

1 Thursday, 17 February 2011
2 [Praljak Defence Closing Statement]
3 [Open session]
4 [The accused entered court]
5 [The Accused Pusic not present]
6 --- Upon commencing at 9.01 a.m.
7 JUDGE ANTONETTI: [Interpretation] Madam Registrar, kindly call
8 the case.
9 THE REGISTRAR: Good morning, everyone in and around the
10 courtroom.
11 This is case number IT-04-74-T, the Prosecutor versus
12 Prlic et al.
13 JUDGE ANTONETTI: [Interpretation] Thank you, Madam Registrar.
14 Today is Thursday, 17th of February, 2011.
15 Let me first greet the accused, the Defence counsel, and also all
16 the OTP members present here and the people assisting us.
17 I'll say, without further adieu to the Praljak Defence, that we
18 got in touch with the Tolimir Chamber, and we were told that it was not
19 possible to extend our sitting by 15 minutes because they have witnesses
20 to hear. So you have two possibilities; either General Praljak will have
21 30 minutes on Monday or you reduce your time and he can speak today,
22 because we have four hours today and you still have a credit of four
23 hours and thirty minutes. So it's up to you, Mr. Kovacic.
24 MR. KOVACIC: Thank you, Your Honour.
25 We will decide during the day, and we will advise you.

1 Good morning, everybody.
2 JUDGE ANTONETTI: [Interpretation] One moment, please.
3 Mr. Scott, did you want to take the floor?
4 MR. SCOTT: For one moment, Your Honour. I apologise. I said to
5 the Registry if I could just have one moment, in an effort to be as
6 little disruptive as possible, rather than getting on my feet later
7 today.
8 Your Honour, the whole intervention will take less than one
9 minute.
10 I've been carrying around this note for some days now.
11 During Mr. Kruger's closing submissions, he, unfortunately, as we
12 all sometimes do, mis-cited an exhibit. At
13 he mentioned Exhibit P05889. The correct exhibit reference should be
14 P05884, and I wanted to correct that, Your Honour.
15 While I'm on my feet, I just wanted to assure both Ms. Nozica and
16 the Chamber I certainly did not intend to be discourteous to her
17 yesterday. There are some things that are just so deeply embedded in our
18 own legal cultures, sometimes it's hard not to react, but I regret that
19 it was taken as any sort of personal affront to Ms. Nozica or the
20 Chamber.
21 Thank you for that.
22 JUDGE ANTONETTI: [Interpretation] Thank you, Mr. Scott.
23 We take due note of what you've just said.
24 Yes, Ms. Nozica, do you have anything to say?
25 MS. NOZICA: [Interpretation] Your Honours, I'm glad that you gave

1 me the opportunity to thank my learned friend. I didn't understand his
2 words as an attack on me or our Defence, but I wouldn't have risen just
3 to express my gratitude. I also have a correction of the transcript.
4 On the 16th of February, 2010, Page 30, line 9, instead of
5 "5P5259," it should be "P --"
6 THE INTERPRETER: Could counsel please repeat the number.
7 MS. NOZICA: [Interpretation] I repeat.
8 Instead of "P5259," it should be "P5249."
9 Your Honours, I just want to say that we, too, will listen to the
10 tape with a recording of our final brief, so possibly on Monday we will
11 make additional corrections if we made any mistakes.
12 JUDGE ANTONETTI: [Interpretation] Very well, thank you.
13 You may proceed, Mr. Kovacic.
14 MR. KOVACIC: I would like to say a few words about the nexus
15 between the alleged existence of an international armed conflict and the
16 crimes from Article 2 of the Statute. In our submission, the Prosecution
17 failed to prove the existence of this nexus.
18 Instead of explaining the nexus between the crimes and the
19 international armed conflict, the Prosecution simplified things and just
20 say that General Praljak was present in Bosnia-Herzegovina, and seems to
21 consider that fact to be sufficient. An explanation is missing, and so
22 is concrete evidence to show that there undoubtedly is a nexus between
23 the crimes from Article 2 of the Statute and the international armed
24 conflict. The mere presence of General Praljak in Bosnia-Herzegovina is
25 not sufficient grounds for such a conclusion.

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1 Concerning the Prosecution's allegation in paragraph 78 of their
2 final brief, in other words, the mens rea in connection with the
3 international armed conflict, I would like to say the following:
4 The Prosecution claimed that all the accused were fully aware of
5 the intensive involvement of the Republic of Croatia in the conflict in
6 Bosnia and Herzegovina. They base this claim on alleged regular contacts
7 with the relevant bodies or persons in the Republic of Croatia, and go on
8 to claim that the intervention of Croatia was so intensive in the period
9 in question that it would be impossible to believe that the accused were
10 unaware of the existence of links and the involvement of the Republic of
11 Croatia in the Croatian-Muslim conflict. So the only thesis is indirect
12 conclusions, they can't have failed -- they can't have failed to do this
13 and that. It is true that Croatia was involved in the war in
14 Bosnia-Herzegovina, but it was involved in the war in which the
15 aggressor, the JNA, waged against Bosnia-Herzegovina and in which the
16 HVO, and later the BH Army, opposed this aggression, but not with the
17 intention to help one party to that conflict.
18 The Republic of Croatia is a necessary participant in this war,
19 but not a willing participant. There is no safety for the Republic of
20 Croatia as long as the un-safety in Bosnia-Herzegovina exists because
21 their mutual border is over 1.000 kilometres long. There is no safety
22 for Croatia while the JNA, or the Serbs, are attacking Bosnia-Herzegovina
23 but, simultaneously, they're also attacking Croatia with the same plan,
24 to conquer territories in both countries regardless of the border between
25 them. There is no safety for Croatia while it is a point of transit for

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1 the supply of Bosnia-Herzegovina, in general, for the supply of
2 humanitarian aid, and while 300.000 refugees from Bosnia-Herzegovina are

3 present in Croatia, to leave it at that.

4 All that shows that the Republic of Croatia is a necessary
5 participant in that war, but it isn't involved in the war of its own
6 will.

7 The Republic of Croatia is a subject and a victim in that war, if
8 it wishes that were not. It's not a result of will or the policy of
9 Croatia, it's a result of the acts of others; specifically, the
10 Yugoslav People's Army and the Serbs, which is beyond the control of
11 Croatia. The Republic of Croatia thus had a legitimate interest in the
12 situation in Bosnia-Herzegovina, and it was its duty to take measures to
13 prevent chaos, measures to put up a defence in Bosnia-Herzegovina, and
14 co-operation with the HVO to be able to defend its own territory; first
15 of all, the southern front, but also the Croatian Posavina,
16 Slavonski Brod, and other areas that were directly threatened or attacked
17 from the territory of Bosnia-Herzegovina.

18 I can refer to the testimony of General Praljak and that of
19 General Petkovic. In the case of General Petkovic, the transcript Page
20 is 49702 through 49704. The date is 18 February 2010. In Praljak's
21 case, the motives are even more obvious than in Petkovic's, but many
22 other people, just like General Praljak, also went to Bosnia-Herzegovina
23 to defend their native area.

24 It's a relevant question, whether Croatia had the intention to
25 help one party in one of the additional conflicts in Bosnia-Herzegovina;

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1 specifically, the conflict between the BH Army and the HVO, which came
2 about as a consequence of the aggression of the JNA. That was a conflict
3 that nobody planned or foresaw except, probably -- this is speculation
4 now -- except probably the JNA, which contributed to that conflict to
5 weaken the resistance that the BH Army and the HVO put up to prevent it
6 from achieving its objectives.

7 There is no evidence to indicate that General Praljak or any
8 other accused were in a position to know or foresee what the Republic of
9 Croatia, or the Presidency of Bosnia-Herzegovina, or the VRS, or the
10 international community, or anybody would do in the days or weeks to
11 come. All these I mentioned were players there, and nobody could know
12 what any of these players would do on the following day.

13 The Prosecution implicitly claims that General Praljak was so
14 much smarter than anybody else that he could know with certainty and he
15 could foresee future events which, by the way, nobody foresaw.

16 As for the awareness of the participants of the alleged
17 international armed conflict, the Defence reiterates that throughout the
18 conflicts -- sorry, throughout the alleged conflict or throughout the war
19 in Bosnia-Herzegovina in general, not one party, especially the
20 representative Bosnia-Herzegovina, never once publicly and unambiguously
21 stated that they see the other side, that is, Croatia and
22 Bosnia-Herzegovina, as an enemy, or not even as a rival. So there were
23 no two enemy countries, which is certainly a precondition for the
24 existence of an international armed conflict.

25 The political representatives of Bosnia-Herzegovina and the

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1 Republic of Croatia, and we have dealt with this extensively, had their
2 own positions which sometimes were not harmonised, but, simultaneously,
3 they participated in peace talks, patiently and very long, to find
4 acceptable solutions, and it was Croatia which was the first to sign any
5 solution that was offered, any plan.

6 About the Prosecution's claim that the accused certainly knew and
7 understood that Croatia was intensively involved in the conflict in BiH,
8 among others, because there were regular contacts with the relevant
9 bodies and persons in the Republic of Croatia, that is, based on the fact
10 that there were such contacts with bodies and persons in Croatia, the
11 Defence thinks it necessary to point out this information: The president
12 of BiH, Alija Izetbegovic, was President Tudjman's guest more often than
13 all these accused together, if they had a chance to ever meet
14 President Tudjman. We made this analysis based on all presidential
15 transcripts, both those that were admitted here and those that weren't,
16 and the result is always the same. Then we may draw the same conclusion
17 with regard to President Izetbegovic. He must have known what was going
18 on. He was with Tudjman all the time. So this Prosecution claim
19 certainly does not take us to the desired conclusion.
20 The Defence wishes to show by this that the mere existence of
21 contacts with Croatian officials is not sufficient ground for the
22 conclusion that there was a single-mindedness about something only
23 because there were contacts.
24 With regard to the claim that there was mens rea in
25 General Praljak with regard to the international armed conflict or, to

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1 quote paragraph 78 of their final brief, "his awareness of the
2 involvement of Croatia in the conflict in BiH."
3 [In English] The Prosecution has not made concrete efforts to
4 specifically contradict Praljak's assertions and the assertions of the
5 Praljak Defence. Regarding his motive to defend the people and state of
6 the BiH, the Prosecution does not point to the various quotes from
7 Praljak about his presence in BiH, the Banovina, et cetera, but it does
8 not actually make the argument that Praljak was not there to defend
9 against the Serbs, as the Defence asserted. We want to pose the
10 following question to the Bench: What does it mean if our assertions
11 with respect to Praljak's motive are correct? What does it mean if
12 Praljak was there to defend BiH and her people? The answer should
13 ultimately be, if our assertions are true, then this honourable Chamber
14 cannot find proof of the requisite mens rea beyond a reasonable doubt.
15 Then we should ask: Has the Prosecution proven that Praljak did not wish
16 to defend BiH and her people? Was there no threat? Did the JNA
17 aggression not exist? Does the Prosecution deny the role of the
18 JNA/VRS? Did Praljak lack a connection to BiH? Was he not born there?
19 Did his family not living there? Finally, we should ask: If there are
20 any doubt that had the HVO not been organised, the JNA would have killed
21 and victimised countless more BiH citizens? Does this not demonstrate
22 the motivation of Praljak and others like him more concretely than
23 twisted interpretations, cherry-picked evidence? In the very last
24 section of the Prosecution's oral argument last week, the Prosecution
25 asked the honourable Trial Chamber to render a judgement that would

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1 sanction the war, generally, in the judgement that would somehow prevent
2 future wars. At the heart of modern International Humanitarian Law is
3 the principle of autonomy between questions of jus in bello and jus ad
4 bellum. One aspect of that autonomy is that even if you do not agree
5 with the reasons a party participated in a conflict, that does not change
6 the criteria needed to prove a jus in bello violation.
7 To the Prosecution, every casualty is inculpatory. The
8 Prosecution, throughout the indictment, the trial, their final brief and

9 closing argument, refers to the killing and wounding of Bosnian Muslims
10 as though those tragedies were inherently criminal. Very frequently, no
11 evidence is given as to the combat status of the casualties. The only
12 possible deduction that can be made from this approach is that, to the
13 Prosecution, the principle of autonomy does not apply. By effectively
14 claiming that all tragedies are crimes, that all aid to the HVO was
15 criminal, the Prosecution seeks to functionally destroy the principle of
16 autonomy through pushing JCE theory to its outer-most extremes. Even if
17 the Prosecution alleges the HVO was somehow a bad actor with respect to
18 participating in a conflict, which would be a question of jus ad bellum,
19 the Prosecution must still prove specifically every element of alleged
20 violations of jus in bello. Unless the Prosecution could prove that the
21 casualty was connected to a crime, not just the tragedy of war, then the
22 fact of that casualty never should have been included in the indictment,
23 and evidence on those casualties should never have been led.
24 As Your Honours review the evidence, any evidence that shows the
25 ills of war, rather than a crime, must be pointedly disregarded, lest the

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1 Trial Chamber be seen to follow the Prosecution's lead in disregarding
2 the principle of autonomy between jus ad bellum and jus in bello. Such
3 disregard is not only contrary to law, it is extremely dangerous,
4 striking at the heart of the modern system of International Humanitarian
5 Law.

6 Just a moment, Your Honour.

7 Your Honour, because of the time, I will skip now one subject
8 which I planned to raise.

9 Okay, then I will not, sorry. I will not, because it will be
10 difficult to cover -- to cover all the details.

11 [Interpretation] Greater Croatia:

12 The Prosecution develops a thesis about an alleged plan of the
13 Republic of Croatia to create a Greater Croatia within its historical
14 borders, and essentially uses this thesis to explain the alleged motives
15 and political plans of the Republic of Croatia, on which then, logically,
16 a conclusion about the existence of a joint criminal enterprise can be
17 based, as well as in the context of an international armed conflict.
18 Thus, the Prosecution, in paragraphs 164 through 167, presents the
19 political discussions of the president of the Republic of Croatia,
20 Franjo Tudjman, which, according to the Prosecution, show the existence
21 of political and territorial claims of Croatia against the BiH.
22 It's interesting to note immediately that in these paragraphs,
23 the Prosecutor refers to the discussions of the Croatian political
24 leaders that were held on the 8th of June, 1991, and the
25 27th of December, 1991, which is significantly earlier than the moment at

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1 which Bosnia-Herzegovina became a sovereign state, or just to be aware of
2 the period, at the time when the break-up of the previous joint state of
3 Yugoslavia began. This argument of the Prosecution is obviously
4 irrelevant. Namely, these were the talks which President Tudjman had
5 with his close associates at the time when the SFRY was breaking up, and
6 neither the Republic of Croatia nor Bosnia-Herzegovina were, as yet,
7 independent states. The SFRY was still in existence. So were the
8 republics, the future independent states. All possible scenarios and
9 options were considered.

10 To provide the context of the thesis, I recall that the JNA,
11 together with the local Serbs, occupied almost one-third of the territory

12 of the Republic of Croatia in late 1991, and the war in Bosnia and
13 Herzegovina had not broken out as yet, although it was quite certain that
14 it would.

15 The Prosecution simply ignores the fact that what follow after
16 such discussions or thoughts which politicians expressed out loud, were
17 specific actions. Thus, after such talks in March 1992, Tudjman and the
18 HDZ took some specific steps to stimulate the Croats in the BiH to cast
19 their votes at the referendum on the independence of BiH and to vote in
20 favour of independence, that is to say, the creation of the new state of
21 BiH, which I already mentioned.

22 Therefore, considering possible political options or moves of the
23 Republic of Croatia at this stage - that was the stage of the break-up of
24 the Yugoslavia - resulted in the position that a contribution ought to be
25 made to the creation of the new and independent state of

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1 Bosnia-Herzegovina, and this is a fact.

2 Considering political options or the possibilities which are at
3 the disposal of a republic in relation to the federal Republic of
4 Yugoslavia and other republics, under the circumstances of the break-up
5 of the SFRY, is not just a legitimate right of the political leadership
6 of a country, but also their duty; namely, to ascertain all the existing
7 options and to select the one which is in the interest of this country.

8 After the independent BiH was declared, there was not a single
9 occasion on which the Croatian political leadership considered any
10 options that would include a break-up of BiH or a change of the exterior
11 borders of the BiH. Quite the contrary, when Izetbegovic offered to
12 Tudjman to annex a part of the BiH territory, Tudjman refused that
13 because he knew that this was not a solution, considering a series of new
14 circumstances.

15 The political leadership of the Republic of Croatia discussed a
16 peaceful resolution to the war in BiH, which is, of course, quite
17 legitimate because the BiH is a neighbouring country, and the
18 Republic of Croatia cannot have any security without a stable
19 Bosnia-Herzegovina.

20 In the talks which were conducted at the time after the
21 referendum, what was discussed was an internal division or internal
22 configuration of Bosnia-Herzegovina, the various forms of a possible
23 confederate Bosnia-Herzegovina or cantons, as we've often heard. Such
24 initiatives also came from international mediators. The proposals for
25 such a solution within Bosnia-Herzegovina were included in all peace

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1 plans, from the so-called Cutileiro Plan, to the Vance-Owen Plan, the
2 Owen-Stoltenberg Plan, and to the Dayton Accords, which eventually did
3 include one such solution. However, the Prosecution interprets such
4 discussions, which can be found in various presidential transcripts that
5 we have seen during the trial, as something that demonstrates the
6 intention of the Republic of Croatia to divide Bosnia and Herzegovina.
7 This is a thesis, and other options are simply not considered. However,
8 this interpretation is completely wrong, because this division has to do
9 only with the modus of the internal configuration and system of
10 government within Bosnia-Herzegovina.

11 Why was the Republic of Croatia actively involved in this issue?

12 It was not just the political interest of the Republic of Croatia,
13 considering its security, as I already noted. There was also the
14 insistence on part of the Western countries that the Republic of Croatia,

15 that is to say, President Tudjman, by his personal authority which he
16 enjoyed among the Croats in Bosnia-Herzegovina, should influence them to
17 accept the Western countries' proposed solutions or ideas, should the
18 president of the Republic of Croatia have refused the requests of
19 international officials and let the situation in Bosnia-Herzegovina
20 develop without any attempt to find solutions acceptable to the peoples
21 of Bosnia-Herzegovina.
22 In paragraphs 177 through 206, the Prosecution presents arguments
23 about the presence of the Croatian Army in Bosnia-Herzegovina. In spite
24 of an extremely creative interpretation of evidence, the Prosecution has
25 not managed to indicate a single direct piece of evidence which would

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1 undoubtedly demonstrate that a particular unit of the Croatian Army was
2 present in Bosnia-Herzegovina and engaged in combat with the
3 Army of Bosnia-Herzegovina. The Prosecution has not presented such
4 evidence, simply because such evidence does not exist, because this never
5 happened.
6 The Prosecution completely disregards the fact that the HVO was a
7 component of the defence forces of BiH. The Prosecutor also completely
8 disregards the fact that there is no single piece of evidence
9 demonstrating that the HV units participated in combat against the ABiH.
10 The Prosecution also completely disregards the fact that there were much
11 more members of the Croatian Army who were members of the ABiH rather
12 than of HVO, which is shown by the analysis of all documents providing
13 data about the volunteers who left the Republic of Croatia in order to
14 enlist with the HVO in the beginning, and then later on, when the Army of
15 Bosnia-Herzegovina was formed, they transferred into that army because
16 there were ethnic Muslims and this was an army which defended the BiH
17 from JNA, just like the HVO did. However, this requests a bit of
18 analysis of all documents, and there are many documents, and numbers can
19 be drawn from them.
20 There is no doubt that the president, Franjo Tudjman, had a
21 political influence on the Croatian community in Bosnia-Herzegovina and
22 the HVO. It's natural and logical. The Croats in Bosnia-Herzegovina
23 were aware that the interests of the Republic of Croatia and the Croats
24 in Bosnia-Herzegovina were identical. Everyone knew that the priority
25 was to defend themselves against the Serbian aggression, and that was

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1 also the interest of the Muslim leadership. To defend oneself against
2 the Serbian aggression meant defending the battle-field; that is to say,
3 the territories in both the Republic of Croatia and the Republic of
4 Bosnia-Herzegovina. The aggressor was trying to occupy the areas which
5 were covered by his plan, regardless of the existence of the borders
6 between Bosnia-Herzegovina and the Republic of Croatia. Therefore, this
7 fact does not allow one to find some hidden motives that the Republic of
8 Croatia had to take a part of Bosnia-Herzegovina and then draw from that
9 conclusion that the Republic of Croatia assisted the HVO in its conflict
10 with the Army of Bosnia-Herzegovina.
11 I would now also like to deal with the existence of occupation,
12 as the Prosecution claims in its final brief.
13 The introduction:
14 [In English] With respect to the alleged culpability of
15 Slobodan Praljak, due to the alleged occupation of parts of
16 Bosnia-Herzegovina by Croatia, the Prosecution errs in their legal and
17 factual analysis. Before examining those errors in detail, I would like

18 to pause a moment and reflect on what the Prosecution is asking the
19 Trial Chamber to say, from the perspective of an ordinary citizen of BiH.
20 To the family of the volunteer who was born in Bosnia and
21 Herzegovina, whose multi-ethnic family is from Bosnia-Herzegovina, who
22 took note of the Serbian aggression threatening their family and their
23 community, who voted in local elections in which the local HDZ-BiH party
24 won, who volunteered in one of the local multi-ethnic armed forces of
25 Bosnia-Herzegovina, who fought and died protecting their family from the

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1 Serb aggression, to the family of that fallen veteran the Prosecution
2 would have this Trial Chamber say, Your son was an occupier, he is merely
3 part of a foreign -- he was merely part of a foreign occupation of
4 Bosnia-Herzegovina. If he happened to volunteer for the HVO, then he was
5 Croatian occupier. It does not matter if he has never been to Croatia,
6 for example. It does not matter if he or his family is ethnically Muslim
7 or Croatian or mixed. It does not matter if his municipal force fought
8 purely for the defence of his municipality, was organised and paid
9 locally, and paid little regard to the orders from above the municipal
10 level. It does not matter what he thought, or who he fought, or how he
11 died, even if his only intent until his end was merely the defence of his
12 own village, or perhaps a little bit broader, his municipality, from the
13 Serb aggression, of course.

14 The Prosecution would have Your Honours say because the evils
15 that occur in war must be pinned on someone, and because the law and
16 common sense are so malleable to some, your son must be found in a
17 criminal court to be an occupier. Thousands like him must be considered
18 foreign occupiers of their own land, the land they died for, the land
19 they now lay beneath. Your Honours, this is not a reasonable thing for
20 the Prosecution to ask you to say.

21 If the same son, or his brother in a neighbouring village, had
22 happened to volunteer for the ABiH rather than the HVO, he would not be
23 branded as a foreign occupier by the Prosecution, despite of the foreign
24 arms, despite of the foreign soldiers, despite the foreign influence upon
25 the ABiH. And the Prosecution is right not to label the ABiH a foreign

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1 occupier, despite all of this. But the Prosecution is wrong to label the
2 dead veterans of Bosnia and Herzegovina occupiers if they happen to
3 volunteer for the armed forces of Bosnia-Herzegovina, whom they do not
4 favour at this particular trial. And we, of course, know who the
5 Prosecutor does not favour.

6 I think this is also errors of law. The Prosecution errs with
7 regard to the law. It effectively assumes that because, in their
8 mistaken opinion, they have demonstrated international armed conflict.
9 They have also established foreign armed occupation in Croatia at the
10 time and places where the alleged crimes occurred. This is a clear
11 error. The existence of an international armed conflict and the
12 existence of an occupation are separate questions.

13 In the Naletilic trial judgement, paragraph 214, it is
14 established that the further degree of control, then overall control, is
15 required to establish occupation. In paragraph 218, it establishes that
16 the Prosecution must prove beyond all reasonable doubt that the foreign
17 power had actual control and actual authority at the relevant times and
18 places. Influence is not merely sufficient.

19 The Praljak Defence respectfully submits that the Government of
20 the Republic of Croatia may have had a certain influence on both the ABiH

21 and the HVO, given its aid to both, but the Republic of Croatia did not
22 occupy Bosnia and Herzegovina through the HVO or, for that matter,
23 through the ABiH.
24 The Prosecution relies on a dissenting opinion at the
25 International Court of Justice, Korman's separate and dissenting opinion

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1 in the Republic of Congo versus Uganda.
2 International law, as reflected in the actual judgements of the
3 International Court of Justice, applies stricter requirements than the
4 dissenting opinion the Prosecution relies on. In the cited case,
5 Congo versus Uganda, 205, paragraph 177, the ICJ held that either the
6 state needs to have effective control over rebel groups or it needs to
7 have direct effective control, itself, over the area. This is the proper
8 standard. The HVO must be proved to have been effectively identical to
9 the Croatian Army in terms of the Croatian Government's control. This
10 cannot be proven because it was not true.
11 The Praljak Defence respectfully refers the Trial Chamber to
12 other important rulings on state responsibility and control of domestic
13 armed forces, including the case Nicaragua versus the United States and
14 Bosnia-Herzegovina versus Serbia and Montenegro.
15 There are severe consequence if this Trial Chamber continues the
16 fragmentation of International Law encouraged by the Prosecution.
17 As recognised by the International Law Commission in their 2006
18 report on the fragmentation of International Law, on Page 36, such
19 fragmentation reduces legal security by making the law unpredictable and
20 reduces justice because the rights of individuals depends on which
21 jurisdiction is enforcing those rights.
22 It is also important to emphasise the clear legal requirement
23 that the Prosecution avoids, that in situations where fighting is still
24 ongoing, the law of occupation does not apply. This will be addressed as
25 I now turn to the Prosecution's errors of fact.

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1 The Prosecution erred with respect to the application of law to
2 the facts of this case. It is characteristic of the Prosecution's
3 approach that their final brief does not even plainly explain who the
4 alleged occupying power is. One searches their final brief in vain for a
5 clear phrase such as would be "the Republic of Croatia occupied
6 Herzegovina." Perhaps it is embarrassing to actually enumerate the
7 words. In any case, this implied, but never properly alleged, statement
8 is clearly unproven.
9 The Prosecution's factual analysis is based on two criteria for
10 which, incidentally, it provides no citation in support. The first
11 criterion is that the occupying power has rendered the occupied
12 authorities incapable of functioning publicly or of controlling the area.
13 This criterion happens to be the same as the first guide-line in
14 Naletilic. Most of those guide-lines the Prosecution ignores because
15 they do not support their allegations and they certainly cannot proven
16 them. The second criterion is that the occupying power is in a position
17 to exercise its authority over the territory. An objective application
18 of the Prosecution's own criteria demonstrates that the Prosecution's
19 assertion that Croatia occupied Bosnia-Herzegovina is in error. It
20 certainly has not proven that Croatia occupied Bosnia-Herzegovina
21 throughout the relevant time and did so everywhere where crimes were
22 allegedly committed.
23 With respect to the first criterion, that the occupying power has

24 rendered the occupation authorities incapable of functioning publicly or
25 of controlling the area, a few observations must be made.

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1 If we, only for the sake of discussion, imagine that the
2 Republic of Croatia actually occupied certain territory, the question
3 would be: Who are the occupied authorities that were rendered incapable
4 of functioning? As said earlier, there were no functioning governmental
5 authorities in the area. The HVO organised and gained local authority
6 primarily because there was no effective government at all. The
7 Prosecution, in fact, simply presumes that since the HVO established some
8 control over certain territory within BiH borders, that it is -- that
9 this territory was governed until then by the Sarajevo government before
10 being taken over by the HVO. Your Honours, this presumption is wrong.
11 There was no functioning governmental structure of BiH in those areas.
12 The old socialist government ceased to exist or function. The new
13 independent BiH government was not able to impose any real functional
14 governance.
15 The Prosecution characteristically assumes, without any actual
16 facts or analysis, that for any particular municipality, the elected HVO
17 government and multi-ethnic municipal defence force is the occupying
18 power. Similarly, the party that lost the municipal elections and which
19 actively discriminated against ethnic Croats is the, quote, "occupied
20 power."
21 The Praljak Defence respectfully submits that the elected HVO
22 municipal governments, the municipal defence forces, and the institutions
23 set up to co-ordinate between them, as best as could be managed, cannot
24 be considered an occupying power. They were domestic, and domestic
25 organisations do not occupy. Simple as that.

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1 It is worth bearing in mind that Slobodan Praljak was a member of
2 both the Army of Bosnia and Herzegovina and the HVO. You have seen the
3 evidence. One might ask whether the Prosecution assumes he was somehow
4 occupying, himself, just as the local volunteers were apparently staging
5 a foreign occupation of their own homes. The power of the HVO did not
6 spring from foreign invasion by Croatia, as would happen in an
7 occupation. It sprang from local grassroots efforts to
8 manage [indiscernible].
9 With respect to erroneous suggestion that Croatia caused the
10 Sarajevo government incapacity of functioning publicly or controlling the
11 area, the Praljak Defence respectfully submits that, but for Croatia, the
12 Sarajevo government would not have even retained the municipality --
13 quote, "municipality of Sarajevo," de facto power it retained during the
14 conflict -- the only de facto power it retained during the conflict.
15 Without Croatia's active support, the Sarajevo government would have been
16 entirely overrun. Croatia was the anti-occupier of Bosnia and
17 Herzegovina in the face of the very real Serb aggression. Any capacity
18 the Sarajevo government had in the face of the Serbian onslaught was
19 primarily because the Croatian Government provided and facilitated aid to
20 the two co-equal BiH defence forces, the ABiH and the HVO. If one is
21 desperate to establish the cause of the Sarajevo government's incapacity,
22 the evidence clearly points away from Zagreb. There are obvious causes
23 for the Sarajevo government's incapacity conspicuously absent from the
24 Prosecution's blinkered focus on Zagreb. The Sarajevo government lacked
25 capacity because of Belgrade, not because of Zagreb. The Sarajevo

1 government lacked capacity because of its own failings and
2 ethnically-biased policies. The Sarajevo government lacked capacity
3 because the international community put it under an embargo and stood by
4 while the Serbian aggression continued.
5 The suggestion that the Republic of Croatia occupied
6 Bosnia and Herzegovina at the same time that it armed and aided
7 Bosnia-Herzegovina, should be disregarded as absurd.
8 Similarly, even if the Prosecution proved, which it did not, that
9 the HVO was functionally identical to the Croatian Army, which it
10 certainly has not, does the Prosecution seriously suggest that if the
11 local Bosnian HVO units had not formed, those areas would not have been
12 overrun by the JNA or VRS? Had the HVO disbanded at any point, the ABiH
13 would have been entirely overwhelmed by the JNA/VRS. The HVO was part of
14 the BiH armed forces. This is proven, for example, by Exhibits 1D507,
15 2D628, 4D410, and others. The HVO saved BiH from being overrun. It did
16 not occupy the country it saved.
17 With respect to the second criterion identified by the
18 Prosecution, that the so-called occupying power is in a position to
19 exercise its authority over the territory, the Praljak Defence
20 respectfully submits that the Prosecution simply assumes, without proof,
21 without proof, that because the Sarajevo government was incapable, the
22 Republic of Croatia must have had clear command and control of all areas
23 and at all times where the alleged crimes occurred. One does not follow
24 from the other. Just because the Sarajevo government may have been
25 incapable at times does not mean that the Republic of Croatia was in the

1 position to exercise its authority over the territory at the relevant
2 places and times. Had the Prosecution intended to proven this fact,
3 rather than assume it, the Prosecution should have proven at least two
4 facts in each situation. First, the Prosecution should have proven that
5 there was no fighting in the supposedly occupied territory not only
6 between the ABiH and HVO, but also between HVO and JNA. It is not the
7 responsibility of the Praljak Defence to demonstrate ongoing fighting,
8 although it has. Rather, it is the obligation of the Prosecution to show
9 that fighting has ceased in the areas it asserts were occupied.
10 The JNA/VRS never stopped fighting. Many of the crimes alleged
11 occurred when the ABiH attacks upon the HVO were intense. The
12 Prosecution tends to assume conflict between the ABiH and the HVO as the
13 norm, despite the obvious contradiction between that assumption and the
14 assumption that there was no conflict and that the HVO was occupying in a
15 conflict-free environment. The Prosecution failed to specifically allege
16 or prove there was no fighting at the time crimes -- at the time crimes
17 were allegedly committed. Accordingly, the Prosecution failed to prove
18 occupation.
19 Second, the Prosecution must prove that there was an unbroken
20 chain of effective control between the Government of the Republic of
21 Croatia to the leadership of the HVO, to the municipal governments who,
22 themselves, were in position to exercise authority over the territory.
23 Only then would the so-called occupying power of Croatia be able to
24 exercise authority over the territory. Every link in that chain is
25 broken. Influence is not command. The Republic of Croatia influenced

1 but did not control the leadership of the HVO. The municipal forces

2 co-operated with the top HVO leadership only when they wished to. It was
3 not a formal, professional military with effective command, control and
4 communication. The municipal governments, themselves, only had spotty,
5 irregular, partial control over the essentially chaotic situation. There
6 was no occupation here.

7 Conclusion:

8 Finally, the Praljak Defence must respectfully ask what this
9 question has to do with General Slobodan Praljak. Slobodan Praljak was
10 not king of the allegedly occupied areas. He has no criminal liability
11 for the periods outside of his military command. During his brief period
12 of military command, his forces were stretched to the utmost along the
13 confrontation line, and he had no effective control outside where he was
14 present. To place an operationally front-line commander under a regime
15 of effective strict liability for anywhere the ABiH and JNA had not
16 overrun would be an absurd abuse of criminal law. The Trial Chamber
17 should resist the Prosecution efforts to push the law in this direction.
18 Whether from the perspective of the individual Bosnian soldier,
19 defamed as a foreign occupier, or the perspective of a volunteer member
20 of both the HVO and the ABiH, who briefly served as a commander on the
21 front-lines, or from the grand questions of state responsibility, the
22 Praljak Defence respectfully submits that factual findings with respect
23 to the subject of occupation must be approached with extreme caution.
24 This is not only due to principles of the presumptions of innocence or in
25 dubio pro reo. This Trial Chamber may reasonably ask itself whether the

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1 Prosecution is, in effect, putting the Republic of Croatia on trial
2 without allowing this state to represent itself. This is a Tribunal
3 charged with evaluating criminal culpability of natural persons, not the
4 responsibilities of the states. It is designed to evaluate whether the
5 Prosecution has proved a specific theory of individual criminal
6 responsibility over specifically alleged crimes, not to ratify,
7 broad-brush, historical generalisations which may be convenient, for
8 technical legal reasons, for those willing to bend the law to the desired
9 outcome.
10 In this setting, if the Prosecution wishes to allege occupation,
11 its allegation must be specific, and its proof must be iron-clad.
12 Instead, the Prosecution asks this Trial Chamber to transform itself into
13 a tribunal concerned with the responsibility of states based on rogue
14 assertions and mostly unidentified flimsy evidence. The Prosecution asks
15 too much of the Trial Chamber. It has failed to prove the alleged
16 occupation of Bosnia and Herzegovina and the international armed conflict
17 and occupation by Republic of Croatia. It has certainly failed to prove
18 any derivative criminal culpability of Slobodan Praljak from his false
19 allegation of a foreign occupation. The Prosecution's allegations with
20 respect to occupation and international armed conflict should be
21 discarded.
22 Your Honour, if you will allow us, my partner, Ms. Pinter, will
23 now continue. And then, on the end, Mr. Praljak would use his 30 minutes
24 as granted. And if you -- by your leave, we would decide on whether
25 General Praljak will start today or on Monday. Probably, I think it

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1 would be Monday, not to pressure the things, but we'll see as the day
2 will develop.
3 Thank you so much.
4 MS. PINTER: [Interpretation] Good morning, Your Honours. Good

5 morning to everybody in the courtroom and around the courtroom.
6 As Mr. Kovacic has said, in my part of the closing arguments I
7 will analyse the Prosecution final brief. I will point out the
8 Prosecution's erroneous interpretations and the paragraphs of their final
9 brief that contain false allegations about the contents of documents,
10 based on which these allegations are made, and the allegations which the
11 Prosecution puts forward, based on quotes outside of a context, which all
12 result in misrepresentation of the facts.
13 I can only agree with the Prosecution in one thing, and that is
14 their own assessment that they have not presented their case so well,
15 because the Prosecution totally neglects the fact that the acts of which
16 General Praljak is accused happened during a war, and the war presupposes
17 at least two armed forces in conflict. General Praljak, who was the head
18 of the Main Staff of the HVO, didn't wage war on the Muslim population,
19 but with the BH Army.
20 About what war is, and what it does to people, and how people
21 change in war, we see what Rudy Gerritsen says in 3D991. The acts,
22 possibilities, and the words of General Praljak must be assessed in
23 accordance with that.
24 The document reference is 3D991.
25 I wish to point out the wrong interpretation of the

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1 Praljak Defence final brief.
2 The Defence, never once, in its final brief or throughout the
3 trial, accepted the existence of a JCE. On the contrary, the first
4 sentence of the Defence final brief is the statement that there's no such
5 thing as a JCE, or there was no such thing.
6 The Defence never assumed the role of the Prosecutor and never
7 pointed their finger at the co-accused or any other persons, shifting the
8 blame on them.
9 The Defence replied to the paragraphs of the indictment and
10 pointed to documents which challenge the allegations in those paragraphs.
11 If a paragraph of the indictment states that the authorities of the HZ-HB
12 are responsible, according to the Prosecution, the Defence replied to
13 that position of the Prosecution.
14 The Defence founded its claim that General Praljak is not
15 responsible on documents, rather than pointing their fingers at -- their
16 finger at persons, which everybody was able to read in our final brief.
17 General Praljak, in his testimony, never said that either Dr. Prlic or
18 civilians were responsible for caps.
19 And now I'll move on to the analysis of the individual paragraphs
20 that referred to General Praljak, but I must immediately add that in this
21 short time, I cannot deal with each and every paragraph, although each
22 and every paragraph certainly deserves a very close review and analysis.
23 In paragraph 42, the Prosecution implies that Praljak ordered
24 that prisoners be withdrawn from labour on the day when he spoke to the
25 representative of an international organisation, but immediately after

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1 that conversation, the prisoners were returned to continue labour. This
2 is about Prozor. Siljeg, the commander of the operative zone, on
3 8 September 1993, ordered that prisoners be used in that way, and Praljak
4 supposedly did nothing to make sure that this doesn't happen. The
5 Prosecution, in this respect, cite P4256. This is a document dated
6 17 August 1993, although at the top of the Page there's a note that it
7 was sent by fax on 15 August 1993; in other words, two days before it was

8 created. There is no mention in that document that the author of the
9 document in any way spoke to General Praljak about the topic of forced
10 labour. The Prosecution merely speculates that General Praljak's order,
11 dated 17 August 1993, is a consequence of his meeting with the author of
12 the document, and that, therefore, cannot be valid ground for any court
13 decision or an assessment of General Praljak's personality.
14 The next document is P4517, and it does not show that the author
15 of the document spoke to General Praljak and acquainted him with the fact
16 that prisoners have to do labour. The author of the report does not
17 point out the status of the prisoners. The Trial Chamber has not seen
18 evidence about the status of the detainees, whether they were prisoners
19 of war, or detained persons, remand prisoners, military conscripts who
20 have been isolated, civilians, or HVO members, and the status of the
21 persons who did labour is important for the legal qualification.
22 P9736 is another document that was supposed to corroborate the
23 allegations of paragraph 42. This is a list of persons who worked, but
24 the only information the Trial Chamber can draw from this document is
25 that 20 persons worked at Jurici, and that a Muslim was in charge of

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1 these persons, and it was this Muslim who also filed a report about this
2 event. What kind of labour this is about, we don't know. There is no
3 evidence that on 1 September 1993, when the document was created, there
4 were any military operations in or around Jurici.
5 The following document that was supposed to corroborate the
6 allegations of paragraph 42 is P4877. In no way does this document
7 indicate that Siljeg's order was passed pursuant to General Praljak's
8 order, nor that this document was forwarded to the Main Staff of the HVO.
9 So how can you say that General Praljak must have known about the
10 prisoners' or detainees' work?
11 Document P4235, according to the Prosecution, proves that they
12 had to use Muslims because of problems with mobilising Croats. This
13 conclusion of the Prosecution is false. No evidence has been led that
14 unambiguously shows that General Praljak, A, ordered, B, condoned, C,
15 knew and failed to react to the fact that prisoners or detainees had to
16 do work. In his testimony, General Praljak never said that any prisoner
17 or detainee is allowed to work, nor did he say that about BH Army members
18 who were taken prisoner.
19 The following paragraph is 211. I would also give the reference
20 to transcript Page 51952, where the Prosecution alleges that Praljak lied
21 with regard to the agreement with Izetbegovic and the agreement about
22 re-subordination in connection with the decision of 15 January 1993,
23 which has the working title, "The Ultimatum of 15 January 1993." The
24 Prosecution failed to show evidence for the allegation that
25 General Praljak lied. They only say that it isn't really likely that

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1 this was an oral agreement. The Prosecution says that Izetbegovic called
2 it a potential misunderstanding which supposedly proves that
3 General Praljak lies.
4 The Defence would like to draw the Trial Chamber's attention to
5 document P1158. It's dated 15 January 1993. These are the minutes from
6 the office of President Tudjman. The Prosecution also cites these
7 minutes, but what is important, with regard to General Praljak and his
8 testimony here, can be found on Page 20 of the English translation, where
9 Gojko Susak addresses Alija Izetbegovic about talks, about
10 re-subordination, and the reasons why he was changing his mind. I'm sure

11 that the Trial Chamber will read these minutes and not be satisfied with
12 the fragments that the Prosecution offers.
13 Paragraph 233: Among other things, the Prosecution here claims
14 that Susak threatened Izetbegovic and said that BiH would not get weapons
15 unless Izetbegovic signs the statement. They cite document P1739 and
16 Page 26 and 27 in these minutes. There's nothing in these minutes about
17 hostility toward the Muslims. What can be seen in these minutes is the
18 fact that Praljak, in Bosnia-Herzegovina, with the knowledge and approval
19 of Mr. Izetbegovic -- that Praljak is in Bosnia-Herzegovina. The
20 documents show that Jaganjac and Praljak are together in
21 Bosnia-Herzegovina, that they held meetings and tried to calm down the
22 situation to prevent a conflict between allies. They are reducing
23 tensions. Praljak had done that since late October 1992, while he was in
24 and around Prozor, Vakuf and Travnik. We also mention this in our final
25 brief.

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1 With regard to the threat, according to the Prosecution, I must
2 say that the threat was not about signing the agreement on
3 re-subordination, but about Konjic, which can be seen from P1739 again.
4 At that time, attacks on the HVO started in Konjic, and on 20 March 1993
5 the representatives of the BH Army strike an agreement that they don't
6 want to be together with the HVO again. The document reference is
7 2D00253.
8 In paragraph 242, which refers to the second ultimatum of
9 15 April 1993, the Prosecution cite document P1942, dated 19 April 1993.
10 This exhibit was led through Witness Okun, and I would like to point out
11 the conclusion of that document, which says:
12 "The situation is critical, and while the highest -- or before
13 the highest civilian authorities in BiH take action to resolve the
14 situation, there can be no hope of a peaceful solution in the near
15 future."
16 Document P2458, which is the Mazowiecki report of 19 May 1993,
17 under item 7, says:
18 "The strategic importance of the Lasva Valley, in accordance to
19 the planned Province 10, Croatian majority administrative centre in
20 Travnik, the Muslims are not willing to accept that."
21 So the documents of the Prosecution side show that the peace
22 between the Muslims and the Croats depended on the Muslims.
23 "The displacement of Bosnian Croats orchestrated by Tadjman,"
24 that's the heading from the final brief of the Prosecution. In
25 paragraph 262 through 293, they deal with this. My learned friend

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1 Mr. Karnavas dealt with this topic and analysed the witnesses. I want to
2 analyse the documents on which the Prosecution base their allegations.
3 Paragraph 276 through 292 speak about the HVO propaganda
4 that Muslim crimes have been committed, whereas reports from the ground
5 state that there has been a little bit of firing, with few casualties.
6 Reports speak that thousands of Croats from Travnik were being
7 transferred at night and clandestinely. There's a footnote reference to
8 Azra Krajsek. The transcript Page is 20114, and it says that nobody
9 confirmed having seen any Mujahedin. But the UN reports, the reports of
10 observers and other documents, clearly show that Mujahedins did very much
11 take part in the operation.
12 Witness Filipovic, upon the questions of Judge Antonetti,
13 confirmed their presence, and the transcript Page is 47561 and the

14 following, as well as 47 -- sorry.

15 THE INTERPRETER: Interpreter's correction: 47561, line 2

16 through line 21.

17 MS. PINTER: [Interpretation] The relevant documents are 2D1407;

18 2D1262; P6697, Page 7, paragraphs 29 and 30; 3D1914; 4D597; 3D331. And I

19 repeat the number that wasn't recorded, 2D1407.

20 The consequences of defensive activities of the BH Army were the

21 following: The fall of Bugojno and a river of Croats who had fled

22 Bugojno and, before that, the Croats who had fled Kakanj and Travnik.

23 They didn't come to Prozor, or Rama, or Vares, and later to Herzegovina,

24 because that was a result of propaganda, but they were saving their bare

25 lives, which was also described by Witness Filipovic. The Prosecution

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1 mention Filipovic's answer in paragraph 292. However, the answer that

2 the Prosecution cite to confirm their thesis is Filipovic's answer to the

3 question about document 4D567, which was recorded on Page 47556. That's

4 a map which was showed to him depicting the situation in November 1993

5 and the refugees. General Filipovic's answer was:

6 "Don't abandon your homes unless your lives are in danger."

7 General Filipovic's answer to the question -- to that question

8 cannot be a plausible argument for the Prosecution and can by no means be

9 linked to the retreat of the Croats due to propaganda and orchestrated

10 reverse ethnic cleansing.

11 Starting from June 1993, during the BH Army offensive, the

12 population of Croats in Travnik was reduced by 20.000; in Kakanj, by

13 15.000 [Realtime transcript read in error "20.000"]; in Bugojno, by

14 15.000. The Croats didn't leave Central Bosnia to implement the policy

15 of the JCE, but due to the fierce offensive of the BH Army against areas

16 inhabited by Croats. The fear of the BH Army and its operations, rather

17 than the HVO propaganda, caused the escape of the Croats.

18 And I would like to correct what has been recorded. The figure

19 for Kakanj was 15.000.

20 The Croats did not leave Travnik, Kakanj, Bugojno and Vares of

21 their own free will. They were saving their lives, escaping before the

22 attacks of the BH Army, not to implement Franjo Tudjman's and

23 Slobodan Praljak's objective, which would also be their own objective,

24 because if they were leaving of their own free will, then they would also

25 be protagonists of the JCE. The evidence shows something else, though:

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1 Exhibit 1D1654, the third amended indictment in the Hadzihasanovic case,
2 P3337, 3D837, 3D1731, 2D1407, 3D2632, 3D2775.

3 With regard to that part of the final brief of the Prosecution

4 about Ljubuski, Stolac and Capljina, I would like to point to

5 paragraph 353 and an allegation in it about the establishment of Croatian

6 rule, language, school curriculums, and flying the Croatian flag. This

7 is a description of the conduct of the HVO toward the Muslims, and it's

8 about Croat-isation.

9 Let me first say that the flag in question was not the flag of

10 the Republic of Croatia. It was the flag of the Croatian people in

11 Bosnia-Herzegovina. I would like to draw the Chamber's attention to

12 document 3D3228, "Hercegovacki Vojnik," or "Herzegovinian Soldier." That

13 was a publication of the 4th Corps BH Army from February 1993. The

14 document number is 3228. The document describes the events of 1993, the

15 shelling of Mostar and Stolac; 23 January 1993, Stolac shelled by VRS; 24

16 January 1993, Stolac shelled by VRS; 1 February, attacks on Stolac, over

17 500 shells fired on the lines and 20 on the town of Stolac; 2 February
18 1993, a continuation of the attack on Stolac. They were able to defend
19 Stolac together with the HVO. That's what the publication says. They
20 also mention Pocitelj and 12.000 civilians who were transferred. We
21 listened -- we heard about that during the trial. Fierce fighting
22 ensued, and on Bajram the lily flag flew from the mosque. Luburic, a
23 Croat, brought the first lilies. That's what the 4th Corps says. I
24 kindly ask the Trial Chamber to review this document, too, when it
25 analyses the testimonies of the witnesses in this Trial Chamber about the

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1 HVO attacking Stolac, shelling it, destroying it, and Croat-ising it.
2 Your Honours, I will now move on to the criminal responsibilities
3 of Slobodan Praljak from Chapter 11 of the Prosecution final brief, so
4 this may be a convenient moment for a break.
5 JUDGE ANTONETTI: [Interpretation] Yes, we're going to break for
6 20 minutes.
7 --- Recess taken at 10.30 a.m.
8 --- On resuming at 10.53 a.m.
9 JUDGE ANTONETTI: [No interpretation]
10 MS. PINTER: [Interpretation] Thank you, Your Honours.
11 I stopped at the criminal responsibility of General Praljak,
12 which is described in Chapter 11 of the Prosecution final brief, and the
13 paragraphs are 614 through 860. I will only discuss the elements which I
14 believe are important.
15 In paragraph 649, the Prosecution claims that the
16 Convicts Battalion was also known under the title ATG Tuta and that
17 General Praljak commanded the Convicts Battalion. The claim is supported
18 with P4134 and 4131. However, considering the ATG Tuta and the
19 Convicts Battalion as one and the same is something that the Prosecution
20 also states in paragraph 296 of the final brief.
21 The documents do not confirm that it's possible to consider the
22 Convicts Battalion and the ATG Tuta as one and the same. Not a single
23 piece of evidence originating from the time when General Praljak was the
24 commander of the Main Staff of the HVO indicate that, by his orders, he
25 issued any task to the Convicts Battalion. The Prosecution has not

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1 presented evidence that would demonstrate that the Convicts Battalion was
2 in Rastani on the orders of the Main Staff of the HVO, nor did it present
3 a single piece of evidence which would rebut the Defence claim that
4 Mladen Naletilic was not the commander of the ATG Tuta. On the contrary,
5 Exhibit 4D01356 is an interview with Ivan Andabak, who confirmed that the
6 Convicts Battalion, when it was engaged in war in the Croatian Community
7 of Herceg-Bosna, was only subordinated to Mate Boban, and evidence to the
8 contrary has not been presented to the Court.
9 In the document P05226, and the date is the 20th of September,
10 1993, a letter of the chief of Security Sector of the Defence Department,
11 addressed to Mate Boban and concerning a serious incident caused by the
12 members of the Convicts Battalion, it is noted that the convicts --
13 THE INTERPRETER: Interpreter's correction.
14 MS. PINTER: [Interpretation] If the Convicts Battalion was under
15 the command of the Main Staff of the HVO, then this letter would have
16 been addressed to the Main Staff of the HVO, rather than to Mate Boban.
17 If the chief of the Security Sector had been under the command of the
18 Main Staff of the HVO, i.e., Slobodan Praljak, then he would have
19 addressed the letter to Slobodan Praljak, as his commander, rather than

20 write to Mate Boban, side-stepping his own commander. The Main Staff
21 never received this document. The Prosecutor has not presented a single
22 piece of evidence on the basis of which the Trial Chamber could establish
23 with certainty that Slobodan Praljak was informed with the events in
24 Ljubuski which are referred to in the document. The document undoubtedly
25 demonstrates that the Convicts Battalion was under the command of

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1 Mate Boban, as General Praljak, indeed, claimed in his testimony.
2 Document P7009 is a payroll for the month of November 1993, for
3 the members of the Convicts Battalion and the ATG. These were the
4 anti-terrorist units. It shows that ATG Tuta is not mentioned as a unit
5 that was a part of the Convicts Battalion or that the Convicts Battalion
6 was one and the same as the ATG Tuta. The conclusion that the ATG Tuta
7 was one and the same as the Convicts Battalion cannot be drawn from the
8 contents of the document that the Prosecution refers to. The Prosecution
9 did not provide a single piece of evidence that would indicate that the
10 Convicts Battalion and the ATG Tuta can be considered one and the same.
11 No evidence was presented indicating that this was the same military
12 unit, and a criminal procedure cannot include any assumptions or
13 speculation.
14 Contrary to the allegations made in paragraph 654 and in
15 transcript Page 51880 - the date is Tuesday, the 8th of February,
16 2011 - in which the Prosecution expressly relies on the testimony of
17 Generals Petkovic and Filipovic and claims that there was no problems
18 with command, control and communications within the HVO, the one Page,
19 51935, it adds that there were also no problems within the chain of
20 command, the Defence points to the claims from its final brief,
21 Chapter 16, in which the Defence of General Praljak shows, in the
22 documents and witness testimonies, that command, control, and the system
23 of communications within the HVO were insufficient and not fully
24 established. The testimony of General Petkovic, which the Prosecution
25 disregards, and which is recorded on Page 40363 of the transcript,

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1 confirms the arguments of General Praljak's Defence. This is recorded, I
2 mean, General Praljak's testimony, on Page 44121 and 41138.
3 A very precise picture about the existence of 3C elements within
4 the HVO was provided to the Trial Chamber by Witness Skender, and this is
5 something that he experienced personally, and the same thing follows from
6 his statement, 3D3710. As for the quality of the communications,
7 document P4698A, Page 86, talks about this.
8 In paragraph 661, it is noted that Dr. Tudjman appointed Praljak
9 to be one of those who would relay the policy of Herceg-Bosna, that is to
10 say, the Croatian Government about the Banovina, to Izetbegovic until the
11 exclusion of the government in Sarajevo. The Prosecution incorrectly
12 mentions this claim, because in paragraph -- in document P00 -- P00524,
13 on Page 23, there is no such text. It has been added. When the
14 transcript is read in its entirety, it can be established that it has to
15 do with talks about the annex to the agreement about co-operation with
16 the BiH, and on Page 23, appointment of persons on the Croatian side is
17 mentioned to the joint committee charged with the implementation of this
18 agreement. Praljak and Bobetko have been proposed. However, on Page 23
19 that the Prosecution refers to, President Tudjman said:
20 "As for Izetbegovic, we'll tell him openly, when he comes here,
21 what we said at the very beginning."
22 Sarajevo is never mentioned, nor is it ever mentioned that

23 General Praljak will relay to Alija Izetbegovic what was said, as the
24 Prosecution claims. President Tudjman is, rather, the person who will
25 talk with Mr. Izetbegovic, whereas General Praljak has not been appointed

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1 to relay any message.

2 For the sake of argument, I want to note that if General Praljak
3 was a member of the committee charged with the implementation of the
4 annex to the agreement, then it's only logical that he should advocate
5 the positions of the side which he is representing, and there is no
6 criminal activity in this. This document shows that there was no
7 hypocritical policy from the Croatian side in relation to
8 Alija Izetbegovic, because Dr. Tudjman decided to inform Mr. Izetbegovic
9 about the position of the Republic of Croatia.
10 In the next sentence of paragraph 661, it is noted that at the
11 meeting held on the 5th of November, 1993, Praljak confirmed that the
12 goal was to secure the area within the borders of the Banovina that would
13 be controlled by the Croats, and the Prosecution conclusion, on the basis
14 of this document, is that it is out of the question that achieving this
15 goal did not request movement of the population and, in particular,
16 reducing the number of the Muslim population in a large part of
17 Herceg-Bosna.
18 Document P6454 that the Prosecution refers to, Page 50 - it's one
19 of the presidential transcripts - shows that this sentence which is
20 quoted in the above paragraph has been taken out of the context of the
21 whole speech and also out of the context of the events which preceded.
22 The speech should be read in its entirety, and it's recorded on Pages 47
23 through to 57 of the English translation. When you read the entire text,
24 you can conclude that General Praljak is describing the military
25 situation, and discusses military positions, and analyses events in Vakuf

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1 and Central Bosnia in connection with the offensive launched by the
2 Army of BiH, its military power and political ideas to create a Muslim
3 state. It can be concluded from the text of this speech that the
4 Prosecution claim from the above paragraph is an assumption which cannot
5 be included in the criminal procedure because nothing confirms it.
6 As for the context in which these talks were held, I wish to
7 indicate the document P04027. That's the agreement on humanitarian
8 convoys from Makarska. The HVO authorities were facing the refugees and
9 displaced persons from Central Bosnia. 42.000 of them and another 8.000
10 were expected to arrive from Kakanj and Vares. As the Defence already
11 emphasised a number of times, the events cannot be considered in
12 isolation, but in their entirety, and we should not forget for a moment
13 that everything is taking place in the context of at least two wars which
14 are being waged simultaneously.
15 In paragraph 262, there is a claim that Praljak advocated a
16 policy in relation to BiH which implied a joint criminal enterprise, and
17 what is noted here is a secret meeting in Hungary held on the 5th of
18 October, 1992, with Ratko Mladic, and another meeting with Ratko Mladic
19 three weeks after that, as well as a meeting which General Praljak had
20 with a French delegation in January 1993, and, finally, a meeting held on
21 the 2nd of April, 1993, where Praljak briefed the military commanders in
22 an authoritarian manner, according to what is stated in this paragraph.
23 The documents that the Prosecution refers to -- that is to say, some
24 parts of these documents that it refers to, cannot prove these claims,
25 because they are taken out of context and they lead to a wrong

1 conclusion.

2 The Prosecutor also refers to the document P11376 and P11380,
3 Mladic's diary. As for these exhibits, the Trial Chamber was not told
4 whether General Praljak was present or whether he participated in these
5 discussions, and if he did, with what status, because, supposedly, what
6 was discussed during the meeting was the Republic of Croatia ending the
7 attack on Slavonski Brod and ending war operations in the
8 Republic of Croatia. General Praljak did not have the opportunity to
9 face the author of this note and hear his testimony or cross-examine him,
10 nor did he have an opportunity to testify about the contents of these
11 notes from the meeting which was supposedly held. Therefore, the Defence
12 notes that these documents have no probative value because they were not
13 tested by examination. This is hearsay evidence, mainly the monologues
14 of one side in the talks, whereas there is no information about what the
15 other side in these talks stated. The Defence wrote in detail about
16 these exhibits in its final brief, so I will not talk about them anymore.
17 In paragraph 662, document P9447 is also mentioned. It is
18 Page 8, and it is an interview which General Praljak gave after the war.
19 The Prosecution claims that the general said that the policy of Serbs in
20 Bosnia-Herzegovina was closer to Croats than the Muslim policy; unity is
21 out of the question. During the trial, the Prosecution also played the
22 video-recording of this interview. In this way, the Prosecution wanted
23 to connect General Praljak with the Army of Republika Srpska and a
24 criminal agreement with Mladic. But as the Prosecutor wrote, it was not
25 to the detriment of Bosnia-Herzegovina, but to the detriment of the

1 Muslims. It was said several times already that Bosnia-Herzegovina was
2 not the property of Muslims; it is a state which belongs equally to the
3 Muslims, Croats and Serbs.
4 The allegation made in the footnote does not exist in the
5 original document and has not been recorded in the trial transcript of
6 the 8th of February, 2011, during the oral presentation of my learned
7 friend Mr. Scott, during which he also played the video with interview
8 given by General Praljak. The text of the transcript of the video in
9 Croatian is recorded on Page 11 of document P9447, and the sentence,
10 "Unity is out of the question," is never mentioned in it.
11 Correction of the translation: Had been requested so it would be
12 harmonised with the original text.
13 The sentences that the Prosecution refers to are taken out of
14 context, and the full answer, as it is recorded in the text, mentions the
15 military alliance with Muslims before the war, but differences with
16 regard to political options and configuring the joint state. The
17 Prosecution claim that Praljak co-operated with Mladic is arbitrary,
18 unfounded and incorrect.
19 Footnote 1538 includes the reference that in January 1993,
20 General Praljak informed the French delegation that the Banovina is an
21 area which belongs to the Croats. Incorrect. 3D482, which is the
22 document that the Prosecution refers to, says the following: that
23 General Praljak said this:
24 "The territory which belongs to the Croats corresponds with the
25 borders of the Banovina Hrvatska from the configuration of Yugoslavia in

1 1939 and is in harmony with the census from 1981, because the 1991 census
2 has not been recognised. Croats advocate a single and unified BiH as a
3 state and for the rights of Croats as a constitutive people. The
4 problems between the Muslims and Croats in Bosnia-Herzegovina are a
5 result of different goals of political struggle. The Croats are
6 struggling for the state of BiH, with autonomy for the Croats, whereas
7 the Muslims are struggling for a civil state."

8 The Defence wishes to refer to the document P10463. It is an
9 interview given by Mr. Izetbegovic in which he says:

10 "We only have the possibility to achieve the ideal of a civil
11 republic or a civil war."

12 Document 1D2479 explains what a civil state means, according to
13 the proposal of the SDA and Mr. Izetbegovic. One vote per one man. This
14 position completely disregards the constitutive peoples in
15 Bosnia-Herzegovina.

16 And, finally, the last document which is supposed to confirm an
17 allegation, paragraph 662, that Praljak exerted authority on briefing HVO
18 commanders is document P1788, Pages 1 through 3. The Prosecutor quotes
19 from the document, but we encounter a problem here. The quote, as a
20 compilation of two different generals, provided by General Praljak to two
21 different questions - one of them was about Vares and the other one about
22 Posavina - the mere fact that General Praljak confirmed that he, indeed,
23 had attended that meeting does not confirm the credibility of the minutes
24 and the contents thereof. I would permittedly like to point out the
25 probative value of this document, which we highlighted during trial every

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1 time when the document came up. We don't know who drafted the minutes.
2 We don't know how capable the note-taker was to understand the topic.
3 And General Praljak, who spoke about the Vance-Owen Peace Plan and
4 presented his positions and analysis of what might happen in the future
5 as a result of that plan, we don't know whether he managed to catch all
6 of the general's words. We don't know whether the minutes are just a
7 summary of all the interventions. We don't know anything about how the
8 document came to be. The text is illegible, and when shown to
9 General Praljak, General Praljak, himself, said that he could not read
10 the document, and that the text which was shown to him does not reflect
11 any of his words.

12 During trial, the general stated his position and challenged the
13 accuracy of the minutes; i.e., he said that his words were not properly
14 noted. The Defence would like to point out that General Praljak
15 described and interpreted what was said at the meeting. He repeated that
16 before the Trial Chamber in response to the honourable Judge Antonetti's
17 questions, as well as in response to the Prosecutor's question.
18 Everything that was said about the credibility of the document and the
19 contents thereof is recorded on the transcript Pages 43381 through 43410,
20 that is, Mr. Slobodan Praljak's testimony, as well as 43675, again
21 General Praljak's testimony. This was also recorded on transcript Pages
22 when Witness EA testified on Pages 24363 through 24376, as well as on the
23 transcripts of Witness William Tomljanovich's words, the Pages are 6062
24 through 6072 on the 19th of September, 2006. A suggested, implied, an
25 erroneous interpretation of any document must not be allowed to lead to

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1 erroneous conclusions on the part of the Trial Chamber in criminal
2 proceedings.

3 In paragraph 663, to corroborate the claim that Praljak

4 complained about the fact that achieving a Croatian state in the HR-HB
5 fades and weakens, the Prosecution refers to document P6454. This is the
6 Split minutes, a meeting with President Tudjman, but again we have an
7 erroneous interpretation on the part of the Prosecutor. General Praljak
8 did not speak about the achievement of a Croatian state in the HR-HB,
9 which is the liberal interpretation on the part of the Prosecution, but
10 here, intrinsically and exclusively to the text, we can establish that
11 the general made a comparison between the leaderships of the Serbs,
12 Muslims and Croats from Bosnia and Herzegovina. And when he came to
13 describe the Croats, he concluded, and I quote it:
14 "In that respect, Mr. President, we started resembling, all of us
15 together, a collective of farmers."
16 The text has to be presented as a whole, not as fragments. I
17 expect that the Trial Chamber will not reduce evidence to its mere
18 fragments.
19 In paragraph 664, the Prosecution claims that Praljak, himself,
20 recognised that he had the de facto command power even before he was
21 appointed commander. The Prosecution refers to General Praljak's
22 testimony recorded on the transcript Pages quoted in the footnote.
23 However, the quoted Pages do not confirm the allegations in that
24 paragraph. On those Pages, Praljak did not admit that he was the
25 de facto commander. Actually, he expressly said that he did not have any

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1 command authorities, and while he was not a commander, he had authority
2 while assisting HVO units. The Prosecutor refers to document P8838 when
3 describing General Praljak's command authorities, and he is referring to
4 Page 4. This is a document which was created on the 2nd of April, 1998,
5 in Sarajevo on OBN Television. In a TV studio, General Praljak gave an
6 interview. However, when we look at the interview, we will not see that
7 a reference was made to General Praljak's authorities. We can only hear
8 that Praljak said that his lads respected him and loved him, but that has
9 nothing to do with his command authorities.
10 In paragraph 664, Praljak's high position in the HVO and close
11 relationship with Tudjman provided him with de facto power. That's not
12 correct. Praljak did not have authority in HVO among soldiers because of
13 his close relations with President Tudjman. He had built his authority
14 and respect himself. I would be curious to know how closeness may be
15 considered as an element of a crime, and what legal category would that
16 constitute?
17 In paragraph 665, numerous documents show that Praljak was, from
18 October 1992 to July 1993, the de facto commander of the HVO units'
19 commanders and civilian leaders as their superior. Documents to which
20 the Prosecutor refers do not confirm this allegation, because the
21 generals co-signed those documents together with somebody who, indeed,
22 had the authority.
23 When we talk about the role of General Praljak in Bosnia and
24 Herzegovina, that is something that we have been listening to for five
25 years in this courtroom, from Praljak and the Prosecutor's witnesses. I

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1 would like to point to a document, 3D3510, which is General Praljak's
2 military booklet that he received from Arif Pasalic, and based on which
3 he was a member of the BiH Army.
4 The Prosecutor refers to document P9838, talking about the
5 de facto command authority of Mr. Praljak. This document is under seal.
6 I'm not going to say what's in the document. I'm just going to mention

7 the initials of the witness.
8 Document 9838 is the transcript of Witness Z's testimony in the
9 Martinovic/Naletilic case. The same witness appeared in our case under
10 pseudonym CU. The Prosecution refers to P9838, and we have to say that
11 General Praljak did not participate in that case as an accused, he did
12 not have a possibility to cross-examine the witness and challenge his
13 testimony. This witness did testify in our case, he was cross-examined,
14 and if the Prosecutor believes that the witness provided a testimony
15 which was relevant for this case, then he should have referred to the
16 relevant Pages of the transcript.
17 In paragraph 666, the Prosecution speaks about Coric, who had
18 accepted as a fait accompli Praljak's appointment of a higher HVO officer
19 of the military police. And the reference for that is document P00927.
20 This document speaks about the de jure and not the de facto authority,
21 because it speaks about the appointment -- or the appointment of a person
22 which, in the month of April 1992, arrived in Bosnia-Herzegovina and was
23 appointed as a commander of the military police in the
24 OG South-East Herzegovina. At that time, General Praljak was the chief
25 of staff of the OG. At that time, General Praljak was the chief of the

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1 South-East Herzegovina OG, so this document cannot confirm the
2 allegations in the paragraph about the de facto authorities. It was
3 just -- it was the de jure authority. Praljak never denied that he
4 arrived even before his formal appointment. What General Praljak said
5 was that he was not a commander with all the authorities pertaining to a
6 commander, but rather he assisted, and he had an ability to influence
7 troops because of a relationship that he had built before.
8 In paragraph 668, Praljak is portrayed as being centrally
9 involved in planning, and with his authority, as a senior commander, he
10 contributed to the important meetings of his subordinates. To
11 corroborate that, the Prosecution proposes document P01350, the meeting
12 that was held on the 29th of January, 1993, with the military police.
13 Praljak did not chair that meeting. He merely responded to the questions
14 about Vakuf, Central Bosnia. He was at the meeting -- or he was in Vakuf
15 and Central Bosnia because of the problems there. And he also spoke
16 about the situation in Croatia, about Zadar, Maslenica. Praljak was not
17 in a position to receive reports from the military police, as the
18 paragraph suggests, so the military police never reported to Praljak.
19 Paragraph 669 says that the official communications of the HVO
20 recognised Praljak's pivotal role in the chain of command even before the
21 24th of July, 1993. This should be corroborated by document P1311. I
22 will kindly ask the Trial Chamber to read the document in its entirety,
23 especially when they decide about the part of the indictment that
24 concerns Gornji Vakuf, because the document reads:
25 "The BiH Army forces in Vakuf in the January conflict made up

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1 4.300 members of the BiH Army which participated in the conflict."
2 And then there is a list of all the units which had arrived in
3 Gornji Vakuf. This is 5(L) in the document.
4 On Page 3 of the document, it says:
5 "During the writing of the report, I was informed about the
6 instructions that Zrinko Tokic received from Brada, and I shall act
7 accordingly."
8 Based on this sentence alone, the Trial Chamber cannot conclude
9 that General Praljak had a pivotal role in command. The role of

10 General Praljak was explained in our final brief and concerns the area of
11 Gornji Vakuf and Uskoplje.
12 The following document that the Prosecution proposes to prove the
13 pivotal role of General Praljak in the command chain is P02039. This is
14 Mico Lasic's report about the condition in Konjic and Jablanica on the
15 22nd of April, 1993. It was submitted to the Main Staff and to
16 General Praljak as well. Praljak testified that he had been in Mostar to
17 attend reconciliation talks in April 1993. He attended talks at the SDA,
18 and he also spoke to Pasalic. The Trial Chamber was shown
19 Mustafa Hadrovic's photos. He took photos of General Praljak together
20 with Arif Pasalic, and that's on Pages 14613 through 14616 of the
21 transcript.
22 General Praljak came to Mostar to appease tensions between
23 Muslims and Croats. This is illustrated by 3D3261, which is
24 Slobodan Bozic's statement. He spoke about General Praljak's arrival in
25 Mostar in order to appease tensions.

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1 The following document that corroborates the allegations in the
2 paragraph according to the Prosecution is P02092. Brada asked for Tuta
3 to come back to him. What conclusions can be made about Praljak's
4 pivotal role in the chain of command as we read this document? If he
5 had, indeed, had a central role in the command, then he would not use a
6 mediator to ask Tuta to come back to him. There is no data whatsoever as
7 to what that document refers to, and that document cannot be used to
8 establish either a positive or a negative fact.
9 The international community was -- filed a formal complaint with
10 regard to Praljak's authorities on 23rd April 1993. This is what the
11 Prosecution claims, and this is supported by document P02043.
12 Arif Pasalic filed a complaint on the 23rd of April, 1993, immediately
13 before he had taken a stroll along the east bank of Mostar and had a cup
14 of coffee in a bar in East Mostar. He filed that complaint, where he
15 says that due to the stay of General Praljak, the complaint is being
16 filed, but that didn't bother him then, that didn't bother him in 1993.
17 Documents IC443 and IC444 are documents which were received from
18 Witness Hadrovic, and they depict General Praljak in the company of
19 Arif Pasalic and other members both of the HVO and the BiH Army in Mostar
20 in the month of April 1993.
21 On the 14th of November, 1992, Arif Pasalic writes:
22 "Units of the ABiH and the HVO Herceg Stjepan unit elaborated a
23 plan of action in very great detail against the Army of
24 Republika Srpska."
25 They are waiting for an order to arrive from Mr. Praljak. We can

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1 conclude from this document that Praljak was in command of both the HVO
2 and the ABiH units. And this document also challenges the allegation
3 that Praljak considerably contributed and participated in the joint
4 criminal enterprise in Herceg-Bosna.
5 Paragraph 673 is in the chapter entitled "Praljak's
6 Transformation from De Facto Commander to De Jure Commander."
7 That paragraph says:
8 "It has been decided to change Praljak's status in an attempt to
9 cover up his role of a Croatian agent in the support of the Herceg-Bosna
10 JCE."
11 Before analysing the document, let me just point out that at no
12 time the stay of General Praljak in Bosnia-Herzegovina was hidden or kept

13 secret, and that international representatives and, of course,
14 Alija Izetbegovic knew of his presence. By the way, upon Izetbegovic's
15 request, Praljak came to BiH, and he had met with him before he became
16 commander of the Main Staff of the HVO. General Praljak never denied his
17 involvement with the HZ-HB, but we must look at the time when this
18 conversation happened comparatively.
19 In mid-June, the BH Army, which now openly advances against the
20 HVO and attacks Kakanj and Travnik, the possibility of joint action is no
21 more there. The international community exerts pressure on the
22 Republic of Croatia because of the events in Bosnia-Herzegovina, but not
23 on those who are advancing, whose offensive it is. The Muslims, except
24 for a military offensive, have also launched a propaganda and political
25 offensive. They turned against their allies because they are now ready

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1 for the Croats. This is shown in document P1325 of 27 January 1993,
2 Page 5. It is for this very propaganda and political offensive that
3 there is whining about the presence of the HV and BiH. In that
4 situation, although General Praljak, until that time, had for eight
5 months tried to prevent the war with the BH Army, he became a person
6 being pointed at -- just like now in the indictment, the person pointed
7 at, as the representative of Croatian BiH, to rule out objections,
8 General Praljak couldn't be forbidden to defend his country, and to
9 prevent him from being used as a proof of the involvement of Croatia in
10 the conflict with the BH Army, his release from the Croatian Army would
11 resolve his status in BiH. But it is important to point out that there
12 can be no talk of a retroactive appointment, because General Praljak
13 became commander on 24 July 1993, and the aforementioned meeting took
14 part in June, which means a month earlier.
15 Once again, let me point out that nobody ever tried to cover up
16 General Praljak's presence in Bosnia-Herzegovina, in Central Bosnia, or
17 in Herzegovina before his formal appointment, nor did anyone -- Praljak.
18 There was no reason for that.
19 In paragraph 675, it is alleged that there were regular contacts
20 with Tudjman and Susak so that he may inform them of the conflict between
21 the HVO and the BH Army, and for him to get instructions for him about
22 the JCE and its implementation. But the Prosecution doesn't offer any
23 documents or any citations to substantiate this allegation, for the
24 simple reason that there are no documents of this kind. Then it says he
25 was the channel for information, demands, policies and feedback between

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1 the Croatian leadership and the HVO/HZ-HB with regard to the JCE. The
2 document mentioned in this context is P1622, dated 9 March 1993. The
3 Pages are 18, 42, 36 of the presidential transcript. Susak speaks to the
4 representatives of Central Bosnia, who want Praljak to return to
5 introduce order again, and Susak says that Praljak will return.
6 In March, Praljak was in Bosnia-Herzegovina with the knowledge of
7 Izetbegovic, who never once demanded that Praljak be withdrawn from
8 HZ-HB. If he was sent to BiH to appease the situation, then it's normal
9 that he should inform those who sent him there. General Praljak was in
10 contact with Izetbegovic, which follows from General Praljak's testimony
11 but also from the minutes of 27 March 1993, which is P1739. Praljak
12 exercised de jure command and control after 24 July 1993.
13 In paragraph 681, the Prosecution say:
14 "Praljak said that he was responsible if he failed to react to
15 wrong acts by Petkovic and Tole, as well as anybody else's."

16 And there is a reference to a transcript Page. However, on these
17 Pages, General Praljak actually said:
18 "Under the conditions that we had, and considering the
19 communication that we had and the type of war that went on, if anybody
20 proves that I violated any provision of International Law, I am willing
21 to bear full responsibility for it, as I said at the very beginning."
22 That's what General Praljak said, and it's up to the Prosecution
23 to prove that the general did not react to wrongdoings or failures,
24 although he knew that they were committed.
25 In paragraph 683, it says, Praljak's subordinates recognised his

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1 command authority, which extended to the HVO MP and the civilian police.
2 What would an army be like if it were not to recognise or acknowledge the
3 command authority of the commander of the Main Staff, which is proved by
4 that claim? It would be -- it would have been fortunate if Praljak's
5 subordinate had obeyed and fully respected the orders issued by
6 General Praljak. More detail about this is in our final brief, "Command
7 Responsibility 3C."

8 The following document is P5405 of 26 September 1993, information
9 for Mr. Praljak about the civilian convoy from Vares being halted, but
10 this document doesn't belong with this footnote, nor does it have
11 anything to do with General Praljak, because this is about civilian
12 affairs.

13 Document P6095, also cited by the Prosecution, does not confirm
14 the allegations in the paragraph, because it isn't about either the
15 civilian or the military police.

16 Document P6360 of 2 November 1993, an attack order, has nothing
17 to do with the military police or the civilian police. They are not
18 involved in combat activities, nor are they mentioned in the order. This
19 document refers to an area not covered by the indictment, at a time after
20 General Praljak had become commander, so even in this respect it is
21 irrelevant. The command authority of the commander of the Main Staff, in
22 itself, cannot be considered an element of the commission of a criminal
23 offence unless it is linked with an illegal act. General Praljak or his
24 Defence never denied that General Praljak had command authority, but they
25 did deny the allegation that this command authority was used to commit

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1 crimes. But whatever the Prosecution have to add -- to show during the
2 trial or with these documents does not refute this claim of the Defence.
3 The Prosecution seek to confirm the allegation that Praljak's
4 command authority was extended to include the military police. It is
5 based on some documents. But the Praljak Defence never denied that when
6 the military police was under the Main Staff or the operative zone, that
7 they were under their command.

8 In this part of the Prosecution brief about Praljak's authority
9 over the military police, they mention document P3829.

10 I am now shortening because I have no time to go into the details
11 of each and all documents.

12 They say that Praljak reacts to unlawful acts when he learns of
13 them, and he asks to be informed of them.

14 Praljak has contacts with representatives of international
15 organisations, which is also mentioned by the Prosecution. He also has
16 contacts with the UNPROFOR and certainly must have information about
17 measures taken to be able to forward that information. By his request
18 and warning, Praljak only showed that at all times he demanded

19 disciplinary proceedings to be launched and discipline to be implemented
20 from those who can -- who are in a position to do so.
21 In paragraph 688, the Prosecution claim that when Boban issued
22 the order of 15 September 1993 to the armed forces to comply with
23 International Law, Praljak implemented Boban's order and sent it to the
24 chief of the Military Police Administration. Two paragraphs refer to the
25 entire military police. That is a misinterpretation of document P5104.

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1 This document was first -- was addressed first to the Department of
2 Defence and then, secondly, to the Main Staff. With regard to this
3 document, I would like to say that the correct translation of this
4 document can be found on transcript Page 44309. During General Praljak's
5 testimony, the correct translation of the document was verified. And
6 Slobodan Praljak included Boban's order in his order, and it can be found
7 in document P5188. General Praljak again orders that International Law
8 be complied with.
9 Document P5104 shows that possibly some detention centres do not
10 provide adequate conditions, but this document does not inform
11 Slobodan Praljak of any breaches of International Humanitarian Law.
12 On 9 February 2011, the Prosecution puts forward its allegations
13 with regard to their evidence. They say that General Praljak knew
14 everything at all times. This was recorded on transcript Page 51925. To
15 prove their allegations, the Prosecution identifies three documents, but
16 if we read these documents, we see that General Praljak was not the one
17 who had information about the events about which these documents speak.
18 These documents do not refer to Slobodan Praljak, nor do they indicate
19 any concrete knowledge of specific mis-treatment. The Prosecution never
20 precisely showed -- identified a document that shows that Praljak must
21 have known any specific fact at any point in time.
22 In their final brief, the Prosecution sought to show that
23 General Praljak knew some facts by showing maps, which is very unusual in
24 criminal proceedings, I must say. What does the Prosecution say?
25 Praljak was probably in command in Prozor a few days before and a few

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1 days after the representative of an international organisation was there.
2 He must have been there when the representative of that international
3 organisation was there, and he must have known what the representative of
4 that organisation knew. They cite document 3D981 and 3D979 in that
5 context. These documents only show that representatives of international
6 organisations were allowed access to prisons.
7 The Prosecution claim that the military police were deployed in
8 Prozor to implement the objectives of the JCE, but that claim is
9 unfounded. The Prosecution says the battalions were deployed in various
10 areas where HVO forces committed various crimes from the indictment.
11 It is uncontested that military police battalions were
12 re-subordinated to the commander of the operations zone in combat
13 operations. We discussed that in the final brief. Mr. Coric could
14 deploy them and order their re-subordination. However, these documents
15 do not deal with the crime which was committed in the territory where
16 these units were engaged, nor does the Prosecution indicate which crime
17 this would be. In Prozor and Vakuf, the HVO defended itself from the
18 attack of the Army of BiH, so it is difficult to connect their defensive
19 position with the advancement of a joint criminal enterprise.
20 In paragraph 690, the Prosecution claims that Praljak issued
21 orders to the military police units on the 4th of August, 1993, and the

22 20th of September, 1993, throughout the relevant period, or immediately
23 before the commission of the crimes listed in the indictment. Context
24 should be given for the documents listed in the footnote to this
25 paragraph.

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1 Document 3D2613, dated the 20th of September, 1993, talks about
2 the duration of the offensive called "Neretva 93" in the area of
3 Prozor/Rama. Axes of ABiH operations are described. The document was
4 created just a few days after the massacre in Uzdol, in which 29
5 civilians were killed by the BiH Army.
6 Another document that talks about the duration of the offensive
7 in the Rama area is 1D00541, "Sefer Halilovic's Cunning Strategy: The
8 Truth About Uzdol." In it, a direct participant in the offensive
9 describes the axis of attack, the actions that were carried out, the
10 units which were involved, and claims that Neretva 93 was not a private
11 operation, but an operation planned by the General Staff and personally
12 approved by General Rasim Delic. One of the axes in this operation was
13 Here-Uzdol, and it was led by the Independent Prozor Battalion, commanded
14 by Buzo, who was awarded for this operation by being promoted.
15 In view of the consequences of this offensive of the Army of BiH,
16 in view of the casualties which were a consequence of this action in
17 Uzdol, General Praljak, in order to prevent the further killing of
18 civilians, and to successfully repel a fierce offensive, requested that
19 military police should also be engaged, but the question here is: What
20 crimes did the HVO commit in defending itself against the attack, as the
21 Prosecution provides no answers? The Defence points to document P5162,
22 dated the 17th of September, 1993, which says that in spite of the
23 massacre in Uzdol, the Croats in Prozor did not abuse Muslims.
24 Document P4260, quoted in footnote 1604 -- it says the following:
25 "Praljak ordered the military police, on the 17th of August,

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1 1993, to withdraw prisoners from the works in Prozor and bring them back,
2 by which he showed that he commanded the military police, in terms of
3 prisoner issues."
4 Praljak's order, dated the 17th of August, 1993, according to the
5 Prosecutor, indicates that Slobodan Praljak was aware of the possibility
6 that the prisoners were working in Rama from that date onwards. The
7 order shows his will to try and eliminate the possibility of having the
8 prisoners work, even though this was not his responsibility, particularly
9 with regard to document P04285, which is the reply of Ante Pavlovic dated
10 the 18th of August, 1993. It is a response to the order of
11 General Praljak. It could not show him in any way that forced labour was
12 still going on. The Prosecutor has not managed to prove that
13 Slobodan Praljak was aware that prisoners did any work. Indeed, he had
14 no reason to think so, but rather had reason to think, as he was
15 informed, that they did not. The Prosecutor does not accept the
16 possibility that this practice could have been concealed from
17 Slobodan Praljak, as he had prohibited such practice.
18 In paragraph 710, the Prosecution refers to an interview by
19 General Praljak and says that Praljak admitted that he consulted the
20 political leaders of the Croatian Community of Herceg-Bosna. According
21 to the Prosecution, this is confirmed by document P8765. The author is
22 Nebojsa Taraba, who interviewed Slobodan Praljak, and the title of this
23 article is "I'm Not Responsible." The Prosecution refers to Page 4.
24 However, in Page 4, on the first sentence of the paragraph, there is

25 nothing to indicate any unlawful activity. The Defence, however, points

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1 out that this is an interview for which we do not know whether it was
2 authorised, and whether the words of General Praljak were correctly
3 recorded, and whether his words unseen are correct. There is nothing
4 unlawful in consultation with leaders of the Croatian Community of
5 Herceg-Bosna. What the Prosecution lacks, if any weight is to be given
6 to this claim, is evidence that in these statements any crime was ever
7 agreed or planned.

8 The claim from the second sentence of this paragraph, namely,
9 that Praljak took part in the meetings in top leadership of the
10 Croatian Community of Herceg-Bosna, showing that his acts and decisions
11 fit the broader picture of the general HVO and HZ-HB policy, is a
12 Prosecution claim not supported by evidence. There is even no reference
13 given to support the claim.

14 In footnote 1648, the following claim is included: The soldiers
15 which joined the HVO remained on the payroll of the Croatian Army. And
16 reference is given to the Page of transcript.

17 THE INTERPRETER: Could the counsel please repeat the number of
18 the transcript Page.

19 MS. PINTER: [Interpretation] I wish to say the following here,
20 and point to the general's testimony which is recorded on Page 43039,
21 that the volunteers from the Croatian Army were treated in the same way
22 if they enlisted with the BiH Army, the Muslims, which is confirmed by
23 document 3D00299.

24 Another document is used by the Prosecution in order to show the
25 presence of the Croatian Army in Bosnia-Herzegovina or, more

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1 particularly, in Herceg-Bosna. I have to refer to it because it is a
2 completely wrong interpretation. The Prosecution refers to the document
3 P03917, and the footnote is 1648, where the Prosecution says that this
4 document confirms the presence of the Croatian Army, but this is, rather,
5 the unit Hrvoje Vukcic Hrvatinic and the return of the unit
6 Hrvoje Vukcic Hrvatinic from Jajce. "HV," as written before "Hrvatinic,"
7 does not stand for "Croatian Army." During all these years that we have
8 been sitting in this courtroom, and we have seen so many documents on the
9 basis of which the Prosecution may have realised that once you say
10 "Croatian Army," and put the abbreviation "HV," there are never any full
11 stops in this abbreviation. In this document, however, the "HV,"
12 "Hrvatinic," there is a full stop after the "H", because the "H" stands
13 for the name "Hrvoje." Therefore, proving something by this document,
14 the Prosecution could in no way have proved the presence of the Croatian
15 Army in Herceg-Bosna.

16 In paragraph 718, the Prosecution claims that on 16th of January,
17 1993, the commander of the North-Western Operations Zone reported that
18 Praljak had sent a message to the Army of BiH that they would be
19 destroyed unless they accept the decision of the Croatian Community of
20 Herceg-Bosna. The HVO negotiators in Gornji Vakuf also consulted Praljak
21 before they formulated the HVO requests. The document that the
22 Prosecution refers to is P1162. It is a report from General Siljeg,
23 dated the 16th of January and addressed to the Main Staff, and the
24 document says that a meeting was held and that Praljak sent a message
25 that they would be overrun. General Praljak stated his view of the

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1 allegation from this document on the following Page of the transcript,
2 43698, where he said that he did not address such words, nor were
3 instructions for Siljeg formulated in this way.
4 If you have a look at document P1174, Page 1, paragraph 2, it is
5 a document originating from the Army of Bosnia and Herzegovina, and it is
6 never mentioned in it that the message was that they would be
7 overwhelmed. The document discusses in detail the HVO requests, and
8 there is not a single word that would indicate that they received a
9 threat. Page 2 of this document says the following:
10 "In a contrary case, we shall not bear any responsibility for the
11 consequences that may follow from the refusal of this request, which is
12 intended to ease the tensions and the conflict and impose public law and
13 order in the area where there is unrest."
14 Document P1236 from Hadzihasanovic also does not mention any
15 threat from the HVO that they would be overwhelmed. It is certain that
16 this would be included if it had ever been expressed.
17 In the oral presentation, the Prosecutor referred to document
18 P1163, Page 3, indicating that General Praljak was in Mostar before he
19 came to Prozor, and that he issued an order to Miro Andric. The
20 Prosecutor found his conclusion on the fact that a general is mentioned
21 in the text of this document. However, the general's name is not
22 mentioned. But, in any case, the Prosecution concludes that the general
23 is Slobodan Praljak and that he was the one who issued the order in
24 Mostar because General Petkovic was in Geneva. However, on the 15th and
25 16th of January, 1993, General Petkovic was not in Geneva. There is a

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1 series of documents which testify to that. I'm not going to enumerate
2 them all, but 2D00471 is one that I will mention. It is the minutes on
3 the reception of high officials of UNPROFOR to the Main Staff Command on
4 the 16th of January, 1993, at 1500 hours, and one of those present was
5 Milivoj Petkovic. So the Prosecution erroneously refers to this document
6 so that the Trial Chamber would also draw a wrong conclusion from it.
7 With regard to Gornji Vakuf, I just want to note as well that
8 conflicts broke out before the 15th of January, 1993, so that referring
9 to the decision on re-subordination as a trigger of conflict is
10 unfounded, because the conflicts broke out on the 11th of January, before
11 the decision on the re-subordination was made. And the goal of this
12 decision was, as you will see from the documents, i.e., the presidential
13 transcripts, to ease tensions and to end the conflict. So quite the
14 contrary from what the Prosecution claims.
15 And while we are still dealing with Gornji Vakuf, I also want to
16 note what the Prosecution did in footnote 1559, in which they base their
17 claim on a note of Witness Agic, which is Page of transcript 9479, and it
18 was not possible to do this; namely, the Prosecution should not have
19 presented this transcript because this was the cross-examination of
20 General Praljak. And the quoted text was the examination of Witness Agic
21 when he examined General Praljak, and this also should not have been
22 allowed. Therefore, what General Praljak answered to the witness, when
23 replying to the question which he was asked, and General Praljak was the
24 one who was doing the examination, this is something that cannot be taken
25 as evidence. General Praljak never denied that he was present in Mostar

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1 on the 16th of January --
2 THE INTERPRETER: On the 15th of January, interpreter's

3 correction.

4 MS. PINTER: [Interpretation] And that he arrived in Prozor on the
5 16th of January.

6 In paragraph 720 through 728, the Prosecution claims that Praljak
7 commanded and was involved in military operations in which crimes were
8 committed against Muslims in order to achieve the goals of a joint
9 criminal enterprise. It is not contested that General Praljak issued
10 orders. That was his main and principal task as the commander of the
11 Main Staff. He did issue orders to HVO units, including those to
12 participate in military operations. That was also his task. The orders
13 which General Praljak issued were issued during a violent offensive
14 launched by the Army of BiH. And throughout the trial the Prosecution
15 did not present a single order of General Praljak which implied offensive
16 operations or the taking of territories where the HVO had not been before
17 such military actions. Throughout the period since June 1993 onwards,
18 the HVO was defending itself from a violent attack. The Prosecution does
19 not accept that, but the Trial Chamber cannot disregard it.
20 The Prosecutor neither presented evidence nor pointed to any to
21 confirm the allegation that crimes were committed by persons subordinated
22 to Praljak. The case file contains testimonies by Prosecution witnesses
23 who described those who ill-treated them as wearing both military
24 uniforms and civilian clothes. We know that at the time, everybody wore
25 uniforms, everybody and their uncle. They may have been soldiers in the

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1 HVO or the BiH Army, or they may have been civilians.

2 I'm now pointing to document 3D03205, which is a statement by
3 Witness 1D-AA, who spoke about those people who ill-treated other people
4 in Mostar. I'm also pointing to Witness BN's testimony, which confirms
5 that those persons wore civilian clothes.

6 The Prosecution did not prove that crimes were committed by
7 individuals subordinated to General Praljak, nor that General Praljak
8 knew that crimes had been committed. It was the Prosecutor's duty to
9 establish a link between every crime that General Praljak is charged
10 with, and a soldier who allegedly committed it. He was not supposed to
11 leave any possibility that those were civilians or members of another
12 unit which was not subordinated to General Praljak. Conclusions based on
13 indicia, if there is an alternative possibility, cannot serve as grounds
14 for conviction here, because the circle of indicia has not been closed.
15 Document P4399: I'm highlighting this document because the
16 Prosecutor refers to it. What I'm saying about the document, however, is
17 this: When Praljak arrived back from Prozor, order was restored, the
18 situation was improved, and Praljak inspected the front-lines there. The
19 Prosecutor, in order to show that General Praljak's orders caused the
20 commission of crimes, refers to document P5365, which is a report on HVO
21 successes in the course of the Muslim offensive in the month of
22 September. However, the Prosecutor ignores the fact that that, indeed,
23 was a Muslim offensive which had started on the 14th of September. He
24 just gingerly points out that the situation in Rastani in September is
25 not in the indictment; therefore, he could not refer to that situation

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1 either in the final brief or in the final argument because that situation
2 goes beyond the scope of the temporal scope of the indictment.

3 In paragraph 721, the Prosecutor refers to a number of documents
4 in order to confirm the allegations. However, documents referred to in
5 this paragraph fail to prove that General Praljak issued an order for

6 crimes to be committed, nor does it prove that they were, indeed,
7 committed. In order to indict General Praljak, and particularly in order
8 to convict him, the Prosecutor was supposed to collect and then present
9 direct proof that showed that: A, Praljak issued orders that crimes were
10 committed by members of units subordinated directly to General Praljak;
11 that he was informed about the crimes; and that he didn't do anything
12 within his powers to punish those crimes.
13 I would like to point out for the benefit of the Trial Chamber
14 that paragraph 721 of the Prosecutor's final brief refers to Vakuf in
15 1993, again beyond the territorial scope of the indictment. That's why I
16 will not belabour the point.
17 In proving his case about the crimes committed by Praljak, in
18 paragraph 72, the Prosecutor refers to the developments in Rastani. The
19 Prosecutor states that crimes were committed. However, he does not
20 establish any link between the crimes and General Praljak. The fact that
21 Praljak appointed Stamper as commander of the Rastani front-line does not
22 link the former with any crimes as a fact. The Prosecutor did not show
23 any proof that Praljak received any report about the crimes in Rastani
24 before the operation was launched on the 23rd of August, 1993 -- or,
25 rather, during the operation on the 23rd of August, 1993.

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1 I have just been alerted to the time. It seems to be the time
2 for our next break, or maybe not. Okay.
3 JUDGE ANTONETTI: [Interpretation] It has been nearly one hour and
4 thirty minutes, but we could go for another ten minutes until 12.30 or we
5 can break now, as you wish.
6 MS. PINTER: [Interpretation] As far as I'm concerned, I can
7 continue. I believe that General Praljak had -- or, rather, no, okay,
8 I'll go on.
9 The Prosecutor refers to document P4719 in his footnote 1663, and
10 it says that General Praljak issued an order about the organisation of
11 command system and attacks and defence activities in
12 South-East Herzegovina Zone of Responsibility; and, furthermore, he
13 quotes a document that proves that that order was, indeed, implemented.
14 In a war, every order issued by a commander is meant to be executed, and
15 that cannot constitute an element of any crime. If the Prosecutor
16 accepted evidence on file, if the Prosecutor accepted the fact that the
17 HVO waged a war against the BiH Army and not against the entire Muslim
18 population, he would not claim what he did in his final brief.
19 The Prosecutor was supposed to offer evidence to the effect that
20 the HVO attacked the entire Muslim population. The Prosecutor did not
21 point to any piece of evidence that would establish a link between
22 General Praljak and any crime. He doesn't show that he may be charged
23 with a failure to punish perpetrators within the scope of his powers.
24 The Prosecutor has to prove beyond any reasonable doubt that Praljak
25 commanded his subordinates, that he issued orders to them to attack

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1 civilian population, that he provided his subordinates with instructions
2 to commit crimes, that he approved crimes, and when he learned of the
3 crimes, that he did everything possible to cover them up. Proof based on
4 indicia can be taken into account only in a case when only one reasonable
5 conclusion may be drawn from them, and that was -- that should be that
6 General Praljak approved crimes and condoned crimes. I'm certain and I
7 claim that the Trial Chamber cannot draw such inferences from the
8 evidence in the case.

9 The Prosecutor did not show a single piece of evidence that
10 Praljak ever received a SIS report. As this was an organisation that was
11 tasked with monitoring the conduct of HVO soldiers, such reports were
12 never submitted or sent to the Main Staff of the HVO. The chief of staff
13 does not engage in crime investigations, he does not interview witnesses,
14 he doesn't file criminal reports, he doesn't issue indictments, he does
15 not issue convictions. Only under those conditions could General Praljak
16 discipline or sentence those who perpetrated crimes.
17 When we're talking about the model of General Praljak's
18 behaviour, and when we talk about his authority to call people to task,
19 let's remind ourselves, he was not a prosecutor, he was not a judge; he
20 could only discipline soldiers. We are referring to documents P3829,
21 P4260, P5530, 3D3316, P8889 -- P8889, P7035, P2860, P5621.
22 Due to the brevity of time at my disposal, I'm going to skip the
23 part dealing with Humanitarian Law, because I believe that there is so
24 much evidence on this case file testifying to the attempts undertaken by
25 General Praljak to instruct his soldiers about the Humanitarian Law and

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1 provisions regarding the soldierly conduct. I will skip all that, and I
2 will go straight to paragraph 728. This is the Prosecutor's conclusion
3 about Praljak's alleged tolerance of crimes and support of crimes.
4 The Defence of General Praljak states that General Praljak never
5 condoned crimes, which we have managed to demonstrate clearly during the
6 trial. As we follow his conduct from Sunje, testified by
7 Witness Arbutina on transcript Page 45091 as well as Witness Crnkovic,
8 transcript Page 45106, 3D3679, which is a statement by Dr. Mahmoud Eid,
9 document 3D2860, as well as 3D3361, both generated by the Ministry of
10 Defence of the Republic of Croatia, issued by General Praljak, so when we
11 follow the conduct of General Praljak with regard to the protection of
12 Serbs in Grabovina and Capljina, we have a witness statement under
13 3D3666. We also have Witness Curcic's testimony during trial and his
14 statement, 3D3759. The Pages in question are 3, 5 and 8, which show the
15 model of an established conduct towards detainees. Witness BM was
16 released, as he stated himself, in Exhibit P5530. This is another way to
17 establish the model of behaviour which calls for discipline. The lack of
18 discipline is punished, there is a ban on looting, ill-treatment, and
19 there is an instruction on how to care for civilians. The Prosecution
20 did not provide any proof that soldiers subordinate to General Praljak
21 burned Muslim houses, that they stole their property, that they illegally
22 detained Muslims and terrorised them, and, finally, deported them. The
23 Prosecutor failed to prove that Praljak tolerated any such behaviour, if
24 there was any, or that he was ever informed of any such conduct.
25 Your Honours, I've just been told that the time has come for our

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1 next break.
2 JUDGE ANTONETTI: [Interpretation] It is now time to have a break.
3 You have had three hours and thirty minutes. We will have a break of 20
4 minutes' time.
5 --- Recess taken at 12.31 p.m.
6 --- On resuming at 12.52 p.m.
7 JUDGE ANTONETTI: [Interpretation] The court is back in session.
8 MS. PINTER: [Interpretation] Thank you, Your Honours.
9 In paragraph 730, the Prosecutor quotes the alleged allegation
10 from document P8765 and says that a subordinate reported about Praljak's
11 command style. That subordinate said this:

12 "General Praljak at the time said that Croats had to learn how to
13 hate Muslims because hatred is a precondition for success in war."
14 This is incorrect, this is misinterpretation. The text quoted by
15 the Prosecutor is actually a journalist's text. It is not a text of any
16 soldier that was subordinated to General Praljak.
17 A question may be asked here: Why would General Praljak change
18 his position and his conduct in 1993? His conduct throughout all that
19 time was this: Crimes cannot be pardoned, crimes have to be punished;
20 however, he could not react if he didn't know about any crimes committed.
21 Paragraph 732 refers to a document, document P5530. The
22 Prosecutor wants to demonstrate that the state of lawlessness reigned
23 supreme in HVO units. We heard about this document during trial, and
24 this document is a report of a unit which was returning from Vakuf back
25 to the Republic of Croatia, after having spent a lot of time in the Vakuf

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1 theatre of war. They were on their way back to Croatia, yes, just like I
2 said it. They were Croatian volunteers. The report in question says:
3 "Our unit was charged with having looted houses in the Uskoplje
4 front-line. We were stopped at the toll booth, allegedly pursuant to
5 General Praljak's order. The military police inspected us, and the
6 following appliances were found: A freezer, a fridge, an electric stove
7 and a TV set. Those appliances were seized from those on whom they were
8 found."

9 This document shows that General Praljak, despite the fact that
10 those troops had spent a long time on the front-line, he still did not
11 tolerate looting, he did not tolerate plunder. As soon as he learned
12 that things like that may have happened, he reacted immediately.
13 When we speak about General Praljak's conduct and his attitude
14 towards crime, we can quote 3D3316. This document was issued on the
15 1st of October, 1992. This is information about the crimes committed
16 regularly by members of the Croatian Army. Pre-emptive action has to be
17 based on the rule of law. Nobody, either former or present members of
18 the Croatian Army can break the law unpunished. Nobody has acquired a
19 possibility to be pardoned for a crime committed. Citizens' property,
20 state property, and enemy property are protected by law. That's Page 8
21 of the document. No one Croatian soldier can expect a crime to be
22 forgiven to him or that criminal proceedings will not be launched. This
23 document shows General Praljak's attitude toward crime and toward
24 intolerable behaviour. However, General Praljak couldn't try soldiers,
25 he couldn't press charges, nor could he convict or acquit them. There

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1 were other bodies in charge of that.
2 I want to show that General Praljak said several times that
3 knowing that due to the use of military police in combat activity, he
4 will not be able to react immediately to intolerable behaviour because
5 those responsible for crime could only later be called to responsibility,
6 that this is true, that it was possible to hold responsible those -- hold
7 accountable those responsible for crimes shown by the following
8 documents: 1D2577, Operation Spider. It says that persons were deprived
9 of liberty, who were suspected of that, in 1993 and 1994, in the area of
10 Rama municipality, they committed crimes. The document is from 1994,
11 document 1D1252, information about the perpetrators of crimes. Crimes
12 are mentioned that were committed in June 1993, in September 1993, in
13 August 1993, in November 1993, and the evidence we have led which was
14 admitted into evidence by the Trial Chamber shows that a crime was not

15 condoned and were not part of a plan at any time.
16 In paragraph 751, the Prosecution say that Praljak was familiar
17 with the expulsion of Muslims. They base their claim on Witness E's
18 testimony. However, the contents of General Praljak's speech on the
19 transcript Page cited by the Prosecution cannot be evidence because that
20 was not testimony under oath. It was the Prosecution that insisted that
21 General Praljak's speeches should not be admitted as evidence.
22 Paragraph 753: On 24 September 1993, Praljak spoke to the
23 fighters of HR-HB and spoke about the situation in the Mostar theatre and
24 the HVO victories at Rastani and elsewhere. He was encouraging the HVO
25 soldiers to continue their -- continue with victories. According to the

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1 Prosecution, the situation is as follows: Praljak is attacking, and he
2 is being successful; however, for that he needs another side. In our
3 trial brief, under the heading "BH Army," we showed documents until
4 October 1993 which speak about the offensive of the BH Army. When this
5 document that the Prosecution cites was drafted, Doljani had already
6 happened on the 27th of July, 1993; Grabovica, too, 8 September 1993;
7 Uzdol, 14 September; and the forcefulness of the offensive was recorded
8 in the documents of the UNPROFOR unit which was in the area of Mostar and
9 Jablanica as well as south of Mostar. If the HVO was able to slow down
10 the BH Army offensive, clearly, the soldiers had to be informed. They
11 had -- it was necessary to instill optimism in them and hope that the
12 Croats will not be expelled from the areas where they lived. It was
13 necessary to make public the fact that the HVO is being successful in
14 slowing down or stopping the Muslim offensive, and the Prosecution act as
15 if there had never been an offensive.
16 About the siege of Mostar, we spoke extensively about that in our
17 final brief, dealing with all allegations of the Prosecution; water,
18 electricity, shelling, sniping, leaving Mostar by way of Bijela Bridge.
19 So that for reasons of time, although I would have much to comment about
20 that, I will move on to paragraph 761, "Convoys."
21 I claim that the allegations made in this paragraph are refuted
22 by evidence. It is not recorded anywhere, nor was it established during
23 the trial, that Praljak was obstructing the convoys. Quite the contrary,
24 when I say that, I do not have just in mind the convoy which was stopped
25 in Citluk when General Praljak boarded an APC, and with his presence of

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1 mind when no one else managed to do that, those who were supposed to do
2 it made it possible for this convoy to pass through to Eastern Mostar.
3 I'm talking, rather, about all convoys which were headed to
4 Central Bosnia and were meant to bring supplies to Muslims in Zenica
5 throughout 1993. Document 3D00921 talks about this. The list of convoys
6 of the 1st of June, 1993, up until the 10th of December, 1993, is to be
7 found there. So throughout the time during which General Praljak was the
8 commander but also before and after that time, the convoys were passing
9 through. Of course, when the offensive of the Army of BiH was in full
10 swing in the area of the South-Eastern Herzegovina Operation Zone when
11 movement was dangerous, international representatives or organisations
12 decided themselves that they would rather not pass through with their
13 convoys. This was not prohibited by the HVO. The very same
14 international representatives, however, did not do anything to stop the
15 attacks launched by the Army of Bosnia-Herzegovina.
16 Document P5926 is the protocol about the transit of humanitarian
17 convoys, dated the 17th of October, 1993. What follows from it is that

18 the Main Staff was not in charge of allowing the transit of the convoys.
19 Therefore, General Praljak cannot be taken to account for the convoys,
20 but he did allow convoys to pass through. He never prohibited a single
21 one from transiting.
22 Document P4027 is the Makarska Agreement about the free passage
23 of humanitarian convoys. No one from the Main Staff was present, because
24 the Main Staff was not responsible. The Prosecution failed to show that
25 General Praljak obstructed convoys, and we have shown that when those

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1 responsible did not manage to secure a convoy that would go to
2 Eastern Mostar, General Praljak did this.
3 In paragraph 767 and 768, the Prosecution claims that
4 General Praljak expressed his vision during the cross-examination and
5 agreed that he advocated the separateness of peoples of Bosnia and
6 Herzegovina. But what crime is that, to advocate the autonomy of a
7 constituent people in Bosnia and Herzegovina? The autonomy would not be
8 the only case in the world where there would be an autonomous unit within
9 a given country. Praljak never mentioned the separation of areas where
10 Croats had lived since time immemorial, their separation from
11 Bosnia-Herzegovina. What he did advocate was the autonomy of the Croats
12 within Bosnia-Herzegovina so that they could achieve their full
13 constituent nation's rights.
14 Which element of any crime defined in the Statute is a political
15 thought, a wish, or a proposal of a political order? For such a wish to
16 become an element of criminal responsibility of General Praljak, the
17 Prosecution would have to prove that the events developed in such a way
18 that this wish was achieved by force. However, the evidence shows the
19 contrary.
20 In paragraph 770, the Prosecution claims that Praljak advocated
21 expulsion of Muslims in order to secure a majority Croatian population in
22 the Croatian Community of Herceg-Bosna and refers to document P00524,
23 which is one of the presidential transcripts. General Praljak did not
24 advocate the expulsion of Muslims. He talked about people who were
25 expelled by Serbs and who had come to Travnik. That resulted in a change

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1 of the ethnic composition. If they were to remain in Travnik, these
2 people who had been expelled and who had been expelled by the VRS and the
3 JNA, then the ethnic cleansing carried out by the VRS would be awarded.
4 What the influx of refugees to Central Bosnia meant is also recorded by
5 Margaret Thatcher in her book, and the relevant passage is under 3D2642.
6 It is Page 169. The burden of taking care of so many people, in
7 particular, in Croatia and Bosnia, was unsupportable. The waves of
8 refugees created instability, and that was their purpose. The arrival of
9 thousands of Muslim refugees to Central Bosnia which disrupted the ethnic
10 balance between the Muslims and the Croats is an important factor which
11 contributed to the open war which broke out between the two sides in
12 March 1993.
13 3D02637. Schrader also confirms that refugees were the cause of
14 conflict. The Defence explained its arguments in relation to Prozor in
15 detail in the final brief. We just want to point out here that the
16 Trial Chamber does not have any evidence that could confirm the
17 Prosecution thesis that General Praljak was aware of the crimes and
18 condoned them. Quite the contrary, he punished them, which we have
19 shown.
20 As in its final brief and oral arguments, the Prosecution

21 repeated that during his testimony, General Praljak said that he wanted
22 victory, the Defence wants to refer to the transcript, and the reference
23 is to Page 40985 through 40986 on the 2nd of June, 2009:
24 "At the time, it was important for me not to loose Gornji Vakuf
25 or Rama. Bugojno was already lost. I did not want to lose Vakuf and

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1 everything else. The forces that were attacking us, the Army of Bosnia
2 and Herzegovina, were about to clean everything all the way to the
3 Croatian border. I'm not an occupier in that part."
4 General Praljak never said that he had to win the war. He said
5 that he must not lose the war and must not lose the areas populated by
6 the Croats.
7 General Praljak came at the time when the Muslim offensive was in
8 full swing. He was at the front all the time. He had to deal with
9 thousands upon thousands of Croats who had left Konjic, Vares, Bugojno
10 and Klis. Witnesses Skender, Curcic and Gerritsen talked about that.
11 The Prosecution, during the trial, did not provide any evidence about
12 direct perpetrators of the crimes and so as to have the right to claim
13 that they were directly connected with General Praljak.
14 In paragraph 785, the Prosecutor quotes the position of
15 Judge Trechsel in order to support its own claims, and says that the
16 Judge wanted to confirm this attitude:
17 "No, I just note that you confirmed that your policy and your
18 idea is if there is a murder and a victim, you remove the victim, instead
19 of containing the murderer."
20 For General Praljak to approve a forcible movement of a
21 population, he should have known about it in real time. The Prosecutor
22 had to produce at least one piece of evidence which shows that Praljak
23 either ordered or was informed about that in real time. That would be
24 the only way to prove that Praljak knew.
25 The Prosecutor cannot refer to an interview given after the war

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1 about the knowledge acquired after the war. Praljak, himself, explained
2 that between the two evils, a lesser -- the lesser evil was chosen.
3 Lives are what matters the most, after all, and we shouldn't forget that
4 at the time the HR-HB was faced with 50.000 refugees from Central Bosnia
5 who arrived there not only because they wanted to be in Herzegovina, not
6 because they were scared by any propaganda, not because they fulfilled
7 somebody's political goals; they arrived because they wanted to save
8 their own lives. Those people were not criminals. Only if they had been
9 could this allegation referred to by Judge Trechsel in his remark be used
10 as proof. Those were people on the run. They were running from the ABiH
11 offensive after the fall of their cities, and they fled to an area where
12 they felt safer.
13 In a situation when there was sabotage and terrorist groups in
14 the Dubrava Valley, when there was combat going on, and when everybody
15 fully expected that the ABiH will continue advancing along the
16 Neretva Valley, with the presence of a large number of frustrated,
17 wounded, and embittered people, General Praljak, after the war, after the
18 developments, once he was fully familiar with the reasons for the
19 resettlement of Muslims, he said that it had been a good move because it
20 meant that lives were saved.
21 With regard to document P9470, I would like to point to the
22 Trial Chamber that the piece of evidence presented in that evidence as
23 paragraph -- as Page 2 was already admitted into evidence as IC01076.

24 When the document is evaluated, please take into account IC01076.

25 The Prosecutor failed to show a single piece of evidence pointing

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1 to the Main Staff or General Praljak having anything to do with the
2 detention centres. Document P7064 that the Prosecutor refers to is
3 Biskic's report about the conditions of accommodation in detention
4 facilities, and that document doesn't show that anything about the
5 detention centres was under the authority of the Main Staff of the HVO.
6 Document P7124, and the previous one was 7064, the second
7 document, 7124, Page 6, dated December 1993, not a single member of the
8 Main Staff attended a meeting, and the list on the first Page gives the
9 names of all the detainees. This is the authorisation of Boban's order
10 about the dismantling of all detention centres. All those that had
11 anything to do with detention centres were there; the Ministry of
12 Defence, the SIS Administration head, the military police, the heads of
13 detention centres in Ljubuski, Heliodrom, Gabela, the Ministry of the
14 Interior, the military prosecutors and judges. Nobody in the Main Staff
15 was informed or invited to the meeting.

16 In paragraph 813, the Prosecutor speaks about sniping, and he
17 says that the snipers were under General Praljak's authority, and that he
18 was well aware of the sniping activities, and that's why all the victims
19 are down to the HVO, and Praljak is made responsible for the victims.
20 However, the Chamber did not see any evidence to the effect that the
21 victims were, indeed, hit by the HVO soldiers, and that snipers were only
22 exclusively in the hands of the HVO; and that, as such, they were the
23 only ones who could open fire on the positions of those individuals who
24 had been hit by sniper fire. It had to be demonstrated that only an
25 exclusively -- position in the HVO control of the western part of Mostar

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1 was the only possible position from which those victims could be either
2 wounded or killed.

3 The Prosecutor claims that Praljak cross-examined quite
4 unsuccessful, without any successful argument, about the fact that
5 snipers were under HVO command. Before the end of my final argument, I
6 would like to point to the document P4822. This is Mazowiecki's report
7 that the Prosecutor referred to on several occasions in his final
8 argument. And I would like to say that it arises from that report that
9 the constant sniping from the government position, and so far we've seen
10 that the government or the BiH Army was positioned on the east bank of
11 the river, and where their fire was aimed, and we could see that people
12 in Brijeg Hospital were visited by Mazowiecki and his crew, it arises
13 from this document that both the east and west sides of the Mostar lacked
14 water, and it stems from that document that Mostar was destroyed already
15 in 1992, or mostly in 1992, which is clearly demonstrated by document
16 1D1415.

17 I've been informed that my time is up. Isn't it? Just a moment,
18 Your Honours.

19 JUDGE ANTONETTI: [Interpretation] You have --

20 MS. PINTER: [Interpretation] I apologise, Your Honours. I was
21 warned that my time was up and that I had to provide for the half hour
22 for the general, but I have just been -- received corrected information
23 that I still have time.

24 JUDGE ANTONETTI: [Interpretation] You have had four hours until
25 now. If General Praljak takes the floor, he will take the floor on

1 Monday, because we must stop at a quarter to 2:00.
2 MS. PINTER: [Interpretation] Your Honours, I'm not done. I just
3 thought that my time was up and I had to stop. But if I can deal with
4 another few paragraphs of the Prosecution brief, I'll do that with great
5 pleasure.
6 So I broke off when I was speaking about the snipers.
7 In paragraph 814, the Prosecution speaks about Praljak's
8 knowledge about snipers in Mostar. However, the documents they cite
9 actually say -- speak to the contrary. I have already mentioned P4822.
10 With regard to document P10047, that's a statement of which I'm not sure
11 at the moment whether it's confidential, so I won't state the name. The
12 Prosecution refers to paragraphs 47, 44 and 46. I must point out to the
13 Trial Chamber that paragraph 44 of the statement is not in evidence, so
14 that the Trial Chamber cannot base its decision on that.
15 About General Praljak's knowledge about the snipers, it was the
16 Prosecution's duty to prove that they were HVO snipers and that the
17 victims were hit by their snipers. Then they had to prove that
18 General Praljak knew of the snipers, and, based on that, draw such
19 conclusions. As it is, it all rests on the Prosecution's allegations,
20 without any evidence. In our final brief, we analysed each and every
21 sniping incident and all the victims hit by snipers, and showed that no
22 one victim could have been hit from HVO positions.
23 With regard to the destruction of Mostar and what it looked like,
24 I would like to refer to document 1D01415. That is the Mostar morning of
25 11 June 1992. That's a document issued by the 1st Mostar Independent

1 Battalion, and it's a publication of the BH Army, in which it says:
2 "June 92: Raving pyromaniacs have reduced Luka,
3 Donja Mahala, Main Street and Fejic Street, a large part of Cernica and
4 Semovac, Cim and Ilici to cinders. The beastly Greater Serbian and
5 Greater Montenegrin thirst for blood, the criminal instinct for looting
6 and killing, the delirious concept of creating a twilight zone on the
7 banks of the Neretva to draw ethnic borders in -- imagined in the darkest
8 depths of a disturbed mind have levelled a cultural and historical
9 heritage which was four centuries' old, devastated Muslim and Catholic
10 shrines, ploughed over graves, and expelled people from their
11 centuries-old homes."
12 So that Mostar was actually destroyed in 1992, and not in 1993,
13 as claimed by the Prosecution witnesses and as alleged by the Prosecution
14 in their final brief. This was written by Bosniaks in 1992, and I kindly
15 ask the Trial Chamber to take this into consideration.
16 In paragraph 820, the Prosecution says American
17 Ambassador Peter Galbraith has summed up his opinion about Praljak's
18 responsibility not only about the shelling and destruction of
19 Eastern Mostar, but also concerning all of his crimes. That included the
20 JCE. This is a general assessment of Ambassador Galbraith. Of course,
21 it is his right to put forward arbitrary assessments and unconfirmed
22 allegations, but it is up to the Trial Chamber to reach the decision only
23 based on evidence led by both sides, both parties to the proceedings.
24 In paragraphs 839 through 846, the Prosecution claim that
25 Praljak's testimony, with which he wanted to help himself, is not

1 trustworthy. Although Mr. Praljak's testimony is not trustworthy, the

2 final brief is full of lines from his testimony, and the allegations in
3 57 paragraphs actually cite his testimony. The Prosecution says when
4 Praljak did not lie, then he avoided answering.
5 About the lies: Praljak, in his testimony, showed a map of
6 Gornji Vakuf which did not show the HVO artillery positions on
7 Mount Makljen. By doing so, he failed to give important information to
8 the Trial Chamber, and he showed them a wrong map that showed only
9 BH Army positions. However, the positions of the HVO artillery with
10 regard to the events in Vakuf was irrelevant, which follows from Tokic's
11 testimony. Praljak drew a map showing the BH Army positions. By drawing
12 the map, Praljak showed the BH Army positions. Because of the
13 Prosecutor's insisting that the HVO attacked the Muslim population,
14 showing a map where the BH Army positions had as its goal to show that
15 there were BH Army forces, and that this wasn't an attack on the Muslim
16 population. According to the testimony of Witness Tokic, the artillery
17 on Makljen couldn't target the town because it was out of reach.
18 P1162: Siljeg's report, "Our Forces." In the description of the
19 activities, it was not mentioned that from the area of Makljen, fire was
20 opened upon Gornji Vakuf/Uskoplje, but rather on Crni Vrh and Voljevac,
21 BH Army positions. The report points out the BH Army strongholds south
22 of the town of Gornji Vakuf; namely, Uzice, Dusa, Mount Mackovac, and the
23 strengthened lines at Podovi. The Prosecution's allegations that only
24 civilians were present at Uzice and Dusa, and that, thus, the Muslim
25 population was attacked, is unfounded.

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1 In the direct examination, Praljak said that Eastern Mostar did
2 not complain to international representatives about shortage of water.
3 In the cross-examination, he was faced with a document in which he was
4 informed about the shortage of water in Eastern Mostar. This is a
5 misinterpretation, and actually the Prosecution was asking -- was asking
6 leading questions.
7 The following lie: When answering Judge Antonetti's questions
8 about his possible conversations with Tudjman while he was the chief of
9 the Main Staff, Praljak lied, because on cross he was faced with evidence
10 showing that on the 15th of September, 1993, he was in Tudjman's office.
11 Praljak said that he never spoke with Tudjman about the way military
12 operations were conducted, and he also said that he didn't receive orders
13 either from Tudjman or even Boban when he came to the planning of defence
14 and commanding operations. In other words, General Praljak did not lie,
15 whereas the Prosecution erroneously interpreted the contents of the
16 documents and minutes.
17 The following lie: Praljak lied when he said that the Tudjman
18 and Milosevic agreement was created in 1993, when pressure had to be put
19 on Croats. He was faced with Filipovic's interview, of whom he said that
20 he was an honourable Muslim. In the month of June 1991, he spoke about
21 the Tudjman-Milosevic agreement. Praljak said that the rumours of a
22 division of Bosnia between Tudjman and Milosevic started circulating
23 around Croatia already in 1993 anyway.
24 Alija Izetbegovic was well aware of the meeting between Tudjman
25 and Milosevic. He was even aware of the alleged topic of the

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1 conversation, which is corroborated by document 3D00295. The document is
2 Alija Izetbegovic's letter to Dr. Tudjman, dated 24 March 1991. And in
3 the letter, it says:
4 "I am convinced, Mr. President, and I have certain proof and

5 information to that effect, that he," "He" with a capital letter and
6 underlined, "in bilateral talks, will offer you certain partial solutions
7 which, to a certain extent, would be to the expense of Muslims and Bosnia
8 and Herzegovina. Please turn any such offer down, because you know that
9 those offers accepted would lead to chaos ...," and so on and so forth.
10 However, at that time the rumours about Karadjordjevo did not
11 blow out of proportions, as they did in 1994. It became particularly
12 absurd when the JNA launched an all-out attack on the Republic of
13 Croatia. Then the rumours quieted down. In 1994, when Manolic and Mesic
14 left the HDZ and established their own party and were preparing for a
15 take-over, the story about Karadjordjevo became topical again because it
16 was necessary to destabilise the Republic of Croatia and
17 Dr. Franjo Tudjman. Therefore, General Praljak didn't lie.
18 Another lie: Praljak denied knowledge about the tank on Stotina.
19 Under oath, Praljak lied that he didn't know about the tank in Stotina,
20 whereas his book shows the position of the tank on Stotina. The
21 Prosecutor completely ignores the fact that General Praljak said that at
22 the relevant time in November 1993, he did not know that there was a tank
23 on Stotina. Only subsequently, when he investigated the circumstances of
24 the destruction of the Old Bridge was he able to establish that there was
25 a tank on Stotina; and then, for the purpose of truthfully representing

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1 all the circumstances surrounding the destruction of the Old Bridge in a
2 book, which was the result of all that evidence collected, he did show
3 the position of the tank on Stotina. It is one thing to know something
4 in November 1993 and an entirely different thing to have subsequent
5 information as a result of the collection of data. This can certainly
6 not be qualified as a lie.
7 The Defence claims that the OTP failed to prove that
8 General Praljak did any violations of the law as a commander. They
9 didn't prove that Slobodan Praljak committed a great breach of his
10 duties, that any such possible breach may have been serious, willful and
11 wanton. Therefore, General Praljak cannot be held responsible pursuant
12 to 7/3. Only the most serious deviations from the duties of a commander
13 constitute criminal liability, and this Trial Chamber has been deprived
14 of any proof that would demonstrate that General Praljak behaved in a
15 criminal way pursuant to 7/3.
16 For all those reasons, General Praljak's Defence believes that
17 this Trial Chamber [as interpreted] should be acquitted of all charges.
18 Thank you.
19 THE INTERPRETER: That General Praljak should be acquitted of all
20 charges.
21 JUDGE ANTONETTI: [Interpretation] It is soon going to be time to
22 adjourn.
23 We'll resume on Monday with General Praljak. Until then, I wish
24 you all a good evening.
25 The hearing stands adjourned.

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1 --- Whereupon the hearing adjourned at 1.40 p.m.,
2 to be reconvened on Monday, the 21st day of
3 February, 2011, at 2.15 p.m.
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