

1 Thursday, 24 February 2011  
2 [Pusic Defence Closing Statement]  
3 [Open session]  
4 [The accused entered court]  
5 [The accused Pusic not present]  
6 --- Upon commencing at 8.59 a.m.  
7 JUDGE ANTONETTI: [Interpretation] Madam Registrar, could you  
8 please call the case.  
9 THE REGISTRAR: This is case IT-04-74-T, the Prosecutor versus  
10 Prlic et al.  
11 JUDGE ANTONETTI: [Interpretation] Thank you, Madam Registrar.  
12 On behalf of the Chamber, I would like to greet everybody, the  
13 counsel, the accused, the representatives of the OTP, and everybody who  
14 is assisting us. Let's not forget the guards, who are always here, as  
15 well as our interpreters.  
16 I'll give the floor to the Defence counsel for Mr. Pusic.  
17 Mr. Pusic is still absent due to illness. His counsel is going to  
18 continue presenting his closing arguments.  
19 MR. SAHOTA: Your Honours, yesterday we explored some of the main  
20 themes of the Pusic Defence. One of the main themes is that the evidence  
21 of many of the Prosecution witnesses, we submit, supports our case that  
22 Mr. Pusic was a civil servant or bureaucrat with no decision-making  
23 powers, and not, as the Prosecution say, that Mr. Pusic was not one of  
24 the leaders of the HVO.  
25 Another theme of our Defence rests on a critique of some of the

1 evidence presented by the Prosecution in support of the arguments that  
2 they have advanced, and on that point, as we were dealing at the close of  
3 proceedings yesterday with Mr. Pusic's activities in late 1993, I would  
4 now like to turn to an allegation that is made at paragraph 1247 of the  
5 Prosecution's final trial brief. The Prosecution therein tried to  
6 establish a link between the conduct of Mr. Pusic and the evacuation of  
7 civilians and the seizure of their property in Mostar.  
8 We submit that that is a matter -- that is an issue that was not  
9 fully dealt with in our written submissions, and that the reason for that  
10 is that we consider this to be a fresh allegation, an allegation that was  
11 not clearly fully articulated in the indictment, or the Prosecution's  
12 pre-trial brief, or mentioned in any detail in the Prosecution's 98 bis  
13 submissions.  
14 We would also ask you to scrutinise some of the documents that  
15 are cited by the Prosecution in support of this assertion, and we would  
16 refer you to footnotes 2669 and 2678. In our analysis, these documents  
17 do not implicate Mr. Pusic, and in some instances there is no reference  
18 to Mr. Pusic whatsoever in any of the documents cited. Obviously, Your  
19 Honours, as I said yesterday, it's a matter for you to decide whether you  
20 attach any weight to the contents of these documents, but we suggest that  
21 a review of the evidence points to the conclusion that the Prosecution  
22 have failed to discharge their evidential burden.  
23 And while we're on this topic, while we're looking at the  
24 reliability of some of the material that's advanced by the Prosecution,  
25 I'd like to turn now to another topic, which is that of detention

1 centres.

2 Your Honours, you'll see, from an extract that is sighted on the  
3 screens in front of you, at paragraph 1211 of the Prosecution's final  
4 trial brief, that the Prosecution make what we say are some very  
5 extravagant claims about Mr. Pusic's -- about Mr. Pusic exercising  
6 maximum control, whatever that means, over all detention facilities and  
7 over all HVO prisoners. This is an allegation that we have dealt with  
8 comprehensively in our final trial brief, and, therefore, I do not intend  
9 to repeat our submissions now. But in respect of the lists that have  
10 been cited by the Prosecution in support of their submissions, and you'll  
11 see the middle of the paragraph, that there is a reference to Mr. Pusic  
12 signing no fewer than 13 lists of prisoners in the Heliodrom on just one  
13 day, the 15th of September, 1993, giving details on 1,494 detainees.  
14 Now, in reference to those lists, we make the following  
15 observation: You may recall from my submissions yesterday that one of  
16 the main duties and functions of the Service of Exchange was to maintain  
17 a database of those in custody. That is a requirement that is explicitly  
18 referred to in the mandate for the Service for Exchange, which is a  
19 document that we -- it's a document that we cited earlier in our  
20 submissions yesterday.  
21 Your Honours, it follows that if the evidence suggests that  
22 Mr. Pusic drew up these lists in the course of discharging his duties as  
23 head of the Service of Exchange, the fact these documents are lists, and  
24 nothing more than that, in our submission, does give rise to an  
25 alternative inference to that that the Prosecution ask you to draw.

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1 We would also like you to consider the date cited by the  
2 Prosecution, 15th of September, 1993. That's the date that these 13  
3 lists are produced. It's an important date because it's the next day --  
4 the following day after the Tudjman-Izetbegovic agreement is signed, one  
5 of the landmark agreements signed in the course of the HVO-BiH  
6 negotiations in 1993. That agreement called for the closure of all  
7 detention facilities and the release of all detainees. So we raise the  
8 question of whether these lists may have been produced to give effect to  
9 the terms of that agreement.  
10 Your Honours, I'd like to move on to my final point in regard to  
11 this issue of detention centres and bring your attention to what may be  
12 an inconsistency in the language used by the Prosecution.  
13 Despite the forthright terms employed at paragraph 1211 in  
14 respect of Pusic's role in controlling prisoners, in another section of  
15 the Prosecution's final trial brief there was no reference made to Pusic  
16 whatsoever, Your Honours. And we refer you to the sections of the  
17 Prosecution's final trial brief dealing with the powers of Mr. Coric and  
18 the military police in the same area. The Prosecution's analysis therein  
19 seemed to imply that the military police was the principal body with  
20 charge of all HVO detention facilities. And, Your Honours, we would  
21 refer to you paragraphs in the OTP's final trial brief 1163, 1062, 1065,  
22 1068, 1079, and 1081.  
23 I'd like to move on now to another issue which is directly  
24 related to the operation of HVO detention facilities, and that is the  
25 issue -- the question of whether Mr. Pusic had any involvement in forced

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1 labour assignments. Once again, this is a matter that's dealt with in  
2 some detail in our final trial brief. We would bring your attention,

3 however, to the fact that the Prosecution have failed to produced any  
4 written orders signed by Mr. Pusic directing prisoners to embark on  
5 forced labour assignments.  
6 Furthermore, it's important, we submit, given that it's clear  
7 from our submissions that we challenge the veracity and credibility of  
8 the testimony of Josip Praljak on this particular issue -- we don't  
9 challenge his veracity generally, but we do say where he testifies about  
10 an issue where he may be potentially implicated himself, that his  
11 evidence should be subject to close and searching scrutiny. We emphasise  
12 that there is no other Prosecution witness who testified before this  
13 Tribunal who corroborated the evidence of Josip Praljak, and it is this  
14 feature, the lack of corroboration, combined with other inconsistencies,  
15 such as the fact that both Josip Praljak and his immediate superior,  
16 Bozic, the fact that both these individuals did not mention Mr. Pusic at  
17 all in some of their reports documenting detainee abuses in late 1993,  
18 and, just as importantly, they didn't forward these reports to Mr. Pusic.  
19 He was not on the circulation list. We submit that these factors, taken  
20 cumulatively, and in light of other submissions made in our final trial  
21 brief, indicate that the Prosecution have failed to discharge their  
22 evidential burden. They have failed to prove beyond reasonable doubt  
23 that Mr. Pusic had the authority to make orders for detainees to embark  
24 on forced labour assignments.  
25 Your Honours, my final concluding point on this issue, forced

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1 labour.  
2 You'll see on the screen in front of you a number of documents  
3 that we've cited. We have cited these documents. We submit that they  
4 have been incorrectly attributed to Mr. Pusic. The assertion made by the  
5 Prosecution is that there is a link between the conduct of Mr. Pusic and  
6 many of the murders and unlawful killings stemming from this practice of  
7 forced labour at the Heliodrom. We submit there is no evidence in the  
8 documents that we've cited, P03351, P04325, P04393, P04542, P04648,  
9 P04718, P04830, P04858, P04860, P05050, P05242, P05280, P05307, P05430,  
10 P07069, P07118. Those documents can be found at footnote 2625 of the  
11 Prosecution's final trial brief.  
12 Returning now to one of the other themes that I outlined at the  
13 beginning of my address to you today, which is the fact that many of the  
14 important Prosecution witnesses called to testify against Mr. Pusic  
15 actually gave evidence that we say supports the Defence case and gives  
16 rise to a reasonable doubt.  
17 I'd like, at this juncture, to make some brief observations on  
18 the testimony of Marijan Biskic. His evidence is dealt with in some  
19 detail in our final trial brief. We say that Mr. Biskic's evidence in  
20 connection with Mr. Pusic is important because he confirms that Mr. Pusic  
21 had no decision-making powers. You remember the quote that we  
22 highlighted at the beginning of our submissions, that according to  
23 Mr. Biskic, Pusic could not issue orders to him or to anyone else. His  
24 evidence provides a link -- provides continuity to the conclusions  
25 reached by Witness DZ and DV. They had been in regular contact with

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1 Mr. Pusic since spring 1993, whereas Biskic arrived in Bosnia in November  
2 1993.  
3 I'd also like to refer you to another extract from Biskic's  
4 testimony. Biskic expressed his views about the remit of the service --  
5 powers of the Service of Exchange and remit of that organisation in a

6 letter that he sent to Susak, dated the 7th of December, 1993. In that  
7 letter, Biskic wrote, calling for the creation of a commission at  
8 ministerial, and he described the Service of Exchange as not consisting  
9 of people who occupy the most responsible positions in the HR-HB:  
10 "Nobody controls the work of the commission, nor is it competent  
11 to realise such a responsible task."  
12 In this passage, we submit that Biskic clearly implying that the  
13 Service for Exchange was a toothless body and that Pusic lacked the clout  
14 to give orders to any other HVO officials.  
15 I'm going to conclude, Your Honours, my examination of the  
16 evidence in this case by looking at Mr. Pusic's role in prisoner releases  
17 in late 1993.  
18 Your Honours, it's pertinent to note the testimony of another  
19 international witness, Watkins. Again, this is a witness whose evidence  
20 we have considered in detail in our final trial brief, and it's fair to  
21 note at this juncture that not everything that Mr. Watkins says is  
22 accepted by the Defence. However, by December 1993, shortly after the  
23 10th of December, when Mate Boban had issued a declaration calling for  
24 the closure of all HVO detention facilities and for the release of all  
25 detainees, Watkins was asked to testify and gave this evidence on the

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1 role of Mr. Pusic. He said that:  
2 "Mr. Pusic is keen to push on and to see more prisoners of war  
3 released, and he's looking to UNPROFOR, rather than the ICRC. And we've  
4 offered ECMM presence, I notice, in the comment below. So I think what  
5 is happening here is Mr. Pusic is delivering on and looking to continue  
6 the prisoner of war exchange and one announced by Mate Boban. I think  
7 it's an important signal being sent by Mate Boban about co-operation with  
8 the international community."  
9 And that's transcript reference 18824 to 5.  
10 Your Honours, we don't make any concessions or admissions as to  
11 Mr. Pusic having the power to release prisoners. What we say, that at  
12 this time Mr. Pusic was engaged in making lists and passing them on,  
13 circulating them, so as to bring about the declaration -- the objectives  
14 of the declaration made by Mate Boban on the 10th of December.  
15 Mr. Watkins' evidence, we submit, also directly rebuts  
16 Prosecution allegations that Mr. Pusic obstructed exchanges and releases.  
17 And, again, this is an assertion that's examined in more detail in our  
18 final trial brief.  
19 And at this juncture, Your Honour, I'd like to move on to examine  
20 the evidence of three Prosecution witnesses who were all released after  
21 December 1993, who all testified before you. We suggest that their  
22 testimony, when it's considered in the round, highlights Mr. Pusic's lack  
23 of decision-making powers in the release process, and also that their  
24 testimony gives rise to the conclusion that Mr. Pusic's role was limited  
25 to the issuance of discharge letters and certificates.

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1 The first witness, Lizde. According to evidence from Garic,  
2 Lizde was released together with a number of detainees, not as a  
3 consequence of an order from Mr. Pusic directly, but because the HVO  
4 authorities decided, as a gesture of goodwill, to unconditionally and  
5 unilaterally release a group of detainees, and that release followed --  
6 was in accordance with the terms of the Tudjman-Izetbegovic agreement of  
7 the 14th of September.  
8 Your Honours, I would also refer you to paragraph 312 of our

9 final trial brief, where we elaborate on an admission by Josip Praljak  
10 that he may have been mistaken in attributing responsibility to Mr. Pusic  
11 for the decision to release Mr. Lizde.  
12 And while we're discussing this particular witness's evidence,  
13 I'd like to correct another error that we've noticed in the Prosecution's  
14 final trial brief.  
15 The Prosecution asserts, at paragraph 1198 - the relevant  
16 footnote is number 2504 - that Mr. Pusic had an office in the same  
17 building as Mr. Stojic and Mr. Coric, and that's an assertion that's  
18 based on a document from the Witness van der Grinten, it's document  
19 number P02806, who claims that he met all three men, Stojic, Coric,  
20 Pusic, on the same day in the same office. Your Honours, we suggest that  
21 that document does not necessarily prove that Mr. Pusic's office was  
22 based in the same building as these other two men, and indeed Mr. Lizde  
23 testified to the contrary. At transcript reference 17835 to 6,  
24 Mr. Lizde confirmed that Mr. Pusic's office was in the centre of town,  
25 that it was based some 7 kilometres from the Heliodrom facility, and that

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1 it was located by the football stadium. And the directions given by  
2 Mr. Lizde may be -- will be confirmed by inspection of the transcript to  
3 the site visit conducted by the Chamber, which is exhibit reference C0001  
4 at page 10. The transcript refers to the location of Mr. Pusic's office  
5 as at the old Velez Football Stadium.  
6 The second witness whose evidence we would like to refer to is  
7 Professor Rizvanbegovic. Mr. Rizvanbegovic was an intellectual in Bosnia  
8 who knew of all the significant figures in Bosnian political circles, but  
9 had never heard of Mr. Pusic. His evidence is discussed at paragraph 338  
10 to 340 of our final trial brief. He confirmed that in commenting on the  
11 circumstances of his release, that he was released after the intervention  
12 of Mr. Mate Boban and in response to pressure from various international  
13 organisations. And although Mr. Pusic signed the certificate for his  
14 release, which is dated the 10th of December, 1993, he unequivocally  
15 stated that Mr. Pusic's role in his release was wholly insignificant.  
16 That's transcript reference 2268 to 9.  
17 Mr. President, may we move briefly into private session?  
18 JUDGE ANTONETTI: [Interpretation] Yes. Madam Registrar.  
19 MR. SAHOTA: Our final witness --  
20 [Private session]  
21 (redacted)  
22 (redacted)  
23 (redacted)  
24 (redacted)  
25 (redacted)

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11 Page 52781 redacted. Private session.  
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1 (redacted)

2 (redacted)

3 (redacted)

4 [Open session]

5 MR. SAHOTA: For the Chamber to return verdicts of guilty --

6 THE REGISTRAR: We're in open session, Your Honours.

7 MR. SAHOTA: I apologise. I jumped the gun there.

8 For the Chamber to return verdicts of guilty on the basis that

9 Mr. Pusic had any power or authority over HVO policy, you must accept

10 every incriminating inference that the Prosecution ask you to draw. You

11 must select parts of the evidence which seem to fit together, ignoring

12 other parts of the evidence which might not fit together, thereby reading

13 into a conflicting mass of evidence a pattern which we submit is not

14 really justified. The choice is clear. You must either trust the word

15 of witnesses, such as Masovic, Cupina, and Josip Praljak, witnesses who

16 had an axe to grind, and Witnesses BB, BC, and BD, who had relatively

17 little contact with Mr. Pusic and whose evidence is primarily based on

18 hearsay, we suggest, or you must rely on Bozic's evidence, on the

19 documents produced by Bozic, Lavric, and the documents adduced from the

20 SIS.

21 Alternatively, Your Honours, you could give weight to the

22 testimony of other international witnesses, like Witness DZ or

23 Witness DV, and other insiders such as Biskic.

24 Your Honours, the fact that the Prosecution could stand here

25 after four years of trial with a straight face and ask you to convict

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1 Mr. Pusic on the basis of his powers arising from his position as

2 president of the non-functioning 6th of August, 1993, commission, or on

3 the basis of the evidence of Mr. Cupina, defies belief. The fact that

4 the Prosecution can stand here and ask you to convict Mr. Pusic on the

5 basis that he was a high-level leader of the JCE defies logic. The fact

6 that the Prosecution can stand here and claim that they have proved the

7 case against Mr. Pusic beyond all reasonable doubt, despite the massive

8 conflicting evidence and the contradictions that arise from that

9 evidence, we say defies credulity.

10 Your Honours, I'd like to move on now to the issue of command

11 responsibility. I can summarise our case on command responsibility in a

12 nutshell.

13 At no point have the Prosecution established that Mr. Pusic had

14 any identifiable subordinates, and that failure, we submit, speaks

15 volumes, given the extravagant claims that they have made about his

16 purported status and influence. That is a submission, Your Honours, that

17 underpins and reinforces all our other arguments and points to the

18 fact -- one of the fundamental flaws in the Prosecution case, which is

19 that the Prosecution cannot clearly show where Mr. Pusic fits in with  
20 their grand scheme of a seamless, top-down JCE.  
21 Turning to this issue, JCE liability, we support the submissions  
22 made by Mr. Khan and Mr. Karnavas in his various filings, that all point  
23 to this conclusion that JCE theory is not part of customary International  
24 Law in light of recent rulings in the BCC and the practice adopted at the  
25 International Criminal Court.

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1 We would also like you look at this question of JCE liability  
2 from a slightly different perspective. We have described the  
3 Prosecution's JCE theory in our final trial brief, paragraphs 41 to 46,  
4 as a simplistic and crude theory. "Simplistic" in this sense means naive  
5 and one-dimensional. And the reason we've used these words is the JCE  
6 theory advanced by the Prosecution paints the HVO as an instrument in the  
7 hands of a small group of nationalist politicians in Bosnia and Croatia  
8 who are set to control a seamless, top-down JCE.  
9 Your Honours, when I look at the language used by the  
10 Prosecution, it brings me back to my studies in history as I mentioned  
11 earlier in my address. The language used by the Prosecution to describe  
12 the JCE reminds me of the language that Marxist theorists used to employ  
13 when describing the state. According to the instrumentalist school of  
14 Marxist theory, the state was a tool in the hands of a particular  
15 economic class, and in this one-dimensional analysis, only this ruling  
16 class controlled the machinery and apparatus of the state.  
17 Your Honours, if we replace the term "class," "ruling class,"  
18 with the descriptions of the politicians used by the Prosecution in their  
19 theory of JCE, there may be an obvious parallel that comes to light, and,  
20 Your Honours, there are flaws, we submit, in the theory of the JCE  
21 developed by the Prosecution. These flaws have been highlighted in  
22 detail in the final trial brief submitted by Mr. Karnavas. And, in  
23 summary, the criticisms that can be made of the Prosecution's JCE theory  
24 are the same criticisms that are often made of the instrumentalist theory  
25 of the state that was employed by many Marxist political philosophers.

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1 The Prosecution's JCE theory excludes any possibility that HVO policy  
2 evolved as a response to short-term and immediate developments on the  
3 ground. The Prosecution's JCE theory excludes the possibility that the  
4 HVO could act autonomously of Franjo Tudjman and autonomously of the  
5 Republic of Croatia. In other words, the Prosecution's JCE theory  
6 excludes the possibility that HVO responses were motivated by a desire to  
7 ensure the survival of a state in government that was in its very  
8 infancy.  
9 Your Honour, this discussion of political theory arising from my  
10 studies in history brings me to my next point, which is this: There must  
11 be a question as to whether the Muslim-Croat conflict in Bosnia in 1991  
12 to 1993 can be characterised as a product of a massive, top-down JCE  
13 driven by certain identified politicians. There must be a question as to  
14 whether that really is an appropriate matter for a court of law to  
15 determine or whether this is a matter that should be left to students of  
16 history to answer.  
17 Your Honours, we say that question arises because the Prosecution  
18 have over-reached themselves, they've stretched the theory of JCE  
19 liability to its very limits in this case; and they've stretched the  
20 theory of JCE liability in the manner that they have defined the goals of  
21 the JCE, they've defined the membership, the territorial scope, and its

22 geographical and tempori time span. We submit this question is relevant  
23 here because in this trial there's been very little or no evidence -- no  
24 direct evidence of any of the accused plotting with Franjo Tadjman and  
25 any other so-called JCE leaders plotting together to ethnically cleanse

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1 parts of Bosnia. As a consequence, the Prosecution ask you to draw  
2 broad-brush and sweeping inferences that we submit cannot be justified  
3 from a mass of contradictory historical evidence.  
4 Your Honours, we'd ask you to look, perhaps, at the approach  
5 taken by the Blaskic Trial Chamber, and in particular the  
6 Appeals Chamber -- may I correct that, the Blaskic Appeals Chamber  
7 judgement, paragraphs 518 to 523, where the Blaskic Appeals Chamber took  
8 the view that, where there was a mass of contradictory evidence that they  
9 could not draw or should be wary of drawing any adverse inferences as to  
10 the individual criminal responsibility of the accused.  
11 And, Your Honours, I would also like to quote from Eichmann in  
12 his -- this is a text that has already been mentioned in the course of  
13 these proceedings by the Prosecution, and to quote from the words of  
14 Hannah Arendt when she considered what the function of a court should be,  
15 whether the Court was equipped to deal with what she described as general  
16 questions of history, or to put it in more precisely, the terms that she  
17 used was the "higher purpose theory behind the international justice  
18 system." And this is a quote that's taken from page 253, the first page  
19 of the epilogue, and I quote:  
20 "The purpose of a trial is to render justice, and nothing else,  
21 even the noblest of ulterior purposes - 'The making of the record of the  
22 Hitler regime which would withstand the test of history,' as  
23 Robert G. Storey, executive trial counsel at Nuremberg, formulated the  
24 supposedly higher aims of the Nuremberg trials - can only detract from  
25 the law's main business: to weigh the charges brought against the

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1 accused, to render judgement, and to mete out due punishment."  
2 The extract continues:  
3 "The judgement in the Eichmann case, whose first two sections  
4 were written in reply to the higher purpose theory as it was expounded  
5 both inside and outside the courtroom, could not have been clearer in  
6 this respect, and more to the point: all attempts to widen the range of  
7 the trial had to be resisted because the Court could not allow itself to  
8 be enticed into provinces which are outside its sphere ... the judicial  
9 process has ways of its own, which are laid down by law, and which do not  
10 change, whatever the subject of the trial may be.  
11 "The Court, moreover, could not over-step these limits without  
12 ending in complete failure" --  
13 THE INTERPRETER: Kindly slow down when reading, please.  
14 MR. SAHOTA: "... at its disposal the tools required --"  
15 JUDGE PRANDLER: Please slow down.  
16 MR. SAHOTA: "Not only does it not have at its disposal the tools  
17 required for the investigation of general questions, it speaks with an  
18 authority whose very weight depends upon its limitation. No one has made  
19 us judges of matters outside the realm of law, and no greater weight is  
20 to be attached to our opinion of them than to that of any person devoting  
21 study and thought to them. Hence, to the question most commonly asked  
22 about the Eichmann trial: What good does it do? There is but one  
23 possible answer: It will do justice."  
24 Your Honours, the mandate of this Tribunal says that its goal is

25 not just to deliver justice, but also to aid the process of national

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1 reconciliation. The point is circular because only by delivering justice  
2 can national reconciliation take place. But in light of the Tribunal's  
3 mandate in this respect, we also say it's relevant to consider that the  
4 state of Bosnia and Herzegovina does not appear to share the  
5 Prosecution's characterisation of the HVO as a top-down joint criminal  
6 enterprise. And, Your Honours, we refer you to footnote in our final  
7 trial brief, paragraph 46, where we point to the fact that the policies  
8 of the state of Bosnia and Herzegovina, for instance, include policies  
9 that recognise and confer full pension rights to former HVO combatants.  
10 These facts suggest the truth regarding the history of the Croat-Muslim  
11 conflict may be far more complicated than the one-dimensional theory  
12 advanced by the Prosecution, and this leads to my last point on this  
13 particular topic.  
14 Nobody could argue that trials such as these cannot assist in the  
15 production of an accurate and nuanced historical record. However,  
16 criminal trials cannot substitute for historical inquiries. And the  
17 danger in this case, when asked to determine whether a JCE existed of the  
18 magnitude in which it's been defined, the danger is the Court may, in  
19 effect, be indulging in an exercise that amounts to nothing more than  
20 historical revisionism.  
21 Your Honours, I'd like to turn now to another aspect of our  
22 submissions on JCE liability, and these relate to the question of  
23 Mr. Pusic's alleged membership of this top-down JCE.  
24 In paragraph 49 of our final trial brief, we point to the  
25 existence of an exclusion clause that was highlighted in our Rule 98 bis

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1 submissions. At paragraph 230 of the indictment, it is clearly stated  
2 that Mr. Pusic is not charged with the commission of crimes in the  
3 Gornji Vakuf municipality in January 1993 and the Prozor municipality in  
4 October 1992. We have previously made submissions that this exclusion  
5 clause is inconsistent with the notion that Mr. Pusic was a member or  
6 indeed leader of this alleged JCE. And in our 98 bis submissions, we  
7 concluded our arguments with a question. We asked the Prosecution to  
8 explain how Mr. Pusic could be a member of the JCE, given the contents of  
9 this exclusion clause. You may recall that the Prosecution chose not to  
10 answer that question in the course of their reply to our 98 bis  
11 submissions.  
12 Some two years later, we have now been provided by the  
13 Prosecution with an answer. It's a contradictory answer, in some  
14 respects, because in their final trial brief the Prosecution state,  
15 footnote 2328, that the evidence shows that Mr. Pusic joined the JCE, at  
16 the latest, by April 1993. During their closing oral arguments, the  
17 Prosecution changed their position very slightly, but in a significant  
18 way, as they positively asserted that Mr. Pusic's role in the JCE began  
19 in April 1993.  
20 And you'll see, at the end of the extract on the screen in front  
21 of you, it was stated that:  
22 "It is convincing and consistent, showing Pusic's role in the JCE  
23 spanning several months, from April 1993 onwards."  
24 And that's transcript reference 52141.  
25 Your Honour, the fact that the Prosecution can't even

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1 definitively state when Mr. Pusic joined the JCE, we suggest, speaks  
2 volumes. We suggest that must give rise to a reasonable doubt as to  
3 whether Mr. Pusic ever was a member of this alleged JCE, and it's also  
4 another example, we suggest, of how the Prosecution have shaped their  
5 argument to fit the facts of this trial as they have arisen.

6 Another limb our JCE submissions will now deal with the quantum  
7 for there to be a finding of a significant contribution from a member of  
8 the JCE.

9 At the very beginning of their closing oral arguments, the  
10 Prosecution sought to draw parallels between the case of Mr. Pusic and  
11 the case of another ICTY accused, Prcac. The case of Prcac, we would  
12 submit, is very different from the case you are dealing with here, and we  
13 seek to distinguish the two. All the defendants in that particular  
14 trial, the Kvocka trial, were stationed at various detention facilities,  
15 and Prcac, himself, was alleged by the Prosecution to be the deputy  
16 commander of the Omarska facility. And there were several witnesses in  
17 his trial who testified to support that particular allegation. Your  
18 Honours, we submit that Prcac's close proximity to the operation of that  
19 detention facility, in contrast to Pusic's role and the evidence  
20 concerning Pusic, means that there's no meaningful parallel that can be  
21 drawn between the two questions.

22 Moving on to deal with this issue of significant contribution and  
23 the question of whether the Prosecution can prove that Mr. Pusic made a  
24 significant contribution to the JCE, if it can be found to exist.  
25 Your Honours, we submit that even if you find that Mr. Pusic was

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1 a member of the JCE, that the Chamber may face a difficult dilemma in  
2 determining whether he made a significant contribution to this  
3 enterprise. If you accept our submissions, the Chamber will be placed in  
4 a position where the only way that a conviction could be justified is if  
5 Mr. Pusic was found to make a significant contribution, despite the fact  
6 that he had no power or influence or authority to give orders to other  
7 HVO members. We suggest that this would be a finding that would be wrong  
8 in principle, as it would effectively set the level of quantum required  
9 beneath that that should be necessary to incur criminal liability, and it  
10 would, in effect, raise the spectre of guilt by association. And we  
11 would remind you that this question -- this issue of whether an accused  
12 can be found to make a significant contribution to a JCE is not a  
13 foregone conclusion. If it was a foregone conclusion, then there was no  
14 way that the Milutinovic Trial Chamber could have found that the  
15 president of Serbia did not make a significant contribution to the JCE,  
16 and that is exactly the finding that the Milutinovic Trial Chamber  
17 concluded with.

18 And, Your Honours, I would like to ask you to take a brief glance  
19 at the judgement of the Milutinovic Trial Chamber, not to draw any  
20 parallels between this case and the case concerning Mr. Milutinovic, but  
21 just to bring your attention to the approach adopted when considering  
22 this issue by the Trial Chamber in that particular matter. And, Your  
23 Honours, I'll quote from the extract that's highlighted in the middle of  
24 the paragraph 284, where it's stated:  
25 "Had the burden of proof been on a balance of probabilities,

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1 rather than beyond reasonable doubt, the result may have been different.  
2 However, it is not the task of the Trial Chamber to assess the moral

3 culpability of Milan Milutinovic, but rather simply to decide whether the  
4 Prosecution has proved beyond reasonable doubt the averments in the  
5 indictment."  
6 Your Honours, if Mr. Milutinovic can be acquitted on that basis,  
7 then we see no reason why a low-level civil servant like Mr. Pusic should  
8 also not be acquitted.  
9 Our final submissions on this particular topic, JCE, are related  
10 to the issue JCE intent.  
11 During the course of the Prosecution's closing submissions, they  
12 referred you to a document P07007. This was a SIS report from December  
13 1993, and it was a SIS report containing -- and it's a SIS report  
14 containing various allegations of misconduct that were labelled against  
15 Mr. Pusic. And, Your Honours, those allegations included an allegation  
16 that Mr. Pusic had been acting against the interests of the Croatian  
17 people, and that's transcript reference, the Prosecution's closing  
18 argument, 52143 to 5. This is a document from SIS which states, and I  
19 reiterate according to the Prosecution, that Mr. Pusic was acting against  
20 the interests of the Croatian people.  
21 Now, the Prosecution can't have it both ways. They can't claim  
22 that Mr. Pusic was a brazen opportunist acting against the interests of  
23 the Croatian people, and at the same time also argue, as they do in their  
24 closing submissions, transcript reference 52146 -- they can't also argue  
25 that Mr. Pusic was a radical nationalist who was willing to lie about or

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1 for his ideology. And in support of that particular assertion, the  
2 Prosecution relied on a document P08431.  
3 Your Honours, I'll say no more about JCE and move on to consider  
4 the issue of sentencing.  
5 Your Honours, it's a novelty to someone from a common-law  
6 jurisdiction to have to discuss sentencing before a conviction has been  
7 entered. We submit that the Chamber is already in possession of all the  
8 information it needs to have concerning Mr. Pusic's character, his family  
9 background, his personal circumstances, and that information comes in the  
10 form of the extensive library of medical -- the extensive library of  
11 medical records that you have considered in the course of your  
12 deliberations over our various provisional release applications.  
13 Mr. Pusic is grateful to the Trial Chamber for the sympathy and  
14 understanding that you have shown, and we submit that Mr. Pusic has also  
15 shown respect for the Tribunal during those periods when he has been  
16 granted provisional release.  
17 It cannot escape anyone's attention that Mr. Pusic is not here  
18 today. The Chamber will be fully aware of the reasons why Mr. Pusic is  
19 not here today. He has missed large parts of his trial because he is not  
20 well. He means no disrespect to the victims, and his absence from court  
21 should not be interpreted in that way.  
22 The Chamber knows about the nature of Mr. Pusic's medical  
23 condition, and Mr. Pusic himself has addressed you on a few occasions.  
24 And we ask you to refer to what he said to you when he addressed you on  
25 the 5th of October, 2006. And we would refer to you transcript reference

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1 7950 to 1. He told the Chamber the simple words that he found it  
2 unbearable to listen to the testimony of the victims in this case.  
3 So when the Prosecution said in their closing submissions that  
4 Mr. Pusic has expressed no remorse, we dispute that assertion. And his  
5 illness, Your Honour, Mr. Pusic also told you that his illness relates to

6 the fact that he's haunted by the memories and images of the war, of what  
7 he saw then and also what he saw after 1994.  
8 Your Honours, before I close and end my submissions, I'd like to  
9 thank you for the opportunity to address you on behalf of myself and  
10 Mr. Ibrisimovic and all the other members of the Pusic Defence team  
11 working here and outside of the courtroom. On behalf of Mr. Pusic, I  
12 would like to express his gratitude to you and refer you again to the  
13 remarks that he made when he spoke to you on the 5th of October, 2006.  
14 In conclusion, I would ask Your Honours to hesitate before  
15 entering any judgement against Mr. Pusic. At some point in the next few  
16 months, you will have to sit back, close your eyes, and decide if the  
17 evidence that you have heard supports the thesis advanced by the  
18 Prosecution. You will have to decide if the evidence that you have heard  
19 supports the inferences the Prosecution ask you to draw.  
20 Your Honours, I am duty-bound to remind you that you can only  
21 convict beyond reasonable doubt if you are sure of Mr. Pusic's guilt. If  
22 you find another explanation is possible, then you must be left in a  
23 state of doubt. And if that is the case, we would call on you to acquit  
24 Mr. Pusic of all the charges on the indictment.  
25 He Prosecution ended with an eloquent call to arms which will

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1 linger in the memory, and Mr. Scott's words still resonate around this  
2 courtroom. And we would like to end, Your Honours, by referring to the  
3 testimony of one of the victims to allow you to hear his voice in respect  
4 of what his assessment was of Mr. Pusic's role, Mustafa Hadrovic.  
5 Mustafa Hadrovic testified and said as follows:  
6 "It was Berislav Pusic, and I can frankly say that this will  
7 remain with me for as long as I live, and I can thank him for being alive  
8 today. And I have every confidence in you, Your Honours, that you will  
9 make your rulings according to justice and that you know what I  
10 experienced and all the hardships I went through."  
11 I have nothing more to add. Thank you, Your Honours.  
12 JUDGE ANTONETTI: [Interpretation] Very well. I'd like to thank  
13 Mr. Pusic's Defence. I was waiting for the French translation to finish.  
14 I'd like to address the Prosecutor next and ask them whether they  
15 wish to reply, whether there is any rebuttal.  
16 MR. SCOTT: Good morning, Mr. President. Good morning, each of  
17 Your Honours. Good morning to all those in and around the courtroom.  
18 Yes, Your Honour. As the Prosecution mentioned earlier in the  
19 week, and I hasten to add again it was not intended in any way to disrupt  
20 the proceedings, and that's why I did it actually between two different  
21 Defence closings, but to, nonetheless, give the Chamber a heads-up, if  
22 you will, that we did anticipate asking for a significant amount of  
23 rebuttal time, so it didn't -- something that wasn't perceived as, well,  
24 being dropped at the last minute. So we have tried to do that out of  
25 good faith.

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1 Your Honour, we do ask for significant rebuttal time. I am  
2 prepared to go through the topics -- some of the topics that we would  
3 seek to address, all of which have been raised in the course of the  
4 Defence closing arguments: The legitimacy and operation of the BiH  
5 Presidency and Izetbegovic's role in that, including the alleged  
6 statement or what is a statement, but the characterisation of the  
7 statement, It's not our war; the repeated Defence arguments that the  
8 Croats' support for the BiH referendum is somehow inconsistent with the

9 Herceg-Bosna JCE, and why that is not at all the case; we would like to  
10 respond to the continuing Defence argument that the BiH authorities and  
11 systems were not, allegedly, functioning as the reason -- as the alleged  
12 reason for Herceg-Bosna's existence; the Prosecution would like to  
13 respond to the Defence arguments that the HVO military was the only  
14 functioning armed force opposing the Serbs in 1992, and the continuing  
15 argument that the HVO was part of the BiH state armed forces, which --  
16 with which the Prosecution continues to disagree.  
17 The Defence have spent considerable time attacking Prosecution  
18 witnesses. We wish to respond to at least some of that. Various of the  
19 accused have spent considerable time arguing the theme that the  
20 international witnesses were somehow uninformed, somehow misinformed,  
21 somehow followed a misguided party line. We would like to respond to  
22 that. Likewise, given what's been said, we may wish to touch more  
23 directly, if briefly, on the credibility of a number or actually some of  
24 the Defence witnesses.  
25 The Chamber will have heard over the past two weeks extensive

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1 attacks on the credibility of Prosecution witnesses. The Prosecution, up  
2 until now, preferred to, if you will, present a positive case, to talk  
3 about its case and its witnesses, and not to talk so much about the  
4 Defence witnesses. But in light of all the attacks levelled on the  
5 Prosecution case and the Prosecution witnesses, the Prosecution submits  
6 it's only fair that there be some opportunity to respond.  
7 We would like to respond to the various accused's continued  
8 arguments that Croatia's provision of military and humanitarian aid to  
9 BiH is somehow fundamentally inconsistent with the Herceg-Bosna JCE, and  
10 they have literally accused the Prosecution of simply ignoring that  
11 evidence in some sort of bad-faith way, as if we've just brushed it off.  
12 We'd like to respond to that.  
13 We would like to respond to the statements by the Prlic Defence  
14 about his operation of the HVO government; also in connection with  
15 arguments by the Stojic and Petkovic Defence teams in relation to Prlic's  
16 role in the HVO.  
17 We would like to address Stojic's argument that all components of  
18 the HVO Defence Department operated independently. We would like to  
19 address the Stojic claims about his -- continuing claims about his lack  
20 of military power, including as to military appointments and direct  
21 military orders. We would like to respond to the Stojic claim that  
22 Petkovic did not say that Stojic was responsible for the HVO camps. We  
23 believed Mr. Petkovic's testimony was clear.  
24 We would like to respond to the Defence claims that various  
25 alleged ABiH documents in April 1993 are attack orders, which the Defence

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1 claims prove that the Muslims started the war. The Prosecution could not  
2 disagree more.  
3 We would like to respond to the Petkovic Defence arguments about  
4 the 30th of June and the alleged start of the war.  
5 We would also like to respond at some length to the Defence  
6 submissions on occupied territory, the Mrksic duty, and the status of  
7 prisoners. These are important questions of law, and, in the  
8 Prosecution's submission, a number of the Defence points are in error,  
9 and the Chamber needs to be fully advised, in our view, and at least  
10 clarified as to the Prosecution's views and arguments on these topics,  
11 whether the Chamber ultimately agrees with the Prosecution or not. We

12 should have a chance to respond to what's been said.  
13 Now, we don't know what the Prosecution -- excuse me, my  
14 apologies. We don't know what the Chamber's intentions or the other  
15 parties' intentions are. Judge Trechsel said early on the first day of  
16 closing arguments, I believe, that, of course, the Defence would have the  
17 opportunity to respond to each other, possibly, if they chose to, if they  
18 request it, separate and apart from whether the Prosecution sought  
19 rebuttal or seeks rebuttal or not. Of course, I don't know what their  
20 intentions may be.  
21 It was also stated that, of course, each of the accused,  
22 themselves, personally would be afforded the opportunity to tab a last or  
23 final word. I don't know how long any of that might take, in terms of  
24 whether the Defence will respond to each other and which, if any, of the  
25 accused will seek to have a further word.

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1 Your Honours, we start with the -- and I hasten -- and I mean  
2 this quite sincerely. I don't want anything I'm about to say to be taken  
3 as criticism, I really don't, but I do -- I think it's fair to state and  
4 set the need for rebuttal in the context of the case and the proceedings.  
5 The Prosecution started this whole closing process, in terms of  
6 both the final brief and the closing arguments, we started with a  
7 significant deficit. We had one-third as many pages as the Defence. We  
8 had 400 pages; the Defence had 1200. It's very difficult -- well,  
9 literally impossible for us to possibly anticipate and respond to 1200  
10 pages of brief in 400 pages. Likewise, Your Honours, we have had half as  
11 much time as the Defence to engage in these arguments. We had 15 hours;  
12 the Defence have had 30 hours. It is again impossible -- and, obviously,  
13 we can't -- we can't even begin to respond to all the Defence points,  
14 because if we did, we'd need another 30 hours. If I stood up now and  
15 responded to every point that Mr. Sahota just made in the last three  
16 hours, it would take me three hours, or close to it. But that's  
17 obviously not what we're talking about. But, nonetheless, we've had  
18 something approaching 30 hours of Defence argument, and the Prosecution  
19 does need a fair chance to respond.  
20 It's a shame, really, that we couldn't give you longer, fuller  
21 briefs -- a brief. We were prepared to do that. We would have set out  
22 things much more extensively, in much greater detail. We would have  
23 given you 100 pages on Mostar alone on every detail, on every narrative  
24 fact, from the beginning to the end. But, of course, unfortunately, we  
25 were not able to do that.

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1 There are, of course, no reply briefs. There are no reply briefs  
2 in the case, so really, Your Honours, this is the only opportunity, now  
3 that issues have really fully been joined, that we finally -- we've heard  
4 the final arguments, we've heard 30 hours of arguments, it's only now  
5 that the Prosecution has a real further opportunity to respond to these  
6 arguments.  
7 Based on all that, Your Honours, and based upon the review that  
8 the Prosecution has conducted over the past several days, all of us,  
9 myself, Mr. Stringer, Ms. West, Mr. Kruger, and others, Your Honour, we  
10 believe that the Prosecution will require and request one full court day,  
11 four hours, roughly, of court day, four hours, in order to make its  
12 rebuttal arguments.  
13 I would just -- my final comment, Your Honours, would be -- would  
14 be this -- and I can almost hear the wheels turning in the courtroom,

15 Well, it's 10.00, so we go to 1.45, and if we give the Prosecution four  
16 hours, et cetera, et cetera, et cetera. Your Honour, with the greatest  
17 of respect to each of you, and to my colleagues on the other side, and to  
18 the accused, with all due respect, after four and a half years of trial,  
19 there is nothing magical or necessary about ending this trial today, and  
20 a simple desire to finish the trial today cannot trump fairness to the  
21 Prosecution or the Defence.  
22 Thank you, Your Honours.  
23 JUDGE ANTONETTI: [Interpretation] Very well. Just a moment,  
24 please.  
25 The Chamber will retire to deliberate, and then we will come back

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1 in 20 minutes --  
2 MR. KARNAVAS: We need to be heard, Your Honour.  
3 [Trial Chamber confers]  
4 JUDGE ANTONETTI: [Interpretation] The Chamber will deliberate on  
5 the time issue. The issue of the rebuttal is a different issue.  
6 --- Recess taken at 10.05 a.m.  
7 --- On resuming at 10.20 a.m.  
8 JUDGE ANTONETTI: [Interpretation] Very well.  
9 The Chamber has deliberated, and we estimate that we will first  
10 hear the observations by the Defence, and, therefore, I'm going to give  
11 the floor to Defence counsel in a normal sequence. It will be  
12 Mr. Karnavas who is going to take the floor first.  
13 MR. KARNAVAS: Good morning, Your Honours, and good morning to  
14 everyone in and around the courtroom.  
15 Let me begin by stating that we've had final briefs in this case,  
16 which effectively are closing arguments; they are only in a written form.  
17 And then the Trial Chamber specifically requested that we give closing  
18 arguments that were effectively responses to the various final briefs.  
19 Effectively, that is the rebuttal.  
20 There is no mystery. The Prosecution knew exactly what they had  
21 before them by the various Defences, and nothing that was said by any of  
22 the Defences could come as a surprise. If you go down that list, Your  
23 Honours, there is not one single item that did not come out during the --  
24 either in the final briefs or could not have been anticipated, and a good  
25 closing argument has to anticipate what the other side is going to say.

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1 The Prosecution says that they were in a deficit, they only had  
2 15 hours. They bring out this violin, and they play it, and they keep  
3 playing it. Let me remind you, Your Honours, they, themselves, indicated  
4 to you that they could do their closing argument in 13 hours, and then  
5 they came back begging like Oliver Twist with cup in hand, saying, Could  
6 I get my two hours back, after the Trial Chamber determined, in fact,  
7 that 13 hours would be sufficient. So for them to say now that they were  
8 at a deficit is laughable.  
9 This case has to come to an end at some point. If you allow the  
10 Prosecution the four hours that they ask for, then you must provide the  
11 Defence with at least four hours, if not more.  
12 Go down the list, please, of what they've indicated. Have we not  
13 challenged the credibility of the internationals? All we did was bring  
14 it all together.  
15 The purpose of the closing arguments, as I understand them, Your  
16 Honours, were to simply provide you with some guidance. We're not going  
17 to win this case with some oratorical splendor that somehow will sweep

18 this Bench away and into rushing you into a guilty or not verdict. It  
19 doesn't happen. Maybe in our national jurisdictions, but you are  
20 professional judges.  
21 The final briefs say it all. You've heard the closing arguments.  
22 There is no need to go into -- to give the Prosecution anything.  
23 Now, having said that, I did come prepared today to make a  
24 request for rebuttal based on what Judge Trechsel had indicated what we  
25 would be able to do concerning the others. And I would be making a

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1 request for 10 to 15 minutes based on one matter that was brought up and  
2 that was by Ms. Alaburic of the Petkovic Defence regarding the Ljubuski  
3 transit centres, which she admitted was not in her brief, but then  
4 proceeded to say that this was established for the purpose of POWs. And  
5 to that, we categorically not only object, but we have specific  
6 references for the Trial Chamber. And we believe that that is rebuttal,  
7 in a sense, because it's something new, and had it been in a brief, we  
8 would have addressed it.  
9 But what the Prosecution is asking, there is nothing new, there's  
10 no mystery, Your Honours. You have it all, and I think the best thing to  
11 do is to shut them down.  
12 That's all I have to say, Your Honours. Thank you.  
13 JUDGE ANTONETTI: [Interpretation] Thank you, Mr. Karnavas.  
14 And now Mr. Khan for Defence team number 2.  
15 MR. KHAN: Mr. President, Your Honours, we're most grateful to be  
16 given the opportunity to address the submissions put forward by my  
17 learned friend Mr. Scott.  
18 Standing back, it is perhaps understandable, to some extent, to  
19 know that after perhaps living and sleeping with a case that's gone on  
20 for five years, it is sometimes difficult to let go and to say, This is  
21 enough. Enough evidence has been adduced, enough argument has been  
22 heard, enough witnesses have been called, enough has been explained. We  
23 are content for this matter to be adjudicated upon finally by  
24 professional Judges. But that is not what the Prosecution want. They  
25 want - and Mr. Scott was quite candid - a number of matters. He talks

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1 about MTS, military and humanitarian assistance, and whether or not that  
2 is relevant to the joint criminal enterprise that they, themselves,  
3 allege.  
4 Your Honour, none of these matters are new. They have been  
5 ventilated, if not ad nauseam, to a very significant extent, and the  
6 Defence have not raised -- for Mr. Stojic, we have not raised any  
7 argument in our oral submissions, not one, that has not -- is not founded  
8 in our final brief.  
9 And so for Mr. -- for the Prosecution to assert that they simply  
10 have a right for rebuttal, in my submission, is not made out. In fact,  
11 the submission is rather general.  
12 In my respectful submission, it behove the Prosecution to be far  
13 more specific than they have been. They have lumped together a whole  
14 variety of gripes, starting, as Mr. Karnavas says, with this underlying  
15 sense of unfairness that they do not seem to be able to shake off, saying  
16 that they started these proceedings with a significant deficit. Well,  
17 Your Honours, I do note that fairness is not dependent upon the Defence  
18 getting everything that we ask for, and surely it is not dependent -- the  
19 acid test, the litmus test, is not the Prosecution getting for whatever  
20 they ask for. Fairness is in the province of the judiciary deciding the

21 competing demands -- the competing requests and charting a fair and  
22 equitable solution, and that's what Your Honours did in your decision of  
23 the 1st of November, giving a scheduling order.  
24 Now, the Prosecution could have sought leave to appeal that  
25 decision if they thought it was so unfair, if indeed there was such

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1 unfairness, and I note that they did not do so. They did not do so, in  
2 my respectful submission, because the scheduling order put forward was  
3 reasonable. Nobody got everything they wanted, but it was reasonable and  
4 clearly within the margins of discretion of Your Honours.  
5 Your Honours, the Prosecution, in effect, are asking, in my  
6 respectful submission, for a second bite at the cherry. They're asking  
7 for four hours, four hours, when fifteen hours has already been given to  
8 them, when all the arguments from Mr. Stojic have already been put before  
9 the Prosecution, before Mr. Scott even stood up. In my submission, they  
10 have not given any argument, never mind a persuasive argument, to justify  
11 such an amount of time being allotted to them.  
12 And, Your Honour, I do note that Mr. Scott says that it was very  
13 difficult in his time to discuss matters. Well, Your Honours, we can't  
14 revisit an earlier finding regarding allotment of time through the back  
15 door of rebuttal. That would be to contort the very purpose and the  
16 judicial intent that's already been evidenced by your scheduling order.  
17 Your Honour, the case law, in my respectful submission, is quite  
18 clear when it comes to rebuttal.  
19 In the Naletilic/Martinovic case, on the 30th of October, 2002,  
20 at transcript page 12820, Judge Liu said, and I quote, in relation to  
21 rebuttal:  
22 "According to the jurisprudence of this Tribunal, the rebuttal  
23 argument must related to the significant issues arising out of the  
24 Defence final brief and closing arguments which could not reasonably have  
25 been anticipated."

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1 Insightful words, as one would expect from such an experienced  
2 Judge. There has been no matter that my learned friend has pointed to  
3 that has arisen ex improviso in the course of submissions. We have not  
4 ambushed the Prosecution. We have not taken them by surprise by some  
5 previous newfangled theory. We have been, in my respectful submission,  
6 quite consistent in how this case has been run, and our oral arguments  
7 echoed in substance what was put forward in our final brief.  
8 Judge Liu continued:  
9 "The Prosecution cannot repeat what has already been said in its  
10 final brief and closing argument with the sole purpose to reinforce its  
11 case. The test will apply equally to the Defence teams ..."  
12 And he goes on.  
13 Well, Your Honours, this is exactly what the Prosecution is  
14 seeking to do. They're seeking to reinforce bang-on again about the  
15 arguments that they think Your Honours haven't quite got.  
16 And of course they take exception to the Defence case, in the  
17 same way that many colleagues have said it was difficult to listen to the  
18 Prosecution. Of course, I can concede that many arguments put forward by  
19 the various accused in this courtroom were difficult for the Prosecution  
20 to listen to. There is an adversarial system in operation when it comes  
21 to two competing or seven competing narratives that Your Honours have to  
22 adjudicate upon. But that's not a good-enough reason simply to be given  
23 another four hours.

24 And, Your Honour, in Halilovic, 17th of August, 2005, for the  
25 sake of completion, at page 107, Judge Liu again said:

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1 "I have to stress that rebuttal is not an opportunity for the  
2 parties to reinforce their argument, but just to rebut whatever they had  
3 not expected in the briefs but had appeared in the closing arguments."  
4 It couldn't be any clearer than that on a spring day or even in  
5 February. Absolutely crystal clear, the jurisprudence of this Tribunal.  
6 Your Honour, there is a practical matter. I do accept, if the  
7 Prosecution could point, in relation to any of the six accused, a matter  
8 that's arisen ex improviso that could not have reasonably been  
9 anticipated, they can make, in relation to that one discreet issue or  
10 those two discreet -- an application to address the Court. That's  
11 natural justice, that's fairness. But they have not done so; and that is  
12 significant.  
13 But, Your Honours, if they are given these four hours, what then?  
14 Are the Defence then just to stand up immediately after these four hours,  
15 a third or so of the whole closing speech, and respond extemporaneously,  
16 or will there be an adjournment to consider matters? Your Honours, those  
17 contingencies, those eventualities, do not need, in my respectful  
18 submission, to be discussed at this point, because the primary failing of  
19 my learned friend's submissions, and that failing is an inability to  
20 point to any matter that has arisen ex improviso that justifies rebuttal  
21 in accordance with the case law of this Tribunal and the very clear  
22 language of Your Honours' decision. They haven't shown good cause, and  
23 in my respectful submission, the application should be denied.  
24 Your Honour, one matter for the sake of clarity. There is no  
25 intention, as things stand for the Stojic team, to make any application

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1 to say anything further. The accused do have a right to a fair and  
2 expeditious trial, and whilst a day or two days or three days may not  
3 seem too much, a point comes where proceedings have to close and Your  
4 Honours have to deliberate. And Mr. Stojic, I know, wants that process  
5 to start so that these matters that have been hanging over all of these  
6 accused for a very long time are finally determined once and for all.  
7 Your Honour, those are my submissions in relation to this matter.  
8 JUDGE ANTONETTI: [Interpretation] Thank you, Mr. Khan.  
9 D3.  
10 MR. KOVACIC: [Interpretation] I thank you, Your Honour.  
11 First of all, I would like to say that I fully agree with the  
12 arguments presented by my learned friend Mr. Khan. His arguments were  
13 relevant, and I think that the Trial Chamber should take those arguments  
14 into account, especially in the matters of the case law.  
15 As regards the Prosecutor's assertions about the time that he was  
16 given to justify the indictment, and he says that they didn't have enough  
17 time to analyse the entire trial, I would like to remind you that this is  
18 res judicata, this is something that we cannot discuss. Your decision  
19 was rendered on the 1st of November, 2010, and you expressly provided the  
20 parties, and especially the Defence teams, to put forth proposals.  
21 At one point, the Prosecutor gave up on his two hours, which  
22 Mr. Karnavas mentioned, and then he came back, as Oliver Twist, begging  
23 for the two hours to be returned to them, and then they were given the  
24 two hours back. However, despite the alleged shortage of time, on the  
25 first day of their final arguments the Prosecution had enough time to

1 play a video which lasted 40 minutes. This was an exhibit that we all  
2 saw, and the exhibit has a number. So if they wanted to play and put on  
3 a show, they could have played just one part of that video-clip, lasting  
4 a few seconds.

5 So, first of all, everything is res judicata. That cannot be an  
6 argument. And, second of all, by their conduct, the Prosecution has  
7 showed us very clearly that they had ample time, more than enough.  
8 Another thing that I would like to mention, and that is one of  
9 the issues that had been raised here: The Praljak Defence does not need  
10 to rebut any of the other Defence teams' arguments. You have heard all  
11 the evidence, you've heard our positions. As professional Judges, you  
12 have enough material to decide on. We can go over the same grounds again  
13 and again, we can point out different pieces of evidence, but before this  
14 Trial Chamber, I believe, this would be futile, this would lead to an  
15 endless discussion, and we can go on like that forever.  
16 And let me now go back to what Mr. Khan said, and that was that  
17 the essence of the entire issue of somebody's right to rebuttal lies in  
18 the fact whether anybody here in the course of the past two weeks, either  
19 the Defence team or the Prosecution, have come up with a new thesis in  
20 terms of the facts or in terms of the law. In this courtroom, nobody has  
21 said anything new, nothing that we didn't hear either during the  
22 pre-trial brief or during the long five-year-long trial. There's nothing  
23 new. It would have been naive for anybody to expect that something new  
24 would be said five years into the trial. I'm sure that our Defence has  
25 not presented anything new. I'm sure that if we all sat down at the

1 roundtable and we went and discussed one thesis after the next, that you  
2 will be able to find all of our theses in our pre-trial brief and in  
3 everything that we said during the trial. This is the framework, and, I  
4 repeat, there's nothing new.

5 The Prosecutor has not surprised me with even the tiniest little  
6 thing that they said. I knew what they would say, I anticipated  
7 everything, and I responded within the time given to me. There is  
8 nothing new, there is no grounds for rebuttal that would be in keeping  
9 with the case law, and that's why I've joined Mr. Khan.

10 JUDGE ANTONETTI: [Interpretation] Thank you, Mr. Kovacic.  
11 D4, Ms. Alaburic, have you the floor.

12 MS. ALABURIC: [Interpretation] Good morning, Your Honours, I will  
13 be very brief. There's no need for me to go on and repeat what my  
14 learned friends said before me. Mr. Khan has expressed the position of  
15 the Petkovic Defence with regard to the right to rebuttal after the final  
16 argument.

17 I would like to add that the four topics that Mr. Scott has  
18 mentioned as the topic of rebuttal with regard to the Petkovic Defence  
19 are topics which were extensively discussed in this courtroom over the  
20 past five years, save for the topic of occupation, but the Prosecutor  
21 initiated the topic in his final brief and I believe that in his final  
22 brief they said everything that they deemed to be relevant to be said  
23 about that topic. And in our closing argument, we only responded, and we  
24 did not add a new dimension to this topic of occupation.  
25 Therefore, we believe that our learned friends from the

1 Prosecution have not met the conditions to be given time for rebuttal,

2 and that's why I propose that their proposal should be rejected.  
3 The Petkovic Defence will not need to rebut any Defence teams.  
4 And as for the Prlic Defence, we do not object to the Prlic team dealing  
5 with one part of our closing arguments about transit centres, and we will  
6 be curious to hear arguments by which they propose that it would be in  
7 favour of their accused that they were civilians rather than prisoners of  
8 war. We will certainly ask to be given time after that rebuttal.  
9 JUDGE ANTONETTI: [Interpretation] Thank you, Ms. Alaburic.  
10 Ms. Tomic for Mr. Coric.  
11 MS. TOMASEGOVIC TOMIC: [Interpretation] Thank you, Your Honours.  
12 If we analyse carefully what Mr. Scott said and why he is asking  
13 for an additional time for rebuttal, it is easy to see that he is looking  
14 for an opportunity to present a new closing argument. Maybe he thinks  
15 that his new closing argument would be better or maybe different. In any  
16 case, he is asking for time to present his new closing argument.  
17 Why am I saying this? Because the purpose, as I understand it,  
18 of the first closing argument was to respond to what he found in the  
19 final briefs of the Defence teams. Partially, he did use the time to do  
20 that, and he did briefly deal -- not only him, but also the other members  
21 of the Prosecution team -- he dealt with the final briefs of the Defence  
22 teams. But what he did, most of all, was to repeat what can be found in  
23 his final brief, the indictment, and everything that we heard during the  
24 trial a thousand times. He did not give us a single reason why any of  
25 the topics should be rebutted. There is nothing new that he would be

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1 able to say, not only in terms of the pre-trial briefs or something that  
2 happened in the courtroom during trial, not only in that sense, but also  
3 in the sense that everything was presented in the final briefs of the  
4 Defence teams, and not only in the final briefs of the Defence teams, but  
5 also the Prosecutor already dealt with most of the topics, if not all of  
6 them, in his final brief and in the closing arguments.  
7 The Prosecutor said that some Defence teams criticised and  
8 attacked Prosecution witnesses. Yes, we did, and our Defence team was  
9 among them. However, Your Honours, we spent a lot of time and dedicated  
10 a lot of space in our final brief precisely to that. All the  
11 Prosecutor's witnesses that the Coric Defence attacked in their closing  
12 argument, we already attacked -- challenged their credibility in our  
13 final brief, and we used the same arguments when we did that. The  
14 Prosecutor, therefore, had an opportunity to respond to all the arguments  
15 presented by the Coric Defence in his closing arguments. He failed to do  
16 that.  
17 Likewise, the Prosecutor said that they wanted to sound positive,  
18 and that's why they didn't challenge the Defence evidence and witnesses.  
19 Your Honours, this is simply not true. In their final brief, they said  
20 that they think that no Defence witness could be trusted and none of them  
21 are credible because they're all insiders, and, therefore, potentially in  
22 good relations with the accused, or perhaps they were defending their own  
23 interests and they were protecting themselves by not telling the truth.  
24 And this was a general statement applicable to all Defence witnesses.  
25 After that, they particularly attacked and challenged the

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1 accused, who testified and who were also Defence witnesses. They  
2 butchered their testimonies. They analysed their testimonies in dozens  
3 of their paragraphs, and finally in their closing arguments, they  
4 attacked the Defence witness Coric and they called him a war criminal,

5 and that's why he couldn't be trusted.

6 The Prosecution had its time for the closing argument, and they  
7 used it the way they did, the way they deemed best for them, just like  
8 each and every one of us was given time and we used it the best way we  
9 could and the way we deemed was strategically best for us.  
10 I don't think that anybody in this courtroom, including the  
11 Prosecution, has the right to be given an opportunity to supplement  
12 either their final brief or their closing arguments. And if they were  
13 given time, that would be only that, and nothing else. And that would be  
14 going over the same grounds the umpteenth time, and we have heard that  
15 story, we have read about it both in the final brief as well as in the  
16 closing argument.  
17 The Coric Defence, Your Honours, will not seek to rebut any of  
18 the other Defence arguments.  
19 I would just like to say briefly, and that has nothing to do with  
20 the topic, I have been alerted to another error in the transcript. It is  
21 on page 52637, line 16. I misread one number there. Instead of  
22 "2D8454," the number should read "2D854."  
23 Thank you, Your Honour.  
24 JUDGE ANTONETTI: [Interpretation] Thank you.  
25 Mr. Ibrisimovic for the Defence of Mr. Pusic.

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1 MR. IBRISIMOVIC: [Interpretation] Thank you, Mr. President.  
2 Our position is that a line should be drawn in these proceedings.  
3 It is high time for the trial to be over.  
4 We've heard the Prosecutor's arguments. We believe that those  
5 arguments are not founded. In order to ask for rebuttal, some new  
6 circumstances have to be presented. We haven't heard anything new.  
7 In the case of the Pusic Defence, we referred to the closing  
8 argument of the Prosecution. They referred to our closing argument. We  
9 believe that they should be rejected.  
10 We are going to refer, just like Mr. Khan, to a very fresh  
11 decision in the Srebrenica case against Popovic et al. The decision was  
12 made on the 28th of August, 2009. The Prosecution had the same request,  
13 and the decision was made to that effect.  
14 JUDGE ANTONETTI: [Interpretation] Thank you.  
15 I'm going to consult my colleagues on the Bench before the  
16 Trial Chamber reaches their final decision.  
17 MR. SCOTT: Your Honours, if I could have one minute. Well, it  
18 will be one minute, Mr. Kovacic, and you can time me.  
19 Your Honours, we know that the trial has to end. We know that,  
20 everyone knows that, and I dare say we all want it to end. I mean, I  
21 don't think there isn't anyone in this courtroom that doesn't want it to  
22 end fairly soon. But in our view, we are not asking for a huge or  
23 indefinite period of time and, in our respectful submission, our request  
24 is quite modest given the overall circumstance.  
25 We've reviewed each of these matters, each thing we proposed was

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1 specifically in response to arguments made during closing arguments. We  
2 went through, specifically, as a point by point, points that have been  
3 made, and that's how we prepared the list.  
4 I would just give one specific additional example and try to stay  
5 within my one minute.  
6 Mr. Stringer reminds me that the -- the argument, for example,  
7 has been made that the Prosecution has raised the occupied territory

8 theory for the first time, and that we -- and that is an example of  
9 something we believe we should be able to respond to.  
10 Thank you, Your Honour.  
11 [Trial Chamber confers]  
12 JUDGE ANTONETTI: [Interpretation] Very well.  
13 The Bench, having deliberated, will now deliver its oral  
14 decision.  
15 The Bench will give the floor to the Prlic Defence. They will  
16 have 15 minutes to put forth their rebuttal to what was stated by the  
17 other Defence teams.  
18 As for the Prosecution's request, the Chamber is of the view that  
19 they have this right under the Rules of Procedure. Therefore, this Trial  
20 Bench cannot limit the time allocated to the Prosecution. Unanimously,  
21 we opted to give them three hours. As for the optimum amount of time  
22 given to the Defence teams to reply to their rebuttal, it's also  
23 something envisaged by the Rules. The Bench will define the time they  
24 will need for their submissions, having heard the rebuttal from the OTP.  
25 We wish to remind the Prosecutor that during the three hours,

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1 they should focus on the most important points only, especially those  
2 which, in their view, they had not discussed sufficiently.  
3 We wish to remind the accused, if they wish to do so, they will  
4 have an opportunity to address us in respect of either the OTP rebuttal  
5 or any other submissions made by the Defence teams.  
6 As for the opportunity for the Defence teams to reply to the OTP  
7 rebuttal, we conclude that we wouldn't be able to finish it today.  
8 Therefore, we suggest that next Tuesday, at 9.00, we reconvene. One of  
9 the Judges is assigned to the Tolimir case, which was scheduled for  
10 Monday next. Therefore, we continue on Tuesday at 9:00 a.m. We'd also  
11 like the Registrar to have a courtroom available on Wednesday, as well,  
12 at 9.00 a.m. for any replies to the rebuttal process.  
13 This is our decision.  
14 I wish you all a nice day, and we'll see you again on Tuesday at  
15 9:00 a.m.  
16 --- Whereupon the hearing adjourned at 10.57 a.m.,  
17 to be reconvened on Tuesday, the 1st day of March,  
18 2011, at 9.00 a.m.  
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