UNITED NATIONS

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

Case No. IT-95-14-T

Date: 3 March 2000

Original: English French

IN THE TRIAL CHAMBER

Before: Judge Claude Jorda, Presiding
Judge Almiro Rodrigues
Judge Mohamed Shahabuddeen

Registrar: Mrs. Dorothee de Sampayo Garrido-Nijgh

Decision of: 3 March 2000

THE PROSECUTOR

v.

TIHOMIR BLA[KI]

JUDGEMENT

The Office of the Prosecutor:

Mr. Mark Harmon
Mr. Andrew Cayley
Mr. Gregory Kehoe

Defence Counsel:

Mr. Anto Nobilo
Mr. Russell Hayman

TABLE OF CONTENTS

ANNEX

Abbreviations

ABiH	**Muslim Army of Bosnia-Herzegovina**
BH	**Republic of Bosnia-Herzegovina**
BRITBAT	**UNPROFOR British Battalion**
ICRC	**International Committee of the Red Cross**
ECMM	**European Commission Monitoring Mission**
UNPROFOR	**United Nations Protection Force**
HDZ	**Croatian Democratic Community**
HOS	**Croatian Defence Forces**
HV	**Army of the Republic of Croatia**
HVO	**Croatian Defence Council**
HZHB	**Croatian Community of Herceg-Bosna**
JNA	**Yugoslav People's Army**
UN	**United Nations**
FRY	**Federal Republic of Yugoslavia (Serbia and Montenegro)**
SDA	**Party of Democratic Action**
SDS	**Serbian Democratic Party**
SIS	**HVO Security and Information Service**
TO	**Bosnian Territorial Defence**
VJ	**Army of the FRY**
VRS	**Army of Republika Srpska**
CBOZ	**Central Bosnia Operative Zone**

Players

Miro Andri}	**HV Colonel, he was later the "number two at the joint command of the BH armed forces" before returning to the HV in Croatia.**
Mate Boban	**President of the HZHB and Commander-in-Chief of the HZHB military forces.**
Janko Bobetko	**HV General, southern front commander.**
Mario ^erkez	**Commander of the HVO Vitez Brigade.**
Filip Filipovi}	**HVO Colonel in Travnik.**
Darko Geli}	**Liaison officer for General Bla{ki} to the UNPROFOR**
Enver Had`ihasanovi}	**ABiH 3rd Army Corps Commander.**
Dario Kordi}	**Vice-President of the HZHB.**
Ignac Ko{troman	**Secretary-General of the HZHB and the HDZ in BH.**
Pa{ko Ljubi~i}	**Military Police Fourth Battalion Commander.**
D`emo Merdan	**ABiH Chief-of-Staff.**
Slobodan Milo{evi}	**President of the FRY.**
Milivoj Petkovi}	**HV General, HVO headquarters Chief-of-Staff.**
Slobodan Praljak	**HV General, former Croatian deputy national defence minister in Zagreb, he was replaced by Petkovi} as HVO Chief-of-Staff on 27 July 1993.**
Ivica Raji}	**HVO operative zone 3 Commander (in Kiseljak).**
Ante Roso	**HV General in charge of the Livno region, he replaced Praljak as HVO Chief-of-Staff in October 1993.**

Bruno Stoji}	**Head of the HZHB Defence Department.**
Gojko [u{ak	**Croatian Minister of Defence.**
Franjo Tudjman	**President of the Republic of Croatia.**
Anto Valenta	**President of the HDZ in Vitez, deputy president of the HDZ for the HZHB, vice president of the HVO (April 1993).**
Ivica Zeko	**Deputy commander of the CBOZ responsible for intelligence activities.**

Units

Brigades

a) HVO regular brigades

Ban Jela~i}	**Located in Kiseljak and commanded by Mijo Bo`i} and, later, Ivica Raji}.**
Bobovac	**Located in Vare{ and commanded by Emil Harah.**
Frankopan	**Located in Gu~a Gora, Travnik and commanded by Ilija Naki}.**
Jure Franceti}	**Located in Zenica (until 14 May 1993 at the latest) and commanded by @ivko Toti}.**
Kotromani}	**Located in Kakanj and commanded by Neven Mari}.**
Kralj Tvrtko	**Located in Sarajevo and commanded by Slavko Zeli}.**
Nikola [ubi} Zrinski	**Located in Busova~a and commanded by Du{ko Grube{i}.**
Stjepan Toma{evi}	**Located in Novi Travnik and commanded by @eljko Sablji}.**
Vite{ka	**Located in Vitez and commanded by Mario ^erkez.**
III XP	**Located in @ep~e and commanded by Ivo Lozan~i}.**
Zenica 2nd Brigade	**Located in Zenica (until 14 May 1993 at the latest) and commanded by Vinko Bare{i}).**

b) ABiH Chief-of-Staff

3rd Corps	**Located in Zenica and commanded by General Had`ihasanovi}, the 3rd Corps commanded the ABiH brigades in central Bosnia.**
7th Muslim Brigade	**Brigade forming part of the 3rd Corps command structure, particularly well equipped and comprised in part of foreign soldiers (Mujahedin).**
325th Mountain Brigade	**3rd Corps Brigade in Vitez.**

Military Police

Fourth Battalion	**Located in Travnik. Commanded initially by Zvonko Vukovi} who was replaced on 18 January 1993 by Pa{ko Ljubi~i}. Pa{ko Ljubi~i} was removed from his position on 23 July 1993 and replaced by Marinko Palavra. In July 1993, the Fourth Battalion was renamed the Seventh Battalion.**
Seventh Battalion	**See the Fourth Battalion.**

Special Units

Bruno Bu{i}	**Located in Travnik and commanded by the "director of the Defence Department". The unit left the CBOZ before the April 1993 conflict**
D`okeri	**Anti-terrorist units formed within the Military Police (Fourth Battalion). Located in the bungalows in Nadioci (still called "Swiss chalet"). The immediate commander was Vlado [anti} whose headquarters were in the Hotel Vitez. Anto Furund`ija was appointed commander, subordinate to Vlado [anti}.**
Ludwig Pavlovi}	**Located at the Dubravica school (with the Vitezovi).**
Maturice	**Formed from the Ban Jela~i} brigade. Located in Kiseljak.**
Tvrtko II	**Located in Nova Bila.**
Vitezovi	**Located at the Dubravica school. Its members were former HOS members. Commanded by Colonel Darko Kraljevi} and his deputy Niko Kri`anac.**
@uti	**HVO Frankopan Brigade unit. Located at the Gu~a Gora school in Travnik and commanded by @arko Andri} (nicknamed "@uti").**

Others

Domobrani	**So-called Home Guard units positioned in each village pursuant to a decision of the Mostar Ministry of Defence dated 8 February 1993.**
SIS	**Commanded in the CBOZ by Ante Sli{kovi}, office at the Hotel Vitez.**
HOS	**Commanded in Bosnia by Jadranko Jandri} who was replaced by Mladen Holman before being incorporated into the HVO prior to 16 April 1993.**

I. INTRODUCTION

A. The Tribunal

1. The International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the Former Yugoslavia since 1991 (hereinafter "the Tribunal") was established by the Security Council[1] pursuant to Chapter VII of the Charter of the United Nations.

B. The Indictment

2. General Tihomir Bla{ki}[2] was initially indicted along with five other accused in a single indictment, *The Prosecutor v. Dario Kordi} et al*, confirmed on 10 November 1995[3]. The indictment charged the accused alone with 13 counts. An Order of Judge McDonald dated 22 November 1996 authorised a new indictment to be filed, *The Prosecutor v. Tihomir Bla{ki}*, which incorporated seven new counts.

3. Further to the amendment, the Defence filed four preliminary motions all relating to the amended indictment. The first requested that portions of the indictment alleging "failure to punish" liability be struck out on the ground that it did not constitute an offence falling under the jurisdiction of the Tribunal[4]. The Trial Chamber rejected the request of the Defence since it deemed that, in most cases, such a failure also constituted a failure to prevent other crimes from being committed[5].

4. The Defence submitted a second preliminary motion so as to receive a more detailed explanation of the criteria for the intent required for the charges alleging command

[1] Resolution 827 (1993) adopted by the Security Council on 25 May 1993.
[2] At the time, the accused was a colonel. He was promoted to General of the army of the Republic of Croatia after the period covered by the indictment. In addition, the first name "Tihofil" was sometimes used in referring to him. To take this situation into account but also to ensure the presentation is consistent, the accused shall be called "General Bla{ki}", "Colonel Bla{ki}", "Tihomir Bla{ki}" or simply "the accused".
[3] Confirmation of the indictment, case no. IT-95-14-I, 10 November 1995. Originally, the document included six accused including *Dario Kordi}*, *Tihomir Bla{ki}*, *Mario ^erkez* and *Zlatko Aleksovski*. Following severances, the reference "IT-95-14" concerns *Tihomir Bla{ki}* only.
[4] Motion to strike portions of amended indictment alleging "failure to punish" liability, Case no. IT-95-14-PT, 4 December 1996.
[5] Decision on the Defence Motion to strike portions of the amended indictment alleging "failure to punish" liability, Case no. IT-95-14-PT, 4 April 1997.

responsibility[6]. The Trial Chamber did not grant the Motion on the ground that it related to the subject-matter of the prosecution and was premature at that stage of the proceedings[7].

5. In a third preliminary motion, the Defence also requested the Trial Chamber to reject those counts under Article 2 of the Tribunal's Statute based on a failure to plead adequately the existence of an international armed conflict[8]. The Motion was rejected because the Trial Chamber considered that the Prosecutor did not have to present proof at this stage of the proceedings that such a conflict did occur and that the formal validity of the indictment was in no manner undermined thereby [9].

6. This Judgement responds to the indictment *The Prosecutor v. Tihomir Bla{ki}* as amended for the second time on 25 April 1997 further to the Decision of the Trial Chamber on the fourth and last preliminary motion tendered by the Defence for the dismissal of the indictment based upon defects in the form thereof[10]. The Trial Chamber had granted the Defence Motion in part and ordered the Prosecutor to add details relating to the times and places of the facts characterised, the role of the accused and the type of responsibility alleged, pursuant to the criteria set down by Article 18(4) of the Statute and Sub-rule 47(B) of the Rules of Procedure and Evidence (hereinafter "the Rules"). Following a fresh Defence motion, the Trial Chamber deemed that some of the amendments to the indictment did not comply with its previous Decision[11]. The Prosecutor ultimately withdrew count 2 of the indictment[12].

1. The general context and form of responsibility incurred

7. The indictment of 25 April 1997 (hereinafter "the indictment") contains twenty counts including six grave breaches of the Geneva Conventions (counts 5, 8, 11, 15, 17 and 19),

[6] Motion *in limine* regarding *mens rea* required for charges alleging command responsibility and for bill of particulars re command responsibility portions of indictment, Case no. IT-95-14-PT, 4 December 1996.
[7] Decision rejecting the Defence motion *in limine* regarding *mens rea* required for charges alleging command responsibility and for bill of particulars re command responsibility portions of indictment, Case no. IT-95-14-95-PT, 4 April 1997.
[8] Motion to dismiss counts 4, 7, 10, 14, 16 and 18 based on failure to adequately plead existence of international armed conflict, Case no. IT-95-14-PT, 16 Decmeber 1996.
[9] Decision to reject a motion of the Defence to dismiss counts 4, 7, 10, 14, 16 and 18 based on failure to adequately plead existence of international armed conflict, Case no. IT-95-14-PT, 4 April 1997.
[10] Decision on the Defence motion to dismiss the indictment based upon defects in the form thereof (vagueness/lack of adequate notice of charges), Case no. IT-95-14-PT, 4 April 1997.
[11] Decision on the Defence request for enforcement of an Order of the Trial Chamber, Case no. IT-95-14-PT, 23 May 1997.

eleven violations of the laws or customs of war (counts 2, 3, 4, 6, 9, 12, 13, 14, 16, 18 and 20)[13] and three crimes against humanity (counts 1, 7 and 10) under Articles 2, 3 and 5 of the Tribunal's Statute respectively. The crimes alleged in the indictment were purportedly committed in the context of "serious violations of international humanitarian law against Bosnian Muslims" by members of the armed forces of the Croatian Defence Council (hereinafter "the HVO") between May 1992 and January 1994[14], in the municipalities of:

> Vitez, Busova~a, Kiseljak, Vare{, @ep~e, Zenica, Duvno, Stolac, Mostar, Jablanica, Prozor, ^apljina, Gornji Vakuf, Novi Travnik, Travnik, Kre{evo and Fojnica, all in the territory of the Republic of Bosnia and Herzegovina[15].

However, it emerges from the specific counts that the particular municipalities mentioned as the setting for the crimes with which the accused is charged are Vitez, Busova~a, Kiseljak and Zenica.

8. The indictment states that, throughout the period under consideration, a state of international armed conflict and partial occupation existed in the territory of the Republic of Bosnia and Herzegovina[16].

9. Tihomir Bla{ki} was appointed commander of the HVO armed forces headquarters in central Bosnia on 27 June 1992 and occupied the position throughout the period covered by the indictment. In this position and pursuant to Article 7(1) of the Statute, he was accused of having, in concert with members of the HVO, planned, instigated, ordered or otherwise aided and abetted in the planning, preparation or execution of each of the crimes alleged. In addition or in the alternative, Tihomir Bla{ki} was accused of having known or having had reason to know that subordinates were preparing to commit those crimes or that they had done so and that he had not taken the necessary and reasonable measures to prevent the said crimes from being committed or to punish the perpetrators.

---

[12] Summary of the Prosecutor's Final Brief, 22 July 1999 (filed on 30 July 1999) (hereinafter "Prosecutor's Brief"), paragraph (hereinafter "para.") 8.2, p. 59.
[13] For counts 6, 9, 16, 18 and 20, the Prosecutor specifies Article 3 common to the Geneva Conventions of 12 August 1949 (hereinafter "the Geneva Conventions") for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field (hereinafter "the First Convention"), for the Amelioration of the Condition of the Wounded, Sick and Shipwrecked Members of Armed Forces at sea (hereinafter "the Second Convention"), Relative to the Treatment of Prisoners of War (hereinafter "the Third Convention") and relative to the Protection of Civilian Persons in Time of War (hereinafter "the Fourth Convention"); in addition, for counts 3 and 4, the Prosecutor refers to Articles 51(2) and 52(1) respectively of Protocol I of 8 June 1977 Additional to the Geneva Conventions of 1949 Relating to the Protection of Victims in International Armed Conflicts (hereinafter "Protocol I").
[14] That is, in actual fact, between 1 May 1992 at the earliest and 31 January 1994 at the latest.
[15] Second amended indictment, Case no. ITR-95-14-PT, para. 1.
[16] *Ibid*., para. 5.10.

2. The crimes charged

10. The indictment brought by the Prosecutor groups the facts imputed to General Bla{ki} into six distinct categories.

a) Persecution

11. Under count 1, Tihomir Bla{ki} is accused of a crime against humanity for persecution[17] of the Muslim civilian population of Bosnia[18] throughout the municipalities of Vitez, Busova~a, Kiseljak and Zenica on political, racial or religious grounds from May 1992 to January 1994[19]. The persecution was allegedly implemented through a widespread, large-scale and systematic attack upon towns, villages and hamlets inhabited by Bosnian Muslims[20]. During and after the attack, Bosnian Muslim civilians were allegedly murdered and subjected to serious bodily harm[21] whilst dwellings, buildings, private property, livestock and businesses belonging to Bosnian Muslims as well as their institutions dedicated to religion or education were all allegedly plundered and wilfully destroyed[22]. Furthermore, the Prosecutor alleged that hundreds of Bosnian Muslim civilians were systematically arrested, interned, treated inhumanly[23], intimidated and coerced to leave their homes or forcibly transferred by the HVO to zones outside the municipalities of Vitez, Busova~a and Kiseljak. The forcible transfer of civilians was allegedly described "by HVO representatives as a voluntary or humanitarian transfer of civilians […]"[24]. The persecutions allegedly resulted in a considerable reduction of the Bosnian Muslim civilian population within the three municipalities[25].

b) Unlawful attacks upon civilians and civilian objects

12. Under counts 2 to 4, Tihomir Bla{ki} was accused of three violations of the laws or customs of war[26] for the unlawful attacks upon civilians and civilian objects and for the destruction, not justified by military necessity, which were allegedly perpetrated in the

[17] Article 5(h) of the Statute.
[18] The Trial Chamber states the neutrality of the expression, in any case used by the Prosecutor (hereinafter "Bosnian Muslims" or "Muslim civilians").
[19] Second amended indictment, Case no. ITR-95-14-PT, para. 6.
[20] *Ibid*., para. 6.1.
[21] *Ibid*., para. 6.2.
[22] *Ibid*., para. 6.3.
[23] *Ibid*., paras. 6.4 and 6.5..
[24] *Ibid*., para. 6.7.
[25] *Ibid*., para. 7.
[26] Articles 3 and 3(b) of the Statute and Articles 51(2) and 52(1) of Protocol I for counts 3 and 4.

towns and villages of Ahmi}i, Nadioci, Piri}i, [anti}i, O~ehni}i, Vitez, Stari Vitez, Rotilj and Zenica[27].

c) Wilful killing and serious bodily injury

13. Under counts 5 to 10, Tihomir Bla{ki} was prosecuted for wilful killing and serious physical and mental injury to civilians, allegedly committed from January 1993 to January 1994 in the municipalities of Vitez, Busova~a, Kiseljak and Zenica[28]. The crimes thus alleged were prosecuted as two serious breaches of the Geneva Conventions[29], two violations of the laws or customs of war[30] and two crimes against humanity[31].

d) Destruction and plunder of property

14. Under counts 11 to 13, Tihomir Bla{ki} was accused of a serious breach of the Geneva Conventions[32] and two violations of the laws or customs of war[33] for the large-scale plunder and destruction of Bosnian Muslim dwellings, buildings, businesses, private property and livestock between January 1993 and September 1993, and more specifically in Ahmi}i, Nadioci, Piri}i, [anti}i, O~ehni}i, Vitez, Stari Vitez, Donja Ve~eriska, Ga~ice, Lon~ari, Behri}i, Svinjarevo, Gomionica, Gromiljak, Polje Vi{njica, Vi{njica and Rotilj in April 1993, in Tulica and Han Plo~a/Grahovci in June 1993, again in Stari Vitez in August 1993 and in Grbavica in September 1993[34].

e) Destruction of institutions dedicated to religion or education

15. Under count 14, Tihomir Bla{ki} was accused of a violation of the laws or customs of war[35] for the destruction or wilful damage done to Bosnian Muslim institutions dedicated to religion or education between August 1992 and June 1993 – in Duhri in August 1992, Busova~a, Stari Vitez and Svinjarevo in 1993, Ahmi}i, Kiseljak, Gromiljak and Kazagi}i in April 1993, Hercezi, Han Plo~a and Tulica in June 1993 and Vi{njica in September 1993[36].

[27] Second amended indictment, para. 8.
[28] *Ibid*., para. 9.
[29] Articles 2(a) and 2(c) of the Statute.
[30] Article 3 of the Statute and Article 3(1) of the Geneva Conventions.
[31] Articles 5(a) and 5(i) of the Statute.
[32] Article 2(d) of the Statute.
[33] Articles 3(b) and 3(e) of the Statute.
[34] Second amended indictment, para. 10.
[35] Article 3(d) of the Statute.
[36] Second amended indictment, para. 11.

f) Inhumane treatment, taking of hostages and use of human shields

16. Counts 15 to 20 concern the cruel and inhumane treatment inflicted from January 1993 to January 1994 on Bosnian Muslims detained at facilities controlled by the HVO[37], the taking of Bosnian Muslim civilians as hostages between January 1993 and January 1994 to obtain prisoner exchanges and the cessation of Bosnian military operations against the HVO[38] and, lastly, the use of Bosnian Muslim civilians between January 1993 and April 1993 as human shields to protect the HVO positions[39]. In this respect, the Prosecutor charged the accused with three grave breaches of the Geneva Conventions[40] and three violations of the laws or customs of war[41].

C. The main stages of the proceedings

17. Following Judge McDonald's confirmation of the initial indictment on 10 November 1995, the warrants of arrest ordering the transfer of the accused were sent to the authorities of the Federation of Bosnia-Herzegovina of the Republic of Bosnia-Herzegovina and to the authorities of the Republic of Croatia[42]. Copies of the indictments and warrants of arrest were subsequently sent to IFOR[43] upon an Order of Judge Jorda. Lastly, Judge Vohrah issued a warrant of arrest ordering the transfer of Tihomir Bla{ki} to the Kingdom of The Netherlands on 28 March 1996[44].

18. Tihomir Bla{ki} voluntarily gave himself up to the International Tribunal on 1 April 1996 and, pursuant to Rule 62 of the Rules, his initial appearance hearing was held on 3 April 1996 before Trial Chamber I composed of Judge Jorda, presiding, Judge Deschênes and Judge Riad. The accused pleaded "not guilty" to all the counts brought against him in the initial indictment. On 4 December 1996, Tihomir Bla{ki} pleaded "not guilty" to the new counts confirmed against him[45] following the first amendment of the indictment on 22 November 1996. The second amendment of the indictment on

[37] *Ibid*., paras. 13 and 14.
[38] *Ibid*., para. 15.
[39] *Ibid*., para. 16.
[40] Articles 2(b) and 2(h) of the Statute.
[41] Article 3 of the Statute and Article 3(1)(a) common to the four Geneva Conventions.
[42] Warrants of Arrest Order for Surrender of Tihomir Bla{ki} addressed to the Federation of Bosnia-Herzegovina, the Republic of Croatia and the Republic of Bosnia-Herzegovina, Case no. IT-95-14-I, 10 November 1995.
[43] Order rendered on 24 December 1995 by Judge Claude Jorda, Case no. IT-95-14-I, 24 December 1995.
[44] Warrant of Arrest Order for Surrender of Tihomir Bla{ki} addressed to the Kingdom of The Netherlands, Case no. IT-95-14-I, 28 March 1996.
[45] Provisional English Transcript (hereinafter "PT") of the hearing of 4 December 1996, p. 5.

25 April 1997 did not bring any new counts against the accused who, for that reason, did not have to enter a new plea.

19. The proceedings against Tihomir Bla{ki} before the Tribunal were complex and at each stage gave rise to many questions, often without precedent. Accordingly, during the fourteen-month pre-trial phase, the Tribunal rendered eighty-two interlocutory decisions. The trial proper commenced on 24 June 1997[46] and lasted a little over two years, closing on 30 July 1999. During this stage of the proceedings, seventy-eight interlocutory Decisions were rendered, 158 witnesses heard and more than one thousand three hundred exhibits filed[47]. The French version of the transcript runs to more than 18,300 pages. This chapter is intended to recall the various stages of the lengthy proceedings in brief and according to the issues. However, it will not deal with the issues relating to the indictment, which were examined in the previous chapter or the proceedings relating to binding Orders for the production of documents addressed to some States.

1. Issues relating to the composition of the Trial Chamber

20. The Trial Chamber hearing the present case was initially composed of Judge Jorda, presiding, Judge Deschênes and Judge Riad. Since Judge Deschênes was unable to continue sitting in the case, the President of the Tribunal ordered the temporary assignment of Judge Li pursuant to Sub-rule 15(F) of the Rules[48]. On 18 April 1997, Judge Deschênes resigned for medical reasons and was replaced on 16 June 1997 by Judge Shahabuddeen who was assigned to the case in an Order of the President[49] on the same day of his appointment to the Tribunal.

21. Sub-rule 15(F) was implemented for a second time when Judge Riad became unavailable for approximately three months for medical reasons. Upon consulting with the parties at two status conferences[50], the Presiding Judge of the Trial Chamber, Claude Jorda, submitted a report to the President of the Tribunal expressing his preference for Judge Riad to be replaced given the circumstances[51]. The said report recalled that the Prosecutor

[46] Order for the holding of a hearing and the setting of a date for the start of trial, Case no. IT-95-14-PT, 17 June 1997.
[47] Some of the exhibits contain several distinct parts, even up to around one hundred elements.
[48] Order of the President temporarily assigning a Judge to Trial Chamber I, Case no. IT-95-14-PT, 27 January 1997.
[49] Order of the President assigning a Judge to a Trial Chamber, Case no. IT-95-14-T, 16 June 1997.
[50] PT of 12 and 21 January 1999.
[51] Report of the Presiding Judge of Trial Chamber I pursuant to Sub-rule 15(F) of the Rules of Procedure and Evidence, Decision on the production of discovery materials, Case no. IT-95-14-T, 26 January 1999.

favoured a solution which would enable Judge Riad to continue reviewing the case and mentioned the document filed by the accused reiterating his conditional consent to the continuation of the proceedings following the assignment of a new Judge[52]. In view of these developments, the President of the Tribunal ordered the assignment of Judge Almiro Rodrigues and the resumption of proceedings before the newly composed Trial Chamber[53].

2. Issues relating to the detention of the accused

22. The Trial Chamber considers that in this instance it is appropriate to distinguish between the requests for modification to the detention conditions presented to the President of the Tribunal pursuant to Rule 64 of the Rules and the Motions for provisional release submitted to the Trial Chamber by the accused pursuant to Rule 65 of the Rules. Although in this case, the requests were filed at the same time, they will be examined successively in this chapter.

a) Motions for modification to the detention conditions of the accused

23. On the same day as Tihomir Bla{ki}'s surrender to the Tribunal, Defence Counsel submitted to the President of the Tribunal pursuant to Rule 64 of the Rules a motion for modification to the conditions of detention of the accused. The President authorised that the accused be detained under strict conditions outside the United Nations Detention Unit facilities "within the confines of a residence designated by the Netherlands authorities" [54]. The detention conditions were later modified, in particular as regards family visits and movement of the accused outside[55]. Nonetheless, following serious threats to the security of General Bla{ki}, these detention conditions were abandoned in a Decision of the Tribunal and the accused was transferred to the United Nations Detention Unit[56].

---

[52] Conditional consent of the accused to the continuation of the proceedings following the assignment of a new Judge to the Trial Chamber, Case no. IT-95-14-T, 22 January 1999.
[53] Order of the President for the assignment of a Judge to the Trial Chamber, Case no. IT-95-14-T, 29 January 1999.
[54] Decision on the motion of the Defence filed pursuant to Rule 64 of the Rules of Procedure and Evidence, Case no. IT-95-14-I, 3 April 1996, para. 24.
[55] Decision on the motion of the Defence seeking modification to the conditions of detention of General Bla{ki}, Case no. IT-95-14-PT, 17 April 1996; Decision on the motion of the Defence seeking modification to the conditions of detention of General Bla{ki}, Case no. IT-95-14-PT, 9 May 1996; Decision on motion of the Defence seeking modification of the conditions of detention of General Bla{ki}, Case no. IT-95-14-PT, 9 January 1997; Decision on the conditions of detention of General Bla{ki}, Case no. IT-95-14-PT, 26 May 1997.
[56] Order modifying the conditions of detention of General Bla{ki}, Case no. IT-95-14-PT, 20 June 1997; Decision on the modification of the conditions of detention of General Bla{ki}, Case no. IT-95-14-PT, 23 June 1997; Decision, Case no. IT-95-14-T, 17 July 1997.

b) Motions for provisional release of the accused

24. Defence Counsel to Tihomir Bla{ki} twice presented a motion for provisional release pursuant to Rule 65 of the Rules. The first gave rise to a Decision dated 25 April 1996 and the second to a Decision dated 20 December 1996. In both instances the Trial Chamber rejected the Motion upon reviewing all the elements to be taken into consideration[57].

3. Issues relating to evidence

25. Throughout the trial, the administration of the evidence gave rise to many motions relating both to the disclosure obligations of the parties and to the admissibility of the evidence. One of the characteristics of this case is that the questions relating to disclosure obligations, which typically arise at the pre-trial phase, persisted through the trial itself. It is also appropriate to deal with the unprecedented matter of access to confidential documents in related "La{va Valley" cases and the lengthy procedure for Orders addressed to States for the production of documents.

a) Disclosure obligations

26. Seised of a Defence motion[58], the Trial Chamber rendered a Decision on 27 January 1997 setting out how it interpreted the scope of the parties' disclosure obligations under Rules 66, 67 and 68 of the Rules[59].

Pursuant to former Sub-rule 66(A) of the Rules, the Trial Chamber initially took up a broad interpretation of the notion of disclosure by concluding that all the prior statements of the accused appearing in the Prosecutor's case-file had to be disclosed to the Defence without delay whatever their nature or origin. The Judges further stated that the same criteria were to apply *mutatis mutandis* to the prior statements of the witnesses under that same Sub-rule 66(A). Nonetheless, the Trial Chamber attached two reservations to this interpretation, grounded on Sub-rules 66(C) and 70(A) of the Rules respectively.

Secondly, on the issue of the disclosure of the Prosecution witnesses' names to the Defence provided for under Sub-rule 67(A), the Trial Chamber found that all the names of the witnesses had to be disclosed "at the same time in a comprehensive document which thus

[57] Decision rejecting a request for provisional release, Case no. IT-95-14-PT, 25 April 1996. Order denying a motion for provisional release, Case no. IT-95-14-PT, 20 December 1996.
[58] Motion to compel the production of discovery material, Case no. IT-95-14-PT, 26 November 1996.
[59] Decision on the production of discovery materials, Case no. IT-95-14-PT, 27 January 1997.

permits the Defence to have a clear and cohesive view of the Prosecution's strategy and to make the appropriate preparations"[60].

Thirdly, the Trial Chamber evaluated the scope and methods of application of Rule 68 of the Rules relating to the Prosecutor's disclosure of exculpatory material. It recalled that the obligation was boundless and unquestionably fell upon the Prosecutor alone, though under the control of the Trial Chamber, if only because she was in possession of the said exculpatory material. However, the Trial Chamber drew a parallel between the evidence identified under Sub-rule 66(B) of the Rules "material to the preparation of the Defence" and Rule 68 exculpatory evidence. Applying the case-law on the interpretation of Sub-rule 66(B) in the ^*elebi}i* case[61] to Rule 68, it therefore deduced that where the Defence contested the Prosecutor's execution of her obligations it "must present a *prima facie* case which would make probable the exculpatory nature of the materials sought"[62].

27. The Trial Chamber subsequently heard fresh motions on the matter during the same trial and clarified its case-law of 27 January 1997.

Hence, in response to a Defence motion, the Trial Chamber reviewed the notion of prior statements in the light of its foregoing case-law on the subject and found that topographical maps, personal journals and radio logs could not be likened to prior statements of witnesses within the meaning of Sub-rule 66(A) of the Rules and did not need to be disclosed to the Defence[63]. The matter was also raised in respect of written orders of Tihomir Bla{ki}. The Trial Chamber assessed, however, that these were documents within the meaning of Sub-rule 66(B) of the Rules and fell under Sub-rule 66(A):

> all statements made by the accused during questioning in any type of judicial proceedings which may be in the possession of the Prosecutor, but only such statements[64].

The Defence also approached the Trial Chamber in order to have the statements of a third party presented by a witness at a hearing disclosed to it. The Judges limited the field of

[60] *Ibid*., para. 22.
[61] Decision on the Motion by the accused Zejnil Delali} for the disclosure of evidence, Case no. IT-96-21-T, 26 September 1996.
[62] Decision on the production of discovery materials, Case no. IT-95-14-PT, 27 January 1997, para. 49.
[63] Decision on the Defence Motion to preclude testimony of certain Prosecution witnesses based upon the Prosecution's violation of the Tribunal's Order compelling the production of discovery materials, Case no. IT-95-14-T, 25 August 1997.
[64] Decision on the Defence Motion for sanctions for the Prosecutor's failure to comply with Sub-rule 66(A) of the Rules and the Decision of 27 January 1997 compelling the production of all statements of the accused, Case no. IT-95-14-T, 15 July 1998, p. 3.

application of Sub-rule 66(A) of the Rules to the statements of only those witnesses whom the Prosecutor actually meant to call[65], in addition to the elements provided to the confirming Judge in support of the indictment.

28. In respect of application of Sub-rule 67(A) of the Rules on disclosure to the Defence of the names of the Prosecution witnesses called to appear, the Prosecutor was instructed to provide the Trial Chamber and the Defence with the list of the witnesses whom she intended to call to appear at least two working days beforehand[66]. The Trial Chamber did not adjudge it appropriate at this stage to rule on the proceedings as regards the reciprocal prior disclosure of the names of Defence witnesses[67]. It was only just before the Defence began to present its case that the Trial Chamber ordered that the names and identifying information of the Defence witnesses whom the Defence intended to call and the summary of the facts on which their testimony would bear be disclosed at least seven days before their appearance[68]. This was done for the purposes of a faster and more efficient conduct of the proceedings and pursuant to Rule 54 of the Rules.

29. Being seised of a Defence motion, the Trial Chamber clarified its initial case-law on the interpretation of Rule 68 of the Rules and stated that it assumed that the Office of the Prosecutor was acting in good faith. However it reserved the possibility to verify on a case by case basis the potential failures and, at time of trial, draw the necessary conclusions as regards the probative value to be given to the evidence in question[69].

b) The exception to the disclosure obligation set down in Rule 70 of the Rules

30. Pursuant to Sub-rule 70(A) of the Rules:

> reports, memoranda, or other internal documents prepared by a party, its assistants or representatives in connection with the investigation or preparation of the case, are not subject to disclosure or notification

[65] Decision on the Defence Motion to compel the disclosure of Rule 66 and 68 material relating to statements made by a person known as "X", Case no. IT-95-14-T, 15 July 1998.
[66] Decision on the Defence Motion to preclude testimony of certain Prosecution witnesses based upon the Prosecution's violation of the Tribunal's Order compelling the production of discovery materials, Case no. IT-95-14-T, 25 August 1997.
[67] Decision of Trial Chamber I on the Prosecutor's Motion for clarification of order requiring advance disclosure of witnesses and for Order requiring reciprocal advance disclosure by the Defence, Case no. IT-95-14-T, 29 January 1998.
[68] Decision on the Prosecutor's Motion for seven (7) days advance disclosure of Defence witnesses and Defence witnesses statements, Case no. IT-95-14-T, 3 September 1998.
[69] Decision on the Defence Motion for "Sanctions for Prosecutor's repeated violations of Rule 68 of the Rules of Procedure and Evidence", Case no. IT-95-14-T, 29 April 1998.

The Trial Chamber took note that the accused, appearing as a witness in accordance with Sub-rule 85(C) of the Rules, relied upon his personal notes made during the preparation of his defence which included a war diary kept by his assistant and a military logbook of activities held at the headquarters. The Judges were of the opinion that these materials did not constitute internal documents within the meaning of Sub-rule 70(A) of the Rules and considered it appropriate and in the interests of justice to be able to view them. In so doing and where need be, they ordered the Defence or the Federation of Bosnia-Herzegovina to disclose them to the Trial Chamber[70]. The Defence replied that it no longer had these materials in its possession.[71]

31. The other paragraphs under Rule 70 of the Rules deal with the exception to the disclosure obligation set down in Rules 66, 67 and 68 of the Rules. The Trial Chamber acknowledged that this was an exceptional and strictly governed right which benefited *mutatis mutandis* the accused and was intended to allow the use of confidential source information which, failing the said provision, would allegedly prove unusable[72]. In light of several Prosecution and Defence submissions[73] within the terms of Rule 70, the Judges stated its conditions of applicability and its limits.

32. In accordance with Rule 70 of the Rules, the Trial Chamber held that the information specified must meet several conditions, that is: be in the applicant's possession; have been disclosed confidentially - the holder or holding entity being the sole judge of its confidentiality; and have been used for the sole purpose of collecting new evidence which, contrary to initial information, did not enjoy Rule 70 protection.[74]

33. Pursuant to Sub-rule 70(B) of the Rules, the transmission and use in evidence of information responding to the criteria specified above are subject to the consent of the person or entity providing them. The Trial Chamber nevertheless firmly recalled the limits of this protection where the rights of the Defence were involved and affirmed that once the person or entity holding the information had consented to its use in evidence it had to be disclosed without undue delay to the Defence and that the person or entity concerned could not determine whether and, where applicable, when it was appropriate to disclose the said

[70] Order for the production of documents used to prepare for testimony, Case no. IT-95-14-T, 22 April 1999.
[71] No response was received from the Federation.
[72] Decision of Trial Chamber I on the Prosecutor's Motion for video deposition and protective measures, Case no. IT-95-14-T, 11 November 1997, para. 10.
[73] Decision of Trial Chamber I on the Application of the Defence pursuant to Sub-rule 70(F) of the Rules, Case no. IT-95-14-T, 12 January 1999 (under seal) and Decision of Trial Chamber I on the Motion to protect a witness, Case no. IT-95-14-T, 19 March 1999.
[74] Aforementioned Decision of 11 November 1997, paras. 10-23.

information[75]. The Trial Chamber further observes that recourse to this provision of the Rules allowed highly confidential evidence to be presented to the Trial Chamber, in particular by former representatives of the government of a member State of the United Nations.

c) The admissibility of the evidence

34. The admissibility of the evidence presented at trial was also the subject of Decisions on several occasions. The principle embodied by the case-law of the Trial Chamber on the issue is the one of extensive admissibility of evidence - questions of credibility or authenticity being determined according to the weight given to each of the materials by the Judges at the appropriate time.

35. In this respect, it is appropriate to point out that the Trial Chamber authorised the presentation of evidence without its being submitted by a witness. The Trial Chamber relied on various criteria for this. At the outset, it is appropriate to observe that the proceedings were conducted by professional Judges with the necessary ability for first hearing a given piece of evidence and then evaluating it so as to determine its due weight with regard to the circumstances in which it was obtained, its actual contents and its credibility in light of all the evidence tendered. Secondly, the Trial Chamber could thus obtain much material of which it might otherwise have been deprived. Lastly, the proceedings restricted the compulsory resort to a witness serving only to present documents. In summary, this approach allowed the proceedings to be expedited whilst respecting the fairness of the trial and contributing to the ascertainment of the truth.

36. Nonetheless, the discussions between the parties as to how evidence was to be administered were generally animated and acrimonious. By way of example, the Trial Chamber notes the following submissions.

Initially, the Defence filed a standing objection to the admission of hearsay with no inquiry as to its reliability. The Trial Chamber rejected this objection on the ground that Sub-rule 89(C) of the Rules authorises the Trial Chamber to receive any relevant evidence which it deems has probative value and that the indirect nature of the testimony depends on the weight which the Judges give to it and not on its admissibility[76].

[75] Decision on the Prosecutor's request for authorization to delay disclosure of Rule 70 information, Case no. IT-95-14-T, 6 May 1998, paras. 13-15.
[76] Decision on the standing objection of the Defence to the admission of hearsay with no inquiry as to its reliability, Case no. IT-95-14-T, 21 January 1998.

The Defence raised a similar issue regarding the authenticity of documents produced during testimony. The Trial Chamber found that any documentary evidence produced by a party and identified by a witness was admissible and that any dispute over its authenticity did not derive from its admissibility but from the weight which it would be appropriate to give to it[77].

Furthermore, the Trial Chamber was confronted with the problem of the admission of the statement of a deceased witness which had been given under oath to the Prosecutor's investigators. The Judges considered this to be clearly one of the exceptions to the principle of oral witness testimony, in particular for cross-examination, accepted in the different national and international legal systems and therefore they admitted the said statement in evidence but reserved the right to give it the appropriate weight when the time came[78].

Finally, in order to assist the Judges in their search for the truth, the Trial Chamber authorised that the statement of a witness who had already appeared before it be admitted into evidence. In so doing, it considered that pursuant to Rule 89 of the Rules it could admit any relevant document with probative value and reserve the right to evaluate freely the weight to be given to it at the end of the trial[79].

d) Access to the confidential documents in related La{va Valley cases

37. On 16 September 1998, Defence for the accused *Dario Kordi}* and *Mario ^erkez* (hereinafter "the *Kordi}-^erkez* Defence") filed a motion for access to the non-public materials in this case, that is, the hearing transcripts, exhibits, Orders and Decisions concerning events, facts and witnesses at issue in their related case, with the Trial Chamber hearing the case *The Prosecutor v. Tihomir Bla{ki}* (hereinafter "the *Bla{ki}* Trial Chamber")[80]. On 12 November 1998, the Trial Chamber hearing the case *The Prosecutor v. Dario Kordi} and Mario ^erkez* (hereinafter "the *Kordi}-^erkez* Trial Chamber") issued, at the same time, a Decision on the matter in which it requested the Trial Chambers concerned to give their reasoned opinion on the review of the issues raised and to indicate whether the

[77] Decision on the Defence Motion for reconsideration of the ruling to exclude from evidence authentic and exculpatory documentary evidence, Case no. IT-95-14-T, 30 January 1998.
[78] Decision on the Defence Motion to admit into evidence the prior statement of deceased witness Midhat Ha{ki}, Case no. IT-95-14-T, 29 April 1998.
[79] Decision of Trial Chamber I on the application of the Prosecutor to admit into evidence the statement of Defence witness Mr. Leyshon, Case no. IT-95-14-T, 16 March 1999.
[80] Motion of the accused Dario Kordi} and Mario ^erkez for access to the non-public materials in this case, Case no. IT-95-14-T, 16 September 1998.

Motion could be granted and if so under what confidentiality and protective measure conditions[81].

38. The *Bla{ki}* Trial Chamber rendered its Opinion on 16 December 1998 pursuant to the Decision of the *Kordi}-^erkez* Trial Chamber[82]. Bearing in mind that the two cases had at the outset formed part of one and the same indictment, the Trial Chamber affirmed that the Prosecutor was compelled to disclose to the *Kordi}-^erkez* Defence all statements or evidence within the meaning of Rules 66 and 68 of the Rules. Nonetheless, the Judges stated that protective measures granted to witnesses by the *Bla{ki}* Trial Chamber must apply *ipso facto* to the parties in the *Kordi}-^erkez* case and proposed a set of tightened measures in order to offset the increased risk of breaches of confidentiality due to the greater number of persons in possession of confidential information. These additional measures included, *inter alia*, limitation on access to confidential documents to a single responsible custodian and the use of separate pseudonyms in the two cases.

39. Subsequently, the *Bla{ki}* Trial Chamber rendered another Decision on the disclosure to the *Kordi}-^erkez* Defence of a confidential transcript of a statement given by a witness appearing for the Defence. The *Bla{ki}* Trial Chamber recalled that, although the Defence was not subject to the same disclosure obligations as the Prosecutor, with the exception of the materials tendered under Rule 70 of the Rules the Prosecutor remained subject to her Rule 66 and 68 obligations with no distinction being made between the public or confidential nature of the documents concerned[83].

40. On 17 January 2000, the *Bla{ki}* Trial Chamber authorised the Prosecutor's use of a confidential document belonging to the *Bla{ki}* Defence, subject to the appropriate protective measures being taken by the *Kordi}-^erkez* Trial Chamber. The *Bla{ki}* Defence did not contest the principle by which the document was disclosed to the Judges and the Defence in the *Kordi}-^erkez* case[84].

[81] Decision on the Motion of the accused for access to non-public materials in the La{va Valley and related cases, Case no. IT-95-14/2-T, 12 November 1998.
[82] Opinion further to the Decision of the Trial Chamber seized of the case *The Prosecutor v. Dario Kordi} and Mario ^erkez* dated 12 November 1998, Case no. IT-95-14-T, 16 December 1998.
[83] Decision on the Prosecution and Defence Motions dated 25 January 1999 and 25 March 1999 respectively, Case no. IT-95-14-T, 22 April 1999.
[84] Decision on the Motion to allow non-public evidence to be revealed to the Kordi}-^erkez Trial Chamber and Defence Counsel, Case no. IT-95-14-T, 17 January 2000.

e) Orders for production of documents

41. This Trial Chamber conducted several parallel proceedings relating to the forced production of documents by certain States and entities. Beforehand, it is appropriate to point out that both the Prosecution and the Defence resorted to these proceedings. In addition, it must be recorded that the Trial Chamber was not necessarily informed of whether the measures it ordered were properly executed. It is incumbent upon the requesting party to refer any difficulties to the Trial Chamber which, however, does not intervene, or only marginally so, in the hand-over of the documents requested.

i) Proceedings regarding the Republic of Croatia

42. The issue of a *subpoena duces tecum* ordering the production of documents had been pending in the *Bla{ki}* case since 10 January 1997, the date on which the Prosecutor requested a Judge to issue a *subpoena duces tecum* to Croatia. The Judge issued just such a *subpoena duces tecum* on 15 January 1997 to Croatia and Mr. Gojko [u{ak, then Minister of Defence[85]. Her Order listed the documents to be produced by 14 February 1997 at the latest. Croatia declared in a letter dated 10 February 1997, first, that it adjudged that any request addressed to its Minister as a government official was ungrounded as, according to the Statute and the Rules, a request for assistance had to be addressed to a State and, second, that as a sovereign State, it could not accept to comply with the order of the *subpoena duces tecum* "but respecting its obligations under the Tribunal's Statute reiterate[d] its readiness for full co-operation under the terms applicable to all States"[86]. On 19 February 1997, Judge McDonald held a hearing at which a representative from Croatia expressed an identical view. That same day, the Prosecutor issued an official request for assistance to the Republic of Croatia pursuant to Rule 39 of the Rules asking for the same categories of documents[87]. The discussions continued for several months before Trial Chamber II ruled, on 18 July 1997, on

[85] *Subpoena duces tecum* issued to the Republic of Croatia and to the Ministry of Defence Gojko [u{ak, Case no. IT-95-14-PT, Judge McDonald, 15 January 1997. Judge MacDonald issued the Order being the Judge who confirmed the indictment against Tihomir Bla{ki}.
[86] Reply to *subpoena duces tecum*, government of the Republic of Croatia, Case no. IT-95-14-PT, 10 February 1997.
[87] Request for assistance to the Republic of Croatia by the Prosecutor under Rule 39 of the Rules of Procedure and Evidence of the International Tribunal, Case no. IT-95-14-PT, 19 February 1997.

the power of the Tribunal to issue *subpoenae duces tecum*[88] and the Appeals Chamber rendered a subsequent ruling[89].

43. On 29 October 1997, the Appeals Chamber ruled pursuant to Rule 108 *bis* of the Rules on the Request of the Republic of Croatia filed on 25 July which requested *inter alia* that the 18 July Decision of Trial Chamber II be reviewed and set aside and the *subpoena duces tecum* of 15 January 1997 be quashed[90]. In its Judgement, the Appeals Chamber decided that neither a State nor its *ex officio* official agents could be the subject of a *subpoena duces tecum* and stated the conditions under which a potential binding Order to a State to produce documents or other items could be issued and the rights and duties of the State concerned. Moreover, the Appeals Chamber set the criteria which any motion for an Order for the production of documents had to meet[91]. These criteria were: 1) an exact description of the documents requested (as opposed to broad categories); 2) the relevance of the documents to the trial; 3) comparatively simple execution of the Order; and 4) a sufficient time-period for the State to comply[92]. Furthermore, it established the "possible modalities of making allowance for national security concerns"[93].

44. On 12 January 1998, the Prosecutor, relying on Article 29 of the Statute[94], filed a motion "for the issuance of a binding Order on the Republic of Croatia for the production of documents". The Trial Chamber granted the Motion and issued confidentially and *ex parte* the Order of 30 January 1998[95] in which it instructed that the documents requested be provided to the Office of the Prosecutor in the shortest possible time and by 27 February 1998 at the latest. On 13 February 1998, the Republic of Croatia filed a Request pursuant to Rule 108 *bis*

---

[88] Decision on the objection of the Republic of Croatia to the issuance of *subpoenae duces tecum*, Case no. IT-95-14-PT, 18 July 1997, (hereinafter "the Decision on the *subpoenae duces tecum*").
[89] Judgement on the Request of the Republic of Croatia for review of the Decision of Trial Chamber II of 18 July 1997, Case no. IT-95-14-AR 108*bis*, 29 October 1997 (hereinafter "the Judgement on the Request of the Republic of Croatia"); for a full reminder of the proceedings of the issue until the Judgement, see the Judgement, para. 2-18.
[90] In addition, Croatia requested that the Order of the Trial Chamber be suspended until the Appeals Judgement had been rendered and that no new binding Order under threat of sanctions be issued to the States or their official agents. The Appeals Chamber declared the Request admissible and suspended the *subpoena duces tecum* (Decision on the admissibility of the request for review by the Republic of Croatia of an interlocutory Decision of a Trial: Chamber (issuance of *subpoenae duces tecum*) and scheduling Order, *The Prosecutor v. Tihomir Bla{ki}*, Case no. IT-95-14-AR 108*bis*, Appeals Chamber, 29 July 1997).
[91] The Judgement on the Request of the Republic of Croatia, para. 32.
[92] For an exact description of the four criteria see the Judgement on the Request of the Republic of Croatia, para. 32.
[93] The Judgement on the Request of the Republic of Croatia, paras. 67-69.
[94] Article 29 of the Statute entitled, "Co-operation and judicial assistance" states *inter alia* that "States shall comply without undue delay with any request for assistance or an order issued by a Trial Chamber, including but not limited to […] the production of evidence [and] the service of documents".

of the Rules for the Order of 30 January 1998 to be reviewed and stayed[96]. A lengthy dispute ensued during which the Trial Chamber strove, within the context of the Appeals Chamber decision, to obtain production of those documents which it deemed relevant whilst taking account of the national security concerns expressed by the Republic of Croatia.

45. On 15 and 16 April 1999, following many procedural episodes, the Trial Chamber consequently heard a civil servant duly empowered by the Republic of Croatia to put forward its concerns, especially regarding national security. The proceedings allowed it to be established that the Republic of Croatia had disclosed only a very limited number of documents. Furthermore, the Republic of Croatia transmitted directly to the Trial Chamber some documents which the Prosecutor had refused on the ground that they were not responsive to her successive motions. The documents essentially touched on the humanitarian aid transited through the Republic of Croatia bound for Bosnia-Herzegovina and on the treatment given to refugees to Bosnia-Herzegovina. They could in no manner be construed as responding to the Prosecutor's motions, interesting though they might be.

46. Finally, on 16 November 1999, the Appeals Chamber found that there was reason to reject the Request for review of the Republic of Croatia without prejudice to the rights of the parties to raise an issue further to the present Judgement[97].

ii) Other proceedings

47. Other proceedings for the production of documents were undertaken against States and other entities. The spirit of co-operation of the entities came to the fore at hearings organised to enable a procedure for executing Trial Chamber decisions to be passed which took into account the legitimate confidentiality and security concerns of these entities. On a State level, some responses provided by the Croatian part of the Croat-Muslim Federation appeared to contradict other elements in the possession of the Trial Chamber, including the accused's statements[98].

---

[95] Order on the Motion of the Prosecutor for the issuance of a binding Order on the Republic of Croatia for the production of documents (confidential – *ex parte*), Case no. IT-95-14-T, 30 January 1998.
[96] Notice of State Request for review of Order on the Motion of the Prosecutor for the issuance of a binding Order on the Republic of Croatia for the production of documents and Request for stay of Trial Chamber's Order of 30 January 1998 (hereinafter "the Request of Croatia").
[97] Order terminating proceedings, Case no. IT-95-14-AR 108*bis*, 16 November 1999.
[98] The accused claimed that he had been able to prepare his testimony upon the basis of archives whose existence the party concerned denied.

4. Issues relating to the appearance and protection of victims and witnesses

48. On 17 June 1996, the Trial Chamber rendered its first Decision granting protective measures to Prosecution witnesses. It observed that there were exceptional circumstances covered by Sub-rule 69(A) of the Rules and authorised the sole disclosure to the Defence, by 1 September 1996 at the latest, of versions of the witnesses' statements which had been redacted of names and identifying information until the witnesses were placed under the Tribunal's protection[99]. Having rejected the Request of the Prosecutor for an *ex parte* hearing[100], on 18 September 1996, the Trial Chamber heard the parties in closed session regarding the Prosecutor's request for release from her obligations pursuant to the Decision of 17 June 1996 through a general Order to the Defence for non-communication of witness identification information. In its Decision of 2 October 1996, the Trial Chamber ordered that all the redacted statements be disclosed in their unabridged versions within fifteen days as well as the ten statements still not communicated from before 1 December 1996, failing which the testimony could not be used in trial. The Defence was bound by a non-disclosure obligation in respect of the identification information under pain of contempt of the Tribunal[101]. This measure imposed on the Defence was subsequently to be the focus of a general Order prohibiting it from:

> disclos[ing] to the public or to the media the name of the witnesses residing in the territory of the former Yugoslavia or any other information which would permit them to be identified, unless absolutely necessary for the preparation of the Defence[102].

Prior to the Defence commencing its case, the Trial Chamber held that there was reason to apply *mutatis mutandis* the relevant provisions of the Rules to the Defence witnesses who accordingly enjoyed protection under the same terms[103].

49. In all, thirty-three witness testified in closed session. Each time that tightened protection was required for witnesses who were heard in open session, the Trial Chamber went into private session.

---

[99] Decision on the Prosecutor's Motion requesting protective measures for witnesses and victims, Case no. IT-95-14- PT, 17 June 1996.
[100] Decision rejecting the Request of the Prosecutor for *ex parte* proceedings, Case no. IT-95-14-PT, 18 September 1996.
[101] Decision of Trial Chamber I on the Applications of the Prosecutor dated 24 June and 30 August 1996 in respect of the protection of witnesses, Case no. IT-95-14-PT, 2 October 1996.
[102] Decision of Trial Chamber I on the Requests of the Prosecutor of 12 and 14 May 1997 in respect of the protection of witnesses, Case no. IT-95-14-PT, 6 June 1997, para. 12.
[103] Decision on the Defence Motion for protective measures for Defence witnesses, Case no. IT-95-14-T, 30 September 1998.

50. The matter of anonymous testimony was raised by the Prosecutor in respect of two of her witnesses. The Trial Chamber asserted on the matter that:

> the victims and witnesses merit protection, even from the accused, during the preliminary proceedings and continuing until a reasonable time before the start of the trial itself; from that time forth, however, the right of the accused to an equitable trial must take precedence and require that the veil of anonymity be lifted in his favour, even if the veil must continue to obstruct the view of the public and the media[104].

Concurring with the conclusions of the Trial Chamber hearing the case *The Prosecutor v. Du{ko Tadi}*[105], the Judges nevertheless deemed that the fundamental exceptional circumstance which would justify that anonymity be granted to one or several witnesses, namely an ongoing armed conflict in central Bosnia, no longer existed.

51. The Defence requested that several Defence witnesses enjoy safe-passage, failing which they would refuse to appear. Mindful of the need to respect the principle of appearance of witnesses in person, the Trial Chamber granted such immunity limited *ratione materiae* to the facts within the Tribunal's jurisdiction, *ratione temporis* to seven days at the most after the said witnesses had finished testifying and *ratione loci* to the territory of the Netherlands and those territories crossed by the said witnesses when travelling from this country to their country of origin[106].

52. Lastly, some witnesses requested the authorisation of the Trial Chamber to testify by video-link. Accordingly and bearing in mind the situation in the territory of the former Yugoslavia and the crucial command role played by the witness, the Trial Chamber permitted General Milivoj Petkovi}[107] to testify by video-link from Zagreb[108].

5. Issues relating to the length of proceedings

53. The Trial Chamber always took care to ensure that the ongoing trial, already long in itself, was not subject to additional delays and guaranteed the accused that he would be tried without undue delay, a guarantee provided for by Article 21(4)(c) of the Statute. Once the parties had "agreed on the need to limit the number of hearing days which they would use respectively for the presentation of their evidence", the Trial Chamber was moved by a

[104] Decision on the Application of the Prosecutor dated 17 October 1996 requesting protective measures for victims and witnesses, Case no. IT-95-14-PT, 5 November 1996, para. 24.
[105] Hereinafter "the *Tadi}* Trial Chamber".
[106] Orders granting safe-passage to Defence witnesses "D/A","D/B", "D/C", "D/E", "D/F" and "D/G", Case no. IT-95-14-T, 7 September 1998.
[107] *Cf. infra* the section on the appearance of the Trial Chamber witnesses pursuant to Rule 98 of the Rules.
[108] Order relative to the testimony of General Milivoj Petkovi}, Case no. IT-95-14-T, 17 June 1999.

concern for vigilance to set the number of hearing days each party would be authorised to use for the presentation of their evidence. Thus, the Prosecution and the Defence were accorded seventy-five and sixty hearing days respectively [109]. The rebuttal and rejoinder each took a little over the equivalent of one hearing day.

54. With a mind to enable the expeditious and efficient conduct of the trial, the Trial Chamber decided that when one of its members was exceptionally and temporarily unable to sit, it would proceed by deposition as provided for under Rule 71 of the Rules. Sub-rule 71(A) sets forth that, in the interests of justice and at the request of one of the parties, the Trial Chamber may in exceptional circumstances order depositions be taken by a duly mandated presiding officer. Upon obtaining the consent of the accused, the Trial Chamber granted the joint Motion of the parties to implement such a procedure and mandated the two remaining members of the Trial Chamber as presiding officers whilst the case-file relative to the depositions was subsequently transmitted to the full Trial Chamber.[110]

6. The issue of the dismissal of some counts following the presentation of Prosecution evidence

55. After the close of the Prosecution case, the Defence filed a motion based on Rule 54 of the Rules alleging that, in legal terms, the Prosecutor had not managed to present evidence which enabled her to establish sufficient grounds justifying the proceedings brought against the accused. It consequently requested that fifteen counts be dismissed and that the scope of the five remaining counts be restricted[111].

Upon the basis of new Rule 98 *bis* of the Rules and the foregoing Tribunal case-law grounded on Rule 54 of the Rules, the Trial Chamber confined the review of the Motion to only those theoretical cases where the Prosecutor had allegedly failed to provide the factual proof of one of the counts and a strong legal *prima facie* case in support of her allegations. In so doing, the Judges observed that none of the counts could be dismissed, in whole or in part, at this stage of the trial[112].

---

[109] Decision on the length of proceedings and the time allocated to the parties to present their evidence, Case no. IT-95-14-T, 17 December 1997. One "hearing day" equates to a productive session lasting five hours and twenty minutes. One calendar day is often not long enough to constitute a whole hearing day, if only because of unforeseen technical issues.

[110] Decision on Prosecutor and Defence Motions to proceed by deposition, Case no. IT-95-14-T, 19 February 1998.

[111] Motion to dismiss, Case no. IT-95-14-T, 10 August 1998.

[112] Decision of Trial Chamber I on the Defence Motion to dismiss, Case no. IT-95-14-T, 3 September 1998.

7. The summoning of Trial Chamber witnesses pursuant to Rule 98 of the Rules

56. On 25 March 1999, the Trial Chamber ordered *proprio motu* the appearance of several witnesses in accordance with Rule 98 of the Rules [113]. At this stage of the proceedings, when the principal Prosecution and Defence witnesses had been heard, it held that in order to ascertain the truth about the crimes ascribed to the accused it was vital to make appear General Philippe Morillon[114], Mr. Jean-Pierre Thébault[115], Colonel Robert Stewart[116], General Enver Had`ihasanovi}[117], General Milivoj Petkovi}[118] and the successive commanders of the Seventh Muslim Brigade, namely, Colonels [erif Patkovi}, Amir Kubara and Asim Kori~i}[119].

57. The Trial Chamber rendered several subsequent Orders for each of the witnesses concerned in order to set the date and modalities of their testimony, the protective measures which they would enjoy and the subjects on which they were invited to testify. In this respect, it is appropriate to note that a procedure was established which ensured that the witness could give a spontaneous but not pre-drafted statement whilst guaranteeing the equality of the parties who were granted equal time to put their questions. The questions were restricted to the witnesses' initial statements and were, in fact, asked before those of the Judges[120].

[113] So as to be comprehensive, it should be pointed out that the Trial Chamber also made a Defence witness appear, Professor Jankovi} (PT pp. 17336-17337).
[114] Decision of Trial Chamber I in respect of the appearance of General Philippe Morillon, Case no. IT-95-14-T, 25 March 1999.
[115] Decision of Trial Chamber I in respect of the appearance of Mr. Jean-Pierre Thébault, Case no. IT-95-14-T, 25 March 1999.
[116] Decision of Trial Chamber I on the appearance of Colonel Robert Stewart, Case no. IT-95-14-T, 25 March 1999.
[117] Decision of Trial Chamber I in respect of the appearance of General Enver Had`ihasanaovi}, Case no. IT-95-14-T, 25 March 1999.
[118] Decision of Trial Chamber I in respect of the appearance of General Milivoj Petkovi}, Case no. IT-95-14-T, 25 March 1999.
[119] Decision of Trial Chamber I in respect of the appearance of the commanders of the Seventh Muslim Brigade of the Army of Bosnia and Herzegovina, Case no. IT-95-14-T, 25 March 1999.
[120] Decision of Trial Chamber I on protective measures for General Philippe Morillon, witness of the Trial Chamber, Case no. IT-95-14-T, 12 May 1999; Decision of Trial Chamber I on protective measures for Mr. Jean-Pierre Thébault, witness of the Trial Chamber, Case no. IT-95-14-T, 13 May 1999; Decision of Trial Chamber I summoning Mr. Robert Stewart as a witness of the Trial Chamber, Case no. IT-95-14-T, 19 May 1999; Decision of Trial Chamber I to call General Enver Had`ihasanaovi} as a witness of the Trial Chamber, Case no. IT-95-14-T, 21 May 1999; Decision of Trial Chamber I to call General Milivoj Petkovi} as a witness of the Trial Chamber, Case no. IT-95-14-T, 21 May 1999; Order relative to the testimony of General Milivoj Petkovi}, Case no. IT-95-14-T, 17 June 1999; Decision of Trial Chamber I in respect of protective measures for General Milivoj Petkovi}, Case no. IT-95-14-T, 22 June 1999; Decision of Trial Chamber I to call Colonel [erif Patkovi} as a witness of the Trial Chamber, Case no. IT-95-14-T, 21 May 1999; Decision of Trial Chamber I to call Colonel Amir Kubura as a witness of the Trial Chamber, Case no. IT-95-14-T, 21 May 1999; Decision of Trial Chamber I to call Colonel Asim Kori~i} as a witness of the Trial Chamber, Case no. IT-95-14-T, 21 May 1999.

8. The procedure for determining the sentence

58. The Judges proved their flexibility in letting the witnesses testify, where need be, on elements which might have appeared more specifically relevant to determining a possible sentence, at the very least once the Rules were amended to provide for trials' being one single stage[121]. This held all the more true for the accused whom the Defence called in this context even before the start of his cross-examination as a witness. The Prosecution did not present any witnesses in this respect.

[121] During the 18th plenary, the Judges decided that the amendment, which did not impinge upon the rights of the accused, was to come into immediate effect.

II. APPLICABLE LAW

59. Both the case-law of the Tribunal and the arguments of the parties show that a close legal connection exists between Articles 2, 3, 4 and 5 of the Statute and in particular between Articles 2 and 3. As the Appeals Chamber concluded in the *Tadi}* Appeal Decision[122], under certain conditions Article 3 operates as a residual clause covering all those violations of international humanitarian law which do not fall under Article 2 or are not covered by Articles 4 and 5:

> Article 3 may be taken to cover all violations of international humanitarian law other than the "grave breaches" of the four Geneva Conventions falling under Article 2 [and as conferring] on the International Tribunal jurisdiction over any serious offence against international humanitarian law not covered by Article 2, 4 or 5[123].

60. In addition, the existence of an armed conflict is one of the conditions for Articles 2, 3 and 5 of the Statute to apply. Application varies, however, depending on whether in question are Articles 2 and 3 of the Statute or Article 5 thereof.

61. Lastly, the Prosecutor puts forward the criminal responsibility of the accused on the basis of Articles 7(1) and 7(3) of the Statute.

62. Consequently, the Trial Chamber will deal briefly with the question of the armed conflict in relation to the relevant articles of the Statute before reviewing Articles 2 and 3 of the Statute and addressing separately crimes against humanity and individual criminal responsibility.

A. The requirement that there be an armed conflict

1. Definition

63. According to the *Tadi}* Appeal Decision:

> an armed conflict exists whenever there is a resort to armed force between States or protracted armed violence between governmental authorities and organized armed groups or between such groups within a State[124].

[122] Decision on the Defence Motion for interlocutory appeal on jurisdiction, *The Prosecutor v. Du{ko Tadi} a/k/a "Dule"*, Case no. IT-94-1-AR72 (hereinafter the "*Tadi}* Appeal Decision"), para. 87.
[123] *Tadi}* Appeal Decision, para. 91.
[124] *Tadi}* Appeal Decision, para. 70.

64. This criterion applies to all conflicts whether international or internal. It is not necessary to establish the existence of an armed conflict within each municipality concerned. It suffices to establish the existence of the conflict within the whole region of which the municipalities are a part. Like the Appeals Chamber, the Trial Chamber asserts that:

> International humanitarian law applies from the initiation of such armed conflicts and extends beyond the cessation of hostilities until a general conclusion of peace is reached; or, in the case of internal conflicts, a peaceful settlement is achieved. Until that moment, international humanitarian law continues to apply in the whole territory of the warring States or, in the case of internal conflicts, the whole territory under the control of a party, whether or not actual combat takes place there[125].

2. Role

a) A condition for charging under Articles 2 and 3 of the Statute

65. The requirement that an armed conflict exist and that there be a nexus between the crimes alleged and that conflict was presented in detail in the Judgement of the case *The Prosecutor v. Zejnil Delali} et al*[126]. The Trial Chamber accepts that reasoning. None of these conditions has been challenged in the case in point. The Trial Chamber will therefore limit itself to setting forth its opinion in brief after having shown the specificity of Article 5.

b) A condition for jurisdiction under Article 5 of the Statute

66. An armed conflict is not a condition for a crime against humanity but is for its punishment by the Tribunal. Based on an analysis of the international instruments in force[127], the Appeals Chamber affirmed[128] the autonomy of that charge in relation to the conflict since it considered that the condition of belligerence had "no logical or legal basis" and ran contrary to customary international law[129].

67. Neither Articles 3 or 7 of the Statutes of the ICTR and the International Criminal Court nor *a fortiori* the case law of the Tribunal for Rwanda require the existence of an

---

[125] *Id*.
[126] Judgement, *The Prosecutor v. Zejnil Delali} et al*, Case no. IT-96-21-T, 19 November 1998, (hereinafter the "^*elebi}i* Judgement"), paras. 182 to 185 and 193 to 195).
[127] *Cf. inter alia* Article II 1-c of Law No. 10, Article 1 of the Convention on the Prevention and Punishment of the Crime of Genocide, 9 December 1948, 78 *United Nations Treaty Series* (hereinafter the "UNTS") 277 and Articles 1 and 2 of the International Convention on the Suppression and Punishment of the Crime of Apartheid, 30 November 1973, UNTS 243.
[128] *Tadi}* Appeal Decision, para. 140; Judgement, *The Prosecutor v. Du{ko Tadi}*, Case no. IT-94-1-A, 15 July 1999 (hereinafter the "*Tadi}* Appeal Judgement"), para. 251.
[129] *Tadi}* Appeal Decision, para. 140.

armed conflict as an element of the definition of a crime against humanity[130]. In his Report to the Security Council on the adoption of the Statute of the future Court, the Secretary-General also explicitly refused to make this condition an ingredient of the crime:

> Crimes against humanity are aimed at any civilian population and are *prohibited regardless of whether they are committed in an armed conflict*, international or internal in character.[131]

68. Nonetheless, the Appeals Chamber stated that whether internal or international, the existence of an armed conflict was a condition which gave the Tribunal jurisdiction over the offence. In its analysis of Article 5 of the Statute in the *Tadi}* Appeal Decision, the Appeals Chamber concluded that:

> [...] Article 5 may be invoked as a *basis of jurisdiction* over crimes committed in either internal or international armed conflicts[132]

This position was reasserted in the *Tadi}* Appeal Judgement:

> The Prosecution is, moreover, correct in asserting that the armed conflict requirement is a *jurisdictional* element, not "a substantive element of the *mens rea* of crimes against humanity" (i.e. not a legal ingredient of the subjective element of the crime)."[133]

3. Nexus between the crimes imputed to the accused and the armed conflict

69. In addition to the existence of an armed conflict, it is imperative to find an evident nexus between the alleged crimes and the armed conflict as a whole. This does not mean that the crimes must all be committed in the precise geographical region where an armed conflict is taking place at a given moment. To show that a link exists, it is sufficient that:

> the alleged crimes were closely related to the hostilities occurring in other parts of the territories controlled by the parties to the conflict[134].

70. The foregoing observations demonstrate that a given municipality need not be prey to armed confrontation for the standards of international humanitarian law to apply there. It is also appropriate to note, as did the *Tadi}* and *^elebi}i* Judgements, that a crime need not:

---

[130] *Cf*. Judgement, *The Prosecutor v. Jean-Paul Akayesu*, Case no. ICTR-96-4-T, 2 September 1998 (hereinafter the "*Akayesu* Judgement"), paras. 563-584; Judgement, *The Prosecutor v. Clément Kayishema and Obed Ruzindana*, Case no. ICTR-95-1-T, 21 May 1999 (hereinafter the "*Kayishema-Ruzindana* Judgement"), paras. 119-134.
[131] *Report of the Secretary-General pursuant to paragraph 2 of Security Council resolution 808 (1993)* (hereinafter the "Report of the Secretary-General"), para. 47 (emphasis added).
[132] *Tadi}* Appeal Decision, para. 142.
[133] *Tadi}* Appeal Judgement, para. 249.
[134] *Tadi}* Appeal Decision, para. 70.

> be part of a policy or practice officially endorsed or tolerated by one of the parties to the conflict, or that the act be in actual furtherance of a policy associated with the conduct of the war or in the actual interest of a party to the conflict[135].

71. With particular regard to Article 5 of the Statute, the terms of that Article[136], the *Tadi}* Appeal Judgement[137], the Decision of the Trial Chamber hearing the *Tadi}* case[138] and the statements of the representatives of the United States, France, Great Britain and the Russian Federation to the United Nations Security Council[139] all point out that crimes against humanity must be perpetrated during an armed conflict. Thus, provided that the perpetrator's act fits into the geographical and temporal context of the conflict, he need not have the intent to participate actively in the armed conflict.

72. In addition, the Defence does not challenge that crimes were committed during the armed conflict in question but rather that the conflict was international and that the crimes are ascribable to the accused.

B. Article 2 of the Statute: Grave breaches of the Geneva Conventions

73. Article 2 of the Statute "grave breaches of the Geneva Conventions" stipulates that:

> The International Tribunal shall have the power to prosecute persons committing or ordering to be committed grave breaches of the Geneva Convention of 12 August 1949, namely the following acts against persons or property protected under the provisions of the relevant Geneva Convention:
>
> (a) wilful killing;
>
> (b) torture or inhuman treatment, including biological experiments;
>
> (c) wilfully causing great suffering or serious injury to body or health;
>
> (d) extensive destruction and appropriation of property, not justified by military necessity and carried out unlawfully and wantonly;
>
> (e) compelling a prisoner of war or civilian to serve in the forces of a hostile power;

---

[135] Judgement, *The Prosecutor v. Du{ko Tadi} a/k/a "Dule"*, Case no. IT-94-1-T, 7 May 1997 (hereinafter the "*Tadi}* Judgement"), para. 573; ^*elebi}i* Judgement, para. 195.

[136] The condition required by the provisions of Article 5 of the Statute is temporal: "The International Tribunal shall have the power to prosecute persons responsible for the following crimes *when* committed *in* armed conflict" (emphasis added).

[137] *Tadi}* Appeal Judgement, para. 251. According to the Judges of the Appeals Chamber "[t]he armed conflict requirement is satisfied by proof that *there was* an armed conflict; that is all the Statute requires, and in so doing, it requires more than does customary international law".

[138] *Tadi}* Judgement, paras. 618-660.

[139] Provisional transcript of the 3217th meeting, UN document S/PV. 3217 (25 May 1993), p. 11 (French declaration), p. 16 (United States declaration), p. 19 (United Kingdom declaration) and p. 45 (Russian Federation declaration).

(f) wilfully depriving a prisoner of war or a civilian of the rights of fair and regular trial;

(g) unlawful deportation or transfer or unlawful confinement of a civilian;

(h) taking civilians as hostages.

74. Within the terms of the *Tadi}* Appeal Decision and *Tadi}* Appeal Judgement, Article 2 applies only when the conflict is international. Moreover, the grave breaches must be perpetrated against persons or property covered by the "protection" of any of the Geneva Conventions of 1949. Neither party challenged these two conditions. The Defence, however, refuted that these two conditions were met in the instance. The Trial Chamber will now address the issue of the nature of the armed conflict and that of the status of the victims as protected persons by relying on the *Tadi}* Appeal Judgement and on other applicable sources of law.

a) International nature of the armed conflict

75. The legal criteria which allow the international nature of an armed conflict to be demonstrated were set out in great detail by the Appeals Chamber in its Judgement of 15 July 1999 in the *Tadi}* case. The Trial Chamber, which agrees with the conclusions in that Judgement, does not intend to reproduce the lengthy analysis set forth therein. It prefers to limit itself to drawing on those essential elements necessary for ruling on the present case.

76. An armed conflict which erupts in the territory of a single State and which is thus at first sight internal may be deemed international where the troops of another State intervene in the conflict or even where some participants in the internal armed conflict act on behalf of this other State[140]. The intervention of a foreign State may be proved factually. Analysing this second hypothesis is more complex. In this instance, the legal criteria allowing armed forces to be linked to a foreign power must be determined. This link confers an international nature upon an armed conflict which initially appears internal.

77. The Prosecution put forward that the direct military intervention of Croatia and the involvement of its armed forces (hereinafter the "HV") alongside those of the Croatian Defence Council (hereinafter the "HVO") in the armed conflict against the Bosnian Muslims conferred on it an international nature by January 1993 at the latest. The Prosecution pointed out however that the engagement of the HV had extended to central Bosnia even before the

[140] *Tadi}* Appeal Judgement, para. 84.

date marking the start of the period covered by the indictment charging the accused with having committed grave breaches[141].

78. The Defence maintained that the conflict pitting the HVO against the Muslim element of the Bosnia-Herzegovina army (hereinafter the "ABiH")[142] in central Bosnia was internal.

79. The Defence stated first that the HVO had been organised to fight the Serbian aggression in Bosnia. After a conflict pitting Croats against Serbs in Ravno, President Izetbegovi} allegedly stated: "this was not our war"[143]. This was a reaction to the statement that the Bosnian Croats were allegedly attempting to organise their own defence against the Serbian threat. Fighting the Muslims was allegedly never the HVO's objective.

80. The Defence therefore referred to the agreement signed in May 1992 under the auspices of the ICRC between the Croatian Democratic Community (hereinafter the "HDZ"), the Serbian Democratic Party (hereinafter the "SDS") and the Party of Democratic Action (hereinafter the "SDA" – Muslim), according to which, it claimed, the latter were committed to honouring the provisions regarding internal armed conflicts as covered in Article 3 common to the Geneva Conventions and to observing certain rules applicable to international armed conflicts. The Defence considered that the agreement demonstrated the conviction of the ICRC that the conflict was internal[144].

81. On this point, the Trial Chamber does not consider that the cited agreement clearly showed a conviction on the part of the ICRC that the conflict was internal. The preamble of the agreement[145] stipulates that:

> The parties agree that, *without any prejudice* to the legal status of the parties to the conflict or *to the international law of armed conflict in force*, they will apply the following rules…[146]

82. Whatever the case, the parties to the conflict may not agree between themselves to change the nature of the conflict, which is established by the facts whose interpretation, where applicable, falls to the Judge. In May 1992, the ICRC was certainly responsible for

[141] Prosecutor's summary, p. 6, para. 1.9.
[142] Originally, the HVO was a component of the army of Bosnia-Herzegovina and came under the supreme authority of Sarajevo. However, it detached from it quickly and became the armed wing of the Bosnian Croats and received its orders only from its large headquarters in Mostar (see below, section II).
[143] Submissions, PT p. 24940.
[144] Defence Final Brief, 22 July 1999 (hereinafter the "Defence Brief"), p. 32.
[145] P786 (the exhibits will be specified by their number, preceded by the letters P, D or C according to who submitted them during the trial, the Prosecutor, the Defence or a witness of the Trial Chamber).

fulfilling its mandate to provide the best possible protection to civilians and persons placed *hors de combat* whilst the war unfolded around them. Nonetheless, it is this Trial Chamber which is responsible for evaluating the facts before it and determining the true nature of the conflict.

i) Direct intervention

83. The first issue to be resolved is whether Croatian HV troops intervened in the conflict in question. The Prosecutor's assertion that the HV was allegedly present in the territory of the Central Bosnia Operative Zone (hereinafter the "CBOZ") which the accused commanded, in particular in the La{va Valley, was contested by the Defence. The Defence relied i*nter alia* on testimony stating that some units of the Croatian army were present and engaged in an armed conflict not in the La{va Valley but in other parts of Bosnian territory (in Herzegovina and in the border regions between Bosnia and Herzegovina)[147].

84. The presence of HV soldiers or units in Bosnia-Herzegovina (hereinafter "BH") has been amply demonstrated and, indeed, the Defence acknowledged that the Prosecutor established the presence of HV soldiers or units in BH but not in the CBOZ[148]. The Trial Chamber heard the testimony of several witnesses on the subject of which it took especial note of the following.

85. One witness stated that he heard from a high-ranking Croatian government official that HV soldiers had been sent to BH in 1993 to combat the Muslim forces[149]. Another witness spoke of HV soldiers who had been dismissed from their positions because they did not want to got to Bosnia and of other soldiers who had to exchange their HV insignia for HVO insignia while they were in Bosnia[150]. One Defence witness, Admiral Domazet, confirmed that, along with other Croatian army personnel, he was in Bosnia-Herzegovina in April 1993 when he was "head of personnel" of the HV intelligence service[151]. He also testified that General Bobetko could never have defended and liberated the southern portion of the territory of Croatia without entering the territory of Bosnia-Herzegovina[152]. The

[146] Emphasis added.
[147] Witness Degan, PT pp. 16180-16181.
[148] Defence Summary, p. 32.
[149] Witness DX, PT p. 20004
[150] Witness II, PT pp. 7169-7171.
[151] Witness Domazet, PT pp. 11563, 11572.
[152] Witness Domazet, PT pp. 11583-11584. *Cf*. also document P406/49 (27 March 1993): authorisation given by Milivoy Petkovi} to an HV unit to enter BH territory.

presence of the HV in BH was even confirmed by one witness who discussed the nature of the intervention of the HV[153] and another who was of the view that the Croatian troops in Bosnia between 1992 and 1994 were not there lawfully given that such a decision had never been taken in the Sabor (parliament of the Republic of Croatia)[154]. Other evidence also demonstrated a general HV presence in Bosnia[155].

86. Those places where the presence of HV soldiers was noted have been specified. The Croatian army penetrated into BH territory at least as far as Livno[156] and Tomislavgrad[157]. In October 1992, when he was Deputy Minister of Defence of the Republic of Croatia, General Praljak was seen in Mostar[158]. Other witnesses spoke of the presence of the HV in the Mostar region[159] and in the Prozor and Gornji Vakuf regions from mid-January to February 1993[160]. In July 1993, UNPROFOR noted that the HVO in Mostar was being supported by HV soldiers "in great numbers"[161]. Other written evidence attesting to the HV presence was detailed in the Prosecutor's brief. Some documents recall the HV's "massive presence" in Bosnia in Jablanica, Prozor and Gornji Vakuf[162] and provide clarification as to who the troops involved were and what materiel and weapons these troops had[163].

87. On 13 May 1993, the government of Bosnia-Herzegovina brought a complaint against the armed aggression upon its territory:

> The government of Bosnia and Herzegovina states, once again, that it wishes to develop all encompassing relations in co-operation with the Republic of Croatia on the basis of mutual trust and respect; however, unless the attacks are immediately stopped and the units of the state of Croatia are withdrawn immediately from the territory of Bosnia and Herzegovina, the government of the Republic of Bosnia and Herzegovina will be forced to turn to the international community and request protection from the aggression[164].

88. In a letter dated 4 September 1993 addressed to the UNPROFOR commander in Bosnia-Herzegovina, the Presidency of Bosnia-Herzegovina described the attack on certain

[153] Witness Degan, PT p. 16206.
[154] Witness II, PT pp. 7169-7170.
[155] Witness Vulliamy, PT p. 7711; P406/38 (under seal); P303 (report of the European Commission Monitoring Mission (hereinafter the "ECMM")); see also the Prosecutor's Brief, book 1, p. 149 , para. 6.95.
[156] Witness Domazet, PT p. 11591. *Cf*. also P406/89.
[157] Witness Domazet, PT p. 11591. *Cf*. also P406/94.
[158] Witness DX, PT pp. 20002-20003.
[159] Witness VV, PT pp. 9556-9557, pp. 9562-9565.
[160] Witness Buffini, PT pp. 5581-5588, p. 5599; witness Short, PT p. 24244; witness Duncan, PT p. 9083; P601, P747.
[161] P406/72.
[162] P741, p. 3. P406/90; P406/91 (these documents date from November 1993). *Cf*. also witness Short, PT p. 24244.
[163] P406/20, P406/74; P406/76; P406/78; P406/94.
[164] P556; witness Degan, PT pp. 16142-16143.

towns by HVO and Croatian army forces[165]. Another letter, dated 28 January 1994 from the Permanent Representative of Bosnia-Herzegovina to the United Nations addressed to the Security Council President, contained an annex which included a description of the military intervention by the armed forces of the Republic of Croatia against Bosnia-Herzegovina[166].

89. The Trial Chamber also points to the existence of United Nations documents (hereinafter the "UN") confirming the presence of the HV in BH. United Nations Security Council resolutions 752 of 15 May 1992[167] and 787 of 16 November 1992[168] demanded that the elements of the HV respect the territorial integrity of the BH and withdraw[169]. In correspondence dated 1 February 1994 and 17 February 1994, the Secretary-General informed the Security Council of the support lent to the HVO by Croatia[170]. In particular, the United Nations Secretary-General wrote to the Security Council on 1 February 1994:

> The Croatian army has directly supported the HVO in terms of manpower, equipment and weapons for some time. Initially the level of support was limited to individual and small sub-units, many of them volunteers. As the offensives of the Bosnia and Herzegovina Government forces against the HVO have become successful, the number of Croatian soldiers appears to have increased. It is assessed that in total there is the equivalent of three Croatian Brigades of regular army personnel in Bosnia and Herzegovina, approximately 3,000 to 5,000 (this is an estimation, as it is impossible with UNPROFOR's assets to obtain the required information for a more accurate account).

90. Other United Nations reports and correspondence dealt with the same subject[171] In a letter dated 11 February 1994 addressed to the Secretary-General, the Croatian Vice-Prime Minister and Minister for Foreign Affairs explained *inter alia* that his government was prepared to withdraw some units from the Bosnia-Herzegovina border areas but simultaneously urged the government of that Republic "immediately to order its army to cease all hostilities and offensive actions against Croatian population centres, especially *in the region of central Bosnia. Following the cessation of hostilities, we shall issue an appeal to all Croat volunteers in central Bosnia to lay down their arms and return to normal civilian lives*"[172].

91. The Trial Chamber is of the opinion that proof exists as to the presence of the HV within the CBOZ itself. Over the period in question, HV officers, in particular Colonel

[165] P557; witness Degan, pp. 16147*ff*.
[166] P406/95; witness Degan, PT pp. 16151-16152.
[167] P406/14.
[168] P406/29
[169] Several documents make reference to the withdrawal of the HV troops from BH: *cf*. in particular, P406/99 and P406/101 to P406/104.
[170] P406/96 and P406/100.
[171] Prosecutor's Brief, book 1, p. 171, para. 6.106. *Cf*. P406/38.

Vido{evi} from the Split Brigade along with two other Croatian army officers, were "frequently" seen at the Hotel Vitez. In April 1993, representatives of the Croatian Defence Council, Dragan]ur~i} and Bo`o]ur~ija, were seen there too[173]. Soldiers wearing insignia bearing the initials "HV" set up in a Dubravica school near the Hotel Vitez[174]. Soldiers from Croatia were also observed in Busova~a whilst the HVO forces were grouping between May 1992 and January 1993[175] and at the Vitez Health Centre in January 1993[176]. At the same time, soldiers wearing badges which identified them as members of the HV arrived in the Kiseljak zone[177]. The Muslim victims of the attacks launched against villages in the Vitez and Busova~a municipalities declared that they had seen members of HV units participating in the assaults[178].

92. One example of the presence of the HV is particularly significant. HV Colonel Miro Andri} and members of the 101st National Guards Brigade of the President of the Republic of Croatia were sent to the BH southern front by the Croatian Defence Minister, Gojko [u{ak[179]. They continued to operate in central Bosnia in 1993[180]. Miro Andri}, along with Tihomir Bla{ki} and Milivoj Petkovi}, represented the HVO at meetings in Vitez on 28 and 29 April 1993 and during negotiations with the ECMM and the ABiH on the establishment of a joint command[181]. Bla{ki} declared that "Miro Andri} […] was the number two in the joint command of the armed forces of the Republic of Bosnia-Herzegovina on behalf of the HVO"[182]. Subsequently, Andri} returned to the HV in Croatia.

93. In the CBOZ, several orders were given to the members of the HV serving in the HVO to remove their HV insignia so that observers would not detect their presence in BH[183]. Further, a helicopter from Croatia "frequently" landed at the quarry some two kilometres south of the UNPROFOR British battalion base (hereinafter "BRITBAT") during the summer

---

[172] UN Document S/1994/117 (16 February 1994), P406/99 (emphasis added).
[173] Witness HH, PT pp. 6800-6803.
[174] Witness Hrusti}, PT pp. 4797-4798; witness HH, PT p. 6837.
[175] Witness FF, PT p. 6164.
[176] Witness Mujezinovi}, PT pp. 1723-1724.
[177] P406/45. One witness stated that when the accused was in Kiseljak his personal guard was an individual who wore the Croatian coat of arms (witness HH, PT pp. 6820-6821; this assertion has not however been confirmed).
[178] Prosecutor's Brief, book 1, p. 172, para. 6.111.
[179] P406/17. This order, dated 10 June 1992, affects the parties concerned on a "temporary" basis while indicating that they will continue to have the same rights as beforehand and that they must report to General Bobetko, Chief-of-Staff of the "southern front – Plo~e" command. Amongst other equipment, the parties were supposed to be supplied with four VHF radios and a cellular telephone.
[180] P604.
[181] Witness Bla{ki}, PT p. 19050.
[182] Witness Bla{ki}, PT p. 19210.
[183] P406/7, P406/26, P406/31, P406/36, P406/55.

of 1993[184], apparently to provide direct communication between Croatia, in particular, and the HVO enclave in central Bosnia.

94. Ultimately, the evidence demonstrated that, although the HV soldiers were primarily in the Mostar, Prozor and Gornji Vakuf regions and in a region to the east of ^apljina[185], there is also proof of HV presence in the La{va Valley. The Trial Chamber adds that the presence of the HV in the areas outside the CBOZ inevitably also had an impact on the conduct of the conflict in that zone. By engaging the ABiH in fighting outside the CBOZ, the HV weakened the ability of the ABiH to fight the HVO in central Bosnia. Based on Croatia's direct intervention in BH, the Trial Chamber finds ample proof to characterise the conflict as international.

ii) Indirect intervention

95. Aside from the direct intervention by HV forces, the Trial Chamber observes that Croatia exercised indirect control over the HVO and HZHB.

96. In order to establish whether some of the participants in the armed internal conflict acted on behalf of another State, the Appeals Chamber in the *Tadi}* Appeal Judgement took as its starting point Article 4 of the Third Geneva Convention which defines those situations in which militia and paramilitary groups may be likened to legitimate combatants. The Appeals Chamber deemed that the condition of belonging to another Party to the conflict provided for in this Article constituted an implicit reference to a control criterion[186]. Therefore, some degree of control exercised by a Party to a conflict over the perpetrators of the breaches is needed for them to be held criminally responsible[187] on the basis of Article 2 of the Statute. The question of determining the degree of control required then arises.

97. In this respect, the *Tadi}* Appeal Judgement contains a meticulous analysis of the notion of control. Upon examining the reasoning and control criteria set forth by the International Court of Justice in the *Nicaragua* case[188], the majority of the Appeals Chamber ultimately rejected the position of the Court on the ground that the criteria in question agreed

[184] Witness Hunter, PT p. 5141.
[185] As suggested by witness DX, PT pp. 20034-20035.
[186] *Tadi}* Appeal Judgement, para. 95.
[187] *Tadi}* Appeal Judgement, para. 96.
[188] Case concerning military and paramilitary activities in and against Nicaragua (*Nicaragua v. United States of America*), Merits, Judgement of 27 June 1986, ICJ Report 1986 (hereinafter "the *Nicaragua* Judgement" or "*Nicaragua*").

neither with "the logic of the law of State responsibility" nor with "judicial and State practice"[189]. The Defence contended that the *Tadi}* Appeal Judgement wrongly dismissed the criterion of "effective control" set by the International Court of Justice in the *Nicaragua* case[190]. For the Defence, this is the appropriate criterion to apply in the instance, notwithstanding the conclusions of the *Tadi}* Appeal Judgement. Nonetheless, this Trial Chamber is of the opinion that it is correct to follow the reasoning of the Appeals Chamber.

98. The Appeals Chamber concluded that although State and legal practice adopted the *Nicaragua* criterion for unorganised groups or individuals acting on behalf of a State, it applied another when military or paramilitary groups were at issue[191]. Thus:

> the Appeals Chamber holds the view that international rules do not always require the same degree of control over armed groups or private individuals for the purpose of determining whether an individual not having a status of a State official under internal legislation can be regarded as a *de facto* organ of the State.[192]

99. The Appeals Chamber clearly laid out the three control criteria which allow the acts of individuals or groups to be ascribed to a foreign State, circumstances which transform what at first sight is an internal armed conflict into an international one. The first criterion is applicable to individuals or unorganised groups and demands the issuance of specific instructions for the acts at issue to be perpetrated or, in the alternative, proof that the foreign State endorsed *a posteriori* the said acts.[193] Another criterion relates to a situation wherein, even though no instructions are given by a State, individuals may be likened to State organs because of their effective behaviour within the structure of the said State[194]. Neither of these criteria is relevant in this case and this is why we will not analyse them here.

100. The matter is one of possibly imputing the acts of the HVO to the Republic of Croatia which would then confer an international nature upon the conflict played out in the La{va Valley. It is the third criterion[195] which applies in this instance. This criterion allows the degree of State control required by international law to be determined in order to be able to ascribe to a foreign State the acts of armed forces, militia and paramilitary units (hereinafter "organised groups"). The Appeals Chamber characterised it as a criterion of overall control when it stated:

---

[189] *Tadi}* Appeal Judgement, paras. 99 to 145.
[190] Defence Brief, pp. 50 to 53.
[191] *Tadi}* Appeal Judgement, para. 124.
[192] *Tadi}* Appeal Judgement, para. 137.
[193] *Tadi}* Appeal Judgement, para. 137.
[194] *Tadi}* Appeal Judgement, para. 141.

> control by a State over subordinate *armed forces or militias or paramilitary units* may be of an overall character (and must comprise more than the mere provision of financial assistance or military equipment or training). This requirement, however, does not go as far as to include the issuing of specific orders by the State, or its direction of each individual operation. Under international law it is by no means necessary that the controlling authorities should plan all the operations of the units dependent on them, choose their targets, or give specific instructions concerning the conduct of military operations and any alleged violations of international humanitarian law. The control required by international law may be deemed to exist when a State (or, in the context of an armed conflict, the party to the conflict) *has a role in organising, co-ordinating or planning the military actions* of the military group, in addition to financing, training and equipping or providing operational support to that group[196].

101. How may it be established that a State exercises overall control over an organised military group? The Appeals Chamber stated numerous factors whose conjunction indicated that the Federal Republic of Yugoslavia (Serbia and Montenegro) (hereinafter "the FRY") exercised an overall control over the Army of Republika Srpska (hereinafter the "VRS"), i.e. the transfer of non-Bosnian Serb former officers of the old Yugoslav National Army (hereinafter the "JNA") to BH, the payment of the wages of Bosnian Serbs by the FRY administration, the fact that the reorganisation and change of name of the JNA in no way altered the military objectives and strategies, the fact that the VRS had structures and ranks identical to those of the army of the FRY (hereinafter "the VJ") and that the VJ continued to direct and supervise the VRS (well beyond the generous financial, logistical and other support which it lent) and the persistence of the VJ's direct intervention[197]. However, for the Appeals Chamber, these factors do not define overall control but instead constitute indications thereof. Accordingly, the factors which permit the existence of overall control to be proved may vary depending on the circumstances.

102. In this instance, the direct intervention of the HV in Bosnia and in the CBOZ has already been demonstrated above. Mention may be made of several other indications of Croatia's involvement in the conflict which rebut the Defence argument that the HV did indeed direct HVO operations, but only between March and June 1992 before the HVO became organised and prior to the outbreak of the conflict in central Bosnia between the Croatian and Muslim forces[198]. The Trial Chamber concurs that the involvement of the HV and Croatia may appear more clear-cut at the start of the period under consideration but deems that it persisted throughout the conflict.

---

[195] This is the second criterion presented in the *Tadi}* Appeal Judgement.
[196] *Tadi}* Appeal Judgement, para. 137.
[197] *Tadi}* Appeal Judgement, paras. 150 to 151.
[198] Defence Brief, book 3, p. 52.

103. This involvement does not seem to be the result only of the particular circumstances prevailing at the time. In fact, according to one Defence witness, Croatia had harboured ambitions in respect of the Croatian territory of Bosnia-Herzegovina for 150 years[199]. President Tudjman aspired to partitioning this neighbouring country. In his book entitled *Nationalism in Contemporary Europe* Franjo Tudjman argued that Bosnia-Herzegovina should form part of the federal Croatian unit because it was linked historically to Croatia. Moreover, Tudjman observed that from an ethnic and linguistic viewpoint most Muslims were of Croatian origin[200]. On the partitioning of Bosnia-Herzegovina, Tudjman wrote:

> But large parts of Croatia had been incorporated into Bosnia by the Turks. Furthermore, Bosnia and Herzegovina were historically linked with Croatia and together they comprise an indivisible, geographic and economic entity. Bosnia and Herzegovina occupy the central part of this whole, separating southern (Dalmatian) from northern (Pannonian) Croatia. The creation of a separate Bosnia and Herzegovina makes the territorial and geographic position of Croatia extremely unnatural in the economic sense and therefore in the broadest nationalist political sense very unfavourable for life and development and in the narrower administrative sense unsuitable and disadvantageous. These factors largely explain why the 1939 agreement between Belgrade and Zagreb included the following areas of Bosnia into the Banovina of Croatia: the whole of Herzegovina and Mostar and those Bosnian districts where the Croats have a clear majority[201].

104. Franjo Tudjman's nationalism and his desire to annex a part of BH were apparent to Lord David Owen to whom President Tudjman staked his claim that 17.5% of Bosnian territory should revert to a republic with a Croatian majority[202]. Witness P also confirmed that Franjo Tudjman had in mind the partition of BH[203].

105. These aspirations for a partition were furthermore displayed during the confidential talks between Franjo Tudjman and Slobodan Milo{evi} in Karadjordjevo on 30 March 1991[204] on the division of Bosnia-Herzegovina. No Muslim representative participated in these talks which were held bilaterally between the Serbs and Croats[205]. Following Karadjordjevo, Franjo Tudjman opined that it would be very difficult for Bosnia to survive and that the Croats were going to take over the Banovina plus Cazin, Kladu{a and Biha}[206]. Preliminary secret negotiations were held using maps to come to an agreement with the Serbs on how to partition Bosnia[207]. An interview of the Defence witness Biland`i} published on 25

[199] Witness Biland`i}, PT pp. 11366-11367.
[200] Witness Biland`i}, PT pp. 11384-11385; P18, Tudjman's book, *Nationalism in Contemporary Europe* (1981).
[201] P18, witness Donia, PT pp. 169-171.
[202] P19, witness Donia, PT p. 178.
[203] Witness P, PT pp. 4708-4709.
[204] Witness II, PT p. 7136.
[205] Witness Biland`i}, PT pp. 11363-11364,
[206] Witness II, PT. p. 7137.
[207] Witness II, PT pp. 7247-7248, 7249-7250.

October 1996 by the Croatian weekly *Nacional* confirms that, following negotiations with Slobodan Milo{evi}, "it was agreed that two commissions should meet and discuss the division of Bosnia and Herzegovina"[208]. The agreement entered into by the Serbs and Croats on the partition of Bosnia was reportedly confirmed at a meeting between the Bosnian Serb and Bosnian Croat political leaders, Radovan Karad`i} and Mate Boban, in Graz in Austria on 6 May 1992. They allegedly agreed to resort to arbitration to determine whether certain zones would fall within Serbian or Croatian "constituent entities"[209].

106. The aspirations of Franjo Tudjman to annex "Croatian" regions of Bosnia persisted throughout the conflict. On 6 May 1995, during a dinner at which he was sitting beside Mr. Paddy Ashdown, leader of the Liberal Democrat Party in the United Kingdom, who was called as a witness by the Prosecutor, President Tudjman clearly confirmed that Croatia had aspirations to territory in Bosnia. Having sketched on the back of a menu[210] a rough map of the former Yugoslavia showing the situation in ten years time, Franjo Tudjman explained to Mr. Ashdown that one part of Bosnia would belong to Croatia and the other part to Serbia. He also said that there would no longer be a Muslim region within the former Yugoslavia, that it would constitute only a "small element of the Croat State". Franjo Tudjman was convinced that the Serbs would ultimately exchange Banja Luka for Tuzla[211]. President Tudjman also said that he intended to retake Knin and the Krajina region[212] which Croatia did indeed subsequently do. According to the witness, Franjo Tudjman and Slobodan Milo{evi} seemed to have reached an agreement on some territories[213].

107. The Defence claimed, however, that the opinions expressed by President Tudjman were purely personal and did not reflect the official position of the Republic of Croatia[214]. Admittedly, the distinction in principle between President Tudjman's personal comments and Croatia's official policy is justified. The Trial Chamber notes nonetheless that President Tudjman was so dominant in the government of Croatia that his personal opinions in fact represented the position of the official authorities. According to Witness P, President

[208] P464. The witness denied some of what was said in this interview but not this particular fact.
[209] Prosecutor's Brief, book 1, p. 68, para. 5.76.
[210] P275; Witness Ashdown, PT pp. 7330-7331.
[211] Witness Ashdown, PT p. 7331.
[212] Witness Ashdown, PT p. 7332.
[213] Witness Ashdown, PT, pp. 7349, 7351. Although the Defence attempted to make it seem that Tudjman's statements to the witness were merely words said after a few drinks, the Trial Chamber considers that the testimony of the witness is totally credible and coherent in all respects even when what the Defence raised is taken into account. Nor can there be any doubt as to what the partition of territory between Croatia and Serbia as shown in the sketch drawn by President Tudjman represents.
[214] Submissions, PT pp. 25245-25246.

Tudjman exercised his responsibilities within an authoritarian regime where only he held the power[215]. For this reason, the distinction cannot apply in the case in point.

108. Furthermore, it appears that the HVO and Croatia shared the same goals. The HVO and some paramilitary or assimilated forces fought for Croatia, defended the "Croatian" people and territory and wanted the territory which they regarded as Croatian to be annexed to the Republic of Croatia[216]. The members of these armed forces saw Tudjman as their President[217]. Mate Boban, President of Herceg-Bosna, rejected the constitution of Bosnia-Herzegovina which he thought protected only the rights of the Muslims in Bosnia. According to Mate Boban, Herceg-Bosna was culturally, spiritually and economically part of Croatia and had only been separated from it for regrettable reasons[218]. For him, the HDZ was the Bosnian branch of the party founded by Franjo Tudjman[219].

109. The minutes of a meeting held on 12 November 1991 in Grude between the representatives of the regional communities of the Herzegovina and Travnik HDZ regional communities are particularly revealing. The two communities declared that they "have unanimously decided that the Croatian people in Bosnia and Herzegovina must finally embrace a determined and active policy which will realise our eternal dream – a common Croatian state" and that they must "show … which territories in BH are Croatian territories […]. Our *people will not accept*, under any conditions, any other solution *except* within the borders of a free Croatia"[220].

110. These common goals did indeed have consequences on the decision-making mechanism of the Croatian Community of Herceg-Bosna (hereinafter "the HZHB"). Croatia was able to control the decisions either through Croatian officers detached from the HV so as to serve in the HVO or through Bosnian Croats who shared the same goals as Croatia and who effectively followed the instructions issued by the Croatian government.

111. On 21 March 1992, Pa{ko Ljubi~i}, commander of the "HB Defence", requested the Defence Minister of the Republic of Croatia, Gojko [u{ak, for a meeting *inter alia* "to

[215] Witness P, PT p. 4700.
[216] Witness HH, PT pp. 6884-6887.
[217] Witness HH, PT pp. 6774-6775.
[218] Witness Vulliamy, PT pp. 8496-8497.
[219] Witness Vulliamy, PT pp. 7769-7770. The Defence concedes that some of the leaders of Croatia and the Croatian Community of Herceg-Bosna had common aspirations. See Defence Brief, p. 32.
[220] P406/2 (emphasis in document in the original language); document signed by Jozo Mari}, Dario Kordi} and Mate Boban.

receive your *instructions for further actions* [in central Bosnia]"[221]. President Tudjman announced that Croatia officially recognised the independence of BH on 7 April 1992[222]. For this reason, any involvement of Croatia in the setting up of the HVO after that date was intervention in the internal affairs of BH. The Trial Chamber notes, however, that although Croatia's action in BH was less obvious after that date, it did not stop.

112. Croatia was thus directly involved in the control of the HVO forces which were created on 8 April by the HZHB presidency[223]. On 10 April 1992, President Tudjman appointed General Bobetko of the HV as commander of the "Southern Front"[224]. His duties included commanding HV and HVO units in Croatia and Bosnia-Herzegovina. Three of General Bobetko's subordinates, officers in the HV, subsequently took command of HVO units. On 21 April 1992, General Bobetko ordered General Ante Roso to take responsibility for the Livno region in BH[225]. By 19 May, General Bobetko had already established a forward command post in Gornji Vakuf in BH[226]. On 14 June 1992, General Bobetko ordered offensive activities to commence, HVO forces to manoeuvre in a certain direction and specific operations to be launched as part of a military campaign[227]. On 27 June 1992 while still an HV General, Ante Roso promoted Tihomir Bla{ki} to the rank of HVO Colonel and made him commander of the CBOZ[228]. General Petkovi} was replaced in his post as Chief-of-Staff by General Praljak, the former Croatian national Deputy Minister of Defence in Zagreb[229]. In October 1993, General Praljak was replaced by General Roso. The decisions to make these replacements were taken by the Croatian government[230] and affected an army in principle answering to a distinct sovereign State.

113. The HDZ in Croatia had overall control of the HDZ in Bosnia:

> formally the HDZ in Croatia was separate from the HDZ in Bosnia-Herzegovina – that is formally, but, in reality, all decisions are made in Zagreb and I think that there is no doubt

[221] P406/4 (emphasis added); among the participants put forward for this meeting was the name of "Dario Kordi}, head of the Crisis Committee for Central Bosnia, vice-president of the HZ /Croatian Community of/ Herceg-Bosna".
[222] P406/5. In this document signed by President Tudjman on 7 April 1992, the Republic of Croatia "recognises the independent and sovereign socialist Republic of Bosnia and Herzegovina *as a State of three constituent nations"* (emphasis added).
[223] P457; P38/1
[224] P406/6.
[225] P406/11.
[226] P406/16.
[227] P406/20; witness Degan, PT p. 16180.
[228] Witness Bla{ki}, PT p. 17914.
[229] P406/79; P406/80.
[230] Witness DX, PT pp. 20002: "The HVO was monitored or controlled by Zagreb, and so the political leadership in Zagreb appointed [the] leadership of the HVO". See also PT pp. 20030-20031.

> about it. I do not think that – there is no question of the HDZ in Bosnia being an independent party in Bosnia-Herzegovina – formally yes, but not in reality.[231]

114. The Defence furthermore did not challenge the fact that the HVO shared personnel, often from BH, with the HV. According to Admiral Domazet, officers in the army of the Republic of Croatia voluntarily resigned from the HV in order to serve in Bosnia-Herzegovina. These officers needed official authorisation and were regarded as temporarily detached officers. It appears that these officers continued to receive their wage from Croatia[232]. Those who wished to rejoin the ranks of the Croatian army could do so if they obtained the official approval of the HV authorities which, bearing in mind how the Trial Chamber interpreted the elements of the case, was but a formality.

115. The Trial Chamber heard evidence indicating that Milivoj Petkovi}, Ante Roso, Slobodan Praljak and General Tolj, all high-ranking officers within the Croatian army, went to serve in the HVO for a time before returning to the Croatian army[233]. Before becoming HVO Chief-of-Staff, General Milivoj Petkovi} was a senior officer in the army of the Republic of Croatia. Slobodan Praljak left the army of the Republic of Croatia and became an HVO General. He then returned to the armed forces of the Republic of Croatia, was promoted to the rank of General and pensioned off[234]. It was only on 15 October 1993 that General Roso resigned from the HV to "leave for Bosnia-Herzegovina" and become the HVO Chief-of-Staff. On 23 February 1995, he requested to be taken back into the HV, a request which was granted[235]. Ivan Tolj was a deputy of the Sabor, a general, chief of the Croatian army's political department and also a member of the HVO[236]. The aforementioned HV Colonel, Miro Andri}, also belonged to the HVO. Even at junior levels, the HVO was in part made up of Croats who had returned from Croatia after having fought in the Croatian army[237].

116. President Tudjman also ordered the replacement of Bosnian Croats who did not agree with him. Stepan Kljuji} was President of the HDZ in Bosnia but was replaced because he

---

[231] Witness II, PT p. 7112.
[232] Witness Domazet, PT pp. 11607-11608.
[233] Witness II, PT p. 7173. This witness stated that Ivan Tolj, a member of the Croatian Parliament "was a general of both armies" and that along with other "members of the Croat Parliament [who went] to Bosnia and Herzegovina [and] to Herceg-Bosna [was] photographed there wearing HVO uniforms, while at the same time being members of the Croat Parliament. Those same people in the Croat Parliament are satanising, to the limit of the permissible, the Muslims and their right to defend Bosnia and Herzegovina" (PT p. 7283).
[234] Witness Domazet, PT p. 11583.
[235] Prosecutor's Brief, book 1, p. 159, para. 6.70; P586, P587.
[236] Witness II, PT p. 7162.
[237] Witness DX, PT pp. 19933-19934. *Cf.* also P406/61; The ABiH granted a request from the ICRC to return a captured soldier to the HVO so that he could then be returned to the HV.

was fighting for a united Bosnia. Lastly, Mate Boban was appointed President of Herceg-Bosna. Before taking an important decision related to Herceg-Bosna, Mate Boban always consulted Franjo Tudjman[238] and effectively followed his instructions. Delegations from the Bosnian HDZ regularly went to consult President Tudjman[239].

117. General Bla{ki} himself was appointed by a procedure which stressed the need to select loyal people prepared to implement the policy dictated by Zagreb. In order to implement the BH HDZ partisan policy, it was decided, during the meeting in Grude presided over by Mate Boban[240], to "strengthen its membership, and select people who [could] see these tasks through to the end" and "to prepare better militarily for the struggle against all the forces trying to hinder the inevitable process of the creation of a free Croatian state"[241]. General Bla{ki} could not have been appointed to the post he held if he had not fully endorsed this policy.

118. The Bosnian Croat leaders followed the directions given by Zagreb or, at least, co-ordinated their decisions with the Croatian government[242]. Co-ordination was manifest at various levels. The day after the establishment of the Territorial Defence (hereinafter the "TO") on 9 April 1992 as the legitimate military organisation in Bosnia-Herzegovina, Mate Boban issued an order prohibiting the TO from entering HZHB territory[243]. The order was confirmed in a similar one issued by General Roso on 8 May 1992[244]. On 11 May 1992, in the municipality of Kiseljak, Tihomir Bla{ki} issued an order[245] to execute the one from Anto Roso by which the HVO became the sole legal military unit and which outlawed the TO. Dario Kordi} allegedly issued a similar order in the municipality of Busova~a[246]. An order of HV General Anto Roso was therefore quickly put into effect. Even on the subject of control of the munitions factory in Vitez, President Tudjman and Tihomir Bla{ki} promoted the same policy by threatening to blow it up if the ABiH attacked[247].

---

[238] Witness II, PT pp. 7115-7116, 7295-7296.
[239] Witness II, PT pp. 7112-7113, 7115-7116.
[240] See *supra* para. 110.
[241] P406/2. Translated from the French: "mieux se préparer militairement à la lutte contre toutes ces forces qui tentent d'entraver l'inévitable processus de création d'un Etat croate libre" (emphasised in the original).
[242] "Oftentimes the operations of the Croat army were co-ordinated with those of the HVO", Witness II, PT pp. 7294-7296. See also the authorisation for publishing a collective work to which Tihomir Bla{ki} contributed entitled *Offensives and Operations of the HV and HVO*, P406/112.
[243] P583; Prosecutor's Brief, book 1, p. 160, para. 6.75.
[244] P584.
[245] P502b (*bis*).
[246] Prosecutor's Brief, book 1, p. 160, para. 6.76.
[247] Prosecutor's Brief, book 1, p. 163, para. 6.85.

119. Accordingly, the evidence demonstrates that there were regular meetings with President Tudjman and that the Bosnian Croat leaders, appointed by Croatia or with its consent, continued to direct the HZHB and the HVO well after June 1992.

120. Apart from providing manpower, Croatia also lent substantial material assistance to the HVO in the form of financial and logistical support[248]. The person responsible for all the intelligence services in Croatia publicly declared that Croatia had spent a million German marks (DM) a day on providing aid to all of Herceg-Bosna's structures including the HVO[249]. Croatia supplied the HVO with large quantities of arms and materiel in 1992, 1993 and 1994[250]. The presence of T-55 tanks and howitzers with the HV acronym was raised before the Trial Chamber. In September 1993, witness DX observed Croatian T-55 assault tanks in the Gornji Vakuf region being crewed by HV teams and that these tanks seemed to have been intended for participation in the hostilities between the HVO and the ABiH[251]. Equipment was also supplied to the ABiH but this ceased in 1993 during the conflict between the HVO and the ABiH[252]. HVO troops were trained in Croatia[253].

121. Finally, in the *Tadi}* Appeal Judgement, the Appeals Chamber also found that:

> Where the controlling State in question is an adjacent State with territorial ambitions on the State where the conflict is taking place, and the controlling State is attempting to achieve its territorial enlargement through the armed forces which it controls, it may be easier to establish the threshold [254].

122. In the light of all the foregoing and, in particular, the Croatian territorial ambitions in respect of Bosnia-Herzegovina detailed above, the Trial Chamber finds that Croatia, and more specifically former President Tudjman, was hoping to partition Bosnia and exercised such a degree of control over the Bosnian Croats and especially the HVO that it is justified to speak of overall control. Contrary to what the Defence asserted, the Trial Chamber concluded that the close ties between Croatia and the Bosnian Croats did not cease with the establishment of the HVO.

---

[248] P741, p. 1.
[249] Witness II, PT p. 7168. For example, the HDZ leadership in the municipality of Bugojno used 540,000 DM made available to it in a Viennese bank by the Ministry of Finance of the Republic of Croatia to move the equipment necessary for its defence (P406/3; document dated 3 March 1992).
[250] P406/1: supply of petrol; P406/89: vehicles; P406/25: order of the accused dated 19 September 1992 regarding the movement of arms, munitions and military equipment to and from Croatia.
[251] Witness DX, PT pp. 20004-20005.
[252] P558 (under seal), Prosecutor's Brief, book 1, p. 170, para. 6.104.
[253] P406/23: order of the accused for reconnaissance group to undergo 10-day training in Croatia as "specific tasks are to be carried out" dated 24 July 1992.
[254] *Tadi}* Appeal Judgement, para. 140.

123. Croatia's indirect intervention would therefore permit the conclusion that the conflict was international.

b) Protected persons and property

124. Once it has been established that a conflict is international, it becomes necessary to examine the last condition for Article 2 of the Statute to apply, namely, to determine whether the victims or property were protected under the Geneva Conventions.

i) The "nationality" of the victims

125. Article 4(1) of the Fourth Geneva Convention states that:

> Persons protected by the Convention are those who, at a given moment and in any manner whatsoever, find themselves, in case of a conflict or occupation, in the hands of a party to the conflict or Occupying Power of which they are not nationals.

126. The Defence maintained that since the Bosnian Muslims and Bosnian Croats were nationals of the same country, they did not enjoy the protection accorded to the persons protected within the meaning of Article 4(1). The Defence argued that in the *Tadi}* Appeal Judgement the Appeals Chamber incorrectly found that the criterion of nationality was not a decisive factor for this article to apply. Nevertheless, the Trial Chamber follows the conclusion arrived at by the Appeals Chamber which chose a "legal approach hinging more on substantial relations than on formal bonds" [255], an approach which it deemed best adapted to contemporary international armed conflicts:

> While previously wars were primarily between well-established States, in modern inter-ethnic armed conflicts such as that in the former Yugoslavia, new States are often created during the conflict and ethnicity rather than nationality may become the grounds for allegiance. Or, put another way, ethnicity may become determinative of national allegiance. Under these conditions, the requirement of nationality is even less adequate to define protected persons. In such conflicts, not only the text and the drafting history of the Convention but also, and more importantly, the Convention's object and purpose suggest that allegiance to a Party to the conflict and, correspondingly, control by this Party over persons in a given territory, may be regarded as the crucial test[256].

127. Consequently, the Defence argument on this particular point is rejected and the principle put forward by the Prosecution[257] confirmed. In an inter-ethnic armed conflict, a

[255] *Tadi}* Appeal Judgement, para. 166.
[256] *Tadi}* Appeal Judgement, para. 166. *Cf.* also the *^elebi}i* Judgement, in which the Trial Chamber concluded as follows: "The provisions of domestic legislation and citizenship in a situation of violent State succession cannot be determinative of the protected status of persons caught up in conflicts which ensue from such events" (para. 263). The Trial Chamber continued by concluding that since the victims of the alleged acts had been arrested and detained principally on the basis of their ethnicity, they should be regarded as protected persons within the meaning of the Fourth Geneva Convention "as they were clearly regarded by the Bosnian authorities as belonging to the opposing party in an armed conflict and as posing a threat to the Bosnian State" (para. 265).
[257] Prosecutor's Brief, book 1, pp. 151-154, paras. 6.48-6.60.

person's ethnic background may be regarded as a decisive factor in determining to which nation he owes his allegiance and may thus serve to establish the status of the victims as protected persons. The Trial Chamber considers that this is so in this instance.

128. Several of the explanations on the international nature of the conflict elaborated above by the Trial Chamber may be restated here. The disintegration of Yugoslavia occurred along "ethnic" lines. Ethnicity became more important than nationality in determining loyalties or commitments. One historian, a Defence witness, stated that Yugoslavia was a multi-ethnic State in which each of the nations that had formed had followed differing "ideologies": Orthodox, Catholic or Muslim[258]. The witness made reference to the ethnic principle and the historic principle whereby even 150 years ago Serbia and Croatia considered that they had a right to Bosnia. For their part, the Bosnians regarded themselves as a distinct people[259].

129. These trends became manifest in 1990 during the first multi-party elections held in Yugoslavia. The parties with nationalist leanings won in each constitutive republic. In Bosnia-Herzegovina, the dominant parties were the SDS, the SDA and the HDZ[260].

130. Croatia's policy towards the Bosnian Croats placed more emphasis on their ethnic background than on their nationality. A provision adopted by the Republic of Croatia gave to all members of the Croatian nation the right to citizenship[261]. General Bla{ki} himself asked to take advantage of this measure[262]. Another law authorised all Croats to vote in the elections in Croatia, thus allowing the Bosnian Croats with Bosnian nationality to vote in the parliamentary elections in the Republic of Croatia. The "Agreement on Friendship and Co-operation between the Republic of Bosnia-Herzegovina and the Republic of Croatia" stipulated that the two republics would reciprocally authorise their citizens to obtain dual nationality[263]. The Trial Chamber deems that all these texts were used by Croatia to steer the Croats of Bosnia-Herzegovina towards Croatia[264] and contributed to the fact that the people identified more with ethnicity than formal nationality when expressing their loyalty. Approximately 10% of the representatives in the Sabor came from the diaspora. Two Bosnian Croat members of the HVO were elected to the Croatian parliament – Vice Vukojevi} and

[258] Witness Biland`i}, PT pp. 11281-11282.
[259] Witness Biland`i}, PT pp. 11452-11456.
[260] Prosecutor's Brief, book 1, p. 8, para. 3.10.
[261] P406/5.
[262] P765.
[263] Agreement of 21 July 1992, para. 7 (D572).
[264] Witness II, PT pp. 7156-7158.

Ivan Tolj[265]. UNPROFOR basically looked upon the HVO and the HV as being on the same side during the conflict against the ABiH and referred to them collectively as the "HV/HVO"[266]. The ECMM spoke of the need to put strong pressure on Croatia *and* the Bosnian Croats[267].

131. President Tudjman himself thought that BH was comprised of different nations:

> International recognition of Bosnia and Herzegovina shall imply that *the Croatian people*, as *one of the three constituent nations* in Bosnia and Herzegovina, shall be *guaranteed their sovereign rights*[268];

and the Bosnian Croat officials considered the Bosnian Muslims and Serbs to be people of another nationality or another people altogether:

> The Croatian Defence Council of the Croatian Community of Herceg-Bosna shall respect the competence of the authorities in provinces where the other two *nations* are in the majority[269].

In April 1993, the vice-president of the HVO, Anto Valenta, requested "a province for every of these three nations"[270].

132. In the La{va Valley, one observer saw flags symbolising the various ethnic groups[271]. General Bla{ki} himself announced that the BH authorities in Sarajevo had no legitimacy in Kiseljak, that Kiseljak would be part of a Croatian canton and would look more to the west than the east[272]. A report submitted to the Trial Chamber mentioned "separate schools, only for Croats, […] with new school books coming from Zagreb, using the 'traditional Croat language'"[273].

133. The supporters of the HVO were in no doubt that Croatia was their ally and that the Bosnian Muslims were their adversaries. They treated the Muslims as foreigners in Croatian territory. "Balija", a pejorative term for a Muslim, was commonly used. Keeping in mind the sense in which the notion of nationality was used in the former Yugoslavia and more specifically in central Bosnia, the Trial Chamber is of the opinion that the Bosnian Muslim

[265] Witness II, PT pp. 7156-7158
[266] P406/66, P406/72, P406/75, P406/80, P406/82.
[267] P741, p. 6.
[268] P406/5 (emphasis added).
[269] P24 (emphasis added).
[270] P741, p. 5.
[271] Witness DX, PT p. 19953. *Cf.* also P741.
[272] P545.
[273] P741, p. 1.

victims in the hands of the HVO must be considered as protected persons within the meaning of the Geneva Conventions[274].

ii) Co-belligerent States

134. The Prosecution considered that the Bosnian Muslim civilians were persons protected within the meaning of the Fourth Geneva Convention because Croatia and BH were not co-belligerent States and did not have normal diplomatic relations when the grave breaches were committed[275].

135. The Defence contended that even if the conflict had been international, the Bosnian Muslim victims of acts imputed to the HVO still would not have had the status of "protected" persons since Croatia and Bosnia-Herzegovina were co-belligerent States united against the aggression of the Bosnian Serbs. It draws its argument from Article 4(2) of the Fourth Geneva Convention, which provides *inter alia* that:

> nationals of a co-belligerent State shall not be regarded as protected persons while the State of which they are nationals has normal diplomatic representation in the State in whose hands they are.

136. The Defence argument may be tested from three perspectives: co-belligerence, normal diplomatic relations and the reasoning underlying Article 4 of the Fourth Geneva Convention.

a. Co-belligerence

137. Firstly, the reasoning of the Defence may be upheld only if Croatia and Bosnia-Herzegovina were co-belligerent States or allies within the meaning of Article 4. The Defence first stated that none of these States had declared war on the other. It then suggested that the status of co-belligerent could be deduced from a review of the treaties signed between the two countries and whether or not there were diplomatic relations between the States in question. The Trial Chamber considers that it is important not to limit oneself to the formal or superficial elements but also to examine the actual relations between the two countries at the relevant time and region. It therefore comes down to deciding whether the Republic of Bosnia-Herzegovina and the Republic of Croatia were allies and acted as such in conducting operations in the Central Bosnia Operative Zone.

[274] Prosecutor's Brief, book 1, pp. 151-152, footnote on p. 75.
[275] Prosecutor's Summary, p. 7, para. 1.10.

138. Granted, Croatia and Bosnia-Herzegovina did enter into agreements over the course of the conflict. One of these, dated 14 April 1992, stipulated that the diplomatic and consular missions of Croatia and Bosnia-Herzegovina abroad would be responsible for defending the interests of the nationals of the other State when there was only a mission of one of the two party-States in the territory of a given country[276]. On 21 July 1992, an agreement on friendship and co-operation was signed[277] and on 25 July the two States entered into an agreement establishing diplomatic relations.

139. However, the true situation was very different from that which these agreements might suggest. Bosnia-Herzegovina perceived Croatia as a co-belligerent to the extent that they were fighting alongside each other against the Serbs. Nonetheless, it is evident that Bosnia did not see Croatia as a co-belligerent insofar as Croatia was lending assistance to the HVO in its fight against the ABiH over the period at issue[278].

140. The Croats had an ambivalent policy towards Bosnia-Herzegovina. The nationalist Croats benefited from the Serb aggression in Bosnia to expand the territory of Croatia into some regions of the newly independent Bosnia. Furthermore, the Serbian aggression forced the Croats and Muslims to form alliances, temporarily at least[279]. In fact, they were allies only when it served Croatian interests as for example in the Biha} pocket[280]. Following pressure exerted by the international community, the official declarations of the Croatian government admittedly tended to make it appear that Croatia was respecting the territorial integrity of Bosnia-Herzegovina[281] and sought to demonstrate that the Croats and Muslims were co-operating. Croatia thus always denied that its troops were in the territory of Bosnia-Herzegovina which the Security Council had nonetheless noted and deplored. At the same time, it supported gathering the Bosnian Croats into a distinct community parallel to the legitimate governmental authorities. To this end, during the conflict between the HVO and the ABiH in 1993, it stopped supplying the Bosnian Muslims[282], behaviour which runs contrary to that of an ally.

141. On the Bosnian side there was no doubt as to what was unfolding in Bosnia. The commander of the ABiH, Arif Pa{ali}, said on the subject of the HVO-ABiH conflict: “This

[276] Witness Degan, PT p. 16169.
[277] Witness Degan, PT p. 16134; D572.
[278] See above P556.
[279] Witness Donia, PT pp. 202-203.
[280] Witness DT, PT pp. 16395-16397.
[281] Witness II, PT p. 7281.

is not some local squabble. This is the implementation of a plan, a policy coming from Grude and Mate Boban"[283]. The division and conflict between the Bosnian Croats and Muslims were reproduced in Vitez, Novi Travnik and other locations in central Bosnia[284]. The intervention of the HV against the ABiH was characterised by a Defence witness as "unlawful armed intervention"[285]. On 8 May 1992, General Roso issued an order which outlawed the legitimate ABiH armed forces[286], an act which is not one of a co-belligerent. The Bosnian Croats who wished to co-operate with the ABiH faced internal opposition. For example, in autumn 1992, in Vare{, the local HVO attempted to co-operate with the Muslim army but Ivica Raji}, Tihomir Bla{ki}'s successor at the head of the Kiseljak HVO, sent troops to prevent the Croatian leaders from co-operating with the Muslims[287]. In Travnik, Colonel Filipovi} of the HVO declared that Mate Boban and Colonel Bla{ki} had exerted considerable pressure on him not to ally with the Muslims[288].

142. In any case, it seems obvious if only from the number of casualties they inflicted on each other that the ABiH and the HVO did not act towards each other within the CBOZ in the manner that co-belligerent States should[289].

143. In summary, the Trial Chamber deems it established that, in the conflict in central Bosnia, Croatia and Bosnia-Herzegovina were not co-belligerent States within the meaning of the Fourth Geneva Convention.

b. Reasoning of Article 4 of the Fourth Geneva Convention

144. The Trial Chamber adjudges a final observation appropriate. The Commentary of the Fourth Geneva Convention reaffirms that the nationals of co-belligerent States are not regarded as protected persons so long as the State of which they are nationals has normal diplomatic representation in the other co-belligerent State[290]. The reasoning which underlies

[282] P558 (under seal), Prosecutor's Brief, book 1, p. 170, para. 6.104.
[283] Witness Vulliamy, PT pp. 7766-7767.
[284] Witness Vulliamy, PT pp. 7768-7769.
[285] Witness Degan, PT p. 16181.
[286] P584.
[287] Witness Vulliamy, PT pp. 8556-8557.
[288] Witness Vulliamy, PT p. 7791 and pp. 8535-8539.
[289] D345, P462.
[290] Commentary, p. 49.

this exception is revealing: "It is assumed in this provision that the nationals of co-belligerent States, that is to say, of allies, do not need protection under the Convention"[291].

145. In those cases where this reasoning does not apply, one might reflect on whether the exception must nevertheless be strictly heeded. In this respect, it may be useful to refer to the analysis of the status of "protected person" which appears in the *Tadi}* Appeal Judgement. The Appeals Chamber noted that in the instances contemplated by Article 4(2) of the Convention:

> those nationals are not "protected persons" as long as they benefit from the normal diplomatic protection of their State; when they lose it or in any event do not enjoy it, the Convention automatically grants them the status of "protected persons"[292].

Consequently, in those situations where civilians do not enjoy the normal diplomatic protection of their State, they should be accorded the status of protected person.

146. The legal approach taken in the *Tadi}* Appeal Judgement to the matter of nationality hinges more on actual relations than formal ties. If one bears in mind the purpose and goal of the Convention, the Bosnian Muslims must be regarded as protected persons within the meaning of Article 4 of the Convention since, in practice, they did not enjoy any diplomatic protection.

iii) Prisoners of war

147. In accordance with the Third Geneva Convention, those persons defined in Article 4 are protected "from the time they fall into the power of the enemy and until their final release and repatriation"[293]. The Prosecution contended that all the Bosnian Muslim combatants held by the HVO suffered inhumane treatment and were used as human shields as alleged in counts 15 and 19 of the indictment, had the status of protected persons within the meaning of the Third Geneva Convention[294]. The Trial Chamber is of the view that all the persons identified as prisoners of war did enjoy the protection accorded by the Third Geneva Convention and points out that those who did not enjoy this protection were civilians and thereby enjoyed the protection accorded by the Fourth Geneva Convention. However, the Trial Chamber cannot envisage that the Third Geneva Convention may apply in respect of

[291] Commentary, p. 49.
[292] *Tadi}* Appeal Judgement, para. 165.
[293] Third Geneva Convention, Article 5.
[294] Prosecutor's Brief, book 1, p. 156, para. 6.66.

count 19 as the indictment specifies only Muslim *civilians*[295]. Nonetheless, the provisions of the Fourth Convention still remain applicable.

iv) Protected property

148. Pursuant to Article 53 of the Fourth Geneva Convention, the extensive destruction of property by an occupying Power not justified by military necessity is prohibited. According to the Commentary on the Fourth Geneva Convention, this protection is restricted to property within occupied territories:

> In order to dissipate any misconception in regard to the scope of Article 53 it must be pointed out that the property referred to is not accorded general protection; the Convention merely provides here for its protection in occupied territory[296].

149. The Prosecution maintained that the property of the Bosnian Muslims was protected because it was in the hands of an occupying Power[297]. The occupied territory was the part of BH territory within the enclaves dominated by the HVO, namely Vitez, Busova~a and Kiseljak. In these enclaves, Croatia played the role of occupying Power through the overall control it exercised over the HVO, the support it lent it and the close ties it maintained with it. Thus, by using the same reasoning which applies to establish the international nature of the conflict, the overall control exercised by Croatia over the HVO means that at the time of its destruction, the property of the Bosnian Muslims was under the control of Croatia and was in occupied territory. The Defence did not specifically address this issue.

150. Following to a large extent the reasoning of the Trial Chamber in the *Raji}* Decision[298], this Trial Chamber subscribes to the reasoning set out by the Prosecution.

c) The elements of the grave breaches

151. Once it has been established that Article 2 of the Statute is applicable in general, it becomes necessary to prove the ingredients of the various crimes alleged. The indictment contains six counts of grave breaches of the Geneva Conventions which refer to five sub-headings of Article 2 of the Statute.

---

[295] Amended indictment, para. 16.
[296] Commentary, p. 301.
[297] Prosecutor's Summary, p. 7, para. 1.9.
[298] Review of the indictment pursuant to Rule 61 of the Rules of Procedure and Evidence, *The Prosecutor v. Raji}*, Case no. IT-95-95-12-R61, 13 September 1996, para. 42.

152. The Defence claimed that it is not sufficient to prove that an offence was the result of reckless acts. However, according to the Trial Chamber, the *mens rea* constituting all the violations of Article 2 of the Statute includes both guilty intent and recklessness which may be likened to serious criminal negligence. The elements of the offences are set out below.

i) Article 2(a) – wilful killing (count 5)

153. The Trial Chamber hearing the ^*elebi}i* case[299] defined the offence of wilful killing in its Judgement. For the material element of the offence, it must be proved that the death of the victim was the result of the actions of the accused as a commander. The intent, or *mens rea*, needed to establish the offence of wilful killing exists once it has been demonstrated that the accused intended to cause death or serious bodily injury which, as it is reasonable to assume, he had to understand was likely to lead to death.

ii) Article 2(b) – inhuman treatment (counts 15 and 19)

154. Article 27 of the Fourth Geneva Convention states that protected persons "shall at all times be humanely treated". The ^*elebi}i* Judgement analysed in great detail the offence of "inhuman treatment"[300]. The Trial Chamber hearing the case summarised its conclusions in the following manner:

> inhuman treatment is an intentional act or omission, that is an act which, judged objectively, is deliberate and not accidental, which causes serious mental harm or physical suffering or injury or constitutes a serious attack on human dignity […]. Thus, inhuman treatment is intentional treatment which does not conform with the fundamental principle of humanity, and forms the umbrella under which the remainder of the listed "grave breaches" in the Conventions fall. Hence, acts characterised in the Conventions and Commentaries as inhuman, or which are inconsistent with the principle of humanity, constitute examples of actions that can be characterised as inhuman treatment.[301]

155. The Trial Chamber further concluded that the category "inhuman treatment" included not only acts such as torture and intentionally causing great suffering or inflicting serious injury to body, mind or health but also extended to other acts contravening the fundamental principle of humane treatment, in particular those which constitute an attack on human dignity. In the final analysis, deciding whether an act constitutes inhuman treatment is a question of fact to be ruled on with all the circumstances of the case in mind[302].

---

[299] Hereinafter the "^*elebi}i* Trial Chamber".
[300] ^*elebi}i* Judgement, paras. 512 to 544.
[301] ^*elebi}i* Judgement, para. 543.
[302] ^*elebi}i* Judgement, para. 544.

iii) Article 2(c) – wilfully causing great suffering or serious injury to body or health (count 8)

156. This offence is an intentional act or omission consisting of causing great suffering or serious injury to body or health, including mental health. This category of offences includes those acts which do not fulfil the conditions set for the characterisation of torture, even though acts of torture may also fit the definition given[303]. An analysis of the expression "wilfully causing great suffering or serious injury to body or health" indicates that it is a single offence whose elements are set out as alternative options[304].

iv) Article 2(d) – extensive destruction of property (count 11)

157. An occupying Power is prohibited from destroying movable and non-movable property except where such destruction is made absolutely necessary by military operations. To constitute a grave breach, the destruction unjustified by military necessity must be extensive, unlawful and wanton. The notion of "extensive" is evaluated according to the facts of the case – a single act, such as the destruction of a hospital, may suffice to characterise an offence under this count[305].

v) Article 2(h) – taking civilians as hostages (count 17)

158. Within the meaning of Article 2 of the Statute, civilian hostages are persons unlawfully deprived of their freedom, often arbitrarily and sometimes under threat of death[306]. However, as asserted by the Defence[307], detention may be lawful in some circumstances, *inter alia* to protect civilians or when security reasons so impel. The Prosecution must establish that, at the time of the supposed detention, the allegedly censurable act was perpetrated in order to obtain a concession or gain an advantage. The elements of the offence are similar to those of Article 3(b) of the Geneva Conventions covered under Article 3 of the Statute.

[303] ^*elebi}i* Judgement, para. 511.
[304] ^*elebi}i* Judgement, para. 506.
[305] Commentary, p. 601.
[306] Commentary, pp. 600-601.
[307] Defence Brief, pp. 58-59.

C. Article 3 of the Statute – Violations of the Laws or Customs of War

159. Article 3 of the Statute states that:

> The International Tribunal shall have the power to prosecute persons violating the laws or customs of war. Such violations shall include but not be limited to:
>
> (a) employment of poisonous weapons or other weapons calculated to cause unnecessary suffering;
>
> (b) wanton destruction of cities, towns or villages, or devastation not justified by military necessity;
>
> (c) attack, or bombardment, by whatever means, of undefended towns, villages, dwellings, or buildings;
>
> (d) seizure of, destruction or wilful damage done to institutions dedicated to religion, charity and education, the arts and sciences, historic monuments and works of art and science;
>
> (e) plunder of public or private property.

160. The two parties acknowledged that the existence of an armed conflict and a nexus between the alleged acts or omissions and that armed conflict set conditions for the implementation of Article 3 of the Statute. The Trial Chamber has set out its position on the matter above[308]. Nonetheless, the parties did not agree upon the nature of the conflict and the scope of Article 3 is contested. The Trial Chamber must therefore rule on the issue before examining the elements of the offences under this Article of the Statute[309].

a) Scope and conditions of applicability of Article 3 of the Statute

161. At the outset, it is appropriate to note that Article 3 of the Statute applies to both internal and international conflicts. This conclusion was reached in the *Tadi}* Appeal Decision and was not challenged by the parties:

> In the light of the intent of the Security Council and the logical and systematic interpretation of Article 3 as well as customary international law, the Appeals Chamber concludes that, under Article 3, the International Tribunal has jurisdiction over the acts alleged in the indictment, *regardless of whether they occurred within an internal or an international armed conflict*[310]*.*

---

[308] See above, II, A.

[309] The Trial Chamber points out that the Prosecution expressly withdrew count 2 insofar as count 12 reproduces the charges therein (Prosecutor's Summary, para 8.2, p. 59).

[310] *Tadi}* Appeal Decision, para. 137 (emphasis added). *Cf*. also the Judgement, *The Prosecutor v. Anto Furund`ija*, Case no. IT-95-17/1-T, 10 December 1998 (hereinafter the "*Furund`ija* Judgement"), para. 132.

162. The Prosecution asserted that the enumeration of the laws or customs of war appearing in Article 3 of the Statute is illustrative and not exhaustive[311]. It also contended that Additional Protocol I bound the parties pursuant to a series of special agreements which they signed under the auspices of the ICRC and to customary international law which prohibits unlawful attacks upon civilians and civilian property whatever the nature of the conflict[312].

163. The Defence nevertheless maintained that Article 3 represented a limited body of customary and conventional law. It contested *inter alia* that some of the provisions of the Hague Convention of 1907 are contained therein[313] as the Convention allegedly acquires a customary aspect only in international armed conflicts. The Defence moreover deemed that Additional Protocol I did not apply to counts 3 and 4 because it did not constitute part of established customary international law[314]. It also challenged the applicability of Additional Protocol II to count 3 of the indictment since the HVO and the HZHB never formally agreed to the application of the whole of Additional Protocol II as conventional law and were not bound by the agreement that the Croatian and Bosnian authorities might have given to the said Protocol[315].

i) Customary international law and conventional law

164. In interpreting Article 3, it is appropriate to refer to the *Report of the Secretary-General[316].* According to this Report, the Statute of the Tribunal should apply the rules of international humanitarian law which form part of customary law in order to account for the principle of *nullum crimen sine lege[317]*. The Report sets out that the part of conventional international humanitarian law which has "beyond doubt" become part of customary international law is:

> the law applicable in armed conflict as embodied in: the Geneva Conventions of 12 August 1949 for the Protection of War Victims; the Hague Convention (IV) respecting the Laws and Customs of War on Land and the regulations annexed thereto of 18 October 1907; the Convention on the Prevention and Punishment of the Crime of Genocide of 9 December 1948; and the Charter of the International Military Tribunal of 8 August 1945[318].

[311] Reaffirmed in the *Tadi}* Appeal Decision, par. 87; *^elebi}i* Judgement, para. 278; and *Furund`ija* Judgement, para. 133.
[312] Prosecutor's Brief, pp. 168 and 169, paras. 7.7 to 7.12.
[313] Defence Brief, p. 60.
[314] Defence Brief, p. 65.
[315] Defence Brief, pp. 62 and 63
[316] S/25704, 3 May 1993.
[317] Report of the Secretary-General, para. 34.
[318] Report of the Secretary-General, para. 35.

165. The Security Council subsequently approved the Report and, thereby, the term adopted by the Secretary-General to define those rules which constitute international customary humanitarian law. That law allows perpetrators of violations of the rules to be prosecuted without risking infringing the principle of *nullum crimen sine lege*.

166. Common Article 3 must be considered a rule of customary international law[319]. The *^elebi}i* Judgement points this out very explicitly and sets forth *inter alia* that:

> While in 1949 the insertion of a provision concerning internal armed conflicts into the Geneva Conventions may have been innovative, there can be no question that the protections and prohibitions enunciated in that provision have come to form part of customary international law[320].

The *Akayesu* Judgement rendered by the International Criminal Tribunal for Rwanda, expresses the same viewpoint:

> It is today clear that the norms of Common Article 3 have acquired the status of customary law in that most States, by their domestic penal codes, have criminalized acts which if committed during internal armed conflict, would constitute violations of Common Article 3[321].

167. It is important to note that Common Article 3 lays down minimum criteria that the parties must respect during a conflict, expressing "the fundamental principle underlying the four Geneva Conventions", that is, humane treatment[322].

168. Further, the Trial Chamber must take note of the very explicit terms of Article 3 of the Statute in which violations of the laws or customs of war are in no manner enumerated as a closed list. The Trial Chamber is of the opinion that it is the Hague Convention (IV) of 1907 respecting the Laws and Customs of War on Land (hereinafter "the Regulations of The Hague"), as interpreted and applied by the Nuremberg Tribunal, which is the basis for Article 3 of the Statute[323]. Hence, although Article 3 of the Statute subsumes Common Article 3[324], it nevertheless remains a broader provision inasmuch as it is also based on the

---

[319] Report of the Secretary-General; paras. 98, 102 and 134 of the *Tadi}* Appeal Decision; paras. 609-611 of the *Tadi}* Judgement and para. 218 in the *Nicaragua* case.
[320] *^elebi}i* Judgement, para. 301.
[321] *Akayesu* Judgement, para. 608.
[322] Commentary, p. 38: "With Common Article 3 representing, as it does, the minimum which must be applied in the least determinate of conflicts, its terms must *a fortiori* be respected in the case of international conflicts proper, when all the provisions of the Convention are applicable". *Cf.* also the *Akayesu* Judgement, para. 601; the *Tadi}* Appeal Decision, para. 102; *Nicaragua* case, para. 218.
[323] Report of the Secretary-General, paras. 41-44; *Tadi}* Appeal Decision, para. 86.
[324] *Tadi}* Appeal Decision, para. 87; *^elebi}i* Judgement, para. 298.

Regulations of The Hague which, in the opinion of the Trial Chamber, also undoubtedly form part of customary international law. As the Secretary-General noted in his Report:

> The Hague Regulations cover aspects of international humanitarian law which are also covered by the 1949 Geneva Conventions. However, the Hague Regulations also recognise that the right of belligerents to conduct warfare is not unlimited and that resort to certain methods of waging war is prohibited under the rules of land warfare [325].

169. The Report of the Secretary-General also states that the law applied by the Tribunal must be customary international law so that "the problem of adherence of some but not all States to specific conventions does not arise"[326]. In line with this reasoning, the Trial Chamber is also empowered to apply any agreement which incontestably bound the parties at the date the crime was perpetrated. Thus, the risk would not be run of infringing the principle of *nullum crimen sine lege* where a belligerent did not adhere to a particular treaty[327].

170. Taking into account the effect of the application of the fundamental principles of Article 3 of the Statute in this case, the Trial Chamber considers that it should not be necessary to rule on the applicability of Protocol I. The specific provisions of Article 3 of the Statute satisfactorily cover the provision of the said Protocol relating to unlawful attacks upon civilian targets. The specific provisions of Common Article 3 also satisfactorily cover the prohibition on attacks against civilians as provided for by Protocols I and II.

171. Taking into account the arguments of the parties on this point, and in particular of the Defence, the Trial Chamber will nonetheless deal rapidly with the issue of the Additional Protocols.

172. The Trial Chamber deems that Article 3 covers the violations of the agreements binding the parties to the conflict - agreements which are regarded as falling under conventional law, that is, which have not become customary international law[328]. The Trial Chamber is of the opinion that this applies to the Additional Protocols. There are at least two arguments for this. Firstly, Croatia ratified the two Protocols (and the four Geneva Conventions) on 11 May 1992. Bosnia-Herzegovina ratified them on 31 December 1992. Consequently, as of 1 January 1993, the two parties were bound by the provisions of the two Protocols, whatever their status within customary international law. Secondly, in an agreement signed on 22 May 1992 under the auspices of the ICRC, the two parties expressly

[325] Report of the Secretary-General, para. 43.
[326] Report of the Secretary-General, para. 34.
[327] *Tadi}* Appeal Decision, para. 143.

agreed that they would be bound during the conflict by provisions 51 and 52 of Additional Protocol I[329].

173. The Defence's argument that Additional Protocol I is not part of customary international law is therefore not relevant. Finally, once it has been established that Protocol I applies, the application of Additional Protocol II is excluded pursuant to Article 1 of this Protocol[330].

174. Lastly, a violation of the laws or customs of war within the meaning of Article 3 of the Statute is a serious violation of international humanitarian law within the meaning of the Statute which the Tribunal was *ipso facto* established to prosecute and punish. Still to be verified is whether the violation in question entails individual criminal responsibility and whether, as regards the counts based on Common Article 3, the violations were committed against persons protected by the said article.

ii) Individual criminal responsibility

175. The Prosecution contended that the provisions of the Regulations annexed to the Hague Convention IV of 1907 constitute international customary rules which were restated in Article 6(b) of the Nuremberg Statute. Violations of these provisions incur the individual criminal responsibility of the person violating the rule[331]. Conversely, the Defence did not acknowledge that violations of the laws or customs of war within the meaning of Common Article 3 of the Geneva Conventions had ever been upheld to impose criminal sanctions upon individuals[332].

176. The Trial Chamber recalls that violations of Article 3 of the Statute which include violations of the Regulations of The Hague and those of Common Article 3 are by definition serious violations of international humanitarian law within the meaning of the Statute. They are thus likely to incur individual criminal responsibility in accordance with Article 7 of the Statute. The Trial Chamber observes moreover that the provisions of the criminal code of the

---

[328] Prosecutor's Brief, p. 167, para. 7.4.
[329] P786, para. 2.5.
[330] "This Protocol […] shall apply to all armed conflicts which are not covered by Article 1 of the Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol I) …".
[331] Prosecutor's Brief, pp. 171-173, paras. 7.24-7.32.
[332] Defence Brief, p. 61.

SFRY[333], adopted[334] by Bosnia-Herzegovina in April 1992, provide that war crimes committed during internal or international conflicts incur individual criminal responsibility[335]. The Trial Chamber is of the opinion that, as was concluded in the *Tadi}* Appeal Decision, customary international law imposes criminal responsibility for serious violations of Common Article 3[336].

iii) Protected persons (Common Article 3)

177. Where the charges are specifically based on Common Article 3[337], it is necessary to show that the violations were committed against persons not directly involved in the hostilities[338]. The criterion applied in the *Tadi}* Judgement comes down to asking:

> whether, at the time of the alleged offence, the alleged victim of the proscribed acts was directly taking part in hostilities, being those hostilities in the context of which the alleged offences are said to have been committed. If the answer to that question is negative, the victim will enjoy the protection of the proscriptions contained in Common Article 3[339].

178. The conclusions grounded on this criterion will depend on an analysis of the facts rather than the law.

b) The elements of the offences

179. Having determined that Article 3 is applicable, it must still be proved that one of the particular offences enumerated therein has occurred. The indictment alleges nine offences under Article 3 in ten counts. The Prosecutor maintained that the *mens rea* which characterises all the violations of Article 3 of the Statute, as well as the violations of Article 2, is the intentionality of the acts or omissions, a concept containing both guilty intent and recklessness likeable to serious criminal negligence[340]. The elements of the offences which must be proved are set forth below.

i) Unlawful attack against civilians (count 3); attack upon civilian property (count 4)

---

[333] Ed. 1990, Articles 142 and 143.
[334] Subject to certain amendments.
[335] ^*elebi}i* Judgement, para. 312.
[336] *Tadi}* Appeal Decision, para. 134. In this instance, the position is supported by the Prosecution (Prosecutor's Brief, p. 170, para. 7.17).
[337] Counts 6, 9, 16, 18 and 20.
[338] Having set out above that the violations must have been committed within the context of an armed conflict and that there is a close nexus between them and the said conflict.
[339] *Tadi}* Judgement, para. 615.
[340] Prosecutor's Brief, pp. 35-36, paras. 4.33-4.36.

180. As proposed by the Prosecution[341], the Trial Chamber deems that the attack must have caused deaths and/or serious bodily injury within the civilian population or damage to civilian property. The parties to the conflict are obliged to attempt to distinguish between military targets and civilian persons or property. Targeting civilians or civilian property is an offence when not justified by military necessity. Civilians within the meaning of Article 3 are persons who are not, or no longer, members of the armed forces. Civilian property covers any property that could not be legitimately considered a military objective. Such an attack must have been conducted intentionally in the knowledge, or when it was impossible not to know, that civilians or civilian property were being targeted not through military necessity.

ii) Murder (count 6)

181. The content of the offence of murder under Article 3 is the same as for wilful killing under Article 2[342].

iii) Violence to life and person (count 9)

182. This offence appears in Article 3(1)(a) common to the Geneva Conventions. It is a broad offence which, at first glance, encompasses murder, mutilation, cruel treatment and torture and which is accordingly defined by the cumulation of the elements of these specific offences. The offence is to be linked to those of Article 2(a) (wilful killing), Article 2(b) (inhuman treatment) and Article 2(c) (causing serious injury to body) of the Statute. The Defence contended that the specific intent to commit violence to life and person must be demonstrated. The Trial Chamber considers that the *mens rea* is characterised once it has been established that the accused intended to commit violence to the life or person of the victims deliberately or through recklessness.

iv) Devastation of property (count 12)

183. Similar to the grave breach constituting part of Article 2(d) of the Statute, the devastation of property is prohibited except where it may be justified by military necessity. So as to be punishable, the devastation must have been perpetrated intentionally or have been the foreseeable consequence of the acts of the accused.

v) Plunder of public or private property (count 13)

[341] Prosecutor's Summary, annex 1, pp. 1-2.

184. The prohibition on the wanton appropriation of enemy public or private property extends to both isolated acts of plunder for private interest and to the "organized seizure of property undertaken within the framework of a systematic economic exploitation of occupied territory". Plunder "should be understood to embrace all forms of unlawful appropriation of property in armed conflict for which individual criminal responsibility attaches under international law, including those acts traditionally described as 'pillage'"[343].

vi) Destruction or wilful damage to institutions dedicated to religion or education (count 14)

185. The damage or destruction must have been committed intentionally to institutions which may clearly be identified as dedicated to religion or education and which were not being used for military purposes at the time of the acts. In addition, the institutions must not have been in the immediate vicinity of military objectives.

vii) Cruel treatment (count 16 and 20)

186. The Defence asserted *inter alia* that using human shields and trench digging constituted cruel treatment only if the victims were foreigners in enemy territory, inhabitants of an occupied territory or detainees[344]. The Trial Chamber is of the view that treatment may be cruel whatever the status of the person concerned. The Trial Chamber entirely concurs with the ^*elebi}i* Trial Chamber which arrived at the conclusion that cruel treatment constitutes an intentional act or omission "which causes serious mental or physical suffering or injury or constitutes a serious attack on human dignity. As such, it carries an equivalent meaning and therefore the same residual function for the purposes of Common article 3 of the Statute, as inhuman treatment does in relation to grave breaches of the Geneva Convention"[345].

viii) Taking of hostages (count 18)

187. The taking of hostages is prohibited by Article 3(b) common to the Geneva Conventions which is covered by Article 3 of the Statute. The commentary defines hostages as follows:

---

[342] As decided by the Trial Chamber in the ^*elebi}i* Judgement, para. 422.
[343] ^*elebi}i* Judgement, paras. 590-591.
[344] PT, submission, p. 25290; Defence Brief, p. 68.
[345] ^*elebi}i* Judgement, para. 552.

> hostages are nationals of a belligerent State who of their own free will or through compulsion are in the hands of the enemy and are answerable with their freedom or their life for the execution of his orders and the security of his armed forces[346].

Consonant with the spirit of the Fourth Convention, the Commentary sets out that the term "hostage" must be understood in the broadest sense[347]. The definition of hostages must be understood as being similar to that of civilians taken as hostages within the meaning of grave breaches under Article 2 of the Statute, that is - persons unlawfully deprived of their freedom, often wantonly and sometimes under threat of death. The parties did not contest that to be characterised as hostages the detainees must have been used to obtain some advantage or to ensure that a belligerent, other person or other group of persons enter into some undertaking. In this respect, the Trial Chamber will examine the evidence as to whether the victims were detained or otherwise deprived of their freedom by the Croatian forces (HVO or others).

D. Article 5 of the Statute: crimes against humanity

188. The provisions of Article 5 of the Statute, entitled "Crimes against humanity", grant the Tribunal jurisdiction to:

> "[..] prosecute persons responsible for the following crimes when committed in armed conflict, whether international or internal in character, and directed against any civilian population:
>
> (a) murder
>
> (b) extermination
>
> (c) enslavement
>
> (d) deportation
>
> (e) imprisonment
>
> (f) torture
>
> (g) rape
>
> (h) persecutions on political, racial and religious grounds
>
> (i) other inhumane acts.

[346] Commentary, p. 229.
[347] Commentary, p. 230.

This text primarily draws on Article 6(c) of the Statute of the Nuremberg Tribunal of 8 August 1945[348] which constitutes the benchmark definition of a crime against humanity and is also the source of the provisions of Article 3 of the Statute of the Tribunal for Rwanda (hereinafter the "ICTR") and Article 7 of the Statute of the International Criminal Court.

1. The Arguments of the Parties

189. The Trial Chamber will present in brief the legal arguments of the Prosecutor and the Defence as they appear in their respective final briefs.

a) The Prosecution

190. Firstly, the Prosecutor contended that a crime against humanity must be committed within the context of a widespread or systematic operation[349]. She also considered that for the crime to be ascribed to the accused he must be aware of this context[350]. Finally, she asserted that it must be committed as part of an armed conflict[351].

191. The Prosecutor alleged first that the two characteristics "widespread nature" and "systematic nature" of the "widespread or systematic attack against a civilian population" are not cumulative[352]. She noted that the first characteristic relates to the scale of the criminal acts and to the number of victims[353]. She then stated that the second refers to the plan or policy according to which the crimes are committed[354] which must not necessarily be expressly set out and may be inferred from the factual circumstances particular to the case in hand[355].

192. Moreover, the Prosecutor was of the view that the notion of "civilian population" must be defined broadly and include, *inter alia*, persons taking no active part in the hostilities[356] or who are not fit for combat[357]. She drew attention in this respect to the fact that

[348] Annex to the Agreement for the Prosecution and Punishment of Major War Criminals of the European Axis, signed in London on 8 August 1945, 85 "*Recueil des traités des Nations Unies /United Nations Treaty Series/*", (p. 251 in the French /no English version has been locatable/).
[349] Prosecutor's Brief, book 1, paras. 5.10–5.20.
[350] *Ibid*., para. 5.4.
[351] *Ibid.*, paras. 5.6–5.9.
[352] *Ibid.,* paras. 5.10–5.11.
[353] *Ibid.,* paras. 5.13–5.16.
[354] *Ibid.,* paras. 5.13–5.16.
[355] *Ibid*., para. 5.14.
[356] *Ibid*., para. 5.269.
[357] *Ibid*., para. 5.267.

the presence of resistance fighters or soldiers amongst the civilian population does not alter the civilian nature of that population[358].

193. As regards the *mens rea*, the Prosecutor deemed it sufficient to demonstrate that the perpetrator of a crime against humanity is aware of the general context within which his act is framed at the instant that he commits the crimes[359]. Moreover, the Prosecutor argued that it need not be proved that the perpetrator was motivated by discriminatory intent except, however, for the crime of persecution[360]. To be found guilty of persecution the accused must know that his act forms part of a discriminatory attack against a civilian population[361]. She noted in this respect that persecution may encompass acts enumerated in the Statute under Articles 2, 3 and 5 and all other violations of fundamental human rights[362].

b) The Defence

194. The Defence did not accept the same interpretation of either the material elements or the *mens rea* of a crime against humanity.

195. It considered that the two criteria of the "widespread or systematic attack against a civilian population" are cumulative[363]. It also noted that a crime against humanity must be committed as part of an official policy of a State or organisation[364].

196. In addition, the Defence asserted that the population targeted by the perpetrator of the crime must be civilian[365]. It noted in this respect that the criterion which allows a distinction to be made between a civilian population and an "organised defence" is not the number of civilians involved but the objective of the organised defence[366].

197. In respect of the *mens rea*, the Defence maintained that the perpetrator of the crime must intend to implement the official policy of the State or organisation concerned[367]. It submitted in this regard that persecution requires proof of a clearly defined *mens rea*, that is,

[358] *Ibid*., para. 5.267.
[359] *Ibid*., para. 5.4 and paras. 5.278–5.282.
[360] *Ibid*., paras. 5.283–5.284.
[361] Prosecutor's Brief, book 3, para. 2.16.
[362] *Ibid.*, paras. 2.2–2.13.
[363] Defence Brief, book 2, E, pp. 75-77.
[364] *Ibid*., pp. 77-78.
[365] *Ibid*., pp. 74-75.
[366] *Ibid*., p. 75.
[367] *Ibid*., pp. 78-80.

the intent to carry out the discriminatory State policy[368]. More specifically, it put forth that the accused may not be found guilty of persecution for crimes such as the forcible transfer of civilians or the plunder of property[369].

2. Discussion and conclusions

198. A preliminary comment is appropriate before examining the constituent elements of a crime against humanity as they stood in customary international law prevailing at the time the crimes imputed to the accused were allegedly committed[370] and, more specifically, in both texts and international and national case-law. The sub-characterisations specified in the indictment brought against General Bla{ki} – that is murder, persecutions and other inhumane acts – will be integrated into the examination of the legal and factual elements of a crime against humanity. However, for the "underlying crimes", each with its own characteristics, to be characterised as a crime against humanity, they must be part of a single category - that of a widespread or systematic attack against a civilian population - which gives this offence its specificity and distinguishes it fundamentally from other violations of humanitarian law defined by the Statute[371]. As stated by the International Law Commission (hereinafter the "ILC"),

> "[t]he particular forms of unlawful act (murder, enslavement, deportation, torture, rape, imprisonment etc.) are less crucial to the definition than the factors of scale and deliberate policy, as well as in their being targeted against the civilian population in whole or in part"[372].

a) The legal and factual elements

199. Two essential elements derive from the definition of a crime against humanity - firstly, a material criterion, which consists of the commission of one of the enumerated

---

[368] *Ibid*., p. 80.
[369] *Ibid*., pp. 81-84.
[370] The customary character of the provisions of Article 5 of the Statute and of the individual criminal responsibility of the perpetrators of crimes against humanity has been recognised by the Trial Chamber Judges in the *Tadi}* Judgement (para. 623) and the *Tadi}* Appeal Decision (para. 141). In the assessment of the Appeals Judges, "There is no question, however, that the definition of crimes against humanity adopted by the Security Council in Article 5 comports with the principle of *nullum crimen sine lege*". The Trial Chamber itself noted that "[…] since the Nürnberg Charter, the customary status of the prohibition against crimes against humanity […] ha[s] not been seriously questioned".
[371] According to the report of the International Law Commission (hereinafter the "ILC") on the work of its 43rd session "*each of the subparagraphs* concerning the criminal acts *should be read in conjunction with the chapeau of the article*, under which they are a crime only if they constitute systematic or mass violations of human rights" (emphasis added) (Report of the ILC on the work of its 43rd session, 29 April – 19 July 1991, supplement no. 10 (A/46/10) (hereinafter the "1991 ILC Report"), p. 266).
[372] Report of the ILC on the work of its 46th session, 2 May – 22 July 1994, supplement no. 10 (A/49/10) (hereinafter the "1994 ILC Report"), p. 76.

crimes as part of a widespread or systematic attack against a civilian population and, secondly, a mental criterion, that is, awareness of participating in this attack.

i) The material element

200. Having presented the general conditions of the offence, the Trial Chamber will define the three sub-characterisations imputed to General Bla{ki}.

a. The widespread or systematic attack against any civilian population

201. A crime against humanity is made special by the methods employed in its perpetration (the widespread character) or by the context in which these methods must be framed (the systematic character) as well as by the status of the victims (*any* civilian population).

i. A widespread or systematic attack

202. The "widespread or systematic" character of the offence does not feature in the provisions of Article 5 of the Statute which mention only acts "directed against any civilian population". It is appropriate, however, to note that the words "directed against any civilian population"[373] and some of the sub-characterisations set out in the text of the Statute imply, both by their very nature and by law, an element of being widespread or organised, whether as regards the acts or the victims. "Extermination", "enslavement" and "persecutions" do not refer to single events.

Moreover, the assertion that the "widespread or systematic" character is a constituent element of a crime against humanity is found in Article 3 of the Statute of the ICTR[374] and Article 7 of the Statute of the International Criminal Court[375]. The Appeals Chamber in the *Tadi}* Appeal Judgement[376] rendered consequent to the Judgement of Trial Chamber II of the ICTY dated 7 May 1997 and Trial Chambers I and II of the ICTR in their Judgements pronounced

[373] *Tadi}* Appeal Judgement, para. 248. The Appeal Judges maintained that "[…] it may be inferred from the words "directed against any civilian population" in Article 5 of the Statute that the acts of the accused must comprise part of a pattern of widespread and systematic crimes directed against a civilian population and that the accused must have *known* that his acts fit into such a pattern".
[374] Article 3 of the Statute of the ICTR characterises inhumane acts "committed as part of a *widespread or systematic attack* against any civilian population" as crimes against humanity (emphasis added).
[375] Within the terms of Article 7 of the Statute of the International Criminal Court (PCMICC/1999/INF/3), a crime against humanity means "any of the following acts when committed as part of a *widespread or systematic attack* directed against any population, with knowledge of the attack" (emphasis added).
[376] *Tadi}* Judgement, para. 648. According to the Judgement "It is therefore the desire to exclude isolated or random acts from the notion of crimes of humanity that led to the inclusion of the requirement that the acts must be directed against a civilian "population", and either a finding or widespreadness, which refers to the number of victims, or systematicity, indicating that a pattern or methodical plan is evident, fulfils this requirement".

on 2 September 1998 and 21 May 1999 in the cases *The Prosecutor v. Jean-Paul Akayesu*[377] and *The Prosecutor v. Clément Kayishema and Obed Ruzindana*[378] respectively all made the widespread or systematic characteristic an essential element of the offence. That being the case, there can be no doubt that inhumane acts constituting a crime against humanity must be part of a systematic or widespread attack against civilians.

203. The systematic character refers to four elements which for the purposes of this case may be expressed as follows:

- the existence of a political objective, a plan pursuant to which the attack is perpetrated or an ideology, in the broad sense of the word, that is, to destroy, persecute or weaken a community[379];

- the perpetration of a criminal act on a very large scale against a group of civilians or the repeated and continuous commission of inhumane acts linked to one another[380];

- the preparation and use of significant public or private resources, whether military or other[381];

- the implication of high-level political and/or military authorities in the definition and establishment of the methodical plan.

---

[377] *Akayesu* Judgement, paras. 579-581. Paragraph 579 commences with the affirmation: "The Chamber considers that it is a prerequisite that the act must be committed as part of a widespread or systematic attack and not just a random act of violence" (emphasis added).

[378] *Kayishema-Ruzindana* Judgement, para. 123.

[379] The case-law of both this Tribunal, in the *Tadi}* Judgement, (para. 648), and the ICTR, in the *Akayesu* (para. 580) and *Kayishema-Ruzindana* Judgements (para. 123), refer to the plan or policy in order to define the element of "systematicity".
In the case *The Prosecutor v. Menten* the Dutch Supreme Court evoked the condition of "systematicity" in reference particularly to a policy consciously directed against a group of persons (75, *International Law Report*, (hereinafter the "ILR"), 1987, pp. 362-363): "The concept of crimes against humanity also requires – although this is not expressed in so many words in the […] definition – that the crimes in question form part of a *system based on terror* or constitute a link in a consciously *pursued policy* directed against particular groups of people" (emphasis added).

[380] According to the Report of the ILC on the work of its 48th session, the term systematic means "pursuant to a preconceived plan or policy. The *implementation* of this plan or policy *could result in the repeated or continuous commission of inhumane acts*" (emphasis added) (Report of the ILC on the work of its 48th session, 6 May – 26 July 1996, supplement no. 10 (A/51/10) (hereinafter the "1996 ILC Report"), p. 94).
This definition is in keeping with the preceding work of the ILC and, in particular, that of its 43rd session which created the offence of "Systematic or mass violations of human rights" under Article 21 and which stated that the systematic characteristic related to *a "constant practice or to a methodical plan to carry out [...] violations of human rights*" (emphasis added) (1991 ILC Report, p. 266).

[381] In the *Akayesu* Judgement, the Judges referred to the concerted policy and use of "substantial public or private resources" to characterise the systematic nature (para. 580).

204. This plan, however, need not necessarily be declared expressly or even stated clearly and precisely [382]. It may be surmised from the occurrence of a series of events[383], *inter alia*:

- the general historical circumstances and the overall political background against which the criminal acts are set;

- the establishment and implementation of autonomous political structures at any level of authority in a given territory;

- the general content of a political programme, as it appears in the writings and speeches of its authors;

- media propaganda;

- the establishment and implementation of autonomous military structures;

- the mobilisation of armed forces;

- temporally and geographically repeated and co-ordinated military offensives;

- links between the military hierarchy and the political structure and its political programme;

- alterations to the "ethnic" composition of populations;

- discriminatory measures, whether administrative or other (banking restrictions, laissez-passer,…)

- the scale of the acts of violence perpetrated – in particular, murders and other physical acts of violence, rape, arbitrary imprisonment, deportations and expulsions or the destruction of non-military property, in particular, sacral sites.

[382] Cf. especially, the *Tadi}* Judgement, para. 653.
[383] Review of the Indictments Pursuant to Article 61 of the Rules of Procedure and Evidence, *The Prosecutor v. Radovan Karad`i} and Ratko Mladi}*, Case no. IT-95-5-R61, 11 July 1996, (hereinafter "Article 61 *Karad`i}* and *Mladi}*"), para. 43; Review of the Indictment Pursuant to Article 61 of the Rules of Procedure and Evidence, *The Prosecutor v. Dragan Nikoli}*, Case no. IT-94-2-R61, 20 October 1995, (hereinafter "Article 61 *Nikoli}*"), para. 27; Review of the Indictment Pursuant to Article 61 of the Rules of Procedure and Evidence, *The Prosecutor v. Milan Marti}*, Case no. IT-95-11-R61, 8 March 1996, para. 27.

205. Nor must the plan necessarily be conceived at the highest level of the State machinery. Trial Chambers I and II of both this Tribunal[384] and the ICTR[385] have constantly refused to characterise a crime against humanity as an "act of criminal sovereignty"[386]. To support the argument they relied *inter alia* upon the opinion of the ILC on the work of its 43rd session according to which individuals "with *de facto* power or organized in criminal gangs" are just as capable as State leaders of implementing a large-scale policy of terror and committing mass acts of violence[387]. As pointed out by Advocate-General Dontenwille at the end of his application to the French *Cour de Cassation* in the case *Fédération nationale des déportés et internés résistants et patriotes et autres v. Barbie* (hereinafter the "Barbie Case"),

> "Are there not forces and organizations whose powers might be greater and whose actions might be more extensive than those of certain countries represented institutionally at the United Nations? Care is required because other methods of total abuse of the human condition could equal in horror, albeit from other aspects, those of which we have just spoken."[388]

Moreover, Article 18 of the Draft ILC Code defined a crime against humanity as committing crimes "in a systematic manner or on a large scale and *instigated or directed by a government or by any organization or group*"[389] .

The texts of the Statute of the International Criminal Court adopted by 120 States of the international community confirm this interpretation. They hold that criminal acts must be committed "pursuant to or in furtherance of a State or *organizational* policy […]".[390]

206. The widespread characteristic refers to the scale of the acts perpetrated and to the number of victims. According to the draft Code of the ILC, to which Trial Chamber II explicitly refer in the case *The Prosecutor v. Du{ko Tadi}*,

> "inhumane acts [must] be committed on a large scale meaning that the acts are directed[391] against a multiplicity of victims. This requirement excludes an isolated inhumane act

---

[384] Article 61 *Nikoli}*, para. 26 and *Tadi}* Judgement, para. 654. According to the Judgement "As the first international tribunal to consider charges of crimes against humanity alleged to have occurred after the Second World War, the International Tribunal is not bound by past doctrine but must apply customary international law as it stood at the time of the offences. In this regard *the law in relation to crimes against humanity has developed to take into account forces which, although not those of a legitimate government*, have *de facto* control over, or are able to move freely within, defined territory" (emphasis added).
[385] *Kayishema-Ruzindana* Judgement, para. 126 and *Akayesu* Judgement, para. 580. Within the terms of the *Akayesu* Judgement "There is no requirement that this policy must be adopted formally as the policy of a state."
[386] J.Graven, "*Les crimes contre l'humanité*", *Recueil des cours de l'Académie de droit international*, 1950, p. 566. Translated from the French: "… acte de souveraineté criminel…".
[387] 1991 ILC Report, p. 266.
[388] Vol. 78, *ILR*, 1988, p. 147.
[389] 1996 ILC Report, p. 93 (emphasis added).
[390] Article 7(1)(a) of the Statute of the International Criminal Court (emphasis added).

committed by a perpetrator acting on his own initiative and directed against a single victim"[392].

A crime may be widespread or committed on a large-scale by "the cumulative effect of a series of inhumane acts or the singular effect of an inhumane act of extraordinary magnitude"[393].

207. As asserted by Trial Chambers I and II of the ICTY and ICTR in the cases *The Prosecutor v. Mile Mrk{i}, Miroslav Radi} and Veselin [ljivan~anin*[394]*, Tadi}*[395]*, Akayesu*[396] and *Kayishema and Ruzindana*[397] and as it appears in the Report of the Secretary-General[398], the Statute of the International Criminal Court[399] and the work of the ILC[400], the conditions of scale and "systematicity" are not necessarily cumulative. This means that for inhumane acts to be characterised as crimes against humanity it is sufficient that one of the conditions be met. The fact still remains however that, in practice, these two criteria will often be difficult to separate since a widespread attack targeting a large number of victims generally relies on some form of planning or organisation. The quantitative criterion is not objectively definable as witnessed by the fact that neither international texts nor international and national case-law set any threshold starting with which a crime against humanity is constituted.

ii. A civilian population

208. The contention that acts of violence perpetrated systematically or on a widespread basis against a population must not be characterised as a crime against humanity on the sole ground that the victims were soldiers and regardless of the fact that they were not combatants when the crimes were perpetrated is not in conformity with either the letter or spirit of Article 5 of the Statute. The terms of this provision are in no manner restrictive in this respect since a

---

[391] The term "directed" appears to refer more to the intention of the perpetrator of the crime to commit a massive or widespread crime than the physical result of his action.
[392] 1996 ILC Report, pp. 94-95.
[393] *Ibid.* p. 95.
[394] Review of the Indictment Pursuant to Article 61 of the Rules of Procedure and Evidence, *The Prosecutor v. Mile Mrk{i}, Miroslav Radi} and Veselin [ljivan~anin*, Case no. IT-95-13-R61, 3 April 1996, (hereinafter "Article 61 *Mrk{i}, Radi} and [ljivan~anin*") para. 30.
[395] *Tadi}* Judgement, paras. 646-647
[396] *Akayesu* Judgement, para. 579.
[397] *Kayishema-Ruzindana* Judgement, para 123.
[398] Report of the Secretary-General, para 48.
[399] Article 7(1) of the Statute of the International Criminal Court.
[400] Cf. 1996 ILC Report, pp. 94-95: "The opening clause of this definition [of crimes against humanity] establishes the two general conditions which must be met for one of the prohibited acts to qualify as a crime against humanity covered by the present Code. The first condition requires that the act was "committed in a systematic manner or on a large scale". This condition consists of *two alternative requirements* … Consequently, an act could constitute a crime against humanity if either of these conditions is met" (emphasis added).

crime against humanity applies to acts "directed[401] against *any* civilian population". As far as the spirit of the text is concerned, it must be remembered that the specificity of a crime against humanity results not from the status of the victim but the scale and organisation in which it must be committed.

209. In this spirit, it is appropriate to state that Article 3 common to the Geneva Conventions, whose customary nature was recognised, in particular, by the Appeals Chamber in the *Tadi}* Appeal Decision, protects not only persons taking no active part in the hostilities but also members of armed forces who have laid down their arms and persons placed *hors de combat* by sickness, wounds, detention or any other cause. Moreover, Trial Chamber I of the ICTR which heard the *Akayesu* case[402] relied on this provision to classify as civilians within the meaning of Article 3 of the ICTR Statute persons who for one reason or another were no longer directly involved in fighting.

210. The case-law of this Tribunal in the cases *Mrk{i}, Radi} and [ljivan~anin*[403] and *Tadi}*[404] has also interpreted broadly the notion of a civilian population, adjudging that it must include persons involved in resistance movements[405].

211. Moreover, relying on the provisions of paragraph 3 of Article 50(3) of Protocol I, Trial Chamber II of this Tribunal[406] and Trial Chambers I[407] and II[408] of the ICTR stated that "[t]he presence within the civilian population of individuals who do not come within the definition of civilians does not deprive the population of its civilian character". Very recently, Trial Chamber II hearing the *Kupreski}* case also considered that:

---

[401] The term "directed" indicates that international legislation seems to have placed more importance on the intention of the agent responsible for the widespread or systematic attack than on the physical result of the attack. In other words, if it is demonstrated that the perpetrator of the acts of violence had the primary intention of inflicting injury upon a civilian population, he could be found guilty of a crime against humanity even if the attack caused military casualties as well as civilian victims.
[402] *Akayesu* Judgement, para. 582.
[403] Article 61 *Mrk{i}, Radi} and [ljivan~anin*, paras. 29-32.
[404] *Tadi}* Judgement, paras. 636-647.
[405] The Supreme Court in the British zone broadly interpreted Law No. 10 by accepting that the characterisation of crime against humanity was applicable to acts whose victims were soldiers (cf. *inter alia* the case *P et al.*, 7 December 1948 (S. Sts 111/148), O.G.H. br. Z. I, p. 228 and the case *H*, 10 October 1949, (S. Sts 309/49) O.G.H. br. Z. II, pp. 223-238). As stated by the Appeals Chamber in the *Tadi}* Appeal Judgement, "the […] court gave a very liberal interpretation to the notion of crimes against humanity as laid down in Control Council Law No. 10, extending it among other things to inhumane acts committed against members of the military" (*Tadi}* Appeal Judgement, note 351).
[406] *Tadi}* Judgement, para. 639.
[407] *Akayesu* Judgement, para. 582.
[408] *Kayishema-Ruzindana* Judgement, para. 128.

> […] the presence of those actively involved in the conflict should not prevent the characterization of a population as civilian and those actively involved in a resistance movement can qualify as victims of crimes against humanity.[409]

212. In the *Barbie* case, the Criminal Chamber of the French *Cour de Cassation* also maintained that resistance fighters could rely on the judicial regime relating to the provisions for crimes against humanity[410]. Following this line of reasoning, French law recently incorporated under crimes against humanity inhumane acts committed as part of a concerted plan against those fighting the regime in whose name the said crimes were perpetrated[411].

213. Lastly, the Commission of Experts established pursuant to Security Council resolution 780 (hereinafter the "Commission of Experts") extended the status of civilian to persons who strictly speaking did not carry out military operations although they did bear arms.

> "It seems obvious that article 5 applies first and foremost to civilians, meaning people who are not combatants. This, however, should not lead to any quick conclusions concerning people who at one particular point in time did bear arms. A head of family who under such circumstances tries to protect his family gun-in-hand does not thereby lose his status as a civilian. Maybe the same is the case for the sole policeman or local defence guard doing the same, even if they joined hands to try to prevent the cataclysm"[412].

214. Crimes against humanity therefore do not mean only acts committed against civilians in the strict sense of the term but include also crimes against two categories of people: those who were members of a resistance movement and former combatants - regardless of whether they wore wear uniform or not – but who were no longer taking part in hostilities when the crimes were perpetrated because they had either left the army or were no longer bearing arms or, ultimately, had been placed *hors de combat*, in particular, due to their wounds or their being detained. It also follows that the specific situation of the victim at the moment the crimes were committed, rather than his status, must be taken into account in determining his standing as a civilian. Finally, it can be concluded that the presence of soldiers within an intentionally targeted civilian population does not alter the civilian nature of that population.

---

[409] Judgement, *The Prosecutor v. Kupre{ki}*, case no. IT-95-16-T, 14 January 2000 (hereinafter the "*Kupre{ki}* Judgement, para. 549.
[410] *Barbie* Case, Cass. Crim., 20 December 1985.
[411] Article 212-2 of the French Criminal Code.
[412] Final Report of the Commission of Experts established pursuant to Security Council resolution 780 (1992), S/1994/674, (hereinafter the "Final Report of the Commission of Experts") para. 78.

b. The sub-characterisations

215. The sub-characterisations with which the accused is charged, that is, murder, persecutions and other inhumane acts[413], must be defined individually because, beyond any possible common link with a widespread or systematic attack, each has its own nature and specificity.

i. Murder

216. It is appropriate to point out first that the French version of the Statute uses the term "*assassinat*" – a crime with a very precise meaning in French national law[414] - whilst the English version adopts the word "murder" which translates in French as "*meurtre*". Relying on Article 7(1)(a) of the Statute of the International Criminal Court, Article 18 of the ILC Code of Crimes Against the Peace and Security of Mankind[415] and the assertions of Trial Chamber I of the ICTR in the *Akayesu* case[416] which all refer to murder ("*meurtr*e"), the Trial Chamber is of the view that it is murder ("*meurtre"*) and not premeditated murder ("*assassinat"*) which must be the underlying offence of a crime against humanity.

217. Guided by the work of the ILC[417], the Trial Chamber will refer to the legal and factual elements of the offence as commonly recognised in national law to define murder, that is:

- the death of the victim;

- the death must have resulted from an act of the accused or his subordinate

- the accused or his subordinate must have been motivated by the intent to kill the victim or to cause grievous bodily harm in the reasonable knowledge that the attack was likely to result in death[418].

ii. Persecution

218. Unlike the sub-characterisation of murder which represents only one crime, that of "persecution" may assume several different criminal forms. The indictment against General

[413] Second amended indictment, counts 1, 7 and 10.
[414] According to Article 221-3 of the French Criminal Code, an "assassinat" means a premeditated murder - "meurtre commis avec prémeditation".
[415] 1996 ILC Report, p. 93.
[416] *Akayesu* Judgement. para. 588.
[417] According to the ILC, "Murder is a crime that is clearly understood and well defined in the national law of every State. This prohibited act does not require any further explanation" (1996 ILC Report, p. 96).

Bla{ki} specifies physical and mental injury (murders and other forms of bodily harm[419] including the use of civilians as human shields[420] and forcing them to dig trenches[421]), infringements upon individual freedom (arbitrary arrest and detention[422] and forcible transfer of civilians[423]) and attacks against property (destruction and plunder of property[424]), all directed against the "Bosnian Muslim civilian population"[425].

219. Although the Statute of the Nuremberg Tribunal and those of the Tribunals for the former Yugoslavia and Rwanda all sanction persecutions on political, racial and religious grounds under crimes against humanity, none defines this sub-characterisation or states which forms it may take. The Trial Chamber will therefore refer to customary international law to determine whether the violations covered in the indictment may constitute persecution and under what condition they may be characterised as such.

iii. Serious bodily and mental harm, infringements upon freedom and attacks against property as forms of persecution

220. There is no doubt that serious bodily and mental harm and infringements upon individual freedom may be characterised as persecution when, as will be indicated below, they target the members of a group because they belong to a specific community. The Trial Chamber considers that infringements of the elementary and inalienable rights of man, which are "the right to life, liberty and the security of person", the right not to be "held in slavery or servitude", the right not to "be subjected to torture or to cruel, inhuman or degrading treatment or punishment" and the right not to be "subjected to arbitrary arrest, detention or exile" as affirmed in Articles 3, 4, 5 and 9 of the Universal Declaration of Human Rights[426], by their very essence may constitute persecution when committed on discriminatory grounds.

221. This interpretation is reaffirmed by the established case-law of the Nuremberg Tribunal, the tribunals acting in accordance with Law No. 10 promulgated by the Allied

---

[418] *Akayesu* Judgement, para. 589.
[419] Second amended indictment, paras. 6.2, 6.5 and 6.7.
[420] *Ibid.*, para. 6.5.
[421] *Ibid.*, para. 6.5.
[422] *Ibid.*, paras. 6.4 and 6.5.
[423] *Ibid*., paras. 6.6 and 6.7.
[424] *Ibid*., para. 6.3.
[425] *Ibid*., para. 5.2.
[426] The Universal Declaration of Human Rights was passed by the United Nations Security Council on 10 December 1948.

Control Council for Germany on 20 December 1945 (hereinafter "Law No. 10"),[427] the Supreme Court of Israel and the ILC reports.

222. In the part of the Judgement of the major war criminals specifically devoted to the persecution of the Jews, the Nuremberg Tribunal affirmed that the murder of the Jews, the brutal acts which they suffered, their confinement in ghettos and their being used to perform forced labour were all forms of persecution[428]. The Nuremberg Tribunal thus noted *inter alia* that:

> "The Nazi *persecution of Jews* in Germany before the war, severe and repressive as it was, cannot compare, however, with the policy pursued during the war in the occupied territories […][429].
>
> In the summer of 1941, however, plans were made for the "final solution" of the Jewish question in Europe. This "final solution" meant the *extermination* of the Jews […]"[430].
>
> *"Beating, starvation, torture and killing* were general. The inmates were subjected to cruel experiments […]"[431].

In the paragraphs describing the role played by SS units in the persecution of the Jews, that Tribunal also brought out the fact that the units had participated in their deportation and extermination[432]. Furthermore, in its analysis of the individual responsibility of the accused Frank, it pointed out that:

> "The persecution of the Jews was immediately begun in the General government. The area originally contained from 2½ million to 3½ million Jews. They were *forced into ghettos*, subjected to discriminatory laws, *deprived of the food necessary to avoid starvation*, and finally systematically and brutally *exterminated*"[433].

As regards the accused Bormann, the Judges also stated that:

> "Bormann was extremely active in the persecution of the Jews, not only in Germany but also in the absorbed and conquered countries. *He took part in the discussions which led to the removal* of 60,000 Jews from Vienna to Poland in co-operation with the SS and the Gestapo. *He signed the decree of 31 May 1941* extending the Nuremberg Laws to the annexed Eastern territories. In an order of 9 October 1942 *he declared that the permanent elimination of Jews in Greater German territory* could no longer be solved by emigration, but only by applying "ruthless force" in the special camps in the East. On 1 July 1943 *he*

[427] *Law Reports of Trials of War Criminals*, London, H.M.S.O., 1946-1949, (hereinafter the "LRTWC"), vol. XV, p. 41.
[428] Trial of Major War Criminals before the International Military Tribunal, Nürnberg, 14 November 1945 – 1 October 1946, Judgement, 1947 (hereinafter the "Nürnberg Judgement"), pp. 249-253.
[429] *Ibid.*, p. 249 (emphasis added).
[430] *Ibid.*, p. 250.
[431] *Ibid.*, p. 252. (emphasis added)
[432] *Ibid.*, p. 271.
[433] *Ibid.*, pp. 297-298. (emphasis added)

> *signed an ordinance withdrawing Jews from the protection of the law courts* and placing them under the exclusive jurisdiction of Himmler's Gestapo"[434].

223. In line with the Nuremberg Tribunal, the Supreme National Tribunal of Poland[435] and the Netherlands Special Court in Amsterdam[436], both acting in accordance with Law No. 10, categorised physical and mental injury and infringements upon freedom, in particular, murder, wounding and deportations, as persecutions.

224. The Supreme Court of Israel found Eichmann guilty of persecution for *inter alia* the "murder, extermination, enslavement, starvation and deportation of the civilian Jewish population"[437].

225. Lastly, the ILC report on the work of its 48th session explicitly specified that "persecution may take many forms with its common characteristic being the *denial of the human rights and fundamental freedoms to which every individual is entitled without distinction*"[438] and which by their very nature incorporate a person's right to life and respect for his physical and mental well-being.

226. The *Kupre{ki}* Trial Chamber reached a similar conclusion when it considered that the crime of persecution could include attacks on persons such as murder, extermination or torture.[439]

227. However, persecution may take forms other than injury to the human person, in particular those acts rendered serious not by their apparent cruelty but by the discrimination they seek to instil within humankind. As put forward by the Prosecutor in the indictment against the accused[440], persecution may thus take the form of confiscation or destruction of private dwellings or businesses, symbolic buildings or means of subsistence belonging to the Muslim population of Bosnia-Herzegovina.

228. The Nuremberg International Tribunal expressly recognised that, as of autumn 1938, the persecution of the Jews was designed to exclude them from German life and was particularly apparent in the "[p]ogroms [which] were organized, which included the burning

[434] *Ibid.*, pp. 339-340. (emphasis added)
[435] *LRTWC*, vol. XIII, 1949, p. 105.
[436] *LRTWC*, vol. XIV, 1949, p. 141.
[437] *Eichmann* Case, 29 May 1962, 36, *ILR*, 1968, count 5, p. 277.
[438] 1996 ILC Report, p. 98 (emphasis added).
[439] *Kupre{ki}* Judgement, paras. 600 and 615.
[440] Second amended indictment, para. 6.3.

and demolishing of synagogues, the looting of Jewish businesses, and the arrest of prominent Jewish business men"[441] and the imposition of a billion mark fine[442]. Furthermore, the Nuremberg Tribunal found Göring guilty of crimes against humanity, in particular, for being " […] the active authority in the spoliation of conquered territory"[443] and for having imposed the fine of a billion reichsmarks on the Jews[444]. It added that:

> "Göring persecuted the Jews […] not only in Germany […] but in the conquered countries. His own utterances then and his testimony now shows this interest was primarily economic – how to *get their property* and how to *force them out of the economic life* of Europe"[445].

Rosenberg too was convicted of war crimes and crimes against humanity for "a system of organised plunder of both public and private property throughout the invaded countries of Europe". The Judgement also noted in this respect that:

> "[a]cting under Hitler's orders of January 1940 to set up the "Hohe Schule", he organized and directed the "Einsatzstab Rosenberg", which plundered museums and libraries, confiscated art treasures and collections, and pillaged private houses"[446].

In addition, the Nuremberg Tribunal found the accused Streicher guilty of crimes against humanity *inter alia* for the boycott on Jewish businesses and the fire at the Nuremberg synagogue[447].

229. Although the Tribunals acting pursuant to Law No. 10[448] proved less definite on this matter, they explicitly declared that the collective fine of a billion marks was a "typical piece of the persecution to which German Jews were subjected"[449]. Lastly, they maintained that the confiscation and liquidation of property belonging to German Jews by the Reich comprised part of a programme to persecute the Jews in Germany[450].

---

[441] Nürnberg Judgement, p. 248.
[442] *Ibid.*, p. 248.
[443] *Ibid.*, p. 281.
[444] *Ibid.*, p. 282.
[445] *Ibid.*, p. 282.
[446] *Ibid.*, p. 295.
[447] *Ibid.*, p. 302.
[448] In the cases *Flick* (*Trials of War Criminals* (hereinafter "TWC"), vol VI, pp. 1215-1216) and *Farben* (TWC, vol VIII, part 2, pp. 1129-1130), the Judgements of the American military tribunals refused to have crimes against property characterised as crimes against humanity.
[449] *Ibid.*, p. 676.
[450] *Ibid.*, p. 678.

230. The Jerusalem District Court confirmed this interpretation. It stated in the *Eichmann* case that from the moment Hitler came to power[451] the persecution of the Jews became manifest in the systematic destruction of the synagogues[452] and the boycott of their businesses and shops[453].

231. The 1991 and 1996 ILC reports similarly asserted that "persecution may take many forms"[454]. The first expressly cited the example of the "systematic destruction of monuments or buildings representative of a particular social, religious, cultural or other group"[455].

232. Lastly, the *Kupre{ki}* Trial Chamber ruled that persecution includes a variety of other discriminatory acts involving attacks on political, social, and economic rights.[456]

233. The Trial Chamber finds from this analysis that the crime of "persecution" encompasses not only bodily and mental harm and infringements upon individual freedom but also acts which appear less serious, such as those targeting property, so long as the victimised persons were specially selected on grounds linked to their belonging to a particular community.

iv. Legal and factual elements of the forms of persecution specified in the indictment

234. The Trial Chamber will now deal with the legal and factual elements of the forms of persecution specified in the indictment – the destruction and plunder of property, unlawful detention and the forcible transfer of civilians – except for murder and physical and mental injury which are defined in paragraphs 224 and 250 of this Judgement.

- The destruction and plunder of property. In the context of the crime of persecution, the destruction of property must be construed to mean the destruction of towns, villages and other public or private property belonging to a given civilian population or extensive

[451] According to the Jerusalem District Court: "With the rise of Hitler to power, the persecution of Jews became official policy and assumed the *quasi-legal form of laws and regulations published by the government* of the Reich in accordance with legislative powers delegated to it by the Reichstag on March 24, 1933 *and of direct acts of violence organised by the regime against the persons and property of Jews.* The purpose of these acts carried out in the first stage was *to deprive the Jews of citizens rights*, to degrade them and strike fear into their hearts, *to separate them from the rest of the inhabitants, to oust them from the economic and cultural life of the State* and to close to them the source of livelihood" (emphasis added) (District Court Judgment, *Eichmann* case, 36 *ILR*, 1968, para. 56.
[452] *Ibid.*, para. 57.
[453] *Ibid.*. para. 57.
[454] 1996 ILC Report, p. 98.
[455] 1991 ILC Report, p. 268.
[456] *Kupre{ki}* Judgement, para. 615.

devastation not justified by military necessity and carried out unlawfully, wantonly and discriminatorily[457]. In the same context, the plunder of property is defined as the unlawful, extensive and wanton appropriation of property[458] belonging to a particular population, whether it be the property of private individuals or of state or "quasi-state" public collectives[459].

- The unlawful detention of civilians. The unlawful detention of civilians, as a form of the crime of persecution, means unlawfully depriving a group of discriminated civilians of their freedom.

- The deportation or forcible transfer of civilians. The deportation or forcible transfer of civilians means "forced displacement of the persons concerned by expulsion or other coercive acts from the area in which they are lawfully present, without grounds permitted under international law"[460].

v. Discrimination

235. The underlying offence of persecution requires the existence of a *mens rea* from which it obtains its specificity. As set down in Article 5 of the Statute, it must be committed for specific reasons whether these be linked to political views, racial background or religious convictions. It is the specific intent to cause injury to a human being because he belongs to a particular community or group[461], rather than the means employed to achieve it, that bestows on it its individual nature and gravity and which justifies its being able to constitute criminal acts which might appear in themselves not to infringe directly upon the most elementary rights of a human being, for example, attacks on property[462]. In other words, the perpetrator of the acts of persecution does not initially target the individual but rather membership in a specific racial, religious or political group.

---

[457] *Cf. inter alia* paragraphs 2(d) of the Statute, 6(b) of the Statute of the Nuremberg Tribunal and 2(1)(b) of Law No. 10 and Articles 50 of Protocol I, 51 of Protocol II and 147 of the Ist Geneva Convention and the *^elebi}i* Judgement, paras. 584-592.
[458] *Cf. inter alia* Articles 50 of Protocol I, 51 of Protocol II and 147 of the IVth Geneva Convention.
[459] *Ibid.*
[460] Article 7(2)(d) of the Statute of the International Criminal Court (*Cf.* in particular the 1996 ILC Report, pp. 100-101).
[461] As affirmed by Trial Chamber II in the case *Kupre{ki} et al*, it is the discrimination which distinguishes persecution from the other crimes (*Kupre{ki}* Judgement, para. 607)
[462] *Cf.* (b) The *Mens Rea*.

236. The Trial Chamber notes in this respect the negative definition of the persecution "victim group" provided by the *Tadi}* Trial Chamber[463], that is, the one of which the perpetrator of the crimes is not a member.

vi. Other inhumane acts

237. As with the underlying crime of "persecution" the sub-characterisation "other inhumane acts" laid down in Article 5(i) of the Statute is a generic charge which encompasses a series of criminal activities not explicitly enumerated. Indeed, as the commentary on Article 3 common to the Geneva Conventions states regarding the notion of "humane treatment",

> "[…] it is always dangerous to try to go into too much detail – especially in this domain. However much care were taken in establishing a list of all the various forms of infliction, one would never be able to catch up with the imagination of future torturers who wished to satisfy their bestial instincts; and the more specific and complete a list tries to be, the more restrictive it becomes"[464].

238. The indictment characterises as inhumane acts under crimes against humanity the "assault causing injury", excluding murder, which the Muslim population of Bosnia-Herzegovina allegedly suffered - in this instance "the wilful infliction of serious injury and great suffering, both physically and mentally, to civilians"[465].

vii. Serious physical and mental injury as "other inhumane acts"

239. As shown by the case-law of the ICTR, the provisions of Article 7 of the Statute of the International Criminal Court and the ILC Draft Code of Crimes Against the Peace and Security of Mankind, serious physical and mental injury – excluding murder – is without doubt an "inhumane act" within the meaning of Article 5 of the Statute and may, on this ground and if it fits into a widespread or systematic context, assume the characterisation of a crime against humanity.

240. Trial Chamber II of the ICTR expressly asserted in the *Kayishema and Ruzindana* case that inhumane acts were, *inter alia*, acts or omissions intended to cause deliberate mental or physical suffering to the individual[466].

---

[463] *Tadi}* Judgement, para. 714.
[464] Jean Pictet, *Commentary on the I^st^ Geneva Convention of 12 August 1949*, Geneva, 1952, p. 54.
[465] Second amended indictment, para. 9.
[466] *Kayishema-Ruzindana* Judgement, para 151.

241. According to Article 7 of the Statute of the International Criminal Court "other inhumane acts" are those "of a similar nature intentionally causing great suffering, or *serious injury to body or* to mental or physical *health*".[467]

242. Article 18(k) of the ILC Draft Code of Crimes Against the Peace and Security of Mankind also clearly permits this interpretation by making "other inhumane acts which *severely damage physical or mental integrity*, health or human dignity, such as mutilation or severe bodily harm" an offence under "crimes against humanity."[468] The ILC adds in its commentary that:

> "[…] the notion of other inhumane acts is circumscribed by two requirements. First, this category of acts is intended to include only additional acts that are similar in gravity to those listed in the preceding subparagraphs. Second, the act must in fact cause injury to a human being in terms of physical or mental integrity, health or human dignity"[469].

Serious physical and mental injury not constituting murder obviously fulfils these conditions.

viii. Legal and factual elements of serious bodily or mental harm

243. In defining serious bodily and mental harm, the Trial Chamber will refer to the legal and factual elements of the offence as unanimously recognised in national law, that is:

- the victim must have suffered serious bodily or mental harm; the degree of severity must be assessed on a case by case basis with due regard for the individual circumstances;

- the suffering must be the result of an act of the accused or his subordinate;

- when the offence was committed, the accused or his subordinate must have been motivated by the intent to inflict serious bodily or mental harm upon the victim.

ii) Mens Rea

244. For the underlying crimes to be constituted, a mental factor specific to crimes against humanity must be adjoined to the required criminal intent. The perpetrator must knowingly participate in a widespread or systematic attack against a civilian population. However, to be

[467] Emphasis added.
[468] Emphasis added.
[469] ILC 1996 Report, p. 103.

judged guilty of crimes against humanity, except in the case of persecution, he must not have had the intent of targeting civilians because of their race or their religious or political beliefs.

a. Knowledge of the widespread or systematic attack

245. The provisions of Article 3 of the Statute of the Tribunal for Rwanda and of Article 5 of the Statute of the Tribunal for the former Yugoslavia do not state the nature of the *mens rea* of a crime against humanity. Only Article 7 of the Statute of the International Criminal Court provides that criminal acts must be perpetrated "in the knowledge" of the widespread or systematic attack[470].

246. For this reason, *for the purposes of this case*, three aspects of the *mens rea*, as they derive from international and national case-law, must be borne in mind:

i. Knowledge of the context

247. The accused must first have knowledge of the general context in which his acts occur and then of the nexus between his action and that context.

248. This contention relies on the Judgement rendered by the Trial Chamber hearing the *Tadi}* case which stated that "the perpetrator must know of the broader context in which his act occurs"[471], which relies in particular on the Decision of the Supreme Court of Canada in the case *Regina v. Finta*[472].

249. It is also based upon the Decision rendered by the ICTR Trial Chamber hearing the *Kayishema and Ruzindana* case which considered that the *mens rea* contained two parts, that is, knowledge of the attack and its widespread or systematic character and awareness of the fact that the criminal activity constitutes part of the attack:

> "[…] to be guilty of crimes against humanity the perpetrator must know that there is an attack on a civilian population and that his act is part of the attack"[473].

The Trial Chamber thus stated that:

---

[470] According to the *Tadi}* Appeal Judgement "Article 7(1) of the Statute of the International Criminal Court thus articulates a definition of crimes against humanity based solely upon the interplay between the *mens rea* of the defendant and the existence of a widespread or systematic attack directed against a civilian population" (note 354).
[471] *Tadi}* Judgement, para. 656.
[472] *Regina v. Finta*, (1994) 1, *Recueil de la Cour Suprême*, 701, p. 819.
[473] *Kayishema-Ruzindana* Judgement, para. 133.

> "[p]art of what transforms an individual's act into a crime against humanity is the inclusion of the act within a greater dimension of criminal conduct; therefore *an accused should be aware of this greater dimension* in order to be culpable thereof. Accordingly, *actual or constructive knowledge of the broader context of the attack*, meaning that the accused must know that his act is part of a widespread or systematic attack on a civilian population and pursuant to some kind of policy or plan, is necessary to satisfy the requisite *mens rea* element of the accused"[474].

250. This assertion relies on the *Tadi}* Appeal Judgement which expressly recognises that:

> "[…] the acts of the accused must comprise part of a pattern of widespread or systematic crimes directed against a civilian population and that the accused must have *known* that his acts fit into such a pattern"[475].

ii. Knowing participation in the context

251. The accused need not have sought all the elements of the context in which his acts were perpetrated; it suffices that, through the functions he willingly accepted, he knowingly took the risk of participating in the implementation of that context.

252. This is what emerges from the spirit of the Statute, from the case-law of both this Tribunal and the ICTR and from the Judgement of the French *Cour de Cassation* rejecting Maurice Papon's appeal against the Judgement of the Indictments Chamber of the Bordeaux Appeals Court (hereinafter the "*Papon* case")[476].

253. As concerns the spirit of the Statute, the Trial Chamber is of the view that an accused who, in his capacity as a commander, participates in the commission of a mass crime must question the malevolent intentions of those defining the ideology, policy or plan in whose name the crime is perpetrated.

254. Moreover, the nexus with the institutional or *de facto* regime, on the basis of which the perpetrator acted, and the knowledge of this link, as required by the case-law of the Tribunal and the ICTR and restated above, in no manner require proof that the agent had the intent to support the regime or the full and absolute intent to act as its intermediary so long as proof of the existence of direct or indirect malicious intent or recklessness is provided. Indeed, the Trial Chambers of this Tribunal[477] and the ICTR[478] as well as the Appeals Chamber[479] required only that the accused "knew" of the criminal policy or plan, which in

[474] *Ibid.* para. 134. (emphasis added)
[475] *Tadi}* Appeal Judgement, para. 248. (emphasis added)
[476] *Papon* case, *Cass. Crim.*, 23 January 1997.
[477] *Tadi}* Judgement, para. 656.
[478] *Kayishema-Ruzindana* Judgement, para. 133.
[479] *Tadi}* Appeal Judgement, para. 248.

itself does not necessarily require intent on his part or direct malicious intent ("… the agent *seeks* to commit the sanctioned act which is either his *objective* or at least the method of achieving his objective"[480]). There may also be indirect malicious intent (the agent did not deliberately seek the outcome but knew that it would be the result[481]) or recklessness, ("the outcome is foreseen by the perpetrator as only a probable or possible consequence"[482]). In other words, knowledge also includes the conduct "of a person taking a deliberate risk in the hope that the risk does not cause injury"[483].

255. The person who has "knowledge' of the plan, policy or organisation as part of which the crimes take place is not only the one who fully supports it but also the one who, through the political or military functions which he willingly performed and which resulted in his periodic collaboration with the authors of the plan, policy or organisation and in his participation in its execution, implicitly accepted the context in which his functions, collaboration and participation must most probably have fit.

256. In the *Papon* case, the French *Cour de Cassation* confirmed this approach and maintained that Article 6 of the Nuremberg Statute did not require that an aider and abettor to a crime against humanity necessarily support the policy set by the principal perpetrators. The Criminal Chamber of the Court stated:

> "the last sub-paragraph of Article 6 of the International Military Tribunal […] does not require that the accomplice to a crime against humanity support the policy of ideological hegemony of the principal perpetrators […]"[484].

257. It follows that the *mens rea* specific to a crime against humanity does not require that the agent be identified with the ideology, policy or plan in whose name mass crimes were perpetrated nor even that he supported it. It suffices that he knowingly took the risk of participating in the implementation of the ideology, policy or plan. This specifically means that it must, for example, be proved that:

---

[480] C. Hennau, J. Verhaegen, *Droit pénal général*, Brussels, 1991, p. 270. Translated from the French: "l'agent recherche la réalisation du fait incriminé dont il fait son objectif".
[481] *Ibid.*, p. 271.
[482] J. Pradel, *Droit pénal général*, 11th edition, 1997, no. 471. Translated from the French: "le résultat n'est qu'une conséquence probable ou possible, envisagé par l'auteur".
[483] F. Desportes, F. Le Gunehec, *Le nouveau droit pénal*, Economica, Paris, 1996, p. 384. Translated from the French: "de la personne qui prend un risque de façon délibérée, tout en espérant que ce risque ne provoque aucun dommage".
[484] *Papon* case, *Cass. Crim.*, 23 January 1997. Translated from the French: "[l]e dernier alinéa de l'article 6 du statut du tribunal militaire international […] n'exige pas que le complice de crimes contre l'humanité ait adhéré à la politique d'hégémonie idéologique des auteurs principaux […]".

- the accused willingly agreed to carry out the functions he was performing;

- that these functions resulted in his collaboration with the political, military or civilian authorities defining the ideology, policy or plan at the root of the crimes;

- that he received orders relating to the ideology, policy or plan; and lastly

- that he contributed to its commission through intentional acts or by simply refusing of his own accord to take the measures necessary to prevent their perpetration.

iii. The evidence

258. The Judges will seek evidence of the *mens rea* required by the charges in the circumstances of the case.

259. As the Trial Chambers of this Tribunal and the ICTR have already asserted in respect of the *mens rea* of the crime of genocide in the Rule 61 *Karad`i} and Mladi}* proceedings[485] and in the *Akayesu* case,[486] and as Trial Chamber II of this Tribunal stated regarding the *mens rea* of a crime against humanity in the *Tadi}*[487] case, knowledge of the political context in which the offence fits may be surmised from the concurrence of a number of concrete facts. Principally, these are:

- the historical and political circumstances in which the acts of violence occurred;

- the functions of the accused when the crimes were committed;

- his responsibilities within the political or military hierarchy;

- the direct and indirect relationship between the political and military hierarchy;

- the scope and gravity of the acts perpetrated;

---

[485] Article 61 *Karad`i} and Mladi}*, para. 94. According to the Trial Chamber, the specific intention of a crime of genocide may "be inferred from a certain number of facts such as the general political doctrine which gave rise to the acts possibly covered by the definition in Article 4, or the repetition of destructive or discriminatory acts. The intent may also be inferred from the perpetration of acts which violate, or which the perpetrators themselves consider to violate, the very foundation of the group – acts which are not in themselves covered by the list in Article 4(2) but which are committed as part of the same pattern of conduct".

[486] *Akayesu* Judgement, paras. 523-524.

[487] *Tadi}* Judgement, para. 657. According to the Trial Chamber "[w]hile knowledge is thus required, it is examined on an objective level and factually can be *implied from the circumstances*" (emphasis added) (*cf.* also

- the nature of the crimes committed and the degree to which they are common knowledge.

b. Exclusion of discriminatory intent

260. It ensues from the *Tadi}* Appeal Judgement that for a widespread or systematic attack and the resultant crimes – murder, extermination, enslavement, deportation, imprisonment, torture, rape or other inhumane acts with the exception of persecution – to be characterised as crimes against humanity they need not have been perpetrated with the deliberate intent to cause injury to a civilian population on the basis of specific characteristics[488]. In other words, to be found guilty of such an offence, those responsible for the attack need not necessarily have acted with a particular racial, national, religious or political intent in mind.

E. Article 7 of the Statute: Individual Criminal Responsibility

261. The accused Tihomir Bla{ki} was prosecuted under Article 7(1) and 7(3) of the Statute of the Tribunal. The Trial Chamber will review successively these provisions and their application to the case in point taking into account in particular the position of command authority held by the accused at the time of the facts. The Trial Chamber notes that at issue is the criminal responsibility of a military commander. In this respect, it is appropriate to distinguish between the charges based on Article 7(1) of the Statute and those concurrently advanced by the Prosecution under Article 7(3). Whilst Article 7(1) deals with the commander's participation in the commission of a crime, Article 7(3) enshrines the principle of command responsibility in the strict sense which entails the commander's individual criminal responsibility if he did not prevent crimes from being committed by his subordinates or, where applicable, punish them.

1. Individual criminal responsibility under Article 7(1) of the Statute

a) Introduction

262. The Prosecutor considers that all the crimes covered in the indictment entail the accused's individual criminal responsibility under Article 7(1) of the Statute, which provides that:

---

case no. 38, *Annual Digest and Reports of Public International Law Cases for the Year 1947*, London, 1951, pp. 100-101).

> [a] person who planned, instigated, ordered, committed or otherwise aided and abetted in the planning, preparation or execution of a crime referred to in articles 2 to 5 of the present Statute, shall be individually responsible for the crime.

263. In this respect, the Trial Chamber hearing the ^*elebi}i* case held that

> [t]he principles of individual criminal responsibility enshrined in Article 7, paragraph 1, of the Statute reflect the basic understanding that individual criminal responsibility for the offences under the jurisdiction of the International Tribunal is not limited to persons who directly commit the crimes in question[489].

264. The Trial Chamber concurs with the views deriving from the Tribunal's case-law, that is, that individuals may be held responsible for their participation in the commission of offences under any of the heads of individual criminal responsibility in Article 7(1) of the Statute. This approach is consonant with the general principles of criminal law[490] and customary international law[491].

265. In the case in point, the accused was not prosecuted for having personally committed any of the alleged crimes, that is, for being the actual perpetrator of the *actus reus* of any of the crimes. However, he was held criminally responsible for the crimes committed by others, on the ground that he "ordered, planned, instigated or otherwise aided and abetted in the planning, preparation, or execution of those crimes"[492].

266. The Trial Chamber will therefore limit its analysis of Article 7(1) of the Statute to defining the legal elements of these particular modes of participation.

b) The arguments of the Parties

i) The Prosecution

267. To establish that the accused "ordered", "planned" or "instigated" crimes within the meaning of Article 7(1) of the Statute, the Prosecution submitted that the following elements must be proved: (i) the *actus reus* of the crime was committed by a person other than the accused; (ii) the conduct of that other person was in execution of an order or plan of the accused, or instigated by him; and (iii) the accused had the *mens rea* of the crime. To establish the *mens rea* of the superior who orders, plans or instigates, requires direct or

---

[488] *Tadi}* Appeal Judgement, paras. 273-305.
[489] ^*elebi}i* Judgement, para. 319.
[490] *Ibid.*, para. 321.
[491] *Tadi}* Judgement, para. 669; ^*elebi}i* Judgement, para. 321.
[492] Prosecutor's Brief, Part XI, para. 1.1.

indirect intent, it is necessary to prove his direct or indirect intent, the latter corresponding to the notion of recklessness in common law and the notion of *dolus eventualis* in civil law[493].

268. The Prosecution submits that "ordering" implies a superior-subordinate relationship between the person who orders and the one who carries it out. In other words, the person in authority uses that authority to cause another to commit an offence. This may be proved by circumstantial or direct evidence. There is no requirement as to the form of the order, which may be implied or express. Moreover, an order does not need to be issued by the accused directly to the person(s) who perform(s) the *actus reus* of the crime. Nor is it necessary that the order explicitly required the commission of the crime[494].

269. "Planning" implies that one or several persons plan, design or organise the commission of the *actus reus* of a crime. This may be proved by circumstantial evidence. It is not required that the planners intervene in the execution of the crime[495].

270. The essence of instigating is that the accused causes another person to commit a crime. Although it must be proved that the instigation was a clear contributing factor to the commission of the crime, it need not be a *conditio sine qua non*. Instigation can take many different forms; it can be express or implied, and entail both acts and omissions[496].

271. The Prosecution contended that although aiding and abetting both constitute acts of complicity, they are two different concepts. "Aiding" means giving assistance to someone whereas "abetting" assumes facilitating the commission of an offence. The conduct of the person who aids or abets (hereinafter "the aider and abettor"[497]) must have a "direct and substantial" effect on the commission of the crime, although the adjective "direct" adds little to the definition. The aiding and abetting need not have been a *conditio sine qua non* for the actual perpetration of the offence. Nor is a pre-existing plan between the aider and abettor and the perpetrator required. The assistance may be provided before, after (even without prior agreement) or during the commission of the crime. Proof is not required that the aider and abettor actually participated in or that he was present during the physical perpetration of the crime. Both acts and omissions may constitute a form of aiding and abetting, at least in circumstances where the omission is in breach of a duty to act. The aiding and abetting need

[493] *Ibid.*, paras. 1.3-1.14.
[494] *Ibid.*, paras. 1.15-1.19.
[495] *Ibid.*, paras. 1.20-1.25.
[496] *Ibid.*, paras. 1.26-1.28.
[497] And by reference, "complicity".

not assume the provision of tangible or practical assistance but may also consist in giving encouragement or moral or psychological support to the perpetrator of the crime through words or attitude or even by merely being present at the crime scene[498].

272. As to the *mens rea* requirement for aiding and abetting, the Prosecution submitted that it suffices that the aider and abettor knew that his conduct would assist the principal in the commission of the offence. This may be inferred from the relevant circumstances. It is not necessary that he knew the precise crime that was intended and which in the event was committed[499].

ii) The Defence

273. The Defence submitted that in order to establish the criminal responsibility of an accused within the meaning of Article 7(1) of the Statute, proof of the commission of a "deliberate act" by the accused is required, that is, proof that he planned, instigated, ordered or otherwise aided and abetted the planning, preparation or execution of crimes; proof of specific intent on the part of the accused to commit the deliberate act facilitating the commission of crimes; and, lastly proof that a causal link between the deliberate act and the crimes exists[500].

274. In addition, the Defence submitted that according to the *Tadic* Appeals Chamber Judgement, individual criminal responsibility under Article 7(1) of the Statute may be established through the active participation in a common design. Three situations may be distinguished: (a) all participants in the common design share the same criminal intent to commit a crime, (b) the requisite *mens rea* comprises knowledge of the nature of a system of ill-treatment and intent to further the common design of ill-treatment, and (c) the accused intends to take part in a joint criminal enterprise and to further individually and jointly the criminal purposes of that enterprise, whereas other members of the group commit offences that do not constitute the object of the common criminal purpose but were nonetheless foreseeable by the accused. Therefore, any form of common design liability requires at least proof of a criminal common design and the accused's intent to further this design[501].

[498] Prosecutor's Brief, Part XI, paras. 1.29-1.44.
[499] *Ibid.*, paras. 1.45-1.49.
[500] Defence Brief, p. 37.
[501] *Id*.

275. Finally, in the view of the Defence, the *mens rea* satisfying Article 7(1) is intent to commit an act facilitating offences. The deliberate act cannot be presumed even if the evidence were to satisfy the criminal omission element of Article 7(3) of the Statute[502].

c) Discussion and Findings

276. The Appeals Chamber in the *Tadi}* case and the Trial Chambers in other cases brought before both this Tribunal and the ICTR, notably the *Tadi}*, *Akayesu*, *^elebi}i* and *Furund`ija* cases[503], defined those legal elements which under customary international law refer to the various forms of individual criminal responsibility included in Article 7(1) of the Statute. This Trial Chamber will consider their findings in order to ascertain their applicability to the present case.

277. Following the approach taken by the Prosecution, the Trial Chamber will determine the *actus reus* and *mens rea* required for holding an accused individually criminally responsible for having "planned", "instigated", "ordered" or "aided and abetted" the offences alleged in the indictment.

i) Planning, instigating and ordering

278. The Trial Chamber holds that proof is required that whoever planned, instigated or ordered the commission of a crime possessed the criminal intent, that is, that he directly or indirectly intended that the crime in question be committed. However, in general, a person other than the person who planned, instigated or ordered is the one who perpetrated the *actus reus* of the offence. In so doing he must have acted in furtherance of a plan or order. In the case of instigating, as appears in the definition below, proof is required of a causal connection between the instigation and the fulfilment of the *actus reus* of the crime. In defining each of the forms of participation, the Trial Chamber concurs with the relevant findings of the Trial Chamber in the *Akayesu* case.

279. Accordingly, planning implies that "one or several persons contemplate designing the commission of a crime at both the preparatory and execution phases"[504]. The Trial Chamber is of the view that circumstantial evidence may provide sufficient proof of the existence of a plan.

---

[502] *Ibid.*, p. 38.
[503] *Tadi}* Judgement; *Akayesu* Judgement; *^elebi}i* Judgement; *Furund`ija* Judgement.
[504] *Akayesu* Judgement, para. 480.

280. Instigating entails "prompting another to commit an offence"[505]. The wording is sufficiently broad to allow for the inference that both acts and omissions may constitute instigating and that this notion covers both express and implied conduct. The ordinary meaning of instigating, namely, "bring about"[506] the commission of an act by someone, corroborates the opinion that a causal relationship between the instigation and the physical perpetration of the crime is an element requiring proof.

281. The *Akayesu* Trial Chamber was of the opinion that ordering

> implies a superior-subordinate relationship between the person giving the order and the one executing it. In other words, the person in a position of authority uses it to convince another to commit an offence[507].
>
> There is no requirement that the order be in writing or in any particular form; it can be express or implied. That an order was issued may be proved by circumstantial evidence.

It is not necessary that an order be given in writing or in any particular form. It can be explicit or implicit. The fact that an order was given can be proved through circumstantial evidence.

282. The Trial Chamber agrees that an order does not need to be given by the superior directly to the person(s) who perform(s) the *actus reus* of the offence[508]. Furthermore, what is important is the commander's *mens rea*, not that of the subordinate executing the order. Therefore, it is irrelevant whether the illegality of the order was apparent on its face.

ii) Aiding and abetting

283. As a starting point, the Trial Chamber concurs with the opinion of the Trial Chamber in the *Furund`ija* case which states that

> the legal ingredients of aiding and abetting in international criminal law to be the following: the *actus reus* consists of practical assistance, encouragement, or moral support which has a substantial effect on the perpetration of the crime. The *mens rea* required is the knowledge that these acts assist the commission of the offence[509].

---

[505] *Ibid*, para. 482.
[506] The Concise Oxford Dictionary, 10th edition (1999), p. 734.
[507] *Akayesu* Judgement, para. 483.
[508] As to criminal responsibility of commanders for passing on criminal orders, the Trial Chamber notes the *High Command* case in which the military tribunal considered that "to find a field commander criminally responsible for the transmittal of such an order, he must have passed the order to the chain of command and the order must be one that is criminal upon its face, or one which he is shown to have known was criminal" (*U.S.A. v. Wilhelm von Leeb et al.,* in *Trials of War Criminals Before the Nuremberg Military Tribunals Under Control Council Law No. 10*, (hereinafter the "*Trials of War Criminals*") Vol. XI, p. 511)
[509] *Furund`ija* Judgement, para. 249.

284. The Trial Chamber holds that the *actus reus* of aiding and abetting[510] may be perpetrated through an omission, provided this failure to act had a decisive effect on the commission of the crime and that it was coupled with the requisite *mens rea*[511]. In this respect, the mere presence at the crime scene of a person with superior authority, such as a military commander, is a probative indication for determining whether that person encouraged or supported the perpetrators of the crime[512].

285. Proof that the conduct of the aider and abettor had a causal effect on the act of the principal perpetrator is not required[513]. Furthermore, participation may occur before, during or after the act is committed and be geographically separated therefrom[514].

286. As to the *mens rea* requirement for aiding and abetting, a distinction is to be made between "knowledge" and "intent"[515]. As held earlier in this Judgement, the *mens rea* required for establishing the responsibility of an accused for one of the crimes in Articles 2, 3 and 5 of the Statute is "willingness", comprising both direct and indirect intent. In the case of aiding and abetting, the Prosecution relies on *inter alia* the *Furund`ija* Judgement and argues that the applicable *mens rea* applicable to the aider and abettor is "knowledge" that his acts assist the commission of the offence. In the submission of the Defence, however, Article 7(1) of the Statute requires proof of the specific intent on the part of the accused to commit the deliberate act to facilitate the commission of a crime[516]. The Trial Chamber is of the view that in addition to knowledge that his acts assist the commission of the crime, the aider and

---

[510] The Trial Chamber notes that in the *Akayesu* Judgement, the Trial Chamber distinguished between, on the one hand, aiding and, on the other, abetting, as constituting two different heads of individual criminal responsibility. The *Akayesu* Trial Chamber held that whereas the prior means giving assistance, the latter entails the facilitation of an act by being sympathetic thereto. *See Akayesu* Judgement, para. 484. In this respect, the Trial Chamber further takes note of Article 25(3)(c) of the Statute of the International Criminal Court, where aiding and abetting appear to be considered two separate forms of assistance to the commission of a crime. Likewise, the 1996 ILC Report, p. 24.

[511] *Tadi}* Judgement, para. 686; ^*elebi}i* Judgement, para. 842; *Akayesu* Judgement, para. 705.

[512] Judgement, *The Prosecutor v. Zlatko Aleksovski*, Case no. IT-95-14/1-T, 25 June 1999, (hereinafter the "*Aleksovski* Judgement"), para. 65; *Akayesu* Judgement, para. 693.

[513] *Furund`ija* Judgement, para. 233; *Aleksovski* Judgement, para. 61.

[514] *Aleksovski* Judgement, para. 62.

[515] The Trial Chamber takes note of Article 30 ("mental element"), paragraph 1, of the Rome Statute of the International Criminal Court, which applies to any form of criminal responsibility under that Statute: "Unless otherwise provided, a person shall be criminally responsible and liable for punishment for a crime within the jurisdiction of the Court only if the material elements are committed with *intent* and *knowledge*" (emphasis added).

[516] Defence Brief, p. 37. In fact, this also appears to be the Prosecution's view: "If the aider and abettor is aware that one of a number of crimes will probably be committed, and one of those crimes is in fact committed, he or she has *intended to facilitate the commission* of that crime" (Prosecutor's Brief, Part XI, para. 1.46 (emphasis added))

abettor needs to have intended to provide assistance, or as a minimum, accepted that such assistance would be a possible and foreseeable consequence of his conduct[517].

287. Finally, the Trial Chamber concurs with the following finding in the *Furund`ija* Judgement:

> [I]t is not necessary that the aider and abettor should know the precise crime that was intended and which in the event was committed. If he is aware that one of a number of crimes will probably be committed, and one of those crimes is in fact committed, he has intended to facilitate the commission of that crime, and is guilty as an aider and abettor[518].

288. The Trial Chamber deems it appropriate to point out that a distinction is to be made between aiding and abetting and participation in pursuance of a purpose or common design to commit a crime[519]. In the case in point, it notes that the only question raised is the question of aiding and abetting.

2. Individual Criminal Responsibility Within the meaning of Article 7(3)

a) Introduction

289. The accused faces concurrent charges under Article 7(3) of the Statute, which provides that

> [t]he fact that any of the acts referred to in articles 2 to 5 of the present Statute was committed by a subordinate does not relieve his superior of criminal responsibility if he knew or had reason to know that the subordinate was about to commit such acts or had done so and the superior failed to take the necessary and reasonable measures to prevent such acts or to punish the perpetrators thereof.

290. As found by the Trial Chamber in the *^elebi}i* case[520], the Trial Chamber first holds that the principle of command responsibility *strictu sensu* forms part of customary international law.

291. The Prosecution submitted that for an accused to be held criminally responsible within the meaning of Article 7(3) of the Statute, proof is required that: an offence was committed; the accused exercised superior authority over the perpetrator of the offence or over his or her superiors; the accused knew or had reason to know that the subordinate was

---

[517] In *Tadic* it was held that "intent […] involves awareness of the act of participation coupled with a conscious decision to participate by planning, instigating, ordering, committing, or otherwise aiding and abetting in the commission of a crime" (*Tadi}* Judgement, para. 674). This was corroborated in the *^elebi}i* Judgement, para. 326, and the *Aleksovski* Judgement, para. 61.
[518] *Furund`ija* Judgement, para. 246.
[519] *Cf. Tadic* Appeal Judgement, paras. 178-229.

about to commit a crime or had done so; and the accused failed to take the necessary and reasonable measures to prevent the offence or to punish the perpetrator[521].

292. The Defence, however, submitted that Article 7(3) of the Statute requires fulfilment of the following conditions: the commission of crimes by direct subordinates of the accused; the accused knew or had reasons to know that his subordinates were going to commit such crimes or had done so; the accused had the legal authority and actual ability to prevent or punish the acts committed by his subordinates; and the accused failed to prevent or punish the acts of his subordinates[522].

293. In the submission of the Defence, it needs to be additionally demonstrated that the commander's failure to act caused the crime, that is, that the crime was the direct result of the commander's omission, and that the commander foresaw or knew that the omission could reasonably and foreseeably lead to the crime[523].

294. As to the essential elements of command responsibility under Article 7(3) of the Statute, the Trial Chamber concurs with the views of the Trial Chambers in the *^elebi}i* and *Aleksovski* cases[524]. Accordingly, for a conviction under Article 7(3) of the Statute in the present case, proof is required that:

(1) there existed a superior-subordinate relationship between the commander (the accused) and the perpetrator of the crime;

(2) the accused knew or had reason to know that the crime was about to be or had been committed; and

(3) the accused failed to take the necessary and reasonable measures to prevent the crime or punish the perpetrator thereof.

b) The Superior-Subordinate Relationship

i) Arguments of the parties

---

[520] *^elebi}i* Judgement, para. 343. Corroborated in the *Kayishema-Ruzindana* Judgement, para. 209.
[521] Prosecutor's Brief, Part XIII, p. 125.
[522] Defence Brief, p. 37-38.
[523] *Ibid.*, p. 38 and p. 45.
[524] *^elebi}i* Judgement, para. 346; *Aleksovski* Judgement, para. 69.

295. The Prosecution submitted that the term "superior" is not limited to commanders who are above the perpetrators of crimes in the regular chain of command. The determining factor in the case in point is whether or not the commander exercised control over the acts of his subordinates. Proof is required that the superior has effective control over the persons committing the violations of international humanitarian law in question, that is, has the material ability to prevent the crimes and to punish the perpetrators thereof.

296. In the view of the Prosecution, formal designation as a commander is not a necessary prerequisite for superior responsibility. Such responsibility may be imposed by virtue of a person's *de facto* as well as *de jure* position of authority or power of control. A person may be a "superior" for the purpose of Article 7(3) on the basis of effective influence that person exercises which amounts to forms of control giving to him the ability to intervene to prevent a crime. The fact that the commander had *de jure* authority to take *all* the necessary measures to punish the subordinates in question is also not a necessary prerequisite to entail the commander's responsibility. It suffices that he could have taken some measures. The fact that the commander is the *only one* who can take all the necessary measures to punish the subordinates in question is also not a necessary prerequisite incurring the commander's responsibility.

297. On a factual note, the Prosecution submitted that this legal criterion when duly applied to the evidence can only lead to the conclusion that the accused was also the "superior" of some independent units such as the Vitezovi, the D`okeri and the HVO Military Police Fourth Battalion[525].

298. The Defence submitted that proof is required that the accused possessed the legal authority and the actual ability to impose measures to prevent or punish the commission of crimes by his subordinates. For a commander's responsibility to apply not only to his direct subordinates but also to the local civilian population, the Prosecution must proof that the commander exercised executive or sovereign power in his area of command, and that there was a state of total occupation by his forces.

299. In the case in point, the Defence contended that the accused did not possess sovereign power within an occupied area during the relevant period of the indictment. Therefore, the accused's responsibility is limited to the crimes committed by his direct subordinates whose

[525] Prosecutor's Brief, Part XIII, paras. 1.1-1.12.

conduct he had the legal authority and actual ability to prevent and punish. Furthermore, the Defence submitted that the accused did not have the legal authority to punish the criminal acts of any soldiers in the CBOZ and that he did not have the legal authority to impose disciplinary sanctions against members of certain autonomous units[526].

ii) Discussion and Findings

300. The Trial Chamber in the ^*elebi}i* case held that in order for Article 7(3) of the Statute to apply, the accused must be in a position of command. This principle is not limited to individuals formally designated commander but also encompasses both *de facto* and *de jure* command.[527] On the basis of judicial precedents and the concept of "indirect subordination" defined in Article 87 of the 1977 Additional Protocol I to the Geneva Conventions of 1949[528], the ^*elebi}i* Trial Chamber held that

> in order for the principle of superior responsibility to be applicable, it is necessary that the superior have effective control over the persons committing the underlying violations of international humanitarian law, in the sense of having the material ability to prevent and punish the commission of these offences[529].

301. The Trial Chamber concurs with this view. Accordingly, a commander may incur criminal responsibility for crimes committed by persons who are not formally his (direct) subordinates, insofar as he exercises effective control over them[530].

302. Although the Trial Chamber agrees with the Defence that the "actual ability" of a commander is a relevant criterion, the commander need not have any legal authority to prevent or punish acts of his subordinates. What counts is his material ability[531], which instead of issuing orders or taking disciplinary action may entail, for instance, submitting reports to the competent authorities in order for proper measures to be taken[532].

---

[526] Defence Brief, p. 42-44.
[527] ^*elebi}i* Judgement, para. 370.
[528] Ibid., para. 364-378.
[529] *Ibid.*, para. 378.
[530] The Trial Chamber takes notice of Article 28(1) of the Rome Statute of the International Criminal Court, which limits a military commander's criminal responsibility to crimes which are about to be or which are being committed by "forces under his or her effective command and control".
[531] ^*elebi}i* Judgement, para. 395: "a superior may only be held criminally responsible for failing to take such measures that are *within his powers*" (emphasis added). Likewise, Article 86(2) of Additional Protocol I refers to superiors and "feasible measures *within their power* to prevent or repress" (emphasis added).
[532] *Aleksovski* Judgement, para. 78, concerning reporting to the appropriate authorities the commission of crimes.

303. Finally, as recognised in the *Aleksovski* Judgement[533], the Trial Chamber holds that the test of effective control exercised by the commander implies that more than one person may be held responsible for the same crime committed by a subordinate.

c) Mens Rea: "Knew or Had Reason to Know"

i) Arguments of the Parties

304. Both Prosecution and Defence agreed that actual knowledge may be proved either through direct or circumstantial evidence. In respect of the latter, the Prosecution submitted a number of relevant factors, such as the number, type and scope of the illegal acts[534].

305. In the Prosecution's view a commander "had reason to know" if he had information putting him on notice or tending to suggest that subordinates were about to commit or had committed crimes or if the fact that he did not have this information stemmed from a serious dereliction of his duty to obtain information of a general nature concerning the conduct of his subordinates to which he could reasonably have had access[535].

306. The Defence submitted that for a commander to know or have reason to know of a crime, the Prosecution must prove that the commander actually knew or wantonly disregarded information within his possession which could only lead to the conclusion that such an act was going to occur or had occurred[536].

ii) Discussion and Findings

a. "Actual knowledge"

307. Knowledge may not be presumed[537]. However, the Trial Chamber agrees that "knowledge" may be proved through either direct or circumstantial evidence. With regard to circumstantial evidence, the Trial Chamber concurs with the view expressed by the Trial Chamber in the *^elebi}i* case and holds that in determining whether in fact a superior must have had the requisite knowledge it may consider *inter alia* the following indicia enumerated by the Commission of Experts in its Final Report: the number, type and scope of the illegal

[533] Ibid., para. 106.
[534] Prosecutor's Brief, Part XIII, paras. 2.2-2.3; Defence Brief, p. 39.
[535] Prosecutor's Brief, Part XIII, paras. 2.4-2.15.
[536] Defence Brief, p. 39-42.

acts; the time during which the illegal acts occurred; the number and type of troops involved; the logistics involved, if any; the geographical location of the acts; the widespread occurrence of the acts; the speed of the operations; the *modus operandi* of similar illegal acts; the officers and staff involved; and the location of the commander at the time[538].

308. These indicia must be considered in light of the accused's position of command, if established. Indeed, as was held by the *Aleksovski* Trial Chamber, an individual's command position *per se* is a significant indicium that he knew about the crimes committed by his subordinates[539].

b. "Had reason to know"

309. In the ^*elebi}i* case, the Trial Chamber conducted a survey of post-World War II jurisprudence and held that

> the principle can be obtained that the absence of knowledge should not be considered a defence if, in the words of the Tokyo judgement, the superior was "at fault in having failed to acquire such knowledge"[540].

310. However, the ^*elebi}i* Trial Chamber went on to state that since it was bound to apply customary law as it stood at the time of the alleged offences[541], it must in addition fully consider the standard established by Article 86 of Additional Protocol I[542]. It held that, read in accordance with its ordinary meaning, the provision reflects the following position of customary law at the relevant time:

> a superior can be held criminally responsible only if some specific information was in fact available to him which would provide notice of offences committed by his subordinates. This information need not be such that it by itself was sufficient to compel the conclusion of the existence of such crimes. It is sufficient that the superior was put on further inquiry by the information, or, in other words, that it indicated the need for additional investigation in order to ascertain whether offences were being committed or about to be committed by his subordinates[543].

311. The ^*elebi}i* Trial Chamber added that this is without prejudice to the current state of customary international law. In this respect, it noted Article 28(1)(a) of the Statute of the

---

[537] ^*elebi}i* Judgement, para. 386. The Trial Chamber notes that in the submission of the Defence, the Prosecution at some stage during the trial argued that knowledge may be presumed in certain circumstances, a position which the Defence opposes. Defence Brief, p. 41-42.
[538] Final Report of the Commission of Experts, para. 58; ^*elebi}i* Judgement, para. 386.
[539] *Aleksovski* Judgement, para. 80.
[540] ^*elebi}i* Judgement, para. 388 (footnote omitted). *See also* ^*elebi}i* Judgement, para. 389.
[541] 1992.
[542] ^*elebi}i* Judgement, para. 390.
[543] *Ibid.*, para. 393.

International Criminal Court which imposes individual criminal responsibility on a military commander if he "either knew or, owing to the circumstances at the time, should have known" that his subordinates were committing or were about to commit crimes[544].

312. Both parties disagreed with this finding in *^elebi}i* but for different reasons. The Prosecution argued that Article 86 of Additional Protocol I is complementary to Article 87 which requires that a superior supervise his subordinates and remain apprised of their acts. Accordingly, the knowledge requirement does not differ from the standard established in the case-law arising out of World War II, as reflected in Article 28(1)(a) of the Statute of the International Criminal Court. According to the Prosecution, as a minimum, a commander is required to rely on or to establish an effective reporting system to ensure that any violation is brought to his attention. Based on the Commentary to Article 86 of Additional Protocol I, the Prosecution listed a number of issues about which the commander must remain informed such as the tactical situation in general and the level of training of subordinate troops[545].

313. The Defence, however, argued that the post-World War II jurisprudence focused on information compelling the conclusion that crimes had been committed. It submitted that the phrase "had reason to know" must not be interpreted as including "ordinary negligence" in the *mens rea* of the offence[546].

314. The Trial Chamber will now state its own interpretation of the "had reason to know standard" in accordance with customary international law. It will first turn to the relevant jurisprudence issuing from the aftermath of the Second World War.

315. In dealing with the responsibility for war crimes against prisoners, the International Military Tribunal for the Far East (hereinafter the "IMTFE") stated that:

> It is the duty of all those on whom responsibility rests to secure proper treatment of prisoners and to prevent their ill treatment by establishing and securing the continuous and efficient working of a system appropriate for these purposes. Such persons fail in this duty and become responsible for ill treatment of prisoners if:
>
> (1) They fail to establish such a system.
>
> (2) If having established such a system, they fail to secure its continued and efficient working.

[544] *Id*.
[545] Prosecutor's Brief, Part XIII, paras. 2.9-2.14.
[546] Defence Brief, p. 39-41.

> Each of such persons has a duty to ascertain that the system is working and if he neglects to do so he is responsible. He does not discharge his duty by merely instituting an appropriate system and thereafter neglecting to learn of its application.
>
> […]
>
> Nevertheless, such persons are not responsible if a proper system and its continuous efficient functioning be provided for and conventional war crimes be committed unless:
>
> (1) They had knowledge that such crimes were being committed, and having such knowledge they failed to take such steps as were within their power to prevent the commission of such crimes in the future, or
>
> (2) They are at fault in having failed to acquire such knowledge.
>
> *If such a person had, or should, but for negligence or supineness, have had such knowledge he is not excused for inaction if his office required or permitted him to take any action to prevent such crimes*. On the other hand it is not enough for the exculpation of a person, otherwise responsible, for him to show that he accepted assurances from others more directly associated with the control of the prisoners if having regard to the position of those others, to the frequency of reports of such crimes, or to any other circumstances he should have been put upon further enquiry as to whether those assurances were true or untrue[547].

The IMTFE further specified that:

> Army or Navy commanders can, by order, secure proper treatment and prevent ill treatment of prisoners. So can Ministers of War and of the Navy. If crimes are committed against prisoners under their control, of the likely occurrence of which they had, *or should have had knowledge in advance*, they are responsible for those crimes. If, for example, it be shown that within the units under his command conventional war crimes have been committed of which he knew *or should have known*, a commander who takes no adequate steps to prevent the occurrence of such crimes in the future will be responsible for such future crimes[548].

316. In the *Toyoda* case, the law member of the war crimes tribunal delivered the Tribunal's opinion when he stated:

> In the simplest language it may be said that this Tribunal believes the principle of command responsibility to be that, if this accused knew, *or should by the exercise of ordinary diligence have learned*, of the commission by his subordinates, immediate or otherwise, of the atrocities proved beyond a shadow of a doubt before this Tribunal or of the existence of a routine which would countenance such, and, by his failure to take any action to punish the perpetrators, permitted the atrocities to continue, he has failed in his performance of his duty as a commander and must be punished.
>
> In determining the guilt or innocence of an accused, charged with dereliction of his duty as a commander, consideration must be given to many factors. The theory is simple, its application is not. […] His guilt cannot be determined by whether he had operational command, administrative command, or both. If he knew, *or should have known, by use of reasonable diligence*, of the commission by his troops of atrocities and if he did not do everything within his power and capacity under the existing circumstances to prevent

[547] Tokyo Trial Official Transcript, p. 48,444-48,445 (emphasis added).
[548] *Ibid.*, p. 48,446 (emphasis added).

> their occurrence and punish the offenders, he was derelict in his duties. Only the degree of his guilt would remain[549].

317. One of the defendants in the *Pohl* case was Karl Mummenthey, an SS officer in control of concentration camp enterprises. In its Judgement, the military tribunal hearing the case held that "Mummenthey's assertions that he did not know what was happening in the labor camps and enterprises under his jurisdiction does not exonerate him. *It was his duty to know*"[550]. It seems, however, that the tribunal held that in actual fact the accused *must have known*:

> Mummenthey could not help knowing about concentration camp labor in the DEST enterprises. In Sachsenhausen-Oranienburg the inmate workers daily passed by the very building in which Mummenthey had his office. Their poor physical condition was obvious[551].

318. The *Roechling* case dealt with the criminal responsibility of directors of the Roechling firm for ordering or consenting to the ill-treatment of forced labourers. Responding to the accused Hermann Roechling's defence that he did not know of the conditions of the workers at the Voelklingen plant, the tribunal of first instance held that

> *it was his duty as the head to inquire into the treatment accorded* to the foreign workers and to the prisoners of war whose employment in his war plants was, moreover, forbidden by the rules of warfare, of which fact he must have been aware; that he cannot escape his responsibility by stating that the question had no interest for him[552][.]

The appellate court affirmed the rejection of the defence of lack of knowledge, holding that

> [n]o superior may prefer this defense indefinitely; for *it is his duty to know what occurs in his organization, and lack of knowledge, therefore, can only be the result of criminal negligence*[553].

---

[549] *U.S.A. v. Soemu Toyoda* (emphasis added), Official Transcript of Record of Trial, p. 5006. The President of the Tribunal summarised the charges against Admiral Toyoda as follows: "He is charged with violation of the laws and customs of war whilst holding the appointments of Commander-in-Chief of the Yokosuka Naval District, the Combined Fleet, the Combined Naval Forces, the Naval Escort Command as well as when Chief of the Naval General Staff, all these appointments being held for varying periods of time between the 21st of May, 1943, until shortly after the conclusion of the Pacific War" (*Toyoda* case, Official Transcript of Record of Trial, p. 5008).

[550] *U.S.A. v. Oswald Pohl et al.,* in *Trials of War Criminals*, Vol. V, p. 1055 (emphasis added).

[551] *Ibid.*, p. 1053. Further on, the tribunal referred to "the wholesale suffering of which he could not but be aware". *Ibid*., p. 1054.

[552] General Tribunal of the Military Government of the French Zone of Occupation in Germany, *Judgement Rendered on 30 June 1948 in the Case versus Hermann Roechling and Others Charged With Crimes Against Peace, War Crimes and Crimes Against Humanity*, in *Trials of War Criminals*, Vol. XIV, Appendix B, p. 1088 (emphasis added).

[553] Superior Military Government Court of the French Occupation Zone in Germany, *Judgement of 25 January 1949 in the Case Versus Hermann Roechling and Others Charged with Crimes Against Peace, War Crimes, and Crimes Against Humanity. Decision on Writ of Appeal Against the Judgement of 30 June 1948*, in *Trials of War Criminals*, Vol. XIV, Appendix B, p. 1106 (emphasis added).

319. In respect of the "duty to know", the military tribunal hearing the *Hostage* case stated the following when it rejected the defence of the accused General List that he had no knowledge of many unlawful killings committed by subordinates:

> A commanding general of occupied territory is charged with the duty of maintaining peace and order, punishing crime, and protecting lives and property within the area of his command. His responsibility is coextensive with his area of command. *He is charged with notice of occurrences taking place within that territory*. He may require adequate reports of all occurrences that come within the scope of his power and, if such reports are incomplete or otherwise inadequate, he is obliged to require supplementary reports to apprize him of all the pertinent facts. *If he fails to require and obtain complete information, the dereliction of duty rests upon him and he is in no position to plead his own dereliction as a defense*. Absence from headquarters cannot and does not relieve one from responsibility for acts committed in accordance with a policy he instituted or in which he acquiesced[554].

320. In the same way, the following extract of the opinion in the *Hostage* case was adopted by the military tribunal hearing the *High Command* case:

> Want of knowledge of the contents of reports made to him is not a defense. Reports to commanding generals are made for their special benefit. Any failure to acquaint themselves with the contents of such reports, or a failure to require additional reports where inadequacy appears on their face, constitutes a dereliction of duty which he cannot use in his own behalf[555].

321. In clear rejection of the so-called concept of strict liability, the Tribunal in the *High Command* case further held the following:

> Criminality does not attach to every individual in this chain of command from that fact alone. There must be a personal dereliction. That can occur only where the act is directly traceable to him or where his failure to properly supervise his subordinates constitutes criminal negligence on his part. In the latter case it must be a personal neglect amounting to a wanton, immoral disregard of the action of his subordinates amounting to acquiescence[556].

322. From this analysis of jurisprudence, the Trial Chamber concludes that after World War II, a standard was established according to which a commander may be liable for crimes by his subordinates if "he failed to exercise the means available to him to learn of the offence and, under the circumstances, he should have known and such failure to know constitutes criminal dereliction"[557].

323. This principle of command responsibility was further introduced in domestic legislation. For example, the Field Manual issued by the U.S. Department of Army provides as follows:

---

[554] *U.S.A. v. Wilhelm List et al.,* in *Trials of War Criminals*, Vol. XI, p. 1271 (emphasis added).
[555] *Ibid.*; *U.S.A. v. Wilhelm von Leeb et al.,* in *Trials of War Criminals*, Vol. XI, p. 603.
[556] *U.S.A. v. Wilhelm von Leeb et al.,* in *Trials of War Criminals*, Vol. XI, p. 543-544.
[557] W. H. Parks, *Command Responsibility for War Crimes*, 62 Mil. L. Rev. 1 (1973) (hereinafter "*Parks*"), p. 90.

> The commander is […] responsible, if he had *actual knowledge*, or *should have had knowledge*, through reports received by him or through other means, that troops or other persons subject to his control are about to commit or have committed a war crime and he fails to use the means at his disposal to insure compliance with the law of war[558].

324. The Trial Chamber now turns to codification at the international level, namely the adoption of Additional Protocol I in 1977. The pertinent question is this: was customary international law altered with the adoption of Additional Protocol I, in the sense that a commander can be held accountable for failure to act in response to crimes by his subordinates only if some specific information was in fact available to him which would provide notice of such offences? Based on the following analysis, the Trial Chamber is of the view that this is not so.

325. Article 86 ("failure to act"), paragraph 2, of Additional Protocol I reads as follows:

> The fact that a breach of the Conventions or of this Protocol was committed by a subordinate does not absolve his superiors from penal or disciplinary responsibility, as the case may be, if they knew, or *had information which should have enabled them to conclude in the circumstances at the time*, that he was committing or was going to commit such a breach and if they did not take all feasible measures within their power to prevent or repress the breach[559].

326. As a preliminary matter, a difference of meaning appears to exist between the English and the French version of Article 86(2). Whereas the English text reads "information which should have enabled them to conclude", the latter reads "*des informations leur permettant de conclure*", which literally means "information enabling them to conclude". In keeping with Article 33(4) of the Vienna Convention on the Law of Treaties (1969), the Trial Chamber deems that the French version is truer to the object and purpose of the text[560].

327. The Trial Chamber will interpret Article 86(2) in accordance with Article 31 of the Vienna Convention, that is, "in good faith in accordance with the ordinary meaning to be given to the terms of the treaty in their context and in the light of its object and purpose". In this respect, the Trial Chamber considers fundamental the provision enshrined in Article 43(1) of Additional Protocol I according to which the armed forces are to be placed "under a command responsible […] for the conduct of its subordinates"[561].

---

[558] U.S. Department of Army, Field Manual No. 27-10, Law of Land Warfare, para. 501 (1956), cited in *Parks* p. 95. The *British Manual of Military Law* employs exactly the same wording. *Cf. Great Britain War Office, The Law of War on Land: Being Part 3 of the Manual of Military Law*, para. 631 (1958), cited in: L.C. Green, *Command Responsibility in International Humanitarian Law*, 5 Transnt'l L & Contp Prbs 319, p. 343 (1995).
[559] Emphasis added.
[560] Pursuant to Article 102 of Additional Protocol I, the two texts are equally authentic.
[561] This Article was preceded by virtually identical provisions in Article 1 of the 1907 Regulations Respecting the Laws and Customs of War on Land, and in Article 4A(2) of the Third Geneva Convention of 1949.

328. In the Trial Chamber's view, the words "had information" in Article 86(2) must be interpreted broadly. In this respect, it is noted that on the basis of post-World War II jurisprudence, the Commentary on Additional Protocol I explains that the information includes "reports addressed to [the superior], […] the tactical situation, the level of training and instruction of subordinate officers and their troops, and their character traits"[562].

329. Moreover, a commander "cannot claim to be ignorant" of this information[563]. The Trial Chamber considers instructive the Commentary's guidance that Article 86(2) should be read in conjunction with article 87 ("duty of commanders"), paragraph 1[564], which provides as follows:

> The High Contracting Parties and the Parties to the conflict shall require military commanders, with respect to members of the armed forces under their command and other persons under their control, to prevent and, where necessary, to suppress and to report to competent authorities breaches of the Conventions and of this Protocol.

Given the essential responsibilities of military commanders under international humanitarian law, the Trial Chamber holds, again in the words of the Commentary, that '[t]heir role obliges them to be constantly informed of the way in which their subordinates carry out the tasks entrusted them , and to take the necessary measures for this purpose"[565].

330. The Trial Chamber also notes that according to the Commission of Experts, "a commander has a duty to do everything reasonable and practicable to prevent violations of the law. Failure to carry out such a duty carries with it responsibility"[566]. Apart from circumstances in which knowledge can be proved or deduced, the Commission considered "such serious personal dereliction on the part of the commander as to constitute wilful and wanton disregard of the possible consequences" [567] to satisfy the *mens rea* requirement under Article 7(3) of the Statute.

331. Lastly, the Trial Chamber considers that the findings of the Israeli Commission of Inquiry responsible for investigating the atrocities perpetrated in the Shatilla and Sabra refugee camps in Beirut in 1982 constitute further evidence of the state of customary

[562] Y. Sandoz *et al.* (eds.), Commentary on the Additional Protocols of 8 June 1977 to the Geneva Conventions of 12 August 1949 (1986) (hereinafter the "Protocol Commentary"), para. 3545, p. 1014.
[563] *Id.*
[564] *Ibid.*, para. 3541, p. 1011.
[565] *Ibid.*, para. 3560, p. 1022.
[566] Final Report of the Commission of Experts, para. 59.
[567] Final Report of the Commission of Experts, para. 58.

international law[568]. With respect to the responsibility of the Chief of Staff of the Israel Defence Forces, the Commission held that his knowledge of the feelings of hatred of the particular forces involved towards the Palestinians did not justify the conclusion that the entry of those forces into the camps posed no danger. Accordingly,

> The absence of a warning from experts cannot serve as an explanation for ignoring the danger of a massacre. The Chief of Staff should have known and foreseen – by virtue of common knowledge, as well as the special information at his disposal – that there was a possibility of harm to the population in the camps at the hands of the Phalangists. Even if the experts did not fulfil their obligation, this does not absolve the Chief of Staff of responsibility[569].

The Commission clearly held that the applicable standard for imputing responsibility is negligence:

> If the Chief of Staff did not imagine at all that the entry of the Phalangists into the camps posed a danger to the civilian population, his thinking on this matter constitutes a disregard of important considerations that he should have taken into account. […] We determine that the Chief of Staff's inaction […] constitute[s] a breach of duty and dereliction of the duty incumbent upon the Chief of Staff[570].

332. In conclusion, the Trial Chamber finds that if a commander has exercised due diligence in the fulfilment of his duties yet lacks knowledge that crimes are about to be or have been committed, such lack of knowledge cannot be held against him. However, taking into account his particular position of command and the circumstances prevailing at the time, such ignorance cannot be a defence where the absence of knowledge is the result of negligence in the discharge of his duties: this commander had reason to know within the meaning of the Statute.

d) Necessary and Reasonable Measures to Prevent or Punish

i) Arguments of the Parties

333. The Prosecution put forth several measures which a commander can take in order to discharge his obligation to prevent offences from being committed. Accordingly, the exercise of effective command and control through the proper and diligent application of discipline is

[568] Final Report of the Commission of Inquiry into the Events at the Refugee Camps in Beirut, February 7, 1983 (authorised translation) (hereinafter "Kahan Report"), reproduced in 22 *International Legal Materials* 473-520 (1983). Although the Commission was not a criminal court, its membership justifies attributing considerable weight to its findings. The Commission members were: Yitzhak Kahan, President of the Supreme Court, Commission Chairman; Aharon Barak, Justice of the Supreme Court; and Yona Efrat, Major General (Res.), Israel Defense Forces.
[569] Kahan Report, p. 35.
[570] Kahan Report, p. 35 and 37.

a common thread. The duty to punish entails the obligation to establish the facts, to put an end to the offences and to punish. "Necessary measures" are those required to discharge the obligation to prevent or punish, in the circumstances prevailing at the time. "Reasonable" measures are those which the commander was in a position to take in the circumstances prevailing at the time. The lack of formal legal jurisdiction does not necessarily relieve the superior of his criminal responsibility. If subordinates act pursuant to criminal orders passed down from higher up in the chain of command the commander remains under an obligation to take all measures within his power[571].

334. The Defence submitted that if the commander makes a reasonable effort to prevent or punish the crimes of his subordinates, command responsibility is entailed only if his effort is patently disproportionate to the crime committed. Hence, if the evidence demonstrates that a commander took reasonable steps to prevent or punish the commission of crimes, command responsibility cannot be imposed[572].

ii) Discussion and Conclusions

335. The Trial Chamber has already characterised a "superior" as a person exercising "effective control" over his subordinates. In other words, the Trial Chamber holds that where a person has the material ability to prevent or punish crimes committed by others, that person must be considered a superior. Accordingly, it is a commander's degree of effective control, his material ability, which will guide the Trial Chamber in determining whether he reasonably took the measures required either to prevent the crime or to punish the perpetrator[573]. As stated above in the discussion of the definition of "superior", this implies that, under some circumstances, a commander may discharge his obligation to prevent or punish by reporting the matter to the competent authorities.

336. Lastly, the Trial Chamber stresses that the obligation to "prevent or punish" does not provide the accused with two alternative and equally satisfying options. Obviously, where the accused knew or had reason to know that subordinates were about to commit crimes and failed to prevent them, he cannot make up for the failure to act by punishing the subordinates afterwards.

---

[571] Prosecutor's Brief, Part XIII, paras. 3.1-3.16.
[572] Defence Brief, p. 44-45.
[573] Likewise, *^elebi}i* Judgement, para. 395; *Kayishema-Ruzindana* Judgement, para. 229-231; *Aleksovski* Judgement, para. 81.

e) Concurrent Application of Articles 7(1) and 7(3) of the Statute

337. It would be illogical to hold a commander criminally responsible for planning, instigating or ordering the commission of crimes and, at the same time, reproach him for not preventing or punishing them. However, as submitted by the Prosecution[574], the failure to punish past crimes, which entails the commander's responsibility under Article 7(3), may, pursuant to Article 7(1) and subject to the fulfilment of the respective *mens rea* and *actus reus* requirements, also be the basis for his liability for either aiding and abetting or instigating the commission of *further* crimes.

338. In this respect, it should be noted that the regulations concerning the application of the international law of war to the armed forces of the SFRY, under the heading "Responsibility for the acts of subordinates", provide the following:

> The commander is personally responsible for violations of the law of war if he knew or could have known that his subordinate units or individuals are preparing to violate the law, and he does not take measures to prevent violations of the law of war. The commander who knows that the violations of the law of war took place and did not charge those responsible for the violations is personally responsible. In case he is not authorized to charge them, and he did not report them to the authorized military commander, he would also be personally responsible.
>
> A military commander is responsible as *a participant or an instigator* if, by not taking measures against subordinates who violate the law of war, he allows his subordinate units to continue to commit the acts[575].

While the first paragraph corresponds to individual criminal responsibility under Article 7(3) of the Statute, the second supports the Trial Chamber's view regarding the concurrent application of Articles 7(3) and 7(1) in cases of subsequent crimes being committed.

339. As stated earlier in this Judgement, in the case of instigation, proof is required of a causal connection between the instigation, which may entail an omission, and the perpetration of the act. In the scenario under discussion, this means it must be proved that the subordinates would not have committed the subsequent crimes if the commander had not failed to punish the earlier ones[576]. However, with respect to the Defence's submission that under Article 7(3) of the Statute proof is required that the commander's omission caused the commission of the crime by the subordinate, the Trial Chamber is of the view that such a causal link may be

[574] Prosecutor's Brief, Part XIII, paras. 4.1-4.3.
[575] Cited in the *^elebi}i* Judgement, para. 341 (emphasis added).
[576] The *^elebi}i* Trial Chamber held that such a causal connection is "not only possible but likely" to exist. *^elebi}i* Judgement, para. 400.

considered inherent in the requirement that the superior failed to prevent the crimes which were committed by the subordinate. In other words,

> the superior may be considered to be causally linked to the offences, in that, but for his failure to fulfil his duty to act, the acts of his subordinates would not have been committed[577].

* * *

340. After having set the legal framework for its considerations and established the international nature of the armed conflict in which the crimes covered in the indictment occurred, the Trial Chamber will examine the facts and the responsibility of the accused Tihomir Bla{ki}.

[577] *Ibid.*, para. 399.

III. FACTS AND DISCUSSION

A. The Lašva Valley: May 1992 – January 1993

341. In its discussion of Article 2 of the Statute, the Trial Chamber explained that the armed conflict in question was an international conflict. In that connection, it pointed out that the objectives of the Croatian nationalists in Croatia were clearly shared by many members of the HVO and the Croatian Community of Herceg-Bosna (HZHB): Mate Boban, president of that community, but also Anto Valenta (leader of the HDZ in Vitez and later President of the HDZ for the HZHB), whose nationalistic writings were revealing; Ignac Koštroman (Secretary-General of the HZHB) and Dario Kordic whose speeches inflamed the Bosnian Croats. The example given by the Trial Chamber is from the minutes of a meeting held on 12 November 1991, signed by Mate Boban and Dario Kordic: "the Croatian people in Bosnia and Herzegovina must finally embrace a determined and active policy which will realise our eternal dream – a common Croatian state".

342. Those nationalists could not accept that the Muslims could want to have their own defence. On 10 April 1992, Mate Boban decreed that the Bosnian Territorial Defence (TO), which had been created the day before, was illegal on HZHB territory. The Croatian General Roso confirmed the proscription by an Order of 8 May[578]. On 11 May, Tihomir Blaškic implemented that Order declaring the TO illegal on the territory of the Kiseljak municipality. Tensions continued to increased between May 1992 and January 1993. The Trial Chamber will now set out a brief summary of the important events of the period since they were at the root of the torching of the Lašva Valley in April 1993.

1. The exacerbation in tensions

a) The municipality of Vitez

343. In the municipality of Vitez, as in many others, the rivalries between communities and the struggle for political power started in November 1990 with the election of the members of

[578] P584

the Municipal Assembly[579]. The Croatian Democratic Union party won most of the seats, followed by the SDA, made up mainly of Muslims and the Communist Party. Ivan Santic, a Bosnian-Croat, was elected President of the Assembly, which was responsible, *inter alia*, for the police and for defence. The Municipal Council, an executive body, was chaired by a Muslim, Fuad Kaknjo[580].

344. Tensions increased in November 1991 with the formation of the HZHB. The creation of that institution marked the beginning of the breakdown in inter-ethnic relations in Vitez[581]. Several political and social events, the most important of which are briefly summarised here, demonstrate the HDZ's desire to take progressive political and social control of the town and to initiate a policy of discrimination towards the town's Muslims, whereas an independent Muslim political organisation was being set up in tandem.

345. In March 1992 the last meeting of the Vitez Municipal Assembly took place. A Crisis Committee, officially supervised by the Municipal Assembly, chaired by Ivan Santic and made up of five Croats and five Muslims, was set up in order to cope with the problem of refugees in Vitez[582].

346. In April 1992, the Leader of the HDZ in Vitez, Anto Valenta, told the SDA representatives that they should take their orders from the "Croatian Community of Herceg-Bosna"[583].

347. On 20 May 1992, an ABiH soldier was killed in front of the Vitez Hotel and two others were captured and beaten. Nothing came of Prosecutor Vladomir Miskovic's investigation[584].

348. On 18 June 1992, military formations of the HVO took over the headquarters in Vitez and the Municipal Assembly building and raised the flags of Herceg-Bosna and of Croatia[585].

[579] Witness Djidic, PT of 25 July 1997, p. 1036.
[580] Witness Mujezinovic, PT of 20 August 1997, pp. 1631-1633.
[581] Witness Djidic, PT of 25 July 1997, pp. 1037-1038.
[582] Witness Djidic, PT of 28 July 1997, pp. 1164-1165; Witness Mujezinovic, PT of 20 August 1997, pp. 1637-1639.
[583] Witness Mujezinovic, PT of 20 August 1997, pp. 1650-1652.
[584] Witness Mujezinovic, PT of 20 August 1997, pp. 1642-1646.
[585] Witness Mujezinovic, PT of 20 August 1997, pp. 1646-1647. According to the statement of Witness Djidic, "with the formation of the Croatian Community of Herceg-Bosna, the Croats placed flags on all institutions and

349. On 12 July 1992, Muslim political leaders created the Co-ordination Committee for the protection of Muslim interests under the Chairmanship of Fuad Kakjno. That Committee addressed numerous public statements about the daily problems facing Muslims in Vitez to the government of BH, to the HVO and to UNPROFOR[586].

350. On 20 October 1992, the first clashes between Croatian and Muslim forces occurred in Ahmici. Muslim forces sought to block the passage of Croatian troops coming from Busovaca. According to the Defence, these troops were going as reinforcements to the Serbian front in Jajce[587]. The Muslims wanted to stop the Croatian forces for fear that they were in fact going towards Novi Travnik where clashes had broken out between Croatian and Muslim forces[588]. On 19 October 1992, roadblocks were erected on the main road linking Busova~a to Vitez and Travnik[589], especially at Ahmici[590]. One of them had been set up by a unit of twenty or so Muslim soldiers based at Ahmici[591], on the orders of the headquarters of the territorial defence[592].

351. On 20 October 1992, Dario Kordic is alleged to have ordered the Muslims to take down the blocks and threatened to set their village alight[593]if they did not. According to the Witness Abdullah Ahmic, the roadblock was taken down by the Croatian forces as early as 06:30 hours[594] whereas General Bla{kic stated that it was only lifted at 18:00 hours[595]. However, the clashes were not limited to the taking down of the roadblock, as attested to,

---

factories and even private homes, flags which were those of a neighbouring state, that is the Republic of Croatia, that is the national flag, as if no-one else lived in Vitez except the Croats ", PT of 25 July 1997, p. 1039.

[586] Witness Mujezinovic, PT of 20 August 1997, pp. 1654-1660.

[587] That front fell to the Serbs on 28 October 1992 (Witness Blaškic, PT p. 21323).

[588] See especially the report sent by General Bla{kic on 20 October 1992 at 20:07 hours and addressed to Mate Boban, Bruno Stojic and Milivoj Petkovic (P644; Witness Bla{kic, PT pp. 21339-21340). Controlling Novi Travnik was of particular strategic interest because that town had a military factory (the Bratstvo factory) with the necessary equipment for arms production. In accordance with the philosophy of the ex-JNA, each military factory had to have available what was known as "war stocks", which enabled it to be productive for about six months during periods of war (Witness Bla{kic, PT pp. 21318-21319). Clashes had already occurred at Novi Travnik between Muslim forces and Croatian forces in June 1992, with a view to gaining control of a petrol station (Witness Bla{kic, PT pp. 21344-21345). The Serbian front was about ten kilometres from the town of Novi Travnik (Witness Bla{kic, PT pp. 21321-21322).

[589] P647.

[590] Witness Mujezinovic (PT of 21 August 1997 pp. 1743-1744), alleged that the order to put up a roadblock at Ahmici was given orally to Sefkija Djidic by Dzemo Merdan.

[591] Witness HH, PT pp. 6889-6901. This witness, who was of Muslim origin, was a soldier in the HVO from the summer of 1992 to April 1993, after having served in the Croatian Defence Forces under Darko Kraljevic. He was in the Military Police from October 1992 (PT p. 6811).

[592] Witnesses Abdullah Ahmic, PT pp. 2793-2794; Mujezinovic, PT of 21 August 1997 pp. 1743-1744.

[593] Witness Abdullah Ahmic, PT pp. 3800-3801.

[594] Witness Abdullah Ahmic, PT p. 3722.

[595] Witness Bla{kic, PT p. 18012.

inter alia, in the accused's report dated 21 October 1992. That report shows not only that "the barricade in the village of Ahmici, Vitez municipality, was completely destroyed and the Muslim forces were driven out of the village and crushed entirely"[596]. The witness Abdullah Ahmic explained that the HVO had first of all fired on the minaret of the Donji Ahmici mosque after the Muslims had used the mosque to call for the Croats to surrender their arms[597]. It is alleged that the HVO then began an infantry attack on the village, from 08:00 hours to nightfall[598], setting four houses and ten stables[599] alight with incendiary bullets[600]. According to the Witness Abdullah Ahmic, 80% of the village was evacuated and a young boy was killed[601]. General Bla{kic reported that one HVO soldier and one territorial defence soldier were dead and that a few buildings around the roadblock had been burned down.

352. According to the witness HH, the operation was led by Mario ^erkez[602]. According to the accused, however, the action was carried out by the Military Police[603].

353. The consequence of those clashes was the disarming of the Muslim troops stationed in Ahmici[604] and in the surrounding villages. Witnesses Abdullah Ahmic[605] and Casim Ahmic[606] stated that Muslims in the Zume[607] area had been disarmed during the cease-fire negotiations which followed the clashes. Likewise, the witness O testified that the inhabitants of [anti}i had had to surrender their arms to Nenad Santi}, HVO Commander in [anti}i, shortly after the clashes caused by the roadblock[608].

354. General Bla{kic's afore-mentioned report noted that the Muslim troops in Ahmici were entirely disarmed after the attack and the village of Ahmici placed under the exclusive control of the HVO. However, General Bla{kic declared before the Trial Chamber that the

[596] P647; witness Bla{kic, PT pp. 21381-21382.
[597] Witness Abdullah Ahmic, PT p. 3722.
[598] Witness Abdullah Ahmic, PT p. 3722.
[599] Witness Abdullah Ahmic, PT p. 3723.
[600] Witness Abdullah Ahmic, PT p. 3722.
[601] By the name of Halid Pezer. Witness Abdullah Ahmic, PT pp. 3723-3724.
[602] PT pp. 6889-6901. The witness testified that he had heard ^erkez give the following order over the radio: "Go forward and do not take prisoners".
[603] Witness Bla{kic, PT p. 18012. According to the *Kupreskic* judgement, the attack was led by HVO forces from outside Ahmici although a few local Croats also took part (para. 162).
[604] See General Bla{kic's report dated 21 October 1992, P647 : "The Muslim forces also surrendered their weapons on their own initiative … since yesterday, the village is under full control of the HVO" (witness Bla{kic, PT pp. 21381-21382).
[605] Witness Abdullah Ahmic, PT p. 3725.
[606] PT of 1 October 1997, pp. 3130-3131.
[607] Zume is an area of the town of [antici (Witness Djula Djidic, PT p. 4328).
[608] Witnesses O, PT p. 4500; Haris ([antici), PT p. 4004.

HVO had stopped exercising control of the village between 20 and 25 October 1992 as soon as a local cease-fire between the HVO and the ABiH was signed[609]. According to General Bla{kic, a joint municipal committee was then set up[610] and operated until 4 November when the Muslim leaders chose not to participate in it any longer[611].

355. The Trial Chamber considers that the attack on the roadblock at Ahmici on 20 October 1992 was not unlawful and that, given the circumstances, the damage caused to certain dwellings were actions which General Bla{kic could not prevent and which he had not ordered. It considered however that the events were characteristic of increasingly strident nationalistic attitudes and that they led to the Muslim population of Ahmici being disarmed.

356. In November 1992, General Blaškic organised the command structure, transformed the municipal headquarters into brigades and set up the CBOZ's headquarters in the Hotel Vitez[612]. Furthermore, the municipality introduced new taxes, asked members of staff to sign a declaration of allegiance to the new Government, threatening those that did not obey with dismissal[613]. Many Muslims were refused access to public institutions because they had refused to sign the declaration[614] and they were unable to get the *laissez-passer* necessary to drive on the roads that the HVO had taken over[615]. Finally, the Chairman of the Vitez Red Cross (Sead Cajnic) was replaced by a Croat, who forbade the registration of Muslim refugees on his lists. They were sent back to Muslim municipalities[616].

b) The municipality of Busova~a

357. Many significant social and political events also occurred in Busova~a during 1992 and demonstrated the HVO authorities' resolve to take over all the powers of the municipality and to exclude Muslims from them.

[609] Witness Bla{kic, PT p. 21390.
[610] Witness Bla{kic, PT p. 18012.
[611] Witness Bla{kic, PT pp. 21390-21391.
[612] Witness Bla{kic, PT pp. 18060-18061.
[613] Witness Mujezinovic, PT of 20 August 1997, pp. 1661-1662.
[614] P406/45.
[615] Witness Mujezinovic, PT of 20 August 1997, pp. 1662-1663.
[616] P456/95.

358. At the celebrations for the first year of Croatian independence, which were held on 16 January 1992 at the Town Hall in Busova~a[617], influential members of the HDZ, including Dario Kordic, Vice-President of the HZHB and Ignac Koštroman, General-Secretary of the HZHB, made extremely nationalistic speeches[618], which were evidence of their ambitions at the time: they publicly expressed their wish to see the creation of a sovereign Bosnian-Croatian State and for that State to be attached to Croatia[619].

359. On 10 May 1992, Dario Kordic and Ivo Brnada, Commander of the HVO municipal headquarters took the following decisions[620]:

- to revoke the arms distribution agreement[621] which had been concluded with the Territorial Defence[622];

- to seize "all weapons, equipment, material as well as the barracks"[623];

- to issue an ultimatum to all military units calling on them to surrender their weapons and "to place themselves under HVO command"[624];

- to issue a decree mobilising all Croatian military forces[625];

- to impose a general curfew[626];

- to seize the "Public Security Section" and to create the "Busova~a Police Station"[627];

- to make the HVO Military Police exclusively responsible for the maintenance of law and order[628];

[617] Witness FF, PT pp. 6119-6120.
[618] P234. According to Witness FF, "that event was celebrated in the presence of a large number of HDZ members from the entire La{va region, from virtually all the villages, Kresevo, Kiseljak, Busova~a, Vitez, Novi Travnik, Travnik, Vareš, and so on" (PT pp. 6120-6121) (See also PT pp. 6147-6155).
[619] P234/2.
[620] Witness FF spoke of a putsch or military coup d' état after the HVO had seized the barracks and the weapons (PT p. 6131).
[621] Witness T, PT p. 5763.
[622] P208, para. 1.
[623] P208.
[624] P208, para. 3.
[625] P208, para. 7.
[626] P208, para. 10.
[627] P208, para. 8.

- to take control of "the PTT building"[629];

- to prohibit "the passage [of] all carriers passing of through the territory of our municipality"[630];

- and finally, to dissolve the "Municipal crisis committee" and to confer its powers on the HVO[631].

360. Then, by a decree dated 22 May 1992, Dario Kordic and Florian Glavocevic, President of the HVO Command in Busova~a, gave the HVO general administrative powers over the municipality. They provided that:

> The internal organisation and the responsibilities of the government bodies of the (Busova~a) Municipal Assembly will be *regulated by a special order* by the (Busova~a) HVO Municipal Command [...][632.]

They also decreed that:

> because the HVO of the Busova~a municipality is leading the whole organisation of life and defence of Busova~a, the Busova~a Municipal Assembly, Busova~a Municipal Executive Council and the Busova~a Municipal Crisis Command will not do their duties any more, nor will they make any decisions, until the conditions are improved[633].

361. After those two decrees had been adopted, tension considerably increased between the Croatian and Muslim communities during the remainder of 1992 and their relations deteriorated:

- legal power holding organs were abolished[634];

- Muslims were progressively excluded from all structures with any powers[635];

---

[628] P208.
[629] P208, para. 15.
[630] P208, para. 13.
[631] P208, para. 11. According to witness FF, after this decree was signed, "a curfew [for three days], ban on movement for all citizens, whether Bosniak or Croat in the city of Busova~a" (PT p. 6133).
[632] P209 (emphasis added).
[633] P209 (emphasis added).
[634] Witness T, PT pp. 5764-5765; Witness FF, PT pp. 6134-6136.
[635] Witness FF, PT p. 6191.

- the HVO seized the television broadcasting station at Skradno and created its own local radio and television[636];

- the HVO seized the town hall, the post office, the police, the post and telecommunications[637] buildings and those of the other public institutions[638];

- the HVO set up roadblocks on all major roads and controlled movement of persons and goods going through the municipality[639];

- the Croatian flag was raised over, *inter alia*, the police station, the town hall and the post and telecommunications building[640];

- the Muslims were forced to sign an act of allegiance to the HVO in order to be allowed to work[641];

- the Croatian Dinar was imposed as the unit of currency[642];

- an increasing number of armed Croatian soldiers[643] wearing military uniform were see moving about the streets of Busova~a[644];

- there were numerous attacks on businesses and shops belonging to Muslims[645];

- and finally, Muslims gradually left the area fearing that they would be the victims of crimes[646].

[636] Witness FF, PT p. 6134, p. 6161.
[637] Witness FF, PT p. 6161.
[638] Witness FF, PT p. 6162.
[639] Witness FF, PT p. 6134, p. 6161.
[640] P237/1-237/3; witness FF, PT p. 6142; witness T, PT pp. 5764-5765.
[641] Witness FF, PT p. 6137, p. 6159.
[642] Witness FF, PT pp. 6142-6143. Telephone bills were expressed in Croatian Dinars.
[643] Witness FF, PT p. 6163. According to witness FF, HVO soldiers confiscated weapons during the checks they carried out at roadblocks.
[644] Witness FF, PT p. 6163.
[645] Witness T, PT pp. 5766-5767, 5787-5788.
[646] Witness T, PT pp. 5766-5767.

c) The municipality of Kiseljak

362. As in the municipalities of Vitez and Busova~a, several incidents occurred in Kiseljak in the period from April to November 1992 that demonstrated the HVO authorities' resolve to take political and military control of the Kiseljak municipality.

363. Many events showed that during 1992 the local HVO authorities seized the civil, political and military powers in the municipality progressively and with increasing violence.

364. The most significant event during that period was the creation, on 21 April 1992, of a crisis staff in which Croatians had an absolute majority[647]. It took over the powers of the Municipal Assembly although under the constitution of Bosnia-Herzegovina, only the Municipal Assembly is entitled to exercise those powers[648]. That crisis staff, which was at the root of many discriminatory measures taken against the Muslim authorities and population, took the following significant decisions:

- on 23 April 1992, it set up the HVO Headquarters in the municipality of Kiseljak, of which General Blaškic was appointed head also on that day[649];

- on 27 April 1992, it assigned the Kiseljak barracks, which had hitherto belonged to the JNA[650], to the HVO[651];

- on 12 May 1992, it ordered that all the "manpower, material assets and technical equipment of the reserve structure of the Public Security Station" be made available to the HVO[652];

- on 25 May 1992, it cancelled "the giro account of the Municipal TO /Teritorial Defence/ Staff and nullifie[d] the use of the seal of this body"[653];

[647] Witness MM, PT p. 8087.
[648] Witness MM, PT p. 8087.
[649] P314, witness MM, PT pp. 8115-8116.
[650] Witness MM, PT p. 8090; witness KK, PT pp. 7917-7918.
[651] P315.
[652] P318, witness MM, PT pp. 8116-8117.
[653] P319, witness MM, PT pp. 8099-8100.

- on 25 May and 1 June 1992, it requisitioned the quarters of the former JNA for the benefit of HVO officers[654], including Tihomir Blaškic[655], Ivica Rajic[656] and Mato Lu~ic[657];

- on 15 June 1992, it imposed the Croatian Dinar "on the territory of the Kiseljak municipality as the currency of account […]"[658] and ordered that "all commercial service companies [were] obliged to display the prices of products and services in CRO (Croatian) Dinars"[659], and finally

- on 25 June 1992, the crisis staff unilaterally renamed the "Executive Committee of the Kiseljak Municipal Assembly" the "Croatian Defence Council of Kiseljak", made up exclusively of Croatian representatives[660].

365. Other incidents occurred during that period and should also be pointed out by the Trial Chamber because of their discriminatory impact on the Muslim population of the region:

- the municipal authorities raised the Croatian flag over the town hall and the police station as soon as they had seized them[661];

- the authorities imposed Croatian as the language to be used in schools[662];

- the HVO took over most of the roadblocks in the area[663] and the Croats appropriated part of the humanitarian aid destined for Muslims, in particular those in the enclave of Tuzla[664];

- the Croatian authorities made it a requirement for Muslims wishing to cross these roadblocks to obtain a *laissez-passer* beforehand[665];

[654] Witness MM, PT pp. 8101-8102, pp. 8117-8118, pp. 8147-8148, pp. 8149-8150.
[655] P321.
[656] P322.
[657] P320.
[658] P323; witness LL, PT pp. 8010-8011; witness MM, PT pp. 8101-8102.
[659] P324; witness KK, PT p. 7912; witness MM, PT p. 8120.
[660] P325; witness MM, PT p. 8120.
[661] Witness KK, PT pp. 7917-7918; witness LL, PT pp. 8010-8011; witness MM, PT pp. 8106-8107.
[662] Witness KK, PT p. 7913; witness LL, PT pp. 8010-8011.
[663] Witness KK, PT pp. 7908-7909; witness MM, PT pp. 8147-8148.
[664] Witness KK, PT pp. 7917-7918.
[665] Witness MM, PT pp. 8147-8148.

- the HVO appropriated a large part of the weapons which had been in the Kiseljak barracks[666], despite the decree dated 6 May 1992 issued by the Municipal Crisis Staff which provided that "those weapons [should] be distributed proportionally between ethnic groups"[667];

- the HVO gradually excluded the Muslim authorities from power at the local level[668];

- the Croatian authorities took over the Kiseljak schools, public enterprises[669], Post Office, the medical centre and the police station[670];

- the HVO appropriated Muslim business premises[671];

- the authorities created a radio station which broadcast nationalist propaganda[672];

- HVO soldiers moved about in military uniform in the municipality and intimidated the Muslim population;

- members of the police force in the Kiseljak municipality were forced to wear the Croatian crest on their uniform[673] as from April 1992;

- General Blaškic expelled the Territorial Defence from the former JNA buildings on 14 May 1992[674];

- at the beginning of August 1992 the HVO arrested Sead Sinanbašic, the Commander of the Territorial Defence in Kiseljak, and detained him for several weeks in the Busova~a prison[675];

---

[666] Witness MM, PT p. 8096.
[667] P317.
[668] Witness MM, PT pp. 8103-8104.
[669] Witness KK, PT p. 7912.
[670] Witness KK, PT pp. 7916-7918.
[671] P541.
[672] Witness LL, PT pp. 8010-8011 and witness Morsink, PT pp. 9830-9848. According to the testimony of witness Liebert, "[…] radio Kiseljak played a very active role in terms of propaganda for the HVO or HDZ, the Bosnian Croat forces" (PT p. 8757).
[673] Witness WW, PT pp. 9683-9684.
[674] P631.
[675] Witness MM, PT p. 8130.

- during the month of August 1992 the HVO launched attacks on the villages of Duhri[676], Potkraj[677], Radanovi}i and Topole[678] and these attacks involved more violent incidents, including setting fire to homes where Muslims lived and vandalising their businesses[679];

- many Muslim civilians who feared attack started to leave the Kiseljak enclave as from the summer of 1992[680].

d) Conclusions

366. In sum, during 1992 discriminatory acts were regularly carried out against the Muslim authorities of Vitez, Busova~a and Kiseljak and against the Muslim population of those municipalities. Those acts sought to exclude those Muslim authorities from civil, political and military functions for the benefit of HVO representatives. They made life so onerous for Muslim civilians at that point that many of them decided to leave the area and to move to other municipalities where they were in the majority. Those who chose, despite everything, to remain in those municipalities had to accept that they would be subject to persecution by a political and military regime[681] increasingly hostile to them.

367. In those three municipalities, tensions increased between Muslim and Croatian populations, with incidents breaking out especially when one party thought it could gain a tactical or strategic advantage: control of a village, a town, former military warehouses or a road. Provocation and incidents increased, such as raising a Croatian flag over public buildings or the abduction of officers of Croatian origin. The first acts of destruction of mosques and Muslim houses, the first murders of civilians and the first acts of pillage occurred. On a small territory, groups of refugees, some Croatian but most Muslims, forced

[676] Witness FF, PT p. 6170.
[677] Witness MM, PT p. 8143.
[678] Witness MM, PT pp. 8136-8137, pp. 8137-8138, pp. 8207-8209.
[679] Witness Christie, PT p. 7853; witness LL, PT pp. 8013-8014.
[680] The Trial Chamber noted moreover that the HVO appropriated the commercial premises of Kiseljak on 25 February 1993 (P451).
[681] Witness KK, PT p. 7912. According to the witness: "[…] as far as the political situation in Kiseljak is concerned, in my opinion, the political leadership of the HDZ as well as the military leadership was one and the same. To me […] they were the same […]".

to leave their homes by Serbian forces, were joined by internal movements of displaced Muslim populations forced from their dwellings by the Croats.

2. The Vance-Owen Plan and the January 1993 conflicts

a) The Vance-Owen Plan

368. Those were the conditions in which the Vance-Owen Plan was presented, on 2 January 1993, at the first plenary session of the Bosnian parties, summoned to Geneva by the International Conference for the former Yugoslavia. That peace plan proposed, *inter alia*, a decentralised Bosnia-Herzegovina, organised into ten provinces, each one substantially autonomous and administered by a democratically elected local government. According to the explanation given by one of the Trial Chamber's witnesses, the whole logic of the plan was one of power-sharing with predominance of one nationality in certain zones but not without denying the other nationalities. Power was to be exercised with respect for minorities. That witness also testified that the plan could only be implemented if the parties co-operated perfectly, since they would both have to make concessions as regards not only the territory over which they had nominal control, but also government of their population and the setting up of their administration.

369. According to the Vance-Owen Plan, the Lašva valley would largely be in Province 10, and the rest (Southern part of the Kiseljak municipality) in Province 7 (Sarajevo). Province 8 (Mostar) extended from Bosnia-Herzegovina's Southern border with Croatia to Prozor and Konic in the North. The Plan assigned the main responsibilities in Provinces 8 and 10 to the Croats and in Province 7 to the Muslims. In the minds of Croatian nationalists, and in particular of Mate Boban, this meant that Province 10 was Croatian. However, he believed that lands, which were historically Croatian, would end up in Province 7 and thus would be lost to them. He considered it necessary to ensure Croatian domination in the regions in question.

370. The Croats, and in particular the Bosnian-Croats, provoked an open conflict between Croats and Muslims in central Bosnia by anticipating the implementation of the Vance-Owen Plan then by wanting to implement it unilaterally.

b) The January 1993 conflicts

371. The first violent clashes broke out in January 1993. On 15 January, Bruno Stojic, Head of the HZHB Defence Department, called for the ABiH forces to surrender to the authority of the HVO in Bosnian Provinces 3,8 and 10 or to leave these territories before 19:00 hours on 20 January[682]. Paragraph 3 of the ultimatum also provided that:

> unit members of the HVO Armed Forces and BH army […] who refuse to leave the region and acknowledge the superior command shall be regarded as members of paramilitary units and shall be disarmed and arrested.

372. In the face of the Muslim forces' refusal to obey the ultimatum, Croatian forces embarked on a series of actions intended to implement the "Croatisation" of the territories by force. The Muslim community was subjected to of an increasing number of acts of aggression: ill treatment, plunder, confiscation, intrusion into private homes, beatings, thefts, arrests, torching of homes and murder of prominent Muslims[683]. Hundreds of Muslims were arrested and many were imprisoned in Kaonik in the former JNA warehouses. Many were beaten. Most of them were forced to dig trenches, often in inhumane conditions, exposed to enemy fire, beaten or even killed, and sometimes serving as a human shield.

373. Tensions were high. The British Battalion military information summary of 16 January 1993 recorded the presence in the region of "extremists on [both the Muslim and Croat] sides, who do not appear to be under the control of their respective commanders"[684], who made the situation worse.

374. Following the Muslim army commanders' refusal to obey the ultimatum, HVO forces launched an attack on the town of Busova~a during the night of 20 to 21 January[685].

375. Indeed, by order of 16 January 1993, General Blaškic placed all troops on the highest state of alert, in particular those of the HVO, the Vitezovi Unit and the Military Police Fourth

[682] P658. See also P657, P659.
[683] Witness Pezer, PT of 19 August 1997, p. 1576; witness Mujezinovic, PT of 20 August 1997, pp. 1678-1679.
[684] P663.
[685] P671. According to witness T, the purpose of the offensive was to take control of the positions of the army of Bosnia-Herzegovina (PT pp. 5789-5790).

Battalion and called upon them to prepare for battle[686]. Three days later, on 19 January, soldiers from the Vitezovi Unit were placed under his command by General Petkovic[687], and with the help of the Ludvig Pavlovic Brigade, they carried out reconnaissance operations on troop movements of the army of Bosnia-Herzegovina[688]. The following evening, and further to the ABiH authorities' refusal to obey Bruno Stojic's ultimatum, on the orders of Bozo Raji}[689], the HZHB Defence Minister, the HVO launched attacks against Muslims in the Busova~a region, attacks which, as we have already stated, were at the root of torching of businesses and private homes. Croatian forces fired on eight businesses belonging to Muslims and damaged them using explosives, including grenades[690]. These forces also looted private Muslim homes[691] and killed a soldier of the Territorial Defence[692]. Subsequently, according to the report drawn up by Major Vinac, Deputy Commander of the Vitezovi, a battalion of fifteen soldiers from that unit was sent to the Busova~a zone on 26 January 1993[693]. The report also stated that that battalion was still there on 9 February 1993[694].

376. According to the British Battalion's report of 21 January 1993, this was "a pre-planned, co-ordinated attack on the Muslim population"[695]. That report also stated that roadblocks had been set up at each end of the town, on 20 January between 20:00 hours and 21:00 hours[696]. The telephone lines were also cut a few hours before the start of the offensives[697].

377. Other attacks followed. On 24 January 1993, the HVO set fire to around 19 Muslim houses in Busova~a and forced out their inhabitants[698]. It kept some of them in Kaonik prison[699]. On 25 January 1993, Croatian forces[700] shelled the Grablje and Merdani villages[701],

[686] P456/6.
[687] P666.
[688] D250.
[689] Witness T, PT pp. 5766-5768.
[690] P238, P669 and witness FF, PT p. 6139.
[691] P671; witness FF, PT p. 6174.
[692] P671; witness FF, PT p. 6139.
[693] D250.
[694] D250.
[695] P669.
[696] P669.
[697] Witness T, PT pp. 5768-5769.
[698] Witness T, PT pp. 5769-5771.
[699] Witness T, PT pp. 5770-5771.
[700] Witness FF, PT p. 6176.
[701] Witness FF, PT p. 6144, p. 6175.

which caused many civilians to flee[702]. Those two villages were however defended by ABiH units from Visoko and Maglaj[703] and Muslim artillery pounded Busova~a from Grablje[704].

378. Even if the HZHB Ministry of Defence did order the attacks, the accused was directly responsible for their implementation, because he was the commander in charge of the units deployed on the ground at the time of the criminal acts.

379. It should be noted that at the same time, similar incidents were occurring in the municipality of Gornji Vakuf. On 17 January 1993, @ivko Toti}, local commander of the HVO, ordered the ABiH commander to place himself under the authority of the HVO[705]. Following the refusal to carry out that order, the HVO launched attacks against the army of Bosnia-Herzegovina[706] on 19 January 1993 at 00:30 hours and set fire to several Muslim villages in the area[707]. According to Major Short who personally went to these places after the attacks:

> it became apparent to me that a number of villages had been reduced to ashes and in one particular area had actually been blown up using military explosives[708].

Despite Mate Boban's order to stop fighting on 19 January 1993, hostilities continued until 27 January 1993[709].

c) Conclusions

380. Throughout the period from January to April 1993, the Muslim population would continue to be subjected to increasing persecution from the Croatian political and military authorities. Many civilians left the area to go to Kacuni or Zenica. According to Witness FF's account,

> things became more and more complicated, and practically, factually speaking, we became two different sides, even though there was no conflict between us yet, but the HVO worked independently on their own, organised their life and the Bosniaks on the

[702] Witness FF, PT p. 6176.
[703] Witness FF, PT p. 6203.
[704] P671.
[705] Witness Short, PT p. 24239.
[706] Witness Short, PT pp. 24239-24240.
[707] Witness Short, PT p. 24240.
[708] Witness Short, PT pp. 24240-24241.
[709] P591.

> other side organised themselves and prepared for defence on their own and they did this in the area of Kacuni which is also a part of the Busova~a municipality[710] [...] As a result of all these events, the Bosniak people as such were *totally negated, there was a ban on assembly, they were thrown out of work, their nationhood was completely denied and what was considered to be the highest value was belonging to the Croatian people,* whereby all the values of the individual were denied[711].

381. There were considerable efforts made by the ECMM and UNPROFOR first of all to try to get prisoners released and secondly to contain the conflict. A joint Committee was appointed in Busova~a on 13 February.

382. On 27 January 1993, General Blaškic gave an order that firing should cease within 24 hours[712]. The same day, he received a report from Franjo Nakic, Chief-of-Staff, summarising the situation[713]. That report announced however that there would be future conflicts in Vitez, in Busova~a or in Kiseljak. It was noteworthy in that it used expressions like "to create feelings of insecurity and fear on the enemy side" and especially "the enemy regrouped their forces and entered *our* villages"[714] or "our forces disarmed the villages of *Strane and Skradno where 100 rifles were captured*"[715]. A relatively calm situation prevailed until April 1993.

383. Still the report predicted that the conflict would explode in April 1993 and the following months. The Trial Chamber will now examine the conflict municipality by municipality and will look separately at the questions concerning the detention of Muslims by Croatian forces.

B. The municipality of Vitez

1. Ahmici , Šanti}i , Pirici, Nadioci

384. The villages of Ahmici, Šanti}i, Pirici, Nadioci, situated about 4 to 5 kilometres from the town of Vitez[716], belong to the municipality of Vitez. According to the last official census taken in 1991, the municipality had 27 859 inhabitants, made up of 45.5% Croats, 5.4%

[710] Witness FF, PT p. 6137.
[711] Witness FF, PT p. 6143 (emphasis added).
[712] P456/8 and D348.
[713] D408. Franjo Nakic was also General Blaškic's representative at the Joint Committee in Busova~a.
[714] D408 (emphasis added).
[715] D408, emphasis in original text.
[716] P706. For the exact distances between the Hotel Vitez and these villages, see also P79.

Serbs, 41.3% Muslims and 2.8% other nationalities[717]. These villages are about 1000 meters away from each other and their total population was about 2 000 inhabitants[718]. Šantici, the biggest of the villages, had a population of about 1 000 inhabitants, the majority of whom were Croats[719], whereas Pirici, the smallest of the villages, was a mere hamlet with a mixed population[720]. Nadioci was also a village with a substantial majority of Croats[721]. Ahmici had about 500 inhabitants[722], of whom about 90% were Muslims[723], which meant 200 Muslim houses and fifteen or so Croat ones[724].

385. On Friday 16 April 1993 at 05:30 hours[725], Croatian forces simultaneously attacked Vitez, Stari Vitez, Ahmici, Nadioci, Šantici, Pirici, Novaci, Puti{[726] and Donja Ve~eriska. General Blaškic spoke of 20 to 22 sites of simultaneous combat all along the road linking Travnik, Vitez and Busova~a[727]. The Trial Chamber found that this was a planned attack against the Muslim civilian population.

a) A planned attack with substantial assets

i) An organised attack

386. Several factors proved, beyond a doubt, that the 16 April attack was planned and organised.

387. The Trial Chamber notes, first of all, that the attack was preceded by several political declarations announcing that a conflict between Croatian forces and Muslim forces was imminent. Mate Boban issued an ultimatum requiring the troops of the Bosnian army on the

[717] P46; P193; witness Kajmovic, PT pp. 5647-5648.
[718] 2173 inhabitants according to the 1991 census, of whom 32% were Muslims and 62% were Croats (same finding as in the *Kupreskic* judgement, para. 149).
[719] According to the 1991 census (P46), 782 inhabitants out of 1 008 were Croats.
[720] According to the 1991 census (P46), the hamlet of Pirici had 225 inhabitants of whom 110 were Muslim and 98 were Croats.
[721] According to the 1991 census (P46), out of 474 inhabitants recorded in the census as living in Nadioci, 386 were Croats and 42 were Muslims (P46).
[722] 466 inhabitants recorded in the 1991 census (P46).
[723] Report of the Commission on Human Rights, P184, p. 5, para. 13. According to witness Kajmovic, Ahmici had a population of 508 Bosnians in 1991 (PT pp. 5680-5681).
[724] P184, p. 7, para. 20.
[725] All the witnesses agree about the time the attack began.
[726] This village was not mentioned in the indictment.
[727] Witness Blaškic, PT pp. 22052 and 22939-22940.

territories of provinces 8 and 10 under the Vance-Owen Plan, to surrender their weapons or to leave these territories[728]. Witness Mujezinovic alleged that in early March 1993, Dario Kordic had stated on television that the "Muslims would disappear from Bosnia"[729]. Several witnesses who lived in the area at the material time moreover reported that the accused and Dario Kordic had declared during the course of a television interview broadcast on 15 April 1993, that "their soldiers" stationed in the bungalow at Nadioci had been attacked by Muslim forces and that consequently the negotiations with the Muslims had to be broken off since only war could resolve the matter[730].

388. The declarations were made together with orders issued by the political authorities to the Croatian population in Herceg-Bosna. In particular, on 14 April, Anto Valenta ordered the Croatian officials in the of municipalities in central Bosnia to impose a curfew from 21:00 hours to 06:00 hours and to close the schools until 19 April[731].

389. The evidence showed moreover that the Croatian inhabitants of those villages were warned of the attack and that some of them were involved in preparing it. Several witnesses, who lived in Ahmici at the material time, testified that Croatian women and children had been evacuated on the eve of the fighting[732]. The witness Fatima Ahmic furthermore stated that a Croatian neighbour had informed her that the Croatian men were holding regular meetings and preparing to "cleanse Muslim people from Ahmici"[733]. Witness S testified that the same thing happened in Nadioci: several Croatian families were said to have left the village several days before the attack and a Croatian neighbour is alleged to have advised the witness to hide[734]. The witness Abdullah Ahmic stated that an "enormous" rally of Croats from Ahmici and the neighbouring villages had taken place on Sunday 11 April 1993[735]. Witness M gave evidence of having seen that many armed soldiers in uniform had gathered

[728] PT p. 21765. The municipality of Vitez was situated in Province no. 10. Other earlier speeches also implied that this might happen. See in particular P679, a summary of an interview given by Dario Kordic on 13 March 1993, in which he sent the following warning to the Muslim population: "If you attack other municipalities, not only [will there] be no Bosnia–Herzegovina, but there will be no Muslims left".
[729] Witness Mujezinovic, PT of 20 August 1997, p. 1654.
[730] Witnesses Fatima Ahmic, PT pp. 3941-3945 and 3977-3980; Nura Pezer, PT pp. 3883-3884; Sefik Pezer, PT of 20 August 1997 pp. 1557-1558; Haris Hrnjic, PT pp. 4006-4007; M, PT pp. 4416-4417; O, PT p. 4517.
[731] P687.
[732] Witnesses Elvir Ahmic (Ahmici), PT pp. 3245-3246, 3296; Zec, PT pp. 4274-4276, 4320. According to these two witnesses, Croatian children did not go to school on 15 April and the women and children had been taken out of the village by the Croatian men who then returned to the village.
[733] Witness Fatima Ahmic, PT pp. 3987-3988.
[734] Witness S, PT pp. 4878-4879.
[735] Witness Abdullah Ahmic, PT pp. 3806-3807.

in the house of Ivica Kupreskic the day before the attack[736]. Witness HH stated that the D`okeri stationed in the Nadioci bungalow[737] spoke of an attack on Ahmici long before it had actually occurred. They were even alleged to have advised the witness to warn his friends or his family living in Ahmici to leave the village[738].

390. The method of attack also displayed a high level of preparation. Colonel Stewart stated that he had received many reports indicating an increased presence of HVO troops shortly before the events[739]. The witness Sefik Pezer also said that on the evening of 15 April he had noticed unusual HVO troop movements[740]. On the morning of 16 April, the main roads[741] were blocked by HVO troops[742]. According to several international observers, the attack occurred from three sides and was designed to force the fleeing population towards the south where elite marksmen, with particularly sophisticated weapons[743], shot those escaping[744]. Other troops, organised in small groups of about five to ten soldiers, went from house to house setting fire and killing[745]. It would seem that a hundred or so soldiers took part in the operation[746]. According to the witness Thomas, the attacks in the built-up areas, such as those carried out in the Ahmici area were "operations [were] planned in minute detail"[747]. According to Colonel Stewart, the attacks on the villages of Ahmici, Šantici, Pirici and Nadioci needed about half a day's planning[748]. The attack was carried out in a morning[749].

[736] Witness M, PT pp. 4400-4401 and P147 no. 1.
[737] The bungalow was also known as the "Swiss chalet".
[738] Witness HH, PT p. 6858.
[739] Witness Stewart, PT p. 23756. That finding was corroborated by witnesses Landry (PT pp. 7508-7509) and Baggesen (PT of 22 August 1997 pp. 1918-1919).
[740] Witness Sefik Pezer, PT of 19 August 1997 pp. 1555-1556.
[741] This refers to two roads, one a mountain road and the other the road through the valley.
[742] Witnesses Landry, PT pp. 7508-7509 and Stewart, PT p. 23860.
[743] See especially the photographs of the rifles used by the hidden marksmen, P82/Z2/469 and p82/Z2/470.
[744] Witnesses Watters, PT pp. 3440-3441; Stewart PT p. 23589; Commission on Human Rights report, P184, para. 15, p. 4.
[745] P184, para. 15, p. 5.
[746] Witnesses Zec, PT p. 4296 (the witness stated that he had a hundred or so soldiers in Ahmici on 16 April); Akhavan, P184 para. 23 p. 6 ("At least 50 and possibly up to 150 soldiers are reported to have been involved in the operation, according to the testimonies gathered"); Stewart, PT p. 23773 (the witness estimated at between 40 and 70 the number of soldiers who took part in the Ahmici massacre). The Defence did not challenge that estimate (Defence Brief, book VI, p. 304).
[747] Witness Thomas, PT of 24 September 1997 p. 2688.
[748] Witness Stewart, PT p. 23861.
[749] Witness Blaškic, PT pp. 19155-19156.

391. All the international observers, military experts for the most part, who went to the site after the attack had occurred, stated without hesitation that such an operation could only be planned at a high level of the military hierarchy[750].

392. The accused himself also consistently expressed that view. Both in the statements he made shortly after the attack in April 1993 and before the Trial Chamber, General Blaškic expressed his conviction that this was "an organised, systematic and planned crime"[751].

393. Like Trial Chamber II in the *Kupreskic* case[752], the Trial Chamber therefore finds, and this finding is not open to challenge and was indeed unchallenged, that the attack carried out on Ahmici, Nadioci, Šanti}i and Piri}i was planned at a high level of the military hierarchy.

ii) The troops involved

394. According to the Prosecution, those participating in the attack were not only the Military Police Fourth Battalion and in particular the D`okeri stationed at the bungalow in Nadioci, but also the Vitezovi, the *Viteška* brigade of the municipality of Vitez, the Nikola Šubic Zrinski brigade of Busova~a, together with Domobrani units (units set up in each village in accordance with a decision from Mostar dated 8 February 1993[753]) stationed at Ahmici, Šantici, Pirici and Nadioci[754].

395. According to the accused, the Military Police Fourth Battalion and its special unit, the D`okeri, carried out the attack[755]. The Defence specifically maintained that no regular unit of the central Bosnia operational zone took part in the fighting[756].

396. The Trial Chamber notes that many witnesses mentioned the presence of soldiers in camouflage uniform or dressed in black. Their faces were painted and they had sophisticated

[750] Witnesses Watters, PT p. 3633; Akhavan, PT pp. 5291 and 5367-5368; Thomas, PT pp. 2429-2430; Morsink, PT pp. 9877-9879; Macleod, P242, "Report on inter-ethnic violence in Vitez, Busova~a and Zenica in April 1993" Annex J; Baggesen, PT of 22 August 1997 pp. 1893-1894 and PT of 25 August 1997 pp. 1934-1935 and 2126-2131 (the witness considered that the attack was planned at a level higher than brigade level); Ellis, PT of 30 August 1997 pp. 3112-3113 (the witness based his opinion in particular on the fact that the restocking of ammunition required a logistical chain which had to have been prepared in advance); Parrott, PT pp. 5032-5033.
[751] Witness Blaškic, PT p. 19029; see also pp. 19155-19156 and 22020 (cross-examination).
[752] *Kupre{kic* Judgement, para. 761.
[753] P769 (signed by General Milivoj Petkovic).
[754] Prosecutor's Brief, book VI, pp. 47-48.
[755] Witness Blaškic, PT pp. 18609-18610.

equipment[757]. According to several witnesses, the black uniform had been that of the "Ustasha" during the Second World War[758]. It was worn by the D`okeri, an anti-terrorist squad with twenty or so members[759], created in January 1993, from within the Military Police on the order of Zvonko Vokovic[760], and whose mission was to carry out special assignments such as sabotage or ant-terrorist operations[761]. Other witnesses also noticed that some soldiers wore white belts which were a distinctive feature of the HVO Military Police[762].

397. The evidence given however proved that the Military Police was not the only unit involved in the actions. The Vitezovi, special HVO unit created on 10 September 1992[763] and placed under Dario Kraljevic's authority also wore black uniforms[764] and several witnesses stated that they recognized their emblem on the uniform of some of the soldiers[765]. According to a few witnesses, HVO soldiers themselves sometimes wore black[766]. The witness Ellis stated that the accused sometimes wore that uniform himself[767]. Owing to the apparent confusion displayed by some witnesses and stemming from the fact that different troops wore similar uniforms, the Trial Chamber was unable to conclude with certainty that the Vitezovi participated in the operations on these villages. The Trial Chamber notes in this connection that the *Kupreskic* Trial Chamber did not make a finding that the Vitezovi were present during the attack on Ahmici. Many witnesses also referred to soldiers in camouflage uniforms being present[768], wearing the HVO insignia[769] and some even claimed to have seen soldiers

---

[756] Defence Brief, book VI, p. 303.
[757] Witnesses Nura Pezer, PT p. 3888; Haris Hrnjic, PT pp. 4011-4012; G, PT pp. 3854-3856; H, PT pp. 3912 and 3921-3922; I, PT p. 4040-4041; M, PT pp. 4405-4408; Djula Djidic, PT pp. 4332-4334.
[758] Witnesses Abdullah Ahmic, PT pp. 3747-3748; R, PT pp. 4923-4924, 5001-5002.
[759] Witnesses Marin, PT p. 12898; HH, PT p. 6833.
[760] P481; witness HH, PT p. 6854. Zvonko Vukovic was replaced by Paško Ljubicic on 18 January 1993 (P457/1A/46).
[761] Witness HH, PT pp. 6856-6857.
[762] Witnesses Parrott, PT p. 5021; Abdullah Ahmic, PT pp. 3734-3736; J, PT p. 4082; Elvir Ahmic, PT p. 3260-3261.
[763] D250; witness Marin, PT p. 12186.
[764] Witness Zec did however testify that the Vitezovis' commander, Dario Kraljevic, wore a camouflage uniform with HVO insignia (PT of 26 September 1997 p. 2803).
[765] Witnesses Zec, PT pp. 4293-4294; F, PT pp. 3662-3663 and Abdullah Ahmic, PT pp. 3823-3825, although he was not entirely sure. The *Kupre{kic* Trial Chamber did not hold that there had been Vitezovi present.
[766] Witness G (PT pp. 3855-3856) specified that the soldiers in black uniforms wore the emblems of the D`okeri, the Vitezovi and the HVO on their shirts.
[767] Witness Ellis, PT of 30 September 1997 pp. 3115-3116. See also photographs P88/Z2/446 and 447.
[768] Witnesses I, PT pp. 4040-4041; J (Zume), PT pp. 4080-4082; M, PT pp. 4405-4406; Fatima Ahmic, PT pp. 3948-3949; O, PT p. 4505.
[769] Witnesses Zec, PT pp. 4293-4324; Elvir Ahmic, PT pp. 3254-3255; G, PT pp. 3855-3856; Abdullah Ahmic, PT p. 3750; M, PT pp. 4405-4406; S (Nadioci), PT pp. 4881-4882 (he described camouflage uniforms with the emblem of a red and black checkerboard characteristic of the HVO; he also noted the presence of "U" insignia); J (Zume), PT p. 4071; F, PT p. 3666; Hrnjic (Šantici), PT pp. 4010-4017; Djula Djidic (Šantici), PT pp. 4331-4333.

wearing the emblem of the HV[770]. Exhibit D245 showed that on 14 April, 20 members of the *Viteška* brigade of the HVO were stationed in Nadioci, 12 in Šantici and 19 in Dubravica. Those soldiers were part of the first company of the first battalion of the *Viteška* brigade and were under the command of Slavko Papic. Several certificates, issued by the HVO, certified that on the day of the attack soldiers who were members of that brigade were wounded in the sector in the exercise of their duties[771]. Witness Parrott, who was then a sergeant with the Cheshire Regiment, went on a Warrior to the Ahmici area and saw HVO soldiers recognisable by their emblems and badges. They wore either a very dark green uniform or black fatigues and had small arms (assault rifles or similar weapons)[772]. Finally, other witnesses noticed emblems depicting an oak leaf[773].

398. Several Croatian inhabitants of these villages participated in these operations as members of the HVO. The witness Abdullah Ahmic in particular gave the names of a certain number of local HVO commanders, who were each responsible for a specific sector. They were members of the Domobrani. Those named included Slavko Milicevic for the Donji Ahmici sector, Zarko Papic for the Zume area, Branko Perkovic in Nadioci, Zoran Kupreskic in Grabovi (an area in the centre of Ahmici), Nenad Šantic[774] and Colic[775] in Šantici.

399. There was a certain amount of indirect evidence attesting to HVO participation. In particular, several witnesses stated that, on the day of the attack, the telephone lines had been cut[776]. Indeed, all the communications exchanges in the municipality of Vitez were under HVO control[777].

[770] Witnesses Abdullah Ahmic, PT p. 3750 and Zec, PT pp. 4290-4291.
[771] P691: certificate showing that Ivica Semren, member of the Viteška Brigade from 8 April 1993, was wounded at Ahmici on 16 April 1993 when "carrying out combat duties by order of the competent commander"; P692: certificate showing that Nikola Omazic, member of the Viteška Brigade from 16 April 1993, was wounded at Pirici on 16 April 1993 during combat operations.
[772] Witness Parrott, PT p. 5021.
[773] According to Witness Mujezinovic, the units wearing that emblem came from Herzegovina (PT of 21 August 1997 p. 1749).
[774] Witness Abdullah Ahmic, PT p. 3829. According to exhibit P772, Nenad Šantic was appointed temporary Commander of the Domobran unit in Vitez on 12 March 1993 by the Head of the Defence Bureau, Marijan Skopljak. According to exhibit P776, Nenad Šantic had been a member of the HVO from 26 April 1992.
[775] Witness Hrnji}, PT pp. 44016-4017.
[776] Witnesses Kavazovic, PT of 27 August 1997, pp. 2381-2382 and G, PT p. 3854.
[777] Witness Morsink, PT pp. 9908-9909. According to witness Baggesen (PT of 21 August 1997 pp. 1844-1845), the post and telecommunications were controlled by the ABiH in Zenica and by the HVO in Travnik, Vitez and Kiseljak.

400. The Trial Chamber therefore finds that not only the Military Police, and especially the D`okeri Unit, but also regular HVO units, and in particular the *Viteška* brigade[778], took part in the fighting on 16 April 1993.

401. Oral evidence also established beyond a doubt that those troops acted in a perfectly co-ordinated manner. The witness Abdullah Ahmic stated that he saw soldiers wearing the emblem of the HV acting in concert with HVO soldiers[779]. The witnesses G[780], H[781] and Zec[782] also indicated that the soldiers worked in a very co-ordinated manner. Several witnesses declared that the soldiers worked in groups of five to ten, each of these groups having differently-coloured ribbons attached to their arms[783]. Those troops communicated by way of little Motorola radios or walkie-talkies[784]. The witness Morsink noted on this point that HVO soldiers normally wore these portable radios[785]. Moreover, a superior of the accused was of the view that the *Viteška* brigade must have co-operated with the Military Police in the operation against Ahmici[786].

b) An attack against the Muslim civilian population

i) The absence of military objectives

402. The Defence put forward different arguments in order to explain the fighting[787]. First of all, it pointed to the strategic nature of the road linking Busova~a and Travnik[788]. That road was controlled by the HVO at the material time[789], but the HVO intelligence services are said to have noted a movement of Muslim troops on 15 April from Travnik towards Ahmici and

[778] Same finding as in the *Kupre{kic* Judgement, para. 334.
[779] Witness Abdullah Ahmic, PT pp. 3825-3826.
[780] Witness G, PT pp. 3856-3857.
[781] Witness H, PT p. 3922.
[782] Witness Zec, PT pp. 4293-4294, 4323-4324.
[783] Witnesses Abdullah Ahmic (Ahmici), PT pp. 3748-3749 (red and other colour armbands); Elvir Ahmic (Ahmici), PT p. 3251 (white and orange armbands); Djula Djidic (Šantici), PT pp. 4333-4334 (blue armbands). According to the witness Parrott, the use of those armbands showed that those troops were acting in concert (PT pp. 5074-5075).
[784] Witnesses Zec, PT pp. 4292-4293; Djula Djidic, PT pp. 4333-4334; G, PT pp. 385-3857; Elvir Ahmic, PT pp. 3254-3255.
[785] Witness Morsink, PT pp. 9908-9909.
[786] PT. p. 2410.
[787] Defence Brief, book VI, p. 268.
[788] Defence Brief, book VI, p. 270.
[789] See in particular witness O, PT p. 4507-4508.

the neighbouring villages[790], which led them to believe that the Muslims were seeking to regain control of the road. That submission could not however be deemed to have been sufficient justification for the attack on the villages which with the exception of Šantici, were not directly on the main road[791]. Furthermore the accused said in his evidence that the HVO's intelligence services had informed him that ABiH forces from Zenica were moving towards Mount Kuber, a strategic point in the Lašva Valley from which, he stated, it was possible to control the whole valley[792]. It was alleged that shots had been heard on 15 April in the area around Ahmici[793]. Another justification given was terrorist activities carried out by the ABiH, in particular the abduction on 15 April in Zenica of Major Totic[794].

403. A report from the command of the Military Police Fourth Battalion (Paško Ljubi~ic), transmitted to the accused on 16 April[795], alleged that Muslim forces had attacked the D`okeri's bungalow early that morning. The Trial Chamber cannot however accept that that incident was the source of the conflict. The extent and the planned character of the attack in which several units took part in a perfectly co-ordinated manner would be sufficient to discount that justification. The Trial Chamber also notes that the accused had addressed an order to the Croat forces before he had even received that report[796]. The accused acknowledged that the information was incorrect and that its sole purpose was "to justify further activities" in Nadioci and Ahmici[797].

[790] These reasons were put forward by General Blaškic during his interview with an ECMM monitor on 8 May 1993, P242, "Report on inter-ethnic violence in Vitez, Busova~a and Zenica in April 1993", annex G, ECMM H/S 720 dated 15 May 1993.
[791] See in particular P29; PT pp. 23698-23699.
[792] Witness Blaškic, PT pp. 18484-18486 and 21930-21931.
[793] P242, "Report on inter-ethnic violence in Vitez, Busova~a and Zenica in April 1993", annex G, ECMM H/S 720, dated 15 May 1993.
[794] The accused alleged that he had been told of this by Holman on 15 April at 11:00 hours (witness Blaškic, PT of 22 August 1997, pp. 18477-18478). That abduction followed the abduction on 14 April of four members of the HVO main staff in Travnik and Novi Travnik, which gave rise to a complaint from the accused to the ECMM. The accused suspected the Seventh Muslim Brigade of being responsible for this crime (witness Baggesen, PT pp. 1864-1873).
[795] D280. The report referred to the accused's order no. 01-04-243/93 (which was not available to the Trial Chamber).
[796] That order was issued at 01:30 hours whereas the Military Police's report was received at 11:42 hours. As regards the order (D269), described either as an combat preparation order or an attack order, depending on the party, see discussion below.
[797] Witness Blaškic, PT pp. 18621-18622.

404. The Defence also invoked the presence of units of the 325th ABiH Mountain Brigade in Ahmici[798] and the neighbouring villages. General Blaškic claimed that the command of these units was located at the primary school in Ahmici[799]. But documents submitted in support of that assertion mention only the village of Ahmici with no further details as to the number of soldiers, the amount of equipment there or the precise location of their headquarters. Moreover, the "defense" orders issued by the accused on the eve of the attack did not mention the presence of the 325th Brigade at all. Those orders, and in particular the order issued on 15 April at 15:45 hours[800], only refer to the threat which the seventh Muslim Brigade allegedly posed.

405. General Blaškic claimed that, in the night of 15 to 16 April, HVO members informed him that soldiers from the first and seventh brigades of the ABiH were coming towards Vitez by truck. These were soldiers going home on leave to Krusica and Ahmici. The HVO maintained that those soldiers were drunk and excited[801]. There again, that information was not enough to justify the attack. On the contrary, it highlighted the fact that the soldiers were on leave and were not preparing to fight in the municipality of Vitez.

406. The Defence also explained that "authorised CBOZ military activity at times included a legitimate military tactic known as fighting in built-up areas (FIBUA)"[802] defined by the witness Thomas as "clearing of a built-up area on a house-by-house area"[803], usually with automatic weapons and grenades. The Defence recognised that such a tactic often results in many victims, the number of which may even exceed that of the hostile soldiers. The Defence submitted however that those civilian victims should be considered "collateral casualties"[804] and that such an attack could be legal in certain circumstances. That is an incorrect interpretation of Witness Baggesen's statements to the Trial Chamber. He said that on the contrary there could be no justification for the death of so many civilians[805]. Furthermore, General Blaškic himself acknowledged in his oral evidence that the tactic normally used by

[798] The Defence based its statement on, *inter alia,* a situation report issued by the Military intelligence services of the Vitez Brigade on 10 April 1993 (D192) and which claimed that units of the Fourth Battalion of the 325th Mountain Brigade of the ABiH were to be found in Ahmici, Šantici and Nadioci. Defence Submissions, book VI, p. 268.
[799] Witness Blaškic, PT pp. 21389-21390.
[800] D268.
[801] Witness Blaškic, PT p. 19224.
[802] Defence Brief, book VI, p. 281.
[803] Defence Brief, book VI, p. 281.
[804] Defence Brief, book VI, p. 282.
[805] Witness Baggesen, PT of 22 August 1997 p. 2001.

professionals avoided all combat operations inside villages[806]. The witness Landry, who was an ECMM monitor from February to August 1993, also explained that in "this kind of cleansing operation, especially for an area of tactical significance […], you would destroy certain buildings or houses, […] those areas which contain[ed] some sort of military munitions but it was quite usual […] to actually go ahead and burn a village"[807]. He went to Ahmici on 16 April and noted however that there was no longer any military presence there in the evening of 16 April[808] whereas that morning he had noticed a high concentration of HVO troops on the main roads linking Vitez and Zenica[809]. According to that witness: "if this village did have some tactical importance, perhaps it would have been for the HVO to be able to consolidate their position and to maintain some sort of observation post or stop post for the military operations"[810]. And he added: "it is very difficult for me to say from a military perspective, to say what was the military reason to carry out such a carnage"[811].

407. The Trial Chamber also notes that much of the evidence contradicted the Defence submission that the ABiH forces were preparing for combat. Witness Abdullah Ahmic, *inter alia*, described the armed Muslim units present in the Ahmici area in April 1993 to the Trial Chamber. According to his testimony, the territorial defence was starting to organise in the area and consisted of about 120 men[812] whose main task was to carry out night watches[813]. According to that witness, their participation was purely voluntary and there was no disciplinary sanction for those who failed to take their turn on guard[814]. It was therefore a sort of civil defence[815] rather than an army strictly speaking. The members of the territorial defence were very badly equipped and most of them were dressed as civilians and did not think of themselves as soldiers[816]. There was no barracks in Ahmici[817]. Witness

[806] Witness Blaškic, PT pp. 22941-22942. According to General Blaškic: "there is no commander whatever who would agree to planning an operation and forget the fact that it would be fighting in the centre of a village".
[807] Witness Landry, PT pp. 7515-7516. The Witness Thomas made the same comment, PT of 24 September 1997 p. 2633.
[808] Witness Landry, PT pp. 7508-7509.
[809] The two main roads were a mountain road and a road through the valley. Witness Landry, PT pp. 7508-7509.
[810] Witness Landry, PT pp. 7516-7517.
[811] Witness Landry, PT pp. 7515-7516.
[812] Witness Abdullah Ahmic, PT pp. 3720-3721 and 3788-3789.
[813] Witness Abdullah Ahmic, PT p. 3721.
[814] Witness Abdullah Ahmic, PT pp. 3831-3833.
[815] Witness Abdullah Ahmic, PT pp. 3788-3789.
[816] Witness Abdullah Ahmic, PT pp. 3720-3721 and 3787-3789. See also Witness Kavazovic (PT of 27 August 1997 pp. 2354-2355 and 2452-2453) who stated that he joined the TO voluntarily and nonetheless thought of himself as a civilian when he was not in uniform. In fact, he only wore his uniform during the day and in the evening went back home and did not exercise any official function. In other words, he thought of himself as a soldier when he was in uniform and as a civilian when he was not.

Hadzihasanovic confirmed this information, stating that owing to the lack of men and of equipment, and in particular of barracks, the only armed presence in the village of Ahmici and those nearby was a territorial defence unit from Zenica in case of a Serb parachute attack[818]. The Trial Chamber notes moreover that the HVO had already disarmed the Muslim forces in these villages in October 1992, following the conflicts which occurred when a roadblock was erected by Muslim forces on the main Busova~a to Vitez road at Ahmici.[819]

408. The international observers who gave evidence before the Trial Chamber unanimously confirmed that those villages had not prepared for an attack. According to the ECMM monitors, there were no Muslim troops stationed in Ahmici[820]. Colonel Stewart stated that on 15 and 16 April, he saw no ABiH formation ready to carry out an attack in the Lašva Valley[821]. He did, however, receive numerous reports suggesting a reinforced HVO presence shortly before the events[822].

409. Lieutenant-Colonel Thomas, UNPROFOR commander at the material time, went to Ahmici on 17 April 1993 and stated that he saw no evidence suggesting that there had been a conflict between two separate military entities, nor any evidence of resistance such as trenches, sandbags or barbed wire indicating the presence in the village of an armed force ready for combat[823]. Furthermore, the bodies he saw were not in uniform[824] and not a single weapon was found in the destroyed buildings[825]. On the contrary, there were women and children amongst the bodies strewn on the ground[826]. The witnesses Watters[827], Bower[828], Stewart[829], Landry[830], Parrott[831], Kujawinski[832] and Ellis[833] stated that they had seen the same

---

[817] Witness Abdullah Ahmic, PT pp. 3802-3803.
[818] Witness Had`ihasanovic, PT pp. 23221-23225.
[819] P647: report submitted by the then Colonel Blaškic to the authorities in Mostar on 21 October 1992.
[820] PT p. 23699; witness Baggesen, PT of 22 August 1997, pp. 1923-1924.
[821] Witness Stewart, PT, p. 23755.
[822] Witness Stewart, PT, p. 23756. Witness Landry, PT pp. 7508-7509, corroborated that evidence.
[823] Same evidence as that of witness Baggesen, PT of 22 August 1997, pp. 1931-1932.
[824] Evidence confirmed, *inter alia*, by witness Kujawinski, PT pp. 4112-4113.
[825] Witness Thomas, PT of 24 September 1997 pp. 2583-2588 and 2645-2650.
[826] Witness Kujawinski, PT pp. 4112-4113.
[827] PT pp. 3639-3640.
[828] PT pp. 9361 and 9405. The witness stated, *inter alia*, that he had not seen any actual trench systems or any military installations.
[829] PT p. 23864.
[830] Witness Landry, PT pp. 7508-7509.
[831] Witness Parrott, PT pp. 5046-5047.
[832] Witness Kujawinski, PT p. 4121.
[833] Witness Ellis, PT of 30 September 1997 p. 3115.

thing. In its second periodical report on the human rights situation on the territory of the former Yugoslavia, the Commission on Human Rights even found that "by all accounts, *including those of the local Croat HVO commander and international observers,* this village contained no legitimate military targets and there was no organised resistance to the attack"[834]. The accused himself admitted before the Trial Chamber that the "villagers of Ahmi}i, that is Bosniak Muslims," had been the victims of the attack without there having been any attempt to distinguish between the civilian population and combatants[835].

410. The Trial Chamber is therefore convinced beyond any reasonable doubt that no military objective justified these attacks.

ii) The discriminatory nature of the attack

411. Although the village of Ahmici had no strategic importance which justified the fighting, it was however of particular significance for the Muslim community in Bosnia. Many imams and mullahs came from there. For that reason, Muslims in Bosnia considered Ahmici to be a holy place[836]. In that way, the village of Ahmici symbolised Muslim culture in Bosnia. The witness Watters was certain that Ahmici had been chosen as a target for that reason[837].

412. The eyewitnesses who saw the attack all describe the same method of attack[838]. It began between 05:00 hours and 06:00 hours, that is to say when the inhabitants were asleep or at their prayers. Woken by a detonation caused by artillery fire[839], the inhabitants did not attempt to defend themselves but hid in their houses, most of them seeking refuge in their cellars. Some time after the artillery shots, soldiers organised in groups of between five and ten[840] went into each Muslim house shouting insults against the Muslims, referring to them as

[834] E/CN.4/1994/4 (19 May 1993), P184, p. 4, para. 14 (emphasis added).
[835] Witness Blaškic, PT pp. 18609-18610.
[836] PT p. 23589; witness Watters, PT pp. 3634 and 3453-3454.
[837] Witness Watters, PT pp. 3453-3454.
[838] In that connection, the Trial Chamber would point out that the references given in the context of describing the facts were not at all exhaustive. The evidence cited here better reflected what the Trial Chamber heard during the trial.
[839] Witnesses Abdullah Ahmic (Ahmici), PT pp. 3728-3729; Fatima Ahmic, PT pp. 3980-3982; Djula Djidic (Šantici), PT p. 4329; G, PT p. 3854; Baggesen, PT of 22 August 1997 pp. 1911-1912 (machine guns and shells).
[840] Witnesses G, PT pp. 3855-3856; Cazim Ahmic, PT of 1 October 1997 pp. 3142-3143; Pjanic, PT pp. 4445-4446.

"balijas"[841]. The groups of soldiers sometimes forced the inhabitants out of their houses, without however allowing them the time to dress. Most of them were still in their night-clothes, some not even having had time to put anything on their feet before fleeing[842]. The soldiers killed the men of fighting age at point blank range and set fire to the Muslims' houses and stables with incendiary bullets, grenades[843] and petrol[844]. Some houses were torched before their inhabitants even had a chance to get out.

iii) Arrests

413. Some inhabitants were transferred to the school in Dubravica[845]. According to the Commission on Human Rights, "approximately 150 Muslims were rounded up and detained for sixteen days in the Braca Ribara school in Dubravica. […] The vast majority of those detained were women and children"[846].

iv) Murders of civilians

414. Most of the men were shot at point blank range. Several witnesses described how the men of their families had been rounded up and then killed by Croatian soldiers[847]. To cite only a few examples, the witness Abdullah Ahmic described how, after having lost his father and his brother, he was himself severely wounded by a bullet[848]. The witnesses Nura Pezer

[841] Witnesses Cazim Ahmic, PT of 1 October 1997 pp. 3136-3137 and 3142-3143; Pjanic, PT pp. 4445-4446; M, PT pp. 4402-4404; Fatima Ahmic, PT pp. 3948-3949; G, PT pp. 3855-3856.
[842] Witnesses O (Šantici), PT p. 4505; F (Ahmici), PT pp. 3688-3689; Zec (Ahmici), PT pp. 4292-4293; I (Donji Ahmici), PT p. 4040; M, PT pp. 4404-4405; J (Zume), PT, p. 4072.
[843] Witnesses Fatima Ahmic, PT pp. 3946-3947; Elvir Ahmic, PT pp. 3248-3250; Nura Pezer (Zume), PT pp. 3885-3886; O, PT pp. 4502-4503; Akhavan, PT pp. 5284-5285.
[844] Witnesses Abdullah Ahmic (saw soldiers with cans of petrol) PT pp. 3729-3730; Akhavan, PT p. 5283; O, PT pp. 4503-4505; Fatima Ahmic, PT pp. 3946-3949, (saw petrol poured over curtains and sofas); the witness Nura Pezer (Zume) saw eight soldiers carrying cans of petrol to set light to houses (PT p. 3888); witness G, PT pp. 3858-3859; Djula Djidic (Šantici), PT pp. 4333-4334.
[845] Witness G, PT pp. 3867-3868; Elvir Ahmic, PT p. 3264.
[846] P184: report of the Commission on Human Rights, E/CN.4/1994/4, pp. 6-7, para. 21. That information was confirmed by the witness Abdullah Ahmic (PT pp. 3766-3768 and 3867) who said that a hundred or so Muslims were transferred to the school in Dubravica. See also P117.
[847] Witnesses O (whose husband was killed in front of her and her children) PT pp. 4503-4504; Hrinjic (Šantici), PT pp. 4013-4014; Pjanic (saw his son killed in cold blood after he had been forced to jump from a second floor window), PT pp. 4436-4437; Zec, PT pp. 4283-4284; Abdullah Ahmic, PT p. 3733; Fatima Ahmic, PT pp. 3987-3988; G, PT pp. 3860-3861. The witness Djula Dzidic, PT p. 4337 described the systematic murder of Muslim men in the village of Šantici.
[848] Witness Abdullah Ahmic, PT pp. 3733-3734.

and H stated that they had lost their son and husband during the attack[849]. The witness Zec saw his parents and two of his sisters murdered[850]. The international observers also saw bodies lying in the road[851], many of whom had been killed by a bullet to the head fired at short range[852].

415. Twenty or so civilians were also killed in Donji Ahmici as they tried to flee the village. The fleeing inhabitants had to cross an open field before getting to the main road. About twenty bodies of people killed by very precise shots[853] were found in the field. Military experts concluded that they had been shot by marksmen[854].

416. Other bodies were found in the houses so badly charred they could not be identified and in positions suggesting that they had been burned alive[855]. The victims included many women and children[856]. The British UNPROFOR battalion reported that: "[o]f the 89 bodies which have been recovered from the village, most are those of elderly people, women, children and infants"[857]. An ECMM observer said he had seen the bodies of children who, from their position, seemed to have died in agony in the flames: "some of the houses were absolute scenes of horror, because not only were the people dead, but there were those who were burned and obviously some had been - - according to what the monitors said, they had been burned with flame launchers, which had charred the bodies and this was the case of several of the bodies"[858].

417. According to the ECMM report, at least 103 people were killed during the attack on Ahmici[859].

[849] Witnesses Nura Pezer, PT pp. 3887 and 3897-3898; H, PT p. 3912. See also witness M, PT pp. 4401-4403.
[850] Witness Zec, PT pp. 4290-4293.
[851] See, *inter alia,* witness Watters, PT pp. 3386-3387 and 3442.
[852] Witness Parrott, PT p. 5022.
[853] P184, para. 15, p. 4 and witness Akhavan, PT pp. 5284-5285.
[854] PT p. 23589. See also the corroboration given by witness Akhavan, P184, para. 15 p. 4; witness Watters, PT pp. 3440-3441; Abdullah Ahmic, PT pp. 3825-3826.
[855] Report of the Commission on Human Rights, E/CN.4/1994/4, P184, p. 5, para. 18; witness Bower, PT pp. 9422-9423.
[856] Witness Watters, PT pp. 3386-3387 and 3442.
[857] P184, p. 5, para. 19.
[858] PT p. 23584.
[859] P242, "Report on inter-ethnic violence in Vitez, Busova~a and Zenica in April 1993", Appendix 2 to Annex N to ECMM H/S 720, 15 May 1993.

v) Destruction of dwellings

418. According to the Centre for Human Rights in Zenica, 180 of the existing 200 Muslim houses in Ahmici were burned during the attack[860]. The Commission on Human Rights made the same finding in its report dated 19 May 1993[861]. Prosecution exhibit P117 also showed that nearly all the Muslim houses had been torched, whereas all the Croat houses had been spared[862]. The witnesses Bower[863] and Casim Ahmic[864] confirmed the information. The witness Nura Pezer stated, on this point, that the day before the attack, she had seen a Croat from the village, named Ivica Vidovic, who, in the presence of another man, was pointing out the Croat houses and the Muslim houses[865]. The British UNPROFOR battalion reported having seen houses burning in Šantici on 17 April[866]. According to the ECMM observer Morsink, practically all the Muslim houses in the villages of Ahmici, Nadioci, Pirici, Sivrino Selo, Ga~ice, Gomionica, Gromiljak and Rotilj had been burned[867]. He stated that the houses had all been set alight with petrol and oil[868]. Likewise, according to the witness Watters, the Muslim houses had been systematically burned in Nadioci, Ahmici and Šantici[869]. The witness Baggesen, ECMM observer, reported that "it was a whole area that was burning"[870]. The report of the Joint Busova~a Commission, dated 21 April, showed that the ICRC had made enquiries that afternoon in Ahmici and noted that all the Muslims situated in Ahmici-west had left and that 90% of the houses together with the area's mosque, had been destroyed[871]. The report stated moreover that about 200 Muslim women and children were crowded into 3 houses in Novaci, and that half of them wished to be evacuated[872].

[860] P242, "Report on inter-ethnic violence in Vitez, Busova~a and Zenica in April 1993", Annex N to ECMM H/S 720, 15 May 1993. Meeting with the Centre for Human Rights in Zenica, p. N-2.
[861] P184, p. 5, para. 20.
[862] Witnesses Abdullah Ahmic, PT p. 3768; M, PT p. 4410; Elvir Ahmic, PT p. 3255-3256.
[863] This witness, a member of the Prince of Wales Regiment in Bosnia Herzegovina (2nd British Battalion which succeeded the Cheshire Regiment), who remained in the area from April to November 1993, stated that some houses, where Croats lived, remained intact. PT p. 9361.
[864] PT of 1 October 1997 p. 3136.
[865] Witness Nura Pezer, PT pp. 3883-3884.
[866] P242, "Report on inter-ethnic violence in Vitez, Busova~a and Zenica in April 1993", Annex N to ECMM H/S 720, 15 May 1993. Events reported by ECMM and UN, 13-30 April 1993, Annex R to ECMM H/S 720, 15 May 1993, p. R-3.
[867] Witness Morsink, PT pp. 9900-9901.
[868] Witness Morsink, PT pp. 9901-9902.
[869] Witness Watters, PT pp. 3602-3605.
[870] Witness Baggesen, PT of 22 August 1997 p. 1928.
[871] This information appears also in the report of the ECMM whose team accompanied the ICRC team. P242, "Report on inter-ethnic violence in Vitez, Busova~a and Zenica in April 1993", Annex N to ECMM H/S 720, 15 May 1993. Events reported by ECMM and UN, 13-30 April 1993, Annex R to ECMM H/S 720, 15 May 1993, p. R-7.
[872] P696: report of the Joint Busova~a Commission dated 21 April (witness Morsink), para. D.

vi) Destruction of institutions dedicated to religion

419. Several religious edifices were destroyed. The Defence did not deny the destruction of the mosque at Donji Ahmici or of the matif mesjid [873]at Gornji Ahmici. However, it did maintain that the reason for this destruction was that "the school and church in Ahmici became locations of fighting following the attack by the Fourth Military Police Battalion"[874].

420. Conversely, the Prosecutor contended that "both mosques were deliberately mined and given the careful placement of the explosives inside the buildings, they must have been mined after HVO soldiers had control of the buildings"[875].

421. The Trial Chamber notes at the outset that according to the witness Stewart, it was barely plausible that soldiers would have taken refuge in the mosque since it was impossible to defend[876]. Furthermore, the mosque in Donji Ahmici was destroyed by explosives laid around the base of its minaret[877]. According to the witness Kaiser, this was "an expert job" which could only have been carried out by persons who knew exactly where to place the explosives[878]. The witness Zec stated that he had heard a Croatian soldier speaking on his radio asking for explosives "for the lower mosque in Ahmici"[879]. The destruction of the minaret was therefore premeditated and could not be justified by any military purpose whatsoever. The only reasons to explain such an act were reasons of discrimination.

422. The Trial Chamber notes that that mosque had just been built. The inhabitants of Ahmici had collected the money to build it and were extremely proud of its architecture[880].

423. It is undeniable that the matif mesjid in Gornji Ahmici was destroyed[881]. The ECMM also noted the destruction of the mosque in the eastern quarter of the village[882].

[873] Mosque with no minaret. P47
[874] Defence Brief, book X, p. 490.
[875] Prosecutor's Brief, book V, p. 45.
[876] Witness Stewart, PT p. 23864.
[877] Witness Thomas, PT pp. 2645-2650; PT p. 23660.
[878] Witness Kaiser, PT p. 10663. See also witness Thomas, PT p. 2650.
[879] Witness Zec, PT p. 4286-4287.
[880] Witness Baggesen, PT of 22 August 1997 p. 1931; Abdullah Ahmic, PT pp. 3769-3770.
[881] See in particular P47/49, P47/77, P47/78, P47/80, and P47/81.
[882] P242, "Report on inter-ethnic violence in Vitez, Busova~a and Zenica in April 1993", Events reported by ECMM and UN, 13-30 April 1993, Annex R to ECMM H/S 720, p. R-7.

vii) Plunder

424. The soldiers also set fire to the stables and slaughtered the livestock[883] as the accused noted himself when he visited the site on 27 April[884]. Several Croatian soldiers were also alleged to have stolen money from private individuals. One member of the D`okeri was alleged to have seized DM 2000 and jewels belonging to Elvir Ahmic[885]. Two HVO soldiers were alleged to have taken money from Haris Hrnjic's wallet after he had surrendered[886]. It was also alleged that DM 400 were taken from the body of Alija Ahmic[887]. The witness Casim Ahmic[888] also accused a group of five Croatian soldiers of stealing DM 300-400. The victims of these thefts were always Muslim. Finally, the witness Akhavan reported seeing HVO soldiers looting the houses that were still intact in Ahmici when he visited the village on 1 May 1993[889].

c) Conclusion

425. The methods of attack and the scale of the crimes committed against the Muslim population or the edifices symbolising their culture sufficed to establish beyond reasonable doubt that the attack was aimed at the Muslim civilian population. An ECMM observer noted that, further to his visit to Ahmici on 22 April 1993, "apart from the systematic destruction and the religious edifices that had been dynamited, what was most striking was the fact that certain houses remained intact, inhabited even, and one wondered how those islands had been able to survive such a show of violence"[890]. Several international observers who went to the village a few days after the attack on Ahmici reported finding "a phenomenon of a ferocity and a brutality almost impossible to describe"[891]. The accused went to Ahmici on the morning of 27 April and noted the scale of the damage: houses burnt, livestock slaughtered and an entirely deserted village[892]. He conceded, both to the Commission on Human Rights

[883] Witness Zec, PT pp. 4288-4289; M, PT pp. 4405-4407; Pjanic, PT pp. 4435-4436; Elvir Ahmic, PT p. 3253.
[884] Witness Blaškic, PT pp. 19036-19037.
[885] Witness Elvir Ahmic, PT p. 3263.
[886] Witness Haris Hrnjic, PT p. 4010-4011.
[887] Witness Abdullah Ahmic, PT p. 3759.
[888] PT p. 3142.
[889] Witness Akhavan, PT pp. 5286-5287.
[890] PT p. 23584.
[891] Witness Thomas, PT pp. 2672 and 2674.
[892] Witness Blaškic, PT pp. 19036-19037.

representatives on 5 May 1993[893] and in his testimony[894] before the Trial Chamber that crimes had been committed in Ahmici.

426. Witness Baggesen said of the attack on Ahmi}i: "We think that this operation, military operation against the civilian population was to scare them and to show what would happen to other villages and the Muslim inhabitants in other villages if they did not move out. So I think this was an example to show"[895], especially given what Ahmici symbolised for the Muslim community.

427. The Commission on Human Rights noted that all the Muslims had fled from Ahmici. Only a few Croats had remained[896]. According to the witness Kajmovic, the Ahmici Muslim population had completely disappeared in 1995[897]. According to the Centre for Human Rights in Zenica, the four Muslim families living in Nadioci had been exterminated[898]. As an overview, the Muslim population in the canton of Vitez dropped from 41.3% in 1991[899] to 33.83% in 1995[900], a reduction that also saw very great movements of population within the area. According to witness Kajmovic, only 80 Muslims, that is to say 0.49%, were still living in the territory of the Vitez municipality in 1995[901].

428. All that evidence enables the Trial Chamber to conclude without any doubt that the villages of Ahmici, Pirici, Šantici and Nadioci had been the object of a planned attack on the Muslim population on 16 April 1993.

d) General Blaškic's responsibility

429. The accused himself did not commit any of the crimes set out above. He could therefore be liable only for ordering, planning, inciting or otherwise aiding and abetting the

[893] P 184; witness Marin, PT p. 13631.
[894] Witness Blaškic, PT pp. 19025-19026: "I toured a part of the village. I saw burned houses in the village, and there was still some embers. They may have been burned during the night or set fire to. I saw the minaret and mosque and other signs of destruction".
[895] Witness Baggesen, PT of 22 august 1997 p. 1935.
[896] P184, p. 7, para. 20.
[897] Witness Kajmovic, PT p. 5680. See also P199.
[898] Charles Macleod, P242, "Report on inter-ethnic violence in Vitez, Busova~a and Zenica in April 1993", Annex N to ECMM H/S 720, 15 May 1993, Meeting with the Centre for Human Rights in Zenica, p. N-1. According to the 1991 census, Nadioci had 42 Muslim inhabitants.
[899] P46.
[900] P207.
[901] P199.

crime, in accordance with Article 7(1) of the Statute. By default, he could, however, be convicted on the basis of Article 7(3) if it was established that he was the superior of the perpetrators of the crimes and that he did not take the necessary measures to prevent such acts or to punish the perpetrators thereof.

430. The Prosecutor claimed that the accused gave the order to attack the villages of central Bosnia on 16 April 1993 to the *Vite{ka* brigade, to the Nikola Šubic Zrinski unit, to the Military Police Fourth Battalion, including the D`okeri special unit, to the Vitezovi and to the Domobrani of the villages in question. Irrespective of their nature - written, oral, express or implied - those orders instructed all the units to destroy and burn the Muslims' houses, to kill the Muslim civilians and to destroy their religious institutions.[902].

431. As indicated earlier, the accused himself considered that, in view of its scale and very short duration, the Ahmici massacre must have been organised[903]. He further considered that the order to commit that crime could not have come from the Commander of the Military Police Fourth Battalion. The Commander did not have sufficient standing, in his view, to take the initiative for an operation of such magnitude alone. Consequently, the accused admitted that the order came from a higher authority in the hierarchy[904].

432. The accused did however deny that he gave an order capable of justifying such acts. In support of that claim, the Defence submitted three orders given by the accused the day before the attack[905] which it put forward as being "defence" orders following a report from the HVO Busova~a intelligence services, dated 14 April 1993, notifying him of a probable attack by the ABiH on Vitez from Zenica, through Vrohdine and Ahmici[906].

[902] Prosecutor's Brief, book VII, pp. 26-27.
[903] Witness Blaškic, PT pp. 19029 and 22020.
[904] Witness Blaškic, PT pp. 19155-19156. The Defence suggests that the order could have been given by Ivica Rajic (Witness Blaškic, PT pp. 19156-19157).
[905] D267, D268, D269.
[906] Defence Brief, book I, pp. 13 and 272. P242 "Report on inter-ethnic violence in Vitez, Busova~a and Zenica in April 1993", Annex G to ECMM H/S 720, 15 May 1993.

i) The orders issued by the accused

433. The first order submitted is dated 15 April and was allegedly transmitted to the units concerned at 10:00 hours[907]. It was addressed to the Military Police, the Vitezovi and to the HVO operative zone brigades[908]. The "preparatory combat command"[909] asked the brigades to keep themselves in readiness to carry out a decisive defence operation and instructed the Military Police to ensure that the Muslim forces did not block the main road linking Travnik to Busova~a[910]. The accused also ordered the Vitezovi to keep themselves in readiness for any intervention and the HVO brigades to defend their area. The reasons relied upon in this order were: combat operations to prevent terrorism aimed at the HVO and ethnic cleansing of the region's Croats by extremist Muslim forces.

434. The second order is dated 15 April at 15:45 hours[911]. According to the witness Marin[912], that "order for action" was given in response to information from the HVO intelligence services pointing to a general mobilisation in Zenica of Muslim forces assumed to be arriving via Mount Kuber[913]. The accused further referred to the abduction of Commander Totic by the ABiH at Zenica on 15 April, which allegedly caused a great frenzy in the population and was described by the accused as "pure terrorism" designed to eliminate the Commanders of the HVO brigades[914]. The enemy designated in that order was the seventh Muslim brigade which the order accused of being responsible for a new wave of terrorist activities. That order was addressed to the *Vite{ka* brigade of the HVO and to the Military Police Fourth Battalion. They were asked to ensure that "combat readiness […] be increased to the highest level" and that they were ready "to take defensive action". Paragraph 2.4 states that those units must show perfect co-ordination and promote team work while ensuring that the members of the command of all the units are completely interchangeable over a 24 hour period. The order further called on those units to ensure total control of the consumption of all products, particularly fuel and to take measures to rationalise consumption. The accused also required there to be organised a system of uninterrupted command at all levels and regular reports to be submitted to him at 18:00 hours and 06:00

[907] D267.
[908] Witness Marin, PT pp. 12275-12276.
[909] Witness Marin, PT p. 12266.
[910] Witness Marin, PT pp. 12273-12274.
[911] D268
[912] The witness Bla{ki} testified that he had dictated the order to the witness (witness Bla{ki}, PT pp. 18481-18482)
[913] Witness Marin, PT p. 12282.

hours each day, together with special reports where events so warranted. Even though the order was not an order to carry out combat operations, the accused admitted that action could be taken by virtue of that order in particular to combat terrorist activities[915].

435. A third order, which again referred to "planned terrorist activities" on the part of the enemy and to the risk of its engaging in an open offensive designed to destroy everything Croatian, was given on 16 April at 01:30 hours and addressed to the *Vite{ka* brigade and to the Tvrtko independent units[916]. That "combat command order to prevent attack activity by the enemy" ordered Commander Cerkez and the Tvrtko independent units "to occupy the defence region, blockade villages and prevent all entrances to and exits from the villages". The order stated that "in the event of open attack activity by the Muslims", those units should "neutralize them and prevent their movement with precise fire" in counterattack. That order indicated that the forces of the Military Police Fourth Battalion, the N. Š. Zrinski unit and the civilian police would also take part in the combat[917]. The order required the forces to be ready to open fire at 05:30 hours and, by way of combat formation, provided for blockade (observation and ambush), search and attack forces[918]. General Blaškic stated in that order that "the commander of the Vitez HVO brigade, Mario Cerkez is personally responsible to me for the performance of this mission". The order closed by saying that the "instruction given previously [should be] complied with", although the Trial Chamber was not able to establish what that instruction was.

436. A cease-fire was agreed between the representatives of the ABiH and the HVO on about 12:30 hours on 16 April under the aegis of UNPROFOR[919], following which General Blaškic ordered the N.Š.Zrinski brigades to stop fighting immediately[920].

---

[914] Witness Bla{ki}, PT pp. 18478-18479.
[915] Witness Bla{ki}, PT pp. 18481-18482.
[916] D269.
[917] D269, para. 3: "in front of you are the forces of the IV Police VP, […] to the right of you are the forces of the Unit N. [. Zrinski, and to the left of you are the forces of the civilian police".
[918] D269, para. 2: "Time of readiness at 0530 hours on 16 April 1993
Combat formation
Blockade forces (observation, ambush)
Search forces
Forces for offensive activity".
There is no reference number for the order on this exhibit.
[919] D278: Report sent by Bla{ki} to the Croatian Defence Council (the HVO) in Mostar on 16 April at 15:30 hours covering this agreement. A joint declaration was moreover signed on 20 April by the representatives of the Croats and of the Muslims in the municipality of Vitez (P86).
[920] D279; Witness Marin PT pp. 12322-12323.

ii) The accused ordered the attack of 16 April 1993

437. The Trial Chamber finds that the third order[921], dated 16 April at 01:30 hours is very clearly an order to attack. That order, which was addressed in particular to the *Vite{ka* brigade, also expressly mentions other units, such as the Military Police Fourth Battalion, the forces of the N. Š. Zrinski unit and the forces of the civilian police which were recognised on the ground as being those which had carried out the attack. The time to commence hostilities which is set out in that order corresponds very precisely to the start of fighting on the ground. Admittedly, the order is presented as "a combat command order to prevent attack activity by the enemy". Accordingly, the attack purportedly formed part of a defensive rather than offensive strategy. However the Trial Chamber has already concluded that no military objective justified that attack. It is therefore unnecessary here to go back over the reasons given for the issue of that order, which, in any event, remains an order to attack. The Trial Chamber considers that that evidence sufficed to show that all those troops, acting in concert, attacked on the accused's order.

438. Apart from the fact that nothing has been adduced to substantiate the claim that an imminent attack justifying General Blaškic's attack order, the question is whether the troops acted beyond the accused's orders.

iii) The accused ordered an attack aimed at the Muslim population

439. The Defence submitted that all the crimes committed in the Ahmici area were carried out by the Military Police, in particular its special unit, the D`okeri. According to the Defence, the accused did not control those troops, who, at the time when the crimes were committed, came directly under the Ministry of Defence of the Croatian Community of Herceg-Bosna in Mostar.

440. The Trial Chamber pointed out in this regard that the evidence established on the contrary that the crimes committed were not the work of the Military Police alone but were also ascribable to the regular HVO units, in particular, the *Vite{ka* Brigade and the Domobrani.

[921] D269.

441. The trial showed that, in addition to the regular units placed under the direct authority of the accused, a number of independent units were acting in the territory of the Central Bosnia Operative Zone, units for which the accused denied responsibility. It is therefore necessary to appraise the control exercised by the accused over those different units.

a. The accused's control over the *Vite{ka* brigade and the Home Guard (Domobrani)

442. There is no doubt whatsoever that the *Vite{ka* Brigade was directly answerable to the accused[922]. The order of 16 April, which triggered the attack, again stated this[923].

443. The Domobrani also were under the direct orders of the accused[924]. On 6 April at 10:00 hours, he called a meeting of all the Domobrani commands of the villages of Travnik, Vitez, Novi Travnik, Kreševo, Fojnica, Kakanj, Vareš, Žep~e, Zavidovi}i, Maglaj and Usora so that they could work out the arms and materiel which each had at its disposal. The accused stated again, in the order calling the meeting, that "the commands of the Domobrani units are responsible to me for the conduct of the command"[925].

444. The Defence however depicted the Croatian troops in Bosnia as bands of "armed villagers", very much influenced by local alliances. The lack of qualified officers, of training and of equipment for the troops as well as a inadequate communication system would explain that such crimes could have been committed. Thus without challenging the accused's *de jure* authority, the Defence submitted that he had no *de facto* authority over his troops[926].

---

[922] See in particular D241.
[923] The accused said again in order D269 that "Personally responsible to me for the execution of the given assignment is the commander of the HVO Brigade Vitez, Mario Cerkez".
[924] See in particular:
P769: document issued by the Croatian Defence Council in Mostar (signed by General Milivoj Petkovic) dated 8 February 1993 setting up the national guard. Paragraph 1.7 of that document states: "after being formed, the units shall be under the command of the appropriate operations zone commander". According to that document, the Domobrani were formed in order to support the regular army forces.
P770 (p. 3): this document, issued by the accused and dated March 1993, stated that the Domobrani were directly responsible to the operational zone commander.
P773, order of Zvonko Vukovic dated 13 March 1993, para. 2: "Command and leadership of the home guard shall be exercised by the provisional commands of the home guard units of the municipalities. These units and commands shall be under the command of the commander of the Central Bosnia Operative Zone".
[925] P777.
[926] Defence Brief, book VI, p. 538.

445. The accused explained that the *Vite{ka* brigade was in the process of being created[927]. The brigade had been set up by an order of 12 March 1993 appointing Mario Cerkez as commander[928] and was not yet very well organised as of 16 April.

446. Yet the accused congratulated himself on several occasions on how perfectly well organised and controlled his troops were[929]. The witness Mujezinovic also stated that in Vitez, the HVO had very well organised and very well armed troops[930]. According to several international observers, the HVO had very precise organisation charts defining everyone's tasks and areas of responsibility. The hierarchy seemed very clear, with each unit having a number, an area of activity and a grade[931]. The witness Bower stated that the military personnel were generally well trained since they had been trained in the JNA, which provided for two years of military service[932].

447. The Defence further maintained that the accused had insufficient means of communication. Being blocked in the basement of Hotel Vitez, he claimed he had only two telephones and a packet-transmission system, which did not enable him to maintain constant contact with all the troops deployed on the ground.

448. According to the witness Duncan, on the contrary, the accused had a fax machine available to him together with access to a local telecommunication network[933]. He also had access to an intelligence network and a Motorola satellite communication system[934]. An ECMM observer accordingly found that the communications facilities available to the Bosnian Croat army were generally relatively good[935]. According to the witness Morsink, the HVO controlled all the communication centres covering the municipality of Vitez and decided who could have access to the network[936]. According to that witness, the HVO

[927] Witness Blaškic, PT p. 18646.
[928] D241. Witness Blaškic, PT p. 22044.
[929] See in particular P647, dated 21 October 1992: "the activities of our forces are organised, fully co-ordinated and controlled by the command"; P456/32, dated 7 May 1993: "command and control function properly and all missions precede in a planned fashion according to orders, with detailed knowledge of the situation, full co-ordination and control".
[930] Witness Mujezinovic, PT of 20 August 1997 p. 1742.
[931] PT p. 23689.
[932] Witness Bower, PT p. 9782.
[933] Witness Duncan PT pp. 9062-9063.
[934] Witness Duncan PT p. 9062-9063.
[935] PT p. 23712.
[936] Witness Morsink, PT pp. 9908-9909. According to the witness Baggesen (PT of 21 August 1997, pp. 1878-1879), the postal services were under ABiH control in Zenica and HVO control in Travnik, Vitez and Kiseljak.

officers carried mobile radios[937] of the sort carried by Croatian soldiers during the attack on 16 April. Witness Baggesen, for his part, mentioned that radio equipment was present at the Hotel Vitez [938].

b. The control exercised by the accused over the special units

449. According to the Defence, a number of "special" units acted outside the accused's *de jure* and *de facto* control. The accused claimed that those special units had been set up on the initiative of the Defence Department of the HZHB and answered directly to that ministry. Although they could be deployed throughout the territory of the community of Herceg-Bosna, in particular in the Central Bosnia Operative Zone, these units remained under the sole command of the civilian authority of the Ministry of Defence of the HZHB. Thus, according to the accused, '[n]one of these units were ever part of the Central Bosnia Operative Zone structure and its organisation […] They were never under the command of the main headquarters of the Croatian Defence Council"[939].

450. This in fact tallies with what the accused said to General Hadžihasanovic, according to whom the special units of the HVO and the Military Police were under the command of someone higher up in the chain of command[940].

451. The Trial Chamber first notes that it is inconsistent with military principles for the commander of an operational area not to have authority over all the troops acting within the confines of his area of responsibility. Witness Baggesen explained, for example, that "there was no doubt that those troops were commanded by General Blaškic. This is because, normally in the army, when a person is in command of a specific area of responsibility, he commands *ipso facto* all the military units located in that area"[941]. The accused himself admitted that that organisation was contrary to the principle of unity of command, albeit that principle was applied in the JNA[942].

[937] Witness Morsink, PT p. 9908-9909.
[938] Witness Baggesen, PT of 22 August 1997, p. 1895.
[939] Witness Bla{ki}, PT pp. 18105-18106.
[940] Witness Had`ihasanovi}, PT p. 23236.
[941] Witness Baggesen, PT of 22 August 1997, pp. 1901-1902.
[942] Witness Bla{ki}, PT p. 18070: "in the JNA, you had unity of command and unity of responsibility, which meant that in one single area there is a single commander and that he commands all forces. For instance, a commander of a brigade in the JNA had direct command over the military police company". See also PT p. 18074.

452. The Trial Chamber further finds that the accused gave orders with regard to the special units. Thus, on 26 September 1992, the accused gave an order providing for training for the special units[943]. Accordingly, an order of 16 January 1993 was addressed to several special units, including the Vitezovi, and to the Military Police[944]. Order 01-1-217/93 dated 18 January 1993 was addressed to all commands of all the brigades of the HVO and to the independent units of the Central Bosnia Operative Zone[945]. A number of orders of March 1993 were addressed to the HVO brigades and to the special units, in particular the Vitezovi, and the Military Police Fourth Battalion[946]. General Blaškic stated as follows in one of his orders: "brigade and *independent unit* commanders shall be responsible to me for carrying out the order"[947]. Other orders, dating from June 1993, which were addressed by the accused to the independent units, were submitted to the Trial Chamber[948]. The three orders submitted by the Defence as described above constitute further examples.

c. <u>The accused's control over the Military Police</u>

453. The military policy, which was established on 10 April 1993, was organised in battalions. The Fourth Battalion was in the Central Bosnia Operative Zone.

454. According to an operations report of the military policy for January to June 1993[949], the administration and organisation of the battalions of the military policy were reorganised in January 1993[950]. It was decided in particular to form light assault companies. One of those was the D`okeri unit, which operated in the Central Bosnia Operative Zone[951]. The report

[943] P456/2 and witness Marin, PT pp. 12901-12903.
[944] P456/6 of 16 January 1993, 11:40 hours. General Bla{ki} explained that those units had been temporarily assigned to him for those combats on the basis of an order from General Petkovi} dated 15 January 1993 (Witness Bla{ki}, PT pp. 18156-18157)
[945] D208; witnesses Bla{ki}, PT p. 18125 and Marin PT, p. 12090.
[946] D42, D211, P456/16; witnesses Bla{ki}, PT p. 18358; Marin PT p. 12110: order of 17 March 1993 sent to commanders of the HVO brigades, to independent units, to the Vitezovi, to the Military Police in Vitez and to the HVO civilian representatives (for information).
D358: order of 18 March so as to ensure that ECMM had freedom of movement. That order was addressed to ECMM representatives in Zenica for information, to commanders of the HVO brigades, to commanders of independent units, to the commander of the Military Police Fourth Battalion and to the person in charge of the police department in Travnik (witness Bla{ki}, PT p. 18366)
[947] D42, D211, P456/16 (emphasis added).
[948] P422, point 4: request to HVO brigades and to independent units, including the Military Police, the Vitezovi and the @utis, to report any developments in the situation on the ground and on the efforts taken to achieve a cease-fire agreement (witness Morsink, PT, p. 9883).
P423 and P443: orders given by Bla{ki} to all the commanders of HVO brigades, to the Military Police Fourth Battalion and to the special unit of the Vitezovi (witness Morsink, PT, p. 9884).
[949] P457.
[950] P457, p. 17.
[951] P457, pp. 17-18.

states that those units "participate[d] in the most difficult war operations achieving great success, mostly with great sacrifice"[952].

455. For all that, although they acted in the CBOZ, the Fourth Battalion and its D`okeri special unit were allegedly not placed under the sole authority of General Blaškic. That formation was placed under a dual chain of command as from 13 December 1992[953], whereby the accused gave the orders for certain tasks and the administration in Mostar for others. The Defence based this claim in particular on the rules on the formation and the activity of the administration of the Military Police[954]. According to Articles 9 and 10 of that document, the accused was entitled to give orders relating to routine operational tasks of the Military Police, but was not entitled to give them combat orders, this being only within the competence of the defence department[955]. The accused further explained that the Military Police were placed under the authority of Pa{ko Ljubi~ic, who himself was answerable to the accused, but only for routine tasks, not including combat operations[956].

456. Apart from absence of authority under the regulations, the Defence has argued that the Commander of the Fourth Battalion, Pa{ko Ljubi~ic, had considerable power in the region and did not obey the accused's orders[957]. Accordingly, it is alleged that the accused had no *de jure* or *de facto* authority over the Military Police Fourth Battalion and the D`okeri.

457. The accused further explained that he could not in any event take disciplinary measures against its members[958].

458. In reliance principally on the testimony of witness Marinko Palavra, the Commander of the Fourth Battalion as from 1 August 1993, the Prosecutor argued on the contrary that the distinction referred to in these rules had become obsolete at the material time and that the

[952] P457, p. 18.
[953] Date of a meeting in Vitez between General Petkovi}, Colonel Bla{ki} and the representatives of the Mostar administration, in the presence of the commander of the Military Police Fourth Battalion, Pa{ko Ljubi~i}.
[954] D523.
[955] Article 9: "in carrying out daily operative military police tasks, Military Police units shall be subordinated to the commander of the Military District or the commander of the HVO in the highest position in the sphere of activity of a Military Police unit".
Article 10: "Military Police shall carry out tasks and duties relating to: […] participation in carrying out combat assignments along the front line on the orders of the Minster of Defence of the Croatian Republic of Herceg-Bosna".
Witness Bla{ki}, PT, pp. 19231-19232. See also PT pp. 24016-24018.
For the Defence arguments, see the Defence Brief p. 40.
[956] Witness Bla{ki}, PT pp. 19231-19232.
[957] Defence Brief, book V, p. 201.

accused had *de facto* all the powers of command over the Fourth Battalion and the D`okeri special unit[959].

459. The accused acknowledged that those troops could be "attached" to him[960] for *ad hoc* missions pursuant to specific requests[961]. He explained in this connection that certain rules provided that a commander of high rank in the military hierarchy could reinforce the units under him with supplementary units put at his disposal for *ad hoc* operations. According to the accused, the high command therefore defined how "a superior command [could] reinforce certain subordinate units with additional units, and during the period in which these combat operations [were] carried out, [how] such reinforcements [we]re subordinated to the commander of the overall operation"[962].

460. The accused acknowledged that the Military Police had been "attached" to him in that way as from 15:00 hours on 15 April on the order of the Chief of the General Staff[963]. General Petkovic thereby gave an order that "all forces of the Military Police" and the special units should be attached to him in the event of an "all-out attack"[964]. Consequently, those units were subordinated to him only for the duration of the combat mission. According to the accused, the attachment took effect as soon as the commander of the attached unit placed himself under the orders of the commander of the unit to which his unit was detached[965], that is to say, as regards the events in question and the Military Police, as from 11:42 hours on 16 April 1993[966]. The accused therefore claimed that the Military Police committed the crimes before they were attached to him.

461. The Trial Chamber observes in this regard that the accused admitted in another connection that he had a meeting in the afternoon of 15 April with the commanders of the Military Police Fourth Police, the Vitezovi and the Tvrtko special unit. He allegedly informed them during that meeting that General Petkovic had given orders that they should be attached

---

[958] Witness Bla{ki}, PT p. 19138.
[959] Prosecutor's Brief, book II, p. 54.
[960] The question of whether these troops were "attached", "assigned" or "subordinate" was debated at length before the Trial Chamber.
[961] Witness Bla{ki}, PT p. 19138.
[962] Witness Bla{ki}, PT p. 18110.
[963] Witness Bla{ki}, PT p. 18625 and 21930.
[964] Witness Bla{ki}, PT pp. 18624-18625.
[965] Witness Bla{ki}, PT p. 18626.
[966] Witness Bla{ki}, PT p. 18626.

to him[967]. He allegedly also read them the two orders D267 and D268, which, according to the accused, had not yet sent to the units concerned[968].

462. The Trial Chamber further notes that Vladimir [antic, the commander of the first battalion of the Military Police in active service[969], had an office in the Vitez Hotel, as the accused himself mentioned[970].

463. A number of witnesses moreover stated, that the accused had *de facto* authority over the Military Police Fourth Battalion. According to witness H.H., Pa{ko Ljubicic received orders from the accused and never refused to carry them out[971]. According to witness Baggesen, "the only one who had command over the Military Police was Mr. Blaškic"[972]. That witness testified to the attempt by the Commander of the Travnik Military Police to abduct Dzemo Merdan as a protest against the slowness of the inquiry carried out into the abduction of four officers of the Stjepan Tomaševic brigade. When requests made by UNPROFOR and the ECMM remained unsatisfied, the commander in question abandoned this forthwith after receiving an order by telephone from the accused.

464. As far as his power to impose sanctions was concerned, the accused explained that he did not have the power directly to punish individuals guilty of abuses. On the contrary, he had to contact the soldier's commander in the event of an abuse. It was then for the commander of the unit concerned to take the necessary measures. According to his own statements, the accused had in parallel to contact the Chief-of-Staff, who was then to contact the person responsible in the Defence Department[973]. That obligation on the accused to report any abuse committed to the competent authorities sufficed, as has been stated above[974], to establish command responsibility.

465. That evidence confirmed that General Blaškic had command authority over the Military Police Fourth Battalion and its special D`okeri unit during the period in question.

---

[967] Witness Bla{ki}, PT pp. 21930-21932. The detachment order was issued at 15:00 hours and the meeting was held at 17:00 hours.
[968] Witness Bla{ki}, PT pp. 21948-21949.
[969] Witness Bla{ki}, PT p. 22052.
[970] Witness Bla{ki}, PT pp. 21937-21938.
[971] Witness HH, PT pp. 6917-6918.
[972] Witness Baggesen, PT of 22 August 1997, p. 1907.
[973] Witness Bla{ki}, PT pp. 19505-19506.
[974] See above, discussion of Article 7 (3) of the Statute.

466. The Trial Chamber therefore cannot accept the argument that the accused did not have control over the troops acting on the ground.

iv) The massive and systematic nature of the crimes as proof that they were committed on orders

467. Lastly, the idea that these crimes could have been committed by uncontrolled elements is impossible to reconcile with the scale and uniformity of the crimes committed on 16 April in the municipality of Vitez. The Trial Chamber adopts the opinion expressed by witness Morsink, a professional soldier acting as an observer for the ECMM at the material time:

> I believe that one or two minor cases may have been committed by small, uncontrolled groups, but the large-scale and systematic manner in which these events took place, entire villages being burned, and other villages, we saw that it was the Muslim houses that were systematically selected, and we saw that the same type of events were taking place at the same time period in different locations, and it would be impossible, in my opinion, for this to have been carried out by uncontrolled groups[975].

The planned nature and, in particular, the fact that all these units acted in a perfectly co-ordinated manner presupposes in fact that those troops were responding to a single command, which accordingly could only be superior to the commander of each of those units.

468. In this connection, it is worth recalling that that was the opinion expressed by the accused himself[976].

v) The content of the orders

469. The Trial Chamber observes that the reasons adduced in order to justify the order of 16 April (D269) are based on propaganda designed to incite racial hatred. Order D267, for instance, alleges that extremist Muslim forces intended to carry out "ethnic cleansing" on the Croats in the region. Order D269 refers to the intention of the Muslim forces to destroy everything Croatian. Several international observers have stated that those words gave a very

[975] Witness Morsink, PT, p. 9878.
[976] Witness Bla{ki}, PT p. 19029, pp. 19155-19156 and p. 22020.

exaggerated picture as compared with the real situation[977]. According to an ECMM observer: "the fighting began without doubt on the initiative of the HVO, claiming that it was only answering a systematic anti-Croat attitude. It was obviously an attempt to seize and secure 'Croatian provinces'"[978].

470. The Trial Chamber further notes that those orders recommend the modes of combat that were actually used on the ground on 16 April. In this way, order D268 stresses co-ordination among the different units. It also asks the forces to take care to ensure that they have total control over fuel consumption, which was one of the main weapons used by the Croatian forces during the attack on 16 April. It is hard to image how the systematic use of petrol as a combat weapon could have been possible in that period of fuel shortage without the approval of the military and/or civilian authorities[979]. Order D269 refers to blocking (observation and ambush), search and offensive forces. The main (mountain and valley) roads between Vitez and Zenica were in fact blocked by HVO blocking forces on the morning of 16 April[980], in particular by the *Vite{ka* brigade[981]. According to witness Landry, the area was subjected to a so-called "cleansing" operation, which was carried out by establishing a cordon outside the village by means of check points on the roads leading to the villages, whilst lighter, more mobile troops, notably search troops, carried out the "cleansing" of the village[982].

471. The attack started with artillery fire and the Trial Chamber recalls that, according to the accused's own statements, the use of the artillery was placed under his direct command[983].

472. The testimony of the victims of the massacres tended to show that the civilians were killed in response to orders. Accordingly, witness Fatima Ahmic testified that she heard an HVO soldier in a van say by walkie-talkie: "Yes, the operation was successful, they are lying

[977] See especially P414: special report of the ECMM dated 8 June 1993 regarding Travnik; P415: special report of the ECMM dated 19 June 1993, specifically regarding the events at Gu~a Gora; witness Morsink, PT, pp. 9840-9842.
[978] PT p. 23575 and P741 (ECMM report dated 1/5/93), p. 8.
[979] Witness Bla{ki}, PT p. 22031.
[980] Witness Landry, PT pp. 7508-7509.
[981] Their use was confirmed by order D284 delivered in the night of 16 to 17 April by the accused to the *Vite{ka* Brigade; witness Bla{ki}, PT pp. 18644-18646.
[982] Witness Landry, PT p. 7515.
[983] Witness Bla{ki}, PT pp. 18521-18522.

in front of houses like pigs"[984]. When she asked them why they had killed her son, the soldiers said that "it was the *force majeure* who ordered it…the orders came from above"[985]. Witness Abdullah Ahmic testified that he saw a soldier say to another soldier who refused to kill a man: "do as you are ordered"[986]. Witness Cazim Ahmic testified to what an officer, Ibrica Kupre{kic, said to him: "go and run for your life. No Muslim may stay here. If they learn that I let you go, I will be executed"[987]. According to witness F, the D`okeri and the Vitezovi said that they had been given orders to kill all the Muslims so that Muslims would never ever live there again[988]. Witness A said that he heard a person named Cicko speak in these terms with regard to the events of 16 April: "everyone is washing their hands now as regards Ahmici, but we all know that Blaškic has ordered that no prisoners of war were of interest to him, only dead bodies"[989].

473. The Trial Chamber further finds that, in seeking to locate the centre of operations when the attack began on 16 April, the Cheshire Regiment found that it was near a sports stadium close to the Vitez Hotel[990].

vi) <u>The risk taken by the accused</u>

474. Even if doubt were still cast in spite of everything on whether the accused ordered the attack with the clear intention that the massacre would be committed, he would still be liable under Article 7(1) of the Statute for ordering the crimes. As has been explained above[991], any person who, in ordering an act, knows that there is a risk of crimes being committed and accepts that risk, shows the degree of intention necessary (recklessness) so as to incur responsibility for having ordered, planned or incited the commitment of the crimes. In this case, the accused knew that the troops which he had used to carry out the order of attack of 16 April had previously been guilty of many crimes against the Muslim population of Bosnia. The order given by the accused on 4 November 1992 expressly prohibiting the troops from burning the houses[992] proves this. Moreover, the accused admitted before the Trial Chamber

[984] Witness Fatima Ahmi} PT pp. 3959-3960.
[985] Witness Fatima Ahmi} PT p. 3955.
[986] Witness Abdullah Ahmi} PT p. 3836.
[987] Witness Cazim Ahmi} PT of 1 October 1997 p. 3144.
[988] Witness F.
[989] Witness A, PT p. 5444.
[990] Witness Parrott, PT pp. 5014-5015.
[991] See above, discussion on Article 7 of the Statute.
[992] Order of 4 November 1992, D347.

that he had been informed about the crimes committed by troops acting in the area for which he was responsible. In particular, the disciplinary reports were forwarded to him[993]. Likewise, the accused stated that he asked the Commander of the main general staff and the head of the Defence Department in January 1993 that the independent units be withdrawn from the Central Bosnia Operative Zone on account of the troubles they were causing[994]. Furthermore, the accused was aware that there were criminals acting in the ranks of the Military Police[995]. Witness Marin, who was a subordinate of the accused at the time, himself acknowledged that there were criminals in the ranks of the Military Police[996]. Admittedly, the accused did give an order on 18 January 1993 for the attention of the regular units of the HVO, the independent units and the Military Police Fourth Battalion instructing them to make sure that all soldiers prone to criminal conduct were not in a position to do any harm[997]. However, that order remained without effect, even though the accused issued a reminder on 6 February 1993[998]. On the contrary, according to the witness Marin the situation deteriorated thereafter[999]. The Defence also presented an order issued by the accused on 17 March 1993 requiring the commanders of all HVO brigades to identify their members who were prone to criminal conduct[1000]. Nevertheless, the Trial Chamber finds that the accused did not ensure himself, before calling on their services on 16 April, that measures had indeed been taken so as to be sure that those criminal elements were not in a position to do any harm. On the contrary, according to the accused it was not until he received the letter from Colonel Stewart on 22 April 1993 that he realised that he could not rely on the reports sent to him by the Military Police commander Ljubicic[1001]. It was not until 30 April that the accused asked the commander of the main staff to replace Paško Ljubicic and to change the structure of that unit[1002].

475. The Trial Chamber has further established that the Vitezovi and the Military Police Fourth Battalion took part in the fighting at Busova~a in January 1993[1003] on the accused's orders.

[993] See D204; witness Bla{ki}, PT pp. 18122-18123.
[994] Witness Bla{ki}, PT pp. 18126-18127.
[995] Witness Bla{ki}, PT pp. 18395-18396.
[996] Witness Marin, PT pp. 12080-12081.
[997] Witness Bla{ki}, PT pp. 18125-18126; witness Marin, PT pp. 12089-12090.
[998] D208.
[999] Witness Marin, PT p. 12091.
[1000] D42, D211 and P456/16: order of 17 March 1993; witness Marin, PT pp. 12103-12105.
[1001] Witness Bla{ki}, PT pp. 19144-19145.
[1002] Witness Bla{ki}, PT pp. 19144-19145.

476. The Trial Chamber further notes that the accused used the Military Police for subsequent operations. In particular, the attack launched against Grbavica on 7 and 8 September 1993 was carried out by the Military Police Seventh Battalion, which took over from the Military Police Fourth Battalion. Consequently, the members of that unit were the same as those who had committed the crimes at Ahmici, as the defence witness Marin acknowledged[1004]. Admittedly, the accused stated that he had removed the criminal elements once he had obtained overall control of that battalion on 23 July 1993. The accused testified that he sent off a report on 30 April concerning breaches of his orders by the Military Police and asked that disciplinary proceedings be taken against them. He further asked the Supreme Commander of the headquarters general staff to discharge the Commander of the Military Police, Paško Ljubicic, from his duties. He further claimed that he repeated this request on 29 May and 10 June[1005]. The accused claimed that during the months of June and July, he urged the main staff to make the Military Police subordinate to the Central Bosnia Operative Zone. This request was only granted on 23 July. Paško Ljubicic was then discharged from his duties and replaced by Marinko Palavra. According to the accused, it was not until this time that elements of the Military Police with criminal records were dismissed[1006].

vii) <u>The accused knew that crimes had been committed</u>

477. As the Trial Chamber has shown above, since he had reason to know that crimes had been, or were, about to be, committed, as the hierarchical superior of the forces in question, the accused was bound to take reasonable measures to forestall or prevent them. Having regard to the criteria laid down by the Trial Chamber[1007] and the facts as established by it, the Trial Chamber considers that the accused knew that crimes had been or were about to be committed and took no action as a consequence. The Trial Chamber construes the reluctance that he showed in letting the truth about the crimes committed be known as additional evidence of his guilt under Article 7(1) of the Statute.

478. The Trial Chamber is unable to believe the accused's assertions that he was unaware until 22 April 1993 that crimes had been committed. In fact, the accused maintained that he

---

[1003] See discussion above.
[1004] Witness Marin, PT pp. 13705-13706.
[1005] Witness Bla{ki}, PT pp. 19140-19144.
[1006] Defence Brief, book V, pp. 336-337.
[1007] See above, discussion of Article 7 of the Statute.

had had no knowledge of the extent of the crimes committed until he received a letter from Colonel Stewart dated 22 April[1008], to which he replied forthwith proposing that a committee of inquiry be set up[1009]. Apart from the fact that it is difficult to believe that the accused had no foreknowledge of an attack planned in an area coming within his area of responsibility only a few kilometres from his headquarters, several pieces of evidence disproved the accused's assertions. The accused maintained that he was blocked in the basement of the Vitez Hotel[1010], to which his headquarters had been transferred on account of the shelling of Vitez and Stari Vitez and which, for safety reasons[1011], he had been unable to leave until 27 April. The accused claimed that he had no means of observing for himself the extent and exact location of the fighting and that he was also not informed by his team on account of the lack of adequate means of communication: General Blaškic asserted that at that time he had available to him only two telephones and the packet transmission system[1012]. The only information which he purportedly had on 16 April came in the report forwarded by the commander of the Military Police, Paško Ljubicic, at 11:42 hours which mentioned neither murders of civilians nor the torching of houses[1013].

479. In the first place, the Trial Chamber casts doubt on the claim that the accused remained in the Vitez Hotel throughout the day on 16 April. Indeed, Colonel Stewart attempted to visit him there at 10:00 hours on 16 April and was informed that Colonel Blaškic was not there[1014]. The ECMM also tried to contract the accused on 16 April and was told that he was not at the headquarters[1015]. Be that as it may, Defence exhibit D278 shows that at least two of the accused's colleagues left the Vitez Hotel during the day of 16 April to negotiate a cease-fire with the Muslim forces at UNPROFOR headquarters at Bila[1016]. The accused said that when they returned, the two HVO representatives told him that they had

[1008] Witness Bla{ki}, PT pp. 23761-23762.
[1009] P456/57 and D340: letter from General Bla{ki} sent on 23 April to Colonel Stewart and in which the accused claimed to be ready to assemble a committee of enquiry, to look into the events at Ahmi}i especially, and asking that a meeting be held with the commander of the third corps of the ABiH in order to prevent the conflict from degenerating again. See witness Marin, PT p. 12452.
[1010] Witness Bla{ki}, PT p. 22049-22050.
[1011] According to the witness Marin the HVO did not have any armoured vehicle (witness Marin, PT pp. 12294-12295).
[1012] Witness Bla{ki}, PT pp. 22052-22053. What he said was corroborated by witness Marin, PT p. 12294-12295. As regards the accused's arguments see also the Defence Brief, book VI, p. 15 and 95.
[1013] Witness Bla{ki}, PT pp. 18622-18623.
[1014] Witness Stewart, PT p. 23743.
[1015] Witness Baggesen, PT of 22 August 1997, p. 1920. According to those witnesses his absence was not surprising since " it is normal during a military operation that the commander is at the forward headquarters so he can be closer to the front and command his soldiers."
[1016] D278: report on the meeting with the Muslim forces. "Upon the initiative of the British Battalion at the UNPROFOR headquarters in Bila, a meeting was held today with enemy representatives". Marko Prskalo and Piskuli} were the HVO representatives. Witness Marin, PT pp. 12318-12319.

seen some corpses of civilians at the side of road, but did not mention the torched houses. The accused's explanation for this was that the HVO representatives were travelling in armoured vehicles with very small windows[1017]. For his part, witness Landry described the situation in the following terms: "we could see that there was an immense fire coming from that area"[1018]. Likewise, witness Baggesen stated that "the whole sky was illuminated like a big fire"[1019]. The Trial Chamber notes how hard those two accounts are to reconcile with each other, to the say the least

480. Moreover, a superior of the accused testified to the Trial Chamber that the accused had informed him by telephone on 18 April that some members of the Military Police had behaved in an uncontrolled manner and committed crimes[1020]. That very day, General Petkovic had sent the accused an order asking in particular that "4. reliable information should be gathered concerning the protagonists of the conflict, the expulsion of the civilian population, the killing of captured soldiers and civilians, the torching of houses and other buildings"[1021], which order the accused caused to be forwarded to the units under his orders[1022].

481. Further, on 20 April the accused attended a meeting at Zenica during which Dzemo Merdan, the ABiH chief-of-staff, protested about the massacre at Ahmici, where he maintained that 500 civilians had been killed. Witness Marin testified to the Trial Chamber that the accused had told him upon his return from that meeting about the crimes committed in Ahmici[1023]. The accused claimed that he had then immediately proposed setting up a joint investigating commission but the ABiH representatives had rejected this offer[1024]. The accused also stated that on that very evening he had ordered all the reports received by the command to be collected and that any report which might confirm Dzemo Merdan's allegations be identified[1025]. However, no order requesting additional information about those events was sent to the Military Police Fourth Battalion[1026]. Furthermore, the accused made no mention of such information in the document that he sent on the following day, 21 April,

[1017] Witness Bla{ki}, PT pp. 22050-22053.
[1018] Witness Landry, PT p. 7515.
[1019] Witness Baggesen, PT of 22 August 1997, p. 1926.
[1020] PT pp. 24100 and 24024-24027.
[1021] P316; witness Marin, PT p. 13620.
[1022] P318; witness Marin, PT p. 13621.
[1023] Witness Marin, PT. pp. 13617-13618.
[1024] Defence Brief, book V, p. 311.
[1025] Witness Bla{ki}, PT p. 22125.
[1026] Witness Marin, PT pp. 13617-13618.

to Dario Kordic, Ignac Ko{troman and Ivica Zeko[1027]. His explanation for that omission was that Dzemo Merdan's accusations had remained vague. He further told the Trial Chamber that the civilian protection units had received the order to gather up the bodies at Ahmici on 21 April 1993[1028]. Although the accused asserted that that order came from the civil authorities and not from himself, it is hard to believe that such an undertaking could have been carried out without the accused's having been informed of the scale of the massacre.

482. Several international observers who attempted to go to the scene of the massacre stated that they encountered resistance from the HVO soldiers in control of the area. An ECMM team attempted to go to Ahmici on the morning of 16 April but was prevented from doing so by the HVO soldiers manning a roadblock at the entry to the village[1029]. Moreover, the team from the Commission on Human Rights came under fire from snipers[1030]. In addition, HVO soldiers sought to bar Colonel Stewart's passage when he came to visit the scene on 22 April[1031].

483. There is, moreover, a surprising discrepancy between what the accused said both before international observers and the international community and what he has said *vis-à-vis* the Croatian public. On 22 April he gave an immediate answer to Colonel Stewart's letter in which he stated that he was "ready to send immediately the investigating commission to the village of Ahmici"[1032]. When he met Colonel Stewart on 24 April at 13:00 hours, he accepted that crimes had been committed in the zone for which he was responsible[1033] and, according to the witness Stewart, seemed devastated by the scale of the massacre[1034]. However, in his report to the Croatian authorities dated the same day, the accused showed no regret, remorse or anger over the crimes committed on 16 April. On the contrary, the accused complained that the international community had given a biased presentation of the events thus proving its anti-Croatian attitude[1035]. Likewise, in an interview in the magazine *Danas* that appeared on 5 October 1993[1036], General Blaškic stated that the HVO were set up in Ahmici and that in any event, those crimes were the responsibility of the HOS which had a large majority of

[1027] Witness Marin, PT p. 13629.
[1028] Witness Bla{ki}, PT pp. 22126-22131. According to witness Zec, a lorry is alleged to have collected the bodies from Ahmi}i six days after the massacre, that is to say 22 April (witness Zec, PT pp. 4303-4304).
[1029] Witness Baggesen, PT of 22 August 1997, pp. 1929-1931.
[1030] P184, p. 2 para. 4.
[1031] Witness Stewart, PT p. 23776.
[1032] P456/57; witness Marin, PT. pp. 13653-13654.
[1033] Witness Stewart, PT p. 23762.
[1034] Witness Stewart, PT pp. 23765-23766 and 23866; P742.
[1035] P466/58; witnesses Stewart, PT pp. 23766-23767 and Marin PT pp. 13662-13663.

Muslims among its troops, and of the armed forces of the MOS (Muslim troops). He went on to assert that the massacres in Ahmici had been "staged and skilfully shown to […] the EC observer mission [and] Bob Stewart"[1037].

484. It is also difficult to see how these crimes which the accused himself thought had been organised and ordered at a high level of the military hierarchy, could have escaped his knowledge, and that of Dario Kordic, Ignac Koštroman or Anto Valenta. After all, the accused held a press conference condemning the Ahmici massacre in the presence of these people on 27 April 1993[1038].

485. Other witnesses stated that they had heard about it before 22 April. In particular, the president of the HDZ in Vitez, Anto Valenta, stated that he had been informed of it on 17 April by a report from the Central Bosnia Operative Zone. That report noted the destruction of buildings and the deaths of 70 to 80 civilians whose ethnic origin was not specified[1039]. However, according to the accused, at that time, Anto Valenta used the office of Franjo Nakic, Chief-of-Staff, which was in the Hotel Vitez[1040]. A meeting between Mate Boban and President Izetbegovic was allegedly scheduled for 18 April to discuss the situation in central Bosnia[1041]. One of General Blaškic's superiors said that he had been informed of the scale of the massacre on 18 April[1042] and that on 19 April General Morillon had told him in Medjugorje that the Military Police had been recognized at the scene[1043]. The Defence witness DY, who was not in the military, said that he had heard about the events at Ahmici the day they occurred or the next day[1044].

viii) The accused did not take the necessary measures

486. The Defence explained that the accused had given a whole series of orders after hearing of the Ahmici massacre on 22 April[1045]. In particular, on 18 April, he gave the order

[1036] P380.
[1037] Witnesses Bell, PT p. 17638; Duncan, PT pp. 9057-9058.
[1038] P572; witness Bell, PT pp. 17620-17622.
[1039] PT p. 24090.
[1040] Witness Blaškic, PT pp. 19177-19178.
[1041] PT p. 24091.
[1042] P695; witness Stewart, PT pp. 23769-23770.
[1043] PT p. 24091.
[1044] Witness DY, PT p. 23457.
[1045] D284, D318, D334, D336, D338, D353, D361, D362, D364, D365, D370, D374, D376, P456/27.

to all HVO units in his command zone not to torch homes and he transmitted that order to UNPROFOR and to the ECMM[1046].

487. However, the accused only gave these "preventive" orders after the order to attack on 16 April[1047]. In that connection, the Trial Chamber agrees with the Prosecutor that "the preventative nature of prior punishment was lost […]. His subordinates clearly understood that certain types of illegal conduct were acceptable and would not lead to punishment"[1048]

488. The efforts made by the accused to see that the crimes committed were investigated and the perpetrators prosecuted and punished were also hardly convincing. In particular, the accused did not attempt to contact the commander of the Military Police, Paško Ljubi~ic, although he suspected from the outset that the Military Police had committed the crimes[1049]. Nor did he take any measures to seal off the area and ensure that evidence was preserved, despite being required to do so by Article 60 of the military discipline regulations. He did not, for example, order an autopsy on any body before it was buried[1050], and did not attempt to interview any survivors although they were detained at the school in Dubravica.

489. The accused stated that he sought the help of international organisations, especially the ECMM and UNPROFOR, in carrying out the investigation and that he never obtained this help[1051]. However, international observers who gave evidence before the Trial Chamber challenged this version of events. The witnesses Stewart and Morsink testified that the accused had never sought their help[1052]. On the contrary, Colonel Stewart complained on 24 April that no investigating commission had been set up yet: "No-one has yet taken responsibility, and no commission has been formed; This is a political catastrophe for the HVO; The HVO wants to destroy the Muslims"[1053].

490. Colonel Stewart once again asked about the setting up of an investigating commission at a meeting with Anto Valenta and Tihomir Blaškic on 4 May 1993[1054]. The witness Stewart

[1046] P456, P55.
[1047] D269.
[1048] Prosecutor's Brief, book VII, p. 158/2.
[1049] Witness Blaškic, PT pp. 18935-18937 and 18948. See also PT pp. 24100-24101.
[1050] Witness Marin, PT pp. 13679-13682.
[1051] Witness Blaškic, PT p. 19168; Defence Brief, p. 29.
[1052] Witness Stewart, PT p. 23760.
[1053] P456/58; witness Marin, PT pp. 13655-13656.
[1054] Witnesses Stewart, PT pp. 23747 and 23769; Blaškic, PT pp. 19177-19178.

stated that no investigation had been initiated before his departure on 10 May[1055]. There was another meeting on 9 May in the presence of his replacement, Colonel Duncan, then Commander of the Prince of Wales Regiment in Central Bosnia[1056]. The accused allegedly explained to Colonel Duncan that the crimes committed at Ahmici had been carried out either by Muslims wearing HVO uniforms or by Muslim extremists who were out of control, or even by Serbs who could have infiltrated the HVO controlled zone[1057]. The witness Duncan said he asked once again for an investigation to be set up and 25 May was agreed as the date for completion of the investigation and publication of the results[1058]. According to the witness Duncan, that investigation was never carried out[1059]. Likewise, the witness Morsink stated that the ECMM had never received the findings of the investigation which was supposed to have been undertaken into the events in Ahmici[1060].

491. Thus there were many occasions on which the accused could have asked for help from the international authorities. However, far from having been asked for such help, the authorities had, on the contrary, had to get in touch with the accused and to insist on an investigation being carried out.

492. The accused maintained that as early as 24 April, he had asked the SIS representative, Anto Sliškovic, to carry out the investigation. However, no evidence was adduced of this request. General Blaškic testified that he had made the request orally[1061], through the intermediary of his subordinate Marin[1062]. The witness Marin did not mention such an order however. His request was in any event never fulfilled. He testified that he again met the SIS representative on 8 May and reiterated his request. It was only on 10 May that the accused gave a written order[1063], that is to say after the bodies had been buried, the surviving eyewitnesses released from the Dubravica detention centre and Colonel Stewart replaced by Colonel Duncan. That order asked Anto Sliškovic to submit his report by 25 May at the

[1055] Witnesses Stewart, PT p. 23750.
[1056] Witness Duncan, PT pp. 9038-9039.
[1057] Witness Duncan, PT pp. 9055-9056. The accused has always denied saying this. However, what he is alleged to have said here echoes what he said in *Danas* magazine on 5 October 1993 (P380).
[1058] Witness Duncan, PT pp. 9055-9056.
[1059] Witness Duncan, PT pp. 9056-9057.
[1060] Witness Morsink, PT pp. 9858-9859.
[1061] The accused explained in that connection that it was very rare for him to give a written order to his closest colleagues: "these exceptional situations […] were telling proof in their own right that I was not fully satisfied with the action that I ordered previously" (witness Blaškic, PT pp. 22922-22923).
[1062] Witness Blaškic, PT p. 22924. Marin appeared as a defence witness and gave evidence to the Trial Chamber for several weeks.
[1063] P456/59 and D341 (same document); witness Blaškic, PT p. 19248.

latest[1064]. The report submitted on that date was, even in the view of the accused, "not complete"[1065]. The report concluded in fact that the attack had been initiated by Muslim forces whose artillery shots were alleged to have been the cause of most of the material damage suffered by these villages. The report also indicated the presence of "men in black" whose military affiliation was not specified and who were deemed to be responsible for the pillage and the murders. According to the report, this was the action of Muslim forces who had thus sought to draw the international community's attention to the suffering of the Muslim population and consequently get an international force into the region. According to the report, there had been sixty or so victims of the fighting in Ahmici, which figure is much below the finding of the ECMM on 15 May 1993[1066]. It was only on 17 August that the accused asked the SIS to carry out a second investigation and to finish it by 30 September at the latest[1067]. The accused however testified that that report had never been communicated to him, Anto Sliškovic having informed him on 30 September that the results of the investigation, including the names of the guilty parties, had been transmitted to the SIS in Mostar and that the affair was no longer any of his concern[1068].

493. He had another chance in 1994. The accused, then appointed HVO Deputy Chief-of-Staff, was put in charge, from June to October 1994, of a major campaign against ordinary crime, known as operation "Pauk" or "Spider". He broadened the scope of the operation in order to be able to investigate war crimes. In that context, he ordered an SIS officer to check whether a criminal report on the subject of Ahmici had actually been submitted. He claimed that the SIS officer told him that he was not able to find the criminal report giving the names of the suspects[1069]. The Trial Chamber further notes that the accused had not shown that he had made any sustained efforts to recover the report before appearing before the Tribunal, although that report was the item of evidence most likely to exonerate him. Consequently, these findings cast doubt on the very existence of such a report.

494. In sum, no soldier has ever been convicted for the crimes at Ahmici, Pirici, Šantici and Nadioci. The Defence witness Marin recognised that no member of the HVO or of any other unit of the Croatian forces had ever been punished for crimes committed against the

[1064] Witness Blaškic, PT pp. 19248-19250.
[1065] D608 and D342. See also PT p. 24112.
[1066] That report found that there had been at least 103 victims.
[1067] Witness Blaškic, PT pp. 19296-19300 and 19617-19628; D342 and D343; witness Marin PT p. 13700-13701.
[1068] Witness Blaškic, PT pp. 19741.
[1069] Witness Blaškic, PT pp. 19640.

Muslim population or their possessions after the Ahmici massacres[1070]. The witness Morsink testified that he had never seen the HVO authorities carry out investigations into the atrocities against the Muslims[1071]

495. In the final analysis, the Trial Chamber is convinced that General Blaškic ordered the attacks that gave rise to these crimes. In any event, it is clear that he never took any reasonable measure to prevent the crimes being committed or to punish those responsible for them.

2. The events in Vitez and Stari Vitez

496. In April 1993, Croatian political and military forces controlled the town of Vitez[1072]. Access to the town was controlled by roadblocks. Towards mid-April, tension between the two communities had increased considerably in Vitez as in the whole of the Lašva Valley[1073]. On the eve of the conflict hatred towards the Muslim minority in Vitez was exacerbated, generalized and borne by the media. As the Special Rapporteur of the Commission on Human Rights explained in his 19 May 1993 report:

> relatively minor incidents involving Croats are exaggerated and sensationalised. It is reported that in the days prior to the attack on Muslim civilians in the area of Vitez and the Lašva valley, a prominent local member of the Croatian Democratic Union (HDZ) suggested on the radio, without any apparent justification, that a massive attack by government forces was imminent, that "Mujahidin" forces would destroy the entire town and commit atrocities against women and children. All Muslim residents in Vitez were identified as conspirators in this plan, portrayed as "Islamic fundamentalists" and threatened with death. This is reported to have added greatly to the climate of fear and hatred in the area[1074].

a) The attacks committed as from 16 April 1993

497. The political and social events of 1992 and the start of 1993 led to the conflict breaking out between the HVO and ABiH troops in Vitez and Stari Vitez as from 16 April 1993. The headquarters of the two parties to the conflict were then a few hundred meters apart. General Blaškic's headquarters were in the Hotel Vitez and the Territorial Defence

[1070] Witness Marin, PT p. 13640.
[1071] Witness Morsink, PT pp. 9851-9852.
[1072] P45C and P53.
[1073] Witness Thomas, PT of 24 September 1997, p. 2618 ; witness Watters, PT pp. 3381-3382; witness McLeod, PT p. 6361.

headquarters in Stari Vitez were in the Muslim quarter of the town. That proximity only increased the frequency of confrontations between the two warring factions.

498. Three major events marked the period covered by the indictment: the attack of 16 April 1993, the booby-trapped lorry attack of 18 April 1993 and the attack of 18 July 1993. Those tragic events stood out because of their sheer scale and brutality[1075].

499. On 16 April 1993, between 05:00 hours and 06:00 hours, various areas of the town of Vitez such as Kolonija (town centre), Rijeka, Stari Vitez (old town and Muslim quarter) and Novaci were shelled and then came under fierce infantry fire[1076]. Many houses were looted and torched[1077], Muslims were arrested, segregated on the basis of their age and sex and the men of fighting age were driven to detention areas or to the battle front lines[1078]. Near Stari Vitez, in the vicinity of a building known as "the yellow building"[1079], a group of soldiers armed with explosives attacked several cafés belonging to Muslims and looted and torched Muslim houses[1080]. They opened fire on Stari Vitez from the roof of the "yellow building" and later in the day they arrested Muslims[1081]. The attacks carried on the next day with fierce artillery fire, in particular on Stari Vitez and Novaci[1082].

500. On 18 April 1993, a tanker containing 500 kilograms of explosives[1083] exploded near the Stari Vitez mosque. The conflagration, which was unusually intense[1084], caused major material damage and claimed a great many victims[1085].

[1074] P184.
[1075] Witness Thomas PT of 24 September 1997, p. 2629.
[1076] Witness Djidic, PT of 29 July 1997, pp. 1199-1200; witness Pezer, PT of 19 August 1997, p. 1562; witness Mujezinovic, PT of 20 August 1997, pp. 1695-1697; witness Beso, PT of 26 August 1997, pp. 2280-2281; witness Thomas PT of 24 September 1997 p. 2650; witness D, PT of 24 September 1997, pp. 2687-2689; witness Zeco, PT of 26 September 1997, p. 2808; witness E, PT of 29 September 1997, p. 2908-2910.
[1077] Witness Djidic, PT of 29 July 1997, pp. 1207-1208; witness Pezer, PT of 19 August 1997, pp. 1563-1565; witness Thomas, PT of 24 September 1997 p. 2656; witness D, PT of 24 September 1997, pp. 2694-2730; witness E, PT of 29 September 1997, pp. 2908-2910; witness Ellis, PT of 30 September 1997 p. 2979 and pp. 3042-3045; witness Kujawinski PT pp. 4106-4107; witness Parrott, PT p. 5045-5046.
[1078] Witness Djidic, PT of 29 July 1997, pp. 1201-1202; witness Pezer, PT of 19 August 1997, p. 1568-1569; witness Beso, PT of 26 August 1997, pp. 2280-2288; witness Kavazovic, PT pp. 2255-2259; witness D, PT of 24 September 1997, pp. 2695-2702; witness Zeco, PT of 26 September 1997, p. 2810-2812; witness E, PT of 29 September 1997, pp. 2912-2913; witness N, PT pp. 4470-4471; witness Hunter PT pp. 5132-5133; witness Kajmovic, PT pp. 5668-5669.
[1079] Witness Djidic, PT of 29 July 1997, p. 1223.
[1080] Witness Pezer, PT of 19 August 1997, pp. 1562-1566.
[1081] Witness Pezer, PT of 19 August 1997, pp. 1567-1569.
[1082] Witness Djidic, PT of 29 July 1997, pp. 1211-1213. Witness Thomas PT of 24 September 1997 pp. 2649-2650; witness D, PT of 24 September 1997, pp. 2691-2693; witness Kujawinski PT pp. 4126-4127.
[1083] P242, witness Watters, PT pp. 3635-3636.
[1084] Witness Thomas PT of 24 September 1997 p. 2590; Witness Zeco, PT of 26 September 1997, p. 2815.

501. As from 17 April 1993, and until the Washington accords of February 1994, Stari Vitez became a Muslim enclave and was under siege for ten months[1086]. The period was characterized by confrontations of varying intensity[1087], in particular by a violent attack on 18 July 1993[1088]. That day, a great many homemade weapons known as "baby bombs" were fired on Stari Vitez and killed many Muslims. That quarter of the town was also targeted by multi-tube rocket-launchers and mortars.

b) The widespread or systematic nature of the attacks

502. Several facts bear witness to the organized and planned nature of the aforementioned attacks on Vitez and Stari Vitez.

i) The 16 April 1993 attack

503. According to the witness Parrott, the soldiers involved in the 16 April 1993 operation on Vitez and Stari Vitez seemed "well organized" and "appeared to be using military […] tactics"[1089]. Indeed, the attack was organized into two separate phases in order to achieve maximum efficiency. First of all, it started with an artillery attack and was followed by an infantry attack with torching of houses and expulsion of the inhabitants[1090].

504. Several clues suggest that the attack was well prepared, in particular:

- increased control of the town by HVO forces[1091]: on 15 April, the witness Kavazovic saw groups of HVO soldiers in combat gear "who were blocking all the entrances to buildings"[1092] and explained that, on 15 April, he had been warned by a Croatian friend

[1085] Witness Djidic, PT of 29 July 1997, pp. 1214-1216. Witness Mujezinovic, PT of 20 August 1997, pp. 1697-1698; witness Zeco, PT of 26 September 1997, pp. 2816-2817; witness Watters, PT pp. 3403-3404; witness Hughes, PT pp. 4534-4535.
[1086] Witness Djidic, PT of 29 July 1997, pp. 1233-1234.
[1087] Witness Bower, PT pp. 9389-9390.
[1088] P708 ; Witness Djidic, PT of 29 July 1997, pp. 1238-1239.
[1089] Witness Parrott, PT pp. 5032-5033.
[1090] Witness Djidic, PT of 29 July 1997, pp. 1206-1207 ; witness Pezer, PT of 19 August 1997, pp. 1563-1570; witness Ellis, PT of 30 September 1997, pp. 2988-2989.
[1091] P45C, P53 ; witness Watters, PT pp. 3538-3539.
[1092] Witness Kavazovic, PT of 26 august 1997, pp. 3538-3539.

that "bad things were about to happen in Vitez"[1093]. That same day, the witness Pezer saw that access to the Vitez-Zenica road was closed and noted "unusual movements by HVO soldiers" and HVO members filling their vehicles with fuel[1094]. The witness Bower explained that the HVO controlled access to Stari Vitez[1095]. HVO soldiers were seen filling three tow trucks with bags of sand[1096]. Those bags were set out at the crossroads that led to the Hotel Vitez and in the old town[1097]. The witness S noticed the presence of snipers, machine guns and cannons, which were aimed at the two Muslim areas of Stari Vitez and Treskavica[1098]. Finally, on the day of the attack, the witness Ellis saw twenty or so soldiers wearing the HVO insignia at a checkpoint and more heavily armed than usual[1099].

- Preparation of the necessary equipment: the organizers of the attack used heavy, sophisticated weaponry which was "designed specifically for air defence"[1100]. Some witnesses saw a very large calibre anti-aircraft gun mounted on a vehicle and a very modern anti-tank weapon[1101].

- Creation of a system for regrouping soldiers and patrolling in small groups[1102].

ii) <u>The booby-trapped lorry attack of 18 April 1993</u>

505. Prosecution and Defence alike described this act as terrorism, designed principally to instil a feeling of terror in the target population[1103]. The Trial Chamber has no doubt that this terrorist operation was premeditated. The organisers had to acquire a considerable quantity of explosives, organize the transportation of the booby-trapped vehicle and plan where it was to

[1093] D53, p. 4.
[1094] Witness Pezer, PT of 19 August 1997, p. 1556.
[1095] Witness Bower, PT pp. 9375-9377. The witness added that to the west, the road which leads to Stari Vitez was blocked by a roadblock, explosives and landmines.
[1096] Witness S, PT pp. 4876-4877.
[1097] Witness S,PT pp. 4898-4900 and 4905-4906.
[1098] Witness S, PT pp. 4898-4900 and pp. 4905-4907.
[1099] Witness Ellis, PT of 29 September 1997, pp. 2970-2974.
[1100] Witness Ellis, PT of 30 September 1997, pp. 2988-2989.
[1101] P106 ; witness Pezer, PT of 19 August 1997, pp. 1555-1556; witness Ellis, PT of 30 September 1997, pp. 2987-2988.
[1102] Witness Ellis, PT of 30 September 1997, pp. 3113-3114. The witness Hughes noticed that there existed an efficient system of reconnaissance between the soldiers, with the probable aim of better recognizing one another. The HVO soldiers wore ribbons attached to the epaulettes of their uniforms, PT p. 4537.
[1103] Witness Thomas, PT of 24 September 1997, pp. 2646-2647.

be placed (near a mosque). This evidence was sufficient to show the operation had been planned.

iii) The 18 July 1993 attack

506. Darko Gelic, General Blaškic's liaison officer with UNPROFOR, admitted that HVO troops attacked Stari Vitez that day and that the attack had been planned. The attack bore the same hallmarks of planning as that of 16 April 1993, in particular the organisation of the operation into two phases[1104]. Darko Gelic also confirmed that the artillery barrage was the first phase of the attack[1105].

c) The civilian and Muslim character of the target populations

507. Generally speaking, the three attacks described above targeted the Muslim civilian population and were not designed as a response to a military aggression. At the very least, even if there had been such aggression, the assets and the method used could not be deemed proportionate to it. In each of the aforementioned events, the majority of the victims were civilians[1106], Muslim[1107](out of 101 civilians killed, 96 Muslims and 5 Croats were identified after the 16 April attack[1108]) and it seems obvious that men, women and children were attacked without distinction[1109].

i) The 16 April 1993 attack

508. The Defence maintained that "ABiH soldiers from Stari Vitez were continuously using civilian buildings for military purposes"[1110]and that the fighting occurred in the middle

[1104] Witness Djidic, PT of 29 July 1997, p. 1238.
[1105] P708.
[1106] Witness Thomas, PT of 24 September 1997, pp. 2656-2690 ; witness Bower, PT pp. 9490-9491 ; witness Whitworth, PT pp. 10376-10377.
[1107] Witness Pezer, PT of 19 August 1997, pp. 1565-1569 ; witness Beso, PT of 26 August 1997, p. 2281; witness Thomas, PT of 24 September 1997, p. 2675 ; witness D, PT of 24 September 1997, pp. 2693-2694.
[1108] P184.
[1109] P83, P100/4, P100/5 ; witness Watters, PT p. 3597 ; witness Kujawinski, PT pp. 4107-4108 ; witness Hughes, PT pp. 4532-4569 ; witness Bower, PT p. 9385.
[1110] Defence Brief, book II, p. 302.

of an urban area. Consequently, any attempt to gain some of the enemy's terrain was likely to entail greater losses and damage than are usual in other situations.

509. The Trial Chamber dismisses this approach. Granted troops from the army of Bosnia-Herzegovina were present in the town that day[1111]. But they were the ones attacked and not the other way around. There were several reasons, which emerged from the evidence of the witness Thomas, to infer that conclusion:

- there was no military installation, fortification or trench in the town on that day[1112];

- at the material time, the front line was fluctuating and changed from day to day depending on the commanders of the different troops[1113];

- until 16 April, there had been no confrontations between the HVO troops and the Bosnia-Herzegovina army. War broke out suddenly on 16 April 1993[1114];

- that day, there were no reports of any military victims[1115] or of the presence of soldiers from the Bosnia-Herzegovina army[1116];

- the Muslim military did not put up any defence because the target was not military but civilian[1117]. The houses that were torched belonged to civilians and could not in any circumstances be construed as military targets[1118];

[1111] According to the statement of the witness Djidic : "At the time of the attack, there were approximately 50 to 100 soldiers in Vitez. They were deployed. They were accommodated in one room, in one building called the fire-fighting house. And some soldiers and officers were in the headquarters, in the building which I pointed out. A certain number of soldiers were in their own houses, resting; and another set of soldiers was on the front line in Visoko and in Vla{i} [so that there] were only two military buildings in Stari Vitez", PT of 29 July 1997, pp. 1205-1206.
[1112] Witness Ellis, PT p. 3115 and p. 2989 ; witness Parrott, PT pp. 5034-5035. The witness Thomas stated that there were no military installations, that it was not a military sector or objective: "It was merely a strip of residential houses that were lived in by Muslims. That goes down to the point that none of the buildings were fortified for defence because they did not have to be because they were simply people's homes", PT of 24 September 1997, p. 2681.
[1113] Witness Djidic, PT of 31 July 1997, pp. 1477-1478; witness Thomas, PT of 24 September 1997, pp. 2633-2634.
[1114] Witness Thomas, PT of 24 September 1997, pp. 2633-2634.
[1115] Witness Thomas, PT of 24 September 1997, pp. 2635-2636.
[1116] Witness Thomas, PT of 24 September 1997, pp. 2641-2642.
[1117] Witness Thomas, PT of 24 September 1997, p. 2681.
[1118] Witness Djidic, PT of 29 July 1997, pp. 1207-1208.

- the artillery was not aiming particularly at the front lines where most of the ABiH soldiers were[1119].

510. Consequently, it was impossible to ascertain any strategic or military reasons for the 16 April 1993 attack on Vitez and Stari Vitez. In the event that there had been, the devastation visited upon the town was out of all proportion with military necessity. On the contrary, the attack was designed to implement an expulsion plan, if necessary by killing Muslim civilians and destroying their possessions[1120]. As the witness Bower explained,

> [i]t appeared to be more of a containment campaign, not to try and seize and hold the ground of Stari Vitez, but more to ensure that the occupants of Stari Vitez didn't expand their enclave or attempt to break out of their enclave. It was more static, more containment[1121].

The Croatian or mixed areas in the town were thus not damaged during the attack[1122].

ii) <u>The booby-trapped lorry of 18 April 1993</u>

511. The explosion occurred near houses belonging to civilians, thus causing numerous civilian victims together with many possessions of a civilian[1123] or religious nature, such as the roof of the mosque[1124]. Not one of the victims was in uniform[1125]. It seemed that the purpose of the attack was solely to terrorize the Muslim civilians in order to make them flee[1126]. As Colonel Watters explained,

> it was an act of terrorism, and certainly it was not a legitimate act of war in pursuit of military objectives. The design of terror weapons or terrorist weapons is to terrorise, and it certainly worked. The people of Stari Vitez were absolutely terrorised by it. Very many of them wanted to leave their homes[1127].

[1119] Witness Bower, PT pp. 9386-9387.
[1120] Witness Pezer, PT of 19 August 1997, pp. 1563-1566 ; witness N, PT p. 4477.
[1121] Witness Bower, PT pp. 9386.
[1122] Witness Watters, PT p. 3598.
[1123] P81 ; witness Djidic, PT of 29 July 1997, pp. 1218-1220.
[1124] Witness Djidic, PT of 29 July 1997, pp. 1220-1221.
[1125] Witness Thomas, PT of 24 September 1997, pp. 2646-2647.
[1126] Witness Ellis, PT of 30 September 1997, pp. 2983-2984.
[1127] Witness Watters, PT pp. 3404-3405.

iii) The 18 July 1993 attack

512. The Trial Chamber inferred from the arms used that the perpetrators of the attack had wanted to affect Muslim civilians. The "baby-bombs" are indeed "home-made mortars"[1128] which are difficult to guide accurately. Since their trajectory is "irregular" and non-linear[1129], they are likely to hit non-military targets. In this case, these blind weapons were sent onto Stari Vitez where they killed and injured many Muslim civilians[1130]. They also resulted in substantial material civilian damage[1131].

d) General Blaškic's responsibility

i) The arguments of the parties

513. According to the Prosecution, the HVO and the Vitezovi committed the aforementioned crimes. The Prosecution claimed that the Vitezovi obeyed General Blaškic's orders in the same way as the HVO troops. General Blaškic is alleged to have assigned the Vitezovi to the Stari Vitez sector on 15 April and then to have given them orders to attack the area, with the help of the HVO, on 16 April, 18 April and 18 July 1993[1132].

514. The Defence did not deny that HVO troops were responsible for some of the attacks on Stari Vitez but considered that those troops attacked military targets and were always acting in response to an ABiH attack, thus meeting the requirement of proportionality[1133]. It stated that the above crimes were committed by the Vitezovi alone, and refused to recognize the existence of a permanent relationship of subordination between the Vitezovi and General Blaškic.

515. The Defence maintained that the Vitezovi answered directly to the Ministry of Defence of the HZHB in Mostar and were not acting, at least not in any permanent way, under the command of General Blaškic. Although the units were sometimes temporarily

[1128] Defence Brief, p. 301.
[1129] Witness Djidic, PT of 29 July 1997, pp. 1242-1243.
[1130] P758 to 763.
[1131] Witness Djidic, PT of 29 July 1997, pp. 1238-1239.
[1132] Prosecutor's Brief, book VII, p. 62.
[1133] Defence Brief, pp. 294-302.

attached to the Central Bosnia Operative Zone, Tihomir Blaškic "did not possess the legal authority or actual ability to punish or discipline Vitezovi members" according to the Defence[1134]. It added that, during the periods of temporary attachment, "the Vitezovi, armed with the knowledge that Blaškic could not execute disciplinary or criminal sanctions against members of the unit, determined how [to] implement Blaškic's orders. On numerous occasions the Vitezovi conducted operations of which Blaškic had no knowledge. Even when the Vitezovi was attached to the OZSB, Bla{ki} could not enforce any of his orders by imposing sanctions on the Vitezovi"[1135].

ii) The individual criminal responsibility of General Blaškic

516. In limine, the Trial Chamber observes that there was no basis to the Defence's claim that responsibility for the commission of the crimes lay with the Vitezovi alone. As the testimony mentioned above showed, HVO troops clearly participated in the attacks on Stari Vitez on 16 April and 18 July 1993.

517. There is no doubt that there was a relationship of subordination between General Blaškic and the HVO troops strictly speaking. The Trial Chamber had however to resolve the question of whether there was such a link, either structural or factual, between the accused and the Vitezovi.

518. The Trial Chamber found several clues showing that, at the material time, General Blaškic was responsible for the Vitezovi as their superior. First of all, it analyzed the tenor and content of the orders given by the accused to the Vitezovi. Then it considered the evidence given by different international observers and analyzed the orders given by persons other than the accused in the HVO chain of command in the light of that evidence. Finally, the Trial Chamber concluded that the troops could not have committed the 18 April and 18 July crimes without obeying the orders of, or at least without the assistance of, General Blaškic.

[1134] Defence Brief, pp. 158-160.
[1135] Defence Brief, p. 159.

a. The accused's orders or reports as evidence of a relationship of subordination

519. During the course of 1993, the accused drafted many orders addressed, amongst others, to the Vitezovi. According to General Blaškic, the relationship of subordination between the Vitezovi and the command of the Central Bosnia Operative Zone applied only for the duration of the assigned mission for each order given to the Vitezovi. The relationship of subordination did not apply for the whole of the period between 16 April 1993 and the Washington Accords. During that period, the Vitezovi were solely assigned to the CBOZ command without being permanently legally subordinate to it, according to the accused[1136].

520. The Trial Chamber is unable to accept the distinction made by the accused. By analyzing General Blaškic's orders to the Vitezovi chronologically, the Trial Chamber was able to conclude that he exercised effective control over the Vitezovi for the whole of 1993 at least, or in any event as from 19 January[1137]. The Trial Chamber considers that the distinction between the *notion of temporary subordination* and that of permanent *attachment* is a legal fiction, at least as far as the accused's ability to give orders directly to the Vitezovi or to send a report on their potentially criminal activities to the competent authorities is concerned.

521. The orders given to the Vitezovi showed that, in 1993, there was a permanent *relationship of superiority* between General Blaškic and those troops giving him effective control over them. That is sufficient to prove that there was a *relationship of subordination*.

522. By analysing the content of the orders, the Trial Chamber was able to confirm that General Blaškic exercised effective control over the Vitezovi and that there was a permanent relationship of subordination between Blaškic and those troops. The Trial Chamber notes that the orders often related to aspects of organisation [1138] and conduct[1139]of the troops and therefore, owing to their content, were of a permanent nature, and that in any event they clearly went beyond the context of a specific operation.

523. The Vitezovi seemed to have participated to the same extent as the regular HVO troops in the implementation of the troops' general organization. On 13 February 1993,

[1136] Witness Blaškic, PT pp. 18111-18112.
[1137] P456/6; P456/16; D42; D267; P456/26; D77; D359; P456/27; D78; D39; P456/30; P456/31; P456/32; P456/33; P456/34; P456/37; P456/40; D384; P456/41; D389; D391. According to General Blaškic, the Vitezovi unit was broken up on 15 January 1994.
[1138] P456/16; P456/30; P456/31; P456/32; P456/33.
[1139] D42; P456/26; D77; D359; P456/27; D78; D39; P456/34; P456/37; P456/40; D384; P456/41; D389; D391.

General Blaškic asked the Vitezovi, *inter alia*, to organize their lines of defence, to establish "a complete record of conscripts", to carry out "a shooting test with the civilian and military police units" and to draw up additional and thorough assessments of the situation in cooperation with HVO chairmen, Heads of the Offices for defence matters and Commanders of police stations in the brigade's zone of responsibility[1140]. On 3 May 1993, General Blaškic asked the Vitezovi to submit a list of the Croatian soldiers killed during the fighting with the ABiH[1141] and, on 26 May 1993, he enjoined those same troops to submit the data on the demographic structure of the pre-war populations by zone of responsibility in the form of a report[1142].

524. The Vitezovi also received orders relating to the general conduct management of the troops. On 21 April 1993, General Blaškic asked the HVO regular troops as well as the special intervention forces to protect the civilian population and to ensure that the ICRC had free access and that the injured received medical treatment[1143]. On 17 June 1993, General Blaškic demanded that arrests of civilians during military actions cease and asked for religious effects to be protected. On that occasion, he stated that the brigade and independent unit commanders should be answerable to him for implementing that order and asked those commanders to let him know that it was being properly applied by way of regular reports[1144].

525. More fundamentally, the Vitezovi obeyed preparatory orders given by General Blaškic. On 16 January 1993, the accused gave the Vitezovi an order to intensify the preparations for combat at the highest level of all the HVO formations in the CBOZ[1145]. On 15 April 1993, General Blaškic enjoined the Vitezovi to prepare for an action by the ABiH troops from Stari Vitez towards the Vitez headquarters, in the event that there would be a break through the front line. He therefore ordered the Vitezovi to hold a front line between Stari Vitez and his headquarters, a few hundred meters away from the Muslim quarter[1146].

[1140] P456/15.
[1141] P456/31.
[1142] P456/33.
[1143] P456/26, D77.
[1144] P456/37.
[1145] P456/6.
[1146] D267. The front line from Stari Vitez was 300 metres from the accused's HQ (P79).

b. The other evidence that there existed a relationship of subordination

526. Some independent observers pointed out how effective General Blaškic's command of the Vitezovi was[1147]. The witness Whitworth stated that those units formed an integral part of the HVO's strategy in the Lašva Valley and that they "came under the command of General Blaškic and were used […] in actually carrying out the HVO's military intention, establishing, strengthening and regaining ground lost to the ABiH"[1148].

527. In the Trial Chamber's view, the Vitezovi came under the accused's command responsibility regardless of the legal form of their link with the Defence Ministry. An order dated 19 January 1993[1149] drawn up by Lieutenant-General Milivoj Petkovic, the HVO Chief-of-Staff, indicated that the Vitezovi were "attached in all matters" to General Blaškic and that any independent action on their part was forbidden. A witness heard by the Trial Chamber further explained that he and General Blaškic were the only two authorities who could have commanded the Vitezovi[1150]. The witness acknowledged that the Defence Minister could theoretically have given the Vitezovi orders, but stated that, in practice, he considered that it would have been impossible for the Minister to give orders without General Blaškic or himself knowing about them[1151]. He stated that the Vitezovi were attached to the operative zone and that he had never received any report saying that it was practically impossible to command those units[1152]:

> Finally, in relation to […] all the problems concerning these units, I found out about them only when this trial began. Until then, I did not receive any information that these units were troublesome and that they could not be commanded[1153].

528. Lastly, the commander of the Vitezovi, Darko Kraljevic, explained in a letter dated 15 April 1993 that his troops came under "the unified system of command and control in the SB /Central Bosnia/ OZ /Operative Zone/"[1154]. The frequency of the meetings between the accused and the commander of the Vitezovi is evidence that such a system existed. On 15 April 1993, Darko Kraljevic went to the Hotel Vitez and had a meeting with Tihomir

[1147] Witness Baggesen, PT of 22 August 1997, pp. 1901-1902 ; witness Buffini, PT pp. 5636-5637.
[1148] Witness Whitworth, PT p. 10237.
[1149] P666 "Protest" addressed to the Vitez TO and the 325th ABiH Brigade.
[1150] PT p. 24171.
[1151] PT p. 24171.
[1152] PT pp. 24186-24204.
[1153] PT pp. 24198-24199.
[1154] P456/20.

Blaškic[1155]. The witness Kavazovic stated that he saw Darko Kraljevic three times at the Hotel Vitez in June, July and September 1992[1156]. Likewise, witness HH testified that Darko Kraljevic often went to the Hotel Vitez for meetings with General Blaškic[1157].

c. The organized nature of the attacks

529. The crimes described above were committed on a large scale and hence their execution required precise organization, determined by a general command structure. It would in fact have been physically impossible for the Vitezovi, with 60 to 80 men[1158], to have planned and executed operationally the crimes in question on an isolated basis[1159]. They could not have procured between 450 and 700 kilograms of explosives which were placed in the booby-trapped lorry without the authorization of General Blaškic, who controlled the Vitez explosives factory[1160]. By the same token, the troops could not have undertaken the attacks on 16 April and 18 July 1993 without obeying the accused's orders on the operational level or without his assistance. General Blaškic was the only person in Vitez entitled to authorize the use of artillery[1161].

530. As a result, the attack of 16 April 1993, the explosion of the booby-trapped lorry on 18 April 1993 and the attack of 18 July 1993 could not physically have been carried out if General Blaškic had not given the order for their execution or at least allowed them to take place. He was the only one empowered to authorize the use of the assets necessary to carry out those operations. The quantity of arms and explosives used were clear evidence of the accused's involvement in the organization and planning of those operations. In relation to 16 April 1993, the witness Ellis testified that:

> there was an enormous amount of ammunition fired, a lot more than I had seen. […] to achieve that amount of ammunition in a particular area - - that must have been an orchestrated move to actually gather ammunition into that area[1162].

More generally, the work of organising those operations could not have been carried out independently by the small Vitezovi unit. That unit must have had recourse not only to the

[1155] P276.
[1156] Witness Kavazovic, PT of 26 August 1997, pp. 2305-2306.
[1157] Witness HH, PT pp. 6809-6810.
[1158] PT pp. 24187-24203.
[1159] PT pp. 24210-24211.
[1160] Defence Brief, book 2, p. 21; see also PT p. 24045.
[1161] Witness Bla{ki}, PT p. 18518.
[1162] Witness Ellis, PT of 30 September 1997, p. 2992.

material available to the accused, but also to an effective command structure, which only General Blaškic could provide. As witness Thomas explained,

> they were carried out by an organised force operating with a coherent command and control structure, operating to a certain plan[1163].

d. Conclusions

531. The Trial Chamber considers that General Blaškic must be found guilty on the basis of Article 7(1) of the Statute of ordering the attack of 16 April 1993 on Vitez and Stari Vitez, the detonation of the booby-trapped lorry on 18 April 1993 at Stari Vitez and the attack of 18 July 1993 on Stari Vitez. At the very least, he took no step to prevent those crimes being committed or to punish the perpetrators.

3. Other villages in the municipality of Vitez

532. In the context of the conflict which rocked the municipality of Vitez, the Prosecutor drew a distinction between the villages of Donja Ve~eriska, Ga~ice and Grbavica, which were attacked by Croatian forces in April and September 1993.

a) Donja Ve~eriska and Ga~ice

533. Donja Ve~eriska and Ga~ice were two mixed villages of the municipality of Vitez[1164]. The two villages face, from opposite sides, the Slobodan Princip Selo weapons factory (hereinafter "the SPS factory")[1165]. The Defence submitted, and the Trial Chamber agrees, that the SPS factory was a sensitive position as far as the HVO was concerned[1166]. The SPS factory was one of the largest industrial complexes making explosives in Bosnia (and in Europe) and was of considerable strategic importance for both sides[1167]. Consequently, there were military reasons for fighting to gain control of the neighbouring villages. But the HVO

[1163] Witness Thomas, PT of 24 September 1997, pp. 2679-2680.
[1164] Donja Ve~eriska had about 240 houses, divided 60/40% between Muslims and Croats (D71). Ga~ice had a hundred or so houses, divided 50/50% between Muslims and Croats (witness Mati}, PT, (PV) p. 16968. Donja Ve~eriska is 3.9 km from the Hotel Vitez, Ga~ice is 1.9 km from the Hotel Vitez (P79).
[1165] Witness R, PT p. 4957.
[1166] Defence Brief, book IV, p. 392.
[1167] Witness Hunter, PT pp. 5126-5127.

had taken control of the SPS factory in October or November 1992[1168], well before the events considered here. In view of the context of those operations, it appears appropriate to review the parties' arguments.

i) The arguments of the parties

534. According to the Prosecutor, the HVO attacked Donja Ve~eriska on 16 April 1993 and Ga~ice on 20 April 1993. The attacks against those two villages formed part of the persecution of Muslim civilians referred to in the indictment. Those villages witnessed the destruction, devastation and large-scale pillaging of Muslim-owned property[1169]. Several Muslim civilians were killed during the attacks and the Muslim inhabitants of those villages were expelled. Muslim homes were torched and looted and Croats appropriated them[1170]. The accused is responsible for all those criminal acts.

535. The Defence did not deny that the Vitezovi attacked Ga~ice on 20 April 1993[1171], but it argued that the "independent" unit was acting on its own initiative, that the Vitezovi were attacking an ABiH formation[1172] and that the houses were torched as reprisals for the death of a Vitezovi soldier[1173]. The Defence further submitted that Tihomir Blaškic did not give any order to that unit concerning action at Ga~ice.

536. As far as the destruction carried out at Donja Ve~eriska is concerned, the Defence argued that it must be regarded as the collateral damage of a justified military operation and that therefore it was not the outcome of a punishable act. The HVO and the ABiH were equally (or virtually equally) matched and dwellings were burned as a result of the fighting. The Defence argued that no more than 10% of the houses in the village of Donja Ve~eriska burned as a result of the fighting. There were no attacks against civilians in the sense of an intention to destroy the buildings in question, but fighting did take place in the village concerned[1174]. Furthermore, Tihomir Blaškic did not order the destruction found in Donja

[1168] According to one witness, HVO soldiers in Herzegovina had already come in October 1992 (Witness R, PT pp. 4922-4923, pp. 4964-4965); according to another, the HVO was installed since November 1992 (Witness Hrusti}, PT pp. 4829-4831).
[1169] Prosecutor's Brief, book 5, pp. 84-85, paras. 2.330 to 2.333.
[1170] Prosecutor's Brief, book 5, p. 85, para. 2.335
[1171] Defence Brief , book VI, p. 352.
[1172] Defence Brief , book VI, p. 352.
[1173] Defence Brief , book VI, p. 353.
[1174] During R's testimony, PT pp. 4974-4975.

Ve~eriska. The destruction and the looting were the outcome of criminal acts which the accused could neither control nor punish[1175].

ii) The course of the attacks

537. As in the case of the other villages in the municipality of Vitez, the two orders given by General Blaškic prior to those attacks must be examined. First, on 15 April 1993[1176], there was the order to the HVO brigades and the independent units, including the Vitezovi, to prepare to fight in order to defend the HVO and Vitez. There was also the order given on 01:30 hours on 16 April[1177] to fight in order to "forestall enemy attacks (extremist Muslim forces) and to block the larger territory of […] D. Ve~eriska"[1178].

a. Donja Ve~eriska

538. On 15 April 1993, the HVO held a press conference in their local centre attended by Tihomir Bla{ki} and Ignac Ko{troman and during which Dario Kordi} declared: "my Croat brothers, it is time to defend our Croatianhood"[1179]. Later that day, the Croatian civilians of Donja Ve~eriska left the village[1180].

539. The Defence maintained that the HVO was attacked and that that provoked the conflict[1181]. The Trial Chamber considers instead that on the morning of 16 April, towards 06:00 hours, the HVO attacked the village of Donja Ve~eriska[1182]. During the attack, bombs fell[1183] and Croats fired on the Muslims from the SPS factory[1184]. The HVO used mortar shells and anti-aircraft gun mortars[1185]. HVO soldiers[1186], fifteen or so members of the Tvrtko unit[1187], other soldiers wearing black uniforms[1188]with the "U" insignia (standing for

[1175] Defence Brief , book VI, p. 374.
[1176] D267.
[1177] D269.
[1178] Given to the command of the Vitez HVO Brigade (Mario ^erkez) and to the Tvrtko independent units.
[1179] D71, p. 5.
[1180] Witness R, PT pp. 4913-4914.
[1181] Witness Bla{ki} PT pp. 18530-18531.
[1182] Witness R, PT pp. 4913-4915.
[1183] Between forty and fifty bombs in the space of an hour, according to witness R (PT pp. 4916-4917).
[1184] Witness R, PT pp. 4929-4930.
[1185] Witness R, PT pp. 4930-4931.
[1186] Soldiers wearing the HVO emblem on their sleeve with the checkerboard, an armband (maybe blue) around the sleeve (witness R, PT pp. 4923-4924).
[1187] Witness Lovric, PT p. 17785.
[1188] Witness R, PT pp. 4914-4915, pp. 4923-4924.

"Ustasha"[1189]), and yet more wearing the "HV" insignia were on the Croatian side . All those groups attacked together[1190]. There were at least fifty soldiers in all[1191].

540. The Muslims tried to defend themselves on 16 and 17 April. During those two days, houses were burned[1192] and the mekteb, the Muslim religious and cultural centre of the village, was destroyed[1193]. Muslim residents were driven from their homes by the HVO[1194]. Eight Muslims, including at least seven civilians, were killed[1195], and others injured, including a woman called Hadzira Ba{i}[1196], as she was attempting to escape across the fields. When the UNPROFOR mission arrived at the top of the village on 17 April, it saw that the HVO sign had been painted on most of the houses in that part of the village. It also saw HVO soldiers, recognisable by their insignia[1197]. As regards the houses: "these were not military targets, this was just where people lived" [1198]. According to one witness, the purpose of the attack and the murders was "to intimidate us so that we would leave from there, simply to cleanse us from there"[1199].

541. Finally, on the morning of 18 April, towards 03:00 or 04:00 hours, Muslim residents abandoned the village going on foot as far as the UNPROFOR base in Divjak[1200]. As they left the village, the column was subjected to shots from the SPS factory and three women were killed[1201]. The conflict therefore lasted until the HVO had succeeded in entering the second part of the village on 18 April 1993[1202].

[1189] Witness R, PT pp. 5002-5004. Sometimes soldiers wore two of the insignia.
[1190] Witness R, PT pp. 4931-4932.
[1191] Witness R, PT p. 4969.
[1192] Thirty burnt houses were identified by the witness R from an aerial photograph. "All the houses and stables were on fire" (Witness R, PT p. 4916). On 17 April, "there was at least one house but possibly more that were burning"(witness Parrott, PT p. 5026). One witness said of Donja Ve~eriska that from Ga~ice he could see the houses "one by one going up in flames", (witness Hrusti}, PT p. 4803). It was possible to see the flames rising above the village from Vitez (witness Parrott, PT p. 5050; witness Hunter PT p. 5107-5108). Defence exhibits acknowledged the HVO torching of 22 homes and stables (D70, D71). One witness maintained that there were fourteen burnt houses on each side (witness Lovri}, PT p. 17764).
[1193] Witness R, PT p. 5001.
[1194] On the morning of 17 April, Sergeant Parrott of UNPROFOR met some Muslims on the road, including maybe two members of the armed forces who had been driven from their homes by the HVO (PT p. 5026).
[1195] D71; witness R, PT pp. 4921-4922. The witness Lovri} maintained that it was seven civilians and one soldier (PT p. 17765).
[1196] That woman was in a house separated from other Muslim houses by a field, and she tried to escape. According to witness R, "Hadjira and her small child tried to escape across the field and Zoran shot her in her thigh […] Hadjira was lying in the field for a long time, she was wounded around 8 a.m. and we could not get to her […] during the night we made up stretchers and we were able to pick up Hadjira"(D71, p. 6)
[1197] Witness Parrott, PT p. 5026.
[1198] Witness R, PT pp. 5001-5002.
[1199] Witness R, PT p. 5001.
[1200] Witness R, PT pp. 4933-4934. The UNPROFOR base was the headquarters of the British Battalion.
[1201] Habiba Ha{ki}, her younger sister and her daughter (witness R, PT p. 4920).
[1202] Witness R, PT p. 4981.

542. The Trial Chamber heard contradictory oral testimony and received contradictory evidence on the point of the ABiH participation in the conflict. According to the Prosecution, the civilians effectively put up the Muslim defence: there were only a very few members of the armed ABiH forces and only a handful of rifles[1203]. According to that argument, the Defence of the village was not organised and everyone did what he could[1204]. However, there was also evidence of a noteworthy ABiH presence. Contrary to his evidence before the Trial Chamber, one Prosecution witness stated to the Prosecutor that "only about 40 Muslim men were part of the TO from the village"[1205] and that as regards the Muslims' retreat from the village,

> The Territorial Defence was running out of ammunition so approximately one or two o'clock in the morning all civilians had to retreat from the village by following an UNPROFOR vehicle. Then the members of the Territorial Defence retreated because we were out of bullets [...] The members of the Territorial Defence went to the village of Grbavica[1206].

543. Even though the Trial Chamber could not confirm the Defence argument that there were one hundred and twenty-eight members of the armed forces among the Muslims in the village[1207], it was not able characterise the attack as being targeted only against a Muslim civilian population. Consequently, until the Muslims' retreat on the morning of 18 April, the conflict at Donja Ve~eriska was characterised as a conflict between the HVO and independent Croatian units on the one hand and the ABiH on the other. Before the retreat of the Muslims, it was not clear that the criteria of proportionality of a military attack against positions defended by the military had not been met as regards the destruction of property, nor that the injuries to Hadzira Ba{i} and the deaths could not be considered the result of a conflict between the ABiH and the HVO.

[1203] Witness R, PT pp. 4958, 4931, 4982-4983. That witness maintained that the villagers merely defended their families (PT pp. 4993-4994). The UNPROFOR Sergeant also noted two men of fighting age, with rifles, seeming more civilian than military (witness Parrott PT p. 5077).
[1204] Witness R, PT p. 5005.
[1205] P169, p. 3.
[1206] D71, p. 5. That statement seemed to be confirmed by the witness Lovri} who mentioned ABiH units which were following those fleeing on the morning of 18 April(PT pp. 17765-17767); see also witness Bla{ki}, PT, p. 18800. Other signs of ABiH presence "A front line was made between the HVO and Territorial Defence near the kitchen"(D71, p. 5) and "at one point I had helped the Territorial Defence after a member was wounded"(D71, p. 6). See also witness R, PT p. 5004; "they were not classic soldiers, they did not have uniforms, they were just defending from the Serbs, Montenegrin aggression, so some of them when they would come to be relieved back to the village, they would some of them bring their weapons with them". The witness Marin also confirmed that there was an ABiH presence, PT p. 12455.

544. The Trial Chamber notes however that much of the destruction and damage occurred after the assaults on the villages were over and the HVO had taken control of the villages. In particular, members of the HVO set fire to the Muslim houses[1208] and no-one made any effort to put out the fires. It was possible to see houses burning from the UNPROFOR base[1209]. Moreover, there was looting of property from the mekteb after the Muslim civilians had left the village[1210]. Those houses and the mekteb could not be considered to be military targets as from 18 April. The Trial Chamber considers that these events were large-scale destruction or devastation with no military necessity[1211].

b. Ga~ice

545. From the time when the conflict broke out in Donja Ve~eriska on 16 April 1993, the Croats and Muslims tried to negotiate in order to prevent there being problems in Ga~ice, but without success[1212]. The Prosecution maintained that on 17 April the HVO issued an ultimatum to the Muslim inhabitants of Ga~ice to surrender their arms and sign an oath of allegiance to the Croatian community of Bosnia, which the Muslims rejected[1213]. On 19 April, the day before the attack, Croatian residents (women and children) left the Muslim part of the village[1214].

546. At 05:50 hours on 20 April, mortar fire started and shells fell[1215]. The village was pounded with shells from all sides and the attack came from three different directions[1216]. The HVO soldiers fired shots on the village from the SPS factory. In the village, there were only about thirty Muslim men with a few hunting rifles and a few bombs and grenades[1217]. The Muslims took refuge in a few houses. The men withdrew in the direction of the forest,

---

[1207] Witness R, PT p. 4958. Moreover, the Defence maintained that there was a command structure in place (witness Lovric, PT pp. 17754-17756).
[1208] Captain Ellis of Britbat confirmed that "several" houses were on fire after the Muslims had fled the village on the morning of 18 April (Provisional Transcript, Public Version (hereinafter "PTPV") of 30 September 1997 p. 3074).Some houses were still burning on 20 May (witness Hunter, PT pp. 5104-5105).
[1209] Witness R, PT pp. 4935-4936.
[1210] Witness Kaiser, PT p. 10623; P455/17.
[1211] The Trial Chamber agrees with the Prosecution on this point (Prosecutor's Brief, book 5, p. 94, para 2.369 to 2.371 and p. 96, para. 2.377). The Defence did not deny that there was no military necessity for the burnt houses after the retreat of the Muslims (Defence Brief, book VI, p. 372).
[1212] Witness Matic, PTPV p. 17086.
[1213] Prosecutor's Brief, book 5, p. 89, para. 2.351. Witness Hrusti}, PT pp. 4807-4808. The witness explained the reasons for the refusal: "because we knew approximately what was going on in other villages and we knew if we surrendered the weapons that they would slaughter us, that they would kill us"(PT p. 4837).
[1214] Witness Hrusti}, PT pp. 4808-4809.
[1215] Witness Hrusti}, PT pp. 4805-4806, 4809-4810. Another witness said how he had heard two or three rather violent explosions towards 07:00 hours that day, witness Matic, PTPV p. 17087.
[1216] Witness Hrusti}, PT pp. 4812-4813.

whereas the women and children stayed in the cellars. After the shelling of the village, the Muslim inhabitants (therefore women and children for the most part) were encircled by soldiers wearing insignia such as those of the HVO, HV, U and Vitezovi[1218]. Some of the soldiers called the Muslims "balijas"[1219] and drove them out of their houses[1220], which they then burned[1221].

547. There were at least four Muslim deaths in the village[1222], including a Muslim who burned in his house, Fikret Hrusti}[1223]. One witness maintained that the attack against the Muslims in Ga~ice was "a plan, well-planned and very well organised"[1224]. According to certain sources, the ABiH held the Vitezovi responsible for the massacres in Ga~ice[1225]. But clearly the members of that unit were not the only ones involved in the attack.

548. The Defence contended that the village was defended by Muslim militia. The Trial Chamber heard little evidence to that effect[1226]. Even if that was the case, the torching of houses continued after the HVO soldiers and other units had taken control of the village.

549. Once the HVO soldiers had taken control of the village, they took the residents of Ga~ice (247 Muslim civilians) on a forced march towards Vitez and forced them to sit opposite the Hotel Vitez as human shields, for about three hours[1227]. Afterwards, they were taken back to the village and made to live in the seven houses which remained standing. Subsequently, those same people were taken in lorries and driven by force out of the village by the HVO[1228].

[1217] Witness Hrusti}, PT pp. 4807-4808.
[1218] Witness Hrusti}, PT p. 4810-4811, 4854-4855. The witness maintained that the HVO received the help of a Brigade from Split and of the 125th Vara`din Brigade (PT p. 4820).
[1219] Witness Hrusti}, PT pp. 4809-4811, 4857.
[1220] Witness Morsink, PTPV pp. 10266-10271.
[1221] The Muslim civilians returning from Vitez later that day saw the houses and the stables still on fire (witness Hrusti}, PT p. 4816). An ECMM observer confirmed that the Muslim houses had been burned after the conflict (witness Morsink, PTPV p. 10264). The Trial Chamber considers that between fifteen (witness Matic, PTPV p. 17093) and thirty five (witness Hrusti}, PT p. 4849) Muslim houses were torched and notes that a few Croatian houses were also burning (witness Matic, PTPV p. 17090).
[1222] Witness Hrusti}, PT p. 4842. Another witness maintained that the dead were all soldiers and that one of the Muslim victims was killed by another Muslim (witness Matic, PTPV p. 17094).
[1223] Witness Matic, PTPV p. 17094. It seemed that the man had burned alive.
[1224] Witness Hrusti}, PT p. 4860.
[1225] Witness Duncan, PT pp. 9169-9170. Another witness confirmed that he had heard it said that the soldiers were Vitezovi (witness Matic, PTPV p. 17112).
[1226] Witness Matic, PTPV p. 17092.
[1227] See discussion below.
[1228] Witness Hrusti}, PT p. 4825-4826.

550. The Trial Chamber finds that these events amount to devastation without any military necessity and forcible transfers of civilians.

b) Grbavica

551. The village of Grbavica was a mixed village 1.5 km from Stari Vitez[1229]. The Grbavica hill had a certain strategic importance[1230], which enabled the ABiH, if it occupied it, to block the HVO and the Croatian civilians' access to the main Travnik-Busova~a road.

i) The arguments of the parties

552. The Prosecution submitted that the HVO attacked Grbavica on 7 September 1993. The purpose of the attack was not at issue. The HVO took Grbavica in the afternoon of 8 September 1993. Once all the combatants and the Bosnian Muslim civilians had been driven out of the village, the HVO set about systematically plundering and destroying the Muslims' houses. Subsequently, the Bosnian Croats moved into the houses that were still habitable[1231].

553. The Defence contended that Tihomir Bla{ki} authorised a legitimate military attack on the ABiH positions at Grbavica, justified by military necessity, and that all damage caused by the HVO offensive was collateral damage of a lawful military operation[1232]. Moreover, the accused did not order and was not otherwise directly involved in the looting of civilian property which followed the attack. The HVO attacked on 7 September 1993 and achieved all its goals the next day. Then, in accordance with what had been agreed, the HVO withdrew and the Vitez civilian police arrived in order to maintain law and order in the village. The acts of destruction were those of civilian looters. The civilian police tried unsuccessfully to prevent those criminal acts[1233].

[1229] Witness Djidi}, PT of 29 July 1997, p. 1262.
[1230] Witness Duncan, PT p. 9212-9213.
[1231] Prosecutor's Brief, p. 25, para. 5.15.
[1232] Defence Brief, book VI, pp. 162-163.
[1233] Defence Brief, book VI, pp. 162.

ii) The course of the attack

554. The parties agreed to consider that there were legitimate reasons for the 7 September attack by the HVO on the village of Grbavica[1234]. That the ABiH took part in the conflict was not at issue[1235]. Tihomir Bla{ki} acknowledged that he planned the military operation and personally took part in it[1236]. It was carried out in an organised military manner[1237]. The operation was carried out by HVO men Bla{ki} had chosen and who were under his command[1238]. Members of the D`okeri[1239], of the "Nikola [ubi} Zrinski" Brigade[1240], of the "Tvrtko II"[1241] unit and of the Military Police[1242] took part in the attack.

555. On the first day of the attack, the HVO launched attacks using artillery and explosive devices, including "babies"[1243]. The ABiH was reinforced in the night of 7-8 September 1993, and UNPROFOR evacuated the civilian population from houses built on the Grbavica hill[1244]. On the morning of 8 September, the HVO infantry troops attacked and proceeded with the systematic rooting out of enemy soldiers and of Muslims from the houses they were occupying[1245]. Finally the HVO took control of its targets and the Vitez HVO civilian police entered Grbavica to keep law and order[1246].

[1234] The Prosecution maintained that the attack started at 13:55 hours (Prosecutor's Brief, book V , p. 162, para. 2.688) whereas the Defence maintained that it started at 14:20 hours (Defence Brief, book VI, p. 162).
[1235] The Prosecution agreed that the ABiH command post was one of the main targets on the first day of the attack (Prosecutor's Brief, book V , pp. 162-163, para. 2.688). See also P713 (Milinfosum of 9 September 1993): "The C/S […] in the burnt out village of Grbavica discovered the body of a dead ABiH soldier which had been decapitated and disembowelled"
[1236] Witness Bla{ki}, PT p. 20808. Bla{ki} told Brigadier General Duncan in advance that he would be obliged to attack and to eliminate some of the Muslims in that zone (witness Duncan PT pp. 9213-9214). See also witness Whitworth, PT, pp. 10268-10269.
[1237] Defence Brief, book VI, p. 399. See also witness Bla{ki}, PT pp. 2810-2811. That view was confirmed by the witness Bower: "It appeared to be a professional, well-coordinated military offensive to seize and hold an area of ground" (PT pp. 9401-9402).
[1238] Witness Bla{ki}, PT pp. 2809-2810.
[1239] Witness Palavra PT p. 16793. The witness Bower learned from the British liaison officers that the D`okeri were involved in the attack on Grbavica (PT p. 9423). See also witness Whitworth, PT pp. 10274-10275; P712, P713.
[1240] P173.
[1241] Witness Whitworth, PT pp. 10274-10275.
[1242] Witness Bla{ki}, PT p. 22632. See also the witness Marin who agreed that part of the forces of the Military Police were engaged in the Grbavica operation. He maintained: "we did not have other forces that could have carried out the task of this attack operation, except for the units for special purposes together with the military police"(PT p. 13701).
[1243] The witness Djidi} saw the "babies" in flight when he was in Stari Vitez (PT of 29 July 1997, p. 1262). See also the witness Whitworth, PT pp. 10278-10279; P433/28. The accused formally denied having used that type of device (Witness Bla{ki}, PT p. 22649).
[1244] Witness Bla{ki}, PT pp. 19692-19693.
[1245] Witness Whitworth PT pp. 10270-10272.
[1246] Witness Bla{ki}, PT pp. 19692-19694.

556. As far as the destruction of houses in Grbavica was concerned, the Trial Chamber accepts the idea that the ABiH was occupying certain private houses and that, consequently, those dwellings became legitimate military targets[1247]. The Defence claimed that that was the reason the houses were burned during the conflict[1248]. Moreover, the looting and the torching was said to be the result not of the soldiers' actions but those of civilians who arrived in the village after the HVO took control, in particular criminals and unruly elements[1249].

557. The evidence showed that in fact only a few houses were occupied by soldiers[1250]. Moreover, it was clear that many houses were burned after the fighting, including, by definition, houses that were not legitimate targets[1251]. As far as the fires were concerned, they were not necessary from a military point of view. General Duncan testified:

> There was a requirement to get to the buildings on top of the hill because they represented a good defensive area, which is why it had held out for so long. There was not a requirement, in my opinion, to destroy those buildings, which is what happened, because the military worth of the buildings - on the top of the hill - was they provided the cover and protection and ability to hold a strong defensive position, which is what they've done. By setting fire to them, which is what happened after the initial assault, that achieved no – - to my mind, […] no military purpose whatsoever[1252].

558. As regards the pillage, the Trial Chamber does accept that civilians could have taken part, as the Defence maintained[1253]. But the testimony and exhibits clearly show that, having driven the ABiH out of the sector, the soldiers indulged in systematic pillage of the Muslim dwellings[1254] of Grbavica prior to setting them on fire:

[1247] Defence Brief, book VI, p. 395.
[1248] Witness Bla{ki}, PT pp. 19693-19694. The Defence maintained that most of the houses in Grbavica were damaged between October 1993 and March 1994, and accordingly were not torched during the attack (Defence Brief, book VI, p. 396).
[1249] Witness Marin, PT p. 13701; witness Palavra, PT p. 16797. The Croats who moved into the Muslim houses in Grbavica were refugees from other villages or towns (witness Palavra, PT p. 16790).
[1250] Witness Whitworth PT p. 10412.
[1251] The witness Marin maintains that some houses were 80% burnt (PT pp. 13701-13702). P712 (Milinfosum of 8 September 1993); "the majority of the houses (approx. 50) in the village are at present ablaze". See also witness Hunter, PT pp. 5087-5088; P433/21-23; P433/25-27, P433/29-31.
[1252] Witness Duncan, PT pp. 9187-9188. Furthermore, the witness maintained that it would have been in the interest of the HVO to leave these buildings as they were (PT pp. 9213-9214). He added that, having spent seven months in the La{va Valley, [he understood that] the procedure of attacking and then torching was consistent with the attacks the HVO had launched in the whole of the La{va Valley (PT pp. 9212-9213).
[1253] Witness Bower, PT pp. 9402-9403.
[1254] The witness Bower said of the pillage: "initially it was by HVO soldiers. They were taking electrical items, furniture" (PT pp. 9402-9403). He noted that "there were some Croat families living in the village and their houses remained untouched, but the Muslim population were cleared out of their houses" (PT pp. 9402-9403).

> After they had actually been through and cleared it, there was a systematic burning of all the buildings that we saw in there […] I observed numerous soldiers and […] there was some looting going on by the HVO soldiers and all the buildings had been set on fire[1255]

559. The Trial Chamber favours the view expressed by the witnesses who maintained that the Bosnian Croats burned Muslim houses in order to dissuade Muslims from returning[1256]. Those acts of destruction were not justified by military necessity and acts of looting were committed.

c) General Bla{ki}'s responsibility

560. As stated above, the Trial Chamber accepts that the villages of Ve~eriska, Ga~ice and Grbavica could have represented a military interest such as to justify their being the target of an attack. But the Trial Chamber also observes that, at the time or afterwards, the attacks gave rise to destruction, pillage, forcible transfer of civilians, all committed by the troops the Trial Chamber has established the accused controlled.

561. The Trial Chamber points out in that connection that, for those attacks, General Bla{ki} used forces which he knew, according to his own testimony, were, at least in part, difficult to control, and at the very time when they were being called into question for the perpetration of earlier crimes. Finally, the Trial Chamber notes that it has established that the accused was the commander of the troops involved, including the police forces.

562. The Trial Chamber concludes that General Bla{ki} is responsible for the crimes committed in the three villages on the basis of his negligence, in other words for having ordered acts which he could only reasonably have anticipated would lead to crimes.

[1255] Witness Whitworth, PT p. 10273. See also witness Djidi}: "And on the second day I saw houses burning. At first I thought they were set on fire by ammunition, flammable ammunition, but it was a mistake. I looked more closely and saw soldiers, and not only soldiers but also civilians who were looting houses in Grbavica, probably even them, as early as then the army had retreated from Grbavica. When they took whatever they wanted to take from the houses they set them on fire. At one point, one could see over 100 houses on fire. All of those houses belonged to Muslims. Only a few houses belonging to Muslims escaped this fate in a village which had over 200 houses". The witness also noted that the Grbavica mosque had burned (PT of 29 July 1997 pp. 1262-1263).
[1256] Witness Duncan, PT pp. 9213-9214. See also the witness Whitworth, PT pp. 10275-10276.

C. The municipality of Busovaca

563. As a general rule, the Defence did not deny that crimes had been committed in the villages of Loncari and Ocehnici, *inter alia*[1257]. It claimed however that Tihomir Blaškic was not responsible for those crimes.

1. The attacks against the villages in the municipality of Busovaca

564. Around mid-April 1993, at nearly the same time as they were launching offensives against villages in the municipality of Vitez and Kiseljak, HVO and Military Police troops took the villages of Loncari and Ocehnici by assault.

a) Loncari

565. Before the April 1993 attacks, Loncari was an essentially Muslim village. At the 1991 census, it was made up of 44 Croats, 249 Muslims and 1 Yugoslav[1258]. Puti{, Jelinak and Merdani were neighbouring villages.

566. In the evening of 16 April 1993, Croatian women and children, warned of imminent attacks, left the area[1259]. A few hours later, the HVO artillery pounded the villages of Jelinak, Merdani and Puti{[1260]. The civilians from these villages then fled in the direction of Busovaca[1261].

567. In the morning of 17 April, HVO soldiers[1262] belonging to the Nikola Šubic Zrinski brigade[1263] and members of the D`okeri unit[1264] entered Loncari and systematically searched the Muslim houses, looking for men of fighting age[1265]and weapons[1266]. Twenty-five of

[1257] Defence Brief, book 6, F, p. 352 and book 6, J, p. 368.
[1258] P46 and witness Q, PT p. 5150.
[1259] Witness Q, PT pp. 5151-5152.
[1260] Witness Q, PT pp. 5167-5170.
[1261] Witness Q, PT pp. 5168-5169.
[1262] Witness Q. PT pp. 5154-5155. According to this witness, the soldiers who entered Loncari on 16 April 1993 wore the HVO insignia on their uniform (PT, pp. 5154-5155)
[1263]Witness Blaškic, PT p. 21726.
[1264] Witness Nuhagic, PT pp. 5255-5257.
[1265] Witness Q, PT pp. 5152-5153.

them[1267] were arrested and taken to Kaonik prison where they were detained. Moreover, around 200 people, including women, children and old people, from the villages of Jelinak and Puti{[1268]were assembled at the mekteb of the mosque[1269]. They were threatened with death if they escaped[1270]and several of them were beaten[1271]. During that time, Croatian soldiers were torching homes and stables by dousing them with petrol[1272]. Many Muslim civilians were forced to leave the village and to go to Vrhovine[1273]. Once there, they took refuge in cellars and once again had to endure heavy shelling[1274].

568. The houses and stables belonging to the Muslims of Loncari were torched[1275]. The houses in the villages of Jelinak and Puti{ were also set on fire[1276]. The livestock were burned alive[1277]. Around ten people have since been declared missing[1278].

b) Ocehnici

569. Before the April 1993 hostilities, Ocehnici was an entirely Muslim hamlet. At the 1991 census, it was made up of 33 Muslims[1279].

570. On 27 January 1993, HVO soldiers entered the village, arrested the men of fighting age and seized their weapons[1280]. They drove them to Kaonik prison[1281], where they were detained until February[1282]. During their detention, they were subjected to all sorts of brutality[1283].

[1266] Witness Q, PT p. 5158-5159.
[1267] Witness Q, PT pp. 5168-5169.
[1268] Witness Q, PT pp. 5159-5160.
[1269] Witness Q, PT pp. 5159-5160.
[1270] Witness Q, PT pp. 5159-5160.
[1271] Witness Q, PT pp. 5163-5164.
[1272] Witness Q, PT pp. 5158-5160.
[1273] Witness Q, PT pp. 5164-5165.
[1274] Witness Q, PT pp. 5164-5165.
[1275] Witness Q, PT pp. 5160-5161, pp. 5170-5171.
[1276] Witness Q, PT pp. 5169-5170.
[1277] Witness Q, PT pp. 5170-5171.
[1278] Witness Q, PT pp. 5179-5180.
[1279] P46.
[1280] Witness Nuhagic, PT pp. 5213-5214.
[1281] Witness Nuhagic, PT pp. 5214-5215.
[1282] Witness Nuhagic, PT pp. 5216-5217.
[1283] Witness Nuhagic, PT pp. 5213-5214.

571. Three months later, in the afternoon of 19 April, soldiers from the Military Police, and more precisely the Fourth Battalion, acting on the orders of Paško Ljubi~ic[1284], entered the village[1285], fired shots and systematically set fire to the houses and farms belonging to Muslims[1286]. They killed around five civilians, women included[1287], and burned the bodies[1288].

572. The Muslim homes in the village of Ocehnici were torched[1289]. Several people were wounded[1290] and at least five civilians were killed[1291]. Livestock were also slaughtered[1292]

c) Conclusions

i) The organized and massive nature of the attacks

573. The Trial Chamber is convinced that the aforementioned crimes were organized in advance, as is evidenced by the following facts:

- the assaults on Loncari and Ocehnici were launched respectively on 17 and 19 April 1993, that is to say practically at the same time as offensives were being carried out in the areas of Vitez and Kiseljak;

- the consequences of the attacks were similar to those on the villages in the municipalities of Vitez and Kiseljak: unlawful confinement of the men of fighting age, rounding up then deportation of the elderly, women and children, intimidation of civilians by murder and beating, and systematic torching and pillage of homes and farms;

- finally and more specifically, the Croatian inhabitants of Loncari were warned of the attacks and left the village several hours before the start of the hostilities.

[1284] Witness Nuhagic, PT pp. 5235-5236.
[1285] Witness Nuhagic, PT pp. 5234-5235. According to witness Nuhagic's account, the soldiers who entered the village wore masks so as not to be recognised.
[1286] Witness Nuhagic, PT pp. 5217-5218.
[1287] Witness Nuhagic, PT p. 5219, pp. 5247-5248.
[1288] Witness Nuhagic, PT pp. 5248-5249.
[1289] Witness Nuhagic, PT pp. 5217-5218.
[1290] Witness Nuhagic, PT pp. 5217-5218.
[1291] P242.
[1292] Witness Nuhagic, PT pp. 5234-5235.

574. The Trial Chamber also considered that the attacks were massive. Although the Croatian soldiers mainly targeted only two villages in the municipality of Busovaca, those villages were totally destroyed and most of their inhabitants were driven out.

575. Busova~a, which had a population of two to three thousand Muslims before the hostilities, only has thirty or so Muslims living there today[1293].

ii) <u>The civilian and Muslim nature of the targeted populations</u>

576. The Trial Chamber finds that the offensives were not justified by military reasons, but essentially targeted Muslim civilians and their possessions[1294].

577. The Trial Chamber recognised that a Muslim resistance army had progressively been formed: groups of soldiers had organised themselves in order to take turns in patrolling the village[1295]. It also noted that the villages of Jelinak, Merdani and Puti{ together with the hamlet of Lon~ari were at the front line which separated the HVO forces from those of the ABiH and that there was intense fighting between the factions there. In that connection, the Trial Chamber noted that trenches had been dug, particularly in the village of Lon~ari[1296]. It found, finally, that the army of Bosnia-Herzegovina controlled in particular the villages of Jelinak and Merdani at the material time[1297].

578. However, the Trial Chamber points out that the inhabitants of O~ehni}i[1298]and Lon~ari[1299] had been disarmed before the attacks and were therefore unable to put up any resistance to the regular HVO troops' and Military Police's assaults.

579. More fundamentally, the Trial Chamber is convinced, given the nature and scale of the crimes committed, that the target for these troops was not only military but essentially

[1293] Witness FF, PT p. 6187.
[1294] According to the witness Nuhagi}, the attack on the town of O~ehni}i was in reprisal for the torching of the Draga barracks by the ABiH (PT p. 5231-5232).
[1295] Witness Q, PT p. 5150. The witness Q told investigators from the Office of the Prosecutor that Muslim men aged between 15 and 50 had been mobilised (PT pp. 5176-5177).
[1296] Witness Q, PT pp. 5177-5178.
[1297] Witness Q, PT pp. 5181-5183.
[1298] Witness Nuhagic, PT pp. 5213-5214.
[1299] Witness Q, PT pp. 5176-5177.

civilian. Indeed, it was private dwellings belonging to Muslims that were pillaged and then destroyed and farms and livestock that were burned. Moreover, it was in very large part Muslim civilians who were killed or unlawfully confined or beaten, then finally driven away towards territories under the control of the Bosnia-Herzegovina army.

2. The responsibility of General Bla{ki}

a) The arguments of the parties

580. According to the Prosecutor, General Bla{ki} orally ordered the commands of the HVO units involved in the crimes to take Lon~ari and O~ehni}i[1300] by assault and to "cleanse" them. In support of that allegation, the Prosecution relied on the fact that the villages were attacked in exactly the same way as all the villages in the La{va Valley[1301]. Furthermore, the Prosecution maintained that regular HVO forces and members of the D`okeri unit carried out the crimes at Lon~ari[1302] and at O~ehni}i[1303].

581. The Defence argued however that the accused did not order the destruction of the village of Lon~ari[1304]. In that connection, it said that the order given by General Bla{ki} to the Military Police on 16 April 1993 at 1:30 was only to defend the Vitez-Busova~a road and to prevent any attack by the ABiH from Zenica and from Kuber[1305]. The Defence added that the crimes were probably committed by the D`okeri over which it claimed that the accused had no control[1306]. Finally, it asserted that the destruction of Muslim homes could have been collateral damage resulting from the fighting between ABiH and HVO forces which was taking place in Jelinak and in Puti{[1307]. As regards the crimes committed at O~ehni}i, the Defence recognised that the attack was carried out by the commander of the Military Police Fourth Battalion and his men[1308]. It maintained however that that unit was not under the control of the accused but answered directly to the central office of the Military Police[1309].

[1300] Prosecutor's Brief, book VII, para. 2.164
[1301] Prosecutor's Brief, para. 2.165.
[1302] Prosecutor's Brief, para. 2.157 to 2.159.
[1303] Prosecutor's Brief, para. 2.162 to 2.163
[1304] Defence Brief, book VI, J, p. 366.
[1305] Defence Brief, book VI, J, p. 366.
[1306] Defence Brief, book VI, J, p. 367.
[1307] Defence Brief, book VI, J, p. 368.
[1308] Defence Brief, book IV, F, p. 351.
[1309] Defence Brief, book IV, F, p. 351.

Moreover, the Defence asserted that because General Bla{ki} had not received a report on these events, he could not know of the punishable acts carried out at O~ehni}i[1310].

b) The individual criminal responsibility of General Bla{ki}

582. The Trial Chamber will first of all show that at the time of the attacks, General Bla{ki} was the superior of the troops involved in the crimes. Then it will show from the content of the orders and reports which were submitted at the hearing and especially the general background against which the atrocities were committed that the accused was directly implicated in the offensives in the villages of Lon~ari and O~ehni}i.

i) The accused was the superior of the troops involved

583. The soldiers guilty of the crimes committed in April 1993 at Lon~ari and O~ehni}i belonged to the regular HVO forces[1311], the Military Police Fourth Battalion, and more specifically the D`okeri unit[1312].

584. It was not denied that the regular HVO troops in Busova~a – including the Nikola [ubi} Brigade which operated in the area – took orders directly from the accused[1313].

585. The Trial Chamber is convinced, despite the Defence assertions to the contrary, and, as it already found in respect of the crimes committed in the municipality of Vitez, that the Military Police Fourth Battalion and the D`okeri unit were also under the authority of General Bla{ki} at the material time.

586. That finding is essentially based on the accused's testimony. It is further confirmed by the corroborating allegations of several witnesses. During his evidence before the Trial Chamber, the accused himself said that the Military Police was under his command at the

[1310] Defence Brief, book IV, F, p. 351.
[1311] Witness Q, PT pp. 5153-5154, pp. 5168-5169.
[1312] Witness Nuhagi}, PT pp. 5235-5236, pp. 5255-5257.
[1313] Witness Bla{ki}, PT p. 20579.

time of the criminal events which took place at Lon~ari and O~ehni}i[1314]. Several witnesses also accepted that the Military Police was subordinate to the command of the accused[1315].

587. That allegation was corroborated by the fact that during 1993 the accused regularly addressed orders to the Military Police. Those orders took many different forms[1316] and referred both to organisational aspects[1317] and to the conduct of the troops[1318]. Moreover, the accused also gave the Military Police several combat preparation orders[1319] and combat orders [1320], which is undeniably evidence of the control he exercised over it.

ii) <u>The accused was responsible for the attacks on the villages of Lon~ari and O~ehni}i</u>

588. The Trial Chamber asserted that during the material time, General Bla{ki} gave numerous orders to the units involved in the crimes, and especially to the Nikola [ubi} Zrinski Brigade, and deployed them in the area where the crimes were committed[1321]. Moreover, the reports that the accused received from the commanders of that brigade are evidence that he was fully informed of the developments of their mission on the ground[1322].

589. Admittedly, the Trial Chamber does not *stricto sensu* have in its possession any order to seize the villages of Lon~ari and O~ehni}i addressed to those units. But then clearly it does not have all the orders issued by the accused during the events, as is obvious from the irregular numbering of the exhibits submitted during the hearing. In that regard, the Trial Chamber noted that it received only ten or so of General Bla{ki}'s orders covering the period from 17 April at 04:00 hours to 19 April at 18:45 hours[1323], whereas forty numbers separate the first document from the last[1324]. It also noted that the accused often addressed his troops orally.

[1314] Witness Bla{ki}, PT p. 18627, p. 20592.
[1315] Witness HH, PT p. 6917; see also witness Baggesen, PT p. 1907.
[1316] See P422, P456/5, P456/7, P456/26, P456/30, P456/33, P456/34, P456/38, P498/9 and D87, D208, D263, D380, D382, D400, D405, D511.
[1317] See P456/21, P456/31.
[1318] See P423, P424, P456/40, P456/27, P456/41, P456/77, P498/7, P498/8 and D354, D357, D368, D384, D386, D388, D389, D391, D456/44.
[1319] See P456/6, P456/35, P456/85, D267, D298.
[1320] See D268, D296.
[1321] See D268, D296.
[1322] D277, D288, D289, D299, D300, D301.
[1323] P456/45 and D284, D296, D297, D298, D299, D300, D301.
[1324] The first order given on 17 April at 04:00 hours is numbered 291/93 whereas the last is numbered 331/93.

590. More fundamentally, the Trial Chamber is convinced beyond all reasonable doubt that it followed from the scale of the atrocities carried out, from the scale of the assets used to achieve them and especially from the fact that the attacks were carried out at the same time and in the same way on the municipalities of Busova~a, Vitez (particularly the villages of Ahmi}i, Nadioci, Piri}i and [anti}i) and Kiseljak (particularly the villages of Behri}i, Gomionica, Gromiljak, Polje Vi{njica, Rotilj and Vi{njica) that General Bla{ki} had ordered the offensives against Loncari and Ocehnici.

591. In that connection, the Trial Chamber points out, as it did earlier[1325], that the crimes committed at Busova~a were similar to those carried out in other municipalities: murders, beatings, unlawful confinements and forced expulsions of Muslim civilians and torching of private homes. It notes, finally, that all these crimes are set against the same background of persecution of Muslim populations in central Bosnia of which they are the most extreme form.

592. The Trial Chamber is also convinced beyond any reasonable doubt that by giving orders to the Military Police in April 1993, when he knew full well that there were criminals in its ranks[1326], the accused intentionally took the risk that very violent crimes would result from their participation in the offensives. Granted, in November 1992 and March 1993, General Bla{ki} ordered that the torching of houses stop and had asked commanders, in particular those of regular HVO troops and of the Military Police, to identify the criminals responsible for those acts[1327]. But he almost never punished these criminals and never took steps to put them in a position where they could do no harm by imposing measures that would have prevented the very serious crimes that occurred at Loncari and Ocehnici from being repeated .

[1325] Witness Morsink, PT pp. 9877-9879 (see above, discussion of Ahmici).
[1326] Witness Bla{ki}, PT pp. 18395-18396.
[1327] P456/16.

D. The municipality of Kiseljak

593. From a general point of view, the Defence did not deny that the HVO committed crimes against the Muslim civilian populations in the region of Kiseljak in April and June 1993[1328]. However it did deny that the accused was responsible for these crimes.

1. The April and June 1993 attacks against the villages in the Kiseljak enclave

594. On 18 April, the villages with a high Muslim population in the north of the region, Behri}i, Gomionica, Gromiljak, Hercezi, Polje Vi{njica, Vi{njica, Rotilij and Svinjarevo were systematically taken by assault by HVO troops. On 12 June, it was the turn of the Muslim villages to the south of the municipality, Grahovci, Han Plo~a et Tulica and their inhabitants to suffer the offensives of the Bosnian Croat army.

a) The attacks on the villages in the north of the municipality of Kiseljak

i) Behri}i and Gomionica

595. Before the April 1993 hostilities, Behri}i and Gomionica were essentially Muslim villages. At the 1991 census, Behri}i was made up of 153 Muslims and 45 Croats, whereas Gomionica had 417 Muslims and 6 Croats[1329]. Those villages are situated about 6.5 km from the Kiseljak barracks.

596. The attacks on these entities took place in two successive stages: first an artillery offensive then an infantry offensive. From 18 to 21 April 1993, the HVO artillery shelled the two villages with at least 50 shells, including incendiary shells[1330]. Many civilians then took refuge in the Visoko municipality[1331]. As soon as the shelling ended and the soldiers who were attempting to resist these assaults withdrew[1332], the HVO infantry systematically set fire to and looted houses and stables belonging to Muslims of the lower part of Gomionica[1333].

[1328] The Defence acknowledged on several occasions in its Brief that HVO soldiers carried out crimes in the Kiseljak region (see book VI, N, p. 400, p. 410, p. 418, p. 419, p. 420 and p. 421).
[1329] P46.
[1330] Witness SS, PT pp. 9267-9269.
[1331] Witness SS, PT pp. 9268-9269.
[1332] Witness SS, PT pp. 9269-9271.
[1333] Witness SS, PT pp. 9269-9274.

Many Muslims, including soldiers[1334], then took refuge for several weeks in the higher part of the village. During June 1993, the HVO artillery and the infantry launched fresh offensives against Gomionica[1335].

597. All the Muslim inhabitants were finally expelled from these villages. A hundred and thirty-one homes and 98 stables were destroyed[1336]. The two religious sites there were also torched[1337].

ii) Gromiljak

598. Before the April 1993 attack, Gromiljak was a mainly Croatian village. At the 1991 census, it was made up of 425 Croats, 143 Muslims and 16 Yugoslavs[1338]. The village is 5.3 km to the north of the Kiseljak barracks.

599. On 18 April 1993, the HVO infantry entered Gromiljak in order to disarm its Muslim inhabitants[1339]. Then it held part of them in the basement of a private home[1340]. The women and children were released one week later whereas the men of fighting age were held for a fortnight and taken to the front lines and made to dig trenches[1341]. After they were released, the Croatian authorities forced the Muslims to report each day to the local police station and to comply with a curfew imposed upon them from 21:00 hours to 05:00 hours[1342].

600. The HVO soldiers pillaged[1343] and torched the Muslim homes of the village and drove away their inhabitants. They slightly damaged the mosque by setting fire to it[1344].

[1334] Witness SS, PT pp. 9279-9280.
[1335] Witness SS, PT pp. 9275-9278.
[1336] Witness SS, PT pp. 9277-9280.
[1337] Witness SS, PT pp. 9278-9280.
[1338] P46.
[1339] D305; witness LL, PT pp. 8014-8015.
[1340] Witness LL, PT pp. 8016-8017.
[1341] Witness LL, PT pp. 8016-8018.
[1342] Witness LL, PT pp. 8017-8018.
[1343] Witness LL, PT pp. 8062-8064.
[1344] Witness LL, PT p. 8031.

iii) Hercezi

601. Before the April 1993 fighting, Hercezi was a mainly Muslim village. At the 1991 census, 42 Croats and 143 Muslims lived there[1345].

602. On 18 April 1993, the HVO attacked the area around Hercezi with artillery fire[1346]. The Muslim soldiers who were defending the village then fled into the forest for around two days[1347]. The Croatian military then entered the village and demanded that the Muslims surrender any weapons they possessed, threatening to kill all the inhabitants, including the women, children and the elderly[1348]. After having obeyed that order[1349], the Muslim residents of the village were put under house arrest for several months and forced by the HVO to report three times a day to a specific location[1350]. As from August, the men of fighting age were taken to the front in order to dig trenches[1351].

603. In September, all the inhabitants of Hercezi were taken to the Rotilj camp[1352], then to the Kiseljak barracks where they were driven to the front to dig trenches[1353].

604. The HVO soldiers pillaged the private homes and seized all the livestock[1354]. Croats moved into the houses originally occupied by Muslims, whom they had forced to leave the village[1355].

iv) Polje Vi{nijica and Vi{nijica

605. Before the April 1993 hostilities, Vi{nijica was a village with a Muslim majority. At the 1991 census, it had 216 Croats, 714 Muslims and 1 Serb[1356]. The village is situated 5.2 km from the Kiseljak barracks. 444 Croats, 175 Muslims and 3 Serbs lived in Polje Vi{nijica[1357].

[1345] P46.
[1346] Witness JJ, PT p. 7398.
[1347] Witness JJ, PT p. 7398.
[1348] Witness JJ, PT p. 7399.
[1349] Witness DD, PT pp. 7035-7036. According to the witness, since the inhabitants of the village accepted to surrender their weapons, the village was not torched like the other villages in the area.
[1350] Witness DD, PT pp. 7036-7037; witness JJ, PT p. 7399.
[1351] Witness DD, PT pp. 7036-7037; witness JJ, PT pp. 7400-7401.
[1352] Witness DD, PT pp. 7037-7038; witness JJ, PT pp. 7404-7406.
[1353] Witness JJ, PT pp. 7410-7414.
[1354] Witness JJ, PT pp. 7400-7402.
[1355] Witness DD, PT pp. 7041-7042.
[1356] P46.
[1357] P46.

606. Around 13 April 1993, HVO soldiers dug trenches above Vi{njica[1358]. The Croatian inhabitants, warned of an imminent attack, then left the village[1359].

607. The HVO attacked the villages of Polje Vi{nijica and Vi{nijica during the morning of 18 April 1993[1360]. As with the other villages apart from Gromiljak, Vi{njica was attacked in two phases: first artillery fire for half a day[1361], then, once Muslim resistance had been overcome[1362], the assaults of the infantry soldiers. Soldiers picked out the men of fighting age whom they sent to dig trenches[1363]. They also killed several civilians[1364] and locked some civilians in silos situated at the border of the village. They looted their houses and torched them by dousing them with petrol[1365].

608. At Vi{jnica, they burned 40 of the 150 houses belonging to Muslims[1366]. They looted the mosque and expelled the civilians[1367]. At Polje Vi{njica, the HVO also burned most of the Muslim houses and forced their inhabitants to flee[1368].

v) Rotilj

609. Before the April 1993 attack, Rotilj was a mainly Muslim village. At the 1991 census, it was made up of 440 Muslims, 17 Croats and 1 Yugoslav[1369]. The village is 4.6 km to the west of the Kiseljak barracks.

610. In the night of 17 to 18 April 1993, the HVO forces surrounded Rotilj[1370]. On 18 April, the Commander of the Parizovici HVO, Mato Bojo asked those responsible for the TO to surrender all the weapons in the possession of the Muslim inhabitants of the village[1371].

[1358] Witness AA, PT p. 6618.
[1359] Witness Christie, PT p. 7857.
[1360] Witness Christie, p. 5842 of the French transcript of the video entitled "We are all neighbours".
[1361] Witness AA, PT pp. 6621-6622; Witness Christie, PT, p. 5842 of the French transcript of the video entitled "We are all neighbours".
[1362] According to witness AA, the village of Vi{njica included a military unit of 10 to 20 very poorly armed men (PT pp. 6621-6622)
[1363] Witness AA, PT p. 6624.
[1364] Witness AA, PT pp. 6626-6627.
[1365] Witness AA, PT pp. 6626-6627.
[1366] P95; witness Baggesen, PT pp. 1965-1966, 22 August 1997.
[1367] Witness AA, PT pp. 6638-6640.
[1368] P95.
[1369] P46.
[1370] Witness KK, PT pp. 7928-7929.
[1371] Witness KK, PT p. 7931.

Despite the fact that the TO leaders agreed to the demand and although very few people had any weapons[1372], the HVO soldiers attacked the village early in the afternoon of 18 April 1993. The offensive started with artillery fire from the direction of Przevici[1373]. The civilians who had not resisted then took refuge in the basements of their homes[1374]. The attack was carried out by HVO[1375] infantry soldiers who searched the houses looking for weapons[1376] as soon as the shelling stopped and set fire to several of them. They also killed some civilians[1377].

611. Moreover, the HVO rounded up around 600 Muslims[1378], mainly women and elderly people[1379], including some from neighbouring villages[1380], in the south-east of the village. Those people could not leave[1381]the fifteen to twenty houses abandoned by their owners[1382], since they were constantly watched over by HVO marksmen[1383] hidden in the hills overlooking the village[1384]. They suffered from overcrowding, from the lack of electricity and especially from the lack of water and food[1385]. Several of them were taken by HVO soldiers to the front lines to dig trenches[1386].

612. During these assaults, seven Muslim civilians were killed[1387]. Commander Baggesen heard it said that a woman was raped before being killed, that an elderly couple had been burned alive and that a father and his son had been decapitated[1388]. Captain Lanthier, an officer with the Canadian armed forces who served with UNPROFOR from April to November 1993, also related that several people had been killed violently[1389]. Several dwellings were pillaged[1390]and torched[1391].

[1372] Witness KK, PT p. 7931.
[1373] Witness KK, PT p. 7932.
[1374] Witness KK, PT p. 7932.
[1375] Witness KK stated that he saw HVO soldiers in the village of Rotilj wearing black scarves on their faces (PT p. 7934).
[1376] Witness KK, PT p. 7934.
[1377] Witness KK, PT p. 7935; witness Lanthier, PT pp. 8255-8256.
[1378] P298; witness Liebert, PT. p. 8792.
[1379] Witness Lanthier, PT pp. 8296-8297.
[1380] Witness JJ, PT p. 7404; witness Liebert, PT p. 8792.
[1381] Witness AA, PT p. 6658; witness JJ, PT pp. 7409-7410.
[1382] Witness JJ, PT p. 7404; witness Liebert, PT p. 8792.
[1383] P298; witness Baggesen, PT of 22 August 1997 p. 1954.
[1384] Witness Baggesen, PT pp. 1952-1953.
[1385] P298; witness Landry, PT p. 7543; witness Liebert, PT p. 8792.
[1386] Witness JJ, PT pp. 7406-7407; witness KK, PT p. 7936; witness Lanthier PT pp. 8297-8298.
[1387] Witness KK, PT pp. 7943-7944; witness Liebert PT p. 8767.
[1388]Witness Baggesen, PT of 22 August 1997, pp. 1952-1953.
[1389] Witness Lanthier PT pp. 8255-8256.
[1390] Witness KK, PT pp. 7944-7945.

vi) Svinjarevo

613. Before the April 1993 fighting, Svinjarevo was an almost exclusively Muslim village. At the 1991 census, it was made up of 282 Muslims and one Yugoslav[1392]. The village is 7.3 km north of the Kiseljak barracks.

614. On 18 April 1993, towards 06:00 hours, the HVO launched its attack by firing[1393] 60, 80 and 120 millimetre mortars and anti-aircraft weapons[1394]. As soon as the shelling stopped, soldiers from the TO organised the evacuation of about 200 civilians from the village who went in the direction of the municipality of Visoko[1395]. The HVO infantry entered Svinjarevo and the neighbouring villages of Rausevac, Puriševo, Japojrevo and Jehovac. It torched several houses belonging to Muslims[1396], sometimes using petrol[1397]. The soldiers also took civilians to the Kiseljak barracks where they were imprisoned for several weeks. The attacks carried on until 23 April 1993[1398].

615. During the offensives, ten Muslim civilians were killed[1399]. Several hundred people fled in the direction of Visoko. Not a single Muslim remained in Svinjarevo after these events[1400]. Ten houses were torched in Puriševo and four houses in Rausevac[1401].

b) The attacks against the villages in the south of the municipality of Kiseljak

i) Grahovci and Han Ploca

616. Before the June 1993 hostilities, Grahovci was inhabited by 66 Muslims and 2 Croats[1402]. Han Ploca had a population of 259 Muslims and 45 Croats[1403]. Those villages are about ten km to the south of Kiseljak.

[1391] The witness Lanthier attempted to go to the village of Rotilj on 19 April, but was prevented from doing so by HVO soldiers forming a roadblock at the entry to the village (PT pp. 8279-8280).
[1392] P46.
[1393] Witness WW, PT pp. 9688-9689.
[1394] Witness WW, PT pp. 9732-9733.
[1395] Witness WW, PT p. 9691.
[1396] Witness WW, PT pp. 9689-9696.
[1397] Witness WW, PT pp. 9738-9739.
[1398] Witness WW, PT pp. 9698-9699.
[1399] Witness WW, PT pp. 9698-9699.
[1400] Witness WW, PT p. 9705.
[1401] Witness WW, PT pp. 9709-9710.

617. On 12 June 1993, the HVO ordered the inhabitants of the two villages to surrender their weapons[1404], which they refused to do[1405], partly because of the proximity of the Serbian front [1406]. Towards 14:00 hours[1407], the HVO artillery then shelled Grahovci and Han Ploca[1408]. The shelling was carried out with the assistance of the Bosnian Serb army[1409]. Many Muslim civilians fled, especially into the neighbouring woods[1410].

618. Once any resistance was overcome, on 13 June towards 18:00 hours[1411], the HVO infantry[1412] erupted into the villages and systematically looted and torched the houses and stables belonging to Muslims[1413]. It also beat[1414] and violently killed several inhabitants[1415]. The Han Ploca mosque was burned[1416] and its imam killed[1417]. Many civilians, mainly men of fighting age[1418], were taken prisoner and detained in the Kiseljak barracks[1419]. They were deprived of sufficient food, beaten and made to dig trenches[1420] .

619. All the Muslims left the village during the offensives and about sixty of them have since been declared missing[1421]. Their houses were burned and looted by the HVO soldiers[1422].

[1402] P46.
[1403] P46.
[1404] Witness QQ, PT p. 8936; witness RR, PT pp. 8973-8974.
[1405] Witness TT, PT p. 9343; witness UU, PT p. 9530.
[1406] Witness QQ, PT p. 8935. The villages of Grahovci and Han Ploca were 700m and 1 km respectively from the Serbian front.
[1407] Witness QQ, PT p. 8936.
[1408] Witness RR, PT pp. 8974-8975; witness UU, PT pp. 9530-9531.
[1409]. Witness TT, PT pp. 9328-9329; witness UU, PT pp. 9530-9531. The witness QQ stated that he saw a tank of the Serbian artillery firing six shells in the direction of Grahovci (PT p. 8938).
[1410] Witness RR, PT pp. 8975-8976; witness TT, PT pp. 9328-9329.
[1411] Witness QQ, PT p. 8937.
[1412] Witness QQ, PT p. 8939; witness UU, PT pp. 9531-9532.
[1413] Witness QQ, PT pp. 8937-8940; witness TT, PT pp. 9328-9329; witness UU, PT pp. 9531-9532.
[1414] Witness UU, PT pp. 9531-9532.
[1415] Witness RR, PT pp. 8989-8995.
[1416] Witness QQ, PT p. 8937; witness TT, PT pp. 9328-9329; witness UU, PT pp. 9532-9533.
[1417] Witness QQ, PT p. 8950; witness RR, PT pp. 8979-8980.
[1418] Witness TT, PT pp. 9329-9330.
[1419] Witness RR, PT pp. 8995-8996.
[1420] Witness TT, PT pp. 9329-9331.
[1421]Witness QQ, PT p. 8950. The witness UU put forward the figure of 95 to 100 for missing persons (PT pp. 9533-9534).
[1422] Witness RR, PT pp. 8983-8984.

ii) Tulica

620. Before the June 1993 hostilities, Tulica was a Muslim village. At the 1991 census, it was inhabited by 278 Muslims and one Croat[1423]. It is 12 km to the south of the Kiseljak barracks.

621. On 12 June 1993, Tulica was attacked by HVO soldiers and by the Maturice sabotage unit[1424]. As in April, they acted in two phases. Assisted by the Serbian forces stationed not far from the village[1425], they started their offensives at about 10:00 hours with artillery fire which went on until about 16:00 hours[1426]. The soldiers then launched an infantry attack. They held the women, children and elderly in a private dwelling. The men of fighting age were taken, then held in the Kiseljak barracks[1427]. Several prisoners were beaten by the barracks guards[1428] and taken to the front to dig trenches[1429]. During the digging work, they were again beaten by HVO soldiers[1430].

622. The HVO forces deliberately looted and torched most of the Muslim dwellings of the village[1431]. They also killed 12 people including 3 women[1432] and drove all the other Muslim residents away from Tulica[1433].

c) Conclusions

623. The offensives of April and June 1993 carried out by the HVO against the municipality of Kiseljak were systematic and massive. Moreover, they were all aimed against the Muslim civilian populations of the region.

[1423] P46.
[1424] Witness NN, PT pp. 8464-8471.
[1425] Witness OO, PT pp. 8662-8663; witness PP, PT p. 8724.
[1426] Witness OO, PT pp. 8634-8636.
[1427] Witness NN, PT pp. 8475-8476.
[1428] Witness NN, PT pp. 8477-8478; witness OO, PT pp. 8654-8655.
[1429] Witness NN, PT p. 8480; witness OO, PT pp. 8655-8656.
[1430] Witness OO, PT pp. 8655-8656.
[1431] Witness NN, PT pp. 8465-8469.
[1432] Witness NN, PT pp. 8470-8477; witness PP, PT pp. 8726-8727.
[1433] Witness OO, PT pp. 8671-8672.

i) The systematic and massive nature of the April and June 1993 attacks

624. There is no doubt whatsoever that these offensives were carried out in execution of a plan or an organised action agreed at a high level of the military hierarchy. This is shown by the fact that the following events occurred together:

- the attacks were launched by the HVO simultaneously on 18 April 1993 against all the villages to the north of the Kiseljak enclave and on 13 June against the villages to the south of the enclave[1434];

- the telephone lines in Rotilj were cut and that village encircled on the eve of the military operations ;

- the Croatian inhabitants of the village of Višnijca were warned of the offensives and left the area before the start of the hostilities;

- the offensives were carried out each time mainly by the same "Ban Jelaci}" Brigade with the help of other units which had been placed under the control of that brigade[1435];

- the attacks on the north of the Kiseljak enclave were carried out 48 hours after those carried out, in a similar manner, against the Muslim villages in the municipality of Vitez, in particular Ahmici, Nadioci, Pirici, and Šantici;

- several of these offensives, mainly those which were launched against the villages of Gomionica, Grahovci, Han Ploca and Tulica were carried out in concert with the Bosnian Serbs' artillery[1436];

[1434] Witness Lanthier, PT p. 8295. As Captain Lanthier, a Canadian army officer who served with UNPROFOR from October 1992 to May 1993, pointed out, the attacks had to be "synchronised" and not "the result of chance". According to witness KK, the 18 April attack: "was carried out in an organised manner. When I say "organised manner" I do that because I had – I know certain facts; namely, at the same time, the HVO attacked the villages of Rotilj, Vi{njica, Hercezi, Doci, Gromiljak, Gomionica, Jehovac, Svinjarevo. Therefore, these villages were all attacked on the same day, on 18 April 1993, so I believe this […] was carried out with a previous plan" (PT p. 7925).

[1435] D300.

[1436] According to the witness Liebert: "We had ample evidence of very close co-ordination and co-operation between the HVO forces, the Bosnian-Croat forces and the Bosnian-Serb forces in our area"(PT p. 8793). That collaboration between the army of the Bosnian Serbs and the HVO was particularly evident in two other ways. The former helped the latter to operate displacements of civilian Croatian populations by providing methods of transport and by allowing them to pass onto their territory, towards HVO controlled zones, especially towards Vare{ and Kiseljak (Witness Liebert, PT, pp. 8773-8775 and witness Morsink, PT p. 9968). The Croatian

- roadblocks were put up by the HVO at the entrance to the main roads leading to Gomionica and Polje Višnjica[1437];

- finally, and more significantly, the offensives were carried out in the same manner.

On that last point, the Trial Chamber notes that all the attacks, except that on Gromiljak[1438], occurred in two clear phases: heavy artillery fire intended to defeat any Muslim inhabitants who refused to surrender, followed by infantry offensives.

625. Those soldiers proceeded in the same way each time: they violently killed certain Muslim civilians, confined those they had decided to spare and from among those, picked out the men of fighting age. The men were mainly taken to the Kiseljak barracks, where they were detained for several months and sent to the front in small groups to dig trenches. Other people, mainly women, children and the elderly were driven to the part of the village of Rotilj which was under HVO surveillance. In most of the villages, the infantry systematically looted, damaged or even destroyed the houses, farms and places of worship of the Muslims, usually by torching them.

626. It was also established that the attacks were massive. They affected at least ten Muslim villages in the Kiseljak municipality. During the attacks, around forty civilians were killed and 250 houses torched. Nearly all the Muslim dwellings in the villages of Behrici, Gromiljak, Gomionica and Polje Višnjica were destroyed. The mosques in Behrici, Gomionica, Gromiljak, Višnjica and Han Ploca were also looted, damaged or demolished.

---

authorities supplied fuel to the Serbian army which was subject to an embargo (witness Lanthier, PT pp. 8305-8306 and see also witness Morsink, PT p. 9968). According to the witness KK, as from the end of May 1992, "[…] there was an agreement between the Kiseljak HVO and the Serb Army" (PT pp. 7914-7915). The witness TT also testified that "co-operation between the Serbs and Croats in these parts was extremely good" (PT pp. 9332-9333).

[1437] Witness LL, PT pp. 8045-8046. The witness Baggesen tried to get to Gomionica and Polje Višnjica after the April 1993 events and was prevented from doing so by lots of HVO road blocks (PT pp. 2003-2007; P93).

[1438] That was probably because the village of Gromiljak was inhabited mainly by Croats that it was spared the HVO artillery.

ii) The civilian and Muslim character of the targeted populations

627. There is no doubt whatsoever that the attacks carried out by the HVO in April and June 1993 were not justified by strictly military reasons but also targeted Muslim civilians and their possessions.

628. In April 1993, the army of Bosnia-Herzegovina was mainly occupied in defending the regions of Visoko[1439], Koscan and Kralupi, which were being subjected to offensives by the Bosnian Serb army[1440]. Furthermore, the villages to the north of the Kiseljak enclave had hardly any military facilities to speak of, nor any trenches[1441].

629. Furthermore, the assets used by the Muslim soldiers to fight against these attacks were trivial compared to those used by the HVO[1442]. The HVO used heavy artillery and anti-tank artillery[1443], 60, 80 and 120 mm mortars and hand-held grenade launchers (RPG7)[1444].

630. Finally, and more fundamentally, it is undeniable that military surveillance had been organised[1445], particularly at Gomionica[1446], Hercezi[1447], Svinjarevo[1448] and Višnjica[1449], and that the army of Bosnia-Herzegovina was present at the time of the offensives carried out in the villages of Svinjarevo and especially Grahovci and Han Plo~a[1450]. Those two villages were very close to the Serbian front lines[1451] and to the territories under the control of the ABiH[1452]. It follows however from the nature and the scale of the crimes perpetrated that the

[1439] P298. As regards the village of Rotilj, the ECMM report signed by Lieutenant-Colonel Landry stated that "the village wasn't defended by any ABiH force, since all of the soldiers were deployed in the Visoko area".
[1440] Witness KK, PT p. 8001; witness LL, PT pp. 8044-8045; witness Lanthier, pp. 8331-8332.
[1441] Witness SS, PT pp. 9297-9300 and witness UU, PT p. 9545. The witness KK testified that there were no trenches nor any barracks at Rotilj (PT pp. 7995-7996).
[1442] Witness Liebert, PT pp. 8795-8798; witness RR, PT p. 8008; witness SS, PT pp. 9245-9246; witness UU, PT pp. 9530-9541. The witness KK stated that the Muslims from the village of Rotilj did not counterattack when attacked on 18 April 1993 because they were surrounded by HVO troops (PT pp. 7957-7958).
[1443] Witness Baggesen, PT pp. 1956-1957 of 22 August 1997
[1444] Witness Baggesen, PT pp. 1966-1967 of 22 August 1997
[1445] The witness KK stated that the headquarters of the Jasikovika military unit were in Vi{njica (PT pp. 7975-7976, 7978-7980)
[1446] Witness SS, PT pp. 9244-9245.
[1447] Witness JJ, PT p. 7398. According to the witness: "we organised ourselves in the village. There were about 15 able-bodied men there. We split between two ends of the village; we knew what we needed to protect."
[1448] A unit of about 70 people was stationed in the village of Svinjarevo (Witness WW, PT p. 9718)
[1449] Witness AA, PT pp. 6621-6622. In relation to the defence of the village of Vi{njica, the witness Christie stated that : "Muslim men decided to conduct their own patrol within the village. This amounted to six men who would gather in a house and two at a time they would walk around the village at night, between about 10.00 and 1.00 in the morning to protect their own houses"(PT pp. 9852-9853).
[1450] Witness WW, PT pp. 9719-9721.
[1451] P345.
[1452] Witness QQ, PT p. 8936.

HVO soldiers were not fighting only in order to overcome that armed resistance. They were also seeking to make the Muslim civilian populations flee the municipality and to ensure that they did not return[1453]. In order to achieve this the HVO soldiers mainly acted as follows:

- they terrorised the civilians by intensive shelling, murders and sheer violence;

- they systematically torched and destroyed their private homes and places of worship[1454], usually after looting them;

- they slaughtered the livestock and seized agricultural reserves;

- and finally, they arrested and detained in camps, then finally exchanged or expelled Muslim civilians towards territories under the control of the army of Bosnia-Herzegovina.

631. In that connection, the Trial Chamber notes that the Kiseljak authorities created an official commission responsible for driving civilians out of the region[1455]. Finally, it points out that the municipality in which 10,000 Muslims lived before the hostilities had only 800 remaining after[1456].

632. All these facts emerge clearly from the consistent findings of many witnesses, including several ECMM officers. According to the report of Major Lars Baggesen, the village of Gomionica was totally destroyed and all its inhabitants had gone[1457]. The report mentioned in relation to Polje Vi{njica that "most of the Muslim houses had been burned and most of the Muslims had left the village"[1458]. Captain Lanthier expressed his "horror in the face of the savagery of the acts"[1459]. He added that "the very nature of these acts was just

[1453] The witness Baggesen went to the municipality of Visoko a few days after the events and personally noted that there were 18,908 refugees there, including 1,038 from the municipality of Kiseljak from the villages of Svinjarevo, Jehovac, Gromiljak, Behri}i, Gomionica and Bilalovac (PT p. 2010; P94).
[1454] As witness LL said: "Only Muslim houses, exclusively Muslim houses, not a single Croat house was ever on fire. In the village of Gomionica, which was a Muslim village, there were several Croat houses, maybe two or three, and they remained standing, not a single bullet was shot at them. The targets were only Muslim houses"(PT p. 8069).
[1455] Witness LL, PT p. 8026, p. 8050; witness WW, PT p. 9705.
[1456] Witness Meijboom, PT. p. 10131.
[1457] P95.
[1458] P95.
[1459] Witness Lanthier, PT p. 8289.

horrifying"[1460]. Captain Liebert, a Canadian army officer, also noted the "surgical" nature of the damage inflicted on Rotilj and after his visit to the village declared:

> The impression it left with me is very vivid and very striking, because I was taken aback by the surgical nature of the damage, and I use that term because, as you drove through this area, there would be houses that were burnt out. There would be one or two or three, and right in the middle of them you would see another house that was still intact, and indeed, inhabited. And then a little further down the road, there would be more destroyed houses. There was no pattern to this or no immediate pattern and upon talking to the inhabitants, it quickly became clear that the damaged houses were basically the property of Bosnian Muslim civilians, and, in a lot of cases, the undamaged ones were the property of Bosnian Croats[1461]

He added:

> I think it was *very discriminating*, sir, and I believe the damage for the most part was relegated to Bosnian Muslim houses[1462].

According to the account given by Lieutenant-Colonel Remy Landry:

> Once we arrived, we saw that there had absolutely been some atrocities which had been committed. *Specific* houses had been burned, burnt houses between houses which had not at all been set on fire. […] It was clear that the Muslim houses had been burned; that at least one women who was not able to escape on time had been raped and then killed with machine-gun bursts […] We went to visit a house, if you can call it a house, where the people had been burned[1463].

633. Deborah Christie, a BBC journalist, testified to the discriminatory nature of the destruction at Vi{njica: "there would be a Croat house, then a Muslim house, then a Croat house and the Muslim one in the middle would be destroyed, severely damaged and on several occasions burned out"[1464]. She also said: "it was clear from the state of the houses, which we knew quite well by then, that the people had had *to leave in a terrible hurry*, that they had taken absolutely nothing"[1465].

634. In conclusion, and as was pointed out by Captain Lanthier, who was able to visit many of the villages in the Kiseljak enclave after the hostilities:

> What had happened in the Kiseljak pocket is what is known as *ethnic cleansing, where deliberately the citizens had been attacked, that is, those citizens of Muslim origin and*

[1460] Witness Lanthier, PT p. 8289.
[1461] Witness Liebert, PT, pp. 8753-8754.
[1462] Witness Liebert, PT, p. 8866 (emphasis added).
[1463] Witness Landry, PT pp. 7542-7543. See also P298.
[1464] Witness Christie, PT p. 7857 (emphasis added).
[1465] Witness Christie, PT p. 7857 (emphasis added).

> *only them*. The others had been left untouched. It wasn't specifically the villages that were attacked but specifically people within the villages. That was what allowed me – that is the conclusion I came to[1466]. […] In my mind, it was clear, and even more so in retrospect, that the operations that were carried out in the Vitez and Kiseljak pockets constituted *ethnic cleansing* of the Muslim population living there. They were carried out in the military fashion. The tactics utilised and the use of the land and all the other factors, which I have already mentioned, indicates quite clearly that [the situation was not] that one day to the next, a farmer decides to exterminate his neighbours, but rather a systematic extermination […] When you look at what happened in Vitez two days later, this thing continued in the Kiseljak pocket, and then several days later, in Breza, in this 302nd Brigade, I was told that the same thing was being prepared for Vare{ and Stupni Do. And I was told by this brigade that he feared for Stupni Do. History showed later on that the exact same thing was to happen there. So it was *systematic*, it was organised, and there was no doubt whatsoever that *this was a military operation against a civilian population*[1467].

He also stated: "except for [in one] house, […] around Gromiljak, I didn't see *any presence of human beings* in those villages"[1468]. Major Baggesen also acknowledged that "it was obvious that ethnic cleansing had taken place in the area"[1469].

2. The responsibility of General Bla{ki}

635. To begin, the Trial Chamber will very succinctly recall the main arguments advanced by the Prosecution and the Defence. It will then analyse General Bla{ki}'s individual criminal responsibility for the crimes described above.

a) Arguments of the parties

i) The Prosecution

636. The Prosecutor asserted that General Bla{ki} ordered HVO units, and more specifically the Ban Jela~i} Brigade, to attack the villages in the north and south of the Kiseljak enclave on 18 April and 12 June 1993[1470]. She also maintained that by issuing such orders the accused must have known that violations of humanitarian law would very probably result[1471]. In support of these assertions, she presented *inter alia* two combat orders dated 17 April 1993 in which the accused instructed the commander of the Ban Jela~i} Brigade to seize the villages of Gomionica and Svinjarevo[1472]. Moreover, from the scope of the military

[1466] Witness Lanthier, PT p. 8293 (emphasis added).
[1467] Witness Lanthier, PT pp. 8337-8338 (emphasis added).
[1468] Witness Lanthier, PT p. 8293 (emphasis added).
[1469] Witness Baggesen. PT of 22 August 1997, p. 1967. Witness LL also maintained that the attacks were "followed by ethnic cleansing and evictions" (PT p. 8046).
[1470] Prosecutor's Brief, book VII, para. 2.204.
[1471] Prosecutor's Brief, para. 2.210.
[1472] Prosecutor's Brief, paras. 2.204 and 2.207.

operations conducted in April and June 1993 and the manner in which they were carried out, she surmised that they were planned by General Bla{ki} at a very high level in the command structure[1473]. The Prosecutor stated lastly that even though the HVO headquarters were geographically isolated from the Kiseljak region, the accused was closely connected to the military units deployed there as the combat reports which he received during the events showed[1474]. In view of this, she also noted that General Bla{ki} travelled to the Kiseljak[1475] enclave on several occasions and that he had available to him advanced communications[1476].

ii) The Defence

637. However, the Defence alleged that the accused did not know of the crimes perpetrated during the unlawful attacks upon the villages[1477]. It asserted firstly that since the army of Bosnia-Herzegovina controlled the road linking the Busova~a and Kiseljak entities as of January 1993, General Bla{ki} could only rarely travel to the enclave[1478]. The Defence further declared that he could only get there with UNPROFOR's assistance[1479]. It finally maintained that the telephone communications between the accused's headquarters and Kiseljak headquarters were regularly cut and intercepted by the ABiH[1480] and that the packet transmission system was neither effective nor rapid[1481].

638. In addition, the Defence contended that on 17 April 1993 the accused ordered the Ban Jela~i} Brigade to seize the positions held by the ABiH in Gomionica and Svinjarevo so as to prevent that army from coming to the aid of the Muslim forces attacking the HVO in the Busova~a and Vitez regions[1482]. Moreover, following the combat operations conducted by the ABiH in the Kiseljak region after 17 April, the accused issued a new order dated 19 April directing the Ban Jela~i} Brigade to take control of the Gomionica heights[1483]. According to the Defence, his objective was strictly military[1484]. Furthermore, in light of the reports which he received as to the progress of the fighting on the ground, he had no "reason to know,

[1473] Prosecutor's Brief, para. 2.252.
[1474] Prosecutor's Brief, para. 2.204.
[1475] Prosecutor's Brief, para. 2.208.
[1476] Prosecutor's Brief, para. 2.209.
[1477] Defence Brief, book VI, N, p. 403.
[1478] Defence Brief, book VI, N, pp. 403-406.
[1479] Defence Brief, book VI, N, p. 403, p. 405.
[1480] Defence Brief, book VI, N, p. 406.
[1481] Defence Brief, book VI, N, p. 407.
[1482] Defence Brief, book VI, N, pp. 408-409.
[1483] Defence Brief, book VI, N, pp. 409-410.
[1484] Defence Brief, book VI, N, p. 409.

however, that his orders were being destroyed and that civilians and civilian property were being deliberately attacked"[1485].

639. Lastly, the Defence supported that the Mostar HVO General Staff had a forward command post in the Kiseljak region[1486] and directly controlled the "operative group" in this zone[1487]. It asserted too that the return of Ivica Raji} in May 1993 as "HVO Operative Group Commander in Kiseljak"[1488] made the exercise of his functions especially difficult and uncertain[1489]. The Defence claimed that commander Raji} received orders directly from General Petkovi}, his personal friend[1490], and was highly regarded by the soldiers in the Kiseljak HVO, unlike General Bla{ki}[1491].

b) Discussion

640. Initially, the Trial Chamber will analyse the content of the military orders sent by the accused to the commander of the Ban Jela~i} Brigade. It will then infer from the systematic and widespread nature of the crimes perpetrated and the general context within which they occurred that the military operations conducted in April and June 1993 in the Kiseljak enclave were ordered by General Bla{ki} himself.

i) The combat preparation order and combat order

641. The Trial Chamber will first look at the contents of the combat preparation order[1492] and the combat order[1493] of 17 April 1993. It will next determine to whom the orders were sent and the military assets ordered to be used.

a. The texts of the combat preparation order and combat order

642. In orders issued at 09:10 hours and 23:45 hours on 17 April 1993, General Bla{ki} instructed the Kiseljak Ban Jela~i} Brigade to seize several Muslim villages in the municipality.

[1485] Defence Brief, book VI, N, p. 410.
[1486] Defence Brief, book VI, N, p. 412.
[1487] Defence Brief, book VI, N, p. 412.
[1488] Defence Brief, book VI, N, p. 413.
[1489] Defence Brief, book VI, N, pp. 412-419.
[1490] Defence Brief, book VI, N, p. 415.
[1491] Defence Brief, book VI, N, p. 415.
[1492] D299.
[1493] D300.

643. The first, a combat preparation order, was addressed to the commander of the brigade instructing him to prepare his troops *inter alia* to "engage in the blockade of Vi{njica and other villages that can be used by the enemy to launch an attack"[1494], to "take control of Gomionica and Svinjarevo "[1495] and to inform the accused as soon as he was ready to launch the offensives[1496]. The second order directed the "Ban Jela~i} Brigade Command Kiseljak" to launch those military operations at 05:30 hours on 18 April 1993 and to "capture Gomionica and Svinjarevo"[1497].

644. The Trial Chamber observes that in these orders General Bla{ki} used terms which were not strictly military and had emotional connotations which were such as to incite hatred and vengeance against the Muslim populations. The opening paragraph of the combat order began with the following assertion:

> [the] enemy continues to *massacre* Croats in Zenica where Muslim forces are *using tanks* to *fire* at people, mostly women and children[1498]

Using the same terms, the fourth paragraph added:

> Persist tomorrow with the attack or we will be wiped out because the MOS /Muslim armed forces/ and the Mujahedin are advancing against the Croats in Zenica *supported by tanks*[1499]

The ninth paragraph included an emphatic call to the responsibility of the commander who received the order to "maintain a sense of historic responsibility"[1500].

645. The same terms were again to be found in the combat preparation order of 17 April 1993, in particular in the opening paragraph:

> [t]he enemy is continuing the intense attacks against the forces of HVO and is trying to completely *eradicate* the Croats from the region and *destroy all the institutions* of HVO in the valley of the La{va. The probable goal of the aggressor, after the accord with the chetniks about the surrender of Srebrenica and other regions, is the military defeat of

[1494] D299.
[1495] D299.
[1496] D299.
[1497] D300.
[1498] D300 (emphasis added).
[1499] D300 (emphasis added).
[1500] D300 (emphasis added).

> HVO and the *inclusion of our regions into some kind of a greater Serbia* or New Yugoslavia.
>
> In the combats that *raged* yesterday, the enemy used the favourite method of the chetniks: *pushing women and children in front, to use them as a shield* and then to occupy the main strategic objects[1501].

The order's ninth paragraph also emphatically conferred an historic role upon the Kiseljak HVO commander and his troops:

> [k]eep in mind that *the lives of the Croats* in the region of La{va *depend upon your mission.* This region could become a *tomb* for all of us if you show a lack of resolution[1502].

646. Based only on the text, the Trial Chamber notes that the accused used particularly clear terms in entrusting the commander of the Ban Jela~i} Brigade with an attack mission. He gave the order to "engage in the blockade of Vi{njica and other villages"[1503] and to "take control of"[1504] or "capture"[1505] Gomionica and Svinjarevo. Despite the contention of the Defence, the terms used do not suggest that General Bla{ki} ordered the commander to capture only the ABiH positions allegedly located in the towns. On the contrary, the eighth paragraph implied that his task went well beyond that. The accused employed radical words in the order which have connotations of "eradication": "All assault operations must be successful and to that end, use units of the Military Police and civilian police for *the mop-up*"[1506].

b. <u>The recipient of the orders</u>

647. On 17 April 1993, the accused sent the combat preparation order and combat order to Mijo Bo`i} whom he had previously appointed to the post of Ban Jela~i} Brigade commander

[1501] D299 (emphasis added).
[1502] D299 (emphasis added). These same affirmations are also to be found in the combat orders issued at 18:45 hours and 21:40 hours on 19 April. The first states that "[t]he future of all Croats of Busova~a, Travnik, Vitez and Novi Travnik depends upon your success, whereas in Zenica /words illegible/ in *any concentration camp*, particularly in Gornja Zenica, where our people who fled from the centre of Zenica are being slaughtered even today. *There is a massacre*" (P456/49) (emphasis added). The second asserts that "[a]t the moment, the Croatian people of Zenica are going through a most critical period. *They are literally being slaughtered*" (P456/50).
[1503] D299.
[1504] D299.
[1505] D300.
[1506] D300 (emphasis added).

[1507]. Furthermore, at 16:45 hours on 18 April 1993, Mijo Bo`i} reported to the accused informing him, amongst other things, that the conflict had spread to Rotilj, Vi{njica, Doci, Hercezi and Bretovsko[1508].

648. It was Mijo Bo`i} himself who issued a criminal order on 27 January 1993[1509] which read: "After the preparation has been completed the local population is to be called to surrender unconditionally all weapons; otherwise *the villages will be burnt to the ground*. In case of refusal to surrender arms open strong and concentrated fire on all targets with PAT /anti-aircraft guns/, PAM /anti-aircraft machine guns/, and MB /mortars/ and proceed with *mopping up the area*"[1510]. It also stated that "Bukovci village must be taken by nightfall on condition that *we burn anything standing in our way*"[1511].

649. Despite the fact that Mijo Bo`i} never carried out this January order, by turning to him in April 1993 to direct military operations designed to "seal off", attack and "cleanse" villages inhabited to a very large extent by civilians, General Bla{ki} ordered or at least provoked the commission of crimes against Muslims and their property, including the razing of their houses.

c. Military assets

650. In the second paragraph of the combat order, the accused instructed that "all available artillery" be used and that Gomionica and Svinjarevo be captured "through *systematic targeting* (60, 82 and 120 mm MB /mortar launchers/)"[1512]. In paragraph 6 of the same order, he also ordered that "fire preparations for the attack must be strong and guarantee a successful attack"[1513].

651. By advocating the vigorous use of heavy weapons to seize villages inhabited mainly by civilians, General Bla{ki} gave orders which had consequences out of all proportion to military necessity and knew that many civilians would inevitably be killed and their homes destroyed.

[1507] Witness Bla{ki}, PT pp. 21699-21700.
[1508] D306.
[1509] General Bla{ki} was in Kiseljak on the day the order was issued (witness Bla{ki}, PT pp. 21700-21701).
[1510] P510 (emphasis added).
[1511] P510 (emphasis added).
[1512] D300.
[1513] D300.

d. Conclusions

652. Before reaching any conclusions, the Trial Chamber recalls that the attack of April on the villages, especially Svinjarevo, Gomionica and Vi{njica, proceeded according to the combat order signed by the accused[1514] – heavy artillery fire followed up by infantry sent in to "mop up".

653. The Trial Chamber maintains that even though General Bla{ki} did not explicitly order the expulsion and killing of the civilian Muslim populations, he deliberately ran the risk of making them and their property the primary targets of the "sealing off" and offensives launched on 18 April 1993. It draws this assertion from the following in particular:

- the categorical and hate engendering content of the combat preparation order and combat order;

- the fact that the orders were addressed to a commander who had himself previously threatened to burn a village down;

- and finally, the fact that they advocated the use of heavy weapons against villages inhabited for the most part by civilians.

ii) The widespread and systematic nature of the crimes perpetrated

654. The Trial Chamber points out that the two aforesaid orders did not initiate all the military operations conducted in Kiseljak in April and June 1993.

655. To start, the Trial Chamber indicates that other orders were sent by the accused to the Ban Jela~i} Brigade at the same period, in particular at 18:45 hours[1515] and at 21:40 hours[1516] on 19 April. The former explained *inter alia* that it was necessary to "attack in groups and only diagonally from Ko~atale and [ikulja"[1517]. The latter recalled that Gomionica had to be

[1514] D300. Paragraph 10 of the order states: "Begin the operation on 18 April 1993 at 0530 hours".
[1515] P456/49.
[1516] P456/50.
[1517] P456/49.

taken "tonight or in the early morning, because the main forces of the MOS /Muslim armed forces/ are at Busova~a […]"[1518].

656. The Trial Chamber also sets forth that General Bla{ki} often spoke to his troops. It asserts that even though it was difficult to reach Kiseljak due to the war-time circumstances the HVO army had taken hold of the town's communications buildings and had sufficiently advanced technical means in order to communicate with the officers in the field on a regular basis[1519]. In this connection, the Trial Chamber points out that the combat preparation order demanded a report from the commander of the Ban Jela~i} Brigade before 23:30 hours confirming that he was ready to conduct operations. At 23:45 hours, the accused sent out the attack order. It is thereby proved that, contrary to the claims of the accused, the communications between Vitez and Kiseljak were indeed working.

657. Further, as it has affirmed previously, the Trial Chamber is convinced that it does not have all the orders issued by the accused during the period covered by the charges. This is borne out by the irregular numbering of the documents provided to the Trial Chamber by the parties to the hearings.

658. Moreover, the reports which the accused received during the events[1520] and the orders which he issued during 1993, especially those appointing[1521] and dismissing[1522] commanders, persuaded the Trial Chamber that General Bla{ki} did indeed command military operations in the Kiseljak region and effectively controlled how they developed. In addition, he claimed in a interview for the newspaper *Danas* in October 1993:

[1518] P456/50.
[1519] Witness Lanthier affirmed that "[…] the HVO had excellent communications among the various locations of its headquarters, particularly the presence of telephones and civilian lines, because the PPT building was under HVO control in Kiseljak and those telephone lines were working so they could use telephones to communicate. They could use faxes. […] Also, that there were high frequency antennae, and there were also telephones that showed that there were satellite dishes on the roofs of the headquarters. I saw all of that and so they could see that there was a great deal of possibility to maintain communications among the various headquarters, which allowed the commander to exercise commander control over his troops" (PT p. 8333). According to witness Liebert: "[…] what I did see was the – what I would say was symptomatic of an effective chain of command and communication system" (PT p. 8797). Witness Morsink also pointed out that the HVO soldiers "[…] had good telephone communications, they had good fax communications, and I saw several HVO officers carrying small portable radios, so I think also the communication part was well-organised. They controlled all the switching stations of the telephone lines, so they could, in fact, decide who was having connections, who not" (PT p. 9909).
[1520] D305, D306, D323.
[1521] *Cf*. P456/68.
[1522] *Cf*. P456/53, P456/64, P456/68.

> [the separated municipalities] are carrying out, in a co-ordinated and organised manner, all commands connected with the defence of the people and Croatian territories. This physical separation is not an essential or decisive factor, because we figured in our planning that the temporary physical separation of these areas could occur. Travnik is the first operative group, Kiseljak the second, @ep~e the third, and Sarajevo the fourth. *All operative groups are under my command, and the chain of leadership and command functions absolutely. Without interruption.*[1523]

659. More fundamentally and in addition to these important elements, the Trial Chamber holds that the indubitable conclusion to be drawn from the manner in which the offensives progressed and the systematic and widespread nature of the crimes perpetrated is that the military operations of April and June 1993 were ordered at the highest level of the HVO military command by the Central Bosnia Operative Zone commander - General Bla{ki}. In this regard, the Trial Chamber will recall three striking points already brought out:

- the offensives conducted in April in the municipality of Vitez and to the north of Kiseljak and in June to the south of Kiseljak all evolved along similar lines;

- the attacks on Kiseljak were on each occasion led mostly by HVO troops, and more precisely by the Ban Jela~i} Brigade whose commander received orders directly from the accused.

- and finally, the offensives all produced the same result: the systematic expulsion of Muslim civilian inhabitants from their villages and, in most cases, the destruction of their dwellings and the plunder of their property.

iii) <u>The general context of persecution of the Muslim populations</u>

660. The Trial Chamber observes that the HVO military offensives were merely the ultimate outcome of an overall policy of persecution of the Muslim populations pursued by the Croatian military and political authorities. In agreeing to be the Kiseljak region military commander in April 1992 and then Central Bosnia Operative Zone commander in June of

[1523] P380 (emphasis added). The Trial Chamber interprets the statement as a reflection of the actual situation and, not as the Defence preferred, as a propaganda operation to maintain the HVO troops' morale.

that same year, the accused fully subscribed to this policy from the very moment of his posting.

iv) Conclusions

661. The Trial Chamber is of the view that the content of the military orders sent to the Ban Jela~i} Brigade commander, the systematic and widespread aspect of the crimes perpetrated and the general context in which these acts fit permit the assertion that the accused ordered the attacks effected in April and June 1993 against the Muslim villages in the Kiseljak region. It also appears that General Bla{ki} clearly had to have known that by ordering the Ban Jela~i} Brigade to launch such wide-ranging attacks against essentially civilian targets extremely violent crimes would necessarily result. Lastly, it emerges from those same facts that the accused did not pursue a purely military objective but that by using military assets he also sought to implement the policy of persecution of the Muslim civilian populations set by the highest HVO authorities and that, through these offensives, he intended to make the populations in the Kiseljak municipality take flight.

E. The shelling of Zenica

662. Towards midday on 19 April 1993, Zenica town centre was targeted by several artillery shells. The testimony and exhibits admitted by the Trial Chamber indicate that the shells hit very busy parts of town, such as the shopping district and the municipal market[1524] - moreover, at a peak time. In fact, it seems that at this exact time of day, commercial traffic was considerable and there were between two to three thousand people in the geographical area bombarded[1525].

663. The Prosecution contended that many civilians died or were severely wounded by the shelling. The exhibits and testimony confirmed the allegation which the Defence, moreover, did not dispute[1526]. That the persons killed or wounded were civilians is also beyond doubt.

664. Likewise, the Defence did not contest that much civilian property was destroyed. In view of the exhibits, the civilian nature of the material damage inflicted by the shelling is

[1524] P224; witness Veseljak, PT of 22 January 1998, p. 5946.
[1525] P221/10. P221/11, P221/13, P221/14, P221/15; witness Veseljak, PT of 22 January 1998, p. 5946.

unquestionable[1527]. In addition, witnesses attested to the fact that there were no military facilities near the impact points of the shelling - nor even facilities of a military nature [1528].

665. The precise number of shells fired into Zenica town centre remains unknown but was not argued over by the parties. The Prosecution put the figure at nine shells[1529] whilst the Defence mentioned several shells[1530] without providing any further details.

666. The main difficulty which the Trial Chamber had to resolve centred on how to establish which troops were involved in the shelling. On this point, it became apparent that the arguments of the parties differed greatly and that identification of the perpetrators and those responsible for the bombardment was less important than a study of the case-file conducted in as much detail as possible and, in particular, of the information available on the artillery pieces probably used and their technical characteristics.

667. The Trial Chamber first need an exact understanding of the arguments and method used by each of the two parties.

1. The Prosecution argument

668. The Prosecution maintained that the shells were fired from a 122 mm howitzer belonging to the HVO troops positioned in Puti~evo 16 km west of Zenica[1531]. This assertion was based on the analysis of the depositions given by witnesses Baggesen, Veseljak and W. The Prosecution argument, supported by the testimony of the three said persons, was presented in two main sections which formed the bases for the calculation method used by the Prosecutor.

669. The first section consisted of determining the calibre of the shell by analysing the depth and size of the crater formed by the artillery piece and how the shell fragmented within the craters. Relying on examination of the craters at the sites shelled, witnesses Baggesen and

[1526] P220, P221; witness Beganovi}, PT of 21 January 1998, pp. 5899-5901; witness Veseljak, PT of 22 January 1998, pp. 5944-5945.
[1527] P221 and P224.
[1528] Witness Baggesen, PT of 22 August 1997, pp. 1941-1942; witness W, PT p. 6103.
[1529] Prosecutor's Brief, book 5, pp. 135-136.
[1530] Defence opening statement, PT p. 11236-11237.
[1531] Prosecutor's Brief, book 7, p. 70.

W reached the conclusion that the shell's calibre was 122 mm[1532]. Determining the shell's calibre allowed its azimuth and range to be subsequently established.

670. The second section consisted of establishing from which direction the shell was fired. The direction can be ascertained from the position of the crater and examination of the marks left by the shell's explosion, bearing in mind that the trajectory followed by the shell is inversely related to the direction of the shell impact marks. In the present case, the three witnesses considered that the shells originated from the west of Zenica, in particular from the HVO positions to the west of the town[1533].

671. According to the Prosecution, the conclusion reached as to the calibre and trajectory of the shells was a decisive argument which demonstrated that the HVO troops were behind the Zenica shelling. The Prosecutor further deemed that additional evidence corroborated the conclusion. She claimed that the contemporary military context strongly suggested that the shelling of Zenica was an intentional riposte by the HVO to the ABiH counter-offensive[1534]. Moreover, she asserted that the VRS artillery could not have been responsible for the shelling in light of the type of shell employed and the geographical location of the troops when the shelling occurred[1535].

2. The Defence argument

672. The Defence contended that the shelling could not be ascribed to HVO troops. It claimed that even if it was "not possible to identify with precision the origin of those shells"[1536] everything went to prove that, on the contrary, it was the Bosnian Serb army which was behind the attack on Zenica. In order to demonstrate that the HVO was not responsible, the Defence put forth several arguments relating both to the military context and to the analysis of the calibration of the shells used.

673. Firstly, the VRS allegedly shelled Zenica on a regular basis from April to July 1993 and the marketplace was within firing range of the Serbian artillery positioned around Vla{i}[1537].

[1532] Witness Baggesen, PT of 22 August 1997, PT pp. 1940-1941; witness W, PT pp. 6019-6020.
[1533] Witness Baggesen, PT of 22 August 1997, PT pp. 1940-1941; witness Veseljak, PT pp. 5592-5593; witness W, PT p. 6027.
[1534] Prosecutor's Brief, book 5, p. 142 and book 7, p. 70.
[1535] Prosecutor's Brief, book 7, pp. 72-73.
[1536] Defence opening statement, PT pp. 11237-11238.
[1537] Defence opening statement, PT p. 11237-11238; Defence Brief, p. 92.

674. In addition, a telephone call between Lieutenant-Colonel Stewart and Tihomir Bla{ki} shows that the calibre of the shell which hit the marketplace was not 122 mm but 155 mm[1538]. It was, moreover, only during his trial that Tihomir Bla{ki} supposedly learnt of the theory that a 122 mm howitzer had been used[1539]. The Defence maintained that the HVO troops were not equipped with this type of artillery piece at the time of the acts since they had been moved from Travnik to Mostar on 8 January 1993[1540].

675. Lastly, the Defence further submitted that Professor Jankovi}'s testimony refuted the arguments advanced by the Prosecution witnesses. Based on mathematical calculations made according to standardised models and using the hypothetical calculations put forward by the Prosecution, the witness considered that the two types of Russian and Yugoslav 122 mm howitzer likely to have been used in the acts could not have reached the centre of Zenica from the HVO positions west of the town because of their insufficient range[1541]. In addition, Professor Jankovi} thought that the method of examining the shell crater employed by the Prosecution witnesses to determine the range, angle of descent and direction of the projectile fired was incorrect[1542].

3. Conclusions

676. Analysis of the respective arguments propounded by the Prosecution and Defence allowed the Trial Chamber to focus in on the nature and specificity of the two arguments. It actually appeared that the calculation method employed by the Prosecution was pragmatic and deductive in that it opted for reasoning based on observation. It thus differed from that of the Defence which was based on the data presented by the Prosecution and was more abstract and mathematical insofar as it relied on rules and official standards.

677. Admittedly, the arguments put forward by the Defence were not such as to invalidate wholly the Prosecution argument. The Trial Chamber had to note in particular the coincidence of the attacks of the Croatian forces of 16-18 April 1993, the necessary reaction of the Muslim forces in the face of such attacks and the circumstance by which Zenica was

[1538] Witness Bla{ki}, PT pp. 18985-18986.
[1539] Witness Bla{ki}, PT pp. 18988-18989.
[1540] Defence Brief, pp. 92 and 93.
[1541] Witness Jankovi}, PT pp. 17254-17259.

both the town with the largest Muslim population near to Vitez and the headquarters of the ABiH 3rd Corps[1543]. Notwithstanding this, in the eyes of the Trial Chamber, the Prosecutor's demonstration was not sufficiently convincing and the Defence produced evidence such as to cast reasonable doubt onto whether the shelling at issue could be imputed to the HVO. The Prosecution's demonstration relative to the calibre and trajectory of the shells used to shell Zenica town seemed insufficient when compared to that of the Defence. The sketches submitted by the Prosecution in support of its demonstration suffered from vagueness[1544] whilst those produced by the Defence witness were unquestionably scientific[1545]. Professor Jankovi}, whom the Trial Chamber further asked for additional information pursuant to Rule 98 of the Rules[1546] with the consent of the Prosecution, offered comparative mathematical calculations liable to contradict those presented by the Prosecution. Even though the Prosecution attempted to prove in other ways that the shell used was 122 mm, it did not sufficiently demonstrate that the HVO artillery positions, as located to the west of the city by the Prosecution, could reach Zenica town with this type of shell as occurred on 19 April 1993. Moreover, despite the fact that, in the eyes of the Trial Chamber, the argument that the howitzer was moved several kilometres by the HVO is plausible, the Prosecution was not able to prove that such was the case.

678. Consequently, the issue of the identity of the troops involved in the shelling of Zenica could not be resolved by the Trial Chamber because the Prosecutor did not demonstrate beyond all reasonable doubt that the HVO troops or other elements under the command of the accused were behind the shelling. The Trial Chamber is therefore of the view that there is reason to declare General Bla{ki} not guilty of the counts brought against him based on the shelling of Zenica town on 19 April 1993.

F. Detention related crimes

679. Counts 15 to 20 were grouped together because they all deal with the deprivation of freedom suffered by many Muslims and the crimes committed against them at the time.

[1542] Witness Jankovi}, PT pp. 17276-17283.
[1543] The inverse would equally be true: if one were to suppose that the ABiH were responsible for the break out of the conflict on 16 April 1993, the Croatian forces would evidently have wanted to conduct a terrorisation operation to halt the Muslim attacks.
[1544] See for example P230.
[1545] D526 and C1.

1. Inhuman and cruel treatment

680. The indictment alleges that from January 1993 to January 1994, Bosnian Muslims were detained by the HVO in Vitez cinema hall, Kaonik prison near Busova~a, Vitez veterinary station, Dubravica primary school, the SDK offices in Vitez, Kiseljak barracks, Rotilj village and the houses of Ga~ice[1547].

681. The detainees were allegedly used as human shields, beaten, forced to dig trenches and subjected to physical and mental violence, threats and inhuman treatment, in particular by being confined in cramped or overcrowded facilities and being deprived of sufficient food and water. Some of them were reportedly killed or wounded while being forced to dig trenches in the Kiseljak, Vitez and Busova~a municipalities[1548].

682. Accordingly, the accused allegedly committed a grave breach covered by Article 2(b) of the Tribunal's Statute (inhuman treatment - count 15) and a violation of the laws or customs of war covered by Article 3 of the Statute and recognised by Article 3(1)(a) of the Geneva Conventions (cruel treatment - count 16)[1549].

a) Arguments of the parties

683. The Prosecution submitted that the acts or omissions constituting inhuman or cruel treatment committed by General Bla{ki} or his subordinates caused great physical or mental suffering or serious physical and mental injury to the Bosnian Muslim detainees and attacked their human dignity. The acts on which the counts rely cover most of the physical or mental violence, especially the verbal abuse, beatings, theft of the detainees' personal effects, forced labour, digging of trenches and rape. The criminal omissions purportedly concerned the failure of the HVO to meet their obligations to treat the Bosnian Muslim detainees with humanity and to guarantee them acceptable living conditions[1550].

[1546] PT p. 17337.
[1547] Second amended indictment, para. 12.
[1548] Second amended indictment, paras. 13-14.
[1549] The unlawful detention of these persons is not specified in the indictment. *See also* the Prosecutor's Brief, book 6, VIII, 2.2.
[1550] Prosecutor's Brief, book 6, IX, 6-7.

684. The Defence held that the Bosnian Muslims' freedom of movement in the village of Rotilj was not limited and that they could not consequently have been detained. It argued that a roadblock was erected by the HVO at the village's checkpoint in order to protect the Muslim inhabitants from any danger. This checkpoint did not supposedly prevent the Muslim inhabitants from leaving Rotilj because the main road was not the only route out of the village[1551].

685. The Defence further deemed that Tihomir Bla{ki} was not guilty of the charges by which the Bosnian Muslim detainees were deprived of sufficient food and water and confined in cramped facilities. It contended that both the supply of food and water and the facilities were adequate at the detention sites at Vitez cinema, Kaonik prison, Vitez veterinary hospital, Kiseljak barracks, Rotilj village and the houses in Ga~ice. Likewise, the persons assigned to the work teams were neither short of food or water nor confined in cramped facilities. In any case, the Defence maintained that the Prosecution had not managed to demonstrate that the detainees were in a worse situation that the Croats detained by the ABiH[1552].

686. Finally, the Defence contended that the work conditions of the teams were not generally dangerous, improper or discriminatory and thereby did not constitute a breach of the Geneva Conventions. Moreover, the teams were formed in accordance with the law of the HZHB and the Republic of BH and the accused was convinced that they were lawful. In the opinion of the Defence, even if the use of work teams constituted a breach of the Conventions, General Bla{ki}'s mistake as regards the law should exonerate him of all responsibility in this respect. In conclusion, the Defence claimed that the Prosecution did not charge the accused with the use of work teams in dangerous conditions and that, accordingly, such an indictment could not incur his responsibility[1553].

b) Conclusions

687. The Trial Chamber will review the crimes alleged by municipality.

[1551] Defence Brief, IX, B.
[1552] Defence Brief, IX, D.
[1553] Defence Brief, IX, F.

i) Busova~a municipality

688. During the first half of 1993, male Muslim civilians, particularly from Busova~a municipality[1554], were imprisoned by the HVO at Kaonik prison[1555], a former JNA warehouse a little over 10 kilometres from the Hotel Vitez[1556]. The prison was made up of approximately twenty rooms, about 9 square metres, transformed for the purpose into cells to hold Muslims[1557]. With perhaps as many as 400 persons detained by the HVO, as for example after the January 1993 campaign, the prison was overcrowded[1558]. The hygiene and comfort conditions as well as the quality and quantity of food were poor[1559]. Personal valuables were confiscated there[1560]. Further, exaction was sadistically meted out upon detainees[1561] by HVO soldiers. For example, detainees were forced to beat one another[1562].

689. Detainees at Kaonik prison were also compelled to dig trenches under guard of HVO soldiers. They were led in groups to different sites[1563]. The detainees taken off to the front were in danger – some were killed by gunfire[1564]. Work was strenuous and long, food insufficient[1565]. In addition, detainees were abused by their guards. For instance, some were refused permission to take cover while fire was being exchanged, some were beaten[1566] and others underwent mock executions[1567].

ii) Kiseljak municipality

690. On 23 April 1992, the HVO took over a former JNA barracks in Kiseljak where Tihomir Bla{ki} set up one of his headquarters[1568]. As of April 1993 until approximately November 1993[1569], the barracks were also used as a detention centre to hold many male

[1554] The prisoners in Kaonik did not originate solely from the Municipality of Busova~a. Witness Y, for example, was arrested in Vitez and detained at the cultural centre in the town. Then, along with 13 other detainees, he was transferred to Kaonik prison where he remained from 5 to 14 May 1993. PT pp. 6509-6511.
[1555] Witness Nuhagi}, PT pp. 5214-5215, pp. 5228-5229, pp. 5247-5248; witness T, PT pp. 5769-5770, pp. 5771-5805.
[1556] Witness Leach, PT of 27 June 1997, PT p. 259; witness Nuhagi}, PT pp. 5228-5229.
[1557] Witness T, PT pp. 5771-5772; witness Nuhagi}, PT pp. 5228-5229.
[1558] Witness Mcleod, PT p. 6388.
[1559] Witness Nuhagi}, PT pp. 5215-5217, pp. 5228-5229; witness T, PT pp. 5804-5806.
[1560] Witness BB, PT pp. 6677-6678, pp. 6681-6682.
[1561] Witness Y, PT pp. 6522-6523.
[1562] Witness U, PT pp. 5880-5882. The Trial Chamber notes that the Trial Chamber seised of the *Aleksovski* case reached the same conclusion. *Aleksovski* Judgement, para. 228.
[1563] Witness U, PT pp. 5877-5880; witness Z, PT pp. 6594-6596.
[1564] Witness BB, PT pp. 6684-6685.
[1565] Witness BB, PT pp. 6686-6688.
[1566] Witness BB, PT pp. 6684-6685.
[1567] Witness Z, PT pp. 6594-6596.
[1568] Witness MM, PT p. 8229; witness Friis-Pedersen, PT pp. 5485-5486.
[1569] Witness Friis-Pedersen, PT pp. 5485-5486.

Muslim civilians captured by the HVO in the villages of Kiseljak municipality[1570]. At one time, there were also women and children interned at the prison[1571]. The detainees endured difficult living conditions. In particular, hygiene and food were poor[1572]. Furthermore, HVO soldiers and military policemen were responsible for many beatings and for brutal physical and mental violence inflicted on detainees. Thus, for instance, in pitch darkness detainees received engine oil with which to "wash"[1573].

691. In addition, from April 1993 until January 1994[1574], Muslims from Kiseljak municipality were held captive in the village of Rotilj. The Trial Chamber recalls that the detainees were prevented from leaving the village, especially because they were being watched by snipers positioned in the hills around the village. The Muslims were therefore kept in an HVO detention camp.

692. The prisoners of Rotilj were forced to endure particularly harsh living conditions. The village was overcrowded and the people crammed into those houses which had not been destroyed. They lacked medicines and there was insufficient water and food. The Trial Chamber points to the murders and acts of physical violence, including rape, which occurred in the village.

693. Furthermore, the men detained in Kiseljak barracks and Rotilj were compelled by the HVO to dig trenches[1575]. In so doing, some detainees near the front-line were killed or wounded during exchanges of fire[1576]. Forced labour sometimes lasted a long time and the detainees were exposed to bad weather[1577]. In addition, they were mistreated by the Military Police[1578] who, for example, sometimes inflicted sadistic bodily harm on them. Thus, one witness related how they placed a cigarette up his nostril while threatening to kill him[1579]. The guards prohibited the detainees from taking cover whilst fire was being exchanged[1580].

[1570] Witness AA, PT p. 6619, pp. 6652-6653; witness DD, PT pp. 7035-7038, pp. 7058-7059; witness JJ, PT pp. 7393-7394, pp. 7410-7411.
[1571] Witness Lanthier, PT p. 8303.
[1572] Witness TT, PT pp. 9332-9334.
[1573] Witness TT, PT pp. 9332-9334, p. 9348.
[1574] In fact, up until March, witness TT, PT pp. 9334-9335.
[1575] Witness DD, PT pp. 7050-7051; witness AA, PT pp. 6656-6658.
[1576] Witness AA, PT p. 6655; witness TT, PT p. 9342.
[1577] Witness TT, PT p. 9342.
[1578] Witness TT, PT p. 9342.
[1579] Witness OO, PT p. 8657.
[1580] Witness OO, PT p. 8657.

iii) Vitez municipality

694. On 16 April 1993, HVO soldiers detained a large number of male Muslim civilians in Vitez veterinary station[1581]. The station was inside a municipal building located approximately 900 metres from the Hotel Vitez[1582]. Seventy-six detainees were locked in the basement and in rooms at the top of the building[1583]. In the basement there was so little room that the detainees could only crouch. The air inside was humid and suffocating. The elderly were finally transferred to the veterinary station's examination room[1584]. On the fourth day of detention[1585], the detainees were taken off to other detention centres such as Dubravica school[1586].

695. Located in a municipal building near to Vitez railway station and just over two and a half kilometres from the Hotel Vitez[1587], Dubravica primary school was the billet for the Vitezovi unit and the Ludwig Pavlovi} Brigade[1588]. During the second half of April 1993, the school also served as an HVO detention centre. Two hundred Muslim men, women and children from the villages of Vitez municipality were detained there[1589]. They suffered from a lack of food and comfort[1590]. Furthermore, the women and children were terrorised and threatened by their guards[1591]. Women were raped by HVO soldiers and members of the Military Police[1592].

696. Vitez cultural centre was in a municipal building barely a hundred metres from Bla{ki}'s headquarters at the Hotel Vitez[1593]. The building was originally used as a head office by the political parties in Vitez. Mario ^erkez, commander of the HVO Vitez Brigade, had established his headquarters there[1594]. Beginning on 16 April 1993, between 300 to 500

[1581] Witness Zeco, PT of 26 September 1997, pp. 2808-2810; witness D, PT of 24 September 1997, pp. 2700-2701; witness Beso, PT of 26 August 1997, PT p. 2217, p. 2219.
[1582] Witness Leach, PT of 27 June 1997, pp. 272-273.
[1583] Witness Zeco, PT of 26 September 1997, pp. 2809-2811.
[1584] Witness D, PT of 24 September 1997, pp. 2700-2701.
[1585] Witness Zeco, PT of 26 September 1997, pp. 2818-2819.
[1586] Witness Zeco, PT of 26 September 1997, pp. 2818-2819.
[1587] P32, witness Zeco, PT of 26 September 1997, pp. 2818-2819; witness Leach, PT of 27 June 1997, pp. 272-274.
[1588] Witness Sefkija Djidi}, PT of 29 July 1997, pp. 1226-1227; witness HH, PT p. 6836.
[1589] Witness Zeco, PT of 26 September 1997, pp. 2819-2820; witness XX, PT p. 10466 and pp. 10468-10469.
[1590] Witness Fatima Ahmi}, PT pp. 3967-3968; witness G, PT pp. 3867-3868.
[1591] Witness Fatima Ahmi}, PT pp. 3967-3968.
[1592] Witness Elvir Ahmi}, PT pp. 3265-3268; witness Fatima Ahmi}, PT pp. 3967-3970.
[1593] Witness Leach, PT of 27 June 1997, pp. 272-273.
[1594] Witness Bla{ki}, PT pp. 22469-22470.

Muslim civilians were detained under guard of the Military Police and HVO soldiers[1595]. In the cellar, a large number of detainees, including some ill pensioners, had to sit or stand on the coal stored there[1596]. Since the number of detainees grew rapidly, they were transferred to other rooms in the building, such as the cinema hall, which also became overcrowded[1597]. Towards the end of the month some of the pensioners and ill were released[1598] but other detainees, particularly ABiH or SDA members and intellectuals[1599], were transferred to other detention centres, such as Kaonik prison[1600].

697. The village of Ga~ice lies in the municipality of Vitez approximately two kilometres from the town of Vitez[1601]. After the attack on the village on 20 April 1993, a group of 180 women, children, elderly men and Muslim civilians were assembled in a few of the remaining houses[1602] under the control of the HVO soldiers[1603]. The living conditions were particularly harsh[1604]. After approximately two weeks, the HVO took them off to territory controlled by Muslim forces[1605].

698. In mid April 1993, 63 men mostly of fighting age were detained by the HVO for several days in the SDK building in Vitez. Guarded by the Military Police, the detainees were confined in three overcrowded and cold facilities[1606].

699. A significant number of the detainees at the cultural centre, the veterinary station, Dubravica school and the SDK building were forced to dig trenches by HVO soldiers [1607]. It was strenuous and dangerous work. At the front-line, some were killed or wounded[1608], especially when the HVO did not allow them to lie down to protect themselves from

[1595] Witness Y, PT p. 6509, pp. 6512-6514; witness Beso, PT of 26 August 1997, p. 2232; witness Pezer, PT of 19 August 1997, pp. 1570-1571.
[1596] Witness Mujezinovi}, PT of 20 August 1997, p. 1711.
[1597] Witness Y, PT p. 6509; witness Beso, PT of 26 August 1997, p. 2232.
[1598] Witness Y, PT p. 6510.
[1599] Witness Pezer, PT of 19 August 1997, pp. 1577-1578.
[1600] Witness Y, PT p. 6510.
[1601] Witness Hrusti}, PT p. 4791.
[1602] Witness Hrusti}, PT pp. 4815-4817.
[1603] Witness Hrusti}, PT pp. 4818-4819; witness ZZ, PT pp. 10845-10846.
[1604] Witness ZZ, PT pp. 10845-10846.
[1605] Witness ZZ, PT pp. 10846-10847; witness Hrusti}, PT pp. 4825-4826.
[1606] Witness Kavazovi}, PT of 26 August 1997, pp. 2319-2321.
[1607] Witness Pezer, PT of 19 August 1997, pp. 1570-1571; witness Zeco, PT of 26 September 1997, p. 2816; witness G, PT pp. 3868-3869; witness Kavazovi}, PT of 26 August 1997 pp. 2320-2321.
[1608] Witness Zeco, PT of 26 September 1997, pp. 2817-2818; witness XX, PT pp. 10470-10471; witness Y, PT p. 6515.

shooting[1609]. During one incident in particular, HVO soldiers killed one detainee and threatened to kill another[1610].

700. In conclusion, the Trial Chamber adjudges that in the case in point the material element and *mens rea* of the crimes of inhuman treatment (count 15) and cruel treatment (count 16) as defined above have been satisfied. The Trial Chamber takes note of the following acts and omissions:

- inflicting physical and mental violence upon the detainees, at the various aforesaid detention sites and whilst they were forced to dig trenches;

- placing the detainees in a life-threatening situation by taking them to the front or nearby;

- the atmosphere of terror reigning in the detention facilities;

- the cases of long-term detention[1611], in several camps under difficult circumstances[1612].

Moreover, the Trial Chamber adds that the cruel or inhuman treatment was inflicted by HVO soldiers and the Military Police and that the victims were Bosnian Muslims. For the most part they were civilians - the remainder being *hors de combat* - and therefore were protected persons for the reasons explained earlier.

[1609] Witness D, PT of 24 September 1997, pp. 2704-2705.
[1610] Witness D, PT of 24 September 1997, pp. 2707-2708.
[1611] In general the maximum stay in detention within a single facility does not seem to have been extremely long: Kaonik – 2 months; Kiseljak barracks – 2 months; Rotilj – 2 months; veterinary station – 4 days; Dubravica school – 20 days; cultural centre - 2 weeks; Ga~ice – 16 days; and, finally, the SDK building – a few days.
[1612] For example, after the HVO attack in April, witness DD was forced to remain in his village. He was interned in Rotilj village from 6 September to 20 September and then in the Kiseljak barracks until 30 September. He then dug trenches for a month at Kre{evo before again being interned at the Kiseljak barracks until 15 November. In the end, he was interned in Rotilj village until he was exchanged on 14 January 1994, witness DD, PT pp. 7035-7060. Likewise, between April and 6 November 1993, witness JJ was interned in his village, in Rotilj and at the Kiseljak barracks. Witness JJ, PT p. 7399, p. 7405, pp. 7410-7411, p. 7421. Lastly, witness TT was detained from June 1993 until March 1994 in various locations, including the Kiseljak barracks. Witness TT, PT pp. 9328-9335.

2. Taking of hostages

701. The indictment states that from January 1993 to January 1994 Bosnian Muslim civilians were taken hostage by the HVO and used both in prisoner exchanges and in order to bring to a halt Bosnian military operations against the HVO[1613]. The accused thus allegedly committed a grave breach covered by Article 2(h) of the Tribunal's Statute (taking civilians as hostages - count 17) and a violation of the laws or customs of war covered by Article 3 of the Statute and recognised by Article 3 of the Geneva Conventions (taking of hostages - count 18).

a) Arguments of the parties

702. The Prosecution explained that counts 17 and 18 were based on the HVO's taking of Bosnian Muslim detainees incarcerated *inter alia* at the cinema, the veterinary station, Dubravica school and Kaonik prison as hostages on 19 and 20 April 1993.

703. The Prosecution contended that the large number of detainees (2,223) to whom death threats were allegedly made on 19 and 20 April led to the unavoidable conclusion that all the Bosnian Muslim detainees in the hands of the Croatian forces in the region at all the detention facilities must be considered as HVO hostages. To begin with, very many civilians were at the detention facilities. In any case, and for the purposes of Article 3 of the Statute, the Prosecution asserted that the victims had not taken an active part in the hostilities. The HVO next clearly sought to use all means available to it to compel the ABiH to end its counter-attack. Lastly, the Prosecution alleged that a death threat hung over the lives of the hostages[1614].

704. In the opinion of the Defence, even though General Bla{ki} exercised command responsibility within the CBOZ, the detention of Bosnian Muslim civilians was justified on security and safety grounds. A lawful act of this type could not therefore be characterised as taking of hostages. Moreover, the Defence asserted that it had not been established that the persons who participated in the alleged hostage-taking had had the specific intention to profit therefrom[1615].

[1613] Second amended indictment, para. 15.
[1614] Prosecutor's Brief, book 6, IX, 8.
[1615] Defence Brief, IX, C.

b) Conclusions

705. In order to reconstruct the incidents of 19 and 20 April 1993, the Trial Chamber will rely *inter alia* on the testimony of Dr. Muhamed Mujezinovi}, a Bosnian Muslim and member of the Vitez War Presidency at the time[1616].

706. On 19 April 1993, Dr. Mujezinovi} was taken off by two HVO soldiers to Vitez cultural centre. In an office were Mario ^erkez and five other persons all wearing HVO uniforms. Mario ^erkez said that the ABiH troops were advancing into town and that the witness had to obey his orders. He told the witness:

> that [he] had to call the command of the Third Corps, to call Alija Izetbegovi}, Haris Silajd`i}, Ejub Gani} and whoever [he] knew, and to tell them that if the BH-Army continued advancing towards the town, that they have 2,223 captured Muslims. [^erkez] emphasised, women, children, and that he would kill all of them. [^erkez] also told [him] that [he] would have to go on local television, and to ask the Muslims of Stari Vitez to surrender their arms.[1617]

Dr. Mujezinovi} telephoned the ABiH 3rd Corps commander, General Had`ihasanovi}, and made a speech on television calling the Muslims to hand over their arms. Other persons called together by Dr. Mujezinovi} also sent Dario Kordi}'s message to their respective acquaintances[1618].

707. On the following morning, two local HDZ officials, Ivan [anti} and Pero Skopljak, arrived to repeat the threat made by Mario ^erkez. Lastly, Dr. Mujezinovi} was forced to sign a document put in front of him by Ivan [anti} according to which the Muslims and Croats agreed *inter alia* to implement the Vance-Owen Plan even before it had been signed by the Serbs[1619].

708. In light of the foregoing, the Trial Chamber is of the view that all the Muslims in the hands of the Croatian forces interned at the aforesaid detention facilities on 19 and 20 April 1993 were threatened with death. This is incontestably so at least for those detained at Vitez cultural centre. Although not all were necessarily civilians, all were persons placed *hors de*

[1616] Witness Muhamed Mujezinovi}, PT of 20 August 1997, pp. 1673-1674, pp. 1705-1722.
[1617] Witness Muhamed Mujezinovi}, PT of 20 August 1997, p. 1707.
[1618] This part of the testimony is corroborated by witness Y, PT p. 6656.
[1619] P86.

combat. Moreover, the Trial Chamber is of the opinion that, in this instance, detention could in no way be deemed lawful because its main purpose was to compel the ABiH to halt its advance. The Trial Chamber points out that Mario ^erkez was the commander of the HVO Vitez Brigade and, in this role, was directly under the orders of General Bla{ki}. The offences mentioned in counts 17 and 18 are hereby constituted.

3. Inhuman and cruel treatment: human shields

709. According to the indictment, Bosnian Muslim civilians were used as human shields to prevent the Bosnian army from firing on HVO positions or to force Bosnian Muslim combatants to surrender. The HVO allegedly used human shields in January or February 1993 in the village of Merdani and on 16 and 20 April 1993 in Vitez[1620].

710. Thus, the accused allegedly committed a grave breach covered by Article 2(b) of the Tribunal's Statute (inhuman treatment - count 19) and a violation of the laws or customs of war covered by Article 3 of the Statute and recognised by Article 3(1)(a) of the Geneva Conventions (cruel treatment - count 20).

a) The arguments of the parties

711. The Prosecution submitted that the HVO's use of Bosnian Muslim detainees as human shields was based on three events or distinct types of action. First, on 19 and 20 April 1993, the Bosnian Muslims detained at Vitez cinema were allegedly used as human shields in an attempt to halt the ABiH shelling the CBOZ and Vitez Brigade headquarters. Then, on 20 April 1993, the HVO purportedly placed 250 Muslim men, women and children around the Hotel Vitez for about three hours in order to try and halt the ABiH shelling of that zone. Last, the HVO was allegedly engaged in a widespread practice consisting of using the detainees forced to dig trenches on the front-line positions as human shields. The detainees thus placed in a dangerous situation around (or in) buildings constituting military objectives were allegedly victims of great physical and mental suffering or of serious attacks upon their human dignity[1621].

[1620] Second amended indictment, para. 16.
[1621] Prosecutor's Brief, book 6, IX, 9.

712. On this point, the Defence did not prefer any other arguments than those used more generally in respect of detention issues.

b) Conclusions

713. To start with, the Trial Chamber reiterates its conclusion that the use of detainees to dig trenches at the front under dangerous circumstances must be characterised as inhuman or cruel treatment. The motive of their guards is of little significance.

714. Around 20 April 1993, Vitez and in particular the HVO headquarters at the Hotel Vitez were shelled[1622]. That same day, following the attack on Ga~ice village by Croatian forces, a column of 247 Muslim men, women and children[1623] was directed to a spot just in front of the Hotel Vitez. Once there, the men were led off elsewhere[1624]. Witness Hrusti} was seated in a shell crater opposite the Hotel:

> One of the soldiers said, while we were standing there, "you are going to sit here now and let your people shell you, because they have been shelling us up to now, and you better sit down and wait".[1625]

The persons assembled were watched over by soldiers inside the Hotel Vitez. They told them that whoever moved would be instantly cut down. After about two and a half to three hours, the persons were taken back to their village[1626].

715. Moreover, the Trial Chamber recalls that on 19 and 20 April 1993, many Muslim civilians were detained at Dubravica school, also the billet of the Vitezovi, and at Vitez cultural centre, the headquarters of Mario ^erkez. Nonetheless, although it is conceivable that a military force might seek to protect its headquarters unlawfully by detaining members of the enemy there, the Prosecution did not prove beyond all reasonable doubt that the detainees in question were aware of a potential attack against which they were allegedly used as protection. Unlike for the Hotel Vitez, it was not established that the detainees at Dubravica school and Vitez cultural centre suffered as a result of being used as human shields.

[1622] P187; D273; witness Marin, PT pp. 12307-12309 ; PT pp. 24084-24085.
[1623] Witness Hrusti}, PT pp. 4809-4816; witness ZZ, PT pp. 10844-10845.
[1624] Witness Hrusti}, PT pp. 4814-4815.
[1625] Witness Hrusti}, PT pp. 4814-4816.
[1626] Witness Hrusti}, PT pp. 4815-4816.

716. In conclusion, the Trial Chamber is of the view that on 20 April 1993, the villagers of Ga~ice served as human shields for the accused's headquarters in Vitez. Quite evidently, this inflicted considerable mental suffering upon the persons involved. As they were Muslim civilians or Muslims no longer taking part in combat operations, the Trial Chamber adjudges that, by this act, they suffered inhuman treatment (count 19) and, consequently, cruel treatment (count 20).

4. Individual criminal responsibility of General Bla{ki}

a) Arguments of the parties

717. The Prosecution submitted that the crimes described above were committed by persons either acting pursuant to an order or plan of Tihomir Bla{ki}, at his incitement or with his aid and encouragement[1627]. Moreover, the Prosecutor highlighted that pursuant to Article 7(3) of the Statute the evidence also demonstrated that the accused was criminally responsible for the crimes[1628].

718. The Defence maintained that none of the evidence proved that General Bla{ki} gave the orders or actively participated in any other way in committing the detention related crimes. In addition, the Defence asserted that General Bla{ki} had no command responsibility over the detention related crimes since he did not know nor had he any reason to know that ill-treatment was being meted out. In the opinion of the Defence, the accused took many measures either to prevent the crimes or to punish the perpetrators thereof and he had no authority to control or sanction the administrators of the detention centres in central Bosnia[1629].

[1627] Prosecutor's Brief, book 7, XII, 3.
[1628] Prosecutor's Brief, book 7, XIV, 3.
[1629] Defence Brief, IX.

b) Conclusions

i) Inhuman and cruel treatment (counts 15 and 16)

719. The Trial Chamber will first determine General Bla{ki}'s responsibility for the crimes committed in the detention centres and then examine his responsibility in respect of the trench digging.

a. Detention centres

720. The above analyses demonstrate that the illegal confinement and detention of male Muslim civilians was a recurring feature of the attacks conducted by the HVO in the municipalities of Busova~a, Kiseljak and Vitez. Hence, these persons were detained in a manifestly organised way. In this respect, the Trial Chamber highlights that HVO soldiers informed some Muslims that they were being detained under order[1630]. Other persons were transported in HVO buses to the prison in Kiseljak[1631]. Lastly, as the Trial Chamber will conclude below, General Bla{ki} ordered that many detainees be used to dig trenches throughout the CBOZ and some detainees were ultimately exchanged[1632]. The Trial Chamber deems that such a degree of organisation demonstrates that the highest levels of authority within the HVO were involved and therefore finds that the evidence establishes beyond all reasonable doubt that General Bla{ki} ordered the detentions.

721. The Trial Chamber holds that General Bla{ki} is responsible for the violence committed in the detention facilities pursuant to the principle of command responsibility enshrined in Article 7(3) of the Statute.

i. Tihomir Bla{ki} exercised "effective control" over the perpetrators of the crimes

722. The Trial Chamber recalls that all the detention centres were located in the CBOZ which General Bla{ki} commanded from 27 June 1992[1633]. The perpetrators of the crimes at the detention centres were HVO soldiers and also members of the Military Police.

[1630] Witness T, PT pp. 5770-5771; witness Zeco, PT of 26 September 1997, pp. 2809-2810.
[1631] Witness TT, PT pp. 9330-9331.
[1632] Witness Djula Djidi}, PT pp. 4344-4345; witness Z, PT pp. 6595-6596.
[1633] Witness Bla{ki}, PT p. 21299.

723. It is not contested that General Bla{ki} commanded the regular troops of the HVO. The Trial Chamber is moreover convinced that the accused exercised effective control over the Military Police within the meaning of Article 7(3) of the Statute.

724. In this respect, as it has already asserted, the Trial Chamber recalls that General Bla{ki} was in command of the soldiers and Military Police implicated in the attacks on Ahmi}i, Lon~ari and O~ehni}i in April 1993. It further affirms that pursuant to the rules on the training and activities of the Military Police[1634], this group was under the authority of the accused as commander of the CBOZ when it came to accomplishing daily operational tasks. As one witness heard by the Trial Chamber explained:

> The commander of the Operative Zone vis-à-vis a military policeman, regardless of whether he is in the reserve formation or active formation, could impose only disciplinary measure, and the greatest disciplinary measure that he could take was 15 days' detention. After a 15-day detention, the military policeman would be returned to his unit and would continue to perform his regular duties. The commander of the Operative Zone, if there was a criminal act in question on the part of the military policeman, the commander could […] make a proposal for the prosecution of that individual and send that request to the military disciplinary judiciary or the chief of the military police, head of the military police administration, for him to undertake such measures[1635].

725. The Trial Chamber thereby concludes that, throughout the period during which the previously described crimes were committed, General Bla{ki} incontestably held at least the material power to prevent the Military Police from perpetrating crimes or to punish the perpetrators thereof.

ii. Tihomir Bla{ki} "knew or had reason to know" that crimes had been committed

726. Having arrived at the conclusion that General Bla{ki} ordered that Muslims be detained, the Trial Chamber will next review whether he knew that crimes were being perpetrated at each of the detention sites.

727. The Trial Chamber recalls that the detainees at Kaonik prison were Muslim civilians. They were detained by HVO soldiers who were also responsible for violent acts at the prison.

[1634] D523.
[1635] PT pp. 24020-24021.

728. The Defence contended that in January 1993 General Bla{ki} was isolated in Kiseljak and therefore did not know that civilians were being detained and subjected to ill-treatment[1636]. However, the accused himself declared that on 27 January 1993 he ordered the release of civilian detainees at Kaonik prison[1637]. His power to order the release of prisoners[1638] shows that he could actually find out about the circumstances in which the civilians were being detained. In this connection, the Trial Chamber notes that at the time, Bla{ki} knew that the Red Cross had become involved when it was informed that detainees were being ill-treated[1639].

729. Moreover, Kaonik prison was very near Vitez and the warden of Kaonik prison admitted to being under the authority of the Vitez and Busova~a HVO commanders[1640]. Accordingly, the Trial Chamber reaches the conclusion that General Bla{ki} did know of the acts of violence which occurred over the first half of 1993 at Kaonik prison.

730. The Trial Chamber recalls that for about 8 months in 1993 many Muslims were detained in Kiseljak barracks. Violence was inflicted upon the detainees by HVO soldiers and military policemen. The particular fact that the detention centre was located in the same complex as Kiseljak HVO headquarters[1641] allows the Trial Chamber to conclude that General Bla{ki} must have known that acts of violence were taking place.

731. Murders and physical violence took place in Rotilj for the extended period of time that the HVO held Muslim civilians there. The Trial Chamber is of the view that through his subordinates, General Bla{ki} must have known what was going on in the village which lay 4.6 kilometres from HVO Kiseljak headquarters[1642]. From this perspective, the Trial Chamber underlines in particular that Mario Bradara, deputy commander of the Kiseljak HVO, acknowledged that he was aware of the detentions in Rotilj[1643].

[1636] Defence Brief, IX, A.1 and G.
[1637] Witness Bla{ki}, PT pp. 21659-21660.
[1638] The delay between Bla{ki}'s order and the actual release of the prisoners has nothing to do with Bla{ki}'s authority over his subordinates but was down to the involvement of the Red Cross. Witness Bla{ki}, PT pp. 21660-21661.
[1639] Witness Nuhagi}, PT pp. 5216-5217.
[1640] General Bla{ki} issued orders to the prison wardens directly and in particular to the warden of the Busova~a district military prison, D373 and D391, witness Mcleod, PT p. 6387.
[1641] General Bla{ki} even had his headquarters there, witness Friis-Pedersen, PT pp. 5485-5486.
[1642] Witness Leach, PT of 27 June 1997, p. 262.
[1643] Witness Lanthier, PT p. 8260, pp. 8299-8300.

732. General Bla{ki} admitted to the Trial Chamber that he knew that civilians were being detained at Dubravica primary school[1644]. These included *inter alia* the women and children who had been placed around General Bla{ki}'s command post for two weeks. Nonetheless, he announced that he had not made any effort to investigate the circumstances under which people were detained because the civilian authorities and Red Cross were dealing with the matter[1645]. In addition, the Trial Chamber points out that the school also served as the billet of the Vitezovi. As a result, in the opinion of the Trial Chamber, General Bla{ki} could not have been unaware of the atmosphere of terror and the rapes which occurred at the school.

733. The Trial Chamber accordingly concludes that General Bla{ki} did know of the circumstances and conditions under which the Muslims were detained in the facilities mentioned above. In any case, General Bla{ki} did not perform his duties with the necessary reasonable diligence. As a commander holding the rank of Colonel, he was in a position to exercise effective control over his troops in a relatively confined territory[1646]. Furthermore, insofar as the accused ordered that Muslim civilians be detained, he could not have not sought information on the detention conditions. Hence, the Trial Chamber is persuaded beyond all reasonable doubt that General Bla{ki} had reason to know that violations of international humanitarian law were being perpetrated when the Muslims from the municipalities of Vitez, Busova~a and Kiseljak were detained.

iii. Tihomir Bla{ki} did not take the necessary and reasonable measures to punish the perpetrators of the crimes

734. The Defence highlighted that General Bla{ki} had no authority to control or sanction the detention centre administrators[1647]. Nevertheless, as established above, the Trial Chamber identified HVO soldiers or the Military Police as being the perpetrators of the crimes. The evidence demonstrated that the accused did not duly carry out his duty to investigate the crimes and impose disciplinary measures or to send a report on the perpetrators of these crimes to the competent authorities[1648].

[1644] Witness Bla{ki}, PT pp. 22225-22226.
[1645] Witness Bla{ki}, PT pp. 22226-22227.
[1646] Witness Duncan, PT pp. 9061-9063; witness Lanthier, PT pp. 8260-8265; D333 and D334, General Bla{ki} ordered captured civilians be treated humanely; D366, General Bla{ki} ordered that the civilians be released and provided with security.
[1647] Defence Brief, IX, A.3.
[1648] Witness Marin, PT pp. 13822-13823 , pp. 8898-8901; witness Bla{ki}, PT pp. 21808-21811.

b. Trench digging

735. The Trial Chamber concluded that many detainees were forced to dig trenches on the front in dangerous conditions. These persons were detained at various facilities within the CBOZ – Kaonik prison, Kiseljak barracks, Rotilj village and in the town of Vitez at the cultural centre, the veterinary station, Dubravica school and the SDK building. While the detainees worked they suffered mental and physical violence inflicted by HVO soldiers and the Military Police.

736. The Defence refused to acknowledge that General Bla{ki} ordered or endorsed the use of civilian detainees to dig trenches[1649]. It argued that he was convinced that the work teams were lawful[1650]. Further, both the Kaonik prison warden[1651] and some HVO commanders admitted that using civilian detainees to dig trenches was necessary and that they were carrying out orders[1652]. One international observer considered that the HVO had deliberately used detainees for the purposes[1653].

737. General Bla{ki} declared that it was not he who decided where the work teams went. He also stated that he was aware that the Geneva Conventions forbade forced labour on the front-lines[1654]. Notwithstanding this, the evidence proves that the accused effectively directed work teams by requiring them to dig trenches on the front-line[1655]. In this respect, the Trial Chamber further recalls that those performing forced labour at the front were guarded by HVO soldiers.

738. With particular regard for the degree of organisation required, the Trial Chamber concludes that General Bla{ki} ordered the use of detainees to dig trenches, including under dangerous conditions at the front. The Trial Chamber also adjudges that by ordering the forced labour Bla{ki} knowingly took the risk that his soldiers might commit violent acts against vulnerable detainees, especially in a context of extreme tensions.

[1649] Defence Brief, IX, F.
[1650] Defence Brief, IX, F.
[1651] Witness Mcleod, PT pp. 6384-6387.
[1652] Witness Zeco, PT of 26 September 1997, pp. 2826-2827; witness Morsink, PT pp. 9895-9897.
[1653] Witness Buffini, PT pp. 5576-5577.
[1654] Witness Bla{ki}, PT p. 22773.
[1655] P715; P716; P717 .

ii) The taking of hostages (counts 17 and 18)

739. Bla{ki} admitted knowing that civilian detainees were at various locations in Vitez around 17 April 1993 but denied having ordered their detention[1656]. He then contradicted himself by stating that he had ordered that the detainees be treated humanely and he also stated that he had had the power to release them[1657].

740. The Trial Chamber notes that Mario ^erkez (commander of the Vite{ka Brigade and a direct subordinate of Bla{ki})[1658], other HVO military representatives and Ivan [anti} and Pero Skopljak (local HVO civilian officials) were all directly involved in the taking of hostages on 19 and 20 April 1993. In addition, they clearly referred to the threat posed by the ABiH's military advance towards the town of Vitez[1659].

741. The Trial Chamber concludes that although General Bla{ki} did not order that hostages be taken, it is inconceivable that as commander he did not order the defence of the town where his headquarters were located. In so doing, Bla{ki} deliberately ran the risk that many detainees might be taken hostage for this purpose.

iii) Inhuman and cruel treatment: human shields (counts 19 and 20)

742. On 20 April 1993, 247 detainees were in front of the Hotel Vitez, General Bla{ki}'s headquarters in Vitez. Despite his presence in the building for a large part of the afternoon, the accused claimed that he knew nothing of it[1660]. However, there were many HVO soldiers in and around the Hotel whose frontage was glass[1661]. One of the soldiers said to one of the detainees in front of the Hotel that he would go and tell the commander[1662]. Moreover, the officer responsible for operations under General Bla{ki}, Slavko Marin, implicitly admitted that the civilians from Ga~ice village were put in danger[1663]. Finally, the Trial Chamber

[1656] Witness Bla{ki}, PT pp. 22469-22470, pp. 22475-22476.
[1657] Witness Bla{ki}, PT pp. 22475-22477.
[1658] D242.
[1659] The Trial Chamber notes that on 19 and 20 April 1993, the ABiH was successfully attacking the HVO which was in a difficult military situation; P242; witness Walters, PT p. 3406.
[1660] Witness Bla{ki}, PT pp. 22463-22464.
[1661] Witness Hrusti}, pp. 4815-4816.
[1662] Witness Hrusti}, pp. 4814-4815.
[1663] Witness Marin, pp. 13567-13568.

recalls that on 20 April 1993 the ABiH set in motion an extremely threatening offensive of which General Bla{ki} was well aware.

743. The Trial Chamber is therefore convinced beyond all reasonable doubt that on 20 April 1993 General Bla{ki} ordered civilians from Ga~ice village to be used as human shields in order to protect his headquarters.

IV. FINAL CONCLUSIONS

744. The Trial Chamber concludes that the acts ascribed to Tihomir Bla{ki} occurred as part of an international armed conflict because the Republic of Croatia exercised total control over the Croatian Community of Herceg-Bosna and the HVO and exercised general control over the Croatian political and military authorities in central Bosnia.

745. The accused was appointed by the Croatian military authorities. Following his arrival in Kiseljak in April 1992, he was designated chief of the Central Bosnia Operative Zone on 27 June 1992 and remained there until the end of the period covered by the indictment. From the outset, he shared the policy of the local Croatian authorities. For example, he outlawed the Muslim Territorial Defence forces in the municipality of Kiseljak.

746. From May 1992 to January 1993, tensions between Croats and Muslims continued to rise. At the same time, General Bla{ki} reinforced the structure of the HVO armed forces with the agreement of the Croatian political authorities.

747. In January 1993, the Croatian political authorities sent an ultimatum to the Muslims, *inter alia*, so as to force them to surrender their weapons. They sought to gain control of all the territories considered historically Croatian, in particular the La{va Valley. Serious incidents then broke out in Busova~a and Muslim houses were destroyed. After being detained, many Muslim civilians were forced to leave the territory of the municipality.

748. Despite the efforts of international organisations, especially the ECMM and UNPROFOR, the atmosphere between the communities remained extremely tense.

749. On 15 April 1993, the Croatian military and political authorities, including the accused, issued a fresh ultimatum. General Bla{ki} met with the HVO, military police and Vitezovi commanders and gave them orders which the Trial Chamber considers to be genuine attack orders. On 16 April 1993, the Croatian forces, commanded by General Bla{ki}, attacked in the municipalities of Vitez and Busova~a.

750. The Croatian forces, both the HVO and independent units, plundered and burned to the ground the houses and stables, killed the civilians regardless of age or gender, slaughtered

the livestock and destroyed or damaged the mosques. Furthermore, they arrested some civilians and transferred them to detention centres where the living conditions were appalling and forced them to dig trenches, sometimes also using them as hostages or human shields. The accused himself stated that twenty or so villages were attacked according to a pattern which never changed. The village was firstly "sealed off". Artillery fire opened the attack and assault and search forces organised into groups of five to ten soldiers then "cleansed" the village. The same scenario was repeated in the municipality of Kiseljak several days later. The Croatian forces acted in perfect co-ordination. The scale and uniformity of the crimes committed against the Muslim population over such a short period of time has enabled the conclusion that the operation was, beyond all reasonable doubt, planned and that its objective was to make the Muslim population take flight.

751. The attacks were thus widespread, systematic and violent and formed part of a policy to persecute the Muslim populations.

752. To achieve the political objectives to which he subscribed, General Bla{ki} used all the military forces on which he could rely, whatever the legal nexus subordinating them to him.

753. He issued the orders sometimes employing national discourse and with no concern for their possible consequences. In addition, despite knowing that some of the forces had committed crimes, he redeployed them for other attacks.

754. At no time did he even take the most basic measure which any commander must at least take when he knows that crimes are about to be or have actually been committed. The end result of such an attitude was not only the scale of the crimes, which the Trial Chamber has explained, but also the realisation of the Croatian nationalists' goals - the forced departure of the majority of the Muslim population in the La{va Valley after the death and wounding of its members, the destruction of its dwellings, the plunder of its property and the cruel and inhuman treatment meted out to many.

V. PRINCIPLES AND PURPOSES OF SENTENCING

A. Applicable provisions

755. In imposing the appropriate sentence on the accused, the Trial Chamber is guided by the Statute and the Rules which make reference to the general practice regarding prison sentences in the courts of the former Yugoslavia.

1. Statute

756. The relevant provisions of the Statute are Articles 7, 23 and 24. Article 7, which deals with individual criminal responsibility, stipulates *inter alia* that:

> 2. The official position of any accused, whether as Head of State or Government or as a responsible Government official, shall not relieve such person of criminal responsibility nor mitigate punishment.
>
> 4. The fact that an accused person acted pursuant to an order of a government or of a superior shall not relieve him of criminal responsibility, but may be considered in mitigation of punishment if the International Tribunal determines that justice so requires.

757. Articles 23 and 24 state:

> Article 23
> Judgement
>
> 1. The Trial Chambers shall pronounce judgements and impose sentences and penalties on persons convicted of serious violations of international humanitarian law.
>
> 2. The judgement shall be rendered by a majority of the judges of the Trial Chamber, and shall be delivered by the Trial Chamber in public. It shall be accompanied by a reasoned opinion in writing, to which separate or dissenting opinions may be appended.
>
> Article 24
> Penalties
>
> 1. The penalty imposed by the Trial Chamber shall be limited to imprisonment. In determining the terms of imprisonment, the Trial Chambers shall have recourse to the general practice regarding prison sentences in the courts of the former Yugoslavia.

2. In imposing the sentences, the Trial Chambers should take into account such factors as the gravity of the offence and the individual circumstances of the convicted person.

2. Rules of Procedure and Evidence

758. Rule 101 of the Rules, entitled "Penalties", determines the maximum sentence which the Tribunal may pass, that is life imprisonment, and the elements which the Trial Chamber takes into consideration when passing sentence, notably:

> the factors mentioned in Article 24, paragraph 2, of the Statute, as well as such factors as […] any aggravating circumstances; […] any mitigating circumstances including the substantial co-operation with the Prosecutor by the convicted person before or after conviction; […] the general practice regarding prison sentences in the courts of the former Yugoslavia […]

3. General practice regarding prison sentences

759. Keeping in mind the foregoing provisions, the Trial Chamber has recourse to the general practice regarding prison sentences in the courts of the former Yugoslavia[1664]. Reference to the practice is only indicative and not binding. Whenever possible, the Tribunal examines the texts and relevant judicial practice of the former Yugoslavia. However, it could not be legally bound by them in determining the sentences and sanctions it imposes for crimes falling under its jurisdiction[1665].

760. The practice for determining prison sentences in the courts of the former Yugoslavia is based on the provisions of Chapter 16[1666] and Article 41(1)[1667] of the SFRY criminal code.

[1664] Article 23 of the Statute and Rule 101 of the Rules.

[1665] Sentencing Judgement, *The Prosecutor v. Dra`en Erdemovi}*, Case no. IT-96-22-T, 29 November 1996 (hereinafter the "*Erdemovi}* Sentencing Judgement of 29 November 1996"), para. 40; Judgement and Sentence, *The Prosecutor v. Jean Kambanda*, Case no. ICTR-97-23-S, 4 September 1998 (hereinafter the "*Kambanda* Judgement and Sentence"), para. 23; *Furund`ija* Judgement, para. 285; *Aleksovski* Judgement, para. 242; Sentence, *The Prosecutor v. Jean Paul Akayesu*, Case no. ICTR-96-4-T, 2 October 1998 (hereinafter the "*Akayesu* Sentence"), paras. 12-14; Sentence, *The Prosecutor v. Clément Kayishema and Obed Ruzindana*, Case no. ICTR-95-1-T, 21 May 1999 (hereinafter the "*Kayishema-Ruzindana* Sentence"), paras. 5-7.

[1666] Chapter XVI of the Criminal Code of the former Yugoslavia "Crimes against peace and international law", Articles 141-156 and Articles 38 "Imprisonment", 41 "Sentences" and 48 "Concurrence of offences". Crimes against peace and international law were subject to 5 to 15 years in prison or the death penalty, or twenty years in prison where the death sentence is replaced by a prison sentence or for aggravated murder.

[1667] Article 41(1) of the Criminal Code of the SFRY: "For a given offence, the court shall set the limits prescribed by law for the offence and shall consider all the circumstances which might influence the severity of the penalty (mitigating and attenuating circumstances) and, in particular: the level of criminal responsibility, the motives for the offence, the intensity of the threat or assault on the protected object, the circumstances under which the offence was committed, the previous history of the perpetrator of the offence, his personal circumstances and conduct subsequent to the perpetration of the offence and any other circumstances relating to the character of the perpetrator."

Nonetheless, the Trial Chamber is not limited by the practice of the courts of the former Yugoslavia and it may draw upon other legal sources in order to determine the appropriate sentence.

4. Purposes and objectives of the sentence

761. The determination of a "fair" sentence, that is to say a sentence consonant with the interests of justice, depends on the objectives sought. The Trial Chamber hearing the *^elebi}i* case noted four parameters to be taken into account in fixing the length of the sentence: retribution, protection of society, rehabilitation and deterrence. According to the Trial Chamber, deterrence:

> is probably the most important factor in the assessment of appropriate sentences for violations of international humanitarian law. Apart from the fact that the accused should be sufficiently deterred by appropriate sentence from ever contemplating taking part in such crimes again, persons in similar situations in the future should similarly be deterred from resorting to such crimes[1668].

762. As the Trial Chamber hearing the *Tadi}* case recently recalled, pursuant to Security Council resolutions 808 and 827, the Tribunal's mission is to put to an end serious violations of international humanitarian law and to contribute towards the restoration and maintenance of peace in the former Yugoslavia[1669]. To achieve these objectives, the Trial Chamber must, in accordance with the case-law of the two *ad hoc* Tribunals, pass a sentence consonant with the above defined objectives[1670].

763. In addition, as observed in the *Erdemovi}* case:

> the International Tribunal sees public reprobation and stigmatisation by the international community, which would thereby express its indignation over heinous crimes and denounce the perpetrators, as one of the essential functions of a prison sentence for a crime against humanity[1671]

[1668] *^elebi}i* Judgement, para. 1234.
[1669] Sentencing Judgement, *The Prosecutor v. Du{ko Tadi}*, Case no. IT-94-1-T*bis*-R117, 11 November 1999 (hereinafter the "*Tadi}* Appeals Sentencing Judgment"), para. 7.
[1670] *Tadi}* Appeals Sentencing Judgment, para. 9; *^elebi}i* Judgement, paras. 1231 and 1234; *Furund`ija* Judgement, para. 288; *Kayishema-Ruzindana* Sentence, para. 2; Sentence, *The Prosecutor v. Omar Serushago*, Case no. ICTR-98-39-S, 5 February 1999 (hereinafter the "*Serushago* Sentence"), para. 20; *Akayesu* Sentence, para. 19; *Kambanda* Judgement and Sentence, para. 28.
[1671] *Erdemovi}* Sentencing Judgement of 29 November 1996, para. 65.

764. Finally, the Trial Chamber shares the opinion of the Trial Chamber hearing the *Furund`ija* case, that is, such reasoning is not applicable only to crimes against humanity but also to war crimes and other serious violations of international humanitarian law[1672].

B. Sentencing

765. The factors taken into account in the various Judgements of the two International Tribunals to assess the sentence must be interpreted in the light of the type of offence committed and the personal circumstances of the accused. This explains why it is appropriate to identify the specific material circumstances directly related to the offence in order to evaluate the gravity thereof and also the specific personal circumstances in order to adapt the sentence imposed to the accused's character and potential for rehabilitation. Notwithstanding this, in determining the sentence, the weight attributed to each type of circumstance depends on the objective sought by international justice. Keeping in mind the mission of the Tribunal, it is appropriate to attribute a lesser significance to the specific personal circumstances. Although they help to explain why the accused committed the crimes they do not in any event mitigate the seriousness of the offence. Furthermore, these circumstances may aggravate the responsibility of an accused depending on the position he held at the time of the acts and on his authority to prevent the commission of crimes.

1. The accused

766. Tihomir Bla{ki} was born on 2 November 1960 in the municipality of Kiseljak in Bosnia-Herzegovina. He lived in the town of Bretovsko. His parents were working class and his father died at the front during the conflict. He has a sister and a brother. Tihomir Bla{ki} has been married since 1987 and is the father of two young boys. His wife looks after their children and Tihomir Bla{ki}'s brother[1673]. Tihomir Bla{ki} was trained at the Belgrade Military Academy from 1979-1980 and subsequently promoted at regular intervals, first to the rank of Captain First Class within the former JNA, then to the ranks of Colonel and Chief-of-Staff of the HVO Mostar headquarters within the HVO and lastly to the rank of General assigned to the General Inspectorate within the army of the Republic of Croatia. He is a member of the General Inspectorate of this army. Tihomir Bla{ki} surrendered to the Tribunal

[1672] *Furund`ija* Judgment, para. 289.
[1673] PT pp. 20186-20187.

on 1 April 1996. He is presently being detained at the United Nations Detention Unit in Scheveningen, The Hague, The Netherlands.

2. Mitigating circumstances

767. Superior orders and co-operation with the Prosecutor are the only two mitigating circumstances explicitly set forth by the Statute and the Rules[1674]. The Tribunal has full discretion in respect of any other relevant mitigating circumstances.

a) The material mitigating circumstances

768. The fact that the accused did not directly participate may be taken as a mitigating circumstance when the accused holds a junior position within the civilian or military command structure. However, the Trial Chamber considers that the fact that commanders, such as Tihomir Bla{ki} at the time of the crimes, played no direct part cannot act in mitigation of the sentence when found guilty.

769. Duress, where established, does mitigate the criminal responsibility of the accused when he had no choice or moral freedom in committing the crime. This must consequently entail the passing of a lighter sentence if he cannot be completely exonerated of responsibility. The Trial Chamber points out that over the period covered by the present indictment Tihomir Bla{ki} did not act under duress whilst in his post. Accordingly, he does not enjoy any mitigating circumstances.

770. It appears that, independently of duress, the context in which the crimes were committed, namely the conflict, is usually taken into consideration in determining the sentence to be imposed. Such was the case in the *Tadi}*[1675], *^elebi}i*[1676] and *Aleksovski*[1677] cases. Though mentioned in these cases, this factor does not seem to have been decisive in

[1674] Article 7(4) of the Statute and Rule 101(B)(ii) of the Rules.
[1675] Sentencing Judgement, *The Prosecutor v. Du{ko Tadi}*, Case no. IT-94-1-T, 14 July 1997, (hereinafter the "*Tadi}* Sentencing Judgment"), para. 70: "the Trial Chamber cannot ignore these events, how they may bear on the offences of Du{ko Tadi}, and how they illuminate his role and thus his personal circumstances", and para. 72: "the virulent propaganda that stoked the passions of the citizenry […] was endemic and contributed to the crimes committed in the conflict".
[1676] *^elebi}i* Judgement, para. 1248: "It is relevant, and crucial, to take into account the circumstances in which the events occurred as well as the social pressures and hostile environment within which the accused was operating". For application in each instance: para. 1245 (Muci}) and 1283-1284 (Land`o).

fixing the sentence. Nonetheless, the Trial Chamber brings out the explanations given by Tihomir Bla{ki} whilst testifying to the disorganisation of the armed forces due, essentially, to the lack of experienced troops and the want of proper training and suitable materiel. It also observes the crimes allegedly committed by the other party and the difficulty of controlling the spontaneous reactions of some Croats. Nonetheless, even were they verified, these allegations are still not such as to constitute an excuse for a commander such as Tihomir Bla{ki} - *a fortiori* once it has been established as in this instance that the accused acted in accordance with a discriminatory policy which he deliberately implemented. The Trial Chamber finds the accused guilty of crimes against humanity and thereby excludes the possibility of disorder ensuing from an armed conflict constituting a mitigating circumstance.

b) Personal mitigating circumstances

771. Article 24(2) of the Statute allows the personal status of the accused to be taken into account in determining the sentence. Thus, where the elements effectively contribute to the determination of the sentence, the sanction must fit the crime's perpetrator and not merely the crime itself[1678] in accordance with the requirement of individualisation. As a human being, the accused has a conscience, a personal history and a character which may explain the process which led to the accused committing the crimes whose seriousness justifies his being tried before the Tribunal.

772. The Trial Chamber notes that the mental state of the accused was not invoked in this case[1679].

773. The accused's conduct after committing the crimes says much about his personality insofar as it reveals both how aware the accused was of having committed crimes and, to some extent, his intention to "make amends" by facilitating the task of the Tribunal[1680]. Such conduct includes co-operation with the Prosecutor, remorse, voluntary surrender and pleading guilty.

[1677] *Aleksovski* Judgement, para. 6.
[1678] Lafave and Israel, *Criminal Procedure* (1991), p. 1102, quoted from the *Tadi}* Sentencing Judgement, para. 61.
[1679] Sub-rule 67(A)(ii) of the Rules.

774. Co-operation with the Prosecutor is the only circumstance explicitly provided for within the terms of the Rules[1681]. By this simple fact, it takes on a special importance. The earnestness and degree of co-operation with the Prosecutor decides whether there is reason to reduce the sentence on this ground. Therefore, the evaluation of the accused's co-operation depends both on the quantity and quality of the information he provides[1682]. Moreover, the Trial Chamber singles out for mention the spontaneity and selflessness of the co-operation which must be lent without asking for something in return[1683]. Providing that the co-operation lent respects the aforesaid requirements[1684], the Trial Chamber classes such co-operation as a "significant mitigating factor"[1685]. The Trial Chambers have, on several occasions, ruled that failure to co-operate constitutes an aggravating circumstance. Here, the Trial Chamber notes that the accused has not co-operated with the Office of the Prosecutor.

775. Remorse was taken into account as a mitigating circumstance in the *Erdemovi}*[1686], *Akayesu*[1687] and *Serushago* cases[1688]. The Trial Chamber hearing the *Kambanda* case noted that the accused did not express any regrets even when the Trial Chamber presented him with the opportunity to do so[1689]. However the remorse expressed by the accused must be established as being real and sincere. Consequently, the Trial Chamber in the *Jelisi}* case indicated that it was not satisfied that the remorse expressed by the accused was sincere[1690]. In this instance, the Trial Chamber notes that the feeling of remorse must be analysed in the light of not only the accused's statements but also of his behaviour (voluntary surrender, guilty plea). The Trial Chamber points out that, from the very first day of his testimony, Tihomir Bla{ki} expressed profound regret and avowed that he had done his best to improve the

---

[1680] *Kambanda* Judgement and Sentence, para. 54: "The Trial Chamber has furthermore been requested to take into account in favour of Jean Kambanda that his guilty plea has also occasioned judicial economy, saved victims the trauma and emotions of trial and enhanced the administration of justice".
[1681] Sub-rule 101(B)(ii) of the Rules.
[1682] *Erdemovi}* Sentencing Judgement of 29 November 1996, para. 99-101 and the Sentencing Judgement, *The Prosecutor v. Dra`en Erdemovi}*, Case no. IT-96-22-T*bis*, 5 March 1998 (hereinafter the "*Erdemovi}* Sentencing Judgement of 5 March 1998"), para. 16 (iv); *Kambanda* Judgement and Sentence, para. 47.
[1683] ^*elebi}i* Judgement, para. 1279: "the Trial Chamber does not consider any attempt at plea bargaining to be a mitigating factor in the matter of sentencing".
[1684] And especially when it has contributed not only to the disclosure of information which is new or corroborates known information but also to the identification of other perpetrators of crimes (against whom the accused agrees to testify during their trial).
[1685] *Kambanda* Judgement and Sentence, para. 47; the *Erdemovi}* Sentencing Judgement of 5 March 1998, para. 16 (iv).
[1686] *Erdemovi}* Sentencing Judgement, paras. 96-98; *Erdemovi}* Sentencing Judgement of 5 March 1998, para. 16.
[1687] *Akayesu* Sentence, para. 35(i).
[1688] *Serushago* Sentence, paras. 40-41.
[1689] *Kambanda* Judgement, para. 51.
[1690] Judgement, *The Prosecutor v. Goran Jelisi}*, Case no. IT-95-10-T, 14 December 1999 (hereinafter the "*Jelisi}* Judgement"), para. 127.

situation although this proved insufficient[1691]. The Trial Chamber observes that there is a flagrant contradiction between this attitude and the facts it has established - having given orders resulting in the commission of crimes the accused cannot claim that he attempted to limit their consequences. His remorse thus seems dubious.

776. Voluntary surrender is deemed a significant mitigating circumstance in determining the sentence. The factor has been analysed in three cases to date. In the *Erdemovi}* case, it was deemed to indicate that the remorse expressed by the accused was sincere and thus a ground for reducing the sentence. However, it was selected as a self-contained mitigating circumstance in the *Serushago* case[1692]. More recently, the Trial Chamber in the *Kupre{ki}* case indicated that the voluntary surrender of accused constituted a factor operating in mitigation of the sentence[1693]. In the present case, even though his name appeared in an indictment alongside those of five other co-accused, Tihomir Bla{ki} voluntarily surrendered himself on 1 April 1996, that is approximately a year before the arrest of one of the other co-accused and eighteen months before another of the co-accused was handed over. However, as he himself stated during the hearings, he only surrendered himself once he had very carefully prepared his defence, to the point that he could retrace his movements down to the very minute even at the most critical moments of the conflict. The accused declared that he made preparations using documents which were no longer in his possession and which the Trial Chamber was unable to obtain.

777. A guilty plea, where entered, may in itself constitute a factor substantially mitigating the sentence. In this case, Tihomir Bla{ki} did not plead guilty. Although the Trial Chamber understands that the accused would contest the ascribability of the crimes, it does not however accept the fact that he took so much time to acknowledge that the crimes did indeed take place, particularly in Ahmi}i, crimes which the accused himself had ascribed to the Muslims or Serbs[1694], before stating at trial that they had been perpetrated, more specifically, by the Military Police[1695].

778. The case-law of the two *ad hoc* criminal Tribunals on rehabilitation takes the young age of the accused into account as a mitigating circumstance. The assessment of youth varies

[1691] PT pp. 17286-17287.
[1692] *Serushago* Sentence, para. 34.
[1693] *Kupre{ki}* Judgement, para. 853: "The fact that Zoran Kupre{ki} and Mirjan Kupre{ki} voluntarily surrendered […] is a factor in mitigation of their sentence"; *cf. also* paras. 860 and 863.
[1694] P380; witness Duncan, PT pp. 1198-1199.

– whilst the ICTY considers accused aged between 19 and 23 at the time of the facts as being young[1696], the ICTR selects ages from 32 to 37[1697]. In the present case, the Trial Chamber notes that Tihomir Bla{ki}, now 39 years old, was 32 at the time of the facts. It points out that this is not an unusually young age for a operative zone commander in time of armed conflict. However it must be stated that the accused was given considerable responsibilities, notably in organising the army and the conduct of military operations at a particularly critical period. Although he was a professional officer, the Trial Chamber considers that his age is to some degree a mitigating circumstance.

779. Finally, the Trial Chambers have often found it appropriate to review the accused's personal history - socially, professionally and within his family. It is essential to review these factors because they may bring to light the reasons for the accused's criminal conduct.

780. The character traits are not so much examined in order to understand the reasons for the crime but more to assess the possibility of rehabilitating the accused. The Judgement rendered in the *Erdemovi}* case states that the accused can be reformed and that he represents no danger[1698]. High moral standards are also indicative of the accused's character[1699]. Thus, the Trial Chamber bears in mind not only the fact that Tihomir Bla{ki} does not have a criminal record but also his keen sense for the soldiering profession which he considers a duty. In this respect, the Trial Chamber must take note of the exemplary behaviour of the accused throughout the trial, whatever the judgement as to his statements as a witness. The accused also appeared particularly at ease as regards the military aspect. It is appropriate to note that several witnesses attested to the professionalism of the accused and his organisational skills. He is a man of duty. He is also a man of authority who barely tolerated non-compliance with his orders. He is a man of conviction and his commitment to the Croatian cause is undoubted.

[1695] Witness Bla{ki}, PT pp. 18935-18937 and p. 18948.
[1696] *Furund`ija* Judgement, para. 284: 23 years; *^elebi}i* Judgement, para. 1283: *Land`o* 19 years; *Erdemovi}* Sentencing Judgement of 29 November 1996, para. 109 and *Erdemovi}* Sentencing Judgement of 5 March 1998, para. 16 (iv): 23 years.
[1697] *Serushago* Sentence, para. 39; *Kayishema-Ruzindana* Sentence, para. 12 (Ruzindana).
[1698] *Erdemovi}* Sentencing Judgement of 29 November 1996, para. 110 and *Erdemovi}* Sentencing Judgement of 5 March 1998, para. 16 (i).
[1699] *Erdemovi}* Sentencing Judgement of 5 March 1998, para. 16 (i); *Akayesu* Sentence, para. 35 (iii). *A contrario*, see the *^elebi}i* Judgement, para. 1256.

781. Another indication that the accused's character is reformable is evident in his lending assistance to some of the victims[1700]. In this regard, the Trial Chamber notes that Tihomir Bla{ki} allegedly maintained, here and there, good relations with the Muslims throughout the conflict. Accordingly, he supposedly participated in Muslim festivals, stayed in touch with the family of a Muslim friend and protected a Muslim woman whose husband was threatened[1701]. Notwithstanding this, the Trial Chamber observes that these good relations were sporadic and above all on an individual basis. These factors are all the less decisive when one notes that criminals frequently show compassion for some of their victims even when perpetrating the most heinous of crimes.

782. Nevertheless, in a case as serious as this and also insofar as many accused share these personal factors, the Trial Chamber must find that their weight is limited or even non-existent when determining the sentence[1702].

3. Aggravating circumstances

a) The scope of the crime

i) How the crime was committed

783. The fact that the crime was as egregious as it was is a qualitative criterion which can be gleaned from its particularly cruel or humiliating nature. The Trial Chambers have pointed out, in this regard, the extreme cruelty of the beatings[1703], the sadism with which they were inflicted and the especial humiliation which ensued. The cruelty of the attack is clearly a significant consideration when determining the proper sentence. In this case, the heinousness of the crimes is established by the sheer scale and planning of the crimes committed which resulted in suffering being intentionally inflicted upon the Muslim victims regardless of age,

---

[1700] ^*elebi}i* Judgement, para. 1270; *Erdemovi}* Sentencing Judgement of 5 March 1998, para. 16 (i); *Serushago* Sentence, para. 37 (v): assistance to victims; *Akayesu* Sentence, para. 35 (ii).
[1701] On 5 November 1993 (PT pp. 19851-19852).
[1702] *Furund`ija* Judgement, para. 284. Having recalled the personal mitigating circumstances, the Trial Chamber notes: "this may be said of many accused persons and cannot be given any significant weight in a case of this gravity".
[1703] *Tadi}* Sentencing Judgement, para. 11 and the detailed description of the bodily harm given in the third part of the *Tadi}* Judgement; *Kayishema-Ruzindana* Sentence, para. 18; ^*elebi}i* Judgement, paras. 1260-1267 and paras. 1272-1276.

sex or status. In this respect, the Trial Chamber wishes to bring out the particularly heinous nature of the crimes at Ahmi}i where, during a carefully prepared attack, many Muslim children, women and adults were systematically murdered and sometimes burnt alive in their homes, the houses plundered and set alight and the mosques and religious buildings destroyed. Such facts constitute a decisive aggravating circumstance.

784. The number of victims has been raised on several occasions as an aggravating circumstance and reflects the scale of the crime committed[1704]. By noting that the crimes were committed systematically, the Trial Chambers also took into account as aggravating circumstances the recurrence of the crimes[1705]. The number of victims must also be considered in relation to the length of time over which the crimes were perpetrated[1706]. In this case, the Trial Chamber not only points to the high number of victims but also the violence of the crimes and the fact that they were repeated, discriminatory and systematic. The Trial Chamber recalls that a very large number of Muslim civilians had their homes forcibly taken away from them. This excludes the very large number of victims who had to take flight. The brutal murder of Muslim civilians in Ahmi}i over a brief time-span is a blatant illustration.

785. The motive of the crime may also constitute an aggravating circumstance when it is particularly flagrant. Case-law has borne in mind the following motives: ethnic and religious persecution[1707], desire for revenge[1708] and sadism[1709]. Resultantly, the Trial Chamber considers that it is essential to review the motives of the crimes violating international humanitarian law imputed to the accused[1710]. Here, the Trial Chamber takes note of the ethnic and religious discrimination which the victims suffered. In consequence, the violations are to be analysed as persecution which, in itself, justifies a more severe penalty.

[1704] *Tadi}* Sentencing Judgement, paras. 11-55. The Trial Chamber reviewed in detail the circumstance surrounding each offence and the role of the accused in each of them by performing a victim by victim analysis which ultimately resulted in particular in highlighting the number of victims. *Erdemovi}* Sentencing Judgement of 5 March 1998, para. 15. *Kambanda* Judgement and Sentence, para. 42: "The magnitude of the crimes involving the killing of an estimated 500,000 civilians in Rwanda, in a short span of 100 days constitutes an aggravating fact" (footnote removed); *Kayishema-Ruzindana* Sentence, para. 26: passing down a more severe sentence on Kayishema was justified, *inter alia*, by the fact that he was found guilty on 4 counts of genocide (compared to 1 for Ruzindana).

[1705] *Aleksovski* Judgement, para. 235; in the instance, the Trial Chamber did not retain "repeated malice". *A contrario*, had it been established, there is no doubt that it would have been regarded as an aggravating factor.

[1706] *Erdemovi}* Sentencing Judgement of 29 November 1996, para. 85 and *Erdemovi}* Sentencing Judgement of 5 March 1998, para. 15; *Kambanda* Sentence, para. 42; *Akayesu* Sentence, para. 26 (iv).

[1707] *Tadi}* Sentencing Judgement, para. 45.

[1708] *^elebi}i* Judgement, para. 1235.

[1709] *Ibid*. para. 1269 and para. 1281.

[1710] *Ibid*. para. 1235.

ii) Effects of the crime upon the victims

786. The status of the victims may be taken into account as an aggravating circumstance. Judgements have indicated that the victims were civilians and/or women[1711]. This Trial Chamber notes that in this case many crimes targeted the general civilian population and within that population the women and children. These acts constitute an aggravating circumstance[1712].

787. The physical and mental effects of the bodily harm meted out to the victims were also seen as aggravating circumstances[1713]. The criterion is thus characterised by its subjectiveness. In the *Tadi}*, *^elebi}i* and *Furund`ija* cases, the Trial Chambers observed that the offences had been committed in circumstances which could only aggravate the crimes and the victims' suffering[1714]. Those cases where bodily injury led to death have also been noted[1715]. Consequently, victims' suffering is one factor to be taken into account when determining the sentence. The Trial Chamber here points not only to the suffering inflicted upon the victims while the crimes were being committed through the use of indiscriminate, disproportionate and terrifying combat means and methods, such as "baby bombs", flame-throwers, grenades and a booby-trapped lorry, but also the manifest physical and mental suffering endured by the survivors of these brutal events. Thus, along with the physical or emotional scars borne by the victims, their suffering at the loss of loved ones and the fact that most of them are still unable to return to their homes to this day must also be mentioned.

b) The degree of the accused's responsibility

i) Command position

788. In the case-law of the two Tribunals, there can be no doubt that command position may justify a harsher sentence, which must be that much harsher because the accused held a

[1711] *Furund`ija* Judgement, para. 283.
[1712] *Ibid*. and *Tadi}* Sentencing Judgement, para. 56; *^elebi}i* Judgement, para. 1268.
[1713] *^elebi}i* Judgement, paras. 1226, 1260 and 1273.
[1714] *Tadi}* Sentencing Judgement, para. 56.
[1715] *Ibid*., para. 29: "While Du{ko Tadi} was not found guilty of having killed any of the prisoners, his participation in the beating of prisoners encouraged the beating of other prisoners by camp guards and visitors in such circumstances that death could and in fact did result, which aggravates the nature of his crime".

high position within the civilian or military command structure[1716]. In this instance, actual authority exercised seems more decisive than command authority alone[1717]. The Judgements of the ICTR on the issue are of particular importance in view of the high level of command authority held by some of the accused[1718]. The Trial Chambers observed that the case-law of the Tribunal classifies command position as an aggravating circumstance[1719]. In the Judgement rendered in the ^*elebi}i* case, the Trial Chamber nevertheless noted that command position does not necessarily entail a harsher sentence and that the accused may enjoy mitigating circumstances if he had only "constructive knowledge" of the crimes[1720]. However the Trial Chamber stated that:

> it would constitute a travesty of justice, and an abuse of the concept of command authority, to allow the calculated dereliction of an essential duty to operate as a factor in mitigation of criminal responsibility[1721].

789. Therefore, when a commander fails in his duty to prevent the crime or to punish the perpetrator thereof he should receive a heavier sentence than the subordinates who committed the crime insofar as the failing conveys some tolerance or even approval on the part of the commander towards the commission of crimes by his subordinates and thus contributes to encouraging the commission of new crimes. It would not in fact be consistent to punish a simple perpetrator with a sentence equal or greater to that of the commander. From this viewpoint, the Trial Chamber recalls that in the *Tadi}* case the Appeals Chamber found that a prison sentence above twenty years would be excessive given the relatively low rank of Du{ko Tadi} within the command structure.[1722] Command position must therefore systematically increase the sentence or at least lead the Trial Chamber to give less weight to the mitigating circumstances, independently of the issue of the form of participation in the crime. The Trial Chamber observes that as commander of the Central Bosnia Operative Zone at the time of the facts, Tihomir Bla{ki} held a senior command position. As indicated above, the Trial Chamber is of the opinion that the accused had more than a constructive knowledge of the crimes. It is satisfied beyond all reasonable doubt that General Bla{ki} ordered attacks

[1716] *Eichmann* case, 29 May 1962, 36, ILR, 1968, p. 237: "The degree of responsibility generally increases as we draw further away from the man who uses the fatal instrument with his own hands and reach the higher level of commands".
[1717] *Serushago* Sentence, para. 29: "He was a *de facto* leader of the Interahamwe in Gisenyi. Within the scope of the activities of these militiamen, he gave orders which were followed"; *Akayesu* Sentence, para. 36(ii).
[1718] *Kambanda* Judgement, paras. 44, 61, 62; *Akayesu* Sentence para. 26.
[1719] *Kupre{ki}* Judgement, para. 862; *Furund`ija* Judgement, para. 283 and ^*elebi}i* Judgement, paras. 1240-1243 and para. 1268.
[1720] ^*elebi}i* Judgement, paras. 1219-1220.
[1721] *Ibid*. para. 1250.

which targeted the Muslim civilian population and thereby incurred responsibility for crimes committed during these attacks or at least made himself an accomplice thereto and, as regards those crimes not ensuing from such orders, he failed in his duty to prevent them and did not take the necessary measures to punish their perpetrators after they had been committed.

ii) Form of participation

790. Active and direct participation in the crime means that the accused committed by his own hand all or some of the crimes with which he is charged. Direct participation in the crime is accordingly an aggravating circumstance which will more often than not be held against the actual perpetrators rather than against the commanders[1723]. The relevant precedents set down by the Judgements delivered in the *Tadi}* and *Furund`ija*[1724] cases are quite significant. In the case in hand, the Trial Chamber points out that Tihomir Bla{ki} did not take a direct and active part in the crimes. Nonetheless, at the time of the facts, the accused held a command position which made him responsible for the acts of his subordinates. Accordingly, although the fact that he did not take a direct and active part does not constitute an aggravating circumstance in itself, it can in no way counterbalance the aggravation arising from the accused's command position[1725].

791. Therefore, it can be concluded that command position is more of an aggravating circumstance than direct participation. This holds true insofar as, although direct participation by the commander does constitute an aggravating circumstance, the fact that he does not participate directly may not conversely justify a reduction in the sentence

792. Informed and voluntary participation means that the accused participated in the crimes fully aware of the facts. It was specified as an aggravating circumstance in the *Tadi}*[1726] case and in all the Judgements rendered by the ICTR[1727]. The importance of this factor varies in

---

[1722] Discussion, *The Prosecutor v. Du{ko Tadi}*, Case no. IT-94-1-A and IT-94-1-A*bis* (hereinafter the "Judgement in Sentencing Appeals"), paras. 55-57.
[1723] Taking into account abuse of command authority as an aggravating circumstance results in raising the sentence of a superior to at least the same level if not higher.
[1724] *Furund`ija* Judgement, paras. 281-282.
[1725] *^elebi}i* Judgement, para. 1252.
[1726] *Tadi}* Sentencing Judgement, para. 57 and *Tadi}* Appeals Sentencing Judgment, para. 20: in determining the sentence the Chamber took into account the fact that Tadi} knew of the attack upon the non-Serb civilian population and his enthusiastic support for the attack.
[1727] *Kambanda* Sentence, para. 61(B)(vi); *Akayesu* Sentence, para. 36(i); *Serushago* Sentence, para. 30; *Kayishema-Ruzindana* Sentence, para. 13.

case-law depending on the degree of enthusiasm with which the accused participated. Informed participation is consequently a less aggravating circumstance than willing participation. Not only does the accused's awareness of the criminality of his acts and their consequences and of the criminal behaviour of his subordinates count but also his willingness and intent to commit them. Once such intent is established, it is likely to justify an additional aggravation of the sentence. In the case in hand, the Trial Chamber brings out the informed and voluntary participation of Tihomir Bla{ki} in the crimes ascribed to him. As a professional soldier who, as he himself explained, took a course on the law of armed conflicts while in the former JNA, the accused knew perfectly well the range of his obligations. It is inconceivable that Tihomir Bla{ki} was unable to assess the criminal consequences stemming from the violations of such obligations.

iii) Premeditation

793. The premeditation of an accused in a crime tends to aggravate his degree of responsibility in its perpetration and subsequently increases his sentence. Premeditation is a classic aggravating circumstance in national legal practice. For this reason, it was taken into account by the ICTY and ICTR in the *Tadi}*, *^elebi}i*, *Kambanda* and *Serushago* cases. The Trial Chamber here holds that, insofar as the accused has been found guilty of crimes against humanity, these circumstances may not be taken into account.

4. Credit for time served

794. Under Sub-rule 101(D) of the Rules, any person found guilty is entitled to "the period which [he] was detained in custody pending surrender to the Tribunal or pending trial or appeal" being deducted from the sentence. Consequently, in calculating the sentence, the fact that the accused has been detained by the Tribunal since 1 April 1996, that is three years, eleven months and two days as of the day of this Judgement, must be considered.

5. The sentence

795. Neither the Statute nor the Rules lays down expressly a scale of sentences applicable to the crimes falling under the jurisdiction of the Tribunal. Article 24(2) of the Statute draws

no distinction between crimes when determining the sentence. The Trial Chamber passes only prison sentences, the maximum being life imprisonment pursuant to Sub-rule 101(A) of the Rules.

796. However, the principle of proportionality, a general principle of criminal law, and Article 24(2) of the Statute call on the Trial Chamber to bear in mind the seriousness of the offence and could consequently constitute the legal basis for a scale of sentences. The first question which arises therefrom concerns the existence of a scale of seriousness of the crimes over which the Tribunal has jurisdiction. The question of transposing this scale when determining the sentence only comes up later.

a) Legal bases and consequences of an objective ranking of the crimes

797. To date, the issue of the legal basis for ranking the crimes does not appear to have been the focus of many discussions[1728]. In the *Erdemovi}* case, the Appeals Chamber outlined the principle of a scale of seriousness of the crimes although the legal arguments put forward in support of the said principle were not unanimously agreed upon. In their separate opinion, Judges McDonald and Vohrah advanced two arguments for a scale of seriousness of the crimes. First, they indicated a natural distinction between crimes against humanity and war crimes in order to justify the intrinsically more serious nature of the crimes against humanity[1729]. In their respective separate opinions in the *Erdemovi}* and *Tadi}* cases[1730], Judge Li and Judge Robinson signalled their disagreement on the matter noting that a crime against humanity is not a crime against the whole of mankind but a crime against "humaneness, i.e. a certain quality of behaviour". The Trial Chamber however observes that although the two meanings of the word "humanity" are allowable, the second in no way acts

[1728] Judgement, *The Prosecutor v. Dra`en Erdemovi}*, Case no. IT-96-22-A, 7 October 1997 (hereinafter the "*Erdemovi}* Judgement"), Joint Separate Opinion of Judge McDonald and Judge Vohrah, paras. 20-27 and Separate and Dissenting Opinion of Judge Li; *Erdemovi}* Sentencing Judgement of 5 March 1998, Separate Opinion of Judge Shahabuddeen; *Tadi}* Appeals Sentencing Judgment, Separate Opinion of Judge Robinson.
[1729] *Erdemovi}* Judgement, para. 21: "It is in their very nature that crimes against humanity differ in principle from war crimes. Whilst rules proscribing war crimes address the criminal conduct of a perpetrator towards an immediate protected object, rules proscribing crimes against humanity address the *perpetrator's conduct not only towards the immediate victim but also towards the whole of humankind*" (emphasis added) and the *Erdemovi}* Sentencing Judgement of 29 November 1996: "But crimes against humanity also transcend the individual because when the individual is assaulted, humanity comes under attack and is negated. It is therefore the concept of humanity as victim which essentially characterises crimes against humanity".
[1730] *Erdemovi}* Judgement, Separate and Dissenting Opinion of Judge Li, para. 26 and reference to definition given by Egon Schwelb in "Crimes against Humanity", 23 *British yearbook of International Law* (1946), p. 195; *Tadi}* Appeals Sentencing Judgment, Separate Opinion of Judge Robinson, page 9.

in mitigation of the seriousness *per se* of a crime against humanity which retains a different nature from a war crime.

798. Secondly, the fact that a crime against humanity is distinguishable from a war crime by its ingredients is raised – crimes against humanity are not isolated acts committed at random but rather acts which, as their perpetrator is aware, have much more serious consequences because of their additional contribution to a widespread pattern of violence[1731]. However, a crime against humanity must not necessarily be considered more serious than a war crime[1732]. The comparison must be made between two similar underlying crimes[1733].

799. Accordingly, an outline of the hierarchy of crimes emerges from the case-law of the two *ad hoc* Tribunals but its legal value does not seem to have been established at the present time[1734].

b) The principles set by the case-law of the two Tribunals

i) The principles

800. A hierarchy of crimes seems to emerge from the case-law of the ICTR. The Trial Chamber seised of the *Kambanda* case[1735] established a complete scale of seriousness of the crimes which was taken up in the subsequent Judgements of the ICTR[1736]. The following hierarchy of crimes falling under the jurisdiction of the Tribunal may therefore be compiled:

[1731] *Erdemovi}* Judgement, Joint Separate Opinion of Judge MacDonald and Judge Vohrah, para. 21 and reference to the analysis of the legal ingredients of a crime against humanity made in the *Tadi}* Sentencing Judgement.
[1732] *Ibid*., Separate and Dissenting Opinion of Judge Li, para. 19-20.
[1733] An assessment of the seriousness of crimes is made "all things being equal".
[1734] *Tadi}* Appeals Sentencing Judgment, Separate Opinion of Judge Robinson, p. 2: "That decision of the Appeals Chamber in *Erdemovi}*, which is discussed in this Sentencing Judgment ("Judgment"), is, of course, binding on Trial Chambers as to the relative gravity of crimes against humanity and war crimes; and it is only because I am bound by it that I have concurred in those sections of this Judgment" (emphasis added).
[1735] *Kambanda* Sentence, para. 10-16.
[1736] *Akayesu* Sentence, paras. 3-11; *Serushago* Sentence, paras. 12-16; *Kayishema-Ruzindana* Sentence, para. 9.

1) "The crime of crimes": genocide[1737]

2) Crimes of an extreme seriousness: crimes against humanity

3) Crimes of a lesser seriousness: war crimes[1738]

The ICTR has thus supposedly established a genuine hierarchy of crimes and this has been used in determining sentences as witnessed by the fact that the crime of genocide was punished by life imprisonment[1739].

801. The ICTY has not yet transposed this hierarchy of crimes to the sentencing phase. Until now only the *Tadi}* case has the distinctive feature whereby the accused has been found guilty of crimes against humanity and war crimes for the same acts and was sentenced separately for each characterisation specified. In view of this, it should also be noted that the sentences imposed for crimes against humanity were systematically one year longer than those for war crimes. Even in the *Erdemovi}* case, the Appeals Chamber did not clearly use the hierarchy of offences, as established in the Judgement, in order to determine the corresponding applicable sentence[1740]. Recently in the *Tadi}* case, the Appeals Chamber noted that in determining the sentence there is no distinction in law between the seriousness of a crime against humanity and that of a war crime[1741]. In setting the sentence, the Chamber indicated:

> [t]he authorized penalties are also the same, the level in any particular case being fixed by reference to the circumstances of the case[1742].

802. Ultimately, it appears that the case-law of the Tribunal is not fixed. The Trial Chamber will therefore confine itself to assessing seriousness based on the circumstances of the case.

[1737] *Kambanda* Judgement, para. 16: "The crime of genocide is unique because of its element of *dolus specialis* (special intent) which requires that the crime be committed with the intent 'to destroy in whole or in part, a national, ethnic, racial or religious group as such'".
[1738] *Ibid*., para. 9.
[1739] Except for the sentences passed down on Serushago and Ruzindana.
[1740] *Erdemovi}* Sentencing Judgement of 5 March 1998: if the sentence was reduced to 5 years for violations of the laws or customs of war from 10 years for a crime against humanity, the recharacterisation of the crime was not the sole decisive factor in determining the sentence, since in the Sentencing Judgement duress was selected as a decisive mitigating circumstance; *cf.* Separate Opinion of Judge Shahabuddeen, p. 10.
[1741] *Tadi}* Judgement in Sentencing Appeals, para. 69. Also note the Separate Opinion of Judge Cassese.
[1742] *Ibid*., para. 69.

ii) The method for assessing seriousness

803. The objective method for assessing the seriousness of a crime is linked to the intrinsic seriousness of the crime's legal characterisation. It is not the seriousness of the crime committed in the case in point which is borne in mind but the seriousness of the characterisation specified. The subjective method for assessing the seriousness relates to the seriousness *in personam* of the crime[1743].

804. In addition to the seriousness *per* se of the crime, it is also appropriate to take into account its seriousness *in personam*[1744]. Although the subjective seriousness is not taken into account in the scale of seriousness of the crimes, it is a factor in the second phase of determining the sentence and thereby ensures that the circumstances of the case may be duly taken into account in setting the sentence. It is not contrary to the principle of individualisation of the sentence to rely on a scale of seriousness of the crimes. The scale of sentences will follow from the relationship between and the evaluation of the objective seriousness, if relevant, and the subjective seriousness of the crimes. It is understood that the weight of the second factor, that is the subjective seriousness, should not, other than in exceptional circumstances, cancel out the first factor, that is the objective seriousness. Furthermore and where necessary, the imposition of a minimum sentence to be served would give some scope for the sentence to be fine-tuned[1745]. However, the Trial Chamber notes that this notion is not universally accepted in the various legal systems.

c) A single sentence

805. The Trial Chamber is of the view that the provisions of Rule 101 of the Rules do not preclude the passing of a single sentence for several crimes. In this regard, the Trial Chamber takes note that although until now the ICTY Trial Chambers have rendered Judgements imposing multiple sentences, Trial Chamber I of the ICTR imposed single sentences in the *Kambanda*[1746] and *Serushago*[1747] cases.

[1743] *^elebi}i* Judgement, para. 1226.
[1744] *Erdemovi}* Judgement, para. 10; *Kambanda* Sentence, para. 29.
[1745] *Tadi}* Sentencing Judgement, para. 76: "Minimum term recommendation"; Article 132-133 of the French Criminal Code.
[1746] *Kambanda* Sentence.
[1747] *Serushago* Sentence.

806. Moreover, the Trial Chamber recalls that in the cases brought before the military Tribunals at Nuremberg and Tokyo, a single sentence was passed even for multiple crimes.

807. Here, the crimes ascribed to the accused have been characterised in several distinct ways but form part of a single set of crimes committed in a given geographic region during a relatively extended time-span, the very length of which served to ground their characterisation as a crime against humanity, without its being possible to distinguish criminal intent from motive. The Trial Chamber further observes that crimes other than the crime of persecution brought against the accused rest fully on the same facts as those specified under the other crimes for which the accused is being prosecuted. In other words, it is impossible to identify which acts would relate to which of the various counts - other than those supporting the prosecution for and conviction of persecution under count 1 which, moreover, covers a longer period of time than any of the other counts. In light of this overall consistency, the Trial Chamber finds that there is reason to impose a single sentence for all the crimes of which the accused has been found guilty.

6. Conclusion

808. In conclusion, the Trial Chamber holds that in this case, the aggravating circumstances unarguably outweigh the mitigating circumstances and that the sentence pronounced accurately reflects the degree of seriousness of the crimes perpetrated and the faults of the accused given his character, the violence done to the victims, the circumstances at the time and the need to provide a punishment commensurate with the serious violations of international humanitarian law which the Tribunal was set up to punish according to the accused's level of responsibility.

VI. DISPOSITION

FOR THE FOREGOING REASONS, **THE TRIAL CHAMBER**, in a unanimous ruling of its members,

FINDS Tihomir Bla{ki} GUILTY:

of having ordered a crime against humanity, namely persecutions against the Muslim civilians of Bosnia, in the municipalities of Vitez, Busova~a and Kiseljak and, in particular, in the towns and villages of Ahmi}i, Nadioci, Piri}i, [anti}i, O~ehni}i, Vitez, Stari Vitez, Donja Ve~eriska, Ga~ice, Lon~ari, Grbavica, Behri}i, Kazagi}i, Svinjarevo, Gomionica, Gromiljak, Polje Vi{njica, Vi{njica, Rotilj, Hercezi, Tulica and Han Plo~a/Grahovci between 1 May 1992 and 31 January 1994 (count 1) for the following acts:

- attacks on towns and villages;

- murder and serious bodily injury;

- the destruction and plunder of property and, in particular, of institutions dedicated to religion or education;

- inhuman or cruel treatment of civilians and, in particular, their being taken hostage and used as human shields;

- the forcible transfer of civilians;

and by these same acts, in particular, as regards an international armed conflict, General Bla{ki} committed:

- a violation of the laws or customs of war under Article 3 of the Statute and recognised by Article 51(2) of Additional Protocol I: unlawful attacks on civilians (count 3);

- a violation of the laws or customs of war under Article 3 of the Statute and recognised by Article 52(1) of Additional Protocol I: unlawful attacks on civilian objects (count 4);

- a grave breach, under Article 2(a) of the Statute: wilful killing (count 5);

- a violation of the laws or customs of war under Article 3 and recognised by Article 3(1)(a) of the Geneva Conventions: murder (count 6);

- a crime against humanity, under Article 5(a) of the Statute: murder (count 7);

- a grave breach under Article 2(c) of the Statute: wilfully causing great suffering or serious injury to body or health (count 8);

- a violation of the laws or customs of war under Article 3 and recognised by Article 3(1)(a) of the Geneva Conventions: violence to life and person (count 9);

- a crime against humanity under Article 5(i) of the Statute: inhumane acts (count 10);

- a grave breach under Article 2(d) of the Statute: extensive destruction of property (count 11);

- a violation of the laws or customs of war under Article 3(b) of the Statute: devastation not justified by military necessity (count 12);

- a violation of the laws or customs of war under Article 3(e) of the Statute: plunder of public or private property (count 13);

- a violation of the laws or customs of war under Article 3(d) of the Statute: destruction or wilful damage done to institutions dedicated to religion or education (count 14);

- a grave breach under Article 2(b) of the Statute: inhuman treatment (count 15);

- a violation of the laws or customs of war under Article 3 of the Statute and recognised by Article 3(1)(a) of the Geneva Conventions: cruel treatment (count 16);

- a grave breach under Article 2(h) of the Statute: taking civilians as hostages (count 17);

- a violation of the laws or customs of war under Article 3 of the Statute and recognised by Article 3(1)(b) of the Geneva Conventions: taking of hostages (count 18);

- a grave breach, under Article 2(b) of the Statute: inhuman treatment (count 19);

- a violation of the laws or customs of war under Article 3 of the Statute and recognised by Article 3(1)(a) of the Geneva Conventions: cruel treatment (count 20),

In any event, as a commander, he failed to take the necessary and reasonable measures which would have allowed these crimes to be prevented or the perpetrators thereof to be punished, and

NOT GUILTY of counts 3 and 4 in relation to the shelling of the town of Zenica,

and therefore,

SENTENCES Tihomir Bla{ki} to forty-five years in prison;

STATES that the length of time he has been detained for the Tribunal, that is the period from 1 April 1996 until the date of this Judgement, shall be deducted from the overall length of the sentence.

Done in French and English, the French version being authoritative.

Done this third day of March
At The Hague
The Netherlands.

/signed/

Claude Jorda
President of the Trial Chamber

/signed/

Mohamed Shahabuddeen

/signed/

Almiro Rodrigues

[Seal of the Tribunal]

Judge Shahabuddeen appends a declaration to this Judgement.

DECLARATION OF JUDGE SHAHABUDDEEN

I agree with the judgment but, as I had made a reservation in a previous case concerning the subject of international armed conflict, I state below my views on some aspects of that matter as it relates to this case.

The main question concerns the test to be applied where the impugned state is alleged to have acted through a foreign military entity, as distinguished from direct military intervention. Paragraph 27 of a joint opinion of Judges Vohrah and Nieto-Navia spoke of "overall control"; that was in *Aleksovski,* decided by a Trial Chamber on 25 June 1999. A test similarly named appeared in the judgment rendered, shortly afterwards, by the Appeals Chamber in *Tadic* on 15 July 1999. It was in respect of this test that I entered the reservation above-mentioned. The present Trial Chamber applies this test. Institutionally, I agree with the Trial Chamber in following the judgment of the Appeals Chamber on the point. Individually, however, I have a different approach and would like to preserve it, although it leads to the same conclusion as that produced in this case by the overall control test.

A prefatory consideration is that, as it was said by Judge Gros, "a change in terminology does not suffice to avoid a problem".[1] The problem of determining whether a state is in armed conflict with another state through a foreign military entity is not resolved by asking whether there is "overall control" unless this term is understood by reference to a criterion which enables the court to decide whether such control exists in the particular circumstances of any case.

It seems to me that this criterion is to be found by asking what is the degree of control which is *effective* in any set of circumstances to enable the impugned state to use force against the other state through the intermediary of the foreign military entity concerned. It is only that standard which can help to determine whether "overall control" for one purpose is "overall control" for another. For example, what is overall control for the purpose of committing breaches of international humanitarian law need not be overall control for the purpose of using force short of committing such breaches, as is possible. It was in respect of the former purpose (which is not germane here) that *Nicaragua* spoke

[1] *Gulf of Maine, I.C.J. Reports 1984*, p. 363, para. 6, dissenting opinion.

of the need for specific instructions.[2] I do not read that case as intended to say that, as a matter of law, proof of specific instructions is necessarily required where the question is whether a state was using force through a foreign military entity short of committing breaches of international humanitarian law, which is all that the prosecution has to prove in support of its proposition that an "armed conflict" had arisen between two states within the meaning of Article 2, first paragraph, of the Fourth Geneva Convention.

In all cases, the juridically meaningful criterion is whether there is effective control. Whether there is such control has to be considered in the light of the particular purpose in view. This means that it may be necessary to distinguish between the criterion and evidence of satisfaction of the criterion. In some cases, proof of satisfaction of the criterion may conceivably require evidence of specific instructions; in others it may not. But, whatever may be the evidence required to satisfy it, the criterion remains that of effectiveness. There is no way of eliminating the concept; it is both constant and ineradicable. Any needed flexibility is provided by its operation.

Thus, a criterion of universal applicability displaces a number of tests (apparent in the *Tadi}* appeal judgment) to determine what is but a single issue, namely, whether the acts of others (individuals or groups, organised or not) are acts of the impugned state – whether a neighbouring state or a distant state. In the result, it may be doubted whether analysis is promoted by adding the word "overall" to the word "control" unless recourse is had to a criterion of effectiveness to determine whether there is overall control in any circumstances. A test is not by itself sufficient and is not therefore adequate if, to apply it in particular circumstances, it is necessary to have recourse to another test of more fundamental applicability.

As mentioned above, as a matter of institutional correctness, I agree with the Trial Chamber in following the Appeals Chamber as to the test to be applied. In my respectful individual opinion, however, the effective control test to be extracted from the judgment of the International Court of Justice in *Nicaragua* is sound. The defence was right in contending for that test, but I cannot see that, in the circumstances of this case, it produces effects which differ from those resulting from the overall control test.

A second question concerns the argument of the defence that the ICRC-sponsored agreement of 22 May 1992 showed that the parties, together with the ICRC, regarded the

[2] *Nicaragua v United States of America*, *I.C.J. Reports 1986*, p. 14.

conflict as internal, and not as international.[3] The argument is based on the fact that, under the agreement, the parties committed themselves to abide by the substantive rules of internal armed conflict set out in common Article 3 of the Geneva Conventions and in addition agreed, on the strength of the third paragraph of that article, to apply certain provisions of the Conventions concerning international armed conflict.

It appears to me that the proposition that the ICRC must have held the view that the conflict was internal is not the same as the proposition that the ICRC must have held that it was *only* internal. The Appeals Chamber itself recognised that the same armed conflict may have both internal and international aspects.[4] As the Appeals Chamber put it:

> "Taken together, the agreements reached between the various parties to the conflict in the former Yugoslavia bear out the proposition that, when the Security Council adopted the Statute of the International Tribunal in 1993, it did so with reference to situations that the parties themselves considered at different times and places as either internal or international armed conflicts, or as a mixed internal-international conflict".[5]

It was therefore open to the parties to agree on the regulation of their conflict in so far as it was internal without thereby excluding the possibility that it also had international aspects. An admission that it had these latter aspects was not likely to be made so long as any intervening external state was in a position to exercise influence on key parties to the agreement; if there had to be such an admission, there might have been no agreement. Likewise, it was competent for the ICRC to encourage the parties to regulate the conflict in so far as it was internal without thereby necessarily taking the position that the conflict was *only* internal.

Further, the position was an evolving one. The agreement was made on 22 May 1992. Even if the armed conflict was exclusively internal on that date, it did not follow that it remained so. From paragraph 26 of their opinion in *Aleksovski*, it appears that the majority in that case accepted that the conflict became international but that they considered that this happened after the end of the period covered by the indictment in that

---

[3] For supporting argument, see *Tadic Interlocutory Appeal on Jurisdiction*, (1994-1995)1 ICTY JR, p. 433, para. 73, and para. 16 of the joint opinion in *Aleksovski*, IT-95-14/1-T of 25 June 1999.
[4] *Tadi} Interlocutory Appeal on Jurisdiction*, (1994-1995), 1 ICTY JR 357, p. 433, para. 72; and see ibid., p. 441, para. 77.
[5] Ibid., p. 435, para. 73.

case. Their view of the time (seemingly, April 1993) with effect from which the conflict became international does not of course bind this Trial Chamber.

A third question concerns a view that there could have been no international armed conflict in this case because, if there were, that would lead to the absurdity of holding that persons having the nationality of Bosnia and Herzegovina who were held by the HVO were protected persons on the ground that the HVO was acting for a foreign state[6] whose nationality the victims did not have, but that such persons were not protected persons if held by the ABiH since they would have the nationality of the state for which the latter was acting. In the result, atrocities would be punishable as grave breaches in the former case, but not in the latter.

The difficulty can be overcome by argument to the effect that, on one ground or another, in a particular situation Bosnian Croat victims of the ABiH did not in fact have the nationality of Bosnia and Herzegovina for purposes of the Fourth Geneva Convention, recourse being had to the broad objects of the relevant provisions. But it is right to recognise that those possibilities have a limit beyond which the victims indisputably have the same nationality as that of the state in whose hands they find themselves. What then, when that limit is reached?

The hypothesis given above in relation to victims of the HVO assumes a common nationality of the victims and those by whom they were directly victimised, the former being nevertheless protected persons on the ground that the latter were acting as agents of a state whose nationality the victims did not have. That agency element is missing in a case in which citizens of a state are victimised by the armed forces of the same state who are acting only for that state and not for another. In such a situation, the victims have the nationality of the party in whose hands they find themselves and are not protected persons.

The resulting difference between the two situations is obvious. But the lack of symmetry is superficial and does not attract an absurdity argument. In one case, the captors would have been acting as agents of a foreign state; not so in the other. The law itself is symmetrical. If a party puts itself within the reach of its sanctions for a reason which does not apply to another, there can be no complaint on the ground of inequality in

[6] See *Tadic Interlocutory Appeal on Jurisdiction*, p. 439, para. 76; and see and compare *Prosecutor v. Delalic*, IT-96-21-T, 16 November 1998, paras. 245-266.

the operation of the law. In the result, there is no such absurdity as to justify rejection of the view that there was an international armed conflict in this case.

A fourth and last question concerns a submission by the defence that, in accordance with the *Tadi} Interlocutory Appeal on Jurisdiction* decision rendered by the Appeals Chamber on 2 October 1995 and the judgment given by the Trial Chamber in *Aleksovski* on 25 June 1999, the mere intervention of foreign troops in a conflict between local forces does not convert the conflict from a local one into an international one. This holding, said the defence, denies the judgment rendered in *Celebi}i* on 16 November 1998 and the review decision given in the *Raji} Indictment* case on 13 September 1996, when the opposite position was taken.[7]

I understand the submission to contemplate this situation: There is an armed conflict between a secessionist group and the government of the state. A foreign state intervenes militarily in support of the secessionist group and is resisted by the local state. The external military intervention clearly constitutes an armed conflict between states for the purpose of making the Fourth Geneva Convention applicable. But does the internal conflict itself become an armed conflict between states?

The answer is in the affirmative if the foreign state assumes control over the secessionist group such that the use of force by the secessionist group becomes a use of force by the foreign state against the local state, thereby giving rise to an armed conflict between states within the meaning of Article 2, first paragraph, of the Fourth Geneva Convention.

Where that is so, a remaining question is whether the local armed conflict can retain any part of its original internal character. It seems to me that an affirmative answer is indicated both by principle and by authority. As to principle, it is difficult to see why an ongoing internal armed conflict should suddenly and necessarily lose that character altogether because of foreign intervention. The circumstance that a secessionist group is using force under the control of a foreign state does not necessarily mean that it cannot be also using the same force on its own account. As to authority, words used in the *Tadi} Interlocutory Appeal on Jurisdiction* decision suggest the possibility of dual characterisation. For example, paragraph 72 of that decision spoke of the armed conflict

[7] T.25248-9, Mr Nobilo.

in that case being "characterised as both internal and international" or as having "some combination" of internal and international aspects.

Thus, I think the defence is right to the extent that foreign intervention does not of necessity deprive an internal armed conflict of its internal character altogether – it may, but it may not. However, I do not think it is necessary to pursue the matter further. The conclusion of the Trial Chamber, with which I respectfully agree, is that, in the particular circumstances of the case, Croatia was always in overall control of the HVO; that conclusion is unqualified. No room is left for a finding that the armed conflict was in part internal or to explore the legal implications of such a finding.

Done in both English and French, the English text being authoritative.

_____
Mohamed Shahabuddeen

Dated this third day of March 2000
At The Hague
The Netherlands