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1 Tuesday, 8 February 2011

2 [Prosecution Closing Statement]

3 [Open session]

4 [The Accused Pusic not present]

5 [The accused entered court]

6 --- Upon commencing at 9.03 a.m.

7 JUDGE ANTONETTI: [Interpretation] Mr. Registrar, please call the
8 case.

9 THE REGISTRAR: Good morning, Your Honours. Good morning
10 everyone. This is case number IT-04-74-T, the Prosecutor versus Prlic
11 et al. Thank you, Your Honours.

12 JUDGE ANTONETTI: [Interpretation] Thank you, Mr. Registrar.

13 Today is Tuesday, the 8th of February, 2011. Good morning to
14 everybody. And without further ado, I'm going to ask Mr. Scott to
15 proceed. He's going to continue with his closing arguments.

16 MR. SCOTT: Good morning, Mr. President. Good morning each of
17 Your Honours. Good morning, Counsel, the accused, all those in and
18 around the courtroom who are assisting us.

19 I first offer my apologies to the interpreters yesterday for my
20 speed and probably for the effects of my cold, and I'll try to do
21 somewhat better today. I'm not promising I'll succeed, but I'll try.
22 We left off yesterday evening with an important decision point,
23 and that is the complete and full recognition and realisation that
24 Izetbegovic, the BiH authorities, the Muslim people generally in Bosnia,
25 were not accepting -- would not accept Herceg-Bosna. I told you at the

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1 end of the day that at that point Tudjman, those around him, including
2 these accused, then faced an important decision point. They could either
3 change their strategy, perhaps soften their position or lower their goals
4 or what have you, or they could choose to, if I can put it this way, up
5 the ante. They could choose to take the conflict to a whole new level,
6 and unfortunately, it was the latter course that was selected.

7 Now, there are a lot of other important things that happened in
8 the last few months of 1992, and if I had the time, I would love the
9 opportunity to take the Chamber virtually week by week of the Tudjman
10 statements, the statements by these six accused, the events, the
11 meetings, the planning, but again, unfortunately, we don't have time for
12 that.

13 There was an important meeting in November 1992, finally a
14 meeting, an Assembly, a convention of the HDZ-BiH. Although the party
15 had been sidelined or made inactive, put on ice, as some of the witnesses
16 said, it must have continued to be a thorn in the collective
17 Tudjman-Boban side, and finally in the party Assembly in November 1992,
18 once and for all Boban took full power not only in name but in reality --
19 or not only -- I should reverse that. Not only in reality, but finally
20 in name as well. The moderates are all finally forced out. Brkic is
21 gone. Pelivan, the moderate Croat prime minister of Bosnia is gone,
22 replaced by the Defence witness Mile Akmadzic, who at the same time is
23 elected -- hand selected by Boban as one of his five vice-presidents of
24 the party.

25 A lot of things happen, important things, but let me wrap up 1992

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1 in this way: By December of 1992, Kordic, Boras, and Akmadzic had once
2 and for all cleansed the HDZ-BiH party of most if not all of its moderate
3 leaders, even though Kljuic and many of the others had actually received
4 more votes than Boban and his faction in the 1990 elections. The HDZ-BiH
5 was in no sense the same party that had stood for election in 1990 with
6 the moderate Kljuic winning the most votes. The Bosnian Croats were
7 never a monolithic group or a people with only one point of view. Boban
8 and his ilk had no basis to claim to represent or speak for all Bosnian
9 Croats. Indeed, Tudjman plainly recognised this saying to Herceg-Bosna
10 leaders on the 24th of November, 1995:

11 "From the very beginning, the Croats in Bosnia and Herzegovina
12 were not united, because objectively they could not be united because
13 they lived in different circumstances and conditions."

14 That's at P08489.

15 At no time since November 1990 had their been open, free, or
16 democratic elections. No free and open popular election had ever voted
17 for the HDZ-BiH in this form, in the form that it had taken by late 1992.
18 No one had elected the HVO government. The Muslims had never voted for
19 or been given the opportunity to vote for Herceg-Bosna or for the HVO
20 government. Again, and for that matter, neither had the Croats. The
21 accused Petkovic answered the following questions under oath:

22 "Q. When did the Muslims vote for Herceg-Bosna?"

23 "A. The Croats didn't vote for Herceg-Bosna either.

24 "Q. You're absolutely right, sir. No one elected Boban or Prlic
25 or Kordic or Bender or Boras. No one elected them legitimately to any of

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1 these positions."

2 By December of 1992, the Herceg-Bosna HVO governmental and
3 military machinery was well developed. Since taking charge in August,
4 Jadranko Prlic had turned his HVO HZ-HB into a fully operational
5 government which was by far the most powerful Herceg-Bosna engine,
6 combining full executive, legislative, and administrative powers,
7 empowered and actually engaged in supervising the work of the municipal
8 HVOs and even annulling any HVO work and local decrees which Prlic and
9 his government thought inconsistent with Herceg-Bosna policy. It was
10 Prlic, not Boban, who controlled all of the levers of the HVO government,
11 including the executive departments, which included defence, finance, and
12 the police. It was Prlic, together with Bruno Stojic, who directed,
13 planned, financed, manned, armed, and fed the HVO armed forces. It was
14 Stojic, not Boban, who chaired defence department meetings, prepared the
15 department's work programme, and appointed the vast majority of HVO
16 commanders.

17 Under the Herceg-Bosna HVO political and military leadership with
18 Bruno Stojic heading the Defence Department from 3 July 1992 forward, and
19 Milivoj Petkovic commanding the HVO military since the spring of 1992,
20 the HVO, by the late summer of 1992, was a substantially organised armed
21 force under a central command with functioning command and control.
22 By December 1992, Petkovic had prepared a report on the work of
23 the HVO armed forces since his arrival in Bosnia on the 14th of April,
24 1992, stating that:

25 "HVO forces are now successfully holding under their control 90

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1 per cent of the territory planned as the territory of the HZ-HB. The
2 territory planned as the territory of the HZ-HB. And with better

3 material support, they are willing and able to defend it."
4 Petkovic reported that:
5 "After three operative zones, 18 brigades, and several
6 professional units had been formed in Herzegovina and Central Bosnia, all
7 municipal staffs were abolished, which increased the quality of
8 commanding and made the units more mobile. In another December report,
9 senior HVO commander Ivica Primorac," the same Primorac who switched from
10 HOS to the HVO when Blaz Kraljevic was murdered, "Primorac confirmed the
11 existence and operation of six 'professional HVO units' including the
12 Bruno Busic regiment (which had 'regularly executed its assigned task on
13 the entire territory of HZ-HB' and was relocating at the time its base of
14 operations to the Heliodrom), the Ludvig Pavlovic special purposes unit
15 (described as well equipped, well trained, and 'completely
16 professional'), the Convicts Battalion," Tuta's unit, "the Convicts
17 Battalion (based at the Heliodrom and described as a unit 'which gave a
18 maximum contribution to the liberation of Mostar ... ready to execute the
19 most difficult task at any time'), and the Vitezovi special unit in
20 Bosnia."
21 All of those were professional units under the control of the HVO
22 Main Staff and Department of Defence.
23 Continuing in his report, Petkovic described the HVO as the
24 "Croatian people's own armed forces." Petkovic reported, quote, "the
25 defence of this territory and the command of units in most cases rests on

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1 'ordinary' men ... devoted to the ideas of the HZ-HB," and that "HVO
2 forces are able to defend and keep under their control the territory of
3 the HZ-HB."
4 It is interesting to note in one version of Petkovic's report
5 where it says -- it says: "Officers of the Croatian Army have given
6 great help to the HVO in organisation and command of forces," but then
7 statements in his report about the Croatian Army's involvement in major
8 operations in Bosnia during the period April, June 1992, the very time
9 when the UN Security Council was complaining about the Croatian Army's
10 involvement in Bosnia, those parts of a -- one version of Mr. Petkovic's
11 report have been crossed out but are nonetheless still visible. The
12 parts that mention the HV, the Croatian Army's involvement. That is
13 P00907.
14 Petkovic confirmed these facts in his testimony. By late June
15 1992, HVO operative zone commanders had been appointed, and by the end of
16 1992, the HVO brigade structure had replaced the Municipal Staffs. The
17 Main Staff had direct communications with the commands of the operative
18 zones and various brigades, battalions, and other units were directly
19 linked to each operative zone. The HVO professional units were directly
20 linked to the Main Staff.
21 According to Petkovic, every, I put a line under "every," HVO
22 unit which he -- I said what do you mean, when you're talking about HVO
23 units, what do you mean? His answer was, well every unit in the official
24 HVO organisation. Every HVO unit was under the command and control of
25 the HVO and, quote, "under the control of the person who was at the head

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1 of that body." Petkovic confirmed that he had, quote, "he had authority
2 over my commanders." He testified, quote, "he had authority over my
3 commanders," and that no HVO unit could exist on its own or act on its
4 own.
5 The professional officer and senior HVO commander Filip Filipovic

6 fully confirmed these points. Filipovic said that by the end of June
7 1992, the HVO was in communication with its units. There was the ability
8 to command and control them with reporting mechanisms and other
9 structures and processes in place, quote, "so it was a normal system of
10 command and control."

11 There has been a continuing Defence argument that the real
12 Bosnian Croat power was in the municipalities and that this was true
13 concerning the HVO armed forces. As I addressed yesterday when I was
14 talking about the status and function or lack of function of the party,
15 that I would touch on that as one of the sometimes allegedly -- alleged
16 alternative power bases, if you will, that some of the accused like to
17 point to and say, well, the real power was over there. Another one that
18 they have frequently pointed to was the HVO municipal authorities. Well,
19 they're the ones that are really responsible. They're the ones that have
20 the real power.

21 Not true. Not true.

22 While HVO or HDZ-BiH municipal officials might have been more
23 directly involved with the Bosnian Croat paramilitary forces during the
24 earliest times, in 1991 to perhaps the spring of 1992, the evidence is
25 clear that this was no longer substantially the case by the second half

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1 of 1992 and certainly not in 1993. Both the accused Petkovic and the
2 commander Filipovic testified under oath that the so-called "Municipal
3 Staffs" had come to an end by at least late 1992. Petkovic testified:
4 " ... we had moved on to a brigade structure ... So in 1992, as
5 far as I can remember, these Municipal Staffs were completely
6 dismantled."

7 The HVO commander Filipovic confirmed the same. By the fall of
8 1992, the HVO brigades had replaced the municipal staffs with improved
9 command and control and increased mobility, and that by the end of 1992,
10 the HVO was a significant military force. Petkovic and Filipovic, two
11 professional soldiers, both JNA trained, not witnesses for the
12 Prosecution, both testified consistently on that point. HVO
13 municipalities -- municipal authorities did not control the HVO military.
14 In its report for the period May to December 1992, the Prlic
15 government stated:

16 "... following a decision in Travnik on 17 October 1992 ..., all
17 armed formations of the HVO were placed under the sole command, the sole
18 command, of the Main Staff, which resulted in the consolidation and
19 efficiency of the military operations of our units."

20 The same report confirmed still again that the HVO was, quote,
21 "the only military force for the defence of the territory of the HZ-HB."
22 Those -- that evidence can be found at P00128.

23 Both Petkovic and Filipovic testified that local civilian
24 authorities had no power to command or issue orders to HVO military
25 units. Petkovic answered the following questions under oath -- we saw

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1 this yesterday but I touch on it briefly again on this particular point.

2 "Your testimony in the Kordic case at Page 26805-06."

3 Answer to the question:

4 "Your Honours, the orders followed the chain of command
5 vertically from the Supreme Commander down to the Main Staff. I didn't
6 receive any orders outside of that.

7 "Q. Did you receive orders or directives from other politicians
8 other than Mr. Boban at any time during your service as head of the armed

9 forces of the HVO?

10 "A. No, Your Honours. Nobody outside this vertical chain of
11 chain of command, Boban, Stojic, issued orders to me or the army.

12 "Q. And that's the case isn't it.

13 "A. Yes, I'm saying no one issued orders to me outside that
14 chain of command."

15 Filipovic gave similar testimony.

16 "A. The local civilian authorities did not have the power to
17 command the units or brigades.

18 "Q. And would you agree that in your experience, applying this
19 to both yourself and Mr. Blaskic, as to military matters the
20 organisation, and especially combat, were, according to your Kordic
21 testimony, 'always within the command.' They were not commanded by
22 politicians. Do you stand by that, sir?

23 "A. In the territory where I was, nobody could command except
24 Blaskic, myself, and the brigade commanders.

25 "Q. ... in any of your positions in the Central Bosnia

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1 operative zone, from 1992 until the spring of 1994, did you ever take a
2 military order from a political or municipal leader? An order.

3 "A. No."

4 In fact, the HVO military was all the more the army of
5 Herceg-Bosna which was dedicated to its sovereignty and its territory.
6 In amendments to the decree on armed forces on the 17 of October, 1992,
7 Herceg-Bosna adopted the oath which Your Honours heard at the swearing-in
8 ceremony or the oath-taking ceremony of the Jure Francetic Brigade:

9 "I swear that I shall faithfully and honourably perform the
10 duties required of me as a member of the HVO and that I shall obey
11 official commands and orders conscientiously and responsibly. I swear
12 that I shall protect and defend my motherland of Herceg-Bosna, its
13 sovereignty, territorial integrity, and all its citizens - even if my
14 life is at stake."

15 The oath contains not a single word about Bosnia-Herzegovina and
16 its authorities but only the motherland of Herceg-Bosna, its sovereignty,
17 and territorial integrity. It is simply too convenient for some to
18 suggest now that some sort of link or allegiance to Bosnia and
19 Herzegovina was implicit when it would simply have been too easy to write
20 exactly those words at the time if that had been the true intention.

21 I want to spend a few minutes talking about the various peace
22 plans, only a few minutes. Some of the accused, and especially
23 Mr. Prlic, have spent significant parts of their cases at times and
24 arguments talking about the various peace plans, Cutileiro, Vance-Owen,
25 Owen Stoltenberg, et cetera. The suggestion it seems to be that the

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1 international community had somehow endorsed or given its blessing to
2 what the Herceg-Bosnians wanted to do. That's not true. In fact the
3 Prosecution respectfully submits that you can spend a lot of time
4 thinking and talking about the various peace plans but unless you are
5 looking at something very, very specific, talking about the plans,
6 frankly, doesn't get you very far, and I'll explain that just in a
7 moment.

8 I've looked at all the plans over the years a number of times.

9 I've read them all several times, talked about them, Cutileiro,

10 Washington, Vance-Owen, et cetera, and here's what I submit to you in my
11 humble view: No one from the international community ever drew a map and

12 gave it to the Herceg-Bosnans and said, this is what you want. To be
13 more specific, no one from the international community ever drew the
14 borders of the Banovina on a map of Bosnia and told Tudjman and the
15 others, this is what you want. What the parties wanted always started
16 with and remained with the parties. What the Herceg-Bosnans wanted
17 always started with and stayed with the Herceg-Bosnans. The parties
18 including the Herceg-Bosnans put forward what they wanted including the
19 maps.

20 Number 2: No one from the international organisations told the
21 Herceg-Bosnans, quote, "I know you're frustrated with these negotiations.
22 Why don't you just go ahead and expel the Muslims from West Mostar and
23 destroy the old centre of Stolac and starve the men at Dretelj. That's
24 okay." No one ever said that. No one ever endorsed that. No one ever
25 gave it a green right.

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1 Number 3: There is no agreement until there's an agreement,
2 another way of saying it's not over until it's over. And my good friend
3 Ms. Nozica said it well on the 30th of September, 2006, at transcript
4 Page 7021, and I noted it then and I've been holding on to it ever since:
5 "You can only talk about agreements if both sides agree. You can
6 only talk about an agreement if both sides agree."
7 Precisely. Until then, it's only talk. It's only banter. It's
8 only back and forth. It's always subject to change. It's not over until
9 its over.

10 Now, given the particular circumstances in the former Yugoslavia
11 and the nature of negotiations and talks there, I would actually take
12 that a step further. "It's not over until it's been over for more than
13 just a couple of days."

14 Witness after witness ultimately said, and Bo Pellnas, the
15 international witness from Sweden, and Mr. Filipovic again, are two that
16 come immediately to mind. Cease-fires and negotiations were a dime a
17 dozen. Bo Pellnas sat on the stand and said, at one time I counted up
18 and there had been 73 cease-fires, 73 cease-fires -- no, sorry, 79, 79.

19 I asked him, well, you know, what did you think about that. And Pellnas
20 said:

21 "Well, after a while in these conditions, you don't take much
22 notice of paperwork or oral statements. You wait to see what happens ...
23 You wait and see what happens before you make any valuation of it."

24 And Filipovic agreed:

25 " ... all those documents, agreements, did not mean a thing for

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1 me when I spent hours every day being fired at."

2 So as to the negotiations and peace plans, there's no agreement
3 until there's an agreement. It's not over until it's really over, and
4 that's the situation. And no more conclusions can be drawn from the
5 peace plans much than that.

6 If you take Cutileiro and Vance-Owen as the two examples, I
7 submit to you that in both cases this is what it comes down to:

8 Cutileiro: The Herceg-Bosnans put forward their map, which is
9 map 32 in the book of maps, and guess what, the Herceg-Bosna map looked a
10 lot like the Banovina.

11 B: There was never a genuine meeting of the Muslim, Croat
12 (and/or Serb) minds. The parties negotiated, maybe they went forwards
13 and backwards, but at the end of the day there was no agreement. The
14 Muslims never agreed to a separate sovereign Croat space where the Croats

15 would be in complete control regardless of the actual demographics within
16 that space. No final agreement.
17 I've searched and searched and there's no provision in any
18 proposed Cutileiro agreement which said, "If the Muslims don't agree, you
19 can expel, destroy, and pillage anyway."
20 If you look at the Vance-Owen, the Herceg-Bosnans put forward
21 their map, map 34, which looks a lot like the Banovina.
22 B: There was never a genuine meeting of the Muslim, Croat
23 (and/or Serb) minds. The parties negotiated, maybe they went forwards
24 and backwards, but at the end of the day there was no agreement. The
25 Muslims never agreed to a separate sovereign Croat space where the Croats

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1 would be in complete control regardless of the actual demographics within
2 that space. No final agreement.
3 B [sic]: Again, I searched every footnote and clause of the
4 Vance-Owen Plan. There was no provision in any proposed Vance-Owen
5 agreement which said, "If the Muslims don't agree, you can expel,
6 destroy, and pillage anyway."
7 Now, the only exception to this sort of very broad approach is if
8 you want to look at something very, very specific, and in that case you
9 need to look very carefully at the specific relevant language. For
10 example, and highly relevant to the Prosecution case, is some language
11 that's buried, if you weren't looking for it you might not see it, but
12 it's the language that's part of the 25 March 1993 Vance-Owen papers that
13 were signed by Izetbegovic, P01398, e-court Page 30. It's buried in
14 Annex A, Section E, "Withdrawal of forces," which said, quote, in part:
15 " ... both Bosnian Army and HVO forces shall be deployed in
16 Provinces 3, 8, 9, and 10 under arrangements agreed between them."
17 And it was that language which then leads into the events in
18 April of 1993 and the proposed -- so-called proposed joint statement that
19 Boban signed but Izetbegovic never did.
20 So if you want to talk about peace plans, you can either talk
21 about them -- appear broadly, and I've put before you what the
22 Prosecution position is. They don't really get you very far. There were
23 talks, agreements, Herceg-Bosnans consistently put forward the Banovina
24 map. There was never an agreement. If you want to look at something
25 very specific, you can't play in generalities. You've got to go to the

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1 exact specific language and see what that says.
2 Now, turning back to the crimes -- or turning to the crimes in
3 Herceg-Bosna. They were large scale, widespread, and systematic. And
4 that's a very important part of this case, a feature of the evidence in
5 this case. The HVO behaviour was widespread, systematic, and on a large
6 and continuing scale. These were not the isolated or infrequent random
7 acts of a few individual bad actors. They were not, in essence, the
8 results of a few HVO soldiers who had a bad night. These were
9 large-scale systematic crimes that followed a consistent pattern of
10 behaviour not just over a period of days or weeks but months. They
11 occurred not only a few times, not only at a few locations, but all
12 across Herceg-Bosna, in Prozor, Stolac, Mostar, and Varos. In October
13 1992 and January 1993, in April 1993, in July 1993, and October 1993.
14 The witness Peter Galbraith summed this up in response to
15 questions from Mr. Praljak:
16 "We expected convoys to go into Bosnia every single day. We
17 expected convoys to go into Mostar every single day, and they were

18 obstructed practically every single day by the HVO. And this was not a
19 group of rogue soldiers; this was a command decision by the HVO. And
20 when we finally brought enough pressure to bear through Croatia, through
21 Croatia, in fact the convoys went through. -- the shooting into East
22 Mostar was not some private individual shooting off -- shooting off --
23 ... the shooting into East Mostar was by artillery. This was by an
24 organised military force that was shooting into civilian areas,
25 destroying an ancient cultural heritage, killing people. The camps were

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1 not some kidnapping by an individual held in a basement, it was the
2 holding of thousands of people in organised military-run camps in
3 inhumane conditions. The organised labour patrols was not some
4 individual taken out with a gun to dig trenches but organised work
5 parties. These, in short, were the acts of an organised authority of
6 which Mr. Boban was the political chief at the time and Mr. Prljak was
7 the military chief, and that is why I held him responsible."
8 The issuance of the January 1993 ultimatum was not the act of
9 some local HVO soldiers -- soldier sitting in a house in Stolac but the
10 decision and act of the top Herceg-Bosna political and military
11 leadership following exactly the chain of command that you would have
12 expected. Decision by Prlic, implementing order by the head of the
13 Defence Department, Stojic, implementing order by Petkovic. Couldn't be
14 any clearer. A decision is made. It goes down the chain of command and
15 out to the HVO military forces for execution.
16 The siege of East Mostar was not the random act over a couple of
17 days by a few rogue individuals, but a systematic course of conduct from
18 May or June 1993 to the spring of 1994 all right in the face of and under
19 the nose of these six accused. Many of them had their offices, their
20 daily offices, and even homes within metres, within metres of where these
21 events were taking place.
22 The establishment and operation of the transit visa and third
23 country deportation system was not the act of a couple of low-level
24 actors but the highly systematic expulsion of Muslims from Herceg-Bosna.
25 The use of hundreds if not thousands of Muslim men in forced labour over

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1 a period of -- over a period of, again, months was not a random act by a
2 few individuals but a highly structured program with daily records. You
3 even saw the ledgers, the journals, these men going out, these men coming
4 back day after day after day, unfortunately some of the men not coming
5 back because they were killed doing labour on the front line. Highly
6 systematic. Daily ledgers. Daily ledgers that you've seen.
7 The point is further made and reinforced by the fact that the
8 accused or most of them were front and centre in connection with the
9 launch of every major phase of the Herceg-Bosna campaign from Prozor in
10 October 1992 to late 1993. Prozor in October 1992. As we discussed
11 yesterday, the confrontation was fully expected. Prljak said,
12 "Confrontation can be expected," to which Susak says, "We know that.
13 We've already been preparing for a week." Prlic says, "Conflict with the
14 Muslims may be inevitable." All of this leading up to the events in
15 October, the end of October in Prozor. The die was cast. Pushing
16 forward meant war, and they chose the course.
17 The 15 January ultimatum I just mentioned, Prlic-Stojic-Petkovic
18 chain of command.
19 The 3 April 1993 HVO HZ-HB meeting and the April ultimatum,
20 Prlic-Boban-Stojic decision, as part of the government meeting on the 3rd

21 of April, with co-ordinated action by Petkovic and Praljak promoting the
22 strategy in Central Bosnia.
23 30 June 1993. Joint Prlic-Stojic proclamation, Petkovic arrest
24 order. Arrest them all. Take them all.
25 These men were at every single major phase. October 1992,

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1 January 1993, April 1993, end of June 1993. They were leading the
2 charge. They gave the decisions. They gave the orders.
3 A few comments on the Defence evidence generally, and of course
4 the Defence could call whatever witnesses they wanted provided, of
5 course, they were relevant and material and not unduly cumulative. And
6 of course they had the option not to call any witnesses or present any
7 evidence at all. That would certainly have been their right. However,
8 when Defence evidence is led, then like all evidence it is subject to
9 comment and assessment.
10 The Defence combined called a total of 70 witnesses either viva
11 voce, Rule 92 ter, or Rule 92 bis. Of those 70 witnesses, 61 were Croat.
12 Now, again in principle nothing wrong with that. Croats have every much
13 right to appear in this institution and give testimony as anybody else,
14 but out of 70 witnesses, 61 were Croat, and well more than half of those
15 could fairly be described, at least in the Prosecution's submission, as
16 Herceg-Bosna and HVO insiders who were largely to varying degrees part of
17 the same programme and pursuing much or all of the same agenda as the
18 accused. To name a few of those who testified publicly, Neven Tomic,
19 Zoran Buntic, Mile Akmadzic, Slobodan Bozic, Veso Vegar, Mirko Zelenika,
20 Ivan Bagaric. All people who held senior positions in one or more of the
21 HVO Herceg-Bosna apparatus. These men were all part of the Herceg-Bosna
22 family, so to speak, and their denials or explanations concerning HVO
23 programmes, policies, and behaviour must be assessed in, our respectful
24 submission, with that firmly in mind.
25 With the exception of the rule -- excuse me, of the four

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1 Rule 92 bis character witnesses presented by the Prlic Defence, the
2 Defence did not call a single international witness. Out of 70
3 witnesses, only two Muslims were called on what we submit were narrow and
4 secondary topics primarily dealing with arms shipments to the ABiH in
5 1992, but having nothing to do with the crime base or Herceg-Bosna's
6 expulsions, destruction, or imprisonment of Muslims.
7 Excuse me.
8 Before turning more specifically to some of the accused, I'm
9 going to spend a few minutes talking about Mr. Prlic and Mr. Stojic. The
10 Prosecution thinks it may assist the Tribunal, assist the Chamber, if we
11 look at a few of the other Tribunal cases that are focused in particular
12 on senior political or civilian officials. As an introduction to that,
13 I'd like to refer to something written by Judge Meron in an essay
14 entitled: "Crimes and accountability in Shakespeare."
15 "Accountability for crimes, a theme central to Shakespeare's
16 plays, is also extraordinarily pertinent to our times. Newspapers have
17 reported on the care taken by the leaders of the former Yugoslavia to
18 order atrocities against enemy populations only in the most indirect and
19 euphemistic way. Even the Nazi leaders constantly resorted to euphemisms
20 in referring to the Holocaust. No explicit written order --"
21 My apologies. I don't know how that happened.
22 "-- from Hitler to carry out the final solution has ever been
23 found. No explicit written order from Hitler to carry out the final

24 solution has ever been found. At the height of their power, the Nazis
25 treated the data on the killing of Jews as top secret. Similarly, a high

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1 ranking member of the former security police told the South African Truth
2 and Reconciliation Commission that written instructions to kill apartheid
3 activists were never given. Squad members who carried out the killings
4 simply got a 'nod of the head or a wink-wink kind of attitude.'
5 That is the reality most -- in the vast majority of time how
6 these things occurred. There's not going to be a written order that says
7 "Kill all the Muslims on this day," or not very many of those. There may
8 be some that come close, but it's a nod-nod. It's a wink-wink. It's a
9 go forth and doing this knowing what the consequences will be.
10 We can pause on the Milan Martić case. Milan Martić was a Croat
11 Serb who held a number of senior positions related to Serb organisations.
12 He was the chief of the Serb police in Knin. He was secretary for
13 internal affairs of the Serbian autonomous region of Krajina. He was
14 minister of defence of the SAO Krajina. At one point he was deputy
15 commander of the Territorial Defence, and eventually president of the
16 Republic of Serbian Krajina or the RSK. During most of those periods he
17 was a senior civilian official with no explicit military powers.
18 Nonetheless, he was convicted based on his participation in a JCE of 16
19 counts involving persecution, murder, imprisonment, et cetera, and
20 sentenced to 35 years imprisonment.
21 Let's look at a couple of parts of the judgement. And I just ask
22 the Chamber, as you see this language and you look at the jurisprudence
23 of the Tribunal, I invite the Chamber to consider how that might apply to
24 the accused in this case.
25 Milan -- this is from paragraph 448 of the trial judgement:

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1 "Milan Martić's contacts with other members of the JCE had
2 already begun during the autumn of 1990 and intensified during 1991 and
3 onwards. The evidence shows that these contacts were close and direct
4 and that as a result, substantive financial, logistical, and military
5 support was rendered to the SAO Krajina and the RSK. The evidence is
6 clear that Milan Martić actively worked together with the other JCE
7 participants to fulfil the objective of a united Serb state, something
8 which he expressed publicly on several occasions between 1991 and 1995."
9 Paragraph 452 of the judgement:
10 "... during a meeting with Cedric Thornberry," a man known to
11 Your Honours, "on 14 June 1993, Milan Martić requested that Croats who
12 wished to leave the RSK sign statements that no one had put pressure on
13 them to leave. Milan Martić was aware of the persecutory and coercive
14 atmosphere," the persecutory and coercive atmosphere, "which existed and
15 had existed in the SAO Krajina and RSK territory for a long time and that
16 those non-Serbs who expressed a desire to leave the territory did so
17 without ... a genuine choice in their displacement. Moreover, there is
18 evidence that Milan Martić repeatedly and publicly opposed the return of
19 refugees."
20 453:
21 "The Trial Chamber therefore concludes that Milan Martić intended
22 to forcibly displace the non-Serb population from the territory of the
23 SAO Krajina and subsequently the RSK, and actively participated in the
24 furtherance of the common purpose of the JCE."
25 Momčilo Krajišnik, a Bosnian Serb who was president of the

1 Bosnian Serb Assembly and an active member of the Presidency of the
2 Bosnian Serb Republic. I thought it was interesting in looking at the
3 final Defence brief in that case for Mr. Krajisnik that we saw language
4 that we might -- might be familiar to the Chamber in terms of some of the
5 language that it has seen in the Defence briefs in this case. All these
6 high civilian officials who suddenly claim no power, no responsibility.
7 This is what Mr. Krajisnik said in his final brief in August
8 2006, paragraph 284:

9 "Mr. Krajisnik's formal powers as President of the Assembly were
10 extremely limited. The constitutional and legal structure of the Serb
11 republic were relatively conventional in its essentials: Leaving aside
12 the issue of the Expanded Presidency (discussed below) there were a
13 legislature and an executive. Mr. Krajisnik's position as a member and
14 the president of the legislative organ gave him absolutely no executive
15 powers or responsibilities beyond his authority over the workings of the
16 Assembly."

17 As I say, some of that language might seem familiar to some of
18 the language in this case. Nonetheless, based on his participation in a
19 JCE form 1, Krajisnik was convicted of persecution, extermination,
20 murder, deportation, and forcible transfer, and sentenced to 27 years'
21 imprisonment, reduced to 20 years on appeal.

22 Paragraph 236 of that judgement:

23 On 24 March, the Bosnian Serb Assembly instructed the Ministerial
24 Council to prepare an operational plan for 'assuming power, that is, for
25 establishing power and rendering operational the authorities in the

1 territory of the Bosnian Serb Republic.

2 "It was under the accused's direction that the Assembly on 27
3 March 1992, set up the Bosnian Serb MUP, and then proceeded to approve
4 the proclamations of 'Newly Established Serbian Municipalities.'"

5 Some of his contributions to the JCE.

6 Paragraph 1015 -- excuse me, I'll skip that

7 In paragraph 1121 of its judgement, the Trial Chamber found that
8 Krajisnik had contributed to the joint criminal enterprise in the
9 following ways:

10 "Formulating, initiating, promoting, participating in, and/or
11 encouraging the development and implementation of SDS and Bosnian Serb
12 governmental policies intended to advance the objectives of the joint
13 criminal enterprise.

14 "B: Participating in the establishment, support, and/or
15 maintenance of SDS and Bosnian Serb government bodies at the republic,
16 regional, municipal, and local levels, including Crisis Staffs,"
17 et cetera, et cetera, "through which he could implement the objectives of
18 the joint criminal enterprise."

19 I would pause next on the accused Sainovic, one of the
20 accused in the Milutinovic case. And I think I will submit to you that
21 there is a great similarity in Mr. Sainovic's role in that case and
22 Mr. Prlic's role in this case.

23 Mr. Sainovic was a Serb who was the deputy prime minister of the
24 Federal Republic of Yugoslavia and head of the Joint Command. Now, that
25 sounds like a military body. He was not a military officer. He had

1 nothing -- he had no role in the army or armed forces. It was a

2 co-ordination body that included and cut across both civilian bodies and
3 the military and police, which according to the Milutinovic trial
4 judgement, paragraph 1007, operated "to inform its members about the
5 situation, as well as to initiate a certain level of information exchange
6 and co-ordination." He was also head of the Commission for the
7 Federal Republic of Yugoslavia's co-operation with the international
8 community's Kosovo Verification Mission. Those were his roles.
9 Based on his participation in the JCE 1, Sainovic was convicted
10 of persecution, deportation, forcible transfer, and murder, and sentenced
11 to 22 years' imprisonment.
12 Paragraph 331 of the judgement:
13 "Accordingly, the Chamber is of the view that Sainovic ... was an
14 active participant in the Joint Command meetings where he undertook a
15 leading role. In addition, on his own admission, he reported to
16 Milosevic, Bulatovic, and the Federal Ministry for Foreign
17 Affairs. ... The various instructions he issued, as outlined above,
18 reveal that he was indeed a political co-ordinator of the activities of
19 the VJ and the MUP in Kosovo in 1998."
20 Your Honours, the Prosecution submits, in this respect,
21 Jadranko Prlic played an essentially similar role in this case and that
22 the words "political co-ordinator" is a pretty fair description. He was
23 at the middle of the entire HVO -- well, at the middle -- at the top and
24 the middle of the entire HVO apparatus. He, Jadranko Prlic, was the
25 political government co-ordinator for the entire Herceg-Bosna machinery.

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1 Boban didn't do that. By all indications - and we'll come to this in a
2 bit -- a bit -- a bit more in a few minutes - Boban, by all indications
3 and what this Chamber has seen, wasn't a detail man. He wasn't a
4 hands-on manager. It was the HVO HZ-HB. It was Prlic's government which
5 was the hub of the Herceg-Bosna wheel. It was the Herceg-Bosna
6 government, Prlic's government, which was the hub of the Herceg-Bosna
7 wheel, the junction where all roads met, the glue which held it all
8 together, and Prlic was its boss. There was no other body and no other
9 person in Herceg-Bosna which performed that role. Let me say that again.
10 There was no other body and no other person besides Jadranko Prlic in
11 Herceg-Bosna which performed that role.

12 Paragraph 468 of the Sainovic judgement:

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1 "Pavkovic, as the commander of the 3rd Army of the VJ, was in
2 command and control of all the VJ forces in Kosovo throughout the period
3 when the crimes were committed, and issued orders for the operations of
4 the VJ in Kosovo during this time. Pavkovic's counterpart with respect

5 to the MUP was Lukic who, throughout the NATO air campaign, had both
6 de jure and de facto responsibility over MUP forces that committed crimes
7 on a massive scale. Sainovic himself was a political co-ordinator of the
8 VJ and MUP forces in Kosovo. All three were involved in the
9 co-ordination of VJ and MUP activities. Slobodan Milosevic, another
10 member of the joint criminal enterprise," one might, in this case, read
11 Tudjman, "was both the Supreme Commander of the VJ and had significant
12 de facto powers over the MUP. For all these reasons, the crimes of both
13 the VJ and the MUP are imputable to Sainovic."

14 Paragraph 463:

15 "... knowledge of the commission of crimes by individuals
16 associated with an accused, combined with continuing participation in
17 joint operations with those individuals, can be conclusive as to an
18 accused's intent."

19 443:

20 "Sainovic was aware of various allegations levelled at the
21 FRY/Serb authorities by the international community. For example, on
22 23 September 1998, the UN Security Council noted that it was 'gravely
23 concerned' about 'the excessive and indiscriminate use of force by
24 Serbian security forces and the Yugoslav Army,' which, according to the
25 Secretary-General's estimates, had resulted in 'the displacement of over

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1 230.000 persons from their homes.' As deputy prime minister of the FRY,
2 Sainovic would have been aware" - would have been aware - "of this
3 UN Security Council Resolution."

4 Going to paragraph 465:

5 "In contrast to his extensive knowledge of crimes in Kosovo,
6 Sainovic showed little initiative in dealing with the allegations, other
7 than making a few statements. This was despite his extensive de facto
8 and de jure authority within the province, and his close relationship
9 with Milosevic ...

10 "Taking all the relevant evidence into account, the Chamber
11 concludes the only reasonable inference is that Sainovic had the intent
12 to forcibly displace part of the Kosovo Albanian population, both within
13 and without Kosovo, and thereby change the ethnic balance in the province
14 to ensure continued control by the FRY and Serbian authorities over it."

15 And finally paragraph 470. And I would relate this to the
16 discussion we had yesterday about foreseeability, all the things that
17 Mr. Miller told us, all the other evidence in the case in this regard:
18 "As described above, Sainovic intended to forcibly displace part
19 of the Kosovo Albanian population and shared this intent with other
20 members of the joint criminal enterprise, the object of which was to
21 force -- forcibly displace Kosovo Albanians within and deport them from
22 Kosovo in order to maintain control over the province. Sainovic was
23 aware of the strong animosity between ethnic Serbs and Kosovo Albanians
24 in Kosovo during 1998 and 1990 [sic] he was aware of the context of which
25 the forcible displacement took place. It was thus reasonably foreseeable

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1 that other crimes, including murder, would be committed."

2 I want to turn for a few minutes more to Mr. Prlic. As I

3 understand his final brief, Mr. Prlic's essential position is that, at

4 least as to all the subjects and events charged in the indictment, he had

5 no power, no authority, and no responsibility. Yet in his final brief,

6 Prlic spends six Pages essentially setting out his credentials and giving

7 us, by all accounts, a rather impressive CV. In some respects it must be

8 very difficult and perhaps annoying for Mr. Prlic because, on the one
9 hand, he's obviously quite proud of his credentials, quite proud of his
10 academic training, quite proud of his -- the very senior and top
11 positions he's held, and yet comes into this court now and says all that
12 is really meaningless. I didn't have any power. I didn't have any
13 authority. I didn't have any responsibility.
14 He says in his brief he is a, quote, "polymath," highly
15 academically trained. He has been involved in politics since secondary
16 school. He says he is widely published. His "brief-as-CV" lists all
17 sorts of top positions he has held including the minister of defence of
18 both the BiH federation and the State of Bosnia-Herzegovina.
19 And I pause there. For an individual who claims to have nothing
20 to do with military matters and defence and the armed forces, perhaps a
21 bit strange that he was then subsequently put in the position of minister
22 of defence of both the federation and the State of Bosnia and Herzegovina
23 and all sorts of other situations where he has been at the centre of
24 events a principal player, a principal player.
25 The evidence in this case plainly contradicts Prlic's claims of

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1 no power, authority, and in fact, corroborates and is far more consistent
2 with the Prlic CV stated in his brief.
3 During the core period of the indictment, from October 1992 to
4 the end of August 1993, Prlic's HVO HZ-HB was, without question, the
5 highest, most powerful body in Herceg-Bosna, combining supreme,
6 executive, legislative, and administrative powers in a wartime government
7 which established, implemented, and administered Herceg-Bosna law,
8 policy, and strategy.
9 During that time period, as we indicate in our brief, the HZ-HB
10 Presidency, the Assembly, the legislative branch, the parliament, if you
11 will, was not meeting, did not meet once between the 17th of October,
12 1992, and the 28th of August, 1993. During that time, it delegated its
13 entire legislative powers to Prlic's government.
14 As I said a few moments ago, there was no other body, there was
15 no other body and no other individual like Prlic who was at the centre of
16 the power in Herceg-Bosna, who was running the machinery of government on
17 a day-to-day basis.
18 The Defence witness Zoran Buntic, a top HVO official himself, a
19 lawyer, and a regular participant in the HVO HZ-HB meetings confirmed in
20 his sworn testimony that by October 1992, quote, "The HVO HZ-HB was the
21 highest executive and controlling body. That is beyond dispute."
22 That is from a Defence witness who was an insider to the HVO
23 As President and then prime minister, Prlic was the master of and
24 responsible for, quote, "the highest executive and controlling body."
25 Herceg-Bosna's amended statutory decision on the temporary decision

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1 organisation of executive authority also expressly provided in Article 9:
2 "The HVO HZ-HB President," that is Mr. Prlic, "shall be in charge
3 of the work of the HVO HZ-HB and shall be held accountable for it. He
4 shall ensure the unity of the political and administrative activities of
5 the HVO HZ-HB, co-operate with other bodies and organisations of the
6 HZ-HB, and direct the activities of the HVO HZ-HB as a whole and its
7 members as individuals."
8 That's in Exhibit P00303, Article 9.
9 Buntic confirmed that this Article, the one that I just read to
10 you, that this article establishes Prlic's individual responsibility for

11 conducting the government.
12 As we looked at yesterday, Praljak confirmed the central
13 political control of the HVO military, quote, again he said:
14 "A political decision has an absolute priority over a military
15 decision. You cannot conduct the creation of a state from 20 centres but
16 from one..."
17 Petkovic confirmed as we looked at yesterday that the three
18 highest political or civilian authorities concerning Herceg-Bosna's
19 military and defence matters were Boban, Prlic, and Stojic.
20 In a 22 April 1993 interview which described Prlic as one of the
21 "politically best trained Croat politicians," Prlic said that the HVO was
22 "ready to defend the Croat nation and Croat territory in BH regardless of
23 who our enemies are, to defend their national territory and their state."
24 Making reference to "our territories," Prlic said that:
25 "To expect BH to function as a unitary independent state was

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1 unrealistic."
2 And that:
3 "If two nations do not agree to some state and they are
4 constituent nations, then that state cannot even be discussed." P02021.
5 Defence witnesses Neven Tomic and Zoran Perkovic confirmed that
6 Prlic fully executed his responsibilities in directing the work of the
7 Herceg-Bosna HVO government, whether in the form of the community or the
8 republic, and that Prlic was instrumental in shaping its work. The HVO
9 finance man Rupcic testified that Prlic was superior to both the Defence
10 witness Neven Tomic who was head of the HVO finance department and the
11 accused Stojic as head of the Defence Department.
12 It was abundantly clear to all of the international observers,
13 including Witness DZ, that Boban and Prlic were the decision-makers and
14 nothing could be done in Herceg-Bosna without them. The ECMM official
15 Christopher Beese identified Boban as the senior figure and Prlic as the
16 next most senior Herceg-Bosna HVO official, with everyone except Boban
17 subordinate to Prlic. Another knowledgeable ECMM official, Ray Lane
18 testified that the Herceg-Bosna HVO hierarchy appeared to be Boban at the
19 top, then Prlic, Stojic, Petkovic, and Coric. Witness BF, I'm not
20 identifying him or quoting him or giving anything that would identify who
21 the witness was, stated that Prlic as head of the HVO government had
22 authority over all HVO departments, including the Defence Department.
23 Beese testified that Prlic, quote, "appeared to know all things and
24 appeared to be able to give direction on all matters whether civilian or
25 military."

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1 If we could go into private session just for a moment,
2 Mr. President.
3 JUDGE ANTONETTI: [Interpretation] Just a minute. Let me consult
4 with my fellow Judges.
5 [Trial Chamber confers]
6 JUDGE ANTONETTI: [Interpretation] Mr. Scott, normally it's --
7 it's a public argument, so why do you want to move to private session?
8 Is it for protected witnesses?
9 MR. SCOTT: Yes, Your Honour. There is a part of the testimony
10 that was given by a witness on this topic that was in private session,
11 and it is -- struck the Prosecution as more of the type that might
12 arguably be more identifying of the witness, but I'm in the Chamber's
13 hands. It was given in private session.

14 JUDGE ANTONETTI: [Interpretation] Very well. Let's move to
15 private session.
16 Mr. Registrar.
17 [Private session] [Confidentiality lifted by order of the Chamber]
18 THE REGISTRAR: Your Honours, we're in private session.
19 MR. SCOTT: Thank you, Mr. President. Out of an abundance of
20 caution, it may be that the Chamber will decide it wasn't necessary, but
21 I would rather err on the side of caution in these situations.
22 Mr. Lane, although he gave most of his testimony in public
23 session, for whatever reason there were some limited parts that were in
24 private session.
25 Mr. Lane said -- gave the evidence that in truth, Prlic was one

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1 of the key, most powerful Herceg-Bosna HVO actors together with Tudjman,
2 Susak, and Boban. Also according to Witness BH, another protected
3 witness, Prlic in fact was the real operational leader. Jadranko Prlic
4 was the boss. I'm quoting now. "Jadranko Prlic was the boss, the chief.
5 He directed the entire, the entire, military structure of
6 Herceg-Bosna ... Everything pointed to the fact that he was the real
7 boss."
8 Witness BF testified that Prlic was very proud of how
9 well-organised the HVO was, and Beese who met with Prlic on numerous
10 occasions could not recall a single instance when Prlic did not seem in
11 full control of the situation.
12 With that, Your Honour, we go back into open session.
13 JUDGE ANTONETTI: [Interpretation] Very well. Mr. Registrar.
14 [Open session]
15 THE REGISTRAR: Your Honours, we're back in open session. Thank
16 you.
17 JUDGE ANTONETTI: [Interpretation] Continue, please.
18 MR. SCOTT: On the 30th September 1993, the Croatian Defence
19 Minister Susak told Tudjman that he had instructed Boban -- and notice
20 again this sequence of events. Susak told Tudjman that he, Susak, had
21 instructed Boban to nominate a prime minister and that Prlic would be put
22 forward.
23 On 10 November 1993, Boban formally confirmed Prlic's selection,
24 and his selection was unanimous. It is especially noteworthy that
25 Tudjman, Susak, and Boban gave their full and unanimous endorsement to

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1 Prlic in November 1993 after all of the events, after all the
2 developments, after all the crimes, after all the tragedies that had
3 occurred since August of 1992, when it came time for those power brokers,
4 Tudjman, Susak, Boban to select who should be the new prime minister,
5 they unanimously chose Jadranko Prlic without dissent.
6 The Chamber heard yesterday that, for the most part, moderates in
7 those circles had a short lifespan. Stjepan Kljujic was forced out and
8 gone. Jure Pelivan, the moderate prime minister Croatia, forced out and
9 gone. Miljenko Brkic, the moderate head of the HDZ party, forced out and
10 gone. But not Prlic. Not Prlic. Endorsed by the highest possible -- in
11 the highest possible circle. Prlic not only remained but constantly
12 increased his power, going from power to power. He was very clearly part
13 of Tudjman's trusted inner circle.
14 On 20 June 1998, Prlic met alone with Tudjman. They were looking
15 back over the previous few years, like probably many of us would. They
16 had talked a number of times before, and Prlic spoke about mistakes that

17 had been made, Prlic and Tudjman, perhaps mistakes had been made and
18 problems that he and other Croats were having with the federation at the
19 time. And when Tudjman accused him, Prlic, of not taking the right
20 decision or approach, Prlic responded:
21 "I do not belong to any line. I have been implementing what you
22 were telling me all the time. I have been implementing what you were
23 telling me," you Tudjman, "were telling me all the time."
24 To which Tudjman replied:
25 "Well, it is for sure that you are the most intelligent one

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1 within that structure."
2 Perhaps for obvious reasons, but Prlic has done himself a
3 disservice in understating and denying his significant credentials, his
4 intelligence, and his obvious talents. It's simply not true that he was
5 a powerless spectator watching Herceg-Bosna and the war unfold with no
6 role, no power, and no involvement. He was at that time clearly either
7 number one or, if not number one, number two, the most powerful man in
8 Herceg-Bosna.
9 Some thoughts on Bruno Stojic. A few documents will introduce us
10 or remind us of Mr. Stojic's role in the case. The fact that Bruno
11 Stojic was having essentially the same "Graz" conversation with senior
12 Bosnian Serbs on 5 May 1992, the day -- the very day before Boban's
13 meeting with Karadzic in Graz on the 6th of May, the fact that they were
14 having essentially the same conversation cannot have been a coincidence
15 and demonstrates that the Herceg-Bosna goals were widely known and shared
16 among its leadership. The conversation involved Bruno Stojic and Branko
17 Kvesic on the Bosnian Croat side, and Momcilo Mandic and Mico Stanistic,
18 who is on trial at the Tribunal also, on the Bosnian Serb side.
19 By 15 May 1992, Kvesic was chief of the HVO's department of
20 interior and he remained in that position until late 1993.
21 In May 1992, Mandic, Momcilo Mandic was the Republika Srpska
22 minister of justice and Mico Stanistic was Kvesic's Serb counterpart as
23 chief of the RS Ministry of the Interior.
24 In the conversation of 5 May, Stojic made it clear that the
25 Herceg-Bosna wanted the Banovina borders and "none other."

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1 "Stanistic: Listen, Karadzic, too, wants a deal."
2 And remember, this is the day before Graz. This is the day
3 before Graz.
4 "Listen, Karadzic, too, wants a deal. To sit down and work out a
5 deal. But once it gets started it keeps going.
6 "Stojic: Stop it already, what's wrong with you.
7 "Stanistic: Well, let us, you give some initiative to have
8 somewhere...
9 "Stojic: Both you and us. This makes no sense.
10 "Stanistic: We'll give you all this over here, Visoko, Vares,
11 Kakanj, and Zenica. We'll give them to you.
12 "Stojic: You can't give us what's ours. That is the Banovina of
13 1939.
14 "Stojic: We have to work out a deal as soon as possible. This
15 has no ...
16 "Stanistic: Bruno, you know we've always been prepared to talk
17 with you. Be fair. But they got embroiled in this. Fuck it. When a
18 religious sect wants to have a state, that is the worst.
19 "Stojic: We only want our own state, man.

20 "Stanisic: Huh, you and us, and what about this third side.
21 "Stanisic: Let's get it started and you give up some, we give up
22 some, so we can mark those natural borders and that's it.
23 "Stojic: What natural ones?
24 "Stanisic: Well, these ...
25 "Stojic: This is the 1939 one and none other. I'm dead serious.

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1 "Stanisic: We need to see what is realistic there and sit down
2 and make a deal.
3 "Stojic: Only the 1939 borders and no bargaining. Ha, ha."
4 It goes on.
5 "Mandic: Listen. And let's ... let's make a deal as Mico said,
6 not to let people die. There's no need.
7 "Branko: No need.
8 "Mandic: You have your own state, we have ours, and the Muslims
9 should go and look for their own, fuck them.
10 "Branko: Well said.
11 "Mandic: It's a deal."
12 That speaks volumes about where these people were at the time and
13 what their attitude was.
14 Now, in his final brief, Mr. Stojic tries to attempt -- he
15 attempts to dismiss this conversation as -- as meaningless banter with
16 friends, but the Prosecution submits to you, Your Honours, isn't it often
17 when you are talking with friends, you think privately, when you are most
18 likely to say what you really think?
19 There's another sampling of a few documents that also cannot be
20 discussed as banter. A report on the 14th of June, 1993, P02770, going
21 to Bruno and Petkovic and Keza. I believe that's Zarko Keza.
22 "Around 90 Muslims were evicted yesterday from the settlement
23 DUM, Petra Drapsina Street. Apart from forcible moves into apartments,
24 few women were raped in front of eye-witnesses. Some women were taken in
25 unknown direction, and many people were beaten up and maltreated. There

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1 are indications of new murders of civilians on which we will inform you.
2 The perpetrators of these latest crimes are mainly members of the
3 4th Battalion, Vinko Martinovic - Stela, Bobo Peric, Damir Peric, Ernest
4 Takac, and Nino Pehar - Ziga."
5 90 Muslims evicted yesterday. A few women were raped in front of
6 eye-witnesses.
7 P03181. A 5 July 1993 report to Mr. Bruno Stojic personally.
8 "Subject: Families of Members of Balija units.
9 "We are sending you enclosed the list of families from the Zahum
10 local commune whose members are in Balija units.
11 "List." And then there's a list of seven names.
12 "Remark:
13 "Kavazbasina Street has not been cleansed of Balijas.
14 Number 2:
15 "At M. Gupca Street, number 109, Balijas are hiding in a garage
16 and the shelter next to the supermarket. At the sign of knocking. Raid
17 in the evening."
18 P04352, 20 August 1993 report from Stanko Bozic, the warden of
19 the Heliodrom, to Bruno Stojic:
20 "On 11 August 1993, the Red Cross started work on registering
21 all the detainees and the following two days they took messages. When
22 they finished their work in the prison, a representative of the

23 delegation, Mr. Franco Faro and I as the prison warden had a
24 conversation. Mr. Franco pointed out the following wrong-doings in
25 violation of the Geneva Conventions:

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1 "1. Sending detainees to work;
2 "2. The quality and quantity of food, they request its
3 improvement; and
4 3. Bad conditions in solitary cells.
5 "Regarding the violations of the Geneva Conventions, Mr. Franco
6 warned and obligated me as the warden to make sure that these
7 wrong-doings are not repeated in the future or we would be reported to
8 the International Tribunal."
9 Well, I guess they were.
10 "After the Red Cross's departure we were not able to remedy these
11 wrong-doings. On the contrary, the number of wounded and killed at the
12 workplace is increasing by the day."
13 Now, Mr. Stojic tries to shift much of his responsibilities to
14 Mr. Boban, saying that a number of powers and functions he didn't really
15 have, but in reality, the Prosecution position is, Your Honours, we
16 submit that the powers and functions that Boban didn't exercise himself
17 as supreme commander were largely delegated to Stojic, either expressly,
18 implicitly, or even by default, and that is fully consistent with both
19 the de jure language and the Herceg-Bosna legislation and in the de facto
20 evidence.
21 Davor Marijan was an expert witness called by the Stojic Defence.
22 When asked during cross-examination to whom Boban delegated -- and
23 perhaps I should pause for a moment and set this up a bit more fully, the
24 reason it came up is because, and we'll get to it, perhaps, in a moment,
25 is that by this point Davor Marijan had said, well, you know, I was

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1 looking through all this documentation, all the contemporaneous record,
2 and I just couldn't find any record that Boban was actually exercising
3 these functions. There's just no paper trail. There's nothing about
4 Boban running the military. I couldn't find anything. Well, if he
5 wasn't doing it, well, who did? And there is a provision under the
6 Herceg-Bosna Statute, under the amended decree on armed forces Article
7 30, that's P00588, which provides:
8 "The Supreme Commander of the armed forces may delegate certain
9 task of leading and commanding the armed forces to the head of the
10 Defence Department," Mr. Stojic.
11 So going back to Mr. Marijan, when he was asked during
12 cross-examination to whom Boban delegated or would have delegated this
13 power or function as supreme commander of the HVO military, it was
14 perhaps no surprise as a Stojic Defence witness that Mr. Marijan did not
15 put these responsibilities on Stojic but instead placed them on the
16 accused Petkovic. Marijan had no real basis for selecting Petkovic over
17 Stojic, and he was specifically asked well why do you say that? Well, I
18 couldn't find any written decision from Boban delegating his power to
19 Stojic. Well, the problem with that explanation is exactly the same
20 thing could be said as to Petkovic. But the legislation and the de facto
21 evidence suggests that it was to Stojic that these powers were actually
22 delegated.
23 The decree itself, the amended decree on armed forces is likewise
24 an indication of a collective legislative judgement that head of the
25 Defence Department was the most logical political or civilian official to

1 be in charge of the HVO armed forces in the event that Boban for some
2 reason or whatever reason was not fulfilling that role.

3 Mr. President, perhaps that would be a time to stop.

4 JUDGE ANTONETTI: [Interpretation] Very well. Let's have our
5 20-minute break.

6 --- Recess taken at 10.28 a.m.

7 --- On resuming at 10.53 a.m.

8 JUDGE ANTONETTI: [Interpretation] The court is back in session.

9 The Trial Chamber will now issue an oral decision as far as the
10 transcript is concerned. Page 31, line 8 to 25. We have looked at the
11 transcript. We noted that the name of protected witness was not such
12 that they could be identify. The Trial Chamber then has decided to lift
13 the confidentiality of these and make Page line 8 to 25 of Page 31
14 public.

15 Mr. Scott, you may continue.

16 MR. SCOTT: Thank you, Mr. President. I certainly have no
17 objection to that. It wouldn't matter if I did, but I have no objection
18 to that. But the Chamber, of course we're trying to be -- exercise
19 caution in some instances and so I appreciate and don't disagree with the
20 Chamber's ruling.

21 We had stopped -- we were talking about the delegation of
22 Mr. Boban's authority to Mr. Stojic, and we were talking primarily before
23 the break about -- at the de jure analysis based on the amended decree on
24 armed forces, but in addition to that, the de facto evidence or the real
25 world, if you will, how things really worked, that evidence also supports

1 that it was to Mr. Stojic, who at least primarily, received these
2 delegated responsibilities.

3 Christopher Beese from ECMM said:

4 "Bruno Stojic was senior in the military hierarchy, commanding
5 military forces through generals."

6 Witness DZ, and in light of what we were just talking, I don't
7 believe this will give any identifying information as to the witness:

8 "Bruno Stojic was focused on military action and delivering to
9 Boban and Prlic what they wanted, and this was Mostar on its knees.

10 Stojic was effectively the minister of defence and always accompanied by
11 soldiers. He had good grip on military issues and people on the field.

12 He was the bridge between Petkovic, the other military representatives of
13 Zagreb, and the military actors on the field who were local men. Because
14 he was a local man, Stojic had the respect of the local soldiers."

15 And that can be found at P10367.

16 Witness BH said:

17 "Bruno Stojic was a man of authority and a boss who was in charge
18 of military affairs and the operational side of military and defence
19 issues."

20 There's extensive documentary evidence of Stojic's direct
21 military role and involvement, a sampling of which is set out in the
22 annex to the Prosecution's final brief which includes Stojic's orders to
23 HVO commanders in the field, mobilisation orders, Stojic's direct
24 involvement in and orders concerning military operations, reports from
25 the field keeping Stojic closely informed of developments, and Stojic

1 providing material and logistical support to forces in the field.
2 All of this evidence corroborates and in turn is corroborated by
3 the role that Stojic can be seen playing in Mostar on the 10th of May
4 1993 in a BBC news clip showing the HVO, quote "defence minister leading
5 the Croat forces in Mostar." We will play that for a moment, which is
6 P04238.
7 [Video-clip played]
8 "Reporter: A quiet day in Mostar. A former Muslim sniper
9 position on fire. Sporadic machine-gun and mortar exchanges. The
10 cease-fire has still not taken hold. It is the end of a dreadful week.
11 "The Croatian forces led by defence minister Bruno Stojic put
12 their wounded in Mostar at 150. Muslim casualties are certainly much
13 higher. The total dead in the city could be as high as 500. There are
14 at least 200 Croats missing further north, and this may be just the start
15 of it.
16 "Over a map of the pitched battles, the minister says his forces
17 could clear their half of the city in five hours, and he charges the
18 Muslim commander with not wanting a cease-fire.
19 THE INTERPRETER: [Voiceover] "On the one hand he is buying time.
20 "Interpreter: But this is one very bloody, very heavy war, and
21 nothing can come as a surprise.
22 "Reporter: The recent conflicts are in the area supposedly
23 controlled by Spanish UN troops who have suffered their first fatal
24 casualty and are daily under fire in Mostar. Now each side is accusing
25 the other of planning the next offensive in the British area.

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1 "This is Central Bosnia where the Croats have produced 11 alleged
2 Mujahadin, Islamic fighters from the Middle East and Bangladesh. They
3 said they were aid workers, the Croats said they were arms smugglers and
4 three of them were taken into combat. Martin Bell, BBC News, Mostar."
5 As I watch that, and I would just note for the Chamber's
6 consideration, compare the conditions in the hospital that you just saw
7 with the HVO soldiers with the conditions that you're familiar with in
8 terms of the East Mostar war hospital and the various video-clips that
9 you've seen of that. It's a rather stark contrast, I must say.
10 There is also the topic that Mr. Stojic's final brief about the
11 appointment of senior HVO officers, Mr. Stojic again saying that, well,
12 that was really Boban's responsibility, and indicating, of course, that
13 he did not play a significant role in that, that he, quote, "played a
14 purely administrative role regarding the appointment procedure."
15 While the Prosecution has never disputed the de jure decrees and
16 Herceg-Bosna legislation describing the president of Herceg-Bosna, that
17 is the position held by Mate Boban, as the supreme commander, that does
18 not take away from Stojic having major responsibilities in regard to
19 defence and military matters.
20 As to the appointment of top HVO officers, the de jure and de
21 facto evidence plainly indicates that Boban's appointments in this regard
22 were largely based on proposals put forward by the head of the Defence
23 Department and the head of the HVO Main Staff. In the usual course of
24 business, the head of the -- the head of the Main Staff would propose an
25 appointment to the head of the Defence Department. The head of the Main

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1 Staff being, depending on the time, either Mr. Petkovic or Mr. Praljak,
2 and the head of the Defence Department for virtually all the time
3 relevant to the indictment being Mr. Stojic.

4 If the head of the Defence Department approved, it would then be
5 sent to Boban for final action. This can be seen or is outlined in the
6 20 May 1993 decision on the internal organisation of the Defence
7 Department, which is Exhibit P02477, Article 3(B).
8 The Defence expert Marijan confirmed this:
9 "In chief you agreed that these were all high-level positions and
10 that's why they had to be approved by Mr. Boban, but isn't it true that
11 these positions also needed approval from the head of the Defence
12 Department?
13 "A. That is correct. From this," and being a reference to
14 P02477, "... from this we can see that he gave his approval to these
15 posts."
16 The process plainly indicates the significant role played by both
17 Stojic and Petkovic and/or Praljak in this process.
18 Before leaving that topic, I just leave for the Chamber's
19 consideration giving -- given Mr. Stojic's role in the appointment of
20 senior HVO officers and commanders, one wonders why he did not approve --
21 why he did not approve what he -- why he did not disapprove, perhaps, the
22 proposal to appoint and promote Ivica Rajic to colonel just days after
23 Stupni Do.
24 Beyond or in addition to Stojic's important role and the
25 appointment of the top, the very top HVO commanders, he also had the

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1 power to appoint and dismiss military personnel up to at least the level
2 of deputy brigade commander, which included important command positions
3 in the Main Staff and in the HVO operative zones. This power itself,
4 even putting aside the very top commanders, where the evidence is clear
5 that he did play a significant role, but even as to the deputy brigade
6 commanders, these were people, as we all know in an army or in most
7 organisations, these are the people that actually made things happen on
8 the ground on a day-to-day basis, the lower-level commanders, the
9 mid-level commanders.
10 Mr. Stojic had direct responsibility for them. He could appoint
11 them. He could relieve them. It could have been a powerful tool for
12 Mr. Stojic to control the behaviour of the HVO.
13 There's a troublesome deputy brigade commander out there.
14 There's a troublesome commander in the HVO Main Staff at the staff level.
15 This person's causing trouble. They're out there causing crimes.
16 They're out there burning Muslim houses. You're out of here. You are
17 dismissed. A powerful force to use if Mr. Stojic chose to do so.
18 Stojic and the Defence Department collegium. The Chamber will
19 recall that there was a body within the Defence Department called the
20 collegium which was composed of both the various subdepartment heads,
21 subsections, if you will, of the Department of Defence, together with
22 various of the military commanders. The Stojic Defence brief attempts
23 again to minimise Stojic's role in this body, but in fact the collegium
24 was a significant working group which met regularly and included not only
25 the various heads of the subdepartments and other DOD administrative

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1 units but also, and importantly, the chief the Main Staff and the head of
2 the HVO Military Police Administration, Mr. Coric. The group functioned,
3 inter alia, to advise Stojic on various defence and military matters.
4 It is clear that Stojic attached importance to these meetings,
5 telling General Praljak on one occasion that he was expected to attend
6 every meeting personally when at least on one occasion Mr. Praljak had

7 seen fit to send a deputy instead. That's displayed or seen in Exhibit
8 P04646 and P04756.

9 Mr. Stojic as defence minister was not amused that Mr. Praljak
10 had not attended personally and issues an order to the effect
11 Mr. Praljak, in the future you will attend these meetings personally.
12 On mobilisation, the Stojic final brief again emphasised that
13 that was primarily Boban's role; in fact, that it was exclusively Boban's
14 role. That is entirely wrong. Stojic's own expert witness again
15 Davor Marijan confirmed that the task of carrying out mobilisation fell
16 directly within Stojic's job description.

17 Davor Marijan at transcript 35902:

18 "I believe that Mr. Stojic is the addressee with respect to the
19 last element, and that is mobilisation, because carrying out mobilisation
20 falls within the job description of Mr. Stojic."

21 Transcript 35887, Marijan again, it's in reference to the joint
22 proclamation by Mr. Prlic and Mr. Stojic on the 30th of June, 1993.

23 Marijan says, well, I don't know. I've never researched the role of the
24 president in that. But as to Mr. Stojic, he says:

25 "He did have responsibilities regarding mobilisation. He was

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1 carrying out mobilisation."

2 In fact, the evidence shows that Stojic was the principal
3 responsible person for the mobilisation of Bosnian Croat soldiers. All
4 HVO mobilisation orders issued in 1993 were signed or co-signed by
5 Bruno Stojic without any involvement of Boban.

6 Now, taking more generally various of his administrative and
7 logistical responsibilities as head of the Defence Department, the Stojic
8 Defence essentially dismisses Stojic's role in important administrative,
9 financial, and logistical matters as both legally and factually
10 insignificant. Quote in the brief:

11 "Regarding the military operations, his purely administrative and
12 logistical role cannot be considered as having a substantial effect on
13 the commission of crimes," paragraph 244.

14 The Prosecution wants to make it clear both as to Mr. Stojic and
15 to all six of the accused that we reject out of hand the premise that
16 such powers and involvements, such administrative things and
17 responsibilities and powers in such things as finances, administration,
18 logistics, procurement of weapons, that those things are insignificant.
19 Involvement in administrative, financial, and logistical matters can and
20 do -- or can and does easily rise to the level of making significant
21 contributions to a joint criminal enterprise and other modes of
22 liability. And in reference to some of the examples I was citing earlier
23 this morning from some of the other cases, the ICTY case law makes it
24 plain that a number of cases, such as some of the ones that I cited this
25 morning, involvement in administrative financial and logistical roles

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1 that give support to the joint criminal enterprise are clearly sufficient
2 to amount to, quote, "significant contribution to the joint criminal
3 enterprise."

4 In fact, on the -- on the significance of those functions,
5 dealing with manpower, dealing with food, dealing with equipment, dealing
6 with health care of soldiers, dealing with finances, all of those again
7 provide ample tools to control and influence the army's behaviour.

8 As General Eisenhower once said, and he was quoted by Marijan:

9 "You will not find it difficult to prove that battles, campaigns,

10 and even wars have been won or lost primarily because of logistics."
11 Indeed, Stojic's involvement in weapons procurement and logistics
12 is one of his claims to fame dating back to 1991, long before he was
13 appointed head of the Defence Department. Stojic was a member of the
14 HDZ-BiH Crisis Staff established in September 1991. That can be seen in
15 Exhibit P00058, and was clearly involved in the acquisition of weapons
16 and other equipment and material leading, in fact, to Croatian Army
17 General Bobetko putting him in charge of logistics at the Grude forward
18 command of the Croatian Army in April/May 1992. The Chamber may recall,
19 and I hope it will, it will have a chance to look back on, at the very
20 beginning when Bobetko was sent down by Zagreb to, quote, "the southern
21 front," and established an advanced forward command post of the
22 Croatian Army in Bosnia on the -- around the 14th of April, 1992, he
23 named about 11 people to this -- what became the core HVO staff. Two of
24 those persons were Mr. Petkovic, who was then put in charge in Bobetko's
25 absence, and Mr. Stojic in charge of logistics.

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1 At a meeting with Tudjman on 10 March 1992, Boban praised Stojic
2 as a devoted man who had obtained 150 new Golf type of Volkswagen, new
3 Golf cars for Herceg-Bosna, "not to mention the weapons." That's at
4 P00134.
5 All of these, in fact, were part of the very credentials and the
6 very reason that he was then appointed head of the Defence Department.
7 By the time that Stojic was named head of the HVO Department of
8 Defence on 3 July 1992, Stojic was the access, the access around which
9 everything concerning HVO arms, ammunition, and military equipment
10 revolved. The evidence set out in the final Prosecution brief,
11 paragraphs 552 to 560, show that Stojic as head of the Defence Department
12 had full control and direct involvement with HVO's manpower, that is
13 mobilisation, et cetera, including arms and ammunition, and finances,
14 including funding requests to the Croatian Ministry of Defence. The
15 Chamber will recall and will have the opportunity to review numerous
16 communications and requests for funding sent and signed by Mr. Stojic to
17 Gojko Susak requesting funding from the Croatian Ministry of Defence for
18 the HVO.
19 Again, Stojic's own expert witness Davor Marijan confirmed that
20 there was no doubt that the chief of the HVO Main Staff reported to and
21 dealt with the head of the Department of Defence, Bruno Stojic, when it
22 came to the HVO's arms, ammunition, fuel, et cetera. Marijan also stated
23 in his expert report that "Commanders of the HVO brigades and other
24 officers often appealed directly to the head of DOD in the matter of
25 supply and manpower." That's at 2D -- that's in his report, 2D02000,

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1 paragraph 86.
2 Coming to the topic of the HVO prisons and camps. There is
3 virtually overwhelming evidence both de jure and de facto that
4 Bruno Stojic had major responsibility for the HVO military prisons and
5 detention camps. His efforts to duck this responsibility both in 1993
6 and now cannot, with respect, be taken seriously.
7 After the massed detention of the Muslim civilians in Mostar on 9
8 and 10 May, 1993, most of the women, children, and elderly were released
9 after about ten days of detention, but the captured Muslim men were not.
10 When the ECMM officer van der Grinten confronted Stojic a few weeks later
11 with the continuing unlawful detention of the Muslim men, Stojic
12 responded that, quote, "the 504 prisoners in the Heliodrom are till now

13 still not accused but under investigation." P02806. And transcript
14 21049.
15 During the HVO mass arrest of the Muslim men of military age in
16 early July 1993, Stojic on 4 July 1993 ordered Capljina and Stolac
17 municipalities, quote, "to immediately assume obligations of custody,
18 accommodation, et cetera, regarding the arrested members of the MOS fit
19 for military service." That is 4D00461.
20 Among other evidence, the documentary and testimonial evidence
21 involving the Heliodrom warden and deputy warden, Stanko Bozic and Josic
22 Praljak, respectively, overwhelmingly demonstrates that these top HVO
23 prison officials fully understood that Stojic was in charge, and they
24 raised their concerns with him and put him on notice repeatedly.
25 In the interests of time I'm not going to go through all of those

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1 communications and letters. They're all either identified in the
2 Prosecution's final brief or will be readily apparent to the Chamber in
3 its review of the evidence. They've been discussed many times.
4 On that evidence, Mr. Stojic attempts to avoid it by attacking
5 its authenticity, that there's no stamp that says that it actually came
6 into his personal office. The Prosecution firmly disagrees. These
7 documents were most likely collected from the Heliodrom archives and
8 would therefore not bear any receipt stamp of the HVO Defence Department,
9 yet documents and records at each end, the file copy and the one that is
10 sent to the recipient, all of the documents contain a Heliodrom file
11 number whose numbers logically follow the chronology in which these
12 communications were issued by the Heliodrom wardens.
13 Further, at least three out of the five specific letters shown to
14 Josip Praljak at trial and their content were specifically authenticated
15 by the witness Josip Praljak, P03209, P04352, and P06170.
16 As to P06170, Josip Praljak testified that he personally handed
17 this report to the secretary for Mr. Stojic. That's at transcript 14801.
18 Except for one of the documents which is P05812, all the reports
19 are signed. They all bear an official HVO stamp. All the documents were
20 collected from the Croatian State Archive, and all bear a stamp from the
21 archive.
22 Mr. Stojic next points to the establishment of the Pusic
23 Commission in August 1993 as somehow proof -- I'm not really exactly sure
24 what -- I guess at this point, he said, well, I did try to do something
25 good. I submit to the Chamber this is one of those instances, and we see

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1 it with several of the accused, where on the one hand they said I didn't
2 have any power, I didn't have any responsibility, but on other occasions,
3 well, I did have the power to do something good. It's kind of like power
4 being a kind of one-way street mechanism. I could good but I couldn't do
5 bad. I could appoint the Pusic Commission to try to resolve these
6 problems but I really didn't have any power or responsibility.
7 Nonetheless, it was Stojic who appointed and established the
8 Pusic Commission led by the accused Pusic to control the functioning of
9 all HVO remand facilities and prisons, including Ljubuski, and that can
10 be seen at P03995 and P04002.
11 The Stojic Defence does not deny that Bruno Stojic ordered the
12 formation of this commission, and as I've just mentioned a moment ago, in
13 fact, the Stojic Defence claims that his having set this up should
14 somehow work to his credit. Reality is it shows that, indeed, he had the
15 power to do something if he wanted to.

16 The Defence brief asserts that because the commission members
17 allegedly never implemented their task, it shows -- somehow shows
18 Stojic's lack of authority over prison matters. Not correct. First, the
19 fact that Stojic could and did order the formation of this commission
20 plainly indicates that he did have power to act, as we've just been
21 discussing. And further, it is not true that the establishment of this
22 commission did not serve its purpose. For its appointed president,
23 Berislav Pusic, this function expanded his own role with respect to
24 prisoners and further confirmed his key place in the JCE 2 and JCE 1
25 involving the camps and the deportation of Muslims from the camps. Those

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1 may be functions which Mr. Stojic is not anxious to embrace, but he
2 cannot pretend that they didn't exist.
3 In direct reference to Stojic's order establishing the
4 commission, Pusic confirmed his de jure responsibilities over the HVO
5 prisoners and over the HVO personnel who held them, implementing Stojic's
6 directive to assemble information about the detainees, the conditions and
7 circumstances of their confinement, and their classification and
8 potential release. You can see that as P04141.
9 Mr. Stojic next turns to say, well, it was actually the military
10 Judges who were responsible for the prisoners held at the HVO facilities.
11 That may be true, at least to the extent of only those soldiers who were
12 specifically being held on the order of an HVO military judge. The
13 Prosecution submits that those were pretty few and far between. These
14 are not the prisoners of war. These are not the detained Muslim men, for
15 the most part, that we're talking about. So even taking as -- even
16 taking arguendo that that may be true, the fact that a military judge may
17 have had some responsibility as some few of the detainees in HVO prisons
18 and facilities does not let Mr. Stojic off the hook.
19 In fact, one of the issues in this case concerning the detained
20 individuals was a lack of classification. People didn't know and the HVO
21 didn't know. Are they civilians? Are they prisoners of war? Are they
22 detained HVO members? Why are they being held? What categories are they
23 in? How are they classified? That was indeed one of the very core
24 problems that directly relates to this particular issue.
25 What is perhaps most important about the military judge situation

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1 in which the report from the military judge, which Stojic cites as
2 P06520, is that it indicates as to who was responsible for the operation
3 of the Ljubuski prison because who does this military judge send his
4 report to? Three people: The head of the government, Mr. Prlic; the
5 head of the Defence Department, Mr. Stojic; and the head of Military
6 Police Administration, Mr. Coric. That's who that military judge thought
7 was responsible.
8 Stojic and the military police. The Prosecution persists in its
9 position that Stojic had substantial responsibility for the HVO military
10 police as set out in our final brief. In his final brief, Stojic does
11 not seem to seriously contest this connection, but again dismisses what
12 he claims were, quote, "only administrative and logistical
13 responsibilities."
14 While the Prosecution submits that Stojic's role and involvements
15 concerning the military police was, in fact, much more than he let's on,
16 we nonetheless reject again any notion or any premise that, quote, "mere
17 or only administrative responsibilities or functions is somehow
18 insufficient for purposes of criminal liability or contribution to a

19 joint criminal enterprise."

20 As to humanitarian aid, finally in about -- excuse me, in the
21 connection of blocking or manipulation of humanitarian aid, the Stojic
22 position on this seems to be another instance where the accused claims
23 the power only to do good but no power to do ill. While he claims to
24 have no role or responsibility bearing on the movement, distribution, or
25 receipt of humanitarian aid, he nonetheless seeks credit for giving

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1 permission or arranging for medical supplies to reach the East Mostar war
2 hospital.

3 Excuse me one moment, Your Honours. My apologies.

4 I want to turn, last two topics for me, and one is the pointing
5 the finger, if you will, at other persons or other institutions in terms
6 of, if I can call it, blame shifting. It wasn't me. I didn't have
7 power. I didn't have responsibility. I didn't have authority. It was
8 someone else.

9 Various of the accused point the finger at someone or something
10 else as the person or institution with the, quote, "real power" or the
11 person or institution that was really responsible or really to blame.

12 Putting aside for now the instances where they point the finger
13 at each other, here are some of the other persons or institutions which
14 are routinely blamed, if you will: Well, of course, perhaps the number
15 one is Boban. The Prosecution has never denied, does not deny today,
16 that Boban was the president of Herceg-Bosna and at least on paper, at
17 least de jure, the supreme commander of the HVO military.

18 In connection with the Defence pointing at the famous empty chair
19 of the courtroom or empty chairs, perhaps to Boban in particular, perhaps
20 others that are not here in court, I would note what Robert Jackson said
21 in his closing at Nuremberg concerning a certain person or persons who
22 were missing from that trial, Jackson:

23 "I shall not dissent from this consensus, nor do I deny that all
24 these dead and missing men share the guilt. In crimes so reprehensible
25 that degrees of guilt have lost their significance, they may have played

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1 the most evil parts, but their guilt cannot exculpate the defendants.
2 Hitler did not carry all responsibility to the grave with him. All the
3 guilt is not wrapped in Himmler's shroud. It these dead men whom these
4 living chose to be their partners in this great conspiratorial
5 brotherhood, and the crimes that they did together they must pay for one
6 by one."

7 Having said that, let's consider Boban's role and its relation to
8 the evidence in this case. First, even assuming that Boban had
9 significant power, he could not have run Herceg-Bosna and the HVO all by
10 himself. He could not and did not run the government. Prlic did. He
11 could not and did not run the HVO Department of Defence. Stojic did. He
12 could not and did not run the HVO Main Staff. Prljak and Petkovic did.
13 He did not run the HVO military police. Coric did. He did not run the
14 service for exchange of prisoners and other persons. Pusic did.
15 Second, even if Boban was a significant player, and surely he
16 was, surely he was -- you've heard the evidence over the last day and a
17 half already of Boban's role, and again the Prosecution has never denied
18 that, but even if he was a significant player, he was a leadership member
19 of the same joint criminal enterprise so that his acts and behaviour are
20 linked with and attributable to the other members of the joint criminal
21 enterprise, including the accused.

22 Assuming arguendo that Boban played a significant role in the
23 joint criminal enterprise, that does not negate or diminish the liability
24 of the various accused. As Jackson said, they must be held responsible
25 for their crimes one by one. The accused were members of the same JCE

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1 and are liable for every crime committed in pursuit of the common purpose
2 provided that the crime can be imputed to a JCE member. So pointing the
3 finger at Boban, unless there is something very specific that somehow
4 disconnects him from the joint criminal enterprise, pointing the finger
5 at Boban does not really get them very far.

6 Third, there is no evidence that Boban was a hands-on
7 administrator as either president, that is head of state, not head of
8 government because that was Mr. Prlic's role, or as supreme commander.
9 The Stojic Defence expert witness Davor Marijan hit the nail on the head,
10 and I made reference to this earlier:

11 "Practically from the summer of 1992, we have no evidence that
12 Mr. Boban commanded the armed forces, which means he had delegated his
13 powers." Transcript 35866.

14 Not a Prosecution witness, Defence expert. There is no evidence.
15 We have no evidence that Mr. Boban commanded the armed forces.
16 Number four, throughout the Croat-Muslim conflict Boban spent
17 much if not most of his time abroad representing the HVO and the Bosnian
18 Croats in international peace negotiations and talks outside Bosnia in
19 such places as Zagreb, Geneva, and New York without having much knowledge
20 of many of the day-to-day military operations in the field. The Chamber
21 has seen and heard evidence after evidence of his extensive involvement
22 in those sorts of activities.

23 Your Honour, again, out of an abundance of caution I'd ask to go
24 briefly into private session on some private-session testimony.

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

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1 [Private session]

2 (redacted)

3 (redacted)

4 (redacted)

5 (redacted)

6 (redacted)

7 (redacted)

8 (redacted)

9 (redacted)

10 (redacted)

11 (redacted)

12 (redacted)

13 (redacted)

14 [Open session]

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

16 MR. SCOTT: Next, Neven Tomic, Prlic Defence witness, was asked
17 this:

18 "How often was Mr. Boban, in your experience, how often was
19 Mr. Boban himself actually in Mostar during this time? And I mean we're
20 roughly talking mid-1992 until the end of 1993, about an 18-month period.

21 I mean, you may have had an office, but perhaps you will tell us he was
22 never there or perhaps he was there every day.

23 "A. He would come very seldom. He spent most of his time in

24 Grude."

25 Number seven, the accused Slobodan Praljak:

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1 "For instance, you remember that convoy in Citluk. So it was the
2 civilians that stopped the convoy. For the convoy to go through, one
3 should first talk to the civilians and the person to do that should have
4 been Mate Boban. So that was a political issue. But Mate Boban fails to
5 appear for the talks, so Dr. Jadranko Prlic addresses the crowd."
6 Once again, Boban's a no-show. It falls to Mr. Prlic to actually
7 do the work. I suggest, and respectfully submit to the Chamber that that
8 was true most of the time.
9 As I mentioned previously, Davor Marijan made it very clear,
10 quote, "... practically from the summer of 1992, we have no evidence that
11 Mr. Boban commanded the armed forces."
12 Davor Marijan again:
13 "It's a fact, and at least I didn't see it, we have very few
14 documents from Mr. Boban in 1993. I wonder if there are any, in fact.
15 There was a document about the establishment of a military district, but
16 not appointments, so obviously some powers have been transferred from
17 him, which doesn't mean that he did not remain the supreme commander."
18 In name, I suppose.
19 That's Boban.
20 Another organisation or entity that some of the accused like to
21 point as well that was the real power and the responsibility was the
22 HZ-HB Presidency, the legislative body. Yes, that body did officially
23 exist de jure, and yes it did meet on some occasions, but there are two
24 fundamental problems with this being -- with that body being, if you
25 will, the fall-guy. First, this was a legislative body, not an executive

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1 government or administrative authority. Whatever laws or policies it
2 might have made, it was not the body which administered, executed, or
3 carried out those laws and policies. Executing Herceg-Bosna law and
4 policy was first and foremost the responsibility of the Prlic government,
5 and Prlic, as we saw earlier, was personally and individually responsible
6 for the work of his government.
7 Second, and perhaps more importantly, the HZ -- HZ-HB Presidency
8 was not in session during the period from 17 October 1992, to 28 August
9 1993. Not functioning, not meeting. During that time, as I mentioned
10 earlier today, it had delegated its full legislative powers to the Prlic
11 government. They weren't meeting. They weren't in session. They
12 weren't a factor.
13 Accordingly, during the core period of the indictment, from
14 October 1992 to at least the end of August 1993, Prlic's HVO government
15 again was the highest, most powerful body in Herceg-Bosna combining
16 supreme, executive, legislative, and administrative powers in that
17 government. Indeed, the HVO's -- HVO government's own report for the
18 year 1992, it's year-end report, summarised and fully confirmed its
19 expanded powers, saying that, quote, "responsibility for determining
20 policies in all spheres," in all spheres, "have been transferred to the
21 Prlic government." And that can be found at P00128.
22 The Defence witness Zoran Buntic, as I mentioned earlier today
23 but I'll briefly mention again in this specific context, made it clear
24 and testified, "The HVO HZ-HB was the highest executive and controlling
25 body. That is beyond dispute." His words, not mine.

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1 One or more of the accused from time to time have pointed the
2 finger at the HDZ-BiH party. We talked about that yesterday. The party
3 was not functioning. The party was frozen. The party was not a factor.
4 Another frequent target, someone else that the finger was pointed
5 at, were the HVO municipal authorities. We talked about that earlier
6 today. Mr. Petkovic, Mr. Filipovic, and others clearly said
7 unequivocally those bodies did not control, did not issue orders, did not
8 direct the HVO military. No one can point the finger at the HVO
9 municipal authorities and say they were responsible. They did not issue
10 the orders or give the direction.
11 The final topic for me at this point is -- that I want to close
12 with is this point, and that is that despite all the claims of no power,
13 no authority, no ability to act, the evidence is clear that the HVO and
14 these accused could take strong and forceful action when they really
15 wanted to. The accused have generally claimed to have had no power or
16 ability to act, but the evidence shows clearly that they could take such
17 action if they chose to.
18 As just one example of -- P01598, a 3 March 1993 Petkovic order
19 which in part says:
20 "Due to reasonable suspicion that he abused his official position
21 as an HVO," general staff officer, "a Main Staff officer, abused the
22 official stamp ... and tried forcibly to take someone else's apartment, I
23 hereby order ... arrest this officer and investigate the above-mentioned
24 circumstances."
25 Wow. He can investigate the abuse of a stamp, but I wonder about

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1 investigating abuse of Muslims and expulsions from their homes, their
2 imprisonment, the destruction of their property, their deportation. How
3 about arresting and investigating people about those things rather than
4 whether someone abused the use of an official stamp.
5 The HVO government, including the Defence Department, invested
6 substantial effort over a sustained course of time to enforce HVO
7 mobilisation, that is, bringing Croat men into the HVO armed forces. It
8 is clear from a review of the government records and meetings that this
9 was an ongoing important issue. I refer the Chamber as an example to
10 4D00508, the minutes of an HVO government meeting on the 9th of October,
11 1993. Prlic chaired the meeting with Stojic, Praljak, and Petkovic all
12 in attendance.
13 Item 6 deals with the issue of mobilisation and dealing with,
14 quote, "persons avoiding military obligation."
15 "In addition to criminal sanctions, other measures shall also be
16 taken against the persons avoiding military obligation. The following
17 shall be done based on the exact list of persons avoiding their military
18 obligation (and the Defence Administrations are required to create those
19 lists immediately):
20 "They shall be prevented from receiving personal papers and
21 realising their rights resulting from dual citizenship in the Republic of
22 Croatia;
23 "The names of the people who are avoiding the military obligation
24 shall be published in the media - radio press, et cetera;
25 "Their families' shall lose their status of displaced persons or

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1 refugees;
2 "Their families' electrical supply and telephone lines shall be

3 cut and their privileges in receiving medical treatment, schooling, et
4 cetera, revoked."

5 Two days later, on 11 October 1993, Stojic issues an order to all
6 military district courts and district military prosecutors, which is
7 4D01655:

8 "1. All District Military Courts and District Military
9 Prosecutors' Offices should give priority --" note that this is Stojic
10 giving orders to Judges and Prosecutors as to what they should do:
11 "All District Military Courts and Military Prosecutor's Offices
12 should give priority to the cases related to the failure to respond to
13 the call for general mobilisation and wilful abandonment of military
14 units."

15 Stojic then also ordered the assistance of the HVO military
16 police in carrying these actions out.

17 One can only wonder whether it might have made a difference of
18 such severe and draconian actions as cutting off their families'
19 displaced persons or refugee status and cutting off electrical supply --
20 their electrical supplies, blocking them from medical treatment, school,
21 one can only wonder if such severe sanctions had been threatened or taken
22 against people for the abuse of Muslims, for burning Muslim houses, for
23 raping Muslim women, for expelling them, for destroying mosques, whether
24 that might have made some difference, but there is no evidence of such a
25 strong HVO position or such sustained efforts being made as those we can

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1 see that could be made and were made in connection with the mobilisation
2 of Croat men into the armed forces.

3 A few other examples. P03700. Slobodan Praljak order dated 25
4 July 1993 ordering HVO units from Kostajnica to Prozor:

5 "Who does not carry out this order is to be disarmed, stripped of
6 their HVO clothes, detained, and kept with no food or water until I come
7 back."

8 Fairly forceful action by an HVO commander. There again, I
9 wonder if that might have been done in response to misconduct toward
10 Muslims.

11 3D02798, a 12 October 1993 order by Mario Bradara, deputy
12 commander of the HVO Ban Jelacic Brigade in Kiseljak, prescribing
13 punishment for abandoning position on the confrontation line, prescribing
14 that the unit -- that the violator will be put in front of the unit --
15 put in front of his unit, excuse me, and shot. The commander of his unit
16 shall be proclaimed a traitor and also shot.

17 Now, that may seem pretty extreme, but at least it was one
18 person's view of the action to be taken in response to misconduct.

19 As a final example, we have Mr. Petkovic's clear ability to take
20 aggressive action to protect his friend and colleague, Mr. Rajic,
21 Mr. Ivica Rajic, when he chose to do so. The Chamber will recall that
22 Petkovic was fully capable of taking strong and decisive action when a
23 group of HVO soldiers in the Kiseljak area mistreated Rajic first in
24 mid-May 1993 and again in August 1993. On the first occasion, Petkovic
25 suspended 12 HVO soldiers for their "maltreatment of Rajic."

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1 I'm just hesitating on a private session matter, Your Honours. I
2 think in light of your prior ruling, I'll say this: When the
3 misbehaviour of the HVO soldiers recurred in August 1993, Petkovic
4 ordered an action to arrest nine or ten of the perpetrators, during which
5 two of them were killed. There was evidence to the effect that what --

6 well, what did affect -- what affect did that action have on HVO command
7 and control?

8 "After the showdown with that criminal group you may say that the
9 system of command was elevated to a somewhat higher level and that it was
10 much easier to be in command of the units that I was in command of. Had
11 a positive effect on military discipline."

12 Mr. Petkovic could take those actions. He didn't take others.

13 The failure by the HVO and the failure by these accused to take
14 meaningful action in response to misconduct and crimes against Muslims
15 wasn't a lack of means or a lack of opportunity but a lack of will. It
16 was a lack of desire, being or becoming a decision not to do so, or
17 stated differently, there was no point in punishing those who were in
18 fact only carrying out HVO policy. And if that wasn't the case
19 initially, that certainly came to be the case over time. Acquiescence in
20 misconduct becomes ratification; ratification becomes approval; approval
21 becomes encouragement; encouragement becomes instigation; and instigation
22 becomes, in effect, ordering.

23 Your Honours, that completes my part, at least this part, of the
24 Prosecution's closing argument. Thank you.

25 JUDGE ANTONETTI: [Interpretation] Good morning, Mr. Stringer.

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1 MR. STRINGER: Good morning. Thank you, Mr. President and Your
2 Honours. Greetings to you, Counsel.

3 I'm prepared to begin at this time with the Prosecution's
4 submissions on General Praljak. One alternative, possibly,
5 Mr. President, would be to take the break now for 20 minutes and then
6 come back for the final hour and a half of the day, and then during the
7 break we can make the transition.

8 JUDGE ANTONETTI: [Interpretation] Very good idea. Let's have our
9 20-minute break now.

10 --- Recess taken at 11.48 a.m.

11 --- On resuming at 12.12 p.m.

12 JUDGE ANTONETTI: [Interpretation] The court is back in session.

13 You may proceed, Mr. Prosecutor.

14 MR. STRINGER: Thank you, Your Honours. Good afternoon, Your
15 Honours. Good afternoon, Counsel. May it please the Court, I will be
16 making the Prosecution's submissions on the case against General Slobodan
17 Praljak.

18 Not surprisingly, and like his co-accused, General Praljak denies
19 responsibility for any single crime that occurred throughout the entire
20 Herceg-Bosna territory throughout the entire HVO ABiH conflict. Where
21 blame or responsibility is to be assigned, he assigns it to others,
22 including at times, his co-accused. Praljak would have the Chamber
23 believe that he had no real power or authority over subordinates and no
24 knowledge of or ability to do anything about the widespread crimes
25 directed against the Muslim people who were unfortunate enough to find

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1 themselves in Herceg-Bosna with Praljak during late 1992 and throughout
2 1993.

3 The evidence, of course, paints a completely different picture,
4 that of a strong-willed and charismatic commander and politician who
5 achieved the highest political and military positions, assistant minister
6 of defence for the Republic of Croatia, a member of the Croatian National
7 Security Council, and trusted advisor to President Franjo Tudjman, a
8 Major-General in the Croatian Army, and finally commander of the HVO Main

9 Staff of the Croatian Defence Council, the HVO, in Bosnia-Herzegovina.
10 Praljak rose to this level not based on his qualifications or
11 military training, but rather based on, first, his fervent support of the
12 Tudjman policy of re-establishing something akin to a Croatian Banovina
13 in Bosnia-Herzegovina, and second, his willingness to do whatever it
14 takes, including committing and condoning crimes linked to the forced
15 movement of populations, to establish Herceg-Bosna in Bosnia-Herzegovina
16 as an autonomous, permanent Croat-dominated territory. The evidence
17 shows that at all times, whether exercising his de facto authority over
18 HVO armed forces or his de jure authority after taking command of the HVO
19 Main Staff on 24 July 1993, Praljak was in control and was fully informed
20 of all significant events taking place throughout Herceg-Bosna, including
21 the widespread crimes and persecution carried out by his subordinates in
22 the HVO against the Muslim population.
23 As HVO commander, Praljak moved frequently and easily throughout
24 Herceg-Bosna, from Gornji Vakuf to Prozor to Mostar and down to the HVO
25 forward command post headquarters in Citluk, ensuring that he was fully

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1 informed of events on the ground. He issued orders and directives to HVO
2 subordinates from all of these locations, demonstrating his control over
3 subordinate HVO units and their activities.
4 When he was not in Bosnia-Herzegovina, Praljak was in Zagreb
5 meeting with the Croatian leadership to discuss the Herceg-Bosna policy
6 that he would then implement upon his return to Bosnia-Herzegovina. We
7 know now that Praljak also travelled to Hungary and to Montenegro in
8 October of 1992 with other accused in this case for meetings with Ratko
9 Mladic, commander of the VRS Main Staff, hoping to enlist his support and
10 collaboration in achieving the division of Bosnia-Herzegovina between the
11 Croats and the Serbs.
12 I will first address General Praljak's claims that there was no
13 joint criminal enterprise and that, in any event, he did not participate
14 in or contribute to a joint criminal enterprise. He claims this
15 unequivocally from the very beginning of his brief in paragraphs 2 and 3.
16 Your Honours, the evidence establishes beyond all doubt that
17 Praljak, as well as his co-accused and other members of the Herceg-Bosna
18 JCE, had as their goal the establishment of an autonomous, permanent,
19 Croat-dominated entity within Bosnia-Herzegovina. When I say
20 Croat-dominated, I mean that Praljak wanted to establish and maintain a
21 Croat majority population in this territory which they called
22 Herceg-Bosna.
23 On the 29th of June, 2009, Praljak testified:
24 "We were all hoping all that time that the leadership would
25 finally understand that Croats in Bosnia-Herzegovina wanted only one

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1 thing, and that was an autonomy in the area that could have been 17 or 18
2 per cent of the territory of Bosnia-Herzegovina, an area in which they
3 were an absolute or relative majority equal to anybody else."
4 I believe Mr. Scott, my colleague, referred to this bit of
5 testimony in his remarks yesterday when he was talking about two of the
6 key things at that form part of the Prosecution's case, that of
7 demographics and territory.
8 Setting aside the fact that Praljak was in no position to decide
9 what the Croats in Bosnia-Herzegovina wanted, Praljak's own words make
10 two things clear: He and the accused wanted territory, and in that
11 territory they wanted the majority of people to be Croats.

12 Praljak testified on the 17th of August, 2009, transcript 43297,
13 that this should be a permanent autonomous area for Croats, completely
14 undermining Defence claims that Herceg-Bosna was simply a temporary
15 entity intended to fill in for the Bosnia-Herzegovina government.
16 In fact, Praljak's goal was identical to that of Prlic Defence
17 witness Zoran Buntic, who testified as a Defence witness in this case as
18 the former head of Herceg-Bosna's justice department. The Trial Chamber
19 may recall his testimony in July of 2008, when he stated that he wanted
20 an area in which Croatian people would be in the majority. He believed
21 the Serbs and the Muslims should have their own different areas where
22 they could be in the majority also. That's at Page 30881 of the
23 transcript.
24 Praljak was, of course, fully aware this vision necessarily
25 involved moving populations and that moving populations would require

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1 force and violence. While it is true that many parts of the so-called
2 Herceg-Bosna had majority Croat populations, it's also true that many
3 other parts had majority Muslim populations. Of course, in many
4 municipalities, Croats and Muslims lived side by side and were mixed
5 throughout the countryside, one of the defining attributes of
6 Bosnia-Herzegovina itself at that time.
7 We all know now that Mostar proclaimed to be the capital of
8 Herceg-Bosna had been a place where Muslims and Croats intermarried in
9 significant numbers, but Praljak was keenly aware that the Croat
10 population was declining even in areas where they were in majority and
11 that this trend was exacerbated by the fact that large numbers of
12 Muslims, themselves expelled from the Serb-held territories, were
13 arriving in areas claimed for Herceg-Bosna.
14 P00524 is a transcript of a meeting that occurred on the 26th of
15 September, 1992, at the presidential palace in Zagreb.
16 President Tudjman, Slobodan Praljak, and others were present. At this
17 meeting, Praljak raised his concern with Tudjman, observing that
18 expulsion would be necessary in order to achieve a majority population.
19 As he said:
20 "As it seems now and due to the people settling on the territory
21 from Travnik and below, I am afraid our chances will be bad at the moment
22 when the war is over. There has been a great change in the ethnic
23 structure. And to solve that with them by war, the civil, the
24 international ... rights, et cetera, and it will be difficult in any form
25 to expel those people from there, and without expelling those people, we

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1 will not have a majority there." Slobodan Praljak, on the 26th of
2 September, 1992.
3 Here Praljak clearly links forced population movement to the goal
4 of achieving the desired Croat majority demographic.
5 In paragraph 61 of his brief, Praljak tries to explain away this
6 statement, claiming he was speaking in the conditional form, but his
7 later actions prove otherwise.
8 At the time of this conversation with President Tudjman in
9 September of 1992, the Bosnian Serb armed forces had indeed driven
10 thousands of non-Serbs from their homes and villages throughout much of
11 Bosnia-Herzegovina. This was, without doubt, the intended result of the
12 Serbs' campaign to establish their own autonomous entity in other parts
13 of Bosnia-Herzegovina where they, like the accused, like Croats, would be
14 in the majority. In a post-war interview, Praljak indeed acknowledged

15 that he and the Serbs shared this view, this vision, for
16 Bosnia-Herzegovina.
17 This is P09447. It's a clip that was played to General Praljak
18 during his cross-examination in this case.
19 [Video-clip played]
20 THE INTERPRETER: "[Voiceover] You had a communication problem
21 regarding political and military co-operation with Izetbegovic and the
22 Muslim army; on the other hand, the leadership in Zagreb fully supported
23 you. How was this support manifested? Can you remember a specific
24 meeting and action? Can you give us a story?
25 "Praljak: There have been many meetings. The support consisted

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1 in -- well, once we realised what the intentions were -- the problem was
2 that before the war, we were military allies with the Muslims, but the
3 political ideas about a future state were completely opposite. To be
4 honest, the Serb's political options for Bosnia-Herzegovina were closer
5 to the Croats than that of the Muslims. Either we'll amend the
6 constitution to provide for equal rights or we'll go separate ways."
7 MR. STRINGER: "To be honest, Serbs's political option for
8 Bosnia-Herzegovina was closer to Croats than that of Muslims."
9 That was indeed the case and is shown by the steps taken as early
10 as October 1992 by General Praljak.
11 P11376. Ten days after observing to President Tudjman that it
12 would be necessary to expel the Muslims in order to achieve a majority,
13 Praljak, in his capacity as assistant minister of defence for the
14 Republic of Croatia, with the accused Prlic and Stojic, travelled to Pecu
15 in Hungary where they held a secret meeting with General Ratko Mladic on
16 the 5th of October, 1992, to discuss matters of common interest.
17 The Trial Chamber is by now familiar with General Mladic's notes
18 of this meeting at which Praljak distinctly described the objective:
19 "The goal is the Banovina of 1939; if not, we'll continue the
20 war."
21 He makes the additional remark: "We shall not go further."
22 That's at the bottom of the highlighted portion that the
23 Trial Chamber sees.
24 I'd like to step off of this exhibit for a moment, Mr. President.
25 I'm going to come back to it but move to the next one, P00466, transcript

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1 of a meeting held not one month earlier, again in Zagreb, with
2 President Tudjman.
3 Your Honours, the Prosecution submits that in informing Mladic
4 "we shall not go further," Praljak is repeating instructions issued by
5 Tudjman during a meeting between Praljak, Tudjman, and Susak, only a few
6 weeks earlier, on the 11th of September, when Tudjman made clear their
7 military goal of holding the Banovina territory in Bosnia-Herzegovina.
8 The HVO would not be involved in defending any territory of
9 Bosnia-Herzegovina that fell outside of the 1939 Banovina which they
10 believed was, in fact, Croatia itself. As Dr. Tudjman said:
11 "Gentlemen, gentlemen, let's not orient, we have nothing to
12 conquer, let's defend those Croatian ..."
13 Praljak says:
14 "Nowhere, Mr. President. It is impossible to pass further."
15 Tudjman says:
16 "And let's get ready to cleanse them out of Croatia. As I said,
17 do not get involved in conquering Bosnia.

18 "Praljak: No, Mr. President, believe me, the attacks have been
19 stopped."
20 Susak then says:
21 "Nothing out of Banovina. We did not trespass, not one even
22 metre."
23 The evidence thus shows that in this meeting -- in his meeting on
24 the 5th of October with Mladic, Praljak on behalf of Tudjman and Susak
25 were assuring Mladic that the HVO would not challenge the Serbs for any

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1 territory in Bosnia-Herzegovina that fell outside of the Banovina.
2 Now moving back to P011376, the Mladic diary excerpt from the
3 5th of October. It's worth noting - this is on Page 10, I believe of the
4 English version - that at this meeting Praljak and the other accused,
5 notably Bruno Stojic, agreed that the HVO would repair the hydro-electric
6 plant at Jajce in order to provide the Serbs with electricity, in
7 exchange for which the Serbs would release water for use at other power
8 plants.
9 We see this in P11377, which is an order issued by General Mladic
10 on the very next day after his meeting with Praljak, Stojic, and Prlic.
11 On the 6th of October, Mladic issued this order, referring to his
12 secret meeting with the leadership of the Croatian Community of
13 Herceg-Bosna, saying:
14 "... a meeting was held between the said leadership and the
15 representatives of the Army of Republika Srpska. It was strictly
16 confidential meeting and no information should be given about it. An
17 agreement was reached regarding a cease-fire, the repair of the Jajce 2
18 hydro power plant, release of water ... and the exchange of prisoners."
19 And then he issues this order in order to implement the
20 procedures necessary to bring about the operation of the hydro-electric
21 plant after its repair.
22 P11380. Three weeks after the first meeting with Mladic in
23 Hungary, Praljak, now with Petkovic, Prlic, and Stojic, met with Mladic
24 again, this time in Njivice, Montenegro, on the 26th of October, 1992.
25 Here Praljak reported that his side had adhered to the fundamental

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1 agreement and had reconnected the electric power plant near Jajce. He
2 announced:
3 "We're on a good path to compel Alija to divide Bosnia."
4 Later in this meeting, he referred to the population movements he
5 envisioned as part of the Herceg-Bosna plan, saying:
6 "It is in our interest that the Muslims get their own canton so
7 they have somewhere to move to."
8 In having these discussions with none other than Ratko Mladic,
9 the commander of the Bosnian Serb armed forces, in October of 1992,
10 Praljak undoubtedly knew that the demographic engineering necessary to
11 the establishment of an autonomous ethnic territory like Herceg-Bosna
12 could not be accomplished without the violence of forced transfers and
13 deportation, persecution, and destruction of property. The Serb
14 experience made this clear, and all of the accused who were sitting that
15 day with Ratko Mladic in Montenegro knew it. They knew the path they
16 were on.
17 3D00482. Praljak again clearly expressed his views on
18 establishment of the Banovina territory in Bosnia-Herzegovina as an
19 autonomous Croat territory to a delegation of French officials during a
20 meeting held in Zagreb on the 13th of January, 1993.

21 While he reported that the Croats supported the territorial
22 integrity of Bosnia-Herzegovina, it's clear that to Praljak, this was
23 only within the borders of a divided Bosnia-Herzegovina organised along
24 separate ethnic lines.
25 P01788. Praljak returned to the theme of population movements

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1 while chairing a meeting of HVO commanders in the Central Bosnia
2 operative zone on April 2nd, 1993. His co-accused Valentin Coric was
3 present together with HZ-HB vice-president Dario Kordic as well as
4 Ignjac Kostroman. The Trial Chamber will recall that it was
5 Mr. Kostroman, the gentleman from Central Bosnia, who had advocated that
6 Herceg-Bosna should ultimately accede to become a part of Croatia in the
7 meeting held with Tudjman in December of 1991.
8 Meeting with the HVO commanders on the 2nd of April, 1993,
9 Praljak shared his vision of the kind of society that Herceg-Bosna would
10 be for non-Croats and others who failed to support the Croatian Defence
11 council. As he said:
12 "We shall ask for the HVO government and our provinces, those who
13 choose not to submit can leave our territories."
14 He continued:
15 "Now we have got what we want, the homogenisation of our
16 population continues. We can only fence off what is ours and build there
17 our own space and our own state. It is all as clear as noon on a spring
18 day."
19 For Praljak, establishment of the state was only part of the
20 goal. In all of his references to the establishment of Herceg-Bosna, we
21 see from his own words that General Praljak consistently links this to
22 demographics and population movements: "Croat majority," "expel them" to
23 have a majority, "homogenisation of populations," those who don't accept
24 the HVO governance can "leave our territories;" Muslims "moving into
25 their own canton."

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1 We know, of course, that none of the population movements Praljak
2 anticipated would take place on their own peacefully and voluntarily. In
3 order to bring about the population movements and demographic changes he
4 consistently refers to, Praljak and the other members of this joint
5 criminal enterprise knew they would have to resort to crimes such as
6 persecution, forcible transfer, deportation, and destruction. We know
7 that as time went on, other large-scale crimes linked to this, for
8 example, imprisonment of all the Muslim men in the Bosnia-Herzegovina
9 territory, were ultimately resorted to.
10 Your Honour, the Prosecution submits that the evidence firmly
11 establishes beyond a reasonable doubt the criminal goals of the
12 Herceg-Bosna joint criminal enterprise, and in particular,
13 General Praljak's participation in it.
14 Next I would like to address General Praljak's claim that he did
15 not significantly contribute to the joint criminal enterprise as he
16 states in paragraph 31 of his brief, and in order to illustrate one of
17 his primary contributions to the Herceg-Bosna JCE, his role as conduit
18 between the Croatian leadership in Zagreb and the HVO in Herceg-Bosna, I
19 will discuss the role Praljak played in the events in Gornji Vakuf in
20 January of 1993. This discussion will also clearly establish that
21 Praljak wielded supreme military authority despite the fact that, as he
22 readily points out, he did not have at that time an official title or
23 rank within the HVO.

24 Not surprisingly, the story of the HVO offensive and military
25 success at Gornji Vakuf begins in Zagreb. As the Trial Chamber is fully

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1 aware, these events are linked to the ultimatum issued on the
2 15th of January, 1993, by Praljak's co-accused, Mr. Jadranko --
3 Dr. Jadranko Prlic, by which Prlic and the HVO demanded units of the ABiH
4 found in the Vance-Owen Peace Plan cantons 3, 8, and 10, must either
5 subordinate themselves to the HVO or withdraw from those areas
6 altogether.

7 In paragraph 63 of his brief, Praljak recalls his testimony in
8 which he claimed that the text of the ultimatum was, in fact, agreed upon
9 between Bosnia-Herzegovina President Izetbegovic and the Croatian
10 leadership during meetings that took place in Zagreb during 13th and
11 14th of January, 1993. I'm referring now to his testimony at Pages 40568
12 and 69, on the 21st of May, 2009.

13 As Praljak said:

14 "And when it comes to the drafting of the so-called ultimatum, I
15 was involved in that together with some other people from the Muslim
16 delegation, in the presence of Mr. Alija Izetbegovic."

17 Praljak claimed that during the meetings in Zagreb, Izetbegovic
18 and the Muslim delegation agreed that the ABiH would be subordinated to
19 the HVO in Gornji Vakuf and elsewhere, or that the ABiH units would leave
20 those territories altogether.

21 Mr. President, Your Honours, the evidence does not support this
22 claim, and in fact, it shows that Praljak lied to the Trial Chamber in
23 giving this evidence.

24 In claiming that he participated in drafting the ultimatum in
25 Zagreb, Praljak led the Trial Chamber to believe that this alleged

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1 agreement with Izetbegovic was a written agreement. In fact, as we learn
2 on cross-examination, Praljak conceded that it was not written, nor was
3 anything signed by the alleged parties.

4 On the 24th of August, 2009, at Page 43701, he conceded it was
5 not written and it was not signed, saying:

6 "I didn't say that anyone signed it on behalf of
7 the ... Muslims."

8 I asked him:

9 "So your evidence is that this was an oral agreement on the
10 text?"

11 He says:

12 "Yes."

13 Consider this, Your Honours: General Praljak wants the
14 Trial Chamber to believe that President Izetbegovic reached an oral
15 agreement with the leadership of the Republic of Croatia, providing
16 either for the withdrawal of units of the army from the parts of
17 Bosnia-Herzegovina falling within Vance-Owen cantons 3, 8, and 10, or for
18 the subordination of the ABiH units to the HVO in those areas.

19 Mr. President, I suggest that it is outlandish for anyone to make
20 such a suggestion that such an agreement, if it were to exist, would be
21 anything other than written and bearing signatures of all parties.
22 Neither Praljak nor any other accused in this case has produced any such
23 written agreement. Praljak's testimony about this alleged oral agreement
24 on subordination or withdrawal of the ABiH to the HVO in
25 Vance-Owen cantons 3, 8, and 10 is not worthy of your belief.

1 P01158. This is a presidential transcript of the meeting held on
2 the 15th of January, 1993, again in the presidential palace in Zagreb.
3 President Izetbegovic was present at this meeting and they were
4 discussing these matters. And the text of this transcript makes it clear
5 that as of the 15th of January, when this meeting was held in Zagreb,
6 there was no agreement between Izetbegovic and the Croatian leadership on
7 this matter of alleged subordination or withdrawal.

8 As President Izetbegovic said:

9 "Mr. Boban said he understood from these papers that the
10 armies -- that each army should withdraw to their territories. That's
11 not how I understood the papers, and I don't know whether this was the
12 intention of these documents.
13 "Because I do not see that they define who has what territories,
14 whose armies these are, you know. So I'm afraid what is now going on in
15 Gornji Vakuf may have been caused by a misunderstanding of this item of
16 these agreements.
17 "I'm not sure I understood Mr. Boban correctly. But he seems to
18 have understood that, say, now, that the Bosnian Army should withdraw
19 from the region, from the Travnik province now, and the HVO should take
20 it over completely. I did not understand these papers like this."
21 Here, Izetbegovic makes clear that there was no agreement
22 concerning the withdrawal or subordination of ABiH units in Gornji Vakuf
23 or anywhere else. Based on Izetbegovic's comments at the 15 meeting,
24 January, in Zagreb, how can Praljak seriously contend that Izetbegovic
25 agreed to the text of the ultimatum that was issued on that day, the

1 15th of January, 1993?
2 Izetbegovic's rejection of the Croatia HVO's self-serving
3 interpretation of the Vance-Owen Peace Plan didn't stop Praljak. In an
4 act that perfectly illustrates his role as the conduit or the bridge
5 between Croatia's leadership and the leadership of Herceg-Bosna, Praljak
6 travelled from Zagreb to Mostar on the 15th of January, personally
7 handing the text of what became this ultimatum to Messrs. Prlic, Stojic,
8 and General Petkovic there.
9 The Trial Chamber is well acquainted with the evidence on what
10 happened next, when the HVO HZ-HB government convened to adopt this text.
11 Prlic issued the ultimatum, and it was then sent down the military chain
12 of command, reaching Gornji Vakuf on that same day.
13 This, of course, is not the end of General Praljak's involvement
14 in and his contribution to the HVO's campaign in Gornji Vakuf and the
15 eventual expulsion of the Muslim civilian population there.
16 On the 21st of May, 2009, at Page 40580 of the transcript,
17 Praljak tells us that he went from Mostar and -- to Prozor. As he says,
18 he arrived on the 16th of January:
19 "In the evening, I heard everybody, the information, the
20 arguments of the HVO officers, and I demanded that another round of talks
21 be held with the BH Army in the presence of the English officers from
22 UNPROFOR who were deployed there."
23 Now, in a moment we'll see that's a reference to the
24 British Battalion. This right away tells us, General Praljak tell us by
25 his own admission, that he was immediately exercising his substantial

1 de facto powers upon his arrival in Prozor, demanding another round of

2 talks.

3 At paragraph 235 of his brief, General Praljak tells us that he
4 arrived in Prozor on the 16th of January. We know that he had meetings
5 there with the operative zone commander Zeljko Siljeg. The evidence
6 clearly establishes that upon his arrival in Prozor, Praljak exercised
7 the greatest authority on behalf of the HVO armed forces, giving
8 directions and orders to Siljeg that were immediately communicated in the
9 form of demands and threats to the ABiH if they refused to accept the
10 terms of the previous day's ultimatum and the text which Praljak had
11 personally delivered from Zagreb.
12 P01163 is the British Battalion UNPROFOR report of that day's
13 events in Gornji Vakuf. This is at Page 3 of the document, under item E.
14 What it tells us is that even before he arrived in Prozor from
15 Mostar, Praljak was issuing orders to the HVO Prozor command from Mostar.
16 The British Battalion reported, on the 16th of January, that an HVO
17 Colonel Andreivitch - who we say is actually Colonel Miro Andric, his
18 name was misspelled by the British Battalion - read out a message from
19 his commander, a general in Mostar. Since Petkovic was in Geneva at this
20 time, the commander that Andric refers to is clearly Slobodan Praljak.
21 The text of Praljak's message as read out by Andric and reported by the
22 British Battalion states:
23 "At the Geneva conference it was agreed that all provinces would
24 be administered by the leading ethnic group, in this area the Croats."
25 Praljak's message conveyed by Andric here, consistent with the

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1 text of the Prlic ultimatum, goes on to demand subordination of the ABiH
2 to the HVO. Praljak's message also contained a threat that if the ABiH
3 did not comply "in return the Croats and the HVO guarantee nothing will
4 happen to the Muslim population, less those suspected of or accused of
5 war crimes." The message continues by saying that if the ABiH agrees to
6 the terms of this ultimate, "the Muslim population will be given full
7 equality," as if Praljak reserved unto himself the authority to grant any
8 one group full equality with any other group of inhabitants in this
9 region.
10 P01174. This is a report from the 17th of January by ABiH
11 commander Dzemat Merdan, who was involved in the negotiations with the
12 HVO on the ABiH side. His report independently corroborates the text of
13 Praljak's demands as they were reported by the British Battalion.
14 We know, of course, that the ABiH did not agree to the terms
15 demanded by General Praljak and the HVO, and indeed, Praljak and the HVO
16 made good on their threat. If Praljak had indicated nothing would happen
17 to the Muslim population if the ABiH agreed to his terms, something
18 indeed did happen to the Muslim population there in the days and weeks
19 following the ABiH rejection of the ultimatum.
20 The Muslim populations throughout Gornji Vakuf municipality were
21 instead attacked on the 18th of January in Gornji Vakuf town and in a
22 number of villages like Dusa, Hrasnica, Usricje, and Zdrimci, where they
23 were driven from their homes, their property taken, and their homes
24 destroyed. The men were either taken away or detained at a makeshift HVO
25 detention centre at the furniture factory in Trnovaca, where they were

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1 beaten and abused. The women and children were rounded up and crammed
2 into a few empty houses, where they endured harsh conditions and
3 mistreatment by the HVO for weeks before they were expelled in the ABiH
4 territory.

5 P01162. Getting back to the 16th of January when Praljak did
6 arrive in Prozor, he ratcheted up the rhetoric of his demands as soon as
7 he arrived. At 8.00 that evening, the HVO operative zone commander
8 Siljeg sent this report to the HVO Main Staff headquarters in Mostar,
9 reporting on the negotiations with the ABiH. The bottom of Page 2,
10 Siljeg states:
11 "Tonight, at Gornji Vakuf, Colonel Siljeg and Colonel Andric
12 negotiated with BH Army representatives. There were no results. Unless
13 there is an agreement, Gornji Vakuf southern strongholds (Uzricje, Duse,
14 mount Mackovac) will be taken and our line strengthened."
15 He then adds:
16 "General Praljak sent them a message that they will be
17 annihilated if they do not accept the decisions of the HZ-HB."
18 Throughout his testimony and throughout his brief General Praljak
19 has assured the Trial Chamber that, in fact, he was only sent to Gornji
20 Vakuf with the mission of calming the situation down, calming the
21 situation there. Let's take a look and see who, in fact, was trying to
22 calm the situation.
23 P01168. On the 16th of January, ABiH Commander Sefer Halilovic
24 sent this order from Sarajevo to all of his commands regarding the HVO
25 ultimatum issued on the previous day. Item 3 orders them to take

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1 measures to "realise further co-operation with the HVO and to prevent any
2 conflicts between HVO and the BiH Army. Extreme behaviour of some
3 individuals and groups within BH Army towards members of the HVO are to
4 be prevented."
5 Item 4:
6 "Estimate current situation and possible conflict situations in
7 relation to HVO HZ-HB decisions and make a plan of measures for
8 preventing them."
9 However, General Praljak's personal involvement in demanding the
10 subordination or withdrawal of the ABiH units from Gornji Vakuf and
11 elsewhere made the conflict there inevitable. After the ABiH rejected
12 the HVO ultimatum and the demands issued by Praljak through Siljeg and
13 Andric, Praljak continued to exercise his de facto HVO authority to
14 support the HVO military operations in Gornji Vakuf.
15 P01202. On the 18th of January, on the day of the attack,
16 Praljak issued this order from Prozor to the HVO south-east operative
17 zone, directing that certain assets be sent "due to the complicated
18 situation in Gornji Vakuf ... and the need to engage in combat activity."
19 In response to a question from Judge Antonetti, Praljak testified
20 that although he did not sign this order personally, he had said, "Okay.
21 Fine. Use my authority, and we'll ask for those three pieces to be
22 returned." That's at Page 41882 of the transcript.
23 Praljak continued to direct and participate in HVO activities
24 affecting Gornji Vakuf in the following days.
25 P01293. At this time, General Petkovic was in Geneva taking part

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1 in the negotiations there. On what appears to be or is at least the 20th
2 or 21st of January, 1993, the document itself is not dated, Petkovic
3 issues this order from Geneva on a cease-fire, and further directing in
4 item 3 that:
5 "Colonel Siljeg is to report directly --" excuse me.
6 "Colonel Siljeg is to report urgently to Brada in Mostar and send a
7 report on the situation in Gornji Vakuf directly."

8 In his testimony, Praljak acknowledged that Brada was a reference
9 to him. That's at Page 44117.
10 P01277. Siljeg clearly complied with Petkovic's order and
11 continued to take orders from Praljak, reporting on 23 January to the
12 Defence Department, as well as the HVO Main Staff, on the 23rd of
13 January:
14 "I issued necessary orders that were in the spirit of the orders
15 issued by 'Brada ' and they were carried out."
16 On the same day that Siljeg sent this report down to the HVO
17 Defence Department and Main Staff, the HVO continued to engage in ethnic
18 cleansing of the civilian Muslim population in Gornji Vakuf. In its
19 report of 23 January, in item 3, this is P01278, the British Battalion
20 noted the HVO rocket attack on the village of Bistrica where houses in
21 the village were reported to be burning fiercely. The report notes the
22 British Battalion Cheshire unit in the area was, quote, "keen to stress
23 that this was most definitely ethnic cleansing by Croats on a Muslim
24 village."
25 Your Honours, in this evidence on the lead-up in the events

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1 occurring in Gornji Vakuf in January 1993, the Prosecution submits that
2 one finds overwhelming proof of Praljak's contribution to the
3 Herceg-Bosna JCE and its goal of carving out an autonomous Croatian
4 entity there at the expense of the Muslim population. We also see the
5 supreme de facto authority Praljak exercised in directing and controlling
6 HVO communications with the ABiH side, insisting on implementation of the
7 ultimatum, threatening annihilation in the event of refusal, and
8 directing that additional military assets be transferred to the area when
9 the HVO resort to force became necessary to achieve its goals.
10 There is yet another important point to make based on Praljak's
11 involvement in the events in Gornji Vakuf. In his brief, Praljak denies
12 that the HVO-ABiH conflict was an international armed conflict, claiming
13 that many of the crimes alleged were bottom-up events, only tangentially
14 related to the wider conflict.
15 The Trial Chamber can reject this assertion based solely on
16 Praljak's role and the positions he held within the Croatian government
17 and the Croatian military before even taking command of the HVO Main
18 Staff in July of 1993. For example, the leading role that Praljak played
19 in Gornji Vakuf compels the Trial Chamber to find a nexus between the
20 crimes committed there and international armed conflict.
21 The Prosecution brief, as well as annex material submitted with
22 it, fully demonstrates the existence of an international armed conflict
23 at all times of relevance in this case based on the overall control that
24 Croatia in its leadership exercised over the HVO and the direct and
25 active participation of Croatian Army units, personnel, and equipment

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1 fighting on the side of the HVO against the Army of Bosnia-Herzegovina
2 inside Bosnia-Herzegovina.
3 However, I would like to draw the Trial Chamber's attention to
4 paragraphs 75 and 76 of the Prosecution brief in which we identify an
5 additional basis on which to find international armed conflict based upon
6 the language of the Appeals Chamber judgement in the Tadic case.
7 In Tadic, the Appeals Chamber states:
8 "International law renders any state responsible for acts in
9 breach of international law performed (i) by individuals having the
10 formal status of organs of a state (and this occurs even when these

11 organs act ultra vires or contra legem) or (ii) by individuals who make
12 up organised groups subject to the State's control."
13 The Tadic judgement thus refers to state responsibility for the
14 acts of individuals having the formal status of organs of the state.
15 Until shortly before taking command of the HVO Main Staff in
16 July of 1993, General Praljak was an assistant minister of defence of the
17 neighbouring Republic of Croatia. He was a major-general in its army.
18 He was a member of Croatia's National Security Council.
19 P01458. This decision of Mr. Sarinic and the Croatian
20 Ministry of Defence, dated the 10th of February, 1993, tells us that
21 General Praljak was indeed on the payroll of the Croatian
22 Ministry of Defence in January of 1993, at the same time that he was down
23 in Gornji Vakuf directing Siljeg, Andric, and the HVO in their
24 negotiations with the ABiH and issuing threats on annihilation, issuing
25 orders on the movement of military equipment into the region.

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1 When he testified, Praljak agreed that his salary was paid by
2 Croatia at all times during 1993, even after he took command of the
3 HVO Main Staff. That's at Page 42993.
4 Mr. President, Your Honours, there is no doubt that Praljak was
5 indeed a de jure organ of the State of Croatia in Bosnia-Herzegovina
6 until July 1993, when he resigned his positions as a Croatian official to
7 take up his position as commander of the HVO Main Staff. After the
8 24th of July, 1993, he remained on Croatia's payroll and continued to
9 confer with Tudjman and Susak, implementing Croatia's Herceg-Bosna policy
10 in Bosnia-Herzegovina.
11 On Page 43001 of the transcript, there is a highly interesting
12 and relevant exchange that occurred between the two of us, myself and
13 General Praljak, during his cross-examination.
14 I put it to him:
15 "But at all times you were down in Bosnia and Herzegovina, and
16 your job was to see to it that President Tudjman's policies were
17 implemented and carried out; isn't that true? He was your boss. At all
18 times, you were answerable to him, and it was your job to implement his
19 policy; correct?
20 "A. No. I was implementing the policies of the Croatian state.
21 I wasn't there on a permanent basis. I was there at very precise points
22 in time ..."
23 There's no question that as he told us himself, General Praljak
24 was in Bosnia-Herzegovina implementing the policies of Croatia, and that
25 has a huge impact on the question of international armed conflict even

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1 apart from the other issues and the points, which have amply been proven
2 as well, regarding the HVO being a group under the overall control of the
3 Croatian leadership or the direct participation of units and personnel
4 and equipment of the Croatian Army in the conflict in Bosnia-Herzegovina.
5 I'd like to now turn to some issues and some discussion on
6 command and control, General Praljak's effective command and control, his
7 ability to impose discipline, disciplinary measures, and his powers to
8 stop the many crimes that were being committed against the Bosnian Muslim
9 populations throughout the areas that were under HVO control.
10 Throughout his brief, General Praljak claims repeatedly that he
11 was either not responsible for or could not control subordinate members
12 of the HVO who committed crimes. He frames this issue largely as one of
13 command responsibility under Article 7(3) of the Statute, but in fact,

14 those issues are also directly linked to his criminal responsibility
15 under Article 7(1). For example, Praljak claims he did not contribute to
16 the JCE. In fact, his permissive and accepting attitude in regard to the
17 numerous crimes committed by his HVO subordinates, the command climate he
18 established by abandoning his obligation to protect civilians was itself
19 a very substantial contribution to the achievement of the Herceg-Bosna
20 JCE. Issues of responsibility and the Praljak command climate also bear
21 directly on his liability under other parts of Article 7(1), such as
22 ordering, instigating, and aiding and abetting the widespread criminal
23 conduct of the HVO armed forces.
24 General Praljak denies having effective control over subordinates
25 unless he was physically present with them. He claims he was powerless

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1 to punish perpetrators of crimes that weren't committed in his presence.
2 He denies responsibility for the conduct of HVO soldiers who were not
3 engaged in specific combat activities on the front line. He denies
4 responsibility for any crime that occurred when he was not commander of
5 the HVO Main Staff. He denies having any responsibility for the
6 HVO prison camps and detention facilities or for the conditions and
7 mistreatment of prisoners there.
8 As an accused in this Tribunal, and more importantly as a
9 commander of soldiers in the field who controlled the areas in which
10 large numbers of civilians were found, Praljak does not get to choose
11 between which aspects of effective command and control apply to him and
12 which do not. He, without doubt, exercised effective control over his
13 men. As he told you himself, he led them in battle frequently in Prozor,
14 Gornji Vakuf, Bokseвица, and elsewhere. He regained lost territory. He
15 rallied the troops. As General Praljak acknowledges in his brief, he did
16 have effective command and control of his subordinates when he was
17 physically present with them in the field in connection with their combat
18 taskings. He testified several times about taking direct operational
19 control over military police units to deploy them in combat. He issued
20 many orders, and those orders were carried out.
21 Let's look briefly at Exhibits P04640 and 4645.
22 In 4640, we see on the 30th of August, General Praljak issues an
23 order as commander of the Main Staff, from the Citluk headquarters to the
24 south of Mostar, directing that the commander of an Independent Battalion
25 submit a report to him as to why a certain order was not carried out. He

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1 directed, that is, Praljak directed, in item 2, that this order was to be
2 carried out immediately and unconditionally.
3 We find in P04645 that on the very next day, the
4 31st of August, 1993, the commander at issue did, indeed, submit a
5 written statement to Praljak, as directed, acknowledging that the order
6 had not been carried out, but informing Praljak that arrangements were
7 made for this battalion to discharge its duties on the following day.
8 The question of command and control we submit, Mr. President and
9 Your Honours, is not seriously in question. Praljak did indeed possess
10 and exercise effective command and control over his subordinates. Had
11 Praljak shown himself to be unable to exercise effective command and
12 control over HVO subordinates prior to 24 July 1993, no one would have
13 considered appointing to him to the position of commander of the
14 HVO Main Staff at that time. He was offered that position precisely
15 because he was effective.
16 What Praljak is really claiming is that he didn't have command

17 and control over his soldiers when they were committing crimes against
18 Muslim civilians who were living in areas under HVO control. In other
19 words, for successful combat operations of the HVO, General Praljak
20 happily takes credit, but when blame is to be assigned for crimes
21 committed by his subordinates, Praljak conveniently asserts that he was
22 powerless to do anything about.
23 The fact is, apart from his empty words while testifying in this
24 case, there is no evidence that Praljak attempted to impose his will on
25 subordinates to stop them from committing crimes against the Muslim

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1 population or to punish subordinates for having done so.
2 For purposes of his command responsibility under Article 7(3),
3 the question, simply put, is whether Praljak had the material ability to
4 take measures that would stop the crimes from happening, to prevent the
5 perpetrators from committing more crimes or to punish or bring about the
6 punishment of perpetrators. The answer is, of course, Slobodan Praljak,
7 assistant minister of defence for the Republic of Croatia, a
8 Major-General in that army, and as commander of the HVO Main Staff did
9 indeed have the material ability to do something about the crimes that
10 were happening all around him. Did he make any genuine effort to do so?
11 The answer is no.
12 P03829. Shortly after taking command of the HVO Main Staff on
13 the 30th of July, 1993, General Praljak demanded that Mr. Coric,
14 chief of the Military Police Administration, provide him with the names
15 of some military police officers who'd been involved in beating up the
16 drivers of a convoy from Germany.
17 We don't know where the convoy was destined to go or who its
18 beneficiaries would be, but we surely know that Praljak had no hesitation
19 on this occasion in demanding from the chief of the Military Police
20 Administration identification of the individuals involved. He expressly
21 directed that those individuals were to be sent to him.
22 P03700. I believe this is an order my colleague Mr. Scott
23 referred to in his submissions earlier today. This is another Praljak
24 order. Item number 2:
25 "Who does not carry out this order is to be disarmed, stripped

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1 off from the HVO clothes, detained ... kept with no food or water until I
2 come back."
3 P03706, 25th of July, 1993. In an order to his operative zone
4 Commander Siljeg personally:
5 "Failure to carry out the received order until 1700 hours on
6 26 July 1993 would mean:
7 "1. That the said commanders, as the most responsible persons,
8 will be replaced and criminal proceedings instituted against them."
9 P03773. Another example of Praljak's willingness to threaten
10 serious consequences for misconduct or failing to carry out orders is
11 found in this document. Here he threatens that commanders who fail to
12 carry out this order shall be held to account according to the HZ-HB
13 Criminal Code.
14 As the Appeals Chamber indicated in paragraph 63 of its judgement
15 in the Halilovic case, for purposes of command responsibility under
16 Article 7(3), the question is: Did the accused genuinely try to prevent
17 or punish crimes by taking measures that fell within his material powers?
18 These examples that I've just shown in which Praljak demanded the
19 identity of perpetrators, for example, or threatened criminal proceedings

20 under the criminal law, these were all well within his sphere of
21 competence. He very clearly believed that issuing orders and directives
22 like this was within his material powers as commander of the HVO.
23 However, there is not one example of Praljak ever issuing any order,
24 complaint, or threat like these against, for example, perpetrators of the
25 expulsion of Muslims from West Mostar throughout the many months that he

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1 was commander the Main Staff and as well as the weeks and months before
2 that, or the campaign of terror directed against the Muslim population in
3 Prozor throughout 1993, a place where he spent a lot of his time after
4 taking command of the HVO Main Staff.
5 Did he ever issue any orders or strongly-worded communications of
6 any kind like this in order to bring an end to the forced labour? We'll
7 talk about that labour later, but the answer is he did not.
8 He knew all of these crimes were occurring. Did Praljak ever
9 demand that Coric or anyone else provide him with the names of the
10 perpetrators of any of these crimes in West Mostar, Prozor or elsewhere?
11 There is no question that Praljak had the material ability and
12 the authority to issue such a command, and in doing so, he would have
13 made it clear that he would not tolerate such conduct. He never
14 exercised this authority. He never even tried. He never even tried.
15 With the exception of Stupni Do, there is no evidence that
16 Praljak ever even ordered disciplinary measures against HVO soldiers who
17 committed crimes against Muslims or that he ordered an investigation of
18 any of the widespread crimes that occurred either prior to or after he
19 became commander of the HVO Main Staff.
20 You might be stripped of your uniform for failing to follow
21 orders but not for driving hundreds of Muslim civilians from their homes.
22 Although Praljak claims he wasn't responsible for HVO crimes
23 committed away from the front line or that he couldn't do anything about
24 crimes not committed in his presence, the truth is that he turned a blind
25 eye to the crimes committed by HVO soldiers when they weren't at the

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1 front line. As he made very clear during his testimony, Praljak only
2 cared about winning the war, winning the battle at hand. He claimed, for
3 example, that he could not discipline soldiers because this would result
4 in their removal from the front line.
5 Page 41035 of the transcript from the 2nd of June, 1992.
6 General Praljak told us:
7 "And on the assumption that you did have the power and authority
8 to put 300 soldiers in prison, into some kind of prison, you still
9 wouldn't have another 300 soldiers to take up their positions at the
10 front lines." So it wasn't a problem that could be solved within the
11 frameworks of the resources that you had and the way in which we acted
12 and in which we existed.
13 Mr. President and Your Honours, I submit to you that it wouldn't
14 have required putting 300 soldiers in gaol. Strong and decisive measures
15 against a smaller number would have certainly sent the signal and would
16 have had, as General Pringle tells us, a profound effect on the command
17 climate that existed under Praljak's command.
18 The Trial Chamber will recall that Praljak made a conscious
19 decision to subject the civilian population to even more crime and terror
20 by using police, both military and civilian, in combat operations.
21 Page 43991 of the transcript. I'm sure the Trial Chamber will
22 recall these passages.

23 Here on cross-examination, General Praljak affirmed his earlier
24 testimony on the direct in which he had said:
25 "Such a use of the military police will significantly decrease

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1 the ability of the military police to perform their tasks, their normal
2 tasks, and that for that reason there will be an increase in the rate of
3 general crime, and there will also be a decrease in the number of those
4 who will be arrested for those crimes."
5 On the 27th of August, 2009, we return to this theme at Page
6 43997 of the transcript, with Judge Trechsel intervening with the
7 following question asking for clarification from General Praljak on this:
8 "You took that in account. You were aware of it, and your point
9 is that this was a case of necessity; that is to say, the situation was
10 so tense and the end of fighting the enemy justified the means of drawing
11 away a police force, which exposed civilians to a greater risk of crime.
12 Have I understood that correctly?"
13 General Praljak says:
14 "Correct. Unfortunately, that's how it was. You have understood
15 my answer correctly."
16 Moving down a number of lines he says:
17 "The military situation was such that it was necessary to have a
18 part of the military police force engaged in battle."
19 P04177. The effect, the impact on the ground of
20 General Praljak's decision to abandon protection of the civilian
21 population is shown graphically in this report from the 14th of August,
22 1993, of a SIS officer in Prozor. He describes the horrific situation
23 facing the Muslim population there at the time when Praljak himself was
24 personally in Prozor.
25 The report notes:

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1 "The arrival of soldiers and civilians into the municipality has
2 caused an increase in crime, prostitution, removal of Muslims from prison
3 and their liquidation, the extortion of gold, money, other valuables ...
4 "Every day women and girls are taken out from the collection
5 centres of Podgrade, Lapsunj, and Duge, which are not secure ..."
6 We will talk more in my submissions about Mr. Coric, but it was,
7 in fact, a primary role and responsibility of military police to provide
8 security in the HVO detention centres.
9 " ... collection centres are not secure and taken to houses
10 where they are raped, abused, humiliated. For example, naked women have
11 to serve them. They are beaten until they agree to have sex, and some
12 have their hair shaven off."
13 Next Page. After the reference to men going to the Muslim houses
14 and the mistreatment and abuse that takes place there, he reports:
15 "This has all been happening systematically for a considerable
16 time now, even though we informed the HVO President Mijo Jozic, the
17 brigade commander, and the commanders of the military and civilian police
18 of this in writing."
19 Moving on to the next Page. Whereas General Praljak, what's he
20 doing in the midst of all this terror reigning in Prozor? At the bottom
21 of the Page:
22 "The civilian police are unable to cope with all this and
23 recently they have been mostly in the field under the command of
24 General Slobodan Praljak."
25 The evidence proves that General Praljak concluded it would

1 undermine the HVO's ability to win the war if he took steps to punish or
2 discipline HVO soldiers committing crimes against Muslim civilians and so
3 he did nothing. Distilled down to its essence, as he indicated in
4 responding to Judge Trechsel's question, General Praljak's position was
5 that military necessity, i.e., winning the war, justified exposing the
6 civilian population to the kind of widespread crime, persecution, and
7 terror that we see in this SIS report and in other places as well, such
8 as West Mostar. However, as we note in our brief, military necessity is
9 never justification for crime. A military commander cannot simply
10 disregard the law and turn a blind eye to crimes by his subordinates
11 because that's what he needs to do to win the war.
12 Of course, the crimes condoned by General Praljak were a
13 necessary part of driving the Muslim population out of
14 Bosnia-Herzegovina, and it is here, Mr. President and Your Honours, that
15 the consequences of General Praljak's conscious decision not to prevent
16 or punish crimes, the consequences of that reach across from Article 7(3)
17 to Article 7(1) of the Statute. Given Praljak's fervent support for the
18 establishment of a Croat-dominated Herceg-Bosna, a goal that necessarily
19 involved crimes linked to forced population movements, Praljak's
20 acceptance of widespread criminal conduct on the part of his subordinates
21 itself constitutes a significant, indeed a tremendous contribution to the
22 Herceg-Bosna JCE.
23 Joint criminal enterprise is, of course, a form of committing
24 under Article 7(1). We don't have to speculate about what sort of --
25 excuse me -- what sort of command climate would exist when the

1 highest-ranking commander denies all responsibility for conduct of his
2 subordinates when they are out of his sight and when he knowingly exposes
3 the civilian population to increased crime by condoning crime and
4 deploying military and civilian police in combat operations. The
5 Trial Chamber need only read the reports of the evidence taking place --
6 of the events taking place in Prozor, Mostar, and throughout
7 Western Herzegovina and elsewhere, all of HVO-controlled territory, to
8 see the kind of terror, expulsion, and destruction that flourish in such
9 a climate.
10 This is the climate that Slobodan Praljak nurtured. Win the war
11 at all cost, the end justifies the means. Condone and turned a blind eye
12 to crimes by subordinates so long as they continue to return to their
13 front line positions the next day to fight for Herceg-Bosna. Coming from
14 the supreme commander of the HVO, this was a supreme contribution to the
15 joint criminal enterprise.
16 Tribunal jurisprudence in such cases as Galic and others makes
17 clear that the repeated and consistent failure to prevent crimes or to
18 take reasonable and necessary measures against perpetrators can itself
19 lead to the conclusion that such crimes were intended and indeed ordered
20 under Article 7(1). We know also that by repeatedly tolerating crimes,
21 the acts and omissions of a senior commander may constitute instigation
22 of crimes when he has created an environment permissive of criminal
23 behaviour.
24 These legal principles apply directly in the case of
25 General Praljak and his total unwillingness to exercise any form of

1 control or discipline over his subordinates to deal with the widespread
2 crimes of deportation, eviction, looting and appropriation, destruction
3 of property directed against the Muslim civilian populations throughout
4 the areas under HVO control. The evidence shows that he, in fact,
5 accepted these crimes as necessary to that objective. The objective of,
6 in his words, "fencing off what is ours and creating there our own
7 State."

8 Mr. President, I submit to you that it's all as clear as noon on
9 a spring day.

10 This is a good time for me to break, Mr. President.

11 JUDGE ANTONETTI: [Interpretation] Very well. Absolutely. It's
12 almost 1.45. Time to adjourn.

13 As you know, we will resume tomorrow afternoon, because there's
14 been a change in the schedule of the Tolimir case. So we will resume
15 tomorrow at 2.15. Thank you.

16 --- Whereupon the hearing adjourned at 1.42 p.m.,
17 to be reconvened on Wednesday, the 9th day
18 of February, 2011, at 2.15 p.m.

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