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**THE INTERNATIONAL CRIMINAL TRIBUNAL  
FOR THE FORMER YUGOSLAVIA**

**IN THE TRIAL CHAMBER II**

**Original: English**

**Before: Judge Carmel A. Agius, Presiding  
Judge Jean Claude Antonetti  
Judge Kevin Parker**

**Registrar: Mr. Hans Holthuis**

**Filed: 14<sup>th</sup> February 2006**

**THE PROSECUTOR**

**v.**

**JADRANKO PRLIĆ  
BRUNO STOJIĆ  
SLOBODAN PRALJAK  
MILIVOJ PETKOVIĆ  
VALENTIN ČORIĆ  
and BERISLAV PUŠIĆ**

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**THE ACCUSED VALENTIN ČORIĆ'S PRE-TRIAL BRIEF**

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**For the Accused Berislav Pušić**

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**THE ACCUSED VALENTIN ĆORIĆ'S PRE-TRIAL BRIEF****Introduction.**

1. On 21<sup>st</sup> November 2005, the Pre-Trial Judge ordered that the Prosecution file the final version of its pre-trial brief as well as the list of witnesses and exhibits it intends to present, by 19<sup>th</sup> January 2006. The counsel for the defence and the accused Praljak shall file their pre-trial brief by 15<sup>th</sup> February 2005.<sup>1</sup> The Order was amended on 30<sup>th</sup> November 2005, when the Pre-Trial Judge issued the Order on Guidelines for Drawing Up the List of Witnesses and Exhibits.
2. On 19<sup>th</sup> January 2006, the Prosecution filed the Pre-Trial Brief, and the very extensive list of witnesses and exhibits were delivered to the Defence four days later. The Prosecution did not comply with the Pre-Trial Judge's Order of 30<sup>th</sup> November 2006.<sup>2</sup> On the contrary, on 30<sup>th</sup> January 2006, it requested modification of the Order and the extension of time until 14<sup>th</sup> April 2006.<sup>3</sup> The Prosecution insisted on its request also at the status conference held on 30<sup>th</sup> January 2006.<sup>4</sup> Regardless of that, the deadline for the Defence pre-trial brief is 15<sup>th</sup> February 2006.
3. Rule 65<sup>ter</sup>(F) of the Rules of Procedure and Evidence (the "Rules") stipulates: "After the submission by the Prosecutor of the items mentioned in paragraph (E), the pre-trial Judge shall order the defence, within a time limit set by the pre-trial Judge, and not later than three weeks before the Pre-Trial Conference, to file a pre-trial brief addressing the factual and legal issues, and including a written statement setting out: (i) in general terms, the nature of the accused's defence, (ii) the matters with which the accused takes issue in the Prosecutor's pre-trial brief, and (iii) in the case of each such matter, the reason why the accused takes issue with it". The pre-trial brief will not exceed 50 pages or 15,000 words, whichever is greater.<sup>5</sup>

<sup>1</sup> Scheduling Order of 21 November 2005.

<sup>2</sup> Order Directing the Prosecution to Comply with the Provisions of Ordinary Proceedings, of 24 January 2006.

<sup>3</sup> Prosecution Submission Pursuant to the Pre-Trial Judge's Order Dated 24 January 2006, of 30 January 2006, para. 28.

<sup>4</sup> Status Conference, Unofficial Transcript, p. 356.

<sup>5</sup> Practice Direction on the Length of Briefs and Motions (IT/184/Rev.1), of 5 March 2002.

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4. The accused is not obliged to present its defence case in the pre-trial brief. The purpose of defence pre-trial brief is primarily to respond to the Prosecution pre-trial brief.<sup>6</sup> Rule 65ter(F) “does not compel a defendant to include any information about his or her intended exhibits in the pre-trial brief”.<sup>7</sup>
5. The accused Valentin Ćorić contests all legal and factual assertions of the Amended Indictment resulting in his criminal responsibility.

**The Prosecution's Pre-Trial Brief is too vague.**

6. In contrast to the right of the Defence, the Prosecution has clear obligations in this phase of the proceedings. Pursuant to the Rules, the purpose of the Prosecution's Pre-Trial Brief is not only to present a summary of the evidence, which the Prosecutor intends to bring regarding the commission of the alleged crime and the form of responsibility incurred by the accused or to name any admissions by the parties and a statement of matters which are not in dispute as well as a statement of contested matters of fact and law,<sup>8</sup> but the additional task of Pre-Trial Brief is to assist the defence in the preparation of its case.<sup>9</sup> In that sense, the Prosecution pre-trial brief should supplement the indictment and thus enable the accused to prepare the defence case properly.
7. At the moment of the filing of the Pre-Trial Brief, the Prosecutor has to be quite clear about her case. Generally, an indictment, as the primary accusatory instrument, must plead with sufficient particularity the material aspects of the Prosecution's case, failing which it suffers from a material defect.<sup>10</sup> In the light of the primary importance of the indictment, the Prosecution cannot cure a defective indictment via its supporting material and pre-trial brief.<sup>11</sup> In the situation where an indictment does not plead the material facts with the requisite degree of specificity because the necessary information is not in the Prosecution's

<sup>6</sup> IT-99-36-PT, *Prosecutor v. Radoslav Brdjanin and Momir Talić*, Decision on Prosecution Response to Defendant Brdjanin's Pre-trial Brief, of 14 January 2002.

<sup>7</sup> IT-99-36-PT, *Prosecutor v. Radoslav Brdjanin and Momir Talić*, Decision on Prosecution Response to Defendant Brdjanin's Pre-trial Brief, of 14 January 2002.

<sup>8</sup> Rule 65ter (E) (i).

<sup>9</sup> IT-95-16-A, *Prosecutor v. Zoran Kupreškić et al.*, Appeal Judgement of 23 October 2001, para. 117.

<sup>10</sup> IT-95-16-A, *Prosecutor v. Zoran Kupreškić et al.*, Appeal Judgement of 23 October 2001, para. 114.

<sup>11</sup> IT-99-36-PT, *Prosecutor v. Brdjanin and Talić*, Decision on Objections by Radoslav Brdjanin to the Form of the Amended Indictment, 23 February 2001, para. 13.

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possession, doubt must arise as to whether it is fair to the accused to proceed with the trial.<sup>12</sup>

8. The Prosecution is expected to inform the accused of the nature and cause of the case, before it goes to trial. It is unacceptable for the Prosecution to omit the material facts in the indictment with the aim of moulding the case against the accused as the trial proceeds, depending on how the evidence unfolds.<sup>13</sup> The materiality of a particular fact - such as the identity of the victim, the time and place of the offence, and the means by which the offence was committed - depends on the nature of the Prosecution case. A decisive factor is the nature of the alleged criminal conduct charged against the accused and, in particular, the proximity of the accused to the events alleged in the indictment.<sup>14</sup> The Appeals Chamber considers that the acts and conduct of the accused on which the Prosecution relies to establish criminal responsibility are material facts to be pleaded in an indictment.<sup>15</sup>
9. In the jurisprudence of the Tribunal, it is considered that pre-trial brief must not be "extremely general in nature".<sup>16</sup> In this case, the Prosecution's Pre-Trial Brief is in fact repetition of the Amended Indictment. The Prosecution itself admits that the Pre-Trial Brief is built around and follows the structure of the Amended Indictment. Every paragraph of the Amended Indictment is included in the brief, in the same order, at the same numbered paragraph as in the Amended Indictment.<sup>17</sup> Most of the differences from the Amended Indictment are quotes from judgments (mostly those where appeals judgment is still pending, such as in *Naletilić and Martinović* case) or, some witness statements. The Pre-Trial Brief has an annex with an extremely extensive list of witnesses and exhibits.

<sup>12</sup> IT-95-16-A, *Prosecutor v. Zoran Kupreškić et al.*, Appeal Judgement of 23 October 2001, para. 92.

<sup>13</sup> IT-95-16-A, *Prosecutor v. Zoran Kupreškić et al.*, Appeal Judgement of 23 October 2001, para. 92.

<sup>14</sup> IT-04-83-PT, *Prosecutor v. Rasim Delić*, Decision on Defence Motion Alleging Defects in the Form of the Indictment and Order on Prosecution Motion to Amend the Indictment, of 13 December 2005, para. 7.

<sup>15</sup> IT-04-83-PT, *Prosecutor v. Rasim Delić*, Decision on Defence Motion Alleging Defects in the Form of the Indictment and Order on Prosecution Motion to Amend the Indictment, of 13 December 2005, para. 9

(IT-04-81-PT, *Prosecutor v. Momčilo Perišić*, Decision on Preliminary Motions, 29 August 2005, para. 5; IT-95-14/2-A, *Prosecutor v. Dario Kordić and Mario Čerkez*, Judgement, 17 December 2004, paras. 144, 147.; IT-98-30/1-A, *Prosecutor v. Kvočka, Radić, Žigić and Prač*, Judgment, 28 February 2005, para. 65.

<sup>16</sup> IT-95-16-A, *Prosecutor v. Zoran Kupreškić et al.*, Appeal Judgment of 23 October 2001, paras. 117, 319.

<sup>17</sup> Prosecution Pre-Trial Brief, fn. 1.

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10. The Pre-Trial Judge's Order of 30<sup>th</sup> November 2005 was obviously motivated by the wish not to create prejudice to the accused due to the large quantity of material and the short period of time. Relying on the standard from the *Kupreškić* Appeals Judgment, the ICTR Appeals Chamber stated: "The disclosure made in the Pre-Trial Brief must also be found to be timely, such that the Defence suffered no prejudice from the failure of the Indictment to allege specifically" the allegations against the accused.<sup>18</sup>

**Inadequate detail of the charges laid against Valentin Ćorić.**

11. In the Amended Indictment and Pre-Trial Brief, the Defence finds that the Prosecution has charged the defendant with numerous sweeping charges stemming from his alleged involvement with a Joint Criminal Enterprise ("JCE") with the co-accused and others. According to the Prosecution, as of 18<sup>th</sup> November 1991 or earlier, until April 1994, there was a JCE, whose purpose was to create an ethnically clean "Greater Croatia" within the borders of the 1939 Croatian Banovina<sup>19</sup>. The JCE took place during the international armed conflict.<sup>20</sup> In order to implement it, the Croatian Community of Herceg-Bosna (HZ HB) was established, and subsequently the Croatian Defence Council (HVO), which played the role of state authority.<sup>21</sup> HZ HB's relation to Muslims had a discriminatory and a persecutory nature.<sup>22</sup>
12. The Defence submits that there is a lack of precision in the Amended Indictment and the Pre-Trial Brief that is not consistent with the procedural requirements mandated by the case law of the ICTY. This is especially the case in relation to the alleged JCE. The Defence argues that this defect calls into question the fairness of these proceedings. The following excerpt from the *Krnjelac* Appeals Chamber supports this finding: "If the Prosecution relies on a theory of joint criminal enterprise, then the Prosecutor must plead the purpose of the enterprise, the identity of the participants, and the nature of the accused's participation in the

<sup>18</sup> ICTR-96-10-A, ICTR-96-17-a, *Prosecutor v. Elizaphan Ntakirutimana and Gérard Ntakirutimana*, Judgement of 13 December 2004, para. 38.

<sup>19</sup> Prosecution Pre-Trial Brief, para. 15.

<sup>20</sup> Prosecution Pre-Trial Brief, para. 16.3-16.9.

<sup>21</sup> Prosecution Pre-Trial Brief, para. 25-25.1.

<sup>22</sup> Prosecution Pre-Trial Brief, para. 26.

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enterprise.<sup>23</sup> Therefore, in order for an accused charged with joint criminal enterprise to fully understand which acts he is allegedly responsible for, the indictment should **clearly indicate which form of joint criminal enterprise** is being alleged.<sup>24</sup>

13. As the Indictment and the Pre-Trial Brief against the Accused fails to clearly indicate which form of JCE is being alleged for each of the charges against the Accused, the Defence must assume that all forms might be alleged during the course of the trial. This clearly stems from the Prosecution's Pre-Trial Brief.<sup>25</sup> Without greater specificity in the Amended Indictment, it is very difficult for the Defence to adequately prepare for whichever form the Prosecution may choose to employ for each of the charges alleged in the Indictment.
14. In its Pre-Trial Brief, the Prosecution insists on the assertion that the participants in the joint criminal enterprise, among others, were Dario Kordić and Tihomir Blaškić. These persons were tried at the Tribunal, but were not condemned for taking part in the joint criminal enterprise. The Prosecution cannot intentionally seek to exhaust its opponent's resources by leaving the Defence to investigate charges that it has no intent to prosecute. The Prosecution should make every effort to ensure not only that the indictment specifically pleads the material facts that the Prosecution intends to prove but also that any facts that it does not intend to prove are removed. The same applies to other communications that give specific information regarding the Prosecution's intended case, such as the Pre-Trial Brief. It would be a serious breach of ethics for the Prosecution to draw the Defence into lengthy and expensive investigations of facts that the Prosecution does not intend to prove at trial.<sup>26</sup> Despite that, the Prosecution's Pre-Trial Brief does not solve the doubt whether the Accused should defend himself also from the

<sup>23</sup> See e. g. IT-03-69-PT, *Prosecutor v. Jovica Stanišić*, Decision on Defence Preliminary Motions, 14 November 2003, p. 5; IT-02-65-PT, *Prosecutor v. Željko Meakić et al.*, Decision on Dusko Knezevic's Preliminary Motion on the Form of the Indictment, 4 April 2003, p. 6; IT-00-39&40-PT, *Prosecutor v. Momčilo Krajišnik & Biljana Plavšić*, Decision on Prosecution's Motion for Leave to Amend the Consolidated Indictment, 4 March 2002, para. 13.

<sup>24</sup> IT-97-25-A, *Prosecutor v. Krnojelac*, Appeals Judgement, 17 September 2003, para. 138. Emphasis added.

<sup>25</sup> Prosecution Pre-Trial Brief, paras. 15-17, 218-227.

<sup>26</sup> ICTR-96-10-A, ICTR-96-17-a, *Prosecutor v. Elizaphan Ntakirutimana and Gérard Ntakirutimana*, Judgement of 13 December 2004, para. 43.

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charges for the deeds, for which these two persons were sentenced, or not. This significantly limits the right of the Accused to a fair trial.

15. The Accused categorically denies any knowledge or awareness on the existence of a joint criminal enterprise, let alone his participation in it, either by tacit agreement or expressed consent. The Defence submits that the concept of the joint criminal enterprise, in the way the Prosecution interprets it in this case, is in fact too wide and introduces the principle of collective guilt as a mode of liability for serious war crimes. The Defence stresses that it has the potential to deprive the Accused of a fair trial.

**Personal culpability as the foundation of any fair system of justice.**

16. The Defence submits that the ICTY, which has been charged with administering justice during the transitional period following the conflict in the Former Yugoslavia, must rely on the principle of personal culpability in order to be seen as a legitimate force for reconciliation and justice in the region: "The basic assumption must be that in international law as much as in national systems, the foundation of criminal responsibility is the principle of personal culpability: nobody may be held criminally responsible for acts or transactions in which he has not personally engaged or in some other way participated (*nulla poena sine culpa*)."<sup>27</sup>
17. In its current form and use by the Prosecutor, the Defence will argue that the frequency of use of JCE within the Tribunal illustrates that it is being used as a catchall to attach liability through guilt by association where the Prosecutor does not have enough evidence to convict under more traditional modes of liability.
18. In order to achieve a just balance between the rights of accused and the aims of international humanitarian and criminal law, the Defence will especially argue that "extended form" or "3<sup>rd</sup> form" of JCE should be limited to criminal acts that were physically perpetrated by members of an alleged JCE in accordance with post WWII case law.<sup>28</sup> The Defence believes that the scope of JCE as a mode of liability must be more clearly defined by the ICTY, or risk being a target of

<sup>27</sup> IT-94-1-A, *Prosecutor v. Duško Tadić*, Appeals Judgement, 15 July 1999, para.186.

<sup>28</sup> See IT-99-36-A, *Prosecutor v. Brđjanin & Talić*, Amicus Curiae Brief of Association of Defence Counsel – ICTY, filed on 5 July 2005.

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criticism by outside detractors, which would undermine the aims and jurisprudential contribution of the Tribunal to International Criminal Law.<sup>29</sup>

19. The defence will also argue that the scope of JCE as a mode of liability can be more clearly defined by incorporating a “substantial contribution requirement”<sup>30</sup> as previously suggested in the *Kvočka* Trial Chamber Judgement. At paragraph 284, the *Kvočka* Trial Chamber found that: “The shared intent of an accused participating in a criminal enterprise may be inferred from knowledge of the criminal enterprise and continued participation, *if the participation is significant in position or effect*. Eventually, an aider or abettor, one who assists or facilitates the criminal enterprise as an accomplice, may become a co-perpetrator, even without physically committing crimes, if their participation lasts for an extensive period or becomes more directly involved in maintaining the functioning of the enterprise. By sharing the intent of the joint criminal enterprise, the aider or abettor becomes a co-perpetrator.”<sup>31</sup>
20. Taking into consideration the above submission regarding JCE, the Defence submits that the alleged crimes, as far as they have been described in the Indictment and Prosecution’s Pre-Trial Brief, do not suggest physical perpetration by members of the alleged JCE or a substantial contribution by the Accused. To hold the accused Valentin Ćorić guilty for a vast array of crimes in which he had no actual knowledge or intent, and which were also not physically perpetrated by members of the alleged JCE, would go beyond any conception of personal culpability or legal precedence employed by the Appeals Chamber when it first illustrated the concept of extended JCE in the *Tadić* Appeals Judgement:<sup>32</sup> “The requisite *mens rea* for the extended form is twofold. First, the accused must have the intention to participate in and contribute to the common criminal purpose.

<sup>29</sup> For further discussion and analysis, see Nicola Piacente, *Importance of Joint Criminal Enterprise Doctrine for the ICTY Prosecutorial Policy*, *Journal of International Criminal Justice*, June 2004, Allison Marston Danner and Jenny S. Martinez, *Guilty Associations: Joint Criminal Enterprise, Command Responsibility, and the Development of International Criminal Law*, 93 *Calif. L. Rev.* 75. (“Guilty Associations”), and Mark Osiel, *The Banality of Good: Aligning Incentives Against Mass Atrocity*, 105 *Colum. L. Rev.* 1751.

<sup>30</sup> For further discussion See *Guilty Associations*, *Supra* Note 29, at pg. 47.

<sup>31</sup> IT-98-30/1-T, *Prosecutor v. Miroslav Kvočka et al.*, Trial Judgment, 2 November 2001, para. 284, *comp.* paras 285-286; also see *Guilty Associations*, *Supra* Note 29. Emphasis added.



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Second, in order to be held responsible for crimes which were not part of the common criminal purpose, but which were nevertheless a natural and foreseeable consequence of it, the accused **must also know** that such a crime **might be perpetrated by a member of the group**, and willingly take the risk that the crime might occur by joining or continuing to participate in the enterprise.<sup>33</sup>

21. During the trial, the Defence will demonstrate that the accused Valentin Ćorić was not aware of the existence of any JCE whatsoever, that the whole Prosecution's theory of the JCE is wrongly fabricated and that the Accused cannot be criminally responsible. The Defence will also demonstrate that the Accused lacked the requisite intent or knowledge to attract any liability associated with the alleged JCE. Contrary to that, most of the period the Amended Indictment refers to, the Accused was acting as a medium-ranked officer in the Croatian Defence Council military units, without any of the requisite criminal intent alleged by the Prosecution.

**Valentin Ćorić's Command Responsibility.**

22. The basic assumption of criminal responsibility is founded upon the principle of personal culpability. No one may be held criminally responsible for acts or transactions in which he has not personally engaged or in some other way participated (*nullum crimen nulla poena sine culpa*).<sup>34</sup> Generally, this principle (the principle of legality) aims at preventing the prosecution and punishment of an individual for the acts, which he reasonably believed to be lawful at the time of their commission.<sup>35</sup> Inherent in this principle are the requirement of specificity and the prohibition of ambiguity in criminal law, its retroactive application, or its application by analogy.<sup>36</sup> This principle is expressed also in the international documents on human rights, such as the Universal Declaration of Human Rights, which says: "No one shall be held guilty of any penal offence on account of any act or omission which did not constitute a penal offence, under national or

<sup>32</sup> See IT-94-1-A, *Prosecutor v. Duško Tadić*, Appeals Judgment, 15 July 1999, paras 228 and also 204, 220; IT-98-32-A, *Prosecutor v. Mitar Vasiljević*, Appeal Judgment, 25 February 2004, para. 99.

<sup>33</sup> *Ibid.* Emphasis added.

<sup>34</sup> IT-94-1-A, *Prosecutor v. Duško Tadić*, Appeal Judgment of 15 July 1999, para. 186.

<sup>35</sup> IT-96-11-T, *Prosecutor v. Zejnil Delalić et al.*, Judgement of 16 November 1998, para. 313.

<sup>36</sup> *Idem*, paras. 402, 408-413.

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international law, at the time when it was. Nor shall a heavier penalty be imposed than the one that was applicable at the time the penal offence was committed".<sup>37</sup> Also, the Article 15 of the International Covenant on Civil and Political Rights stipulates: "No one shall be held guilty of any criminal offence of any act or omission which did not constitute a criminal offence, under national or international law, at the time when it was committed".<sup>38</sup> This principle is a constituent part of the international law, and as such is incorporated in the legal systems of all civilised countries.

23. A too wide interpretation of the criminal responsibility as a superior under Article 7(3), i.e. of the command ("imputed command") responsibility is one of the most common criticism of the Statute and the Tribunal's jurisprudence.<sup>39</sup> The Additional Protocol I to the 1949 Geneva Conventions introduces responsibility of the commander, but "its provisions only stipulated that superiors who fail to prevent or repress the crimes of their subordinates shall not be absolved from responsibility for these crimes. The more specific determination of this responsibility – penal or disciplinary, primary or vicarious – was left to the domestic law of the ratifying states".<sup>40</sup> The Additional Protocol II to the 1949 Geneva Conventions says nothing about that.<sup>41</sup> Additional confusion is created by the differences, which exist, in terms of responsibility of the superior, between the Statute of the ICC and Statute of the ICTY and ICTR. These differences imply that the concept of command responsibility, which abandons the standard of strict liability as one of the cornerstones of the criminal law, does not meet general acceptance and approval. For that very reason, it should be approached with an increased caution.<sup>42</sup>

<sup>37</sup> *Universal Declaration of Human Rights*, Art. 11 (2) Adopted 10<sup>th</sup> December 1948.

<sup>38</sup> *International Covenant on Civil and Political Rights*, Art. 15 Adopted 16<sup>th</sup> December 1966.

<sup>39</sup> See Mirjan Damaška, *The Shadow Side of Command Responsibility*, *The American Journal of Comparative Law*, Vol. XLIX, No. 3/2001.

<sup>40</sup> M. Damaška, o. c., pp. 485-486. See also: *Protocol Additional to the Geneva Conventions of 12<sup>th</sup> August 1949, and Relating to the Protection of Victims of International Armed Conflicts*: Adopted on 8 June 1977; Art. 86(2).

<sup>41</sup> *Protocol Additional to the Geneva Conventions of 12<sup>th</sup> August 1949, and Relating to the Protection of Victims of Non-International Armed Conflicts*. Adopted on 8 June 1977.

<sup>42</sup> See *Commentary on the Additional Protocols of 8<sup>th</sup> June 1977 to the Geneva Conventions of 12<sup>th</sup> August 1949*, Geneva, 1987, pp. 1011-1016 ff.

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24. A large majority of the war manuals acknowledge that commanders are responsible for failing to prevent or punish, but they leave the nature of this responsibility unspecified.<sup>43</sup> In that sense, and especially with regard to the principle of legality (*nullum crimen sine lege*) which includes the prohibition of retroactive application of law, the provisions must be borne in mind of the Regulation Concerning the Application of International Law of War, issued by the Defence Ministry of former Yugoslavia in 1988: "It is true that article 21(1) of the Regulation provides that a commander is 'personally' responsible for failure to prevent and failure to punish. But article 32, dealing with responsibility for war crimes, obligates (empowers) state authorities to hold only those military persons criminally accountable who 'ordered and perpetrated' war crimes. Failure to prevent and to punish is conspicuously absent from this latter provision".<sup>44</sup>
25. The basis of the superior-subordinate relationship is the power of the superior to control the actions of his subordinates. The responsibility level of a military superior must be proportionate to the unit's organisation level, because it would be inappropriate to expect the same organisation level (and thus the effective control level) from both the trained and developed army, and the group, which is spontaneously organised for the purpose of defence against aggression. In the *Čelebići* case, the Appeal Chamber observed in relation to the mental element that it should be assessed "in the specific circumstances of each case, taking into account the specific situation of the superior concerned at the time in question".<sup>45</sup>
26. The defence believes that the ICTY Appeals Chambers in *Čelebići* and *Blaškić* have found the right balance in respect to liability under command responsibility, by assuring that defendants cannot be convicted under 7(3) for a *mens rea* standard of negligence.<sup>46</sup> The Defence will argue that the Trial Chamber should uphold a restrictive interpretation of the mode of liability under Article 7(3).<sup>47</sup>

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<sup>43</sup> M. Damaška, o. c., p. 492.

<sup>44</sup> *Idem*, p. 492, footnote 74.

<sup>45</sup> See IT-96-11-A, *Prosecutor v. Zejnil Delalić et al.*, Appeal Judgment of 20 February 2001, para. 239.

<sup>46</sup> See IT-95-14-A, *Prosecutor v. Tihomir Blaškić*, Appeals Judgment, 29 July 2004, para. 62, IT-96-21-A, *Prosecutor v. Zejnil Delalić et al.*, Appeals Judgment, paras. 197 and 241.

<sup>47</sup> *Ibid.*

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27. In particular, *de jure or de facto* control of subordinates does not necessarily equate with *effective control* of subordinates. Without admitting to the effect that the Accused had either *de jure or de facto* control of the HVO Military Police as alleged by the Prosecution in the Amended Indictment, the Accused denies ever having either *effective control or knowledge* of subordinates involved with crimes alleged in the Amended Indictment.
28. The Defence submits that it is critical for the Trial Chamber to bear in mind the statement of the *Čelebići* Appeals Chamber in acknowledging that: "In general, the possession of *de jure* power in itself may not suffice for the finding of command responsibility if it does not manifest in effective control, although a court may presume that possession of such power *prima facie* results in effective control unless proof to the contrary is produced."<sup>48</sup> The Defence intends to lead evidence that will show that Valentin Ćorić did not have effective control, knowledge, or any reason of knowing any alleged wrongdoing by his subordinates and should therefore be acquitted of all charges made against him on the basis of command responsibility.

**Factual background: JCE did not exist at all**

29. It is hard to escape the impression that the entire Amended Indictment, as well as the Prosecution's Pre-Trial Brief, have been motivated by the attempt to pronounce guilty the accused in this case – among them, the accused Valentin Ćorić – for alleged activities of the late President of the Republic of Croatia, Dr. Franjo Tuđman and Croatia's authorities, which were allegedly aspiring to create a "Greater Croatia" in a way which included the crimes described in the Amended Indictment.<sup>49</sup> However, the Amended Indictment and the Prosecution's Pre-Trial Brief fail to demonstrate and explain in which way the Accused was associated with the highest-ranking Croatia's authorities.
30. The Prosecution claims that JCE existed between 18<sup>th</sup> November 1991 and around April 1994, and that Croats in Bosnia and Herzegovina were politically and militarily organised in view of implementation of JCE, aiming at the creation of an ethnically clean "Greater Croatia". For that purpose, the Amended Indictment,

<sup>48</sup> IT-96-21-A, *Prosecutor v. Zejnil Delalić et. al.*, Appeals Judgment, para. 197.

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and the Prosecution's Pre-Trial Brief, use various superficial and improvable assertions and a number of prejudices and clichés. For example, the Prosecution persistently calls Croatian Banovina (1939-1941) "Greater Croatia" although in the Croatian history of political ideas there has never been a political force or group aspiring to such (territorial) solution of the Croatian issue. Croatian Banovina was established in 1939 under the pressure of France and Great Britain, and served exclusively as a means of strengthening the Yugoslav state, which was facing the threats of the Axis forces. As such, it was a political and constitutional provisional solution, which caused dissatisfaction not only among Muslims, but also among Croats and Serbs.<sup>50</sup> After the disappearance of Croatian Banovina, there has never been a group among Croats (or, among the Croatian political emigration which was very numerous after WW II and politically organised based on various programmes) aspiring to the establishment of Croatian Banovina.

31. To prove their basic theses, the Amended Indictment and the Pre-Trial Brief chronologically describe events and present putative evidence for their assertions.<sup>51</sup> They do not even abstain from quoting reputed allegations and street talks, without mentioning their sources.<sup>52</sup> The Prosecution also interprets events – crimes as well – outside the political and military context. As the space limits and the rule stipulating that evidence is presented at trial do not allow for a detailed analysis of each and every assertion of the Prosecution, the Defence will in few words, also chronologically, demonstrate why the Prosecution's theses are incorrect. Evidence for each of the Defence's assertions will be presented during the trial. Here, the Defence will be using Muslim sources, while the other materials will be presented at the trial.

**(a) Discrepancies between Croat-Muslim political interests and aims.**

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<sup>49</sup> Prosecutor's Pre-Trial Brief, paras. 16, 18, 23, 27, etc.

<sup>50</sup> There are thousands of published articles about that in Croatian, Serbian and Muslim historiography.

<sup>51</sup> Beside that, the Prosecution refers to some witnesses and the so-called Presidential Transcripts, that is the transcript of reputed discussions of the President of the Republic of Croatia with various persons. The Defence contests the authenticity and the evidential force of the transcripts.

<sup>52</sup> It is not very serious to state in the Pre-Trial Brief that there was a "saying" among Croats that "HVO stood for Hvala, Vance-Owen (Thank you, Vance-Owen!)" (Prosecution's Pre-Trial Brief, para. 29.1.), or that «telling circulated» that Muslims were to be «in the Neretva» (Prosecution's Pre-Trial Brief, para. 27.4.). The same method can be used in giving evidence of serious plans to colonise Mars and Jupiter.

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32. In 1980's, the aspirations of Serbian political circles to turn the Socialist Federal Republic of Yugoslavia (SFRJ) into a Greater Serbia grew stronger.<sup>53</sup> The communist leaderships of other Yugoslav republics and provinces resisted that. The fall of communism at the international level resulted in democratic elections in Yugoslav republics, after which communists remained in power only in Serbia and Montenegro. The so-called Yugoslav People's Army (JNA), which remained practically unchanged in terms of structure and personnel since the communist period, openly took the side of the communist leadership.<sup>54</sup> Serbia, Montenegro and JNA did not want to accept the disintegration of SFRY, in which they had a dominant position. The 1974 SFRY Constitution guaranteed the republics the right to self-determination and separation. Faced with the aggressive Greater Serbian policy, the other republics of the former SFRY commenced the separation procedure, proposing at the same time that SFRY should be reorganised as a confederation. The political leaderships of Serbia and Montenegro, together with JNA leadership, refused such proposals and responded to the democratic aspirations of other republics with armed aggression, first against Slovenia, and afterwards against Croatia and Bosnia and Herzegovina.
33. Due to a difficult and complex historical experience, a large majority of Croats refused the continuation of life in a Serb-dominated Yugoslavia.<sup>55</sup> In the referendum on independence, held on 19<sup>th</sup> May 1991, 83.56 per cent of the electorate voted. 93.24 percent voted for the independence of the Republic of Croatia.<sup>56</sup> The Croats in BiH shared the opinion of their compatriots in the Republic of Croatia. Contrary to the romantic theses of Bosnia and Herzegovina

<sup>53</sup> The aim of the Greater Serbian policy is simply expressed with the syntagm: "All Serbs in one state". This means the intention to, unconditionally, even by means of war, achieve that a Serbian state include those territories where Serb population makes even a very small minority. There is abundant literature on the roots, level of acceptance and plans of that policy. Comp. Bože Čović (Ed.), *Roots of Serbian Aggression. Debates. Documents. Cartographic Reviews*, Zagreb, 1993; Ante Beljo (Ed.), *Greater Serbia: From Ideology to Aggression*, Zagreb, 1993; Mirko Grmek-Marc Gjidara-Neven Šimac (Ed.), *Le nettoyage ethnique. Documents historiques sur une idéologie serbe*, Paris, 1993, etc.

<sup>54</sup> The then political leaders of SR Montenegro was in fact installed in a coup, as ordered by Belgrade, and was totally devoted to the Greater Serbian policy.

<sup>55</sup> It is impossible here, even in the most summarized form, to present the historical reasons for such disposition. The Defence intends to do that during the trial.

<sup>56</sup> Andjelko Milardović, *Dokumenti državnosti Republike Hrvatske (Documents of Statehood of the Republic of Croatia)*, Zagreb, 1992, p. 82.

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as an oasis of peace, prosperity and cohabitation, the reality was quite different.<sup>57</sup> The position of Croats in BiH after WWII was best described in the statement of the Yugoslav communist high official Cvijetin Mijatović (a Serb by origin): "Being a Croat in Bosnia and Herzegovina is difficult".<sup>58</sup> Such situation left a deep trace in the psychology of that people, the least numerous constituent people in BiH, and determined, to a significant extent, its actions in the crisis periods.<sup>59</sup>

34. In the aggression on the Republic of Croatia, which commenced in summer 1990, 15,000 Croatian citizens were killed, mostly Croats. 7,500 of them were civilians. Many Croats from BiH took part in Croatia's defence, as well as a significant number of Muslims.<sup>60</sup> Even the most superficial observers realised from the developments in war operations that the conflict would spread over Bosnia and Herzegovina. The democratisation process had just begun there. In the first free elections, scheduled for 18<sup>th</sup> November 1990, the majority of votes were won by the Croatian Democratic Community of BiH (HDZ BiH) – 15.51 per cent, the Muslim Party of Democratic Action (SDA) – 30.41 per cent, and the Serbian Democratic Party of BiH (SDS BiH) – 25.23 per cent. That meant that HDZ BiH won 84.38 per cent of Croat votes, SDS BiH won 78.79 per cent of Serb votes, and SDA 76.94 per cent of Muslim votes.<sup>61</sup>
35. The Republic of Croatia was supporting the democratic processes in BiH. The then President of the Republic of Croatia, Franjo Tudjman, was a historian. He believed that the majority of Muslims considered themselves Croats. He said that

<sup>57</sup> The Defence intends to present, during the trial, the data on the number of BiH Croats murdered in the period of the two Yugoslav states, as well as the data about the number of political prisoners, political and economic emigrants, which resulted in incalculable demographic, economic and political consequences.

<sup>58</sup> The Defence will present this document at the trial as well.

<sup>59</sup> One cannot understand what led to the BiH conflict without a social and psychological study, which would take into account: the historical heritage, especially the one from the communist period, migrations caused by war operations and crimes, the appearance of Mujahedins, etc. Of course, it is easier for the Prosecution to boil everything down to several alleged meetings of a group of individuals. Such attempt to explain such large-scale historical events with the actions of a handful of individuals must lead to a failure.

<sup>60</sup> To avoid confusion, the Defence will be using the term «Muslims» to denote one of the three constitutive peoples in Bosnia and Herzegovina, because that was the official name of the people before the war, and in most of the period described in the Amended Indictment. It was only later that the name «Bosniaks» was accepted and legalised, but it still denotes the same people.

<sup>61</sup> Franjo Boras, *Kako je umirala Socijalistička Republika Bosna i Hercegovina 1990.-1996. (The Dying of the Socialist Republic of Bosnia and Herzegovina 1990-1996)*, Mostar, 2002, 20-21, 58-66.

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without hesitation to the president to be of SDA, Alija Izetbegović.<sup>62</sup> The first president of HDZ BiH, Dr. Davor Perinović, after the dispute with Tudjman, admitted that Tudjman told him on the occasion of their first meeting in Zagreb, “that the Bosnian policy can be managed by Bosnians only, and secondly, there is no Bosnia and Bosnian policy without Muslims. That is why he stubbornly insisted that the managing bodies [HDZ BiH] should include as many Muslims as possible, and I think we managed that”.<sup>63</sup> In other words, it is impossible to prove the thesis on anti-Muslim attitude of Franjo Tudjman or any other political leader in Croatia. At the same time, it is impossible to oversee that Tudjman’s belief in Croatian national feeling among Muslims is in irreconcilable contradiction with the thesis on his distrust in them or on his discriminatory plans.

36. The understanding that Croats and Muslims belong to the same people was not characteristic only for some Croatian political circles. Most of the prominent 20<sup>th</sup> century Muslim political, cultural and religious officials openly declared themselves as Croats.<sup>64</sup> When BiH became a part of the Independent State of Croatia, which existed during WWII as an Axis forces’ ally (1941-1945), Muslims were its pronouncedly loyal citizens. Their share in the armed forces of that state was above-proportioned, and none of the political documents originating from the leading Muslim circles during that war questions the issue of BiH being a part of the Croatian state.<sup>65</sup> The expressions of belief that Croats and Muslims belong to the same people were common also in the recent war. For example, in June 1992, president of the Crisis Headquarters of the SDA branch in Split, Alija

<sup>62</sup> Alija Izetbegović describes how Tudjman, during their first meeting in Zagreb in early 1990, tried to dissuade him from establishing a separate Muslim party “because Muslims are Croats and HDZ will win 70 per cent of votes in the elections in Bosnia and Herzegovina”. (Miljenko Jergović, Interview with Alija Izetbegović: Tudjman told me at lunch in 1990 that Muslims were Croats and that HDZ would win 70 per cent of votes in BiH elections! *Globus*, issue 560, Zagreb, 50-56 Comp. Alija Izetbegović, *Sjećanja. Autobiografski zapis (Memoirs, Autobiography)*, Sarajevo, 2001, p. 84.).

<sup>63</sup> Interview with Davor Perinović, *Vox*, issue 7, Sarajevo, October 1990.

<sup>64</sup> The Defence will present at the trial numerous pieces of evidence in support of this statement.

<sup>65</sup> Muslims made the vast majority in the so-called SS-Handshar Division. According to the official German data, in February 1944, six months after Italy’s capitulation and only a year before the fall of the nazist Germany, there were some 22,000 BiH Muslims in that Division. (Georg Lepre, *Himmler’s Bosnian Division. The Waffen-SS Handshar Division 1943-1945*, Atglen, 1997, p. 138.) By giving this data, the Defence does not want to get engaged in any ideological discussions, it only wishes to demonstrate the prejudices on which the Prosecution’s assertions often rest.



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Džafo, calls for unity and says: "Muslims and Croats are one people with two faiths".<sup>66</sup>

37. However, most of Muslims at that time clearly did not share that opinion. Because of that, their political representatives started to organise themselves separately. In late 1989, the Forum for Protection of Muslims' Individual and Collective Human Rights was established.<sup>67</sup> One should note that already at the very beginning of public political organising, the most prominent individuals from the Muslim people were aspiring to very particular goals: the defence of rights and interests of Muslims, and not the defence of rights and interests of all BiH citizens.
38. A public discussion of Muslim intellectuals on the need to organise a political party took place on 12<sup>th</sup> February 1990, in Croatia's capital, Zagreb.<sup>68</sup> While announcing the founding of SDA, on 27<sup>th</sup> March 1990, Izetbegović read the "Public Announcement", in which he openly emphasised the interest in the preservation of specific characteristics and interests of Muslims, and the preservation of Yugoslavia as a federal state with the current federal units' borders.<sup>69</sup> Here again the interests of Muslims were given priority. But, Muslims' insisting on the preservation of Yugoslavia demonstrated significant differences in Croat and Muslim political goals.
39. The SDA Programme Declaration also aspired to the reorganisation of Yugoslavia.<sup>70</sup> That was not just a public programme, but also the actual orientation of the Party's leadership. One of Izetbegović's closest associates, Omer Behmen, stated that he had asked JNA generals to carry out a military coup and save Yugoslavia.<sup>71</sup> Dr. Maid Hadžiomerađić, one of the founders of SDA, wrote in 1991 that "Yugoslavia is above any price", and was glad when "the people in Knin" gave Croats "a hot seat".<sup>72</sup> Five years after the disintegration of

<sup>66</sup> SDA Croatia, Appeal dated 4 June 1992.

<sup>67</sup> Muhamed Filipović, *Bio sam Alijin diplomata (I Was Alija's Diplomat)*, vol. I, Bihać, 2000, p. 44.

<sup>68</sup> M. Filipović, *Bio sam Alijin diplomata (I Was Alija's Diplomat)*, vol. I, p. 45.

<sup>69</sup> A. Izetbegović, *Sjećanja. Autobiografski zapis (Memoirs, Autobiography)*, p. 69-75.

<sup>70</sup> Programme Declaration of the Party of Democratic Action, Sarajevo, May 1990.

<sup>71</sup> Omer Behmen: "I asked JNA generals to carry out a military coup and save Yugoslavia", *Nezavisne novine*, Banjaluka, 1 September 2000.

<sup>72</sup> Maid Hadžiomerađić, *Stranka demokratske akcije i stvarnost (Party of Democratic Actions and Reality)*, Sarajevo, 1991, 240. The term "the people from Knin" denotes the Serb rebels led by Milan Martić and Milan Babić, who organized the so-called Republic of Srpska Krajina, with the capital Knin. One should

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Yugoslavia, Izetbegović confirmed that: "I wanted, with the group around me, to try and carry out, through the Party, the reconstruction of Yugoslavia. We thought that Yugoslavia suited Muslims, but not that kind of Yugoslavia, with one party, and not with Serbian hegemony"<sup>73</sup>.

40. Among the undoubtedly key reasons for such (pro-Yugoslav) attitude, was the belief that BiH could not survive the disintegration of Yugoslavia, as expressed by Izetbegović on several occasions, but also the awareness of the Muslim political leaders that "Muslims do not only live in BiH; there are many Muslims in Sandžak, Macedonia, Kosovo, Croatia..."<sup>74</sup> The then supreme head of the Islamic Religious Community, reisu-l-ulema Hadzhi Jakub Selimoski, said on several occasions in 1990 that Muslims' vital interest was to preserve Yugoslavia.<sup>75</sup> According to Izetbegović, apart from BiH Muslims, SDA "was aspiring to become the party of all Muslims in Yugoslavia; those in Serbia, Montenegro, Kosovo and Macedonia. The Party was first founded all over Yugoslavia, where the Muslim people lived, and then abroad: in Europe, America and Australia. It became in a way a movement of the Bosniac (sic!) Muslim people in the world".<sup>76</sup>

**(b) Secret Muslim-Serbian negotiations behind Croats' back (1990-1992)**

41. In the light of Serbian-Montenegrin aggression on Croatia, such attitudes of Muslim political leaders contributed to the creation of the atmosphere of distrust. In spring 1991, Franjo Tudjman was trying to convince BiH political leaders to follow the example of the westbound republics of Slovenia and Croatia, and leave Yugoslavia. If they decided to go in that direction, Croatia was willing to wait for BiH. At the same meeting, Tudjman expressed his scepticism about Izetbegović, considering him "too impressed" and "in a way prepared by JNA». The mediators

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therefore bear in mind that in 1991, amidst the most fierce occupation and aggression on Croatia, the leading people in SDA were sending signals demonstrating their sympathy for the Serb secessionists in Croatia.

<sup>73</sup> Izetbegović '96. *Godina rata i mira. Odabrani govori, intervjui i pisma (Izetbegović '96. A Year of War and Peace. Selected speeches, interviews and letters)*, Sarajevo, 1997, 166-168; A. Izetbegović, *Sjećanja. Autobiografski zapis (Memoirs, Autobiography)*, p. 417.

<sup>74</sup> Izetbegović '96., o. c., 168.; A. Izetbegović, *Sjećanja. Autobiografski zapis (Memoirs, Autobiography)*, p. 417-418.

<sup>75</sup> Mehmedalija Bojić, *Historije Bosne i Bošnjaka (Stories on Bosnia and Bosniaks)*, Sarajevo, 2001, 279, 354.

<sup>76</sup> A. Izetbegović, *Sjećanja. Autobiografski zapis (Memoirs, Autobiography)*, p. 68.

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in those talks considered Tudjman's proposals to be fair,<sup>77</sup> but Izetbegović "left everything open" saying that he had received guarantees, through Ejup Ganić, that JNA would not interfere with BiH internal affairs.<sup>78</sup> This means that Ganić had earlier held, in Izetbegović's name, negotiations with JNA, without any information given thereof to other members of the Presidency.<sup>79</sup> Izetbegović, therefore, was not acting as a representative of a state, but rather as a leader of one people. At the same time, he was pretending to represent all citizens and all peoples – including Croats.

42. There is no single reliable evidence supporting the Prosecution's thesis that there were Croat-Serb agreements on the division of BiH<sup>80</sup>. The thesis was denied by both Tudjman and Milošević.<sup>81</sup> Stipe Mesić commented on the news about their meeting the day after, in a way, which shows that the focus of the meeting was the position of the Yugoslav federal Prime-Minister Marković. Borisav Jović, a member of the SFRJ Presidency, never mentions in his memoirs the alleged Milošević's plans on the division of BiH, neither does he mention Tudjman in that context.<sup>82</sup> Until today, there has not been published a single evidence of the talks between Tudjman and Milošević on the division of BiH or of their agreement on the division of that country.

43. Despite that, the issue has been ruthlessly exploited in a propaganda war. Its purpose is clearly to cover the Serb-Muslim negotiations carried out to the detriment of Croats. The first phase of the negotiations was held, as already mentioned, in early spring 1991.<sup>83</sup> Having received undeniable proof of plans on aggression against BiH, the then President of the Presidency and SDA leader,

<sup>77</sup> M. Filipović, *Bio sam Alijin diplomata (I Was Alija's Diplomat)*, vol. I, p. 68-71. Comp. Luka Mičeta, *Sudbina Bošnjaka: Svedočenje Adila Zulfikarpašića (Bosniak Destiny: Adil Zulfikarpašić's Testimony)*, *Specijalni dodatak NIN-a*, issue 2430, 25 June 1997, 45-46.

<sup>78</sup> M. Filipović, *Bio sam Alijin diplomata (I Was Alija's Diplomat)*, vol. I, p. 74-78.

<sup>79</sup> Ejup Ganić became a member of the SR BiH Presidency as a representative of «the Yugoslav peoples». He soon became, contrary to the Constitution, Izetbegović's close associate and SDA chief support in the Presidency.

<sup>80</sup> Prosecution's Pre-Trial Brief, para. 16.21 etc.

<sup>81</sup> The two of them gave a statement, on 17 July 1993 in Geneva, denying any agreement in that sense (David Owen, *Balkan Odyssey*, III ed., London, 1998, p. 215-216).

<sup>82</sup> Borisav Jović, *Poslednji dani SFRJ (The Last Days of SFRJ)*, Belgrade 1995. Comp. also: Borisav Jović, *Knjiga o Miloševiću (A Book on Milošević)*, Belgrade, 2001.

<sup>83</sup> Comp. para. 38.

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Alija Izetbegović, decided to commence secret negotiations with Serbs. He asked his close associates Adil Zulfikarpašić and Muhamed Filipović to carry out the negotiations in the name of Muslims.<sup>84</sup> At the meeting of the three of them at Izetbegović's cabinet in the Presidency building, on 27<sup>th</sup> July 1991, it was agreed that the negotiations would be held secret from Croat representatives. Here again, Izetbegović was not acting as a representative of a state, but rather as a leader of one people. At the same time, he was claiming to represent all citizens and all peoples – including Croats.

44. The negotiations started on 8<sup>th</sup> July 1991, and were held at Nikola Koljević's cabinet, in the BiH Presidency building. Apart from the two Muslim representatives, Karadžić and Koljević were representing the Serb side.<sup>85</sup> The Muslims emphasised that they had Izetbegović's mandate.<sup>86</sup> This is supported by the fact that Izetbegović himself joined the negotiations later, while on the Serb side, Momčilo Krajišnik and Biljana Plavšić were occasionally taking part.<sup>87</sup> At the same time, Izetbegović was claiming for the public that he was representing all citizens and all peoples – including Croats.

45. Two documents were drafted at the secret Muslim-Serbian negotiations. One was public and spoke about principles: "independent Bosnia, life together in communal state, equality, etc.", and the second, "for internal use, legally clear and binding".<sup>88</sup> Several years later, Krešimir Zubak, a BiH Croat politician, spoke publicly about its content. According to him, the secret part of the agreement was about BiH joining Yugoslavia, with Neum and the whole territory in its south joining Yugoslavia as well; several municipalities in Western Herzegovina would be left out to satisfy Croatia.<sup>89</sup> Zulfikarpašić asked for the meeting with Milošević, to "refine" the agreement, and Karadžić arranged that with a single

<sup>84</sup> M. Filipović, *Bio sam Alijin diplomata (I Was Alija's Diplomat)*, vol. I., p. 87-88.

<sup>85</sup> M. Filipović, *Bio sam Alijin diplomata (I Was Alija's Diplomat)*, vol. I., p. 88-92.

<sup>86</sup> M. Filipović, *Bio sam Alijin diplomata (I Was Alija's Diplomat)*, vol. I., p. 95.

<sup>87</sup> M. Filipović, *Bio sam Alijin diplomata (I Was Alija's Diplomat)*, vol. I., p. 96.

<sup>88</sup> Luka Mičeta, *Sudbina Bošnjaka: Svedočenje Adila Zulfikarpašića (Bosniak Destiny: Adil Zulfikarpašić's Testimony)*, *Specijalni dodatak NIN-a*, issue 2430, 25 June 1997, 42.

<sup>89</sup> Alenko Zornija: *Bosniaks speak of alleged division of BiH in Karadžorđevo, and keep secret their agreement with Serbs on the surrender of Neum to Yugoslavia*. Interview with Krešimir Zubak, *Vjesnik*, 9 January 1998, 3.

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phone call.<sup>90</sup> Filipović was clear about Izetbegović's support for the agreement and about the arrangement that Izetbegović himself was to sign it.<sup>91</sup> Nine years later, Izetbegović confirmed that he had given approval for the trip of the two to Belgrade and that he had originally supported the agreement.<sup>92</sup>

46. This shows that the most prominent Muslim political representatives – led by Izetbegović – carried out secret negotiations on BiH remaining a part of Yugoslavia and on its internal organisation, all behind the back of Croatian political representatives, who had an equal and constituent position pursuant to the Constitution. All this happened at the time when Serbia, Montenegro and JNA were conducting the aggressive war against the Republic of Croatia. At the same time, he was claiming to represent all citizens and all peoples – including Croats.
47. The negotiations were being held behind the back of normally moderate Croatian political leaders in BiH, and that is proven by the fact that the then President of HDZ BiH, Stjepan Kljuić, assessed the Muslim-Serbian agreement as an agreement between two peoples behind the back of the third, and also by the fact that Ivo Komšić called the agreement a treachery and delivery of BiH to the Greater Serbia, in *Oslobođenje* of 4<sup>th</sup> August 1991.<sup>93</sup> The thesis that the agreement was to skirt Croats is supported also by Filipović's recent statement that the agreement was intended to avoid "the thing we had in Croatia: Tudjman entrenched himself in, SDS entrenched themselves in, and here we have a war. We thought that *both* (sic!) sides in Bosnia had to give way, so that the Croatian experience would not be repeated".<sup>94</sup> As one of the key participants in the agreement, Filipović openly admits that the agreement "depends primarily on the relationship between Serbs and us (Muslims)".<sup>95</sup> Another participant, Adil Zulfikarpašić, considered that Muslims did not need Croats to feel jeopardised, but considering they are in minority, it would "not be dangerous", while "it was

<sup>90</sup> Luka Mičeta, *Sudbina Bošnjaka: Svedočenje Adila Zulfikarpašića (Bosniak Destiny: Adil Zulfikarpašić's Testimony)*, *Specijalni dodatak NIN-a*, issue 2430, 25 June 1997, 42.

<sup>91</sup> *4. juli*, of 3 October 1991.

<sup>92</sup> A. Izetbegović, *Sjećanja. Autobiografski zapis (Memoirs, Autobiography)*, p. 97-98.

<sup>93</sup> A. Izetbegović, *Sjećanja. Autobiografski zapis (Memoirs, Autobiography)*, p. 96.

<sup>94</sup> *Večernje novine*, 30<sup>th</sup> August 1991.

<sup>95</sup> M. Filipović in *Bosanski pogledi*, 25 July 1991. Also in: M. Filipović, *Bio sam Alijin diplomata (I Was Alija's Diplomat)*, vol. I, p. 112.

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vitally dangerous to have Serbs feeling jeopardised and thinking they could not live with us".<sup>96</sup> In other words, Croats could be discriminated without punishment, regardless of their position guaranteed by the Constitution.

48. In reality, the actual motive of the Muslim-Serb negotiations was not a short-term attempt to avoid war, but rather to ensure Muslim majority in future. Izetbegović's representative in the negotiations, Adil Zulfikarpašić, explained in 1993 that the intention was to get a chance for Muslims to solve their problems "in another democratic process", as "we were on the way to reach the 60% - majority in Bosnia within 10 years".<sup>97</sup> Here "we" quite clearly means – Muslims.
49. Izetbegović abjured his agreement with Serbs and his negotiators only after the Croat political representatives learned about the agreement and publicly condemned it. His treatment of the mediators (Filipović and Zulfikarpašić) clearly demonstrates his double-faced politics, which continued in the following period, and without which it is impossible to understand the actions of political representatives of BiH Croats. Although at that time he was formally the President of the Presidency of BiH and as such a representative of all its citizens and peoples, Izetbegović was factually acting as a Muslim and SDA leader. His readiness to give up his own ideas and opinions, and even his envoys at the secret negotiations, made Croat political representatives cautious and distrustful.
50. Separate and secret Muslim-Serb negotiations were not definitely ended in summer 1991. Izetbegović and Haris Silajdžić, BiH Foreign Minister, met a Serbian leader Dobrica Ćosić on 19<sup>th</sup> October 1991.<sup>98</sup> Before that, at the initiative of Zulfikarpašić and Filipović, and arranged by the Serbian Orthodox Church, the two had a meeting with Serb leaders Ćosić, Milan Panić and their colleagues in Zurich. The purpose of the talks was to examine the possibility of direct negotiations between Sarajevo and Belgrade. A joint statement was signed at the meeting.<sup>99</sup>

<sup>96</sup> Milovan Đilas – Nadežda Gaće, *Bošnjak Adil Zulfikarpašić (Bosniak Adil Zulfikarpašić)*, Bošnjački institut Zürich-Globus Zagreb, 1996, 182.

<sup>97</sup> Adil Zulfikarpašić, *Bezdušno komadanje Bosne (Ruthless Partition of Bosnia)*, Nezavisni evropski tjednik *Oslobođenje*, Sarajevo-Zagreb, 9-15 April 1993, 15.

<sup>98</sup> M. Filipović, *Bio sam Alijin diplomata (I Was Alija's Diplomat)*, vol. I., p. 228.

<sup>99</sup> M. Filipović, *Bio sam Alijin diplomata (I Was Alija's Diplomat)*, vol. I., p. 228-231.

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51. In spring 1992, separate Muslim-Serb negotiations were taking place behind the back of Croat political representatives. General Šiber has published a document showing that Ejup Ganić concluded an agreement with JNA, in early May 1992, of which the public and the Republic Territorial Defence HQ (RŠTO) did not have any knowledge.<sup>100</sup> In April 1992, Izetbegović secretly met JNA generals Kadrijević and Adžić; Aleksandar Vasiljević, Head of the Yugoslav Counterintelligence Service (KOS), also attended the meeting. Izetbegović had obviously reached a certain agreement with JNA at those meetings, especially at the one in Ohrid, and consequently proposed Croatia to enter a confederation with Yugoslavia, and BiH should remain in federation with Serbia and Montenegro.<sup>101</sup> A former member of SFRY Presidency, Branko Kostić, gave an interesting testimony before the Tribunal, in case *Milošević*, about the secret arrangements with Serbs in early February 2006. In summer 1992, and later, until 1994, prominent Muslim political leaders A. Zulfikarpašić and M. Filipović were recommencing the secret negotiations with Bosnian Serbs and the political leaders of Serbia (S. Milošević).<sup>102</sup>

52. When the war in BiH got enraged, numerous secret agreements between Muslims and Serbs were being concluded at the local level (Stolac, Doboj, etc.). At the same time, Muslim propaganda was accusing Croats of such arrangements. The evidence confirming that will be presented at the trial.

**(c) Izetbegović and SDA – preference of religion.**

53. SDA leader, Alija Izetbegović, was being accused in the communist regime of promoting Islam. That was not just personal professing of religion. Having entered politics in 1989/90, Izetbegović tried to implement his own religious and ideological beliefs in the civil (political) life in BiH. To that purpose, he appointed people close to him, privately and in terms of ideology, to be his closest

<sup>100</sup> Stjepan Šiber, *Prevare, zablude, istina: ratni dnevnik 1992 (Deceits, Illusions, Truth: War Log-Book 1992)*, Supplement I, 229-232.

<sup>101</sup> *Oslobodenje*, Sarajevo, 3 July 2001, p. 22. Comp. F. Boras, o. c., §2. In his memoirs, Izetbegović does not deny that he flew to Skopje on 26 April 1992 to a three-hour secret talks with Branko Kostić and Gen. Adžić, but refuses to describe the content of the talks. (Comp. A. Izetbegović, *Sjećanja. Autobiografski zapis, (Memoirs, Autobiography)*, p. 114-115).

<sup>102</sup> Luka Mičeta, *Sudbina Bošnjaka: Svedočenje Adila Zulfikarpašića (Bosniak Destiny: Adil Zulfikarpašić's Testimony)*, *Specijalni dodatak NIN-a*, issue 2430, 25 June 1997, 46-47.

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associates. Izetbegović himself said in an interview in October 1990 that he would “gladly see a muezzin on the Eiffel Tower. (...) People belonging to Islam are fully devoted to it, because Islam is a thought, which touches upon every field of life. (...) Islam to Muslims is, I won’t say a political system, but definitely a direction on how to solve political problems”.<sup>103</sup> Understandably, such statements were not welcomed by non-Muslims in BiH, who were in absolute majority.

54. Central Muslim political party, SDA, was a party with prominent religious element.<sup>104</sup> Already in 1990, one could see at the Party facilities and meetings “flags of Saudi Arabia, photos of Homeini, Saddam Hussein”.<sup>105</sup> Calling Izetbegović a “religious fanatic”,<sup>106</sup> Filipović resolutely claims that SDA’s key tone and strategy were determined by “rigid positions of Islamic extremists”.<sup>107</sup> He explains that that was the reason of his leaving the Party leadership in 1990, and the Party membership: “I could not continue to work in the Party which shrunk into a narrow religious, national programme leading Muslims to isolation, whose leaders thought it was about time Muslims got even with anything they found on their way». <sup>108</sup>

55. In terms of foreign policy also, Izetbegović was turning BiH towards the Islamic world. Lord Owen recalls that in March 1991 Izetbegović flew to Lybia to arrange a loan of 50 million USD, and that in July 1991, he requested that BiH be an observer at the meeting of the Organisation of the Islamic Conference.<sup>109</sup> Such foreign policy was not defined in a way foreseen by the Constitution and the legislation of SR BiH. “Izetbegović’s policy is dragging us into a horrible conflict” said M. Filipović, a member of BiH Academy of Science and Art, in early October 1991.<sup>110</sup>

<sup>103</sup> *Izbori '90. Stranke, programi, ličnosti (Elections 1990. Parties, Programmes, Persons)*, Oslobođenje, Sarajevo, October 1990. Comp. F. Boras, o. c., 52.

<sup>104</sup> M. Filipović, *Bio sam Alijin diplomata (I Was Alija's Diplomat)*, vol. I, p. 49.

<sup>105</sup> Luka Mičeta, *Sudbina Bošnjaka: Svedočenje Adila Zulfikarpašića (Bosniak Destiny: Adil Zulfikarpašić's Testimony)*, *Specijalni dodatak NIN-a*, issue 2430, 25 June 1997, 37.

<sup>106</sup> Muhamed Filipović, *Pogovor knjizi Adil Zulfikarpašić – članci i intervjui (Epilogue to Book Adil Zulfikarpašić – articles and interviews)*, December 1991.

<sup>107</sup> M. Filipović, *Bio sam Alijin diplomata (I Was Alija's Diplomat)*, vol. I., p. 51.

<sup>108</sup> M. Filipović in *Oslobođenje*, 20 September 1990.

<sup>109</sup> David Owen, *Balkan Odyssey*, p. 41.

<sup>110</sup> 4. juli, of 3 October 1991.



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56. Izetbegović's religious ideas were reflected also on the organisation of BiH Army.<sup>111</sup> The problem was that all strategic decisions on ABiH were made by Izetbegović himself, and not by the Supreme Command.<sup>112</sup> Muslim political leaders left the organisation of ABiH and distribution of weapons to SDA party bodies.<sup>113</sup> During the entire war, ABiH was strongly influenced by SDA.<sup>114</sup> General Šiber says that the elimination of non-Muslim personnel began already in late 1992,<sup>115</sup> and he soon noticed that a foreign currency was used for salaries in the Command of the 3<sup>rd</sup> ABiH Corp; and "some strange flags" were in use.<sup>116</sup> He also saw green flags and Arabic inscriptions and concluded: "This is not my army; not my Army".<sup>117</sup> In ABiH, which was practically a Muslim army, those practicing Islam were privileged.<sup>118</sup> In the ABiH-controlled areas, flats were being given mostly to Muslims, preferably those from Sandžak.<sup>119</sup> The high military and political circles were advocating the introduction of Muslim religious salute in ABiH.<sup>120</sup>

57. In this context, very important are the fighters coming from Islamic countries (Mujahedins), who entered BiH (mainly through Croatia's territory). The numbers and cruelty of their crimes, the ritual way of execution and the fact that they enjoyed the support of highest Muslim political circles, including Izetbegović, had incalculable psychological and political consequences in the Croat-Muslim relations.<sup>121</sup>

**(d) Izetbegović and SDA – for division of BiH and creation of a Muslim state.**

58. In keeping with the pronounced religious approach, SDA leaders considered as a realistic option, already in 1990, the possibility of division of BiH, where there

<sup>111</sup> The Prosecution calls it – quite erroneously – the only regular armed force in the BiH territory.

<sup>112</sup> S. Šiber, *Prevare, zablude, istina: ratni dnevnik 1993 (Deceits, Illusions, Truth...)*, 153-154.

<sup>113</sup> M. Filipović, *Bio sam Alijin diplomata (I Was Alija's Diplomat)*, vol. I., p. 129.

<sup>114</sup> Moreover, S. Delić, the Commander of ABiH 2<sup>nd</sup> Corp, said in late 1994: "SDA is the Party which organized this people and managed to defend it. I think we should now be the one (only) party, which would make us stronger". (Sead Delić, *Destined to Win, Ljiljan*, 21 December 1994. Published also in: *Armija Bosne i Hercegovine 1992.-1995., o.c.*, 91-93).

<sup>115</sup> S. Šiber, *Prevare, zablude, istina: ratni dnevnik 1993. (Deceits, Illusions, Truth...)*, 293.

<sup>116</sup> S. Šiber, *Prevare, zablude, istina: ratni dnevnik 1993. (Deceits, Illusions, Truth...)*, 97.

<sup>117</sup> S. Šiber, *Prevare, zablude, istina: ratni dnevnik 1993. (Deceits, Illusions, Truth...)*, 117-118.

<sup>118</sup> S. Šiber, *Prevare, zablude, istina: ratni dnevnik 1993. (Deceits, Illusions, Truth...)*, 168.

<sup>119</sup> S. Šiber, *Prevare, zablude, istina: ratni dnevnik 1993. (Deceits, Illusions, Truth...)*, 169.

<sup>120</sup> S. Šiber, *Prevare, zablude, istina: ratni dnevnik 1993. (Deceits, Illusions, Truth...)*, 276, 283.

<sup>121</sup> Numerous evidence of Mujahedin presence and activities will be presented at the trial.

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would be created a small Muslim state in the central part of BiH.<sup>122</sup> In the interview with Paddy Ashdown, journalist Silvija Luks claims that Gen. Wesley Clark told her, in front of the camera, that the division of BiH was in fact planned by Alija Izetbegović.<sup>123</sup> Izetbegović himself said that, adding that the world obviously wanted that.<sup>124</sup> Gen. Jacques Paul Klein confirmed on two occasions that Izetbegović was offering Tudjman Herzegovina to become a part of Croatia, considering that that would be an easier way of solving other problems, but Tudjman refused that.<sup>125</sup> Izetbegović's statement that it had just been a joke, that he had only wanted to test Tudjman's intentions,<sup>126</sup> provoked reaction from the then Chief of Tudjman's Cabinet, Hrvoje Šarinić, who said that Izetbegović had really given Tudjman such offer in late 1991 or early 1992.<sup>127</sup> The then Tudjman's adviser, Vesna Škare-Ožbolt, confirmed that Izetbegović had been very seriously offering Herzegovina to Tudjman in 1991.<sup>128</sup>

59. Already in 1991, some of the Muslim-Bosniak leaders and intellectuals saw Izetbegović's ambition to create a Muslim state within the BiH territory. Weekly magazine *Bosanski pogledi* published, after the Tudjman-Milošević-Izetbegović meeting in Split (12<sup>th</sup> June 1991), that there was concluded "a trilateral pact for the division of BiH". Muhamed Filipović, a member of the BiH Academy of Science and Art, said in September 1991: "Party of Democratic Action and its leader Alija Izetbegović made the final list for the division of BiH, which means the end of its existence and the beginning of a long period of difficult internal struggles, which may result in the disappearance of our Bosniak Muslim people".<sup>129</sup> According to *Slobodna Bosna*, Izetbegović told Bosniak intellectuals

<sup>122</sup> M. Filipović, *Bio sam Alijin diplomata (I Was Alija's Diplomat)*, vol. I., p. 57.

<sup>123</sup> *Croatian Television*, 27 June 2004.

<sup>124</sup> M. Filipović, *Bio sam Alijin diplomata (I Was Alija's Diplomat)*, vol. I., p. 293.

<sup>125</sup> News on *Croatian Television*, 3 February 2002. Klein then said that BiH had never been a state, and the only form of statehood in that area had been under Croat rulers in the Middle Ages. Klein repeated the statement on Izetbegović's proposal to Tudjman, on 5 February 2002 in Mostar. At first, Izetbegović did not deny it (*Croatian TV News*, 5 February 2002), and then on 6 Feb he said that he had given Tudjman such proposition, but he had not meant it; he only wanted to see Tudjman's reaction. (*Croatian TV News*, 6 February 2002).

<sup>126</sup> *Jutarnji list*, 1357/V, Zagreb, 7 February 2002.

<sup>127</sup> *Jutarnji list*, 1358/V, Zagreb, 8 February 2002.

<sup>128</sup> *Jutarnji list*, 1358/V, Zagreb, 8 February 2002.

<sup>129</sup> MBO Press Conference, 13 September 1991.

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that he sees "the perspective of peace in BiH only in a durable solution, according to which 'Serbs should take what is Serbian, Croats should take what is Croatian, and Muslims should get what we are able to control in a prosperous manner'".<sup>130</sup>

60. The plans to divide BiH and create a separate Muslim state remained a permanent obsession of Muslim political leaders. Head of the ABiH General Staff, Sefer Halilović, describes Izetbegović's thoughts on the exchange of territories with Serbia and Montenegro: Serbs would get Eastern Herzegovina, and (Muslim) Bosnia – Sandžak.<sup>131</sup> Croatian Foreign Minister Dr. Mate Granić claims that in January 1994, in Geneva, Izetbegović and Silajdžić were offering Tudjman everything south of Prozor, but the latter did not accept that.<sup>132</sup>
61. While he was secretly offering parts of BiH to neighbouring countries, Izetbegović was insisting, for the public eyes, on his pretended attempts to keep the state whole. With such double-faced politics he was trying (and largely succeeded) to gain sympathies of the international public and to present himself as a protector of the state's integrity.
62. The project of BiH division and creation of a separate Muslim state in one of its parts meant the concentration of Muslim population, or ethnic cleansing of non-Muslim population. At the very beginning of the war, in spring 1992, SDA high officials met Serb representatives and discussed the exchange of population, as reported by Sefer Halilović at the RBiH Presidency session.<sup>133</sup> Halilović claims that the way, in which the Muslim political leaders were deploying refugees in mid 1992, was clearly showing that BiH was to be divided according to the ethnic principle.<sup>134</sup> Stjepan Šiber, a disappointed ABiH general, a Croat by origin, wrote that in August 1992 there were plans to deploy refugees intentionally in the Lašva and Lepenica valleys, and western Herzegovina, under the excuse that there would be no war operations there.<sup>135</sup>

<sup>130</sup> *Slobodna Bosna*, 383/X, Sarajevo, 18 March 2004, p. 4.

<sup>131</sup> Sefer Halilović, *Lukava strategija (A Cunning Strategy)*, Sarajevo, 1997, p. 18-20.

<sup>132</sup> *Jutarnji list*, 1358/V, Zagreb, 8 Feb 2002.

<sup>133</sup> Comp. excerpt from the Presidency session of 20 June 1992, in: S. Halilović, *Lukava strategija (A Cunning Strategy)*, pp. 137-138.

<sup>134</sup> Comp. S. Halilović, *Lukava strategija (A Cunning Strategy)*, pp. 78-79.

<sup>135</sup> S. Šiber, *Prevare, zablude, istina: ratni dnevnik 1992. (Deceits, Illusions, Truth...)*, p. 124.

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63. In reality, the settlement and concentrating of refugees in ethnically mixed areas caused great tensions and numerous incidents. It is impossible to present the problem here in a systematic manner but a situation in Central Bosnia can be used as an illustration. Emphasising that he is speaking as a vice-president of a Muslim humanitarian organisation Merhamet, a witness in *Furundžija* case says that, in the first half of 1992, there were 4,000 Muslim refugees in Vitez.<sup>136</sup> In the difficult economic and security conditions, that was causing difficulties with accommodation, food, organisation of defence, etc. A local Croat political representative spoke, on 18<sup>th</sup> August 1992, of tensions in Novi Travnik, which were even worse after the planned settling of 3,600 Muslim refugees in the town.<sup>137</sup> One should bear in mind that the population of the municipality of Vitez was around 28,000, and the municipality of Novi Travnik – around 31,000. In both municipalities Croats were in relative majority. However, the problem with refugees became much more acute in the months which followed these two testimonies, especially after the fall of Jajce in late October 1992.
64. A systematic islamisation of the area, which was considered to belong to Muslims, according to Filipović, implied that there were areas, which were considered to be Croatian and Serbian.<sup>138</sup> To achieve that goal, Croat and Serb populations were being systematically resettled from the ABiH-controlled area.<sup>139</sup> Stjepan Šiber, an ABiH general also confirmed that.<sup>140</sup> The Archbishop of Vrhbosna Vinko Puljić complained, in February 1993, about systematic persecutions of Croats and Catholic generally, by members of ABiH.<sup>141</sup> Mass slaughters of Croats, especially those committed in a ritual or particularly brutal manner (such as the Dusina slaughter in January 1993) gravely traumatised the Croat community.<sup>142</sup>

**(e) Izetbegović and SDA – exclusive protection of Muslim interests.**

<sup>136</sup> *Furundžija case*, Unofficial Transcript, 8 June 1998, p. 101.

<sup>137</sup> HVO Novi Travnik, no. 288/92 of 18 August 1992.

<sup>138</sup> M. Filipović, *Bio sam Alijin diplomata (I Was Alija's Diplomat)*, vol. I., 58.

<sup>139</sup> S. Halilović, *Lukava strategija (A Cunning Strategy)*, 103-104.

<sup>140</sup> S. Šiber, *Prevare, zablude, istina: ratni dnevnik 1993. (Deceits, Illusions, Truth...)*, pp. 239-240.

<sup>141</sup> S. Šiber, *Prevare, zablude, istina: ratni dnevnik 1993. (Deceits, Illusions, Truth: War Log-Book 1993)*, Supplement 4, pp. 319-320.

<sup>142</sup> IT-95-16-T, *Prosecutor v. Zoran Kupreškić et al.*, Judgment, 14 January 2000, para. 62.

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65. Although the Muslim political leadership was passively observing the Greater Serbian aggression on Croatia, SDA leaders started thinking, already in February 1991, about the instruments of military defence of the Muslim people.<sup>143</sup> In early March 1991, Izetbegović signalled a green light for the beginning of creation of a military organisation, and later the same month, the first meeting of SDA representatives from all regions was held in Jarčedoli, at the foot of the Trebević mountain. The meeting, chaired by Rusmir Mahmutćehajić and Hasan Čengić, decided that the BiH Muslim military organisation would be created through the SDA structure.<sup>144</sup> Therefore, although he was pretending for public eyes to represent all citizens and peoples, Izetbegović was in fact acting on behalf of one people.
66. A meeting of about 380 Muslims from all over former Yugoslavia was held on 10<sup>th</sup> June 1991, at the Sarajevo Home of Militia. National Defence Council of the Muslim People, and its military wing, Patriotic League, were established then.<sup>145</sup> That was under direct patronage of SDA.<sup>146</sup> SDA was also directly controlling the unit called Green Berets, which had been established "at the beginning of the war in Croatia".<sup>147</sup> The collection and distribution of money for defence purposes were also controlled by SDA.<sup>148</sup> Muslim political leadership, headed by Izetbegović, was thus taking care of the interests of one people, although their activities were presented differently.

<sup>143</sup> Hasan Čengić, *Krizu Dejtonskog sporazuma neće razriješiti moja smjena* (My Relief Will Not Solve Dayton Agreement Crisis), *Ljiljan*, 13 November 1996 (Published also in: *Armija Bosne i Hercegovine 1992.-1995.*).

<sup>144</sup> H. Čengić, cited interview of 13 November 1996.

<sup>145</sup> Fikret Muslimović, *Obrana Republike (The Defence of the Republic)*, Sarajevo-Ljubljana, 1995, pp. 206-207; Comp. Alija Izetbegović: We Swear in Mighty God that We Won't Be Slaves! (It is about Izetbegović's interview in *Ljiljan* of 12 January 1994, published also in *Armija Bosne i Hercegovine 1992.-1995.*, *Ljiljan*, Sarajevo, 1995, 9. In the collection of interviews, the name "Muslim people" was systematically replaced by the new one "Bosniak people").

<sup>146</sup> *Izetbegović '96.*, o.c., 207.; F. Muslimović, *Obrana ... (Defence...)*, o. c., 188, 200, 218-219 Izetbegović in his memoirs claims that on 10 June 1991 «SDA had first formed the National Defence Council, from which the Patriotic League was created, and subsequently the Army of BiH». (Alija Izetbegović, *Sjećanja. Autobiografski zapis (Memoirs, Autobiography)*, p. 95).

<sup>147</sup> Narcis Dročić, unit commander, claims that, and adds: «Green Berets were the striking force of SDA. We were the first to place control points towards Serb villages, and the full name of our unit is the Demolition Squad Green Berets. We were sometimes a part of the Army of BiH, and sometimes in the 7<sup>th</sup> Muslim, and the first orders were always coming from SDA» (*Hrvatsko slovo*, issue. 559/XII, 6 January 2006, p. 12).

<sup>148</sup> S. Halilović, *Lukava strategija (A Cunning Strategy)*, o.c., 97-100.

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67. The military officers engaged in the organisation of the Patriotic League, submitted their first (secret) report to Izetbegović in Hrasnica, in October.<sup>149</sup> The organisation covered the whole BiH territory. There were the main and nine regional headquarters, municipality headquarters and manoeuvre territorial units.<sup>150</sup> At the Patriotic League military consultations in Mehurići near Travnik, on 7-8<sup>th</sup> February 1992, it was concluded that the League had about 120,000 personnel.<sup>151</sup> Allegedly, between 60 and 70 thousand of them were armed.<sup>152</sup>
68. The meeting, attended by high state and Party officials, agreed upon the Directive on the defence of sovereignty, which was completed on 25<sup>th</sup> February 1992. The Directive foresees, among other, drafting the plan, according to which Muslim, Croat and Serb towns and villages would be treated differently. The plan was aimed at "the defence of BiH and the Muslim people", and "the basic task of BiH Patriotic League forces was to protect the Muslim people, to preserve integrity and integrity of BiH". As regards the evacuation of population, the evacuation only of Muslims was being prepared.<sup>153</sup> One should note that the entire organisation of the Patriotic League was carried out under the surveillance of Alija Izetbegović and SDA, kept totally secret to Croats. The Mehurići meeting was held in secret, two months before HVO was established.
69. The published documents show that the military organisation, created in 1991/1992 by Alija Izetbegović and associates, was meant to defend the Muslim people only, although Izetbegović was formally the President of the Presidency of BiH, and was advocating in public the integrity of BiH and equality of its constitutive peoples.

**(f) Croatian share in defence of sovereignty and integrity of BiH.**

70. Despite the tragic experience of the aggression on Croatia, Muslim political leadership allowed for the deployment of JNA in BiH. They also let JNA occupy

<sup>149</sup> A. Izetbegović, cited interview.

<sup>150</sup> S. Halilović, Accelerated Pace of Military Victories, *Ljiljan*, 4 January 1993, Published also in: *Armija Bosne i Hercegovine 1992.-1995.*, o.c., 26.

<sup>151</sup> S. Halilović, *Lukava strategija (A Cunning Strategy)*, pp. 165-168.

<sup>152</sup> Davor Marijan, *Rat u Bosni i Hercegovini ili: nepodnošljiva lakoća "povjesničarenja"* (*War in Bosnia and Herzegovina or: the Unbearable Lightness of "Playful History"*), Nacionalna sigurnost i budućnost, Collection 1, Zagreb, 2001, p. 144.

<sup>153</sup> S. Halilović, *Lukava strategija (A Cunning Strategy)*, pp. 165-168.

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TV transmitters, and in early 1991, approved of the arrival of some 200 instructors from Belgrade to the Republic Ministry of the Interior.<sup>154</sup> That in fact meant giving up power to the central government dominated by Milošević. Even in early 1992, Izetbegović was convinced that Serbia and Montenegro, or JNA, would not attack BiH, and issued several statements in that sense.<sup>155</sup> He did not consider JNA an enemy force; he even thought its presence in BiH was necessary.<sup>156</sup> Occupation and destruction of Croat settlements in Herzegovina were irrelevant to him.

71. In summer 1991, Croatia's authorities delivered to the Muslim political leaders, including Izetbegović, the recorded talks between Milošević and Karadžić, as well as other evidence of the preparations for the showdown with Muslims.<sup>157</sup> Croatia had recognised BiH, and established and maintained diplomatic relations with it. The two states signed a number of bilateral agreements on political, military, economic and other forms of cooperation.<sup>158</sup>
72. After the war broke out, Croatia continued to help BiH. On 12<sup>th</sup> April 1992, Gen. Agotić, on behalf of the Croatian Army, offered the authorities in Sarajevo every possible assistance.<sup>159</sup> A number of Muslim units (i.e. ABiH units) were founded in Croatia's territory, in Rijeka<sup>160</sup> and Zagreb.<sup>161</sup> In 1992, there were almost 500 flights from Zagreb carrying aid for the Bihać area, and the Croatian Army was systematically supporting those operations.<sup>162</sup> In 1992 and 1993, the Republic of Croatia was delivering to the ABiH forces enormous quantities of weapons and ammunition. At the same time, hundreds of thousands of BiH refugees (many of them were Muslims) were settled in the Republic of Croatia; many wounded

<sup>154</sup> S. Halilović, *Lukava strategija (A Cunning Strategy)*, pp. 61, 72.

<sup>155</sup> Usp. S. Halilović, *Lukava strategija (A Cunning Strategy)*, p. 55.

<sup>156</sup> S. Halilović, *Lukava strategija (A Cunning Strategy)*, pp. 56-57.

<sup>157</sup> M. Filipović, *Bio sam Alijin diplomata (I Was Alija's Diplomat)*, vol. I, p. 82-83.

<sup>158</sup> Even during the Croat-Muslim conflict, a large portion of travel expenses of Muslim political and diplomatic representatives attending various conferences and negotiations was covered by the Republic of Croatia.

<sup>159</sup> S. Šiber, *Prevare, zablude, istina: ratni dnevnik 1992. (Deceits, Illusions, Truth...)*, p. 50.

<sup>160</sup> Rasim Imamović, Every fighter respects the provisions of the Geneva Convention on Refugees, *Ljiljan*, 27 October 1993. Published also in: *Armija Bosne i Hercegovine 1992.-1995.*, o.c., 45-46.

<sup>161</sup> Special unit Gazije was established and fully armed in Zagreb, says the commander of 505<sup>th</sup> ABiH Brigade. (I. Nanić, cited interview of 29 April 1995).

<sup>162</sup> H. Čengić, cited interview of 13 November 1996.

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ABiH members and BiH patients were treated in Croatia. Logistic ABiH centres were also operating from Croatia's territory.<sup>163</sup>

73. Having learned from the aggression on the Republic of Croatia, in whose defence they took a large part, BiH Croats started preparing the defence already in 1991. Unlike the Muslim political leadership, which organised the Patriotic League secretly and *only* for the needs of Muslims, Croats were inviting Muslims to prepare the defence *jointly*. The material demonstrating the initiatives on joint defence preparations is very abundant, and will be presented at the trial. This clearly shows that Croats were not aspiring to conflicts with Muslims; neither did they intend to divide BiH.
74. Izetbegović's military advisor ("military advisor at the BiH Presidency"), Fikret Muslimović, wrote in early October 1992 that the Croatian people had a vital role in the defence of BiH: if Croats had not opposed the aggression, "most of the concept of Greater Serbia would have been realised by now, and the non-Serb peoples in this territory would have been enslaved".<sup>164</sup> Muslimović sees the reason of Muslim passivity in political orientation: "We all know very well that Bosniaks loved Yugoslavia and were in favour of brotherhood and unity".<sup>165</sup> Had there been an aggression on BiH in autumn 1991, Bosniaks (Muslims) would have been totally disoriented: some would have supported JNA, others would have been against it, and the third would have acted as neutral.<sup>166</sup>
75. In many documents coming from Muslims in the war period (regardless of whether they were political declarations, conclusions of congress of intellectuals or military documents), until mid 1993, the HVO-controlled territory was called the BiH free zone.<sup>167</sup> Until mid 1993, a large number of Muslims were members of HVO units, and in some areas, even after that date, until the end of the war.<sup>168</sup> However, the Prosecution claims that JCE existed as of November 1991 at the

<sup>163</sup> The Defence will present exhibits on that at the trial.

<sup>164</sup> F. Muslimović, *Odbrana ... (Defence...)*, o. c., p. 103.

<sup>165</sup> Fikret Muslimović, I have established the "Directorate for Ethics", *Ljiljan*, 4 October 1995 (Published also in: *Armija Bosne i Hercegovine 1992.-1995.*, o.c., 110-113).

<sup>166</sup> F. Muslimović, *Odbrana ... (Defence...)*, o.c., pp 58-59.

<sup>167</sup> The material will be presented at the trial.

<sup>168</sup> The Defence will present exhibits at the trial.



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latest. In other words, the Prosecution corrects the ideas and the perceptions of Muslims, who – look! – did not know that HVO was “the occupier”.

**(g) Izetbegović and SDA – responsibility for the sufferings of Croats (1991-1992)**

76. The aggression of Serbia, Montenegro and JNA on the Republic of Croatia was being carried out to a large extent from the territory of the then SR Bosnia and Herzegovina. Taken the geopolitical position of Croatia and BiH, such use of BiH territory might have seriously jeopardised the survival of the Republic of Croatia.
77. Also, SR BiH forces, such as Territorial Defence (TO), took part in the aggression on Croatia.<sup>169</sup> In November 1991, it was announced that a large number of TO members were killed and wounded in Croatia’s territory, in the armed conflict with Croatian defence forces.<sup>170</sup> TO Command was paying the reservists fighting against Croatia from the BiH Republic TO HQ funds.<sup>171</sup> Muhamed Filipović says that Izetbegović personally allowed for the use of BiH territory to attack Croatia.<sup>172</sup> In any case, the authorities and SDA have never condemned JNA for the use of BiH territory to attack Croatia.<sup>173</sup> A special example of Muslim political leaders’ collaboration with Serbia and Montenegro, or JNA, in the aggression on Croatia, is the case of defenders of the town of Hrvatska Kostajnica. Those members of Croatia’s armed forces withdrew to BiH territory, and the authorities there arrested them and surrendered to JNA, which imprisoned them at the Manjača camp.<sup>174</sup> The case of high SDA officials openly showing sympathies for the Serb secessionists in Croatia has already been mentioned.<sup>175</sup>
78. The Herzegovina town of Ravno populated by Croats was occupied by Serbian-Montenegrin forces on 28<sup>th</sup> September 1991, and on 2<sup>nd</sup> and 3<sup>rd</sup> October 1991,

<sup>169</sup> The Territorial Defence, according to the legislation in force, was the republic's armed force. Therefore, SR BiH authorities were responsible for its use. If the authorities are not capable of controlling their armed force, can one say that they do not exist at all?

<sup>170</sup> S. Šiber, *Prevare, zablude, istina: ratni dnevnik 1992. (Deceits, Illusions, Truth...)*, 20.

<sup>171</sup> S. Šiber, *Prevare, zablude, istina: ratni dnevnik 1992. (Deceits, Illusions, Truth...)*, 26; D. Marijan, o.c., 142.

<sup>172</sup> Muhamed Filipović, *Bio sam Alijin diplomata (I Was Alija's Diplomat)*, vol. I, p. 103.

<sup>173</sup> Muhamed Filipović, *Bio sam Alijin diplomata (I Was Alija's Diplomat)*, vol. I., 106.

<sup>174</sup> Muhamed Filipović, *Bio sam Alijin diplomata (I Was Alija's Diplomat)*, vol. I, p. 126.

<sup>175</sup> Comp. para. 39.

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JNA arrested and expelled most of its inhabitants. In the following days, the town was totally destroyed. HVO liberated Ravno as late as 30<sup>th</sup> May 1992.<sup>176</sup>

79. Although, as we saw in previous paragraphs, the organisation of the Patriotic League and other SDA-controlled units was far advanced, the Muslim political leadership did not react at all at the occupation and destruction of Ravno. Alija Izetbegović did not react as a party leader or as a statesman (President of the Presidency) either.<sup>177</sup> Instead, Izetbegović reiterated on TV Sarajevo, on 6<sup>th</sup> October 1991, that the Presidency of BiH (by the way, in disagreement with Serb members) made the decision, according to which BiH military conscripts did not have to obey mobilisation summons, because BiH “did not want to take part in this insane act”. He added: “this is not our war” and invited everyone to help “preserve the peaceful Bosnia”.<sup>178</sup> He therefore failed to clearly condemn the destruction of Ravno, let alone the aggression on Croatia. In the context of the behaviour of Muslim political leadership as a whole, the event showed BiH Croats that Alija Izetbegović and SDA were not reliable partners in the defence against aggression.<sup>179</sup>

**(h) Was there a state of Bosnia and Herzegovina (1991-1993)?**

80. In *Milošević* case, the Trial Chamber noted that the best-known definition of a state is the one provided by Article 1 of the Montevideo Convention. This article reads: “The State as a person of international law should possess the following qualifications: (a) a permanent population; (b) a defined territory; (c) government; and (d) capacity to enter into relations with other States”.<sup>180</sup> How the government

<sup>176</sup> Ivo Lučić, *Selo moje Ravno. Povijest stradanja Hrvata u Popovu (My Village of Ravno. The History of Croat Sufferings in Popovo)*, Zagreb, 1992, pp. 61-78.

<sup>177</sup> Characteristically, the post-war literature of Muslim origin does not mention the destruction of Ravno as the beginning of aggression on BiH. The reasons are obvious: such recognition would imply responsibility for silence and participation in the crime.

<sup>178</sup> Alija Izetbegović, *Sjećanja. Autobiografski zapis (Memoirs, Autobiography)*, 2001, p. 95.

<sup>179</sup> Some prominent Muslim military and political officials are aware of psychological importance of such approach. E.g. Sefer Halilović condemns the political leaders who oversaw that the aggression on BiH had begun with the occupation and destruction of Ravno. Moreover, he admits that the entry of the Croatian Army (HV), regular forces of the Republic of Croatia, into the Ravno area near the border is fully justifiable, because the local population was not protected by the state they were citizens of. On that occasion, Gen. Praljak explained that it was not HV entry, but the entry of a small group of soldiers, some 150 people (Radio Free Europe, Interview Praljak - Halilović, 28 February 1999).

<sup>180</sup> IT-02-54-T, *Prosecutor v. Slobodan Milošević*, Decision on Motion for Judgment of Acquittal, 16 June 2004, p. 1.

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was created and how it functions is of no importance: "the main and the only decisive thing is that organised government acts in a country exclusively and independently of any other government".<sup>181</sup>

81. According to the Constitution of SR BiH (1974), the then BiH was a federal unit within SFRY. Serbs, Muslims and Croats had the status of equal and constitutive peoples. Most of the vital decisions, and especially those concerning the structure and position of the state, as well as the national rights of individual peoples, were to be made only by consensus.
82. BiH Serbs were generally using such constitutional formulation trying to prevent the separation of BiH from Serbia and Montenegro. Already on 12<sup>th</sup> September 1991, they proclaimed the Serbian Autonomous Region (SAO) Eastern Herzegovina, and on 16<sup>th</sup> September 1991 - SAO Bosanska Krajina. Based on the referendum held on 9<sup>th</sup> and 10<sup>th</sup> October 1991, BiH Serbs founded, on 24<sup>th</sup> October 1991, the Assembly of the Serbian People in BiH. It verified the proclaimed SAOs. The decision on the establishment of Serbian Republic of Bosnia and Herzegovina was passed on 21<sup>st</sup> December 1991, and it was proclaimed as early as 9<sup>th</sup> January 1992.
83. Within that process, the democratically elected BiH Serb representatives abandoned all state bodies (the Presidency, the Government, the Assembly). Taking into consideration the provisions of the Constitution in force, as well as the criteria applied by the Arbitration Commission of the Conference on Yugoslavia (so-called *Badinter Commission*) in deciding on the question whether SFRY existed or not,<sup>182</sup> one can justly ask the question of the existence of BiH as a state. The Badinter Commission's Opinion 4, of 11<sup>th</sup> January 1992, expressed the position that SR BiH did not fulfil the preconditions to be considered a sovereign and independent state.<sup>183</sup>

<sup>181</sup> Juraj Andrassy, *Međunarodno pravo (International Law)*, VIII ed., Zagreb, 1984, p. 61.

<sup>182</sup> Comp. Opinion of the Arbitration Commission of 10 December 1991, in: A. Milardović, *Dokumenti (Documents)*, o. c., pp. 134-135, and in: Vladimir Djuro Degan, *Hrvatska država u međunarodnoj zajednici, Razvitak njezine međunarodnopravne osobnosti tijekom povijesti (Croatian State in International Community. Development of Its International-Law Personality during History)*, Zagreb, 2002, pp. 334-336.

<sup>183</sup> Vladimir Djuro Degan, *Hrvatska država u međunarodnoj zajednici, Razvitak njezine međunarodnopravne osobnosti tijekom povijesti (Croatian State in International Community. Development of Its International-Law Personality during History)*, Zagreb, 2002, pp. 340-341.

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84. Despite that, BiH Croats (and the Republic of Croatia) continued advocating the integrity and sovereignty of BiH. After the proclamation of the Serbian Republic of BiH, on 9<sup>th</sup> January 1992, the (incomplete) BiH Assembly session on 14<sup>th</sup> January 1992 passed the Resolution on BiH Sovereignty.<sup>184</sup> Referendum was the international community's condition for recognition of BiH, so that the BiH Assembly, at the Presidency's proposal, made decision on holding a referendum on 25<sup>th</sup> January 1992.
85. The referendum was held on 29<sup>th</sup> February and 1<sup>st</sup> March 1992. The Croat electorate voted in a relatively larger number than the Muslim.<sup>185</sup> The Declaration on Independence of the Republic of BiH was passed on 3<sup>rd</sup> March 1992, without the participation of Serbian parties' representatives. The European Community recognised BiH on 6<sup>th</sup> April 1992, and USA on 7<sup>th</sup> April 1992. At the proposal of Croatia's Government, the President of the Republic of Croatia signed the decision on the recognition of SR BiH on 7<sup>th</sup> April 1992. The following day, 8<sup>th</sup> April 1992, the name SR BiH was changed, by the Presidency's decision, into the Republic of Bosnia and Herzegovina of (R BiH).<sup>186</sup>
86. In previous paragraphs, some cases have been described to illustrate the fact that the so-called central authorities, in the second half of 1991 and the first half of 1992, did not have effective control over their own armed forces.<sup>187</sup> There are more of such cases. For example, when some 200 members of paramilitary forces of the so-called RSK, the occupational creation in the Croatian territory, occupied the Bosnian towns of Grahovo and Drvar in the first half of 1991, the Republic Ministry of the Interior remained disunited and inefficient, and the BiH Presidency was satisfied with mere request for an explanation from JNA.<sup>188</sup> Izetbegović admitted that BiH was not able to resist the aggression coming from within and outside, and "the vital authorities do not function": BiH had 798

<sup>184</sup> For the reasons of simplicity, the Defence will continue to call the BiH Assembly that name when referring to it after the Serb members left it, leaving the question of its legality and legitimacy open. The same applies to the BiH Presidency in the first half of 1992 and the Government of BiH.

<sup>185</sup> F. Boras, o.c., 23.

<sup>186</sup> *Official Journal of the Republic of BiH*, issue 1/I, Sarajevo, 9 April 1992.

<sup>187</sup> Paras. 72-73.

<sup>188</sup> *Kronologija rata. Agresija na Hrvatsku i Bosnu i Hercegovinu 1989.-1998.*, p. 65.

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special police officers only, so that "one must say clearly and aloud that BiH is not capable of protecting itself".<sup>189</sup>

87. The municipality authorities did not function either: in early 1992, municipality authorities were mobilising TO members and sending them to armed operations independently, without consultations and without orders from central government.<sup>190</sup> In Prozor, the joint Croat-Muslim headquarters was not able to implement the decision on joint actions.<sup>191</sup> There were no mechanisms enabling functioning of state authorities.
88. While discussing the (non-)existence of BiH as a state, one should analyse the position of the so-called Presidency, which pursuant to the Constitution, assumed the function of the Assembly. Pursuant to Art. 220. para. 4 of the Constitution of the Republic of BiH, the Presidency of the Republic consisted of seven members. Article 222. para. 1 of the Constitution stipulates that in the state of war, the Presidency was to be extended with the President of the Assembly of BiH, President of the Government, and Chief of the Military Supreme HQ (ŠVK). A number of decisions were made contrary to these imperative norms.<sup>192</sup> The legal President of the Presidency, during a part of his first mandate, was Alija Izetbegović, also the President of SDA. As we could see, Izetbegović was regularly acting as a representative and leader of one, and not of all three peoples. With the Serbian members departed, one can raise the question of legality of the rest of the Presidency. But, the prolongation of Izetbegović's mandate added to the problem. That was done contrary to the Constitution.<sup>193</sup> The Constitutional Court's blessing did not change anything in term of legality, because the Constitutional Court itself was acting contrary to the Constitution.<sup>194</sup>
89. Lord David Owen himself resolutely says that the Presidency of BiH did not exist in 1993, although there were attempts to present the decisions made by

<sup>189</sup> *Kronologija rata. Agresija na Hrvatsku i Bosnu i Hercegovinu 1989.-1998.*, p. 67.

<sup>190</sup> S. Šiber, *Prevare, zablude, istina: ratni dnevnik 1992. (Deceits, Illusions, Truth: War Log-Book 1992)*, pp. 29, 33-34.

<sup>191</sup> S. Šiber, *Prevare, zablude, istina: ratni dnevnik 1992. (Deceits, Illusions, Truth...)*, p. 46.

<sup>192</sup> Comp. S. Halilović, *Lukava strategija (A Cunning Strategy)*, 40-41.

<sup>193</sup> Also, contrary to the Constitution was the appointment of Presidency members from among Croats and Serbs, after the democratically elected representatives had left it.

<sup>194</sup> M. Filipović, *Bio sam Alijin diplomata (I Was Alija's Diplomat)*, vol. I, p. 19-20.

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Izetbegović, or him and his clique, as the decisions of the Government of BiH or of the Presidency.<sup>195</sup> The prolongation of Izetbegović's mandate meant the beginning of "the process of delegitimation of the Bosnian state".<sup>196</sup> Croat members of the BiH Presidency (Boras, Akmadžić, Lasić) announced on 3<sup>rd</sup> August 1993 in Geneva that they would abstain the work of the Presidency,<sup>197</sup> after which, in late August, Akmadžić was banned from the Presidency, and on 20<sup>th</sup> October 1993, Izetbegović signed the decision no. 02-111-628/93 by which Boras and Lasić were "recalled". Such decision was not constitutionally grounded.

**(i) Justification and legality of the HZ HB.**

90. The Constitution of SR BiH allows for the founding of municipality communities, having executive power functions.<sup>198</sup> Due to historical, geographical, traditional, and economic and traffic reasons, BiH has always been in a way "regionalised" throughout the history. This applies to early Middle Ages, the Ottoman period, as well as the period under the Austro-Hungarian rule.
91. Every realistic project of internal organisation of BiH, in the democratisation period, and after the war, had its regional structure as a starting point. For instance, the position of the Government of the Republic of BiH on BiH administrative and territorial organisation, from mid July 1992, envisaged the establishing of regions, and even empowered the BiH regions with the right to establish links and relations with other states, all in harmony with interstate agreements and principles of integrity and the protection of interests of BiH.<sup>199</sup>
92. SDS BiH policy was relying on that while establishing the so-called autonomous regions.<sup>200</sup> Having assessed that the SDS BiH policy and the establishment of the so-called Serbian autonomous regions would result in total disintegration of the system, the other two BiH constitutive peoples undertook countermeasures. Contrary to the Prosecution's claims, it was not Croats who blazed the trail, but

<sup>195</sup> David Owen, *Balkan Odyssey*, 3<sup>rd</sup> ed., p. 104-105.

<sup>196</sup> Muhamed Filipović in statement for *Euro Bosna*, 18 June 1993.

<sup>197</sup> F. Boras, o.c., 131-133.

<sup>198</sup> Constitution of SR BiH, Art. 274-281.

<sup>199</sup> S. Šiber, *Prevare, zablude, istina: ratni dnevnik 1992. (Deceits, Illusions, Truth...)*, Supplement 23, 293,296. Comp. p. 108.

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Muslims. On 6<sup>th</sup> June 1991, SDA regional committee in Mostar decided to "launch the initiative for uniting of the Muslim people into separate municipalities".<sup>201</sup> The operation was carried out in secret, without any agreements with political representatives of BiH Croats, with whom BiH Muslims were formally joined in preventing the Great Serbian aggression.

93. BiH Croats applied a similar model five and half months later, but publicly. But, that move resulted from further military and political developments in Croatia and BiH. In autumn 1991, the aggression on Croatia was getting into full swing, JNA was destroying Vukovar and Dubrovnik; almost one third of Croatia's territory was occupied. In BiH, in silent occupation, JNA was slowly taking on actual power. The Assembly, the Presidency and the Government demonstrated their inability to prevent open occupation (the above example of Drvar and Bosansko Grahovo). Moreover, they did not react to brutal destruction of areas populated by Croats (Ravno). At the same time, the results of the internationalisation of the crisis were totally uncertain.<sup>202</sup>
94. The last session of the joint (whole) SR BiH Assembly was held between 12<sup>th</sup> and 15<sup>th</sup> October.<sup>203</sup> Considering the provisions of the SR BiH Constitution on the Council of peoples and the protection of interests of the country's constitutive peoples, the Serb representatives' leaving of Assembly put in doubt the validity of decisions in that highest representative and legislative body.
95. As the last of the BiH constitutive peoples, Croatian political representatives were undertaking measures in response to the disintegration of BiH political system, so that on 18<sup>th</sup> November 1991, they established the Croatian Community Herceg-Bosna (HZ HB).<sup>204</sup> The decision on its establishment emphasised that the establishment of HZ HB was a consequence of a brutal Greater Serbian

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<sup>200</sup> Here one need not analyse the actual motives for such BiH Serb policy.

<sup>201</sup> The Defence will present the material at the trial.

<sup>202</sup> At that time, The Hague Conference in Yugoslavia just began.

<sup>203</sup> Karlo Rotim, *Obrana Herceg-Bosne (The Defence of Herceg-Bosna)*, 1., Široki Brijeg, 1997, pp. 300.-301.

<sup>204</sup> The Defence recalls that the Constitution of SR BiH in Art. 274-281 allows for the establishment of municipality communities having numerous executive powers.

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aggression on BiH and Croatia.<sup>205</sup> It also says that its purpose was to defend the population in its territory, and that HZ HB would “respect the democratically elected government of the Republic of Bosnia and Herzegovina as long as Bosnia and Herzegovina is a state independent from the former or any future Yugoslavia”.<sup>206</sup> Clearly, the reasons for establishing HZ HB were of defensive nature only, and HZ HB was a constituent part of the sovereign state of Bosnia and Herzegovina.

96. In its documents, HZ HB emphasises that it is a provisional solution conditioned by the war and the lack of a political solution of BiH crisis. For example, the Municipality HVO HQ in Mostar states, in spring 1992, that HZ HB is a provisional solution: after the war, the three most numerous peoples in BiH will achieve a political solution.<sup>207</sup> HVO Busovača informs the public on the conclusions of the Grude session of 3<sup>rd</sup> July 1992, saying that HZ HB recognises BiH as a sovereign, independent and internationally recognised state. HZ HB is a constituent part of that state, and HVO a constituent part of BiH armed forces. All the decisions made are a consequence of the state of emergency caused by the aggression, and HZ HB does not want to prejudice the outcome of the negotiations under the auspices of the international community.<sup>208</sup> HVO Novi Travnik issued a similar announcement on 19<sup>th</sup> August 1992.<sup>209</sup>

97. Numerous Muslims played an important role in HZ HB bodies. The temporary HZ HB authorities provided many Muslim refugees with accommodation. In a number of POW exchanges, HZ HB authorities took many Muslims from Eastern Herzegovina and Bosanska Krajina, and provided them with accommodation in Mostar and other towns in HZ HB.<sup>210</sup> Therefore, the Prosecution’s claims that HZ HB had a discriminatory and persecuting nature are incorrect.<sup>211</sup>

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<sup>205</sup> *Narodni list. Službeno glasilo Hrvatske zajednice Herceg-Bosna (Official Journal of HZ HB)*, issue 1, Mostar, September 1992, pp. 2-3.

<sup>206</sup> *Ibid.*

<sup>207</sup> HVO municipality HQ Mostar, What are the Croats in Herceg-Bosna fighting for?

<sup>208</sup> HVO Busovača, Press release.

<sup>209</sup> HVO Press service Novi Travnik of 19 August 1992.

<sup>210</sup> The exhibits will be presented at the trial.

<sup>211</sup> Prosecutor's Pre-trial brief, para. 26.



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98. The same causes have the same consequences. HZ HB covered some areas, where there have never been conflicts between Croats and Muslims. Those were the areas with relative Croatian majority (Usora, Bosanska Posavina), geographically and in any other way closely oriented to the Republic of Croatia (Bosanska Posavina). If HZ HB was *per definitionem* in the function of ethnic cleansing and division of BiH, why there have never been Croat-Muslim conflicts? If the cause is the same, as the Prosecution says (JCE, which was created on 18<sup>th</sup> November 1991 at the latest), why are its consequences totally different? Maybe the causes of Croat-Muslim conflict should be sought elsewhere?
99. In relation to these two regions, the Defence will present during the trial numerous documents showing that HZ HB bodies were always: (a) underlining the sovereignty of BiH and the need to keep it whole, (b) ensuring equality of Croats and Muslims, (c) organising joint defence, (d) guaranteeing their equality in practicing religion and tradition, (e) in humanitarian plan, preventing any form of discrimination on the basis of ethnicity or religion, etc. At the same time, these two regions were parts of HZ HB and participated in that form of temporary government. How can one reconcile these facts with the Prosecution's thesis about JCE?

**(i) Justification and legality of HVO.**

100. With the beginning of the war, the civilian governmental bodies practically ceased to exist, and their tasks (police, finance, customs, inspection, etc.) were left to military bodies, which were the only ones preventing total anarchy. At that time, much of the country was occupied, the roads were impassable; the justice, banking and monetary systems had collapsed, etc. As underlined earlier, Muslim political leaders' passivity and the factual collapse of the state administration forced the smallest nation in BiH, Croats, to organise its armed force. Their representatives were not informed on the organising of separate Muslim armed forces (Patriotic League, Green Berets, etc.), because that happened under the auspices of SDA.<sup>212</sup> The Ministry of the Interior forces did not act, and they were

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<sup>212</sup> Usp. paras. 65-68.

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not strong enough either;<sup>213</sup> what was there - as admitted by one of Muslim military and political leaders - was permeated by the Patriotic League, i.e. vitally influenced by SDA.<sup>214</sup>

101. The Prosecution witness, who was for a long time highly positioned in BiH Croat leadership, describes that in one part of BiH, in spring 1992, Croat armed forces were created spontaneously. They did not belong to HVO then, but were organised separately from Muslims, in which "first reason (...) was that they distrusted Izetbegovic. They feared that the Bosnian Muslims would accept to remain in Yugoslavia, especially due to a statement of Izetbegovic, which was quite shocking, which concerned a conflict in the Ravno village when he said that these were events that did not concern them. For all these reasons, Croats simply placed no trust in both the Bosniak and the state leadership as such".<sup>215</sup>
102. Croats were, like Serbs and Muslims, an equal and constitutive people in SR BiH. This means that, not only that they had the constitutional right in their municipalities and municipality communities, but also the obligation, to organise the so-called nation-wide defence and social self-protection.<sup>216</sup> After the Sarajevo incident in early April 1992, the incomplete BiH Presidency (without Serb representatives) issued a manifesto to the people to increase TO and Civil Protection (CZ) readiness, and exert itself in self-organising. The so-called National Security Council of the Assembly of Serbian People in BiH condemned the manifesto in the public announcement, signed by R. Karadžić, on 4<sup>th</sup> April 1992.<sup>217</sup> Taking into consideration the provisions of the Constitution of SR BiH, the Presidency's call for self-organisation included the call to organise in the form of the Croatian Defence Council.
103. Based on that constitutional right and obligation, HVO was established on 8<sup>th</sup> April 1992. The same day, BiH Presidency proclaimed not the state of war, but a

<sup>213</sup> Usp. para. 86.

<sup>214</sup> S. Šiber, *Prevare, zablude, istina: ratni dnevnik 1993. (Deceits, Illusions, Truth: War Log-Book 1992)*, 223.

<sup>215</sup> V000-4881, Interview of 10 January 2004

<sup>216</sup> SFRY Constitution from 1974, Art. 239, Constitution of SR BiH of 1974, Art. 252, 258; The BiH National Defence Act, Official Journal of SR BiH, issue. 3, 9 Feb 1984, Art. 63-64.ff.

<sup>217</sup> The material will be presented at the trial.

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direct danger of war.<sup>218</sup> On 10<sup>th</sup> April 1992, the President of HZ HB issued the order proclaiming HVO the only legal defence force of the Croatian people. HVO had the main headquarters and municipality HQ in municipalities within HZ HB. Any other military formation in that area was either illegal or inimical, and any other name was to be eliminated from official use.<sup>219</sup> On the same day, Mate Boban, the President of HVO, issued the order, by which all TO crisis headquarters or former TO headquarters were renamed into HVO municipality headquarters.<sup>220</sup>

104. Contrary to the Prosecution's theses, those documents were not directed against Muslims, but rather against the then TO, which was being used in BiH occupation and aggression on Croatia. Already in April 1992, TO was in Serb hands. According to Gen. Šiber, the Republic TO HQ consisted of 60% Serbs, 30% Muslims and some 10% Croats. The Personnel and Financial Departments were completely in Serb hands.<sup>221</sup> Because of that, BiH Presidency passed, on 8<sup>th</sup> April 1992, the Decree on abolishment of the then Republic TO HQ and the founding of a new TO HQ of the Republic of BiH, which was formed on 15<sup>th</sup> April, and as of that day, it took over the command over the existing units, which were organised on the Patriotic League political platform. By then the illegal Patriotic League HQ became the base of the new TO HQ.<sup>222</sup>
105. Despite all attempts, HVO military component,<sup>223</sup> has never during the war achieved the level of organisation of the army in the fullest sense. Due to the difficult circumstances, in which it was created, the lack of military schools and educated officers, logistic difficulties, etc, HVO was in fact the armed people, during the entire war. Its units remained organised according to the municipality principle, largely influenced by local (municipal) authorities. All that was

<sup>218</sup> Official Journal of the Republic of BiH, issue. 1/1992 and 13/1994.

<sup>219</sup> HVO General Staff, order no. Z-01-11, Grude, 10 April 1992.

<sup>220</sup> HVO General Staff, no. 01-92/92 of 10 April 1992.

<sup>221</sup> S. Šiber, *Prevare, zablude, istina: ratni dnevnik 1992. (Deceits, Illusions, Truth: War Log-Book 1992)*, p. 15.

<sup>222</sup> F. Muslimović, *Odbrana ... (Defence...)*, o.c., 209.

<sup>223</sup> Due to limitations, the Defence here cannot analyse in detail the HVO structure, and the way in which its civilian and military segments functioned.

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reflected in the low level of organisation, as well as the actions of commanders and military discipline organs.<sup>224</sup>

106. Between 10<sup>th</sup> and 15<sup>th</sup> April 1992, HVO sent a proposal to the War BiH Presidency on establishing a joint military HQ for the defence of BiH. Izetbegović has never put the proposal on the Presidency agenda.<sup>225</sup> ABiH General, Stjepan Šiber, proposed to BiH Presidency, on 7<sup>th</sup> June 1992, to issue an official call for help to the armed forces of Croatia and Slovenia, but that proposal was never discussed either.<sup>226</sup>
107. Co-operation was established at local levels, so that many town and municipality authorities left the organising of defence to HVO.<sup>227</sup> But, Muslim political leaders never showed readiness for true co-operation. This was reflected in the field. For instance, according to a JNA report of 2<sup>nd</sup> April 1992, the police station (so-called Public Security Station) in Bugojno, distributed ammunition among the war militia Muslim members, who were instructed to hide that from Croat members of the same unit.<sup>228</sup>
108. Still, Muslim and Croat political representatives agreed in numerous documents that HVO was a legal and legitimate BiH defence force. We will mention here few examples. On 21<sup>st</sup> July 1992, in Zagreb, Tudjman and Izetbegović signed the Agreement on Friendship and Co-operation, which stated, *inter alia*, that HVO was a constituent part of BiH Armed Forces.<sup>229</sup> Izetbegović expressed at RTV BiH gratitude to HVO for the defence of BiH against aggression,<sup>230</sup> and his military advisor, ABiH General F. Muslimović wrote, in early October 1992, that the Croatian people vitally contributed to the defence of BiH: if Croats had not

<sup>224</sup> Many exhibits showing that will be presented by the Defence at the trial.

<sup>225</sup> F. Boras, o.c., 23, 94-95.

<sup>226</sup> S. Šiber, *Prevare, zablude, istina: ratni dnevnik 1992. (Deceits, Illusions, Truth: War Log-Book 1992)*, 90

<sup>227</sup> For the reasons of economy, the Defence will not mention here the exhibits, which will be presented at the trial.

<sup>228</sup> D. Marijan, o.c., 149.

<sup>229</sup> K. Rotim, o. c., pp. 316-317. Several weeks before that, the President of the Republic of Croatia, Dr. Franjo Tudjman expressed belief, in his letter addressed to Alija Izetbegović, on 6 July 1992, "that the differences between the constituent peoples of Bosnia and Herzegovina need to be solved by political means. Organising of Croatian Community of Herceg-Bosna and HVO are initiatives within the Republic of Bosnia and Herzegovina, and we support them as such". (*Ibid*, pp. 315-316).

<sup>230</sup> The Defence will present the video-clip at the trial.

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opposed the aggression, “most of the concept of Greater Serbia would have been realised by now, and the non-Serb peoples in this territory would have been enslaved”.<sup>231</sup> The Decree with Legal Force on the Amendments to the Decree with Legal Force on Armed Forces of the Republic of Bosnia and Herzegovina, of 6<sup>th</sup> August 1992, stipulates that “ a constituent part of the Army are the units of the Croatian Defence Council and the other armed units, which place themselves under the Army command”.<sup>232</sup> On 11<sup>th</sup> February 1993, at the meeting with Morillon and Petković, Halilović said in Šiber’s presence: “The forces of the Army and HVO fight the aggressor on the same side. The politics only needs to do its job”.<sup>233</sup> Stjepan Šiber, a Croat and Army of BiH general, said on 15<sup>th</sup> April 1993,<sup>234</sup> that “Bosnia is defended by its patriots – fighters of the Army of BiH and HVO”.<sup>235</sup> Only several days after the outbreak of the conflict in Central Bosnia, HVO general Milivoj Petković and ABiH general Sefer Halilović concluded an agreement in Zenica, on 20<sup>th</sup> April 1993, in the presence of Gen. Morillon and Ambassador Jean-Pierre Thebault, whose first article states: “Army of BiH and HVO are legal military forces of the Republic of Bosnia and Herzegovina, having the same treatment”.<sup>236</sup> Member of BiH Presidency, Ejup Ganić, says at the Zenica meeting on 20<sup>th</sup> April 1993: “The Presidency position [is] that the armed forces consist of the Army and HVO”, which was agreed upon also by Halilović and Petković.<sup>237</sup>

109. The Washington Agreement of 18<sup>th</sup> March 1994<sup>238</sup>, the Split Declaration of 22<sup>nd</sup> July 1995<sup>239</sup> and the constituent documents of the Dayton Agreement of 21<sup>st</sup>

<sup>231</sup> F. Muslimović, *Obrana Republike (The Defence of the Republic)*, o. c., p. 103.

<sup>232</sup> S. Šiber, *Prevare, zablude, istina: ratni dnevnik 1992. (Deceits, Illusions, Truth: War Log-Book 1992)*, Supplement 30, 306-307.

<sup>233</sup> S. Šiber, *Prevare, zablude, istina: ratni dnevnik 1993. (Deceits, Illusions, Truth: War Log-Book 1992)*, Supplement 3, 316-318.

<sup>234</sup> Therefore, a day before the conflict between ABiH and HVO in Central Bosnia.

<sup>235</sup> Stjepan Šiber, *Bosnu brane njeni patrioti (Bosnians Defended by Its Patriots)*, Ljiljan, 15 April 1993. Published also in: *Armija Bosne i Hercegovine 1992.-1995.*, o. c., pp. 27-29.

<sup>236</sup> The text of the agreement will be presented at the trial.

<sup>237</sup> S. Šiber, *Prevare, zablude, istina: ratni dnevnik 1993. (Deceits, Illusions, Truth: War Log-Book 1992)*, Supplement 14, 341-345

<sup>238</sup> K. Rotim, o. c., pp. 370-378 ff.

<sup>239</sup> K. Rotim, o. c., pp. 423-425. Of course, when dealing with a document signed by Alija Izetbegović, one should always ask a question one of the ABiH generals posed: “Was Izetbegović honest in his statements to Croats and in his talks with Tudjman?” (S. Šiber, *Prevare, zablude, istina: ratni dnevnik 1993.*, p. 295.)

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November 1995 see HVO as a constituent and equal part of BiH armed forces. HVO is treated in the same way in post-war official publications, such as the Encyclopaedic Dictionary of the Army of BiH.<sup>240</sup> Therefore, the Prosecution's thesis that HVO was founded in order to implement JCE has been built on no grounds.

**(k) International community and the plans on regional organisation of BiH.**

110. Internationalisation of BiH conflict resulted in a number of peace conferences and other international community's activities. Recent analyses have shown that the international community actions did not always contribute to the achieving of peace and a just solution.<sup>241</sup> Due to the limitation in space, the Defence will present in short its views on the course and the consequences of negotiations with the international community surveillance and mediation. The Defence here underlines that the Croatian side was always the first to accept without reservations all proposals set by the international community. Paradoxically, such conduct of the Croatian side has resulted in accusations against Croats and then – this Indictment. Serbian representatives were regularly rejecting such plans, and Alija Izetbegović's conduct was the most perfidious: he would accept almost every proposal, and then renounce it upon his return to Sarajevo.
111. All plans aimed at preventing or putting a stop on war activities foresaw decentralised and regional organisation of BiH. In its full sense, the internationalisation of the BiH conflict officially started on 21<sup>st</sup> February 1992, with the UN Security Council Resolution 743.<sup>242</sup> At the same time, in February 1992, the EC organised a meeting in Lisbon of all three peoples, where Muslims were proposing a unitary state, Croats – a federal organisation of BiH, and Serbs – forming of three states in the territory of BiH.<sup>243</sup>
112. The international community proposed the so-called Cutilleiro Plan, which foresaw three constituent units, organised on the ethnic principle. Six meetings

<sup>240</sup> Ahmed Kasumović – Ćamil Huseinbašić, *Enciklopedijski rječnik Armije Bosne i Hercegovine (Encyclopedic Dictionary of the Army of Bosnia and Herzegovina)*, Sarajevo, 2000, p. 145.

<sup>241</sup> See Brendan Simms, *Unfinest Hour. Britain and the Destruction of Bosnia*. Bosnian Edition, Sarajevo – Belgrade, 2003

<sup>242</sup> F. Boras, o.c., 26.

<sup>243</sup> F. Boras, o.c., 26.

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were held in February and March 1992, within the framework of negotiations on that Plan. At the third meeting, held in Konak in Sarajevo on 16-18<sup>th</sup> March, the principles of the constitutional-legal system of BiH were adopted. At the sixth meeting, held on 30-31<sup>st</sup> March 1992 in Lisbon, all three parties accepted the solutions offered, and the maps were left for discussion and agreeing upon by 15<sup>th</sup> May 1992. Upon return from Lisbon, Izetbegović renounced his signature there.<sup>244</sup> Ambassador Cutilliero said in Sarajevo, in April 1992, that the EC insisted on the division of BiH according to his plan, on which the ethnic parties had fully agreed in Lisbon.<sup>245</sup>

113. In the course of the negotiations on the plan, M. Boban, F. Boras and Vlado Šantić, on Croatian, and R. Karadžić, M. Krajišnik and B. Simić on Serbian side, met in Graz on 6<sup>th</sup> May 1992. They were discussing the organisation of BiH, within the framework of the Cutilleiro-Carrington Plan, but no agreement was achieved, neither was there minutes made; but it was decided that talks should be held with the Muslim side.<sup>246</sup> The Croat-Muslim meeting was scheduled for 14<sup>th</sup> May 1992 in Prozor, but the Muslims did not show up, so that the meeting was held in Split on 17<sup>th</sup> May 1992. As Izetbegović did not arrive, Boban refused to take part.<sup>247</sup> The public-law system in BiH was discussed at the meeting, and not maps. Again, the minutes were not made; neither was there public information made, because there was to be a meeting with Serbian side.<sup>248</sup> But, in the evening, Šemso Tanković, President of SDA Croatia, announced, at his own will, that a confederation of Croatia and BiH had been agreed upon, which was not the case.<sup>249</sup>
114. After the Cuitilleiro Plan failed, the next plan of BiH's internal organisation was the Vance-Owen Peace Plan (VOPP). It was being gradually built in autumn 1992, and discussed publicly. At the press conference held on 21<sup>st</sup> October 1992 in Geneve, Izetbegović in principle supported the Plan, which was later known as

<sup>244</sup> F. Boras, o.c., 86-88.

<sup>245</sup> M. Filipović, *Bio sam Alijin diplomata (I Was Alija's Diplomat)*, vol. I, p. 164-165.

<sup>246</sup> F. Boras, o.c., 97-98.

<sup>247</sup> F. Boras, o.c., 99.

<sup>248</sup> F. Boras, o.c., 99.

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VOPP.<sup>250</sup> Several days later, Martti Ahtisaari drafted a constitutional solution plan. The plan was at that time strongly supported by Americans (Warren Zimmerman), and the Muslim side: Silajdžić requested that the solution be imposed to all sides.<sup>251</sup>

115. According to Izetbegović, Lord Owen requested from him direct negotiations with Karadžić in mid December 1992. He threatened that, unless that happens, the international community would withdraw their forces from BiH, even the humanitarians.<sup>252</sup> Because of that, Izetbegović started talks with Karadžić in Geneva.<sup>253</sup> Owen says that he and Vance met Tuđman, Boban and Izetbegović in Zagreb, on 17<sup>th</sup> December 1992. He emphasises that the assessments of VOPP have persistently failed to mention that at that very meeting the borders of Mostar and Travnik, as well as Posavina, Zenica and Tuzla provinces, were agreed upon. Therefore, the Croat-Muslim agreement on the province borders had been achieved two weeks before the plan was presented.<sup>254</sup> The final version of VOPP was presented on 2<sup>nd</sup> January 1993 in Geneva. The Croatian side was the first to accept the Plan, because it made the end of the war and stabilisation possible. Bear in mind Izetbegović's and Silajdžić's earlier statements, as well as the Croat-Muslim talks mediated by Lord Owen, it was realistically expected that VOPP was acceptable for the Muslim side, as well.
116. But, contrary to earlier agreements, Izetbegović accepted ten constitutional principles and the proposal of immediate cease-fire, but the Plan as a whole was unaccepted to him.<sup>255</sup> Three days later, on 7<sup>th</sup> January 1993, he said that VOPP was to sanction ethnic cleansing and prevent the return of refugees.<sup>256</sup> At the same time, he was talking his associates into accepting it, saying that Yasser Arafat had

<sup>249</sup> F. Boras, o.c., 99. In Croatia, namely, SDA Croatia has been active as a political party since 1990, without interruption, and has in fact been a branch of central SDA led by Izetbegović.

<sup>250</sup> David Owen, *Balkan Odyssey*, 3<sup>rd</sup> ed, p. 68.

<sup>251</sup> David Owen, *Balkan Odyssey*, 3<sup>rd</sup> ed, p. 68-69.

<sup>252</sup> Alija Izetbegović, *Sjećanja. Autobiografski zapis (Memoirs, Autobiography)*, p. 225.

<sup>253</sup> Alija Izetbegović, *Sjećanja. Autobiografski zapis (Memoirs, Autobiography)*, p. 226.

<sup>254</sup> David Owen, *Balkan Odyssey*, 3<sup>rd</sup> ed, p. 87.

<sup>255</sup> David Owen, *Balkan Odyssey*, 3<sup>rd</sup> ed, p. 98.

<sup>256</sup> David Owen, *Balkan Odyssey*, 3<sup>rd</sup> ed, p. 99.



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told him to take a part of BiH and create a Muslim state.<sup>257</sup> Gen. Šiber confirms Izetbegović's reference to Arafat.<sup>258</sup>

117. One week before the President Clinton's inauguration (scheduled for 20<sup>th</sup> January), Lord Owen was reassured that the new US administration would support VOPP and urge Muslims to sign the third document, the one about maps.<sup>259</sup> In the second half of January 1993, there were talks on corrections on the Plan, which implicitly included a Croat-Muslim agreement (Livno-Bihać corridor, access to the Sava river, etc.), but the possibility of agreement was immediately eliminated.<sup>260</sup> VOPP was supported by France,<sup>261</sup> and also Russia.<sup>262</sup>
118. The Request of 15<sup>th</sup> January 1993, the Prosecution calls the attempt of unilateral implementation of VOPP,<sup>263</sup> was signed by the Defence Minister of the Republic of BiH. Commander of the 4<sup>th</sup> ABiH Corp emphasises that "the ultimatum" was never delivered to ABiH, neither was he considered serious.<sup>264</sup> In reality, the request of the Croatian side (which was, after all, withdrawn on 19<sup>th</sup> January, before the deadline), was no an ultimatum. Its only purpose was to prevent the HVO-ABiH conflict, because efficient actions of two armies in one area were impossible without an operational agreement.
119. Alija Izetbegović signed VOPP on 25<sup>th</sup> March 1993 in the name of Bosniaks-Muslims. UN Secretary General said that signing of the agreement was an enormous step towards the solution of the crisis.<sup>265</sup> The Prosecution claims that the Croatian side again wanted to implement the agreement unilaterally, and issued an ultimatum until 15<sup>th</sup> April 1993.<sup>266</sup> Contrary to that, the Trial Chamber in *Naletilić* case said: "The evidence does not allow the conclusion that a deadline was set for 15 April 1993".<sup>267</sup> Quite contrary, HDZ BiH and SDA Herzegovina representatives held a meeting on 23<sup>rd</sup> April, from which they issued a statement

<sup>257</sup> S. Halilović, *Lukava strategija (A Cunning Strategy)*, o.c., 22-23.

<sup>258</sup> S. Šiber, *Prevare, zablude, istina; ratni dnevnik 1993.*, 293.

<sup>259</sup> David Owen, *Balkan Odyssey*, 3<sup>rd</sup> ed, p. 103.

<sup>260</sup> David Owen, *Balkan Odyssey*, 3<sup>rd</sup> ed, p. 104.

<sup>261</sup> David Owen, *Balkan Odyssey*, 3<sup>rd</sup> ed, p. 104.

<sup>262</sup> David Owen, *Balkan Odyssey*, 3<sup>rd</sup> ed, p. 107.

<sup>263</sup> *Prosecutor's Pre-Trial Brief*, para. 31.

<sup>264</sup> Arif Pašalić, *Armija Bosne i Hercegovine 1992.-1995. (Army of BiH 1992-1995)*, p. 15.

<sup>265</sup> David Owen, *Balkan Odyssey*, 3<sup>rd</sup> ed, p. 142.

<sup>266</sup> *Prosecutor's Pre-Trial Brief*, para. 31.2 ff.

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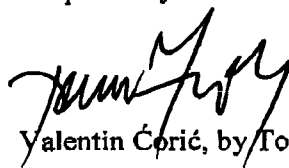
in favour of the end of the conflict, and announced a continuation of the negotiations on the implementation of VOPP.<sup>268</sup> Regional Herzegovina SDA Board issued on 26<sup>th</sup> April 1993 an announcement, which, among other, expressed readiness "to start immediately working on the implementation of the Vance-Owen Plan".<sup>269</sup>

120. After VOPP failed, peace mediators Lord Owen and Thorvald Stoltenberg tried to reach a solution in mid 1993. After their proposal of 20<sup>th</sup> August 1993 that BiH should be organised as a union of three constituent republics,<sup>270</sup> HZ HB made the Basic Decision on the Establishment of Croatian Republic Herceg-Bosna (HR HB), on 28<sup>th</sup> August 1993. The purpose of the Decision of the establishment of HR HB was thus to implement the new international community's peace plan, and not to divide BiH and carry out ethnic cleansing.

**(I) Conclusion: JCE the Amended Indictment refers to did not exist.**

121. Consequently, there are no proofs of BiH Croat political leaders' or HVO leaders' participation in any JCE, as imputed to them in the Amended Indictment. There is especially no proof that Valentin Ćorić found out, any time, in any way whatsoever, of the existence of such JCE, or that he contributed, with his actions or oversight, to its creation, activities or consequences.

Respectfully submitted,



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Defence Counsel

<sup>267</sup> IT-98-34-T, *Prosecutor v. Mladen Naletilić et al.*, Judgment of 31 March 2003, para. 24.

<sup>268</sup> Announcement, 23 March 1993.

<sup>269</sup> Regional Herzegovina SDA Board, Announcement, Mostar, 26 April 1993.

<sup>270</sup> D. Owen, *Balkan Odyssey*, 3<sup>rd</sup> ed, p. 234.