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-95-14/2-T

Date: 26 February 2001

Original: ENGLISH

IN THE TRIAL CHAMBER

Before: **Judge Richard May, Presiding**
Judge Mohamed Bennouna
Judge Patrick Robinson

Registrar: **Mr. Hans Holthuis**

Date: **26 February 2001**

PROSECUTOR

v.

DARIO KORDI]
&
MARIO ^ERKEZ

JUDGEMENT

The Office of the Prosecutor:

Mr. Geoffrey Nice, Q.C.
Mr. Patrick Lopez-Terres
Mr. Kenneth R. Scott
Ms. Susan Somers
Mr. Fabricio Guariglia

Counsel for the Accused:

Mr. Mitko Naumovski, Mr. Turner T. Smith, Jr., Mr. Stephen M. Sayers, Mr. Robert Stein and Mr. Christopher G. Browning, Jr., for Dario Kordi}

Mr. Božidar Kova~i} and Mr. Goran Mikuli~i}, for Mario ^erkez

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PART ONE: INTRODUCTION

1. This is the Judgement of the Trial Chamber in the case of *Prosecutor v. Dario Kordi} and Mario ^erkez*. Both accused are Bosnian Croats who played prominent parts in the conflict in the Central Bosnian region of Bosnia and Herzegovina in the early 1990s. Dario Kordi} was a politician at the time, described as the most important Bosnian Croat political figure in the area. On the other hand, Mario ^erkez was a military man and Commander of a Brigade of the Croatian Defence Council. The conflict between the Bosnian Muslims and the Bosnian Croats, with which this case is concerned, took place mainly in 1992 and 1993. The accused are charged with offences arising from that conflict.

2. The two accused were originally indicted with four others in an indictment confirmed on 10 November 1995. The accused surrendered to the custody of the International Tribunal on 6 October 1997 and made their initial appearance on 8 October 1997 when both pleaded "Not guilty". On 30 September 1998 an amended indictment, against these two accused only, was confirmed. The trial took place on this amended indictment ("Indictment"), a copy of which is to be found as Annex V to this Judgement.

3. The trial opened on 12 April 1999 and the hearing of evidence and speeches of counsel concluded on 15 December 2000: 240 days sittings were held. In total 241 witnesses gave evidence: 122 for the Prosecution and 117 for the Defence and 2 Court witnesses. The Prosecution submitted 30 transcripts of witnesses who had given evidence in other cases before the International Tribunal. The Defence submitted 53 affidavits and 10 transcripts. 4,665 exhibits were produced: 2,721 by the Prosecution and 1,643 by the Defence (together with 1 court exhibit). The transcript of the proceedings runs to more than 28,000 pages. **(**Other relevant procedural matters are contained in Annex IV to this Judgement.**)**

4. The Indictment contains 44 counts and charges both accused with eight grave breaches of the Geneva Conventions, ten violations of the laws or customs of war and four crimes against humanity.

5. The Indictment may be summarised in this way:

(a) The background is the break-up of the former Yugoslavia. The declaration of independence by the Republic of Croatia occurred in June 1991 and its recognition by the European Community in January 1992. The declaration of independence by the Republic of

Bosnia and Herzegovina followed in March 1992 and its recognition by the European Community in April 1992.

(b) The principal Bosnian Croat political party was the Croatian Democratic Union of Bosnia and Herzegovina ("HDZ-BiH"), an offshoot of its Croatian parent, the HDZ, a nationalist party. As the Indictment sets out, the goal of the HDZ-BiH party was to secure the right of the Croatian people to self-determination, including the right to secession.

(c) To this end, in November 1991 the HDZ-BiH set up a new community or entity for the Bosnian Croats, called the Croatian Community of Herceg-Bosna ("HZ H-B") which was described as 'a separate and distinct cultural, economic and territorial whole'. (This community covered the area of Central Bosnia with which this case is concerned.) The HZ H-B then created another new body, the Croatian Defence Council ("HVO") in April 1992 which was to be the supreme executive and defence authority of the HZ H-B. Local municipal HVO units were subsequently established from June 1992 as the executive and military power in the municipalities.

(d) Dario Kordi} rose rapidly in the HDZ-BiH, becoming its President in the Municipality of Busova~a, President of the Travnik Regional Community and a Vice-President of the HZ H-B. In August 1993 the HZ H-B turned itself into the Croatian Republic of Herceg Bosna ("HR H-B") with Dario Kordi} continuing as a Vice-President. He became President of the HDZ-BiH in July 1994.

(e) The Indictment alleges that from November 1991 to March 1994 persons and groups "directed, instigated, supported or aided or abetted by the HDZ, the HDZ-BiH, the HZ H-B/HR H-B and HVO … planned … and engaged in a campaign of persecutions and ethnic cleansing and committed serious violations of international humanitarian law against the Bosnian Muslim population residing in the HZ H-B/HR H-B …". The charges in the Indictment arise from this campaign and relate, *inter alia*, to the persecution, killing, inhuman treatment and unlawful imprisonment of Bosnian Muslims.

(f) The Indictment also alleges that Dario Kordi} exerted "power, influence and control over the political and military aims and operations of the HDZ-BiH, the HZ H-B, the HR H-B and HVO" and, from November 1991 to March 1994, was individually responsible, under Article 7(1) of the Statute of the International Tribunal, for committing, planning, instigating or ordering the preparation or execution of the crimes charged against him in the Indictment. Further, or alternatively, it is alleged that Dario Kordi} was criminally responsible, under Article 7(3) of the Statute, as a superior, for the acts of his subordinates since he knew, or

had reason to know, that persons subordinate to him were about to commit these crimes and failed to take the necessary and reasonable measures to prevent the crimes or punish the perpetrators.

(g) In March 1993 Mario ^erkez became the Commander of the HVO Brigade in the Municipality of Vitez in Central Bosnia (Vite{ka Brigade) and during the material time demonstrated his authority and control. The Indictment alleges that, from April 1992 to August 1993, he was individually responsible for the crimes charged against him in the Indictment and also, or alternatively, was criminally responsible under Article 7(3) of the Statute for the acts of his subordinates.

6. The Counts in the Indictment may conveniently be considered in five groups:

(a) **Counts 1 and 2** charge the accused with a crime against humanity: persecution on political, racial or religious grounds. In Count 1, Dario Kordi} is charged with such an offence committed between November 1991 and March 1994. Count 2 charges Mario ^erkez with a similar offence committed between April 1992 and September 1993. The persecution in each case is alleged to have been "the widespread or systematic persecutions of Bosnian Muslim civilians". These persecutions are said to have been carried out, inter alia, by attacking places where the civilians lived; killing and causing serious harm to numbers of them; detaining others; coercing them and transferring them from their homes; using them to dig trenches and as human shields; promoting ethnic hatred; destroying and plundering their property and destroying and damaging their places of worship.

(b) **Counts 3 – 6** charge the accused with violations of the laws or customs of war by means of attacks on civilians and civilian property and wanton destruction not justified by military necessity. Counts 3 and 4 charge Dario Kordi} with such offences in 16 places between January and October 1993. Counts 5 and 6 charge Mario ^erkez with similar offences in seven places in April 1993.

(c) **Counts 7 – 20** charge the accused with crimes against humanity, grave breaches and violations of the laws or customs of war in connection with the wilful killing, murder and inhuman treatment of Bosnian Muslims and inhumane acts against them. Counts 7 - 13 charge Dario Kordi} with such offences committed in 13 places between January and October 1993. Counts 14 - 20 charge Mario ^erkez with similar offences committed in seven places in April 1993.

(d) **Counts 21 – 36** charge the accused with crimes against humanity, grave breaches and violations of the laws or customs of war in connection with the imprisonment and inhuman treatment of Bosnian Muslims, the taking of hostages and the use of human shields. Counts 21 – 28 charge Dario Kordi} with such offences between January 1993 and March 1994. Counts 29 – 36 charge Mario ^erkez with similar offences committed between April and August 1993.

(e) **Counts 37 – 44** charge the accused with grave breaches and violations of the laws or customs of war in connection with the destruction and plunder of Bosnian Muslim property and the destruction of institutions dedicated to religion or education. Counts 37 – 39 and Count 43 charge Dario Kordi} with such offences committed in numerous locations between October 1992 and December 1993. Counts 40 – 42 and Count 44 charge Mario ^erkez with similar offences between April and September 1993.

7. After the close of the prosecution case the Trial Chamber rejected defence motions for judgement of acquittal but ruled that there was no case to answer in relation to a limited number of locations referred to in four counts. (These matters are dealt with later in this Judgement.)

8. Central Bosnia is a loosely defined area in the middle of Bosnia, about 30 kilometres north-west of Sarajevo and to the east of Mostar and Herzegovina.[1] At the heart of Central Bosnia is the La{va Valley, consisting of the municipalities of Vitez, Novi Travnik and Busova~a. The municipality of Zenica lies to the north and the municipalities of Kiseljak and Fojnica to the south. These municipalities, together with Travnik, made up the core of the area referred to as Central Bosnia. To these may be added the municipalities of Žep~e to the north, Gornji Vakuf to the west, Kre{evo to the south and Vare{ and Kakanj to the east. The population of the area in 1991 was nearly 470,000, of whom about 48 per cent were Muslim, 32 per cent Croat and 10 per cent Serb.[2] The significance of the area to the conflict lay in its position and the fact that it contained a number of armaments factories. It is a mountainous area with important roads running along the valleys, going from Herzegovina to Eastern Bosnia and from Sarajevo to the north. Thus, one witness described the conflict in Central Bosnia as a war for roads.[3] On the other hand, the area itself is not large. At the centre of the events in this case is the area between Vitez and Kiseljak: two towns separated by a distance of only 30 kilometres.

[1] *See* Annex VI, 1-7. The Indictment, evidence and exhibits do not contain identical definitions of Central Bosnia. For instance, the list of municipalities which were to constitute the Bosnian Croat Military Zone of Central Bosnia ("the Central Bosnia Operative Zone") changed from one order to another (e.g. Ex. Z151, Z199.3, Z234, Z292.2). However, review of the available materials provides a coherent basis for a definition for the purposes of this Judgement.

9. The prosecution case is that the offences alleged in the Indictment represent the unfolding of a plan to secure Bosnian Croat control of Central Bosnia and its accession to the Republic of Croatia. The plan started with the HDZ in Croatia and its leader, Franjo Tu|man, and was based on the "Banovina Plan" of 1939, an agreement between Croatia and Serbia to divide Bosnia and Herzegovina between them. The Bosnian branch of the HDZ political party took over the Bosnian Croat organisations and established the Croatian community of HB in November 1991. A campaign of persecution and ethnic cleansing was then planned and implemented by the Bosnian Croat leadership in the area of the HZ H-B, through their organisations, in particular the HVO. First they took over the government, police and military facilities in as many municipalities as possible, and asserted control over all aspects of daily life. Meanwhile, overall control was maintained by the Republic of Croatia; and the Army of the Republic ("HV") intervened in the conflict which was thus turned into an international armed conflict with Bosnia and Herzegovina.

10. According to the Prosecution the conflict began in earnest in Central Bosnia in January 1993 when the Vance-Owen Peace Plan provided the pretext for removing the Bosnian Muslim population from the HZ H-B. Before January 1993 the Bosnian army (the "ABiH") and the HVO had joint military control over the La{va Valley region in Central Bosnia. However, the ABiH forces were mainly deployed to confront the Bosnian Serb forces who, supported by the Yugoslav People's Army ("JNA"), were conducting their own offensive in Bosnia and Herzegovina and had advanced to lines which were to the north-west of Travnik on one side of Central Bosnia and to the north east of Kiseljak on the other. Then, in January and April 1993, the HVO launched a series of attacks in order to secure the La{va Valley. The series began in January 1993 with an attack on Busova~a and was followed on 16 April with a general attack in the La{va Valley which culminated in the massacre in the village of Ahmi}i when over 100 Bosnian Muslims were killed, including many women and children. In the same month there were attacks on Bosnian Muslim villages to the south of the La{va Valley in Kiseljak municipality. It is the prosecution case that all these attacks were widespread or systematic, that they were conducted according to a preconceived plan and following a pattern, starting with shelling in the early morning and then involving groups of soldiers going from house to house, killing and wounding many of the inhabitants, detaining others and setting fire to the houses. There were also individual atrocities, such as the detonation of a truck-bomb in Vitez and the shelling of the city of Zenica. During their detention the detainees were used as hostages and human shields and were used to dig trenches (often under fire). The next

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[2] These figures are based on a table setting out the results of the 1991 Census which was exhibited in the case: Ex. Z571.2.
[3] Brig. Luka [ekerija, a retired officer from the HVO, T. 18151.

wave of attacks against Bosnian Muslim villages took place in June 1993 in Kiseljak municipality with the object of securing that municipality for the HVO and removing the Bosnian Muslim population. Similar tactics were employed as before. Finally, in October 1993, the HVO attacked Stupni Do, a village in Vare{ municipality, and another massacre ensued. It is the prosecution case that part, at least, of this campaign was successful. Many Muslims were killed or expelled and their homes destroyed. A Croat-controlled canton was established which exists to this day.

11. The defence case for both accused amounts to a complete denial of the prosecution case, putting virtually everything in dispute. According to the Defence there was no plan for the Croats of Central Bosnia to secede, no persecution and no interference from the Republic of Croatia in Central Bosnia. The various Bosnian Croat organisations, the HDZ-BiH, HZ H-B (HR H-B) and HVO were all formed in the context of a disintegrating central authority with the purpose of defending Bosnian Croat interests against Bosnian Serb aggression. Thus, the background to the conflict with the Bosnian Muslims was the Bosnian Serb spring 1992 offensive in Herzegovina and Sarajevo. The resulting influx of refugees affected the ethnic balance in Central Bosnia which in turn led to clashes between Bosnian Croats and Muslims. Fighting broke out in the La{va Valley in January 1993 and continued thereafter as a result of efforts by the ABiH to cut off and keep apart the Bosnian Croats in the La{va Valley from those in Kiseljak. The Croats were outnumbered and were driven to defend themselves in the three pockets which they held in Central Bosnia, i.e., in the La{va Valley, around Kiseljak and around Vare{. There was fighting in villages in all these areas, atrocities were committed against Bosnian Croats and they were expelled from their homes. Fighting broke out afresh in April 1993 after ABiH extremists kidnapped the HVO brigade commander in Zenica and killed his bodyguard. Ahmi}i was a legitimate military target: insofar as there were excesses they were <u>not</u> committed by troops of the Vite{ka Brigade. In June 1993 the ABiH launched a further offensive and took Travnik and other municipalities. The Bosnian Croats were heavily outnumbered and were driven back into their pockets. Stupni Do was a legitimate military target and the civilian deaths were caused by the excesses of the troops involved. (The Prosecution, it should be noted, accepts that crimes were committed by all sides but says that this is not relevant to the charges against the accused.)

12. Accordingly, there is a dispute as to whether the crimes underlying the charges against these accused were committed or not. If, of course, the Prosecution does not prove that the crimes took place in relation to any count, then the accused must be acquitted on that count. Thus, the Trial Chamber must determine in relation to each count whether the offence charged is made out. Only if sure that the offence on a particular count has been proved can the Trial Chamber move to the next stage of the enquiry which is to determine whether the respective accused is guilty of the offence or not.

13. The prosecution case against Dario Kordi} is that, as a political leader, he was both individually responsible for the crimes charged in the Indictment and also responsible as a superior. It is alleged, first, that he was instrumental in the campaign of persecution in his role as Vice-President of HZ H-B and President of the HDZ-BiH in Busova~a: he frequently reaffirmed the objective of taking over the Croatian territories, himself ordering the take-over of the Busova~a municipality and playing a part in the take-over of other municipalities. The Prosecution further alleges that, as the Bosnian Croat political leader in Central Bosnia, Dario Kordi} was instrumental in launching the attacks on the Bosnian Muslim towns and villages in 1993, controlling checkpoints and free passage along the roads and delivery of humanitarian aid; he acted as an HVO Commander, gave orders to local commanders and was known as 'Colonel'. The Prosecution relies primarily on circumstantial evidence to prove the case against this accused. It says that inferences can be drawn from the conduct of the accused in order to establish that Dario Kordi} was part of the military chain of command and linked to the unlawful acts.

14. The defence of Dario Kordi} is that he was a politician and not a military man and, as such, he gave no orders to military organisations and was not part, in any way, of the military chain of command. His role was to inspire the Bosnian Croat population in the defence of their homeland. Even as a politician his influence was purely local: he had no part in running the HZ H-B nor in the take-over of municipalities.

15. The prosecution case against Mario ^erkez is that from November 1992 he was a Commander of the HVO Brigade in Novi Travnik and from March 1993 he was sole Commander of the HVO Brigade in Vitez under the command of Colonel Bla{ki}, the Central Bosnian Operative Zone Commander: as the Commander of the HVO Vite{ka Brigade, he participated in the campaign of persecution within his area of responsibility, i.e., the municipalities of Vitez and Novi Travnik. The units under his command carried out the crimes in those municipalities. Accordingly, Mario ^erkez was the commander of the units which carried out the unlawful attacks in Vitez and Novi Travnik and, as such, responsible for those crimes.

16. The defence of Mario ^erkez is that he was not the commander of all the HVO units in the area of Vitez or Novi Travnik (of which there were many) and soldiers under his command did not commit any of the crimes alleged. On the contrary, he took measures to see that his soldiers were instructed in international humanitarian law. The accused had no connection with the internment of civilians or their use in digging trenches and as human shields. On 16 April 1993, the day of the Ahmi}i attack, the Vite{ka Brigade was not involved in the attack on the village but, rather, deployed near a place called Kru{~ica, outside Vitez.

17. It will be thus for the Trial Chamber to determine:

(a) whether the underlying crimes have been proved, or not, and;

(b) if so, whether the accused are guilty of the crimes charged against them, or not.

In this connection it should be emphasised that it is the duty of the Trial Chamber to consider the case against each accused separately and to consider each count in the Indictment separately. It should also be stated at the outset that no accused may be found guilty on any count unless the Trial Chamber is satisfied, beyond reasonable doubt, of his guilt on that count.

18. The Judgement begins with a discussion of the law relating to the various counts in the Indictment. This discussion starts with the law applying to international armed conflict and contains the evidence relating to that topic. There follows discussion of the law applicable to the other counts.

19. The discussion of the evidence follows a general chronological order, beginning with the background to the conflict, the alleged campaign of persecution, the attacks on the towns and villages and the killings. There then follows a discussion of the other offences alleged in the Indictment: those relating to detention and inhuman treatment and destruction and plunder. The role of the accused is considered in relation to each of the relevant events. The Judgement ends with consideration of the individual responsibility of the accused for any crimes which have been proved.

20. In its discussion the Trial Chamber will only deal with such evidence as is necessary for the purposes of the Judgement. It will, thus, concentrate on the most salient parts and briefly summarise (or not mention at all) much of the peripheral evidence. A vast amount of detail has been presented in this case (too much, in the view of the Trial Chamber). The fact that a matter is not mentioned in the Judgement does not mean that it has been ignored. All the evidence has been considered by the Trial Chamber and the weight to be given it duly apportioned. However, only such matter as is necessary for the purposes of the Judgement is included in it. [A Glossary of Terms, Chronology of Events and List of *Dramatis Personae* are included in Annexes for ease of reference.]

PART TWO: THE LAW

21. As discussed above, Dario Kordi} and Mario ^erkez are charged with crimes under Articles 2, 3 and 5 of the Statute. In this section, the Trial Chamber will consider the requirements for the application of these Articles which are common to all of them. It will then examine the requirements for the application of each of these Articles in turn. First, the Trial Chamber sets forth the elements of the crimes charged in the Indictment. Next, it addresses the law on individual responsibility and concludes with a consideration of the law relating to self-defence as a defence to war crimes.

I. GENERAL REQUIREMENTS FOR THE APPLICATION OF ARTICLES 2, 3 AND 5 OF THE STATUTE

A. Elements Common to Articles 2, 3 and 5 of the Statute

1. Requirement of an Armed Conflict

22. Articles 2 and 3 of the Statute set forth provisions which reflect the laws of war; plainly a pre-condition to the applicability of these Articles is the existence of an armed conflict in the territory where the crimes are alleged to have occurred.

23. Article 5 vests the International Tribunal with the competence to prosecute crimes against humanity "when committed in armed conflict, whether international or internal in character". In the *Tadi}* Jurisdiction Decision[4] the Appeals Chamber found that under customary law there is no requirement that crimes against humanity have a connection to an international armed conflict. The Appeals Chamber further held that "customary international law may not require a connection between crimes against humanity and any conflict at all."[5] Article 5, however, requires nothing more than the existence of an armed conflict at the relevant time and place for the International Tribunal to have jurisdiction.[6]

24. The Appeals Chamber in *Tadi}* held that an armed conflict exists:

[4] *Prosecutor v. Du{ko Tadi}*, Case No. IT-94-I-AR72, Decision on the Defence Motion for Interlocutory Appeal on Jurisdiction, 2 Oct. 1995 ("*Tadi}* Jurisdiction Decision"), *Tadi}* (1995) I ICTY JR 293.
[5] *Tadi}* Jurisdiction Decision, paras. 140-41.
[6] The *Tadi}* Appeals Chamber held that "the armed conflict requirement is a *jurisdictional* element, not 'a substantive element of the *mens rea* of crime against humanity' (i.e., not a legal ingredient of the subjective element of the crime)". *Prosecutor v. Du{ko Tadi}*, Case No. IT-94-1-A, Judgement, 15 July 1999 ("*Tadi}* Appeal Judgement"), para. 249. The

> 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.[7]

25. The Kordi} Defence argues that the relevant armed conflict for purposes of this Indictment is that between the Bosnian Croats and the Bosnian Muslims, rather than the conflict between the Bosnian Croats and the Bosnian Muslims on the one hand, and the Serbs on the other. It submits that, while there were incidents of violence in Central Bosnia in 1992 and early 1993, "protracted violence did not begin until mid-April 1993, after which it continued until the Washington Agreement in March 1994."[8] It is argued that since the International Tribunal's jurisdiction in relation to crimes under Articles 2, 3 and 5 of the Statute is dependent upon the existence of an armed conflict, all counts relating to the time period prior to the outbreak of armed conflict in mid-April 1993 must be dismissed.

26. In relation to Article 5 of the Statute, the Prosecution contends that it is not required that the crimes must all be committed in the precise geographical region where the armed conflict occurs at a given moment.[9] The Defence did not raise this issue in their briefs.

27. In this regard, the Trial Chamber observes that, in order for norms of international humanitarian law to apply in relation to a particular location, there need not be actual combat activities in that location. All that is required is a showing that a state of armed conflict existed in the larger territory of which a given location forms a part.[10]

28. The Indictment alleges that a state of international armed conflict existed on the territory of the Republic of Bosnia and Herzegovina at all times relevant to the Indictment. Count 1, which charges Dario Kordi} with persecution as a crime against humanity, is the broadest count in the Indictment, covering the time-period from November 1991 to March 1994, and encompassing the whole territory of the HZ H-B and HR H-B, as well as the municipality of Zenica. Consequently, it is these temporal and geographic parameters which must form the basis of the Chamber's inquiry on this issue.

29. Part Three, Sections I-III of this Judgement discusses the establishment of the territory of the HZ H-B by the HDZ BiH, on 18 November 1991, and the rise in the incidence of violent clashes

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Kupre{ki} Trial Judgement held that the character of the conflict "is therefore immaterial", *Prosecutor v. Zoran Kupre{ki} et al*, Case No. IT-95-16-T, Judgement, 14 January 2000 ("*Kupre{ki}* Trial Judgement"), para. 545.

[7] *Tadi}* Jurisdiction Decision, para. 70.

[8] Kordi} Final Brief, Annex E, p. E-1.

[9] Prosecution Final Brief, para. 162, citing *Prosecutor v. Tihomir Bla{ki}*, Case No. IT-95-14-T, Judgement, 3 March 2000 ("*Blaškic* Trial Judgement"), para. 69.

[10] *Prosecutor v. Zejnil Delali} et al.,* Case No. IT-96-21-T, Judgement, 16 November 1998 ("^*elebi}i* Trial Judgement"), para. 185.

between the Bosnian Croats and Bosnian Muslims within that territory and, in particular, in the territory of Central Bosnia, following its establishment.

30. Part Three, Section IV discusses the outbreak of armed conflict in Busova~a in January 1993 and the violence that erupted on a much wider scale in Vitez and throughout the La{va Valley in April 1993 and continued through March 1994.

31. Based upon the foregoing, the Chamber finds that, while it was not until April 1993 that a generalised state of armed conflict in the form of protracted violence broke out in the territory of Central Bosnia between the HVO and the ABiH, prior to that period there were localised areas of conflict, within which a state of armed conflict could be said to exist.

2. Nexus Between the Crimes Alleged and the Armed Conflict

32. Having established the existence of an armed conflict, the Chamber observes that, in order for a particular crime to qualify as a violation of international humanitarian law under Articles 2 and 3 of the Statute, the Prosecution must also establish a sufficient link between that crime and the armed conflict. In this regard, the Appeals Chamber has held that:

> Even if substantial clashes were not occurring in the [specific region] at the time and place the crimes were allegedly committed . . . international humanitarian law applies. 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.[11]

33. The Appeals Chamber further concluded in respect of Article 5 of the Statute that proof of a nexus between the conduct of the accused and the armed conflict is not required:

> A nexus between the accused's acts and the armed conflict is not required, as is instead suggested by the [*Tadi}* Trial] Judgement. The armed conflict requirement is satisfied by proof that there *was* an armed conflict; that is all that the Statute requires, and in so doing, it requires more than does customary international law.[12]

Although the acts or omissions must be committed in the course of an armed conflict, the nexus which is required is between the accused's acts and the attack on the civilian population.[13]

34. As previously discussed, all of the acts underlying the charges in the Indictment are alleged to have occurred in the territory of the HZ H-B, in which the HDZ BiH was the controlling political authority, with the HVO as its military arm. The Indictment charges Dario Kordi} with crimes committed in his capacity as the Vice-President of the HZ H-B, in which capacity he is alleged to have played a central role in developing and executing the policies of the HZ H-B and the HVO.

[11] *Tadi}* Jurisdiction Decision, para. 70.
[12] *Tadi}* Appeal Judgement, para. 251.
[13] *Tadi}* Appeal Judgement, para. 251.

Mario ^erkez is charged in his capacity as commander of the Vite{ka Brigade of the HVO. The acts for which both accused persons have been indicted are alleged to have been committed either in their respective personal capacities or by other members of the HVO in the course of its armed conflict with the Bosnian Muslim forces, the ABiH.

35. Consequently, the Chamber is in no doubt that a clear nexus exists between the armed conflict between the Bosnian Croats and the Bosnian Muslims in Bosnia and Herzegovina and the acts alleged in the Indictment to have been committed by the two accused persons.

B. Article 2 of the Statute

36. Dario Kordi} and Mario ^erkez are charged under Article 2 of the Statute with the following crimes as grave breaches of the Geneva Conventions of 1949;[14] inhuman treatment,[15] wilful killing,[16] wilfully causing great suffering or serious injury to body and health,[17] unlawful confinement of civilians,[18] taking civilians and hostages[19] and extensive destruction of property.[20]

37. Article 2 of the Statute, entitled "Grave breaches of the Geneva Conventions of 1949" states:

> The International Tribunal shall have the power to prosecute persons committing or ordering to be committed grave breaches of the Geneva Conventions 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 a civilian to serve in the forces of a hostile power;
>
> (f) wilfully depriving a prisoner of war or a civilian of the rights of fair and regular trial;

[14] Geneva Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field of August 12, 1949 ("Geneva Convention I"); Geneva Convention for the Amelioration of the Condition of Wounded, Sick and Shipwrecked Members of Armed Forces at Sea of August 12, 1949 ("Geneva Convention II"); Geneva Convention Relative to the Treatment of Prisoners of War of August 12, 1949 ("Geneva Convention III"); Geneva Convention Relative to the Protection of Civilian Persons in Time of War ("Geneva Convention IV") ("the Geneva Conventions").
[15] Counts 12, 23 and 27 (Dario Kordi}) and Counts 19, 31 and 35 (Mario ^erkez).
[16] Count 8 (Dario Kordi}) and Count 15 (Mario ^erkez).
[17] Count 11 (Dario Kordi}) and Count 18 (Mario ^erkez).
[18] Count 22 (Dario Kordi}) and Count 30 (Mario ^erkez).
[19] Count 25 (Dario Kordi}) and Count 33 (Mario ^erkez).
[20] Count 37 (Dario Kordi}) and Count 40 (Mario ^erkez).

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

(h) taking civilians as hostages.

1. Arguments of the Parties

(a) The Prosecution case

38. The Prosecution submits that Article 2 of the Statute only applies to violations committed in the context of an international armed conflict. In addition, in order to qualify as a crime under Article 2 of the Statute, the victim of the alleged crime must be "protected" under any one of the four Geneva Conventions of 1949.[21]

39. The Prosecution argues that an armed conflict is internationalised where a foreign State intervenes in the conflict through its troops, or where a foreign State exercises a degree of control over the military forces of a party to the conflict sufficient to internationalise the conflict. In the Prosecution's submission, it has proved the existence of an international armed conflict under both tests.

40. The Appeals Chamber in *Tadi},* it is submitted, established the test for the degree of control which must be exercised by a foreign State over the military forces of a party to the conflict in order to render that conflict international; namely "overall control".[22] The Prosecution argues that the test of "overall control" is applicable in the instant case for the reasons set out by the Appeals Chamber in the *Aleksovski* Appeal Judgement.[23] Under that test, the Prosecution submits that it must prove that Croatia had a role in organising, coordinating or planning the military actions of the HVO, in addition to financing, training, and equipping or providing operational support to the HVO.[24]

41. The testimony and documents in this case, it is submitted, demonstrate that Croatia exercised overall control over the HVO during the time-period covered by the Indictment. In the Prosecution's submission, there is evidence to show that Croatia provided extensive logistical support to the HVO. The Prosecution argues that the following evidence goes to satisfy the overall control test:

(i) President Tuđman's territorial ambitions in Bosnia and Herzegovina;

(ii) The fact that Croatia and the HVO shared the same goals;

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[21] Prosecution Final Brief, Annex 7, para. 1.
[22] Prosecution Final Brief, Annex 7, para. 5 (citing *Tadi}* Appeal Judgement, para. 137).
[23] Prosecution Final Brief, Annex 7, para. 6 (citing *Prosecutor v. Zlatko Aleksovski*, Case No. IT-95-14/1-A, Judgement, 24 March 2000 ("*Aleksovski* Appeal Judgement"), para. 125), and para. 7 (citing *Aleksovski* Appeal Judgement, paras. 112 -113).
[24] Prosecution Final Brief, Annex 7, para. 8.

(iii) Croatia controlled the decisions of the HZ H-B either through Croatian army officers assigned to the HVO, or directly;

(iv) The HDZ in Croatia had overall control over the HDZ in Bosnia and Herzegovina;

(v) Croatian army officers served with the HVO and then returned to the Croatian army;

(vi) President Tuðman dismissed Bosnian Croat leaders who did not share his opinions;

(vii) The Bosnian Croat leaders followed directions from, or at least co-ordinated with, the Croatian government.

42. In sum, the Prosecution contends that an international armed conflict existed between the Bosnian Croats and the Bosnian Muslims at all relevant times for purposes of the Indictment by reason of: (i) direct intervention by Croatian armed forces in that conflict; (ii) Croatia's exercise of overall control over the HVO forces in their conflict with the Bosnian Muslims.

43. It is argued that, when an armed conflict is internationalised, the Geneva Conventions apply throughout the respective territories of the parties engaged in the conflict.[25]

44. The Prosecution submits that, as Croatia exercised overall control over the HVO, all persons or property in the hands of the HVO were simultaneously in the hands of Croatia. Consequently, Bosnian persons or property in the hands of the HVO were entitled to protected status under the relevant Geneva Conventions of 1949.[26]

45. The Prosecution concedes that, while Bosnia and Herzegovina and Croatia may be regarded as co-belligerents in the context of their joint struggle against the Serbian military forces, this characterisation is not applicable in the context of the armed conflict between Bosnia and Herzegovina and Croatia.[27]

(b) The Defence case

(i) The Kordi} Defence

46. The Kordi} Defence submits that the following three criteria must be satisfied before Article 2 of the Statute may apply:

(i) the alleged violations occurred in the context of an international armed conflict;

[25] Prosecution Final Brief, Annex 7, para. 11 (citing *Tadi}* Jurisdiction Decision, para. 68 and ^*elebi}i* Trial Judgement, paras. 208 and 209).
[26] Prosecution Final Brief, Annex 7, para. 12.
[27] Prosecution Final Brief, Annex 7, para. 13.

(ii) the victims of the alleged violations were persons regarded as "protected" by the Geneva Conventions;

(iii) the alleged violations are included in the acts enumerated in Article 2 of the Statute.

47. In respect of the first criterion for the application of Article 2 of the Statute, the Defence argues that the armed conflict relevant to a consideration of the applicability of Article 2 in this case is that between the Bosnian Croats on the one hand, and the Bosnian Muslims on the other. In its submission, that conflict should be characterised as internal, since both the Bosnian Croats and Muslims were citizens of the Republic of Bosnia and Herzegovina. In this regard, the Defence argues that the *^elebi}i* case, in which the Trial Chamber held that Bosnian Serbs need not be viewed as nationals of Bosnia and Herzegovina for purposes of applying Article 2 of the Statute, may be distinguished on the following grounds: the Bosnian Serbs had adopted a Constitution rendering them part of the Federal Republic of Yugoslavia, whereas the Bosnian Croats did not formally secede; "[r]ather, they had voluntarily joined with the Muslims in forming the BiH. . .".[28] In any event, it is argued that this Chamber is not bound by the decision in *^elebi}i.*[29]

48. The Defence further contends that any intervention of Croatia in the armed conflict between the Bosnian Croats and Serbs was insufficient to render the conflict international for the following reasons. First, any Croatian intervention in Bosnia and Herzegovina was in support of the Bosnian Croats struggle against the Bosnian Serbs, rather than the Bosnian Muslims.[30] Second, even if Croatia intervened directly in the armed conflict between the Bosnian Croats and the Muslims, this did not render the conflict international. Third, Croatia did not exercise sufficient control over the military forces of the Bosnian Croats so as to render the conflict international under the applicable law. Fourth, the conflict must be deemed internal so as to avoid unequal application of Article 2 of the Statute as between the Bosnian Croats and the Bosnian Muslims.

49. In respect of the second criterion for the application of Article 2 of the Statute, whether or not the victims qualify as "protected persons" under any of the four Geneva Conventions of 1949, the Defence contends that the alleged perpetrators of the crimes were of the same nationality as the alleged victims of their crimes; both were citizens of Bosnia and Herzegovina. Therefore, it is argued, unless it can be demonstrated that the Bosnia Croat forces were sufficiently controlled by Croatia so as to render them agents of the Croatian State, the Bosnian Muslim victims do not qualify for protected person status.

[28] Kordi} Pre-trial Brief, Vol. II, para. 8.
[29] Kordi} Pre-trial Brief, Vol. II, para. 9
[30] Kordi} Pre-trial Brief, Vol. II, paras. 11-12.

50. The Defence further submits that, according to Article 4 of Geneva Convention IV, "protected persons" are "those who, at a given moment and in any manner whatever, 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."

51. In its final submissions, the Defence extracts the following principles from the two Appeals Chamber Judgements in the *Tadi}* case,[31] which, it is argued, must be considered in determining whether an armed conflict occurred in Central Bosnia during the time-period covered by the indictment:

> (i) The Trial Chamber must focus upon the time and place of the specific conflict at issue, that is an area-by-area analysis must be applied in considering whether an international armed conflict occurred;
>
> (ii) Financial and military assistance alone are not sufficient to establish control by a foreign State;
>
> (iii) A high threshold of proof is required to show that a military or paramilitary group is being controlled by a foreign State;
>
> (iv) Control by a foreign State may only be established where that State is shown to have organised, coordinated or planned the military actions of a military or paramilitary group with respect to the specific conflict at issue.[32]

52. As to the evidence presented in this case, the Defence argues that it does not support a finding that Croatian troops were present in Central Bosnia. In particular, Major-General Filipovi}, a retired HVO officer, who it is argued, was in a position to know, testified that there were no Croatian troops in Central Bosnia.[33] In the submission of the Defence, the various reports and documents prepared by the international military monitors, and relied upon by the Prosecution, are insufficient to prove the presence of Croatian troops in Central Bosnia.[34] In addition, it is argued, the testimony of Brigadier [ekerija raises serious questions as to the probative value of certain of the exhibits tendered to demonstrate that the Croatian army troops were active in Central Bosnia.[35]

53. The Defence further submits that the evidence does not support a finding that Croatia exercised "overall control" over the HVO in Central Bosnia.[36] It is argued that there is clear and unambiguous evidence demonstrating that the CBOZ was not under the command of the Republic of Croatia.[37] The Defence contends that the HVO and the ABiH cooperated in the struggle against

[31] *Tadi}* Jurisdiction Decision and *Tadi}* Appeal Judgement.
[32] Kordi} Final Brief, Annex E, p. E-4.
[33] Kordi} Final Brief, Annex E, p. E-5.
[34] Kordi} Final Brief, Annex E, p. E-6.
[35] Kordi} Final Brief, Annex E, p. E-6.
[36] Kordi} Final Brief, Annex E, p. E-6.
[37] Kordi} Final Brief, Annex E, p. E-5.

their common enemy, Serbia, and that it was in connection with this conflict that Croatia provided logistical and operational support to the HVO.[38] In addition, the fact that Croatian army officers left to serve in the HVO is, it is argued, not indicative of overall control, as several high-ranking officers in the ABiH had also previously served as officers in the Croatian army.[39]

54. The Defence observes that the Prosecution only invited witnesses to comment on a small percentage of the numerous exhibits tendered in relation to the issue of international armed conflict, and argues that this was on account of the comments received from witnesses, which tended to diminish the probative value of those exhibits. The Defence sees Croatia's recognition of Bosnia and Herzegovina as an independent State as significant. It submits that Croatia and Bosnia and Herzegovina cooperated against a common enemy, Serbia, in 1992 and that there is evidence demonstrating this cooperation, especially in the western parts of Herzegovina, on the border between Croatia and Bosnia and Herzegovina.

55. The Defence points to the testimony of Major-General Filip Filipovi}, who stated that, while many of the military officials who were active in Bosnia and Herzegovina in 1992 and 1993 had previously served in the Croatian army, the majority of them were citizens of Bosnia and Herzegovina. It highlights the "countless other witnesses" who testified that Bosnian Croats who volunteered to defend Croatia against the Serb aggression voluntarily returned to Bosnia and Herzegovina to defend their homeland.[40]

56. The Defence submits that the Prosecution has failed to establish the existence of an international armed conflict, and accordingly, Dario Kordi} cannot be convicted of crimes under Article 2 of the Statute.

(ii) The ^erkez Defence

57. The ^erkez Defence submits that two conditions must be met for Article 2 to apply. Firstly, there must be an international armed conflict, and secondly, the crime must be directed against persons or property protected under the provisions of the relevant Geneva Conventions.[41] In its submission, the Prosecution has failed to prove that Croatia exercised a degree of control over the HVO sufficient to internationalise the conflict between the Bosnian Croats and the Bosnian Muslims. The Defence further submits that the mere presence of Croatian army troops anywhere in

[38] Kordi} Final Brief, Annex E, p. E-6 –7.
[39] Kordi} Final Brief, Annex E, p. E-7.
[40] Kordi} Final Brief, Annex E, p. E-10.
[41] ^erkez Final Brief, p. 59.

the territory of Bosnia and Herzegovina will not internationalise the conflict as between the Bosnian Croats and the Bosnian Muslims.[42]

58. In relation to the second requirement under Article 2, the Defence argues that the Prosecution has failed to prove that the crime was directed against protected persons or property, that is, persons or property in the hands of a party to the conflict of which they are not nationals. Since, it is argued, the Prosecution has failed to show that Croatia exercised such a level of control over the HVO as to render the military forces of the Bosnian Croats effective agents of the Croatian State, the Bosnian Muslim civilians and property in the hands of the HVO do not qualify for protection under the relevant Geneva Conventions.[43]

59. While the Defence does not dispute that there was an armed conflict between the Bosnian Croats and the Bosnian Muslims in Central Bosnia throughout the time-period covered by the Indictment, it argues that that conflict cannot be characterised as international for the following reasons:

> 1. Any Croatian intervention in Bosnia was directed against the Serbian forces in 1992, not the Bosnian Muslims in 1993.
>
> 2. The control exercised by the Republic of Croatia over the HVO did not rise to the requisite level so as to internationalise the conflict between the HVO and the Bosnian Muslims.
>
> 3. Croatia did not intervene militarily in Central Bosnia, nor did it exercise a level of control over the HVO forces in that region sufficient to internationalise the conflict between the Bosnian Croats and the Bosnian Muslims in that region.
>
> 4. Characterising the conflict between the Bosnian Croats and the Bosnian Muslims as international would lead to an unequal application of Article 2 of the Statute.

60. In relation to the level of control required to internationalise an internal armed conflict, the Defence refers to the legal standard for determining state responsibility set forth by the ICJ in the *Nicaragua* case,[44] stating that "if anything, this International Tribunal should require a more stringent showing in order to find liability in a criminal case."[45] It further submits that any inquiry into the international character of the conflict must be narrowly focused on the question whether the Croatian army was present on the territory at the time and in the place where the crimes are alleged to have occurred. Similarly, it is argued, the Prosecution must prove that the accused, Mario

[42] ^erkez Final Brief, p. 60.
[43] ^erkez Final Brief, p. 60.
[44] *Military and Paramilitary Activities in and against Nicaragua (Nicaragua v. United States of America)*, Judgement, I.C.J. Reports (1986).
[45] ^erkez Final Brief, p. 66.

^erkez, acted on the direct orders of Croatian officials in order for the conflict to be internationalised.[46]

61. The Defence submits that Croatia intervened militarily in south-west Bosnia and Herzegovina in 1992 in order to defend itself against Serbian attack.[47] It argues that there is no evidence that Croatia exerted military control over HVO operations in the La{va Valley during the period covered by the Indictment, and that the Croatian army generals who were sent to organise the military operations of the HVO were in fact citizens of Bosnia and Herzegovina, returning to defend their homeland.[48] In its submission, there is no evidence whatsoever of the presence of Croatian army troops in the La{va Valley in the time-period covered by the indictment.[49]

62. In relation to the second criterion for the application of Article 2 of the Statute, namely that the victims must have protected status under any of the four Geneva Conventions of 1949, the Defence argues that the Bosnian Muslim victims cannot be protected as they were of the same nationality as their Bosnian Croat captors.[50] It further submits that, under the terms of Article 4(2) of Geneva Convention IV, "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." Therefore, it is argued, since Bosnia and Herzegovina and Croatia maintained normal diplomatic relations throughout the armed conflict between the Bosnian Croats and the Bosnian Muslims, the latter are not "protected" by Geneva Convention IV when they find themselves in the hands of Bosnian Croat captors.[51]

63. The Defence submits that there is ample evidence to demonstrate that Bosnia and Herzegovina and Croatia were in fact co-belligerents in the conflict against the Serbian forces, rather than warring parties.[52] Neither State declared war against the other, while, according to Article 2(1) of Geneva Convention IV, at least one of the parties must recognise a state of war.[53]

64. The Defence submits that conferring protected status on the Bosnian Muslim victims in this case would lead to an unequal application of Article 2 of the Statute for the reason that while

[46] ^erkez Final Brief, p. 68.
[47] ^erkez Final Brief, p. 80.
[48] ^erkez Final Brief, p. 80.
[49] ^erkez Final Brief, p. 74.
[50] ^erkez Final Brief, p. 69.
[51] ^erkez Final Brief, pp. 69-70.
[52] ^erkez Final Brief, p. 73.
[53] ^erkez Final Brief, p. 78.

Bosnian Muslim victims would be protected in the hands of their Bosnian Croat captors the contrary would not hold.[54]

2. Discussion

65. The International Tribunal's jurisprudence confirms that, arising out of the four Geneva Conventions of 1949, there are two requirements for the application of Article 2 of the Statute; first, it must be established that the crimes occurred in the context of an international armed conflict and, secondly, that the victims of the crimes qualify as "protected persons" under the applicable provision of the Geneva Conventions.[55]

(a) The international character of the armed conflict

66. In the *Tadi}* case, the Appeals Chamber conducted an extensive review of the applicable law as to how an internal armed conflict becomes internationalised for the purposes of Article 2 of the Statute. The Appeals Chamber held:

> … in case of an internal armed conflict breaking out on the territory of a State, it may become international (or, depending upon the circumstances, be international in character alongside an internal armed conflict) if (i) another State intervenes in that conflict through its troops, or alternatively if (ii) some of the participants in the internal armed conflict act on behalf of that other State.[56]

67. Before carrying out an examination as to whether any or both of the two criteria set out in the *Tadi}* case are satisfied by the evidence in this case, it is necessary to deal with two preliminary issues which are raised by the arguments advanced by the Defence.

(i) Preliminary issues

a. Croatian troop activity outside the La{va Valley

68. While Counts 1 and 2 of the Indictment charge Dario Kordi} and Mario ^erkez, respectively, with persecution as a crime against humanity, a charge that relates to the entire area covered by the HZ H-B, which would take in the southernmost part of Bosnia and Herzegovina, bordering Croatia, the other counts, including those charging crimes under Article 2 of the Statute, relate to a more limited number of municipalities, and the evidence that has been adduced in respect of these counts is almost exclusively related to acts committed in Central Bosnia. The

[54] ^erkez Final Brief, p. 79.
[55] ^*elebi}i* Trial Judgement, para. 201; *Tadi}* Appeal Judgement, para. 80; *Bla{ki}* Trial Judgement, para. 74; *Aleksovski* Trial Judgement, para. 117, and *Prosecutor v. Zejnil Delali} et al.,* Case No. IT-96-21-A, Judgement, 20 February 2001 (" ^*elebi}i* Appeal Judgement"), paras. 8, 26 and 36.
[56] *Tadi}* Appeal Judgement, para. 84.

municipalities in relation to which evidence has been adduced in support of substantive crimes charged under Article 2 of the Statute range from Žep~e in the north to Kiseljak in the south, and from Vare{ in the east to Travnik in the west. These are all municipalities in Central Bosnia, and the two accused have argued that Croatian troops involvement must be substantiated by evidence of the presence of Croatian troops in Central Bosnia.

69. The Kordi} Defence interprets the Appeals Chamber decision in the *Tadi}* case to require an area-by-area analysis in considering whether an international armed conflict occurred.[57] The particular passages upon which it relies state:

> On the basis of the foregoing, we conclude that the conflicts in the former Yugoslavia have both internal and international aspects . . .
>
> . . . the conflicts at issue in the former Yugoslavia could have been classified, at varying times and places, as internal, international, or both.[58]

The ^erkez Defence submits that Article 2 will only apply where the Prosecution has proved "the presence of the Croatian army on the spot and at the moment of the alleged crimes".[59]

70. The Chamber understands the passages relied upon from the Appeals Chamber's Judgement in the *Tadi}* case to mean that the determination as to whether the conflict is international or internal has to be made on a case-by-case basis, that is, each case has to be determined on its own merits, and accordingly, it would not be permissible to deduce from a decision that an internal conflict in a particular area in Bosnia was internationalised that another internal conflict in another area was also internationalised. However, it would be wrong to construe the Appeals Chamber's decision as meaning that evidence as to whether a conflict in a particular locality has been internationalised must necessarily come from activities confined to the specific geographical area where the crimes were committed, and that evidence of activities outside that area is necessarily precluded in determining that question.

71. What is at issue is whether Croatian troops intervened in the conflict between the Bosnian Croats and Bosnian Muslims, and while that intervention would normally be substantiated by evidence of the presence of Croatian troops in Central Bosnia, it may also be proved by evidence of the presence of Croatian troops in areas outside Central Bosnia, if the location of those areas is of strategic significance to the conflict. Thus, areas bordering Central Bosnia, in which there is evidence of the presence of Croatian troops, cannot be excluded from the inquiry. To confine the inquiry narrowly to Central Bosnia, as though it was an isolated entity, would be artificial. The

[57] Kordi} Final Brief, Annex E, p. E-4.
[58] *Tadi}* Jurisdiction Decision, paras. 77 and 78.

inquiry is not so much as to the presence of Croatian troops in the conflict area, which is predominantly Central Bosnia, but as to the intervention of Croatia, through its troops, in the conflict itself, which was not confined to Central Bosnia.

72. The Chamber also notes the argument advanced by the Prosecution that "when an international armed conflict exists, the Geneva Conventions, including the grave breach provisions, apply to all of the territories of the parties engaged in the conflict, that is to all of Croatia and Bosnia Herzegovina".[60] In this regard, the Prosecution relies upon the *Tadi}* Jurisdiction Decision which states that the "provisions of the Conventions apply to the entire territory of the Parties to the conflict, not just the vicinity of actual hostilities",[61] as well as the *^elebi}i* Trial Judgement, which held that "should the conflict in BiH be international, the relevant norms of international humanitarian law apply throughout its territory until the general cessation of hostilities".[62]

b. The significance of the overlapping conflicts

73. Both accused also argue that while Croatia sent troops into Bosnia and Herzegovina, these troops were sent, not in relation to the conflict between the Bosnian Croats and the Bosnian Muslims, but rather, in support of the Bosnian Croats in their conflict with the Serbs.[63] In that event, argue the accused, the question of Croatian involvement internationalising the conflict between the Bosnian Croats and the Bosnian Muslims does not arise.

74. The evidence clearly shows that initially the Bosnian Croats and the Bosnian Muslims were united in a struggle against a common enemy, the Serbs. However, as relations between the two broke down in late 1992 and early 1993, fighting erupted between the Bosnian Muslims and the Bosnian Croats. The ensuing conflict between the HVO and the ABiH overlapped with the conflict between the Bosnian Croats and the Bosnian Muslims on the one hand, and the Serbs on the other.

75. Croatia's support of the Bosnian Croats was strategically significant in their struggle against the Bosnian Muslims, in that the relief given to the Bosnian Croats allowed them to deploy more forces against the Bosnian Muslims. An ECMM[64] report dated 3 June 1993 notes this strategic linkage:

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[59] ^erkez Final Brief, p. 68.
[60] Prosecution Final Brief, Annex 7, para. 11.
[61] *Tadi}* Jurisdiction Decision, para. 68.
[62] *^elebi}i* Trial Judgement, para. 209.
[63] ^erkez Final Brief, p.64.
[64] European Community Monitoring Mission.

> . . . the trickle of confirmed proof and particular circumstances continue to add weight to the knowledge that HV military have been and are increasingly involved in the conflict between the HVO and the BiH, *or in holding the line against the Serbs while the relieved HVO forces move against Moslem targets*.[65]

76. Similarly, a report from the Spanish Battalion of the Rapid Action Forces, dated January 1994, states, in relation to the Mostar area:

> . . . the number of HV elements (vehicles and personnel) in the area continues to increase, especially in Buna and Stolac, which could mean that the HV is assuming charge over the front with the Serbs from Stolac to Blagaj (they already control it from Stolac to the border with Montenegro) and *thus relieving HVO for operations elsewhere*.[66]

77. In relation to the armed conflict between the Bosnian Croats and the Bosnian Muslims, the strategic significance of Croatian support for the Bosnian Croats in their struggle against the Serbs makes it artificial to draw a distinction between the two overlapping conflicts.

78. The Chamber is aware that, for the purpose of showing Croatian involvement in the conflict between the Bosnian Muslims and the Bosnian Croats, there must be evidence of an intervention by Croatia, through its troops, in that conflict. However, evidence of Croatian support of the Bosnian Croats in their conflict with the Serbs becomes relevant in determining whether Croatian intervention was such as to internationalise the conflict between the Bosnian Croats and the Bosnian Muslims when it has a strategic impact on that conflict.

(ii) The two criteria for determining the international character of an armed conflict

79. In light of the conclusions of the Appeals Chamber in the *Tadi}* case as to how an internal armed conflict becomes internationalised, the Trial Chamber will examine, firstly the question whether Croatia intervened in the armed conflict between the Bosnian Muslims and the Bosnian Croats in Bosnia and Herzegovina through its troops and, secondly whether the HVO acted on behalf of Croatia.[67] The Trial Chamber notes that these criteria are alternative.

a. Whether Croatia intervened in the conflict

i. The Prosecution Evidence

80. There is a great deal of evidence before the Chamber on this question. There is the oral evidence of a large number of witnesses, and also a wealth of documentary evidence comprising

[65] Ex. Z1012 (emphasis added).
[66] Ex. Z2452 (emphasis added).
[67] In *Aleksovski*, the Appeals Chamber held that its decisions are binding upon Trial Chambers. *See Aleksovski* Appeal Judgement, para. 113.

over a hundred exhibits submitted by the Prosecution. This evidence may be divided into four broad categories:

a. Reports of military monitoring bodies;
b. Reports to and from the United Nations;
c. HVO documents;
d. Other reports, including death notices.

The reports of military monitoring bodies

81. The armed conflict between the Bosnian Croats and the Bosnian Muslims in Bosnia and Herzegovina was monitored by several military bodies. One of their main tasks was the gathering of information about the conflict. The Chamber attaches particular importance to the reports produced by these military monitoring bodies because they were prepared on the basis of information gathered by disinterested personnel who were trained for that purpose.

82. Major Alistair Rule, a major in the British army who, in October 1992, was stationed in Bosnia as an officer in the 1st Cheshire regiment, testified that the military information summaries ("Milinfosums") generated by the soldiers under his command would be used to keep operational troops informed as to the general situation in the area;[68] for that reason, it was important that the information contained in the Milinfosums be accurate.[69]

83. Lieutenant Colonel Remi Landry of the Canadian army, who worked for the ECMM, testified that that body's information was based upon multiple sources which enabled them to gather a more accurate picture of what was going on.[70] William Stutt, an officer in the Canadian army who worked as an ECMM monitor in Bosnia and Herzegovina testified that one of the reasons the ECMM were deployed in Central Bosnia was to assess the presence of HV troops on the ground.[71]

84. Several members of military monitoring bodies, such as the ECMM, gave evidence of the presence of Croatian army troops in Bosnia and Herzegovina.[72] While none of these reports relate to sightings of Croatian army troops in Central Bosnia, the Chamber is satisfied that they all relate to areas that were sufficiently close to Central Bosnia and that, therefore, they constitute evidence of Croatian intervention in the conflict through its troops. In this regard, the Chamber recalls its

[68] Major Alistair Rule, T. 5428–9.
[69] Major Alistair Rule, T. 5429.
[70] T. 15341.
[71] William Stutt, T. 15232.
[72] *See e.g.,* Michael Buffini, T. 9312 -3.

analysis above as to the evidential value of the presence of Croatian troops in areas bordering Central Bosnia which are of strategic significance to the conflict.

85. Brigadier Alistair Duncan, commanding officer of the Prince of Wales Regiment of the British army, stationed in Central Bosnia from May to November 1993, whose area of responsibility covered the Prozor region (Gornji Vakuf, Zenica, Vitez and up to Tuzla), gave evidence of reports from his soldiers of Croatian soldiers moving along the "Route Triangle".[73] This was the name given to the section of road between Tomislavgrad and Prozor. That route was the connecting link between Croatia and Central Bosnia and, on the testimony of one witness, was probably the only route that stayed open and where access could be had to Central Bosnia from Split in Croatia.[74] Andrew Williams, who served as an intelligence officer in the 1st Cheshire Regiment of the British army, stationed in Gornji Vakuf from November 1992 to May 1993, confirmed that the Route Triangle "was one of the few access routes from the border up into Central Bosnia."[75]

86. Brigadier Duncan testified that he actually saw Croatian soldiers along the Route Triangle on one occasion. Although in cross-examination he confirmed that the Prozor area is south of the La{va Valley area, and geographically separate from that area, he maintained that the location of the Croatian troops in the Route Triangle would have placed the ABiH troops deployed in the Gornji Vakuf region within range. Michael Buffini, who was deployed as a U.K. liaison officer in the former Yugoslavia in the first half of 1993, testified that, in February 1993, he personally witnessed a convoy of between six and eight coaches carrying troops with HV insignia travelling along the Route Triangle into Prozor.[76]

87. Major Rule, who served in Bosnia in late 1992 and early 1993, gave evidence that his subordinates had reported seeing regular troops wearing a Tigers (an HV unit) badge at the checkpoint on Makljen, a high pass to the south of Gornji Vakuf which was the only route from Prozor into Gornji Vakuf.[77] Based upon their insignia, and in particular the Tigers badge, the witness concluded that these were troops from the Croatian army.[78]

88. Andrew Williams testified that, in March 1993, he personally met a group of Croatian soldiers in Prozor.[79] This encounter is reflected in a Milinfosum of the Cheshire regiment dated 22

[73] Alistair Duncan, T. 9796.
[74] Michael Buffini, T. 9311.
[75] Andrew Williams, T. 6003.
[76] Michael Buffini, T. 9313–14.
[77] Alistair Rule, T. 5390.
[78] Alistair Rule, T. 5392.
[79] Andrew Williams, T. 6039.

March 1993, which states that "40 soldiers wearing '4 Brigade HV' badges were sighted in the town [Prozor] all carrying new 5.56mm Austrian SIG Assault rifles."[80]

89. Witness AD, a member of the British army who served as an ECMM monitor in Bosnia and Herzegovina between 1993 and 1995, testified that on one occasion in January 1994, he was delayed on the Route Triangle by a convoy of the Croatian army, numbering at least 50 vehicles. The witness estimated that the vehicles were transporting a battalion of between 800 to 1,000 soldiers. The witness observed that the vehicles and soldiers bore the insignia of the Croatian army[81] and that they were travelling in the direction of Prozor.[82] The witness also testified that, during a meeting with General Praljak, a commander in the HVO, he had asked the latter to comment on the allegations and persistent reports of HV involvement in Bosnia and Herzegovina. Witness AD testified that, in his response, "General Praljak denied that there were any HV forces operating in Bosnia-Herzegovina, but did state that individuals like himself, who were from Bosnia-Herzegovina, had returned, seeing it was their duty to fight for the Croat cause".[83]

90. The reports prepared by the various military monitoring organisations vary as to the number of Croatian soldiers seen; some reports are of a few Croatian soldiers, while others are of large numbers of Croatian soldiers.[84] A small number of the reports explicitly state that their information came from Bosnian Serb Army ("BSA") or ABiH sources.[85] To these latter reports the Chamber attaches less weight, because of their potential self-serving character. A significant feature of these reports from the military monitoring organisations is that they were obviously prepared on the basis that Croatian army forces were participating in the conflict.[86]

Reports to and from the United Nations

91. Several reports made to the United Nations and by the United Nations itself in relation to the conflict deal with the question of the presence of Croatian troops in the territory of Bosnia and Herzegovina.

92. The report of the Secretary-General of the United Nations, dated 18 January 1993, notes that "UNPROFOR had also confirmed that elements of the Croatian army are deployed in certain parts

[80] Ex. Z557.1.
[81] Witness AD, T. 13048.
[82] Witness AD, T. 13050.
[83] Witness AD, T. 13026.
[84] For example, UNPROFOR reports a considerable number of Croatian army troops (Exs. Z2441.8, Z2441.10, Z2449.1 and Z2456).
[85] *See e.g.,* Ex. Z381.2, Z385 and Z2424.
[86] *See e.g,* Ex. Z2437.1 (a Milinfosum dated 21 August 1993, discussing the strategic significance of the presence of Croatian troops).

of BiH".[87] However, the report also referred to statements made by the Croatian army representatives that those elements were "present only in those areas from which attacks have been made on Croatian territory and that they would be removed as soon as they ceased ...".[88]

93. In a letter dated 28 January 1994, to the President of the Security Council, the Permanent Representative of Bosnia and Herzegovina to the United Nations attached a letter from the Prime Minister of Bosnia and Herzegovina which concluded that in the area of Mostar, Prozor and Gornji Vakuf "12 brigades of the regular Croatian army, with manpower estimated at 15,000 to 18,000 is directly involved in military operations".[89]

94. To that letter the Permanent Representative of Croatia to the United Nations replied that Croatia did not deny the presence of regular Croatian army troops in the border area in accordance with an agreement between Bosnia and Herzegovina and the Republic of Croatia, and that these troops were necessary in order to preserve the territorial integrity and security of Croatia.[90]

95. In a letter of 17 February 1994 to the President of the Security Council, the Secretary-General of the United Nations reported on the withdrawal of some Croatian troops, but stated that an estimated 5,000 troops remained in Bosnia and Herzegovina, although no Croatian command post or any full Croatian army brigades had been identified as operating in Bosnia and Herzegovina. The letter also noted that Croatian troops were removing their insignia and replacing them with HVO insignia.[91] Croatia responded stating that it had complied and that troops had been withdrawn.[92]

96. The Chamber considers that significant weight has to be attached to reports from the Secretary-General, by virtue of his position as head of the United Nations. While the reports to and from the United Nations do not, by themselves, establish the presence of Croatian army troops, they nonetheless point to such a presence in Bosnia and Herzegovina and in the areas of Mostar, Prozor and Gornji Vakuf in particular; this evidence, when taken together with other items of evidence, is relevant in the determination of this issue.

HVO documents

97. The following HVO documents relate to the involvement of Croatian army troops in the conflict:

[87] Ex. Z375.2, para. 32.
[88] Ex. Z375.2, para. 32.
[89] Ex. Z2455.
[90] Ex. Z2460.

1. An order from the CBOZ to the commanders of the brigades and individual units of the HVO, dated 12 April 1993, requiring them to submit a list of all officers of the Croatian army operating in their units.[93]

2. An order from the headquarters of the Zenica HVO to all HVO units, dated 26 November 1992, requiring HV members in BiH to remove HV insignia "as this creates trouble for the Republic of Croatia".[94]

3. An order from the 3rd HVO battalion to various HVO battalions, dated 9 December 1992, stating that HV members must wear HVO insignia during their "deployment in our area".[95]

4. An order of 31 March 1993 from Mario ^erkez, commander of the Vite{ka Brigade, to all battalions, issued pursuant to the order of Colonel Bla{ki}, requiring all members to wear only HVO insignia on their uniforms.[96]

98. The Chamber considers that these items of evidence reflect, not only the presence of Croatian army soldiers participating in the conflict in Bosnia and Herzegovina between the Bosnian Croats and the Bosnian Muslims, but also an attempt to conceal that presence.

Other reports, including death notices

99. There is a letter dated 22 February 1993 from the HVO Brigade in Gornji Vakuf to the 4th Split Brigade, indicating that Stanko Posavac, a combatant in that brigade, was killed in the fighting between the ABiH and the HVO in Gornji Vakuf.[97]

100. In the publication "*Oslobodjenje*", there is a report, dated 6 February 1994, about a Croatian soldier, Ivica Jeger, who had been captured by the ABiH in Bosnia and Herzegovina. Mr. Jeger, who was a member of the Fifth Home Guard regiment in Osijek, described how he and other Croatian soldiers were taken, against their will, to fight in Prozor in Bosnia and Herzegovina. He stated that the salary for the Croatian soldiers was about 200 DEM per month.[98] This evidence is corroborated by the testimony of D`emal Merdan, a commander in the ABiH, who stated that on one occasion between January and April 1993, he set free a group of captured HVO soldiers in

[91] Ex. Z2468.
[92] Ex. Z2469.
[93] Ex. Z2414.
[94] Ex. Z2390.
[95] Ex. Z2392.1.
[96] Ex. Z2411.
[97] Ex. Z2404.1.
[98] Ex. Z2463.1.

Gornji Vakuf, one of whom "said that he came from Osijek and that he was a member of the Croatian army".[99]

101. The Zagreb field office of the United Nations Centre for Human Rights received several reports of Croatian citizens, born in Bosnia and Herzegovina, being mobilised by the Croatian government to fight there.[100] The Croatian Ministry of Defence, in a letter dated 31 December 1993, stated in response:

> In the end I want to say that official stand towards the Republic of Bosnia and Herzegovina is the same both politically and militarily. The Minister of Defence, Gojko [u{ak, and the Minister of Foreign Affairs, Mate Grani}, clearly said that Croatia is going to re-examine its attitude towards B&H if the offensive of Muslim forces to Croat territories in Central Bosnia will continue, if this would represent a threat to strategic and security interests of the Croatian state.[101]

102. While the evidence in this section would not, by itself, prove the presence of Croatian army troops in Bosnia and Herzegovina, it is evidence which, when taken together with the other evidence, is relevant in the determination of this issue.

ii. Defence evidence

103. The Kordi} Defence submits that there were no Croatian army troops in Central Bosnia. It contends that, while individual soldiers who had previously served with the Croatian army in the Croatian defence against the Serbian attack in 1991 and early 1992 did go on to serve in the HVO, their assistance in the conflict between the Croats and the Muslims was provided on a voluntary basis.

104. Major-General Filip Filipovi}, who testified on behalf of the accused, Dario Kordi}, held several high-ranking positions in the HVO throughout the course of the conflict between the HVO and the ABiH in Bosnia and Herzegovina. For a short period in mid-1992, he acted as commander of the HVO forces being organised in Central Bosnia.[102] Thereafter, he served as special headquarters commander of the CBOZ under the command of Colonel Bla{ki}.[103] From June 1993 until March 1994, he acted as deputy commander of the CBOZ.[104] He testified that there were no individuals or units from the Croatian army fighting in Central Bosnia.[105] He further stated that,

[99] Gen. D`emal Merdan, T. 12745.
[100] Ex. Z1348.3 and Z1365.3.
[101] Ex. Z1350.2.
[102] Major-Gen. Filip Filipovi}, T. 16999.
[103] T. 16999.
[104] T. 17001–2.
[105] Major-Gen. Filip Filipovi}, T. 17077.

although some individuals in Central Bosnia did wear Croatian army insignia, none of them were actually born and bred in Croatia.[106]

105. Brigadier Luka [ekerija worked as chief of staff in the CBOZ between May 1992 and January 1993. Subsequently, he became chief of staff for the Dr. Ante Star~evi} Brigade in Uskoplje.[107] The witness, in cross-examination, denied having received instructions from Croatia and stated that he had, rather, "worked in the interests of Bosnia-Herzegovina alone".[108] He further testified that, between January and August 1993, there were no organised units of the Croatian army deployed in the territory of the CBOZ, although some individuals did fight there on behalf of the HVO.[109]

106. Franjo Naki} served as Chief of Staff of the CBOZ from December 1992 until 1996. At the time of his appointment on 1 December, his position was subordinate to that of Colonel Bla{ki} and his deputy commander at that time, Filip Filipovi}.[110] He too testified that the Croatian army was never in Central Bosnia; rather the witness testified that he was aware of seven or eight individuals of Bosnian Croat origin, who had fought with the Croatian army against the Serbs and had returned, with their Croatian army uniforms, to fight in Bosnia and Herzegovina.[111] The witness testified that he was charged with ensuring the removal of the Croatian army insignia, but stated that some of the officers refused to remove their patches and indicia of rank.[112]

107. Rudy Gerritsen, a member of the Dutch army who served with the ECMM in Bosnia and Herzegovina from June 1993 until January 1994, and whose area of responsibility covered Bugojno, Gornji Vakuf and Prozor,[113] testified that during his tour of duty, neither he, nor his colleagues saw Croatian army soldiers in Bosnia and Herzegovina, although he stated that "it appeared to be for us fairly logical that there would be HV involvement in Bosnia-Herzegovina".[114]

iii. Findings

108. Based upon the foregoing, the Trial Chamber makes the following findings:

[106] Major-Gen. Filip Filipovi}, T. 17078.
[107] Brig. Luka [ekerija, T. 18145–7. (Uskoplje is the Croatian name for Gornji Vakuf.)
[108] Brig. Luka [ekerija, T. 18239.
[109] Brig. Luka [ekerija, T. 18268–9.
[110] Brig. Franjo Naki}, T. 17278.
[111] Brig. Franjo Naki}, T. 17328–9.
[112] Brig. Franjo Naki}, T. 17328.
[113] Rudy Gerritsen, T. 21761 and 21764.
[114] Rudy Gerritsen, T. 21798–9.

1. Although no Croatian army troops were sighted in Central Bosnia,[115] neighbouring areas outside Central Bosnia played a strategic role in the conflict between the Bosnian Croats and the Bosnian Muslims (for example, Gornji Vakuf and Prozor fall within the Route Triangle, which, on the evidence of Michael Buffini, was the only operational route between Croatia and Central Bosnia). What is required in relation to the first criterion for determining the international character of an armed conflict, is proof of Croatian intervention in the conflict. This proof may come, not only from evidence of Croatian troops in Central Bosnia, but also from evidence of those troops in neighbouring areas of strategic importance to the conflict in Central Bosnia. There were several sightings of Croatian troops in those areas, and the Chamber infers that some of these troops were being deployed in relation to the conflict in Central Bosnia between the Bosnian Croats and the Bosnian Muslims.

2. Moreover, in cases where the Croatian troops in the areas mentioned above were not deployed in the struggle against the Bosnian Muslims, but to fight the Serbs, that support had a strategic impact on the conflict between the Bosnian Croats and the Bosnian Muslims, by enabling the Bosnian Croats to deploy additional forces in their struggle against the Bosnian Muslims. For that reason, the Chamber concludes that Croatia's support of the Bosnian Croats constitutes Croatian intervention in the struggle between the Bosnian Croats and the Bosnian Muslims.

3. While volunteer defenders may have accounted for some of the Croatian army troops seen by the monitors and other bodies, they cannot account for the vast majority of Croatian army troops seen in the neighbouring areas of strategic significance to the conflict. The Chamber observes that, even if these persons were not formally part of the Croatian army, they were Croatian citizens, militarily involved in the struggle between the Bosnian Croats and the Bosnian Muslims, in which struggle Croatia was also involved. Moreover, even if it is acknowledged that some of the Croatians involved in the conflict were volunteers and their presence is discounted, this would not affect the general finding by the Trial Chamber that there were Croatian troops involved in the conflict.

109. For the above reasons, the Chamber finds that the conflict between the Bosnian Croats and the Bosnian Muslims in Bosnia and Herzegovina was internationalised by the intervention of Croatia in that conflict through its troops.

[115] Although Witness A did report having seen troops wearing HV patches in Busova~a in 1992 and in the early part of

110. Although this finding would, by itself, be sufficient to dispose of the question of the international status of the conflict, the Chamber will, in the interest of completeness, also consider whether the second criterion for internationalising an internal conflict has been met.

b. Whether the HVO acted on behalf of Croatia

111. The second test of the international character of an armed conflict was dealt with extensively in the *Tadi}* Appeal Judgement. The Appeals Chamber established that an armed conflict, which is otherwise internal, is internationalised if a foreign state exercises "overall control" over the military forces of one of the parties to that conflict.[116] It is the Prosecution's contention that Croatia exercised such control over the military forces of the Bosnian Croats, the HVO.

112. The examination of this issue, carried out by the Appeals Chamber in the *Tadi}* case, was done against the background of the test of effective control, which was used by the Trial Chamber in the *Tadi}* case following the decision of the ICJ in the *Nicaragua* case.[117] The Appeals Chamber, in effect, rejected effective control as the appropriate test and found that in the particular situation of the internal conflict it was considering, "overall control" was a sufficient test. Although the Appeals Chamber did not say so in explicit terms, it is clear that the test of overall control is a lower standard than that of effective control, and, accordingly, a lower threshold of proof is required for its establishment. This was confirmed in the *Aleksovski* case, where the Appeals Chamber stated:

> Bearing in mind that the Appeals Chamber in the *Tadi}* Judgement arrived at this test against the background of the "effective control" test set out by the decision of the ICJ in *Nicaragua*, and the "specific instructions" test used by the Trial Chamber in *Tadi}*, the Appeals Chamber considers it appropriate to say that the standard established by the "overall control" test is not as rigorous as those tests.[118]

113. The Chamber observes that the ^erkez Defence appears to proceed on the basis that effective control is still the applicable test for determining when an internal conflict has been internationalised.[119]

114. The Appeals Chamber in the *Tadi}* case found that the control required by international law over armed forces or militias or paramilitary units for the purposes of internationalising an internal conflict may be deemed to exist when a State

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1993 (T. 398).
[116] *Tadi}* Appeal Judgement, para. 145.
[117] *Military and Paramilitary Activities in and against Nicaragua (Nicaragua v. United States of America)*, Judgement, I.C.J. Reports (1986), p.14.
[118] *Aleksovski* Appeal Judgement, para. 145. *See also* *^elebi}i* Appeal Judgement, para. 42.
[119] ^erkez Final Brief, pp. 64–66.

> has a role in organising, coordinating or planning the military actions of the military group, in addition to financing, training and equipping or providing operational support to that group. Acts performed by the group or members thereof may be regarded as acts of *de facto* State organs regardless of any specific instruction by the controlling State concerning the commission of each of those acts.[120]

115. The Chamber will examine the evidence to see whether the criteria set by the *Tadi}* Appeal Judgment are satisfied. Essentially, there are two parts to the test:

a) The provision of financial and training assistance, military equipment and operational support;

b) Participation in the organisation, coordination or planning of military operations.

i. Croatia's provision of assistance to the HVO

116. Several witnesses gave evidence of Croatia's logistical support to the HVO. Lieutenant Colonel Remi Landry, testified that he himself identified Croatian logistical units in the area of Prozor,[121] and that it was the ECMM's assessment that Croatia was providing substantial logistical support to the HVO.[122] Ismet [ahinovi} and Witness AS also gave evidence of the provision by Croatia to the HVO of training[123] and uniforms, vehicles and other supplies.[124]

117. In addition, the Prosecution adduced 40 exhibits as evidence of what it termed "logistical support given by Croatia to the HVO". From that number, the Chamber will examine those it considers to be most significant.

118. Several exhibits referred to Croatia's provision of military equipment to the HVO. In particular, one exhibit purports to be a chart detailing shipments of military equipment from Croatia to the HVO and the ABiH.[125] There is a recommendation from the Vitez Military District Office for an individual, who had worked for the HVO in Vitez from March 1992 until 16 April 1993, to receive rank in the Croatian army; this individual's duties, while a member of the HVO, included procuring "vast quantities of military material for the defence of Central Bosnia through representatives of the Republic of Croatia authorities…".[126] Another exhibit notes that the individual being recommended for rank in the Croatian army "participated in the implementation of

[120] *Tadi}* Appeal Judgement, para. 137.
[121] Col. Landry, T. 15313.
[122] Col. Landry, T. 15314.
[123] Ismet [ahinovi}, T. 1037.
[124] Witness AS, T. 16349.
[125] Ex. Z2497.2.
[126] Ex. Z2487.

logistics communications of the Ministry of Defence of the Republic of Croatia for purposes of HV logistical support to Kiseljak HVO units" from April 1992 until early 1993.[127]

119. Of those exhibits which provide evidence of Croatia's logistical support to the HVO, the Chamber finds the following particularly persuasive: a receipt for military hardware provided by the Croatian Army Logistics Corps to the municipal headquarters in Vare{, dated 30 July 1992;[128] a certificate from a military post in Split, dated 11 September 1992, confirming that the unit has delivered artillery to the HVO in Bugojno;[129] an order from Colonel Bla{ki} to all commanders of municipal headquarters of the HZ H-B, dated 19 September 1992, setting forth instructions for the passage of military equipment from Croatia to Central Bosnia.[130]

120. A series of orders issued by the Ministry of Defence of the Republic of Croatia, between 21 October and 16 December 1992, call for the provision of military supplies to the HVO for the defence of Bugojno.[131]

121. Several of the exhibits provide evidence of training assistance from Croatia to the HVO. These include[132] an order from Colonel Bla{ki}, as commander of the CBOZ to the HVO Vitez unit, dated 24 July 1992, for the training of HVO reconnaissance units in the Republic of Croatia;[133] an order from the HDZ in Mostar to several HVO brigades, dated 25 June 1993, that certain soldiers be sent to Zagreb to attend a course for company commanders.[134]

122. A number of the exhibits demonstrate cooperation between Croatia and the HVO in relation to the care of the wounded and sick.[135]

123. In the Kordi} Defence's submission, Croatia provided logistical support to both the HVO and the ABiH in their struggle against a common enemy, the Serbs.[136] Witness CW1 testified that

[127] Ex. Z2490.
[128] Ex. Z2374.1.
[129] Ex. Z2376.1.
[130] Ex. Z2377.
[131] Ex. Z2383.1, Z2388.1, Z2389, Z2391 and Z2395.
[132] *See also* Ex. Z2386: a notice from the CBOZ to municipal HVO headquarters, dated 11 November 1992, of a training course for staff of the intelligence organs of the battalions and brigades, to be instructed by personnel from the Zagreb Intelligence Administration.
[133] Ex. Z2374.
[134] Ex. Z2429.
[135] *See e.g.,* Ex. Z2441.7 (Report of the Section for the Wounded, Split, dated 19 November 1993, stating that certain wounded from Central Bosnia received treatment and supplies in Zagreb); Ex. Z2481.1 (memorandum from HVO command to the commander of the Vite{ka Brigade, dated 24 May 1994, referring to the coordination between the Vitez Brigade and Split in terms of assisting the wounded).
[136] Kordi} Final Brief, Annex E, p. E-7.

the Republic of Croatia assisted the HVO and the ABiH equally and that the ABiH maintained logistic bases in Rijeka, Zagreb, Split and Slavonski Brod.[137]

ii. Croatia's participation in the organisation etc. of military operations

124. The Prosecution submitted approximately 143 exhibits under the heading "Croatia Direct and Indirect Control of HVO", the majority of which, in the Chamber's opinion, are of little probative value in the determination of the question of Croatia's "overall control" of the HVO.[138] There are, however, a number of exhibits which indicate Croatia's territorial ambitions in Bosnia and Herzegovina and which also point to their leadership role in the conflict between the HVO and the ABiH in Bosnia and Herzegovina.

125. General Bobetko was placed in command of all units of the Croatian army on the southern front of Croatia, which borders Bosnia and Herzegovina, by order of President Tuðman on 10 April 1992.[139] While in that post, he appointed officers to the defence command of Tomislavgrad "in order to achieve effective, operational and secure command in the units of the HVO of the Croatian Community of Herceg-Bosna".[140] He also established forward command posts, first in Grude in Bosnia and Herzegovina, located on the border with Croatia, with General Petkovi} as commander,[141] and thereafter in Gornji Vakuf, a neighbouring municipality to the south, in Central Bosnia.[142] He appointed @arko Tole as commander in Gornji Vakuf with "all the authorities of co-ordinating and commanding forces in the Central Bosnia region (Busova~a, Vitez, Novi Travnik, Travnik, Bugojno, Gornji Vakuf, Prozor, Tomislavgrad, Posu{je)".[143]

126. The Chamber is satisfied that General Bobetko's activities are an illustration of the supervisory role exercised by Croatia over the HVO during the conflict between the Bosnian Muslims and the Bosnian Croats. Although the evidence relating to General Bobetko covers a period prior to the outbreak of the armed conflict between the Bosnian Croats and the Bosnian Muslims in Bosnia and Herzegovina, the Chamber is satisfied that General Bobetko's influence and leadership continued throughout that conflict. It would be artificial to draw a line of demarcation on temporal grounds for the purpose of determining the issues raised by this question. The Chamber observes that the Trial Chamber in the *Bla{ki}* case, which covers roughly the same

[137] Witness CW1, T. 26896.
[138] The Prosecution submitted two binders of exhibits relating to the international armed conflict, of which this material forms a part.
[139] Ex. Z2358.1.
[140] Ex. Z2360.6.
[141] Ex. Z2360.3.
[142] Ex. Z2360.18.
[143] Ex. Z2360.18.

geographical area and time-period as this case, attached significant weight to General Bobetko's role in its consideration of this question.[144]

127. Witness CW1, a high-ranking officer in the HVO from April 1992 to April 1994, testified that, while in his former position, part of his salary was paid by the Croatian government, and the remainder (approximately 40–50 per cent) was paid by the authorities of the Bosnian Croats.[145]

128. The Kordi} Defence contends that the relevant inquiry, in relation to the "overall control" criterion, is whether the Prosecution has proved that Croatia exercised overall control over the HVO in Central Bosnia, in particular. Therefore, evidence of overall control relating to areas in Bosnia and Herzegovina other than Central Bosnia, it is argued, is not relevant.[146]

129. The Chamber has previously addressed the Defence argument that any inquiry into the character of an internal armed conflict must be narrowly confined in geographical terms to the area of the hostilities. The Chamber observes that the geographical element is less critical for the purposes of establishing "overall control" than it is in relation to the criterion for internationalising an armed conflict through a foreign State's intervention through its troops. What the Prosecution must establish is that Croatia exercised control over the HVO in relation to the conflict between the Bosnian Croats and the Bosnian Muslims.

130. The ^erkez Defence also contends that the Prosecution must prove "that the Defendant, as a commanding officer, acted on orders of the Army or of superior Croatian officials."[147] The short answer to this argument is that one of the features of the "overall control" test, as enumerated by the Appeals Chamber in *Tadi}*, is that the act of a member of a military group may be regarded as the act of a controlling State, regardless of any specific instructions by that State regarding the commission of such act.[148]

131. Witness CW1 acknowledged a close link between the Croatian army and the HVO in their common struggle against Serbian aggression. He testified that "it was quite logical for us to be linked together and it was also logical for the commander of the southern front, General Bobetko, to send his people there to monitor the situation and to act as coordinators, because if the front line at Livno collapsed, the whole of southern Croatia would have been lost."[149]

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[144] *Bla{ki}* Trial Judgement, para. 112.
[145] T. 26681–83.
[146] Kordi} Final Brief, Annex E, p. E-6.
[147] ^erkez Final Brief, p.68.
[148] *See* previous discussion in this Judgement.
[149] Witness CW1, T. 26689.

132. In response to a question from the Prosecution, Witness CW1 testified that the individuals appointed by General Bobetko to "achieve effective operation and secure command in the HVO units of the Croatian Community of Herceg-Bosna",[150] were all citizens of Bosnia and Herzegovina who had joined the Croatian army in 1991 and were returning to defend their homeland.[151]

133. President Tu|man, who had been elected as President of Croatia in 1991 on a nationalist platform, had long harboured hopes to expand the borders of the modern State of Croatia into the Republic of Bosnia and Herzegovina to encompass those areas with a majority Bosnian Croat population. By declaring Croatia as a State for the Croatian people, he encouraged loyalty from Croats living outside the territorial boundaries of the Croatian State, including the 800,000 Croats living in neighbouring Bosnia and Herzegovina; to this end, ethnic Croats residing abroad were given the right to vote in national elections.[152]

134. President Tu|man's formal recognition of the sovereign independence of Bosnia and Herzegovina, an act upon which the Defence places much emphasis,[153] is offset by the many expressions of his territorial ambitions in Bosnia. Dr. Allcock, an expert witness called by the Prosecution, observes that in the publication *Nationalism in Contemporary Europe*[154] Tu|man "insists that Bosnia and Herzegovina 'should have been made a part of the Croatian federal unit', since together they 'comprise an indivisible geographic and economic entity'." Consequently, Dr. Allcock argues, Tu|man is convinced of the artificiality of Bosnian statehood.[155] Dr. Allcock states that while these views of Tu|man's were published in 1981 "there is no indication that he has modified his ideas subsequently".[156]

135. Multiple references to the "natural borders" of Croatia can be found in Tu|man's speeches and, indeed, the HDZ's *Program* insists on the "territorial entirety of the Croatian nation in its historical and natural borders".[157] The significance of this phrase in Tu|man's parlance was revealed by a witness who testified in the *Bla{ki}* case that in *Nationalism in Contemporary Europe,* Tu|man develops the notion that the boundaries of the Croatian *banovina*, defined by agreement in 1939, most accurately reflected these "natural borders". The *banovina* incorporated

[150] Ex. Z2360.6.
[151] Witness CW1, T. 26690–91.
[152] Ex. Z1668, p. 67-68.
[153] Kordi} Final Brief, Annex E, p. E-7.
[154] Franjo Tuðman, *Nationalism in Contemporary Europe*. Ex. Z2352.1.
[155] Ex. Z1668, p.67 (referencing Franjo Tu|man, *Nationalism in Contemporary Europe*, p. 113).
[156] Ex. Z1668, p.67.
[157] Ex. Z1668, p. 67 (citing the *Program* of the HDZ, p.3).

the whole of western Herzegovina and Mostar, as well as Bosnian districts where Croats had a clear majority[158] in Croatia.

136. The view that President Tu|man harboured territorial ambitions in respect of Bosnia and Herzegovina, despite his official position to the contrary, is strengthened by reports of discussions held between Tu|man and Milo{evi}, against the backdrop of the break-up of the Yugoslav federation in 1991. The two leaders are reported to have met and considered a partition of Bosnia in which Milo{evi} would have gained control over eastern Herzegovina, while the western part of the country, home to the majority of the Bosnian Croat population, would have become part of Croatia.

137. President Tu|man himself acknowledged to Mr. Ashdown, a U.K. politician, in 1991 that he and Milo{evi} shared an understanding as to how the territory of Bosnia and Herzegovina would be divided between them, although he denied the existence of a formal agreement at that time. In the *Bla{ki}* case, Mr. Ashdown testified that, at his request, President Tu|man had drawn a map of Bosnia and Herzegovina on a dinner menu showing the proposed line of partition. A copy of this sketch, as annotated by Mr. Ashdown, has been admitted in this case. [159]

138. Dr. Allcock argues that President Tu|man's interest in western Herzegovina and Central Bosnia most likely extended beyond a sense of common national identity and shared history, to reflect strategic economic interests.[160] He observes that Croatia's topography and lack of natural resources means that it is dependent on Bosnia and Herzegovina, both for its energy supply and as a territorial link between north and south Croatia. Tu|man himself had clearly reflected upon this, as evidenced by the following statements from his publication, *Nationalism in Contemporary Europe*:

> … Bosnia and Hercegovina were historically linked with Croatia and together comprise an indivisible geographic and *economic entity*. Bosnia and Hercegovina occupy the central part of this whole, separating southern (Dalmatian) from northern (Pannonian) Croatia. The creation of a separate Bosnia and Hercegovina makes the territorial and geographic position of Croatia extremely unnatural *in the economic sense*. . .[161]

139. Ties between President Tu|man, as head of the HDZ in Croatia, and the leadership of the HZ H-B and the HDZ H-B, were strong throughout the conflict. Stjepan Kljui}, the first leader of the HDZ BiH, testified that he was forcibly removed from that position and replaced by Mate Boban in October 1992 who benefited from Tu|man's support.[162] Mr. Kljui} testified that Mate

[158] According to Tu|man, these included the districts of Bugojno, Fojnica, Travnik, Derventa, Grada~ac and Br~ko.
[159] Ex. Z2486.
[160] Ex. Z1668, pp. 50-51.
[161] Ex. Z2352.1, p. 113 (emphasis added).
[162] Stjepan Kljui}, T. 5333, 5338.

Boban's policies, in contradistinction to his own, were "what many people in Zagreb wanted to hear".[163]

140. The Chamber also notes in this context, the gradual "Croatianisation" of the HZ H-B, as evidenced by the flying of the Croatian flag over buildings of public authorities,[164] widespread use of the Croatian currency,[165] and Tu|man's representation of the Bosnian Croats in many international forums. Tu|man's close links to the Bosnian Croat leadership were even recognised by the Security Council, which, in its resolution dated 10 May 1993 called upon the Republic of Croatia "to exert all its influence on the Bosnian Croat leadership and paramilitary units with a view to ceasing immediately their attacks particularly in the area of Mostar, Jablanica and Drežnica".[166]

141. General Sir Martin Garrod, former British Marine, served in Bosnia during the time-period of the Indictment, initially as head of the co-ordinating centre in Mostar, from June through September 1993, then he took over as head of the Regional Centre of the ECMM in Zenica until April 1994, when he was appointed chief of staff of the European Community administration in Mostar.[167] He testified that '[t]he Croats carried Croatian passports, they voted in Croatian elections, and they sang the Croatian national anthem. So, in other words, as far as they were concerned, President Tu|man was their President".[168] He also observed that a number of Herzegovinian Croats held positions in the Croatian government, most notably the Defence minister, Gojko [u{ak.[169]

142. The Trial Chamber finds that President Tu|man harboured territorial ambitions in respect of Bosnia and Herzegovina, and that was part of his dream of a Greater Croatia, including Western Herzegovina and Central Bosnia.

143. Against that background, the prosecution case, that Croatia intervened in the conflict to support the Bosnian Croats and provided logistical support and provided leadership in the planning, coordination and organisation of the HVO, becomes more credible. The significance of the evidence of Croatia's territorial ambitions in Bosnia and Herzegovina has been explained by the Appeals Chamber in this way:

> 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

[163] Stjepan Klju i}, T. 5314–5.
[164] Witness E, T. 2476–7; Edib Zlotrg, T. 1599.
[165] Edib Zlotrg, T. 1643; Witness D, T. 1982; Muhamed Mujezinovi}, T. 2172; Ex. Z2366.
[166] Ex. Z2419.
[167] Gen. Sir Martin Garrod, T. 13490–1 and T. 13548.
[168] Gen. Sir Martin Garrod, T. 13492.
[169] Gen. Sir Martin Garrod, T. 13492.

> enlargement through the armed forces which it controls, it may be easier to establish the threshold.[170]

144. The "threshold" to which the Appeals Chamber is referring in the above-mentioned quotation, is the level of control that a foreign State must exercise over armed forces engaged in an internal conflict in another State in order to internationalise that conflict.

145. Based upon the foregoing, the Chamber is satisfied that Croatia exercised overall control over the HVO through its provision to the HVO of financial and training assistance, military equipment and operational support, and by its participation in the organisation, coordination and planning of military operations of the HVO. The Chamber therefore finds that, on that basis, the conflict between the HVO and the ABiH was rendered international.

146. The Chamber concludes that the evidence in this case satisfies each of the alternative criteria set forth in the *Tadi}* Appeal Judgement for internationalising an internal conflict, and is fortified in this conclusion by a similar finding made by the Trial Chamber in the *Bla{ki}* case, which covered essentially the same time-period and geographical area as this case.[171]

(b) Whether the Bosnian Muslims were "protected" persons

147. Article 4 of Geneva Convention IV defines protected persons as:

> 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.

148. The question of protected persons was extensively considered by the Appeals Chamber in the *Tadi}* Appeal Judgement, which was followed by the Appeals Chamber in the *Aleksovski* and *^elebi}i* cases. Those decisions are binding on this Chamber.

149. As to the contention, raised by both the accused persons, that, since the Bosnian Muslims victims were of the same nationality as their Bosnian Croat captors, the requirement under Article 4 of Geneva Convention IV is not met, the Appeals Chamber's judgements in *Tadi}, Aleksovski* and *^elebi}i* provide two responses.[172]

150. In the first place, the *Aleksovski* Appeal Judgement, following the reasoning in *Tadi},* concludes that the finding that the conflict was international by reason of Croatia's participation necessarily means that the Bosnian Muslim victims were in the hands of a party to the conflict,

[170] *Tadi}* Appeal Judgement, para. 140.
[171] *Bla{ki}* Trial Judgement, paras, 94 and 123.
[172] *Tadi}* Appeal Judgement, paras. 163-169; *Aleksovski* Appeal Judgement, paras. 150–152; *Celebi}i* Appeal Judgement, paras. 56-84.

namely Croatia, of which they were not nationals. Therefore, Article 4 of Geneva Convention IV is applicable.

151. By parity of reasoning, the Trial Chamber's finding that the conflict in this case was internationalised means that the Bosnian Muslim victims were in the hands of a party to the conflict, namely Croatia, of which they were not nationals. The Bosnian Muslim victims are, therefore, protected persons under Article 4 of Geneva Convention IV.

152. Secondly, on the basis of a teleological interpretation of Article 4 of Geneva Convention IV, the Appeals Chamber in *Tadi}* concluded 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."[173] In such a case, nationality is not as crucial as allegiance to a party. In accordance with this interpretation, which the Appeals Chamber in *Aleksovski* found to be "particularly apposite in the context of present day inter-ethnic conflicts",[174] the Bosnian Muslim victims are protected persons since they owe no allegiance to the Bosnian Croats under whose effective control they were. This interpretation accords with the general purpose of Geneva Convention IV, which is to provide protection for civilians in an armed conflict.

153. If *Tadi}* might have been equivocal as to the application of the allegiance test in determining the status of protected persons under Article 4 of Geneva Convention IV, the Appeals Chamber in *^elebi}i* put this matter beyond doubt. In the first place, the Chamber stressed that the meaning to be given to nationality under Article 4 must be determined on the basis of international, not national, law. Then, emphasising the need for a purposive construction of Article 4, the Appeals Chamber held, first, that:

> [d]epriving victims, who arguably are of the same nationality under domestic law as their captors, of the protection of the Geneva Conventions solely based on that national law would not be consistent with the object and purpose of the Conventions. Their very object could indeed be defeated if undue emphasis were placed on formal legal bonds, which could also be altered by governments to shield their nationals from prosecution based on the grave breaches provisions of the Geneva Conventions.[175]
>
> and
>
> The nationality of the victims for the purpose of the application of Geneva Convention IV should not be determined on the basis of formal national characterisations, but rather upon an analysis of

[173] *Tadi}* Appeal Judgement, para. 166.
[174] *Aleksovski* Appeal Judgement, para. 152.
[175] *^elebi}i* Appeal Judgement, para. 81. The Appeals Chamber also referred to a concession made at the hearing by the Appellants that "in the former Yugoslavia 'nationality', in everyday conversation, refers to ethnicity. *^elebi}i* Appeal Judgement, para. 80.

> the substantial relations, taking into consideration the different ethnicity of the victims and the perpetrators, and their bonds with the foreign intervening State.[176]

154. Applying the decisions of the Appeals Chamber in the *Tadi}*, *Aleksovski* and *^elebi}i* cases to the present case, the Chamber finds that the Bosnian Muslim victims were in the hands of a party to the conflict, namely the Bosnian Croats, to whom they owed no allegiance.

155. The Chamber will now deal with two specific arguments raised by the Defence.

156. The Defence for both accused have argued that, by reason of Article 4(2) of Geneva Convention IV, the Bosnian Muslims are not protected persons for the reason that Croatia and Bosnia and Herzegovina were co-belligerents in a conflict with the Serbs. Article 4(2) provides:

> . . . 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.

157. The Chamber dismisses this argument for the reason that the Indictment in this case is concerned, not with a conflict between Bosnia and Herzegovina and Croatia on the one hand, and the Serbs on the other, but with a conflict between the Bosnian Croats and the Bosnian Muslims in Bosnia and Herzegovina; in respect of that conflict, Bosnia and Herzegovina and Croatia were plainly not co-belligerents.

158. The Defence for both accused persons have argued that the finding that the Bosnian Muslims were protected persons because they were in the hands of a party to the conflict, namely Croatia, of which they were not nationals, gives rise to unequal treatment, in that Bosnian Croat victims would not, on the basis of that finding, qualify as protected persons, since there would be no corresponding foreign State as a captor. The Trial Chamber observes that under the "allegiance test" no question of unequal treatment would arise, since, in the same way that the Bosnian Muslims owe no allegiance to the Bosnian Croats, the Bosnian Croats would owe no allegiance to the Bosnian Muslims.

159. The Trial Chamber, therefore, concludes that the requirement in Article 4 of Geneva Convention IV, that the victims be protected persons, has been met.

160. Based upon its findings that the armed conflict between the Bosnian Croats and the Bosnian Muslims was internationalised for the reasons given, and that the Bosnian Muslims qualify as protected persons under Geneva Convention IV, the Trial Chamber holds that Article 2 is applicable in the circumstances of this case.

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[176] *^elebi}i* Appeal Judgement, para. 84.

C. Article 3 of the Statute

161. Both Dario Kordi} and Mario ^erkez are charged with offences under Article 3 of the Statute. Article 3 of the Statute, entitled "Violations of the laws or customs of war", provides:

> 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.

1. Whether Article 3 Covers Internal Armed Conflicts

162. The Kordi} Defence submits that Article 3 does not apply to acts committed in internal conflicts. According to its contention, unlike Article 5, which expressly states that it covers armed conflicts "whether international or internal in character," Article 3 is silent as to whether it applies to internal armed conflicts. The Defence interprets this silence as limiting Article 3 to internal armed conflicts.[177] In particular, the Defence would exclude the prohibition of "devastation not justified by military necessity" from internal armed conflicts. According to the Defence, this prohibition codifies the 1907 Hague Convention (IV),[178] which does not apply to internal armed conflicts.[179]

163. The International Tribunal case-law is well-settled in this area, following the Appeals Chamber's finding 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.[180]

It is not for this Trial Chamber to dissent from that finding, according to the established doctrine of precedent in the practice of the International Tribunal.[181]

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[177] Kordic Pre-trial Brief, Vol. II, para. 64.
[178] The 1907 Hague Convention (IV) Respecting the Laws and Customs of War on Land ("Hague Convention IV").
[179] Kordic Pre-trial Brief, Vol. II, para. 79.
[180] *See Tadi}* Jurisdiction Decision, para. 137. *See also*, *Prosecutor v. Anto Furundžija*, Case No. IT-95-17/1-T, Judgement, 10 December 1998 ("*Furund`ija* Trial Judgement"), para. 132, and *Blaškic* Trial Judgement, para. 161.

164. Furthermore, as this Chamber has found, above, in the relevant period of time and region covered by the Indictment, there existed an international armed conflict involving the HV, the HVO - being agents of the Republic of Croatia - and the ABiH. The legal issue of an internal conflict does not therefore arise in this context.

2. Whether Common Article 3 of the Geneva Conventions, Additional Protocols I and II, were Customary Law

165. The Kordi} Defence argues that Common Article 3 of the Geneva Conventions, as well as Additional Protocols I and II were not unquestionably part of customary international law at the time when the crimes charged in the Indictment were allegedly committed. It points to the example of Articles 51(2) and 52(1) of Additional Protocol I. Although the Trial Chamber has found these provisions to be part of customary international law,[182] the Defence argues that the failure of the 1994 Draft Statute for the International Criminal Court to include them illustrates that the Protocol was not part of customary international law in 1994.[183]

166. The Defence further maintains that whether or not Common Article 3 and Additional Protocols I and II were customary international law in 1992 and 1993, they did not provide for individual criminal responsibility at that time, and do not do so now. According to the Defence, breaches other than grave breaches do not entail individual criminal responsibility. Rather, the contracting parties of the Geneva Conventions agreed to "suppress" violations under national law only.[184]

167. The Trial Chamber notes that the issue of whether Common Article 3 of the Geneva Conventions, as well as Additional Protocols I and II, reflected customary law at the time when the offences charged in the Indictment were allegedly committed, is of limited scope in this case, given that the Indictment is concerned with activities which unfolded in the course of an international armed conflict. The question is whether Additional Protocol I reflected international law at the relevant time. However, even that question does not pose any obstacle for the application of Article 3 of the Statute in this case. For Article 3, in the view of the Appeals Chamber,

> confers on the International Tribunal jurisdiction over any serious offence against international humanitarian law not covered by Article 2, 4 or 5. Article 3 is a fundamental provision laying

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[181] *Aleksovski* Appeal Judgement, para. 113.
[182] Decision on the Joint Defence Motion to Dismiss the Amended Indictment for Lack of Jurisdiction Based on the Limited Jurisdictional Reach of Articles 2 and 3, 2 March 1999 ("Decision on Jurisdiction"), para. 31.
[183] Kordi} Pre-trial Brief, Vol. II, para. 68.
[184] Kordi} Pre-trial Brief, Vol. II, paras. 70-71.

> down that any "serious violation of international humanitarian law" must be prosecuted by the International Tribunal.[185]

Article 3 covers violations which are not only custom-based, but also treaty-based. It is settled that the International Tribunal also has jurisdiction over violations which are prohibited by international treaties.[186] The former Socialist Federal Republic of Yugoslavia ratified Additional Protocol I in 1979. The RBiH deposited its Declaration of Succession on 31 December 1992 to succeed to the Geneva Conventions and the Additional Protocols. Croatia did likewise on 11 May 1992. According to international practice, these two States became parties to the Conventions and the Additional Protocols from their respective dates of independence: 8 October 1991 for Croatia and 6 March 1992 for RBiH.[187] As Additional Protocol I has since 1979 been applicable to the territory of the two States, whether it reflected customary law at the relevant time in this case is beside the point.[188]

168. As to the argument that Additional Protocol I does not entail individual criminal responsibility, the Trial Chamber recalls a statement in the *Tadi}* Jurisdiction Decision:

> Faced with similar claims with respect to the various agreements and conventions that formed the basis of its jurisdiction, the International Military Tribunal at Nuremberg concluded that a finding of individual criminal responsibility is not barred by the absence of treaty provisions on punishment of breaches. … because, as the Nuremberg Tribunal concluded '[c]rimes against international law are committed by men, not by abstract entities, and only by punishing individuals who commit such crimes can the provisions of international law be enforced."[189]

The Appeals Chamber in that case had no difficulty in finding that customary law "imposes criminal liability for serious violations of Common Article 3" of the Geneva Conventions,[190] an article that contains no reference to individual responsibility. This finding was reaffirmed by the Appeals Chamber in ^*elebi}i*.[191]

169. By analogy, violations of Additional Protocol I incur individual criminal liability in the same way that violations of Common Article 3 give rise to individual criminal liability.

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[185] *Tadi}* Jurisdiction Decision, para. 91 (emphasis in the original).
[186] *Tadi}* Jurisdiction Decision, para. 143.
[187] *See* the Notifications of the Swiss Federal Council, which is the depositary of the Conventions and Protocols, regarding the Declarations of Succession, issued on 7 July 1992 (Croatia) and 17 February 1993 (RBiH), respectively.
[188] The Defence submits that Additional Protocol I did not reflect customary law at the relevant time because some provisions were not adopted by the International Law Commission in its Draft Statute for the International Criminal Court of 1994. However, the Trial Chamber is not persuaded by this argument and reiterates its conclusion contained in the earlier Decision on Jurisdiction.
[189] *Tadi}* Jurisdiction Decision, para. 128. The quotation is from the Judgement of the IMT, *The Trial of Major War Criminals: Proceedings of the International Military Tribunal sitting at Nuremberg, Germany,* Part 22, 1950, p. 447.
[190] *Tadi}* Jurisdiction Decision, para. 134.
[191] ^*elebi}i* Appeal Judgement, paras. 153-173.

D. Article 5 of the Statute

170. Article 5 of the Statute proscribes specified crimes such as murder, deportation, torture, rape and persecution on political, racial and religious grounds "directed against any civilian population" when committed in an armed conflict. Of relevance to the present Judgement are the offences of persecutions, murder, imprisonment, and inhumane acts with which the accused are charged as crimes against humanity.[192] Article 5 of the Statute, entitled "Crimes against humanity", reads:

> The International Tribunal shall have the power 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.

171. The Trial Chamber will first consider the common elements required for the application of Article 5 of the Statute before turning to an analysis of the elements of the relevant offences. The majority of the elements that need to be established in order for a crime against humanity to be proved have been the subject of the jurisprudence of this International Tribunal, and also that of the International Criminal Tribunal for Rwanda ("ICTR"), to which the Trial Chamber will refer. Certain elements have also been elucidated by the Appeals Chamber, which findings bind Trial Chambers.

[192] Counts 7 and 14 charge Dario Kordi} and Mario ^erkez, respectively, with murder as a crime against humanity. The accused are also charged with wilful killing as a grave breach under Article 2 of the Statute, and murder as a violation of the laws or customs of war under Article 3, for the same acts by Counts 8 and 9, and 15 and 16, respectively. Counts 21 and 29 charge Dario Kordi} and Mario ^erkez, respectively, with imprisonment as a crime against humanity. The accused are also charged with unlawful confinement of civilians as a grave breach under Article 2 for the same acts in Counts 22 and 30. Counts 10 and 17 charge Dario Kordi} and Mario ^erkez, respectively, with inhumane acts as a crime against humanity. The same acts are also charged as wilfully causing great suffering or serious injury to body and health as a grave breach (Counts 11 and 18), inhuman treatment as a grave breach (Counts 12 and 19), and violence to life and persons as a violation of the laws or customs of war (Counts 13 and 20).

1. Widespread or systematic attack against any civilian population

(a) Arguments of the parties

172. The Prosecution submits that the civilian population does not lose its civilian character as a result of the presence of armed forces, and includes all persons no longer taking part in hostilities.[193]

173. The Defence contends that an attack is "directed against any civilian population" only if the objective of the attacker is to attack civilians.[194] According to the Defence, the presence of military units inside an area may change the "civilian" character of a population.[195] It is therefore the presence of a legitimate military objective, not the "civilian/non-civilian mix", that should determine the character of the population. The accused cannot be expected to determine this ratio accurately prior to attacking the target.[196]

174. The Prosecution takes the position that crimes against humanity must involve attacks that are widespread or systematic, citing the *Tadic* Trial Chamber's finding that "widespread" refers to the number of victims, whereas "systematic" signifies the existence of a pattern or methodical plan.[197]

175. The Defence disagrees with the holding in the *Tadic* Trial Judgment that crimes against humanity must involve attacks that are widespread or systematic.[198] The Defence submits that the criminal acts must have taken place in the context of attacks that are widespread and systematic.[199]

176. The Prosecution relies on the *Blaškic* approach, which, in its view, refrained from imposing the burden of proving a policy or plan as a general requirement of crimes against humanity or a specific requirement of the element of "systematic,"[200] for its assertion that proof of a plan or policy is not an element of crimes against humanity. While evidence of such a policy could support the determination of a systematic attack, the Prosecution submits that other relevant evidence or a

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[193] Prosecution Pre-trial Brief, para. 169 and Prosecution Final Brief, Annex 5, para. 166, *citing Tadic* Trial Judgement at paras. 639 and 643, and *Prosecutor v. Jean-Paul Akayesu*, Case No. ICTR-96-4-T, Judgement, 2 September 1998 ("*Akayesu* Trial Judgement") at para. 582.
[194] Kordic Pre-trial Brief, Vol. II, para. 93, and Kordic Final Brief, p. 491. Cerkez Final Brief, p. 95.
[195] Kordic Pre-trial Brief, Vol. II, para. 97, and Kordic Final Brief, pp. 491-492.
[196] Kordic Pre-trial Brief, Vol. II, para. 95, and Kordic Final Brief, pp. 491-492, citing Final Report of the Commission of Experts Established Pursuant to Security Council Resolution 780.
[197] Prosecution Pre-trial Brief, para. 169, and Prosecution Final Brief, Annex 5, para. 173, *citing Tadic* Trial Judgement, para. 648 and *Akayesu* Trial Judgement, para. 580.
[198] Kordi} Pre-trial Brief, Vol. II, para. 99, and Kordic Final Brief, pp. 490-91, *citing Tadic* Trial Judgement, para. 646.
[199] Kordi} Pre-trial Brief, Vol. II, paras. 100-103, and Kordic Final Brief, p. 494. The Defence cites the *Justice Trial* ("Trial of Joseph Altstötter and Others, Vol. VI, Law Reports of Trials of War Criminals, U.N. War Crimes Commission, London, 1949) in support of its argument.
[200] *Bla{ki}* Trial Judgement, para. 203.

combination of evidence could also establish that element beyond a reasonable doubt, relying upon the proposition in the *Kupreškic* Trial Judgement that a policy does not have to be "explicitly formulated nor need it be the policy of a *State*" in order to fulfil the "systematic" aspect of an attack. Reference is made to the *Kupreškic* Trial Chamber's finding that a crime need not 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 in order to be "systematic".[201]

177. The Defence argues that the alleged criminal acts must have been committed in furtherance of a "formal state policy." The accused must have intended to advance that policy and shared the aims behind that policy. According to the Defence, crimes against humanity are different from war crimes because they include the element of "proof of systematic governmental planning."[202]

(b) Discussion

178. The requirement that an attack, to qualify as a crime against humanity, imports the requirement that the accused's acts must be related to a widespread or systematic attack on a civilian population is now settled in the International Tribunal's jurisprudence.[203] It is also generally accepted that the requirement that the occurrence of crimes be widespread or systematic is a disjunctive one.[204] This requirement is intended to ensure that it is crimes of a collective nature that are penalised whereby, in the words of the *Tadi}* Trial Chamber, an individual is "victimised not because of his individual attributes but rather because of his membership of a targeted civilian population."[205] Although generally, because of their very nature, offences which are characterised as crimes against humanity are part of a course of conduct, Trial Chambers have also accepted that a single isolated act by a perpetrator, if linked to a widespread or systematic attack, could constitute a crime against humanity.[206]

179. The *Bla{ki}* Trial Chamber clarified the meaning of the "systematic" requirement. It held that this requirement refers to the following four elements: (1) 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,

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[201] Prosecution Final Brief, para. 187, *citing Kupre{ki}* Trial Judgement, para. 551 (emphasis in original).
[202] Kordic Pre-trial Brief, Vol. II, paras. 105-108, and Kordic Final Brief, pp. 494-495. The Defence cites a number of cases and international legal scholars in support of this proposition.
[203] *Tadi}* Appeal Judgement, para. 271: "The Trial Chamber correctly recognised that crimes which are unrelated to widespread or systematic attacks on a civilian population should not be prosecuted as crimes against humanity." The *Tadi}* Trial Chamber also found that, although not formally required by Article 5, "the acts must occur on a widespread or systematic basis" (*Tadi}* Trial Judgement, para. 644).
[204] *Kupre{ki}* Trial Judgement, para. 544; *Bla{ki}* Trial Judgement, para. 207.
[205] *Tadi}* Trial Judgement, para. 644.
[206] *Tadi}* Trial Judgement, para. 649. *Kupre{ki}* Trial Judgement, para. 550.

that is, to destroy, persecute or weaken a community; (2) 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; (3) the preparation and use of significant public or private resources, whether military or other; (4) the implication of high-level political and/or military authorities in the definition and establishment of the methodical plan.[207] Moreover, 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".[208]

180. The meaning to be attached to "civilian population" has also been clarified by Trial Chambers. A population may be considered as "civilian" even if certain non-civilians are present – it must simply be "predominantly civilian in nature."[209] Moreover, a wide definition of what constitutes a civilian population was adopted. It was decided that individuals who at one time performed acts of resistance may in certain circumstances be victims of a crime against humanity:[210]

> 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 uniforms 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.[211]

The Trial Chamber finds this holding persuasive.

181. Whether there is a requirement that some form of policy to commit acts against a civilian population be demonstrated is not uncontroversial in the International Tribunal's jurisprudence. The *Tadi}* Trial Chamber found that the existence of "forces which, although not those of the legitimate government, have de facto control over, or are able to move freely within, defined territory"[212] has been taken into account by the law in relation to crimes against humanity. It also found that the policy could be that of any organisation or group and need not be the policy of a

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[207] *Bla{ki}* Trial Judgement, para. 203.
[208] *Bla{ki}* Trial Judgement, para. 206.
[209] *Tadi}* Trial Judgement, para. 638.
[210] *Tadi}* Trial Judgement, para. 643, referring to *Prosecutor v. Mile Mrk{i}, Miroslav Radi} and Veselin [ljivan~anin*, Review of the Indictment Pursuant to Rule 61 of the Rules of Procedure and Evidence, Case No. IT-95-13-R61, 3 April 1996, paras. 29 and 32. In that case, patients in a hospital who had been part of the resistance movement and had laid down their arms were considered victims of crimes against humanity. *Kupre{ki}* Trial Judgement, paras. 547-549. *Bla{ki}* Trial Judgement, paras. 208-213.
[211] *Bla{ki}* Trial Judgement, para. 214.
[212] *Tadi}* Trial Judgement, para. 654.

State.[213] The *Bla{ki}* Trial Chamber, after holding that the plan "need not necessarily be declared expressly or even stated clearly and precisely", went on to refer to events from which the existence of a plan may be inferred.[214] It thus agreed with *Kupre{ki}* that "a policy need not be explicitly formulated, nor need it be the policy of a *State*."[215] The Appeals Chamber did not refer to this requirement specifically as it was not the subject of a ground of appeal.

182. The Trial Chamber agrees that it is not appropriate to adopt a strict view in relation to the plan or policy requirement. In particular, it endorses the *Kupre{ki}* finding that "although the concept of crimes against humanity necessarily implies a policy element, there is some doubt as to whether it is strictly a *requirement*, as such, for crimes against humanity." In the Chamber's view, the existence of a plan or policy should better be regarded as indicative of the systematic character of offences charged as crimes against humanity.

2. Mental Element

183. The Prosecution agrees with the holding in *Blaškic* that for purposes of Article 5, the *mens rea* is satisfied if an accused knowingly "took the risk of participating in the implementation of that context."[216] The Prosecution further submits that an accused need not seek out all the elements of the context of an attack in order for him to knowingly participate in that context. Rather, according to the Prosecution, the accused's knowledge of the attack may be actual or constructive.[217] It may be inferred from a concurrence of concrete facts, such as the historical and political circumstances in which the acts occurred, the scope and gravity of the acts perpetrated, or the nature of the crimes committed and the degree to which they were common knowledge.[218]

184. The Defence submits that an individual who commits an act enumerated under Article 5, but without any desire to advance the improper government policy, may possess the *mens rea* necessary to commit a crime, but not a crime against humanity. Similarly, an individual who sees his State pursuing an improper policy and endeavours to assist out of a sense of loyalty (for example), but without the "ideologically malevolent intent" that underlies the state policy, does not possess the *mens rea* required to commit a crime against humanity.[219]

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[213] *Tadi}* Trial Judgement, para. 655.
[214] *Bla{ki}* Trial Judgement, para. 204.
[215] *Kupre{ki}* Trial Judgement, para. 551 (emphasis in the original).
[216] Prosecution Final Brief, para. 191, *citing Blaškic* Trial Judgement, para. 251.
[217] Prosecution Final Brief, para. 191, *citing Tadic* Trial Judgement, para. 659; *Kupreškic* Trial Judgement, para. 557; and *Prosecutor v. Kayishema and Ruzindana*, Case No. ICTR-95-1-T, Judgement, 21 May 1999 ("*Kayishema* Trial Judgement"), para. 134.
[218] Prosecution Final Brief, para. 191, *citing Blaškic* Trial Judgement, para. 259.
[219] Kordic Final Brief, para. 495.

185. That the perpetrator must have knowledge of the wider context in which his acts occur, i.e., that he must know that his acts are performed in the context of a widespread or systematic attack, does not appear to be controversial any more in the jurisprudence of the International Tribunal.[220] Further, the Appeals Chamber has held that the accused must have known that his acts were related to the attack on a civilian population.[221] There is no apparent requirement in the jurisprudence of either the Trial Chambers or the Appeals Chamber, that the perpetrator must approve of the context in which his acts occur, as well as have knowledge of it. The Trial Chamber finds the following statement, as referred to in *Kupre{ki}* and *Bla{ki},* which is taken from the ICTR *Kayishema* Judgement, persuasive:

> [t]he perpetrator must knowingly commit crimes against humanity in the sense that he must understand the overall context of his act. […] Part of what transforms an individual's act(s) 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(s) is part of a widespread or systematic attack on a civilian population and pursuant to some sort of policy or plan, is necessary to satisfy the requisite *mens rea* element of the accused.[222]

186. The Appeals Chamber in *Tadi}* clarified another issue in relation to the requisite *mens rea* for crimes against humanity. It rejected the view that to constitute a crime against humanity all relevant acts or omissions must be undertaken by the perpetrator on discriminatory grounds.[223] The Appeals Chamber determined that discriminatory intent "is an indispensable legal ingredient of the offence only with regard to those crimes for which this is expressly required, that is, for Article 5(h), concerning various types of persecution."[224]

187. It is also settled that the motives of the accused are not relevant in this context.[225] The Appeals Chamber further rejected the *Tadi}* Trial Chamber's interpretation to the effect that the accused's acts may not be committed for purely personal motives.[226] It is thus now settled in the jurisprudence of the International Tribunal that

> crimes against humanity can be committed for purely personal reasons, provided it is understood that the two aforementioned conditions - that the crimes must be committed in the context of widespread or systematic crimes against a civilian population and that the accused must have *known* that his acts, in the words of the Trial Chamber, 'fitted into such a pattern' - are met.[227]

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[220] *Tadi}* Trial Judgement, paras. 656-657; *Kupre{ki}* Trial Judgement, para. 556; *Bla{ki}* Trial Judgement, paras. 247-250.
[221] *Tadi}* Appeal Judgement, paras. 248 and 271.
[222] *Kayishema* Trial Judgement, paras. 133-134, referred to in *Kupre{ki}* Trial Judgement, para. 557, and *Bla{ki}* Trial Judgement, para. 249. The *Tadi}* Trial Chamber also found that such knowledge could be inferred from the circumstances (actual or constructive knowledge), *Tadi}* Trial Judgement, para. 657.
[223] This view was held in the *Tadi}* Trial Judgement, paras. 650-652.
[224] *Tadi}* Appeal Judgement, para. 305.
[225] *Tadi}* Appeal Judgement, para. 272.
[226] *Tadi}* Appeal Judgement, paras. 252 and 269.

II. DEFINITION AND ELEMENTS OF THE CRIMES

A. Persecution as a Crime Against Humanity

188. The submissions of the parties reveal two major areas of dispute regarding persecutions under Article 5(h) of the Statute: (a) whether the crime of persecution can be applied only in connection with other crimes enumerated in the Statute; and (b) the appropriate *mens rea* for the crime of persecution. The Defence asserts that the *actus reus* for the crime of persecution must be committed in connection with another crime enumerated in the Statute, while the Prosecution submits that persecution need not be connected to any other statutory crime. In relation to the *mens rea*, the Defence argues that the accused must have committed the act "with specific intent to severely deprive the victim of fundamental rights by reason of the identity of the group or collectivity".[228] The Prosecution's position is that a showing that the accused had the "knowledge" that his acts fit within the widespread or systematic attack on discriminatory grounds is sufficient.[229]

189. The parties, however, do agree with the *Tadic* Trial Chamber's three basic requirements for the crime of persecution: (1) the occurrence of a discriminatory act or omission; (2) a discriminatory basis for that act or omission on one of the listed grounds, specifically race, religion or politics; and (3) the intent to cause, and a resulting infringement of an individual's enjoyment of a basic or fundamental right.[230] The *Tadic* Appeal Judgement further clarified the distinction between persecution and other Article 5 offences, holding that persecution is the only crime against humanity enumerated in Article 5 to require a discriminatory intent.[231]

190. The Trial Chamber now turns to consider the areas of dispute regarding the crime against humanity of persecution.

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[227] *Tadi}* Appeal Judgement, para. 255.
[228] Kordic Final Brief, p. 497 (emphasis added).
[229] Prosecution Final Brief, Annex 5, para. 198.
[230] *Tadic* Trial Judgement, para. 715.
[231] *Tadic* Appeal Judgement, para. 283.

1. *Actus Reus*

(a) Scope of the crime of persecution

191. The Prosecution submits that the term "persecutory act" could include acts enumerated in the Statute as well as acts not specifically listed therein.[232] The Defence submits that the crime of persecution must be narrowly construed, and applied only in connection with another crime within the jurisdiction of the International Tribunal.[233] The Defence explicitly rejects the *Tadic* and *Kupreškic* Trial Chamber rulings that persecution may encompass acts not enumerated in the Statute.[234] The Defence relies upon the Charters of the International Military Tribunal (IMT) and the International Military Tribunal of the Far East (IMTFE), which required that persecution occur in the execution of other crimes within the jurisdiction of those Tribunals,[235] as evidence of customary international law on this matter. The Defence also notes that Article 7(1)(h) of the Rome Statute of the International Criminal Court (ICC Statute) requires that persecution occur in connection with other crimes in the jurisdiction of the ICC.[236]

192. As the Trial Chambers in *Tadic*, *Kupreškic* and *Blaškic* have recognised, the crime of persecution under Article 5(h) has never been comprehensively defined.[237] Neither international treaty law nor case law provides a comprehensive list of illegal acts encompassed by the charge of persecution, and persecution as such is not known in the world's major criminal justice systems.[238] The Trial Chamber agrees with the Defence[239] that the crime of persecution needs careful and sensitive development in light of the principle of *nullum crimen sine lege.* Following the definition of the principle of legality set forth in Article 15 of the ICCPR, the Appeals Chamber in *Aleksovski* held that this principle requires "that a person may only be found guilty of a crime in respect of acts which constituted a violation of the law at the time of their commission."[240] In order for the principle of legality not to be violated, acts in respect of which the accused are indicted under the

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[232] Prosecution Pre-trial Brief, para. 159.
[233] Kordic Pre-trial Brief, Vol. II, paras. 125, 127-128; Kordic Final Brief, pp. 498-500.
[234] Kordic Final Brief, pp. 499-500.
[235] Kordic Final Brief, p. 499.
[236] Kordic Final Brief, p. 500.
[237] *Tadic* Trial Judgement, para. 694; *Kupreškic* Trial Judgement, para. 567; *Blaškic* Trial Judgement, para. 219.
[238] *Tadic* Trial Judgement, para. 694.
[239] The Kordi} Defence submits that the term "persecution" is potentially an enormously elastic concept that touches on a number of civil liberties (such as freedom of speech and political association). Furthermore, criminal law is a blunt instrument. Criminalising acts that are generally the subject of civil remedy, if any, in most jurisdictions (such as employment discrimination) would result in the *ex post facto* creation of new criminal offences and thus violate the principle of *nullum crimen sine lege*. Kordi} Defence Closing Arguments, T. 28385-86.
[240] *Aleksovski* Appeal Judgement, para. 126. The Appeals Chamber further held that the principle of legality "does not prevent a court, either at the national or international level, from determining an issue through a process of interpretation and clarification as to the elements of a particular crime", para. 127.

heading of persecution must be found to constitute crimes under international law at the time of their commission.

193. At the outset, the Trial Chamber notes that the wording of Article 5(h) does not contain any requirement of a connection between the crime of persecution and other crimes enumerated in the Statute. The jurisprudence of Trial Chambers of the International Tribunal thus far appears to have accepted that the crime of persecution can also encompass acts not explicitly listed in the Statute.[241] The *Kupreškic* Trial Chamber placed particular emphasis upon the principle of legality when considering in some detail the issue now before this Chamber. It found that the *actus reus* for persecution requires no link to crimes enumerated elsewhere in the Statute.[242]

194. The Trial Chamber concurs with the *Kupreškic* decision in this regard, and finds that, consonant with customary international law, the crime of persecution may indeed encompass crimes not enumerated elsewhere in the Statute. But of equal importance, and in order to comply with the principle of legality, this Trial Chamber also adopts the *Kupreškic* position that there must be "clearly defined limits on the expansion of the types of acts which qualify as persecution."[243]

195. The Trial Chamber thus agrees that acts must reach a similar level of gravity as the other offences listed in Article 5 in order to fall within the crime of persecution.[244] In its definition of the *actus reus* of persecution, the Trial Chamber in *Kupreškic* set forth a four-part test in which an act of persecution is constituted by (1) a gross or blatant denial, (2) on discriminatory grounds, (3) of a fundamental right, laid down in international customary or treaty law, (4) reaching the same level of gravity as the other crimes against humanity enumerated in Article 5 of the Statute.[245] The Trial Chamber finds that acts which meet the four criteria set out above, as well as the general requirements applicable to all crimes against humanity, may qualify as persecution, without violating the principle of legality.

196. The Prosecution has urged the Trial Chamber to forego the final aspect of the *Kupreškic* definition of persecution (the "same level of gravity" test), because it "would limit the inclusion of some acts, such as certain property destruction and dismissal from employment, that do not necessarily rise, in and of themselves, to the level of inhumane acts prescribed under Article 5."[246] The Trial Chamber recognises that the "same level of gravity" test may indeed result in the

[241] *See Tadi}* Trial Judgement, para. 703; *Kupre{ki}* Trial Judgement, para. 614; *Bla{ki}* Trial Judgement, para. 233. The Appeals Chamber has not addressed this specific issue yet.
[242] *Kupreškic* Trial Judgement, para. 581.
[243] *Kupre{ki}* Trial Judgement, para. 618 (emphasis in the original).
[244] *Kupre{ki}* Trial Judgement, para. 619.
[245] *Kupreškic* Trial Judgement, para. 621.
[246] Prosecution Final Brief, Annex 5, para. 205.

exclusion of some acts from the realm of criminal persecution, yet finds this to be a wholly valid result. To reiterate the words of the *Kupreškic* Trial Chamber, "[a]lthough the realm of human rights is dynamic and expansive, not every denial of a human right may constitute a crime against humanity".[247]

197. Article 7(1)(h) of the ICC Statute, upon which the Kordi} Defence relies in support of its argument, sets out the requirement that persecutions be connected to another crime within the jurisdiction of the Court.[248] The ICC Statute further defines persecution as "the intentional and severe deprivation of fundamental rights contrary to international law by reason of the identity of the group or collectivity."[249] The *Kupreškic* Trial Chamber found this provision to be more restrictive than is necessary under customary international law.[250] The Trial Chamber observes that, although the Statute of the ICC limits persecution to acts performed in connection with other crimes falling within its jurisdiction, in practice, the list of acts which may potentially be characterised as persecution is extensive in view of the broad range of crimes listed thereunder.[251]

198. Thus far, Trial Chambers of this International Tribunal have held that the following acts constitute persecution: participation in "the attack on Kozarac and the surrounding areas, as well as the seizure, collection, segregation and forced transfer of civilians to camps, calling-out of civilians, beatings and killings";[252] "murder, imprisonment, and deportation" and such attacks on property as

[247] *Kupreškic* Trial Judgement, para. 618 (emphasis added). *See also Tadic* Trial Judgement, para. 707 ("There is a limit … to the acts which can constitute persecution within the meaning of crimes against humanity").
[248] Article 7(1)(h) of the ICC Statute reads: "Persecution against any identifiable group or collectivity on political, racial, national, ethnic, cultural, religious, gender … or other grounds that are universally recognised as permissible under international law, in connection with any act referred to in this paragraph or any crime within the jurisdiction of the Court." Rome Statute of the International Criminal Court, U.N. Doc. A/Conf.183/9 (1998).
[249] ICC Statute, Art. 7(2)(g). *See also* the Report of the Preparatory Commission for the International Criminal Court, Finalised Draft Text of the Elements of Crimes, 6 July 2000, PCNICC/2000/INF/3/Add.2.
[250] *Kupreškic* Trial Judgement, paras. 578-581. The *Kupreškic* Trial Chamber relied on the following sources in reaching this conclusion: Control Council Law No. 10 (C.C. Law 10), which omitted the link between crimes against humanity and war crimes; national legislation, particularly in France and Canada; the case law of the National Military Tribunal, particularly the *Einsatzgruppen* Case (NMT Vol. IV, p. 49) and the *Justice* case (NMT Vol. III, p. 974); various international treaties (the Genocide Convention of 1948, the Convention on the Non-Applicability of Statutory Limitations to War Crimes and Crimes Against Humanity of 1968, and the Apartheid Convention of 1973); and the *Tadic* Jurisdiction Decision, paras. 140-141.
[251] *See* ICC Statute, Articles 6-8. Paragraph 1 of Article 7, entitled "Crimes against humanity", sets out the following acts: (a) murder; (b) extermination; (c) enslavement; (d) deportation or forcible transfer of population; (e) imprisonment or other severe deprivation of physical liberty in violation of fundamental rules of international law; (f) torture; (g) rape, sexual slavery, enforced prostitution, forced pregnancy, enforced sterelization, or any other form of sexual violence of comparable gravity; (h) persecution; (i) enforced disappearance of persons; (j) apartheid; (k) other inhumane acts of a similar character intentionally causing great suffering, or serious injury to body or mental or physical health. A number of these crimes are not listed in the Statute of the International Tribunal.
[252] *Tadic* Trial Judgement, para. 717. The *Tadic* Trial Chamber generally held that "the crime of persecution encompasses a variety of acts, including, *inter alia*, those of physical, economic or judicial nature, that violate an individual's right to equal enjoyment of his basic rights", *Tadic* Trial Judgement, para. 710.

would constitute "a destruction of the livelihood of a certain population;"[253] and the "destruction and plunder of property", "unlawful detention of civilians" and the "deportation or forcible transfer of civilians," and physical and mental injury.[254] In *Blaškic*, the Trial Chamber found that the crime of persecution encompasses both bodily and mental harm and infringements upon individual freedom.[255] The Trial Chamber notes that all of these acts are enumerated as crimes (grave breaches of the Geneva Conventions of 1949, violations of the laws or customs of war and crimes against humanity) elsewhere in the Statute.

199. In addition, the Trial Chamber wishes to emphasise the unique nature of the crime of persecution as a crime of cumulative effect. As the *Kupreškic* Trial Chamber held, "acts of persecution must be evaluated not in isolation but in context, by looking at their cumulative effect. Although individual acts may not be inhumane, their overall consequences must offend humanity in such a way that they may be termed 'inhumane'".[256] In this connection, the Trial Chamber notes the Defence contention that all the means of persecution alleged by the Prosecution in paragraph 37 of the Indictment must be proved in order for a widespread or systematic campaign of persecution to be proved.[257] However, while the notion of persecution is generally used to describe a series of acts, the Trial Chamber agrees with the *Kupre{ki}* finding that "a single act may constitute persecution", provided there is "clear evidence of the discriminatory intent."[258]

200. The Trial Chamber now turns to a consideration of the specific offences alleged to constitute persecutions in the Indictment.

(b) Specific offences alleged in the Indictment

201. The specific offences with which the accused are charged in the Indictment may be conveniently divided into two categories: (a) acts enumerated elsewhere in the Statute which rise to the same level of gravity as other crimes listed in Article 5; (b) acts not enumerated elsewhere in the Statute which do not rise to the same level of gravity as other crimes listed in Article 5.

[253] *Kupre{kic* Trial Judgement, paras. 628-633. The Trial Chamber found that the "'deliberate and systematic killing of Bosnian Muslim civilians' as well as their 'organised detention and expulsion from Ahmi}i' can constitute persecution". *Kupre{ki}* Trial Judgement, para. 629.
[254] *Blaškic* Trial Judgement, para. 234.
[255] *Blaškic* Trial Judgement, para. 233.
[256] *Kupreškic* Trial Judgement, para. 622, reiterating para. 615; the Trial Chamber referred to the *Justice* Trial and the *Einsatzgruppen* Case in support of its finding, *see Kupre{ki}* Trial Judgement, footnotes 895 and 898. *See* Prosecution Final Brief, Annex 5, para. 211. The Kordi} Defence appears to agree with this finding, *see* Kordi} Final Brief, p. 498.

(i) Acts enumerated elsewhere in the Statute

202. The following acts alleged in the Indictment are enumerated elsewhere in the Statute and also rise to the same level of gravity as other Article 5 crimes against humanity. As such, these acts may constitute the crime of persecution provided they are performed with the requisite discriminatory intent:

a. Attacking cities, towns and villages[259]

203. This act is akin to an "attack, or bombardment, by whatever means, of undefended towns, villages, dwellings, or buildings," a violation of the laws or customs of war enumerated under Article 3(c) of the Statute. This act has therefore already been criminalised under customary international law and the International Tribunal Statute in particular. Moreover, the act of attacking cities, towns and villages on discriminatory grounds provides the factual matrix for most of the other alleged acts of persecution (such as killing, imprisonment, forcible transfer, inhumane acts, wanton and extensive destruction of property, etc.). The combination of this *actus reus* with the requisite discriminatory *mens rea* would therefore constitute the crime of persecution.

b. Trench-digging and use of hostages and human shields[260]

204. These acts are generally recognised as grave breaches of the Geneva Conventions of 1949, and as such are already criminal under customary international law and the International Tribunal Statute in particular.[261] For that reason and for those listed in the above paragraph, the Trial Chamber finds that this act combined with the requisite discriminatory intent rises to the same level of gravity as other Article 5 crimes against humanity.

c. Wanton destruction and plundering[262]

205. This act is similar to the "wanton destruction of cities, towns or villages" and the "plunder of public or private property" violations of the laws or customs of war enumerated under Articles

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[257] The Defence bases this argument on the use of the conjunctive "and" in the list of acts allegedly comprising the campaign of persecution in paragraph 37(j) of the Indictment. The Defence does not cite any sources in support of this argument. Kordi} Final Brief, p. 486.
[258] *Kupre{ki}* Trial Judgement, para. 624.
[259] Indictment, Counts 1 and 2 (Persecutions), paragraph 37(a) and 39(a). The Trial Chamber notes that this act, unlike several of the acts discussed below, has previously been charged by the Prosecutor as persecution under Article 5(h) of the Statute. *See Prosecutor v. Tihomir Blaškic*, Second Amended Indictment, 26 April 1999, Count 1 (Persecution), paragraph 6.1 ("the widespread and systematic attack of cities, towns and villages, inhabited by Bosnian Muslims…").
[260] Indictment, Counts 1 and 2 (Persecutions), paragraphs 37(h), 37(i), 38(g), 38(h). The Prosecutor also charged these acts as persecution in *Blaškic*. *See Prosecutor v. Tihomir Blaškic*, Second Amended Indictment, 26 April 1999, Count 1 (Persecution), paragraph 6.5.
[261] Statute, Articles 2(e) ("compelling a prisoner of war or a civilian to serve in the forces of a hostile power") and 2(h) ("taking civilians as hostages").
[262] Indictment, Counts 1 and 2 (Persecutions), paragraphs 37(j) and 39(i).

3(b) and 3(e) of the Statute. This act has therefore already been criminalised under customary international law and the International Tribunal Statute in particular. Prior jurisprudence of the International Tribunal has made clear that the destruction of property with the requisite discriminatory intent may constitute persecution.[263] If the ultimate aim of persecution is the "removal of those persons from the society in which they live alongside the perpetrators, or eventually even from humanity itself",[264] the widespread or systematic, discriminatory, destruction of individuals' homes and means of livelihood would surely result in such a removal from society. In the context of an overall campaign of persecution, rendering a people homeless and with no means of economic support may be the method used to "coerce, intimidate, terrorise and forcibly transfer … civilians from their homes and villages." Thus, when the cumulative effect[265] of such property destruction is the removal of civilians from their homes on discriminatory grounds, the "wanton and extensive destruction and/or plundering of Bosnian Muslim civilian dwellings, buildings, businesses, and civilian personal property and livestock" may constitute the crime of persecution.

d. Destruction and damage of religious or educational institutions[266]

206. This act is the same as the "destruction or wilful damage done to institutions dedicated to religion", a violation of the laws or customs of war enumerated under Article 3(d) of the Statute. This act has therefore already been criminalised under customary international law and the International Tribunal Statute in particular. Moreover, the IMT,[267] the jurisprudence of this International Tribunal,[268] and the 1991 ILC Report,[269] *inter alia*, have all singled out the destruction of religious buildings as a clear case of persecution as a crime against humanity.

207. This act, when perpetrated with the requisite discriminatory intent, amounts to an attack on the very religious identity of a people. As such, it manifests a nearly pure expression of the notion of "crimes against humanity", for all of humanity is indeed injured by the destruction of a unique religious culture and its concomitant cultural objects. The Trial Chamber therefore finds that the

[263] *See, e.g., Tadic* Trial Judgement, paras. 707, 710; *Kupreškic* Trial Judgement, para. 631; *Blaškic* Trial Judgement, paragraph 227.
[264] *Kupreškic* Trial Judgement, para. 634, *cited with approval* in Prosecution Final Brief, Annex 5, para. 200, and Kordic Final Brief, p. 501.
[265] *Kupreškic* Trial Judgement, paras. 615, 622. ("Persecution is commonly used to describe a series of acts rather than a single act. Acts of persecution will usually form part of a policy or at least a patterned practice, and must be regarded in their context.")
[266] Indictment, Counts 1 and 2 (Persecutions), paragraphs 37(k) and 39(j).
[267] Nuremberg Judgement, pp. 248 and 302. *See also Eichmann* District Court Judgement, para. 57.
[268] *Blaškic* Trial Judgement, 3 March 2000, para. 227.
[269] 1991 ILC Report, p. 268 (persecution may take the form of the "systematic destruction of monuments or buildings representative of a particular social, religious, cultural or other group").

destruction and wilful damage of institutions dedicated to Muslim religion or education, coupled with the requisite discriminatory intent, may amount to an act of persecution.

(ii) Acts not enumerated elsewhere in the Statute

208. The following acts are not enumerated elsewhere in the Statute, nor do they rise to the same level of gravity as the other acts enumerated in Article 5 of the Statute.

a. Encouraging and promoting hatred on political etc. grounds

209. The Trial Chamber notes that the Indictment against Dario Kordic is the first indictment in the history of the International Tribunal to allege this act as a crime against humanity.[270] The Trial Chamber, however, finds that this act, as alleged in the Indictment, does not by itself constitute persecution as a crime against humanity. It is not enumerated as a crime elsewhere in the International Tribunal Statute, but most importantly, it does not rise to the same level of gravity as the other acts enumerated in Article 5.[271] Furthermore, the criminal prohibition of this act has not attained the status of customary international law.[272] Thus to convict the accused for such an act as is alleged as persecution would violate the principle of legality.

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[270] Indictment, Count 1 (Persecutions), paragraph 37(c).

[271] The Trial Chamber recognises that "direct and public incitement to genocide" is a crime under Article 4(3)(c) of the Statute, but the act alleged in the present case falls far below that crime.

[272] The criminal prosecution of speech acts falling short of incitement finds scant support in international case law. In the *Streicher* case, the International Military Tribunal convicted the accused of persecution because he "incited the German people to active persecution." The IMT found that his acts (publishing a virulently anti-Semitic journal) amounted to "incitement to murder and extermination". (*Streicher* Case, Nuremberg Judgement, pp. 302-304). Similarly in the *Akayesu* Trial Judgement (paras. 672-675), the ICTR found the accused guilty of direct and public incitement to commit genocide under Article 2(3)(c) of the Statute of the ICTR. Furthermore, the only speech act explicitly criminalised under the statutes of the International Military Tribunal, Control Council Law No. 10, the ICTY, ICTR and ICC Statute, is the direct and public incitement to commit genocide.

The sharp split over treaty law in this area is indicative that such speech may not be regarded as a crime under customary international law. The International Convention on the Elimination of All Forms of Racial Discrimination, for example, states that parties to the Convention "shall declare an offence punishable by law all dissemination of ideas based on racial superiority or hatred, and incitement to racial discrimination." Article 20 of the ICCPR (Prohibitions of Propaganda for War) provides that "(1) any propaganda for war shall be prohibited by law. (2) Any advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence shall be prohibited by law." Although initial drafts of Article 20 made incitement to racial hatred a crime, only the obligation to provide for a prohibition by law prevailed. This formulation does not require a prohibition by criminal law. *See* Manfred Nowak, United Nations Covenant on Civil and Political Rights (1993), at 361. A significant number of States have attached reservations or declarations of interpretations to these provisions.

The broad spectrum of legal approaches to the protection and prohibition of "encouraging, instigating and promoting hatred, distrust and strife on political, racial, ethnic or religious grounds, by propaganda, speeches or otherwise" also indicates that there is no international consensus on the criminalisation of this act that rises to the level of customary international law. Germany and the United States mark the opposite ends of this spectrum, although various other countries, including the former Yugoslavia, have provided for some form of regulation of hate speech. *See, e.g,* South Africa Constitution (1996), Art. 16(c) (excluding "advocacy of hatred that is based on race, ethnicity, gender and religion, and that constitutes incitement to cause harm"), Canadian Criminal Code, section 319(2) (prohibiting the communication of statements that wilfully promote hatred against any identifiable group distinguished by colour, race, religion or ethnic origin), and French Criminal Code, article 32 ("Those, who by publication by any of various means, provoke discrimination, hatred, or violence with regard to a person or a group of persons by reason of their origin or their membership or nonmembership in an ethnic group, nation, race, or particular religion, shall be punished by a term

b. Dismissing and removing Bosnian Muslims from government etc.

210. As with the above act, the Trial Chamber finds that this act, as alleged in the Amended Indictment,[273] does not constitute persecution as a crime against humanity because it does not rise to the same level of gravity as the other crimes against humanity enumerated in Article 5. The criminal prohibition of this act has not even reached the level of customary international law. As the National Military Tribunal noted in the *Einsatzgruppen* case

> We do not refer to localised outbursts of hatred nor petty discriminations which unfortunately occur in the most civilised of states. When persecutions reach the scale of nation-wide campaigns designed to make life intolerable for, or to exterminate large groups of people, law dare not remain silent.[274]

This act would have to amount to an extremely broad policy to fit within Nuremberg jurisprudence, in which economic discrimination generally rose to the level of legal decrees dismissing all Jews from employment and imposing enormous collective fines. As alleged, it does not.

2. *Mens Rea*

211. The parties do not dispute that the mental element of the crime of persecution consists of acting with discriminatory intent on the political, racial, and religious grounds provided in the Statute. This is consistent with the *Tadi}* Appeal Judgement finding that a discriminatory intent "is an indispensable legal ingredient of the offence only with regard to those crimes for which this is expressly required, that is, for Article 5(h), concerning various types of persecution."[275] The issue before the Trial Chamber is whether the accused must have had the specific intent to advance the persecutory policy and shared the discriminatory intent behind that policy, or whether a showing that the accused had the objective knowledge that his acts fit within the widespread or systematic attack on discriminatory grounds is sufficient. Defining the appropriate *mens rea* for the crime of persecution is a complex task. Generally, determining whether the accused possessed the requisite *mens rea* for other crimes against humanity involves a two-step process. The accused must first have had the requisite specific intent to commit the underlying act (such as murder, extermination or torture). Then, if that act is to entail additional, criminal, liability as a crime against humanity, the accused must also have had the requisite *mens rea* for crimes against humanity, which has been

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of imprisonment of one year and by a fine"). Article 133 of the Yugoslav Federal Criminal Code prohibited the publication of information that could "disrupt the brotherhood, unity and equality of nationalities." The German Criminal Code provides for the punishment of those who incite hatred, or invite violence or arbitrary acts against parts of the population, or insult, maliciously degrade, or defame part of the population, in a manner likely to disturb the public peace (*StGB*, § 130). The United States, in contrast, is exceptional in the extent of its free speech guarantees. Hate speech finds protection in the United States constitutional regime provided it does not rise to the level of "incitement", a very high threshold in American jurisprudence. *See* United States Constitution, 1st amendment.

[273] Indictment, Count 1 (persecutions), paragraph 37(e) (this act is charged against Dario Kordi} only).

[274] *Einsatzgruppen* case, NMT Vol. IV, p. 49.

defined as knowledge of the context of a widespread or systematic attack directed against a civilian population.

212. With regard to the crime of persecution, a particular intent is required, in addition to the specific intent (to commit the act and produce its consequences) and the general intent (objective knowledge of the context in which the accused acted). This intent – the discriminatory intent – is what sets the crime of persecution apart from other Article 5 crimes against humanity. As the Trial Chamber in *Blaškic* stressed, the crime of persecution "obtains its specificity" from its particular, discriminatory *mens rea*: "It is the specific intent to cause injury to a human being because he belongs to a particular community or group, rather than the means employed to achieve it, that bestows on it its individual nature and gravity…."[276] This discriminatory intent requirement for the crime of persecution is thus different from the more general level of intent required for the other crimes against humanity under Article 5, when mere "knowledge of the context" of a widespread or systematic attack against a civilian population is sufficient.[277]

213. The *Kupreškic* Trial Judgement also notes the elevated nature of the *mens rea* for persecution: "The *mens rea* requirement for persecution is higher than for ordinary crimes against humanity, although lower than for genocide."[278] Although the *Kupreškic* Trial Chamber observed that it is not necessary to demonstrate that an accused participated in the formulation of a discriminatory policy or practice by a governmental authority,[279] the Trial Chamber did maintain that "what matters is the intent to discriminate".[280]

214. The Prosecution and the Defence agree with the *Kupreškic* formulation of the intent requirement for persecution: the acts of the accused must have been "aimed at singling out and attacking certain individuals on discriminatory grounds", with the aim of "removal of those persons from the society in which they live alongside the perpetrators, or eventually even from humanity itself".[281]

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[275] *Tadi}* Appeal Judgement, para. 305.
[276] *Blaškic* Trial Judgement, para. 235 (emphasis added; footnote omitted).
[277] *Blaškic* Trial Judgement, para. 244. *See also* para. 260, explicitly excluding the specific *mens rea* for the crime of persecution from the other crimes against humanity, which "need not have been perpetrated with the deliberate intent to cause injury to a civilian population on the basis of specific characteristics".
[278] *Kupreškic* Trial Judgement, para. 636.
[279] *Kupreškic* Trial Judgement, para. 625, *citing Streicher*, IMT Judgement, p. 302 (as the publisher of an anti-Semitic Journal, Streicher "infected the German mind with the virus of anti-Semitism, and incited the German people to active persecution," although Streicher did so in no official capacity).
[280] *Kupreškic* Trial Judgement, para. 636 (emphasis added).
[281] *Kupreškic* Trial Judgement, para. 634 (emphasis added). Prosecution Final Brief, para. 200, and Kordic Final Brief, p. 502.

215. The Kordic Defence, however, stresses that the Prosecutor must prove the specific discriminatory intent of the individual accused. The Defence further asserts that the accused's criminal intent may not be imputed solely by demonstrating his membership in, or association with, an alleged criminal enterprise.[282] As the Secretary-General stated,

> The question arises … whether a juridical person, such as an association or organisation, may be considered criminal as such and thus its members, for that reason alone, be made subject to the jurisdiction of the International Tribunal. The Secretary-General believes that this concept should not be retained in regard to the International Tribunal. The criminal acts set out in this statute are carried out by natural persons; such persons would be subject to the jurisdiction of the International Tribunal irrespective of membership in groups.[283]

According to the Defence, the Prosecution's case is predicated on the assumption that, if this Trial Chamber finds that the Bosnian Croat institutions operated as "criminal" associations in Central Bosnia, and further finds that the accused (particularly Dario Kordic) was a prominent member of one or more of those organisations, the Prosecution may then be relieved from having to prove that Dario Kordic possessed the requisite discriminatory intent when committing the alleged acts of persecution.[284] As a result, the Defence proposes that the Trial Chamber adopt this formulation of the discriminatory *mens rea*: "a desire to deprive a defined group of its fundamental rights as laid down in international customary or treaty law so as to remove the persons in that group from the society in which they live or even from humanity itself."[285]

216. Although the Prosecution does concede that "discriminatory grounds constitute a more particular mental state standard than that required by other enumerated crimes against humanity in Article 5",[286] the Prosecution goes on to reject the notion that the requisite discriminatory *mens rea* for persecution amounts to a specific intent requirement. According to the Prosecution, it is sufficient that the accused had knowledge of the discriminatory grounds on which the widespread or systematic attack against a civilian population was launched. Such knowledge does not relate to the subjective motives of the perpetrator, but to his objective knowledge that such acts fit into a widespread or systematic attack against a civilian population based on political, racial or religious grounds.[287]

217. The Trial Chamber finds that an adoption of the Prosecution's formulation of the requisite *mens rea* would eviscerate the distinction between persecution and the other enumerated crimes against humanity. Such an approach also would dilute the gravity of persecution as a crime against

[282] Kordic Pre-trial Brief, Vol. II, para. 131; Kordic Final Brief, pp. 503-505.
[283] Report of the Secretary-General, para. 51.
[284] Kordic Final Brief, p. 504.
[285] Kordic Final Brief, p. 501.
[286] Prosecution Final Brief, Annex 5, para. 198.
[287] Prosecution Final Brief, Annex 5, para. 198.

humanity, making it difficult to reach principled decisions in sentencing. Given the fact that the *actus reus* of persecution overlaps with the *actus reus* of other Article 5 crimes, the sole distinction between the two lies in the *mens rea*. Yet despite acknowledging the more stringent intent requirement, the Prosecution essentially adopts the *mens rea* formulated by the International Tribunal for crimes against humanity in general ("the objective knowledge that such acts fit into a widespread or systematic attack against a civilian population"), simply tacking on the additional requirement that the accused had the objective knowledge that attack was "based on political, racial or religious grounds". This approach does not incorporate the requisite heightened *mens rea* that justifies the increased gravity of criminal liability for the crime of persecution. Rather, it simply requires that the accused have known one more thing.

218. In practice, it is hard to imagine a case where an accused somehow has the objective knowledge that his or her acts are committed in the context of a widespread or systematic attack against a civilian population, yet remains ignorant of the grounds (racial, religious or political) on which that attack has been launched. That would be tantamount to stating that the accused must have remained wholly ignorant of the racial, religious or political identity of the victim in order to escape the charge of persecution. In this manner, any distinction between persecutions and other crimes against humanity (or, for that matter, between persecutions and any other crime within the jurisdiction of this International Tribunal) collapses.

219. The expansion of *mens rea* is an easy but dangerous approach. The Trial Chamber must keep in mind that the jurisdiction of this International Tribunal extends only to "natural persons"[288] and only the crimes of those individuals may be prosecuted. Stretching notions of individual *mens rea* too thin may lead to the imposition of criminal liability on individuals for what is actually guilt by association, a result that is at odds with the driving principles behind the creation of this International Tribunal.

220. The Trial Chamber therefore finds that in order to possess the necessary heightened *mens rea* for the crime of persecution, the accused must have shared the aim of the discriminatory policy: "the removal of those persons from the society in which they live alongside the perpetrators, or eventually from humanity itself."[289]

[288] Statute, Art. 6.
[289] *Kupreškic* Trial Judgement, para. 634.

B. Wilful Killing and Murder

221. The Indictment charges Dario Kordi} and Mario ^erkez with killings under Article 2 of the Statute ("wilful killing", Counts 8 and 15 respectively), Article 3 of the Statute ("murder", Counts 9 and 16 respectively), and Article 5 of the Statute ("murder", Counts 7 and 14 respectively). The Trial Chamber will now consider the elements of these crimes.

1. Wilful Killing

(a) Arguments of the parties

222. The Prosecution emphasises at the outset that the specific elements of wilful killing under Article 2 are the same as those of murder under Articles 3 and 5, and therefore that the submissions will apply equally in respect of those crimes.[290]

223. In the Prosecution's submission, the crime of wilful killing comprises the following elements: (i) the death of the victim, (ii) that an act or omission of the accused was a substantial cause of the death, (iii) that the accused intended to kill or inflict serious injury in reckless disregard of human life.[291] The Prosecution submits that the requisite intent may be inferred from the circumstances, which include the foreseeability of death as a consequence of the accused's acts.[292]

224. The Kordi} Defence argues that the crime of wilful killing consists of the following four elements: (i) the death of the victim, (ii) the commission of an unlawful act by the accused that directly caused the death of the victim, (iii) the accused intended to commit the conduct causing the victim's death, and (iv) the accused intended to kill the victim (which includes a situation where the accused knows with virtual certainty that the death of the victim would result from his actions).[293]

225. In respect of the *mens rea,* the Defence contends that the term "wilful" implies a heightened requirement, such that the perpetrator must be shown to have had either direct intent (where a person intends the consequences of his actions) and knowledge (where a person knows that a specific outcome is virtually certain to result as a consequence of his actions).[294]

226. Thus, the Defence contests the Prosecution's submission that the requisite intent may be met where the perpetrator acted recklessly in disregard of the likelihood that the victim's death would

[290] Prosecution Final Brief, Annex 5, para. 22.
[291] Prosecution Final Brief, Annex 5, para. 23.
[292] Prosecution Final Brief, Annex 5, para. 26.
[293] Kordi} Pre-trial Brief, Vol. II, para. 33.
[294] Kordi} Pre-trial Brief, Vol. II, para. 36.

result.[295] Wilfulness, it is submitted, "entails embracing, not disregarding the prospect that the accused's action will result in the death of the victim."[296]

227. Moreover, the Defence submits that the Prosecution must establish that the accused intended to kill. It is not sufficient to show that the accused acted with the intent to cause severe bodily harm.[297]

228. The ^erkez Defence made no individual submissions as to the legal ingredients of this crime, but the Trial Chamber notes its joinder in the Kordi} Final Brief.[298]

(b) Discussion

229. The Trial Chamber in the *^elebi}i* case was the first to identify the ingredients of the offence of wilful killing in Article 2(a) of the Statute.[299] That finding was adopted by the Trial Chamber in the *Bla{ki}* case.[300] This Chamber can see no reason to depart from the findings of the *^elebi}i* and *Tadi}* Trial Chambers on this matter. Accordingly, the Chamber finds that, in relation to the crime of wilful killing, the *actus reus* – the physical act necessary for the offence – is the death of the victim as a result of the actions or omissions of the accused.[301] In this regard, the Chamber observes that the conduct of the accused must be a substantial cause of the death of the victim, who must have been a "protected person".[302] To satisfy the *mens rea* for wilful killing, it must be established that the accused had the intent to kill, or to inflict serious bodily injury in reckless disregard of human life.[303]

2. Murder (Article 3)

(a) Arguments of the parties

230. The Prosecution submits that the offence of murder includes the following elements:[304] (1) the occurrence of acts or omissions causing the death of victim; (2) the acts or omissions were committed wilfully; (3) the victims of the acts or omissions were taking no active part in the hostilities pursuant to Common Article 3 of the Geneva Conventions; (4) there was a nexus

[295] Kordi} Pre-trial Brief, Vol. II, para. 37.
[296] Kordi} Pre-trial Brief, Vol. II, para. 37.
[297] Kordi} Pre-trial Brief, Vol. II, para. 38.
[298] ^erkez Final Brief, p.4.
[299] *^elebi}i* Trial Judgement, paras. 420 – 439.
[300] *Bla{ki}* Trial Judgement, para. 153.
[301] *^elebi}i* Trial Judgement, para. 424, *Bla{ki}* Trial Judgement, para. 153.
[302] *^elebi}i* Trial Judgement, para. 424. In relation to the requirement that the victim was a protected person, *see* discussion earlier in this Judgement.
[303] *^elebi}i* Trial Judgement, para. 439.
[304] Prosecution Pre-trial Brief, pp. 46-47.

between the acts or omissions and an armed conflict; (5) the accused bears individual criminal responsibility for the destruction or devastation under Article 7(1) or 7(3).

231. The Kordi} Defence submits that "the elements of 'murder' under Article 3 should be the same as for 'wilful killing' under Article 2".[305]

232. The Prosecution Final Brief states that:

> The crime of murder, as charged in the Amended Indictment, contravenes a basic rule of international humanitarian law similar to the safeguards against wilful killing, as prohibited in each grave breach provision of the Geneva Conventions.[306]

233. Having repeated elements 1, 4, and 5 of this offence as listed in its Pre-trial Brief, the Prosecution further submits that "the underlying offence wilful killing under Article 2, and the crime of murder as provided for in Common Article 3 and Article 5 of the Statute, apart from their respective jurisdictional conditions, require the same *actus reus* and *mens rea*",[307] referring to a statement of the *^elebi}i* Trial Judgement that "[t]here can be no line drawn between 'wilful killing' and 'murder' which affects their content".[308]

(b) Discussion

Following the findings of the *^elebi}i* and *Bla{ki}* Trial Chambers,[309] the Trial Chamber finds that the elements of the offence of "murder" under Article 3 of the Statute are similar to those which define a "wilful killing" under Article 2 of the Statute, with the exception that under Article 3 of the Statute the offence need not have been directed against a "protected person" but against a person "taking no active part in the hostilities".[310]

3. Murder (Article 5)

(a) Arguments of the parties

234. The Prosecution agrees with the *Celebici* Trial Chamber that the *actus reus* of murder requires the death of a victim. The result of the acts or omission of the accused must be a "substantial cause" of the death of the victim.[311] The Prosecution submits that the *mens rea* for murder under Article 5 should be interpreted to cover acts whereby the accused intended to kill or

[305] Kordi} Pre-trial Brief, para. 74.
[306] Prosecution Final Brief, para. 94.
[307] Prosecution Final Brief, para. 120.
[308] Prosecution Final Brief, para. 120. *See also ^elebi}i* Trial Judgement, para. 422.
[309] *^elebi}i* Trial Judgement, paras. 422 and 437-439, *Bla{ki}* Trial Judgement, para. 181.
[310] *See* Common Article 3 of the Geneva Conventions, and discussion of Article 3 of the Statute in this Judgement.

inflict serious injury in reckless disregard for human life, or when an accused willingly took the risk that such death could occur.[312] The Defence argues that an omission may not constitute the *actus reus* for murder, and the accused's act must have "directly" caused the death of the victim.[313]

(b) Discussion

235. Although there has been some controversy in the International Tribunal's jurisprudence as to the meaning to be attached to the discrepancy between the use of the word "murder" in the English text of the Statute and the use of the word "*assassinat*" in the French text, it is now settled that premeditation is not required.[314] Most recently, the *Bla{ki}* Trial Chamber held that "it is murder ("*meurtre*") and not premeditated murder ("*assassinat*") which must be the underlying offence of a crime against humanity."[315]

236. The constituent elements of a murder do not appear to be controversial.[316] In order for an accused to be found guilty of murder, the following elements need to be proved:

- the death of the victim;
- that the death resulted from an act or omission of the accused or his subordinate;
- that the accused or his subordinate intended to kill the victim, or to cause grievous bodily harm or inflict serious injury in the reasonable knowledge that the attack was likely to result in death.[317]

These elements are similar to those required in connection to wilful killing under Article 2 and murder under Article 3 of the Statute, with the exception that in order to be characterised as a crime

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[311] Prosecution Final Brief, para. 195, citing *Celebici* Trial Judgement, para. 424.
[312] Prosecution Final Brief, para. 195.
[313] Kordic Pre-trial Brief, p. 10.
[314] *See* in the ICTR jurisprudence, *Akayesu* Trial Judgement, paras. 587-589; *Kayishema/Ruzindana* Trial Judgement, paras. 137-138; *Prosecutor v. Georges Anderson Nderubumwe Rutaganda*, Case No. ICTR-96-3, Judgement, 6 Dec. 1999, para. 79; *Prosecutor v. Alfred Musema*, Case No. ICTR-96-13, Judgement, 27 Jan. 2000, para. 244. In the ICTY jurisprudence, *Prosecutor v. Goran Jelisi}*, Case No. IT-95-10-T, Judgement, 14 Dec. 1999 ("*Jelisi}* Trial Judgement"), para. 51; *Bla{ki}* Trial Judgement, para. 216. Although the *Kupre{ki}* Trial Judgement defined murder as an "intentional and premeditated killing", it did not refer to the latter element in its factual findings, para. 818.
[315] *Bla{ki}* Trial Judgement, para. 216.
[316] The *Kupre{ki}* and *Bla{ki}* Trial Judgements both refer to the International Law Commission's view that "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." *Kupre{ki}* Trial Judgement, para. 560, and *Bla{ki}* Trial Judgement, para. 217.
[317] *Kupre{ki}* Trial Judgement, paras. 560-561; *Bla{ki}* Trial Judgement, para. 217; *Akayesu* Trial Judgement, para. 589.

against humanity a "murder" must have been committed as part of a widespread or systematic attack against a civilian population.[318]

C. Offences of Mistreatment

237. Dario Kordi} and Mario ^erkez are alleged to have caused injuries to Bosnian Muslims in a series of towns and villages listed in the Indictment. These acts are charged under Article 2 of the Statute (as "wilfully causing great suffering or serious injury to body or health" in Count 11 in respect of Dario Kordi}, and Count 18 in respect of Mario ^erkez, and as "inhuman treatment" in Count 12 in respect of Dario Kordi}, and Count 19 in respect of Mario ^erkez), Article 3 of the Statute (as "violence to life and persons" in Count 13 in relation to Dario Kordi}, and Count 20 in relation to Mario ^erkez), and finally under Article 5 (as "inhumane acts" in Count 10 in respect of Dario Kordi}, and Count 17 in respect of Mario ^erkez).[319] Dario Kordi} and Mario ^erkez are further alleged to have participated in the inhuman and/or cruel treatment of detainees, charged under Article 2 of the Statute as "inhuman treatment" (in Counts 23 and 31 respectively), and under Article 3 of the Statute as "cruel treatment" (in Counts 24 and 32 respectively).[320] Dario Kordi} and Mario ^erkez are finally alleged to have participated in the use of Bosnian Muslims as human shields, which is charged under Article 2 of the Statute as "inhuman treatment" (in Counts 27 and 35 respectively), and under Article 3 of the Statute as "cruel treatment" (in Counts 28 and 36 respectively).[321] The Trial Chamber now turns to a consideration of the elements of these offences.

1. Wilfully Causing Great Suffering or Serious Injury to Body or Health (Article 2)

(a) Arguments of the parties

238. The Prosecution submits that, in order to establish the crime of wilfully causing great suffering or serious injury to body or health, it must prove "the wilful occurrence of acts or omissions which cause either (a) great suffering; or (b) serious injury to body or health, including mental health".[322] The *mens rea* requirement is satisfied, it is argued, when the act is deliberate; there is no additional requirement that the act be undertaken with specific intent or prohibited purpose.[323]

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[318] ^*elebi}i* Trial Judgement, para. 439. As regards the common requirements for the application of Article 5 of the Statute, *see* discussion above.
[319] Indictment, paras. 42-43.
[320] Indictment, paras. 44-45 and 50-51.
[321] Indictment, paras. 49 and 54.
[322] Prosecution Final Brief, Annex 5, para. 37.
[323] Prosecution Final Brief, Annex 5, para. 39.

239. The Prosecution concurs with the finding of the Trial Chamber in the *^elebi}i* case that the crime of wilfully causing great suffering encompasses more than just physical suffering and may extend to include moral suffering.[324] The Prosecution further submits that the requirement that the injury be serious means that it need only rise beyond the level of being "not slight or negligible".[325]

240. The Kordi} Defence submits that, like the crime of inhuman treatment, the crime of wilfully causing great suffering is extremely difficult to define,[326] but to the extent it is susceptible to definition, it is submitted, it comprises the following elements: (i) the victim experienced serious injury to body or health; (ii) the accused committed an unlawful act that directly caused the victim to experience serious injury; (iii) the accused intended to commit the conduct that caused the victim to experience the serious injury, and intended for the victim to experience serious injury; and (iv) justification was lacking.[327]

241. The Kordi} Defence submits that the term "great suffering" should be interpreted to require a showing of verifiable incapacity. Moreover, it is argued, the *mens rea* requirement is not satisfied by a showing of recklesness; the accused must have intended, through his deliberate acts, to cause great suffering or serious injury.[328] Finally, the Defence contends that it must be for the Prosecution to establish that the actions that inflicted great suffering or serious injury were not necessary.[329]

242. The ^erkez Defence submits that the existence of a serious injury for the purpose of this crime may not be proved in the absence of medical documentation, or at least a detailed description of the injuries by the wounded person.[330]

(b) Discussion

243. This crime, set forth in Article 2(c) of the Statute, is one of a group of crimes falling under the general heading of inhuman treatment. The ICRC Commentary to Geneva Convention IV provides the following discussion in relation to this crime:

> *Wilfully causing great suffering:* - This refers to suffering inflicted without the ends in view for which torture is inflicted or biological experiments carried out. It would therefore be inflicted as a punishment, in revenge or for some other motive, perhaps out of pure sadism. In view of the fact that suffering in this case does not seem, to judge by the phrase which follows, to imply injury to body or health, it may be wondered if this is not a special offence not dealt with by national

[324] Prosecution Final Brief, Annex 5, para. 40.
[325] Prosecution Final Brief, Annex 5, para. 41.
[326] Kordi} Pre-trial Brief, Vol. II, para. 49.
[327] Kordi} Pre-trial Brief, Vol. II, para. 50.
[328] Kordi} Pre-trial Brief, Vol. II, paras. 51 and 52.
[329] Kordi} Pre-trial Brief, Vol. II, para. 53.
[330] ^erkez Final Brief, p. 49.

> legislation. Since the Conventions do not specify that only physical suffering is meant, it can quite legitimately be held to cover moral suffering also.
>
> *Serious injury to body or health:*- This is a concept quite normally encountered in penal codes, which usually use as a criterion of seriousness the length of time the victim is incapacitated for work.[331]

244. In interpreting this Commentary, the Chamber agrees with the findings of the Trial Chamber in ^*elebi}i*, which held, *inter alia,* that the scope of this crime encompasses mental, in addition to physical suffering. Moreover, the ^*elebi}i* Trial Chamber held that the terms "great" and "serious", which qualify the terms "suffering" and "injury", respectively, merely require a finding that a particular act of mistreatment, in order to fall within the ambit of this crime, must occasion suffering or injury of the requisite level of seriousness.[332]

245. Accordingly, the Trial Chamber finds that the crime of wilfully causing great suffering or serious injury to body or health constitutes an intentional act or omission which causes serious mental or physical suffering or injury, provided the requisite level of suffering or injury can be proven. This crime is distinguished from that of inhuman treatment in that it requires a showing of serious mental or physical injury. Thus, acts where the resultant harm relates solely to an individual's human dignity are not included within this offence. Provided the acts of causing injuries alleged in the Indictment meet the requirements set forth by the Trial Chamber, they may be characterised as the crime of wilfully causing great suffering. As with all offences charged under Article 2 of the Statute, there is a further requirement that the acts must have been directed against a "protected person".

2. Inhuman Treatment (Article 2)

(a) Arguments of the parties

246. The Prosecution submits that the specific elements of the crime of inhuman treatment are (i) the infliction of serious mental or physical suffering or injury, or a serious attack on human dignity, and (ii) the accused must have intended unlawfully to inflict such suffering or to attack human dignity.[333]

247. The Prosecution argues that the scope of this crime was correctly established in the ^*elebi}i* Judgement; in this regard, a victim need not suffer physical injury or injury to health for an act to

[331] ICRC Commentary (GC IV), p. 599.
[332] ^*elebi}i* Trial Judgement, para. 510.
[333] Prosecution Final Brief, Annex 5, para. 28.

qualify as inhuman treatment under the Geneva Conventions.[334] The crime, it is argued, extends to encompass inadequate living conditions for detainees.[335]

248. The Prosecution concurs with the statement in both the ^*elebi}i* and *Bla{ki}* Trial Judgements that "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."[336]

249. As to the *mens rea* element, the Prosecution submits that this is satisfied where the act was committed intentionally. There is no additional requirement, it is argued, that the acts or omission were committed with the specific intent to cause suffering or attack human dignity.[337]

250. The Kordi} Defence agrees with the ^*elebi}i* Trial Chamber finding that "inhuman treatment" under Article 2 of the Statute, "cruel treatment" under Article 3 of the Statute and "inhuman acts" under Article 5 of the Statute are all the same offence.[338] The Defence, however, submits that none of these crimes have been sufficiently defined under international law so as to warrant prosecution without violating the principle of legality.[339]

251. The Kordi} Defence observes that the European Court was the only body to have formulated a definition of the offence of inhuman treatment at the time the crimes alleged in the Indictment were committed. In its submission, that definition comprises three elements: (i) the occurrence of acts causing an intense and severe suffering, physical or mental, (ii) the intent to commit the act that caused intense and severe suffering, and the intent to cause such suffering, and (iii) the lack of any justification.[340] It is the Defence submission that even under this definition, the principle of legality is violated.[341] Relying upon the finding of the Trial Chamber in the *Tadi}* case, the Defence submits that, while the suffering associated with the crime of inhuman treatment may be physical or mental, the action that causes the suffering must have a serious physical component.[342]

252. The Kordi} Defence rejects the definition of the crime of inhuman treatment set forth in the ^*elebi}i* Trial Judgement for the reason that it is far too vague to provide notice, even when applied prospectively, of the acts encompassed.[343]

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[334] Prosecution Final Brief, Annex 5, para. 29.
[335] Prosecution Final Brief, Annex 5, para. 33.
[336] Prosecution Final Brief, Annex 5, para. 35.
[337] Prosecution Final Brief, Annex 5, para. 36.
[338] Kordi} Pre-trial Brief, Vol. II, para. 39.
[339] Kordi} Pre-trial Brief, Vol. II, paras. 39-40.
[340] Kordi} Pre-trial Brief, Vol. II, para. 41.
[341] Kordi} Pre-trial Brief, Vol. II, para. 45.
[342] Kordi} Pre-trial Brief, Vol. II, para. 43.
[343] Kordi} Pre-trial Brief, Vol. II, para. 46.

253. In relation to the *mens rea* element, the Kordi} Defence contends that the perpetrator must have acted, not only deliberately, but with the intent to cause serious injury.[344] The Defence submits that the crime may only be established where the treatment lacked any justification; in support of this position, it cites a case where the European Commission held that certain conditions of detention, including isolation, constant artificial lighting and lack of physical exercise, did not constitute inhuman treatment where these conditions were shown to be related to ensuring security and preventing escape.[345]

254. The ^erkez Defence observes that Article 27 of Geneva Convention IV states that while protected persons have the right to have their religious customs, honour and family rights protected (and, to be protected from acts of violence or threats) a party to the conflict may undertake measures of control and security in respect of protected persons which are necessary as a result of war.[346]

255. In the submission of the ^erkez Defence, the crime of inhuman treatment comprises the following elements: (i) premeditation, (ii) long duration, (iii) intensive physical and psychological suffering and acute psychiatric disturbances.[347]

(b) Discussion

256. The elements of the crime of inhuman treatment in Article 2(b) of the Statute were extensively discussed by the Trial Chamber in the *^elebi}i* case. This Chamber is persuaded by its reasoning and adopts the *^elebi}i* Trial Chamber's findings in that respect. Consequently, this Chamber holds that "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."[348] As with all offences charged under Article 2 of the Statute, the act must have been directed against a "protected person". The Trial Chamber is of the view that the acts alleged in the Indictment (injuries, inhuman treatment of detainees, and use of persons as human shields) may be characterised as "inhuman treatment" under Article 2 of the Statute provided the above-mentioned required elements are proven.

[344] Kordi} Pre-trial Brief, Vol. II, para. 47.
[345] Kordi} Pre-trial Brief, Vol. II, para. 48.
[346] ^erkez Final Brief, p. 109.
[347] ^erkez Final Brief, p. 109.
[348] *^elebi}i* Trial Judgement, para. 543.

3. Violence to Life and Person (Article 3)

(a) Arguments of the parties

257. The Prosecution identifies the elements of this offence as follows:[349] (1) the occurrence of acts or omissions causing death or serious mental or physical suffering or injury; (2) the acts or omissions were committed wilfully; (3) the victims of the acts or omissions were persons taking no active part in hostilities pursuant to Common Article 3 of the Geneva Conventions; (4) there was a nexus between the acts or omissions and an armed conflict; (5) the accused bears individual criminal responsibility for the acts or omissions under Article 7(1) or 7(3) of the Statute.

258. In respect of this offence, the Kordi} Defence submits that[350]

> the offense of violence to life and person should be considered the same underlying offense as "wilfully causing great suffering or serious injury to body or health" under Article 2.

259. The Prosecution Final Brief submits that "[t]he offence of violence to life and person covers a panoply of criminal conduct that includes murder".[351]

(b) Discussion

260. The Trial Chamber notes that this offence is to be found in Common Article 3(1)(a) of the Geneva Conventions. Although this provision was originally designed to apply in armed conflicts "not of an international character", it is now accepted that the fundamental character of the prohibitions it contains renders it applicable to both internal and international conflicts.[352] The Trial Chamber agrees with the *Bla{ki}* Trial Chamber that the offence of "violence to life and person" is

> a broad offence, which … 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) *(sic)* of the Statute. … 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. [353]

With respect to the specific act of causing injuries alleged in the Indictment, the Trial Chamber is of the view that, where the act did not result in the death of the victim, it may be better characterised as "wilfully causing great suffering" or "inhuman treatment" under Article 2 of the Statute.

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[349] Prosecution Pre-trial Brief, pp. 47-48.
[350] Kordi} Pre-trial Brief, Vol. II, para. 74.
[351] Prosecution Final Brief, Annex 5, para. 95. *Also*, para. 123.
[352] *Tadi}* Jurisdiction Decision, para. 129, *^elebi}i* Appeal Judgement, paras. 140-50.
[353] *Bla{ki}* Trial Judgement, para. 182. The Trial Chamber notes that the parties in the instant case have reached the same conclusion regarding the mental element.

4. Cruel Treatment (Article 3)

(a) Arguments of the parties

261. The Prosecution identifies the elements of this offence as follows:[354] (1) the occurrence of acts or omissions causing serious mental or physical suffering or injury or constituting a serious attack on human dignity; (2) the acts or omissions were committed wilfully; (3) the victims of the acts or omissions were persons taking no active part in hostilities pursuant to Article 3 Common to the Geneva Conventions; (4) there was a nexus between the acts or omissions and an armed conflict; (5) the accused bears individual criminal responsibility for the acts or omissions under Article 7(1) or 7(3) of the Statute.

262. In respect of this offence, the Kordi} Defence "agrees with the ^*elebi}i* Trial Chamber that cruel treatment under Article 3 is the same offense as inhuman treatment under Article 2".[355]

263. The Prosecution Final Brief submits that

> … the elements of the offense of cruel treatment are constituted by an accused's participation in: (a) an intentional act or omission that, judged objectively, is deliberate and not accidental; and (b) that causes serious mental or physical suffering or injury or constitutes a serious attack on human dignity.[356]

264. The Prosecution also suggests that "the *mens rea* of cruel treatment is similar to the *mens rea* for the offenses of inhuman treatment under Article 2 and outrages upon personal dignity under Common Article 3".[357] Considering that, in the existing case-law of the International Tribunal, this offence is considered to include acts of severe beatings, sexual mutilations, inflicting burns, forced eating of grass, contribution to an atmosphere of terror, and the use of human shields, the Prosecution "notes that the elements of cruel treatment under Common Article 3 carries the equivalent meaning and performs the same residual function as the offense of inhuman treatment under Article 2 of the Statute".[358]

(b) Discussion

265. As the offence of "violence to life and person", the offence of "cruel treatment" is prohibited in Common Article 3 of the Geneva Conventions. The ^*elebi}i* Trial Chamber found that

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[354] Prosecution Pre-trial Brief, pp. 47-48.
[355] Kordi} Pre-trial Brief, para. 74. In the context of the submissions, Articles 2 and 3 are those of the Statute.
[356] Prosecution Final Brief, para. 124.
[357] Prosecution Final Brief, para. 125.
[358] Prosecution Final Brief, para. 128. See also para. 127.

> cruel treatment constitutes an intentional act or omission, that is an act which, judged objectively, is deliberate and not accidental, which causes serious mental or physical suffering or injury or constitutes a serious attack on human dignity.[359]

The ^*elebi}i* Trial Chamber went on to conclude that "cruel treatment" is "equivalent to the offence of inhuman treatment in the framework of the grave breaches provisions of the Geneva Conventions."[360] The Trial Chamber sees no reason to depart from these findings.

5. Inhumane Acts (Article 5)

(a) Arguments of the parties

266. The Prosecution submits that the specific elements of the crime of inhumane acts are identical to the elements of the Article 2 crime of inhumane treatment: (a) the infliction of serious mental or physical suffering or injury, or a serious attack on human dignity; and (b) the accused must have intended unlawfully to inflict such suffering or to attack human dignity.[361] The Prosecution further contends that there is no additional requirement that these acts or omissions be committed with the specific intent to cause suffering or attack human dignity. The *mens rea* element is fulfilled as long as the act "judged objectively, is deliberate and not accidental".[362]

267. With respect to the *actus reus* for inhumane acts, the Kordic Defence submits that the acts must have caused intense and severe mental or physical suffering, and that under the circumstances, the acts were unjustifiable.[363] As for the *mens rea*, the Defence asserts that the acts must have been committed with a specific intent to take part in the furtherance of formal government policy or plan and with discriminatory intent.[364]

268. The Cerkez Defence submits that inhumane treatment is defined as action of violent behaviour, but not as violent as torture. Relevant factors in determining inhuman treatment are premeditation, long duration, intensive physical and psychological suffering and acute psychiatric disturbances.[365]

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[359] *Celebici* Trial Judgement, para. 552.
[360] *Celebici* Trial Judgement, paras. 551 and 552. The ^*elebi}i* Trial Chamber noted the observation of the *Tadi}* Trial Chamber that "cruel treatment is treatment that is inhuman"; *Celebici* Trial Judgement, para. 550.
[361] Prosecution Final Brief, Annex 5, para. 212.
[362] Prosecution Final Brief, Annex 5, para. 212, citing *Celebici* Trial Judgement, para. 543, and *Blaškic* Trial Judgement, paras. 154-155.
[363] Kordic Pre-trial Brief, Vol. III, p. 11.
[364] Kordic Pre-trial Brief, Vol. III, p. 11.
[365] Cerkez Final Brief, p. 109.

(b) Discussion

269. It is not controversial that the category "other inhumane acts" provided for in Article 5 is a residual category, which encompasses acts not specifically enumerated.[366] Trial Chambers have considered the threshold to be reached by these other acts in order to be incorporated in this category, reaching similar conclusions as to the serious nature of these acts. The *Tadi}* Trial Chamber found that "inhumane acts" are acts "similar in gravity to those listed in the preceding subparagraphs".[367] In the words of the *Kupre{ki}* Trial Chamber, in order to be characterised as inhumane, acts "must be carried out in a systematic manner and on a large scale. In other words, they must be as serious as the other classes of crimes provided for in the other provisions of Article 5."[368] The *Tadi}* Trial Chamber, in relation to the requisite nature of "other inhumane acts", held that they "must in fact cause injury to a human being in terms of physical or mental integrity, health or human dignity."[369]

270. Acts such as "mutilation and other types of severe bodily harm", "beatings and other acts of violence",[370] and "serious physical and mental injury"[371] have been considered as constituting inhumane acts. The Trial Chamber in *Kupre{ki}* took a broader approach of which acts may fall into the category of other inhumane acts in concluding that acts such as the forcible transfer of groups of civilians, enforced prostitution, and the enforced disappearance of persons, may be regarded as "other inhumane acts".[372]

271. Within the context of the discussion of "other inhumane acts", the *Bla{ki}* Trial Chamber defined the elements of serious bodily or mental harm thus:

- 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.[373]

[366] *Kupre{ki}* Trial Judgement, para. 563; *Bla{ki}* Trial Judgement, para. 237.
[367] *Tadi}* Trial Judgement, para. 729.
[368] *Kupre{ki}* Trial Judgement, para. 566.
[369] *Tadi}* Trial Judgement, para. 729.
[370] *Tadi}* Trial Judgement, para. 730.
[371] *Bla{ki}* Trial Judgement, para. 239.
[372] *Kupre{ki}* Trial Judgement, para. 566. Contrary to the *Tadi}* Appeals Chamber's finding, the Trial Chamber appears to have included a requirement that some of the acts that may be characterised as "inhumane acts" be performed with a discriminatory intent.
[373] *Bla{ki}* Trial Judgement, para. 243.

In addition, as discussed in relation to the requirements for the application of Article 5 of the Statute, the acts must have been committed as part of a widespread or systematic attack against a civilian population.

272. The Trial Chamber finds that where the act alleged in the Indictment to have caused injuries meets the requirements set out in the preceding paragraph, they may be characterised as "inhumane acts" for the purposes of Article 5 of the Statute.

D. Unlawful Confinement of Civilians and Imprisonment

273. Dario Kordi} and Mario ^erkez are alleged to have participated in the illegal detention of Bosnian Muslims. These acts are charged under Article 2 (as "unlawful confinement" in Counts 22 and 30 respectively), and Article 5 of the Statute (as "imprisonment" in Counts 21 and 29 respectively).[374] This section will determine the legal ingredients of these offences.

1. Unlawful Confinement (Article 2)

(a) Arguments of the Parties

274. According to the Prosecution, in order to constitute the crime of unlawful confinement of a civilian under Article 2 of the Statute, it must be proved that: (a) the victim was a civilian; and either (b) the initial confinement was not legal; or (c) the continuing confinement was not legal because the requisite procedural safeguards were violated.[375]

275. In relation to (b), the Prosecution argues that while the confinement of civilians is permitted in certain limited situations – and only as a measure of last resort - where the person is definitely suspected of or engaged in activities hostile to the security of a State, these situations remain the exception and, consequently, do not apply to an individual's political attitude towards the State.[376] Moreover, although the determination of the security of the State, a threat to which justifies internment or assigned residence, is left to the authorities of the State itself, it must nevertheless be made on a case-by-case basis[377] and the exceptional measure of confinement can never be taken on a collective basis.[378]

276. In respect of (c), the Prosecution states that even if the initial confinement of civilians is justifiable under the exceptions discussed above, the detainee must still be granted some basic

[374] Indictment, paras. 44-46 and 50-51.
[375] Prosecution Final Brief, Annex 5, para. 51.
[376] Prosecution Final Brief, Annex 5, paras. 56-58.
[377] Prosecution Final Brief, Annex 5, para. 59.
[378] Prosecution Final Brief, Annex 5, para. 59.

procedural rights. Any failure to implement these procedural safeguards can render an otherwise lawful confinement unlawful.[379] The procedural safeguards are those provided in Articles 43 and 78 of Geneva Convention IV, that is to say the detainee's right to have his detention reconsidered as soon as possible by an appropriate court or an administrative board.[380] Furthermore, in addition to the review of the legality of confinement under international humanitarian law, the detainee is also entitled to a periodic review of the detention, bearing in mind that "no civilian should be kept in … an internment camp for a longer time than the security of the detaining party absolutely demands"[381] and that, upon confinement or/and release, his or her identity should be given by the detaining party to the Protecting Power .[382]

277. In its Pre-trial Brief, the Kordic Defence submitted the following as constituting the elements of the offence under Article 2(g): (1) the occurrence of acts directly causing civilian/s to be unlawfully confined; (2) the acts were committed intentionally, that is, with intent to commit the act and intent to cause the victims to be unlawfully confined; (3) the victims of the acts were protected persons under Geneva Convention IV; (4) the acts occurred during an international armed conflict, and there was a nexus between the act and the conflict; (5) the accused bears individual criminal responsibility for the acts under Article 7(1) or 7(3) of the Statute.[383]

278. The ^erkez Defence argues that the internment of civilians in wartime may be necessary and justified in order to safeguard the civilian population living in a combat zone, as well as to safeguard the party's own troops and prevent espionage and sabotage operations.[384] The Defence cited the United States Supreme Court cases of *Korematsu v. United States*[385] and *Hirabayashi v. United States*[386] for this proposition. In both cases, the claims of the plaintiff – U.S. nationals of Japanese origin - were rejected on the basis that the measures in question did not constitute a violation of their constitutional rights or a discrimination against them. The measures constituted, rather, temporary measures justified by safety considerations. The Defence further notes that these two cases involved the internment of Japanese-American civilians in the United States far from any combat activities, whereas "the temporary and short" internment of Bosnian Muslims was not

[379] Prosecution Final Brief, Annex 5, para. 60.
[380] Prosecution Final Brief, Annex 5, para. 61.
[381] Prosecution Final Brief, Annex 5, para. 62 citing Geneva Convention IV, Art. 43.
[382] Prosecution Final Brief, Annex 5, paras. 62-63.
[383] Kordi} Pre-trial Brief, Attachment A, p. 3.
[384] ^erkez Final Brief, pp. 105-108.
[385] *Korematsu v. United States*, 323 U.S. 214 (1944): order of U.S. military commander to remove from the West Coast military zone U.S. citizens of Japanese origin and accommodate/intern them in "assembly centres" located outside the military zone, for the purpose of successful conduct of war and protection against espionage and sabotage of national defence material, premises and defence utilities.
[386] *Hirabayashi v. United States*, 320 U.S. 81 (1943): order of the U.S. military commander of the West Coast imposing a curfew as a safety measure against the threat of possible sabotage or espionage that would significantly affect the military efforts, which threat might be reasonably expected as an assistance to the possible enemy invasion.

motivated by national discrimination but, as in the cases cited above, was similarly justified by safety considerations, to protect against espionage and sabotage, as well as for the detainees' protection. The Defence concludes that if the internment of Japanese-Americans does not constitute a violation of human rights, then the internment of Bosnian Muslims from the zone of actual war operations should legally be viewed likewise.[387]

(b) Discussion

279. The offence of unlawful confinement is punishable under Article 2(g) of the Statute as a grave breach of the Geneva Conventions. Two questions arise in considering the elements of this offence. Firstly, whether the initial confinement was lawful. Secondly, regardless of the legality of the initial confinement, whether the confined persons had access to the procedural safeguards regulating their confinement.

(i) Legality of the Initial Confinement

280. In order to assess the legality of the initial confinement, the Trial Chamber must evaluate its conformity with international humanitarian law. Although, as a rule, civilians are entitled to the rights and privileges set forth in Geneva Convention IV, there are instances in an armed conflict whereby certain of those rights may be temporarily restricted or suspended.[388] Accordingly, Article 5 of Geneva Convention IV provides:

> Where in the territory of a Party to the conflict, the latter is satisfied that an individual protected person is definitely suspected of or engaged in activities hostile to the security of the State, such individual person shall not be entitled to claim such rights and privileges under the present Convention as would, if exercised in the favour of such individual person, be prejudicial to the security of such State.
> […]
> In each case, such persons shall nevertheless be treated with humanity and, in case of trial, shall not be deprived of the rights of fair and regular trial prescribed by the present Convention. They shall also be granted the full rights and privileges of a protected person under the present Convention at the earliest date consistent with the security of the State or Occupying Power, as the case may be.

Although the language of this provision may suggest a broad application of Article 5 to a variety of situations, the Chamber observes nevertheless that "activities hostile to the security of the State", are above all espionage, sabotage and intelligence with the enemy Government or enemy nationals and exclude, for example, a civilian's political attitude towards the State.[389] As stated in the ^*elebi}i* Trial Judgement:

[387] ^erkez Final Brief, pp. 107-108.
[388] ICRC Commentary (GC IV), p. 202.
[389] ICRC Commentary (GC IV), p. 56.

> While there is no requirement that the particular activity in question must be judged as criminal under national law before a State can derogate from the rights of protected civilians under Article 5, it is almost certain that the condemned activity will in most cases be the subject of criminal punishment under national law. However, the instances of such action that might be deemed prejudicial or hostile to State security must be judged as such under international law, both for cases arising in occupied and unoccupied territory.[390]

281. Paragraph 4 of Article 27 of Geneva Convention IV contains a reservation permitting a party to restrict certain rights arising under this Convention:

> [...] the Parties to the conflict may take such measures of control and security in regard to protected persons as may be necessary as a result of the war.

However, the treatment of protected persons must in all circumstances meet the standards set forth in paragraphs 1, 2 and 3 of Article 27:

> Protected persons are entitled, in all circumstances, to respect for their persons, their honour, their family rights, their religious convictions and practices, and their manners and customs. They shall at all times be humanely treated, and shall be protected especially against all acts of violence or threats thereof and against insults and public curiosity.
>
> Women shall be especially protected against any attack on their honour, in particular against rape, enforced prostitution, or any form of indecent assault.
>
> Without prejudice to the provisions relating to their state of health, age and sex, all protected persons shall be treated with the same consideration by the Party to the conflict in whose power they are, without any adverse distinction based, in particular, on race, religion or political opinion.

Thus, paragraph 1 of Article 27 lays down the general principles of respect for fundamental rights - including the respect for personal liberty - and humane treatment.[391] Paragraph 2 focuses on the treatment of women, while paragraph 3 pertains to the equality of treatment and non-discrimination.

282. In sum, the reservation in paragraph 4 leaves a wide margin of discretion to the belligerents with regard to the choice of measures, which can range from imposing a duty to register to the internment of civilians.[392] However, what is fundamental is that, even if these measures of constraint are justified and made absolutely necessary based on the requirements of State security, the fundamental rights of the persons must be respected.[393]

283. Articles 41,[394] 42 and 43 of Geneva Convention IV specify the circumstances under which a party may resort to internment. Article 41 provides:

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[390] ^*elebi}i* Trial Judgement, para. 568 (footnotes omitted).
[391] ICRC Commentary (GC IV), pp. 201-202.
[392] ICRC Commentary (GC IV), p. 207.
[393] ICRC Commentary (GC IV), p. 207; ^*elebi}i* Trial Judgement, para. 570.
[394] Article 78 of Geneva Convention IV sets up a rule similar to Article 41 in situations of occupation:

> Should the Power in whose hands protected persons may be consider the measures of control mentioned in the present Convention to be inadequate, it may not have recourse to any other measure of control more severe than that of assigned residence or internment, in accordance with the provisions of Articles 42 and 43.
> …

Assigned residence consists of moving people from their domicile and forcing them to live, as long as the circumstances justifying such action continue to exist, in a locality which is generally out of the way and where supervision is more easily exercised.[395] Internment is the most severe form of assigned residence, since internees are detained, not just outside their normal place of residence, but in a camp with other detainees.[396] Article 41 thus specifies that the internment of civilians is the most severe measure of control permitted under Article 27, paragraph 4, of the Convention. However, such extreme measures are subject to strict conditions, primarily set out in Articles 42 and 43 of Geneva Convention IV.

284. Article 42 of Geneva Convention IV provides:

> The internment or placing in assigned residence of protected persons may be ordered only if the security of the Detaining Power makes it absolutely necessary.
>
> If any person, acting through the representatives of the Protecting Power, voluntarily demands internment, and if his situation renders this step necessary, he shall be interned by the Power in whose hands he may be.

If internment is permitted only in cases of absolute necessity, it is, to a large extent, up to the Party exercising this right to determine the activities that are prejudicial to the external or internal security of the State. However, if activities threatening the security of the State, such as subversive

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> If the Occupying Power considers it necessary, for imperative reasons of security, to take safety measures concerning protected persons, it may, at the most, subject them to assigned residence or to internment.
>
> Decisions regarding such assigned residence or internment shall be made according to a regular procedure to be prescribed by the Occupying Power in accordance with the provisions of the present Convention. This procedure shall include the right of appeal for the parties concerned. Appeals shall be decided with the least possible delay. In the event of the decision being upheld, it shall be subject to periodical review, if possible every six months, by a competent body set up by the said Power.
>
> Protected persons made subject to assigned residence and thus required to leave their homes shall enjoy the full benefit of Article 39 of the present Convention.

In occupied territories the internment of protected persons should be even more exceptional than it is inside the territory of the Parties to the conflict; for in the former case the question of nationality does not arise. There can be no question of taking collective measures: each case must be decided separately. Unlike Articles 41 and 42, Article 78(1) relates to people who have not been guilty of any infringement of the penal provisions enacted by the Occupying Power, but that Power may consider them dangerous to its security and is consequently entitled to restrict their freedom of action only within the frontiers of the occupied country itself. *See* ICRC Commentary (GC IV), pp. 367-368.

[395] ICRC Commentary (GC IV), p. 256. In that respect it differs from "being placed under surveillance" which was the idea referred to in the ICRC draft and is a form of supervision which allows the person concerned to remain in his usual place of residence.

[396] ICRC Commentary (GC IV), p. 256.

activities or direct assistance to the enemy, may permit a Party to intern people or place them in assigned residence – but only if it has a *serious and legitimate reason* to think that they are members of a subversive organization - the mere fact that a person is a national of the enemy cannot be considered as threatening the security of the country where he lives.[397] Furthermore, the fact that a man is "of military age should not necessarily be considered as justifying the application of these measures".[398]

285. However, whether in the territory of the occupying power or in that of the occupied power, internment and assigned residence are exceptional measures to be taken only after careful consideration of each individual case, and never on a collective basis.[399]

(ii) Procedural Safeguards

286. Civilians interned in accordance with Articles 5, 27 or 42 of Geneva Convention IV should be granted the procedural rights set forth in Article 43 of Geneva Convention IV, which reads as follows:

> Any protected person who has been interned or placed in assigned residence shall be entitled to have such action reconsidered as soon as possible by an appropriate court or administrative board designated by the Detaining Power for that purpose. If the internment or placing in assigned residence is maintained, the court or administrative board shall periodically, and at least twice yearly, give consideration to his or her case, with a view to the favourable amendment of the initial decision, if circumstances permit.
>
> Unless the protected persons concerned object, the Detaining Power shall, as rapidly as possible, give the Protecting Power the names of any protected persons who have been interned or subjected to assigned residence, or who have been released from internment or assigned residence. The decisions of the courts or boards mentioned in the first paragraph of the present Article shall also, subject to the same conditions, be notified as rapidly as possible to the Protecting Power.

287. This Article provides the individuals interned or placed in assigned residence with basic procedural rights in relation to the detaining power. The first paragraph guarantees the right of appeal, under an *a posteriori* scheme before an appropriate court or administrative board designated by the detaining party. In cases where an appeal is denied, the court or administrative board must reconsider the case periodically. Paragraph 2 obliges the detaining party to provide the Protecting Power with the names of protected persons who are interned, placed in assigned residence or released.[400] If the exceptional and severe decision to intern or to place a civilian in assigned

[397] ICRC Commentary (GC IV), p. 258.
[398] *See also* ^*elebi}i* Trial Judgement, para. 577.
[399] ^*elebi}i* Trial Judgement, para. 578.
[400] *See also* para. 7(1) of the Standard Minimum Rules for the Treatment of Prisoners, adopted by the First United Nations Congress on the Prevention of Crime and the Treatment of Offenders, held in Geneva in 1955, and approved by the Economic and Social Council by its resolutions 663 C (XXIV) of 31 July 1957 and 2067 (LXII) of 13 May 1977.

residence is taken where it is not justified by absolute necessity for the security of the State, the court or administrative board must revoke it.[401]

288. Finally, Article 132 of Geneva Convention IV provides:

> Each interned person shall be released by the Detaining Power as soon as the reasons which necessitated his internment no longer exist.
>
> The Parties to the conflict shall, moreover, endeavour during the course of hostilities, to conclude agreements for the release, the repatriation, the return to places of residence or the accommodation in a neutral country of certain classes of internees, in particular children, pregnant women and mothers with infants and young children, wounded and sick, and internees who have been detained for a long time.

Despite its general wording, paragraph 1 forms the counterpart to the principle stated in Article 42, and seeks to prevent the unlimited detention of civilians.

289. Based on the foregoing, the Chamber agrees with the following findings of the Trial Chamber in ^e*lebi}i* in respect of the crime of unlawful confinement:

> [T]he confinement of civilians during armed conflict may be permissible in limited cases, but has in any event to be in compliance with the provisions of articles 42 and 43 of the Geneva Convention IV. The security of the State concerned might require the internment of civilians and, furthermore, the decision of whether a civilian constitutes a threat to the security of the State is largely left to its discretion.[402]

The Trial Chamber went on to assert that

> … the measure of internment for reasons of security is an exceptional one and can never be taken on a collective basis. An initially lawful internment clearly becomes unlawful if the detaining party does not respect the basic procedural rights of the detained persons and does not establish an appropriate court or administrative board as prescribed in article 43 of Geneva Convention IV.[403]

290. The Trial Chamber now looks at the arguments of the ^erkez Defence with regard to the *Korematsu* and *Hirabayashi* cases. The Chamber first notes that the decisions in question were rendered in the light of the United States Constitution and prior to the adoption of the Geneva Conventions. It is the opinion of this Trial Chamber that those decisions should not be analysed solely in the context of the Second World War, but also, and especially, in the light of their subsequent development. Thus, in 1984, the United States District Court for the Northern District of California[404] rendered a judgement whereby Mr. Korematsu was granted a writ of *coram nobis*[405]

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[401] ICRC Commentary (GC IV), p. 261.
[402] ^e*lebi}i* Trial Judgement, para. 583.
[403] ^e*lebi}i* Trial Judgement, para. 583.
[404] *Korematsu v. United States of America*, 584 F. Supp. 1406-1424 (N.D.Ca. 1984), hereinafter "1984 *Korematsu* case".
[405] A writ of *coram nobis* is a remedy by which the court can correct errors in criminal convictions where other remedies are not available. As formulated by the District Court though, its decision "does not reach any errors of law suggested by petitioner. At common law, the writ of *coram nobis* was used to correct errors of fact it was not used to

to vacate his conviction on the grounds of governmental misconduct, i.e., that the Government deliberately omitted relevant information and provided misleading information before the Supreme Court, and seriously impaired the judicial process.[406] On that occasion, the United States Government acknowledged the injustice suffered by the petitioner and other Japanese-Americans.[407] In its decision, the court referred to the findings of the Commission on Wartime Relocation and Internment of Civilians[408]:

> "[B]road historical causes which shaped these decisions [exclusion and detention] were race prejudice, war hysteria and a failure of political leadership". As a result, "a grave injustice was done to American citizens and resident aliens of Japanese ancestry who, without individual review or any probative evidence against them, were excluded, removed and detained by the United States during World War II.[409]

According to the court, although the Supreme Court's decision stands as the law of this case,

> Justices of that Court and legal scholars have commented that the decision is an anachronism in upholding overt racial discrimination as compellingly justified.[410]

Thus, the court stated that "[a]s a legal precedent, [the *Korematsu* decision] is now recognized as having very limited application." Interestingly, the court cited the United States Government's acknowledgement of its concurrence with the Commission's observations that "today the decision in *Korematsu* lies overruled in the court of history".[411]

291. Given this evolution of the American legal perception of the *Korematsu* and *Hirabayashi* decisions, coupled with the fact that the Supreme Court decisions were rendered prior to the adoption of the Geneva Conventions, the Chamber cannot consider these decisions as constituting a precedent with regard to the question of what constitutes unlawful confinement of civilian persons under the Geneva Conventions. The Trial Chamber finds that the confinement of civilians during armed conflict may be permissible in limited cases, but will be unlawful if the detaining party does

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correct legal errors and this court has no power, nor does it attempt, to correct any such errors". *See* 1984 *Korematsu* case, p. 1420.

[406] 1984 *Korematsu* case, p. 1420.

[407] 1984 *Korematsu* case, p. 1420.

[408] Established in 1980 by an act of the United States Congress, this Commission was directed to review, *inter alia*, directives of the United States military forces requiring the relocation and, in some cases, detention in internment camps of American citizens, including those of Japanese ancestry; and to recommend appropriate remedies. This resulted in an Act of Congress on the Restitution for World War II Internment of Japanese Americans and Aleuts (50 USCS Appx §§ 1989) recognising that "a grave injustice was done to both citizens and permanent resident aliens of Japanese ancestry by the evacuation, relocation and internment of civilians during World War II [which] were carried out without adequate security reasons and without any acts of espionage or sabotage [and] were motivated largely by racial prejudice, war time hysteria, and a failure of political leadership. … [F]or these fundamental violations of the basic civil liberties and constitutional rights of these individuals of Japanese ancestry, the Congress apologizes on behalf of the Nation".

[409] 1984 *Korematsu* case, pp. 1416-1417.

[410] 1984 *Korematsu* case, p. 1420.

not comply with the provisions of Articles 42 and 43 of Geneva Convention IV. Thus, as confirmed by the ^*elebi}i* Appeal Judgement, the confinement of civilians will be unlawful in the following circumstances:

> (i) when a civilian or civilians have been detained in contravention of Article 42 of Geneva Convention IV, *ie,* they are detained without reasonable grounds for believing that the security of the Detaining Power makes it absolutely necessary; and
>
> (ii) where the procedural safeguards required by Article 43 of Geneva Convention IV are not complied with in respect of detained civilians, even where their initial detention may have been justified.[412]

2. Imprisonment (Article 5)

(a) Arguments of the Parties

292. According to the Prosecution, the underlying elements of imprisonment as a crime against humanity are identical to the elements as set forth above for unlawful confinement under Article 2 of the Statute.[413]

293. The Kordic Defence submits that the *mens rea* for imprisonment, as with all other crimes against humanity, must be the specific intent to take part in the furtherance of a formal government policy or plan and with discriminatory intent.[414]

294. The Cerkez Defence arguments are the same as those set out with regard to the crime of unlawful confinement of civilians.[415]

(b) Discussion

295. The offence of imprisonment is punishable under Article 5(e) of the Statute as a crime against humanity. This section will consider the definition of imprisonment pursuant to which its legality will be discussed.

296. The Trial Chamber observes that, to date, the jurisprudence of the *ad hoc* International Tribunals has not addressed the crime against humanity of imprisonment. Therefore, this Trial Chamber deems it necessary briefly to determine the scope of imprisonment in the context of crimes against humanity.

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[411] 1984 *Korematsu* case, p. 1420.
[412] ^*elebi}i* Appeal Judgement, para. 322.
[413] Prosecution Final Brief, Annex 5, para. 196.
[414] Kordi} Pre-trial Brief, Attachment A, p. 12; Kordi} Final Brief, p. 494.
[415] ^erkez Final Brief, pp. 105-108.

297. Concerning the Statutes of the *ad hoc* International Tribunals, Article 5 of the International Tribunal Statute and Article 3 of the ICTR Statute both refer to the term "imprisonment" as a crime against humanity but do not define it.[416]

298. As for the Indictment, it charges Dario Kordi} under "Imprisonment/Unlawful Confinement" with a crime against humanity (Count 21) and a grave breach (Count 22). Likewise, under "Imprisonment/Unlawful Confinement", the Indictment charges Mario ^erkez with a crime against humanity (Count 29) and a grave breach (Count 30). This coupling of the charges in the Indictment suggests that although imprisonment and unlawful confinement are two distinct crimes, the Prosecution has viewed them as sharing the same elements. This inference is strengthened by the Prosecution Final Brief in which it considers that the underlying elements of imprisonment as a crime against humanity are identical to the elements as set forth in paragraphs 51-63 of its Final Brief for unlawful confinement under Article 2 of the Statute.

299. In its definition of crimes against humanity, the Internationaln Law Commission refers to the prohibited act of "arbitrary imprisonment" under sub-paragraph (h):

> the term imprisonment encompasses deprivation of liberty of the individual and the term "arbitrary" establishes the requirement that the deprivation be without due process of law.[417]

The International Law Commission further indicates that arbitrary imprisonment is contrary to Article 9 of the Universal Declaration of Human Rights and to Article 9 of the International Covenant on Civil and Political Rights ("ICCPR")[418] and would cover the practice of concentration camps or detention camps or "other forms of long-term detention".[419]

300. Finally, Article 7(1)(e) of the ICC Statute mentions "imprisonment or other severe deprivation of physical liberty in violation of fundamental rules of international law". Thus, this provision prohibits imprisonment only where it is contrary to international law and draws a distinction between lawful and unlawful imprisonments.[420]

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[416] The same approach was adopted by Control Council Law No. 10 (Article II, paragraph (c)) whereby "imprisonment" was included – but not defined - as a crime against humanity. *See* Official Gazette of the Control Council for Germany, No. 3, Berlin, 31 January 1946. Reprinted in Ferencz 488, 1 Friedman 908.
[417] 1996 ILC Report, p. 101.
[418] *Ibid*. Article 9, para. 1, of the International Covenant on Civil and Political Rights, adopted by the United Nations General Assembly on 16 December 1996 ("ICCPR") provides that: "No one shall be deprived of his liberty except on such grounds and in accordance with such procedures as are established by law".
[419] 1996 ILC Report, p. 101.
[420] According to Cherif Bassiouni, by adding the language "other severe deprivation of physical liberty", Article 7(1)(e) of the ICC Statute has broadened the scope of meaning of "imprisonment" to include other conduct which under the previous formulations may have been outside the scope of "imprisonment". *See* Cherif Bassiouni, Crimes Against Humanity in International Criminal Law, Second Revised Edition, Kluwer Law International, pp. 362-363.

301. In the light of this analysis, the Trial Chamber concurs with the arguments of the Prosecution with regard to the identity of the elements of the crime of imprisonment and those of unlawful confinement.

302. The Trial Chamber concludes that the term imprisonment in Article 5(e) of the Statute should be understood as arbitrary imprisonment, that is to say, the deprivation of liberty of the individual without due process of law, as part of a widespread or systematic attack directed against a civilian population. In that respect, the Trial Chamber will have to determine the legality of imprisonment as well as the procedural safeguards pertaining to the subsequent imprisonment of the person or group of persons in question, before determining whether or not they occurred as part of a widespread or systematic attack directed against a civilian population.

303. Based on the aforementioned definition, the imprisonment of civilians will be unlawful where:

- civilians have been detained in contravention of Article 42 of Geneva Convention IV, i.e., they are detained without reasonable grounds to believe that the security of the Detaining Power makes it absolutely necessary;
- the procedural safeguards required by Article 43 of Geneva Convention IV are not complied with in respect of detained civilians, even where initial detention may have been justified;[421] and
- they occur as part of a widespread or systematic attack directed against a civilian population.

E. Taking of Hostages

304. Dario Kordi} and Mario ^erkez are charged in the Indictment with taking Bosnian Muslims as hostages. These acts are charges under Article 2 (as "taking civilians as hostages" in Counts 25 and 33 respectively) and Article 3 of the Statute (as "taking of hostages" in Counts 26 and 34 respectively).

1. Taking Civilians as Hostages (Article 2)

(a) Arguments of the parties

305. The Prosecution submits that the elements of the crime of taking civilians as hostages under Article 2(h) are: (i) civilians were seized, detained, or otherwise held hostage; (ii) the detained

[421] ^*elebi}i* Appeal Judgement, para. 322. The Appeals Chamber set forth this definition in the context of a discussion of the offence of unlawful confinement under Article 2 of the Statute. *See also* discussion above.

civilians were wilfully used for the purpose of obtaining some advantage or securing some commitment from a Party to the conflict, or other person or group of persons; and (iii) there was a threat to the life, well-being or freedom of the civilians detained if such advantage was not obtained or such commitment not secured.[422]

306. The Prosecution observes that the term "hostages" was defined in *The Hostages Trial, W. List and Others* as "those persons of the civilian population who are taken into custody for the purpose of guaranteeing with their lives the future good conduct of the population of the community from which they are taken."[423] The ICRC Commentary to Article 75(2)(c) of Additional Protocol I, it is argued, expanded the definition of hostages in the *Hostages* case to include persons "detained for the purpose of obtaining certain advantages."[424] While Article 12 of the International Convention Against the Taking of Hostages specifically states that the Convention does not apply to acts of hostage-taking committed in the course of armed conflict, it is argued that it can be of assistance in determining the essential elements of the offence.[425] The Convention defines the crime in the following terms:

> any person [who] seizes or detains and threatens to kill, to injure or to continue to detain another person in order to compel a third party, namely a State, an international organisation, a natural or juridical person, or a group of persons, to do or abstain from doing any act as an explicit or implicit condition for the release of the hostage.[426]

307. The Kordi} Defence submits that the crime of unlawfully taking civilians as hostages comprises the following elements: (i) the victims are civilians detained against their will, (ii) there is no reasonable basis for their detention, (iii) the civilian detainees are answerable with their lives, physical well-being, or their freedom for the granting of a concession, (iv) the accused committed an unlawful act that caused the detention of the civilians and he intended to commit that act, (v) the accused intended to detain civilians against their will for the purpose of extracting a concession.[427]

308. In the Defence's submission, hostage-taking is only unlawful where the accused lacks a reasonable basis for detaining the civilian hostages. Thus, it is argued, detention is permitted to protect civilians or when security concerns make it necessary.[428]

309. As regards the *mens rea* element, the Defence submits that the accused must not only have deliberately detained the victims, he must have intended to detain them for the purpose of extracting

[422] Prosecution Final Brief, Annex 5, para. 64.
[423] Prosecution Final Brief, Annex 5, para. 66.
[424] Prosecution Final Brief, Annex 5, para. 68.
[425] Prosecution Final Brief, Annex 5, para. 70.
[426] Prosecution Final Brief, Annex 5, para. 70.
[427] Kordi} Pre-trial Brief, Vol. II, para. 57.
[428] Kordi} Pre-trial Brief, Vol. II, para. 60.

a concession. Moreover, it is argued, "even if a concession is eventually sought . . . the accused is not liable absent proof that he performed his original actions of detention for the purpose of extracting a concession".[429]

310. The ^erkez Defence made no individual submissions in relation to the legal ingredients of this offence, but the Trial Chamber notes its joinder in the Kordi} Final Brief.[430]

(b) Discussion

311. This crime is listed as one of the grave breaches in Article 147 of Geneva Convention IV. The ICRC Commentary thereto provides:

> *The taking of hostages*: Hostages might be considered as persons illegally deprived of their liberty, a crime which most penal codes take cognizance of and punish. However, there is an additional feature, i.e. the threat either to prolong the hostage's detention or to put him to death. The taking of hostages should therefore be treated as a special offence. Certainly, the most serious crime would be to execute hostages which, as we have seen, constitutes wilful killing. However, the fact of taking hostages, by its arbitrary character, especially when accompanied by a threat of death, is in itself a very serious crime; it causes in the hostage and among his family a mortal anguish which nothing can justify.[431]

312. It would, thus, appear that the crime of taking civilians as hostages consists of the unlawful deprivation of liberty, including the crime of unlawful confinement. In that regard, the Chamber observes that the elements of the crime of unlawful confinement are set out above.

313. The additional element that must be proved to establish the crime of unlawfully taking civilians hostage is the issuance of a conditional threat in respect of the physical and mental well-being of civilians who are unlawfully detained. The ICRC Commentary identifies this additional element as a "threat either to prolong the hostage's detention or to put him to death". In the Chamber's view, such a threat must be intended as a coercive measure to achieve the fulfilment of a condition. The Trial Chamber in the *Bla{ki}* case phrased it in these terms: "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."[432]

314. Consequently, the Chamber finds that an individual commits the offence of taking civilians as hostages when he threatens to subject civilians, who are unlawfully detained, to inhuman treatment or death as a means of achieving the fulfilment of a condition.

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[429] Kordi} Pre-trial Brief, Vol. II, para. 61.
[430] ^erkez Final Brief, p.4.
[431] ICRC Commentary (GC IV), pp. 600–601.
[432] *Bla{ki}* Trial Judgement, para. 158 (emphasis added).

2. Taking of Hostages (Article 3)

(a) Arguments of the parties

315. The Prosecution defines the elements of this offence as follows:[433] (1) the occurrence of acts or omissions causing person/s to be seized, detained, or otherwise unlawfully held as hostages; (2) the acts or omissions involved a threat to injure, kill, or continue to detain such person/s in order to compel a State, military force, international organisation, natural person or group of persons to act or refrain from acting, as an explicit or implicit condition for the safe release of the hostage/s; (3) the acts or omission were committed wilfully; (4) the victims of the acts or omissions were persons taking no active part in hostilities pursuant to Common Article 3 of the Geneva Conventions; (5) there was a nexus between the acts or omissions and an armed conflict; (6) the accused bears individual criminal responsibility for the acts or omissions under Article 7(1) or 7(3) of the Statute.

316. The Kordi} Defence submits that this offence "should be analysed in a manner consistent with 'taking civilians as hostages' under Article 2", with "Article 2" being understood to be that of the Statute.[434] It also concurs in the *Bla{ki}* Trial Judgement in respect of the definition of hostages and the *actus reus* of the offence of hostage-taking.[435]

317. The Prosecution Final Brief submits that this offence violates Common Article 3 (1) of the Geneva Conventions as well as Article 75 (2) (c) of Additional Protocol I and Article 4 (2) (c) of Additional Protocol II.[436]

318. The ^erkez Final Brief asserts that the Prosecution has not proved the offence, an assertion that is more linked to facts than law.[437]

(b) Discussion

319. The Trial Chamber notes that Common Article 3(1)(b) of the Geneva Conventions prohibits the taking of hostages in respect of persons taking no active part in the hostilities, members of armed forces who have laid down their arms and those placed *hors de combat* by sickness, wounds,

[433] Prosecution Pre-trial Brief, p. 48.
[434] Kordi} Pre-trial Brief, para. 74.
[435] Prosecution Final Brief, Annex V, paras. 130 and 134.
[436] Prosecution Final Brief, Annex V, para. 97.
[437] ^erkez Final Brief, pp. 115-116.

detention, or any other cause. The *Bla{ki}* Trial Chamber, relying upon the ICRC Commentary (GC IV) adopted a broad definition of the term "hostage".[438] It went on

> 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.[439]

The *Bla{ki}* Trial Judgement also held that hostages are taken to "obtain some advantage or to ensure that a belligerent, other person or other group of persons enter into some undertaking".[440]

320. This Trial Chamber concurs with these findings and considers that, in the context of an international armed conflict, the elements of the offence of taking of hostages under Article 3 of the Statute are essentially the same as those of the offence of taking civilians as hostage as described by Article 2 (h).

F. Attacks and Property-Related Offences

1. Unlawful Attacks on Civilians and Civilian Objects (Article 3)

321. Dario Kordi} and Mario ^erkez are charged with the offence of unlawful attack on civilians (under Counts 3 and 5 respectively), and unlawful attack on civilian objects (under Counts 4 and 6 respectively) under Article 3 of the Statute.[441]

(a) Arguments of the parties

322. The Prosecution defines the elements of the offence of unlawful attack on civilians as follows:[442] (1) an attack resulted in civilian deaths, serious injury to civilians, or a combination thereof; (2) the civilian status of the population or individual persons killed or seriously injured was known or should have been known; (3) the attack was wilfully directed at the civilian population or individual civilians; (4) there was a nexus between the attack and an armed conflict; (5) the accused bears individual criminal responsibility for the attack under either Article 7(1) or 7(3) of the Statute.

323. The Prosecution defines the elements of the offence of unlawful attack on civilian objects as follows:[443] (1) an attack resulted in damage to civilian objects; (2) the civilian character of the objects damaged was known or should have been known; (3) the attack was wilfully directed at

[438] *Bla{ki}* Trial Judgement, para. 187.
[439] *Bla{ki}* Trial Judgement, para. 187.
[440] *Bla{ki}* Trial Judgement, para. 187.
[441] Indictment, paragraphs 40-41.
[442] Prosecution Pre-trial Brief, pp. 48-49.
[443] Prosecution Pre-trial Brief, p. 49.

civilian objects; (4) there was a nexus between the attack and an armed conflict; (5) the accused bears individual criminal responsibility for the attack under either Article 7(1) or 7(3) of the Statute.

324. The Kordi} Defence defines the elements of the two offences as follows:[444] (1) a wilful and deliberate attack is launched against civilians or protected civilian objects; (2) the attack is indiscriminate (i.e., not directed at a specific military objective), and in violation of international humanitarian law; (3) the attack causes civilian deaths, serious injury to civilians or a combination thereof; (4) the accused intended (*dolus directus*) to launch the attack against civilians; (5) the accused launched the attack with the knowledge that such attack will cause excessive loss of life or injury to civilians or damage to civilian objects.

325. The Kordi} Defence maintains that only "serious" violations are covered by Article 3 of the Statute and argues that unlawful attacks on civilians or civilian objects may only be regarded as "serious" if they result in death or serious injury.[445]

(b) Discussion

326. There is little difference between the definitions given by the Prosecution and the Defence. Civilians and civilian objects are protected by, *inter alia*, Geneva Convention IV. Civilians are expressly protected under that Convention, and civilian objects, such as civilian hospitals organised to give care to the wounded and sick, the infirm and maternity cases, "may in no circumstances be the object of attack, but shall at all times be respected and protected by the Parties to the conflict".[446] The protection of civilians and civilian objects is augmented by Additional Protocol I, Article 50 (1) of which defines the category of civilians as including those who do not belong to one of the categories of persons referred to in Article 4 (A) (1), (2), (3) and (6) of Geneva Convention III, and in Article 43 of Additional Protocol I. Article 51 (2) of Additional Protocol I provides that

> The civilian population as such, as well as individual civilians, shall not be the object of attack.

However, civilians will no longer enjoy the protection afforded by Additional Protocol I if "they take a direct part in hostilities".[447]

327. Article 52 (1) of Additional Protocol I defines civilian objects as "all objects which are not military objectives". Military objectives are defined in paragraph 2 as "those objects which by their

[444] Kordi} Pre-trial Brief, Vol. II, para. 77.
[445] Kordi} Pre-trial Brief, Vol. II, para. 69.
[446] Art. 18, Geneva Convention IV.
[447] Additional Protocol I, Art. 51 (3).

nature, location, purpose or use make an effective contribution to military action and whose total or partial destruction, capture or neutralization, in the circumstances ruling at the time, offers a definite military advantage." Article 52 (2) further states that "[a]ttacks shall be limited strictly to military objectives".

328. In short, prohibited attacks are those launched deliberately against civilians or civilian objects in the course of an armed conflict and are not justified by military necessity. They must have caused deaths and/or serious bodily injuries within the civilian population or extensive damage to civilian objects.[448] Such attacks are in direct contravention of the prohibitions expressly recognised in international law including the relevant provisions of Additional Protocol I.

2. Destruction of Property

329. Dario Kordi} and Mario ^erkez are charged in Counts 37 and 40 of the Indictment, respectively, with the crime of extensive destruction of property not justified by military necessity under Article 2(d) of the Statute. Counts 38 and 41 respectively charge them with the crime of wanton destruction not justified by military necessity under Article 3(b) of the Statute.[449]

(a) Extensive destruction of property not justified by military necessity (Article 2)

(i) Arguments of the Parties

330. The Prosecution submits that the elements of this crime are: (i) the occurrence of extensive destruction of property protected pursuant to the Geneva Conventions, where (ii) the destruction was not justified by military necessity and (iii) the destruction was committed wilfully.[450]

331. In the Prosecution's submission, the property protected by this provision can be real or personal, public or private. In order to qualify as a grave breach, it is argued, the quantity or value of the property destroyed must be sufficiently large.[451] Relying upon the decision of the Trial Chamber in the *Bla{ki}* case, the Prosecution submits that the meaning of "extensive" must be evaluated based upon the facts and circumstances of the military operation at issue.[452]

332. Moreover, it is argued, the term "extensive" must be assessed in light of what is justified by military necessity. According to the Prosecution, the targeted destruction of houses belonging to a particular national or ethnic group with no purpose other than to prevent their continuing habitation

[448] *Bla{ki}* Trial Judgement, para. 180.
[449] Indictment, paras. 55-56.
[450] Prosecution Final Brief, Annex 5, para. 44.
[451] Prosecution Final Brief, Annex 5, para. 45.

can never be justified by military necessity.[453] Finally, it is submitted, the alleged perpetrator of this crime must have acted intentionally or with "extreme indifference to the substantial likelihood of destruction of protected property as a consequence of the conduct in question".[454]

333. The Kordi} Defence submits that the elements of this offence are: (i) that the property is destroyed beyond repair, (ii) that the property is protected under the Geneva Conventions, (iii) that the destruction occurred on a large scale, (iv) that the accused wantonly committed an unlawful act that caused the destruction of the property, (v) that the destruction was not justified by military necessity.[455] It is argued that, other than certain designated types of property, the Geneva Conventions do not provide general protection for property in enemy territory; rather the offence applies in respect of real and personal property only in occupied territory.[456]

334. In the Defence's submission, the term "extensive" means that the destruction must have occurred on a large scale.[457] Moreover, the Prosecution bears the burden of proving that the destruction of the property in question was not justified by military necessity.[458]

(ii) Discussion

335. Article 147 of Geneva Convention IV sets out the crime of extensive destruction as a grave breach. The ICRC Commentary thereto states, in relation to the crime of extensive destruction

> The Fourth Convention forbids the destruction of civilian hospitals and their property or damage to ambulances or medical aircraft. Furthermore, the Occupying Power may not destroy in occupied territory real or personal property except where such destruction is rendered absolutely necessary by military operations. On the other hand, the destruction of property on enemy territory is not covered by the provision. In other words, if an air force bombs factories in an enemy country, such destruction is not covered either by Article 53 or by Article 147. On the other hand, if the enemy Power occupies the territory where the factories are situated, it may not destroy them unless military operations make it absolutely necessary.[459]

336. Several provisions of the Geneva Conventions identify particular types of property accorded general protection thereunder. For example, Article 18 of Geneva Convention IV provides that "civilian hospitals organized to give care to the wounded and sick, the infirm and maternity cases, may in no circumstances be the object of an attack, but shall at all times be respected and protected

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[452] Prosecution Final Brief, Annex 5, para. 46.
[453] Prosecution Final Brief, Annex 5, paras. 48-49.
[454] Prosecution Final Brief, Annex 5, para. 50.
[455] Kordi} Pre-trial Brief, Vol. II, para. 54.
[456] Kordi} Pre-trial Brief, Vol. II, para. 55.
[457] Kordi} Pre-trial Brief, Vol. II, para. 55.
[458] Kordi} Pre-trial Brief, Vol. II, para. 56.
[459] ICRC Commentary (GC IV), p. 601.

by the parties to the conflict".[460] While property thus protected is presumptively immune from attack, the Conventions identify certain highly exceptional circumstances where the protection afforded to such property will cease.[461]

337. Article 53 of Geneva Convention IV sets forth a general prohibition on the destruction of property in occupied territory:

> Any destruction by the Occupying Power of real or personal property belonging individually or collectively to private persons, or to the State, or to other public authorities, or to social or co-operative organizations, is prohibited, except where such destruction is rendered absolutely necessary by military operations.[462]

While the protective scope of this provision encompasses all real and personal property, other than property accorded general protection under the Geneva Conventions, it only applies in occupied territories. This is confirmed by the ICRC Commentary, which states that:

> [i]n 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. The scope of the Article is therefore limited to destruction resulting from action by the Occupying Power. It will be remembered that Article 23(g) of the Hague Regulations forbids the unnecessary destruction of enemy property; since that rule is placed in the section entitled "hostilities", it covers all property in the territory involved in a war; its scope is therefore much wider than that of the provision under discussion, which is only concerned with property situated in occupied territory.

Thus, the protective requirement set forth in Article 53 of Geneva Convention IV represents an additional duty that attaches only to an Occupying Power.

338. The question arises what is meant by the term "occupied territory" for the purposes of the application of Article 53 of Geneva Convention IV. Section III of Geneva Convention IV, under which Article 53 falls, deals with the treatment which the inhabitants of occupied territory must receive from the Occupying Power, and

> represents the first attempt to codify the rules of international law dealing with occupation since the conclusion of the Hague Conventions of 1899 and 1907 concerning the laws and customs of war on land. The rules set forth in Section III will supplement Sections II and III of the Regulations annexed to these Conventions, by making numerous points clearer.[463]

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[460] *See* also Chapters III, V and VI of Geneva Convention I (protecting medical units, vehicles, aircraft, equipment and material) and Article 22 *et seq.* (protecting hospital ships) and Article 38 *et seq.* (protecting medical transports) of Geneva Convention II.
[461] *See* in relation to medical units and establishments, Articles 21 and 22 of Geneva Convention I; in relation to the material of mobile medical units, Article 33 of Geneva Convention I; in relation to medical transports, Article 36 of Geneva Convention I, and; in relation to military hospital ships, Articles 34 and 35 of Geneva Convention II.
[462] Article 53, Geneva Convention IV.
[463] ICRC Commentary (GC IV), p. 272.

In light of the absence of a definition of the term "occupied territory" in the Geneva Conventions, and considering the customary status of the Hague Convention (IV) and the Regulations attached thereto,[464] the Trial Chamber will have recourse to that Convention in defining the term.

339. Thus, Article 42 of the Regulations attached to Hague Convention IV[465] provides that:

> Territory is considered occupied when it is actually placed under the authority of the hostile army. The occupation extends only to the territory where such authority has been established and can be exercised.

The Trial Chamber accepts this definition and finds that the enquiry as to whether a particular territory is occupied must be conducted on a case-by-case basis.

340. In *Bla{ki}*, the only case to date before the International Tribunal to have provided a definition of this crime, the Trial Chamber found that

> [a]n 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.[466]

341. In view of the foregoing, the Trial Chamber finds that the crime of extensive destruction of property as a grave breach comprises the following elements, either:

(i) Where the property destroyed is of a type accorded general protection under the Geneva Conventions of 1949, regardless of whether or not it is situated in occupied territory; and the perpetrator acted with the intent to destroy the property in question or in reckless disregard of the likelihood of its destruction; or

(ii) Where the property destroyed is accorded protection under the Geneva Conventions, on account of its location in occupied territory; and the destruction occurs on a large scale; and

(iii) the destruction is not justified by military necessity; and the perpetrator acted with the intent to destroy the property in question or in reckless disregard of the likelihood of its destruction.

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[464] *See* Report of the Secretary-General, para. 41.
[465] *See* Hague Regulations Respecting the Laws and Customs of War on Land 1907, annexed to the 1907 Hague Convention IV Respecting the Laws and Customs of War ("Hague Regulations").
[466] *Bla{ki}* Trial Judgement, para. 157.

(b) Wanton destruction not justified by military necessity (Article 3)

(i) Arguments of the parties

342. The Prosecution submits that the offence of wanton destruction or devastation includes the following elements:[467] (1) the occurrence of destruction or devastation of property; (2) the destruction or devastation was not justified by military necessity; (3) the destruction or devastation was committed wilfully; (4) there was a nexus between the destruction or devastation and an armed conflict; (5) the accused bears individual criminal responsibility for the destruction or devastation under Article 7(1) or 7(3).

343. The Kordi} Defence submits that, in respect of this offence, the Prosecution must prove the following:[468] (1) the destruction or devastation occurred on a large scale, involving whole areas; (2) the accused wantonly committed an act that caused the destruction or devastation; (3) the accused intended thereby to cause the destruction or devastation; (4) the destruction or devastation is not justified by military necessity; (5) there is a nexus between the destruction or devastation and an armed conflict in which the accused participated.

344. In defining the offence, the Prosecution Final Brief repeats the first three elements listed in the Prosecution Pre-trial Brief.[469] The Prosecution further argues, with reference to Article 2 (d) of the Statute concerning extensive destruction, that "the scope of Article 3 (b) differs, however, in that devastation is not limited to destruction of property in occupied territory or in the control of an armed force".[470] The Prosecution also considers that military necessity "does not justify a violation of international humanitarian law insofar as military necessity was a factor which was already taken into account when the rules governing the conduct of hostilities were drafted".[471] It argues that the mental element of this offence "does not include ordinary negligence", and that "the destruction of protected property cannot be purely accidental".[472]

345. The ^erkez Final Brief seems to endorse the elements defined by the Prosecution by merely asserting that "on locations where property was destroyed, this was the result of attacks on strategic points and not civilian property".[473] The validity of this assertion is a matter of evidence, rather than law.

[467] Prosecution Pre-trial Brief, p. 49.
[468] Kordi} Pre-trial Brief, Vol. II, para. 80.
[469] Prosecution Final Brief, Annex 5, para. 79.
[470] Prosecution Final Brief, Annex 5, para. 80.
[471] Prosecution Final Brief, Annex 5, para. 81.
[472] Prosecution Final Brief, Annex 5, para. 82.
[473] ^erkez Final Brief, pp. 55-56.

(ii) Discussion

346. The Trial Chamber considers that the elements for the crime of wanton destruction not justified by military necessity charged under Article 3(b) of the Statute are satisfied where:

(i) the destruction of property occurs on a large scale;

(ii) the destruction is not justified by military necessity; and

(iii) the perpetrator acted with the intent to destroy the property in question or in reckless disregard of the likelihood of its destruction.

347. The Trial Chamber observes that, while property situated on enemy territory is not protected under the Geneva Conventions, and is therefore not included in the crime of extensive destruction of property listed as a grave breach of the Geneva Conventions, the destruction of such property is criminalised under Article 3 of the Statute.[474]

3. Plunder (Article 3)

348. Dario Kordi} and Mario ^erkez are both charged with the "plunder of public or private property" under Article 3(e) of the Statute in Counts 39 and 42 respectively.

(a) Arguments of the parties

349. The Prosecution lists the following elements of the offence:[475] (1) public or private property was unlawfully or violently acquired; (2) the property was acquired wilfully; (3) there was a nexus between the unlawful appropriation of property and an armed conflict; (4) the accused bears individual criminal responsibility for the unlawful acquisition of property under either Article 7(1) or 7(3) of the Statute.

350. The Kordi} Defence maintains that the Prosecution must prove several elements of plunder, particularly that the property was appropriated without justification, with the intent permanently to deprive the owner of its possession or use, and that the property was of sufficient monetary value to involve grave consequences to its owner.[476] It goes on to define the elements as follows:[477] (1) the accused unlawfully appropriated private or public property; (2) the accused did so against the will and consent of the owner; (3) the appropriation was of sufficient monetary value to involve grave

[474] ICRC Commentary (GC IV), p. 615.
[475] Prosecution Pre-trial Brief, p. 50.
[476] Kordi} Pre-trial Brief, Vol. II, paras. 84-85, citing the *Celebici* Trial Judgement, para. 1154.
[477] Kordi} Pre-trial Brief, Vol. II, para. 84.

consequences for the victims; (4) the accused appropriated the property with the intent unlawfully to deprive the owner its use and benefit; (5) the accused intended to appropriate the property permanently; (6) the appropriation was not justified; and (7) there was a nexus between the appropriation and an armed conflict in which the accused participated.

(b) Discussion

351. The offence of plunder or spoliation has long been known to international law, and it is prohibited as a matter of both conventional and customary law.[478]

352. The essence of the offence is defined by the *^elebi}i* Trial Judgement as "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".[479] Such acts of appropriation include both widespread and systematised acts of dispossession and acquisition of property in violation of the rights of the owners and isolated acts of theft or plunder by individuals for their private gain.[480] The Judgement also expresses, and this Trial Chamber concurs, that "the prohibition against unjustified appropriation of private or public property constitutes a rule protecting important values".[481] To measure that importance, the *^elebi}i* Trial Judgement refers to "sufficient monetary value" of the property so appropriated as to involve "grave consequences for the victims".[482]

353. The *^elebi}i* Trial Judgement has been followed by the *Bla{ki}* Trial Judgement[483] and the *Jelisi}* Trial Judgement.[484] This Trial Chamber sees no reason why it should depart from the conclusions of those Judgements.

4. Destruction or Wilful Damage to Institutions Dedicated to Religion or Education (Article 3)

354. Dario Kordi} and Mario ^erkez are finally charged with the offence of destruction or wilful damage to institutions dedicated to religion or education under Article 3(d) of the Statute, in Counts 43 and 44 respectively.

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[478] *See* Hague Regulations, Article 46; the Charter of the International Military Tribunal 1945, Art. 6(b); *The Trial of German Major War Criminals* (Proceedings of the International Military Tribunal sitting at Nuremberg, Germany), Part 22, the IMT Judgement, p.457; *U.S. v. Carl Krauch*, *Law Reports of Trials of War Criminals*, vol. x, pp. 42-47, which considers the term "spoliation" to be synonymous with that of "plunder".
[479] *^elebi}i* Trial Judgement, para. 591.
[480] *^elebi}i* Trial Judgement, para. 590.
[481] *^elebi}i* Trial Judgement, para. 1154.
[482] *^elebi}i* Trial Judgement.
[483] *Bla{ki}* Trial Judgement, para. 184.
[484] *Jelisi}* Trial Judgement, para. 48.

(a) Arguments of the parties

355. The Prosecution defines as follows the elements of this offence:[485] (1) institutions dedicated to religion or education were destroyed; (2) the destruction or damage was committed wilfully; (3) the institutions destroyed or wilfully damaged were protected under international humanitarian law; (4) there was a nexus between the destruction or wilful damage and an armed conflict; and (5) the accused bears individual criminal responsibility for the attack under either Article 7(1) or 7(3) of the Statute.

356. The Kordi} Defence lists the following elements:[486] (1) institutions dedicated to religion or education were destroyed or wilfully damaged; (2) the institutions in question or their surroundings were not used for a military purpose; (3) the institutions in question were protected under international humanitarian law; (4) the accused caused the destruction or damage; (5) the accused intended (*dolus directus*) to commit the action that caused the destruction or damage; (6) the accused intended thereby to cause the destruction or damage of specified religious institutions which constitute the cultural or spiritual heritage of peoples; (7) there was a nexus between the destruction or damage and an international armed conflict in which the accused participated.

357. The Defence stresses that the destruction or wilful damage to religious institutions does not constitute a violation of Article 3 if the institution was used for military purposes. The Defence argues that a "contrary rule" would encourage defenders to shield military forces and objectives by placing them in the proximity of religious buildings.[487] The Defence further argues that the Convention for the Protection of Cultural Property in the Event of Armed Conflict of 1954 grants "special protection" only to property registered under the International Register of Cultural Property under Special Protection. Absent this registration, the Defence maintains, institutions would receive only ordinary protection. In other words, such institutions could be destroyed or damaged in cases of military necessity, regardless of whether they are occupied or used for military purposes.[488]

(b) Discussion

358. The offence appears, from the submissions of the parties, to be of a narrower scope than the one recognised by Article 3(d) of the Statute, in that no reference is made to the seizure of, or

[485] Prosecution Pre-trial Brief, Vol. II, p. 50.
[486] Kordi} Pre-trial Brief, Vol. II, para. 86
[487] Kordi} Pre-trial Brief, Vol. II, paras. 87-88, citing Hague Convention IV 1907, Article 27; Convention for the Protection of Cultural Property in the Event of Armed Conflict of 1954, Article 8 (hereinafter "Cultural Property Convention").

destruction or damage done to, institutions of charity, the arts and sciences, works of art and science, or historic monuments.

359. Article 27 of the Hague Regulations provides in part that

> In sieges and bombardments all necessary steps must be taken to spare, as far as possible, building dedicated to religion, art, science, or charitable purposes, historic monuments, hospitals, and places where the sick and wounded are collected, provided they are not being used at the time for military purposes.

Similarly, Article 53 of Additional Protocol I states that

> Without prejudice to the provisions of the Hague Convention for the Protection of Cultural Property in the Event of Armed Conflict of 14 May 1954, and of other relevant international instruments, it is prohibited:
>
> (a) to commit any acts of hostility directed against the historic monuments, works of art or places of worship which constitute the cultural or spiritual heritage of peoples;
>
> (b) to use such objects in support of the military effort;
>
> (c) to make such objects the object of reprisals.

Article 1 of the Cultural Property Convention lists numerous types of cultural property for protection in the form of "movable or immovable property of great importance to the cultural heritage of every people", "buildings whose main and effective purpose is to preserve or exhibit the movable cultural property", and "centres containing a large amount of cultural property". This Convention had been binding on the former Socialist Federal Republic of Yugoslavia as a contracting State since 1956, and continues to apply to the Republic of Croatia and RBiH as from their dates of independence, following their deposit of declarations of succession.[489]

360. The Trial Chamber notes that educational institutions are undoubtedly immovable property of great importance to the cultural heritage of peoples in that they are without exception centres of learning, arts, and sciences, with their valuable collections of books and works of arts and science. The Trial Chamber also notes one international treaty which requires respect and protection to be accorded to educational institutions in time of peace as well as in war.[490]

361. This offence overlaps to a certain extent with the offence of unlawful attacks on civilian objects except that the object of this offence is more specific: the cultural heritage of a certain population. Educational institutions are certainly civilian objects. The offence this section is

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[488] Kordi} Pre-trial Brief, Vol. II, para. 90, citing the Cultural Property Convention, Article 4 and Additional Protocol I, Article 85(4)(d).

[489] In accordance with the law of treaties, a State which makes a declaration of succession is considered to have been a party to the relevant treaty as from its date of independence. *See ^elebi}i* Appeal Judgement, para. 110.

concerned with is the *lex specialis* as far as acts against cultural heritage are concerned. The destruction or damage is committed wilfully and the accused intends by his acts to cause the destruction or damage of institutions dedicated to religion or education and not used for a military purpose.[491] The Trial Chamber intends to apply this more specialised offence to the facts of this case.

362. As to the Defence argument regarding the application of the Cultural Property Convention, the Trial Chamber notes that protection is generally accorded by the Convention to cultural property defined therein. Special protection as a special measure is provided for "a limited number of refuges intended to shelter movable cultural property". However, under Article 8 (1), this special protection would be lost if the refuges were used for military purposes. It appears therefore that there is little difference between the conditions for the according of general protection and those for the provision of special protection. The fundamental principle is that protection of whatever type will be lost if cultural property, including educational institutions, is used for military purpose, and this principle is consistent with the custom codified in Article 27 of the Hague Regulations.

[490] Protection of Artistic and Scientific Institutions and Historic Monuments, known as "Roerich Pact", 15 April 1935, Art.1. Currently 11 American States are parties thereto.
[491] *Bla{ki}* Trial Judgement, para. 185.

III. INDIVIDUAL CRIMINAL RESPONSIBILITY

A. Introduction

363. Alongside the charges of individual criminal responsibility based on personal participation in criminal conduct, the Indictment charges Dario Kordi} and Mario ^erkez with criminal responsibility on the basis of their alleged positions as superiors to the perpetrators of the crimes alleged in the Indictment. Article 7 of the Statute, entitled "Individual criminal responsibility", provides:

> 1. 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.
>
> …
>
> 3. The 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.

364. Article 7 is clearly intended to assign individual criminal responsibility at different levels, both subordinate and superior, for the commission of crimes listed in Articles 2 to 5 of the Statute. Article 7 gives effect to a general principle of criminal law that an individual is responsible for his acts and omissions. It provides that an individual may be held criminally responsible for the direct commission of a crime, whether as an individual or jointly, or through his omissions for the crimes of his subordinates when under an obligation to act. Article 7(3) of the Statute sets forth the principle governing the responsibility of superiors commonly referred to as "command responsibility".[492]

365. Some of the legal issues arising in connection with Article 7(1) and 7(3) were considered in depth in other cases before this International Tribunal. This Trial Chamber will not revisit them. In accordance with the Appeals Chamber's finding in *Aleksovski* that "a proper construction of the Statute requires that the *ratio decidendi* of its decisions is binding on Trial Chambers",[493] the Trial Chamber will follow the Appeals Chamber's jurisprudence on those issues that were previously addressed on appeal.

[492] The terms "command responsibility" and "superior responsibility" are used interchangeably in this Judgement.
[493] *Aleksovski* Appeal Judgement, para 113.

1. Preliminary Observations on the Distinct Features of Article 7(1) and (3)

366. The distinct character of the liability envisaged in Article 7(1) and 7(3), particularly in relation to persons in positions of superior authority, should be emphasised.

367. Article 7(1) is concerned with persons directly responsible for planning, instigating, ordering, committing, or aiding and abetting in the planning, preparation or execution of a crime. Thus, both the individual who himself carries out the unlawful conduct and his superior who is involved in the conduct not by physical participation, but for example by ordering or instigating it, are covered by Article 7(1). For instance, a superior who orders the killing of a civilian may be held responsible under Article 7(1), as might a political leader who plans that certain civilians or groups of civilians should be executed, and passes these instructions on to a military commander. The criminal responsibility of such superiors, either military or civilian, in these circumstances is personal or direct, as a result of their direct link to the physical commission of the crime. The criminal responsibility of a superior for such positive acts, except where the superior orders the crime in which case he may be more appropriately referred to as primarily responsible for its commission, may be regarded as "follow(ing) from general principles of accomplice liability".[494]

368. In contrast, the Secretary-General in his report describes command responsibility as set out in paragraph 3 of Article 7 of the Statute thus:

> A person in a position of superior authority should, therefore, be held individually responsible for giving the unlawful order to commit a crime under the present Statute. But he should also be held responsible for failure to prevent a crime or deter the unlawful behaviour of his subordinates. This imputed responsibility or criminal negligence is engaged if the person in superior authority knew or had reason to know that his subordinates were about to commit or had committed crimes and yet failed to take the necessary and reasonable steps to prevent or repress the commission of such crimes or to punish those who had committed them.[495]

The Appeals Chamber in ^*elebi}i* held:

> The literal meaning of Article 7(3) is not difficult to ascertain. A commander may be held criminally liable in respect of the acts of his subordinates in violation of Articles 2 to 5 of the Statute. Both the subordinates and the commander are individually responsible in relation to the impugned acts. The commander would be tried for failure to act in respect of the offences of his subordinates in the perpetration of which he did not directly participate.[496]

369. The type of responsibility provided for in Article 7(3) may be described as "indirect" as it does not stem from a "direct" involvement by the superior in the commission of a crime but rather from his omission to prevent or punish such offence, i.e., of his failure to act in spite of knowledge.

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[494] ^*elebi}i* Trial Judgement, para. 334.
[495] Report of the Secretary-General, para 56.
[496] ^*elebi}i* Appeal Judgement, para. 225.

This responsibility arises only where the superior is under a legal obligation to act. In the words of the ^*elebi}i* Trial Chamber, as endorsed by the Appeals Chamber:

> The doctrine of command responsibility is ultimately predicated upon the power of the superior to control the acts of his subordinates. A duty is placed upon the superior to exercise this power so as to prevent and repress the crimes committed by his subordinates, and a failure by him to do so in a diligent manner is sanctioned by the imposition of individual criminal responsibility in accordance with the doctrine."[497]

The duty that rests on military commanders properly to supervise their subordinates is for instance expressed in Article 87 of Additional Protocol I, entitled "Duty of commanders", which imposes an affirmative duty on them to prevent persons under their control from committing violations of international humanitarian law, and to punish the perpetrators if violations occur.[498] Liability under Article 7(3) is based on an omission as opposed to positive conduct. It should be emphasised that the doctrine of command responsibility does not hold a superior responsible merely because he is in a position of authority as, for a superior to be held liable, it is necessary to prove that he "knew or had reason to know" of the offences and failed to act to prevent or punish their occurrence. Superior responsibility, which is a type of imputed responsibility, is therefore not a form of strict liability.[499]

370. The Prosecution contends that an accused may be convicted cumulatively for responsibility under Article 7(1) and 7(3). It is submitted that any additional responsibility under Article 7(3) increases the responsibility of the accused attracting "enhanced" punishment.[500]

371. The Trial Chamber is of the view that in cases where the evidence presented demonstrates that a superior would not only have been informed of subordinates' crimes committed under his authority, but also exercised his powers to plan, instigate or otherwise aid and abet in the planning, preparation or execution of these crimes, the type of criminal responsibility incurred may be better characterised by Article 7(1).[501] Where the omissions of an accused in a position of superior

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[497] ^*elebi}i* Appeal Judgement, para. 197, *citing* ^*elebi}i* Trial Judgement, para. 377.

[498] *See* ^*elebi}i* Trial Judgement para. 334: "As is most clearly evidenced in the case of military commanders by article 87 of Additional Protocol I, international law imposes an affirmative duty on superiors to prevent persons under their control from committing violations of international humanitarian law, and it is ultimately this duty that provides the basis for, and defines the contours of, the imputed criminal responsibility under Article 7 (3) of the Statute."

[499] The ^*elebi}i* Appeals Chamber held: "as the element of knowledge has to be proved in this type of cases, command responsibility is not a form of strict liability. A superior may only be held liable for the acts of his subordinates if it is shown that he "knew or had reasons to know" about them. The Appeals Chamber would not describe superior responsibility as a vicarious liability doctrine, insofar as vicarious liability may suggest a form of *strict* imputed liability." ^*elebi}i* Appeal Judgement, para. 239.

[500] Prosecution Final Brief, p. 149, and Prosecution Final Brief, Annex 4, pp. 22-24, referring to *Bla{ki}* Trial Judgement, paras. 337-339, and ^*elebi}i* Trial Judgement, paras. 1222-1223. Reference is also made to ICTR jurisprudence.

[501] *Prosecutor v. Karad`i} and Mladi}*, Review of the Indictments Pursuant to Rule 61 of the Rules of Procedure and Evidence, Trial Chamber I, Case No. IT-95-5-R61/IT-95-18-R61, 11 July 1996, para. 83.

authority contribute (for instance by encouraging the perpetrator) to the commission of a crime by a subordinate, the conduct of the superior may constitute a basis for liability under Article 7(1).

B. Individual Criminal Responsibility Under Article 7(1)

1. Introduction

372. The accused Dario Kordi} and Mario ^erkez are both charged under Article 7(1) of the Statute for "committing, planning, instigating, initiating, ordering or aiding and abetting the planning, preparation or execution" of the crimes alleged in the Indictment.[502] The Prosecution in its final arguments submits that both accused are primarily responsible for their "active participation" in the crimes charged in the Indictment.[503]

373. Article 7(1) provides that a person who "planned, instigated, ordered, committed, or otherwise aided and abetted in the planning, preparation or execution of a crime" shall be held individually responsible for the crime. The principle that an individual may be held criminally responsible for planning, assisting, participating or aiding and abetting in the commission of a crime is firmly based in customary international law.[504] Article 7(1) reflects the principle of criminal law that criminal liability does not attach solely to individuals who physically commit a crime but may also extend to those who participate in and contribute to a crime in various ways, when such participation is sufficiently connected to the crime, following principles of accomplice liability. The various forms of participation listed in Article 7(1) may be divided between principal perpetrators and accomplices. Article 7(1) may thus be regarded as intending to ensure that all those who either engage directly in the perpetration of a crime under the Statute, or otherwise contribute to its perpetration, are held accountable.[505] The Appeals Chamber in *Tadi}* found that

> Any act falling under one of the five categories contained in the provision [Article 7(1)] may entail the criminal responsibility of the perpetrator or whoever has participated in the crime in one of the ways specified in the same provision of the Statute.[506]

374. The Statute does not specify the necessary degree of participation by the individual in the crime. Trial Chambers of this International Tribunal, and the Appeals Chamber in relation to some aspects, addressed the material and mental elements required by customary international law under

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[502] Indictment, paras. 19 and 21. In relation to the heading of "initiating", the Trial Chamber observes that it is not provided for in Article 7(1) and that in any event it would be covered by other forms of participation explicitly listed.
[503] Prosecution Final Brief, p. 149. It is further submitted that any additional responsibility under Article 7(3) increases the responsibility of the accused attracting "enhanced" punishment. The bulk of the Prosecution's legal submissions in relation to Article 7 is presented in Annex 4 to its Final Brief.
[504] *See* discussion of the customary basis of the criminal heads set out in Article 7(1) by the Trial Chamber in *Tadi}* Trial Judgement, paras. 663-669.
[505] *See* Report of the Secretary-General, para. 54. *Tadi}* Appeal Judgement, para. 190.
[506] *Tadi}* Appeal Judgement, para. 186.

the heads of direct criminal responsibility set forth in Article 7(1). The Trial Chamber will now turn to a consideration of the legal issues raised by the arguments of the parties.

2. Committing

375. The legal elements of "committing" as described in the submissions of the Prosecution[507] and the Defence[508] do not appear to differ fundamentally. In relation to the requisite *actus reus*, it is submitted that to be held responsible for "committing" the accused should be found to have performed all of the material elements of a crime under the International Tribunal's Statute. In the Prosecution's submission the *actus reus* may be performed both through positive actions and omissions,[509] or a combination thereof. The Kordi} Defence submits that the accused may commit the act that constitutes a crime individually or jointly with others. The *mens rea* required is that the accused acted with the requisite intent for the crime under customary international law.[510] The Prosecution is of the view that this requirement is satisfied when the accused acted in the awareness of the substantial likelihood that a criminal act or omission would occur as a consequence of his conduct.

376. It is not controversial, in the Trial Chamber's opinion, that any finding of direct commission requires the direct personal or physical participation of the accused in the actual acts which constitute a crime under the International Tribunal's Statute with the requisite knowledge. The Appeals Chamber in *Tadi}* found that Article 7(1) "covers first and foremost the physical perpetration of a crime by the offender himself, or the culpable omission of an act that was mandated by a rule of criminal law."[511]

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[507] Prosecution Final Brief, Annex 4, p. 15. Individual perpetration is one of the forms of "commission", co-perpetration within the context of a common design being the other one argued by the Prosecution.
[508] Kordi} Final Brief, pp. 362-363. The ^erkez Defence incorporated by reference the relevant legal submissions of the Kordi} Final Brief, *see* ^erkez Final Brief, p. 4. Unless otherwise noted, the arguments set out by the Kordi} Defence also refer to the arguments of the ^erkez Defence.
[509] In relation to the requisite *actus reus* of "planning, instigating, ordering, committing or otherwise aiding and abetting in the execution of a crime", the Prosecution avers that not only positive acts but also culpable omissions may give rise to individual responsibility. However, an individual will incur criminal liability for an omission only when the individual is under a duty to act. Prosecution Final Brief, Annex 4, pp. 3-4.
[510] Kordi} Final Brief, p. 363.
[511] *Tadi}* Appeal Judgement, para. 188.

3. Planning, Instigating, Ordering

(a) Arguments of the parties

(i) Planning

377. The Prosecution submits that the elements of the offence of "planning" are the following. The *actus reus* required is that: (a) the crime was committed by a person other than the accused, with or without the latter's participation or that of the other planners; and (b) the criminal conduct of that other person was undertaken in execution of a plan devised by the accused alone or in conjunction with others. The accused had the *mens rea* of the crime, or was aware of the substantial likelihood that the commission of the crime would be a consequence of carrying out the plan.[512] Responsibility for planning may involve different levels of command and, accordingly, different levels of planning, from persons holding the higher positions of "overall architects" to field commanders. The existence of a plan may be proved through circumstantial evidence.[513]

378. The Kordi} Defence contends that "planning" is a form of indirect liability, and that the elements of that crime are the same as those of "aiding and abetting".[514] Further, "planning" is a form of complicity where criminal liability only arises upon the completion of the crime. The Defence thus argues that there is no precedent supporting the theory that "planning" alone of a crime under the Statute can be punished as a separate stage in the commission of such crimes. A person may be punished either for planning a crime, or for committing it, but not for both, as a perpetrator cannot be punished for planning as a separate stage in the commission of a crime.[515]

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[512] Prosecution Final Brief, Annex 4, pp. 6-7. In the Prosecution's submissions, an accused may be held criminally responsible for planning a crime even if the person actually performing the *actus reus* of the crime in pursuance of the plan lack the corresponding *mens rea* (for instance where soldiers are ordered to destroy a religious building thinking that the object of the attack is a military arsenal). Moreover the responsibility for planning may cover results which, while not contained in the initial plan, can be seen as a natural and foreseeable or predictable consequence of the execution of the crime (for instance the planning of forcibly removing inhabitants of a village and deporting them to a detention facility which results in the killing of several of them). Prosecution Final Brief, Annex 4, pp. 7-8.

[513] Prosecution Final Brief, Annex 4, p. 8.

[514] The Defence submits that three elements are required to establish "indirect liability" for planning, instigating and aiding and abetting under Article 7(1): (1) the accused intended to participate in an act that constitutes a crime under the Statute; (2) the accused actually participated with such intent, and (3) by that participation, the accused contributed directly and substantially to the commission of the crime. Kordi} Final Brief, pp. 364-365.

[515] Kordi} Final Brief, pp. 396-397.

379. The Prosecution disagrees with the Defence position that "planning" constitute a sub-species of "aiding and abetting" and submits that "planning" is an autonomous form of responsibility under Article 7(1).[516]

(ii) Instigating

380. In the Prosecution's submission, instigation is essentially defined by the fact that the accused prompted another person or persons to commit a crime, and may take a variety of forms,[517] including incitement (forms of promises of financial or other advantage). Any conduct by an accused intending to cause another person to act or omit to act in a particular way may qualify as instigation. The requisite *actus reus* is satisfied if it is shown that the accused provoked or induced the conduct of another person(s) who committed a crime, in the sense that the conduct of the accused was a clear contributing factor to the conduct of the other person(s) (a causal connection between the instigation and the fulfillment of the *actus reus* of the crime needs to be proven). It is sufficient to prove that the accused's conduct strengthened the resolve of the direct perpetrator who already had the intention to commit a crime.[518] The required *mens rea* is that (i) the accused intended to provoke or induce the commission of the crime, or was aware of the substantial likelihood that the commission of a crime would be a probable consequence of his acts; and (ii) he had all the elements of the *mens rea* of a crime within the jurisdiction of the International Tribunal which he meant to induce. The accused must have the full *mens rea* of the underlying offence which he seeks to instigate but there is no requirement that the direct perpetrator possess the full *mens rea*.[519]

381. The Kordi} Defence argues that "instigating" is a narrowly defined offence in which the instigation has to be very specific both as to the perpetrator and as to the offence to prevent the infringement of legitimate free speech. The requisite *actus reus* is that (1) the accused committed an act directly intended to provoke a particular perpetrator or identifiable group to which the perpetrator belongs to commit a specific crime; (2) there is a causal link between the act characterised as instigation and a specific offence – the criteria is the "but for" standard of causation. There can be no instigation if the perpetrator has already formed his decision to commit the crime. The Defence also asserts a strict *mens rea* requirement for instigation: the instigator

[516] Prosecution Final Brief, Annex 4, p. 8, footnote 23. The Prosecution further asserts that even if an accused were held responsible only for "committing" a crime, his or her intervention in the planning stage would at least constitute a higher degree of culpability and therefore call for enhanced punishment.
[517] There is no requirement (as held in *Akayesu*) that the instigation be direct and public. An instigation to commit a crime can be express or implied. Prosecution Final Brief, Annex 4, p. 9, footnote 28.
[518] Where the crime is committed by more than one person, it is not necessary to prove that the accused instigated the conduct of all of them. It is also submitted that an accused may instigate a crime indirectly, i.e., through another person. Prosecution Final Brief, Annex 4, p. 9.

must have intended directly to prompt or provoke a particular perpetrator or identifiable group to which he belongs to commit a specific crime desired by the instigator himself. The instigator not only has to be aware of all the elements of the crime he is instigating, but has to possess the very same intent as is required for the perpetrator. It is further submitted that the instigator is liable only to the limits of his own intent, regardless of the guilt of the principal.[520]

(iii) Ordering

382. The Prosecution submits that the requisite *actus reus* is satisfied where: (a) the crime was performed by a person or persons other than the accused, with or without the latter's participation; (b) the perpetrator acted in execution of an express or implied order given by the accused to a subordinate or other person over whom the accused was in a position of authority. In addition to orders given by regular military commanders, orders of "superiors" or "commanders" of "irregular" bodies such as paramilitary forces or special units also fall within the scope of "ordering".[521] What matters is the authority to give orders even in the absence of a formal superior-subordinate relationship. There is no requirement that the order be in writing or in any particular form, and it may be express or implied. The order need not be given directly to those who actually perform the *actus reus* of the crime. The Prosecution also stressed that the existence of an order may be proven circumstantially.

383. According to the Prosecution, the *Blaškic* Trial Judgement supports its position that the requisite *mens rea* for the crime of ordering encompasses both direct and indirect intent (i.e., awareness of the "substantial likelihood" that crimes will be committed as a consequence of carrying out the order).[522] It is not necessary to prove that the subordinates who execute the order share the *mens rea* of the accused.[523]

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[519] Prosecution Final Brief, Annex 4, p. 10.
[520] Kordi} Final Brief, pp. 373-375. The instigator should not be liable for the excesses of the principal. Conversely, if the perpetrator has committed less than the instigator believed he would, the instigator can be held responsible only for what was actually done.
[521] Prosecution Final Brief, Annex 4, p. 10. The Prosecution submits that the presence of a commander at the time of the commission of a crime by units under its command or immediately before may be received as evidence of responsibility under Article 7(1). His approving presence immediately after the commission is also a relevant indicator of his criminal responsibility in the commission of the crime. Prosecution Final Brief, Annex 4, p. 14.
[522] Even if the crime committed was not the actual purpose of the order, an accused may be held liable for issuing it if he is aware of the substantial likelihood that a crime will be committed as a result of the execution of the order, Prosecution Final Brief, Annex 4, pp. 12-13.
[523] The Prosecution refers to elements listed by the United Nations Commission of Experts which may be used to ascertain the existence of an order. Prosecution Final Brief, Annex 4, pp. 10-15.

384. The Kordi} Defence submits that there can be no "ordering" without a superior-subordinate relationship.[524] It also disagrees with the Prosecution concerning the form that the order may take: it is submitted that either written or "spoken speech" are necessarily involved.[525] Having the power to order in general does not suffice. Further the superior must have ordered a particular subordinate to commit a specific crime. Issuance of general orders or orders on general topics will not suffice. There is a causal link between the order and a specific offence – the criterion is the "but for" standard of causation. The Defence asserts a strict *mens rea* requirement to establish criminal responsibility for ordering: the superior must have been aware of the constitutive elements of the crime ordered, and must have desired a crime to be committed by the subordinate. In order for the superior to be held liable for ordering a crime he must possess the very same intent as that required for the guilty subordinate.[526]

(b) Discussion

385. In relation to the involvement of an accused in a crime other than through direct participation, the Trial Chamber in *Tadi}* considered the connection sufficient for an individual to be held criminally liable. Based upon a review of Second World War case-law, the *Tadi}* Trial Chamber concluded that, to hold an individual criminally responsible for his participation in the commission of a crime other than through direct commission, it should be demonstrated that he intended to participate in the commission of the crime and that his deliberate acts contributed directly and substantially to the commission of the crime:

> In sum, the accused will be found criminally culpable for any conduct where it is determined that he knowingly participated in the commission of an offence that violates international humanitarian law and his participation directly and substantially affected the commission of that offence through supporting the actual commission before, during, or after the incident. He will also be responsible for all that naturally results from the commission of the act in question.[527]

386. Referring to the *Akayesu* Trial Judgement, the Trial Chamber in *Bla{ki}* held that "planning implies that 'one or several persons contemplate designing the commission of a crime at both the preparatory and execution phases'".[528] The *Bla{ki}* Trial Chamber also found that the existence of a plan may be demonstrated through circumstantial evidence.[529] The Trial Chamber finds that planning constitutes a discrete form of responsibility under Article 7(1) of the Statute, and thus agrees that an accused may be held criminally responsible for planning alone. However, a person

[524] In the Kordi} Defence submission, this element renders "ordering" different from "instigating". Kordi} Final Brief, pp. 365-366.
[525] Kordi} Final Brief, p. 365, footnote 2135.
[526] Kordi} Final Brief, pp. 365-366.
[527] *Tadi}* Trial Judgement, para. 692. The Trial Chamber held that the requisite intent may be inferred from circumstantial evidence, para. 676. The *Tadi}* findings were endorsed by the ^*elebi}i* Trial Judgement, para. 326.
[528] *Bla{ki}* Trial Judgement, para. 279.

found to have committed a crime will not be found responsible for planning the same crime. Moreover, an accused will only be held responsible for planning, instigating or ordering a crime if he directly or indirectly intended that the crime be committed.[530]

387. The *Bla{ki}* Trial Chamber held that instigating "entails 'prompting another to commit an offence'."[531] Both positive acts and omissions may constitute instigation,[532] but it must be proved that the accused directly intended to provoke the commission of the crime. Although a causal relationship between the instigation and the physical perpetration of the crime needs to be demonstrated (i.e., that the contribution of the accused in fact had an effect on the commission of the crime), it is not necessary to prove that the crime would not have been perpetrated without the accused's involvement.

388. The Trial Chamber is of the view that no formal superior-subordinate relationship is required for a finding of "ordering" so long as it is demonstrated that the accused possessed the authority to order.[533] The Trial Chamber agrees with the *Bla{ki}* finding that there is no requirement that an order be given in writing or in any particular form, and that the existence of an order may be proven through circumstantial evidence.[534] In relation to ordering, the *Bla{ki}* Trial Chamber further held that the order "does not need to be given by the superior directly to the person(s) who perform(s) the *actus reus* of the offence. Furthermore, what is important is the commander's *mens rea*, not that of the subordinate executing the order."[535]

4. Aiding and Abetting and Participation in a Common Purpose or Design[536]

(a) Arguments of the parties

(i) Aiding and abetting

389. In the Prosecution's opinion, these two concepts are distinct in that aiding means giving assistance to someone while abetting implies facilitating the commission of an offence. Either one suffices to render an accused criminally responsible under Article 7(1).[537] The Prosecution

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[529] *Bla{ki}* Trial Judgement, para. 279.
[530] *Bla{ki}* Trial Judgement, para. 278.
[531] *Bla{ki}* Trial Judgement, para. 280, endorsing *Akayesu* Trial Judgement, para. 482.
[532] *Bla{ki}* Trial Judgement, para. 280.
[533] The Trial Chamber disagrees with the *Bla{ki}* and *Akayesu* Trial Chambers in this respect. *See Bla{ki}* Trial Judgement, para. 281, citing *Akayesu* Trial Judgement, para. 483.
[534] *Bla{ki}* Trial Judgement, para. 281.
[535] *Bla{ki}* Trial Judgement, para. 282.
[536] Aiding and abetting and participation in a common purpose are addressed in the same section in light of the *Tadi}* Appeal Judgement which, in setting out the elements of the latter, compared it to aiding and abetting.
[537] Prosecution Final Brief, Annex 4, p. 18.

submits[538] that for an accused to be held responsible for aiding and abetting, his conduct must have directly and substantially contributed to the commission by another person of the material elements of a crime, i.e., his conduct constitutes assistance which facilitates the commission of the crime in some significant way.[539] There is no requirement of a pre-existing plan. Where such a plan exists all those who knowingly participate in or contribute to it may be held responsible either as co-perpetrators or as aiders and abettors. It is submitted that aiding and abetting can take place before, during or after the event.[540] Aiding and abetting may assume a variety of forms of assistance (including omissions when there is a legal obligation to intervene), including mere presence at the scene of the crime which encourages the perpetrators or gives them psychological support.[541] In the Prosecution's opinion, an accused's position of authority constitutes a relevant factor in determining whether his conduct lent encouragement or support (for instance through an acquiescing presence which may be understood as signaling approval and tolerance when or after the crime is committed).[542]

390. The Prosecution avers that the requisite *mens rea* is satisfied if the accused knew that his conduct would substantially contribute to the commission by another person of the *actus reus* of a crime, or was aware of the substantial likelihood that this would be a probable consequence of his conduct. The aider and abettor need not share the *mens rea* of the principal, and he does not need to know the precise crime committed. What is required is awareness of the essential elements of the crime committed by the principal. It is submitted that the existence of the *mens rea* need not be explicit and may be inferred from all the relevant circumstances.

391. The Kordi} Defence contends[543] that the requisite *actus reus* is satisfied where the accused assisted in the commission of the particular crime by another individual, and his assistance contributed directly and substantially to the commission of the specific crime in the sense that such crime most likely would not have occurred in the same way without the accused acting as he did.

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[538] Prosecution Final Brief, Annex 4, pp.17-21.

[539] However, the contribution need not constitute a *conditio sine qua non* for the commission of the offence by the principal. The fact that the same assistance could have been obtained from another person does not affect the culpability of the aider and abettor (*Furund`ija* Trial Judgement, paras. 232-235). Prosecution Final Brief, Annex 4, p. 18.

[540] Assistance may be agreed upon after the crime is committed. Any form of assistance that aims at ensuring impunity or profit to the perpetrator(s) amounts to aiding and abetting. Prosecution Final Brief, Annex 4, pp. 18-19.

[541] Prosecution Final Brief, Annex 4, p. 19.

[542] After the commission of the crime, the approving presence of the accused coupled with failure to punish may be understood as providing moral support to the perpetrators and ensuring their impunity, which amounts to aiding and abetting. Prosecution Final Brief, Annex 4, p. 20.

[543] Kordi} Final Brief, pp. 390-396. The ^erkez Defence submits that aiding and abetting include all acts of assistance by words or acts of encouragement or support which have a direct and substantial effect on the commission of the crime (before, during or after), with the requisite intent. Mere presence at the scene of the crime is not sufficient if it is an ignorant or unwilling presence (based on *Tadi}* Trial Judgement, paras. 689 and 692). An accused cannot be held responsible for encouraging an individual who has already decided to commit a crime. ^erkez Final Brief, p. 86.

Although the accused's conduct need not have been a *conditio sine qua non* of the commission of the crime, it must have made a difference.[544] It is submitted that the accused's presence is sufficient for establishing aiding and abetting when it made a direct and significant contribution to the actual crime. The Defence refers with approval to the *Aleksovski* Appeals Chamber's findings (which referred to the *Tadi}* Appeal Judgement) in support of its argument. It is also submitted that a finding of aiding and abetting may not be based solely on an accused's status in a particular organisation or party.

392. In relation to the requisite *mens rea*, the Kordi} Defence asserts that specific knowledge of the specific criminal act by the aider and abetter is essential.[545] It is submitted that the Trial Chamber should reject the Prosecution's argument that mere knowledge is sufficient to meet the *mens rea* requirement. In the Defence's view, there should be a conscious decision to participate. The accused may be found to possess the requisite *mens rea* if he is aware of the nature and effect of his own acts and of the essential elements that constitute the offence.[546]

(ii) Participation in a common purpose or design

393. The Prosecution submits[547] that "common purpose" as adopted by the *Tadic* Appeals Chamber is a theory of co-perpetration under the word "committing" in Article 7(1). A knowing participant in a common plan or design may be held liable as a principal perpetrator for all the acts that flow from the plan, irrespective of whether he was personally involved in the act. It is submitted that the *actus reus* involves a plurality of persons, and the existence of a common plan, design or purpose for the commission of a crime provided for in the Statute, in which the accused participated. Depending on the category of common design as set out in the *Tadi}* Appeal Judgement, the *mens rea* will be different.

394. The Kordi} Defence does not accept that the International Tribunal's Statute permits reliance upon the common purpose doctrine because it has no statutory basis and there is no need for a common purpose doctrine. It is submitted that even if the elements set out in the *Tadi}* Appeal

[544] The Defence further relies on the *Furund`ija* Trial Judgement which held that "the *actus reus* of aiding and abetting in international criminal law requires practical assistance, encouragement, or moral support which has a substantial effect on the perpetration of the crime" (*Furund`ija* Trial Judgement, para. 235). Kordi} Final Brief, pp. 391-392.
[545] The accused must have intentionally assisted another in the commission of the specific offence; he was aware that a principal intended to commit a specific crime; he must have known that his assistance would contribute to the commission of the specific crime in some significant way; and he deliberately decided to assist the principal in commission of the specific crime in order to promote or facilitate such commission. Kordi} Final Brief, pp. 394.
[546] Reference was made to the *Aleksovski* Appeal Judgement in support of its argument. It is finally submitted that accomplices are only liable to the limits of their own intent, regardless of the guilt of the principal. On the other hand, if the perpetrator has committed less than the accomplice believed, he would be held responsible only for what was actually done. Kordi} Final Brief, pp. 395-396.
[547] Prosecution Final Brief, Annex 4, pp. 15-17.

Judgement are regarded as the correct legal test, the facts of the case do not show that Dario Kordi} participated in any "common purpose or design".[548]

(b) Discussion

395. The Appeals Chamber in *Tadi}* considered the issue of "whether the acts of one person can give rise to the criminal culpability of another where both participate in the execution of a common criminal plan".[549] Having found that criminal responsibility for participating in a common purpose or design falls within the scope of Article 7(1) of the Statute,[550] the Appeals Chamber went on to review three categories of cases.

396. The third category, in relation to cases where there is a "shared intention on the part of a group to forcibly remove members of one ethnicity from their town, village or region (to effect "ethnic cleansing") with the consequence that, in the course of doing so, one or more of the victims is shot and killed",[551] seems particularly apposite to the issues in this case. In relation to this type of case, the Appeals Chamber held that the requirements were "that of a criminal intention to participate in a common criminal design and the foreseeability that criminal acts other than those envisaged in the common criminal design are likely to be committed by other participants in the common design."[552]

397. The Appeals Chamber summarised its findings concerning the required elements in relation to criminal liability pursuant to the common purpose doctrine thus:

> In sum, the objective elements (*actus reus*) of this mode of participation in one of the crimes provided for in the Statute (with regard to each of the three categories of cases) are as follows:
>
> i. *A plurality of persons*. They need not be organised in a military, political, or administrative structure ... .
>
> ii. *The existence of a common plan, design or purpose which amounts to or involves the commission of a crime provided for in the Statute.* There is no necessity for this plan, design or purpose to have been previously arranged or formulated. The common plan or purpose may materialise extemporaneously and be inferred from the fact that a plurality of persons acts in unison to put into effect a joint criminal enterprise.

[548] Kordi} Final Brief, pp. 397-398. The Defence goes on to refer to the elements of common purpose as set out in the *Tadi}* Appeal Judgement.
[549] *Tadi}* Appeal Judgement, para. 185.
[550] *Tadi}* Appeal Judgement, paras. 187-193. *See also*, para. 220: "In sum, the Appeals Chamber holds the view that the notion of common design as a form of accomplice liability is firmly established in customary international law and in addition is upheld, albeit implicitly, in the Statute of the International Tribunal."
[551] *Tadi}* Appeal Judgement, para. 204. Another example mentioned by the Appeals Chamber in this regard is that of "a common plan to forcibly evict civilians belonging to a particular ethnic group by burning their houses", para. 204. *See* paras. 205-219 for a discussion of this category of cases.
[552] *Tadi}* Appeal Judgement, para. 206.

iii. *Participation of the accused in the common design* involving the perpetration of one of the crimes provided for in the Statute. This participation need not involve commission of a specific crime under one of those provisions (for example murder, extermination, torture, rape, etc.), but may take the form of assistance in, or contribution to, the execution of the common plan or purpose.[553]

398. The Appeals Chamber found that the *mens rea* required was different depending upon the category of common design under consideration. In relation to the third category of cases, it held:

> what is required is the *intention* to participate in and further the criminal activity or the criminal purpose of a group and to contribute to the joint criminal enterprise or in any event to the commission of a crime by the group. In addition, responsibility for a crime other than the one agreed upon in the common plan arises only if, under the circumstances of the case, (i) it was *foreseeable* that such a crime might be perpetrated by one or other members of the group and (ii) the accused *willingly took that risk*.[554]

399. The Appeals Chamber compared the forms of responsibility based on participation in a common purpose with aiding and abetting:

> (i) The aider and abettor is always an accessory to a crime perpetrated by another person, the principal.
>
> (ii) In the case of aiding and abetting no proof is required of the existence of a common concerted plan, let alone of the pre-existence of such a plan. No plan or agreement is required: indeed, the principal may not even know about the accomplice's contribution.
>
> (iii) The aider and abettor carries out acts specifically directed to assist, encourage or lend moral support to the perpetration of a certain specific crime (murder, extermination, rape, torture, wanton destruction of civilian property, etc.), and this support has a substantial effect upon the perpetration of the crime. By contrast, in the case of acting in pursuance of a common purpose or design, it is sufficient for the participant to perform acts that in some way are directed to the furthering of the common plan or purpose.
>
> (iv) In the case of aiding and abetting, the requisite mental element is knowledge that the acts performed by the aider and abettor assist the commission of a specific crime by the principal. By contrast, in the case of common purpose or design more is required (i.e., either intent to perpetrate the crime or intent to pursue the common criminal design plus foresight that those crimes outside the criminal common purpose were likely to be committed), as stated above. [555]

400. Although the Appeals Chamber did not consider "aiding and abetting" in great detail in the context of the *Tadi}* appeal, it set out its essential elements. In *Aleksovski* the Appeals Chamber accepted the *Tadi}* Appeals Chamber's findings and emphasised the importance of the "awareness by the aider and abetter of the essential elements of the crime committed by the principal".[556]

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[553] *Tadi}* Appeal Judgement, para. 227. The Appeals Chamber relied on this finding in the *Furund`ija* Appeal Judgement, para. 119.
[554] *Tadi}* Appeal Judgement, para. 228.
[555] *Tadi}* Appeal Judgement, para. 229.
[556] *Aleksovski* Appeal Judgement, paras. 163-164. The findings of the *Furund`ija* Trial Chamber, which conducted an extensive analysis of the *actus reus* and *mens rea* required to prove a charge of aiding and abetting, are essentially consistent with the *Tadi}* Appeals Chamber's findings in this regard. *See Furund`ija* Trial Judgement, paras. 190-249.

C. Individual Criminal Responsibility Under Article 7(3)

401. It is clear from a reading of Article 7(3) that three elements must be proved before a person may incur superior responsibility for the crimes committed by subordinates: (1) the existence of a relationship of superiority and subordination between the accused and the perpetrator of the underlying offence; (2) the mental element, or knowledge of the superior that his subordinate had committed or was about to commit the crime; (3) the failure of the superior to prevent the commission of the crime or to punish the perpetrators.[557] The Trial Chamber will consider these three elements in turn.

1. The Superior-Subordinate Relationship

(a) Arguments of the parties

402. The Prosecution argues[558] that superior responsibility is not limited to military commanders or to situations arising under a military command, but also extends to "individuals in non-military positions of superior authority", that is civilians.[559] What is important is the degree of authority exercised by the superior. The Prosecution finds support for its position in the *Aleksovski* Appeals Chamber's finding, which is binding on Trial Chambers, that it is immaterial whether an accused is a civilian or military superior if it can be established that he had the powers to prevent or punish. It submits that the superior need not be part of a regular chain of command.[560] Superior responsibility may be imposed by virtue of a superior *de facto* as well as *de jure* position of authority. The factor that determines superior responsibility is the actual possession, or non-possession of effective powers of control, in the sense that the superior must be found to have the material ability to prevent and punish the commission of crimes by subordinates.[561]

403. The Kordi} Defence submits that the superior-subordinate relationship must be such that the subordinate was under the authority of the superior in an actual military chain of command, or its functional equivalent, and, if the superior was a civilian, he must have exercised a degree of control

[557] *See ^elebi}i* Trial Judgement, para. 346, and *Bla{ki}* Trial Judgement, para. 294. Prosecution Final Brief, Annex 4, p. 22. Kordi} Final Brief, p. 261.
[558] Prosecution Final Brief, Annex 4, pp. 24-27.
[559] Prosecution Final Brief, Annex 4, p. 24, quoting *^elebi}i* Trial Judgement, para. 363. Further reference is made to ICTR jurisprudence.
[560] It is submitted that 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. Prosecution Final Brief, Annex 4, p. 25.
[561] The Prosecution submits that a commander need not have any legal authority to prevent or punish. Prosecution Final Brief, Annex 4, p. 26.

over the subordinate equivalent to that of a military commander.[562] The Defence quotes with approval the ^*elebi}i* Trial Chamber's finding that the principle of superior responsibility is only applicable to superiors who exercise effective control over subordinates, in the sense of having the material ability to prevent and punish the commission of the offences.

404. It is submitted that politicians usually have far less powers of control and prevention over subordinates than military commanders, which is why civilians in a position of *de facto* authority should be required to exercise "full military-style" control to be held responsible as superiors for the acts of their subordinates.[563]

(b) Discussion

(i) The nature of the superior-subordinate relationship

405. The ^*elebi}i* Appeals Chamber defined a commander or superior as "one who possesses the power or authority in either a *de jure* or a *de facto* form to prevent a subordinate's crime or to punish the perpetrators of the crime after the crime is committed."[564] It went on to conclude that "[t]he power or authority to prevent or to punish does not solely arise from *de jure* authority conferred through official appointment."[565] The Appeals Chamber thus endorsed the ^*elebi}i* Trial Chamber's conclusion that *de facto* superiors may incur criminal responsibility if found to be in possession of actual and effective powers of control over the actions of their subordinates.[566] It concluded:

> In determining questions of responsibility it is necessary to look to effective exercise of power or control and not to formal titles. This would equally apply in the context of individual criminal responsibility. In general, the possession of *de jure* power in itself may not suffice for the finding of command responsibility if it does not manifest in effective control, although a court may presume that possession of such power *prima facie* results in effective control unless proof to the contrary is produced. The Appeals Chamber considers that the ability to exercise effective control is necessary for the establishment of *de facto* command or superior responsibility and thus agrees with the Trial Chamber that the absence of formal appointment is not fatal to a finding of criminal responsibility, provided certain conditions are met.[567]

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[562] The Defence relies on the ^*elebi}i* Trial Judgement in support of its position in relation to civilians. Kordi} Final Brief, p. 261. It rejects the conclusions of the *Aleksovski* and *Bla{ki}* Trial Chambers to the extent they intend to apply the doctrine of superior responsibility to civilians who do not exercise the equivalent of military control. Kordi} Final Brief, p. 263.

[563] The Defence discusses the differences between the military chain of command and civilian/political authority to support the proposition that civilian commanders must exercise a degree of control equivalent to that of a military commander to be found liable. Kordi} Final Brief, pp. 263-265. It is further submitted that the Second World War case-law and the ICTR jurisprudence either do not support a relaxation of the requirements in relation to the superior responsibility of civilians, or that their context fundamentally differs from that of the present case. Kordi} Final Brief, pp. 265-272. *See also* ^erkez Final Brief, pp. 82-83.

[564] ^*elebi}i* Appeal Judgement, para. 192.

[565] ^*elebi}i* Appeal Judgement, para. 193.

[566] ^*elebi}i* Appeal Judgement, paras. 194-95.

[567] ^*elebi}i* Appeal Judgement, para. 197 (footnotes omitted).

406. In other words, not only persons in formal positions of command but also persons found to be "effectively" in command of more informal structures, with the power to prevent and punish the commission of crimes of persons in fact under their control, may be held criminally responsible on the basis of their superior authority.[568] In the absence of a formal appointment, it is the actual exercise of authority which is fundamental for the purpose of incurring criminal responsibility,[569] and in particular a showing of effective control:

> Effective control has been accepted, including in the jurisprudence of the Tribunal, as a standard for the purposes of determining superior responsibility. … The showing of effective control is required in cases involving both *de jure* and *de facto* superiors.[570]

Moreover, the Appeals Chamber defined effective control as "a material ability to prevent or punish criminal conduct, however that control is exercised".[571]

407. Analysing "command" as referring to "powers that attach to a military superior", and control as having a "wider meaning", which also includes the reference to the "powers wielded by civilian leaders",[572] the Appeals Chamber held that the rule that civilian leaders may incur responsibility in relation to acts committed by their subordinates or other persons under their effective control is not controversial.[573]

408. That a superior-subordinate relationship is needed before a person in a position of superior authority may be held liable under the doctrine of command responsibility may seem self-evident. The Trial Chamber in *^elebi}i* held that the "law does not know of a universal superior without a corresponding subordinate. The doctrine of command responsibility is clearly articulated and anchored on the relationship between superior and subordinate, and the responsibility of the commander for actions of members of his troops."[574] The type of relationship required, however, may vary. The Appeals Chamber in *^elebi}i* agreed with the Trial Chamber that the relationship of subordination may be direct or indirect. The *^elebi}i* Trial Chamber held:

> The requirement of the existence of a "superior-subordinate relationship" which, in the words of the Commentary to Additional Protocol I, should be seen "in terms of a hierarchy encompassing the concept of control", is particularly problematic in situations such as that of the former

[568] *^elebi}i* Appeal Judgement, para. 198.
[569] *See* para. 736, *^elebi}i* Trial Judgement, endorsed by the *^elebi}i* Appeal Judgement, paras. 194-95.
[570] *^elebi}i* Appeal Judgement, para. 196. The Appeals Chamber referred to Article 28 of the ICC Statute which "reaffirmed" the standard of effective control.
[571] *^elebi}i* Appeal Judgement, para. 256; *see also ^elebi}i* Trial Judgement, paras. 378 and 395, and *Bla{ki}* Trial Judgement, para. 302 (referred to in *^elebi}i* Appeal Judgement, para. 190).
[572] Thus, "If "command" implies formal appointment, "control" is less restrictive as to the source from where it originates." *^elebi}i* Appeal Judgement, para. 196.
[573] *^elebi}i* Appeal Judgement, para. 196. *See also ^elebi}i* Trial Judgement's analysis of Second World War cases in support of this finding, paras. 355-363.
[574] *^elebi}i* Trial Judgement, para. 647. The Trial Chamber went on to state in the same paragraph that "actual control of the subordinate is a necessary requirement of the superior-subordinate relationship."

> Yugoslavia during the period relevant to the present case – situations where previously existing formal structures have broken down and where, during an interim period, the new, possibly improvised, control and command structures may be ambiguous and ill-defined. It is the Trial Chamber's conclusion [...] that persons effectively in command of such more informal structures, with power to prevent and punish the crimes of persons who are in fact under their control, may under certain circumstances be held responsible for their failure to do so.[575]

The Appeals Chamber summarised this holding in the following terms:

> The Trial Chamber's references to concepts of subordination, hierarchy and chains of command must be read in this context, which makes it apparent that they need not be established in the sense of formal organisational structures so long as the fundamental requirement of an effective power to control the subordinate, in the sense of preventing or punishing criminal conduct, is satisfied.[576]

409. Both Chambers relied upon Additional Protocol I and the ICRC Commentary thereto, which states in relation to the concept of superior:[577]

> This is not a purely theoretical concept covering any superior in a line of command, but we are concerned only with the superior who has a personal responsibility with regard to the perpetrator of the acts concerned because the latter, being his subordinate, is under his control. The direct link which must exist between the superior and the subordinate clearly follows from the duty to act laid down in paragraph 1 [of Article 86]. Furthermore, only that superior is normally in the position of having information enabling him to conclude in the circumstances at the time that the subordinate has committed or is going to commit a breach. However, it should not be concluded from this that this provision only concerns the commander under whose direct orders the subordinate is placed. The role of commanders as such is dealt with in Article 87 (*Duty of commanders*). The concept of the superior is broader and should be seen in terms of a hierarchy encompassing the concept of control.[578]

410. Article 87(1) of Additional Protocol I further extends the legal duty of commanders to properly supervise their subordinates beyond troops under their command:

> The High Contracting Parties and the Parties to the conflict shall require military commanders, with respect to members of the armed forces and the Parties 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 [Geneva] Conventions and of this Protocol.

411. In relation to the meaning to be attached to the superior-subordinate relationship it is worth quoting the ICRC Commentary to Article 87 in full as it unambiguously sheds light on its intended scope:

> This responsibility primarily applies with respect to "members of the armed forces under their command". This term should be understood very specifically, if full practical meaning is to be given to the provision. A commander may, for a particular operation and for a limited period of time, be supplied with reinforcements consisting of troops who are not normally under his command. He must ensure that these members of the armed forces comply with the [Geneva] Conventions and the Protocol as long as they remain under his command. In addition, it is self-evident that the obligation applies in the context of the responsibilities as they have devolved over different levels of the hierarchy, and that the duties of a non-commissioned officer are not identical to those of a battalion commander, and the duties of the latter are not identical to those of

[575] ^*elebi}i* Trial Judgement, para 354, quoted in the ^*elebi}i* Appeal Judgement, para. 254.
[576] ^*elebi}i* Appeal Judgement, para. 254.
[577] ^*elebi}i* Trial Judgement, para. 371; ^*elebi}i* Appeal Judgement, para. 250.
[578] ICRC Commentary (Additional Protocol I), para. 3544 (footnotes omitted).

> a divisional commander. Within the confines of these areas of competence, the responsibility of each of these applies with respect to all the members of the armed forces under his command.
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> However, the text does not limit the obligation of commanders to apply only with respect to members of the armed forces under their command; it is further extended to apply with respect to "other persons under their control". It is particularly, though not exclusively, in occupied territory that this concept of indirect subordination may arise, in contrast with the link of direct subordination which relates the tactical commander to his troops. Territory is considered occupied when it is actually placed under the authority of the hostile army, and the occupation extends only to the territory where such authority has been established and can be exercised. Consequently the commander on the spot must consider that the local population entrusted to him is subject to his authority in the sense of Article 87, for example, in the case where some of the inhabitants were to undertake some sort of pogrom against minority groups. He is responsible for restoring and ensuring public order and safety as far as possible, and shall take all measures in his power to achieve this, even with regard to troops which are not directly subordinate to him, if these are operating in his sector. *A fortiori* he must consider them to be under his authority if they commit, or threaten to commit, any breaches of the rules of the [Geneva] Conventions against persons for whom he is responsible. As regards the commander who, without being invested with responsibility in the sector concerned, discovers that breaches have been committed or are about to be committed, he is obliged to do everything in his power to deal with this, particularly by informing the responsible commander.[579]

It is therefore clear that Additional Protocol I envisages a superior-subordinate relationship wider than a strictly hierarchical one.

412. The Appeals Chamber in ^*elebi}i* referred to the existing distinction in international law between the duties of a commander of occupied territories and the other commanders in general. Even though it acknowledged that commanders of occupied territories may be held responsible on the basis of the doctrine of superior responsibility in circumstances where the link of subordination is limited and very general, the Appeals Chamber found that "(t)his clearly does not apply to commanders in general."[580] The Prosecution's argument in that case that a superior may be held criminally responsible based upon "powers of influence", even if substantial, was rejected in the following terms:

> The Appeals Chamber considers, therefore, that customary law has specified a standard of *effective* control, although it does not define precisely the means by which the control must be exercised. It is clear, however, that substantial influence as a means of control in any sense which falls short of the possession of effective control over subordinates, which requires the possession of material abilities to prevent subordinate offences or to punish subordinate offenders, lacks sufficient support in State practice and judicial decisions. Nothing relied on by the Prosecution indicates that there is sufficient evidence of State practice or judicial authority to support a theory that substantial influence as a means of exercising command responsibility has the standing of a rule of customary law, particularly a rule by which criminal liability would be imposed.[581]

413. The Appeals Chamber endorsed the ^*elebi}i* Trial Chamber's finding that substantial influence would not be indicative of a sufficient degree of control to incur criminal responsibility on

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[579] ICRC Commentary (Additional Protocol I), paras. 3554-3555: "Troops usually assigned to a commander which are assigned to another command for special purposes will be considered to be under the responsibility of the special commander. However, if the original commander retains control over them, he could also incur responsibility." (footnotes omitted).
[580] ^*elebi}i* Appeal Judgement, para. 258.

the basis of the command responsibility doctrine.[582] It did not disturb the Trial Chamber's conclusion that Zejnil Delali}'s role at the municipal level in the defence effort and in the release of prisoners of war allowed him to be characterised as a highly influential individual but did not render him a superior.[583]

414. While civilians occupying positions of authority in relation to a portion of a territory may be held responsible under the principle of superior responsibility, they will incur criminal responsibility only if they are found to possess the necessary powers of control over the actual perpetrators. The ^*elebi}i* Trial Chamber persuasively held:

> While the Trial Chamber must at all times be alive to the realities of any given situation and be prepared to pierce such veils of formalism that may shield those individuals carrying the greatest responsibility for heinous acts, great care must be taken lest an injustice be committed in holding individuals responsible for the acts of others in situations where the link of control is absent or too remote.[584]

415. It follows that a government official will only be held liable under the doctrine of command responsibility if he was part of a superior-subordinate relationship, even if that relationship is an indirect one. Even though arguably effective control may be achieved through substantial influence, a demonstration of such powers of influence will not be sufficient in the absence of a showing that he had effective control over subordinates, in the sense of possessing the material ability to prevent subordinate offences or punish subordinate offenders after the commission of the crimes. For instance, a government official who knows that civilians are used to perform forced labour or as human shields will be held liable only if it is demonstrated that he has effective control over the persons who are subjecting the civilians to such treatment. A showing that the official merely was generally an influential person will not be sufficient. In contrast, a government official specifically in charge of the treatment of prisoners used for forced labour or as human shields, as well as a military commander in command of formations which are holding the prisoners, may be held liable on the basis of superior responsibility because of the existence of a chain of command.

416. In sum, only those superiors, either *de jure* or *de facto*, military or civilian, who are clearly part of a chain of command, either directly or indirectly, with the actual power to control or punish the acts of subordinates may incur criminal responsibility. The Appeals Chamber found that the

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[581] ^*elebi}i* Appeal Judgement, para. 266 (emphasis in original).
[582] The Appeals Chamber referred to a number of cases in the course of its analysis of the Prosecution's argument on "substantial influence". ^*elebi}i* Appeal Judgement, paras. 258- 66.
[583] The Trial Chamber found that Delali} merely provided logistical support: he was a "well-placed influential individual, clearly involved in the local effort to contribute to the defence of the Bosnian State. This effort and the recognition which accompanied it did not create a relationship of superior and subordinate between him and those who interacted with him." ^*elebi}i* Trial Judgement, para. 658. *See also* ^*elebi}i* Appeal Judgement, paras. 267-68.
[584] ^*elebi}i* Trial Judgement, para. 377.

degree of *de facto* authority or powers of control required under the doctrine of superior responsibility is equivalent to that required based upon *de jure* authority:

> Although the degree of control wielded by a *de jure* or *de facto* superior may take different forms, a *de facto* superior must be found to wield substantially similar powers of control over subordinates to be held criminally responsible for their acts.[585]

417. The Trial Chamber will thus consider the status of the accused as superiors on the basis of these findings, which must be taken to represent the correct interpretation of the applicable law. While it should be emphasised that such factual determinations will be based upon the specific circumstances of this case, the Trial Chamber will briefly turn to the question of which elements may be indicative of a position of authority and how means of effective control may be demonstrated.

(ii) Elements for a determination of superior authority

418. A starting point will be the official position held by the accused. Actual authority however will not be determined by looking at formal positions only. Whether *de jure* or *de facto*, military or civilian, the existence of a position of authority will have to be based upon an assessment of the reality of the authority of the accused.

419. A formal position of authority may be determined by reference to official appointment or formal grant of authority. Military positions will usually be strictly defined and the existence of a clear chain of command, based on a strict hierarchy, easier to demonstrate. Generally, a chain of command will comprise different hierarchical levels starting with the definition of policies at the highest level and going down the chain of command for implementation in the battlefield. At the top of the chain, political leaders may define the policy objectives. These objectives will then be translated into specific military plans by the strategic command in conjunction with senior government officials. At the next level the plan would be passed on to senior military officers in charge of operational zones. The last level in the chain of command would be that of the tactical commanders which exercise direct command over the troops.

420. In relation to military structure, the ICRC Commentary (Additional Protocol I) observes that "there is no part of the army which is not subordinated to a military commander at whatever level". Consequently, "responsibility applies from the highest to the lowest level of the hierarchy, from the Commander-in-Chief down to the common soldier who takes over as head of the platoon to which

[585] ^*elebi}i* Appeal Judgement, para. 197.

he belongs at the moment his commanding officer has fallen and is no longer capable of fulfilling his task."[586]

421. The capacity to sign orders will be indicative of some authority.[587] The authority to issue orders, however, may be assumed *de facto*. Therefore in order to make a proper determination of the status and actual powers of control of a superior, it will be necessary to look to the substance of the documents signed and whether there is evidence of them being acted upon. For instance in the *Ministries* case, the court found that the mere appearance of an official's name on a distribution list attached to an official document could simply provide evidence that it was intended that he be provided with the relevant information, and not that "those whose names appear on such distribution lists have responsibility for, or power and right of decision with respect to the subject matter of such document."[588] Similarly, direct signing of release orders would demonstrate authority to release. An accused's signature on such a document, however, may not necessarily be indicative of actual authority to release as it may be purely formal or merely aimed at implementing a decision made by others.

422. In order to determine the formal powers and duties exercised by political and military superiors an analysis of the formal procedures for appointment to civilian and military offices (through national legislation and appointment orders for instance) would be a starting point. This will not be sufficient, as it must be shown that the powers are "real" for criminal responsibility to be attached to them. Further, in situations such as that of the armed conflict in Bosnia and Herzegovina, it will often be the case that civilian leaders will assume powers more important than those with which they are officially vested. In these circumstances, *de facto* powers may exist alongside *de jure* authority, and may be more important than the *de jure* powers.

423. In order to assess the individual criminal responsibility of the accused, the Trial Chamber in *Karad`i} and Mladi}* turned to an examination "of the position of each of the accused in the overall [institutional, political and military] organisation described [whose purpose was to establish a territory with a homogeneous population] with a view to determining their institutional functions and how they exercised their powers."[589] After examining the official positions held by the accused, the Trial Chamber turned to a consideration of "the effective exercise of those powers".[590]

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[586] ICRC Commentary (Additional Protocol I), para. 3553 under Article 87.
[587] *See ^elebi}i* Trial Judgement, para. 672.
[588] *Ministries* case (USA v. Von Weizsaecker), 14 Trials of War Criminals before the Nuremberg Military Tribunals under Control Council Law No.10 (1952), p. 693.
[589] Review of the Indictments Pursuant to Rule 61 of the Rules of Procedure and Evidence, Trial Chamber I, Case No. IT-95-5-R61/IT-95-18-R61, 11 July 1996, paras. 65-66.
[590] *Ibid*., para. 71.

424. A superior status, when not clearly spelled out in an appointment order, may be deduced though an analysis of the actual tasks performed by the accused in question. This was the approach taken by the Trial Chamber in *Nikoli}*.[591] Evidence that an accused is perceived as having a high public profile, manifested through public appearances and statements, and thus as exercising some authority, may be relevant to the overall assessment of his actual authority although not sufficient in itself to establish it, without evidence of the accused's overall behaviour towards subordinates and his duties. Similarly, the participation of an accused in high-profile international negotiations would not be necessary in itself to demonstrate superior authority. While in the case of military commanders, the evidence of external observers such as international monitoring or humanitarian personnel may be relied upon, in the case of civilian leaders evidence of perceived authority may not be sufficient, as it may be indicative of mere powers of influence in the absence of a subordinate structure.

2. The Mental Element

425. The mental element set forth in Article 7(3) distinguishes between two different types of situation: (a) in the first situation the superior has actual knowledge that subordinates are committing or are about to commit a crime; (b) in the second situation he "has reason to know" that his subordinates are committing or about to commit a crime. The Trial Chamber will consider these two situations in turn after setting out the arguments of the parties.

(a) Actual knowledge

426. The Prosecution and the Kordi} Defence agree that actual knowledge may be established either through direct evidence or through circumstantial evidence.[592] The Prosecution submits that an individual's position of command is *per se* a significant *indicium* that he knew of the crimes committed by his subordinates.[593] Referring to the *^elebi}i* Trial Judgement, the Defence emphasises that actual knowledge cannot be presumed merely because the subordinates' crimes are a matter of public notoriety, are numerous, occur over a prolonged period, or over a wide geographic area.[594]

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[591] Review of Indictment Pursuant to Rule 61 of the Rules of Procedure and Evidence, Trial Chamber I, Case No. IT-94-2-R61, 20 Oct. 1995, para. 24. The Trial Chamber appears to have endorsed the witnesses' evidence in this regard: "The witnesses based their conclusions upon an analysis of the distribution of tasks within the camp. The guards were subjugated to Dragan Nikoli}'s orders; nothing, apparently, could be carried out without his consent."

[592] Prosecution Final Brief, Annex 4, p. 28 (para. 81). Kordi} Final Brief, pp. 273 - 275.

[593] The Prosecution also refers to the elements set forth in the Commission of Experts Report as relevant factors which may be used to determine whether a superior "knew". Prosecution Final Brief, Annex 4, p. 28, (para. 83).

[594] Kordi} Final Brief, pp. 272-274. According to the Defence, a contrary approach would effectively impose strict liability on commanders for all widespread or notorious violations by their subordinates, regardless of the commander's degree of personal guilt.

427. In relation to the necessary mental element, the first situation where a superior "knew" does not appear to be controversial. Actual knowledge, which may be defined as the awareness that the relevant crimes were committed or were about to be committed, may be established through direct or circumstantial evidence.[595] Circumstantial evidence will allow for an inference that the superior "must have known" of subordinates' criminal acts. The Trial Chamber agrees with the Prosecution that the indicia listed by the United Nations Commission of Experts may be used when making such a determination: the number, type, and scope of illegal acts; the time during which they occurred; the number and type of troops involved; the logistics involved, if any; the geographical location of the acts; their widespread occurrence; the tactical tempo of operations; the *modus operandi* of similar illegal acts; the officers and staff involved and the location of the commander at that time.[596]

428. Depending on the position of authority held by a superior, whether military or civilian, *de jure* or *de facto*, and his level of responsibility in the chain of command, the evidence required to demonstrate actual knowledge may be different. For instance, the actual knowledge of a military commander may be easier to prove considering the fact that he will presumably be part of an organised structure with established reporting and monitoring systems. In the case of *de facto* commanders of more informal military structures, or of civilian leaders holding *de facto* positions of authority, the standard of proof will be higher.

(b) Imputed knowledge

(i) Arguments of the parties

429. The Prosecution submits that a commander should be regarded as "having reason to know" in two situations:

> (1) Where he had some specific information which indicated the need for additional investigation in order to ascertain whether offences were being committed by his subordinates. Even if the information by itself was not sufficient to compel the conclusion that crimes were being committed, the superior may incur criminal responsibility if he fails to act by undertaking further inquiry.
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> (2) Where a military commander lacks any information putting him on notice of the possible commission of crimes as a result of a serious dereliction of his duty to obtain

[595] ^*elebi}i* Trial Judgement, para. 386: "in the absence of direct evidence of the superior's knowledge of the offences committed by his subordinates, such knowledge cannot be presumed, but must be established by way of circumstantial evidence."
[596] Commission of Experts Report, para. 58; referred to in Prosecution Final Brief, Annex 4, p. 28 (para. 82); ^*elebi}i* Trial Judgement, para. 386; *Bla{ki}* Trial Judgement, para. 307.

information of a general nature within his reasonable access relating to the conduct of his subordinates.[597]

430. In the Prosecution's opinion, the correct interpretation of the "had reason to know" standard was set out in the *Bla{ki}* Trial Judgement.[598] The knowledge requirement set out in Article 86(2) of Additional Protocol I does not differ, as concluded by the *^elebi}i* Trial Chamber, from the standard established in the post-Second World War case-law. In the Prosecution's submission, this standard is now also reflected in Article 28 of the ICC Statute. The Prosecution argues that this standard requires commanders to establish an effective reporting system to ensure that crimes will be brought to their attention. It is finally submitted that no distinction should be made between the knowledge required in relation to military and civilian superiors.[599]

431. The Kordi} Defence submits that "had reason to know" refers to the situation where a superior had actual information in his possession that, if reviewed, would have provided notice that subordinates were about to commit crimes or had done so.[600] It is submitted that in the absence of available evidence of criminal behaviour of subordinates, a commander's failure to inquire does not give rise to superior responsibility. In the Defence's view, the *^elebi}i* Trial Chamber adopted the correct legal approach in rejecting a "should have known" standard. It thus rejects the Prosecution's assertion that the "reason to know" standard encompasses a "should have known" negligence standard.[601] The Defence argues that the controlling standard is found in Article 86(2) of Additional Protocol I, as interpreted in the *^elebi}i* Trial Judgement. It is well established that command responsibility cannot be imposed on the basis that a commander should have done more to inform himself about the conduct of his subordinates.[602]

(ii) Discussion

432. The Appeals Chamber in *^elebi}i* pronounced on the mental element when it endorsed the Trial Chamber's interpretation of the standard "had reason to know". In doing so, the Appeals Chamber rejected the Prosecution's argument that a commander can be held responsible for the actions of his subordinates based solely on a failure to obtain information of general nature within his reasonable access due to a serious dereliction of duty.[603]

[597] Prosecution Final Brief, Annex 4, p. 29.
[598] Prosecution Final Brief, Annex 4, p. 30.
[599] Prosecution Final Brief, Annex 4, pp. 28-33.
[600] Kordi} Final Brief, pp. 261, and 274-277.
[601] The Kordi} Defence endorses a strict interpretation of the *^elebi}i* standard. The Defence finds further support for its position in the ICTR jurisprudence; Kordi} Final Brief, pp. 275-276.
[602] Kordi} Final Brief, pp. 274-277.
[603] *^elebi}i* Appeal Judgement, paras. 238-40.

433. The Appeals Chamber considered whether commanders may be the subject of criminal responsibility for breach of a duty to know, i.e., to obtain relevant information about their subordinates' conduct, in customary law.[604] First on the basis of an analysis of Second World War case-law, it concluded "in the same way as did the United Nations War Crimes Commission, that the then customary law did not impose in the criminal context a general duty to know upon commanders or superiors".[605] The Appeals Chamber then turned to a consideration of Additional Protocol I, Article 86(2) of which provides:

> The fact that a breach of the Conventions or of this Protocol was committed by a subordinate does not absolve his superiors from penal or disciplinary responsibility, as the case may be, if they knew, or *had information which should have enabled them to conclude in the circumstances at the time*, that he was committing or was going to commit such a breach and if they did not take all feasible measures within their power to prevent or repress the breach.[606]

434. It referred with approval to the following Trial Chamber's finding interpreting Article 86 of Additional Protocol I:

> An interpretation of the terms of this provision … in accordance with their ordinary meaning thus leads to the conclusion, confirmed by the *travaux préparatoires*, that 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. This standard, which must be considered to reflect the position of customary law at the time of the offences alleged in the Indictment, is accordingly controlling for the construction of the *mens rea* standard established in Article 7(3). The Trial Chamber thus makes no finding as to the present content of customary law on this point.[607]

435. The Appeals Chamber concluded that the standard "had reason to know" set forth in Article 7(3) of the Statute should be interpreted as having the same meaning as the standard "having information enabling them to conclude" set out in Article 86.[608] In adopting this interpretation it rejected a strict "should have known" standard, concluding that there was no duty to know, i.e., to remain apprised of the subordinates' action, imposed on commanders resulting in criminal liability. The Appeals Chamber held that the position in relation to civilian superiors is similar:

> As found by the Appeals Chamber, there is no criminal responsibility for breach of such a "duty" to know in customary law as far as military commanders are concerned. This applies equally to civilian superiors.[609]

The Appeals Chamber upheld the Trial Chamber's finding that

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[604] ^*elebi}i* Appeal Judgement, paras. 228-37.
[605] ^*elebi}i* Appeal Judgement, para. 230.
[606] Article 86 is entitled "Failure to act".
[607] ^*elebi}i* Appeal Judgement, para. 236 (emphasis added) *quoting* ^*elebi}i* Trial Judgement, para. 393.
[608] ^*elebi}i* Appeal Judgement, para. 232.
[609] ^*elebi}i* Appeal Judgement, para. 240.

> a superior may possess the *mens rea* for command responsibility where (1) he had actual knowledge, established through direct or circumstantial evidence, that his subordinates were committing or about to commit crimes referred to under Articles 2 through 5 of the Statute; or (2) where he had in his possession information of a nature, which at the least, would put him on notice of the risk of such offences by indicating the need for additional investigation in order to ascertain whether such crimes were committed or were about to be committed by his subordinates.[610]

436. The Appeals Chamber further elaborated on the meaning to be attached to the information which needs to be available to a superior for him to be considered as having the requisite *mens rea*:

> Contrary to the Prosecution's submission, the Trial Chamber did not hold that a superior needs to have information on subordinates offences in his actual possession for the purpose of ascribing criminal liability under the principle of command responsibility. A showing that a superior had some general information in his possession, which would put him on notice of possible unlawful acts by his subordinates would be sufficient to prove that he "had reason to know". The ICRC Commentary (Additional Protocol I) refers to "reports addressed to (the superior), … the tactical situation, the level of training and instruction of subordinate officers and their troops, and their character traits" as potentially constituting the information referred to in Article 86(2) of Additional Protocol I. As to the form of the information available to him, it may be written or oral, and does not need to have the form of specific reports submitted pursuant to a monitoring system. This information does not need to provide specific information about unlawful acts committed or about to be committed. For instance, a military commander who would receive information that some of the soldiers under his command have a violent or unstable character, or have been drinking prior to being sent on a mission, may be considered as having the required knowledge.
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> Finally, the relevant information only needs to have been provided or available to the superior, or in the Trial Chamber's words, "in the possession of". It is not required that he actually acquainted himself with the information. In the Appeals Chamber's view, an assessment of the mental element required by Article 7(3) of the Statute should be conducted in the specific circumstances of each case, taking into account the specific situation of the superior concerned at the time in question.[611]

437. It appears clearly from the Appeals Chamber's findings that a superior may be regarded as having "reason to know" if he is in possession of sufficient information to be on notice of the likelihood of subordinate illegal acts, i.e., if the information available is sufficient to justify further inquiry. The level of training, or the character traits or habits of the subordinates, are referred to by way of example as general factors which may put a superior on notice that subordinate crimes may be committed. The indicia listed in the United Nations Commission of Experts Report, referred to in the context of actual knowledge, could also be used in this context to determine whether knowledge of the underlying offences alleged could be imputed to an accused.

3. Failure to Take Necessary and Reasonable Measures to Prevent or Punish

(a) Arguments of the parties

438. The Prosecution refers to a number of measures which may be taken by a commander to prevent the commission of crimes by subordinates. The Prosecution submits that the duty to punish

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[610] ^*elebi}i* Appeal Judgement, para. 241 referring to ^*elebi}i* Trial Judgement, para 383.
[611] ^*elebi}i* Appeal Judgement, paras. 238-39 (footnote omitted).

consists of the obligations to (1) establish the facts,[612] (2) put an end to violations,[613] and (3) repress.[614] It is contended that the responsibility of the commander continues until all three obligations are properly discharged.

439. The Prosecution submits that necessary measures are those which are required in the circumstances prevailing at the time. Similarly, reasonable measures are those which the commander was in a position to take in the circumstances prevailing at the time.[615] Further, the lack of formal legal competence to take the measures does not necessarily preclude the criminal responsibility of the superior.[616] Both the Prosecution and the Defence agree that what constitute necessary and reasonable measures should be assessed in the particular circumstances of the case.

440. The Kordi} Defence submits that the measures must be both necessary and reasonable, and must be evaluated based on the situation as it appeared to the commander at the time, and not in hindsight. Further, it must be shown that the superior possessed (a) the legal competence to take the measures in question, and (b) the actual material possibility to do so. In the Defence's view, a causal nexus must exist between the superior's failure to take the measures, and the commission of subsequent offences.[617]

(b) Discussion

441. Article 7(3) of the Statute establishes a duty to prevent a crime that a subordinate was about to commit or to punish such a crime after it is committed, by taking "necessary and reasonable measures". Article 87(3) of Additional Protocol I contains a similar requirement and in addition refers to disciplinary or penal measures:

> The High Contracting Parties and Parties to the conflict shall require any commander who is aware that subordinates or other persons *under his control* are going to commit or have committed a breach of the Conventions or of this Protocol, to *initiate such steps as are necessary to prevent*

[612] It is submitted that this obligation rests with military commanders at all levels in the chain of command. Prosecution Final Brief, Annex 4, p. 34.
[613] This obligation includes the obligation to take measures to prevent the recurrence of similar crimes in the future. For instance, the perpetrators of an offence should not be sent back in action without having been properly briefed, punished or disciplined, or without proper supervision. Prosecution Final Brief, Annex 4, p. 35 (para.106).
[614] This obligation requires that the individual criminal liability of alleged perpetrators be determined by a competent judicial organ. The commander is responsible for taking the necessary steps to ensure that the alleged crimes are reported to, and investigated by, the competent authorities. Prosecution Final Brief, Annex 4, p. 35 (para. 107).
[615] The Prosecution is of the view that "reasonable measures" in Article 7(3) has the same meaning as "feasible measures" in Article 86(2) of Additional Protocol I. Prosecution Final Brief, Annex 4, p. 36, (paras. 109-110). A commander is required to take reasonable measures that are within his powers. Prosecution Final Brief, Annex 4, p. 27 (paras. 76–78).
[616] Prosecution Final Brief, Annex 4, p 36 (para. 111).
[617] Kordi} Final Brief, p. 278. The Defence finds support for its last argument in para. 399 of the ^*elebi}i* Trial Judgement. *See also* ^erkez Final Brief, pp. 88-89.

> *such violations of the Conventions or this Protocol*, and, where appropriate, to initiate disciplinary or penal action against violators thereof.[618]

The Appeals Chamber in ^*elebi}i* held that this provision was "customary in nature" in 1992.[619] The ICRC Commentary explains that the rationale behind the provision is the nature of the position of military commanders on the field:

> … military commanders […] are on the spot and able to exercise control over the troops and the weapons which they use. They have the authority, and more than anyone else they can prevent breaches by creating the appropriate frame of mind, ensuring the rational use of the means of combat and by maintaining discipline […] they are in a position to establish or ensure the establishment of the facts, which would be the starting point for any action to suppress or punish a breach.[620]

442. Trial Chambers in previous cases before the International Tribunal have interpreted "necessary and reasonable measures" for the purposes of Article 7(3). The ^*elebi}i* Trial Chamber found that such measures are those that are practically within his powers and do not hang on his formal legal ability to take them:

> It must, however, be recognised that international law cannot oblige a superior to perform the impossible. Hence, a superior may only be held criminally responsible for failing to take such measures that are within his powers. The question then arises of what actions are to be considered to be within the superior's powers in this sense. … we conclude that a superior should be held responsible for failing to take such *measures that are within his material possibility*. The Trial Chamber accordingly does not adopt the position taken by the ILC on this point, and finds that the lack of formal legal competence to take the necessary measures to prevent or repress the crime in question does not necessarily preclude the criminal responsibility of the superior.[621]

443. As in relation to the determination of the subordination relationship, it is the actual ability, or effective capacity to take measures which is important. The reference to the lack of formal legal competence to take measures should be read in this context. When assessing whether a superior failed to act, the Trial Chamber will look beyond his formal competence to his actual capacity to take measures.

444. The *Bla{ki}* Trial Chamber emphasised 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."[622]

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[618] Article 87(3) of Additional Protocol I (emphasis added).
[619] ^*elebi}i* Appeal Judgement, para. 195.
[620] ICRC Commentary (Additional Protocol I), para. 3560.
[621] ^*elebi}i* Trial Judgement, para. 395 (footnotes omitted; emphasis added). The ILC's position as referred to by the Trial Chamber in footnote 425 of its Judgement provides: "for the superior to incur responsibility, he must have had the legal competence to take measures to prevent or repress the crime and the material possibility to take such measures. Thus, a superior would not incur criminal responsibility for failing to perform an act which was impossible to perform in either respect."
[622] *Bla{ki}* Trial Judgement, para. 336.

To prove a failure to prevent, it would be necessary to show that the superior failed to take *any* meaningful steps to prevent the commission of the subordinate crime.

445. This Trial Chamber finds these statements persuasive and will consider that a superior has discharged his duty to prevent or punish if he uses every means in his powers to do so. Such a determination will be based on the circumstances of each case. The Trial Chamber will however briefly comment on the duties to prevent or to punish. The duty to prevent should be understood as resting on a superior at any stage before the commission of a subordinate crime if he acquires knowledge that such a crime is being prepared or planned, or when he has reasonable grounds to suspect subordinate crimes.

446. The duty to punish naturally arises after a crime has been committed. Persons who assume command after the commission are under the same duty to punish. This duty includes at least an obligation to investigate the crimes to establish the facts and to report them to the competent authorities, if the superior does not have the power to sanction himself.[623] Civilian superiors would be under similar obligations, depending upon the effective powers exercised and whether they include an ability to require the competent authorities to take action.

447. The ^*elebi}i* Trial Chamber found that a requirement of causation as a separate element was not necessary:

> Notwithstanding the central place assumed by the principle of causation in criminal law, causation has not traditionally been postulated as a *conditio sine qua non* for the imposition of criminal liability on superiors for their failure to prevent or punish offences committed by their subordinates. Accordingly, the Trial Chamber has found no support for the existence of a requirement of proof of causation *as a separate element of superior responsibility*, either in the existing body of case law, the formulation of the principle in existing treaty law, or, with one exception, in the abundant literature on this subject.[624]

The Trial Chamber finds no reason not to agree with this statement.

[623] Military commanders will only usually have the power to start an investigation. ICRC Commentary (Additional Protocol I) para. 3562.

[624] ^*elebi}i* Trial Judgement, para. 398 (footnote omitted; emphasis added); *see also* paras. 399-400. The Kordi} Defence when relying on para. 399 of the ^*elebi}i* Trial Judgement in support of its argument appears to have overlooked the following paragraph of the Trial Chamber's discussion which adopts a different conclusion.

IV. SELF-DEFENCE AS A DEFENCE

448. In relation to many of the charges in the Indictment, the Defence argues that the Bosnian Croats were acting in self-defence. Thus, the Kordi} Defence presented evidence of ABiH attacks and offensives in Central Bosnia and sought to demonstrate that the Bosnian Croats were victims of a policy of Muslim aggression in Central Bosnia.[625] This argument raises the question whether defensive action or self-defence may amount to a ground for excluding criminal responsibility for the commission of serious violations of international humanitarian law.

449. The notion of 'self-defence' may be broadly defined as providing a defence to a person who acts to defend or protect himself or his property (or another person or person's property) against attack, provided that the acts constitute a reasonable, necessary and proportionate reaction to the attack. The Trial Chamber notes that the Statute of the International Tribunal does not provide for self-defence as a ground for excluding criminal responsibility. "Defences" however form part of the general principles of criminal law which the International Tribunal must take into account in deciding the cases before it.

450. Paragraph (1)(c) of Article 31 of the Statute of the ICC, entitled "Grounds for excluding criminal responsibilty", which provides for the exclusion of criminal liability in situations where a person acts reasonably to defend himself or another person, or certain types of property, reads:

> 1. In addition to other grounds for excluding criminal responsibility provided for in this Statute, a person shall not be criminally responsible if, at the time of that person's conduct:
>
> [...]
>
> (c) The person acts reasonably to defend himself or herself or another person or, in the case of war crimes, property which is essential for the survival of the person or another person or property which is essential for accomplishing a military mission against an imminent and unlawful use of force in a manner proportionate to the degree of danger to the person or the other person or property protected. The fact that the person was involved in a defensive operation conducted by forces shall not in itself constitute a ground for excluding criminal responsibility under this subparagraph;

451. The principle of self-defence enshrined in this provision reflects provisions found in most national criminal codes and may be regarded as constituting a rule of customary international law. Article 31(1)(c) of the ICC Statute sets forth two conditions which must be met in order for self-defence to be accepted as a ground for excluding criminal liability: (a) the act must be in response

[625] The Defence, for instance, argues that the conflict in Central Bosnia was a "defensive struggle by a minority community [...] to protect its members' legitimate political interests and their communities and way of life in the chaos of the new RBiH", Kordi} Final Brief, p. 1; that the Bosnian Croats "fought a war of self-defence", Kordi} Final Brief, p. 5; that in April 1993 the HVO was "on the strategic defensive", Kordi} Final Brief p. 120.

to “an imminent and unlawful use of force” against an attack on a “protected” person or property; (b) the act of defence must be “proportionate to the degree of danger”. In relation to the specific circumstances of war crimes, the provision takes into account the principle of military necessity.

452. Of particular relevance to this case is the last sentence of the above provision to the effect that the involvement of a person in a “defensive operation” does not “in itself” constitute a ground for excluding criminal responsibility. It is therefore clear that any argument raising self-defence must be assessed on its own facts and in the specific circumstances relating to each charge. The Trial Chamber will have regard to this condition when deciding whether the defence of self-defence applies to any of the charges. The Trial Chamber, however, would emphasise that military operations in self-defence do not provide a justification for serious violations of international humanitarian law.

PART THREE: THE FACTS

I. BACKGROUND

453. The purpose of this section is to set out the background to the 1993 conflict. It deals briefly with the history. There then follow short biographies of the two accused. The section ends with the events of 1991 and early 1992, covering the formation of the HDZ-BiH, HZ H-B and the HVO, the key Bosnian Croat organisations in the ensuing conflict.

A. HISTORICAL BACKGROUND

1. Post-war Yugoslavia

454. After the Second World War, Josip Broz, also known as "Tito", who, along with his Partisan forces had achieved victory against the invading German army and its Croatian allies, rose to power in Yugoslavia. In place of the former Kingdom of Yugoslavia, which had first united the southern Slavs, Tito established the Socialist Federal Republic of Yugoslavia ("SFRY") comprising the Republics of Bosnia and Herzegovina, Croatia, Macedonia, Montenegro, Serbia and Slovenia, in addition to the two autonomous Republics within Serbia, Kosovo and Vojvodina. The boundaries of the constituent Republics in this socialist federation tended to correspond closely to a sense of shared national identity.[626]

455. Though initially allied with the Soviet Union, Tito split with Stalin and the Comintern in 1948. Thereafter, he moved the system away from the Soviet-style of centralised government towards a system based upon the theory of workers' self-management. This policy led to the decentralisation of economic control and a parallel process of decentralising political control to the constituent republics.[627] Under this decentralised system, the largely autonomous republics were free to evolve distinct identities, which, more often than not, were constructed along lines of national identity. Dr. Robert Donia, who testified for the Prosecution as an expert witness in this case, observes that the greater personal freedoms that accompanied decentralisation led to expressions of nationalism in Serbia and Croatia. However, these sentiments were swiftly suppressed by Tito in the name of preserving a single-party State.[628] Thus, while the communists sought to supplant ethnic identity with a broader, unifying, Yugoslav identity, the structure of

[626] Statement of Expert Witness Robert J. Donia Pursuant to Rule 94 *bis* (A), Submission of Expert Report, 14 April 1999, pp. 21-22, Ex. Z1677.1, plus corrigendum Ex. 1677.1a.
[627] Ex. Z1677.1, p. 22.

predominantly ethnically-based republics operating with a fair degree of autonomy within a federal system only served to reinforce national identities within Yugoslavia as a whole. As Dr. Allcock, another expert witness for the Prosecution, observed in his report:[629]

> [T]he consequences of the policies of the League of Communists during the post-1945 period were to entrench their importance in public life and to heighten people's awareness of [differences of ethnic or national identity]. What is more important, by virtue of the fact that these differences were attached systematically and explicitly to political structures (the building of quasi-states in the constituent republics and provinces of the federation) the ground was laid for the way in which the struggles over the disintegration of Yugoslavia took the form of attempts to found new states.[630]

456. Dr. Allcock argues that economic factors also had a significant role to play in reinforcing "republican" and consequently, "national" identities. Within the federation, each republic's economy operated independently. The rates of growth varied considerably among the republics, with Slovenia, Croatia and Serbia performing consistently well, and Bosnia performing relatively poorly.[631] Funds were initially redistributed through the central government from the richer republics to the poorer ones, which soon came to be regarded as a financial burden.[632] In addition, this emphasis on redistributing wealth among the republics meant that inequalities within the republics were often ignored.[633] Impoverished living standards among certain minority groups may have contributed to a heightening of nationalist sentiments over this period.[634]

457. The 1974 Constitution of the SFRY gave the republics an even greater role within the federation and established the Presidency as the key political institution at the federal level; a collective body which represented each of the six republics and the two autonomous provinces (Kosovo and Vojvodina). When Tito died in 1980, the constitution provided for the president of that body to be appointed on a rotating basis from among the representatives of the republics.[635]

458. In his expert testimony, Dr. Allcock attributes the rise in national identity as a powerful factor in politics, after the break up of the SFRY, in part, to the correspondence between the boundaries of the SFRY republics and a common sense of national identity. To the extent that

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[628] Ex. Z1677.1, p. 22.
[629] Submission of Expert Statement of Dr. John B. Allcock under Rule 94 *bis*, 25 June 1999, Ex. Z1668.
[630] Ex. Z1668, p. 45, para. 13.
[631] Ex. Z1668, p. 46.
[632] Ex. Z1668, pp. 46-47.
[633] Ex. Z1668, p. 47.
[634] Ex. Z1668, p. 48.
[635] Ex. Z1677.1, pp. 22-23.

one's identification as a citizen of a republic was synonymous with one's national identity, the latter emerged as a critical element in political conflict.[636]

2. Milo{evi}'s Rise to Power and the 1990 Elections in the Republics

459. In December 1987, Slobodan Milo{evi} took over as President of the League of Communists in Serbia. Through a shrewd manipulation of nationalist sentiment, Milo{evi} succeeded in ousting the leaders of the two autonomous provinces, Kosovo and Vojvodina, and replaced them with loyal supporters.[637] Consequently, as of 1990, with the help of Montenegrin support, he effectively controlled four out of the eight seats in the Federal Presidency, and was thus capable of paralysing that critical centralised institution.[638] As the federal political machinery began to collapse, nationwide elections in the SFRY scheduled for 1990 were cancelled and, instead, elections were held in each of the republics.[639]

460. In Croatia, the HDZ won the elections of 22 April and 6 May 1990 and a new constitution was adopted.[640] President Tu|man, as the leader of the HDZ, sought to promote a Croatian identity by appealing to Croatia as a distinct and historically continuous entity.[641]

461. Bosnia, in addition to hosting the most ethnically diverse population, was unique among the republics in that it had no majority ethnic population.[642] The 1991 census indicates that approximately 43.7 per cent of the population in Bosnia were Muslims, 31.3 per cent Serbs and 17.3 per cent Croats.[643] The decline of the League of Communists as a unifying force in Bosnian politics led to the emergence of new political parties, many of which based their policies upon a nationalist agenda. The results from the 1990 elections in the Bosnian republic reveal that most individuals chose to vote along lines of national identity. Out of a total of 240 seats in the Bosnian Parliament, the Serbian party (the "SDS") won 72 seats, the Muslim party (the "SDA") won 86 seats and the Croatian party (the "HDZ") won 44 seats.[644] Alija Izetbegovi}, leader of the SDA, was appointed President of the Bosnian Presidency, while Radovan Karadži} was the leader of the SDS and Stjepan Kljui} was head of the HDZ.

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[636] Dr. Allcock, T. 5183-84.
[637] Ex. Z1677.1, p. 23.
[638] Ex. Z1677.1, p. 25.
[639] Ex. Z1677.1, pp. 23-24.
[640] Ex. Z1668, p. 63, para. 6.
[641] Ex. Z1668, pp. 59-61 and Allcock, T. 5184-85.
[642] Ex. Z1668, p. 69, para. 1.
[643] Ex. Z1677.1, p. 4.
[644] Ex. Z1677.1, p. 6.

3. The Dissolution of the Yugoslav Federation

462. With the Federal Presidency virtually deadlocked, and the spectre of Serbian domination looming, the federation itself began to unravel. The European Commission sought to establish a framework for the likely break-up of Yugoslavia and agreed, in principle, to recognition of the secessionist republics.[645] In 1991, Slovenia and Croatia took the first steps towards independence, their populations confirming popular support for secession in national referendums.[646] In mid-1991, both of these former federal republics declared their independence. Serbia attempted to intervene militarily to prevent Slovenia's secession, but met with fierce resistance from the Slovenes, and in view of Slovenia's negligible Serb population, they quickly withdrew. Croatia, however, with a Serbian population numbering approximately 600,000, was to suffer a different fate.[647]

463. Throughout the summer of 1991, the incidence of provocations between Croat and Serb forces increased and, in August of that year, full-scale conflict broke out on the territory of Croatia. The Croatian forces, comprising remnants of the army of the Croatian republic under the federal system, proved no match for the JNA. On 2 January 1992, Croatia and Serbia signed a cease-fire agreement which provided, among other things, for the deployment of a lightly-armed United Nations peace-keeping force, designated UNPROFOR, to monitor the parties' compliance.[648]

4. Conflict in Bosnia and Herzegovina

464. The international community took an active role in trying to resolve the competing national interests in Bosnia by peaceful means. In February 1992, Alija Izetbegovi} (the "Bosnian Muslim" representative), Radovan Karadži} (the "Bosnian Serb" representative) and Mate Boban (the "Bosnian Croat" representative) met and agreed to a plan (the "Lisbon Agreement") for the division of Bosnian territory into semi-autonomous ethnically-based enclaves under a weak central government. Alija Izetbegovi} subsequently renounced the agreement.[649] The Vance-Owen Peace Plan, first published in early 1993, was based upon a similar premise, in that it proposed a division of Bosnia into three ethnic cantons, with power being shared equally in the capital, Sarajevo.[650] Mate Boban, the leader of the HDZ-BiH, immediately agreed to the terms of the plan, as it promised huge gains in territory for the Bosnian Croats. While Alija Izetbegovi}, under pressure

[645] Ex. Z1668, p 74.
[646] Ex. Z1677.1, p. 26.
[647] Ex. Z1677.1, p. 26.
[648] Ex. Z1677.1, pp. 26-27.
[649] Ex. Z1677.1, pp. 30-31.
[650] Ex. Z1677.1, p. 31.

from the international community, did finally agree to the plan, the Serbs continued to boycott the agreement.[651]

465. At the request of the European Commission, on 29 February-1 March 1992, the Republic of Bosnia and Herzegovina held a referendum on independence. Despite the Serb boycott, the motion for independence was carried with overwhelming support from both Croats and Muslims.[652] Once the results of the referendum were known, and Bosnia had declared itself independent, the Bosnian Serbs began to attack Bosnia and Herzegovina in earnest, sweeping westwards from the Serbian border.[653] The government responded by forming an army of the Republic of Bosnia and Herzegovina ("ABiH") in the summer of 1992, which replaced the former territorial defence ("TO").[654]

466. Throughout the conflict, the international community continued to urge the warring factions in Bosnia to negotiate, and to that end presented numerous compromise agreements, none of which succeeded in bringing a halt to the fighting.[655] It was not until the signing of the Dayton Agreements in 1995 that the conflict in Bosnia ended.

B. The Accused

1. Dario Kordi}

467. Dario Kordi} is aged 40 and was born on 14 December 1960. He comes from a religious family.[656] He graduated in 1983 from the Faculty of Political Science in Sarajevo. His background is as a journalist and from 1985 he was employed at the Vatrostalna company in Busova~a. Before the war he displayed no prejudice towards Muslims.[657]

468. Kordi} began his political career in Busova~a by becoming Secretary of the local branch of the HDZ (in September 1990) and then President from February 1991. He was part of the faction which sided with the HDZ of Croatia and President Tu|man.[658] Meanwhile, after the 1990 elections, he was appointed by the HDZ to be Secretary for National Defence in the Busova~a municipality.[659]

[651] Ex. Z1677.1, p. 31-32.
[652] Ex. Z1677.1, p. 27.
[653] Ex. Z1677.1, pp. 27-28.
[654] Ex. Z1677.1, p. 29.
[655] Ex. Z1677.1, p. 30.
[656] Fuad Ze}o, T. 6499.
[657] Witness J, T. 4491-92.
[658] Dragutin Ci~ak, T. 1183-84.
[659] Nasiha Neslanovi}, T. 11301.

469. Kordi}'s career continued with his appointment, on 30 July 1991, as Co-ordinator of the Travnik Regional Community of the HDZ-BiH, responsible for calling and chairing its meetings.[660] In August 1991 the Busova~a HDZ provided for the functioning of the municipal organisation in wartime by the setting up of a Command, of which the President would be the Commander.[661]

2. Mario ^erkez

470. Mario ^erkez is aged 41 and was born on 27 March 1959. He comes from Vitez and before the war was employed in the Slobodan Princip Seljo factory ("SPS factory") near the town. Many witnesses spoke well of his character and freedom from bias or prejudice against Muslims. This included prosecution witnesses[662] and a number of defence witnesses.[663] A prosecution witness, Colonel Stewart, gave this endorsement of the accused's character: an apparently decent and honourable man.[664]

471. A report from the Vite{ka Brigade describes Mario ^erkez as one of the founders of the HVO in Vitez, "beginning with the accumulation of arms, through their distribution to the organisation of HVO units": he was first Assistant Commander of the Vitez Staff, then Assistant Commander of the Stjepan Toma{evi} Brigade and, finally, Commander of the Vite{ka Brigade.[665]

C. The Formation of the HZ H-B

472. In 1991, according to the Prosecution, a separate Croat community was founded in Bosnia and Herzegovina with the intention that it should secede from that Republic. The story can be told primarily from the documents, beginning with the formation of the HDZ-BiH as a branch of the Croatian HDZ in August 1990. Mr. Stjepan Kljui} was duly elected President, Mate Boban as Vice-President and Ignac Ko{troman as Secretary.[666] There were regular meetings, alternatively in Zagreb and Sarajevo, between the Croat and the HDZ-BiH leaderships.[667] However, by the autumn of 1991, with war clouds gathering in Croatia after the declaration of Croatian independence, there was a difference of view in the HDZ-BiH party as to the future of Bosnia and Herzegovina. Stjepan Kljui} and one faction wanted it to survive as a political whole; but another faction, including

[660] Minutes of meeting, Ex. Z8.
[661] Decision, Ex. Z14.
[662] Dr. Mujezinovi}, T. 2253-56; Witness G, T. 3955; Fuad Ze}o, T. 6579-80; Witness S, T. 7956-57; Witness K, T. 6785-86. In a conversation with the Prosecutor (after he had given evidence) Dr. Mujezinovi} said that Mario ^erkez was a good person before the conflict but had not used his brains, had been led by others and did what he was told. (Prosecutor's Memorandum, 19 May 1999.)
[663] *See e.g.,* Slavko Juki}, T. 23155; Zdenko Raji}, T. 24073-74; Ivica Miskovi}, T. 28133-37.
[664] Col. Stewart, T. 12462.
[665] Ex. Z1199.4.
[666] A list of the *dramatis personae* is to be found in Annex II.
[667] Mr. Stjepan Kljui}, T. 5257-60.

Dario Kordi} and Mate Boban, were in favour of the division of the country.[668] These were matters discussed at a June 1991 meeting (and other meetings) with President Tu|man.[669] Events then unfolded as follows:

(a) At a meeting of the Main Board of HDZ-BiH in August 1991 there was mention of the possible linking of municipalities with majority Croat population and of a "special plan" should there be an attack on the Croatian people.[670]

(b) On 26 August 1991, the HDZ-BiH imposed a state of emergency within the HDZ-BiH because of Serb aggression and stated that the HDZ municipal boards should be linked to each other in a unified system of defence.[671]

(c) On 18 September 1991, the HDZ-BiH established a Crisis Staff, numbering Stjepan Kljui}, Mate Boban and Dario Kordi} among its members: Crisis Staffs were to be formed immediately for three regional communities, including Travnik.[672]

(d) On 12 November 1991, the Joint Meeting of the Crisis Staffs of Herzegovina and Travnik Regional Communities, chaired by Mate Boban and Dario Kordi}, was held. The two communities decided that the Croatian people in Bosnia and Herzegovina should institute a policy to bring about "our age-old dream, a common Croatian State" and should call for a proclamation of a Croatian *banovina* in Bosnia and Herzegovina as the "initial phase leading towards the final solution of the Croatian question and the creation of a sovereign Croatia within its ethnic and historical … borders".[673]

(e) This policy was put into effect at a meeting in Grude on 18 November 1991 when the new Croatian Community of Herceg-Bosna (HZ H-B) was set up. The Community consisted of 30 municipalities (including those in Central Bosnia) and was described as a "political, economic and territorial integrity". Mostar was the seat of the Community. Its "supreme authority" was the Presidency, comprising the Presidents of the HDZ municipal boards.[674] (Mr. Kljui} was not present at the meeting in Grude but Mr. Kordi} was.)

[668] *Ibid*., 5289-90, 5311-18.
[669] *Ibid*., 5257-62.
[670] Minutes, Ex. Z10.
[671] Instructions, Ex. Z13.
[672] Minutes, Ex. Z16.
[673] Minutes, Ex. Z22.
[674] Decision, Ex. Z27. *See* Annex VI 2 for the territory of the HZ H-B.

(f) The leadership of the HZ H-B was described as Mate Boban, President; Božo Raji} and Dario Kordi}, Vice-Presidents; and Ignac Ko{troman, Secretary.[675]

(g) On 27 December 1991 there was a meeting in Zagreb, chaired by President Tu|man, of the leadership of the Croatian HDZ and of the HDZ-BiH. The purpose was, first, to discuss the future of Bosnia and Herzegovina and the differences of opinion on this topic in the HDZ-BiH party; secondly, to formulate an overall Croatian political strategy. Stjepan Kljui} set out his position in favour of the Croats remaining within Bosnia and Herzegovina but Mate Boban said that, should Bosnia and Herzegovina disintegrate, the HZ H-B would be proclaimed as independent Croatian territory "which will accede to the State of Croatia but only at such time as the Croatian leadership … should decide". Dario Kordi} said that the Croatian spirit in the HZ H-B had grown stronger in the 40 days since the declaration of the HZ H-B, the Croatian people of the Travnik region were ready to accede to the Croatian State "at all costs … any other option would be considered treason, save the clear demarcation of Croatian soil in the territory of Herceg Bosna".[676]

(h) Mr. Kljui} resigned as President of the HDZ-BiH in February 1992 and Mate Boban became President in the following month. (The Prosecution points to this as the ousting of moderates from the leadership of the Croat political party and the assertion of hardline control.)

(i) On 16 January 1992 a rally was held in the municipal hall in Busova~a to celebrate Croatian independence, a video recording of which was shown to the Trial Chamber.[677] Dario Kordi} is to be seen speaking to a cheering, flag-waving crowd. He said that the rally was proof that the Croatian people in Busova~a are part of the united Croatian nation and that the HZ H-B, including Busova~a, is "Croatian land and that is how it will be". Ignac Ko{troman also spoke and said: "we will be an integral part of our dear State of Croatia by hook or by crook". The speeches were met with yells of "Dario, Dario".[678]

D. The Formation of the HVO

473. The year 1992 saw the take-over by the HVO of municipalities in the HZ H-B and the beginning of the conflict between Muslims and Croats. It began with the scramble for weapons

[675] Ex. Z2717, p. 12.
[676] Minutes, Ex. Z2717, especially pp. 10 and 43.
[677] Ex. Z2698.
[678] Transcript of speeches, Ex. Z2699.

between the Bosnian Croats and Muslims (in which Dario Kordi} was destined to play the part which brought him to a position of leadership).

474. The events in the early part of that year were as follows: on 29 January 1992 the first meeting of the Presidency of the HZ H-B was held in Grude. Dario Kordi} was named as part of the Working Presidency with Mate Boban, Ignac Ko{troman and two others.[679] As noted, a referendum on Bosnia and Herzegovina independence was held and the vote was for independence. On 6 March 1992 independence was declared by Bosnia and Herzegovina.

1. Arms Deliveries and the Role of the Accused

475. It was at about this time that Dario Kordi} first came to prominence in connection with the problems over the division of weapons. A defence witness from Novi Travnik said that he first heard of Kordi} in connection with the problems about the deliveries of weapons from the Bratsvo arms factory when Kordi} became involved and gained popularity among the Croat people.[680] Another defence witness said that in September 1991 a convoy from Travnik was stopped at Kaonik: Dario Kordi} stepped in front of the vehicles and told them to stop: such courageous acts added to his reputation.[681] A third witness commented on Kordi}'s courage in confronting armed soldiers of JNA convoys and taking out arms when he was unarmed himself.[682]

476. According to witnesses, Dario Kordi} was also prominent in early 1992 in the stopping of a JNA convoy at the Kaonik crossroads in January 1992 shortly after the cease-fire was signed between Croatia and Serbia. The convoy was stopped for several days. Dario Kordi} was present in civilian clothes with a pistol in his belt, telling the police what to do.[683]

477. The trouble started in February 1992 when a dispute broke out over the delivery of arms to the JNA from the Bratsvo factory in Novi Travnik which manufactured rocket launchers, Howitzers and canons (and employed 75 per cent of the workforce of the town). The Bosnian Croats opposed such deliveries and, as a result, the workers were not paid. Eventually the Bosnian Croats prevented trucks containing military equipment from leaving the area by erecting a roadblock. Workers from the factory responded by themselves erecting a roadblock on 26 February in the village of Donje Puti~evo in order to draw attention to their grievances. Dario Kordi} appeared at the roadblock saying that he was on his way to Novi Travnik to try to resolve the dispute.

[679] Ex. Z42.
[680] Zlatan ^iv~ija, T. 18993.
[681] Niko Grube{i}, T. 19315-16.
[682] Witness DE, T. 19506-07.
[683] Witness A, T. 254-257: the witness, in cross-examination, accepted that Kordi}, as Secretary for Defence in the municipality, had an official pistol; T. 675-677.

However, the workers would not let him pass. Armed and masked men then appeared wearing black uniforms and Croat Defence Forces ("HOS") insignia. Explosives were tied to the bus being used as a roadblock and the HOS leader, Darko Kraljevi}, threatened to blow up the bus unless the workers dispersed, which they did.[684]

478. In early March 1992 Dario Kordi} was interviewed by TV Sarajevo outside the Bratsvo factory. He said that the people in charge of the plant would be considered war criminals in the eyes of the Croatian people if they continued what they were doing (a reference, it must be supposed, to attempting to supply arms to the JNA).[685] There followed a panel discussion in which Kordi} explained the reasons for the HZ H-B taking the steps which it did, i.e., that there should be no monopoly of arms for the JNA and arms should be exported to Croatia; and that federal regulations were not binding on the HZ H-B, which recognised the legitimacy of the State of Bosnia and Herzegovina but not of the federal government. Dario Kordi} also said that it was no secret that the Croatian people, like everyone else, were arming themselves and no-one could deny their right to organise themselves into the HZ H-B.[686]

479. On 7 March 1992 an interview with Dario Kordi} appeared in a publication called the *La{vanski Krug* (the La{va Circle). In the interview Kordi} said that the main reason for forming the Croatian Community was the fact that Serb forces occupied Bosnia and Herzegovina:

> The Croatian people are bound to protect the minimum area that historically belongs to them with the *banovina* borders. The HZ represents 30 naturally connected municipalities … on the territory where the Croatian population was and is in the majority. This entitles the Croatian people to organise relations to everybody's satisfaction, respecting the right of Muslims, Serbs and other peoples in the area.[687]

480. Evidence was also given of Mario ^erkez's involvement in the obtaining of arms by a witness who said that in April 1992 the HVO and TO had agreed on a joint attack on the Slimena JNA depot near Travnik; however, the HVO attacked, alone, two days early: the witness received information that the "attack was carried out under the command of Colonel Filipovi}" and Mario ^erkez.[688] Another witness described Mario ^erkez's take-over of a mountain lodge near Kru{~ica for HVO exercises.[689]

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[684] The above account is summarised from the evidence of Ismet [ahinovi}, Chairman of the union in the factory, T. 985-995 and Ex. Z47.1 (Bulletin of the BNT Factory, 26. Feb. 1992).
[685] Transcript of video recording of programme: Ex. Z53a.
[686] T. 1004-09; Ex. Z53.1.
[687] Ex. Z58.
[688] Witness L, T. 6841-42.
[689] Witness R, T. 7846-50.

2. March - April 1992

481. Further events in March 1992 may be noted:

(a) On 16 March the Bosnian Serb Army ("BSA") attacked Mostar;

(b) On 17 March, at a joint meeting of the Municipal HDZ Boards for Vitez, Busova~a, Travnik and Zenica in Vitez (at which Kordi} was present) it was decided that Zenica was to be included in the defence system of the HZ H-B.[690]

(c) On 21 March a request was sent to the Ministry of Defence of Croatia, by the Central Bosnia Command, for a meeting between the Minister of Defence of the Republic of Croatia, Mr. [u{ak, and representatives from Central Bosnia, including Dario Kordi} (described as Head of the Crisis Committee for Central Bosnia and Vice-President of the HZ H-B).[691] (The Prosecution comments that this document illustrates Dario Kordi}'s true and important role at the time.)

(d) On 26 March the BSA attacked Sarajevo.

482. Meanwhile, a dispute had broken out in the Busova~a HDZ between the President, Dario Kordi} and the Vice-President, Dragutin Zvonimir ^i~ak. The latter had denounced Dario Kordi}, Mate Boban and Ignac Ko{troman as extremists who had no authority to organise roadblocks and to prevent weapons going to the JNA.[692] On 30 March 1992 Dragutin ^i~ak was beaten up and injured and articles stolen from his house by men who, it is alleged, were acting on behalf of Dario Kordi}. In his evidence Mr. ^i~ak said that one of the men, when hitting him, said that this was "from Dario".[693] The next day Mr. ^i~ak went to Kordi}'s office in Busova~a and confronted the latter with his injuries. Kordi} said that he thought that Mr. ^i~ak would come, "repentant rather than rebellious":[694] Kordi} denied responsibility.[695] There is no dispute that Mr. ^i~ak was injured in this attack: a medical certificate to that effect and photographs of the injuries were produced.[696] However, the defence case is that Kordi} was not involved. The Trial Chamber accepts the evidence of Mr. ^i~ak on this issue and finds that he was beaten up on the orders of Mr. Kordi}. Although a political opponent of Kordi}, there is no reason to doubt the evidence of Mr. ^i~ak and

[690] Minutes, Ex. Z61. The Prosecution points to this proposal as an example of the ambition of the local HDZ: Prosecution Final Brief, para. 38.
[691] Ex. Z62.
[692] Articles, Ex. Z59.1, Z59.2, Z60.1, Z63, Z64.1; Kordi}'s response, Ex. Z52.
[693] T. 1310.
[694] T. 1320-21.
[695] T. 1322.
[696] Ex. Z66 and Z64.3, respectively.

no evidence was called to contradict it.[697] The purpose of calling this evidence was to show the lengths to which Mr. Kordi} was prepared to go in the silencing of opponents.[698] However, the Trial Chamber does not find that it is assisted in coming to a judgement about these international crimes by evidence relating essentially to local political disputes.

483. International events gathered pace in April 1992:

(a) on 6 April the European Community Declaration on the Recognition of the Republic of Bosnia and Herzegovina (RBiH) was issued;[699]

(b) on 7 April the Republic of Croatia recognised RBiH;[700]

(c) on 8 April the RBiH Presidency proclaimed an imminent threat of war;[701]

(d) on the same day the Presidency of HZ H-B, at an emergency session, issued a decision establishing the HVO as the "supreme defence body of the Croatian people" in HZ H-B.[702]

(e) On 20 June the President of the RBiH was to declare a state of war.[703]

E. The Parties' Cases and Trial Chamber Findings

484. The prosecution case is that the HZ H-B had no legal foundation, as the Bosnia and Herzegovina Constitutional Court found in a decision of September 1992.[704] The prosecution case is also that the purpose of setting up the HZ H-B was to establish control within its territory, to exclude the Bosnian Muslims and to engineer unification with Croatia. This had been the original purpose of the setting up of the HDZ-BiH and explains why opponents such as Stjepan Kljui} were ousted. This programme gathered momentum in 1992 with the establishment of the HVO and was to lead to the exertion of HVO control over various municipalities with the object of controlling the

[697] The Kordi} Defence attempted to discredit the evidence of Mr. ^i~ak by calling evidence of Zoran Mari} (T. 20181) and Dr. Pavlovi}, a specialist in occupational medicine; T. 21641-46, and producing medical opinions dated April 1984 (Ex. D281/1, D282/1) to show that he was discharged from work in 1984 suffering from mental illness; Kordi} Final Brief, Annex H. The Trial Chamber does not consider that any weight can be given to evidence of illness 15 years before the witness appeared before the Trial Chamber, in particular in the absence of up-to-date expert psychiatric evidence in support.
[698] The Prosecution Final Brief (para. 31) refers to Kordi}'s acquisition of power being built upon a plan, backed by others and executed by whatever means were available.
[699] Ex. Z68.
[700] Ex. Z69.
[701] Ex. Z70.1.
[702] Ex. Z70.
[703] Official Gazette: Ex. D17/1.2.
[704] Ex. Z216.

Muslim population and ultimately securing its removal from the territory of the HZ H-B.[705] According to the Prosecution, it was this plan which led to the conflict and the alleged crimes which are the subject of this case.

485. The defence case about these events is to this effect: (a) that the HZ H-B was a purely defensive organisation, set up to provide defence for the Bosnian Croats in the face of JNA aggression;[706] and (b) that it operated legally at all times and its officials had no notion of the Bosnia and Herzegovina Constitutional Court decision. A summary of the defence evidence follows.

486. Zoran Bunti}, a Croat lawyer, testified that the HZ H-B was not a set of parallel institutions, but rather replacement institutions that were fully constitutional and lawful under Chapters 6 and 7 of the Republic's Constitution.[707] Zoran Perkovi}, who worked on legal matters for the HVO Department of Justice during the war, testified that the establishment of the HZ H-B was authorised under existing legislation concerning the organisation of political parties.[708] Both the founding documents and the organisation of the HZ H-B, HR H-B and HVO show that they were only temporary organisations made necessary by the war.[709]

487. Unlike the Serbs in Republika Srpska, who had enacted their own constitution and created a whole new system of laws, the HZ H-B mainly applied laws that were in force in RBiH. New legislation and decrees were passed to fill in the gaps and adapt RBiH laws where necessary. Essentially, the RBiH law applied, unless there was some reason to amend it in some way. Evidence was given that the HZ H-B advocated the sovereignty of Bosnia and Herzegovina and tried to find a solution that would include all three ethnic groups.[710] The Croats wanted to maintain their traditional status as a constitutive people.[711]

488. HZ H-B institutions were necessary due to the general collapse of the RBiH system: the central government did not function and the municipalities were left to fend for themselves.[712] Sarajevo lost all communication with the rest of the country, as well as all effective control. There

[705] Prosecution Pre-trial Brief, paras. 69-77.
[706] Kordi} Final Brief, Annex A, pp. 24-35.
[707] Zoran Bunti}, T. 21082-83.
[708] Zoran Perkovi}, T. 20593.
[709] Zoran Perkovi}, T. 20534-35.
[710] Zoran Bunti}, T. 21088.
[711] Witness DJ, T. 20325-27.
[712] Major-Gen. Filip Filipovi}, T. 17005.

was no mail delivery, no taxes and no salaries were paid, the banks did not operate, the whole monetary system had broken down and in some areas business was conducted by barter.[713]

489. The Defence called evidence to the effect that the Muslims' intransigence essentially forced the Croats to establish separate institutions. For example, Zoran Perkovi} testified that the HZ H-B proposed to the Muslims the creation of a division of the Supreme Court in Mostar because Sarajevo was effectively cut off from the rest of the country. But the lack of political will in Sarajevo to create such a division gave the HZ H-B no choice but to create a detached division of the RBiH Supreme Court in Mostar alone.[714]

490. Major-General Filip Filipovi} testified that the HZ H-B was organised primarily to aid in the defence against the BSA and to give the Bosnian Croats a vehicle for participation in international negotiations over the future internal structure of Bosnia and Herzegovina. Although the HVO was formally declared on 8 April 1992, the Bosnian Croat armed forces were only organised during the summer and autumn of 1992. The HVO's initial organisation was rudimentary; but as 1992 progressed, it gradually evolved into an effective and well-organised fighting force.[715] It comprised two separate components, military and civilian, each with its own jurisdiction. While the military wing of the HVO held the front lines against the BSA, the civilian component was responsible for procuring food and logistical supplies for civilians and the military, and assisting people with travel when possible.[716]

491. Having considered all the evidence on this topic, the Trial Chamber rejects that given on behalf of the Defence and finds that the weight of the evidence and all the circumstances point to the conclusion that the HZ H-B was founded with the intention that it should secede from Bosnia and Herzegovina and with a view to unification with Croatia.

[713] Zoran Perkovi}, T. 20526-27, 20530-31; Witness DE, T. 19486-87.
[714] Zoran Perkovi}, T. 20561-62.
[715] Major-Gen. Filip Filipovi}, T. 17007; Major Darko Geli}, T. 17572.
[716] Major Franjo Ljubas, T. 18834-35.

II. PERSECUTION: THE HVO TAKE-OVERS

492. As has been stated, the prosecution case is that the HVO was the chief organisation through which the Bosnian Croat leadership planned and implemented their campaign of persecution and ethnic cleansing in the area of the HZ H-B. The Prosecution relies in support of this allegation on the events as they unfolded in the HZ H-B, in the spring and summer of 1992.

493. It is the prosecution case on Counts 1 and 2 of the Indictment that there was a campaign of persecution in the territory of the HZ H-B against the Bosnian Muslim population. This "campaign of persecution, violence and ethnic cleansing was … carried out on a widespread or systematic basis by various means and methods, including attacks on cities, towns and villages … and killing and causing serious injury to Bosnian Muslim civilians".[717] The other methods included detention and ill-treatment of civilians, forcible transfer, fomenting ethnic hatred, plunder and destruction and the use of prisoners for trench-digging and as human shields.[718] "As a result of the persecution and ethnic cleansing campaign, the Bosnian Muslim population was substantially reduced and relocated from those areas [over which] the Bosnian Croats … and their leaders had seized control."[719] The campaign was implemented by securing control of the territory and then using armed force and violence to remove the Muslims.

A. HVO Take-Over of Busova~a

494. The background to the HVO take-over in Busova~a is to be found in the distribution of the arms and equipment of the local JNA (already mentioned in this Judgement). By this time Bosnian Serb aggression had led to many refugees coming to Busova~a.[720] This in turn led to an increase in tension. (The population of Busova~a municipality was nearly 20,000 in 1991, almost evenly divided between Muslims and Croats.)[721] It was agreed that the JNA equipment in the Draga and Ka}uni barracks in Busova~a should be divided between the HVO and the TO equally. The above matters are not in dispute. However, there is a dispute about what happened then. The prosecution evidence was as follows: the HVO, headed by Dario Kordi}, went into the Draga barracks while the TO went into Ka}uni.[722] Disputes arose over the arms from the third barracks at Kaonik; and Kordi} was involved in planning the operation to take the barracks and remove the arms and

[717] Indictment, para. 28.
[718] *Ibid*., paras. 29-34.
[719] *Ibid*., para. 35.
[720] Witness B, in cross-examination, T. 548.
[721] Census, Ex. Z571.2. The total population was 18,849 of whom 48 per cent were Croat and 45 per cent Muslim. The population of the town of Busova~a was over 4,000 of whom about half were Muslims. The villages in the municipality of Busova~a which are relevant to the Indictment are Merdani, O~ehni}i, Puti{ and Lon~ari: *see* Annex VI 4.
[722] General Džemal Merdan, T. 12714.

ammunition.[723] On the other hand, the defence evidence was that there was an understanding between Muslims and Croats that, because the Ka}uni barracks were located in a predominantly Muslim area, the Muslims would take Ka}uni; and, as the Draga barracks were located in a predominantly Croat area, the Croats would take Draga.[724] Mr. Kordi} did not lead the Draga operation.[725] With respect to the Kaonik barracks, the defence case is that Muslims and Croats agreed that the barracks, which were located in the Croat-populated area,[726] would be taken over by the HVO,[727] and that any armaments found in the barracks would be distributed equally between them:[728] however, this agreement was breached by the Muslims and General Merdan brought in military forces to take over the Kaonik weapons.[729] The Defence contends therefore that the Prosecution's suggestion that the Muslims arrived to collect the weapons pursuant to an agreement is unfounded.[730]

495. There is no dispute that on the evening of 8 May an incident occurred at a checkpoint in which a member of the HVO was injured. According to the Prosecution this incident served as a pretext for the HVO take-over of Busova~a which occurred in the early hours of 10 May 1992. At 1.20 a.m. that day the Commander of the Municipal HVO, Ivo Brnada, issued an order, counter-signed by Dario Kordi} as "HVO Vice-President", dismissing the Crisis Committee and ordering the Busova~a HVO to take over all authority, giving an ultimatum to the TO to hand over its weapons and to place itself under the command of the HVO and issuing a warrant for the arrest of three Muslim leaders, including Džemal Merdan.[731] The latter was duly arrested and beaten up: he was subsequently released by order of Dario Kordi}.[732] On the other hand, according to the Defence the 10 May 1992 order was issued by the Croat leadership of Busova~a in an attempt to rectify the situation and establish peace and order:[733] (Mr. Kordi}'s co-signature was only to give the order more weight, on the basis that he was the highest-ranking Croat politician in the

[723] Witness J's evidence, T. 4490-91.
[724] Z. Mari}, T. 20043; N. Grube{i}, T. 19318; Brig.-Gen. Merdan, T. 12714; Witness A, T. 679-680, (testifying that there was no such agreement but agrees that Draga was taken over by Croats and Ka}uni by Muslims).
[725] Major-Gen. F. Filipovi}, T. 17160; Z. Mari}, T. 20186.
[726] Z. Mari}, T. 20043.
[727] N. Grube{i}, T. 19318.
[728] Z. Mari}, T. 20043 and 20044-45; N. Grube{i}, T. 19318; Witness O, T. 7142 and 7186-87.
[729] Z. Mari}, T. 20047-48 and 20187-88; *see* Major-Gen. F. Filipovi}, T. 17088. The Defence contends that the two Kordi} defence witnesses with direct knowledge of the events confirm this. Likewise, the only prosecution witness with personal knowledge of the Kaonik weapons agreement confirms that, although the agreement was reached on the local Busova~a level, General Merdan led about 100 people who suddenly appeared at Kaonik, resulting in an incident in which two people were wounded: Kordi} Final Brief, p. 145.
[730] Z. Mari}, T. 20187-88.
[731] Ex. Z100.
[732] Ex. Z101.2. In cross-examination it was put that Kordi} only heard of the witness's arrest from a delegation: the witness said that this was not so: T. 12860-61.
[733] Z. Mari}, T. 20049-50.

municipality at the time)[734] and only a few of the provisions of the order were, in fact, implemented.[735] The Defence further contends that whilst General Merdan was arrested by the civil police,[736] was apparently beaten and then released after two days,[737] there is no evidence that Mr. Kordi} had anything to do with this incident.[738]

496. There is no dispute that on 22 May 1992 the President of the Busova~a HVO issued an order, again counter-signed by Kordi}, lifting the blockade on the town (which had been imposed on 10 May) but imposing a curfew, ordering workers to return to work by 25 May and putting the HVO in charge of the municipality, displacing the Municipal Assembly, the Executive and the Crisis Staff.[739] According to the Prosecution, the HVO then took over all authority, the agencies of RBiH were abolished and all functions were concentrated in the military.[740] The effect was described by one witness as a military coup.[741] According to another, anyone wanting to remain in the government had to swear allegiance to the HVO; those who did not were left sitting in their offices without power.[742] By 25 June 1992 the Muslim Council of Busova~a had acknowledged that the Supreme Command was the HVO.[743] Croatian flags were flown on the PTT building, police buildings and municipal buildings which were taken over by the HVO.[744] Radio and television stations and transmitters were taken over and programmes coming from Bosnia and Herzegovina were abolished. The Croatian dinar was introduced[745] and the names of streets were changed.[746] There was no resistance by the Muslims except for a peaceful public protest on 25 May.[747]

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[734] Kordi} Final Brief, p. 146. The Defence says that the evidence for this is that the title of 'HVO Vice-President' (under Kordi}'s signature) did not exist at the time: Ex. D182/1, Tabs 18 and 19, appointments of the first HVO Vice-Presidents: Z. Bunti}, T. 21024; N. Grube{i}, T. 19412.
[735] N. Grube{i}, T. 19414; Kordi} Final Brief, p. 146.
[736] Z. Mari}, T. 20052 and 20191.
[737] Brig.-Gen. D. Merdan, T. 12715.
[738] Z. Mari}, T. 20191; *but cf.* Brig-Gen. D. Merdan, T. 12860-62 (the Defence relies on the fact that Gen. Merdan is the only witness who claims – and his testimony is hearsay – that Mr. Kordi} was involved in, first, not allowing and then agreeing to Merdan's release: Kordi} Final Brief, p. 147.
[739] Ex. Z111.
[740] Witness A, T. 322, 328-29; Witness O, T. 7144-46; Ex. Z111.
[741] Witness O, T. 7142.
[742] Witness M, T. 6938-45.
[743] Report of meeting between the Council and Busova~a HVO (including Kordi}) on 25 June 1993: Ex. D223/1. However, the Defence points out that the same report declares that there would be autonomy of TO formations within the HVO and that the TO military police would police entirely Muslim villages.
[744] Witness O, T. 7144.
[745] Witness A, T. 329.
[746] Witness B, T. 445. Dragutin ^i~ak said that at meetings of the core leadership of HDZ Busova~a the Croatian flag would be flown, the Croatian anthem sung and a salute would be given that was common during the days of the Croatian Independent State: T. 1334-35.
[747] Witness A, T. 331-32. Witness J, T. 4500-01: Witness J, who had lived in Busova~a for 41 years prior to the fighting, said the Muslims held a peaceful demonstration but the HVO surrounded them and shot in the air, causing the demonstrators to disperse in fear. After this, the HVO exercised tighter control over gatherings of Muslims.

497. The prosecution case is that Dario Kordi} was instrumental in the HVO take-over of Busova~a and the government of the municipality. By 1992, in Busova~a, according to Dragutin ^i~ak, Dario Kordi} was solely responsible as civilian, military and police authority, all in one.[748] Of the decision that Dario Kordi} should become President of the Municipal Board in wartime, Mr. ^i}ak said that the Board never met and all decisions were taken by Dario Kordi}.[749] According to Witness J, who had been friendly with Dario Kordi} since before the war started in 1992, Dario Kordi} planned the take-over of arms from Kaonik in May 1992, and as Vice-President to Mate Boban was in H-B, in charge of the La{va Valley and the main power in Central Bosnia with all the authority. It was common knowledge if he were absent, that Dario Kordi} had gone to see Boban in Grude and Mostar. The witness said that he had concluded that Kordi} was in charge in the La{va Valley: this was known to all Muslims and everyone in Busova~a knew it.[750] Thus, it was Dario Kordi} who said in a television interview that the HVO had ceased to recognise the autonomy of the RBiH Ministry of Defence and the TO,[751] and Dario Kordi} who said at a meeting that the HVO would guarantee the security of the Bosniaks only if they recognised the lawfulness of the HVO.[752]

498. The defence case is that the 22 May order was a step towards the normalisation of life.[753] According to defence witnesses, the Busova~a TO and its police continued to operate autonomously without being subordinated to the HVO[754] and patrolled the municipality alongside the HVO military police;[755] all municipal civil servants were invited to return to the jobs that they had held before the outbreak of the war, regardless of their ethnicity and that they did so.[756] There was also testimony from defence witnesses that no employees of the HVO provisional government had to take loyalty oaths when they returned to work[757] and, in reality, after BiH had become independent, the central government never really began to function,[758] particularly in relation to the municipalities.[759] The street names were changed jointly, with one street named after a priest and

[748] T. 1370-71.
[749] T. 1207-12.
[750] T. 4490-94, 4496, 4500. In cross-examination he said that he had no direct knowledge of Kordi}'s involvement but that "everything was under his supervision": T. 4590-91.
[751] Transcript of interview, Ex. Z117, p. 2.
[752] Witness M, T. 6955-57.
[753] N. Grube{i}, T. 19417.
[754] The Defence relies on Ex. D223/1, minutes of the 25 June 1992 Muslim National Council and HVO meeting emphasising the autonomy of TO.
[755] N. Grube{i}, T. 19445; T. 19331-32; Ex. D223/1, minutes of the 25 June 1992 Muslim National Council and HVO meeting reflecting the agreement that, although the supreme command in Busova~a would be HVO, the TO would continue to police Muslim villages.
[756] N. Grube{i}, T. 19421, 19326; Z. Mari}, T. 20058-59.
[757] N. Grube{i}, T. 19421, 19327; Z. Mari}, T. 20059, 20194; Witness DE, T. 19493-94, 19543; Witness M, T. 7006-07; (Witness O states the opposite, T. 7195-96.)
[758] Z. Bunti}, T. 21050; Major S. ^eko, T. 23450.
[759] Witness DE, T. 19485-86, 19564; Z. Mari}, T. 20270. The Defence states in its final brief: "Busova~a's municipal employees, too, described how they did not receive any help from the central government and "were simply left to their

another after an Islamic leader.[760] In addition a number of Muslim witnesses supported the testimony that there was no prejudice from the HVO in Busovaca. For example, Witness DH testified that the quality of life improved under the HVO and that there was no required oath of loyalty;[761] and Witness DI, a Muslim, never had his shop damaged and lived in Busovaca throughout the war, providing supplies for the HVO. A Serb witness testified that the Croats acted peaceably towards the Serbs in Kaonik and that Kordic tried to resolve things peacefully.[762]

B. Novi Travnik

499. In June 1992 the focus switched to Novi Travnik where HVO efforts to gain control were resisted. The population of the municipality was over 30,000 in 1991 and was evenly balanced, with 40 per cent Croat, 38 per cent Muslim and 13 per cent Serb.[763] In April 1992 the HVO was established in Novi Travnik and set up a headquarters. On 18 June 1992 the TO in Novi Travnik received an ultimatum from the HVO which included demands to abolish existing Bosnia and Herzegovina institutions, establish the authority of the HZ H-B and pledge allegiance to it, subordinate the TO to the HVO and expel Muslim refugees, all within 24 hours.[764] There was a meeting between members of the HVO and the TO on the evening of 19 June 1992. During this meeting an armed conflict broke out.[765] The fighting lasted two hours and the headquarters of the TO, the elementary school and the Post Office were attacked and damaged. Units wearing HVO and HOS uniforms took part. There was a report that units from the HVO in Vitez and Busova~a took part.[766] This was confirmed by the evidence of Witness P who spoke to some captured HVO soldiers who said that troops had been sent by Dario Kordi} from Busova~a.[767]

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own devices" without expectation of "assistance from anywhere". With the lack of clear regulations or instructions, and while "some people knew how to organise authority, and some didn't", "the conditions were practically impossible … and precluded any kind of normal work": Kordi} Final Brief, p. 152.

[760] Zoran Mari}, T. 20086-87.

[761] Witness DH, T. 19750. The credibility of this witness is very much in question. He gave evidence that his son was a member of the HVO; and he asked his son what it was like; "Who gives you orders? … Does Mr. Kordi} come to see you? Does Mr. Kordi} give you orders?"; T. 19770. Asked in cross-examination why he asked his son this question about Kordi} (in particular) he could give no reply; T. 19772. The answer must be that he had simply come to help the accused out and was not telling the truth.

[762] Zoran Bilic, T. 19954-55.

[763] Census, Ex. Z571.2. According to the Census the total population was 30,713. *See* Annex VI 3.

[764] Witness C, T. 616-17; Witness P, T. 7253-54.

[765] Witness C, T. 614-15.

[766] This account is based on the evidence given by Witness C, T. 785-86 and 789-90.

[767] T. 7259-60. The Defence points out that this evidence was uncorroborated double hearsay (Kordi} Final Brief, p. 131) and the witness, in his prior statement, made no mention of his having personally spoken to these soldiers, T. 7305-06. The Defence also relies on the testimony of the local HVO military commander, Ivica Markovi}, that Mr. Kordi} was not in Novi Travnik during the fighting, that he played no part in the fighting and that no forces from outside the municipality were involved, T. 23971.

500. On the other hand, the Defence asserts that, due to the influx of refugees, who had fled in the face of BSA attacks in Western and Eastern Bosnia, the crime rate rose, the government ceased to operate, as did a subsequent Crisis Staff which was set up.[768] It was in this setting that the HVO administration was formed as a temporary measure to organize life in the wartime conditions:[769] the local HVO government was appointed by Mate Boban and consisted of both Croats and Muslims.[770] Shortly thereafter, Muslim politicians organised a parallel War Presidency consisting only of Muslims, which managed the part of the municipality mostly inhabited by Muslims.[771] The latter provoked tensions by leaving the Croat section of the municipality without power, cutting off the water supply (which they controlled) and opening sewer lines in the high ground that they controlled, letting raw sewage run downwards into the Croat part of town.[772] There was no order to persecute anyone; on the contrary, in the spring of 1993 Colonel Bla{ki} issued a directive to the civilian police and military units not to persecute members of any ethnic group, including Muslims.[773] With respect to the brief fighting which broke out on the evening of 19 June 1992, the fighting began when the TO attempted to seize some strategic points in the town of Novi Travnik.[774] Refik Lendo, the TO Commander in Novi Travnik, who supposedly received the ultimatum from the HVO, was a known troublemaker in the area[775] who refused any kind of cooperation with the HVO.[776]

C. The HVO Take-Over in Other Municipalities

501. The HVO exerted control in the municipalities of Vare{, Kiseljak, Vitez, Kre{evo and Žep~e. The evidence called by the Prosecution and the Defence is set out in the following paragraphs.

502. In 1991 the population of **Vare{** municipality was 22,000, of whom 41 per cent were Croats, 30 per cent Muslim and 13 per cent Serb.[777] According to the Prosecution, on about 1 July 1992, the HVO took over all civilian and military power in Vare{ and all important official positions were

[768] Z. Civcija (the Chief of Police in Novi Travnik until joining the HVO in September 1993), T. 18965, 18949-50, 18966.
[769] Kordi} Final Brief, pp. 128-29.
[770] Z. Civcija, T. 18967; Ex. D219/1.
[771] Z. Civcija, T. 18968; *see also* Witness P, T. 7300 (the Muslim government was formed in August or early September).
[772] Z. ^iv~ija, T. 18989.
[773] Z. ^iv~ija, T. 18991-92.
[774] Affidavit of Jozo Seki}, para. 10.
[775] Witness CW1, T. 26808-09; Z. ^iv~ija, T. 18970; Ex. D155/1, Milinfosum.
[776] Z. ^iv~ija, T. 18970-71, 18986-87.
[777] Census, Ex. Z571.2. According to the Census, the total population was 22,203; *see* Annex VI 7.

delegated to those loyal to the HDZ/HVO.[778] On the same day the Vare{ HVO commander signed an order prohibiting TO activity in Vare{[779] and a few days later all political parties were forbidden, except the HDZ.[780] The minutes of a meeting of the Central Bosnia HVO on 22 September 1992 noted that "the HVO is in full control" of Vare{.[781]

503. According to the Defence the HVO assumed power in Vare{ because the SDA had refused to participate in government. According to a defence witness, the HVO take-over was peaceful, with the full consent of the Vare{ SDA branch;[782] however, the Muslims in Vare{ formed their own military forces and established parallel government bodies:[783] everybody stayed in their jobs and nobody was asked to sign a loyalty oath.[784] When Croat refugees from Kakanj and Travnik arrived in Vare{, they were not allowed to take over Muslim flats or to take revenge.[785]

504. In **Kiseljak** municipality the population in 1991 was 52 per cent Croat and 40 per cent Muslim of a total population of over 24,000.[786] The HVO was established there on 23 April 1992.[787] The JNA having left the barracks, the HVO moved in.[788] There was an agreement that the weapons and ammunition would be divided[789] but it was never implemented. According to Witness D the TO received about 5 per cent of the poorest weapons and the rest were taken by the HVO.[790] The HVO were not fighting the BSA at the time and would not allow the TO through the municipality when the TO wanted to try to raise the siege of Sarajevo.[791] On 25 May 1992 the HVO passed a decision to abolish the TO in Kiseljak.[792] On 25 June 1992 there was a decision to re-name the Executive Committee Municipal Assembly as the Croatian Defence Council (HVO) of

[778] Witness W, T. 10896-97. Around 10 June 1992, Ekrem Mahmutovi}, Commander of the local TO, heard of an order from Malba{i} to the military police and the special forces to take over the important installations in the town. (He later saw this order after it was seized during the ABiH take-over of Vare{ on 4 Nov. 1993.) When he came back on 1 July 1992 the HVO had taken control of Vare{: T. 3258-64.
[779] Ekrem Mahmutovi}, T. 3265.
[780] Ekrem Mahmutovi}, T. 3266.
[781] Ex. Z223. Ekrem Mahmutovi} said that he had seen the order for the HVO take-over (signed by Dario Kordi}) in November 1993 in the municipal archives in Vare{: T. 3269-71. In cross-examination he was referred to a statement he had made to the Prosecution in December 1998 in which he said that he had never seen the order (Ex. D31/1, p. 5). The witness said that this was an error of translation: T. 3325-26.
[782] Pavao Vidovi}, T. 22078-81.
[783] Pavao Vidovi}, T. 22085-86.
[784] Pavao Vidovi}, T. 22081-82.
[785] Miroslav Pej~inovi}, Defence Transcript Witness TWO1; *Bla{ki}*, T. 15071.
[786] Census, Ex. Z571.2. According to the Census the total population was 24,164. The villages in the muncipality which are relevant to the Indictment are Rotilj, Vi{njica, Svinjarevo, Gomionica, Polje Vi{njica, Tulica, Han Plo~a-Grahovci: *see* Annex VI 5.
[787] Ex. Z81.
[788] Ex. Z83.
[789] Ex. Z91.
[790] T. 1970-73.
[791] T. 1978-79.
[792] Witness D, T. 1978-80; Ex. Z114.

Kiseljak.[793] No Muslims were left on the Municipal Staff. The HVO assumed "absolute power, absolute domination and control" in the municipality.[794]

505. In 1991 the total population of the **Vitez** municipality was nearly 28,000, of whom 46 per cent were Croat, 41 per cent Muslim and 5 per cent Serb.[795] The locations in the municipality relevant to the Indictment are: the town of Vitez including Stari Vitez (the old, Muslim part of the town) and the villages of Ve~eriska and Ahmi}i (with its associated hamlets of [anti}i, Piri}i and Nadioci).[796] The significance of Vitez lay, partly, in the presence of three armaments companies with facilities near the town: Slobodan Princip Seljo (or "SPS"), (the only company producing gunpowder in the former Yugoslavia), Vitezit (explosives and fuses) and Sintevit (chemical products). These companies shared a single factory near Vitez, employing 2,000-3,000 people and occupying an area bigger than the centre of the town: this location was known as 'SPS' or 'Vitezit' in the vernacular.[797]

506. According to the prosecution evidence the municipal building and the police station were taken over by a group of HOS under the command of Darko Kraljevi} on 19 June 1992. At a meeting of the municipality of Vitez the next day, Anto Valenta, a Vice-President of the HDZ-BiH, said that the HVO should be able to control everything and protect everybody.[798] In mid-June the municipal hall and the civilian police building were taken over by HVO soldiers and flags of Herceg-Bosna were flown over these buildings.[799] The Croatian dinar and various Croat symbols were introduced.[800]

507. The Defence, on the other hand, relies on the evidence of Dr. Mujezinovi} who testified that the take-over of the municipal building and police station in Vitez lasted only two or three days[801] and that at the conclusion of this incident, weapons that had been seized from Muslim police officers were returned.[802] Ivica Šantic, and other Vitez politicians, denounced this takeover.[803] Additionally, Bosnian Croat politicians tried to maintain normal relationships between Muslims and

[793] Ex. Z141.
[794] Witness D, T. 1984, 2014.
[795] Census, Ex. Z571.2. According to the Census the total population was 27,589**.**
[796] *See* Annex VI 4.
[797] The above account is based on evidence given by Zvonimir Bekavac; T. 24716-19, 24723-24. After the Washington Accords only Vitezit remained; *ibid*.
[798] Witness L, T. 6843-44, 6881-82: the witness said that acts committed against Muslims were blamed on extremists such as the HOS. The HVO would say they had no control over the HOS. Dr. Muhamed Mujezinovi} said that Anto Valenta said at a meeting of the Crisis Staff in April 1992 that Muslims and other non-Croats in Vitez must place themselves under the control of the HVO, because the HVO at that time was 90 per cent armed: T. 2123.
[799] Dr. Muhamed Mujezinovi}, T. 2136-37.
[800] Dr. Muhamed Mujezinovi}, T. 2172-73. According to Witness AP tensions were rising in 1992 and every time Dario Kordi} came to Vitez the tensions grew worse: T. 15882.
[801] Dr. M. Mujezinovic, T. 2136-37.
[802] Dr. M. Mujezinovic, T. 2139.

Croats in Vitez.[804] Nevertheless, the Muslim politicians proceeded to take their own steps to form a parallel government. The creation of the Muslim War Presidency, according to one witness,[805] fractured the local municipal government in Vitez, which became two parallel governments – the War Presidency of the Muslims and the HVO government of the Croats.[806] The Defence points out that no witness in this proceeding has indicated that Dario Kordic had any role in the June 1992 take-over of the Vitez municipal building or police station: in fact he had little or no role with respect to any of the political events in the Vitez municipality.[807]

508. **Kre{evo**: This municipality is next to Kiseljak and 30 kilometers from Busova~a. In 1991 the population was about 6,700, of whom 70 per cent were Croat, 23 per cent Muslim and 5 per cent Serb.[808] In 1992 the Croats controlled the police in Kre{evo. Public funds were diverted to the HVO and HZ H-B.[809] At the same time the HVO assured the Muslims of Kre{evo that there was no reason to be concerned.[810] In April 1992 the municipal assembly was dissolved and a Crisis Committee established: although there were some Muslims on the Committee they did not wield genuine power.[811] The Muslims started to prepare to defend themselves and Witness E tried to organise a joint force to defend the municipality against the Serbs; however, only five Croats joined. Dario Kordi}, as Vice-President of the HDZ in Central Bosnia, sent a long fax stating that the HVO was the only military force allowed and any other force would be treated as an occupying force.[812]

509. **Žep~e**: Žep~e lies to the north of Zenica. In 1991 the population of the municipality was recorded as nearly 23,000 of whom about 47 per cent were Muslims, 40 per cent Croats and 10 per cent Serbs.[813] It was, therefore, an exception in that Croats were in a minority. In January 1993 the Croats took over all the institutions, including postal services, health centres etc., and put them under their administration.[814] They also made preparations for conflict such as fortifying several

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[803] Dr. M. Mujezinovic, T. 2136-37; Witness K, T. 6843-44.
[804] M. Kajmovic, T. 3797; *see also* Witness L, T. 6885.
[805] F. Zeco, T. 6507-08.
[806] F. Zeco, T. 6557-58.
[807] *See, e.g.*, S. Kalco, T. 16064; J. Silic, T. 25486.
[808] Census, Ex. Z571.2. According to the Census the total population was 6,731. *See* Annex VI 5.
[809] Witness E, T. 2475-79.
[810] Witness E, T. 2479. However, when some school children spontaneously raised a BiH flag in public, the TO were ordered by the HVO to remove the flag: Witness E, T. 2481.
[811] Witness E, T. 2481-82.
[812] Witness E, T. 2482-87.
[813] Census, Ex. 571.2. According to the Census the total population was 22,966.
[814] Witness F, T. 3489.

locations, digging trenches and carrying out exercises.[815] When asked, they would say they were doing so for their own security and that the Muslims should not be concerned.[816]

D. Persecution in the Municipalities

510. The Prosecution adduced evidence to the effect that with the assumption of power in these municipalities, the HVO initiated a campaign of persecution which took a number of forms.[817]

511. The prosecution evidence was thus that the HVO took measures to coerce, intimidate and terrorise the Muslim population. During a peaceful demonstration in **Busova~a** the demonstrators were dispersed by shots being fired in the air.[818] Persons were evicted from their apartments.[819] In January 1993 the Muslim call to prayer was forbidden in Busova~a and Muslims were expelled:[820] in the same month most left.[821] In **Kiseljak** Bosnian Muslims were arrested and their business premises were damaged or blown up.[822] There were incidents of Muslim shops being looted[823] and Muslims being expelled from their homes.[824]

512. Several Muslims were murdered in **Vitez** in 1992.[825] In late 1992 and January 1993 damage was caused to Muslim businesses in **Vitez**.[826] The same occurred in the village of Ga}ice nearby, where according to one witness, intimidation of the Muslims was greater after visits by Dario Kordi}.[827] Another said that violence was intentionally provoked by the Croats.[828] In January 1993 two armed HVO soldiers forced their way into an apartment in Vitez, abused a witness and his family and stole money and valuables: the witness heard that the same thing had happened to about 20 other Muslim families in the same part of town.[829] A Muslim member of the Vitez police compiled details of 37 crimes against Muslims in the municipality, between December 1992 and

[815] Witness AH, T. 14450-51.
[816] Witness F. T. 3424-25.
[817] The prosecution case was that the persecution took a number of forms which included promoting ethnic hatred and distrust by means of propaganda and removal of Bosnian Muslims from public positions. The Trial Chamber has already ruled that, in the circumstances of this case, these acts do not amount to persecution and, accordingly, the evidence relating to these matters is not discussed.
[818] Witness J, T. 4500-01.
[819] Nasiha Neslanovi}, T. 11242. Other evidence of mistreatment in Busova~a, T. 11248; Witness T, T. 9471-74.
[820] Witness B, T. 464-466, 469-470.
[821] Witness A, T. 729.
[822] Witness D, T. 2054-55.
[823] Witness AN, T. 15640.
[824] Witness Y, T. 11003.
[825] Edib Zlotrg, T. 1580-90, 1606-15; Sulejman Kal~o, T. 15941-44.
[826] Nihad Rebihi}, T. 8339.
[827] Witness AP, T. 15903.
[828] Nihad Rebihi}, T. 8402.
[829] Witness AC, T. 12575.

April 1993, involving harassment, wounding and murder; and the bombing, shooting at and arson of Muslim business premises.[830]

513. There were also many instances of physical harassment of Muslims in **Novi Travnik** after the first conflict:[831] Muslims came regularly to the police station to complain of violence and robbery, frequently by men in uniform from the HVO and HOS.[832] The Muslims in the lower part of town were given ultimatums by HVO soldiers to leave within 24 hours.[833] Muslims were also subjected to killings, rape and other mistreatment.[834]

E. The Defence Case

514. The Defence rejects the assertion that the HVO initiated and carried out a campaign of persecution as alleged by the Prosecution. One witness, who worked closely with Mate Boban, testified that he never saw any indication that Boban or any other top decision-makers had any intention, policy or plan for the ethnic cleansing of Muslims, or to persecute or discriminate against them.[835] For example, another witness stated that although most of the humanitarian aid in Vare{ came from the Republic of Croatia and Croat areas of BiH, it was distributed to everyone in need, regardless of ethnicity.[836]

515. The civilian governments in the municipalities and villages did not discriminate against Muslims. For instance, in **Zenica** the HVO never persecuted the Muslims. Rather, it was the Croats who were discriminated against following the influx of refugees.[837] In 1992-93, when 35-50,000 Muslim refugees arrived in Zenica,[838] the ratio became six Muslims to one Croat, and Croats were harassed, intimidated and expelled.[839]

516. The Croats in **Travnik** never had a policy of persecution against the Muslims, but resources were scarce following the influx of refugees.[840] Ivica Stojak, Commander of the municipal HQ, who tried to maintain good relations between the Muslims and Croats, was killed in October

[830] Edib Zlotrg, T. 1615-19. Notes: Ex. Z332.1, Z332.2.
[831] Witness C, T. 797-798.
[832] Witness Q, T. 7679-81.
[833] Ex. Z1963.1, Z1963.12 are reports of expulsions and harassment in the lower part of the town which was under HVO control.
[834] Witness P, T. 7274.
[835] Srecko Vucina, T. 20745-47; Affidavits of Perica Jukic, paras. 12-15 and Jure Pelivan, para. 26.
[836] Pavao Vidovic, T. 22075. The HZ H-B put a special effort into creating and organising a military justice system: war crimes were made expressly illegal and a pamphlet concerning war crimes was distributed to HVO troops. Furthermore, the HR H-B adopted all legal framework agreements on human rights and signed UN rules and regulations on these issues: Z. Perkovi}, T. 22075, 220583; Ex. D276/1, tab 1; Witness DK, T. 20918.
[837] Dominik [akic, T. 22468; Major Darko Gelic, T. 17579-80.
[838] Brigadier Živko Totic, T. 18019.
[839] Major Darko Gelic, T. 17579-80.
[840] Anto Pulji}, T. 22648; Major Franjo Ljubas, T. 18866-87.

1992.[841] Further, the ABiH shot and killed two HVO members in March 1993 and arrested 70 prominent Croats in April.[842] On Holy Thursday, the Muslims attacked the Croats in Travnik, looting the Caritas pharmacy and destroying several Croat businesses.[843] Other ABiH provocations in the municipality included burning the Croat flag and driving through Croat villages waving flags, singing songs and intimidating the population.[844] Although the Croats did fly the Croatian flag in Travnik, this did not represent a threat to the Muslim people, because each ethnic group would fly their flags on their respective holidays.[845]

517. Ivo Mr{o, an HDZ-BiH official in the municipality of **Bugojno**, testified that the HVO there was left to protect the front lines by itself during the BSA attack in 1992.[846] While the HVO troops fought, the ABiH gathered forces and dug trenches in preparation for an attack on HVO positions.[847] Incidents of harassment of Croats increased in late 1992 and early 1993, including the murder of Croats.[848] In contrast, the Croats never had any policy of persecution towards the Muslims there.[849]

518. The defence case was that the objective of the HZ H-B was not to create an ethnically homogenous territory; thus, there was no discrimination in the HZ H-B or the HVO. For instance, Major-General Filipovic testified that there was no official or unofficial policy of persecution and if there had been such a policy, he would have refused to implement it. Given the fact that the Muslims were in the majority due to the tremendous refugee influx in Central Bosnia, harassing or persecuting them would have been complete folly, tantamount to military suicide. Although there was pervasive violence on both sides, this was because the framework of civilised society had collapsed, not because of any deliberate policy imposed by political leaders.[850]

519. In relation to this evidence the Prosecution accepts that atrocities were committed by both sides but argues that violations of international humanitarian law committed by an adversary do not justify violations by a belligerent.[851]

[841] Major Franjo Ljubas, T. 18842-43.
[842] Major Franjo Ljubas, T. 18844-45.
[843] Fr. Stjepan Neimarevic, T. 21992-93.
[844] Major Franjo Ljubas, T. 18845; Fr. Stjepan Neimarevic, T. 21988-91.
[845] Major Franjo Ljubas, T. 18905.
[846] Ivo Mr{o, T. 22412-14.
[847] Ivo Mr{o, T. 22412-15.
[848] Ivo Mr{o, T. 22414.
[849] Ivo Mr{o, T. 22430.
[850] Major-Gen. Filip Filipovic, T. 17027-30. Brig. Naki} gave evidence to the same effect, T. 17330-31.
[851] Prosecution Final Brief, paras. 166-167.

F. Trial Chamber Findings

520. The Trial Chamber finds that the weight of the evidence points clearly to persecution of the Muslims in the Central Bosnian municipalities taken over by the HVO: Busova~a, Novi Travnik, Vare{, Kiseljak, Vitez, Kre{evo and Žep~e. The persecution followed a pattern in each municipality and demonstrates that the HVO had launched a campaign against the Bosnian Muslims in these municipalities. The fact that there may have been persecution of Croats by Muslims in other municipalities does not detract from this finding and in no way justifies the HVO persecution.

III. EVENTS LEADING TO THE CONFLICT

A. July – September 1992

521. This section deals with the events of the late summer and autumn of 1992, which led up to the major conflict between the Bosnian Muslims and Croats in 1993. The most important incidents involved renewed fighting in Novi Travnik and an associated incident in Ahmi}i. This period also saw the emergence of Dario Kordi} as a key Bosnian Croat negotiator and his assumption of the rank of "Colonel". The section ends with an assessment of the role of Dario Kordi} on the eve of the conflict.

1. The Role of Dario Kordi}

522. The events of the late summer show Dario Kordi} being as active as ever:

(a) On 28 July 1992 the first HVO press conference was held in Busova~a. Dario Kordi} was introduced as Vice-President of the HVO. He greeted the conference on behalf of the regional HVO of Central Bosnia and reported that there had been "certain misunderstandings within the military section" of Busova~a municipal HVO. The misunderstandings had been cleared up.[852]

(b) On 14 August 1992 a meeting of the Presidency of the HZ H-B was held in Grude, which was presided over by Dario Kordi} (in the absence of Mate Boban) at which Mr. Prli} was appointed President of the HVO.[853] The Prosecution submits that the fact that the accused presided over such a significant meeting indicates the importance of his position. A defence witness, Witness DC, while giving evidence, was asked about this contention: he said that the accused could not be singled out because any of the Vice-Presidents could have chaired the meeting.[854]

(c) On 18 August 1992 Colonel Tihomir Bla{ki}, who by this time had taken command of what was to become the Central Bosnia Operative Zone (CBOZ) of the HVO, ordered that swearing-in ceremonies for the HVO forces should take place.[855] Dario Kordi} was

[852] Ex. Z173.
[853] Minutes, Ex. Z188.1.
[854] T. 19238-40.
[855] Order, Ex. Z191.1.

much in evidence at these ceremonies. In Busova~a he spoke and reviewed the troops.[856] In Novi Travnik he was escorted by soldiers and in a speech said that Novi Travnik would be a Croatian town.[857] In Fojnica between 800 and 1,000 took an oath to defend their "homeland" at a ceremony in the football stadium: Kordi} was among the guests of honour.[858] In Travnik, Kordi} and Ko{troman addressed the troops:[859] the text of a proposed speech states that those who do not wish to live in the Croatian provinces of HZ H-B are all enemies and must be fought with both political and military means.[860] In Vitez, the gist of Kordi}'s speech was a statement to the Muslims of the La{va Valley that this was Croat land and that they had to accept that this was Herceg Bosna.[861]

(d) On 5 September 1992 a meeting of the HDZ Travnik Presidency was held with Kordi} and Ko{troman representing the HZ H-B. The minutes record that only one HVO government existed for the Croatian people in the municipality and the Croatian people did not accept a unitary State of BiH.[862]

(e) On 30 September 1992 Kordi}, as Vice-President of HZ H-B, was present at a meeting of the Presidency of the Kakanj HVO, a neighbouring municipality to Vare{. The minutes of the meeting record Kordi} as saying that the HVO was the government of the HZ H-B and what they were doing with the HZ H-B was the realisation of a complete political platform: they would not take Kakanj by force but "it is a question of time whether we will take or give up what is ours. It has been written down that Vare{ and Kakanj are in HZ H-B. The Muslims are losing morale and then it will end with 'give us what you will'".[863]

523. The defence evidence on this topic dealt with Kordi}'s speeches and the terms used in them. For instance, that he always attended areas when things were critical (for instance Jajce, Vitez and Travnik), that he provided political and moral support;[864] and gave a morale-raising speech to soldiers defending Jajce, saying "we have to defend Jajce and I will go with you to defend Jajce".[865]

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[856] Nasiha Neslanovi}, T. 11240.
[857] Witness P, T. 7265-66. The witness was told that Dario Kordi}'s escort was a unit of Jokers from Busova~a and that they were Dario's men; T. 7266, 7312-12.
[858] Stjepan Tuka, T. 10068.
[859] Proposal for ceremony, Ex. Z193.2. There is no evidence that the speech was in fact given.
[860] *Ibid*. On 27 August 1992 the London Conference was held and an Agreement for a Programme of Action on Humanitarian Issues was signed by Dr. Karadži}, President Izetbegovi} and Mr. Boban: Ex. Z198.
[861] Munib Kajmovi}, T. 3685-86. According to another witness, Kordi} called on the Croats to fight to the last man for the territory and send a message to Izetbegovi} that the HVO would fight for Herceg Bosna with their bodies and their souls: he was then given a military-style ovation and a fascist-style salute: Transcript of evidence of TW10, given in the *Bla{ki}* trial and admitted in the instant trial: Witness TW10, *Bla{ki}*, T. 1153-55.
[862] Ex. Z206.2.
[863] Ex. Z229.
[864] Major-Gen. Filip Filipovi}, T. 17051; Major Geli}, T. 17593-94.
[865] Niko Grube{i}, T. 19354

As to the terms used, the defence evidence was to the effect that Kordi}'s political speeches were never racially inflammatory nor were they intended to foment hatred of Bosnian Muslims by Bosnian Croats.[866] Kordi} was portrayed by many witnesses as a moderate, caring person with a strong sense of responsibility. His was not a vehement personality.[867] One witness, who had worked with him for many years prior to the conflict and who claimed to have heard many of his political speeches, testified that she never heard Kordi} use derogatory terms with respect to Muslims, publicly or privately, and furthermore that his speeches were never racially inflammatory or incited violence. He did not use derogatory terms for other ethnic groups, apart from extremists about whom he was very sharp.[868] Brigadier [ekerija testified in similar terms and said that in his public appearances, which the witness often saw, Mr. Kordi} often stated that Bosnian Croats were one of the constituent peoples in BiH as well as Bosnian Muslims and Bosnian Serbs.[869] Several witnesses involved in the political process at the time testified that they never heard Kordi}, in meetings or at press conferences, refer pejoratively to other ethnic groups.[870]

2. Ruling of the BiH Constitutional Court

524. Meanwhile, on 18 September 1992, decrees relating to the HZ H-B (including that to establish it on 18 November 1991) were annulled by the Bosnia and Herzegovina Constitutional Court.[871] The defence evidence was that the leaders of the HZ H-B knew nothing of this.[872] The Defence further contends that at any rate the 18 September decision of the Court was both invalid including for lack of notice to the HZ H-B under its own Statute and was never enforced.[873] The Trial Chamber comments this is not the place to consider whether it was or not and notes the findings of the Constitutional Court.

3. Role of Mario ^erkez

525. It is convenient at this stage to consider the evidence about Mario ^erkez in the summer of 1992, when he was Assistant Commander of the Vitez Staff. The prosecution evidence was as follows:

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[866] Col. Zvonko Vukovi}, T. 17764-65.
[867] Witness DK, T. 20930-31.
[868] Major-Gen. Filip Filipovi}, T. 17069; Witness DE, T. 19508-09.
[869] T. 18177-78.
[870] Witness DC, T. 19174; Niko Grube{i}, T. 19375-76; Ilija Zuljevi}, former priest and member of the government of HZ H-B and HR H-B, T. 22615-16. Zoran Mari}, the President of the municipal HVO government in Busova~a, testified that Kordi} never incited violence against the Muslims or used derogatory language in referring to Muslim people: T. 20117. Sre}ko Vu~ina testified to the same effect, T. 20375.
[871] Decision, as reported in the Official Gazette of the RBiH of 18 Sept. 1992; Ex. Z216.
[872] Zoran Bunti}, T. 21028-29.
[873] Kordi} Final Brief, pp. 102-04. The Defence dedicates an entire annex in its Final Brief to the Constitutional Court Decisions (*see* Annex C).

(a) In May 1992 there occurred the murder of a Muslim member of the TO in the Hotel Vitez. At one stage the Prosecution sought to prove that Mario ^erkez was implicated in this murder. However, that allegation was subsequently withdrawn. The evidence was that the accused came to the scene of the murder, accompanied by members of the HOS.[874] The HVO identified a military policeman named Perica Vukadinovi} as being responsible but he was never charged and, after a few months, he was seen walking around Vitez, a free man.[875]

(b) Witness AS, a Bosnian Muslim member of the HVO, said in evidence that he joined that organisation in May 1992: on the day he joined he went to a restaurant in Kru{~ica, where the officers met and on the first floor of which building Mario ^erkez lived.[876]

(c) Dr. Mujezinovi} gave evidence about Mario ^erkez's relations with the HOS in the summer of 1992, after the HVO take-over of Vitez. According to the witness, the commander of the local HOS unit, Darko Kraljevi}, complained to him that Pero Skopljak, Anto Valenta and Mario ^erkez were trying to persuade the HOS to subordinate itself to the HVO and to mistreat Muslims.[877] (In cross-examination it was put that he had not mentioned Mario ^erkez in this connection when giving evidence in the *Bla{ki}* trial. The witness said that Kraljevi} had said that the most insistent were Skopljak and Valenta but that Mario ^erkez also said it.)[878]

(d) According to Nihad Rebihi}, in May 1992 the accused spoke to a review of HVO troops at the Vitez stadium which was broadcast on television: in his speech ^erkez said that the Croat people were in danger of attack by Muslims and must prepare themselves.[879] (In cross-examination it was put that the date was August 1992.)

B. Novi Travnik and the Ahmi}i Barricade: October 1992

1. Conflict in Novi Travnik

526. In October 1992 fighting broke out again in Novi Travnik. One witness stated the cause to be a demand by the HVO that they be allowed to take over the Bratsvo factory which the ABiH refused.[880] According to Witness C the conflict lasted from 19 to 26 October and began with the

[874] Sulejman Kavazovi}, T. 7357-58.
[875] Edib Zlotrg, T. 1589-90.
[876] T. 16329-30; photo Ex. D66/2.
[877] T. 2146-48.
[878] T. 2312.
[879] T. 8322-26, 8455. Video-recording of broadcast, Ex. Z2771.
[880] Sulejman Kal~o, T. 15944.

HVO attacking an ABiH unit in the fire brigade building.[881] The front line between the forces ran through the middle of the town.[882] During the conflict a number of Bosnian Muslim-owned buildings, including houses, business premises and restaurants were set on fire or demolished.[883]

527. The Prosecution alleges that Dario Kordi} was directly involved in the fighting in Novi Travnik where he was acting as Commander of the HVO. This allegation is based on the evidence of Colonel Stewart, Commanding Officer of the 1st Battalion, the Cheshire Regiment, then forming the British Battalion of UNPROFOR ('Britbat'). Colonel Stewart's evidence was that on 20 October 1992 serious fighting had erupted in Vitez and when he went to see ^erkez about it, the latter sent him to see the ABiH Commander in Novi Travnik. When the Colonel got to Novi Travnik on the afternoon of 20 October he found heavy fighting going on. He first saw Refik Lendo, the ABiH Commander. He then went to the Café Grand where, in an upstairs bar, he met Dario Kordi} for the first time. Kordi} was dressed in military fatigues and was surrounded by people who were similarly dressed. A number were HVO soldiers and it was clear that Kordi} had authority over the soldiers who listened when he spoke and did what he said. (Bla{ki} was not present.) Kordi} appeared to be the commander and negotiated with Colonel Stewart as such.[884]

528. There is also indirect and documentary evidence to the above effect.

(a) According to intelligence information received at Zenica HQ of the ABiH, the HVO unit attacking Novi Travnik was led by Dario Kordi}.[885]

(b) A witness saw a video showing Dario Kordi} at the hotel in Novi Travnik requesting that Refik Lendo be arrested and tried.[886]

(c) Another witness said that the Commander of the military police sent a group as reinforcements to Novi Travnik and told them to report to Dario Kordi}.[887]

(d) Three documents support the prosecution contention and illustrate the role of Dario Kordi} at the time:

(i) on 23 October 1992 Major Luka [ekerija reported on the situation in Gornji Vakuf as being tense but under control with all TO reinforcements blocked: the

[881] T. 792-93.
[882] Sketch plan, Ex. Z1962.
[883] Witness C, T. 796-98.
[884] T. 12288-92.
[885] Džemal Merdan, T. 12723.
[886] Witness P, T. 7269.
[887] Witness AT, T. 27571.

report on this military subject is headed as being "to Colonel Bla{ki} and Dario Kordi}";[888]

(ii) on 24 October 1992 Kordi} (as Vice-President HZ H-B) and Bla{ki} sent a message to the HVO Bugojno referring to information that two ABiH battalions were moving from Bugojno towards Novi Travnik to reinforce Lendo's forces and stating that "should these units participate in the fighting we shall use long-range artillery on Bugojno";[889]

(iii) In a CBOZ report on the situation in Novi Travnik, dated 21 October 1992,[890] over the names of Bla{ki} and Kordi}, it is stated that "while defence operations are being conducted … Dario Kordi} and I are in Novi Travnik continuously leading the military operations with deep knowledge of the situation and by keeping all the forces under control".

529. On the other hand, the Defence relies on a Britbat Milinfosum which states that Refik Lendo is believed to have started the fighting in Novi Travnik.[891] This was supported by the evidence of Witness CW1, who said that the HVO did not launch the operation and the aim of the ABiH was to gain control of the Bratsvo arms factory.[892] Defence witnesses also testified that it was the ABiH that had attacked the HVO.[893] With respect to Kordi}'s role, the defence case is that Dario Kordi} was not in command of any of the military operations in Novi Travnik in October 1992 and that the HVO military forces in Novi Travnik were under the command of Vlado Juri} at that time.[894] According to one defence witness, Kordi} was present in Novi Travnik as a politician to monitor the situation there.[895] With respect to Colonel Stewart's evidence, the Defence points out that he agreed in his testimony that he did not know that Kordi} existed before he met him in Novi Travnik on 20 October 1992 and that his testimony was based on a "first impression" only.[896] The Defence

[888] Ex. Z248.
[889] Ex. Z249.
[890] Ex. Z243. The defence case is that this was a public relations document and was not intended to set out the military chain of command, which is properly illustrated by Col. Bla{ki}'s report referred to above: Ex. Z241.2.
[891] Ex. D155/1.
[892] Witness CW1, T. 26827. Ex. Z241.2, a report from Col. Bla{ki} to Mate Boban speaks of the situation in the town deteriorating on 20 October 1992, the objective of the TO being to drive the HVO out: however, the TO command was in partial encirclement and retreating.
[893] *See, e.g.,* S. Kri{to, T. 25327-28; Z. ^iv~ija, T. 18987-88; I. Markovi}, T. 23933.
[894] Witness P, T. 7335; I. Markovi}, T. 23953-55. Major-Gen. Filip Filipovi} was also there; T. 16999, 17046-49; Witness CW1, T. 26828.
[895] I. Markovi}, T. 23953-55.
[896] T. 12355.

also relies on the proposition that nobody considered Kordi} important enough to include in subsequent cease-fire negotiations.[897]

530. However, the Trial Chamber accepts the evidence of Colonel Stewart, supported, as it is, by the documentary evidence and finds that Dario Kordi} had a clear role leading the HVO in the fighting in Novi Travnik.

2. Ahmi}i Barricade

531. On 19 October 1992, during the early part of the conflict in Novi Travnik, the local TO, on orders from their superiors, put up a barricade in Ahmi}i on the main road through the La{va Valley in order to prevent HVO reinforcements reaching Novi Travnik. According to the evidence of Abdulah Ahmi}, a resident of the village, four HVO soldiers were disarmed at the barricade, their rifles confiscated and they were returned to Vitez. Four hours later (during the evening) a courier from the Croat side arrived with a threat to the effect that the Muslims should remove the barricade or they and their houses would be burned. This was said to be a message from Dario Kordi} and they (the villagers) were told to carry the message to their leader.[898] The Prosecution relies on the evidence of this threat to show that it had been made in his name (thus illustrating his authority) and not necessarily to show that it had been made by Dario Kordi}. Although hearsay, the evidence was admitted because of its spontaneous character and the Trial Chamber concludes that it is capable of demonstrating the nature of the authority wielded by Dario Kordi} at this time.

532. That authority was illustrated by events the same evening in Vitez when there was a meeting in the headquarters of the TO. Ivica [anti}, Mayor of Vitez, and Mario ^erkez, the HVO Brigade Commander, came to the headquarters to ask for the Ahmi}i barricade to be removed. They were told that this would be done if the HVO stopped sending units to Novi Travnik. There were a number of accounts given of what happened then. According to one witness, [anti} said that he did not have the authority to make such a decision which could only be taken by Dario Kordi}:[899] according to another, Mario ^erkez said that he had to consult with his boss (Kordi}).[900] The upshot was that a telephone call was made to Dario Kordi} in Novi Travnik. The evidence of what was said by Dario Kordi} during the conversation was confused. However, the gist was that the ABiH in Novi Travnik had to surrender before negotiations could take place.[901] [anti} then said

[897] Kordi} Final Brief, p. 136; Col. Stewart, T. 12356.
[898] T. 3547-49, 3561.
[899] Munib Kajmovi}, T. 3690-91.
[900] Witness AC, T. 12571.
[901] Witness L, T. 6853-55; Munib Kajmovi}, T. 3691; Witness AC, T. 12571.

that he had orders from Kordi} and that he and ^erkez had to obey them.[902] According to the evidence of Sulejman Kal~o, during the meeting Mario ^erkez threatened that the municipality would burn down if the HVO was not allowed to go to Novi Travnik; and an hour later the attack on the barricade started.[903] This latter statement was disputed in cross-examination on behalf of ^erkez.[904] However, Witness AC also said in evidence that ^erkez had threatened that if the blockade was not removed, Ahmi}i would come under attack.[905] According to the Kordi} Defence, the defence to this aspect of the case is that Kordi} simply said that negotiations would be possible if Refik Lendo would cease hostilities.[906] Whatever the precise words used, the Trial Chamber accepts that Dario Kordi}, thereby, demonstrated his political and military authority.

533. According to the evidence of Abdulah Ahmi}, the HVO attacked the Ahmi}i barricade the next morning. His account was as follows: the attack began early in the morning and houses were set on fire. The minaret of the mosque was hit. A 16-year-old boy was killed when he was shot near the barricade. About 200 men were guarding the village of Ahmi}i at the time of the barricade: half from outside the village. The attack lasted all morning until the people manning the barricade ran out of ammunition and the checkpoint was then removed.[907] In an agreement on 22 October 1992 the "Muslim people of Ahmi}i" agreed to submit a list of their weapons to the HVO and to establish mixed units to defend the area.[908] A general cease-fire for the Vitez municipality was signed on the same day by, among others, Mario ^erkez, on behalf of the HVO HQ.[909]

534. A postscript to this incident occurred in November 1992, according to the evidence of one inhabitant of Ahmi}i. This witness said that he had seen footage of a press conference broadcast that month on Busova~a TV; Dario Kordi} was present at the conference and in answer to a question said that Ahmi}i would pay a dear price for putting up a barricade, it would be razed to the ground.[910] It was put in cross-examination that the accused had not said such things: the witness

[902] T. 15954.
[903] T. 15954-55.
[904] T. 16058-59.
[905] T. 12573.
[906] T. 3758-59.
[907] T. 3551-54, 3562. In cross-examination the witness said that mines were brought from Slimena. A few trenches were dug around the barricade but not in the cemetery. One hundred people from outside came to help them, some with camouflage and some armed. There were 60 armed men at the barricade but with very little ammunition. In re-examination the witness said that HVO roadblocks had iron "hedgehogs", mines and machine-gun nests: T. 3624-32, 3654-55.
[908] Ex. Z245.
[909] Ex. Z246.1.
[910] Witness K, T. 6761-64.

affirmed that he had.[911] However, the Trial Chamber, noting that no tape of this broadcast has been produced, can place no reliance on the hearsay evidence of the witness.[912]

3. After the Conflict

535. Meanwhile, the conflict in Novi Travnik had repercussions in nearby Vitez. On 19 October 1992 a witness saw motor vehicles and HVO members, together with an anti-aircraft gun on a truck, outside the Hotel Vitez: he saw the soldiers board the trucks at about 1 p.m., leaving in the direction of Novi Travnik and it was noted that 27 soldiers from Vitez were among them.[913] The same witness described a meeting at the TO building on the same day when a rocket was fired at the building and the witness overheard Mario ^erkez saying that the units were not his but Darko Kraljevi}'s.[914] Another witness, a policeman in Vitez, gave evidence of the take-over of Vitez police station on 20 October by HVO members in full combat gear and the resulting expulsion of the Bosnian Muslim police officers.[915]

536. Towards the end of October 1992 the focus of the conflict moved to Jajce, a town north-east of Travnik, which had been under siege by the BSA and which was defended by a combined Muslim and Croat force. However, the defences began to crumble and on 29 October 1992 the Jajce HVO President reported that the defence had broken down and the town was in flames.[916] By 4 November the town had fallen, releasing a flood of refugees into the area of Travnik and Zenica.[917]

537. By December 1992 the situation in Central Bosnia was this: the HVO had taken control of the municipalities of the La{va Valley and had only met significant opposition in Novi Travnik and Ahmi}i. Much of Central Bosnia therefore was in the hands of the HVO.

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[911] T. 6825.

[912] According to the evidence of Witness U, a resident of [anti}i, an associated hamlet of Ahmi}i, Dario Kordi} was in [anti}i in late October 1992. Returning from school one day, the witness saw Nenad [anti} (the local HVO Commander) standing on the corner opposite the witness's house. Later he saw a Jeep draw up, driven by Dario Kordi}. [anti} got into the Jeep and they drove off towards Vitez. Subsequently the witness saw Dario Kordi} and Slavica Josipovi} (Nenad [anti}'s sister) together on television at a meeting in Grude. This was on the same evening or the evening after he saw Dario Kordi} in [anti}i: T. 10220-23. The Defence disputes that Dario Kordi} was in [anti}i. The witness said that he saw Kordi} from a distance of 30 metres: T. 10222. In a statement the witness said that Kordi} was in uniform: the witness now said that this was wrong: T. 10255. Another statement was put where the witness said that Slavica Josipovi} entered the car with Nenad [anti}: the witness said that he was confused, having seen her on television that evening. It may not matter very much whether Dario Kordi} was in [anti}i at this time since he was, after all, a local politician. However, on this evidence, challenged as it is, the Trial Chamber cannot be satisfied that he was there.

[913] Nihad Rebihi}, T. 8332-35.

[914] T. 8337-39.

[915] T. 1597-1601.

[916] Ex. Z260. On the same day an order was sent from Ivica Raji}, Commander of the HVO 2nd Operative Group in Kiseljak for the transfer of troops to Busova~a, in response to a request from Dario Kordi} (Deputy Commander of the HZ H-B), based on an order from Brigadier Petkovi} to send all available troops and equipment to Jajce: Ex. Z261.

[917] ECMM Report, Ex. Z266. Order of Col. Bla{ki} to same effect: Ex. Z269.

C. Mixed Military Working Group: November - December 1992

538. The prosecution case is that evidence about this group illustrates the importance of Kordi}'s role, with his appearance at high-level negotiations with the rank of 'Colonel' and **as** the superior of Bla{ki} (which the Prosecution asserts was the truth).[918] In October 1992 UNPROFOR had begun a series of negotiations between the three Bosnian factions at its building at Sarajevo Airport. Colonel Bla{ki} initially led the HVO delegation, Colonel [iber the ABiH delegation and General Gvero that from the BSA.[919] This group came to be known as the Mixed Military Working Group ("MMWG"). In the course of time Kordi} came to replace Bla{ki} on the MMWG.[920] Thus, the Report of the ninth meeting of the group on 28 November records that "Colonel Kordi} was the new Chairman of the HVO delegation. He introduced himself as the superior of Colonel Bla{ki} and stated that he would be in attendance at all future MMWG meetings".[921] According to the evidence of Mr. David Pinder, who was then a Major in the British army and attended the meetings as Head of Public Affairs for UNPROFOR, Bla{ki} was replaced by Kordi} as the decision-making became critical: when they were together Kordi} took the lead and Bla{ki} did not contradict him.[922] Mr. Pinder noted that Kordi} did not have to defer to a higher authority and could take decisions on the spot; the witness observed that events on the ground and the odd remark by local officials indicated that senior command, whether political or military, rested with Dario Kordi}.[923]

539. The organiser of these meetings gave evidence at the trial. This was Lt. General Cordy-Simpson, then a Brigadier and Chief of Staff, UNPROFOR. His evidence was that from the meeting of 28 November 1992 onwards "Colonel Kordi}" was the senior representative of the HVO at the MMWG meetings, effectively deputy commander of the HVO and accepted as such by General Gvero and Colonel [iber.[924] The witness went on to say that on 7 December 1992 the HVO did not appear at a meeting, but sent a fax, signed by "Colonel Dario Kordi}" proposing a delay because of the proximity of UNPROFOR headquarters to the Serb front lines.[925] (Kordi} and Bla{ki} had in fact been subject to harassment on the way back from a MMWG meeting.) On 12 December 1992 the witness met Colonel Kordi} alone, when the latter came to explain his non-attendance on 7 December. The minutes of the meeting describe Dario Kordi} as "a highly intellectual and capable journalist, come [*sic*] politician. He wields real power and is clearly

[918] Prosecution Final Brief, para. 115.
[919] Ex. Z252.
[920] On 14 November 1992 the Second General Assembly of HDZ-BiH in Mostar had elected Mate Boban as President and Kordi} as one of five Vice-Presidents: Minutes, Ex. Z281.
[921] Ex. Z297.
[922] T. 5514-15.
[923] T. 5532-33, 5541-42.
[924] T. 6200-01.
[925] Ex. Z306.1.

respected by his side".[926] The witness said that this was his view of Dario Kordi} at the time.[927] In cross-examination the witness said that he assumed that Dario Kordi} was superior to Bla{ki} since at the 28 November meeting the accused referred to himself as the man responsible for the HVO and Bla{ki} (who was present) did not demur.[928] Lt.-General Cordy-Simpson said that as Mr. Boban and General Petkovi} were oriented towards operations in Mostar (which was under Serb attack) the witness got the impression that with their authority Kordi} exercised considerable authority in Central Bosnia.[929]

540. On 12 December 1992, according to Mr. Pinder (based on his notes of the meeting), Kordi} said he was grateful for Lord Owen's contribution to the peace process[930] and asked the other sides to join the HVO in acknowledging the goodwill shown in previous meetings. He said that the Bosnian Croats agreed all four main issues discussed, including the cessation of hostilities.[931] At another meeting held on a date between 12 and 17 December, Dario Kordi} said that the delegates had agreed to consult their political masters; he had done so and the HVO supported a cessation of hostilities. He had consulted the HVO military top level and the HVO were ready to sign a written agreement to freeze all military activity.[932]

541. A further meeting was held on 18 December 1992, attended by Lord Owen, General Morillon,[933] and the representatives of the three sides (including Dario Kordi}, leading the HVO delegation). Lord Owen drew attention to the importance of the meetings when a very grave situation was developing in Bosnia and Herzegovina and announced a meeting at a higher level on 2 January in Geneva. Dario Kordi} presented a proposal for "freedom of movement of 500 women, children and elderly prior to Christmas". The proposal was accepted, with reservation, by the other sides.[934] Then, on 22 December 1992, a meeting was held, attended by top level Generals, including General Petkovi} for the HVO, at which Agreements for (a) free passage of civilians from Sarajevo, and (b) areas of separation, were signed.[935] The minutes record that "General Petkovi} signed the two Agreements as proposed and stated that Colonel Kordi} would provide the representatives required".[936]

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[926] Ex. Z314, Annex E.
[927] T. 6204-05.
[928] T. 6270.
[929] T. 6210-11.
[930] Co-chairman of the International Conference on the Former Yugoslavia.
[931] T. 5520-22.
[932] Mr. Pinder, T. 5523-24, 5598.
[933] Commander, UNPROFOR.
[934] Minutes, Ex. Z328.2.
[935] Minutes, Ex. Z336.1.
[936] Ex. Z336.1, para. 7.

542. As a coda to these events, and illustrating the way in which Dario Kordi} adopted the rank of Colonel, it may be noted that a magazine reported that on 23 December 1992 "Colonel Dario Kordi}", as Vice-President of HZ H-B, addressed the troops at the oath-taking ceremony of the Jure Franceti} Brigade in Zenica and said that the territory of Zenica was Croatian, would be Croatian and added that they wanted to create a Croatian territory, the HZ H-B "which no-one will ever again take from us".[937]

543. For the Defence, evidence was given from within the HVO as to how it came about that Dario Kordi} was given the rank of "Colonel". Thus, Witness CW1 gave evidence that Colonel Bla{ki} was first assigned to represent the HVO at the Sarajevo airport talks. Bla{ki} attended once or twice and then said it was not necessary for him to do so and that anyone familiar with the situation could attend. The witness decided to assign Dario Kordi} to attend since the talks were to deal with the de-blocking of Sarajevo, a matter with which Kordi} was familiar. Accordingly, on 26 November 1992 the witness and Bruno Stoji} (Head of the HVO Defence Department) requested Kordi} to attend the meeting on 28 November with full authority to represent the HVO and to introduce himself as "Colonel Dario Kordi} (HVO Army Colonel)".[938] This was to give Kordi} the necessary authority. The witness had been told that the group would only deal with humanitarian issues and that military problems were to be solved by commanders. However, the witness agreed that there was no reason after the meetings for Dario Kordi} to continue in his rank of Colonel.[939]

544. The Defence seeks to rely on the fact that while the evidence in this case is clear in regard to the military chain-of-command and the role of Colonel Bla{ki}, the international community witnesses made no real attempt to determine precisely what Mr. Kordi}'s position or powers were.[940] While this may be so, the Trial Chamber has to deal with the evidence as it has been given. As a result, the Trial Chamber finds that at the MMWG meetings the accused was not only the leader of the HVO delegation but was also the superior of Colonel Bla{ki}; and that, no matter how he came to be given the rank of "Colonel", it was one which he enthusiastically adopted.

D. The Role of Dario Kordi} on the Eve of the Conflict

545. The Prosecution asserts that by this time Dario Kordi} had assumed an important political and military role connected to the chain of command. "[by his] actions and titles it is clear that

[937] Report in "Bojovnik", Ex. Z331. This was the HVO Zenica magazine: Ex. Z581.2.
[938] Ex. Z294.2. Notice of appointment, Ex. D343/1,Tab 3; Notification to UNPROFOR, Ex. D343/1,Tab 4; Witness CW1, T. 26716.
[939] Witness CW1, T. 26723.
[940] The Defence, for example, refers in the Kordi} Final Brief to the testimony of Col. Stutt, who stated, when pressed to admit that he never asked Mr. Kordi} any questions about his political or military powers: "Sometimes it's embarrassing to ask someone what he is"; T. 15240.

Kordi} was the authority in Central Bosnia … and his titles, ranks and roles, these […] were ubiquitous and all-encompassing".[941] This may be inferred from (a) his position as Vice-President in the HZ H-B and HDZ-BiH; (b) his leading role in the take-over of Busova~a municipality and the acquisition of JNA arms; (c) his command in the Novi Travnik conflict in October 1992; and (d) his leadership of the HVO delegation at the MMWG and assumption of the rank of Colonel.

546. It is also the prosecution case that the military role of Mr. Kordi} may be inferred from his wearing of uniform, his use of a headquarters and the fact that he was guarded. Thus, he had three offices. According to Nasiha Neslanovi}, who was a cleaner and courier in the Busova~a municipal hall, she saw Dario Kordi} nearly every day during this period in his office there: he wore civilian clothes at the outset but, from April 1992, he began to wear camouflage uniform; from time to time she saw him carrying weapons, sometimes over his clothes and sometimes a pistol under his jacket; and he had two bodyguards.[942]

547. Dario Kordi}'s second office and headquarters was at the Vila Ivancica, Tisovac, a converted restaurant in a forest in the hills near Busova~a, known by some as the "Eagles' Nest". Evidence about the villa in July 1992 was given by a local resident, who, with a friend, went fishing on the river near it when they came upon half-buried bodies (which they were told were those of executed Serbs) and were then detained by HVO soldiers.[943] A defence witness who was an escort and driver to Ignac Ko{troman said that he had been part of the staff at the villa when there had been a total of 14 staff, all in military uniform and where both Kordi} and Ko{troman had offices.[944] A witness who had been a member of the HVO military police described Kordi}'s office at the headquarters as having a big table, lots of maps and two to three telephones in it.[945]

548. The villa impressed two international witnesses as having the hallmarks of a military headquarters. Dan Damon, the Sky News journalist, was taken there by a circuitous route and found it guarded by checkpoints by people in military uniform: to the witness it looked like a military planning centre (with maps on the walls).[946] The villa made a similar impression on

[941] Prosecution Final Brief, para. 69: Kordi}'s titles are set out in Annex 10.
[942] T. 11196-97, 11203-05. According to the witness, Kordi} began to wear his uniform at the time when people generally were wearing uniforms: T. 11308. According to another witness, during this period Dario Kordi} carried out his work properly but was often absent, travelling to Grude, Mostar and Zagreb where he met high-ranking officials and received media coverage: Witness O, T. 7136-37; Witness A, T. 402-03.
[943] Witness T, T. 9438-46. Sketch plan, Ex. Z1725. Photos of the converted restaurant and surroundings: Ex. Z2782.1-4.
[944] Ivo Arar, T. 18449-50.
[945] Witness AS, T. 16359.
[946] T. 6644, 6714-15.

Witness AA because of the extraordinary security measures and precautions taken to escort him to it.[947]

549. The accused had a third office in the PTT building in Busova~a which will be discussed below.

550. Evidence about Kordi}'s security and escort was given by a number of witnesses. For instance, Witness AS described Kordi} often coming to the HVO headquarters in the Hotel Vitez (when the witness was on guard duty) escorted by one or two cars: his escorts wore military police badges and had good weapons.[948] Another witness said that Dario Kordi}'s bodyguards were known as the "Scorpions": they had long-barrelled weapons, pistols and bullet-proof vests;[949] while a list of conscripts in the IV Battalion Military Police (dated 18 February 1994) includes five men described as "Personal Security of the Chief of the HVO Main Staff, Colonel Dario Kordi}".[950]

551. A description of the uniform worn by Dario Kordi} was that it was dark, drab camouflage and had a dark T-shirt.[951] The accused often also wore a large cross[952] and an HVO patch or "flashes"[953] (but no badges of rank). This outfit (or variations on it) can be seen in a number of photographs of the accused, e.g., with a delegation,[954] chairing a press conference[955] or posing with a rifle in the environs of the Tisovac headquarters.[956]

552. Evidence was given of the use by Dario Kordi} of the rank of Colonel. For instance, he introduced himself to General Merdan as a Colonel of the HVO,[957] and seemed amused on meeting the Commander of the Dutch Transport Battalion at Christmas 1992 that he was a Colonel while the latter was only a Lieutenant Colonel.[958] Similarly, the cease-fire agreement of 30 January 1993 was addressed (at least in one version) to "Colonel Kordi}" and an ECMM report of 6 February 1993, written by Jeremy Fleming, deals with a meeting with "Colonel Kordi}" about the clearance of a

[947] T. 11547. Witness AK and a friend were imprisoned in a basement under a terrace near the HQ at Tisovac for about a month in August/September 1992 where they were kept with little food and subject to regular beatings: Witness AK, T. 15520-33. Sketch plan drawn by witness, Ex. Z2083.
[948] T. 16362-63. Among HVO soldiers the guards were known in derogatory terms as the "Vultures": *ibid*.
[949] Witness T, T. 9432-33.
[950] Ex. Z1380.2. In his evidence Col. Marinko Palavra agreed with a suggestion by defence counsel that the reference to Kordi} as Chief of HVO Main Staff was a clerical error: T. 27043-44.
[951] Major Jennings, T. 8885.
[952] Anto Breljas, T. 11703.
[953] Gen. Merdan, T. 12712.
[954] Ex. Z2507-9.
[955] Ex. Z248.2b.
[956] Ex. Z2703.
[957] T. 12705.
[958] Col. de Boer, T. 11875-76.

roadblock:[959] the witness said that the accused was generally known as "Colonel Kordi}" and the nomenclature stuck.[960]

553. The final category of evidence from which the accused's military role may be inferred is from orders and reports from him or mentioning him. There are, for instance, orders signed by him relating to military equipment, e.g., one to Travnik Technical Repair Institute dated 10 June 1992, for a staff vehicle;[961] and another dated 27 May 1992, seeking equipment from Travnik War Presidency:[962] or reports or other documents, e.g., a report from Kakanj Military Police dated 20 November 1992, referring to a Citroën van being returned to the ABiH pursuant to the orders of the HVO staff in Kakanj, following an intervention by Dario Kordi};[963] or an order from Colonel Bla{ki}, dated 19 September 1992, concerning the procedure for the transport of weapons, stating that checkpoint commanders may permit unimpeded passage of weapons only with the signature of himself or Dario Kordi};[964] or a report of 20 November 1992 about the arrest of an HVO military police patrol in Kru{~ica and the presence of Kordi} at the Travnik HVO headquarters where the decision was made not to launch an operation to release the patrol;[965] or telling Bla{ki} in a note of 5 September 1992, that he (Kordi}) had prepared three lorry loads of supplies for Jajce and that Bla{ki} was to organise people from other municipalities.[966]

554. There are, also, examples of orders given by Kordi} in relation to personnel, approving the appointment of the Commander of the Special Purpose Police Unit in Travnik[967] and the appointment of the Deputy Chief of Police there;[968] signing the decisions of the HZ H-B to appoint the President of the Kakanj HVO,[969] and to appoint a Communications Co-ordinator for the Central Bosnia HVO Main Staff;[970] and, over the protests of the locals, replacing the police chief in Fojnica.[971]

[959] Ex. Z445.
[960] T. 13867.
[961] Ex. Z129.
[962] Ex. Z115.
[963] Ex. Z289.
[964] Ex. Z220.1.
[965] Ex. Z287.5.
[966] Ex. Z207.
[967] Ex. Z229.1. In his evidence Col. Palavra claimed that Kordi} had been consulted about this appointment in order to demonstrate to the Ministry on Mostar that people in Central Bosnia agreed to the proposal: T. 26978-79.
[968] Ex. Z353.2.
[969] Ex. Z87.
[970] Ex. Z114.3.
[971] Ex. Z384; Ex. Z386. A defence witness, Witness DL, denied that Kordi} was present at the meeting or that the replacement was made. However the documents speak for themselves.

555. In this connection, it should be noted that, according to the Official Gazette of the HZ H-B,[972] Dario Kordi} held a number of official positions during the time with which this case is concerned. For instance, in November 1992 he was appointed as a member of the HVO Personnel Commission. (According to a defence witness, Mr. Zoran Bunti}, who was also a member of the Commission, it never met.) In October 1993 Kordi} was elected as a member of a Committee for Internal and Foreign Policy and National Security of the HR H-B Chamber of Deputies and as a member of the Commission for Elections. (The Trial Chamber is satisfied that these positions were purely nominal and in no way represented the role played by the accused in the affairs of the HZ H-B.

556. These were not normal times and the fact that the accused assumed a uniform (as many others did) does not mean that he had a military role. Nor, by itself, does the fact that he was called "Colonel". However, these facts, together with his involvement in the issue of orders, the presence of security guards around him and the facts already found by the Trial Chamber, allow it to draw the inference that Dario Kordi} by this time combined political authority in Central Bosnia (as leader of the Bosnian Croats in the La{va Valley) with military authority. This latter authority did not involve a formal rank but a position which he had won for himself by his energy, character and commitment to the Croatian cause. Accordingly, a precise position in the chain of command cannot be ascribed to him. For instance, it is not suggested that he had power to punish or discipline troops.[973] However, the Trial Chamber is satisfied that by this time Dario Kordi} had a role which was at least consultative in relation to the Commander of the CBOZ, Colonel Bla{ki}.

[972] Ex. Z1227.1.
[973] Thus, Witness CW1 said in evidence that Kordi} had no power to initiate disciplinary action; T. 26824: there was no evidence to contradict this.

IV. ATTACKS ON TOWNS AND VILLAGES: KILLINGS

A. The Conflict in Busova~a: January 1993

557. The discussion proceeds chronologically, location by location, broadly in the order in which the alleged attacks on the towns and villages are listed in the Indictment, i.e., Busova~a, Vitez, Stari Vitez, Ve~eriska, Ahmi}i (and Nadioci, Piri}i and [anti}i), Lon~ari (with Merdani and Puti{), O~ehni}i, Rotilj, Kiseljak, Zenica, Tulica, Han Plo~a–Grahovci, Žep~e and Stupni Do. The prosecution case is that these attacks were all part of a deliberate policy of ethnic cleansing on the part of the Bosnian Croats: they followed a pattern and exhibited the same characteristics of the use of military force to subdue and remove the Muslim population (an objective in which they were largely successful).

558. The New Year saw the beginning of the first major conflict. The year began with peace talks and a plan but soon degenerated into conflict, first in Gornji Vakuf and then in Busova~a.

1. The Vance-Owen Peace Plan

559. On 2 January 1993, Peace Talks, attended by President Izetbegovi}, Dr. Karadži}, Mr. Boban, President Tu|man and the President of the FRY, Mr.]osi}, took place in Geneva. Mr. Vance and Lord Owen put forward a peace plan and a proposed provincial map. At the end of the talks Mate Boban signed the provincial map: others did not. A second round of talks took place between 23–30 January 1993.[974] The Vance-Owen Peace Plan (as it was called) involved the establishment of 10 provinces or cantons in Bosnia and Herzegovina, each containing a provincial government headed by the representatives of the ethnic majority in the canton: interim provincial governments were to be set up on the basis of the composition of the population according to the 1991 census.[975] The Bosnian Croats would be in a majority in three of the provinces, numbered 3, 8 and 10. Central Bosnia would form Province 10 and would include the municipalities of Travnik, Novi Travnik, Vitez, Busova~a, Fojnica, Gornji Vakuf and part of Kiseljak. According to the Prosecution, the plan, or rather the Bosnian Croat interpretation of it, was to be used as a pretext by the HVO in order to try and establish ethnically pure cantons in those where they were in a majority. The prosecution case is that the Croats interpreted the plan in a way to suit their ends: once the interpretation was not accepted there was no reason for restraint and the Croats attempted

[974] Report to Security Council, Ex. Z571.
[975] Plan, Ex. Z571. Map attached to Peace Plan: Ex. Z2582.1.

to achieve their ends by violence.[976] This determination led to a sharp deterioration in the situation. As a senior military witness put it: after the Vance-Owen Peace Plan was announced the situation broke down, particularly in Gornji Vakuf and along the La{va Valley and there was a general breakdown in the alliance of the HVO and ABiH.[977]

560. This is disputed by the Defence. According to the Defence, the plan was a temporary one: as was its requirement for the ABiH forces to be put under HVO command, and vice-versa. Witness DJ, a senior Croat politician, testified that the Croats did not try to take advantage of the Vance-Owen Peace Plan to conquer Central Bosnia, as towns and villages with a Croat majority were surrounded by places with a Muslim majority.[978] Another witness claimed that from 1992-1994 a primary goal of the Muslims was to separate Central Bosnia from Herzegovina in order to allow the Muslims to consolidate their hold on Central Bosnia and control its strategic heavy industries and central communication routes.[979] The same witness testified that, in his opinion, the Vance-Owen Peace Plan further exacerbated the conflict in Central Bosnia, because the Muslims were not satisfied with the land allocated to them under the plan in Central Bosnia.[980]

2. The Conflict in Gornji Vakuf

561. Gornji Vakuf is a town of strategic importance at a crossroads en route to Central Bosnia. It is 48 kilometres from Novi Travnik and about one hour's drive from Vitez in an armoured vehicle.[981] According to the 1991 census the population of Gornji Vakuf municipality was 25,000 with 5,000 in the town itself: the Muslims accounted for 56 per cent of the total population and the Croats 43 per cent.[982] A Britbat company, (B Company of the Cheshire Regiment) was stationed in Gornji Vakuf at the time and the Officer-in-Command, Major Alistair Rule, gave evidence about the conflict which was the start of the fighting in Central Bosnia. He said that the fighting broke out in Gornji Vakuf on 11 January 1993, sparked by a bomb which had been placed in a Muslim-owned hotel used as a headquarters. A general outbreak of fighting followed and there was heavy shelling of the town that night. During cease-fire negotiations at the Britbat HQ, Colonel Andri}, who was representing the HVO, demanded that the Muslim forces lay down their arms and accept HVO control of the town. These demands were unacceptable to the Muslims and Colonel Andri}

[976] Prosecution Final Brief, para. 142.
[977] Lt. Gen. Cordy-Simpson, T. 6219.
[978] Witness DJ, T. 20368-70, 20465-68.
[979] Sre}ko Vu~ina, T. 20703-05.
[980] Sre}ko Vu~ina, T. 20737-38.
[981] Cross-examination of Andrew Williams, T. 6074.
[982] Census, Ex. Z571.2.

threatened that if they did not agree he would flatten Gornji Vakuf.[983] The witness said that at no stage were significant reinforcements reported to him and that he saw no Mujahedin in Gornji Vakuf and his soldiers did not see any[984] (contrary to the claims made at a press conference at which Colonel Bla{ki} and Mr. Kordi} were present).[985] The witness also said that he did not agree with Colonel Stewart (in the latter's book)[986] that the fighting in Gornji Vakuf started spontaneously.[987] (When he was asked about this during his evidence Colonel Stewart said that, thinking now, it was perhaps the Vance-Owen Peace Plan which was the cause of the fighting.[988])

562. Meanwhile, tensions arose elsewhere. On 10 January 1993, an HVO/HOS convoy was reported to have entered Novi Travnik with 150-200 soldiers from the Mostar/Grude area: the situation was reported as being tense. A group of about 150-200 soldiers was reported to have arrived in Vitez on 8 January from Mostar.[989] More significantly, the Croatian Defence Council of Herzeg-Bosna, at a special meeting in Mostar on 15 January, decided "in line with the … Geneva Agreement" that all units of the ABiH currently in Provinces 3, 8 and 10 ("which were proclaimed Croatian in the … Agreements") were to be subordinate to the main HQ of the HVO while units of the HVO in Provinces 1, 5 and 9, where the Muslims were in a majority, were to be subordinate to the ABiH Command: (this decision was to be implemented by 20 January 1993). Thus was the decision made to take full military control of Central Bosnia. As a result, Colonel Bla{ki} gave orders for full combat readiness to all formations of the HVO in the CBOZ.[990]

563. On 19 January 1993 the ECMM reported a meeting with Jadranko Prli} (President of the HVO), Arif Pa{ali} (Commander 4th Corps, ABiH) and Milivoj Petkovi}, (HVO Chief of Staff), which reveals much of the thinking of the HVO at the time. While the parties agreed to an immediate cease-fire in Gornji Vakuf, the main contention between them was reported to be "the fate of the … troops in the process … started in Geneva". The HVO was reported as taking for granted that Cantons 8 and 10 will be under its control and wanting to incorporate all armed troops under its command. Jadranko Prli} blamed the trouble in Gornji Vakuf on Muslim extremists and said that the decision of the HVO to take control of the troops in its areas by 20 January was merely

[983] T. 5399-5409. This evidence was supported by that of Andrew Williams, a former Colour Sergeant in the Cheshire Regt., who was Intelligence Officer for B Co., and said that at the meeting Col. Andri} read an ultimatum to the effect that Gornji Vakuf was to be part of a Croat canton and the BiH Army was to hand in its weapons: anyone who did not want to be under Croat rule should leave: T. 6013-14.
[984] T. 5415-16.
[985] BBC summary of broadcast on Croatian Radio, Zagreb: Ex. Z382.1.
[986] Ex. D 153/1 at p. 205.
[987] T. 5465-66.
[988] T. 12364.
[989] Milinfosum, Ex. Z355.1, Ex. Z355.2.
[990] Ex. Z370.

a consequence of the document signed in Geneva.[991] (However, it is the prosecution case that this was the first of two sets of ultimatums issued by the Croats in 1993, for their own ends; and heavy Croat attacks coincided with both expiry dates.)[992]

564. The Defence, in relation to these matters, relies on the testimony of Brigadier Luka [ekerija, the HVO officer and the only witness from Gornji Vakuf, who was directly involved in the events there and who testified that the fighting was caused by an all-out attack by ABiH forces on the HVO positions on 11 January 1993.[993] According to the witness, in his post-war conversations with the local ABiH officers, they said that their orders had been to force Croats out of Gornji Vakuf, first in October 1992 and then again in January 1993,[994] as the area "was the front door to Central Bosnia"[995] and, thus, of considerable strategic significance. The Defence also relies on an ECMM report of 19 January which states that, in addition to "a lot of mutual accusations and bitterness", the ABiH commander in Gornji Vakuf recognised that the responsibility for the fighting "could be shared with some Muslim extremists".[996] Brigadier [ekerija testified that on the day that the conflict broke out, he personally proposed the establishment of a Muslim-Croat joint command to "bring the tension down".[997]

3. The Conflict in Busova~a

565. It was against this background that the first really serious conflict in the war between Bosnian Croats and Muslims took place. According to the Prosecution it led to the various offences alleged in Counts 1-2, 3-4, 5-6 and 7-13 in the Indictment. The trouble started with incidents at a checkpoint established by the ABiH at Ka}uni, south of Busova~a and controlling the road to Kiseljak. An incident there led to the murder of Mirsad Delija, a Bosnian Muslim resident of Busova~a, on the afternoon of 20 January 1993. It is the prosecution case that Kordi} was implicated in this murder, a charge rejected by the Defence. The Prosecution called Witness AE who was on duty at the checkpoint under the leadership of Miralem Delija, the brother of Mirsad. According to Witness AE, Kordi} was among the occupants of four vehicles which came to the checkpoint that afternoon. Miralem Delija approached the cars and asked the occupants for identification. There was then an altercation during which Miralem Delija took the pistol of one of

[991] ECMM Report, Ex. Z377.
[992] Prosecution Final Brief, para. 143.
[993] Brig. L. [ekerija, T. 18154; T. 18225-26; *see also* Ex. Z376, Jan. 1993 Bojovnik, p. 1 (quoting Col. Bla{ki} on the ABiH attack on HVO in Gornji Vakuf).
[994] Brig. L. [ekerija, T. 18220.
[995] Brig. L. [ekerija, T. 18222.
[996] Ex. Z377, ECMM Report, 19 Jan. 1993, p. 3. The Defence rejects contradictory reports as conclusory and filled with unsupported opinions, Kordi} Final Brief, p. 164.

the occupants. Kordi} remonstrated with Miralem Delija and threatened that he "would pay for this". The witness was 4-5 metres away at the time. The men at the checkpoint were ordered to let the vehicles go, which they did.[998] Mirsad Delija was shot at his home in Busova~a shortly after the incident.[999] Miralem Delija was himself subsequently killed during the conflict.[1000] (It was put to Witness AE that he was mistaken in his evidence that Kordi} was present: he said that he knew Kordi} and saw him there.)[1001] The Prosecution also called Witness T who gave evidence of an account, which he had heard second-hand, of Kordi} issuing a threat to Miralem Delija at the checkpoint and Mirsad being shot three quarters of an hour later.[1002]

566. The defence case is that Kordi} was not present at the checkpoint at all and Ko{troman was detained there.[1003] The Defence relies on two documents: (i) entries in the CBOZ Duty Officer's Log: 20 January 1993, 16.50: It was reported that Ko{troman was disarmed at the barricade in Ka}uni. 17.55: report that Ko{troman had been released with the prompt intervention of D. Kordi};[1004] and (ii) a report from the Nikola [ubi} (NS) Zrinski Brigade concerning the kidnapping of Ko{troman at Ka}uni on 20 January. (The same report states that Mirsad Delija was shot and wounded when, carrying hand grenades, he approached military police who were searching his apartment; and died on the way to hospital.)[1005]

567. In the light of this evidence Prosecuting Counsel conceded in his closing speech that Ko{troman (and not Kordi}) was stopped at the checkpoint: however, counsel submitted that Kordi} was involved in Ko{troman's release.[1006] However, the fact that Kordi} assisted in the release of a colleague does not mean that he participated in the murder; and the Trial Chamber's findings are that the alleged involvement of Dario Kordi} in this crime is not made out.

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[997] T. 18219. The defence case with respect to Dario Kordic is that he had absolutely no part in events in Gornji Vakuf and that it is undisputed that the cease-fire was negotiated directly between Brigadier Petkovic, the Senior HVO Military Commander, and Arif Pašalic, the ABiH Commander in Herzegovina: Kordi} Final Brief, p. 164.
[998] T. 13987-92.
[999] Witness T, T. 9466.
[1000] Witness T, T. 9464.
[1001] T. 14022-23.
[1002] T. 9465-66. Witness AW gave evidence that he was present on duty at the checkpoint at the time: there was an altercation and a pistol was taken. He did not recognise anyone, except Kordi}'s bodyguard, but was told by a colleague that Ko{troman was there: T. 27788-93.
[1003] Josip Grube{i}, T. 18381-85; affidavit of Brano Kri{to.
[1004] Ex. Z610.1, pp. 11-12.
[1005] Ex. D356/1/8. In relation to the credibility of Witness AE, the Defence relies on an Indictment issued in October 2000 by the Prosecutor's office in Žep~e, charging Witness AE with 11 burglaries, alleged to have been committed with others in July and August of the same year, i.e., after the witness had given evidence to the International Tribunal: Ex. D353/1.
[1006] T. 28276.

568. The second incident occurred at the Ka}uni checkpoint on 24 January 1993 when an exchange of fire occurred between the HVO and the ABiH in the presence of UNPROFOR and two Croats were killed.[1007] The Defence relies on two documents in relation to this incident. The first is an extract from Colonel Stewart's diary, which states: "All hell was happening on the road to Kiseljak. Apparently an HVO vehicle following Sergeant Smith's two Warriors was attacked by Muslims in the village of Ka}uni and in the resultant events two HVO soldiers were killed. Both sides, Croats and Muslims are having 'a go' at one another … ".[1008] There is also an entry noting his visit to the ABiH commander of the 3rd Corps, General Had'ihasanovi}, to whom he complained that the Muslims had started the trouble. The second document is a Milinfosum stating, in part, that several Croat houses around the two checkpoints were burning, "the occupants having been ethnically cleansed by the Bosnian army".[1009]

569. On 25 January 1993, at about 5.30 or 6 a.m., the HVO attacked Kadi}a Strana, the Muslim part of Busova~a.[1010] There was much shooting and later there was also shelling from the surrounding hills.[1011] A loudspeaker called on Muslims to surrender.[1012] A witness saw soldiers with HV and HVO patches and with HOS insignia, as well as soldiers from a brigade from Herzegovina participating in the attack.[1013] Evidence was given that certain Muslims had been warned of this attack by Croat colleagues or friends.[1014] The remaining Muslims in the town (around 90 in all) were rounded up in the square. Women and children (around 20 in total) were allowed to return home and the men (70 in all), some as young as 14-16 years, were loaded onto buses and taken to Kaonik camp.[1015]

570. The attack on Busova~a resulted in many deaths although the precise number is not clear. Witness B made a list of 27 Muslims, all of whom had died a violent death.[1016] A police report

[1007] Report, Ex. Z461. The CBOZ Duty Officer's Log contains an entry for 15.15 that day: "Ka}uni … there is shooting and that one of our men was killed": Ex. Z610.1, p. 17.
[1008] Ex. D104/1.
[1009] Ex. D105/1.
[1010] Witness AG, T. 14140-41.
[1011] Witness J, T. 4528; Nasiha Neslanovi}, T. 11216.
[1012] Witness T, T. 9467.
[1013] Witness J, T. 4529; Ex. Z1529, Ex. Z2564.
[1014] For example, Witness O said that on 20 January 1993, Florijan Glavo~evi} told him that Božo Raji} had given an order to attack ABiH positions in Busova~a and that vicinity. The witness sent his family to Zenica but returned to collect another son and some items when he was arrested on 27 January 1993 by two armed HVO soldiers and taken to Kaonik: T. 7148-50.
[1015] Witness J, T. 4534-35; Nasiha Neslanovi}, T. 11217: her husband was also taken to Kaonik; Witness T, T. 9467-68.
[1016] T. 453-459; List Ex. Z2697; Witness J, T. 4533.

shows that 43 people were murdered in Busova~a in January and February 1993.[1017] (The violence was to continue after the January attack.)[1018]

571. Witness AS, a Bosnian Muslim member of the Jokers, gave evidence of taking part in what he called a "cleansing operation" launched by the HVO in Busova~a municipality. He said that the forces involved were the military police, units of the Ludvig Pavlovi} Brigade, companies of the Vite{ka Brigade and the Vitezovi.[1019] In a significant piece of evidence the witness said that the official policy of the HVO was to call every operation "defensive", never an attack or offensive operation. The witness's commander, Pa{ko Ljubi~i}, said to his unit: "It's begun in Busova~a. Our guys from Busova~a are already there, but we need more people". The campaign required a huge logistical effort and preparation and, for many days before its start, trucks laden with armaments and ammunition were being sent from Novi Travnik to Busova~a.[1020]

572. The fighting spread to the whole territory of Busova~a. Thus, on 25 January 1993, the HVO shelled the village of Merdani. Witness A saw the shelling that morning at about 6 a.m. Buildings were destroyed and the civilian population ran up a hill in the direction of Zenica: the witness participated in getting buses to help evacuate the population.[1021]

573. As a result of the reports of the two Croats having been killed in Ka}uni, Major Jennings, a Britbat Company Commander, went to collect the bodies on 25 January 1993. When he did so he came across a firefight at Kaonik junction. On going into Ka}uni, the witness found buildings on fire and the road blocked by the ABiH with a log lorry at a bridge. The witness saw HVO soldiers firing at civilian houses in Ka}uni with a wombat-type weapon (anti-tank weapon).[1022] The fighting between the ABiH and the HVO continued until nightfall.[1023] On 26 January the ABiH refused to unblock the road. It was then agreed that Britbat would man a United Nations checkpoint on the bridge. However, the HVO later fired three rounds of heavy artillery fire, 120mm., at the bridge, hitting a Warrior armoured vehicle. This fire continued for an hour: the witness could see no military target and concluded that he was the target.[1024] Also on 26 January the witness patrolled in Donji Polje and saw HVO soldiers leaving houses which then caught fire. He saw a number of

[1017] Ex. Z461.
[1018] In March explosives were placed in the house of a former SDA President; his wife was killed and he was seriously injured in the explosion: Witness B, T. 483. In April the HVO attacked the house of Witness AG, killing her husband, son, niece and father-in-law: T. 14145-58.
[1019] Witness AS, T. 16354-55, 16437-38.
[1020] Witness AS, T. 16355.
[1021] T. 354-56.
[1022] Picture, Ex. Z862.2.
[1023] T. 8853-58.
[1024] T. 8859-60, 8862. The assessment made at the time was that the fire came from an area just to the north-west of Busova~a: marked on Ex. Z477.1.

houses which had been burned.[1025] (In cross-examination the Defence pointed out that the census shows no Muslims in the village.)[1026] However, the witness said that the destruction was also along the road to Ka}uni.[1027]

574. Meanwhile, UNPROFOR HQ in Kiseljak reported that tensions had increased in Central Bosnia, particularly where there was no clear ethnic majority in a municipality: "over the past week, the political and military leaders of the Croatian Community of Herceg-Bosna have begun to implement their 'understanding' of the proposed settlement … [and made a] grab for control of provinces 3, 8 and 10".[1028] This was later underscored by an ECMM Report to the effect that the alliance against the Bosnian Serbs had held until the growing tension between the Bosnian Croats and Muslims broke into fighting following the HVO Declaration on 15 January 1993.[1029]

575. On the other hand, Witness CW1 did not accept that the HVO was the aggressor in Busova~a in January 1993: he said that there was no reason for it since there was free passage between Kiseljak and Busova~a. He did not accept that the Vance-Owen Peace Plan had any significance: it had not been signed and he did not pay any attention to it.[1030] The defence case is that the ABiH started the hostilities and that its military objective during the January attack was "to cut off communications at Kaonik and Ka}uni",[1031] isolating Busova~a from Vitez and Kiseljak. Major Marko Prskalo stated that the attack was carried out from three sides.[1032] Witness CW1 and Brigadier Naki} testified that after 25 January 1993 the HVO no longer had control over the main supply route between Busova~a and Kiseljak, thus causing the Kiseljak and Busova~a areas to be geographically and militarily isolated.[1033] The Defence maintains that during the conflict the HVO troops were greatly outnumbered and there were many more ABiH troops attacking the town than HVO troops defending it.[1034] The Defence relies on another extract from Colonel Stewart's diary, to the effect that the Bosnian Muslims were doing everything to create a full-scale war in the Kiseljak Valley.[1035] The Defence also relies on the evidence of Witness AS, that during the fighting the HVO military police were never ordered to conduct or conducted offensive operations against

[1025] T. 8864-65.
[1026] Census, Ex. D116/1; T. 8972-73.
[1027] T. 9022-23.
[1028] Report, 24 Jan. 1993, Ex. Z390.2.
[1029] Ex. Z454.
[1030] Witness CW1, T. 26728.
[1031] Brig. F. Naki}, T. 17431.
[1032] "When the Muslim forces took this area, they achieved control over another very important supply route", Major J. Prskalo, T. 17875-76.
[1033] Witness CW1, T. 26842; Brig. F. Naki}, T. 17290.
[1034] Affidavit of Milenko Bilanovi}, para. 15.
[1035] Col. R. Stewart, T. 12371-72; Ex. D104/1, pp. 3-4.

civilians or burn Muslim villages:[1036] the offensive operations were exclusively directed towards the ABiH forces.[1037]

576. The Trial Chamber finds that Witness AS, a participant in the fighting, gave a balanced account of it and accepts his evidence of taking part in a cleansing operation, supported, as it is, by the UNPROFOR report. The Trial Chamber finds that following the ultimatum of 20 January, the HVO attacked the municipality of Busova~a on 25 January 1993, using the incidents at the Ka}uni checkpoint as a pretext. The attack involved the use of artillery and infantry and was the beginning of a pattern of attacks in the locality, the purpose of which was to remove or subdue the Muslim population. While there was some defence by the ABiH the Trial Chamber rejects the defence case that the HVO were on the defensive in Busova~a. Accordingly, the Trial Chamber finds that all the elements in the underlying offences relating to Busova~a in the following counts are made out:

(a) Counts 3-4 (unlawful attacks on civilians and civilian objects);

(b) Counts 7-13 (wilful killings, murder, inhuman acts and treatment).

The evidence about the attack on Merdani was inconclusive and the Trial Chamber does not find that the allegations regarding that location in Counts 3-4 are made out. (However, the allegation of destruction in Counts 37 and 38 is made out.)

4. Role of Dario Kordi}

577. Three pieces of evidence, if they are accepted, closely connect Dario Kordi} with the fighting in Busova~a during this period. The first, and potentially most significant, consists of the tape recording of a telephone conversation between Colonel Bla{ki} and Kordi}. The witness who gave evidence about the interception said that it took place on 23 or 24 January 1993.[1038] However, the label on the tape refers to "24.01.93".[1039] The prosecution case is that the conversation took place that day at a time when Bla{ki} was in Kiseljak and Kordi} was in Busova~a.[1040] This date would be consistent with the events at Ka}uni, as set out above. The gist of the conversation was as follows.[1041] Early on Kordi} said

[1036] Witness AS, T. 16399-402.
[1037] Witness AS, T. 16400. *See also* Ex. Z527.3, Report of the Military Police, 8 March 1993.
[1038] Edin Husi}, T. 13701.
[1039] Ex. Z2801.3.
[1040] Bla{ki} had his headquarters in Kiseljak whereas Kordi} had his headquarters in Busova~a: Lt. Gen. Cordy-Simpson, T. 6221.
[1041] Transcript, Ex. Z2801.2B, pp. 1-3. The Defence did not dispute that the voices on the tape, Ex. Z2801.4, were those of Bla{ki} and Kordi} but submitted that the tape was not authentic and may have been tampered with. This submission was rejected. In fact, the Defence acknowledged that it could not establish that the conversation did not occur or that

"Let's have that VBR (multiple rocket launcher), friend. Get it ready for me, for Ka}uni and Lugovi over here. Let me hear it roar."

Bla{ki}: "When? Now?"

Kordi}: "It doesn't have to be right away ….".

Bla{ki}: "Well, you just tell me when."

Kordi}: "Listen! You prepare everything. Select the targets for the mortars and the VBR, and everything there is. Let's burn everything."

Bla{ki}: "Well, I've already prepared that."

Kordi}: "You prepare everything and we're also preparing … ."

…….

Kordi}: "Listen! ... Stay there so we can be in touch."

Bla{ki}: "I'm here all the time. No problem."

Kordi}: "And Batini} [has] got a Nora [a Howitzer] and a VBR ready for Zenica."

Bla{ki}: "That's good … let him load 40 in the VBR and fire a salvo."

Kordi}: "I told him … but he won't do anything without an order. I told him we would strike if Zenica reacts. Otherwise we won't. Just Ka}uni."

Bla{ki} then said that he had been asked to appear on television. He asked Kordi} whether he should get in touch or not. Kordi} told him to forget it and say (as an excuse) that his funeral had been scheduled. The conversation went on:

Kordi}: "They killed two of our boys, friend."

Bla{ki}: "Two?"

Kordi}: "Two of our boys, they killed them perfidiously, from behind. At the checkpoint in Ka}uni."[1042]

Bla{ki}: "And them?"

Kordi}: "Only one of theirs."

…….

Kordi}: "One hundred should be [killed] for every one, friend."

……..

Kordi}: "Well, that's it."

Bla{ki}: "OK, and we'll agree on what comes next."

Kordi}: "You just squeeze them all. And keep an eye especially on those in Fojnica and Kakanj and Visoko over here."

Bla{ki}: "OK!"

578. The Defence submits that the tone, and frequent laughter, in the recording shows that the telephone conversation is an example of banter and bravado to be expected in times of danger between people who know each other well, despite the serious context of escalating violence.[1043]

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the tape was a fabrication: Accused Dario Kordi}'s Supplemental Submission Regarding Audio-Tape Evidence, filed 12 December 2000.

[1042] The Prosecution points out that this comment is consistent with the evidence of the death of the two Croats at the checkpoint.

[1043] Accused Dario Kordi}'s Supplemental Submission Regarding Audio-Tape Evidence, filed 12 December 2000.

However, in the Trial Chamber's view, the recording demonstrates more than mere bravado and shows Dario Kordi} participating in the conduct of military affairs and, seemingly, enjoying it.

579. There is, furthermore, confirmation of the above in three pieces of documentary evidence. First, a report, dated 8 February 1993, from the Chief of Artillery for the CBOZ concerning requests by Colonel Kordi} for the use of artillery in the preceding days, as follows:

> (a) 26 January: (i) "action be taken on Hill 749 (Zminjac) with the Nora";
> (ii) "try and turn the Nora around in 30 minutes and fire one shell".
> (b) 28 January: Targets in La{va and another village be "processed with the 107mm VBR [multiple rocket launcher] which was done within 60 minutes".
> (c) 4 February: Dusina and Merdani to be "processed with the VBR".[1044]

Next, in an entry in the CBOZ Duty Officer's Log:

> 29 January 1993, 14.45: Mr. Kordi} called and asked for artillery fire to be opened on the region of Be{i}i…. Mr. Kordi} called again and asked that the order be carried out (15.00 hours).[1045]

Finally, an order from Colonel Bla{ki}, dated 4 February 1993, "on the basis of an oral order by Colonel Dario Kordi}" to fire rockets at Dusina.[1046]

580. Secondly, the Prosecution relies on various other documents in this connection:

(a) On 10 January 1993, during, or just before, the fighting in Gornji Vakuf, Brigadier Luka [ekerija, the HVO commander there, sent a "Military – Secret" request to Colonel Bla{ki} and Dario Kordi} for rounds of mortar shells available at the SPS factory.[1047]

(b) A letter, dated 25 January 1993, from Brigadier Naki} (Chief of Staff of CBOZ) to Colonel Bla{ki} and Colonel Kordi}, informing them that Colonel Stewart of UNPROFOR had asked to meet Colonel Bla{ki} "today".[1048]

[1044] Ex. Z447.1. The explanation for this document, given by Brigadier Grube{i}, a defence witness, was that, from time to time, Kordi} wanted to be in the arena, even though he was not conversant with military matters: in most cases this was prevented because the command and control were well established, i.e., that only the commander of the CBOZ could operate the artillery upon request from brigade command. The witness also claimed that VBR's were not used against Ka}uni.

[1045] Ex. Z610.1, pp. 22-23.

[1046] Ex. Z439.2.

[1047] Ex. Z248.1. In his evidence, Brigadier [ekerija said that the request was sent to Kordi} as well as Bla{ki}, so that it could be passed on to the latter if he did not receive it and also to inform Kordi} of the situation: T. 18188-91: an explanation which the Trial Chamber does not find convincing.

[1048] Ex. Z391. When he gave evidence, Brigadier Naki} was asked why this was sent to Colonel Kordi}. Brig. Naki} said that it was "a bit stupid", it was written by the duty officer and he (the witness) signed; it was routine, people sent things to both Colonel Bla{ki} and Colonel Kordi}: T. 17433-39.

(c) An order from Brigadier Petkovi} (Chief of Staff of the HVO) dated 26 January 1993, to CBOZ that HVO units to be in full combat readiness: this order was to be delivered to "Colonel Dario Kordi}, Colonel Bla{ki}", and was marked "Military Secret, Strictly Confidential".[1049]

(d) A report of 26 January 1993 from Brigadier Naki} that the Vitezovi unit was engaged at the order of "Mr. Colonel Kordi}".[1050]

(e) Orders of Colonel Kordi}: (i) to the Stjepan Toma{evi} Brigade, 30 January 1993, to send a company of the brigade to Busova~a to carry out combat activity (the order is expressed to be with the agreement of Bruno Stoji}: in handwriting it is noted on the order "done according to another order");[1051] (ii) returning the Bruno Bu{i} unit to Novi Travnik, 2 February 1993: the unit is to put itself under the command of the CBOZ upon its return to N. Travnik.[1052]

(f) A report of 27 February 1993 to Bla{ki} from the Deputy Commander of the Vitezovi, that the Vitezovi "after operations by Muslim forces in Busova~a … reports on the order of HZ H-B Vice-President, Colonel Dario Kordi}".[1053]

(g) A cease-fire agreement of 30 January 1993 (arranged under the auspices of the ECMM and UNPROFOR) was addressed in one version to "Colonel Bla{ki} and Colonel Kordi}" (typewritten) and in another version to "Kordi} and Bla{ki}" (in handwriting).[1054] [The fact that the document was addressed to the accused at all (whether or not as "Colonel") indicates, the Prosecution says, the importance of his position in military affairs.] On 31 January Dario Kordi} told a Britbat liaison officer that the HVO would abide by the

[1049] Ex. Z395.1. When examined about this document during his evidence, Brigadier Naki} said that he knew that this order came, was forwarded to Colonel Bla{ki} and could have gone on to Kordi} without his (the witness) being aware of it. He did not know why Petkovi} addressed it to Kordi}: T. 17460-68. The suggested explanation was that it was sent because Kordi} was the liaison with UNPROFOR: Witness CW1, T. 26729.
[1050] Ex. Z396.1. There was evidence with regard to this order that the unit was subordinated to the CBOZ at this time: Witness CW1, T. 26745-46.
[1051] Ex. Z421.4. Brigadier Grube{i} gave this explanation for the presence of Kordi}'s signature on this order. At the time Brigadier Grube{i} was Deputy Commander of the NS Zrinski Brigade in Busova~a and had been asked to intercede with Kordi} to get help from other municipalities: this document was prepared by the operations staff of the NS Zrinski Brigade and Mr. Kordi} signed it: it was then stamped with the brigade stamp, and the packet (a communications system) was used to send it up to the CBOZ: T. 28019-20. (Another explanation which the Trial Chamber does not find convincing.)
[1052] Ex. Z437.1. The Defence points out that this document is neither stamped nor signed, however the Trial Chamber finds it a genuine document, there being no evidence that it is not, despite the absence of a stamp and signature.
[1053] Ex. Z501.1.
[1054] Ex. Z422; Jeremy Fleming, T. 13860-62.

agreement and would not return fire if shelled by ABiH: however, he stressed that the HVO reserved the right to defend themselves if subject to ABiH attack.[1055]

(h) A report of a meeting on 1 February 1993 at which the cease-fire was reaffirmed, refers to Colonel Bla{ki} reported as stating that he was the HVO military commander for the area whereas Colonel Kordi} had no military authority.[1056] However, on the same day Mr. Kordi} at a press conference at Busova~a warned the Muslim population "Do not play with fire. If you attack any other municipalities not only will there be no Bosnia and Herzegovina left but there will be no Muslims left".[1057] [It is challenged that the accused said "do not play with fire", it being suggested that he said "do not play with it".][1058]

581. Thirdly, the Prosecution relies on oral evidence. The prosecution case was that during this period Dario Kordi} had a headquarters in the basement of the PTT building in Busova~a. It was described in evidence as having a large-scale map in it, marked with the current military situation (on which the accused pointed out the front line to one witness, indicating that Busova~a was surrounded).[1059] There was also a fax machine.[1060] When Major Jennings visited the office he found Kordi} at the head of the table with uniformed personnel down either side and a radio on the desk: this witness thought the office to be a functioning operations room.[1061]

582. When Colonel Stewart visited the office on 4 February 1993, Kordi} was agitated as it appeared that Busova~a might be cut off from Kiseljak and he asked the witness to stop the fighting.[1062] Kordi} was dressed in military fatigues and it seemed to the witness that he was the military commander in Busova~a.[1063] Asked why he made this assumption, the witness replied that the indication of a military commander is that he sits in an operations room, surrounded by staff, no-one contradicts him and when he gives instructions they are carried out: seeing this in Kordi}'s case led to this assumption.[1064]

[1055] Milinfosum, Ex. Z424.
[1056] UNPROFOR Report, Ex. Z427.1.
[1057] Tape recording of conference: Ex. Z431.
[1058] T. 5554.
[1059] Major Forgrave, T. 9962-66.
[1060] *Ibid*.
[1061] Major Jennings, T. 8882-86, 9037-38.
[1062] Transcript of evidence in *Bla{ki}* trial, Ex. Z2791, p. 23743.
[1063] T. 12291; Transcript of evidence in *Bla{ki}* trial, Ex. Z2791, p. 23743, 23872.
[1064] T. 12334-35.

583. The Prosecution also relies on evidence relating to Mr. Kordi}'s control over roads, e.g., evidence of his preventing the lifting of a roadblock on the main Vitez-Zenica road;[1065] evidence of soldiers at a roadblock, stopping UNPROFOR officers on the Vitez-Busova~a road and telling them that they were not allowed to pass on the orders of Colonel Kordi};[1066] the evidence of Kordi} arranging for a General in the Dutch Army to pass through a checkpoint on the Kiseljak-Busova~a road.[1067]

584. The prosecution evidence on the role of the accused may be summarised as follows: (a) before the conflict he was already in a position of political and military authority in Central Bosnia, particularly in Busova~a; (b) on 24 January he was ordering Bla{ki} to fire at Ka}uni and at about the same time was giving orders or making other requests for the use of artillery; (c) the documentary evidence establishes that he was giving other military commands; (d) he had a military headquarters in Busova~a in which he was seen acting as commander; and (e) he demonstrated control over roadblocks in the area.

585. On the other hand, the Defence, in answer to the prosecution evidence about Mr. Kordi}'s role, points to a number of Milinfosums and other documents which refer to others as commander of the HVO in Busova~a in the relevant period, December 1992 – February 1993.[1068] The Defence maintains that Kordi} had no military power, did not and was not in a position to order military attacks. To this end a great deal of evidence was called to show that Kordi} played no military part in the conflict and simply wished to help his people: the Defence relies on this evidence in respect of Kordi}'s alleged role in the Busova~a conflict.[1069] For example, Brigadier Grube{i} stated that Mr. Kordi} was a politician and not a military commander; that he was under a lot of pressure from the civilian population, especially after the fall of Jajce in late October 1992 and onward, that this

[1065] A Britbat "Sitrep" for 26 January 1993 refers to a roadblock on the road consisting of two trucks (with mines beneath them) and "despite early indications that the HVO would lift the mines this did not happen following the intervention of Dario Kordi} and a developing fire fight": Ex. Z398.

[1066] Major Forgrave said in evidence that in late January 1993 he and two other Britbat officers were stopped at a roadblock on the Vitez-Busova~a road by HVO soldiers who said that they were not allowed to pass, on the orders of Colonel Kordi}. The witness found his way through the block and went to the PTT building in Busova~a. There, Kordi} apologised and said that the roadblocks were there to stop Muslim aid agencies smuggling weapons: T. 9958-60. In cross-examination the witness said that he was sure that the soldiers said "Colonel Kordi}", not "Bla{ki}". Kordi} was embarrassed that Britbat had been impeded in their passage. He was helpful and that was consistent with Kordi}'s approach to Britbat: T. 10008-09.

[1067] General Maas wished to visit the Dutch Transport Battalion which was stationed as part of UNPROFOR in Busova~a. On his way there the General was held up at the checkpoint. Upon hearing about this a Dutch ECMM Monitor went to see Dario Kordi} at his headquarters in Busova~a and asked the latter to let the General pass. According to the Monitor's evidence, the accused agreed to ring the checkpoint, did so, said that it was "all arranged", which it was, and the General was allowed to go on his way. Cornelius van der Pluijm, T. 11930-32.

[1068] Ex. Z429, Ex. D102/1, D108/1, D109/1, D154/1.

[1069] Many witnesses gave evidence of this, including military commanders and others: Major-Gen. Filip Filipovi}, T. 17045; Brig. Franjo Naki}, T. 17291; Major Darko Geli}, T. 17588; Col. Zvonko Vukovi}, T. 17764-65; Major Marko Prskalo, T. 17888; Brig. Živko Toti}, T. 18056; Brigadier (ret'd) Luka [ekerija, T. 18180; Major Franjo

pressure culminated during the January attack on Busova~a; and that Kordi} wanted to help every man.[1070]

586. The Trial Chamber finds that Dario Kordi} was implicated in the attack on Busova~a as a leader exerting both political and military authority. The Trial Chamber draws this inference from the evidence of the audio-tape, the documentary evidence and the evidence of the accused's use of an HQ and his control over the roads. The Trial Chamber is satisfied that there is no truth in the evidence put forward by the Defence that the accused played no military part in the conflict and was simply helping his people.

B. The Interlude in February – March 1993

587. The cease-fire, arranged on 30 January 1993, was to last until 16 April when the major conflagration occurred in Vitez and the La{va Valley. There was no relevant national or international event. However, the Prosecution relies on evidence, which it asserts demonstrates the power and influence of Dario Kordi}.

1. The Role of Dario Kordi}

588. The first area of evidence relates to Mr. Kordi}'s continued authority over roads and roadblocks. Thus, on 3 February 1993, Dario Kordi} complained to Major Jennings that the ABiH had fired on HVO engineers attempting to remove a roadblock and threatened to hold up a prisoner exchange until this was sorted out.[1071] [The Defence disputed that Kordi} said this: however, the witness made a contemporaneous note and the Trial Chamber accepts his evidence.] Four days later, Kordi} permitted the unblocking of the main Zenica-Vitez road where the HVO had put a lorry (said to have explosives under its bonnet) as a roadblock.[1072] On 22 February Dario Kordi} set up roadblocks on the routes into Busova~a on the grounds that the town had only one aid delivery in 39 days and he wanted to draw attention to it:[1073] Colonel Bla{ki} agreed to open the road but Kordi} would not agree and said that Bla{ki}'s word on this did not matter.[1074] A few days

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Ljubas, T. 18842; Zoran Mari}, T. 20118; Zlatan ^iv~ija, T. 18993-94; Josip Buha, T. 18629 and Witness DK, T. 20931-32, amongst others.
[1070] T. 28017.
[1071] T. 8887-90.
[1072] Major Jennings, T. 8899-903.
[1073] Milinfosum, Ex. D158/1; Major Jennings, T. 8914.
[1074] Col. Stewart, T. 12295-97.

later Dario Kordi} arranged for the return of a Mercedes Jeep which belonged to the Dutch Transport Battalion and which had been hijacked at gunpoint on the Vitez by-pass.[1075]

589. In March 1992 Colonel de Boer, Commanding Officer of the Dutch Transport Battalion, went to the PTT building with General Morillon in order to negotiate the release of three Muslim girls who were being held by the HVO. Colonel de Boer's evidence was that he and General Morillon went to an operations room in the basement of the PTT building where he found people in camouflage uniform, including Zoran Mari}, the Mayor of Busova~a. Dario Kordi} was also there in uniform (with an HVO patch) and conducted the meeting while Zoran Mari} remained silent.[1076] The girls were released: the accused having made the decision to release them.[1077]

590. However, according to the Prosecution, Dario Kordi}'s influence was not limited to the roads or to Busova~a. In late January 1993 he was sending instructions to the Bobovac Brigade in Vare{ to release one Muslim prisoner and detain another indefinitely;[1078] and on 2 February he sent an order to the CBOZ to hold up an exchange of prisoners.[1079] A further incident occurred in late February 1993 when a "Muslim" flag was placed on the chimney of the SPS factory. Dario Kordi} insisted that it be removed. There was opposition on the ground that to do so would cause conflict. However, Kordi}'s view prevailed and Bla{ki} instructed the military police to comply with Kordi}'s order.[1080]

591. According to the Prosecution the final piece of evidence from this period demonstrates (a) Dario Kordi}'s control over Colonel Bla{ki} and (b) Kordi}'s power over the crowds which were used to block the roads. The evidence relates to another taped telephone conversation between Kordi} and Bla{ki}. This conversation was also subject to interception by the ABiH as was the conversation on 24 January and was placed on the same tape.[1081] The date on the label for this conversation is 25 February 1993.[1082] It is accepted that the conversation occurred that day and it appears, from an earlier conversation, that Colonel Bla{ki} was in Kiseljak and Mr. Kordi} in

[1075] Major Forgrave, T. 9967-68; Major Jennings, T. 8918-20; Ex. Z502.
[1076] T. 11876-80.
[1077] T. 11880. According to the witness there was a map of the La{va Valley on the central table in the room. Lines were drawn on the map and the witness's impression was that the lines corresponded to lines of separation or advance lines. Arrows were added to the lines, pointing at various small villages, among them Ahmi}i. The witness was cross-examined about a statement made to the Prosecutor, in which he said that the lines pointed at Ahmi}i and surrounding villages (or past them) and he thought they represented the HVO idea of the line with the BSA. In answer the witness said that the map was upside down and he was not sure what the lines stood for: T. 11876-80, 11904-05.
[1078] Ex. Z411.1.
[1079] Ex. Z437.1.
[1080] Witness AT, T. 27582-83. There is documentary evidence to support this occurrence: (i) an entry for 25 February 1993 in the CBOZ Duty Officer's Log refers to a Muslim flag placed on the SPS factory at 16.30 and taken down at 22.10: Ex. Z610.1, p. 39; (ii) an HVO police report refers to an incident on 25 February concerning the flying of a flag on the factory chimney in Vitez: Ex. Z498.1.
[1081] Ex. Z2801.4.

Busova~a. The conversation concerns the alleged refusal of UNPROFOR to provide an escort for 723 tons of food, including 22 tons of potatoes, which was waiting to be transported in a convoy to the Croats of the La{va Valley. At the beginning of the conversation Bla{ki} informed Kordi} of this. The conversation was then recorded as follows:[1083]

> Kordi}: "Very well, then the people will go out again today."
>
> Bla{ki}: "Well, the people should be informed about that and they should go out and block everything … because those potatoes, if they're not used today, we can throw them away …"
>
> Kordi}: "Listen, call those people in Kiseljak [i.e., UNPROFOR] now and tell them that the traffic will be blocked in central Bosnia unless the potatoes arrive by 1200 hours."
>
> Bla{ki}: "I'll give them a call …."
>
> …….
>
> Bla{ki}: "And we'll see how they react. Because they don't want to send the potatoes …. I have nowhere to put it. So far I kept it in a hangar but it's going to rot."
>
> Kordi}: "…. did you tell that to Petkovi}?"
>
> Bla{ki}: "He knows everything."
>
> Kordi}: "… what does he say?"
>
> Bla{ki}: "The same thing that you've just said a few minutes ago."
>
> Kordi}: "I see."
>
> Bla{ki}: "So then, they should not be allowed to pass through and that's it."
>
> Kordi}: "Yeah."
>
> …….
>
> Kordi}: "Tell them there's no deal until they let us pass; the Kiseljak-Busova~a road is the condition for further talks."
>
> Bla{ki}: "Yeah."

592. The scheme to force UNPROFOR's hand was successful. In a conversation later the same day, Bla{ki} reported that the food had left in UNPROFOR trucks.[1084] Kordi}, having complained of the seriousness of the situation and power shortages, commented "how can there be a joint command with the enemy?" [Laughter.] "I don't know what that is … " At which Bla{ki} complimented him on his sense of humour.

593. Turning now to the defence case, the Defence asserts that Kordi}'s involvement in events at this time was purely as a politician who would naturally be concerned for the welfare of his people and try to care for them as well as possible in the circumstances. The Defence makes the following points:

[1082] Ex. Z2801.1.
[1083] Transcript of the conversation, Ex. Z2801.2B, pp. 12-14.
[1084] Transcript of the conversation, Ex. Z2801.2B, p. 20.

(i) With respect to the conversation reported by Major Jennings, the Defence relies on two Milinfosums at the time. The meeting between the witness and Kordi} is not mentioned in the first Milinfosum at the time,[1085] nor is it mentioned in the next Milinfosum at the time either.[1086]

(ii) With respect to the order postponing a prisoner exchange,[1087] the Defence notes that it was a revocation under the cease-fire agreement because the Muslims had violated and detained Croat women and children in Katici.[1088] At any rate, the Defence argues that the order was issued under the logo of the Busovaca Brigade, was not signed and there is no direct evidence that either was ever known to or authorised by Mr. Kordic.[1089]

(iii) With respect to Kordic's involvement in setting up checkpoints, the Defence argues that this concerned sensitive political matters, given the use of the main roads by UNPROFOR and by humanitarian aid vehicles, and that it is not surprising that Mr. Kordic should take some interest, at times, in those matters.[1090]

(iv) With respect to the placing of a "Muslim" flag on the chimney of the SPS factory, the only evidence of Kordic's involvement comes from the testimony of Witness AT. The Defence attacks the credibility of this witness, as detailed below.

2. The Role of Mario ^erkez and the Vite{ka Brigade

594. Between October 1992 and February 1993, Mario ^erkez was deputy commander of the HVO Stjepan Toma{evi} Brigade which covered the Novi Travnik and Vitez municipalities and was based in Novi Travnik. (Živko Toti}, commander of the brigade, said that the Vitez component was 60-120 soldiers strong.[1091]) In January 1993 relations were already deteriorating between the communities because of the arrival of the Bruno Bru{i} Brigade from Herzegovina which resulted in an increase in the crime rate and expulsion of Bosnian Muslims.[1092] According to one witness,

[1085] Ex. D107.1; T. 8996.
[1086] Ex. D108.1, T. 8998.
[1087] Ex. Z438.3.
[1088] Kordi} Final Brief, pp. 324-325.
[1089] *Ibid*.
[1090] Kordi} Final Brief, p. 329.
[1091] T. 18013.
[1092] Ismet [ahinovi}, T. 1027-28. However the witness did agree in cross-examination that the HVO tried to get the Herzegovinians under control and that Croats were also victims of crime: T. 1109-12, 1131. An HVO soldier, called Zoran Juki}, was killed in February 1993 while resisting arrest by the HVO in a café in Novi Travnik: Report, Ex. D1/2.

Mario ^erkez threatened in January 1993 that if the ABiH did not accept HVO commands, shelling would begin.[1093]

595. On 24 March 1993 Colonel Bla{ki} appointed Mario ^erkez as the commander of the Vite{ka Brigade[1094] although a list of the command structure, sent by ^erkez to Bla{ki} on 15 March, contains a complete command already, with ^erkez shown as commander.[1095] (It should be noted that an HVO "Brigade" was not the same as a brigade in NATO or other regular forces but simply referred to the troops from a particular town or municipality.) The Vite{ka Brigade had been formed from the second battalion of the Stjepan Toma{evi} Brigade and was based in Vitez itself. Above the Brigade was the CBOZ (commanded by Colonel Bla{ki}) which reported to General Petkovi} (the regional commander).

596. The Vite{ka Brigade consisted of a number of battalions. The brigade headquarters was in the Cinema complex in Vitez. According to one outside observer, Colonel Duncan, the forces on the front line were territorially-based and individuals would serve ten days on the line at a time. There were also manoeuvre or special purpose units which could shuttle to places in the Vitez pocket: the witness assumed that they came under the command of the brigade as reinforcements could not be sent into an area with a separate command structure. It would be normal for special units to be attached according to the task of the brigade. In the witness's view it would not take long for a territorially-based brigade to be combat ready as they had their weapons ready.[1096]

597. Evidence about the relations between Mario ^erkez and the special purpose units was given by Anto Breljas, a former political officer and Lieutenant in the Vitezovi, a prominent such group. The Vitezovi were commanded by Darko Kraljevi} but, dealing with the command structure, the witness said that the Vitezovi and Vite{ka Brigade were the same unit: the Vitezovi was the assault unit and the Vite{ka Brigade were the defensive forces. However, the Vitezovi were not commanded as Darko Kraljevi} would not let that happen. Colonel Bla{ki} could order them in the first half of the conflict where to fight and along which route but that was all. ^erkez commanded Vitez as a whole but orders for the Vitezovi were issued by Darko Kraljevi}: ^erkez would not give orders to the Vitezovi. As for their respective roles the witness said that the Vitezovi would launch a first assault and start the street fighting: they would also take watches, gold and money; when that was over, the Vite{ka Brigade would establish order and collect whatever they could lay

[1093] Munib Kajmovi}, T. 3695.
[1094] Order, Ex. Z567.
[1095] Ex. Z544.4. Josip Žuljevi}, a member of the command, claimed in evidence that this was no more than a proposal for a list of the command.
[1096] T. 9718, 10536-41.

their hands on and take that away in trucks. Then the refugees would come to pick out houses for themselves.[1097]

598. On behalf of the Defence much evidence was called relating to the formation of the Vite{ka Brigade. The Defence case is that the formation of the Vite{ka Brigade did not progress according to the anticipated timetable.[1098] The Defence argued that by the time the conflict broke out on 16 April 1993, the Vite{ka Brigade still was not fully established, because even in times of peace the establishment of a brigade would have taken about six months.[1099] Thus, Gordana Badrov gave evidence that she was responsible for organising the Brigade and it was not established by 16 April 1993.[1100] The Defence case was also that the HVO was generally disorganised and ill-prepared for the fighting in Central Bosnia in April 1993:[1101] some soldiers had to fight in civilian clothes and there was a severe shortage of warm jackets; and the soldiers had mainly personal weapons, such as old rifles. They worked in shifts because the Brigade had no barracks or other accommodation facilities.[1102] Anto Bertovic testified that in the days just before the Muslim-Croat conflict broke out on 16 April 1993, he had eight standing members of the command and about 270 potential troops from which he could draw: they were volunteers, not "conscripts".[1103] The entire potential number was never actually mobilised before 16 April 1993 because there were no accommodation facilities to house this large number.[1104] The Trial Chamber also heard evidence that the Vite{ka Brigade was preparing to fight the Serbs on the Slatka Voda defence line at the time the conflict with the Muslims broke out:[1105] an order was issued for heightened readiness for the Bajram Festival in March 1993 as a Serb attack was anticipated.[1106]

599. This defence evidence about the state of readiness of the Brigade was contradicted by the documentary evidence produced by the Prosecution. The first mention of the Brigade is found on 1

[1097] T. 11690, 11730-36. Lists of those killed, Ex. Z819.2, Z871.1, Z1337.1 and Z808. The Vitezovi had been the HOS (both organisations led by Darko Kraljevi} – evidence of Zoran Strukar, a ^erkez Transcript Witness).
[1098] *See* Ex. Z852.3 (Vitez Defence Office report, dated 30 April 1993, blaming problems with the preparatory period and poor performance by the commanders for the delay in the formation of the Vite{ka Brigade); Ex. Z653.3 (warning from Anto Puljic to Marijan Skopljak, dated 14 April 1993, stating that a 7 April inspection revealed the brigade had not been brought up to strength, and ordering Marijan Skopljak to complete the task by 23 April or else be held personally responsible); and Ex. D160/2, Tab 3, No. 1 (inspection report, dated 7 April 1993, detailing weaknesses in organisation and training of the Vite{ka Brigade).
[1099] Brig. Franjo Nakic, T. 17352. Major-Gen. Filip Filipovi}, T. 17231-33; Zlatko Senkic, T. 23003; Darko Gelic, T. 17630-32.
[1100] T. 26291-310, 26297-99.
[1101] An HVO report (dated 19 March 1993) on the situation at the Slatka Voda feature, the HVO defence line against the Serbs, describes a disordered state of affairs at the front line and that the soldiers dispatched to the front line needed to be properly trained and armed; Ex. D132/2,Tab 23.
[1102] Anto Bertovic, T. 25850.
[1103] Anto Bertovi}, T. 25971-72, 25856.
[1104] Anto Bertovi}, T. 25856, 26002.
[1105] Ex. D99/2 and D132/2 (including order from Cerkez (dated 19 March 1993) to send a unit in the strength of two platoons to the Slatka Voda-Strikan~a area and "prepare and equip the platoons as well as possible for Chetnik attacks", (Tab 20) and similar orders dated 25 March and 13 April 1993); Major-Gen. Filip Filipovic, T. 17041-42.

March 1993.[1107] On 20 March Mario ^erkez was requesting complete lists of military-age men in Vitez.[1108] By 22 March he was able to set out "the current arrangements of units of the Vite{ka Brigade" with 240 soldiers in units of 30;[1109] and on the same day he referred in a combat report to an anti-sabotage platoon within the brigade.[1110] On 10 April, he produced a 'Mobilisation Development' for the brigade with a total of 2,481 soldiers.[1111] Most significantly, a list of the 1st Battalion of the brigade, dated 14 April, shows 270 personnel in three companies and situated in various villages. By 24 April as many as 23 members of the brigade were listed as killed and 63 as wounded.[1112]

600. The prosecution case was supported by a list of members of what is described as the "92nd Home Guard Regiment Vite{ka" for the period of 8 April 1992 to 22 April 1996, which shows a great many members as joining before 16 April 1993.[1113] The Prosecution also relied on a series of files which they had compiled and which related to 38 soldiers of the Vite{ka Brigade and contained certificates of membership, personal ID numbers and certificates.[1114]

601. The Trial Chamber, having considered the evidence, is satisfied that the picture of disorganisation and confusion presented by the Defence is not correct and that the Brigade was sufficiently well organised and established to carry out the tasks allotted to it on 16 April 1993.

C. The April 1993 Conflagration in Vitez and the La{va Valley

602. The prosecution case is that the town of Vitez, together with other locations in the La{va Valley, came under sustained attack by the HVO in the morning of 16 April 1993. The attack was partly successful and many Muslims were killed or detained. However, the Muslims managed to hold out in the old town, Stari Vitez. The Prosecution alleges that the attack on the town and Muslim villages was part of a preconceived plan of ethnic cleansing and followed the usual pattern of such attacks.

[1106] Anto Bertovic, T. 25975; Ex. D131/2,Tab 17.
[1107] Ex. Z516.2.
[1108] Ex. Z557.3.
[1109] Ex. Z653.
[1110] Ex. Z569.1.
[1111] Ex. Z636.1.
[1112] Ex. Z808.
[1113] Ex. Z2332.1. According to Gordana Badrov many entries were false since the list was a compilation of participants in the 'homeland war' compiled so that they could receive additional pay by means of an issue of shares; T. 26365.
[1114] Ex. Z2813.2.

1. The Background

603. The events leading to the conflagration were as follows:

(a) On 27 March 1993 talks between Presidents Izetbegovi} and Tu|man resulted in a joint statement in which the Republic of Croatia supported the signing of the Vance-Owen Peace Plan by President Izetbegovi} and Mr. Boban and both called for the implementation of the Plan;[1115]

(b) On 2 April 1993 a joint statement was issued over the names of President Izetbegovi} and Mate Boban, announcing that after signing the Vance-Owen Peace Plan they were in agreement that the armed forces of the ABiH in Provinces 3, 8 and 10 were to be placed under the command of the General Staff of the HVO.[1116] (In a letter to Trial Chamber I of the International Tribunal, dated 22 July 1997, President Izetbegovi} stated that he did not sign this declaration and did not remember such a declaration being put forward.)[1117]

(c) On 3 April 1993, the HVO leadership met in Mostar to discuss the implementation of the Vance-Owen Peace Plan. The HVO decided to implement the provisions of the Plan in Provinces 3, 8 and 10; the military and police were to come under the authority of the HVO and, in the next few days, members of the HVO were to brief officials in these provinces; and those forces which did not accept the decision should leave the provinces;[1118]

(d) On 4 April, according to Reuters, the HVO HQ in Mostar set a deadline for President Izetbegovi} to sign the above agreement and stated: "If Izetbegovi} fails to sign this agreement by April 15, the HVO will unilaterally enforce its jurisdiction in cantons three, eight and 10".[1119]

604. The prosecution case is that this was the second of the ultimatums issued by the Bosnian Croats and it was no coincidence that an attack followed the expiry date.[1120] Thus was the stage set for the conflict which erupted in the La{va Valley on 16 April 1993, and in the area which came to be known as the "Vitez pocket".

[1115] Joint Statement, Ex. Z573.1.
[1116] Ex. Z595.
[1117] Ex. Z595.1.
[1118] According to a report in Vjesnik (based on a report from the Press Department of the HZ H-B): Ex. Z601.
[1119] Ex. Z603.
[1120] Prosecution Final Brief, para. 143.

605. On the other hand, the defence is that Muslim provocations and assaults against the Bosnian Croats led up to the fighting on 16 April 1993 and that during February and March the ABiH and Mujahedin engaged in attacks against Bosnian Croats. For example, on 17 March, a hand grenade was thrown by ABiH soldiers at the HVO military police headquarters in Travnik.[1121] The HVO military police building in Travnik were also shot at on 23 March 1993.[1122] Donja Veceriska was similarly attacked.[1123] On 17 March, ABiH soldiers riding in a van fired upon HVO troops near Dolac, killing two HVO soldiers.[1124] On 28 March, two HVO military police officers were killed at the ABiH Cajdraš checkpoint.[1125] On 29 March, an HVO soldier was killed at a cabin being used to house several HVO soldiers and the TO refused to conduct an investigation of the soldier's death.[1126]

606. These events were followed by the approach of Easter Sunday on 11 April 1993 and disputes over the flying of Croatian flags. In a message from Kordi}, Ignac Ko{troman and Anto Valenta, the Croatian people were told to display more flags.[1127] On 10 April 1993, the Tanjug Press Agency reported that clashes between Bosnian Croats and Muslims were escalating; an artillery duel broke out in Travnik over the flying of flags; however, both Muslims and Croats expected the real conflict was to come after 15 April, the deadline set for the withdrawal of Muslim units from the Croat provinces.[1128] On 12 April Mario ^erkez sent a protest to the ABiH about the ill-treatment of Croats in Vitez over Easter[1129] and the President of the Travnik HVO protested about the armed conflicts during Easter over flag-flying in the town.[1130] The Defence also points to other incidents in the town: hand grenades being thrown and the arrest of Croats.[1131] On 13 April Muslim forces abducted several HVO officers in Novi Travnik.[1132]

2. The Events of 15 April 1993

607. Matters started coming to a head on 15 April 1993. The Prosecution points out that this was the expiry date of the ultimatum. However, the first violence came from the Muslim side. At about

[1121] Ex. D309/1, Tab 11; Transcript of broadcast, Ex. Z665.3.
[1122] Ex. D309/1, Tab 11.
[1123] Ex. D309/1, Tab 11; Transcript of broadcast, Ex. Z665.3.
[1124] Major F. Ljubas, T. 18844.
[1125] Brig. Ž. Totic, T. 18032-33.
[1126] Brig. Ž. Totic, T. 18033-34.
[1127] Ex. Z670.
[1128] Ex. Z636.
[1129] Ex. Z642.
[1130] Ex. Z647.
[1131] For example, in Travnik hand-grenades were thrown at the headquarters of the HVO on 4 April 1993 (Ex. D309/1, Tab 10); in Travnik on or around 9 April 1993, 70 prominent members of the Croat community were rounded up and many imprisoned by the ABiH (Major Ljubas, T. 18845). In mid-April 1993, the ABiH evicted 110 wounded HVO soldiers from the Travnik Hospital: Major Ljubas, T. 18846.
[1132] One of the abducted officers, Ivica Kambi}, testified in this case about his kidnapping; T. 18573-615.

8 a.m. Živko Toti}, the HVO Zenica Brigade Commander, was ambushed on his way to work: he was abducted and his four escorts and a passer-by (a Muslim) were killed.[1133]

608. At some time between 12 noon and 1.30 p.m. a televised press conference was held in the municipal offices in Busova~a at which Kordi} and Bla{ki} were present.[1134] The press conference began with the announcement that it was "called in connection with this morning's events … in Zenica". An announcement was made concerning the kidnapping of Živko Toti} and the murder of his escorts. A film taken at the scene was played and an announcer listed alleged crimes committed by Muslims since January. There were then speeches by Bla{ki}, Kordi} and Ignac Ko{troman. In his speech Dario Kordi} said that the morning's events constituted a clear message of the plans of Muslim extremists that there should be no Croat territory, people or Defence Council; however HVO units were ready to repel all attacks on the territory of the HZ H-B.

> We would like to tell the Croatian people that there is no cause for anxiety or concern. I am sure that the units of the Croatian Defence Council are doing everything that is necessary even as we speak. I am certain that a plan has been made and that the units are ready for combat … . I think we should conclude by saying that the Croatian people should now show their real strength and that in the days to come, we shall transform the psychological stability we have into a final victory and the survival of the Croatian people in this region.[1135]

609. At 3 p.m. on 14 April 1993 there was an informal ceremony at the Fire Station in Stari Vitez to mark the anniversary the next day of the founding of the ABiH. Mario ^erkez was present at the ceremony and said that there would never be conflict between the HVO and the ABiH.[1136] During the evening of 15 April a joint group of HVO and ABiH appeared on television to say that all misunderstandings had been eliminated, the causes of conflict removed and the population was to remain calm.[1137]

610. However, there is direct evidence that the HVO planned an attack for the next day at a series of meetings that afternoon and evening. The evidence was given by Witness AT, himself a senior member of the HVO IV Battalion Military Police. According to the witness the first meeting was a meeting of the political leadership: it took place in Colonel Bla{ki}'s office at the Hotel Vitez, lasted one and a half hours and Dario Kordi} was present at it. The witness was not present himself

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[1133] Brig. Toti}, T. 18040-48; video recording of scene, Ex. D211/1. According to the witness he was held, handcuffed, for 33 days in a family house, guarded by masked soldiers from the 3rd Corps. He was interrogated two or three times, with explosives around his neck. He was released on 17 May 1993 during a prisoner exchange: Ex. D79/1.
[1134] Brig. Grube{i}: T. 28113-14.
[1135] Tape of broadcast, Ex. Z665; transcript of broadcast, Ex. Z665.1 and Z665.3. Nura Pezer said in evidence that she had seen Dario Kordi} on television news on the afternoon of 15 April and that he had said that his combatants were ready and waiting for orders: T. 15444-46. However, in the absence of a tape or other corroborative evidence the Trial Chamber is unable to place any reliance on this evidence. Likewise the evidence of Witness AC that Kordi} had broadcast on ABiH TV that, around 15 April 1993, ABiH units would be put under the control of the HVO (T. 12581-82) this too was without support and cannot be relied upon.
[1136] Sulejman Kal~o, T. 15964-67.
[1137] Witness G, T. 3898-3901.

but saw some of those who did attend, i.e., Ivan [anti}, Pero Skopljak and Zoran Mari}. He was told about it by Pa{ko Ljubi~i} (the Commander of the IV Battalion Military Police) while it was going on: Pa{ko Ljubi~i} said that it was a meeting of the political leadership and Kordi} was present.[1138] There was then a second meeting (also lasting about one and a half hours) in Bla{ki}'s office, attended by amongst others, Pa{ko Ljubi~i}, Ante Sli{kovi}, Mario ^erkez and Darko Kraljevi}. During the meeting Pa{ko Ljubi~i} came to the witness's office in the Hotel Vitez and told him that at the previous meeting a decision had been made that in the morning an attack would be launched against the Muslims (the reason being that a report had been intercepted saying that the Muslims would attack in the morning); and that directions of attack were being determined for the units that were to take part.[1139]

611. After the meeting ^erkez and Darko Kraljevi} came to the witness's office: Kraljevi} asked, on behalf of ^erkez, for an M-53 machine gun which ^erkez needed for Kru{~ica "because it would be hard up there". The witness arranged for ^erkez to have the weapon.[1140] Also, after the meeting, according to Witness AT, Pa{ko Ljubi~i} ordered some policemen to escort Kordi} and Ignac Ko{troman to Busova~a to ensure their safety through Ahmi}i.[1141]

612. There then followed a briefing to a company of the IV Battalion Military Police, given by the Commander of the Battalion, Pa{ko Ljubi~i}, in the TV room of the Hotel Vitez. Witness AT was present for the briefing. Ljubi~i} said that the decision had been made to start the war in the morning: a Muslim message had been intercepted saying that they would attack in the morning and to forestall this the Croats would attack first. Ljubi~i} said that it was war and eveybody who was not ready should step forward – nobody did. Ljubi~i} said that the company would be transferred to the "Bungalow" (a former restaurant in Nadioci, near Ahmi}i where the Anti-Terrorist Platoon of the Battalion (the "Jokers") already were): and the direction of the attack would be Ahmi}i. The Vitezovi were to be assigned Vitez; the Vite{ka Brigade was assigned all Muslim villages and hamlets with Muslim inhabitants: UNPROFOR would be prevented from entering the Ahmi}i area (the Vite{ka Brigade was to block the road from Vitez). Late that evening the military police company (including Witness AT) was transferred to the Bungalow.[1142]

[1138] T. 27590-92.
[1139] T. 27592-93. The Defence pointed out that the CBOZ Duty Officer's Log, Ex. Z610.1, p. 68, does not contain a record of any meeting of civilians on 15 April 1993; and the record of those at the second meeting does not include ^erkez. (The Defence challenges that he was present: T. 27702-07.)
[1140] T. 27593-94.
[1141] T. 27596. The Defence pointed out in cross-examination that the witness had not mentioned this piece of evidence before the trial: the witness said that he stood by his evidence: T. 27707-09.
[1142] T. 27597-99. Ante Sli{kovi}, Second in Command of the battalion, who was also at the meeting, announced that Miroslav "Cicko" Bralo (a notorious criminal) would be released from prison to join the military police.

613. According to the evidence of Witness AT, after their arrival in the Bungalow the military police received two further briefings. At the first, Pa{ko Ljubi~i} said that Colonel Bla{ki}'s order was to attack at 5.30 a.m. and all Muslim men of military age were to be killed while the civilians were not to be killed, but expelled and the houses set on fire. ("Military age" was defined as between 16 and 60.)[1143] Ante Sli{kovi} (Second in Command) then spoke and said that if they did not attack, the Muslims would do so and commit slaughter and Mujahedin had been infiltrated into Ahmi}i during the night: he added that Dario Kordi} had placed full trust in the police to carry out the action successfully.[1144] The witness's evidence was that he and others then drew sketches of the village showing the location of the Muslim houses on pieces of cardboard (all that was available) and tasks were assigned to the various groups. These groups were given different lines of advance (one of the groups was led by Miroslav "Cicko" Bralo who had been released from prison and joined the police in the Bungalow).[1145] At the second briefing, Ljubi~i} said that the groups would move off in line and there were to be no living witnesses. Ljubi~i} also said that there would be artillery support from Hrasno, including an anti-aircraft gun and a heavy machine gun. Short-wave radio was available for communications and participants could communicate among themselves and with Colonel Bla{ki} and the Vite{ka Brigade; a list of codes was provided for their names.[1146]

614. The Defence points to inconsistencies in the recollection of Witness AT with respect to who attended the meetings.[1147] However, the Defence relies on the fact that Witness AT agreed that there is no question that Bla{ki} had the authority to deploy the Jokers wherever and whenever he wanted.[1148] The Defence relies on this to show that it was Colonel Bla{kic who had control of the military police units. With respect to the first meeting in the afternoon in Blaskic's offices, the Defence relies on the fact that in cross-examination Witness AT admitted that he did not see Kordi} at any time on 15 April 1993.[1149] With respect to the second meeting in Bla{kic's offices, the Defence highlights the fact that Witness AT's evidence was inconsistent with his previous statements to the Prosecution, although Witness AT stated that his statements related to two different events.[1150] The Defence points out that apart from the testimony of Witness AT there is no other evidence of such a meeting and that the entry in the Duty Officer's Log for 15 April contains

[1143] T. 27603-04.
[1144] T. 27604.
[1145] T. 27604-06.
[1146] T. 27608-12.
[1147] There is no mention of ^erkez or "Žuti" in the CBOZ Duty Officer's log (Ex. Z610.1), but Witness AT maintains that ^erkez was there. In relation to Witness AT's statement of 25 May 2000 to the Prosecution, Witness AT maintained that someone from Novi Travnik was indeed attending the meeting and that this person's name might have been Seki}. With regard to Ko{troman, Witness AT forgot to mention in his statements to the Prosecution that he too attended the meetings: T. 27696–27705.
[1148] T. 27688–91.
[1149] T. 27702.
[1150] T. 27709–10.

no reference to such a meeting;[1151] or to a meeting between Kordi} and Bla{ki} at the relevant time.[1152] With respect to ^erkez and Darko Kraljevi} requesting an M-53 machine gun from the witness, Witness AT agreed, in cross-examination, that it was Kraljevi} who asked for the weapon; but the witness also said that Kraljevi} did so because he was the first to enter the office. Witness AT accepted that ^erkez could not issue military orders to the Vitezovi and Kraljevi}.[1153]

615. The Defence called evidence to contradict Witness AT. Zoran Mari}, President of the Busova~a HVO, denied that he was in Vitez on 15 April 1993 and denied that he attended a meeting that afternoon in the Hotel Vitez.[1154] The witness said that during the afternoon he was at home in Ravno, near Busova~a: while he was there the municipality was attacked at about 3.30 p.m.: shelling started then and continued throughout the night: the Muslim forces having attacked in the Kuber area to the north west of the municipality.[1155]

616. The Defence also called Jozo Seki}, President of Novi Travnik HVO (according to the witness from July 1992 to August 1993). He too denied that he was at the meeting and asserted that no other representative of Novi Travnik was present.[1156] (The credibility of this witness was questioned because, in an affidavit submitted to the Trial Chamber, he had said that his term of office as President had ended in March 1993: the witness said that this was due to a typographical error.)[1157]

617. Although no direct evidence was called as to the whereabouts of Dario Kordi} after the Press conference on 15 April 1993, Brigadier Grube{i} said that he heard that Kordi} was at a luncheon at his offices in Tisovac.[1158] Even if this were true, the Prosecution claims that it would have been perfectly possible for Dario Kordi} to get to the meeting in the Hotel Vitez: on the other hand, the witness claimed that with roadblocks it could take from 40 minutes to an hour to travel the few kilometres from Busova~a to Vitez.[1159]

618. Brigadier Grube{i} also denied that he had been present in the Bungalow on the night of 15/16 April during the time when briefings were being given to the military police.[1160] However, there are very real questions about the credibility of this witness. For instance, when cross-

[1151] Ex. Z610.1.
[1152] Ex. Z610.1, p. 14.
[1153] T. 27767–68.
[1154] T. 27956.
[1155] In cross-examination, T. 27971-78.
[1156] T. 27980-81. Witness AT had said in cross-examination that somebody from Novi Travnik, possibly called Seki}, was present at the meeting; T. 27704.
[1157] T. 27986-87.
[1158] T. 28113-14.
[1159] T. 28114-15.
[1160] Witness AT, T. 27610-11. (Witness AT recalls Brig. Grube{i} discussing the level of artillery support.)

examined he claimed not to remember whether he had a code name during the war (the Prosecution claiming that he had such a name i.e., "Soko" or "Falcon").[1161] Since the possession of a code name during a time of intense excitement such as this is something which would be likely to be imprinted on the mind, it seems inherently unlikely that the witness has forgotten and that his evidence is explicable in terms of his wish to avoid admission that he was at the Bungalow at the relevant time and his involvement in the attack by lending the support of the artillery of his brigade which was based at Hrasno.

619. Witness AT's evidence is thus disputed. However, there is confirmation for it in the events of 16 April 1993 when Ahmi}i was attacked and destroyed. According to the Prosecution this was part of a concerted attack by the HVO on Vitez and the Muslim villages of the valley.[1162] Prosecution witnesses gave evidence that the ABiH was totally unprepared. The evidence of General Džemal Merdan, Deputy Commander, 3rd Corps ABiH, was that all available forces of the ABiH were at the front against the Serbs and defending Sarajevo. On the other hand, he saw near Kaonik Junction, 30-50 well-armed members of the HVO on 15 April. On his return to Zenica he received a phone call that an HVO unit was moving towards Puti{, near Busova~a and he ordered the village guards to be reinforced.[1163] At 5.30 p.m. the HVO attacked Puti{, using small arms fire and artillery and resulting in the death of one ABiH soldier, the wounding of another and casualties to civilians.[1164] There were further reports that evening of a concentration of troops at the cultural centre in Vitez[1165] and heavy HVO troop movements in Kru{~ica.[1166] However, the Muslims did not expect an attack. There were four Muslim soldiers in Vitez that evening. The 325 Brigade was in the process of formation: one battalion was in Preo~ica, another in Kru{~ica; the headquarters was in Stari Vitez but its role was administrative.[1167]

620. There is further confirmation of the evidence of Witness AT in the sequence of orders issued by Colonel Bla{ki} on 15 April 1993 and the early hours of 16 April at the following times:

> <u>15 April</u>
>
> 15.45: Bla{ki} order for all units, including IV Bn. Military Police to "increase combat readiness to the highest degree and be ready to act defensively".[1168]

[1161] Brig. Grube{i}, T. 28063-66, 28122-23, 28125-26.
[1162] The subject of various offences included in Counts 1-2 (persecutions); Counts 3-4, 5-6 (unlawful attacks on civilians); Counts 7-13, 14-20 (wilful killing and inhuman treatment).
[1163] T. 12739.
[1164] *Ibid*.; ABiH 3rd Corps Report, Ex. D80/1 and Duty Officer's Log, Ex. D368/1, p. 35.
[1165] Nihad Rebihi}, T. 8356.
[1166] Witness I, T. 4229.
[1167] Nihad Rebihi}, T. 8357-58.
[1168] Ex. Z660. A 'preparatory combat order', Ex. Z660.1, by Bla{ki} was alleged to have been issued at 10 a.m. on 15 April: however, it was established from the serial numbers that in fact it had been issued on 23 April: Marko Prelec, T. 27244-45.

17.30: Order from Anto Pulji} (Chief of Travnik Defence Administration) to Chiefs of Defence Offices to conduct full mobilisation immediately of all HVO units in the La{va Valley municipalities.[1169]

18.30: Bla{ki} order marked "urgent" for the immediate mobilisation of all brigades and independent units of the Central Bosnia Operative Zone: "Brigade Commanders shall be personally responsible … to me for its implementation".[1170]

18.55: Bla{ki} information to all units that the civil authorities have imposed a curfew from 21.00-06.00.

16 April

01.30: Bla{ki} combat orders to HVO units as follows:

- to Vite{ka Brigade and PPN unit "Tvrtko" to occupy defence region and blockade villages against enemy attack from Vranjska and Kru{~ica: "Other points of the command conform to earlier specified instructions".[1171]
- to IV Bn Military Police: to block the Ahmi}i-Nadioci road (in which area "we expect an attack") and to crush the enemy offensive; time for readiness to be 05.30, 16 April; "Other elements of the order shall be in accordance with earlier items".[1172]
- to the Vitezovi to prevent attacks in the Firehouse area of Vitez.[1173]
- to the Vitez police to protect public buildings in Vitez.[1174]
- to Grube{i}, Commander of the HVO Brigade in Busova~a, to crush all expected attacks and strengthen defence lines; "in case of an intense attack parts of the HVO br. Vitez will assist you".[1175]

621. It may be noted that these orders follow the sequence of Witness AT's evidence, albeit that they refer to defensive action and thus support the defence case. The Prosecution points out that the references to earlier items and instructions, in fact, make the real position clear: no orders such as those alleged by Witness AT to have been given would be committed to writing; and the proof that those were the orders is to be found in what actually happened the next day. Hence, the talk of "defence" was a smokescreen by Bla{ki} for his real orders (and it will be remembered that Witness AS described the HVO policy of marking offensive orders as "defensive").

622. The defence case is that the Muslims were preparing for war, and the ABiH had made preparations for hostilities. A defence witness testified that weapons and ammunition were warehoused at a house in Stari Vitez[1176] and the Muslims had taken a gun battery from the SPS factory and had stationed it in Stari Vitez.[1177] According to the same witness, the ABiH had placed several experienced fighters in Stari Vitez.[1178] The Defence further relies upon a Prosecution

[1169] Ex. Z658.3.
[1170] Ex. Z657.2.
[1171] Ex. Z676.
[1172] Ex. D343/1/Tab 6.
[1173] Ex. D343/1/Tab 7.
[1174] Ex. D343/1/Tab 8.
[1175] Ex. D356/1/Tab 31.
[1176] Ljubomir Pavlovic, T. 26018-20; Ex. D135/2.
[1177] L. Pavlovic, T. 26019.
[1178] L. Pavlovic, T. 26034.

witness who admitted that, when the fighting commenced on 16 April 1993, the ABiH soldiers in Stari Vitez outnumbered the HVO soldiers engaged in the battle there.[1179]

623. It is the defence case that the kidnapping of Brigadier Toti} started the conflict. The Defence relies on the evidence of Colonel Stewart that, in his opinion, the Totic kidnapping touched off the open fighting between Muslims and Croats on 15 April 1993.[1180] Similarly, the ECMM concluded that this action was a "grave provocation."[1181] The Defence asserts that these kidnappings served to strike fear in the hearts of Croats and were an effective blow against the military capabilities of the HVO.[1182] In response to the kidnapping of Živko Toti}, both the ABiH and the HVO erected numerous checkpoints on 15 April.[1183] The abduction of two ABiH soldiers at a checkpoint in Vitez on the evening of 15 April, led UNPROFOR to conclude that "some form of retaliatory action by the BiH against the HVO is highly likely."[1184]

624. The Defence asserts that open fighting in the La{va Valley began on 15 April 1993 when the ABiH attacked the HVO position on Kuber.[1185] Vlado Ramljak testified that prior to the ABiH attack, he witnessed four busloads of ABiH soldiers massing in the vicinity of Kuber.[1186] Mr. Ramljak testified that these soldiers had beards, wore turbans and carried Arabic flags.[1187] Brigadier Du{ko Grube{ic testified that he received a report from his Commander at Kuber that the ABiH attacked there.[1188]

3. The Attack on Ahmi}i

625. The prosecution case is that the attack on Ahmi}i, together with the associated villages or hamlets of Nadioci, Piri}i and [anti}i, represented the most extreme manifestation of the HVO plan to remove the Bosnian Muslims from the La{va Valley.[1189] The attack resulted in the massacre of the Muslim villagers and the destruction of the village. Among the more than 100 who died were 32 women and 11 boys and girls under the age of 18.

[1179] Munib Kajmovic, T. 3771-72, 12-11; *cf.* with Brig. Franjo Naki}, T. 17346-48, 22-3 (ABiH had 600-700 soldiers in Stari Vitez).
[1180] T. 12405.
[1181] Ex. Z910.
[1182] Kordi} Final Brief, p. 200.
[1183] *See e.g.*, Stipo Babi}, T. 25755, 12-17.
[1184] Ex. D93/1.
[1185] Zoran Maric, T. 20109, 20259; Brig. Grube{ic, T. 28040-41.
[1186] Vlado Ramljak, T. 25714-15.
[1187] *Ibid*.
[1188] Brig. Grube{ic, T. 28040-41.
[1189] According to the 1991 census the total population was 466, of whom 356 were Muslim and 83 Croat. The upper part of the village was exclusively Muslim, whereas a minority population of Croats lived in the lower part.

626. According to Witness AT, the attack on the village was carried out by the unit of military police from the Bungalow (75-strong) assisted by local members of the HVO. His account of the attack, and the events of the day, was as follows. The attack was due to start at 5.30 a.m., the signal being a round of artillery fire. The groups of military police moved off from the Bungalow between 4.30 a.m. and 4.45 a.m. in line, with about 20 metres between them. Witness AT went with his group into Ahmi}i and crouched beside a shed. The artillery round was fired as a signal and the group ran to a house where they banged on the door. Shooting started all round. However, the witness was recognised by a woman who came out of the house and she shouted at him. The witness panicked and hid behind a wall of the house. (Nobody was disguised but Pa{ko Ljubi~i} had told them to remove all insignia and white belts, which they did.) The witness took no further part in the action. The aim of the HVO artillery was to support the infantry and destroy structures, which the infantry could not. Whenever an UNPROFOR vehicle came into the village the firing stopped. The mosque was fortified and fire from it never stopped, until it was hit by a shot from a powerful weapon. (Later the minaret was blown up by Bralo and Juki}.) Four HVO men were killed and several wounded. The witness saw captured automatic rifles, a considerable amount of ammunition and mines. The witness estimates 72 Muslims were killed.[1190] Arrests were carried out by local HVO members belonging to the Vite{ka Brigade.[1191]

627. The credibility of Witness AT was attacked on the grounds that he was a participant in the attack; and, as such, has been convicted by the International Tribunal of crimes against humanity, involving persecution and murder, and received a substantial sentence (against which he has appealed). Furthermore, although he did not give evidence himself at his trial, he had put forward a lying alibi defence and refused even now to admit to any part in the murder. The Defence asserts that he lied in his evidence in order to have his sentence reduced. Faced with these allegations the witness in his evidence said that he was not trying to evade his responsibility but to alleviate his conscience and tell the truth.[1192] His defence of alibi was withdrawn and was not true. However, while he was at the house of Witness EE (the lady who recognised him) he had no part in taking her husband behind the shed where he was shot.[1193] The witness denied that he was giving evidence in the hope of getting his sentence reduced:[1194] he had made no agreement with the Prosecution but

[1190] T. 27613-23, 27772.
[1191] T. 27627.
[1192] T. 27650.
[1193] T. 27654-55, 27661-63.
[1194] The Defence states in the Kordi} Final Brief: "The Trial Chamber has already observed that the credibility of Witness AT is a central issue in evaluating his testimony. ['Clearly, he's not a witness who can be simply ignored. He is an important witness … . The attack on his credibility, of course, makes it plain that he is a co-accused, and that is a matter which we are going to have to consider because the matter of his credibility is very much at issue.'"; T. 27914.]

felt that he could no longer live in "darkness" concealing the truth.[1195] The truth had been concealed and those who wanted to tell the truth among the Croats could not be put on the list of (defence) witnesses. He himself received a letter "as a form of pressure to testify for the defence" through Mr. [u{ak (attorney for a co-accused in his trial). The letter was said to be a message from Mr. Nobilo (another attorney) as to the procedure to be followed in his giving a statement (as a matter of urgency since arrests may be made and somebody may talk). The message continued that his statement should be to this effect: that on the night of 15/16 April there was a meeting in Kordi}'s house in Busova~a when a decision was taken to burn down the houses and kill the Muslims in Ahmi}i: when it was said that civilians might be killed, Kordi} said "so what".[1196] The witness said that he did not agree to this version because he could "no longer carry all this in secret" and "cannot go on like this, regardless of what happens to me".[1197] (The Prosecution relies on this evidence in support of the witness's credibility since it showed him resisting pressure to give untruthful evidence against Kordi}.) Witness AT said that he had not had the courage to tell the truth before or testify at his own trial; and if it had not been for the change of government in the Republic of Croatia he would not have plucked up courage to do so.[1198]

628. In common law jurisdictions the evidence of Witness AT would be regarded as that of an accomplice and would be treated with great caution. Thus, until recently, English law required corroboration of an accomplice's evidence; and although this requirement has now been abolished, juries must have the danger of relying on the witness's evidence pointed out to them if there is a risk that it is tainted by an improper motive.[1199] Thus, where a witness has a prospect of obtaining a discount in the sentence against himself, it is important that the witness's potential fallibility and ulterior motives are put squarely before the jury.[1200] However, a jury may convict on the uncorroborated evidence of such a witness. Likewise, the Italian Court of Cassation has accepted the evidence of *pentiti* or 'crown witnesses' providing certain safeguards are met.[1201] Similarly, the European Commission of Human Rights concluded that there had been no violation of the right to a fair trial under Article 6 of the ECHR in a case in which a "supergrass" had given evidence, but where a number of elements indicated that the defendant had been given a fair hearing, i.e., the trial court was aware of the particular nature of the evidence; the jury had been given notice of the

[1195] T. 27722-23.
[1196] T. 27724-27. Ex. C.1: the letter.
[1197] T. 27727.
[1198] T. 27742-43.
[1199] May, *Criminal Evidence*, 4th Edition, 1999, p. 603, para. 17-17.
[1200] *Chan Wai-Keung v. R* [1995] 2 Cr. App. R. 194 (Privy Council).
[1201] *Corte di Cassazione, Cass. Penale, Sez. I,* 20.2.1996, n. 3070, in *Cass. Pen.* 1997, 1457; Art. 192(3) of the Italian Criminal Procedure Code requires there to be other evidence on which to base a conviction.

difficulties involved in the assessment of its reliability; the defence had been given full opportunity to challenge the evidence; and, it was not the exclusive basis for the court's decision.[1202]

629. Moreover, it is essentially a matter of common sense that a witness with an interest to serve (particularly an interest to get his sentence reduced) may seek to inculpate others and exculpate himself. On the other hand, it does not follow that such a witness is incapable of telling the truth. In each case it is necessary to consider the witness's evidence and all the circumstances, particularly the extent to which evidence is confirmed.

630. Thus, in deciding whether to accept the evidence of Witness AT the Trial Chamber must determine to what extent his evidence is confirmed by other evidence. In fact, there is no direct evidence supporting his account of the meeting. However, there is circumstantial evidence which does so. First, as will be seen, the events of the day in Ahmi}i followed the plan which he described. Secondly, no such plan could have been put into operation without prior meetings and without political approval. Next, no meeting of this importance of politicians in the La{va Valley would have taken place without Dario Kordi} being present. These matters, by themselves, would not be sufficient to lead the Trial Chamber to accept the witness's evidence. However, the account which he gave was a coherent one which was given fluently (in the manner of a person recalling incidents rather than one making them up) and was not shaken in cross-examination. Such inconsistencies as are relied on by the Defence are not of such significance as to make his evidence unbelievable. Furthermore, the Trial Chamber saw and heard the witness giving his evidence and thus had the opportunity of observing his demeanour. Although he could not bring himself to tell the full truth of his own involvement in the attack, and the Trial Chamber finds that he was mistaken in his evidence about the use of the mosque for defence purposes (which is not supported by the evidence of other witnesses) the Trial Chamber is satisfied that he did tell the truth about the preparations for the Ahmi}i attack, including the meetings at Hotel Vitez and the subsequent briefings.

631. In those circumstances, and in the absence of evidence to the contrary, the Trial Chamber is satisfied that Dario Kordi} was present at the meetings of politicians which authorised the 16 April 1993 attack. He thus participated as the senior regional politician in the planning of the military operation and attack against Ahmi}i (and the other La{va Valley villages), an operation which was aimed at 'cleansing' these areas of Muslims. The Chamber is satisfied that the meeting would have approved of Bla{ki}'s order to kill all the military-age men, expel the civilians and set the houses on fire: such an order would not have been given without political approval. Kordi} was thus

[1202] X v. UK No. 7306/75, 7 DR 115 (1976).

associated with the giving of that order. (However, the Chamber cannot be sure that the second order, that there be no living witnesses, was not Ljubi~i}'s own order, made without reference to any prior order.) The Chamber is also satisfied that Mario ^erkez, as Commander of the Vite{ka Brigade, was present at the military meeting which followed the politicians' meeting.

632. Witness AT stated that the entry in the CBOZ Duty Officer's log for the morning of 16 April 1993 to the effect that the Muslims attacked the Croats was a fabrication.[1203] The witness reiterated that the Croats carried out a planned attack on the Muslims on 16 April in the territory of Vitez municipality.[1204] On the other hand, the Defence contends that the attack was instigated by the Muslims. The Prosecution called evidence from survivors, UNPROFOR officers and international observers which tends to confirm the evidence of Witness AT about the Croat plan of attack and the order to shoot all Muslim men of military age:

(i) When Witness AQ's husband went to the front door on hearing shots outside he himself was shot dead.[1205]

(ii) The house of Nura Pezer and her family came under attack and was set on fire. Her son went outside, raised his hands in the air, but was shot and killed. She had to leave her husband behind in the house because he was wounded. She later found out that he had been shot in the head.[1206]

(iii) Witness U's father surrendered and told the soldier not to shoot: he took his wallet with a large sum of German marks in it from the safe. The soldier took the wallet but then the father and the witness's brother were shot dead.[1207]

(iv) Abdulah Ahmi}'s brother was killed outside the family house in an explosion and shooting. When the witness and his father went out his father was shot dead and the witness himself was shot in the head. (The witness survived, as he also did a hand grenade attack the following day.)[1208] While hiding the witness could see military

[1203] T. 27697-700. Log, Ex. Z610.1, p. 69.
[1204] *Ibid*., pp. 70-100.
[1205] T. 16262-67.
[1206] T. 15448-55, 15459-62.
[1207] T. 10204-06.
[1208] T. 3568-84.

police and HVO soldiers, each group having different ribbons:[1209] he also saw the military police going to the mosque and heard an explosion.[1210]

633. The HVO did not restrict themselves to shooting the men of military age. They also shot women and children. Abdulah Ahmi}'s mother and three sisters were killed in a house in Upper Ahmi}i.[1211] When one witness tried to take his family to Upper Ahmi}i for shelter they were seen by HVO soldiers who opened fire on them, killing the witness's sister-in-law and wounding his daughter.[1212] The mother and 8-year-old brother of another witness were killed in a grenade attack.[1213]

634. Some efforts had been made at defence, as the evidence of Witness AT indicated. According to a local witness the villagers had drawn up a defence plan but there was no organised ABiH unit in the village.[1214] Major Woolley of UNPROFOR came into the village at about 11.30 a.m. and was helping injured civilians when he saw four Muslim men, carrying Kalashnikovs, who appeared to be a local defence outfit.[1215] On the basis of this and other evidence the Defence argues that although the murders which occurred in the village were criminal acts, the decision to attack Ahmici was not criminal, as it was a village that had military significance[1216] which was strategically located on the main supply route that runs to Vitez; and from there troops could easily sever this crucial route.[1217] Furthermore, the Defence argues that Ahmici was defended. Witness CW1 testified in the *Blaškic* trial that, anticipating a conflict in Ahmici, the TO had dug-in prior to 16 April 1993[1218] and that it was clear that a conflict was about to occur in the area.[1219] Accordingly, the units of the TO in the vicinity of Ahmici had been placed on an increased level of alert on the evening of 15 April.[1220] Several Prosecution witnesses described how the TO

[1209] The wearing of ribbons by attacking forces was a practice adopted from the JNA: each colour having a significance for deployment. For instance, Sulejman Kavazovi} had seen soldiers at the Bungalow with different coloured ribbons on their shoulders: T. 7371-73.
[1210] T. 3590-93. Ex. Z1593.1. Photos of destroyed Muslim houses: the mosque has graffiti on it: "Goodbye *Balijas* – 24 Hours of Ashes – 16 April 1993 – Croatia".
[1211] T. 3605.
[1212] Witness K, T. 6672-73.
[1213] Witness TW01, pp. 3247-50.
[1214] Witness K, T. 6768-71.
[1215] Witness TW29, *Bla{ki}* T. 3524-26, 3494. Photograph Ex. D160/1.
[1216] Witness CW1 testified: "Ahmici was a legitimate military objective"; *Blaškic* T. 24194.
[1217] Major Gelic testified that Ahmici "is a choke point and with a very small force you could stop a much larger force ... because it's a very narrow area and it's a bottleneck"; T. 17599; Z. Ahmic, TW02, *Kupreškic* T. 898-02 (road had great strategic importance for HVO); Lt.-Col. Watters, T. 5747-48 (Ahmici has military significance as a result of its position on the main road).
[1218] Witness CW1, *Blaškic*, T. 24192-93; Ex. D13/2.
[1219] T. 4229.
[1220] T. 4228-30. The witness statement of Fuad Berbic also confirms that the TO in Ahmici was placed on a heightened level of alert on 15 April: Ex. D13/2.

conducted guard duty in Ahmici on the evening of 15 April[1221] and the guard members had both rifles and hand-grenades for the defence of the village.[1222] Major Woolley heard combat engagements that caused him to take cover.[1223] Five HVO soldiers were alleged to have been killed during the attack on Ahmici,[1224] and ABiH documents reflect the possible presence of Muslim armed forces in Ahmici on 16 April. In particular, on 16 April, General Hadžihasanovic ordered the Commander of the 303rd Mountain Brigade to "be prepared to provide assistance to our forces in the village of ... Ahmici."[1225] The Defence also relies on the evidence of Witness AT about: (a) the recovery of weapons and large amounts of ammunition by the HVO;[1226] (b) the resistance by Muslim forces;[1227] and (c) the ABiH shelling of the attacking HVO troops.[1228]

635. However, this was not the view of the UNPROFOR officers who were on the scene then or shortly afterwards. Major Woolley, on his visit to the village, saw 5-6 soldiers at the bottom of a reverse slope, looking into the village: in his view, if they had been defenders they would have been closer to the village (or on higher ground) and would have been facing outwards.[1229] Colonel Watters (at the time a Major and Second in Command of the British Battalion) said that what he saw in Ahmi}i was the aftermath of a massacre. The Muslim part of Ahmi}i had been completely destroyed, in stark contrast to the Croat houses which were still standing. If there had been any resistance the village was not well-defended.[1230] The witness also dismissed a Defence suggestion that the destruction of Ahmi}i was a consequence of a tactic called “Fighting in Built-up Areas” (“FIBUA”), a recognised military technique which normally includes the evacuation of civilians and the chance for surrender.[1231] The destruction was too systematic and included evidence of snipers used to cut off likely escape routes: Ahmi}i looked like a massacre to the witness.[1232] He

[1221] N. Pezer, T. 15443, 15447-48; Witness AQ, T. 16278-80; TW01, *Blaškic* T. 3250-52 (father responsible for patrolling village on evening of 15 April); TW01, *Kupreškic*, T. 1423-25.
[1222] A. Ahmic, T. 3573, 3638-39 (hand-grenades); N. Pezer, T. 15474 (M-48 rifle). In describing the defence of Ahmici, one Muslim witness stated: "Several Muslim men had formed a front line and were shooting at the HVO. Among them was Zihad Ahmic, Mirsad Ahmic and Hazrudin Bilic"; (TW01, *Kupreškic* T. 1410). This testimony is fully corroborated by the statement of Fuad Berbic: "When the attack commenced our guards and reinforcements in the lower part of Ahmici engaged in combat": Ex. D13/2.
[1223] Major Woolley, *Kupreškic*, T. 3567; *see id.,* at 3484, ("sporadic gunfire" at 11 a.m.); *id.,* at 3516-17 ("peripheral gunfire and explosions" at 2.45 p.m. either in village or within 200 meters); *id.,* at 3530-31 (generally describing "gunfire in and around the periphery of the area").
[1224] Witness AT, T. 27622-23; *see also* Ex. Z678 (noting three policemen were killed and three were wounded).
[1225] Ex. D190/1.
[1226] T. 27622-23.
[1227] T. 27620-21, 27732-33.
[1228] T. 27619.
[1229] Two ECMM monitors could see Ahmi}i in flames but were prevented from going there: when one did get in on 21 April 1993 he saw no defensive positions: Lt. Col. Landry, T. 15290-91.
[1230] Col. Bryan Watters, T. 5813-14.
[1231] Major Mark Bower said that FIBUA technique does not involve the deliberate targeting and killing of civilians: T. 9298-99.
[1232] Col. Bryan Watters, T. 5846-50, 5885-87: Ex. D63/1, D64/1. The witness stated that the FIBUA doctrine is not surgical, therefore one would not see a lack of destruction to Croat houses.

said that an indication that the attacks were coordinated was the use of heavy calibre artillery and mortars, which would not have been available to village commands.

636. During his evidence Colonel Stewart was shown a copy of a report, which purports to be a summary dated 25 May 1993 of an investigation performed by the HVO Security and Information Service, under the auspices of Anto Sli{kovi}.[1233] According to the witness, the report is a mixture of fact and fiction. For instance, the report states that the ABiH on 14 April 1993 infiltrated around 30 exceptionally well-armed MOS members into Ahmi}i: these troops were supposed to cut off communication lines between Vitez and Busova~a. The witness said that he had seen no evidence in Ahmi}i of dug-in positions which soldiers would traditionally take up if they were planning to defend.[1234] The report's description of how the attack was carried out on 16 April 1993 is incorrect; according to the witness it could be described as a classic "infantry attack". From speaking with people, the witness deduced that the start line was close to the main La{va Valley road with machine gun positions in at least one place and artillery support to prevent retreat in a classic "cordon and sweep" operation (which could only take half a day to mount); then a group of soldiers took out the inhabitants of one house after another.[1235]

637. The views expressed by these witnesses were supported by the authors of two contemporary reports:

(i) Charles McLeod, an ECMM monitor and former Captain in the British Army, who visited Ahmi}i on 4 May 1993, was not of the opinion that the attack could have been in defence against a Muslim attack. He had the impression, drawing on his own military experience, that it was a carefully planned and coordinated attack.[1236] (He had been sent to establish what had happened in the La{va Valley, collated reports and interviewed various people).[1237] He concluded in his report that on 16 April the Croats in Vitez had launched a coordinated attack against the Muslim villages around Vitez and against Stari Vitez.[1238]

(ii) A contemporary report, the "Mazowiecki Report",[1239] compiled for the United Nations Commission on Human Rights, Special Rapporteur for former Yugoslavia,

[1233] Ex. Z975.1. The report is dated 25 May 1993.
[1234] Col. Stewart, T. 12501.
[1235] Col. Stewart, T. 12426-29, 12442-46. To Lt. Col. Landry, an ECMM monitor, the attack on Ahmi}i seemed more like a "cleaning up operation" than one for tactical gain, as territory taken for tactical gain is usually occupied by conquering forces.
[1236] Charles McLeod, T. 2690, 4710-11.
[1237] List, Ex. Z858.1.
[1238] Report, Ex. Z926.
[1239] Ex. Z942.

> Tadeusz Mazowiecki, states that on 16 April 1993 there were concerted attacks by Croat HVO forces on Vitez and surrounding villages: "By all accounts, including those of the local Croat commander and international observers, this village contained no legitimate military targets and there was no organised resistance to the attack".[1240] The Report described the attack on Ahmi}i as follows: HVO forces launched a mortar attack on the northern part of the village, which prevented villagers fleeing to the forest to the north. Many residents ran southwards to an open field where Croat HVO forces ambushed them: 20 were shot at close range (mainly in the head and neck). Field staff visited the scene and found three vantage points where shell casings were left behind (para. 15). HVO soldiers, meanwhile, walked into the village and went in groups of four or five from house to house, shooting and throwing grenades through doors and windows. Field staff counted an average of 50 spent shells around each house from a variety of weapons including rocket-propelled grenades. Approximately 180 houses were destroyed and some were still smouldering. (The approximately 15 Croat houses remain untouched.)

638. A precise figure for those killed may never be known. According to one witness who listed them, a total of 104 people were killed.[1241] The Trial Chamber accepts this figure as being as nearly accurate as possible.

639. The contemporary accounts given by Bla{ki} and Kordi} about these matters were as follows. On 30 April 1993 Colonel Bla{ki} told his superior, General Petkovi}, that Ahmi}i had been defended by a platoon of the Vite{ka Brigade and that he, Bla{ki}, had sent a military police platoon to support them and protect the lines of communication: at 6 a.m. on 16 April strong firing broke out, three military policemen were killed, Bla{ki} lost communications with them and during the morning the military police stormed the village and took over part of it; it was a classic operation of fighting in a built-up area.[1242]

640. Dario Kordi} denied to Payam Akhavan, an investigator with the United Nations Centre for Human Rights, that the HVO were involved in the Ahmi}i massacre; indeed, he said that his men, as good Christians, would never commit such acts and blamed the Bosnian Serbs or the Muslims

[1240] Ex. Z942, paras. 14-19.
[1241] Witness K, T. 6778-79; list Ex. Z1594.3; aerial photographs of Muslim houses, Ex. Z1594.1. On 28 April Nihad Rebihi} assisted in the burial of 96 bodies of Muslims killed in Ahmi}i, Vitez and the surrounding villages: apart from two in military uniform the rest were bodies of civilians, among them children and elderly people. T. 8374-77. Photographs of burial, Ex. Z2772. In May 1993, Enes [urkovi}, then a member of the Committee for Refugees, documented atrocities in Vitez municipality. As the result of his enquiries he listed 95 Muslims killed in Ahmi}i: the list corresponds with 95 death certificates which were presented: Enes [urkovi}, T. 4405; Ex. Z1583.
[1242] Witness CW1, transcript of evidence in *Bla{ki}* trial, T. 24038-40, 24099-102.

themselves: no investigation was necessary.[1243] (A similar response was given by Bla{ki} to Colonel Stewart in Kordi}'s presence.)[1244]

641. During the trial a further report on the massacre came to light. This took the form of a report by Miroslav Tu|man, Director of HIS (the Croatian Intelligence Service) to his father, President Tu|man, dated 21 March 1994. This report blames the "Jokers" special purpose unit for the attack together with a group of prisoners released from Kaonik prison. The cause was said to be the deaths of three HVO soldiers at the hands of the MOS and the death of Brigadier Toti}'s escort. The report exonerates Mario ^erkez, who is described as a bad commander and a coward by nature.[1245]

642. The Trial Chamber finds that the overwhelming evidence points to a well-organised and planned HVO attack upon Ahmi}i with the aim of killing or driving out the Muslim population, resulting in a massacre. The assertion that this attack was justified strategically, defensively, or in any other way, is wholly without foundation: such defenders as were available were taken completely by surprise and any defence put up thereafter was rudimentary, as the results of the day show. Furthermore, the Trial Chamber draws the inference from this evidence (and the evidence of other HVO attacks in April 1993) that there was by this time a common design or plan conceived and executed by the Bosnian Croat leadership to ethnically cleanse the La{va Valley of Muslims. Dario Kordi}, as the local political leader, was part of this design or plan, his principal role being that of planner and instigator of it.

4. The Attack on Vitez and Ve~eriska

643. Prosecution witnesses gave evidence about the attack on Vitez. Thus, Colonel Watters said that in the early morning of 16 April 1993 he was at the British Battalion base near Vitez and received reports of shelling and firing on Muslim areas of Kru{~ica and Vitez.[1246] A Croat artillery piece was firing from a quarry. At 9.30 a.m. the witness interviewed the Croat brigade commander in the Vitez cinema and also the Muslim commander. Both sides said they were under attack from the other. Based on his own observations, he came to the opinion that most of the destruction and casualties were in the Muslim area of the town.[1247] Reports were also received of fighting up and down the La{va Valley, targeting small Muslim villages and hamlets such as Ahmi}i. The witness

[1243] P. Akhavan, T. 5937-38.
[1244] Brig. Duncan, T. 9737.
[1245] Ex. Z1406.1.
[1246] Major Lars Baggesen said he knew it was HVO forces doing the shelling because the ABiH forces in the area were not equipped with the type of artillery or large calibre mortars that were being used: T. 7495-97.

sent patrols to these areas and evacuated civilians.[1248] In the witness's professional judgement the ABiH had been taken by surprise. It was the first coordinated offensive in the area with attacks happening simultaneously up and down the valley.[1249]

644. According to those in Vitez, the attack started at about 5.45 to 6 a.m. with artillery shelling, which increased during the morning and included mortar fire of various calibre.[1250] The evidence of the local TO commander was that he found that there were 50 to 100 soldiers deployed in defence: the attack was very much a surprise.[1251] Edib Zlotrg said that he was awoken by a detonation from the direction of Ahmi}i. He saw smoke coming from Ahmi}i and also saw HVO members in camouflage uniforms in the streets of Vitez, arresting Muslims and killing them in their apartments. He later learnt that among those killed was his brother-in-law, who had previously published a letter in a newspaper criticising HVO soldiers for firing their weapons in town.[1252] The prominent Muslims of the town were arrested.[1253] Anto Breljas, a former member of the Vitezovi, said that the Vite{ka Brigade and the Vitezovi attacked Stari Vitez but the Vitezovi did not take part in the attack on Ahmi}i as a unit (although one or two individuals may have done so).[1254]

645. The reference to "Ve~eriska-Donja Ve~eriska" in the Indictment is to the two villages of Donja and Gornji Ve~eriska. The prosecution case is that these associated villages (near the Vitezit or SPS factory to the south-east of Vitez) were attacked on 16 April 1993 as part of the general HVO attack on the La{va Valley. Donja Ve~eriska was a small, mixed village, 60 per cent Muslim, with no military installations. The HVO military forces had established a presence in the course of

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[1247] Col. Watters, T. 5694-99; Ex. Z2007 is a series of photographs of smoke and fires arising from the fire and bodies lying in a line on the far side of Vitez (past Dubravica). There were a number of bodies in Stari Vitez. In the northern, Croat, part nothing was going on.
[1248] Col. Watters, T. 5704-05.
[1249] T. 5705.
[1250] Witness TW10, *Bla{ki}* T. 1199; Nihad Rebihi}, T. 8359-60. Witness L said that, on the morning of 16 April 1993, he saw soldiers wearing helmets and masks in his neighbourhood. He sought shelter in the apartment of his friend and hid there for four days. He saw soldiers searching for him, T. 6858-60. Sulejman Kavazovi} heard an explosion and shooting at 5.15 a.m. He saw three or four groups of 10 soldiers and was afraid as everyone knew he was a TO member. He hid in an apartment of a Croat friend; T. 7365-67.
[1251] Witness TW10, *Bla{ki}* T. 1206: Another witness described in her transcript evidence that armed men came into her house in Vitez looking for weapons, sexually assaulting her and stealing her jewellery: Witness TW21, *Bla{ki}*, T. 4471-74.
[1252] Edib Zlotrg, T. 1644-47. Other witnesses gave evidence of the attack. Kadir Džidi} said he heard a loud explosion and, from his apartment, he could see Stari Vitez being shelled from Krcevine and Jardol. The entrance to his building, and others, was blocked by Croat neighbours (some in uniform). He sought shelter at a neighbour's apartment and then gave himself up to three HVO soldiers: T. 4004-11. Mirsad Ahmi} said that the perpetrators of the attack on Vitez were the HVO and Vitezovi: T. 13783-87. Enes Surkovi} said that men with HVO insignia came to his apartment building and searched for weapons. One of his neighbours, Salih Omerdi}, was shot and stabbed: T. 4381-87.
[1253] Enes [urkovi}, T. 4386-89.
[1254] T. 11714-15. This evidence about Ahmi}i is supported by a report from Darko Kraljevi}, dated 25 April 1993, of the "battle activities" of the Vitezovi in the preceding 10 days, describing battles at 5 a.m. on 16 April in Old Vitez and Novaci village and similar locations for 17 April: however the report for 18 April is "Village of Novaci cleansed": Ex. Z819.2.

1992. On the night of 15 April 1993, most Croats left the village for Gornji Ve~eriska, with only the able-bodied men remaining. Nonetheless, an attack was not expected since the Croats had evacuated the village several times before. The shelling started at 5.30 a.m. with an anti-aircraft gun shooting from the factory nearby. Grenades were thrown into the houses and the residents and others were then arrested and beaten. Witness V recognised some of his Croat neighbours and HVO soldiers (some were wearing helmets with a black "U") and some with stripes painted on their faces and ribbons on their shoulders. The witness saw the majority of Muslim houses were burning.[1255] The TO organised some defence. Eventually, at 3 a.m. on 18 April 1993, the villagers (around 400 in all) managed to escape from the village with the help of UNPROFOR. At least eight persons died in the attack and the village was destroyed by explosives and fire.[1256]

646. In all 172 Muslims in the Vitez municipality were killed and 5,000 expelled, (1,200 having been detained): 420 buildings were destroyed, together with three mosques, two Muslim seminaries and two schools.[1257]

647. The defence case is that it was the ABiH who started the attack in the Vitez municipality on 16 April 1993. Major Ceko testified that at 5:30 a.m., shells fell in the vicinity of the HVO headquarters in Vitez, followed by intense gunfire.[1258] The Defence relied on the testimony of Allan Laustsen and certain ECMM reports to show that the firing that occurred at 5.30 a.m. on 16 April was directed from ABiH positions towards the HVO Headquarters.[1259] The Defence also asserts that the fact that the ABiH was ready to engage the HVO in Vitez is reflected by the outcome of the fighting that day. According to Sulejman Kalco only three ABiH soldiers died in Stari Vitez.[1260] By contrast, the ABiH killed at least 11 HVO soldiers in that exchange.[1261]

648. The Defence also presents a different picture of fighting in Donja Veceriska. One witness testified that prior to the 16 April 1993 fighting, the Muslims in Donja Veceriska had dug trenches in anticipation of a conflict.[1262] The Defence highlights the evidence of a prosecution witness that the TO in the village had sufficient weapons and ammunition to hold the HVO at bay for two

[1255] Witness V, T. 10366-83.
[1256] Witness V, T. 10386-94. According to Witness V, he saw Dario Kordi} in the village 20 days before when Kordi} came to the local HVO command place in a café in the village. Dario Kordi} was wearing a camouflage uniform with the HVO insignia and had a bodyguard. The witness was 10-15 meters away from him. The defence case is that Dario Kordi} was never in the village: T. 10396-97.
[1257] Enes [urkovi}, T. 4401-02; Ex. Z2715: Report of the BiH Presidency State Commission for Gathering Facts on War Crimes in the Territory of RBH dated 17 July 1995.
[1258] T. 23482.
[1259] Allan Laustsen, T. 8501; Ex. D94/1.
[1260] T. 16083-84.
[1261] T. 16083-84.
[1262] Bono Drmic, T. 25654, Ins. 3-8; 25662, Ins. 22-25.

days.[1263] Although the TO had 40-50 men[1264] and 42 rifles available in Donja Veceriska,[1265] the Muslim fighters retreated when their ammunition was spent.[1266] According to one witness, both the HVO and TO suffered casualties in this fighting.[1267]

649. The Trial Chamber rejects the defence case and finds that the evidence clearly points to organised HVO attacks in these areas. This must be seen against the background of the expiry of the 15 April 1993 deadline as part of a wider attack on Vitez and the Muslim villages of the La{va Valley. Accordingly, the Trial Chamber finds that the underlying offences relating to Vitez, Stari Vitez, Ve~eriska, Ahmi}i, Nadioci, Piri}i and [anti}i, in the following counts, are made out:

Counts 3 – 4 (unlawful attacks on civilian objects)

Counts 7 – 20 (unlawful killings, murder, inhumane acts and treatment).

5. The Involvement of the Accused

650. There was direct evidence of the involvement of Dario Kordi} and Mario ^erkez in the fighting of 16 April 1993. In the case of the latter, evidence was given by Nihad Rebihi}, a member of the Vitez TO. On 16 April that witness had a walkie-talkie radio which was tuned to listen to HVO communications. During the course of the morning and early afternoon, he overheard conversations between ^erkez and Marko Ljui} (the alleged Commander of the HVO artillery). In the first conversation, between 8 and 9 a.m., ^erkez was informed that UNPROFOR was arriving:

> ^erkez: "You know what to do".
>
> Marko Ljui}: "Hit feature J" (an elevation point near Jelovac).
>
> ^erkez: "Fuck their mother, you know the feature, go on and shoot".

(It appeared to the witness that mosques were the targets and that they were shooting at Preo~ica mosque in particular.)

> At 1.17 p.m.: Mario ^erkez: "Can you target the thing you did a moment ago? – J – Target it well".
>
> At 1.40 p.m.: a voice: "Tell No. 23 to target Jelovac with five projectiles at 1.40 p.m.".

(At 1.48 p.m. there was mortar fire in the direction of Jelovac.)[1268] This evidence was challenged in cross-examination, in particular that ^erkez made the comments alleged. The witness replied that he was certain that the voice was ^erkez's: he had known ^erkez well, over a number of years.[1269]

[1263] Witness V, T. 10387.
[1264] Witness V, T. 10372.
[1265] Witness V, T. 10420.
[1266] Witness V, T. 10424.
[1267] Bono Drmi}, T. 25665, 25668.
[1268] T. 8359-68.

651. This evidence was supported by Sulejman Kal~o who gave evidence that the TO intercepted an order from Mario ^erkez to Marko Ljui} (who was with the artillery in Stari Bila) to the effect that he should fire at religious objects in Vranjica: Ljui} then asked ^erkez for a break so that they could have breakfast. The TO taped this conversation but the tape was thought to have been lost in a car bomb explosion.[1270] In cross-examination the Defence challenged the witness's evidence about this conversation, suggesting that the conversation took place between Marko Ljui} and his son, also Mario. The witness rejected that suggestion and had previously stated that he could identify the voices because he grew up with these people.[1271] However, in the absence of a tape-recording or any documentary evidence, the Trial Chamber is not able to attach any weight to this evidence; and, as a result, makes no finding adverse to Mario ^erkez.

652. The Defence case**,** regarding the activities and plans of Mario Cerkez and the Vite{ka Brigade on the eve of 16 April 1993, was that they were neither prepared nor preparing to launch a military offensive. Mario Cerkez had allegedly planned a church ceremony to renew his marriage vows with his wife, set for the late afternoon of 15 April 1993.[1272] In fact, the Defence produced a marriage procedure certificate, dated 15 April 1993, stating that Mario Cerkez and his wife intended to get "married" in Vitez on 15 April 1993 at 18.30 hours.[1273] But the ceremony never occurred because, before going to church, Mario Cerkez received an urgent order to report to Bla{kic at the Vite{ka Brigade headquarters.[1274] Later that evening, Mario Cerkez provided the information for a short briefing at the headquarters, informing the Brigade that the CBOZ command had issued an order to intensify combat readiness in anticipation of an ABiH attack the next day. The Brigade's sole task was to block the direction of a possible ABiH attack from the area of Kru{}ica and Vranjska.[1275] Ahmici, Nadioci, Sivrino Selo, or any areas other than Kru{}ica and Vranjska, were never mentioned at the meeting.[1276]

653. The Defence also called evidence that there was no indication that the Vite{ka Brigade operated anywhere during the night of 15-16 April 1993.[1277] The alleged ABiH attack took the Vite{ka Brigade completely by surprise; thus, chaos and disorganisation reigned in the Vite{ka

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[1269] T. 8430.
[1270] T. 15968-70.
[1271] T. 15969-70.
[1272] Stipo Ceko, T. 23438-42.
[1273] Ex. D94/2.
[1274] Stipo Ceko, T. 23440-45.
[1275] Stipo Ceko, T. 23438-44, corroborated by Anto Bertovic, T. 25862-63.
[1276] Stipo Ceko, T. 23563-71, corroborated by Željko Sajevic, T. 23355-56.
[1277] Stipo Ceko, T. 23581-82.

Brigade headquarters on the morning of 16 April 1993.[1278] The local HVO battalion commander, Anto Bertovic, testified regarding the Brigade's level of readiness on the night of 15 April 1993. He claimed that he had the following soldiers at his disposal: about 60 in the Slatka Voda-Strikan~a sector, and up to 50 in Kru{}ica, preparing at the Hotel Ribnjak for their shift on the front line (the Slatka Voda-Strikan~a line). He did not have reliable communications equipment to communicate with the shift at the front line,[1279] and deployed not more than 80 men on the night of 15 April 1993:[1280] he testified that, had he had a choice, he would not have dared to go into war with such a battalion.[1281] The HVO communications system in the CBOZ was in any event unreliable, making concerted military action difficult.[1282] The Chief of Communications for the Vite{ka Brigade testified that the communications system was far from satisfactory, because the TO had taken most of the available equipment. Most of the HVO equipment was amateur radio equipment.[1283]

654. On the other hand, the Prosecution was able to rely, in relation to the communications system, on documentary evidence. First, on a report dated 22-23 March 1993 from the administrative officer for communications of the 1st Battalion of the Vite{ka Brigade to the effect that the telephones in the trenches and dugouts and field telephone exchanges were in working order;[1284] second, a report from the Chief of Communications of the Vite{ka Brigade unit dated 24 April 1993 in which he stated that, with two exceptions, communications between the front line and commanders were working;[1285] and third, an order of 21 January 1993 from the HZ H-B chief of communications to the chief of communications of Vitez CBOZ for the distribution of packet radio transmitters (a communications system like fax) to the various brigades.[1286] It was denied that this distribution took place.[1287] However, the Trial Chamber finds in the light of these documents that the Brigade possessed a satisfactory communications system in April 1993.

655. In the case of Dario Kordi}'s involvement on 16 April 1993, the following evidence was called by the Prosecution:

[1278] Ex. D160/2, Tab 5, No. 4: (report by Srecko Petrovic, duty officer of the Vite{ka Brigade, explaining the situation as of 0700 hours on 16 April 1993.
[1279] Anto Bertovic, T. 25864. Anto Bertovic ordered the group in the hotel to remain there and be watchful. He did not order them to be moved because he did not want them to be disarmed by the ABiH or disturb the local population; T. 25865.
[1280] Anto Bertovic, T. 25869.
[1281] Anto Bertovic, T. 26003-04: ("The ratio [of] forces did not even allow such a thought. It would have been insane because the strength of the ABiH was higher than the HVO forces at that time.").
[1282] Željko Blaž, T. 24105-06, 24113-14, 24117-18.
[1283] Vladica Babic, T. 26241-43, 26248. In cross-examination, Babi} stressed that this equipment did not come from the government of Croatia despite being shown Ex. Z2490, which specified the delivery of logistics material from Croatia to HVO units in Kiseljak. T. 26271-72.
[1284] Ex. D96/2.
[1285] Ex. Z813.2.
[1286] Ex. Z383.1.
[1287] Vladica Babi}, T. 26263-64.

(a) According to Witness H, a resident of Lon~ari, near Busova~a, at 5 a.m., on the radio Dario Kordi} ordered all HVO units to attack ABiH positions.[1288] The witness said that he recognised Kordi}'s voice because the latter was a media figure.[1289] However, there was no corroboration of this evidence and no tape of this broadcast has been produced and the Trial Chamber rejects it. Likewise, the evidence of Witness AP that on the Saturday before the attack Dario Kordi} was in the football stadium in Vitez where the witness heard him making a speech through a loudspeaker to soldiers in the stadium: he said that at this historic moment for Croats they would fight for their independence and rights and the soldiers saluted him using the "Hitler salute".[1290] There is no evidence to support this allegation and the Trial Chamber cannot accept it.

(b) Witness I gave evidence of a taped conversation which, it is alleged, shows the involvement of Kordi} in an attack on a village called Gornja Rovna, near Vitez. The witness's account was that he was a resident of Gornja Rovna and a soldier in the ABiH. On 16 April 1993 his platoon was on duty in Kru{~ica and from there he saw the attack on his own village as it occurred. He was subsequently captured, detained until June 1993 and did not return to his village for another two months.[1291] On his return to the village he visited the ABiH communications centre where a colleague let him listen to a tape which was concerned with the attack on the village. The tape purported to record a dialogue between two people calling themselves "Puma 1" and "Puma 2". Puma 1 ordered Puma 2 to attack the centre of the village. Puma 2 said that he could not. Puma 1 then told him to attack the upper part of the village. Puma 2 said that he had tried but could not. Puma 1 ordered him to attack again. Puma 2 said "Kordi}, fuck your mother, you come here and take it. … we can't do anything here because every tree is a *balija*".[1292] In cross-examination the witness said that Gornja Rovna was not specifically mentioned in the conversation but the point could be located by reference to "wood" and "upper part": the devices have a range of two kilometres. He first mentioned the tape in a statement made in November 1997. There were several attacks on the village between 16 and 20 April 1993. On reflection, he thought that the first instruction was to attack the upper part of the village and not the centre. The tape quality was bad and he did not recognise the voices. He denied that his evidence about the tape was a fiction.[1293] The Trial Chamber again notes that there

[1288] T. 4081-82.
[1289] T. 4084.
[1290] T. 15883.
[1291] T. 4196, 4199-209.
[1292] Derogatory term for Muslims: T. 4214-15.
[1293] T. 4239-46.

is no corroboration of this evidence and no tape has been produced. The Trial Chamber can place no reliance on it.

(c) Anto Breljas is a Bosnian Croat, a former member of the Vitezovi which he joined through the intervention of Dario Kordi}. His evidence was that in March 1993 he had reported to the accused in Tisovac and said that he wanted to join the HVO: the accused told him to go to the Head of the Vitezovi, Darko Kraljevi}, who would give him a job. The witness became a political officer with the rank of Lieutenant.[1294] (In cross-examination the Defence challenged this evidence but the witness said that he did meet the accused and the latter did help him get into the HVO.)[1295] According to this witness's evidence, on the evening of 15 April 1993 Dario Kordi} was at the Vitezovi barracks in Dubravica. He was with the Commander and the Deputy of the Vitezovi (Kraljevi} and Vinac), Miji} (Chief of the Central Bosnia SIS, i.e., secret police) and two other persons.[1296] The witness saw these people conferring: they had a piece of paper with a map drawn on it. The witness heard Dario Kordi} say "That must be done to the end"; to which there was a response "Don't worry, everything will be fine".[1297] The witness was cross-examined about the date on which he heard the conversation and he accepted that he could not be precise about dates. In a statement to the Prosecution the witness had said that he had spent the evening of 15 April in ^ajdra{ when he was trying to get back from Zenica to Vitez. He was subsequently picked up by Colonel Stewart in his jeep and taken to Vitez.[1298] In re-examination the witness said that he was confused as to whether the Dubravica school meeting with Kordi} was on the eve of the attack on Ahmi}i (i.e., 15 April) or the night after it (i.e., 16 April).[1299] The Defence called evidence to the effect that Kordi} was never in the Dubravica barracks and was not there on 15 April. Josip Buha, a member of the Vitezovi at the relevant time, testified that Kordi} could not possibly have attended the barracks on this day as the barracks are small and he and others would have known of such an important visit.[1300] This testimony was corroborated by the affidavit of Mario [anti}, a member of the Vitezovi, who said he was stationed at the barracks at the time and neither Kordi} nor Bla{ki} were there on 15 April.[1301] Nonetheless, the Trial Chamber notes that, as a Bosnian Croat, Mr. Breljas

[1294] T. 11691-92.
[1295] T. 11761-63.
[1296] *See also* Letter, 18 June 1993, from Miji} appointing Kraljevi} his Deputy: Ex. Z1075.1.
[1297] T. 11697-700.
[1298] T. 11751-59. Col. Stewart's diary says that he spent the night of 15/16 April in Zenica. In his evidence Col. Stewart said that having spent the night in Zenica he left at 7.15 a.m. and returned to Vitez by the mountain road: he did not pick anyone up on the way: T. 12312-14, 12406-08.
[1299] T. 11858.
[1300] Josip Buha, T. 18625.
[1301] Affidavit of Mario [anti}.

has no axe to grind nor motive for lying[1302] and accepts his evidence that Kordi} was in the barracks at a meeting: this event having occurred on the evening of 16 April.

656. The CBOZ Duty Officer's log for 16 April 1993 is as follows:

> 09.05: Mr. T. Bla{ki} talked with D. Kordi}. Report on the situation … .
>
> 10.30: T. Bla{ki} spoke with Kordi}, informed him of the current situaition.
>
> 11.40: Col. T. Bla{ki} spoke with Kordi} in connection with the cease-fire … .[1303]
>
> 12.07: "Mario ^." called Colonel Bla{ki}, reported on the situation in the field.
>
> 12.36: D. Kordi} called Colonel T. Bla{ki} … .
>
> 12.50: Colonel T. Bla{ki} called "Mario ^.", gave him instructions.
>
> 13.02: M. Batini} *[sic]* from the (Mixed Artillery Battalion) called Col. Bla{ki}, said he had completed the task. Mario ^. should see where it is and whether a correction is needed.
>
> 13.10: Mario ^. calling Colonel Bla{ki}, reporting on the situation.[1304]
>
> 13.44: Colonel Tiho… B., conversation with Dario K., giving a report and said that the BH Army is asking for a cease-fire.
>
> 13.55: Colonel Tihomir B. called "Mario ^.", gave instructions and said to hold out a little more.
>
> 14.30: D. Kordi} calling T.B., exchange of views … .[1305]
>
> 15.00: Mario ^. called to say that substantial forces are moving from Zenica.
>
> 15.45: Kordi} called and asked about the situation. He received an oral report from Colonel Bla{ki}.
>
> 15.52: Kordi} called and reported that the Muslims are firing at our positions in Kru{ik.[1306]
>
> 16.38: Colonel T.B. spoke with D. Kordi}, informed him that he had spoken with Anto Valenta about the situation … .
>
> 17.55: (Du{ko, ^erkez and Pa{ko). Donja Ve~eriska, Ahmi}i, Vranjska, Rovna and Peri}i are encircled. They have no forces for reinforcement of these areas. The HVO is carrying out arresting people.
>
> 18.02: D. Kordi} calling Colonel T.B. Pa{ko has finished it all off and is pressing on.
>
> 18.07: Colonel T.B. calling Mario ^. Need to step up security of the SPS factory.[1307]
>
> 18.50: D. Kordi} calling Colonel T.B., 350-400 people have left Zenica for Kuber (Muslims).
>
> 19.25: Colonel Bla{ki} called Colonel Kordi} and informed him of the forces that are setting off from Zenica, most probably for Kuber … .
>
> 19.45: Mario ^erkez called and asked that help from Busova~a reach him a.s.a.p.[1308]

[1302] The Defence called Mrs Mira Pocrnja as a witness in order to challenge the credibility of Anto Breljas on the ground that after she let him stay in her apartment in Vitez in the summer of 1993 he had allegedly lied, behaved badly in the flat, threatened her and slapped her in the face (T. 26073-76). However, Mr. Breljas had left her to move to the apartment of a young widow in the same building (T. 26086) and, although the witness denied having had any sort of affair with him (T. 26082) or giving evidence in order to settle accounts with him (T. 26087), the Trial Chamber found her evidence itself to lack credibility.
[1303] Ex. Z610.1, pp. 71-77.
[1304] *Ibid*., pp. 79-80.
[1305] *Ibid*., pp. 83-85.
[1306] *Ibid*., pp. 87-89.
[1307] *Ibid*., 91-94.
[1308] *Ibid*., 95-97.

657. To summarise the evidence in the log: between 9.05 a.m. and 7.25 p.m. on 16 April 1993 Kordi} and Bla{ki} had at least 10 conversations on the telephone. In those conversations military matters were discussed: with both participants reporting on such matters. The Trial Chamber finds that the inference to be drawn from this evidence is one of an involved political leader keeping a close eye on events and in contact with the military commander.

6. The Attacks on Villages near Busova~a

658. The villages of Lon~ari, Merdani and Puti{ are not far apart, in the area east of Ahmi}i and north of Busova~a. The prosecution evidence was as follows. After the attacks on the villages in January 1993 a significant number of the civilian population went to Zenica but, over the weeks and months that followed, many of them moved back.[1309] The villages were then attacked by the HVO in April. Between 4.30 and 5 a.m. on 16 April 1993 Witness H hid in the woods with other Bosnian Muslim men. There was mortar and artillery fire around Lon~ari. The witness, his son and other men were arrested by HVO soldiers and taken to Kaonik prison.[1310] As noted above, the nearby village of Puti{ had been attacked on 15 April.

659. The village of O~ehni}i is to the south of Busova~a. According to the Prosecution, it was subject to HVO attack in April 1993. The prosecution evidence was as follows. In the afternoon of 16 April 1993 masked HVO soldiers attacked the village by firing incendiary bullets into the houses. Within half an hour all the Muslim houses were burning. The villagers were unarmed and did not put up any resistance.[1311] One resident heard, at second-hand, that Pa{ko Ljubi~i} was the leader of the unit that had attacked the village and that he had been ordered to do so by Brigadier Du{ko Grube{i}, commander of the Zrinski Brigade, to "cleanse" Muslims from the area.[1312] The damage to O~ehni}i is clearly shown on the video recording taken during a helicopter flight over the area in May 1996 and played to the court during the trial.[1313] Around 20 men from Lon~ari were detained and taken to Kaonik on 16 April 1993.[1314] Upon arrival they were lined up and their valuables were stolen by HVO soldiers.[1315]

660. Although prima facie evidence of unlawful attacks, in the Trial Chamber's view there is insufficient evidence on which to found a conviction on Counts 3 and 4. Accordingly, the

[1309] Witness H, T. 4079.
[1310] Witness H, T. 4085-88.
[1311] Ibrahim Nuhagi}, T. 13135.
[1312] Ibrahim Nuhagi}, T. 13137, 13141, 13143, 13145.
[1313] Ex. Z2799.
[1314] Witness H, T. 4088.
[1315] Witness H, T. 4089-90.

allegations in relation to Lon~ari, Puti{ and O~ehni}i in Counts 3 and 4 are not made out. There is, however, evidence of destruction in O~ehni}i (Counts 37 and 38).

7. The Stari Vitez Truck Bomb

661. The fighting in Vitez continued after 16 April 1993. The old town of Stari Vitez (or Mahala as it was also called) remained in Muslim hands. However, the HVO surrounded it and subjected it to attack. On 18 April 1993 a truck bomb exploded there and it was subjected to siege from April 1993 to February 1994.

662. The truck bomb exploded during the afternoon of Sunday 18 April, near the mosque in Stari Vitez, destroying the offices of the War Presidency, killing at least six people and injuring 50 others.[1316] According to the evidence of Nihad Rebihi}, who was walking nearby at the time, an HVO fuel truck drove past him, there was then a powerful explosion which threw him to the ground and he lost consciousness: when he came round there was much damage to houses.[1317] Before the explosion warnings were given to some of the population.[1318] There were various reports as to who was responsible;[1319] according to one, Marko Ljui}, Chief of Artillery for the Vite{ka Brigade, loaded an oil truck with explosives, tied a Muslim man to the steering wheel and set the truck in motion towards the old town,[1320] while another alleged that Darko Kraljevi}, commander of the HOS, was behind it.[1321] At the time when the bomb went off Mario ^erkez was at a meeting which was taking place at the Britbat camp, there was a loud explosion and a large cloud of smoke over Stari Vitez: as the participants returned to Vitez, Mario ^erkez made no comment about the explosion.[1322]

663. According to one witness, Dario Kordi} appeared that evening on local television and said that an ABiH ammunitions depot in Stari Vitez had been activated and that there would be other explosions of this kind. He also said that members of the ABiH should surrender and its commanders would be tried according to the laws of Herceg-Bosna.[1323] (This evidence concerning the television broadcast is disputed by the Defence. There is no evidence to support it and the Trial

[1316] Witness TW10, *Bla{ki}* T. 1214-15; Dr. Mujezinovi}, T. 2191-92. The precise number of those killed was not clearly established by the evidence. Dr. Mujezinovi} said that eight people were killed. Nihad Rebihi} said that six people had been killed and produced death certificates for five of them: Ex. Z2210/9-13.
[1317] T. 8368-8371.
[1318] Dr. Mujezinovi}, *ibid.*; Witness L, T. 6860; Witness AC, T. 12590. Fuad Ze}o was detained in the Vitez Veterinary Station at the time. A guard told the detainees to go to the basement. They heard an explosion and the guard said: "With this, the question has been solved of the Muslims in the Vitez area"; T. 6520.
[1319] Sulejman Kal~o, T. 15971-72.
[1320] Report from the RBH Crime Suppression Service, 2 June 1993, Ex. Z1009.1.
[1321] Major Friis Pedersen in the transcript of his testimony in *Bla{ki}*, admitted as Ex. Z2706.
[1322] Witness TW10, *Bla{ki}* T. 1216.
[1323] Sulejman Kal~o, T. 15971-72.

Chamber, accordingly, cannot rely on it.) When Colonel Morsink, of the ECMM, asked Mario ^erkez about the explosion the next day the accused said that the explosion came from a house and he would investigate:[1324] in cross-examination the witness denied that the accused said that he had informed his commander, having found out that the act was committed not under his chain of command.[1325]

664. The Trial Chamber accepts that this action was a piece of pure terrorism committed by elements within the HVO, as an attack on the Muslim population of Stari Vitez. However, there is no evidence to connect either of the accused with this action, which is as consistent with freelance terrorist activity by any of a number of people as it is as part of a concerted plan of ethnic cleansing. It does not necessarily follow that because an accused is a political leader (or military commander) that he is responsible for any act of terrorism, which may occur.

8. Attacks on Villages in the Kiseljak Municipality

665. On Sunday, 18 April 1993, it was the turn of the Muslim villages in the Kiseljak municipality to come under attack. (A number of villages were attacked; however, only one, Rotilj, is mentioned in the relevant counts of the Indictment.) The background to the attacks was an order by Colonel Bla{ki} to an HVO brigade to capture two of the villages where all enemy forces were to be placed under HVO command.[1326] On 18 April 1993 the villages of Gomionica, Svinjarevo and Behri}i (which were all close to each other and connected by the main road) were attacked by the HVO, together with Rotilj, Gromiljak, Polje Vi{njica and other Muslim villages in this part of the Kiseljak municipality. The evidence was that the Muslim population of these villages was either killed or expelled, houses and mosques were set on fire and, in Svinjarevo and Gomionica, houses were plundered.[1327] In the case of Rotilj the TO were asked to surrender their guns before the HVO shelled the village. As a result the lower part of the village was set on fire and 20 houses or barns were destroyed:[1328] seven civilians were killed.[1329] Later there was graffiti on a wall to the effect: "This was done by the Maturice", (a para-military unit from Kiseljak).[1330]

[1324] Col. Morsink, T. 8016-17.
[1325] Col. Morsink, T. 8281.
[1326] Ex. Z702.
[1327] At Svinjarevo houses were put on fire and the mosque burnt down: nine civilians and five soldiers were missing after the attack. Only two houses (in which Croats lived) remained intact: Witness AM, T. 15585-87. Witness TW13 put the number of civilians killed at 10: Witness TW13, *Bla{ki}* T. 9699. Gominonica was shelled by the HVO and evacuated. HVO soldiers then plundered part of the village, taking everything they could before setting fire to the houses: Witness TW04, *Bla{ki}* T. 9244-47. The HVO attacked Gromiljak ejecting the inhabitants and setting fire to the houses: Witness TW26, *Bla{ki}* T. 8015-17. At 6 a.m. on 18 April the HVO attacked Polje Vi{njica and quickly captured it from the small TO unit. Between 10-13 civilians were killed and 103 structures burned: Witness TW11, *Bla{ki}* T. 6718-19; Witness TW25, *Bla{ki}* T. 6614-16, 6633; Witness D, T. 2057-58.
[1328] Witness TW07, *Bla{ki}* T. 7931-34.

666. International observers saw the destruction in the villages in the next few days. An officer of the Canadian battalion of UNPROFOR, Captain Lanthier, drove through the Kiseljak pocket and saw many looted and burned houses. The villages were deserted. His impression was that the attack on Rotilj had been carried out according to infantry platoon tactics for fighting in built-up areas.[1331] When ECMM Monitors visited the villages they found almost all the Muslims had left and their houses had been burned[1332] and they concluded that ethnic cleansing had taken place in the area.[1333] (It should be noted in this connection that the CBOZ Duty Officer recorded Colonel Bla{ki} as saying on 20 April, with reference to Gominonica, that the police would be used for "cleansing".)[1334]

667. No defence evidence was called about this HVO offensive. The Trial Chamber concludes that it was part of the general offensive launched by the HVO against the Muslims in this area and in relation to Rotilj the underlying offences in Counts 3-4 and 7-13 are made out.

668. In connecting Dario Kordi} with these attacks the Prosecution relies on an order sent by Colonel Bla{ki} to the Ban Jela~i} Brigade in Kiseljak on 18 April 1993, instructing the Brigade to take Gomionica that night and stating that the situation is generally under control and "we have informed the leadership of the HZ H-B of everything. We are in constant contact with the leadership".[1335] The Prosecution comments that there was limited possibility of contact with Mate Boban given the communications difficulties relied on by the Defence and there is no document before the Trial Chamber on such a topic: therefore, the only leadership to whom Bla{ki} could have been referring was the local leadership, i.e., Kordi}, and the CBOZ Duty Officer's log confirms this.[1336]

669. The Trial Chamber finds that Dario Kordi} was involved in these attacks in a municipality about 25 kilometers from Busova~a. The attacks occurred two days after the attacks on the Muslim villages of the La{va Valley and were part of the pattern of attacks on the Muslims of Central Bosnia. Bla{ki} would not have launched the attacks without political approval which the Trial Chamber accepts meant the approval of the local leadership in the person of Dario Kordi}. The

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[1329] Ex. Z1888 is a map of the Kiseljak villages. Lt. Col. Landry listed the seven victims (two aged over 60 and one aged 16): T. 15299-300.
[1330] Witness TW07, *Bla{ki}* T. 7936.
[1331] Witness TW18, *Bla{ki}* T. 8295, 8337.
[1332] Report, Ex. Z847.
[1333] Major Baggesen, T. 7558-59.
[1334] Ex. Z610.1, p. 148.
[1335] Ex. Z733.
[1336] Prosecution Final Brief, para. 289.

clear inference is that the latter was thus associated with the giving of orders to attack the villages, including Rotilj.

9. The Shelling of Zenica

670. On 19 April 1993 the market-place in Zenica was shelled, killing 15 people and injuring another 50. The prosecution case is that the HVO were responsible for the shelling and, hence, the unlawful attack on the town. Their case is that the purpose of the attack was to demonstrate the military capability of the HVO and to threaten the ABiH and force it to stop its counter-attacks.[1337] The prosecution evidence was as follows.

671. Six artillery shells were fired into Vitez between 12 noon and 12.30 p.m. on 19 April 1993. They landed in the area of the market-place, which was described by one witness, who went to the scene, as a busy market and pedestrian street area with shops, stalls and coffee bars, where, at about midday, there would be many people, pedestrians, shoppers and people going to the mosque.[1338] Another witness described the area as containing 30-40 cafes in it and a department store and estimated that there could have been 2-3,000 people there at the time.[1339] It appears, however, that the intended target of the shelling may have been the radio station, Radio Zenica. A technician from the radio station gave evidence that on 19 April he received a telephone call from a person wanting directions to Radio Zenica. When asked why, the man said they were going to shell the station in 10 minutes and told the witness to take shelter. Sometime later the witness saw smoke coming from not far away. People were stampeding in a panic and dragging wounded people away. The witness heard three or four shells: one landed close by the radio station. After the shelling the witness received a phone call from a man who said: "*Balija*, you haven't been hit yet. We are going to shell you again".[1340]

672. Two Danish members of the ECMM, Major Baggesen and Mr. Laustsen, were in Zenica at the time of the shelling. They visited the scene shortly after the shelling and took photographs.[1341] These photographs show scenes of devastation in the market area, bodies lying on the ground, destroyed cars, a demolished bus shelter and damaged buildings. One witness identified 13 corpses

[1337] Col. Watters, T. 5714-17; Ex. Z738.
[1338] Witness TW19, *Bla{ki}* T. 5291.
[1339] Witness TW28, *Bla{ki}* T. 5946.
[1340] Salih Hamzi}, T. 13200-07.
[1341] Ex. Z2277.1-4, Ex. Z2281, Z2282.1-3: video recording, Ex. Z2258.

but said that 15-16 people in all (he produced 15 death certificates) were killed.[1342] The local hospital received 18 severely injured patients and a further 38 with lighter injuries.[1343]

673. The two ECMM monitors made investigations on the spot. (One of them, Mr. Laustsen, is a Chief Inspector in the Danish police and the commander of a battery in the Danish Reserve Artillery). From the marks made on impact by a shell when it lands (known as "splash marks") it is possible to tell from which direction the shell came; and based on the size of the impact it is possible to determine the size of the gun involved. Mr. Laustsen concluded that the shells in this case were fired from a 122mm artillery gun with a range of 14 kilometres. (He reached this conclusion together with Britbat or Canbat officers and conceded in cross-examination that it could have been a 152 mm shell.) The witness took a compass reading which showed that the shells came from the west and an area controlled by the HVO.[1344] The witness found that there were no military objectives around the market-place within reasonable range of where the shells impacted.[1345] (In cross-examination Major Baggesen said that in April the Serb artillery was shelling Zenica and it was shelled on 20 and 21 April and 8 May. In the witness's view this shelling, with the exception of that on 19 April, was due to the Serbs.)[1346]

674. The Prosecution called, as an expert, Mr. John Hamill, an Irish artillery officer who has 25 years' experience as a gunnery instructor. In 1997 the witness investigated the shelling. His findings were as follows: on 19 April 1993 the shells landed in three groups of two, at 12.10 p.m., 12.24 p.m. and 12.29 p.m.[1347] There was an error in the third of the six rounds.[1348] The witness agreed with the crater analysis made at the time by the ECMM monitors. He concluded that two pieces of artillery were used: D-30 J Howitzers which are hand-loaded and which have a slow rate of fire. It was a professional piece of artillery work with the fire being adjusted by an observer.[1349] The witness's view was that the intended target was the radio station: thus, rounds 5 and 6 bracketed the area and the firing then ceased. Remnants from the shelling were produced to the witness in Zenica. These were found to be from 122 mm OF 482 Z shells which, when fired from a D-30 J Howitzer, have a range of 15 kilometres.[1350] The line of fire was from due west. The witness went out in that direction and came across a possible gun-platform at Puti~evo, south-east of Travnik, close to the maximum range. The witness said that the shelling could not have come

[1342] Witness TW28, *Bla{ki}* T. 5953-65: his report is Ex. Z728.
[1343] Witness TW06, *Bla{ki}* T. 5899-900. List, Ex. Z729.
[1344] A map was produced showing the area and direction of fire: Ex. Z2282.6.
[1345] Allan Laustsen, T. 8473, 8481-82 supported by that given by Major Baggesen, T. 7519-34. Town plan and list of facilities, Ex. Z2282.4-5; ECMM report Ex. Z728.
[1346] T. 7773.
[1347] John Hamill, T. 16184-91. Ex. Z2260.3.
[1348] John Hamill, T. 16191.
[1349] John Hamill, T. 16193-95.

from Serb territory, which was out of range. This gun would have made a loud noise: if closer than 15 kilometres it would have been within hearing distance of the ABiH positions in Zenica.[1351] (In this connection, the Prosecution also relies on the Duty Officer's Report, Vitez Command, 19 April 1993, stating that "if attacks intensify from the direction of Zenica, we propose the use of artillery under the command of the O.Z.".)[1352]

675. The defence case is that the Serbs were responsible for the shelling. The Defence called Dr. Slobodan Jankovi}, a former Colonel in the JNA and retired Professor of Aerodynamics, as an expert witness. His evidence was that, based on the materials available it was not possible to determine what calibre of weapon was used, the distance over which it was fired or the direction of the projectile.[1353] However, his expertise is that of an engineer: he has no artillery experience and has only fired an artillery piece on a range and never as an artillery officer firing with units and troops.[1354] Accordingly, the Trial Chamber is satisfied that the evidence of Mr. Hamill, an independent and experienced artillery officer, is to be preferred and finds that the HVO fired the shells at the radio station, missed and hit the market-place with the concomitant death and destruction: a pure act of terrorism. Thus, the underlying offences in Counts 3 and 4 and 7 – 13 are made out insofar as they relate to Zenica. However, the Trial Chamber can find no connection between this act and Dario Kordi}. It is consistent with a military action, the result of a military command which had no political connection. It is not consistent with the pattern of the other HVO attacks on towns and villages at this time; and was thus outside the common design or plan and not part of it. If it had a political connection none has been demonstrated. In these circumstances it is not possible to draw the inference that Dario Kordi} was implicated in this unlawful attack.

10. Events at the End of April 1993 and the Cease-Fire

676. On 19 April 1993 the ECMM reported a sharp deterioration of the situation in Central Bosnia, a possible explanation being the "suspected aim of the HVO while the world's attention is focused on Srebrenica … to take over the territory of the two provinces, described in the Vance-Owen Plan as predominantly Croat, while the Muslim community is determined to avoid this".[1355]

677. On 20 April 1993, Ga}ice, a village to the south-east of Stari Vitez, was attacked by the HVO; this village was one which was evenly divided between Muslims and Croats. According to

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[1350] John Hamill, T. 16195-96.
[1351] John Hamill, T. 16197-201.
[1352] Ex. Z726.3.
[1353] T. 21290-91, 21296-97, 21299-302; Expert Witness Statement, Dr. Slobodan Jankovi}, dated May 29, 2000.
[1354] T. 21313.
[1355] Ex. Z738.

the evidence of Witness AP the village came under attack from three sides at 5.30 a.m. The Muslims were formed into a column and marched to the HVO headquarters at the Hotel Vitez which was being shelled by the ABiH. When there, they were told by an HVO soldier to sit down and wait and let their people shell them. However, they were not shelled but were kept there for over two hours before being returned to the few unburned Muslim houses in the village.[1356] (The prosecution case is that these people were taken effectively as hostages to prevent the ABiH shelling the HVO headquarters.) At 1.30 p.m. on 20 April the Duty Officer of the Vite{ka Brigade reported that the "village of Ga}ice has been 70 per cent done" and would probably be under control by the end of the day.[1357]

678. On 20 April 1993 Bla{ki} issued an order dismissing Stjepan Tuka, a moderate HVO officer, as Commander in Fojnica.[1358] According to the evidence of Mr. Tuka he had followed a policy of compromise in Fojnica where peace had been maintained. His unit took no part in the fighting in the La{va Valley. On 18 April Bla{ki} ordered him to attack Dusina,[1359] but he did not carry out the order as he hoped for an agreement.[1360] The result was his dismissal, despite protests from the local HVO and other organisations.[1361]

679. On 21 April 1993 negotiations took place between the HVO and ABiH (under the chairmanship of the ECMM) with the aim of securing a cessation of the fighting and separation of the forces. To Bla{ki}'s notes of the meeting (which he sent to Kordi}) he added this observation: "Of me they said that I'd be all right without Kordi} giving me orders, and this is a big problem for everyone".[1362]

680. On 25 April 1993, at a meeting in Zagreb, between President Izetbegovi} and Mr. Mate Boban, an agreement for an immediate cease-fire was reached.[1363]

11. Role of Dario Kordi}

681. After 16 April 1993 the Jokers were withdrawn from the line at Ahmi}i and sent to conduct an operation in the village of Kova~evi}. (Pa{ko Ljubi~i} told the witness that this was on the instructions of Dario Kordi}.) The operation failed and three or four individuals from Busova~a

[1356] T. 15873-914. Photos of the burned Muslim houses and Mekteb in Ga}ice: Ex. Z1758, Z1760-63, Z1770.1-3, Z1771.2.
[1357] Ex. Z764.1.
[1358] Ex. Z749.
[1359] Ex. Z709.
[1360] T. 10081-82.
[1361] Ex. Z745; Ex. Z747.
[1362] Ex. Z769.
[1363] Ex. Z819.

were killed.[1364] In this connection Witness AT gave evidence that Ivo Brnada (an HVO commander from Busova~a) told him that on one occasion he had to go to Kordi}'s headquarters to convince Kordi} that it was not possible to capture a height above Lon~ari called Vran Stijena, which Kordi} was insisting upon; and only just managed to convince Kordi}.[1365]

682. The telephone conversations between Kordi} and Bla{ki} recorded in the log of the CBOZ Duty Officer continued on 17 April 1993:

> 08.17: D. Kordi} calling Colonel T.B., who informed him about the course of events and especially mentioned that the attacks by Muslim forces … [which] began at 0525 hours. Informed him of losses, casualties, wounded, missing, captured … .[1366]
>
> 11.26: Dario K. calling Colonel T.B.
>
> 13.14: Call from D. Kordi}. "It was not <u>us</u> firing just now, it was the Muslims, not <u>us.</u>"[1367]
>
> 16.35: Tiho got through to D. Kordi} – submitted a report on the current situation.
>
> 20.11: Dario K. calling Colonel T.B. "He told me that the brunt of the attack was headed our way. We've hammered Kuber. It is urgent … . Send reinforcements to Pa{ko … so that he can come here … .[1368]
>
> <u>18 April</u>:
>
> 12.35: Dario K. calling Colonel T.B., in brief, "our great friend from below called (telling us) to hold 2-3 days".[1369]
>
> <u>19 April:</u>
>
> 16.23: Dario K. calling Colonel T.B. "The municipal building and command headquarters have been hit, as well as others."[1370]
>
> 16.29: Dario K. calling Colonel T.B. – they have captured elevation 808 (Kuber), proceeding well, we are pushing on to the top of Kuber.[1371]
>
> 17.40: Dario K. calling. "Has it gone off? Igla replies that it is en route, but has to be observed. The answer is that it went off towards R."[1372]
>
> 21.40: D. Kordi} calling Colonel T.B. for further coordination.[1373]
>
> <u>20 April:</u>
>
> 08.23: "Dario K. calling Colonel T.B. submits a report on what has been done so far." [Reporting situation in Preo~ica, Travnik and Fojnica where it is noted that the situation has not been handled well and the survival of battalion command is under a question mark.][1374]
>
> 12.28: Dario K. calling Colonel T.B. – "the one which was fired 3 minutes ago towards Solakovi}i - hit dead centre"… .[1375]

[1364] T. 27627.
[1365] T. 27629.
[1366] Ex. Z610.1, p. 105.
[1367] *Ibid*., p. 113. (Emphasis added.)
[1368] *Ibid*., p. 121.
[1369] *Ibid*., p. 128.
[1370] *Ibid.,* p. 140.
[1371] *Ibid*., p. 140.
[1372] *Ibid.,* p. 142. (Igla was an operative concerned with artillery (as other entries make clear): *see* p. 160.)
[1373] *Ibid*., p. 143.
[1374] *Ibid*., p. 146.
[1375] *Ibid*., p. 148.

683. Another incident in Busova~a in April 1993 needs comment because, according to the Prosecution, it illustrates the power exercised by Dario Kordi} at this time in the La{va Valley. This incident is summarised in an ECMM report, as follows:

> On 28 Apr. a 40-vehicle convoy escorted by 2 x Warrior APCs was detained by HVO forces, who demanded that they search it. HVO claimed that their orders came from Mr Kordi}, HVO Central Bosnia. They said they would ignore any orders from Col Bla{ki} … or Brig Petkovi} … . Eventually Brig Petkovi} contacted Mr Kordi} and the convoy was allowed to pass. Local HVO said that they were only 'acting on Mr Kordi}'s orders'.[1376]

The convoy was a UNHCR convoy of food supplies on its way to Zenica.[1377]

684. At the time that this convoy was detained a meeting was taking place in the Hotel International, Zenica, to discuss cease-fire arrangements: present at the meeting were General Petkovi} (HVO) and General Halilovi} (ABiH) and the meeting was chaired by Ambassador J.P. Thebault, Head of the Zenica Regional Centre of the ECMM.[1378] The meeting was interrupted by Lt. Colonel Landry (the desk officer in the ECMM operations room) with news of the hijacking of the convoy.[1379] Also present at the meeting was Mr. Christopher Beese, Deputy Head of the Regional Centre, who made a contemporaneous note of the meeting. According to his evidence when the interruption occurred, Ambassador Thebault asked General Petkovi} to come to the communications centre to take action, the idea being that General Petkovi} should phone Mr. Kordi} to obtain the release of the convoy. The interpreter briefed the witness and Ambassador Thebault at the end of each phone call. In the first call General Petkovi} told Mr. Kordi} to release the convoy. The accused said that he would not: he was not beholden to Petkovi} any more than he was to Colonel Bla{ki}; he only answered to Mate Boban. Ambassador Thebault advised General Petkovi} to try again. In the second phone call General Petkovi} advised the accused to release the convoy.[1380] The convoy was duly released on Kordi}'s intervention.[1381]

685. There is support for the evidence about the convoy in the form of entries in the CBOZ Duty Officer's log. On 27 April 1993 Colonel Bla{ki} is recorded as calling Dario Kordi} to ask the latter whether he should allow a convoy for Tuzla through. (The answer, apparently, was that there were Croats in it, wait and see.)[1382] The entry for 28 April reads:

> 14.00: A call from the Puti~evo checkpoint to ask if they should let a convoy through.

[1376] Ex. Z856.
[1377] Christopher Beese, T. 14087-88.
[1378] T. 14084; ECMM Report, Ex. Z840.
[1379] T. 15303-04; ECMM Report, Ex. Z857.3.
[1380] T. 14089-94.
[1381] Ex. Z840; Lt. Col. Landry said in evidence that he gathered that they had contacted Kordi}: T. 15305.
[1382] Ex. Z610.1, p. 185.

> 16.12: Call from D. Kordi} to Colonel T.B. to inform him that … a convoy was held at Puti~evo and was being thoroughly inspected.[1383]

686. It was denied in evidence that General Petkovi} was there at all, or that he knew anything of phone calls to Kordi}.[1384] The Defence also points out that no UNPROFOR document refers to any such convoy and that Colonel Stewart's diary does not do so.[1385] Furthermore, the Defence relies on the fact that Colonel Stewart was himself in Busova~a at the time[1386] and testified that he had no recollection of any specific convoy problems that day:[1387] none were recorded in his diary[1388] nor in his official Commander's Diary.[1389] The Defence further relies on the evidence of Mr. Beese that he did not know whether Kordi} was actually on the other end of the telephone when General Petkovi} made the call.[1390]

687. However, the Trial Chamber accepts the evidence of Mr. Beese, supported, as it is, by his notes and the entries in the log: it rejects the evidence relied on by the Defence and does not find the absence of any mention in other documents persuasive. The Trial Chamber finds that the evidence clearly shows Dario Kordi} exercising authority over HVO forces.

12. The Role of Mario ^erkez

688. Since the relevant counts in the Indictment relating to unlawful attacks on civilians (Counts 5 – 6) and wilful killings and inhumane treatment (Counts 14 – 20) in the case of Mario ^erkez relate only to incidents in April 1993 in Vitez, Stari Vitez, Ve~eriska and Ahmi}i and its associated hamlets, it is convenient to consider at this stage his role in the events of that month.

689. It is the prosecution case that Mario ^erkez, as Commander of the Vite{ka Brigade, was responsible for the units which carried out the unlawful attacks in the Vitez municipality on 16 April 1993. The Prosecution relies on the following orders from Colonel Bla{ki} to Mario ^erkez and the latter's reports to the former as pointing to Mario ^erkez's involvement with the events of 16 April:

(a) At a time which is not given but (from a stamp) may be 8.52 a.m., on 16 April Colonel Bla{ki} ordered the commanders of brigades to report immediately on the current

[1383] *Ibid*., p. 190.
[1384] Witness CW1, T. 26771-72.
[1385] Diary, Ex. D151/1.
[1386] T. 12433-34.
[1387] T. 12435.
[1388] T. 12434.
[1389] T. 12434.
[1390] T. 14098.

situation: on the reverse of the order is a hand-written response headed "Vite{ka Brigade" and stating:

> Donja Ve~eriska … fell;
>
> We are advancing in Ahmi}i;
>
> Sivrino Selo and Vrhovine are offering a truce;
>
> We have three casualties.[1391]

(b) At 10 a.m. the same morning ^erkez reported ongoing fighting in the city and municipality: "[HVO] responding … with artillery fire our forces are advancing in D. Ve~eriska … Ahmi}i".[1392]

(c) At 10.35 a.m. the same morning Colonel Bla{ki} sent an order to the Commander of the Vite{ka Brigade:

> "Completely take the villages of Donja Ve~eriska [*sic*], Ahmi}i, Sivrino Selo and Vrhovine."[1393]

(d) At an unknown time the same day, Mario ^erkez reported to the CBOZ Commander "with regard to your subject concerning … further combat actions":

- The village of Donja Ve~eriska has been 70 per cent done …
- The village of Ahmi}i has also been 70 per cent done: We have taken 14 prisoners …
- Sivrino Selo has been moved … [the ABiH is] properly dug in and … our artillery is constantly acting …
- Vrhovine is very hard to take over and we act on it only with artillery …
- The situation in Vraniska and Kru{~ica is very difficult … we act with artillery (mortar) … units are completely cut off …
- The situation in Po~ulica is also difficult … pressure from the Muslim forces … is very strong … in the area of Vrhovine, Po~ulica (around the mosque) and Preo~ica more help is needed with artillery.[1394]

(e) At 12 noon ^erkez reported on the situation in the Vite{ka Brigade's zone of responsibility and referring to battles in all regions of the municipality.[1395]

(f) At 2.50 p.m. on the same day Mario ^erkez reported to Colonel Bla{ki} that:

- he had no suggestions "with regard to the latter's enquiry concerning the unit … surrounded in Kru{~ica".

[1391] Ex. Z692.2. A researcher from the Office of the Prosecutor, Marko Prele}, gave evidence that when researching the HVO archives in Zagreb in the summer of 2000, he had seen the original of this document with handwriting on the back in pencil: the witness had checked that the copy (which the Trial Chamber has) is correct: T. 27236-37. In cross-examination the witness said that the document came from a box of folders relating to 16 April 1993: T. 27281-82. The Trial Chamber notes that the document lacks a signature but has a filing or distribution stamp.
[1392] Ex. Z673.7.
[1393] Ex. Z692.3. Of this order, Anto Bertovi} said, in re-examination, that it would require three strong battalions to carry it out; T. 25997.
[1394] Ex. Z671.4.
[1395] Ex. Z673.6.

- the town is "clean" and … "we have about 50 Muslims in the cellar of the Brigade Police station".
- Stari Vitez "still remains … a problem. What shall we do ….?"[1396]

690. The Prosecution submits that these documents demonstrate that Mario ^erkez was in Donja Ve~eriska on 16 April 1993 involved in arresting people and the cleansing of villages by artillery and ground forces. As for his part in the attack on Ahmi}i, they submit that the function of his brigade was to keep UNPROFOR out of the area and whether he himself or any of his soldiers participated in the attack on Ahmi}i does not change anything: he was part of the plan and played his role.[1397]

691. The Trial Chamber concludes that these documents clearly establish that the Vite{ka Brigade was in the thick of the fighting and that Mario ^erkez was in command of the Brigade. In particular the Brigade took part in operations in Vitez, Ve~eriska and Ahmi}i during 16 April 1993 (but only later in the day and not during the initial assault on Ahmi}i).

692. The Prosecution called evidence which demonstrated Mr. ^erkez's reaction to these events:

(a) On 17 April 1993 Colonel Morsink, an ECMM Monitor, visited Vitez and spoke to Mario ^erkez. In his report Colonel Morsink described the situation in Vitez as "almost [a] full war going on" with shelling and small arms fire being heard all day.[1398] In his evidence, Colonel Morsink said that he met Mario ^erkez in his headquarters in the Cinema, although it was difficult to get to the building because of fighting in the streets and the many guards on the front of the building and inside it. The witness recollected his meeting with the accused as the meeting was concerned with who started the conflict. The witness asked ^erkez to stop the conflict but he replied that the Mujahedin from Zenica had to be stopped first; until then he could not stop the fighting and many of his soldiers were out of control.[1399]

(b) On 26 April 1993 Mario ^erkez issued an announcement as Brigade Commander, referring to a cease-fire agreement signed in Zagreb and "the heroic struggle of the soldiers and people on the defence lines in Kr~evine, Nadioci [and] Piri}i and all our defence areas …".[1400]

[1396] Ex. Z671.5.
[1397] Prosecution Final Brief, para. 252.
[1398] Ex. Z590.
[1399] T. 7983-95.
[1400] Ex. Z823.1.

(c) On 4 May 1993 Mr. Payam Akhavan, at the time an investigator for the UNHCR, met Mario ^erkez in the Cinema and discussed the events in Ahmi}i with him. According to Mr. Akhavan's evidence about the meeting, Mario ^erkez said he was asleep that morning (16 April) but he was not surprised at the events because hostilities with the Bosnian Muslims had been anticipated. Colonel Stewart then arrived and told Mario ^erkez that it would be his responsibility to conduct a thorough investigation and discipline his subordinates for violations of international humanitarian law.[1401] Mario ^erkez said that chaos reigned on the morning of 16 April in the Vitez area but he did not deny atrocities had taken place. Mario ^erkez said that his troops were defending themselves against Muslim forces in an attack which they had not anticipated. At first Mario ^erkez was confrontational in demeanour but was more intimated when Colonel Stewart arrived and it appeared that Mario ^erkez may be held accountable.[1402] The witness was cross-examined about his notes of the meeting, where it was recorded that ^erkez said that HOS (a mixed Muslim and Croat force from Zenica) was present during hostilities in Ahmi}i. The notes continued:

> "Ahmi}i – again HOS(?) – HVO did not do it."

The witness said that this was a description of what ^erkez said: the question mark was because the witness doubted the explanation.[1403]

(d) When taxed by Pa{ko Ljubi~i} with allowing UNPROFOR into Ahmi}i on 16 April 1993, ^erkez said that it was not his fault but Bertovi}'s; or that the explanation was that UNPROFOR went round the barricade.[1404]

693. On 4 May 1993 the Brigade military police sent to Mario ^erkez a report on the control of apartments, dealing with the search of 21 apartments in Vitez.[1405] The Prosecution submits that this demonstrates ^erkez's control over military police. A defence witness, Dragan ^ali}, said that the search was carried out in streets close to the command building and was for the security of the building: it was sent to ^erkez to inform him of the security situation.[1406]

[1401] On 21 and 22 April 1993 Col. Bla{ki} had issued orders that the troops should comply with international humanitarian law: Ex. Z767, Z781; and in March, Bla{ki} had ordered brigade commanders to order an investigation of criminal and destructive conduct among the troops. This order was passed on to the 1st Battalion Commander by Mario ^erkez (Ex. Z553) and by the Battalion Commander (Ex. Z554). However, when Major Baggesen, one of the ECMM monitors, visited HVO sub-units the soldiers knew nothing of these orders and he did not see any sign that soldiers responsible for looting, etc., had been punished: T. 7588-90.
[1402] T. 5931-34.
[1403] T. 6347-48.
[1404] Witness AT, T. 27638.
[1405] Ex. Z882.3.
[1406] Dragan ^ali}, T. 26584-86.

694. According to Colonel Morsink, ^erkez threatened to burn Kru{~ica down because Croats had been killed.[1407] When the witness was challenged on this piece of evidence, he confirmed that ^erkez had said it and he had made a note of it.[1408]

695. The final area of prosecution evidence concerning Mr. ^erkez's role was given by two international observers about events at, or shortly after, the time with which this part of the Judgement is concerned.

696. Mr. Michael Buffini (a United Kingdom Liaison Officer) gave evidence that, in April 1993, ^erkez came to play a part in the meetings of the Busova~a Joint Commission, despite the hostility of some local ABiH commanders. The witness's evidence was that on the Commission it was clear that the HVO representative, Franjo Naki}, had very little authority, whereas ^erkez had more authority in deciding something; and when he said something would be done, the witness knew it would be done. When ^erkez attended the meetings of the Commission (as he did on two or three occasions) he did so as local commander: it was clear that he had command and authority over his troops in his area.[1409]

697. Captain Whitworth (a British battalion liaison officer in Vitez in June 1993) gave this assessment of Mario ^erkez's role: ^erkez was held in high regard by the local population. On the other hand Colonel Bla{ki} did not appear to be held in high regard by Mario ^erkez who was demeaning of the former's authority and effectiveness. There was reluctant cooperation and on occasion ^erkez ignored Bla{ki}'s orders.[1410]

698. The defence evidence included this explanation. A defence witness, Josip Žuljevi}, said of the reports of 16 and 17 April 1993[1411] that the reference to "our forces" in the reports referred to the forces of the HVO and not merely the Vite{ka Brigade: all the developments in Vitez were described regardless of unit. (No part of the Brigade was in Donja Ve~eriska, Ahmi}i, Sivrino Selo or Vrhovine.) The witness was Head of Transport for the Brigade at the time and, as part of the command, was in the Brigade headquarters on 16 April and was a witness to the gathering of information for reports by telephone. ^erkez had instructed the command of the Vite{ka Brigade to compile all information from the territory of the municipality of Vitez, from friends and neighbours and by ringing duty officers of the other units.

[1407] T. 8008.
[1408] T. 8289-90.
[1409] T. 9302, 9329, 9346-47.
[1410] T. 8556-58, 8619.
[1411] Ex. Z673.6, Z673.7, 694.4.

699. The defence case for Mario ^erkez may be summarised: (a) the alleged criminal acts regarding attacks on civilians and the detention of civilians, if they occurred at all, were committed by the "special purpose units" (the Vitezovi, the Jokers and the military police); and (b) these special purpose units were outside the command responsibility of Mario Cerkez when the crimes allegedly occurred. Thus, a number of Defence witnesses blamed the special purpose units for the alleged massacre at Ahmici in April 1993 and for the alleged illegal detention of civilians.[1412] Defence evidence painted a picture of a highly strained command structure in Vitez, where a number of fringe military groups (some with significant "criminal elements") contributed to a volatile and intimidating environment.[1413] More specifically, there was also evidence that Mario Cerkez did not have any control over the actions of these special purpose units.[1414] The Defence also called evidence that the command structure of the HVO in the CBOZ was confused in the spring of 1993 and many units were acting without the orders of their commanders. For instance, an order issued by Mario Cerkez on 18 March 1993 to his subordinate commanders that, in the light of "an increased incidence of overt destructive acts by individuals wearing HVO uniforms and insignia", the commanders were to discipline and disarm such individuals.[1415] According to another order, issued by Colonel Bla{kic on 30 May 1993, an assessment of the quality of command and control of HVO units in Central Bosnia revealed many weaknesses, most notably "duality of leadership and command, overlapping of authority, and unauthorised combat operations without orders from a superior commander."[1416]

700. The Defence also presented evidence that, although the HVO units were under the direct command of Colonel Bla{kic in March-April 1993, the special purpose units were under contract with the Ministry of Defence. Brigadier Nakic testified that the Vitezovi and the military police were placed under the direct control of Colonel Bla{kic as of 4 June 1993.[1417] Before 4 June 1993, if Colonel Bla{kic needed to use the Vitezovi, he had to seek the permission of the HVO Main Staff in Mostar.[1418] When confronted by prosecution exhibits of Vite{ka Brigade personnel lists that

[1412] *See* Željko Sajevic, T. 23293, 23336-37; Dragan Cickovic, T. 23659, 23768-69; Stipo Ceko, T. 23502, 24087-88.
[1413] *See, e.g.,* Stipo Ceko, T. 23506-07 (listing the numerous groups operating in Vitez in April 1993, including the Žuti (from Nova Bila), the Tvrtkovci, the PZO, members of the Travnik and Jure Francetic Brigades, the Zenica Battalion, and others).
[1414] Zvonimir Bekavac, T. 24747-49. Marinko Palavra also testified that Darko Kraljevic and "his small team" were responsible for stealing computers, and were essentially thieves and criminals trying to avoid military service by conducting unofficial, covert activities for a shadowy organisation with no official function in Central Bosnia: T. 27071-72.
[1415] Ex. D311/1,Tab 6. *See also* Ex. D160/2, Tab 1, No. 7, 9, 12, 15, 16, 17 (orders issued by Mario Cerkez in the spring and summer of 1993, prohibiting the burning, looting and forced entry of houses and other buildings in the zone of responsibility of the Vitez Command).
[1416] Ex. Z997.2 (order from Colonel Bla{kic dated 30 May 1993, commanding all units in a brigade's zone of responsibility to subordinate themselves to the command and control of the brigade commander). ^erkez' orders, Ex D160/2, Tab 1, No. 7, 9, 12, 15, 17.
[1417] Brig. Franjo Nakic, T. 17482.
[1418] Brig. Franjo Nakic, T. 17484.

included the special purpose units, Gordana Badrov, a defence witness, claimed that the command of the Vite{ka Brigade was often accused of not having included all military-age men in Vitez. Thus, when the command realised that a certain military-age man had been assigned to another unit, he would be recorded as "engaged personnel from Vitez in other units."[1419]

701. Zvonko Vukovic, Commander until January 1993, testified that he organised the IV Battalion Military Police, which numbered about 600 men in total, into five companies responsible for five main areas in Central Bosnia;[1420] a small platoon of the IV Battalion Military Police, comprised of about 20 men, secured the headquarters of the Vite{ka Brigade and were based at the Cinema hall. Yet the military police was not subordinate to the Vite{ka Brigade,[1421] and was only called "brigade police" because they were responsible for the security of the Brigade.[1422] However, the military police sometimes discharged duties typical of regular military units. The IV Battalion Military Police, for example, intervened in a number of situations when the front line was in peril.[1423] Colonel Bla{kic would issue an order to Marinko Palavra (Commander of the IV Battalion Military Police from August 1993) to use the military police in such combat activities, and Palavra in turn would command the police. Mario Cerkez was not authorised to issue such orders and no brigade commander had such authority; all had to seek the authority of Colonel Bla{kic before issuing combat orders to the military police.[1424] (Furthermore, neither Colonel Bla{kic nor Mario Cerkez had the authority to order investigations into criminal offences.)[1425] The military police did not come under the direct control of the Vite{ka Brigade until August 1993.[1426]

702. The ^erkez Defence case is that the Vite{ka Brigade was not involved in the attack on Ahmi}i and that on 16 April 1993 the Brigade was on the southern side of the area with the assignment to block possible attempts at breakthrough by the ABiH forces from the direction of Kruščica and Vraniska (from the south) toward the centre of the town.[1427] The Defence also relies on the report from Miroslav Tuđman of 21 March 1994, to which reference has already been made and which exculpates Mario ^erkez from involvement in the massacre in Ahmi}i.[1428]

703. The Trial Chamber finds that there is clear evidence that Mario ^erkez, as Commander of the Vite{ka Brigade, participated in the attacks on Vitez, Stari Vitez and Ve~eriska. This is to be

[1419] Gordana Badrov, T. 26481 (discussing Ex. Z1134.2).
[1420] Zvonko Vukovic, T. 17745-47.
[1421] Dragan Calic, T. 26568-69.
[1422] Dragan Calic, T. 26569.
[1423] Marinko Palavra, T. 27082.
[1424] Marinko Palavra, T. 27083-84.
[1425] Marinko Palavra, T. 27084, 26972.
[1426] Stipo Ceko, T. 23499, 23596-98.
[1427] *See* Ex. D-60/2, D-85/2 and Witness CW1, T. 26907-08.

inferred from his presence at the military meeting on 15 April 1993, the documentary evidence concerning events of 16 April and the entries in the Duty Officer's Log. However, there is no evidence which satisfied the Trial Chamber beyond reasonable doubt that he bears any responsibility for the initial attack on Ahmi}i on 16 April which was the responsibility of the military police battalion, not under his command: there was no involvement of the Brigade in the initial attack and any involvement in the area was subsequent to the massacre.

D. The June and October Offensives

704. In June 1993 further fighting broke out in Central Bosnia, some of it caused by the newly revitalised ABiH. It may be noted that, by this time, although Dr. Karadži} had added his signature to those of Mr. Boban and President Izetbegovi} to the Vance-Owen Peace Plan, the Bosnian Serb Assembly had rejected the plan and in May it had become clear that the international will was lacking for the 10-province solution proposed under the plan.[1429]

1. The Convoy of Joy

705. In early June 1993 there occurred another incident which the Prosecution says demonstrates the power and control exercised by Dario Kordi} in the La{va Valley. This incident also involved a convoy, variously referred to as the "Convoy of Joy", "Convoy of Mercy" or the "Tuzla Convoy". This convoy of aid supplies was made up of several hundred trucks, was seven kilometres in length and was bound for Tuzla. It was approaching Central Bosnia when it was stopped at an HVO checkpoint near Prozor, where it was seen by members of a delegation of the Foreign Affairs Committee of the German *Bundestag*. On 7 June 1993, two members of the delegation wrote to the ECMM at Zenica about their fears for the safety of the convoy when it reached the area of Travnik and Vitez in the light of threats made to it by Mate Boban (whom the delegation had met).[1430] As a result the ECMM decided to monitor the convoy.

706. The convoy then made its way to Central Bosnia and the area of Novi Travnik. There it was stopped at a roadblock formed by a large crowd of Croat women at Rankovi}i, north of Novi Travnik. Eight of the drivers were shot and killed, vehicles were driven away and the convoy was looted by civilians and soldiers. Lt. Colonel Duncan, now Commanding Officer of Britbat, had spoken to Colonel Bla{ki} about the safety of the convoy. Colonel Bla{ki} said that he would do

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[1428] Ex. Z1406.1: Croatian HIS report sent to the late President Tuðman.
[1429] Report of Co-chairmen of the Steering Committee on the International Conference on the Former Yugoslavia, 5 Aug. 1993, Ex. D141/1.
[1430] Letter, Ex. Z1030.1.

his best to ensure its safety but it was difficult to control the crowd. Colonel Duncan was prevented from getting to the scene by a crowd of women and children. Eventually the convoy was released. In defending the convoy Britbat shot and killed two HVO soldiers.[1431]

707. The convoy was then stopped again by a crowd at the Dubravica checkpoint near Vitez. Colonel Duncan's evidence was that he went with Colonel Bla{ki} to try and unblock the convoy. He was told that the soldiers, women and children would not move, except on the express orders of Dario Kordi}. The witness had this confirmed to him a number of times: the crowd was shouting "Kordi}, Kordi}". They would not speak to Bla{ki}: when his name was mentioned one person spat on the ground.[1432] Similarly, a Milinfosum records that "locals claim that they would only lift the roadblock on the direct personal orders of Dario Kordi} and were not interested in the orders of Tihomir Bla{ki}".[1433]

708. Meanwhile, many of the trucks were driven away, seven of them to the Dubravica school;[1434] others were later found parked in Novi Travnik, Nova Bila, Vitez and Busova~a.[1435] Witness AA went to the scene and from there sent a message by CAPSAT (Satellite Communications System) to the Chief of Mission of the ECMM, saying that the convoy was blocked, the HVO would only obey Dario Kordi}'s orders and requiring "an immediate intervention on Boban by Tu|man".[1436] (At the roadblock the witness asked a man, whom he thought was a mercenary, and who was threatening him, if Colonel Bla{ki} had authorised this; the man said "only Mr. Kordi} can give us orders".)[1437]

709. Meanwhile, Brigadier Wingfield Hayes, the Chief of Staff of UNPROFOR at this time, had secured an undertaking from General Petkovi} that he would try to secure for the convoy a safe passage through Vitez. General Petkovi} had failed to ensure this and the witness's opinion was that, although he was Commander-in-Chief of the HVO, his authority in the Vitez pocket was limited. The witness went to Vitez and made enquiry as to who had the authority to prevent the hijacking: he was directed to Dario Kordi}, whom he found in a woodyard in the west of the pocket. The witness complained of what had happened to the convoy. The accused said that he was doing his best but the witness felt that he was not. The witness then went to the quarry where the remains of the convoy were. He was led there by Anto Valenta. He again saw Dario Kordi}

[1431] Brig. Duncan, then a Lt. Col. and C.O. of the Prince of Wales' Regiment which formed the British Battalion of UNPROFOR (Britbat), stationed in Vitez between May and November 1993: T. 9755-64.
[1432] T. 9759-60.
[1433] Ex. Z1044.
[1434] Ante Breljas, T. 11743.
[1435] ECMM Report, 20 June 1993, Ex. Z1085.
[1436] Text, Ex. Z1045.1.
[1437] Witness AA, T. 11614-15.

who, again, said that he was doing his best. On the journey with Anto Valenta they came upon a line of vehicles being looted by the HVO: Valenta ignored this.[1438] In cross-examination the witness said that the persons to whom the witness spoke were HVO officers and soldiers. He agreed that there was no reference in his statement to the Prosecution in 1996 to his asking who had authority and being directed to Kordi}: the witness commented that there should have been, as he remembered it full-well.[1439]

710. Colonel Duncan had also complained to Colonel Bla{ki} and Mr. Kordi} and the latter said that he would sort out the situation. Within one hour the vehicles were all released. It was clear to the witness that Mr. Kordi} was calling the shots. The witness concluded that a plan had been made to take a slice off the convoy for the inhabitants of the Vitez pocket. It was all carefully orchestrated. The witness asked the HVO to produce a report as to why people had been murdered: he asked Dario Kordi} to produce it but none was produced.[1440] In cross-examination the witness said that he was present when locals said that they would not move except on the orders of Dario Kordi}.[1441]

711. The defence evidence included a Public Announcement from Kordi}, Bla{ki} and Ignac Ko{troman (with a date-received stamp of 11 June 1993) referring to eight Croat children being killed in Vitez and the passage of the convoy kindling an eruption of feelings turning into anarchy and chaos which could not be stopped;[1442] and a report dated 23 June on measures taken by HVO officials (having been given the responsibility by Kordi}, Ko{troman and Anto Valenta): the officials toured Novi Travnik municipality and found 63 vehicles and a large quantity of goods and released over 30 vehicles from Vitez.[1443]

712. The defence case concerning the convoy was that there was no plan to stop the convoy - its stopping was a spontaneous act by angry and hungry civilians.[1444] Several witnesses also testified that 20,000 Croat refugees had come from Travnik as a result of a Muslim offensive and that, immediately before the halting of the convoy, eight Croat children had been killed in a playground by an artillery shell: as a result tensions were very high.[1445] Witness CW1 testified that he had pleaded in vain with General Morillon to keep the convoy out of Central Bosnia where the Muslims

[1438] Brig. Wingfield Hayes, T. 16108-12.
[1439] T. 16158. ECMM Reports on the convoy, Ex. Z1040; Ex. Z1041; Ex. Z1041.1; UNHCR Report, Ex. Z1150.1.
[1440] T. 9761, 9764-67.
[1441] T. 10502-03.
[1442] Ex. D343/1/12.
[1443] Ex. D331/1/46.
[1444] Major-Gen. Filip Filipovic, T. 17062-66.
[1445] Major-Gen. Filip Filipovic, T. 17061-66; Major Darko Gelic, T. 17611.

were attacking Travnik.[1446] Other witnesses gave evidence that the looting of the Convoy of Joy was not premeditated, but occurred as a result of anger and hunger.[1447]

713. The defence case concerning Kordi}'s role was that he had nothing to do with orchestrating the crowds in stopping the convoy: he had been asked for assistance by UNPROFOR for safe passage of the convoy and he had provided it.[1448] Major Gelic testified that the convoy was not stopped as a result of a plan drawn up by the HVO and Kordic:[1449] on the contrary, Kordic was asked to assist in getting the convoy moving again because he had a reputation amongst international community representatives of being helpful.[1450] Another witness gave evidence that Kordic did his best to try to bring the lorries together and direct them to their destinations.[1451]

714. However, evidence tending to confirm the accused's role was given by Witness AT. This witness said that sometime in 1993 he received a handwritten message which was sent to him by mistake by Kordi} and was meant for Ivan [anti} (President of the Vitez HVO) or Anto Valenta. It told them to stop the convoy which was about to pass because the food was needed. It went on: "Organise the women and the people at Impregnacija. The convoy must not pass". The witness gave evidence that the next day the convoy was stopped at Novi Travnik and looted.[1452]

715. The Trial Chamber accepts the prosecution evidence on this topic (which, effectively, was not challenged) which establishes that the crowds which stopped the Convoy of Joy were under the control of Dario Kordi} and Colonel Bla{ki}.

2. The Conflict in Travnik and Zenica

716. On 4 June 1993 the ABiH forces attacked the HVO in the Travnik municipality. This led to a large exodus of the Croat population: much defence evidence was given about these events. The military attack began on 3 June 1993. On 5 June 1993, the ABiH attacked the village of Dolac, outside Travnik.[1453] On 6 June 1993, the ABiH attacked the village of Ovcarevo.[1454] On 8 June, the ABiH attacked and took over the Brajkovici parish.[1455] By 13 June, the ABiH had taken Travnik and the surrounding villages.[1456] According to an ECMM Report the first reports of ethnic

[1446] T. 26773.
[1447] Ivo Vilusic, T. 22206, 22208; Brig. Franjo Nakic, T. 17327.
[1448] T. 17327.
[1449] T. 17612.
[1450] Major Darko Gelic, T. 17613-14.
[1451] Pavao Vidovic, T. 22098-99.
[1452] Witness AT, T. 27635-36.
[1453] Fr. Stjepan Neimarevic, T. 21997-001.
[1454] Fr. Stjepan Neimarevic, T. 21997-001.
[1455] Fr. Stjepan Neimarevic, T. 21997-001 (corroborated by the affidavit of Franjo Kri`anac).
[1456] Major Franjo Ljubas, T. 18857.

cleansing and destruction were exaggerated.[1457] On 8 June there was fighting in Guca Gora with reports of atrocities and destruction, the Catholic church in flames and thousands fleeing. These reports were investigated by two ECMM monitors, Colonel Morsink and Witness AD. They found the church still standing and the claims of destruction to be exaggerated.[1458] The movement of population was organised by the HVO.[1459] However, a Milinfosum of 16 June describes the desecration of Gu~a Gora church.[1460] Another Milinfosum, dated 9 June 1993, comments: This is the first time that the BiH have taken the military initiative against the HVO in Central Bosnia. On all other occasions the BiH have responded to HVO aggression (Gornji Vakuf, Vitez and Mostar). It would appear that [the 3rd Corps (ABiH)] are orchestrating a carefully planned and phased attack against the HVO in the areas of Travnik and the Western La{va Valley.[1461]

717. On the other hand, the Defence relies on an UNPROFOR report from 9 June 1993, which appears to corroborate the defence version of events on that date. On 9 June 1993, UNPROFOR headquarters in Kiseljak reported that ABiH forces had launched an operation west of Zenica early that morning, attacking several villages and taking them under control.[1462] On 10 June, they reported that heavy fighting had broken out in Kakanj, and that Britbat had established a "protective presence" in Guca Gora, where 186 people (mainly Croat women and children) were sheltered in a church. UNPROFOR evacuation transported the people to Nova Bila.[1463] On 14 June 1993, UNPROFOR headquarters reported that the ABiH had decided to find its own solution in Central Bosnia, noting that "Ethnic cleansing, theft, looting and executions have been the principle *(sic)* characteristics of the last few days. The BiH seems to be master of the situation even though Croat HVO forces still have strongholds in some areas.[1464]

3. The HVO Offensives in June 1993

(a) Novi Travnik

718. The HVO retaliated as follows. On 9 June 1993 fighting again broke out in Novi Travnik and was to continue until the conclusion of the Washington Accords in February 1994. The front line ran through the centre of the town and did not move much during the conflict. In June 1993 a high-rise building on the front line, called Stari Soliter, was the scene of intense fighting. Fifty-seven people, including 10 women and 18 children were trapped in the building for three months.

[1457] Ex. Z1076.1.
[1458] Col. Morsink, T. 8110-11; Witness AD, T. 13021-22, 13025.
[1459] Witness AD, T. 13023-25; Col. Morsink, T. 8116.
[1460] Ex. D290/1.
[1461] Ex. D194/1.
[1462] Ex. D331/1/45.
[1463] Ex. D331/1/57.

At first the HVO refused to allow the evacuation of the building but eventually, in September, agreed to exchange them for Croat residents of two villages held by the ABiH.[1465]

719. The Defence evidence concerning Novi Travnik is as follows: in Travnik and Novi Travnik, another large offensive was launched on 9 June 1993, causing 6–8,000 refugees to flee. The HVO regrouped, but were surrounded in Novi Travnik, as ABiH forces then controlled 90 per cent of the municipality.[1466] On 10 June 1993, Colonel Blaškic reported that the MOS intended to intensify their attacks on and cleansing of Croat territories from the south-west (chiefly on the axis of Gornji Vakuf-Novi Travnik and Gornji Vakuf-Sebešic-Fojnica-Kacuni). He also reported on intense combat activities in villages in the municipalities of Travnik, Novi Travnik and Busovaca.[1467] In Senkovici and the surrounding villages in Novi Travnik municipality, the ABiH attacked at 5.15 a.m. on 9 June 1993.[1468]

(b) Tulica and Han Plo~a–Grahovci

720. On 12-13 June 1993 the HVO attacked villages in the Kiseljak municipality, beginning with Tulica on 12 June. The prosecution case is that a number of villages were attacked; however, only the attacks on Tulica and Han Plo~a–Grahovci are specifically mentioned in the Indictment (Counts 7 – 13).

721. Tulica is about 15 kilometres from Kiseljak, towards Sarajevo to the south. Before the war it had a population of about 350, all Muslim, but surrounded by villages with Croat or Serb populations. During the war Tulica found itself between the positions of the HVO and the BSA and was subject to intermittent shelling. Some of the inhabitants left and the population was reduced to 250. The prosecution case is that, on 12 June 1993, Tulica was attacked by the HVO, resulting in the deaths of at least 12 villagers and the destruction of the village. The attack began with heavy shelling of the village from about 10 a.m. to midday.[1469] The shelling was followed by an infantry attack on the village from several directions. One witness described the HVO soldiers singing and shouting as they set the houses on fire (they were carrying pumps or sprays to apply the gasoline) and herding the civilian population to where the men were separated from the women. The same witness saw the murders of seven men whom he knew: he also heard of more killings, including

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[1464] Ex. Z1054.
[1465] Witness C, T. 827-840; Witness Q, T. 7698-7702. Ex. Z1963, 1963.4-6, 1963.8-9.
[1466] Zlatan ^iv~ija, T. 18990-91.
[1467] Ex. D308/1/449.
[1468] Witness DB, T. 19061-62.
[1469] A witness, with experience in the JNA, identified the shelling as coming from Serb positions: Witness AF, T. 14049-50.

those of a pensioner and three women, one of whom was burnt to death in her house. The surviving men were loaded onto a truck and taken to Kiseljak barracks.[1470] Another witness described the women being forced to give up their money and jewellery, the men being led away in a line and four taken out and shot: according to this witness, 11 men and one woman were killed.[1471] The soldiers were in black or camouflage uniforms and had white ribbons around their arms: those in black were identified as coming from the Apostoli and Maturice units, based in Kiseljak, and those in camouflage as members of the HVO.[1472]

722. Han Plo~a and Grahovci are associated villages which also lie to the south of Kiseljak on the way to Sarajevo, not far from Tulica. Shortly after the attack on Tulica they were also subject to attack by the HVO. The prosecution evidence was that the HVO issued an ultimatum to the Muslims to surrender their weapons. After the ultimatum expired, the village was shelled by the HVO and the BSA, and houses were set on fire. An HVO infantry attack followed. Having come into the village, HVO soldiers lined up three Muslim men against a wall and shot them. They also killed some other men and set fire to a garage with people in it. The women and children were then taken to the Kiseljak barracks.[1473] One witness said that his sister (aged 15), father and grandmother were all killed and that in all 64 people were killed during the attack or after their capture.[1474]

723. No defence evidence was called about these attacks. The Trial Chamber finds that the attacks on Tulica and Han Plo~a–Grahovci were part of a sustained HVO attack in which civilians were murdered and subjected to inhumane treatment and the underlying offences in Counts 7 – 13 of the Indictment in relation to these events are made out.

(c) Presence of Dario Kordi}

724. The defence case is that there was no link between Dario Kordi} and events in Kiseljak which was cut off from Busova~a.[1475] However, evidence of Dario Kordi}'s presence in Kiseljak during the June 1993 conflict was given by Witness Y who saw him that month in Kiseljak barracks. Witness Y's evidence was that on 14 June 1993 he was arrested in Topolje with other

[1470] Witness AF, T. 14049-61. Ex. Z2104: photos of houses destroyed in Tulica, including the Mekteb. Witness TW15 said that the first shell hit the Mekteb.
[1471] Witness AN, T. 15665-78. Witness TW15 identified a man called "Pijuk" as one of the executioners who shot three men on the edge of a ravine. Witness TW15 also put the number of those killed at 12. Witness TW05 returned the next day to bury eight victims.
[1472] Witness AF, T. 14059-61; Witness AN identified some of the soldiers as coming from a unit called the "Devil's Division"; T. 15657-61.
[1473] Witness TW08, *Bla{ki}* T. 8996; Witness TW12, *Bla{ki}* T. 9532; Witness TW16, *Bla{ki}* T. 8954.
[1474] Witness TW16, *Bla{ki}* T. 8950: Major Mark Bower watched part of the attack and saw the Muslim houses attacked and looted: T. 9222-23.
[1475] Kordi} Final Brief, p. 3.

villagers and taken to Kiseljak barracks where they were all detained in a room in a building. Within two hours of his arrival there he was beaten. His head was bleeding and he was told to wash in a trough in the hall of the building. As he was washing he saw Dario Kordi} coming out of the building. Kordi} was 8-14 metres away. There were HVO soldiers around Kordi} who came out first with others behind him. The witness spent three days in the barracks and was then transferred to the municipal building where he saw Kordi} again 23 or 24 days later. On behalf of the Defence it was disputed that Mr. Kordi} was in the barracks as alleged by the witness. However, the latter said that he had seen the accused there for about five seconds, time enough for the accused to take five or six steps. He had seen the accused many times in Kiseljak in 1992-1993, sometimes in uniform, black or camouflage, or with a gun in his belt and always accompanied and with bodyguards. He had also seen the accused many times on television: the first time when Kordi} was making a speech.[1476]

725. In this connection it is the defence case, although no evidence was called to this effect, that the accused was only twice in this period in Kiseljak and that was at the end of August 1993 for meetings under the auspices of UNPROFOR.[1477] The Defence relies on evidence that the Kiseljak enclave was cut off from the Vitez-Busova~a enclave and that it was "difficult, if not impossible" to get from one enclave to the other,[1478] for everyone including Mr. Kordic. The Defence asserts that Mr. Kordic was not in Kiseljak and had no influence there, generally, in 1993.[1479] In considering this evidence the Trial Chamber bears in mind that it relates to an alleged identification of the accused by a witness. Such evidence must be approached with caution because of the ease with which even an honest and convincing witness may be mistaken.[1480] Thus it is necessary to look at the circumstances of the identification. The witness knew who the accused was and had seen him often before. He was, therefore, in a position to recognise the accused. His view of him was for more than a split second and he had the opportunity to make a firm identification. His evidence was not shaken in cross-examination. The Trial Chamber, therefore, accepts his evidence.

726. The Trial Chamber finds that these offensives were another manifestation of the HVO design to subjugate the Muslims of Central Bosnia. As with the offensives against the villages of the same municipality in April 1993, the Trial Chamber is satisfied that the attacks would not have been launched without the approval of the local political leadership in the person of Dario Kordi}. The fact of his direct involvement in this case is confirmed by the evidence of his presence in

[1476] Witness Y, T. 11000-01, 11004-11, 11081-87, 11097-99.
[1477] Kordi} Defence counsel, T. 11088-90.
[1478] Witness AD, T. 13099; Brig. Wingfield Hayes, T. 16168.
[1479] Brig. Wingfield Hayes, T. 16168.
[1480] *See*, for instance, *R. v. Turnbull*, (1977) 65 Cr. App. R. 242, a decision of the Court of Appeal of England and Wales.

Kiseljak during the offensives. It is, therefore, to be inferred that he was associated with the giving or orders to attack these villages, including Tulica and Han Plo~a-Grahovci.

(d) The Remaining Offensives

727. The remaining offensives were as follows. On 16 June 1993, and the days following, the HVO military police and other units from Kiseljak attacked the ABiH positions in Kre{evo, burning villages, setting mosques alight and detaining the Muslim population.[1481] On 24 June the HVO launched an assault on Žep~e, far to the north of the other localities dealt with in the Indictment. The assault began with shelling and (according to one witness) the use of Serb tanks. There was some resistance but 90 per cent of Žep~e (apart from the Croat area) was destroyed or set on fire by the shelling. All four mosques were completely demolished during the attack and a number of people were killed. Žep~e fell at the end of June.[1482]

728. In pointing to a connection between Dario Kordi} and events in Žep~e, the Prosecution relies on Žep~e's location within the HZ H-B,[1483] his issuing of orders to the municipality[1484] and his invitation to its representatives to discuss the security situation on 5 April 1993.[1485] The Prosecution claims that local HVO representatives "implemented the same policies which Kordi} advocated and effected in his Central Bosnia pocket" - Žep~e may have been distant and isolated but it was part of the same overall fiefdom in which Kordi} was the principal active politician with power.[1486] It is for the Trial Chamber to determine whether this claim is borne out by the evidence. The defence case is that there was no link between Kordi} and Žep~e which was cut off from the Busova~a-Vitez pocket.[1487]

729. Meanwhile the ABiH attacked and took Kakanj. The defence evidence about this was that the ABiH launched a major offensive on 8 June 1993. An HVO member of the Kakanj War Presidency testified concerning events in Kakanj.[1488] He described the workings of the Muslim-dominated government in Kakanj, and the systematic harassment and intimidation of the Croat population there.[1489] He also testified to the incidents leading up to the ABiH offensive on 8 June 1993, and the offensive itself. This offensive resulted in the complete defeat of the HVO forces in

[1481] Witness E, T. 2547-49.
[1482] The above account is taken from the evidence of Witness F, T. 3426-40, 3484-85; and Witness AH, T. 14430-38, 14452-55. Ex. Z2291.2 is a recording of a BBC TV programme showing the fighting in Žep~e: Witness AH, T. 14434-35.
[1483] Ex. Z223.
[1484] Ex. Z299, Z307.
[1485] Ex. Z606.
[1486] Prosecution Final Brief, paras. 378-379.
[1487] Kordi} Final Brief, p. 3.
[1488] Pavo Šljivic, T. 18730-31.
[1489] Pavo Šljivic, T. 18737-39.

Kakanj after five days of fighting, as well as the killing of 120 Croats and the displacement to Vareš of 13-15,000 Croat refugees, together with the destruction of 2,500 homes, 30 chapels, and 30 cemeteries.[1490] The Defence case was that the attack on Kakanj was part of a deliberate, organised action by the ABiH, whereby they attacked town by town and undertook the expulsion of the Croat population.[1491] Thus, on 2 July the ABiH also attacked the HVO in Fojnica, destroying about 70 per cent of the Croatian villages and detaining some of the villagers. This attack was to lead to 5,500 Croats leaving Fojnica: after the war only 100 remained.[1492]

4. The Owen-Stoltenberg Plan and Formation of the HR H-B: July - September 1993

730. On 22 July 1993 an ECMM report was issued on the policy of the HVO to blockade totally the roads coming from the south as the most efficient weapon used by the HVO to strangle central and north Bosnia and to force the Bosnian Muslims to surrender. The report notes that this deliberate strategy, which began before the HVO offensive in April, had disastrous effects and stopped commercial traffic.[1493]

731. On 27 July 1993 peace talks again began in Geneva and on 30 July President Izetbegovi}, Dr. Karad`i} and Mr. Boban agreed to a cessation of hostilities and to an agreement for a union of three republics in Bosnia and Herzegovina.[1494] On 6 August a report containing what was to be called the "Owen-Stoltenberg Plan", based on the union of three republics in Bosnia and Herzegovina, was sent by the Secretary-General to the Security Council.[1495] The report noted that the boundary between the Croat and Muslim majority republics in Central Bosnia "where fighting was intense" during the negotiations was an "area of great contention". (A Milinfosum, dated 24 August, refers to a request from Mate Boban for transport to a meeting to discuss the Geneva proposals which "reveals the Croat political hierarchy in Central Bosnia". The list of 21 names is headed by that of "Dario Kordi}, Vice-President HZ H-B".)[1496]

732. On 28 August 1993 the HZ H-B instituted the new Croat Republic of Herceg-Bosna (HR H-B) with Mate Boban as President.[1497] Also on 28 August, the ECMM reported that "Colonel

[1490] Pavo Šljivic, T. 18739-42, 18752. Witness DA, a resident of a village near Kakanj, testified that her husband and three sons were executed by ABiH soldiers while they were being held captive: T. 18798-821. *See also* affidavit of Neven Maric, para. 10-14.
[1491] Pavo Sljivi}, T. 18742.
[1492] Stjepan Tuka, T. 10139-40, 10143-44, 10153.
[1493] Ex. Z1149.1.
[1494] Ex. Z1151.
[1495] Ex. D141/1.
[1496] Ex. Z1179. On 21 August 1993, the ECMM reported a meeting with Dario Kordi} who was confident of the Geneva proposals being accepted and said that his appointment would soon be that of Vice-President of the Bosnian-Croatian Republic: Ex. Z1176.2.
[1497] ECMM Report, Ex. Z1186.2.

Bla{ki} refused to be drawn on the question of the Geneva proposals: he said that Dario Kordi} spoke on matters concerning 'ideas' while he dealt with reality". The report noted that Dario Kordi} was "the key HDZ political figure in Central Bosnia and had long been suspected of controlling the HVO". It was assessed that his influence over Bla{ki} was significant if not total.[1498]

733. One witness's evidence tends to connect Dario Kordi} directly with military affairs during this period. This was the evidence of Sulejman Kal~o, Deputy Commander of the Vitez TO during the war, who said that on 8 August 1993, at some time between noon and 1 p.m., he was touring the front lines near Vitez. He was in the remains of a house in Stari Vitez, looking at the lines towards Krcevine through binoculars. He saw Dario Kordi}, Mario ^erkez and other HVO officers on the front line between the HVO and the ABiH forces about 500 meters away. Kordi} was in camouflage uniform and waving his hands. The witness could see that Kordi} was issuing orders: he was in command. The day was clear and sunny. That evening, on television, Kordi} was shown touring the HVO lines and saying that the lines were firm and invincible.[1499] The Defence disputes that the television programme took place. However, no evidence was called to contradict that given by Mr. Kal~o. The scene of the accused on the front line was a vivid one and there is no reason for thinking that Mr. Kal~o did not give truthful evidence about it and about the television programme. Accordingly, the Trial Chamber accepts his evidence on both these points.

734. On 8 September 1993 the HVO launched a successful attack on the village of Grbavica, a hillside feature to the west of Vitez and close to the Britbat camp at Bila. This feature had been used by the ABiH as a position for the purposes of sniping and, according to the evidence of Britbat officers who saw the attack, it was a legitimate military target.[1500] However, according to the same witnesses, the attack was accompanied by unnecessary destruction. For instance, Brigadier Duncan said that the objective was secured by an excessive use of force against the local population, causing massive destruction of property beyond any military necessity.[1501] Colonel Bla{ki} and Mario ^erkez commanded this attack from a nearby church.[1502] This location, referred to as 'Divjak' in the Indictment, is the subject of allegations in Counts 37 – 39 against Dario Kordi}. However, the Trial Chamber can find no evidence to connect him with this attack. This appears to have been another military operation and not part of the common plan or design.

[1498] Ex. Z1185.3.
[1499] Sulejman Kal~o, T. 15979-80.
[1500] Brig. Duncan, T. 9786; Major Hay, T. 10294-95; Capt. Whitworth, T. 8588.
[1501] T. 9786.
[1502] Anto Breljas, T. 11744. The witness, in fact, said that they "participated" in the attack from a nearby church. However, it must be inferred that they commanded it. Capt. Whitworth congratulated ^erkez upon the attack: ^erkez agreed that it was a good attack but that he had not been responsible for the staff work and planning: T. 8585-86.

735. On 18-19 September 1993 the ABiH launched an offensive with the apparent purpose of cutting the Vitez-Busova~a main road and capturing the Vitezit factory. They did not succeed in taking either objective but Colonel Bla{ki} threatened to blow up the factory to prevent it falling into ABiH hands.[1503] This was a threat which was to be repeated not only by Colonel Bla{ki} but also by Dario Kordi}.

736. Evidence pointing to Kordi}'s continued control during this month is to be found in the following:

(a) In the evidence of Brigadier Duncan that on 4 September 1993 Colonel Bla{ki} came to the witness's (Britbat) camp with a message from Dario Kordi} to the effect that there would be no more exchanges of wounded out of the Vitez pocket and that all agreements were finished: the message was written and Bla{ki} read it out, but did not give the witness a copy.[1504]

(b) On 20 September 1993 Kordi} and Ignac Ko{troman reported to Mate Boban on "the military and security situation in the La{va Valley", describing a Muslim offensive in the valley but reporting "that the political and military leadership of Central Bosnia is holding the situation firmly under **...** control".[1505]

(c) On 29 September 1993 a Milinfosum described a meeting between the United Nations Civil Affairs Officer and Dario Kordi} to "discuss access to Muslim Stari Vitez" (prevented by the HVO by means of mines across the road). The accused is quoted as maintaining that "access will be denied until the BiH cease their current attacks in the valley".[1506]

737. On 21 October 1993 the ECMM reported two meetings. At the first Anto Valenta referred to the Owen-Stoltenberg Plan as having failed. At the second meeting Dario Kordi} said that no clear military outcome was possible, for example, he expected a major offensive in the La{va Valley aimed at the Vitezit factory. The accused also said that the Croats would leave Zenica since they did not feel protected there: some Croats would remain in Muslim areas if a peace plan were agreed but much fewer than before the war.[1507]

[1503] Milinfosum, Ex. Z1206.1.
[1504] T. 9784-86; C.O. Britbat, May-November 1993.
[1505] Ex. Z1209.1.
[1506] Ex. Z1213.
[1507] Report, Ex. Z1255.

5. The Stupni Do Attack: October 1993

738. Events then moved to the Vare{ municipality. By October 1993 the Croats were isolated and found their freedom of movement increasingly circumscribed. The HVO Central Bosnian leadership was concerned about Vare{, which it feared might be handed over in the international negotiations. (The HVO had taken over Vare{ in June 1992 but it had always been isolated, the more so after the fall of Kakanj in June 1993.) On 23 August 1993 the leaders of the HVO in Vare{ presented ECMM Monitors with a copy of a letter, which had been sent to President Tu|man, Mr. Boban and "Col. Dario Kordi}", complaining about the proposed future of Vare{, as decided in the Geneva talks, when it was proposed that the municipality come under Muslim control.[1508] Reinforcements arrived in the person of Ivica Raji}, HVO Commander in Kiseljak, with paramilitary units, the "Maturice" and "Apostoli".

739. There then followed the ABiH attack on the Croat village of Kopjari in the Vare{ municipality and its capture.[1509] The evidence about the ABiH attack on Kopjari in the morning of 22 October 1993 was that two HVO soldiers were reported to have been killed; and during a visit by the ECMM to the village it was noted that all the buildings had been destroyed and the village was uninhabited.[1510] The HVO responded by attacking the nearby village of Stupni Do the next day. Thirty-eight people lost their lives in this attack and, after the massacre at Ahmi}i, this loss in a single incident forms the most serious allegation in the Indictment. The attack is one of those specified in Counts 3 and 4 and the killings are reflected in Counts 7 – 13.

740. Stupni Do is a village located in the hills about one kilometre south of the town of Vare{, at a height of 1074 metres, with one principal road leading to it through a tunnel. The village lies above the main supply route to Vare{ (which itself lies at the head of a valley with mountains all round it.) Above the village is the Croat village of Mir. Before the war the inhabitants of Stupni Do were almost all Muslim (although there had been five or six Serb families who had left in 1992). The total population was about 224.[1511] The significance of the village in October 1993 also lay in the fact that it was in the Vare{ pocket (controlled by the HVO) close both to the ABiH front lines and also the Serb front lines: thus, according to one ECMM witness, a point between the warring parties ideal for smuggling and the exchange of goods and arms.[1512]

[1508] ECMM Report, Ex. Z1178.1; Letter, Ex. Z1174.
[1509] ECMM Report, Ex. Z1259.
[1510] Witness W, T. 10902-03. ECMM Report, Ex. D192/1. However, the destruction at Kopjari was not on the scale of that at Stupni Do: Gen. Sir Martin Garrod, T. 13588-92.
[1511] The above account of the village is from the evidence of Witness W, T. 10889-906; Witness AI, T. 14531; Gen. Sir Martin Garrod, T. 13588. *See* Annex VI 7.
[1512] Rolf Weckesser, T. 9051-52.

741. According to the Vare{ TO Commander trenches were dug in August 1993 to protect the civilian population against the HVO; in October 1993 the local TO unit in Stupni Do was 50 men strong, armed with 40 rifles (majority for hunting), a mortar, hand-held rocket launcher and a limited quantity of ammunition. The unit had no military training: most wore civilian clothing. Additionally, on 17 October six members of this unit were arrested and detained.[1513]

742. In Stupni Do, there were rumours of attack in revenge for the attack on Kopjari (the HVO chief in Vare{, Pej~inovi}, having threatened to attack Muslim villages if Vare{ municipality was attacked by the ABiH).[1514] Some efforts were made towards the defence of the village, the digging of shelters was organised and preparations were made for medical assistance. On 22 October 1993 the Vare{ War Presidency ordered the evacuation of the village but the inhabitants declined to go.[1515] That evening the Commander of the Vare{ TO received information that an attack was being planned on the village.[1516]

743. Survivors of the attack on the village gave graphic accounts of what happened. Witness W heard small arms fire, followed by artillery fire. He sent his family to the basement while he stayed in a trench. From there he could see that the attack came from various locations and he could hear the HVO soldiers yelling: they were wearing camouflage and black uniforms (the witness later found HVO and HOS patches).[1517] He tried to defend the village as much as possible but after two hours he told his family and others hiding in the basement to hide in the woods as the defence lines were breaking. His father remained in the house and was killed. The witness hid in a nearby wood and from there he saw that all the houses were on fire. In the evening he returned to his house which had burned down completely.[1518]

744. Two international witnesses gave evidence of what they found in the village in the aftermath of the attack. The first, Rolf Weckesser, was an ECMM monitor who tried to get to the village on the morning after the attack but found the HVO blocking the road and refusing entry: the soldiers appeared to be drunk and were yelling and said: "We did not like … this job, but we had to do it, and we do not like our leaders".[1519] On 27 October 1993the witness finally succeeded in getting access to Stupni Do with the assistance of the local battalion of UNPROFOR ("Nordbat"). He

[1513] Ekrem Mahmutovi}, T. 3280-81.
[1514] Witness W, T. 10902-03.
[1515] Ekrem Mahmutovi}, T. 3285.
[1516] Ekrem Mahmutovi}, T. 3287.
[1517] Witness W, T. 10904-07.
[1518] Witness W, T. 10907-08.
[1519] Rolf Weckesser, T. 9048-51.

found a scene of complete destruction with the houses still smouldering and about 20 bodies burnt beyond recognition, some of them the bodies of children.[1520] There were no indications of fighting.

745. Major (then Captain) Mark Bower, a Britbat Liaison Officer, also visited the village on 27 October 1993 and found it totally destroyed.[1521] He saw the bodies of three women who had been shot in a cellar:[1522] it appeared that one woman had had her throat cut and the other two had been stabbed and shot.[1523]

746. Of the 38 dead as the result of the attack on Stupni Do, five or six were soldiers and the rest were civilians.[1524]

747. Witness CW1 gave evidence from the point of view of the HVO. He said that after the attack on Kopjari and Muslim attacks in Vare{, the local HVO Brigade Commander sought assistance. Mate Boban, General Praljak and General Petkovi} consulted together and agreed to send Ivica Raji} to see what the situation was.[1525] On 23 October 1993 Raji} reported to Kordi}, General Petkovi} and Bla{ki} that he had led an attack on Stupni Do and Bogo{ (a nearby hill): a large number of MOS men and some civilians were killed.[1526] In a report to Mate Boban, dated 31 October 1993, Raji} stated that the village of Stupni Do had to be "cleansed" to prevent the unobstructed entry of MOS into Vare{ and the action was carried out by the Apostoli and Maturice: the MOS in the village had been reinforced "as shown by the fact that two of our best soldiers were killed and ten wounded". Raji} added that "the well-known impression of Stupni Do … was a direct consequence of the killing and wounding of our troops, about which objectively nothing could have been done in the course of the action".[1527]

748. The defence case is that excesses were committed by troops in Stupni Do but that the village was defended and (despite notice of an attack) the civilians were not evacuated. Thus, a local ABiH commander gave evidence that the "local unit in Stupni Do" had available to it a variety of hunting rifles, automatic weapons, semi-automatic weapons, a mortar and a rocket launcher; he estimated a total of 40 rifles.[1528]. Estimates of the number of rounds available varied from 80-120 rounds per rifle.[1529] In addition to this, the defence forces in Stupni Do had constructed trench emplacements

[1520] Ex. Z1296.1 is an article from Newsweek with a picture of the witness with the body of a person who looks as if he has been stabbed in the neck.
[1521] Major Mark Bower, T. 9225-28; Ex. Z.2048.2.
[1522] Ex. Z2048.5, .6, .7, .8.
[1523] Major Mark Bower, T. 9228-30.
[1524] Ekrem Mahmutovi}, T. 3375-76; List, Ex. Z2047; Ex. Z2047.1-3 (death certificates and autopsy reports).
[1525] T. 26782.
[1526] Ex. Z1257.3.
[1527] Ex. Z1279.2.
[1528] Ekrem Mahmutovi}, T. 3280; T. 3355.
[1529] Ex. D31/1, p. 9; T. 3281; T. 10925.

in August and September of 1993 to protect themselves from a possible HVO assault.[1530] When that assault finally came, according to Witness W, the ABiH combatants held the HVO at bay for "a couple of hours".[1531] Lt. Kre{imir Božic, a member of the Bobovac Brigade staff, gave evidence that Stupni Do was defended because of its strategic significance, both against the Serbs and against the HVO.[1532]

749. As to this allegation Witness AI gave evidence. He said that there were about 35 members of the TO in Stupni Do, mainly armed with hunting rifles but also having three M48 rifles and three semi-automatic rifles. Weapons were passed on when guard shifts changed. On 23 October 1993 six men from Stupni Do were in HVO detention, having been arrested at an HVO checkpoint several days before (as mentioned earlier). This evidence was supported by that given by Colonel Stutt, a Canadian officer and member of the ECMM, who said that he was surprised because the village was only loosely protected by six ABiH soldiers when he had visited it a week before.[1533] Stupni Do was a loosely organised, well-fed village; there was no sign of a military build up, fortification or any sign of artillery. As a result the witness had a great deal of difficulty in believing that the HVO were under threat from the village as HVO Vare{ claimed and as reported on 25 October.[1534]

750. There was also some suggestion that the fighting in Stupni Do was as a result of a dispute over smuggling.[1535] However, the Trial Chamber finds that the attack on Stupni Do was a concerted attack by the HVO upon the village, with a view to removing the Muslim population. Whatever the immediate motive, it was part of the HVO offensive against the Muslim population of Central Bosnia and the result was a massacre. Some defence was offered but there was no justification for the attack. The underlying offences in relation to Counts 7 – 13 are accordingly established in relation to Stupni Do.

751. When General Sir Martin Garrod (an ECMM monitor and Head of the Zenica Regional Centre), questioned Dario Kordi} about the events in Stupni Do, the latter said that he had immediately telephoned General Petkovi} in Kiseljak who had told him that nothing bad had happened, a lot of houses were burning, a lot of soldiers in and out of uniform had been killed but most civilians had moved out and were now in Vare{. Kordi} said Muslim allegations had to be checked and they were making excuses for their attack on Kopjari while accusing the HVO of the

[1530] Witness W, T. 10932-33; Ekrem Mahmutovi}, T. 3414; Pavao Vidovic, T. 22148.
[1531] T. 10907.
[1532] T. 22258-60.
[1533] Report, Ex. Z1254.1; Col. Stutt, T. 15152.
[1534] Report, Ex. Z1263.1; Col. Stutt, T. 15155-56.
[1535] ECMM Report, Ex. Z1419. Gen. Sir Martin Garrod, T. 13593-96 and Col. Stutt, T. 15201-03.

attack on Stupni Do and "speaking as a soldier and a human being", he severely condemned atrocities committed by any side.[1536] At a subsequent meeting Kordi} told Sir Martin Garrod that some houses had been burned and some people had been killed but he could not believe the HVO would deliberately kill civilians: suitable action would be taken after "the inquiry" was completed and they would not protect anyone.[1537] Sir Martin Garrod said in evidence that he knew of no inquiry or report.[1538] However, as a result of the events in Stupni Do, Ivica Raji} was subsequently removed as commander in Kiseljak on the instructions of General Petkovi}. (According to Colonel Stutt, Dario Kordi} told him that Raji} was being replaced. In cross-examination, the witness said that he knew Kordi} announced that Raji} was to be replaced although Kordi} might have said that Petkovi} had replaced Raji}.)[1539]

752. There can be no dispute, whatever may be contended about the circumstances, that Ivica Raji} and his Apostoli and Maturice troops from Kiseljak were responsible for the attack on Stupni Do. (Thus it is the prosecution case that only senior political figures from Vare{ were removed from their posts and the HVO leadership protected Ivica Raji} who soon re-emerged.)[1540] The prosecution case against Dario Kordi} is that his responsibility for the Stupni Do massacre may be inferred from (a) his position as political leader in Central Bosnia; (b) his connections with Vare{; (c) the fact that the troops went from Kiseljak which was under Kordi}'s control (and Raji} must have had superior authority or approval); and (d) the fact that the events in Vare{ mirrored those in Central Bosnia.[1541]

753. The Trial Chamber does not accept the prosecution case on this topic and finds that the evidence is insufficient to draw the inferences on which the Prosecution relies. Kordi}'s connections with Vare{ were tenuous and the evidence does not establish that he was in control of Kiseljak where the troops came from. The fact that Kordi} was the leading political figure in Central Bosnia does not, of itself, establish that Kordi} was involved in this offence. The Trial Chamber finds that Kordi}'s influence and authority which were concentrated in the La{va Valley did not extend to Stupni Do which was thus outside his sphere of authority and the attack on the village was not part of any common plan or design to which he was party.

[1536] Report, Ex. Z1263.1.
[1537] Report, Ex. Z1284.1.
[1538] T. 13510-11.
[1539] T. 15160-61, 15213-15.
[1540] Prosecution Final Brief, para. 403. As an example of Raji}'s "re-emergence" the ECMM reported on 22 November 1993 that the HVO Kiseljak was commanded, for the time being, by somebody else but that "Ivica Raji} remains in location as an 'adviser'": Ex. Z1315.
[1541] Prosecution Final Brief, para. 404.

6. Novi Travnik and Stari Vitez

754. The final attack, which is the subject of Counts 3 – 4, is that on Novi Travnik in October 1993. On 7 October 1993 the HVO shelled Novi Travnik in an area where there were no military facilities: two children were killed and four wounded, together with two other civilians and several soldiers.[1542] [A shell fired by the HVO hit a building and killed 10 or 11 civilians.] Between June 1993 and February 1994 there was constant sniper fire in the town which killed or wounded 78 people. Although deplorable and a matter for consideration under Count 1 (persecution), it would appear that the offences under Counts 3 and 4 relating to this locality are not made out.

755. In a similar category is the Muslim enclave of Stari Vitez, which was under siege until the Washington Accords in February 1994 and subject to constant shelling and a coordinated sniping campaign aimed at intimidating the civilian population. Fifty-four people were killed during this period, 29 able-bodied men and the rest women, children and elderly people.[1543]

E. Final ABiH Offensives until Washington Agreement: November 1993 – March 1994

756. By October 1993 the ABiH offensives had become more frequent. Lieutenant-Colonel Carter arrived in Vitez as United Nations Civil Affairs Officer in November 1993. By that time the ABiH had captured Vare{[1544] and also Travnik, Kakanj and Bugojno. Large numbers of refugees had left these areas and there was much lawlessness. However, the weaponry of the HVO was clearly superior and they benefited from internal lines of communication. The ABiH could concentrate their forces only through light infantry and mortars and had limited use of mechanised and artillery weapons; also it was fighting on two fronts, whereas the HVO areas of control were in small pockets in Kiseljak, Vare{ and the La{va Valley, so they were able to move forces rapidly.[1545] The Vitez - Busova~a pocket was surrounded and there were ABiH attacks in September 1993, December 1993 (unsuccessful) and January 1994 (more successful). By now the HVO was on the defensive.[1546] The ABiH used house-clearance techniques, which resulted in the deaths of many Croat civilians.[1547] For instance, Witness Z gave evidence about the ABiH attack in January 1994. There was heavy fighting in the [anti}i area, blocking the main supply route through the village. The attack was led by an ABiH 3rd Corps Brigade and the Mujahedin, who apparently waged war without regard for human life, including their own. The Croats and also the witness were terrified

[1542] Witness C, T. 858-861.
[1543] Nihad Rebihi}, T. 8383-86; Witness TW10, *Bla{ki}* T. 1222; Major Mark Bower, T. 9181-84.
[1544] On 2 November 1993 the ABiH attacked the town: the HVO put up no resistance and abandoned it: Gen. Sir Martin Garrod, T. 13519-20.
[1545] Lt.-Col. Carter, T. 9620-21.
[1546] Lt.-Col. Carter, T. 9659-62.
[1547] Gen. Sir Martin Garrod, T. 13555-57.

of them. There were two brigades of Mujahedin: the 37th Brigade, based in Travnik and the more fundamentalist 7th Mountain Brigade, based in Gu~a Gora, behind the monastery.[1548]

757. In December 1993 the Croat forces sustained substantial losses in defending Križan~evo Selo (Dubravica) and Mario ^erkez was dismissed as Brigade Commander. According to Anto Breljas he was deprived of his command after the ABiH infiltrated HVO positions and killed 32 soldiers.[1549]

758. Faced with this situation a Croat tactic was to threaten to blow up the Vitezit ammunition factory if the Vitez pocket was in danger of falling to the Muslims. This would have had devastating consequences for the surrounding area and population (including the Britbat camp nearby). Such a threat was made by Colonel Bla{ki} on 22 November 1993,[1550] by Dario Kordi} on 16 November,[1551] and by Bla{ki} again on television on 3 January.[1552]

759. The war between the Muslims and Croats was brought to an end by the Washington Agreements (or Accords), which were concluded between 28 February and 1 March 1994.

760. It is the prosecution case that throughout this period the continuing influence and power of Dario Kordi} was demonstrated:

(a) On 31 October 1993 a memo was sent to Mate Boban and others, including "Remote Office of the HR H-B President – Attention Mr. Dario Kordi}" and others, from Anto Pulji}, reporting on the work of the Vitez Defence Office and complaining about its Chief, Marjan Skopljak.[1553] On 3 November the ECMM was informed by a Bosnian Croat politician that Boban was President of the HR H-B and Kordi} the Vice-President.[1554]

(b) On 18 November 1993 ECMM reported a meeting with Colonel Bla{ki} at which he said that Dario Kordi} remained Boban's Vice-President for Central Bosnia. The report also states that all sources say the same thing: "Valenta is finished, but Kordi} remains the major HVO influence in Middle Bosnia".[1555]

[1548] Witness Z, T. 11120-22, 11184. On 17 November 1993 a report was issued on the murder of two priests in the Fojnica monastery on 13 November: Ex. Z1309.1 and Ex. Z1313.1.
[1549] T. 11729.
[1550] An ITN TV broadcast, 22 November 1993: video recording, Ex. Z1315.5.
[1551] Col. Peter Williams, T. 13365.
[1552] Witness Z, T. 11139-40.
[1553] Ex. Z1279.
[1554] Report, Ex. Z1284.2.
[1555] Ex. Z1311.

(c) On about 1 December 1993 Colonel Peter Williams (Commanding Officer 1st Battalion Coldstream Guards, which then formed Britbat) asked Dario Kordi} to allow the evacuation of two injured Muslim children from Stari Vitez hospital to Zenica. According to Colonel Williams' evidence, the accused refused to allow the children to go because (among other reasons) it would involve the crossing of an international border. The Defence disputed that the accused made the remark attributed to him but the witness said that he was positive that Kordi} said that it would involve crossing an international border: it was such a remarkable statement that it stuck in his mind and chilled him.[1556] The Trial Chamber accepts the witness's evidence: as he said, it was an exceptional statement and one that he was unlikely to forget.

(d) In the same month, Anto Breljas, the former member of the Vitezovi, met Dario Kordi} in the Impregnaciza factory when the accused, according to Mr. Breljas, personally led the defence of Krizancevo Selo, against an ABiH attack (in the absence of Bla{ki} who was in Mostar). The witness noticed the accused and the local area commander looking at a map together.[1557]

(e) On 15 December 1993 a meeting took place concerned with the route proposed for a convoy of 200 trucks put together by Muslims and Croats and known as the "White Road Convoy". Lt.-Colonel Carter was present as were Kordi} and Bla{ki}, who insisted that the convoy take the mountain road to Zenica instead of the main road in the valley. (In cross-examination the witness accepted that Kordi} was concerned that arms and ammunition were being smuggled: as it so turned out when explosives were found on the convoy.) Dealing with their conduct at the meeting, the witness said that Kordi} and Bla{ki} led the discussion equally but their body language suggested that Bla{ki} deferred to the accused.[1558]

(f) The Vitez Duty Officer's combat report for 11 January 1994, 06.00, describes the firing of artillery, including improvised bombs made out of fire extinguishers, in the Vitez area during the previous nights and says that: "On Colonel Kordi}'s orders, two fire extinguishers were fired deep into Kru{~ica".[1559]

[1556] T. 13382-83, 13429-31.
[1557] T. 11707-08. On the other hand, a defence witness, Anto Pojavnik, claimed that Kordi} took no part in the fighting at Buhine Ku}e: T. 25608.
[1558] T. 9630-34, 9686-87.
[1559] Ex. Z1356.4.

(g) In a report dated 30 January 1994 Sir Martin Garrod described a meeting between himself and Dario Kordi}. The witness's note states that "Kordi} introduced himself as the Deputy Head of Staff of the HVO and thus, he said, he came third in the order of military seniority – i.e. below Roso and Petkovi}".[1560] [This evidence is confirmed by an order appointing Colonel Dario Kordi} as Assistant Chief of the Main Staff of the HR H-B HVO[1561] and by a series of letters from Anto Pulji}, Chief of the HR H-B Defence Administration in Travnik, dated late January-early February, in which he refers to "Colonel Dario Kordi}" as "Assistant Chief of the Main Staff" of the HR H-B.[1562] Bla{ki} also used a similar title for Kordi} in an order of 11 February.][1563]

(h) On 21 February 1994 representatives of the United Nations civil and military authorities in Central Bosnia presented a letter of protest to the Croat authorities about the levels of violence and the restrictions on movement of United Nations agencies in the area.[1564] At the meeting, according to the evidence of Colonel Williams, he again asked for the two injured Muslim children to be evacuated immediately from Stari Vitez: Dario Kordi} responded that this was impossible. Sir Martin Garrod tried one last time to raise the issue with the accused who said "if these two Muslim children are so important to you, you can have them".[1565]

761. The Trial Chamber accepts that the evidence above demonstrates that Dario Kordi}, while exercising power politically and becoming Vice-President of the HR H-B, also exercised military power in controlling movements on the roads, threatening to blow up the Vitezit factory, refusing to allow children to leave Stari Vitez, involving himself in the defence of Križen~evo Selo and, finally, introducing himself as the third in order of military seniority.

F. Dario Kordi}'s Role in the HVO Offensives in April – October 1993

762. In assessing the role of Dario Kordi}, the following findings by the Trial Chamber, and evidence, must be taken into account: (a) the findings about his position before the conflict and assumption of rank of Colonel; (b) the findings about his role in Busova~a in the January 1993 conflict; (c) the findings about his role in Vitez in April 1993; (d) the finding of Kordi}'s authority

[1560] Ex. Z1364.6.
[1561] Ex. Z1342.4. Witness CW1 in his evidence claimed that the document was a forgery and that Dario Kordi} was never an Assistant Chief: T. 26817-18.
[1562] Ex. Z1363, 1363.1, 1365.2, 1369, 1388.1. In his evidence Anto Pulji} said that he only used the title for Kordi} because it was used in the media: T. 22691. An explanation which the Trial Chamber does not accept.
[1563] Ex. Z1371. Witness DL in his evidence claimed that this order did not correspond to a Croatian document; T. 22917-19. Another explanation which is not accepted by the Trial Chamber.
[1564] Letter, Ex. Z1383.2.

over roads; (e) his presence in Kiseljak and Vitez during the summer of 1993; (f) his continuing power and influence at the end of the war, as found above.

763. It is also the prosecution case that inferences may be drawn about the role of Dario Kordi}, and the way in which political and military authority were combined, from the way in which the accused was treated and regarded by the international observers in Central Bosnia at the relevant time. These witnesses came to much the same conclusions.

764. Thus, Colonel Stewart's evidence was that Kordi}, having started as a political controller, became increasingly involved in the military situation. (However, the witness found that the HVO soldiers did not have much time for Kordi} and considered him inept as a military commander:[1566] a view which was supported by Brigadier Grube{i}, who said that Kordi}'s military interventions were the subject of laughter.[1567]) As a student of the Soviet Army during his time in the British Army it was not a surprise to the witness that there was a military commander and a political commander side-by-side since this was how the JNA was organised.[1568] This evidence was supported by that of Lt. Colonel Watters (then Colonel Stewart's Second in Command) who said that it was important to know the chain of command of the indigenous forces in order to know where to interdict to carry out the Battalion's mission and the understanding was that there was a political chain of command focused on Kordi} and a military chain of command focused on Bla{ki}.[1569] It was also supported by the evidence of Brigadier Duncan (Colonel Stewart's successor) that there was a clear link between the military and political: while operations were Bla{ki}'s task, planning was Kordi}'s task.[1570] Indeed, a comment appears in a Milinfosum of the same period: "that the HDZ controls the actions of the HVO is becoming increasingly apparent".[1571] (This comment is reinforced by the minutes of a meeting of HVO and HDZ municipal representatives and military commanders, which states, under the heading of Military Organisation, that "individuals must be appointed to key posts after consultation with the HDZ".)[1572] Colonel Williams noted that, in the presence of Kordi}, Bla{ki} played a deferential

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[1565] T. 13382-85.
[1566] The witness said that the sources of information open to him from which he drew his conclusions included his four to five encounters with Dario Kordi} himself, information from patrols and interpreters and information from the ABiH, HVO and local inhabitants. T. 12285.
[1567] Brigadier Grube{i}, T. 28041.
[1568] T. 12298-300.
[1569] T. 5689-91.
[1570] T. 9720-28. The witness was commenting on an "Orbat" (order of battle) drawn up by his Intelligence Officer in June 1993, which included the HDZ with a link to the CBOZ: Ex. Z2653.
[1571] Ex. Z969.
[1572] Ex. Z631. The meeting was held in Travnik on 8 April 1993.

role and looked up to Kordi} as if he were in charge. He also noted that Kordi} always sat in the centre at meetings, demonstrating the fact that he was in charge.[1573]

765. Similarly, Payam Akhavan, the UNHCR investigator, gave evidence of his view, based on discussions with them, that Kordi} was the "mastermind of policies in the region and Bla{ki} the executor".[1574] Lt.-Colonel Carter said that there was a blurring of roles between the HVO and the HDZ and the political party leader tended to become the military leader with the same thing happening at the lower level in the CBOZ: the old Soviet system applied with the political officer ensuring that the political direction is executed through the military chain of command.[1575]

766. The ECMM shared the UNPROFOR view that the military authority was completely subordinate to the political, according to Witness AA:[1576] the two were intertwined according to General Sir Martin Garrod.[1577] As for Kordi}, Witness AA said that his role appeared to grow during 1993.[1578] Another witness said that for the monitors it was sufficient that Kordi} seemed to exercise authority rather than to know his exact title.[1579]

767. The Prosecution claims it cannot be denied that Kordi} had influence and control over the central military figures in Central Bosnia.[1580] However, it is for the Trial Chamber to draw its own conclusions from the evidence in the trial and therefore the views of witnesses can only have limited weight. On the other hand, their observations do lend force to the prosecution case that (as might be expected) the exercise of military power was subject to a political authority. As the Prosecution puts it, "Bla{ki} could not do his job alone, without Kordi} 'giving the green light'".[1581] These observations also confirm that Kordi} wielded the leading political authority in Central Bosnia.

768. Evidence to support these findings was given from within the HVO:

(a) Anto Breljas said that Darko Kraljevi} (Commander of the Vitezovi) carried out orders which only Dario Kordi} could have conceived: while Kordi} could not issue orders

[1573] T. 13352-54. This was also his place at press conferences, shown, for instance, in video recordings of such conferences in March and April 1993: Ex. Z562, Z665.
[1574] Payam Akhavan, T. 5951.
[1575] Lt.-Col. Carter, T. 9624-29.
[1576] Witness AA, T. 11339-40.
[1577] Gen. Sir Martin Garrod, T. 13496.
[1578] Witness AA, T. 11319-21, 11338-40.
[1579] Mr. Brix Andersen, Deputy Head of Mission, ECMM (T. 10807-09). In a valedictory despatch of 16 June 1993 (Ex. Z1065, para. 16), the witness said: "In the Novi Travnik/Vitez/Busova~a area HVO preventing the movement of relief convoys answer only to Dario Kordi}, Minister for Herceg-Bosna in the HVO Government, political leader, effective military commander in Busova~a". The same paragraph also asserts that Kordi} was a cousin of Mate Boban; an assertion, once relied on by the Prosecution, but subsequently disproved.
[1580] Prosecution Final Brief, para. 250.

to Kraljevi}, he could make suggestions with which Kraljevi} would agree. Kraljevi} himself never conceived an operation or organised one strategically. While Bla{ki} was the superior of ^erkez and Kraljevi}, Kordi} was superior to both of them: asked if he had any documents to prove this, the witness said that there were no documents because Kordi} produced none. Indeed, he said that until about 15 July 1993 no one issued paper orders: orders were given verbally.[1582]

(b) Witness AS, a member of the HVO military police, said that Dario Kordi} often went to HVO headquarters in the Hotel Vitez when the witness was on guard. The members of the headquarters staff seemed to be afraid of him and there were signs of panic when the accused came to the hotel. Colonel Bla{ki} would come out of his office to greet the accused. Once, Kordi} was angry with Bla{ki} about an ABiH convoy and said words to the effect: "How dare you let '*Balijas*' go through Vitez!".[1583] (The Defence disputes that there was an incident when Kordi} was angry with Bla{ki}.)[1584]

(c) In an order from the Travnik Defence Department, dated 20 September 1993 and signed by the accused, he is referred to as "Colonel Dario Kordi}, Head of the Forward Command Post of the Office of the President of the Republic".[1585] Kordi} is referred to in the same way in another document from the Department, dated 19 October 1993.[1586]

769. Finally, it is submitted that some inference may be drawn about the accused's military and leadership role from events after the war. From June 1994 Dario Kordi} was referred to as Brigadier-General[1587] and in July 1994 was elected President of HDZ-BiH. Furthermore, a proposal, dated 21 October 1996, for a Croatian military decoration for Mr. Kordi} was submitted

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[1581] *Ibid*.
[1582] T. 11710-11, 11775-77. Further evidence was given linking Dario Kordi} with paramilitary groups. For instance, in June 1993 the Intelligence Officer of Britbat reported intelligence that the Jokers came under the direct control of Dario Kordi} and local control of Tihomir Bla{ki}: Ex. Z881.1; Brig. Duncan, T. 9729-32, 10456-58. Witness AD, an ECMM Monitor, said he had seen armed groups in similar uniforms with a coherence about them, known as the Jokers and the Apostoli, and the person with whom they were most often connected was Dario Kordi}: T. 13014-20. Witness AA gave evidence on the same lines, saying that Kordi} seemed to have power and authority over all groups within the Croatian community, including paramilitary groups: T. 11322-32.
[1583] T. 16361-65.
[1584] T. 16407-08.
[1585] Ex. Z1209.
[1586] Ex. Z1253. A defence witness, Anto Pulji}, said that he had picked up this title for Kordi} from the media and adopted it: of the first document the witness said that he had also drafted it in this way so that it would have greater authority: T. 22687-92, 22724-28. However, in a report from Kordi} and Ignac Ko{troman of the "Branch office of the President of the HR H-B", 7 December 1993 to Mate Boban in Grude on the situation in Central Bosnia, they complain (p. 6) that they have encountered a series of obstacles, including hypocritical questions about their status and legitimacy: they have given themselves the right to call themselves officials of the Branch Office of the President of the HR H-B in Busova~a and ask for his instructions: Ex. D343/1/18.
[1587] ECMM Report, Ex. Z1429.1. In 1995 the accused signed for the insignia of the rank of Brigadier: Ex. Z1466.2.

by the Busova~a Defence Office. The proposal states that the award (the second-highest in the Croatian army) would be for his outstanding contribution to the formation of HVO units and the creation of war strategy and "his great success in leading and commanding the [HVO] units during the Muslim aggression against the La{va Valley and the wider region. During the bloodiest moments of the ordeal of the Croats in Central Bosnia, he played a key role in all the battles and was a source of hope and faith in their survival in the areas of Bosnia and Herzegovina inhabited by Croats for centuries".[1588]

770. On the other hand, Witness CW1, in his evidence, said that there were no political officers or commissars in the HVO and no dual chain of command. Until February 1994 Mate Boban was Commander-in-Chief and orders followed the chain of command from him. However, Mate Boban never visited Central Bosnia in 1993: nor did any other politician or official. Kordi} had no military role in Central Bosnia and no command of any unit in the CBOZ.[1589] However, unlike other politicians who were afraid of shells and hid in cellars, Kordi} was not afraid and, as a result, it was normal for him to be seen with Bla{ki} and the other commanders.[1590]

771. As for the special purpose units, including the Vitezovi and Jokers, Witness CW1 said that they were linked to the main staff, but could be subordinated to a particular commander to carry out assignments, which was so in the case of the Vitezovi who were subordinated to the CBOZ: he said that civilians could not command the military police or HVO units.[1591]

772. The Prosecution submits that the fact that Dario Kordi} maintained the rank of Colonel during the war (and was promoted to Brigadier after it) was because he was exercising military power.[1592] However, the Trial Chamber finds this indicates a military role, but no more.

[1588] Ex. Z1477; list of honours Ex. Z1477.6: the honour was not awarded.
[1589] Witness CW1, T. 26677.
[1590] Witness CW1, T. 26733.
[1591] Witness CW1, transcript of evidence in *Bla{ki}* trial, T. 24169-71.
[1592] Prosecution Final Brief, para. 115.

V. IMPRISONMENT AND INHUMAN TREATMENT

773. This part of the Judgement deals with the various detention facilities which are the subject of Counts 21 – 36 of the Indictment. The prosecution case is that the HVO, throughout 1993, unlawfully imprisoned Bosnian Muslims in these facilities; and that while so detained the prisoners were subjected to various forms of inhuman treatment, used as hostages and human shields and forced to dig trenches. The discussion proceeds in the order in which the facilities are listed in the Indictment. The first six facilities (Kaonik prison, the Vitez Cinema and the Chess Club, the Veterinary Station, the SDK offices and the Dubravica elementary school) are common to the counts against both defendants: the last five facilities (the municipal building and barracks in Kiseljak, Rotilj village, Nova Trgovina and the silos) relate only to the counts against Dario Kordi}. The evidence is also relevant to the counts alleging persecution (Counts 1 and 2) as described in pararaphs 37(d), (g) and (h) and 39(d), (f) and (g) of the Indictment.

A. The Facilities in Busova~a and Vitez

1. Kaonik Camp

774. The most substantial facility was at Kaonik camp, five kilometres north of Busova~a.[1593] Muslim civilians and TO members were detained in the camp on two occasions: first, after the HVO attack on the municipality in January 1993 and, secondly, after the attacks in the La{va Valley in April 1993. For instance, in May 1993, 79 detainees were listed.[1594] The guards wore camouflage uniforms with HVO patches. There was much evidence of the poor conditions in the camp and the mistreatment of prisoners: the cells were small and over-crowded, hygiene was very poor and the food was inadequate.[1595] The detainees were subjected to beatings: one witness described how he could hear people being beaten and crying out day in and day out;[1596] another described how he was beaten severely for three and a half hours and suffered a broken jaw as a result.[1597] Sounds of screams were played on the loudspeakers at night.[1598]

[1593] Aerial photo, Ex. Z1862.1. Witness J, T. 4536.
[1594] List, 10 May 1993, Ex. Z928.
[1595] Witness B, T. 479-480; Witness G, T. 3909-12; Witness I, T. 4209-16; Witness J, T. 4539; Witness H, T. 4097-98; Dan Damon, T. 6670-71.
[1596] Edib Zlotrg, T. 1685-86: this witness lost 30 kilos in weight during his detention.
[1597] Witness J, T. 4548-52. Witness I was beaten at night and still suffers from the effects: T. 4216; Enes [urkovic could hear screams at night from the cells in which Arab prisoners were held: T. 4389-92, 4467.
[1598] Witness G, T. 3909-12.

775. Evidence was given that the HVO forced detainees from Kaonik to dig trenches at various places. Witness I said that he was among those taken trench-digging from Kaonik and that about 26 of those taken during his time there did not return.[1599] Witness H's son was one of those selected in April 1993 and did not return: the witness himself had also to go trench-digging.[1600] Witness AR was beaten and his ribs broken when he was trench-digging: he saw others being beaten and said that the prisoners were denied food and water and two of them were killed.[1601] Other witnesses gave evidence about this trench-digging, including international observers.[1602]

776. The Kordi} defence case is that Kaonik was a military prison throughout the war.[1603] In January several hundred Muslim men were detained,[1604] those over 50 being released the next day[1605] and most after 10 days.[1606] Some detainees were members of MOS:[1607] some were civilians and some were armed members of the TO who posed a security threat and were arrested pre-emptively.[1608] Only a small number of cells were available in the prison and the existing cells became overcrowded.[1609] The remaining prisoners were placed in hangars. Because there was no heat and it was winter, the hangars were cold.[1610] Despite inadequate accommodation, there is no evidence that the Kaonik prisoners were denied food or basic sanitary necessities. On the contrary, prisoners were free to perform their religious rituals,[1611] they could see a doctor in Busova~a, and some said that they were treated relatively well while imprisoned.[1612] Furthermore, with respect to

[1599] Witness I, T. 4204-08.
[1600] T. 4092-95, 4103-09.
[1601] T. 16307-10.
[1602] Witness J, T. 4564-79; Edib Zlotrg, T. 1673-76; Major Phillip Jennings saw 10 to 15 Muslims, two or three of whom were women, digging trenches south of the T-junction at Kaonik on approximately 28 January 1993. Four HVO soldiers in camouflage, armed with Kalashnikovs, were with them: T. 8872-73; Col. Hendrik Morsink saw civilians digging trenches near Jelinak: T. 8043. Witness AS, a member of the HVO, saw prisoners digging trenches in the area of Puti{: T. 16358. Witness T said that in 1993 he and a group of around 160 Muslims were compelled to dig trenches around Lon~ari and two were killed: T. 9474.
[1603] Witness G, T. 3985; T. 3909; McLeod, T. 4715 (Kaonik was a military prison under military jurisdiction); Dan Damon, T. 6671; Witness DI, T. 19840.
[1604] Witness T, T. 9468 (380 men were detained for three days); Jennings, T. 8869; Witness A, T. 366 (initially 500 but once men over 50 were released the next day only 400 remained); Witness AR, T. 16306 (the number over several days rose to 250); Witness DI, T. 19840; Witness O, T. 7200; Witness J, T. 4535; Witness AG, T. 14144; Witness T, T. 9468.
[1605] Witness A, T. 366.
[1606] Witness T, T. 9468; Witness DH, T. 19747; Ex. Z435.
[1607] Witness AR, T. 16318-19; Witness DH, T. 19780-81; Witness DG, T. 19692-93.
[1608] Witness AR, T. 16318; Brig. F. Naki}, T. 17443; Witness O, T. 7150-51; Z. Mari}, T. 20103 (Muslim men were arrested for "security reasons").
[1609] Witness O, T. 7151; Ex. D356/1, Tab. 1. Order of Col. Bla{ki}, dated 14 November 1992, to the Commander of the HVO HQs in Busova~a to build 15 cells for the purposes of the military prison. Witness O, T. 7151.
[1610] Witness J, T. 4540.
[1611] Witness AR, T. 16319.
[1612] I. Nuhagi}, T. 13155; Witness O, T. 7200.

the period of detention in April-May 1993, the Defence asserts that there is no evidence of widespread mistreatment of detainees during the April-May imprisonment.[1613]

2. Vitez Cinema and Chess Club

777. The Vitez Cinema is part of a complex variously called "the Cinema", "Cultural Centre" or "Workers' University". During the war this complex housed the headquarters of the Vite{ka Brigade. Parts of it (first the basement, then the cinema hall) were also used after 16 April 1993, for the detention of some 200-300 Muslim men of all ages, who had been rounded up.[1614] The defence case is that these men were being detained for their own safety and were not mistreated. On the other hand, the prosecution case is that the detention was unlawful and that, while so confined, the men were subject to cruel treatment, forced to dig trenches and used as hostages and human shields. The evidence of prosecution witnesses was that the complex was guarded by HVO soldiers in uniform, some being members of the military police.[1615] Prisoners were beaten during their stay.[1616] Prisoners were taken out to dig trenches and some did not return.[1617]

778. Witness S, a doctor, treated civilians (men and women) detained in the cinema; some of whom had sustained gunshot wounds while being forced to dig trenches.[1618] The witness said she was then ordered to join a Commission to check the health of the detainees and to prepare a list of those to be released on medical grounds. The witness saw around 50 prisoners, some of them elderly, and in total the Commission saw about 100-150. A local Vitez television crew was present and was told by Dr. Thibolt, the Croat manager of the centre, that nobody had complained of

[1613] Out of eight people who testified that they were detained in Kaonik during this period, only two claimed they were mistreated (*see*, for example, Witness G, T. 3912-13, 3951, 3911; K. Đidic, T. 4029-30; Witness H, T. 4088, 4090, 4092-93, 4096, 4097. Witness I, the only witness who claims to have been regularly beaten, was registered by the International Committee of the Red Cross ("ICRC") shortly after his imprisonment, and never complained of maltreatment to Red Cross representatives; Witness I, T. 4207, 4232, 4233: he also was driven by the Superintendent, personally, to receive medical assistance, T. 4234-35.

[1614] Witness AC, T. 12606. Witness AC, T. 12608-12. Kadir Đidi} was detained in the Cinema on 17 April 1993 and taken to the basement where he found his Muslim neighbours, men of between 17 and 65 years of age, in the boiler room. There was no space to lie down. Initially there was no food provided and the detainees were only able to go to the toilet in an adjacent corridor. After several days he was transferred to the cinema hall where conditions were slightly better: T. 4014-20. Ex. Z767; Ex. Z805; Ex. Z807 and Ex. Z807/1 are documents signed by Tihomir Bla{ki} regarding the treatment of detainees in Central Bosnia: T. 4019-22.

[1615] Witness L, T. 6900; Witness AC said that HVO military police guarded the cinema; T. 12593. Witness S identified the guards as all HVO soldiers; T. 7951.

[1616] Witness AC was severely beaten with wooden and metal objects just prior to his release on 16 May 1993: Witness AC, T. 12611.

[1617] Kadir Đidi}, T. 4022; Ex. Z2229-1; Witness L, T. 6865-66; Witness TW17 in his transcript evidence described how they were taken from the cinema to Piri}i and Kr~evine to dig trenches: in both locations a man was killed: Witness TW17, *Bla{ki}* T. 2701-05, 2714-18.

[1618] Witness S, T. 7938-39.

mistreatment: however, Witness S had the impression that the prisoners were terrified. One prisoner had a broken arm and another a broken jaw.[1619]

779. The Chess Club was in a building, not far from the Cinema. It was not used extensively for the purposes of detention. However, there was some prosecution evidence about it. Edib Zlotrg was detained there;[1620] as was Witness L who was beaten up and threatened with a knife by a guard.[1621] Witness G was also detained in the club and said that no visits were allowed there.[1622]

3. Vitez Veterinary Station

780. The prosecution case is that a detention centre was established in this station and was used for the first few days of the conflict in Vitez. Evidence was given by Fuad Ze}o, Director of the Station, who was taken there by HVO soldiers on the morning of 16 April, having been arrested in his home.[1623] He said that there were about 40 Muslims detained in the basement on his arrival and around 70 people were detained there at any one time: the guards did not provide the detainees with any food but the detainees' families could bring food for them. He also said that detainees were taken to dig trenches at Kru{}ica and that two were killed.[1624] After four days the detainees were taken to the Dubravica school. In the Veterinary Station the detainees could move around freely, make telephone calls and receive food from home.[1625]

4. The SDK Offices in Vitez

781. A third Vitez detention centre was established in the SDK building, a block of offices in Vitez. Detainees were kept there for about two weeks after 16 April 1993, before they were all transferred or released. Apart from the fact that there was no space to lie down, there were no allegations of mistreatment by prosecution witnesses: there was enough food and water, families were allowed to visit and there was access to a doctor.[1626] However, the detainees were taken to dig trenches. Mirsad Ahmi} was taken to dig for five days at Kratine, close to the front line where it was very dangerous: the detainees were threatened with an axe and had to work day and night.[1627]

782. The ^erkez defence case with regard to these facilities in Vitez was as follows. The majority of internees who gave evidence confirmed that where security conditions permitted, the

[1619] Witness S, T. 7939-52.
[1620] T. 1681.
[1621] T. 6869-70.
[1622] T. 3992.
[1623] Ex. Z2765 is a photo of the veterinary station; Fuad Ze}o, T. 6508-10.
[1624] T. 6516; Ex. Z2210.4, .5 are the death certificates.
[1625] Zdrako Zuljevi}, T. 24393-94.
[1626] Mirsad Ahmi}, T. 13824-25; Sulejman Kavazovi}, T. 7365-67.
[1627] T. 13796-802.

rules of detention were liberal. There is evidence that medical care was provided.[1628] Only one witness stated that he was physically attacked by an HVO soldier while interned in the Cinema complex and this was an isolated incident not reflecting a pattern of treatment.[1629] In the SDK the detainees were not ill-treated: they had medical treatment, food, clothes and cigarettes from home and could walk around the building; only one detainee was ill-treated by a guard.[1630]

5. Dubravica Elementary School

783. This school was an important centre for the detention of over 300 Muslims by the HVO between 16-30 April 1993. The facilities were poor and detainees were forced to dig trenches. Two prosecution witnesses, in particular, gave evidence about the school:

(i) When Fuad Ze}o was transferred from the Veterinary Station he and the other detainees (about 360 in all) were kept in the school gymnasium.[1631] Their needs were provided by their families who could bring food, drink and other necessities for them. However, some detainees were taken to dig trenches in Nadioci, Piri}i, Kuber, Tolovi}i and other locations.[1632] Some were killed and others wounded; some suffered physical mistreatment and humiliation while digging trenches.[1633] When the fighting came close to the school, the HVO soldiers told the detainees that they would be blown up along with the building.[1634] However, the detainees were released on 30 April 1993 and were told they could either stay in the Vitez municipality or leave.[1635]

(ii) Anto Breljas gave evidence that the Vitezovi took charge of the school on 16 April 1993. He confirmed that there were about 350 Muslim prisoners (men, women and children) in the school. Women and children were separated from the men; the former were kept in the classrooms and the latter in the gymnasium. Military prisoners were kept in the basement and 15 of them were killed. In the witness's opinion the conditions were appalling; in the gymnasium there was not enough air; there was inadequate food and no medical treatment. The detainees were mistreated and would be used as human shields and

[1628] Witness S, T. 7970-71, Ex. D20/2.
[1629] Witness AC, T. 12611.
[1630] Dragan ^ali}, T. 26576-77; Sulejman Causevic, T. 26182.
[1631] Ex. Z1625.1 is a video tape taken in the school, on which film Fuad Ze}o recognised the school and even the spot where he was detained. The mural on the wall with the words "Black Legion" is a drawing of the emblem of the Vitezovi; T. 6530. Dan Damon also filmed in Dubravica school: the footage shows symbols of Croat nationalism such as the word "Usta{a" on the walls: T. 6636. AbdulahAhmi} was also detained in Dubravica school: T. 3594-97.
[1632] These locations are marked on Ex. Z2767.
[1633] Fuad Ze}o, T. 6523-28.
[1634] Anto Breljas, T. 11725-26, gave evidence that on the orders of Darko Kraljevi}, explosives were placed around the school so that it could be blown up in the case of an ABiH attack: when the ABiH did attack on 20 April 1993 the attack ended in an ABiH withdrawal.

for trench-digging in the area near the school and Kula. This all led the witness to protest against the mistreatment of prisoners.[1636]

6. Hostages/Human Shields

784. Evidence was given that Muslim civilian prisoners were used as hostages:

(a) Prisoners from Ga}ice (247 civilians) were taken to the HVO headquarters in Hotel Vitez and kept there for some hours as hostages in case of ABiH shelling.[1637]

(b) Dr. Muhammad Mujezinovi} was asked by Mario ^erkez to set up a Commission from 300 detainees held in the basement of the Vitez cinema to call upon the ABiH to stop attacking or all prisoners held in Vitez would be killed.[1638]

(c) The detainees at the Dubravica school were told that the ground around the school had been mined and should the ABiH attack the detainees would be blown up along with the building.[1639]

(d) The people in the Stari Soliter building in Novi Travnik were prevented from leaving and were used as leverage by the HVO in negotiations;[1640] the same was true of the population of besieged Stari Vitez, according to Major Mark Bower.[1641]

785. The following witnesses gave evidence about being used as human shields:

(a) Witness T said he and others were used as human shields at Strane, Kula and Komari.[1642]

(b) Witness H said that Bosnian Muslim prisoners were required to dig trenches and carry ammunition on the front line: he believes they were being used as human shields.[1643]

[1635] Fuad Ze}o, T. 6530-32. The Defence called no evidence in relation to the conditions of detention in this facility.
[1636] T. 11717-24. On one occasion the witness received a cut-off ear from a member of the Vitezovi: T. 11724. Another prisoner, a judge from Travnik named Kemal Pori~anin, was beaten badly and died in detention: T. 11726-27.
[1637] Ex. Z1760-3, Ex. Z1770 are photos of the burned Muslim homes and Mekteb in Ga}ice.
[1638] Dr. Muhamed Mujezinovi}, T. 2199-2200; Witness G, T. 3902-03.
[1639] Fuad Ze}o, T. 6530; Anto Breljas, T. 11725-26.
[1640] Witness C, T. 827-829; Witness Q, T. 7697-99.
[1641] Major Mark Bower, T. 9199.
[1642] Witness T, T. 9474.
[1643] Witness H, T. 4109.

Five prisoners from Lon~ari were killed at Kuber while carrying ammunition for the HVO and 12 young men from Lon~ari are missing.[1644]

(c) Witness J was taken from Kaonik on 26 or 27 January 1993 with 15 other prisoners from Busova~a: 13 of them (excluding the witness but including his brother) were tied together with a rope and told they would be used as human shields at Strane. The witness's brother later told him that they had been used as human shields; for example, they were tied to a railroad bridge and used as human shields at Merdani. No one was killed.[1645]

(d) On 5 October 1993, in Novi Travnik, three ABiH soldiers, who were prisoners of the HVO, were forced to walk towards the ABiH line with mines attached to them: when they reached the vicinity of the ABiH positions the mines were activated.[1646]

(e) Three Muslim men were used as human shields by the HVO at Svinjarevo in order to force the defenders of the village to surrender. All three are missing.[1647]

(f) Witness AJ heard of people used as human shields at Gomionica and Kre{evo.[1648]

786. With respect to the allegations relating to trench-digging, the Kordi} defence case is as follows. As the conflict broke out, both the ABiH and the HVO were hastily building fortifications;[1649] and therefore it is no surprise that the HVO may have used some of the detained Muslims for trench-digging under an obligation on prisoners to carry out work.[1650] Brigadier Naki} gave evidence that the Busova~a Joint Commission investigated allegations relating to beatings and trench-digging. According to his evidence, the Commission visited the front lines but could find no evidence of crimes, indicating that any forced digging of trenches was limited to a few isolated incidents at the beginning of the war.[1651] In addition to the Joint Commission, the ICRC visited the prison.[1652] When two prisoners died while trench-digging, the matter fell under the jurisdiction of the military police and the District Military Prosecutor, who filed a criminal complaint and a request for an investigation.[1653] Furthermore, the Kordi} Defence submits that the Prosecution

[1644] Witness H, T. 4109-12.
[1645] Witness J, T. 4541-45, 4669.
[1646] Witness C, T. 854-55.
[1647] Witness AM, T. 15580-82.
[1648] Witness AJ, T. 14644.
[1649] Ex. D111/1, Milinfosum No. 99 of 7 Feb. 1993 and Ex. D49/1, Milinfosum No. 98 of 6 Feb. 1993.
[1650] Ex. D103/2.
[1651] Brig. F. Naki}, T. 17450-51.
[1652] Witness J, T. 4575, lns. 20-25.
[1653] Ex. D39/1, Criminal Complaint by the IV Battalion Military Police, Vitez, dated 11 Feb. 1993; Ex. D38/1, Request of the District Military Prosecutor for Investigation against Ivica Radman, Ivica Antolovi}, Nedeljko Vidovi} and Slobodan Frlji} Suspected of Killing of Nermin Elezovi} and Jasmin [ehovi}, dated 16 Feb. 1993.

evidence is insufficient for the Trial Chamber to make a finding that the conditions in the various detention facilities violated the Geneva Conventions.[1654]

B. The Role of Mario ^erkez

787. It would be convenient at this stage to discuss the role of Mario ^erkez in relation to these events since he is only linked in those matters already covered and not in those to be discussed hereafter.

788. Evidence was given about the involvement of Mario ^erkez with the detention of Muslims:

(i) During their meeting in the Cinema on 17 April 1993, Mario ^erkez told Colonel Morsink of the ECMM, that he had people in his prison (males since he considered every male as somebody able to fight): the women and children he had released.[1655]

(ii) Witness G was detained in the Cinema and he said in evidence that Mario ^erkez was supervising the activities of the police and several times came into the room where the detainees were held. The accused also visited the centre with a delegation of ABiH and HVO Commanders on 26 April 1993.[1656]

(iii) On 20 April 1993 Mrs. Mahmutovi} (widow of the Vitez Deputy Police Chief) and her daughter, were detained near the UNPROFOR base. Her evidence was that while they were confined there Mr. ^erkez (whom she knew) arrived and the witness approached him: however, his response was to say to the soldiers detaining them that, as far as he was concerned, "You can slay them … UNPROFOR is here, BBC is here, so the Armija would gain a major advantage"; (in fact, they were exchanged that night).[1657] On the other hand, Mario ^erkez reassured Witness K about his son after the latter was detained, on 13 April 1993, on his way to work. The witness went to see Mario ^erkez (with whom he used to work in the factory) at his headquarters. Mario ^erkez received the witness in a friendly manner and said that not a hair would be hurt on the son's head – the son had been taken for the purposes of exchange.[1658]

[1654] Kordi} Final Brief, p. 480.
[1655] T. 7995, 8276-77.
[1656] T. 3906-08, 3997. Witness L also saw ^erkez once or twice when he was detained and, again when ^erkez told him that he would be released (which he was not): T. 6866-67.
[1657] T. 4307-09.
[1658] T. 6766-68.

(iv) On 19 April 1993 Mario ^erkez appointed Borislav Jozi} to the Committee for Exchange of Prisoners.[1659] This committee (subsequently referred to as a "Commission") was ordered by Mario ^erkez on 30 April 1993 to compile a list of detained civilians.[1660] A list of 299 Muslim detainees was produced on paper with the letter heading of the Vite{ka Brigade and handed to Colonel Morsink.[1661] The latter said in evidence that he received the list at a time somewhere around the end of April 1993 from Bozo Jozi} who was responsible for making lists for the whole Vitez area: it was part of an attempt to get a clear picture of prisoners held by both sides.[1662] (On the same day Colonel Morsink visited the prisoners in the basement of the Cinema and found them to be treated quite well.)[1663]

(v) On 22 April 1993 Mario ^erkez sent to the ICRC and ECMM a list of the detainees who were sick or aged over 60 or under 16, detained in the Cinema and ordered them to be released.[1664]

(vi) At a meeting of the Busova~a Joint Commission, a representative of the ICRC complained to Mario ^erkez and Franjo Naki} about the use of detainees for trench-digging: the response was a denial and the statement that this practice was against the Geneva Conventions.[1665] However, Witness AT gave evidence that after the conflict of 16 April 1993, the witness requested Muslim labourers for forced labour from the Vite{ka Brigade. He made the request of ^erkez at least once and, on other occasions, of the duty officer. On 30 April ^erkez told the witness on the phone that Muslims could no longer be used for digging and fortification and that arrangements had to be made with the labour platoon which had been set up.[1666]

(vii) The evidence of Nihad Rebihi}, also a member of the Commission for Prisoner Exchange, was that on about 15 May 1993 the Commission visited the Cinema. Mario ^erkez claimed that he had no prisoners; but the commission found 13 detainees in the Cinema hall, all but two of whom opted to leave, although ^erkez claimed that they were safer there than in their own apartments.[1667]

[1659] Ex. Z734.1.
[1660] Ex. D307/1/248.
[1661] T. 27095-99. Ex. Z591.
[1662] T. 27099-109: (Col. Morsink on his recall on 16 Nov. 2000.)
[1663] T. 8020-21.
[1664] Ex. Z781.2.
[1665] Michael Buffini, T. 9335-36. The only evidence directly connecting Mario ^erkez with the work platoons is an order for their establishment in September 1993, signed by the Chief of the Vitez Defence Office, with what looks like ^erkez's signature on the back according to Gordana Badrov, T. 26440-42: Ex. Z1199.3.
[1666] T. 27633-34.
[1667] T. 8379-83. Report of the Commission, 24 May 1993, Ex. Z2712.

(viii) On 19 April 1993, according to Dr. Mujezinovi}, Mario ^erkez told him that the ABiH had broken through the front line at Dubravica: the witness had to ring the 3rd Corps Commander and say that there were 2,223 prisoners and that if the Muslim advance continued on Vitez he would order the killing of the prisoners. The witness did so and the Commander agreed to halt the advance.[1668] He was cross-examined about his witness statement of 1995, in which he said that Ivica [anti} and Pero Skopljak threatened that, if the ABiH attacked, they would kill the people in the basement plus 2,323 prisoners. The witness attributed the difference to poor translation: he never said it.[1669]

(ix) According to Fuad Ze}o, who was detained in the Veterinary Station in Vitez, the commander of the station was a teacher and neighbour of his: the commander's superior at Rijeka was Karlo Grabovac and his commander, in turn, was Mario ^erkez.[1670]

(x) Witness L, when detained in the Cinema, was forced to dig trenches in the Vranjska and Rijeka areas near Vitez. He recognised some of the guards as coming from the same areas. He saw Mario ^erkez there once in a while, as well as at the Cinema.[1671]

789. The defence case is that the military police were responsible for rounding up and detaining Muslim civilians and it was not the responsibility of the Vite{ka Brigade;[1672] and there is no evidence that the Brigade had anything to do with Kaonik or taking detainees there (this, too, being the responsibility of the military police).[1673] With respect to the facilities in Vitez (the Cinema, Chess Club, Veterinary Station and SDK offices) the ^erkez Defence submits that there is no evidence to connect these facilities with the accused: the fact that the headquarters of the Vite{ka Brigade was in the same complex as the Cinema detention facility is not sufficient evidence to lead to the conclusion that the Brigade controlled or organised that internment. The IV Battalion Military Police was in control of detention. This unit was not part of the Vite{ka Brigade, therefore, the accused could not have issued orders to this unit.[1674]

[1668] T. 2199-2200.
[1669] T. 2343-46.
[1670] T. 6521-23.
[1671] T. 6865-68.
[1672] Željko Sajevi}, T. 233312, 23320 (the IV Battalion Military Police ran the detention centre at the Vitez Cinema); Stipo ^eko, T. 23502 (the Vite{ka Brigade had no role in the detention of Muslims) and T. 23546-47.
[1673] ^erkez Final Brief, p. 52.
[1674] Gordana Badrov, T. 26428-29; Ž. Sajevi}, T. 23367-88 and D. Cali}, T. 26570-71 (stating that the command did pass to the accused but only in August 1993, after these events); Ex. D152/2, D91/2.

C. The Facilities in Kiseljak and Žep~e

1. Kiseljak Barracks and Municipal Buildings

790. In April and June 1993 two facilities were used by the HVO for the purpose of detaining Muslims from the villages around Kiseljak town, namely the barracks and municipal buildings in the town. The prisoners were initially detained in the barracks where they were kept in overcrowded and unhygienic conditions, their valuables having been taken from them.[1675] The prisoners were beaten regularly and kept short of food.[1676] Witness Y was transferred from the barracks to the municipal building which he described as being in a terrible condition, dirty, with a lot of garbage and mice running around: with 50 people to a room and no food for two days.[1677]

791. The prisoners were taken to dig trenches on or near the front line.[1678] One dug trenches for a period of over eight months during which digging four prisoners were killed.[1679] Another was shot and seriously wounded while digging.[1680] When Major Baggesen of the ECMM visited the barracks in June 1993, the HVO commander said that the prisoners were out digging trenches and clearing minefields: the commander said the Geneva Conventions did not apply in this conflict. At the witness's insistence the prisoners were released that evening; they were all Muslim civilians.[1681]

2. Rotilj Village

792. Rotilj, as has already been noted, is a village in the Kiseljak municipality, lying a few kilometres to the west of Kiseljak town itself. It is situated in a valley, a natural bowl or basin, in the hills, with one small road leading in and out.[1682] According to the Prosecution, after the HVO took the village on 18-19 April 1993 (destroying Muslim houses and killing seven people)[1683] they turned part of it into a detention camp for Muslims from the other villages in the municipality, together with the surviving Muslims from Rotilj itself. Once detained, the Muslims were

[1675] Witness Y, T. 11004-13; Witness AN, T. 15679-80; photo of barracks, Ex. Z1894.1.
[1676] Witness TW09, *Bla{ki}* T. 9332-33; Witness AN, T. 15679-80.
[1677] Witness Y, T. 11011-12.
[1678] Witness Y, T. 11012-13; Witness AN, T. 15679-80.
[1679] Witness TW09, *Bla{ki}* T. 9328-35.
[1680] Witness TW12, *Bla{ki}* T. 9535-36.
[1681] T. 7566-70.
[1682] Major Baggesen, T. 7548-51.
[1683] As reported to the ECMM, Report, Ex. Z818.

surrounded and could not leave, being controlled by HVO soldiers and snipers stationed on the surrounding hillsides.[1684]

793. Muslims were still detained in Rotilj in September 1993. On 28 September a Canbat officer, Captain Liebert, visited Rotilj and found 600 people there who had been displaced from all over the municipality: they were living in about 20 houses and conditions were poor and over-crowded.[1685] One witness who was in Rotilj from September 1993 to September 1994 said that the Muslims were not allowed out of the village and that there was no heating in it: the HVO took men out for trench-

[1684] Major Baggesen, *ibid*.; Col. Morsink, T. 8035-38, giving evidence of their visit to the village on 27 April 1993. Their report is Ex. Z818.
[1685] Witness TW20, *Bla{ki}* T. 8790-92.

digging every day.[1686] Further evidence was given by Witness Y who was taken to Rotilj in September 1993. He found there people who had been expelled from all the Muslim villages in the Kiseljak area. Witness Y and his family were detained in a small weekend house which contained five families. There was a barrier at the edge of the village but no fence: it was not necessary as the village was surrounded by hills controlled by the HVO and there was nowhere to go.[1687] Conditions were poor and the ICRC was not allowed to make a list. Men were taken to the boundaries of the Kiseljak municipality to dig trenches and fortify lines (near Fojnica and Visoko) and many were killed.[1688]

3. Žep~e: Nova Trgovina and Silos

794. These two locations in Žep~e were used as detention facilities for the Muslim population after the fall of Žep~e to the HVO on 1 July 1993. According to Witness F, after the surrender the civilian Muslim population was ordered to gather and marched between HVO soldiers to four or five hangars or warehouses in the compound of the Nova Trgovina company where about 5,000 were detained. The men aged between 16 and 60 years were separated from the women and children[1689] and taken to the elementary school. Conditions there were very bad: 105 men were kept in a cell measuring six metres by seven metres and received hardly any water.[1690] The women and children remained in the hangars, guarded by the HVO military police.[1691]

795. The silos were normally used for the storage of grain but they were now used as a prison for able-bodied men of military age. It was upon this facility that the prosecution evidence concentrated. Witness F's evidence was that the detainees were kept in concrete cells of 15 metres by 5 metres, 50-60 men to each cell, without toilets; sleeping on the floor without any covers. There were two to three toilets for 500-600 prisoners and two meals a day.[1692] At the end of August a Muslim soldier was badly beaten in the silos and died from his injuries.[1693] During the day the

[1686] Witness TW25, *Bla{ki}* T. 6653-59.
[1687] Witness Y, T. 11018-19.
[1688] Witness D, T. 2061-63; Remi Landry, T. 15298-300. Witness AJ spent time in detention in Rotilj and said the conditions were poor: he was staying in a weekend house with five families in total. Many had to do forced labour, including himself. There was no permanent HVO guard in the village although they came on occasion to collect people: T. 14643-45, 14649-51.
[1689] Witness F, T. 3437-40.
[1690] Witness AH, T. 14435-36; Witness AH, T. 14435.
[1691] Witness F, T. 3437-39.
[1692] Witness F, T. 3443-45.
[1693] Witness F, T. 3446; Witness AH could hear him screaming and said there were also other examples of maltreatment at night: Witness AH, T. 14440-41. Witness F was himself beaten by a military policeman while at the silos: T. 3455.

prisoners were sent to dig trenches for the HVO and for the Serbs.[1694] While they were digging trenches they were exposed to the risk of being killed by the ABiH;[1695] and two men were killed by guards while digging trenches. Osman Tuki}, chief of the railway station, and nine other civilians were taken from the silos in Žep~e to be used as human shields on the railway line and went missing.[1696] The silos continued to be used as a detention centre until the end of 1993 or the beginning of 1994, when the prisoners were taken to HVO camps in Herzegovina.[1697]

796. No defence evidence was called about any of the above facilities.

D. Other Locations Used for Detention

797. There was evidence about other places which were used for the detention of Muslims. For instance, in Novi Travnik, Muslims were detained in Stojkovi}i camp from 18-30 June 1993 where the HVO forced them to dig trenches on the front line and to bury bodies.[1698] Doctors in Vitez received complaints and examined women who had been held (for the purposes of rape) by HVO soldiers in a house in Novaci.[1699] After the attack on Kre{evo men were put in a hangar and the women and children in the elementary school and were there from July – September 1993: there were accounts given to Witness E, of beatings, torture and lack of food, together with accounts of trench-digging.[1700]

E. The Role of Dario Kordi}

798. The prosecution case is that Dario Kordi} ordered and planned these crimes relating to detention, as may be inferred from his role as political leader in Central Bosnia. However, there was little evidence on this topic. Two prosecution witnesses gave evidence that they were told by members of the HVO that Kordi} had to approve releases from Kaonik.[1701] Also, an order, purportedly over Dario Kordi}'s name and dated 3 February 1993, postpones an exchange of

[1694] Witness F, T. 3443; Witness AH estimates that more than 100 prisoners were killed in the course of forced labour. Witness L compiled a list of 100 people killed in Žep~e, which included people killed while digging trenches: Ex. Z2291.1.
[1695] Witness AH, T. 14441-44.
[1696] Witness F, T. 3451-52; Ex. Z1421.1.
[1697] Witness F, T. 3466. List of detainees from Žep~e taken to HVO camps in Herzegovina, Ex. Z1362.
[1698] Witness C, T. 845-51.
[1699] Witness S, T. 7942-46.
[1700] Witness E, T. 2549-54.
[1701] Witness J's evidence was that Zlatko Aleksovski (the Commander of Kaonik camp) told him in January 1993 that he could not release prisoners unless the paper was signed by Kordi}, T. 4644; and Witness AC said that when he was in Kaonik in May 1993 a guard told him that Kordi} had to approve the release or transfer or prisoners, T. 12608.

prisoners for 48 hours.[1702] And, as already noted, Kordi} was in Kiseljak barracks in June 1993 when it was being used as a detention facility.

799. The defence case is that there is no real evidence that Dario Kordi} had any involvement or responsibility in relation to the detention of prisoners or to any of the other detention-related offences. The evidence shows that each of the facilities was a military prison run by military commanders. Thus, Colonel Bla{ki} issued orders regarding the establishment of military prisons[1703] and to those responsible for running them;[1704] moreover, Bla{ki} had the authority to release detainees.[1705] By contrast, there was no evidence that Kordi} had any authority over the operation of the facilities or conditions in them.

F. Trial Chamber's Findings

800. The Trial Chamber finds that the underlying offences in Counts 21-36 are made out. The Bosnian Muslims were systematically subjected to arbitrary imprisonment for which there was no justification. The assertion that they were detained for security reasons, or for their own safety, is in the Chamber's view, without foundation. The Trial Chamber finds that while so detained the Muslims were subjected to conditions which varied from camp to camp, but which were generally inhuman. The Trial Chamber also finds that while detained the Muslims were, without any justification, used as hostages and human shields, and forced to dig trenches and that, as a result of the latter activity, a number were killed or wounded. The Trial Chamber, therefore, finds that the detained Bosnian Muslims were unlawfully confined and subjected to inhuman treatment.

801. The Trial Chamber finds that Mario ^erkez was responsible, as Commander of the Vite{ka Brigade, for the unlawful detention and inhuman treatment of the detainees in the Vitez detention facilities, i.e., the Cinema, Chess Club, SDK building and Veterinary Station. The Chamber makes this finding based on the statements of the accused to Colonel Morsink and Nihad Rebihi} and the lists of detainees ordered or sent by him. The Trial Chamber also accepts the evidence of Witness G that ^erkez was supervising the activities of the police and notes that it would not be surprising for a Brigade Commander to take charge of the prisoners detained in his own headquarters. With regard to the trench-digging, the Trial Chamber accepts the evidence of Witness AT. The Trial Chamber also accepts that a Brigade Commander is responsible for what happens to prisoners in his area of responsibility. However, the Trial Chamber accepts that Kaonik camp was not part of ^erkez's responsibility, and that Dubravica school was also outside it, as the

[1702] Ex. Z438.3.
[1703] E.g., Ex. D356/1,Tab 1.
[1704] *See*, e.g., Ex. D356/1,Tab 7.

evidence establishes that it was under the control of the Vitezovi and not the Vite{ka Brigade. Accordingly, the Trial Chamber finds that Mario ^erkez had no responsibility for these last two facilities.

802. The Trial Chamber finds that the unlawful confinement and detention of the Bosnian Muslims was part of the common design to subjugate them. As has been noted, the attacks on the towns and villages followed a pattern, beginning with the initial assault and culminating in the detention of the surviving Muslims. This happened with such regularity that it could have been the result of nothing except a common plan. The Trial Chamber is entitled to draw the inference that as political leader Dario Kordi} was involved in this plan in the areas for which he held political responsibility. Consistent with its other findings, the Trial Chamber finds that Dario Kordi} was associated with the orders for the detention of Bosnian Muslims and the ordering and coming into existence of the detention facilities in the La{va Valley, i.e., Kaonik, the Vitez Cinema, Veterinary Station and SDK offices, Chess Club, Dubravica school and in Kiseljak (the barracks and municipal building and Rotilj). However, there is not sufficient evidence to connect Kordi} with the attack on Žep~e and confinement of Bosnian Muslims in Nova Trgovina and the Silos. Furthermore, there is no sufficient evidence that the accused had any connection with the conduct of the detention facilities or the inhuman treatment of the detainees. The camps were run by the military and the evidence is not such as to allow an inference to be safely drawn that Kordi}, as a politician, was connected with the way in which they were run or in which the detainees were treated; or that the treatment of the detainees (as opposed to their detention) was part of the common plan or design.

[1705] Ex. D363/1.

VI. DESTRUCTION AND PLUNDER

803. Counts 37 – 42 allege crimes relating to the destruction and plunder of property in numerous locations in Central Bosnia (27 locations in Counts 37 to 39 against Dario Kordi}, and seven locations in Counts 40 – 42 against Mario ^erkez). Counts 43 and 44 allege crimes relating to the destruction of institutions dedicated to religion or education: four locations are mentioned in Count 43, and two locations are mentioned in Count 44. [1706]

804. The Prosecution produced a video recording made in 1996 showing the damage to the villages of the La{va Valley and surroundings.[1707] The recording was taken from a helicopter and prepared by Lt. Colonel Jean-Pierre Capelle, who gave evidence about it.[1708] The recording started south of Kiseljak by showing the village of Tulica where most of the roofs have disappeared from the houses. In Kiseljak the minaret of the mosque has disappeared. The helicopter then travelled north, up the valley, over Vi{njica, where almost all the houses were gutted; Polje Vi{njica, with intact Croat houses among the destroyed houses; Hercezi, with a destroyed mosque; Behri}i, where almost all the houses were destroyed; Gomionica, where the destruction is almost total; Svinjarevo, with a damaged mosque. Throughout there were scenes of totally destroyed houses with their roofs off or gutted houses with roofs on, but windows blackened. All this is in countryside which is wooded, green and mountainous. The helicopter then travelled up the "Ka}uni corridor", south-east of Busova~a (held by the ABiH during the war), passing over O~ehni}i where the destruction was clear; Busova~a itself, where some destruction was visible; Strane and Merdani in the La{va Valley where there was clear destruction; and then up the Vitez-Busova~a road over Ahmi}i, where there were many destroyed houses as well as some intact ones inhabited by Croats and where the minaret had fallen on the roof of the mosque. Houses were being rebuilt in [anti}i and Piri}i. The helicopter then travelled over Ga}ice, Ve~eriska and Stari Vitez, which show extensive destruction.

805. The evidence of destruction, including religious institutions and the plunder of property, has been mentioned throughout the Judgement. It may be summarised here location by location, as set out in the Indictment, beginning with Novi Travnik and Busova~a:

[1706] Two locations, Divjak and Stupni Do, were deleted from Count 43 and Divjak from Count 44 by order of the Trial Chamber at the end of the prosecution case and the Trial Chamber determined that there was no case to answer on Count 39 (plunder of public or private property) in relation to the following locations: Merdani, Puti{, O~ehni}i, Kazagi}i, Behri}i, Gromiljak, Vi{njica, Piri}i, Ga}ice; and Count 42 (plunder of public or private property) in relation to Nadioci and Piri}i: Decision on Defence Motions for Judgement of Acquittal, 6 April 2000.
[1707] Ex. Z2799.
[1708] Lt. Col. Jean-Pierre Capelle, T. 13308-43.

(i) Novi Travnik: During the attack on Novi Travnik, between 19-26 October 1992, a number of Muslim buildings, including houses, business premises and restaurants were set alight and demolished:[1709] cars were taken away by HVO soldiers.[1710]

(ii) Busova~a: In late January 1993 explosions were heard in the town and Muslim shops and restaurants were destroyed.[1711] Property was stolen in the HVO attack on 23 January 1993. Witness J saw HVO soldiers looting houses in town. They blew up Muslim business premises.[1712] This continued: on 20 May 1993, at a meeting of the Local Joint Commission, the Imam from Busova~a complained about the local police robbing people and taking away cars and property from civilians.[1713] According to a report, dated 14 February 1993, by the police chief in Busova~a: "the worst situation is in Lon~ari, where virtually all the houses have been looted and some tenants physically abused …. cattle [are] being taken away and slaughtered".[1714] (The damage to O~ehni}i in April and Merdani in January-February 1993 has already been noted.)

806. The evidence about the Kiseljak municipality was as follows. After January 1993 Muslim business premises in Kiseljak were being damaged or blown up.[1715] The HVO looted Muslim shops.[1716] Witness TW12 described the attack on Grahovci, where the HVO came into the village to set fire to houses; he saw the HVO stealing cars, buses and cattle and saw HVO soldiers set fire to the mosque. Vi{njica was attacked on 18 April 1993 and houses were set on fire.[1717] When the residents returned to their houses five days later they found them looted and some burnt.[1718] The mosque was also looted.[1719] Witness TW20 described the destruction to Rotilj and Vi{njica as of a "surgical nature". The HVO attacked Svinjarevo on 18 April 1993. The mosque was burnt down and about 100 houses were destroyed. Only two houses remained intact and these were Croat houses.[1720] Gomionica was also attacked on 18 April 1993. The village was plundered and 131 of its 159 houses were destroyed, along with the Mekteb and the Turbe.[1721] In the attack on Polje

[1709] Witness C, T. 7798-800; Witness P, T. 7267-70.
[1710] Ismet Halilovi}, T. 14362-64.
[1711] Witness AG, T. 14138-39.
[1712] Witness J, T. 4524-26.
[1713] Col. Hendrik Morsink, T. 8075-76. Witness B said that all technical appliances were taken from his house during the HVO occupation: T. 483-484. Witness A gave evidence about the destruction of religious sites in Busova~a; T. 403-404; Ex. Z1803, 1804, 1805 are the photos.
[1714] Report to the RBiH Ministry of the Interior on the Security Situation in Busova~a Municipality: Ex. Z472.
[1715] Witness D, T. 2055.
[1716] Witness AN, T. 15640.
[1717] Witness D, T. 2057-58.
[1718] Witness TW11, T. 6720.
[1719] Witness TW25, T. 6639.
[1720] Witness TW13, T. 9696, 9701-02 (acording to Witness TW13, one house remained intact); Witness AM, T. 15586.
[1721] Witness TW04, T. 9262, 9264-64, 9269-72, 9278, 9280, 9311-15.

Vi{njica the houses were looted and some were burned down.[1722] Colonel Landry, an ECMM monitor, found substantial destruction to the village of Rotilj on his visit on 22 April 1993. He received information that some of the houses were looted before they were burned down.[1723] From his position in the woods, Witness AF witnessed soldiers looting valuables from the houses in Tulica and driving off with them in the direction of the Croat village of Lepenica.[1724] The houses were burnt.[1725] Witnesses saw that the day after the attack on the village the HVO returned and looted it.[1726] The Han Plo~a mosque was set on fire first and then the houses.[1727] The HVO drove away vehicles and tractors and stole cattle. (The destruction and plunder in Svinjarevo has already been noted.)

807. The evidence about the Vitez municipality may be summarised as follows:

(i) Vitez: After October 1992, several Muslim properties were destroyed.[1728] In early 1993 there was further looting and destruction of Muslim property.[1729] As noted above, Anto Breljas said that when the Vitezovi attacked a village, they would plunder small objects, e.g. watches, gold, money from the houses. The units of the Vite{ka Brigade would follow in the next wave of attacks and would take larger items such as cars, refrigerators and tractors.[1730]

(ii) Stari Vitez: HVO soldiers came to the house of Witness AC on the night of 26 January 1993: they attacked the witness and his family and took all money and valuables.[1731] The truck bomb in Stari Vitez also destroyed civilian houses.[1732] Edib Zlotrg heard Pero Skopljak say that he ordered the shelling of the minaret at Stari Vitez because a

[1722] Witness TW11, T. 6722.
[1723] Remi Landry, T. 15299; Ex. Z793.
[1724] Witness AF, T. 14060. Witness AN saw houses burning and an HVO soldier pushing a wheelbarrow full of electronic equipment, including a television set, stereo and video-equipment. Other HVO soldiers were driving around in cars belonging to the villagers: T. 15665-66.
[1725] Witness TW15, T. 8639, 8668.
[1726] Witness TW08, T. 8984-85; Witness TW09, T. 9340; Witness TW12, 9531, 9533, 9546; and Witness TW16, T. 8939-40.
[1727] Witness TW08, T. 9003.
[1728] Witness G, T. 3897; Dr. Muhamed Mujezinovi}, T. 2163; Nusreta Mahmutovi}, T. 4283-84; Nihad Rebihi}, T. 8339.
[1729] Edib Zlotrg, T. 1640; Witness AS, T. 16356; Dr. Muhamed Mujezinovi}, T. 2180-81.
[1730] Anto Breljas, T. 11734-36.
[1731] Witness AC, T. 12575; *see* also Ex. Z332.1, a list compiled by Edib Zlotrg of incidents in Vitez, which contains various examples of destruction, stealing and looting of Muslim property.
[1732] Dr. Muhamed Mujezinovi}, T. 2191; Ex. Z204.2 is a video which shows the damage. Ex. Z2534 are photos of the area affected by the bomb.

Muslim sniper was operating from there.[1733] Four mosques and one Muslim junior seminary were destroyed in Vitez municipality.[1734]

(iii) Ahmi}i: In the attack on 20 October 1992, the HVO used incendiaries on three to four houses and damaged 15 others. The top of the minaret of the mosque was hit by a shell.[1735] On 17 April 1993 the rest of the mosque was destroyed.[1736] On his visit to Ahmi}i on 22 April 1993, Colonel Bryan Watters saw burnt houses with charred remains inside, and destruction to the minaret and mosque.[1737] Payam Akhavan on 1 May 1993 saw extensive damage to houses, and he also saw soldiers (who it was thought were from the HVO) looting property.[1738] Much other evidence was given about the destruction and plunder of Ahmi}i and its associated hamlets on 16 April 1993 and there is no need to repeat it all here.

(iv) Ve~eriska – Donja Ve~eriska: The village was destroyed by explosives and fire during the HVO attack on 16 April 1993.[1739] In Ga}ice the Muslim houses were burned and the Mekteb destroyed in the HVO attack of 20 April.[1740]

(v) It should be noted that although the evidence of the destruction and plunder of Stupni Do and the destruction of Grbavica (Divjak) established that these offences had been made out, the Trial Chamber has already determined that Dario Kordi} was not connected with these offences. Accordingly, they will not be discussed further. There was no defence evidence on this topic. The Kordi} Defence challenges the prosecution case and maintains that Kordi} was not involved in any offences.

808. The Trial Chamber finds that there was a pattern of destruction (not justified by military necessity) and plunder in all the places attacked by the HVO and mentioned in Counts 37 – 39 and 40 – 42 (save for those deleted at the close of the prosecution case and those for which there was insufficient evidence) and, with those qualifications, the underlying conduct in those counts is made out. In relation to the offence of extensive destruction of property under Article 2 of the Statute, however, as discussed in the section of the Judgement dealing with the law, two alternative legal requirements need to be proved in order for this crime to be made out. Either the property destroyed must have been "accorded general protection" under the Geneva Conventions, or, if not

[1733] Edib Zlotrg, T. 1703.
[1734] Ex. Z2715.
[1735] Abdulah Ahmi}, T. 3551-53.
[1736] Abdulah Ahmi}, T. 3588.
[1737] Ex. Z1504-1523; Dan Damon, T. 6632-33; Charles McLeod, T. 2688-90.
[1738] Payam Akhavan, T. 5637-38.
[1739] Witness V, T. 10391-96.
[1740] Witness AP, T. 15876-77; photographs, Ex. Z1760-63.

accorded general protection, the property must have been situated in "occupied territory".[1741] The property destroyed was mostly houses, dwellings, businesses, i.e., not property generally protected in the Geneva Conventions. Further in the Chamber's opinion, the property was not located in occupied territory. Accordingly, the Trial Chamber finds that the offences of extensive destruction or property alleged in Counts 37 and 40 of the Indictment on the basis of Article 2 of the Statute are not made out.

809. Likewise (in respect of the offence of destruction of institutions dedicated to religion or education alleged in Counts 43 and 44), the HVO deliberately targeted mosques and other religious and educational institutions. This included the Ahmi}i mosque which the Trial Chamber finds was not used for military purposes but was deliberately destroyed by the HVO. Accordingly, the Trial Chamber finds that the underlying offences in Counts 43 and 44 are made out (save in relation to the locations deleted at the close of the prosecution case). With regard to the participation of the accused in these offences, it follows that since they were a feature of the HVO attacks and were committed as part of the common plan, the accused were implicated in the offences where they have been found to be responsible for the attacks, i.e., in Kordi}'s case, Novi Travnik, Busova~a and associated villages, Vitez, Stari Vitez and Ahmi}i and its associated villages, and in ^erkez's case, Vitez, Stari Vitez and Ve~eriska.

[1741] *Ibid*.

PART FOUR: CONCLUSION

I. CUMULATIVE CONVICTIONS

810. Most of the acts alleged in the Indictment form the basis of several charges under different Articles of the Statute. For instance, the acts of killing alleged in paragraph 42 of the Indictment are charged in Count 7 as murder under Article 5, in Count 8 as wilful killing under Article 2, and in Count 9 as murder under Article 3. Another example is that of the act of taking civilians as hostages which is charged under both Articles 2 and 3 of the Statute (Counts 25 and 33, and 26 and 34). The jurisprudence of the International Tribunal permits the practice of cumulative charging. This was most recently reaffirmed in the ^*elebi}i* Appeal Judgement.[1742] In relation to the particular case at hand, the Trial Chamber rejected a Defence motion seeking the dismissal of charges on the basis that they were cumulative, considering that

> the Prosecutor may be justified in bringing cumulative charges when the Articles of the Statute referred to are designed to protect different values and when each Article requires proof of a legal element not required by the others, and that in the instant case both requirements are met.[1743]

The issue now before the Trial Chamber is that of cumulative conviction.

A. Arguments of the Parties

811. The Prosecution, relying on *Akayesu*, argues that an accused may be cumulatively charged and convicted (1) where the offences have different elements, or (2) where the provisions creating the offence protect different interests, or (3) where it is necessary to record a conviction for both offences in order to fully describe the criminal conduct of the accused.[1744] The Prosecution contends that the findings of the *Kupre{ki}* Trial Chamber, which relied on the test set out in the *Blockburger* case of the United States Supreme Court, do not represent a correct application of the law.[1745] It is submitted that because Articles 2, 3 and 5 of the Statute have different values and protect different interests, and have different elements, cumulative convictions are needed in order to describe fully the conduct of the accused.[1746] The Prosecution submits that issues arising out of

[1742] ^*elebi}i* Appeal Judgement, para. 400.
[1743] Decision on Defence Motion to Dismiss or Alternatively to Order the Prosecutor to Elect Between Counts, 1 March 1999, p. 2 (footnote omitted).
[1744] Prosecution Final Brief, Annex 5, para. 213.
[1745] Prosecution Final Brief, Annex 5, para. 222.
[1746] Prosecution Final Brief, Annex 5, para. 223.

cumulative charging or conviction may be addressed at the sentencing stage in imposing concurrent sentences.[1747]

812. The Kordi} Defence submits that the approach taken by the *Kupre{ki}* Trial Chamber is the approach that should be applied by the Trial Chamber.[1748] Applying the test set out to the present case, the Defence submits that Dario Kordi} could not be convicted on Count 9 (murder under Article 3 of the Statute) if he were to be convicted on Count 7 (murder under Article 5(a) of the Statute) based on the same transaction.[1749] The Defence also identifies three more groups of cumulative counts: (a) Counts 24 and 28 (cruel treatment under Article 3) *vis-à-vis* Count 10 (inhumane acts under Article 5 (i));[1750] (b) Counts 3, 4, 13, 26, 38, 39, and 43 (Article 3 offences) *vis-à-vis* Count 1 (persecution under Article 5(h));[1751] and (c) Counts 8, 11, 12, 22, 23, 25, 27, and 37 (Article 2 offences) *vis-à-vis* Count 1 (persecution under Article 5 (h)) or Counts 7, 10, and 21 (the offences of murder, inhumane acts and imprisonment under Article 5).[1752]

813. The ^erkez Defence submits that the accused cannot be convicted several times for the same criminal conduct, except "[i]f more than one offense arises out from the same act, and under the condition that one offense has elements which are not found in the other offense".[1753] The Defence argues that where the accused is charged with violating Articles 2, 3, and 5 for offences arising out of "a single criminal act", he should be convicted under Articles 2 or 5, but not Article 3.[1754]

B. Discussion

814. The Appeals Chamber in *^elebi}i* addressed this issue within the context of an appeal against multiple convictions based on the same acts. The Appeals Chamber found as follows:

> Having considered the different approaches expressed on this issue both within this Tribunal and other jurisdictions, this Appeals Chamber holds that reasons of fairness to the accused and the consideration that only distinct crimes may justify multiple convictions, lead to the conclusion that multiple criminal convictions entered under different statutory provisions but based on the same conduct are permissible only if each statutory provision involved has a materially distinct element not contained in the other. An element is materially distinct from another if it requires proof of a fact not required by the other.[1755]

[1747] Prosecution Final Brief, Annex 5, paras. 217-218.
[1748] Kordi} Final Brief, Annex F, pp. F2-5.
[1749] Kordi} Final Brief, Annex F, pp. F2-5.
[1750] Kordi} Final Brief, Annex F, p. F-6.
[1751] Kordi} Final Brief, pp. F-6-F-7.
[1752] Kordi} Final Brief, pp. F-8-F-9.
[1753] ^erkez Final Brief, p. 90.
[1754] ^erkez Final Brief, p. 91.
[1755] *^elebi}i* Appeal Judgement, para. 412. The review of the Tribunal's jurisprudence conducted by the Appeals Chamber revealed that, so far, the issue of cumulative conviction was addressed in connection with sentencing. In

815. The Appeals Chamber went on to hold that where multiple criminal convictions are not permissible under this test "the conviction under the more specific provision should be upheld."[1756] In the Appeals Chamber's view, this means that where a fact forms the basis of two charges under different provisions of the Statute, and where the test set out above is not met, the provision "which contains an additional materially distinct element" should be the one under which a conviction will be entered.[1757]

816. The Appeals Chamber went on to apply the test it set out, i.e., to assess whether each applicable provision contains a materially distinct legal element not present in the other. Of relevance to the present case is the analysis in relation to cumulative conviction for the same acts under Article 2 and Article 3 of the Statute. Generally, with respect to the distinctive character of "grave breaches" as compared to Common Article 3 of the Geneva Conventions which is incorporated in the "violations of the laws or customs of war", the Appeals Chamber held that "Article 2 of the Statute is more specific than Common Article 3."[1758]

817. Comparing the elements of "wilful killing" under Article 2 of the Statute and "murder" under Article 3 (on the basis of Common Article 3 of the Geneva Conventions), the Appeals Chamber concluded that "wilful killing under Article 2 contains an additional element [the requirement that the victim be a protected person] and therefore more specifically applies to the situation at hand [a situation of international armed conflict], the Article 2 conviction must be upheld, and the Article 3 conviction dismissed."[1759] Thus, where all the elements of both offences are proven, the offence of "wilful killing" should be preferred to enter a conviction to that of "murder".

818. The Appeals Chamber, after analysing the elements of the offences of "wilfully causing great suffering or serious injury to body or health" under Article 2, and "cruel treatment" under Article 3 on the one hand, and the offences of "inhumane treatment" under Article 2 and "cruel treatment" under Article 3 on the other hand, came to a similar conclusion. In both cases, the

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reaching its conclusion, the Appeals Chamber had regard to the *Blockburger* case, relied upon by the parties in this case. *See* ^*elebi}i* Appeal Judgement, para. 409.

[1756] ^*elebi}i* Appeal Judgement, para. 413.

[1757] ^*elebi}i* Appeal Judgement, para. 413.

[1758] ^*elebi}i* Appeal Judgement, para. 420.

[1759] ^*elebi}i* Appeal Judgement, para. 423.

offences charged under Article 2 are to be chosen for conviction because they contain the "materially distinct legal element" that the victim be a protected person.[1760]

819. The Trial Chamber will now turn to a consideration of the offences based on the same acts cumulatively charged in the Indictment.

820. Wilful killing (Article 2)/murder (Article 3)/murder (Article 5)[1761]: Based on the discussion of the elements of the crimes, the Trial Chamber finds that the offences of wilful killing and murder charged under Article 2 and 5 of the Statute (Counts 7 and 8, 14 and 15) each contain an additional element not required by the offence of murder under Article 3 (the requirement that the victim be a protected person for wilful killing under Article 2, and the requirements that the offence be widespread or systematic and directed against any civilian population in the case of a murder charged under Article 5). Thus, where the elements of all these crimes are proved, an accused may not be convicted of the Article 3 offence (Counts 9 and 16). Moreover, the crimes of wilful killing and murder under Articles 2 and 5 each contain an additional legal element not required by the other. Consequently, where all the elements of both crimes are proved, convictions may be entered on both charges.

821. Wilfully causing great suffering and inhuman treatment (Article 2)/violence to life and persons (Article 3)/inhumane acts (Article 5)[1762] for causing injuries: The offence of inhumane acts charged under Article 5 of the Statute (Counts 10 and 17) contains an additional legal element not contained in the other charges, and a conviction should thus be entered on this charge if all its elements are proved. In relation to the charges under Articles 2 and 3 (Counts 11 – 13 and Counts 18 – 20): the offence of violence to life and person is broader than the two offences charged under Article 2 in that it also encompasses acts resulting in death. Therefore, where the evidence shows that the acts charged did not result in the death of the victim, a conviction under the Article 2 charges should be preferred. However, Counts 10 – 13 and 17 – 20 are specifically pleaded under the heading of 'Injuries', as opposed to those counts relating to murder and wilful killing which are pleaded under the heading of 'Killings'. Accordingly, the former offences must be taken to encompass offences which fall short of those resulting in death and convictions under Article 2 (Counts 11 and 12, 18 and 19) will be preferred. Furthermore, in relation to the charges of wilfully causing great suffering and inhuman treatment under Article 2, where the evidence shows that the acts constituted an attack upon human dignity, as the Trial Chamber finds in Counts 11 and 12, 18

[1760] ^*elebi}i* Appeal Judgement, para. 424. The Appeals Chamber also analysed the offences of torture under Article 2 and 3 of the Statute which are not relevant to the present case.
[1761] Counts 8 and 15, 9 and 16, 7 and 14.
[1762] Counts 10-13 and 17-20.

and 19 in the present case, the accused should be convicted of the offence of inhuman treatment (Counts 12 and 19).

822. Inhuman treatment of detainees (Article 2)/cruel treatment of detainees (Article 3)[1763]: Applying the ^*elebi}i* Appeals Chamber's finding referred to above, the Trial Chamber finds that where all the elements of both offences are proved, an accused should be convicted of the offence of inhuman treatment under Article 2 of the Statute (Counts 23 and 31).

823. Inhuman treatment (human shields, Article 2)/ cruel treatment (human shields, Article 3)[1764]: Applying the ^*elebi}i* Appeals Chamber's finding referred to above, the Trial Chamber finds that where all the elements of both offences are proved, an accused should be convicted of the offence of inhuman treatment under Article 2 of the Statute (Counts 27 and 35).

824. Unlawful confinement (Article 2) and imprisonment (Article 5)[1765]: Each of these crimes contain an additional element not required by the other (the requirement that the victim be a protected person for unlawful confinement under Article 2, and the requirements that the offence be widespread or systematic and directed against any civilian population in the case of imprisonment charged under Article 5). Therefore, where the elements of both offences are satisfied, convictions may be entered on both charges.

825. Taking of civilians as hostages (Article 2)/taking of hostages (Article 3)[1766]: As with wilful killing/murder, the elements of these two offences are similar except for the requirement that the victims be protected persons contained in Article 2; therefore where all the elements of the offences are proved, an accused should be convicted of taking civilians as hostages under Article 2 of the Statute (Counts 25 and 33).

826. The issue of improper cumulative conviction does not arise in relation to the remaining Counts charged in the Indictment.

[1763] Counts 23 and 31, 24 and 32.
[1764] Counts 27 and 35, 28 and 36.
[1765] Counts 22 and 30, 21 and 29.
[1766] Counts 25 and 33, 26 and 34.

II. FINDINGS AS TO RESPONSIBILITY UNDER ARTICLE 7(1) OF THE STATUTE

A. Counts 1 and 2: Persecution

827. The Trial Chamber has already defined persecution under Article 5(h) of the Statute as the occurrence of discriminatory acts on racial, religious or political grounds committed with intent to cause an infringement of an individual's basic or fundamental rights; and in fact doing so. The Trial Chamber finds, on overwhelming evidence, that there was a campaign of persecution throughout the Indictment period in Central Bosnia (and beyond) aimed at the Bosnian Muslims. This campaign was led by the HDZ-BiH and conducted through the instruments of the HZ H-B and the HVO and orchestrated from Zagreb. It took the form of the most extreme expression of persecution, i.e., of attacking towns and villages with the concomitant destruction and plunder, killing, injuring and detaining Bosnian Muslims. The Trial Chamber has already held that the allegations relating to the encouragement and promotion of hatred, etc., and the dismissal of Bosnian Muslims from employment do not amount to persecution for the purposes of this case or, in the case of the latter allegation, at all. The purpose of this campaign was the subjugation of the Bosnian Muslim population. All this, in the Trial Chamber's view, has been comprehensively proved and thus all the elements of the underlying offence made out. The defence case that these events amounted to a civil war in which the Bosnian Croats were on the defensive, and themselves subject to persecution, is rejected.[1767] For these purposes, as has been pointed out, the fact that individual atrocities were committed against Bosnian Croats is for these purposes irrelevant although they may be the subject of other criminal proceedings. (It is inherent in the above finding that there existed a common plan or design in the Bosnian Croat leadership to conduct this persecution.) However, as the Trial Chamber has found, the abuse and inhuman treatment of the detained Muslims (and using them as hostages and human shields and for trench-digging) was not part of the common plan or design.

828. The prosecution case against Dario Kordi} is that, together with other persons holding positions of authority, he conceived this common plan to persecute the Bosnian Muslim population of Central Bosnia and that he planned, prepared, instigated or ordered it: as "an overall architect"

[1767] Kordi} Final Brief, pp. 1-3.

of the plan, he had the necessary *mens rea*, and "intended to contribute to that joint criminal design".[1768] The defence case is that Kordi} was not linked to any crimes.[1769]

829. The Trial Chamber has already held that planning is an autonomous form of responsibility under Article 7(1) and that no formal superior-subordinate relationship is required for a finding of "ordering". Its findings to date amount to this: Dario Kordi} was the political leader of the Bosnian Croats in Central Bosnia with particular authority in the La{va Valley and although having no formal position in the chain of command he was associated with the military leadership; as such he participated in the HVO take-over of the municipalities and the attacks on Busova~a in January and the La{va Valley in April and Kiseljak in June 1993. Whatever positions he may have held, the evidence does not support the contention that Dario Kordi} was in the very highest echelons of the Bosnian Croat leadership or that he conceived the campaign of persecution. He was a regional political leader and lent himself enthusiastically to the common design of persecution by planning, preparing and ordering those parts of the campaign which fell within his sphere of authority. (It is to be inferred that he did so intending to advance the policy and sharing the discriminatory intent from his active participation in the campaign.) The evidence on which the Trial Chamber relies in making this finding is of the accused's positions as Vice-President of the HDZ-BiH and President of the Busova~a HDZ, his role in the HVO take-over and attack on Busova~a and his role in the attacks in the La{va Valley and Kiseljak and in the confinement of Muslims.

830. The prosecution case against Mario ^erkez is that he was a co-perpetrator: his contribution to the common plan being to implement its objectives by force in engaging his units in the persecution and playing a central role as military commander in attacks on Ahmi}i, Donja Ve~eriska, Vitez and Stari Vitez. He intended to participate in the common design and to contribute to it.[1770] The defence case is that there is no nexus between the accused and any subordinates alleged to have committed crimes.

831. The Trial Chamber has already held that ^erkez, as Commander of the Vite{ka Brigade, participated in the attacks on Vitez, Stari Vitez and Donja Ve~eriska (although not in the initial attack on Ahmi}i). This was a high point of the campaign of persecution. The accused played his part in that campaign by commanding the troops involved in some of the incidents. As such he was a co-perpetrator; and that he had the necessary *mens rea* may be inferred, also in his case, from his part in the campaign.

[1768] Prosecution Final Brief, para. 437-38.
[1769] Kordi} Final Brief, pp. 1-3.
[1770] Prosecution Final Brief, para. 448.

B. Counts 3 – 44: Unlawful Attacks, Wilful Killing, Inhuman Treatment, Detention and Destruction

832. The prosecution case on these counts is that Kordi} was responsible for planning and ordering the crimes which were committed by HVO units implementing his commands and instructions. The coordinated fashion and number of crimes is an indication of the existence of an organised scheme. Kordi} had the necessary *mens rea* since he intended the crimes or accepted the risk that they would be committed.[1771] On the other hand the Kordi} Final Brief begins by asserting that the case deals with crimes committed by soldiers whereas Dario Kordi} was a local political leader who helped his community organise itself for defence: the core issue is the "lack of linkage" of any credible evidence that the accused had any criminal responsibility for crimes by soldiers.[1772]

833. The prosecution case against ^erkez is that he planned and ordered these crimes, intending that they should be committed or instigated them by failing to prevent or punish them; alternatively, he was an aider and abetter.[1773] The defence case is that there is no evidence implicating the accused in any of these offences.[1774]

834. The Trial Chamber finds that in those cases where Kordi} participated in the HVO attacks he intended to commit the crimes associated with them and did so. His role was as political leader and his responsibility under Article 7(1) was to plan, instigate and order the crimes. In making this finding the Trial Chamber relies on the evidence already referred to in relation to persecution. As a result the Trial Chamber finds the accused Dario Kordi} liable under Article 7(1) on the following counts:

(a) Count 3 (unlawful attacks on civilians) and Count 4 (unlawful attacks on civilian objects), Count 7 (murder) and Count 8 (wilful killing), Count 10 (inhumane acts) and Count 12 (inhuman treatment) in relation to the following locations and dates as set out in the Indictment: Busova~a (January 1993); Vitez, Stari Vitez, Ve~eriska-Donja Ve~eriska, Ahmi}i, Nadioci, Piri}i, [anti}i, and Rotilj (April 1993); Tulica[1775] and Han Plo~a-Grahovci (June 1993).[1776]

(b) On Count 21 (imprisonment) and Count 22 (unlawful confinement of civilians) in the following locations: Kaonik Prison, Vitez Cinema Complex, Veterinary Station, SDK

[1771] Prosecution Final Brief, para. 444.
[1772] Kordi} Final Brief, pp. 1-3.
[1773] Prosecution Final Brief, paras. 454-57.
[1774] ^erkez Final Brief, p. 49.
[1775] Counts 7, 8, 10, 12 (only).
[1776] Counts 7, 8, 10, 12 (only).

offices, Chess Club, Dubravica Elementary School, Kiseljak municipal buildings and barracks and Rotilj village.

(c) On Count 38 (wanton destruction not justified by military necessity) and Count 39 (plunder of public or private property) in relation to the following locations: Novi Travnik (October 1992); Busova~a (January 1993); Kiseljak, Svinjarevo, Gomionica, Polje Vi{njica, Rotilj (April 1993); Tulica, Han Plo~a-Grahovci (June 1993); and Vitez, Stari Vitez, Ahmi}i and Ve~eriska-Donja Ve~eriska (April 1993). And on Count 38, alone, in the following locations: Merdani (January 1993); and O~ehni}i, Vi{nijca, Behri}i, Gromiljak, Nadioci, Piri}i, [anti}i and Ga}ice (April 1993). And on Count 39, alone, in Lon~ari (April 1993).

(d) On Count 43 (destruction or wilful damage to institutions dedicated to religion or education) in the following locations: Ahmi}i and Stari Vitez (April 1993) and Han Plo~a (June 1993).

835. In relation to the remaining locations in which offences are alleged to have been committed in the above Counts and on Counts 9, 11, 13, 23, 24, 25, 26, 27, 28 and 37, the Trial Chamber finds Dario Kordi} not liable under Article 7(1).

836. The Trial Chamber finds that in those cases where ^erkez participated in attacks as Commander of the Vite{ka Brigade, he committed the crimes associated with them, intending to commit the crimes. His responsibility as Commander of the Brigade was as a co-perpetrator in crimes which he committed. As a result the Trial Chamber finds the accused, Mario ^erkez, liable under Article 7(1) on the following counts:

(a) Count 5 (unlawful attacks on civilians) and Count 6 (unlawful attacks on civilian objects), Count 14 (murder), and Count 15 (wilful killing), Count 17 (inhumane acts), Count 19 (inhuman treatment) in relation to the following locations Vitez, Stari Vitez, Stari Vitez and Ve~eriska-Donja Ve~eriska; and Count 41 (wanton destruction not justified by military necessity) and Count 42 (plunder of public or private property) in relation to the following locations: Vitez, Stari Vitez and Donja Ve~eriska;

(b) on Count 29 (imprisonment), Count 30 (unlawful confinement of civilians), Count 31 (inhuman treatment), Count 33 (taking civilians as hostages) and Count 35 (inhuman treatment) in relation to the following locations: Vitez Cinema Complex, Veterinary Station, SDK offices and Chess Club);

(c) on Count 44 (destruction or wilful damage to institutions dedicated to religion or education) in relation to Stari Vitez.

837. In relation to the remaining locations on the above Counts and Counts 16, 18, 20, 32, 34, 36 and 40, the Trial Chamber finds Mario ^erkez not liable under Article 7(1).

III. FINDINGS AS TO RESPONSIBILITY UNDER ARTICLE 7(3) OF THE STATUTE

A. Dario Kordi}

838. Dario Kordi} was a civilian and a politician with tremendous influence and power in Central Bosnia. He occupied an important position in the leadership of the HZ H-B, but was not in the top echelon, being answerable to Mate Boban.

839. While he played an important role in military matters, even at times issuing orders, and exercising authority over HVO forces, he was, and remained throughout the Indictment period, a civilian, who was not part of the formal command structure of the HVO.

840. Although liability under Article 7(3) may attach to civilians as well as military personnel, once it is established that the requisite power to prevent or punish exists, the Chamber holds that great care must be taken in assessing the evidence to determine command responsibility in respect of civilians, lest an injustice is done. In the first place, it is established that substantial influence (such as Kordi} had), by itself, is not indicative of a sufficient degree of control for liability under Article 7(3).[1777] Secondly, while liability under Article 7(3) may attach not only to persons in formal positions of command, but also to those who are effectively in command of more informal structures,[1778] the Chamber finds that Kordi} lacked effective control, which the Appeals Chamber in the *Celebi}i* case defined as "a material ability to prevent or punish criminal conduct, however that control is exercised".[1779]

841. In sum, the Chamber finds that Kordi} was neither a commander nor a superior in respect of the HVO, since he possessed neither the authority to prevent the crimes that were committed, nor to punish the perpetrators of those crimes,[1780] and as such, he is not liable under Article 7(3) of the Statute.

[1777] *See* previous discussion in this Judgement of the *Celebi}i* Appeals Chamber's endorsement of this finding by the *Celebi}i* Trial Chamber.
[1778] *Celebi}i* Appeal Judgement, para. 198.
[1779] *Celebi}i* Appeal Judgement, para. 256.
[1780] *See* previous discussion of the definition of a commander or superior at paragraph 192 of the *Celebi}i* Appeal Judgement.

B. Mario ^erkez

842. The Chamber refers to its previous finding that, as commander of the Vite{ka Brigade, Mario ^erkez participated in the attacks on Vitez, Stari Vitez and Ve~eriska; as commander, he exercised *de jure* and *de facto* control over the members of his brigade.

843. The Chamber is satisfied that Mario ^erkez knew of the impending attacks on those towns by those troops under his command, that he failed to take the necessary measures to prevent those attacks, and that he failed to punish those who were responsible for the attacks. The Chamber therefore finds Mario ^erkez liable under Article 7(3) in respect of the attacks by the Vite{ka Brigade on the three locations and the associated killings and injuries (Counts 5 - 6, 14 - 15, 17 and 19), imprisonment and other detention offences (Counts 29 – 31, 33 and 35), plunder (Count 42) and destruction (Counts 41 and 44).

IV. SENTENCING

A. Submissions of the Parties

844. The Prosecution submits that a sentence of life imprisonment for both accused is appropriate in this case, with a recommendation that Kordi} serve a minimum of 30 years and ^erkez a minimum of 25 years.[1781] In support of this submission the Prosecution relies on principles to be borne in mind in sentencing, i.e., the requirements for retribution and deterence: it also relies on the need for a sentence to reflect adequately the gravity of the criminal conduct of the accused.[1782] It submits that (a) both accused have been charged with crimes of the gravest nature, and that the evidence establishes "a pattern of atrocities and inhumane acts"; (b) the Trial Chamber should have in mind the large number of victims, their suffering and that of their families; (c) the accused in this case had a "central" role in the crimes charged, and should bear "the highest criminal culpability"; and (c) there are no mitigating circumstances.[1783]

845. The Kordi} Defence made no submissions on sentencing in its Final Brief, although reference was made to the fact that he is a family man with no criminal record, who surrendered voluntarily to the International Tribunal and whose behaviour in the United Nations Detention Unit has been described as excellent.[1784] On behalf of Mario ^erkez, it is submitted in mitigation (a) that he surrendered voluntarily to the International Tribunal and returned to the Detention Unit, having been released provisionally due to the terminal illness of his father; (b) that he is a model citizen, a hard-working family man with no criminal record; (c) that he had friends of all ethnicities and had displayed no prejudices or intolerance;[1785] and (d) that his behaviour in the United Nations Detention Unit has also been described as excellent.[1786]

B. Sentencing Principles

846. The relevant provisions of the Statute and Rules of Procedure and Evidence of the International Tribunal are Article 24 of the Statute and Rule 101. The material parts of these provisions are as follows:

[1781] Prosecution Final Brief, para. 498. Corrigendum, 20 Dec. 2000.
[1782] Prosecution Final Brief, paras. 483-88.
[1783] Ibid., paras. 467-78.
[1784] Kordi} Final Brief, p. 11; Report, Ex. D369/1.

> Article 24:
>
> 1. The penalty imposed by the Trial Chamber shall be limited to imprisonment. In determining the terms of imprisonment, the Trial Chamber shall have recourse to the general practice regarding prison sentences in the courts of the former Yugoslavia.
>
> 2. In imposing the sentences, the Trial Chamber should take into account such factors as the gravity of the offences and the individual circumstances of the convicted person.
>
> …
>
> Rule 101:
>
> (A) A convicted person may be sentenced to imprisonment for a term up to and including the remainder of the convicted person's life.
>
> (B) In determining the sentence, the Trial Chamber shall take into account the factors mentioned in Article 24, paragraph 2, of the Statute, as well as such factors as:
>
> (i) any aggravating circumstances;
>
> (ii) any mitigating circumstances including the substantial cooperation with the Prosecutor by the convicted person before or after conviction;
>
> (iii) the general practice regarding prison sentences in the courts of the former Yugoslavia;
>
> …
>
> (C) Credit shall be given to the convicted person for the period, if any, during which the convicted person was detained in custody pending surrender to the Tribunal or pending trial or appeal.

847. Thus, in imposing a sentence,[1787] a Trial Chamber must have regard to the gravity of the offence, the individual circumstances of the accused, and any aggravating or mitigating factors. The application of these principles has not led to the establishment by the Appeals Chamber of sentencing guidelines;[1788] however, various general principles have emerged from its Judgements:

(i) Deterrence is a consideration of general importance in determing a sentence,[1789] but it "must not be accorded undue prominence in the overall assessment";[1790]

(ii) "An equally important factor is retribution. This is not to be understood as fulfilling a desire for revenge but as truly expressing the outrage of the international community at these crimes";[1791]

[1785] ^erkez Final Brief, pp. 116-119.
[1786] Report, Ex. D161/2.
[1787] A Trial Chamber may impose a single sentence for a number of offences. Under the latest revision of the Rules, Rule 87(C) permits a Trial Chamber "to exercise its power to impose a single sentence reflecting the totality of the criminal conduct of the accused": IT/183, 12 January 2001, in effect from 19 January 2001.
[1788] *Furundžija* Appeal Judgement, para. 238; *Celebi}i* Appeal Judgement, paras. 715-18.
[1789] *Aleksovski* Appeal Judgement, para. 185.
[1790] *Tadi}* Sentencing Appeals Judgement, para. 48; *Celebi}i* Appeal Judgement, paras 800-01.
[1791] *Aleksovski* Appeal Judgement, para. 185, citing a number of Judgements from both the International Tribunal and the ICTR.

(iii) The most important consideration is the gravity of the offence which has been described as "the litmus test for the appropriate sentence"[1792] and reflects the provisions of Article 24(2) of the Statute;[1793]

(iv) The fact that an accused held a position of superior responsibility may seriously aggravate an offence,[1794] but there must be regard to the position of the accused in the command structure.[1795]

848. On the other hand, no clear formulation of what constitutes mitigating circumstances (other than cooperation with the Prosecutor) has emerged. The following have been considered as mitigation in certain cases: a good personal character with no previous criminal record,[1796] poor health[1797] and youth.[1798] Although it will be rare for such factors to play a significant part in mitigating international crimes, there may be occasions when they do; and the categories of mitigating circumstance cannot be considered as closed. Such factors will vary with the circumstances of each case, as must be contemplated by the reference to "individual circumstances" in Article 24 of the Statute.

849. A Trial Chamber must also have regard to the sentencing practice of the former Yugoslavia although, as has been noted, no provision requires a Trial Chamber to follow this practice.[1799] The SFRY Criminal Code of 1976/1977 provided for a sentence of not less than five years imprisonment or the death penalty for genocide or war crimes against civilians (Articles 141 and 142(1)). (However, Article 38(2) of the Code permitted courts to impose a term of 20 years imprisonment for criminal acts eligible for the death penalty.)[1800] The practice of the former Yugoslavia shows that the death penalty was imposed for such offences: for instance, by the

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[1792] *Aleksovski* Appeal Judgement, para. 182, citing the *Celebi}i* Trial Judgement, para. 1225. It also refers to the *Kupre{ki}* Trial Judgement, para. 852.
[1793] A measure of the gravity of offences is their nature, magnitude and the manner in which they were committed, the number of victims involved and the degree of suffering endured by the victims: *Bla{ki}* Trial Judgement, paras. 783-787. *Also see Prosecutor v. Jean Kambanda*, Case No. ICTR 97-23-S, Judgement and Sentence, 4 September 1998, paras. 56-57 ("*Kambanda* Trial Judgement"); *Prosecutor v. Dražen Erdemovi}*, Case No. IT-96-22-T*bis*, Sentencing Judgement, 5 March 1998, para. 15, ("*Erdemovi}* Sentencing Judgement"); *Celebi}i* Appeal Judgement, para. 731.
[1794] *Aleksovski* Appeal Judgement, para. 183; *Kambanda* Trial Judgement, para. 44; *also see Bla{ki}* Trial Judgement, para. 789.
[1795] *Tadi}* Sentencing Appeals Judgement, para. 56.
[1796] *Erdemovi}* Sentencing Judgement, para. 16(i); *Prosecutor v. Georges Ruggiu*, Case No. ICTR-97-32-I, Judgement and Sentence, 1 June 2000, paras. 59-60 and 61-68.
[1797] *Prosecutor v. Georges Rutaganda*, Case No. ICTR-96-3-T, Judgement and Sentence, 6 December 1999, para. 472.
[1798] *Erdemovi}* Sentencing Judgement, para. 16(i); *Furundžija* Trial Judgement, para. 284; *Bla{ki}* Trial Judgement, para. 778.
[1799] *Kupre{ki}* Trial Judgement, 840; *Bla{ki}* Trial Judgement, para. 759; *Celebi}i* Appeal Judgement, paras. 813, 816.
[1800] *Kupre{ki}* Trial Judgement, paras. 842, 844-845. Bosnia and Herzegovina abolished the death penalty in 1998 and introduced in its place a long-term imprisonment of 20-40 years "for the gravest forms of criminal offences […] committed with intention": *Tadi}* Sentencing Appeals Judgement, para. 12. Croatia adopted an identical provision in its 1997 Criminal Code.

District Court in Zagreb in 1986 on a former member of the so-called Independent State of Croatia during the Second World War;[1801] by a military court in Belgrade in 1992 on two members of paramilitary units;[1802] and in a similar case on the commander of a paramilitary unit who was sentenced for carrying out "the liquidation of quite a large number" of Serbs.[1803] On the other hand, if the offences were sporadic or committed by a soldier of lower rank, the penalty was mitigated. Thus, in the last case above, a member of the commander's unit was sentenced to 11 years imprisonment and in 1985, in the District Court of [abac, a soldier was sentenced to five years imprisonment for beating a civilian who subsequently died as a result of his injuries.[1804] The practice, therefore, may be said to be similar to that of the International Tribunal, in the serious view taken of these offences and the role of commanders.

850. Finally, a Trial Chamber must give credit to an accused for the period during which he or she was detained in custody pending trial; it must order any sentence to run from the date of Judgement[1805] and may recommend a minimum sentence to be served by an accused before any commutation or reduction of sentence is considered.[1806]

851. With the above principles in mind, the Trial Chamber will consider the appropriate sentences in the case of these accused, emphasising that the sentences reflect the evidence in this case and the role of these accused as found by this Trial Chamber.

C. Sentences

852. The starting point for the consideration of sentence is the gravity of the offences. Both accused have been convicted of numerous offences. However, all arise from the same common design which led to the persecution and "ethnic cleansing" of the Bosnian Muslims of the La{va Valley and surroundings. This led to a sustained campaign involving a succession of attacks on villages and towns which were characterised by a ruthlessness and savagery and in which no distinction was made as to the age of its victims: young and old were either murdered or expelled and their houses burned. The total number of dead may never be known, but it runs into hundreds, with thousands expelled. Offences of this level of barbarity could not be more grave and those who participate in them must expect sentences of commensurate severity to mark the outrage of the international community.

[1801] Case No. K-91/84-61, 14 May 1986. (The sentence was confirmed by both the Supreme Court of Croatia and the Federal Court of the SFRY.)
[1802] Case No. IK No. 112/92, 26 June 1992.
[1803] Case No. IK No. 108/92, 14 July 1992. All the decisions referred to here are on file with the International Tribunal Library and are in English.
[1804] Case No. 24/85, District Court of [abac, 2 October 1985.

1. Dario Kordi}

853. Dario Kordi} was born on 14 December 1960. He is now 40 years old. At the time of these offences he was aged between 31-33, a youthful age (the Trial Chamber notes) for the responsibilities of leadership which he undertook. His role in these offences was an important one. As a regional political leader in Central Bosnia, with particular authority in the La{va Valley, he was the effective political commander in the area where the majority of these offences were committed. The Trial Chamber bears in mind that it has not accepted the full extent of the Prosecution case and not found that Kordi} was in the highest echelons of the leadership of the campaign of persecution; likewise, he has been acquitted of some of the offences arising from individual acts of terror and the massacre at Stupni Do. He is not, therefore, to be sentenced as an architect of the persecution or the prime mover in it. Nonetheless, he joined the campaign enthusiastically and played an instrumental part in the La{va Valley offensives in 1993, in particular, in the ordering of the attack on Ahmi}i and the other villages in April 1993. For his part in that dreadful episode he deserves appropriate punishment. The fact that he was a politician makes no difference: he played his part as surely as the men who fired the guns. Indeed, the fact that he was a leader aggravates the offences.

854. Dario Kordi} has offered no mitigation of these offences; and there is none. The Trial Chamber considers that the overall criminality of the accused can best be reflected in a single sentence. Dario Kordi} is sentenced to twenty-five years' imprisonment.

2. Mario ^erkez

855. Mario ^erkez was born on 27 March 1959. He is now aged 41. At the time of these offences he was 33-34. His position is different from that of his co-accused. Whereas the latter was a political leader, Mario ^erkez was a soldier and a middle-ranking HVO commander. The Trial Chamber notes that he had no previous experience of command and nothing in his earlier life could have prepared him for it. However, he was the commander of the local Vite{ka Brigade during the time of the terrible events in the La{va Valley and led it in the assaults on Vitez and Ve~eriska, both of which led to civilian deaths and destruction. While the Trial Chamber has found that his troops were not involved in the massacre at Ahmi}i, he played his part in the campaign of persecution against the Muslims of the La{va Valley, aggravated because of his role as commander.

[1805] *Tadi}* Sentencing Appeals Judgement, paras. 31-32.
[1806] *Ibid*., para. 28.

856. None of the matters submitted as mitigating circumstances amount to mitigation of these international crimes. The Trial Chamber considers that the overall criminality of the accused can best be reflected in a single sentence. Mario ^erkez is sentenced to fifteen years' imprisonment.

V. DISPOSITION

THE TRIAL CHAMBER makes these findings on the Counts of the Indictment:

Count 1: a crime against humanity, as recognised by Article 5(h) (persecutions on political, racial, or religious grounds) and pursuant to Article 7(1) of the Statute of the International Tribunal

DARIO KORDI] - GUILTY

Count 2: a crime against humanity**,** as recognised by Article 5(h) (persecutions on political, racial, or religious grounds) and pursuant to Article 7(1) of the Statute of the International Tribunal

MARIO ^ERKEZ - GUILTY

Count 3 : a violation of the laws or customs of war, as recognised by Article 3 (unlawful attack on civilians) and pursuant to Article 7(1) of the Statute of the International Tribunal

DARIO KORDI] - GUILTY

Count 4 : a violation of the laws or customs of war, as recognised by Article 3 (unlawful attack on civilian objects) and pursuant to Article 7(1) of the Statute of the International Tribunal

DARIO KORDI] - GUILTY

Count 5: a violation of the laws or customs of war, as recognised by Article 3 (unlawful attack on civilians) and pursuant to Articles 7(1) and 7(3) of the Statute of the International Tribunal

MARIO ^ERKEZ - GUILTY

Count 6: a violation of the laws or customs of war, as recognised by Article 3 (unlawful attack on civilian objects) and pursuant to Articles 7(1) and 7(3) of the Statute of the International Tribunal

MARIO ^ERKEZ - GUILTY

Count 7: a crime against humanity, as recognised by Article 5(a) (murder) and pursuant to Article 7(1) of the Statute of the International Tribunal

DARIO KORDI] - GUILTY

Count 8: a grave breach of the Geneva Conventions, as recognised by Article 2(a) (wilful killing) and pursuant to Article 7(1) of the Statute of the International Tribunal

DARIO KORDI] - GUILTY

Count 9: a violation of the laws or customs of war, as recognised by Article 3 (murder) of the Statute of the International Tribunal

DARIO KORDI] - NOT GUILTY

Count 10: a crime against humanity, as recognised by Article 5(i) (inhumane acts) and pursuant to Article 7(1) of the Statute of the International Tribunal

DARIO KORDI] - GUILTY

Count 11: a grave breach of the Geneva Conventions, as recognised by Article 2(c) (wilfully causing great suffering or serious injury to body or health) of the Statute of the International Tribunal.

DARIO KORDI] - NOT GUILTY

Count 12: a grave breach of the Geneva Conventions, as recognised by Article 2(b) (inhuman treatment) and pursuant to Article 7(1) of the Statute of the International Tribunal

DARIO KORDI] - GUILTY

Count 13: a violation of the laws or customs of war, as recognised by Article 3 (violence to life and person) of the Statute of the International Tribunal

DARIO KORDI] - NOT GUILTY

Count 14: a crime against humanity, as recognised by Article 5(a) (murder) and pursuant to Articles 7(1) and 7(3) of the Statute of the International Tribunal

MARIO ^ERKEZ - GUILTY

Count 15: a grave breach of the Geneva Conventions, as recognised by Article 2(a) (wilful killing) and pursuant to Articles 7(1) and 7(3) of the Statute of the International Tribunal

MARIO ^ERKEZ - GUILTY

Count 16: a violation of the laws or customs of war, as recognised by Article 3 (murder) of the Statute of the International Tribunal

MARIO ^ERKEZ - NOT GUILTY

Count 17: a crime against humanity, as recognised by Article 5(i) (inhumane acts) and pursuant to Articles 7(1) and 7(3) of the Statute of the International Tribunal

MARIO ^ERKEZ - GUILTY

Count 18: a grave breach of the Geneva Conventions, as recognised by Article 2(c) (wilfully causing great suffering or serious injury to body or health) of the Statute of the International Tribunal

MARIO ^ERKEZ - NOT GUILTY

Count 19: a grave breach of the Geneva Conventions, as recognised by Article 2(b) (inhuman treatment) and pursuant to Articles 7(1) and 7(3) of the Statute of the International Tribunal

MARIO ^ERKEZ - GUILTY

Count 20: a violation of the laws or customs of war, as recognised by Article 3 (violence to life and person) of the Statute of the International Tribunal

MARIO ^ERKEZ - NOT GUILTY

Count 21: a crime against humanity, as recognised by Article 5(e) (imprisonment) and pursuant to Article 7(1) of the Statute of the International Tribunal

DARIO KORDI] - GUILTY

Count 22: a grave breach of the Geneva Conventions, as recognised by Article 2(g) (unlawful confinement of civilians) and pursuant to Article 7(1) of the Statute of the International Tribunal

DARIO KORDI] - GUILTY

Count 23: a grave breach of the Geneva Conventions, as recognised by Article 2(b) (inhuman treatment) of the Statute of the International Tribunal

DARIO KORDI] - NOT GUILTY

Count 24: a violation of the laws or customs of war, as recognised by Article 3 (cruel treatment) of the Statute of the International Tribunal

DARIO KORDI] - NOT GUILTY

Count 25: a grave breach of the Geneva Conventions, as recognised by Article 2(h) (taking civilians as hostages) of the Statute of the International Tribunal

DARIO KORDI] - NOT GUILTY

Count 26: a violation of the laws or customs of war, as recognised by Article 3 (taking of hostages) of the Statute of the International Tribunal

DARIO KORDI] - NOT GUILTY

Count 27: a grave breach of the Geneva Conventions, as recognised by Article 2(b) (inhuman treatment) of the Statute of the International Tribunal

DARIO KORDI] - NOT GUILTY

Count 28: a violation of the laws or customs of war, as recognised by Article 3 (cruel treatment) of the Statute of the International Tribunal

DARIO KORDI] - NOT GUILTY

Count 29: a crime against humanity, as recognised by Article 5(e) (imprisonment) and pursuant to Articles 7(1) and 7(3) of the Statute of the International Tribunal

MARIO ^ERKEZ - GUILTY

Count 30: a grave breach of the Geneva Conventions, as recognised by Article 2(g) (unlawful confinement of civilians) and pursuant to Articles 7(1) and 7(3) of the Statute of the International Tribunal

MARIO ^ERKEZ - GUILTY

Count 31: a grave breach of the Geneva Conventions, as recognised by Article 2(b) (inhuman treatment) and pursuant to Articles 7(1) and 7(3) of the Statute of the International Tribunal

MARIO ^ERKEZ - GUILTY

Count 32: a violation of the laws or customs of war, as recognised by Article 3 (cruel treatment) of the Statute of the International Tribunal

MARIO ^ERKEZ - NOT GUILTY

Count 33: a grave breach of the Geneva Conventions, as recognised by Article 2(h) (taking civilians as hostages) and pursuant to Articles 7(1) and 7(3) of the Statute of the International Tribunal

MARIO ^ERKEZ - GUILTY

Count 34: a violation of the laws or customs of war, as recognised by Article 3 (taking of hostages) of the Statute of the International Tribunal

MARIO ^ERKEZ - NOT GUILTY

Count 35: a grave breach of the Geneva Conventions, as recognised by Article 2(b) (inhuman treatment) and pursuant to Articles 7(1) and 7(3) of the Statute of the International Tribunal

MARIO ^ERKEZ - GUILTY

Count 36: a violation of the laws or customs of war, as recognised by Article 3 (cruel treatment) of the Statute of the International Tribunal

MARIO ^ERKEZ - NOT GUILTY

Count 37: a grave breach of the Geneva Conventions, as recognised by Article 2(d) (extensive destruction of property not justified by military necessity) of the Statute of the International Tribunal

DARIO KORDI] - NOT GUILTY

Count 38: a violation of the laws or customs of war, as recognised by Article 3(b) (wanton destruction not justified by military necessity) and pursuant to Article 7(1) of the Statute of the International Tribunal

DARIO KORDI] - GUILTY

Count 39: a violation of the laws or customs of war, as recognised by Article 3(e) (plunder of public or private property) and pursuant to Article 7(1) of the Statute of the International Tribunal

DARIO KORDI] - GUILTY

Count 40: a grave breach of the Geneva Conventions, as recognised by Article 2(d) (extensive destruction of property not justified by military necessity) of the Statute of the International Tribunal

MARIO ^ERKEZ - NOT GUILTY

Count 41: a violation of the laws or customs of war, as recognised by Article 3(b) (wanton destruction not justified by military necessity) and pursuant to Articles 7(1) and 7(3) of the Statute of the International Tribunal

MARIO ^ERKEZ - GUILTY

Count 42: a violation of the laws or customs of war, as recognised by Article 3(e) (plunder of public or private property) and pursuant to Articles 7(1) and 7(3) of the Statute of the International Tribunal

MARIO ^ERKEZ - GUILTY

Count 43: a violation of the laws or customs of war, as recognised by Article 3(d) (destruction or wilful damage to institutions dedicated to religion or education) and pursuant to Article 7(1) of the Statute of the International Tribunal

DARIO KORDI] - GUILTY

Count 44: a violation of the laws or customs of war, as recognised by Article 3(d) (destruction or wilful damage to institutions dedicated to religion or education) and pursuant to Articles 7(1) and 7(3) of the Statute of the International Tribunal

MARIO ^ERKEZ - GUILTY

And, therefore, **SENTENCES** the accused

DARIO KORDI] to 25 years' imprisonment, and

MARIO ^ERKEZ to 15 years' imprisonment

and **STATES** that the period of time during which the accused have been in the custody of the International Tribunal, i.e., from 6 October 1997 to the date of this Judgement, shall be deducted from the overall length of the sentence.

Done in English and French, the English text being authoritative.

_____
Richard May
Presiding

_____ _____

Mohamed Bennouna Patrick Robinson

Dated this twenty-sixth day of February 2001
At The Hague
The Netherlands

[**Seal of the Tribunal**]

ANNEX I: CHRONOLOGY OF EVENTS

August 1990	The Croatian Democratic Union of Bosnia and Herzegovina ("HDZ-BiH") was founded.
November 1990	Multi-party elections in Bosnia and Herzegovina ("BiH").
25 June 1991	Republic of Croatia declared its independence (suspended until 8 October 1991).
18 November 1991	Formation of the Croatian Community of Herceg-Bosna ("HZ H-B").
15 January 1992	Republic of Croatia recognised by the European Community.
February 1992	Referendum on independence in BiH.
3 March 1992	Republic of Bosnia and Herzegovina declared its independence.
Spring of 1992	Attacks on Slimena and Busova~a arms depots of the JNA.
March-April 1992	War started in BiH with attacks by the Bosnian Serb Army.
6 April 1992	Republic of Bosnia and Herzegvina recognised by the European Community.
8 April 1992	Establishment of the HVO as the supreme defence body in the territory of the HZ H-B.
May 1992	JNA shelled Busova~a.
May-June 1992	HVO general HQ established in Mostar. HVO Central Bosnia HQ established in Busovaca.
22 May 1992	Republic of Croatia and Republic of Bosnia and Herzegovina admitted by the UN as Member States.
19 June 1992	Fighting broke out in Novi Travnik between the HVO and the TO.
22 June 1992	RBiH proclaimed a state of war.
14 September 1992	HZ H-B declared illegal by the Constitutional Court of BiH.
19-26 October 1992	Second conflict in Novi Travnik: TO erected barricade in Ahmi}i in order to prevent HVO reinforcements getting there. When HVO reached barricade, ensuing fighting lasted one day.
November-December 1992	Mixed Military Working Group, representing the three Bosnian factions and chaired by General Morillon on behalf of the UN, met at Sarajevo airport for negotiations.

December 1992-early 1993	HVO forces in Central Bosnia began to consolidate, operating as units of larger brigades, with Milivoj Petkovic serving as supreme commander and Tihomir Bla{kic as Central Bosnia Operative Zone ("CBOZ") commander.
11 January 1993	Fighting breaks out in Gornji Vakuf.
20 January 1993	HVO, as alleged, attacked Merdani, Ka}uni, Strane, Loncari and Ocehnici in the municipality of Busovaca; while ABiH attacked northern Kiseljak Valley, cutting off the main supply route and establishing a checkpoint between Busovaca and Kiseljak, at Ka}uni.
25 January 1993	Announcement of the Vance Owen Peace Plan with proposal that BiH be organised into ten provinces.
25 January 1993	Kacuni checkpoint incident: exchange of fire between the HVO and the ABiH.
30 January 1993	Cease-fire agreement between the HVO and the ABiH.
24 March 1993	Tihomir Bla{ki} appointed Mario ^erkez as Commander of the Vite{ka Brigade.
4 April 1993	The HVO HQ in Mostar set the deadline of 15 April for President Izetbegovi} to sign the 3 April agreement according to which, the military and police were to come under the authority of the HVO in Provinces 3, 8 and 10.
10 April 1993	Artillery duel in Travnik over the flying of flags.
15 April 1993	Abduction of local HVO commander @ivko Totic and murder of his bodyguards in Zenica.
16 April 1993	Violence broke out across the Lašva Valley as the HVO, as alleged, attacked Vitez, Stari Vitez, Ga}ice, Ahmici, Šantici, Pirici, Donja Veceriska, Sivrino Selo, Nadioci, Loncari, Puti{ and Ocehnici. Detention of civilians in the Vitez cinema complex and veterinary station, the Dubravica elementary school, the SDK offices and the chess club. In the village of Ahmici, at least 103 Muslim civilians were killed, including 33 women and children.
18 April 1993	Truck bomb explosion in Stari Vitez/Mahala, the Muslim quarter of Vitez. HVO attacked the municipality of Kiseljak: Stara Bila, Svinjarevo, Gomionica, Gromiljak, Višnjica and Rotilj.
19 April 1993	Shelling of Zenica market place. ABiH proceeded to defeat the HVO in Zenica.

20 April 1993	HVO attacks Muslim population of Ga}ice, Pirici, Preocica and new Vitez. ABiH counteroffensive succeeded in rolling back some HVO gains and recapturing all checkpoints.
25 April 1993	At a meeting in Zagreb, Alija Izetbegovic and Mate Boban concluded a cease-fire agreement.
May-June 1993	ABiH offensive in Lašva Valley. By June, the ABiH became dominant.
Early June 1993	Convoy of Joy incident.
4 June 1993	ABiH took Travnik, large exodus of Croats to Busovaca.
9 June 1993	Fighting again broke in Novi Travnik.
12 June 1993	HVO attacked Tulica.
13 June 1993	HVO attacked the villages of Han Ploca and Grahovci.
16 June 1993	Fighting broke out in Kreševo.
24 June 1993	HVO attacked Žepce.
30 June 1993	ABiH commander in Žep~e surrendered to HVO, Muslim civilians and military personnel were put into detention around Žep~e.
June-July 1993	ABiH captured Kakanj, Fojnica and Bugojno, causing many more Croats to flee to Busova~a.
6 August 1993	A report on the union of the three republics of BiH, the "Owen-Stoltenberg Plan", was sent by the Secretary-General to the Security Council.
28 August 1993	HZ H-B declared itself Croatian Republic of Herceg-Bosna ("HR H-B"), with Mate Boban as President and Dario Kordi} as Vice-President.
23 October 1993	HVO attacked Stupni Do.
2 November 1993	ABiH attacked Vareš.
25 February-2March 1994	Washington Agreements ended the war between Muslims and Croats.
10 July 1994	Dario Kordi} became President of the HDZ-BiH.
November-December 1995	Dayton Agreements. RBiH, Croatia and the FRY agreed to fully respect the sovereign equality of one another and to settle disputes by peaceful means.

Summer of 1997	Death of Mate Boban.
6 October 1997	Surrender of both accused to the Tribunal.

ANNEX II: *DRAMATIS PERSONAE*

Mile Akmad`i}	Prime Minister of RBiH; Member of the Presidential Council HZ H-B.
Miro Andri}	HV Colonel.
Ivan Bender	President of the House of Representatives HR H-B.
Ante Bili}	Vice President HDZ Busova~a.
Tihomir Bla{ki}	Commander of the CBOZ.
Mate Boban	President of the HZ H-B. President of the Presidency of the HZ H-B. President of the HVO. President of HDZ-BiH.
Janko Bobetko	HV General, southern front Commander.
Mario ^erkez	Commander of the HVO Vite{ka Brigade.
Filip Filipovi}	HVO Colonel in Travnik.
Anto Furund`ija	Commander of the Jokers (D`okeri), subordinate to Vladimir [anti}.
Darko Geli}	Tihomir Bla{ki}'s liaison officer to the UNPROFOR.
Florijan Glavo~evi}	President HDZ Busova~a.
Du{ko Grube{i}	Commander of the Nikola [ubi} Zrinski Brigade.
Jadranko Jandri}	Commander of the HOS (replaced by Mladen Holman).
Enver Had`ihasanovi}	ABiH 3rd Army Corps Commander.
Radovan Karad`i}	President of the Bosnian Serb administration in Pale.
Dario Kordi}	Vice President of the HZ H-B Presidency. Vice President of the HR H-B. President HDZ-BiH in 1994.
Ignac Ko{troman	Secretary-General of the HZ H-B and the HDZ-BiH.
Darko Kraljevi}	Commander of the Vitezovi.
Pa{ko Ljubi~i}	IV Battalion Military Police Commander from 18 January 1993 until 23 July 1993.
Zoran Mari}	President of HVO Busova~a.

D`emal Merdan	ABiH Chief of Staff.
Slobodan Milo{evi}	President of the FRY.
Philippe Morillon	Commander UN BiH Command.
Marinko Palavra	IV Battalion Military Police Commander from 23 July 1993.
Arif Pa{ali}	Commander of the ABiH 4th Corps.
Jadranko Perli}	President of the HVO.
@eljko Pervan	President of HVO Travnik.
Milivoj Petkovi}	HV General, HVO headquarters Chief of Staff.
Slobodan Praljak	HV General, replaced by Petkovi} as HVO Chief of Staff on 27 July 1993.
Bo`o Raji}	Minister of Defence RBiH. Vice President HVO. Vice President of the HZ H-B Presidency.
Ivica Raji}	HVO OZ 3 Commander (in Kiseljak).
Ante Roso	HV General in charge of the Livno region, in replacement of Praljak as HVO Chief of Staff in October 1993.
Ivan [anti}	President of HVO Vitez.
Vladimir [anti}	Commander of a company in IV Brigade MP
Pero Skopljak	Chief of Police Vitez.
Ante Sli{kovi}	Commander of the CBOZ SIS, office at the Hotel Vitez.
Bruno Stoji}	Head of HVO Defence Department.
Gojko [u{ak	Minister of Defence of the Republic of Croatia.
@ivko Toti}	Commander of the Jure Franceti} Brigade.
Franjo Tu|man	President of the Republic of Croatia.
Anto Valenta	President of the Vitez HDZ. Deputy-President of the HDZ for the HZ-HB. Vice-President of the HVO.
Sre}ko Vu~ina	Vice President HDZ-BiH.
Zvonko Vukovi}	IV Battalion Military Police Commander until 18 January 1993.

Ivica Zeko	Deputy-Commander of the CBOZ, responsible for intelligence activities.
Kre{imir Zubak	Member of the Presidential Council; Member of the Presidency of RBiH; Vice President of the HVO.

ANNEX IIIA: GLOSSARY - LEGAL CITATIONS

Additional Protocol I	Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol I), of 8 June 1977
Additional Protocol II	Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of Non-International Armed Conflicts (Protocol II), of 8 June 1977
***Akayesu* Trial Judgement**	*Prosecutor v. Jean-Paul Akayesu*, Case No. ICTR-96-4-T, Judgement, 2 September 1998
***Aleksovski* Appeal Judgement**	*Prosecutor v. Zlatko Aleksovski*, Case No. IT 95-14/1-A, Judgement, 24 March 2000
***Bla{ki}* Trial Judgement**	*Prosecutor v. Tihomir Bla{ki}*, Case No. IT-95-14-T, Judgement, 3 March 2000
***^elebi}i* Trial Judgement**	*Prosecutor v. Zejnil Delali} et al*, Case no. IT-96-21-T, Judgement, 16 November 1998
***^elebi}i* Appeal Judgement**	*Prosecutor v. Zejnil Delali} et al*, Case No. IT-96-21-A, Judgement, 20 February 2001
^erkez Final Brief	*Prosecutor v. Dario Kordi} and Mario ^erkez*, Case No. IT-95-14/2, Mario ^erkez Final Trial Brief, filed on 13 December 2000
^erkez Pre-trial Brief	*Prosecutor v. Dario Kordi} and Mario ^erkez*, Case No. IT-95-14/2, Defendant's Mario ^erkez Pre-Trial Brief, filed 8 April 1999
Commission of Experts Report	Final Report of the Commission of Experts Established Pursuant to Security Council Resolution 780 (1992) (S/1994/674)
Common Article 3	Article 3 of Geneva Conventions I through IV
***Furund`ija* Trial Judgement**	*Prosecutor v. Anto Furund`ija*, Case No. IT-95-17/1-T, Judgement, 10 December 1998
***Furund`ija* Appeal Judgement**	*Prosecutor v. Anto Furund`ija*, Case No. IT-95-17/1-A, Judgement, 21 July 2000
Geneva Convention I	Geneva Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field of August 12, 1949

Geneva Convention II	Geneva Convention for the Amelioration of the Condition of Wounded, Sick and Shipwrecked Members of Armed Forces at Sea of August 12, 1949
Geneva Convention III	Geneva Convention Relative to the Treatment of Prisoners of War of August 12, 1949
Geneva Convention IV	Geneva Convention Relative to the Protection of Civilian Persons in Time of War of August 12, 1949
Geneva Conventions	Geneva Conventions I through IV of August 12, 1949
Hague Convention IV	The 1907 Hague Convention (IV) Respecting the Laws and Customs of War on Land
Hague Regulations	Regulations Respecting the Laws and Customs of War on Land annexed to Hague Convention IV
ICCPR	International Covenant on Civil And Political Rights, adopted by the United Nations General Assembly on 16 December 1966
ICRC Commentary (GC IV)	Pictet (ed.)-Commentary: IV Geneva Convention Relative to the Protection of Civilian Persons in Time of War (1958)
ICRC Commentary (Additional Protocol I)	Sandoz *et al.* (eds.)-Commentary on the Additional Protocols of 8 June 1977 to the Geneva Conventions of 12 August 1949
ICC Statute	Rome Statute of the International Criminal Court, Adopted at Rome on 17 July 1998 (PCNICC/1999/INF/3)
1991 ILC Report	Report of the International Law Commission on the work of its 43rd session, 29 April-19 July 1991, supplement no. 10 (A/46/10)
1996 ILC Report	Report of the International Law Commission on the work of its 48th session, 6 May-26 July 1996, supplement no. 10 (A/51/10)
Indictment	*Prosecutor v. Dario Kordi} and Mario ^erkez*, Case No. IT-95-14/2, Amended Indictment, 30 September 1998
***Jelisi}* Trial Judgement**	*Prosecutor v. Goran Jelisi}*, Case No. IT-95-10-T, Judgement, 14 December 1999

Kordi} Final Brief	*Prosecutor v. Dario Kordi} and Mario ^erkez*, Case No. IT-95-14/2, Dario Kordi}'s Final Trial Brief, filed 13 December 2000
Kordi} Pre-trial Brief	*Prosecutor v. Dario Kordi} and Mario ^erkez*, Case No. IT-95-14/2, Kordi} Defense Pre-Trial Brief, filed 6 April 1999
***Kupre{ki}* Trial Judgement**	*Prosecutor v. Zoran Kupre{ki} et al*, Case No. IT-95-16-T, Judgement, 14 January 2000
Law Reports	Law Reports of Trials of War Criminals (the United Nations War Crimes Commission)
Prosecution Final Brief	*Prosecutor v. Dario Kordi} and Mario ^erkez*, Case No. IT-95-14/2, Prosecutor's Closing Brief, filed 13 December 2000
Prosecution Pre-trial Brief	*Prosecutor v. Dario Kordi} and Mario ^erkez*, Case No. IT-95-14/2, Prosecutor's Pre-Trial Brief, filed 25 March 1999
Report of the Secretary-General	Report of the Secretary-General Pursuant to Paragraph 2 of Security Council Resolution 808 (1993), (S/25704)
Rules	Rules of Procedure and Evidence of the International Tribunal
Statute	Statute of the International Tribunal, annexed to the Report of the Secretary-General pursuant to paragraph 2 of Security Council resolution 808 (1993), (S/25704)
T.	Transcript of hearing in *Prosecutor v. Dario Kordi} and Mario ^erkez*, Case No. IT-95-14/2-T
***Tadi}* Appeal Judgement**	*Prosecutor v. Du{ko Tadi}*, Case No. IT-94-1-A, Judgement, 15 July 1999
***Tadi}* Jurisdiction Decision**	*Tadi}* (1995) I ICTY JR 293
***Tadi}* Trial Judgement**	*Prosecutor v. Du{ko Tadi}*, Case No. IT-94-1-T, Judgement, 7 May 1997
***Tadi}* Sentencing Appeals Judgement**	*Prosecutor v. Du{ko Tadi}*, Case No. IT-94-1-A and IT-94-1-A*bis*, Judgement in Sentencing Appeals, 26 January 2000
TWC	Trials of War Criminals before the Nuernberg Military Tribunals under Control Council Law No. 10

Vance-Owen Peace Plan	This plan is reproduced in pp. 13-44 of the Report of the Secretary-General on the Activities of the International Conference on the former Yugoslavia, 2 February 1993, (S/25221)

ANNEX IIIB: GLOSSARY - FREQUENTLY USED TERMS AND ABBREVIATIONS

ABiH	Armed Forces of the Republic of Bosnia and Herzegovina
AID	Bosnian Intelligence Service
BiH	Bosnia and Herzegovina
BSA	Bosnian Serb Army
Britbat	British Battalion of UNPROFOR
CBOZ	Central Bosnia Operative Zone, HVO
Dayton Agreements	Agreements between RBiH, Croatia and the FRY, initialled in Dayton on 21 November 1995 and signed in Paris on 14 December 1995
Dutchbat	Dutch Battalion of UNPROFOR
ECHR	European Convention for the Protection of Human Rights and Fundamental Freedoms signed in Rome on 4 November 1959
EC	European Community
ECMM	European Community Monitoring Mission
FRY	Federal Republic of Yugoslavia (Serbia and Montenegro)
HDZ	Croatian Democratic Union
HDZ-BiH	Croatian Democratic Union of Bosnia and Herzegovina
HOS	Croat Defence Forces (military wing of the HSP)
HR H-B	Croatian Republic of Herceg-Bosna
HSP	Croatian Party of Rights
HZ H-B	Croatian Community of Herceg-Bosna
HV	Army of the Republic of Croatia
HVO	Croatian Defence Council

ICJ	International Court of Justice
ICRC	International Committee of the Red Cross
ICTR	International Criminal Tribunal for the Prosecution of Persons Responsible for Genocide and Other Serious Violations of International Humanitarian Law Committed in the Territory of Rwanda and Rwandan Citizens Responsible for Genocide and Other Such Violations Committed in the Territory of Neighbouring States, between 1 January 1994 and 31 December 1994
IMT	International Military Tribunal sitting at Nuremberg, Germany
IMTFE	International Military Tribunal for the Far-East sitting at Tokyo, Japan
International Tribunal	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
JNA	Yugoslav Peoples' Army
Milinfosum	Military Information Summary
MMWG	Mixed Military Working Group
MOS	Muslim Armed Forces
MUP	Ministry of the Interior Police
Parties	The Prosecutor and the Defence in *Prosecutor v. Dario Kordi} and Mario ^erkez,* Case No. IT-95-14/2-T
PPN	Special Purpose Unit
RBiH	Republic of Bosnia and Herzegovina
SDA	Party of Democratic Action
SDS	Serbian Democratic Party
SFRY	Socialist Federal Republic of Yugoslavia
SIS	HVO Security and Information Service
SJS	Public Security Station

TO	Territorial Defence
UNPROFOR	United Nations Protection Force
VJ	Army of the FRY
VP	HVO Military Police

HVO Regular Brigades

Ban Jela~i}	Located in Kiseljak
Bobovac	Located in Vare{
Frankopan	Located in Travnik
Jure Franceti}	Located in Zenica
Nikola [ubi} Zrinski	Located in Busova~a
Stjepan Toma{evi}	Located in Novi Travnik
Vite{ka	Located in Vitez; formed out of part of the Stjepan Toma{evi} Brigade

HVO Military Police

IV Battalion Military Police	Military Police Fourth Battalion located in Travnik, renamed Military Police 7th Battalion in July 1993
VII Battalion Military Police	See IV Battalion Military Police

HVO Special Purpose Units

Bruno Bu{i}	Located in Travnik. Left the CBOZ before the April 1993 conflict.
Jokers (D`okeri)	Anti-terrorist unit formed within the IV Battalion Military Police, located in the Bungalow in Nadioci
Maturice	Located in Kiseljak
Vitezovi (formerly HOS)	Located in the Dubravica school, Vitez
@uti	Located in Travnik

ABiH

3rd Corps	Located in Zenica, its area of responsibility included Central Bosnia
7th Muslim Brigade	Part of the ABiH 3rd Corps, comprised (in part) of foreign combatants (Mujahedin)
325th Mountain Brigade	3rd Corps Brigade in Vitez
Mujahedin	See 7th Muslim Brigade.

ANNEX IV: PROCEDURAL HISTORY

A. The Stages of the Proceedings

1. Dario Kordi} and Mario ^erkez were indicted on a joint indictment with four other accused, including Tihomir Bla{ki} and Zlatko Aleksovski. The joint indictment was confirmed by Judge McDonald on 10 November 1995[1807] and warrants of arrest were issued the same day addressed to the Republic of Croatia, the Federation of Bosnia and Herzegovina and the Republic of Bosnia and Herzegovina.[1808] Copies of the indictments and warrants of arrest were subsequently sent to IFOR upon an Order issued by Judge Claude Jorda in December 1995.[1809]
2. The co-accused Tihomir Bla{ki} surrendered voluntarily to the International Tribunal in April 1996 while Zlatko Aleksovski was arrested in the Republic of Croatia in June 1996 and transferred to the International Tribunal in April 1997. Proceedings against both of these co-accused were separated from those against the four indictees remaining at large.
3. Dario Kordi}, Mario ^erkez and their co-accused, Ivan Santi} and Pero Skolpjak, surrendered voluntarily to the International Tribunal on 6 October 1997 and made their initial appearances on 8 October 1997 before a Trial Chamber comprised of Judge Jorda, presiding, Judge Karibi-Whyte and Judge Shahabuddeen. All four pleaded not guilty to the charges in the indictment. On 20 November 1997, following the installation of new Judges at the International Tribunal, the case was assigned to a Trial Chamber composed of Judge Jorda, presiding, Judge Riad and Judge Rodrigues. In December 1997, all charges against the co-accused Ivan Santi} and Pero Skolpjak were withdrawn and they were released from the custody of the International Tribunal[1810]. The case continued jointly against Dario Kordi} and Mario ^erkez and in September 1998 the indictment was amended with leave of Judge McDonald. The accused again pleaded not guilty in a further appearance on 14 October 1998.
4. In November 1998, following the creation of a third Trial Chamber, the case was transferred to a Trial Chamber comprising Judge May, presiding, Judge Bennouna and Judge Robinson, before whom the trial was conducted.

[1807] Decision on the review of the Indictment, 10 Nov, 1995.
[1808] Warrants of arrest and order for surrender against Mario ^erkez sent to the Federation of Bosnia and Herzegovina, the Republic of Croatia and the Republic of Bosnia-Herzegovina, 10 Nov. 1995; Warrants of arrest and order for surrender against Dario Kordi} sent to the Federation of Bosnia and Herzegovina, the Republic of Croatia and the Republic of Bosnia-Herzegovina, 10 Nov. 1995.
[1809] Order, 24 Dec. 1995.
[1810] Order on Prosecutor's Motion for Leave to Withdraw the Indictment against Ivan Santi}, 19 Dec. 1997 ; Order on Prosecutor's Motion for Leave to Withdraw the Indictment against Pero Skopljak, 19 Dec. 1997.

5. The pre-trial proceedings lasted 18 months and required the resolution of more than 60 pre-trial motions and requests. In February 1998 the accused filed a joint application requesting disqualification of Judge Jorda and Judge Riad on the basis that the two Judges were also hearing the case against Tihomir Bla{ki} which, it was argued, would both cause undue delay in the progress of the case and would expose those Judges to evidence that would jeopardise their ability to hear the second case impartially. The application was denied in May 1998, following a referral to the Bureau in accordance with the Rules[1811]. The objection was immediately renewed and a further decision denying the application was issued by the Trial Chamber on 8 October 1998[1812]. In July 1998, Mario ^erkez applied for a separate trial on the grounds that, first, there was no common transaction capable of forming the basis of the joint charges and, second, even if a common transaction was established, it would be in the interests of justice for the two accused to be tried separately. The application was denied on 7 December 1998 on the grounds that the two accused were properly joined in that they were accused of crimes committed in the course of the same transaction; there was no risk of prejudice to Mario ^erkez in a joint trial and that the interests of justice actually mitigated in favour of a joint trial[1813].

6. The trial of Dario Kordi} and Mario ^erkez commenced on 12 April 1999. The Prosecution team was led by Mr. Geoffrey Nice, Q.C., and the Defence for Dario Kordi} ("Kordi} Defence") was led by Mr. Mitko Naumovski. The Defence for Mario ^erkez ("^erkez Defence") was led by Mr. Bo`idar Kova~i}. The Prosecution case lasted 134 days and 114 Prosecution witnesses were called. Of these, two were subsequently recalled. Later in the proceedings four prosecution witnesses were heard in relation to the admissibility of additional evidence that had only become available late in the trial. With the permission of the Trial Chamber, one final prosecution witness, Witness AT, was heard in November 2000, shortly after his availability became known to the Prosecution. The transcripts of testimony of 30 witnesses from other proceedings before the International Tribunal were also admitted into evidence in this case.

7. The Prosecution completed presentation of its case in March 2000 but did not formally close its case as a number of issues remained outstanding relating to the production of documents from the Republic of Croatia. Shortly after the end of the evidence both accused filed Motions for Judgement of Acquittal pursuant to Rule 98 *bis* of the Rules and a hearing was held on 30 March 2000. The Trial Chamber handed down its Decision on Defence Motions

[1811] Decision on the Application of the Accused for Disqualification of Judges Jorda and Riad, 21 May 1998.
[1812] Decision on the Application for the Disqualification of Judges Jorda and Riad, 8 Oct. 1998.
[1813] Decision on Accused Mario ^erkez's Application for Separate Trial, 7 Dec. 1998.

for Judgement of Acquittal on 6 April 2000[1814] denying the motions but confirming that there was no case to answer in relation to the charge of plunder against Dario Kordi} (Count 39 of the Indictment) in respect of ten specified locations and no case to answer in relation to the similar charge against Mario ^erkez (Count 42 of the Indictment) in respect of two specified locations. The Prosecution also conceded that it had not produced evidence on two locations (Divjak and Stupni Do) referred to in Counts 43 and 44 of the Indictment and agreed to amend the Indictment accordingly. With respect to the charges of persecution (Counts 1 and 2 of the indictment), which were charged "throughout the HZ H-B/HR H-B and the municipality of Zenica" the Trial Chamber noted that the Prosecution was not required to produce evidence as to each and every municipality forming part of the HZ H-B/HR H-B but that the Defence was not expected to call evidence concerning municipalities about which no evidence was given.

8. The defence case for Dario Kordi} commenced on 11 April 2000 and a total of 60 witnesses were called. Three of these witnesses were heard via video-link conference from the region. The defence for Mario ^erkez commenced on 24 July 2000 and called 53 witnesses. Together the defence cases ran for 84 days. The Kordi} Defence presented affidavit evidence from 32 witnesses pursuant to Rule 94 *ter* of the Rules and the ^erkez Defence presented a further 17 witness affidavits. The Trial Chamber ordered certain of the witnesses whose affidavits were tendered to give oral testimony instead.

9. After the close of the defence cases in chief, the Trial Chamber heard two witnesses called by the Chamber pursuant to Rule 98 of the Rules. After hearing the two witnesses who were recalled and the additional prosecution witnesses referred to in paragraph 6 above, the Prosecution then called three rebuttal witnesses, the Kordi} Defence called three witnesses in rejoinder and the ^erkez Defence called two rejoinder witnesses, over a period of four days. The ^erkez Defence sought unsuccessfully to appeal the ruling of the Trial Chamber for closing arguments to be heard shortly thereafter, seeking a period of not less than four weeks in which to prepare its final brief.[1815] Closing arguments were heard over two days from 14 December 2000 and the case closed on 15 December 2000. Four thousand six hundred and sixty-five exhibits were admitted and the transcript runs to more than 28,500 pages.

10. The Rules of the International Tribunal provide for the Trial Chamber to issue a single Judgement addressing both guilt and penalty, where appropriate. Accordingly, some defence witnesses testified as to the character of the accused and addressed other matters relevant to sentencing. The Prosecution did not present any witnesses in this respect.

[1814] Decision on Defence Motions for Judgement of Acquittal, 6 Apr. 2000.
[1815] Decision on Application for Leave to Appeal, 5 Dec. 2000.

11. On the few occasions when for exceptional and temporary reasons, such as illness, a member of the Trial Chamber was unable to sit, the Trial Chamber utilised the provisions of Rule 71 to proceed by way of deposition. Upon obtaining the consent of the accused to proceed in this manner, the Trial Chamber would grant a motion from one of the parties and mandate the two remaining members of the Trial Chamber to act as presiding officers, with the case-file of the proceedings for that period being presented to the full Trial Chamber. After the adoption of Rule 15 *bis* in November 1999, the Trial Chamber utilised the provisions of this Rule (which permits the remaining Judges to continue to sit for up to three days) in such circumstances.

B. Issues Relating to the Accused

1. Motions for provisional release of the accused

12. In February 1999 the accused filed a joint request for provisional release which was denied on 22 March 1999[1816], shortly before the trial commenced in April 1999. In September 1999 the ^erkez Defence presented a motion for temporary provisional release to permit the accused to visit his father who was then terminally ill. The Trial Chamber found that the humanitarian aspects weighed in favour of granting the motion for a limited period of time, partly in view of the fact that the accused had surrendered voluntarily to the International Tribunal, and also taking into consideration the fact that, as far as the Trial Chamber was informed, none of the Prosecution witnesses resided in the area of release and so the accused was not likely to pose a danger to any victim or witness. The Republic of Croatia provided certain guarantees of compliance and Mario ^erkez was granted provisional release for a three-day period, subject to stringent conditions[1817]. The accused Mario ^erkez duly returned to the custody of the International Tribunal at the allotted time.

13. In November 1999, Rule 65 of the Rules governing provisional release was amended to remove the requirement for the accused to show "exceptional circumstances" justifying release[1818]. In early December 1999 both accused filed motions seeking provisional release. Both motions were denied on the grounds that generally it would be inappropriate to grant provisional release during the trial and that the Trial Chamber was not satisfied that the accused would appear for trial if released and would not pose a danger to any victim, witness or other person.[1819]

[1816] Decision on Joint Defense Motion Requesting Provisional Release, 22 Mar. 1999.
[1817] Order on Motion of the Accused Mario ^erkez for Provisional Release, 14 Sept. 1999.
[1818] IT/32/Rev. 17 issued 2 August 1999.
[1819] Order on Application by Dario Kordi} for Provisional Release Pursuant to Rule 65, 17 Dec. 1999; Order on Defendant Mario ^erkez' Application for Provisional Release Pursuant to Rule 65, 17 Dec. 1999.

14. On 20 February 2001, the accused Mario ^erkez filed a confidential application for temporary provisional release. The Trial Chamber denied the application as being inappropriate in the circumstances.[1820]

2. Legal representation of the accused

15. Mario ^erkez was represented throughout the proceedings, by counsel assigned by the Registrar of the International Tribunal pursuant to the Directive on the Assignment of Defence Counsel[1821]. In August 1999, part-way through the trial, that assignment was withdrawn on the basis of information obtained by the Registrar from the media that the accused was receiving substantial financial support for his legal representation from a Croatian support group[1822]. Counsel for Mario ^erkez challenged the Registrar's decision before the Trial Chamber on a number of grounds, asserting that the information relied upon by the Registrar was unreliable. The Trial Chamber considered the matter and found that there was insufficient evidence for the Registrar to take such a drastic step in the middle of the trial, based upon unsubstantiated reports, and that further investigation should have been undertaken before withdrawing the assignment. The Trial Chamber reversed the Registrar's decision and ordered that the assignment should continue without interruption[1823].

16. The accused Dario Kordi} did not request assignment of counsel by the International Tribunal on the grounds of indigency and was represented throughout the trial by Mr. Naumovski, from Zagreb, assisted by a number of attorneys from the United States law firms of Hunton & Williams and Stein, Volinsky & Callaghan, P.A., under financial arrangements to which the Trial Chamber is not party. In a filing in late December 1998 the Prosecution raised various issues relating to the representation of the accused by the same law firm (Hunton & Williams) that represented the Republic of Croatia in proceedings relating to the production of documents in both this case and other cases before the International Tribunal. After giving the opportunity to the Kordi} defence, the Republic of Croatia and the law firm itself to make submissions, the Trial Chamber took formal notice of the knowing, voluntary and informed consent of the accused, Dario Kordi}, to the concurrent representation[1824]. In January 2001, shortly before the entry of this Judgement, the two law firms sought and were granted

[1820] Order on Provisional Release Application of Mario ^erkez, 23 Feb. 2001.
[1821] IT/73, as amended.
[1822] Decision of the Registrar, filed 10 Aug. 1999.
[1823] Decision on the Registrar's Withdrawal of the Assignment of Defence Counsel, 3 Sept. 1999.
[1824] Notice by Trial Chamber III of Consent by the Accused Dario Kordi} to Concurrent Legal Representation, 15 Feb. 1999.

permission to withdraw from the record, apparently after having represented the accused for more than a year without financial settlement.

C. Issues Relating to Witnesses

1. Witness protection

17. Both the Prosecution and the Kordi} Defence applied for various protective measures for certain of their witnesses, pursuant to the Rules of Procedure and Evidence of the International Tribunal. In all, the Trial Chamber issued more than 100 orders for various protective measures, in both the pre-trial and trial phases of the proceedings, and over 20 witness summonses and subpoenas.
18. Pseudonyms were granted to 50 Prosecution witnesses, of whom 16 were heard in closed session and 34 testified in open session but with facial distortion to conceal their identities from the public. One Prosecution witness testified with facial distortion but no pseudonym and one court witness testified in closed session, also with a pseudonym. When the need arose, the Trial Chamber would go into private session (where there is no external sound broadcast) for a short period. The accused were always fully aware of the identity of the protected witnesses.
19. Of the Kordi} Defence witnesses, 12 were granted pseudonyms, six of whom were heard in closed session and six in open session with facial distortion. Three Kordi} Defence witnesses, who were unable or unwilling for good reason to travel to The Hague, were heard by way of video conference link from the region. Orders for safe conduct (granting limited immunity for a short period of time so as to permit the witness to travel to The Hague to testify without fear of arrest) were issued for 37 Defence witnesses, who otherwise would have refused to appear, together with one of the witnesses called by the Chamber.
20. To the extent that this Judgement is based upon testimony given in closed session, that testimony is released to the extent that it is recited or relied upon herein. Of particular relevance here is the evidence of Witness AT, the reliability of which has been considered in detail in the Judgement in the assessment of his credibility as a witness. The Prosecution acknowledged that it was required to disclose to the Defence, pursuant to Rule 68 of the Rules of Procedure and Evidence, closed session material that went to the issue of his credibility, even though a previous request for disclosure from the Defence had been denied by the Trial Chamber before which the evidence had been given (the witness in question not having consented to the testimony being used or released in other proceedings). The Trial Chamber examined both the issue and the material to be disclosed and ruled that where the Trial

Chamber is required to balance the competing and conflicting interests of the rights of the accused and the protection of witnesses, the requirement under Article 20 of the Statute to act with "full respect" for the rights of the accused is to be given greater weight than the requirement in the same Article to have "due regard" to the protection of victims and witnesses.[1825] The Trial Chamber authorised the release of the confidential material to the Defence, subject to the same protective measures as had been imposed by the original Trial Chamber.

2. The summoning of Trial Chamber witnesses pursuant to Rule 98

21. On 20 July 2000 the Trial Chamber rejected a request from the Defence to admit the transcripts of two of seven witnesses who had previously testified in the *Bla{ki}* case. The Prosecution objected to the admission of the transcripts on the basis that there were significant issues relating to the role of the accused that were not addressed in the previous testimony. The Trial Chamber ruled that the two witnesses were to be called to testify in person and, at the suggestion of the Defence, agreed to summon the two witnesses *proprio motu* pursuant to Rule 98.[1826]

22. The witnesses were heard after the close of the ^erkez case in chief, and before any party witnesses were recalled and before rebuttal and rejoinder witnesses were heard. The Trial Chamber ordered that the transcript of the evidence given by the witness in the *Bla{ki}* trial would be treated as the examination-in-chief and the witnesses were then subject to cross-examination by all parties.

3. Provision of witness statements, summaries and outlines

23. On 6 April 1999, immediately prior to the commencement of the Prosecution case, the Prosecution filed its list of intended witnesses pursuant to (then) Rule 73 *bis*. The Prosecution listed 331 witnesses to be called and provided brief summaries of the expected testimony. The timely provision of full witness statements for these witnesses in both an official language of the International Tribunal and in the language of the accused proved to be difficult for the Prosecution, largely due to translation difficulties as a result of the sheer volume of material, and was an ongoing issue of contention between the parties throughout both the trial and pre-trial period.

[1825] Decision on Prosecutor's Application on Rule 68 Material, 22 Nov. 2000.
[1826] T. 22973-74.

24. In addition to the summary of the testimony for each witness provided before the trial commenced, the Prosecution developed a practice of providing both the Trial Chamber and the Defence with an outline of the evidence to be given by the individual witness shortly before the witness was called and references to paragraphs of these outlines can be seen throughout the transcripts. The outline was prepared after the witness arrived in The Hague to testify and proved to be a useful tool in that it identified topics for which the Defence could agree that the witness could be led. The outlines do not form part of the evidence of the trial, nor does the fact that something is not included in the outline preclude a party from raising it with the witness. The purpose of the outline is simply to assist everyone involved in the proceedings to concentrate on what is relevant to the particular trial.

4. Additional witnesses

25. In June 1999 the Prosecution made an oral application to call four additional witnesses whose testimony, it was said, had only been sought after certain other (listed) witnesses had refused to testify. The Prosecution asserted that, although the Office of the Prosecutor had had contact with the witnesses during past investigations concerning Central Bosnia, no statements had been taken and it was only when they were identified as possible "replacement" witnesses that statements were taken. In the case of one witness in particular, the statement indicated for the first time that the witness could provide direct information on a topic on which the Prosecution had no other evidence. After hearing the parties on the issue, the Trial Chamber rejected the Prosecution application to call the additional witnesses in an oral ruling on 3 June 1999.[1827]

26. The Prosecution then sought leave to appeal the decision on the ground that the exclusion of the witnesses would cause prejudice to the Prosecution case that could only be cured by interlocutory appeal and that the Prosecutor should not be prevented from calling additional witnesses, especially where it would not lengthen the overall proceedings. The Appeals Chamber denied the application as not showing any prejudice that could not be cured on the final disposal of the trial and that it did not present an issue of general importance to the proceedings of the International Tribunal.[1828]

[1827] T. 3237.
[1828] Decision on Application for Leave to Appeal, 18 Aug. 1999.

D. Evidentiary Issues

1. Exhibits generally

27. Numerous evidentiary and procedural issues arose during the trial and the Trial Chamber dealt with more than 150 applications of various types and issued more than 30 decisions on matters of substance. The magnitude of the evidence in this case gave rise to repeated challenges and complaints as to late production of material. More than 4,500 exhibits were admitted into evidence and many others excluded, for a variety of reasons. In addition to submitting two binders of key exhibits at the commencement of the case ("core documents"), many of which were agreed by the Defence (subject to translation, legibility etc.), at the close of the presentation of its case-in-chief, the Prosecution submitted to the Trial Chamber a large volume of exhibits (15 binders, with approximately 50 documents in each) that had not been tendered through witnesses but which the Prosecution still sought to have admitted ("the outstanding exhibits"). The Trial Chamber examined the documents tendered and, after hearing the parties, admitted most but not all of them (9 binders), subject to an evaluation of the weight to be attributed to such material. A similar procedure was followed at the close of the Defence cases. The Prosecution also submitted five binders of exhibits relating to the issue of an international armed conflict in the region, of which approximately half were admitted.

2. Judicial notice of adjudicated facts

28. In March 2000, shortly after the issue of the Judgement in Bla{ki}, and near to the close of the Prosecution case, the Prosecution filed a motion requesting the Trial Chamber to take judicial notice of certain facts contained in the Kupre{ki} and Bla{ki} Judgements, in the interests of judicial economy and the efficient administration of justice. The material sought to be noted related, in particular, to the events in Ahmi}i, as established by the Kupre{ki} Trial Chamber, to the issue of an armed conflict in the La{va Valley, as established in the Bla{ki} Judgement, and to various attacks and incidents of detention in certain of the La{va Valley municipalities. The matter remained pending until late May 2000, when the Prosecution asked for consideration of the motion to be postponed[1829], pending, *inter alia*, the outcome of appeals challenging some of the facts sought to be admitted. In light of that application, the Trial

[1829] T. 19713.

Chamber decided to treat the motion as withdrawn.[1830] The Prosecution submitted a revised application at the close of its rebuttal case in December 2000, inviting the Trial Chamber to consider certain factual findings from previous Judgements, rather than taking judicial notice of adjudicated facts. The Trial Chamber declined to take judicial notice of any of the matters raised, noting that the Chamber has an inherent power to consider the findings of other Chambers but that it is not bound by any such determination.

3. Evidence other than through live testimony

29. With the encouragement of the Trial Chamber and supported by various changes to the Rules of Procedure and Evidence during the course of the trial, the parties tendered large amounts of evidence in various documentary forms. Transcripts of the testimony of 57 witnesses given in other cases before the International Tribunal were tendered for admission, 50 from the Prosecution and seven from the Kordi} Defence. Of these, 30 were admitted into evidence, sometimes with the agreement of the other parties and sometimes by order of the Trial Chamber, after having examined the transcript and heard the parties on the issue. Fourteen transcripts were not admitted by the Trial Chamber and six witnesses were required to be called to testify in person.

30. Evidence was also tendered by way of affidavit by all parties pursuant to Rule 94 *ter* of the Rules. Rule 94 *ter* sets out various procedural requirements and requires the affidavits to be corroborative in nature. Towards the end of its case, the Prosecution sought to have admitted seven affidavits, a formal statement, and two unsworn statements of witnesses who had subsequently died. The Defence challenged the admission of these affidavits and the statements, on the basis that the procedural and temporal requirements of the Rule had not been met. By way of oral rulings, on 10 March 2000, the Trial Chamber admitted the seven affidavits and the formal statement. In so doing, the Trial Chamber stated that, in its view, and following the decision of the Permanent Court of Justice in the *Chorzow Factory case* (1929) and the International Court of Justice in the *Corfu Channel case* (1950), the Rules had to be interpreted so as to give them useful effect (*ut res magis valeat quam pereat*).[1831]

31. The Prosecution sought to admit the first of the two deceased statements under Rule 89 (C), which permits a Trial Chamber to admit "any relevant evidence which it deems to have probative value". The Trial Chamber noted that the deceased statement had not been (and could not now be) subject to cross-examination and was not given under oath; further, the

[1830] T. 11910.
[1831] T. 16487.

Trial Chamber noted that, consistent with the jurisprudence of the European Court of Human Rights, it would not be possible to convict the accused on the basis of the deceased statement alone, if uncorroborated. With those considerations in mind, the first statement was admitted on 21 February 2000.[1832] The second statement was of a witness who had testified in other proceedings before the International Tribunal prior to his death, and whose transcript had already been admitted in these proceedings. The Trial Chamber held that this second witness statement did not contain sufficient additional evidence to make it admissible in its own right and that any additional evidence was cumulative in nature.[1833]

32. The Defence then sought leave to appeal these two decisions of the Trial Chamber and leave was granted on March 2000 in respect of the deceased statement and on 28 April 2000 in respect of the affidavits and the formal statement.

33. The Appeals Chamber ruled the deceased statement inadmissible on 21 July 2000.[1834] The Appeals Chamber held that the Rules express a preference for in-court testimony and that they provide certain safeguards which must apply in any departure from that principle so as to ensure that the evidence is reliable. The Appeals Chamber found that the deceased statement contained none of the required indicia of reliability in that it was not given under oath, nor was it made under formal circumstances that might increase its reliability, such as before an investigation judge. The deceased statement had not been subjected to cross-examination and was not corroborated in terms of the truth of the matter asserted. It was not made contemporaneously with the events in question but some years afterwards. In addition, the method of taking the statement, involving multiple translations in an informal setting, created potential for inaccuracy.

34. Addressing the admissibility of the affidavits and the formal statement, the Appeals Chamber held that there were three relevant issues: whether the timing requirement of Rule 94 *ter* was merely procedural in nature; the effect of an objection if the affiant is not then made available for cross-examination; and the interpretation of the phrase in Rule 94 *ter* "a fact in dispute".

35. The Appeals Chamber held that the timing requirement was not merely procedural but was an integral part of the Rule protecting the rights of the accused and that to depart from it caused material prejudice to the accused. On this ground alone the appeal would succeed. The Appeals Chamber also held that there is no absolute right to cross-examine a witness, simply a right to apply for an order for the affiant to be called for cross-examination. The decision is then to be made by the Trial Chamber on a case-by-case basis. Similarly, it is for the Trial Chamber to determine on a case-by-case basis whether the fact in dispute is of a minor nature

[1832] T. 14701-02.
[1833] T. 14702.

or not, provided that there is a clear link between the live testimony to be corroborated by the affidavit and the corroborating evidence in the affidavit is focussed on the facts contained in the live testimony. The seven affidavits were ruled inadmissible.

36. The Appeals Chamber then held that the formal statement was of a different character, as it related to an agreement to supplement live testimony already given by the declarant, without requiring the recall of the witness but that it failed to meet the requirement for admission under Rule 94 *ter.* The Appeals Chamber held that the formal statement could be considered for admission under Rule 89 (C), applying the criteria set down by the Appeals Chamber in connection with the admission of the affidavits and directed to the Trial Chamber to re-evaluate its admissibility.

37. The Trial Chamber considered the admissibility of the formal statement afresh[1835] and, in light of the continued objections of the ^erkez Defence to the admission of the information contained in the statement (a list of detainees at a certain location), the witness was recalled for cross-examination.

38. A further issue of admissibility was raised by the Kordi} Defence in connection with Prosecution exhibit Z1380.4. This unsigned and unattributed document, which was said to be an internal report prepared by the Croatian Information Service ("HIS"), was admitted by the Trial Chamber "in the fashion that [the Prosecution] were given it … as a document … which will serve you in your cross-examination today".[1836] The Defence challenged its admissibility on the grounds of lack of proper foundation, authenticity and hearsay. The Defence sought leave to appeal on the basis that admission of the exhibit would cause incurable prejudice to the accused: its admission would not only breach the right of confrontation of witnesses under Article 21, paragraph 4, of the Statute but that it was likely to be a fabricated document, produced (by its creators, not by the Prosecution) in an attempt to influence the outcome of the case. The Appeals Chamber denied the application for leave on the grounds that the Appeals Chamber had recently addressed the general question of admissibility of evidence pursuant to Rule 89 (C) and that the Defence had not made out that the issues in the proposed appeal were of general importance to proceedings before the International Tribunal or in international law generally.[1837]

[1834] Decision on appeal regarding statement of a deceased witness, 21 July 2000.
[1835] T. 26533-34, 26664.
[1836] T. 20252.
[1837] Decision on Application for Leave to Appeal, 22 Sept. 2000.

4. The village dossiers

39. Another innovative evidentiary procedure was the submission by the Prosecution of "dossiers" (or village binders) containing material relevant to specific locations. The Prosecution submitted a dossier relating to the village of Tuli}a as an example of the information it sought to present in this manner and the Trial Chamber ruled upon the admissibility of the material on 29 July 1999.[1838]

40. The Tuli}a dossier contained a report prepared by the Investigations Team Leader responsible for this case ("Investigator"), together with:

i. Eight witness statements;

ii. Four transcripts;

iii. Five maps;

iv. Exhumation documents, including an on-site report, photographs and death certificates;

v. Photographs, diagrams and maps;

vi. A video;

vii. Photographic "stills" taken from the video footage.

41. The Prosecution proposed that the dossier form part of the record of the proceedings and for the Investigator to be called to summarise the scope and result of the investigations conducted by the Office of the Prosecutor in this case. The Prosecution relied upon Rules 90 (G) and 89 (C) as permitting the Trial Chamber to admit the material. The Defence objected to admission of the material in the dossier on the basis that it amounted to a violation of the right of the accused under Article 21, paragraph 4 (e) of the Statute to examine the witnesses against him.

42. The Trial Chamber examined both the Investigator's report and each category of material sought to be admitted. It held that the Investigator's report was merely a collation of statements and other materials and that the Investigator would not be reporting as a contemporary witness of fact. The report would therefore be of little or no probative value and was not admissible. The witness statements were also excluded from admission under Rule 89 (C), on the ground that to admit them would amount to wholesale admission of hearsay evidence untested by cross-examination but the Trial Chamber drew the attention of the parties to the possibility of admitting the witness statements under Rule 94 *ter.* Similarly, there was no basis for the admission of transcripts of testimony from other trials of four

[1838] Decision on the Prosecution Application to Admit the Tuli}a Report and Dossier into Evidence, 29 July 1999.

witnesses who had already testified live and been subject to cross-examination in these proceedings. However, the remaining transcripts were admissible on the basis that the witnesses had been cross-examined in other proceedings in which the Defence in that case had a common interest with the Defence in the current case. This would not preclude the Defence from applying to cross-examine these witnesses on the grounds that there are significant relevant matters not covered in the previous case which needed to be tested in these proceedings.

43. Turning to the photographic and documentary evidence, the Trial Chamber held that this was admissible pursuant to Rule 89 (C) as evidence which the Trial Chamber deems to have probative value. Any assumptions or conclusions expressed in the material (for example, a statement by an investigating judge that the deceased persons had been killed by the HVO) would be disregarded by the Trial Chamber and would not form part of the record of evidence in determining the innocence or guilt of the accused.

44. Prior to the Trial Chamber's ruling, the Kordi} Defence filed a "precautionary" application for leave to appeal. In the application, it sought to challenge the requirement on the Defence, if any, in responding to the issues raised in connection with the dossier, to go beyond the not guilty plea and to require the Defence to state its substantive position on specific issues, thus effectively reversing the burden for the production of proof. The Appeals Chamber rejected the application on 12 July 1999, on the basis that no issue of general importance to proceedings before the International Tribunal had yet arisen.[1839]

45. The Prosecution subsequently submitted similar dossiers for a further eight villages and municipalities (Ahmi}i, Busova~a, Kiseljak, Novi Travnik, Vare{, Vitez, Zenica and @epce).

5. Material challenged pursuant to Rule 95

46. In September 1998, the Office of the Prosecutor obtained and, with the assistance of the United Nations Stabilisation Force ("SFOR"), executed a search warrant relating to the Defence Office of the Vitez Municipality, pursuant to which a number of documents were seized. The Defence challenged the manner in which the warrant had been executed, arguing, *inter alia*, that the Office of the Prosecutor had no power to take direct enforcement action within a sovereign state without the consent or participation of such state and that SFOR was not vested with the power to execute warrants other than warrants of arrest. The Defence then sought to suppress the production of material seized during the search, pursuant to Rule 95 of the Rules, which provides that: "No evidence shall be admissible if obtained by methods

[1839] Decision on Dario Kordi}'s Precautionary Application for Leave to Pursue an Interlocutory Appeal, 12 July 1999.

which case substantial doubt on its reliability …". The Trial Chamber overruled the objection and admitted such material by an oral ruling of 1 June 1999[1840], followed by written reasons on 25 June 1999.[1841]

47. The Defence sought leave to challenge the admission of this material on the basis that its improper admission would cause incurable prejudice to the accused, arguing that the question of the extent of the power of the Office of the Prosecutor to seize documents raised an issue of general importance to proceedings before the International Tribunal. The Appeals Chamber denied leave to appeal, on the basis that the Defence had not shown any prejudice that could not be cured on the final disposal of the trial and that no issue of general importance to proceedings before the International Tribunal or in international law generally had been raised, in that the issues raised were provided for in the Statute, the Rules and a treaty entered into between the United Nations and the state in question.[1842]

6. Exhibit 2801

48. The Defence challenged the authenticity of this exhibit, a tape-recording of an intercepted conversation between Colonel Bla{ki} and Dario Kordi} in January 1993, presented through the witness Edin Husi}. The Kordi} Defence acknowledged that the voices on the tape are those of Bla{ki} and Dario Kordi} but alleged possible tampering with the tape (of which there are a number of copies). The chain of custody of the various copies of the recording were also disputed by the Defence both at the time the tape was first tendered and again, on separate grounds, after it was discovered that the Prosecution had sent copies of the tapes to an external laboratory for testing after they had been formally tendered into evidence. The Defence sought to have the tape excluded on the basis that the handling of the evidence by the Prosecution violated Rule 81 (C), pursuant to which the Registrar of the International Tribunal is to retain all physical evidence offered in the proceedings.[1843]

49. The tape is not the original recording but one of at least two copies made by the witness in February 1993. The witness provided one copy (tape A) to his superior later in 1993 and retained the other (tape B). The witness retained tape B until sometime in November 1999 when, on being told that tape A could not be located, he handed tape B to his current superior. The witness next saw tape B on 4 December 1999 when it was shown to him by investigators from the Office of the Prosecutor and he confirmed that it was indeed tape B. In addition to

[1840] T. 3045.
[1841] Decision stating reasons for Trial Chamber's ruling of 1 June 1999 rejecting defence motion to suppress evidence, 25 June 1999.
[1842] Decision on Application for Leave to Appeal, 23 Aug. 1999.

challenging the provenance of the tapes, the Defence also challenges the integrity of tape B, asserting that it could have been tampered with and recordings of the accused's voice spliced into it in the period from November to early December 1999, while out of the custody of the witness. From December 1999 to February 2000 tape B was held in the Evidence Unit of the Office of the Prosecutor ("the OTP Evidence Unit").

50. On 2 February 2000, tape B (Exhibit Z2801.1) and a transcript were tendered in evidence by the Prosecution through the witness. The Prosecution retained the "original" tape B and a copy was made and submitted to the Registry. Tape B was not played in court because, during his testimony, the witness produced another tape (tape C) which he said was a copy he had made before handing over tape B. Tape C was played in court and was given number Exhibit Z2801.4. Tape C was then provided to the Registry and a copy was made by the Audio-visual section and provided to all parties. The tapes were formally admitted on 4 February 2000 but the Defence was permitted to raise further matters pertaining to the tapes. (The Defence also asserted that there are various sounds that appear on one version of the tape and not on the other, so that they are not reliable copies.)

51. On 16 February 2000 both tapes (the "original" tape B and a "copy" of tape C) were released by the Prosecution to a forensic laboratory for a digital copy to be made. This was done without the knowledge or consent of either the Trial Chamber or the Registry. The tapes remained at the forensic laboratory until 12 May 2000 when they were returned to the custody of the OTP Evidence Unit.

52. During its initial consideration of this matter, the Trial Chamber expressed considerable concern that an original exhibit could leave the Tribunal without permission.[1844] On 15 May 2000, the Chamber considered the matter further, referring to Rule 81 of the Rules of Procedure and Evidence. The Chamber noted the universal principle that it is the court and not a party that should control the exhibits.[1845] On 18 May, the issue was raised again and all members of the Chamber expressed grave concerns about the propriety of leaving the originals of exhibits in the hands of one of the parties, and especially the impression this could give in the international community.[1846] The Chamber ordered the original of both tape B and tape C to be handed to the Registry forthwith. The Chamber indicated that it would consider a Defence application for this exhibit to be excluded from evidence and the OTP was

[1843] Dario Kordi}'s Response to Prosecution's Report on Audio-tape Handling of Evidence, filed 7 June 2000.
[1844] T. 18539 – 41.
[1845] T. 18713.
[1846] T. 19102.

given seven days in which to file a written report setting out where the tapes had been. The report was filed on 25 May 2000.[1847]

53. Expert evidence about the tapes was called subsequently by both parties, and on 3 July 2000 the Trial Chamber decided that the witness should be recalled.[1848] The witness was heard on 16 November 2000. In a final submission, the Kordi} Defence acknowledged that it was unable to assemble evidence to establish that the conversation did not occur or that it was a fabrication from several conversations but still sought to have the tape excluded .[1849] The Trial Chamber ruled the tape admissible on 6 December 2000 on the basis that, in this case, the Registry had, in fact, retained the original exhibit (tape C) and that in any event, the evidence would only be excluded if its admission would seriously damage the integrity of the proceedings.[1850]

E. Binding Orders to States and Other Entities for the Production of Documents

54. During the course of the trial and the pre-trial proceedings, both the Prosecution and the Kordi} Defence sought binding orders addressed to States or other international entities in connection with the production of documents relevant to their respective cases, pursuant to Rules 54 and 54 *bis*. The majority of these proceedings were conducted on a confidential basis and so will not be addressed in detail in this section. However, the Trial Chamber notes the varying levels of cooperation received and its appreciation of the assistance that has been provided by a number of States and entities in identifying and providing access to the material sought.

55. The Trial Chamber does find it necessary however to address in more detail in this section the proceedings relating to States once part of the former Yugoslavia. The impact of cooperation by these States is all the more important in that they are the most likely repositories of such documents and their cooperation with the International Tribunal in these matters is mandated by Article 29 of the Statute.

1. Proceedings addressed to the Republic of Croatia

56. On 28 January 2000, the Trial Chamber issued an "omnibus" order ("the Order of 28 January"), addressing four separate applications by the Prosecution, all filed before the adoption by the Tribunal of Rule 54 *bis.* The Order required production of documents listed

[1847] Prosecutor's Report on Audio-tape Handling of Evidence, filed 25 May 2000.
[1848] T, 21980.
[1849] Accused, Dario Kordi}'s Supplemental Submission regarding Audio-tape Evidence, filed 12 Dec. 2000.
[1850] T. 27954.

in four separate annexes. In all, 184 different categories of documents were identified for production.

57. Croatia was required to file a written submission on progress within 28 days and to attend at a hearing two weeks later. Following a request from Croatia for an extension of time, a hearing was held on 29 March 2000. On 31 March 2000, the Trial Chamber issued a further Order requiring Croatia by 13 April 2000 to file a report stating which of the documents requested were in its possession and to produce those documents by 29 April 2000.

58. On 13 April 2000 Croatia responded with a list of 219 documents said to be covered by the Order of 28 January and, on 24 May 2000, six documents relating to Ahmi}i were provided by Croatia, including HIS reports from Miroslav Tu|man to President Tu|man.

59. On 25 July 2000, the Prosecution filed an application under Rule 54 *bis* for an order to Croatia for production of 70 categories of documents, referred to as "the Ahmi}i documents". The Prosecution asserted that all or most of the Ahmi}i documents were already covered by the Order of 28 January. An *ex parte* hearing was held on 25 July 2000 addressing the need for an urgent hearing of the application. (Rule 54 *bis* requires that 15-days notice of the application be given to the relevant State.) The Prosecution acknowledged that it had recently been given access to the HVO archive, containing a huge quantity of material, in excess of 2000 binders. The Chamber determined not to expedite the proceedings at this stage, stating that the government of Croatia should have time to respond to the request of 10 July 2000.[1851]

60. On 2 August 2000 the Prosecution filed a renewed application seeking an order in identical terms to that sought on 25 July 2000 and asking that a hearing be scheduled for shortly after the summer recess. A Scheduling Order was issued by the Trial Chamber on 4 August 2000, ordering the application to be served on Croatia and setting a hearing for 7 September 2000 and on 24 August 2000 Croatia submitted a letter in response to the Application (filed on 6 September 2000) outlining the steps that had been taken by Croatia to provide access to these documents to both the Prosecution and the Defence.

61. At the hearing the Trial Chamber noted that there had been compliance with the Order to some extent and that there was ongoing cooperation in respect thereof. In those circumstances the Trial Chamber declined to make any further order but reiterated that the Order of 28 January remained in force. [1852]

[1851] T. 23206.
[1852] T. 24382.

2. The admission of the material obtained pursuant to the Order of 28 January 2000

62. Throughout the proceedings, the Prosecution had indicated that it was still seeking the production of documents by the Republic of Croatia and that it would seek to submit any material so obtained as part of its case. Indeed, the Prosecution had been permitted not to close its case in chief when it completed the presentation of all of its other evidence in March 2000. As a result of the access to archives provided to the Prosecution by the Republic of Croatia, on 30 October 2000 the Prosecution applied for the admission of additional material[1853] (both in the case in chief and as rebuttal evidence) in the Prosecution case ("the Zagreb material"). This was after presentation of both defence cases, with only the rebuttal and rejoinder phases of the proceedings and closing arguments remaining.

63. The material submitted by the Prosecution for admission was voluminous, amounting to more than 300 items, plus 33 transcripts of meetings that had also recently been made available to it. These alone comprised six binders. In addition, the Prosecution proposed to call up to 33 additional witnesses. The Prosecution argued that everyone involved in the proceedings had been aware of the efforts the Prosecution was making to try to obtain this material and that to exclude it now that it had been produced would reward those who sought to hinder the proper functioning of the International Tribunal. The Prosecution was permitted to call three witnesses, one of whom testified as to the access to these materials from an archive in Zagreb, and the other two of whom testified about the manner in which the transcripts had been recorded and access to the documents regulated. Admission of this evidence at this late stage of the proceedings was vigorously resisted by the Defence.

64. After receiving both written and oral submission from the parties the Trial Chamber ruled all but 17 of the items inadmissible.[1854] All of the transcripts were excluded on the ground that they addressed matters which had already been the subject of considerable evidence in the case, namely the role of the Republic of Croatia in the conflict in Bosnia and Herzegovina. Therefore to admit them would be cumulative and repetitious. Of the exhibits, the Trial Chamber noted that some of the items were already in evidence; others had been produced in other proceedings before the International Tribunal and therefore had been available to the Prosecution at any earlier stage of these proceedings; in many cases the material was cumulative and did not add to the material already in evidence; or the material was not significant enough to warrant production at this stage of the proceedings; or that certain items

[1853] Prosecutor's Submissions concerning witness list, rebuttal exhibits, "Zagreb exhibits" and Presidential Transcripts, filed 30 Oct. 2000.

were based on anonymous sources or hearsay statements that were incapable of being tested by cross-examination.

65. The Prosecution also sought to admit 42 documents as rebuttal evidence, five of which were subsequently withdrawn. Of these the Trial Chamber admitted two documents, noting that 20 of the documents tendered had already been admitted into evidence during the course of the trial, and excluding the remainder.[1855]

66. Both Defence teams also sought to admit material recently received from Croatia; the Kordi} Defence initially sought to admit 159 further documents and to call four additional witnesses. This was reduced to 12 documents, of which all but one were admitted by the Trial Chamber.[1856] The ^erkez Defence sought only to admit two additional documents as "Zagreb material" both of which were accepted by the Trial Chamber.[1857]

3. Proceedings addressed to the Federation of Bosnia and Hercegovina

67. As with the proceedings involving Croatia, the Prosecution sought a series of Orders for production addressed to the Federation of Bosnia and Herzegovina (FBiH), which were eventually combined in an Order of the Trial Chamber issued on 27 January 2000. Pursuant to this Order FBiH was to produce the documents sought no later than 24 February 2000. In early - mid March 2000 the Trial Chamber received reports from the Ministry of Justice, the Minister of Defence and the Ministry of the Interior of the FBiH addressing the steps that had been taken by those Ministries to locate the various documents but no documents were actually produced at this time. The Trial Chamber notes that the responses provided by one part of the FBiH are not always consistent with those provided by another part.

68. A hearing on the issue of compliance with the Order was held on 29 March 2000, at which the representative of the FBiH confirmed that certain relevant documents did exist but that the material needed to be checked and organised but could be produced within one month. The Trial Chamber confirmed the obligation to provide all of the documentation referred to in the Order and allowed a further period of one month for production. At the date of issue of this Judgement, none of the documents subject to the Order had been produced.

69. In June 2000 the Kordi} Defence also sought an Order for production of documents by the FBiH. A hearing on that application was held on 6 July 2000 and a Binding Order for

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[1854] Decision on Prosecutor's submissions concerning "Zagreb Exhibits" and Presidential Transcripts, 1 Dec. 2000.
[1855] Decision on Admission of Prosecution Rebuttal Exhibits, 11 Dec. 2000.
[1856] Decision On Admission Of Rejoinder And "Zagreb Materials" And One Additional Exhibit On Behalf Of Accused Dario Kordi}, 11 Dec. 2000.

production of documents was issued by the Trial Chamber on 18 July 2000. On 15 August 2000 the FBiH produced 27 documents pursuant to this latest Order, which documents were formally filed (after translation into one of the official languages) in November 2000.

[1857] Decision on Additional and Rejoinder Documents on Behalf of Accused Mario ^erkez, 11 Dec. 2000.

ANNEX V: INDICTMENT

THE INTERNATIONAL CRIMINAL TRIBUNAL FOR THE FORMER YUGOSLAVIA

Case No. IT-95-14/2-PT

Confirming Judge: Judge Gabrielle Kirk McDonald

Trial Chamber: Judge Claude Jorda
Judge Fouad Abdel-Monem Riad
Judge Almiro Simões Rodrigues

Registrar: Ms. Dorothee de Sampayo Garrido

Date: 30 September 1998

THE PROSECUTOR

v.

Dario KORDI]
Mario ^ERKEZ

AMENDED INDICTMENT

The Prosecutor of the International Criminal Tribunal for the former Yugoslavia, pursuant to her authority under Article 18 of the Statute of the International Criminal Tribunal for the former Yugoslavia ("The Statute of the Tribunal"), charges:

Dario KORDI]
Mario ^ERKEZ

with Crimes Against Humanity, Grave Breaches of the Geneva Conventions and Violations of the Laws or Customs of War.

BACKGROUND

1. The events alleged in this indictment took place against the background of the break-up of the former Yugoslavia. The Republic of Croatia declared its independence on 25 June 1991, the implementation of which was suspended until 8 October 1991. The Republic of Croatia was recognized by the European Community on 15 January 1992, and admitted by the United Nations as a member State on 22 May 1992. The Republic of Bosnia and Herzegovina declared its independence on 3 March 1992, and was recognized by the European Community on 6 April 1992, and admitted by the United Nations as a member State on 22 May 1992.

2. At times relevant to the indictment, the Croatian Democratic Union (the "HDZ") was a principal and influential political party in Croatia. Some of the HDZ's stated goals were to establish "the sovereignty of the Croatian people" and their "inalienable right to self-determination -- including the right to secession -- of the entire Croatian nation inside its historical and natural borders," and to promote "the economic and spiritual association between . . . Croatia and . . . Bosnia and Herzegovina, which comprise (or constitute) a natural, inseparable geopolitical entity and whose historical fate (or destiny) is directed toward partnership."

3. At times relevant to the indictment, the Croatian Democratic Union of Bosnia and Herzegovina (the "HDZ-BiH") was a principal Bosnian Croat political party in the Republic of Bosnia and Herzegovina. Among the HDZ-BiH's stated goals were "securing the right of the Croatian people to self-determination, including the right to secession . . ."

4. The Croatian Community of Herceg-Bosna (the "HZ H-B") proclaimed its existence on 18 November 1991, claiming to be a separate or distinct "political, cultural, economic and territorial whole," in the territory of Bosnia and Herzegovina. Among its purposes was the establishment of closer ties to or a union with Croatia, as evidenced by the HZ H-B's use of Croatian currency, the Croatian language and the granting of Croatian citizenship by Croatia to Bosnian Croats. The HZ H-B's Presidency included a President, two Vice Presidents and a Secretary. The Presidency's powers included the appointment of executive and administrative authorities. On 28 August 1993, the HZ H-B declared itself the Croatian Republic of Herceg-Bosna ("HR H-B"), with its two principal officers being a President and a single Vice President. Neither the HZ H-B nor the HR H-B were ever recognized by the international community, and the HZ H-B was declared illegal by the constitutional court of Bosnia and Herzegovina on or about 14 September 1992.

5. By Article 2 of the 18 November 1991 Decision on the Establishment of the HZ H-B, the HZ H-B (and later the HR H-B) consisted of the following muncipalities in the territory of Bosnia and Herzegovina: Jajce, Kre{evo, Busova~a, Vitez, Novi Travnik, Travnik, Kiseljak, Fojnica, Skender Vakuf (Dobreti}i), Kakanj, Vare{, Kotor Varo{, Tomislavgrad, Livno, Kupres, Bugojno, Gornji Vakuf, Prozor, Konjic, Jablanica, Posu{je, Mostar, [iroki Brijeg, Grude, Ljubu{ki, ^itluk, ^apljina, Neum, Stolac and Trebinje (Ravno). By virtue of Article 4 of the same Decision, the municipality of @ep~e was added to the HZ H-B/HR H-B in about October 1992.

6. The Croatian Defence Council (the "HVO") was established in or about April 1992, and was the HZ H-B's and HR H-B's supreme executive, administrative and defence authority. The creation of municipal HVOs was authorized and such HVOs were subsequently established beginning in or about June 1992, as the municipal executive and military power. The HVO and every HVO member were subject and accountable to the HZ H-B Presidency, which in turn executed its powers and objectives through the HVO.

7. From approximately November 1991 to March 1994, various persons and groups associated or directed, instigated, supported or aided or abetted by the HDZ, the HDZ-BiH, the HZ H-B/HR H-B and HVO and various of their political, municipal and administrative bodies, armed forces, police, paramilitary and special units, caused, planned, prepared, instigated, supported, directed and engaged in a campaign of persecutions and ethnic cleansing and committed serious violations of international humanitarian law against the Bosnian Muslim population residing in the HZ H-B/HR H-B and the municipality of Zenica, in the territory of Bosnia and Herzegovina.

THE ACCUSED AND SUPERIOR AUTHORITY

DARIO KORDI]

8. **Dario KORDI],** son of Pero, was born on 14 December 1960 in Sarajevo, in the Republic of Bosnia and Herzegovina. He studied at the University of Sarajevo, where he concentrated on political science, and then worked as a journalist.

9. **Dario KORDI]** was an active member of the HDZ-BiH and rose to positions of increasing power, authority and influence in the Bosnian Croat leadership. He was part of the highest circle of political and military leaders in the HDZ-BiH, the HZ H-B, the HR H-B and HVO. In 1991, **Dario KORDI]** was named President of the HDZ-BiH in the municipality of Busova~a and also President of the Travnik Regional Community. As President of the Travnik Regional Community, **Dario KORDI]** co-chaired a meeting of the HDZ-BiH on 12 November 1991, where it was declared that "the Croatian people in Bosnia and Herzegovina finally has to start conducting a decisive and active policy which should bring about the realisation of our eternal dream -- a joint Croatian state." Several days later, on 18 November 1991, **Dario KORDI]** was one of the leaders who signed the Decision establishing the HZ H-B and became one its two Vice Presidents, in which position he continued until approximately August 1993. By virtue of his position as a Vice President, **Dario KORDI]** was also a member of the HZ H-B Presidency, which also functioned as the HZ H-B's legislative body. When the HR H-B was declared in August 1993, **Dario KORDI]** was named Vice President, in which position he continued at times relevant to the indictment. Beginning on or about 10 July 1994, he became President of the HDZ-BiH. At times relevant to the indictment, **Dario KORDI]** represented himself and was regarded by others as a senior HVO official, and signed orders and documents as a senior HVO official. By his roles and positions, **Dario KORDI]** exercised power. command and authority in, over and through the HVO and its activities and operations.

10. **Dario KORDI]**, by virtue of his various offices, positions and authorities, his relationships with key Croatian and Bosnian Croat leadership figures and his political and military power in the HZ-HB/HR H-B, exerted power, influence and control over the political and military aims and operations of the HDZ-BiH, the HZ H-B, the HR H-B and HVO. **Dario KORDI]** demonstrated power, influence, authority and control on numerous occasions and in numerous ways including, by example, making policy and strategic decisions, negotiating cease-fire agreements on behalf of the HVO, issuing orders that were directly or indirectly of a military nature or consequence, representing himself as a HVO Colonel, Vice President or other senior HVO official, dressing in military attire, having a military operations room in his office at the PTT building in Busova~a, countermanding cease-fire agreements when the terms were not suitable to him, appointing and dismissing persons to or from various offices, jobs and positions, issuing orders for the arrest or release of influential Muslims detained by the HVO, authorizing travel and freedom of movement through various HVO-controlled territories, obtaining the release of stolen or seized vehicles or property, and negotiating the passage of relief convoys or United Nations vehicles through various checkpoints.

MARIO ^ERKEZ

11. **Mario ^ERKEZ,** son of Tugomir, was born on 27 March 1959 in the village of Rijeka, municipality of Vitez, in the Republic of Bosnia and Herzegovina. **Mario ^ERKEZ** worked as a car mechanic and a clerk at the SPS Factory.

12. **Mario ^ERKEZ** became the commander of the HVO brigade in or about the municipality of Vitez (the "HVO Vitez Brigade") in 1992, and he remained in such position at all times relevant to the charges in this indictment. His position within the HVO meant that he was under the command of Tihomir BLA[KI], who was then the HVO Central Bosnia Operative Zone Commander. **Mario ^ERKEZ's** authority and duties as a commander are set forth in the Decree on the Armed Forces of the Croatian Community of Herceg-Bosna, dated 17 October 1992, which provides that a commander in his position was responsible for the combat readiness of the troops under his command and the mobilisation of the armed forces and police units, and had the authority to appoint and dismiss commanders.

13. At all times relevant to the charges in this indictment, **Mario ^ERKEZ**, by virtue of the positions and authority described above, demonstrated or exercised his control in military matters in a variety of ways including, by example, negotiating cease-fire agreements with opposing civil and military figures from within the Muslim community, negotiating with United Nations officials, issuing orders to deploy troops and other units under his command and controlling the detention and treatment of detained civilians.

GENERAL ALLEGATIONS

14. In each paragraph charging crimes against humanity, a crime recognised by Article 5 of the Statute of the Tribunal, the alleged acts or omissions were part of widespread, large-scale or systematic acts and conduct directed against Bosnian Muslim civilian populations residing in the HZ H-B/HR H-B and the municipality of Zenica, in the territory of Bosnia and Herzegovina.

15. At all times relevant to this indictment, a state of international armed conflict and partial occupation existed on the territory of the Republic of Bosnia and Herzegovina.

16. All acts or omissions herein set forth as grave breaches of the Geneva Conventions of 1949 (hereafter "grave breaches"), recognised by Article 2 of the Statute of the Tribunal, occurred during such international armed conflict and partial occupation.

17. All of the victims referred to in the charges contained in this indictment were, at all relevant times, persons protected by the Geneva Conventions of 1949.

18. The accused in this indictment were required to abide by the mandate of the laws and customs governing the conduct of war, including the Geneva Conventions of 1949.

19. **Dario KORDI],** from about November 1991 to approximately March 1994, is individually responsible for the crimes charged against him in this indictment, pursuant to Article 7(1) of the Statute of the Tribunal. Individual criminal responsibility includes committing, planning, instigating, initiating, ordering or aiding and abetting the planning, preparation or execution of any acts or omissions set forth in this indictment.

20. **Dario KORDI],** from about November 1991 to approximately March 1994, is also, or alternatively, criminally responsible as a superior for the acts of his subordinates pursuant to Article 7(3) of the Statute of the Tribunal. A superior is criminally responsible for the acts of his subordinate if the superior knew or had reason to know that his subordinate was about to commit such acts or had done so and the superior failed to take necessary and reasonable measures to prevent further such acts or to punish his subordinate. As to each charge in the indictment, **Dario KORDI],** in addition to being individually responsible, knew or had reason to know, and it was foreseeable, that persons subordinate to him were about to commit various crimes, persecutions and illegal acts, or had done so, and failed to take necessary and reasonable measures to prevent such crimes, persecutions and acts or punish the perpetrators thereof.

21. **Mario ^ERKEZ,** from about April 1992 to approximately August 1993, is individually responsible for the crimes charged against him in this indictment, pursuant to Article 7(1) of the Statute of the Tribunal. Individual criminal responsibility includes committing, planning, instigating, initiating, ordering or aiding and abetting the planning, preparation or execution of any acts or omissions set forth in this indictment.

22. **Mario ^ERKEZ,** from about April 1992 to approximately August 1993, is also, or alternatively, criminally responsible as a superior for the acts of his subordinates pursuant to Article 7(3) of the Statute of the Tribunal. A superior is criminally responsible for the acts of his subordinate if the superior knew or had reason to know that his subordinate was about to commit such acts or had done so and the superior failed to take necessary and reasonable measures to prevent further such acts or to punish the subordinate. As to each charge in the indictment, **Mario ^ERKEZ,** in addition to being individually responsible, knew or had reason to know, and it was foreseeable, that persons subordinate to him were about to commit various crimes, persecutions and illegal acts, or had done so, and failed to take necessary and reasonable measures to prevent such crimes, persecutions and acts or punish the perpetrators thereof.

23. The general allegations contained in paragraphs 1 through 22, as well as the allegations in paragraphs 24 through 35 below, are realleged and incorporated in each charge.

CHARGES

24. One of the principal aims of the HDZ-BiH, the HZ H-B, the HR H-B and HVO was to control various municipalites and territories in Bosnia and Herzegovina and connect or unify them with the Republic of Croatia. To achieve this aim, the HDZ-BiH, the HZ H-B/HR H-B and HVO caused, planned, instigated, prepared, initiated, supported and executed a political-military campaign to gain control of these territories, and to ethnically cleanse them of, or substantially reduce and subjugate, the Bosnian Muslim population. This campaign was carried out by various practices, means and methods which demonstrated, by their pattern, consistency and frequency, that an orchestrated and widespread campaign was implemented throughout the HZ H-B/HR H-B and the municipality of Zenica, from about 18 November 1991, when the HZ H-B proclaimed its existence, to approximately 1 March 1994, when the Washington Agreement was signed.

25. In his various high-ranking positions and through the power and influence that he exercised, **Dario KORDI]** played a central role in developing, establishing and executing the policies, objectives and strategies of the HDZ-BiH, the HZ H-B, the HR H-B and the HVO. Along with others, he launched, planned, instigated, prepared, ordered, committed and aided and abetted a political-military campaign to persecute and terrorise Bosnian Muslims, which involved, or resulted in, the commission of serious violations of international humanitarian law. **Dario KORDI]** was a definite integral and important figure in the whole campaign, and had power, authority and responsibility to direct, control and shape its policies and execution, and to prevent, limit or punish crimes, violations or abuses which occurred or were carried out in the campaign. He publicly advocated the campaign's goals and encouraged and instigated the ethnic hatred, strife and distrust which served its ends.

26. **Dario KORDI]** extended his sphere of authority, command and influence over a wide range of municipalities, and was closely involved in preparing, instigating and carrying out the campaign's objectives and operations. **Dario KORDI]** not only personally voiced and promoted the campaign's objectives and participated in various criminal acts, but was also aware of and had every reason to know - in the highly charged and volatile environment of Bosnia and Herzegovina - of the dangers, abuses and consequences of the campaign's policies and objectives, and the courses of conduct that he and others set in motion. Persecution, oppression and violence against Bosnian Muslim civilians, institutions and property were fully foreseeable and no adequate steps were taken to prevent, stop or punish such abuses and violations. **Dario KORDI]** knew or had reason to know that various subordinates and aiders and abetters were about to persecute and oppress Bosnian Muslims, or had done so, and failed to take the necessary and reasonable measures to prevent such acts or to punish the perpetrators.

27. As an HVO commander, **Mario ^ERKEZ** implemented by military means the HDZ-BiH's, the HZ H-B's, the HR H-B's and HVO's goals, policies and objectives, and committed and aided and abetted the persecution campaign. He was the commander of the HVO Vitez Brigade, which was directly and actively involved in the wide-scale persecution against Bosnian Muslim civilians. **Mario ^ERKEZ** also knew or had reason to know that various subordinates and aiders and abetters under his control were about to persecute and oppress Bosnian Muslim civilians, or had done so, and failed to take the necessary and reasonable measures to prevent such acts or to punish the perpetrators.

28. The campaign of persecution, violence and ethnic cleansing was perpetrated and carried out on a widespread or systematic basis, by various means and methods, including attacks on cities, towns and villages with no military significance inhabited by Bosnian Muslim civilians, and killing and causing serious injury to Bosnian Muslim civilians. Many of the attacks commenced early in the morning when most of the inhabitants were in their homes and asleep. At least one hundred defenceless Bosnian Muslim civilians, including women, children, the elderly and the infirm, were killed and many wounded or harmed in their homes or yards, while attempting to hide or escape from the HVO attacks or bombardments or after they had been detained by the HVO.

29. Detention and imprisonment were other means used to persecute Bosnian Muslims, who were systematically selected, detained and imprisoned in HZ H-B/ HR-H-B and HVO detention facilities, on political, racial, ethnic or religious grounds. Imprisoned and otherwise detained Bosnian Muslim civilians were subjected to physical and psychological abuse, including beatings and sexual assaults, and suffered inhumane deprivations of basic necessities, such as adequate food, water, shelter and clothing. There was often little or no medical attention, and overcrowded and unsanitary conditions.

30. As part of the persecutions, Bosnian Muslims were forced to proclaim their allegiance to the HZ H-B/HR H-B and/or the HVO or face losing their jobs. Many Bosnian Muslims were dismissed or removed from government, municipal and other positions, or relegated to positions of no real power or authority.

31. Many of the Bosnian Muslims who were imprisoned and detained were also forced to dig trenches in hostile and otherwise hazardous conditions, were used in forced labor, used as hostages to promote the HZ H-B/HR H-B and HVO political-military objectives and also used as human shields. Some such persons were killed in the course of being detained and forced to engage in such activities.

32. The persecution against Bosnian Muslims was also accomplished by encouraging, instigating and fomenting hatred, distrust and division on political, racial, ethnic or religious grounds, by propaganda, speeches and otherwise.

33. The widespread persecution of Bosnian Muslims also included coercing, intimidating, terrorising and forcibly transferring such civilians from their homes and villages. Many of the persecuted Bosnian Muslims were either killed, transferred or forced to move to Muslim-dominated areas outside the municipalities of Vitez, Novi Travnik and Busova~a. Many of the detained or transferred civilians were taken to HVO checkpoints and then made to walk to Bosnian Muslim territory.

34. To promote and advance this ethnic cleansing, various members of the HDZ-BiH, the HZ H-B/HR H-B and HVO, together with their agents and others, instigated, caused and engaged in the wanton and extensive destruction and plundering of Bosnian Muslim civilian property, with no military justification. Bosnian Muslim dwellings and buildings, as well as civilian personal property and livestock, were destroyed or severely damaged. Bosnian Muslim businesses were blown up and destroyed. Many of these acts and much of this damage was meant to ensure that the Muslim inhabitants could not or would not return to their homes and communities. In addition, many Bosnian Muslim buildings, sites and institutions dedicated to religion or education were targeted for destruction or otherwise damaged or violated.

35. As a result of the persecution and ethnic cleansing campaign, the Bosnian Muslim civilian population was substantially reduced and relocated from those areas of the HZ H-B/HR H-B where the HDZ-BiH, the HZ H-B/HR H-B and HVO and their leaders and agents seized control.

COUNT 1
PERSECUTIONS

36. From about November 1991 to approximately March 1994, **Dario KORDI],** together with various members of the HDZ-BiH, the HZ H-B/HR H-B and HVO and their leaders, armed forces and agents, caused, planned, instigated, ordered or committed, or aided and abetted the planning, preparation or execution of, a crime against humanity, that is, the widespread or systematic persecutions of Bosnian Muslim civilians on political, racial, ethnic or religious grounds, throughout the HZ H-B/HR H-B and the municipality of Zenica, in the territory of Bosnia and Herzegovina.

37. This campaign of widespread or systematic persecutions was perpetrated, executed and carried out by or through the following means:

(a) attacking cities, towns and villages inhabited by Bosnian Muslim civilians;
(b) killing and causing serious injury or harm to Bosnian Muslim civilians, including women, children, the elderly and the infirm, both during and after such attacks;
(c) encouraging, instigating and promoting hatred, distrust and strife on political, racial, ethnic or religious grounds, by propaganda, speeches and otherwise;
(d) selecting, detaining and imprisoning Bosnian Muslims on political, racial, ethnic or religious grounds;
(e) dismissing and removing Bosnian Muslims from government, municipal and other positions;
(f) coercing, intimidating, terrorising and forcibly transferring Bosnian Muslim civilians from their homes and villages;
(g) physical and psychological abuse, in humane acts, inhuman treatment, forced labor and deprivation of basic human necessities, such as adequate food, water, shelter and clothing, against Bosnian Muslims who were detained or imprisoned;
(h) using detained or imprisoned Bosnian Muslims to dig trenches;
(i) using detained or imprisoned Bosnian Muslims as hostages and human shields;
(j) wanton and extensive destruction and/or plundering of Bosnian Muslim civilian dwellings, buildings, businesses, and civilian personal property and livestock; and
(k) the destruction and wilful damage of institutions dedicated to Muslim religion or education.

By these acts and omissions, **Dario KORDI]** committed:

Count 1: a CRIME AGAINST HUMANITY, as recognised by Articles 5(h), 7(1) and 7(3) (persecutions on political, racial, or religious grounds) of the Statute of theTribunal.

COUNT 2
PERSECUTIONS

38. From about 1 April 1992 to September 1993, **Mario ^ERKEZ,** together with various members of the HDZ-BiH, the HZ H-B/HR H-B and HVO and their leaders, armed forces and agents, caused, planned, instigated, ordered or committed, or aided and abetted the planning, preparation or execution of, a crime against humanity, that is, the widespread or systematic persecutions of Bosnian Muslim civilians on political, racial, ethnic or religious grounds, in the municipalities of Vitez, Busova~a and Novi Travnik, in the territory of Bosnia and Herzegovina.

39. This campaign of widespread or systematic persecutions was perpetrated, executed and carried out by or through the following means:
- (a) attacking cities, towns and villages inhabited by Bosnian Muslim civilians;
- (b) killing and causing serious injury or harm to Bosnian Muslim civilians, including women, children, the elderly and the infirm, both during and after such attacks;
- (c) encouraging, instigating and promoting hatred, distrust and strife on political, racial, ethnic or religious grounds, by propaganda, speeches and otherwise;
- (d) selecting, detaining and imprisoning Bosnian Muslims on political, racial, ethnic or religious grounds;
- (e) coercing, intimidating, terrorising and forcibly transferring Bosnian Muslim civilians from their homes and villages;
- (f) physical and psychological abuse, inhumane acts, inhuman treatment, forced labor and deprivation of basic human necessities, such as adequate food, water, shelter and clothing, against Bosnian Muslims who were detained or imprisoned;
- (g) using detained or imprisoned Bosnian Muslims to dig trenches;
- (h) using detained or imprisoned Bosnian Muslims as hostages and human shields;
- (i) wanton and extensive destruction and/or plundering of Bosnian Muslim civilian dwellings, buildings, businesses, and civilian personal property and livestock; and
- (j) the destruction and wilful damage of institutions dedicated to Muslim religion or education.

By these acts and omissions, **Mario ^ERKEZ** committed:

Count 2: a CRIME AGAINST HUMANITY, as recognised by Articles 5(h), 7(1) and 7(3) (persecutions on political, racial, or religious grounds) of the Statute of the Tribunal.

COUNTS 3 - 4
UNLAWFUL ATTACKS ON CIVILIANS AND CIVILIAN OBJECTS

40. From about January 1993 to approximately October 1993, **Dario KORDI]**, together with members of the HZ H-B/HR H-B and HVO and their leaders, armed forces and agents, caused, planned, instigated, ordered or committed, or aided and abetted the planning, preparation or execution of, unlawful attacks on civilians and civilian objects and wanton destruction not justified by military necessity in the following cities, towns and villages on about the dates indicated:

Busova~a	January 1993
Merdani	January 1993
Vitez	April 1993
Stari Vitez	April 1993
Ve~eriska-Donja Ve~eriska	April 1993
Ahmi}i	April 1993
Nadio}i	April 1993
Piri}i	April 1993
[anti}i	April 1993
Lon~ari	April 1993
Putis	April 1993
O~ehni}i	April 1993
Rotilj	April 1993
Zenica	April 1993
Novi Travnik	October 1993
Stupni Do	October 1993

By these acts and omissions, **Dario KORDI]** committed:

Count 3: a **VIOLATION OF THE LAWS OR CUSTOMS OF WAR,** as recognised by Articles 3, 7(1) and 7(3) of the Statute of the Tribunal and customary law, Article 51(2) of Additional Protocol I and Article 13(2) of Additional Protocol II (unlawful attack on civilians).

Count 4: a **VIOLATION OF THE LAWS OR CUSTOMS OF WAR,** as recognised by Articles 3, 7(1) and 7(3) of the Statute of the Tribunal and customary law and Article 52(1) of Protocol I (unlawful attack on civilian objects).

COUNTS 5 - 6
UNLAWFUL ATTACKS ON CIVILIANS AND CIVILIAN OBJECTS

41. During or about April 1993, **Mario ^ERKEZ**, together with members of the HZ H-B/HR H-B and HVO and their leaders, armed forces and agents, caused, planned, instigated, ordered or committed, or aided and abetted the planning, preparation or execution of, unlawful attacks on civilians and civilian objects and wanton destruction not justified by military necessity in the following cities, towns and villages on about the dates indicated:

Vitez	April 1993
Stari Vitez	April 1993
Ve~eriska-Donja Ve~eriska	April 1993
Ahmi}i	April 1993
Nadio}i	April 1993

Piri}i	April 1993
[anti}i	April 1993

By these acts and omissions, **Mario ^ERKEZ** committed:

Count 5: a **VIOLATION OF THE LAWS OR CUSTOMS OF WAR,** as recognised by Articles 3, 7(1) and 7(3) of the Statute of the Tribunal and customary law, Article 51(2) of Additional Protocol I and Article 13(2) of Additional Protocol II (unlawful attack on civilians).
Count 6: a **VIOLATION OF THE LAWS OR CUSTOMS OF WAR,** as recognised by Articles 3, 7(1) and 7(3) of the Statute of the Tribunal and customary law and Article 52(1) of Protocol I (unlawful attack on civilian objects).

COUNTS 7 - 13
WILFUL KILLING, MURDER ,
CAUSING SERIOUS INJURY, INHUMANE ACTS
AND INHUMAN TREATMENT

42. From about January 1993 to approximately October 1993, **Dario KORDI]**, together with members of the HZ H-B/HR H-B and HVO and their leaders, armed forces and agents, caused, planned, instigated, ordered or committed, or aided and abetted the planning, preparation or execution of, murders and wilful killings of, and wilful causing and infliction of serious injury and great suffering to body and health, both physical and mental, inhumane acts and inhuman treatment upon and against Bosnian Muslims, in the following cities, towns and villages on about the dates indicated:

Busova~a	January 1993
Rotilj	April 1993
Ahmi}i	April 1993
Nadio}i	April 1993
Piri}i	April 1993
[anti}i	April 1993
Vitez	April 1993
StariVitez	April 1993
Ve~eriska-Donja Ve~eriska	April 1993
Zenica	April 1993
Tulica	June 1993
Han Plo~a/Grahovci	June 1993
Stupni Do	October 1993

By these acts and omissions, **Dario KORDI]** committed:

Killings:
Count 7: a **CRIME AGAINST HUMANITY**, as recognised by Articles 5(a) (murder), 7(1) and 7(3) of the Statute of the Tribunal.
Count 8: a **GRAVE BREACH OF THE GENEVA CONVENTIONS OF 1949** (hereinafter "GRAVE BREACH"), as recognised by Articles 2(a) (wilful killing), 7(1) and 7(3) of the Statute of the Tribunal.
Count 9: a V**IOLATION OF THE LAWS OR CUSTOMS OF WAR**, as recognised by Articles 3, 7(1) and 7(3) of the Statute of the Tribunal and Article 3(1)(a) (murder) of the Geneva Conventions.

Injuries:
Count 10: a **CRIME AGAINST HUMANITY**, as recognised by Articles 5(i) (inhumane acts), 7(1) and 7(3) of the Statute of the Tribunal.
Count 11: a **GRAVE BREACH**, as recognised by Articles 2(c) (wilfully causing great suffering or serious injury to body or health), 7(1) and 7(3) of the Statute of the Tribunal.
Count 12: a **GRAVE BREACH**, as recognised by Articles 2(b) (inhuman treatment), 7(1) and 7(3) of the Statute of the Tribunal.
Count 13: a V**IOLATION OF THE LAWS OR CUSTOMS OF WAR**, as recognised by Articles 3, 7(1) and 7(3) of the Statute of the Tribunal and Article 3(1)(a) (violence to life and person) of the Geneva Conventions.

COUNTS 14 - 20
WILFUL KILLING, MURDER
CAUSING SERIOUS INJURY, INHUMANE ACTS
AND INHUMAN TREATMENT

43. During or about April 1993, M**ario ^ERKEZ**, together with members of the HZ H-B/HR H-B and HVO and their leaders, armed forces and agents, caused, planned, instigated, ordered or committed, or aided and abetted the planning, preparation or execution of, murders and wilful killings of, and wilful causing and infliction of serious injury and great suffering to body and health, both physical and mental, inhumane acts and inhuman treatment upon and against Bosnian Muslims, in the following cities, towns and villages on about the dates indicated:

Ahmi}i	April 1993
Nadio}i	April 1993
Piri}i	April 1993
[anti}i	April 1993
Vitez	April 1993
StariVitez	April 1993
Ve~eriska-Donja Ve~eriska	April 1993

By these acts and omissions, **Mario ^ERKEZ** committed:

Killings:
Count 14: a **CRIME AGAINST HUMANITY**, as recognised by Articles 5(a) (murder), 7(1) and 7(3) of the Statute of the Tribunal.
Count 15: a **GRAVE BREACH**, as recognised by Articles 2(a) (wilful killing), 7(1) and 7(3) of the Statute of the Tribunal.

Count 16: a V**IOLATION OF THE LAWS OR CUSTOMS OF WAR**, as recognised by Articles 3, 7(1) and 7(3) of the Statute of the Tribunal and Article 3(1)(a) (murder) of the Geneva Conventions.

Injuries:
Count 17: a **CRIME AGAINST HUMANITY**, as recognised by Articles 5(i) (inhumane acts), 7(1) and 7(3) of the Statute of the Tribunal.
Count 18: a **GRAVE BREACH**, as recognised by Articles 2(c) (wilfully causing great suffering or serious injury to body or health), 7(1) and 7(3) of the Statute of the Tribunal.
Count 19: a **GRAVE BREACH**, as recognised by Articles 2(b) (inhuman treatment), 7(1) and 7(3) of the Statute of the Tribunal
Count 20: a V**IOLATION OF THE LAWS OR CUSTOMS OF WAR**, as recognised by Articles 3, 7(1) and 7(3) of the Statute of the Tribunal and Article 3(1)(a) (violence to life and person) of the Geneva Conventions.

COUNTS 21 - 28
IMPRISONMENT, INHUMAN TREATMENT, TAKING OF HOSTAGES AND USE OF HUMAN SHIELDS

44. From about 1 January 1993 to approximately 31 March 1994, **Dario KORDI]** , together with members of the HZ H-B/HR H-B and HVO and their leaders, armed forces and agents, caused, planned, instigated, ordered or committed, or aided and abetted the planning, preparation or execution of, the imprisonment, unlawful confinement and inhuman treatment of Bosnian Muslims at about the following locations, in the territory of Bosnia and Herzegovina:

Kaonik Prison,
Vitez Cinema Complex,
Vitez Veterinary Station,
SDK Offices in Vitez,
The chess club in Vitez,
Dubravica Elementary School,
Municipal Building in Kiseljak,
Kiseljak Barracks,
Rotilj village,
Nova Trgovina, and
Silos

45. Many Bosnian Muslims were expelled or forcibly transferred from their homes and villages. Bosnian Muslims were detained and beaten, subjected to physical and/or psychological abuse, intimidation and inhuman treatment, including being confined in overcrowded and unsanitary conditions, deprived of adequate food and water, and provided little or no medical attention.

46. From about 1 January 1993 to approximately 31 January 1994, **Dario KORDI],** together with members of the HZ H-B/HR H-B and HVO and their leaders, armed forces and agents, caused, planned, instigated, ordered or committed, or aided and abetted the planning, preparation and execution of, the use of Bosnian Muslim detainees to dig trenches in hostile, hazardous and combat conditions, in the municipalities of Kiseljak, Vitez, Busova~a, Novi Travnik and @ep~e, which resulted in a number of such detainees being killed or injured.

47. From about 1 January 1993 to approximately 31 January 1994, **Dario KORDI],** together with members of the HZ H-B/HR H-B and HVO and their leaders, armed forces and agents, caused, planned, instigated, ordered or committed, or aided and abetted the planning, preparation or execution of, the use of various Bosnian Muslims detained or imprisoned at the facilities or locations described in Paragraph 44 as hostages.

48. From about June 1993 to approximately September 1993, **Dario KORDI],** together with members of the HZ H-B/HR H-B and HVO and their leaders, armed forces and agents, caused, planned, instigated, ordered or committed, or aided and abetted the planning, preparation or execution of, the use of Bosnian Muslims as hostages in Novi Travnik in order to transfer Bosnian Muslim and Bosnian Croat populations.

49. From about 1 January 1993 to approximately 31 October 1993, **Dario KORDI],** together with members of the HZ H-B/HR H-B and HVO and their leaders, armed forces and agents, caused, planned, instigated, ordered or committed, or aided and abetted the planning, preparation or execution of, the use of Bosnian Muslims as human shields in order to prevent armed forces hostile to the HVO from attacking or firing on HVO positions or to force Bosnian Muslims to surrender:

Merdani	January 1993
Skradno	January-February 1993
Strane	January-February 1993
Kati}i	January-February 1993
Kula	April-May 1993
Vitez	April 1993
@ep~e	June 1993
Novi Travnik	July 1993

By these acts and omissions, **Dario KORDI]** committed:

Imprisonment/Unlawful Confinement:
Count 21: a **CRIME AGAINST HUMANITY**, as recognised by Articles 5(e) (imprisonment), 7(1) and 7(3) of the Statute of the Tribunal..
Count 22: a **GRAVE BREACH**, as recognised by Articles 2(g) (unlawful confinement of civilians), 7(1) and 7(3) of the Statute of the Tribunal..

Inhuman and/or Cruel Treatment of Detainees:
Count 23: a **GRAVE BREACH** as recognised by Articles 2(b) (inhuman treatment), 7(1) and 7(3) of the Statute of the Tribunal.
Count 24: a **VIOLATION OF THE LAWS OR CUSTOMS OF WAR** as recognised by Articles 3, 7(1) and 7(3) of the Statute of the Tribunal and Article 3(1)(a) (cruel treatment) of the Geneva Conventions.

Hostages:
Count 25: a **GRAVE BREACH** as recognised by Articles 2(h) (taking civilians as hostages), 7(1) and 7(3) of the Statute of the Tribunal.
Count 26: a **VIOLATION OF THE LAWS OR CUSTOMS OF WAR** as recognised by Articles 3, 7(1) and 7(3) of the Statute of the Tribunal and Article 3(1)(b) (taking of hostages) of the Geneva Conventions.

Human Shields:
Count 27: a **GRAVE BREACH** as recognised by Articles 2(b) (inhuman treatment), 7(1) and 7(3) of the Statute of the Tribunal;
Count 28: a **VIOLATION OF THE LAWS OR CUSTOMS OF WAR** as recognised by Articles 3, 7(1) and 7(3) of the Statute of the Tribunal and Article 3(1)(a) (cruel treatment) of the Geneva Conventions.

COUNTS 29 - 36
IMPRISONMENT, INHUMAN TREATMENT, TAKING OF HOSTAGES AND USE OF HUMAN SHIELDS

50. From about 1 April 1993 to approximately 31 August 1993, **Mario ^ERKEZ**, together with members of the HZ H-B/HR H-B and HVO and their leaders, armed forces and agents, caused, planned, instigated, ordered or committed, or aided and abetted the planning, preparation or execution of, the imprisonment, unlawful confinement and inhuman treatment of Bosnian Muslims at the following locations in the territory of Bosnia and Herzegovina:

Kaonik Prison,
Vitez Cinema Complex,
Vitez Veterinary Station,
SDK Offices in Vitez,
The chess club in Vitez,
Dubravica Elementary School,

51. Many Bosnian Muslims were expelled or forcibly transferred from their homes and villages. Bosnian Muslims were detained and beaten, subjected to physical and/or psychological abuse and intimidation, and inhuman treatment, including being confined in overcrowded and unsanitary conditions, deprived of adequate food and water, and provided little or no medical attention.

52. From about 1 April 1993 to approximately 31 August 1993, **Mario ^ERKEZ,** together with members of the HZ H-B/HR-HB and HVO and their leaders, armed forces and agents, caused, planned, instigated, ordered or committed, or aided and abetted the planning, preparation and execution of, the use of Bosnian Muslim detainees to dig trenches in hostile, hazardous and combat conditions, in the municipality of Vitez.

53. During or about April 1993, **Mario ^ERKEZ,** together with members of the HZ H-B/HR H-B and HVO and their leaders, armed forces and agents, caused, planned, instigated, ordered or committed, or aided and abetted the planning, preparation or execution of, the use of Bosnian Muslims detained or imprisoned at or about the facilities or locations described in Paragraph 50 as hostages.

54. During or about April 1993, **Mario ^ERKEZ,** together with members of the HZ H-B/HR H-B and HVO and their leaders, armed forces and agents, caused, planned, instigated, ordered or committed, or aided and abetted the planning, preparation or execution of, the use of Bosnian Muslims as human shields in or about Vitez, in order to prevent armed forces hostile to the HVO from attacking or firing on HVO positions or to force Bosnian Muslims to surrender.

By these acts and omissions, **Mario ^ERKEZ** committed:

Imprisonment/Unlawful Confinement:
Count 29: a **CRIME AGAINST HUMANITY**, as recognised by Articles 5(e) (imprisonment), 7(1) and 7(3) of the Statute of the Tribunal.
Count 30: a **GRAVE BREACH**, as recognised by Articles 2(g) (unlawful confinement of civilians), 7(1) and 7(3) of the Statute of the Tribunal.

Inhuman and/or Cruel Treatment of Detainees:
Count 31: a **GRAVE BREACH** as recognised by Articles 2(b) (inhuman treatment), 7(1) and 7(3) of the Statute of the Tribunal.
Count 32: a **VIOLATION OF THE LAWS OR CUSTOMS OF WAR** as recognised by Articles 3, 7(1) and 7(3) of the Statute of the Tribunal and Article 3(1)(a) (cruel treatment) of the Geneva Conventions.

Hostages:
Count 33: a **GRAVE BREACH** as recognised by Articles 2(h) (taking civilians as hostages), 7(1) and 7(3) of the Statute of the Tribunal.
Count 34: a **VIOLATION OF THE LAWS OR CUSTOMS OF WAR** as recognised by Articles 3, 7(1) and 7(3) of the Statute of the Tribunal and Article 3(1)(b) (taking of hostages) of the Geneva Conventions.

Human Shields:
Count 35: a **GRAVE BREACH** as recognised by Articles 2(b) (inhuman treatment), 7(1) and 7(3) of the Statute of the Tribunal;
Count 36: a **VIOLATION OF THE LAWS OR CUSTOMS OF WAR** as recognised by Articles 3, 7(1) and 7(3) of the Statute of the Tribunal and Article 3(1)(a) (cruel treatment) of the Geneva Conventions.

COUNTS 37 - 39
DESTRUCTION AND PLUNDER OF PROPERTY

55. From about 1 October 1992 to approximately 31 December 1993, **Dario KORDI],** together with members of the HZ H-B/HR H-B and HVO and their leaders, armed forces and agents, caused, planned, instigated, ordered or committed, or aided and abetted the planning, preparation or execution of, the unlawful, wanton and extensive destruction, devastation and plunder of Bosnian Muslim dwellings, buildings, businesses, civilian personal property and livestock, which was not justified by military necessity, in the following cities, towns and villages on or about the dates indicated:

Novi Travnik	October 1992 -December 1993
Busova~a	January-February 1993
Merdani	January-February 1993
Putis	April 1993
O~ehni}i	April 1993
Lon~ari	April 1993
Kiseljak	April 1993
Vi{njica	April 1993
Kazagi}i	April 1993

Behri}i	April 1993
Svinjarevo	April 1993
Gomionica	April 1993
Gromiljak	April 1993
Polje Vi{njica	April 1993
Vi{njica	April 1993
Rotilj	April 1993
Tulica	June 1993
Han Plo~a/Grahovci	June 1993
Vitez	April1993
Stari Vitez	April 1993
Ahmi}i	April 1993
Nadioci	April 1993
Piri}i	April 1993
[anti}i	April 1993
Ve~eriska-Donja Ve~eriska	April 1993
Ga}ice	April 1993
Divjak (Divjaka)	September 1993
Stupni Do	October 1993

By these acts and omissions, **Dario KORDI]** committed:

Count 37: a **GRAVE BREACH,** as recognised by Articles 2(d) (extensive destruction of property), 7(1) and 7(3) of the Statute of the Tribunal.
Count 38: a **VIOLATION OF THE LAWS OR CUSTOMS OF WAR**, as recognised by Articles 3(b) (wanton destruction not justified by military necessity), 7(1) and 7(3) of the Statute of the Tribunal.
Count 39: a **VIOLATION OF THE LAWS OR CUSTOMS OF WAR,** as recognised by Articles 3(e) (plunder of public or private property), 7(1) and 7(3) of the Statute of the Tribunal.

COUNTS 40 - 42
DESTRUCTION AND PLUNDER OF PROPERTY

56. During or about April 1993, **Mario ^ERKEZ,** together with members of the HZ H-B/HR H-B and HVO and their leaders, armed forces and agents, caused, planned, instigated, ordered or committed, or aided and abetted the planning, preparation or execution of, the unlawful, wanton and extensive destruction, devastation and plunder of Bosnian Muslim dwellings, buildings, businesses, civilian personal property and livestock, which was not justified by military necessity, in the following cities, towns and villages on or about the dates indicated:

Vitez	April 1993
Stari Vitez	April 1993
Ahmi}i	April 1993
Nadioci	April 1993
Piri}i	April 1993
[anti}i	April 1993
Donja Ve~eriska	April 1993

By these acts and omissions, **Mario ^ERKEZ** committed:

Count 40: a **GRAVE BREACH,** as recognised by Articles 2(d) (extensive destruction of property), 7(1) and 7(3) of the Statute of the Tribunal.
Count 41: a **VIOLATION OF THE LAWS OR CUSTOMS OF WAR**, as recognised by Articles 3(b) (wanton destruction not justified by military necessity), 7(1) and 7(3) of the Statute of the Tribunal.
Count 42: a **VIOLATION OF THE LAWS OR CUSTOMS OF WAR,** as recognised by Articles 3(e) (plunder of public or private property), 7(1) and 7(3) of the Statute of the Tribunal.

COUNT 43
DESTRUCTION OF INSTITUTIONS DEDICATED TO RELIGION OR EDUCATION

57. From about October 1992 to approximately November 1993, **Dario KORDI] ,** together with members of the HZ H-B/HR H-B and HVO and their leaders, armed forces and agents, caused, planned, instigated, ordered or committed, or aided and abetted the planning, preparation or execution of, the destruction or wilful damage of Bosnian Muslim institutions dedicated to religion or education in the following towns and villages, on or about the dates indicated:

Ahmi}i	April 1993
Stari Vitez	April 1993
Han Plo~a	June 1993
Kiseljak	July-August 1993
Divjak	September 1993
Stupni Do	October 1993

By these acts and omissions, **Dario KORDI]** committed:

Count 43: a **VIOLATION OF THE LAWS OR CUSTOMS OF WAR,** as recognised by Articles 3(d) (destruction or wilful damage to institutions dedicated to religion or education), 7(1) and 7(3) of the Statute of the Tribunal.

COUNT 44
DESTRUCTION OF INSTITUTIONS DEDICATED TO RELIGION OR EDUCATION

58. From about April 1993 to approximately September 1993, **Mario ^ERKEZ,** together with members of the HZ H-B/HR H-B and HVO and their leaders, armed forces and agents, caused, planned, instigated, ordered or committed, or aided and abetted the planning, preparation or execution of, the destruction or wilful damage of Bosnian Muslim institutions dedicated to religion or education in the following towns and villages, on or about the dates indicated:

Stari Vitez	April 1993
Ahmi}i	April 1993
Divjak	September 1993

By these acts and omissions, **Mario ^ERKEZ** committed:

Count 44: a **VIOLATION OF THE LAWS OR CUSTOMS OF WAR,** as recognised by Articles 3(d) (destruction or wilful damage to institutions dedicated to religion or education), 7(1) and 7(3) of the Statute of the Tribunal.

By Authority of the Prosecutor:

_____
Gavin F. Ruxton
Senior Legal Advisor

Dated this 30 September 1998
The Hague
The Netherlands

ANNEX VI: MAPS

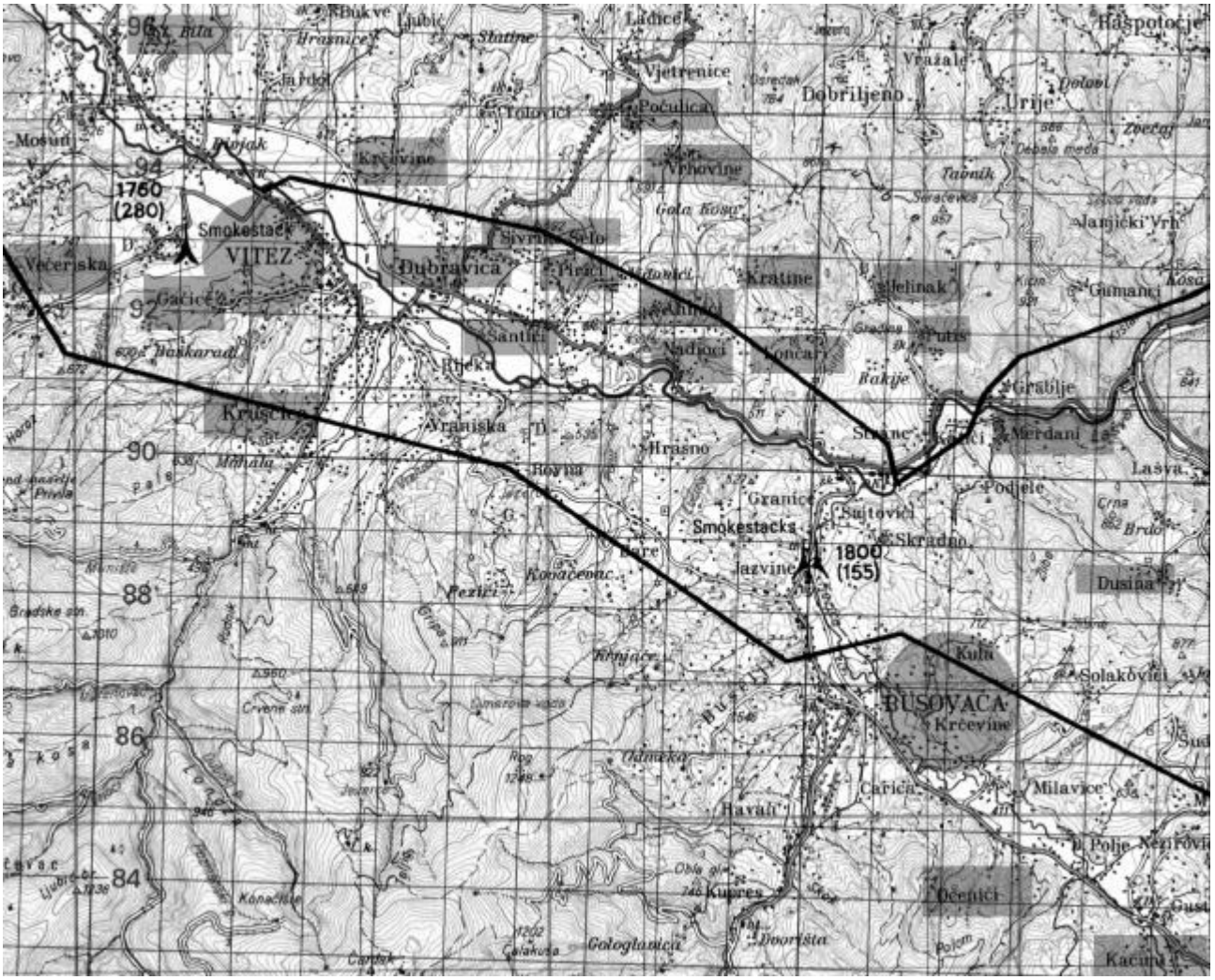
ANNEX VI 1: BOSNIA-HERZEGOVINA

ANNEX VI 2: HZ H-B TERRITORY

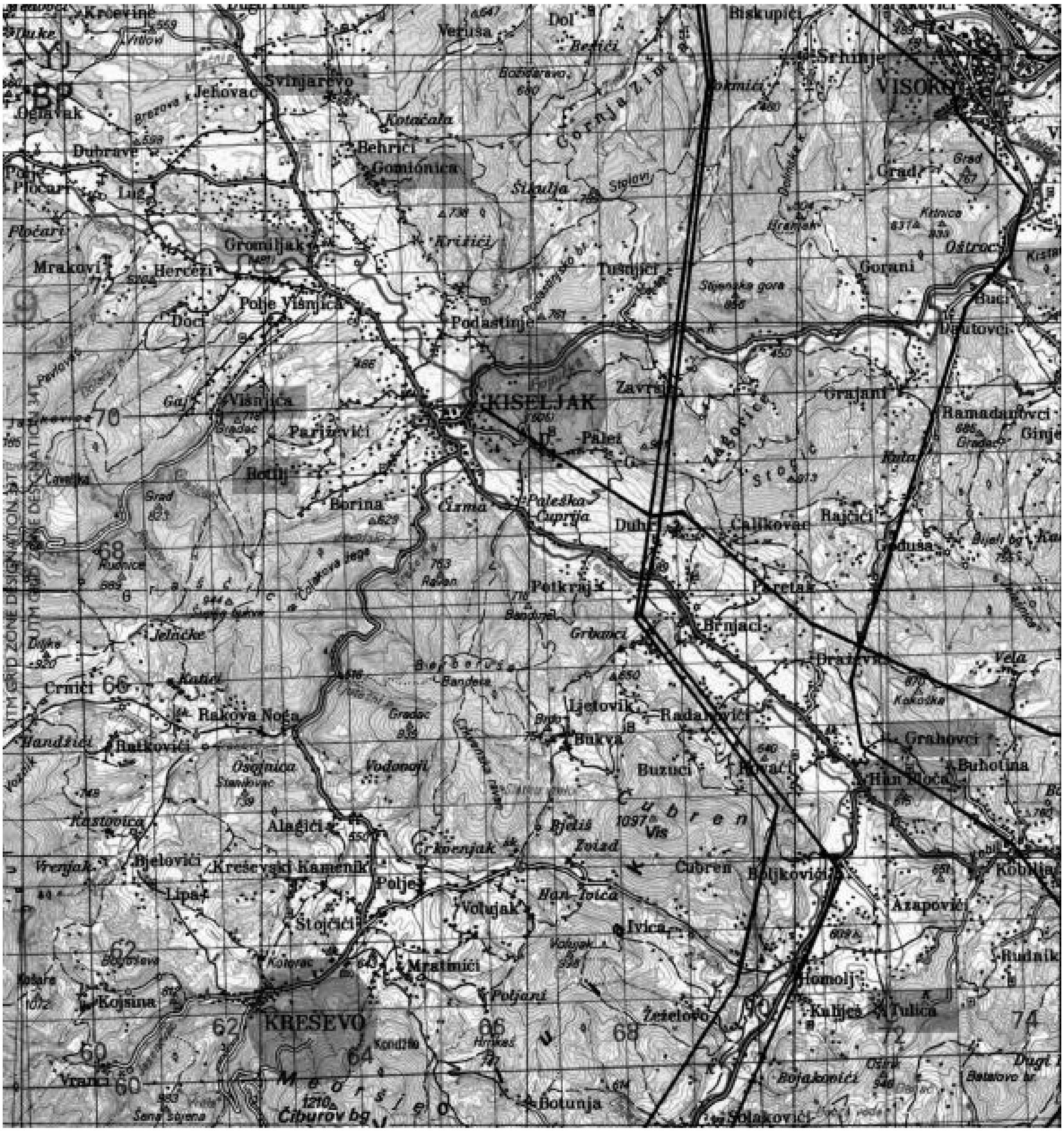
(according to the Decision of 18 November 1991 in Grude establishing the Croatian Community of Herceg-Bosna)

ANNEX VI 3: ZENICA, TRAVNIK, NOVI TRAVNIK/PUCAREVO, VITEZ AND BUSOVA^A

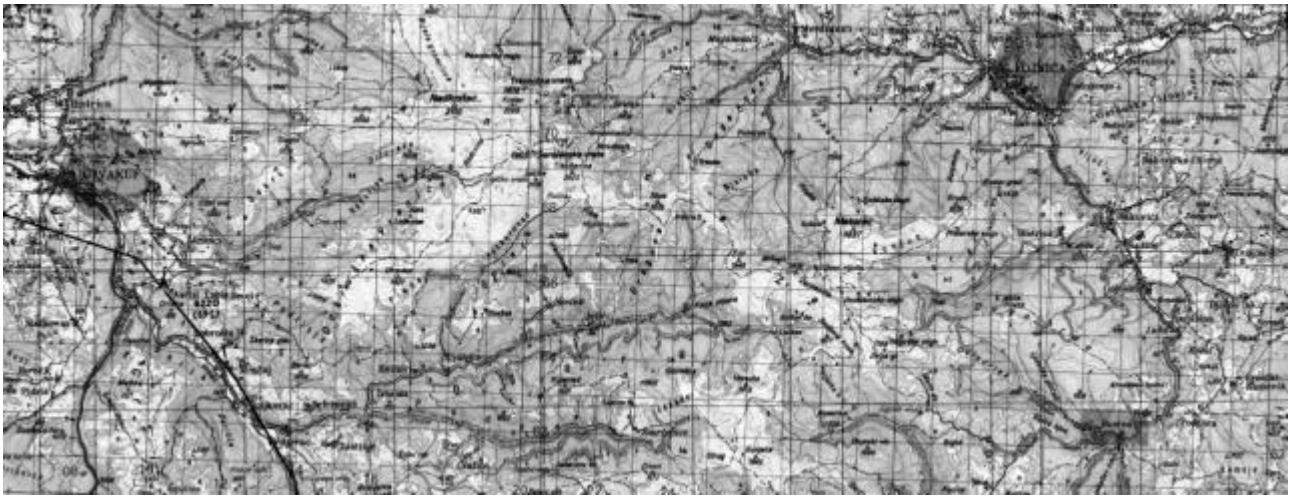
ANNEX VI 4: VITEZ AND BUSOVA^A



ANNEX VI 5: VISOKO, KISELJAK AND KRE[EVO



ANNEX VI 6: FOJNICA AND GORNJI VAKUF



ANNEX VI 7: KAKANJ AND VARE[