

1 Monday, 21 February 2011
2 [Praljak Defence Closing Statement]
3 [Open session]
4 [The accused entered court]
5 [The Accused Pusic not present]
6 --- Upon commencing at 2.14 p.m.
7 JUDGE ANTONETTI: [No interpretation]
8 THE REGISTRAR: Good afternoon, Your Honours.
9 This is case number IT-04-74-T, the Prosecutor versus
10 Prlic et al.
11 JUDGE ANTONETTI: [No interpretation]
12 [Interpretation] I'm starting over again.
13 I would like to welcome everybody in the courtroom, the accused,
14 I would also like to welcome the Defence counsel, as well as members of
15 the OTP, and everybody who is helping us in these proceedings.
16 We are continuing today with the closing arguments.
17 General Praljak will have exactly 30 minutes.
18 Mr. Praljak, you have the floor for your 30 minutes.
19 THE ACCUSED PRALJAK: [Interpretation] Good afternoon. I extend
20 my greetings to everybody in the courtroom. I especially extend my
21 greetings to the interpreters.
22 Your Honours, the training of police officers from
23 Bosnia-Herzegovina in Croatia, who were sent by the SDA as early as 1991,
24 the training of pilots of the BH Army in the Republic of Croatia, the
25 training and equipping of entire BH Army units in Croatia, the taking up

1 of hundreds of thousands of Muslim refugees in Croatia, the organisation
2 of ex-territorial education and schooling for Muslim refugees in the
3 Republic of Croatia in the Bosnian language, which at the time didn't
4 even exist, the uninterrupted supply of weapons to the BH Army,
5 ammunition, oil, medication, food, and other necessary logistics for the
6 BH Army in order to wage a war, the medical treatment of more than 10.000
7 wounded BH Army combatants in Croatian hospitals, enabling thousands of
8 Mujahedin to come and join the BH Army, regular logistic bases of the
9 BH Army in Zagreb, Rijeka, Split, Samobor, throughout the war, and so on
10 and so forth, and all of this for free, never in the history of war has
11 one people, the Croats, provided so much help to another people, the
12 Bosnian Muslims, even when the latter turned their army, the BH Army,
13 against the Croats, the HVO, in Bosnia-Herzegovina. Never in the history
14 of war has the commander of one army, the HVO, let convoys with armaments
15 and other equipment pass through to another army, the BH Army, even when
16 that army, the BH Army, used those armaments and all the rest to attack
17 those who let them receive it.
18 And what about the referendum of Croats for Bosnia-Herzegovina,
19 which was a precondition for the existence of that state, the recognition
20 of Bosnia and Herzegovina by the Republic of Croatia, the appointment of
21 the ambassador of the Republic Croatia to Bosnia and Herzegovina, the
22 signing of all propositions made by the international community on the
23 internal structure of Bosnia-Herzegovina, and the first ones to sign were
24 the representatives of the Croatian Community of Herceg-Bosna and the
25 Republic of Croatia. That was the policy of Dr. Franjo Tudjman,

1 president of the Republic of Croatia. It was the policy of the
2 Government of Croatia, the Parliament of Croatia and the Ministry of
3 Defence of Croatia. It was the policy of the HVO.
4 To the Prosecution of this Tribunal, all these are elements of a
5 joint criminal enterprise. Such an indictment uses logic that is
6 offensive even to the cognitive system of a pathogenic virus. What kind
7 of opinion and which positions precede such an indictment?
8 Firstly, Simon Leach, a former police constable in Great Britain,
9 member of the OTP team who investigated crimes committed by Croats in the
10 Lasva Valley, at some meeting in the Prosecution in 1996, produced a
11 piece of paper with names, the names of Franjo Tudjman, Gojko Susak and
12 Vice Vukojevic. He interpreted and explained that these were the goals
13 that his investigation was led to.
14 Secondly, I quote from Willem Montgomery's book, "After the
15 Cheering Stops," page 114:
16 "The US special ambassador for war crimes, Pierre Prosper,
17 invited three American ambassadors from the region, from Serbia, Croatia
18 and Bosnia to come to The Hague in order to meet with the representatives
19 of the ICTY. There are two memories rather impressive. The first one
20 refers to the fact that we heard directly from Carla Del Ponte that the
21 official approach of her office is based on the position that all war
22 leaders of all parties are guilty of war crimes, and, further on, that
23 she considers which these specific crimes are and how their guilt can be
24 proved. At that moment, it seemed, and it still seems to me, that such a
25 position is false for several reasons."

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1 Is Mr. Montgomery a credible witness? What was the reaction of
2 the other three? The positions of Carla Del Ponte are not false for many
3 reasons. Her position is imperial arrogance, a degradation of law and
4 its reduction to Communist purges and Nazi pogroms.
5 Thirdly, in her book "La Caccia: lo e Il Criminali Di Guerra,"
6 Carla Del Ponte says, on page 254:
7 "One of the Prosecutors of the Tribunal, a Canadian, well known
8 in his circle for his wit and anecdotes, had an aphorism that did a good
9 job capturing the difference between the Serbs and the Croats who
10 attempted to obstruct the work of the Tribunal. The Serbs are bastards,
11 he used to say. In contrast, the Croats are perfidious bastards."
12 This Prosecutor of the Tribunal, the Canadian, is using hate
13 speech. Del Ponte uses the phrase "he used to say," which means that it
14 was not a one-off witty remark, but a habitual chauvinistic and racist
15 characterisation of the Croats as perfidious bastards. Carla Del Ponte
16 relays the words of one of the Prosecutors of the Tribunal without any
17 restrictions, which means that she completely agrees with that opinion;
18 on an ongoing basis, too, which we can infer from the language and the
19 phrase "he used to say." The lack of any reaction to such a pro-fascist
20 manner of speech about one nation is something I cannot comprehend. I'm
21 interested to know whether the indictment against me may have been
22 drafted under the impression of such an opinion. If, by any chance, I,
23 Slobodan Praljak, had written or said anything like that, anywhere, at
24 any time, about any people or nation or group during the war in the
25 territories of the former Yugoslavia, I would have been sentenced to five

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1 years of imprisonment only for that.
2 I really would like to know whether the saying "quod licet Iovi,

3 non licet bovi" is something that is a valid rule here in this Tribunal.
4 I really would like to know whether the international organisations,
5 which established the Tribunal and which ensure that it is fair, support
6 the position mentioned in the book, this book.
7 The Prosecution has compared me to the Nazis and my activity to
8 the Holocaust. Well, let me then describe the role of Goering, which
9 character, according to the Prosecution, I compare. This Goering placed
10 his Jews - actually Muslims - in his country cottage and took care of
11 them. He put his Jews in his apartment in Zagreb. He fed them and gave
12 them medical treatment. He exposed himself to sniper fire in front of
13 the JNA barracks at Grabovina in order to save the wives of his enemies.
14 He protected the captured JNA soldiers with his own body and saw to it
15 that they make it to their homes safe and sound. He pulled out captured
16 Serb civilians from the Dretelj Camp, although he was being threatened
17 with weapons; not alone, though. The camp was held by HOS members, who
18 were mostly Muslims. He evacuated wounded Jews - actually Muslims - from
19 the hospital in East Mostar; not alone, of course. He organised the
20 evacuation and accommodation of 15.000 Jews - actually Muslims - from
21 Stolac and the Dubrava Plateau, across the Neretva, and 3.000 of their
22 cars. He didn't do that alone, either. He transported a wounded Jewish
23 women - actually Muslim woman - by helicopter from East Mostar to Split;
24 not alone. He received a Jewish - actually Muslim - family with a child
25 suffering from leukemia near Uskoplje and transported them to Split to be

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1 treated. He helped them to get Croatian citizenship in order to travel
2 to Switzerland and be treated medically at the expense of the Croatian
3 state budget; not alone, though. He organised that the Salvation Road
4 for Jews - actually Muslims - be built in order to be able to leave to
5 another country, Goering's country, Croatia. He didn't do it alone,
6 though. He guided them and fought with the Jews - actually
7 Muslims - defending and liberating Mostar and Capljina and Travnik and
8 Konjic and other places. He didn't do that alone either. He, of his own
9 accord, let the captured Jews - actually Muslims - go who were captured
10 after the conflict in Rama or Prozor, and he prevented retaliation after
11 the Jews - actually Muslims - committed crimes in Uzdol. He didn't do
12 that alone, and the same applies to Doljani and Grabovica. When
13 necessary, he personally let through convoys transporting food for the
14 Jews - actually Muslims - as well as convoys with armaments, even when
15 the 3rd Corps of the BH Army, the 4th Corps of the BH Army, the 6th Corps
16 of the BH Army and parts of the 1st Corps of the BH Army launched an
17 attack against Goering, against the western borders of
18 Bosnia-Herzegovina, at the port of Ploce, after they had signed a truce
19 with the Serbs. He didn't do that alone either, and so on and so forth.
20 I'll skip Goering's - that is Praljak's - behaviour in the courtroom, but
21 that behaviour makes one a war criminal according to the logic applied by
22 the OTP.
23 The Prosecutor quoted Goethe's Faust about the mirror that
24 we should look -- that you would use to look at ourselves. My actus reus
25 are my mirror, my point and my very essence, because they follow from the

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1 mens rea of that one who we call Slobodan Praljak.
2 Unfortunately, Judges Prandler and Trechsel refused to accept my
3 150 witnesses who were supposed to testify about the activities and deeds
4 of the accused Praljak, and about the general situation in which such
5 deeds were necessary, but, unfortunately, not always sufficient, and I

6 really fail to understand the legal procedure that forbids me to testify
7 about Mladic's diaries.

8 Do I regret the victims? Yes, I regret all innocent victims of
9 all war. I especially regrets the victim of those 500 wars or so after
10 1945 that have taken place and still go on, despite all moralists'
11 speeches that we hear daily. I especially regret every child that, in
12 reality, dies of hunger every four seconds.

13 Peace in dictatorship is a preparation for war. The longer and
14 the worst the dictatorship, the more negative energy builds up and the
15 more blood and evil will follow later. It doesn't matter whether we're
16 talking about Tito or Saddam. And those who bring down a dictator and
17 who later try to diminish the evil that occurs according to the force of
18 the laws of physics, but those who made possible the dictatorship and by
19 their silence made it last longer. The same applies to Yugoslavia after
20 Tito as well as to Iraq after Saddam.

21 What the Prosecutor calls nationalist is something the Croats
22 felt a necessity for freedom, both the freedom of the people and
23 citizens' freedom. In this sense, I am a Croatian nationalist.

24 I do not renounce the policy of Dr. Franjo Tudjman because that
25 policy created the Republic of Croatia and made possible the survival of

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1 Bosnia-Herzegovina as a state. I do not renounce the inherent sense and
2 point in the legal establishment of the HZ-HB, the expression of the will
3 of the Croats in BH to become and remain a sovereign and constitutive
4 people in that state. The HZ-HB, by its frail organisational structure,
5 made possible the creation of the HVO, which in 1992 was able to defend
6 the BH and the south of Croatia in 1993, prevented the implementation of
7 the aggressive plans of the BH Army. The Muslim policy and the BH Army,
8 unable to regain the territories that were occupied by the JNA and the
9 VRS, and that was due, to a large extent, to the weapons embargo that is
10 incomprehensible to an ethical human mind, moved to launch a
11 counter-offensive against the HVO. By liberating areas from Croats, they
12 committed crimes at Konjic, Capljina, Doljani, Bugojno, Grabovica, Uzdol,
13 and elsewhere. The facts are plain to see for the killed, expelled and
14 detained Croats.

15 Social relations are an area where the laws of cause and
16 consequence apply, whereas the spiral of evil, once initiated, does not
17 justify crime, but it does significantly reduce the possibility to
18 implement the law, whoever's task that is on paper. It is always like
19 that, and everywhere. The HVO defended itself from an aggression in
20 1992, in 1993, and 1994, and a commander's duty is not to lose the war.
21 My conscience is clear.

22 Legal proceedings are the interpretation of laws and facts in a
23 trial proceedings, as rhetoric, and, as such, does not seek to find the
24 absolute truth. It seeks to find a probable truth beyond all reasonable
25 doubt, which can be contradicted hardly or not at all. In an attempt to

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1 discover such truth, knowledge is not enough. One needs to ponder, one
2 needs to apply logic, one needs to apply rational and logical
3 argumentation, data, facts, statements, and statistics do not mean a
4 thing if they are not in a logical relationship with assertions. Through
5 connecting various types of knowledge can we get closer to the truth.
6 In these proceedings, one requires knowledge from the field of
7 sociology, sociology of war, knowledge about societies in which state and
8 social structures are completely destroyed, in which individuals return

9 to their natural state. One needs to apply knowledge from the field of
10 war psychology as well as the knowledge of war skills, armament, and the
11 understanding of the real term of the military, and so on and so forth.
12 Possible mistakes in the interpretation of facts are probable and just as
13 well fatal. Exaggerated and false reduction of terms and of logical
14 connections, making conclusions on the basis of false presumptions,
15 avoiding comparing similar systems and phenomena, arbitrary equalising of
16 terms "power" and "desire," which is so dear to intellectuals, arbitrary
17 accusations because the world is not how one wishes or conceives it to
18 be, these are all fields of possible logical errors in the final
19 assessment of facts. I sincerely hope that the honourable Trial Chamber
20 will adhere to scientific methods and notions.
21 In the last century, millions of people were convicted in trial
22 proceedings pursuant to racial laws, for example, in the USA and
23 Pretoria, dictatorial, religious and Nazi laws in Germany, Serbia,
24 Slovakia, the independent state of Croatia, fascist laws which were
25 applicable in Italy, Communist laws which were applicable in the former

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1 Soviet Union and Yugoslavia, and so on and so forth. The court rhetoric
2 has been under the influence of unreasonable social and political powers
3 for too long, and that is why it has been criticised; unfortunately, not
4 loudly enough. In order to not end up in moral desperateness, it is high
5 time for it to become what it has to be, a moral and reasonable process.
6 Do I have the right to hope?
7 I would kindly ask the honourable Judge Antonetti to tell me how
8 much more time I have.
9 JUDGE ANTONETTI: [Interpretation] Madam Registrar, could you
10 please confirm the time.
11 [Trial Chamber and Registrar confer]
12 JUDGE ANTONETTI: [Interpretation] You have five minutes left.
13 THE ACCUSED PRALJAK: [Interpretation] Enough.
14 Laws of this Tribunal may be what they are. However, they do not
15 apply to the Americans. For other peoples, laws of the Permanent Court
16 apply, and those laws again differ from the laws applied here at the
17 ICTY, the International Criminal Tribunal for the former Yugoslavia, laws
18 which are applied to me. This abolishes a significant condition of the
19 court rhetoric, which is the principle of the equality of arms among the
20 participants in the trial proceedings.
21 And now I quote Perelman:
22 "In a relation where inequality is a significant and
23 characteristic of relations among people, there is no foundation for a
24 reasonable and judicious process."
25 And for the end, I'm not guilty, and I'm not referring here to

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1 the feeling of guilt, coldly, rationally, with a logical analysis that
2 has been critically examined dozens of times. I know I'm not guilty.
3 Your Honour Judge Antonetti, if your judgement is the opposite of
4 my conclusion, I will respect the general principle of challenging every
5 opinion, conclusion, or attitude. I shall reconsider my position on my
6 own responsibility openly and courageously. If I recognise a mistake
7 after that, I shall serve my time because you are righteous. I will know
8 what I could have done better, how I could have done it better, where I
9 could have done it better, and when I could have done things better, in
10 my thoughts and in my words, in what I did and in what I failed to do.
11 If, however, you do not convince me and if your interpretation of facts

12 is not a good-enough or a falsely application of sum of social sciences,
13 and what is not possible thus becomes possible, what is not simple thus
14 becomes simple, and the power to do something thus becomes just a
15 substitute for a desire or a wish, then I will be in jail only because
16 the Tribunal is might, and this wouldn't be anything new under the sun,
17 really.

18 My half hour is finished. I would like to thank you for your
19 attention now and over the past several years. Thank you very much.
20 JUDGE ANTONETTI: [Interpretation] And now I'm going to give the
21 floor to the Petkovic Defence, who are, I believe, prepared. So I'm
22 giving the floor to Ms. Alaburic, who will present the argumentation on
23 behalf of the Petkovic Defence.
24 I am reminding her of her time, which is five hours.
25 [Petkovic Defence Closing Statement]

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1 MS. ALABURIC: [Interpretation] Your Honours, good afternoon.
2 Good afternoon to my learned friends from the OTP, the accused, the other
3 counsel, and all of those who are with us at the moment.
4 On behalf of the General Petkovic Defence, I'm going to present
5 our closing argument. I will be the only one to speak. I have my
6 co-counsel, Zoran Ivanisevic, who is currently in Zagreb, and we have a
7 new member of the team, Mr. Guenaël Mettraux, who is our legal
8 consultant.
9 On the screen, you can now see the title page, and you can see
10 who members of the Petkovic Defence team are. They all participated in
11 the preparation of our closing argument.
12 Before I start my closing argument, I have to use the magic word
13 "Sanction" to launch the presentation that we have prepared for you,
14 Your Honours. And before I start, I would kindly ask my associate to
15 distribute the binders that we have prepared for the Trial Chamber. We
16 would kindly ask the assistance of the Usher.
17 Your Honours, we have the hard copy of our presentation for your
18 benefit to allow you to follow us and to check all those things that we
19 will be presenting, that we will try to explain to you. The Powerpoint
20 presentation is also in e-form, so if any of the parties in these
21 proceedings is interested in obtaining the electronic form, you can
22 address the case manager of the Petkovic team and you will be provided
23 with an electronic version of our presentation.
24 And now I'm starting the closing argument on behalf of the
25 Petkovic Defence.

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1 Your Honours, certain crimes were, indeed, committed in the area
2 of Herceg-Bosna. Crimes should not be forgotten. Victims have the right
3 to receive justice. Perpetrators must be punished, and accused have the
4 right to a fair trial. A fair trial is one of the basic human rights.
5 Human right to a fair trial includes, inter alia, an obligation of the
6 Judges to rely only and exclusively on evidence heard in the courtroom
7 and to establish the facts only and exclusively on the evidence in the
8 case.
9 Victims of a crime have a legitimate interest in participating in
10 any proceedings against an accused. The ICTY Statute, unfortunately,
11 does not provide such a possibility, like the ICC Statute.
12 The Prosecutor's invitation to Judges to think about the victims
13 and to listen to the voices of victims is not an invitation to a fair
14 trial, in our opinion, for at least three reasons. The first one:

15 Judges in a criminal proceedings are not expected to protect victims, but
16 rather to decide about the criminal responsibility of the accused.
17 Secondly, Judges are not supposed to rely on the voices of anybody
18 outside the courtroom. And, thirdly, Judges are not supposed to rely on
19 anything other but the evidence in the case.
20 The goddess of justice is blind, because the Tribunal has to be
21 impartial. Judges must not harbour preconceived notions about the matter
22 put before them. Judges have to decide the case exclusively on the basis
23 of their reasonable assessment of the evidence and the application of the
24 law.
25 Your Honours, I believe that we have a consensus in this

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1 courtroom on these principles, and I'm mentioning just in response to the
2 Prosecutor's appeal for you to listen to the voices of the victims that
3 we did not hear in this courtroom. The Petkovic Defence will talk about
4 victims in its final argument. We will mention certain numbers in
5 relation to the victims. When we mention numbers, there is always a
6 feeling of discomfort, because a crime against one person is no
7 less terrible than a crime against 10 people. We will not mention the
8 figures to diminish or minimise the victims' suffering or the
9 consequences of the crime. Numbers are supposed to help us understand
10 the essence of the case.
11 Let's start with some general data about the crime bases. The
12 table in front of you is based on paragraph 229 of the indictment. Out
13 of the crime bases, we have singled out the crime of persecution because
14 the underlying act of that is a different crime, and we believe that if
15 you look at all the other crimes, you will gain a good insight into the
16 structure of the crime base.
17 The Prosecutor compiled his indictment for a total of 903 crimes
18 barring the Prosecution. The majority of the crimes is relative to
19 inhumane acts, accounting for about 25 per cent. What follows are crimes
20 of incarceration, with a share of 20 per cent. The total share of crimes
21 relative to incarceration, and we're talking about bullet points 10
22 through 18, is about 54 per cent. If we look at the crimes of
23 deportation and transfer together, they make up about 20 per cent. And
24 if we add up all of the crimes that we have just mentioned, namely,
25 deportation, transfers, and crimes relative to imprisonment, pertaining

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1 to bullet point 6 to 18, we will see that approximately three-fourths of
2 the total crime base is relative to the aforementioned crimes.
3 If you look at the table, you will see that certain crimes have
4 been marked in red. Let us remember these crimes. These crimes,
5 according to the Prosecutor's final argument, make up an element of the
6 JCE from the 1st of July, 1993. Those are crimes which make up the JCE
7 Forms 1 and 2, both detention and deportation, again from the 1st of
8 July, 1993. I would like to draw your attention, Your Honours, to the
9 fact that there are no charges for attacking undefended towns, villages,
10 residential and other facilities.
11 Killings, Your Honours, is most commonly the essence of war, and
12 it is one -- the ratio is 1:10 at the expense of civilians. Let's
13 analyse the killing and murder charges in this case.
14 The next table refers to killings, murders, and unlawful killings
15 as presented in the indictment. All of the columns contain a reference
16 to a paragraph in the indictment and the number of victims as presented
17 in the indictment. The total number of killed has been segregated into

18 four different groups. The first group is made up of those who were
19 killed during combat or after combat. The second are those who were
20 alleged human shields at the moment when they died. The third group is
21 composed of those who were killed during an alleged unlawful labour. And
22 the fourth group are those which, according to the Prosecutor, died
23 during the imprisonment.

24 Let's look at the first column, those who died during or in
25 relation to combat. Out of the total number of victims which we could

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1 find in the indictment, and that is 242, 103 victims died during combat
2 or immediately after combat or in relation to combat. Therefore, less
3 than one half of those victims were killed during or in relation to
4 combat.

5 On the following 10 pages, Your Honours, we have prepared for you
6 a brief analysis of all the pieces of evidence that the Prosecutor
7 presented in Annex A of his final brief, and all of them are in respect
8 of murder, willful killing, and I don't intend to analyse every piece of
9 evidence at the moment. My learned friend from the Prosecution will be
10 provided with this analysis in an electronic form to be able to check the
11 veracity of our claims, but let me just present the results of our
12 analysis.

13 Paragraph 48 of the indictment, the village of Paljike. Our
14 analysis indicates that the Prosecutor did not prove that there had been
15 murder committed there.

16 In paragraph 51, we see the village of Toscanica. Our analysis
17 indicates that the Prosecutor failed to prove beyond reasonable doubt
18 that the crime of murder had been committed.

19 Paragraph 66, the village of Dusa. Having analysed the evidence,
20 we conclude that the Prosecutor failed to prove the committed acts of
21 murder, although it is not disputed that a certain number of civilians
22 were killed during the attack on the village by the HVO.

23 Paragraph 66, the village of Hrasnica. The Prosecutor failed to
24 prove that the crime of murder of civilians was committed.

25 Paragraph 77, the village of Sovici. The evidence suggests that

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1 the killed persons were "hors de combat," and they are not a legitimate
2 target of attack, as such, which means that the Prosecutor did prove that
3 the crime of murder was committed.

4 Paragraph 114 has to do with shelling and sniping in Mostar. We
5 analysed the evidence of until the 24th of July, 1993, and we established
6 that the Prosecutor proved the murder of one victim, Arzamina Alihodzic.
7 And in Annex A, we find no evidence on the victims of shelling which
8 could be seen as the victims of the crime of murder.

9 Paragraph 161. Our analysis indicates that the Prosecutor proved
10 that the crime of murder was committed on Sanida Kaplan.

11 Paragraph 176, Domanovici. Our analysis indicates that the
12 Prosecutor managed to prove that the crime of murder was committed.

13 Paragraph 177, the village of Bivolje Brdo. Our analysis
14 indicates that the Prosecutor proved that the crime of murder was
15 committed, and the victim was Hasan Korac. However, the Prosecutor did
16 not prove beyond reasonable doubt that the crime of murder was committed
17 against the 12 victims referred to in that paragraph.

18 Had we had sufficient number of pages and sufficient word count
19 for our final brief, we would have conducted a similar analysis as per
20 each charge of the indictment. Unfortunately, we had an insufficient

21 number of pages, so we needed to focus only on matters which were of
22 importance for General Petkovic's Defence.
23 What was our aim in stating all this? The Prosecution, in its
24 final trial brief, stated that the crimes of murders and willful killings
25 were not planned by the HVO or in the context of JCE, that these crimes

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1 were not part of the criminal common plan. The Petkovic Defence agrees
2 that the crimes of murder and willful killing of Muslims and Bosniaks in
3 Herceg-Bosna were not part of some criminal common plan or a means to
4 persecute the Muslim Bosniak population. In other words, Your Honour,
5 the aim of the Armed Forces of Herceg-Bosna was not to kill the Muslim
6 population. Given that the chief of the Main Staff is part of the
7 military authorities, this fact alone is of crucial importance for the
8 Defence of General Petkovic.

9 The continuation of our closing argument, Your Honours, will be
10 dedicated to the topic of the joint criminal enterprise. We will spend
11 significant time on that topic; I believe up to an hour.

12 To start with, by your leave, I'd like to put forth a few theses
13 which would serve as an aide-memoire needed to prove the elements of the
14 JCE. I believe we are all familiar with those elements, so I won't go
15 into them, per se.

16 An important characteristic of a JCE is that there is a criminal
17 common purpose in existence. This common purpose can be twofold. The
18 purpose of it can be to implement a goal arranged as part of a
19 collective. That is why we have the term "common purpose." The second
20 goal could be to achieve something which is not criminal in and by -- by
21 and of itself, but that criminal goal is tempted by committing crimes.
22 Therefore, we need to view both the means and goals. We also need to
23 have an agreement among JCE members about these criminal means and goals.
24 Having analysed the indictment, the opening statement of the OTP,
25 and their final trial brief, we established that the Prosecution, in its

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1 final brief, explains the concept of JCE and significantly changes the
2 concept of JCE in its first form. Secondly, we established that the
3 Prosecution changed its thesis about the time of creation of the JCE,
4 Form 2, as well as in terms of detention and persecution. This will be
5 the subject of our analysis in the next one hour, approximately.

6 Let us have a look at what is the goal of the alleged JCE, as put
7 forth by the Prosecution, and what were the means to be used in order to
8 establish or achieve the goal, as defined by the OTP.

9 The goal or the objective of the alleged JCE are, inter alia,
10 defined by the Prosecution in paragraph 5 of their final trial brief. I
11 quote:

12 [In English] "The objective of this JCE was to establish an
13 autonomous Croat-dominated entity (the Croatian Community of
14 Herceg-Bosna) on the territory of BiH that would at some point be linked
15 to Croatia, whether by accession or another form of close association."

16 [Interpretation] Therefore, the Prosecution state that the
17 objective of the JCE was, first of all, to establish a Croatian entity in
18 Bosnia-Herzegovina and, secondly, that there should be close links
19 between that Croatian entity in Bosnia-Herzegovina and the Republic of
20 Croatia. We will address those objectives from the legal point of view,
21 and I undertake full responsibility for the legal definitions offered.
22 We will also address this matter from the point of view of
23 Milivoj Petkovic and his understanding of the situation in 1992 and 1993.

24 To start with, let's have a look at the case law of this Tribunal
25 about the political goals of common purpose. The first-instance

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1 judgement in the Martić case, in paragraph 442, states as follows:
2 [In English] "The evidence establishes the existence as of early
3 1991 of a political objective to unite Serb areas in Croatia and Bosnia
4 and Herzegovina with Serbia in order to establish an unified territory.
5 Moreover, the evidence establishes that the SAO Krajina and subsequently
6 Republika SRK government and authorities fully embrace and advocated this
7 objective and strove to accomplish it in co-operation with the Serb
8 leadership in Serbia and in Republika Srpska in Bosnia and Herzegovina.
9 The Trial Chamber considers that such an objective, that is to unite with
10 other ethnically similar areas, in and of itself does not amount to a
11 common purpose within the meaning of the law on JCE pursuant to Article 1
12 of the Statute. However, where the creation of such authorities [sic] is
13 intended to be implemented through the commission of crimes within the
14 Statute, this may be sufficient to amount to a common criminal purpose."
15 [Interpretation] The Appeals Chamber in the Martić case confirmed
16 this position.
17 Let us conclude, therefore, that this Tribunal ascertained that
18 the political goals of unifying certain parts of Croatia and
19 Bosnia-Herzegovina with Croatia is not a criminal common plan. If the
20 aforementioned goal is intended to be achieved by committing crimes, such
21 a plan may suffice to believe that there is a JCE in existence. If we
22 apply this rule to our proceedings, we conclude the following: The plan
23 to establish a territory in Bosnia-Herzegovina that would be primarily
24 populated by Croatia, with close ties to the Republic of Croatia, cannot
25 be seen as a criminal common plan.

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1 My learned friend, Ms. Nozica, reminded us that the current topic
2 in Bosnia-Herzegovina now is the establishment of a Croatian entity, and
3 Mr. Scott confirmed that by having said that the US ambassador in
4 Bosnia-Herzegovina is against such an initiative, which is beyond
5 dispute, and it is also something that is very important for us is that
6 such an initiative is on the table and that nobody even attempted to
7 pronounce it a criminal concept.
8 Let us see what see what Mr. Petković thought about that
9 principle in 1992 and 1993.
10 The first document, 4D2510, which is an excerpt from Mladić's
11 diary for the 29th of November, 1992. Petković met Mladić in the
12 presence of General Morillon, under the auspices of UNPROFOR, and
13 Petković said this to Mladić and General Morillon, Let us try to come up
14 with a solution by having the three sides sit down at the table in
15 Bosnia-Herzegovina, let us stop to refer to Tudjman and Croatia all the
16 time.
17 The next document is even more important. It is P2019, the notes
18 taken by Tihomir Blaskić during a meeting of the 21st of April, 1993. We
19 saw it a number of times in this courtroom. Let's look at it again.
20 Halilović says:
21 "Your top politicians advocate the establishment of the Croatian
22 state on the territory of Bosnia-Herzegovina."
23 Petković's response is this:
24 "Well, you ought to be reasonable enough to know that Croatia
25 cannot go for the annexation of B and H territory, because in that case

1 it would lose its own territory."
2 What Petkovic had in mind were the Serbs in the Republic of
3 Croatia who also wanted to carve out a part of Bosnia-Herzegovina
4 territory for themselves.
5 Mr. Petkovic had the following to say about this document at
6 page 49677 and 49678:
7 [In English] "Let me first say what I replied to Halilovic. I
8 said to him, You must be out of your mind if you really think that's the
9 case. Croatia is an integral part of its territory, the Serbian Krajina
10 which wishes to leave Croatia, and it is a crazy idea to think that
11 Croatia, given this unsolved problem, aspires to anything more; something
12 along those lines. So I'm not sure whether it was -- how faithfully it
13 was recorded in that document. But, anyway, as far as I'm concerned, I
14 was never in favour of the idea that part of Bosnia and Herzegovina
15 should join Croatia. Instead, Bosnia and Herzegovina was a unified
16 country and stayed this way, only I'm sorry that nowadays they can't seem
17 to be able to run their own affairs."
18 The conclusion is that Petkovic at the time believed that nobody
19 in their right mind could seriously ponder an annexation of B and H
20 territory with Croatia. For Petkovic, as a career military person, was
21 the beginning and the end of the story of Greater Croatia. Hence, this
22 Defence will not touch upon that topic any further.
23 Let us look at what the Prosecutor has to say about the planned
24 means used to achieve the objectives of the alleged JCE. In the
25 indictment, in paragraph 15, the Prosecutor defines those means, and they

1 say that all such means are planned simultaneously and, at the latest, as
2 of the 18th of November, 1991. In the OTP final trial brief, they
3 identified the alleged means of the JCE as follows: They defined what
4 the original or core JCE 1 is. They state that it includes the crimes of
5 persecution, deportation, and forcible transfer. Next, they define an
6 expanded form of the JCE Form 1, which occurred in mid-1993, according to
7 the Prosecution. Form 2, detention and deportation, is also taken into
8 account. And according to the Prosecution, it came about on the 1st of
9 July, 1993. In our belief, this amounts to a significant change of their
10 definition of JCE 1. We believe that by having done this, the Prosecutor
11 confirmed that the 30th of June, 1993, was a turning point in the
12 relations of Croats and Muslims.
13 Let us look at the following table. Here in this table,
14 Your Honours, we wanted to show you, in a simple and easy-to-read manner,
15 what the Prosecution state. In red, you will see the core JCE. These
16 are -- these also include crimes against property, but they can also be
17 found in the third form. It is obvious from this table that the
18 Prosecution thinks that on 30 June 1993, in the area of Herceg-Bosna,
19 something happened that represented a drastic change in the relations
20 between the Muslim side and the Croatian side.
21 If you allow me to draw some conclusions from that, I will put
22 the following to you:
23 There is no evidence that Petkovic ever made an agreement with
24 anybody or joined any agreement, if such an agreement existed at all,
25 that any political goal in Herceg-Bosna would be pursued by criminal

1 means, by committing war crimes. The Petkovic Defence agrees with the

2 Prosecution that 30 June 1993 was a turning point in the relations
3 between the Croat and Muslim side in Bosnia-Herzegovina. We differ,
4 however, when it comes to the reasons for that drastic change in their
5 relations.

6 The Prosecution's position is that in mid-1993, the authorities
7 of the Herceg-Bosna simply decided to evolve the nature and scope of
8 crimes in order to establish a Croat-dominated entity in
9 Bosnia-Herzegovina. The Petkovic Defence's position is the following:
10 Herceg-Bosna was already established, up and running, as of April 1992.
11 Secondly, the Herceg-Bosna authorities were not planning on widening or
12 enlarging the territories under their control, which is corroborated by
13 Petkovic's report for the period from 14 April through 31 December 1992.
14 The document reference is P907. He says that in 1994, the Herceg-Bosna
15 authorities had under their control 90 per cent of the territory planned
16 as a territory of the HZ-HB, or the Croatian entity, with the corrections
17 possible.

18 Correction of the year. It's 1992.

19 In April 1993, the BH Army launched offensive actions against the
20 HVO, and until mid-1993, gained control over the entire Konjic
21 municipality, except for two small enclaves, and they continued
22 operations in two directions, Gornji Vakuf in the north and Mostar in the
23 south; and in Central Bosnia they had taken Kakanj and Travnik.

24 The fourth difference: On 30 June 1993, in co-operation with HVO
25 soldiers of Muslim ethnicity, the BH Army took control over the whole

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1 area north of East Mostar toward Jablanica. This was the alarm for
2 taking special security measures. This, Your Honours, was the event that
3 marked the turning point in the relations between Croats and Muslims in
4 Herceg-Bosna. Everything that happened in Herceg-Bosna after
5 30 June 1993 was not the consequence of a criminal plan, but rather the
6 consequence of security measures that were forced upon the authorities by
7 the situation on the ground.

8 Let me repeat. There is no evidence at all that anybody, on
9 30 June 1993, planned crimes against the Muslim population and the
10 BH Army in order to achieve a political goal.

11 Let us take a look at what was happening on the ground.

12 The Prosecution witnesses mostly spoke about the Croats, that is,
13 the HVO, as the party that caused the conflicts, as of April 1993. The
14 Defence tried to show that it wasn't the case, but rather that the
15 conflict started with the attacks of the BH Army and that they developed
16 as these offensive activities gained momentum.

17 There is an undisputed fact, though, that from April 1993, the
18 BH Army enlarged the territory under its control. If we totally ignore
19 the question who the first was, who started the conflict, because we
20 cannot agree there, we will agree that the BH Army was in an offensive,
21 that it was taking new territories, and that the areas marked green here
22 are getting larger, whereas the areas marked blue, controlled by the HVO,
23 are getting smaller.

24 Let us look at map 4D561. This is a map for the period of March
25 and April 1993. On this map, which we know well, you will see that at

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1 that moment, there were conflicts in and around Konjic and Gornji Vakuf
2 and that the BH Army attacked HVO forces in and around Vitez, the attack
3 coming from Zenica.

4 If you look at the connection between Busovaca and Kiseljak, you

5 will see that it is no longer possible to travel between these two towns.
6 That's why I wish to remind you of a document that we analysed here in
7 this courtroom, which is 4D392. This is a report of the
8 Security Administration of the Supreme Command of the BH Army, dated
9 18 January 1993. The document says, I quote:
10 "The Security Sector estimates that the BH Army forces in this
11 area, in case of serious clashes, are able to fight back the HVO forces
12 successfully, under the condition that the road communications between
13 Busovaca, Kiseljak and Fojnica, as well as Busovaca, Vitez and Travnik,
14 are cut."
15 If we look at the sketch, then we'll see that the road between
16 Busovaca and Kiseljak had already been cut, which happened in
17 January 1993, and in April 1993, efforts are made to cut the road from
18 Vitez to Travnik or Vitez -- from Vitez to Busovaca. The situation on
19 the ground, therefore, is exactly what the Security Administration of the
20 BH Army suggested in January 1993.
21 Let us look at the following map, IC1183. We see the same area
22 as before, but in June 1993. We see that the BH Army has full control
23 over Kakanj and Travnik.
24 Let's look at what happened in and around Mostar. The map is
25 IC1184, the situation until 30 June 1993. We see here that the BH Army,

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1 marked green, has under its control East Mostar, and there is no direct
2 communication with their own forces in the north and the south. But that
3 wasn't much of a problem, because up until that time there was some sort
4 of co-operation between the two armies in this area.
5 Map IC1185, for the same period, shows a wider area. We see that
6 in and around Jablanica and Konjic, the BH Army has full control, except
7 over two small enclaves marked blue. One of them would disappear within
8 a month.
9 What is happening on the 30th of June, 1993? Let's take a look
10 at map 4D622. The BH Army put all areas north and south of East Mostar
11 under its control.
12 Let's look at map IC1186. What does it look like if we take a
13 wider view that also shows Jablanica and Konjic? East Mostar, after
14 30 June 1993, is directly linked with Jablanica, Konjic, and further on
15 to Central Bosnia.
16 We can draw the following conclusions: Firstly, the evidence
17 clearly and unambiguously shows that the BH Army launched offensive
18 military operations, as of April 1993, and continually widened the
19 territory under its control. Secondly, the Petkovic Defence does not
20 challenge the legality and legitimacy of the military actions of the
21 BH Army because war, or combat activity by armed forces, unfortunately,
22 are not an illegal means to achieve political objectives. Thirdly, the
23 military activities of the BH Army are relevant in this case as evidence,
24 as proof that certain measures taken by the Herceg-Bosna authorities were
25 a reaction to and the consequence of the BH Army offensive, their actions

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1 and plans, rather than a criminal common plan agreed upon by the members
2 of the alleged JCE.
3 And thus, Your Honours, we are getting to the crucial date in
4 this case, 30 June 1993, the date when the order to isolate and disarm
5 the Muslim soldiers of the HVO was issued, the day when the order was
6 issued to isolate conscripts of the BH Army.
7 Let us look at these sketches once more. I'm referring to

8 IC1184. Likewise, I refer to map 4D622, and we'll see what happened on
9 the ground.
10 Let me repeat once more the BH Army established control over the
11 territories north and south of East Mostar so that East Mostar was linked
12 with Central Bosnia. Let us take a look at the documents about that.
13 The first document is 2D1389. This is a report of the staff of
14 the Supreme Command of the Armed Forces in Sarajevo about combat
15 activities on 30 June 1993. What we see from this document is what the
16 BH Army is. I'll repeat the document number, 2D1389. The document
17 precisely lists what the BH Army took or had taken by 30 June 1993. It's
18 not only the North Camp, as suggested by the Prosecution not only in the
19 indictment, but also in all subsequent briefs, including the final brief.
20 Apart from the North Camp, the following had been taken: Rastani,
21 Vrapcici, Bijelo Polje, Salakovac, and Rosci.
22 This report goes on to say, Your Honours, that the BH Army is
23 holding all hydro power-plants on the Neretva River except for the
24 Capljina plant. When you analyse the situation in Mostar, Your Honours,
25 please take into consideration this document, which is one of the

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1 documents showing that the BH Army had control over the hydro
2 power-plants on the Neretva River. And the third important part of this
3 document is the final paragraph, which says that the forces of the 4th
4 and the 6th Corps linked up in the areas around Mostar and Jablanica, and
5 it says, I quote:
6 "... which will have a positive effect on the coming combat
7 operations."
8 The following document we consider extremely important is 2D448.
9 This is Arif Pasalic's speech on War Radio, given on June 30th, 1993 at
10 1100 hours [as interpreted], Your Honours, I stress 1100 hours
11 [as interpreted]. Arif Pasalic said, I quote:
12 "People, citizens of Mostar, you have to understand that this is
13 judgement day, when you have to start fighting. I call on each citizen
14 who can carry a rifle, who can carry a rock, to kill Ustasha criminals."
15 This, Your Honours, was the start of all-out war in Mostar. The
16 BH Army established control over areas north and south of East Mostar in
17 co-operation with Muslim HVO soldiers. This, Your Honours, is the fact
18 which makes these activities around Mostar different from all previous
19 activities by the BH Army or any other activities. That's why the Muslim
20 HVO soldiers, especially in and around Mostar, Stolac and Capljina,
21 became a security issue.
22 Let us remind ourselves of what the foreigners said about that.
23 I will refer to three documents by foreign observers, the last two being
24 under seal. I will only refer to them by number, but will refrain from
25 mentioning the authors of the documents. And I warn against showing the

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1 documents outside the courtroom. I believe that this is sufficient
2 protection, but if you think that we should go into private session, I'm
3 not opposed to that.
4 The first document is P3952. This is a report by the
5 European Monitors, dated 4 August 1993. It says in the report, I quote:
6 [In English] "Also, since about five weeks, the HVO has decided a
7 large-scale arrest operation of all the Muslim male between 16 and 60 in
8 all the territory under their control. These operations have followed
9 the mutiny of Muslim soldiers of the HVO, who have given the opportunity
10 to B and --" I never can pronounce that in English, "Bosnia-Herzegovina

11 Army to create a horseback corridor between Jablanica and Mostar along
12 the Neretva River."

13 [Interpretation] The following document, which is under seal so
14 it should not be broadcast outside the courtroom, is P4698A. In this
15 document, it says, among others, I quote:

16 [In English] "It seems that the operation was triggered off
17 during the night of June 29/30th, when the Muslims enlisted in the
18 HVO 3rd Brigade with the base in the Tihomir Masic Barracks deserted
19 their weapons to join the ranks of the BiH. Seizing this opportunity,
20 the Muslims advanced north and reached Bijelo Polje."

21 [Interpretation] The following document is P2979. It is also
22 under seal. It should not be broadcast outside the courtroom. Under
23 item 3, it says, among others, that HVO forces are concerned because
24 Muslims are leaving the 3rd Brigade and joining the forces of the
25 BH Army.

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1 Now, Your Honours, we wish to show you documents that show that
2 Muslim HVO soldiers, under such circumstances, really became a security
3 problem, and that it was justified from the security point of view to
4 take some measures.

5 The first document is 4D1461. This is a SIS document issued in
6 September 1992, and it says, amongst other things, and I quote:
7 "Muharem Dizdar, one of the HVO commanders, and Ragib Dizdar,
8 visited Muslim members of the HVO, and they told them not to leave the
9 HVO units, or rather not to join the BiH Army until the hour was right,
10 and that they would inform them when that happened."

11 The following document is 4D469, an official record originating
12 from the Crime Department, where it says:

13 "Pressures put on the Muslims who are members of the HVO and the
14 MUP units to leave those units, if they didn't do so, they were
15 threatened to be killed or their house to be set on fire.

16 The following document, 4D568, issued by the
17 Security Administration of the Supreme Command of the Armed Forces of
18 Bosnia-Herzegovina, the author is Fikret Muslimovic, and it says here, I
19 quote:

20 "It is realistic to [indiscernible] further tensions in relations
21 and even an all-out military confrontation between the RBiH army and the
22 HVO. It is very important to prepare ourselves for such situation and to
23 inactivate the Muslims who are in the HVO and to exercise influence on
24 them to move over from the HVO to the Army of Bosnia-Herzegovina."

25 The following document is 4D33.

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1 JUDGE PRANDLER: I'm sorry to interrupt you, Ms. Alaburic. I
2 only would like to ask the interpreters that in the English booth, there
3 is so much voice -- or, sorry, not voice only, but noise that it is
4 impossible to listen to. Thank you.

5 MS. ALABURIC: [Interpretation] I'm sure that our colleagues in
6 the booth will appreciate and will act accordingly.

7 Let's look at 4D33. This is an assessment of the security
8 situation. It was issued by the security organ of the
9 42nd Mountain Brigade, which says, amongst other things, and I quote:
10 "Call upon all Muslim members of the HVO to place themselves on
11 the side of their people."

12 The following document is 4D34. The same author, only two days
13 later on the 18th of April, 1993, he proposes as follows, and I quote:

14 "... to establish co-operation with our soldiers in the HVO and
15 point out the seriousness of the situation to them."
16 The following document, 4D35, the commander of the
17 42nd Mountain Brigade, Bajro Pizovic, says, amongst other things, a plan
18 for forming of Muslim soldiers in HVO units in Mostar, Capljina and
19 Stolac has to be prepared.
20 The following document is 4D00473. The same author,
21 Bajro Pizovic, on the 18th of April, wrote to the commander of the
22 1st Brigade of the HVO, Nedjeljko Obradovic, and says, and I quote:
23 "I mention, and this is well known to you, that a large number of
24 Muslim soldiers are in your units, and they are all Muslims, and they
25 belong to this people, so it wouldn't be good if a defined organisation

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1 and formation of your units was disrupted."
2 Your Honours, I would like to remind you that our witness,
3 Mr. Bozo Pavlovic, who was an officer in the 1st Brigade, interpreted
4 this document as a direct threat, and that's exactly how the HVO
5 understood it at the time.
6 The following document is 4D36. This document was issued by
7 Arif Pasalic on the 2nd of May, 1993. It is a report about the situation
8 in the territory of the 42nd Mountain Brigade that was around Stolac and
9 Capljina. We would like to point out three parts, where it says:
10 "Linking up with our men in the HVO was carried out."
11 It says also:
12 "Men from the Capljina HVO have the task of taking Tasovcici
13 village ..."
14 And, thirdly:
15 "Villages have maximum security," or, rather:
16 "Seize the town of Stolac with our people in the HVO."
17 That's the end of quote. This points directly to a link between
18 the BiH Army and Muslims in the HVO.
19 We would also like to highlight the testimony of a protected
20 witness, Witness CR.
21 Can we somehow make sure that the image is not broadcast.
22 On transcript page 11858 and 11859, Witness CR said that during
23 the first three months of 1993, the Muslim authorities advised Muslims to
24 leave the HVO police.
25 Based on all of the above, I would like to conclude the

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1 following: Firstly, if the HVO soldiers of Muslim ethnicity joined the
2 ABiH in other parts of the South-East Herzegovina Operation Zone, the
3 authorities of Herceg-Bosna could easily lose control over the territory
4 of entire Mostar, Stolac and Capljina municipalities. Secondly,
5 ABiH Army documents establish beyond any doubt that the ABiH prepared
6 military actions in co-operation with certain members of the HVO Muslim
7 soldiers. Thirdly, immediate security measures had to be taken under
8 such circumstances.
9 Let's remind everybody that Muslim soldiers accounted for a large
10 percentage of HVO units. In Mostar, it was 50 per cent. HVO soldiers of
11 Muslim ethnicity were disarmed and interned.
12 What we wanted to demonstrate as part of our Defence is this:
13 Croats did not rejoice -- rejoice at disarming their Muslim
14 colleagues. That measure was a necessary security measures aimed at
15 preventing the loss of control in the territory stretching from Mostar to
16 the Adriatic coast.

17 The order on disarmament and isolation was issued on the same
18 day, on the 30th of June, 1993, and the order was issued to
19 Milivoj Petkovic by the supreme commander, Mate Boban. And Petkovic, in
20 his turn, issued the same order to his subordinate, the head of the
21 operations zone, Mr. Miljenko Lasic. Petkovic does not say that he did
22 not issue the order, and as we go on we will try to show you that it was
23 legal and that it was militarily justified. In other words, Petkovic
24 participated in the implementation of the decision, thinking that he was
25 acting legally and justly.

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1 On the 30th of June, 1993, Petkovic testified that that was the
2 most difficult day in his life, and that was confirmed by our witness,
3 Bozo Pavlovic, who personally took part in the disarmament of his own
4 Muslim soldiers.
5 Your Honours, we wanted to show you that the isolation of Muslim
6 soldiers of the HVO was a justified security measure and that, before the
7 30th of June, 1993, Muslims enjoyed the same rights in the HVO as Croats.
8 Military commanders protected their own Muslim soldiers when certain
9 security services pointed to possible security issues due to a large
10 share of Muslims in HVO units in the territory of Mostar, Capljina and
11 Stolac. Muslim soldiers remained HVO soldiers even after isolation. The
12 period of their incarceration in a detention centre is considered time
13 served in the HVO. That's how things were, and that's how things should
14 be.
15 Your Honours, I believe we have reached the time for our first
16 break.
17 JUDGE ANTONETTI: [Interpretation] Yes, you're right. I was
18 signalling to you just a minute ago to tell you that.
19 Yes, it's the time for our first 20-minute break.
20 --- Recess taken at 3.45 p.m.
21 --- On resuming at 4.08 p.m.
22 JUDGE ANTONETTI: [Interpretation] We continue, and, Ms. Alaburic,
23 you have the floor.
24 MS. ALABURIC: [Interpretation] Thank you, Your Honour.
25 I promised our colleagues in the French booth that I will slow

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1 down in the rest of my argument. I apologise to them for not having
2 borne in mind the fact that they are interpreting with a bit of a delay
3 and I was too fast.
4 Your Honours, in our presentation, in our final argument, in our
5 closing brief, we have reached the topic of imprisonments which started
6 on the 30th of June, 1993. In his final brief, in paragraph 313, the
7 Prosecutor speaks about that, and as we go on, we will analyse that
8 paragraph sentence by sentence.
9 In the first sentence, the Prosecutor claims that pursuant to
10 Petkovic's order dated 30 June 1993, the Muslim able-bodied men were all
11 imprisoned. Let's focus on the words "all Muslim able-bodied men," which
12 implies all conscripts in Herceg-Bosna.
13 Let's look at Petkovic's order, P03019. We have seen it dozens
14 of times in this courtroom, but let's look at it once again. Petkovic
15 issued his order and sent it only to one operation zone, not to all four
16 operations zones, but to just one operation zone, the
17 South-East Herzegovina Operation Zone. The estimate was that the
18 security issue existed primarily in that zone. And let's look at the
19 document, where it says that the OZ commander sent this order to the

20 2nd and 3rd Brigades, but not to the 1st Brigade. Furthermore, Petkovic
21 ordered that Muslim soldiers of the HVO and conscripts of the BH Army who
22 were on the reserve strength of the ABiH forces to be isolated. We will
23 talk about that further on. It arises from this order that civilians had
24 to be left in their homes. This order, issued by Milivoj Petkovic, was
25 lawful, and no crime could be committed through the execution of that

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1 order, and we will provide a lengthy explanation of that as we go on.
2 The next sentence in paragraph 313 -- or, rather, the next two
3 sentences contain an allegation that civilians were also arrested. In
4 footnote 714, the Prosecutor refers to a number of documents which we
5 analysed very thoroughly, and we were able to establish that a majority
6 of those documents, or at least one part of those documents, refers to
7 the month of May 1993. In other words, a lot of those documents had
8 nothing whatsoever to do with this isolation measure which was carried
9 out starting on the 1st of July, 1993. The analysis of the remainder of
10 the document shows that in this footnote, the Prosecutor fails to mention
11 a single piece of evidence that would confirm his argument about the
12 incarceration of civilians.
13 And the following sentence reads and contains an allegation about
14 the detention of women, children and elderly. The footnote number is
15 715. An analysis of this footnote also shows that there is no proof
16 about the incarceration of civilians.
17 I would especially like to draw your attention to two documents.
18 One of them is P3133. This is a report dated the 3rd of July, which was
19 compiled by the Department for Crime Prevention. In this report, it says
20 that a list of persons under 18 and over 60 years of age has been
21 compiled, and they have to be let go. In other words, people of a
22 younger age and people of an older age were not supposed to be arrested
23 in the first place on the 1st of July, 1993, or later on.
24 Now let's also look at P4822, which is Mazowiecki's report dated
25 September 1993, where it says that militarily able-bodied males were

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1 arrested, but there were also examples where people younger and older
2 were also isolated. We conclude that on the 30th of June, 1993, and
3 later on, no civilians were incarcerated.
4 And, Your Honours, now we come to an issue that
5 General Petkovic's Defence regards the key issue in these proceedings.
6 For us, the topic of a Greater Croatia or a Croatian entity are not
7 crucial topics in these proceedings. For us, the crucial topic concerns
8 the categories of detained persons.
9 What was the status of a people detained in the detention centres
10 of Herceg-Bosna?
11 The Prosecutor, in paragraph 142 of their final brief, state the
12 following categories: First of all, Muslim soldiers of the HVO;
13 secondly, POWs; and, three, civilians. Your Honours, Petkovic's Defence
14 completely agrees with the structure of these three categories, but this
15 is where our agreement ends.
16 First, a few words about Muslim HVO soldiers.
17 In their final brief, the OTP, in paragraphs 144 to 149, say that
18 the Muslim HVO soldiers were neither civilians, nor POWs. The
19 Petkovic Defence agrees. Further on, the Prosecution states that the
20 Muslim soldiers were persons protected by Article 75 of the
21 Additional Protocol 1 and Common Article 3, as people "hors de combat"
22 due to their detention. Concerning this international law of protection

23 of Muslim HVO soldiers, the Petkovic Defence disagrees, and I will
24 explain why.
25 I believe everyone in this courtroom will agree that in order to

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1 interpret a legal norm, it is essential to establish where it is in the
2 legal body. If it is in the part concerning civilians, it is deemed
3 relevant to civilians. If it is found in the parts concerning POWs, then
4 it has to do with POWs.
5 Article 75 of the Additional Protocol 1 is in the civilian
6 population part, in section 3, Chapter 1:
7 [In English] "Field of application and protection of persons and
8 objects."
9 [Interpretation] The first article of that chapter is Article 72,
10 defining field of application, and it clearly states that the entire part
11 of that protocol has to do with civilians. Based on that, Your Honours,
12 we conclude that Article 75 of Additional Protocol 1 does not concern own
13 soldiers.
14 Let us look at whether Common Article 3 could concern Muslim HVO
15 soldiers. Persons "hors de combat" due to detention are defined by
16 Article 41 of AP 1. Inter alia, it is stated that a person is
17 "hors de combat" if held by the enemy. Based on that, Your Honours, we
18 conclude that the Muslim HVO soldiers were not in the power of an adverse
19 party. They were and remain HVO soldiers. The time spent in detention
20 is counted towards their service; their service with the HVO, that is,
21 and we have shown examples of that. Muslim HVO soldiers, therefore, were
22 not "hors de combat," and Common Article 3 does not apply. We conclude,
23 therefore, that Muslim HVO soldiers were protected by national law. If a
24 crime was committed against them, it is a matter of domestic and not
25 international law. And an important legal rule to mention is this: In

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1 case of ambiguity or legal uncertainty on that point, the interpretation
2 of the law the most favourable to the accused must prevail.
3 In their final briefs, the Valentin Coric and General Petkovic's
4 Defence addressed the issue of the status of Muslim HVO soldiers, and you
5 could also refer to the relevant parts of our final brief.
6 This brings us, Your Honour, to what we believe is the crux or
7 the core of this case, which is the military able-bodied men or military
8 conscripts in Bosnia and Herzegovina and their status in case of
9 detention. The Prosecutor believed that those persons were civilians.
10 We, on the other hand, consider them to be POWs.
11 Why is this question important at all? Namely, we do not dispute
12 that POWs and civilians, once detained, need to be treated humanely.
13 There is no dispute in that. However, the definition of their status is
14 essential for the following reasons, which we marked in red in our
15 presentation. It is important because the crimes of imprisonment of
16 Article 2 and 5 of the Statute cannot be committed against POWs. It is
17 important because the crime of deportation of civilians cannot be
18 committed against POWs. It is important because the crime of forcible
19 transfer cannot be committed against POWs. It is important because the
20 crime of persecution cannot be committed against POWs, with one remark.
21 The Petkovic Defence is, of course, familiar with the fact that POWs can
22 be victims of crimes against humanity, but in such a case it has to be a
23 part of a widespread and/or systematic attack against a civilian
24 population. To put it shortly, if the able-bodied men of
25 Bosnia-Herzegovina were POWs and not civilians, then there is no core

1 JCE 1, or at least that JCE 1 is substantially different than pleaded by
2 the Prosecution.
3 Let's have a look at the status of able-bodied men as defined by
4 the jurisprudence of this Tribunal and its case law and what it has to
5 do -- what it has to say about the relevance of mens rea in order to
6 perform certain actions against POWs. We believe it most appropriate,
7 Your Honours, to point out the position of the Appeals Chamber in the
8 Kordic case and what they had to say about the status of able-bodied men.
9 Many paragraphs are relevant. However, we believe that it suffices for
10 us to point out paragraph 608 and 615 of the appeals judgement. You have
11 the relevant portions on the screens. I will merely sum up the position
12 of the Appeals Chamber. First of all, able-bodied men are not considered
13 civilians unless proven otherwise. The second rule of thumb is that
14 children, women and elderly are considered civilians until proven
15 otherwise. Hence, therefore, for the able-bodied men, a different
16 presumption stands, as opposed to the children, women and the elderly.
17 The Petkovic Defence believes that position to be appropriate.
18 In these proceedings, the Prosecutor was supposed to prove the
19 civilian status of able-bodied men, because an able-bodied man is
20 considered a civilian if his status as civilian is proven by the
21 Prosecutor beyond any reasonable doubt. Pending that, able-bodied men
22 are not considered civilians.
23 The case law of this Tribunal mentions the relevance of the
24 mens rea. We believe the most appropriate example would be the appeals
25 judgement in the Mrksic case, paragraph 42. In the final part, it

1 states, I quote:
2 [In English] "... the Trial Chamber's finding, unchallenged by
3 the parties, that the perpetrators of the crimes in Ovchara acted in the
4 understanding that their acts were directed against members of the
5 Croatian armed forces. The fact that they acted in such a way precludes
6 that they intended that their acts form part of the attack against the
7 civilian population of Vukovar ..."
8 [Interpretation] In other words, it is crucial to determine
9 whether certain activities were undertaken with the necessary mens rea
10 and the wish to treat members of the opposing force in a particular way.
11 Evidence shows that the authorities of Herceg-Bosna considered
12 able-bodied men the reserve force of the Army of Bosnia-Herzegovina.
13 This was the position of the Petkovic Defence, and we expanded on it in
14 our final brief, among others, in paragraph 279.
15 For a start, let us have a look at what
16 International Humanitarian Law has to say on the point of reservists. We
17 believe it to be the most appropriate to indicate a portion from a book
18 called "Customary International Humanitarian Law" by Henckaerts and
19 Doswald-Beck. I wanted to quote two paragraphs towards the end of the
20 book. I quote:
21 "While in some countries entire segments of the population
22 between certain ages may be drafted into the armed forces in the event of
23 armed conflict, only those persons who are actually drafted, that is, who
24 are actually incorporated into the armed forces, can be considered
25 combatants. Potential mobilisation does not render the person concerned

1 a combatant liable to attack.
2 "Footnote: This conclusion is based on discussions during the
3 second consultation with academic and governmental experts in the
4 framework of this study in May 1999 and the general agreement among the
5 experts to this conflict. The experts also considered that it may be
6 necessary to consider the legislation of a state in determining when
7 reservists actually become members of the armed forces."
8 [Interpretation] End of quote.
9 I wish to put forth the position on the Petkovic Defence.
10 Firstly, members of armed forces can be combatants and non-combatants.
11 Combatants are those taking direct part in combat. Non-combatants are
12 those taking part in various so-called non-combat services in the armed
13 forces. Secondly, if captured, both have the status of POWs. Thirdly,
14 military conscripts who are not mobilised are not combatants. Fourthly,
15 military conscripts who are not mobilised could be members of the armed
16 forces, but then they are non-combatants. Fifthly, in order to establish
17 whether in Bosnia and Herzegovina military conscripts were members of the
18 armed forces, one needs to study the legislation of Bosnia and
19 Herzegovina.
20 Let's have a look at that particular legislation. The first
21 document is 4D412, Decree Law on Service in the Army of the Republic of
22 Bosnia and Herzegovina. Article 7:
23 "The army shall be composed of the standing and reserve forces."
24 Article 9 of the decree law states as follows, I quote:
25 "The reserve force of the army shall comprise persons who are,

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1 according to the provisions regulating conscription, subject to service
2 in the reserve force of the army."
3 The next document is Decree Law on Compulsory Military Service,
4 number 4D1030. In Article 4, it is stated that compulsory military
5 service shall consist of the recruitment obligation. And Article 7
6 states that compulsory military service shall cease for men at the end of
7 the calendar year in which the age of 60 is reached.
8 Let us conclude, then, Your Honours. According to B and H
9 legislation, the Army of Bosnia and Herzegovina comprised active and
10 reserve forces. Secondly, able-bodied men of a certain age, that is to
11 say, military conscripts, were members of the reserve forces of the
12 Army of Bosnia-Herzegovina. Thirdly, military conscripts were not
13 combatants, but they were non-combatant members of the
14 Army of Bosnia-Herzegovina as part of the reserve forces. Let us look at
15 a number of documents to see whether the legislation was, indeed,
16 implemented in such a way in the field. We will first look at the
17 documents of the Muslim side.
18 Let us start with 4D430. It is from mid-April 1993. It is a
19 combat report which states as follows:
20 "Civilians from the village of Doljani are being evacuated at the
21 moment. Conscripts will remain."
22 This document clearly confirms that military conscripts are not
23 civilians, as viewed by the Army of Bosnia-Herzegovina.
24 The next document is 1D349. It is a document drafted by the
25 Jablanica Municipal Assembly War Presidency on 9 May 1993. Among other

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1 things, it states that mobilisation should be carried out of all
2 able-bodied population between the age of 15 and 65 in order to man work
3 units, military units, civilian protection units, and other units formed

4 in the municipality of Jablanica. Therefore, military able-bodied men of
5 a certain age did have certain obligations.
6 The next document, 1D1410, is a decision of the Army of the
7 Republic of Bosnia-Herzegovina. It regulates the status of citizens,
8 which, among other things, states that military conscripts can receive
9 permission to depart for a third country only if they are ill. Those who
10 are not must return to Bosnia-Herzegovina. Assembly points will be set
11 up for them under the auspices of the Ministry of Defence.
12 THE INTERPRETER: Interpreter's correction: This document was a
13 government decision.
14 MS. ALABURIC: [Interpretation] The next document is P9208 by
15 Mr. Zecic, who said, and I quote, that "only able-bodied men remained in
16 the village."
17 The testimony of Witness Husnija Mahmutovic on transcript
18 page 25694. The witness confirmed that all healthy men of military age
19 were obliged to join the BH Army.
20 The following document is P9198. It's the statement of
21 Witness Zahirovic, who, speaking about himself and his colleagues, once
22 says "people fit for military service," and on another occasion, "members
23 of the BH Army," by which he unambiguously places a sign of equation
24 between persons fit for military service and members of the BH Army.
25 And the following document is from a protected witness and should

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1 not be broadcast outside the courtroom. The document number is P10220.
2 Witness U said, I quote.
3 "Of course, when I was released from Heliodrom, just like any
4 other military conscript, I reported to the closest military unit."
5 [Interpretation] We conclude, Your Honours, that these, as many
6 other documents of the BH Army, confirm that the practice was in line
7 with the laws and regulations. Conscripts were considered members of the
8 BH Army.
9 We said, in the introductory part, that it's equally important
10 how the BH authorities perceived military able-bodied men and military
11 conscripts, so let us look at some testimonies. Milivoj Petkovic,
12 transcript page 49579. He testified about how he considered --
13 able-bodied Muslim men were considered by him to be members of the
14 BH Army. Witness Zrinko Tokic considered conscripts soldiers, as noted
15 on transcript page 45373 and the following. Witness Filipovic spoke
16 extensively about that. I will quote Judge Antonetti, who summarised
17 Filipovic's extensive testimony:
18 [In English] "As I understand it, in your view there were no
19 civilians, as a matter of fact, apart from women and children. Any man,
20 maybe except very old men, any man could be a soldier; is that right?
21 "That's correct."
22 [Interpretation] That was the witness's answer.
23 (redacted)
24 (redacted)
25 (redacted)

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1 (redacted)
2 (redacted)
3 (redacted)
4 (redacted)
5 (redacted)
6 Let us now look at some official minutes, and we'll see what the

7 Government of Herceg-Bosna -- what their position was of the status of
8 men who are conscripts. The document is P4841. These are minutes from
9 the working meeting held on 6 September 1993. It is clearly stated that
10 the persons taken prisoner were members of the standing -- standing
11 personnel of the BH Army or members of the reserve; that is, active-duty
12 or reserve members.

13 I could quote other documents, but there is no doubt about the
14 position of the authorities that members of the reserve were considered
15 members of the BH Army.

16 I'm now going to summarise all this in 12 points.

17 Firstly, the crime of imprisonment under Article 5(E) of the
18 Statute and the crime of unlawful confinement of civilian under
19 Article 2(G) of the Statute can be committed only and exclusively in
20 relation to civilians.

21 Secondly, crimes of imprisonment, unlawful confinement, cannot be
22 committed by the internment of prisoners of war.

23 Thirdly, military-able men were not civilians until proved
24 otherwise.

25 Fourthly, Muslim HVO soldiers were not protected persons by

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1 international law. They were protected by national laws, and that is why
2 this Tribunal is not competent to decide about crimes committed against
3 one's own soldiers, irrespective of their ethnic affiliation.

4 Five, by internment of Muslim HVO soldiers and military-able men
5 of Muslim ethnicity who had the status of prisoners of war, crimes of
6 imprisonment, unlawful confinement, of civilians could not be committed.

7 Six, sub-item 1. On the 30th of June, 1993, Milivoj Petkovic,
8 upon the order of the supreme commander, issued an order that Muslim HVO
9 soldiers in the South-East Herzegovina Operative Zone be disarmed and
10 isolated and that military-able Muslim men shall also be isolated.

11 Sub-item 2. The order was lawful and justified by security
12 considerations. Sub-item 3, civilians were supposed to be protected.
13 And here we can see once more an excerpt from Petkovic's order, which is
14 document P3019.

15 Seventh conclusion. Civilians were not supposed to be detained
16 upon Petkovic's order. If a civilian was arrested, after all, he or she
17 had to be released immediately.

18 Eighth conclusion. Disarmament and isolation of Muslim HVO
19 soldiers and soldiers of the BH Army, both active and reserve, were not
20 an attack directed against the civilian population.

21 Nine, the disarmament and isolation of Muslims was not a
22 discriminatory measure, as was explained by the Appeals Chamber in the
23 Kordic case. I quote:

24 [In English] "The Appeals Chamber considers that the detaining
25 power must, within a reasonable time, process and decide whether detained

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1 persons are civilians. In the circumstances, the evidence does not
2 support that the HVO carried out blanket detentions of all Muslim
3 civilians, but rather suggests that men of military age between 18 and 60
4 were targeted."

5 [Interpretation] The 10th conclusion is that the crime of
6 persecution was not committed by internment of Muslim HVO soldiers and
7 military-age men of Muslim ethnicity because the victims of the
8 internment were not civilians and, therefore, the underlying act was not
9 a crime. Moreover, that internment was not part of an attack against any

10 civilian population.

11 Conclusion 11. In accordance with the Geneva Convention
12 number 3, Article 12, paragraph 2, prisoners of war may be transferred to
13 a third country which is a party to the Convention. The transfer of
14 prisoners of war is not a crime of unlawful deportation or transfer of
15 civilians.

16 And now a digression, with your leave.

17 The Petkovic Defence, Your Honours, did not go into the issue of
18 the transit centre in Ljubuski which was to be founded in July 1993
19 because it wasn't directly relevant for General Petkovic. And in our
20 final brief, we couldn't afford to go into matters that are not directly
21 essential for General Petkovic, so I will explain our position now.
22 Since military-able men of Muslim ethnicity were considered the
23 reserve army of the BH Army and, hence, they were prisoners of war, the
24 initiative to establish a transit centre at Ljubuski was absolutely
25 lawful and in line -- in keeping with the 3rd Geneva Convention,

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1 Article 12, paragraph 2. I remind you that the Herceg-Bosna authorities
2 contacted the UNHCR and UNPROFOR for help in the establishment of their
3 transit centre and the temporary transfer of prisoners of war to third
4 countries. The UNHCR, upon consultation with their headquarters,
5 concluded that they would thus contribute to ethnic cleansing, and
6 refused to provide assistance, after which UNPROFOR pulled out as well.
7 I think that these are facts for which there is ample evidence in the
8 case file, which will be very important when you decide about the
9 importance of this initiative, so I believe, Your Honours, that you will
10 take this into consideration when you draw your conclusions on all the
11 consequences of the situation in the detention centres.

12 11th conclusion. The JCE 1, as pleaded by the Prosecution, did
13 not exist.

14 THE INTERPRETER: Interpreter's correction: It is conclusion 12.

15 MS. ALABURIC: [Interpretation] Whether or not a JCE 2, with
16 regard to the conditions and confinement, actually existed is another
17 matter which we will deal in the continuation of our closing arguments.
18 Your Honours, I'm going to speak about the so-called Mrksic duty.
19 We will state very openly, as has been our habit in the past five years,
20 what, in our opinion, is the crucial thesis of these proceedings, such as
21 determining which stone in a bridge determines its firmness and
22 stability. We said that it's a status of the detained conscripts of the
23 BH Army or, in other words, the question whether they are prisoners of
24 war or civilians. The second most important question, to our minds, is
25 about the responsibility for a failure to act; that is, the admission of

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1 liability, which is Article 7, paragraph 3 of the Statute, and which is
2 also important for the question of responsibility under paragraph 7 --
3 Article 7, paragraph 1 of the Statute, which is about responsibility by
4 commission or by omission. The duties prescribed by law or the legal
5 duty to act we consider -- is something that we, the Petkovic Defence,
6 consider very important.

7 The Mrksic duty, what does the Prosecution say about that? To
8 begin with, let us take a look at the context of the Mrksic case. We
9 considered it most appropriate to show paragraph 1 from the
10 first-instance judgement, in which there is a brief description of the
11 context. I'll summarise it in one sentence.

12 The Yugoslav People's Army handed over at least 264 detainees to

13 Serb paramilitary units. The detainees were persons from the
14 Vukovar Hospital. So the essence of this case is that the
15 Yugoslav People's Army handed over detainees to Serb paramilitary units.
16 The duty of military commanders, or the so-called Mrksic duty as
17 determined in this case, does not exist if a military commander transfers
18 prisoners of war to the military police of their own armed forces, their
19 own civilian police, official prisons or detention facilities. The
20 reason for that is very simple, and I think it most appropriate to give
21 an example, an example from your life.
22 The military commander of the Herceg Stjepan Brigade from the
23 area around Konjic and Jablanica, in April 1993, transferred some 80-odd
24 soldiers of the BH Army taken prisoner in Sovici to the Ljubuski Prison.
25 That military commander stays in his area, that is, around Konjic and

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1 Jablanica, has no contact whatsoever with the Ljubuski Prison, and has no
2 authority over it. Therefore, he cannot be responsible for the treatment
3 of prisoners of war in that prison, and that includes the prisoners of
4 war he, himself, transferred to that prison. Accordingly, the military
5 commander's duty with regard to prisoners of war ceases at the moment
6 when he hands them over to the military police, the police, or the
7 detention centre over which that military commander has no de jure or
8 de facto authority, just as testified to by General Praljak,
9 General Petkovic and other witnesses.
10 Let us see what the Prosecution says about that in their final
11 brief in paragraphs 140 and 302. They refer to the Mrksic case and the
12 Appeals Chamber judgement, and more specifically paragraph 273. Briefly,
13 the Prosecution considers all prisoners in this case agents of the
14 detaining power and, therefore, they had a duty to protect the prisoners.
15 Let us look at the entire paragraph 73 from the Mrksic appeals
16 judgement. We will see that the duty to protect prisoners of war
17 concerns those who have custody of prisoners, and that's why an agent, in
18 the sense of the Mrksic duty, is not every military commander, or every
19 official in Herceg-Bosna, or any other territorial jurisdiction. An
20 agent is only one -- or only those into whose custody prisoners of war
21 have come into.
22 Let me conclude. The legal duty as identified by the
23 Appeals Chamber in the Mrksic case only applies to those agents of the
24 detaining power who find themselves with custody of prisoners of war,
25 that is, not any and every agent of that state, but only those who had

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1 that responsibility as they were effectively custodians of the prisoners
2 of war. Second conclusion, international law does not regulate the issue
3 of competence; it is left to each individual country to decide who is
4 responsible to deal with prisoners of war. Thirdly, the Prosecution did
5 not plead in these proceedings that any legislative enactment and/or
6 superior order delegated the duty to protect detainees in any detention
7 facility to the chief of the Main Staff. Number 4, there is no evidence
8 that any legislative enactment and/or superior order delegated the duty
9 to protect detainees in any detention facility to Milivoj Petkovic.
10 Number 5, there is no evidence that the chief of the Main Staff,
11 Petkovic, exercised control over any detention facility. Number 6,
12 Prosecution did not plead that Petkovic found himself with the de facto
13 custody over prisoners of war and/or other detainees. Number 7, there is
14 no evidence that Petkovic had de facto custody over prisoners of war.
15 And, finally, number 8, in conclusion, Mrksic's duty, even if it could be

16 applied in this case, certainly does not apply to Milivoj Petkovic.
17 The following topic regarding omissions, as explained by the
18 Prosecution, is the so-called Celebici duty to release prisoners. The
19 Prosecutor speaks about that in paragraph 308 of their final brief, and
20 it is said there, amongst other things, and I quote:
21 [In English] "By August 1993, all of the accused knew that they
22 had imprisoned thousands of civilian detainees ..."
23 [Interpretation] I'm skipping one part:
24 [In English] "All of the accused, therefore, had a duty to
25 release prisoners."

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1 [Interpretation] I would just like to say that in August 1993,
2 Petkovic was the deputy commander, and he had the right to decide to an
3 extent to which his commander or the joint [indiscernible] authorised him
4 to do so. However, what matters here is this: Duty to release prisoners
5 according to the international humanitarian law applies exclusively to
6 civilians and not to prisoners of war.
7 Let's look at Rule 128, Customary International Humanitarian Law.
8 It's very clear. There's no obligation to release prisoners of war
9 before the end of the conflict. The International Humanitarian Law does
10 not prescribe obligations pertaining to one's own soldiers, and also the
11 duty to release applies only to civilians. Based on that, we can
12 conclude this armed and interned Muslim HVO soldiers were not civilians.
13 Military-able men or military conscripts of the BiH Army were not
14 civilians, but rather prisoners of war. The Herceg-Bosna authorities
15 were not obliged to release Muslim HVO soldiers and military-able men
16 from their detention centres.
17 Your Honours, as I've already told you, we will not deal with
18 detention centres. We will touch upon the conditions in detention
19 centres, but we will be dealing with the prisoners' forced labour.
20 And now as I continue presenting my closing argument,
21 Your Honours, I would like to refer to the Prosecutor's argument about
22 commanding generals or occupation commanders, and that term applies
23 directly both to General Petkovic and General Praljak. In his final
24 brief, the Prosecutor speaks about that in paragraphs 154, 155, 156 and
25 324. There are some other paragraphs that touch upon the topic.

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1 In a nutshell, Generals Petkovic and Praljak, according to the
2 Prosecutor, shall be held responsible for aiding and abetting crimes
3 committed against civilians at the time when they were heads of the
4 Main Staff, for a simple reason: They were commanding generals at the
5 time.
6 Your Honours, we would like to draw your attention to the
7 following facts. This is the first mention of occupying commanders,
8 commanding generals, in these proceedings. No such thing was ever
9 pleaded in the indictment. No such thing was ever mentioned or explained
10 in the Prosecutor's pre-trial brief. This argument was never part of the
11 Prosecution's opening statement. This argument was never part of the
12 Prosecution case. The Prosecution did not lead any evidence to that
13 effect. The thesis about Petkovic and Praljak as occupying generals is
14 belated, and that's why it should be totally ignored by the
15 Trial Chamber, it should be totally disregarded. However, we will be
16 dealing with the Prosecutor's allegations, and we will try to demonstrate
17 to you that contrary to the Prosecutor's allegation, the alleged
18 obligation for protecting civilians in the occupying area was not, in

19 general terms, part of the commanding general's duties. A special
20 obligation to protect civilians in an occupied area concerned commanders
21 of the occupation army who is assigned or appointed to govern an occupied
22 territory.
23 First of all, let's deal with the issue of whether Herceg-Bosna
24 could ever be considered an occupied territory of Bosnia and Herzegovina.
25 To constitute an occupation as a matter of International Law, the

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1 occupation must be done by foreign forces. This arises clearly from the
2 1907 Hague Convention. This is beyond challenge in the legal theory, and
3 here we have presented an excerpt from the book "The International Law of
4 Belligerent Occupation" by Dinstein, and based on that we can conclude:
5 Since an occupier has to be a foreign force, the Croats of Bosnia and
6 Herzegovina cannot be occupiers in Bosnia and Herzegovina. Secondly,
7 Herceg-Bosna cannot be an occupying power in Bosnia and Herzegovina.
8 There's no dispute about the fact that there's a difference
9 between an international armed conflict, on the one hand, and occupation,
10 on the other. My learned friend Mr. Bozo Kovacic said a few words about
11 that, but I will also say a few words about that.
12 Firstly, every occupation is, beyond any doubt, an international
13 armed conflict. However, an international armed conflict does not have
14 to be occupation. The difference between occupation and an international
15 armed conflict arises from the level of control. For an international
16 armed conflict, there has to be the so-called overall control over the
17 territory of a different state, whether for an occupation to be in place,
18 there has to be effective control over the territory of another state.
19 Occupation is the question of fact, and the Prosecution has to prove the
20 fact of occupation beyond any reasonable doubt.
21 What I've just stated is very clear in legal theory, and I'm
22 offering another excerpt from the book, "The International Law of
23 Belligerent Occupation" and as well as from the book, "The International
24 Law of Occupation." And here we also have an excerpt from the
25 first-instance judgement in Naletilic judgement, paragraph 214. I

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1 believe that my learned friend Mr. Kovacic has already quoted that part,
2 and I will repeat:
3 [In English] "The overall control test submitted in the Blaskic
4 trial judgement is not applicable to the determination of the existence
5 of an occupation. The Chamber is of the view that there is an essential
6 distinction between the determination of a state of occupation and that
7 of the existence of an international armed conflict. The application of
8 the overall control test is applicable to the latter. A further degree
9 of control is required to establish occupation."
10 [Interpretation] Your Honours, we would like to draw your
11 attention to the fact that the Prosecution did not plead that Croatia
12 occupied Bosnia-Herzegovina.
13 Let's look at the indictment, first of all, paragraph 232, where
14 it says -- or, rather, this is the only paragraph where the term
15 "occupation" is mentioned at all.
16 We have prepared an excerpt from the Prosecution's pre-trial
17 brief, paragraphs 232 -- there are many of them. However, everything
18 boils down to the following. The Prosecutor is trying to demonstrate
19 there was an overall control, that Croatia was directly involved, that it
20 participated or intervened directly, the participation of the
21 Croatian Army. However, there's no single word about occupation or

22 effective control.

23 Let's look at the adjudicated facts. We have tried to single out
24 the most representative facts. Among the adjudicated facts, we can find
25 those that lead to the conclusion that the Republic of Croatia took part

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1 in the organisation, planning and co-ordination of military operations;
2 that Croatian Army units were involved in the conflict in the territory
3 of Mostar. It was also established that Croatian Army units were present
4 in the territory of Bosnia and Herzegovina; and that Croatia financed
5 and provided military equipment to the HVO; that Croatia was thus
6 involved in the control of the HVO forces, that Croatia exercised
7 indirect control; that Croatia also provided manpower and lent
8 substantial material assistance to the HVO. Again, Your Honours, look at
9 the adjudicated facts, and you will see that there is no mention of
10 occupation, there is no single word about effective control.

11 Let's look at what the Prosecutor says in his final brief. In
12 paragraphs 71 through 79, the Prosecutor speaks about an international
13 armed conflict. There is a chapter where it says that Croatia had
14 overall control, and then at Chapter 5 again there's a reference to
15 Croatia's overall control, and another chapter where it says that the
16 Croatian Army was extensively engaged in BiH. Therefore, save for the
17 parts which might refer to Generals Praljak and Petkovic, the Prosecutor
18 did not establish in his final brief that Croatia was an occupying force
19 in Bosnia and Herzegovina or that it had effective control and, I repeat,
20 effective control over the developments in Bosnia and Herzegovina.

21 Let's conclude.

22 Firstly, there is no documentary evidence that Croatia ever
23 occupied Bosnia and Herzegovina. Secondly, there is no testimony or
24 witness statement that Croatia occupied Bosnia and Herzegovina. I am
25 emphasising the word "occupy" or "the occupying force." Thirdly, there

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1 is no evidence that the Croatian Government had effective control in
2 Herceg-Bosna. Four, the Prosecution has tried over the past five years
3 that Croatia did have overall control, that Croatia gave substantial
4 support to the authorities in the HVO armed forces, and that the conflict
5 between the HVO and the ABiH, therefore, was not a civil war, but an
6 international armed conflict. All allegations would be unnecessary if
7 the Republic of Croatia had been an occupying force in the Republic of
8 Bosnia and Herzegovina. And now, number 5: The Prosecution neither
9 pleaded nor proved that Croatia and the Croatian Army occupied part of
10 Bosnia-Herzegovina. Thus, the Prosecution's submissions about occupation
11 presented at the very end of the proceedings should be totally
12 disregarded.

13 We would now like to put something else within the context, and
14 those are the contradictory statements on the part of the Prosecution
15 about occupation and an armed conflict co-existing on the same territory
16 at the same time.

17 First of all, let's present the following thesis: Armed conflict
18 or occupation are two alternatives. They cannot co-exist. You can
19 have -- you cannot have at the same time, in the same place, an armed
20 conflict, and then charge individuals pursuant to Articles 2, 4 and 5 of
21 the Statute, and allege that at the same time, in the same place, there
22 was also the state of occupation, which requires a much higher degree of
23 concern for the civilians who reside in such an occupied territory.
24 Let's look at an excerpt from the Geneva Convention 4, only a few

25 articles where the staple formulation is "conflict" or "occupation."

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1 There are even parts of the Convention which regulate situations that
2 exist during an armed conflict, and a special chapter which regulates the
3 situation on an occupied territory. It is beyond every doubt that
4 certain crimes may be committed only in an occupied territory, and they
5 cannot be committed during an armed conflict.
6 We would like to point out a comment from the
7 Additional Protocol 1, Commentary 1700, and I will quote from the
8 relevant portion of that commentary:
9 [In English] "Any part of territory in which the occupant has
10 been deprived of actual means for carrying out normal administration by
11 the presence of opposing military forces would not have the status of
12 occupied territory within the terms of Articles 2 and 42 of
13 The Hague Regulations."
14 [Interpretation] End of quote.
15 The jurisprudence of the case law of this Tribunal is incomplete.
16 Accord with that, I'm quoting from the first-sentence judgement from
17 Naletilic, paragraph 217:
18 [In English]"... battle areas may not be considered as occupied
19 territory."
20 [Interpretation] Based on that, Your Honours, we conclude that
21 the state of armed conflict, on the one hand, and the state of
22 occupation, on the other, cannot co-exist on the same territory, at the
23 same time. The Prosecutor, however, claims that the contrary is
24 possible, and then let's look at the situation that that may lead to.
25 The Prosecution claims in the indictment and tried to lead

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1 evidence that major conflict between ABiH and the HVO was avoided until
2 April 1993, and that from then until April 1994, there was continued
3 fighting in Mostar and other areas. You can find this in paragraph 32,
4 111, 232 and 234 of the indictment. I will repeat the paragraph numbers.
5 32, 111, 232 and 234.
6 Pursuant to this assertion, that there were continuing conflicts
7 in the area, the Prosecution submitted a number of allegations for your
8 assessment based on Articles 3 and 5 of the Statute, the acts which can
9 be committed only during an armed conflict. That is why the
10 Prosecution's assertion about continued fighting contradicts their
11 assertions on the simultaneous state of occupation.
12 We'd like to turn your attention to some evidence which clearly
13 establishes the state of armed conflict from April onwards. There were
14 conflicts in the area of Konjic and Jablanica as of April onwards,
15 Central Bosnia from April on, Prozor from April onwards, Mostar from May,
16 with a short interim period until the 30th of June, and onwards. In
17 June 1993, Travnik fell in Central Bosnia. In June, Kakanj fell. Yes, I
18 believe it was June, I believe. I must check that over the break. On
19 the 30th of June, 1993, as we have already mentioned, the ABiH takes the
20 territory to the east and south of Mostar. In July, they take control of
21 the area towards Buna. In July 1993, the AB and H take control of
22 Fojnica. In the same month, Bugojno and Doljani fell. As of July 30,
23 1993, there is combat in the Neretva Valley. In October, the AB and H
24 took control of some villages in Vares municipality. And in November
25 1993, AB and H took control of Vares town.

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1 As a separate example of confusion in the Prosecution
2 allegations, we want to point out Mostar. In their final trial brief, in
3 para 344, they state that all of West Mostar became occupied territory,
4 at the latest, on the 9th of May, 1993. Therefore, the Prosecutor
5 asserts that on the day the conflict broke out in Mostar, Mostar became
6 occupied territory. We wanted to indicate some undisputed facts to you.
7 The conflict between the HVO and the Army of Bosnia-Herzegovina
8 began in Mostar on the 9th of May, 1993. Municipal HVO government, with
9 Jadran Topic at the helm, was established in May 1992, and was not
10 changed on the 9th of May, 1993. Herceg-Bosna central bodies were
11 established in April and May 1992, and their authority in Mostar was not
12 changed on the 9th of May, 1993. On the 9th of May, there was no change
13 in terms of authorities in Western Mostar. On the 30th of June, an
14 all-out war broke out in Mostar, lasting until the Washington Agreements
15 were signed. Our conclusion, therefore, is unambiguous. Facts disprove
16 Prosecution's allegations about occupation in Mostar as of 9 May 1993
17 onwards.
18 A few words about occupation state of administration, given that
19 both General Praljak and General Petkovic are charged as occupational
20 governors.
21 The system of administration on an occupied territory was
22 discussed in numerous sources, and we will quote one, for example, the
23 Benvenisti "International Law of Occupation."
24 It is stated that in occupied territory, there can be a system of
25 military administration or a civil one, or a mixture of both.

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1 In the manual of the UK Ministry of Defence, it is stated that in
2 an occupied area, a military or civil government may be established.
3 Therefore, it is asserted that the system in an occupied territory may be
4 a civilian, a military, or a mixed one. A system of authority in a
5 specific area is a matter of fact which needs to be proven beyond any
6 reasonable doubt by the Prosecution.
7 If we completely disregard the fact that Herceg-Bosna was not an
8 occupied part of the territory of Bosnia-Herzegovina, we should deal
9 briefly with the system of administration in Herceg-Bosna as pleaded by
10 the Prosecution. They state that civilian authorities existed in
11 Herceg-Bosna, such as the Presidency, presidents, government, ministries,
12 civil and military judiciary, and civil and military police. The
13 Prosecution asserts that there was civilian control over the military.
14 In parts of their final brief concerning responsibility of government
15 officials, it is stated that the system of control in Herceg-Bosna was a
16 civilian one, as asserted in para 361 of the final trial brief.
17 Therefore, the Prosecutor does not at all assert that a military
18 commander was tasked with running Herceg-Bosna. The Prosecutor knows and
19 asserts that civilian authorities ran the area.
20 We wanted to point out, Your Honours, that the Prosecution
21 incorrectly interprets the duties of occupying commanders.
22 Let us look yet again at paragraph 324 of their final trial
23 brief. Petkovic and Praljak, in their respective periods and mandates,
24 were, according to the OTP, responsible for the commission of crimes
25 committed against civilians, irrespective of their knowledge, ignorance,

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1 measures undertaken, and all other circumstances. Namely, with the
2 exception of this paragraph in this case, there is not a single

3 Prosecution submission which defined differently the responsibility of
4 occupying commanders, simply because there were no such assertions made
5 up to that point. In order to interpret the duties of occupying
6 commanders in this way, one would need a sound basis in international
7 humanitarian law, which does not exist.

8 We prepared a few excerpts from the High Command case for you,
9 Your Honours, which we wanted to present to you in order to show the
10 following: that the occupying commander is the commander entrusted with
11 executive authorities. If you look at this first excerpt, you can
12 clearly see that the phrase "endowed with executive power" is mentioned.
13 Therefore, a military commander lacks executive power unless specifically
14 tasked with it.

15 The second excerpt indicates the knowledge and information at the
16 disposal of the commander about crimes committed and that he must have
17 known in order to be culpable.

18 The third excerpt speaks of executive authorities which have to
19 be endowed -- delegated to the commander.

20 The next excerpt speaks of the lack of general presumption of the
21 commander's knowledge about the crimes; that is to say, the burden of
22 proof is with the Prosecution in order to prove that the occupying
23 commander had the requisite knowledge.

24 In the fifth excerpt, we wanted to show you a part of a judgement
25 which has to do with the von Leeb. I hope I have pronounced that

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1 properly. I quote:

2 "We are, therefore, unable to find from the evidence submitted
3 that the defendant, von Leeb case. I hope I pronounced that properly. I
4 quote:

5 "We are therefore unable to find from the evidence submitted that
6 the defendant, von Leeb, had knowledge of the murder of civilians within
7 his area by the Einsatzgruppen or acquiesced in such activities.

8 "Nor is it established from the evidence that the defendant
9 participated in the recruitment of slave labour from the Reich."

10 Therefore, the responsibility of an occupying commander is not
11 presumed. It must be proven.

12 The last excerpt from the High Command case is something of
13 interest for these proceedings, because it has to do with the siege of
14 Leningrad. If any of us heard of any horrific sieges throughout human
15 history, it would probably be those who heard of Leningrad, and the
16 conclusion is as follows: We are sorry to say that the law is as such,
17 but that no crime was committed in the case of the siege of Leningrad.
18 I wanted to conclude this part by saying that Herceg-Bosna was
19 not an occupied part of Bosnia and Herzegovina, in our view. Therefore,
20 we can conclude the following: Not every military commander on the
21 occupied territory is a military governor or a commanding general. A
22 commanding general in an occupied territory is that commander which was
23 appointed governor, entrusted with administrative tasks and those of the
24 executive authorities. Duties and responsibilities of a particular
25 military commander within an occupied territory is a question of fact,

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1 and the Prosecution has to prove them beyond reasonable doubt. The
2 criminal responsibility of occupying commanders is a form of command
3 responsibility defined in Article 7(3) of the Statute. The Prosecution
4 proved that the government in Bosnia and Herzegovina was a civilian one
5 and the civil had control over the military. We wanted to reiterate yet

6 again that this does not include operational command. The Petkovic
7 Defence was clear on the point. Jadranko Prlic, as the HVO government
8 president, did not issue orders to the military, in terms of operational
9 orders. Bruno Stojic, as the minister of defence, never issued an order
10 to General Petkovic to undertake a specific combat operation or activity
11 by any unit of the HVO. We'd like to close this topic of occupational
12 governors by having said this with regard to General Petkovic.

13 Your Honours, is this a suitable time for the break?

14 JUDGE ANTONETTI: [Interpretation] Very well. This will be our
15 last break of 20 minutes for the day. Thank you.

16 Stand up, please.

17 --- Recess taken at 5.30 p.m.

18 --- On resuming at 5.54 p.m.

19 JUDGE ANTONETTI: [Interpretation] We are going to continue with
20 this hearing.

21 Ms. Alaburic, you have the floor.

22 MS. ALABURIC: [Interpretation] Thank you, Your Honours.

23 I know that it is tedious to listen to a single person for such
24 an extended period of time, but this was the only way we could organise
25 ourselves.

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1 To continue with our closing arguments, we'll briefly look at the
2 closing arguments of the Praljak Defence. It was not our intention to
3 respond to the final briefs and closing arguments of other Defences,
4 believing that in the past five years we have had ample opportunity to
5 say everything we deemed relevant. However, one assertion was made
6 during the closing argument by General Praljak's counsel, and it was that
7 assertion which drove us to change our previous decision. Let us have a
8 look at what it actually is.

9 It has to do with something that was stated at Page 52484 and
10 52485, with regard to document P1236. It is a -- P1163, which is under
11 seal. I would like to ask that it not be broadcast, and I will strive
12 not to refer directly to the contents of the document, itself.

13 General Praljak's counsel said as follows:

14 [In English] "In the oral presentation, the Prosecutor referred
15 to document P1163, page 3, indicating that General Praljak was in Mostar
16 before he came to Prozor, and that he issued an order to Miro Andric.
17 The Prosecutor found his conclusion on the fact that the general is
18 mentioned in the text of this document. However, the general's name is
19 not mentioned. But, in any case, the Prosecution concludes that the
20 general is Slobodan Praljak and that he was the one who issued the order
21 in Mostar because General Petkovic was in Geneva. However, on the 15th
22 and 16th of January, 1993, General Petkovic was not in Geneva."
23 [Interpretation] End of quote.

24 There is reference made to a document in the text that follows,
25 confirming that Milivoj Petkovic was in Mostar in the course of those few

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1 days. The counsel concluded by saying:

2 [In English] "So the Prosecution erroneously refers to this
3 document so that the Trial Chamber would also draw a wrong conclusion
4 from it."

5 [Interpretation] End of quote.

6 Given that this is a direct suggestion that the message Andric
7 mentioned in document P1162 is a message from his commander, who was a
8 general based in Mostar, and that this document refers to

9 General Petkovic, allegedly, it is this Defence that wishes to draw your
10 attention to the following: The assertion in this document about a
11 general in Mostar cannot be in regard to -- with regard to
12 General Petkovic because General Petkovic at that point in time was not a
13 general. At that point in time, he was a brigadier, which can be seen in
14 all the documents he issued whereby he stipulates his military rank. We
15 prepared one such document, which is P1322, Petkovic's order of the 27th
16 of January, 1993. The contents are unimportant at this point in time.
17 We can see, however, that in January 1993, Milivoj Petkovic was a
18 brigadier. Therefore, a general in Mostar referred to in the document
19 could not have been Milivoj Petkovic.
20 We would like to draw your attention to a paragraph in the
21 Praljak Defence final brief, which is paragraph 406, which says, I quote:
22 [In English] "Slobodan Praljak was not, prior to action taken by
23 the HVO (including units Maturice and Apostoli from Kiseljak), informed
24 about assessment of Ivica Rajic, nor was he informed which action the HVO
25 forces are taking. When the accused did receive the information

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1 (3D00823) of Ivica Rajic on 23rd October 1993, it was later that day or
2 in the evening. After receiving this information, the accused Praljak
3 reacted promptly. On the same day at 1110 hours, he sent a message to
4 Petkovic, advising him to settle down the situation in Vares without
5 mercy to anyone and to find the men who are up to time and task. It must
6 be noted that Praljak did not order Petkovic to do anything. He merely
7 offered him an advice. If Praljak, as the commander of General Staff,
8 considered it necessary, he would surely say so. He would surely write
9 down the word 'order.' It is logical that, instead, Praljak chose to
10 offer only a piece of advice or suggestion to Petkovic because Petkovic
11 was on the field. He could easily obtain any additional information
12 needed for proper decisions, and Petkovic was commander of the area
13 (de jure and de facto) pursuant to the previously issued orders."
14 [Interpretation] End of quote.
15 What I would like to draw the Bench's attention to is the
16 allegation that Petkovic then was the de jure and de facto commander of
17 the area pursuant to previously issued orders. These orders -- or,
18 rather, documents are mentioned in footnote 550. In the right-hand
19 column of this table, you can see the documents cited in that footnote.
20 The first document is 3D1161. That's an order of
21 General Slobodan Praljak on the organisation of duty operations shifts in
22 the Main Staff. And the second document is 3D2756, also
23 General Praljak's order about the composition of the duty operative team
24 from the 22nd until the 29th of October, 1993. The third document is an
25 order issued by General Petkovic on 4 November 1993 about the area around

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1 Kiseljak. The document number is P6408.
2 Therefore, Your Honours, the Praljak defence that pursuant to
3 these orders about duty shifts in the Main Staff, General Petkovic had
4 de jure commander's powers in Central Bosnia, we will not comment on
5 those allegations, but we leave it to you to assess its validity based on
6 the documents as cited in the footnote.
7 Now we will deal with analysing the Prosecution's closing
8 arguments, which was presented by my learned friend Ms. West and partly
9 by my learned friend Mr. Scott.
10 Ms. West, as you can see here, tried to put it to us that the
11 Petkovic Defence claims that Petkovic never took part in a meeting with

12 President Tudjman, but the OTP have found out that he did, after all,
13 attend a meeting with President Tudjman on the 5th of November, 1993, in
14 Split. Let us take a look at the Petkovic final brief about that meeting
15 with President Tudjman in Split. The Petkovic Defence mentions it in at
16 least three paragraphs. These paragraphs are 464, 532 and 537.
17 The Prosecution tried to put it wrongly to the Trial Chamber that
18 the Petkovic Defence tried to hide our client's participation in the
19 meeting on the 5th of April, 1993, meeting in Split, where
20 President Tudjman was. They tried to show that Mr. Petkovic attended
21 various meetings about the strategy in Herceg-Bosna and political issues,
22 and so the OTP, on transcript pages 52013 and the following, states that
23 Petkovic did participate in at least two very important meetings. They
24 mention a meeting in Zagreb, in Tudjman's office, in April 1993.
25 We would like to point it out to you, Your Honours, what is said

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1 in the annex of the Petkovic final brief, Annex 1, page 2, that is, where
2 you see excerpts from decisions that were signed or excerpts from the
3 joint statement and its annexes as signed at the meeting in Zagreb on
4 25 April 1993. This is a joint statement signed by Izetbegovic,
5 Boban and Tudjman, and the supplement -- or the military supplement to
6 the joint statement, signed by Halilovic and Petkovic. This document has
7 been shown in this courtroom by the Petkovic Defence zillions of times,
8 and we will show it yet again in our closing arguments. For the time
9 being, I'll say this was a meeting of the Muslim and Croatian side in
10 Bosnia-Herzegovina, in President Tudjman's office, in the presence of the
11 international community, so this is not a meeting of Croatian politicians
12 who discussed a strategy of whatever sort or other things in
13 Herceg-Bosna, as the Prosecution wishes to present it. We do consider
14 this meeting as one of the most important events, and it really has
15 nothing to do with any agreements about criminal objectives of
16 Herceg-Bosna.
17 On transcript Page 52016, it says that the Petkovic Defence does
18 not mention his report for 1992; it only mentions it in its annex. And
19 they say that the report was allegedly issued by Petkovic. Your Honours,
20 please take a look at the excerpt that you'll see in this table on your
21 screens, and you will see that the documents allegedly issued by Petkovic
22 in this annex of ours are marked red. The report for 1997
23 [as interpreted], P907, is under item 1, and you see that it is not
24 mentioned -- it is not marked red. This report was used by our Defence
25 many times, and we used it in our closing argument, and we will use it

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1 again because we consider it extremely important. We would like to point
2 it out that the OTP falsely puts it to the Trial Chamber that the
3 Petkovic Defence wishes to hide something or that it wrongly qualifies
4 any document issued by Petkovic.
5 On Page 52027, we see the Prosecution's claim:
6 "Petkovic claims that the brigade commanders did not report to
7 him ..."
8 Your Honours, among other things, we would like to draw your
9 attention to paragraph 70 of the Petkovic Defence final brief, where it
10 says clearly that the commander of the Main Staff was superior to a
11 brigade commander and other military commanders in all issues regarding
12 combat. We have shown many reports that military commanders sent to both
13 Mr. Petkovic and the Main Staff, so that General Petkovic never renounced
14 the brigade commanders of the HVO or other military commanders. What we

15 have clearly pointed out to the Trial Chamber in these five years is the
16 following: that the chief of Main Staff had no authority over the
17 Convicts Battalion and that the chief of Main Staff had no authority over
18 the military police or the civilian police, except where they were
19 re-subordinated to the Main Staff or any military commander.
20 The following allegation we want to comment upon is mentioned on
21 transcript Page 52028. It is about documents that define the tasks of
22 the Main Staff. Ms. West said that the arguments of the Petkovic Defence
23 refer to only two HVO pieces of legislation, and the stress was on "only
24 two." What we wish to say is that it's true, only two, for the simple
25 reason that there are no more. There were only two. So if you want to

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1 see what the duties of the chief of Main Staff were under the law, what
2 you will have to consult are these very two pieces of legislation. By
3 this allegation, the Prosecution falsely implied the existence of any
4 other laws or regulations which the Petkovic Defence consciously omitted.
5 That is why we want to state clearly and unambiguously that these two
6 pieces of legislation are the ones that set out the authority of the
7 Main Staff.
8 On transcript Page 52029, developing this thesis about only two
9 pieces of legislation, Ms. West says that -- mentions exercise in
10 linguistic gymnastics and mentions P289 and P586, and then she says, I
11 quote:
12 [In English] "The reason I am not going to do the analysis here
13 is this: No matter what these documents say about Petkovic's competence
14 as chief of the Main Staff, the Trial Chamber must look to what happened
15 in fact, what happened on the ground, to see the real picture."
16 [Interpretation] End of quote.
17 In the right-hand column, Your Honours, we show excerpts from the
18 documents I mentioned, so you can see for yourselves what they say and
19 determine what the legal duties and obligations of the chief of
20 Main Staff of the HVO were.
21 What we wish to comment on now is the appeal of the Prosecution
22 to the Trial Chamber not to heed laws and regulations, but instead to
23 focus on the events on the ground. We would like to say to you that both
24 matter, laws and regulations, on the one hand, and the situation on the
25 ground, on the other. The appeal to disregard laws and regulations and

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1 focus only on events on the ground surprises us because, based on our
2 analysis of all the laws and regulations, this trial is actually a trial
3 for commission by omission. Commission by omission and aiding by
4 abetting by omission are the very crux of these proceedings. To assess
5 responsibility under these headings, you must determine the legal
6 obligation to act, and that can only be determined by looking at laws and
7 regulations. We cannot sentence somebody for omission and only determine
8 the facts about what he did, and a precise analysis of the laws and
9 regulations of Herceg-Bosna is a precondition for a fair verdict. That
10 is why we dealt extensively with laws and regulations in our defence and
11 attempted to give our opinion about what the laws and regulations of
12 Herceg-Bosna say about the duty of the chief of Main Staff to do or omit
13 to do something. I believe that you will also analyse these laws and
14 regulations and draw your conclusions from them.
15 We would also like to stress something else in this context;
16 namely, that we never contested the position of the chief of Main Staff
17 in the operative chain of command, and I stress the word "operative,"

18 because this operative chain of command has to do with combat activities.
19 What we have alleged in these proceedings and tried to prove is that the
20 chief of Main Staff was not in the chain of command or the chain of
21 subordination for regular tasks of the military police, the SIS, and
22 other non-combat activities, from the remit of individual bodies of
23 Herceg-Bosna. We also attempted to show that the Main Staff had no
24 authority over detention centres. Whether or not we have been successful
25 in that respect is up to you to decide, Your Honours.

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1 The following submission of the Prosecution we would like to
2 comment on is recorded on Page 52031 of the transcript. Ms. West said, I
3 quote:
4 [In English] "Mr. Scott mentioned this chart as well, and it's
5 clearly contrary to the Defence position that Petkovic was not in command
6 and control of the armed forces."
7 [Interpretation] End of quote.
8 I must admit, Your Honours, that after this allegation put
9 forward by Ms. West, General Petkovic asked me, What did you write in
10 your final brief for the Prosecutor to say this?
11 Please take a look at the schematic on the right-hand side. This
12 is also a Defence document of the Petkovic Defence, 4D618. This document
13 was used by General Petkovic when he was examined in the Blaskic case, so
14 it was used some 10 years ago or so, and we wanted it to be an exhibit in
15 this trial because it shows what General Petkovic said in another trial
16 without knowing that he would be -- he would stand trial here one day.
17 And it is important information that the Convicts Battalion is not in the
18 system of responsibility of the Main Staff. This was a chart that we
19 used during our case. And based on it, we examined many of our own
20 witnesses and other witnesses, and Generals Petkovic and Praljak also
21 testified about it. Let me, therefore, repeat once more. It is
22 uncontested that the chief of Main Staff was part of the chain of command
23 and in exactly the manner as stated by the witnesses of the
24 Petkovic Defence, as we have mentioned it in our final brief.
25 Further on, on transcript Page 52039, the Prosecutor referred to

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1 paragraph 212 in the Petkovic Defence final brief and said -- actually,
2 they quoted one part of our paragraph 212 and then they said:
3 [In English] "Now the brief does not give any citation for this
4 assertion that the government only is responsible and not anyone else,
5 and there is no source listed."
6 [Interpretation] Your Honours, look at the entire paragraph 212
7 of the Petkovic Defence final brief, and you will see that there is a
8 footnote there, footnote 410. Furthermore, look at the documents
9 referred to in that footnote, in footnote 410. We have prepared parts of
10 the regulations that we referred to when we compiled paragraph 212 of our
11 final brief. Allow me to read what we wrote there. In annex to the 1907
12 Hague Convention, it is said, and I quote:
13 [In English] "Prisoners of war are in the power of the hostile
14 government, but not of the individuals who captured them.
15 "Article 7: The government into whose hands prisoners of war had
16 fallen is charged with their maintenance.
17 "Article 14: An inquiry officer for prisoners of war is
18 instituted on the commencement of hostilities in each of the belligerent
19 states and, when necessary, in neutral countries which have received
20 belligerence in their territory. It is the function of this office to

21 reply to all inquiries about the prisoners. It received from the various
22 services concerned full information respecting internment and transfers,
23 releases on parole, exchanges, escapes, admissions into hospitals,
24 deaths, as well as other information necessary to enable it to make out
25 and keep up to date an individual return for each prisoner of war."

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1 [Interpretation] The second document that we referred to in the
2 footnote is the Geneva Convention III. I quote:

3 [In English] "Article 12: Prisoners of war are in the hands of
4 the enemy power, but not of the individuals or military units who have
5 captured them."

6 [Interpretation] The commentary of the International Committee of
7 the Red Cross, the first sentence reads, I quote:

8 [In English] "The logical consequence is that prisoners of war
9 are not in the power of the individuals or military units who have
10 captured them. They are in the hands of the state itself over which
11 these individuals or military units are only the agents. The present
12 provision, which formally establishes this principle, reproduces the text
13 of Article 2, paragraph 1, of the 1929 Convention, which, in turn, was
14 derived from Article 4, paragraph 1, of The Hague Regulations of 1907."

15 [Interpretation] We would also like to point to a completely
16 erroneous conclusion by my learned friend from the Prosecution. She
17 claims that the Petkovic Defence claimed that only the government was
18 responsible for the treatment of POWs. There is no such claim in our
19 final argument. Within that context, it might be of some interest to
20 remind everybody that Mr. Scott arrived at a completely different
21 conclusion, based on our final brief. On the one hand, Ms. West
22 concludes that only the government was responsible, whereas Mr. Scott
23 concluded that the Petkovic Defence considered the Ministry of Defence
24 and the military police as persons responsible for the treatment of
25 prisoners of war in detention centres.

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1 A large part of the closing argument of our learned friend from
2 the Prosecution was dedicated to artillery fire and the responsibilities
3 of those responsible for the artillery, and that is recorded on
4 pages T-52061 and P52064 [as interpreted]. Those assertions, briefly,
5 concern the fact that the Main Staff had responsibilities over the
6 artillery, that Milivoj Petkovic, as the chief of the Main Staff, had
7 full authority over the artillery, and that he used those authorities,
8 that he exercised his rights.

9 We shall deal with the part of the documents that were of some
10 relevance for this topic. The first one is P04131. This is an order
11 issued on the 12th of August, 1993, about the changes in the chain of
12 command which were to be implemented when General Praljak took over the
13 command of the Main Staff. Under item 2, you will see entirely that it
14 was decided for the Rocket Battalion to be subordinated directly to the
15 Main Staff. General Praljak testified at great length about that. He
16 explained why the artillery fire was being centralised by this decision.
17 Other witnesses confirmed that in their testimonies. Among them was also
18 Petkovic's witness, Maric. It is very clear in the document that up to
19 that moment, the Rocket Regiment was never subordinated to the
20 Main Staff. If the Rocket Regiment had ever been subordinated to the
21 Main Staff, General Praljak would have never issued an order to this
22 effect, it would have been unnecessary. Therefore, it is completely
23 erroneous to conclude that Milivoj Petkovic, as the chief of the

24 Main Staff, had authorities that did not exist before the 12th of August, 25 1993, and that person number 1 of the Main Staff never had.

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1 Let's look at the following document, which is P6950. Towards
2 the end of November, 1993, the commander of the South-East Herzegovina
3 OZ, Mr. Miljenko Lasic, sent a request to the chief of the Main Staff,
4 Ante Roso, for the Rocket Regiment to be returned under the authority of
5 the OZ, which used to be the South-East Herzegovina OG.
6 On the 1st of December, 1993, document P6990 was sent by the
7 chief of Main Staff, Ante Roso, and by that order he re-subordinated the
8 Rocket Regiment to the Military District of Mostar until further
9 proceedings. It arises unambiguously from these documents that the
10 Main Staff at the time, and Milivoj Petkovic was its chief, was not in
11 command of the Rocket Regiment. There is no reason whatsoever not to
12 establish very clearly what happened and what the sequence of events was.
13 We will be able to do that if we analyse all of the documents and if we
14 see what the relationship between those documents is.
15 Furthermore, in their closing argument, on Page 52064, the
16 Prosecutor stated that one document, dated 22nd July, showed that
17 General Petkovic, prior to leaving his office as the chief of the
18 Main Staff, had requested data on artillery, and this, according to them,
19 was a clear suggestion that there was a combat being prepared. As you
20 can see from the quote, the document has been admitted under P343.
21 And now let's look at the document on the right-hand side. The
22 document was indeed issued on the 22nd of July, but not in 1993, as has
23 been suggested by the Prosecutor, but rather in 1992. In other words,
24 that document was issued in mid-1992, when the Main Staff of the HVO
25 still didn't have a clue what kind of artillery pieces were in the hands

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1 of their units on the ground, but when the Main Staff tried to gather
2 information as to what kind of artillery power the HVO had at its
3 disposal. The Prosecution completely erroneously suggested to the
4 Trial Chamber that Petkovic did something immediately around the time
5 when he left his position. They did that by missing the date of the
6 document by merely a year.
7 Your Honours, I would like to point out to one part of the
8 closing argument delivered by my learned friend Mr. Scott that refers to
9 General Petkovic.
10 My learned friend Mr. Scott, inter alia, on page P51848,
11 mentioned a document, 35377, that the document was issued by
12 General Petkovic, and that document says, inter alia -- I'm repeating the
13 document number -- first the page number, P51848 and then the document
14 number P377. P377 is the document number, and the page number is
15 correct, yes. Very well.
16 My learned friend Mr. Scott quoted one part of the order dated 10
17 August 1992, where it says, and I quote:
18 [In English] "Use all available HVO civilian and military police
19 forces to prevent any military units, other than the HVO, from entering
20 your area of responsibility. This is solely HVO territory. None others
21 are welcome. None others will be accepted. You are to advise the staff
22 on the presence of any unit other than the HVO."
23 [Interpretation] On the right-hand side of this page,
24 Your Honours, we are providing you with the integral text of this order
25 issued by Petkovic, and we would like to draw your attention to the fact

1 that this order was sent to the following cities: Livno, Tomislavgrad,
2 Posusje, Siroki Brijeg, Mostar, Capljina, Ljubuski and Citluk. At that
3 moment in the month of August 1992, BiH Army units existed only in the
4 territory of Mostar. As for the other municipalities, there were no HVO
5 units there. And if you -- I apologise. There were no BiH Army units
6 there. I thank my colleague for the intervention. So the only
7 municipality where a BiH Army unit existed was Mostar; nowhere else.
8 That fact would have been reasonable grounds to ask ourselves as to what
9 hid behind the order issued by Brigadier Petkovic. Was there another
10 reason, and not what was suggested to us by the Prosecutor? Why did
11 General Petkovic put a ban on the entry of BiH Army units? We believe
12 that the answer lies in P391. This is the minutes of the HZ-HB session
13 which was held on the 14th of August, 1992, in Grude. If we look at the
14 last lines of the excerpt, we will see that a warning was issued at the
15 meeting to the effect that the HVO was privy to the information that the
16 HOS were poised to take over in Ljubuski, Capljina, and other
17 municipalities in that part of Herzegovina. Within that context,
18 Petkovic's order issued in August 1992 cannot be interpreted in any other
19 way but as an order that is relative to the HOS and not to the BiH Army.
20 And now, Your Honours, with regard to this type of interpretation
21 of documents, and drawing conclusions either based on the erroneous
22 interpretation of entire documents or parts thereof, I would like to
23 remind you that all Defence teams, those who were delivering their
24 arguments before me, invited the Trial Chamber to carefully analyse each
25 and every document and to analyse their context. Otherwise, if you don't

1 do that, by combining selected parts of documents, irrespective of the
2 date when they were created, irrespective of the participants and the
3 context, any kind of picture could be created, as is indeed possible
4 according to the mosaic theory. If you take parts of certain documents
5 and put them together, you can get whatever you wish. However, proper
6 reading of documents, proper reading of context, can bring us closer to
7 the truth.

8 And now, Your Honours, we will embark on our commentary of the
9 Prosecutor's final brief, although I believe that whatever I have done so
10 far is pretty tiring, so if you don't mind, if it's all the same to you,
11 I don't mind continuing tomorrow instead of today.

12 JUDGE ANTONETTI: [Interpretation] Please continue now. We still
13 have 20 minutes left.

14 MS. ALABURIC: [Interpretation] Very well.

15 Let's start analysing the Prosecutor's final trial brief.

16 In paragraph 3 of its final trial brief, the Prosecutor says:
17 [In English] "This is especially true of the testimony of the
18 accused Praljak and Petkovic, who lied repeatedly when they were not
19 evading questions on important issues. Their self-serving testimony is
20 entitled to little weight."

21 [Interpretation] The Prosecutor, therefore, claims about
22 General Praljak and about General Petkovic that they both lied. Of
23 course, I'm going to provide comments only with regard to the parts
24 dealing with General Petkovic.

25 Further on, the Prosecution doesn't give us a single example to

1 corroborate their claim that General Petkovic lied in his testimony. We

2 believe that such a claim in a final brief is inappropriate, and if
3 anybody in -- if nobody in the courtroom, when examining their witnesses,
4 was not able to prove that they are lying, that it is inappropriate for
5 them to claim something like that in their final brief. We also believe
6 that it is an inappropriate expression, when we look at paragraph 867 of
7 the Prosecution's final trial brief, where it says, inter alia, and I
8 quote:

9 [In English] "The meaning couldn't be clearer, and Petkovic's
10 assertions are comical, at best, and dishonest, at worst."

11 [Interpretation] We also believe it to be completely
12 inappropriate to state what was stated in para 868, that Petkovic was
13 trying to convey something through Praljak. General Praljak spoke on his
14 behalf, much as General Petkovic did, as well as all the other
15 participants of the meeting referred to in that paragraph. We won't
16 comment upon this mode of expression, but we merely wanted to note that
17 it is entirely inappropriate as part of a final trial brief in
18 proceedings such as this.

19 In several paragraphs in their final trial brief, the OTP
20 referred to document P279 let's look at paragraph 11 for that purpose.
21 It is stated as follows for General Petkovic:

22 [In English] "The accused intended to achieve Croat control over
23 Herceg-Bosna through deportation and forcible transfer, together forcible
24 displacement. As early as June 1992, Petkovic cited the need to
25 establish Croatian rule over all municipalities."

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1 [Interpretation] In paragraph 861, this speech is mentioned as
2 well, as well as in 864. I must admit that while reading the OTP final
3 brief, my impression was that there was a number of speeches or
4 contributions, and only then I realised that the Prosecutor kept going
5 back to one single document. So let's look at that document together.
6 It is P279. You are familiar with it, Your Honours, since, on the basis
7 of that document, you put many questions to General Petkovic. Let's look
8 at how the document opens. I quote:

9 [In English] "General, gentlemen of municipal leadership and
10 commanders of HVO units, today we shall analyse current operative and
11 tactical situation, further intentions and tasks, and consider all the
12 problems that we have and are confronted with that need urgent solutions.
13 Agenda of this meeting has been created to serve that purpose. We have
14 to give proper answers to the questions and problems that we shall talk
15 about. (Inform about the agenda.)"

16 [Interpretation] Based on this introductory part of the document,
17 one concludes that it is completely unambiguous that this is not a
18 written report, but a draft speech that was supposed to be held at a
19 meeting which was supposed to be attended by a general. It was
20 General Bobetko. In attendance, there should also have been members of
21 municipal authorities and commanders of certain areas.

22 The first and basic question to put is this: If we realise that
23 a document is a draft speech, we must ask ourselves whether it was ever
24 held or not, because if it had not been, then there is no actus reus,
25 there is no activity which would initiate anything. The Prosecutor did

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1 not offer a single piece of evidence that General Petkovic indeed made
2 this speech, as drafted in this document. On the other hand,
3 General Petkovic's Defence provided the following proof:
4 General Petkovic explained what took part at the meeting. He also said

5 that he never made the speech, and that rather, standing in front of a
6 map, he explained the situation in the field. This was at transcript
7 page 49351, 49351 to 49353. Our witness, General Beneta, confirmed that
8 General Petkovic spoke in front of the map, addressing directly those in
9 attendance while he was not reading out of anything. General Beneta's
10 testimony is at transcript page 46606 to 46607.

11 With regard to this document, Your Honours, we also wish to draw
12 your attention to one part of it that you can see on the screen, which
13 contains a list of municipalities whose representatives were supposed to
14 have attended the meeting. Let's have a look at what those
15 municipalities were: Mostar, Siroki Brijeg, Citluk, Ljubuski, Capljina,
16 Grude, Stolac, Neum, and Ravno.
17 If you recall the testimonies of General Beneta and of
18 Bozo Pavlovic, as well as of General Praljak and General Petkovic, you
19 will see that in June 1992, it was precisely this area of Bosnia and
20 Herzegovina that had been liberated and taken over from the JNA and the
21 Serb forces, and that in Stolac there was an attempt to organise civilian
22 authorities. As for the other municipalities in question, they already
23 had civilian authorities in place; that is to say, all of the
24 municipalities, save for Mostar and Stolac, were predominantly populated
25 by Croats. Hence, there were no changes in the authorities of those

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1 municipalities.

2 If we take another look at the document, we see that neither in
3 its introductory part, nor anywhere else, we have the registry file
4 number. We do not believe this is a decisive piece of evidence, but it's
5 at least an indication that the document had never received an official
6 filing number. That is why we wish to reiterate the following concerning
7 this document: This speech was never made. Concerning this speech,
8 there is no actus reus, and the Petkovic Defence, however, does not deny
9 that this document is important to ascertain Petkovic's mens rea. We do
10 not shy away from it, and we will address it specifically in the
11 continuation of our closing argument. What we are trying to stress for
12 the time being is that this is not an anti-Muslim speech, as the
13 Prosecutor would have you believe, and we will prove that by showing you
14 a number of other documents and reports issued by Petkovic, at the time
15 and later, which clearly and unambiguously confirm that Petkovic did not
16 have any anti-Muslim intentions and that the mention of Croatian rules
17 did not mean the denigration of Muslims.

18 In order to begin with that exercise, I wanted to show you first
19 4D830. Basically, it is the same document as P907, the report on
20 Petkovic's work in 1992.

21 In general conclusions, General Petkovic states as follows:

22 "At this moment in time, HVO forces successfully hold on to
23 90 per cent of the territory envisaged as the territory of Herceg-Bosna."

24 In item 7, he states that:

25 "HVO forces, despite numerous obstacles and problems, hold

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1 70 per cent of the territory of Bosnia-Herzegovina under their control."

2 Your Honours, we wanted to draw your attention to this part of
3 the report. This sentence makes it clear that General Petkovic believed
4 that the free part of Bosnia-Herzegovina was also that part which was
5 held by BH Army at the time.

6 The sentence following that is -- given that I have this document
7 in English, I'll read it out in English:

8 [In English] "By organising its own armed forces in the territory
9 of HZ-HB, Croatian people defended themselves and majority of Muslims."
10 [Interpretation] Therefore, General Petkovic in the report states
11 that the armed forces of Herceg-Bosna defended the Croatian people and
12 most Muslims. Therefore, there was no doubt in General Petkovic's mind
13 that the HVO forces are the forces defending the Croatian and Muslim
14 people in Bosnia and Herzegovina. Based on this small portion of this
15 document, we can see that General Petkovic believed the HVO capable of
16 defending and keeping under control a certain part of territory, meaning
17 that neither General Petkovic nor anyone else in the Main Staff or in the
18 HVO had planned any offensive operations.
19 It is also a fact that it is stated therein that 90 per cent of
20 the territory was under control of the authorities of Herceg-Bosna. It
21 clearly indicates that the HVO had no offensive plans and that there were
22 no preparations under way to attack the Army of Bosnia-Herzegovina. They
23 did not wish to expand the territory that had already been under control
24 of the authorities of Herceg-Bosna by use of arms.
25 Your Honours, this brings us to the next large topic. Hence, I

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1 suggest that we continue tomorrow, since we only have five minutes left,
2 by your leave, of course.
3 JUDGE ANTONETTI: [Interpretation] Very well.
4 I wanted to tell you that you have one and a half hours left for
5 tomorrow, one and a half hours. Actually, it is one hour and thirty-five
6 minutes. Therefore, we continue with your argument tomorrow, following
7 which we have Mr. Coric's Defence.
8 I wish you a good evening. And as you know, we continue tomorrow
9 at 2.15 in the afternoon.
10 --- Whereupon the hearing adjourned at 6.54 p.m.,
11 to be reconvened on Tuesday, the 22nd day of
12 February, 2011, at 2.15 p.m.
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