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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-04-74-T

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IN TRIAL CHAMBER III

Before: **Judge Jean-Claude Antonetti, Presiding**
Judge Árpád Prandler
Judge Stefan Trechsel
Reserve Judge Antoine Kesia-Mbe Mindua

Registrar: **Mr John Hocking**

Judgement of: **29 May 2013**

THE PROSECUTOR

v.

Jadranko PRLIĆ
Bruno STOJIĆ
Slobodan PRALJAK
Milivoj PETKOVIĆ
Valentin ĆORIĆ
Berislav PUŠIĆ

PUBLIC

JUDGEMENT

Volume 1 of 6

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INTRODUCTION

1. On 2 March 2011, after more than four years of trial proceedings, the Presiding Judge in the Chamber pronounced oral argument closed, thereby marking the beginning of deliberations in private pursuant to Rule 87 (A) of the Rules.[1] Over the following months, the Chamber analysed and assessed the evidence admitted into the record in order to determine the individual criminal responsibility of Jadranko Prlić, Bruno Stojić, Slobodan Praljak, Milivoj Petković, Valentin Ćorić and Berislav Pušić in relation to the events which took place in eight municipalities and five detention camps in BiH between 1992 and 1994.

2. The Chamber is mindful that this Judgement, which provides not merely an historical overview of the context of the creation of Herceg-Bosna and its political, administrative and military structure but also an overview of the facts related to the political and social developments in a number of BiH municipalities over a period of several years, contributes to an account of the history of a part of BiH between the end of 1991 and the middle of 1994. Nonetheless, the Chamber would indicate that the primary objective of the Judgement is not an account of the history of BiH between 1991 and 1994. Historical narrative is first and foremost the work of historians, and a criminal trial, with its demands and constraints, cannot fully satisfy the requirements of history. The Chamber"s primary task is to rule on the criminal responsibility of six men on the basis of specific facts and allegations. These allegations are revisited below.

3. The Prosecution submits in the present case that the individual criminal responsibility of Jadranko Prlić, Bruno Stojić, Slobodan Praljak, Milivoj Petković, Valentin Ćorić and Berislav Pušić[2] is entailed pursuant to Articles 7 (1) and 7 (3) of the Statute for the role they played in the crimes allegedly committed between 1992 and 1994 in the municipalities of Prozor, Gornji Vakuf, Jablanica (Sovići and Doljani), Mostar, Ljubuški, Stolac, Ĉapljina and Vareš, as well as in the Heliodrom,

[1] T(F), p. 52976.
[2] The allegations pertaining to the criminal responsibility of Berislav Pušić differ from those of the other Accused inasmuch as Berislav Pušić is not being prosecuted for the crimes committed at Prozor in October 1992 and in Gornji Vakuf in January 1993. *See* the treatment of this in the Introduction, below.

Vojno and Ljubuški detention camps and the Dretelj and Gabela District military prisons.

4. In this regard, the Prosecution alleges that the Accused are responsible for grave breaches of the Geneva Conventions (Article 2 of the Statute), for violations of the laws or customs of war (Article 3 of the Statute) and for crimes against humanity (Article 5 of the Statute).

5. The Indictment[3] is divided into six parts: the Accused, the JCE, the Statement of the Case, Criminal Responsibility, the Counts and the "Additional Allegations".

6. The first part introduces the Accused and, more particularly, their position at the time of the alleged events.

7. According to the Indictment, Jadranko Prlić and Bruno Stojić held high military positions within the HZ H-B, and then within the HR H-B, at the time of these events.

8. Jadranko Prlić was appointed head of the Department of Finance of the HVO by Mate Boban on 15 May 1992, then, starting on 14 August 1992, President of the HVO, defined at the time as the supreme executive, administrative and military body of the HZ H-B.[4] In August 1993, he became prime minister of HR H-B, with his functions remaining largely the same, according to the Prosecution, to those he held as President of the HVO.[5] The Prosecution contends that for most of 1992 and 1993, Jadranko Prlić was, other than Mate Boban, the most powerful official in the political and governmental structures of Herceg-Bosna/HVO, and that, by late 1993, he effectively eclipsed Mate Boban.[6]

9. Bruno Stojić headed the HVO Department (later Ministry) of Defence from 3 July 1992 to November 1993.[7] On 16 December 1993, he was named head of the Office for the Production and Sales of Weapons and Military Equipment of the HR H-

[3] *See* "Pre-Trial Proceedings" in the Chamber"s review of the procedural background (Annex 2) for more details concerning the various amendments to the Indictment in this case.
[4] Indictment, para. 2.
[5] Indictment, para. 2.
[6] Indictment, para. 3.
[7] Indictment, para. 4.

B.[8] The Prosecution submits that, as Head of the Department (later, the Ministry) of Defence of the HVO, Bruno Stojić was that body"s top political and management official and was in charge of the armed forces of Herceg-Bosna/HVO.[9]

10. According to the Indictment, Slobodan Praljak and Milivoj Petković held high military office within the HZ H-B, and then within the HR H-B, at the time of these events.

11. From approximately March 1992 until July 1993, Slobodan Praljak served, according to the Prosecution, as a senior HV officer, and as Assistant Minister of Defence of Croatia, and was the senior representative of the Croatian Ministry of Defence within the government and in dealings with the armed forces of Herceg-Bosna/HVO, exercising *de facto* command over the armed forces of the HVO during this period.[10] He subsequently served as the military head of the Herceg-Bosna/HVO armed forces, with the title "Commander of the Main Staff", from approximately 24 July 1993 to 9 November 1993.[11]

12. Milivoj Petković was assigned, on or about 14 April 1992, to the command of the HV Forward Command Post in Grude in BiH, which was or became the senior command staff of the HVO armed forces.[12] Milivoj Petković thus served as the military head of the armed forces of Herceg-Bosna/HVO, with the title Chief of the Main Staff from April 1992 until about 24 July 1993.[13] From on or about 24 July 1993 until April 1994, he became the deputy overall commander of the HVO armed forces.[14] The Prosecution submits that, through his positions and functions, Milivoj Petković exercised *de jure* and/or *de facto* command and control over the Herceg-Bosna/HVO armed forces.[15]

13. According to the Indictment, in his various positions and functions at the times relevant to the Indictment, Valentin Ćorić played a central role in the establishment, administration and operation of the HVO Military Police, specifically through his

[8] Indictment, para. 4.
[9] Indictment, para. 5.
[10] Indictment, paras 7-8.
[11] Indictment, paras 7-8.
[12] Indictment, para. 9.
[13] Indictment, para. 9.
[14] Indictment, para. 9.
[15] Indictment, para. 10.

position as Chief of the Military Police Administration within the Department, later the Ministry, of Defence of the HVO from April 1992 until at least November 1993.[16] The Prosecution alleges that he exercised *de jure* and/or *de facto* command and control of the HVO Military Police, which played an important role in administering Herceg-Bosna/HVO prisons and detention facilities. In November 1993, he was appointed HR H-B Minister of the Interior.[17]

14. Lastly, the Indictment says that Berislav Pušić played a decisive role within the HVO in the exchange of prisoners and the running of HVO detention facilities and prisons in 1992-1993: on 22 April 1993, Valentin Ćorić assigned him to act on behalf of the HVO Military Police in exchanging BiH Muslims detained by the HVO; on 5 July 1993, he was appointed head of the Service for the Exchange of Prisoners and Other Persons by Jadranko Prlić; from 6 August 1993 onwards, Bruno Stojić appointed him president of the commission to take charge of the Herceg-Bosna/HVO detention facilities and prisons.[18] Bruno Stojić also appointed him HVO liaison officer to UNPROFOR on 11 May 1993.[19]

15. The second part of the Indictment outlines the alleged JCE, and then how each of the Accused participated in the JCE at all times relevant to the Indictment.

16. According to the Indictment, from on or before 18 November 1991 to about April 1994 and thereafter, various persons including the Accused established and participated in a JCE to politically and militarily subjugate the Bosnian Muslims and other non-Croats who lived in areas on BiH territory which were claimed to be part of the HZ H-B (later, the HR H-B).[20] The members of the JCE allegedly acted, in particular, to permanently remove the Muslims and other non-Croats from BiH, to ethnically cleanse the regions of the HZ(R) H-B, and to join the Croatian communities as part of a "Greater Croatia" by force, intimidation, threat of force, persecution, imprisonment, detention, forcible transfer, deportation, appropriation and destruction of property and other means which constituted or involved the commission of crimes punishable under Articles 2, 3 and 5 of the Statute.[21] According to the Indictment, the

[16] Indictment, paras 11-12.
[17] Indictment, para. 11.
[18] Indictment, paras 13-14.
[19] Indictment, para. 13.
[20] Indictment, paras 15-16.
[21] Indictment, paras 15-16.

territorial ambition of the members of the JCE was to establish a Croatian territory with the borders of the Croatian Banovina, a territorial entity which existed from 1939 to 1941, with the aim of engineering the political and ethnic map of these areas so that they would be Croat-dominated, both politically and demographically.[22]

17. The Prosecution submits that in this context, each one of the Accused, acting individually through the exercise of his position and/or powers, and in concert with other members of the joint criminal enterprise, participated as leaders, in one or more of the following ways, specifically: by establishing, organising, directing, funding, facilitating and supporting the governmental, political and military structures and processes of the HZ H-B and the HVO; by establishing, organising, directing and funding a system of HVO prisons and detention facilities where Bosnian Muslims were imprisoned, and by creating, organising, directing and funding a system for the deportation or forcible transfer of Bosnian Muslims to other countries or parts of BiH.[23]

18. In the third part, the Prosecution describes the historical and political context in which the HZ H-B and the HR H-B were established, and sets out the alleged facts in relation to the eight municipalities and the five detention camps that fall within the scope of the Indictment: the municipalities of Prozor, Gorni Vakuf, Jablanica (Sovići and Doljani), Mostar, Ljubuški, Stolac, Čapljina and Vareš, as well as in the Heliodrom, Vojno and Ljubuški detention camps, and in the Dretelj and Gabela District military prisons.

19. In this regard, the Prosecution uses the developments pertaining to the establishment of the HZ H-B and the HR H-B to highlight the allegation of widespread systematic ethnic cleansing in which the Accused are said to have participated.[24]

20. The fourth part of the Indictment introduces the alleged modes of responsibility. Thus, the Accused in this case are being prosecuted, pursuant to Article 7(1) for having planned, instigated, ordered and/or committed the crimes alleged in

[22] Indictment, paras 15-16.
[23] Indictment, para. 17.
[24] Indictment, paras 39-41.

the Indictment.[25] They are alleged to be responsible on the basis of their own acts and, where they had a duty to act, on the basis of their omissions or failures to act.[26] In the alternative, the Accused are charged, pursuant to Article 7(1) of the Statute, with those crimes they aided and abetted in planning, preparing or executing.[27]

21. The Prosecution further alleges that the crimes charged in the Indictment were committed as part of a JCE to which the various Accused belonged or in which they participated.[28]

22. Every form of JCE is alleged in the Indictment.[29] Thus, each Accused, acting individually and in concert with or through other persons, knowingly participated in and contributed to the JCE and the crimes alleged, intending to further the objectives of the JCE (Form 1).[30]

23. Each accused is alleged to be criminally responsible for having knowingly participated in a system of ill-treatment (1) involving a network of HZ(R) H-B prisons and detention camps which were systematically used to arrest, detain and imprison thousands of Bosnian Muslims in unlawful conditions, which amounted to the crimes alleged in the amended Indictment or involved such crimes,[31] and (2) that were used to deport Bosnian Muslims to other countries or to transfer them to other parts of BiH not claimed or controlled by the HZ(R) H-B, which amounted to the commission of the crimes alleged in the amended Indictment or involved such crimes (Form 2). [32]

24. Additionally, any crime alleged in the Indictment which was not within the purpose of the JCE or an intended part of it is alleged to be the natural and foreseeable consequence of the JCE and the implementation or attempted implementation thereof (Form 3).[33]

[25] Indictment, para. 218.
[26] Indictment, para. 218.
[27] Indictment, para. 220.
[28] Indictment, paras 221-227.
[29] Indictment, paras 221-227.
[30] Indictment, paras 221-222.
[31] Indictment, para. 224.
[32] Indictment, para. 225.
[33] Indictment, para. 227.

25. Lastly, the Indictment likewise alleges, in the alternative, that each one of the Accused is criminally responsible as a superior under Article 7(3) of the Statute.[34] The six Accused are therefore being prosecuted on the basis of all the modes of responsibility under the Statute for all the crimes alleged in the Indictment,[35] with the exception of the Accused Pušić, who is not being prosecuted for the crimes alleged in the municipalities of Prozor in October 1992 and Gornji Vakuf in January 1993.[36]

26. The fifth part of the Indictment presents the 26 charges in detail.[37] The 26 charges can be grouped into three categories:

> (a) Grave Breaches of the Geneva Conventions of 1949 (Article 2 of the Statute):
>
> The following are alleged: wilful killing (Count 3); inhuman treatment (sexual assault) (Count 5); unlawful deportation of a civilian (Count 7); unlawful transfer of a civilian (Count 9); unlawful confinement of a civilian (Count 11); inhuman treatment (conditions of confinement) (Count 13); inhuman treatment (Count 16); extensive destruction of property not justified by military necessity and carried out unlawfully and wantonly (Count 19); and the appropriation of property not justified by military necessity and carried out unlawfully and wantonly (Count 22).
>
> (b) Violations of the Laws or Customs of War (Article 3 of the Statute)
>
> The following are alleged: cruel treatment (conditions of confinement) (Count 14); cruel treatment (Count 17); unlawful labour (Count 18); wanton destruction

[34] Indictment, para. 228.
[35] Indictment, paras 218-228.
[36] Indictment, paras 230 and 72.
[37] Indictment, para. 229.

of cities, towns or villages or devastation not justified by military necessity (Count 20); destruction or wilful damage done to institutions dedicated to religion or education (Count 21); plunder of public or private property (Count 23); unlawful attack on civilians (Mostar) (Count 24); unlawful infliction of terror on civilians (Mostar) (Count 25); and cruel treatment (Mostar siege) (Count 26).

(c) Crimes against Humanity (Article 5 of the Statute)

The following are alleged: persecution on political, racial and religious grounds (Count 1); murder (Count 2); rape (Count 4); deportation (Count 6); inhumane acts (forcible transfer) (Count 8); imprisonment (Count 10); inhumane acts (conditions of confinement) (Count 12); and inhumane acts (Count 15).

27. The sixth and final part of the Indictment, entitled "Additional Allegations", argues that the general requirements for the application of Articles 2, 3 and 5 in the Statute have been met in this case. The Prosecution asserts, for example, that there was an armed conflict, an international armed conflict and a partial occupation in BiH at all times relevant to the Indictment, and that the acts and omissions prosecuted as crimes against humanity in this case were part of a widespread and systematic attack directed by the authorities and forces of the HVO against the Bosnian Muslim civilian population.[38] Moreover, the Prosecution submits, broadly speaking, that the requisite elements for certain specific crimes have been met. It asserts, for example, that the acts, omissions and conduct charged as persecution were committed with discriminatory intent for political, racial, ethnic or religious grounds,[39] and that the acts, omissions and conduct charged as crimes against property were not justified by military necessity.[40]

28. At their initial appearance on 6 April 2004, the six Accused pleaded not guilty to all the charges brought in the original Indictment.[41]

[38] Indictment, paras 231-238.
[39] Indictment, para. 233.
[40] Indictment, paras 237-238.
[41] *See* in this regard "Transfer and Initial Appearance" in the Chamber"s review of the procedural history (Annex 2).

29. This Judgement is divided into ten chapters: Applicable Law (Chapter 1); Evidentiary Standards (Chapter 2); Creation, Development and Structure of the Community and the Republic of Herceg-Bosna (Chapter 3); Factual Findings in Respect of the Crimes Committed in the Municipalities and Detention Facilities (Chapter 4); Review of the General Requirements for the Application of Articles 2, 3 and 5 of the Statute (Chapter 5); Chamber"s Legal Findings (Chapter 6); Criminal Responsibility of the Accused (Chapter 7); Cumulative Convictions (Chapter 8); Sentencing (Chapter 9) and Disposition (Chapter 10).

CHAPTER 1: APPLICABLE LAW

30. This portion of the Judgement concerns the applicable law and is divided into two parts. The first part (I) will discuss the crimes, namely, (A) the crimes against humanity, (B) the grave breaches of the Geneva Conventions, and (C) the violations of the laws or customs of war; and the second part (II) will examine responsibility, namely, (A) the modes of responsibility punishable under Article 7(1) of the Statute, (B) the general requirements for the application of Article 7(3) of the Statute, and (C) the issue of cumulative responsibility in connection with Articles 7(1) and 7(3) of the Statute .

I. The Crimes

A. Crimes Against Humanity

31. This part of the applicable law is divided into seven sections. The first covers the general requirements for the application of Article 5 of the Statute. The six parts that follow address various crimes covered under Article 5 of the Statute and correspond to the counts alleged in the Indictment based on that Article, namely Count 1 (persecutions on political, racial and religious grounds), Count 2 (murder), Count 4 (rape), Count 6 (deportation), Count 8 (inhumane acts – forcible transfer), Count 10 (imprisonment), Count 12 (inhumane acts – conditions of confinement) and Count 15 (inhumane acts).

1. General Requirements for the Application of Article 5 of the Statute

32. Article 5 of the Statute confers on the International Tribunal subject-matter jurisdiction over crimes against humanity and lists the specific offences proscribed.[42]

33. An offence enumerated in Article 5 of the Statute does not constitute a crime against humanity unless it was "committed in armed conflict".[43] This requirement that there be an armed conflict is not a constituent element of crimes against humanity but is in fact a prerequisite for the exercise of the Tribunal's jurisdiction to adjudicate these crimes.[44] Therefore, crimes against humanity fall within the Tribunal's jurisdiction if committed contemporaneously with the armed conflict on the territory of the former Yugoslavia.[45]

34. Then, in order to meet the characterisation of crimes against humanity, the acts of the perpetrator must fall within the context of a widespread or systematic attack directed "against any civilian population". The Tribunal's case-law has established that the following elements must be proved for Article 5 of the Statute to apply:

35. First, there must be an attack.[46] The concept of an attack must be distinguished from that of an armed conflict. Although the attack may occur within the context of an armed conflict, it is equally true that the attack may precede an armed conflict, may continue once it has ended or proceed during the conflict, without necessarily being part of it.[47] However, as stated earlier, the Tribunal will be competent to judge crimes committed by an accused only if they are committed as part of an attack occurring "in an armed conflict". An "attack" has been defined as "a course of conduct involving the commission of acts of violence".[48] In the case of a crime against humanity, the

[42] Article 5 of the Statute provides that: "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."
[43] *Kunarac* Appeals Judgement, paras 82 and 86: *Tadić* Appeals Judgement, para. 251.
[44] *Kunarac* Appeals Judgement, para. 83; *Tadić* Appeals Judgement, paras 249 and 251. *See* also *Tadić* Decision on Jurisdiction, para. 141; *The Prosecutor v. Vojislav Šešelj*, IT-03-67-AR72.1, "Decision on Motion for Reconsideration of the 'Decision on the Interlocutory Appeal Concerning Jurisdiction' dated 31 August 2004", 15 June 2006 ("*Šešelj* Decision of 15 June 2006"), para. 21.
[45] *Šešelj* Decision of 15 June 2006, para. 21.
[46] *Kunarac* Appeals Judgement, para. 85; *Tadić* Appeals Judgement, para. 248.
[47] *Kunarac* Appeals Judgement, para. 86; *Tadić* Appeals Judgement, para. 251.
[48] *Kunarac* Appeals Judgement, para. 89; *Kunarac* Judgement, para. 415.

term "attack" is not restricted to the use of armed force but may also encompass circumstances where there is mistreatment of the civilian population.[49]

36. Second, the attack must be directed against a civilian population of any sort. The expression "directed against" indicates that, in the event of a crime against humanity, the civilian population must constitute the primary target of the attack. In order to determine whether this was the case, the Trial Chamber must consider, among other indicia, the means and methods employed during the attack, the status of the victims, their number, the discriminatory character of the attack, the nature of the crimes committed during the attack, the resistance to the assailants at the time, as well as the extent to which the attacking forces may be said to have complied or attempted to comply with the precautionary requirements of the laws of war.[50]

37. The use of the word "population" does not mean that the entire population of the geographical entity where the attack is taking place must have been targeted.[51] During the course of the attack, a sufficient number of individuals must have been targeted or were targeted in such a way as to satisfy the Trial Chamber that the attack was in fact directed against a civilian "population", rather than a limited number of randomly selected individuals.[52]

38. Regarding the "character" of the population, it has been acknowledged that the targeted population must be predominantly civilian. It follows then that the presence of isolated non-civilians among this population does not deprive that population itself of its civilian character.[53] The Appeals Chamber specified that the civilian status of the victims, the number of civilians and the proportion of civilians among the population attacked are relevant factors in determining the civilian status of the population attacked.[54] The Chamber recalls, however, that the determination of the civilian character of the population is an issue which forms part of the assessment of the evidence. Furthermore, the Chamber notes that the Petković Defence argues both that the crime of imprisonment provided under Article 5(e) can be committed only towards civilians and that it cannot be committed when the detainees are prisoners of

[49] *Kunarac* Appeals Judgement, para. 86; *Kunarac* Judgement, para. 416.
[50] *Kordić* Appeals Judgement, para. 96; *Kunarac* Appeals Judgement, para. 91.
[51] *Martić* Appeals Judgement, para. 305; *Kunarac* Appeals Judgement, para. 90.
[52] *Martić* Appeals Judgement, para. 305; *Kunarac* Appeals Judgement, para. 90.
[53] *Mrkšić* Appeals Judgement, para. 31; *Kordić* Appeals Judgement, para. 50.
[54] *Mrkšić* Appeals Judgement, para. 32; *Blaškić* Appeals Judgement, paras 113 and 115.

war.[55] In this regard, the Chamber notes that, under settled case-law, it is not necessary that the individual victims of the underlying crimes be themselves civilians, provided that the population targeted in the attack is civilian in character. Thus, a person *hors de combat*, that is to say, a person who, while having the status of combatant, no longer participates in hostilities, because he was, for example, injured or captured, may be the victim of a crime against humanity provided that this act forms part of a widespread or systematic attack against a civilian population.[56]

39. The term "of any sort" means that crimes against humanity can be committed against civilians of the same nationality as the perpetrator or against those who are stateless, as well as those of a different nationality.[57]

40. The Chamber notes that in their final briefs and closing arguments, several Defence teams have raised the issue of the status of the Muslim men belonging to the HVO and of the Muslim men of military age detained by the HVO. This issue was raised more specifically by the Defence teams in respect of the general requirements for the application of Article 5 of the Statute and the specific offence of imprisonment.[58] Inasmuch as the analysis of these issues involves an assessment of the evidence, the Chamber considers that the issue is best addressed in the part concerning the examination of the general requirements for the application of Articles 2, 3 and 5 of the Statute.

41. Third, the attack must be widespread or systematic.[59] This requirement is in the alternative, rather than cumulative.[60] The adjective "widespread" refers to the attack being conducted on a large scale as well as to the high number of victims it caused, whereas the adjective "systematic" emphasizes the organised character of the

[55] Closing Arguments by the Petković Defence, T(F), p. 52558; Petković Defence Final Trial Brief, paras 255, 256 and 258.
[56] *Mrkšić* Appeals Judgement, paras 32 and 36; *Martić* Appeals Judgement, paras 307, 309, 311, 313 and 314. Regarding the definition of "civilian" more specifically, it should be noted that the Appeals Chamber in the *Martić* Case confirmed that the term "civilian", within the meaning of Article 5, was equivalent to the term "civilian" in international humanitarian law (*Martić* Appeals Judgement, para. 299).
[57] *Tadić* Judgement, para. 635.
[58] Praljak Defence Final Trial Brief, para. 85; Closing Arguments by the Petković Defence, T(F), pp. 52558 and 52559; Petković Defence Final Trial Brief, paras 255 and 256; Ćorić Defence Final Trial Brief paras 369-371.
[59] *Kunarac* Appeals Judgement, paras 85 and 97; *Tadić* Appeals Judgement, para. 248.
[60] *Kunarac* Appeals Judgement, para. 93; Tadić Judgement, para. 648.

acts of violence and the improbability of their random occurrence.[61] Thus, it is in the "patterns" of the crimes, in the sense of the deliberate, regular repetition of similar criminal conduct that one discerns their systematic character.[62] Among the factors which may be taken into account in determining whether the attack meets either or both conditions ("widespread" or "systematic") are the consequences of the attack on the civilian population targeted, the number of victims, the nature of the acts, the possible participation of political officials or authorities, or any identifiable pattern of crime in the sense defined above.[63]

42. Only the attack, not the individual acts of the accused, must be widespread or systematic.[64] Moreover, the acts of the accused need only be a part of this attack, and all other requirements being met, a single act or relatively limited number of acts by that person would be characterised as a crime against humanity, unless those acts may be said to be isolated or random.[65]

43. The perpetrator's acts must constitute part of the attack.[66] Stated otherwise, the acts of the perpetrator must, by their nature or their consequences, form an objective part of the attack.[67] It is not necessary for the acts of an accused to have been committed at the height of the attack, and so long as there is even a minimally sufficient nexus, a crime committed before or after the principal attack upon the civilian population or located at some distance from it may still be considered part of it.[68] However, as stated above, an isolated act, that is, an act so remote from the attack in question that the act could not reasonably considered part of it, may not be characterised as a crime against humanity.[69]

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[61] *Kordić* Appeals Judgement, para. 94; *Kunarac* Appeals Judgement, para. 94.
[62] *Kunarac* Appeals Judgement, para. 94; *Kunarac* Judgement, para. 429. Thus, among the factors leading the Trial Chamber in the *Kunarac* Case to hold that the Bosnian Serb Army and the paramilitary groups had launched a systematic attack against the civilian Muslim population of Foĉa, Gacko and Kalinovik, was the fact that "[o]nce towns and villages were securely in their hands, the Serb forces [...] applied the same pattern: Muslim houses and apartments were systematically ransacked or burnt down, Muslim villagers were rounded up or captured, and sometimes beaten or killed in the process. Men and women were separated, with many of the men detained in the former KP Dom prison." (*Kunarac* Judgement, paras 570-578).
[63] *Kunarac* Appeals Judgement, para. 95; *Kunarac* Judgement, para. 430.
[64] *Blaškić* Appeals Judgement, para. 101; *Kunarac* Judgement, para. 431.
[65] *Blaškić* Appeals Judgement, para. 101; *Tadić* Judgement, para. 649.
[66] *Kunarac* Appeals Judgement, para. 85; *Tadić* Appeals Judgement, para. 248.
[67] *Kunarac* Appeals Judgement, para. 99; *Kunarac* Judgement, para. 418.
[68] *Kunarac* Appeals Judgement, para. 100; *Tadić* Judgement, para. 649.
[69] *Kunarac* Appeals Judgement, para. 100; *Kupreškić* Judgement, para. 550.

44. The existence of a policy or plan to support the commission of the crimes is not a requisite condition for crimes against humanity. However, it may be relevant in connection with taking evidence.[70]

45. Finally, the perpetrator of the crime must have knowledge of the attack on the civilian population and of the fact that his act is part of that attack.[71] However, it is not necessary that the perpetrator be informed of the details of the attack, or that he approve its purpose or the goal behind it.[72] Moreover, it is irrelevant whether the perpetrator participated in the attack for purely personal reasons,[73] as such reasons are relevant only during consideration of the sentence to be handed down, as aggravating or extenuating circumstances.[74] Lastly, discriminatory intent is not required for crimes against humanity, with the exception of the offences for which it is expressly stipulated, namely, the types of persecution contemplated in Article 5(h) of the Statute.[75]

2. Murder

46. The offence of murder is punishable under Article 5(a) of the Statute. According to the settled case-law of the Tribunal, the crime of murder is committed when the following three requirements are met:

(a) the victim has died;

(b) the death was caused by an act or omission of the accused, or of a person or persons for whose acts or omissions the accused bears criminal responsibility;

(c) the act or this omission was carried out by the accused or by certain persons for whom he is criminally responsible with the intent (1) to cause the victim‟s death or

[70] *Kordić* Appeals Judgement, para. 98; *Tadić* Judgement, paras 653-655.
[71] *Kordić* Appeals Judgement, paras 99-100; *Tadić* Appeals Judgement, para. 248.
[72] *Kunarac* Appeals Judgement, paras 102-103; *Kunarac* Judgement, para. 434.
[73] *Kunarac* Appeals Judgement, para. 103; *Tadić* Appeals Judgement, paras 248, 252 and 272.
[74] *Tadić* Appeals Judgement, para. 269. It is a matter of settled jurisprudence that a distinction must be drawn between the concept of "intent" and that of "motive", with the latter broadly constituting the motive which incites someone to commit a crime, such as, for example, the opportunity for personal economic gain or political advantage or the desire for revenge or vengeance. Criminal intent, when it already constitutes an element of a crime, cannot be considered as an aggravating factor in the determination of the sentence, whereas personal motives could be. Thus, the Tribunal‟s case law has on numerous occasions acknowledged that the presence of a specific motive constituted an aggravating or extenuating circumstance in relation to the punishment meted out to an accused: (*Simić* Sentencing Judgement, para. 63; *Tadić* Judgement on Sentencing Appeals, para. 45).

(2) to cause grave bodily harm which he reasonably must have known might lead to death.[76]

3. Deportation and Forcible Transfer

47. Article 5 of the Statute makes express mention of the crime of deportation in paragraph (d), whereas forcible transfer is encompassed within the concept of "other inhumane acts", contemplated in paragraph (i) of that same article.[77] In the jurisprudence of the Appeals Chamber, the *actus reus* of deportation (also known as "*expulsion*" in French) and forcible transfer assumes the forced removal of persons by expulsion or other forms of coercion from the area in which they are lawfully present without grounds permitted under international law.[78] Unlike forcible transfer, which may be carried out entirely within the borders of a single state, deportation is by definition effected by crossing a border.[79]

48. The Chamber considers that the removal must result from an act or omission by the accused or by a person for whom he has criminal responsibility.[80] The Prosecution must establish the nexus between this act or omission and the removal of the victims.[81]

49. Given that the prohibition on forcible removals seeks to protect the right of individuals to live in their communities and in their homes and not be deprived of their property, the Chamber holds that there is a "removal from an area" within the meaning of Article 5 of the Statute when the location to which the victims are sent is so remote that they are no longer able to effectively enjoy these rights.[82]

50. The Tribunal"s case-law does not go so far as to require that forcible removal occur "by force" in the strict sense of the word. Indeed, the mere threat of resorting to force or physical or mental coercion may be enough, if the targeted population facing this coercive climate or these threats, has no other choice but to leave its territory.[83] It

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[75] *Tadić* Appeals Judgement, para. 305.
[76] *Kvoĉka* Appeals Judgement, para. 259; *Akayesu* Judgement, para. 589.
[77] *Krajišnik* Appeals Judgement, paras 330-331; *Kupreškić* Judgement, para. 566.
[78] *Krajišnik* Appeals Judgement, para. 304; *Blaškić* Judgement, para. 234.
[79] *Krajišnik* Appeals Judgement, para. 304; *Stakić* Appeals Judgement, paras 278, 300, 302 and 317.
[80] *Popović* Judgement, para. 893.
[81] *Popović* Judgement, para. 893.
[82] *Simić* Judgement, para. 130; *Stakić* Judgement, para. 677.
[83] *Krajišnik* Appeals Judgement, para. 319; *Krnojelac* Appeals Judgement, paras 229 and 233.

is the absence of genuine choice that renders removal unlawful.[84] To determine whether the victims of a forcible removal faced a genuine choice, the circumstances surrounding their removal must be assessed.[85]

51. Accordingly, consent by the victim does not necessarily render forcible removal lawful, inasmuch as the circumstances surrounding that consent may deprive it of any potential value.[86] The consent of the victim must be assessed in context. Generally speaking, detaining a person in a climate of terror and violence obviates any and all value arising from the consent.[87]

52. Subject to very strict requirements, however, international law does provide an exception for the forcible removal of a person. Thus neither total nor partial evacuation is prohibited "if the security of the population or imperative military reasons so demand."[88] Article 49 of the Fourth Geneva Convention specifies, however, that "[p]ersons thus evacuated shall be transferred back to their homes as soon as hostilities in the area in question have ceased". Moreover, all possible measures must be taken in order that the evacuated population may be received under satisfactory conditions of shelter, hygiene, health, safety and nutrition.[89]

53. In addition, the Appeals Chamber accepts forcible removal of the population for humanitarian reasons, in certain situations.[90] However, this exception does not apply if the humanitarian crisis that gave rise to the removal of the population is the result of the accused"s unlawful activity.[91]

54. The fact that international organizations such as the ICRC or UNPROFOR participated in organising the forced removals of the population does not alter the

[84] *Stakić* Appeals Judgement, para. 279; *Krnojelac* Appeals Judgement, para. 229.
[85] *Stakić* Appeals Judgement, para. 282; *Stakić* Judgement, para. 707.
[86] *Stakić* Appeals Judgement, para. 279; *Krnojelac* Appeals Judgement, para. 229.
[87] *Krnojelac* Appeals Judgement, para. 229.
[88] *Stakić* Appeals Judgement, para. 284, citing Article 49 of the Fourth Geneva Convention, Article 19 of the Third Geneva Convention, and Article 17 of Additional Protocol II; *Krstić* Judgement, paras 524 and 526.
[89] Article 49 of the Fourth Geneva Convention.
[90] *Stakić* Appeals Judgement, para. 287, citing Article 17 of Additional Protocol II, yet without identifying the situations which would render removal permissible on humanitarian grounds; *Blagojević* Judgement, para. 600, citing the Commentary to Additional Protocol II with respect to Article 17, and observing that removals done on humanitarian grounds, such as protecting the population from epidemics or natural disasters, are justified.
[91] *Stakić* Appeals Judgement, para. 287.

unlawful nature of the said removal.[92] Furthermore, it is not because the displacement of an individual is carried out pursuant to an agreement reached between political or military leaders, or under the auspices of the ICRC or any other organization, that it becomes permissible. Put differently, signing such an agreement does not make forced removal lawful.[93]

55. Deportation as a crime against humanity proscribed under Article 5(d) of the Statute assumes that a border has been crossed.[94] Deportation occurs when a person is moved across a national border separating two States.[95] In addition to this, the jurisprudence of the Tribunal also characterises as deportation the crossing of any "*de facto*" border. By "*de facto* border", the Appeals Chamber had in mind forcible removal beyond occupied territory.[96] Knowing whether this involves a "*de facto* border" within the meaning of customary international law, that is, a border whose crossing constitutes the crime of deportation, must be evaluated on a case-by-case basis.

56. By contrast, the Appeals Chamber has found that "constantly changing front lines" are not included in the definition of a *de facto* border and that forcible transfer requiring persons to cross such constantly changing front lines cannot lead to a conviction for deportation.[97]

57. Neither deportation nor forcible transfer requires that the perpetrator have the intent to remove the victim permanently.[98]

58. The *mens rea* for these two crimes is present when the perpetrator of the forcible removal intended to remove the victims by force. In the case of deportation,

[92] *Stakić* Appeals Judgement, para. 286; *Simić* Judgement, para. 127. The Chamber points out in particular that in the *Simić* Judgement, para. 127, the *Simić* Chamber recalled both the humanitarian nature of the mission of organisations such as the ICRC, one of whose essential missions is "to protect and assist the victims of armed conflicts" as well as the principles of neutrality and impartiality which guide these organisations: "[a]n analysis of the ICRC"s mandate can only lead to the conclusion that the ICRC"s involvement in „exchanges" was only based on humanitarian considerations, and may not be interpreted as „legalising" such procedures".
[93] *Naletilić* Appeals Judgement, para. 350; *Naletilić* Judgement, para. 523.
[94] *Stakić* Appeals Judgement, paras 278, 289 and 300-303; *Blaškić* Judgement, para. 234.
[95] *Stakić* Appeals Judgement, paras 300 and 301; *Stakić* Judgement, para. 679.
[96] *Stakić* Appeals Judgement, para. 300.
[97] *Stakić* Appeals Judgement, paras 301-303; *Stakić* Judgement, para. 679.
[98] *Stakić* Appeals Judgement, paras 307 and 317, overturning the conclusion of the Trial Chamber that the person behind the deportation must possess the intent to remove the [victim], which "implies the aim that [the person] is not returning", (*Stakić* Judgement, para. 687).

the perpetrator must, in addition, have had the intent to carry out the removal by crossing a *de jure* or *de facto* border.[99]

59. Moreover, forcible transfer must satisfy three specific conditions in order to constitute an inhumane act within the meaning of Article 5(i) of the Statute: (1) the victim must have suffered serious bodily or mental harm; (2) the suffering must be the result of an act or omission, by the accused or a person in relation to whom he bears criminal responsibility, of a severity equal to those acts enumerated in Article 5 of the Statute; and (3) the accused or a person for whom he bears criminal responsibility must, at the time of the commission of the offence, have been motivated by the intent to inflict serious bodily or mental harm upon the victim or knew that his act or omission might result in the infliction of serious bodily or mental harm to the victim.[100]

4. Imprisonment

60. According to the Chamber, the term "imprisonment" must be understood to be arbitrary imprisonment, that is, one without any justification, falling outside of the legal framework of civilian and military proceedings.[101]

61. The Appeals Chamber has determined that the imprisonment of individuals is unlawful within the meaning of Article 5(e) of the Statute when:

- the individuals in question have been detained in contravention of Article 42 of the Fourth Geneva Convention, when no substantial reason exists for believing that the security of the Detaining Power makes this absolutely necessary;

- the procedural safeguards required by Article 43 of the Fourth Geneva Convention have not been afforded to the individuals detained, even where initial detention was justified; and

[99] *Milutinović* Judgement, para. 164; *Stakić* Appeals Judgement, paras 278, 307 and 317.
[100] *Kordić* Appeals Judgement, para. 117; *Vasiljević* Judgement, paras 234-236.
[101] *See mutatis mutandis Kordić* Appeals Judgement, para. 116; *Kordić* Judgement, para. 302.

– the imprisonment took place as part of a widespread or systematic attack directed against a civilian population.[102]

62. The Appeals Chamber has added that the existence of an international armed conflict, a general requirement for the application of Articles 42 and 43 of the Fourth Geneva Convention, is not required in order for the imprisonment to constitute a crime against humanity.[103]

63. The Chamber nevertheless considers that Articles 68 and 78 of the Fourth Geneva Convention, which provide for lawful detention measures in the context of an occupation, must be given consideration when assessing whether there was an unlawful imprisonment within the meaning of Article 5(e) of the Statute. Therefore, the Chamber holds that the imprisonment of individuals is unlawful within the meaning of Article 5(e) of the Statute when:

– the individuals in question who are in occupied territory and committed an offence, solely to harm the Occupying Power, without such offence having caused harm to the lives or bodily integrity of the members of the occupying forces or administration, without having created a substantial collective danger and without seriously damaging the property of the occupying forces or administration or the facilities used by them, were detained for a period of time disproportionate to the offence committed in contravention of Article 68 of the Fourth Geneva Convention;

– the individuals in question who are in occupied territory, were detained in contravention of Article 78 of the Fourth Geneva Convention, whereas there is no substantial reason to believe that the security of the Detaining Power rendered it absolutely necessary;

– the procedural safeguards required by Article 78 of the Fourth Geneva Convention were not afforded to the individuals detained, even where initial detention was justified.

[102] *Kordić* Appeals Judgement, para. 114; *Kordić* Judgement, para. 303.
[103] *Kordić* Appeals Judgement, para. 115.

64. Concerning Article 42 of the Fourth Geneva Convention, the Appeals Chamber has established that the "imperative reasons of security" had to be such that detention was "absolutely necessary" to ensure the security of a State. The Chamber holds that this definition also applies to Article 78 of the said treaty. In this respect, the jurisprudence of the Tribunal generally grants broad discretion to the party having recourse to this measure in deciding what constitutes a threat to its security.[104] Nevertheless, the Detaining Power does not possess blanket authority to detain the entire civilian population of a party to the conflict. It must establish for each individual that he or she poses a specific risk to the security of the State, such that it is necessary to detain them.[105]

65. Certain acts are considered prejudicial to the security of a State: espionage, sabotage and "intelligence with the enemy Government or enemy nationals".[106] However, the mere fact that a person is a national of or shares the same opinion as an enemy party does not *per se* justify the deprivation of liberty.[107] By the same token, the fact that a man is of military age does not necessarily constitute a threat to the security of the enemy.[108] Internment and placement in assigned residence are exceptional measures and must be ordered only after a careful consideration of each individual case.[109]

66. Even confinement of a civilian originally warranted by compelling reasons of security may become unlawful if the Detaining Power fails to comply with the procedural rights enshrined in Article 43 of the Fourth Geneva Convention.[110] Thus, each person detained in accordance with Article 42 of the said Convention has the right to prompt review of that decision by a competent court or administrative board. If the appeal is denied, the court or administrative board must periodically reconsider the case at least twice a year.[111]

[104] *Ĉelebići* Appeals Judgement, para. 323; *Ĉelebići* Judgement, paras 574 and 1132.
[105] *Ĉelebići* Appeals Judgement, para. 327; *Ĉelebići* Judgement, paras 577 and 578.
[106] *Kordić* Judgement, para. 280; *Ĉelebići* Judgement, para. 576.
[107] *Ĉelebići* Appeals Judgement, para. 327; *Ĉelebići* Judgement, paras 577 and 1134.
[108] *Kordić* Judgement, para. 284; *Ĉelebići* Judgement, para. 577.
[109] *Ĉelebići* Judgement, para. 578.
[110] *Ĉelebići* Appeals Judgement, para. 320; *Ĉelebići* Judgement, paras 579-583.
[111] Article 43 of the Fourth Geneva Convention.

67. In the event that the competent authority concludes that internment or placement in assigned residence is not justified by absolute necessity for the security of the Detaining Power, it must revoke the measure.[112]

68. Article 78 of the Fourth Geneva Convention confers similar rights with regard to internment and placement in assigned residence, which are considered to be instances of "imprisonment" in occupied territory falling within the meaning of Article 5(e) of the Statute.

5. Rape

69. The physical element of the crime or rape is constituted by sexual penetration, even if partial, (a) of the vagina or anus of the victim by the rapist"s penis, or by any other object used by him, or (b) of the mouth by the rapist"s penis, provided that such sexual penetration occurs without the consent of the victim. Consent for this purpose must be given voluntarily and must result from the exercise of the victim"s free will, which is evaluated in light of the circumstances.[113] The mental element is constituted by the intent to effect such sexual penetration and the knowledge that this is occurring without the victim"s consent.[114]

70. The Appeals Chamber has clarified that the use of force or the threat thereof does admittedly constitute incontrovertible evidence of the lack of consent, but that the use of force is not a constituent element of rape *per se*. Indeed, there are factors other than the use of force which make sexual penetration a non-consensual act or an act the victim does not want.[115] The Chamber holds that, in lieu of physical force, the perpetrator may be able to exploit specific circumstances which the victim experiences as so constraining that they render physical resistance instantly impossible. By way of example, it has been found that the victim"s detention at the time of the events may constitute such a circumstance.[116]

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[112] *Kordić* Judgement, para. 287 citing the Commentary to the Fourth Geneva Convention, p. 281; *Furundţija* Judgement, p. 246. *See* also Article 132 of the Fourth Geneva Convention, which provides *inter alia* that "[e]ach person shall be released by the Detaining Power as soon as the reasons which necessitated his internment no longer exist".
[113] *Kvoĉka* Appeals Judgement, para. 395; *Kunarac* Judgement, para. 460.
[114] *Kvoĉka* Appeals Judgement, para. 395; *Kunarac* Judgement, para. 460.
[115] *Kunarac* Appeals Judgement, para. 129; *Furundţija* Judgement, para. 185.
[116] *Kunarac* Appeals Judgement, para. 132.

71. In the *Kunarac* Case, the Appeals Chamber made it clear that the argument that "nothing short of continuous resistance provides adequate notice to the perpetrator that his attentions are unwanted is wrong on the law and absurd on the facts".[117]

6. Persecution

72. The crime of persecution on political, racial and religious grounds is prohibited by Article 5(h) of the Statute. In accordance with the case-law of the Tribunal, the *actus reus* or physical element of the crime of persecution consists of an act or omission that "discriminates in fact and which denies or infringes upon a fundamental right laid down in international customary or treaty law". The *mens rea* or mental element required for this crime is that it be "carried out deliberately with the intention to discriminate on one of the listed grounds, specifically race, religion or politics".[118] Although Article 5(h) of the Statute places the conjunction "and" between the various reasons for discrimination defined, it must be interpreted in the spirit of customary international law, whereby each of the three grounds independently meets the threshold requirements for persecution.[119]

73. The Chamber adopts the clarification provided by the *Krnojelac* and *Vasiljević* Chambers, namely, that discriminatory intent alone does not suffice, and that the act or omission must have "discriminatory consequences" in fact, and not merely be committed with discriminatory intent.[120] Concerning the *actus reus* of the crime of persecution, the Appeals Chamber has thus acknowledged that there is discrimination in fact even if the victim is not a member of the group discriminated against and is targeted because the perpetrator mistakenly identifies them with that group.[121]

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[117] *Kunarac* Appeals Judgement, para. 128.
[118] *Stakić* Appeals Judgement, para. 327; *Krnojelac* Appeals Judgement, para. 185.
[119] *Tadić* Judgement, para. 713.
[120] *Vasiljević* Judgement, para. 245; *Krnojelac* Judgement, para. 432. In these two cases, the Trial Chamber stated that without this requirement of a discriminatory outcome, the distinction between the crime of persecution and other crimes such as murder or torture would be shorn of practically any meaning; moreover, in the *Krnojelac* Case, the Trial Chamber observed that an accused could then be found guilty of persecution without anyone having actually been persecuted.
[121] *Krnojelac* Appeals Judgement, para. 185; *Krnojelac* Judgement, para. 431. The Appeals Chamber in the *Krnojelac* Case in fact explained that in the event a victim did not belong to the ethnic group targeted, the act committed against him or her would institute discrimination in fact against the other members of this differing group who were not targeted by such acts, deliberately discriminating against a group on the basis of ethnic origin.

74. Although the word "persecution" is often used to describe a series of acts, a single act may constitute persecution[122] if it discriminates in fact and is carried out deliberately with the intent to discriminate on a prohibited ground.

75. An act of persecution does not require express prohibition either in Article 5 or another provision of the Statute. Indeed, depriving a person of a substantial number of their rights may constitute persecution.[123] However, the acts constituting the crime of persecution, whether considered in isolation or jointly with other acts, must constitute a crime of equal severity with the crimes enumerated in Article 5 of the Statute.[124] In applying the criterion of severity, the acts of persecution must be evaluated in context and not in isolation, taking into consideration their cumulative effect.[125]

76. The mental element for the crime of persecution is defined as "the specific intent to cause injury to a human being because he belongs to a particular community or group".[126] The discriminatory intent is equivalent to a *dolus specialis*.[127] Such intent may not be inferred solely from the overall discriminatory nature of an attack characterised as a crime against humanity.[128] It may, however, be inferred from such a context so long as, in view of the facts of the case, circumstances surrounding the commission of the alleged acts substantiate the existence of discriminatory intent.[129] Lastly, persecution does not require a discriminatory policy, or, if one is proven to exist, it is not necessary that the accused have participated in the formulation of such policy or such practice by the governing authority.[130]

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[122] *Kordić* Appeals Judgement, para. 102; *Kupreškić* Judgement, para. 624. To illustrate its position, the Trial Chamber in the *Kupreškić* Case stated that an individual may have taken part in the murder of a single person belonging to the targeted ethnic group and that such murder may constitute persecution if the perpetrator clearly possessed the intent to murder this person on the ground that they belonged to the ethnic group targeted.
[123] *BrĊanin* Appeals Judgement, para. 296; *Kupreškić* Judgement, para. 614.
[124] *BrĊanin* Appeals Judgement, para. 296; *Kvočka* Appeals Judgement, paras 321-323.
[125] *Naletilić* Appeals Judgement, para. 574; *Kupreškić* Judgement, paras 615 (e) and 622.
[126] *Kordić* Appeals Judgement, para. 111; *Blaškić* Appeals Judgement, para. 235.
[127] *Stakić* Appeals Judgement, para. 328; *Stakić* Judgement, para. 737.
[128] As the Appeals Chamber rightly recalled in the *Krnojelac* Case, it is important to note that not every attack against a civilian population is necessarily discriminatory in character and that discriminatory character is not a constituent element of an attack on a civilian population. *Krnojelac* Appeals Judgement, footnote 267.
[129] *Krnojelac* Appeals Judgement, para. 184; *Naletilić* Appeals Judgement, para. 129. According to the Appeals Chamber in the *Krnojelac* Case, these circumstances include, for example, how the prison is operated (particularly the systematic nature of the crimes committed against a racial or religious group) or the general attitude of the alleged perpetrator of the offence, as shown by his conduct (*Krnojelac*

7. Other Inhumane Acts

77. "Other inhumane acts" are made punishable under Article 5(i) of the Statute as crimes against humanity. Article 5(i) is a supplementary provision applicable to acts that do not fall within the ambit of any other paragraph of Article 5 of the Statute.[131] The Tribunal's case-law has determined that, to constitute "other inhumane acts", it must be established that there was an act or omission, which is vested with a degree of a severity identical to that of the other crimes enumerated in Article 5 of the Statute. The act or the omission must therefore be carried out in a widespread or systematic manner and fulfil the following requirements:

(a) the victim must, giving due regard to the individual circumstances, have suffered serious bodily or mental harm, or must have suffered a serious attack on his/her human dignity,

(b) this suffering or violation must have been caused by an act or omission of the accused or a person or persons for whose acts or omissions the accused bears criminal responsibility; and

(c) the criminally responsible person must have acted (1) with the intent to inflict serious bodily or mental harm on the victim or constitute a serious attack on the human dignity of the victim, or (2) lacking such intent, must have been reasonably able to foresee that the said act or said omission would likely give rise to serious bodily or mental injury or harm to the human dignity of the victim.[132]

78. To ascertain the degree of severity of an act, all the factual circumstances must be considered, "including the nature of the act or omission, the context in which it

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Appeals Judgement, para. 184). Another situation held *inter alia* to establish discriminatory intent, was the fact that all of the guards in several detention sites belonged to one ethnic group whereas all of the prisoners belonged to another ethnic group (*Kordić* Appeals Judgement, para. 950).

[130] *Blaškić* Appeals Judgement, para. 165; *Kupreškić* Judgement, para. 625.

[131] *Stakić* Appeals Judgement, para. 315; *Kupreškić* Judgement, para. 563. The Trial Chamber in the *Kupreškić* Case rightly recalled that, according to the Commentary to Common Article 3 of the Geneva Conventions regarding the topic of "inhumane treatment": "[...] it is always dangerous to try to go into too much detail – especially in this domain. However great the care taken in drawing up a list of all the various forms of infliction, it would never be possible to catch up with the imagination of future torturers who wished to satisfy their bestial instincts [...] and the more specific and complete a list tries to be, the more restrictive it becomes. The form of wording adopted is flexible and, at the same time, precise", *Kupreškić* Judgement, para. 563, citing the Commentary to the Fourth Geneva Convention, p. 44.

[132] *Kordić* Appeals Judgement, para. 117; *Vasiljević* Appeals Judgement, para. 165.

occurs, its duration and/or repetition, the physical, mental and moral effects of the act on the victim as well as the personal circumstances of the victim, including age, sex, and health".[133]

79. As stated above, "other inhumane acts" covers a set of criminal activities not explicitly enumerated. Thus, the case-law has held that the following acts, among others, fall into the category of "inhumane acts": mutilations and other forms of severe bodily harm, beatings and other acts of violence, serious bodily and mental injury, forcible transfer, inhumane and degrading treatment, forced prostitution and forced disappearance.[134]

80. The Indictment characterises as inhumane acts under the rubric of crimes against humanity *inter alia* the "conditions of confinement" as well as the "forcible transfer" allegedly suffered by the civilian Muslim population.[135] Inasmuch as the characterisation of forcible transfer was assessed earlier,[136] the Chamber will state merely that it has been established, based on the definition of the inhumane acts set out above, that detention under harsh conditions is likely to constitute an inhumane act within the meaning of Article 5(i) of the Statute if it causes great suffering or physical or mental anguish or constitutes a serious attack on human dignity.[137]

[133] *Krnojelac* Judgement, para. 131; *Ĉelebići* Judgement, para. 536.
[134] *Kvoĉka* Judgement, para. 208; *Tadić* Judgement, para. 730.
[135] Counts 8 and 12 of the Indictment.
[136] *See* "Deportation and Forcible Transfer" in the Chamber"s review of the applicable law: Crimes Against Humanity.
[137] *See* in this regard *Krnojelac* Judgement, para. 133; *Kvoĉka* Judgement, para. 209.

B. Grave Breaches of the Geneva Conventions

81. This part of the applicable law is divided into seven sections. The first of these addresses the general requirements for the application of Article 2 of the Statute. The following six address certain crimes falling under Article 2 of the Statute and corresponding to the counts alleged in the Indictment on the basis of that article, namely, wilful killing (Count 3), inhuman treatment (Counts 5 – sexual assault, 13 – conditions of confinement, and 16), the extensive destruction of property, not justified by military necessity and carried out unlawfully and wantonly (Count 19), the appropriation of property, not justified by military necessity and carried out unlawfully and wantonly (Count 22), deportation and the unlawful transfer of civilians (Counts 7 and 9, respectively), and the unlawful confinement of civilians (Count 11).

1. General Requirements for the Application of Article 2 of the Statute

82. The grave breaches are enumerated in Articles 50, 51, 130 and 147, respectively, of the First Geneva Convention, the Second Geneva Convention, the Third Geneva Convention, and the Fourth Geneva Convention of 12 August 1949.

83. Article 2 of the Statute, pertaining to the grave breaches of the Geneva Conventions,[138] applies when four requirements are met: (i) there is an armed conflict; (ii) there is an armed conflict of an international nature or an occupation;[139] (iii) the fact that the persons or objects of property affected by the breaches are protected by

[138] The text of Article 2 of the Statute provides that: "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;
(g) unlawful deportation or transfer or unlawful confinement of a civilian;
(h) taking civilians as hostages."

[139] The Chamber recalls that the Geneva Conventions apply to circumstances of occupation as defined by Common Article 2 of the Geneva Conventions, and that Article 4 of the Fourth Geneva Convention recognises the status of protected persons, including persons in the hands of an occupying power.

the Geneva Conventions, and (iv) there is a nexus between the armed conflict and the crimes alleged.[140]

a) Existence of an Armed Conflict

84. In the jurisprudence of the Tribunal, an armed conflict exists whenever there is resort to armed force between States or protracted armed violence between government authorities and organised armed groups or between such groups within a State.[141]

b) International Character of the Armed Conflict or State of Occupation

i. International Armed Conflict

85. Whether the grave breaches regime in the Geneva Conventions applies is contingent upon the international character of the conflict. It is indisputable that a conflict is possessed of an international character when it pits two or more States against one another. Moreover, an armed conflict that is internal at first glance may become international or exhibit an international character when "another State intervenes in that conflict through its troops".[142] The Chamber finds that, to determine whether the conflict is international in character, the conflict must be examined in its entirety. For instance, it is not necessary to prove that troops from another State were present in each of the places were the crimes were committed.[143] The presence of troops belonging to a foreign army in the region ravaged by conflict or in the regions that border the territory in which the conflict is unfolding and which are of strategic importance to the conflict, may constitute an indicator sufficient to support a finding that a foreign State was intervening directly in the conflict, establishing its international character.[144]

[140] *Tadić* Decision on Jurisdiction, paras 80-84; *Naletilić* Judgement, para. 176. Judge Antonetti raises the issue of international armed conflict in his separate, partly dissenting opinion annexed to this Judgement.
[141] *Kunarac* Appeals Judgement, para. 56, referring to the *Tadić* Decision on Jurisdiction, para. 70.
[142] *Tadić* Appeals Judgement, para. 84; *Blaškić* Judgement, para. 76.
[143] *See Naletilić* Judgement, para. 194; *Kordić* Judgement, para. 71.
[144] *See mutatis mutandis Kordić* Judgement, paras 108-110; *Kordić* Appeals Judgement, paras 314 and 319-321.

86. The international character of an internal conflict may also be the result of certain participants in the internal armed conflict acting on behalf of another State.[145] In the latter case, it is important to determine the degree of authority or control by a foreign State over the armed forces fighting on its behalf.[146] In the *Tadić* Case, the Appeals Chamber, after considering that international law did not always require the same degree of control over the members of armed groups as over individuals not holding the status of state agents under internal legislation in order for the latter to be deemed *de facto* organs of the State,[147] found that three distinct criteria could be applied, depending on the nature of the entity in question, to establish that participants in an internal conflict had acted on behalf of another State, thereby lending an international character to the conflict. These are the criteria of: (a) overall control (for armed groups acting on behalf of another State); (b) specific instructions or public approval *a posteriori* (for individuals acting alone or militarily unorganised groups); and (c) assimilation of individuals to State organs on account of their actual behaviour within the structure of the said State.[148]

(a) To the extent that the issue of overall control is of special importance in this case, the Chamber considers it appropriate to review in detail the applicable law, as identified by the Appeals Chamber in the *Tadić* Case. Thus, to impute responsibility for acts committed by military or paramilitary groups to a State, the Appeals Chamber found that it was necessary to establish that the latter wielded overall control over the group, not merely by equipping and financing the group, but also by coordinating or providing its assistance in the overall planning of its military activities.[149] Only then will the international responsibility of the State be attached due to the misconduct of the group. However, there is no need to require also that the State have issued, either

[145] *Blaškić* Judgement, para. 76; *Tadić* Appeals Judgement, para. 84.
[146] *Ĉelebići* Appeals Judgement, para. 13, referring to the *Tadić* Appeals Judgement, para. 97.
[147] *Ĉelebići* Appeals Judgement, para. 13, referring to the *Tadić* Appeals Judgement, para. 137.
[148] *Tadić* Appeals Judgement, para. 141.
[149] In paragraph 79 of its Final Trial Brief, the Prosecution argues that Croatia"s provision of arms to the ABiH during the time period covered by the Indictment does not alter the international nature of the conflict between the HVO and the ABiH, citing paragraph 372 of the *Kordić* Appeals Judgement in support. The Chamber points out, moreover, that the Prosecution does not dispute the case-law on this point. The Chamber will analyse this issue in its review of the requisite conditions for the application of Articles 2, 3 and 5 of the Statute.

to the head of the group or to its members, instructions or directives for the commission of various specific acts contrary to international law.[150]

(b) Concerning isolated individuals or groups not organised in a military structure, the criterion of overall control was deemed inadequate. Such a group or such an individual will be considered to have acted as a *de facto* organ of State only if that State gave such persons specific instructions or directives to commit a specific act or, otherwise publicly approved such act *a posteriori*.[151]

(c) The third criterion, regarding the assimilation of individuals to State organs, makes it possible to consider individuals acting in a private capacity as *de facto* State organs if they act in concert with the armed forces of or in collusion with the authorities of a State.[152]

ii. State of Occupation

87. As the Geneva Conventions do not define occupation, the Chamber will refer to the Hague Regulations, the provisions of which form part of customary law.[153]

88. The Chamber endorses the criteria identified by the *Naletilić* Chamber for establishing whether the authority of the occupying power has been proven in fact and holds in respect of this that these criteria need not be cumulative:

> • the occupying power must be in a position to substitute its own authority for that of the occupied power, rendered incapable of functioning publicly from that time forward;
> • the enemy"s forces have surrendered, been defeated or have withdrawn. In this respect, battle zones may not be considered as occupied territory. Despite this, the status of occupied territory remains unchallenged by sporadic local resistance, however successful;
> • the occupying power has a sufficient force present, or the capacity to send troops within a reasonable time to make the authority of the occupying power felt;
> • a temporary administration has been established over the territory;
> • the occupying power has issued and enforced directions to the civilian population.[154]

89. Several issues related to occupation were debated by the parties in their final briefs and closing argument. The Chamber will analyse the purely legal points of

[150] *Tadić* Appeals Judgement, para. 131.
[151] *Tadić* Appeals Judgement, paras 132 and 137.
[152] *Tadić* Appeals Judgement, para. 144.
[153] *See Naletilić* Judgement, para. 215.
[154] *Naletilić* Judgement, para. 217.

order in this section of the Judgement. Initially, the Chamber will set forth and respond to the arguments submitted by the parties in response to the allegations of occupation in the Indictment. It will then set out the divergences between the parties concerning the issue of how international armed conflict and a state of occupation differ and will respond to the parties on that point. Finally, after having introduced the parties‟ arguments with regard to the notion of an "occupying power", the Chamber will recall the relevant jurisprudence.

a. Occupation as Alleged in the Indictment

90. In its Final Trial Brief, the Prosecution raises the responsibility of the Accused Praljak and Petković as commanding officers of an occupied territory in various municipalities in BiH.[155] In its closing arguments, the Petković Defence asserts that the Prosecution is raising this issue for the first time in its Final Trial Brief, whereas it was never mentioned in the Indictment or its Pre-Trial Brief, and that it never produced any evidence going to prove that the Accused Praljak and Petković were commanders of an occupying army.[156] The Petković Defence argues that, due to this, these allegations ought to be dismissed.[157] In its Reply, the Prosecution states that, read in its entirety, the Indictment provides adequate notice to the Defence with respect to this allegation.[158] The Prosecution recalls that paragraph 232 of the Indictment makes mention of partial occupation twice and says that it referred to "territorial expansion" in the Pre-Trial Brief as well as the take-over or capture of municipalities.[159] The Prosecution considers that all of this constitutes the basis for the criminal responsibility of the various Accused.[160] In its Rejoinder, the Petković Defence alleges, lastly, that the Accused Petković, as Chief of the Main Staff, was never charged as commanding officer of an occupying power and that the Prosecution‟s allegations during the final months of the trial are absent from the evidence adduced by the Prosecution.[161]

[155] Prosecution Final Trial Brief, paras 323 to 360.
[156] Closing Arguments by the Petković Defence, T(F), pp. 52565 and 56566.
[157] Closing Arguments by the Petković Defence, T(F), p. 52566.
[158] Reply of the Prosecution, T(F), pp. 52837 and 52838.
[159] Reply of the Prosecution, T(F), p. 52838.
[160] Reply of the Prosecution, T(F), p. 52838.
[161] Rejoinder of the Petković Defence, T(F), p. 52941.

91. The Chamber observes that a partial occupation of the territory included in the Indictment is indeed alleged to have existed in paragraph 232 thereof. The Chamber notes, moreover, that the issue of the occupation was discussed by the Praljak Defence in paragraph 31 of its Pre-Trial Brief. Furthermore, both the Praljak and Petković Defence teams addressed the issue of the occupation in their Final Trial Briefs, which were filed contemporaneously with that of the Prosecution.[162] In addition, the Indictment alleges that both the Accused Praljak and the Accused Petković "exercised *de jure* and/or *de facto* command over the Herceg-Bosna/HVO armed forces"[163] and are charged for the crimes alleged under each mode of criminal responsibility provided under Articles 7(1) and 7(3) of the Statute.[164] Consequently, the Chamber must conclude that the Defence teams were adequately informed of the allegations brought against the Accused Praljak and Petković as commanding officers in a zone of occupation. The Chamber, however, recalls that in order to prove the responsibility of an accused for his functions as a commanding officer in a zone of occupation, the Prosecution must first prove that such an occupation exists. The analysis of the evidence about the alleged state of occupation will appear in the factual part of the Judgement.

b. Difference between an International Conflict and an Occupation

92. Concerning the legal definition of an occupation, in its Final Trial Brief, the Prosecution submits that the existence of pockets of resistance in certain zones of the territory considered to have been occupied does not void their status as occupied areas, provided that the occupying power still wields control over these areas.[165] In its closing arguments, the Praljak Defence nevertheless states that the Prosecution committed an error of law in its analysis of whether a state of occupation existed in Herceg-Bosna at the time of the events, and considers that the existence of an international armed conflict and an occupation constitute distinct issues.[166] Referring to the *Naletilić* Judgement and Additional Protocol I, in its closing arguments, the

[162] *See*, e.g., Praljak Defence Final Trial Brief, para. 440; Petković Defence Final Trial Brief, paras 38, 115 and 258.
[163] Paras 8 and 10 of the Indictment.
[164] Paras 218 to 228 of the Indictment.
[165] Prosecution Final Trial Brief, paras 91 and 92.
[166] Closing Arguments of the Praljak Defence, T(F), p. 52439.

Petković Defence submits that these are mutually exclusive situations.[167] In its Reply, the Prosecution refutes the Petković Defence argument by giving examples *inter alia* of cases taken from the Second World War.[168] The Chamber notes that the Petković Defence maintained its original stance in its Rejoinder yet appears to contend that a state of occupation in connection with international armed conflicts is possible when the conflicts are limited in scope.[169]

93. The Prosecution specifically argues that the areas behind battle lines also constitute an occupied area.[170]

94. The Chamber is of the opinion that nothing in case-law or customary law excludes the possibility that fighting with the character of an international armed conflict might take place in the occupied territory without that territory losing its status as an occupied territory, provided that the occupying power maintains its control over the territory at issue, in keeping with the criteria defined above.

c. Occupying Power

95. The Chamber then notes that the Prosecution, the Praljak Defence and the Petković Defence do not contest the criteria established by the *Naletilić* Chamber and set forth above,[171] for determining whether there was a state of occupation.[172] The Chamber observes nevertheless that the Praljak Defence appears to argue, on the basis of the ICJ‟s judgment in the case of the *Democratic Republic of the Congo v. Uganda*,[173] that for a territory in BiH to be considered occupied by the HVO, the Prosecution should have demonstrated beyond a reasonable doubt that the degree of control exercised by the Government of Croatia over the HVO was identical to the control it exercised over the HV.[174]

[167] Closing Arguments of the Petković Defence, T(F), pp. 52569-52571.
[168] Reply of the Prosecution, T(F), p. 52843.
[169] Rejoinder of the Petković Defence, T(F), p. 52941.
[170] Prosecution Final Trial Brief, para. 92.
[171] *See* "Difference between an International Armed Conflict and Occupation" in the Chamber‟s treatment of the applicable law: Grave Breaches of the Geneva Conventions.
[172] Closing Arguments of the Praljak Defence, T(F), p. 52439; Closing Arguments of the Petković Defence, T(F), p. 52567; Rejoinder of the Praljak Defence, T(F), p. 52925.
[173] "Armed Activities on the Territory of the Congo (Congo v. Uganda)", Appeals Judgment, ICJ Reports 2005, p. 168, para. 177.
[174] Closing Arguments of the Praljak Defence, T(E), p. 52440.

96. The Chamber would recall that the Tribunal"s case-law is clear concerning the criteria applicable to any determination of the international nature of a conflict. The Appeals Chamber has established that an armed conflict is international in nature when, for example, a foreign State exercises overall control over one of the parties to the conflict.[175] Accordingly, the Chamber finds that if the Prosecution proves that the party to the armed conflict under the overall control of a foreign State fulfils the criteria for control of a territory as identified above, a state of occupation of that part of the territory is proven.

c) Persons or Property Covered by Grave Breaches and Protected by the Geneva Conventions

97. Applying Article 2 of the Statute requires that the grave breaches of the Geneva Conventions be committed against (i) persons or (ii) property protected by the provisions of the relevant Geneva Convention.[176]

i. Protected Persons

98. The Chamber recalls that persons who do not enjoy protection under the first three Geneva Conventions fall within the scope of application of the Fourth Geneva Convention relative to the Protection of Civilian Persons in Time of War, provided that the requirements of Article 4 are satisfied.[177]

99. Civilian persons under the Third Geneva Convention are defined by their exclusion with respect to the armed forces.[178] Any person who is not a combatant is considered a civilian as defined under Article 4(A)(1), (2), (3) and (6) of the Third Geneva Convention as well as under Article 43 of Additional Protocol I. In case of

[175] *See* "International Armed Conflict" in the Chamber"s treatment of the applicable law: Grave Breaches of the Geneva Conventions.
[176] *See Tadić* Decision on Jurisdiction, para. 81: "For the reasons set out above, this reference is clearly intended to indicate that the offences listed under Article 2 can only be prosecuted when perpetrated against persons or property regarded as "protected" by the Geneva Conventions under the strict conditions set out by the Conventions themselves. This reference in Article 2 to the notion of "protected persons or property" must perforce cover the persons mentioned in Articles 13, 24, 25 and 26 (protected persons) and 19, 33 to 35 (protected [property]) of Geneva Convention I; in Articles 13, 36, 37 (protected persons) and 22, 24, 25 and 27 (protected [property]) of Convention II; in Article 4 of Convention III on prisoners of war; and in Articles 4 and 20 (protected persons) and 18, 19, 21, 22, 33, 53, 57, etc. (protected [property]) of Convention IV on civilians".
[177] *BrĈanin* Judgement, para. 125; *Ĉelebići* Judgement, para. 271; Commentary to the Fourth Geneva Convention, pp. 56 and 57.
[178] Commentary on Additional Protocol I, paras 1913 and 1914.

doubt, the person shall be considered by the party to the conflict or the occupying power to be a civilian.[179]

100. Article 4(1) of the Fourth Geneva Convention defines as "protected persons" those persons "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". Thus, those protected are, first, civilians in enemy or occupied territory or in a combat zone, who are not nationals of the belligerent State in power in whose hands they find themselves, or who are stateless persons.[180] Moreover, the Appeals Chamber has taken a teleological approach to Article 4, finding that the decisive criterion for determining the status of a protected person is allegiance to a party in the conflict.[181] Thus, in the context of armed inter-ethnic conflicts, allegiances may depend more on ethnic identity than on nationality.[182] The Appeals Chamber has determined that "[t]he nationality of the victims [...] should not be determined on the basis of formal national characterisations, but rather upon an analysis of the substantial relations, taking into consideration the different ethnicity of the victims and the perpetrator, and their bonds with the foreign intervening State".[183]

101. Both civilians who were in the territory prior to the outbreak of the conflict or the occupation and those who arrived later enjoy the protections conferred by the Fourth Geneva Convention. Moreover, the expression "in the power of" has a very broad meaning, which exceeds the bounds of direct authority. Thus, "[t]he mere fact of being in the territory of a Party to the conflict or in occupied territory implies that one is in the power or „hands" of the Occupying Power".[184]

102. In contrast, nationals of a co-belligerent State do not enjoy the protection conferred by the Fourth Geneva Convention, "while the State of which they are nationals has normal diplomatic representation in the State whose hands they are in".[185] For this provision to apply, it must be demonstrated that the States were allies

[179] Article 50(1) of Additional Protocol I.
[180] *Tadić* Appeals Judgement, para. 164; Commentary on the Fourth Geneva Convention, p. 53.
[181] *Tadić* Appeals Judgement, para. 166.
[182] *Tadić* Appeals Judgement, para. 166.
[183] *Ĉelebići* Appeals Judgement, para. 84.
[184] Commentary to the Fourth Geneva Convention, p. 53; *Naletilić* Judgement, para. 208.
[185] Article 4 of the Fourth Geneva Convention.

and that they enjoyed effective, satisfactory diplomatic relations.[186] In this regard, consideration must be given not only to formal diplomatic relations existing between the two States but also the true situation.[187]

103. Article 4(A) of the Third Geneva Convention extends protection to prisoners of war, that is, to persons who have fallen into the power of the enemy and are members of one of the six categories defined in that article.[188]

104. Paragraph 6 of Article 4(A) of the Third Geneva Convention envisages the possibility of the inhabitants taking up arms. This refers to a "situation where territory has not yet been occupied, but is being invaded by an external force, and the local inhabitants of areas in the line of this invasion take up arms to resist and defend their homes".[189] There is no requirement that the population be surprised by the invasion.[190] Such taking up arms in fact also refers to a situation where the population taking up arms has been alerted to the invasion, provided that they lacked sufficient time to organise themselves in accordance with sub-paragraphs 1 and 2 of Article 4(A) of the Third Geneva Convention.[191] For this provision to apply, in the interest of the combatants to be recognised as prisoners of war, it is necessary that they carry arms openly.[192] In conclusion, this provision can be considered only for a very short period

[186] *Blaškić* Appeals Judgement, para. 186.
[187] *Blaškić* Appeals Judgement, paras 186 and 188.
[188] The six categories identified in Article 4(A) of the Third Geneva Convention are as follows: "(1) members of the armed forces of a Party to the conflict, as well as members of militias or volunteer corps forming part of such armed forces; (2) members of other militias and members of other volunteer corps, including those of organised resistance movements, belonging to a Party to the conflict and operating in or outside their own territory, even if this territory is occupied, provided that such militias or volunteer corps, including such organized resistance movements, fulfil the following conditions: (a) that of being commanded by a person responsible for his subordinates; (b) that of having a fixed distinctive sign recognizable at a distance; (c) that of carrying arms openly; (d) that of conducting their operations in accordance with the laws and customs of war; (3) members of regular armed forces who profess allegiance to a government or an authority not recognized by the Detaining Power; (4) persons who accompany the armed forces without actually being members thereof, such as civilian members of military aircraft crews, war correspondents, supply contractors, members of labour units or of services responsible for the welfare of the armed forces, provided that they have received authorization, from the armed forces which they accompany, who shall provide them for that purpose with an identity card similar to the annexed model; (5) members of crews, including masters, pilots and apprentices, of the merchant marine and the crews of civil aircraft of the Parties to the conflict, who do not benefit by more favourable treatment under any other provisions of international law; (6) inhabitants of a non-occupied territory, who on the approach of the enemy spontaneously take up arms to resist the invading forces, without having had time to form themselves into regular armed units, provided they carry arms openly and respect the laws and customs of war."
[189] *Ĉelebići* Judgement, para. 270.
[190] Commentary to the Third Geneva Convention, p. 75.
[191] Commentary to the Third Geneva Convention, p. 75.
[192] Commentary to the Third Geneva Convention, pp. 75 [67] and 76 [68].

of time and is applicable only to mass movements, that is, when a gathered population unites to resist.[193]

105. The protection granted to prisoners of war under the Third Geneva Convention commences from the time they fall into the power of the enemy and terminates at the time of their final release and repatriation.[194] The expression "fall into the power" covers not merely those cases where the persons mentioned in Article 4(A) of the Third Geneva Convention have been captured during combat but also the situation where "soldiers became prisoners without fighting, for example following a surrender".[195]

ii. Protected Property

106. According to the *BrĊanin* Chamber, two categories of property are protected under Article 2(d) of the Statute:

1) real or personal property in occupied territory, belonging individually or collectively to private persons, or to the State, or to other public authorities, or to social or cooperative organisations protected under Article 53 of the Fourth Geneva Convention;

2) property that is generally protected under the Geneva Conventions, regardless of location.[196]

107. As concerns property in the first category, in order to enjoy the protection afforded by the Geneva Conventions, it must be located in occupied territory.[197]

108. Concerning the second category of protected property, the Chamber recalls that this is property enjoying the broad protection afforded by the Geneva Conventions, regardless of whether it is located in enemy territory and includes *inter*

[193] Commentary to the Third Geneva Convention, p. 76 [68].
[194] Article 5 of the Third Geneva Convention.
[195] Commentary to the Third Geneva Convention, p. 57.
[196] *BrĊanin* Judgement, para. 586. *See* also *Naletilić* Judgement, para. 575.
[197] Commentary on the Fourth Geneva Convention, p. 324: "[i]n order to dissipate any misconception in regard to this Article, 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." *See Blaškić* Judgement, para. 148, citing the Commentary on the Fourth Geneva Convention; *Naletilić* Judgement, para. 222.

alia civilian hospitals,[198] air, land, and sea transport used to convey wounded and sick civilians, the infirm and women in maternity,[199] fixed establishments and mobile medical units.[200]

d) Existence of a Nexus between the Armed Conflict and the Alleged Crimes

109. International humanitarian law is applicable throughout the territory controlled by a party or on the territory of the belligerent States regardless of whether or not actual combat is ongoing. Thus, as concerns the nexus between the armed conflict and the alleged crimes, it is not necessary to prove that combat took place at the sites where the crimes were allegedly committed. It is sufficient to establish that the alleged crimes were closely related to the hostilities occurring in other parts of the territories controlled by the parties to the conflict.[201] Moreover, the principle of individual responsibility requires that the Prosecution prove that each one of the Accused was aware of the factual circumstances demonstrating the international character of the armed conflict.[202] The Chamber will address this point in the part devoted to the criminal responsibility of the Accused.

2. Wilful Killing

110. The offence of wilful killing, to which Count 3 is directed, is sanctioned under Article 2(a) of the Statute and under the Geneva Conventions, among the grave breaches.[203] Wilful killing is identical to the crime of murder, punishable under Articles 3 and 5 of the Statute, but it requires an additional constituent element, because it must be committed against a person who is protected under the Geneva Conventions.[204]

[198] Article 18 of the Fourth Geneva Convention.
[199] Articles 21 and 22 of the Fourth Geneva Convention.
[200] Article 19 of the First Geneva Convention. Other property is likewise protected under this framework. *See inter alia* the property contemplated in Article 38 of the Second Geneva Convention, namely ships intended for the transport of medical equipment; the property contemplated in Article 39 of the Second Geneva Convention, and in Article 36 of the First Geneva Convention, namely medical aircraft, as well as the property contemplated in Article 20 of the First Geneva Convention, namely hospital ships.
[201] *Blaškić* Judgement, para. 69, referring to the *Tadić* Decision on Jurisdiction, para. 70.
[202] *Naletilić* Appeals Judgement, paras 118-121. *See* also *Boškoski* Judgement, para. 295, not overturned on appeal.
[203] Article 50 of the First Geneva Convention, Article 51 of the Second Geneva Convention, Article 130 of the Third Geneva Convention, Article 147 of the Fourth Geneva Convention.
[204] *Kordić* Appeals Judgement, para. 38; *Brđanin* Judgement, para. 380.

111. The constituent elements of wilful killing and murder, as identified in the Tribunal"s case-law are: (1) the death of the victim; (2) the death of the victim was caused by acts or omissions for whose acts or omissions the accused bears criminal responsibility; and (3) the act was done, or the omission was made, by the accused, or a person or persons for whose acts or omissions he bears criminal responsibility, with an intention to kill or to inflict grievous bodily harm, in the reasonable knowledge that such act or omission was likely to cause death.[205]

3. Inhuman Treatment

112. The Indictment contains allegations of inhuman treatment in Count 16. Moreover, it more specifically characterises sexual assault and the conditions of confinement under Counts 5 and 13 as inhuman treatment.[206]

113. The offence of inhuman treatment is punishable under Article 2(b) of the Statute and is one of the grave breaches under the Geneva Conventions.[207] Inhuman treatment comprises (1) intentional acts or omissions which, when judged objectively, are deliberate, not accidental, and which cause serious physical or mental harm or suffering or constitute a serious attack on human dignity, and (2) are committed against a protected person within the meaning of Article 2 of the Statute.[208]

114. The Geneva Conventions stipulate that protected persons must be treated humanely[209] and provide non-exhaustive examples,[210] of actions contrary to the principle of humane treatment, in particular, physical mutilation, medical or scientific experiments, acts of violence or intimidation, insults,[211] or even the act of wilfully leaving wounded prisoners of war without medical assistance and care.[212] In addition, they contain provisions relative to the conditions of confinement of civilian internees[213] and prisoners of war, and protect women "against any attack on their

[205] *BrĈanin* Judgement, para. 381. *See* also *Ĉelebići* Appeals Judgement, para. 422.
[206] Indictment, para. 229.
[207] Article 50 of the First Geneva Convention, Article 51 of the Second Geneva Convention, Article 130 of the Third Geneva Convention, Article 147 of the Fourth Geneva Convention.
[208] *Ĉelebići* Appeals Judgement, para. 426; *Naletilić* Judgement, para. 246.
[209] Article 12 of the First Geneva Convention, Article 12 of the Second Geneva Convention, Article 13 of the Third Geneva Convention, Article 27 of the Fourth Geneva Convention.
[210] *Ĉelebići* Judgement, para. 525; Commentary on the Fourth Geneva Convention, p. 239.
[211] *See* Article 13 of the Third Geneva Convention, Articles 27 and 32 of the Fourth Geneva Convention.
[212] Article 12 of the First Geneva Convention.
[213] *See* Article 37 and Articles 82 to 98 of the Fourth Geneva Convention.

honour, in particular against rape, enforced prostitution, or any form of indecent assault".[214] In the language of the ICRC Commentary regarding Article 147 of the Fourth Geneva Convention, humane treatment comprises that which involves physical integrity, health and human dignity.[215]

115. Under Article 2(b) of the Statute, the following have been characterised as inhuman treatment: repeated beatings and outrages inflicted on protected persons,[216] certain conditions of confinement,[217] the use of detainees as human shields,[218] sexual assault[219] and being compelled to perform forced labour along the front lines under dangerous conditions.[220]

116. In keeping with the case-law of the Tribunal, any sexual violence inflicted on the physical and moral integrity of a person by means of threat, intimidation or force, in such as a way as to degrade or humiliate the victim, may constitute inhuman treatment under Article 2(b) of the Statute.[221] Rape is thereby prohibited,[222] as well as all forms of sexual violence not including penetration.[223]

117. Concerning the conditions of confinement, the Third and Fourth Geneva Conventions contain provisions regarding *inter alia*, housing quarters, food, clothing, hygiene and medical attention for prisoners of war and other protected persons. Thus, detainees are to be offered housing conditions which do not harm their health, particularly in respect of the total area of dormitories, minimum cubic space, bedding and blankets, heating and lighting.[224] They must receive a daily ration of food in sufficient quantity, quality and variety to maintain them in good health and to prevent loss of weight or nutritional deficiencies, as well as sufficient amounts of drinking water.[225] In keeping with this, account must be taken of the dietary habits and tastes of

[214] Article 27 of the Fourth Geneva Convention.
[215] Commentary to the Fourth Geneva Convention, p. [640].
[216] *Kordić* Judgement, paras 774, 790 and 800; *Blaškić* Judgement, paras 690, 700.
[217] *Kordić* Judgement, paras 774, 783, 790, 794, 795, 800; *Blaškić* Judgement, paras 688, 690, 692, 694, 695, 697, 698 and 700.
[218] *Kordić* Judgement, paras 783 and 800; *Blaškić* Judgement, paras 714-716.
[219] *Blaškić* Judgement, paras 692, 695 and 700; *Ĉelebići* Judgement, para. 1066.
[220] *Naletilić* Judgement, paras 268 and 271; *Blaškić* Judgement, paras 689, 699 and 713.
[221] *Furundţija* Judgement, paras 172 and 186.
[222] *See* "Rape" in the Chamber"s treatment of the applicable law: Crimes Against Humanity.
[223] *Furundţija* Judgement, para. 186.
[224] Article 25 of the Third Geneva Convention; Article 85 of the Fourth Geneva Convention.
[225] Article 26 of the Third Geneva Convention; Articles 76 and 89 of the Fourth Geneva Convention.

the prisoners.[226] The Detaining Power is bound to provide facilities conforming to the rules of hygiene, as well as baths and showers, and must provide the prisoners with sufficient water and soap for daily personal hygiene.[227] Moreover, prisoners must receive medical care at an appropriate infirmary.[228] The Geneva Conventions stipulate that the Detaining Power must afford full liberty to any organisation seeking to assist the detainees and that the visits of the ICRC cannot be restricted as to frequency or duration except for reasons of imperative military necessity, and even then, only as an exceptional and temporary measure.[229] Moreover, detainees have the right to inform their families of their internment, their address, and their state of health, and to correspond with them,[230] and interned civilians may receive visits, particularly from relatives.[231]

118. The Trial Chambers have taken into consideration certain conditions of confinement such as size and overcrowding of cells, insufficient quality and quantity of food, the unavailability or inadequacy of medical treatment, beds and blankets, and the absence of hygiene in finding that there was inhuman treatment under Article 2(b) of the Statute.[232] The conditions of confinement must be assessed in light of the circumstances at the time, taking into account the state of communications that might affect the supply of food, water and medication as well as the livelihood of the civilian population,[233] particularly if there are shortages.[234] The Accused must bear the burden of proving that the conditions of confinement resulted from specific circumstances.[235]

119. The severity of an act must be assessed in light of the circumstances of the case, specifically taking into account "the nature of the act or omission, the context in which it occurs, its duration and/or repetition, the physical, mental and moral effects

[226] Article 26 of the Third Geneva Convention; Articles 76 and 89 of the Fourth Geneva Convention.
[227] Article 29 of the Third Geneva Convention; Articles 76 and 85 of the Fourth Geneva Convention.
[228] Article 30 of the Third Geneva Convention; Articles 76 and 91 of the Fourth Geneva Convention.
[229] Articles 142 and 143 of the Fourth Geneva Convention; Articles 125 and 126 of the Third Geneva Convention.
[230] Articles 70 and 71 of the Third Geneva Convention; Articles 106 and 107 of the Fourth Geneva Convention.
[231] Article 116 of the Fourth Geneva Convention.
[232] *Kordić* Judgement, paras 774, 783, 790, 794, 795, 800; *Blaškić* Judgement, paras 688, 690, 692, 694, 695, 697, 698 and 700.
[233] *Aleksovski* Judgement, paras 213 and 214; Commentary on Additional Protocol II, para. 4573. *See* Compilation of Customary Law, p. 430.
[234] *Aleksovski* Judgement, paras 213 and 214; *Ĉelebići* Judgement, paras 1099 and 1100.
[235] *See Hadţihasanović* Judgement, para. 37.

of the act on the victim and the personal circumstances of the victim, including age, sex and health".[236]

120. In respect of the mental element, at the moment of the act or omission, the direct perpetrator must have "had the intention to inflict serious physical or mental suffering or to commit a serious attack on the human dignity of the victim, or where he knew that his act or omission was likely to cause serious physical or mental suffering or a serious attack upon human dignity and was reckless as to whether such suffering or attack would result from his act or omission".[237]

4. Extensive Destruction of Property Not Justified by Military Necessity and Carried Out Unlawfully and Wantonly

121. The offence of extensive destruction of property not justified by military necessity and carried out unlawfully and wantonly towards which Count 19 of the Indictment is directed is punishable under Article 2(d) of the Statute, and constitutes a grave breach under the Geneva Conventions.[238]

122. The Chamber recalls that two categories of property are protected pursuant to Article 2(d) of the Statute, which forbids both the destruction of property falling under the general protection of the Geneva Conventions as well as the destruction of property in occupied territory.[239]

123. Military necessity may be defined in reference to the military objectives defined in Article 52(2) of Additional Protocol I,[240] which provides that "military objectives are limited to those objects which by their 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

[236] *Krnojelac* Judgement, paras 130 and 131. The Chamber notes that the extent of mental or physical suffering required for inhuman treatment is less than that required for torture: see also *Naletilić* Judgement, para. 246 and *Ćelebići* Judgement, para. 542.
[237] *Aleksovski* Judgement, para. 56.
[238] Article 50 of the First Geneva Convention, Article 51 of the Second Geneva Convention, Article 147 of the Fourth Geneva Convention.
[239] Articles 18, 21 and 22 of the Fourth Geneva Convention; Article 19 of the First Geneva Convention. Other property is likewise protected under this framework. *See inter alia* the property contemplated in Article 38 of the Second Geneva Convention, namely ships intended for the transport of medical equipment; the property contemplated in Article 39 of the Second Geneva Convention, and in Article 36 of the First Geneva Convention, namely medical aircraft, as well as the property contemplated in Article 20 of the First Geneva Convention, namely hospital ships.
[240] *Galić* Judgement, para. 51.

definite military advantage".[241] Where there is uncertainty, Article 52(3) of Additional Protocol I provides that "an object which is normally dedicated to civilian purposes, such as a place of worship, a house or other dwelling or a school, is being used to make an effective contribution to military action, it shall be presumed not to be so used".[242] Objects of property which, by their very nature, afford a definite military advantage include property used directly by the armed forces, such as equipment, structures that provide shelter for the armed forces, depots or communications centres.[243] The criterion dealing with the location of property is aimed at objects of particular significance to military operations, such as bridges or other structures.[244] The purpose of an object relates to its future use whereas its use relates to its present function.[245] The military advantage for each object of property must be definite and cannot offer merely an indeterminate or potential advantage.[246] Knowing whether a definite military advantage may be achieved must be decided from the perspective of the person contemplating the attack, taking into account the information available to the latter at the moment of the attack.[247]

124. The Appeals Chamber has, moreover, recalled that although attacks may be conducted against military objectives, "collateral civilian damage" is not by nature unlawful, provided that the customary rules of proportionality in the conduct of hostilities are observed.[248] This proportionality principle is defined by Article 51.5(b) of Additional Protocol I, which prohibits attacks "which may be expected to cause incidental loss of civilian life, injury to civilians, damage to civilian objects, or a combination thereof, which would be excessive in relation to the concrete and direct military advantage anticipated".

125. Objects of property that receive broad protection, such as fixed medical establishments and mobile medical units, hospital ships and civilian hospitals may "in no circumstances" be attacked, and must at all times be respected and protected by the

[241] Article 52(2) of Additional Protocol I.
[242] Article 52(3) of Additional Protocol I.
[243] Commentary to Additional Protocol I, para. 2020.
[244] Commentary to Additional Protocol I, para. 2021.
[245] Commentary to Additional Protocol I, para. 2022.
[246] Commentary to Additional Protocol I, paras 2024-2028.
[247] S*trugar* Judgement, para. 295; *Galić* Judgement, para. 51.
[248] *See* in particular *Kordić* Appeals Judgement, para. 52.

Parties to the conflict.[249] The Chamber notes, however, that this protection may expire if these are used to commit "acts harmful to the enemy", once due warning setting a reasonable time limit has gone unheeded.[250]

126. To violate the prohibition set out in Article 2(d) of the Statute, the destruction of property must be extensive in scope.[251] The Chamber considers, however, that the criterion that the destruction be extensive in scope must be evaluated in light of the facts of the case, and that a single incident, such as the destruction of a hospital, may suffice to constitute an offence under this count.[252]

127. The deliberate nature of the offence of the destruction of property is established when the perpetrator acts knowingly with the intent to destroy the property in question[253] or when the property has been destroyed "in reckless disregard of the likelihood of its destruction".[254]

5. Extensive Appropriation of Property Not Justified by Military Necessity and Carried Out Unlawfully and Wantonly

128. The offence of extensive appropriation of property not justified by military necessity and carried out unlawfully and wantonly, to which Count 22 of the Indictment is directed, is punishable under Article 2(d) of the Statute and appears in the Geneva Conventions under the grave breaches.[255] Unlawful, wanton appropriation of property or plunder [256] is prohibited by Article 33 of the Fourth Geneva

[249] Article 19 of the First Geneva Convention; Article 22 of the Second Geneva Convention; Article 18 of the Fourth Geneva Convention.
[250] Article 21 of the First Geneva Convention; Article 19 of the Fourth Geneva Convention. The commentary on Article 21 of the First Geneva Convention and Article 19 of the Fourth Geneva Convention cite several examples of acts considered "harmful to the enemy", such as: using a hospital as a shelter for combatants or "able-bodied fugitives", as an arms or ammunition dump, setting up a military observation post there, or deliberately locating a medical structure so as to impede enemy attack. Moreover, it should be noted that these acts are defined by exclusion in light of Article 22 of the First Geneva Convention and paragraph 2 of Article 19 of the Fourth Geneva Convention, which enumerate actions which should not be considered harmful acts. *See* in this regard the Commentaries on Article 21 of the First Geneva Convention, pp. 221 and 222, and to Article 19 of the Fourth Geneva Convention, p. 166.
[251] *BrĊanin* Judgement, para. 587; *Blaškić* Judgement, para. 157.
[252] *BrĊanin* Judgement, para. 587; *Blaškić* Judgement, para. 157.
[253] *BrĊanin* Judgement, para. 589; *Kordić* Judgement, para. 341.
[254] *Naletilić* Judgement, para. 577; *Kordić* Judgement, para. 341.
[255] Article 50 of the First Geneva Convention, Article 51 of the Second Geneva Convention, Article 147 of the Fourth Geneva Convention.
[256] *See Ĉelebići* Judgement, paras 590 and 591; Knut Dörmann, *Elements of War Crimes Under the Rome Statute of the International Criminal Court* (Cambridge: Cambridge University Press, 2002), p. 92.

Convention.[257] Concerning prisoners of war more specifically, Article 18 of the Third Geneva Convention protects any appropriation of their personal property, except for arms, horses, military equipment and military documents.[258] Article 18 adds, moreover, that the effects used to clothe and feed prisoners of war, whether these articles are their private property or belong to their military equipment, may not be confiscated.[259]

129. The prohibition on the unlawful and wanton seizure of property is broad in scope and is directed toward private as well as government property.[260] It covers both organised and systematic confiscations and acts of appropriation committed by soldiers acting in self-interest.[261] This prohibition applies equally, moreover, to the territory of the Parties to the conflict and to occupied territories.[262]

130. To constitute a violation of the prohibition in Article 2(d) of the Statute, to the extent that the appropriation of property is a grave breach of the Geneva Conventions under Article 147 of the Fourth Geneva Convention, such appropriation must also be committed extensively and carried out unlawfully and wantonly.[263] The Fourth Geneva Convention authorises the occupying powers, in certain cases, to requisition private property, such as food and medical supplies or articles, in occupied territory to meet the needs of their occupying forces and administration.[264] The requisition of excess food and supplies for the benefit of occupied regions is authorised provided that it is proportionate to the resources of the country.[265] The criterion of extensive scale must be evaluated according to the facts of the case.[266]

[257] Article 33 of the Fourth Geneva Convention.
[258] Thus, arms, horses, military equipment and military documents may be subject to confiscation, even if they form part of the personal property of the prisoner of war. *See* the Commentary on the Third Geneva Convention, p. 177.
[259] Article 18 of the Third Geneva Convention.
[260] Commentary to the Fourth Geneva Convention, p. [244].
[261] *Simić* Judgement, para. 99; *Ĉelebići* Judgement, paras 590 and 591; Commentary on the Fourth Geneva Convention, p. 244.
[262] Commentary on the Fourth Geneva Convention, p. [244]; *Ĉelebići* Judgement, para. 588.
[263] Article 147 of the Fourth Geneva Convention; *Blaškić* Judgement, para. 157.
[264] Article 55 of the Fourth Geneva Convention.
[265] Commentary to the Fourth Geneva Convention, pp. 334 and 335.
[266] *Blaškić* Judgement, para. 157.

131. The deliberate nature of the offence of appropriation of property in Article 2(d) of the Statute is established when the perpetrator acts knowingly with the intent to appropriate the property in question unlawfully.[267]

6. Deportation and Unlawful Transfer of Civilians

132. The offences of deportation and unlawful transfer of civilians, to which Counts 7 and 9 of the Indictment are directed, are punishable under Article 2(g) of the Statute, and constitute grave breaches under Article 147 of the Fourth Geneva Convention.[268] The constituent elements for deportation and forcible transfer are identical whether it involves a war crime or a crime against humanity,[269] with one exception: to be characterised as a grave breach of the Geneva Conventions, the offences of forcible transfer and deportation must be committed against a person protected under the Geneva Conventions.

7. Unlawful Confinement of Civilians

133. The offence of unlawful confinement of civilians, to which Count 11 of the Indictment is directed, is prohibited under Article 2(g) of the Statute and is listed among the grave breaches in Article 147 of the Fourth Geneva Convention.[270] Under certain conditions, the Fourth Geneva Convention permits only the imposition of "measures of control and security" on protected persons within the meaning of the Fourth Convention, such as internment or placement in assigned residence, as well as voluntary internment.[271]

134. The internment or placement in assigned residence of a protected person is permitted if the "security of the Detaining Power makes it absolutely necessary"[272] or, in the case of an occupation for "imperative reasons of security".[273] The parties to a

[267] *Naletilić* Judgement, para. 612.
[268] Article 147 of the Fourth Geneva Convention.
[269] *Krnojelac* Judgement, para. 473. *See* "Deportation and Forcible Transfer" in the Chamber's treatment of the applicable law: Crimes Against Humanity.
[270] Article 147 of the Fourth Geneva Convention.
[271] Articles 42 and 78 of the Fourth Geneva Convention. The commentaries to Articles 42 and 78 of the Fourth Geneva Convention define internment and placement in assigned residence as "measures of control and security as may be necessary as a result of the war". *See* the Commentary to Articles 42 and 78 of the Fourth Geneva Convention, pp. 277, 278 and 393. It should be noted that, with respect to the Third Geneva Convention, it authorises a detaining power to intern prisoners of war during active hostilities, subject to certain conditions.
[272] Article 42 of the Fourth Geneva Convention.
[273] Article 78 of the Fourth Geneva Convention.

conflict possess broad discretion to determine which activities are harmful to the external or internal security of a State, and may resort to internment or placement in assigned residence if they have serious and legitimate reasons "to think that the person concerned, by his activities, knowledge or qualifications, represents a *real* threat to its present or future security".[274] Subversive activity carried on inside the territory of a party to the conflict or acts that directly assist an enemy power may constitute threats to national security.[275] On the other hand, the mere fact that a person is a national of or has taken sides with the enemy party cannot be considered threatening the security of the country in which he or she resides.[276] Likewise, the fact that "a man is of military age should not necessarily be considered as justifying the application of these measures".[277]

135. Internment and placement in assigned residence constitute measures taken on an exceptional basis, after detailed examination of each individual case and may not in any circumstance constitute a collective measure.[278] Thus, the Detaining Power must, within a reasonable time, determine on a case-by-case basis whether a detained person constitutes a threat to the security of the State.[279] Reasonable time has been defined by the Appeals Chamber as "the *minimum* time necessary to make enquiries to determine whether a view that they pose a security risk has any objective foundation such that it would found a „definite suspicion"".[280]

136. Moreover, the Detaining Power must respect certain procedural guarantees, or otherwise render the internment or placement in assigned residence unlawful, despite its being lawful at the outset.[281] Thus, according to Article 78 of the Fourth Geneva Convention, decisions regarding internment or assigned residence must be made according to a regular procedure that must include a right of appeal, which shall be decided with the least possible delay, as well as a periodical review by a body

[274] *Ĉelebići* Judgement, para. 577; Commentary to the Fourth Geneva Convention, p. 277.
[275] Commentary to the Fourth Geneva Convention, pp. 277 and 278; *Kordić* Judgement, para. 284; *Ĉelebići* Judgement, paras 576 and 577.
[276] Commentary to the Fourth Geneva Convention, p. 278; *Ĉelebići* Appeals Judgement, para. 327; *Ĉelebići* Judgement, para. 577.
[277] *Kordić* Judgement, para. 284, referring to *Ĉelebići* Judgement, para 577.
[278] *Kordić* Judgement, para. 285; *Ĉelebići* Judgement, para. 578. *See* Article 33 of the Fourth Geneva Convention; Commentary to the Fourth Geneva Convention, p. 225.
[279] *Kordić* Appeals Judgement, para. 609; *Ĉelebići* Appeals Judgement, para. 327.
[280] *Ĉelebići* Appeals Judgement, para. 328.
[281] *See Kordić* Appeals Judgement, para. 70; *Ĉelebići* Appeals Judgement, para. 320.

competent over the decisions in question.[282] Moreover, Article 43 of the Fourth Geneva Convention, which applies to the territory of the parties to the conflict as well as to occupied territory, provides that:

> 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.[283]

137. Moreover, the Fourth Geneva Convention provides provisions pertaining to the conditions of internment.[284] Internees are to be accommodated separately from prisoners of war,[285] in premises which are protected from dampness, and are adequately heated and lighted.[286] They must be afforded sanitary conveniences that conform to the rules of hygiene,[287] and must receive adequate daily food rations,[288] and, if needed, sufficient clothing.[289] Places of internment are to have an infirmary, where internees may have the medical attention they require.[290] Internees shall enjoy complete latitude in the exercise of their religion.[291]

138. The internment of a protected person at his or her request is provided for under Article 42 of the Fourth Geneva Convention.[292] Voluntary internment in the interest of the protected person is subject to three cumulative conditions: (1) it must be requested by the protected person, (2) the request must be made through the representatives of the Protecting Powers, and (3) it must be warranted by the situation

[282] Article 78 of the Fourth Geneva Convention.
[283] Article 43 of the Fourth Geneva Convention.
[284] These are provisions contained in Section IV of the Fourth Geneva Convention, entitled "Regulations for the Treatment of Internees".
[285] Article 84 of the Fourth Geneva Convention.
[286] Article 85 of the Fourth Geneva Convention.
[287] Article 85 of the Fourth Geneva Convention.
[288] Article 89 of the Fourth Geneva Convention.
[289] Article 90 of the Fourth Geneva Convention.
[290] Articles 91 and 92 of the Fourth Geneva Convention.
[291] Article 93 of the Fourth Geneva Convention.
[292] Article 42 of the Fourth Geneva Convention.

of the interested party.[293] When a request of this nature meets these three conditions, then the authorities of the State where he or she is living are obliged to give it favourable consideration.[294]

139. By way of conclusion, the detention or confinement of civilians is unlawful in the following cases:

(i) when one or more civilians have been detained in contravention of Articles 42 or 78 of the Fourth Geneva Convention;

(ii) where there has not been compliance with the fundamental procedural safeguards conferred upon civilians detained under Articles 43 and 78 of the Fourth Geneva Convention, even if their detention was initially justified.[295]

C. Violations of the Laws or Customs of War

140. This part concerning the applicable law is divided into eight sections. The first addresses the general requirements for the application of Article 3 of the Statute. The next seven address certain crimes covered by Article 3 of the Statute and correspond to the counts alleged in the Indictment on the basis of that article, namely Count 17 (cruel treatment), Count 18 (unlawful labour), Count 19 (extensive destruction of property, not justified by military necessity and carried out unlawfully and wantonly), Count 21 (destruction or wilful damage done to institutions dedicated to religion or education), Count 23 (plunder of public or private property), Count 24 (unlawful attack on civilians (Mostar)), Count 25 (unlawful infliction of terror on civilians (Mostar)) and Count 26 (cruel treatment, siege of Mostar).

1. General Requirements for the Application of Article 3 of the Statute

141. Two prerequisites must be satisfied for Article 3 to apply: there must be an armed conflict, whether international or internal in character,[296] and there must be a nexus between the crimes alleged and the armed conflict.[297] The Prosecution is further

[293] Commentary to the Fourth Geneva Convention, p. 278.
[294] Commentary to the Fourth Geneva Convention, pp. 278 and 279.
[295] *See Kordić* Appeals Judgement, para. 73; *Ĉelebići* Appeals Judgement, para. 322.
[296] *Galić* Appeals Judgement, para. 120; *Tadić* Decision on Jurisdiction, para. 94.
[297] *Kunarac* Appeals Judgement, para. 55: Referring to the *Tadić* Decision on Jurisdiction; *see* "Whether There is a Nexus Between the Crime and the Conflict" in the Chamber"s treatment of the applicable law: Grave Breaches of the Geneva Conventions.

required to prove that each of the Accused knew or had reason to know the factual circumstances demonstrating that there was an armed conflict.[298] This point will be addressed in the part devoted to the criminal responsibility of the Accused.

142. The Appeals Chamber has, in addition, identified four requirements which must be satisfied in order for a violation of international humanitarian law to fall within the scope of Article 3: (i) the violation must infringe a rule of international humanitarian law; (ii) the rule must be customary in nature, or if it belongs to treaty law, the required conditions must be satisfied; (iii) the violation must be serious, in that it must constitute an infraction of rules protecting important values, and it must entail grave consequences for the victim, and (iv) the violation of the rule must entail, under customary or conventional law, the individual criminal responsibility of its perpetrator.[299]

143. Under the case-law of the Tribunal, Article 3 is a general clause covering all violations of humanitarian law which do not fall under Articles 2, 4 or 5 of the Statute.[300] It covers *inter alia* the grave breaches of Common Article 3 of the Geneva Conventions in as much as it forms part of customary international law and grave breaches thereof entail individual criminal responsibility.[301] In addition, as the purpose of Common Article 3 of the Geneva Conventions is to protect persons not taking part in hostilities,[302] Article 3 of the Statute applies to every person who is not taking part in hostilities at the moment the alleged crimes are committed.[303] Thus the Prosecution must be able to establish that the perpetrator of the crime knew or ought to have known that victims were not participating in hostilities.[304] Among the activities which may be taken into consideration for this purpose are the activities of the victim, their clothing, their age or whether or not they were carrying a weapon.[305]

144. The Chamber notes that in their final trial briefs and closing arguments several Parties raised the issue of the status of the Muslim men who belonged to the HVO and of the Muslim men of military age held by the HVO. The Chamber considers that,

[298] *Boškoski* Judgement, para. 295, not overturned on appeal.
[299] *Tadić* Decision on Jurisdiction, para. 94. *See* also *Kunarac* Appeals Judgement, para. 66.
[300] *Kunarac* Appeals Judgement, para. 68; *Tadić* Decision on Jurisdiction, para. 89.
[301] *Galić* Appeals Judgement, para. 119; *Kunarac* Appeals Judgement, para. 68.
[302] *Ĉelebići* Appeals Judgement, para. 420.
[303] *Ĉelebići* Appeals Judgement, para. 420.
[304] *Lukić* Judgement, para. 870; *Halilović* Judgement, para. 36.

inasmuch as the analysis of these issues involves an assessment of the evidence, it is best addressed in the part concerning the review of the general requirements for the application of Articles 2, 3 and 5 of the Statute.

2. Cruel Treatment

145. The offence of cruel treatment, punishable under Article 3 of the Statute, is alleged in the Indictment as a violation of Common Article 3(1)(a) of the Geneva Conventions.[306]

146. The offence of cruel treatment within the meaning of Article 3 of the Statute has been defined in the Tribunal"s case-law as:

> a. an intentional act or omission [...] which causes serious mental or physical suffering or injury or constitutes a serious attack on human dignity;
>
> b. committed against a person taking no active part in the hostilities.[307]

According to the Appeals Chamber, a person is considered to have taken part in hostilities within the meaning of this article when he has taken part in "acts of war which by nature or purpose are likely to cause actual harm to the personnel and equipment of the enemy"s armed forces".[308] A trial chamber must therefore review the issue of participation in hostilities on a case-by-case basis, having regard to the individual circumstances of the person at the time of the events.[309] The Appeals Chamber has likewise stated that, because participation in hostilities may be intermittent and discontinuous, a trial chamber may find that such participation took place if there is a nexus between the actions of the person and the act of war alleged to constitute an offence.[310] The Chamber must conduct this analysis case-by-case in view of the circumstances of the case.[311]

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[305] *Lukić* Judgement, para. 870; *Galić* Judgement, para. 50
[306] Indictment, Counts 14 (Cruel Treatment (Conditions of Confinement), as a Violation of the Laws and Customs of War), 17 (Cruel Treatment, as a Violation of the Laws and Customs of War) and 26 (Cruel Treatment (Siege of Mostar)).
[307] *Blaškić* Appeals Judgement, para. 595; *Ĉelebići* Appeals Judgement, para. 424.
[308] *Kordić* Appeals Judgement, para. 51.
[309] *Strugar* Appeals Judgement, para. 178.
[310] *Strugar* Appeals Judgement, para. 178.
[311] *Strugar* Appeals Judgement, paras 178-179.

147. The mental element for this offence requires the perpetrator of the crime to have acted with direct or indirect intent to engage in cruel treatment.[312] According to the *Limaj* Chamber, the perpetrator has acted with indirect intent to commit cruel treatment when he knew that cruel treatment was a probable consequence of his act or omission and accepted that fact.[313]

148. Thus, the Chamber finds that the physical conditions of detention may be enough to constitute the offence of cruel treatment when they cause detainees great physical and/or mental suffering, constituting a serious attack on their human dignity, and are imposed deliberately.[314]

149. The Appeals Chamber, moreover, has found that although resorting to forced labour is not always unlawful:

> "the use of persons taking no active part in hostilities to prepare military fortifications for use in operations and against the forces with whom those persons identify or sympathise is a serious attack on human dignity and causes serious mental (and depending on the circumstances physical) suffering or injury".[315]

It found that "[a]ny order to compel protected persons to dig trenches or to prepare other forms of military installations, in particular when such persons are ordered to do so against their own forces in an armed conflict, constitutes cruel treatment".[316]

150. The Appeals Chamber has furthermore established that using prisoners of war or civilian detainees as human shields, that is, the use of a protected person such that, by his very presence, certain points or areas are shielded from military operations is prohibited under Article 23 of the Third Geneva Convention, Articles 28 and 83 of the Fourth Geneva Convention, and Article 51 of Additional Protocol I[317] and that it may constitute cruel treatment under the provisions of Article 3 of the Statute when the other constituent elements of this crime have been met.[318]

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[312] *Strugar* Judgement, para. 261.
[313] *Limaj* Judgement, para. 231.
[314] *See* also *Limaj* Judgement, paras 288-289.
[315] *Blaškić* Appeals Judgement, para. 597.
[316] *Blaškić* Appeals Judgement, para. 597.
[317] *Blaškić* Appeals Judgement, para. 652.
[318] *Blaškić* Appeals Judgement, para. 653.

3. Unlawful Labour

151. Unlawful labour is alleged in the Indictment as a violation of the laws or customs of war under Article 3 of the Statute, as recognised by Articles 40, 51, and 95 of the Fourth Geneva Convention and by Articles 49, 50 and 52 of the Third Geneva Convention.[319]

152. The Chamber adopts the reasoning of the Trial Chamber in the *Naletilić* Case, deeming the violations of the aforementioned provisions to constitute breaches of the Geneva Conventions outside of those termed grave breaches and that, for this reason, they constitute manifest violations of international humanitarian customary law, causing their perpetrators to incur individual criminal responsibility.[320] As indicated by the *Naletilić* Chamber, the Chamber must verify case by case whether the breaches alleged are sufficiently grave to fall within the scope of Article 3 of the Statute.[321]

153. As for the unlawful labour of civilians, the Chamber also adopts the position of the *Naletilić* Chamber, holding that the application of Article 51 of the Fourth Geneva Convention is restricted to protected persons who find themselves in occupied territory.[322] The Chamber recalls, however, that Article 3 of the Statute applies not only to protected persons, but to any person not participating directly in hostilities at the time the alleged crime is committed.[323] Therefore, the Chamber holds that the application of the law of occupation established in Article 51 of the Fourth Geneva Convention includes any person not taking part in hostilities. Furthermore, the Chamber adopts the findings of the *Naletilić* Chamber, holding that occupation does not require an occupying power to wield actual authority over a territory but that a state of occupation exists when civilians have fallen "into the hands of the occupying power".[324] Therefore, it is not required to establish the existence of a state of occupation within the meaning of Article 42 of the Hague Regulations, inasmuch as unlawful labour by civilians, within the meaning of Article 51 of the Fourth Geneva

[319] Indictment, Count 18 (Unlawful Labour as a Violation of the Laws and Customs of War).
[320] *Naletilić* Judgement, para. 250.
[321] *Naletilić* Judgement, para. 250.
[322] *Naletilić* Judgement, para. 251. *See* "Protected Persons" in the Chamber"s treatment of the applicable law: Grave Breaches of the Geneva Conventions for the definition of a protected person and the definition of a prisoner of war.
[323] *See* "General Conditions for the Application of Article 3 of the Statute" in the Chamber"s treatment of the applicable law: Violations of the Laws and Customs of War.

Convention, is prohibited the moment "they fall into the hands of an occupying power, regardless of the phase of hostilities".[325]

154. Inasmuch as all the allegations of unlawful labour set our in the Indictment concern persons in confinement, the Chamber will limit itself in this section to an analysis of the law applicable to forced labour by persons in confinement, that is, internees and prisoners of war.[326]

a) Labour by Internees

155. Adhering to the same line of argument as the *Naletilić* Chamber concerning the concept of occupation,[327] the Chamber finds that when an enemy power interns persons not taking part in hostilities who fall into its power,[328] such persons automatically enjoy the status of internees, irrespective of whether a state of occupation has been proved.[329] Article 95 of the Fourth Geneva Convention specifies that the detaining authority may employ internees as labourers only if they so desire. This limitation prohibits "employment which, if undertaken under compulsion by a protected person not in internment, would involve a breach of Articles 40 and 51 of the [Fourth Geneva Convention] and employment on work which is of a degrading or humiliating" nature is in any case prohibited.

156. Article 95 of the Fourth Geneva Convention contemplates a certain type of labour which the detaining authority has the right to impose on internees against their will. These are, broadly speaking, tasks whose completion contributes to the well-being of the interned population.[330] Article 95 specifically mentions the employment of internees with medical skills on behalf of their fellow internees, internees for administrative and maintenance work at the detention facility, etc. In connection

[324] *Naletilić* Judgement, para. 221. *See* also the "State of Occupation" in the Chamber‟s treatment of the applicable law: Grave Breaches of the Geneva Conventions.
[325] *Naletilić* Judgement, para. 222.
[326] *See* "Unlawful Confinement of Civilians" in the Chamber‟s treatment of the applicable law: Grave Breaches of the Geneva Conventions for the definition of an internee. *See* "Protected Persons" in the Chamber‟s treatment of the applicable law: Grave Breaches of the Geneva Conventions for the definition of a prisoner of war.
[327] *See* "State of Occupation" in the Chamber‟s treatment of the applicable law: Grave Breaches of the Geneva Conventions for the definition of a prisoner of war.
[328] *See* "Unlawful Confinement of Civilians" in the Chamber‟s treatment of the applicable law: Grave Breaches of the Geneva Conventions for the definition of a prisoner of war.
[329] *See* "Unlawful Confinement of Civilians" in the Chamber‟s treatment of the applicable law: Grave Breaches of the Geneva Conventions for the definition of a prisoner of war.
[330] Commentary to the Fourth Geneva Convention, p. 444.

therewith, the detaining authority assumes responsibility for all working conditions, for medical attention, for the payment of wages, and for compensation for workplace accidents and occupational diseases.[331]

b) Labour by Prisoners of War

157. As for labour by prisoners of war, the Chamber also adopts the findings of the *Naletilić* Chamber insofar concerning the general requirements for the application of Articles 49, 50, and 52 of the Third Geneva Convention. The *Naletilić* Chamber found that these provisions protect persons with prisoner of war status.[332] That Chamber recalled that the Detaining Power may compel prisoners of war – excepting officers[333] – to work,[334] under certain conditions described in Section III of the Third Geneva Convention.

158. Labour by prisoners of war is regulated in detail in Articles 49 to 57 of the Third Geneva Convention. Broadly speaking, when labour is required of a prisoner of war it must accord with the latter's age, sex, rank and physical condition.[335]

159. The Third Geneva Convention broadly prohibits using prisoners of war in labour related to combat operations.[336] In this spirit, the list of authorised work established by Article 50 of that Convention contains three exceptions: work in metallurgical, machinery and chemical industries; public works; and work in building operations which have no military character or purpose.[337] According to the Commentary to the Third Geneva Convention, "[e]verything which is commanded and regulated by the military authority is of military character, in contrast to what is commanded and regulated by the civil authorities".[338] The Commentary offers a more flexible definition of military purpose whereby the ultimate objective of the activity in question must be determined on a case-by-case basis, even if it is controlled by civil

[331] Article 95 of the Fourth Geneva Convention.
[332] *Naletilić* Judgement, para. 251.
[333] Article 49 of the Third Geneva Convention.
[334] *Naletilić* Judgement, para. 254.
[335] Article 49 of the Third Geneva Convention.
[336] Commentary to the Third Geneva Convention, p. 282.
[337] Article 50 of the Third Geneva convention authorises using prisoners of war in relation to administration or installation.
[338] Commentary to the Third Geneva Convention, p. 284.

authorities or civil undertakings.[339] This type of work cannot, in any event, be made compulsory for prisoners of war.[340]

160. Moreover, Article 52 of the Third Geneva Convention prohibits compelling a prisoner of war to engage in unhealthy or dangerous labour unless the prisoner volunteers for it. The Commentary warns that the fact that the prisoner of war has volunteered does not in any way rule out the responsibility of the detaining authority, inasmuch as it falls to the latter to choose the prisoner of war best qualified for the work from among the volunteers who come forward.[341]

161. Article 52 of the Third Geneva Convention prohibits the assignment of prisoners of war to labour which can be considered humiliating for a member of the Detaining Power"s own forces.

162. Finally, like the *Naletilić* Chamber, the Chamber finds that it must determine on a case-by-case basis whether the labour alleged in the Indictment was indeed forced in nature. To do so, the Chamber will use the following criteria: (a) the substantially uncompensated aspect of the labour performed; (b) the vulnerable position in which the detainees found themselves; (c) the allegations that detainees who were unable or unwilling to work were either forced to do so or put in solitary confinement; (d) the long term consequences of the labour; (e) the fact and the conditions of detention; and (f) the physical consequences of the work on the health of the internees.[342] The perpetrator of the crime must have acted with the intent that the victim perform prohibited labour. This *mens rea* can be inferred from the circumstances in which the labour is carried out.[343]

163. In view of the foregoing, the Chamber finds that the crime of unlawful labour consists of any intentional act or omission whereby a prisoner of war or a civilian not taking part in hostilities at the time of the act or omission is compelled to perform

[339] Commentary to the Third Geneva Convention, p. 284.
[340] Commentary to the Third Geneva Convention, p. 285.
[341] Commentary to the Third Geneva Convention, p. 294.
[342] *Naletilić* Judgement, para. 259. *See* also *Krnojelac* Judgement, para. 378.
[343] *Naletilić* Judgement, para. 260.

labour prohibited under the provisions of Articles 49, 50 and 52 of the Third Geneva Convention and Articles 40, 51 and 95 of the Fourth Geneva Convention.[344]

164. In its Final Brief, the Petković Defence argues that international law is not entirely clear regarding the circumstances under which civilians and prisoners of war may be compelled to perform forced labour.[345] More specifically, relying on the jurisprudence of the Nuremberg Tribunal and the Commentary to Article 50 of the Third Geneva Convention, the Petković Defence argues that the sort of work relevant to the Indictment, such as work on defensive structures, could be considered to fall within the category of work permissible under applicable law.[346] The Petković Defence concludes from this that the uncertainties and ambiguities of the present state of the law concerning this matter must benefit the Accused and that clarifying this would be likely to prejudice the Accused.[347] The Chamber cannot subscribe to the interpretation of the Petković Defence. Quite to the contrary, the Chamber considers that forced labour by civilians is clearly regulated in Article 95 of the Fourth Geneva Convention as described above, which rules out the use of internees for the needs of military operations.[348] As concerns labour by prisoners of war, the Chamber recalls that Article 50 of the Third Geneva Convention expressly prohibits "building operations which have no military character or purpose". The Commentary to Article 50 of the Third Geneva Convention defines the "military character" of work as including "[e]verything which is commanded and regulated by the military authority [...], in contrast to what is commanded and regulated by the civil authorities."[349] Moreover, this same Commentary establishes that "military purpose" is any activity whose ultimate purpose is military in nature.[350] The Chamber concludes from this that the use of civilian detainees or prisoners of war for work on the defensive structures of the detaining power is clearly included among the categories of military labour prohibited under applicable law.

[344] *See Naletilić* Judgement, para. 261. *See* also Article 95 of the Fourth Geneva Convention and the Commentary to the Fourth Geneva Convention with respect to Article 95.
[345] Petković Defence Final Trial Brief, para. 365.
[346] Petković Defence Final Trial Brief, paras 366-368.
[347] Petković Defence Final Trial Brief, para. 368.
[348] Article 95 of the Fourth Geneva Convention reiterates *mutatis mutandis* the employment prohibited in Articles 40 and 51 of the said Convention applicable to protected persons who are not internees. Article 51 of the said Convention prohibits any labour that would place [a protected person] under any "obligation of taking part in military operations".
[349] Commentary to the Third Geneva Convention, p. 284.
[350] Commentary to the Third Geneva Convention, pp. 284-285.

4. Wanton Destruction of Cities, Towns or Villages, or Devastation Not Justified by Military Necessity

165. The Indictment alleges the wanton destruction of cities, towns or villages or devastation not justified by military necessity under Article 3(b) of the Statute.[351]

166. According to the Appeals Chamber, the constituent elements of this crime are met when:

> 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.[352]

167. On the same occasion, the Appeals Chamber held that the destruction not justified by military necessity and punishable under Article 3(b) of the Statute constituted a violation of customary law.[353] The Chamber likewise embraced the finding of the *Kordić* Chamber whereby the extensive destruction of property in enemy territory fell within the scope of application of Article 3(b) of the Statute.[354]

168. The Appeals Chamber in the *Kordić* Case, did, moreover, recognise the definition of military necessity defined in Article 14 of the *Lieber Code* of 24 April 1863 as being "the necessity of those measures which are indispensable for securing the ends of the war, and which are lawful according to the modern law and usages of war".[355]

169. The Appeals Chamber likewise recalled that although attacks may be conducted only against military objectives,[356] "collateral civilian damage" was not unlawful *per se*, provided that the customary rules of proportionality in the conduct of

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[351] Indictment, Count 20 (Wanton Destruction of Cities, Towns or Villages, or Devastation Not Justified by Military Necessity, as a Violation of the Laws and Customs of War).
[352] *Kordić* Appeals Judgement, para. 74 (citing the *Kordić* Judgment, para. 346).
[353] *Kordić* Appeals Judgement, para. 76.
[354] *Kordić* Appeals Judgement, para. 74.
[355] *Kordić* Appeals Judgement, para. 686. *See* "Extensive Destruction of Property Not Justified by Military Necessity and Carried Out Unlawfully and Wantonly" in the Chamber's treatment of the applicable law: Grave Breaches of the Geneva Conventions for the definition of a prisoner of war.
[356] *See* "Extensive Destruction of Property Not Justified by Military Necessity and Carried Out Unlawfully and Wantonly" in the Chamber's treatment of the applicable law: Grave Breaches of the Geneva Conventions for the definition of a prisoner of war.

hostilities were complied with.[357] This proportionality principle is defined in Article 51.5(b) of Additional Protocol I, which prohibits:

> an attack which may be expected to cause incidental loss of civilian life, injury to civilians, damage to civilian objects, or a combination thereof, which would be excessive in relation to the concrete and direct military advantage anticipated.

170. Relying on the jurisprudence of the Appeals Chamber in the *BrĊanin* Case, the Praljak Defence argues in its Final Trial Brief (1) that the Prosecution must prove that destruction was not justified by military necessity and cannot simply presume such to be the case, and (2) that the Prosecution must establish that the objects of property destroyed did not constitute a military objective within the meaning of Article 52 of Additional Protocol I.[358] The Chamber considers that, as the Praljak Defence points out, the Prosecution must establish that the destruction was not justified by military necessity, which means that the Chamber must assess the circumstances in which the destruction took place, in light of all of the direct and indirect evidence adduced.[359]

5. Destruction or Wilful Damage Done to Institutions Dedicated to Religion or Education

171. Destruction or wilful damage done to institutions dedicated to religion or education is alleged in the Indictment as a serious violation of the laws or customs of war punishable under Article 3(d) of the Statute.[360] The Appeals Chamber has established that the destruction of objects of property dedicated to education or to religion also forms part of customary international law.[361]

172. According to the Tribunal‟s case-law, international instruments provide for two types of protection for buildings of a cultural, historic and/or religious nature. On the one hand, they enjoy the broad protection afforded to civilian objects of property by Article 52 of Additional Protocol I.[362] This protection continues as long as the edifice makes no actual contribution to military action and its destruction or capture

[357] *See* in particular *Kordić* Appeals Judgement, para. 52.
[358] Praljak Defence Final Trial Brief, para. 346.
[359] *Kordić* Appeals Judgement, para. 495.
[360] Indictment, Count 21 (Destruction or Wilful Damage Done to Institutions Dedicated to Religion or Education, as a Violation of the Laws and Customs of War).
[361] *Kordić* Appeals Judgement, paras 91-92.
[362] *See* "Extensive Destruction of Property Not Justified by Military Necessity and Carried Out Unlawfully and Wantonly" in the Chamber‟s treatment of the applicable law: Grave Breaches of the Geneva Conventions for the definition of a prisoner of war.

does not offer a specific military advantage at the moment of attack.[363] Article 52 makes clear that, if there is doubt, places of worship and schools are presumed not to be used for an actual contribution to military action.

173. In addition to this broad protection, certain objects of property also receive special protection granted under Article 53 of Additional Protocol I. This provision prohibits the commission of "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.[364]

174. According to Article 1 of The Hague Convention of 1954, the cultural property protected in the event of armed conflict covers "movable or immovable property of great importance to the cultural heritage of [every] people [...]". The Hague Convention of 1954 is considered to form an integral part of customary international law.[365]

175. The Commentary to Additional Protocol I would seem to indicate that protection from the prohibition against any hostile act that is mentioned in Article 53 of the Protocol is broader than the protection from the prohibition against launching an attack against the civilian objects of property cited in Article 52 of the Protocol. Article 53 prohibits any acts arising from the conflict which have or could have a substantial detrimental effect on the protected objects, as well as all acts directed against such property.[366] This provision prohibits not merely the effect itself but all acts directed against the protected objects, which implies that it is not necessary for any damage to have occurred for there to be a violation of the article.[367] The Commentary adds that the obligation of belligerents toward objects of property protected by Article 53 is stricter than that imposed by the 1954 Hague Convention because it provides for no derogation for "military necessity". This implies that, as long as the object concerned is not made into a military objective, likewise forbidden under the article, no attack is permitted.[368] That being the case, the Chamber subscribes to the finding of the Trial Chamber in the *Strugar* Case, explaining that,

[363] *Kordić* Appeals Judgement, para. 89.
[364] *Kordić* Appeals Judgement, para. 90.
[365] *Kordić* Appeals Judgement, para. 92.
[366] Commentary to Additional Protocol I, para. 2070.
[367] Commentary to Additional Protocol I, para. 2070.
[368] Commentary to Additional Protocol I, para. 2072.

although the prohibition in Additional Protocol I and in the 1954 Hague Convention does not require the protected object to be destroyed or damaged in order for the provisions in question to be violated, Article 3(d) of the Statute criminalises only those prohibited acts which result in the destruction or damage of the object protected.[369]

176. Like the *Naletilić* Chamber, the Chamber finds that for Article 3(d) of the Statute to apply, the perpetrator of the crime must act with intent to destroy the protected property.[370]

177. The Praljak Defence argues that the second paragraph of Article 27 of the above-mentioned Hague Regulations requires that the protected building have "distinctive" and "visible" signs.[371] The Chamber joins the Praljak Defence in saying that both the Hague Regulations and Articles 6, 16 and 17 of the 1954 Hague Convention contemplate the use of distinctive signs on historic and cultural monuments in wartime. However, the Chamber would add that not using such a sign does not in any event withdraw protection from the property provided that the property has not been transformed into a military objective.

178. By way of conclusion, the Chamber considers that the crime of destruction or wilful damage done to institutions dedicated to religion or education comprises the following elements: (1) an intentional act or omission; (2) causing destruction or damage to a cultural or religious object of property; (3) the property did not constitute a military objective[372] within the meaning of Article 52 of Additional Protocol I and (4) the act or omission is perpetrated with intent to destroy the cultural or religious property.

[369] *Strugar* Judgement, para. 308.
[370] *Naletilić* Judgement, para. 605.
[371] Praljak Defence Final Trial Brief, para. 350.
[372] *See* "Extensive Destruction of Property Not Justified by Military Necessity and Carried Out Unlawfully and Wantonly" in the Chamber's treatment of the applicable law: Grave Breaches of the Geneva Conventions for the definition of a prisoner of war.

6. Plunder of Public or Private Property

179. The crime of plunder of public or private property is alleged in the Indictment to be a serious violation of the laws or customs of war and is punishable under Article 3(e) of the Statute.[373]

180. The Appeals Chamber has defined the offence of plunder as follows:

> "plunder is committed when private or public property is appropriated intentionally and unlawfully. Furthermore, the general requirements of Article 3 of the Statute, [read] in conjunction with Article 1 of the Statute relating to the seriousness of the crime, must be fulfilled".[374]

181. The Appeals Chamber found that the prohibition on the unjustified appropriation of public or private property protects important personal values and, for this reason, falls within the ambit of Article 3 of the Statute.[375] It recalled that for the offence in question to fall under the jurisdiction of the Tribunal, it must also entail serious consequences for the victim. Thus, in the case of the offence of plunder, there is a consequential link between the monetary value of the appropriated property and the gravity of its consequences for the victim. However, the assessment of when a piece of property reaches the threshold level of a certain value can only be made on a case-by-case basis and only in conjunction with the general circumstances of the crime.[376]

182. In this spirit, the Appeals Chamber considered that a chamber may hold that there has been a grave violation when a significant number of persons have been deprived of their property even if the consequences are not equally serious for every person.[377] In this case, it would be the overall effect upon the civilian population and the multitude of offences committed that would make the violation serious.[378]

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[373] Indictment, Count 23 (Plunder of Public or Private Property as a Violation of the Laws and Customs of War).
[374] *Kordić* Appeals Judgement, para. 84.
[375] *Kordić* Appeals Judgement, paras 80-81.
[376] *Kordić* Appeals Judgement, para. 82.
[377] *Kordić* Appeals Judgement, para. 83.
[378] *Kordić* Appeals Judgement, para. 83.

7. Unlawful Attack on Civilians

183. The Indictment alleges unlawful attack on civilians as a violation of Article 3 of the Statute as recognised under customary law, Article 51 of Additional Protocol I and Article 13 of Additional Protocol II.[379]

184. The Tribunal"s case-law has settled that attacks on civilians fall within the scope of application of Article 3 of the Statute, whether they involve international or internal armed conflicts.[380] It has restated the definition of attack provided in Article 49 of Additional Protocol I, whereby attacks are "acts of violence against the adversary, whether in offence or in defence".[381]

185. The Appeals Chamber recalled the fundamental principle of international customary law whereby it is prohibited to direct attacks on the civilian population, as set out in Articles 51(2) and 51(3) of Additional Protocol I.[382] It also recalled that Article 50 of the Additional Protocol I considers to be a civilian any person who does not belong to one of the categories of persons referred to in Article 4(A)(1), (2), (3) and (6) of the Third Geneva Convention and in Article 43 of Additional Protocol I. If in doubt, the said person will be considered a civilian.[383]

186. The Tribunal"s case-law has likewise observed that, although the expression "in case of doubt" defines the standard of conduct which the members of an army must adopt in the field, nevertheless, when it comes to the criminal responsibility of the latter, it falls to the Prosecution to establish the victim"s status as a civilian.[384]

187. Civilian persons are to be protected unless they participate directly in hostilities for as long as they continue to participate.[385] Lastly, the civilian population comprises all civilian persons, and the presence within the civilian population of individuals who do not enjoy civilian status does not deprive the population of its

[379] Indictment, Count 24 (Attack on Civilians as a Violation of the Laws and Customs of War).
[380] *Galić* Appeals Judgement, para. 120, referring to the *Strugar* Decision on Interlocutory Appeal, para. 10.
[381] *Kordić* Appeals Judgement, para. 47.
[382] *Kordić* Appeals Judgement, para. 48.
[383] *Kordić* Appeals Judgement, para. 48. *See* "Protected Persons" in the Chamber"s treatment of the applicable law: Grave Breaches of the Geneva Conventions for the definition of a prisoner of war.
[384] *Kordić* Appeals Judgement, para. 48.
[385] *Kordić* Appeals Judgement, para. 50, referring to the *Blaškić* Appeals Judgement, para. 111.

civilian character.[386] However, it will be necessary to give heed to the number of combatants intermingled with the civilian population and to whether they are on furlough in order to determine whether the presence of combatants within a civilian population deprives that population of its civilian character.[387]

188. The Appeals Chamber wished to devote particular attention to the situation of the members of the TOs. Relying on the Commentaries to the Additional Protocols, it held that the members of the armed forces as well as those from the TOs, who reside in their homes in the area of the conflict, retain their status as combatants, even when they do not participate directly in hostilities, regardless of whether they are armed.[388]

189. According to the Appeals Chamber, although attacks may be directed only against military objectives,[389] "collateral civilian damage" is not *per se* unlawful provided that the customary rules of proportionality in the conduct of hostilities are observed.[390] However, the Appeals Chamber noted that the prohibition against attacks on civilians is absolute. Therefore, the military necessity exception does not apply to this prohibition.[391] This proportionality principle is defined by Article 51.5(b) of Additional Protocol I, which prohibits:

> an attack which may be expected to cause incidental loss of civilian life, injury to civilians, damage to civilian objects, or a combination thereof, which would be excessive in relation to the concrete and direct military advantage anticipated.

190. The Appeals Chamber has held that an attack employing weapons which by their very nature cannot discriminate between military objectives and civilian objects may amount to a direct attack on civilians. That determination will be made case by case, based on the available evidence.[392]

191. Under the Tribunal's case-law, for a violation of Article 51 of Additional Protocol I to entail individual criminal responsibility under Article 3 of the Statute, it must result in death or serious injury to the body or health of the civilian victim or any

[386] *Kordić* Appeals Judgement, para. 50.
[387] *Galić* Appeals Judgement, para. 137, referring to the *Blaškić* Appeals Judgement, para. 115.
[388] *Kordić* Appeals Judgement, para. 51.
[389] *See* "Extensive Destruction of Property Not Justified by Military Necessity and Carried Out Unlawfully and Wantonly" in the Chamber's treatment of the applicable law: Grave Breaches of the Geneva Conventions for the definition of a prisoner of war.
[390] *See* also *Kordić* Appeals Judgement, para. 52.
[391] *Galić* Appeals Judgement, para. 130; *Kordić* Appeals Judgement, para. 54.
[392] *Galić* Appeals Judgement, paras 132-133.

other criminal act listed in Article 3 of the Statute, or any other consequence of equal severity.[393]

192. Regarding the mental element required for the crime of attacks on the civilian population, the Tribunal"s case-law has settled that the perpetrator of the crime is required to have acted with intent, which encompasses *dolus eventualis* whilst excluding negligence.[394] In this regard, the Appeals Chamber in the *Galić* Case adopted the definition of the *dolus* that the *Galić* Trial Chamber had incorporated from the Commentary to Additional Protocol I. Thus, for there to be intent, the perpetrator has to have acted knowingly and wilfully, that is to say, perceiving his acts and their consequences and purposing that they should come to pass. *Dolus eventualis* occurs when the perpetrator, without being certain that the result will take place, accepts it in the event it does come to pass. Conduct is negligent when the perpetrator acts without having his mind on the act or its consequences.[395]

193. In view of the foregoing, the Chamber holds, as the *Galić* Chamber stated, that the offence of attack on civilians includes the common elements from Article 3 of the Statute as well as the following elements:

> (1) Acts of violence directed against the civilian population or civilian persons not directly participating in hostilities, causing death or serious injury to body or health.
>
> (2) The perpetrator of these acts of violence wilfully subjected the civilian population or the civilian persons not directly participating in hostilities to these acts.[396]

8. Unlawful Infliction of Terror on Civilians

194. The Indictment alleges a violation of Article 3(d) of the Statute through the unlawful infliction of terror on the civilian population, an offence recognised under customary international law and Article 51 of Additional Protocol I and Article 13 of Additional Protocol II.[397]

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[393] *Kordić* Appeals Judgement, paras 67-68.
[394] *Galić* Appeals Judgement, para. 140.
[395] *Galić* Appeals Judgement 140, citing the Commentary to Additional Protocol I, para. 3474. *See* also *Galić* Judgement, para. 54.
[396] *Galić* Judgement, para. 56.
[397] Indictment, Count 25 (Unlawful Infliction of Terror on Civilians, as a Violation of the Laws and Customs of War).

195. The Appeals Chamber has established that this offence, as recognised in Articles 51(2) of Additional Protocol 1 and 13(2) of Additional Protocol II forms part of customary international law.[398] These provisions prohibit acts or threats of violence, the primary purpose of which is to spread terror among the civilian population. The Appeals Chamber in the *Galić* proceedings found that violations contravening these provisions caused individual criminal responsibility to attach.[399]

196. The Appeals Chamber likewise held that this crime can include attacks or threats of attacks against the civilian population, but is not restricted to that. These acts or threats also include indiscriminate or disproportionate attacks or threats of attacks.[400]

197. The case-law does not require that terror actually be spread among the civilian population for there to be a violation. It is sufficient that the perpetrator of the crime acted with the specific intent to spread terror among that population. Furthermore, it is not necessary that spreading terror among the civilian population be the sole objective desired by the perpetrator of the crime. It need merely be the primary objective of his acts or threats.[401] This objective may be inferred from the circumstances in which the acts or threats at issue arose, that is, the manner in which they were carried out, the choice of timing and the duration of these acts or threats.[402]

II. Responsibility

A. Modes of Responsibility Contemplated Under Article 7(1) of the Statute

198. The Accused in this case are being prosecuted, under Article 7(1) for having planned, instigated, ordered and/or committed the crimes alleged in the Indictment.[403] They are alleged to be responsible on the basis of their own acts, and where they had a duty to act, on the basis of their omissions or failures to act.[404] The Prosecution likewise alleges that the crimes charged in the Indictment were committed in

[398] *Galić* Appeals Judgement, para. 86.
[399] *Galić* Appeals Judgement, paras 86 and 98.
[400] *Galić* Appeals Judgement, para. 102.
[401] *Galić* Appeals Judgement, para. 104. *See* Articles 51(4) and (5) of Additional Protocol I for the definition of indiscriminate attack and *Galić* Judgement, para. 58, for the definition of a disproportionate attack.
[402] *Galić* Appeals Judgement, para. 104.
[403] Indictment, para. 218.
[404] Indictment, para. 218.

connection with a JCE in which the various Accused were members or in which they participated.[405] In the alternative, the Accused are charged, under Article 7(1) of the Statute, with those crimes they aided and abetted in planning, preparing or executing.[406]

199. Article 7(1) of the Statute reflects the principle of criminal law which states that the criminal responsibility of an individual may attach not merely by the physical commission of a crime, but also, by any participation in and contribution to a crime sufficiently related to it. The different forms of participation in Article 7(1) of the Statute may be allocated among direct perpetrators and accomplices; thus, Article 7(1) of the Statute ensures that any person, whether involved directly or not in the commission of a crime, may have responsibility imputed to them.[407]

1. Commission

200. Participation through commission covers first and foremost the most likely scenario, that is, physical or direct perpetration of a crime by the perpetrator or the perpetrator refraining from actions he was obliged to take pursuant to some precept of criminal law.[408] The *mens rea* required to incur individual criminal responsibility for commission under Article 7(1) of the Statute, is for such person to have acted with the knowledge that a criminal act or culpable failure to act would likely result from his conduct.[409]

201. The case-law of the Tribunal has enshrined the idea of a JCE as a form of commission under Article 7(1) of the Statute.[410]

2. JCE

202. According to the jurisprudence of the Appeals Chamber, the mode of responsibility for "commission" as found in Article 7(1) of the Statute also comprises

[405] Indictment, paras 221-227.
[406] Indictment, para. 220.
[407] *Kordić* Judgement, para. 373; *Tadić* Appeals Judgement, para. 186.
[408] *Nahimana* Appeals Judgement, para. 478; *Tadić* Appeals Judgement, paras 186 and 188.
[409] *Lukić* Judgement, para. 900; *Kvočka* Judgement, para. 251.
[410] *Kvočka* Appeals Judgement, para. 79; *Ojdanić* Decision of 21 May 2003, para. 20. Judge Antonetti discusses the concept of JCE in his separate, partly dissenting opinion annexed to this Judgement.

a mode of responsibility through "co-participation" in a JCE.[411] In this regard, the Appeals Chamber discerns three categories of ECC.

203. The first of these categories, called "basic" category, concerns those cases where all of the co-accused, acting in concert pursuant to a common goal, possess the same criminal intent.[412] One could cite as an example a plan to commit murder, conceived by the participants in the JCE, every one of whom is motivated by the intent to kill, even though each may play a different role ("JCE Form 1").[413]

204. The second category, called "systemic" category, is a variant of the first and concerns cases involving "organised system[s] of ill-treatment".[414] The second category specifically targets concentration camps in which prisoners are killed or mistreated pursuant to a concerted plan ("JCE Form 2").[415]

205. The third category concerns cases in which the crimes committed fall outside of the common purpose of the JCE but are nevertheless a natural and foreseeable consequence of its implementation.[416] This could be a situation where there is a common, shared intent within a group to forcibly remove members of one ethnicity from their town, village or region, with the consequence that one or more persons is killed in the operation ("JCE Form 3"). The Appeals Chamber thus stated that, although murder may not have been explicitly contemplated in connection with the common purpose, it was foreseeable that the removal of civilians at gunpoint might well result in the death of one or more of those civilians.[417]

206. The Chamber observes that, in its Final Trial Brief, the Prlić Defence disputes the very existence of JCE in customary international law.[418] The Prlić Defence in particular questions the existence of JCE Form 3 and argues that the Chamber ought to disregard the JCE in favour of co-perpetration as a mode of responsibility

[411] *Kvočka* Appeals Judgement, para. 79; *Ojdanić* Decision of 21 May 2003, para. 20.
[412] *Vasiljević* Appeals Judgement, para. 97; *Tadić* Appeals Judgement, para. 196.
[413] *Vasiljević* Appeals Judgement, para. 97; *Furundţija* Judgement, para. 227.
[414] *Vasiljević* Appeals Judgement, para. 98; *Tadić* Appeals Judgement, paras 202 and 203.
[415] *Vasiljević* Appeals Judgement, para. 98; *Tadić* Appeals Judgement, paras 202 and 203.
[416] *Vasiljević* Appeals Judgement, para. 99; *Tadić* Appeals Judgement, para. 204.
[417] *Tadić* Appeals Judgement, para. 204.
[418] Prlić Defence Final Trial Brief, paras 35 to 43. The Ćorić Defence also appears to contest this, but seems ultimately to acknowledge that this is accepted jurisprudence at the Tribunal – *see* Ćorić Defence Final Trial Brief, paras 140 to 142.

applicable to a group of persons alleged to have committed crimes collectively.[419] To this effect, the Prlić Defence relies on the decisions of the Pre-Trial Chamber of the Extraordinary Chambers in the Courts of Cambodia ("ECCC") and by the International Criminal Court ("ICC").

207. The Prlić Defence also directs the Chamber's attention to the fact that the concept of JCE was rejected as a mode of responsibility applicable at the ICC. The Prlić Defence argues that, to establish the customary international nature of a JCE, the Appeals Chamber in the *Tadić* Appeals Judgement relied specifically on Article 25(3)(d) of the Rome Statute of the ICC.[420] According to the Prlić Defence, ICC jurisprudence has construed Article 25(3)(a) of the Rome Statute as establishing a form of co-perpetration, whereas Article 25(3)(d) simply embodies a form of residual accessorial liability.[421]

208. The Prlić Defence further relies on a Decision by the Pre-Trial Chamber of the ECCC from 20 May 2010[422] to call into question JCE Form 3.[423] It underscores that the said Decision undertakes a systematic analysis of the jurisprudence, *inter alia* from the Nuremberg Tribunal, which was taken into consideration by the Appeals Chamber in the *Tadić* Appeals Judgement, in determining whether JCE Form 3 formed part of customary international law.[424] The Prlić Defence recalls that the Pre-Trial Chamber found that this mode of responsibility was not reflected in customary international law.[425]

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[419] Prlić Defence Final Trial Brief, para. 35.
[420] Rome Statute of the International Criminal Court of 17 July 1998, entry into force on 1 July 2002, Article 25(3)(a):

> "In accordance with this Statute, a person shall be criminally responsible and liable for punishment for a crime within the jurisdiction of the Court if that person:
>
> (a) Commits such a crime, whether as an individual, jointly with another or through another person, regardless of whether that other person is criminally responsible."

[421] Prlić Defence Final Trial Brief, para. 38. The Prlić Defence cites the case of *The Prosecutor v. Germain Katanga and Mathieu Ngudjolo Chui*, "Decision on the Confirmation of Charges", Case no. ICC-01/04-01/07, 30 September 2008, and the case of *The Prosecutor v. Lubanga Dyilo*, "Decision on the Confirmation of Charges", Case no. ICC-01/04-01/06, 29 January 2007.
[422] "Decision on the Appeals against the Co-Investigator Judges' Order on Joint Criminal Enterprise (JCE)", Pre-Trial Chamber of the Extraordinary Chambers in the Courts of Cambodia, Case no. 0002/19-09-2007-ECCC/OCIJ, 20 May 2010.
[423] Prlić Defence Final Trial Brief, paras 36 to 37.
[424] Prlić Defence Final Trial Brief, para. 36.
[425] Prlić Defence Final Trial Brief, para. 36.

209. Lastly, the Prlić Defence submits that in the event the Chamber considered itself bound to follow the case-law of the Tribunal, it should construe the jurisprudence with regard to JCE narrowly.[426]

210. The Chamber, by a majority, with Judge Antonetti dissenting, does not wish to enter into an analysis of the jurisprudence of the ECCC or the ICC. The Chamber holds that, out of concern for juridical certainty,[427] it is proper to refer to the jurisprudence of other international or national jurisdictions only when the jurisprudence of the Appeals Chamber is not settled or is unclear. In this instance, the Chamber recalls that the Appeals Chamber clearly established that the JCE was a mode of responsibility firmly established under customary international law. The Chamber likewise recalls that case-law recognises three different categories of JCE, detailed above.[428] The Chamber thus holds that the arguments supported by the Prlić Defence fail to justify calling into question the settled case-law of the Tribunal with regard to JCE.

211. However, the Chamber does understand the concerns which the Prlić Defence – and indeed the other Defence teams[429] – might have about an overly broad application of this mode of responsibility. The Chamber also wishes to provide certain clarifications regarding the general requirements for the application of this mode of responsibility. The Chamber will thus (a) clarify the physical elements common to all forms of JCE, and then (b) attempt to define the mental element for each category.

a) The Physical Element (*Actus Reus*)

212. The *actus reus* for participation in a JCE is identical for all three categories and includes the three following elements:

[426] Prlić Defence Final Trial Brief, para. 43.
[427] For a review of the jurisprudence of the Appeals Chamber concerning the necessity, for reasons of consistency, certainty and legal predictability, of following earlier decisions, *see* the *Aleksovski* Appeals Judgement, paras 97, 98 and 107.
[428] The Appeals Chamber has consistently upheld its jurisprudence regarding JCEs since the *Tadić* Appeals Judgement, even going so far as to examine as of right the decision of a Trial Chamber when it attempted to replace JCE with co-perpetration. *See* on this point the *Stakić* Appeals Judgement, paras 58 to 63.
[429] Petković Defence Final Trial Brief, para. 569; Pušić Defence Final Trial Brief, paras 50 and 51.

(1) A plurality of persons, who need not be organised in a military, political or administrative structure.[430] The Appeals Chamber has repeatedly had occasion to state that although a trial chamber must identify the plurality of persons acting in the context of the JCE, it does not need to identify every one of them by name.[431] It may therefore suffice to refer to categories or groups of persons.[432] The Appeals Chamber, has moreover, stated that for a participant in a JCE to be held responsible for a crime committed by a person outside of the JCE, it is necessary to prove that the crime may be imputed to one of the members of the JCE and that such person – utilising the direct perpetrator of the crime – acted in furtherance of the common plan.[433] Whether such a link exists is assessed case by case.[434] The Appeals Chamber also added that, under certain circumstances, a member of a JCE could be found responsible for crimes not part of the common plan and carried out by a person outside of the JCE.[435] That particular situation will be analysed in connection with the review of the *mens rea* required for JCE Form 3.[436]

(2) The existence of a common plan amounting to the commission of a crime defined in the Statute or implying one.[437] Regarding the time frame required for the common plan, the Petković Defence asserts that the Chamber must determine the exact moment when it becomes possible to confirm beyond a reasonable doubt that the JCE did indeed exist.[438] The Chamber nevertheless recalls the jurisprudence of the Appeals Chamber, wherein the plan need not necessarily be finalised or formulated beforehand.[439] The plan may materialise extemporaneously and can be inferred from the fact that a plurality of persons is acting in unison to put the joint criminal enterprise into effect.[440] The Appeals Chamber has thus been able to state, in connection with a JCE Form 2, that it was less a matter of proving that there was a more or less formal agreement between all of the participants than of proving that

[430] *Stakić* Appeals Judgement, para. 64; *Tadić* Appeals Judgement, para. 227.
[431] *Brđanin* Appeals Judgement, para. 430; *Krnojelac* Appeals Judgement, para. 116.
[432] *Tadić* Appeals Judgement, paras 196, 202, 203, 204, 227 and 228; *Krajišnik* Appeals Judgement, para. 156.
[433] *Brđanin* Appeals Judgement, paras 410 and 413.
[434] *Brđanin* Judgement, para. 413.
[435] *Brđanin* Judgement, para. 411.
[436] *See* "The Mental Element (*Mens Rea*)" in the Chamber's treatment of the applicable law: The JCE.
[437] *Stakić* Appeals Judgement, para. 64; *Tadić* Appeals Judgement, para. 227.
[438] Petković Defence Final Trial Brief, para. 526.
[439] *Stakić* Appeals Judgement, para. 64; *Tadić* Appeals Judgement, para. 227.
[440] *Stakić* Appeals Judgement, para. 64; *Tadić* Appeals Judgement, para. 227.

they adhered to the system.[441] The Appeals Chamber has also had occasion to acknowledge that the criminal activities implementing the JCE may evolve over time and accepted the possibility that a JCE might expand to encompass crimes other than those originally contemplated.[442] In these circumstances, proof of an agreement concerning its expansion is subject to the same requirements applicable to the original agreement.[443] Moreover, the Chamber is required to make findings that the members of the JCE were informed of the expansion of criminal activities, that they did nothing to prevent this and persisted in implementing the expansion of the common design and determine at which precise point in time the additional crimes were integrated into the common design.[444]

(3) The accused"s adherence to the common purpose must involve perpetration of one of the crimes provided for in the Statute.[445] The accused must participate of his own accord in one of the aspects of the common plan.[446] Such participation does not necessarily involve the accused personally committing one of the crimes contemplated in the Statute but may take the form of assistance in, or contribution to, the execution of the common purpose.[447] In the *Tadić* Appeals Judgement, the Appeals Chamber stated that the requisite physical element in a JCE Form 2 is active participation in enforcing a system of repression, which may be inferred from the authority and functions of the accused.[448] Furthermore, it is not necessary that a participant in a JCE be present at the site of the crime at the time it is committed.[449] The Appeals Chamber has, moreover, stated that participation by the accused must not be a requirement *sine qua non*, without which the crimes could not have occurred, but that it must have been substantial at the very least.[450]

[441] *Krnojelac* Appeals Judgement, para. 96; *Tadić* Appeals Judgement, para. 202.
[442] *Krajišnik* Appeals Judgement, para. 163; *Tadić* Appeals Judgement, para. 227.
[443] *Krajišnik* Appeals Judgement, para. 163; *Tadić* Appeals Judgement, para. 227.
[444] *Krajišnik* Appeals Judgement, paras 171, 175, 176, 193, and 194; *Ĉelebići* Appeals Judgement, paras 192, 252, 255 and 256.
[445] *Vasiljević* Appeals Judgement, para. 100; *Tadić* Appeals Judgement, para. 227.
[446] *Tadić* Appeals Judgement, para. 196.
[447] *Stakić* Appeals Judgement, para. 64; *Tadić* Appeals Judgement, para. 227.
[448] *Tadić* Case, para. 203.
[449] *Kvoĉka* Appeals Judgement, para. 112; *Krnojelac* Appeals Judgement, para. 81.
[450] *Krajišnik* Appeals Judgement, para. 675; *Kvoĉka* Appeals Judgement, para. 98.

b) The Mental Element (*Mens Rea*)

213. For responsibility deriving from a JCE, the *mens rea* will vary depending on which category of JCE is under consideration. Moreover, the Appeals Chamber has clearly ruled that a chamber can only find that an accused actually had the intent to participate in a JCE if this is the only reasonable inference that can be drawn from the evidence tendered.[451]

214. As concerns JCE Form 1, the requisite element is the intent to commit a specific crime, an intent that must be shared by all of the co-participants.[452] In connection with the crime of persecution which requires specific intent, the Appeals Chamber has stated that the Prosecution had to prove that the Accused shared the discriminatory intent common to the members of the JCE.[453]

215. As concerns JCE Form 2, the requisite mental element assumes that the accused had personal knowledge of the nature of the system of ill-treatment and the intent to contribute to the common criminal purpose of ill-treatment.[454] Such intent may be demonstrated by direct evidence or inferred from the authority wielded by the accused within the camp or hierarchy in question.[455] As for JCE Form 1, in respect of the crime of persecution, the Prosecution must prove that the accused shared the common discriminatory intent of the members of the JCE.[456]

216. As concerns JCE Form 3, the requisite mental element is first the intent to participate in and to contribute to furthering the common criminal purpose.[457] Moreover, responsibility for a crime other than the one envisaged in the common purpose attaches only when, in the context of that case, (1) it was foreseeable that such a crime might be committed by one or more members of the group;[458] (2) the accused deliberately assumed the risk that the crime would be committed[459] because he knew that a crime of this sort was the probable outcome of the furtherance of the

[451] *Krajišnik* Appeals Judgement, para. 685; *BrĆanin* Appeals Judgement, para. 429.
[452] *Vasiljević* Appeals Judgement, para. 101; *Tadić* Appeals Judgement, paras 196 and 228.
[453] *Kvoĉka* Appeals Judgement, para. 110; *Krnojelac* Judgement, para. 487.
[454] *Vasiljević* Appeals Judgement, para. 105; *Tadić* Appeals Judgement, paras 203 and 220.
[455] *Tadić* Appeals Judgement, para. 220.
[456] *Kvoĉka* Appeals Judgement, para. 110; *Krnojelac* Appeals Judgement, para. 111.
[457] *Tadić* Appeals Judgement, paras 204, 220 and 228.
[458] *Martić* Appeals Judgement, para. 83; *Tadić* Appeals Judgement, para. 228.
[459] *Martić* Appeals Judgement, para. 83; *Tadić* Appeals Judgement, para. 228.

common purpose; and (3) he accepted the crime being carried out while nevertheless deciding to take part in the JCE.[460]

217. In this regard, the said crime must, of course, actually have been committed.[461] The Appeals Chamber has determined that, in the case of crimes that go beyond the agreed purpose of a JCE Form 2, a fellow participant in the JCE may not be held responsible for such crimes unless the Prosecution proves that he was sufficiently aware of the system in place that the crimes going beyond the common purpose would be, for him, a natural and foreseeable consequence of the enterprise.[462]

218. Still, the Appeals Chamber went even further in the *BrĊanin* Judgement, because it considered the scenario where, in the context of JCE Form 3, a crime not forming part of the common purpose was committed by someone who was not a member of the group:

> When the accused, or any other member of the JCE, in order to further the common criminal purpose, uses persons who, in addition to (or instead of) carrying out the *actus reus* of the crimes forming part of the common purpose, commit crimes going beyond that purpose, the accused may be found responsible for such crimes provided that he participated in the common criminal purpose with the requisite intent and that, in the circumstances of the case, (i) it was foreseeable that such a crime might be perpetrated by one or more of the persons used by him (or by any other member of the JCE) in order to carry out the *actus reus* of the crimes forming part of the common purpose; and (ii) the accused willingly took that risk – that is the accused, with the awareness that such a crime was a possible consequence of the implementation of that enterprise, decided to participate in that enterprise.[463]

219. The Chamber notes here that the principal difficulty raised by this fresh extension involves the situation where the direct perpetrator of the crime – one that did not form part of the common plan but which could have been a foreseeable consequence thereof – is not a member of the JCE and was not directly used by the Accused but by another member of the JCE.

220. The Chamber would first recall that determination of the foreseeability that a crime – other than one forming part of the common plan – will be committed is evaluated according to the circumstances at hand.[464] The Prosecution must therefore

[460] *Vasiljević* Appeals Judgement, para. 101; *Tadić* Appeals Judgement, para. 220.
[461] *Krstić* Appeals Judgement, para. 150; *The Prosecutor v. Radoslav BrĊanin*, Case no. IT-99-36-A, "Decision on Interlocutory Appeal", 19 March 2004, para. 5.
[462] *Kvoĉka* Appeals Judgement, para. 86.
[463] *BrĊanin* Appeals Judgement, para. 411, emphasis added.
[464] *See* "The Mental Element (*Mens Rea*)" in the Chamber"s treatment of the applicable law: The JCE.

prove (i) that for the accused in question it was foreseeable that a new crime was likely to be committed by the direct perpetrator from outside the JCE who was used by a member of the JCE to achieve the physical element of the crimes included in the common plan and (ii) that the Accused knew that the new crime was the probable outcome of the furtherance of the common goal but nevertheless decided to take part in the JCE.

221. The Chamber has observed that the Appeals Chamber and the Trial Chambers have taken into consideration for purposes of establishing the foreseeability of the further crime, the knowledge possessed by the accused with regard to the personality and past of the direct perpetrators of the crimes[465] or even the past actions of the said perpetrators;[466] the accused"s awareness of – and also his contribution to creating and maintaining – a climate of violence.[467] In many cases, the nexus that might exist between the accused and the direct perpetrators of these crimes, and thus, whether it is foreseeable that a crime other than the ones forming part of the common plan might be committed, can be inferred from an array of indicia, such as those mentioned above, and also from the functions of the accused, from communications – meetings, receiving reports, exchanges of correspondence, etc. – between the accused and the JCE members using the direct perpetrators.

[465] *See* for example, *ĐorĊević* Judgement, para. 2145 (use during the attack on a village of a unit known for their lack of training and discipline as well as for having repeatedly committed grave crimes against civilians during combat operations); *Stakić* Appeals Judgement, para. 94: the Appeals Chamber held that Milomir Stakić could be found responsible under JCE Form 3 for the murders committed while transporting the non-Serbian civilian population from the municipality of Prijedor to the Keraterm, Omarska and Trnopolje camps. To do so, the Appeals Chamber took into account the fact that the unit responsible for transport of the civilians – and for the murders – was a unit created by Crisis Staff over which Milomir Stakić presided and which he knew to be composed of individuals with a criminal record who had just been released from prison. Finally, it restated the finding of the Trial Chamber"s conclusion that Milomir Stakić as well as other members of the JCE – who regularly relied on this unit to transport civilians to the camps – accepted the possibility that these civilians might face harsh treatment or even death during transport.

[466] *See* for example: *ĐorĊević* Judgement, para. 2139 (awareness by the accused of the pattern of crimes by Serb forces during anti-terrorist operations and the continuation of such operations); *Milutinović* Judgement, Volume III, paras 470 and 471 (awareness by the accused Šainović of the crimes committed by Serb forces in previous operations and continuation of the same military strategies).

[467] *See* for example: *Milutinović* Judgement, Volume III, paras 470 and 471 (awareness by the accused Šainović of the climate of animosity between Serbs and Kosovo Albanians in 1998 and 1999); *Martić* Judgement, para. 454 (creating and sustaining a coercive atmosphere that resulted in "widespread and systematic crimes" against the non-Serbian population).

3. Planning

222. Individual criminal responsibility may ensue when one or more persons – in the event of a plurality of persons, they may be held responsible under Article 7(1) of the Statute, independently from a JCE – arrange for criminal conduct constitutive of one or more of the crimes contemplated under the Statute, in both the preparatory as well as the execution phase.[468] The crime or crimes in question must actually have been carried out at a later phase.[469] The person or persons may plan an act or an omission[470] and it is sufficient to establish that planning was a determining factor contributing to their criminal conduct.[471] In the event that the commission of the crime did not constitute the sole objective of the planned operation, it is sufficient for it to be the predominant one.[472] Moreover, a person cannot be held responsible for committing a crime and planning that same crime.[473] However, his participation in planning may constitute an aggravating factor in the event he or she is found guilty of having committed that crime.[474]

223. The *mens rea* giving rise to responsibility for planning comprises: (1) the intent to plan the commission of a crime or (2) the awareness of the substantial likelihood that a crime will be committed during the execution of the act or omission planned.[475] Planning while aware of this substantial likelihood must be considered acceptance of the resulting crime.[476]

4. Instigation to Commit

224. Individual criminal responsibility may be imputed when an individual prompts another person to commit a crime which is then carried out.[477] Express or implied conduct may constitute instigating.[478] Moreover, it is not necessary to prove that the

[468] *BrĊanin* Judgement, para. 268; *Stakić* Judgement, para. 443.
[469] *Nahimana* Appeals Judgement, para. 479; *Kordić* Appeals Judgement, para. 26.
[470] *Nahimana* Appeals Judgement, para. 479; *Kordić* Appeals Judgement, para. 31.
[471] *Nahimana* Appeals Judgement, para. 479; *Kordić* Appeals Judgement, para. 26.
[472] *Boškoski* Appeals Judgement, para. 138; *Boškoski* Judgement, paras 155-161, 344-345, 348 and 572.
[473] *BrĊanin* Judgement, para. 268; *Kordić* Judgement, para. 386.
[474] *BrĊanin* Judgement, para. 268; *Stakić* Judgement, para. 443.
[475] *Nahimana* Appeals Judgement, para. 479; *Kordić* Appeals Judgement, paras 29 and 31.
[476] *Kordić* Appeals Judgement, para. 31.
[477] *Nahimana* Appeals Judgement, para. 480; *Kordić* Appeals Judgement, para. 27.
[478] *ĐorĊević* Judgement, para. 1870; *BrĊanin* Judgement, para. 269.

accused wielded effective control[479] or any form of authority whatsoever over the perpetrator or perpetrators of the crime.[480]

225. The individual in question must have had the direct intent to instigate commission of the crime.[481] Moreover, the individual who "instigates another person to commit an act or omission with the awareness of the substantial likelihood that a crime will be committed in the execution of that instigation", likewise possesses the requisite *mens rea* for being found responsible on the basis of Article 7(1) of the Statute.[482] The Appeals Chamber recalled that instigation with such awareness has to be regarded as accepting the crime.[483]

226. Several trial chambers have confirmed that instigation may take the form of a positive act or of an omission.[484] Those trial chambers relied primarily on the *Blaškić* Judgement, which after recalling that instigation "entails prompting another to commit an offence", added that "[this] wording is sufficiently broad to allow for the inference that both acts and omissions may constitute instigating and that this notion covers both express and implied conduct".[485]

227. In reaching this conclusion in connection with its analysis of instigation, the *Blaškić* Chamber did not refer to any case-law or other authoritative text.[486] By

[479] *ĐorĊević* Judgement, para. 1870; *Semanza* Appeals Judgement, para. 257, in which the Appeals Chamber found that "[f]or an accused to be convicted of instigating, it is not necessary to demonstrate that the accused had "effective control" over the perpetrator. The requirement of "effective control" applies in the case of responsibility as a superior under Article 6(3) of the [ICTR] Statute. In this case, even though the Trial Chamber found that it had not been proven that the Appellant had effective control over others (and thus refused to convict him on the basis of his superior responsibility), this does not mean that the Appellant could not be convicted for instigating."
[480] *Orić* Judgement, para. 272; *BrĊanin* Judgement, para. 359.
[481] *Nahimana* Appeals Judgement, para. 480; *Kordić* Appeals Judgement, para. 29.
[482] *Nahimana* Appeals Judgement, para. 480; *Kordić* Appeals Judgement, para. 32.
[483] *Kordić* Appeals Judgement, para. 32.
[484] *ĐorĊević* Judgement, para. 1870; *BrĊanin* Judgement, para. 269.
[485] *Blaškić* Judgement, para. 280: in reaching this conclusion in connection with its review of instigation, the *Blaškić* Chamber does not refer to any case-law or other authoritative text. In its review of cumulative convictions under Articles 7(1) and 7(3) of the Statute, the *Blaškić* Trial Chamber made reference to texts applying the international law of war to SFRY armed forces, concluding that instigation might consist of an omission. The Trial Chamber illustrated this idea of instigation by omission by citing the case where the causal nexus between instigation – by omission – and commission of the act was proven and establishing that, in that case, the subordinates would not have committed the further crimes had the commander not failed in his duty to punish the earlier crimes. *See Blaškić* Judgement, paras 338 and 339.
[486] *Blaškić* Judgement, para. 280; *Akayesu* Judgement, para. 482.

contrast, it did refer to statutes applicable in the SFRY[487] when analysing cumulative responsibility from the perspective of Articles 7(1) and 7(3) of the Statute.[488] The *Blaškić* Chamber indeed recalled that "the failure to punish past crimes, which entails the commander's responsibility under Article 7(3), may pursuant to Article 7(1) and subject to the fulfilment of the requirements for the mental and physical elements, respectively, also be the basis for his liability for either aiding and abetting or instigating the commission of *further* crimes".[489] According to these passages, a commander will be responsible "as a *participant or instigator* if, by not taking measures against subordinates who violate the law of war, he allows his troops to continue to commit the acts".[490] The *Blaškić* Chamber adds, further to this, that in this instance, for the commanding officer to be responsible as an instigator by omission, it is necessary to establish (1) that the commander had the requisite *mens rea* for instigation[491] and (2) that the subordinates would not have committed the subsequent crimes if the commander had not failed to punish the earlier ones.[492]

228. The Appeals Chamber has neither upheld nor overturned this finding in relation to instigation by omission and, consequently, did not establish any jurisprudence in this regard.

229. The Chamber cannot follow the other Trial Chambers on this point, holding the contrary view, that the very notion of instigation requires a positive act on the part of the instigator. The verb "to instigate" – to urge on or to incite a person to do something[493] – implicitly suggests a positive action.

230. The Chamber is all the more persuaded of the need to rule out responsibility of that kind, given that, as the *Blaškić* Chamber has stressed, such responsibility for omission resulting from a breach of the duty to punish is addressed under responsibility pursuant to Article 7(1) for aiding and abetting.[494] The latter

[487] SFRY Secretariat for National Defence, Regulations Concerning the Application of International Law to the Armed Forces of the SFRY (1988) Article 21, cited in the *Ĉelebići* Judgement, para. 341 and restated in the *Blaškić* Judgement, para. 338.
[488] *Blaškić* Judgement, para. 338; *Ĉelebići* Judgement, para. 341.
[489] *Blaškić* Judgement, paras 337 and 338, emphasis in the original; *Ĉelebići* Judgement, para. 341.
[490] *Blaškić* Judgement, para. 338, emphasis in the original; *Ĉelebići* Judgement, para. 341.
[491] *Blaškić* Judgement, para. 337.
[492] *Blaškić* Judgement, para. 339; *Ĉelebići* Judgement, paras 399 and 400.
[493] *New Shorter Oxford Dictionary;* French original source: *Petit Robert, Dictionnaire de la langue française*.
[494] *Blaškić* Judgement, para. 337.

responsibility, moreover, makes it possible to resolve the challenge of reconciling the words "instigation" and "omission" themselves noted by the Chamber.

5. Ordering

231. Individual criminal responsibility may be incurred when an individual in a position of authority orders a person to commit an offence.[495] It is not necessary to demonstrate the existence of a formal superior-subordinate relationship between the individual giving the order and the perpetrator of the crime.[496] It is sufficient to demonstrate that the individual in question was vested with the authority – *de jure* or *de facto*[497] – necessary to enable him to give orders,[498] even if that authority was temporary.[499] Giving an order requires a positive act and thus may not be committed by omission.[500] However, it is not a requirement that the order be issued directly, in writing, or that it be given any particular form, which is the reason that it may be proven through circumstantial evidence.[501]

232. The individual must have possessed the direct intent to order a crime.[502] Moreover, the individual who "orders an act or omission with the awareness of the substantial likelihood that a crime will be committed in the execution of that order", and accepts such likelihood, possesses the requisite *mens rea* for being found responsible on the basis of Article 7(1) of the Statute.[503] The Appeals Chamber has considered that the fact of giving an order while aware of the substantial likelihood that a crime would be committed while that order was being carried out constituted acceptance of the resulting crime.[504] It is not necessary to establish that the crime would not have been committed without the order, but the order must have had a direct and substantial effect on the commission of the illegal act.[505]

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[495] *Boškoski* Appeals Judgement, para. 160; *Kordić* Appeals Judgement, para. 28.
[496] *Boškoski* Appeals Judgement, para. 164; *Kordić* Appeals Judgement, para. 28.
[497] *ĐorĊević* Judgement, para. 1871; *Mrkšić* Judgement, para. 550.
[498] *Galić* Appeals Judgement, para. 176; *Kordić* Judgment, para. 388.
[499] *Milutinović* Judgement, para. 86; *Semanza* Appeals Judgement, para. 363.
[500] *ĐorĊević* Judgement, para. 1871; *Galić* Appeals Judgement, para. 176.
[501] *Boškoski* Appeals Judgement, para. 160; *Blaškić* Judgement, para. 281.
[502] *ĐorĊević* Judgement, para. 1872; *Kordić* Appeals Judgement, para. 29.
[503] *Kordić* Appeals Judgement, para. 30; *Blaškić* Appeals Judgement, para. 42.
[504] *Kordić* Appeals Judgement, para. 30; *Blaškić* Appeals Judgement, para. 42.
[505] *Popović* Judgement, para. 1013; *Kamuhanda* Appeals Judgement, para. 75.

B. Responsibility Contemplated Under Article 7(3) of the Statute: Superior Responsibility

233. Superior responsibility, enshrined in Article 7(3) of the Statute, is a mode of criminal responsibility acknowledged under customary international law.[506] It is applicable when crimes are committed by a subordinate, as mentioned in Articles 2 through 5 of the Statute,[507] in connection with an internal or an international armed conflict.[508] This responsibility is incurred as a result of a breach by the superior of the duty to act when a crime has been committed by one of his or her subordinates. Thus it concerns responsibility for omission (1).[509]

234. In order for an accused to incur responsibility on the basis of Article 7(3) of the Statute, the general requirements for the application of this article are as follows: a superior-subordinate relationship must exist between the perpetrator of the crime and his superior; the superior must have reason to know that his subordinate was about to commit a crime or did so; and the superior did not take the necessary and reasonable measures to prevent the crime or punish the subordinate (2).

1. Nature of Superior Responsibility: Responsibility for Omission

235. The purpose of superior responsibility is to ensure compliance with the rules of international humanitarian law and to protect the persons and objects protected by those rules during armed conflict.[510] Superior responsibility is derived from the obligations of responsible command.[511] It is the corollary of a commander's obligation to act,[512] which means that such command responsibility is responsibility for an omission to prevent or punish crimes committed by his subordinates.[513] As such, it is a *sui generis* responsibility, distinct from that defined in Article 7(1) of the Statute.[514] The superior does not share the same responsibility as that of his subordinates who committed the crimes, but he is responsible for having failed to

[506] *Ĉelebići* Appeals Judgement, para. 195; *Halilović* Appeals Judgement, paras 63.
[507] *Halilović* Judgement, para. 55; *Orić* Judgement, para. 294.
[508] *Hadţihasanović* Judgement, para. 65; *ĐorĊević* Judgement, para. 1878; *see* also, concerning its application to an internal armed conflict, the *Hadţihasanović* Decision of 16 July 2003, para. 31.
[509] Judge Antonetti raises this issue in his separate, partly dissenting opinion annexed to this Judgement.
[510] *Hadţihasanović* Decision of 12 November 2002, para. 66; *Halilović* Judgement, para. 39.
[511] *Hadţihasanović* Judgement, para. 67; *Hadţihasanović* Decision of 16 July 2003, paras 22-23.
[512] *Hadţihasanović* Judgement, para. 75.
[513] *Halilović* Judgement, para. 54; *Hadţihasanović* Judgement, para. 75.

act.[515] Moreover, just as "for an army to even function, troops must obey given orders",[516] it is necessary for a commander to ensure compliance with the orders he has given to his troops, including those that pertain to compliance with international humanitarian law.[517] Assessment of the superior's failure to fulfil this obligation, however, must be done on a case-by-case basis, and may lead to a determination that the said superior may have been in a situation such that he lacked the material ability to ensure that his subordinates acted in compliance with international humanitarian law.[518]

236. The Chamber subscribes to the case-law of the Tribunal which has established that since superior responsibility by its very nature is a form of responsibility by omission, proof of a causal link between the superior's failure to act and the crime committed by his subordinates is not required.[519] Requiring a causal link would undermine the basis for superior responsibility, resulting from a breach of his duty to prevent or to punish, inasmuch as the requirement of a causal link actually presupposes that he played a role in the crimes committed by his subordinates, which would change the very nature of the responsibility that is entailed under Article 7(3) of the Statute.[520]

2. General Requirements for the Application of Article 7(3) of the Statute

237. To hold the superior criminally responsible, it is necessary to establish beyond a reasonable doubt: (a) the existence of a superior-subordinate relationship; (b) the fact that the superior knew or had reason to know that the criminal act was about to be or had been committed by his subordinate; (c) the fact that the superior failed to take the necessary and reasonable measures to prevent the crime or punish the subordinate for it.[521]

[514] *Hadţihasanović* Appeals Judgement, para. 39; *Hadţihasanović* Judgement, para. 75.
[515] *Halilović* Judgement, para. 54; *Milutinović* Judgement, Volume 1, para. 113.
[516] *Hadţihasanović* Judgement, para. 87.
[517] *Hadţihasanović* Judgement, para. 87.
[518] *Hadţihasanović* Judgement, para. 88.
[519] *Blaškić* Appeals Judgement, paras 76-77; *Ĉelebići* Judgement, para. 398.
[520] *Halilović* Judgement, para. 78; *Hadţihasanović* Judgement, para. 191.
[521] *Halilović* Appeals Judgement, para. 59; *Orić* Appeals Judgement, para. 20.

a) Existence of a Superior-Subordinate Relationship

238. A superior-subordinate relationship exists (i) when the subordinate who committed the crime is subject to the effective control of the accused, that is to say, (ii) when the accused has the material ability to prevent the crime or punish the criminally responsible subordinate.[522]

i. A Crime Committed by a Subordinate

239. A charge of superior responsibility first requires that a crime, as provided for in Articles 2 through 5 of the Statute, be committed by a subordinate. In this respect, it must be stressed that the superior is responsible for not having prevented or punished the commission of a crime by his subordinate whether that subordinate physically carried out the crime or participated in it in the modes contemplated under Article 7(1) of the Statute, by action or omission.[523] The subordinates need not be identified by name; rather it is enough if the "category" to which they belong as a group is specified, or even their official duties.[524] That the link of subordination between the superior and his subordinate passes through other intermediate subordinates matters little under the law.[525] Several superiors may, as a result, be held responsible for one and the same crime committed by a subordinate, for it is not necessary that the superior-subordinate relationship be direct or immediate.[526] The Chamber notes that, in its Final Trial Brief, the Petković Defence raised the fact that the existence of two concurrent chains of command would make it impossible to determine who was wielding effective control over the perpetrators of the crime.[527] In this regard, the Chamber recalls the case-law of the Tribunal, whereby if it has been established that the superior is responsible under Article 7(3) of the Statute, the concurrent individual criminal responsibility of the other superiors will not release him from his responsibility.[528] As a consequence, the Chamber rejects the argument of the Petković Defence in its Final Trial Brief.

[522] *Orić* Appeals Judgement, para. 20; *Blaškić* Appeals Judgement, para. 375.
[523] *Orić* Appeals Judgement, para. 21; *Boškoski* Decision of 26 May 2006, paras 18 *et seq.*
[524] *Blaškić* Appeals Judgement, para. 217; *Orić* Appeals Judgement, para. 35.
[525] *Orić* Appeals Judgement, para. 20; *Halilović* Appeals Judgement, para. 59.
[526] *Blaškić* Judgement, para. 303; *Strugar* Judgement, paras 363-366.
[527] Petković Defence Final Brief, paras 614-615.
[528] *Blaškić* Judgement, paras 296 and 302-303; *Aleksovski* Judgement, para. 106.

ii. The Control Test

240. To hold an accused responsible for crimes committed by a subordinate, a superior-subordinate relationship must be established, which results from the status of the superior,[529] whether *de jure* or *de facto*.[530] The superior-subordinate relationship manifests itself in the exercise of effective control over subordinates.[531] That control has been defined as "the material ability to prevent or punish criminal conduct"[532] and pertains to every superior, whether a military chief or any civilian person vested with authority within a hierarchy,[533] even a leader of a paramilitary group.[534] Influence alone is not enough.[535] Lastly, the Chamber adopts the clarification provided by the *Halilović* Chamber that the commanding officer's responsibility applies to every commanding officer in the chain, regardless of their place in the hierarchy, and comprises responsibility for acts committed by troops placed temporarily under his command, provided that he wielded effective control over these troops at the time the crimes were committed.[536]

241. Responsibility under Article 7(3) of the Statute may attach as a result of the *de jure* or *de facto* exercise of the position of a commander.[537] Authority under law is not synonymous with effective control in matters of superior responsibility – the first cannot be equated with the second. It is the same for *de facto* authority: to be held criminally responsible for the acts of his subordinates, the *de facto* superior's authority must be similar to that held by a *de jure* superior.[538] In other words, as the Praljak Defence underscores in its Final Trial Brief,[539] the requisite degree of authority or *de facto* control must be commensurate with that required for *de jure* control.[540]

[529] *Čelebići* Appeals Judgement, para. 256.
[530] *Đorđević* Judgement, para. 1881; *Limaj* Judgement, para. 522.
[531] *Kajelijeli* Appeals Judgement, para. 86; *Hadžihasanović* Judgement, paras 76-77.
[532] *Čelebići* Appeals Judgement, para. 256; *Popović* Judgement, para. 1037.
[533] *Aleksovski* Appeals Judgement, para. 76; *Čelebići* Appeals Judgement, paras 195-197 and 240.
[534] *Čelebići* Judgement, paras 356-357 and 363.
[535] *Čelebići* Appeals Judgement, para. 266; *Hadžihasanović* Judgement, para. 80.
[536] *Halilović* Judgement, para. 61.
[537] *Čelebići* Appeals Judgement, para. 192; *Hadžihasanović* Judgement, para. 78.
[538] *Čelebići* Appeals Judgement, para. 197; *Kordić* Judgement, para. 416.
[539] Praljak Defence Final Trial Brief, para. 519.
[540] *Čelebići* Appeals Judgement, para. 197; *Bagilishema* Appeals Judgement, paras 51-55.

242. Therefore, it cannot be said that pleading the exercise of both *de jure* and *de facto* power amounts to pleading effective control.[541] Although the *de jure* exercise of the responsibilities of a commander may suggest a material ability to prevent or punish criminal conduct, it is not sufficient to prove such ability.[542] Not only must it be established on a case-by-case basis[543] that the superior was able to give orders but also that these orders were actually followed.[544] The presumption of effective control is not irrebuttable in this regard. It is actually necessary to show that the position held by the accused at the time the crime was committed by the subordinate carries the power and authority that ordinarily accompany such a position.[545] By the same token, the members of a self-proclaimed government who hold *de facto* power may be held responsible as superiors if they have the material ability to issue orders and have them executed by their subordinates.[546]

243. The Chamber observes that the Prlić Defence noted that, in the context of an armed conflict, *de facto* authority may be of greater importance than *de jure* authority.[547] The Chamber subscribes to the jurisprudence of the Tribunal in this regard, whereby, in cases where a civilian leader has more extensive powers than those formally vested in him, this *de facto* situation will be more important and more relevant than the *de jure* situation that was formally bestowed upon the superior but does not reflect his actual powers.[548] Likewise, the Chamber agrees with the view of the *Milutinović* Judgement, wherein the Trial Chamber held that it was the nature of the authority wielded, rather than the source of such authority, that mattered.[549]

244. The indicators of effective control depend on the evidence[550] and serve only to show that the accused had the power to prevent crimes and punish their perpetrators, or when necessary, to initiate criminal proceedings against such persons.[551] Among

[541] *Halilović* Appeals Judgement, para. 85; *Strugar* Appeals Judgement, para. 254.
[542] *Orić* Appeals Judgement, para. 91; *Halilović* Appeals Judgement, para. 85.
[543] *Hadţihasanović* Judgement, para. 78; *Ĉelebići* Judgement, para. 370.
[544] *Blaškić* Appeals Judgement, para. 69; *Popović* Judgement, para. 1038.
[545] *See Ĉelebići* Appeals Judgement, para. 197. The Appeals Chamber clarified that, although its jurisprudence from the *Ĉelebići* Appeals Judgement might lead to confusion, the word "presumption" did not reverse the burden of proof; *Hadţihasanović* Appeals Judgement, paras 20-21; *Orić* Appeals Judgement, para. 92.
[546] *Naletilić* Judgement, para. 67.
[547] Prlić Defence Final Trial Brief, para. 55, referring to the *BrĊanin* Judgement, para. 281.
[548] *Kordić* Judgement, para. 422; *BrĊanin* Judgement, para. 281.
[549] *Milutinović* Judgement, para. 401.
[550] *Strugar* Appeals Judgement, para. 254; *Strugar* Judgement, paras 366 and 392.
[551] *Blaškić* Appeals Judgement, para. 69; *Ĉelebići* Appeals Judgement, para. 206.

the factors which support a finding that an accused was vested with authority and wielded effective control, one may refer *inter alia* to: his formal position,[552] the procedure whereby he was appointed,[553] his *de jure* or *de facto* authority to issue orders,[554] his authority to order combat actions and re-subordination,[555] whether his orders were actually followed,[556] whether materiel and human resources were available to him,[557] and the authority he had to enforce disciplinary measures.[558]

b) The Mental Element: "Knew or Had Reason to Know"

245. The Chamber first recalls, as does the Ćorić Defence in its Final Trial Brief,[559] that to be held responsible for the crimes committed by his subordinates, the superior must be aware of his own effective control over them.[560]

246. Superior responsibility is not a form of strict liability, inasmuch as it is necessary to establish the element of knowledge.[561] For this purpose, the Prosecution must prove: (1) that the superior actually knew, taking into consideration the direct or circumstantial evidence at his disposal, that his subordinates (i) were committing, preparing to commit, or had committed[562] the crimes referred to in Articles 2 through 5 of the Statute; or (2) that the superior possessed information of a sort that would at least alert him to such risks insofar as they might indicate additional inquiries were needed (ii) to ascertain whether such crimes had been committed or were about to be.[563] The assessment of the mental element required under Article 7(3) of the Statute must be conducted according to the circumstances of the case by taking into account the specific situation of the superior concerned at the time in question.[564]

[552] *Kordić* Judgement, para. 418; *Delić* Judgement, para. 62.
[553] *Delić* Judgement, para. 62; *Halilović* Judgement, para. 58.
[554] *Blaškić* Appeals Judgement, para. 69; *Hadţihasanović* Appeals Judgement, para. 199.
[555] *Delić* Judgement, para. 62; *Strugar* Judgement, paras 393-397.
[556] *Blaškić* Appeals Judgement, para. 69.
[557] *Delić* Judgement, para. 62.
[558] *Delić* Judgement, para. 62; *Ĉelebići* Judgement, para. 767.
[559] Ćorić Defence Final Trial Brief, para. 56.
[560] *Orić* Judgement, para. 316.
[561] *Ĉelebići* Appeals Judgement, para. 239; *Hadţihasanović* Judgement, para. 92.
[562] *Ĉelebići* Judgement, para. 346; *Kordić* Appeals Judgement, para. 839.
[563] *Ĉelebići* Appeals Judgement, paras 223, 241; *Delić* Judgement, para. 63.
[564] *Ĉelebići* Appeals Judgement, para. 239; *Hadţihasanović* Judgement, para. 101.

i. Actual Knowledge

247. The superior's actual knowledge may not be presumed, but may be established using direct or circumstantial evidence.[565] In principle, the requisite actual knowledge is identical for military commanders wielding *de jure* or *de facto* authority and civilian superiors holding *de facto* authority, even though the standard of proof necessary to prove the actual knowledge of superiors with *de facto* authority or power is higher.[566] The *de jure* position of a military chief who belongs, a *priori,* to an organised structure with reporting and monitoring systems makes it easier to prove actual knowledge.[567]

248. Among the circumstantial factors which enable one to infer actual knowledge, one may cite: the number, type and scope of the illegal acts; the time during which they occurred; the number and type of troops involved; the logistical means that may have been deployed; the geographic locus of the acts; whether the acts were widespread; the cadence of operations; the *modus operandi* of similar illegal acts; the officers and personnel involved and the location of the commander at the moment the acts were completed.[568] Important indicia of knowledge may include the proximity of the crimes to the superior's duty station and the fact that they were committed repeatedly.[569] *A contrario*, the more physically removed the superior is from the commission of the crimes, the more supplemental indicia will be required in order to establish actual knowledge.[570] Authority over a hierarchy constitutes an important indicium of knowledge, although it is not determinative.[571]

ii. The Mental Element "Had Reason to Know"

249. According to the case-law of the Tribunal, the superior "had reason to know" if he had specific information available to him that would have put him on notice regarding the offences committed or the risk that such offences might be committed

[565] *Kordić* and Čerkez Judgement, para. 427; *Čelebići* Judgement, para. 386.
[566] *Kordić* Judgement, para. 428; *Orić* Judgement, para. 320.
[567] *Kordić* Judgement, para. 428; *Halilović* Judgement, para. 66.
[568] Commission of Experts Report, UN Doc. S/1994/674, para. 58, cited in the *Čelebići* Judgement, para. 386; *Kordić* Judgement, para. 427.
[569] *Aleksovski* Judgement, para. 80; *Halilović* Judgement, para. 66.
[570] *Halilović* Judgement, para. 66.
[571] *Orić* Judgement, para. 319; *Naletilić* Judgement, para. 71.

by his subordinates.[572] It is not necessary to establish that the superior actually possessed information concerning the crimes committed. Rather, it is sufficient that the information available indicate the need for further information to ascertain whether offences were being committed or were just about to be committed.[573] The Appeals Chamber has ruled that the superior's approach may incur responsibility, not because he has refrained from informing himself,[574] but because he had the means of knowing, and deliberately avoided making use of them.[575] It declined to recognise criminal negligence as the basis for superior responsibility.[576] As such, under customary law, there is no obligation to know for military commanders, and the same holds true for civilian superiors.[577] Thus, the superior is not responsible because he "ought to have known",[578] but because he had the means to know, so that he might react, and he refrained from making use of them.[579]

250. Concerning the information available to the superior, general information may suffice.[580] For a superior to be judged responsible on the basis of Article 7(3) of the Statute, it is sufficient to prove that he possessed information sufficiently alarming so as to warrant further inquiry.[581] Thus, a superior may be found to possess the required knowledge when he knows that his subordinates have a violent or unstable character, are under the influence of alcohol prior to being sent on assignment, or even when they are reputed criminals or lack professionalism.[582] Thus, the *Hadţihasanović* Chamber found that, under the circumstances of that case,[583] by failing to take measures to punish crimes of which the superior had knowledge, the superior had

[572] *Ĉelebići* Appeals Judgement, paras 238 and 241; *Hadţihasanović* Judgement, para. 95.
[573] *Ĉelebići* Appeals Judgement, paras 238 and 241; *Strugar* Judgement, para. 369.
[574] *Ĉelebići* Appeals Judgement, para. 226; *Blaškić* Appeals Judgement, para. 62.
[575] *Ĉelebići* Appeals Judgement, para. 226; *Blaškić* Appeals Judgement, paras 63 and 406.
[576] *Blaškić* Appeals Judgement, para. 63; *Bagilishema* Appeals Judgement, paras 34-35.
[577] *Ĉelebići* Appeals Judgement, para. 240.
[578] *Kordić* Judgement, para. 435.
[579] *Ĉelebići* Appeals Judgement, para. 226.
[580] *Ĉelebići* Appeals Judgement, para. 238; *Popović* Judgement, para. 1042.
[581] *Strugar* Appeals Judgement, para. 304. In the *Strugar* Case, the Trial Chamber found that Pavle Strugar's mere knowledge of the risk that his forces would illegally shell the old city was insufficient to constitute the mental element defined in Article 7(3) of the Statute and that, for it to be so, he would have had to have known that there was a "substantial likelihood" or a "clear and strong risk" in this respect (*Strugar* Judgement, paras 416-417). The Appeals Chamber found that the Trial Chamber had erred.
[582] *Ĉelebići* Appeals Judgement, para. 238; *Kordić* Judgement, para. 437; *Halilović* Judgement, para. 68.
[583] *Hadţihasanović* Appeals Judgement, para. 30.

reason to know that there was a real and reasonable risk that these unlawful acts might recur.[584]

251. However, the Chamber subscribes to the case-law of the Tribunal whereby the prior knowledge of a superior must be narrowly interpreted to the extent it derives from a situation of repeated similar criminal actions and from a set of circumstances such that these actions could not arise in isolation, committed as they were by the same identifiable group of subordinates.[585]

252. Lastly, the Appeals Chamber has ruled that, at law as well as in fact, knowledge of the crime and knowledge of the criminal conduct of someone else are two distinct matters.[586]

c) A Breach of the Duty to Prevent or Punish Crimes

253. In order to discharge his duty to prevent or punish the crimes committed by his subordinates, the case-law of the Tribunal emphasises that the superior is not required to do the impossible, and that the issue is knowing what measures are considered to be within his powers, in other words, what measures lay within his material ability.[587] Stated otherwise, it must be demonstrated that the superior (i) did not take "necessary and reasonable" measures[588] (ii) enabling him to discharge his duty to prevent or (iii) to punish the crimes committed by his subordinates.

i. Necessary and Reasonable Measures

254. The Appeals Chamber has recalled that "what constitutes „necessary and reasonable" measures" is more a matter of evidence than of substantive law";[589] knowing whether a superior has discharged his duty to prevent a crime or punish its perpetrators in keeping with Article 7(3) of the Statute must be examined "case-by-case"[590] and with particular consideration given to the specific circumstances of the

[584] *Hadţihasanović* Judgement, para. 133.
[585] *Hadţihasanović* Judgement, para. 118.
[586] *Orić* Appeals Judgement, paras 58-59: The Appeals Chamber found that the Trial Chamber did not err when it did not infer the criminal conduct of the subordinates from the superior's knowledge of the crime.
[587] *Blaškić* Appeals Judgement, para. 417; *Hadţihasanović* Appeals Judgement, para. 142.
[588] *Blaškić* Appeals Judgement, para. 72; *Kordić* Appeals Judgement, para. 839.
[589] *Hadţihasanović* Appeals Judgement, para. 33; *Boškoski* Appeals Judgement, para. 259.
[590] *Boškoski* Appeals Judgement, para. 259; *Popović* Judgement, para. 1044.

case at issue. In particular, as set out by the Ćorić Defence,[591] what must be pleaded in the Indictment is conduct by the accused by which he may be found to have failed to take such necessary and reasonable measures.[592] It cannot be ruled out that, under the specific circumstances of a case, the superior might have discharged his duty to punish the perpetrators of crimes under Article 7(3) of the Statute by taking disciplinary measures. In other words, the fact that he took disciplinary measures, penal measures or both is not in itself determinative of whether a superior discharged the duty imposed on him by Article 7(3) of the Statute to prevent the crimes or punish the perpetrators thereof.[593]

255. The Chamber notes, moreover, that the Ćorić Defence pointed out in its Final Trial Brief that, in the *Hadţihasanović* Case, the Trial Chamber found, in respect of the reasonableness of the measures, that there was no rule of customary international law whereby States are obliged to prosecute war crimes solely on the basis of international humanitarian law, and that, as a result, a commander cannot be impugned for relying on domestic law in order to determine his obligations towards his subordinates.[594] The Chamber notes that in the *Hadţihasanović* Judgement, the Trial Chamber, acting in relation to a question put by the Prosecution concerning the number of cases heard by the Zenica District Military Court and the Military Prosecutor"s Office for the district of Travnik that implicated the members of the ABiH for "war crimes", examined the state of customary international law and, in this regard, took into consideration the practice as well as the conviction of States regarding whether they are bound to prosecute war crimes on the basis of international indictments for war crimes, regardless of any characterisations of national criminal law,[595] and concluded that there was no such rule in international customary law binding on States, and therefore, on the courts of the RBiH.[596] The Chamber subscribes to the case-law of the Tribunal in this regard.

[591] *See* Ćorić Defence Final Trial Brief, para. 63.
[592] *Blaškić* Appeals Judgement, para. 218.
[593] *Hadţihasanović* Appeals Judgement, para. 33.
[594] Ćorić Defence Final Trial Brief, para. 61, referring to the *Hadţihasanović* Judgement, para. 260.
[595] *Hadţihasanović* Judgement, paras 249-258.
[596] *Hadţihasanović* Judgement, paras 260-261.

ii. The Duty to Prevent

256. The case-law of the Tribunal distinguishes two duties for the superior: one is to prevent a crime from being committed and the other is to punish its perpetrators.[597] The duty to punish is to be distinguished from the duty to prevent.[598] Therefore, the superior is criminally responsible for his breach of the duty to take what were necessary and reasonable measures to prevent a crime from being committed, regardless of whether he took punitive measures after the crimes were committed. Under no circumstances can he "redeem" the breach of the duty to prevent by punishing the subordinates after the fact.[599]

257. Responsibility for the superior"s failure to act under Article 7(3) is intended to ensure compliance with the rules of humanitarian law. For this reason, the superior has the general obligation to monitor the actions of subordinates and to act so that they are duly informed of the responsibilities they bear under international law.[600] Although the superior manifestly cannot be held criminally responsible for his breach of a general obligation, his failure may nevertheless be taken into consideration when assessing the facts of the case.[601] That being the case, compliance with this general obligation will not relieve him of criminal responsibility if he failed in his specific obligation to take preventive measures with regard to crimes of which he possessed knowledge.[602]

258. The scope of the duty to prevent, in any given case, will depend on the superior"s material ability to act.[603] His specific obligation will vary according to the rank he holds and the powers vested in him.[604] This is therefore analysed case by case but must take the form of specific measures taken that pertain directly to the actions they are intended to prevent.[605] Moreover, the duty to prevent a crime from being committed is present at every stage prior to the time one of his subordinates commits

[597] *Blaškić* Appeals Judgement, para. 83; *Hadţihasanović* Judgement, para. 125.
[598] *Blaškić* Appeals Judgement, para. 83; *Halilović* Judgement, paras 92-94.
[599] *Halilović* Judgement, para. 72; *Hadţihasanović* Judgement, para. 126.
[600] *Halilović* Judgement, para. 87; *Hadţihasanović* Judgement, para. 146.
[601] *Halilović* Judgement, para. 88.
[602] *Halilović* Judgement, para. 88; *Hadţihasanović* Judgement, para. 151.
[603] *Blaškić* Appeals Judgement, para. 72; *Hadţihasanović* Judgement, para. 152.
[604] *Strugar* Judgement, para. 375; *Hadţihasanović* Judgement, para. 152.
[605] *Hadţihasanović* Judgement, para. 155.

a crime, if the superior knew or had reason to know that the crime was about to be committed.[606]

259. Moreover, the duty to stop the crime is recognised by the case-law and is comprised within the scope of the duty to prevent.[607] This duty to "stop" the crime must be considered as corresponding to the duty to prevent because it seeks to prevent continuation of the crimes.[608] Moreover, as the *Hadţihasanović* Chamber observed, although the duty to prevent is distinct from the duty to punish, there are situations where these two obligations are linked, because the one may be the consequence of the other.[609] Thus, independently of his breach of the duty to punish the commission of a crime, the superior may be held responsible for condoning similar acts later on.[610]

iii. The Duty to Punish

260. The duty to punish arises only once the crime has been committed.[611] As with the duty to prevent, the scope of the duty to punish depends on the degree of effective control and the material ability of the superior.[612] If the superior lacks the power to sanction conduct, the duty to punish will at least entail the duty to investigate the crimes or to cause them to be investigated, to establish the facts and to signal them to the competent authorities.[613] The superior need not necessarily be the one who punishes but he must play a significant role in the disciplinary proceedings.[614] The appropriateness of the sanctions administered is determined based on what is reasonable and necessary in light of the facts of the case,[615] which is more a matter of the assessment of the evidence than a matter of substantive law.[616]

261. The Trial Chamber in the *Strugar* Case also considered that the duty to carry out an investigation is an example of a reasonable measure satisfying the superior's duty to punish and recalled the jurisprudence of the post-war tribunals. It ruled that

[606] *Halilović* Judgement, paras 79 and 90, citing the *Strugar* Judgement, para. 416; *Delić* Judgement, para. 72.
[607] *Hadţihasanović* Appeals Judgement, para. 264; *Hadţihasanović* Judgement, para. 127.
[608] *Strugar* Judgement, para. 446; *Hadţihasanović* Judgement, para. 127.
[609] *Hadţihasanović* Judgement, para. 128.
[610] *Hadţihasanović* Judgement, para. 156.
[611] *Blaškić* Appeals Judgement, para. 83.
[612] *Blaškić* Appeals Judgement, para. 72; *Boškoski* Appeals Judgement, para. 231.
[613] *Blaškić* Appeals Judgement, para. 72; *Halilović* Judgement, para. 97.
[614] *Halilović* Judgement, paras 99-100; *ĐorĊević* Judgement, para. 1889.
[615] *Boškoski* Appeals Judgement, para. 234; *Hadţihasanović* Judgement, para. 177.
[616] *Blaškić* Appeals Judgement, para. 72.

the fact that a superior requested an incident report and that the investigation conducted was thorough were relevant factors in assessing whether he discharged his duty to respond.[617] For the purposes of Article 7(3) of the Statute, the superior"s report submitted to the authorities responsible for investigating must meet the requisite threshold for initiating an official investigation into the act charged. However, if the investigation proves unsatisfactory because of failures by the authorities responsible for investigating, and the failures are not linked to the superior and he possessed no knowledge of them, he cannot be held responsible within the meaning of Article 7(3) of the Statute.[618] Moreover, when the Accused could, at most, have reported the unlawful actions to those persons who ordered them, he cannot be held responsible within the meaning of Article 7(3) of the Statute.[619]

C. The Matter of Cumulative Responsibility in Connection with Articles 7(1) and 7(3) of the Statute

262. Inasmuch as the Indictment likewise alleges that each of the Accused is criminally responsible as a superior for each of the crimes alleged,[620] it is appropriate at this point to address the issue of cumulative responsibility under Articles 7(1) and 7(3) of the Statute.

263. The case-law of the Tribunal has clearly established that even though the provisions of Article 7(1) and Article 7(3) of the Statute show distinct forms of criminal responsibility, it would not be appropriate to convict an accused of the same facts on the basis of both Article 7(1) and Article 7(3) of the Statute.[621] On those occasions when the accused is charged with responsibility for the same facts on the basis of these two articles and the necessary legal requirements for doing so have been met, the trial chamber must enter a conviction solely on the basis of Article 7(1) and consider the place of the accused within the hierarchy to be an aggravating factor.[622]

[617] *Strugar* Judgement, para. 376. *See* also *Hadţihasanović* Judgement, para. 175.
[618] *Boškoski* Appeals Judgement, paras 231, 234 and 268-270; *Strugar* Judgement, paras 435-436 and 439.
[619] *Krstić* Appeals Judgement, para. 143; *Krnojelac* Judgement, para. 127; *Popović* Judgement, para. 1046.
[620] Indictment, para. 228.
[621] *Kordić* Appeals Judgement, paras 33 and 34; *Blaškić* Appeals Judgement, paras 91 and 92.
[622] *Kordić* Appeals Judgement, paras 33 and 34; *Blaškić* Appeals Judgement, paras 91 and 92.

264. In its Final Trial Brief, the Prlić Defence raises the point that the case-law recognises that in the event an accused incurs responsibility both on the basis of an omission in connection with Article 7(1) as well as on the basis of Article 7(3), the accused may be found responsible on the basis of Article 7(3) of the Statute.[623] In this respect, the Trial Chamber in the *Milutinović* Case found that when the modes of responsibility of Article 7(1) are applicable to the omission, it is no longer appropriate to consider that Article 7(1) must take precedence over Article 7(3).[624] The *Milutinović* Chamber was of the view that the *Blaškić* Appeals Judgement did not preclude finding the accused responsible on the basis of Article 7(3) of the Statute when the only mode of responsibility alleged on the basis of Article 7(1) is alleged in the form of an omission.[625]

265. It is this Chamber"s view that, in the *Blaškić* Appeals Judgement, the Appeals Chamber clearly indicated that once a superior is indicted for committing a crime by omission under both Article 7(1) and Article 7(3) of the Statute, generally speaking, responsibility under Article 7(1) should take priority.[626] For this reason, the Chamber cannot accept the argument of the Prlić Defence and considers that in the case of cumulative convictions under Articles 7(1) and 7(3) of the Statute for crimes committed by omission, the standard elevating Article 7(1) is the one to apply.[627]

[623] Prlić Defence Final Trial Brief, para. 63, referring to the *Milutinović* Judgement, para. 79 (Volume I) and to the *Strugar* Judgement, para. 355.
[624] *Milutinović* Judgement, para. 79 (Volume I); *Blaškić* Judgement, para. 555.
[625] *Milutinović* Judgement, para. 79 (Volume I); *Blaškić* Judgement, para. 555.
[626] *Blaškić* Appeals Judgement, para. 664, footnote 1386.
[627] *See* the preceding paragraph.

CHAPTER 2: THE EVIDENTIARY STANDARDS

266. The Chamber presents hereinafter the evidentiary standards which guided it throughout the trial proceedings, including during deliberations.

267. Under Article 21(3) of the Statute and Rule 87(A) of the Rules, the accused shall be presumed innocent until proven guilty beyond reasonable doubt. Additionally, the case-law of the Tribunal establishes that the Prosecution carries the burden of proof and that it must establish each constituent element of the crimes and of the modes of responsibility in order to establish the guilt of an accused beyond reasonable doubt.[628] The Chamber notes that it has not systematically restated the expression "beyond reasonable doubt" in each of its findings of fact or in respect of the criminal responsibility of the Accused in this Judgement, but has applied this standard throughout its analysis and throughout this Judgement in arriving at the said findings.

268. In this case, the Chamber heard or admitted (1) court testimony from witnesses for the Prosecution and the Defence, (2) documents tendered in court by way of witnesses appearing there, including expert reports and prior statements admitted under Rule 92 *ter*, (3) written statements and transcripts of witness testimony before other trial chambers at the Tribunal, admitted pursuant to Rule 92 *bis* of the Rules, (4) written statements by witnesses, admitted under Rule 92 *quater* of the Rules, (5) documents admitted by way of written motions,[629] and (6) adjudicated facts of which the Chamber has taken judicial notice under Rule 94 (B) of the Rules.[630] By the close of the trial, the Chamber had heard 207 *viva voce* and 92 *ter* witnesses, admitted 118 92 *bis* and 92 *quater* witness statements, 3,398 items of documentary evidence by way of written motions[631] and 6,358 documents through witnesses who testified in court, thus amounting to 9,756 items of documentary evidence in total.

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[628] *Martić* Appeals Judgement, para. 55; *Halilović* Appeals Judgement, paras 108-109.
[629] Documents admitted by way of written motions pursuant to Guideline 6 (Prosecution) of the Decision of 29 November 2006, p.8 and of Guideline 9 (Defence teams) of the Decision of 24 April 2008, pp. 10 and 11. *See* also "Adoption of Guidelines for Managing the Trial" in the Chamber"s review of the procedural history (Annex 2).
[630] The Chamber took judicial notice of 270 facts. *See* "Admission by Judicial Notice" in the Chamber"s review of the procedural history (Annex 2).
[631] *See* "Adoption of Guidelines Concerning the Admission of Evidence" in the Chamber"s treatment of the evidentiary standards. Pursuant to Guidelines 6 and 9 cited *supra*.

269. The Chamber assessed the evidence above in accordance with the Statute, the Rules, and the Tribunal"s case-law. In those cases where the Rules or the Tribunal"s case-law were silent, the Chamber applied the rules of evidence most suitable for fairly adjudicating the case before it, in keeping with the spirit of the Statute and of general principles of law.[632] Accordingly, the Chamber set out several Guidelines for the presentation of Prosecution and Defence evidence over the course of the trial proceedings.[633]

270. The Chamber deems it appropriate to explain below its approach with respect to evidentiary standards and the standards applied by the Chamber when admitting evidence and when assessing those exhibits admitted into the record, irrespective of the nature of the evidence admitted (documentary, visual, written or oral testimonies). Thus, in this first part, the Chamber will analyse the standards governing the admission of evidence and, in the second part, those governing the assessment of the evidence admitted into the record.

Heading 1: Standards Governing the Admission of Evidence

271. The standards for the admission of evidence, as applied by the Chamber over the course of the proceedings, derive from: (I) general standards for the admission of evidence; (II) the adoption of Guidelines specific to this case; and (III) the application in the case at hand of standards governing the admissibility of evidence relating to the crimes committed by other parties to the conflict (the *tu quoque* defence).

I. General Standards for the Admission of Evidence Applied by the Chamber in this Case

272. Under Rules 89(C) and (D) of the Rules, the Chamber may admit any relevant evidence which it deems to have probative value and may exclude evidence if its probative value is substantially outweighed by the need to ensure a fair trial. Rule 89 (C) of the Rules thus confers discretion upon the Chamber with regard to the

[632] Rule 89(B) of the Rules.
[633] *See* the Decision of 29 November 2006 and the Decision of 24 April 2008. For more detail *see* "Adoption of Guidelines for Managing the Trial" in the Chamber"s review of the procedural history (Annex 2).

admission of relevant evidence it deems to have sufficient probative value.[634] In the jurisprudence of the Tribunal, an exhibit is deemed to have probative value when it tends to prove a point at issue[635] and is relevant at the stage for the admission of exhibits when it touches upon a material aspect of the case and of the indictment.[636] In addition, the Chamber analysed the reliability (including the authenticity) of the evidence tendered for admission as a constituent element of admissibility, because for an exhibit to be admissible as evidence, the tendering party must be able to adduce *prima facie* evidence of its reliability.[637]

273. During the trial, the Chamber encouraged the Parties to choose which documents and other evidence they would produce in order to safeguard the integrity of the judicial proceedings and guarantee completion of the trial within a reasonable time.[638] The Chamber demonstrated its rigour, frequently by majority,[639] in applying Rule 89 (C) of the Rules and the requirements of relevance and probative value developed there.[640] The Chamber likewise restricted the admission of evidence in connection with the requirement in the Tribunal's case-law that such restrictions have a legitimate purpose.[641]

274. The Chamber, often acting by a majority,[642] restricted the admission of the documents, orders, transport permits and delivery slips for materiel and technical

[634] *Halilović* Decision of 19 August 2005, para. 14; *The Prosecutor v. Prlić et al.*, IT-04-74-AR-73.13, "Decision on Jadranko Prlić's Consolidated Interlocutory Appeal against the Trial Chamber's Orders of 6 and 9 October 2008 on Admission of Evidence", 12 January 2009, para. 15. *See* also in this respect the decisions of the Chamber, and in particular, "Decision on Prosecution Motion to Exclude the Testimony of Dragan Pinjuh", public, 17 February 2009.
[635] Decision of 13 July 2006, p. 4; *The Prosecutor v. Enver Hadţihasanović and Amir Kubura*, Case no. IT-01-47-T, "Decision on the Admissibility of Documents of the Defence of Enver Hadţh asanović", 22 June 2005, paras 17 and 18.
[636] *The Prosecutor v. Prlić et al.*, Case no. IT-04-74-AR-73.13, "Decision on Jadranko Prlić's Consolidated Interlocutory Appeal against the Trial Chamber's Orders of 6 and 9 October 2008 on Admission of Evidence", 12 January 2009, para. 17.
[637] *The Prosecutor v. Enver Hadţihasanović and Amir Kubura*, Case no. IT-01-47-T, "Decision to Unseal Confidential Decision on the Admissibility of Certain Challenged Documents and Documents for Identification", public, 16 July 2004, para. 29, citing *The Prosecutor v. Radoslav BrĈanin and Momir Talić*, Case no. IT-99-36-T, "Order on the Standards Governing the Admission of Evidence", 15 February 2002, para. 25.
[638] Decision of 13 July 2006, p. 6.
[639] *See* "Order to Admit Evidence Regarding the Testimony of Milivoj Petković", public, 1 June 2010 and "Order to Admit Evidence Relating to the Testimony of Slobodan Praljak", public, 15 February 2010, and the dissenting opinions of Judge Antonetti pertaining to these orders.
[640] Decision of 28 April 2006, para. 8; Decision of 13 July 2006, T(F), pp. 4 and 6.
[641] Decision of 13 July 2006, p. 5.
[642] *See* the "Order to Admit Evidence Relating to the Testimony of Slobodan Praljak", public, 15 February 2010 and the "Decision on Praljak Defence Motion for Admission of Documentary Evidence", public, 1 April 2010.

equipment ("MTS") bound for the ABiH, transiting or originating from Croatia, which were tendered by certain Defence teams.[643] The Chamber found, in particular, that the destination of the "MTS"s" delivered to the ABiH did not make it possible to establish a nexus between the documents tendered and the Indictment[644] and that the said documents were overly vague in view of the allegations in the Indictment, inasmuch as they could not provide any piece of information that might enable better understanding or assessment of the evidence previously admitted into the record concerning the topic of "MTS".[645] Furthermore, the Chamber found that a substantial number of documents relating to the "MTS" were unnecessary, insofar as those documents did not pertain to a point going to the merits or otherwise at issue in the litigation of the case, because the Prosecution did not contest collusion between the Army of the Republic of Croatia, the HVO and the ABiH in certain regions and at certain times, more specifically the shipment of arms from the HV to the ABiH, between 1991 and 1995.[646]

275. The Chamber was also strict in admitting documents said to be "new",[647] pursuant to its Decision of 27 November 2008 and the Decision of the Appeals Chamber of 26 February 2009.[648] Accordingly, the documents establishing the guilt of an Accused which were not admitted during the phase for presenting the arguments of a party – as the Prosecution or a defence team had closed its case – could not subsequently be admitted unless the party seeking admission of the said "new documents" had argued exceptional circumstances warranting admission in the

[643] *See* also "*Ordonnance portant sur l'admission d'éléments de preuve relatifs au témoin* Andjelko Makar", public, 29 April 2009; "Order on Request for Admission of Evidence Regarding Witness Mario Milos", public, 7 May 2009; "Order on Motion to Admit Evidence Regarding Witness Dragutin Cehulić", public, 11 May 2009.
[644] "*Ordonnance portant sur l'admission d'éléments de preuve relatifs au témoin Andjelko Makar*", public, 29 April 2009; "Order on Request for Admission of Evidence Regarding Witness Mario Milos", public, 7 May 2009; "Order on Motion to Admit Evidence Regarding Witness Dragutin Cehulić", public, 11 May 2009.
[645] "Decision on the Stojić Defence Motion for the Admission of Documentary Evidence (Cooperation Between the Authorities and the Armed Forces of Herceg-Bosna and the Authorities and the Armed Forces of the ABiH)", public, 21 July 2009, para. 27.
[646] "Order on Request for Admission of Evidence Regarding Witness Mario Milos", public, 7 May 2009, p. 3.
[647] The Chamber used the expression "new documents" for those documents not yet admitted by the Chamber, whose admission was requested by a party that had already finished its case. *See* Decision of 27 November 2008 Regarding New Documents, para. 13.
[648] Decision of 27 November 2008 Regarding New Documents; *The Prosecutor v. Prlić et al.*, Case no. IT-04-74-AR-73.14, "Decision on the Interlocutory Appeal Against the Trial Chamber"s Decision on Presentation of Documents by the Prosecution in Cross-Examination of Defence Witnesses", public, 26

interests of justice.[649] However, the Chamber found that the presentation of "new documents" during cross-examination for the purpose of casting doubt on the credibility of a witness or refreshing his or her memory was possible and that admitting "new documents" for the purpose of casting doubt on credibility needed to be analysed on a case-by-case basis, pursuant to Rule 89 (C) of the Rules.[650]

II. Adoption of Guidelines for the Admission of Evidence

276. The Chamber adopted a certain number of "guidelines" regarding the conduct of the trial and the admission of evidence.[651] The Chamber decided *inter alia* that, as a matter of principle, documents are admitted into evidence through a witness in court who testifies to their reliability, relevance and probative value,[652] but that the Parties may nonetheless present written motions requesting the admission of documentary evidence to the Chamber.[653]

277. Certain rules were laid down in connection with requests for the admission of evidence by way of a witness,[654] in particular a rule whereby a party presenting only an excerpt of an exhibit in court must limit itself to requesting the admission of that excerpt alone,[655] or the rule stating that a party seeking to admit into the record an exhibit that has been shown in court shall do so by way of a list filed in court, observing a specific timetable laid down by the Chamber.[656]

278. In connection with the requests for admission of documentary evidence by way of written motion, the Chamber listed the criteria relating to the substance of those said motions, such as the description of the exhibit, the source of the exhibit, the description of the exhibit"s indicia of reliability and the reasons for which the party

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February 2009 ("Decision of 26 February 2009"). *See* also "Adoption of Guidelines for Managing the Trial" in the Chamber"s review of the procedural history (Annex 2).
[649] Decision of 27 November 2008 Regarding New Documents, para. 23.
[650] Decision of 27 November 2008 Regarding New Documents, para. 24.
[651] *See* "Adoption of Guidelines for Managing the Trial" in the Chamber"s review of the procedural history (Annex 2). The Chamber points out that during the pre-trial phase, Judge Antonetti, the Pre-Trial Judge, proposed a number of guidelines for managing the case, in a decision of 1 March 2006 entitled "Draft Guidelines for the Admissibility of Evidence and to Ensure the Efficient Conduct of the Proceedings", which asked the Parties to make known their observations concerning the said guidelines; this was later amended by the Chamber in the Decision of 28 April 2006.
[652] Guideline 1 of the Decision of 13 July 2006; Guideline 8 of the Decision of 24 April 2008.
[653] Guideline 6 of the Decision of 29 November 2006; Guideline 9 of the Decision of 24 April 2008.
[654] Guideline 8 of the Decision of 24 April 2008.
[655] Guideline 4 of the Decision of 13 July 2006; Guideline 8 of the Decision of 24 April 2008.
[656] Decision of 24 April 2008, para. 32.

considers that the exhibit is important to the outcome of the case.[657] Thus, acting in accordance with Guideline 6 of the Decision of 29 November 2006 and Guideline 9 of the Decision of 24 April 2008 as they pertain to the admission of documentary evidence by way of written motion, the Prosecution and the Defence teams submitted several written motions for the admission of documentary evidence during the presentation of their arguments or when closing their cases. By means of this, the Chamber admitted 2,327 exhibits pursuant to Guideline 6 of the Decision of 29 November 2006 and 1,071 exhibits[658] pursuant to Guideline 9 of the Decision of 24 April 2008.

III. Admissibility of Evidence in Relation to the Crimes Committed by Other Parties to the Conflict

279. The Chamber recalls that the principle of *tu quoque* does not constitute a defence under international humanitarian law.[659] Even so, the Chamber held, in connection with the admission of evidence in this case, that the evidence relating to the atrocities committed against the Bosnian Croats could be admitted in the event it went to refuting one of the allegations brought in the Indictment.[660] In this regard, the Chamber recalled, on several occasions, that in accordance with the Tribunal‟s case-law, the evidence going to prove that the Bosnian Muslims committed atrocities

[657] Guideline 6 of the Decision of 29 November 2006; Guideline 9 of the Decision of 24 April 2008.
[658] Prlić Defence: 432 exhibits; Stojić Defence: 267 exhibits; Praljak Defence: 229 exhibits (originally 222, to which 7 exhibits were added following a request for reconsideration); Petković Defence: 106 exhibits; Ćorić Defence: 37 exhibits. *See* also on this point "Presentation of the Defence Cases" in the Chamber‟s review of the procedural history (Annex 2).
[659] *The Prosecutor v. Zoran Kupreškić, Mirjan Kupreškić, Vlatko Kupreškić, Drago Josipović, Dragan Papić, Vladimir Šantić* alias *Vlado*, Case no. IT-95-16-T, "Decision on Evidence of the Good Character of the Accused and the Defence of *Tu Quoque*", public, 17 February 1999, pp. 3 and 4; "Order to Admit Defence Evidence Relative to Christopher Beese", public, 27 September 2006, p. 3; Oral Decision of 16 February 2009, T(F), p. 36878, public session; "Decision on Prosecution Motion to Exclude the Testimony of Dragan Pinjuh", public, 27 February 2009, p. 3; "Order Admitting Evidence Related to Witness Veso Vegar", public, 5 May 2009, pp. 2 and 3; "Decision on the Stojić Defence Motion for the Admission of Documentary Evidence (Cooperation Between the Authorities and the Armed Forces of Herceg-Bosna and the Authorities and the Armed Forces of the ABiH"), public, 21 July 2009, para. 28; "Decision on Stojić Defence Motion for the Admission of Documentary Evidence (Functioning of HVO Municipal Authorities/Brigades and Relationship Between Them, the Bodies of the Operative Zone and HVO Centralized Authority in Mostar)", public, 17 August 2009, paras 28 and 29; "Decision on Stojić Defence Motion for the Admission of Documentary Evidence (Co-Operation between Herceg-Bosna/HVO Authorities and International Organizations; Compliance with International Humanitarian Law Norms)", public, 17 August 2009, para. 22.
[660] *See* "Order to Admit Defence Evidence Relative to Christopher Beese", public, 27 September 2006, p. 3; "Order Admitting Evidence Related to Witness Veso Vegar", public, 5 May 2009, pp. 2 and 3; "Decision on Praljak Defence Motion for Admission of Documentary Evidence", public, 1 April 2010, para. 77; Oral Decision of 3 December 2009, T(F), pp. 47668 and 47669.

against Croatian civilians in the municipalities outside of the scope of the Indictment had no relevance, inasmuch as it did not help to refute the allegations against the Accused in the Indictment.[661] In like manner, the Chamber considered, as did Trial Chamber II in the *Kupreškić* Decision, that the evidence adduced to show that one of the parties to the Croat-Muslim conflict was responsible for the outbreak of the war was not relevant.[662]

280. The Chamber therefore held it incumbent on the party wishing to produce such evidence to explain for each piece of evidence the specific link, particularly geographic and temporal, to the alleged crimes in the municipalities in the Indictment and/or to the alleged responsibility of the Accused for these crimes, regardless of whether the crimes were alleged in connection with a JCE. [663]

281. By way of example, the Chamber did not admit Exhibit 2D 01035, which went to prove that the ABiH had impeded freedom of movement for UNPROFOR, the ICRC and the UNHCR in the municipality of Konjic, inasmuch as the document addressed an issue inadequately defined and the Stojić Defence had not explained the link between the said exhibit and the alleged crimes in the municipalities in the Indictment.[664] On the other hand, the Chamber did admit Exhibit 2D 00484, as this document addressed an issue properly defined and showed a link to the alleged crimes in the municipality of Jablanica, namely, concerning preparations for combat operations by the ABiH in the municipality of Jablanica on 16 April 1993, that is, on the eve of the alleged HVO offensive of 17 April 1993 against a number of villages in

[661] Oral Decision of 3 December 2009, T(F), pp. 47668-47669; "Decision on Stojić Defence Motion for the Admission of Documentary Evidence (Co-Operation between Herceg-Bosna/HVO Authorities and International Organisations; Compliance with International Humanitarian Law Norms)", public, 17 August 2009, para. 22. *See* to this effect *The Prosecutor v. Zoran Kupreškić, Mirjan Kupreškić, Vlatko Kupreškić, Drago Josipović, Dragan Papić, Vladimir Šantić alias Vlado*, Case no. IT-95-16-T, "Decision on Evidence of the Good Character of the Accused and the Defence of *Tu Quoque*", public, 17 February 1999, pp. 3 and 4.

[662] "Decision on Stojić Defence Motion for the Admission of Documentary Evidence (Co-Operation between Herceg-Bosna/HVO Authorities and International Organizations; Compliance with International Humanitarian Law Norms)", public, 17 August 2009, para. 22. *See* to this effect *The Prosecutor v. Zoran Kupreškić, Mirjan Kupreškić, Vlatko Kupreškić, Drago Josipović, Dragan Papić, Vladimir Šantić alias Vlado*, Case no. IT-95-16-T, "Decision on Evidence of the Good Character of the Accused and the Defence of *Tu Quoque*", public, 17 February 1999, pp. 3 and 4.

[663] "Decision on Stojić Defence Motion for the Admission of Documentary Evidence (Co-Operation between Herceg-Bosna/HVO Authorities and International Organisations; Compliance with International Humanitarian Law Norms)", public, 17 August 2009, para. 23; "Decision on Praljak Defence Motion for Admission of Documentary Evidence", public, 1 April 2010, para. 80.

Jablanica. Moreover, the Chamber held that this exhibit presented sufficient indicia of relevance because it could serve to refute the allegation of a broad HVO offensive against Jablanica as part of a plan to subjugate the Muslims of Bosnia.[665]

Heading 2: Standards Governing the Assessment of the Evidence Admitted

282. The Chamber analysed and assessed all the evidence admitted into the record, bearing in mind the hierarchy of evidence dictated by the Rules and the rules for the management of evidence as would ultimately enable the Chamber to adjudicate the case in fairness, in keeping with the spirit of the Statute and general principles of law.[666] Thus, broadly speaking, the Chamber preferred evidence that was either oral and/or put to adversarial argument in the courtroom, namely *viva voce* witnesses and documents admitted through a witness, followed by written statements or interview transcripts, and then documentary evidence admitted by way of written motion.

283. In addition, the Chamber gave consideration to certain specific features in its assessment of the evidence, features relating to (Section 1) *viva voce* witnesses, (Section 2) expert witnesses, (Section 3) documents commented on and introduced through witnesses in court and the documents admitted by way of written motion, Section (4) documents admitted solely for the purpose of testing the credibility of the *viva voce* witnesses, (Section 5) facts admitted by judicial notice, (Section 6) written statements or interview transcripts under Rules 92 *bis* and 92 *quater* of the Rules, (Section 7) statements or testimony of the Accused, (Section 8) corroborating evidence, (Section 9) hearsay and (Section 10) contested documents because they were considered forgeries by certain Parties.

Section 1: *Viva Voce* Witnesses

284. In its assessment of the *viva voce* witnesses, the Chamber gave specific consideration to the attitude, the conduct and the personality of the witnesses who

[664] "Decision on Stojić Defence Motion for the Admission of Documentary Evidence (Co-Operation between Herceg-Bosna/HVO Authorities and International Organizations; Compliance with International Humanitarian Law Norms)", public, 17 August 2009, paras 24-25.
[665] "Decision on the Stojić Defence Motion for the Admission of Documentary Evidence (Cooperation Between the Authorities and the Armed Forces of Herceg-Bosna and the Authorities and the Armed Forces of the ABiH)", public, 21 July 2009, para. 31.

appeared before the Chamber as well as to the time elapsed between the facts as alleged in the Indictment and the testimony of the said witnesses. The credibility of certain witnesses did not always remain constant throughout their testimony and the Chamber had to take into account certain circumstances particular to the witnesses, such as their possible involvement in the events recounted, the fear of self-incrimination, the relationship of the witnesses to the Accused and the possibility of a motive which might, under certain circumstances, call into question the reliability of the testimony. In this regard, the Chamber considered that the testimony *inter alia* of Witnesses *Alojz Arbutina*, *4D AA* and *Boţo Pavlović* had little credibility in view of their relationship to the events or to one of the Accused, and assigned limited weight to their testimony.

285. In general, the Chamber did not hold that minor discrepancies between the testimonies of the witnesses at trial and their prior statements vitiated the credibility of the witness testifying in court or the reliability of his statements.[667] The Chamber gave particular consideration to the fact that significant time had often elapsed between the events, the moment a witness was interviewed in preparation for future testimony, and the moment the witness subsequently testified in court before the Chamber. Nevertheless, certain discrepancies were sufficiently material to call for caution, or to weaken the credibility of a witness‟ testimony, at least in part. This was, for example, the case with *Suad Ĉupina*, who gave inconsistent and unclear statements as to whether there were ABiH prisons in Mostar,[668] and in respect of which the Chamber held that only some information pertaining to the incidents at Mostar was truly credible.

286. Broadly speaking, the Chamber disregarded the testimony of witnesses whose credibility seemed doubtful throughout the session, for example, that of *Mirko Zelenica*, in relation to whom the Chamber found that only some of the documents tendered through him in the hearing and subsequently admitted carried probative value.

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[666] Rule 89 (B) of the Rules.
[667] *Ĉelebići* Appeals Judgement, paras 496-498; *Krajišnik* Judgement, para. 1192; *Simić* Judgement, para. 24; *Kunarac* Judgement, para. 564.
[668] *See* in this regard the "Decision on Slobodan Praljak‟s Request for Investigation of Witness Suad Ćupina for False Testimony", confidential, 3 November 2006, p. 4.

287. Likewise, whenever something a witness said disputed a logical sequence of documents in a manner less than persuasive, the Chamber afforded greater weight to the documentary evidence than to his oral statements.

288. In its Final Trial Brief, the Praljak Defence argues that the so-called "international" witnesses for the Prosecution, such as ECMM and UNPROFOR personnel, were considered to be important and reliable witnesses in the case, despite their inability to provide anything beyond opinions and impressions, and that their testimony and the documents admitted through these witnesses lack probative value, especially in light of their lack of first-hand local knowledge and their inability to evaluate the information received by means of other sources.[669] The Chamber first notes that, at the time this submission was put forward by the Praljak Defence, the Chamber had not yet ruled on the significance and reliability of the witnesses in question; since that time, the Chamber analysed their testimony in the same way as it did the other *viva voce* witnesses, doing so in light of all the evidence admitted into the record. In certain cases, the Chamber did in fact conclude that these witnesses had limited knowledge of the sequence of events and limited preparation for their mission in the field.

Section 2: Experts Under Rule 94 *bis* of the Rules

289. In connection with Rule 94 *bis* of the Rules, the parties presented six expert witnesses for the Prosecution[670] and seven expert witnesses for the Defence.[671] The Chamber also appointed one expert witness.[672] Having heard the Parties through their written submissions as to those experts and the admissibility of their reports, the Chamber admitted 15 expert reports via the testimony of these expert witnesses and also the expert report from the expert witness appointed by the Chamber.[673] Moreover, the Chamber admitted documents put to the expert witnesses during their

[669] Praljak Defence Final Trial Brief, para. 36.
[670] *Robert Donia*, *William Tomljanovich*, *Ewa Tabeau*, *Nicholas Miller*, *Patrick van der Weijden*, and *Andrew Pringle*.
[671] *Slobodan Janković*, *Svetlana Radovanović*, *Milan Cvikl*, *Davor Marijan*, *Josip Jurčević*, *Vlado Šakić* and *Milan Gorjanc*.
[672] This was *Dr Heinrich Pichler*.
[673] Robert Donia (P 09536), William Tomljanovich (P 09545), Ewa Tabeau (P 09835, P 09836, P 09837), Nicholas Miller (P 10239), Patrick van der Weijden (P 09808), Andrew Pringle (P 09549), Slobodan Janković (3D 03208), Svetlana Radovanović (1D 03110), Milan Cvikl (1D 03111), Davor Marijan (2D 02000), Josip Jurčević (3D 03720), Vlado Šakić (3D 03721), Milan Gorjanc (4D 01731), Heinrich Pichler (C 00002).

appearances, pursuant to the Decisions of 13 July 2006 and 24 April 2008.[674] This notwithstanding, the Chamber notes that it could deny the admission into evidence of certain documents tendered by a party claiming that these documents should be admitted on the ground that they were mentioned in the expert reports[675] or in footnotes in these reports.[676] Despite this, the Chamber held that this did not in and of itself justify their admission into evidence.[677]

290. The Chamber recalls that an expert is a person who, due to his knowledge or abilities, may, in certain circumstances, assist the Chamber in understanding or ruling on a point in controversy.[678] An expert witness is obliged to testify "with the utmost neutrality and with scientific objectivity" [679] and is bound to demonstrate independence and impartiality.[680] When assessing expert status, as it was obliged to do in advance of each expert witness appearing, the Chamber gave due consideration to the information and arguments submitted by the parties before ultimately making its determination as to whether the witnesses brought forth were competent to testify as experts.[681]

291. When analysing the expert reports, the Chamber gave consideration to the experts‟ field of professional expertise, their impartiality, the methodology employed

[674] *See* "Order Admitting Evidence Regarding Expert Witness Milan Cvikl", public, 18 February 2009; "Order on Admission of Evidence Relating to Witness *Milan Gorjanc*", public, 14 December 2009.
[675] "Decision on Jadranko Prlić Request for Certification to Appeal and Reconsideration of the Decision of 9 April 2009 (Proposed Evidence Mentioned in the Expert Witness Report of *Milan Cvikl*)", public, 28 May 2009, p. 8; "Decision on the Request of Petković Defence for Admission of Documentary Evidence", 1 June 2010, public, paras 36-38.
[676] "Decision on Jadranko Prlić Request for Certification to Appeal and Reconsideration of the Decision of 9 April 2009 (Proposed Evidence Mentioned in the Expert Witness Report of *Milan Cvikl*)", public, 28 May 2009, p. 8; "Decision on the Request of Petković Defence for Admission of Documentary Evidence", public, 1 June 2010, paras 36-38.
[677] "Decision on Jadranko Prlić Request for Certification to Appeal and Reconsideration of the Decision of 9 April 2009 (Proposed Evidence Mentioned in the Expert Witness Report of *Milan Cvikl*)", public, 28 May 2009, p. 8.
[678] *Krajišnik* Judgement, para. 1193. *See* also *The Prosecutor v. Stanislav Galić*, Case no. IT-98-29-T, "Decision Concerning the Expert Witnesses Ewa Tabeau and Richard Philipps", public, 3 July 2002, pp. 2 and 3.
[679] *Nahimana* Appeals Judgement, para. 199.
[680] *Strugar* Appeals Judgement, para. 58; *The Prosecutor v. Dragomir Milošević*, Case no. IT-98-29/1-T, "Decision on Admission of Expert Report of Robert Donia", 15 February 2007, para. 9; *The Prosecutor v. Milan Martić*, Case no. IT-95-11-T, "Decision on Defence‟s Submission of the Expert Report of Professor Smilja Avramov Pursuant to Rule 94 *bis*", public, 9 November 2006, para. 10.
[681] *See* for example the "Order on Allocation of Time for the Examination of Expert Witness *Milan Gorjanc*", public, 12 October 2009 as well as the oral decisions of 25 April 2006, T(F), pp. 790-791 (in relation to hearing the testimony of expert witness *Robert Donia*) and 26 June 2006, T(F), pp. 3805-3806 (in relation to hearing the testimony of expert witnesses *William Tomljanovich* and *Andrew Pringle*).

in their report, the material available to the experts for conducting their analyses and the credibility of the conclusions drawn in light of these factors and the other evidence admitted.

292. The Chamber analysed the reports and the testimony of the various experts for the Prosecution and for the Defence as well as the one expert appointed by the Chamber, making use in particular of the reports by experts *Slobodan Janković* and *Heinrich Pichler* which were given consideration and analysed in the part of the Judgement relating to the circumstances surrounding the destruction of the bridge at Mostar, as alleged in paragraph 116 of the Indictment.[682] The expert report of *Milan Gorjanc*, for example, was taken into account and was analysed in the parts of the Judgement pertaining to the military structure of the HZ H-B, the international armed conflict, the municipality of Mostar and the Heliodrom detention centre.

293. Nevertheless, inasmuch as the Chamber did not rely on the reports or testimony of experts *Ewa Tabeau,* a demographics expert,[683] who testified for the Prosecution in the case, and *Vlado Šakić*, a Praljak Defence witness, in its Judgement, the Chamber finds it necessary to explain below why it disregarded that testimony and expert reports. Moreover, the Chamber notes that the testimony of *Svetlana Radovanović*, a demographics expert[684] called by the Prlić Defence, and her expert report, were submitted to the Chamber by the Prlić Defence solely to contest the reliability, the relevance and the probative value of *Ewa Tabeau*"s testimony and her expert reports. The Chamber will thus analyse the testimony and the expert reports of *Ewa Tabeau* in light of the one provided by *Svetlana Radovanović*.

I. Expert Reports Admitted through the Two Expert Witnesses Ewa Tabeau and Svetlana Radovanović

294. The Chamber admitted the expert reports by *Ewa Tabeau* on the basis of their *prima facie* probative value,[685] reserving the right to analyse them at the conclusion of

[682] *See* "Destruction of the Old Bridge" in the Chamber"s factual findings concerning the municipality of Mostar.
[683] Ewa Tabeau, T(F), p. 21458.
[684] Svetlana Radovanović, T(F), p. 34847.
[685] *See* the Decision of 13 July 2006, pp. 4 and 5 for the *prima facie* assessment of evidence tendered for admission by the parties. *See* also for this issue the "Order on Admission of Evidence Relating to Witness *Milan Gorjanc*", public, 14 December 2009, p. 3.

the trial in light of all the evidence and the report of *Svetlana Radovanović*, in particular. Thus, by comparing the evidence tendered through these two expert witnesses and through a detailed analysis of *Ewa Tabeau*"s reports, the Chamber determined that it would not rely on Ewa Tabeau"s expert reports in this Judgement.

295. The Chamber admitted four reports through *Ewa Tabeau* and *Svetlana Radovanović*, who testified in August-September 2007 and November 2008, respectively.[686] The reports will be analysed separately, according to the subjects addressed in each one. The Chamber will first examine the report entitled "Killed Persons Related to the Siege of Mostar: a Statistical Analysis of the Mostar War Hospital Books and the Mostar Death Registries", prepared by *Ewa Tabeau* (Tabeau Report 1). The report will also be analysed in light of Section II of the report "A Critical Analysis of the Reports by *Ewa Tabeau*" by *Svetlana Radovanović* entitled: "Critical Analysis of OTP Expert Report: Killed Persons Related to the Siege of Mostar: a Statistical Analysis of the Mostar War Hospital Books and the Mostar Death Registries" (Section II of the *Radovanović* Report). The Chamber will then analyse *Ewa Tabeau*"s report "Wounded Persons Related to the Siege of Mostar: a Statistical Analysis of the Mostar War Hospital Books" (Tabeau Report 2), while continuing to take account of Section II of the *Radovanović* Report, and then, finally, *Ewa Tabeau*"s report "Ethnic Composition, Internally Displaced Persons and Refugees from Eight Municipalities of Herceg-Bosna, 1991 to 1997-1998" (Tabeau Report 3), which will be analysed in light of Section I of *Svetlana Radovanović*"s report entitled "Critical Analysis of OTP Expert Report: Ethnic Composition, Internally Displaced Persons and Refugees in Eight Municipalities in Herceg-Bosna from 1991 to 1997-98" (Section I of the *Radovanović* Report).

A. Analysis of Tabeau Report 1, Particularly in light of Section II of the Radovanović Report

296. *Ewa Tabeau* indicated that the objective of Tabeau Report 1 was to collect reliable statistics concerning the number of deaths caused by armed incidents during

[686] "Order Admitting Evidence Regarding Witness Ewa Tabeau", public, 9 January 2008; "Order Admitting Evidence Regarding Expert Witness *Svetlana Radovanović*", public, 29 January 2009.

the siege of Mostar from May 1993 to around April 1994 and to analyse the specific characteristics of these deaths.[687]

297. Once it has (1) analysed the sources used by expert *Ewa Tabeau* in her report, the Chamber will (2) examine the methodology employed, (3) compare this report with the one by *Svetlana Radovanović*, in order to (4) explain why the Chamber decided not to consider the report in its analysis of the incidents as they pertain to Mostar.

1. Sources

298. The books of the war hospital in East Mostar from 9 May 1993 until 25 May 1994 and the Mostar death registers between 1992 and 1995 are among the sources of Tabeau Report 1 and allowed *Ewa Tabeau* to draw distinctions between the deaths in East Mostar and those outside that geographic area.[688] *Ewa Tabeau* stated that the data for the death registers from Mostar concerned the administrative zones of West Mostar and East Mostar.[689] Therefore, in order to study the registers and conduct its analysis properly, the unit responsible for demographics in the Office of the Prosecutor created the concept of "East Mostar", identifying *inter alia* the places of deaths recorded in the Mostar death registers on a map so as to determine whether the deaths did in fact occur within the geographic area of East Mostar.[690] Concerning the books of the war hospital of East Mostar, *Ewa Tabeau* determined that no geographic criterion was necessary, inasmuch as all of these deaths happened, by definition, in the East Mostar zone.[691] In order to distinguish the deaths of civilians from those of soldiers, *Ewa Tabeau* contrasted the military records of the soldiers and military personnel of the ABiH, the HVO and the VRS who died during the conflict in BiH between April 1992 and about December 1995 with the books of the East Mostar war hospital and the Mostar death registers.[692]

[687] P 09837, p. 1; Ewa Tabeau, T(F), p. 21802.
[688] P 09837, pp. 1 and 2; Ewa Tabeau, T(F), pp. 21802 and 21803. Judge Antonetti considers that some of the statistical elements in the report may be taken into account, as he states in his individual, partly dissenting opinion annexed to this Judgement.
[689] P 09837, p. 3.
[690] P 09837, p. 4.
[691] P 09837, p. 4.
[692] P 09837, p. 2; Ewa Tabeau, T(F), pp. 21803 and 21804.

2. Methodology

299. *Ewa Tabeau* first studied the sources available to her in order to determine the minimum number of deaths in East Mostar during the siege of Mostar.[693] She then compared the information available in the books of the war hospital in East Mostar and in the Mostar death registers in order to evaluate the consistency of the data in both register books, working from the hypothesis that the data from identical categories in both registers would contain similarities.[694] *Ewa Tabeau* considered that, despite the large amount of missing data in both the collections, her comparative analysis had highlighted the consistency of the data there and made it possible to view the data as constituting two reliable samples related to the same population of individuals who died in East Mostar between May 1993 and approximately April 1994.[695]

300. *Ewa Tabeau* next compiled an aggregate list of data matching the individuals identified in both registers, as well as in the military records of the soldiers and military personnel of the ABiH, the HVO and the VRS who died between April 1992 and approximately December 1995 for purposes of obtaining a list of 539 persons she considered to have died in East Mostar as a result of the siege between May 1993 and April 1994 and for whom she had the following information: surname, first name, date of birth and death, as well as a cause of death she characterised as "related to the war" or "unknown".[696] *Ewa Tabeau* indicated that for purposes of her analysis, she determined that the deaths whose causes were unknown were necessarily violent deaths caused by injuries and connected with the siege.[697]

301. On the basis of these 539 persons, *Ewa Tabeau* compiled a table comprising both the figures actually noted in the sources used, including the unknown data, and the estimated figures, in which she redistributed the unknown among the known data.[698]

[693] P 09837, pp. 14-16; Ewa Tabeau, T(F), p. 21802.
[694] P 09837, p. 8.
[695] P 09837, p. 14.
[696] P 09837, pp. 14-16; Ewa Tabeau, T(F), pp. 21808 and 21809.
[697] Ewa Tabeau, T(F), pp. 21867-21869; P 09837, pp. 16 and 17.
[698] P 09837, pp. 16-20.

302. The conclusions of *Ewa Tabeau* are therefore estimates based upon a minimum population of 539 persons who died in East Mostar in the aftermath of the siege between May 1993 and April 1994.[699]

3. Comparison of Ewa Tabeau"s Report with that of Svetlana Radovanović

303. The Prlić Defence compared Tabeau Report 1 with Section II of the Radovanović Report.[700] *Svetlana Radovanović* determined that the conclusions of Tabeau Report 1 did not constitute an objective, expert evaluation of the number of persons killed during the siege of Mostar, inasmuch as the concept of a "siege" does not exist in demographics and analysing the characteristics of a siege is not properly the work of a demographer.[701] She also criticised the deficiencies of the sources used by *Ewa Tabeau*, deeming them poor in quality as well as incomplete.[702] *Svetlana Radovanović* likewise stated that *Ewa Tabeau* had misused the method of data redistribution and criticised her use of the spatial category of East Mostar, for which *Ewa Tabeau* was unable to provide a definition.[703] *Svetlana Radovanović* indicated that no precise spatial definition existed for the concept of East Mostar in the expert community and that, absent a spatial definition for the population under analysis, it was impossible to conduct a reliable statistical study of that zone for a given period.[704]

304. In conclusion, *Svetlana Radovanović* determined that the results obtained by *Ewa Tabeau* were based on biased sources and improper methods, and that the results did not achieve minimal standards of reliability.[705]

4. The Chamber"s Findings Concerning Tabeau Report 1

305. After carefully examining both reports and listening to *Ewa Tabeau* and *Svetlana Radovanović*, the Chamber observes that Tabeau Report 1 uses the term

[699] P 09837, p. 21.
[700] 1D 03110, pp. 34-45.
[701] 1D 03110, p 34; Svetlana Radovanović, T(F), pp. 34922; *Ewa Tabeau*, T(F), p. 21928. The Chamber notes that *Ewa Tabeau* also stated that the concept of a siege was not a demographic concept.
[702] 1D 03110, pp. 34 and 35; Svetlana Radovanović, T(F), p. 34922.
[703] 1D 03110, pp. 34, 35 and 45; Svetlana Radovanović, T(F), pp. 34922-34927, 34960, 34967 and 34968.
[704] 1D 03110, pp. 37-39 and 45; Svetlana Radovanović, T(F), pp. 34922-34924, 34927, 34960, 34967 and 34968.
[705] P 03110, p. 45.

"Siege of East-Mostar" to designate the time running between 9 May 1993 and 25 May 1994.[706]

306. The Chamber notes that the findings of Tabeau Report 1 make no distinction between deaths recorded during the attack on West Mostar on 9-10 May 1993 and the days that followed, and those recorded contemporaneously with the siege, as mentioned in paragraph 110 of the Indictment, from about June 1993 to April 1994.[707]

307. The Chamber observes, moreover, that the available data for the 539 deceased persons analysed are incomplete, particularly in respect of their ethnicity and cause of death.[708] The Chamber finds that *Ewa Tabeau*'s matching of information culled from the data in the books of the war hospital in East-Mostar and among the data in the death registers in Mostar does not compensate for these inadequacies.[709] For instance, *Ewa Tabeau* indicated that the causes of death were not often listed in her sources.[710] In the event that a death was reported in one of the sources without any indication of the cause but did appear in the other sources with a cause of death, *Ewa Tabeau* extrapolated the cause of death from one source to the other.[711] Despite being extrapolated this way, the cause of death remained unknown for 404 deaths out of 539.[712] In order to obtain more complete statistics, *Ewa Tabeau* calculated the percentage of occurrence for each cause of death out of the total number of actually known causes of death, that is, 135, and obtained the following data: 56.3% deaths resulting from shelling, 25.2% persons killed, 13.3% deaths resulting from gunshot wounds, 4.4% deaths due to other injuries sustained, and 0.7% murders.[713] *Ewa Tabeau* justified this choice of methodology by indicating that the method worked

[706] P 09837, p. 1.
[707] P 09837, pp. 1 and 21.
[708] P 09837, pp. 14-17.
[709] P 09837, pp. 9-14 and 17; Ewa Tabeau, T(F), pp. 21881 and 21882, 21896-21898. The only information noted by *Ewa Tabeau* concerned: 76 deaths resulting from shelling, 34 persons killed, 18 fatalities resulting from gunshot wounds, 6 from complications from injuries sustained, and 1 person murdered.
[710] P 09837, pp. 9 and 13; Ewa Tabeau, T(F), pp. 21881 and 21882. The causes of death were unknown for 44.3 % of the individuals identified as deceased in the East Mostar war hospital books and for 89.3 % of the deceased recorded in the Mostar death registers.
[711] P 09837, p. 9.
[712] P 09837, pp. 9-14 and 17; Ewa Tabeau, T(F), pp. 21881 and 21882, 21896-21898. The only information noted by *Ewa Tabeau* concerned: 76 deaths resulting from shelling, 34 persons killed, 18 fatalities resulting from gunshot wounds, 6 from complications from injuries sustained, and 1 person murdered.
[713] P 09837, p. 17.

from the assumption that the unknown causes of death had the same distribution as the known causes of death.[714]

308. After pointing out the deficiencies in the information concerning the causes of death in Tabeau Report 1 – deficiencies since acknowledged by *Ewa Tabeau* – *Svetlana Radovanović* challenged the application of the extrapolation method used in the statistical analysis of small populations.[715] In this manner, applying the extrapolation method to the category "cause of death", in other words, transferring the proportions calculated from small populations – 135 persons in this instance – to larger populations, produced distortions in the percentages obtained for each identified cause of death – in this instance, 539 persons.[716] Use of this method produced an extremely inflated numerical effect, skewing and misrepresenting the percentages. For example, the numbers actually observed might be multiplied by a factor of 4 – as attested to by the number of persons killed as a result of shelling, which went from 76 to 303.[717]

309. The Chamber finds, moreover, that the cause of death is unknown for almost 74.9 % of the 539 deceased persons constituting the base sample for *Ewa Tabeau*"s quantitative analysis, and that the method *Ewa Tabeau* used led her to extrapolate as to the cause of 404 out of the 539 deaths analysed.[718]

310. In conclusion, the geographic and temporal scope of the study carried out, combined with the large ratio of unknowns present among the sources used within the framework of the statistical analysis, and more specifically, the lack of information concerning the causes of death[719] and the ethnic affiliation[720] of the 539 persons constituting the population analysed, as well as the methods used by *Ewa Tabeau* do not provide the Chamber with sufficiently precise information as to the numbers and the data pertaining to the persons who died during the siege of East Mostar. By virtue of the principle *in dubio pro reo*, these ambiguities lead the Chamber to disregard Tabeau Report 1 and not consider it when analysing the events in relation to Mostar.

[714] P 09837, p. 18; Ewa Tabeau, T(F), pp. 21883 and 21884.
[715] 1D 03110, p. 43.
[716] 1D 03110, pp. 43 and 44.
[717] 1D 03110, pp. 43 and 44.
[718] P 09837, p. 17; 1D 03110, pp. 43 and 44.
[719] P 09837, pp. 9 and 11.
[720] P 09837, p. 13.

B. Analysis of Tabeau Report 2, Particularly in Light of Section II of the Radovanović Report

311. *Ewa Tabeau* indicated that the objective of Tabeau Report 2 was to present a statistical analysis of the persons wounded as a result of the violent episodes which took place during the siege of East Mostar between May 1993 and April 1994.[721]

312. After (1) analysing the sources and methodology used by expert *Ewa Tabeau* in her report, the Chamber will (2) compare the report to that of *Svetlana Radovanović*, in order (3) to explain why it decided not to take this report into account in the analysis of the incidents related to Mostar .

1. Sources and Methodology

313. The books from the war hospital in East Mostar between 9 May 1993 and 25 May 1994 constitute the primary source for Tabeau Report 2.[722] *Ewa Tabeau* pointed out that the data appearing in the books of the East Mostar war hospital were only a sample of the true number of persons injured as a result of the violent episodes during the siege of East Mostar between May 1993 and April 1994 and emphasised that the books were incomplete.[723] Concerning the geographic and chronological underpinnings of her analysis, *Ewa Tabeau* defined the siege of Mostar as "an episode of the conflict in Herceg-Bosna that took place in the town of Mostar and its surroundings between 9 May 1993 and 12 April 1994".[724]

314. The East Mostar War Hospital books contained 5,910 entries[725] and covered a period extending from 9 May 1993 until 24 May 1994.[726] The demographics unit of the Office of the Prosecutor originally pointed out the weaknesses, the missing data

[721] P 09835, p. 1.
[722] P 09835, pp. 1, 2-5. Citing the statements by *Jovan Rajkov*, a physician at the East Mostar War Hospital, in her Tabeau Report 2, *Ewa Tabeau* stated that this hospital functioned for the most part, although not exclusively, as a war hospital for the ABiH and that there were other medical centres in Mostar. Judge Antonetti considers that some of the statistical elements in the report may be taken into account, as he states in his individual, partly dissenting opinion annexed to this Judgement.
[723] P 09835, pp. 1, 2, 4, 6 and 7. To distinguish between civilians and soldiers, *Ewa Tabeau* also used the military records of the soldiers and military personnel from the ABiH, the HVO and the VRS who died between approximately April 1992 and December 1995.
[724] P 09835, p. 2.
[725] The Chamber recalls that this is the number of patients whose names appeared in the death registers of the East Mostar War Hospital.
[726] P 09835, p. 5.

and the errors in these registers and sought to "clean up" the problem entries, *inter alia* by eliminating double entries.[727]

315. *Ewa Tabeau* thus based the *Tabeau* Report 2 on a sample of 5,393 entries taken from the registers for which she believed she had sufficient data, namely, at a minimum, their family names and first names.[728] *Ewa Tabeau* pointed out that only 2,549 entries in the books of the East Mostar war hospital included a clearly marked diagnosis relating to the siege of East Mostar between 9 May 1993 and 25 May 1994.[729] *Ewa Tabeau* stated that the 5,393 entries for which she at least had the family names and first names were an estimate – which she considered accurate – of the number of persons injured as a result of the siege of East Mostar between 9 May 1993 and 25 May 1994.[730]

316. At a later stage, *Ewa Tabeau* analysed the data actually available for the 5,393 persons admitted to the war hospital in East Mostar between 9 May 1993 and 25 May 1994 and proceeded to calculate the percentages.[731]

317. Finally, *Ewa Tabeau* studied the chronological distribution of the admissions of the 5,393 persons constituting the analysed sample and concluded that the months from May to September 1993 recorded the highest daily rates of admission of wounded persons at the East Mostar war hospital.[732]

318. In a third phase, *Ewa Tabeau* prepared estimates for a greater number of patients by adding to the 5,393-person sample 474 entries[733] whose data was included in the missing pages or in which no name had been recorded.[734] To compensate for this lack of information, *Ewa Tabeau* redistributed the percentage of unknowns among the known data, and in particular, the information concerning the 52.7 % of individuals for whom the cause of death was unknown but whose names she had and

[727] P 09835, pp. 5-8 and 10.
[728] P 09835, pp. 8 and 10.
[729] P 09835, p. 24.
[730] P 09835, pp. 11, 24 and 25; Ewa Tabeau, T(F), pp. 21825 and 21826.
[731] P 09835, pp. 10, 11, 14, 16 and 19. For example, she observed that 38.7 % of the injuries were the result of shelling, 8.5 % were the result of gunshot wounds, 0.1 % were caused by shelling or gunshot wounds and 52.7 % were due to unknown causes.
[732] P 09835, p. 29.
[733] P 09835, p. 24.
[734] 465 names in the missing pages and 9 incomplete entries: P 09835, pp. 8 and 25-28; Ewa Tabeau, T(F), pp. 21991-21993.

the 474 persons for whom she had no information.[735] *Ewa Tabeau* declared in court that these percentages were based on data for which a cause of injury was expressly recorded in the books of the war hospital of East Mostar.[736] The Chamber observes by majority, with Judge Antonetti dissenting, that despite this, the report clearly indicates that these percentages are derived from the redistribution of unknown causes of injuries – and are therefore based on an estimate.[737]

319. In her conclusions, *Ewa Tabeau* indicated that the siege of Mostar, which took place between 9 May 1993 and 24 May 1994, caused thousands of wounded and hundreds of deaths and stressed that the human consequences of the siege were substantial.[738]

2. Comparison of Ewa Tabeau"s Report with Svetlana Radovanović"s Report

320. The Prlić Defence compared Tabeau Report 2 with Section II of the Radovanović Report, in which *Svetlana Radovanović* criticises the inadequacies of using the books of the East Mostar War Hospital as a source for a statistical study, the absence of any geographic definition for the concept of "East Mostar" and the method of redistribution of the unknowns used by *Tabeau* in her analysis.[739] *Svetlana Radovanović* stated she did not draft a critical analysis of Tabeau Report 2,[740] but added that the criticisms of Tabeau Report 1 set out in Section II of the Radovanović Report were equally applicable to Tabeau Report 2.[741]

3. The Chamber"s Findings Concerning Tabeau Report 2

321. After analysing Tabeau Report 2 and hearing experts *Ewa Tabeau* and *Svetlana Radovanović*, the Chamber observes that *Ewa Tabeau* noted that merely 2,549 out of 5,393 persons from the sample analysed were recorded as injured

[735] P 09835, pp. 10 and 25; Ewa Tabeau, T(F), pp. 21826 and 21904-21906 and 21991-21993. Thus, the percentage of persons injured as a result of shelling went from 38.7 % in the figures actually observed to 81.9 % in the estimates and the percentage of persons wounded by gunshots went from 8.5 % in the figures actually observed to 17.9 % in the estimates.
[736] Ewa Tabeau, T(F), p. 21826.
[737] P 09835, p. 25.
[738] P 09835, p. 33.
[739] 1D 03110, pp. 34-45; Svetlana Radovanović, T(F), pp. 34932, 34960, 34968 and 35099-35101. *See* also details of *Svetlana Radovanović*"s criticism of these issues in the Chamber"s analysis of Tabeau Report 1.
[740] Svetlana Radovanović, T(F), pp. 34852 and 34932.
[741] Svetlana Radovanović, T(F), pp. 34852 and 34932.

between 9 May 1993 and 25 May 1994, were admitted to the East Mostar war hospital and, in her view, had injuries related to the incidents occurring in East Mostar during this period.[742] *Ewa Tabeau* found that 2,549 was the minimum number of persons who suffered injuries as a result of the siege of East Mostar between 9 May 1993 and 25 May 1994.[743] The Chamber observes that *Ewa Tabeau* did not base her calculation on this sample but on a sample of 5,393 persons who are, in her view, a more accurate estimate.[744] The Chamber therefore questions the sample selected by *Ewa Tabeau* for her analysis, inasmuch as it specifically takes into account incomplete entries for which the diagnosis or status of the wounded person is missing.[745] Regarding the geographic and temporal scope of her analysis, *Ewa Tabeau* described the siege of Mostar as an episode in the conflict in Herceg-Bosna which took place in the town of Mostar and its environs between 9 May 1993 and 12 April 1994.[746] Consequently, the findings of the report fail to distinguish between the wounded recorded at the time of the attack on West Mostar on 9 and 10 May 1993 and the days thereafter from those wounded recorded contemporaneously with the siege of East Mostar, as mentioned in paragraph 110 of the Indictment, from about June 1993 to April 1994.[747] In the absence of specifics, any statistical analysis claiming to study the wounded in the siege of East Mostar loses some of its reliability.

322. Moreover, the Chamber notes that the data available for the sample of 5,393 injured persons analysed by *Ewa Tabeau* is incomplete, specifically insofar as concerns the causes of the injuries, and because some data from the report, such as ethnicity, do not appear in the sources *Ewa Tabeau* used in her analysis. The Chamber likewise notes that the statistical methods *Ewa Tabeau* used do not make up for the deficiencies of the East Mostar war hospital books, and in particular, the lack of data on the ethnicity of the victims and the causes of their wounds.

323. Regarding the ethnicity of the victims, the Chamber notes that in the introduction of Tabeau Report 2, *Ewa Tabeau* states that the "Muslim victims from Bosnia" constitute the core of her analysis.[748] Despite that, *Ewa Tabeau* observed that

[742] P 09835, p. 24.
[743] P 09835, p. 24.
[744] P 09835, pp. 11, 24 and 25; Ewa Tabeau, T(F), pp. 21825 and 21826.
[745] P 09835, pp. 10, 24 and 25.
[746] P 09835, p. 2.
[747] P 09835, pp. 24 and 25.
[748] P 09835, p. 1.

the ethnicity of the persons wounded was not recorded in the books of the East Mostar War Hospital.[749] She added that the handwritten books were sometimes illegible and that the spelling of the names was often in doubt.[750] Even so, she determined from her sample of 5,393 persons that 97.72% of those wounded during the siege of Mostar were Muslim.[751]

324. Concerning the causes of the injuries, in her findings *Ewa Tabeau* presented percentages which are in fact adjusted estimates higher than the figures actually found in the books of the East Mostar war hospital.[752] In her sample, *Ewa Tabeau* included the individuals identified in the books as wounded as well as those for whom no diagnosis was available, considering it a given that they were also wounded.[753]

325. In conclusion, the geographic and temporal scope of the study conducted, combined with the high ratio of unknowns appearing in the sources used, and specifically the inadequate information about the causes of the wounds and the complete lack of data on the ethnicity of the 5,393 persons who constituted the sample analysed and the statistical methods to which *Ewa Tabeau* resorted, do not afford the Chamber sufficiently accurate information about the data on the persons wounded during the siege of East Mostar. By virtue of the principle *in dubio pro reo*, these ambiguities lead the Chamber to disregard Tabeau Report 2 and give it no consideration when analysing the events in relation to Mostar.

C. Analysis of Tabeau Report 3, Particularly in Light of Section I of the Radovanović Report

326. *Ewa Tabeau* presented Tabeau Report 3 to the Chamber. The Chamber noted that for purposes of the Report, *Ewa Tabeau* denominated as "Herceg-Bosna" the following eight municipalities: Ĉapljina, Gornji Vakuf, Jablanica, Ljubuški, Mostar, Prozor, Stolac and Vareš. Thus, the area called "Herceg-Bosna" in Tabeau Report 3

[749] P 09835, p. 14; Ewa Tabeau, T(F), pp. 21826 and 21827.
[750] P 09835, p. 14.
[751] P 09835, p. 28; Ewa Tabeau, T(F), pp. 21826 and 21827.
[752] P 09835, pp. 10 and 25. Thus, using this method, *Ewa Tabeau* estimated that 81.9 % of the persons in the sample under analysis were injured as a result of shelling, instead of the 38.7 % recorded in the registers which matched the number of persons in the sample under analysis for whom the causes of their injuries were clearly identified, amounting to 2,559 persons out of the 5,393 individuals making up the sample analysed by *Ewa Tabeau*, and 17.9 % by gunshots, instead of the 8.5 % identified in the registers.
[753] P 09835, pp. 7 and 10.

does not match the borders of the area commonly called "Herceg-Bosna" and particularly the borders of the area defined in paragraph 22 of the Indictment.[754]

327. *Ewa Tabeau* stated that Tabeau Report 3 contained demographic statistics on the ethnic composition of eight municipalities in Bosnia and Herzegovina – Ĉapljina, Gornji Vakuf, Jablanica, Ljubuški, Mostar, Prozor, Stolac and Vareš[755] – as well as on the persons affected by population movements, specifically the minimum number of "internally displaced persons" and "refugees" originally from these municipalities between 1991 and 1997-1998.[756] In addition, the objective of Tabeau Report 3 was to present broad estimates of the number of "refugees" and "internally displaced persons" through "Herceg-Bosna" and BiH from 1991 through 1997-1998.[757]

328. After (1) analysing the sources and (2) the methodology used by expert *Ewa Tabeau* in her report, the Chamber will (3) compare it with the report by *Svetlana Radovanović*, and (4) explain why it chose not to consider the report in its analysis.

1. Sources

329. *Ewa Tabeau* acknowledged in the preamble to her report (3) that it relied on her analysis of information available for the years 1991 and 1997-1998, whereas the Indictment covers a period between November 1991 and April 1994.[758] The reason she gave for this was that there was no source in existence dealing with the causes of the population movements in BiH from November 1991 to 1994.[759]

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[754] S*ee* in this regard P 09836, p. 6; Ewa Tabeau, T(F), pp. 21467; Indictment, para. 22: "According to Article 2 of the 18 November 1991 Decision on the Establishment of the HZ H-B, Herceg-Bosna consisted of the following municipalities in the territory of Bosnia and Hercegovina: Jajce, Kreševo, Busovaĉa, Vitez, Novi Travnik, Travnik, Kiseljak, Fojnica, Kakanj, Vareš, Kotor Varoš, Tomislavgrad, Livno, Kupres, Bugojno, Gornji Vakuf, Prozor, Konjic, Jablanica, Posušje, Mostar, Široki Brijeg, Grude, Ljubuški, Ĉitluk, Ĉapljina, Neum, Stolac and parts of Skender Vakuf (Dobretići) and Trebinje (Ravno). By virtue of Article 4 of the same Decision, the municipality of Ţepĉe was added to Herceg-Bosna in about October 1992."

[755] P 09836, pp. 1 and 6. "For the purposes of this study, the Herceg-Bosna area is defined as consisting of the municipalities listed below. Except for Mostar and Stolac, all other municipalities remained unchanged (pre- and post-war municipalities are the same). Mostar was split into 8 smaller Post-Dayton municipalities and Stolac in 2". Ewa Tabeau, T(F), p. 21467.

[756] P 09836, p. 4; Ewa Tabeau, T(F), pp. 21466, 21467, 21497 and 21498.

[757] P 09836, pp. 4 and 52-54.

[758] P 09836, p. 5.

[759] P 09836, p. 5; Ewa Tabeau, T(F), pp. 21466-21469. Judge Antonetti considers that some of the statistical elements in the report may be taken into account, as he states in his separate, partly dissenting opinion annexed to this Judgement.

330. Tabeau Report 3 uses as its primary sources the census of 1991 of the population of BiH, conducted by the RSBiH statistics bureau ("Census of 1991")[760] and the voter registers of 1997-1998, compiled by the Organization for Security and Cooperation in Europe (OSCE) ("Voter Registers").[761]

331. The Census of 1991 was conducted between 1 and 30 April 1991,[762] and counted all the residents of BiH and the citizens of BiH who had settled abroad with members of their families as of the date of the census.[763] *Ewa Tabeau* considered that the Census of 1991 was a reliable source, even though she pointed out frequent errors in the data, especially in names, and the inclusion of double entries.[764] She indicated that the errors in the names had been corrected with computer software and manual verification by native speakers from Bosnia and Herzegovina.[765] The expert added that all the analyses in Tabeau Report 3 were done for four distinct ethnic groups on the basis of the declarations of ethnicity made during the Census of 1991: Serbian, Croatian, Muslim and "other".[766]

332. The Voter Registers of 1997-1998, another source for Tabeau Report 3, include data on the residents of BiH and individuals originally from BiH residing abroad,[767] over 18 years of age and enrolled in the Voters" Registers.[768] *Ewa Tabeau* pointed out that the Voter Registers contained name errors similar to those in the

[760] P 09836, pp. 4, 5 and 63; Ewa Tabeau, T(F), pp. 21467-21469.
[761] P 09836, pp. 4 and 5 and 88-90 (this annex concerns the OSCE Voter Registers); Ewa Tabeau, T(F), pp. 21467-21469; P 10739 under seal; P 10738; P10737; Svetlana Radovanović, T(F), pp. 35041-35045, private session; Svetlana Radovanović, T(F), pp. 35049-35051 and 35041-35060. In the alternative, *Ewa Tabeau* used the database of refugees and displaced persons jointly established by the UNHCR and the government of Bosnia and Herzegovina in 1999 and 2000 to provide context, without using its data in her statistical analysis. P 09836, pp. 4, 5 and 91-93; Ewa Tabeau, T(F), pp. 21486-21487.
[762] P 09836, pp. 4 and 63.
[763] P 09836, pp. 4 and 63. *See* also the additional explanations concerning the Census of 1991 on pages 63-87 of Tabeau Report 3.
[764] P 09836, p. 63; Ewa Tabeau, T(F), pp. 21473-21475, 21478, 21915 and 21916.
[765] P 09836, p. 63; Ewa Tabeau, T(F), pp. 21473-21478 and 21921-21922.
[766] P 09836, pp. 63 and 64; Ewa Tabeau, T(F), pp. 21500, 21854 and 21934. *Ewa Tabeau* also stated that during the Census of 1991, ethnicity was declared on a voluntary basis and reflected the subjective viewpoint of the individuals surveyed and that certain persons refused to specify their ethnic identity, thus preferring to state that they were Yugoslavs.
[767] Ewa Tabeau, T(F), p. 21483.
[768] P 09836, p. 4; Ewa Tabeau, T(F), p. 21483.

Census of 1991, which were corrected using techniques identical to those used previously.[769]

333. *Ewa Tabeau* considered that the municipality in which enrolment in the Voter Registers occurred served as a good indicator for identifying the municipalities where the voters lived at the time of registration in 1997-1998.[770] However, she acknowledged that enrolment in the Voter Registers was voluntary and that the Voter Registers therefore represented only a sampling of the overall post-war population.[771] After studying the Voter Registers of 1997-1998, *Ewa Tabeau* established a consolidated database for those two years and identified matches between the data from the Census of 1991, obtaining a sample of 2,125,999 persons recorded both in the Voter Registers of 1997-1998 and in the Census of 1991.[772] *Ewa Tabeau* considered that the combined database constituted a sufficiently broad and reliable sample of the population over 18 years of age for her analysis of the population movements of individuals originally from "Herceg-Bosna" between 1991 and 1997-1998.[773]

2. Methodology

334. The Chamber points out that Tabeau Report 3 deals with an analysis of three variables: the place of residence in 1991, the place of residence in 1997-1998 and ethnic affiliation.[774] *Ewa Tabeau* recalled that the Census of 1991 contained data on the ethnicity and place of residence of the individuals in 1991 whereas the Voter Registers contained information only on the place of residence of the voters registered in 1997-1998.[775] Consequently, *Ewa Tabeau* combined the two sources to obtain a single database including the 3 variables, on the basis of which she constructed her

[769] P 09836, pp. 63, 88 and 89. The Voter Registers contained the following information: last name, first names, gender, date of birth and personal identification number, as well as: municipality of residence in 1991 as reported in the Census of 1991; the municipality of residence in 1997-1998 as declared by that person; the municipality or country where registration took place in 1997-1998 and the municipality in which the person desired to vote in 1997-1998.
[770] P 09836, p. 88.
[771] P 09836, p. 89; Ewa Tabeau, T(F), pp. 21956 and 21957.
[772] P 09836, pp. 88 and 89; Ewa Tabeau, T(F), pp. 21484, 21485 and 21511. *Ewa Tabeau* stated that matching these two sources was facilitated by the fact that only those persons surveyed in 1991 could sign up for the Voter Registers in 1997-1998.
[773] P 09836, pp. 4 and 89; Ewa Tabeau, T(F), p. 21497.
[774] P 09836, p. 94.
[775] P 09836, p. 94.

statistical analysis.[776] Excluded from this database were *inter alia* persons born after 1980, inasmuch as they were by definition not included in the Voter Registers in 1997-1998.[777]

335. *Ewa Tabeau* studied the 142,204 persons listed in the Census of 1991 as domiciled in "Herceg-Bosna" and also appearing in the Voter Registers of 1997-1998, whether domiciled in "Herceg-Bosna", in other regions of BiH or abroad in 1997-1998, in order to determine whether they had changed domicile between 1991 and 1997-1998, [778] and to assess the changes in the ethnic composition of the municipalities of "Herceg-Bosna" between 1991 and 1997-1998.[779]

336. *Ewa Tabeau* first studied the ethnic distribution of the population of each municipality in what she defined as "Herceg-Bosna" between 1991 and 1997-1998.[780] She thus compared the ethnic distribution of the 231,610 individuals domiciled in "Herceg-Bosna" in 1991 to the ethnic distribution of the 118,792 persons in the Voter Registers in 1997-1998 in "Herceg-Bosna" whom she considered domiciled in "Herceg-Bosna" in 1997-98.[781]

337. *Ewa Tabeau* concluded that the changes in the ethnic composition observed in the municipalities of "Herceg-Bosna" between 1991 and 1997-1998 suggested that substantial movements of population occurred in this area at the time of the conflict in "Herceg-Bosna" between 1991 and 1994.[782]

338. *Ewa Tabeau* then studied the dynamics of the changes of residence between 1991 and 1997-1998 of the 142,204 persons domiciled in "Herceg-Bosna" according to the Census of 1991 and likewise appearing in the Voter Registers of 1997-1998,

[776] P 09836, p. 94; Ewa Tabeau, T(F), pp. 21482-21486.
[777] P 09836, pp. 33, 89, 95 and 96. Ewa Tabeau, T(F), pp. 21478, 21479, 21485, 21507 and 21508. This combination had the following results: concerning the 2,125,999 persons (2.13 million) recorded both in the Voter Registers of 1997-1998 and in the Census of 1991, 231,610 persons were domiciled in "Herceg-Bosna" in 1991 and of these 231,610 persons domiciled in "Herceg-Bosna" in 1991, 142,204 were identified in the Voter Registers of 1997-1998 as domiciled in Bosnia and Herzegovina or abroad and 118,792 of them had expressed the desire to vote in "Herceg-Bosna" in 1997-98.
[778] P 09836, pp. 24 and 25; Ewa Tabeau, T(F), pp. 21484-21486.
[779] P 09836, pp. 36-59.
[780] P 09836, pp. 37-41.
[781] P 09836, pp. 88, 95 and 96. Ewa Tabeau, T(F), pp. 21478, 21479 and 21485. *Ewa Tabeau* considered the municipality in which the enrolment in the Voter Register took place to be such a reliable indicator for identifying the municipality where a voter was living in 1997-1998 that she defined that municipality as the place of residence in 1997-1998.
[782] P 09836, pp. 32 and 33.

whether these persons were domiciled in "Herceg-Bosna", in other regions of BiH or abroad in 1997-1998.[783] *Ewa Tabeau* added that she had used a statistical, not a legal, definition of the terms "refugees" and "internally displaced persons" in her Tabeau Report 3.[784] Thus, every person residing in 1997-1998, in a municipality different from the one where they resided in 1991 was characterised by *Ewa Tabeau* as an "internally displaced person"[785] and any person residing abroad in 1997-1998 who lived in BiH in 1991 was characterised by *Ewa Tabeau* as a "refugee".[786] The Chamber notes that *Ewa Tabeau* included in the category of "refugees" persons already residing abroad – even temporarily – in 1991 and considered that, independent of the date on which the persons left BiH, they had not returned to BiH prior to 1998, potentially because of the conflict.[787] *Ewa Tabeau* said that the choice of the terms "refugees" and "internally displaced persons" was explained by the fact that the objective of Tabeau Report 3 was to measure the consequences of a conflict on the population movements in a given territory and that more neutral terms such as "internal migration" or "external migration" failed to capture the connection between such movements and the conflict.[788]

339. While indicating that she had not taken into account the potential causes of the population movements between 1991 and 1997-1998, *Ewa Tabeau* stated that the typical causes of migration, such as employment, housing or education, did not factor in during the conflict and that the observed phenomenon of migration she described as "very unusual" was attributable to the conflict in BiH.[789] During her testimony, *Ewa Tabeau* also relied on the data in the database on the refugees and displaced persons established jointly by the UNHCR and the government of Bosnia-Herzegovina in 1999 and 2000[790] which were used to provide context for her statistical analysis.[791]

340. *Ewa Tabeau* then calculated the ethnic distribution of all the persons identified as "internally displaced persons" and "refugees", that is 61,487 persons out of the

[783] P 09836, pp. 24 and 25; Ewa Tabeau, T(F), pp. 21484, 21485 and 21504.
[784] P 09836, pp. 10 and 11; Ewa Tabeau, T(F), pp. 21502-21505, 21530-21534.
[785] P 09836, p. 10; Ewa Tabeau, T(F), pp. 21502, 21502-21504, 21533 and 21534.
[786] P 09836, pp. 9, 11 and 24; Ewa Tabeau, T(F), pp. 21502-21505.
[787] P 09836, pp. 9, 5 and 24; Ewa Tabeau, T(F), pp. 21502-21505. *See* also in this respect pages 77 to 87 of Tabeau Report 3, inasmuch as they provide additional details concerning the statistical use of persons residing abroad.
[788] Ewa Tabeau, T(F), pp. 21929 and 21930.
[789] P 09836, pp. 10, 11 and 34; Ewa Tabeau, T(F), pp. 21548-21551, 21556 and 21557.
[790] P 09836, pp. 4, 5 and 91-93; Ewa Tabeau, T(F), pp. 21469.

sample of 142,204 persons analysed and concluded that 43.4 % were Muslims, 25.6 % Croats, 23.8 % Serbs and 7.3 % a different ethnicity.[792]

341. *Ewa Tabeau* estimated the minimum number of "internally displaced persons" and "refugees" originally from "Herceg-Bosna" to be 61,487 but stated that the figure of 101,107[793] constituted a more thorough estimate of this population, whose precise number remained unknown.[794] Relying on the "proportional" method, *Ewa Tabeau* then applied the observed ethnic distribution in the sample of 61,487 persons representing the minimum number of "internally displaced persons" and "refugees" originally from Herceg-Bosna to the sample of 101,107 persons constituting, in her view, a more thorough estimate of this population.[795]

342. Lastly, *Ewa Tabeau* estimated that the total number of refugees" and "internally displaced persons" in all of BiH amounted to 1,306,377 persons.[796] Ewa Tabeau concluded that non-Croats – Muslims, Serbs and others – were the ones most affected by the conflict inasmuch as they constituted the largest share of the internally displaced persons" and "refugees".[797]

3. Comparison of Ewa Tabeau"s Report with that of Svetlana Radovanović

343. The Prlić Defence compared Tabeau Report 3 with Section I of the Radovanović Report in which *Svetlana Radovanović* criticised Tabeau Report 3 and emphasised the deficiencies of *Ewa Tabeau's* sources which contain numerous errors and resort to unconventional statistical methods for conducting an analysis of this sort, and in particular, criticised the use of the data matching method and the nature of the findings of Tabeau Report 3.[798]

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[791] Ewa Tabeau, T(F), pp. 21487, 21552 and 21553.
[792] P 09836, pp. 42 to 46; Ewa Tabeau, T(F), pp. 21524-21528 and 21539-21545.
[793] P 09836, p. 24.
[794] P 09836, pp. 33 and 47-51.
[795] P 09836, pp. 47-51. *Ewa Tabeau* concluded that the ethnic distribution of the 101,107 "refugees" and "internally displaced persons" from Herceg-Bosna was as follows: 26,304 Serbs, 40,266 Muslims, 25,147 Croats and 9,391 others.
[796] P 09836, pp. 52-54. Ewa Tabeau also applied the proportional method to identify the ethnic make-up of the "refugees" and "internally displaced persons" within the territory of BiH.
[797] P 09836, p. 34.
[798] 1D 03110, pp. 8 and 28-32; Svetlana Radovanović, T(F), pp. 34863, 34864, 34870, 34871, 34880-34881 and 34918; P 10758, Svetlana Radovanović, T(F), pp. 35088-35093.

344. *Svetlana Radovanović* indicated that she had never seen an expert report whose objective was an evaluation of the structure of a population and the number of refugees and for which the Voter Registers constituted the primary source.[799] *Svetlana Radovanović* specifically added that since registration for the Voter Registers was voluntary, this clearly affected the reliability of that source.[800]

345. *Svetlana Radovanović* likewise criticised the corrections made by *Ewa Tabeau* to the data from the Census of 1991 and the Voter Registers of 1997-1998, which she described as "arbitrary" and which, in her view, skewed the sources and made resorting to the proportional method impracticable, inasmuch as the accuracy of the sources is a prerequisite for applying this method.[801]

346. *Svetlana Radovanović* then pointed out a problem in relation to the dates of the sources used – the Census of 1991 and the Voter Registers of 1997-98 – indicating that *Ewa Tabeau* was drawing conclusions about the population movement between 1991 and 1994, even though she admitted that there was no data in existence for the said period.[802]

347. Furthermore, *Svetlana Radovanović* criticised the data matching method *Ewa Tabeau* used to consolidate data from the Census of 1991 and data from the Voter Registers for 1997-1998 in order to obtain a single database.[803] *Svetlana Radovanović* considered it wrong, from a methodological standpoint, to match data from two sources which do not contain the same type of information.[804] Moreover, as far as determination of ethnicity is concerned, *Svetlana Radovanović* pointed out that the statement of ethnicity at the time of the Census of 1991 was made on a voluntary basis and that ethnicity remained a subjective criterion. [805]

[799] 1D 03110, pp. 8 and 21; Svetlana Radovanović, T(F), pp. 34870-34873, 35011, 35012, 35016 and 35017.
[800] Svetlana Radovanović, T(F), pp. 34875 and 34950.
[801] 1D 03110, pp. 23 and 24.
[802] 1D 03110, pp. 7 and 8.
[803] 1D 03110, pp. 28-31; Svetlana Radovanović, T(F), pp. 35036 and 35037; P 09836, pp. 63 and 94. The Census of 1991 contained information on the ethnicity and the place of residence in 1991 of the persons surveyed whereas the Voter Registers contained information on the place of residence of the voters registered in 1997-1998.
[804] 1D 03110, pp. 28-31; Svetlana Radovanović, T(F), pp. 34910; P 09836, p. 94.
[805] Svetlana Radovanović, T(F), pp. 34910-34914.

348. Finally, *Svetlana Radovanović* strongly criticised *Ewa Tabeau*"s use of the so-called "proportion" method.[806]

349. According to *Svetlana Radovanović*, *Ewa Tabeau*"s findings concerning the changes in the ethnic structure of the population analysed showcase mistaken conclusions and are not introduced appropriately.[807] In her view, *Ewa Tabeau* was unable to demonstrate at what moment between 1991 and 1997-1998 the demographic changes she observed had taken place but nonetheless concluded that significant changes had occurred in the ethnic composition of the municipalities of "Herceg-Bosna" during the conflict from 1991 to 1994, even though she acknowledged that no data was available for that period.[808]

350. Insofar as the changes in residence of the persons constituting the population analysed by *Ewa Tabeau* are concerned, *Svetlana Radovanović* disputed the use of the terms "refugee" and "internally displaced person", recalling that there was no statistical definition for these concepts and that *Ewa Tabeau* had treated any change in residence between 1991 and 1997-1998 as a forcible removal without any consideration to the other sources of migration, such as economic migration.[809] According to *Svetlana Radovanović*, the fact that *Ewa Tabeau* considered that even economic migrants prior to 1991 were to be treated as "refugees", inasmuch as, without the conflict, persons expatriated and living abroad before 1991 might perhaps have returned to BiH in 1997-1998, was sheer speculation.[810] *Svetlana Radovanović* also criticised the overall estimate of the total number of "refugees" and "internally displaced persons" proposed by *Ewa Tabeau* for the territory she calls "Herceg-Bosna" and the territory of BiH as a whole.[811]

4. The Chamber"s Findings Concerning Tabeau Report 3

351. After carefully reviewing the two reports and hearing *Ewa Tabeau* and *Svetlana Radovanović*, the Chamber observes that Tabeau Report 3 provides statistics on the ethnic composition of the population of eight municipalities of Bosnia and

[806] 1D 03110, p. 9; Svetlana Radovanović, T(F), pp. 35086-35093. *Svetlana Radovanović* said that the proportional method was used incorrectly by *Ewa Tabeau*.
[807] 1D 03110, p. 9; Svetlana Radovanović, T(F), pp. 34907 and 34908.
[808] 1D 03110, pp. 9 and 14.
[809] 1D 03110, pp. 9 and 18-19; Svetlana Radovanović, T(F), p. 34948.
[810] P 03110, p. 9.

Herzegovina – Ĉapljina, Gornji Vakuf, Jablanica, Ljubuški, Mostar, Prozor, Stolac and Vareš – which form for purposes of *Ewa Tabeau*'s analysis, the area she calls "Herceg-Bosna",[812] and identifies the minimum number of "internally displaced persons" and "refugees" originally from these municipalities for the period 1991 to 1998.[813] The Chamber likewise notes that *Ewa Tabeau* drew conclusions concerning the population movements which took place during the conflict in BiH between 1991 and 1994.[814]

352. The Chamber observes that *Ewa Tabeau* has acknowledged that Tabeau Report 3 was based on the analysis of information available for the years 1991 and 1997-1998, whereas the Indictment covers a period between November 1991 to April 1994.[815] Her explanation for this was that there were no sources for the years 1991 and 1994.[816]

353. The Chamber also notes that *Ewa Tabeau's* use of the term "Herceg-Bosna" in Tabeau Report 3 does not match the borders of the area commonly referred to as "Herceg-Bosna", as more specifically defined in paragraph 22 of the Indictment.[817]

354. In addition, the Chamber notes that *Ewa Tabeau* considered all the changes of residence between 1991 and 1997-1998 to be forcible displacements yet acknowledged that she possessed no information on the causes of these displacements.[818] In this regard, the Chamber observes that *Ewa Tabeau* characterised as a "refugee" any person changing their country of residence between 1991 and 1997-1998 and as an "internally displaced person" any person changing their place of

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[811] P 03110, p. 9.
[812] P 09836, pp. 1 and 6. "For the purposes of this study, the Herceg-Bosna area is defined as consisting of the municipalities listed below. Except for Mostar and Stolac, all other municipalities remained unchanged (pre- and post-war municipalities are the same). Mostar was split into 8 smaller Post-Dayton municipalities and Stolac in 2"; Ewa Tabeau, T(F), p. 21467.
[813] P 09836, p. 4; Ewa Tabeau, T(F), pp. 21497 and 21498.
[814] P 09836, pp. 32 and 33.
[815] P 09836, p. 5; Ewa Tabeau, T(F), pp. 21467 and 21468.
[816] P 09836, p. 5.
[817] P 09836, p. 6; Ewa Tabeau, T(F), pp. 21467; Indictment, para. 22: "According to Article 2 of the 18 November 1991 Decision on the Establishment of the HZ H-B, Herceg-Bosna consisted of the following municipalities in the territory of BiH: Jajce, Kreševo, Busovaĉa, Vitez, Novi Travnik, Travnik, Kiseljak, Fojnica, Kakanj, Vareš, Kotor Varoš, Tomislavgrad, Livno, Kupres, Bugojno, Gornji Vakuf, Prozor, Konjic, Jablanica, Posušje, Mostar, Široki Brijeg, Grude, Ljubuški, Ĉitluk, Ĉapljina, Neum, Stolac and parts of Skender Vakuf (Dobretići) and Trebinje (Ravno). By virtue of Article 4 of the same Decision, the municipality of Ţepĉe was added to Herceg-Bosna in about October 1992."
[818] P 09836, pp. 10 and 11; Ewa Tabeau, T(F), pp. 21950-21953.

residence within the borders of BiH between 1991 and 1997-1998, despite having no information whatsoever as to what caused the changes of residency.[819]

355. The Chamber observes that both experts admitted it was impossible to determine the precise dates of the changes in residence of the population or the reasons for the departures because there are no relevant sources.[820] As a consequence, the Chamber observes that the periods covered by the sources used in Tabeau Report 3, namely the Census of 1991 and the Voter Registers of 1997-1998, provide data for the years 1991 and 1997-1998 but none for the period covered by the Indictment.[821] Accordingly, the Chamber holds that the use of sources too removed in time from the temporal scope of the Indictment, the complete lack of information on the dates of the changes of residency between 1991 and 1997-1998, the underlying reasons explaining the population movements during this period and the statistical methods *Ewa Tabeau* used preclude the Chamber from assigning any probative value to Tabeau Report 3.

II. Expert Report Admitted through Expert Witness Vlado Šakić

356. On 1 December 2009, the Chamber admitted the expert report of *Vlado Šakić* – who testified on 5 and 6 October 2009 – adduced by the Praljak Defence and entitled "The War in Bosnia and Herzegovina, 1991-1995, a Socio-Psychological Expertise", the objective of which was an analysis of human conduct, specifically in wartime, and an application of this analysis to the war in BiH in order to better understand it.[822]

357. Once it has (A) provided an introduction to the objectives of this expert report, the Chamber will (B) explain the reasons why it rejected the factual portions of Expert *Vlado Šakić*"s testimony and report as they relate to the responsibility of the Accused in this Judgement.

A. General Objective of the Expert Report

358. Analysis of the expert report and testimony by *Vlado Šakić* makes it clear that the objective of his report was to analyse and highlight the difficulties which superiors

[819] P 09836, pp. 10 and 11; Ewa Tabeau, T(F), pp. 21929, 21930 and 21950-21953.
[820] P 09836, p. 5; Ewa Tabeau, T(F), p. 21552.
[821] P 09836, p. 5.
[822] 3D 03721.

may encounter in ensuring effective control of their troops.[823] Thus, *Vlado Šakić* attempted to explain that, within a group,[824]particularly during wartime, the members are difficult to control for several reasons:

– within the same group, several types of personalities may conflict with one another (leaders, followers, conformists, etc.).[825] Thus, this would make it very difficult to control them individually;[826]

– when the group becomes too large,[827] the superior no longer interacts directly with his subordinates.[828] Thus, the commander, no longer having any real contact with his soldiers, would no longer control their actions.[829] Moreover, the commanders could anticipate "negative reactions" from their troops to enemy actions only if they possessed adequate knowledge in the field of psychology.[830] As most of them would not, it would be difficult for them to control their soldiers;[831]

– the conduct of soldiers rarely stems from orders given by a commander but results from a social situation and the powerful emotional state in which the soldiers find themselves.[832]

359. In his report, *Vlado Šakić* then applied these principles generally to the conflict in BiH, and explained the difficulties which the "political and military authorities" may have faced in BiH. He thus asserted that, in his opinion, due to the total lack of readiness for the conflict on the part of the "political authorities", defence groups were formed spontaneously, outside of institutional settings.[833] These allegedly comprised volunteers and civilians as well as former JNA personnel, which a small proportion of criminals may have joined.[834] According to *Vlado Šakić*, under

[823] 3D 03721, pp. 16, 22, 29 and 88.
[824] The Chamber notes that *Vlado Šakić* remained very evasive in his definition of the group but finds that, in most cases, he meant armed groups.
[825] 3D 03721, p. 16.
[826] 3D 03721, p. 16.
[827] The Chamber observes that *Vlado Šakić* does not specify the size at which a group becomes too large for a commander to have direct interaction with his subordinates.
[828] 3D 03721, p. 22.
[829] 3D 03721, p. 22.
[830] 3D 03721, p. 22.
[831] 3D 03721, p. 22.
[832] 3D 03721, p. 29.
[833] 3D 03721, p. 88.
[834] 3D 03721, p. 88.

these circumstances, it was impossible for the "political and military powers" in BiH to establish control over these groups.[835]

360. Broadly speaking, the Chamber considers that the Praljak Defence presented *Vlado Šakić'*s expert report as part of its arguments pertaining to the responsibility of the Accused pursuant to Article 7(1) – ordering – and Article 7(3) of the Statute. The Chamber observes that *Vlado Šakić* concluded in his report *inter alia* that the groups described earlier as having committed crimes in BiH were not under the control of those in power (whether political or military) and were left to themselves.[836]

B. Analysis of Issues Related to Vlado Šakić's Expert Report and Testimony

361. After an analysis of the report, the examination-in-chief and the cross-examination of *Vlado Šakić*, as well as the documents tendered during his testimony, the Chamber notes that several problems were brought to the fore mainly during the Prosecution"s cross-examination that affect *Vlado Šakić*"s (1) impartiality and (2) his own credibility and the credibility and probative value of his report.

1. Problems Related to Vlado Šakić"s Impartiality

362. The Chamber notes that during *Vlado Šakić*"s testimony in court, the Prosecution attempted to challenge *Vlado Šakić*"s impartiality by (a) calling into doubt the impartiality of the Ivo Pilar Institute directed by *Vlado Šakić* and (b) by directly attacking the impartiality of *Vlado Šakić* himself.

a) Calling into Doubt the Impartiality of the Ivo Pilar Institute Directed by Vlado Šakić

363. The Prosecution emphasised that the Institute directed by *Vlado Šakić* was a scientific institute created by the Croatian Government as a vehicle for its ideas and to ensure intellectual support.[837] To this effect, the Prosecution questioned *Vlado Šakić* (i) about the origins of the Ivo Pilar Institute and its ties to the Croatian government

[835] 3D 03721, pp. 88 and 89. The Chamber notes that *Vlado Šakić* remains quite vague in his expert report as to what he means by the "political and military authorities in BiH". The Chamber is thus unable to determine whether he means the authorities of BiH, the authorities of Herceg-Bosna, the Serbian authorities or even all these authorities.
[836] 3D 03721, pp. 88 and 89.
[837] Vlado Šakić, T(F), p. 45693.

generally and (ii) attempted to demonstrate the ties between the Institute and the Croatian Intelligence Services.

i. Origins of the Ivo Pilar Institute and Ties to the Croatian Government

364. According to *Vlado Šakić*, the Institute was founded at the beginning of the 1990s when Croatia became an independent State.[838] During his testimony, *Vlado Šakić* stated that the Ivo Pilar Institute was financed in the same way as all the public institutes and public universities in Croatia, namely, through the budget of the Ministry of Education and Science.[839] It was therefore, as it is today, a public research institute.[840] In addition, he indicated that the Institute also received donations from both Croatian and international institutions and actors as well as from various foundations and patrons who might have been actors in social, economic or political life.[841]l

365. *Vlado Šakić* stated moreover that the director of the Institute was elected by a management board, comprised of scholars, which based itself on the opinions of the Institute"s scientific board.[842] According to *Vlado Šakić*, all of the candidates were evaluated by the scientific board.[843] He added further that the management board included members appointed by the Ministry of Education and Science but that that Ministry did not involve itself with the scientific work of the Institute and did nothing beyond monitoring whether procedures were followed.[844]

ii. Ties between the Ivo Pilar Institute and Croatian Intelligence Services

366. The Prosecution sought to highlight the ties which may have existed between the Ivo Pilar Institute and certain key figures in Croatian intelligence. Nevertheless, *Vlado Šakić* denied all ties between the IPD[845] and the Ivo Pilar Institute.[846] *Vlado Šakić* denied such ties, despite the fact that certain founding members of the

[838] Vlado Šakić, T(F), p. 45597.
[839] Vlado Šakić, T(F), p. 45601.
[840] Vlado Šakić, T(F), p. 45601.
[841] Vlado Šakić, T(F), p. 45601.
[842] Vlado Šakić, T(F), pp. 45601 and 45602.
[843] Vlado Šakić, T(F), p. 45602.
[844] Vlado Šakić, T(F), p. 45602.
[845] The Chamber notes that during *Vlado Šakić*"s testimony, the Prosecution defined the IPD as the Croatian Propaganda Service, whereas the Accused Praljak asserted that it was the Department for Information and Psychology Activities – *see* Vlado Šakić, T(F), p. 45698.
[846] Vlado Šakić, T(F), p. 45698.

Institute[847] or declared supporters[848] were also affiliated with or members of the IPD.[849]

367. In addition to this, the Prosecution presented an article which appeared on 3 May 1996 in the Croatian magazine "*Nacional*" stating that most of the persons running the Ivo Pilar Institute in 1996 either worked for or cooperated with the IPD, *inter alia* Miroslav TuĊman – the chief of Croatian secret services,[850] at an unspecified date but at least as early as 1996 – and *Miomir Ţuţul*.[851] The article thus argues that in February 1996 the Ivo Pilar Institute provided the results of a public opinion survey concerning an issue in the elections – a survey presented as confidential and scientific in purpose – to the office of the President of Croatia, as well as to the Croatian HDZ.[852]

b) Calling into Doubt Vlado Šakić"s Impartiality as an Expert

368. The Prosecution likewise sought to demonstrate that there were links between *Vlado Šakić* and the government of Franjo TuĊman, as well as his ties with the Croatian intelligence service.

369. Thus, it appeared that *Vlado Šakić* had held posts within the Croatian government: in 1991, he worked at the Ministry of Justice and Administration of the Republic of Croatia and was responsible for the enforcement of criminal sentences until September 1992.[853] In September 1992, he became the Deputy Minister of Justice in the Republic of Croatia, which made him the "head of the prison system in Croatia".[854]

[847] The Prosecution cites *Josip Jurĉević*, in particular, who testified as an expert in history before the Chamber from 14 to 17 September 2009, who founded the archives of the Croatian Ministry of Defence and was a member of the delegation for documentary and information activities of the HV between 1991 and 1992. *See* Josip Jurĉević, T(F), pp. 44723 and 44725.
[848] The Prosecution cites Miomir Ţuţ ul, who testified before the Chamber from 6 to 8 May, then from 21 to 22 July 2008; he was a psychologist at the IPD until 1992 (*see* Miomir Ţuţ ul, T(F), pp. 31050 and 31194) and held various offices within the government of Franjo TuĊman during the conflict in BiH (*see* Miomir Ţuţ ul, T(F), pp. 27610, 27611, 27718, 27755 and 31053).
[849] Vlado Šakić, T(F), pp. 45692 and 45693.
[850] *See* P 11020, p. 2; Vlado Šakić, T(F), p. 45701; P 11027, p. 1; Vlado Šakić, T(F), p. 45700.
[851] P 11027, p. 1; Vlado Šakić, T(F), p. 45700.
[852] P11027, pp. 1 to 3; Vlado Šakić, T(F), p. 45700.
[853] Vlado Šakić, T(F), p. 45683.
[854] Vlado Šakić, T(F), p. 45683.

370. Moreover, the Prosecution emphasised the fact that *Vlado Šakić* had collaborated during his scientific career with numerous individuals involved in the Croatian intelligence services, such as Miroslav TuĊman, who was – at an unspecified date but no later than 1996 – chief of the Croatian intelligence services,[855] *Miomir Ţuţul* – a psychologist within the IPD until 1992[856] – and also Markica Rebić.[857] The Prosecution pointed out that Rebić had himself been the head of the secret services, but at an unspecified date.[858]

371. Finally, according to an UNPROFOR document prepared on 1 March 1994 describing the Croatian security and intelligence service, *Vlado Šakić*, as an expert and director of the Ivo Pilar Institute, lent his assistance to the analysis work done within Croatian intelligence, that is, according to the Prosecution, the Croatian secret service.[859]

2. Problems Related to Vlado Šakić"s Credibility and the Credibility and Probative Value of His Report

372. During its cross-examination, the Prosecution attacked *Vlado Šakić*"s report, more specifically regarding the argument he made concerning the control of troops in wartime,[860] doing so in order to cast doubt on the report"s credibility as well as of the credibility of *Vlado Šakić*.[861]

373. The Chamber recalls that *Vlado Šakić* said that, in his view, because the political authorities were completely unprepared for the conflict, defence groups formed spontaneously outside of institutional frameworks[862] and that, under those circumstances, it was impossible for the political and military authorities of BiH to establish control over these groups.[863]

374. *Vlado Šakić* added that, in reaching that conclusion, he relied on information regarding the conflict available in the public domain which was relayed by the media,

[855] *See* P 11020, p. 2; Vlado Šakić, T(F), p. 45701; P 11027 , p. 1; Vlado Šakić, T(F), p. 45700.
[856] Miomir Ţuţ ul, T(F), pp. 31050 and 31194.
[857] Vlado Šakić, T(F), p. 45700.
[858] Vlado Šakić, T(F), p. 45700.
[859] P 11020, p. 4; Vlado Šakić, T(F), p. 45701.
[860] 3D 03721, pp. 16, 22, 29 and 88.
[861] Vlado Šakić, T(F), pp. 45740 to 45762.
[862] 3D 03721, p. 88.
[863] 3D 03721, pp. 88 and 89.

and that this information, as well as expert reports he had read on the topic, allowed him to reach these conclusions.[864]

375. During *Vlado Šakić*'s cross-examination, the Prosecution attempted to show that he lacked any specific knowledge of the facts pertaining to the conflict in BiH and to do so put to him a sequence of orders issued by the HVO military command.[865] Thus, when the Prosecution asked *Vlado Šakić* whether the different orders of commanders from the HVO did not go to prove that there was indeed actual control of the troops, *Vlado Šakić* responded by saying that he lacked any knowledge concerning the background of the war and that he could not therefore comment on the documents or incorporate them into the theoretical framework he proposed.[866] Similarly, when the Chamber asked *Vlado Šakić* whether the documents tendered by the Prosecution, which went to show that certain incidents fit the logic of successive orders, would have changed the conclusions in his report had he been aware of them,[867] *Vlado Šakić* answered that he was unfamiliar with the situation being considered or with the relevant context and that, as a consequence, he was unable to answer the question.[868]

376. It would seem, moreover, that *Vlado Šakić* had no knowledge whatsoever concerning the disciplinary sanctions available within the HVO or how they were implemented.[869] When confronted with documents concerning disciplinary sanctions taken by the HVO,[870] *Vlado Šakić* stated that he had not reviewed the political and military decisions taken in Herceg-Bosna.[871]

C. The Chamber's Findings

377. The Chamber observes that, in cross-examining this expert witness, the Prosecution succeeded in casting doubt on his impartiality. By bringing to light the relationship between the Ivo Pilar Institute, which *Vlado Šakić* continues to direct, and Croatia, and likewise between the Institute and the Croatian intelligence services, the Prosecution succeeded in establishing that close ties united and continue to unite the

[864] Vlado Šakić, T(F), p. 45741.
[865] Vlado Šakić, T(F), pp. 45741-45744. *See* P 03019; P 03128; P 03117.
[866] Vlado Šakić, T(F), pp. 45744 and 45745.
[867] Vlado Šakić, T(F), p. 45746.
[868] Vlado Šakić, T(F), pp. 45746 and 45747.
[869] Vlado Šakić, T(F), p. 45747.
[870] P 02595; P 11033; Vlado Šakić, T(F), p. 45748.
[871] Vlado Šakić, T(F), p. 45754.

witness and the Croatian political authorities. The Chamber recalls that allegations about Croatia"s role in the conflict in BiH were frequently debated by the parties. Several witnesses were heard on this topic and numerous documents admitted into the record. Furthermore, the Chamber recalls that experts must provide expertise that is objective, impartial and independent, if they are to assist the Chamber in ruling beyond a reasonable doubt.[872] Finally, the Chamber recalls that *Vlado Šakić*"s expert testimony concerns an essential issue in this case: superior responsibility. Under these circumstances, the Chamber must pay particularly close attention to the impartiality of the expert in question. The Chamber thus finds that the ties between the Ivo Pilar Institute, *Vlado Šakić*, the Croatian Government and the Croatian Intelligence Services cast doubt onto *Vlado Šakić*"s impartiality as an expert.

378. Moreover, the Chamber notes that insofar as the very credibility of *Vlado Šakić* and his expert report are concerned, *Vlado Šakić*"s testimony, his report, the Prosecution"s cross-examination and the questions by the Chamber all brought out important gaps. The Chamber once again stresses that the objective of *Vlado Šakić*"s report, that is, to analyse the challenges to effective oversight of the troops, is a core issue in determining the responsibility of the Accused under Articles 7(1) – ordering – and 7(3) of the Statute. The Chamber considers it essential, in studying the difficulties associated with the effective control of the troops in this case, to take into consideration the reality of the situation in the HVO command structure in order to draw conclusions with regard to control of the troops by the Accused. The Chamber concludes that, as *Vlado Šakić* failed to review any document that specifically addresses the BiH conflict and particularly the documents from the HVO command, his report addresses the issue of effective troop control theoretically, without any bearing on the conflict with which the Chamber has been seized. The Chamber therefore finds the credibility and probative value of the report very weak.

379. Given the doubts in respect of *Vlado Šakić*"s impartiality, which were brought to the fore primarily during his cross-examination by the Prosecution, and the absence of any concrete, practical review by *Vlado Šakić* of the facts pertaining to the conflict in BiH and control of the troops by the HVO command, as well as the expert"s

[872] *See* "Experts Under Rule 94 *bis* of the Rules" in the Chamber"s treatment of the evidentiary standards.

evasive conduct during cross-examination, the Chamber finds that it is unable to make use of the said report in the context of this Judgement.

Section 3: Documents Commented on and Tendered through a Witness in Court and the Documents Admitted By Way of Written Motion

380. In general, the Chamber assigned greater weight to the contents of a document convincingly explained by a witness than to documents admitted by way of written motion.

381. Nevertheless, the Chamber did assign some weight to documents not commented on by witnesses in cases where their contents were corroborated by other documents, and particularly when they belonged to a cohesive set of documentary evidence constituting a reliable whole.

382. The Chamber considered all the documentary evidence admitted by way of written motion and assessed it in the context of the other evidence admitted. In making its assessment, the Chamber gave specific consideration to the source of the document, to its author, to the possibility of contradictions with other exhibits and to the fact that the Parties had contested its authenticity. The Chamber has also accounted for the fact that the Parties did not have an opportunity to put the document to the test in court.[873] The Chamber underscores that, in spite of this, the parties did have the opportunity to present their arguments about the probative value and relevance of this evidence by means of the written procedure for the admission of evidence.[874]

383. The Chamber recalls that in the "Decision on Praljak Defence Motion for Admission of Documentary Evidence", it admitted two items of evidence regarding the Accused Praljak's defence of alibi.[875] The Chamber admitted these two documents by means of a written motion (1) because they displayed sufficient indicia of relevance, probative value and reliability, (2) because they went to establishing the

[873] *See* the "Decision on Praljak Defence Motion for Admission of Documentary Evidence", public, 1 April 2010, para. 92.
[874] Written procedure pursuant to Guideline 6 (Prosecution) of the Decision of 29 November 2006 and of Guideline 9 (Defences) of the Decision of 24 April 2008, pp. 10 and 11.
[875] "Decision on Praljak Defence Motion for Admission of Documentary Evidence", public, 1 April 2010; the admitted exhibits in question: 3D 00686 and 3D 00687.

defence of alibi as set forth in the Praljak Defence"s Notice of Alibi on 23 October 2007[876] and (3) because the Chamber held that time constraints justified tendering these exhibits by way of a written motion rather than through Slobodan Praljak"s testimony in court.[877] The Chamber nevertheless stresses that, as with all of the documentary evidence, the two exhibits relevant to the defence of alibi were assessed in the context of all the evidence admitted into the record, giving due consideration to the fact that they had not been subjected to cross-examination in open court.

Section 4: Documents Admitted Solely for the Purpose of Testing the Credibility of *Viva Voce* Witnesses

384. The Chamber recalls that, in compliance with its Decision of 27 November 2008 in respect of new documents and with the Appeals Chamber Decision of 26 February 2009,[878] a certain number of exhibits were admitted through the Defence witnesses solely for the purpose of testing the credibility of the said witnesses and therefore lack probative value outside the Chamber"s assessment of the credibility of the Witness through whom they were admitted to the record.[879]

Section 5: Adjudicated Facts Admitted by Judicial Notice

385. The Chamber took judicial notice of 270 facts adjudicated in other cases brought before the Tribunal that were related to matters at issue in these proceedings, following Rule 94(B) of the Rules.[880] According to the case-law of the Tribunal, "by taking judicial notice of an adjudicated fact, a Chamber establishes a well-founded presumption for the accuracy of this fact, which therefore does not have to be proven again at trial, but which, subject to that presumption, may be challenged at that

[876] "The Accused Praljak"s Notice Regarding Defence of Alibi", confidential, 23 October 2007.
[877] "Decision on Praljak Defence Motion for Admission of Documentary Evidence", public, 1 April 2010, para. 74.
[878] *See* also "Adoption of Guidelines for Managing the Trial" in the Chamber"s review of the procedural history (Annex 2).
[879] S*ee* P02202, admitted solely because it goes to refuting the credibility of witness *Zdenko Andabak*, "Order to Admit Evidence Regarding Witness Zdenko Andabak", public, 27 April 2010; P05880, which was admitted solely because it goes to refuting the credibility of witness *Ivan Beneta*, "Order to Admit Evidence Regarding Witness *Ivan Beneta*", public, 7 December 2009.
[880] 270 adjudicated facts of which judicial notice was taken, derived from Trial and Appeals Chamber judgements in the following cases: *The Prosecutor v. Furundţija*, *The Prosecutor v. Aleksovski*, *The Prosecutor v. Kupreškić et al.*, *The Prosecutor v. Blaškić*, *The Prosecutor v. Kordić and Ĉerkez*, and *The Prosecutor v. Naletilić and Martinović*; *see* "Judicial Notice" in the Chamber"s review of the procedural history (Annex 2).

trial".[881] The Chamber added, however, that the adjudicated facts admitted by judicial notice pursuant to Rule 94 (B) of the Rules would be examined with all the evidence adduced during the trial to determine what conclusions might appropriately be drawn from it.[882] Thus, the Chamber carefully reviewed the adjudicated facts in light of all the evidence adduced in the case, with particular attention to the evidence adduced by the Defence teams that called into question the accuracy of the facts stated.[883]

Section 6: Evidence Admitted Pursuant to Rules 92 *bis* and 92 *quater* of the Rules

386. The Chamber rendered several decisions pursuant to Rule 92 *bis* of the Rules, granting the motions of the Parties and thus admitted in part or in full 111 statements or transcripts of testimony pursuant to Rule 92 *bis*.[884]

387. Over the course of the trial, the Chamber recalled that Rule 92 *bis* of the Rules[885] is directed towards "one very special type of hearsay evidence which would previously have been admissible under Rule 89 (C)"[886] and that it is settled case-law that Rule 92 *bis* (A) rules out the admission of written evidence concerning the "acts and conduct of the accused as charged in the indictment"[887] or which go to prove a crucial aspect of the case.[888] The Chamber therefore gave consideration to the statements admitted pursuant to Rule 92 *bis* of the Rules inasmuch as they did not

[881] Decision of 14 March 2006, para. 10. *See* also *The Prosecutor v. Slobodan Milošević*, Case no. IT-02-54-AR73.5, "Decision on the Prosecution's Interlocutory Appeal Against the Trial Chamber's 10 April 2003 Decision on Prosecution Motion for Judicial Notice of Adjudicated Facts", public, 28 October 2003, p. 4.
[882] Decision of 14 March 2006, para. 11.
[883] Decision of 14 March 2006, para. 11; Decision of 7 September 2006, paras 21-26.
[884] *See* in this regard "Presentation of the Prosecution and Defence Cases" in the Chamber's review of the procedural history (Annex 2).
[885] "Decision on Slobodan Praljak's Motion to Admit Written Evidence Pursuant to Rule 92 *bis* of the Rules", confidential, 16 February 2010, para. 27.
[886] *The Prosecutor v. Slobodan Milošević*, Case no. IT-02-54-AR73.2, "Decision on Admissibility of Prosecution Investigator's Evidence", public, 30 September 2002, p. 13. *See* also *The Prosecutor v. Stanislav Galić*, Case no. IT-98-29-AR73.2, "Decision on Interlocutory Appeal Concerning Rule 92 *bis* (C)", 7 June 2002, public, ("*Galić* Decision of 7 June 2002"), para. 16.
[887] *Galić* Decision of 7 June 2002, para. 9. *See* also *The Prosecutor v. Slobodan Milošević*, Case no. IT-02-54-T, "Decision on Prosecution's Request to Have Written Statements Admitted Under Rule 92 *bis*", 21 March 2002 ("*Milošević* Decision of 21 March 2002"), para. 22.
[888] *The Prosecutor v. Sikirica et al.*, Case no. IT-95-8-T, "Decision on Prosecution's Application to Admit Transcripts Under Rule 92 *bis*", 23 May 2001, paras 4 and 35. *See* also the *Milošević* Decision of 21 March 2002, para. 7.

address a decisive element in the case or as they corroborated material facts in the case.[889]

388. The Chamber, moreover, admitted seven written statements under Rule 92 *quater* of the Rules,[890] recalling in pertinent part that although Rule 92 *quater* (A) does not differ fundamentally from former Rule 92 *bis* (C), inasmuch as it too requires that two cumulative conditions be satisfied, namely the author of the written statement or giver of the testimony must be unavailable and the evidence contained therein must be reliable; the new Rule 92 *quater* of the Rules in principle allows the admission of a written statement or a transcript that goes to prove the acts or conduct of an accused. Rule 92 *quater* (B) adds, however, that this may be a factor weighing against the admission of such evidence, either wholly or in part.[891] Thus, when analysing the statements admitted pursuant to Rule 92 *quater* of the Rules, the Chamber paid particular attention to the fact that the written statements were admitted without an opportunity to cross-examine the authors of the said statements.[892]

Section 7: Statements and Testimony of the Accused

389. In accordance with Rules 84 *bis*, 85 (C) and 89 (C) of the Rules, the Chamber admitted, heard and assessed evidence from some of the Accused, in the form of (I) prior statements by various Accused, (II) statements by the Accused during the trial proceedings and (III) their testimony as witnesses in court.

I. Admission of Prior Statements by the Accused

390. According to the case-law of the Tribunal, a prior statement by an accused may be admitted during trial if it is relevant, has a certain probative value and if all of

[889] *See* as a reference, the arguments regarding procedure in relation to Rule 92 *bis* of the Rules: "Presentation of the Prosecution and Defence Cases" in the Chamber"s review of the procedural history (Annex 2).
[890] *See* in this regard "The Presentation of the Prosecution and Defence Cases" in the Chamber"s review of the procedural history (Annex 2). Three were admitted for the Prosecution and four for the Praljak Defence.
[891] "Decision on the Prosecution Motion for Admission of Evidence Pursuant to Rules 92 *bis* and *quater* of the Rules", public redacted version, 27 October 2006, para. 8.
[892] *Galić* Decision of 7 June 2002, footnote 34, citing judgments of the European Court of Human Rights; *Milošević* Decision of 21 March 2002, para. 7.

the procedural guarantees and protections were complied with at the time the statement was taken.[893]

391. In this case, the Chamber distinguished between prior statements made during an investigation where the accused has been heard as a suspect, with the guarantees provided in Rules 42 and 43 of the Rules, and prior statements by the Accused in other Tribunal cases on those occasions when the accused were heard as witnesses in the said cases. The Chamber thus admitted, pursuant to Rule 89 (C) of the Rules, the prior statement of the Accused Prlić taken when he was questioned as a suspect by the Prosecution during the investigative phase[894] and did not admit the prior testimony before the Tribunal of the Accused Praljak and the Accused Petković.[895] In these cases, the Chamber held that, inasmuch as the Accused Praljak and Petković were not duly notified of their option to remain silent, the Chamber could not find that they had waived this right, and that, under such circumstances, admission of the said testimonies would have constituted a material breach of the right of the said Accused to a fair trial.[896]

392. The Appeals Chamber, when seized of two appeals lodged by the six Defence teams against the decision admitting the transcript of the examination of Jadranko Prlić,[897] held *inter alia* that the prior statement of an accused could be admitted into the record even when their fellow accused had not had the opportunity to cross-examine the accused, principally on grounds that: (1) in theory, there was nothing to exclude the admission of evidence that did not lead to cross-examination[898] and (2) the evidence going to the acts and conduct of an accused was potentially admissible but would require corroboration in the event it was to be used to support a guilty verdict.[899] The appeals were denied.

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[893] *Kvocka* Appeals Judgement, para. 128; *The Prosecutor v. Milutinović et al.*, Case no. IT-05-87-T, "Decision on Motion to Admit Documentary Evidence", public, 10 October 2006, paras 43-44.
[894] "Decision on Request for Admission of the Statement of Jadranko Prlić", public, 22 August 2007; *The Prosecutor v. Prlić et al.*, IT-04-74-AR73.6 "Decision on Appeals Against Decision Admitting Transcript of Jadranko Prlić's Questioning into Evidence", public, 23 November 2007 ("Decision of 23 November 2007"). *See* also the *Halilović* Decision of 19 August 2005, para. 15.
[895] "Decision on the Admission into Evidence in the Case of Naletilić and Martinović", public, 5 September 2007 ("Decision of 5 September 2007"); "Decision on Prosecution Motion for the Admission into Evidence of the Testimony of Milivoj Petković Given in Other Cases Before the Tribunal", public, 17 October 2007 ("Decision of 17 October 2007").
[896] Decision of 5 September 2007, paras 19-22; Decision of 17 October 2007, paras 18 and 20.
[897] The Prlić Defence lodged an appeal, arguing in the main that the Chamber had not given consideration to the conflict of interest between Jadranko Prlić and his Counsel at the time, and that the

II. Statements of the Accused under Rule 84 *bis* of the Rules

393. An accused who so wishes may, with leave of the Chamber, make an opening statement in support of his defence. According to Rule 84 *bis* of the Rules, the accused is not compelled to take an oath before making his or her opening statement and the statement of the accused does not give rise to cross-examination or questions by the Judges of the Chamber.

394. In the case at issue, two of the Accused elected to make a statement under Rule 84 *bis* of the Rules. The Accused Prlić thus made a statement under Rule 84 *bis* at the beginning of his defence case, that is, on 5-6 May 2008[900] and the Accused Praljak twice made statements under Rule 84 *bis* of the Rules, namely, one at the commencement of the trial proceedings and one at the beginning of his case.[901]

395. The Chamber had the opportunity to rule on the probative value to assign to the opening statements of the Accused and set out "that an opening statement given under Rule 84 *bis*, whether or not it is given under oath, may not be considered as evidence either, unless the Trial Chamber, in the exercise of its discretionary power, decides to attach a degree of probative value to it".[902] The Chamber found that a statement of this kind, even when sworn, would in any event provide substantially less probative value than testimony presented under Rule 85(C) of the Rules.[903]

Chamber had erred in finding that the hearing took place under conditions guaranteeing the rights of the Accused Prlić; the other Defence teams jointly lodged an appeal on the basis that the impugned decision infringed on the right of the co-Accused to examine or have examined the witnesses for the Prosecution, as provided by Article 21(4)(e) of the Statute. *See* Decision of 23 November 2007, para. 10.

[898] Decision of 23 November 2007, para. 55.

[899] Decision of 23 November 2007, para. 57. *A contrario*, the Appeals Chamber observed that it was not necessary to corroborate evidence which could be cross-examined. *See* footnote 98 of the Decision of 23 November 2007, citing the *Aleksovski* Appeals Judgement, paras 62 and 63.

[900] *See* also "Presentation of the Defence Cases" in the Chamber's review of the procedural history (Annex 2), concerning the "Decision Regarding Supplement to the Accused Prlić's 84 *bis* Statement", public, 12 February 2009.

[901] On 27 April 2006 and 4 May 2009.

[902] "Decision on Praljak Defence Notice Concerning Opening Statements Under Rules 84 and 84 *bis*", public, 27 April 2009, pp. 7-11.

[903] "Decision on Praljak Defence Notice Concerning Opening Statements Under Rules 84 and 84 *bis*", public, 27 April 2009, pp. 7-11.

III. Testimony of the Accused Praljak and Petković

396. In accordance with Rule 85(C) of the Rules, an accused who so desires may appear as a witness in his or her own defence. In this case, while the accused continues to enjoy certain rights specific to the accused, such as the right to be present during the examination of other witnesses, under sub-paragraph (d) of paragraph 4 of Article 21 of the Statute, which guarantees the right of the accused to be present at his trial[904] or even the fundamental right not to be compelled to testify against himself or to admit guilt under sub-paragraph (g) of paragraph 4 of Article 21 of the Statute,[905] he is at the same time subject to certain restrictions and obligations incumbent on a witness,[906] namely (1) the accused must take an oath before giving evidence[907] and may face prosecution if he does not tell the truth,[908] (2) he is to be examined by the party calling him in the courtroom, (3) he is to be cross-examined by the other parties and (4) the Judges of a Trial Chamber may question him.[909] The Chamber nevertheless found that an accused appearing as a witness in his own defence could not be denied the assistance of Counsel during his testimony,[910] a finding which the Appeals Chamber has upheld.[911]

397. The Chamber, moreover, specified that the probative value to be assigned to the testimony of an accused electing to appear as a witness must be assessed during deliberations in light of the entire record and cannot be made to depend on whether the accused and Counsel have contact while the accused"s testimony is ongoing.[912]

[904] In principle, under Rule 90(C) of the Rules "A witness, other than an expert, who has not yet testified shall not be present when the testimony of another witness is given. (…)". This provision does not apply to an accused who testifies, who has the fundamental right to be present during the trial and thus to attend the testimonies of all the witnesses (*see* further to this effect sub-paragraph (d) of paragraph 4 of Article 21 of the Statute). *See* also the "Order on the Mode of Examining an Accused Pursuant to Rule 85(C) of the Rules", 1 July 2008, public, p. 5.
[905] "Order on the Mode of Examining an Accused Pursuant to Rule 85(C) of the Rules", 1 July 2008, public, p. 5.
[906] "Decision on Praljak Defence Notice Concerning Opening Statements Under Rules 84 and 84 *bis*", public, 27 April 2009, p. 6.
[907] Rule 90(A) of the Rules.
[908] Rule 91 of the Rules.
[909] Rule 85(B) of the Rules.
[910] "Order on the Mode of Examining an Accused Pursuant to Rule 85(C) of the Rules", 1 July 2008, public, p. 6; "Order Clarifying the Relationship Between Counsel and an Accused Testifying Within the Meaning of Rule 85(C) of the Rules", public, 11 June 2009.
[911] "Decision on Prosecution"s Appeal Against Trial Chamber"s Order on Contact Between the Accused and Counsel During an Accused"s Testimony Pursuant to Rule 85(C)", public, 5 September 2008, paras 11-12.
[912] "Order on the Mode of Examining an Accused Pursuant to Rule 85(C) of the Rules", 1 July 2008, public, p. 6.

The Appeals Chamber has affirmed that the definitive assessment of the probative value of testimony obtained in these particular circumstances falls, properly, to the Chamber that heard the witness.[913]

398. In this case, two Accused elected to testify. Thus, Slobodan Praljak testified from 4 May to 10 October 2009, and Milivoj Petković from 11 February to 11 March 2010.

399. In its Final Trial Brief, the Prosecution argues that the testimony of the Accused Praljak and Petković should carry little weight, as they lied on numerous occasions and attempted to evade questions on important issues.[914] The Chamber nevertheless points out that in the Prosecution"s Final Trial Brief, the testimony of the Accused Praljak and Petković was used extensively in support of certain allegations, particularly those pertaining to the responsibility of the said Accused.[915] The Chamber found that the testimony of the Accused Praljak and the Accused Petković was credible on certain points, and relied on their testimony in those instances, yet was hardly credible on others, in particular when the various Accused testified seeking to limit their responsibility in respect of certain allegations. On those occasions when their testimony was hardly credible, the Chamber did not accept their testimony without also drawing conclusions about the responsibility of the Accused.

400. Moreover, as the Prlić Defence notes in its Final Trial Brief,[916] Article 21 (4)(g) of the Statute provides that an Accused shall not be compelled to testify against himself or to confess guilt. In that respect, the Chamber drew no conclusions from the choice of those Accused who elected to exercise their right to remain silent.

Section 8: Corroboration

401. Following the jurisprudence of the Appeals Chamber, the testimony of a witness concerning a material fact does not by law require corroboration of that

[913] *The Prosecutor v. Prlić et al.*, IT-04-74-AR73.10 "Decision on Prosecution"s Appeal Against Trial Chamber"s Order on Contact Between the Accused and Counsel During an Accused"s Testimony Pursuant to Rule 85(C)", public, 5 September 2008, para. 17.
[914] Prosecution Final Trial Brief, para. 3.
[915] *See* in particular paras 648-654 of the Prosecution Final Trial Brief for Milivoj Petković"s testimony, and paras 783-787 of the Prosecution Final Trial Brief for Slobodan Praljak"s testimony.
[916] Prlić Defence Final Trial Brief, para. 13.

fact.[917] However, when assessing the evidence, the Chamber closely and carefully examined the uncorroborated exhibits in the record before drawing factual and legal conclusions from them prejudicial to the Accused.

402. The Chamber held, moreover, that evidence not subjected to adversarial argument in court, such as written statements admitted under Rules 92 *bis* and 92 *quater* of the Rules, could be taken into account to establish the constituent elements of the crimes and the modes of responsibility of an accused only if it corroborated or would be corroborated by other evidence admitted into the record.[918] In this regard, the Chamber refers to the case-law of the Tribunal, whereby a Chamber may not base a guilty verdict solely or in preponderant part on a single evidentiary exhibit not subjected to cross-examination.[919]

Section 9: Hearsay Evidence

403. Statements made by a person about events which that person did not observe first-hand constitute hearsay evidence. It is clear from the Tribunal"s case-law that hearsay evidence is not inadmissible *per se*.[920] The Chamber therefore assessed hearsay evidence on a case-by-case basis,[921] carefully reviewing the reliability, relevance and probative value of such evidence.[922]

404. The Chamber notes that the Praljak Defence and the Ćorić Defence, in their respective Final Trial Briefs, raise the difficulty of basing a guilty verdict on hearsay evidence.[923] In this respect, the Chamber agrees with them and finds that hearsay evidence carries less weight than testimony given under oath and contested by the adverse party.[924] Generally, the Chamber gave consideration to hearsay evidence only insofar as it was corroborated by other evidence admitted into the record. Moreover,

[917] *Tadić* Judgement, paras 535-539; *Aleksovski* Appeals Judgement, para. 62.
[918] *Galić* Decision of 7 June 2002, p. 9; *Halilović* Appeals Judgement, para. 125; *Milutinović* Judgement, para. 37; *Halilović* Judgement, para. 19.
[919] *The Prosecutor v. Milan Martić*, Case no. IT-95-11-AR73.2, "Decision on Appeal Against the Trial Chamber"s Decision on the Evidence of Witness Milan Babić", 14 September 2006, para. 20; *The Prosecutor v. Prlić et al.*, Case no. IT-04-74-AR73.6, "Decision on Appeals against Decision Admitting Transcript of Jadranko Prlić"s Questioning into Evidence", 23 November 2007, paras 53 and 59.
[920] *Krajišnik* Judgement, para. 1190.
[921] *The Prosecutor v. Aleksovski*, Case no. IT-95-14/1-AR73, "Decision on Prosecutor"s Appeal on Admissibility of Evidence", public, 16 February 1999, para. 15.
[922] *Krajišnik* Judgement, para. 1190; *Brđanin* Judgement, para. 28.
[923] Ćorić Defence Final Trial Brief, paras 12 to 14; Praljak Defence Final Trial Brief, paras 37-39.

the Chamber decided not to rely on evidence that could be characterised as hearsay whose source is unknown.[925]

Section 10: Documents Disputed by Certain Parties, Being Considered "Forgeries"

405. The Chamber notes that the Stojić Defence,[926] the Praljak Defence,[927] the Petković Defence[928] and the Ćorić Defence[929] disputed the authenticity of certain documents admitted into evidence, arguing that these items of documentary evidence were "forgeries". The Ćorić Defence argues more specifically that the Chamber was clearly obligated to give consideration to these arguments in its assessment of these exhibits, particularly those which were not put to witnesses but admitted by way of written motion.[930] In this regard, the Chamber wishes to state that it did in fact give consideration to the Parties' various arguments concerning the disputed, allegedly forged documents and assessed this documentary evidence with the greatest of care when analysing the facts as well as the responsibility of the various Accused, especially in light of all the relevant evidence admitted into the record.

[924] *Brđanin* Judgement, para. 28.
[925] *Krajišnik* Judgement, para. 1190.
[926] Stojić Defence Final Trial Brief, paras 543-547 concerning 4D 00641.
[927] Praljak Defence Final Trial Brief, paras 104-112 concerning P 06937.
[928] Petković Defence Final Trial Brief, paras 482-495, specifically concerning P 06038 and P 09895.
[929] Ćorić Defence Final Trial Brief, paras 695-709, specifically concerning 4D 02041, P 03179/P 03666, P 03220, P 03216, P 03630, P 03345, P 03551, P 02706, P 05376, P 03668, P 03665, P 03670 and P 03659.
[930] Ćorić Defence Final Trial Brief, para. 709.

CHAPTER 3: THE CREATION, DEVELOPMENT AND ORGANISATION OF THE COMMUNITY AND THE REPUBLIC OF HERCEG-BOSNA

Heading 1: The Creation of Herceg-Bosna: Background

406. The facts alleged in the Indictment took place within the context of the dissolution of the former Yugoslavia, on those parts of the territory of the RSBiH/RBiH claimed as part of Herceg-Bosna. The Indictment places the date of the beginning of the criminal events, and particularly the birth of the joint criminal enterprise, on 18 November 1991, the date on which the Croatian Community of Herceg-Bosna (HZ H-B) was proclaimed.[931] The Chamber therefore considers that, in order to better grasp the allegations against the various Accused, it is important to analyse all the evidence relating to the context and events which led to the proclamation of the HZ H-B on 18 November 1991.

407. In order to fix the chronology of the events leading to the proclamation of the HZ H-B on 18 November 1991, the Chamber has examined the relevant documents as well as the testimony of *viva voce* Witnesses *Zdravko Batinić, Milivoj Gagro, Peter Galbraith, Stjepan Kljuić, Josip Manolić* and *Adalbert Rebić*. The Chamber has likewise given consideration to the written statement of *Witness AR*, admitted under Rule 92 *quater* of the Rules, and to the transcript of *Ciril Ribičić*'s testimony in the *Kordić and Čerkez* Case, admitted under Rule 92 *ter* of the Rules, and to his courtroom testimony in this case. Moreover, the Chamber has examined the *viva voce* testimony of *Robert Donia*, *William Tomljanovich* and *Josip Jurčević*, all three expert historians, and analysed their respective expert reports admitted into the record, although it must be recalled that the report of *Josip Jurčević* was admitted into the record only in part.[932]

[931] Indictment, paras 1 and 15.
[932] The Chamber admitted only in part the report of expert witness *Josip Jurčević*: the cover page, the table of contents, the introductory remarks, chapter 4 of Part I, Part II and chapters 1 to 6 of Part III. In this regard, *see* the "Order on Admission of Evidence Regarding Expert Witness Josip Jurčević", public, 6 October 2009 and the "Decision on Praljak Defence Motion for Reconsideration or Alternatively for Certification to Appeal Order on Admission of Evidence Regarding Witness Josip Jurčević", public, 9 November 2009.

408. During the trial, in their final trial briefs and at closing arguments, the defence teams contested the significance of some of the events mentioned in this section.[933] The Chamber heard and has taken these claims into consideration. However, on those occasions when the significance of the events and the manner in which they were construed by the parties might have an impact on the criminal responsibility of the Accused, particularly as to whether there was a JCE or whether the Accused participated in the said enterprise, the Chamber considered it more appropriate to address these events in the parts concerning the responsibility of the Accused. This part is thus strictly historical and brief, and relates to points not posing major challenges in respect of their veracity. For this reason the Chamber will not mention here, for example, the grounds and justifications underlying the creation of the HZ H-B, since they are more suitably placed in our review of the ultimate purpose of the possible joint criminal enterprise.

I. Birth of the HDZ-BiH and Victory of the Nationalist Parties in the First Multi-party Elections in BiH – 1990

409. On 18 August 1990, HDZ-BiH opened its constituent assembly in Sarajevo,[934] in which many Croatian key figures took part, including Josip Manolić, the Croatian Prime Minister, Gojko Šušak, Minister for the émigré community,[935] Miljenko Zadar, General Secretary of the HDZ, and Davor Perinović, who would be elected the first President of HDZ-BiH at the conclusion of the constituent assembly, with the support of the Zagreb HDZ.[936] The purpose of the assembly was to assist the Croats of Bosnia and Herzegovina to establish a political party functioning "in harmony with the [Zagreb] HDZ"[937] which won the multi-party elections in Croatia in mid-April and in early May 1990.[938] The constituent assembly of the HDZ-BiH approved the party"s founding statute, emphasising its ties to the Zagreb HDZ, and indicating in Article 4

[933] *See* for example the Ćorić Defence Final Trial Brief, paras 73-75; Stojić Defence Final Trial Brief, paras 13-15 and 186; Slobodan Praljak, T(F), pp. 39612-39615; Closing Arguments of the Prlić Defence, T(F), p. 52308; Closing Arguments of the Stojić Defence, T(F), p. 52408; Closing Arguments of the Praljak Defence, T(F), pp. 52506 and 52507.
[934] Stjepan Kljuić, T(F), p. 3822.
[935] Gojko Šušak later became Minister of Defence of Croatia; *see* 3D 00300; P 00910; P 02441, p. 1.
[936] Stjepan Kljuić, T(F), pp. 3822-3825, 3838 and 3839. The Chamber notes that according to *Stjepan Kljuić*, Mate Boban was not present at the constituent assembly on 18 August 1990; 3D 03720, p. 70.
[937] Stjepan Kljuić, T(F), pp. 3823 and 3824. The Chamber will use the term "Zagreb HDZ" to denote the HDZ of Croatia or "united HDZ [organisation whose seat is] in Zagreb" following the terms employed by Witness *Stjepan Kljuić* as well as in the "Statute" of the HDZ-BiH: P 00013.

that it should be considered a "constitutive part of the united HDZ organisation whose seat is in Zagreb".[939] According to Witness *Stjepan Kljuić*, a founding member and future president of the HDZ-BiH,[940] who was present on 18 August 1990, the "national interests" of the Croats of Bosnia and Herzegovina and those from Croatia were essentially similar during this period.[941] Subsequent versions of the HDZ-BiH statute, adopted in 1993 and again in 1994, restated that the HDZ-BiH formed part of the Zagreb HDZ.[942]

410. On 16 September 1990, at a meeting in Sarajevo, the Presidency of the Executive Board of the HDZ-BiH appointed Stjepan Kljuić to the post of interim Party President, replacing Davor Perinović.[943]

411. The first elections in RSBiH took place on 18 November and 4 December 1990.[944] In these elections, the HDZ-BiH and the SDS took 44 and 72 seats respectively out of the 240 seats in the RSBiH Parliament.[945] In the wake of these elections, *Stjepan Kljuić* became President of the HDZ-BiH and held the post until February 1992.[946]

II. Croatia's Declaration of Independence – 25 June 1991

412. Following a 19 May 1991 referendum, the Assembly of the Republic of Croatia proclaimed the independence of Croatia on 25 June 1991, with its entry into effect delayed by three months.[947] In a decision on 8 October 1991, the Assembly of the Republic of Croatia"s declaration of independence and

[938] Josip Jurčević, T(F), pp. 44733 and 44734; 3D 03720, p. 48.
[939] P 00013, p. 2; P 09536, p. 20; Stjepan Kljuić, T(F), pp. 3823-3825; Milivoj Gagro, T(F), pp. 2756 and 2815; Zdravko Batinić, T(F), p. 34315; 1D 02699, p. 2, Article 4.
[940] Stjepan Kljuić, T(F), pp. 3826, 3830 and 3831; P 09617; Milivoj Gagro, T(F), p. 2677; P 09536, pp. 20 and 21; 3D 03720, p. 70.
[941] Stjepan Kljuić, T(F), pp. 3823 and 3824.
[942] Zdravko Batinić, T(F), pp. 34315-34316 and 34333; 1D 02699, p. 2 Article 4; 1D 02700 Article 4; 1D 02701, Article 3.
[943] Stjepan Kljuić, T(F), pp. 3826, 3830 and 3831; P 09617; Milivoj Gagro, T(F), p. 2677; P 09536, pp. 20 and 21; 3D 03720, p. 70.
[944] Stjepan Kljuić, T(F), p. 3835.
[945] Stjepan Kljuić, T(F), pp. 3835 and 8057; 1D 00913, p. 11; Josip Jurčević, T(F), p. 44859; 3D 03720, pp. 68 and 70.
[946] Stjepan Kljuić, T(F), pp. 3839, 3885 and 3886; 3D 03720, p. 70.
[947] 3D 01085; Decision of 14 March 2006, Adjudicated Fact no. 20 (*Kordić* Judgement, para. 462); Josip Jurčević, T(F), pp. 44739 and 44740; 3D 03720, p. 51.

acknowledged the right to sovereignty of the other republics of the SFRY, pursuant to the principle of reciprocity, provided they were not at war with Croatia.[948]

III. Events of August 1991: Meeting of the HDZ-BiH Main Board Concerning the Grouping of Croat-Majority Municipalities, Implementation of a "Special Plan" in the Event of an Attack on the Croatian People and Proclamation of a State of Emergency by the HDZ

413. On 6 August 1991, the Main Board of the HDZ-BiH, meeting in Prozor, decided to adopt the proposal to create regional entities of the HDZ-BiH, as previously studied during a 31 July 1991 meeting of the Presidency of the HDZ-BiH chaired by Mate Boban.[949] The minutes of the meeting of 6 August 1991 reflect the HDZ-BiH"s support for the sovereign, indivisible nature of Bosnia and Herzegovina.[950] During the meeting, the HDZ-BiH asserted that the "Croatian people" found itself in a state of war, was subjected to direct occupation by Serbia,[951] and had made plans, in the event of an attack on the Bosnian Croats by supporters of Greater Serbia or any other party, to implement a "special plan".[952]

414. Pursuant to the 6 August 1991 decision by the Main Board of the HDZ-BiH,[953] the Presidency of the HDZ-BiH decided, on 23 August 1991, to set up municipal councils in eight regions, including Herzegovina, which consisted of 18 municipalities.[954] The purpose of this organisation was to connect the municipal councils of the HDZ-BiH, this being, according to the decision, the condition precedent to the territorial and political unification of the Bosnian Croats.[955]

[948] 3D 01085; Adalbert Rebić, T(F), pp. 28337 and 28338; 4D 01233.
[949] Decision of 14 March 2006, Adjudicated Fact no. 47 (*Kordić* Judgement, para. 472 (a)); P 00047, pp. 1 and 7; Stjepan Kljuić, T(F), pp. 3881-3883; P 00044, p. 2.
[950] P 00047, pp. 7 and 8.
[951] P 00047, pp. 4 and 7. On the troubling situation of the Bosnian Croats and the need to mount protection for them due to the lack of action by the Sarajevo government, *see*: Stjepan Kljuić, T(F), pp. 4075-4077, 4098-4100, 4104, 4105, 4112, 4120, 4127, 4128 and 4131; P 00041; P 00042, pp. 2 and 3; P 00052.
[952] Decision of 14 March 2006, Adjudicated Fact no. 47 (*Kordić* Judgement, para. 472 (a)); P 00047, pp. 7 and 8.
[953] P 00047, pp. 4 and 7.
[954] P 00050. The Chamber notes that the eight regions are: Travnik, Herzegovina (comprising 18 municipalities), Sarajevo, Doboj and Zenica, Banja Luka, Bihać and Kladuša, Posavina and Tuzla.
[955] P 00050; Stjepan Kljuić, T(F), pp. 3892-3894.

415. On 26 August 1991, the HDZ-BiH decreed "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".[956]

IV. Creation of a Crisis Staff in Three Regional Communities by the HDZ-BiH – 18 September 1991

416. On 18 September 1991, the Security Council of the HDZ-BiH, at the time renamed the HDZ-BiH Crisis Staff, was headed by Stjepan Kljuić, with Mate Boban as vice president.[957] Its members included *inter alia* Bruno Stojić,[958] described by Witness *Stjepan Kljuić* as the Assistant Minister of Police for Finance.[959] The crisis staff was responsible for the defence of the Croatian population of Bosnia and Herzegovina and for arms procurement, from Croatia in particular.[960] Crisis staffs were to be created without delay in three regional communities of the HDZ-BiH: in Herzegovina, in Posavina and in Travnik.[961] In the event of an armed conflict in any Croat-majority territory, the crisis staff was to assume all of the duties of the local authorities within the municipalities constituting the regional community concerned.[962] At the close of the HDZ-BiH security council/crisis staff meeting on 18 September 1991, a decision was taken to create a commission responsible for "cantonisation", tasked with carrying out the administrative reorganisation of the municipalities of BiH.[963]

[956] Decision of 14 March 2006, Adjudicated Fact no. 46 (*Kordić* Judgement, para. 472 (b)).
[957] P 00058, p. 1.
[958] Decision of 14 March 2006, Adjudicated Fact no. 48 (*Kordić* Judgement, para. 472 (c)); Stjepan Kljuić, T(F), pp. 3898, 4137, 4138, 7961 and 7962; P 00058, p. 1; P 00056, p. 1.
[959] Stjepan Kljuić, T(F), p. 3897.
[960] P 00058, p. 1; Stjepan Kljuić, T(F), pp. 3898-3900 and 7964.
[961] Decision of 14 March 2006, Adjudicated Fact no. 48 (*Kordić* Judgement, para. 472 (c)); P 00058, p. 2.
[962] P 00058, p. 2.
[963] P 00058, p. 3; Stjepan Kljuić, T(F), pp. 3901, 3906, 3977 and 3978; *see* also 1D 00486, pp. 1 and 2, Finding 4.

V. Events of October 1991: Parliament Declares BiH Sovereign and the Serbian Deputies Create an Assembly of the Distinct Serbian Nation

417. In mid-October 1991, the RSBiH Assembly published a document, entitled "memorandum", emphasising that, under the Constitution of the RSBiH, the RSBiH was a sovereign democratic state in which all citizens were equal.[964]

418. The Chamber heard expert historian *Josip Jurčević* explain that, several days later, the Assembly discussed a proposal by the members of parliament from the SDA and the HDZ-BiH regarding the future organisation of the Yugoslav community, against which Momčilo Krajišnik and the SDS deputies expressed impassioned opposition.[965] They left the Assembly and the proposal was adopted in their absence. Consequently, on 24 October 1991, the deputies from the SDS and from the Serbian Renewal Movement in the RSBiH Assembly, who had been elected in the elections of 1990, founded their own assembly, which asserted jurisdiction over the areas of RSBiH territory controlled by the Serbs.[966] According to Witness *Josip Jurčević*, in a decision on 1 November 1991, the RSBiH Constitutional Court declared that the Serbian assemblies and associations in RSBiH were anti-constitutional and unlawful.[967]

VI. Joint Meeting of the Crisis Staffs of the Regional Communities of Herzegovina and Travnik – 12 November 1991

419. On 12 November 1991, the crisis staffs of the Herzegovina and Travnik HDZ-BiH regional communities convened a meeting in Grude, chaired by Mate Boban, Vice-President of the HDZ-BiH, and Dario Kordić, President of the Crisis Staff of the community of Travnik, during which they expressed their intent to create an entity that would unify both regional communities and which would be called Herceg-Bosna.[968] After the meeting, the two crisis staffs produced a document entitled

[964] P 03720, p. 69.
[965] P 03720, p. 69.
[966] Josip Jurčević, T(F), p. 45025; 3D 03720, pp. 69 and 70.
[967] Josip Jurčević, T(F), pp. 45025 and 45026; P 10985.
[968] Decision of 14 March 2006, Adjudicated Fact no. 51 (*Kordić* Judgement, para. 472 (d)): P 00071/1D 00487, p. 3; P 00069; P 09545, p. 10; Milivoj Gagro, T(F), pp. 2684-2686 and 2809-2811.

"Conclusions", stating that, in the wake of meetings on 13 and 20 June 1991 in Zagreb,[969] on 15 October 1991 in Grude, on 21 October 1991 in Busovaĉa, and on 12 November 1991 in Grude, the Croatian people was to fulfil its "centuries-old dream" of creating a Croatian State through the implementation of an active policy.[970]

VII. Proclamation of the Croatian Community of Herceg-Bosna (HZ H-B) – 18 November 1991

420. On 12 and 18 November 1991, two parallel institutions were created in BiH, namely the Croatian Community of Posavina in Bosanski Brod and the HZ H-B.[971]

421. The decision of 18 November 1991, signed by Mate Boban, President of the HZ H-B, provided that the "representatives of the Croatian people" had created the HZ H-B "on the basis of the freely expressed will of the Croatian people in Bosnia-Herzegovina" [972] as a political, cultural, economic and territorial entity ("*Podruĉja*").[973] The preamble to this decision stated that the HZ H-B had been founded by the democratically elected representatives of the Croatian people.[974] *Ciril Ribiĉić* explained that the representatives of the Croatian people were actually elected during the elections for the Assembly and the Presidency of the RSBiH in November 1990.[975]

422. However, he recalled that the Assembly and the Presidency of the RSBiH included proportional representation for all of the nationalities present in RSBiH, which was not the case in the HZ H-B.[976] In fact, the HZ H-B consisted solely of

[969] P 00068, pp. 1 and 52; P 00071 and 1D 00487, para. 1.
[970] P 00071/1D 00487, para. 1; P 00069; P 09545, p. 10; Milivoj Gagro, T(F), pp. 2684-2687 and 2809-2811.
[971] Robert Donia, T(F), pp. 1812 and 1813; P 00302/P 00078; P 09276, p. 4; 3D 03720, p. 71.
[972] P 09545, p. 10; P 00081.
[973] P 00302/P 00078; Robert Donia, T(F), pp. 1807, 1812 and 1813; Stjepan Kljuić, T(F), p. 3923; P 09536, pp. 31 and 32; P 08973, p. 7; Decision of 14 March 2006, Adjudicated Fact no. 58 (*Kordić* Judgement, para. 472 (e)); P 09276, p. 4; 3D 03720, pp. 71 and 78; 3D 03566, p. 13.
[974] P 00302/P 00078, p. 1; 1D 08973, pp. 14 and 15.
[975] P 08973, p. 15. *See* in this regard *Mile Akmadţić*, who stated that the HZ H-B was created by the members of parliament who obtained the highest vote counts in the elections for the Parliament of Bosnia and Herzegovina in their respective municipalities, Mile Akmadţić, T(F), p. 29750; 1D 02225, pp. 2 and 3. Jadranko Prlić, President of the HVO HZ H-B, said during an interview granted to the daily *OsloboĆenje* on 19 March 1993 that the HZ H-B had been created lawfully by individuals elected in free elections.
[976] P 08973, p. 15.

Croatian representatives, and as a result it represented, in his view, merely one segment of the individuals living in HZ H-B territory: the Croats.[977]

423. During the 39th session of the Supreme State Council of Croatia, also held on 18 November 1991, Franjo Tuđman announced that the establishment of the HZ H-B did not constitute a decision to separate from BiH but a declaration grouping all the Croatian municipalities of BiH into a single community.[978]

424. However, Witness *Stjepan Klujić*, who was President of the HDZ-BiH, and Witness *Milivoj Gagro,* an elected official from HDZ-BiH,[979] were not invited to the event proclaiming the new HZ H-B, due to their disagreements with the "Conclusions" of the 12 November 1991 meeting in Grude.[980]

425. As of its creation on 18 November 1991, the HZ H-B consisted of 30 municipalities, including Mostar, its capital.[981]

Heading 2: Principal Events Following the Creation of Herceg-Bosna

I. Disputed Creation of the HZ H-B

426. Several days after the proclamation of HZ H-B, on 23 November 1991, the Government of the RSBiH declared the HZ H-B unlawful;[982] on 14 September 1992, it was declared unconstitutional by the Constitutional Court of BiH.[983]

[977] Stjepan Kljuić, T(F), p. 3923; Robert Donia, T(F), p. 1807; P 08973, p. 15; P 00078/P 00302, p. 1; P 09536, pp. 31 and 32; *see* also 3D 03566, p. 13; in his work, *Franjo Gregurić* indicates that the HZ H-B was proclaimed as a political, economic, cultural and territorial entity of the Croats in BiH. Witness 1D-AA, T(F), pp. 28867, 28868, 28876, 29255, 29259, closed session; 1D 02934 under seal, pp. 2 and 12. *Witness 1D-AA*, a Croat and a member of the HDZ-BiH and the Presidency of BiH for many years, stated that no one ever voted or even had the opportunity to vote for the establishment of the HZ H-B.
[978] P 00080, pp. 1 and 46.
[979] Milivoj Gagro, T(F), pp. 2675-2677.
[980] Stjepan Kljuić, T(F), pp. 3830, 3831, 3925-3929, 3939 and 3940; Milivoj Gagro, T(F), pp. 2688 and 2689; P 09537. *See* also "Joint Meeting of the Crisis Staffs of the Regional Communities of Herzegovina and Travnik – 12 November 1991" in the Chamber's findings in relation to the context underlying the creation of Herceg-Bosna.
[981] Robert Donia, T(F), pp. 1812 and 1813; P 09276, p. 4; P 00302/P 00078, p. 1; P 09536, p. 31; P 08973, p. 7; 3D 03566, p. 13; Decision of 14 March 2006, Adjudicated Fact no. 58 (*Kordić* Judgement, para. 472 (e)). A list of the municipalities of the HZ H-B: Jajce, Kreševo, Busovača, Vitez, Novi Travnik, Travnik, Kiseljak, Fojnica, Kakanj, Vareš, Kotor Varoš, Tomislavgrad, Livno, Kupres, Bugojno, Gornji Vakuf, Prozor, Konjic, Jablanica, Posušje, Mostar, Široki Brijeg, Grude, Ljubuški, Čitluk, Čapljina, Neum and Stolac.
[982] P 09536, p. 36.

427. On 16 November 1992, the UN Security Council confirmed that no entity unilaterally declared in violation of the principle of the territorial integrity of BiH would be accepted.[984]

II. Wish to Create a Reunified Croatian People (December 1991-February 1992)

428. In December 1991, unlike Croatia and Slovenia, BiH's existence as a state still lacked recognition at the international level.[985] On 27 December 1991, a meeting on the issue was convened in Zagreb, chaired by Franjo Tuđman,[986] with many Croatian representatives from BiH and Croatia in attendance.[987] Franjo Tuđman announced at the opening that the purpose of the meeting was to set a "Croatian political strategy, an overall Croatian policy, including that of the Bosnia and Herzegovina HDZ".[988] During the meeting, Stjepan Kljuić defended the option of creating a united BiH, subdivided into cantons.[989] Mate Boban stated that he favoured creating the HZ H-B as an independent entity which would be joined to Croatia over time.[990] At the end of the meeting, President Tuđman criticised the position held by Stjepan Kljuić as being too close to that expressed by Alija Izetbegović; he likewise recalled that the Croats wanted "Croatian Banovina" to be included in the preamble to the Constitution of Croatia; finally, he thought that the Muslims might be satisfied with a mini-state ("statelet") in the remaining part of BiH.[991] President Tuđman did, moreover, emphasise that the international community and Europe would accept this solution, inasmuch as they feared the creation of an Islamic state within Europe.[992] He also declared: "it is time that we take the opportunity to gather the Croatian people inside

[983] P 00505, p.1. On 11 March 1994, the Constitutional Court handed down a decision similar to the one on 14 September 1992, declaring the creation of the Croatian Republic of Herceg-Bosna null and void. *See* P 08060; Robert Donia, T(F), pp. 1814, 1816 and 1817.
[984] P 00752.
[985] Recognition of BiH as an independent State by the international community took place after a referendum on 29 February and 1 March 1992 in BiH; *see* in this regard 1D 02934, p. 2. By way of example, on 7 April 1992, the European Community recognised the independence of BiH, *see* in this respect Robert Donia, T(F), p. 1996.
[986] President of Croatia, *see*, for example, P 00089, p. 1.
[987] P 00089; Stjepan Kljuić, T(F), pp. 3942 and 3944. In particular, Gojko Šušak, Josip Manolić, Mate Boban and Stjepan Kljujić were present.
[988] P 00089, p. 2.
[989] P 00089, pp. 9 and 11-12; Stjepan Kljuić, T(F), pp. 3970 and 3972-3973.
[990] P 00089, pp. 17 and 21-23.
[991] P 00089, pp. 31-34, 105-107; Stjepan Kljuić, T(F), p. 3965.
[992] P 00089, p. 107.

the widest possible borders"[993] and asserted that BiH in its then-current state was hindering the creation of a truly independent Croatia.[994]

429. On 9 February 1992, the Croatian leaders of the HDZ of Croatia and the HDZ-BiH, meeting in Livno, addressed *inter alia* the matter of uniting all BiH Croats with Croatia.[995] At the meeting, it was agreed that HDZ-BiH would present a request to the Government and Parliament of Croatia for the purpose of obtaining Croatian nationality for the BiH Croats, as well as the right to vote in elections held by Croatia, in view of forging an "indestructible thread" between Croats.[996]

430. During this period, inside the HDZ-BiH proper, Stjepan Kljuić and Mate Boban frequently clashed,[997] the first favouring an indivisible BiH, the second favouring territorial autonomy where the Croatian population was in the majority.[998] On 2 February 1992, Stjepan Kljuić resigned from the presidency of HDZ-BiH because, in Franjo Tuđman's own words, "[he] disappeared under Alija Izetbegović's fez and the HDZ [BIH] […] stopped leading an independent Croatian policy".[999] [1000]

431. On 15 March 1992, Miljenko Brkić, one of the political leaders of the HDZ-BiH, was designated president *ad interim* of the Party;[1001] he was subsequently replaced after three or four months by Dario Kordić,[1002] who had the same political leanings as Mate Boban.[1003]

III. Independence of Bosnia and Herzegovina (March 1992)

432. At the request of the EC, the RSBiH organised a referendum on BiH independence, which took place on 29 February and 1 March 1992.[1004] 64 % of the

[993] P 00089, pp. 33 and 34; Robert Donia, T(F), p. 1791.
[994] P 00089, p. 99; Robert Donia, T(F), pp. 1790-1793.
[995] P 00117, p. 6; Robert Donia, T(F), p. 1825.
[996] P 00117, pp. 6 and 7; P 09536, p. 38; Robert Donia, T(F), p. 1825.
[997] Milivoj Gagro, T(F), p. 2680.
[998] Milivoj Gagro, T(E), p. 2679.
[999] P 00134, p. 99.
[1000] P 00134, pp. 99-101; *see* also P 00116, pp. 4-5; 1D 02935 under seal, T(F), p. 9191; 1D 02934 under seal, p. 9; Stjepan Kljuić, T(F), pp. 3991-3993; Milivoj Gagro, T(F), pp. 2690-2691; Zdravko Batinić, T(F), p. 34532.
[1001] P 10490, p. 2; 1D 01780; 1D 02935 under seal, T(F), pp. 9023 and 9191; Mile Akmadţić, T(F), p. 29740; Milivoj Gagro, T(F), pp. 2692-2693.
[1002] Milivoj Gagro, T(F), p. 2693.
[1003] Milivoj Gagro, T(F), p. 2736.
[1004] Decision of 14 March 2006, Adjudicated Fact no. 25 (*Kordić* Judgement, para. 465); Robert Donia, T(F), p. 1818.

registered voters took part, of whom 99% said they favoured independence.[1005] Muslims and Croats – the latter strongly encouraged by Franjo Tuđman[1006] – voted overwhelmingly in favour of BiH's independence, whereas the Serbs abstained.[1007] On 6 March 1992, BiH declared its independence.[1008]

433. On 7 April 1992, Croatia and the international community recognised BiH.[1009] As *Herbert Okun* saw it,[1010] it lay squarely within the Croats' interest to separate BiH from a Yugoslavia then dominated by the Serbs.[1011] On 8 April 1992, Alija Izetbegović, President of the Presidency of RBiH, signed a decree to change the name of the RSBiH, which became the RBiH.[1012]

434. After the results of the referendum and the declaration of BiH's independence were announced, the Serbs launched an offensive against BiH.[1013]

IV. Creation of the HVO: Supreme Body for the Defence of the Croatian People in the HZ H-B (April 1992)

435. On 8 April 1992, the Presidency of the RBiH adopted a decision proclaiming an immediate threat of war.[1014]

436. That same day, the Presidency of the HZ H-B adopted a decision, signed by Mate Boban as President of the HVO and the HZ H-B, establishing the HVO as the supreme body for the defence of the Croatian people in the HZ H-B.[1015] On 10 April

[1005] P 00132; P 09536, p. 38; 3D 03720, pp. 86 and 87; Josip Jurčević, T(F), p. 44750; Robert Donia, T(F), p. 1823.
[1006] Herbert Okun, T(F), pp. 16950 and 16951; Miomir Ţuţ ul, T(F), pp. 27722-27723.
[1007] Decision of 14 March 2006, Adjudicated Fact no. 26 (*Kordić* Judgement, p. 465); 1D 02934 under seal, p. 2; 1D 02935 under seal, T(F), pp. 9014-9015; P 09536, p. 38; Stjepan Kljuić, T(F), p. 3999; Herbert Okun, T(F), pp. 16658 and 16659; Miomir Ţuţ u l, T(F), p. 27722; Robert Donia, T(F), pp. 1823 and 1824.
[1008] P 00132; Decision of 14 March 2006, Adjudicated Fact no. 27 (*Kordić* Judgement, para. 467).
[1009] Decision of 14 March 2006, Adjudicated Fact no. 30 (*Kordić* Judgement, para. 483 (b)); P 00149; P 10356, T(F), pp. 10855 and 10856; Herbert Okun, T(F), pp. 16953 and 16955; Robert Donia, T(F), p. 1996; Josip Jurčević, T(F), pp. 44752 and 44753.
[1010] Deputy Co-Chairman of the International Conference on the Former Yugoslavia (ICFY) from September 1992 to May 1993: *see* Herbert Okun, T(F), p. 16653.
[1011] Herbert Okun, T(F), p. 16955.
[1012] P 00150, p. 1; 1D 10484, pp. 3 and 4.
[1013] Decision of 14 March 2006, Adjudicated Fact no. 25 (*Kordić* Judgement, para. 465).
[1014] 1D 01218; P 10484, pp. 3 and 4; P 00150, p. 4.
[1015] P 00152/P 00151; Decision of 14 March 2006, Adjudicated Fact no. 64 (*Kordić* Judgement, para. 483 (d)); Decision of 14 March 2006, Adjudicated Fact no. 65 *(Aleksovski* Judgement, para. 22); P 09545, pp. 14-15; P 09536, p. 37; Robert Donia, T(F), pp. 1830 and 1891; 3D 01113, p. 3; 3D 03720, p. 78; Milivoj Gagro, T(F), p. 2702.

1992, Mate Boban, as President of the HVO, issued an order whereby the HZ H-B ceased to recognise the RBiH Territorial Defence as the military structure of the HZ H-B, and whereby the HVO alone would thenceforth hold supreme command of HZ H-B forces.[1016] Under the terms of this order, the HVO constituted the sole legitimate entity and all other military groups deployed inside the territory of the HZ H-B would be considered illegal or enemy organisations.[1017] Also on 10 April 1992, Mate Boban, President of the HVO, ordered that all the crisis staffs or former TOs were to be immediately renamed municipal staffs of the HVO[1018] and subordinated to the Main Staff of the HVO.[1019]

V. HVO Proclaimed the Supreme Executive and Administrative Organ of the HZ H-B (May 1992)

437. On 15 May 1992, the Presidency of the HZ H-B adopted the "Decision on the Provisional Establishment of the Executive Authority and Administration in the Territory of HZ H-B", signed by Mate Boban, President of the HZ H-B.[1020] Article 1 of the Decision stipulates that the HVO shall exercise executive authority throughout the territory of the HZ H-B.[1021] Article 10 designates the town of Mostar as the seat of the HVO.[1022] Also on 15 May 1992, Mate Boban was elected President of the HVO[1023] and Jadranko Prlić was designated as Head of the Department of Finance.[1024]

VI. Start of Peace Negotiations and the Cutilheiro Plan (February 1992 – August 1992)

438. From 23 February 1992 to August 1992, negotiations about what was called the "Cutilheiro Plan" took place between the representatives of the Serbs, the Croats, and the Muslims of BiH, under the auspices of the EC.[1025] The Cutilheiro Plan set forth the principles for a "new constitutional arrangement for Bosnia and

[1016] P 00154; Mile Akmadţić, T(F), pp. 29725 and 29726.
[1017] P 00154; Mile Akmadţić, T(F), pp. 29725 and 29726.
[1018] "Municipal Staffs of the HVO".
[1019] 5D 04271; Mile Akmadţić, T(F), pp. 29727 and 29728.
[1020] P 00206.
[1021] P 00206, Article 1, p. 1.
[1022] P 00206, Article 10, p. 3.
[1023] P 09526, p. 7; P09545, p. 15.
[1024] P 00208; P09545, pp. 15 and 16.
[1025] P 09536, pp. 40-41; 3D 03720, pp. 99-102; Robert Donia, T(F), pp. 1825 and 1826.

Herzegovina". [1026] These principles envisaged the continuity of BiH while nevertheless dividing the State into three, non-contiguous territorial entities, based on the ethnic self-identification of their majority populations, as well as on economic and geographic criteria.[1027] The parties accepted the principles of the Cutilheiro Plan, without however signing an agreement.[1028]

439. However, during the period of tri-partite negotiations, the HVO negotiated politically with the Serbs of BiH over the partition of BiH. On 6 May 1992, the representatives of the Serbian community of BiH, consisting *inter alia* of Radovan Karadţić, Momčilo Krajišnik and Branko Simić, and the Croatian Community of BiH, represented *inter alia* by Mate Boban and Franjo Boras,[1029] met without Muslim representatives in the city of Graz in Austria to discuss the future of BiH.[1030] The joint statement issued by Mate Boban and Radovan Karadţić on 6 May 1992,[1031] described by Mate Boban and Radovan Karadţić as a "peace agreement", provided for the territorial division of BiH based on the 1939 borders of Croatian Banovina and called for a general cease-fire.[1032] However, this division included neither the strip of land along the banks of the Neretva, near Mostar, nor the town of Mostar,[1033] the reason why the parties wanted the EC to arbitrate their respective claims regarding these regions.[1034] The parties ultimately parted ways on 6 May 1992, without signing any agreement.[1035]

[1026] Robert Donia, P 09536, p. 40, reiterating the principles of the Cutileiro Plan.
[1027] P 09536, p. 1; P09536, p. 40 and Annex A, Map no. 13; Robert Donia, T(F), pp. 1826 and 1912-1913.
[1028] 1 D 00398, more specifically pp. 7-8; P 09536, pp. 40-41; 1D 02437; 1D 02438; Robert Donia, T(F), pp. 1826, 1910 and 1912; Witness 1D-AA, T(F), pp. 28948-28949, 29212, 29215, closed session; Mile Akmadţić, T(F), pp. 29406-29407, 29770 and 29773.
[1029] Witness 1D-AA, 1D 02935 under seal, *Naletilić and Martinović* Case, T(F), pp. 9044, 9047, 9198 and 9199.
[1030] P 09536, pp. 44-45; Robert Donia, T(F), pp. 1833-1835; Herbert Okun, T(F), pp. 16663-16664 and P 00187; Witness 1D-AA, 1D 02935 under seal, *Naletilić and Martinović* Case, T(F), pp. 9050-9052; Decision of 7 September 2006, Adjudicated Fact no. 4 (*Blaškić* Judgement, para. 105).
[1031] P 00187; Decision of 7 September 2006, Adjudicated Fact no. 20 (*Blaškić* Judgement, para. 105).
[1032] P 00187; P 09536, pp. 44-45; P 00192; 1D 02935 under seal, *Naletilić and Martinović* Case, T(F), pp. 9203 and 9205; Witness 1D-AA, T(F), pp. 29145-29150, closed session; Herbert Okun, T(F), pp. 16663-16664.
[1033] P 09536, pp. 44-45 and Annex, Map no. 14; P 00187.
[1034] P 09536, pp. 44-45.
[1035] Witness 1D-AA, 1D 02935 under seal, *Naletilić and Martinović* Case, T(F), pp. 9051, 9053 and 9200-9201. *See* also 3D 02003, pp. 1 and 6.

440. As of May 1992, military cooperation was achieved, this time between the HVO and the ABiH,[1036] and against the JNA and the VRS.[1037] The cooperation, continuing into early 1993, led *inter alia* to supplying the ABiH with weapons and military equipment,[1038] with the HVO providing medical aid.[1039]

441. Also as part of cooperation, on 21 July 1992 Franjo Tuđman and Alija Izetbegović signed a treaty of friendship and cooperation between Croatia and the RBiH, proclaiming the HVO as an integral part of the ABiH that was to be represented within the joint command of the RBiH armed forces.[1040]

VII. Negotiations within the Framework of the Vance-Owen Plan (August 1992 – January 1993)

442. By the spring of 1992, combat on the front lines as well as the failure to implement the Cutilheiro Plan[1041] confirmed, in *Robert Donia*'s view,[1042] that the EC was incapable of managing the situation in BiH on its own.[1043] Thus, during the summer of 1992, the EC and the UN joined forces to implement a new negotiating framework in BiH;[1044] to this end, they created the International Conference on the Former Yugoslavia ("ICFY") at the London conference of 26-28 August 1992.[1045]

[1036] On 23 June 1992, the TO of BiH was renamed "ABiH", *see* 4D 01731, para. 117; 4D 00404, p. 1.
[1037] Fahrudin Agić, T(F), pp. 9225-9227; Zdravko Batinić, T(F), pp. 34361-34363 and 34453-34455; 1D 03105; 1D 01792; 1D 01693; P 10033, p. 2, para. 4; 1 D 02482; 4D 00624, p. 2; 4D 01700, p. 5; Slobodan Praljak, T(F), p. 42494; 3D 03724; Slobodan Praljak, T(F), pp. 44556, 44559 and 44560; Robert Donia, T(F), p. 1999; 4D 00615; 2D 01295, pp. 2 and 3; 4D 00616, pp. 1 and 2; Vinko Marić, T(F), p. 48161; 2D 03060; 4D 00476; 4D 00477; 4D 00478; 4D 00908; 4D 00932; 4D 01026; 4D 01048; P 00717, p. 1; 1D 01424; Slobodan Praljak, T(F), p. 40519; 4D 01521; P 00868; P 01402; Boţo Pavlović, T(F), pp. 46962-46963; P 01158, p. 19; Herbert Okun, T(F), pp. 16894 and 16895; Mile Akmadţić, T(F), p. 29429-29431; 1D 01945, pp. 2 and 3; 1D 02663, p. 22; 4D 00389; Safet Idrizović, T(F), p. 9908; P 00708, pp. 1 and 2; P 00776, pp. 1 and 2; Safet Idrizović, T(F), p. 9872; 3D 00217; Radmilo Jasak, T(F), p. 48451.
[1038] Vinko Marić, T(F), pp. 48160 and 48229; 4D 01404. *See* also Milivoj Petković, T(F), pp. 49420-49425; P 00716, pp. 1 and 2; Witness EA, T(F), p. 24913, closed session; 2D 00577; 4D 00392; 2D 03008, p. 1; 2D 00310; Mile Akmadţić, T(F), pp. 29443, 29602-29606 and 29608-29611; 2D 00147; 1D 02458; 1D 02292.
[1039] 2D 00737; Ivan Bagarić, T(F), pp. 38955-38957. *See* also: 3D 03768, pp. 2, 6, 7, 10 and 11; 3D 00708; 2D 00502, p. 3; Mile Akmadţić, T(F), pp. 29613-29615; 2D 00705; 2D 00544; 2D 00320; 2D 00325.
[1040] P 10481, annex to the letter, pp. 2-4.
[1041] P 09536, pp. 40-41 and 46.
[1042] History Expert: *see* P 09536.
[1043] P 09536, pp. 41 and 46.
[1044] P 09536, pp. 41 and 46.
[1045] 1D 02935 under seal, *Naletilić and Martinović* Case, T(F), p. 9062; P 09536, pp. 46-47. The Co-Chairmen of the ICFY, acting on behalf of the UN, were, former American Secretary of State Cyrus Vance, and his deputy, Herbert Okun, and, on behalf of the EC, former British Foreign Secretary Lord

443. Three delegations took part in the ICFY.[1046] The BiH Serbian delegation consisted of Radovan Karadţić, President of Republika Srpska, Momčilo Krajišnik, Vice-President of the *Republika Srpska*, and VRS General Ratko Mladić.[1047] The primary representatives for the government of the RBiH were President Alija Izetbegović, Haris Silajdţić, Minister of Foreign Affairs, Ejup Ganić, and General Sefer Halilović (who took part in the conference both as a member of the RBiH government delegation and as a representative of the ABiH).[1048] The BiH Croatian representatives were Mate Boban, President of the HZ H-B, Mile Akmadţić, Prime Minister of the RBiH (who took part in the conference as a member of the Croatian delegation despite being a member of the RBiH government),[1049] and General Milivoj Petković.[1050] The President of Croatia, Franjo Tuđman, also took part in the negotiations, and had influence over the BiH Croatian representatives.[1051] *Herbert Okun* testified that although Franjo Tuđman was not officially the head of the Croatian delegation, he was so in fact.[1052] During the negotiations, Mate Boban told *Herbert Okun* on several occasions that he needed Franjo Tuđman"s approval before taking any decisions.[1053] Moreover, *Herbert Okun* stated that even though Alija Izetbegović, Mile Akmadţić and Haris Silajdţić were members of the RBiH government, Alija Izetbegović and Haris Silajdţić represented the interests of the Muslims of BiH,[1054] whereas Mile Akmadţić represented the interests of the BiH Croats.[1055]

444. On 27 October 1992, the Co-Chairmen of the ICFY Steering Committee, Cyrus Vance and David Owen, presented the three parties with the constitutional

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David Owen and the British Ambassador, Peter Hall. Cyrus Vance and David Owen were appointed Co-Chairmen of the Steering Committee of the ICFY at the London Conference, *see* P 09536, p. 47; Herbert Okun, T(F), pp. 16653, 16656 and 16669, 16682.

[1046] 1D 02888/1D 02889, p. 2; 1D 02890; 1D 02848, p. 2; Mile Akmadţić, T(F), pp. 29375, 29376, 29379, 29391, 29392 and 29454-29465.

[1047] Herbert Okun, T(F), p. 16671.

[1048] Herbert Okun, T(F), pp. 16671 to 16673.

[1049] Herbert Okun, T(F), pp. 16673 and 16674.

[1050] 4D 00830, p. 6; Herbert Okun, T(F), p. 16674.

[1051] Herbert Okun, T(F), pp. 16673-16675; P 01325, *Kordić and Cerkez* Case, T(F), p. 10764.

[1052] Herbert Okun, T(F), p. 16675.

[1053] Herbert Okun, T(F), p. 16675.

[1054] 1D 00814, p. 2; 1D 02848; p. 2; 1D 02849, p. 1; 1D 02851, p. 1; 1D 02850. *See* also on the same subject (namely, the distinction to draw between a delegation representing the Presidency and a delegation representing the Muslim part of RBiH or other party): 1D 02664, pp. 13-16; Mile Akmadţić, T(F), pp. 29376-29380, 29386 and 29617-29619.

[1055] Herbert Okun, T(F), p. 16839. *See* also 1D 02849, p. 1; Mile Akmadţić, T(F), p. 29390; 1D 02851, p. 1; 1D 02850.

principles that were supposed to be included in the future peace plan.[1056] While the Croats and the Muslims of BiH accepted them, they were rejected by the Serbs.[1057] Nevertheless, on 10 November 1992, the representatives of the three parties signed a cease-fire agreement applicable to the whole of BiH.[1058]

445. The talks proceeded apace, and on 2 January 1993, the Co-Chairmen of the ICFY Steering Committee presented to the parties an initial proposal for the agreement known as the Vance-Owen Plan.[1059] According to *Herbert Okun*, this was meant to lead to peace agreements while preventing the Serbs and Croats of BiH from constituting their own State within BiH and later uniting with Serbia and Croatia, respectively, as they were hoping to do.[1060]

446. The Vance-Owen Plan was based on multi-ethnicity, decentralisation and democracy.[1061] It consisted of a constitutional framework, a map of BiH featuring 10 provinces, and military agreements.[1062]

447. The Plan envisaged the creation of 10 provinces in BiH, each with a local government led by the representatives of the majority community in the province; it likewise envisaged that interim governments would be formed in each province, following the distribution of the population according to the 1991 Census.[1063] The provinces did not enjoy legal personality and were unable to negotiate agreements with international organisations or third-party States.[1064] Moreover, the provinces were to be structured in such a way as to form, insofar as possible, geographically coherent units that gave consideration *inter alia* to ethnic, geographic and historical factors, transportation routes and economic viability.[1065] *Witness 1D-AA*[1066] stated that

[1056] Herbert Okun, T(F), p. 16911.
[1057] Herbert Okun, T(F), p. 16911.
[1058] P 00854, p. 3; P 01187, p. 5.
[1059] P 01187, pp. 1 and 2; P 01391, p. 3; Herbert Okun, T(F), p. 16733; Witness BF, T(F), pp. 25918-25919 and 25927-25928, closed session; 1D 01521.
[1060] Herbert Okun, T(F), pp. 16731, 16732; P 01116, p. 3.
[1061] Herbert Okun, T(F), p. 16749; 3D 03720, pp. 108 and 109.
[1062] P 01038, p. 8; Herbert Okun, T(F), pp. 16725 and 16728; P 01047, p. 3; Decision of 14 March 2006, Adjudicated Fact no. 118 (*Kordić* Judgement, para. 559). Concerning the BiH map depicting 10 Provinces in particular, *see* P 09852, p. 11 and P 09276, map no. 11; Josip Jurčević, T(F), p. 44834. *See* also P 01187, p. 1.
[1063] P 09852, pp. 16-17; Decision of 14 March 2006, Adjudicated Fact no. 118 (*Kordić* Judgement, para. 559); 1D 02935 under seal, *Naletilić and Martinović* Case, T(F), pp. 9062 and 9063.
[1064] P 01116, Appendix III, pp. 3 and 4; Herbert Okun, T(F), p. 16731.
[1065] P 09852, p. 11. *See* also the map of the Vance-Owen Plan, P 09276, map 11, page 12.

each ethnic group was to have three provinces;[1067] the envisaged tenth province was the city of Sarajevo, which would constitute a separate district[1068] with a tripartite structure, according to *Herbert Okun*.[1069]

448. The Vance-Owen Plan, in addition, required the immediate cessation of hostilities.[1070] According to the military agreements, the parties were to negotiate the separation of the armed forces according to the borders drawn up for the new provinces.[1071] Thus, the Serbian forces of BiH were to regroup in Provinces 2, 4 and 6, the Croatian forces of BiH were to do so in Province 3, and the parties were to negotiate agreements regarding the deployment of the forces in Provinces 1, 5, 8, 9, and 10.[1072]

449. The BiH Croats constituted a majority in three provinces, designated by numbers 3, 8 and 10 in the Vance-Owen Plan.[1073] Mostar was to be the capital of Province 8 of BiH.[1074] The proposals that came after the Vance-Owen Plan also included Mostar in the majority-Croatian province.[1075]

450. However, based on the map proposed under the Vance-Owen Plan, 29% of the BiH Croats lived outside of Croatian-majority Provinces 3, 8 and 10.[1076] Thus, as underscored by *Witness DE,*[1077] the Municipality of Vareš was placed in a province under Muslim control, despite having a Croatian majority.[1078]

[1066] A Croatian member of the HDZ-BiH and the Presidency of BiH for many years: Witness 1D-AA, *see* T(F), pp. 28867-28868, 28876, 29259, closed session; 1D 02934 under seal, pp. 2 and 12.
[1067] Witness 1D-AA, 1D 02935 under seal, *Naletilić and Martinović* Case, T(F), pp. 9062 and 9063.
[1068] Witness 1D-AA, 1D 02935 under seal, *Naletilić and Martinović* Case, T(F), pp. 9062 and 9063.
[1069] Herbert Okun, T(F), p. 16748.
[1070] P 09852, p. 22; Herbert Okun, T(F), p. 16756.
[1071] P 09852, pp. 12 and 13; Herbert Okun, T(F), p. 16757.
[1072] P 09852, p. 13 and p. 19; Herbert Okun, T(F), p. 16757.
[1073] Decision of 14 March 2006, Adjudicated Fact no. 120 (*Naletilić* Judgement, para. 19); Decision of 14 March 2006, Adjudicated Fact no. 121 (*Kordić* Judgement, para. 559); P 01015, p. 13.
[1074] 1D 00892, p. 26; Bo Pellnäs, T(F), p. 19615.
[1075] 1D 01557; Bo Pellnäs, T(F), p. 19619.
[1076] Herbert Okun, T(F), p. 17005.
[1077] Witness DE, Croatian resident of Vareš, T(F), p. 15456, closed session.
[1078] Witness DE, T(F), pp. 15507 and 15508, closed session; P 09276, p. 12.

451. On 2 January 1993, the BiH Croats agreed to the entire Vance-Owen Plan.[1079] The Muslims accepted the constitutional principles[1080] but did not sign the military agreements and rejected the map.[1081] The Serbs rejected the Plan entirely.[1082]

VIII. Subsequent History of the Vance-Owen Plan; Attempts to Implement the Principles of this Plan in the Field (January 1993 – August 1993)

452. In a decision taken on 15 January 1993, Jadranko Prlić ordered all the ABiH units in Provinces 3, 8 and 10, which were declared Croatian under the Vance-Owen Plan, to subordinate themselves to the HVO within five days.[1083] This same decision instructed all the units of the HVO armed forces based in Provinces 1, 5 and 9, declared Muslim under the Vance-Owen Plan, to subordinate themselves to the Main Staff of the ABiH armed forces.[1084] The units of the HVO armed forces based in Kiseljak and in Kreševo were to remain under the command of the HVO Main Staff until a decision was taken on the definitive status of Province 7.[1085] The decision was to be implemented under the responsibility of Bruno Stojić, Head of the Department of Defence.[1086]

453. That same day, 15 January 1993, pursuant to the decision of Jadranko Prlić, Bruno Stojić issued an order to the Main Staffs of the HVO and the ABiH, to the Ministry of Defence of the RBiH and to the HVO Military Police Administration,[1087] which was to be executed prior to 20 January 1993 at 1900 hours.[1088] Under that order, all ABiH and HVO units refusing to subordinate themselves to the command of the Staffs in question, pursuant to the decision of 15 January 1993, were to leave the

[1079] P 01187, pp. 1 and 2; P 01391, p. 3; Herbert Okun, T(F), p. 16733; Witness BF, T(F), p. 25928, closed session. *See* also 1D 01521; Ray Lane, T(F), pp. 23787 and 23788.
[1080] The government of BiH had already accepted the constitutional principles on 18 December 1992: P 00932, p. 2; Herbert Okun, T(F), p. 16876; P 01187, pp. 1 and 2. *See* also Radmilo Jasak, T(F), p. 48933.
[1081] P 01187, pp. 1 and 2; Mile Akmadţić, T(F), pp. 29379 and 29380.
[1082] P 01187, pp. 1 and 2; P 01391, p. 3; Herbert Okun, T(F), p. 16733; Witness BF, T(F), pp. 25918-25919 and 25927-25928, closed session.
[1083] P 01146; P 09545, p. 77; Herbert Okun, T(F), pp. 16769-16771; Christopher Beese, T(F), pp. 3074 and 3075, 5207, 5300.
[1084] P 09545, pp. 77 and 78; P 01146. *See* also P 01197, p. 3.
[1085] P 09545, p. 78; P 01146.
[1086] P 01146; P09545, pp. 77 and 78.
[1087] P 01140; Bruno Pinjuh, T(F), pp. 37341-34344.
[1088] P 09545, p. 78; P 01140.

territories where they were deployed.[1089] Should they refuse to do so, they would be considered paramilitary units, would be disarmed and have their members placed in detention.[1090] Bruno Stojić added in the order that the persons responsible for carrying it out would be the Chief of the Main Staff and the Chief of the Military Police Administration.[1091]

454. An order restating the substance of the one signed by Bruno Stojić was sent out the same day, 15 January 1993, by General Milivoj Petković, Chief of the Main Staff of the HVO, down the chain of command of the HVO Army, and was addressed to three of the four operative zones of the HVO Army[1092] – except for Posavina – as well as to the 1st Mostar Brigade.[1093]

455. On 16 January 1993, the RBiH Minister of Defence, Boţo Rajić, a Croatian member of the government, issued an order in language identical to that sent by the HVO to the Serbian, Croatian and Muslim armed forces; UNPROFOR and the ECMM in BiH likewise were sent a copy of the order.[1094] David Owen stated that Boţo Rajić"s order was in fact premature[1095] and said that the ABiH was not required to subordinate itself to the HVO.[1096]

456. In correspondence addressed to Alija Izetbegović, Jadranko Prlić requested that effect be given to the subordination orders from the HVO and the Ministry of Defence of the RBiH, which he said were in compliance with the provisions of the Vance-Owen Plan.[1097]

[1089] P 09545, p. 78; P 01140; Bruno Pinjuh, T(F), pp. 37341-34344.
[1090] P 09545, p. 78; P 01140; Bruno Pinjuh, T(F), pp. 37341-34344; Slobodan Praljak, T(F), pp. 44063 and 44065.
[1091] P 01140; Bruno Pinjuh, T(F), pp. 37341-37344.
[1092] The South-East Herzegovina OZ, the North-West Herzegovina OZ and the Central Bosnia OZ (P 01139).
[1093] P 09545, p. 78; P 01139/P 01156, p. 1. *Milivoj Petković* stated during his testimony that his order dated 15 January 1993 informed ABiH personnel in Provinces 3, 8 and 10 to subordinate themselves to the HVO under the terms of a political agreement reached in Zagreb between the ABiH and the HVO, for the purpose of issuing joint command orders, Milivoj Petković, T(F), pp. 49889-49891.
[1094] P 01150; P 01201. The Chamber notes the difference in dates between the 16 and 18 January versions but similarity of content, except for a slightly different translation between the two; 1D 01195, pp. 1 and 2.
[1095] Herbert Okun, T(F), pp. 16781, 16782; P 01038, p. 68.
[1096] Herbert Okun, T(F), p. 16782; P 01038, p. 68.
[1097] P 01263; Herbert Okun, T(F), p. 16775. The Chamber notes that the contents of page 1 of the letter (P 01263) make it possible to date this correspondence between 17 and 22 January 1993.

457. The ABiH did not, however, intend to subordinate itself to the HVO. On 15 January 1993, Enver Hadţihasanović, Commander of the ABiH 3rd Corps, specifically ordered all the ABiH Brigades stationed in the zone of responsibility of the ABiH 3rd Corps to place themselves on highest alert, in order to be able to respond to any attack by the HVO Army.[1098] Likewise, on 16 January 1993, Sefer Halilović, Chief of the ABiH Supreme Command, after reminding his troops that the Geneva peace talks were not yet concluded, ordered them not to subordinate themselves to the HVO in Provinces 3, 8 and 10.[1099]

458. In a letter addressed to Alija Izetbegović dated 18 January 1993, Mate Boban and Mile Akmadţić recalled that the HVO decision concerning the pull-back of the BiH Croatian, Muslim and Serbian armies to their respective provinces took place pursuant to the order on this subject issued by the RBiH Minister of Defence, Boţo Rajić, with their consent, and in accordance with the "Geneva Conference".[1100] Moreover, Mate Boban and Mile Akmadţić told Alija Izetbegović that circumstances were ripe for establishing a joint command over BiH armed forces, that is, between the ABiH and the HVO.[1101]

459. On 19 January 1993, Alija Izetbegović voided the order of Boţo Rajić, the RBiH Minister of Defence, dated 16 January 1993.[1102] On 21 January 1993, Boţo Rajić thus suspended execution of his order of 16 January 1993 until such time as the Geneva peace talks were finalised,[1103] which, according to *Herbert Okun*, was tantamount to abrogating the order of 16 January 1993.[1104]

460. At the same time, in January 1993, clashes between the HVO and the ABiH[1105] broke out in several municipalities, including in the municipality of Gornji Vakuf.[1106]

[1098] 3D 01537, pp. 1 and 2.
[1099] P 01168; Herbert Okun, T(F), pp. 16774, 17056 and 17057. *See* also mention made of an order by Sefer Halilović but dated 17 January 1993: 1D 01197, p. 3; P 01186; 1D 01195, pp. 1 and 2.
[1100] 1D 01521; Ray Lane, T(F), pp. 23791-23792.
[1101] 1D 01521; Ray Lane, T(F), pp. 23791-23792.
[1102] P 01343; Herbert Okun, T(F), pp. 16776 and 16777; 1D 01195, pp. 1 and 2.
[1103] 2D 00441; Herbert Okun, T(F), p. 17058-17059.
[1104] Herbert Okun, T(F), pp. 17058-17059.
[1105] P 01325, pp. 1-3, 8-9; 1D 02729 pp. 2 and 3; 2D 00206.
[1106] P 01285; Herbert Okun, T(F), pp. 16789 and 16790. *See* further "Clashes Between the HVO and the ABiH on or About 11 and 12 January 1993" and "Attacks of 18 January 1993 in the Municipality of Gornji Vakuf" in the Chamber's factual findings with regard to the Municipality of Gornji Vakuf.

461. Because of the clashes between the HVO and the ABiH, Alija Izetbegović and Mate Boban signed a joint statement in Geneva on 27 January 1993, ordering an immediate halt to the fighting.[1107] Milivoj Petković then forbade the HVO units from mounting attacks against the ABiH.[1108] According to *Herbert Okun*, the cease-fire was never enforced in the field.[1109]

462. At the same time, the negotiations between the three parties concerning the Vance-Owen Plan were at last able to advance and, on 30 January 1993, the parties reached agreement on the Plan"s constitutional principles.[1110] The Muslims, however, refused to sign the military agreements and rejected the map.[1111] The Serbs signed the military agreements,[1112] but did not accept the map as proposed.[1113]

463. After 30 January 1993, the BiH Croats and Muslims attempted to cooperate in implementing the cessation of hostilities principle established under the Vance-Owen Plan, doing so through a series of meetings and negotiations in the various municipalities of BiH.[1114] Following the meetings and negotiations, the BiH Croats and Muslims signed joint battlefield orders,[1115] which included orders for the cessation of hostilities.[1116]

[1107] 2D 00093; 4D 00358; Christopher Beese, T(F), p. 5377.
[1108] 4D 00358.
[1109] P 01329; Herbert Okun, T(F), p. 16787.
[1110] P 01363; P 01391, p. 2; Herbert Okun, T(F), pp. 16787 and 16789. *See* also P 01240, pp. 18 and 19 (Document ET-0132-2298).
[1111] P 01391, pp. 3 and 4. *See* also 4D 01235; Herbert Okun, T(F), p. 16733; Witness BF, T(F), pp. 25918-25919 and 25927-25928, closed session; P 01240, pp. 18 and 19 (Document ET-0132-2298); 1D 02914, pp. 5 and 6; Mile Akmadţić, T(F), pp. 29503-29504.
[1112] P 01391, p. 4, para. 16.
[1113] P 01391, p. 3, para. 14.
[1114] By way of example, according to *Witness EA*, negotiations regarding the implementation of the Vance-Owen Plan were held at Kiseljak, between the HVO, the Bosnian Muslims and UNPROFOR, in the spring and summer of 1993, Witness EA, T(F), pp. 24361 and 24362, closed session; *Andjelko Makar* stated that between February and early May 1993, he went to Mostar a total of three times accompanied by two other officers from the 2nd ABiH Corps; there, the two HVO and ABiH delegations expressed their desire to negotiate the end of hostilities between the HVO and the ABiH in Central Bosnia and agreed to install a unified command bringing together the HVO and the ABiH, Andjelko Makar, T(F), pp. 39439, 38456, 38613 and 38614; 2D 01111, pp. 1 and 2. *Milivoj Petković* stated that between April and May 1993, he maintained contact daily with Sefer Halilović, Commander of the 4th ABiH Corps and visited the front with him, Milivoj Petković, T(F), pp. 49528 and 49529.
[1115] *See* P 01709, p. 02259.
[1116] *See* P 02483, pp. 1 and 3-5; P 01950, pp. 1 and 2; Bo Pellnäs, T(F), pp. 19475-19482, 19660, 19661; P 01965; P 01980, p. 4; P 01981, pp. 2 and 3; Grant Finlayson, T(F), pp. 18007-18008, 18013, 18128-18130 and 18134; P 02054 under seal, p. 2; 2D 00289; P 02030; Christopher Beese, T(F), pp. 3140-3144; P 01981; Klaus Johann Nissen, T(F), pp. 20415-20417; Witness DW, T(F), pp. 23094-23096; P 05571; P 02259.

464. Likewise, between February and early May 1993, coordination bodies[1117] and joint commissions[1118] were created or reinforced in several municipalities, including Gornji Vakuf and Mostar, by the BiH Croats and Muslims in order to facilitate the implementation of the peace principles of the Vance-Owen Plan in the field.[1119]

465. While this cooperation in the field between Croats and Muslims was taking place, in March 1993, peace negotiations continued.[1120] Once several amendments were added to the Vance-Owen Plan, on 25 March 1993 Alija Izetbegović agreed to sign the three components of the Plan, subject to certain requirements.[1121] The most important changes with respect to the proposal of 2 January 1993 concerned the map of BiH.[1122] Under the new version of the Plan, the Serbian forces would regroup in the direction of Provinces 2, 4 and 6, the HVO would do so in the direction of Province 3, and the ABiH in the direction of Province 1.[1123] Lastly, the HVO and the ABiH were

[1117] For example, under the joint order of 11 February 1993 issued by Milivoj Petković, Chief of the HVO Main Staff, and Safer Halilović, Chief of the ABiH Main Staff, in order to end the conflicts between the HVO and ABiH, the commander of the Central Bosnia OZ, Tihomir Blaškić, and the commander of the 3rd ABiH Corps, were ordered to create a coordinating team tasked with and responsible *inter alia* for submitting a joint retreat order, evaluating the situation in pockets of conflict and identifying the causes and individuals responsible for these conflicts, for conducting investigations concerning these incidents, for releasing detainees immediately and unconditionally, particularly civilians, and for submitting a written report the next morning. In this order, Milivoj Petković and Sefer Halilović likewise instructed the existing coordinating teams, particularly in the area of Gornji Vakuf and Mostar, to continue to carry out their mission and more specifically instructed the Mostar coordinating team to focus its activities on the area of Konjic-Jablanica, P 01467; Ray Lane, T(F), p. 23939. *See* also P 02088; P 02112; Witness DZ, closed session, T(F), pp. 26734 and 26735; 1D 02094, pp. 1 and 2.
[1118] P 01950; P 01965; P 00557; 4D 00557; P 02054 under seal, pp. 2-3; P 02016, p. 4; Bo Pellnäs, T(F), pp. 19485, 19490 and 19755; Grant Finlayson, T(F), pp. 18013-18014.
[1119] P 01467; P 02088; P 02112.
[1120] *See* in particular the signature of an agreement between the Croats and the Muslims regarding the formation of a provisional government in BiH on 3 March 1993: P 01398, pp. 18-23; Herbert Okun, T(F), pp.16899-16900. *See* the discussions on this subject as of 20 January 1993: P 01240, pp. 22-24 (Document ET-0132-2298) and pp. 20 and 24-37 (Document 1D33-0330); Mile Akmadţić, T(F), p. 29478; 1D 02853; 1D 02903. *See* also 1D 01193.
[1121] The requirements in question are detailed in a separate statement in the Plan, specifically regarding the halt to the "aggression" and the signature without reservation of documents by the other parties, *see* 1D 02908, pp. 41-42. *See* also Herbert Okun, T(F), pp. 16790-16791; 1D 02908, pp. 6 and 8-40; Decision of 14 March 2006, Adjudicated Fact no. 152 (*Naletilić* Judgement, para. 21); P 01804, p. 1; 1D 01822; Ciril Ribiĉić, T(F), p. 25617; 3D 00320, pp. 188-189; P 01738; 1D 02890; Mile Akmadţić, T(F), pp. 29374 and 29484-29486; P 10468, pp. 2 and 3; Radmilo Jasak, T(F), p. 48934.
[1122] Thus, Province 5, with a Muslim majority, was provided with a corridor between Provinces 3 and 4, with Croatian and Serbian majorities, respectively, which gave it access to the River *Sava*. Moreover, Vareš, Visoko, Breza and a part of Kakanj, initially placed in Province 9 (Muslim majority) now formed part of Province 7 of Sarajevo, *see* Herbert Okun, T(F), pp. 16791-16793; IC 00521.
[1123] P 01398, p. 30.

to enter into agreements concerning their redeployment in Provinces 5, 8, 9 and 10.[1124]

466. The Plan, as proposed on 25 March 1993, included further provisions, pertaining *inter alia* to the provisional presidency and central government, to the structure and responsibilities of the provisional provincial governments established in each of the provinces, the demilitarisation and establishment of an "international authority responsible for ensuring freedom of movement" ("International Access Authority"). UNPROFOR was assigned to supervise the gradual demilitarisation of the provinces.[1125] Nevertheless, the BiH Serbs once again rejected the Plan.[1126]

467. On 27 March 1993, Presidents Izetbegović and Tuđman issued a joint statement in which they proclaimed their support for the new version of the Vance-Owen Plan.[1127] Subsequent to signature of the Plan[1128] by the Croatian and Muslim representatives on 25 March 1993 and the joint statement of 27 March 1993, the BiH Croats asked Alija Izetbegović on 2 April 1993 to sign a supplemental statement in support of the notion that the ABiH was to subordinate itself to HVO command in Provinces 3, 8 and 10, and the HVO was to subordinate itself to ABiH command in Provinces 1, 5 and 9; however Alija Izetbegović never signed this statement.[1129]

468. According to the minutes of the 34th session of the HVO of the HZ H-B on 3 April 1993, chaired by Jadranko Prlić, which Mate Boban happened to be attending,[1130] the HVO set a deadline of 15 April 1993 for implementing the Vance-Owen Plan pursuant to the so-called "common" statement by Mate Boban and Alija Izetbegović on 2 April 1993.[1131] The statement, signed by Mate Boban alone,[1132]

[1124] P 01398, p. 30.
[1125] P 01398, p. 30.
[1126] Decision of 14 March 2006, Adjudicated Fact no. 152 (*Naletilić* Judgement, para. 21); P 01804, p. 1.
[1127] P 01738.
[1128] *See* "Negotiations within the Framework of the Vance-Owen Plan (August 1992 – January 1993)" concerning the conditions for signature of the plan by the parties in the Chamber"s findings pertaining to the principal events following the creation of Herceg-Bosna.
[1129] P 01792. Witness Herbert Okun confirmed that Alija Izetbegović never signed this document, *see* Herbert Okun, T(F), pp. 16796 and 16798; P 01798; P 09519.
[1130] P 01798, p. 1; P 09545, pp. 82-85.
[1131] *See* previous paragraph, explaining that Izetbegović never signed this document P 01792. Witness *Herbert Okun* confirmed that Alija Izetbegović never signed this document, *see* Herbert Okun, T(F), pp. 16796 and 16798. Moreover, *see* P 09545, p. 82; P 01798; P 01804, p. 1; P 10675, p. 1; P 01808; P 02045, p. 1.
[1132] P 10675, p. 1.

incorporated the HVO"s decision of 15 January 1993 instructing the ABiH Army to subordiante itself to the HVO or leave Provinces 3, 8 and 10, and ratified the creation of a joint command.[1133] It was also decided during that session of the HVO of the HZ H-B that in the event the Muslim authorities continued to refuse to sign the supplemental statement, the HVO would enforce it unilaterally.[1134] It was finally agreed that they would prevent the RBiH authorities from establishing institutions in the Croatian provinces.[1135]

469. On 15 April 1993 and the days that followed, orders were given to the HVO Armed Forces, whose purpose was to consolidate the HVO"s positions and to enforce subordination of the ABiH forces. The Chamber notes, in particular, an order issued on 16 April 1993 by the commanding officer of the *Knez Domagoj* Brigade indicating that all the members of the ABiH in the *Knez Domagoj* Brigade"s area of responsibility would be arrested for 15 days and their weapons confiscated,[1136] which *Witness CU*[1137] said was in fact done.[1138]

470. On or about 15 April 1993, clashes broke out in BiH between the HVO and the ABiH, specifically in the municipalities of Prozor and Jablanica.[1139]

471. On 18 and 25 April 1993, Mate Boban and Alija Izetbegović, in joint statements,[1140] ordered the cessation of hostilities between the ABiH and the HVO[1141] and the investigation of the crimes committed by both parties.[1142] According to *Herbert Okun* and *Christopher Beese*, the statements on the cessation of hostilities were not enforced in the field[1143] even though on the day of the second joint statement, 25 April 1993, Bruno Stojić and Milivoj Petković issued an order to all the

[1133] P 09545, pp. 82-85; P 01798. *See* also P 01804, p. 1; P 02046/1D 01655, p. 2; P 02094, p. 1; P 01808; Bo Pellnäs, T(F), pp. 19755-19756; P 02016, p. 4; P 02045, p. 2; P 09524, p. 1.
[1134] P 09545, pp. 82-85; P 01798; P 01804, p. 1; P 10675, p. 1; P 01808.
[1135] P 09545, p. 82; P 01798.
[1136] P 01900; P 01913.
[1137] *Witness CU* was a member of the SDA and of the ABiH, *see* Witness CU, T(F), pp. 12214 and 12253, closed session.
[1138] Witness CU, T(E) pp. 12274 and 12275, closed session. The witness did not however provide further clarification.
[1139] 4D 01156, pp. 1 and 2; P 09400, pp. 20-21; P 01915, p. 2; 4D 01565; 4D 01034.
[1140] P 01983; P 02078 (*see* also Exhibit P 02088, with identical contents but without the annex in Exhibit P 02078); Herbert Okun, T(F), pp. 16801 and 16809; Bo Pellnäs, T(F), p. 19756.
[1141] P 01983; P 02078; Herbert Okun, T(F), pp. 16801 and 16809. *See* also 3D 03720, pp. 138 and 139.
[1142] P02078; P 02112.
[1143] Herbert Okun, T(F), pp. 16801 and 16812; Christopher Beese, T(F), p. 3145; P 02300 under seal, p. 2.

HVO operative zones, insisting on the cessation of all actions hostile to the ABiH and the fortification of HVO positions.[1144]

472. In this same joint statement of 25 April 1993 by Mate Boban and Alija Izetbegović, a joint command[1145] was established between the HVO and the ABiH.[1146] The command was to be led by General Sefer Halilović and General Milivoj Petković, who were also supposed to establish a joint headquarters in Travnik.[1147] The Independent Mission of the UN Security Council in BiH reported to the President of the Security Council that the joint command constituted a positive step towards implementation of the Vance-Owen Plan.[1148]

473. On 25 April 1993, at the same time the HVO and the ABiH were deciding to end hostilities and create a joint command in Zagreb, the HVO and the HDZ-BiH adopted a statement in Ĉitluk, published on 29 April 1993, asserting *inter alia* that President Alija Izetbegović could not be considered the legitimate president of BiH, because he represented only the Muslim part of the population, and that the ABiH should be viewed as the military force of the Muslim populace.[1149]

474. On 2 May 1993, at a meeting convened in Athens by the Greek Minister of Foreign Affairs together with the ICFY Co-Chairmen,[1150] Radovan Karadţić, further to Slobodan Milošević's recommendations, signed the three parts of the Vance-Owen Plan, contingent on their ratification by the BiH Serbian Assembly.[1151] However, one or two weeks later, the BiH Serbian Assembly rejected the Vance-Owen agreements as signed on 2 May 1993, thus signalling their definitive failure.[1152]

475. On 6 May 1993, Mate Boban, President of the HZ H-B, sent a letter to the Secretary-General and to the United Nations Security Council, as well as to the governments of the countries in which the RBiH had opened embassies, informing

[1144] P 02093/P 02097; Bo Pellnäs, T(F), pp. 19756-19757.
[1145] P 02091, pp. 1 and 2; P 01965; Slobodan Boţić, T(F), p. 36192; P 02150, para. 38 and Annex III; P 02441, pp. 1 and 2. *See* also 3D 03720, pp. 138 and 139.
[1146] P 02078, pp. 1, 2 and 4; P 02091, pp. 1 and 2; P 02150, para. 38 and Annex III; P 02441, pp. 1 and 2.
[1147] P 02078, pp. 1, 2 and 4; P 02091, pp. 1 and 2; P 02150, p. 19.
[1148] P 02150, paras 39-40.
[1149] P 09494; Christopher Beese, T(F), pp. 3146-3150; P 02051; P 02149; Witness BF, T(F), p. 25787, closed session; 1D 00817, p. 4. *See* also 1D 00814, p. 2; Christopher Beese, T(F), pp. 5274 and 5277.
[1150] P 09606; P 03299, p. 2; Herbert Okun, T(F), p. 16813.
[1151] P 03299, p. 2; Herbert Okun, T(F), pp. 16813-16814.
[1152] Herbert Okun, T(F), p. 16814; Mile Akmadţić, T(F), pp. 29382-29384.

them of the decision taken in Ĉitluk to deny any validity to the decisions taken by the RBiH without the participation of the elected representatives of the Croatian people and to withhold recognition of the lawfulness of Alija Izetbegović again running for President of the RBiH.[1153]

476. On 11 May 1993, the BiH Assembly passed a decision adopting the Vance-Owen Plan and ensuring that it would be enforced by the Government of BiH.[1154]

IX. From Međugorje to Abandonment of the Vance-Owen Plan (May 1993 –Summer of 1993)

477. By the end of April 1993, various international and local actors stated that the Vance-Owen Plan could not be implemented, in its original form and/or in the near future,[1155] given the divergent interpretations of the Plan itself and the clashes taking place in the field.[1156] Fresh negotiations thus started on 18 May 1993. On that date, the Co-Chairmen of the ICFY Steering Committee as well as Alija Izetbegović, Mate Boban and Franjo Tuđman met in Međugorje to reach a cease-fire agreement between the Croats and the Muslims, and to strengthen cooperation in implementing the peace plan.[1157] During the meeting, the parties laid down the principles of a new agreement called the "Međugorje Agreement"[1158] whereby they established two coordinating bodies, one political[1159] and the other military,[1160] arranged for the immediate release of detainees,[1161] and named Jadranko Prlić Prime Minister of the transitional Government of BiH.[1162] Despite this, no agreement was signed at the conclusion of the meeting, particularly in view of President Tuđman's insistence that Croatia's lack

[1153] P 09602.
[1154] 1D 01281, p. 1; 1D 01338, p. 2; Philip Watkins, T(F), pp. 18944-18946; Klaus Johann Nissen, T(F), p. 20543.
[1155] On 15 April 1993, the discussions in the VONS illustrated that a peaceful solution to the conflict in BiH still lay well out of reach, and that the implementation of the Vance-Owen Plan had been a failure up to that point; *see* in this regard P 01883, pp. 9-13. On 27 April 1993, President Tuđman explained during a VONS meeting in Zagreb that the Vance-Owen Plan would not survive in its then-current form, *see* in this regard P 02122, pp. 24-25; P 02845; Zoran Perković, T(F), pp. 31721-31722.
[1156] P 03299, pp. 2-3; P 09536, pp. 41 and 46-47.
[1157] P 03299, pp. 2 and 3.
[1158] 1D 02404.
[1159] 1D 01595, p. 1; 1D 02404, p. 1.
[1160] 1D 01595, p. 1; 1D 02404, p. 2.
[1161] 1D02404, p. 2; Zdravko Sančević, T(F), pp. 28817-28818.
[1162] 1D 01595, p. 1; 1D02404, p. 2; P 02441; Zdravko Sančević, T(F), p. 28555.

of responsibility and non-participation in the events unfolding in Mostar be acknowledged.[1163]

478. On 3 June 1993, the ECMM reported that several attempts to implement the Vance-Owen Plan had been launched since the Međugorje meeting of 18 May 1993, but with decidedly little progress.[1164]

479. By mid-June 1993, however, peace negotiations resumed in Geneva between the Serbs, the Croats and the Muslims of BiH, under the auspices of the ICFY framework,[1165] and the delegations gradually departed from the principles of the Vance-Owen Plan, turning towards the concept of a union of three constituent Republics.[1166]

X. Owen-Stoltenberg Plan

480. In the summer of 1993, the peace negotiations in Geneva between the Serbs, Croats and Muslims of BiH on the division of the BiH territory, resulted in the "Owen-Stoltenberg" Plan in late August 1993.[1167] The Plan provided for a union of three constituent Republics corresponding to the three ethnic entities in the country,[1168] in lieu of the system of provinces subject to a central authority, as contemplated by the Vance-Owen Plan.[1169]

[1163] P 02441, p. 6.
[1164] According to the ECMM, the Croats of BiH were more satisfied than the Muslims about these initiatives for implementing the Plan. The three major problems identified by the ECMM at the start of June 1993 were: (1) the inability of the Muslim representatives of the municipalities to attend meetings and elections of the provincial authorities, given the problems with security on the roads controlled by the HVO, (2) the difficulties in interpreting the Vance-Owen Plan, more particularly as concerned the operation of the municipalities, and (3) the presence of "extremist" Croats among the provincial authorities; *see* in this regard P 02626, pp. 1-2. Moreover, according to an ECMM report of 15 June 1993, the ECMM considered that implementation of the Vance-Owen Plan in Provinces 8 and 10 was unlikely unless certain issues were resolved, in particular, compliance with the freedom of movement of persons and goods throughout BiH, respect for human rights and the right to freedom of religion, and the release of all detainees; *see* in this regard P 02787, p. 5, para. 4.
[1165] P 03299, pp. 3-5; 1D 02840; Mile Akmadţić, T(F), pp. 29529 and 29531.
[1166] P 03299, pp. 3-5; Witness Ole Brix-Andersen, P 10356, *Kordić and Cerkez* Case, T(F), p. 10828; 1D 02100, p. 1.
[1167] P 03299, pp. 3-5; 1D 01539, pp. 3 and 4; Witness Ole Brix-Andersen, P 10356, *Kordić and Cerkez* Case, T(F), p. 10828.
[1168] Witness Ole Brix-Andersen, P 10356, *Kordić and Cerkez* Case, T(F), p. 10828; Josip Jurčević, T(F), p. 45074; 3D 03720, pp. 109 and 110; Witness 1D-AA, 1D 02935 under seal, *Naletilić and Martinović* Case, T(F), p. 9066.
[1169] P 08973, p. 63; Ciril Ribičić, T(F), p. 25451.

481. Mostar was, moreover, to be administered by the EC for a period not to exceed two years, with a part of the city serving as the capital of the HR H-B.[1170] The Muslims were granted access to the Adriatic.[1171]

482. The BiH Serbian and Croatian Assemblies approved the agreements in late August 1993.[1172] However, the Muslim-majority RBiH Assembly merely voted unanimously to continue negotiations because of disagreements over the territories they were assigned.[1173]

483. Meanwhile, on 28 August 1993, the House of Representatives of Herceg-Bosna adopted the decision creating the HR H-B.[1174]

484. In its preamble, the decision of 28 August 1993 stated that the framework of government then existing in the RBiH did not make it possible to guarantee that the rights of the Croatian people in BiH would be protected[1175] and that, for this reason, the Croatian people had decided to establish their own state community in a part of the RBiH,[1176] whose borders would be set by the Constitution of the HR H-B.[1177] The decision nevertheless specified that the HR H-B would agree to participate in certain institutions of the RBiH, pursuant to a tripartite constitutional agreement expected to be signed between the constituent peoples of the RBiH.[1178] The decision provided, lastly, that the territory of the HR H-B would match that of the HZ H-B.[1179]

485. During the month of September, various versions of the Owen-Stoltenberg Plan appeared in succession,[1180] until 20 September 1993, when Alija Izetbegović, Mate Boban and Radovan Karadţić reached a constitutional agreement providing for a union of the Republics of BiH, and submitted the said agreement to their respective

[1170] 1D 01539, p. 3; Philip Watkins, T(F), p. 18964. *See* also Philip Watkins, T(F), pp. 18830-18831; P 07226 under seal, p. 1; P 07356 under seal, p. 3; P 07342 under seal, p. 1; P 07342 under seal, p. 1; P 07372 under seal, p. 1.
[1171] 1D 01539, p. 3.
[1172] 1D 01539, p. 4.
[1173] 1D 01539, p. 4.
[1174] P 04611; P 09545, p. 103; Decision of 14 March 2006, Adjudicated Fact no. 71 (*Kordić* Judgment, para. 732); P 08973, p. 61; Ciril Ribičić, T(F), p. 25451; P 04560, pp. 1-3.
[1175] P 04611, p. 1.
[1176] P 04611, p. 1.
[1177] P 08973, p. 63; Ciril Ribičić, T(F), p. 25451.
[1178] P 04611, p. 1.
[1179] P 04611; P 09545, p. 103; P 08973, p. 63; Ciril Ribičić, T(F), p. 25451.
[1180] 3D 03720, p. 109.

assemblies.[1181] Only the House of Representatives of the HR H-B and the assembly of the Serbs of BiH ratified the agreement[1182] which was rejected by the Assembly of the RBiH[1183] thus leading to the demise of the Owen-Stoltenberg Plan.

486. Meanwhile, fresh fighting broke out in BiH between the HVO and the ABiH, as early as September 1993,[1184] particularly in the municipalities of Mostar and Vareš.[1185] Certain operations conducted by the HVO during this period were, moreover, supported by the Serbian armed forces, as for example, in the municipality of Vareš.[1186]

XI. Washington Agreement (1 March 1994)

487. It was not until the beginning of 1994 that peace negotiations resumed at the international level. A report sent by the Co-Chairmen of the ICFY Steering Committee to the Secretary-General of the United Nations on 12 February 1994 outlined the various stages of the negotiations taking place in early 1994 between the Muslims and the Croats of BiH, including the negotiations in Geneva from 10 to 12 February 1994.[1187] The issues covered during the negotiations involved both, setting up a federation between the BiH Croats and Muslims[1188] and the status of the city of Mostar.[1189] In late February 1994, fighting between the ABiH and the HVO had

[1181] 1D 02854, p. 2; 3D 03720, p. 111.
[1182] 1D 02854, p. 2.
[1183] 3D 03720, pp. 111 and 112.
[1184] 2D 03002; 3D 00740; 4D 01719, pp. 1 and 2. *See* also Bo Pellnäs, T(F), p. 19527 and P 05085, p. 4.
[1185] *See* for the municipality of Mostar specifically, 3D 00740; 3D 00736. For the municipality of Vareš, *see* P 07838, para. 6; P 07917, pp. 6-7; P 06182. *See* also the course of events in the municipalities in the Chamber‟s factual findings with regard to the Municipalities of Mostar and Vareš for further examples.
[1186] P 09817, p. 2; P 06440; P 06498.
[1187] P 07866. *See* also Mile Akmadţić, T(F), p. 29838; P 07480, p. 1. P 07260, pp. 15-20.
[1188] *See* Peter Galbraith, T(F), p. 6530; 1D 01551, p. 2.
[1189] Concerning this point, *Bo Pellnäs* stated that in December 1993, the Muslims and Croats of BiH had put together a working group on this issue and that in January 1994, the BiH Croatian delegation had proposed that East Mostar alone be administered by the European Union. *Bo Pellnäs*‟s testimony, as well as two ECMM reports dated 26 February 1994 and 25 March 1994, respectively, showed moreover that the Muslim and Croatian parties reciprocally slowed the pace of negotiations on this issue in February 1994, due specifically to the issue related to the return or departure of displaced persons in the said town. According to *Bo Pellnäs*, in 1994, the parties finally reached an agreement establishing that the town of Mostar would be administered by the European Union, *see* Bo Pellnäs, T(F), pp. 19535, 19550 and 19552-19553, 19555-19556, 19625-19627, 19629; P 07866, para. 17; P 05757, pp. 4 and 5; P 08019, p. 5; P 07965, p. 1.

ended,[1190] and negotiations could resume once more under the auspices of the United States in Washington.[1191]

488. On 1 March 1994, Haris Silajdţić, the Prime Minister of the RBiH, Mate Granić, the Croatian Minister of Foreign Affairs of Croatia, and Krešimir Zubak, head of the BiH Croat delegation at the ICFY, signed the Washington Agreement establishing a Federation of majority-Croatian and majority-Muslim territories in BiH and contemplating *inter alia* the possibility of a Confederation between Croatia and the Federation of BiH.[1192] *Mile Akmadţić* indicated that the Washington Agreement provided that every place in the territory of BiH where the Muslim or Croatian population was in the majority would belong to the Federation, amounting to approximately 58% of its territory; according to *Mile Akmadţić*, it was the Dayton Agreement that ultimately approved a ratio of 49% of the territory under Serbian control and 51% under joint Muslim and Croatian control.[1193]

489. On 30 March 1994, the Constitution of the Federation of Bosnia-Herzegovina was finalised.[1194]

490. On 6 April 1994, representatives of the Governments of BiH and of the HR H-B met in Mostar, in the office of Jadranko Prlić, Prime Minister of the Government of the HR H-B, to re-establish a working relationship between the two governments in connection with the implementation of the Washington Agreement.[1195]

[1190] P 09882 under seal, p. 13, para. 69. *See* also Bo Pellnäs, T(F), pp. 19557 and 19558; 3D 03720, p. 112.
[1191] P 08061, p. 2; 3D 03720, p. 112.
[1192] 4D 01234; 3D 03720, p. 112. The question of a confederation between BiH and Croatia had been discussed *inter alia* at a meeting of the Presidency of Croatia on 7 January 1994: P 07516, pp. 71 and 72, as well as during a meeting convened on 13 February 1994 by Franjo Tuđman and the representatives of the HR H-B, including Mate Boban and Jadranko Prlić: P 08012, pp. 23 and 29; P 08018. *See* also P 08012, pp. 1-6; P 08066, p. 6 of Document 1D33-0696.
[1193] Mile Akmadţić, T(F), pp. 29845, 29846 and 29868.
[1194] 1D 01435, p. 3; 3D 03720, p. 113.
[1195] 1D 01953; Ilija Koţulj, T(F), pp. 32571-32572. *See* also that on 23 April 1994, another meeting convened between representatives of the Muslim and Croatian peoples of BiH, including Jadranko Prlić with an agenda that also included implementation of the Washington Agreement (in particular, adapting the statutes of the BiH Federation with regard to the legislation of the former BiH): Zoran Perković, T(F), pp. 31804; ID 01955.

Heading 3: Political, Administrative, Military and Judicial Structure of the HZ(R) H-B

491. The Indictment alleges *inter alia* that the Accused took part in the JCE in the course of exercising their power and authority under the government structures and procedures of the HZ(R) H-B.[1196] As a result, the Chamber will analyse the evidence relating to the political, administrative, military and judicial structure of Herceg-Bosna and the position of the Accused within this structure. The resulting findings will assist the Chamber in determining whether – and to what extent – the Accused participated in the commission of any crimes by means of the offices they held within this structure.

Section 1: Political and Administrative Structure

492. The Chamber will analyse the political and administrative structure in the context of both the HZ H-B and the HR H-B. It will specifically examine (I) the structure and operations of their principal organs: namely, the President of the HZ H-B and of the HR H-B; (II) the Presidency of the HZ H-B and the organ that replaced it after the proclamation of the HR H-B, the House of Representatives; (III) the Government of the HZ H-B, embodied by the HVO which held executive power,[1197] and the Government of the HR H-B; (IV) the Department (later Ministry) of Defence; (V) the other departments and ministries; (VI) the commissions and departments of the HVO and the municipal authorities.

I. President of the HZ(R) H-B

493. The evidence attests that between 3 July 1992[1198] and 17 February 1994,[1199] Mate Boban held, in succession, the posts of President of the HZ H-B and the HR H-B. The Chamber will (A) analyse what the powers of the President were at that time, and (B) evaluate the President‟s loss of power to the Council of the Presidency.

[1196] Indictment, para. 17.
[1197] P 00206, Article 1, p. 1.
[1198] P 00302, Article 7, p. 2; Witness DE, T(F), pp. 15599 and 15600, closed session.
[1199] Witness BH, T(F), p. 17548, closed session; Witness BF, T(F), p. 25780, closed session; Ray Lane, T(F), p. 23732; P 10367 under seal, para. 12, pp. 3 and 4; Neven Tomić, T(F), pp. 33729 and 33730; P 08973, p. 69; *see* also P 07856, pp. 88 and 90; Milivoj Petković, T(F), pp. 49934 and 49936.

A. Powers of the President

494. The Amended Decision establishing the HZ H-B, dated 3 July 1992 ("Amended Decision of 3 July 1992"), stipulated that the President of the HZ H-B was, along with the Presidency of the HZ H-B, the supreme authority in Herceg-Bosna.[1200] By virtue of the Decision establishing the HR H-B adopted on 28 August 1993, the President represented the Republic throughout the HR H-B"s territory and abroad, and supervised the work of the Republic"s organs.[1201]

495. The evidence shows that, both within the HZ H-B and within the HR H-B, the President was the Supreme Commander of the armed forces of the HZ(R) H-B.[1202] Moreover, by virtue of the Decrees on the Armed Forces of 3 July 1992 and 17 October 1992, and also of the Decision of 18 November regarding the organisation of the Ministry of Defence, the Chief of the Main Staff was accountable to the Head of the Department of Defence for administrative, budgetary and logistical tasks involving the armed forces, during both peace and wartime.[1203] He was likewise directly accountable to the Supreme Commander in those areas specifically related to strategic planning and the use of the said armed forces.[1204]

B. Creation of the Council of the Presidency and Subsequent Loss of Power by the President of the HR H-B

496. On 10 December 1993, the President of the HR H-B, Mate Boban, created the Council of the Presidency.[1205] According to this decision, the Council of the Presidency was responsible for strategic, political and defence matters, as well as for coordinating the activities of the executive organs of the HR H-B.[1206] The evidence

[1200] P 00302, Article 7, p. 2; Witness DE, T(F), pp. 15599 and 15600, closed session.
[1201] P 04611, Article 8, p. 2.
[1202] P 00588, Art. 29, p. 10; Andrew Pringle, T(F), pp. 24108, 24174-24179, 24268-24270; P 04131, p. 1; P 00586, p. 4; Bruno Pinjuh, T(F), pp. 37326-37328; P 00588, p. 4; P 08973, p. 26; 4D 01286; Neven Tomić, T(F), pp. 33729-33730; Milivoj Petković, T(F), p. 50343; Filip Filipović, T(F), p. 47437. *See* for example 2D 01351; P 00315; 2D 01392; 2D 01393; P 05517, p. 5.
[1203] P 00289; P 00586, p. 3; P 00588, p. 4; 2D 02000, para. 83; Milivoj Petković, T(F), pp. 49384, 49385, 50088, 50089, 50325 and 50326; Slobodan Boţić, T(F), pp. 36397 and 36400; Bruno Pinjuh, T(F), pp. 37319 and 37328; P 09549, para. 26.
[1204] P 00289; P 00586, pp. 3 and 5; P 00588, para. 83; Davor Marijan, T(F), pp. 35614, 35627-35629, 35762 and 35763; P 09549, para. 26; Milivoj Petković, T(F), pp. 49384, 49385, 50088, 50089, 50325 and 50326; Slobodan Boţić, T(F), pp. 36397 and 36400; Bruno Pinjuh, T(F), pp. 37319 and 37328. P 07236, p. 5, Art. 13; Marijan Biškić, T(F), pp. 15346 and 15347.
[1205] P 07424; P 08973; p. 69.
[1206] P 07424, p. 2.

confirms that the Council of the Presidency was likewise an advisory organ enabling the HR H-B to function in the absence of President Mate Boban.[1207]

497. On 10 December 1993, the Council of the Presidency had 9 members.[1208] On 16 February 1994, the President of HR H-B, Mate Boban, altered the composition of the Council, appointing 11 members to serve from that time forward, including Jadranko Prlić and Valentin Ćorić.[1209]

498. On 17 February 1994, the House of Representatives adopted a decision whereby, in exceptional circumstances, the Council of the Presidency could exercise powers properly belonging to the House of Representatives[1210] and that same day, it mandated that the Council of the Presidency fulfil the role of the President of the Republic until further instruction.[1211]

II. Presidency of the HR H-B and House of Representatives

499. The Chamber will analyse (A) the function of the Presidency and the House of Representatives, which replaced it in the HR H-B, followed by (B) their structure and composition, and, (C) their relationship with the government of the HZ H-B.

A. Functions of the Presidency and the House of Representatives

500. The Decision on the Creation of the HZ H-B of 18 November 1991 established the Presidency of HZ H-B as the supreme legislative and executive organ.[1212]

501. Working from the Amended Decision of 3 July 1992, which defined the function of President of the HZ H-B, based on Article 7 of the said Decision, the President of HZ H-B and the Presidency of the HZ H-B jointly embodied the

[1207] Philip Watkins, T(F), pp. 18829-18830; P 07226 under seal, p. 1; 1D 02737, p. 1.
[1208] The delegates were: Pero Marković, Mile Akmadţi ć, Vladislav Pogarĉić, Krešimir Zubak, Ivo Ţivković, Jozo Martinović, Perica Jukić, Ante Roso and Ivo Lozanĉić: P 07424, p. 1.
[1209] The delegates were: Krešimir Zubak, Ivan Bender, Pero Marković, Ivo Ţivković, Braninir Huterer, Jadranko Prlić, Jozo Martinović, Valentin Ćorić, Mile Akmadţić, Ante Roso and Ivo Lozanĉić: P 07876; P 07856; pp. 83-85.
[1210] P 07883, Article 8.c, pp. 1 and 2; P 08973, p. 69; 1D 01402.
[1211] P 08973, p. 69; P 07856, pp. 88 and 90; Milivoj Petković, T(F), pp. 49934 and 49936.
[1212] P 00081, p. 1; P 00079, p. 2; P 08973, pp. pp. 18 and 19; P 00302, Article 7, p. 2; P 09545, p. 12; P 00078; Philip Watkins, T(F), pp. 19050-19056, analysing P 00079, p. 2, and P 00081, p. 1; P 08973, p. 21; Witness DE, T(F), pp. 15599 and 15600, closed session; *see* for example 1D 00002; ID 00165; P

"supreme authority in [the] HZ H-B".[1213] However, the Amended Decree on the Armed Forces of 17 October 1992 established that supreme command of the armed forces was vested in the President of the HZ H-B.[1214]

502. In addition to the power to legislate, the Presidency, through the Amended Decision of 3 July 1992, had certain executive functions, such as the authority to appoint and recall the administrative and executive organs of the HZ H-B.[1215] Moreover, the Presidency held the power to appoint and remove members of the judicial organs of the HZ H-B, including the judges of the military tribunals.[1216] These judges were appointed on the advice of the head of the Department of Defence.[1217]

503. The House of Representatives, established on 28 August 1993,[1218] elected the President and members of the government cabinet subsequent to their nomination for appointment by the President of the Republic.[1219]

504. The Decision on the Creation of the HR H-B stipulated that the HZ H-B legislation then in force, as well as that of the RBiH, would remain in effect throughout the territory of the HR H-B, so long as these statutes did not contravene the existing legislative framework of the HR H-B[1220] until such time as an HR H-B Constitution established the organs of the Republic. However, no Constitution was ever adopted.[1221]

B. Structure and Composition of the Presidency and House of Representatives

505. Under the Decision on the Creation of the HZ H-B of 18 November 1991, the Presidency consisted of the representatives of the Croatian people in the municipal

09552; 08973, p. 27; ID 02340, p. 11; Witness ID-AA, T(F), pp. 28987 and 28988; Zoran Buntić, T(F), p. 30251.
[1213] P 00302, Article 7, p. 2; P 09545, p. 12; Philip Watkins, T(F), pp. 19050-19056; P 00079, p. 2; P 08973, p. 23.
[1214] P 00588, Article 29, p. 10.
[1215] P 00302, Article 8, p. 2; P 08973, pp. 21 and 23; P 00303, Article 7, p. 1; 1D 00010; 1D 00171; 1D 00173; 2D 01368; 2D 01371; 1D 00079; 1D 00084; 2D 01262, pp. 2 and 18; Neven Tomić, T(F), p. 34813.
[1216] P 08973, p. 27; 1D 00080; 1D 00082; 1D 00090; 2D 01262, pp. 2 and 19-21; P 00589, Article 5; Zoran Buntić, T(F), p. 30933; P 00594, Article 4.
[1217] Zoran Buntić, T(F), p. 30274.
[1218] P 04589; Philip Watkins, T(F), pp. 18935-18936; P 08973, p. 64.
[1219] P 08973, p. 66; 1D 01402, Article 26, p. 10; P 07856, p. 83; Philip Watkins, T(F), pp. 18786-18787; P 06381 under seal, p. 2; P 06473 under seal, p. 1; P 06667, p. 2.
[1220] P 09545, pp. 104, and P04611, Article 11, p. 2.
[1221] P 09545, p. 105.

governments of the HZ H-B as well as senior leaders or presidents of the municipal councils of the HDZ BiH.[1222] Article 7 of the Amended Decision of 3 July 1992 shifted this composition by providing that the presidents of the municipal HVOs would be part of the Presidency in addition to the representatives of the Croatian people in the municipal governments of the HZ H-B.[1223]

506. The Presidency was authorised to appoint its own President, two Vice-Presidents and a Secretary.[1224] On 18 November 1991, the Presidency appointed Mate Boban as President of the Presidency, and Boţo Rajić and Dario Kordić as Vice-Presidents.[1225]

507. The roles of the President and of the two Vice-Presidents of the Presidency were not clearly drawn.[1226] Neither were those of the President and Vice-Presidents of the HZ H-B.[1227] In practice, the President and the Vice-Presidents of the Presidency held the posts of President and Vice-Presidents of the HZ H-B contemporaneously.[1228] According to the report by Expert *Ciril Ribiĉić*, certain powers of the President of the HZ H-B as supreme commander were as a result shared with the President of the Presidency, such as appointing brigade commanders or high-ranking officers.[1229]

508. On 28 August 1993, the Presidency of the HZ H-B and the representatives of the Croatian people at the Chamber of the Municipalities of the Assembly of RBiH adopted a decision establishing the House of Representatives of the HR H-B.[1230] According to the Decision, the House of Representatives was the supreme elected body of the HR H-B taking over the responsibilities of the Presidency of the HZ H-B and was vested with the legislative power of the Republic.[1231] The House of Representatives was charged with adopting the Constitution of the HR H-B, its statutes, its budget and all decisions, including those regarding the war and the

[1222] P 00081, Article 7, p. 1.
[1223] P 00302, Article 7, p. 2; P 08973, pp. 21 and 22; Davor Marijan, T(F), pp. 35596 and 35597.
[1224] P 00079, Article 7, p. 2; P 00081, Article 7, p. 1; P 00302, Article 7, p. 2; P 09545, p. 12; Philip Watkins, T(F), pp. 19050-19056; P 08973, p. 20.
[1225] P 08973, pp. 20 and 21; Christopher Beese, T(F), p. 5278.
[1226] P 08973, p. 22.
[1227] P 08973, p. 31.
[1228] P 08973, p. 21.
[1229] P 08973, p. 26.
[1230] P 04589; Philip Watkins, T(F), pp. 18935-18936; P 08973, p. 64.
[1231] P 04589; P 08973, pp. 64 and 65.

decision to associate with the future Federation of Republics.[1232] It likewise made recommendations on the interpretation of the fundamental decisions and laws of the Republic[1233] and was required to rule on the reports or questions put to it by the Government of the HR H-B.[1234]

509. On 30 September 1993, the House of Representatives of the HR H-B adopted the Law on the Government of the HR H-B, which installed the government and established its structure and operation (hereinafter, the "Law on the Government of the HR H-B of 30 September 1993").[1235] That same day, it adopted its Rules of Parliamentary Procedure.[1236] Under these Rules of Procedure, the representatives included a President, two Vice-Presidents and a Secretary.[1237]

510. In the run-up to the first free elections, the House of Representatives consisted of the representatives of the Croatian people in the municipalities of the RBiH and the members of the Presidency of the HZ H-B.[1238] According to the report of Expert *Ciril Ribiĉić*, on 17 February 1994, the House of Representatives adopted a decision indicating that its members were to be elected in future democratic elections.[1239] However, no elections were held following the creation of the HR H-B.[1240]

C. Relationship between the Presidency of the HZ H-B and the House of Representatives of the HR H-B with the HVO of the HZ H-B and the Government of the HR H-B

511. The relationship between the Presidency of the HZ H-B and the HVO was not clearly defined in the various pronouncements of the HZ H-B.[1241] According to the expert report by *Ciril Ribiĉić*, the powers of the HVO derived from the Presidency, to which the HVO answered.[1242] The Rules of Procedure of the Presidency of the HZ H-

[1232] P 04589, p. 2; P 08973, p. 64; P 05821, p. 7; Milan Cvikl, T(F), p. 35301. *See* for example P 08276, p. 13; 1D 03017; Neven Tomić, T(F), pp. 33827, 34804–34805.
[1233] P 05821, p. 6.
[1234] *See inter alia* P 08253, p. 10; P 08276, pp. 6 and 12.
[1235] P 05517; P 08973; p. 65.
[1236] P 05821; P 08973; p. 65.
[1237] P 05821, p. 3; *see* also the discussion concerning this issue: P 07856, p. 69.
[1238] P 04589, p. 1; P 07856, pp. 77-81; P 01015; Belinda Giles, T(F), p. 2061 and T(E), pp. 2058 and 2059.
[1239] P 08973, pp. 64, 68 and 69.
[1240] Philip Watkins, T(F), p. 18786.
[1241] P 08973, p. 31.
[1242] P 08973, p. 31.

B dated 17 October 1992 thus determined that the Presidency had the power to order the HVO to amend its edicts in order to bring them into compliance with those of the Presidency; if the HVO refused to execute such orders, the Presidency had the power to void any unlawful edict and to mandate that a fresh edict be adopted.[1243] Moreover, according to *Neven Tomić*, the persons in charge of the various departments of the HVO were required to submit programmes and reports concerning the activity of their respective departments, especially to the Presidency of the HZ H-B, and the Presidency was to evaluate the work of the HVO.[1244] Furthermore, according to a decision by the Presidency of the HZ H-B on 17 October 1992, in the event of an emergency, the HVO could enact legislation under the power and authority of the Presidency of the HZ H-B; such instruments were to be submitted to the Presidency for its consent during the next session following their adoption by the HVO.[1245] The Chamber also reviewed evidence indicating that the HVO of the HZ H-B had progressively appropriated for itself all the executive and administrative powers as well as certain legislative functions, as the Presidency met very infrequently.[1246]

512. Under its Rules of Procedure, the House of Representatives had the option of calling a vote of confidence regarding the President of the Government, any other member of the Government or the Government as a whole, upon motion by one-tenth of the representatives.[1247] If the vote of no confidence passed the House of Representatives, the Prime Minister was to resign from office.[1248]

513. In wartime or faced with imminent threat of war, if the President, Vice-Presidents or Secretary of the House of Representatives considered that the Chamber was unable to meet, they would so inform the President of the HR H-B and the President of the Government in order for the latter to be able to adopt the necessary

[1243] P 00596, Article 40; P 08973, p. 31.
[1244] Neven Tomić, T(F), pp. 34125 and 34814.
[1245] P 00684.
[1246] P 08973, pp. 32 and 33; P 09545, pp. 71 and 72; Neven Tomić, T(F), pp. 34145–34146; Zoran Buntić, T(F), pp. 30761, 30762, 30889 and 30890. The Chamber will explain below that it did not find most of *Zoran Buntić*'s testimony concerning the structure of the HZ H-B very credible. However, it is taking into consideration what concerns the concentration of power benefiting the HVO to the detriment of the Presidency of the HZ H-B, inasmuch as what was said in this regard was largely corroborated by other evidence.
[1247] P 05821, Article 63, p. 6.
[1248] P 05821, Article 63, p. 6.

legislation, by the virtue of the powers bestowed on them by the Decision Creating the HR H-B.[1249]

III. Governments of the HZ H-B and HR H-B

514. In this part, the Chamber will analyse (A) the role of the Government of the HZ H-B, as embodied by the HVO, then that of the Government of the HR H-B. In this regard, it intends to examine in greater detail (1) the powers of the Governments of the HVO and the HR H-B in military matters, (2) the relationship between the Government of the HVO and the Presidency of the HZ H-B, and between the Government of the HR H-B and the House of Representatives, (3) how the work within the Governments of the HVO and the HR H-B was organised, and (4) the relationships of the Governments of the HVO and the HR H-B with the municipal authorities. The Chamber will then analyse (B) the specific role of the President of the HVO and of the Prime Minister of the HR H-B.

A. Role of the HVO of the HZ H-B and the Government of the HR H-B as the Executive Organ of Herceg-Bosna

515. On 15 May 1992, the Presidency of the HZ H-B adopted the Decree on the "Provisional Establishment of the Executive Authority and Administration in the Territory of the HZ H-B" (hereinafter, the "Decree of 15 May 1992"), signed by Mate Boban, President of the HZ H-B.[1250] The Decree defined the HVO as the executive power in the territory of the HZ H-B.[1251] On 3 July 1992, the Presidency of the HZ H-B adopted the "Statutory Decision on the Temporary Organisation of Executive Authority and Administration in the Territory of the [HZ H-B]", amending the Decree of 15 May 1992 (hereinafter "Statutory Decision of 3 July 1992"), which described the HVO of the HZ H-B as the supreme executive and administrative organ and specified that it would exercise its responsibilities until such time as permanent executive and administrative organs were created.[1252] The Chamber has, moreover,

[1249] P 05821, p. 12.
[1250] P 00206; P 09545; p. 14.
[1251] P 00206, Article 1, p. 1; P 09545, p. 14.
[1252] P 00303, Articles 1 and 2, p. 1; P 08973, pp. 23 and 24; Zoran Buntić, T(F), p. 30249.

examined evidence describing the HVO as a homogeneous, organised political/military entity that operated like a government.[1253]

516. Subsequent to proclamation of the HR H-B, the Law on Government of the HR H-B of 30 September 1993 defined the Government of the HR H-B as the highest executive organ of the Republic.[1254]

1. Powers of the HVO of the HZ H-B and the Government of the HR H-B in Military Matters

517. The Prosecution contends that the HVO of the HZ H-B, described as the "highest, most powerful body in Herceg-Bosna",[1255] wielded considerable authority in military and defence matters and that the armed forces were placed under the control of the political authorities – with the Prosecution, noting moreover that "the governing and military structures" were closely intertwined with one another.[1256] The Petković Defence also stresses that the HVO government was vested with sweeping powers concerning those issues with direct or indirect ties to military and defence operations.[1257] The Prlić Defence, however, submits that the HVO of the HZ H-B held no authority over the Department of Defence or the Main Staff, and lacked any authority whatsoever in respect of military operations.[1258] It also argued that the HVO fell under the authority of Mate Boban, President of the HZ(R) H-B and Supreme Commander and that as such, the Government of the HZ(R) H-B never authorised any operational orders.[1259] The Prlić Defence argues, moreover, that the amendments to the Decree on the Armed Forces of 3 July 1992 stripped the HVO of any legal authority in military matters.[1260] The Stojić Defence points out that none of the meetings of the HVO where issues relevant to defence were debated ever addressed the issue of operational command, that is, the issue of the plans and projects of the

[1253] P 08973, p. 24; Ciril Ribičić, T(F), p. 25451; Ray Lane, T(F), pp. 23637, 23638, 23706-23708 and 23714; Witness BF, P 10365 under seal, *Kordić and Čerkez* Case, T(F), pp. 82 and 106, closed session; Witness BF, T(F), pp. 2577-25780, closed session; *see* also 3D 03720, pp. 78 and 79.
[1254] P 05517, p. 2; P 08973, p. 65.
[1255] Prosecution Final Trial Brief, para. 377.
[1256] Prosecution Final Trial Brief, paras 361, 402; Closing Arguments by the Prosecution, T(F), p. 51773.
[1257] Petković Defence Final Brief, paras 59, 63.
[1258] Prlić Defence Final Trial Brief, paras 179, 224, 319, 326 (b) and 327 (a). *See* also the Preliminary Statement by the Accused Prlić, T(F), pp. 27485, 27510-27511 and 27563-27564.
[1259] Prlić Defence Final Trial Brief, paras 326 (b) and 327 (a).
[1260] Closing Arguments by the Prlić Defence, T(F), pp. 52227-52230 and 52232-52234; Prlić Defence Final Trial Brief, paras 224, 319, 320, 321, 327 (a), (c), (h), (u), and 338.

Armed Forces of the HVO, which belonged neither to the powers of the Department of Defence nor to those of the HVO.[1261] The Prosecution, however, asserts that, in a more general sense, Jadranko Prlić was the coordinator for the entire HVO apparatus, including its military structure.[1262]

518. The Chamber first notes that it cannot subscribe to the Prlić Defence"s theory that reforms in the Decree on the Armed Forces of 3 July 1992 stripped the HVO of its role in military matters. Quite to the contrary, the Amended Decree on the Armed Forces of 17 October 1992, gave the HVO responsibility for *inter alia* producing plans for the defence of the HZ H-B and for undertaking all measures necessary for their implementation.[1263]

519. Moreover, during his testimony *Milivoj Petković* stated that the HVO represented the civilian authority in the HZ H-B and also the armed forces active in HZ H-B, with the civilian authorities exercising control over the military authorities.[1264] Moreover, he stated that the civilian authorities of the HVO were asked to set the "overall strategy" of the HZ H-B.[1265] The government was allowed to make proposals and form conclusions concerning issues of a military nature, which the Ministry of Defence could then forward to the Senior Main Staff or to the principal commanding officers, but lacked authority to give orders of a military nature.[1266] *Davor Marijan* stated that although the Government of the HVO did not form part of the chain of command of the armed forces,[1267] during its sittings, it adopted reports and decisions concerning issues related to defence,[1268] and as a consequence, provided instructions for their enforcement.[1269]

520. *Slobodan Praljak*, however, stated during his testimony before the Chamber that the Government of the HVO"s jurisdiction in military matters was restricted

[1261] Closing Arguments by the Stojić Defence, T(F), pp. 52352 and 52353.
[1262] Closing Arguments by the Prosecution, T(F), pp. 51897, 51901 and 51905; Prosecution Final Trial Brief, paras 374, 379, 389-391 and 401-421.
[1263] P 00588, Art. 9, p. 3.
[1264] Milivoj Petković, T(F), pp. 50014, 50015 and 50342. *See* also Petković Defence Final Brief, paras 55, 64 (ii). *See* further 1D 02078, pp. 1, 4 and 5.
[1265] Milivoj Petković, T(F), pp. 49380, 50349, 50351-50353, 50456, 50458, 50459 and 50495. *See* also P 00289, Article 9, p. 2; 2D 02000, p. 6, para. 4.
[1266] Milivoj Petković, T(F), pp. 49766-49769 and 49771.
[1267] Davor Marijan, T(F), p. 35693.
[1268] 2D 02000, pp. 11 and 12, para. 13; P 00128, p. 3.
[1269] 2D 02000, pp. 11 and 12, para. 13.

solely to the training, supply and mobilisation of the armed forces, *via* Bruno Stojić, Head of the Department of Defence.[1270]

521. The Chamber holds that the evidence shows that, as the civilian authority, the Governments of the HVO and of the HR H-B had the power and responsibilty to exercise broad oversight, particularly in terms of military strategy, over the armed forces of the HZ(R) H-B. However, the Chamber observes that none of the evidence indicates that these governments were directly involved in the conduct of military operations. Moreover, the Chamber heard the testimony of *Marijan Biškić*[1271] and *Milivoj Petković* who said that the President of the Government of the HZ H-B and the President of the Government of the HR H-B were not the hierarchical superiors of the Chief of the Main Staff.[1272]

2. Relationship of the HVO with the Presidency of the HZ H-B and of the Government of the HR H-B with the House of Representatives

522. The Government of the HVO was subordinated to the Presidency of the HZ H-B.[1273] However, as indicated previously, the Chamber examined several exhibits which show that, in fact, the HVO of the HZ H-B gradually arrogated to itself all executive, administrative and some legislative power, without any effective oversight by the Presidency of the HZ H-B.[1274] The testimony of *Neven Tomić* thus makes clear that the HVO itself created certain departments, such as the ODPR and the Commission for the Exchange of Prisoners and Other Persons, that it appointed certain staff members of the said Commission and also appointed the staff of the municipality of Kreševo,[1275] initiatives which nevertheless, according to this witness,

[1270] Slobodan Praljak, T(F), pp. 40420-40422.
[1271] Marijan Biškić was appointed Deputy Minister in the HR H-B Ministry of Defence, responsible for security and the HVO military police by Jadranko Prlić on 1 December 1993: Marijan Biškić, T(F), pp. 15039, 15048 and 15049; P 07236, Article 4, p. 2; P 06994; P 06998, p. 1.
[1272] Marijan Biškić, T(F), p. 15346. The Chamber nevertheless notes P 07345; Milivoj Petković, T(F), pp. 50009, 50010, 50342 and 50343.
[1273] P 09545, pp. 14 and 15; P 00206, Article 3, p. 1; P 00303, Article 3, p. 1; P 08973, p. 24.
[1274] *See* the "Relationship between the Presidency of the HZ H-B and the House of Representatives of the HR H-B with the HVO of the HZ H-B and the Government of the HR H-B" and "Role of the HVO of the HZ H-B and of the Government of the HR H-B as the Executive Organ of Herceg-Bosna" in the Chamber's findings of fact regarding the administrative and political structure of the HZ(R) H-B; P 08973, pp. 32 and 33; P 09545, pp. 71 and 72; Neven Tomić, T(F), pp. 34145-34146. *See* also P 00128, pp. 1 and 2; P 04220.
[1275] Neven Tomić, T(F), pp. 34145–34146 and 34149; P 00824, p. 3; P 01652, p. 4; 1D 01669, pp. 2 and 3.

fell under the jurisdiction of the Presidency of the HZ H-B.[1276] The Chamber likewise notes the absence of any contact between the HVO and the Presidency of the HZ H-B, allegedly as a consequence of the rare or even non-existent meetings at the level of the Presidency of the HZ H-B from 17 October 1992.[1277]

523. According to the Law on the Government of HR H-B, the Government was answerable to the House of Representatives.[1278]

524. The members of the Government of the HR H-B were appointed and removed by the House of Representatives, on the advice of the President of the HR H-B.[1279] On 20 November 1993, the House of Representatives elected the Government of the HR H-B and Jadranko Prlić was elected President of the Government.[1280] In this regard, the evidence admitted into the record attests that the House of Representatives did not elect certain members of the government who had been provisionally appointed to the government before election by the Chamber, such as Ante Valenta, who was appointed to the post of Vice-President of the Government but did not appear in the list later approved by the House of Representatives.[1281]

3. Organisation of Work within the HVO of the HZ H-B and within the Government of the HR H-B

525. The Government of the HVO consisted of a President, Vice-Presidents, department heads and "other members".[1282]

526. *Neven Tomić* recounts that the HVO adopted its decisions on the basis of proposals from the departments of the HVO, which were discussed during the sittings of the HVO.[1283] Moreover, according to him, the HVO was advised of the activities of the HVO's departments, including the Department of Defence, by means of work

[1276] Neven Tomić, T(F), pp. 34145–34146; *see* also P 00303, Article 7, p. 1.
[1277] P 09545, pp. 71 and 72; Neven Tomić, T(F), pp. 34150-34152.
[1278] P 05517, p. 2, Article 3; P 08973, pp. 65-66.
[1279] P 05517, p. 2, Article 4; P 08973, p. 66; P 04611, p. 2, Article 7; *see* also "The Offices of the Presidency and the House of Representatives" in the Chamber's findings regarding the political and administrative structure of the HZ(R) H-B.
[1280] P 06772, p. 1; P 08973, p. 66.
[1281] P 06381 under seal, p. 2; Philip Watkins, T(F), p. 18833.
[1282] P 00303, Article 7, p. 1; P 09545, pp. 14 and 15; P 08973, p. 24.
[1283] Neven Tomić, T(F), p. 34126.

programmes which each department was required to prepare for the HVO, starting in the second half of 1993.[1284]

527. The Government of the HR H-B was composed of a President of the Government and 13 Ministers, among whom two simultaneously held the post of Vice-President of the Government, namely, the Minister of Defence and the Minister of Finance.[1285] He also had a "cabinet" which included the President of the Government, three Vice-Presidents and the Ministers of Defence and of the Interior.[1286] This "cabinet" was given the authority to take urgent decisions in matters of defence and security when circumstances prevented a meeting of the government.[1287]

528. The Government of the HR H-B held its first session on 15 November 1993.[1288] The regulations of the HZ H-B were to remain in force until the adoption of the Constitution of the HR H-B, and those of the RBiH could be enforced, to the extent that they did not contravene those of the HZ H-B.[1289] According to expert historian *William Tomljanovich*[1290] and as recalled previously, no constitution was ever adopted, even if the House of Representatives did adopt a series of standards forming the basis of the system of government.[1291]

4. Relationships of the HVO of the HZ H-B and the Government of the HR H-B with the Municipal Authorities

529. The Prlić Defence argues that neither Jadranko Prlić nor the HVO of the HZ H-B exercised control over the municipalities of the HZ(R) H-B and that appointments within the municipal HVOs were merely a formality because the municipal HVOs were responsible for making recommendations.[1292]

530. The Chamber will analyse hereinafter the statutory texts governing the relationships of the HVO and of the Government of the HR H-B with the municipal

[1284] Neven Tomić, T(F), pp. 34119, 34120, 34126, 34134, 34139 and 34809.
[1285] P 08973, p. 66; P 05517, p. 2.
[1286] P 05517, p. 2.
[1287] P 05517, p. 2.
[1288] P 06667.
[1289] P 08973, p. 64.
[1290] *See* the Chamber"s Oral Decision of 26 June 2006, T(F), pp. 3805 and 3806.
[1291] P 09545, p. 105.
[1292] Prlić Defence Final Trial Brief, para. 327 (e).

authorities. However, in this part of the Judgement, the Chamber will not review what powers and authority in the field and in practice the municipalities had in relation to the central organs. This will be analysed subsequently in the parts pertaining to each of the municipalities relevant to the Indictment.

531. The Government of the HVO coordinated the work of the administrative organs at the municipal level, could dissolve the municipal HVOs, could void their pronouncements and could appoint or remove their members.[1293]

532. The Government of the HVO, moreover, had the option of abrogating decisions of the municipal HVOs which contravened the regulations in force in the HZ H-B, which was done on several occasions, as Witness *Zoran Perković* confirmed.[1294]

533. The Government of the HR H-B supervised the work of the municipal government staffs as well.[1295] It also had the power to void municipal pronouncements which violated the laws of the HR H-B.[1296] If a municipal government constantly violated the laws of the HR H-B, the Government of the HR H-B had the right to dissolve it.[1297] Elections would then have to be held to elect a new local government.[1298] Moreover, according to *Neven Tomić*, the Governments of the HVO and of the HR H-B granted funds to the municipal HVOs between October 1993 and August 1994.[1299]

B. Specific Role of the President of the HVO and the President of the Government of the HR H-B

534. On 15 May 1992, the Presidency of the HZ H-B unanimously elected Mate Boban as President of the HVO.[1300] On 14 August 1992, the Presidency appointed

[1293] P 00303, Articles 13-15, p. 2; P 08973, p. 24; 3D 03720, p. 79; *see* also the example of the payment of a sum of money by *Privredna Banka* of Zagreb to the municipality of Orašje in Posavina "through" the authorities in Herceg-Bosna: Ţarko Primorac, T(F), pp. 29937-29939; 1D 02948; 1D 02942, p. 1.
[1294] Zoran Perković, T(F), pp. 31713-31715, 31953. *See* P 00431; P 02248; P 09545, pp. 35 and 36, and P09530.
[1295] P 05517, p. 4.
[1296] P 05517, p. 4.
[1297] P 05517, p. 4.
[1298] P 05517, p. 4.
[1299] Neven Tomić, T(F), pp. 33878–33879; 1D 02134; 1D 02137.
[1300] P 09526; P 09545, p. 15; *see* also P 00206, Article 2, p. 1; Bo Pellnäs, T(F), p. 19476; Neven Tomić, T(F), p. 33730.

Jadranko Prlić to that post.[1301] On 10 November 1993, the President of the HR H-B, Mate Boban, again appointed Jadranko Prlić to the post of President of the Government.[1302] On 20 November 1993, the House of Representatives elected the members of the Government of the HR H-B, confirming Jadranko Prlić in the post of President of the Government.[1303]

535. The Prlić Defence notes that the President of the HVO was on the same level as the heads of department, who had no power of appointment and that the decisions taken by the HVO to this effect, as with any decisions it adopted *in collegio*, were taken on the advice of the departments and fell under the jurisdiction of the Presidency of the HZ H-B.[1304]

536. The Chamber nevertheless finds that the President of the HVO played a more significant role within the Government of the HVO than the Prlić Defence suggests. In fact, under the Statutory Decision of 3 July 1992, the President of the HVO was in charge of and responsible for the activities of the HVO.[1305] The President signed the official HVO documents, such as decrees and decisions,[1306] including certain decisions to appoint.[1307] Article 9 of the said Decision also indicates that the President of the HVO was supposed to ensure unity of political and administrative action within the HVO and to cooperate with the other organs of the HZ H-B.[1308] In legislative affairs, Jadranko Prlić, as President of the of the HVO, directed debates during discussions over adopting a statute or a decree, organised votes and sometimes even proposed revisions to the texts.[1309]

537. The Law on the Government of the HR H-B of 30 September granted similar power to the President of the Government of the HR H-B. He represented the

[1301] P 09545, p. 29; P 00391, p. 11; Witness DV, T(F), p. 22872; P 10217 under seal, para. 28; P 01965, p. 2; P 01575, p. 3; *see* also P 01303 under seal; P 01309 under seal, p. 3.
[1302] P 06583. The Chamber nevertheless examined evidence showing that prior to this date Jadranko Prlić was already being introduced as the Prime Minister of the HR H-B; P 05422, p. 1; Zoran Buntić, T(F) pp. 30254 to 30256.
[1303] P 06772.
[1304] Prlić Defence Final Trial Brief, paras 174 and 327 (c). *See* also the Preliminary Statement by the Accused Prlić, T(F), p. 27562.
[1305] P 00303, Article 9, p. 2; 2D 00852; P 01505; P 01557.
[1306] P 00303, Article 9, p. 2; *see* in particular P 00988; 1D 00024; 1D 00103; 1D 00141; 1D 00194; P 02015; P 04565.
[1307] Davor Marijan, T(F), pp. 35717 and 35721.
[1308] P 00303, Article 9, p. 2; *see* P 01700.
[1309] Zoran Perković,T(F), pp. 31725-31726.

Government, chaired its meetings, coordinated its work and implemented the Government‟s Rules of Procedure.[1310] The President of the Government was to sign all the laws, decisions and decrees adopted by the Government.[1311] At the recommendation of the President of the Government, the Government appointed and removed the heads and deputy heads of the "cabinet".[1312]

IV. Department of Defence of the HZ H-B and Ministry of Defence of the HR H-B

538. The Chamber will analyse (A) the evidence relating to the structure and operation of the Department of Defence which later became the Ministry of Defence. To this end, the Chamber will review the principal organs of the Department of Defence, namely: (1) the Main Staff; (2) the administrations and offices of the Defence; (3) the collegium of the head of the Department of Defence; and will then analyse (4) the relationships of the Department of Defence with the international organisations. The Chamber will then turn its attention to (B) the evidence pertaining to the offices of the Head of the Department of Defence and of the Ministry of Defence and analyse, in connection with that, (1) the ties between the Head of the Department of Defence and the Ministry of Defence with the armed forces; (2) the power of the Chief of the Department of Defence and the Ministry of Defence to make appointments within the armed forces; and, (3) the power to appoint military judges and prosecutors. Taking into consideration (C) the particular complexity of the SIS, the Chamber will analyse its structure in a separate part. The Chamber will then assess evidence (1) relating to the SIS in connection with the HZ H-B – citing (a) its responsibilities, (b) its structure and its internal operation, and (c) its place in the hierarchy of the HVO – then (2) in connection with the HR H-B. Finally, it will analyse the evidence pertaining to (D) the health section of the Department of Defence, and to (E) the Commission for Prisons and Detention Centres.

[1310] P 05517, p. 3; *see* for example P 07082; P 07588; P 06689; P 06667; P 06803; P 07310; P 08239; P 08253.
[1311] P 05517, p. 3; see, e.g., 2D 00821; *see* in particular P 07001; P 07674; P 07683; P 07783; P 07396.
[1312] 1D 01402, Article 27, p. 10; P 06817; P 07461.

A. Structure and Operation of the Department of Defence and the Ministry of Defence

539. The Presidency of the HZ H-B created the Department of Defence by means of the Statutory Decision of 15 May 1992.[1313]

540. Using the Decision on the basic principles of the Department of Defence dated 15 September 1992 (hereinafter "Decision of 15 September 1992"), the President of the HZ H-B, Mate Boban, set up the organisational structure of the Department of Defence.[1314] The Department of Defence was thus organised into six bodies or sectors, which included the departments for civil protection, security, health, ethics and morals,[1315] procurement/purchasing/production as well as the Main Staff.[1316] This Department was likewise administered through various offices.[1317] The Main Staff, as will be detailed at a later point, was directed by a Chief of Staff, and the five other sectors by persons holding the rank of Assistant Chief of the Department of Defence.[1318] Lastly, the tribunals and offices of the prosecutors for the military districts fell under the Department of Defence for organisation, human resources and finance.[1319]

541. At the end of 1993, the Department of Defence of the HZ H-B became the Ministry of Defence of the HR H-B[1320] upon promulgation of a decision of the President of the HR H-B.[1321] The Ministry of Defence included *inter alia* the Inspector-General, a Cabinet, the Main Staff, and six sections including the security, personnel, political action, health, purchasing/supplies/production and civilian affairs sections.[1322] Unlike the Department of Defence, the Ministry of Defence did not have a section for ethics and morals.

[1313] P 00206, Article 7, p. 2, 2D 02000, Article 10, p. 3; *see* also Davor Marijan, T(F), p. 35604; 1D 00156/P00303, Article 20, p. 3. According to *Davor Marijan*, the Department of Defence truly became operational in July 1992: Davor Marijan, T(F), pp. 35605 and 35815.
[1314] P 00586, pp. 2-4; 2D 02000, para. 14.
[1315] *See* P 00601; P 01593; P 02331; P 09529; P 09531.
[1316] 2D 00435; 2D 00567; P 02477; P 00586; 4D 01286, based on P 00586.
[1317] 2D 00435; 2D 00567; P 02477; P 00586; 4D 01286 based on P 00586..
[1318] 4D 01286. The information on the Main Staff is analysed in the Chamber's factual findings on the military structure of the HZ(R) H-B.
[1319] P 04699, p. 30; Slobodan Praljak, T(F), pp. 42449 and 42450.
[1320] Miroslav Rupčić, T(F), p. 23454; Marijan Biškić, T(F), p. 15036.
[1321] P 01379, p. 7.
[1322] 4D 01464, pp. 6-16.

542. The Ministry of Defence was *inter alia* responsible for the organisation and development of the defence system of the HR H-B, for preparing and harmonising defence plans, for assessing the threat of war, for civil defence, for organisation and preparation of measures pertaining to the mobilisation, conscription and recruitment of the armed forces.[1323] Moreover, the Chamber heard the testimony of *Milivoj Petković* according to whom the Head of the Department of Defence and his deputy for security were responsible for resolving issues likely to arise in the detention centres under the authority of the Ministry of Defence in August 1993 and, if necessary, for taking the decision to close those centres.[1324]

1. Main Staff as an Organ of the Department of Defence

543. The Main Staff formed part of the Department of Defence[1325] and the Chamber will, in this part, focus on studying its role as an organ of the Department of Defence. Specifically, the Chamber will analyse its structure and operation under the heading pertaining to the structure of the armed forces of the HZ(R) H-B.

544. The Decree on the Armed Forces of the HVO HZ H-B, dated 3 July 1992, as well as its amended version of 17 October 1992 specified the respective powers of the Department of Defence, the HVO and the Main Staff in matters of defence.[1326] Thus, the Department of Defence was defined as an administrative organ and had the responsibility *inter alia* to control and coordinate activities designed to implement a defence policy, to mobilise the necessary personnel and equipment in the event of conflict, to draw up and implement plans for the deployment and development of the armed forces, to organise basic and advanced training for the members of these armed forces, to ensure proper operations of the command and control system of the armed

[1323] 1D 01402, pp. 3 and 4; *see* 2D 01237; 2D 01373; P 01154; P 06225; P 07354; P 08253, p. 10; P 08276, pp. 6, 10 and 12; P 08266, pp. 9 and 10. *See* also the creation of a military council within the Department of Defence as an "advisory body to deal specifically with issues concerning the formation, development and equipment of the Armed Forces, and the development of defence doctrine and the strategy of armed combat": 2D 02000, para. 15; P 00588, Article 18, p. 7; P 07090.
[1324] Milivoj Petković, T(F), p. 50770; P 03995. The Chamber notes that, during his testimony, *Milivoj Petković* stated, in reference to Document P 03995, that the Department of Defence was then directed by Mr Jukić and Mr Biskić, his deputy. The Chamber considers that the Accused confused the dates, since the evidence proves that, as of the date of the document on which the Accused commented, that is, August 1993, the Head of the Department of Defence was Bruno Stojić.
[1325] P 00289, p. 3; P 00588, Article 11, p. 4; P 00586, Article IX, p. 3; P 09549, para. 25; 2D 00244; 2D 01222.
[1326] P 00289, pp. 3-7; P 09549, para. 25.

forces as well as to be responsible for logistical tasks relating to the armed forces (supplies, mobilisation of equipment, etc).[1327]

545. The Chamber notes that it has no evidence describing the relationship between the Main Staff and the Ministry of Defence.

2. Administrations and Offices of the Defence

546. According to Article 12 of the Decrees on the Armed Forces of 3 July and 17 October 1992, the HVO, as proposed by the Head of the Department of Defence, was to establish administrations and offices of the Defence Department, with a view to carrying out the tasks assigned to the Department of Defence.[1328]

547. On 17 November 1992, the HVO issued a decision creating administrations and offices for Defence in the territory of the HZ H-B. On 29 July 1993, the HVO reshaped the number of Defence offices and their areas of responsibility in certain municipalities, responding in part to the proposal of the Head of the Department of Defence.[1329]

548. Article 2 of the Defence Department Regulations, issued on 25 February 1993 by Bruno Stojić, head of the Department of Defence, regarding the internal organisation of the Defence throughout the territory of the HZ H-B, specified that these branches were to be the territorial, administrative and military organs of the HZ H-B responsible for specific, technical responsibilities in connection with the system of defence and protection of the HZ H-B.[1330] The Defence offices were responsible for issuing requisition orders and maintaining books tracking all resources requisitioned.[1331] The Defence offices were likewise responsible for establishing files on the military conscripts of the HVO, organising mobilisation, recruitment of soldiers, communications with their units and their discharge.[1332]

[1327] P 00289, pp. 2, 3 and 11; P 00588, Article 10, p. 3; P 09549, para. 25; *see* also 2D 02000, paras 5, 6, 8, 10 and 116; Davor Marijan, T(F), pp. 35862, 35863 and 35605; P 00279; Miroslav Rupčić, T(F), pp. 23565 and 23382; 2D 00535; 2D 00979; 2D 01021; 2D 01319; 2D 01336; 2D 01347; 2D 01348; 2D 01350; 2D 01369; 2D 01372; 2D 01388; P 00397; P 00491; P 00509; P 00864; P 00875/P 00876; P 00933; P 01097; P 01510; P 01521; P 01701; P 01776; P 01864; P 00955; P 01921; P 02139; P 02615.
[1328] P 00289, pp. 4 and 5; P 00669, p. 1.
[1329] Bruno Pinjuh, T(F), pp. 37230, 37231 and 37245; P 03795.
[1330] P 01553, Article 2; P 00588, Article 13; P 00289, Articles 12 and 13; P 01511, pp. 1 and 7.
[1331] P 00289, p. 2; Bruno Pinjuh, T(F), p. 37232.
[1332] P 00289, p. 5; Bruno Pinjuh, T(F), pp. 37231, 37232 and 37234; 2D 02000, para. 23.

549. The Chamber observes that it has no evidence about the Defence offices and agencies within the framework of the HR H-B.

3. Department of Defence Collegium

550. The Stojić Defence submits that, contrary to the Prosecution"s contention,[1333] the meetings of the Collegium did not aim to advise Bruno Stojić concerning military issues or defence but were, on the contrary, an opportunity to discuss administrative and technical matters in relation to the operation of the Department of Defence.[1334] The Stojić Defence insists moreover that, although Bruno Stojić could issue recommendations, decisions were taken by the collective organ, that is, by the Department of Defence Collegium.[1335]

551. As concerns the powers assigned to the Department of Defence Collegium, the Chamber here observes that the only evidence brought to its attention was the testimony of *Slobodan Boţić* who served as Assistant Head of the Department of Defence from mid-January 1993 to November 1993.[1336] *Slobodan Boţić inter alia* testified that the decisions taken by the collegium were binding but failed to answer the question whether Bruno Stojić, who as Head of the Department of Defence chaired the meetings of the Collegium, had the ability to take decisions or was merely bound by the decisions of the Collegium.[1337] However, having heard and analysed his entire testimony, the Chamber finds the credibility of this witness extremely weak and cannot rely on this testimony alone to make a finding in either direction. Throughout his testimony, *Slobodan Boţić* remained extremely vague in respect of any question regarding possible responsibility of the Accused Stojić. Thus, it deserves special mention by the Chamber that, after having first attempted to give an evasive answer to a question put by the Petković Defence during cross-examination concerning the powers of the Head of the Department of Defence, he then stated that he did not remember whether creating military units of the HVO fell within the enumerated powers of the Head of the Department of Defence.[1338] Considering his high office

[1333] Prosecution Final Trial Brief, para. 543.
[1334] Closing Arguments by the Stojić Defence, T(F), pp. 52362-52364.
[1335] Stojić Defence Final Trial Brief, para. 261.
[1336] Slobodan Boţić, T(F), pp. 36157 and 36158.
[1337] Slobodan Boţić, T(F), pp. 36685-36687; 2D 01363; P 00880; 2D 01443; 2D 01444; P 01075.
[1338] Slobodan Boţić, T(F), pp. 36400-36402.

and responsibility in the Department, the Chamber finds that his answer does not ring true.

552. The Chamber therefore finds that it is unable to draw any conclusion whatsoever concerning the powers and authority of the Department of Defence Collegium or concerning its hierarchical relationship to the Head of the Department solely on the basis of the testimony of *Slobodan Boţić*.

553. Moreover, the Chamber notes that the existence of this Collegium was not mentioned by the Parties in connection with the debate concerning the operations of the Ministry of Defence of the HR H-B once it replaced the Department of Defence.

4. Relationships with International and Humanitarian Organisations

554. The Chamber has the minutes of a meeting of the HVO on 26 May 1993 numbering among its participants Milivoj Petković and Bruno Stojić, whereby power and authority for the distribution of humanitarian aid were conferred on the Department of Defence.[1339] The evidence demonstrates, moreover, that Bruno Stojić, as the Head of the Department of Defence, had the authority to issue passes to local humanitarian organisations.[1340] He was also in direct contact with international organisations such as UNPROFOR and the ICRC regarding the allegations of crimes committed against Croats in BiH as well as those committed by the HVO.[1341]

B. Role and Office of the Head of the Department of Defence and of the Ministry of Defence

555. In a decision dated 3 July 1992 signed by Mate Boban as President of the HVO and of the HZ H-B, the Presidency of the HZ H-B appointed Bruno Stojić to the post of Head of the Department of Defence.[1342]

556. By the declaration of 10 November 1993, the President of the HR H-B, Mate Boban, stated that, at the suggestion of the President of the Government, Jadranko Prlić, Perica Jukić would be appointed deputy to the President of the Government and

[1339] 1D 01609, pp. 1 and 2.
[1340] 2D 00552; 2D 00553; 2D 00555; 2D 00556; 2D 00557; 2D 00986.
[1341] 1D 02066; P 01989.

Minister of Defence.[1343] The transfer of responsibilities from Bruno Stojić to Perica Jukić, the new Minister of Defence, was made official on 15 November 1993.[1344] On 20 November 1993, the House of Representatives formally approved the appointment of Perica Jukić to the post.[1345] Between 23 and 25 February 1994,[1346] Vladimir Soljić succeeded Perica Jukić in the post of Minister of Defence of the HR-HB.[1347]

1. Hierarchical Nexus between the Head of the Department of Defence and the Minister of Defence with the Armed Forces

557. The Stojić Defence claims that the role of Bruno Stojić, as Head of the Department of Defence, was solely administrative and logistical and that he had no role in military operations.[1348] The Prosecution points out that Bruno Stojić did in fact work on issues involving human resources and the supply of military arms and equipment.[1349]

558. The Prosecution further contends that Mate Boban delegated some of his military powers to Bruno Stojić, who played an important role, particularly concerning the command and control of the armed forces and military operations of the HVO.[1350] The Stojić Defence contends, to the contrary, that Bruno Stojić had no authority whatsoever to issue orders to the HVO and moreover never did issue such orders.[1351] The Prosecution argues that the responsibilities which Mate Boban did not personally carry out as Supreme Commander were actually delegated to Bruno Stojić,

[1342] P 00308/P 00297; P 09545, p. 16; Witness BH, T(F), p. 17498, closed session; P 10217 under seal, para. 27, p. 5; P 10270 under seal, p. 2; Miroslav Rupčić, T(F), p. 23327; P 10275. Concerning the organisational hierarchy, *see* Miroslav Rupčić, T(F), pp. 23331-23333.
[1343] P 06583; Marijan Biškić, T(F), p. 15037; Slobodan Boţić, T(F), pp. 36158 and 36159.
[1344] 2D 00416.
[1345] P 06772.
[1346] The Chamber does not have any evidence attesting to the specific date.
[1347] Marijan Biškić, T(F), pp. 15042 and 15070; Slobodan Boţić, T(F), pp. 36158 and 36159.
[1348] Stojić Defence Final Trial Brief, paras 247, 251, 252, 254-256, 340, 356, 430 and 556. *See* also Closing Arguments by the Stojić Defence, T(F), p. 52410.
[1349] Closing Arguments by the Prosecution, T(F), pp. 51919-51921; Prosecution Final Trial Brief, paras 552-560.
[1350] Closing Arguments by the Prosecution, T(F), pp. 51915 and 51916; Prosecution Final Trial Brief, paras 363, 533, 534, 541, 545, 547, 548, 551.
[1351] Closing Arguments by the Stojić Defence, T(F), pp. 52367-52369; Bruno Stojić"s Final Trial Brief, paras 340, 352-358, 362, 404 and 430.

expressly, tacitly or by default.[1352] The Stojić Defence, however, points out that this scenario never played out and would moreover have been entirely improbable.[1353]

559. The Chamber observes that as the Stojić Defence contends, Article 10 of the Amended Decree on the Armed Forces of 17 October 1992 assigned administrative and technical tasks to the Department of Defence.[1354] Moreover, *Slobodan Praljak* and *Davor Marijan* declared that Bruno Stojić was not part of the chain of command of the military hierarchy in the armed forces of the HVO.[1355] *Davor Marijan* stated that the Head of the Department of Defence did not issue any orders related to the combat activities of the units.[1356] *Slobodan Praljak* also declared that he consulted with the Head of the Department of Defence only to resolve logistical issues.[1357]

560. Concerning the Prosecution"s allegations with regard to the transfer of the responsibilities of the Supreme Commander to the Head of the Department of Defence, the Chamber notes that Article 30 of the Amended Decree Regarding the Armed Forces of 17 October 1992 indicates that the President of the HZ H-B actually could, as Supreme Commander of the Armed Forces, delegate certain command responsibilities to the Head of the Department of Defence of the HVO.[1358]

561. Furthermore, according to *Milivoj Petković*, the Head of the Department of Defence could, in connection with a prior delegation of attribution of authority decided by the Supreme Commander pursuant to the said Decree, issue operational orders for the HVO"s units and report to the Supreme Commander.[1359] In this regard, *Davor Marijan* stated that Mate Boban had transferred his powers as Supreme Commander of the Armed Forces starting in summer 1992 and no longer commanded the units of the HVO directly. The witness did not, however, identify the person to whom Mate Boban allegedly transferred those responsibilities.[1360] The Chamber observes however that other statements by *Davor Marijan* himself contradict this

[1352] Closing Arguments by the Prosecution, T(F), pp. 51911, 51928 and 51914; Prosecution Final Trial Brief, para. 547.
[1353] Stojić Defence Final Trial Brief, para. 253.
[1354] P 00588, Article 10, p. 3.
[1355] Slobodan Praljak, T(F), p. 43445; 4D 01280; Davor Marijan, T(F), pp. 35693, 36073 and 36074; *see* also Milivoj Petković, T(F), pp. 49766-49769, 49771, 49777, 49779, 49780 and 50089.
[1356] 2D 02000, para. 86.
[1357] Slobodan Praljak, T(F), p. 43445; 4D 01280; *see* also Milivoj Petković, T(F), pp. 49766-49769, 49771, 49777, 49779, 49780 and 50089.
[1358] P 00588, p. 10; Bruno Pinjuh, T(F), p. 37328.
[1359] Milivoj Petković, T(F), pp. 50089, 50814 and 50815; P 00588, Article 30.

testimony, including the one emphasising that he never saw any document proving that Mate Boban delegated his command authority; had this been the case, *Davor Marijan* indicated that such authority would *a priori* have been delegated to the Main Staff.[1361] These contradictions mean that *Davor Marijan*"s testimony on the issue of the transfer of power and authority by the Supreme Commander to the Head of the Defence Department is not credible. The Chamber decides therefore not to take the testimony into account.

562. Moreover, the Chamber has no evidence referring to any transfer of power and authority from Mate Boban to Bruno Stojić with regard to the command of HVO armed forces. However, it did receive several orders from Bruno Stojić addressed directly to the armed forces of the HVO.[1362] Accordingly, on 15 January 1993 for example, Bruno Stojić ordered all the HVO units in Provinces 1, 5 and 9 as established by the Vance-Owen Plan, to subordinate themselves to the command of the ABiH in these zones.[1363] On 23 February 1993, he ordered the commanding officer of the Central Bosnia OZ to allow passage to the UNPROFOR convoys.[1364]

563. As concerns the hierarchical tie between the Head of the Department of Defence and the armed forces, the Stojić Defence contends that there is no evidence to show that the Head of the Department of Defence issued orders to the brigade commanders, other than those involving administrative matters.[1365] The Stojić Defence argues that, contrary to the Prosecution"s submission,[1366] the Department of Defence enjoyed no overall command or control authority over the armed forces, that it was not part of the chain of command of the armed forces of the HVO, and that it did not for this reason issue orders to the Main Staff of the HVO or orders to the assistant heads of the Department of Defence, save for certain orders involving administrative matters.[1367]

[1360] Davor Marijan, T(F), pp. 35866 and 35867.
[1361] Davor Marijan, T(F), pp. 35874 and 35875.
[1362] P 00804; P 00933; P 01246; P 02093; P 02292; P 03124; 2D 00485; P 01316; P 00610; P 00619; P 02673; Milivoj Petković, T(F), pp. 50081 and 50082; 4D 00320; P 00468; P 00491; P 01493; P 03039; P 06087; P 00799.
[1363] P 01140.
[1364] 2D 00984.
[1365] Closing Arguments by the Stojić Defence, T(F), pp. 52354 and 52355.
[1366] Prosecution Final Trial Brief, para. 545.
[1367] Closing Arguments by the Stojić Defence, T(F), pp. 52361, 52362 and 52366; Stojić Defence Final Trial Brief, paras 250, 338-345.

564. In this regard, the Chamber notes that, according to the testimony of *Slobodan Boţić*, there was no law specifically defining the scope of matters for which the Chief of the HVO Main Staff was answerable to the Head of the Department of Defence.[1368] The Decision of 15 September 1992 concerning the organisation of the Department of Defence, signed by Mate Boban, President of the HZ H-B, nevertheless indicated that the Chief of the Main Staff was accountable to the Head of the Department of Defence for matters pertaining to administration, budget, equipment supply and organisation of the structure of the armed forces.[1369] The Decision of 15 September 1992 also indicated that the brigade commanders were not merely subordinated to (and accountable to) the President of the HZ H-B, Supreme Commander of the Armed Forces, but were likewise subordinated to the Head of the Department of Defence and to the Chief of the Main Staff, within their respective spheres of responsibility.[1370] Moreover, although the Chamber does not have orders directly from the Head of the Department of Defence to the brigade commanders, such as noted above, the Chamber did admit into the record orders issued by Bruno Stojić to the OZ commanders.[1371]

565. Taking into consideration the evidence cited above, the Chamber finds that even if the Head of the Department of Defence did not fit *de jure* into the chain of military command, Bruno Stojić, as Head of the Department of Defence, did dispatch orders directly to the armed forces of the HZ(R) H-B, particularly in respect of issues regarding cease-fires, assignement of troops as reinforcement to other units, the dismantling HVO units, troop movements and the freedom of movement of humanitarian or international organisations. The Chamber will analyse in detail the role played by Bruno Stojić, as Head of the Department of Defence, in commanding the armed forces of the HZ(R) H-B, in the part relating to the military structure of the HZ(R) H-B.

566. However, the Chamber does not have any evidence regarding the hierarchical nexus which might have existed between the Minister of Defence and the armed forces within the HR H-B.

[1368] Slobodan Boţić, T(F), p. 36400.
[1369] P 00586, p. 3; Slobodan Boţić, T(F), p. 36400; *see* also P 01575, p. 3; 2D 02000, para. 86.
[1370] P 00586, p. 3.
[1371] *See* for example P 03124 and P 01316.

2. Powers of the Head of the Department of Defence and of the Minister of Defence over Appointments within the Armed Forces

567. The Prosecution asserts that the Head of the Department of Defence had the authority to designate and remove soldiers from office, up to and including deputy brigade commanders.[1372] The Ćorić Defence also points out that the Head of the Department of Defence appointed the members of the Military Police Administration as well as the commanders of battalions on the recommendation of the Chief of that administration.[1373]

568. The Stojić Defence submits that Mate Boban was actually responsible for the appointment of senior military officers and that, insofar as the appointment process was concerned, the role of the Head of the Department of Defence was purely administrative.[1374] The Prosecution underscores, however, that the appointments made by Mate Boban were based on the recommendations made by the Head of the Department of Defence and the Chief of the Main Staff.[1375]

569. The evidence shows that the Head of the Department of Defence did indeed have the authority to appoint or to make proposals to appoint at multiple levels.[1376]

570. Thus, the Head of the Department of Defence approved the proposal for the post of deputy Chief of the Main Staff submitted by the Chief of the Main Staff for subsequent appointment by the President of the HZ H-B.[1377]

571. Concerning appointments within the HVO armed forces, the Chamber observes that, by virtue of Article 34 of the Amended Decree on the Armed Forces of 17 October 1992, the President of the HZ H-B appointed the commanders of the armed forces. According to this decree, the Head of the Department of Defence appointed and removed from office brigade commanders and high-ranking officers.

[1372] Closing Arguments of the Prosecution, T(F), pp. 51877, 51917 and 51918; Prosecution Final Trial Brief, para. 542.
[1373] Ćorić Defence Final Trial Brief, paras 30 and 31.
[1374] Stojić Defence Final Trial Brief, paras 346, 347, 351 and 362.
[1375] Closing Arguments of the Prosecution, T(F), pp. 51916 and 51917.
[1376] As concerns the *Domobrani* and the power of appointment of the Head of the Department of Defence, the Chamber refers to its findings on the armed forces in its findings on the military structure of the HZ(R) H-B.
[1377] 2D 00567; P 02477, p. 2; P 00811.

Commanders appointed by the Head of the Department of Defence could, in turn, appoint high ranking officers within the brigades.[1378]

572. *Slobodan Boţić*, however, stated that it was actually the President of the HZ H-B who appointed the brigade commanders and other officers of senior rank, whereas the Head of the Department of Defence appointed only other officers, lower in rank.[1379] He confirmed that an error had undoubtedly crept into Article 34 of the Decree on the Armed Forces of 17 October 1992.[1380]

573. Although the Chamber previously explained that it assigned very little credibility to Witness *Slobodan Boţić*,[1381] other evidence nevertheless supports the statements of this witness concerning the appointment power of the President of the HZ H-B and the Head of the Department of Defence. Thus, Mate Boban, as President of the HZ H-B appointed operative zone and brigade commanders, by referring to Article 34 of the Amended Decree on the Armed Forces of 17 October 1992.[1382] The only orders for appointment issued by Bruno Stojić, Head of the Department of Defence, pursuant to that same article and admitted into the record, concern only individuals appointed to deputy brigade commander posts.[1383] The Chamber deduces therefrom that Article 34 of the Amended Decree on the Armed Forces was not strictly enforced. In fact, the Head of the Department of Defence had the power to appoint officers within HVO brigades up to and including the rank of Deputy Brigade Commander.

574. Concerning the SIS, whose powers and structure will be analysed below, the Head of the Department of Defence appointed *inter alia* the Deputy Chief for Analysis, the Deputy Chief for Operations, the Chiefs of the SIS centres for Herzegovina in Mostar, Central Bosnia in Travnik and Eastern Posavina in Derventa as well as the deputy commanders for security in the operative zones and in the

[1378] P 00588, Article 34, p. 11; Dragan Jurić, T(F), pp. 39269-39271; 2D 00631; 2D 01349; P 00698; *see* also P 00812; P 01415; Bruno Pinjuh, T(F), p. 37242; 2D 00567, p. 3. Concerning the authority of the Head of the Department of Defence to appoint the directors of the administrative organs of the institutions of the JNA who had been transferred to the armed forces of the HZ H-B: P 00424.
[1379] Slobodan Boţić, T(E), p. 36209.
[1380] Slobodan Boţić, T(F), pp. 36210 and 36211.
[1381] *See* "Defence Department Collegium" in the Chamber"s factual findings regarding the political and administrative structures of the HZ(R) H-B.
[1382] P 03363; P 04234; P 04550; P 05566.
[1383] 2D 01337; P 00698; 2D 01450; P 02945; 2D 00989; Slobodan Boţić, T(F), p. 36234; *see* also on the subject of Bruno Stojić"s power of appointment: 2D 00985; P 01846; P 01805; 2D 01187.

brigades, on the advice of the deputy chief for security of the Department of Defence.[1384]

575. As concerns the Military Police Administration , the Head of the Department of Defence appointed *inter alia* the deputy chief and the Assistant Chief of the Military Police Administration, the heads of department and the chiefs of section as well as the commanders and the deputy commanders of the Military Police battalions on the advice of the Chief of Military Police and with the approval of the assistant chief for Security of the Department of Defence.[1385] Subsequent to the reform of the Military Police introduced in January 1993,[1386] the assigned powers of the chiefs of the Military Police were transferred to the assistant chiefs of the Military Police within the OZs.[1387] The Head of the Department of Defence appointed these assistants in July and August 1993.[1388]

576. The evidence attests that the Head of the Department of Defence also granted promotions to members of the armed forces up to and including the rank of colonel.[1389]

577. Concerning appointments within the Main Staff, under the Amended Decision on the Internal Organisation of the Department of Defence of 20 May 1993, the Head of the Department of Defence approved *inter alia* the appointment of the Deputy Chief of the Main Staff made by the President of the HZ H-B, on the advice of the Chief of the Main Staff, and appointed the assistant chiefs of the Main Staff on the advice of the Chief of the Main Staff.[1390] According to *Milivoj Petković*, the Head of the Department of Defence, Bruno Stojić, was also the only person able to design the structure and the organisational flowchart of the Main Staff.[1391]

[1384] 2D 00567; P 02477, pp. 2 and 3; P 02602; 2D 01507.
[1385] 2D 00567; P 02477, p. 3; P 02467; P 01420/P 01422; P 01466; P 02985; P 02993; P 03011; P 04108; P 02295.
[1386] *See* "First Reorganisation of the Military Police Administration and Its Units: October 1992 – July 1993" and "Second Reorganisation of the Military Police Administration and Its Units: July – December 1993" in the Chamber's factual findings with regard to the military structure of the HZ(R) H-B.
[1387] P 04699.
[1388] P 03002; P 03487.
[1389] 2D 01391; 2D 01392; 2D 01393; P 02783.
[1390] P 02477, p. 2. *See* in particular P 09531/P 04565; P 02190.
[1391] Milivoj Petković, T(F), p. 50849. However *see* 3D 02604.

578. The evidence further attests that the Head of the Department of Defence nominated persons for appointment as heads of Defence administration in the municipalities, [1392] appointed them personally, [1393] or consented to their appointment.[1394]

579. A variety of evidence indicates that the Minister of Defence had the authority to appoint members of brigades, such as Assistants to the Commanders for Political Affairs, as well as the heads of SIS centres; he could also consent to transferring staff members from the Ministry of Defence to the SIS.[1395]

3. Power to Appoint Military Prosecutors and Judges

580. As concerns the appointments within the military justice administration, the Stojić Defence contends that the nominations for appointment to the posts of military prosecutor and deputy military prosecutor generally originated *de facto* from the Department of Justice and Administration.[1396]

581. The Decree of 17 October 1992 creating the office of the military prosecutor provided that the district military prosecutor and his deputies were to be appointed by the Presidency of the HZ H-B on the advice of the Head of the Department of Defence.[1397] The HVO amended this decree on 29 July 1993, following the text proposed by the Department of Justice and Administration to create an office of the military prosecutor at Ţepĉe.[1398] The Chamber has no evidence which enables it to determine whether, as the Stojić Defence alleges, the Department of Justice and Administration *de facto* nominated persons for appointment to district military prosecutor or deputy district military prosecutor posts and must therefore find that the appointments were made on the advice of the Head of the Department of Defence, as provided under the Decree of 17 October 1992 establishing the Office of the Military Prosecutor.

[1392] 2D 01198; 2D 01200; P 00971; 2D 01229; Bruno Pinjuh, T(F), pp. 37225-37227 and T(E), p. 37227.
[1393] 2D 01226.
[1394] 2D 01227; 2D 01228.
[1395] 2D 00632; 2D 00633; 2D 00634; 2D 00928; 2D 01509; P 06075.
[1396] Stojić Defence Final Trial Brief, para. 406.
[1397] P 00590.
[1398] P 03796, p. 3.

582. As to the military tribunals, the Decree concerning the creation of these tribunals also dated 17 October 1992, provided that military judges were appointed by the Presidency of the HZ H-B on the advice of the Head of the Department of Defence.[1399] On 29 July 1993, the HVO amended the Decree at the suggestion of the Department of Justice and General Administration to create a military tribunal at Ţepĉe. [1400] In his testimony, *Slobodan Boţić* indicated that when it came to appointments to the posts of presiding judge and judge of the various military tribunals, contrary to what was announced under the Decree, the Department of Justice and Administration itself also made appointments to military judicial posts.[1401] *Zoran Buntić* stated that, although the civil courts fell under the jurisdiction of the Department of Justice and Administration, military tribunals essentially were within the purview of the Department of Defence.[1402] He did not, however, specify whether the Department of Justice and Administration played any role in the appointment of judges and military prosecutors.

583. The Chamber therefore does not have evidence relating to the appointment of military judges other than what *Slobodan Boţić* said about the issue of which organ did in fact make proposals for the nominations for appointment to the posts of military judge. However, the Chamber notes that, aside from Witness *Slobodan Boţić*"s statement that it was the Department of Justice and General Administration that made the proposals, the HVO, on the advice of the Department of Justice and of Administration, on 29 July 1993 amended the Decree Creating the Military Tribunals. The Chamber deems that this fact prevents it from reaching any finding beyond a reasonable doubt and must then find in favour of the Accused that the Department of Justice and General Administration was *de facto* the department that proposed individuals for appointment to the post of military judge.

584. Nonetheless, the Chamber notes that it does not have any evidence relating to the HR H-B Minister of Defence"s power of appointment.

[1399] P 00592, Article 20, p. 5.
[1400] P 03796, p. 3.
[1401] Slobodan Boţić, T(F), pp. 36255 and 36256.
[1402] Zoran Buntić, T(F), p. 30266.

C. The SIS

1. The SIS of the HZ H-B

585. According to the Decision of 15 September 1992, the SIS constituted one of two component parts of the Sector for Security of the Department of Defence, the other part being the Military Police Administration,[1403] which will be examined in the part of the Judgement relating to the military structure of (HZ)R-H-B. The SIS was already in existence prior to the official date of its creation, probably towards the end of July 1992, but only became operational starting in October 1992.[1404]

a) Responsibilities of the SIS

586. The responsibilities of the SIS were regulated by the Amended Decree on the Armed Forces of the HZ H-B of 17 October 1992, and starting on 15 August 1993, by the Rules Governing the Activities of the SIS, adopted and signed by the Head of the Department of Defence, Bruno Stojić.[1405]

587. The SIS was an intelligence service responsible for the nation"s defence and the protection of the Department of Defence and the armed forces.[1406] Its mission was also to investigate crime, to identify those responsible for criminal violations[1407] particularly in the case of violations committed by the armed forces of the HVO, and to notify the military prosecutor.[1408]

[1403] P 00586, para. V, p. 1; 2D 00924; 4D 01311, p. 2; 2D 00435, p. 2; 2D 00567, pp. 2 and 3; P 02477, pp. 2 and 3.
[1404] 4D 01311; P 03177, p. 1 (*see* the final paragraph of the original BCS version for the date); Ivan Bandić, T(F), pp. 37993 and 37994; 2D 02000, para. 30, p. 20; 2D 01333.
[1405] Ivan Bandić, T(F), pp. 37997, 38006 and 38007; P 00588, Art. 137, pp. 40 and 41; P 04211, Article 9, p. 5.
[1406] P 04211, Article 9, p. 5; Ivan Bandić, T(F), pp. 37997 and 38029; *see* for example 2D 01379; P 04699, pp. 11 and 12; P 00128, p. 8; P 03355, pp. 23 and 24; 2D 00935; 2D 00948; Ivan Bandić, T(F), pp. 38042-38043; P 00128, p. 8; Ivan Bandić, T(F), pp. 38162-38164; 2D 02000, para. 38; Radmilo Jasak, T(F), pp. 48452 and 48453.
[1407] Zvonko Vidović, T(F), pp. 51571-51574; Milivoj Petković, T(F), pp. 49633 and 49634; Slobodan Praljak, T(F), pp. 42208 and 42444; P 00128, p. 8; 2D 03011; P 02544; P 01803; P 02597; 5D 02069; P 04699, p. 16; Slobodan Praljak, T(F), pp. 42244-42245.
[1408] Ivan Bandić, T(F), pp. 37999, 38041, 38042, 38052, 38054, 38134, 38162-38164, 38346 and 38347; *see* for example, P 04274; 2D 00935; P 00128, p. 8; Slobodan Praljak, T(F), pp. 41018 and 41019 and 42681.

b) Structure and Internal Operation of the SIS

588. The SIS was divided into two departments: a department for analysis and a department for operations; the latter was under the four local SIS centres, namely, Mostar, Travnik, Tomislavgrad and Derventa.[1409]

589. The SIS was directed by the Assistant Head of the Department of Defence for Security.[1410] The Assistant Head of the Department of Defence for Security was also the Chief of the SIS Administration.[1411]

590. On 21 October 1992, in an HVO decision Jadranko Prlić signed in his capacity as President, Ivica Lučić was appointed to the post of Assistant Head of the Department of Defence for Security of the HVO of the HZ H-B .[1412] *Ivan Bandić* however, testified that Ivica Lučić had already been appointed to this post by Mate Boban at the end of July 1992.[1413]

591. The Stojić Defence submits that appointments within the SIS were made without the approval of either the Chief of SIS or the Head of the Department of Defence, contrary to what was stipulated in the Decision on the Internal Organisation of the Department of Defence of 17 October 1992.[1414]

592. The Chamber notes that according to the Decision of 17 October 1992 and the Amended Decision of 20 May 1993, both relating to the internal organisation of the Department of Defence, certain assistant chiefs of the SIS, the chiefs of the four SIS local centres and the assistant commanders for security in the OZs were appointed by the Head of the Department of Defence, on the advice of the Assistant Head of the Department of Defence for Security.[1415] According to the same two Decisions, all other employees of the security sector were appointed by the Assistant Head of the Department of Defence for Security, with the approval of the Head of the Department

[1409] Ivan Bandić, T(F), pp. 37998, 37999, 38014 and 38015; 2D 00924.
[1410] P 00586, p. 2; 4D 01280.
[1411] 2D 02000, para. 32, pp. 20 and 21; P 00586, p. 2.
[1412] Ivan Bandić, T(F), pp. 37997, 37998, 38004, 38005 and 38010; P 00615, p. 10; P 00586, p. 2; 2 D 02000, para. 31, p. 20.
[1413] Ivan Bandić, T(F), pp. 37993 and 37998.
[1414] Stojić Defence Final Trial Brief, paras 368-371.
[1415] 2D 00567, pp. 2 and 3; P 02477, pp. 2 and 3; *see* also 2D 01508; 2D 01507; 2D 02000, para. 40, p. 24.

of Defence or someone he authorised.[1416] In this regard, the Chamber has Bruno Stojić"s Order of 31 August 1993, appointing Miroslav Musić to the post of the local SIS centre in Mostar pursuant to the Decision of 17 October 1992.[1417]

593. Admittedly, the Chamber observes, the Stojić Defence contests whether such a proceeding existed, relying here on *Ivan Bandić'*s testimony stating that this procedure was not followed because the HVO was in the process of formation in April 1992.[1418] The Chamber notes that *Ivan Bandić* said nothing beyond this and provided no further clarification on this point. Furthermore, the Chamber can assign only weak credibility to his testimony inasmuch as his answers while testifying were markedly evasive. The Chamber notes out that *Ivan Bandić* even avoided giving a clear response about the offices he held within the HVO at the time of the events.[1419]

594. The Chamber considers, for this reason, that because it has the two Decisions establishing the procedure for appointments within the SIS and an order from Bruno Stojić along the lines of the Decision of 17 October 1992, it cannot find that the procedure for the appointment of posts within the SIS established by the two Decisions regarding the organisation of the Department of Defence was not followed in practice. The testimony of *Ivan Bandić* – which the Chamber found scarcely credible – alleging without further specificity that the procedure was not followed in practice, does not by itself suffice to undermine this conclusion.

595. Concerning the supervision of the SIS, the Chamber notes that, according to the Rules governing the activities of the SIS, adopted by Bruno Stojić on 15 August 1993, the Head of the Department of Defence, together with a commission appointed

[1416] 2D 00567, p. 3; P 02477, pp. 2 and 3; 2D 02000, para. 40.
[1417] 2D 01509.
[1418] Ivan Bandić, T(F), p. 380011.
[1419] In meeting minutes prepared by Tihomir Blaškić, commander of the Central Bosnia ZO, on 21 April 1993 (P 02019), Ivan Bandić appears as the deputy chief of the SIS. Despite this, in his testimony *Ivan Bandić* submitted that this post did not exist. He stated that during meetings held at the time of the events he introduced himself as officer in charge of security for General Petković, which was subjected to differing interpretations by various interlocutors. The witness justified his inability to describe his job with greater precision in that he was in reality a member of the counter-espionage secret services. Ivan Bandić, T(F), pp. 38050-38051. Moreover, *Ivan Bandić* stated that he considered that his superiors were the commanders from the HVO Main Staff, General Petković, General Praljak, Ante Roso, the Supreme Commander of the HVO, Mate Boban, and the director of the SIS, Ivica Lučić, who was his immediate superior and who reported to the head of the Department of Defence, without additional specifics, Ivan Bandić, T(F) pp. 37993, 38129-38131.

by the President of the HZ H-B, were tasked with overseeing the lawfulness of the SIS"s work.[1420]

596. The Stojić Defence argues that despite Bruno Stojić"s efforts to propose the appointment of this commission, it did not ever exist, and, therefore, that it was Mate Boban, the Main Staff of the HVO and the "unit commanders" who wielded *de facto* "authority" over the SIS.[1421]

597. The Chamber has no evidence confirming that the commission referenced in the Rules governing the activities of the SIS existed. However, even if the Chamber were to find that the Commission never existed, the Chamber could not deduce therefrom that the Head of the Department of Defence had no authority over the activities of the SIS. Such a finding must be drawn in light of the totality of the evidence relating to the incidents in the municipalities and the detention centres.

c) The SIS"s Place within the HVO Hierarchy

598. The Prosecution submits that the SIS was a military organ receiving orders from Bruno Stojić, Head of the Department of Defence, and not a distinct, civilian organ.[1422] The Petković Defence, as well as the Praljak Defence asserted that the Main Staff had no authority over the SIS, its officers or its personnel.[1423] The Stojić Defence, on the contrary, argues that the SIS stood under the authority of the armed forces of the HVO, that its ties to the Department of Defence involved only administrative matters and that the department had no authority over the representatives of the SIS.[1424]

599. The Chamber observes that during his testimony *Milivoj Petković* confirmed that the Main Staff had no authority over the SIS, adding that the Main Staff turned to the commanders of brigades or operative zones when it wished to request that SIS agents assist a brigade with completing a particular task or transmitting information.[1425]

[1420] P 04211, Article 5, p. 4; P 00858.
[1421] Stojić Defence Final Trial Brief, para. 367.
[1422] Prosecution Final Trial Brief, para. 544.
[1423] Petković Defence Final Trial Brief, paras 85, 86, 473; Praljak Defence Final Trial Brief, para. 50.
[1424] Stojić Defence Final Trial Brief, paras 363, 366, 367, 372-376 and 403.
[1425] Milivoj Petković, T(F), pp. 50099-50103; 2D 03083; P 03614; 4D 00977.

600. On this point, the Chamber notes that Article 10 of the Rules on the Work of the Information and Security Service, adopted on 15 August 1993, indicates that the Chief of the SIS, that is, the Assistant Head of the Department of Defence responsible for the security sector, was accountable for the work of this unit to the Head of the Department of Defence.[1426] The Chamber likewise observes that, according to *Witness EA*, the SIS was independent of the military structure of the HVO.[1427] *Davor Marijan*[1428] stated that the SIS"s place in the hierarchy was below the Assistant Head of the Department of Defence for Security.[1429]

601. In view of this evidence, the Chamber finds that the SIS did indeed fall under the direct authority of the Assistant Head of the Department of Defence for Security and, therefore, within the hierarchy of those directly reporting to the Head of the Department of Defence.

602. The Petković Defence then argues that the agents of the SIS within the units of the HVO were subordinated to the Head of the Department of Defence for all of their activities unrelated to combat.[1430]

603. Concerning the hierarchical tie between the SIS agents in the brigades and the SIS, the Chamber heard the testimony of *Witness EA*, confirming that the Assistant Brigade Commander for the SIS took orders from the SIS"s Assistant Military District Commander.[1431]

604. *Davor Marijan* testified that brigade commanders were responsible to the Head of the Department of Defence for all of the activities falling within the powers of the SIS.[1432] When the commanding officer gave orders to the SIS agents in his brigade that exceeded the scope of the SIS"s authority, the agents were responsible to so inform immediately their superior within the SIS in order to permit him to take

[1426] P 04211, Article 10, pp. 5 and 6. *See* also Witness EA, T(F), pp. 24803 and 24808, closed session; Ivan Bandić, T(F), pp. 38129-38131; Davor Marijan, T(F), p. 35730.
[1427] Witness EA, T(F), pp. 24802 and 24808, closed session.
[1428] Expert on military structure; "Decision on Submission of the Expert Report of Davor Marijan Pursuant to Rule 94 *bis* (A) and (B) and on Motions for Additional Time to Cross-Examine Davor Marijan", public, 11 December 2008.
[1429] Davor Marijan, T(E), p. 35787; 4D 01281.
[1430] Petković Defence Final Trial Brief, paras 88, 89 and 105.
[1431] Witness EA, T(F), pp. 24882 and 24883, closed session.
[1432] Davor Marijan, T(F), pp. 35790 and 35791.

appropriate measures.[1433] The Rules governing the activities of the SIS did not, however, specify what these measures were.

605. The Petković Defence stresses, moreover, that the Chief of the SIS reported to the Head of the Department of Defence concerning the work of SIS as a whole.[1434] Concerning the transmission of the SIS"s reports to the Department of Defence, the Prosecution argues in its final trial brief that the Head of the Department of Defence, as head of the intelligence services, received "all HVO intelligence information" and had at his disposal significant means to investigate any matters brought to his attention.[1435] By contrast, the Stojić Defence points out that there is no evidence to show Bruno Stojić had any knowledge of the activities of the SIS, inasmuch as he did not receive any reports from that unit.[1436]

606. To this effect, the Chamber has only one piece of evidence, the testimony of *Zrinko Tokić,*[1437] stating that, on 15 July 1993 he had sent a report concerning the security situation in Gornji Vakuf, co-signed by Zvonko Katović, "Chief of the SIS", and by him, to Bruno Stojić, Milivoj Petković, Mate Boban and Jadranko Prlić.[1438] The Witness declared that he decided to send the report to these recipients because he considered that they were persons who could take "good quality" decisions.[1439] The Chamber finds, however, that this single piece of evidence does not enable it to conclude that Bruno Stojić regularly received reports from SIS.

607. Lastly, the Chamber recalls that the SIS was also required to cooperate with the VOS and the Military Police Administration, as well as with civilian police and the representatives of the military tribunals and the civilian prosecutor"s office, particularly in realising its assignment of identifying persons responsible for criminal violations.[1440]

[1433] P 04211, Article 66, pp. 38 and 39; Ivan Bandić, T(F), p. 38151.
[1434] Petković Defence Final Trial Brief, paras 87 and 88.
[1435] Prosecution Final Trial Brief, para. 544.
[1436] Closing Arguments by the Stojić Defence, T(F), p. 52390; Stojić Defence Final Trial Brief, para. 403.
[1437] Commander of the HVO"s *Ante Starčević* Brigade in Gornji Vakuf from September 1992 to May 1994; IC 01056.
[1438] P 03475.
[1439] Zrinko Tokić, T(F), pp. 45531 and 45532.
[1440] P 04211, Art. 74, p. 41; 5D 04350; Zvonko Vidović, T(F), pp. 51484, 51504, 51505, 51526, 51528, 51600, 51601 and 51681; P 03118; 5D 04199; 5D 04169; 5D 02040; 5D 04207; 5D 04115; P 03616, p. 2; Ivan Bandić, T(F), pp. 38055, 38056 and 38213; 2D 00934; 5D 02092; P 04190.

2. The SIS of the HR H-B

608. After the proclamation of the HR H-B, the security sector of the Ministry of the Defence was established in November 1993.[1441] On 1 December 1993, Jadranko Prlić, Prime Minister of the HR H-B, appointed Marijan Biškić to the post of Deputy Minister for Security in the Ministry of Defence of the HR H-B.[1442] He was responsible in this capacity for the Security Administration and the Military Police Administration,[1443] and was subordinated to the Minister of Defence, Perica Jukić.[1444]

609. According to *Marijan Biškić*, Ivica Lučić was Chief of SIS between November 1993 and January 1994.[1445]

610. A document pertaining to the instructions for the SIS in Travnik/Vitez of 21 September 1993 stated that the Department of Defence had decreed a re-organisation of the SIS.[1446] Under this new organisation, the entire territory of the HR H-B would be divided into seven regions, and within each a local SIS centre would be established. The SIS centre in Travnik/Vitez, for example, covered the Central Bosnia OZ area of responsibility. The local SIS centres were military offices within the Department of Defence, not civilian organs.[1447]

611. The local centres of the SIS were the executive organs of the SIS within each of the seven regions. For this reason, all SIS members in the military units were subordinated, as to their "professional tasks", to the local centre of the SIS. The members of the SIS embedded in the battalions were subordinated to the battalion commander for "essentially military tasks" they had, but remained subordinated to the assistant brigade commander responsible for security for their "professional tasks" within the SIS. In turn, the assistant brigade commander for security was subordinated to the brigade commander for "essentially military tasks", but was subordinated to the chief of the local SIS centre when it came to "professional tasks" within the SIS. The deputy brigade commander for security submitted his reports to the chief of the local

[1441] P 07419, p. 1.
[1442] Marijan Biškić, T(F), pp. 15039, 15048 and 15049; P 07236, Article 4, p. 2; P 06994; P 06998, p. 1; P 07481.
[1443] P 07236, Article 5, p. 3; Marijan Biškić, T(F), p. 15049.
[1444] Marijan Biškić, T(F), pp. 15068-15070.
[1445] Marijan Biškić, T(F), p. 15050; *see* for example between November 1993 and January 1994: 2D 01499; 2D 01377; 4D 01463; 2D 02000, para. 31.
[1446] The Chamber does not know the date of the restructuring: P 05249, p. 1.

SIS centre from whom he received instructions concerning his "professional tasks".[1448] The Chamber observes that not one of the HZ(R) H-B documents defines the words "professional tasks".

612. In similar fashion, there was a deputy OZ commander for security who was also subordinated to the OZ commander for military tasks and to the chief of the local SIS centre for tasks properly within the SIS.[1449]

613. Following the SIS"s organisational transformation, those of its members in the brigades were no longer subordinated, for tasks properly within the SIS, to the deputy chief of the OZ for security and ceased reporting to him.[1450]

614. The evidence examined by the Chamber likewise indicates that the SIS"s mission, after August 1993 as well, was *inter alia* to investigate and collect information concerning the incidents related to security, such as crime,[1451] including criminal acts committed by members of the HVO.[1452] According to *Ivan Bandić*, the agents of the SIS were able to request authorisation to go to the collection centres or the prisons where "prisoners of war" or Muslims detained on grounds of security were being held, such as the Heliodrom and the Prisons of Dretelj and Gabela, in order to collect information on them and to forward it to the competent authorities.[1453]

615. The SIS centres sent reports to the SIS from the Department of Defence concerning, *inter alia*, the situation and the military operations underway in the regions within their zone of responsibility,[1454] as well as reports concerning other security issues such as "prisoner of war" exchanges[1455] or even the transfer of Muslim prisoners to the detention facilities.[1456] The SIS centres were likewise tasked with identifying prisoners or other individuals, on the basis of lists supplied by the ODPR

[1447] P 05249, pp. 1 and 2; 2D 01377.
[1448] P 05249, pp. 1 and 2; 2D 01377, p. 2.
[1449] P 05249, pp. 1 and 2; 2D 01377, p. 2.
[1450] P 05249, p. 2; 2D 01377, p. 2.
[1451] Ivan Bandić, T(F), p. 38075; P 05614; 5D 02147; Ivan Bandić, T(F), pp. 38105-38108, 38113, 38114, 38359 and 38360; P 07035; 2D 00942; Slobodan Praljak, T(F), p. 42208; P 04268, p. 2.
[1452] P 06846.
[1453] Ivan Bandić, T(F), pp. 38084, 38085, 38091 and 38248-38251; P 05133; 2D 00929; 2D 00950.
[1454] P 05271; 3D 02057; 3D 01184; 4D 01357.
[1455] Ivan Bandić, T(F), pp. 38079 and 38080; P 06555.
[1456] P 06662; P 06658 Slobodan Praljak, T(F), p. 42783 and 42784.

of the HR H-B or otherwise by the Exchange Service, to place such persons in detention centres and to instigate criminal proceedings against them.[1457]

D. Health Section of the Department of Defence

616. The Decision on the Basic Principles of Organisation of the Defence Department of 15 September 1992, established that the Department of Defence would have a health section directed by a deputy head of the Department of Defence.[1458] The Deputy Head was responsible for the three offices comprising the health sector section, namely, the staff medical service, the office for care of the wounded and the office for monitoring and inspection.[1459] In a decision of 8 September 1992, signed by Jadranko Prlić as President of the HVO, Ivan Bagarić was appointed to the post of Assistant Head of the Department of Defence for Health, that is, before the publication of the Decision of 15 September 1992 officially establishing this office.[1460] *Ivan Bagarić* testified that he held this post until 1996.[1461]

617. The evidence demonstrates that, at least in 1993, the Assistant Head of the Department of Defence for the Health Section sent reports concerning the Section"s activity directly to the Head of the Department of Defence.[1462]

618. Although the evidence attests that there were also medical corps in the HVO brigades,[1463] the Chamber does not know when they existed and what their hierarchical relationship with the Health Section of the Department of Defence was.

619. Nor does the Chamber have evidence referring to the full complement of powers assigned to the Health Section of the Department of Defence.

620. However, the evidence does indicate that among the tasks assigned to the Health Section was evacuation of the wounded and civilians in "besieged" areas, like Jajce.[1464]

[1457] P 07327; P 07495.
[1458] P 00586, p. 2; 2D 02000, para. 64, pp. 32 and 33.
[1459] P 00586, p. 2; 2D00752.
[1460] P 00615, pp. 1 and 2.
[1461] Ivan Bagarić, T(F), p. 38873.
[1462] 2D 00738; P 00739; 2D 00714; P 06167.
[1463] 2D 02000, para. 67; P 00128, p. 14.
[1464] 2D 02000, p. 13.

621. Certain evidence also attests to the fact that the Health Section was tasked in 1993 with visiting the HVO's detention centres and that the said section directly informed the Head of the Department of Defence of this.[1465] The Chamber will review this point in greater detail in the part relating to each of the detention centres.

E. Commission for Prisons and Detention Centres

622. The Commission for Prisons and Detention Centres was created on 6 August 1993 on the orders of Bruno Stojić, Head of the Department of Defence.[1466] The Commission came under the authority of the Department of Defence and was responsible for resolving problems related to the detention centres and prisons in which "prisoners of war" were being held, for establishing a list of all the detainees and for addressing issues relating to prisoner release and exchange.[1467] Berislav Pušić, Head of the Exchange Service, was one of the five members of the Commission.[1468]

623. The Prosecution contends that through his appointment to this Commission, Berislav Pušić succeeded in deporting large numbers of Muslims to third countries.[1469] The Pušić Defence argues, however, that this Commission never actually existed or did anything.[1470]

624. The Chamber notes in this regard that, on 12 August 1993, Berislav Pušić, as Head of the Commission for Prisons and Detention Centres, enacted a decision ordering improvements in security and management of prisoners.[1471] Moreover, in his report of 27 October 1993, Josip Praljak, a member of the Commission, described the work of the Commission following its entry into service on 10 August 1993.[1472]

625. The Chamber thus concludes that, contrary to what the Pušić Defence contends, the Commission for Prisons and Detention Centres did exist. However, no evidence has been brought to the Chamber's attention showing that the Commission carried out its assigned duties.

[1465] *See* for example: P 05503; P 06167.
[1466] P 03995; P 01474, Articles 28 and 29, pp. 1, 10 and 11.
[1467] P 03995; P 01474, Articles 28 and 29, pp. 1, 10 and 11.
[1468] P 03995.
[1469] Prosecution Final Trial Brief, paras 595, 1202 and 1203.
[1470] Pušić Defence Final Trial Brief, paras 95 and 100-103; Closing Arguments by the Pušić Defence, T(F), pp. 52764-52766.
[1471] P 04141.
[1472] P 06170; Josip Praljak, T(F), pp. 14798 and 14799.

V. Other Departments and Ministries

A. ODPR

626. In a decision signed by its President, Jadranko Prlić, on 27 November 1992, the HVO created the ODPR, establishing its internal structure as well as its scope of responsibility.[1473] That same day, Jadranko Prlić, still acting as President of the HVO, signed a decision appointing Darinko Tadić to the post of Head of the ODPR;[1474] on 31 May 1993, he signed a decision appointing Martin Raguţ to the post of Deputy Head of the ODPR.[1475] Darinko Tadić directed the ODPR until 1 December 1993, on which date the Government of the HR H-B, in a decision signed by Jadranko Prlić, replaced him with Martin Raguţ.[1476] Darinko Tadić was then appointed the ODPR's representative in Croatia.[1477]

627. A working report of the ODPR dated 12 July 1993 indicated that the *de facto* organisation of the ODPR had been established at the beginning of January 1993.[1478] In early March 1993, the Head of ODPR, Darinko Tadić, adopted the Charter of Operations of the ODPR.[1479] Located in Mostar, the ODPR had offices – and jurisdiction – over the entire territory of the HZ(R) H-B.[1480]

628. The ODPR had commissioners in every municipality, who managed the work of the ODPR at the local level.[1481]

[1473] P 00846; P 00824, p. 3; Martin Raguţ, T(F), pp. 31306-31308; P 03394, p. 2; P 09851 under seal, p. 5, para. 3.14.
[1474] P 00848.
[1475] Martin Raguţ, T(F), pp. 31310-31316; P 03079, p. 2.
[1476] Witness BA, T(F), pp. 7164 and 7165, closed session; P 09712, under seal, para. 12, p. 4; P 07005, pp. 2-5; Philip Watkins, T(F), p. 19033; Martin Raguţ, T(F), pp. 31336 and 31337; P 06581, pp. 8, 12 and 13 (*see* Document: 1D57-0077).
[1477] P 07005, p. 5.
[1478] P 03394, p. 2; P 00093; P 02533, p. 1.
[1479] P 01602, p. 4; P 00093 ; P 03394, p. 1.
[1480] Witness BA, T(F), p. 7165, closed session; P 09712, under seal, para. 12, p. 4; Witness BD, T(F), p. 20699, closed session.
[1481] P 03394, p. 2.

1. Hierarchical Nexus between the ODPR with the HVO and the Government of the HR H-B

629. The Prosecution contends that Jadranko Prlić wielded direct authority over the ODPR.[1482] The Stojić Defence also argues that the ODPR answered to the President of the HVO.[1483] The Prlić Defence does not specifically address this issue, stating simply that the ODPR was a "sub-department" whose assigned powers involved the humanitarian domain.[1484]

630. On this point, the Chamber has admitted into the record the ODPR Charter of Operations, Article 8 of which specifies that the Head of the ODPR was directly subordinated to the President of the HVO of the HZ H-B.[1485] However, according to the minutes of the 28th session of the HVO dated 3 March 1993,[1486] the HVO specifically insisted that the ODPR amend Article 8 of the said Charter to clarify that the ODPR answered to the HVO, and not to the President of the HVO.[1487] The Chamber nevertheless observes that none of the evidence admitted into the record supports a finding that, subsequent to the meeting of 3 March 1993, the Charter of the ODPR was indeed amended.

631. The Chamber has minutes from the ODPR dated 24 April 1993, addressed to the HVO of the HZ H-B.[1488] The evidence indicates, moreover, that after 3 May 1993, the ODPR sent weekly or monthly reports on its activities to the HVO of the HZ H-B, not its President.[1489] Taking into consideration this evidence and concerned about reaching the finding most favourable to the Accused, the Chamber considers that, both prior to and following the 3 March 1993, the ODPR reported to the HVO of the HZ H-B and not to its President personally.

[1482] Prosecution Final Trial Brief, paras 385, 442 and 493.
[1483] Stojić Defence Final Trial Brief, para. 452.
[1484] Prlić Defence Final Trial Brief, para. 327(q). *See* also the Preliminary Statement by the Accused Prlić, T(F), p. 27519.
[1485] P 00093, Article 8, p. 5; Witness BA, T(F), pp. 7164 and 7165, closed session; P 09712 under seal, para. 12, p. 4.
[1486] Present at this meeting of the HVO, were *inter alia* its President, Jadranko Prlić, and Bruno Stojić; P 01603, p. 1.
[1487] P 01602, p. 4.
[1488] P 02065.
[1489] P 08973, p. 46; Ciril Ribičić, T(F), p. 25451; P 01748, p. 3; P 03394; Martin Raguţ, T(F), pp. 31309, 31310 and 31387; P 02533; P 07500.

2. Powers of the ODPR

632. The Ćorić Defence asserts that only the ODPR, not the Military Police Administration, was responsible for delivering laissez-passer to the humanitarian convoys.[1490] The Pušić Defence also points out that the ODPR was authorised to approve the requests of humanitarian organisations regarding humanitarian convoys.[1491]

633. The Chamber notes that, according to *Martin Raguţ*,[1492] in May 1993, the ODPR consisted of roughly 25 to 30 individuals[1493] and was organised into five departments: the department for displaced persons and refugees, the department for analysis, the department for humanitarian aid, the department for reconstruction and the department for legal matters.[1494] The principal mission of the ODPR was to handle the distribution of humanitarian aid, facilitate the return of "displaced persons and refugees" and implement HZ H-B regulations in matters involving "refugees and displaced persons",[1495] especially the decision of 15 April 1993, amended by that of 29 April 1993 on the rights of "refugees, expelled and displaced persons in the territory of the municipality of Mostar".[1496] More specifically, the department for displaced persons and refugees was assigned to coordinate aid to the "refugees" and to distribute them equitably throughout the territory of Herceg-Bosna.[1497] The ODPR's humanitarian aid department was responsible for delivering humanitarian aid and for administering passage of humanitarian convoys in the territories under the control of the HVO.[1498] The responsibility of the department for legal matters was to standardise the rights and obligations of displaced persons and refugees, to manage

[1490] Ćorić Defence Final Trial Brief, para. 336.
[1491] Pusić Defence Final Trial Brief, paras 516 and 517.
[1492] Deputy to the officer in charge of the ODPR of HZ H-B from 31 May 1993 to 1 December 1993; ODPR Director from 1 December 1993 to Spring 1994; Martin Raguţ, T(F), pp. 31244, 31336 and 31337; P 07005, p. 4.
[1493] Martin Raguţ, T(F), pp. 31246-31248.
[1494] P 06324, pp. 1-7.
[1495] P 09712 under seal, para. 14, p. 4; P 08973, p. 46; P 01602, p. 5; P 04220, p. 1; Martin Raguţ, T(F), pp. 31247-31250, 31517; Witness BB, T(F), p. 17151, closed session; P 02065, p. 2; P 07669, p. 2.
[1496] Witness BB, T(F), pp. 17150 and 17151, closed session; P 01894; P 02144; Witness BB, T(F), pp. 17139-17141, closed session.
[1497] Martin Raguţ, T(F), pp. 31287-31289.
[1498] P 06324, p. 4; P 02706; Witness BB, T(F), pp. 25277-25279, closed session; P 07834; P 03743; Witness BC, T(F), p. 18559, closed session; 1D 01853; P 05371.

requests for transit visas in the territories under the control of the HVO and to offer legal aid services to refugees.[1499]

634. The evidence further indicates that at least from September 1993 onward, the ODPR was also responsible for organising and allocating housing and care to "refugees and displaced persons" in the territory of the HR H-B,[1500] notably in cooperation with the international organisations.[1501]

635. As to its legal authority to issue permits of passage for humanitarian convoys, an order from Valentin Ćorić, Chief of the Military Police Administration, dated 26 August 1993, indicated that Bruno Stojić, Milivoj Petković, Slobodan Praljak, Ivo Lučić, Ţarko Tole, Stanko Matić, Veso Vegar and Ivan Bagarić were vested with the power to authorise this sort of passage.[1502] In October 1993, the HVO issued a protocol governing the movement of humanitarian convoys in its territory, stating that the ODPR was the organ with authority to issue permits for movement to humanitarian convoys.[1503] In April 1994, several ministers of the HR H-B, including Valentin Ćorić, Minister of the Interior, received orders applicable to the passage of humanitarian convoys in the territory controlled by the HVO. According to these instructions, the ODPR was the organ with power to grant transit permits for transporting humanitarian aid.[1504] The Chamber, moreover, has a permit for passage for a humanitarian convoy issued by Darinko Tadić, Head of the ODPR, dated 12 October 1993.[1505]

636. Having reviewed this evidence, the Chamber concludes that the ODPR was one of the organs of the HZ(R) H-B empowered to issue permits for passage for humanitarian convoys. The Chamber cannot, however, find that the ODPR was the only organ having such power and authority. Moreover, the Chamber finds that although there is no evidence to attest that the Military Police Administration had the power to deliver such permits, it did play an important role in the distribution of

[1499] P 06324, p. 7; P 05128; P 05371.
[1500] P 04721; P 05996, p. 1; P 07024; P 08119; 1D 02179.
[1501] 1D 01637; Marijan Biškić, T(F), p. 15114; 1D 02179, p. 2.
[1502] P 04529.
[1503] P 05926, p. 2. *See* also "Assignments of the Military Police Pertaining to Freedom of Movement and Providing Security for Buildings and Officials" in the Chamber"s findings regarding the military structure of the HZ(R) H-B with respect to the power and authority of the Military Police in matters of freedom of movement of humanitarian aid convoys.
[1504] 1D 02025, Article 1; Martin Raguţ, T(F), pp. 31353-31355; P 05926, p. 2.

humanitarian aid and in the access by international organisations to the territory of the HZ(R) H-B, inasmuch as it managed the checkpoints throughout the territory. The Chamber will elaborate on this point in the part relating to the structure of the Military Police and when assessing the responsibility of each Accused.

637. Moreover, the Chamber learned of an order from Darinko Tadić, addressed to Mile Pušić, Deputy Commander of the 3rd HVO Brigade as well as to Stanko Boţić, Warden of the Heliodrom, probably dated in 1993, whereby the ODPR authorised the media and international organisations to visit "displaced and expelled persons and refugees".[1506]

638. The ODPR met at least once a month with its municipal commissioners[1507] and was the official partner of the UN agencies and the interlocutor with the HVO for the other international organisations outside of the UN system and local humanitarian organisations.[1508]

639. On 21 June 1993, in a decision signed by Jadranko Prlić, the HVO established a Headquarters for the purpose of organising and coordinating the work of the HVO entities, the HZ H-B and the HVO municipal councils regarding the management of displaced persons and refugees.[1509] The Headquarters consisted *inter alia* of Darinko Tadić, Martin Raguţ, Krešimir Zubak and Boţo Rajić.[1510]

B. Department of Finance

640. The Presidency of the HZ H-B created the Department of Finance by the Decree on the Installation of a Provisional Government and Administration in the HZ H-B of 15 May 1992.[1511] That same day, the Presidency appointed Jadranko Prlić as Head of the department.[1512]

[1505] 1D 01360.
[1506] 6D 00576.
[1507] P 03394, pp. 2 and 3.
[1508] Witness BD, T(F), pp. 20700-20701, closed session; P 08973, p. 46; P 03394, p. 3.
[1509] P 03092; Martin Raguţ, T(F), pp. 31545-31546.
[1510] Martin Raguţ, T(F), pp. 31545-31546.
[1511] P 00206, Article 7, p. 2; 2D 02000, para. 5; Davor Marijan, T(F), p. 35604.
[1512] P 00208; P 09545, p. 15.

641. From 15 August 1992 until at least August 1993, Neven Tomić was the Head of the Department of Finance.[1513] On 6 January 1993, the HVO appointed Jose Damjanović as Assistant Head of the Department of Finance, on the advice of the Head of the Department of Finance;[1514] on 29 March 1993, Drago Radić was appointed to the same post during a working meeting of the HVO[1515] on the advice of the Presidents of the Municipal HVOs of Central Bosnia.[1516]

642. In a decree dated 14 October 1992, signed by Jadranko Prlić as President of the HVO, the Department of Finance was made responsible for collecting taxes on income, customs duties and excise taxes[1517] particularly those established for petrol, diesel fuel and fuel in the territory of Herceg-Bosna.[1518]

643. According to *Neven Tomić*, the role of the Department of Finance was to put in place a financial system where state revenue would be centralised at the level of the HZ(R) H-B in order to finance the territory"s defence requirements.[1519] In view of this, the three priorities of the Department of Finance were establishing a customs system, deciding a budget for the HZ H-B and implementing an SDK (or service for auditing public accounts).[1520] In three decisions and three decrees on 31 August 1992, the HVO initiated the implementation of a centralised system of taxation for the purpose of financing the HZ H-B.[1521] Several decisions dating principally from August 1992 show that the HVO, and more particularly its Department of Finance, had put in place a customs system based on measures in the RBiH and the former Yugoslavia on behalf of the RBiH.[1522] According to *Neven Tomić*, all revenue from customs duties flowed into the HZ H-B budget.[1523] Lastly, in a decree dated 14 August 1992, Mate Boban, President of the HZ-HB, created the HZ H-B SDK.[1524]

[1513] Miroslav Rupĉić, T(F), p. 23333; Neven Tomić, T(F), pp. 33720, 33724, 33730 and 34105; P 10275; 1D 01934.
[1514] 1D 00194.
[1515] Those in attendance at this meeting included Jadranko Prlić and Bruno Stojić.
[1516] P 01748, p. 1.
[1517] Miroslav Rupĉić, T(F), p. 23328.
[1518] P 00102; Miroslav Rupĉić, T(F), p. 23448 to 23451; P 01097, p. 1.
[1519] Neven Tomić, T(F), pp. 33720, 33724, 33730, 33734 and 33954.
[1520] Neven Tomić, T(F), p. 33734.
[1521] 1D 00028; 1D 00023; 1D 00026; 1D 00027; 1D 00031; 1D 00030; 1D 00025; Neven Tomić, T(F), pp. 33865–33866; 1D 02187; 1D 00048.
[1522] Neven Tomić, T(F), pp. 33734, 33798–33799 and 33801–33805: 1D 00113; 1D 00019; 1D 00020; 1D 00023; 1D 00026; 1D 00027; 1D 00034; 1D 00066.
[1523] Neven Tomić, T(F), p. 34193.
[1524] 1D 00003.

644. The budget of the Government of the HZ H-B was placed into four bank accounts: two non-resident accounts with the *Privredna Banka Zagreb*, one in Croatian dinars and the other in foreign currency, a current account in Croatian dinars and a current account in Bosnia-Herzegovina dinars.[1525]

C. Department of Justice and Administration

645. On 15 May 1992, the Presidency of HZ H-B appointed Zoran Buntić to the post of Head of the Department of Justice and Administration.[1526] *Zoran Buntić* said that he took office on or about 20 June 1992 and served until 28 August 1993.[1527] On 6 January 1993, in a decision signed by its President, Jadranko Prlić, the HVO appointed Mate Tadić to the post of Assistant Head of the Department of Justice and Administration of the HVO of the HZ H-B.[1528]

646. The Department of Justice and Administration was tasked with establishing effective judicial authority; to achieve this, it adopted directives concerning the implementation of tribunals and military prosecutor"s officers in the districts.[1529]

647. In October 1992, municipal misdemeanour courts were established in each of the municipalities, in addition to a High Court of Justice for the entire HZ H-B[1530] and an Office of the Supreme Court located in the territory of the HZ H-B.[1531]

648. As becomes apparent from a decree of 3 July 1992 concerning the treatment of persons captured during combat in the HZ H-B signed by Mate Boban, the Head of the Department of Justice and Administration, in conjunction with the Head of the Department of Defence and the Head of the Department of the Interior, was responsible for determining the detention sites for persons captured in combat.[1532]

[1525] Miroslav Rupčić, T(F), pp. 23339, 23341, 23342 and 23497; Neven Tomić, T(F), pp. 33800 and 33801; P 00606; P 00412; 1D 00047, pp. 1 and 2.
[1526] 2D 01368/1D 00174; *see* also Zoran Buntić, T(F), pp. 30243, 30244 and 30249.
[1527] Zoran Buntić, T(F), pp. 30243, 30244 and 30249
[1528] P 01061.
[1529] 2D 01262, pp. 13 and 14; P 01137, pp. 2 and 3.
[1530] P 02004, p. 1.
[1531] P 00589. *See* also on this point the Chamber"s findings in respect of the courts of ordinary jurisdiction in the HZ(R) H-B.
[1532] P 00292, Article 2. In Article 1, the decree defines "persons captured in combat" as members of the JNA, reservists of the JNA and any other person captured during combat in the HZ H-B.

649. The Head of the Department of Justice and Administration also recommended appointments of staff members of the Department of Justice and Administration as well as appointments of judges and prosecutors of the military and civil courts and tribunals, who were approved by the Presidency of the HZ H-B or by the HVO HZ H-B.[1533] The Chamber notes, however, as previously observed, that according to the Decree on the Establishment of Military Prosecutors" Offices and the Decree on the Establishment of Military Tribunals of the HZ H-B, both dated 17 October 1992, the Head of the Department of Defence was responsible for nominating prosecutors and military district judges for appointment by the Presidency of the HZ H-B.[1534]

650. The judges and presiding judges of the municipal correctional tribunals were appointed by the Municipal HVOs.[1535]

D. Ministry of the Interior

651. On 10 November 1993, the President of the HR H-B, Mate Boban, acting on the advice of Jadranko Prlić, Prime Minister of the HR H-B, appointed Valentin Ćorić to the post of Minister of the Interior of the HR H-B.[1536] On 20 November 1993, the House of Representatives confirmed the appointment, electing Valentin Ćorić.[1537]

652. The Ministry of the Interior was specifically responsible for national security and for protecting the government as a whole, for the safety of persons and property, for the prevention and detection of criminal acts, for arresting criminals, for maintaining law and order, and for matters pertaining to citizenship.[1538]

653. The Chamber draws attention to the Prosecution argument that Jadranko Prić had authority over the HVO civilian police,[1539] an argument contested by the Prlić Defence.[1540]

654. In this respect, the Prosecution bases its argument only on the statements of *Witness BA,*[1541] who was assured by Jadranko Prlić that he had oversight of the

[1533] 2D 01262, pp. 19-22; 2D 01267, p. 1; P 01137, pp. 5 and 6; P 01536, p. 3; 1D 01184, pp. 5-6.
[1534] P 00590, Article 7; P 00592, Article 20, p. 5.
[1535] 2D 01267, p. 1.
[1536] P 06583; Marijan Biškić, T(F), p. 15050.
[1537] P 06772.
[1538] 1D 01402, p, 4; P 06667, p. 2; P 07514, p. 6; P 08253, pp. 6 and 10; P 08266, p. 9; 1D 08276, pp. 5, 6, 11 and 12 P 06689, p. 2; P 07850.
[1539] Prosecution Final Trial Brief, para. 423.

civilian police of the HZ(R) H-B.[1542] The Prlić Defence refers to various documents from the HVO certifying that the civilian police, at least in Mostar, was under the control of the armed forces of the HVO.[1543] Thus, on 23 October 1993, Bruno Stojić, Minister of Defence of the HR H-B, and Branko Kvesić, Minister of the Interior of the HR H-B, jointly ordered the civilian police forces to place themselves under the armed forces of the HR H-B in order to reinforce its units.[1544]

655. In view of this evidence and the scant evidence adduced by the Prosecution in support of its allegation, the Chamber finds that the Prosecution has not proven beyond a reasonable doubt that the Accused Prlić exercised direct authority over the civilian police of the HZ(R) H-B.

VI. Commissions and Departments of the HVO/of the HR H-B

A. Exchange Service and Commission

656. On 5 July 1993, the HVO created an Exchange Commission and an Exchange Service, which was intended to serve as the executive organ for the Exchange Commission.[1545]

657. However, it appears from the evidence that Berislav Pušić and Valentin Ćorić were both appointed members of the Exchange Commission on 25 May 1993,[1546] that is, prior to the date of its creation on 5 July 1993. Moreover, the Secretary of the Exchange Commission was allegedly removed from office on 5 July 1993, that is, the day the Commission was created.[1547] This information appears to indicate that the said Commission existed prior to its official date of creation, even though the evidence does not make it possible to determine specifically the exact date of its creation.

[1540] Prlić Defence Final Trial Brief, para. 326 (b).
[1541] Member of an international organisation present in BiH at the time of the events.
[1542] Prosecution Final Trial Brief, para. 423; P 09712 under seal, para. 8.
[1543] Prlić Defence Final Trial Brief, para. 326 (b); 2D 03070, p. 2; P 00377; P 00458; 5D 05095; 5D 03019; P 03135; 1D 02006; P 03124; 5D 02189.
[1544] P 06027; Milivoj Petković, T(F), p. 49607.
[1545] 1D 01669, pp. 2 and 3; P 03191, pp. 2 and 3.
[1546] P 02520.
[1547] P 03204. *See* also the matter of the 22 February 1993 appointment of Jerko Radić to the post of Secretary of the Exchange Commission: P 01536, p. 1.

1. Powers of the Exchange Service and Commission

658. On 5 July 1993, pursuant to a decision signed by its President, Jadranko Prlić, the HVO appointed Berislav Pušić to the post of the Chief of the Exchange Service.[1548]

659. The tasks attributed to the Exchange Service were as follows: creating a database of prisoners and other persons relating to prisoner exchanges; establishing relationships with "other parties" on the topic of prisoner exchange; preparing methods for exchange and cooperation with the international organisations and other authorities of the HZ H-B whose responsibilities involved the exchange of prisoners.[1549] On the other hand, the Exchange Service was not authorised to issue permits to the international organisations which would allow them to visit the prisons in the territory of the HR H-B.[1550] As of 10 December 1993, this Service was active primarily in the regions of Mostar, Jablanica, Tomislavgrad, Livno, Konjic and Prozor.[1551]

660. According to a report from the Chief of the Military Police Administration, Radoslav Lavrić, dated 22 November 1993, Berislav Pušić, Head of the Exchange Service and member of the Exchange Commission, was responsible for carrying out prisoner exchanges, and, in consultation with the Department of Defence, for selecting the prisoners to be exchanged.[1552]

661. According to *Witness BB*, Berislav Pušić, Head of the Exchange Service, was in charge of issuing special authorisations for the humanitarian evacuation of individuals from East Mostar, concordant with the exchange policy that a Muslim would be exchanged for a Croat.[1553] Still, the Chamber notes that, in February 1994, an international organisation went to Martin Raguţ, Head of the ODPR of the HR H-B, in order to start evacuating individuals from East Mostar on medical grounds; the

[1548] P 03191, pp. 1 and 2; 1D 01669, pp. 2–3; Josip Praljak, T(F), pp. 14726 and 14919; Witness BB, T(F), p. 25269, closed session; Amor Mašović, T(F), pp. 25026 and 25027.
[1549] P 03191, pp. 3-4; P 04312; Amor Mašović, T(F), pp. 25115, 25116, 25024-25029 and 25031-25033; P 07102, pp. 2 and 3; P 08113; P 07951; P 08136; P 08276, p. 13; Marijan Biškić, T(F), p. 15114.
[1550] P 07311; P 07102, pp. 2 and 3.
[1551] P 07102, p. 5.
[1552] P 06805, p. 2.
[1553] Witness BB, T(F), pp. 25277-25279, closed session. *See* also Witness BC, T(F), p. 18404, closed session.

Chamber notes that the letter does not contain any indication as to whether the evacuation actually took place[1554] but deduces therefrom that even though Berislav Pušić was vested with the authority to issue authorisations for humanitarian evacuation from East Mostar, he was not the only person so authorised.

2. Hierarchical Nexus between the Exchange Service and the HVO of the HZ H-B

662. As to the hierarchical nexus between the Exchange Service and the HVO of the HZ H-B, the Stojić Defence – which does not refer to the Exchange Commission – submits that the said Service answered for its work to the HVO of the HZ H-B and not to the Head of the Department of Defence.[1555] The Pušić Defence, however, argues that the Exchange Service did not fall under the authority of the HVO or any other organ of the HVO.[1556] The Pušić Defence points out, however, that the Service was a civilian body outside of the military administration and that its delegated responsibilities were restricted to providing administrative support to the other organs of the HVO responsible for prisoner exchange.[1557]

663. The Chamber observes that Article 4 of the decision establishing the Exchange Service stipulates that the HVO of the HZ H-B would appoint and dismiss the Head of the Exchange Service.[1558] This procedure was followed in practice, as attested to by the appointment of Berislav Pušić to this post on 5 July 1993, by a decision of the HVO, signed by its President, Jadranko Prlić.[1559]

664. Moreover, the HVO of the HZ H-B had to approve the internal organisation and rules governing the work and responsibilities of the Exchange Service established by the Head of the Service.[1560]

665. The Chamber thereby finds that the Exchange Service was answerable for its work to the HVO of the HZ H-B. By contrast, as concerns the Exchange Commission, the Chamber does not have any evidence establishing a hierarchical nexus between the said Exchange Commission and the HVO and the Government of the HR H-B.

[1554] 6D 00513.
[1555] Stojić Defence Final Trial Brief, paras 529-531.
[1556] Pušić Defence Final Brief, para. 94.
[1557] Pušić Defence Final Brief, paras 11, 12, 87, 88.
[1558] P 03191, p. 4.

B. Commission for Missing Persons

666. The Chamber has a document dated sometime in 1994 – it has no more specific date – whereby the Government of the HR H-B is alleged to have adopted a decision creating the Commission for Detained and Missing Persons, which was made responsible for collecting and analysing information regarding these categories of individuals within the HR H-B.[1561] The Commission was supposed to cooperate with the ICRC in the search for missing persons.[1562] The Decision creating the Commission was to render null and void the Decision of 5 July 1993 creating the Exchange Service, from the date of its entry into force forward.[1563] The Chamber observes, however, that this document, admitted into the record on written motion, yet not referenced by any of the Parties in their final trial briefs, more closely resembles a draft decision. The Chamber notes that a blank space was left in the place where the date of the decision was to be inserted and that the document is not signed. The Chamber cannot therefore ascertain whether the decision was finally adopted, and if so, when. The Chamber therefore finds that it does not have sufficient evidence to find that the Commission for Missing Persons actually existed during the period relevant to the Indictment.

C. Humanitarian Affairs Commission

667. On 17 October 1993, the Government of the HR H-B, together with representatives of humanitarian organisations, created a Joint Commission for Humanitarian Affairs, consisting of representatives of the Government of the HR H-B and representatives of the UNHCR, the ICRC, the European Union monitors and UNPROFOR.[1564] The Commission was intended to serve as a discussion forum for the issue of free passage of humanitarian aid in the areas under the control of the HVO.[1565] Martin Raguţ, Deputy Head of the ODPR[1566] and coordinator of the

[1559] P 03191, pp. 1 and 2; 1D 01669, pp. 2 and 3; *see* also Witness BB, T(F), p. 25269, closed session; Amor Mašović, T(F), pp. 25026 and 25027.
[1560] P 03191, Article 5, p. 5.
[1561] P 07783; P 07942.
[1562] P 07783, p. 2.
[1563] P 07783, pp. 2 and 3.
[1564] P 05926, p. 1.
[1565] P 05926, p. 1.
[1566] P 07005/P 07683, p. 2.

Commission, and Slobodan Boţić, from the Department of Defence, represented the HR H-B on the Commission.[1567]

D. Municipal Authorities

1. Hierarchical Nexus Between the Municipal HVOs and the HVO of the HZ H-B

668. According to the HVO decision signed by Mate Boban as President of the HVO and of the HZ H-B, dated 13 June 1992, the municipal HVOs consisted of a President, heads of the administrative departments in the municipalities as well as other members appointed and recalled by the HVO of the HZ H-B.[1568] Thus, it was the responsibility of the HVO of the HZ H-B to supervise the work of the municipal HVOs and to oversee the lawfulness of their work.[1569]

669. As previously recalled, the Prlić Defence argues that appointments inside the municipal HVOs were a mere formality, as it fell to these municipal HVOs to make recommendations.[1570] More generally, the Prlić Defence notes that the HVO of the HZ H-B did not exercise any control over the municipalities of the HZ H-B.[1571] The Stojić Defence stresses, along the same lines, the autonomy of the municipal HVOs, and, specifically, the lack of centralised authority for the Department of Defence over those municipalities.[1572]

670. The Chamber recalls that, according to the Statutory Decision of 3 July 1992, the municipal HVOs were subordinated to the HVO of the HZ H-B. Thus, the HVO of the HZ H-B could for example void any local regulation contrary to the law of the HZ H-B. The HVO of the HZ H-B could likewise dissolve any municipal HVO in contravention of the laws of the HZ H-B and put forward members to constitute a new HVO.[1573]

[1567] P 05926, p. 5.
[1568] P 00250, Article 3.
[1569] P 00250, Article 6.
[1570] Prlić Defence Final Trial Brief, para. 327 (e).
[1571] Prlić Defence Final Trial Brief, paras 118, 182, 183 and 327 (e).
[1572] Stojić Defence Final Trial Brief, paras 316-335.
[1573] P 09545, pp. 19 and 20 and P00303, Articles 14 and 15, p. 2; Zoran Perković, T(F), pp. 31713-31715 and 31953; P 00431; P 02248.

671. In this regard, *Zoran Perković* [1574] stated that, the subordination of the municipal HVOs to the HVO of the HZ H-B was not followed in practice.[1575] As he put it, the HVO of the HZ H-B did not take the appropriate measures to remedy this, on the one hand because no legal mechanism for exerting pressure was in place and, on the other hand, because the presidents of the municipal HVOs were also members of the Presidency of the HZ H-B.[1576] He submitted that no measures for revocation were provided for these presidents of municipal HVOs, so that if tensions arose between the latter and the HVO of the HZ H-B, the municipal HVO presidents remained in their posts.[1577]

672. Pursuant to these provisions, on 28 August 1992, the HVO of the HZ H-B voided a decision adopted by the municipality of Livno concerning demobilization and mandatory military service;[1578] on 22 March 1993, the HVO of the HZ H-B removed the government of the municipality of Ljubuški and appointed a Commissioner of the HVO HZ H-B to replace it, specifically due to problems related to the mobilisation of conscripts in that municipality.[1579] Similarly, on 8 April 1993, Bruno Stojić, Head of the Department of Defence of the HVO of the HZ H-B, also suggested that a decision taken by the municipal HVO of Mostar be voided.[1580]

673. Moreover, the municipal HVOs submitted reports to the HVO of the HZ H-B evaluating the situation in the territory of the municipalities, describing the activities undertaken by the municipalities, and proposing measures capable of resolving any potential problems.[1581]

674. The Chamber viewed evidence showing that the representatives of the municipalities of the HR H-B were appointed by decisions of the Government of the

[1574] Council member sitting on the regulatory and legislative commission of the HVO, later of the HR H-B, from mid-July to mid-August 1992 and from mid-December 1992 until sometime in 1994: Zoran Perković, T(F), pp. 31624, 31627, 31629 and 31639.
[1575] Zoran Perković, T(F), p. 31777; *see* T(F), pp. 31759-31760 concerning the military aspects.
[1576] Zoran Perković, T(F), p. 31777.
[1577] Zoran Perković, T(F), p. 31783.
[1578] P 00431.
[1579] P 01700; P 01781; P 01863; P 01865; P 00172.
[1580] P 01831.
[1581] 2D 00852, p. 8; P 01505; 2D 00852, pp. 8 and 9.

HR H-B; the recommendations of the municipal council of the HDZ were however given due consideration.[1582]

675. During a special session of the Government of the HR H-B on 9 October 1993, attended by Jadranko Prlić, President of the Government of the HR H-B, Bruno Stojić, Minister of Defence, Slobodan Praljak, Chief of the Main Staff, and Milivoj Petković, Deputy Chief of the Main Staff, the Government of the HR H-B decided that all the municipalities in the territory of the HR H-B needed to comply with the regulations of the HR H-B across the board and particularly with the regulations in financial matters.[1583] In this respect, *Milan Cvikl*[1584] indicated that there were disagreements between the Ministry of Finance of the HR H-B and the municipalities, with the latter not wishing to relinquish any portion of their revenue to the HR H-B budget.[1585] According to *Milan Civkl*, the municipalities did not pay back into the HR H-B budget all the revenues they collected, retaining a portion necessary to fund their defence.[1586]

676. According to the minutes of the first session of the Government of the HR H-B, on 15 November 1993, the issue of how to organise the municipal governments was supposed to be re-examined and to be the subject of proposals by the Ministry of Justice and General Administration.[1587] The Chamber, however, was not appraised of any evidence that might enable it to find that this re-examination did indeed occur. During the session of 15 November 1993, Mate Boban, President of the HR H-B, stressed the intentionally arbitrary conduct of the civilian authorities in certain municipalities.[1588]

2. Responsibility of the Municipal HVOs in Defence Matters

677. Insofar as issues related to Defence are concerned, the Chamber has addressed the issue of the distribution of powers between the HVO of the HZ H-B and the municipal governments – particularly as concerns the appointment of the heads and

[1582] P 05805; 2D 01359.
[1583] 4D 00508; P 05799, p. 2; Slobodan Boţić, T(F), p. 36246; P 05769, p. 1; 1D 03036.
[1584] Economics expert: 1D 03111, p. 8.
[1585] Milan Cvikl, T(F), pp. 35342-35345; 1D 03036.
[1586] Milan Cvikl, T(F), p. 35345.
[1587] P 06667, p. 4.
[1588] P 06667, pp. 2 and 3; P 05799, pp. 2 and 3; Slobodan Boţić, T(F), p. 36246; P 05769, p. 1; Davor Marijan, T(F), pp. 35665 and 35666; P 06689.

members of the staff in the administrations and Defence offices in the municipalities by the central authority of the HVO – in the part regarding the Department of Defence.[1589] It recalls that the Chamber does not have evidence to support findings in this regard in relation to the HR H-B.

678. The Chamber observes that the municipalities adopted decisions concerning issues of defence, particularly in relation to the mobilisation of the HVO armed forces[1590] or the *Domobrani* units[1591] as well as calling up technical equipment.[1592]

679. Moreover, on 10 April 1992, Mate Boban, President of the HVO of the HZ H-B, announced that, after the creation of the HVO, it would be connected only to the municipal Staffs and no longer to the TOs.[1593] According to *Davor Marijan*, the municipal Staffs were headed by individuals appointed by the municipalities who, in addition, financed the military units.[1594] The Chamber, moreover, reviewed other evidence indicating that the municipalities used their own resources to finance their municipal defences.[1595]

680. The Chamber also reviewed a letter by Ivica Lučić, Deputy Minister of Defence for administering the security sector, dated 23 October 1993, indicating that the municipalities were issuing passes at the request of the SIS of the Ministry of Defence.[1596]

3. Financing the Municipal Governments

681. In a note relating to an HVO working session, dated 11 January 1993, it was stated that the municipal authorities were financed by the HZ H-B budget and that the municipalities were also contributing to the budget of the HZ H-B.[1597] However,

[1589] *See* "Structure and Operation of the Department of Defence and of the Ministry of Defence" in the Chamber's findings in respect of the political and administrative structure of the HZ(R) H-B.
[1590] 2D 01215; 1D 03025; 1D 03026; 1D 01156.
[1591] 2D 01213; Miroslav Rupčić, T(F), pp. 23526-23529; 1D 01762; 2D 00514.
[1592] Bruno Pinjuh, T(F), p. 37280; P 01831.
[1593] P 00155; Davor Marijan, T(F), pp. 35596 and 35597; P 00154; Mile Akmadţić, T(F), pp. 29725 and 29726.
[1594] Davor Marijan, T(F), pp. 35596 and 35597. *See* also Davor Marijan, T(F), p. 35601 concerning the financing of the *Livno* Brigade by the municipality until the autumn of 1993.
[1595] Miroslav Rupčić, T(F), pp. 23518 to 23533; 1D 01772; 1D 01771; 1D 00854; 1D 00866; 1D 01756; 2D 00538; 1D 01759; 1D 00868; 1D 00307; Tomislav Krešić, T(F), pp. 38741 and 38743; T(E), p. 38742; 1D 00297; Miroslav Rupčić, T(F), p. 23521; 1D 01758.
[1596] 2D 00938.
[1597] P 01097, p. 3.

according to *Neven Tomić*, after the outbreak of the war in BiH and the subsequent malfunction of the financial system in the territory of the RBiH, the municipalities were forced to collect revenue on their own, because transfers from the central budget to the municipal budget no longer took place.[1598] According to a report by *Neven Tomić* dated 12 August 1993, the municipal HVOs had their own finance departments.[1599]

682. The Chamber does not have evidence about the financing of the municipal authorities in the HR H-B.

4. Division of Labour Among the Municipal Authorities

683. According to the Statutory Decision on Municipal Executive Authority and Municipal Administration of 13 June 1992, executive power within the municipalities was exercised by the municipal HVOs.[1600]

684. Within each municipality, there was a municipal assembly, which was the legislative organ, and an executive committee which implemented the decisions taken by the assembly.[1601] The municipalities also had the power to appoint judges to the courts of first instance and the municipal tribunals.[1602] They also had to finance the municipal tribunals.[1603]

685. The municipal HVOs created the professional, technical and other services required to carry out their responsibilities.[1604] Thus, the municipal organs decided, by adopting charters, the status and rights of the "refugees" in their territory as well as

[1598] Neven Tomić, T(F), pp. 33733 and 33737; 1D 00560, pp. 1 and 2; 1D 00559; 1D 00561; 1D 01374; 1D 01375; 1D 00801; 1D 01396; 1D 01400; 1D 02333; 1D 02334, p. 2; 1D 00803; 1D 00806; 1D 02332.
[1599] 1D 01934, p. 1.
[1600] P 00250, Article 1.
[1601] Zoran Buntić, T(F), p. 30677.
[1602] Zoran Buntić, T(F), pp. 30677 and 30678.
[1603] Zoran Buntić, T(F), p. 30678.
[1604] P 08973, pp. 24 and 25; Martin Raguţ, T(F), pp. 31301, 31302 and 31562-31563; 1D 00606; 1D 00618; 1D 00625; 1D 00749; 1D 00613.

the means and places of accommodation.[1605] The municipal centres for social work worked in cooperation with the ODPR.[1606]

686. The Chamber does not have any evidence referring to the financing of the municipal authorities in the HR H-B.

Section 2: Military Structure

687. The Chamber will analyse the military structure of the HZ(R) H-B, more specifically (I) the Supreme Command, (II) the Main Staff, (III) the Armed Forces, and (IV) the Military Police.

I. Supreme Command

688. The Prosecution contends that there is no evidence to show that Mate Boban, a member of the alleged JCE according to the Indictment,[1607] played an active role in the military affairs of the HVO, and that this role fell to "the Prlić Government".[1608] The Prlić and Stojić Defence teams contend that all military matters were placed under the leadership and command of the Supreme Commander, Mate Boban.[1609] The Petković Defence adds that Mate Boban opted for a decentralised command structure under his direction, with a weakened Staff.[1610]

689. The Chamber notes that according to the evidence, between 3 July 1992 and 17 February 1994, Mate Boban held in succession the posts of President of the HZ H-B, and then the HR H-B,[1611] and that, during this same period, he added these

[1605] Martin Raguţ, T(F), pp. 31268, 31271, 31283-31284, 31287-31289, 31480-31482 and 31516; 2D 00444; 1D 01232, Article 27, p. 6; 1D 01198; P 02144; Martin Raguţ, T(F), pp. 31289-31290, 31485; P 00553, Article 3; P 01894; 1D 01198; P 02144.
[1606] Martin Raguţ, T(F), pp. 31418, 31419, 31431, 31516 and 31517.
[1607] Indictment, para. 16.
[1608] Prosecution Final Trial Brief, para. 547.
[1609] Prlić Defence Final Trial Brief, paras 223 and 346 and Stojić Defence Final Trial Brief, paras 341 and 343.
[1610] Petković Defence Final Trial Brief, para. 587.
[1611] Mate Boban held the posts of President of the HZ H-B and then of the HR H-B, from 3 July 1992 to 17 February 1994: P 00302, Article 7, p. 2; P 07856, pp. 88 and 90; P 08973, p. 69; Witness DE, T(F), pp. 15599 and 15600, closed session; Witness BH, T(F), p. 17548, session closed and subject to no transcript order; Witness BF, T(F), p. 25780, closed session; Ray Lane, T(F), p. 23732; P 10367 under seal, para. 12, pp. 3 and 4; Neven Tomić, T(F), pp. 33729 and 33730; Milivoj Petković, T(F), pp. 49934 and 49936.

responsibilities to those of the Supreme Commander of the Armed Forces.[1612] On 4 January 1994, under pressure from the international community, Franjo Tuđman, President of Croatia, took the decision to remove Mate Boban from office.[1613] Mate Boban ultimately resigned on 17 February 1994, and his responsibilities were taken over by the Council of the Presidency, created previously on 10 December 1993.[1614]

690. Once it has (A) recalled the powers vested in the Supreme Commander, the Chamber will (B) analyse the role he played in guiding the armed forces, in order to better understand the distribution of powers and authority between the Supreme Commander and the Chief of the Main Staff.

A. Powers Vested in the Supreme Command

691. According to the provisions of Article 29 of the Decree on the Armed Forces of 3 July 1992, as amended on 17 October 1992,[1615] the powers vested in the Supreme Commander were defined thus:

> "The Supreme Commander shall: (1) stipulate the basic organisation of the Armed Forces and the chain of command and control of the Armed Forces and shall monitor the implementation of the policies of command and control of the Armed Forces; (2) draw up a plan for the operation of the Armed Forces and order them to act; (3) provide guidelines for measures of preparedness and mobilisation of the Armed Forces; (4) stipulate the basic personnel policies in the Armed Forces; (5) prescribe general and basic rules for the Armed Forces; (6) issue regulations for military discipline and other issues; (7) appoint and relieve of duty military commanders, in accordance with the appropriate rules."[1616]

692. In assessing this, the Chamber will pay particular attention to specifying the powers of the Supreme Commanders in respect of (1) the appointment of military commanders of the armed forces and (2) the overall organisation of the armed forces.

[1612] P 00289, Article. 29, p. 8 and P 00588, Article. 29, p. 10; P 00586, p. 4; 4D 01286; P 04131, p. 1; P 08973, p. 26; Andrew Pringle, T(F), pp. 24108, 24174-24179, 24268-24270; Neven Tomić, T(F), pp. 33729-33730; Milivoj Petković, T(F), p. 50343; Filip Filipović, T(F), p. 47437; Bruno Pinjuh, T(F), pp. 37326-37328. *See* for example, 2D 01351; P 00315; 2D 01392; 2D 01393; P 05517, p. 5.
[1613] Milivoj Petković, T(F), pp. 49930, 49931, 49934 and 49936; *see* also P 07475, pp. 1 and 11.
[1614] P 07424; P 08973, p. 69; 1D 02737, p. 1; Milivoj Petković, T(F), pp. 49754, 49755, 49934, 49936, 50322 and 50323; Slobodan Praljak, T(F), pp. 41476 and 43426 and Filip Filipović, T(F), p. 47437.
[1615] P 00289; P 00588.
[1616] P 00289, p. 8, Article 29; P 00588, Article 29; 2D 02000, para. 3.

1. Powers of the Supreme Command in the Appointment of Commanders of the Armed Forces

693. The Stojić Defence contends that Mate Boban as Supreme Commander had the authority to appoint *inter alia* the Chief of the Main Staff, the OZ commanders and the brigade commanders.[1617] The Praljak Defence points out that Mate Boban alone had the authority to appoint brigade commanders.[1618]

694. The Chamber previously observed in the section of the Judgement on the political and administrative structure of the HZ(R) H-B, Mate Boban"s authority as Supreme Commander to appoint Brigade commanders and other senior officers.[1619] The Chamber, however, deems it necessary to note, more specifically, that Mate Boban appointed several Chiefs of the Main Staff,[1620] all the OZ commanders[1621] and all the brigade commanders in the South-East and North-West OZs.[1622]

2. Powers of the Supreme Command in the Overall Organisation of the Armed Forces

695. The Chamber observes that, in keeping with Article 29 of the Decree on the Armed Forces of 3 July 1992, as amended on 17 October 1992,[1623] Mate Boban, the Supreme Commander of the Armed Forces, issued legal instruments establishing the guidelines for the overall organisation of the armed forces. The Chamber notes firstly that these organisational powers were however not exclusive because, as later analysis will show,[1624] the Chief of the Main Staff also had the power to organise the armed

[1617] Stojić Defence Final Trial Brief, para. 346.
[1618] Praljak Defence Final Trial Brief, para. 551.
[1619] *See* "Authority of the Head of the Department of Defence and of the Minister of Defence over Appointments within the Armed Forces" in the Chamber"s findings regarding the political and administrative structure of the HZ(R) H-B. *See* also P 08973, p. 26, and Slobodan Boţić, T(E), pp. 36209-36211.
[1620] 3D 00280; 3D 00279; 4D 01126.
[1621] P 00661; 2D 02000, p. 48, para. 104.
[1622] P 03054; P 03363; P 03582; P 04234; P 04550; P 05566; 2D 00146; Davor Marijan, T(F), pp. 35678 and 35763. The Chamber distinguishes the case of the brigade commanders in the Central Bosnia OZ who were appointed by Tihomir Blaškić, commanding officer of the said OZ, pursuant to specific powers with which he was vested. *See* "Powers of the Supreme Command in the Overall Organisation of the Armed Forces" in the Chamber"s findings regarding the military structure of the HZ(R) H-B.
[1623] P 00289.
[1624] *See* "Orders Given by the Main Staff to the Armed Forces" and "Chain of Command and Control in the Armed Forces" in the Chamber"s findings regarding the military structure of the HZ(R) H-B.

forces, that is, the OZs and the brigades, under the command of the Supreme Commander.

696. The Chamber observes that, even prior to the Decree on the Armed Forces of 3 July 1992, Mate Boban, then President of the HZ H-B and the HVO, already had such organisational power. Thus, as the Chamber has already stated in the part of the Judgement concerning the principal events following the creation of Herceg-Bosna, on 10 April 1992 Mate Boban for example ordered that all the crisis staffs or former TO structures be renamed as HVO municipal structures and subordinated to the HVO Main Staff.[1625]

697. On 3 July 1992, Mate Boban also issued the "Book of Service Rules for the Armed Forces of the HZ H-B", which established among other things the internal organisation of the armed forces of the HVO of HZ H-B as well as the rights and duties of its members.[1626] The regulations also provided that the primary task of the armed forces was to protect and defend the sovereignty, independence and territorial integrity of the HZ H-B and to do so while complying with the rights and duties of the members of the armed forces, namely to carry out their tasks in a professional manner and to execute orders.[1627]

698. As the Chamber previously recalled in the part describing the political structure of the HZ(R) H-B, on 15 September 1992, Mate Boban, as President of the HZ H-B, signed the Decision on the Basic Principles of Organisation of the Defence Department defining *inter alia* the overall structure of the Main Staff.[1628] On 18 December 1993, he signed a decision on the organisation of the Ministry of Defence,

[1625] 5D 04271; P00154; Mile Akmadţić, T(F), pp. 29727 and 29728; *see* also for decisions taken by Mate Boban in respect of the structure of the armed forces prior to 3 July 1992: P 00151; P 00172. *See* also "Creation of the HVO: Supreme Body for the Defence of the Croatian People in the HZ H-B (April 1992)" in the Chamber"s findings regarding the principal events following the creation of Herceg-Bosna.
[1626] P 00307; Andrew Pringle, T(F), pp. 24043 and 24045. The Chamber notes that the name of Mate Boban and the date of the document appear only in the original version of the document and that the English translation is not complete.
[1627] P 00307, pp. 1 and 2.
[1628] *See* "Structure and Operation of the Department of Defence and of the Ministry of Defence" in the Chamber"s findings regarding the political and administrative structure of the HZ(R) H-B. *See* also P 00586. The Decision of 15 September 1992 was taken pursuant to Articles 11 and 29 of the Decree on the Armed Forces of 3 July 1992: P 00289, Articles 11 and 29; P 08973, pp. 25 and 26; Ciril Ribiĉić, T(F), p. 25451.

using provisions similar to those of 15 September 1992 insofar as the overall organisation of the Main Staff was concerned.[1629]

699. On 14 October 1993, Mate Boban[1630] decided that the armed forces should be organised according to the territorial principle of military districts and the establishment of four ZPs to replace the four OZs established by the Main Staff.[1631]

700. The *Domobrani* units, which will be the subject of a detailed review as part of the analysis of the armed forces, were created subsequent to a decision by Mate Boban, as President of the HZ H-B, on 3 November 1992, implemented in an order by Bruno Stojić, Head of the Department of Defence, dated 5 February 1992, then by an order from Milivoj Petković, Chief of the Main Staff, dated 8 February 1993.[1632] Mate Boban was thus behind the creation of the *Domobrani* units, which was not the case for other units, such as the brigades which were created by the Chief of the Main Staff.[1633]

B. Role of the Supreme Commander in Guiding the Armed Forces

701. The Prlić Defence contends that "the military wing" of the HVO was placed under the exclusive leadership and command of Supreme Commander Mate Boban.[1634] The Stojić Defence alleges that Mate Boban addressed orders for immediate execution directly to "all levels of subordinate units".[1635] The Petković Defence contends that Mate Boban wanted a weak Main Staff, to personally control the armed forces,[1636] and that he "bypassed" the Main Staff "when it suited him".[1637]

702. According to the testimony of *Milivoj Petković* and the Petković Defence Final Brief, Mate Boban, the Supreme Commander, had the authority to issue operational orders and at times bypassed the Main Staff in order to do so.[1638] The Chamber observes that most of Mate Boban's orders as Supreme Commander were

[1629] P 07236, Articles 11-15. The Decision of 18 December 1993 was taken pursuant to Articles 11 and 29 of the Decree on the Armed Forces of 3 July 1992: P 00289, Articles 11 and 29.
[1630] Mate Boban signed the order as both President of the HR H-B and Supreme Commander.
[1631] P 05876; P 00416.
[1632] P 00680, Articles 3 and 7; P 01424, pp. 1 and 2; P 01441; P 01587.
[1633] The Chamber here refers to Document 2D 01353.
[1634] Prlić Defence Final Trial Brief, para. 346.
[1635] Stojić Defence Final Trial Brief, para. 356.
[1636] Petković Defence Final Trial Brief, para. 587.
[1637] Petković Defence Final Trial Brief, para. 594.
[1638] Milivoj Petković, T(F), p. 50010; Petković Defence Final Trial Brief, para. 594.

addressed to the Main Staff and not directly to the military units.[1639] The Chamber notes that the few orders addressed directly to the armed forces by Mate Boban essentially concerned units based in Central Bosnia,[1640] since the evidence admitted into the record shows that Mate Boban maintained direct relations with Tihomir Blaškić, commander of the Central Bosnia OZ.[1641] As soon as he was appointed on 27 June 1992, Tihomir Blaškić was vested by Mate Boban with the authority to directly appoint brigade commanders within the said OZ,[1642] which authority ordinarily lay with Mate Boban.[1643] The Chamber observes, as *Davor Marijan* explained during his testimony, that Tihomir Blaškić was the only commander in the OZ to have obtained this sort of authority, and that he in fact used it broadly[1644] by appointing brigade commanders as well as operational groups in the Central Bosnia Operative Zone (OZ).[1645]

703. The Praljak Defence explains the unusual relations between Mate Boban and General Blaškić by the fact that the latter found himself completely surrounded and isolated in the Vitez enclave, and that he was impossible to control; it was for this reason that Mate Boban granted him special authority.[1646] *Andrew Pringle* likewise offered this hypothesis, citing the Chief of the Main Staff's probable lack of authority over General Blaškić. This allegedly justified why the Supreme Command "bypassed" the chain of command.[1647]

704. The Chamber observes that the Petković Defence, in support of its argument that Mate Boban bypassed the Main Staff when "it suited him", cites several orders

[1639] See, e.g., P 01211; 3D 00915; P 05876.
[1640] P 00613; P 03054; P 03363; 4D 05566; P 06339; P 06841; P 07387; P 10309; 3D 02469; 4D 00575; 4D 00576.
[1641] P 00280; P 00661; 2D 02000, para. 108; Davor Marijan, T(F), p. 35672; Filip Filipović, T(F), pp. 47432-47438; Philip Watkins, T(F), pp. 19008-1910.
[1642] P 00280, para. 2; 2D 02000, para. 108; Filip Filipović, T(F), p. 47432; Davor Marijan, T(F), p. 35672; Philip Watkins, T(F), pp. 19008-19010.
[1643] P 03054; P 03363; P 03582; P 04234; P 04550; P 05566; 2D 00146; Davor Marijan, T(F), pp. 35678 and 35679.
[1644] Davor Marijan, T(F), p. 35672.
[1645] P 00774; P 00775; P 00777; P 00766; P 00769; P 00762; P 00765; P 06000; P 00681, p. 4.
[1646] Praljak Defence Final Trial Brief, para. 551; *see* also Slobodan Praljak's testimony, T(F), pp. 42616, 42617, 42634 and 42636. According to *Slobodan Praljak*, Tihomir Blaškić acquired such authority in an exceptional way because although Central Bosnia had not yet been encircled at the time, the fighting against Serbian forces was raging. He noted it was thus necessary to be "reactive", something the ordinary chain of appointment seemingly prevented.
[1647] Andrew Pringle, T(F), p. 24273; 4D 00575.

from Mate Boban pertaining to mobilisation[1648] and the appointment of brigade commanders,[1649] as well as communiqués between Mate Boban, Tihomir Blaškić and Ivica Rajić.[1650] The Chamber notes, however, that the areas related to mobilisation and appointment constituted some of the stated powers wielded directly by Mate Boban.[1651] It also notes that the communiqués cited by the Petković Defence pertained to the specific case of the Central Bosnia OZ, as mentioned above. However, despite these special relations with officials from the Central Bosnia OZ, the commanding officer of the said OZ, like the other commanders in the OZ, remained subject to the Chief of the Main Staff.[1652] The Chamber cannot therefore deduce from this that Mate Boban "bypassed" the Main Staff regularly and whenever it suited him.

705. Moreover, the Chamber observes that the majority of the orders from Supreme Commander Mate Boban were addressed to the Chief of the Main Staff and occasionally to the Head of the Department of Defence, not directly to the heads of the military units.[1653]

706. As concerns the orders given by Mate Boban to the Main Staff, the Chamber observes that these were orders pertaining to: (1) the cessation of hostilities between the HVO and the ABiH subsequent to the agreements reached with Alija Izetbegović, the President of the RBiH;[1654] and (2) the prohibition on conducting offensive operations and the duty to conduct defensive operations.[1655]

707. The Chamber observes that an order from Mate Boban dated 15 September 1993, although admittedly addressed to certain brigades based in the North-West OZ[1656] was also addressed to the HVO Main Staff, which he instructed to transmit the

[1648] Petković Defence Final Trial Brief, para. 594, citing document P 00613.
[1649] P 03054; P 03363; P 05566.
[1650] P 06339; P 06841, p. 07387; P 10309; 3D 02469; 4D 00575; 4D 00576. Ivica Rajić held several command posts in the Central Bosnia OZ, including as commander of the 2nd Operational Group of Central Bosnia: Witness EA, T(F), pp. 24330, 24331 and 24397, closed session; P 02295, p. 2; P 02328; Witness L, T(F), p. 15745, closed session, P 09882 under seal, p. 14, para. 76; P 06647, p. 3; P 06870.
[1651] P 00289, Arts 29 and 34; P 00588, Articles 29 and 34.
[1652] P 00092, p. 5. For examples, *see* orders given by the Main Staff to the Central Bosnia OZ, just as for the other OZs: P 01059; P 01807; P 04131; 3D 01151.
[1653] *See* for example: P 01211; 3D 00915; P 05876.
[1654] 2D 00093; 2D 00089; P 01983; P 02078; P 01959; P 02093; 4D 00456.
[1655] *See* P 01211; P 05104.
[1656] This order was sent in particular to the *Kralj Tomislav* Brigade, the 5th Posušje Brigade, the *Rama* Brigade, the *Eugen Kvaternik* Brigade and the *Dr Ante Starčević* Brigade. The Chamber, however, has

order to the subordinate commands as well as to the units.[1657] The order concerned the obligation for members of the armed forces to comply with the principles of the law of war and humanitarian law, both during military operations and in their treatment of prisoners of war, granting the ICRC unimpeded access to prisoner of war detention centres, as well as the free flow of humanitarian aid in the HR H-B territory.[1658] This order flowed along the classic chain of command in that it was transmitted on 19 September 1993 by the commanding officer of the HVO Main Staff, Slobodan Praljak to each of the OZs – thus including the North-West OZ – and to all the units under the Main Staff, and to the "Chief of the Military Police".[1659]

708. For the Chamber, it is incontrovertible that orders intended for the armed forces customarily flowed through the chain of command, whose pivotal link was the Main Staff.[1660] The low ratio of orders sent directly by Mate Boban to the armed forces that did not transit the Main Staff,[1661] compared with the very high volume of orders issued by the Main Staff to the armed forces,[1662] further confirms this.

II. Main Staff

709. The Indictment submits that the government and political leaders, as well as the administrative authorities of Herceg-Bosna and the HVO were *inter alia* responsible for the armed forces of Herceg-Bosna, that they worked together closely and that the armed forces were one of the key instruments for carrying out the alleged JCE.[1663] The Prosecution more specifically alleges that Milivoj Petković and Slobodan Praljak – the former as Chief of the Main Staff, and later as Deputy Commander of the Main Staff, and the latter as Commander of the Main Staff –

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no additional evidence enabling it to explain why in this situation the brigades received this order directly. Nonetheless, the Main Staff was indeed their primary intended recipient.

[1657] P 05104.

[1658] P 05104.

[1659] 3D 00915. The order was sent by Tihomir Blaškić, commanding officer of the Central Bosnia OZ, on 19 September 1993 to all the HVO Brigades that were part of the Central Bosnia OZ and all the independent units in the OZ, as well as by Miljenko Lasić, commander of the South-East OZ, specifically to the North Sector, the South Sector and the Mostar Defence Sector. *See* in this regard: 3D 01104; 4D 01067; Slobodan Praljak, T(F), p. 40779.

[1660] *See* "Orders Given by the Main Staff to the Armed Forces" and "Chain of Command and Control in the Armed Forces" in the Chamber's findings regarding the military structure of the HZ(R) H-B.

[1661] P 00613; P 03054; P 03363; P 05566; P 06339; P 06841; P 07387; P 10309; 3D 02469 and 4D 00575; P 00576.

[1662] *See* "Role of the Supreme Commander in Leading the Armed Forces" and "Orders Given by the Main Staff to the Armed Forces" in the Chamber's findings regarding the military structure of the HZ(R) H-B.

directed and administered the HVO armed forces.[1664] Considering the importance of the armed forces to the crimes alleged in the Indictment,[1665] and the presumed authority of the Accused Praljak and Petković over them, given their role and office within the Main Staff, the Chamber finds it must describe with specificity the structure and operations of this organ. In light of the evidence, the Chamber observes that the armed forces were headed by a Main Staff, with respect to which the Chamber will analyse (A) the structure and (B) the principal mission and command of the armed forces.

A. Structure of the Main Staff

710. Once it has recalled (1) the background to the creation of the Main Staff, the Chamber will detail (2) the dates on which two of the Accused, Milivoj Petković and Slobodan Praljak, successively directed it at all times relevant to the Indictment, and then analyse (3) the operations and structure of the Main Staff in order to determine specifically to what extent the Main Staff was informed regarding prevailing conditions on the ground.

1. Creation of the Main Staff

711. Under Article 11 of the Decree on the Armed Forces of 3 July 1992, it was contemplated that the Main Staff was to be established within the Department of Defence. Its structure was to be determined by the Supreme Commander, who was also supposed to appoint its principal leaders.[1666] On 15 September 1992, in keeping with the provisions of the said Decree, Mate Boban took a decision on the fundamental principles to guide the organisation of the Department of Defence, also establishing the overall structure of the Main Staff.[1667]

[1663] Indictment, para. 25.
[1664] Indictment, paras 17.3 (a) and 17.4 (a).
[1665] The Chamber will hereinafter devote a specific part to the structure and operation of the armed forces. *See* "The Armed Forces" in the Chamber's findings regarding the military structure of the HZ(R) H-B.
[1666] P 00289, Article 11; P 08973, pp. 25 and 26; Ciril Ribičić, T(F), p. 25451; P 09549, para. 25.
[1667] P 00586, p. 3.

712. On 18 September 1992, Bruno Stojić in keeping with Article 11 of the Decree on the Armed Forces of 3 July 1992 and Mate Boban"s decision of 15 September 1992, announced the "provisional establishment of the Main Staff".[1668]

2. Succession of Chiefs and Commanders of the Main Staff

713. At the head of the Main Staff was a "Chief of the Main Staff" and, between 24 July 1993 and 9 December 1993, a "Commander of the Main Staff".[1669]

714. The Chamber notes that Milivoj Petković, Slobodan Praljak and Ante Roso succeeded one another in the post of Chief or Commander of the Main Staff of the HVO between April 1992 and April 1994.

a) Milivoj Petković, Chief of the Main Staff from 14 April 1992 until 24 July 1993

715. Milivoj Petković, who was released from active military service in the HV on 6 April 1992,[1670] held the office of Chief of the Main Staff of the HVO between 14 April 1992[1671] and 24 July 1993,[1672] on which date Slobodan Praljak succeeded him.[1673] The Chamber observes therefore that Milivoj Petković became Chief of the Main Staff in April 1992[1674] whereas the structure of the Main Staff was not officially introduced until September 1992.[1675]

b) Slobodan Praljak, Commander of the Main Staff from 24 July 1993 until 9 November 1993

716. Slobodan Praljak, who was officially released from active military service in the HV on 15 June 1993,[1676] succeeded Milivoj Petković on 24 July 1993.[1677]

[1668] P 00502; 2D 02000, para. 14. It refers to Article 10 of the Decree of 3 July 1992 – P 00289 – but this pertains more specifically to Article 11. *See* also concerning Bruno Stojić"s participation in the internal structure of the Main Staff: Milivoj Petković, T(F), p. 50849; P 04756.
[1669] P 00586, p. 3; P 03683; 3D 00280; 4D 01130; 4D 01126.
[1670] P 00146. Milivoj Petković was "released from active military service" after his request to this effect on 1 April 1992, so that he could join the RBiH.
[1671] P 10336, p. 2; 4D 00075.
[1672] Witness EA, T(F), p. 24313, closed session; P 10330 under seal, para. 4.
[1673] P 03683; Witness EA, T(F), p. 24313, closed session; P 10330 under seal, para. 4.
[1674] P 10336, p. 2; 4D 00075.
[1675] P 00289; P 00586, p. 3; P 00502.
[1676] P 02604; 3D 00278. Slobodan Praljak was "released from active military service" after his request to this effect on 1 June 1993, so that he could join the RBiH.
[1677] P 03683. Despite this, the Chamber observes that Slobodan Praljak, who was General of the HV at the time (*see* in this regard P 02604 and 3D 00278), was already in BiH territory well in advance of 24 July 1993. Thus, despite not being officially listed in the HVO"s military structure, the Chamber notes

Slobodan Praljak was then appointed to the post of "Commander of the Main Staff" by Mate Boban on 24 July 1993.[1678] Evidence attests to the transfer of authority between Milivoj Petković and Slobodan Praljak between 24 and 27 July 1993.[1679] Nevertheless, insofar as the Chamber has reviewed numerous orders issued to the armed forces by Slobodan Praljak, as Commander of the Main Staff from 24 July 1993 onward, the Chamber finds that he did hold office as of that date.[1680]

717. Whereas Milivoj Petković held the post of "Chief of the Main Staff", Slobodan Praljak succeeded him by being appointed to the post of "Commander of the Main Staff". This change of name in the title of the office heading the Main Staff occurred simultaneously with a reorganisation at the top levels of the Main Staff. Thus, the Commander of the Main Staff – Slobodan Praljak – was thenceforth assisted by a deputy (Deputy Commander of the Main Staff), who was Milivoj Petković.[1681] Moreover, once Slobodan Praljak was appointed to the post of Commander of the Main Staff, and continuing until at least 25 October 1993,[1682] there was within the Main Staff a Chief of Staff, [1683] who was Ţarko Tole,[1684] himself assisted by a deputy (Deputy Chief of Staff), who was General Stanko Matić.[1685] The Chamber heard *Witness EA* explain that, at the head of the Main Staff, "Slobodan Praljak was number 1, Milivoj Petković number 2 and Ţarko Tole number 3".[1686]

718. The Chamber also heard *Slobodan Praljak* state during his testimony that when he became Commander of the Main Staff of the HVO on 24 July 1993, he distributed responsibilities, following a geographic scheme, between Ţarko Tole

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that he was already issuing orders to the military units of the HVO and that he had been signing the said orders from 6 November 1992 onwards in his capacity as "Major General Praljak". *See* in this regard 3D 00419; P 00718; P 00876; P 01172.

[1678] P 03683.

[1679] Milivoj Petković, T(F), p. 49785; Slobodan Praljak, T(F), pp. 43774, 43788 and 43789; Witness EA, T(F), pp. 24313 and 24664, closed session; P 10330 under seal, para. 4; Philip Watkins, T(F), pp. 18763 and 18809; Decision of 7 September 2006, Adjudicated Fact no. 34 (*Blaškić* Judgement, para. 112).

[1680] P 03698; P 03700; 3D 00640; 3D 01097; 3D 01101; 5D 00546; P 03706.

[1681] P 04493; Witness EA, T(F), pp. 24313, 24314, 24315 and T(E), p. 24316, T(F), pp. 24524, 24526, 24527, 24664, 24738 and 24740, closed session; P 10330 under seal, para. 4; P 09968.

[1682] P 03979; P 06091.

[1683] Witness EA, T(F), pp. 24740 and 24741, closed session: *Witness EA* thinks that General Tole"s exact title is "Chief of Staff" and not "Chief of the „Main" Staff", as this adjective is used solely to denote the titles of his superiors.

[1684] 5D 05110 under seal, para. 8; P 03979.

[1685] Witness EA, T(E), p. 24316, and T(F), p. 24741, closed session; *see* for example P 03949; 3D 01150.

[1686] Witness EA, T(F), p. 24741, closed session.

(Chief of Staff), who was responsible for Mostar, Milivoj Petković (Deputy Commander of the Main Staff), who was responsible for Kiseljak, Vareš and Central Bosnia, and Praljak himself, who was responsible for the North-West OZ, and primarily Prozor and Gornji Vakuf.[1687] *Slobodan Praljak* added that these responsibilities were not specifically allocated inasmuch as he could take "decisions" if he was in a territory that "ordinarily" fell under the authority of Ţarko Tole or Milivoj Petković.[1688]

719. This reorganisation, introduced at the highest echelons of the Main Staff as well as in the geographic distribution of power and authority, resulted in a degree of confusion within the armed forces. As General Stanko Matić, Deputy Chief of Staff,[1689] pointed out at a meeting on 2 September 1993 in the presence, among others, of the Head of the Defence Department, Bruno Stojić, the power and authority of the Chief of the Main Staff and his Deputy were not clearly defined.[1690] Moreover, Stanko Matić explained that, although the command of the OZs and the brigades theoretically fell exclusively under the power and authority of the Commander of the Main Staff and his Deputy, this was evidently not the case.[1691]

720. Having analysed several orders issued by Chief of Staff Ţarko Tole, despite *Slobodan Praljak's* declaring that he alone was in charge of Mostar, the Chamber notes that Tole did in fact send orders to the four OZs and to the brigades, at least in August and September 1993.[1692] Again contrary to *Slobodan Praljak*'s statements regarding the geographic division of tasks between him, Milivoj Petković and Ţarko Tole, the Chamber observes that Praljak, as Commander, and Milivoj Petković as Deputy Commander of the Main Staff, issued orders to the four OZs and to the brigades.[1693] Therefore, although in theory tasks were distributed geographically, the Chamber concludes that, in practice, all three of them – Slobodan Praljak, Milivoj Petković and Ţarko Tole – issued orders to the four OZs as well as to the brigades.

[1687] Slobodan Praljak, T(F), pp. 42510, 43070, 43751 and 43752.
[1688] Slobodan Praljak, T(F), pp. 42510, 42511 and 43070.
[1689] Witness EA, T(E), p. 24316, and T(F), p. 24741, closed session; *see* for example P 03949; 3D 01150.
[1690] P 04756, pp. 2 and 3.
[1691] P 04756, pp. 2 and 3.
[1692] 3D 01195; P 04499; 3D 01144; 3D 01151; 3D 01153; P 04439; P 09597.
[1693] For Slobodan Praljak, *see* for example P 03773; 3D 01986; P 03917; P 04131; 3D 02087; P 04819; P 05236.
For Milivoj Petković, *see* for example 3D 02582; P 04745; P 05873; P 06131.

c) Slobodan Praljak and Ante Roso Succeeding One Another as Commander on 9 November 1993 and the Retention of Milivoj Petković on the Main Staff

721. The Chamber took judicial notice of a factual determination by the *Blaškić* Chamber whereby "[i]n October 1993, General Praljak was replaced by General Roso".[1694]

722. However, contrary to this fact adjudicated by the *Blaškić* Chamber, the evidence admitted in this case establishes that Slobodan Praljak was replaced by Ante Roso[1695] on 9 November 1993.[1696]

723. Admittedly, the Chamber also reviewed Exhibit P 06468, whereby Ante Roso was appointed Commander of the Main Staff of the HVO starting 6 November 1993 by Gojko Šušak, Minister of Defence of Croatia.[1697] The Chamber notes, however, that during his testimony *Slobodan Praljak* contested the authenticity of this document.[1698] In view of this testimony, and after careful examination of the said exhibit, the Chamber also has doubts about the authenticity of the document. It is not merely that the order is unsigned, but additionally, that no other item of evidence corroborates the date of 6 November 1993 as the date Ante Roso assumed office. The Chamber therefore decides to set aside Exhibit P 06468 in favour of other, more probative evidence.

724. Thus, the Chamber has the order signed by Mate Boban on 8 November 1993 removing Slobodan Praljak from office and appointing Ante Roso in his place.[1699] Moreover, additional documentary evidence and testimony, including that of

[1694] Decision of 7 September 2006, Adjudicated Fact no. 35 (*Blaškić* Judgement, para. 112). The Chamber notes that there are no references in the *Blaškić* Judgement to support the assertion that Slobodan Praljak was relieved of his duties in October 1993.
[1695] The Chamber observes that Ante Roso was relieved of his duties in the HV by the Croatian Ministry of Defence so he could join the RBiH on 20 October 1993: P 09596. Ante Roso was relieved of his duties in the HV at his request on 15 October 1993 because he "wanted to go to the RBiH".
[1696] 3D 00280; P 06235; P 06556; 3D 00953; Slobodan Praljak, T(F), pp. 39664-39665; Milivoj Petković, T(F), pp. 49785, 49788 and 49790 and T(E), p. 50320; Marijan Biškić, T(F), pp. 15030, 15034, 15035 and 15040; Witness EA, T(F), pp. 24313 and 24664, closed session; P 10330 under seal, para. 4.
[1697] P 06468.
[1698] Slobodan Praljak, T(F), pp. 43128 and 43131.
[1699] 3D 00280; Milivoj Petković, T(F), p. 49788, and T(E), p. 50320.

Slobodan Praljak, confirms that Ante Roso entered office on 9 November 1993,[1700] following the signature of the transfer of powers between him and Slobodan Praljak that same day.[1701]

725. Therefore, in light of all the evidence, the Chamber must draw a different conclusion from the one reached by the *Blaškić* Chamber, deciding then, for this case, to disregard this judicially noticed fact, and to conclude that Slobodan Praljak was relieved of his duties on 8 November 1993 and that he relinquished their exercise in favour of Ante Roso on 9 November 1993.

726. Moreover, the Chamber observes that, in several orders dated 9 December 1993, Mate Boban recalled Ante Roso as Commander of the Main Staff, reappointing him the same day to the post of the Chief of the Main Staff (the duties remained the same, the name alone was changed), with Milivoj Petković appointed Deputy Chief of the Main Staff.[1702] By means of the orders of 9 December 1993, Mate Boban did away with the offices of Commander and Deputy Commander of the Main Staff and restored the system which prevailed prior to Slobodan Praljak's arrival at the helm of the Main Staff, namely, a Chief of the Main Staff and his deputy.

727. Milivoj Petković thus held the post of Deputy Commander of the Main Staff (Slobodan Praljak was then Commander), between 24 July 1993 and 8 November 1993, then the post of Deputy Commander of the Main Staff (Ante Roso was then Commander), between 9 November 1993 and 9 December 1993, then as Deputy Chief of the Main Staff (Ante Roso continued as Chief of the Main Staff), between 9 December 1993 and 26 April 1994.[1703]

[1700] P 06235; 3D 00280; 3D 00953; P 06556; Milivoj Petković, T(F), pp. 49785, 49788 and 49790; Marijan Biškić, T(F), pp. 15030, 15034, 15035 and 15040; Witness EA, T(F), pp. 24313 and 24664, closed session; P 10330 under seal, para. 4.
[1701] Slobodan Praljak, T(F), pp. 39664-39665; P 06556.
[1702] 4D 01130; 4D 01126; 4D 01129; 4D 01124.
[1703] 3D 02582; P 04745; P 05873; P 06131; P 09968; P 06779; P 07044; 4D 01129; 4D 01124; P 07873; P 08112; P 08188.

d) Succession from Ante Roso to Milivoj Petković as Chief of the Main Staff on 26 April 1994

728. Ante Roso held the post of Chief of the Main Staff until he was replaced by Milivoj Petković on 26 April 1994.[1704]

3. Organisation and Operation of the Main Staff

729. Mate Boban"s Decision on the Basic Principles of Organisation of the Department of Defence on 15 September 1992, provided that the Chief of the Main Staff would be assisted by a deputy – appointed by the President of the HZ H-B, on the advice of the Chief of the Main Staff and with the consent of the Head of the Department of Defence[1705] – and four assistants – appointed using the same procedure – namely, an assistant responsible for the professional units; an assistant responsible for personnel and legal matters; an assistant responsible for the *Domobrani* and an assistant responsible for training and education.[1706] The Main Staff was likewise staffed with individuals responsible for various areas, such as artillery, headed by the chief of artillery, Marko Stojiĉić,[1707] and surface-to-air defence, subjects which will be addressed in the analysis of the units deployed in support of the army.[1708]

730. Finally, the Main Staff had various departments and services, specifically including the Department for Operations and Training, the Department of

[1704] 4D 01138.
[1705] 2D 00567, p. 2; 2D 02000, para. 85.
[1706] P 00586, p. 3. The official duties of these assistants were changed under the Amended Decision on the Internal Organisation of the Department of Defence of 20 May 1993, which continued to provide for an assistant in charge of the *Domobrani* and the professional units and created an assistant for organisation, personnel and legal affairs, *see* P 02477. The official duties of the assistants were again changed by the Decision on the Foundation of the Organisation of the Ministry of Defence of 18 December 1993, which provided for: an assistant responsible for the combat sector; an assistant responsible for land forces, an assistant responsible for training and education and an assistant responsible for the *Domobrani*, *see* P 07236, p. 6, Article 15. The Chamber will address more specifically the responsibilities of the Deputy Chief of the Main Staff in charge of the *Domobrani* and of the Assistant Chief in charge of the professional units as well as the issue of the nomenclature for these particular armed forces as well as their roles, in the part devoted to them, under Armed Forces: *see* "Professional Units" and "The *Domobrani*" in the Chamber"s findings regarding the military structure of the HZ(R) H-B.
[1707] Occasionally misspelled "Stojić", this would appear to be an error; P 02712; P 01683; P 01572, p. 8; 4D 01600; P 04495; P 00502, p. 6; 4D 01676.
[1708] *See* "Artillery and the Air Force Group" in the Chamber"s findings regarding the military structure of the HZ(R) H-B.

Communications, the Department for Training and Education, as well as the military intelligence service, the VOS.[1709]

731. The Chamber will now examine in greater detail (a) the structures and means provided to allow the Main Staff and its Chief to be reached in field emergencies, as well as (b) the means provided to ensure the return flow of information from the field to the Main Staff and its Chief.

a) Structures and Means for Alerting the Main Staff and its Chief regarding the Situation in the Field

732. In describing the military structure of the HVO, the Prosecution contends that the successive chiefs of the Main Staff could be reached by the commanding officers of the HVO through various means of communication and, if physically absent, they could be reached through staff duty officers.[1710] The Prosecution states that the Main Staff established direct communications with the OZ commanders, brigades, battalions and other units directly connected to each OZ.[1711] The Praljak and Petković Defence teams contend, by contrast, that communications within the military HVO, particularly via the packet system of communication,[1712] were quite difficult,[1713] and conclude that the Accused were sometimes not informed of events unfolding in the field and so lacked the opportunity to wield effective control over the alleged perpetrators of the crimes.[1714]

733. The Chamber notes that the Main Staff had a department responsible for communications, directed by Jure Zadro ("Department of Communications and Cryptographic Data Protection").[1715] Within this department were assistants

[1709] 4D 01600; P 01683.
[1710] Prosecution Final Trial Brief, para. 654.
[1711] Closing Arguments by the Prosecution, T(F), p. 51879.
[1712] The Chamber heard several witnesses and, particularly, *Witness EA* (T(F), pp. 24342 and 24343, closed session, and Radmilo Jasak (T(F), pp. 48759-48762) explain that packet communication ("*Paket* Communication" or "*Paket* Link") was an encoded communication system using electronic channels. Documents transmitted by packet by their very nature did not contain the sender"s signature.
[1713] Petković Defence Final Trial Brief, para. 622; Praljak Defence Final Trial Brief, paras 135, 549, 551 and 553. The Praljak Defence specifically mentions communication issues in the Prozor region; *see* Praljak Defence Final Trial Brief, para. 539, referring to Document P 03706 which will be analysed as part of the analysis of the armed forces; *see* "Chain of Command and Control in the Armed Forces" in the Chamber"s findings regarding the military structure of the HZ(R) H-B.
[1714] Petković Defence Final Trial Brief, paras 623 and 624; Praljak Defence Final Trial Brief, paras 551 and 552.
[1715] P 01572, p. 8; P01754; 4D 01600; Boţo Perić, T(F), p. 47872.

responsible for radio relay and encryption systems (packet communication systems).[1716] The Chamber heard *Witness EA* state that, between May and November 1993 packet communications between Kiseljak and the Main Staff worked "most of the time".[1717] Moreover, the Chamber admitted into the record many documents that were packet communications[1718] and *Milivoj Petković* himself stated during his testimony that the commanding officers of the armed forces could reach the Chief of the Main Staff or his deputy by telephone.[1719]

734. Lastly, the Chamber observes that in addition to the Department of Communications, the successive chiefs of the Main Staff implemented procedures enabling them to be reached at any time. For example, the Chamber heard *Božo Perić,* the officer in charge of wire communications and telecommunications within the Department of Communications of the Main Staff,[1720] explain that the Chief of the Main Staff could be reached at any moment, and that, if he was physically absent, the head of the Department for Operations and Training would be informed regarding the situation.[1721]

735. The Chamber therefore concludes that, although there were certainly challenges to communication between the armed forces in the field and the Main Staff, there were not only means of communication, such as telephone or packet communications, but also procedures implemented by the successive chiefs/commanders of the Main Staff allowing them to be reached, which worked relatively well and in any case sufficiently well for the chief/commander of the Main Staff or his deputy to be informed regarding the situation prevailing in the field.

[1716] 4D 01600; Boţo Perić, T(F), p. 47872.
[1717] Witness EA, T(F), pp. 24341, 24342, 24343, 24346, 24347, 24645 and 24646, closed session.
[1718] *See*, for example: P 06022; P 06028; 3D 00490; P 00604; P 00679; P 00944; P 01059; P 01087.
[1719] Milivoj Petković, T(F), pp. 50331-50333.
[1720] Boţo Perić, T(F), p. 47868; *see* also P 01683; P 01572, p. 8; 4D 01600, Boţo Perić, T(F), pp. 47882 and 47884-47886.
[1721] Boţo Perić, T(F), p. 47878. Furthermore, if the Chief of the Main Staff could not be reached, the duty officer for operations in Grude (available 24 hours per day) was contacted in order to try to locate him: Boţo Perić, T(F), pp. 47899, 47900, 47901 and 47902. Finally, the Chamber notes that Ante Roso, then Chief of the Main Staff, issued an order on 21 December 1993 indicating that in his absence the persons "in charge" of the Main Staff command would be Milivoj Petković, his deputy, or Stanko Matić, his assistant for the Land Army, or Vinko Vrbanac, his assistant for the combat sector. *See* 4D 01614.

b) Means to Ensure the Return Flow of Information to the Main Staff and its Chief

736. The Chamber notes that the Main Staff received reports through its intelligence service, the VOS, directed by Ţarko Keţa.[1722] This service was likewise deployed in the OZ and the brigades, and focused on collecting information about VRS and ABiH forces.[1723] The heads of the VOS within the brigades and the OZs channelled information from the field up to the Chief of the VOS at the Main Staff.[1724] The Chamber specifically heard *Radmilo Jasak,* a member of the VOS within the Main Staff of the HVO from October 1992 to August 1993,[1725] explain that the VOS also received information collected by the CED, responsible for radio listening posts,[1726] compiled reports and then sent them to Milivoj Petković and Bruno Stojić.[1727] He also stated that the Head of the VOS met regularly with the chief/commander of the Main Staff to exchange information.[1728] The Chamber was able to conclude that, as far as the situation in the OZs was concerned, the Head of the VOS at the Main Staff prepared daily reports, which were sent to Bruno Stojić, to Milivoj Petković, and occasionally to Mate Boban as well.[1729]

737. The Chamber notes, moreover, that, independently of the VOS, an assistant head of the SIS, assigned to the Department of Defence, was placed at the echelon of OZ commanders[1730] and brigade commanders,[1731] and that they sent reports not only to the brigade or OZ commander to which they were assigned, but also directly to the

[1722] P 00173; 2D 00244; P 01665; P 01683; P 01684; P 01572, p. 6; P 01754; 4D 01600; Slobodan Praljak, T(F), p. 44265; Radmilo Jasak, T(F), pp. 48834 and 48588.
[1723] Slobodan Praljak, T(F), p. 44265; Radmilo Jasak, T(F), pp. 48452 and 48453. *See* also for example 3D 02530; 3D 02423.
[1724] The Chamber has evidence confirming that there was a Chief of the VOS at the level of the Central Bosnia OZ, a Chief of the VOS at the level of the 2nd Operational Group in Kiseljak and a Chief of the VOS at the level of the Bobovac Brigade, and that reports were passed along between these three persons responsible for the VOS and the Chief of the VOS at the Main Staff. *See* 4D 00643; 4D 00530; 4D 00648; Radmilo Jasak, T(F), p. 48459; 4D 00526. The Chamber also learned of a VOS department within the Rama Brigade in Prozor and within the North-West OZ; *see* to this effect: 3D 02418; Radmilo Jasak T(F), pp. 48839-48841.
[1725] Radmilo Jasak, T(F), p. 48446.
[1726] Radmilo Jasak, T(F), pp. 48839-48841.
[1727] Radmilo Jasak, T(F), p. 48841.
[1728] Radmilo Jasak, T(F), p. 48584.
[1729] 2D 00244; 1D 02746, p. 6; 3D 02530; 3D 02425, pp. 1 and 2; 3D 02423; 3D 01746; 1D 02746; P 06565; 3D 02388; Radmilo Jasak, T(F), pp. 48459 and 48841.
[1730] P 04749; 2D 03008.
[1731] P 02488; 2D 03008.

Chief of the Main Staff and to the Head of the Department of Defence.[1732] The Chamber recalls that it previously determined in the part pertaining to the political and administrative structure that the SIS was an intelligence service responsible for national defence and security within the Department of Defence and the armed forces.[1733]

738. In its Final Trial Brief, the Prosecution, relying on the testimony of *Milivoj Petković*, alleges that reports were prepared on a daily basis by the commanding officers or by the officers in charge of operations at various levels and then were channelled up "the chain of command from [the] brigades, to the operative zones and then up towards the Main Staff".[1734] The Praljak Defence contends that from 24 July to 9 November 1993, the Main Staff of the HVO was in Ĉitluk "most of the time"; that the military situation required Slobodan Praljak to be present in difficult sectors, that he lacked information on the situation in places other than his location at the time and that he had not in fact received any information concerning the situation in Mostar.[1735] Moreover, the Praljak Defence submits that certain documents, which ought to have been sent to the Main Staff or to the OZs, were not, and as a result, the military chain of command was not kept informed.[1736]

739. However, during his testimony, *Milivoj Petković* stated that the OZs were required to communicate all important information to the Staff.[1737]

740. In this regard, the Chamber observes that the Main Staff did indeed regularly receive reports coming from the OZ and brigade commanders.[1738] The Chamber nonetheless notes that the reports were sent to the Main Staff and not directly to its

[1732] *See* "The SIS"s Place in the HVO Hierarchy" and "The SIS of the HR H-B" in the Chamber"s findings regarding the political and administrative structure of the HZ(R) H-B. *See* also 2D 03008; 2D 03080, p. 1; P 02488; P 02618; P 04749; P 06075.
[1733] *See* "Responsibilities of the SIS" in the Chamber"s findings regarding the political and administrative structure of the HZ(R) H-B.
[1734] Prosecution Final Trial Brief, para. 654.
[1735] Praljak Defence Final Trial Brief, para. 255.
[1736] Praljak Defence Final Trial Brief, para. 382.
[1737] Milivoj Petković, T(F), pp. 49842 and 49843.
[1738] For the OZ reports sent to the Main Staff, *see* 3D 01271; P 01162; P 01209; P 01277; P 01909; P 01930; 3D 00992; 3D 00994; 2D 01494; 3D 01272; P 04989; 3D 01565; 3D 02400; P 05750; P 05936; P 06200; 3D 01460; P 07559.
For the reports sent directly from the brigades to the Main Staff: P 01333; P 01418; P 03337; P 04594; 3D 02400.
The reports were occasionally dispatched jointly to the Chief of the Main Staff and the Head of the Department of Defence, Bruno Stojić, *see* 3D 01271; P 01277; P 02292; 2D 01494; 3D 01460.

Chief. The Chamber heard *Radmilo Jasak* explain that the secretary of the Chief of the Main Staff produced consolidated reports from those sent in by the OZs and forwarded them to the Chief of the Main Staff.[1739] The Chamber notes that the reports were indeed forwarded to and received by the Chief of the Main Staff, because he drafted daily reports, which were known as "consolidated reports" or "collective reports", and which addressed the situation on the front lines, the operations of the ABiH and/or the VRS, combat readiness and combat operations of the HVO units within the four OZs.[1740] The Chamber admitted into evidence a very great number of these daily reports on the military situation in the four OZs, thereby confirming that information was being channelled up the chain of command, from the OZs towards the Main Staff.[1741]

741. After the movement from the HZ H-B to the HR H-B, Milivoj Petković, then deputy commander of the Main Staff of the HVO, ordered the units of the HVO and also the professional units – *Bruno Bušić* and *Ludvig Pavlović* – the KB, and the mixed artillery and rocket regiment, to issue regular combat reports to their respective ZPs and to the Main Staff of the HVO.[1742]

742. The Chamber therefore concludes that through the VOS, the SIS and the reports issuing from the OZ and brigade commanders, the Main Staff and its Chief were kept routinely informed of the situation prevailing on the ground.

B. Command and Control of the Armed Forces by the Main Staff

743. The Prosecution contends that the armed forces of the HVO were under the command and control of the HVO and under the authority of the Chief of the Main

[1739] Radmilo Jasak, T(F), pp. 48645, 48646 and 48650.
[1740] 4D 00895; 4D 00896; 4D 00897; P 00638; 3D 02131; 4D 01179; P 00658; 4D 00042; P 01152; 3D 01094; P 01193; P 01220; 2D 03067; P 01370; P 01437; 3D 01096; P 01810; P 01874; P 01879; 3D 01843; P 01954; P 01961; Radmilo Jasak, T(F), pp. 48645, 48646 and 48650.
[1741] 4D 00895; 4D 00896; 4D 00897; P 00638; 3D 02131; 4D 01179; P 00658; 4D 00042; P 01152; 3D 01094; P 01193; P 01220; 2D 03067; P 01370; P 01437; 3D 01096; P 01810; P 01874; P 01879; 3D 01843; P 01954; P 01961; Radmilo Jasak, T(F), pp. 48645, 48646 and 48650.
[1742] Andrew Pringle, T(F), pp. 24165 and 24166; P 07044. This order reached the ZPs and the brigades because Tihomir Blaškić responded and complained of it on 16 December 1993: P 07205.

Staff.[1743] The Stojić Defence supports this by also submitting that the armed forces of the HVO were under the command of the Chief of the Main Staff.[1744]

744. By contrast, the Praljak Defence alleges that the army of the HVO was not an organised military force and that Slobodan Praljak, as Commander of the Main Staff, could not in any way command and control his subordinates.[1745]

745. The Petković Defence states that as a matter of law, the Chief of the Main Staff did not have the role of a commanding officer; that the Chief of the Main Staff lacked the authority to command and control the armed forces and that he was the military commanders" superior solely for matters of combat and only within the scope of the general and specific authority bestowed upon him by the Supreme Commander.[1746]

746. The Chamber does not subscribe to the Petković Defence"s interpretation inasmuch as analysis of the authority wielded by the Chief of the Main Staff demonstrates that the command and control of the armed forces did indeed fall within his grant of authority.[1747]

747. The central mission of the Main Staff was to command the armed forces and to conduct military operations[1748] for the purpose of protecting the territory of the HZ H-B.[1749] Moreover, it appears from an order by Slobodan Praljak dated 12 August 1993, that the Main Staff, which was subordinate to the Supreme Command, had direct authority over the four OZs.[1750] *Milivoj Petković* also stated during his testimony that the command of military operations fell to the HVO Main Staff alone.[1751]

[1743] Prosecution Final Trial Brief, paras 650-652; Closing Arguments by the Prosecution, T(F), pp. 51879-51882 and 52035.
[1744] Stojić Defence Final Trial Brief, para. 338.
[1745] Praljak Defence Final Trial Brief, paras 203 and 204.
[1746] Petković Defence Final Trial Brief, paras 67-69.
[1747] P 01575, p. 3; P 07236, p. 5, Article 13; P 08128, p. 8; Milivoj Petković, T(F), pp. 49769, 50325 and 50326.
[1748] P 07236, p. 5, Article 13; P 08128, p. 8; P 01575; Milivoj Petković, T(F), pp. 49769, 50325 and 50326; P 03922.
[1749] P 00289, Article 2; and P 00588.
[1750] Slobodan Praljak, T(F), p. 43557; P 04131, p. 1.
[1751] Milivoj Petković, T(F), p. 49769.

748. The Chamber notes moreover that when Milivoj Petković moved up from the rank of Chief of the Main Staff to the rank of Deputy Commander of the Main Staff, the Head of the Department of Defence, Bruno Stojić, informed UNPROFOR on 3 August 1993 that Milivoj Petković was the commander of the HVO armed forces and could thus negotiate with the international community on behalf of the HVO.[1752] As Deputy Commander of the Main Staff, Milivoj Petković thus retained command authority over the armed forces, while retaining power and authority to conduct negotiations on behalf of the HVO.[1753]

749. Accordingly, in exercising this command authority over the armed forces, (1) the chief/commander of the Main Staff and his deputy, when speaking of Milivoj Petković,[1754] gave orders to the OZ commanders, and sometimes directly to the brigade commanders. The Chamber will next examine (2) how the HVO armed forces were trained in respect of international humanitarian law, a matter debated between the Parties.[1755] Finally, the Chamber will examine (3) to what extent the Main Staff informed the political authorities of the actions it was conducting in the field.

1. Orders Given by the Main Staff to the Armed Forces

750. The Chamber observes that the orders which the Main Staff gave to the armed forces first concerned their overall organisation. In this regard, the Chamber can refer to an order from Slobodan Praljak on 1 September 1993 concerning the organisation of the command structure and offensive and defensive operations of the South-East OZ, implemented by Miljenko Lasić, the OZ"s commanding officer, on 3 September 1993.[1756]

751. The Chamber subsequently notes that the orders from the Main Staff could also address the deployment of the armed forces in the field and their combat readiness. This was true of several orders issued by Slobodan Praljak for the South-East OZ, the North-West OZ and the Central Bosnia OZ.[1757]

[1752] P 03922; P 04493; 4D 01708. The Chamber notes that Milivoj Petković was also in charge of conducting negotiations during his time at the helm of the Main Staff. *See* P 00811; P 00812; P 00944.
[1753] P 03922; P 04055.
[1754] P 03895; P 05873; P 06498.
[1755] P 00502, pp. 3 and 8; 1D 02716; P 01456; P 01683; P 01572, p. 8.
[1756] P 04719; P 04774; Slobodan Praljak, T(F), pp. 43795, 43796, 44380 and 44382.
[1757] P 01135; 4D 01048; 4D 00948; P 03082; P 03773; 4D 01719; P 04743; 3D 02563; P 05350.

752. The Main Staff likewise issued numerous orders to the OZs or directly to the brigades, prohibiting any attacks on international forces and humanitarian convoys, and insisting that they be allowed free passage.[1758] Thus, on 26 May 1993, Milivoj Petković, Chief of the Main Staff, gave an order to all of the OZs and to the Military Police, instructing that UNPROFOR and the international humanitarian organisations be given leave to travel without hindrance, and enjoy unrestricted access and guarantees of security.[1759]

753. Moreover, the Chamber notes that the Chief of the Main Staff issued several orders instructing the armed forces to respect "civilians and prisoners" in compliance with international treaties.[1760] The Chamber can illustrate this by referring to the orders issued by Milivoj Petković, Chief of the Main Staff in April 1993 to the OZ commanders.[1761]

754. Finally, the Chief of the Main Staff also issued many ceasefire orders to the HVO armed forces.[1762] Thus, on 25 April 1993, Milivoj Petković and Bruno Stojić both signed an order addressed to all the OZs regarding the ceasefire pursuant to the ceasefire and cessation of hostilities agreement signed in Zagreb by Alija Izetbegović, Mate Boban, Milivoj Petković, Sefer Halilović, and to which Franjo TuĊman *inter alia* was likewise a signatory.[1763] The order was sent the same day to Miljenko Lasić, commanding officer of the South-East OZ, who immediately dispatched it to his troops for implementation.[1764]

755. The Chamber therefore finds that the Chief/Commander of the Main Staff and his Deputy, when speaking of Milivoj Petković, did indeed have command and control authority over the armed forces, which they put into effect by giving orders to the OZs and on occasion directly to the brigades.

[1758] P 00458; P03895; P 05402; P 06580; P 06825; 1D 02019.
[1759] P 02527.
[1760] P 02599; P 00679.
[1761] P 01994. Milivoj Petković gave orders to respect and protect the civilian population affected by combat activity; to treat arrested soldiers and civilians humanely and to ensure adequate protection for them; to inform the ICRC of the identity of the persons arrested and detained and to allow its representatives to visit them; to accommodate, take care of and protect the wounded at all times, regardless of their "affiliation". *See* also in this regard P 02038; P 10268; 4D 00320; P 02599; 3D 01163.
[1762] P 00633; P 00644; P 00625; P 01059; P 01205; P 01959; P 02002, pp. 1 and 2; P 02344; P 02577; P 02599.
[1763] P 02093.
[1764] P 02089; P 02084.

2. Responsibility of the Main Staff in Training the Armed Forces in International Humanitarian Law

756. The Prosecution contends that the HVO armed forces did not receive training in international humanitarian law.[1765] It asserts that although there were training programmes for the soldiers in the HVO, they did not devote any formal attention to this topic.[1766]

757. In his report, Expert *Andrew Pringle* indicated that, after reading the documents made available to him, he could conclude only that the HVO recruits were given no training in international humanitarian law[1767] even if the Decree on the Armed Forces of the HZ H-B of 3 July 1992 placed an obligation on the members of the HZ H-B armed forces to comply with the international law of war in every circumstance during the conduct of military operations.[1768]

758. The Chamber admitted into the record several documents pertaining to the training of HVO soldiers organised by the Main Staff.[1769] However, the Chamber observes that none of the documents mentions any specific training in international humanitarian law.

759. Nonetheless, the Chamber notes that *Slobodan Praljak* said during his testimony that the general training programme for HVO soldiers, which he personally approved on 12 August 1993, included modules covering questions of international humanitarian law[1770] and that seminars specifically devoted to these matters were put

[1765] Prosecution Final Trial Brief, para. 725.
[1766] Prosecution Final Trial Brief, para. 725.
[1767] Andrew Pringle, T(F), pp. 24055-24057; P 00172, p. 1; P 05968.
[1768] P 00289, Article 23: P 00588, Article 23; P 08973, p. 38; Ciril Ribiĉić, T(F), p. 25451.
[1769] The Chamber notes that within the Main Staff, at least between October 1992 and October 1993, there was a "Department for Training and Education", as well as an Assistant Chief of the Main Staff responsible for training and education, namely, Ţeljko Akrap, a colonel in the HV, but despite organising training for members of the armed forces particularly in handling weapons, he did not get involved in training in international law. Bruno Pinjuh, T(F), p. 37263; P 00441; P 00502, pp. 3 and 10; P 00586, p. 4; 4D 00830, p. 2; P 01572, p. 9; P 04091; P 04076; 3D 01147; P 05968, pp. 1 and 2; P 06087; 4D 01600; 3D 01229; P 08705, p. 2 in the original version of the document.
[1770] Slobodan Praljak, T(F), p. 43676; P 04142, p. 24.

on by the Main Staff as well.[1771] *Slobodan Praljak* added that booklets summarising the legal principles in such matters had been distributed to the HVO soldiers.[1772]

760. The Chamber admitted into the record, among other items, a handbook from the ICRC on the law of war produced for the armed forces[1773] which, according to the Praljak Defence, had been used by the HVO to train these soldiers and was printed in a run of 5,000 copies in 1993.[1774] The Chamber also observes that, on 21 September 1993, the ICRC suggested to Slobodan Praljak, Commander of the HVO Main Staff at the time, that a series of conferences on international humanitarian law be arranged for HVO officers,[1775] which he agreed to do on 26 September 1993.[1776] Subsequent to the agreement between Slobodan Praljak and the ICRC, on 14 October 1993, Milivoj Petković, then Deputy Commander of the Main Staff, issued an order to the North-West and South-East OZs pertaining to the holding of an ICRC-run conference on international humanitarian law for the officers of the HVO.[1777]

761. Moreover, the Chamber notes that on 16 November 1993, Jadranko Prlić met with Ante Roso to discuss measures introduced to ensure compliance with the law of war and that brochures were distributed to every unit in the HVO describing the rules concerning the treatment of prisoners of war and how to approach civilians and cultural and historical buildings.[1778]

762. In light of the factors analysed above, the Chamber concludes that the Main Staff did indeed put on at least one international humanitarian law conference and did distribute brochures on this topic to the armed forces. Nevertheless, the Chamber is unable to find that there was any real institutionalised training of the armed forces in such matters.

[1771] Slobodan Praljak, T(F), pp. 43678, 43680, 43684 and 43685; the witness is speaking on the basis of P 04142; Bruno Pinjuh, T(F), p. 37263; P 04091.
[1772] Slobodan Praljak, T(F), pp. 43684 and 43685.
[1773] 3D 02256; 3D 00840.
[1774] "Slobodan Praljak"s Motion for the Admission of Documentary Evidence", public, 26 October 2009, confidential Annex A, p. 16. The Prosecution did not oppose the admission into evidence of this document, *see* "Prosecution Response to Slobodan Praljak"s Motion for the Admission of Documentary Evidence", public, 17 November 2009, confidential Annex A, p. 57.
[1775] 3D 02322.
[1776] 3D 02763.
[1777] 4D 00838.
[1778] P 06687 under seal, p. 2.

3. Relationship of the Main Staff with the Political Organs of the HZ(R) H-B

763. The Prosecution contends that the mission of the Main Staff" was to implement the strategic objectives of the civilian authorities[1779] and that its chief would report on this to the Head of the Department of Defence.[1780]

764. The Petković Defence contends that the Head of the Department of Defence routinely submitted reports to the Government of the HVO concerning the situation from a military and security perspective and that Milivoj Petković, Chief of the Main Staff at that time, was only invited to report on the military situation to the Government of the HVO four times.[1781]

765. The Prlić Defence states that although the Head of the Department of Defence, and occasionally, the Chief of the Main Staff, informed the executive and administrative authorities of the HVO of the HZ-HB concerning the situation in the field in order for the departments and offices of the HVO of the HZ-HB to carry out certain tasks relevant to their designated competencies, some of the information coming from the Main Staff was not accurate or reliable.[1782]

766. The Chamber heard *Milivoj Petković* explain, on the basis of an order from Perica Jukić, HR H-B Minister of Defence, dated 14 December 1993 and addressed to Ante Roso, that the Chief of the Main Staff was required to send weekly reports concerning the "operational-tactical" situation[1783] to the Minister of Defence of the HR H-B and to maintain ongoing relations with the ZPs.[1784] However, inasmuch as *Milivoj Petković* did not mention anything beyond this order, the Chamber is unable to conclude that this procedure was in effect prior to this date and that the Chief of the Main Staff routinely reported to the Head of the Department of Defence.

767. In order to determine the situation prior to December 1993, the Chamber notes that the Chief of the Main Staff attended the sittings of the HVO of the HZ H-B and

[1779] Prosecution Final Trial Brief, paras 361-364 and 647.
[1780] Closing Arguments by the Prosecution, T(F), p. 51921.
[1781] Petković Defence Final Trial Brief, para. 63. The Petković Defence contends that Milivoj Petković was invited to report on the situation three times as Chief of the Main Staff, and once as Deputy Commander of the Main Staff, when he attended the meeting with Commander Praljak.
[1782] Prlić Defence Final Trial Brief, para. 228.
[1783] "Operational-tactical situation" – that is, the situation on the battlefield, troop morale, the security and intelligence situation, unit weaponry, the logistical situation.
[1784] Milivoj Petković, T(F), pp. 49399-49402; 4D 01605.

the Government of the HR H-B on at least three occasions in order to provide information on the situation on the front lines.[1785] Moreover, the Chamber observes that the reports on the combat activities of the HVO armed forces were compiled by the Main Staff and routinely sent to the President of the HZ H-B, the Government and the Head of the Department of Defence.[1786] Thus, the Chamber observes that on 4 February 1993, Milivoj Petković sent the Department of Defence and the Government of the HZ H-B a report on the combat activities in the HZ H-B"s territory.[1787]

768. The Chamber considers in light of the evidence detailed above that the Main Staff communicated with the political authorities, and above all with the Head of the Department of Defence, who were thus kept informed regarding military activities.

[1785] 2D 02000, paras 13 and 92; Davor Marijan, T(F), pp. 35621 and 35622; 1D 01609; P 02575; 1D 01672; P 05799.
[1786] 2D 01353; 4D 00830; P 00128; P 03274; P 04699; P 03642; 4D 01605; P 07302; 2D 02000, para. 13. Davor Marijan stated that bi-annual reports from the Main Staff were provided for the HVO government, independently of those provided by the Department of Defence for reasons of confidentiality: Davor Marijan, T(F), pp. 35622; Milivoj Petković, T(F), pp. 49399-49402, 50087, 50088, 50379 and 50380.
[1787] 2D 01353.

III. The Armed Forces

769. Inasmuch as the Prosecution contends that the Accused used the Herceg-Bosna/HVO armed forces[1788] in furtherance of the alleged JCE,[1789] it is appropriate that the Chamber examine the structure of the armed forces and their chain of command.

770. For the purposes of its analysis, the Chamber will bring together under the term "armed forces of the HVO" the principal forces engaged at the sites of the crimes covered by the Indictment, namely: the armed forces, the special and professional units, the *Domobrani* and the former members of the HOS.[1790] Taking into consideration the complexity and unique characteristics of the Military Police, the Chamber will analyse their structure and operations separately in a subsequent section.[1791]

771. After addressing (A) the composition of the armed forces, the Chamber will (B) analyse the overall structure of the armed forces, (C) the military chain of command, and (D) the units deployed to support the armed forces and their hierarchical chain of command.

A. Composition of the Armed Forces of the HVO

772. Although the evidence shows that mobilisation was a challenging process, particularly due to the lack of response to the call to arms and due to desertion,[1792] a

[1788] The Chamber recalls that in the Decree of 8 April 1992 Mate Boban, President of the HZ H-B, created the military HVO for the purpose of "defend[ing] the sovereignty of the territories of the HZ H-B and to protect the Croatian people as well as other peoples in this community attacked by an aggressor" (*see* Milivoj Petković, T(F), pp. 49846-49849; P 00151) and that this objective was recalled in the first article of the Decree on the Armed Forces of 3 July 1992, also issued by Mate Boban as President of the HZ H-B (*see* in this regard P 00289, Article 11; P 08973, p. 25; Ciril Ribičić, T(F), p. 25451).
[1789] Indictment, para. 25.
[1790] Concerning the reassignment of the members of the HOS to the HVO armed forces, *see* the discussions that follow. Moreover, the Prosecution includes the civilian police among the "Herceg/Bosna/HVO forces" it defines in paragraph 25 of the Indictment. Concerning the civilian police, the Chamber refers to its treatment of the Ministry of the Interior: "Ministry of the Interior" in the Chamber's findings regarding the political and administrative structure of the HZ(R) H-B.
[1791] *See* "Military Police" in the Chamber's findings regarding the military structure of the HZ(R) H-B.
[1792] 3D 02616, p. 1; 2D 01209; 2D 00995, p. 9; P 04699, p. 5; P 06234; Bruno Pinjuh, T(F), pp. 37245-37248, 37268 and 37271 and 37272; P 06017. The analysis by the Ministry of Defence of the number of military conscripts, dated 22 October 1993 shows that some of them were abroad or absent without leave. By way of example, there were 130 cases of unauthorised leave in Jablanica, 58 in Čapljina, 1,171 in Mostar and 98 in Stolac. *See* also Slobodan Praljak, T(F), pp. 42403 to 42407; 4D 01655.

report by Milivoj Petković on the military situation from 14 April 1992 to 31 December 1992 indicated that the armed forces of the HVO in late 1992 already numbered 45,000 men, of whom 855 belonged to the professional units.[1793]

773. To better grasp the distribution of men within these armed forces, the Chamber can specify that on 26 January 1993, the total number of HVO personnel deployed in the South-East OZ was 7,743 members[1794] and that on 31 May 1993, it was 5,549 members.[1795] An analysis by the Ministry of Defence of the composition of the armed forces of the HR H-B, as of 22 October 1993,[1796] shows that the "military conscripts" were assigned to the municipalities as follows: 1,783 to Prozor;[1797] 1,021 to Gornji Vakuf; [1798] 189 to Jablanica; [1799] 2,714 to Ljubuški; [1800] 2,370 to Ĉapljina;[1801] 739 to Stolac[1802] and 5,260 to Mostar.[1803]

774. Moreover, according to the evidence, specifically a document dated 9 June 1993 prepared by the human resources administration in the Department of Defence,[1804] the HVO in 1992 and 1993 included Muslims within its ranks.[1805] In particular, the Chamber notes that on 9 June 1993, the HVO comprised 36,797

[1793] P 00907, p. 5; 4D 00830, p. 3. The Chamber has many figures concerning the number of men in the HVO armed forces, but they are the same as those in Milivoj Petković"s report cited above. *See* Davor Marijan, T(F), p. 35592; Slobodan Praljak, T(F), p. 41073; P 03642.
[1794] 4D 01628, pp. 1 and 2. This figure includes all of the men deployed in the South-East OZ as of that date, including the brigades, the Military Police and the OZ command.
[1795] 4D 01629, pp. 1 and 2.
[1796] P 06017.
[1797] P 06017, p. 4.
[1798] P 06017, p. 5.
[1799] P 06017, p. 7.
[1800] P 06017, p. 9.
[1801] P 06017, p. 10.
[1802] P 06017, pp. 11 and 12.
[1803] P 06017, pp. 10 and 11.
[1804] 2D 00150.
[1805] 4D 01355, p. 3; P 01015; Milivoj Petković, T(F), pp. 49467-49469 and 49574. Belinda Giles, T(F), pp. 2038 and 2064; Sejfo Kajmović, T(F), pp. 11799 and 11800; P 10213, paras 2 and 3.

members, of whom 5,956 were Muslims.[1806] Nevertheless, the evidence clearly shows that the Muslims left the ranks of the HVO *en masse* in May and June 1993.[1807]

775. The Chamber likewise notes that there were HV officers in the ranks of the HVO during the period relevant to the Indictment, who were integrated within the Main Staff,[1808] in the OZs[1809] or in the brigades.[1810] In this regard, the Chamber notes that the Chief of the Main Staff forbade the members of the armed forces from wearing black uniforms and ordered the members of the HV within the territory of the HZ H-B to wear the insignia of the HVO.[1811]

776. Lastly, the Chamber observes that several Defence teams allege that various facts described in the Indictment – for example, that the town of Gornji Vakuf's predominantly Muslim population was provoked by the HVO forces who raised the Croatian flag[1812] – could not be imputed to the HVO but are the responsibility of the

[1806] 2D 00150. The Chamber notes however that the number of Muslim members of the HVO varied considerably from one unit to the next. Moreover, the Chamber notes that the Posavina OZ which included a very large percentage of Muslims among its ranks was included in this count but that the situation in Posavina did not shed light on the number of Muslims in the other OZs. The Chamber can cite, for example, the percentage of Muslims: in the Department of Defence (3.64%), at the Main Staff (1.53%), at South-East OZ command (0.00%), in the *Eugen Kvaternik* Brigade (2.47%), in the *Rama* Brigade (23.30%) or even in the *Petar Krešimir IV* Brigade (24.85%), in the *Kralj Tomislav* Brigade (9.69%) but also in the *Bruno Bušić* regiment (0.60%) and the KB (41.42%).

[1807] 4D 01644; 4D 01645; 4D 01646; 4D 01647; 4D 01648; 4D 01632; 4D 01636; 4D 01637; 4D 01638; 4D 01640; 4D 01641; 4D 01642. The Chamber will determine the reasons for the departures of the Muslim members of the HVO and the related circumstances in the relevant factual parts of this Judgement and will analyse the status of these persons then in detention when examining the requirements for the application of Articles 2, 3 and 5 of the Statute. *See* "Status of the Muslim Members of the HVO Detained by the HVO", in the Chamber's review of the requirements for the application of Articles 2, 3, and 4 of the Statute.

[1808] Witness EA, T(F), p. 24313, closed session; P 10330 under seal, para. 4; Bruno Pinjuh, T(F), pp. 37344-37353; P 10336; P 01889; P 02604; P 03957; P 08705, p. 2 in the original version of the document.

[1809] P 07836; P 00734; P 08705, p. 2 in the original version of the document; P 00549.

[1810] P 05576; P 08705, p. 2 in the original version of the document; P 01242; P 00813; P 00332; P 00891; P 05467; P 00567; P 01855; P 01845; P 01850; P 06037, p. 1; P 03818; Witness CU, T(F), p. 12250; Andrew Pringle, T(F), pp. 24102-24105; Bruno Pinjuh, T(F), pp. 37299 and 37300; P 01683, p. 2.
The Chamber will closely examine the matter of whether there were HV officers in the HVO in connection with its review of the evidence in relation to Croatia's indirect intervention and overall control, in order to determine whether the conflict was international in nature. *See* "Evidence Regarding the Direct Intervention by HV Troops alongside the HVO in the Conflict with the ABiH" in the Chamber's review of the general requirements for the application of Articles 2, 3 and 5 of the Statute.

[1811] P 00798. Under the terms of this order, Milivoj Petković prohibited the members of the HVO from wearing insignia other than those of the HVO and ordered the members of the HV in the HZ H-B territory to wear the HVO insignia. *See* also P 02006.

[1812] *See* para. 64 of the Indictment in this regard.

HOS,[1813] whose members were not under the control of the HVO.[1814] In support of this statement, the Praljak Defence says that after various incidents between the HVO and the HOS in early 1992, the HOS was dissolved and that "certain residual units" operating locally remained in several sectors, including a small group in Gornji Vakuf, and that several units were integrated into the ABiH.[1815] However, the Chamber has no information corroborating the existence of these "residual units", mentioned by the Praljak Defence which would support a finding that they did exist.

777. The HOS was created in 1991 in Croatia as the paramilitary wing of the Croatian Party of Rights "HSP"[1816] and was active in Croatia as well as in BiH up until early August 1992, when Blaţ Kraljević, its commander,[1817] was assassinated, hastening its dissolution.[1818]

778. Although one might conceivably conclude, in light of an order by Sefer Halilović from 15 August 1992, that some former members of the HOS swore allegiance to the ABiH,[1819] the evidence shows that the former members of the HOS reached an agreement with the HVO as of 23 August 1992.[1820] Further to the agreement, the HOS troops joined the ranks of the HVO[1821] conducting military operations alongside the soldiers of the HVO[1822] notably in Prozor, in September and

[1813] Thus, in their final trial briefs, the Praljak and Stojić Defences contend that the HOS, not the HVO, raised the flag at Gornji Vakuf on 6 January 1993. *See* in this regard the Stojić Defence Final Trial Brief, para. 421 and Praljak Defence Final Trial Brief, paras 226 and 227.
[1814] Stojić Defence Final Trial Brief, para. 421, and Praljak Defence Final Trial Brief, paras 226 and 227.
[1815] Praljak Defence Final Trial Brief, para. 226. The Praljak Defence"s argument relies on a single document (5D 00130), an order by Sefer Halilović dated 15 August 1992, dispatched to the HOS units in Konjic, Jablanica and Prozor under Zvonko Lukić"s command ordering them to subordinate themselves to the TG-1/ABiH Tactical Group.
[1816] 3D 00331, p. 19; Witness U, P 10220 under seal, the *Naletilić and Martinović* Case, T(F), pp. 3024-3026; Josip Jurĉević, T(F), pp. 44763-44765; 3D 03720, p. 93; 5D 00093. Moreover, on 4 July 1992, Dobroslav Paraga, the President of the HSP, appointed the commander of the HOS in the municipality of Maglaj.
[1817] 3D 00331, p. 19; Witness U, P 10220 under seal, *Naletilić and Martinović* Case, T(F), p. 3026.
[1818] Josip Jurĉević, T(F), p. 44765; P09947, p. 3; 3D 00331, p. 19; Josip Manolić, T(F), p. 4727; Witness CR, T(F), p. 11828; Milivoj Petković, T(F), p. 50074; P 10108, p. 2; Nicholas Short, P 09804, *Blaškić* Case, T(F), pp. 22660 and 22661 and T(E), p. 24259; Alistair Rule, P 09803, *Kordić and Ĉerkez* Case, T(F), pp. 5390-5392; P 00859; P 00917, p. 2. The members of the HOS wore black – uniforms or jackets – and displayed HOS badges or insignia.
[1819] 5D 00130.
[1820] 3D 00331, p. 19.
[1821] 3D 00331, p. 19; 2D 03080, p. 1; P 10140 under seal, p. 3; P 09947, p. 3; Witness DR, P 09204 under seal, p. 8.
[1822] Alistair Rule, P 09803, the *Kordić and Ĉerkez* Case, T(E), pp. 5391 and 5392; P 00917, p. 2; P 10108, p. 2. The soldiers from another HVO unit wore camouflage uniforms displaying the "HOS" insignia.

October 1992,[1823] and in Gornji Vakuf in December 1992[1824] during which some former members of the HOS were still allowed to display the black uniform and insignia of the HOS.[1825] It is thus clear from the evidence in the case that most of the former members of the HOS joined the ranks of the HVO.

B. Overall Structure of the Armed Forces

779. The overall structure of the armed forces consisted of: (1) the Main Staff, which had command over the armed forces, and particularly the four operative zones, which in turn had command over the brigades. However, the Chamber notes (2) that the Central Bosnia OZ, and its special units "*Maturice*" and "*Apostoli*", had the benefit of a special regime within the armed forces.

1. Operative Zones and Brigades

780. During the first half of 1992, HVO armed forces spontaneously organised on the territory of the HZ H-B while the BiH conflict raged on.[1826] Before August 1992, they were organised in the municipalities according to a territorial principle.[1827] Towards the close of 1992, the HVO developed its structure.[1828] The headquarters of the municipal HVOs then disappeared and the units of the HVO were organised into brigades, with a view to improving the quality of the command and making the military units more mobile.[1829]

781. By order of the Main Staff[1830] on 31 August 1992, the four OZs were created and their geographic boundaries were set.[1831]

[1823] Omer Hujdur, T(F), pp. 3499, 3500, 3565-3567 and 3602-3604; P 01656, p. 5; P 09204 under seal, pp. 4 and 5; P 09702 under seal, p. 8; 2D 00055.
[1824] Nicholas Short, P 09804, *Blaškić* Case, T(E), pp. 24259, 22660 and 22661; Alistair Rule, P 09803, *Kordić and Čerkez* Case, T(F), pp. 5390-5392; P 00859; P 00917, p. 2; P 10108, p. 2.
[1825] Nicholas Short, P 09804, *Blaškić* Case, T(E), pp. 24259, 22660 and 22661; Alistair Rule, P 09803, *Kordić and Čerkez* Case, T(F), pp. 5390-5392; P 00859; P 00917, p. 2; P 10108, p. 2.
[1826] Slobodan Praljak, T(F), p. 42472; P 00907, p. 4.
[1827] Vinko Marić, T(F), pp. 48103, 48104 and 48293; P 10080 under seal, pp. 16-18; P 00416.
[1828] P 00907; 4D 00830, p. 4; Milivoj Petković, T(F), p. 50310; Vinko Marić, T(F), pp. 48103, 48104, 48293 and 48294.
[1829] P 00907, p. 6; 4D 00830, p. 4. Milivoj Petković, T(F), p. 50310; Vinko Marić, T(F), pp. 48103, 48104 and 48293.
[1830] P 00416. The Chamber notes that the order came from the "Main Staff"; the name of the party signing it cannot be seen and only the upper portion of the signature appears on the version of the document scanned into *ecourt*. However, the Chamber recalls that, as of that date, Milivoj Petković was the Chief of the Main Staff and observes that numerous other documents signed by Milivoj Petković contain a signature identical to this one; *see* for example 4D 00830; P 01754; P 02517. The

782. The OZs consisted of HVO brigades comprising battalions [1832] and companies.[1833]

783. In a report covering the period 14 April 1992 to 31 December 1992, sent by Milivoj Petković, Chief of the Main Staff, to the Government of the HVO of the HZ H-B and to the Head of the Department of Defence on 4 February 1993, the structure of the HVO armed forces was as follows:

- the Main Staff, based in Mostar;[1834]
- four OZs[1835] under the command of the Main Staff:[1836] the South-East OZ, based in Mostar; the North-West OZ, based in Tomislavgrad; the Central Bosnia OZ, based in Vitez; and the Posavina OZ, based in Slavonski Brod.[1837]

The OZs were distributed and commanded as follows:

- the South-East OZ, commanded by Miljenko Lasić,[1838] which included the 1st *Knez Domagoj* Brigade in Ĉapljina, the 2nd Brigade in Bijelo Polje, the 3rd Brigade in Mostar/Gnojnice, and the 4th Brigade in Ĉitluk, Grude and Ljubuški;

Chamber is therefore able to deduce that this order was in fact signed by Milivoj Petković, Chief of the Main Staff.

[1831] P 00907, p. 6; 4D 00830, p. 4; Milivoj Petković, T(F), p. 50310; Vinko Marić, T(F), pp. 48103, 48104 and 48293; Filip Filipović, T(F), pp. 47691 and 47701.

[1832] Witness 4D-AB, T(F), pp. 47064 and 47065, private session; P 02694; P 10143, p. 4; P 00616; P 00620; P 05933; 4D 01463; Dragan Jurić, T(F), p. 39278; P 03035.

[1833] P 10133 under seal, p. 2, para. 7, p. 3, para. 16 and para. 17, and p. 10, para. 103. As an example, the chain of command for the HVO 1st *Knez Domagoj* Brigade in October 1992 was established as follows: the Brigade Commander was Colonel Neđeljko Obradović, the Commander of the 1st Battalion was Zoran Delić, and the Commander of the 2nd Company was Nikica Prskalo. P 10143, p. 4; Filip Filipović, T(F), p. 47703.

[1834] P 00907, pp. 4 and 5; 4D 00830, pp. 2 and 3.

[1835] P 00416; 4D 01355, pp. 1 and 2. The four OZs were divided as follows: (1) the South-East OZ, comprising the municipalities of Mostar, Široki Brijeg, Ĉitluk, Ljubuški, Grude, Ĉapljina, Stolac, Ravno and Neum; (2) the North-West OZ, comprising the municipalities of Pošušje, Livno, Tomislavgrad, Kupres, Prozor, Gornji Vakuf, Bugojno, Jablanica and Konjic; (3) the Central-Bosnia OZ comprising the municipalities of Jajce, Donji Vakuf, Travnik, Novi Travnik, Vitez, Busovaĉa, Kiseljak, Ţepĉe, and (4) the Posavina OZ.

[1836] P 00907, pp. 4 and 5; 4D 00830, pp. 2 and 3.

[1837] P 00907, pp. 4 and 5; 4D 00830, pp. 2 and 3.

[1838] Between at least 28 October 1992 and 11 January 1994: P 00661; P 00813; P 00872; 4D 02021; P 01402; P 04774; 5D 04374; P 02030; 3D 01017; 4D 01685; 4D 01534; P 02685; P 03117; 4D 01547; 4D 01067; P 05750; P 05876; P 06524; P 06564; P 06822 P 06846; P 07559.

– the North-West OZ, commanded by Ţeljko Šiljeg [1839] and later by Zvonimir Skender, [1840] which included the *Kralj Tomislav* Brigade in Tomislavgrad, the *Petar Krešimir IV* Brigade in Livno, the *Eugen Kvaternik* Brigade in Bugojno, the *Ante Starĉević* Brigade in Gornji Vakuf, the *Rama* Brigade in Prozor and the *Herceg Stjepan* Brigade in Konjic and Jablanica;

– the Central-Bosnia OZ, commanded by Tihomir Blaškić, [1841] which included the 1st *Stjepan Tomašević* Brigade in Novi Travnik, the 2nd *Ban Josip Jelaĉić* Brigade in Kiseljak, the 3rd *Bobovac* Brigade in Vareš, the 4th *Travnik* Brigade in Travnik, the 5th *Nikola Šubić Zrinski* Brigade in Busovaĉa, the 6th Brigade *110th Usora* in Usora, the 7th Brigade *111th XP* in Ţepĉe and the 8th *Jure Francetić* Brigade in Zenica;

– the Posavina OZ.[1842]

784. On 3 September 1993, the South-East OZ was reorganised by its commanding officer, Miljenko Lasić, further to an order from the Chief of the Main Staff, Slobodan Praljak, dated 1 September 1993.[1843] The South-East OZ was then divided into three sectors: the North sector, the Mostar Defence Sector and the South Sector.[1844]

785. On 14 October 1993, Mate Boban, President of the HZ H-B and Supreme Commander of the Armed Forces, issued an order to the Ministry of Defence and to the Main Staff about changing the OZs into ZPs, specifying that the following districts would be established as of 15 October 1993:

– the Mostar ZP, replacing the South-East OZ;

[1839] Between at least 9 September 1992 and 28 October 1993: P 00460; P 00582; P 00612; P 00643; 3D 01271; P 00661; P 00781; P 00874; 3D 00510; P 01504; P 01938; 5D 02001; P 02864; P 03433; P 05876; P 06203; 3D 01782.
[1840] Between at least December 1993 and 24 February 1994: 3D 03710, p. 3. P 07423; P 11015; 2D 03045.
[1841] Between at least 27 June 1992 and 22 November 1993: P 00280; P 00661; P 00765; 2D 03068; 4D 01205; P 01850; P 01864 ; 4D 00594; 5D 04030; 2D 01407; P 03719; P 04268; P 04989; 4D 00576; P 06793.
[1842] P 00907, pp. 4 and 5; 4D 00830, pp. 2 and 3.
[1843] P 04774; P 04719.
[1844] P 04774; P 04719. The reorganisation is likewise confirmed by P 05271. The Commander of the North Sector was Ivan Primorac; the Commander of the Mostar Defence Sector, Zlatan Mijo Jelić; the Commander of the South Sector was NeĆeljko Obradović.

– the Vitez ZP, replacing the Central Bosnia OZ;[1845]

– the Tomislavgrad ZP, replacing the North-West OZ;

– the Orašje military district, replacing the Posavina OZ.[1846]

786. The switch-over from the OZs to the ZPs, however, did not modify the military structure of the HVO of the HZ H-B/HR H-B as such, inasmuch as the Main Staff retained its authority over each of the four ZPs.[1847]

787. Mate Boban"s order of 14 October 1993 also specified that all the commanders of the OZs were to remain in place within the ZPs.[1848]

2. Peculiarities of the Central Bosnia OZ and the *Maturice* and *Apostoli* Special Units

788. The Central Bosnia OZ had a special status and organisation. Under an order signed jointly by Mate Boban, President of the HVO, and Ante Roso, who was then general of the HV,[1849] Tihomir Blaškić was appointed commander of the Central Bosnia OZ on 27 June 1992.[1850] Tihomir Blaškić could appoint his brigade commanders personally,[1851] which was not the case for the other OZs, inasmuch as this power and authority belonged to Mate Boban.[1852] Tihomir Blaškić also introduced

[1845] Witness EA, T(F), pp. 24333, 24334, 24538 and 24539-24563, closed session; P 06792; P 06793; P 06813; P 06815. Here again, the specific status of the Central-Bosnia OZ/Vitez ZP is clear. Thus, on 22 November 1993, the commanding officer of the Vitez ZP, Tihomir Blaškić, issued an order reorganising the operational groups in the ZP, renaming the 2nd Operational Group in Kiseljak the "forward command post of the Central Bosnia Military District based in Kiseljak"; its short form employed the acronym "IZM 1 in Vitez". After this reorganisation, Ivica Rajić became the post commander of the forward command post in Kiseljak, a post he held until April or May 1993 but his responsibilities continued unchanged in practice.
[1846] P 05876.
[1847] Slobodan Praljak, T(F), pp. 43431 and 43432; P 09324.
[1848] P 05876; Witness EA, T(F), p. 24821, closed session. Moreover, on 14 February 1994, the commander of the Vitez ZP was still Tihomir Blaškić. The Chamber recalls that Mate Boban, Supreme Commander of the armed forces, appointed all the OZ commanders, all the brigade commanders in the South-East and North-West OZs (*see* "Enumerated Powers of the Supreme Command in the Appointment of Commanders in the Armed Forces" in the Chamber"s findings regarding the military structure of the HZ(R) H-B) and that Bruno Stojić, Head of the Department of Defence, appointed the members of the command within the brigades all the way up to the rank of deputy brigade commander (*see* "Authority of the Head of the Department of Defence and of the Minister of Defence Over Appointments within the Armed Forces" in the Chamber"s findings regarding the military structure of the HZ(R) H-B).
[1849] P 09596.
[1850] P 00280.
[1851] P 00280; 4D 00847; P 00765; P 00762; P 00766; P 00769; P 00774; P 00775; P 00777.
[1852] *See* for example: P 03363; P 03582; P 04234; P 04550; P 05566.

operational groups within the Central Bosnia OZ, whose commanders he appointed.[1853] These groups brought together several municipalities and brigades, including in particular the 2nd Operational Group, which covered, among other areas, the municipalities of Kiseljak, Vareš and Kakanj.[1854]

789. Moreover, the HVO in the Central Bosnia OZ also included the *Maturice* and *Apostoli* special units created in April and June 1993, respectively.[1855] They were based in Kiseljak, were directly integrated into the *Ban Josip Jelačić* Brigade[1856] and were under its command.[1857] They were placed at the disposal of the brigade commander for use in combat.[1858]

C. Chain of Command and Control in the Armed Forces

790. The Chamber observes that a principle of unity of command predominated in the HVO, in that the commanding officers at each level of the hierarchy had the authority to supervise, coordinate and command the units of the armed forces placed under their responsibility.[1859] Military expert *Andrew Pringle*[1860] said that the HVO chain of command operated as follows: the Supreme Commander of the Armed Forces of the HVO of the HZ H-B exercised direct command over the Main Staff, under whose command the OZs were placed, which themselves had authority over the brigade commanders.[1861] The Chamber, nevertheless, heard *Milan Gorjanc*, a military expert,[1862] state that within the armed forces of the HVO there was no effective chain of command and control between 1992 and early 1994.[1863] However, this expert did

[1853] P 00554. For the appointments of operational group commanders in his OZ, *see* P 00681; P02328.
[1854] P 00554.
[1855] P 10156, p. 1; P 02732 under seal, p. 1; P 09951; Witness EA, T(F), pp. 24351, 24353, 24354, 24705 and 24706, closed session; P 10330 under seal, para. 8; P 09882 under seal, p. 13, para. 71.
[1856] Witness EA, T(F), p. 24397, closed session; Witness L, T(F), p. 15745, closed session; P 09882 under seal, p. 14, para. 76; P 06647, p. 3; P 06870. An order from Viktor Andrić on 31 January 1994 shows that as of this date Marinko Ljoljo was still the commander of the *Maturice* and *Apostoli* special units: *See* P 07757; P 08162, p. 2.
[1857] P 10156, p. 1; P 02732 under seal, p. 1; P 09951; Witness EA, T(F), pp. 24351, 24353, 24354, 24705 and 24706, closed session; P 10330 under seal, para. 8; P 09882 under seal, p. 13, para. 71.
[1858] Witness EA, T(F), pp. 24350, 24351 and 24705, closed session.
[1859] P 09549, paras 24 and 27; P 00307, p. 4; P 04131; P 00586, p. 5; *see* also P 00095, p. 2; Andrew Pringle, T(F), pp. 24018, 24043, 24046 and 24047.
[1860] Andrew Pringle, T(F), pp. 23997 and 23998.
[1861] Andrew Pringle, T(F), pp. 24105-24111, 24017, 24018, 24174-24179, 24269 and 24270; P 04131; P 00586, p. 5; P 00095, p. 2; P 09549, paras 22 and 23; P 08128, p. 4.
[1862] Milan Gorjanc, T(F), p. 46024. *See* also in respect of his expert status "Order on Allocation of Time for the Examination of Expert Witness Milan Gorjanc", issued publicly by the Chamber on 12 October 2009.
[1863] Milan Gorjanc, T(F), pp. 46361, 46364 and 46366.

acknowledge that the chain of command could operate at the highest levels, while also stating that there were many problems in the lower echelons beneath the brigades, namely the battalions and the companies.[1864]

791. In view of the evidence as a whole, the Chamber concludes that the classic chain of command of the armed forces proceeded from the Main Staff, which was in direct contact with the OZs, which directed the HVO brigades.[1865] The Chamber has many orders of this sort by the OZ commanding officers addressed to the brigades,[1866] as well as several situation reports prepared by the brigade commanders to the OZs,[1867] attesting to the effective functioning of the chain of command.

792. The Chamber likewise notes that the commanders of the OZs transmitted the Chief of the Main Staff's orders to their brigades.[1868]

793. *Slobodan Praljak* stated in his testimony that the Main Staff of the HVO commanded the OZs but not the brigades directly.[1869] Although the customary routing of an order via the military chain of command went from the Chief of the Main Staff to the OZs, and from the commanders of the OZs to the brigade commanders and then to the lower echelons,[1870] the Chamber notes that the Chief of the Main Staff occasionally gave orders directly to various echelons – at the brigade, regimental or battalion levels – without those orders necessarily passing through every echelon in the chain of command.[1871]

794. The Chamber also observes that the brigades could dispatch situation reports directly to the Main Staff.[1872]

[1864] Milan Gorjanc, T(F), pp. 46361, 46364 and 46366.
[1865] Milivoj Petković, T(F), pp. 50322 and 50338-50340; P 11123; P 04131, p. 2.
[1866] 3D 02212; P 01300; P 02047; 3D 00017; P 01491; P 01888; 5D 04375; P 02618; P 04743; 3D 02617.
[1867] 2D 00771; P 01333; 4D 01674; P 01712; 2D 00641.
[1868] P 02040; P 02055; P 02526. Ţarko Tole, Chief of Staff, moreover issued a warning to the OZ on 13 August 1993 on how the orders from the Main Staff to the OZs were to be transmitted to the brigades. In the warning, he reminded them *inter alia* that no order or other document involving headquarters was to be photocopied or dispatched in its original version directly to the subordinate units and that the OZ commanders were themselves required to issue orders based on the order issued by the Main Staff. *See* 3D 01151.
[1869] Slobodan Praljak, T(F), pp. 41579-41580; P 04131.
[1870] *See* "Orders of the Main Staff to the Armed Forces" in the Chamber's findings regarding the military structure of the HZ(R) H-B.
[1871] P 04829; 3D 01195.
[1872] P 01333; P 01418; P 03337; P 04594; 3D 02400.

795. Lastly, Bruno Stojić, Head of the Department of Defence, also gave orders directly – that is, without going through the Main Staff – to the commanders of the OZs and to the brigade commanders.[1873] Thus, on 26 January 1993, he ordered the South-East, North-West and Central-Bosnia OZs to allow all humanitarian aid vehicles and convoys escorted by UNPROFOR, the International Red Cross and the UNHCR to move about.[1874]

796. Although the Chamber notes that in certain cases the Chief of the Main Staff or the Head of the Department of Defence did not follow the chain of command, or that there were coordination problems – e.g. as attested by the fact that Slobodan Praljak"s orders of 25 July 1993 for sending troop reinforcements to Prozor were not obeyed[1875] – it is clear from the evidence that such operational problems were not such as to upset the proper functioning of the military chain of command between the Main Staff, the OZs, the brigades and the lower echelons.

D. Units Deployed in Support of the Armed Forces and their Chain of Command

797. The units deployed in support of the armed forces included, among others, the Military Police units. The operations of these units will, as previously mentioned, be specifically assessed.[1876] This notwithstanding, in the following section the Chamber will analyse (1) the operations and reassignment of the artillery and the air force group, (2) the professional units, and (3) the *Domobrani*, all of which were deployed in support of the armed forces.

1. Artillery and the Air Force Group

798. The Artillery and the Air Force Group were specific units responsible for providing support to the brigades and the OZs in their respective domains.

[1873] P 01098; P 00984; P 03163.
[1874] P 01316.
[1875] 3D 00640; 3D 01097; 3D 01101; 5D 00546; P 03706.
[1876] *See* "The Military Police" in the Chamber"s findings regarding the military structure of the HZ(R) H-B.

799. The artillery was divided up among the various organs of the military hierarchy, within the Main Staff,[1877] the OZs and the brigades.[1878]

800. In the Main Staff, there was a Chief of Artillery.[1879] *Vinko Marić*, the commanding officer responsible for artillery within the South-East OZ,[1880] explained the role of the chief of artillery in the Main Staff and his relationship with the artillery units in the field. Using the example of the South-East OZ, he explained that the HVO Main Staff was kept informed, *inter alia*, about the ammunitions available for each brigade, via reports from the artillery commander of the South-East OZ to the Chief of Artillery at the Main Staff,[1881] as well as through reports prepared for him by the commanding officer of the OZ.[1882]

801. Moreover, in the South-East OZ there was a Mixed Rocket Launcher Regiment ("MRTP") or Rocket and Artillery Regiment ("RTM"),[1883] based in Široki Brijeg,[1884] which had the heaviest equipment – including three 130 mm cannons.[1885] It was responsible for supporting the infantry units pursuant to the orders issued by the OZ commander.[1886] On the orders of Slobodan Praljak, Commander of the Main Staff,[1887] the regiment was placed under the direct command of the Main Staff sometime between 12 August 1993 and 1 December 1993, on which date Ante Roso,

[1877] P 00502, p. 6; 4D 01676; P 02712; P 01683; P 01572, p. 8; 4D 01600; P 04495.
[1878] Slobodan Praljak, T(F), pp. 43568, 43569 and 43572, 43574, 43575 and 43591; Vinko Marić, T(F), pp. 48111, 48127, 48128, 48130-48132, 48250 and 48251; 4D 01675; P 02712; P 04131, p. 2; P 03979.
[1879] P 00502, p. 6; 4D 01676; P 02712; P 01683; P 01572, p. 8; 4D 01600; P 04495.
[1880] Vinko Marić held this post from 10 November 1992 to April 1994: Vinko Marić, T(F), pp. 48090 and 48091.
[1881] Vinko Marić, T(F), pp. 48257 and 4D 01675.
[1882] Vinko Marić, T(F), pp. 48260, 48263 48260 and 48261, 48287; 4D 01625.
[1883] Vinko Marić, T(F), pp. 48122, 48123 and 48125. The witness explained that nomenclature in the artillery was different from the nomenclature in the infantry, particularly in that the artillery terminology was: platoon, battery, battalion and regiment. He said that the mixed regiment of artillery and rocket-launchers was called "regiment" but that given the number of its members, it was more of a reinforced battalion than a regiment – the implication being that they were not sufficiently manned. An artillery regiment was equivalent to a battalion in the infantry, 4D 01676.
[1884] Vinko Marić, T(F), pp. 48125-48127.
[1885] Slobodan Praljak, T(F), pp. 43568, 43569 and 43572; Vinko Marić, T(F), pp. 48111, 48127, 48128, 48130-48132, 48250 and 48251; P 04131, p. 2.
[1886] Vinko Marić, T(F), pp. 48122-48125, 48127 and 48128, 48247-48249 and 48253; P 01872; P 01881; P 01998; P 07559, p. 4. For example, on 11 January 1994, the Mostar ZP received support from the Regiment in its combat duties.
[1887] P 04131; Slobodan Praljak, T(F), pp. 43567 and 43568; Vinko Marić, T(F), pp. 48122-48124, 48128, 48129, 48248, 48251 and 48252.

then Chief of the Main Staff, ordered that the regiment be resubordinated to the Mostar ZP.[1888]

802. The Chamber has little information concerning the artillery units within the North-West and Central Bosnia OZs. Nevertheless, the Chamber heard *Vinko Marić,*[1889] explain how the artillery units worked generally, stating that, at the OZ level, decisions to deploy the artillery were taken by the commanding officer of the OZ.[1890]

803. The brigades also had artillery units placed directly under their direct command, supplied with mortars of a calibre inferior to that of the guns used by the "RTM" artillery regiment at Široki Brijeg.[1891] *Vinko Marić* said that, at the brigade level, decisions concerning the deployment of artillery were taken by the brigade commander.[1892]

804. Nonetheless, the Chamber notes that on 26 September 1993, Slobodan Praljak, Commander of the Main Staff of the HVO, expressly ordered the commanders of the North-West and South-East OZs and the brigade commanders within these OZs, who were responsible for mortar shelling, to request advance permission from the Main Staff of the HVO to fire[1893] and that, on 15 February 1994, Ante Roso, the Chief of the Main Staff of the HVO, ordered the commander of the Mostar ZP to immediately halt the use of heavy artillery on the frontlines towards East Mostar.[1894] The Chamber therefore observes that the Commander of the Main Staff could give orders regarding artillery to the OZ/ZP commanders as well as to the brigade commanders.

805. In view of the evidence, the Chamber thus observes that brigade artillery was under the command of the brigade commander, that OZ artillery was under the command of the OZ commander and that the Široki Brijeg artillery regiment was under the command of the commander of the South-East OZ at all times relevant to

[1888] P 06990.
[1889] Vinko Marić was the commander in charge of artillery for the South-East OZ between 10 November 1992 and April 1994. Vinko Marić, T(F), pp. 48090 and 48091.
[1890] Vinko Marić, T(F), p. 48111.
[1891] Vinko Marić, T(F), pp. 48130, 48131, 48250, 48251, 48310, private session, and 48352. Vinko Marić indicated that the artillery units at the brigade level had 60, 82 and 120 millimetre guns. *See* also for artillery types at the brigade level: P 02712, p. 1. The report shows that the 4th Brigade artillery had a multiple rocket launcher.
[1892] Vinko Marić, T(F), p. 48111.
[1893] P 05402.

the Indictment, save for the period from 12 August 1993 to 1 December 1993, during which time it was under the direct command of the Main Staff. In any event, the artillery units, whether under the command of the brigades or the OZs, were at least indirectly placed under the command of the Main Staff because it exercised command directly over the OZs, which in turn exercised command over the brigades, as previously determined by the Chamber.[1895]

806. Lastly, the armed forces of the HVO had the support of an "Air Force Group", consisting of helicopters used for the evacuation of wounded from Mostar and Central Bosnia.[1896] On orders from Slobodan Praljak on 12 August 1993, the said Air Force Group was placed under the direct command of the Main Staff.[1897]

2. Professional Units

807. As early as 1992,[1898] there were units within the armed forces known as "professional".[1899] *Slobodan Praljak* indicated during his testimony that, in the HVO armed forces, the term "professional" applied to units continually mobilised and ready for action at any moment.[1900] It appears from various exhibits that the professional units were comprised of fewer than 1,000 soldiers.[1901]

808. An assistant to the Chief of the Main Staff, Ivica Primorac, was specifically placed in charge of the professional units.[1902] He established the structure of the professional units in December 1992.[1903] In 1992 and in 1993, the HVO included as

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[1894] P 07868.
[1895] *See* "Operative Zones and the Brigades" in the Chamber's findings regarding the military structure of the HZ(R) H-B.
[1896] Slobodan Praljak, T(F), pp. 43557 and 43578; P 04131, p. 2.
[1897] P 04131; Slobodan Praljak, T(F), p. 43568.
[1898] P 00965. These units were already clearly established and operational when the report was drafted in late 1992. Moreover, the post of assistant in charge of the professional units had existed since at least 15 September 1992. P 00586, p. 4.
[1899] The Chamber observes that there appears to be some confusion between the terms "professional" units and "special" units, particularly in the translations of the parties' final trial briefs. For purposes of this analysis, the Chamber will designate as "professional units" the following units: the KB and its ATGs, and the *Bruno Bušić* and *Ludvig Pavlović* Regiments. As concerns the "special units", it is the Chamber's understanding that these were units created directly within the brigades, such as the "*Maturice*" and "*Apostoli*" units in Kiseljak. *See* "Specificity of the Central Bosnia OZ and the *Maturice* and *Apostoli* Special Units" in the Chamber's findings regarding the military structure of the HZ(R) H-B.
[1900] In other words, they did not return to their homes once their missions were completed. Slobodan Praljak, T(F), pp. 41071, 41072, 43433 and 43424; P 09324.
[1901] Slobodan Praljak, T(F), p. 41073; 4D 00830, p. 3.
[1902] P 00586, p. 4; P 01683; P 01572, p. 9; P 01787.
[1903] P 00965; 4D 01033; P 01787; 4D 01034.

professional units: the *Bruno Bušić* Regiment, the *Ludvig Pavlović* PPN ("Special Purposes Unit"), the *Vitezovi* PPN ("Special Purposes Unit"), the *Baja Kraljević* ATG ("Anti-Terrorist Group") and the *Kaţnjeničk a Bojna* (often translated as the "Convicts Battalion", the "Disciplinary Battalion" or even just, "the KB").[1904]

809. On 23 December 1993, Ante Roso ordered the ATGs and PPNs to be dissolved effective 1 January 1994, with the exception of the *Ludvig Pavlović* and *Bruno Bušić* professional units.[1905]

a) The *Vitezovi* PPN

810. The Chamber observes that the *Vitezovi* unit, which was a professional unit, was located in Central Bosnia.[1906] The Prosecution contends that the unit was under the direct command of the Main Staff.[1907] The Chamber observes that the unit was in fact under the direct command of the Main Staff of the HVO until 19 January 1993 but that after that date it was permanently subordinated to the commander of the Central Bosnia OZ.[1908] This subordination to the commander of the Central Bosnia OZ did not however prevent the unit from dispatching reports on the fighting in Central Bosnia to Bruno Stojić, Head of the Department of Defence, and to Milivoj Petković, Chief of the Main Staff, as it did in fact do on 25 April 1993.[1909]

b) The *Bruno Bušić* Regiment and the *Ludvig Pavlović* PPN

811. The Prosecution submits that the *Bruno Bušić* and *Ludvig Pavlović* units were included among the professional units in the HVO, whose use was overseen by the Head of the Department of Defence and the Chief of the Main Staff and could be placed under the orders of other HVO commanders for short-term operations.[1910]

812. The Praljak Defence contends that the Main Staff had no authority whatsoever over certain units, such as the KB.[1911] The Chamber however notes that the Praljak

[1904] P 00965; 4D 01033.
[1905] P 07315.
[1906] P 00965; 4D 01033.
[1907] Prosecution Final Trial Brief, para. 648.
[1908] P 00965; 4D 01033; P 07892, pp. 1 and 2-4; P 01921; P 02087; Milivoj Petković, T(F), pp. 50322 and 50338-50340; P 11123; 4D 00623.
[1909] P 02087.
[1910] Prosecution Final Trial Brief, paras 296 and 648.
[1911] Praljak Defence Final Trial Brief, para. 528.

Defence fails to elaborate on the *Bruno Bušić* Regiment and the *Ludvig Pavlović* PPN.[1912]

813. At the time they were created, the *Bruno Bušić* Regiment and the *Ludvig Pavlović* PPN formed part of the HVO"s professional units.[1913] The *Ludvig Pavlović* PPN was brought into the HVO in June 1992,[1914] and the *Bruno Bušić* Regiment, commanded by Anton Luburić,[1915] in September 1992.[1916]

814. The Chamber observes that the two units were under the direct command of the Chief of the Main Staff, who determined their deployments until at least 6 January 1993.[1917] The Chamber notes that direct command by the Chief of the Main Staff over these units is recalled in the order of Slobodan Praljak on 12 August 1993 regarding the operation of the military chain of command.[1918] However, as the evidence shows and the Prosecution also affirms, once deployed in the field, the units were subordinated to the commander of the OZ where they were deployed.[1919]

c) The KB and its ATGs

815. Once it has analysed (i) the organisation of the KB and its ATGs, the Chamber will review (ii) its placement within the military chain of command and (iii) the Prosecution"s allegation of a link between Mladen Naletilić, the KB and its ATGs and the Head of the Department of Defence, Bruno Stojić.[1920]

i. Organisation of the KB and the ATGs

816. Mladen Naletilić, *alias* "Tuta", is cited in the Indictment as being among the members of the alleged JCE.[1921] The Prosecution contends that Mladen Naletilić, the

[1912] Praljak Defence Final Trial Brief, para. 528.
[1913] P 00965, p. 1.
[1914] Dragan Ćurčić, T(F), pp. 45798, 45954-45956.
[1915] P 00804; P 00965; P 01064; 4D 01033; 2D 01351.
[1916] 2D 01353, p. 2.
[1917] P 01064; P 01896; P 02209.
[1918] P 04131; P 04439; 3D 01147.
[1919] 4D 01034; 5D 04387, p. 2, para. 2; P 04749; 4D 00618; Dragan Ćurčić, T(F), pp. 45804, 45814, 45833, 45835, 45838, 45879-45881; Slobodan Praljak, T(F), pp. 43455, 43456, 43557 and 43433; Milivoj Petković, T(F), pp. 50322, 50338-50340 and 50807.
[1920] Prosecution Final Trial Brief, paras 293 and 296.
[1921] Indictment, para. 16.

KB and several antiterrorist units (ATGs) were part of the armed forces of the HVO, were placed under his command and were subject to his "overall control".[1922]

817. As of 31 December 1992, the KB was under the command of Mario Hrkać.[1923] Afterwards, Mladen Naletilić served as commander, at least between 22 February 1993 and 2 December 1993.[1924] Some of the evidence shows that Ivan Andabak also exercised command responsibilities within the KB, even though the Chamber does not know his precise function.[1925]

818. Anti-terrorist groups (ATGs) were placed under the KB and were therefore also under the command of Mladen Naletilić at least between 22 February 1993 and 2 December 1993.[1926] Among the ATGs placed under the KB,[1927] the Chamber notes the *Benko Penavić* ATG, under the command of Mario Miličević,[1928] and the *Vinko Škrobo* ATG (previously called the *Mrmak* ATG) under the command of Vinko Martinović *alias* "Štela".[1929]

819. The Chamber also notes that although the *Baja Kraljević* ATG appears as distinct from the KB in the reports by the Assistant Chief of the Main Staff

[1922] Prosecution Final Trial Brief, paras 293 and 296.
[1923] P 00965; Slobodan Praljak, T(F), pp. 43799 and 43800; P 09324.
[1924] P 01531; P 01701; P 02118; P 02325; P 02783; P 03309; P 03910; P 05432; P 06170; P 06664; P 07009.
[1925] P 03219; P 05579; P 05477, p. 2. According to Adjudicated Fact no. 40 from the *Naletilić* Judgement, Mario Hrkać and Ivan Andabak were under the orders of Mladen Naletilić. Decision of 7 September 2006, Adjudicated Fact no. 40 (*Naletilić* Judgement, para. 352). The Chamber heard several witnesses state that Ivan Andabak was the commander of the KB yet were unable to specify exactly when he held office. *See* to this effect: Witness LL, P 09881 under seal, the *Naletilić* Case, T(F), pp. 5217 and 5251; P 10270 under seal, pp. 4 and 5; Dragan Ćurčić, T(F), p. 45813; 4D 01356, p. 1; Slobodan Praljak, T(F), pp. 43799 and 43800; P 09324.
[1926] P 07009. The list of ATGs: *Miljenko Bašić* ATG, *Goran Spajić* ATG, *Ţelko Bošnjak* ATG, *Boka Barbarić* ATG, *Croatian Legion of Honour* ATG, *Stanko Zlomislić-Ciciban* ATG, *Ivan Stanić-Ćićo* ATG, *Benko Penavić* ATG, *Kruško* ATG and *Vinko Škrbo* ATG. *See* also P 01531; P 01701; P 02118; P 02325; P 02783; P 03309; P 03910; P 05432; P 06170; P 06664.
[1927] P 07009.
[1928] P 03111; P 05251; P05271. On page 2, it seems that Mario Miličević *alias* "Baja" assumed command of the *Benko Penavić* ATG towards the end of September 1993. *See* also P 05747, pp. 05888 and 06414.
[1929] P 03177, pp. 1, 3 and 6; P 10037, para. 14; P 10208, paras 1, 13, 14 and 27; Witness AC, P10222 under seal, *Martinović and Naletilić* Case, T(F), pp. 7915, 7916, 7977 and 7978; P 09083 under seal; P 09085 under seal; P 10208, para. 14. *See* also Decision of 7 September 2006, Adjudicated Fact no. 137 (*Naletilić* Judgement, para. 621): the *Vinko Škrobo* ATG was placed under the authority of Vinko Martinović.

responsible for professional units,[1930] it was, just like the *Benko Penavić* and *Vinko Škrobo* ATGs, placed under the KB and under the command of Mladen Naletilić.[1931]

820. The Chamber concludes that the members of the KB and the ATGs engaged in "criminal" conduct, had serious disciplinary problems and were often in conflict with the units of the armed forces of the HVO,[1932] particularly the Military Police.[1933] This is apparent *inter alia* from a report by the Deputy Commander of the Military Police in Prozor, addressed on 20 June 1993 to Valentin Ćorić, Chief of the Military Police Administration, and to Bruno Stojić, Head of the Department of Defence, citing breaches of law and order committed by "Tuta"s men" in Prozor municipality on 17 and 18 June 1993, and the offences committed by Tuta"s men.[1934] The report also indicated that "Tuta"s men" had led a direct assault on the Military Police building in Prozor, captured four military policemen who were there and confiscated their arms, prior to releasing them.[1935] According to the report, thanks to the intervention of Slobodan Praljak and Ţelko Šiljeg, the situation eventually calmed down.[1936]

821. Furthermore, a report sent to the commanding officer of the South-East OZ on 7 July 1993 and an order by the Chief of the Main Staff on 12 April 1994 show that it was well known that the ATGs could not be trusted.[1937] However, the Chamber observes that according to the report of an international organisation on 23 August 1993, Bruno Stojić, then Minister of Defence, said he had full confidence in the "*Bruno Bušić*, *Ludvig Pavlović* and Tuta […] units".[1938]

ii. Placement of the KB and its ATGs within the Military Chain of Command

822. The Prosecution alleges that the KB and several of its ATGs formed part of the armed forces of the HVO[1939] and that they were under the direct command of the

[1930] P 00965; 4D 01033.
[1931] P 01330; P 01531; P 02615; 4D 01034; Decision of 7 September 2006, Adjudicated Fact no. 29 (*Naletilić* Judgement, para. 120).
[1932] P 00931; P 02871; P 04749; P 05936; P 07559, pp. 3 and 7.
[1933] P 02594; P 02863; P 04594, pp. 4-6.
[1934] P 02863.
[1935] P 02863.
[1936] P 02863.
[1937] P 03260, p. 3; P 08188, p. 2.
[1938] P 04435 under seal, p. 5; P 04401 under seal, pp. 4 and 5.
[1939] Prosecution Final Trial Brief, paras 293 and 296.

Main Staff and the Department of Defence.[1940] In particular, the Prosecution contends that Bruno Stojić worked closely with Mladen Naletilić.[1941]

823. The Praljak and Petković Defence teams contest those allegations, arguing that the KB and its ATGs lay outside of the command and control of the Main Staff.[1942] The Petković Defence says that they had the status of HVO special purpose units and that they were placed directly under the Supreme Commander.[1943]

824. Without directly addressing the matter of the KB and its ATGs, the Stojić Defence argues more generally that Bruno Stojić was not in the military chain of command and thus had no "effective control" over the members of the HVO armed forces.[1944]

825. The Chamber heard several witnesses, including *Milivoj Petković* testify that the KB was under the authority of Mate Boban, not the Main Staff.[1945] Despite this, the Chamber has no order in its possession sent by Mate Boban to the KB and its ATGs nor any other document from the HVO which could attest to Mate Boban"s directing the KB and its ATGs.

826. However, the Chamber notes that in the evidence there is an order dated 12 August 1993 from Slobodan Praljak, Commander of the Main Staff, regarding the operation of the military chain of command, in which he expressly orders the Main Staff to exercise direct command over "Tuta"s ATG".[1946]

[1940] Prosecution Final Trial Brief, para. 295.
[1941] Prosecution Final Trial Brief, para. 295.
[1942] Praljak Defence Final Trial Brief, para. 528; Petković Defence Final Trial Brief, para. 601.
[1943] Petković Defence Final Trial Brief, para. 601.
[1944] Stojić Defence Final Trial Brief, para. 234.
[1945] Milivoj Petković, T(F), pp. 49389, 49390, 49393, 49394, 49455, 49804 and 49805; Ivan Bandić, T(F), pp. 38073 and 38074; P 05226; Dragan Ćurčić, T(F), p. 45814; Vinko Marić, T(F), pp. 48359-48363, 48401-48404; 4D 00618; 4D 01356. During his testimony, *Slobodan Praljak* gave contradictory information about the KB"s standing within the armed forces, which is nevertheless contradicted in his final trial brief: Slobodan Praljak, T(F), pp. 42382, 42384, 43433-43434, 43439-43440, 43505-43508, 43797, 43799-43801 and 43805; Praljak Defence Final Trial Brief, para. 528; *see* also P 07419; P 09324.
[1946] P 04131.

827. In the same vein, the Chamber notes that, in an order dated 23 December 1993, issued by Ante Roso, Chief of the Main Staff of the HVO, an ATG unit was formed out of KB units and placed under the command of the Main Staff.[1947]

828. Moreover, the Chamber observes that there are several orders and reports referring to deployments of the KB and its ATGs in the South-East OZ, particularly in Mostar starting in July 1993 and continuing until at least January 1994; that these deployments were carried out pursuant to the orders of the Chief of the Main Staff of the HVO, as relayed by the commanding officer of the OZ and that, once deployed, they were placed under the OZ"s commanding officer.[1948]

829. In view of the evidence, the Chamber finds that the KB and its ATGs, under the command of Mladen Naletilić, were indeed deployed in the OZs pursuant to the orders issued by the Main Staff and that, once deployed, they were placed under the commander of the OZ in which they went into action.[1949] Consequently, just as with the *Bruno Bušić* Regiment and the *Ludvig Pavlović* PPN,[1950] the KB and its ATGs were integrated into the overall chain of command and reported directly to the Main Staff.

iii. Relationship of the Department of Defence to Mladen Naletilić, the KB and its ATGs

830. The Prosecution asserts that Bruno Stojić, Head of the Department of Defence, worked closely with Mladen Naletilić and contends that their offices were located next to one another in the HVO headquarters building in West Mostar; that he wrote on Mladen Naletilić"s door that Naletilić was "Adviser to the HVO Head of the

[1947] P 07315; P 07377.
[1948] P 03466, p. 2. The fact that the *Benko Penavić* and *Vinko Škrobo* ATGs were deployed in the city of Mostar (Mostar Defence Sector) as of July 1993 is confirmed by: Decision of 7 September 2006, Adjudicated Fact no. 168 (*Naletilić* Judgement, para. 137); P 03128, P 03260; P 04499, P 04401 under seal, p. 4; P 04498; P 04719, P 04774. While testifying, *Slobodan Praljak* said at first that he had signed this order but that it never arrived in the OZ. Slobodan Praljak, T(F), pp. 43795 and 43796. Then, later, during questioning by the Prosecution, Slobodan Praljak confirmed that by this order Miljenko Lašić was putting into effect Slobodan Praljak"s earlier order (P 04719). He likewise confirmed that Miljenko Lašić had command over the 3 sectors (T(F), p. 44380). *Slobodan Praljak* explained that Mr Jelić had command over one-third of the South-East OZ (defence of the town of Mostar), and that he was subordinate to Commander M. Lašić, himself subordinated to the Main Staff, T(F), pp. 44382 and 44383; P 09597; P 05271; P 10208, para. 14; P 05750, p. 1; P06721, p. 1; P 07314; P 07559.
[1949] P 04131; P 00965; P 10025; P 03773.

Defence Department for Security Matters"; and that Mladen Naletilić was listed in the March 1993 telephone directory of the Main Staff of the HVO under the heading "Defence Department", third in the listing after Bruno Stojić and his deputy, Slobodan Boţ ić.[1951]

831. More specifically in support of its allegation that the Department of Defence had command authority over the KB and its ATGs, the Prosecution alleges that the *Benko Penavić* and *Vinko Škrobo* ATGs were created in April 1993, under Bruno Stojić"s supervision.[1952] In support of this argument, the Prosecution refers to Exhibit P 03454, a request from Bruno Stojić to the Department of Justice and Administration, asking that a stamp be manufactured to meet the requirements of the "*Mrmak*" ATG (later to become the *Vinko Škrobo* ATG).[1953]

832. The Chamber considers that there is no support for a finding solely on the basis of document P 03454 that the *Benko Penavić* and *Vinko Škrobo* ATGs were created under Bruno Stojić"s supervision. However, the Chamber has other evidence about these units and their connection with Bruno Stojić.

833. Concerning the nature of the ties between Mladen Naletilić and Bruno Stojić, the Chamber notes that *Josip Praljak's* testimony, [1954] and several exhibits, particularly a certificate dated 10 September 1992 and signed by Bruno Stojić, that Mladen Naletilić was an "employee" of the Department of Defence;[1955] that he was the "advisor" to Bruno Stojić for matters of security, and that their offices were side by side.[1956]

834. The Chamber further notes that Mladen Naletilić went to the Head of the Department of Defence on several occasions between 1 April 1993 and 18 October 1993, seeking inter alia the promotion of certain members of the KB to higher

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[1950] *See* "*Bruno Bušić* Regiment and *Ludvig Pavlović* PPN" in the Chamber"s findings regarding the military structure of the HZ(R) H-B.
[1951] Prosecution Final Trial Brief, para. 295.
[1952] Prosecution Final Trial Brief, para. 295.
[1953] P 03454.
[1954] *Josip Praljak* was the *de facto* deputy warden of the Heliodrom from 21 September 1992 to 10 December 1993 and co-warden of the Heliodrom from 10 December 1993 to 1 July 1994. Josip Praljak, T(F), pp. 14639 and 14641.
[1955] P 00464.
[1956] P 06844, p. 1; Josip Praljak, T(F), pp. 14799 and 14800.

ranks,[1957] funds for procurement of a rifle for the requirements of the KB and the *Baja Kraljević* ATG,[1958] currency payments in Croatian dinars in order to finance the KB[1959] and to have petrol coupons issued.[1960] Bruno Stojić, Head of the Department of Defence, also congratulated the KB twice on combat operations at Gornji Vakuf on 30 July 1993 and at Raštani on 23 September 1993, respectively.[1961] On 25 October 1993, Bruno Stojić also spoke to the commanding officer of the *Boţan Šimović* garrison – a military training centre in Ĉapljina[1962] – informing him that soldiers who had completed their training and were interested in joining the KB should receive permission to do so.[1963]

835. In view of the evidence, the Chamber can find that there were structural and operational ties between Bruno Stojić and Mladen Stojić and his ATGs. However, the Chamber does not have any order sent by the Head of the Department of Defence to Mladen Naletilić, to the KB or to its ATGs or any testimony to support a finding that the Department of Defence exercised command authority over the KB and its ATGs under the command of Mladen Naletilić.

3. The *Domobrani*

836. Inasmuch as paragraph 25 of the Indictment establishes a non-exhaustive listing of the armed forces of Herceg-Bosna/the HVO and inasmuch as the evidence shows that the "*Domobrani*" constituted a specific class of combatants in the HZ H-B

[1957] P 02118; P 05432; P 05937. *See* also the proposal for promotion to the upper ranks of the KB which Mladen Naletilić sent to Slodoban Boţić (whose function is not specified in the document but who came to testify before the Chamber and said that he held the post of Assistant Head of the Department of Defence of the HZ H-B between September 1992 and 20 November 1993: Slobodan Boţić, T(F), pp. 36150, 36157 and 36158 and 36675); P 02783. According to *Slobodan Boţić*, nothing was done following this letter and the first ranks of the armed forces were assigned only as of May 1994, Slobodan Boţić, T(F), p. 36644.
[1958] P 02615.
[1959] P 01701.
[1960] P 01776.
[1961] P 03823; P 05303.
[1962] P 11061; 2D 01453.
[1963] P 06087.

territory,[1964] specifically in certain detention facilities where crimes are alleged (e.g. Dretelj and Gabela),[1965] the Chamber deems it necessary to discuss this issue below.

837. The Chamber observes that the *Domobrani* units, consisting of men older than the HVO soldiers,[1966] were created subsequent to a decision dated 3 November 1992 taken by Mate Boban, followed by an order dated 5 February 1993 from Bruno Stojić, and an order dated 8 February 1993 from Milivoj Petković.[1967] The *Domobrani* units were established to "protect territories and sites of strategic significance for the defence [of the HZ H-B] and to provide support for the Armed Forces".[1968]

838. In the final trial briefs, the Defence teams spoke to the chain of command in which the *Domobrani* were integrated. For instance, the Stojić and Ćorić Defence teams contend that the *Domobrani* units formed part of the military chain of command and were placed under the Main Staff of the HVO and the OZ commanders.[1969] The Petković Defence, for its part, simply makes the point that the Chief of the Main Staff had an assistant in charge of the *Domobrani*,[1970] something the Chamber previously established in the part dealing with the Main Staff.[1971]

839. The Chamber notes that Bruno Stojić"s order of 5 February 1993 drew up a non-exhaustive listing of the territories and places of strategic interest for defence, including but without specifying location: electrical power plants, radio relay stations, hospitals and military production factories or silos.[1972] It likewise points out that Milivoj Petković, in his order of 8 February 1993, instructed the South-East, North-

[1964] Inasmuch as different terms are used to denote these – in English, in French and in BCS – and as the profusion of terms may lead to confusion, the Chamber has elected to use simply the BCS term: "*Domobrani*".
[1965] For Dretelj Prison, *see* paras 187 to 194 of the Indictment; for Gabela Prison, *see* paras 195 to 203 of the Indictment. *See* also Prosecution Final Trial Brief, para. 1073 for the Vitina-Otok Camp, para. 1074 for Dretelj Prison, and para. 1076 for Gabela Prison.
[1966] Witness CC, T(F), pp. 10361, 10371 and 10372; Bruno Pinjuh, T(F), pp. 37249, 37250 and 37294.
[1967] P 00680, Articles 3 and 7; P 01424, pp. 1 and 2; P 01441; P 01587.
[1968] P 01424, p. 1; P 04774, p. 2. In terms of support for the armed forces, for example, in September 1993, the *Domobrani* Regiment of Mostar was deployed in Sector Mostar Defence as well as in Sector South.
[1969] Stojić Defence Final Trial Brief, para. 516; Ćorić Defence Final Trial Brief, paras 87, 89 and 574.
[1970] Petković Defence Final Trial Brief, paras 81 and 82.
[1971] *See* "Structure and Operation of the Main Staff" in the Chamber"s findings regarding the military structure of the HZ(R) H-B.
[1972] Bruno Pinjuh, T(F), pp. 37249-37295; P 01424, pp. 1 and 2.

West and Central-Bosnia OZs to provide a listing of these locations of strategic interest, an order that was carried out only by the Central-Bosnia OZ.[1973]

840. The Chamber does not have precise lists of these locations of strategic interest. However, the Chamber reviewed several documents admitted into the record which indicate that the *Domobrani* units were specifically responsible for monitoring checkpoints and factories.[1974] They were also deployed in certain detention facilities, particularly Dretelj, Gabela and Vitina-Otok.[1975]

841. Mate Boban"s decision of 3 November 1992 creating the *Domobrani* units provided that these units and their general staff would be subordinated to the commanders of the OZs and to the Main Staff.[1976] Moreover, Milivoj Petković"s order of 8 February 1993 provided that following their creation, they would be placed under the command of the appropriate OZ.[1977]

842. The Chamber also admitted into the record several orders sent by the brigade commanders to the *Domobrani*,[1978] as attested to by the order from Ţeljko Šiljeg on 22 May 1993, indicating that the *Domobrani* units were to be subordinated to the brigade command for the geographic area in which they were deployed.[1979]

843. In view of this evidence, the Chamber finds that the *Domobrani* were integrated into the military chain of command, that is, the Main Staff, the OZs and the brigades.

844. Concerning their link to the Department of Defence, the Chamber notes that even if Bruno Stojić drew up a list of territories and places requiring the protection of

[1973] P 01424; P 01441; P 02204, p. 3.
[1974] 2D 01222, pp. 1 and 2; 5D 05095; 5D 03019; P 04947, p. 1; P 07559, p. 8.
[1975] For Dretelj Prison: P 03119; P 03134, pp. 1 and 2. For Dretelj and Gabela Prisons: P 03462. For Vitina-Otok Camp: P 04772; P 03327 under seal, p. 2.
[1976] P 00680, Article 5; Bruno Pinjuh, T(F), pp. 37249, 37250, 37251 and 37253; P 08973, p. 26; Ciril Ribičić, T(F), p. 25451; *see* also: 4D 01629, p. 1. Miljenko Lasić, commander of the South-East OZ, turned to the logistics department of the Main Staff requesting pay for the *Domobrani* Regiment for April 1993.
[1977] P 01441. That the *Domobrani* were deployed following the orders of the OZ commanding officers is confirmed by Document P 02204; Bruno Pinjuh, T(F), pp. 37250 and 37251. *Slobodan Praljak* also confirmed that the *Domobrani* units constituted part of the organisation or structure of the HVO armed forces. Slobodan Praljak, T(F), p. 43607; *see* also P 01424; Bruno Pinjuh, T(F), pp. 37249 and 37250; P 00680; P 01424; Bruno Pinjuh, T(F), p. 37261, and T(E), p. 37261; 2D 01232, pp. 5 and 6.
[1978] 5D 05095; 5D 03019; P 03119; P 03421; P 03462; P 04525; P 04772; P 03270; P 03954.
[1979] 5D 02001.

the *Domobrani*,[1980] he also appointed the commander and the members of the *Domobrani* company command in the municipality of Ljubuški.[1981] Nevertheless, the Chamber has no evidence to suggest that Bruno Stojić exercised military command authority over the *Domobrani*.

IV. Military Police

845. The Indictment alleges that the HVO Military Police formed an integral part of the "HVO armed forces", of which "the Herceg-Bosna [...] leadership" was in charge.[1982] According to the Prosecution, it was in fact through the Military Police that the objectives of the alleged JCE were achieved.[1983] While submitting that Jadranko Prlić[1984] and Milivoj Petković[1985] enjoyed broad *de jure* and *de facto* authority over the "armed forces of the HVO", the Prosecution expressly states that Bruno Stojić and Slobodan Praljak "directed, controlled, facilitated and supported the "operations and activities of the HVO Military Police".[1986] As for Valentin Ćorić, the Prosecution contends that in his capacity as "Chief of the Military Police Administration, (…) he had *de jure* and/or *de facto* command and control of the HVO Military Police".[1987] As for Berislav Pušić, the Prosecution asserts that he participated as a "member of the Military Police" in a "system of ill-treatment[1988] . . . which included . . . a network of Herceg-Bosna/HVO prisons, concentration camps and other detention facilities".[1989]

846. Given the significance of the role of the Military Police in the crimes alleged in the Indictment, and the presumed authority of the Accused over the selfsame Police, the Chamber considers it necessary to describe its structure and offices. Created in April 1992, the Military Police went through (A) several reforms specifically designed to improve its operations and efficiency. Although the structure of the Military Police was (B) reformed and reorganised several times, the charter establishing its mission did not vary over the course of the conflict, despite its

[1980] Bruno Pinjuh, T(F), pp. 37249, 37250 and 37294; P 01424, pp. 1 and 2.
[1981] P 01604.
[1982] Indictment, paras 16.1 and 25.
[1983] Indictment, para. 16.1.
[1984] Indictment, para. 17.1 (a).
[1985] Indictment, paras 17.4 (a) and 17.4 (d).
[1986] Indictment, paras 17.2 (c) and 17.3 (g).
[1987] Indictment, para. 17.5 (a).
[1988] Indictment, para. 17.6 (f).

performing numerous combat assignments not conducive to achieving the original assignments from the Herceg-Bosna/HVO authorities. In the context of these varied assignments, however, the Chamber has concluded that the chain of command and control governing the Military Police units was complex and frequently unclear. The units of the said Police reported to (C) two different authorities, namely, the Military Police Administration and the "classic" military hierarchy, via the commanding officers in the brigades and the OZs.

A. Creation and Evolution of the Military Police

847. Created in April 1992 and originally organised (1) for the Military Police outposts in each municipality, the Military Police Administration was integrated into the (2) Department of Defence of the HVO in September 1992, whereas (3) the structure and operations of the Military Police Administration and of its units were gradually redefined by several reforms.

1. Creation of the Military Police and its Administration: April-September 1992

848. In early April 1992, the Presidency of the HVO of the HZ H-B created the Military Police of the Army of the HVO.[1990] Military Police posts were established in 25 municipalities,[1991]made up of reservists,[1992] specifically recruited for their "loyalty to" the Croatian people and homeland.[1993]

849. According to *Zdenko Andabak*,[1994] the Military Police posts at that time reported to the operational command of the brigades in the area of responsibility where they were located.[1995]

850. From April to December 1992, the Military Police Administration was in its early stages: a report on the activities of the HVO of the HZ H-B regarding this period states laconically that "services for general administrative affairs, military

[1989] Indictment, para. 17.6 (c).
[1990] P 00128, p. 9.
[1991] P 00128, p. 9; P 00423, p. 3.
[1992] *See* in this regard P 00420, p. 52.
[1993] P 08548, p. 23; Prosecution Final Trial Brief, para. 982.
[1994] Zdenko Andabak held several important offices for management and command within the Military Police Administration between May 1992 and June 1994, *see* Zdenko Andabak, T(F), pp. 50903 and 50904. *See* also P 01460; P 02996; 5D 02164, p.1; P 02230.
[1995] Zdenko Andabak, T(F), pp. 50905-50907; P 00143/P 00142.

investigations, inspection, personnel training and logistics" were created within it.[1996] In July and August 1992, it consisted of 14 individuals.[1997]

851. Nevertheless, as of May 1992, the municipal units of the Military Police were integrated into four operational groups[1998] placed under the command of the Military Police Administration in order to improve effectiveness[1999] and combat the influence of the local authorities:[2000]

- the South-East Herzegovina Operational Group, consisting of the municipalities of Mostar, Ljubuški, Stolac and Ĉapljina, led by Vlado Primorac;[2001]
- the North-West Herzegovina Operational Group, which encompassed *inter alia* the municipalities of Prozor, Gornji Vakuf and Jablanica, headed by Zdenko Andabak;
- the Central Bosnia Operational Group, commanded by Ivan Lalić to which the municipality of Vareš belonged;
- the Bosanska Posavina Operational Group.[2002]

852. In addition to the units in each municipality, the Military Police included a battalion created in July 1992,[2003] consisting of professional soldiers who had undergone special training at Neum:[2004] the 1st Active Battalion.[2005] The Battalion consisted of three companies – the 1st, based in Vitez, assigned to the Central Bosnia operational group, the 2nd, based in Ljubuški, attached to the South-East Herzegovina operational group and the 3rd operational group in Livno[2006] – as well as the platoon in

[1996] P 00128, p. 10; P 00956, p. 3.
[1997] P 00420, p. 3.
[1998] The Chamber observes that, despite the creation of the operational groups in May 1992, it was mentioned in a report on the activities of the Military Police for July and August 1992 that the municipal posts of the Military Police still existed; *see* in this regard, P 00420, p. 36.
[1999] P 00128, p. 9; P 00956, p. 3.
[2000] P 00420, p. 52; *See* also the part about the municipal governments of the HVO.
[2001] *See* also with regard to Vladimir Primorac"s appointment P 00345 and P 00927.
[2002] P 00956, p. 3.
[2003] P 00128, p. 10; P 00420, pp. 36 and 37.
[2004] P 00420, p. 36; P 00128, p. 10; P 00956, p. 4.
[2005] P 00423.
[2006] P 00420, p. 36; P 00128, pp. 10 and 12.

charge of "special operations".[2007] The members of the First Active Battalion were tasked with the most difficult, most significant operations.[2008] All told, in August 1992, the Military Police – whose members were distinguished from the other HVO soldiers by the white belt, white revolver holster, handcuffs and the Military Police badge they wore[2009] – totalled 1,862 members, a figure that included the members of its Administration.[2010]

853. Although the Chamber does not have an order appointing Valentin Ćorić to head the Military Police Administration, it does note that Mate Boban appointed Valentin Ćorić on 13 April 1992 as Assistant Commander of the SIS[2011] and that, through this order issued by the Presidency of the HZ H-B, Valentin Ćorić was granted the authority to command the units of the Military Police.[2012] Moreover, the Chamber notes that Valentin Ćorić signed an order as Chief of the said Administration on 24 June 1992.[2013] The Chamber further notes that the provisional instructions on the work of the Military Police, promulgated in April 1992, vested command and control authority over the Military Police units in the Military Police Administration without however explicitly stating where they had such authority.[2014] *Zdenko Andabak*, for his part stated that during this period, the Military Police Administration was in charge of personnel management, initiating disciplinary actions, and ensuring that training and equipment were provided for members of the Military Police.[2015]

[2007] P 00420, p. 37.
[2008] P 00128, p. 10.
[2009] *See* P 00143/P 00142, p. 8.
[2010] P 00420, p. 4.
[2011] 2D 01333; *see* also P 08548, p. 23.
[2012] 2D 01333; Ivan Bandić, T(F), pp. 37998, 38003 and 38004; 2D 01333; P 03177, p. 3; for an example demonstrating Valentin Ćorić"s position as the highest-ranking official in the Military Police Administration, *see* P 00936.
[2013] P 00277. *See* also as an illustration of the command authority then held by Valentin Ćorić, P 00385, pp. 1 and 2; *see* with regard to the fact that Valentin Ćorić held the post of Chief of the Military Police Administration: P 09117.
[2014] P 00143/P 00142, p. 4; 2D 02000, para. 44.
[2015] Zdenko Andabak, T(F), pp. 50905, 50906, 51150-51152; P 00143/P 00142, pp. 4, 5, 6 and 7. *See* also concerning the stated powers of the Military Police Administration during this period, Davor Marijan, T(F), pp. 35839 and 35840; 2D 02000, para. 44; P 00978, p. 2. *See* for example, concerning how confiscated vehicles were used 5D 04384.

2. Integration of the Military Police Administration within the Department of Defence and its Consequences

854. The Military Police Administration was integrated very quickly (September 1992) into (a) the Department of Defence, as a component of the security sector of the said department. As a result of that integration, the Head of the Department of Defence (b) became the hierarchical superior of the Chief of the Military Police Administration, thus wielding authority over the Military Police and its leader.

a) The Military Police Administration as a Security Organ of the Department of Defence

855. In the Decision on the Basic Principles of Organisation of the Defence Department, signed by Mate Boban as President of the HZ H-B, on 15 September 1992 the Military Police Administration was integrated into the security sector of the Department of Defence.[2016] By virtue of this Decision, the head of the security sector was responsible for the Military Police Administration and the SIS and held the post of Assistant Head of the Department of Defence.[2017] *Marijan Biškić* confirmed that the Head of the Security Sector was the superior of the Chief of the Military Police Administration,[2018] and that in November 1993, that Administration was still part of the Ministry of Defence.[2019]

856. The Chamber considers, as did the Prlić Defence, the Stojić Defence and the Prosecution,[2020] that the evidence is sufficient to support a finding that the Military Police Administration formed an integral part of the Department of Defence[2021] and finds that like the SIS, it was one of the components of the Security Sector of that said department. Its Chief answered to the Assistant Chief of the Department of Defence in

[2016] P 00586. For a schematic depicting the command structure of the armed forces according to document P 00586, *see* 4D 01280. *See* also 2D 00567, p. 3; 2D 02000, para. 47; Ćorić Defence Final Trial Brief, paras 50 to 53; regarding the creation of the HVO Department of Defence, *see* P 00206, Article 7, p. 2; 2D 02000, para. 5; *see* also Davor Marijan, T(F), p. 35604 and 1D 00156/P 00303, Article 20, p. 2; P 00308/P 00297.
[2017] P 00586, p. 2; as Assistant Head of the Department of Defence, the Head of the Security Sector came under the responsibility of the chief of said Department, *see* 2D 00567, p. 1.
[2018] Marijan Biškić, T(F), p. 15049.
[2019] Marijan Biškić, T(F), p. 15046.
[2020] Prosecution Final Trial Brief, para. 985; Prlić Defence Final Trial Brief, para. 326 (b); Stojić Defence Final Trial Brief, para. 380.
[2021] This occurred for the entire duration of the conflict; Marijan Biškić, T(F), p. 15046. He said that in November 1993 the Military Police Administration reported to the Ministry of Defence.

charge of the Security Sector and, as a last resort, to the Head of the Department of Defence.[2022]

b) Relationship between the Military Police and the Head of the Department of Defence

857. The consequence of integrating the HVO Military Police Administration into the Department of Defence was to place the Military Police under the authority of the Head of the Department of Defence: (i) he had to make certain appointments within the Military Police, as well as (ii) to adopt decisions concerning the structure of the said Police and the procedures they were to implement. As Head of the Department, he could (iii) give direct orders to the Chief of the Military Police Administration.

i. Head of the Department of Defence"s Power of Appointment within the Military Police

858. In respect of the Military Police, the Head of the Department of Defence enjoyed *inter alia* the power of appointment, first defined with specificity in the instructions concerning the work of the Military Police dated 30 November 1992.[2023] It was while acting on one such proposal that the HVO of the HZ H-B appointed the Chief of Administration of the said police force.[2024] Moreover, in this instance on the advice of the Chief of Administration of the Military Police and after consent by his assistant responsible for the security sector he had a power of direct appointment[2025] (1) of Military Police battalion commanders and their deputies; (2) heads of departments and sections within the Military Police Administration;[2026] and (3) from 20 May 1993, the Assistant Chief of the Military Police Administration.[2027] The Chief of the Military Police Administration was also required to obtain the approval of the Head of the Department of Defence when appointing company commanders, Military

[2022] *See* in this regard Witness C, T(E), p. 22324, closed session.
[2023] P 00837, pp. 4 and 5.
[2024] P 00837, p. 4.
[2025] 2D 02000, para. 47; 2D 00567, p. 3.
[2026] P 00837, pp. 4 and 5; for an example of the appointment of battalion commanders, *see* P 01420; P 01466; it seems that the Assistant Chief of the Department of Defence for Security sometimes substituted for him in approving proposals for appointments made by the Chief of the Military Police Administration, *see* P 00803; P 01457; for an example of an appointment of a department head within the Military Police, *see* also P 01460; 2D 02000, para. 47.
[2027] P 02467.

Police platoon commanders and directors of the sections and units within the administration of this army corps.[2028]

859. The evidence thus shows that the Head of the Department of Defence appointed those persons destined for the most senior offices within the units and within the Military Police Administration – except for Chief of Military Police Administration himself[2029] – whereas the latter enjoyed power and authority to appoint persons to "subordinate" posts, although with the consent of the Head of the Department of Defence.

ii. Power of the Head of the Department of Defence to Organise the Military Police: an Authority Shared with the Chief of the Military Police Administration

860. The Chamber notes that the November 1992 instructions concerning the work of the Military Police Administration introduced joint power and authority for organising the Military Police, shared between the Head of the Department of Defence and the Chief of the Military Police Administration. These instructions stipulated that the Military Police Administration "monitors and studies the organisation and establishment of Military Police units […] [in order to propose] to the Head of the Defence Department measures for their improvement".[2030] In the areas of recruitment and training, their authority was also concurrent.[2031] Thus, the reform of December 1992 describing the new organisation for the Military Police and its Administration were signed jointly by the Head of the Department of Defence and the Chief of the Military Police Administration.[2032] However, implementing the reforms was primarily the responsibility of the Chief of the Military Police Administration, as the Military Police work programme for the January – March 1993 time period shows.[2033] It likewise fell within the purview of the Military Police

[2028] P 00837, p. 5; *see* for example, P 01780.
[2029] P 00837, p. 4: the Chief of the Military Administration was appointed by the HVO of the HZ H-B on the advice of the Chief of the Department of Defence.
[2030] P 00837, p. 6; It should be noted that the Provisional Instructions for the Work of the Military Police Units dated April 1992 provided that the power to nominate for appointment in this domain fell to the "HVO", *see* P 00143/P 00142, p. 6.
[2031] P 00837, p. 6.
[2032] *See*, for example, P 00957, p. 6. The Chamber notes however that the Chief of the Department of Defence was the sole signatory on 28 December 1992 of a document addressing the implementation of a reform promulgated two days earlier, *see* P 00960.
[2033] P 01416, p. 2.

Administration to reply to questions and requests for clarification that the battalion commanders and the various members of the Military Police sent to him concerning how to put the structure of said Police into effect,[2034] and thus, also to monitor this process.[2035]

iii. The Head of the Department of Defence as Hierarchical Superior of the Chief of the Military Police Administration

861. The Prosecution gave several examples of orders issued by the Head of the Department of Defence to the Chief of the Military Police Administration as well as reports sent by him to his commanding officer.[2036] As to how information was passed along, the Stojić Defence contends that the Military Police"s activity reports were rare in actual practice and that there is nothing to prove that they had been forwarded to the Head of the Department of Defence.[2037] They contend, moreover, that the Head of the Department of Defence, despite being the superior of the Chief of the Military Police Administration, had no command authority over units from the Military Police.[2038] The Petković Defence, for its part, attempted to show that the Military Police units, in carrying out their assigned missions, did not answer to the Chief of the Main Staff but to the Head of the Department of Defence.[2039]

862. The Chamber considers, in light of the evidence in the record, that as the superior of the Chief of the Military Police Administration,[2040] the Head of the Department of Defence could give orders to him in various areas, such as the release of prisoners,[2041] freedom of movement of convoys (including humanitarian convoys)[2042] or of persons[2043] on the territory of the HZ H-B, the deployment of

[2034] P 01614, p. 1; P 01678 and 5D 00538; P 04922; P 02997.
[2035] *See* for example P 02991/P 03000, p. 2; 4D 01283; P 04135/P 04146/2D 01396.
[2036] Prosecution Final Trial Brief, paras 563, 565, 568, 583 and 619; Closing Arguments by the Prosecution, T(F), p. 51926.
[2037] Stojić Defence Final Trial Brief, para. 381.
[2038] Stojić Defence Final Trial Brief, paras 234 and 404.
[2039] Petković Defence Final Trial Brief, para. 103.
[2040] Witness C, T(F), p. 22318, closed session.
[2041] P 00665.
[2042] P 01316; P 00864.
[2043] P 03163; P 01098.

Military Police forces[2044] as well as compliance with internal Military Police procedures.[2045]

3. Redefining the Structure and Operation of the Military Police Administration and Its Units – Starting in October 1992

863. It is clear after reviewing the evidence that the structure and operation of the Military Police Administration and its units were modified three times during the period relevant to the Indictment, (a) in October 1992, (b) in July 1993, and (c) in December 1993. The Chamber will describe below the changes effected during these periods.

a) First Reorganisation of the Military Police Administration and its Units: October 1992 – July 1993

864. The Chamber received evidence indicating that the structure of the Military Police was revamped commencing in October 1992[2046] and then officially in November 1992, through the issuance of directives concerning the work of the Military Police of the HVO of the HZ H-B.[2047] Although these directives differed little from the provisional directives issued in April 1992, as far as instructions related to the organisation were concerned, they were nonetheless more specific, particularly concerning the procedures for appointments within the Military Police, as previously assessed in connection with the Head of the Department of Defence"s power of appointment.[2048] Moreover, these directives served as a reminder that, within each of the OZs a Military Police battalion was brought in, subordinated to the Military Police Administration[2049] and that all of the subordinate units of the Military Police within the OZ formed part of that battalion.[2050] *Davor Marijan* also stated that, based on the

[2044] P 00619; 2D 03002; P 03164.
[2045] 2D 01237.
[2046] Certain witnesses place the initial organisation of Military Police units in December 1992, *see* Witness E, T(F), p. 22135, closed session; P 00884; 5D 05110 under seal, para. 4; Witness C, T(F), p. 22520, closed session.
[2047] P 00837; P 00956, p. 4; P 00128, p. 11.
[2048] P 00143/ P 00142, p. 5; P 00837, pp. 4 and 5.
[2049] Witness C, T(F), pp. 22520 and 22521, closed session; P 00957, p. 5; Witness EA, T(F), pp. 24876-24878, closed session.
[2050] P 00837, p. 5.

decree of 17 October 1992 on the armed forces, the units of the Military Police formed an integral part of the HVO"s armed forces.[2051]

865. This initial organisation was designed to structure the Military Police"s work on the frontlines and to define the status of the military police, the policy for appointments and the chain of command.[2052]

866. In their report of 26 December 1992, Valentin Ćorić, then Chief of the Military Police Administration, and Bruno Stojić, Head of the Department of Defence, summarised the prevailing structure at the time.[2053] They said that the Military Police Administration, headquartered in Mostar at the time,[2054] consisted of two departments and four Military Police battalions, one per OZ,[2055] in addition to the 1st Active Battalion:

– the Department for General Matters and Movement and the Department for Criminal Investigations, [2056] which were created inside the Military Police Administration[2057] in October 1992.[2058] *Slobodan Boţić* in fact declared that the two departments were separated geographically, [2059] with General Matters based in Ljubuški, as was the Bureau of Operations – an organ of the Military Police Administration responsible for coordinating the activities of the units of the Military Police,[2060] whereas the Department for Criminal Investigations was located in Mostar, in the Department of Defence offices[2061] and then, from August 1993, in Ljubuški.[2062]

[2051] 2D 02000, para. 37; P 00588, pp. 40 and 41, Article 137; *see* also Witness C, T(F), p. 22519, closed session; 1D 00165, Article 5.
[2052] P 00884, p. 2.
[2053] P 00956, p. 4; P 00957; *see* also 4D 01282.
[2054] *Witness BB* indicated that around mid-May 1993, Military Police headquarters had been transferred to the community buildings in West Mostar, *see* Witness BB, T(F), p. 17187, closed session.
[2055] Witness C, T(F), pp. 22520 and 22521, closed session; P 00957, p. 1; see also Closing Arguments by the Ćorić Defence, T(F), p. 52648.
[2056] For a comprehensive overview of the make-up of the Department for Criminal Investigations of the Military Police Administration in March 1993, *see* P 01605. Moreover, the Chamber notes that, according to the documents, this department is sometimes called the crime prevention department, sometimes the Department for Criminal Investigations. To facilitate understanding, the Chamber will employ the term "Department for Criminal Investigations" exclusively.
[2057] P 00956, p. 5; P 00957, p. 1.
[2058] Zvonko Vidović, T(F), p. 51469; 2D 02000, para. 45.
[2059] Slobodan Boţić, T(F), pp. 36679 and 36680.
[2060] 2D 01395.
[2061] 2D 01395; P 00956, p. 5; P 00128, p. 12.
[2062] P 04191, p. 3.

– the 1st Active Battalion directly subordinated under the Chief of the Military Police Administration[2063] and consisting of roughly 300 members,[2064] had an area of responsibility covering all the territory of the HZ H-B[2065] and consisted of specially trained soldiers responsible for the most complex tasks.[2066] It was divided into three companies, responsible for anti-terrorist operations (1st Light Assault Company), the movement of road traffic (2nd Company) and the escort and surveillance of persons, particularly at the Heliodrom (3rd Company).[2067] According to *Zdenko Andabak*, when the Chief of the Military Police Administration sent the 1st Active Battalion on assignment, he did so in compliance with an order from the Main Staff of the HVO; when that battalion arrived in theatre, it placed itself under the command of the commander of the OZ, both when carrying out "traditional" military police assignments and those related to combat operations.[2068]

– the 2nd Military Police Battalion, based in Tomislavgrad-Livno,[2069] whose area of responsibility covered the North-West OZ, consisted of roughly 450 members,[2070] who were to handle anti-terrorist operations, movement of road traffic and general matters.[2071] In addition to these companies, there were six platoons within the brigades of the OZ.[2072] The Battalion had a judicial police service, a department for telecommunications and an operations duty desk.[2073]

– the 3rd Military Police Battalion, based in Mostar,[2074] whose area of responsibility covered the South-East OZ, consisted of roughly 400 members.[2075] It comprised *inter alia* four platoons in the brigades active within the OZ.[2076]

[2063] To illustrate the direct command authority of the Chief of the Military Police Administration over the 1st Active Battalion, P 00754; P 01053; P 02988/P 02982; Witness EA, T(F), pp. 24876 and 24877, closed session; P 00957, pp. 2 and 5; Zdenko Andabak, T(F), p. 51037; 5D 05110 under seal, para. 4; in this regard, the Stojić Defence said that the 1st Active Battalion was deployed by the Military Police Administration at the orders of the Main Staff and that, arriving in its theatre of operations, it was placed under military command, *see* Stojić Defence Final Trial Brief, para. 389; the Ćorić Defence agrees with this analysis, *see* Ćorić Defence Final Trial Brief, para. 28.
[2064] Personnel fluctuated throughout this period, *see* P 00956, p. 7.
[2065] Witness NO, T(F), pp. 51179 and 51194, closed session; 5D 05110 under seal, para. 4.
[2066] P 00956, p. 6; P 00957, p. 2; P 00128, p. 12.
[2067] P 00956, p. 6; P 00957, p. 2
[2068] Zdenko Andabak, T(F), pp. 50910, 50911, 50990, 50991, 51154 and 51155.
[2069] P 01825.
[2070] Personnel fluctuated throughout this period, *see* P 00956, p. 7.
[2071] P 00956, p. 6; P 00957, pp. 2 and 3.
[2072] P 00957, p. 3; Zdenko Andabak, T(F), p. 50912.
[2073] Zdenko Andabak, T(F), p. 50912.
[2074] P 01825.

– the 4th Military Police Battalion, based in Travnik (Vitez),[2077] comprised approximately 530 members and had the Central-Bosnia OZ as its area of responsibility.[2078] It also included eight platoons within the brigades of the OZ.[2079]

– the 5th Battalion, which had to cover the Posavina OZ, could not be put together due to "territorial occupation".[2080]

867. According to *Davor Marijan,* during the first half of 1993, the various Military Police battalions sent very few reports to the Military Police Administration, a violation of their duty to keep it informed.[2081] By contrast, *Zdenko Andabak,* commander of the 2nd Military Police Battalion between October 1992 and February 1993,[2082] said that it was in this capacity that he attended a monthly coordinators meeting to which were invited the Chief of the Military Police Administration and the principal officers from this corps.[2083] The problems related to logistics and the treatment of wounded soldiers from the Military Police in the field were specifically addressed during those meetings.[2084]

868. The initial Military Police structure, set up in October 1992, was revised as of January 1993, eventually leading to the implementation of reforms starting in July 1993.[2085] Thus, the Chamber notes, for example, that the 1st Active Battalion was renamed 1st Light Assault Battalion sometime in January 1993: though the Chamber does not have any document showing that this new name was assigned to it, the Chamber notes the appearance of the 1st Light Assault Battalion during this time,

[2075] P 00956, p. 6; P 00957, pp. 3 and 4.
[2076] P 00957, pp. 3 and 4.
[2077] P 01825.
[2078] P 00956, p. 6; P 00957, p. 4; for an overview of the make-up of the 4th Battalion in December 1992, *see* P 00862.
[2079] P 00957, p. 4.
[2080] P 00956, p. 6; P 00957, pp. 4 and 5. Document P 00956 however shows that a Military Police battalion did cover the area around Orašje – Bosanska Bijela at the time, as does Document P 00128, p. 12.
[2081] 2D 02000, para. 51; *see* for example P 01972, p. 3.
[2082] 5D 02164, p. 1; P 00803; P 01420; P 01460.
[2083] Zdenko Andabak, T(F), pp. 50915 and 50916.
[2084] Zdenko Andabak, T(F), pp. 50915 and 50916. For an example of this type of meeting, *see* P 05869 and P 04947.
[2085] The mobilisation plan for the former organisation was not adopted by Valentin Ćorić until March 1993, *see* 2D 02000, para. 46; 2D 01449.

inferring from the fact that its area of deployment matched that of the 1st Active Battalion, that this was indeed the same unit.[2086]

b) Second Reorganisation of the Military Police Administration and Its Units: July – December 1993

869. The need for a second reorganisation of the Military Police Administration and the Military Police battalions arose towards January 1993, in particular because of the complex situation in the territory of the HZ H-B at that time[2087] and the isolation of certain OZs.[2088] The purpose of the reorganisation was also to reduce the number of military police reserves while adding to the active personnel within the Military Police.[2089] The reorganisation affected (i) the organs of the Military Police Administration and (ii) its units. The Chamber notes that, although the changes in the Military Police Administration were enacted between January and June 1993, it appears that they were in fact implemented starting in July 1993; thus, for example, as will be mentioned subsequently, the posts of the Assistant Chiefs of the Military Police Administration in each OZ, which were created between January and July 1993, remained vacant until July and August 1993 onward.[2090] For this reason, the second reorganisation is being reviewed in connection with the period running from July to December 1993.

i. Restructuring of the Military Police Administration

870. Within the Administration itself, numerous changes were enacted between January and June 1993: the post of Deputy Chief of Administration was created;[2091] from that time forward, the Administration had three departments, devoted to the General Military Police, to road traffic and to criminal investigations.[2092] Also, five sections were created, with responsibility for IPD, logistics, information and communication, and general, administrative and human resources.[2093] Likewise, as

[2086] The 1st Light Assault Battalion is mentioned in Documents P 01350, p. 1 and P 01635, p. 1.
[2087] Zdenko Andabak, T(F), p. 50914.
[2088] P 04699, p. 12; P 01350, p. 1.
[2089] Zdenko Andabak, T(F), p. 50913; P 00960.
[2090] *See* "Restructuring of the Military Police Administration" in the Chamber's findings regarding the military structure of the HZ(R) H-B.
[2091] P 04699, p. 13.
[2092] P 04699, p. 13; Witness C, T(F), p. 22317, closed session.
[2093] P 04699, p. 13; the Chamber observes that the Military Police Administration consisted, in addition to the departments, of organs interchangeably termed "sections" or "divisions", or sometimes even

stated in the report concerning the activities of the Military Police between January and June 1993, the powers of the Department for Criminal Investigations were transferred to the OZ echelon.[2094] In this regard, a report dated 9 August 1993 stated that the Department for Criminal Investigations was divided into several freshly created offices based in Mostar, Ĉapljina, Ljubuški, Livno, Bugojno, Vitez, Kiseljak and Orašje.[2095] It should be noted that, according to *Davor Marijan*, a fourth department responsible for security was created inside the Military Police Administration, with Branimir Tuĉak appointed on 28 August 1993 to direct it.[2096]

871. In addition, four posts of Assistant Chief of the Military Police Administration – one for each OZ – were created.[2097] They had the command authority, previously vested in the Chief of Administration, over the Military Police units active in the OZ under their authority and were responsible for implementing in each OZ the reorganisation of the Military Police units commencing on 1 July 1993.[2098] The Chamber notes that the Assistant Chiefs of the Military Police Administration responsible for the units in each of the OZs were not officially appointed until sometime between June and August 1993 by Bruno Stojić after being nominated by Valentin Ćorić.[2099] According to *Zdenko Andabak*,[2100] the Assistant Chiefs of the Military Police Administration were tasked with coordinating activities of the light assault battalion and the Military Police battalion created within their area of responsibility.[2101] The assistants received orders from the commander of the OZ and transmitted them to both the aforementioned battalions.[2102] The regulations detailing the responsibilities within the Military Police stated that the Assistant Chiefs of the Military Police Administration also had the authority to issue orders to the units of the Military Police Administration in their areas of responsibility and that the assistants

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"departments": refer to P 04279, p. 4; P 04699, p. 13, and P 03090, p. 17. When referring to these organs, the Chamber will use the term "section".
[2094] P 04699, p. 13.
[2095] P 04058, p. 2.
[2096] 2D 02000, pp. 34 and 45; P 02993. *See* for example the report sent by Branimir Tuĉak to Valentin Ćorić, P 05579.
[2097] P 04699, p. 12; 2D 01396, p. 2. Although Document P 04699 mentions only three Assistant Heads of the Military Police Administration (p. 12), the Chamber is persuaded that there were four OZs at this time and that an Assistant Chief of the Military Police Administration had been appointed for each one.
[2098] P 04699, p. 12; 2D 01396 p, 2; P 02991/P 03000; 4D 01283.
[2099] *See* P 03487; P 03002; P 02996. The Chamber notes that the translation of Document P 02996 bears the date of 28 August 1993 whereas the original document bears the date of 28 June 1993.
[2100] Zdenko Andabak held the post of Assistant Chief of the Military Police Administration in the North-West OZ between July and November 1993. Zdenko Andabak, T(F), pp. 50903 and 50904.
[2101] Zdenko Andabak, T(F), p. 50915.

sent their reports to the Chief of the Military Police Administration.[2103] They were responsible to the Chief of the Military Police Administration.[2104]

ii. Restructuring of the Military Police Units

872. In addition to the 1st Light Assault Battalion, the new name assigned to the 1st Active Battalion in January 1993,[2105] three other battalions of the same type were created around August 1993:

– the 2nd Light Assault Battalion, in the North-West OZ;

– the 3rd Light Assault Battalion, in the Central-Bosnia OZ;

– the 4th Light Assault Battalion, in the Posavina OZ.[2106]

873. The units were developed for purposes of military operations and could travel throughout the territory of the HR H-B.[2107]

874. Moreover, the four Battalions already in existence in each of the OZs were renamed on 1 July 1993 yet retained the same area of responsibility:[2108]

– the former 2nd Military Police Battalion became the 6th Military Police Battalion;

– the former 3rd Military Police Battalion became the 5th Battalion;[2109]

– the former 4th Military Police Battalion became the 7th Battalion;

– the former 5th Military Police Battalion was renamed 8th Battalion[2110] (difficulties associated with intense fighting in the Central-Bosnia and

[2102] Zdenko Andabak, T(F), p. 50915.
[2103] P 00978, pp. 3 and 4.
[2104] P 00978, p. 4.
[2105] *See* "First Reorganisation of the Military Police Administration and Its Units: October 1992 – July 1993" in the Chamber's findings regarding the military structure of the HZ(R) H-B.
[2106] P 04699, pp. 12 and 13; 2D 01396/P04146, p.2.
[2107] 2D 02000, para. 48; 2D 01396/P 04146, p. 1.
[2108] P 02991; P 03000, p. 2.
[2109] Concerning the integration of the crime fighting department of the 3rd Battalion into the 5th Military Police Battalion, *see* Zvonko Vidović, T(F), pp. 51439, 51592 and 51731.
[2110] 2D 01396/ P 04146, p. 2; 02991/ P 03000, 4D 01283.

> Posavina OZs had the effect of postponing the introduction of the new organisation in the 7th and 8th Battalions).[2111]

875. The Chamber notes that the Military Police was from that time forward divided into eight battalions.[2112] A Light Assault Battalion and a Military Police Battalion were assembled within each of the four OZs; the 1st Light Assault Battalion of the Military Police was authorised to act throughout the territory of the HZ H-B. As previously indicated, this reorganization appears to have started in earnest in July 1993.[2113]

876. The Military Police platoons within the brigades did not however disappear during the reorganisation: on 10 September 1993,[2114] Valentin Ćorić recalled their responsibilities in this regard, which continued to reflect those defined in December 1992, namely, guarding brigade barracks and the command post, escorting convoys, establishing access points in the brigade"s area of responsibility as well as detaining persons in locations set aside for this purpose by the brigade.[2115]

877. The Chamber considers that this Military Police structure was in effect between July and December 1993.[2116] Throughout the month of November 1993, *Marijan Biškić*, who had just been appointed to direct the security sector of the Department of Defence, received reports from the Military Police Administration and its *ad interim* director, Radoslav Lavrić, for purposes of laying groundwork for yet another reorganization of the said Police.[2117] As of 17 November 1993, he implemented a system of daily bulletins drafted by the Military Police Administration on the basis of information transmitted by the Military Police units,[2118] which were sent to him as well as to others, including the President of the HR H-B, the President of the Government, the President of the Military Tribunal, the Minister of Defence

[2111] 2D 01396/P 04146, p. 1.
[2112] P 04699, pp. 12 and 13; Milivoj Petković, T(F), pp. 49792-49794 and 50231.
[2113] P 02991/ P 03000, p. 2; 4D 01283. It seems that in March 1993 the Military Police organisation as a brigade consisting of five battalions still prevailed, *see* P 01635, p. 1.
[2114] The Chamber observed that the document restating this information did not indicate the year of publication but notes that the parties agreed that it had been issued in 1993, *see* Witness E, T(F), pp. 22141 and 22142, closed session.
[2115] P 04922; *see* also P 00957, p. 5.
[2116] According to Marijan Biškić, this structure was still in place in November 1993, *see* Marijan Biškić, T(F), pp. 15046, 15047.
[2117] Marijan Biškić, T(F), pp. 15045, 15046, 15053, 15365 and 15366.
[2118] Marijan Biškić, T(F), p. 15055.

and his counterpart at the Interior.[2119] He also stipulated that a Military Police unit completing a mission ordered by the ZP commander[2120] was required to report to the ZP"s commanding officer who had to dispatch a report to the HVO Main Staff.[2121] *Marijan Biškić* considered that the system for transmitting information prior to his arrival at the HVO in November 1993 was identical to this.[2122]

878. On 3 December 1993, Perica Jukić, appointed Minister of Defence of the HR H-B around mid-November 1993,[2123] further to a proposal by Marijan Biškić[2124] and with Ante Roso"s consent,[2125] ordered that the final reform of the Military Police"s structure be implemented.[2126]

c) Final Reform of the Military Police Administration and its Units Starting in December 1993

879. The reasons which led the Ministry of Defence to embark on the said reorganisation of the Military Police, by means of the Order of 3 December 1993, are clear: the structure for oversight of this branch of the armed forces of the HVO was considered inefficient and non-functioning, and the prevailing system of command hindered the Military Police units from accomplishing their assignments in an effective manner.[2127] The reform was thus intended to clarify the chain of command.[2128]

i. Restructuring of the Military Police Units

880. On the basis of the observation that the operations of the Military Police were flawed, the Minister of Defence, acting on the proposal of his assistant minister for

[2119] Marijan Biškić, T(F), p. 15055; P 06722, pp. 6 and 7.
[2120] The OZs were renamed ZP by Mate Boban on 14 October 1993, *see* P 05876.
[2121] Marijan Biškić, T(F), p. 15233.
[2122] Marijan Biškić, T(F), p. 15231.
[2123] 2D 00416; P 06772.
[2124] Assistant Minister of Defence for Security, *see* Marijan Biškić, T(F), pp. 15039, 15048 and 15049; P 06994.
[2125] Commander of the Main Staff of the HVO of the HR H-B, *see* 3D 00280.
[2126] P 07018.
[2127] P 07018, p. 2; *see* also P 07169, p. 12; Marijan Biškić, T(F), pp. 15058, 15060.
[2128] Marijan Biškić, T(F), p. 15060.

security,[2129] ordered three Military Police battalions to be formed, along with several companies,[2130] to replace the eight battalions then existing:

- the 1st Military Police Battalion of the Ministry of Defence, based in Mostar and directly subordinated to the Military Police Administration;[2131]
- the 2nd Battalion, with authority over the Tomislavgrad ZP, consisting of three companies and a platoon;
- the 3rd Battalion, with authority over the Mostar ZP, consisting of four companies and two platoons;
- a Military Police Company responsible for providing security and for guarding prisoners of war, whose headquarters was located in the Heliodrom;
- another Company responsible for the basic and advanced training of new Military Police recruits based in the Ĉapljina barracks;
- Independent Companies in certain Military Districts.[2132]

881. Moreover, *Radoslav Lavrić* who held Valentin Ćorić"s office on an interim basis starting in November 1993, announced on 14 December 1993 at a meeting to introduce the reform[2133] that the Light Assault Brigade, which brought together four Military Police Light Assault Battalions, would thenceforth cease to be part of the Military Police structure and would be under the command of the Main Staff of the HVO of the HR H-B.[2134] The Chamber observes that as of 14 December 1993, the new status of the "Military Police Light Assault Brigade" remained to be determined.[2135]

[2129] P 07018.
[2130] P 07018. The Chamber observes that Document 2D 01379 refers on page 7 to four Military Police battalions, however, given the inconsistencies in the dates in the document, the Chamber has decided not to take it into account to the extent it concerns the number of battalions introduced by the reform of December 1993.
[2131] P 07169, p. 13.
[2132] P 07018, pp. 2 and 3.
[2133] Marijan Biškić, T(F), pp. 15063 and 15064.
[2134] P 07169, pp. 12 and 13.
[2135] P 07169, p. 13; concerning the Military Police"s "Light Assault Brigade", the Chamber reviewed Valentin Ćorić"s decision dated 27 August 1993, wherein he mentions the reference codes to use in the

882. Lastly, the Order of 3 December 1993 from Perica Jukić, the HR H-B"s Minister of Defence, formalised the elimination of Military Police platoons from the brigades.[2136]

ii. Restructuring of the Military Police Administration

883. The reform launched in December 1993 also affected the structure of the Military Police Administration.[2137] The three departments,[2138] which were responsible for general matters, criminal investigations and road traffic respectively continued to exist but the number of the sections went from five to four: the section for operations, the section for personnel and legal affairs, the section responsible for communications and information technology and the section for supplies.[2139]

884. In the same vein, the Chamber observes that, starting from the time of the reform, the posts of Assistant Chief of the Military Police Administration in the OZs were abolished.[2140]

885. Lastly, the Chamber observes that the reform initiated in December 1993 by Marijan Biškić and Ante Roso would definitively refocus the activities of the Military Police toward its original mandate. It seems then that the deployment of units of the Military Police in combat operations had interfered with carrying out the assignments it was given by Mate Boban at its creation in April 1992, namely, guarding detainees and detention facilities, law enforcement and monitoring freedom of movement, as will be described in greater detail below.

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various Military Police documents: he indicates there specifically that the Light Assault Brigade has its own reference code (02-4/3-02). When reviewing this document, the Chamber observed that the reference codes corresponding to the 1st, 2nd, 3rd and 4th Battalions were 02-4/3-02/1, 02-4/3-02/2, 02-4/3-02/3 and 02-4/3-02/4, respectively. On the basis of this observation, the Chamber considers that the Military Police Light Assault Brigade, as referred to Radoslav Lavrić at the meeting of 14 December 1993, was a unit that included all four light assault battalions in the Military Police.

[2136] P 07018, p. 3; P 07169, p. 13; P 07419, p. 1.

[2137] P 07169, p. 13; the Chamber observes that the Military Police Administration consisted, in addition to the departments, of organs interchangeably termed "sections" or "divisions", or sometimes even "departments": refer to P 04279, p. 4; P 04699, p. 13 and P 03090, p. 17. When referring to these organs, the Chamber will use the term "section".

[2138] The Chamber recalls that the number of departments within the Military Police Administration rose from two to three during the second reorganisation from July to December 1993.

[2139] P 07169, pp. 19 and 20.

[2140] P 07169, p. 13. *See* also "Second Reorganisation of the Military Police Administration and its Units: July – December 1993" in the Chamber"s findings regarding the military structure of the HZ(R) H-B.

B. Assignments Entrusted to the Military Police of the HVO of the HZ H-B

886. The Prosecution, the Petković Defence and the Stojić Defence point out in their final trial briefs what they consider to have been the tasks which the Military Police of the HVO were assigned to carry out.[2141] The Prosecution takes up the assignments described in the Instructions for the Work of the Military Police Units of November 1992, namely, protecting people and property, maintaining order, discipline and security measures within HVO units, fighting crime, security in "military prisons" and at other locations where people were held, the security of "prisoners of war, monitoring freedom of movement in certain sectors, and confiscating illegally held military equipment.[2142] The Stojić Defence summarises the assignments of the Military Police under three primary areas: "security in military traffic, of military order and discipline, and elimination of criminal elements in the Armed Forces".[2143] The Petković Defence, for its part, underscores that the assigned tasks of the Military Police, and more particularly the assignments concerning the prevention of criminal offences and criminal investigations were to be carried out in cooperation with the agents of the SIS and the MUP.[2144] Lastly, the Ćorić Defence submits that the units of the Military Police had three "specialisations": general military police work, criminal investigations and technical services as well as policing roads.[2145] It also points out that the Ministry of the Interior"s departments and the other units of the HVO were required to cooperate with the Military Police in order for it to complete its assigned tasks.[2146]

887. The Chamber recalls that, in the Provisional Instructions for the Work of the Military Police Units promulgated in April 1992, Mate Boban, President of the HZ H-B, defined the powers and authority of the HVO Military Police.[2147] The Chamber finds that this framework document had priority as a constitutive instrument throughout the conflict, as attested to by the preamble of the order dated 3 December

[2141] Prosecution Final Trial Brief, para. 990; Stojić Defence Final Trial Brief, para. 377; Petković Defence Final Trial Brief, paras 90, 92 and 95.
[2142] Prosecution Final Trial Brief, para. 990, relying on P 00837, pp. 7 and 8.
[2143] Stojić Defence Final Trial Brief, para. 377, relying on P 00588, Article 137.
[2144] Petković Defence Final Trial Brief, paras 60 and 78.
[2145] Ćorić Defence Final Trial Brief, para. 25; P 00142, p. 4.
[2146] Ćorić Defence Final Trial Brief, para. 25; P 00142, p. 4.
[2147] P 00143, pp. 8 and 9; P 00142, pp. 8 and 9.

1993[2148] given by Perica Jukić, Minister of Defence of the HR H-B,[2149] in order to allow the Military Police to carry out its assignments in keeping with the provisional instructions of April 1992.[2150]

888. The twenty duties listed in this document from April 1992 may be grouped according to principal spheres of activity, specifically including:

- (1) assignments pertaining to the detainees and to the detention facilities;
- (2) assignments pertaining to fighting crime in the territory of the HZ H-B, to maintaining order and discipline among the ranks of the HVO armed forces;
- (3) monitoring freedom of movement and providing security for buildings and officials.

889. The assignments were to be accomplished in cooperation with the MUP, the SIS,[2151] and the other units of the HVO armed forces and also required the involvement of the courts.[2152] Thus, for example, *Slobodan Praljak* indicated during his testimony to the Chamber that the persons arrested and detained fell under the responsibility not only of the Military Police, but also of the MUP and the SIS.[2153] Even so, the Chamber observes that each of these organs experienced great difficulty in carrying out coordinated action.[2154]

890. As for the legal authority of the Military Police to successfully carry out its assignments, its members could conduct identity checks, employ physical constraint,

[2148] P 07018.
[2149] *See* P 06583.
[2150] P 07018, p. 2.
[2151] For an example of collaboration between the SIS and the Military Police in the area of fighting crime, *see* Ivan Bandić, T(F), pp. 38055 and 38056; 2D 00934; Zvonko Vidović, T(F), p. 51484; P 03118; 5D 04199; 5D 04169; 5D 04207, p. 2; 5D 04117; Slobodan Praljak, T(F), pp. 42208 and 42209; P 04268, p. 2; P 04110, p. 2. Zdenko Andabak, T(F), pp. 50929 and 50930.
[2152] P 00143, pp. 4 and 5; P 00142, pp. 4 and 5; P 00837, pp. 4 and 17; *see* also P 00420, p. 38; *see* as an example of cooperation in fighting crime, Zvonko Vidović, T(F), pp. 51504, 51505, 51535, 51536, 51600, 51601, 51611, 51612 and 51681; 5D 04115; P 04058, p. 14; P 03616, pp. 2 and 3; 5D 04117; Zvonko Vidović, T(F), p. 51484; P 03118; 5D 04199; 5D 04169; 5D 04207, p. 2.
[2153] Slobodan Praljak, T(F), p. 42775.
[2154] 2D 01501.

use their firearms or any other means of coercion, place persons in detention, search persons or premises and seize goods or documents.[2155]

891. However, due to (4) the progression of the conflict, and the fact that the members of the Military Police were among the best trained soldiers within the HVO armed forces,[2156] the Military Police units were primarily deployed to carry out combat assignments, with negative consequences for the assignments originally entrusted to them.

1. Assignments Pertaining to the Detainees and the Detention Facilities

892. The Chamber will primarily deal here with (1) defining the responsibility of the Military Police in guarding and providing security for the detention facilities and (b) analysing the scope of its involvement in connection with exchanges, transfers, labour and the release of the detainees.

a) Responsibility of the Military Police in Guarding and Providing Security for the Detention Facilities of the HVO of the HZ H-B

893. The Prosecution submits that the Military Police were responsible for guarding the detention facilities, alleging that the Chief of the Military Police Administration had given detailed orders for regulating the prisons and that prison wardens such as the warden of the Ljubuški Prison were subordinated to the said Administration.[2157] According to the Prosecution, the operation of the four primary HVO detention facilities – the Heliodrom and the Ljubuški, Gabela and Dretelj Prisons – was supervised by the Military Police Administration[2158] which granted access,[2159] managed security,[2160] and shared in their creation.[2161] In addition to these primary facilities, the Prosecution alleges that the Military Police was in charge of smaller prisons such as the one at Prozor.[2162] The Petković Defence joins in the Prosecution's analysis concerning the responsibility of the Military Police for the detention

[2155] P 00143, pp. 10-15; P 00142, pp. 10-15; P 00837, pp. 9-16.
[2156] *See* for example P 00956, p. 11.
[2157] Prosecution Final Trial Brief, paras 991 and 1072; Closing Arguments by the Prosecution, T(F), p. 52108.
[2158] Prosecution Final Trial Brief, para. 1065, and, for an example of supervision, para. 1074.
[2159] Prosecution Final Trial Brief, para. 1083.
[2160] Prosecution Final Trial Brief, paras 31 and 1064; Closing Arguments by the Prosecution, T(F), pp. 51990, 51991 and 51993.
[2161] Prosecution Final Trial Brief, paras 1071 and 1076.

facilities.[2163] The Stojić Defence likewise argues that the Military Police bore this responsibility,[2164] referring in particular to the example of the 5th Military Police Battalion, in charge of the Heliodrom,[2165] but adds that the Military Police units inside of the detention facilities formed part of the military chain of command, not the Department of Defence.[2166] The Ćorić Defence shares this interpretation, stressing, for example, that the detention facilities in Sector South fell under the authority of Colonel Obradović, and hence, an HVO military commander.[2167] Additionally, the Ćorić Defence submits that the Chief of the Military Police Administration had no authority whatsoever over the detention facilities established by the HVO.[2168]

894. The Chamber observes that the Provisional Instructions for the Work of the Military Police Units, promulgated in April 1992, explicitly assigned responsibility for the "internal security" of the "military detention centres" of the HZ H-B and those of other "places where persons were held" to the Military Police and its Administration,[2169] as well as the "safety" of "prisoners of war".[2170]

895. On this point, the Chamber begins by noting that the use of the term "prisoners of war", employed in various evidentiary materials originating from the HVO, does not absolve the Chamber of its duty to conduct a case by case analysis of the status of the detainees in connection with the sections hereof relating to the facts, to the law and to the responsibility of the various Accused.

896. The Chamber next observes that neither the provisional instructions of April 1992, nor those promulgated in November 1992,[2171] clearly defined the role of the Military Police Administration and the Military Police units with regard to "securing" detention sites or the persons in question. However, it did learn of the regulations for

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[2162] Prosecution Final Trial Brief, paras 1077 and 1065.
[2163] *See* Petković Defence Final Trial Brief, paras 336, 338, 341, 342, 345, 346, 361 and 511.
[2164] Stojić Defence Final Trial Brief, para. 51.
[2165] Stojić Defence Final Trial Brief, para. 506. The example of the 5th Military Police Battalion is also taken up by the Prosecution, *see* Closing Arguments by the Prosecution, T(F), pp. 52111-52112.
[2166] Stojić Defence Final Trial Brief, para. 506; *see* also Stojić Defence Final Trial Brief, para. 516, regarding Dretelj Prison.
[2167] Closing Arguments by the Ćorić Defence, T(F), p. 52117.
[2168] Ćorić Defence Final Trial Brief, paras 205.
[2169] P 00143, p. 8; P 00142, p. 8. *See* also for example P 03220, p. 1; P 07823.
[2170] P 00143, p. 9; P 00142, p. 9. *See* also P 08550, p. 2; P 00513.
[2171] P 00837, pp. 7 and 8.

the Heliodrom,[2172] dated 22 September 1992 and signed by Valentin Ćorić, which states that the Heliodrom accommodated both "prisoners from the army" and "prisoners of war" and that security measures were applied without distinction to both "categories" of prisoners.[2173] The regulations also set out the responsibilities of the various parties involved with this detention facility.[2174]

897. In this regard, the Chamber notes that the warden of the Heliodrom, a member of the Military Police[2175] appointed by Valentin Ćorić,[2176] was responsible for organising the day-to-day activities at the detention centre, including those related to guarding prisoners and that he produced a daily report on the prevailing situation at the centre which was sent to the Military Police Administration.[2177] The "commander for security" appointed by Valentin Ćorić,[2178] who took orders from the prison warden[2179] and from the Chief of the Military Police Administration,[2180] had authority to issue direct commands to the Military Police platoon assigned to provide security for the Heliodrom[2181] and was responsible for general operations of the security service.[2182] Members of the platoon did guard duty in shifts lasting 12 hours and were required in particular to ensure order and sanitary conditions within the detention centre and to meet the needs of the "prisoners from the army"[2183] with regard to their diet as well as their health.[2184] Those in charge of the guard shifts took orders from the security commander and the prison warden and could, if need arose, deploy the intervention group or sound the alarm.[2185]

[2172] Called "Central Military Prison" in the document. *See* also regarding the Heliodrom"s name as Central Military Prison, 2D 02000, para. 70.
[2173] *See* for example P 00514, pp. 3 and 5; the Heliodrom accommodated both detainees and prisoners of war, *see* P 00513, P 07541 and P 07544.
[2174] P 00514.
[2175] *See* for example P 00968, containing *inter alia* the name of Mile Pušić, one of the directors of the Heliodrom.
[2176] *See* for example P 00352, p. 20; the Chamber notes however that the Heliodrom"s first warden was appointed by Bruno Stojić, *see* P 00452.
[2177] P 00514, p. 2.
[2178] *See* for example in respect of the Heliodrom, P 00352, pp. 12 and 17.
[2179] P 00514, p. 3.
[2180] *See* for example P 03133, p. 2 in which Zvonko Vidović asks the Military Police Administration to contact the commander of prison security to ask that security be strengthened. *See* also for example, this time regarding the Ljubuški Prison, P 05193.
[2181] P 00514, p. 3.
[2182] P 00514, p. 3.
[2183] *See* P 00515, in which the expression "prisoners of the army (civilian or military)" is used.
[2184] P 00514, p. 4.
[2185] P 00514, p. 5.

898. Other members of the Military Police platoon carried out tasks related to guarding the cells and corridors of the detention centre.[2186] Finally, an intervention group, likewise consisting of soldiers from the Military Police platoon, were tasked with accompanying the "prisoners from the army" to the hospital, to the military courts or "other places", to oversee the distribution of food, showers, to intercede in the event of an uprising, escapes, fires, or attacks on the detention centre.[2187]

899. In view of the above, the Chamber considers that, at least in the case of the Heliodrom, the Military Police Administration was responsible for defining the rules governing internal security. Inasmuch as the warden was responsible for its overall supervision and was subordinated to the Military Police Administration,[2188] the Chamber considers that the said Administration likewise had the authority to intervene in giving orders in respect of surveillance. The orders were implemented, in this specific instance, by the Military Police platoon assigned to the Heliodrom.

900. As in the case of the Heliodrom, the Warden of the Ljubuški Prison sent daily reports to the Chief of the Military Police Administration.[2189] *Witness E* confirmed that the warden of the Prison was subordinated to the Chief of the Military Police Administration.[2190] Insofar as the Warden of the Ljubuški Prison was responsible for security and surveillance measures,[2191] the Chamber finds it may properly hold that the Military Police Administration was thus ultimately responsible for providing security and guarding the Ljubuški Prison, which was carried out by members of the Military Police.[2192]

901. The Chamber again recalls here that the chain of command and control of the detention facilities indicated in the Indictment will be assessed on a case-by-case basis

[2186] P 00514, p. 6.
[2187] P 00514, p. 7.
[2188] The fact that while Stanko Boţić was away, Valentin Ćorić named Josip Praljak as interim warden of the Heliodrom while specifying that he could not give orders without his approval establishes the subordination of the Heliodrom"s warden to the Chief of the Military Police Administration, *see* P 00352, p. 23. *See* also as an example of the subordination of the prison warden to the Chief of the Military Police Administration, P 05193.
[2189] *See* Witness E, T(F), pp. 22232 and 22233, closed session; *See* as an example of a report P 02017; P 02042; P 05871.
[2190] Witness EA, T(F), p. 22133, closed session.
[2191] Witness EA, T(F), p. 22134, closed session.
[2192] Concerning the provision of security for Ljubuški Prison by military police, *see* P 05497, p. 3; *see* also P 06663, p. 1; Spomenka Drljević, T(F), p. 1041; Ismet Poljarević, T(F), p. 11600; P 05642; Witness TT, P 09879, under seal, *Naletilić and Martinović* Case, T(F), pp. 6683-6684.

in connection with the analysis of the responsibility of each one of the Accused. The Chamber has evidence demonstrating, for example, that other units of the HVO armed forces were also tasked with guarding the detention facilities, as the *Domobrani* did at Dretelj Prison,[2193] or that other organs issued orders for the wardens of the detention facilities.[2194] The Chamber nevertheless finds that the Heliodrom regulations as well as those in effect at Ljubuški Prison point to the authority of the Military Police and its Administration over internal security at the detention facilities. They also illustrate the specific responsibilities of the Military Police within those facilities.

902. Concerning the Chamber's assessment of the chain of command and control prevailing in Dretelj and Gabela Prisons, as well as at other detention facilities in the territory of the HZ H-B, the Chamber will conduct its analysis case by case in its examination of the factual parts of this Judgement and the responsibility of the Accused.

903. Thus far in its analysis, the Chamber finds that the Military Police and its Administration were among those responsible for providing internal security and guarding the Ljubuški Prison and the Heliodrom.

b) Responsibility of the Military Police in Exchanges, Transfers, Labour and Release of Detainees

904. The Prosecution alleges that the Military Police was one of the principal actors in the exchange of detainees.[2195] Broadly speaking, the Prosecution submits that the Military Police Administration, in addition to security in the detention facilities, was tasked with exchanges, transfers and releases of prisoners, as well as escorting prisoners when they went outside for work programmes.[2196] Concerning how the work was carried out, the Stojić Defence puts forward that the Military Police Units, among others, had the authority to use the detainees and authorise leaves for them for this purpose, while recalling that, in these cases, the units operated under a completely independent chain of command with nothing more than a "professional" relationship

[2193] P 03119; P 03134, p. 2; P 03462; P 05222.
[2194] Milivoj Petković, T(F), pp. 50278-50280 and 50763; P 04750. *See* also for example P 03161 and P 03462; 5D 01059; P 01478.
[2195] *See* for example Prosecution Final Trial Brief, paras 891, 1194 and 1196.
[2196] *See* for example Prosecution Final Trial Brief, paras 935, 1080, 1081 and 1120, and Closing Arguments by the Prosecution, T(F), p. 52115.

with the Department of Defence.[2197] The Petković Defence for its part, like the Prosecution, affirms that the Military Police had responsibility for the above areas, adding that the Main Staff, in its view, lacked the authority to intervene in the relevant decisions taken by the wardens of the detention facilities and particularly, for example, in the area of exchanges and authorisations for taking detainees out for work programmes.[2198] It is clear for the Ćorić Defence that the Military Police Administration had no authority in respect of detainees, as attested to for example, as it says, by the various correspondence sent by the ICRC to senior military leaders seeking information on the said detainees[2199] Furthermore, it says that the Prosecution"s allegations are founded on documents wherein no proof is found that Valentin Ćorić could have been acquainted with them[2200] and that *in fine* it was up to the military commanders to take care of the prisoners of war during the entire detention process, from arrest to release.[2201] The Ćorić Defence likewise alleges that the Military Police Administration had no power over Ljubuški Prison and the Vitina-Otok Camp,[2202] adding that the Head of the said Administration was not in any way involved in transfers or releases of prisoners from the detention facilities, just as he had no knowledge of the events which took place there.[2203] The Ćorić Defence again puts forward, with regard to Dretelj Prison, that the sole duty of "MP Battalion"[2204] was to assist the brigade "in security issues under the command of the brigade commander and to report on eventual criminal incidents connected to members of the [Military Police]".[2205]

i. Responsibility of the Military Police with Respect to "Prisoner of War" Exchanges

905. The Chamber finds that, in addition to its mission to guard and to provide security in the detention facilities, the Military Police played a leading role with regard to "prisoner of war" exchanges: thus, for example, the activity report of the

[2197] Stojić Defence Final Trial Brief, para. 527.
[2198] S*ee* Petković Defence Final Trial Brief, paras 344, 507 and 510.
[2199] *See* Closing Arguments by the Ćorić Defence, T(F), pp. 52720-52728.
[2200] *See* Closing Arguments by the Ćorić Defence, T(F), pp. 52720-52728.
[2201] Ćorić Defence Final Brief, paras 344-349.
[2202] Ćorić Defence Final Brief, paras 524-548.
[2203] Ćorić Defence Final Brief, paras 540-548.
[2204] In its final trial brief the Ćorić Defence does not provide more details about the "Military Police Battalion" it alleges was stationed at Dretelj, see the Ćorić Defence Final Trial Brief, para. 580.
[2205] Ćorić Defence Final Brief, paras 549-585.

HVO of the HZ H-B, covering the period from April to December 1992, indicated that the Military Police was heavily involved in the exchanges, with its Administration being tasked with preserving documents involving the enemy detainees and the members of the HVO who were taken prisoner.[2206] The Chamber notes in particular that on 14 October 1992, Berislav Pušić, acting as a member of the Military Police,[2207] selected "prisoners of war" who were to participate in an exchange[2208] and that on 22 April 1993 as well, Berislav Pušić, who at that time still held office in the Military Police, was tasked by Valentin Ćorić, then Chief of the Military Police Administration, with representing the Military Police of the HVO at a prisoner exchange in Mostar.[2209]

906. The Chamber therefore holds that, in light of the different evidence previously cited, the Military Police and its Administration, whose Department of Criminal Investigation maintained lists of prisoners stating whether they had been exchanged,[2210] was competent to implement prisoner exchanges at least during the period from April 1992 to April 1993.

ii. Responsibility of the Military Police in Matters of Detainee Transfer

907. It appears that the Military Police and its Administration were also involved in transferring detainees from one detention facility to another or for escorting them outside of these facilities, for example, for purposes of undergoing questioning by the SIS[2211] or performing labour.[2212] Thus, on 1 July 1993, Zvonko Vidović and Stanko Boţić, respectively the Head of the Department for Criminal Investigations at the Military Police Administration and Heliodrom warden at that time, ordered that 200 detainees be transferred from the Heliodrom to the "Ĉapljina Prison".[2213] The

[2206] P 00128, p. 13; P 00956, p. 15 and P 00420, p. 38.
[2207] Berislav Pušić, formerly a member of the Department for Criminal Investigations of the 3rd Military Police Battalion, was proposed on 1 April 1993 for appointment as an officer in the Military Police responsible for cooperation with the other belligerents for matters pertaining to the exchange of prisoners, *see* 2D 00008, p. 2 and P 01773.
[2208] P 00352, p. 17.
[2209] P 02020, p. 2.
[2210] *See* for example P 07428.
[2211] *See* P 07810.
[2212] P 03064; *see* the statements of Witness E confirming the role of the Military Police platoon in the *Stjepan Radić* Brigade with regard to the Ljubuški Prison and prisoner escort, T(F), p. 22257, closed session. *See* also, for example, Josip Praljak, T(F), p. 14963; P 02535; P 02541; P 02546, p. 1; P 05193; P 05194; P 05146; P 05214; P 05302; Witness E, T(F), pp. 22042-22044, closed session; P 05312; P 03401, pp. 1 and 2.
[2213] P 03055.

Chamber has, moreover, reviewed orders from Valentin Ćorić, Chief of the Military Police Administration at the time, asking the wardens of the Ljubuški and Gabela Prisons, and also of the Heliodrom, to engage in transfers, and knew about the subsequent orders of the wardens between May and September 1993.[2214] Radoslav Lavrić, who occupied the office of Valentin Ćorić *ad interim* from November 1993,[2215] likewise issued orders to this effect sometime in December 1993.[2216] The Chamber moreover observes that Marijan Biškić, the Assistant Minister of Defence for the Security Sector and direct hierarchical superior of the Chief of the Military Police Administration, could issue orders transferring detainees to the Chief of the Military Police Administration,[2217] and to the Chief of the SIS,[2218] as well as directly to the officials in charge of the detention centres.[2219]

908. Nonetheless, without calling into question the role of the Military Police and its Administration in matters of prisoner transfer, the Chamber observes that other authorities within the HVO could also take action in this area. The Chamber notes that Berislav Pušić, who became head of the Office for Prisoner Exchange on 5 July 1993,[2220] had the ability to propose prisoner transfers, as shown by a document dated 6 January 1994 sent to Marijan Biškić, in which he suggests moving individuals from the Heliodrom to Gabela Prison.[2221]

[2214] P 02535/P 02541: the Chamber notes that the order to transfer prisoners from the Ljubuški Prison to the Heliodrom, received by Ante Prlić on 27 May 1993, was issued on orders from Berislav Pušić and Valentin Ćorić and that on this date Berislav Pušić and Valentin Ćorić were both members of the Commission for the Exchange of Prisoners. Nevertheless, the Chamber notes that neither the title nor the office of Berislav Pušić is mentioned in this document; Valentin Ćorić, by contrast, is designated as "Chief of Military Police"; P 04838; P 05193; P50214; P 05302; P 05312.
[2215] The Chamber does not have the legal instrument appointing Radoslav Lavrić to the post of interim chief of the HVO Military Police Administration but notes that he is designated Assistant Chief of the Military Police Administration as of 14 November 1993, *see* P 06663 and that another document dated 17 November 1993 designates him as Chief of the Military Police Administration, *see* P 06695. On the basis of these documents, the Chamber finds that he took up this post between 14 and 17 November 1993. Concerning the fact that his appointment was merely interim, *see* P 07169, p. 2.
[2216] P 07184; P 07212.
[2217] P 07075; P 07212.
[2218] P 07149.
[2219] 6D 00216.
[2220] P 03191; Amor Mašović, T(F), pp. 25115 and 25116.
[2221] P 07494.

iii. Responsibility of the Military Police in Connection with the Work Performed by the Detainees Outside of the Detention Facilities

909. The Military Police and its Administration also had the power to authorise detainee labour outside of the detention facilities and were informed of the injuries to the detainees during such labour or of their deaths. *Zvonko Vidović*, operations officer at the Department for Criminal Investigations at the HVO military police in Mostar and head of this department under the authority of the 5th Military Police Battalion of the HVO in Mostar,[2222] thus stated that in July 1993 he received reports sent by Stanko Boţić, warden of the Heliodrom, containing information on detainees injured or killed while engaging in labour on the outside.[2223] This department was also tasked by the "HVO military commanders" with conducting investigations concerning these incidents.[2224] Moreover, in addition to these specific reports, the Military Police Administration received written accounts about sending detainees outside of the detention facilities to perform work for the HVO.[2225]

910. In September 1992, Valentin Ćorić, Chief of the Military Police Administration, said that: "[p]risoners of war and military prisoners may be used for work during the day as necessary".[2226] From 27 October 1992 forward, he was in charge of signing all authorisations for using detainees for this purpose;[2227] the evidence shows that he still possessed such authority in August 1993.[2228]

[2222] Zvonko Vidović, T(F), pp. 51438 and 51439.
[2223] Zvonko Vidović, T(F), pp. 51655, 51656 and 51663.
[2224] Zvonko Vidović, T(F), p. 51667.
[2225] *See* for example Ante Kvešić, T(F), pp. 37468 and 37469; P 04157; P 04668.
[2226] P 00514, p. 8.
[2227] P 00740, pp. 2 and 3: "Up until 27 October 1992, the process of taking out prisoners to work involved certification of the request by one of the individuals in charge of logistics and verbal notification of Valentin Ćorić, chief of the (HVO) Military Police Administration. According to the sources, they complained about this manner of taking out prisoners, as a result of which Valentin Ćorić issued a decision announcing that no one was allowed to take out prisoners without his signature".
[2228] P 04020: "Fortify the achieved lines immediately. Prisoners and detained Muslims may be used for fortifying lines. Ask for authorisation through Military Police Administration (in charge of utilising prisoners)"; P 04039: "Immediately carry out maximum fortification of lines reached. You may use prisoners and detained Muslims to fortify the lines. Seek the necessary approval from the Military Police Department (which is in charge of the utilisation of prisoners").

iv. Responsibility of the Military Police for the Transfer of Detainees Outside of the Territory of BiH and While Transiting Croatia

911. The Chamber notes that the Department for Criminal Investigations was also consulted by the ODPR to verify whether any criminal proceedings had been initiated against HVO detainees prior to the issuance of transit certificates by the ODPR.[2229] The Chamber thus considers that the Department for Criminal Investigations, an organ of the Military Police Administration placed under the direct authority of the chief of the said administration, had some measure of oversight in the issuance of transit certificates, inasmuch as a person being prosecuted whose identity was reported to the department could, as a result, no longer obtain that document from the ODPR.

v. Responsibility of the Military Police in Matters of Detainee Release

912. The Chamber notes that, according to *Witness E*, any release of detainees fell under the exclusive power of the military police.[2230] In this regard, the Chamber observes that Valentin Ćorić, by means of a notice he issued on 6 July 1993,[2231] demanded that Colonel Obradović rescind his order of 5 July 1993 which prevented the wardens at the Heliodrom and at the Ljubuški, Dretelj and Gabela Prisons from releasing anyone without his personal approval. Thus, it was specified in the said notice that the "military prisons (…) were exclusively under the authority of the Military Police Administration and that therefore [he was not] authorised to issue orders for the release of prisoners".[2232]

913. The notice shows that Valentin Ćorić believed that only the Military Police Administration was authorised to allow detainee releases. Admittedly, the Chamber notes the Ćorić Defence"s allegation that Valentin Ćorić"s Notice of 6 July 1993 recalling his prerogatives is a forgery.[2233] The Chamber nevertheless recalls that by admitting Document P 03216 into evidence, it considered that it had sufficient indicia

[2229] Zvonko Vidović, T(F), pp. 51523-51525; P 05128; P 05371.
[2230] Witness E, T(F), p. 22258, closed session.
[2231] As Exhibits P 03216 and P 03220 refer to the same document, for the sake of clarity, the Chamber will refer only to P 03216 in the text. The Chamber nevertheless notes that although this is the same document, the translations differ somewhat as to its title, which is said to be a "notification" (P 03220) or an "order" (P 03216).
[2232] P 03216/P 03220; P 03201.

of authenticity and reliability.[2234]. Although there is further evidence to corroborate the power and authority of the Military Police Administration in matters of prisoner release,[2235] the Chamber cannot find that the Military Police Administration had exclusive jurisdiction over such matters.

914. The Chamber finds in light of the exhibits previously examined that the Military Police Administration therefore had the power and authority to order the release of persons detained by the HVO. In this sense, the Chamber rejects the conclusions of the Ćorić Defence whereby the detainees at the Heliodrom could be released only with the consent of Colonel Obradović because the Military Police Administration merely exercised "administrative" oversight.[2236]

915. Nonetheless, the Chamber wishes to stress that this finding does not prevent it from noting that other authorities in the HVO also had the authority to order detainee release, such as, for example the Chief of the Main Staff,[2237] the Head of the Department of Defence[2238] and the military judicial authorities.[2239]

2. Assignments Pertaining to Law and Order, Fighting Crime and Discipline within the Armed Forces of the HVO

916. The Provisional Instructions for the Work of the Military Police Units, promulgated in April 1992, gave the Military Police the power to "discover criminal acts and find the perpetrators of criminal acts when they are committed against or by members of the HVO or against HVO property and facilities".[2240] Most of the Parties to the trial have agreed to stipulate that it fell to the HVO Military Police to maintain

[2233] Ćorić Defence Final Trial Brief, paras 699 to 701; Prosecution Final Trial Brief, para. 1079; Witness Slobodan Bozić, T(F), pp. 36412 to 36415 and 36643.
[2234] "Order on Admission of Evidence Relative to Witness E", public, 27 September 2007, regarding Exhibit P 03216; "Order to Admit Evidence Relative to Witness C", public, 10 October 2007, regarding Exhibit P 03220. Document P 03216 was admitted first on 27 September 2007; Document P 03220 was admitted later, on 10 October 2007. The two orders admitting evidence nevertheless refer to the same single document. The Chamber draws an identical conclusion with regard to the authenticity of these two exhibits and notes that the Ćorić Defence did not request certification to appeal the two decisions.
[2235] P 02285; P 03753 and P 10187; *see* also Josip Praljak, T(F), p. 14964.
[2236] *See* for example the Ćorić Defence Final Trial Brief, paras 468 *et seq.*
[2237] P 02182.
[2238] P 00665. *See* also with regard to the authority of the Head of the Department of Defence over matters of detainee release, P 04002 and P 03995.
[2239] *See* for example, 2D 00888; 1D 01149; 2D 00889; 1D 01797.
[2240] P 00143, p. 8; P 00142, p. 8. *See* also regarding the jurisdiction of the Military Police over matters of fighting crime, Zvonko Vidović, T(F), pp. 51439, 51503, 51504 and 51596; 5D 03087.

order and discipline within the armed forces and to enforce the law.[2241] The allegations diverge however when it comes to examining the responsibility of each person in the proceedings. Thus, according to the Prosecution, the Chief of the Main Staff had authority over the Military Police enabling him to adopt measures to counteract offences by members of the Military Police.[2242] While acknowledging that the Chief of the Main Staff was required to inform the SIS and/or the Military Police when a crime was committed, the Praljak and Petković Defence teams stated that it was up to those organs to conduct an investigation, and that the military commanders could not give them orders in this regard.[2243] Although the Ćorić Defence acknowledges the powers of the Military Police in this domain, it recalls that the Military Police had no oversight of any kind over the judicial organs receiving the results of investigations, or over the actions subsequently taken in response to complaints.[2244] Lastly, the Ćorić Defence indicates that it fell first to the HVO military commanders to conduct criminal investigations in their areas of responsibility.[2245]

917. In order to ascertain as specifically as possible the role and responsibilities of the Military Police in fighting crime, the Chamber will (a) first describe the Military Police organ most responsible for fighting crime, namely, the Department of Criminal Investigation, (b) analyse the relationships between the Military Police and the other HVO agencies responsible for fighting crime such as the Civilian Police before describing (c) the role assigned to the Military Police in connection with criminal proceedings. Lastly, the Chamber will (d) examine in greater detail the powers and authority of the Military Police in matters of fighting crime within the HVO armed forces.

[2241] *See* Prosecution Final Trial Brief, para. 987; Stojić Defence Final Trial Brief, paras 375 and 405; Praljak Defence Final Trial Brief, para. 50; Petković Defence Final Trial Brief, paras 93 and 637 (v).
[2242] *See* for example Prosecution Final Trial Brief, para. 954, pertaining to the responsibility of the Military Police and of Milivoj Petković to take measures against members of the Military Police accused of looting.
[2243] Praljak Defence Final Trial Brief, para. 50; Petković Defence Final Trial Brief, para. 637 (v).
[2244] Closing Arguments by the Ćorić Defence, T(F), pp. 52691 and 52692; Ćorić Defence Final Trial Brief, paras 232 to 236.
[2245] Ćorić Defence Final Trial Brief, paras 260 *et seq.*

a) The Department of Criminal Investigation of the Military Police Administration Dedicated Exclusively to Fighting Crime

918. According to the Provisional Instructions for the Work of the Military Police promulgated in April 1992, the Military Police units had authority to conduct patrols, searches and other activities charged with fighting crime.[2246] To both coordinate and monitor the work of the Military Police in this domain, the Department for Criminal Investigations was instituted in October 1992 within the Military Police Administration.[2247] In December 1992, the Department for Criminal Investigations, which was divided into three sections, had filed 450 criminal reports since the month of April 1992, bringing 350 before the Public Prosecutor's Office.[2248] For example, according to *Zvonko Vidović*, the primary assignment for any operations agent from the Department for Criminal Investigations in Mostar was to uncover the perpetrators of criminal offences in the armed forces within their sector of responsibility.[2249]

919. Between January and June 1993, the powers of the Department for Criminal Investigations were transferred to the OZs:[2250] each of the Military Police battalions introduced into the OZs included under its command a criminal investigations desk, responsible for conducting investigations and leading the fight against crime "on the ground"[2251] under the authority of the OZ commanders.[2252] The Department for Criminal Investigations within the Military Police Administration continued to exist but now had only a coordinating role.[2253] In a meeting on 27 January 1993, in which the Chief of the Military Police Administration and the commanders of the 1st, 2nd and 3rd Military Police Battalions participated, it was emphasised that there was very little coordination both between the Department for Criminal Investigations and the Criminal Investigation Desks within the battalions and between the commands of the said battalions and the Criminal Investigation Desks within their respective battalions.[2254] As of 9 March 1993, despite the dysfunctions identified by the Military

[2246] P 00143, pp. 15 to 17; P 00142, pp. 15 to 17.
[2247] P 00128, p. 12; P 00957, p. 1.
[2248] P 00956, p. 6.
[2249] Zvonko Vidović, T(F), pp. 51439, 51446, 51447, 51465 and 51466; P 00588, Article 137, pp. 40 and 41.
[2250] P 04699, p. 13; *see* also P 03090, p. 19.
[2251] P 00957, pp. 2, 3 and 4; P 01350, p. 2; P 01614, p. 1.
[2252] Zvonko Vidović, T(F), pp. 51442, 51443, 51512 and 51517; P 00453; 5D 02146.
[2253] P 01350, p. 2.
[2254] P 01350, p. 2; P 00696, p. 8.

Police Administration dating back to at least November 1992,[2255] 2,500 criminal reports had been filed with the Department for Criminal Investigations.[2256] In July of the same year, the Prosecutor"s Office of the Military Court of the Mostar District had received 1,394 criminal reports from the HVO Military Police.[2257]

920. A report by *Zvonko Vidović* dated 6 November 1993 came out summarising the activities and structure of the Department for Criminal Investigations, from the founding of the Military Police through that time: according to the report, the department"s organisation was finalised in July 1993. The department was divided into sections and centres, and operated throughout the territory of the HZ H-B.[2258] In November 1993, it consisted of 137 staff members and had worked since its founding in October 1992 to sanction crimes committed against the HZ H-B (armed rebellion, service in an enemy army, assault on the constitutional order and aid to the enemy), crimes against property (robbery, aggravated robbery, looting), crimes against persons (murder, attempted murder, assaults, brawling), crimes against human dignity (rape, forced sexual activity, "unnatural acts"), crimes against the armed forces of the HVO (illegal use of arms, illegal possession of arms) and, finally, other sorts of offences such as violent conduct, illicit trade, forging official documents and bribery.[2259]

b) Relationship of the Military Police with the other Organs of the HVO Responsible for Fighting Crime

921. The Chamber observes that with regard to fighting crime over the lifespan of the conflict, the Military Police was frequently obliged to take on activities ordinarily falling to the Civilian Police and that, during those periods when the Civilian Police departments functioned, there was barely any cooperation between the two organs.[2260] It was only through an order of 6 December 1993 issued by Marijan Biškić[2261] and taken subsequent to several meetings at the Ministry of Defence, that institutionalised

[2255] P 01350, p. 2; P 00696, p. 8.
[2256] P 01635, p. 1.
[2257] 5D 05068.
[2258] 5D 04114, p. 2.
[2259] 5D 04114, pp. 2 and 3.
[2260] P 00956, p. 17; P 00420, p. 1; Marijan Biškić, T(F), p. 15047; P 04191, p. 3; 5D 00538, p. 6; 5D 04115, p. 8. The Chamber notes however that high-level meetings were nonetheless convened among representatives of the civilian and military police forces in an effort to improve cooperation, *see* Zvonko Vidović, T(F), pp. 51504, 51505, 51535, 51536, 51600, 51601, 51611, 51612 and 51681; 5D 04115; P 04058, p. 14; P 03616, pp. 2 and 3; 5D 04117.
[2261] Assistant Minister of Defence for Security, *see* Marijan Biškić, T(F), pp. 15039, 15048 and 15049.

cooperation was established between the Military Police and Civilian Police placed under the Department of the Interior.[2262]

c) Role of the Military Police in Criminal Proceedings

922. The military tribunals had the power to adjudicate criminal offences committed by members of the HVO armed forces.[2263] The activities of the Department for Criminal Investigations, such as, for example, investigations into the cases of which it was seized,[2264] ceased once the complaint was filed with the military prosecutor.[2265] The Chamber, however, was appraised of evidence showing that the Department for Criminal Investigations was involved in summoning witnesses to a trial, at least on those occasions when the said witnesses were members of the HVO armed forces[2266] as well as during investigations conducted at the request of an investigating magistrate or for the publication of wanted persons notices.[2267]

923. The Department for Criminal Investigations was thus authorised to file complaints,[2268] whereas the investigating magistrate had jurisdiction to request the opening of an investigation at the district court,[2269] and to present an indictment,[2270] as well as to place individuals in temporary custody[2271] and provisional detention.[2272]

d) Role of the Military Police in Fighting Crime within the HVO Armed Forces

924. The HVO Military Police was also in charge of maintaining discipline and punishing offences committed by members of the HVO armed forces,[2273] combating

[2262] P 07040; Marijan Biškić, T(F), pp. 15061, 15062 and 15079; P 07064, p. 3.
[2263] Zvonko Vidović, T(F), pp. 51448, 51449, 51499 and 51584; P 00592, Article 6; 5D 04154.
[2264] In respect of the investigative proceedings by the Military Police *see* Zvonko Vidović, T(F), pp. 51461, 51464, 51560, 51635 and 51636; for example, *see* 5D 02098.
[2265] Zvonko Vidović, T(F), pp. 51722 and 51723; concerning the subsequent history of the complaint once the Military Prosecutor was seized, *see* 5D 04168. For examples of occasions when the Military Prosecutor was seized by the Department for Criminal Investigations, *see* 2D 00872; 2D 00873; 2D 00874; 2D 00875; 2D 00876; 2D 00877; 2D 00878; 2D 00879; 2D 00880; 2D 00881; 2D 00882; 2D 00884; 2D 00885; 2D 00887.
[2266] 2D 00870.
[2267] Zvonko Vidović, T(F), pp. 51493, 51495, 51525 and 51526; 5D 04226; 5D 04198.
[2268] *See* for example Zvonko Vidović, T(F), p. 51508; P 04143; 5D 05022; 5D 04181; 5D 04164; 5D 04243; 5D 04248; 5D 04238.
[2269] 5D 04168; P 01503; 5D 04230; 5D 04231; Zvonko Vidović, T(F), pp. 51502 and 51503. The Military Prosecutor could call on the MUP for assistance or on the unit commanders to obtain technical assistance or specific information; *see* Zvonko Vidović, T(F), pp. 51463, 51493 and 51495.
[2270] 5D 04237; 5D 04238; 5D 04165.
[2271] Zvonko Vidović, T(F), pp. 51492 and 04212.
[2272] Zvonko Vidović, T(F), pp. 51461 and 04216.
[2273] *See* for example P 00129; P 01678, p. 3; P 01444; 5D 02020; P 06764.

desertion,[2274] apprehending persons seeking to avoid their military obligations[2275] and seizing arms held illegally or used without authorisation by members of the armed forces.[2276]

925. Moreover, the Military Police Administration was responsible for ensuring punishment of offences committed by the members of the Military Police itself as well as internal discipline.[2277]

926. Nevertheless, *Slobodan Praljak* stated in his testimony that when the Military Police units were carrying out combat operations under the orders of an OZ commander, the commander answered for the crimes committed during the operations.[2278] Moreover, according to *Milivoj Petković*"s testimony, measures taken against a member of a Military Police company resubordinated to a brigade who had committed a crime were to be taken either by a commander of the company or by the brigade commander.[2279] *Zdenko Andabak* briefly summarised the procedures to be followed when a member of the Military Police committed an offence. In such a case, the commander of the OZ was to contact the Main Staff, which in turn contacted the Military Police Administration responsible for the appointment of the member in question, asking that disciplinary or criminal proceedings be initiated.[2280]

927. In light of this evidence, the Chamber observes that it therefore fell to the commanders of HVO units to which Military Police units were assigned to report the offences committed and bring the information back up the chain to the military authorities, including the military prosecutor,[2281] which is also confirmed by Article

[2274] Davor Marijan, T(F), pp. 35828 and 35829; 5D 04380; P 02540, p. 1; P 07559, p. 17. Concerning the role of the Military Police, particularly in matters of fighting crime, military discipline and the elimination of criminal elements within the armed forces, *see* 2D 02000, para. 43; P 00588, pp. 40 and 41, Article 137; 5D 03046. *See* with regard to the incidents of theft at the checkpoints 5D 04392; P 07644; 3D 02585.
[2275] Concerning the role of Military Police in such matters, *see* for example P 02546, p. 2; P 02294; P04528.
[2276] P 00143, pp. 8 and 9; P 00142, pp. 8 and 9.
[2277] *See* regarding offences committed by members of the Military Police, *see* Witness C, T(F), pp. 22514 and 22516, closed session; P 03970 under seal, pp. 2 and 3; P 07027; 3D 01159. For a representative case of fighting desertion within the HVO armed forces, *see* 5D 04394.
[2278] Slobodan Praljak, T(F), p. 43998; P 04177.
[2279] Milivoj Petković, T(F), pp. 49796 and 49797. As concerns the responsibility of brigade commanders to punish offences committed by members of the HVO Military Police, *see* 5D 00440; Davor Marijan, T(F), pp. 35826 and 35827.
[2280] Zdenko Andabak, T(F), pp. 50909 and 50910.
[2281] *See* for example 2D 00858; Slobodan Praljak, T(F), pp. 42665, 42666 and 41790; 4D 01317, p. 1.

27 of the 17 October 1992 Decree on district military courts in the HZ H-B.[2282] The latter passed on the physical descriptions of those wanted for commission of these crimes to the Military Police Administration which was then responsible for initiating proceedings against the members of the Military Police suspected of having committed offences.

3. Assignments of the Military Police Pertaining to Freedom of Movement and Providing Security for Buildings and Officials

928. The final area of activity assigned to the Military Police by Mate Boban involved the freedom of movement throughout the territory of the HZ H-B. The Military Police was tasked with enabling military convoys to move unimpeded and also had to prevent unauthorised persons from entering into areas where military operations were ongoing.[2283] All such actions, like those related to the assignments of the Military Police described above, were carried out in conjunction with the MUP and the SIS.

929. The Prosecution alleges that the Military Police was the HVO's tool for controlling freedom of movement, particularly through the use of checkpoints established along the main roads, at the borders of Croatia, at the entrances to the principal cities and combat zones.[2284] In the view of the Stojić Defence, the Military Police "did not have a crucial role in the question of humanitarian convoy[s]" and their routes in the territory held by the HVO.[2285] This analysis was likewise shared by the Ćorić Defence, which further submits that the Chief of the Military Police Administration had only limited ability to monitor road blockades,[2286] while adding that the orders he gave regarding checkpoints were legitimate[2287] and specifically

[2282] Ivan Bandić, T(F), pp. 38229-38231, 38035, 38158, 38159, 38356 and 38357; P 00592, p. 6, Article 25, para. 4, and p. 7, Article 27; 4D 01317; Zvonimir Skender, T(F), p. 45209. *See* as an example of the authority of unit commanders to punish crimes P 03135/3D 00596; 3D 01146, pp. 1 and 2.
[2283] P 00143, pp. 8 and 9; P 00142, pp. 8 and 9; P 00377.
[2284] *See* for example Prosecution Final Trial Brief, paras 215, 241, 236, 250, 256, 258, 331, 563, 991, 1000, 1001, 1002, 1006, 1012, 1013 and 1014.
[2285] *See* Stojić Defence Final Trial Brief, para. 450.
[2286] Closing Arguments by the Ćorić Defence, T(F), pp. 52695, 52696 and 562698; Ćorić Defence Final Trial Brief, paras 305-323.
[2287] Ćorić Defence Final Trial Brief, paras 324-337.

intended to prevent crimes, enhance checkpoint procedures for HVO vehicles and facilitate the passage of humanitarian convoys.[2288]

930. The Chamber considers that the assignment of the Military Police to monitor freedom of movement was realised principally by establishing checkpoints in the territory of the HZ H-B and along its "borders".[2289] It was through these checkpoints that the units of the Military Police were able to regulate the movement of persons and property and conduct checks.[2290] On this point, *Slobodan Praljak* stated during his testimony before the Chamber, that there were also unofficial checkpoints, set up at whim in the countryside by individuals seeking to appropriate property for themselves.[2291]

931. The Chamber notes that in July and August 1992, the Military Police units had already set up several permanent checkpoints in each of the four operational groups,[2292] specifically to block unauthorised convoys and otherwise seize cargo.[2293] This assignment regarding control of traffic and vehicle searches was sufficiently important to warrant creating platoons specialised in this area within the companies of the Military Police.[2294] Their activities were coordinated and organised at the level of the Military Police Administration by the General and Traffic Department, which as of July 1993 became the Traffic Department of the Military Police.[2295]

932. It appears moreover that the units of the Military Police had set up a total of 11 checkpoints along the borders of the territory of the HZ H-B in July and August 1992, which were formalised with Croatia in November 1992,[2296] as well as 45 checkpoints along roads and near combat zones.[2297] On 7 December 1992, Valentin Ćorić, Chief of the Military Police Administration, Slobodan Praljak, then "Major-General" of the

[2288] Ćorić Defence Final Trial Brief paras 199-202.
[2289] P 00736; P 07772.
[2290] *See* for example P 00385, pp. 1 and 2; P 07535.
[2291] Slobodan Praljak, T(F), p. 44022.
[2292] *See* for example P 00420; P 00335; P 00360; the four operational groups at this time were: the South-East Herzegovina Operational Group, which included the municipalities of Mostar, Ljubuški, Stolac and Ĉapljina, the North-West Herzegovina Operational Group, which included, among others, the municipalities of Prozor, Gornji Vakuf and Jablanica, and the Central Bosnia Operational Group, to which the municipality of Vareš belonged, and the Bosanska Posavina Operational Group.
[2293] P 00128, p. 11; *see,* for example P 00508.
[2294] P 00128, p. 11; P 00957, pp. 2, 3 and 4.
[2295] P 00128, p. 11; P 00956, p. 5; P 04699, p. 13.
[2296] P 00956, p. 8.
[2297] P 00956, p. 5; Marijan Biškić, T(F), p. 15047.

HV, and Bruno Stojić, Head of the Department of Defence of the HVO, issued an order relating to the checkpoints, defining how the military police responsible for maintaining them should appear and the procedures to be followed during checks and searches.[2298] The intensity of the checkpoint activity was confirmed by an activity report from the HVO of the HZ H-B regarding the January to June 1993 period, according to which, for example, 900 persons had been arrested at the checkpoints.[2299] The various reports by the Military Police units, as well as the orders they received, illustrate that the checkpoints, whether permanent or temporary,[2300] were in place until the conflict came to an end.[2301]

933. Beyond keeping track of the comings and goings of persons and goods on the territory of the HZ H-B, the checkpoints also facilitated the arrest of individuals,[2302] including those who were attempting to evade mobilisation,[2303] as well as to monitor humanitarian aid routed through the territory of BiH.[2304]

934. Ultimately, the checkpoints maintained by the HVO Military Police were the material instrument whereby the HVO authorities could control access to certain zones by international organisations[2305] and reporters.[2306] Thus, by way of example, on 19 September 1992, Valentin Ćorić ordered humanitarian convoys to be thoroughly searched upon entering HZ H-B territory.[2307] An ECMM report dated 17 May 1993 noted the increase in the number of checkpoints maintained by the HVO Military Police in Central Bosnia and their impact on the free passage of convoys from international organizations.[2308] In similar fashion, Ivan Anĉić, Commander of the 5th HVO Military Police Battalion gave an order on 26 August 1993 that only foreign journalists and high-ranking officials representing international organisations carrying

[2298] P 00875; Bruno Pinjuh, T(F), pp. 37338-37341.
[2299] P 04699, p. 14; *see* for an example for the town of Mostar, P 02578.
[2300] *See* for example P 04699, p. 14.
[2301] *See* P 03057; P 03069 under seal; P 03753, p. 2; P 04110, p. 2; P 04749, p. 3; P 05497, pp. 4 to 7; P 06722, p. 3; 3D 00422, p. 2.
[2302] P 04699, p. 14; *see* for example 2D 00871; 5D 04352.
[2303] P 00420, p. 7.
[2304] P 05926; 1D 02025; 1D 01853; P 01451; P 01272, p. 3.
[2305] *See* for example P 04792.
[2306] P 02488, p. 1; P 06894, p. 3.
[2307] P 00508.
[2308] P 02424, p. 1.

specific authorisations could travel freely within the 5th Battalion"s area of responsibility.[2309]

935. In view of this evidence, the Chamber finds that the Military Police and its Administration were responsible for installing checkpoints on the territory of the HZ H-B for the purpose of monitoring the freedom of movement of persons and goods or even limiting or prohibiting it in certain areas.

936. However, the Chamber notes that the Military Police Administration was not the only authority issuing instructions to the Military Police on how freedom of movement should be monitored: for instance, on 26 May 1993, Milivoj Petković, Chief of the HVO Main Staff, asked all OZs and Military Police units to ensure free passage for all UNPROFOR vehicles.[2310] Likewise, an order dated 6 December 1993, issued by NeĆedjko Obradović, commander of Sector South in the Mostar Military District, stated that the Military Police was required to inspect the cargo of all convoys crossing the checkpoints it manned and to validate their travel documents.[2311]

937. Finally, contemporaneously with its assignments regarding freedom of movement, the Military Police was responsible in particular for security for senior officers, buildings and areas of particular significance to defence – other than detention facilities, command posts and official foreign delegations.[2312] On occasion, it would also provide protection for individuals at designated events.[2313]

4. Using the Military Police for Combat Missions to the Detriment of its Successful Completion of its "Customary" Assignments

938. The Provisional Instructions for the Work of the Military Police Units promulgated in April 1992 did not envisage the deployment of Military Police forces in combat operations. Nevertheless, Military Police units were asked, from the outset of the conflict, to hold the front lines, conduct offensive operations, participate in sabotage or to "„[comb]" territory or villages that had been liberated".[2314] In this same way, the Military Police units were deployed along the front in Gornji Vakuf in

[2309] P 04527.
[2310] P 02527; *see* also for example P 03835; P 03895; 1D 02019.
[2311] 1D 02207.
[2312] P 00143, pp. 8 and 9; P 00142, pp. 8 and 9; P 02801.
[2313] 2D 00201.

January 1993 to conduct military operations, where the "HVO local command had failed".[2315] Moreover, an activity report from the Military Police covering the period from January to June 1993, stipulated that the creation of the 1st Light Assault Battalion and its reinforcement had allowed the Military Police to better defend the city of Mostar[2316] and had a decisive impact on the North-West OZ.[2317] Between 9 and 30 May 1993, 600 military police agents took part in the fighting in Mostar.[2318] In the first six months of 1993, 90 % of the military police officers killed fell on the front lines.[2319]

939. Like the Prosecution,[2320] the Chamber observes that the continuous deployment of the Military Police on the front lines led in particular to a total reorganisation of this army corps so that special units for armed combat, termed "light assault battalions",[2321] could be established and resubordinated to the operational command of the Chief of the Main Staff or to the OZs in July 1993.[2322] This point will be analysed later, particularly with regard to the distribution of command authority over these units.[2323]

940. The Chamber notes moreover that one of the consequences of deploying the Military Police at the front lines was that it was unable to complete its delegated assignments, as indicated by Valentin Ćorić in a letter addressed to the Minister of Defence, Bruno Stojić, to the Commander of the HVO Main Staff, Slobodan Praljak, and to the Chief of Staff, Ţarko Tole, on 29 September 1993, in which he specifically

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[2314] *See* for example P 00128, p. 13; P 00956, p. 11. *See* also 2D 02000, para. 48; P 08548, p. 24.
[2315] P 01350, p. 2. Concerning the deployment of the Military Police units in January 1993 at Gornji Vakuf, *see* P 03090, pp. 6 and 7. *See* also "The HVO" in the Chamber"s factual findings regarding the Municipality of Gorni Vakuf.
[2316] As an example, the 1st Light Assault Battalion conducted the offensive against the Hotel Mostar, where ABiH soldiers were barracked, *see* P 03090, p. 4.
[2317] P 03090, p. 3.
[2318] P 03090, p. 5. Concerning the deployment of the Military Police units on the front lines in Mostar, *see* P 08548, p. 24. The Military Police were also involved in the fighting in Mostar in July 1993, *see* P 03124.
[2319] P 03090, p. 13. *See* for example Document P 03090, p. 14 which shows that between "the beginning of the war" [no more specific date is given in the document] and 8 July 1993, the Military Police lost 84 members".
[2320] Prosecution Final Trial Brief, para. 1050.
[2321] *See* for example P 02991/P 03000, p.2; 4D 01283. For an example of Military Police Light Assault Battalion deployment in a combat operation, *see* 3D 00745, p. 5. P 08548, p. 24; *see* also P 08550, pp. 3 and 4.
[2322] *See* P 03762; P 03763/; P 03778.
[2323] *See* "Distribution of Command and Control Authority over the Military Police Units" in the Chamber"s findings regarding the military structure of the HZ(R) H-B.

requested that the Military Police units be withdrawn from combat.[2324] It is clear that, despite this request, Military Police units continued to be involved in the combat missions until December 1993.[2325] *Marijan Biškić* informed the Chamber that, at the end of December 1993, most Military Police units had actually been withdrawn from the front.[2326]

C. Distribution of Command and Control Authority Over the Military Police Units

941. The Chamber previously observed that the structure of the HVO Military Police, created in 1992, varied throughout the entire period relevant to the Indictment, *inter alia* for the purpose of allowing the Military Police to carry out the various assignments analysed above. In this part, the Chamber will describe the chain of command and control then prevalent among the Military Police units. This analysis shows that the units were both (1) subordinated to the traditional chain of command in the HVO armed forces, *via* the OZ commanding officers and the brigade commanders, and (2) also had to respond to the orders from the Military Police Administration and its Chief, Valentin Ćorić.

1. Command and Control Authority of the OZ and HVO Brigade Commanders over the Military Police Units

942. The Chamber notes that the Parties disagree about the chain of command prevalent among the Military Police. Thus, according to the Stojić Defence, followed in this respect by the Ćorić Defence,[2327] the "operational" units of the Military Police were under the authority of the HVO armed forces – and more particularly of the OZ commanders – to carry out their "daily duties"[2328] and did not report directly to the Head of the Department of Defence and to the Chief of the Military Police Administration.[2329] By contrast, the Petković Defence emphatically states that all the Military Police units followed the orders of the Military Police Administration within

[2324] P 05471; Witness C, T(F), pp. 22532 and 22534, closed session; Milivoj Petković, T(F), pp. 50267 and 50268; and Marijan Biškić, T(F), p. 15309.
[2325] P 07169, p. 26; P 07234, p. 6; Marijan Biškić, T(F), p. 15047; P 07234, p. 2.
[2326] Marijan Biškić, T(F), p. 15281.
[2327] *See* Closing Arguments by the Ćorić Defence, T(F), pp. 52649, 52652, 52655 and 52656.
[2328] Concerning the nature of these "daily duties", *see* "Command and Control Authority of the OZ and HVO Brigade Commanders over the Military Police Units" in the Chamber's findings regarding the military structure of the HZ(R) H-B.

the OZs, while also submitting that the Military Police units within the OZs were subordinated to the commanders of these same OZs.[2330] The Petković Defence makes a distinction between "non-combat components" and "combat components" in the Military Police and states that the Chief of the Main Staff had no authority over the "non-combat" personnel in the Military Police.[2331]

943. The Ćorić Defence agrees with the Petković Defence on the topic of the structure of the Military Police battalions within each OZ, but states that there was no subordinating link between the Military Police Administration and the said units.[2332] It submits that the Military Police units followed the "operational" orders of the HVO military commanders[2333] both in combat and in carrying out "daily assignments" of military policing.[2334]

944. The Chamber notes that only the Ćorić Defence provided information in its Final Trial Brief about the definition of the Military Police"s "daily duties", assignments for which the Military Police units were under the OZ commanders:[2335] they say that the "daily duties" included: (1) security for facilities; (2) personal security and protection for the inhabitants of a given zone; (3) assigning soldiers to Military Police battalions; (4) monitoring the comings and goings of men of military age in Mostar; (5) arresting and detaining deserters at Ljubuški Prison; (6) monitoring egress from zones of responsibility; and (7) monitoring the ceasefire and obtaining approval to open fire.[2336] The Stojić, Petković and Praljak Defences, despite having indicated a difference between the "daily duties" of the Military Police[2337] and its special assignments, did not describe the said tasks with specificity, preferring to mention them by name and then proceed to deduce their effect on the chain of command within the Military Police units.[2338] In the part of its final trial brief relating

[2329] Stojić Defence Final Trial Brief, paras 363, 388 and 390.
[2330] Petković Defence Final Trial Brief, paras 91 and 99.
[2331] Petković Defence Final Trial Brief, paras 104 and 577.
[2332] Ćorić Defence Final Trial Brief, para. 18.
[2333] Ćorić Defence Final Trial Brief, paras 97 to 110.
[2334] Ćorić Defence Final Trial Brief, paras 111 to 125.
[2335] *See* Ćorić Defence Final Trial Brief, paras 112 and 113.
[2336] *See* Ćorić Defence Final Trial Brief, paras 114. *See* also in this regard para. 120 as well as paras 122 *et seq.* of the Ćorić Defence Final Trial Brief.
[2337] The terms used by the parties in their trial briefs vary as to the duties of the Military Police: the "regular", "ordinary", "current" or even "professional" assignments or duties are mentioned, among others.
[2338] *See* Stojić Defence Final Trial Brief, paras 386 and 402; Praljak Defence Final Trial Brief, paras 81 and 205; Petković Defence Final Trial Brief, para. 99.

to the criminal responsibility of the Accused Ćorić, the Prosecution drew no distinction between the "daily duties" of the Military Police and its other assignments, alleging that the Accused Ćorić was in charge of the activities of the Military Police units.[2339]

945. For its part, the Chamber considers that the HVO Military Police units in fact answered to a dual chain of command:[2340] in carrying out the "daily duties" normally assigned to the Military Police, the commanders of Military Police battalions were directly subordinated to the commander of the OZ in which they operated.[2341] Valentin Ćorić confirmed this subordinating link between the Military Police battalions and the OZ commanders in a document issued in reply to the findings of a meeting on 9 March 1993[2342] and *Milivoj Petković,* questioned during his appearance before the Chamber on the basis of his prior statements in the *Kordić* and the *Blaškić* Cases, personally confirmed this subordinating link as well.[2343]

946. In defining the "daily duties" for which the Military Police units were allegedly subordinated to the OZ commanders, the Chamber refers to the testimony of *Witness NO*[2344] who stated that the OZ commanders had the power and authority to give orders to the Military Police units regarding the set-up of checkpoints, maintaining law and order, providing security for facilities or protecting individuals,[2345] but also in the area of combat operations.[2346] Nevertheless, the

[2339] Prosecution Final Trial Brief, paras 981 *et seq.* The Prosecution nevertheless stated that the Accused Stojić, Praljak and Petković also had command authority over the said units, *see* the parts relating to their respective duties in the Prosecution"s Final Trial Brief.
[2340] *See* for example Slobodan Praljak, T(F), pp. 42719-42721.
[2341] P 00957, p. 5; *see* for example 5D 00538, pp. 2 and 3; P 01548; *see* also P 07018, p. 5; P 01148, p. 1; *See* also Slobodan Praljak, T(F), pp. 42694 to 42699; *see* for example with regard to the subordination of 2nd Battalion to the commander of the North-West OZ, Witness C, T(F), pp. 22525 and 22526, closed session; Zdenko Andabak, T(F), pp. 50908, 50909, 50912 and 51146; P 00781; *see* for examples of the subordination of units within an OZ to the OZ"s command: 5D 04377; Zdenko Andabak, T(F), pp. 50979, 50980 and 50982; Witness C, T(F), pp. 22520 and 22521, closed session; Witness EA, T(F), pp. 24876-24881, closed session; 5D 04039, p. 1.
[2342] P 01678, p. 2.
[2343] Milivoj Petković, T(F), p. 50244.
[2344] A Croat from BiH, *see* Witness NO, T(F), pp. 51180, 51182, 51210 and 51225–51226, closed session; 5D 05110 under seal, paras 3, 7, 8 and 9.
[2345] *See* for example, concerning the authority of the OZ commanders and the brigades over the Military Police units: Milivoj Petković, T(F), pp. 50248-50254; 5D 05095; 5D 04374; 5D 04375; P 02534; P 04063; 3D 02584; P 02968; 4D 00924.
[2346] Witness NO, T(F), p. 51326, closed session. *See* regarding the missions of the 5th Military Police Battalion in defence of Mostar, Witness NO, T(F), p. 51182, closed session; Zdenko Andabak, T(F), pp. 50934-50936. *See* for example 5D 02102; Davor Marijan, T(F), p. 35831; 5D 04371; 5D 04382; 4D 00923; P 02599; Milivoj Petković, T(F), pp. 50266 and 50267.

Chamber considers that this single testimony does not constitute an adequate basis for specifically defining the "daily duties" of the Military Police.

947. Accordingly, with regard to these "daily duties" the Chamber will assess whether the Military Police units reported to the Military Police chain of command or that of the OZ commanders on a case-by-case basis. Nevertheless, the Chamber recalls that the "daily duties" must have included some of the 20 duties of the Military Police enumerated in the provisional instructions of April 1992 as pointed out by *Witness NO.*[2347]

948. Moreover, the Chamber notes that, during the period covered by the Indictment, if the OZ commanders wished to deploy Military Police units, they did not need to request special advance authorisation from the Military Police Administration, [2348] although they were required to inform them of such deployments.[2349] The units thus deployed were, in addition, required to send reports of their activities to the OZ commanders.[2350]

949. The evidence shows that two broad principles governed the chain of command and control in the Military Police units: (1) on the one hand, the Military Police units, in furtherance of their "daily duties" in their areas of responsibility, were subordinated

[2347] P 00142, pp. 8 and 9. The 20 duties are as follows: (1) protecting persons and property within the area of responsibility of an OZ; (2) providing security for military traffic; (3) maintaining military order and discipline; (4) investigations relating to criminal acts committed by or against members of the HVO or on property of the HVO; (5) providing security for the leading figures of the HVO, for documents, for equipment of strategic value as well as for areas considered essential by the HVO for national defence; (6) fighting desertion and guarding the boundaries of war zones; (7) arresting members of the armed forces of the HVO failing to return to their units after authorised leave; (8) providing security for HVO command posts, institutions and officers as well as foreign delegations; (9) providing internal security for military prisons, including areas used for detaining individuals; (10) seizing illegally held weapons and turning them over to the recognised authorities; (11) seizing weapons held or used illegally by members of the armed forces of the HVO; (12) providing security for military convoys together with the MUP; (13) participating in searching for and arresting persons fit for military service but failing to answer the mobilisation; (14) directly securing command posts, their commanders and military units when an order to that effect is given; (15) participating in preventing infiltration tactics employed by enemy forces; (16) monitoring compliance with security measures in zones of deployment, assembling, embarking, disembarking or moving military units; (17) implementing orders to block access or limit movement along certain routes and in certain zones; (18) providing security for allied military missions and delegations; (19) taking part in monitoring refugee flows as well as arresting members of enemy groups infiltrating these flows and (20) taking part in securing prisoners of war.
[2348] Witness NO, T(F), pp. 51326–51327, closed session.
[2349] 5D 00538, p. 3.
[2350] Davor Marijan, T(F), pp. 35832 and 5D 04385.

to the commanders of the HVO unit to which they were attached.[2351] The Chamber notes by way of example that this was true for the Military Police platoons embedded in brigades, which were in fact subordinated to the brigade command to which they were assigned;[2352] (2) on the other hand, when a Military Police unit travelled, ending up outside of its area of responsibility, it was required to place itself under the authority of the unit responsible for that area in connection with its "daily duties",[2353] namely, the commander of the OZ or the brigade in question.

950. As for the top of the chain of command of the Military Police units and knowing that the OZ commanders were themselves under the authority of the Chief of the Main Staff,[2354] the Chamber finds, like *Marijan Biškić*, that the Main Staff did have final authority over the Military Police battalions as they carried out their "daily duties".[2355] In this regard, it does not share the Petković Defence"s conclusions that the Chief of the Main Staff had the authority of a superior over the Military Police units only in those cases where they were re-subordinated for a limited time to his own units.[2356] Likewise, inasmuch as the HVO brigades were subordinated to the Chief of the Main Staff *via* the OZs, the official in charge of the Main Staff also had command authority over the Military Police platoons embedded in those brigades.[2357] It even appears that the Chief of the Main Staff occasionally issued direct orders to these platoons. By way of example, the Chamber notes that in a memorandum addressed to Valentin Ćorić on 31 July 1993, Slobodan Praljak stated that the Military Police platoon commanded by Perica Turalija was subject to his orders.[2358]

[2351] P 00837, p. 5; Witness C, T(F), pp. 22521, 22522, 22527 and 22528, closed session; as an example, an order given by a military commander to the Military Police 5D 02009; 5D 01054.
[2352] P 00957, p. 6; P 01678, p. 2; P 04262; Witness E, T(F), pp. 22150-22152, closed session; P 04922; Zdenko Andabak, T(F), pp. 50925-50927; P 01099, p. 2 and P 04293, p. 2. To view the original organisational chart, *see* 2D 01370, p. 2; Ivan Bandić, T(F), p. 38007; 2D 02000, para. 49; Witness EA, T(F), pp. 24880 and 24881, closed session; 5D 04030, p. 1; Slobodan Praljak, T(F), pp. 42725 to 42727 and 44669; 5D 04040; Witness EA, T(F), pp. 24814, 24876-24878, 24880 and 24881, closed session; P 02017, p. 1; 5D 04039, p. 1. *See* as an example of an order given by a brigade commander P 04750.
[2353] P 07018, p. 5.
[2354] Zdenko Andabak, T(F), p. 51153. *See* "Orders by the Main Staff to the Armed Forces" and "Chain of Command and Control in the Armed Forces" in the Chamber"s findings regarding the military structure of the HZ(R) H-B.
[2355] Marijan Biškić, T(F), p. 15289. Some of the evidence establishes that Slobodan Praljak also issued orders to Valentin Ćorić, *see* for example P 03829.
[2356] Petković Defence Final Trial Brief, para. 97.
[2357] 5D 04394; Marijan Biškić, T(F), pp. 15233 and 15235.
[2358] 5D 04394.

951. The MTS required to carry out the "daily duties" of the Military Police units were obtained from the units of the HVO to whose authority these Military Police units were subject pursuant to the instructions on the work of the Military Police.[2359] The Military Police Administration was responsible for supplying specialised military police equipment – such as insignia and uniforms – to the units of that police force.[2360] In this regard, the Chamber, however, notes that in the minutes of a coordinating meeting held on 9 March 1993 bringing together the commanders of the units in the North-West OZ, it was specified that it was the Military Police Administration, and not the units of the HVO, which was responsible for providing MTS to the 2nd Military Police Battalion which had been granted authority over this OZ.[2361]

952. The Chamber therefore concludes that the units of the Military Police battalion from each OZ were subordinated to the commander of the OZ for purposes of carrying out their "daily duties". The Military Police platoons assigned to the brigades were themselves subordinated to the brigade commander in carrying out their assignments, namely providing barracks security and security for the brigade command, escorting and guarding brigade convoys, establishing points of entry at the borders of the brigade"s area of responsibility and arresting and detaining individuals in the brigade"s jail cells.[2362] The evidence cited does not prevent the Chamber from noting, as it will now do, that several other exhibits admitted into evidence likewise confirm the Military Police Administration"s command and control authority over the units of the said Police in several areas.

[2359] P 00837, p. 6.
[2360] P 00837, p. 6.
[2361] Witness C, T(F), pp. 22525 and 22526, closed session; 5D 00538, p. 2.
[2362] *See* P 00957, p. 5; P 04922; Zdenko Andabak, T(F), p. 50925; P 01099, p. 2. To view the original organisational chart, *see* 2D 01370. For examples of tasks delegated to the Military Police units in the Brigades: Zdenko Andabak, T(F), pp. 51014-51016; 3D 03814; 3D 03815; 3D 03816; 2D 02000, para. 49; Witness EA, T(F), pp. 24876 and 24877, closed session. Witness *Zvonko Vidović* stated that the Military Police platoons in the brigades were also responsible for securing sites where crimes had been committed in order to preserve evidence, arrest the perpetrators and inform those responsible for criminal investigations, *see* Zvonko Vidović, T(F), pp. 51574; P 51583 and 51584; P 02832; P 04922; 5D 02097; Zdenko Andabak, T(F), pp. 50944, 50950 to 50952. For an example of brigade-level Military Police deployment in an area where the said brigade was deployed, *see* P 02832.

2. Military Police Administration Command and Control Authority over the Units of the Military Police

953. It appears that the Chief of the Military Police Administration acted either at his own initiative or subsequent to orders from the Head of the Department of Defence,[2363] the Chief of the Main Staff,[2364] or from both of these authorities,[2365] in creating Military Police units,[2366] in standardising administrative procedures[2367] and when specifying which procedures were applicable to the daily work of this police force.[2368] His command and control authority over the Military Police was exercised primarily through (a) a power of appointment and (b) oversight of recruitment, and basic and advanced training of the units. Moreover, even although *Witness NO*, like *Zdenko Andabak*,[2369] stated that the Military Police Administration had jurisdiction over the Military Police units only in an administrative and logistical sense,[2370] it seems that the Military Police Administration occasionally acted in order (c) to issue orders to the Military Police which went beyond the administrative and logistical framework and that it could in fact (d) order their resubordination.

a) Power of Appointment of the Chief of the Military Police Administration over the Military Police Units

954. Among the core powers of the Chief of the Military Police Administration was his power to appoint: in April 1992, he had the authority to appoint Military Police company commanders, as well as the directors of the sections and services of the Military Police Administration.[2371] Thus, at the outset of the conflict, Valentin Ćorić personally sent requests to the municipal headquarters asking them to recommend candidates for the command posts of the Military Police units inside the municipalities.[2372] However, as of November 1992, this procedure for appointments

[2363] P 00786; 2D 01365.
[2364] *See* for example 2D 01394.
[2365] P 00876/P 00875.
[2366] P 00334; P 00801; 2D 01394.
[2367] By "standardising administrative procedures" the Chamber means, for example, the establishment of a standard form that all reports sent by Military Police units to the Military Police Administration were supposed to use, or the assignment of numbers to each department of the Military Police. *See* in this regard P 00277; 2D 01395; P 00786; P 01821; P 04279; P 04548/P 04544.
[2368] P 00573; 2D 01365; P 00876/P 00875 (identical documents); 5D 00524; 5D 04110.
[2369] Zdenko Andabak, T(F), pp. 50905 and 50906; P 00143/P 00142.
[2370] 5D 05110 under seal, para. 4.
[2371] P 00143/P 00142; p. 5.
[2372] P 08548, p. 23.

was modified; from that time forward, the Chief of the Administration was required to obtain the consent of the Head of the Department of Defence for appointments to be made final.[2373] As previously recalled by the Chamber in its analysis of the Head of the Department of Defence"s power to appoint members of the Military Police, the Chief of the Military Police Administration could also propose candidates to the Head of the Department of Defence who directly appointed the battalion commanders, their assistants and the heads of the departments of the Military Police Administration.[2374] Valentin Ćorić, as Chief of the Military Police Administration, personally received proposals for appointments to subordinate posts in the Military Police units sent to him by subordinates for approval. Thus, for example, Ivan Anĉić, Commander of the 3rd Military Police Battalion, proposed appointments of members of the 3rd Company to the Military Police Administration in a request dated 13 April 1993.[2375]

955. In addition, although *Milivoj Petković* submitted in his testimony that the appointments of the members of the Military Police platoons inside the brigades also fell under the authority of the Military Police Administration,[2376] the Chamber is persuaded after reviewing the evidence that this authority belonged to the brigade commanders.[2377] Moreover, a brigade commander facing problems with a member of the Military Police platoon was required to resolve them on his own and could obtain nothing beyond "professional assistance"[2378] from the Chief of the Military Police Administration, a term for which no definition was provided to the Chamber.

956. The Chamber considers therefore that the Chief of the Military Police Administration had power and authority to propose certain appointments to the Head of the Department of Defence, that he himself had that authority for certain other appointments,[2379] but that the authority to appoint did indeed belong to the brigade

[2373] P 00837, p. 5.
[2374] P 00837, pp. 4 and 5, and P 02467; *see* for example 2D 01349; P 04108; *see* also 2D 00567, p. 3; P 01420; P 01466; 5D 02164; P 00803; P 01460.
[2375] P 01858.
[2376] Milivoj Petković, T(F), pp. 50228, 50229, 50840 and 50841.
[2377] P 04262; P 00990; Zdenko Andabak, T(F), pp. 50918 and 50919, 50923 and 50924; Witness C, T(F), pp. 22525 and 22526, closed session. For an appointment to the post of commander of a Military Police platoon within a brigade, *see* 5D 05106; Witness EA, T(F), pp. 24881 and 24882, closed session; 5D 04039. Moreover, the members of the brigade"s Military Police platoon were recruited from among the brigade"s members, *see* Zdenko Andabak, T(F), pp. 50921 and 50922.
[2378] P 04262; 2D 02000, para. 49; Witness C, T(F), 22535 and 22536, closed session.
[2379] P 00837, p. 5; *see* for example P 01780.

commanders in respect of the appointment of the members of the Military Police platoons attached to their brigade.

b) Power and Authority of the Chief of the Military Police Administration in Matters of Recruitment and Basic and Advanced Training of Military Police Units

957. The Military Police Administration was the principal actor in recruitment[2380] and basic[2381] and advanced[2382] training of HVO military police officers. According to the Provisional Instructions for the Work of the Military Police Units from April 1992, it also proposed measures designed to improve these areas to the Head of the Department of Defence.[2383] Thus, for example, on 20 September 1992, at Valentin Ćorić"s request,[2384] Bruno Stojić, then Head of the HVO Department of Defence, created the Military Police training centre at Neum, on the premises of the Sunce Hotel.[2385] Nevertheless, according to an activity report from the Military Police signed by Valentin Ćorić sometime between January and June 1993, the military police training centre based in Neum was closed.[2386] However, it appears from this report that another centre was created in Ljubuški in April 1993[2387] where, according to *Witness C*, starting in October 1993,[2388] the Military Police Administration sent its members for training.[2389] A document sent by Valentin Ćorić to the Commander of the North-West OZ dated 17 March 1993 stated that military police officers could also train at a centre established in Dretelj.[2390] Lastly, in December 1993, while the latest reform involving the Military Police was underway, a company headquartered in Ĉapljina under the command of Dragan Mustapić was specifically created further to the suggestion of the Assistant Minister of Defence for Security, with the consent

[2380] P 00837, p. 6.
[2381] The Administration was specifically responsible for training Military Police commanders in their legal responsibilities in wartime, *see* 5D 05110 under seal, para. 6; for an example of the authority of the Military Police Administration over the training of its members, *see* Marijan Biškić, T(F), pp. 15030 and P 05001.
[2382] P 00837, p. 6.
[2383] P 00837, p. 6.
[2384] P 00475.
[2385] P 00509; P 00128, p. 13; Miroslav Desnica put the creation of this training centre in October 1992, *see* 5D 05109, para. 4. *See* also P 00518, p. 6.
[2386] P 04699, p. 16; although the Chamber cannot accurately date when the centre was closed, it has evidence that it still existed at least as late as March 1993, *see* P 01678, pp. 2 and 3.
[2387] P 04699, p. 16; P 03090, p. 32; P 01416, p. 3; P 01678, pp. 2 and 3, and 5D 05109, para. 4.
[2388] Witness C, T(F), p. 22519, closed session.
[2389] P 03351, pp. 8 and 9; P 01416, p. 3; P 01678, p. 2.
[2390] P 01678, pp. 2 and 3.

of the Chief of the Main Staff as well as the Minister of Defence in order to address the training needs of its members.[2391]

958. The Chamber heard *Miroslav Desnica*[2392] speak to the substance of the training received by military police officers. He specified that the training offered courses on the international law of war.[2393] The trainers used manuals and documents published by Croatia,[2394] and were given a brochure about the international law of war on completion of their training.[2395]

c) Command and Control Authority of the Chief of the Military Police Administration over the Units of the Military Police

959. As concerns the command and control authority of the Chief of the Military Police Administration, the Chamber recalls the Provisional Instructions for the Work of the Military Police Units of April 1992, stipulating that the Chief of the Military Police Administration commanded and controlled all military police units.[2396] Although, as previously recalled by the Chamber, the Military Police battalion and unit commanders were subordinated to the OZ and brigade commanders under whose authority they stood in carrying out their "daily duties",[2397] it seems that all Military Police units were responsible for their work and carrying out their assigned tasks to the Military Police Administration through the Military Police Battalions organised in each OZ.[2398]

960. The Chamber notes that the Provisional Instructions of April 1992 showed a contradiction between this apparent "overall command responsibility" wielded by the Military Police Administration over the Military Police units and the types of action "reserved" to the Administration, listed in these instructions and described elsewhere by the Chamber (namely, the authority to appoint, to recruit, to provide basic and advanced training of Military Police Units as well as the authority connected with the

[2391] P 07018, p. 2; P 07169, p. 22; P 07419, p. 1.
[2392] Responsible for training military police between the first half of 1992 and June 1993, *see* 5D 05109, para. 3; Miroslav Desnica, T(F), pp. 50890 and 50891.
[2393] 5D 05109, para. 6; Miroslav Desnica, T(F), pp. 50890 and 50891.
[2394] 5D 05109, para. 8; *see* for example 5D 05113, p. 4; 5D 05114, p. 3; 5D 05115.
[2395] 5D 05109, para. 8.
[2396] P 00837, p. 4; P 00978.
[2397] *See* "Command and Control Authority of the OZ and HVO Brigade Commanders over the Military Police Units" in the Chamber's findings regarding the military structure of the HZ(R) H-B.
[2398] P 00837, p. 5.

overall structure of the Military Police).[2399] This contradiction enabled Valentin Ćorić to issue orders intended for Military Police units in areas which, according to the orders of April 1992, fell to the OZ and brigade commanders.

961. Thus, for example, the Military Police platoons embedded in the brigades were required to answer both to the orders of the brigade commander and on occasion to those of the Military Police Administration as well. Thus, the Commander of the 4th Brigade and the Head of the Brigade"s SIS issued orders to the brigade"s Military Police platoon pertaining to activities conducted on the front lines and to the management of the security situation in the municipality, whereas the Military Police Administration gave orders concerning this platoon"s activities inside Ljubuški Prison.[2400] *Witness NO* stated that the Military Police Administration had extremely limited authority over the Military Police platoons embedded in the brigades, merely providing them with Military Police insignia and training their members, pursuant to an order from the brigade or OZ commander.[2401] This contradiction between the statements of *Witness NO* in particular and the various orders the Chamber was able to examine attesting to the Military Police Administration"s command authority over the Military Police units within the brigades and battalions attests, in the Chamber"s view, to the confusion existing in the chain of command and control. The Chamber finds that this confusion explains why there were multiple orders issued simultaneously to the Military Police units both by the OZ commanders, the Chief of the Military Police Administration, the Head of the Department of Defence – and even by the Chief of the Main Staff.[2402]

962. The balance struck between the command authority of an OZ or brigade commander over the Military Police units carrying out their "daily duties" and that of the Chief of the Military Police Administration concerning these same units varied, however, during the time period relevant to the Indictment. During the second half of 1992 until roughly July 1993, the Military Police Administration exercised direct command over the Military Police units, case-by-case and for specific assignments, while issuing general orders relating to the policy for deploying Military Police units on the ground. Thus, for example, the Chamber observes that in connection with his

[2399] P 00142, pp. 6 and 7; P 00143, pp. 6 and 7; P 00837, pp. 4 and 6.
[2400] Witness E, T(F), p. 22160, closed session; P 02886.
[2401] 5D 05110 under seal, para. 4. Witness C, T(F), p. 22323, closed session.

direct command authority over the Military Police units, Valentin Ćorić issued an order to the Military Police Commander in Mostar so that the refugees located along the Gnojice front line would be transferred to the Ĉapljina sector; on 19 February 1993 he also ordered the Commander of the 3rd Military Police Battalion to reinforce the checkpoints at the entry and exit points to the town of Mostar and intervened so that some of the Military Police units would be deployed or reinforced.[2403] At the same time, in connection with his authority to issue general orders, Valentin Ćorić promulgated general rules on the deployment of Military Police units in the field, ordering specifically that checkpoints be installed along the HZ H-B‟s borders, that military vehicles receive authorisation to circulate freely and that Military Police patrols receive joint training alongside the ABiH.[2404]

963. Subsequently, during its review of the evidence, the Chamber noted that the Military Police Administration gradually relinquished its power to exercise direct command over the Military Police units. It did not go beyond defining the procedures that the Military Police were to follow and defining the deployment policy for that Police force. The Administration, from that time onward, issued only orders of a general nature applicable to a broad geographic area that required execution by several Military Police units of varying hierarchical rank.[2405] In this regard, the Chamber can refer to the order of Valentin Ćorić dated 1 July 1993 seeking specifically to stop and question all conscripts who failed to resolve their military status properly, an order enforceable throughout the territory of the HZ H-B which was to be implemented by all departments of the Military Police Administration as well as by all of the Military Police battalions.[2406] Additionally, some of these orders of a general nature were issued further to other orders from the HVO Main Staff,[2407] the Head of the Department of Defence[2408] or from both these authorities.[2409]

[2402] *See* for example P 04947, p. 2.
[2403] *See* for example P 00323; P 00360; 3D 00424; 3D 00425; P 01331; P 01517; P 02982; P 04151; P 03762; P 03075, p. 1; P 00397. The Chamber nevertheless noted that there was an order dated 13 October 1993 showing that the Chief of the Military Police Administration continued to have the authority of a direct operational commander over the units, *see* P 05863.
[2404] *See* for example P 00335; P 00338; P 00355; P 00358; P 00385; P 00508; 5D 04282; P 00864; P 01095; P 01134; P 01562; P 02020.
[2405] *See* for example P 03077; P 04126; P 04174; P 04258; P 04529.
[2406] P 03077.
[2407] *See* P 04174; P 04258.
[2408] P 00355; P 00864; P 03077; P 04126.
[2409] P 04529.

964. The Chamber therefore shares the Ćorić Defence"s interpretation that the Military Police Administration"s command authority over the Military Police units diminished as the conflict progressed between 1992 and 1994.[2410] Nevertheless, the Chamber finds that this reduction did not, however, lead to the complete renunciation of its prerogatives of command over the Military Police units.[2411]

965. The Chamber notes, moreover, that on occasion, the Head of the Department of Defence also dispatched orders directly to the Military Police units. In this regard, the Stojić Defence alleges that the orders produced by the Prosecution to show the Head of the Department of Defence"s involvement in the "daily duties" of the Military Police were merely co-signed by him, which would prove, it says, that the Head of the Department of Defence lacked authority over the Military Police.[2412] The Chamber in fact observes that on 26 June 1993, Bruno Stojić, the Head of the HVO Department of Defence, Jadranko Prlić, President of the HVO of the HZ H-B, and Mate Boban, President of the Presidency of the HZ H-B, co-signed an order instructing the municipal HVOs of Livno and Tomislavgrad to ensure that the Military Police forces were allowing Serbs to leave the territory of these two municipalities.[2413] However, the Chamber notes that on 3 July 1993, Bruno Stojić individually ordered the redeployment of the Military Police Company based in Livno.[2414] Although the Chamber takes note of this evidence, it is nevertheless not persuaded beyond a reasonable doubt that a substantial number of orders were issued by the Head of the Department of Defence directly to the Military Police Units, which would imply that the Head of the Department of Defence was thereby "circumventing" the authority of the Military Police Administration.

d) Authority of the Chief of the Military Police Administration to Re-subordinate Military Police Units

966. The evidence shows that the Military Police Administration had the authority to re-subordinate Military Police units, as most of the Parties have moreover

[2410] Ćorić Defence Final Trial Brief, para. 40.
[2411] P 03077; P 04126; P 04174; P 04258; P 04529.
[2412] Stojić Defence Final Trial Brief, para. 402.
[2413] P 02967.
[2414] P 03146.

conceded.[2415] For instance, on 1 July 1993, Valentin Ćorić, acting as Chief of the Military Police Administration, placed the military police platoon commanded by Perica Turalija under the command of the North-West OZ"s lead officer, Colonel Ţeljko Šiljeg.[2416] In similar fashion, *Zdenko Andabak* explained to the Chamber the procedure for resubordination when an OZ commander sought to obtain reinforcements of Military Police units outside the said OZ:[2417] the commander of the OZ was to turn to the HVO Main Staff, which in turn, issued an order to the Military Police Administration.[2418] The Chief of the Administration would then order the unit concerned to move to the OZ in question[2419] and place itself under the authority of the OZ"s commanding officer upon arrival.[2420] *Witness NO* confirmed the existence of this procedure,[2421] as did *Milivoj Petković*.[2422]

967. The procedure to re-subordinate the Military Police Units described above does not, however, appear to have been applicable in cases where the situation on the ground was too "serious": thus on 12 August 1993, Slobodan Praljak, Commander of the HVO Main Staff, ordered the mobilisation of all resources from the Ĉapljina, Mostar, Buna and Ţitomislići zones – including "Military Police … and hunting sportsmen"s clubs" – in order to finish off "Muslim terrorist groups".[2423] The individuals in question were to place themselves under the command of NeĊeljko Obradović, Commander of the 1st Sector of the South-East OZ.[2424] *Slobodan Praljak* testified before the Chamber that this order was taken pursuant to an "agreement" with Bruno Stojić.[2425] Likewise, due to the "seriousness of the situation" in Gornji Vakuf, on 29 June 1993, Ţeljko Šiljeg, commander of the North-West OZ, ordered

[2415] At least inasmuch as concerns the resubordination of the Military Police units in view of their taking part in combat operations, *see* Stojić Defence Final Trial Brief, paras 379 and 397; Praljak Defence Final Trial Brief, para. 81; Petković Defence Final Trial Brief, para. 96; Closing Arguments by the Ćorić Defence, T(F), pp. 52660 and 52661; Prosecution Final Trial Brief, para. 999; Closing Statements by the Prosecution, T(F), pp. 52097, 52102-52104, 52113.
[2416] Zdenko Andabak, T(F), pp. 50995 and 50996; P 03068; *see* also for example P 05657.
[2417] Zdenko Andabak, T(F), p. 51149; *see* for example Zdenko Andabak, T(F), pp. 51163 and P 02911.
[2418] Zdenko Andabak, T(F), p. 50934; for another example *see* Zdenko Andabak, T(F), p. 51040.
[2419] Zdenko Andabak, T(F), p. 50934.
[2420] Zdenko Andabak, T(F), p. 50934; Witness NO, T(F), pp 51181 and 51283, closed session; 5D 05110 under seal, para. 4.
[2421] Witness NO, T(F), pp. 51196 and 51282–51283, closed session; Witness NO, T(F), p. 51284, closed session; P 05657.
[2422] Milivoj Petković, T(F), pp. 49793, 50259, 50260, 50263 to 50265, 50833 and 50834; P 00645; P 02539.
[2423] P 04125.
[2424] P 04125.
[2425] Slobodan Praljak T(F), pp. 41613-41615.

that the OZ Military Police forces be re-subordinated to the *Eugen Kvaternik* and *Ante Starčević* Brigades with a view to conducting combat operations in addition to their military police assignments.[2426] The order was sent to the Military Police Administration for informational purposes only.[2427]

968. Concerning the Military Police Light Assault Battalions more specifically, on 28 July 1993, Valentin Ćorić, Chief of the Military Police Administration, pursuant to an order that same day from Bruno Stojić, Head of the Department of Defence, ordered that they be re-subordinated to the commander of the Main Staff and/or the OZ commanders.[2428] The Chamber notes that on that date even the 1st Light Assault Battalion, formerly the 1st Active Battalion of the Military Police and ordinarily subject to the oversight of the Chief of the Military Police Administration, passed under the effective command of Slobodan Praljak and/or the OZ commanders.[2429] Admittedly, the Chamber notes that *Slobodan Praljak* claims to have been behind this change because he confirmed during his testimony that on taking up his post of Commander of the Main Staff in July 1993, he asked Mate Boban to authorise the use of the Military Police units to conduct combat activities without requiring the Main Staff to obtain the consent of Valentin Ćorić.[2430] The purpose of the request, introduced because of the critical situation of the HVO armed forces on the ground, according to *Slobodan Praljak* was to enable rapid response in the theatre of operations.[2431] However, the Chamber does not have evidence, other than *Slobodan Praljak*"s testimony, showing that Bruno Stojić and Valentin Ćorić acted in succession on the orders of Mate Boban.

969. The four light assault battalions, although now under the command of the Chief of the Main Staff and/or the Commanding Officer of the OZ pursuant to the 28 July 1993 orders from Valentin Ćorić[2432] and Bruno Stojić,[2433] nevertheless retained an operational link to the other Military Police units as well as to the Military Police

[2426] 5D 02102.
[2427] 5D 02102.
[2428] P 03778/P 03763; 5D 02002.
[2429] *See* P 03778/03763.
[2430] Valentin Ćorić was Chief of the Military Police Administration at the time.
[2431] Slobodan Praljak, T(F), pp. 42711, 42712 and 42715.
[2432] P 03778/03763.
[2433] 5D 02002.

Administration, particularly in dispatching reports,[2434] requiring the Assistant Chiefs of the Military Police Administration for each OZ to ensure the effectiveness of that link.[2435]

970. Nonetheless, despite the orders of 28 July 1993 ordering the re-subordination of the light assault battalions, the Chamber learned of an order signed by Valentin Ćorić on 13 August 1993 under which part of the 4th Light Assault Battalion was to go to Mostar[2436] and another dated 7 August 1993, sent this time to the 2nd Light Assault Battalion, which was summoned to leave for Mostar that very day.[2437] The Chamber thus finds that Valentin Ćorić, despite the previously enacted general re-subordination of the Light Assault Battalions to Slobodan Praljak or to the OZ commanders, did not lose his authority of command over the light assault battalions entirely.[2438]

971. The Chamber thus finds that, at all times relevant to the Indictment, there was a dual chain of command over the Military Police Battalions and the units they comprised. They were under both the commanding officer for the OZ in which they were active or the brigade commanders in carrying out their "daily duties", and the Military Police Administration in other areas, such as appointments, discipline or training their members.[2439] Yet the Chamber considers that although the organisation of the chain of command tended to follow this layout, the division of responsibilities under the Military Police Administration, on the one hand, and the OZ commanders, on the other, was not quite so clear cut in the field. Here, the Chamber does not accept the conclusions of the Stojić Defence, in particular, according to whom the Military Police Administration had a "purely administrative" role and was required only to make sure that there was a "homogeneous and logistical distribution of the [Military Police] units on the ground".[2440] Numerous orders from Valentin Ćorić, concerning the establishment of checkpoints, freedom of movement on the territory of the HZ H-

[2434] *See* for example P 03624; P 05893.
[2435] P 03778/P 03763.
[2436] P 04151.
[2437] P 04010.
[2438] P 05478.
[2439] *See* in this regard 5D 05110 under seal, para. 4.
[2440] Stojić Defence Final Trial Brief, para. 398.

B and even unit deployment, attest to this.[2441] Still other documents show that uncertainty existed among the officers in the HVO armed forces with regard to the chain of command then prevailing in the Military Police[2442] in particular concerning the Military Police platoons embedded in the brigades.[2443] Thus, on 11 September 1993, at a ministerial meeting of Military Police Administration officials and battalion commanders, it was recalled that there were many conflicts between the orders issued by the Main Staff, the OZ commanders and the Department of Defence.[2444] The participants in this meeting, which included Valentin Ćorić, favoured, in this specific circumstance, halting execution of the ambiguous order and referring personally to the Chief of the Military Police Administration.[2445] The Order of 3 December 1993, signed by Perica Jukić, then Minister of Defence, established that in the event of contradictory orders issued to the Military Police units by various authorities, those issued by the Military Police Administration would take precedence.[2446]

972. The Chamber holds, with respect to the HVO Military Police, that despite the importance of the assignments conferred to it at its inception, it was forced to devote the major part of its forces and equipment to combat operations. For this reason, the Chamber notes that crime within the ranks of the HVO armed forces – including the Military Police – as well as on the territory of the HZ H-B, could not, for example, be effectively opposed, especially inasmuch as the civilian police forces and the military tribunals failed to operate in satisfactory fashion.[2447]

973. Furthermore, the Chamber observes that the units of the Military Police responded to a dual chain of command. According to *Zvonimir Skender,* from an administrative perspective, the military policemen were subordinated to the Military Police Administration, while from an "operational" standpoint, they fell under the

[2441] *See* for example P 00360; 3D 00424; 3D 00425; P 01331; P 01517; P 02982; P 04151; P 03762; P 03075, p. 1; P 00397; P 05863; P 00335; P 00338; P 00355; P 00358; P 00385; P 00508; 5D 04282; P 00864; P 01095; P 01134; P 01562; P 02020; P 03077; P 04126; P 04174; P 04258; P 04529.
[2442] Witness C, T(F), p. 22323, closed session.
[2443] *See* 5D 00538, pp. 2 and 3; P 04922; P 04262; Witness C, T(F), pp. 22514, 22516, 22536 and 22538, closed session; P 03970 under seal, pp. 1 and 2; Marijan Biškić, T(F), pp. 15047 and 15065; P 07234, p. 2.
[2444] P 04947, p. 2.
[2445] P 04947, p. 2.
[2446] P 07018, p. 4.
[2447] *See* "A Judicial System in Difficulty" in the Chamber"s findings regarding the system of courts of general jurisdiction.

HVO commanders.[2448] While embracing this logic in the broadest sense, the Chamber however considers by majority with Judge Antonetti dissenting that it must be seen in perspective, inasmuch as evidence referred to previously attests *inter alia* that the Military Police Administration issued orders to the Military Police units whose substance was not merely administrative. Lastly, as concerns the existence of a dual chain of command over the military police units, the Chamber cannot accept the comments of *Ole Brix Andersen*[2449] in his report dated 16 June 1993 stating that the Military Police answered only to the orders of the Head of the Department of Defence and to those of Mate Boban.[2450]

974. This dual chain of command led to confusion among Military Police unit commanders.[2451] Added to this confusion was the specific status of certain units, such as platoons embedded within the brigades, as the Chamber described previously. The Chamber does not share the opinion of *Witness NO* who stated specifically that the Commander of the defence of the town of Mostar never received complaints about the fuzzy chain of command up which the Military Police units were required to report, signalling thereby that no problems existed in this area.[2452] The two Military Police reforms in July and December 1993 were actually introduced for the specific purpose of attempting to clarify this chain of command. *Marijan Biškić*, who stated he left BiH in the spring of 1994, thought that when he left, the chain of command between the Administration and the Military Police units had been clarified and that the information systems in the Military Police had been improved.[2453] He explained that at the end of December 1993, all the Military Police units had been withdrawn from the front lines, which was why their effectiveness had increased.[2454] The Chamber finds that his statements support a finding that at all times relevant to the Indictment, the units of the Military Police operated under the authority of a fuzzy chain of command and carried out assignments for which they were not originally designed.

[2448] Zvonimir Skender, T(F), p. 45240.
[2449] Deputy to the ECMM Chief; *see* P 02803, p. 1.
[2450] P 02803, p. 4.
[2451] *See* in particular 5D 00538; 5D 04394; P 04262; P 04947, p. 2; P 07018; 3D 01184, p. 2.
[2452] Witness NO, T(F), p. 51327, closed session. The Chamber is relying specifically on Documents 3D 00796, p. 2, Point 8 and 3D 00793, p. 1, Point 6 for its doubts about this assertion.
[2453] Marijan Biškić, T(F), pp. 15181-15182.
[2454] Marijan Biškić, T(F), pp. 15181-15182; *see* also Prosecution Final Trial Brief, para. 1054.

Section 3: The System of Courts of General Jurisdiction

975. Although the unique aspects of the judicial system of the HZ(R) H-B were not specifically alluded to in the Indictment or by the Prosecution in its final trial brief or closing arguments, the Chamber notes the argument of the Prlić Defence in its final brief that the HVO acted in consonance with the Constitution of BiH when it attempted to supplement gaps in the law resulting from the independence of BiH and the war.[2455] The Prlić Defence endeavoured to show that it was necessary to amend certain BiH statutes in order to render them enforceable in Herceg-Bosna and underscored the difficulties the HVO encountered as it attempted to maintain a functioning court system.[2456]

976. Thus, once it has noted (I) that the legal provisions and the court structure in effect in Herceg-Bosna were broadly modelled after the existing model in the RSBiH, the Chamber will evaluate in greater detail (II) the operational challenges faced by the courts of general jurisdiction in Herceg-Bosna at the times relevant to the Indictment.

I. A Judicial System Broadly Modelled After the RSBiH

977. The Chamber notes, after reviewing what evidence it received, that a preponderance of the statutory provisions in force in the RSBiH were retained following the independence of BiH, then re-promulgated by the HZ(R) H-B.[2457] The Chamber observes, for example, that the Yugoslavia Federal Penal Code and the RSBiH Penal Code both continued to be enforceable.[2458] The Chamber notes, like the Prlić Defence,[2459] that the structure of the courts of general jurisdiction of the RSBiH continued unchanged in BiH and in the HZ(R) H-B throughout the conflict.[2460]

[2455] Prlić Defence Final Trial Brief, para. 188.
[2456] Prlić Defence Final Trial Brief, paras 188 to 192.
[2457] *See* for example 1D 00005, Article 1; P 00449, Article 1; 1D 00074, Article 1; 1D 00075, Article 1; 1D 00076, Article 1; 1D 00113, Article 1; 1D 00131, Article 1; 1D 00133, Article 1; 1D 00138, Article 1; P01760, Article 1; *see* also 2D00908, Article 1; 2D 00911, Article 1. *See* also Zoran Buntić, T(F), pp. 30259 to 30262; Slobodan Praljak, T(F), pp. 42602 and 42603.
[2458] 2D 00906 2D 00907; *see* also 2D 00909, Articles 1 and 2; 2D 00911, Article 1.
[2459] Prlić Defence Final Trial Brief, 7 January 2011, para. 191. *See* also Slobodan Praljak, T(F), pp. 42600 to 42602.
[2460] 1D 00073, Article 5; 1D 00139, Article 1; 1D 00201/P 01274, Article 1. The Chamber notes that it does not have texts of any statutes pertaining to these jurisdictions after December 1992. The Chamber however finds that the court structure as described continued to exist throughout the conflict.

978. Moreover, the evidence examined by the Chamber attests that between the end of November 1992 and January 1993, the HVO issued several decisions and decrees seeking to consolidate and extend the court system in the HZ H-B.[2461] This was the case with a decree for the implementation of two statutes from the RBiH concerning civil procedure,[2462] and of a decree crafted to implement the RBiH statute on administrative proceedings,[2463] and of a decree designed to enforce the RSBiH statute on the regular courts of ordinary jurisdiction.[2464]

979. Moreover, the Presidency of the HZ H-B created within the HZ H-B several "local offices" of the judicial institutions in place at the RBiH level.[2465] Thus, for example, on 17 October 1992, a section of the office of the state prosecutor of BiH[2466] as well as a division of the Supreme Court of BiH were created in Mostar.[2467]

V. A Judicial System in Difficulty

980. The Chamber notes that the conflict between the Serbian armed forces and the combined Croatian-Muslim forces in 1992 had an affect on the operation of the judicial system in the HZ(R) H-B. According to *Zoran Buntić,*[2468] numerous judges of Serbian origin, who fled the Mostar region as a result of the takeover of the municipality by joint Croatian-Muslim forces, had to be replaced.[2469] *Zoran Buntić* stated that it was sometimes difficult to replace them inasmuch as the majority of judges in the RSBiH system were Serbs.[2470]

981. Moreover, *Zoran Buntić* asserted before the Chamber that in order to make up for the departures of Serbian judges from the benches of courts of military

[2461] 1D 00113; 1D 00131; 1D 00133; 1D 00138; 1D 00139; 1D 00201; 1D 02132; 1D 02124; 1D 02123; 1D 02379.
[2462] 1D 00113.
[2463] 1D 00131.
[2464] 1D 00201.
[2465] P00589; 2D00890; *see* also Prlić Defence Final Trial Brief, para. 190. *See* also Zoran Buntić, T(F), p. 30261.
[2466] P 00594, Article 4.
[2467] P 00589; Zoran Perković, T(F), pp. 31980/31981; 1D 02124; Zoran Buntić, T(F), p. 30261.
[2468] Zoran Buntić was Head of the Department of General Administration and Justice of the HZ H-B from 20 June 1992 to 28 August 1993. *See* Zoran Buntić, T(F), pp. 30243, 30244 and 30249.
[2469] Zoran Buntić, T(F), pp. 30265, 30266 and 30276; 1D 00745. The operation culminating in the capture of Mostar by combined Croatian and Muslim forces took place in June 1992; *see* "Fighting between the Serbian Armed Forces and the Combined Croatian-Muslim Forces" in the Chamber"s factual findings concerning the municipality of Mostar.
[2470] Zoran Buntić, T(F), pp. 30266 to 30268; *see* for example 1D 00274.

jurisdiction, certain judges from the courts of general jurisdiction were transferred to the military courts.[2471]

982. Finally, the Chamber notes that members of the judiciary were occasionally called to the front, at least after January 1993. [2472]

983. The Chamber thus finds that the judicial system as a whole lacked qualified personnel.

984. Likewise, the Chamber notes that the responsibilities of the courts of general jurisdiction and the military tribunal[2473] overlapped, thereby further complicating the operations of the courts of general jurisdiction.[2474] For example, Articles 7 and 8 of the decree regarding the district military tribunals in times of war or immediate threat of war of 17 October 1992 assigned jurisdiction for adjudicating civilians accused of crimes to the military courts.[2475] Moreover, in August and September 1993, the officers responsible for criminal investigations within the Military Police were preparing transcripts of witness interviews for investigating judges at courts of both military and general jurisdiction.[2476]

985. The Chamber observes however that a working group which met on 17 September 1993 and in which Jadranko Prlić and Valentin Ćorić participated, concluded that it was necessary to reorganise the judicial system, setting 1 October 1993 as the date for implementation of its findings, particularly concerning the placement of the district military courts under the responsibility of the Department of General Administration and Justice.[2477] However, the Chamber could not determine whether the findings of that meeting were ever acted on.

986. In view of all these developments, the Chamber finds that at all times relevant to the Indictment the system of courts of general jurisdiction in force on the territory

[2471] Zoran Buntić, T(F), pp. 30265, 30266, 30276 and 31036.
[2472] Zoran Buntić, T(F), pp. 30428 and 30429; 1D 02382; 1D 02341.
[2473] The Chamber observes that in contrast to the absence of any modification of the courts of general jurisdiction and due to the suspension of the law regarding military tribunals in BiH of 11 April 1992, military tribunals were created on the territory of the HZ H-B. *See* 1D 02963, p. 3; P 000587, Article 1.
[2474] Zvonko Vidović, T(F), pp. 51493, 51495, 51525 and 51526; 5D 04226; 5D 04198; P03135/3D 00596, p. 1; 2D 00888; 2D 00890.
[2475] P 00592, Articles 7 and 8.
[2476] 5D 02097; 5D 04249; Zvonko Vidović, T(F), p. 51496; 2D 00860.
[2477] 2D 00854.

of the HZ(R) H-B faced substantial operational difficulties and, for that reason, its ability to work was seriously limited.