

1 Tuesday, 1 March 2011

2 [Open session]

3 [The accused entered court]

4 [The Accused Pusic not present]

5 [Prosecution Rebuttal]

6 --- Upon commencing at 9.00 a.m.

7 JUDGE ANTONETTI: [Interpretation] Madam Registrar, kindly call

8 the case.

9 THE REGISTRAR: Good morning, Your Honours. This is case number

10 IT-04-74-T, the Prosecutor versus Jadranko Prlic et al.

11 JUDGE ANTONETTI: [Interpretation] Thank you, Madam Registrar.

12 The 1st of March, 2011. Good morning to the accused, to

13 Mr. Pusic, who is still absent because he's ill, but he's being

14 represented by his lawyers, his counsel. Good morning to the Defence

15 counsel and the OTP representatives.

16 I'll first give the floor to Mr. Pusic's Defence, because they

17 have some corrections to make with regard to the previous transcript.

18 You may proceed, sir.

19 MR. IBRISIMOVIC: [Interpretation] Thank you, Mr. President. We

20 do have some minor corrections with regard to the transcript of the

21 23rd of February, 2011. 52473, line 17 to -- and transcript page 52744,

22 line 7. When we referred to document P0663, the "SIS" has to be replaced

23 by the "Military police administration."

24 We also have transcript page 52743, line 18. The year 1993

25 should be replaced by 1992.

1 Transcript page 52748, line 12. When we referred to document

2 P01514, the date should be the 5th of March, 1993, and not

3 14 October 1992, as it is recorded in the transcript.

4 Transcript page 52754, line 15. The paragraph should be 275 and

5 not 25.

6 Transcript page 52759, line 7, refers to the testimony of

7 Witness Cupina as recorded on page 4908 instead of 44908 [Realtime

8 transcript read in error "4908"].

9 And we also have a correction on the transcript of

10 24 February 2011, page 52789, line 15. The footnote reference should be

11 2728 of the Prosecutor's final brief.

12 Thank you.

13 JUDGE ANTONETTI: [Interpretation] Mr. Ibrsimovic, there may be

14 another error. Line 6, page 2 of today's transcript, testimony of

15 Cupina. In the English transcript I see 4908. Didn't you say -- or

16 mention another page?

17 THE INTERPRETER: Microphone is not on.

18 JUDGE ANTONETTI: [Interpretation] Your microphone, please.

19 MR. IBRISIMOVIC: [Interpretation] We referred to the testimony of

20 Witness Cupina on page 4908 instead of 4498 as it has been recorded on

21 the transcript. 44908, not 4498.

22 JUDGE ANTONETTI: [Interpretation] Very well. Thank you.

23 I am going to give the floor to the Prosecution for their

24 rebuttal. The Trial Chamber invites the OTP to state paragraphs and

25 transcript pages they refer to when it comes to their rebuttal so that we

1 may follow their rebuttal arguments. Thank you.
2 You may proceed, Mr. Stringer.
3 MR. STRINGER: Thank you, Mr. President. Good morning. Good
4 morning, Your Honours, Counsel, everyone else in and around the
5 courtroom.
6 May it please the Court, I will have some rebuttal that I think
7 will take about 45 minutes or so, and then I'll be followed by my
8 colleague Mr. Scott, and we have prepared a PowerPoint presentation that
9 we'll be referring to during the course of my comments this morning.
10 Mr. President, Your Honours, as indicated by Mr. Scott last week,
11 among the issues that we wanted to address in rebuttal were response or
12 rebuttal in respect of some of the legal points made by counsel during
13 their closing submissions, and most of what I'm going to be referring to
14 relates to positions advanced or remarks made by my learned friend,
15 Ms. Alaburic, and also Mr. Kovacic on the issue of occupied territory.
16 The first -- the first subject would be some remarks related to
17 the question of the status of the Muslim prisoners that were held in HVO
18 detention facilities, and this is dealt with more specifically on
19 page 52550 of the transcript, and those are the transcript references
20 that will be found. That's the location where the Trial Chamber will see
21 the transcript references throughout my remarks.
22 Defence claim that able-bodied men are not considered civilians
23 unless proven otherwise. And just to sort of recap, the Prosecution
24 position is that able-bodied men who are not combatants under Article IV
25 of the Third Geneva Convention or under Article 43 of the

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1 Additional Protocol are indeed civilians. If they are not combatants
2 within the definitions found in those provisions, then the Prosecution
3 position is that those able-bodied men are indeed civilians.
4 We refer the Trial Chamber to the remarks of the Trial Chamber in
5 the Celebici judgement, which is useful to bear in mind that:
6 "The fact that an individual is a male and of military age should
7 not necessarily [justify detention]."
8 Having said that, imprisonment of able-bodied men for security
9 reasons requires an individual assessment, an individual assessment of
10 the risk of that prisoner joining the enemy forces. And again, the
11 citations and the support for that position are set out on the slide.
12 Having said all that, Prosecution agrees that in respect of these
13 proceedings, the burden is on the Prosecution to prove civilian status of
14 the prisoners. We -- Ms. Alaburic made that assertion, and the
15 Prosecution accepts that. However, the Prosecution does not accept the
16 position that there is some default position for Muslim men of military
17 age that makes them something other than civilians simply by virtue of
18 the fact that they were Muslim men of military age.
19 On our next slide I continue with this point. This is again
20 referring to a position set out by Ms. Alaburic that based on the law of
21 Bosnia-Herzegovina, the army consists of active and reserve forces.
22 Reservists are those subject to conscription. All able-bodied men are
23 subject to conscription under BH law, and therefore, according to
24 Defence, all able-bodied men are reservists or "noncombatant members of
25 the armed forces."

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1 Prosecution response to that, Mr. President, is, first, we invite
2 the Trial Chamber to really consider what the Defence are asserting here.

3 What they're claiming is that there are no able-bodied male civilians in
4 Bosnia-Herzegovina. That's really what they're claiming, and that is not
5 supported either factually or under international humanitarian law.
6 Under the law, reservists, that is, those who have undergone
7 military training and have reintegrated into civilian life, those
8 reservists are civilians until such time as they are mobilised or called
9 to active service. We provide the Trial Chamber with support for that
10 position. The article by Mr. Melzer with ICRC.
11 Thirdly, counsel referred to a status that they believe applies
12 to these Muslim men of military age calling them as reservists,
13 "noncombatant members of the armed forces." They are not members of the
14 armed forces if they have reintegrated into civilian life or, indeed, if
15 they are merely subject to conscription because they reached a certain
16 age. The status of noncombatant members of the armed forces does exist,
17 but it applies to armed -- to members of armed forces who have no combat
18 mission, like judges, chaplains, medical personnel. Those people, if
19 captured, have POW status or the equivalent of POW status, but that
20 status itself, something called noncombatant members of the armed forces,
21 does not apply to Muslim men of military age who were not members of the
22 armed forces.
23 Continuing with this, Mr. President, the Prosecution position is
24 that therefore the "interned" able-bodied Muslim men who were not in
25 active service of the armed forces were not "noncombatant members of the

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1 armed forces" under international humanitarian law. They were civilians,
2 and when they were arrested and detained, they retained their civilian
3 status.
4 On this it's useful to note, perhaps counsel should have recalled
5 or consulted with their client General Petkovic on his position regarding
6 the status of persons who are not involved in active combat activities.
7 The Trial Chamber will recall the testimony of General Praljak. This is
8 at page 50785 of the transcript where he said that -- I'm sorry,
9 Petkovic, General Petkovic. He was asked:
10 "General if a member of the HVO, for instance, who was on leave,
11 on furlough, rapes a Muslim woman, for example, is that a crime linked to
12 combat?"
13 And General Petkovic's response was:
14 "No, that is not a crime linked to combat, because during that
15 time he was a free civilian until he is recalled to join the army again."
16 So to the extent General Petkovic appears to be saying that
17 someone who was at one time a member of the armed forces and who has left
18 the armed forces and has reintegrated into civilian life, that person
19 remains a civilian, and if that is what he was asserting in his testimony
20 here, that was correct, but the position advanced by my learned friend,
21 with all due respect to her, is incorrect.
22 One final comment on prisoner status. The Prosecution in its
23 brief, as you know, Your Honours, has advanced the position that Muslim
24 men who had been members of the HVO, who were arrested in the days
25 following the 30th of June, 1993, we do not take the position that they

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1 are civilians. We have taken the position that they are entitled to the
2 protection found under Article 75 of Additional Protocol I, which applies
3 to persons whose custody -- who do not benefit from better status or
4 better treatment under other parts of the Geneva Conventions.
5 In her closing submissions, counsel for General Petkovic asserted

6 that Article 75, Additional Protocol I is in the civilian population
7 section or chapter of that Additional Protocol and it therefore only
8 applies to civilians. Prosecution's response is that is incorrect. We
9 invite the Trial Chamber to read the text of Article 72 of
10 Additional Protocol I, which provides that that section, that chapter, is
11 in addition to Rules concerning protection of civilians and civilian
12 objects. It applies "as well as to other applicable rules of
13 international law relating to the protection of fundamental human rights
14 during international armed conflict," and the French text of those
15 provisions is certainly in accordance with that, indicating that
16 Article -- that the section in which Article 75 is found applies not only
17 to civilians but as well as to other provisions in international law.
18 In addition, the commentary to Additional Protocol 75 makes it
19 clear that Article 75 applies -- or may apply to persons who are not
20 civilians, such as mercenaries, for example, or, most importantly, to
21 "other persons who have been denied prisoner of war status." So it's our
22 submission, Mr. President, Your Honours, that Article 75 of
23 Additional Protocol I does indeed apply to the Muslim men who had been
24 members of the HVO even if they're not civilians.
25 I'd like to move on now and make some remarks regarding what we

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1 call the duty to protect prisoners. It's a related point coming not only
2 from international humanitarian law but closer to home here, the appeals
3 judgement in the Mrksic case.
4 The Defence claim that the Mrksic duty only applies to agents of
5 the detaining power who find themselves with custody of prisoners of war,
6 not every agent of the state, but only those who had that responsibility
7 as they were effectively custodians of the POWs.
8 Mr. President, the first remark or comment that the Prosecution
9 would offer here is that although the Mrksic case is -- itself was
10 limited in its facts to prisoners who were indeed prisoners of war, the
11 rationale and the underpinning for the Mrksic holding as found throughout
12 international humanitarian law makes clear that the Mrksic duty would
13 apply not only to prisoners of war but to other prisoners falling into
14 other categories as well, such as civilians or even Muslim men who had
15 been members of the HVO who might fall within Article 75 of the
16 Additional Protocol or even under Common Article 3.
17 Prosecution position is that responsibility for the protection of
18 detainees depends on the functions that that person carries out.
19 Responsibility may lie based on domestic legislation, or a person may be
20 responsible and have a duty to protect prisoners based upon his or her
21 de facto responsibility based on custody and/or control over prisoners.
22 So there's a de jure and a de facto, in our submission. De jure under
23 domestic law, de facto based on custody, control, as the facts show.
24 On this point, for example, one could say that -- and the
25 Prosecution does say that under the domestic legislation Mr. Coric and

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1 the military police, as part of the Defence Department, had primary
2 responsibility, custody and control of prisoners. We cite a couple of
3 exhibits there, one of which is the instructions issued by Mr. Boban,
4 which vested responsibility with the military police for providing
5 internal security at HVO military prisons and also securing prisoners of
6 war. That's an example of domestic legislation, in our view, that would
7 assign responsibility for prisoners to Mr. Coric, the military police,
8 and, since it's a part of the Defence Department, the Defence Department

9 itself.

10 Mr. Pusic, despite assertions made by his counsel during closing
11 submissions, acquired de jure responsibility for prisoners in connection
12 with his appointment as head of the Department of Exchange and also his
13 appointment to the Stojic commission, which was formed to look into
14 prisoners and the conditions during the latter part of the summer of
15 1993.

16 On Mr. Pusic, Mr. President, just a slight digression. I'd like
17 to take the Chamber to P07411.

18 Mr. Pusic, at 52755, and at 52760, and really throughout the
19 entirety of his closing submissions, asserts that he had no real
20 authority. He was a small cog. He had no discretion. He was merely
21 forwarding lists and that he didn't have the ability or authority to
22 decide who could be released and that he played no real substantive role.
23 Page 4 of this document, which is a report that he made on the
24 work of the Service for the Exchange of Prisoners and Other Persons, that
25 is his service, gives a good overview of the kinds of activities that he

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1 sat at the top of as the head of the service.

2 Item 5 here, on page 4:

3 "The work of the Service staff was mainly concerned with detained
4 Muslims. As the status of prisons ... has still not be regulated," they
5 put all the prisoners together in co-operation with ODPR, SIS, crime
6 investigations department of the Military Police Administration.

7 "... it also effected release from prisoners if detainees had
8 complete documentation," letters of guarantee, transit visa, certificate,
9 et cetera. "In this way, 304 persons were released ..."

10 What this shows is that the Prosecution doesn't assert that
11 Mr. Pusic had supreme or exclusive authority over prisoners. He and his
12 service and his competencies were linked to others, other bodies such as
13 those indicated here, and he played a substantial role in issues
14 involving prisoner custody and release. He doesn't have to have played
15 an exclusive role, and it's certainly not our position that he did so.

16 The fact that he played a role that complemented others, that
17 co-ordinated with others, certainly does not absolve him of
18 responsibility. And more to the point, here, when we're talking about
19 this duty, he certainly is among those having de jure and de facto
20 control over prisoners, and he has a duty to protect them.

21 One aside on this point. There were many repeated assertions
22 concerning the credibility of Witness E made both by the Pusic Defence as
23 well as Mr. Coric's Defence. What we see here is explicit reference by
24 Mr. Pusic to a programme that is linked to the testimony of Witness E and
25 clearly establishes that this programme on letters of guarantee and

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1 release linked to that was in existence and was an official part of HVO
2 policy bringing together the various bodies indicated here, military
3 police; ODPR, which is a bodily linked to president of the government,
4 Mr. Pric; SIS; Military Police Administration.

5 Another document linked to Mr. Pusic in response to his
6 assertions, P07124. It's a meeting of a working group held on the
7 11th of December, 1993. It was chaired by Colonel Biskic who had come
8 in. By that point he was acting as an assistant minister of defence of
9 the Croatian Republic of Herceg-Bosna. He testified in this trial. And
10 this is a very useful document again for dealing with or considering the
11 role that Mr. Pusic played in matters involving prisoner treatment,

12 custody, policy.

13 Page 3 of this, Mr. Pusic takes the floor, informing those
14 present about the various detention centres. According to him, the
15 wardens of each prison, of each detention centre can provide the exact
16 number of detainees being held, as well as the number of those being used
17 to work. He said, and I'm moving up now, he didn't have a precise figure
18 on prisoners because they were being constantly "taken away to work,
19 mostly on preparation of the front line.
20 On the next page, Mr. Pusic continues to present figures related
21 to the numbers of prisoners in the various detention facilities. 1200 at
22 Gabela. Mr. Bozic is present there, talks about the 2.000 who are being
23 held at the Heliodrom.
24 Moving down, this is a significant point on prisoner status.
25 Colonel Biskic added to this that they especially needed the number of

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1 detainees who were members of the Muslim armed forces. Mr. Pusic said
2 there were only five such cases.
3 The next page: Mr. Pusic believes they should all be released
4 but that at the same time all measures of organisation, protection, and
5 security should be taken, and in particular, preparing the detainees so
6 they can be sent abroad.
7 And then finally, toward the end of the document, on page 10,
8 Mr. Pusic believes that people over 50 years of age should be sent or,
9 rather, handed over to the Muslim side, on the left bank of the Neretva.
10 So here in December of 1993, we see Mr. Pusic taking the floor at
11 a high-level meeting regarding prisoners and what the prisoner policy
12 should be. He's expressing his own views. Basically, the younger ones
13 who were in the detention facilities should be sent abroad. The older
14 ones should be sent to the east side.
15 Coming back to the slide, point number 3. The Prosecution
16 rejects, and I mentioned this already, the Coric and Pusic Defence
17 arguments that they've made repeatedly that because others may have had
18 custody, control, may have had the ability to exert authority over
19 prisoners, that they had none. It's our submission that responsibility
20 does not require exclusive control or custody. The evidence shows that
21 several individuals and bodies did have custody and control over
22 prisoners in different spheres. It's our assertion that the duty to
23 protect prisoners applies to all of them.
24 Generals Petkovic and Praljak had custody and control over
25 prisoners when prisoners were in custody of HVO units performing forced

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1 labour. Petkovic and Praljak exercised control over prisoners when
2 issuing orders and approvals on use of prisoners for forced labour and
3 granting access to prisoners and prison camps.
4 The Trial Chamber will also recall that General Petkovic was
5 personally involved in the negotiations near Sovici/Doljani and
6 Jablanica, related to the Muslim prisoners who were being held there at
7 the Sovici school.
8 Next slide. Defence assert the international humanitarian law
9 does not regulate the issue of competence, that is, who's responsible in
10 a de jure capacity for prisoners. It is left to each individual country
11 to decide who was responsible to deal with prisoners of war.
12 Prosecution agrees with that submission. However, that's on the
13 de jure side. De jure responsibility as assigned by domestic law does
14 not preclude or rule out the existence, additionally, of de facto

15 responsibility based on one's having custody and/or control over
16 prisoners.
17 Ms. Alaburic, in her closing submissions, asserted that the
18 Prosecution did not plead that any legislative enactment or superior
19 order delegated the duty to protect detainees to the Chief of the
20 Main Staff. Here we identify those parts of the indictment related to
21 allegations of responsibility concerning General Petkovic and prisoners.
22 The indictment alleges he "controlled, collected, facilitated, assisted,"
23 et cetera. The Trial Chamber can see what's alleged.
24 The Defence seeks to avoid responsibility based on Petkovic's
25 de facto custody and control over prisoners. Even if he wasn't

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1 specifically designated under the law of Bosnia-Herzegovina or the law of
2 Herceg-Bosna to be responsible for prisoners, that doesn't rule out,
3 obviously, his responsibility for prisoners over whom he, in fact,
4 exercises custody or control.
5 Next Defence claim is that there's no evidence that any
6 legislative enactment or superior order delegated the duty to protect
7 detainees to General Petkovic. That is not correct. We refer the
8 Trial Chamber to P05104. It's the order from Mr. Boban dated the
9 15th of September, 1993. I made reference to this in my closing
10 submissions on General Praljak. We have that one. We can take a very
11 quick look at it.
12 Items 3, pointing out that:
13 "If there are detention centres where not all conditions
14 required ... are ensured, they should be immediately ensured and
15 prisoners of war must be treated in accordance with" international law.
16 This is issued to the Defence Department and the Main Staff.
17 Item 7: "The HVO Main Staff shall inform all subordinated
18 commands and units of this order and provide professional help in its
19 implementation."
20 Mr. President, Your Honours, it is the Prosecution position that
21 this is an express delegation from Mr. Boban to the Main Staff that
22 applied to General Petkovic who was the deputy commander of the
23 Main Staff, as well as to General Praljak, who at that time was its
24 commander.
25 JUDGE ANTONETTI: [Interpretation] One moment, Ms. Tomic wants to

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1 speak. You will have your rejoinder. I don't know. There may have been
2 a massive mistake that would justify you taking the floor now, but you're
3 supposed to do it later, not now.
4 MS. TOMASEGOVIC TOMIC: [Interpretation] No, Your Honours. It's a
5 technical matter. The Prosecution got instruction by the Trial Chamber
6 that it should refer to new matters, but what they have been talking
7 about was dealt with in the final brief of the Coric Defence, and I do
8 not see what it is exactly in the Prosecutor's submissions that is
9 supposed to be new. So that the Trial Chamber's decision is not being
10 honoured.
11 JUDGE ANTONETTI: [Interpretation] Very well.
12 Mr. Stringer, normally your rebuttal should focus on what was
13 said during the closing arguments of the Defence. Is that what you're
14 talking about?
15 MR. STRINGER: Well, that's -- I believe, Mr. President, that's
16 what I've been doing. We are talking specifically -- rebuttal's
17 obviously most closely linked to legal assertions made by counsel, but to

18 the extent that we are using this to address assertions made by other
19 parties, I think that it's appropriate to do so. It's clear that all
20 Defence have made assertions and that we're attempting to respond to
21 that.

22 MR. KARNAVAS: Mr. President. Mr. President, if I may be heard
23 for a second. This is the problem. That's a confusion between rebuttal,
24 such as to cross-examination, and rebuttal to closing argument. Now, if
25 I was in the United States, this would be a great rebuttal, but we don't

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1 have that system here. The Tribunal here has made it very, very clear
2 that rebuttal is only if there is a surprise, something that wasn't
3 expected. None of this is a surprise. There was briefs and then there
4 was argument. Nothing came out of the argument that should have been a
5 surprise to the Prosecution, nor have they made that claim. That's why,
6 in my humble submission, this is not proper rebuttal under the
7 jurisprudence of the ICTY, and it's an abuse of the process. Thank you.

8 MR. KHAN: Mr. President, perhaps if I may now --

9 JUDGE ANTONETTI: [Interpretation] Very well. Very well. This is
10 exactly the kind of argument that I wanted to avoid. It would have been
11 best if Mr. Stringer used his 45 minutes, and then if the OTP had used
12 its three hours, and then after this rebuttal, you could have taken the
13 floor on the Defence side and say Mr. Stringer made a mistake and the
14 Chamber could draw its conclusions, because we're wasting time right now.
15 We're wasting time. Let me consult.

16 [Trial Chamber confers]

17 JUDGE ANTONETTI: [Interpretation] Very well. The Trial Chamber
18 is asking the OTP only to mention the topics which were added in the oral
19 submissions, during the closing arguments, and not to come back to what
20 had been written in the closing briefs. What we're interested in is what
21 was added during the oral submissions, during the closing arguments. And
22 you must also, of course, always refer us to the paragraphs and tell us,
23 as you said, on the transcript, counsel such said such and such and I
24 don't agree with this or that or we're going to have this kind of
25 problems cropping up over and over again. Very well.

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1 MR. STRINGER: Mr. President, if you look at the slide it says
2 Defence claim here number 4. That's an assertion that counsel for
3 General Petkovic made during her closing submissions. It's a new
4 assertion. They say that there is no evidence of any legislative
5 enactment delegating responsibility for the prisons to General Petkovic.
6 I've just shown the Trial Chamber the Boban order which in our view does
7 make that express delegation. So I'm responding directly to a point that
8 was -- was raised.

9 JUDGE ANTONETTI: [Interpretation] Well, we will see this in due
10 time. Please proceed.

11 MR. STRINGER: Let's -- let's move to the next slide. I'm going
12 to skip a couple, because I'm starting to run over already. So I want to
13 go to point 5. Again, this is raised by Ms. Alaburic. There's no
14 evidence that the Chief of the Main Staff, Petkovic, exercised control
15 over any detention facility.
16 The Prosecution response is that this is irrelevant. The
17 question is whether General Petkovic exercised control over prisoners and
18 whether he or his subordinates had prisoners in their custody. That's
19 the relevant question in our respectful submission. And we also submit
20 the answer to that question is yes, he did have control over prisoners.

21 Next item. The Prosecution, according to the Defence, did not
22 plead that Petkovic found himself with de facto custody over prisoners of
23 war or other detainees.
24 Here we again referred the Trial Chamber to these parts of the
25 indictment where specific allegations in the indictment are pled

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1 regarding his de facto custody and control over prisoners. We also
2 assert or allege in the indictment that he was responsible for ensuring
3 proper treatment of prisoners under international humanitarian law.
4 Next point. The Defence allege there is no evidence that
5 Petkovic had de facto custody over prisoners.
6 In the Prosecution's view, that is incorrect. It's our position
7 that Petkovic and Praljak did have custody and control over prisoners
8 when they were in the custody of HVO units performing forced labour. And
9 as I've said, when General Petkovic or Praljak issued an order relating
10 to access to prisoners, use of prisoners for forced labour, et cetera,
11 they were exerting control over prisoners. And of course, when prisoners
12 were in -- on front line positions under -- performing forced labour,
13 they were in the custody of the HVO.
14 Finally on this point, counsel asserted that even if the Mrksic
15 duty applied in this case, it does not apply to Petkovic, and the
16 citation or the reference to that is -- is found there in the transcript.
17 Again it's -- the Prosecution obviously relies on everything
18 we've said so far on this, but in addition, the Trial Chamber needs to
19 consider these things: In handing over prisoners to the military police,
20 what did Petkovic and Praljak do to ensure and satisfy themselves that
21 prisoners arrested and imprisoned and held in the custody of the military
22 police would be protected, because we know from Mrksic that when
23 prisoners are handed over to another body, the person doing the handing
24 over has to ensure they'll be treated properly.
25 We know that Petkovic knew and Praljak knew that the military

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1 police had engaged themselves in crimes repeatedly in the past. We know
2 from May 1993, when they arrested hundreds in Mostar and put them in the
3 Heliodrom, that they couldn't take care of them. They couldn't feed
4 them. They had to turn to the international humanitarian organisations
5 for help in that. So that certainly put them on notice that they were
6 going to have a much bigger problem come early July when they started
7 arresting the thousands.
8 We also know that they knew, Prosecution asserts, that prisoners
9 were being used for forced labour under a programme that was very
10 extensively administered by the military police. So knowing all that,
11 what did Generals Petkovic and Praljak do to ensure that the prisoners
12 would be treated properly? We submit, nothing.
13 Secondly, with while the prisoners were in custody, as we've
14 said, Praljak and Petkovic were in custody and control to the extent that
15 they issued orders on access, forced labour, et cetera. So again, Mrksic
16 applies because of that.
17 Thirdly, during my closing submissions on General Praljak, we
18 went through the sequence of events by which the world became aware of
19 the conditions, for example, at Dretelj when the prisoners were being
20 released and the various media reports, the activities and the pressure
21 put on the HVO to shut down the camps. We know that upon learning of all
22 this, Praljak and Petkovic had a duty to take them back, to step in and
23 ensure that proper conditions were provided. And the citations for that

24 are here on this slide under Geneva III, also Geneva IV, on taking
25 effective measures to correct the situation. Praljak knew, Petkovic

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1 knew, in our view, and did nothing. And as a result, that's another
2 aspect of the Mrksic duty that does indeed apply to them.
3 Next slide. This position is actually echoed in the expert
4 report of General Pringle. Paragraph 77 of his report where he talks
5 about the obligation to take prisoners back into their authority when
6 they learn that the prisoners are not being treated in accordance with
7 international humanitarian law.
8 Finally on this point, Mr. President, as I've alluded to item C
9 there on the slide, there is extensive evidence of the disclosures, media
10 reports, international condemnation of the conditions and treatment in
11 the camps. It was all very well known, and clearly, the Prosecution
12 submits that Generals Petkovic and Praljak were aware of that.
13 So again, having that notice, the Mrksic duty under international
14 law imposes on them the obligation to step in, to assert their authority
15 and to ensure that prisoners are being treated correctly if they're not
16 being treated correctly by the military police to whom they had turned
17 over the prisoners.
18 I've got a last few remarks to make concerning Defence positions
19 and assertions related to occupation and the duties that flow from being
20 the commanding general of occupied territory.
21 Mr. President, Your Honours, consider the Defence position on
22 this. The Defence position is that the commander of the HVO may exercise
23 such control throughout the territory as imposing -- as imprisoning all
24 Muslim men of military age, but at the same time, the Defence asserts
25 that the commander of the HVO bears no responsibility for the protection

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1 of women, children, and elderly who remain behind, living on their own
2 throughout these same territories.
3 If ever there was a case justifying application of the doctrine
4 of occupied territory to hold a military commander responsible for
5 failing to protect civilians, this is such a case. Not only were
6 Petkovic and Praljak commanding generals over occupied territory when the
7 law is applied to the facts of this case, but, in fact, each of them
8 played a personal role in creating the very conditions that permitted the
9 widespread crimes committed against Muslims in places like Prozor,
10 Sovici/Doljani, West Mostar, Ljubuski, Stolac, Capljina.
11 The first Defence assertion on this relates to notice. The
12 Defence assert that they received insufficient notice or that the
13 indictment does not sufficiently plead this as an issue in the case.
14 Prosecution respectfully disagrees. We would first of all direct the
15 Trial Chamber to the Mrksic appeal judgement, the paragraphs indicated
16 there, 136 to 144.
17 Now, Mrksic was considering whether the Defence had sufficient
18 notice that they were charged with the Mrksic duty. So it's a different
19 duty that they were considering, but certainly the Prosecution would
20 submit the same rationale applies. And the rationale is that in
21 considering whether there was sufficient notice and pleading, the
22 Trial Chamber should consider the indictment as a whole in concluding or
23 determining whether Defence had notice of their need to defend a duty
24 such as the prisoner duty in Mrksic or, as we say in this case, the duty
25 flowing from the commanding general of occupied territory.

1 In our indictment, we've indicated or listed a number of the
2 provisions there that relate to these issues. I'm not going to read them
3 all to the Trial Chamber. It's worth noting in particular there are
4 repeated references to duties, aiding and abetting, responsibility for
5 failing to carry out duties, omitting duties, and there are two
6 references in paragraph 232 to there having been not only an
7 international armed conflict but also a partial state of occupation.
8 Much of this is repeated or elaborated on in the Prosecution
9 pre-trial brief, which is indicated there. Points on "territorial
10 expansion," again Croat control, taking control of municipalities,
11 securing municipalities. So in our view, again, all of these issues are
12 sufficient and put the Defence on notice that these issues concerning
13 control of occupied territory, as referred to in paragraph 232, would
14 play a role in this case and form a basis for liability.
15 The Trial Chamber will recall that it's not the first
16 Trial Chamber to consider whether there was a territory that's occupied
17 in this Tribunal. It was an issue that was dealt with in the Blaskic
18 case, in fact, but more close to -- closer to home, Sovici/Doljani was
19 expressly found by the Trial Chamber in the Naletilic-Martinovic case to
20 be occupied territory. And of course, that same crime base, that same
21 location forms a part of this case. So it's not clear how the Defence
22 can argue that they didn't know that occupied territory would be a factor
23 or an issue. The difference, of course, is that in this trial we have
24 the commanding general here. We didn't have the commanding general here
25 during the Naletelic trial.

1 We invite the Trial Chamber to consider the extensive trial
2 evidence related to issues of control, takeover, all of which, of course,
3 bear on the issue of proving that the HVO had supplanted the lawful
4 authorities of Bosnia-Herzegovina and was, in fact, in a position to
5 exert its own control and authority over these areas, which is the
6 standard as set out in our brief for finding the territories occupied.
7 Finally, the Trial Chamber may recall the map that
8 General Praljak presented toward the end of his evidence. He was
9 cross-examined on that by me, and he was asked very direct questions
10 about his role, responsibility for protecting civilians in the blue areas
11 that were under the control of the HVO on the map he presented. I
12 believe the Trial Chamber will recall the debate on that, but certainly
13 it was a hot issue during his cross-examination.
14 A second point raised by the Defence with respect to occupied
15 territory is the claim that the occupation must be by foreign forces.
16 The Defence appeared to be claiming that occupation requires the sort of
17 classic belligerent occupation that we saw in World War II, for example.
18 That is not the case. And just to state our position here, because
19 Mr. Kovacic in his closing submissions stated that the Prosecution has
20 not even indicated who the occupying power is, it's our position that
21 it's the Croatia HVO side of the conflict. That's the same occupying
22 power that was held to be in control of Sovici/Doljani in the Naletilic
23 case. The Croatia HVO side of the conflict, an international armed
24 conflict taking place on the territory of Bosnia-Herzegovina against the
25 armed forces of the Republic of Bosnia-Herzegovina.

1 Certainly Blaskic and Naletilic themselves stand for the

2 proposition that you need not have a classic belligerent occupation or
3 that Croatian armed forces themselves must be the sole or exclusive
4 occupying power. Naletilic was the very same factual situation we have
5 here. That is, Croatia exerting overall control over the HVO, while at
6 the same time the HVO having supplanted the lawful authorities and in a
7 position to and indeed exerting its authority and control over the
8 occupied territory.

9 In terms of further support for the view that you don't have to
10 have a foreign or an exclusively foreign occupation, we direct the
11 Trial Chamber to Article 47 of Geneva Convention IV, and this and a
12 couple of the authorities that we're going to rely on that follow make it
13 clear that, certainly in the post-World War II era, there was recognition
14 that occupying forces would attempt to evade or avoid the
15 responsibilities, the responsibilities that flow when territory does
16 become occupied, and that Article 47 here is a response to that in
17 attempting to recognise some of the situations that can arise and be
18 employed in order to avoid the obligations that flow from occupation.
19 Under the commentary here, you'll note, this is the first
20 paragraph of the commentary, which says that:
21 "During World War II, whole populations were excluded from the
22 application of the laws governing occupation and were thus denied the
23 safeguards provided by those laws ..."
24 And then moving down to the second paragraph of item number 2
25 there. It's worth noting, because it's a situation that is very closely

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1 linked, in our view, to this case.
2 "Of course, the Occupying Power usually tried to give some colour
3 of legality and independence to the new organisations, which were formed
4 in the majority of cases with the co-operation of certain elements among
5 the population of the occupied country, but it was obvious ... they were
6 in fact always subservient to the will of the Occupying Power."
7 So we would respectfully direct the Trial Chamber to Article 47
8 of the IV Geneva Convention and the commentary as standing for the
9 proposition that the classic exclusively foreign occupation is not
10 required in today's world for there to be an occupation.
11 In our book of authorities that we've submitted with our final
12 submissions, we have included among those an excerpt from a much more
13 exhaustive treatment of "The International Law of Occupation" by
14 Mr. Benvenisti, and here on page 5, again, he echos this view that
15 occupation can exist even when the occupying power exists through
16 surrogates and other administrations, and even when it seeks to avoid its
17 responsibilities under the law of occupation.
18 "Today, however, such practice is the rare exception," he's
19 talking about a declaration of occupation by the occupying power, "the
20 exception rather than the rule. Modern occupants came to prefer, from a
21 variety of reasons, not to establish such a direct administration.
22 Instead, they would purport to annex or establish puppet states or
23 government, make use of existing structures of government, or simply
24 refrain from establishing any form of administration."
25 And he goes on to talk about how they would not "acknowledge the

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1 applicability of the law of occupation to their own or their surrogates'
2 activities ..."
3 So in our submission, Your Honours, this is reflective of the law
4 of occupation as it is -- as it exists in our world today where we have

5 states, powers, in occupation, even though they may be acting through
6 surrogates.
7 Finally, we refer the Trial Chamber to the article of
8 Mr. Roberts. Again this is included in our book of authorities. "What
9 is military occupation. Here he refers to the Ansar Prison case from
10 1983. In the Ansar Prison case, the Supreme Court of Israel considered
11 the -- whether an occupation existed in a refugee camp in Beirut when
12 Israeli defence forces were present in Beirut during the hostilities
13 there, when they were working with Christian Phalangist forces that
14 carried out a massacre of Palestinians in a refugee camp. Again, it's
15 another source of authority for the proposition that the classic
16 belligerent occupation that counsel appears to require does not, in fact,
17 have to be shown for there to be a state of occupation.
18 Next slide. Defence argue that armed conflict and occupation are
19 mutual exclusive. "They cannot co-exist."
20 That's clearly incorrect. Even in the case of the classic
21 belligerent occupation, obviously when Germany occupied Poland or France,
22 there was still an armed conflict taking place.
23 What counsel's, I believe, stating here is that there cannot be a
24 state of occupation when you've got fighting in the territory where the
25 occupation is supposedly taking place, and that's not correct. We refer

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1 the Trial Chamber to our final trial brief on that, paragraph 92,
2 footnote 145.
3 The existence of pockets of resistance does not negate an
4 occupation if the other factors and requirements of occupation under the
5 law are being met.
6 Finally, the Defence asserts - this is point number 4 - that a
7 military commander lacks executive power unless specifically tasked with
8 it. And, Your Honours, the Prosecution respectfully disagrees with that
9 assertion. We direct Your Honours to page 1272 of the Hostages case from
10 Nuremberg, talking about the obligation, the duty, responsibility of the
11 commanding general of occupied territory.
12 "This not only applies to control of inhabitants in the
13 accomplishment of these purposes, but the control and regulation of all
14 other lawless persons or groups. He cannot escape responsibility by a
15 claim of a want of authority. The authority is inherent in his position
16 as commanding general of occupied territory. The primary responsibility
17 for the prevention and punishment of crime lies with the commanding
18 general; a responsibility from which he cannot escape by denying his
19 authority over the perpetrators."
20 There's further elaboration on this point, Your Honours, in the
21 High Command case, page 544.
22 "... but we are also of the opinion that under international law
23 and accepted usages of civilised nations that he has certain
24 responsibilities which he cannot set aside or ignore by reason of
25 activities of his own state within the area -- his area. He is the

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1 instrument by which the occupancy exists. It is his army which holds the
2 area in subjection. It is his might which keeps an occupied territory
3 from re-occupancy by the armies of the nation to which it inherently
4 belongs."
5 Mr. President; Your Honours, the Prosecution would submit that
6 this text is especially applicable in this case when considering the
7 testimony of General Praljak and the assertion that he didn't have

8 authority, the assertions repeated by Defence counsel in closing
9 arguments, this assertion that the general's only responsible for the
10 front line. And the general, in fact, is holding the territory, and it's
11 by virtue of holding the territory that in this case many of the crimes
12 committed against the civilians were able to take place.
13 Finally, we refer the Trial Chamber to the extensive evidence in
14 our view that shows that indeed Generals Petkovic and Praljak exercised
15 extensive authority over these territories.
16 Mr. President, Your Honours, in summary, the Prosecution asserts
17 that both the facts and the law establish that Generals Petkovic and
18 Praljak possessed and exercised authority as commanders of occupied
19 territory. In his submissions on this, General Praljak's counsel,
20 Mr. Kovacic, claimed that the Prosecution is asking too much of the
21 Trial Chamber and that the Trial Chamber should resist the Prosecution's
22 efforts to push the law in this direction. That's at page 52447 and 48
23 of the transcript from last week.
24 We are not asking the Trial Chamber to push the law. We are
25 asking you to faithfully apply it.

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1 THE INTERPRETER: Microphone, please.
2 MR. STRINGER: We are not asking the Trial Chamber to push the
3 law. We are asking you to faithfully apply it.
4 What is the Defence asking the Trial Chamber when they ask you
5 not to go down this road? A group of individuals carves out a new
6 autonomous territory, a line on ethnic grounds. They take control of the
7 territory, first politically and militarily. They replace the lawful
8 civilian authorities. They defend the territory in armed conflict
9 against the lawful armed forces of that territory. They pass scores of
10 laws. They round up and detain hundreds of civilians in early May 1993,
11 imprisoning them for a few weeks for their own safety. They intern the
12 entire able-bodied male population. They detain, imprison, evacuate,
13 transfer, and eventually deport much of the civilian population. They
14 appropriate civilian property and housing stock. They control the roads.
15 Is no one responsible to protect the civilians in this place? None of
16 these gentlemen has stepped forward. If not them, then who?
17 When the Defence ask you not to consider the issue of occupied
18 territory, they don't want you to think about a very basic question,
19 which was: Who was responsible for protecting the civilians?
20 Now, Mr. President, Your Honours, it's the Prosecution submission
21 that the HVO was in a position to exert its authority over these places
22 that we say are occupied territory. They are expressly laid out,
23 identified in the brief, specific places, specific periods of time.
24 There was a state of occupation in these areas when Your Honours apply
25 the facts and the law in this case. It was an international armed

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1 conflict. And for these reasons, Your Honours, we submit that despite
2 the assertions made by the Defence, there was a state of occupation in an
3 international armed conflict and this duty, then, does flow to the
4 commanding generals who were in charge at the time.
5 Thank you.
6 JUDGE ANTONETTI: [Interpretation] Thank you, Mr. Stringer.
7 We have another 20 minutes before the break. Mr. Scott, you may
8 begin.
9 MR. SCOTT: Can we switch to Sanction, please.
10 Good morning, Mr. President. Good morning each of Your Honours.

11 Good morning, Counsel, all those in and around the courtroom who are
12 assisting us.
13 In responding to various points made during the Defence closings,
14 there were three broad points or broad themes that ran through a number
15 of the six closings. I'll identify specific examples as I go, but one of
16 them was -- and many of these we relate -- the Prosecution submits
17 relates what might be called more generally the Herceg-Bosna mythology,
18 the mythology that has built up around Herceg-Bosna in an attempt to
19 either justify it or to explain in an inaccurate and, we suggest, false
20 way what was happening, what was going on with Herceg-Bosna. The
21 Herceg-Bosna political mythology, if you will.
22 The first -- the first dimension of that is that there is a
23 repeated sense of right, a repeated presumption of correctness, of
24 validity to -- that if the Croats put something forward, if one of the
25 Herceg-Bosnans put a position forward, somehow that -- just by the fact

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1 that it's been put forward, it is presumptively correct. It is
2 presumptively valid. It has the same equal weight or legitimacy as the
3 decision or policy of a politically legitimate, legally recognised body.
4 For example, Mr. Karnavas said on the 15th of February at
5 transcript 52250:
6 "And there is documentation, and maybe we'll get to that where
7 they [referring to the Muslims] also have aspirations to get to the sea."
8 Well, what it's underlying premise in that assertion? That the
9 Muslims didn't have a right to get to the sea on their own sovereign
10 international territory, but it's just a presumption that somehow the
11 Bosnian Croats had a right to exclude the State of Bosnia-Herzegovina
12 from its own territory.
13 There was a second example during Ms. Alaburic's closing on the
14 21st of February, and I only have the daily transcript reference, my
15 apology. When I was making my notes on that day it was on transcript
16 page 25.
17 There is an undisputed fact, she said, that in April 1993, the
18 BH Army enlarged the territory under its control. If we totally ignore
19 the question who started the conflict, we will agree that the BH Army was
20 taking new territories, and that the area marked green here, the areas
21 marked green, are getting larger, whereas the areas marked blue,
22 controlled by the HVO, are getting smaller.
23 Again, Ms. Alaburic just presumes, takes it as a given, that
24 somehow that territory -- that's territory that belonged to Herceg-Bosna
25 and the HVO, which it did not, not for one minute. Every bit of

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1 territory that she showed us on the maps, whether it was green or blue or
2 pink, every bit of it belonged to the internationally recognised
3 sovereign state of BiH. Not one square centimetre belonged to
4 Herceg-Bosna.
5 I also note here, and just to connect back to Mr. Stringer's
6 arguments, the connection addressed to the notion of occupied territory,
7 the whole notion that the ABiH was regaining territory, was gaining more
8 territory, has within it the assertion, in fact the admission, that the
9 HVO had occupied territory and it was only the BH that was regaining
10 territory, regaining occupied territory, territory occupied by the HVO.
11 It was Herceg-Bosna and the HVO and its sponsor and controlling
12 state, Croatia, had occupied and controlled that territory, which was the
13 very reason, the very circumstance which required the ABiH to "gain" new

14 territory. It's own territory.
15 But back to the main point. This whole attitude, this
16 presumption of right, this automatic assumption of validity as if
17 something is somehow a given, was noted by Judge Trechsel in an
18 intervention with Mr. -- during Mr. Petkovic' testimony on the
19 11th of February, 2010.
20 "Judge Trechsel: Mr. Petkovic, listening to you, one gets the
21 impression that it was a matter of course that the authorities would be
22 Croat, but that may be the issue, to establish Croat rule even where
23 previously, as in Stolac, there was not a Croat rule and even a clear
24 Muslim majority in the population."
25 There was a similar or related posture which I will refer to as

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1 "Croat exceptionalism," that is the notion that, "The usual rules don't
2 apply to us. It's okay for us to do something, but not for anyone else
3 to do it." And we heard at that again during closing arguments. It's
4 okay for the Croats to raise funds in foreign countries. It's okay for
5 the Croats to bring volunteers which when they talk about the Muslims
6 they use the term "foreign fighters." Well, foreign fighters are people
7 who come from outside Bosnia, including all the Croats, all the
8 volunteers, all the people from the Croatian diaspora, those were foreign
9 fighters. But this attitude is it's okay for us to do that, but not for
10 the Muslims to bring "foreign fighters."
11 It was okay for the HVO to insist on a single military under a
12 single command under the same supreme commander in Herceg-Bosna, but it
13 was not okay for the legal BiH authorities to assert the same position.
14 A third area of -- a continuing area of human -- concern
15 throughout many of the Defence arguments was inconsistent or
16 contradictory positions, depending on the argument or position being
17 advanced at the moment.
18 For example, consider the Defence position on the Sarajevo or BiH
19 authorities. On the one hand, in some context we are told this was a
20 passive dysfunctional group, a group that couldn't and didn't do much of
21 anything, the gang, if you will, who couldn't shoot straight. Those were
22 the BiH authorities. On the other hand, on other occasions and when it
23 suits the Defence in making another argument, we were told that this was
24 a highly organised top-down Muslim juggernaut centrally directed out of
25 Sarajevo and threatening everything Croat. Well, which was it? Is it

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1 the gang that couldn't shoot straight or is it the highly co-ordinated
2 top-down Muslim juggernaut?
3 A similar -- another example was the Defence -- was the reference
4 to Sarajevo being cut off. When it suited them for Sarajevo to be cut
5 off, it was cut off, but note the numerous occasions when they weren't
6 dealing specifically with that issue, when the evidence would creep in,
7 the evidence would come in that, well, in fact, there were frequent
8 regular communications and the ability to communicate and transportation
9 into and out of Sarajevo when necessary. I'm reminded of the one
10 specifically example where the issue of some financial software came up,
11 financial software, and it was needed from Sarajevo, and it was readily
12 available. Mr. Tomic testified to that, T33745-46. Well, we got it, we
13 needed this software. Well, how did you get it? We got it from
14 Sarajevo.
15 Again, the position shifted and changed depending upon the
16 Defence argument being made at the moment.

17 Now I'll come back to some of those aspects in -- in a few
18 moments in terms of some other specific arguments, but I want to turn now
19 to something actually that came up in the end of the closing arguments by
20 Mr. Sahota, and that was he reminded us -- and I certainly have no basis
21 to disagree with him. He referred back to his training and work as an
22 historian, and in doing so, he argued that, really, a case such as this
23 really shouldn't be at the Tribunal, that these are really decisions for
24 history to make and really not appropriate for adjudication,
25 international courts shouldn't be about this business.

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1 Your Honour, the Prosecution strongly disagrees with that. In
2 fact, it is truly a claim, a plea for impunity, that we should go back to
3 the old days. These cases are too big. We can't hold leaders
4 responsible. They are too complex. Let's just go back. We'll do camp
5 guards and we'll do local commanders, but we can't possibly hold the top
6 senior -- the top and senior political and military leaders responsible.
7 It's just too difficult. The cases are too big. It's not appropriate
8 for courts to do that, so let's give those people impunity. The
9 Prosecution, with great respect, rejects that Defence argument.
10 The Prosecution's pleading of a joint criminal enterprise in this
11 case and the common objectives and the common purposes that were
12 involved, it was fully 100 per cent consistent with the ICTY
13 jurisprudence and practice. And in the interest of time, I'm not going
14 to stop and read these, but as we go forward, I did go back over the
15 weekend and re-read some of the trial judgements in other cases that
16 dealt with the question of JCE. And I'll just remind you, and the
17 Chamber will have these citations, the Krajisnik trial judgement,
18 paragraph 1089. I'll just hit a few of these lightly.
19 "The Bosnian-Serb leadership wanted to ethnically recompose the
20 territories under its control by expelling and thereby drastically
21 reducing the proportion of Bosnian Muslims and Bosnian Croats living
22 there. 'Muslims and Croats should move out of our municipalities until a
23 level is reached where Serbian authority can be maintained and
24 implemented on its own territory in each of these municipalities.'"
25 The Chamber found those allegations to be proven.

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1 The Martić trial judgement, paragraph 442. I'll leave the
2 Chamber to look at that language at paragraph 442. Sounds remarkably
3 similar to the indictment in this case.
4 "... the forcible removal of a majority of the Croat, Muslim and
5 other non-Serb population from approximately one-third of the territory
6 of the Republic of Croatia and large parts of the Republic of Bosnia and
7 Herzegovina in order to make them part of a new Serb-dominated state."
8 Martić, paragraph 443. Martić, paragraph, trial judgement, 445.
9 I'll pause on that one, at the end of paragraph 445, where the Chamber
10 says and the Chamber's saying this has been proved, in the Trial
11 Chamber's view this has been proved.
12 "... the implementation of the political objective to establish a
13 unified Serb territory in these circumstances necessitated the forcible
14 removal of the non-Serb population from the SAO Krajina and the RSK
15 territory. The Trial Chamber therefore finds beyond reasonable doubt
16 that the common purpose of the JCE was the establishment of an ethnically
17 Serb territory through the displacement of Croat and other non-Serb
18 population ..."
19 MR. KARNAVAS: If I may just interrupt very quickly just to make

20 the record, because I think that the reasonable, objective observer at
21 this point in time cannot but conclude that the Trial Chamber is allowing
22 the Prosecutor to make another closing argument and going into areas
23 which are outside of the main of a rebuttal, and I do find this not just
24 to be an abuse of process but also it dangerously comes close to an abuse
25 of judicial discretion. Thank you.

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1 MR. SCOTT: Mr. President, I'm responding specifically to Mr. --
2 specific example to Mr. Sahota's argument. That this was not
3 appropriate, that somehow this was too big a JCE, it was not appropriate
4 under ICTY practice or should not be. I'm specifically responding to
5 that argument. And I think the Defence, with great respect to my
6 colleagues, is being overly narrow with its interpretation. The
7 Prosecution, in good faith, stood up last week and gave -- and presented
8 an outline of those things -- those topics that we wish to address. We
9 listed them, got up and listed them. There was then argument about that.
10 The Chamber decided to give us the three hours. On the basis of that
11 ruling and on the basis of the representations that we made on Thursday,
12 and I can go through the list again if necessary, once again the
13 Prosecution, Mr. Stringer and I, worked long and hard since last Thursday
14 to make this presentation. Now we're not doing that just because we have
15 nothing else to do. We're trying to assist the Chamber.
16 We believe that these are fair responses, these are fair
17 responses, to the arguments raised. We don't know when the -- when we
18 came into this three weeks ago, we didn't know what issues specifically
19 the Defence would raise, what -- how they would use their time and their
20 arguments. Yes, maybe some things were mentioned in their brief, would
21 they use their five hours to address those, would they maybe put a new
22 emphasis on something, would they take things in a slightly different
23 direction, would we then for sure, Oh, this is really what they're
24 focusing on, this is really now what they're focusing on, and therefore
25 there is appropriate opportunity -- there should be an appropriate

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1 opportunity to respond, and the Chamber made that ruling last Thursday.
2 We prepared accordingly, and everything I've said so far is in
3 specific -- specific response to Defence arguments, including the
4 citations I've given so far and including the argument made by
5 Mr. Sahota.
6 So I would like to be able to proceed, Your Honour.
7 JUDGE ANTONETTI: [Interpretation] Please proceed, but please each
8 time refer to what the Defence argued during their closing arguments.
9 Give us the transcript pages.
10 MR. SCOTT: Thank you, Your Honour. I will finish my response to
11 Mr. Sahota's response and I'm just going to give you the citations. The
12 Milutinovic -- well, I'm sorry. Ms. Winner reminds me I need to go back
13 and make one correction. On the Krajisnik trial judgement, I apparently
14 by error referred to paragraph 1089 and I should make it clear that the
15 part I read was at page 1090, but I refer the Chamber to page --
16 paragraphs, excuse me, paragraphs 1089, 1090. My apology.
17 I would also refer to the Chamber to the Milutinovic trial
18 judgement, volume 3, paragraph 95; to the Djordjevic judgement, just last
19 week, just last week, on the 23rd of February, 2011, I refer the Chamber
20 to paragraphs 2000 and 2130. Again, the Trial Chamber making findings
21 and describing the joint criminal enterprises in that case in language
22 very similar to what would apply in this case.

23 I'm now going to respond to an argument by Mr. -- perhaps we can
24 do this before the break. I'm going now to respond to an argument made
25 by Mr. Karnavas and specifically, Your Honour, it was made at transcript

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1 page 52254 and many other places, but that's one example that I'm going
2 to give the Chamber when he addressed the evidence of Mr. Thornberry, but
3 he was making a broader point, and it's a point to which the Prosecution
4 wishes to respond and it fits into this notion about pleading and proving
5 the joint criminal enterprise.

6 Various of the Defence teams, but in particular Mr. Karnavas,
7 have attacked the international witnesses in general, that is the
8 witnesses from UNPROFOR, ECMM, the UNMOs, and other international
9 organisations as having been either uninformed or misinformed and/or
10 misguided, that they were all given or predisposed to a particular view
11 or views, including the view that Herceg-Bosna was part of a Greater
12 Croatia project directed from Zagreb.

13 Now, let me give the specific example in response, Mr. President,
14 to your request for transcript reference. 52254, Mr. Karnavas says:
15 "Now, Mr. Thornberry ... he is at the top of the food chain at
16 least for UNPROFOR and civil affairs, and of course his view was that
17 everybody knew, it was a fact of life, it was a fact of life, that Croats
18 were trying to ... carve out a piece of BiH. Well, if that's what people
19 are getting planted into their mind at the very top when they first
20 arrived for their orientation and then they arrive at the scene, that's
21 the prism by which they will all view the events. Very few were capable
22 of seeing past that."

23 And that's just one example, but that wasn't limited -- this
24 position was not limited to Mr. Thornberry. The Prosecution submits that
25 the Defence arguments in this respect are all based on a fundamentally

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1 false premise, and that is that internationals were misinformed. The
2 Prosecution would submit, Your Honours, that in fact the evidence in this
3 case compellingly supports the view, the notion, the conclusion, that the
4 internationals were exactly right. The internationals and their
5 assessments over the years, through from 1992 to 1995, made assessments
6 about what was happening, and what Herceg-Bosna was about, and about
7 Greater Croatia, and about Tudjman's agenda. It's not that they were
8 misguided. The evidence in this case shows that they were right. I'm
9 not going to take the Chamber's time to go through all the evidence, but
10 I'm just going to quickly pass through it. I'll give the Chamber the
11 references if the Chamber wants to go back through them.

12 Tudjman's own words which the Chamber has heard repeatedly.
13 Prlic's own words that we've heard repeatedly. There was a plan directed
14 from Zagreb. Praljak's testimony, "We wanted borders. We wanted a Croat
15 area with borders that would be permanent." Boban's words, "We are at
16 war over territory and borders." Akmadzic: We want "Herceg-Bosna, with
17 borders," et cetera.

18 The fundamental notion that the internationals were "misinformed"
19 is just simply wrong. The evidence in this case shows that the
20 internationals were correctly informed.

21 Your Honours, on that point it looks like the time for a break.

22 JUDGE ANTONETTI: [Interpretation] You're right. We need to have
23 a break. We're going to have a 20-minute break.

24 --- Recess taken at 10.32 a.m.

25 --- On resuming at 10.54 a.m.

1 JUDGE ANTONETTI: [Interpretation] The court is back in session.
2 The Trial Chamber is telling the Prosecution that it has one hour and
3 30 minutes left -- 38 minutes left for the rebuttal, and after that the
4 Trial Chamber will ask each Defence how long they need for their
5 rejoinder, possibly, of course, because it could also waive its right to
6 a rejoinder. We also would like to remind you that Mr. Karnavas will
7 have 15 minutes because he was told that he could he give us his point of
8 view after last week's hearings. And then also we would like the Defence
9 to tell us whether the accused wish to take the floor. As you know, the
10 accused are entitled to take the floor at the very end. So they will
11 have -- the counsel for Defence will have to tell us whether their
12 clients want to take the floor or not.
13 We also ask Mr. Scott to be very careful and to always cite his
14 sources, especially the transcript pages where such and such Defence
15 would have proffered such and such words.
16 Mr. Scott, you have the floor.
17 MR. SCOTT: Thank you, Mr. President.
18 I want to turn ever so briefly to the question of the Prosecution
19 witnesses. All six of the Defence teams spent considerable parts of
20 their closing arguments attacking in various respects virtually all the
21 Prosecution witnesses and their credibility. If I was going to respond
22 to all of that, it would literally take, well, all of three hours and
23 then some, but let me just pick a couple as examples, simply to say --
24 just to remind the Chamber and ask the Chamber just as the -- just as the
25 Defence did, not to accept counsel's assertions, either mine or theirs,

1 simply at face value, but of course to look back at the evidence.
2 Now, let me give the Chamber two examples. Mr. Karnavas spent
3 time attacking the evidence of the constitutional expert Dr. Ribicic, and
4 that was at transcript 52241 and following.
5 I think Mr. Karnavas's, with all due respect, treatment of
6 Dr. Ribicic was unfair. Can I remind the Chamber that Dr. Ribicic was a
7 Rule 92 bis witness. We presented his transcript and from the Kordic
8 case, and given that, he was not asked to do any new or additional work.
9 That is the nature of a Rule 92 bis witness. We presented him to the
10 Court to be considered with the similar evidence of the viva voce expert,
11 Mr. Tomljanovich. Contrary to what counsel have said, Dr. Ribicic did
12 submit an entirely bona fide expert report in which, in fact, he did
13 exactly what Mr. Karnavas repeatedly said that the Prosecution should
14 have done, and that is, Dr. Ribicic, as a constitutional scholar, as a
15 sitting judge, by the way, on the Slovenian Constitutional Court, went
16 through the Herceg-Bosna legislation, the Herceg-Bosna papers, the very
17 work that Mr. Karnavas said should be done, carefully examined that
18 documentation, and I might mention that documentation didn't change.
19 There wasn't new Herceg-Bosna law between his Kordic testimony and his
20 Prlic testimony. He examined all the existing HVO documentation,
21 Herceg-Bosna documentation, and provided his conclusions in his report.
22 I just simply say -- ask Your Honours to take Dr. Ribicic's
23 evidence, if you will, as a 92 bis witness who then came for cross, and
24 Mr. Tomljanovich's viva voce evidence, take their evidence together with
25 the other evidence in the case and we submit that it is fully credible

1 and fully persuasive.
2 The only other example I'll pause on is the international witness
3 Mr. Pellnas, Bo Pellnas, the Swedish military observer or UNPROFOR
4 officer. For some reason a number of the accused attacked Mr. Pellnas's
5 evidence. I'll just remind the Chamber of what Mr. Filipovic, a Defence
6 witness who had actual encounters with Mr. Pellnas during the time, said.
7 Mr. Filipovic at transcript 47770-71. Mr. Filipovic, in an unsolicited
8 assessment, when context -- when a context came up involving Mr. Pellnas
9 said, and I'm quoting Mr. Filipovic, Pellnas was "a true professional."
10 A true professional.
11 Now let's turn again, ever so briefly, to the credibility of the
12 Defence witnesses. The Prosecution again has had to use its limited
13 pages and limited time as wisely as we thought possible, as wisely as our
14 judgements could make and maybe we were wrong. Maybe we make good
15 judgements. Maybe we made bad judgements, but we had to allocate our
16 time as best we thought. Therefore, we did not spend a great deal of
17 time or pages addressing the credibility of the Defence witnesses, some
18 but not many.
19 The Chamber, of course, will have to make its own assessments of
20 the credibility of each witness and what weight, if any, and I stress if
21 any, to give to his or her evidence. With respect, with great respect,
22 the Prosecution submits that there was hardly a Defence witness who was
23 not substantially impeached, weakened, and/or contradicted on
24 cross-examination.
25 MR. KHAN: Mr. President, I do apologise for interrupting and

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1 I've tried to sit quietly throughout the speech of the Prosecution.
2 Your Honours have enjoined on a number of occasions that the Prosecution
3 be specific, and it seems that despite that enjoinder, my learned friend
4 is seeking repeatedly to make general statements to paint with a broad
5 brush. Another way of putting it perhaps is to use a butcher's knife to
6 the issue of rebuttal when a surgeon's scalpel was needed, and I would
7 ask that a forensic approach be adopted. When it comes to the Defence
8 witnesses for Stojic, everything we've said is supported in our final
9 brief, and we're going to take a very strict line if the Prosecution, at
10 any stage, wish to address anything in relation to Mr. Stojic because
11 everything we've -- apart from one or two matters on sentencing,
12 everything else, in fact, has been covered in our final brief.
13 Your Honours, my learned friend Mr. Stringer earlier prayed in
14 aid the Naletilic and Martinovic case in relation to occupation and yet,
15 of course, the Prosecution, I'm sure, would not seek to turn away from
16 that case when it comes to the clear case law of Judge Liu, which I
17 referred to on the weekend. And it's very clear that rebuttal is not an
18 opportunity to reinforce the Prosecution's case, and yet that's what --
19 that's precisely what it seems the Prosecution is trying to do.
20 So, Your Honour, I would ask that rather than -- I won't call
21 them platitudes, but rather than general assertions, the Prosecution be
22 specific and address particular averments made by the Defence when it
23 comes to Defence witnesses because, as I said earlier, our submissions in
24 relation to the credit of Defence witnesses and their testimony has all
25 been briefed in our final brief. And there's nothing, we say, that the

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1 Prosecution can say about Mr. Stojic that would legitimately and properly
2 come within the scope of rebuttal.
3 JUDGE ANTONETTI: [Interpretation] Admittedly, Mr. Scott, the

4 Defence teams have quoted their own witnesses. There was Skender and
5 Andabak and others, there are other Defence witnesses. Since you're now
6 dealing with this issue, tell us as much as possible the details.

7 Witness so-and-so said at page so-and-so, and for us, as Prosecution,
8 their evidence has no probative value, but we need to have the exact
9 references because, of course, we took notes as we went along. We're
10 going to look into the transcript and the record, but we need to have the
11 exact reference pages where you criticise this or that Defence witness,
12 because you rightly said it will be for the Trial Chamber to assess the
13 probative value of each and every Defence witness as well.

14 MR. SCOTT: Thank you, Mr. President. I was about to turn to a
15 couple of examples, but -- but let me just be very brief. I can't
16 respond to every one. I simply want to ask the Chamber and remind the
17 Chamber that, of course, the credibility of all witnesses, Prosecution
18 and Defence, will have to be carefully assessed according to the evidence
19 they gave. And the Chamber will recall in a number of instances, for
20 example, the Defence -- there were a couple of Defence witness who came.
21 One who denied Ustasha war crimes in World War II, that Jasenovac didn't
22 really happen or should be greatly minimised.

23 JUDGE TRECHSEL: I'm sorry, Mr. Karnavas -- Mr. Scott. Do you
24 believe that you have to recall to the Chamber that it must critically
25 assess the creditability of all witnesses? I would think this is such a

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1 basic, matter-of-fact character that rebuttal should not address such a
2 broad general issue and sort of lecture the Chamber on how to do its
3 work.

4 MR. SCOTT: Well, it certainly, Your Honour, was not meant as a
5 lecture. I would agree with you whole-heartedly, in any event,
6 Judge Trechsel, and it wouldn't matter whether I did, of course, or not,
7 but I don't intend -- and if the Prosecution was to stand here for some
8 time and go on with such a lecture, I would certainly agree that that
9 would be inappropriate. Because of the interventions and this was --
10 really would have been a one-minute thing, just simply to remind that
11 just as the Defence has implored and spent considerable time talking
12 about the credibility of Prosecution witnesses, simply was intended to be
13 a very brief passing reference to the fact that, of course, the same
14 principles as the Chamber, as Judge Trechsel just mentioned, applied to
15 the Defence as well.

16 I will respond specifically because there was the specific
17 response allegation or assertion that the Prosecution had attacked all
18 Croat witnesses as somehow inappropriate or not believable. The
19 Prosecution never, ever said that, would never say that. That simply is
20 not the case. In fact, the Prosecution has referred to the evidence of
21 or related to a number of moderate or more moderate Croats including
22 Kljuic, Brkic, Pelivan, Markesic, Komsic, the Catholic archbishop in
23 Sarajevo Mr. Vinko Puljic, et cetera. The Prosecution has never taken
24 the position, as asserted by the Defence, oh, the Prosecution stood up
25 and told you not to believe any Croat witnesses. That is not our

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1 position, has never been our position.

2 Now as to the Herceg-Bosna insiders, and let me adopt

3 Mr. Sahota's words, let me adopt Mr. Sahota's words, when he said, well,
4 you know, some witnesses come with "an axe to grind." Well, I submit to
5 the Chamber is ever so true, or may be ever so true, and for the

6 Chamber's assessment as to the numerous witnesses who came that held high

7 and senior positions in Herceg-Bosna and the HVO and whether they indeed
8 in coming before this Chamber had an axe to grind.
9 Your Honour, I do need to make one correction. In reference to
10 some of the arguments made by Ms. Alaburic, there was an error, and when
11 we find an error, we've certainly throughout the trial fessed up to it,
12 if you will. In this regard, we confirm that in connection with an
13 argument made by Ms. Alaburic that was in the Petkovic part of our final
14 brief, there was an error in citation. In paragraph 937 of the
15 Prosecution's final brief, we cited in footnote 2086, Exhibit P05308.
16 The correct exhibit and citation is P02950, which is also cited on the
17 same topic in other parts of the brief. They are two similar documents
18 in many ways on the same topic and because they were cited a number of
19 times, the two citations were switched. But if the Chamber will please
20 note, and I'll say again, in footnote 286, the citation should be P02950,
21 not P05308. Although both are ultimately relevant to the case.
22 With that correction, the Prosecution argument is correct and
23 fully supported that Mr. Petkovic was fully on notice based on the ICRC
24 report prior to his forced labour order in July 1993.
25 Your Honours, I'd now like to turn in response to arguments made

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1 by Mr. Karnavas at pages 52266 to 68 about the legitimacy of the BiH
2 Presidency and Mr. Izetbegovic. He went on for some pages about that.
3 Throughout the whole period starting in 19 -- in the earliest times and
4 going up to 1990 -- to the third election, if you will, of
5 Mr. Izetbegovic. From 1990 elections to the third term.
6 Your Honour, I would submit to the Chamber -- and I'll try to
7 take this somewhat more briefly than I had anticipated. As the Chamber
8 reviews the evidence, there is abundant evidence, including from the
9 Defence's own witnesses, that the -- the -- excuse me, the BiH Presidency
10 and Mr. Izetbegovic's role in that Presidency as president was entirely
11 legal, entirely valid, entirely legitimate from at least the period of
12 the December 1990 election or formation of that first government to at
13 least the end of 1993. And I submit to the Chamber and I'm going to be
14 very bold about this because if the Chamber reviews the evidence, you'll
15 find it, I'm confident, quite clear that despite all the words to the
16 contrary, despite all the argument, the evidence in this case, from the
17 witnesses and from the documents, is that the Presidency was completely
18 valid throughout this time period. And Mr. Akmadzic himself, a
19 high-level insider, a man who held a -- initially a nonpolitical position
20 in the Presidency, then became prime minister, followed these events
21 closely, was one of the senior Herceg-Bosna witnesses brought by the
22 Defence. Mr. Akmadzic repeatedly said, as I took him through it from
23 1990 to the end of 1992 and 1993:
24 "Mr. Akmadzic, let me make sure I understand you. You're saying
25 that during that period the Presidency was legitimate?"

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1 "Yes, that's right.
2 "And how about 1992?
3 "Yes, that's right."
4 Now, if we go through some of the slides very quickly and I'm
5 just -- because the Chamber will have the citations of Mr. Akmadzic's
6 testimony, and I will mention -- I'm not going to mention any testimony
7 at this moment but the other critical -- the other important witness on
8 that point is Witness 1DAA. I'm not mentioning evidence at this point in
9 connection, but I'm saying that if the Chamber reviews the Akmadzic

10 evidence on this point and the Witness 1DAA evidence on this point, the
11 evidence is completely clear.
12 There was no question that Mr. -- for example, that President
13 Izetbegovic's -- Izetbegovic was elected to a completely legal and valid
14 term from December of 1990 to December of 1991.
15 I'm going to come back to that in a moment and I probably should
16 have done this differently, but so that I don't get lost, I'm going to
17 step off that before I get lost and address something more or less
18 chronologically, because we're now into 1991. Izetbegovic has been
19 elected president and we've heard again during closing arguments and
20 specifically, I think a number of times, but specifically by Mr. Khan on
21 page 52309, Izetbegovic says this is not our war. Now, if -- I'll just
22 simply try to remind the Chamber --
23 MR. KHAN: Your Honours, I do object. I do object. That's very
24 clearly -- it couldn't be any clearer, that point is addressed in our
25 final brief, and the Prosecution were enjoined in the Scheduling Order to

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1 respond to issues in our final brief. They had that opportunity, and
2 this is not the occasion to reinforce arguments that they may be
3 dissatisfied with simply because perhaps the Defence have highlighted
4 some areas of difficulty that the Prosecution now are trying to repair.
5 Your Honours, I would ask that Mr. Scott cease this attempt to open up a
6 new closing speech via the back door of rebuttal. It is most
7 inappropriate.
8 MR. SCOTT: Your Honour, we don't accept -- with all due respect,
9 we don't accept that we're making a new closing speech. We're
10 specifically responding -- I might as well say if it was in the
11 closing -- if it was in the Defence closing brief and if the Prosecution
12 didn't raise it in our oral submissions, which went first, then why did
13 the Defence spend time on it in their closing submissions? I mean,
14 that's the same -- that's the same logic. I think it's the same logic.
15 And when they do respond, then when it is made and it is a point given
16 emphasis to, whether we could not get to it perhaps in our 400 pages
17 against 1.200 pages, that they choose to make an issue of it in their
18 closing oral submissions that we have an opportunity to respond to that.
19 I fail to see the unfairness of the Prosecution being allowed to respond
20 to the arguments made in this way. I simply don't see -- I just simply
21 don't what's unfair about this.
22 MR. KHAN: Mr. President, with the greatest of respect --
23 JUDGE ANTONETTI: Stop.
24 [Trial Chamber confers]
25 JUDGE ANTONETTI: [Interpretation] Mr. Scott, we remind you that

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1 you have to state specifically what was said by a Defence team in their
2 closing arguments on a specific topic and then you can say you don't
3 agree with it and you can explain why you deem it's not fair, but you
4 have to rely on their closing arguments in court.
5 JUDGE TRECHSEL: I may add a point. I think Mr. Khan has
6 absolutely correctly interpreted that -- the Chamber's ruling. Rebuttal
7 is to answer issues raised orally, not to answer issues that are in the
8 brief, because the opportunity to answer the issues in the brief,
9 limited, of course, that is admitted, but that was in your final
10 pleadings. So please concentrate on points that were arisen -- were
11 raised orally but not already in the written final briefs. Thank you.
12 MR. SCOTT: Thank you, Mr. President. I'll try to do that as I

13 go and I'll try to sort further on that basis. As I said before, the
14 Prosecution prepared its -- its presentation today based on the ruling
15 that we received last Thursday and thought that this was considered --
16 would be considered fair response, but I will try to make -- I will try
17 to edit my comments as I go.
18 I would simply on that point then, Your Honours, remind the
19 Chamber of the evidence to that -- about that statement that the Chamber
20 will be aware of, in particular the statement by Mr. Anton Tus, P10462, a
21 senior Croat who clearly indicated and -- this statement was completely
22 mischaracterised.
23 Now, returning to the second term. I said that I was going to
24 take -- taking a step off the Presidency. Now, returning to that, as I
25 said, there's no dispute that Mr. Izetbegovic was properly then elected

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1 to a second term in a fully legal and legitimate way. And Mr. Akmadzic
2 confirmed that at T 29473-74.
3 Now, as then events developed in April of 1992, with the
4 declaration of the imminent state of war, at that time the Presidency
5 consisted of the president, so Mr. Izetbegovic, Mr. Kljuic, Mr. Boras,
6 and Mr. Ganic. Of course, around that time, the Serb members,
7 Mr. Koljevic and Ms. Plavsic, had left given the outbreak of war with the
8 Serbs, if you will, and there was the business of replacing those Serbs.
9 But also on the Presidency at that time, because the expanded Presidency
10 provided for the inclusion of not just the regular members but also the -
11 excuse me, Your Honours - the president of the Assembly, the prime
12 minister, and the military head of the BiH armed forces. At the time,
13 that included Mr. Pelivan, the Croat prime minister; the minister of
14 defence Mr. Doko, Jerko Doko, a Croat; and then the -- excuse me, and
15 then the addition of the head of the ABiH armed forces. Now, there is no
16 dispute about that.
17 Excuse me, Your Honour. In the effort to cut through, I'm
18 editing as I go.
19 It was that Presidency as so -- as so comprised that again
20 Mr. Akmadzic said, well, how about then? Was it legal and legitimate
21 then? Well, yes, it was. And he cites that, and he talks about that
22 among a number of places both at T29638-39 and T29641.
23 Now if we could go into private session for a moment about a
24 protected witness, Your Honour.
25 JUDGE ANTONETTI: [Interpretation] Yes, Madam Registrar. Private

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1 session.
2 [Private session]
3 (redacted)
4 (redacted)
5 (redacted)
6 (redacted)
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25 (redacted)

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11 Page 52870 redacted. Private session.
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1 (redacted)
2 (redacted)
3 (redacted)
4 (redacted)
5 (redacted)
6 [Open session]
7 THE REGISTRAR: Your Honours, we're back in open session.
8 MR. SCOTT: Thank you, Your Honour.
9 The Prosecution will again just simply ask the Chamber to review
10 again the evidence of Mr. Akmadzic, the -- the witness -- excuse me, the
11 evidence of Mr. Okun. Also P00829. And the long and short of that
12 evidence is that, in fact, what happened was there was agreement reached
13 by late 1992 by Tudjman and Boban, saying, all right, fine, let
14 Izetbegovic serve another term. And there are contemporaneous notes of
15 that agreement or references to that agreement in Mr. Okun's notes, and
16 Dr. -- Mr. Okun specifically said was, well, Tudjman referred to it as he
17 would recommend to Boban that we let Izetbegovic have another term, but
18 Okun says, We all knew what that really meant. When he word -- when he
19 used the word "I recommend to Boban," we all knew what that really meant
20 in so many words was "I've instructed Boban." And that's at page 16717
21 of Okun's testimony.
22 At the end of the day, the point made by these events is that
23 the -- in fact the BiH Presidency and Mr. Izetbegovic's role as president
24 was completely valid and legitimate from December of 1990 at least to the

25 end of 1993. The -- the most pertinent part of the times for

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1 references -- for purposes of this case.

2 Excuse me, Your Honour.

3 Now, I next want to turn to the point that was made by the

4 Defence that during the spring of 1992, the Defence would have you

5 believe that the HVO military was -- was the only organised military

6 force that was fighting the Serbs and that Herceg-Bosna and the HVO was

7 forced to organise itself because, you know, again, supposedly, the BiH

8 authorities weren't doing anything. This was specifically asserted by

9 Mr. Kovacic on the 17th of February, and again I only have the daily

10 transcript reference, page 83. Mr. Khan, on the 15th of February,

11 page 52309, which he said, for example, why does Bosnia-Herzegovina exist

12 today? Who was the cavalry who was riding to the rescue of the people of

13 Bosnia-Herzegovina, et cetera, et cetera. Ms. Nozica then touched on the

14 issue on the 16th of February at daily transcript pages 27 and 28. Came

15 up repeatedly.

16 The response to those arguments, Your Honour, is that they're

17 built again on a fundamentally false premise.

18 MR. KHAN: Well, Your Honour, can I again rise. That very issue

19 has been again dealt with in our final brief in numerous places and I

20 will just give one example. If one looks at 2.3.2, we said, very

21 clearly, that -- we mention this very assistance and its importance.

22 JUDGE ANTONETTI: [Interpretation] Mr. Scott, the Trial Chamber

23 insists once again, please make reference to what was said orally, not in

24 written submissions.

25 MR. SCOTT: Your Honour, I just did that. I just gave the

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1 Chamber the references to the -- to the closing argument and pages. I

2 can only -- I can only state them again.

3 MR. KHAN: Well, Your Honour, this actually brings into quite

4 stark relief the very fallacy, I think, with the greatest of respect,

5 that is besetting the Prosecution. On numerous occasions the first point

6 is the Prosecution's prayed in aid and, in fact, in my respectful

7 submission, they're exposed because in response to the two interventions

8 I've made so far, the Prosecution on both occasions has said, Well,

9 Your Honours, we didn't have enough pages. Well, that's a complete red

10 herring. That's absolutely impermissible. It's an irrelevant

11 consideration, as Mr. Kovacic said last week. Those matters are

12 res judicata, and we cannot pray in aid matters that have been judicially

13 decided.

14 But, Your Honours, the various case law that was referred to on

15 Thursday, the Halilovic case, Naletilic case, the jurisprudence is very

16 clear. Judge Trechsel today and Your Honours by way of the legal

17 officers prior to today made it very clear that the Prosecution should be

18 disciplined and simply limit themselves to matters that have not been

19 raised in substance in the Defence final briefs. And I made the

20 submission and in my -- I maintain, with the greatest of respect, as a

21 matter of law it's correct, unless a matter arises ex improviso that the

22 Prosecution could not have reasonably expected, they have no right to

23 make further rebuttal arguments or to make further submissions under the

24 guise of rebuttal, and that's what's going on here. There are further

25 submissions couched in general terms under the guise of rebuttal, and,

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1 Your Honours, we did raise this very assistance given by Croatia in our
2 final brief many times. It's peppered throughout our brief. It's one of
3 our constant themes. Whatever the Prosecution say, they can't say that
4 the Stojic team has been inconsistent in this regard. And, Your Honours,
5 I would ask that the Prosecution be brought into line and simply be told
6 to properly focus rebuttal. Just because Your Honours have been most
7 generous and given them three hours is not a licence for them to use
8 those three hours in an impermissible manner.

9 JUDGE ANTONETTI: [Interpretation] Mr. Scott, please try to use
10 the time you have left in a wise manner. The Trial Chamber believes that
11 all lawyers, be it Defence lawyers or Prosecution, are all trying to
12 assist the Trial Chamber. So please try and be very effective and help
13 us.

14 MR. SCOTT: Thank you, Your Honour. I will try to do that. I do
15 and I must spend valuable time, at least a moment, to resist -- you know,
16 for the last two weeks the Prosecution's been called dishonest, sleazy,
17 unethical, et cetera, et cetera, for two weeks now. Well, repeatedly,
18 repeatedly, and great licence was taken with mischaracterised evidence,
19 not just the evidence that maybe was wrong or maybe there was a
20 disagreement, but repeatedly, the things we've done wrong. And even now,
21 on the one hand, Mr. Khan says, I'm not -- I don't want to attack counsel
22 but essentially accuses me, in so many words, of bad faith. Now that's
23 just not -- we don't accept that.
24 We're trying to assist the Chamber. We're not trying to abuse
25 the process. We're not trying to take licence. We're trying to assist

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1 the Chamber. And there is some -- while we believe -- let me be very
2 clear, let me be very clear. We believe that we're well within the scope
3 of a permissible rebuttal and the discretion of this Chamber to allow
4 what is helpful to the Chamber and I think that the rules that have been
5 cited are too narrow, are being characterised as far too narrow. So we
6 believe we're within it.

7 But I do have to say and I do have to make a record, I'm sorry
8 because I didn't want to get to this point, but when counsel said, Well,
9 you know, it's too bad they couldn't respond to that. When we had a
10 third of as many pages in time, they got 1200 pages to raise every issue
11 in the book and we got 400 pages, when they get 30 hours and we get
12 15 hours, I think it's only fair. The Prosecution get a limited amount
13 of time, my goodness, three hours, not days, three hours to respond to
14 very specific points that have been raised. I think that's entirely fair
15 and entirely appropriate, and I don't accept the Prosecution is acting in
16 bad faith or trying to take licence where there is none. It's
17 inappropriate. The Prosecution is trying to assist the Chamber. If the
18 Chamber don't find it helpful, the Prosecution can certainly sit down and
19 we'll be done and our work will be done. If the Chamber don't find it
20 helpful, I'm sorry for that. This is to assist the Chamber. Our concern
21 is -- quite frankly, our concern is that there's a number of issues the
22 Prosecution hadn't been able to fully address, and we want to assist the
23 Chamber in putting that evidence together and putting those arguments
24 together so that we're trying to assist the Chamber. But if the Chamber
25 don't want the assistance, it makes it -- obviously it's the Chamber --

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1 I'm in the Chamber's hands.

2 JUDGE TRECHSEL: Mr. Scott, that's nice to hear. I just think

3 that if everyone were given permission to assist the Chamber until they
4 have exhausted their ways of assisting, I think we would sit here for
5 another year and here in closing arguments one after the other. So I
6 must say in this point I agree with Mr. Khan. The ruling of this phase
7 in the game is that you answer points which were not raised in the
8 written submissions but only came up as an oral argument.

9 MR. SCOTT: Thank you, Judge Trechsel. I'll be governed
10 accordingly. I would only say no one is suggesting, no one is claiming
11 that this process should go on forever. The Chamber has given us the
12 three hours. When the three hours is up, it's over. It doesn't go on
13 for days or years, it goes on for the next hour and some minutes. So
14 it's not, with all due respect, completely fair to say that we're just
15 endlessly extending the trial.

16 JUDGE TRECHSEL: I take that point.

17 MR. SCOTT: We've tried to be selective and within that limited
18 three hours to think what would be of most assistance to the Chamber, but
19 I take it on board. I'm directed accordingly.

20 In that regard, Your Honours, let me review -- well, if the
21 Chamber would just allow me, then, to complete on that topic just the
22 most summary statement. Review the evidence of Mr. Petkovic and review
23 the evidence of Mr. Filipovic because both of them came in here, sat
24 there and told you under oath there was no HVO military in April. They
25 got there. They arrived in mid-April. There was no army. There was no

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1 military. They organised it and they told you exactly where the ABiH
2 stood at the same time as well. And there was -- the HVO had no
3 advantage. In fact, they said within a very short time, in fact, the
4 ABiH was bigger, had more professional officers, et cetera. So review
5 the evidence. Review the Petkovic and Filipovic evidence before you
6 assume that, well, there wasn't -- the HVO was somehow miles ahead and
7 that's how and that's why they had no choice but to go with the HVO. Not
8 the case at all.

9 Your Honour, during the closing arguments Mr. Kovacic said, on
10 the 17th of February, at daily transcript page 86, again raising the
11 argument that the HVO was somehow -- HVO military was somehow a
12 legitimate part of the BiH armed forces. Obviously this is a point on
13 which the parties continue to strongly disagree. If the Chamber would
14 allow me one brief response in lieu of some pages of evidence to the
15 contrary. The key issue here is what Izetbegovic said at the 21 July
16 1992 meeting and that's P00336, page 60. Izetbegovic couldn't have made
17 it clearer that, on the one hand, while rejecting Herceg-Bosna
18 completely, absolutely completely, we do not accept, we will not accept
19 Herceg-Bosna, he then says the HVO military is "not only acceptable but
20 it is also necessary and of course desirable in all ways." That is, if
21 you join us, we're happy to have you, but you truly have to become part
22 of the same armed force.

23 The Prosecution -- let me be very clear, the Prosecution does not
24 run from that language. The Prosecution embraces that language. What
25 the evidence shows, what all the Presidential transcripts and all the

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1 meeting records show throughout this period is that Izetbegovic and the
2 BiH Presidency was continuously reaching out, trying to bring the HVO in.
3 Yes, we want you, please do come in, but you've got to be part of the
4 same army, you can't have it both ways. We want to be part of you, but
5 we want to have another supreme commander over here named Boban. We want

6 to have another oath. We want to have -- serve a different agenda, but
7 on the other hand, we're part of you. That is the issue. And again, I
8 direct the Chamber's attention in particular -- I invite the Chamber's
9 attention to P00336.

10 The MTS issue and again it was raised by almost everyone,
11 Mr. Khan on the 15th of February, Mr. Karnavas, Ms. Nozica, Mr. Kovacic,
12 Mr. Praljak himself.

13 MR. KHAN: Your Honours, once again, I have been very careful, we
14 have been very careful, and mindful of the jurisprudence of this Tribunal
15 that's more than nine, ten years old. This case law goes back to 2002.

16 It's not new, and it predates even the further clarification provided by
17 the Bench today and yesterday, and the other point, Your Honour, of
18 course, is that the subjective views of the parties as to fairness, we
19 think this being fair or the Prosecution being that, so-and-so being fair
20 is irrelevant. Fortunately, we are not the arbiters of fairness.

21 Your Honours are. But the issue of MTS has been dealt with extensively
22 in our final trial brief. For example, paragraphs 37, 38, and it goes on
23 and on and on. Your Honour, it's been dealt with extensively. If you
24 look generally at 2.3.2 again, the whole section deals with MTS.

25 The Prosecution simply do not have a proper basis to address Your

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1 Honours on this, and, Your Honours, it's very easy for my learned friend
2 to prove me wrong. It's very easy. It just requires a little bit of
3 pause. Let the Prosecution point to the new issue that we raise in our
4 oral submissions that was not included in our brief. If they do that and
5 say, well, Mr. Khan said this, the Stojic team said this in their oral
6 submissions and that is not founded upon our final brief, of course they
7 would have a proper basis arguably for addressing the Bench, leaving
8 aside the matter whether or not it was reasonably foreseeable. But,
9 Your Honours, the Prosecution's not doing that. Despite the injunctions
10 given, they're once again ploughing on, impervious, it seems, to the
11 injunctions of the Trial Chamber under the rubric of editing, but they
12 are continually addressing matters that we heard when Mr. Scott opened.
13 And, Your Honours, in my respectful submission, it's not a case of them
14 having three hours, as I mentioned before. It's whether or not
15 Mr. Scott's submissions are proper -- properly fall under the scope of
16 rebuttal or if he is inadvertently or deliberately seeking to expand the
17 proper scope of rebuttal. Your Honour, if it's the latter, I'd ask that
18 the -- well, either way I would ask that the Bench ask -- require the
19 Prosecution to put forward focused and limited submissions.

20 JUDGE ANTONETTI: [Interpretation] Mr. Scott.

21 MR. KOVACIC: Your Honour, if I may just one sentence. The issue
22 of MTS that my dear colleague is now starting to talk was raised even
23 pre-trial briefs. It was litigated during the trial and it was mentioned
24 in final brief, as my dear colleague said. Nobody has raised anything
25 new and added anything to this -- to those facts during the oral

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1 presentation, nobody.

2 JUDGE ANTONETTI: [Interpretation] Mr. Scott, it seems that we
3 have spent hundreds of hours on MTS. Though as Mr. Khan says, what we're
4 interested in is anything new during the closing arguments on MTSs, which
5 would require a response or a rebuttal from you, but it has to be new,
6 something new during the closing arguments, not something that was
7 written in their closing arguments, in the trial briefs. In the final
8 briefs.

9 MR. SCOTT: Thank you, Mr. President. I will then -- I will not
10 address it further except to say that again we were -- and I can't give
11 the Chamber a specific citation for this, but I remember well sitting
12 here these last two weeks and being accused of the Prosecution having
13 simply ignored that evidence, and as if we -- that it amounts to come
14 concession, some admission that we just recklessly ignored this evidence.
15 It seems to me that the Prosecution should have a chance to respond to
16 those positions, but apparently not.
17 I would remind the Chamber as to the two meetings -- two of the
18 meetings with Mr. Mladic in which the positions taken by the accused in
19 that meeting were quite contrary to simply -- freely providing MTS.
20 Various statements saying denying them food, bringing the Muslims to
21 their knees, we are not giving them ammunition, we're not giving them
22 anything, dramatically contrary to positions taken in this courtroom.
23 But the Chamber has that evidence.
24 Let me try this one see if it's -- this is fair or not because
25 right now I'm not -- it's not always entirely clear. But perhaps this

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1 is -- I can respond to this comment by Defence counsel during closing.
2 Ms. Nozica at one point in -- in the part of her argument denying
3 that Mr. Stojic had any military power made reference to Mr. Prlic
4 cosigning a mobilisation order and the argument -- this is at page 52319
5 to 22. Now, this was specifically raised and argued in closing and said,
6 well, that's just evidence that Mr. Stojic didn't have any military
7 powers, the fact that Mr. Prlic had to sign it in order to give it some
8 authority. Well, Your Honour, obviously that says a lot about what
9 Mr. Stojic, if that's correct, thought about Mr. Prlic's power. And I
10 think it's fair to say and I think that raises a broader point that I
11 don't think has been addressed specifically before and I invite the
12 Chamber's attention to it --
13 MS. NOZICA: [Interpretation] Your Honours, I believe this is a
14 misinterpretation. The Stojic Defence never alleged that Mr. Prlic was
15 required to sign a mobilisation order. That's a misinterpretation. I
16 have the page in front of me. If my learned friend is prepared, then
17 they can find the relevant page themselves.
18 The Stojic Defence submits that the order to implement
19 mobilisation must have been cosigned by Mr. Prlic, not by -- that
20 Mr. Stojic didn't have the authority to do that.
21 JUDGE ANTONETTI: [Interpretation] Mr. Scott, I hope you took due
22 note of what Ms. Nozica just said.
23 MR. SCOTT: I do note, Your Honour, and the Chamber of course
24 will decide what the evidence says of those pages that I gave to the
25 Chamber a few minutes ago.

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1 The important point is and I do ask the Chamber to consider this
2 as it considers the evidence, and I don't think it's a point that's been
3 made before, how did each of those accused view and deal with each other
4 during the relevant time? How did each of these accused deal with each
5 other during this time period? Because that can tell the Chamber a great
6 deal about the powers and the positions and the responsibility they held.
7 If Mr. -- if -- assuming that my interpretation or understanding
8 of the evidence is correct, if Mr. Stojic thought it was only Mr. Prlic
9 who could give authority to this order, doesn't that tell us something
10 about what Mr. Stojic thought about Mr. Prlic's power and responsibility
11 at the time? The Chamber should consider that and I submit these men,

12 all six of them, treated each other as important and powerful
13 participants at the upper levels of the Herceg-Bosna political and
14 military leadership. They treated each other accordingly, just as
15 Mr. Stojic recognised Mr. Prlic's authority in having him co-sign the
16 mobilisation order. That's how they viewed each other at the time. It
17 wasn't, oh, I don't have any power, I don't know, I have no position, I
18 have no influence. They all treated each other as people as senior
19 people with great powers and great positions.

20 MR. KHAN: Your Honour, just for the record, when you're going
21 through it, I'm not going to belabour the point. I've made my
22 observations. I know my learned friend for the Prosecution says that
23 there's difficulties knowing the rules. The rules are very clear. The
24 Prosecution should rely and cite that aspect of the oral arguments that
25 have not been raised in our final brief.

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1 Now, Your Honours, if you look at page 52320, we do address
2 Article 7 of the decree of armed forces and the issue of mobilisation,
3 and, Your Honour, that issue in general is dealt with in 3.2.2.2 of our
4 final brief. And, Your Honour, we referred to P03038, and, Your Honours,
5 that document is referred to in the Prosecution's final brief at
6 paragraph 540, and, Your Honour, of course there is a reference of the
7 8th of February transcript, page 41. So, Your Honours, once again
8 there's nothing new in relation to the submission that was made that is
9 not founded upon our final brief. Your Honours -- it's for Your Honours
10 to decide whether or not Mr. Scott can continue repeatedly in this vein,
11 but as far as the assertion that the rules are unclear. They could not
12 be any clearer. The Prosecution should be required to say at transcript
13 page 52320, the Prosecution -- the Defence said this and that has not
14 been raised in their final brief. If they can't make that second link
15 that it was not raised in their final brief, they do not have the right,
16 under the jurisprudence of this Tribunal, to address the Bench again.
17 Your Honours, we cannot accept some jurisprudence we like and
18 ignore the parts that somehow limit us. Your Honours, that's not the
19 proper way of proceeding.

20 JUDGE ANTONETTI: [Interpretation] Mr. Scott, the rebuttal is not
21 an opportunity to have another go, another bite of the cherry. You are
22 supposed to counter closing arguments. You have to challenge what was
23 said in court, within that stage of the proceedings.

24 And I believe this is the unanimous view of the Trial Chamber.

25 MR. SCOTT: In case there's some further intervention. Excuse

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1 me. My apologies for not having the microphone on. I was just observing
2 the Chamber whether there was -- okay. Thank you.

3 JUDGE ANTONETTI: [Interpretation] Go ahead. Go ahead.

4 MR. SCOTT: Your Honour, I had intended, and perhaps the Chamber
5 can tell me if they think it's a fair topic or not, I also had intended
6 to address the arrest of the Muslim men on the 30th of June and the
7 particular view expressed by Ms. Alaburic that would have the Chamber
8 believe that, you know, the world essentially sprang into existence on
9 the 30th of June, as if all the things leading up to that event had not
10 happened. But if the Chamber doesn't think that's appropriate for
11 further comment, then I won't address it further.

12 JUDGE ANTONETTI: [Interpretation] Let me consult my fellow
13 Judges.

14 MS. ALABURIC: [Interpretation] Your Honours, with your leave, I

15 with like to say a sentence. As we are talking about the 30th of June,
16 1993, the Petkovic Defence dedicated to that date a lot of time in their
17 final brief and the same goes for the Prosecution. We also spoke about
18 it at length in our closing argument. We have not heard a single new
19 argument, and we did not say anything new with regard to what was written
20 in our final brief. We have said everything about the date, and there's
21 no need to tackle the issue in the rebuttal. In general terms, if my
22 learned friend Mr. Scott thinks that there is a new thesis, I would
23 kindly invite him to present that new thesis rather than broach the
24 subject of the 30th of June in general.
25 JUDGE ANTONETTI: [Interpretation] One moment. We're going to

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1 discuss the issue.
2 THE INTERPRETER: Your microphones, please.
3 [Trial Chamber confers]
4 JUDGE ANTONETTI: [Interpretation] Mr. Scott, regarding the
5 30th of June, what was new about it in the closing arguments?
6 MR. SCOTT: I wanted to respond specifically, Your Honours, to
7 the closing argument emphasis on the role of the -- of the alleged Muslim
8 members of the HVO and their arrest and the position taken about that and
9 remind the Chamber of the evidence by Mr. Filipovic on that point, which
10 I believe is contrary to the Defence position.
11 MS. ALABURIC: [Interpretation] Your Honours, let me repeat that
12 this has been belaboured at length in our final brief, and we believe
13 that this has been done and dusted.
14 JUDGE ANTONETTI: [Interpretation] The presence of Muslims within
15 the HVO is a topic that has been addressed numberless times. Also in the
16 filings and briefs. What was there in court that was said that was new
17 coming from the Defence?
18 MR. SCOTT: Thank you, Mr. President. Your Honours, it's -- it's
19 part of the difficulty is to say, of course, topics, of course broad
20 topics have been raised. There is -- there's virtually nothing,
21 presumably, that's been said that's entirely a new topic after five
22 years, but it's responding to specific aspects of those topics, specific
23 issues that have been emphasised and put and emphasised during closing
24 argument and that is what the Prosecution has tried to respond to.
25 Certainly the topic of the 30th of June has been raised before. No doubt

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1 about that. But there are specific aspects of it that we had hoped to be
2 able to address further, but we won't.
3 As to the status, though, if I can just come back to some of the
4 statements that -- arguments that Mr. Stringer made and I would just
5 invite the Chamber to look at the evidence of Mr. Filipovic as to the
6 status and the right of Muslim members of the HVO to leave, just as he
7 left the -- he and others left the JNA when they determined that the JNA
8 was the enemy. I asked Mr. Filipovic didn't Muslims have exactly the
9 same right to leave the HVO, and Mr. Filipovic said yes, they did, and
10 that's repeatedly throughout his testimony.
11 If I can respond, Your Honour, to one specific Petkovic exhibit
12 and then I'll wrap up my remarks if I'm allowed.
13 Ms. Alaburic spent considerable time on Exhibit P00279, which she
14 says is -- or asserts is a speech, a text of an oral speech --
15 MS. ALABURIC: [Interpretation] Your Honours. Your Honours, I
16 really need to intervene at this point. This document refers to a speech
17 which was not delivered. In their final brief, the Prosecutor has

18 attempted to show that General Petkovic was involved in certain
19 discussions on political issues, and one and the same document reappears
20 and is being belaboured, and the speech was never delivered.
21 Your Honours, this is nothing new. This is not a new topic. In
22 my final brief, I have elaborated the topic at great length, and I have
23 explained everything that is of some relevance for that topic. In my
24 closing argument, I didn't say anything new with this regard. Some of it
25 was in response to the closing argument by the Prosecution. So this is

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1 indeed a very old topic which has been belaboured at great length by the
2 Prosecution as well as by me. In other words, there is nothing new about
3 the topic, and if I am mistaken, maybe Mr. Scott can tell us if there is
4 anything new, but I believe that it is wrong for him to reiterate the
5 Prosecutor's position on a speech which was never delivered. It is true
6 that the speech was not delivered. It was proven, and if my learned
7 friends have ever considered it challengeable, they should have disputed
8 it.

9 JUDGE ANTONETTI: [Interpretation] This was a draft speech, wasn't
10 it, Mr. Scott? And apparently, if we're to believe the Defence, it was
11 never held as a speech. If you believe that this was a speech that was
12 delivered as such, as part of your rebuttal you must tell us that you
13 challenge the Defence's approach for specific reasons. Now, if you
14 believe that the speech was never delivered, you should not insist on it
15 as part of your rebuttal, because if there was no speech, those words are
16 deemed never to have been uttered.

17 MR. SCOTT: Your Honour, this very exchange highlights the
18 importance of being able to address these matters, because the
19 Prosecution couldn't disagree more. And Ms. -- Ms. -- again this is an
20 example where my good friend Ms. Alaburic gets up and makes an assertion
21 that the Prosecution does not accept at all. She says it's true because
22 she says so, that the speech was never delivered. Now the state of the
23 evidence is the only person who supports clearly is Mr. Petkovic himself,
24 and I won't belabour what the Prosecution's view of his credibility is.
25 But the only other person who addressed that was Mr. Beneta, and

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1 Mr. Beneta specifically, at the end of the day -- well, Your Honour, am I
2 allowed to respond or not? Because I see counsel getting -- Mr. Beneta
3 at the end says, I don't know, but whether -- this is at page 46606-07,
4 after a tonne of leading questions by counsel, but at the end of the day
5 what Beneta says is:

6 "... whether he actually read out this entire text, I don't
7 know."

8 That's the sum and substance -- let me finish my point. Let me
9 finish my point.

10 Now that's what it that's what it says. And we do disagree, and
11 besides that, it's a false issue to say, well, it's only important if --
12 if the speech was given. That's again a characterisation we don't
13 accept. Who says it was a speech not given? Who says? It's a document
14 and it's signed and sealed by Mr. Petkovic. Look on the screen. Do you
15 sign and seal outlines of speeches not given? Mr. Petkovic knew this was
16 an important document. It was prepared as an important document.
17 Whether it would be given orally, in writing or both, he signed and
18 sealed it. We can't just simply blow -- dismiss it now and say, well,
19 actually it's a text of a speech that was never given. The Prosecution
20 doesn't accept that, and the only evidence that supports that position is

21 the testimony of Mr. Petkovic himself.
22 MS. ALABURIC: [Interpretation] Your Honours, I'm very glad
23 that -- Your Honours. Your Honours.
24 JUDGE ANTONETTI: [Interpretation] Ms. Alaburic, you will have the
25 floor, but let me tell you this: After scores of years working in a

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1 court, I was never faced -- I have never been faced with a situation
2 when, in closing arguments, procedural matters are being broached. This
3 is a sheer and a massive waste of time for everybody. You have the
4 possibility to let him speak, finish. We'll draw our own consequences,
5 and you will have your rejoinder, and you will be free to say then what
6 you have to say. That's the adversarial system. Because if you are on
7 your feet whenever he wants to speak to say we don't agree, we'll be here
8 in another year. So what do you mean to say?
9 MS. ALABURIC: [Interpretation] Your Honour, I would like to
10 remind everybody that my colleagues before me spoke and intervened more
11 often than I did, and you did not react the same way you did to my
12 reaction, which I don't consider to be fair.
13 Just because of what Mr. Scott said about the document, I would
14 like this: I'm very glad that Mr. Scott provided such an explanation
15 because this explanation clearly demonstrates that the burden of proof is
16 on Defence in this trial and that my learned friend Mr. Scott says that
17 in this specific case, the undelivered speech, for him, is a speech given
18 until the moment when the Defence proves differently. My learned friend
19 Mr. Scott did not provide a single document to prove that the speech was
20 given, that Defence expected to prove differently, and this is what the
21 factual burden is based on. There's no document to prove that the speech
22 was given.
23 I said in my final brief that I believe that the document does
24 have relevance for the mens rea of General Petkovic, and the speech and
25 all the pieces of evidence have been elaborated in my final brief, and if

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1 Mr. Scott needs to -- needed to say something else about that, he could
2 have said it in the closing argument and not in the rebuttal. So we
3 really should not allow Mr. Scott to abuse his time for -- to rebuttal
4 and to reiterate the arguments that he should have presented in the
5 earlier stages of the proceedings.
6 JUDGE ANTONETTI: [Interpretation] Mr. Scott, so what was it that
7 Mr. Filipovic may have said that would run counter to Ms. Alaburic's
8 closing arguments?
9 MR. SCOTT: Your Honour, I think if I understand the -- the
10 Chamber's question -- Mr. President's question correctly, it takes us
11 back to an earlier point. Let me just give the Chamber -- excuse me
12 while I go back to that point. If I can just give the Chamber the -- the
13 critical citations and then the Chamber can of course -- what's most
14 important is for the Chamber to decide its view of the evidence. I would
15 ask the Chamber to consider in the context of the ABiH -- the Muslim
16 members of the HVO, Mr. Filipovic's testimony at T 47643 to 44, again at
17 47649 to 50. On those -- on that point. If I've misunderstood
18 Your Honour's question, I apologise, and perhaps you can assist me
19 further as to that point.
20 As to the so-called speech, and again that's a premise that we
21 don't accept. That it was -- the reference there was to the witness
22 Beneta, and that can be found at P -- at page 46606-07. And just -- I
23 mean, again, read what Mr. Beneta says, and as much as counsel wants him

24 to say that the speech wasn't given and the document not used, that's not
25 what he says. That's not what he says. And when push came to shove,

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1 what he ultimately says is: "I don't know." But whether -- quote:

2 "But whether he actually read out this entire text, I don't
3 know."

4 That's the sum and substance of Mr. Beneta's testimony on the
5 point.

6 Your Honour, if I can just be allowed to make then -- to wrap up
7 our -- our final remarks and -- since I think I have the time to do so, I
8 will afford myself the luxury of just making one additional record,
9 comment, in light of the various things that have been said.

10 Your Honour, I got up during the Defence closings and made an
11 objection about the references to evidence not in the record, and to put
12 it -- to put it colloquially, I was shouted down. I was told to sit
13 down, that it wasn't appropriate to get up and to make objections, and I
14 did. I sat down and I didn't -- I didn't get up again even though there
15 were other opportunities or other reasons why I thought that I should
16 have.

17 Today the rules have been completely different. Today the rules
18 have been completely different. I've been interrupted ad nauseam. We
19 have tried to conduct this in good faith. We outlined our topics to the
20 Chamber on Thursday. The Chamber consulted with each other. The Chamber
21 ruled and gave us three hours. We prepared accordingly with what we
22 understood was the scope. If I've been wrong on that, then I stand
23 corrected, but there was none of this throughout the Defence closing
24 arguments. There was none of this constant interruptions, constantly on
25 our feet. We didn't do that. In fact, the one time I did do it, I was

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1 clearly told to sit down. And I think it's a bit unfortunate that the
2 conduct today has been dramatically different.

3 But if the Chamber will allow me to simply conclude --

4 JUDGE TRECHSEL: Mr. Scott, I would like to answer you on this
5 point.

6 MR. SCOTT: Thank you, Your Honour.

7 JUDGE TRECHSEL: I think there is a fallacy in your sense of
8 injustice, because there is a fundamental difference between final
9 argument, the Prosecution, the Defence, and rebuttal. Rebuttal is -- is
10 very subsidiary. It is rather exceptional, and it is supposed to be
11 focused and not to be a continuation of -- of pleadings. That's the way
12 this Chamber, following Judge Liu, has interpreted Rule 86(A). And here,
13 of course, where you have a basic condition for the right to freedom of
14 expression, as it were, there is a point where the other party can say
15 you are overstepping the limits, whereas in the general pleadings there
16 are no such limits, and therefore there's a different attitude.

17 The Chamber is quite aware of the fact that it is different
18 today. I must say, for one, I have anticipated this. It does not come
19 as a surprise at all.

20 I am sorry, probably there were misunderstandings in the sense at
21 that we did not make it sufficiently clear how -- or to put it more
22 precisely, that we approve and accept the points of the Defence's, mainly
23 put I think by Mr. Khan, that the rebuttal should be limited in the way
24 Judge Liu had pointed out. So I'm prepared to assume some responsibility
25 for the frustration you feel, and it's regrettable, but our task is to

1 see to it that the rules are respected. And the other parties' right is
2 to ask for the rules to be respected.
3 We certainly understand your feelings of frustration, but as I
4 said before, probably such feelings are to be found on -- on all sides,
5 and it is practically impossible to find a precise and all round
6 convincing formula when you have six Defences and one Prosecutor on how
7 much time to give these and that. You can discuss this endlessly. I
8 don't think that you would come to a solution that would convince
9 everyone. We have seen this throughout this trial.
10 So I'm sorry if I have been perhaps a bit lengthy in these
11 explanations, but I would hope that we did continue in a slightly
12 relaxed -- more relaxed atmosphere until the end of these proceedings.
13 Thank you.
14 MR. SCOTT: Thank you, Judge Trechsel. Excuse me.
15 JUDGE PRANDLER: I would like to take the floor as well and to
16 say the following: Within the Chamber we have, of course, spoken about
17 this issue, and I did agree that certain restrictions should be applied
18 on the Prosecution's rebuttal. My dissenting opinion is only about the
19 following: I believe that Rule 86(A) in my view is rather clear and I
20 quote:
21 "After the presentation of all the evidence, the Prosecution may
22 present a closing argument. Whether or not the Prosecutor does so, the
23 Defence may make a closing argument."
24 And now we come to the rebuttal, and I quote:
25 "The Prosecutor may present a rebuttal argument to which the

1 Defence may present a rejoinder."
2 Now, in my view, Rule 86(A) doesn't speak about restrictions. I
3 really very much in a way respect Judge Liu's position, but in my view,
4 it is not a position which should be applied by all means and without
5 any -- any regard to the necessities of this trial, and any trial,
6 actually. And therefore, I am also -- I feel quite uneasy that the
7 Prosecution could not and cannot continue and finish its rebuttal,
8 although, of course, I also acknowledge that -- that on the decision of
9 the Chamber, the -- our team has advised the Prosecution that it should
10 take up those positions and arguments which have been included in the
11 closing arguments -- rather, the Defence closing arguments.
12 Now, I would like to -- in a way to close my remarks that -- that
13 without a -- without listening to all the parties, I believe it would be
14 a rather bad turn of events if we would then prevent anybody, let me say
15 anybody, to speak up and to explain their positions. And, of course, I
16 would also be very much in favour of the Defence teams to be heard and to
17 be listened as far as their own comments and arguments are concerned.
18 So it is what I wanted to say, but again, in my view, the very
19 restrictive interpretation of Rule 86(A), it is not which I see it as a
20 kind of final position of this Tribunal.
21 Thank you.
22 JUDGE ANTONETTI: [Interpretation] Let me add my voice to my
23 Judges' opinions.
24 I fully subscribe to Judge Trechsel's opinion. The Rules are
25 very clear. After the Defence case, the Prosecutor -- the Prosecutor

1 prepare -- will prepare their final brief, and the Defence will do the

2 same, explaining and setting out all their arguments, which is different
3 from civil law countries and systems where everything is said in court.
4 But here, as per rules, everybody is allowed to express their arguments
5 in writing.
6 In a second stage of the proceedings, everybody, every party, is
7 free to express their views in court; the Prosecution through their
8 closing arguments, and the Defence through theirs. So everybody is
9 supposed to be aware of the problems. But the Rules also provided for
10 the possibility that there may be rebuttal, but, of course, the rebuttal
11 to what was done before.
12 As to the jurisprudence, the case law of this Tribunal, for
13 instance through Judge Liu, it recalls that the rebuttal are to be
14 limited, very restrictively, in order to avoid readdressing issues that
15 have been dealt with before. And these are the circumstances under which
16 Judge Trechsel and myself were of the view and decided that the
17 Prosecutor was to address what had been said during the closing arguments
18 in court. In such circumstances and facing such arguments that needed
19 rebuttal, otherwise, there was no need for a rebuttal.
20 I will remind you that we've conducting this trial for
21 five years, and there must be an end to it eventually.
22 So, Mr. Scott, you were about to end when Judge Trechsel spoke,
23 and then the three Judges spoke. You have the floor now.
24 MR. SCOTT: Thank you, Mr. President.
25 All those things would be interesting for further discussion and

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1 perhaps at some future time there will be the opportunity to do that, but
2 obviously it would not be productive to belabour them further now and
3 what the proper -- what the jurisprudence is and what perhaps it should
4 be. So we will leave it at that.
5 If I might be allowed the courtesy of making just a few final
6 observations, I would greatly appreciate that, just by way of summation,
7 and it's going to take me maybe about three minutes if the Chamber and
8 counsel might allow me to do that.
9 Your Honour, I would just simply remind the Chamber in terms of
10 the four important components that the Prosecution mentioned in the
11 beginning of its closing arguments we feel are important guides to the
12 analysis of this case, and those were the aspects of this case that this
13 was a top-down project, the importance of territory, the importance of
14 demographics, the importance of Croatness.
15 The Herceg-Bosna behaviour charged in the indictment is simply
16 too systematic -- is simply too systematic, too widespread, too
17 consistent, too coordinated, too patterned and practiced over too long a
18 period of time to have simply happened as random or isolated acts. It is
19 too clearly tied together by high-level policy and strategy coming from
20 Zagreb and Mostar to have simply happened as a series of random acts.
21 In closing, Your Honours, the Prosecution submits that, at the
22 end of the day, there are two fundamental themes that run through the
23 Defence cases, either explicitly or implicitly and I would add including
24 during the closing arguments. The first of these is the denial of both
25 knowledge and power. What Robert Jackson said at Nuremberg in July 1946

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1 can just as appropriately be said today, that is:
2 "To escape the implications of their positions and the inference
3 of guilt from their activities, the defendants are almost unanimous in
4 one defence. The refrain is heard time and again, these men were without

5 authority, without knowledge, without influence, without importance. And
6 to that would be added or concluded, and without responsibility."
7 The Nuremberg accused Albert Speer, who was more forthright about
8 the responsibility of the Nazi leadership than most of the others
9 although an accused himself, referred to these denials when he talked
10 about about the clear responsibility of the Nazi leadership of the top
11 associates around Hitler with reference to utterly decisive matters there
12 is total responsibility. Quote -- quoting now:
13 "There must be total responsibility insofar as a person is one of
14 the leaders because who else could assume responsibility for the
15 development of events if not the immediate associates who work with and
16 around the head of the state."
17 Speer went further:
18 "It is impossible after the catastrophe to evade the total
19 responsibility. If the war had been won, the leaders would also have
20 assumed total responsibility."
21 There is a saying that captures what Speer said at Nuremberg:
22 "Victory has a thousand fathers, but defeat is an orphan."
23 I dare submit to the Chamber had things somehow gone differently
24 and if Herceg-Bosna had somehow achieved something like independent
25 statehood, none of these men would have declined to take full credit in

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1 the way that they now seek to avoid full responsibility.
2 I return to Jackson again:
3 "We seek to punish each for his own crime of joining a common
4 criminal plan in which others also participated. The measure of the
5 criminality of the plan and therefore of the guilt of each participant
6 is, of course, the sum total of crimes committed by all in executing the
7 plan, but the gist of the offence is participation in the formulation or
8 execution of the plan. These are rules which every society has found
9 necessary in order to reach men like these defendants who never get blood
10 on their own hands, but who lay plans that result in the shedding of
11 blood."
12 These men in this dock on the face of this record were not
13 strangers to this programme of crime, nor was their connection with it
14 remote or obscure. We find them in the very heart of it.
15 Your Honour, that's the Prosecution position in this case. We
16 submit to you that the Prosecution has met its burden of proof. We ask
17 the Chamber to find each of the six men guilty as charged. Thank you
18 very much.
19 JUDGE ANTONETTI: [Interpretation] We're going to have a break,
20 because it's 20 past 12.00. We'll have a 20-minute break. I believe
21 Mr. Karnavas wants to take the floor. Is that so?
22 MR. KARNAVAS: Just to give an update to the Trial Chamber. I
23 was provided with 15 minutes to rebut one point. It's mostly dealing
24 with facts, and having listened to the Prosecution, I have 15 points
25 which I am prepared to -- to address today if time is provided. My

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1 client also wishes to speak. I believe he has about 15 minutes that he
2 wishes to address the Court, given what the Trial Chamber previous ruling
3 was. So that's the update.
4 JUDGE ANTONETTI: [Interpretation] So if I understand you
5 properly, so there's 15 minutes you got last week, and you wish to
6 address us for the rejoinder, and then we'll have Mr. Prlic speaking for
7 some 15 minutes. Is that right?

8 MR. KARNAVAS: That -- yes, that will be it. And I'll now try to
9 be -- very quickly, it's going to be counter punching what the
10 Prosecution brought up today, Your Honours. So it's nothing new, no
11 speeches, no final arguments, just counter punching point, point, point,
12 point, and I think it will go very quickly.
13 JUDGE ANTONETTI: [Interpretation] And so how much time do you
14 need for that?
15 MR. KARNAVAS: I think 15 minutes to 20 at most for that. I
16 think altogether half an hour, Your Honour, for the entire rejoinder.
17 JUDGE ANTONETTI: [Interpretation] So whilst we are at it, what
18 about the Stojic Defence?
19 MS. NOZICA: [Interpretation] Your Honours, we kindly ask you to
20 present our position after the break. What Mr. Karnavas has just said is
21 probably feasible during the day. We'll have to consult with our client
22 whether he would like to take the floor and then make an assessment of
23 the time necessary. At any rate, we won't need much time, but we will
24 give -- inform you after the break.
25 JUDGE ANTONETTI: [Interpretation] Mr. Kovacic.

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1 MR. KOVACIC: [Interpretation] Your Honours, if you permit, we
2 would also like to make an evaluation. We don't want to be emotional but
3 make a rational decision as to whether anything deserves a rejoinder or
4 not. And we will also consult our client, but at any rate, we have no
5 grand plans.
6 JUDGE ANTONETTI: [Interpretation] Ms. Alaburic.
7 MS. ALABURIC: [Interpretation] Your Honours, I would also prefer
8 to give you a more precise assessment of our -- of the time required
9 after the break, after consulting General Petkovic. But what I can say
10 for sure now is that we will ask for a rejoinder to what Mr. Stringer has
11 said. He has spoken about our client for about 50 minutes, but my
12 current assessment is that we will need about 30 [Realtime transcript
13 read in error "15"] minutes for rejoinder to Mr. Stringer's word, and
14 then we'll see what will happen afterwards in the courtroom.
15 JUDGE ANTONETTI: [Interpretation] Mr. Coric.
16 MS. TOMASEGOVIC TOMIC: [Interpretation] Thank you, Your Honours.
17 I will also consult my client but if Mr. Coric chooses to address the
18 Trial Chamber, that, including our rejoinder, will not exceed half an
19 hour.
20 JUDGE ANTONETTI: [Interpretation] Thank you.
21 MR. IBRISIMOVIC: [Interpretation] Thank you, Your President.
22 Unfortunately, I have nobody to consult because my client is not present
23 so that he certainly will not address the Trial Chamber. We will need
24 5 minutes at the most to respond to the Prosecutor.
25 MS. ALABURIC: [Interpretation] Just a correction of the record.

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1 I said that we will not need more than 30 minutes. "Fifteen" was
2 recorded.
3 JUDGE ANTONETTI: [Interpretation] Yes. That's what I wrote down.
4 We're going to have a 20-minute break now.
5 --- Recess taken at 12.26 p.m.
6 --- On resuming at 12.47 p.m.
7 JUDGE ANTONETTI: [Interpretation] The court is back in session.
8 We're going to go round once more since the Defence teams consulted with
9 their respective clients over the break.
10 Now, for the Prlic Defence, Mr. Karnavas told us already how much

11 time he needed. As to the Stojic Defence, what was your decision?
12 MS. NOZICA: [Interpretation] Your Honours, the Stojic Defence
13 decided not to respond to the Prosecution's rebuttal. We made our
14 statement for the transcript -- for the record today about one matter.
15 We would also like to inform the Trial Chamber that Mr. Stojic wishes to
16 address the Trial Chamber, which -- and we think it would be appropriate
17 to do so after all else is done.
18 MR. KOVACIC: [Interpretation] Your Honours, Mr. Praljak would
19 like to take the opportunity given by you to address the Trial Chamber at
20 the end, but he will only need a few minutes.
21 As for our rejoinder, in my estimate I might reach 15 minutes at
22 the most, but it may be less, some ten minutes or so.
23 JUDGE ANTONETTI: [Interpretation] Very well. 4D.
24 MS. ALABURIC: [Interpretation] Your Honours, we stand by our
25 request to get up to 30 minutes for rejoinder to the Prosecution. We

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1 wish to deal with legal issues. The Prosecution has offered some new
2 interpretations, and we would like to respond to them.
3 General Petkovic would also like to address the Trial Chamber at
4 the end, and I support Ms. Nozica's suggestion that the accused speak
5 after the rejoinders.
6 JUDGE ANTONETTI: [Interpretation] Thank you. 5D.
7 MS. TOMASEGOVIC TOMIC: [Interpretation] Thank you, Your Honours.
8 Mr. Coric does not wish to address the Trial Chamber, because he believes
9 that all has been said by his Defence counsel already.
10 As for the rejoinder, I will take very little time, and if I
11 speak very slowly, I will need up to 30 minutes to respond to something
12 Mr. Stringer dealt with. I mean two matters only.
13 JUDGE ANTONETTI: [Interpretation] Thank you. And finally
14 Mr. Pusic's Defence.
15 MR. IBRISIMOVIC: [Interpretation] We have spoken our mind a short
16 time ago. We will need up to 10 minutes, and Mr. Pusic will not speak,
17 of course.
18 JUDGE ANTONETTI: [Interpretation] Very well. We're going to
19 discuss this and then we'll hand down a decision as to the time allotted.
20 [Trial Chamber confers]
21 JUDGE ANTONETTI: [Interpretation] After deliberations, the
22 Trial Chamber recalls that rejoinders fall under the same rules as those
23 applying to rebuttals.
24 Secondly, further to the Defence teams' requests, grants them.
25 So over and above the 15 minutes given to the Prlic Defence for their

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1 rebuttal of another Defence team's arguments, we'll have 15 minutes to
2 the rebuttal -- or rejoinder of the Prosecution's rebuttal, and Mr. Prlic
3 will have 15 minutes for his address to the Judges.
4 As for the Stojic Defence, there will be no intervention -- or no
5 rejoinder, but there will be a 15-minute speech by Mr. Stojic.
6 As to 3D, the Trial Chamber grants 10 minutes as part of the
7 rejoinder and 15 minutes for Mr. Praljak's speech.
8 4D, 30 minutes are given to General Petkovic's Defence.
9 Mr. Petkovic himself will have 15 minutes for his final words.
10 With regard to the 5D team, the Trial Chamber grants 15 minutes
11 to Mr. Coric's Defence and takes due note that Mr. Coric is not going to
12 speak.
13 Finally, regarding Mr. Pusic, the Trial Chamber grants

14 five minutes to his team and notes that Mr. Pusic will not speak since he
15 is absent from the courtroom.

16 As a result, with regard to the time, the overall time, we will
17 continue tomorrow for part of the day. But without further ado,
18 Mr. Karnavas is going to start. It is five to 1.00, and we may proceed
19 with him. Thank you.

20 MR. KARNAVAS: Thank you, Mr. President. Thank you,
21 Your Honours, and good afternoon to everyone in and around the courtroom.
22 I will first begin by rebutting what I indicated last week, the
23 one matter that came up with the Petkovic Defence and that has to do with
24 the Ljubuski transit centres. The transcript pages -- the relevant
25 transcript pages are 52558 to 52559. There are two particular points

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1 that I wish to draw out, and I will be making some reference to documents
2 for your own consideration, Your Honours.

3 The first is that the Petkovic Defence asserts that the purpose
4 for the transit centres was for POWs. That's the first one that we
5 categorically object to and we will be rebutting. The second point, of
6 course, is that the Ljubuski transit centre was not supported by the --
7 the internationals, and we will rebut that as well.

8 Now, the Petkovic Defence stated, and I quote:

9 "Since military-able men of Muslim ethnicity were considered the
10 reserve army of BH Army and hence they were prisoners of war, the
11 initiative to establish a transit centre at Ljubuski was absolutely
12 lawful and in line and keeping with the Third Geneva Convention,
13 Article 12, paragraph 2."

14 It is our contention and we believe the evidence supports that
15 the Ljubuski centre was not set up for purposes of detaining POWs. It
16 was set up for displaced persons from Central Bosnia, Croats, that is, as
17 a result of the ABiH offensive. This was the only mission, we submit,
18 for this particular transit centre. The record demonstrates a
19 pressing -- at the time that there was a pressing need for such a centre
20 given the huge influx of displaced persons coming from Central Bosnia and
21 the fact that in Herzegovina or Herceg-Bosna, there was little or no
22 space available for them. And we refer to our final brief,
23 paragraphs 202 to 219 where we've more fully developed our arguments.
24 But in addition, we invite the Trial Chamber to look at P03394, which is
25 a report on the work of the HZ-HB Office of Expelled Persons and Refugees

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1 for January to June 1993, where on page 3 it is stated, and I'm quoting
2 part of the sentence:

3 "The number of expelled Croats residing in HZ-HB has increased by
4 50.000, (i.e., 100 per cent) and now totals 110.061. It is likely that
5 new expelled persons will be arriving in this area."

6 We also draw Your Honours' attention to 1D00929, which is a
7 letter from Zubak to Rebic sent on 23 July 1993. Zubak informed Rebic
8 that there were approximately 8.000 expelled Croats, this -- 8.000 more,
9 more, displaced Croats to arrive in Herzegovina from Central Bosnia, and
10 he's pleading with Rebic, who was the counterpart of ODPR in the Republic
11 of Croatia, and Zubak writes:

12 "We believe, are aware, that we have almost exhausted our
13 capacities for accommodating the displaced persons so that we cannot take
14 care of newcomers. In that respect, you are kindly requested within the
15 framework of your competencies to make efforts to allow us to relocate a
16 part of displaced Croats from Kakanj and Konjic to facilities in the

17 territory of the Republic of Croatia."

18 We also invite the Trial Chamber's attention to P03796, and these
19 are the minutes of the HVO HZ-HB meeting of the 48th session, dated
20 29 July 1993, where again in there there is -- it is recorded that Zubak
21 had reported at this HVO meeting about the acceptance of 10.000 expelled
22 Croats from Central Bosnia, and in the report, Zubak underlined
23 two problems: One, the lack of accommodation capacities in the territory
24 of HZ-HB; and two, insufficient number of vehicles necessary for
25 evacuation of the population for the mentioned areas.

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1 So that's the one point that I wanted to draw to your attention
2 regarding that. Then the Petkovic Defence indicated, and again it's
3 referenced in those two pages which would have been on 21st February
4 2011, and I quote:

5 "I think these are facts for which there is ample evidence in the
6 case file."

7 In other words, ample facts that the Ljubuski transit centre was
8 set up for POWs. Well, the only evidence concerning this claim is the
9 BA's 92 ter statement, which is P09712, and it's paragraph 50, which is
10 rewritten in the OTP brief on paragraph 453, paragraph 41 and 42,
11 rewritten -- 51, I'm sorry, 51 and 52, rewritten in the OTP brief 454 and
12 paras 54 and 56.

13 MR. SCOTT: Excuse me, Mr. Karnavas. I don't know if you're
14 going to quote the evidence or not, but that can't be --

15 MR. KARNAVAS: I was not. No, I was not. And that was rewritten
16 in paras 455 in the OTP final brief.

17 Now, when it comes to BA's testimony, I refer to my earlier
18 comments. I can go on today in light of what we heard earlier about the
19 credibility of these internationals, but I believe last week I indicated
20 how BA's statement was compiled with the assistance of the OTP
21 investigators, so I won't go into that.

22 However, since there is the remark that there's ample evidence, I
23 use this opportunity to -- and I believe it's within my right as part of
24 the rejoinder or rebuttal, to point out that reports were inaccurate and
25 sometimes outright misleading. And for an example, just as an example,

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1 if we look at P09847, and this is the international organisation which is
2 reporting on 19 August 1993, to Zagreb office about alleged ethnic
3 cleansing in western -- west Herzegovina, and I quote:

4 (redacted)

5 (redacted)

6 (redacted)

7 (redacted)

8 (redacted)

9 And this is on page 2. But if you contrast that with, for
10 instance, 1D01356, which is dated 20 October 1993, this gives an overview
11 of the retired people in the local communities of Mostar municipality,
12 and there we see that at that point in time there were approximately
13 2.000 -- 2.107 Muslim pensioners on the west side.

14 And I also draw your attention with respect to this particular
15 issue, BD's testimony where under -- when I cross-examined and I make
16 reference to pages 20880 to 20883, where in particular I discuss 1D01356
17 and in particular where I -- I impeach her on her organisation's or her,
18 in particular, use of humanitarian aid as a weapon.

19 Then I also wish to draw to the Trial Chamber's attention

20 1D02813. This is a notebook from Marinko Simunovic. He was the head of
21 the Red Cross of Mostar, and in his notebook dated 30 November 1993,
22 based on a coordinating committee meeting that was held, and this was
23 composed of all the humanitarian organisations, he reported, obviously it
24 was done contemporaneously so he didn't know that it was done for the
25 purposes of this trial, that at the time there were approximately

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1 47.558 people in West Mostar, and of that, there were 9.928 Muslims, that
2 is 20.84 per cent of the population, on West Mostar. So I -- and I'm
3 mentioning this as a vignette. So when we're talking about the
4 credibility of the reporting system, this is just one -- and I should
5 point out the transcript pages, which are 33629 to 33638, and that was on
6 22 October 2008. And then the following day, on 23 October 2008, is
7 33673 to 3367 -- 76.

8 We also wish to point out the testimony of Martin Raguz who came
9 here, and then again this refutes this notion that there's ample evidence
10 that the Ljubuski transit centre was for POWs. We take exception to
11 that.

12 Mr. Raguz was cross-examined rather aggressively and at length by
13 the Prosecution, as is their right to do, and with respect to the
14 Ljubuski transit centre, you can find the particular references to his
15 testimony at pages 31522 to 31526. This would have been on
16 28 August 2008. And I specifically urge the Trial Chamber or draw your
17 attention to 31525 to 31526. I'm prepared to quote from the transcript,
18 but I think it is better to utilise our time by simply mentioning that he
19 talked about what these transit centres were for, and it was his
20 testimony that they were for the purposes of assisting those who wished
21 to voluntarily lead -- leave, but they were of Croats from Central Bosnia
22 that wanted to -- that had no place to go.

23 Now, there are other -- the other point that I wanted to make
24 with respect to this is that -- that there was no assistance from the
25 part of the internationals, by the international organisations with

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1 respect to the establishment of the Ljubuski transit centre. And on
2 page 52559, the Petkovic Defence stated:

3 "I remind you that the Herceg-Bosna authorities contacted UNHCR
4 and UNPROFOR for help in the establishment of the transit centre and the
5 temporary transfer of prisoners of war to third countries. The UNHCR,
6 upon consultation with their headquarters, concluded that they would thus
7 contribute to ethnic cleansing and refuse to provide assistance after
8 which UNPROFOR pulled out as well."

9 We categorically refute this, and we draw your attention,
10 Your Honours, to Mr. Raguz's testimony again, and this is on transcript
11 page 31402 to 31405, testimony of 26 August 2008, and again on 31522 to
12 31526, 28 August 2008. And Mr. Raguz was rather explicit that it could
13 not have been done without the assistance of the international
14 humanitarian organisation.

15 And lastly I point -- I draw your attention to P06324, page 3.
16 This is part of a report of the activity of the government of the
17 Croatian Republic of Herceg-Bosna and its ministries from November 1993
18 to March 1994, and it states:

19 "Fortunately, in October 1993, Hotel Bistrica in Ljubuski, which
20 had been and was being restored by international humanitarian
21 organisations, was functioning as a reception centre where several
22 thousand of displaced persons stayed for shorter or longer periods."

23 So that -- that concludes my rebuttal with respect to this
24 particular topic, Your Honours. And now very quickly, unless there are
25 any questions, I will go through the Prosecution's rebuttal, and abiding

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1 by the rules, I will just go right through it.

2 First, the Prosecution mentions that the Muslims -- that there
3 was some sort of an objection by the Defence that the Muslims should not
4 get to the sea. Well, you need to put this into context. No one has
5 ever suggested that Neum was not part of Bosnia and Herzegovina or that
6 the Muslims or the Serbs or the Croats should not have access to Neum.
7 The whole point of getting to the sea had to do with in Croatia, and
8 there, we submit, that the Muslims did not have a right to go into
9 Croatia to try to occupy land for a deep-water port. In particular, they
10 were looking towards Ploce. So we do take exception to the Prosecution's
11 notion that somehow Halilovic, who was a Serbian Muslim, he was from
12 Sandzak, or Ganic, again from Serbia, should have a right to Croatian
13 territory. So when we talk about Muslims getting to the sea, that's what
14 we're talking about. And there is ample evidence also in the Mladic
15 diary, albeit part of it did not make it into the evidence.
16 Croatian exceptionalism. I don't understand quite exactly what
17 the Prosecution means by that. The Defence has endeavoured throughout
18 this trial to be very clear on the evidence itself, and we -- at least
19 the Prlic Defence has never advocated something for the Croats which it
20 did not believe that the Muslims should also be entitled to. So we, too,
21 take exception to that.
22 As far as the single military command, there is no real issue
23 here. The -- the Prlic Defence has never advocated that the ABiH was not
24 a lawful armed force of BiH, but it wasn't the only one. There is a
25 distinction between being an armed forces, which is what the friendship

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1 and co-operation agreement called for with ABiH and HVO being part of it,
2 and I think we need to make that distinction. So when we're talking
3 about the ABiH, we're talking about an army, one component of the armed
4 forces. And as far as -- if you look at what happened in January 15, the
5 purpose behind that, which was also something that had been discussed
6 in -- in Geneva, was that in a region, in a particular region, it would
7 be best for -- where you have two operating armies for there to be one in
8 charge, and that was -- we -- we discussed this at length in our brief,
9 so I'm not going to belabour the point, but our position was and remains
10 that there was never an intolerance of the ABiH. It's just that in
11 certain areas, because there was -- there was conflict, that it would be
12 best to have one of the two armed -- armed forces, one of the two armies,
13 take the lead and the other one being subordinated to it, which is why in
14 areas where there was the Muslim majority provinces based on the
15 Vance-Owen Peace Plan, it had been agreed that the HVO would be
16 subordinated to the ABiH.
17 Moving on to Sarajevo and this top-down Muslim juggernaut. I
18 don't understand this phraseology, I have to be honest. I think I
19 understand what they're talking about.
20 There's no mystery that as early as 1992, Mr. Owen says, and we
21 brought this out already, that by 1992, Sarajevo -- the Sarajevo
22 government was becoming more and more representative of only the Muslim
23 ethnicity. The Serbs had walked away, but this -- these are his
24 observations. Was Sarajevo cut off? It was. And we have to put it into
25 context, Your Honour. You heard testimony, and I don't want to belabour

1 the point, but you heard testimony from Primorac, for instance, who was
2 there. You heard testimony also from one of our other witnesses who was
3 1DAA, Perkovic, Raguz. They all talked about how it was cut off, and for
4 us in particular, our point was and remains is that the government could
5 not function properly because the electrical grid was down,
6 telecommunications didn't function.
7 Now, they mentioned this software. Again, I invite your close
8 scrutiny and attention to Mr. Tomic's testimony at the time, because I
9 believe there was a comment even -- I believe it was from you,
10 Judge Trechsel. The software had to do with the payment bureau system,
11 the SDK, and he had indicated that it would have been much easier for
12 them to have gone to Croatia to get a much more sophisticated software,
13 but because they wanted to stay within the grid because it wasn't
14 expected that the war would last forever, that it was to their advantage
15 to have the software that was compatible with the rest of the country.
16 So when you look at the context, somebody brings out the software, gives
17 it to them. So when we're talking about cutting off, let's put matters
18 in perspective. And also if they're going to be using Tomic for those
19 purposes, consider what the purpose is behind getting the software.
20 Impunity. I want to make sure that we're very, very clear after
21 five years and I hope, I dare hope that I have never -- that we, the
22 Prlic Defence, have never given the impression that we are for impunity.
23 I think Dr. Prlic was very clear early on when he spoke, and I think that
24 throughout our presentation while we have been rather vigorous in
25 cross-examining witnesses, I do not believe that there's been a single

1 incidents when we have subscribed to a culture of impunity, and nor did
2 we try to represent matters in a way that crimes, however -- however
3 minor they may be, should be overlooked. We tried to put matters into
4 perspective.
5 With regard to the JCE, I was to be, frankly, rather disturbed
6 today. I would use the word "offended," but maybe that's a little too
7 strong, but I was disturbed in the sense that the examples that were
8 given were, first of all, are from other cases. They're trying to equate
9 the Croats with the Serbs in Bosnia-Herzegovina. Frankly, I don't
10 believe that this is the place to have this sort of a discussion.
11 This case rests on the facts and the facts alone. In our brief,
12 we challenge, we challenge, the JCE, in particular JCE III. We maintain
13 then as I maintain today and I will continue to maintain that JCE III was
14 never a part of customary international law. Now it's up to Your Honours
15 to decide whether it is or it isn't. But the whole argument on the JCE
16 today, Your Honours, I would invite you to simply dismiss it outright.
17 It has no place. You should decide this case based on the evidence that
18 was presented before you, and I think making comparisons and saying oh,
19 by the way, this other court, these other Judges, I think that's a soft
20 way of trying to pressurise you into going into a particular direction.
21 Not that I think it would work.
22 With respect to Mr. Thornberry, well, you know, I never heard the
23 saying before I heard it from Mr. Khan, but I did like it, you know, when
24 you're jaundice everything looks yellow. I think probably there's a lot
25 of meaning to that, and that's what exactly what I was trying to convey

1 at the time. And we've already talked about the international witnesses.
2 We simply invite you to look at their testimony in toto. Look at it
3 together. And also ask yourselves, again ask yourselves if their
4 memories are so solid, if they vividly recall all of these things, why is
5 it that you have to sit down with somebody for four days and then work
6 them over in a sense to come up with a draft and then another draft and
7 then another draft. Show them documents that they haven't seen.
8 So I do believe that the evidence is there for you, Your Honours,
9 to make that determination as to how much weight, if any, to give to
10 them.
11 Now, they say, well, they got it right. The internationals could
12 got it right. Well, I can point to a dozen of instances, but I go back
13 to the one instance where you have Mr. Lane who says, well, Mr. Prlic had
14 his own private restaurant because I went there, I'm in this room, a
15 waiter comes in, and it's a private restaurant, and it turns out to be
16 hotel restaurant service. How right can they get it if -- if that's the
17 basis of their evidence?
18 With respect to the borders, and they mention Akmadzic. First of
19 all, I think -- and the testimony, I believe, was pages 29851 to 29852.
20 Again, Your Honours, read the -- read those transcript pages very
21 carefully before and after, of course, and I should -- of course there's
22 no need for me to say this, but you will see that what Akmadzic is
23 talking about is the Owen-Stoltenberg Plan.
24 We submit that the Croatian Community of Herceg-Bosna was never
25 about borders. It was about areas. Now, the issue of borders came up --

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1 come up in two contexts. One is the border between Bosnia-Herzegovina
2 and the Republic of Croatia. And who sets it up? It's the Croatian
3 Community of Herceg-Bosna. That's when it started. So if they wanted to
4 merge, why bother to have borders? Borders never existed, not even a
5 sign, "Welcome to Croatia" or "Welcome to Bosnia-Herzegovina." That's
6 number one.
7 Number two and more importantly, the issue of borders really
8 comes into play when we're talking about the provinces under the -- the
9 Owen-Stoltenberg Plan or the Croatian Community of Herceg-Bosna -- the
10 Croatian Republic of Herceg-Bosna. That's what we're talking about, the
11 Croatian Republic of Herceg-Bosna and the provinces. And again, keep in
12 mind that this is based on the international negotiations that are going
13 on. It is not the Croats of Bosnia-Herzegovina driving the agenda. In
14 fact, they're the only ones that keep signing whatever is brought to
15 them, including the maps.
16 So when we talk about borders, be very careful, Your Honours.
17 Put things into context.
18 With respect to Witness Ribicic. Yes, he was a 92 bis witness.
19 I take that on board. However, keep in mind at the time that he prepared
20 his report, he did not have the benefit of all of the presidential
21 transcripts. Now, the Prosecutor would have you believe that he did an
22 honest intellectual report. I say rubbish. It was not. A
23 constitutional analysis does not refer to a presidential transcript from
24 27 December 1991, based on what Tudjman might have said before the
25 establishment of an independent Bosnia and Herzegovina and say, Based on

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1 this, I can conclude that this was the purpose. An honest, objective
2 report would have been for the gentlemen to strictly look at the founding
3 documents, look at the constitution of BiH, maybe have some sort of a

4 historical background, do something to the -- similar to what our Witness
5 Cviki did, but this was not done by Mr. Rebic. In fact, he was relying
6 on things -- Ribicic, I'm sorry. He was relying on such things as what
7 he read in the newspaper. And when the new material came out, when the
8 new presidential transcripts came out, and there was even an exchange, I
9 vividly recall this, with you, Judge Trechsel, because you said well, he
10 doesn't have to read everything, and I understand -- and reading it in
11 context I understand where you were coming from, but my point is this:
12 If new material comes out that is relevant to the study that you just
13 did, I think it behooves you to at least look at it. And when
14 circumstances change, opinions may change with those circumstances as
15 well, and I think it's -- so that's our criticism of Ribicic.
16 Our criticism of Tomljanovich, you know it. I don't have to go
17 through it. I think it's rather clear.
18 With respect to Pellnas, the only thing that I wish to point out
19 regarding Pellnas is that you can take a look at his entire testimony.
20 Look at his demeanour. Look at the way he characterised individuals.
21 And regrettably, regrettably, portions of the Mladic diary did not come
22 in because we see a dark character, someone who certainly was playing one
23 side against the other, and I'm particularly referring to the one
24 conversation that he's having with Mladic in Mount Jahorina. So -- and
25 if I may take this opportunity, since the Prosecution is calling him a

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1 true professional, I think that the Trial Chamber is perfectly capable to
2 exercise its own judicial discretion and to revisit the issue to
3 determine whether what was in the Mladic diaries concerning Pellnas
4 should be admitted. It's never too late.
5 Regarding the Croat moderate witnesses. Yes, we heard -- we
6 heard Kljuic, and Kljuic has some baggage. First of all, he confabulated
7 in a sense when he called himself a dissident. Everybody laughed at that
8 notion. What's important about -- about Kljuic is he leaves the
9 Presidency and then at some point he gets reappointed when clearly the
10 rules did not provide for that. But aside from -- aside from him and if
11 you do read Kljuic, I invite your close scrutiny and attention to the
12 four or five or six hours that I cross-examined him because through
13 his -- through that cross-examination you get a pretty good flavour of
14 the circumstances at the time. But then they mention Brkic, Pelivan and
15 Markesic. Who are -- where -- did these individuals come and testify?
16 Were they subjected to cross-examination? The answer is no. So when
17 they say Brkic was a moderate, how so? Based on what?
18 Now, with respect to the legitimacy of the Presidency, in
19 particular Izetbegovic. They want you to look at Akmadzic, and you know
20 what, Your Honours? I say please do. I vividly recall -- I don't have
21 the transcript page -- no, actually, I do have the transcript page where
22 you should look at, because Akmadzic was on direct examination. We're
23 talking about Izetbegovic being elected the first time, being re-elected
24 the second time, and then his term was about to expire and he had to have
25 a trip to go to Geneva. And Akmadzic says to him, "Mr. President, you

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1 know, you're going to have to resign, you know, so we need to have, you
2 know, elections for the new next president." And he says, well,
3 afterwards we'll do it. And then it's pointed out again, but it's going
4 to be expired, you're going to be out of the country. At which point
5 Izetbegovic says, "I'll talk to Tadjman."
6 Now, one of the -- you could be looking at, Your Honours, are

7 1D02940. Look at 18 June 2008, pages 29514 through to 29517. And also
8 while you're at it, because it might be helpful, look at the constitution
9 of the Social Republic of BiH, Article 358 at 1D02994. And it would not
10 hurt also to look at the Presidency Rule of Procedure Article 19, P10509.
11 But let's go back to this. What does Tudjman have to do with the
12 Presidency of BiH? How legitimate can the government be? Let's assume,
13 let's assume that -- that what was said by -- by Okun, that, well, you
14 know, it was recommended by Izetbegovic to Boban. How legitimate can
15 that Presidency be? In what sense?
16 And so our position was and remains that Izetbegovic was lawfully
17 elected to that position as president for the first time. He was
18 lawfully elected the second time. Beyond that, he had a responsibility
19 to step down, and he did not. And Lord Owen, as he indicated, treated
20 the -- the Presidency at some point became representative of basically
21 just the Muslim nation.
22 So for the Prosecution now to say, well, Tudjman arranged it with
23 Boban, that's utterly ridiculous. How does that make the Sarajevo
24 government a lawful Presidency? It does not.
25 I wonder in which one of our countries we could do that where

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1 some other -- you know. Imagine the Canadian president saying, well,
2 we'll do this for the United States. It doesn't make any sense.
3 This is not our war. You know, the context of this statement
4 we've discussed, but again they bring it up today. And you have to think
5 back. Why is this phrase so important? It is important because of the
6 perception, that's why. It is the perception of those who were not part
7 of Izetbegovic's inner circle or of his nation.
8 Witness 1DAA. You heard his testimony. He was on the stand
9 approximately seven days, as I recall, maybe even eight. All I can say
10 is take -- rather than cherry pick one particular phrase, you need to
11 look at his entire testimony as a whole. There is a great deal there
12 with respect to that one issue. It wasn't just one page. So I suggest,
13 Your Honours, that rather than just look at the one phrase that the
14 Prosecution points out, look at the entire -- his entire testimony.
15 The third term I've already talked about. The third term --
16 Izetbegovic did not deserve a third term, could not have received a third
17 term lawfully under the law at the time, and I think it's -- it's
18 improper now to suggest that Izetbegovic could have.
19 The -- with respect to the HVO being the only armed forces in
20 1992, in the spring of 1992. The Prlic Defence has never submitted that
21 they were the only armed forces. You had the Patriotic League and you
22 had the Green Berets. They organised themselves separately. They were
23 the Muslim armed forces that belonged to the SDA party and they organised
24 themselves clandestinely. At some point, the Croats of BiH and the
25 Muslims of BiH took on what was perceived as their -- their common enemy,

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1 and we've heard plenty of testimony on that.
2 With respect to the Stojic proclamation, I think I will rest on
3 our brief. It's all covered there. Nothing is new.
4 Finally, just let me -- and by saying that the final remarks by
5 the Prosecution were not rebuttal at all, it was another closing
6 argument, and invoking Albert Speer, I found again to be rather
7 disturbing. First, he's a disturbing character throughout that ordeal,
8 and what he says is virtually irrelevant. Self-serving, I would say.
9 But I do want to point out since they're bringing Albert Speer and

10 they're saying if the war would have gone differently, the bottom line is
11 this, Your Honours, Dr. Jadranko Prlic was part of the Washington -- when
12 the Washington Agreement came in was part of the federation government
13 and part of the ABiH government. He was put in a position that was
14 highly responsible which was minister of the defence while the war was
15 still raging, and after Dayton, he continues to be with the same
16 government, having a very responsible position as the minister of foreign
17 affairs. And I'll leave at that, Your Honours. And I think any
18 comparison between the Nazis and the Croats are inappropriate in this
19 courtroom.
20 I believe I have covered all the points I wanted, Your Honour,
21 and unless there are any questions, I have nothing further.
22 JUDGE ANTONETTI: [Interpretation] Very well. Thank you,
23 Mr. Karnavas. It will soon be time to stop, so I think it's best that we
24 continue tomorrow. Therefore, tomorrow we will hear D3, D4, D5, and D6.
25 So we should -- before the first break we will be done with the

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1 rejoinders. Then after the break, each accused willing to take the floor
2 will have this opportunity.

3 Mrs. Alaburic.

4 MS. ALABURIC: [Interpretation] Your Honours, since the
5 Prlic Defence had a chance to rebut some of our closing arguments, I
6 kindly ask you up to five minutes for rejoinder to their rebuttal.

7 JUDGE ANTONETTI: [Interpretation] Very well. Let me consult my
8 fellow Judges.

9 [Trial Chamber confers]

10 JUDGE ANTONETTI: [Interpretation] Very well. The Trial Chamber
11 deliberated, and we'll grant you five additional minutes, which means
12 that altogether tomorrow you will have 35 minutes.

13 I wish you all a good afternoon. We will resume tomorrow morning
14 at 9.00. Thank you.

15 --- Whereupon the hearing adjourned at 1.35 p.m.,
16 to be reconvened on Wednesday, the 2nd day of
17 March, 2011, at 9.00 a.m.

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