

1 Wednesday, 9 February 2011

2 [Prosecution Closing Statement]

3 [Open session]

4 [The accused entered court]

5 [The Accused Pusic not present]

6 --- Upon commencing at 2.15 p.m.

7 JUDGE ANTONETTI: [Interpretation] Mr. Registrar, could you please

8 call the case.

9 THE REGISTRAR: Good afternoon, Your Honours. Good afternoon

10 everyone. This is case number IT-04-74-T, the Prosecutor versus Prlic et

11 al. Thank you, Your Honours.

12 JUDGE ANTONETTI: [Interpretation] Thank you, registrar.

13 This is Wednesday, and I welcome everyone here, notably

14 Mr. Stringer, who is going to continue with his closing arguments.

15 Mr. Stringer, you have the floor.

16 MR. STRINGER: Thank you, Mr. President. Good afternoon. Good

17 afternoon, Your Honours, Counsel. May it please the Court, I'm going to

18 be continuing with the Prosecution's submissions in respect of

19 General Praljak. And the first subject for today, Mr. President, is it

20 relates to General Praljak, his knowledge of and his responsibility for

21 the HVO prison camps and the prisoners there.

22 Regarding the HVO prison camps and the detention facilities where

23 thousands of Muslim men, including many civilians, were held throughout

24 his entire tenure as commander of the HVO Main Staff, Praljak makes two

25 general assertions. First, he claims that he had no involvement in or

1 responsibility for the camps or the prisoners. At trial, he claimed he

2 didn't even know about them.

3 Secondly, General Praljak makes certain meritless claims

4 regarding the legal status under international humanitarian law of the

5 Muslim prisoners who were arrested and imprisoned beginning on the 30th

6 of June, 1993, and I'm going to address this legal issue first on the

7 status of the prisoners.

8 According to General Praljak, there were essentially two

9 categories of prisoners. The first of these were the Muslim men who had

10 been members of the HVO at the time of the ABiH offensive on the 30th of

11 June, 1993. Praljak claims that the isolation of what he calls these

12 traitors was legitimate and that these prisoners benefit from no

13 protection under international law. He says in paragraph 84 of his

14 brief:

15 "The law of armed conflict does not protect members of the armed

16 forces --" let me start that again:

17 "The law of armed conflict does not protect members of the armed

18 groups from acts of violence directed against them by their own forces."

19 JUDGE TRECHSEL: Excuse me, there is a background noise in the

20 microphone. I don't know whether anyone. I seem to have been the only

21 one who had it. Please proceed. Excuse me.

22 MR. STRINGER: In addressing this issue, Mr. President, I'd note

23 that both the Accused Petkovic and Coric take the same general position

24 in their briefs, and so our position, our remarks on this applies to

25 those accused as well.

1 This issue is addressed in paragraphs 145 to 147 of the
2 Prosecution brief. Even if the Trial Chamber finds that the Muslim
3 prisoners who had been members of the HVO were neither prisoners of war
4 under the Third Geneva Convention nor civilians enjoying protection
5 under the Fourth Geneva Convention, that does not mean that they can be
6 subjected to cruel treatment, violence, or forced to perform unlawful
7 labour in dangerous confrontation-line positions.
8 I've got a slide I'd like to put up now. On this question of
9 status, Mr. President, the Prosecution position is that these Muslim
10 prisoners who had been members of the HVO who were disarmed and arrested
11 fall within the protection of Article 75 of Additional Protocol I, which
12 provides in part:
13 "Insofar as they are affected by a situation referred to in
14 Article 1 of this protocol, persons who are in the power of a Party to
15 the conflict and who do not benefit from more favourable treatment under
16 the Conventions or under this Protocol shall be treated humanely in all
17 circumstances and shall enjoy, as a minimum, the protection provided by
18 this Article ..."
19 Then Article 75 continues on in paragraph 2 to prohibit violence
20 to the life, health, physical, mental well-being of the persons, et
21 cetera.
22 If the Trial Chamber concludes that this category of prisoners
23 were neither prisoners of war nor civilians, they are following squarely
24 within the protection and the standards that are provided here in Article
25 75 of Additional Protocol I.

Page 51979

1 In addition, whether or not they participated in the ABiH
2 offensive on the 30th of June, any Muslim members of the HVO who were
3 disarmed and imprisoned were from that point forward, of course, hors de
4 combat. Common Article 3 of the Geneva Conventions thus supplies a
5 minimum level of protection for those prisoners and requires that they
6 are to be treated humanely. We have Article -- we have Common Article 3
7 up on the slide, but I'm sure the Trial Chamber and everyone else is well
8 familiar with the minimum standards of protection that it lays down for
9 all persons hors de combat, and that certainly applies to the Muslim men
10 who had been members of the HVO, disarmed, and imprisoned by the HVO.
11 Without doubt, the conditions of confinement, the mistreatment,
12 and the forced labour on dangerous confrontation lines to which all the
13 Muslim prisoners were subjected falls well below the minimum standards
14 set out in Article 75 of AP I and Common Article 3. And so when the
15 Defence assert that the Muslim prisoners who had been members of the HVO
16 were fair game and they could be the target of cruel treatment and
17 violence at the hands of their Croat HVO captors or that they could be
18 forced to perform labour such as building trenches or building
19 fortifications, they are wrong.
20 In paragraph 85 of his brief, General Praljak attempts to justify
21 the imprisonment of all the Muslim men of military age throughout
22 HVO-controlled territory of Herceg-Bosna, stating:
23 "In fact, it seems that all detainees," Praljak says, "possibly
24 there were a few exceptions for whatever reason, were militarily-able
25 men, mobilised or not, yet mobilised but without doubt in potential

Page 51980

1 combatant status."
2 Not surprisingly, General Praljak does not give us a citation to

3 legal authority or any evidence that establishes that all of the
4 prisoners were potential combat status. In fact, the large-scale and
5 collective arrest and imprisonment of all the Muslim men of military age
6 throughout all the HVO-held territories who were not members of the HVO
7 constitutes the crime of unlawful imprisonment. Men in potential
8 combatant status, as Praljak calls it, who are not actually combatants as
9 defined by Article 4 of Geneva Convention 3, or Article 43 of Additional
10 Protocol I are civilians. They're civilians under the Fourth Geneva
11 Convention.

12 Potential combatants cannot be detained collectively simply
13 because they fall between the ages of 16 and 60. Detention can only be
14 justified if made on an individual basis, if absolutely necessary because
15 that person poses a particular risk or a security threat. The fact that
16 a person is a male of military age is not sufficient justification to
17 detain him, nor is ethnicity alone.

18 What is relevant are a person's activities, knowledge, or
19 qualifications, and so the mass arrest, the collective imprisonment of
20 all Muslim men of military age, as was carried out in this case, solely
21 on ethnic grounds was illegal. Even if there was some initial
22 justification for imprisoning Muslim men because of concern that they
23 might join the ABiH, any such justification for imprisonment or
24 internment would only exist after an individual assessment of the risk of
25 that prisoner, that individual, the risk of his joining forces or

Page 51981

1 otherwise presenting a security risk. On this point we refer the Trial
2 Chamber to Articles 5, 41 to 43 of Geneva Convention 4, as well as much
3 of the jurisprudence already well established in this Tribunal as from
4 the Celebici case and the Kordic cases. As the Celebici Trial Chamber
5 stated, the fact that an individual is male and of military age should
6 not necessarily justify detention.

7 Mr. President, we also refer the Trial Chamber to paragraphs 150
8 to 153 and 308 to 322 of the Prosecution final brief where we apply the
9 duty recognised in Celebici, the Celebici appeals case, the duty to
10 release prisoners who do not pose a legitimate security risk or for whom
11 these procedural guarantees have not been granted. The evidence in this
12 case establishes that the accused did not adhere to a procedure for
13 determining what individuals might pose a security threat so that those
14 who did not could be released.

15 The one individual prisoner assessment that did occur related to
16 Muslim prisoners who gained release by procuring letters of guarantee
17 promising that they would leave with their families from Herceg-Bosna
18 altogether if they were released from imprisonment. I will address this
19 issue in greater detail in my closing remarks tomorrow concerning the
20 accused Mr. Coric.

21 Despite Praljak's claim to the contrary, then, the collective
22 arrest and imprisonment of Muslim civilian men of military age without
23 regard to whether individuals among them posed a security threat and in
24 the absence of a prompt review resulting in the release of those who did
25 not, this was illegal.

Page 51982

1 Furthermore, all prisoners, regardless of status as POW, Muslim,
2 HVO members, or civilian, were, as I've already indicated, subjected to
3 cruel and inhumane treatment and were sent regularly in large numbers to
4 perform unlawful forced labour on the confrontation lines. There is no
5 justification for subjecting any prisoners to these forms of criminal

6 conduct, whatever their status under international humanitarian law.
7 When he testified, General Praljak made a number of false
8 statements regarding the HVO camps and the prisoners held there. On the
9 25th of August, 2009, he testified claiming that he didn't know even of
10 General Petkovic's 30 June, 1993, order to arrest, isolate, detain all
11 the Muslim men of military age. Praljak testified that he didn't know
12 about that when he took command of the HVO Main Staff on the 24th of
13 July. He said he was not informed. He did not know that the HVO was
14 holding these prisoners in HVO detention facilities like the Heliodrom
15 and Dretelj throughout Herceg-Bosna.
16 On the 2nd of September, 2009, General Praljak testified, this is
17 on Pages 44289 to 90, claiming that neither he nor the HVO Main Staff had
18 any responsibility for prisoners, and he claimed that he didn't know what
19 person or body was responsible for them. This was on cross-examination.
20 I asked him:
21 "Q. You've heard testimony, you've seen the documents, military
22 investigative prison at Ljubuski. At any time during that period you
23 were commanding the HVO Main Staff, did you know about Muslim men being
24 held prisoner at Ljubuski?"
25 The answer he says:

Page 51983

1 "No."
2 "Q. Now, you said you never went to the Heliodrom. Did you ever
3 go to Dretelj, Gabela, or Ljubuski during 1993?"
4 His answer was:
5 "No."
6 On the 25th of August, 2009, Praljak even went so far as to say
7 that even if he had known about the camps he would not have done anything
8 about them.
9 "I wouldn't have done anything ... I had nothing to do with
10 prisons. I had nothing to do with prisons. What should I have done?"
11 Mr. President and Your Honours, this is the Prosecution case and
12 position in respect of General Praljak and the HVO camps:
13 Number one, Praljak did know of the arrest order issued by
14 General Petkovic on the 30th of June to imprison all the Muslim males of
15 military age, and he was fully aware of the fact that he had thousands of
16 prisoners in HVO custody when he took command of the HVO Main Staff on
17 the 24th of July, 1993.
18 Second, he did know that the conditions in the HVO prisons and
19 camps did not meet minimum standards when he took command, and
20 information on this continued to come to him from many sources in the
21 days and weeks following the 24th of July.
22 Third, once he was on notice concerning the conditions in the
23 camps, he had an obligation to ensure that the conditions were made
24 right.
25 Fourth, he continued to evade and ignore responsibility to the

Page 51984

1 HVO prisons and prisoners even after Herceg-Bosna president, his
2 Commander-in-Chief, Mate Boban, expressly delegated to Praljak and the
3 Main Staff responsibility for ensuring proper conditions in the camps and
4 proper treatment of prisoners.
5 So going back to the first point, what did Praljak know at the
6 time on or about the 30th of June and moving forward? I'd like to take
7 the Trial Chamber to a tool that I've been using. We'll see how well it
8 works for all of us in the courtroom. We call it a time map. We've

9 plotted a lot of evidence that's obviously only been admitted. I don't
10 know if we're able to see this on our screens. No? Okay.
11 What we've done is to plot admitted evidence and testimony here,
12 and we can see along the time-line the top half events taking place in
13 respect of the HVO camps and the arrest campaign that began on the 30th
14 of June. The bottom half of the time-line we've plotted
15 General Praljak's whereabouts based upon either his testimony or the
16 admitted evidence. And what this tells us is that -- and I'll walk
17 through the chronology just briefly. He was in the Prozor-Boksevica area
18 on the 30th of June at the day, the time when the ABiH attack occurred
19 and when the subsequent order went out to arrest and isolate all of the
20 men.
21 What we can first do is go to P03026 which is one of the exhibits
22 noted on the time-line for the 30th of June, P03026.
23 On the 30th of June Praljak was with operative zone commander
24 Zeljko Siljeg at the HVO forward command post in Prozor. If he wasn't
25 physically present with Siljeg there, he was in contact with Siljeg in

Page 51985

1 that area. In an a communication that Siljeg sent on that day to Stojic
2 and Petkovic, Siljeg stated on the 30th of June that he had familiarised
3 Brada with the report from Mostar, with the conversation between Pasalic
4 and Halilovic and with the command issued by the head of the Defence
5 Department and the president of the HVO HZ-HB. That would have been the
6 call to arms, if you will, or the mobilisation order issued by Mr. Stojic
7 and the communications sent out by Mr. Prlic.
8 Praljak obviously knew all significant aspects of the HVO
9 response to the ABiH offensive of that day.
10 P03246. Let me just take a brief moment, Mr. President.
11 Sorry, Mr. President. I'm being informed -- it may be the
12 registrar has taken something away from us by using e-court. If we could
13 just take it back so we could use Sanction which is what we're using for
14 the exhibits and also the time map programme, which is a different one.
15 Sorry about that.
16 Moving to P03246. On the 6th of July, we see that Praljak
17 remained active in the highest levels of the HVO leadership during the
18 first week of this period, July. On the 6th, Petkovic ordered that
19 Praljak would be a part of the operation command or operation team
20 assembled to organise combat activities as part of what was called
21 Operation Boksevica. So he was still very present and very active, and
22 in our submission, very well informed of the events taking place during
23 the first week of July.
24 In his testimony on the 26th of May, 2009, Praljak stated that he
25 remained in the Boksevica area fighting until the 9th of July, when they

Page 51986

1 pulled out. Praljak then went to see Mate Boban. As he said in his
2 testimony, this is on Page 40778 of the transcript:
3 "Then I went to see Mate Boban. I discussed the whole situation
4 with him. I think I had a brief meeting with Mr. Petkovic -- or, rather,
5 that's not what I think. I know that we met."
6 He continues then that he spoke to Mr. Stojic and that evening
7 spent the night in that area, cleaned up at Mr. Stojic's place, and then
8 left the following morning to go to Zagreb, which we say then would have
9 been on the 11th of July. So from the 30th of June till the 11th of July
10 when he left to return to Zagreb, the evidence, it's our submission,
11 shows that Praljak would have been very well aware and was in full

12 contact with all of the leading figures in the region and would very well
13 have known about the widespread arrest campaign that was taking place
14 during the first 11 days of July.
15 P09470 is a video-clip of an interview that General Praljak gave
16 to the BBC as part of "The Death of Yugoslavia." He tells us about his
17 conversation with Mr. Stojic on, what we say, would have been the 11th of
18 July or the 10th just before he leaves to return to Zagreb.
19 [Video-clip played]
20 THE INTERPRETER: [Voiceover] "So during the disarmament process
21 when the camps started when people had to be put somewhere, I said as I
22 was leaving, there was a short interregnum when I was not there, I
23 remember that I said to Mr. Bruno Stojic, who was defence minister,
24 'Bruno take good care not to do something we would be ashamed of.' He
25 told me that as regards our prison at Heliodrom, which was under my

Page 51987

1 jurisdiction, I could be sure that they would do everything possible to
2 prevent anything unpleasant. Of course, one knew that some unpleasant
3 things would happen because we were not able very much to control things,
4 although it could -- and what was down there was not under military
5 control. It was simply a civilian part. That is how they set it up.
6 Upon my return, I understood from what the people had started saying
7 already that the camps looked bad. Fortunately, Mr. Sakota came and he
8 used his personal authority to oppose some local bosses and ensure ..."
9 MR. STRINGER: Okay. Upon his return he started hearing that the
10 camps looked bad. Praljak would clearly have been aware of the building
11 international media coverage surrounding the release of a group of
12 emaciated Muslim prisoners from the Dretelj camp on the 28th of August,
13 1993. French television broadcast these images just a few days after
14 prisoners released from Dretelj had been moved to ABiH-held territory
15 near Jablanica. This is P00977B.
16 [Video-clip played]
17 THE INTERPRETER: Please switch off the microphone.
18 [Video-clip played]
19 MR. STRINGER: Okay. This is TV5, TV5, French TV coverage from
20 the 31st of August, 1993. This was big news.
21 P04640. At the time when the media coverage of the Dretelj
22 prisoners that we've just seen, Praljak was in the Citluk HVO
23 headquarters south of Mostar. So this is P04640. Okay.
24 At the time of the media coverage, Praljak was in the Citluk
25 headquarters, about 13 kilometres, we say, from Capljina municipality and

Page 51988

1 the Dretelj camp itself where he had issued a number of orders related to
2 events occurring throughout Herceg-Bosna, including issuing orders to,
3 for example, the Zepce Brigade. Praljak clearly knew that he had big
4 problems with the HVO camps to deal with at this period of time.
5 P04716. On the next day, Praljak issued a pass. Media inquiries
6 continued to put him on notice of problems in the HVO camps. He granted
7 this pass to a German television crew to enter the Gabela camp. He
8 issued this pass from the HVO Citluk headquarters a short distance from
9 Capljina where the Gabela prison was located. In his testimony on the
10 2nd of September, 2009, General Praljak told us that he never even went.
11 He never went to Gabela or Dretelj even after what we say was
12 overwhelming information putting him on notice of the conditions there.
13 P04841. These are minutes of the government meeting, the HVO
14 HZ-HB meeting of the 6th of September. By early September conditions in

15 the camps had become so widely known and such a political liability to
16 the Herceg-Bosna leadership and these accused, they were forced to
17 acknowledge the unlawful conditions in meetings with the Defence
18 Department, that was on the 2nd of September, and in this meeting on the
19 6th.

20 Here the Prlic government denied responsibility for conditions in
21 the camps, but nonetheless decided it was necessary to improve
22 conditions, to avoid the situation being used in ways that are adverse to
23 the political and other interests of the HR HB. Clearly the illegality
24 of what was happening in the camps was well-known to the Herceg-Bosna
25 leadership. It was also well-known to Praljak.

Page 51989

1 P10924. On the following day, the 7th of September, Reuters
2 Deutschland reported on the release that day of the report of human UN
3 human rights rapporteur Mazowiecki which, among other things, reported on
4 the HVO camps. According to this both Mazowiecki and UNHCR were
5 reporting the mistreatment of Muslim prisoners in these camps. There is
6 an explicit reference to Gabela here, as well as imprisonment of men in
7 aircraft hangars which, of course, is a clear reference to the Dretelj
8 camp.

9 The article continues:

10 "According to the Mazowiecki report, in the town of Gabela south
11 of Capljina, men were locked up in aircraft hangars, 16 prisoners
12 survived on daily rations of a cup of watery soup and 650 grams of
13 bread."

14 It continues:

15 "The UNHCR spokesman Ray Wilkinson demanded in Sarajevo to put
16 utmost pressure on Croats for maintaining two detention camps in the
17 southern part of Bosnia-Herzegovina."

18 It says:

19 "However, General Slobodan Praljak, commander of Bosnian Croats,
20 declared that his soldiers were no longer holding any prisoners of war.
21 Aid organisations and journalists are free to visit the ... camps."
22 Praljak cynically concealed the fact that the HVO was, in fact,
23 holding hundreds if not thousands of Muslim civilian men at this time,
24 claiming to the UNHCR that the HVO was not holding any prisoners of war.
25 The Trial Chamber will recall the testimony and the expert report

Page 51990

1 submitted by General Andrew Pringle of the British Army. His expert
2 report is P09549. In paragraph 77 he states:

3 "If prisoners of war are handed over to another body, it is the
4 responsibility of those handing them over to ensure that the receiving
5 body complies and understands their responsibilities in accordance with
6 the Geneva Conventions. Moreover, if it becomes apparent that the
7 prisoners of war, having been handed over to another body, are not being
8 so treated, the original captors are beholden to take the prisoners of
9 war back under their authority."

10 On the 25th of August, 2009, at Page 43784 of the transcript,
11 Praljak told us about the handing over of prisoners to the military
12 police. In support of his claim that neither he nor the HVO staff, Main
13 Staff, were responsible for the prisoners, Praljak indicated that the
14 prisoners were the responsibility of the military police. He said:
15 "... whenever someone is captured, it was one's duty to hand over
16 the prisoners to the military police."

17 The evidence indeed shows that it was the military police under

18 the command of Coric which exercised daily control over the prisoners by
19 providing security at the HVO camps and administering or facilitating
20 such things as the HVO forced labour programme, but the evidence
21 establishes that even by the time he returned to take command of the HVO
22 Main Staff on the 24th of July, 1993, Praljak knew there were serious
23 problems regarding conditions in the camps. As the evidence I have just
24 summarised shows, within weeks of his return, the highly publicised
25 release of prisoners from Dretelj made world news. Conditions in the

Page 51991

1 camps were reported by the UN Special Rapporteur Mazowiecki. Journalists
2 were asking Praljak for access.

3 The evidence establishes beyond a reasonable doubt that Praljak
4 knew that the Muslim prisoners, having been arrested and handed over to
5 the military police, were not being treated in accordance with
6 international humanitarian law. As Pringle tells us, and this is
7 confirmed by the Tribunal's own jurisprudence in the Mrksic case, once he
8 had reason to know that the prisoners were not being held in proper
9 conditions, Praljak had a duty to take them under his authority and
10 ensure they receive proper treatment. Instead, he ignored the problem
11 and his responsibility. Any doubt or ambiguity about Praljak's personal
12 responsibility for the prisoners and the camps, as commander of the HVO
13 Main Staff, is laid to rest when he was specifically directed by Mate
14 Boban to take responsibility for ensuring lawful conditions in the camps
15 on the 15th of September, 1993. This is P05104.

16 In item 3, Mate Boban requires that the conditions required by
17 international law be introduced in the prisoner of war detention centres
18 and that the prisoners be treated in accordance with international
19 standards.

20 Item 7 specifically directs the Main Staff not only to inform
21 subordinates about the order but also to provide professional help in its
22 implementation.

23 When General Praljak was asked about this order from Boban during
24 his cross-examination, he acknowledged receiving the order, although he
25 testified that he did not fully transmit the order down the chain of

Page 51992

1 command.

2 Refusing to acknowledge that Boban had specifically directed the
3 Main Staff and Praljak, together with the Defence Department to ensure
4 the proper treatment of prisoners as set out in items 3 and 7, Praljak,
5 on his own, decided that three -- items 3, 4, and 5 did not apply to him.
6 He expressly refused to carry out his obligations in respect to the
7 prisoners and prisons even after being ordered to do so by his
8 Commander-in-Chief. And so again we see Praljak refusing to exercise any
9 authority or to take the slightest action to improve the situation for
10 prisoners in the camps. The result of this, as the Trial Chamber knows,
11 was that the Muslim prisoners continued to suffer in the camps for
12 additional weeks and months. Unlawful forced labour on the front lines,
13 a well entrenched and widespread practice employed at all of the HVO
14 detention facilities, continued unabated after the 15th of September.
15 On the topic of forced labour, Mr. President, in paragraph 83 of
16 his brief Praljak claims that he never ordered forced labour and that he
17 in fact prohibited the practice. The evidence shows otherwise.
18 P04260. Praljak relies entirely on this exhibit, an order that
19 he issued on the 17th of August, 1993, directing that prisoners in Prozor
20 and Gornji Vakuf be withdrawn from the tasks they have been given by 1800

21 hours. He directed that the Rama Brigade SIS and the military police be
22 responsible for the safe return and security of these prisoners in
23 prison.
24 This document tells us, of course, that Praljak knew the
25 prisoners were being used to perform forced labour and that he was in a

Page 51993

1 position to exercise control over the prisoners, the military police, and
2 the SIS personnel in Prozor, Gornji Vakuf, in respect of prisoners.
3 Using the language of the Mrksic appeal judgement, Praljak, like
4 all of the accused in this case, was an agent of the detaining power. He
5 was among those having custody of these prisoners. These prisoners were
6 in his hands.
7 On the 2nd of June, 2009, during his testimony, when asked by
8 Judge Trechsel whether he had ordered an investigation related to the use
9 of these forced labourers, Praljak stated that he had not, because he
10 lacked the investigative resources. He said that it was up to the SIS to
11 do something about the practice.
12 There is no evidence of any other written order by Praljak
13 prohibiting the use of prisoners for forced labour or of him referring
14 this practice for investigation or pursuing disciplinary measures against
15 those engaged in the practice.
16 P04285. On the same day that Praljak issued his order that the
17 prisoners be withdrawn from work, in a classic example of an effective
18 working chain of command regarding the use of prisoners for labour, the
19 commander of the HVO Rama Brigade reported directly to Praljak that his
20 order on the withdrawal of prisoners had been carried out. This shows
21 the brigade and not only the SIS and the military police was involved
22 with prisoners and reported to Praljak about them.
23 Praljak's order of 17 August does not apply to any location
24 outside of the north-west Herzegovina operative zone. Indeed, the use of
25 prisoners for forced labour continued in Prozor, as in all other

Page 51994

1 locations under HVO control, where the HVO needed labourers to perform
2 dangerous work on the front lines. The Trial Chamber will hear more on
3 the use of prisoners from the Heliudrom for illegal forced labour as part
4 of my submissions on Valentin Coric.
5 I'm going to refer now to P04307. It's an ECMM report, so we
6 can't show it outside the courtroom, but I can refer to it. It's dated
7 the 19th of August, 1993, ECMM, just two days after Praljak's order that
8 the prisoners be withdrawn from work in Prozor and Gornji Vakuf.
9 They report on their visit with 167 Muslim prisoners being held
10 at the tech school in Prozor. The HVO operative zone command, according
11 to this report, naming Siljeg, stated they were not prisoners of war but
12 men between 16 and 60 that were being kept there in order to control
13 them.
14 "They are being used as forced labour by the HVO to dig trenches
15 on the front lines in the Gornji Vakuf area..."
16 The report continues:
17 "... some have died as a result of this work."
18 Mr. President, I'd like to look at one other time-line briefly
19 that relates to this issue.
20 On the date of this ECMM report that I've just read from, which
21 is the 19th of August, 1993, if we go to that area, we can see that
22 Praljak was in the Prozor forward command post headquarters on the 17th
23 of August. That's the day he issued the order on withdrawal. He was

24 there on the 16th. He was also there on the 21st, according to an order
25 he issued that day before apparently then moving on to the south to

Page 51995

1 Citluk and Mostar where he issued other orders on that day from that
2 location. So what we know is that Praljak was right in the HVO Prozor
3 headquarters at the time that the ECMM was taking these reports from
4 detainees about the forced labour that was taking place.
5 P04877. This order was issued by Praljak's trusted subordinate
6 operative zone commander Zeljko Siljeg and makes clear that the practice
7 of forced labour was alive and well in Prozor at the very time that
8 Praljak was there commanding HVO units. Here Siljeg issues a patently
9 unlawful order regulating the use of Balijas for engineering work on the
10 first line of defence. It's important to note again, we see the brigade
11 in the operative zone directly subordinate to Praljak exerting direct
12 authority over Muslim prisoners for purposes of forced labour.
13 Item 3 very clearly shows that Siljeg anticipated Muslim
14 prisoners would be wounded and killed while performing this labour as he
15 directed reports on the number of wounded or killed prisoners be made for
16 record-keeping purposes.
17 This order also makes it clear that the HVO operative zone
18 command in Prozor, at the very same time that Praljak was present there,
19 was issuing orders regulating the use of prisoners for forced labour.
20 This is not surprising given the fact that it was the HVO armed forces,
21 the brigade's operative zones, and ultimately the Main Staff commanded by
22 General Praljak that were the beneficiaries of the forced labour
23 programme. It's also not surprising given Praljak's statements to this
24 Trial Chamber that he would do whatever it takes to win the war at all
25 costs, even if that meant subjecting the Muslim population to greater

Page 51996

1 crime.
2 We go back to the time-line for the 8th of September, the date of
3 this order on regulating the use of Balijas for forced labour. We see
4 that also on that same day Praljak was present in the Citluk forward
5 command post headquarters of the HVO where he issued an order in evidence
6 as 3D02759, a transmission sent from Prozor down to Citluk, asking them
7 to send some Motorolas.
8 P09661, another ECMM report we can't show outside. On that day,
9 ECMM reported that they visited the HVO POW camp at Prozor. They report:
10 "This camp is not a military detention camp but a detention camp
11 for civilian internees. The camp is located at the town's technical
12 school, 100 metres from the HVO headquarters. There were 226 civilians
13 imprisoned at the camp. Almost every day they are digging trenches in
14 the area of Trnovaca. At least four detainees have, during the
15 digging ... in the absence of the camp guards the internees mentioned
16 that they thought that between 40 and 60 people had been killed working
17 on the trenches."
18 Mr. President, General Praljak was very regularly at the
19 headquarters in Prozor. As he told the Trial Chamber, he devoted the
20 lion's share of his attention and energies into that area. The
21 Prosecution submits that the evidence shows beyond a reasonable doubt
22 that Praljak knew of and approved the systematic use of the Muslim
23 civilian detainees to perform this labour in the Prozor-Gornji Vakuf
24 theatre of operations.
25 A couple final points in terms of his control over prisoners.

1 3D00981.

2 This is a communication or a special report sent to Praljak from
3 Prozor and operative zone Commander Siljeg. Item number 4, he says:
4 "The representatives of EC," that would be the European
5 Community, we say the ECMM, "presented their problems today.
6 "A) VP, military police, Rama, does not allow them to visit Hodza
7 in Prozor."

8 Item C:

9 "They want to visit the prisoners of war in Prozor."

10 3D00979. The following day, 23rd of September, Praljak issues
11 this response from the Citluk headquarters where he's located on that
12 day, telling Siljeg:

13 "A. Allow EZ," European Community, "to visit Hodza." Hodza
14 being in all likelihood the imam or the Muslim priest in Prozor.
15 And then also authorising item C; that is, authorising ECMM to
16 visit the prisoners in Prozor.

17 So again, this tells us despite his sworn testimony that he
18 didn't know about any prisoners, evidently not even those prisoners in
19 Prozor at the tech school that were being held 100 metres from the HVO
20 headquarters there. Praljak exerts, in fact, direct authority over these
21 prisoners, and he has full knowledge of them.

22 Mr. President, while we're on the issue of forced labour, I
23 should make a few brief comments about P06937. It's dated the 8th of
24 November, 1993. It's an order from Mostar bearing signatures of a Mijo
25 Jelic and also bearing the signature of what we say is General Slobodan

1 Praljak. The Trial Chamber will recall the Praljak Defence and
2 General Praljak asserts that this document, his signature on it, is a
3 forgery.

4 We point out that when the Trial Chamber looks at the original
5 document itself, it will, of course, find the stamp of the HVO Main Staff
6 on the document, as well as signatures and all the necessary stamps one
7 would expect of a legitimate authentic HVO document.

8 The Trial Chamber will also recall P04 -- excuse me. P02642, an
9 HVO log-book which on paragraph -- on Page 17, item 407, expressly
10 records the order of Jelic and Praljak approving the use of prisoners for
11 forced labour. So the document is recorded in the HVO's own log-books.
12 In addition on this point, Mr. President, P05873 is a piece of
13 evidence worth bearing in mind. It's an order issued on the 14th of
14 October, 1993, by General Petkovic. He issues it to all brigades of the
15 HVO south-east Herzegovina operative zone, and in item 1 he prohibits the
16 removal of prisoners to perform any kind of labour.

17 Item 2, he says:

18 "Should such activity nevertheless be allowed, the permit shall
19 be issued by the HVO Main Staff."

20 So the Prosecution position, Mr. President, is that Praljak's
21 signature on 6937, the alleged forgery, is in full agreement, in fact,
22 with the order issued by General Petkovic on the 14th of October. In
23 other words, Petkovic ordered that approval for prisoner release in the
24 south-east operative zone has to be approved or the permits obtained by
25 Main Staff. Praljak was indeed still on the 8th of November, the Chief

1 of the HVO Main Staff. He was present in the Main Staff on the 8th of

2 November, and in signing off on the request to use prisoners that day, he
3 provided the necessary permit as required by the earlier Petkovic order.

4 As the Trial Chamber knows, Praljak resigned his position and
5 left from the HVO Citluk headquarters on the morning of the 9th of
6 November, 1993. He testified that he arrived in Citluk on the previous
7 evening when he issued his report for an order on the events at Stupni
8 Do.

9 Knowing that he was leaving the HVO and Herceg-Bosna altogether
10 on the following day, the Prosecution submits it was perfectly reasonable
11 to assume that Praljak would have first gone to the HVO Defence sector
12 headquarters in Mostar on the 8th of November on his way down to Citluk
13 to say his good-byes. We assert that's when he signed off on this
14 approval for the prisoners to be used for forced labour.

15 Mr. President, the Prosecution submits that all of this shows the
16 alleged forgery, P06937, is an authentic document. Given the widespread
17 use of prisoners throughout all areas under HVO control, as well as
18 Praljak's full awareness and control over events in these areas, he
19 unquestionably knew of and approved the practice of using Muslim
20 prisoners for forced labour. General Praljak will be the first one to
21 tell you of the HVO's mobilisation problems and the difficulties they had
22 in keeping soldiers on the front lines. The Trial Chamber has seen and
23 heard extensive evidence of that throughout the trial.

24 If General Praljak was willing to deploy the military police into
25 battle rather than using them to prevent crimes, he was certainly willing

Page 52000

1 to use prisoners to fortify the trenches on the front lines. The massive
2 use of Muslim prisoners, regardless of their status as civilian, prisoner
3 of war, or a detained Muslim HVO, during the time that Praljak was
4 commander of the Main Staff is, in the Prosecution's submission, beyond
5 question. These prisoners as labourers were a key component of Praljak's
6 win the war at all cost command strategy.

7 Your Honours, I would like to devote the final few minutes of my
8 submissions to a discussion of General Praljak's responsibility for the
9 ethnic cleansing of entire communities of Muslims from areas in Stolac,
10 Capljina, Ljubuski, and Prozor in August of 1993, during this time that
11 General Praljak was in command of the HVO Main Staff.

12 Now, I'd like to first return to an exhibit that was used during
13 the cross-examination of one of the Defence witnesses. It's admitted
14 into evidence -- it's actually two exhibits; IC00833 and 834. We can
15 blow-up 833 so that everybody can see.

16 The Trial Chamber will recall -- the Trial Chamber may recall
17 that the data contained in these tables was discussed with the Defence
18 witness Martin Raguz, who had been with the HVO office of displaced
19 persons and refugees, ODPR. The data in the table, the numbers, come
20 from reports prepared by ODPR, and the data had been provided by ODPR to
21 a representative of an international humanitarian organisation that was
22 working in the region during the fall of 1993.

23 And, Mr. President, if we could briefly go into private session.

24 I'd like to make one additional remark about that.

25 JUDGE ANTONETTI: [Interpretation] Registrar, please.

Page 52001

1 [Private session]

2 (redacted)

3 (redacted)

4 (redacted)

5 (redacted)

6 (redacted)

7 (redacted)

8 (redacted)

9 (redacted)

10 (redacted)

11 [Open session]

12 THE REGISTRAR: Your Honours, we're back in open session. Thank

13 you.

14 MR. STRINGER: The data contained in these tables, ODPR's own

15 data, confirms what the extensive evidence shows regarding the ethnic

16 cleansing of Muslim communities in Ljubuski, Capljina, and Stolac. While

17 General Praljak directly notes that the HVO cleansing of Stolac began

18 prior to 24 July 1993, when he took command of the HVO Main Staff, the

19 evidence shows that this ethnic cleansing campaign in that region

20 continued unabated after Praljak took command on the 24th.

21 The evidence proves, for example, the Prosecution submits, that

22 thousands of Muslim, Bosnian women, children, and elderly were driven

23 from Capljina town and other parts of that municipality on the 23rd of

24 August, 1993. They were rounded up, driven from their homes, and loaded

25 onto buses where they were transported first to the collection site at

Page 52002

1 the silos where many were mistreated and they were forced to leave behind

2 all their belongings, and then finally loaded onto buses and expelled by

3 the HVO out into ABiH-held territory.

4 In Ljubuski municipality during the latter half of August 1993,

5 the Bosnian Muslim populations in Gradska, Vitina, and other parts of

6 Ljubuski municipality were deported. Entire communities of Muslims

7 vanished from these areas. In July, August, and September of 1993,

8 terror reigned. Thousands were removed from these municipalities by the

9 HVO while Praljak was commander of the Main Staff.

10 Getting back to the tables, according to the ODPR data, from a

11 pre-war population of nearly 1600 people, the population of Muslim

12 residents in Ljubuski was reduced by some 50 per cent. ODPR reports a

13 similar 50 per cent reduction in the Muslim resident population of

14 Capljina during the period between September and October of 1993. In

15 Stolac, the Muslim population was reduced from 8.101 to 0, according to

16 ODPR's own data.

17 The other table, IC00834, relates not to long-time Muslim

18 residents, people who had always lived in these areas. 834 refers to the

19 refugee populations that have come in. The Muslim refugees, indeed, the

20 displaced persons driven into these areas, largely from the east by Serb

21 armed forces, they fared even worse. According to ODPR, all Muslim

22 refugees living in the municipalities of Ljubuski, Capljina, and Stolac

23 had been removed by October of 1993, and you can see that by the zeros

24 that are in these boxes concerning the data kept by ODPR.

25 The Trial Chamber will note that throughout the same period the

Page 52003

1 proportion of Croat residents remains unchanged. That's in the first

2 table, 833. We see in the table 834 that according to ODPR's data,

3 thousands of Croat refugees from elsewhere arrived in this area to

4 replace and did replace the Muslims who had, in the Prosecution's

5 submission, been removed.

6 General Praljak knew about the events taking place all the way up

7 in Vares, Stupni Do. He was issuing orders and having communications

8 with the HVO Zepce Brigade farther to the north and the east. He knew
9 the situation facing Croat refugees from places like Konjic and Bugojno.
10 He wrote about all that extensively in his brief, and yet he did not know
11 about what happened to the Muslim populations in Ljubuski, Stolac,
12 Capljina? Impossible.
13 The large-scale expulsion and deportation during Praljak's tenure
14 as commander of the HVO Main Staff was, of course, not limited to these
15 municipalities. The remaining Muslim population in Prozor, which by
16 early August 1993 had been crammed into houses in Podgrade, Lapsunj, and
17 Duge was finally expelled by the HVO. It bears noting that the Muslims
18 who were brutally expelled from their homes or from these areas while
19 Praljak was commander in August and September were the most defenseless
20 of civilians. All of the men had already been arrested and placed in the
21 HVO camps and detention facilities throughout the region.
22 When we speak about the expulsions and the removal of communities
23 of Muslims from these regions during August, September, July of 1993,
24 we're talking about the elderly, the women, the children, those who'd
25 left alone to fend for themselves after the men had already been taken

Page 52004

1 away and imprisoned.
2 I'm going to go back to P04307. The ECMM report of their visit
3 to the detainees and their findings in other travels in that region on
4 the 19th of August. This is P04307. This is a report.
5 "We have also been informed that the Muslims in Prozor have all
6 been moved to three areas in the region: Podgrade, Lapsunj, and Duge.
7 The last two places V2 will visit tomorrow. In Podgrade there was 1.760
8 old men, women, and children. The houses in the area were filled with a
9 minimum of 30 occupants each. Conditions are poor but there is
10 sufficient food provided by Merhamet. A doctor visits the area once
11 every two weeks. The Muslims are not allowed to leave this area. There
12 are indications that HVO soldiers come into the area at night and rape
13 the women they wish. All the men between 16 and 60 are gone. They are
14 very frightened as to their future. Many are DPs," displaced persons,
15 "from other parts of the country. V2," that's the reporting unit of ECMM
16 here, "V2 expects to find the same situation in the other two Muslim
17 areas."
18 Can we briefly go back into private session, Mr. President.
19 JUDGE ANTONETTI: [Interpretation] Mr. Registrar.
20 [Private session]
21 (redacted)
22 (redacted)
23 (redacted)
24 (redacted)
25 (redacted)

Page 52005

1 (redacted)
2 (redacted)
3 (redacted)
4 (redacted)
5 (redacted)
6 (redacted)
7 (redacted)
8 (redacted)
9 (redacted)
10 [Open session]

11 THE REGISTRAR: Your Honours, we're back in open session. Thank
12 you.

13 MR. STRINGER: The Trial Chamber might recall what ultimately
14 happened to these Muslims from these villages in the Prozor area. The
15 Trial Chamber might recall the testimony of Witness BK. After witnessing
16 the execution and the immolation, that is, the burning of her father at
17 Mount Tolovac, Witness BK and her family were bused to Podgradze, a
18 village where approximately 6.000 Muslims were staying. Upon their
19 arrival, they took up residence in a house with approximately 90 other
20 Muslims.

21 At the end of August, Witness BK and her family, along with 6.000
22 Muslim women, children, and elders, were forced out of Podgradze by the
23 HVO soldiers. They were given five minutes to pack up and to get out.
24 They were taken away, ultimately bused to Kucani, and then moved across
25 from there into the ABiH-held territory.

Page 52006

1 So we know exactly the fate of the people that the ECMM was
2 reporting about on the 19th of August. We know that indeed at the end of
3 August they were expelled from this area, driven out by the HVO.
4 In his brief Praljak claims he did not know about the expulsion
5 of Muslims from these municipalities, that he never received any reports
6 or information about these events. He does not mention or address the
7 deportation of the Muslim population from Ljubuski at all in his brief.
8 The evidence shows that Praljak moved freely throughout all
9 HVO-controlled territory during the entire time that these crimes were
10 taking place. He moved easily from Gornji Vakuf to Prozor, to Mostar, to
11 Citluk, issuing orders from all of these locations and demonstrating his
12 knowledge and familiarity with all significant events in this region.
13 And it's not a big region.
14 It is impossible that Praljak was not aware of the significant
15 HVO assets, men, equipment, logistics that were deployed in order to
16 accomplish the expulsion of the Muslim community, from Capljina, for
17 example, or from Prozor at the end of August. The removal of 6.000
18 people in one day takes a lot of equipment and a lot of organising.
19 I'd like to quickly move to IC0062. It's a map. I'm not going
20 to dwell on this because we always have arguments about scale on maps
21 that are shown on the screens here, but it's just worth recalling the
22 region we're talking about, particularly Stolac, Capljina, Ljubuski in
23 relation to the HVO Citluk headquarters.
24 Mr. President, I've got the mouse over the area that I've been
25 talking about here, Stolac, Ljubuski, Citluk. There's Mostar. Citluk is

Page 52007

1 in this area. These are all very, very close to each other and, of
2 course, are well within areas fully under HVO control. There's no
3 question of the HVO being challenged in their actions with regard to the
4 civilian populations in these areas.
5 The Trial Chamber's invited to review the maps, to consider the
6 very short distances involved in all of these areas, and how that impacts
7 Praljak's knowledge and his awareness of all of the events that we've
8 been talking about.
9 In any event, even though he claims he didn't know about these
10 events, we do have a good idea of what Praljak would have done about
11 these events, and we have a good explanation of why he, in fact, didn't
12 do anything about these many crimes.
13 PO -- excuse me P10958. This is an article, an interview given

14 by General Praljak some years later, in April of 2004. The Trial Chamber
15 may recall he was asked about this, these comments, on cross-examination.
16 This is what Praljak said when he was talking about what happened to the
17 Muslims in Stolac:
18 "Stolac? There is nothing wrong there. What happened in the
19 concentration camp should not have happened in such a way, and it is a
20 real crime. But to disarm a soldier in battle, that is what I signed for
21 tomorrow. What happened later on - I would not sign for. Anyway, I was
22 the one who let journalists in Stolac! And then after a month and a half
23 they expelled women and children from the town. I would award the one
24 who did it with a medal, because he saved them from the revenge of the
25 refugees from Central Bosnia. If they wanted to expel them, they would

Page 52008

1 have done it immediately - in this way, they did not expel them, they
2 saved them."
3 Mr. President, General Praljak himself denies that he had any
4 responsibility to protect these people, the vulnerable civilian Muslim
5 populations, the women, the children, and elderly that were left on their
6 own throughout Herceg-Bosna after all the men of military age had been
7 arrested and taken away.
8 As he claims on Page 124 of his brief:
9 "As a commander of HVO Main Staff, Praljak had no duties and/or
10 authority to impose law and order in areas out of the battle zone. The
11 HVO civil authorities were duty-bound for maintenance of law and order."
12 On this he is wrong.
13 The fact is, Your Honours, these areas that I have been
14 describing the last few minutes, Prozor, Stolac, Capljina, Ljubuski, as
15 well as all the other areas held by the HVO armed forces while Praljak
16 was commander of the HVO Main Staff, were occupied territory under
17 international law. As the commanding general of that occupied territory,
18 Praljak was indeed duty-bound to protect all the civilians regardless of
19 their ethnicity. He turned his back on the civilian populations in those
20 areas just as he turned his back on the Muslim men in the HVO prisons and
21 camps.
22 The Trial Chamber will find the Prosecution's submissions on
23 occupied territory in its brief. I won't repeat those, other than to say
24 that a territory is occupied when the occupying power has rendered the
25 occupied authorities incapable of functioning publicly or of controlling

Page 52009

1 the area, and is in a position to exercise its own control over that
2 territory. That test is amply met in this case in virtually all of the
3 areas where crimes were committed against the Muslim civilian population
4 by the HVO.
5 In places like Stolac, Capljina, West Mostar, Prozor, for
6 example, there was no legitimate civilian authority linked to the
7 government of Bosnia-Herzegovina in place. Those legitimate government
8 authorities had long since been pushed out as part of the HVO power grab
9 that served as a precursor to the HVO military takeover that followed.
10 The HVO and its armed forces were able to easily and swiftly exert its
11 authority and control over the areas we say form occupied territory. We
12 see the evidence of this in the ease with which the HVO arrested and
13 imprisoned all the Muslim men throughout the occupied territories
14 beginning on 30 June, 1993. We see this in the ease with which the HVO
15 was able to round up, mistreat at will, and ultimately deport the
16 vulnerable Muslim civilian populations who remained outside the HVO

17 camps. We see this in the unchecked expulsion of the Muslims from their
18 flats in West Mostar, the appropriation of their flats by the HVO, and
19 the expulsion of those Muslims across the river into East Mostar.
20 The Trial Chamber, recalling the thousands of Muslims left in
21 Prozor who were rounded up, held in the houses, in the villages I've just
22 described a few minutes earlier, we see this in decisions. I say we see
23 occupied territory. We see the HVO's full ability and capacity to exert
24 its own authority in these territories. We see this in the decisions
25 such as those taken by Praljak to remove military and civilian policemen

Page 52010

1 from their policing duties and to put them into combat to fight against
2 the legitimate army and authorities of Bosnia-Herzegovina, placing the
3 Muslim populations in even greater peril. And then, of course, these are
4 the scores -- there are the scores of decisions, decrees, regulations
5 issued by the Prlic government purporting to regulate all aspects of life
6 in Herceg-Bosna.

7 None of this could happen unless the HVO had indeed rendered the
8 legitimate authorities of Bosnia-Herzegovina incapable of functioning in
9 these areas. None of this could happen unless the HVO was in a position
10 to impose its authority over the Muslim populations in these areas, and
11 it did.

12 Praljak as commander of the HVO armed forces after July 24, as
13 well as his co-accused, Milivoj Petkovic, for the period of time prior to
14 July 24th, 1993. Praljak had a duty to protect all the civilians from
15 crime, terror, persecution, and all the other crimes they suffered
16 throughout the HVO's campaign to establish Herceg-Bosna. Praljak's
17 failure to honour this duty, his failure to make even the slightest
18 attempt to protect the civilians in these occupied territories, is not
19 just relevant because it bears on his liability for aiding and abetting.
20 His failure to honour this duty to protect even the most defenceless
21 people in Herceg-Bosna tells us that he accepted that persecution,
22 deportation, and all the other crimes that go with it committed against
23 these people were a necessary means of achieving a separate, autonomous
24 territory where Croats would be in the majority.

25 What we see in Stolac, Ljubuski, Capljina, Prozor, West Mostar,

Page 52011

1 and throughout all these areas held by the HVO under Praljak's command is
2 his legacy, the legacy of Slobodan Praljak. Mission accomplished at
3 least in those places. And as a theatre man with a flare for the
4 dramatic, what better exit from the centre stage could there have been
5 for Slobodan Praljak than for the HVO's guns to finally bring the Stari
6 Most, the famous Old Bridge crashing down into the Neretva River on the
7 very morning that he left the HVO's Citluk headquarters and returned home
8 to Zagreb.

9 Mr. President and Your Honours, the Prosecution will have some
10 additional final submissions to make with respect to General Praljak.
11 That completes my remarks at this time. Thank you.

12 JUDGE ANTONETTI: [Interpretation] Very well. We'll have a
13 20-minute break and resume in 20 minutes.

14 --- Recess taken at 3.46 p.m.

15 --- On resuming at 4.08 p.m.

16 JUDGE ANTONETTI: [Interpretation] Ms. West, we're glad to see
17 you, and I welcome you, and you have the floor, even though you're hiding
18 behind the rostrum.

19 MS. WEST: Good afternoon, Mr. President, Your Honours, Counsel,

20 and everyone in the courtroom. Kim West for the Office of the
21 Prosecutor. I will be delivering the Prosecutor's closing argument in
22 response to the Petkovic Defence brief.
23 The accused argues that he was not a political person, that he
24 had no involvement in the HVO plan to permanently remove and ethnically
25 cleanse Bosnian Muslims in Herceg-Bosna. This argument appears in

Page 52012

1 numerous paragraphs of his brief, most clearly in paragraph 41. You'll
2 see that on the screen. That he was never politically engaged. And in
3 paragraph 43, he did not attend any meeting where the goals, programmes,
4 policies, operations, and strategies of the HZ-HB might have been
5 discussed.
6 Petkovic equates the notion of political involvement as
7 evidencing JCE intent, and with this the Prosecution agrees. However,
8 the Prosecution does not agree that Petkovic was merely a titular head of
9 the military. Petkovic was the military general in command and control
10 of the armed forces, and in using that position he executed the
11 Herceg-Bosna JCE, but he was also a leading member of the hierarchy whose
12 input and skill was invaluable in developing and facilitating the plan.
13 The first issue I will address is Petkovic's role in creation of
14 Herceg-Bosna and his significant contribution to the JCE. In the next
15 slide you will see Defence Annex 9, supporting his position that he was
16 not politically engaged. It is a listing of governmental meetings where
17 his attendance is recorded only four times.
18 Now, I will not suggest to you that Petkovic attended such
19 meetings daily or that he was an active participant in the daily
20 execution of the government. Petkovic was too busy commanding the armed
21 forces to do that. However, it is the government's position that
22 Petkovic attended and participated in critical government meetings where
23 the direction of the JCE was discussed.
24 Four of those meetings are now found in the following slide.
25 These are four meetings that Petkovic did not mention in his brief.

Page 52013

1 The first, on July 3rd, you'll be familiar with. This is the
2 meeting in which the decree of armed forces was adopted. Petkovic's
3 attendance at that important meeting is not surprising.
4 The August 1993 meeting, the last meeting, where the republic was
5 commenced, is also a significant and defining moment in the JCE, a moment
6 that Petkovic would not have missed.
7 Now, as shown on the next slide, the December 1992 meeting was
8 also very important. This is a Defence Department meeting. Petkovic
9 discussed the set-up of the army and how best to structure it. And the
10 minutes say:
11 "Petkovic considers that it would be suffice to provide for six
12 generals in the Armed Forces."
13 This is a very high-level meeting chaired by Accused Stojic, and
14 an important decision was entrusted to a man who after consideration
15 thought six generals was enough.
16 The Trial Chamber should ask itself what was the goal of the
17 armed forces? Six generals was enough to do what?
18 It is inconceivable that the person who headed the armed forces,
19 the entity entrusted with executing the plan was not in on the plan
20 itself. In the next slide, this is from the brief, the Defence claims
21 that Petkovic was at none of the Presidential meetings where the
22 political direction of the conflict was discussed. He participated in

23 only one meeting of the HR HB delegation with Tudjman, and that was in
24 relation to Stupni Do.
25 Your Honours, this assertion is simply untrue. Petkovic did

Page 52014

1 participate in at least two very important meetings in President
2 Tudjman's office where the political direction of the conflict was
3 discussed, and one of them is P02059. At this April 24th meeting in
4 Tudjman's office, it lasted for four hours. It was a top-level
5 discussion of the implementation of the Vance-Owen Plan. It included two
6 heads of state, their military leadership, their political lieutenants,
7 as well as top international negotiators, and the first major item for
8 business at this meeting was to hear the reports from Generals Petkovic
9 and Halilovic regarding their discussions about military negotiations and
10 the peace plan and a potential Joint Command. As he finished explaining
11 his position, Petkovic himself noted the political implications for both
12 sides. And that's found at Page 10 of this report. You'll see it in
13 front of you. He says:
14 "I think that in this way command effectiveness would not suffer
15 at all. In view of political implications for both sides, their soldiers
16 would not be in any way subordinate position to the HVO ..."
17 Your Honours, I would submit that this was an explicitly
18 political discussion, and immediately after Petkovic's report, Tudjman
19 and Izetbegovic remarked on exactly that.
20 On Page 11, Tudjman:
21 "Thank you. It's obvious that it's a technical question at the
22 military level, it's a political thing.
23 "Izetbegovic: Ladies and gentlemen, I agree with
24 President Tudjman. This is obviously a political issue."
25 There were several more meetings that benefitted from Petkovic's

Page 52015

1 attendance and significant participation, and you see them now before
2 you.
3 As regard to the first meeting in June of 1992, the Defence
4 asserts the following at paragraph 537 in their brief:
5 "Words of 'Croatian interest' and 'Croatian-held territory' that
6 were written in this document, used in these documents, had the meaning
7 that the territory was free, liberated of Serb forces. These words did
8 not have any anti-Muslim meaning."
9 Now, the Trial Chamber will well remember the cross-examination
10 regarding this document, and I'm not going to reiterate our brief's
11 analysis of Petkovic's unconvincing denial that this document isn't
12 exactly what it plainly reads to be, but you will see at the bottom of
13 this document the four issues that are -- the four facts that are at
14 issue here, and the first is:
15 "To put under control the remaining area of Croatian
16 municipalities.
17 "To secure and fortify the achieved line.
18 "To carry out reorganisation of the existing HVO forces; and
19 "To establish Croatian rule over all municipalities."
20 The Defence would have you believe that the reasonable
21 interpretation of those lines was merely to establish rule excluding the
22 Serbs, that the rule would be somehow shared between the Muslims and the
23 Croats, that each time this document says "Croat," it should be
24 interpreted to somehow read "Croat and Muslim." I submit to you that
25 that understanding is completely at odds with the plain language of the

1 document, and this is a document that was signed by the accused himself.
2 If the Trial Chamber needed more Petkovic documents evidencing
3 that he was aware of the JCE and on board with it and significantly
4 contributed to it, then we can look at the 1992 report where Petkovic
5 reports on the Herceg-Bosna borders and how far along the HVO was in
6 achieving their goal. And in the next slide you will see that document.
7 This document is not mentioned in the Defence brief. It's
8 mentioned in one of the annexes as a report allegedly issued by Petkovic,
9 and this report is for the period of April to December 1992, and under
10 the general conclusions on Page 2, Petkovic writes:
11 "Nowadays, HVO forces successfully hold under their control 90
12 per cent of the area mapped out as HZ-HB, and they are capable and ready
13 to defend it ..."
14 This is a document that you've seen, I believe, yesterday from
15 Mr. Scott, but there's another interesting part of this report that I
16 would like to show you, and this is on
17 to the philosophy, the political will of the army, the JCE that the army
18 was fighting to implement, and here we have:
19 "The defence of this area and unit commanding in most cases
20 depends on 'ordinary' people who do not have military school -- excuse
21 me, skills, but are dedicated to the ideas of the HZ-HB."
22 Petkovic here refers to military men whose most important
23 attribute is not their experience but their philosophical conviction to
24 the ideas to the HZ-HB, men like Petkovic. It was his task to take over
25 the territory and ensure that it was ruled by Croats only, that a new

1 political social order was installed to the exclusion of Muslims.
2 If we look at his tasks in the HVO, we see that to be the case.
3 That is the next document on the screen in front of you. This is the
4 book of rules on the operation of the armed services, and under number 1
5 it shows the tasks:
6 "To protect and defend the sovereignty, independence, and
7 territorial integrity of HZ-HB," and "To defend the social set-up of
8 HZ-HB as established by the Constitution."
9 This document shows that the armed forces in defending the
10 political system of the HZ-HB, they were clearly stating their allegiance
11 to a new state with a whole new order, a new social set-up, and
12 eventually that meant population transfers of Muslims out and Croats in
13 to ensure Croat domination.
14 As you heard, the Defence brief asserts that the accused did not
15 participate in any political discussions with Tudjman in his office. I'd
16 like now to look at the 5 November meeting in Split, and this comes just
17 in the aftermath of Stupni Do. It was a gathering of Croat and
18 Herceg-Bosna's top leaders, including Prlic, Petkovic, and Praljak, to
19 discuss the problems of the Croat parastate in BiH, and in particular
20 Stupni Do. And at Page 4, Tudjman lays out their political goals,
21 saying:
22 "If the BiH union breaks up, the Croatian Republic of
23 Herceg-Bosna and the autonomous province of Western Bosnia will be
24 annexed to the republic ..."
25 And also that, a little bit below:

1 "Therefore, our policy has always been and will be to keep the
2 Republic of Herceg-Bosna."
3 On Page 21, Tudjman also explained precisely what this policy
4 meant in the short term for Petkovic and the HVO military, and he said:
5 "The present situation demands the measures to be taken to
6 strengthen the functioning of the authorities in this part of
7 Herceg-Bosna and to defend the line in the north of Travnik, Vitez, and
8 Busovaca."
9 This is clearly the application of a political philosophy to
10 military tactics. The two go hand-in-hand. One cannot exist without the
11 other. Petkovic could have not have led the army and not been part of
12 the political will of which it was born.
13 In the next slide we see the HVO policy of reverse ethnic
14 cleansing was also discussed at this meeting, and it included moving the
15 military along with the population. This is Prlic:
16 "We must move closer to rounding off territories. As a
17 government, last spring we defined both the proposal and the conclusions,
18 even with regard to moving certain brigades from some areas, which would
19 include moving the population from those areas and concentrating it in
20 certain directions that we think could become and remain Croatian areas."
21 Your Honours, this was an intensely political meeting where
22 Petkovic is asked for his contribution. He is there surrounded by the
23 Croatian president and other HVO leaders, but Petkovic comes to you now
24 denying that he had a political bone in his body.
25 The Defence you would have to believe, that Petkovic was merely

Page 52019

1 an administrative assistant to Boban with no power or autonomy or
2 decision-making power of his own. But if the Prosecution's allegations
3 are true and Petkovic was a military and political leader in
4 Herceg-Bosna, then the Trial Chamber should expect that at the time other
5 people thought the same. The Trial Chamber should expect to have seen
6 international figures meeting with the person they believed to be worthy
7 of HVO decision-making capacity. The Trial Chamber should have seen
8 other Herceg-Bosna leaders interacting with Petkovic in a manner keeping
9 with his position as one of the Herceg-Bosna leaders.
10 The person described by the Defence brief certainly would not
11 have had a seat at the table in Geneva in January, negotiating a peace
12 plan for the parties, nor would he have been meeting with Mladic
13 discussing the two army's plans for co-operation, yet this is the very
14 credible evidence before you.
15 The next slide notes occasions when high-level officials
16 mentioned Petkovic, revealing their understanding of his very important
17 position in the HVO. In the first document, this is a July 2nd meeting,
18 presidential meeting, where it reads:
19 "And you two please, Minister Susak, General Bobetko, see about
20 this and meet with the Herceg-Bosna leaders there, with General Praljak,
21 Petkovic, and ambassador Sancevic and their leaders there ..."
22 And it goes on.
23 The Trial Chamber will recall the grammatical defence offered by
24 the accused to this document when he said that the placement of the comma
25 excluded reference to him as one of the Herceg-Bosna leaders. I think

Page 52020

1 the plain reading of this document shows the weakness of that
2 explanation.
3 The next document is April 27th, where Susak says at the meeting:

4 "About BiH. I talked to Petkovic at about 1930 hours."
5 This shows that Petkovic was a point person for all things
6 Herceg-Bosna.
7 The next meeting, 11 May:
8 "8.00 tonight, General Petkovic, Morillon's deputy, and Halilovic
9 met up there in Kiseljak. Morillon arrives at Medjugorje tonight to meet
10 with Boban and Petkovic."
11 Here you see Petkovic's participation in high-level meetings and
12 negotiations.
13 THE INTERPRETER: Kindly slow down, please. Thank you.
14 MS. WEST: Apologies.
15 November 5th. This is a meeting we just talked about.
16 Prlic says:
17 "I think this meeting is extremely important. The
18 highest-ranking officials of the Republic of Croatia and the Croatian
19 Republic of Herceg-Bosna are here ..."
20 Petkovic was at that meeting and was referred to as one of those
21 officials.
22 And then we have a cite to his -- his testimony itself. And this
23 was on cross-examination, and the question was:
24 "Would you agree with me, wouldn't you, that you were more than
25 just a political/military technocrat; you really were wearing a political

Page 52021

1 hat as well as a military hat, weren't you?
2 "A. No, I didn't have a political hat of any kind."
3 And then when shown an article in which he said he felt more like
4 a politician in that time, he replied in that article that it seemed to
5 him that he was more politician than soldier. And he said -- he was
6 asked:
7 "That's what you said in the interview, isn't it?"
8 His answer:
9 "This does seem strange, this statement that I'm more politician
10 than soldier. I don't really see myself as a politician."
11 The accused did not deny that he more of a politician than
12 soldier. He merely thought it was odd.
13 What else can the Trial Chamber rely on in finding that Petkovic
14 shared the intent to permanently remove and ethnically cleanse Bosnian
15 Muslims and other non-Croats from Herceg-Bosna and join it as part of the
16 Greater Croatia? I submit that the Trial Chamber should look at the
17 ultimatums.
18 The ultimatums and Petkovic's role in their issuance is important
19 because it illustrates his commitment to Croatian-only rule in those
20 areas claimed by Herceg-Bosna. The ultimatums were an attempt at a
21 wholly unjustified grab for territory and power without any agreement by
22 the other parties. But in reviewing this evidence, I ask that the Trial
23 Chamber focus also on the evolution of Petkovic's position, particularly
24 on the January ultimatum, what he said initially in his testimony, then
25 in his cross, and now in his brief, and focus on whether the

Page 52022

1 inconsistency and evolution of his position bears on the credibility of
2 his testimony. I am not suggesting that the accused need carry any
3 burden at all. That burden is solely and always on the Prosecution, but
4 I think the evolution of Petkovic's rationalisations for the ultimatum is
5 helpful to the Trial Chamber in its own determination as to the
6 credibility of his testimony.

7 So we see in paragraph 536, this is the brief on the ultimatum,
8 and in it, it says:
9 "The order is purely military in character and is consistent with
10 the instructions given to him by his government. It was not for him ...
11 to second-guess the nature and reasons for his superior's orders."
12 So the Defence position in the brief is that his superiors told
13 him to do it and so he did it. There's no analysis of the order, there's
14 no commentary regarding it. His defence is that he was just following
15 orders.
16 I'd like to look to see what he initially -- the position he
17 initially took in his testimony regarding the ultimatum, and this came
18 directly after his direct testimony, and it was in response to a question
19 from the President. And he said:
20 "I issued the order on the basis of a previous decision taken by
21 the government and on the basis of the head of the Defence
22 Department ..."
23 And he goes on:
24 "When you read the order, it's not an ultimatum; it's an
25 invitation to hold discussions."

Page 52023

1 And then almost 80 Page -- Pages later in the transcript and
2 further in questioning from the President, the order ceases being an
3 invitation and becomes something else.
4 "Q. What did you envisage writing this document?
5 The answer:
6 "Your Honour, I did not consider this document to be any kind of
7 ultimatum."
8 And he goes on to explain that it's a resubordination plan. He
9 says:
10 "It is a reference to the provinces that do not belong, and as
11 such, they should either be resubordinated according to this document or
12 leave the province. Therefore, the local units, the domicile units, are
13 both units of the ABiH and the HVO units formed there ... all the others
14 who happen to be there and do not belong ... if they don't agree to be
15 resubordinated to one or another party, they have to leave ..."
16 So I would submit that by this time Petkovic's offering on this
17 issue had changed completely. Now it was that the HVO and the ABiH's
18 forces who were domiciled in that area could stay, but all other forces
19 from other places had to go or be resubordinated. This is very different
20 than his earlier testimony that it was an invitation for discussion
21 between the HVO and the ABiH, which was his first answer. Here, the HVO
22 and the ABiH are on the same team, and it is domicile troops against
23 troops from the outside.
24 It is the Prosecution's position that neither of these excuses
25 add up to the real meaning of the ultimatum, which is an unveiled threat

Page 52024

1 to the ABiH.
2 I'd like to look at documents that were issued at the same time
3 to shine light on this subject matter. If we can look at the next slide,
4 which is P1135. This is a document that was issued on January 15th from
5 Mr. Petkovic. Now, he is in Geneva with Boban at the time negotiating,
6 yet here he issues a full combat readiness order, and in it, and these
7 will pop up on the screen, he raises the combat level to the highest --
8 excuse me, I'm going to read those to you.
9 He includes in his order all members of the Croatian people in

10 HVO units. He does not include Muslim members. He says:
11 "Keep only two shifts facing the Chetniks. Keep all other forces
12 in full readiness ready to intervene towards the Muslim forces; and
13 "Disarm and isolate all Muslims in HVO units who refuse to follow
14 our orders."
15 If Petkovic's 15 January order was merely a resubordination
16 order, then these demands placed by Petkovic on the same day appear
17 curiously inconsistent. What makes more sense is that this order was
18 meant to tighten control and compel the Croat HVO soldiers to focus their
19 attention on their Muslim brethren. In addition, Petkovic immediately
20 followed up this full combat readiness order with instructions to Siljeg
21 in Central Bosnia to stop negotiating at one hour and "fire at every move
22 they make."
23 It is also clear that the ABiH understood Petkovic's order to be
24 an ultimatum, the January ultimatum, directed at the ABiH, and HVO Muslim
25 units in the Croatian delegated provinces. In his response dated 18

Page 52025

1 January, Pasalic wrote this:
2 "I cannot carry out item 2 in your order due to the fact that the
3 4th Corps of the Bosnian Army and its units are not under your command
4 regarding such decisions and their execution.
5 "The units from the 4th Corps ... will not leave the territory of
6 the provinces you mentioned, due to the fact that the combatants in those
7 units are inhabitants of those provinces and that they liberated those
8 area, what was their right. To say that our units are paramilitary units
9 is, to say the very least, not serious from your staff."
10 It is in light of Pasalic's response, it is clearly apparent that
11 Petkovic was dishonest with the Trial Chamber when he answered the
12 President's unambiguous question. In addition, Pasalic's letter was
13 written at the time of the events, a particularly persuasive factor
14 evidencing its credibility. In contrast, Petkovic testimony is given 17
15 years later and is in his own defence.
16 Well after the President's questions and pursuant to questioning
17 from the accused Praljak, you'll see this on the next screen, he was
18 asked about the ultimatum again, and again he says that this was an
19 invitation to hold discussions.
20 So so far we have gone initially from an invitation to a
21 resubordination plan and now back to an invitation. But now when there's
22 been time to digest the evidence and the case is closed, Petkovic finds
23 his final defence in regards to the January ultimatum. In that defence
24 there is no parsing of words. There's no rearranging of context or
25 deciphering new-found issues. His explanation now is that he was just

Page 52026

1 following orders.
2 So his current position, now that the first two are found to be
3 untenable, that he was just following orders, is contrary to the
4 Prosecution's position, which is this: That he shared the intent of
5 Croatian rule in the area claimed by the HVO and by issuing this order he
6 contributed to the goal of just that.
7 I will now turn to the Defence argument regarding who was in
8 charge of running Petkovic's armed forces. Was it the civilians and
9 Boban, or was it the Chief of the Main Staff, Petkovic?
10 You will see on your monitor paragraph 3 of the brief, and this
11 is the Defence position, which is that under the doctrine of civilian
12 control of the military, that ultimate responsibility over strategic

13 decision-making lies in the hands of the political civilian leadership.
14 Here, Your Honours, we have found some common ground.
15 Prosecution agrees that the civilian authorities were in charge of the
16 military. Our own expert Andrew Pringle came to the same conclusion. I
17 will now go to the Pringle report. It's paragraph 25. He says:
18 "A range of powers would normally be vested in some form of
19 defence council chaired by a nominated official. In the case of the
20 HZ-HB, Article 2 of the Decree ..." which says, "The defence system of
21 the HZ-HB shall be a uniform form of the organisation of the armed forces
22 administrative bodies and legal entities..."
23 And he -- Pringle concludes:
24 "In effect, this he shrines political control over the military
25 as one would expect."

Page 52027

1 Your Honour, that is the extent of our common ground. It is then
2 that our paths diverge. Petkovic argues that the Main Staff was so
3 lacking in competence because most defence matters were controlled by the
4 civilians, including, and I quote:
5 "The competence to prescribe the authority of the Chief of the
6 Main Staff a means available to him to prevent or punish perpetrators of
7 the crimes," that he urges you to believe that he was not in command and
8 control of the armed forces.
9 Now, the Defence argument goes something like this: Petkovic
10 says that he was in command and control of the armed forces to the extent
11 that those powers were delegated to him by Boban. And since, his
12 argument goes, no substantive powers were delegated to him regarding the
13 armed forces that he was in no way responsible for them. And in specific
14 Petkovic claims that the brigade commanders did not report to him and he
15 was not in effective control of them. He claims in paragraph 65 that:
16 "He was dealt with a hand that he had no way of influencing."
17 Your Honours, the Defence would have you believe that Petkovic
18 was a puppet of his superiors or has -- or as he goes on to write, was
19 mere staff to Boban. And this is at paragraph 68:
20 "The legal competence of the Chief of the Main Staff was only
21 staff in nature (i.e., expert specialised or advisory in nature) and in
22 regard to other specialised services specifically provided for the
23 supreme commander. These powers did not involve any sort of command and
24 control authority over the armed forces."
25 Petkovic would have you believe that he was some sort of expert

Page 52028

1 administrative secretary to Boban, that he had no power of his own, no
2 ability to make any decision, no ability to control anyone below him in
3 the organisational chart. The weight of the evidence shows that this is
4 not the case, and Petkovic was a full-fledged former JNA officer and
5 general in the HVO who was in charge of combat operations of the HVO and
6 in charge of the armed forces, and in so doing significantly contributed
7 to the JCE.
8 The Prosecution's position was accurately articulated by Andrew
9 Pringle, which is that the civilians managed and directed the armed
10 forces but that Petkovic was responsible for execution of that direction
11 and operation. And this is at paragraph 26 where Pringle writes:
12 "The Main Staff would be responsible for performing the
13 stipulated task in accordance with defence policy."
14 The Defence Department and the Main Staff had separate and
15 distinct roles. One did not exist without the other, and both were

16 imperative to the success of the JCE. Importantly, Petkovic could not be
17 relieved of any responsibility, because he was only following orders. He
18 still intentionally and significantly contributed to the JCE by his own
19 actions.
20 The Defence argument on this is fully articulated in paragraphs
21 66 through 70. What is the support for this notion? It is primarily
22 based on only two HVO legislative documents, the original decree on the
23 armed forces and also the decision on the basic principles of
24 organisation of the defence department. Nonetheless, even though it is
25 based only on these two documents, the Defence brief provides an

Page 52029

1 extensive examination of these documents in order to convince the Trial
2 Chamber that no language exists supporting the Prosecution theory that
3 Petkovic was in charge.
4 I would most respectfully suggest that even following the
5 Defence's surgical parsing of the language in these two documents is a
6 wholly unrewarding exercise in linguistic gymnastics, because in the end,
7 it still does not support the Defence position. And for the record,
8 those two documents are P00289 and P00586.
9 The reason I am not going to do the analysis here is this: No
10 matter what these documents say about Petkovic's competence as Chief of
11 the Main Staff, the Trial Chamber must look to what happened in fact,
12 what happened on the ground to see the real picture. Command does not
13 arise solely in the superior's formal or de jure status but can also be
14 based on the existence of de facto powers of control, and the two
15 categories of evidence to which you can turn is the testimony of Petkovic
16 himself and his witnesses and Petkovic's orders evidencing his control
17 over the armed forces, and first I'd like to look to the Petkovic
18 testimony.
19 This is a quote that was mentioned by Mr. Scott yesterday, and it
20 deserves repeating. The question refers to his testimony in Kordic and
21 Blaskic and says:
22 "... as a commander, had authority over those in your command,
23 and as part of that authority, either explicitly or implicitly, you had
24 the authority take measures to exercise that command, in other words, to
25 make it real, didn't you, or is that your starting point?"

Page 52030

1 And his answer was:
2 "Yes, I had authority over my commanders."
3 And the continuation of that same part of the transcript, the
4 question cites his Blaskic testimony where he said:
5 "... all units within my territory are under my command, and I
6 have certain authority over him."
7 And the question was:
8 "Do you stand by those statements and make those statements the
9 same today as your testimony here?
10 "A. Yes."
11 Now, whether authority was punctuated by an effective chain of
12 command, Petkovic testified to this:
13 "A chain of command has been established. As to whether it was
14 functional or not, well, that's debatable. It was functional to the
15 extent that it was possible to make it functional at the time."
16 And from the same section of the transcript, he goes on to say --
17 it's put to him, his Kordic testimony, that he said:
18 "... I've always claimed that the chain of command has been put

19 in place and that it was in working order. I continue to affirm that."
20 The question from Mr. Scott was:
21 "And you continue to affirm your testimony under oath in the
22 Kordic case, don't you?"
23 And the answer was:
24 "Yes."
25 Your Honours, does this testimony, tested as it was on

Page 52031

1 cross-examination, sound like a description of conventional armed forces
2 with the chief on top, or does it sound like a secretary, advisor
3 describing armed forces that were not under his control or not? I submit
4 to you that it's the former, and Petkovic was candid in his responses to
5 these questions on cross-examination because he had no choice but to be
6 when confronted with his previous testimony in Blaskic and Kordic.
7 Petkovic even confirmed that the chart he drew in Blaskic, a
8 chart that clearly puts the armed forces under his command was accurate.
9 It's on the screen before you now, and it -- in regard to that he said:
10 "Yes, Your Honours, I stand by this schematic I draw back then
11 or, rather, which I drafted."
12 Mr. Scott mentioned this chart as well, and it's clearly contrary
13 to the Defence position that Petkovic was not in command and control of
14 the armed forces. But now I would like to look at the testimony of
15 Petkovic's own Defence witnesses who confirmed that he was the one in
16 control, and first we'll look at Filipovic. When asked about the chain
17 of command and the Main Staff's role, he said the following in regard to
18 previous testimony given by Petkovic -- the testimony was cited and then
19 Filipovic said:
20 "Well, as my understanding went, Main Staff meant commanding the
21 army."
22 There's more from Filipovic on whether Petkovic was in charge of
23 the armed forces, and here specifically he was talking about the
24 operational zones and the effectiveness of that control, and that -- in
25 that he says:

Page 52032

1 "In terms of the Central Bosnian operative zone and Mr. Blaskic,
2 you will agree, won't you, that throughout the time that Mr. Blaskic was
3 commander of that zone, his immediate superior ... was Petkovic," and
4 then it was Praljak, and then it was Roso, and then it was Petkovic
5 again?
6 And Filipovic says:
7 "Yes, his immediate superior, that's right, but Boban could, as
8 president, do something, but yes, that's correct".
9 And then you go down a little bit further and he talks about
10 command and control, and he says:
11 "So it was a normal system of command and control."
12 I'd now look like to look at the testimony of Vinko Maric, the
13 south-east's command's artillery commander who testified on behalf of the
14 accused Petkovic. In describing the role of the Main Staff, Maric had
15 this to say about Main Staff control. The question was:
16 "... would you agree that all of the artillery was ultimately
17 under the chain of command directly to the Main Staff?"
18 The answer:
19 "All units within an army are in formal terms under the Main
20 Staff."
21 When Maric was asked about testimony given by Praljak to see if

22 he agreed with it, in this case it was whether the artillery was under
23 the Main Staff, he said this -- he was given Praljak's testimony which
24 was:
25 "Look, everything is within the chain of command of the Main

Page 52033

1 Staff. When under attack, obviously formally speaking, it's all within
2 the chain of command of the Main Staff."
3 And the question was:
4 "So I gather you would agree with General Praljak?
5 The answer:
6 Yes. "Your Honour --"
7 THE INTERPRETER: Slow down, please, thank you.
8 MS. WEST:
9 "-- I agree with what General Praljak said."
10 Maric was asked generally about Main Staff control and he said
11 this:
12 "The Main Staff did have control, and I wouldn't be able to call
13 it strong control. It was just control like ... any other military."
14 Your Honours, do these statements sound to you like the Chief of
15 the Main Staff was merely an advisory assistant to Boban with no powers
16 delegated to him? I submit to you that the answer is no. But you should
17 consider this as well: Assume that it was Boban in control of the armed
18 forces, assume just for the purposes of this, and he directed them in
19 support of the JCE. Then Petkovic, as Boban's assistant, expert advisor
20 in this regard, shared in that intent, and as Mr. Scott argued, Petkovic
21 still cannot evade responsibility.
22 We also in this regard can look at orders issued by the accused
23 to show his control, and the first is 12 -- P01293, and this is an order
24 where he's in Geneva with Boban, and he -- and he's trying to negotiate
25 the peace treaty. The Trial Chamber must ask whether the HVO would send

Page 52034

1 some sort of advisory staff member to negotiate a treaty. I think the
2 answer to that is no. Nonetheless, here he is effectively controlling
3 the military, so much so that he can call a cease-fire.
4 Your Honours, not to belabour this point because the final trial
5 brief is full of these types of documents, but I think this issue begs
6 the question: If Petkovic was really just a staff member who was Boban's
7 handler, his secretary, his assistant, do you think Mladic would have met
8 with him? Don't you think Mladic would have demanded to meet with his
9 own counterpart and not Boban's assistant?
10 The next slide shows a meeting between Mladic, Prlic, Stojic,
11 Praljak, and Petkovic, and I submit to you that Petkovic was not at this
12 meeting to record the minutes. Here Mladic was meeting with people of
13 his own level in the HVO, and here is what Praljak says:
14 "It's in our interests that the Muslims get their own canton so
15 they have somewhere to move to ... We have cut off supplies to them,
16 even food."
17 These are the types of high-level political military meetings
18 that Petkovic attended, and this is not his last face-to-face with
19 Mladic. On January -- excuse me, on July 8th, 1993, the two spoke alone
20 about HVO Serb artillery and ammunition exchanges, a co-operative
21 relationship which the evidence shows that Petkovic was intimately
22 acquainted and managed. In this conversation Petkovic says:
23 "I would first like to defend Fojnica, Kresevo, Kiseljak, and
24 link up with Busovaca. Push your cannons forward a bit and let my guys

25 from Travnik die, they haven't fought, that's for sure..."

Page 52035

1 Petkovic was so confident and so comfortable in his position as
2 head of the armed forces he could choose who to let live and choose who
3 to let die. What does this say about his power? Do those words comport
4 with a person whose position was that as Boban's expert assistant, or
5 were those words spoken by a man who was accustomed to directing the
6 armed forces, who was accustomed to having his orders followed, and
7 accustomed to enshrining the military tasks of the HVO in defending the
8 sovereignty, independence, and territory of HZ-HB?
9 Your Honour, I'd like to move now on to the June 30th arrest
10 order, and you will see that in front of you. You're well familiar with
11 it. Petkovic does not deny issuing it. And we understand that his
12 position was that Boban absolved himself of any responsibility for what
13 happened to the Muslims once they were arrested, and that we see in his
14 direct testimony. You'll see that in front of you. :
15 "It didn't come under my responsibility, and I didn't interfere
16 with the affairs of others."
17 He also said that the HVO facilities that can put up this number
18 of men and that it was up to the army to disarm these men in the safest
19 manner and everything else was for someone else to take care of.
20 So his position in the brief should come as no surprise, and
21 that's at paragraph 211:
22 "Petkovic's role stopped at the door of the detention facilities
23 or earlier at the time of handing over the detainees."
24 His position is clear and he also argues that the law is on his
25 side as well, and that's 213 where it's written:

Page 52036

1 "As a matter of international law from the moment when prisoners
2 are transferred from a commanding officer to others whose
3 responsibility ... is to care for the fate of the prisoners, thereafter
4 their control of such prisoners is terminated."
5 The Prosecution's position on the law is unambiguous. It's
6 outlined in our brief, and we disagree, and we believe he did have a
7 legal obligation to ensure that the prisoners were treated well.
8 However, I would like to emphasise a different point in regard to
9 Petkovic's position, which is that his denial of responsibility for the
10 well-being of those arrested is even contrary to JNA HVO law, a fact that
11 information he would have known at the time, suggesting that in June
12 1993, Petkovic knew full well what he was doing was illegal, but he did
13 it anyways because he knew it would advance the goals of the JCE.
14 How do we know this? Well, the first thing we know is that
15 Petkovic's own military expert, Milan Gorjanc, told you that the SFRY
16 armed forces law was important because it was the base upon which the
17 parties to the war operated, and at paragraph 40 Gorjanc wrote that:
18 "In order to gain a more complete understanding ... of the
19 events ... it's necessary to be familiar with the laws ...
20 regulations ... practices of the armed forces of ... Yugoslavia upon
21 which they are based."
22 We can also go to Gorjanc's testimony where he said this as well.
23 The question was:
24 "Now, in your report you make several notations to the ABiH
25 execution of SFRY doctrine, whether it be All People's Defence or other

Page 52037

1 doctrine, so is it your opinion then, to be clear, that the HVO also
2 adopted the SFRY doctrine?"
3 The answer:
4 "To large extent."
5 He went on:
6 "Would you agree with me that the HVO adopted ... the
7 international war laws ...?
8 "A. Yes."
9 So as you've heard the OTP expert Pringle also focused on the
10 doctrine of Yugoslavia and international laws of war, and in his report
11 Pringle wrote that the JNA doctrine adopted the Mrksic obligation, and
12 that's found at paragraph 77. And here he says that all this is laid
13 down in JNA doctrine:
14 "Prisoners of war will be separated from the civilian
15 non-combatant community, questioned and detained. This procedure is laid
16 down in detail in JNA doctrine ... If prisoners of war are handed over
17 to another body, it is the responsibility of those handing them over to
18 ensure that the receiving body complies ..."
19 And if you go down, the last sentence he says:
20 "Ultimately, the officer would be acting correctly if he refused
21 the order as it would be illegal order [sic] knowing to be party to
22 maltreatment of prisoners."
23 Your Honours, since the HVO adopted the Yugoslavian doctrine and
24 Petkovic was a former JNA officer, and he was also aware of the JNA rules
25 on this issue, which were the same as Mrksic. Pursuant to this law, the

Page 52038

1 person handing the prisoners over is responsible to ensure that they are
2 treated properly. Petkovic was in clear violation. He knew at the time,
3 yet he still went through with the order.
4 His response to the Trial Chamber that it was for someone else to
5 handle it is not sufficient to relieve him of culpability.
6 As I noted at Pringle's last sentence, that the officer would be
7 acting correctly if he refused the order, is something that Petkovic,
8 too, was familiar with, and if we go to his brief at paragraph 4, he
9 writes:
10 "For a professional soldier, as in the case of Petkovic, there is
11 only one justified reason that would require him to refuse to carry out
12 an order - if carrying out an order would involve a commission of a
13 crime ..." He considered this doctrine undisputable and performed his
14 military duties accordingly.
15 Your Honours, Petkovic did not refuse the order. How is the
16 Trial Chamber to interpret this? I submit that he knew that order was
17 illegal. He knew this from his experience in the JNA and his
18 understanding of international law, but nonetheless he issued the order
19 to arrest thousands of people knowing they could not adequately be cared
20 for. Less than two months before that order, less than two months
21 earlier, HVO had arrested numerous people on a smaller scale, and they
22 came away from the experience knowing they could not manage the detention
23 of so many people.
24 I submit to you that the most reasonable interpretation is that
25 Petkovic was committed to the JCE. He was committed to Croatian rule in

Page 52039

1 these areas, and this was a way to get there. This was part of his
2 contribution to the JCE, by arresting the Muslims, by removing them from

3 their homes and setting them on a journey from which they could not
4 return.

5 It is also interesting to note on the same subject matter that
6 the Defence's interpretation of the responsible party of detention. This
7 is paragraph 212 and it says:

8 "As a matter of law, a prisoner of war is the prisoner of the
9 government, not of ... individuals and army unit who captured them. In
10 that sense, a prisoner of war is not at the disposal of the
11 individual ..."

12 Now, the brief does not give any citation for this assertion that
13 the government only is responsible and not anyone else, and there's no
14 source listed. However, I found one, and it's the same JNA document that
15 we've been discussing and that Pringle quoted from extensively. It's a
16 document with which a former JNA officer like Petkovic would be familiar.
17 That's the next slide, and it's the regulations on the application of
18 international laws of war. This is P0007, and it says:

19 "The responsibility of the State for the treatment of prisoners
20 of war by its nationals. Prisoners of war are under the authority of the
21 Detaining Power, and not of the individual person or ... units which
22 captured them. The Detaining Power shall be responsible for the
23 treatment ... this responsibility does not rule out the personal
24 responsibility of individuals."

25 I'm going to move now briefly to the All People's Defence, and

Page 52040

1 the Trial Chamber is well-familiar with this concept. And the Defence
2 briefs this at paragraphs 264 to 281, and right here you'll see 271 where
3 it says:

4 " ... men of fighting age should be assumed members of the armed
5 forces."

6 We heard five full days of Gorjanc's testimony on this particular
7 subject matter, and you'll see his testimony following, and the question
8 was to him:

9 "Q. So Mr. Gorjanc, by your analysis of the war in the former
10 Yugoslavia, no one was a civilian as it related to All People's Defence;
11 is that right?

12 "A. Well, more or less you're right..."

13 And then we went on, and he was asked:

14 "Q. So by application, when the HVO made arrests or detained
15 people or isolated people, whether it was a soldier in the field with a
16 gun or, say, a woman in her 20s in her home, is it your opinion that the
17 arrests would have been justified under the All People's Defence?"

18 Answer is:

19 "... yes, that would have been justified."

20 It is the Prosecution's position that the defence that all people
21 were combatants was is nonsensical and plainly absurd. If this were
22 true, the JNA would never have published laws regarding the treatment of
23 civilians, because there would have been no such thing as a civilian. If
24 this were true, then it would have applied to all the parties and
25 Petkovic would have viewed all Bosnian Croats as combatants as well. And

Page 52041

1 if this is true, Petkovic never would have said this on redirect:

2 "Q. General if a member of the HVO, for instance, who was on
3 leave, on furlough, rapes a Muslim woman, for example, is that a crime
4 linked to combat?

5 "A. No, that is not a crime linked to combat, because during that

6 time he was a free civilian until he is recalled to join the army again."
7 Petkovic cannot claim that some Bosnian Croats were civilians but
8 the Muslims were not. If the All People's Defence was a defence worthy
9 of this Trial Chamber's consideration and attention, then Petkovic would
10 not have said this in a June 14th recorded interview of him. In this
11 interview, the question is:
12 "As for members of the Croatian Defence Council who surrendered
13 to the Serbian fighters on Vlasic five days ago, fleeing from Travnik in
14 front of the Mujahedin ..."
15 Petkovic said, and the interview's recorded, and this is his
16 response:
17 "Well, you yourself reported that you have accepted them and
18 helped them. After their detainment, a different treatment would not be
19 in accordance with what you have said. Therefore, they are civilians in
20 my eyes. They are in uniform. I hope they will be treated as civilians
21 and ... they will be returned to us."
22 I think enough time has been devoted to this issue. The Trial
23 Chamber is amply prepared to deal with the credibility of this particular
24 Defence theory.
25 I'd now like to turn to forced labour. The Defence position on

Page 52042

1 this is a combination of two things. The first is that in regard to
2 Petkovic's July and August 1993 orders for forced labour, he didn't deem
3 them to be unlawful because he assumed that the camp would only send out
4 one -- the right classification of persons in response to his order, and
5 that would be HVO-detained soldiers who he believes could be used for
6 dangerous work. And the second thing as briefed is that particularly in
7 regard to his August forced labour order, he says it was not executed and
8 therefore could not be the basis of a crime.
9 These are found in paragraphs 372 and also 373. I should make it
10 clear that the Prosecution disputes that even Muslim HVO soldiers could
11 be used for forced labour, but I would like to put that issue aside for
12 the moment. Assuming that Petkovic truly believed that a classification
13 system was in place at the camp -- the camps, and the warden would
14 lawfully send out HVO detained soldiers, one class of people who Petkovic
15 believed were able to work in dangerous places, then his order should
16 have been a very simple one. It should have said, "Send out HVO
17 soldiers, detained soldiers, to work." But instead this is how his first
18 order read. This is July, 3474. He asks to send out "prisoners and
19 detainees."
20 If Petkovic truly believed that only one class of people was
21 eligible to work, then why did he ask for two classes? His August order
22 suffers the same fate, and that's the next slide. He asks for "prisoners
23 and --"
24 JUDGE TRECHSEL: I'm sorry to interrupt you. We have agreed, I
25 think, on Monday that when you refer to documents, you identify their

Page 52043

1 number, and you have omitted that, I think, at least since the interview
2 with General Petkovic that you have referred to, and I take the liberty
3 of reminding you.
4 MS. WEST: Your Honour, thank you. I did so because I saw it on
5 the screen, but from going forward now, I will refer to those numbers if
6 the Trial Chamber seems -- would prefer to that. So this is P04020 and
7 again he asks for two classes of people, and if he truly believed that
8 only one class of people were legally eligible to work, then he has no

9 reason asking for two.

10 The other argument the brief fronts is that this particular order
11 in front of you was not executed and because it was not executed then it
12 can't be illegal. And that's in paragraph 505.

13 I would like to look at this more closely because the Defence is
14 simply incorrect in this matter.

15 P04020, you'll see this again, and highlighted on it is the file
16 number, and that's the number that ends in 1748/93. This is the Petkovic
17 August forced labour order. But then we'll look at the next slide, which
18 is P04030, it's issued the same day. We know that this is the next step.
19 This is the beginning of the execution of the Petkovic order, and we know
20 that because in the body of it, it says "pursuant," and it cites the same
21 1748/93. But separately in this order from Dierek, it has its own file
22 number, and you'll see it in the English, it's the number 788/93. But
23 when you look to the B/C/S of this same order, the original is not
24 788/93, it's 288/93. It's clearly just a typo between the B/C/S and the
25 English.

Page 52044

1 The reason this is important is because if we go to P04068, it
2 says: "Pursuant to your request," and it cites 288/93. "We submit the
3 following report.

4 "On 10 August 1993, we took over 100 prisoners from ... military
5 prison ... We accommodated them in the primary school," and "...
6 attached is a list of prisoners."

7 And this is dated the next day. So the brigade that asked for
8 the prisoners now has them and has them for at least a day. I would
9 respectfully suggest that this is execution of the Petkovic order
10 contrary to the Defence assertion. But I'll note this: It is not the
11 Prosecution's position that to prove beyond a reasonable doubt that
12 Petkovic intentionally ordered unlawful forced labour that we must prove
13 execution of each and every order. The Trial Chamber can, on the basis
14 of all the evidence, come to its own conclusion as to whether when
15 General Petkovic gave an order, whether it was executed, and what his
16 intent was regarding that order. But as we know, particularly in regard
17 to P0402, this order for forced labour for two categories of people was
18 executed.

19 Your Honours, I am going to address -- I have addressed the
20 Petkovic Defence brief, but the remainder of my comments will regard
21 Mostar and the -- what Petkovic -- what the Petkovic Defence writes about
22 Mostar and also what some of the other accused write about Mostar, and
23 the first subject matter I'd like to address is who started the war on
24 May 9th, or who started the conflict on May 9th, and those are found at
25 paragraph 130 in the Praljak brief where he says:

Page 52045

1 "The evidence demonstrates that it was the BH Army that started
2 the hostilities there..."

3 Paragraph 133:

4 "June 30th was the turning point in the relationship ... All-out
5 war started on that day."

6 Praljak brief 358:

7 "The Defence case is that contrary to the Prosecution thesis, it
8 was the ABiH who attacked the HVO in Mostar on 9 May ..."

9 Now, I would like to run through the events or incidents that
10 took place in the days preceding May 9th. By that time the Muslims had
11 still not capitulated to the Vance-Owen Plan as the Croats interpreted it

12 and over 15.000 Muslims, refugees, were flooding Mostar unfavourably
13 tipping the demographic balance in favour of the Muslims. I would
14 suggest to the Trial Chamber that the HVO was done waiting, and so in
15 April, they issued the decision on the status of refugees, and that is
16 the next slide, and in this -- and in this decision it provided that
17 humanitarian assistance would only be -- would be provided only to
18 displaced persons who were either elderly or under the age of 18 "who
19 were not staying in abandoned apartments."
20 Now, you have heard testimony from international organisations as
21 to what this in fact translated into, and that testimony was that at
22 least 10.000 people as a result of this decision would be put on the
23 street. Further information from those witnesses was that the deadline
24 of this decision was May 9th, and I would submit to you that that date is
25 not coincidental.

Page 52046

1 For reference, the testimony and information I am speaking of is
2 P09840.
3 But there was testimony from other Defence witnesses who were
4 there at the time, and they relate key details evidencing that the HVO in
5 the days preceding May 9th were about to do something. Vinko Maric,
6 you've already heard about him, the artillery chief, during his cross he
7 was confronted with a document dated May 3rd. It was from Petkovic and
8 Marko Stojcic, who was commander of the artillery, and the order said:
9 "Urgently send me the number of weapons and amounts of ammunition
10 in your zones of responsibility!"
11 Maric, in response to questions about this, that's the next
12 slide, the question was:
13 "Do you know why they wanted this information so urgently?"
14 And he said:
15 "At that time, as in any other time when something similar was
16 required by the superior command or by the superior professional organ,
17 that information was always sent in that [sic] form. Sometimes urgently,
18 sometimes less speedily."
19 I think the Trial Chamber should ask itself what percentage of
20 orders in this case begin with urgently and end with an exclamation
21 point. I think that you will find the number is few, suggesting that
22 Maric's testimony in this regard is not credible.
23 Now, international observers were there at the same time, and
24 they have given information in regard to those days preceding May 9th.
25 Grant Finlayson and Witness BB testified how they were prevented at HVO

Page 52047

1 check-points from entering the town of Mostar on the morning of May 9th.
2 Finlayson eventually managed to get a view of Mostar from a hillside
3 located north of the city where he discovered a number of HVO tanks and
4 artillery pieces strategically located on the hills surrounding Mostar
5 which were firing into areas where the ABiH forces had congregated.
6 That's the slide in front you, it's IC537, and he marked on it where he
7 saw those tanks.
8 In addition, civilians from Mostar reported how Radio Mostar at
9 9.00 a.m. read out a declaration from HVO president Topic announcing that
10 the HVO had undertaken a widespread action with establishing law and
11 order in Mostar and calling upon the Muslims to put out white flags
12 through their windows as a sign of capitulation.
13 You will see the testimony on the screen of Rajkov, and he said
14 on that morning:

15 "We switched the radio on. There were some proclamations which
16 sort of said that an operation was underway by the HVO and the police
17 forces," and "I'm paraphrasing now, of course, and that the members of
18 the BH Army were asked to surrender, to hand over their weapons and put
19 out white flags of surrender."

20 MR. KHAN: Mr. President, I do apologise to my learned friend.
21 Perhaps it's an appropriate point to interrupt her. Your Honour, it is
22 my application that perhaps we adjourn a few minutes early. We've been
23 very patient these last three days. Every single morning we've had
24 problems with LiveNote and have continued labouring under that problem,
25 and once again for the last ten minutes I have not been able to follow

Page 52048

1 LiveNote, and I can't look at the screen that the Prosecution is relying
2 upon and following the transcript at the same time.
3 Your Honours, I know those that have responsibility for this
4 matter are doing their best, but with the greatest of respect, it's not
5 good enough, that on such an important occasion these next -- this week
6 and the next two weeks are of critical importance to all parties, and I
7 would ask that once and for all this very basic problem be sorted out.
8 JUDGE ANTONETTI: [Interpretation] Well, let's have our 20-minute
9 break then, and the technicians will endeavour to do their jobs. He's
10 been up here -- he's been in and out of the courtroom for three days, but
11 it's still not really working correctly. So I want him back, and I want
12 the problem fixed.

13 --- Recess taken at 5.26 p.m.

14 --- On resuming at 5.55 p.m.

15 JUDGE ANTONETTI: [Interpretation] The court is back in session.
16 The Trial Chamber looked into the problem, and we were told that it's a
17 general problem, and that other Chambers, notably the Tolimir Chamber
18 which was here this morning, had the same problem. This is the solution
19 found: Either we continue despite the problem, or the Defence would
20 rather that we adjourn and resume tomorrow.

21 Mr. Khan, you raised the problem. What's your position?

22 MR. KHAN: Mr. President, I'm grateful for the opportunity to
23 address this issue. We're not trying to waste time, and I'm content, we
24 have an hour left today, for my learned friend to continue, but it does
25 seem that this problem is not specific to this courtroom, but the reason

Page 52049

1 for the problem needs to be addressed. It is my understanding, and I may
2 be wrong, that since we last sat there has been a change to the computer
3 configuration in this courtroom, perhaps to the Tribunal as a whole, and
4 it seems to me that that change is rather unstable, and the solution
5 every time seems to be reboot the system, which results in the delay.
6 And I would ask that perhaps the registrar can speak to the head of IT,
7 and that if this problem continues as it has for the last three days, the
8 simplest solution is we go back to the tried and tested method that has
9 served us largely very well these last four years and go back to what had
10 been in situ before. But, Your Honours, it does appear to be that the
11 instability may be the result of a change that's been implemented since
12 we last sat.

13 JUDGE ANTONETTI: [Interpretation] Very well. The Judges join in
14 and support what you just said. I hope that the registrar has just noted
15 down what you said. He checks all the hearings, so they know exactly
16 what's happening. I'm told everything is running smoothly now, but how
17 long we don't know. We'll see. At least the system is working for the

18 Judges, but, I mean, time is of the essence. So we'll give the floor to
19 Ms. West.
20 MS. WEST: Thank you, Mr. President.
21 When we broke, we were speaking about the events in the days
22 preceding 9 May, and I'd like to show you an order dated 7 May. This is
23 on the screen in front of you, 2215, and this is entitled "Preparatory
24 Order for Execution of Combat Operations." And it is issued in the
25 south-east operational zone, and in it one could go through the whole

Page 52050

1 thing, it says that the commands are to go:
2 "2. Immediately determine the number of protective masks in the
3 units ..."
4 The next one is number 3:
5 "Hold a lecture for the unit commanders about the tactics of
6 warfare in inhabited places."
7 The next:
8 "3rd Battalion in co-operation with the police to reinforce
9 check-points ... not allow any Muslims through."
10 The next:
11 " ... full readiness of the medical. Immobilise all motor --
12 automobiles of traffic platoon without Muslim drivers."
13 And that there would be a meeting at 1830 hours on the night of 7
14 May.
15 In addition to those things that the HVO was getting ready, the
16 last is four megaphones or loudspeakers with a microphone. And
17 interestingly, Vinko Maric was shown this document in cross-examination,
18 and the President focused on this issue of megaphones and why they would
19 need megaphones if an offensive operation were not being prepared, and
20 his response to this is that his unit didn't have any. He didn't need
21 any. Communications were sometimes impossible. That might be a reason.
22 And then he says:
23 "I can't think of any other explanation ..."
24 I suggest to you that Maric's testimony was unhelpful to the
25 Trial Chamber and only highlighted the fact that the HVO was preparing

Page 52051

1 for an offensive attack.
2 Your Honours, when all the information is gathered together, it
3 certainly appears that the HVO was planning to do something on May 9th,
4 but what would make it perfect would be if the ABiH was particularly
5 ill-prepared for a fight. A good way to ensure that to be the case is to
6 make sure that the Mostar commander was not in Mostar at the time, and by
7 his absence, the ABiH would have to scramble to organise itself. So if
8 the HVO took the Vranica building first, where the ABiH commander and its
9 4th Corps was officed, then the ABiH would be completely helpless.
10 I submit to you that this would be an ideal plan to take over
11 Mostar and get the Muslims out, and that is exactly what the HVO did.
12 You're going to see on your screen a number of reports, and these
13 are from an international organisation, and in the first it reports that
14 on the 8th of May at 18.50, Pasalic was detained, that the HVO MP, and
15 this is at a check-point, came aggressively, and he was detained at
16 Vrapcici. The next says 9 May early in the morning they had been talking
17 to Bozic, and after painstaking consultations with Bozic the convoy with
18 Pasalic was allowed, but it wasn't allowed to enter Mostar. It was to go
19 straight to Dracevo.
20 The next document, 2235. Pasalic is finally escorted after a

21 seven-hour wait at the check-point. They spend the night at Dracevo and
22 remain there.
23 Next document, May 9th. Now, this is for 1830 through May
24 10th -- 1830. Pasalic is at Dracevo and the check-point, the HVO
25 check-point around it, is preventing him from leaving. The Capljina

Page 52052

1 commander came to arrest him, but the organisation refused to allow that.
2 And in the same document, it says:
3 "The situation remains tense and SpaBat has contacted Petkovic in
4 order to solve the problem created by Pasalic in our detachment."
5 And so we know, at least in the night of May 9th until the
6 following day, within that 24-hour period, that Petkovic was contacted
7 about this. And as you will see from the following document, Petkovic
8 did nothing because Pasalic remained there for at least another 24 hours,
9 and that's the next day. Pasalic at the detachment, the HVO has set up
10 check-point around it to prevent him from leaving.
11 The evidence on this matter is unassailable. These are
12 international reports who could not have guessed at the time that this
13 particular issue of Pasalic's whereabouts would be of interest to a war
14 crimes tribunal 18 years later. The international organisation had no
15 impetus but to tell the truth in its reports. And if the Trial Chamber
16 is still unsure about the HVO's responsibility in this matter in
17 arresting Pasalic, then we should look at Petkovic's words less than
18 three weeks before this date, and that's the next document, 2019, April
19 21. It's at a meeting, negotiations with Halilovic. And this is a
20 document that's recorded by Blaskic. This is an HVO document, and it
21 records Petkovic as saying:
22 "Well, I don't want to waste my time with you. Just remember
23 that I am going to Mostar now, and if you continue to attacking the HVO,
24 then I will capture Arif Pasalic and block your 4th Corps, as you know I
25 can do that very easily."

Page 52053

1 Indeed, Petkovic's follow-through on his promise and Pasalic was
2 captured on the night of 8th of May, and the 4th Corps was blocked on the
3 morning of the 9th of May, making the HVO attack on Mostar on that
4 particular day very well-planned.
5 I'm going to now move to the issue of shelling in East Mostar,
6 and we will see that the Praljak brief references this a number of times,
7 and the first is paragraph 308, and here it says that the only reasonable
8 conclusion in regard to the conflict between the west and east "would be
9 that there should be spectacularly large number of victims if the HVO had
10 shelled East Mostar with the intent to harm the civilians."
11 I think we can dispose of this one in short order. In response
12 to that Defence, the Trial Chamber should recall the evidence of Muslim
13 civilians in East Mostar who managed unbelievably to eek out a pathetic
14 existence inside in the dark, covering up without electricity in order to
15 avoid HVO shelling. Remarkably there were not more deaths, because the
16 Muslims in East Mostar managed to take cover from the fire.
17 The next Praljak -- paragraph is 312:
18 "... there's no evidence that Praljak in his capacity as ...
19 commander or any of his subordinate officers ever issued an order that
20 would include shelling of civilians ..."
21 And indeed I would agree with that. The HVO was very careful not
22 to leave its finger-prints on documents suggesting that it was firing at
23 a populated area, but the Trial Chamber should recall some occasions when

24 the accused were not so careful. And for that if we look at the next
25 document it's dated March 27th, 1736. It's from Petkovic, and it's:

Page 52054

1 "For firing at populated areas it is obligatory to seek approval
2 of the Main Staff."
3 While this is not an order to fire at populated areas it's even a
4 more culpable document because it shows that firing at these areas was
5 just one of the methods by which the HVO was waging its war. Here
6 Petkovic was just reminding everybody that he was in control.
7 Excuse me, Praljak also takes the position that the shelling was
8 minimal and selective, and you'll see that at 303. In regards to
9 selective, I would like to give you an example of HVO selective
10 targeting. If we can go to the next slide which is 6534. This is the
11 November 8th Petkovic order to shell the town of Mostar selectively at
12 various intervals.
13 There are two things that we should mention about the order. The
14 first is this is when Petkovic becomes deputy commander, and he's still
15 issuing orders and still in charge of the arms -- the armed forces, which
16 is contrary to the position he takes now in his brief. And this is also
17 issued at the time where Praljak is the head of the HVO.
18 "The second thing we should note is this is the very order that
19 resulted in the Old Bridge being destroyed. It was issued on the 8th.
20 Lasic issued a mirror order on that night. Lasic reported that night
21 that 'from 8.10 in the morning our tank was opening fire from Stotina
22 during the whole day and it fired 50 projectiles on the old town.'
23 That's P09993. And you are well familiar with the map of Mostar
24 to know that firing from Stotina to Old Town means that you're firing in
25 the direction of the Old Bridge. And on the next day November 9th Lasic

Page 52055

1 reported again as to the events of that day and that is 9992. And in
2 this order he writes:
3 "... in addition to the fire from infantry weapons at around
4 10.00 hours, our tank fired a few projectiles at a target which was
5 determined earlier. At around 10.15 hours ... our people from Hum
6 reported that the Old Bridge was torn down, and they could not say
7 anything about the cause of the ... destruction."
8 Your Honours, I would just suggest that at least in this instance
9 the Prosecution agrees, that there were some occasions when the HVO
10 targeted selectively.
11 The next Praljak paragraph is 313 in which he says that the
12 number of shells which were fired over more than six months was
13 dramatically lower than standard, and it's written:
14 "The HVO light artillery fire on the targets in East Mostar was
15 militarily justified and strictly within the limits of 'military
16 necessity.'
17 It is the Prosecution's position that the shelling of East Mostar
18 was indiscriminate and voluminous in intensity and was not limited to
19 targets of military necessity.
20 And if we can go to the Special Rapporteur's report in September
21 of 1993, 4822, it says that:
22 "Since early May ... the east bank of Mostar is reported to have
23 been subject to constant shelling and sniping from HVO positions on the
24 west bank ... Government [sic] sources claim that between 200 and 400
25 shells have impacted on average every day, destroying around 50 per cent

1 of the buildings and 90 per cent of the private housing. They also
2 allege that on the 24th ... HVO forces dropped mortar grenades on the
3 east bank of the city from a two crop duster aeroplane."

4 International observers also noted that the shelling was heavy
5 and voluminous and coming from west Mostar. Mr. President, may we
6 briefly go into private session.

7 [Private session]

8 (redacted)

9 (redacted)

10 (redacted)

11 (redacted)

12 (redacted)

13 (redacted)

14 (redacted)

15 (redacted)

16 (redacted)

17 (redacted)

18 (redacted)

19 (redacted)

20 (redacted)

21 (redacted)

22 (redacted)

23 (redacted)

24 (redacted)

25 [Open session]

1 THE REGISTRAR: Your Honours, we're back in open session. Thank
2 you.

3 MS. WEST: Further testimony from internationals corroborates
4 this. This is the direct from Forbes, whose UN civil police. He said
5 that:

6 "The HVO were better armed.

7 "I -- as far as the BiH forces went, I never saw anything that
8 they had bigger than their personal rifles," and "they used to make, with
9 plastic explosives, and they used to make a hand bomb ..." that they
10 could throw.

11 In the next slide it says:

12 "... I witnessed around East Mostar heavy shells coming in ...

13 But it was obvious from the impact angle on the road of the smaller
14 mortars that I saw, and from the fragmentation patterns you could tell
15 that the mortars had been coming from the west ..." side.

16 It continues:

17 "It was pretty well continuous every time I was in East Mostar.

18 Sometimes heavy, sometimes to a lesser degree."

19 Your Honours, in regard to the indiscriminate shelling that
20 rained over East Mostar, it also included tyres rolling down the hill
21 from Mount Hum. It included Napalm bombing. It included cluster
22 bombing. And you'll see testimony from -- excuse me, this is a statement
23 from Miro Salcin, who was a witness as well, in which he said:

24 "At the end of July 1993, the HVO began using a tactic of rolling
25 large tyres filled with explosives down Mount Hum and into the Donja

1 Mahala area.

2 "Others would crash into houses and explode.
3 "The tyres were always rolled down the hill during the night.
4 "People would hide in their basements and just hope the tyre
5 wouldn't hit their house. It was terrifying for everyone, because it was
6 so random ..."
7 And on the next slide he says, paragraph 15:
8 "This type of tactic was completely indiscriminate; there was no
9 way they could aim accurately with tyres."
10 Corroborating that testimony is information from Grant Finlayson
11 who said that he visited Donja Mahala in October of 1993, and he said
12 there were signs of tyres that had been exploded and unexploded tyres.
13 And the question was:
14 "Had they been rolling down from the hills?
15 "A. I actually did conclude that they -- it looked like they had
16 been. Certainly the type of damage in the location and the surrounding
17 evidence."
18 You also heard testimony regarding Napalm bombs, and that's on
19 the next slide, Miro Salcin.
20 "On the 16th of October -- excuse me, August around 2200 hours I
21 heard a plane flying overhead. The first bomb fell -- fell just 10 to 15
22 metres away from high house. It killed ... Samira [phoen].
23 "The other bomb fell in Donja Mahala just before the Kamenica
24 bridge.
25 "The bombs fell but there was no fire, nothing was aflame. You

Page 52059

1 could just smell this unpleasant smell."
2 And then he says:
3 "But three bombs fell and three bombs exploded and you could
4 smell - there was a very bad smell which affected your nose and throat."
5 Now, substantiating his testimony is the HVO's own document for
6 the same day, P04265 August 17th. And in this document at 2200 hours on
7 August 16th a Napalm bomb trial operation was conducted.
8 Cluster bombing, P047785. Here UN military observers reported
9 that the HVO were dropping clusters of 120-millimetre mortar bombs in
10 groups of four from a light aircraft in East Mostar. A monitor examined
11 a crater caused by this cluster bomb.
12 I would submit that these are three types of bombing -- these
13 three types of bombings are clear examples of indiscriminate shelling and
14 in direct contradiction of the Praljak position.
15 In regard to the Petkovic Defence. The Petkovic Defence is that
16 there was shelling, that this is a war and shelling was part of it. But
17 at 380 of his brief, he says:
18 "Shelling invited return shelling."
19 And then at 381 he says:
20 "During this -- this short time-frame," and he's clarifying this
21 to be 30th of June to the 24th of July, "there's no statement by any
22 international observer from which it could be inferred that there was
23 shelling on the part of the HVO that was intended to target the civilian
24 population of Mostar or that the shelling was indiscriminate."
25 Indeed, there is a dearth of information of what exactly was

Page 52060

1 going on at this time and with that I agree. However, the lack of
2 information is directly attributable to the HVO. During this period of
3 time of which Petkovic speaks, the internationals were excluded from
4 Mostar.

5 There is an international witness who testified that the city was
6 sealed and they could not get in. I'd ask to go into private session,
7 Mr. President.

8 JUDGE ANTONETTI: [Interpretation] Yes, Mr. Registrar.

9 [Private session]

10 (redacted)

11 (redacted)

12 (redacted)

13 (redacted)

14 (redacted)

15 (redacted)

16 (redacted)

17 (redacted)

18 (redacted)

19 [Open session]

20 THE REGISTRAR: Your Honours, we're back in open session. Thank
21 you.

22 MS. WEST: Witness BJ corroborated this testimony and when asked
23 about whether there was a period of time where they were cut off, he
24 said:

25 "Yes, Mostar was completely isolated.

Page 52061

1 "I believe a period of a month, a month and a half without any
2 contact. That is in relationship to the Spanish Battalion and the Muslim
3 area of Mostar."

4 This is further corroborated by an ECMM monitor who said that
5 they couldn't for "more than four weeks" enter either West or East
6 Mostar. He said, no, no not at all.

7 Now, Petkovic in paragraph 383 indicates that the artillery in
8 Mostar and in the operated -- the south-eastern operative zone was not
9 subordinated to Petkovic while he was the Chief of the Main Staff, but it
10 was subordinated to the commander of the operative zone. Petkovic takes
11 the position that the moment he became deputy commander under Praljak, he
12 was somehow removed from the chain of command. That is not the
13 Prosecution's position, and I will direct you to paragraph 875 of our
14 final trial brief, and I won't address that here, but I want to address
15 whether generally artillery was under the Main Staff and particularly in
16 Mostar.

17 You again will remember the evidence of Vinko Maric who was the
18 artillery commander in Mostar, and on cross-examination he was questioned
19 about Main Staff control, and on 48248, he says:

20 Yes, "... it's true that in a certain period this unit was placed
21 under the operative command of the Main Staff." This is an artillery
22 unit.

23 Later in testimony -- or excuse me, in the same area in the next
24 slide, he was asked whether testimony from General Praljak was true, and
25 that Praljak testimony was -- was.

Page 52062

1 "... the rocket and artillery regiment ..." in one of the units,
2 was it "... directly subordinated to the HVO Main Staff?"

3 And Praljak answered:

4 "Well, this is the artillery. This is meant to establish ...
5 full control, and that's why I asked some of the artillery units be
6 resubordinated and placed under ... the Main Staff."

7 Then Maric was asked whether he agreed, and he said:

8 "If such an evaluation is made by the commander, then I believe
9 it's accurate. It's right ..."
10 He went on and he was asked, would you -- Maric was asked:
11 "... would you agree with me at least in the case of
12 130-millimetre guns, that these were pieces of artillery that came under
13 the Main Staff?"
14 And he said:
15 "Yes, during a certain time period."
16 Later, he was asked about Main Staff control, and he said:
17 "In keeping with the system of subordination, the brigades were
18 answerable to the superior command ... in our case that was the operation
19 zone."
20 But later on he was asked in the same screen:
21 "... would you agree that all of the artillery was ultimately
22 under the chain of command directly to the Main Staff?
23 "A. All units within an army are in formal terms under the Main
24 Staff.
25 "The Main Staff was, above all, military units and districts and

Page 52063

1 military districts -- districts were composed of brigades and other units
2 including the rocket and artillery regiment for most of the time."
3 He goes on further in regard to Main Staff control, is asked
4 again about some Praljak testimony in which Praljak said:
5 "Yes, in part. Look everything is within the chain of command of
6 the Main Staff."
7 And Maric said yes, I agree with what Praljak said.
8 And 48260 in regard to ammunition, he says:
9 "The Main Staff collected ammunition from lower levels, and thus
10 it did have it at its disposal information about the quantity of
11 ammunition," indicating that, yes, the Main Staff was in control of
12 ammunition.
13 And on the next one, 48260, he was asked whether the Main Staff
14 exerted strong control, and you heard -- you saw this earlier in which he
15 agreed that it did have control.
16 Now, ultimately you'll remember that the Main Staff took over the
17 defence of Mostar, and this was in August. Maric was asked about this as
18 well, and on the next slide he says:
19 Yes, "Your Honours, it arises from this document that the Main
20 Staff of the HVO indeed took over the defence of Mostar."
21 Your Honours, I would submit to you that Petkovic's own witness,
22 Vinko Maric, the head of artillery in the operational zone, without a
23 doubt explained to you that the Main Staff was in charge of the
24 artillery. The Accused Praljak testified that the Main Staff was in
25 charge of the artillery. And at least in August for sure we know that

Page 52064

1 the Main Staff took over the defence of Mostar itself, so had to be in
2 charge of the artillery. And if we need any more evidence on this, we
3 can look to Petkovic orders, and the next is on the screen in front of
4 you. This was used in the direct of Maric, but I think it's useful for
5 our purposes as well because number 7 is -- as Petkovic wrote in June:
6 "Foresee the most rational use of artillery in the zones with the
7 HVO Main Staff ..."
8 "Immediately start planning the task of the artillery and the
9 manner of its deployment."
10 Your Honours, if the accused Petkovic was not in charge of the

11 artillery you would never be seeing orders like this. You would not
12 hear -- you would not have heard the testimony you did from Vinko Maric,
13 and you certainly would not have heard the testimony from accused
14 Praljak. And if I can show you one more order on this, 343. This is
15 July 22nd, day before he became -- a couple days before he became deputy.
16 In this order he wants -- he has an urgent summons for artillery
17 commanders where he wants details on the deployment of artillery. I
18 would submit to you that the Prosecution's case is full of evidence that
19 Petkovic and the Main Staff was in charge of the artillery.
20 I'd like to move now to humanitarian aid in Mostar.
21 Now, this is another method by which the HVO caused serious
22 mental or physical suffering to civilians there. I would like to look at
23 this and see what steps the accused took to ensure that the aid did not
24 get through to the people of East Mostar, and first let's see the
25 position of the accused himself. The first is Praljak -- excuse me,

Page 52065

1 Petkovic, he didn't have authority to influence or take decisions
2 regarding the aid policy to establish procedures for obtaining
3 permission. Praljak is the next one, 87:
4 "It is the fact that all humanitarian convoys reached their
5 destination."
6 The next one is Praljak, 253:
7 "The evidence shows that Praljak made personal efforts ... to
8 secure free passage for convoys headed to East Mostar," and he gives a
9 particular date of August 25th.
10 Coric, 336:
11 "The ODPH office was solely responsible for issuing -- for
12 issuing authorisation [sic] ..."
13 Stojic, 107:
14 "... evidence shows that any limitations were based on security
15 concerns."
16 And Pusic, 513: The evidence suggests that the HVO did not have
17 a uniform policy to block the movement of convoys.
18 It is the Prosecution's position that the HVO intentionally,
19 deliberately blocked humanitarian aid from getting into East Mostar. How
20 do we know this? First they claimed to control it, and international
21 organisations noted that various members of the HVO, including some of
22 the accused, made statements evidencing that they controlled what came in
23 to East Mostar.
24 Mr. President, if I may briefly go into private session.
25 JUDGE ANTONETTI: [Interpretation] Mr. Registrar, please.

Page 52066

1 [Private session]
2 (redacted)
3 (redacted)
4 (redacted)
5 (redacted)
6 (redacted)
7 (redacted)
8 (redacted)
9 (redacted)
10 (redacted)
11 (redacted)
12 (redacted)
13 (redacted)

14 (redacted)
15 (redacted)
16 (redacted)
17 (redacted)
18 (redacted)
19 (redacted)
20 (redacted)
21 (redacted)
22 (redacted)
23 (redacted)
24 (redacted)
25 (redacted)

Page 52067

1
2
3
4
5
6
7
8
9
10
11 Page 52067 redacted. Private session.
12
13
14
15
16
17
18
19
20
21
22
23
24
25

Page 52068

1 (redacted)
2 (redacted)
3 (redacted)
4 (redacted)
5 (redacted)
6 (redacted)
7 (redacted)
8 (redacted)
9 (redacted)
10 (redacted)
11 (redacted)
12 (redacted)
13 [Open session]
14 THE REGISTRAR: Your Honours, we're back in open session.
15 MS. WEST: Your Honour, Praljak -- accused Praljak has even
16 voiced his control over the convoys in a public interview. This is a BBC

17 interview, it's 9258. You saw parts of this interview earlier. I won't
18 play the video, I'm just going to read you part of the text, and this is
19 in regard to this convoy he had mentioned earlier that he had allowed to
20 pass in August, and it says:
21 "At one point I had to let that convoy pass."
22 Earlier he notes that:
23 "President Tudjman asked us in fact not to touch Mostar."
24 And he goes on and says:
25 "In this case the order came from Boban but definitely from

Page 52069

1 President Tudjman."
2 Your Honours, there could be no more direct credible evidence of
3 HVO control of the passage of convoy than Praljak's statement in this
4 interview that he had to let it pass. That shows directly that he had
5 the ability to let it pass and he had the ability to stop it.
6 I'm going to now speak about the siege and Petkovic in paragraph
7 406 wrote: "... the evidence shows that the civilian population was in
8 actual fact able to leave East Mostar ... that the BH Army controlled the
9 movement of civilians and intentionally reduced it to a minimum.
10 Obviously, civilians were able to leave the town on a large scale."
11 Praljak brief 260:
12 "There is abundant evidence clearly demonstrating that East
13 Mostar was not besieged by the HVO."
14 Your Honours, the best piece of evidence showing that the Muslim
15 civilians in East Mostar were unable to leave is the piece of evidence
16 that we have spoken the least about, but let's first review what you have
17 heard. You've heard the testimony of Muslims in East Mostar. You've
18 heard the testimony of internationals who were able to get in. You've
19 heard the testimony of journalists who managed to get in, and you've seen
20 videos as well. You've heard testimony from Defence witnesses who have
21 even said that the M-17 was under fire and that it couldn't be used and
22 the only other road out was the donkey path that began in Zalik and went
23 to Vrapcici. And that testimony is found in the cross-examination of
24 Milan Gorjanc. You'll see that. He said:
25 There were two roads leading, one was down the Neretva ... which

Page 52070

1 was most probably under fire, under artillery fire, HVO ... fire. The
2 other route took one across a mountainous area, the western slopes of
3 Mount Prenj and on towards Jablanica. That route was not under fire ..."
4 Further in the cross of Gorjanc he was asked, and this was in
5 regard to the M-17, that: To travel on that was risky and dangerous,
6 correct? And he said, "Yes."
7 Bozo Pavlovic, who was another Defence witness. This is when the
8 President asked him:
9 Very well. You are saying that the M-17 was under fire or was
10 exposed to fire. But was there another road that would not have been
11 under HVO fire that could have been used?
12 And his response:
13 "I think there was a road from the Zalik neighbourhood towards
14 Vrapcici.
15 "You confirm this?"
16 And he says:
17 "That's the other road."
18 Bozo Peric, a Petkovic witness, confirmed that the Zalik road was
19 indeed the donkey path of which we have spoken about, and he also

20 confirms that parts of it were impassable. You'll see that testimony.
21 We asked him: "... the second 500 metres ... do you agree ..."
22 that this was "a narrow path that you cannot put a car or truck on; is
23 that correct?
24 "Yes.
25 "... the next 500 metres ... the road becomes a very narrow

Page 52071

1 narrow path and its particularly along a cliff."
2 And he says:
3 "As to that stretch, I can't say. But it's called a donkey track
4 or a horse track, and it's wide enough for a horse bearing a load...
5 "Q. The next 18 kilometres of this road ..." this was asphalted,
6 it was passable?
7 "Yes ..."
8 And then the question was:
9 "... the next 20 kilometres, would you agree with me, is a very
10 difficult mountain path and only accessible by foot ...?"
11 Finally, he says:
12 "I don't agree that it's impassable over that length. A much
13 shorter distance was impassable as far as I remember."
14 These three Defence witnesses tell us that the M-17 was under
15 fire, you couldn't use it. They tell us that the donkey trail, the horse
16 trail was impassable in parts. I would suggest to you it was impassable
17 in parts making it no real option at all for many of the civilians in
18 East Mostar. I would submit that it could have been an option for the
19 brave. It could have been an option for the fit. And it could have been
20 an option for the courageous, but the best piece of evidence showing that
21 the Muslim civilians in East Mostar were unable to leave was again the
22 piece of evidence that we have spoken the least about, and when
23 deliberating on this issue I urge the Trial Chamber to ask itself this:
24 If the people in East Mostar could leave, then why didn't they? You have
25 seen videos of sick, hungry, pathetic people huddled in the dark.

Page 52072

1 Estimates show that as many as 55.000 at the height of the siege were
2 crammed there. They stayed in basements and small spaces to stay away
3 from the shelling and sniping. If they could leave, then why did so many
4 stay in such horrendous circumstances?
5 You have the evidence from Cedric Thornberry describing his visit
6 to East Mostar in late August and he describes these horrific conditions.
7 He said:
8 "There," in East Mostar, "I was confronted with a situation worse
9 than anything I have ever seen in Yugoslavia with the exception of
10 Vukovar in terms of destruction. The city was a scene of incredible
11 devastation. At the hospital we found many wounded and amputees
12 including children sometimes three to a bed ... I became resolute that
13 the UN would lift the siege of East Mostar which had continued on
14 mercilessly for months with huge human suffering ..."
15 The Trial Chamber should understand that living in this mass
16 destruction were families who had nothing but each other. There were
17 women there with young children with elderly parents but without husbands
18 because their husbands had been arrested. It would have been
19 inconceivable for those families in total to have made their way over the
20 donkey path, but nor could those women have left on their own without
21 their parents, without their children, to a fate filled with shelling,
22 with sniping, with blood, with death. No one would ever have done that.

23 The question of leaving was more than, "Are you fit enough?" It
24 was more than "Are you brave enough?" The question of leaving was this:
25 If you leave, do you have anything to lose? And the answer for many of

Page 52073

1 these people was, yes. What they had to lose was the only thing that
2 they had left, their families. By substantially blocking the exit
3 points, the HVO successfully put East Mostar under siege, because no one
4 could reasonably risk leaving.
5 The last subject matter I'd like to speak about are the
6 expulsions and the terror count.
7 By expelling people into East Mostar, a small densely packed
8 area, and then shelling it, using snipers, blocking water to it, blocking
9 medical aid, blocking food, and blocking the exits, these acts, among
10 other things, were undoubtedly acts that caused serious mental or
11 physical suffering to the Muslim civilians there. But these acts also
12 showed that the HVO was taking one step further. By putting so many
13 people into such tight corners -- quarters and using these methods to
14 instill such fear in them that they would not even venture outside during
15 the day, the HVO pushed to reach a tipping point where the situation
16 would be so bad that the military defence would collapse. The ABiH would
17 leave, and the HVO could claim it as their capital.
18 The Defence addresses the crime of terror in paragraph 393. This
19 is the Petkovic Defence. You see this now. And first I would like to
20 start with the HVO's plan to hyper-pact East Mostar with Muslim refugees.
21 Accused Petkovic was clearly on notice of the evictions and he
22 did nothing about them. You're going to see the next document. This is
23 June 14th. In June, and this is before Petkovic would like you to
24 believe any conflict was going on, in the middle of June, this one-Page
25 document issued, and in it says:

Page 52074

1 "Around 90 Muslims were evicted yesterday from the settlement Dum
2 and they remain in the street. Apart from forcible moves into
3 apartments, few women were raped in front of eyewitnesses. Some women
4 were taken in unknown direction and many people were beaten and
5 maltreated. There are indication of new murders of civilians on which we
6 will inform you. The perpetrators of these latest crimes are mainly
7 members of the 4th Battalion."
8 The middle of June was a time of so many evictions from West
9 Mostar that the military police didn't even consider it a crime. This is
10 a report you'll see from the following day.
11 On Page 2, this is 2802:
12 "No criminal acts or incidents were notified yesterday. Only the
13 ethical cleansing of the town from persons of Muslim nationality was
14 noticed."
15 This document could not be more clear. The HVO did not consider
16 ethical cleansing as -- excuse me, ethnic cleansing as a crime. For the
17 HVO, it was just one of the components of its master plan, a component
18 that was taking place right under the nose of Accused Petkovic, whose
19 office at the time was right in the middle of West Mostar, in the
20 vicinity of all these events.
21 If we go to a document in October. This is a SIS document, and
22 it says:
23 "Because of the generally known events in the town of Mostar,
24 i.e., because of the everyday expelling of Muslims to the part of Mostar
25 controlled by the MOS, we are not giving our content to release."

1 This was the document about somebody being released. But even
2 the HVO documents note that there was everyday expelling, a generally
3 known event. And we know that after June 30th of population increased
4 dramatically to at least 55.000. We have the testimony of Edward
5 Vulliamy in which he said in September of 1993 that the number had now
6 swelled to about 55.000.
7 "The vast majority of those were women and children. In effect,
8 the men had gone to the camps, and the women and children had been herded
9 through Blagaj into the east part of Mostar. They were being subjected
10 to this barrage."
11 Around February of 1994, Vulliamy goes back to East Mostar, and
12 there he testified that the people were still living in cellars, and the
13 population had even increased since his earlier visit.
14 Finlayson compared it to the siege of Sarajevo and found that the
15 humanitarian conditions for the civilian population were worse because of
16 the condensed area and the number of shell impacts per square kilometre.
17 An international witness relayed the -- a ghastly detailed
18 description of what she saw in East Mostar.
19 Mr. President, may we go into private session briefly.
20 JUDGE ANTONETTI: [Interpretation] Mr. Registrar.
21 [Private session]
22 (redacted)
23 (redacted)
24 (redacted)
25 (redacted)

1 (redacted)
2 (redacted)
3 (redacted)
4 (redacted)
5 (redacted)
6 (redacted)
7 (redacted)
8 (redacted)
9 [Open session]
10 THE REGISTRAR: Your Honours, we're back in open session.
11 MS. WEST: Your Honour, the shelling and firing and sniping of
12 East Mostar served a special purpose and it was this: While
13 hyper-packing East Mostar with people, coupled with the continuous
14 firing, the people would be even more frightened. The situation would be
15 more chaotic. The ABiH would be overwhelmed, and the defence of
16 East Mostar would collapse.
17 Jeremy Bowen filmed the eviction of a large number of Muslim
18 civilians from West Mostar into east, and he testified in this case in
19 regard to shooting above their heads. He said that it was essentially a
20 terror tactic.
21 "... they had been thoroughly terrorised as it was. The male
22 members of the family had been taken away. They assumed or worried that
23 some of them had been killed. They had been violently expelled from
24 their homes, and my assumption was that fire directed at them ... I think
25 the intention was to terrorise them rather than to kill them on that

1 particular night."
2 So far I have shown you the views of other people in the area who
3 were there at the time, but what did the HVO itself say about its
4 intention with the civilian population as regards shelling? The
5 explanation for shelling was given by Slobodan Bozic to Witness BC, and
6 Bozic explained, in the next slide, that HVO shelling operations of
7 East Mostar had as their purpose to push the Muslim population from the
8 town. And in this cite from Witness CB, he said:
9 "... it seemed clear to us that the intention of the operations
10 of the HVO had as its objective that the population leave Mostar. The
11 logic behind this was confirmed to us by members of the HVO themselves,
12 who argued that once the population left East Mostar, the forces of the
13 Armija would no longer have a reason to be there and the HVO would have a
14 successful operation."
15 Judge Trechsel asked if -- if the witness could tell him exactly
16 who in the HVO told him this, and he said yes. It was Slobodan Bozic.
17 And then the President said:
18 "And you heard him with your own ears say that?"
19 And he said:
20 "Yes, Your Honour."
21 This explanation by Bozic concurs with the views of the
22 internationals operating in Mostar at the time, but one other reason that
23 you should consider when deliberating about this count is this:
24 Throughout the conflict the HVO-ABiH confrontation line in the town of
25 Mostar hardly moved an inch, and it is unlikely that the direct purpose

Page 52078

1 of HVO shelling was the takeover of ABiH-held territory. I would submit
2 that it's more likely that coupled with the blocking of aid, blocking the
3 exits, hyper-packing the place with people, that the shelling was
4 intended to make the people scared so that they would leave.
5 Mr. President, may we go into private session one last time.
6 JUDGE ANTONETTI: [Interpretation] Mr. Registrar.
7 [Private session]
8 (redacted)
9 (redacted)
10 (redacted)
11 (redacted)
12 (redacted)
13 (redacted)
14 (redacted)
15 (redacted)
16 (redacted)
17 (redacted)
18 (redacted)
19 (redacted)
20 (redacted)
21 (redacted)
22 (redacted)
23 (redacted)
24 (redacted)
25 (redacted)

Page 52079

1 (redacted)
2 (redacted)
3 (redacted)

4 (redacted)

5 (redacted)

6 (redacted)

7 (redacted)

8 [Open session]

9 THE REGISTRAR: Your Honours, we're in open session. Thank you.

10 MS. WEST: I ask the Trial Chamber to consider the facts as it

11 regards East Mostar together as a whole and not separately. The HVO

12 purposely expelled Muslims into East Mostar so that the -- so the town

13 would be overflowing to the brim. The people did not have enough food,

14 water, electricity, medical care, were without their husbands, their sons

15 and fathers, who could not reasonably leave and were living inside in the

16 darkness to avoid being killed. These people were frightened and scared.

17 It is not the Prosecution's position that it needs to prove that the

18 civilians were actually terrorised, but I suggest that the evidence is

19 beyond a reasonable doubt that the HVO intended just that.

20 Mr. President, that concludes my argument in response to the

21 Petkovic brief.

22 JUDGE ANTONETTI: [Interpretation] Very well. As you know, we

23 will resume tomorrow at 9.00 a.m.

24 As far as the time count is concerned, so far the Prosecution has

25 used 11 hours and 10 minutes, take or leave a few seconds. So this is

Page 52080

1 for your information. We still have two minutes. I'm sure tomorrow

2 we'll run out of time, but we still have two minutes today.

3 Let me tell you that our registrar is going to leave us for some

4 months. He's on loan to another International Tribunal. So

5 unfortunately, we'll no longer see him in the weeks to come, and on

6 behalf of this Trial Chamber, I wish him the best, and I would like to

7 tell him how grateful we are for his work, notably when it comes to the

8 time count, because as you know, I'm very interested in this time count.

9 So I wish our registrar the best in his new job. But we'll still see him

10 tomorrow, fortunately, because he is -- he'll still be with us until next

11 week. So have a pleasant evening.

12 --- Whereupon the hearing adjourned at 6.59 a.m.

13 to be reconvened on Thursday, the 10th day

14 of February, 2011, at 9.00 a.m.

15

16

17

18

19

20

21

22

23

24

25