

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

**Case No. IT-04-74-T**

**Before: Judge Jean-Claude Antonetti, Presiding  
Judge Arpad Prandler  
Judge Stefan Trechsel  
Reserve Judge Antoine Kesia-Mbe Mindua**

**Registrar: Mr. John Hocking**

**Date filed: 4 June 2010**

**THE PROSECUTOR**

**v.**

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

***PUBLIC***

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**JADRANKO PRLIĆ'S RESPONSE TO PROSECUTION MOTION TO REOPEN  
ITS CASE – IN – CHIEF (MLADIĆ MATERIALS)**

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**Office of the Prosecutor:**

**Mr. Kenneth Scott  
Mr. Douglas Stringer**

**Counsel for the Accused:**

**Mr. Michael G. Karnavas and Ms. Suzana Tomanović for Jadranko Prlić  
Ms. Senka Nožica and Mr. Karim A. A. Khan for Bruno Stojić  
Mr. Božidar Kovačić and Ms. Nika Pinter for Slobodan Praljak  
Ms. Vesna Alaburić and Mr. Nicholas Stewart for Milivoj Petković  
Ms. Dijana Tomašević-Tomić and Mr. Dražen Plavec for Valentin Ćorić  
Mr. Fahrudin Ibrišimović and Mr. Roger Sahota for Berislav Pušić**

**THE INTERNATIONAL CRIMINAL TRIBUNAL  
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**CASE NO. IT-04-74-T**

**PROSECUTOR v. JADRANKO PRLIĆ ET AL**

***PUBLIC***

**JADRANKO PRLIĆ'S RESPONSE TO PROSECUTION MOTION TO REOPEN  
ITS CASE – IN – CHIEF (MLADIĆ MATERIALS)**

Jadranko Prlić, through his Counsel, respectfully responds to the Prosecution Motion to Reopen its Case-in-chief (Mladić Materials).<sup>1</sup> The Prlić Defence *takes no position* to the Prosecution's motion. Should the Trial Chamber grant the Prosecution's motion, Dr. Prlić should be afforded equal rights under identical standards to have admitted into evidence segments of the Mladić materials relevant in: a) rebutting the Prosecution assertions, b) adding contextual substance to the Prosecution's assertions for the purpose of drawing alternative plausible explanations, or c) supporting his defence case. Dr. Prlić should also be afforded equal rights under identical standards to reopen his case, which may require further testimony from previous witnesses and/or calling new witnesses, or submission of further documentary evidence for admission. Both these matters can only be determined once all of the Mladić materials are transcribed and translated. Finally, the Prlić Defence *opposes* the Prosecution's analysis and assertions proffered in relation to the selected excerpts from the Mladić materials *vis à vis* the allegations in the Indictment.<sup>2</sup> A response / counter-assessment to the Prosecutions's selective entries from the Mladić materials is provided in the affixed annex.

**I. BACKGROUND**

1. On 29 March 2010 the Prosecution was provided in electronic scanned form with the Mladić diaries that the Serbian police authorities had seized on 23 February 2010.<sup>3</sup>

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<sup>1</sup> 21 May 2010.

<sup>2</sup> See paras. 8-13, 22 and 23 of the Motion.

<sup>3</sup> *Prosecutor v. Prlić et al.*, IT-74-04-T, Prosecution Notice of its Intent to Request Reopening of its Case, 21 April 2010 ("Prosecution Notice"), para. 6.

2. On 14 April 2010 the Prosecution disclosed to the Defence the scanned notebooks on DVD discs.
3. On 21 April 2010 the Prosecution filed confidentially a Notice of its Intent to Request Reopening of its Case in order to tender into evidence excerpts of the Mladić diary. Therein, the Prosecution stated that translation has immediately started and that a transcript of the diary in BCS Latin script is being prepared to “facilitate review of the diary materials.”<sup>4</sup>
4. On 26 April 2010 the Prosecution re-iterated its intent to request reopening of its case in its Notice Regarding Rebuttal and Reopening of its Case.<sup>5</sup>
5. On 11 May 2010 the Prosecution was provided by the Serbian authorities with the original diary and related seized audiotapes.<sup>6</sup>
6. On 21 May 2010 the Prosecution filed a Motion to Reopen its Case-in-chief, where it stated that in case its Motion is granted, it will request to tender certain items into evidence through a Rule 89(C) motion. The Prosecution noted that it “is [still] in the process of processing the audiotapes and putting them into digital format for analysis and disclosure”<sup>7</sup> and that it estimates the transcription and translation into English of all the notebooks to be concluded by end of June 2010.<sup>8</sup> The Prosecution further noted that it is reserving its right to “immediately seek to amend this motion should additional Notebook or audio materials be identified that should, in the interests of justice, be added.”<sup>9</sup>

## II. APPLICABLE LAW

7. Reopening a case is not explicitly provided in the Rules of Procedure and Evidence (“Rules”), though it is recognized in the Tribunal’s jurisprudence.<sup>10</sup> The moving party can be either the Prosecution<sup>11</sup> or the Defence.<sup>12</sup>

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<sup>4</sup> Prosecution Notice, para. 7.

<sup>5</sup> *Prosecutor v. Prlić et al.*, IT-04-74-T, Prosecution Notice Regarding Rebuttal and Reopening of its Case, 26 April 2010.

<sup>6</sup> *Prosecutor v. Prlić et al.*, IT-04-74-T, Prosecution Motion to Reopen its Case-in-chief, 21 May 2010 (“Prosecution Motion”), paras. 4, 5.

<sup>7</sup> Prosecution Motion, para. 5.

<sup>8</sup> Prosecution Motion, para. 6.

<sup>9</sup> Prosecution Motion, para. 30.

<sup>10</sup> *Prosecutor v. Prlić et al.*, IT-04-74-T, Decision on Prlić Defence Motion to Reopen its Case, 3 July 2009 (“Decision on Prlić Defence Motion to Reopen its Case”), p. 5; *Prosecutor v. Popović et al.*, IT-05-88-T, Decision on Motion to Re-open the Prosecution Case, 9 May 2008 (“*Popović* Decision”), para. 23;

8. Reopening a case is generally permissible when fresh evidence is discovered, which, despite diligent efforts, was not known to or was not available to the moving party at the time it was presenting its evidence.<sup>13</sup> Fresh evidence is not just evidence that was not in the possession of the moving party at the time of the conclusion of its case, but also evidence which by the exercise of reasonable diligence could not have been obtained by the party at that time.<sup>14</sup> Fresh evidence is distinct from rebuttal evidence.<sup>15</sup>
9. The burden of establishing that the evidence sought to be adduced is “fresh”<sup>16</sup> and that reasonable diligence could not have led to the discovery of the evidence earlier rests on the moving party.<sup>17</sup> The question of whether, with reasonable diligence, the evidence could have been identified and presented in the case-in-chief of the party making the application for reopening a case is the primary consideration in determining the application.<sup>18</sup> Reasonable diligence must be understood with regard to the realities facing the parties; it must not be measured by what a party with infinite time and limitless investigative resources might have discovered or understood.<sup>19</sup>
10. Evidence proposed after the close of the moving party’s case should still meet the general admissibility requirements, being relevant and having probative value.<sup>20</sup> Pursuant to Rule 89(C), the Trial Chamber has discretion to admit any relevant evidence that it deems

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*Prosecutor v. Hadžihasanović & Kubura*, IT-01-47-T, Decision on the Prosecution’s Application to Reopen its Case, 1 June 2005 (“*Hadžihasanović* Decision”), para. 31.

<sup>11</sup> See generally *Prosecutor v. Delalić et al.*, IT-96-21-T, Decision on the Prosecution’s Alternative Request to Reopen the Prosecution’s Case, 19 August 1998 (“*Čelebići* Decision”); *Hadžihasanović* Decision; *Popović* Decision.

<sup>12</sup> See generally *Prosecutor v. Krstić*, IT-98-33-A, Decision on Applications for Admission of Additional Evidence on Appeal, 5 August 2003; *Prosecutor v. Kordić & Čerkez*, IT-95-14/2-A, Decision on Appellant Mario Čerkez’s Motion for Additional Evidence Pursuant to Rule 115, 26 March 2004.

<sup>13</sup> *Čelebići* Decision, para. 26. See also *Popović* Decision, para. 23; *Hadžihasanović* Decision, para. 33.

<sup>14</sup> *Popović* Decision, para. 23; *Čelebići* Decision, para. 26; *Hadžihasanović* Decision, para. 33.

<sup>15</sup> *Čelebići* Decision, para. 23.

<sup>16</sup> *Id.*, para. 26.

<sup>17</sup> *Popović* Decision, para. 24.

<sup>18</sup> Decision on Prlić Defence Motion to Reopen its Case, p. 5, citing *Čelebići* Appeal Judgement, para. 283; *Popović* Decision, para. 24. See also *Hadžihasanović* Decision, para. 33, *Čelebići* Decision, para. 26; *Blagojević*, para. 8; *Mrkšić* Decision, para. 4.

<sup>19</sup> *Popović* Decision, para. 31.

<sup>20</sup> *Prosecutor v. Mrkšić et al.*, IT-95-13/1-T, Decision on Motion to Reopen Prosecution Case, 23 February 2007, para. 5.

to have probative value. Both the probative value<sup>21</sup> and the relevance<sup>22</sup> of the evidence are to be decided at the end of the proceedings.<sup>23</sup>

11. Once a Trial Chamber is satisfied that the moving party has acted with diligence, “it must then exercise its discretion as to whether to admit the new evidence by weighing its probative value against the prejudice that might be caused to the accused by admitting it at such a late stage.”<sup>24</sup> Rule 89 (D) allows a Chamber to exclude relevant evidence, where the probative value of the evidence is outweighed by the need to ensure a fair trial.<sup>25</sup> “In such a determination the following factors are relevant: (1) the advanced stage of the trial; (2) the delay likely to be caused by the re-opening of the [...] case and the suitability of an adjournment in the overall context of the trial; (3) the effect of bringing evidence against one of the Accused on the fairness of the trial of another Accused in a multi-accused case and (4) the probative value of the evidence to be presented.”<sup>26</sup>

### III. ARGUMENT

12. The Prosecution requests the reopening of its case based on the material that was seized at the residence of the Ratko Mladić family in Belgrade, Serbia on 23 February 2010 by the Serbian police authorities. The Defence acknowledges that prior to that date, this evidence was not available to the Prosecution, and that the Prosecution could not have

<sup>21</sup> See, for example, *Prosecutor v. Prlić et al.*, IT-04-74-T, Decision on Praljak Defence Motion for Admission of Documentary Evidence, Dissenting Opinion of the President of the Chamber, Judge Jean-Claude Antonetti, 1 April 2010, p. 48, where Judge Antonetti states: “This probative value is decided only at the end of the trial ‘when all inculpatory and exculpatory evidence has been admitted into evidence.’”

<sup>22</sup> *Prosecutor v. Kupreškić et al.*, IT-95-16-T, Trial Transcript, 20 August 1998, p. 482.

<sup>23</sup> Judge Antonetti, in one of his Dissenting Opinions, noted: “The final assessment of a document with regard to its relevance and probative value can only be made at the **end of proceedings** and by comparing the said document with other documents and, in particular, those that are currently unknown to the Judges of the Trial Chamber and will be presented in the coming months by other Defence Counsels.” *Prosecutor v. Prlić et al.*, IT-04-74-T, Order on Admission of Evidence Relating to Witness Zoran Perković, Dissenting Opinion of Presiding Judge Jean-Claude Antonetti, 9 October 2008, p. 8.

<sup>24</sup> Decision on Prlić Defence Motion to Reopen its Case, p. 6, citing *Čelebići* Appeal Judgment, para. 283; *Hadžihasanović* Decision, para. 35 (emphasis added). See also *Prosecutor v. Blagojević*, IT-02-60-T, Decision on Prosecution’s Motion to Admit Evidence in Rebuttal and Incorporated Motion to Admit Evidence Under Rule 92bis in its Case on Rebuttal and to Re-open its Case for a Limited Purpose, 13 September 2004 (“*Blagojević* Decision”), para. 8.

<sup>25</sup> *Popović* Decision, para. 25; *Hadžihasanović* Decision, para. 47.

<sup>26</sup> *Popović* Decision, para. 25, citing *Blagojević* Decision, para. 10-11; *Prosecutor v. Milošević*, IT-02-54-T, Decision on Application for a Limited Re-opening of the Bosnia and Kosovo Components of the Prosecution Case with Confidential Annex, 13 December 2005, para. 13; *Prosecutor v. Delalić et al.*, IT-96-21-A, Judgement, 20 February 2001, paras. 280, 290; *Čelebići* Decision, para. 27.

known of its existence, despite exercising reasonable diligence. Therefore, the threshold of “fresh evidence” that allows the reopening of a case is met.

13. The Prosecution considers the material based on which it requests the reopening of its case to “contain highly relevant and probative evidence on such issues as the joint criminal enterprise and *mens rea* of the Accused, based on the contemporaneous notes made by Mladić of meetings attended by Mladić, other members of the Bosnian Serb leadership and various Accused in this case.”<sup>27</sup> The Defence, having analyzed what has been translated so far, does not accept the Prosecution’s assertions and analysis. The Defence defers to the Trial Chamber the determination of whether the material sought to be admitted by the Prosecution *may* contain probative evidence relevant to the case that is neither repetitive nor redundant.
14. The Prosecution acknowledges the possibility that parts of the Mladić materials for which it might not seek admission *may* be probative and relevant to the Accused. As such, the Prosecution acknowledges that the Trial Chamber should grant to the Accused “sufficient time to prepare any challenges and defences in respect of the Mladić materials or, if necessary, to reopen their cases to tender evidence or call witnesses for this purpose.”<sup>28</sup>
15. The Defence does not yet have all the material in a form suitable for analysis. The Mladić materials are not yet fully translated, the targeted date being the end of June 2010.<sup>29</sup> Once all the Mladić materials are made available, a possible re-opening of the Prlić defence case may require, axiomatically, not only the admission of relevant segments of the Mladić materials, but also further *viva voce* testimony or submissions of 92bis statements and other documentary evidence.
16. The principle of equality of arms has been recognized by the ICTY jurisprudence “as being only one feature of the wider concept of a fair trial.”<sup>30</sup> This principle requires that the accused is given procedural rights equal to those of the Prosecution.<sup>31</sup> “It is also equally important and inherent in the concept of equality of arms that each party be

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<sup>27</sup> Prosecution Notice, para. 2.

<sup>28</sup> Prosecution Motion, para. 29.

<sup>29</sup> Prosecution Motion, para. 6.

<sup>30</sup> *Prosecutor v. Kordić*, IT-95-14/2-A, Decision on the Application by Mario Čerkez for Extension of Time to File his Respondent’s Brief, 11 September 2001, para. 5.

<sup>31</sup> *Prosecutor v. Brđanin & Talić*, IT-99-36-T, Public Version of the Confidential Decision on the Alleged Illegality of Rule 70 of 6 May 2002, 23 May 2002, para. 22.

afforded a reasonable opportunity to present his or her case under conditions that do not place him at an appreciable disadvantage *vis-à-vis* his opponent.”<sup>32</sup>

17. The principle of equality of arms also requires that the same standard of diligence is applied, when seeking the reopening of the case in order to submit additional evidence for admission. Judge Trechsel notes that:

The defence must be given a fair chance to challenge evidence against the accused and to bring its own evidence. This must be granted under the same conditions as those applicable to the prosecution, which serves the general principle of equality of arms.<sup>33</sup>

18. “It follows [from the principle of *equality of arms*] that the Chamber shall provide every practicable facility it is capable of granting under the Rules and Statute when faced with a request by a party for assistance in presenting its case.”<sup>34</sup> Only when all the Mladić materials have been actually made available, fully transcribed and translated, can the Defence make a reasoned decision on the possibility of seeking admission of other parts of the notebooks, of reopening its case, of seeking further testimony and /or of submitting further documentary evidence for admission.

**WHEREFORE**, for all the reasons set forth herein, the Prlić Defence defers to the Trial Chamber by taking no position concerning the Prosecution Motion to Reopen its Case-in-chief (Mladić Materials). Should the Prosecution’s motion be granted, the Prlić Defence requests that once all of the Mladić materials are translated and disclosed, it be afforded equal rights under identical standards as the Prosecution to:

- a) **Admit** into evidence all Mladić materials relevant to the Prlić Defence in addressing any evidence admitted on behalf of the Prosecution, and / or
- b) **Reopen** its defence case should it be deemed necessary, equitable and just.

<sup>32</sup> *Id.* (emphasis added). See also *Prosecutor v. Orić*, IT-03-68-AR73.2, Interlocutory Decision on Length of Defence Case, 20 July 2005, para. 7, where it is stated that: “At a minimum, equality of arms obligates a judicial body to ensure that neither party is put at a disadvantage when presenting its case, certainly in terms of procedural equality.” This is consistent with Article 21(4)(b) of the Statute which requires that “[i]n the determination of any charge against the accused ..., the accused shall be entitled to ... [*inter alia*] in full equality ... have adequate time and facilities for the preparation of his defence.”

<sup>33</sup> STEFAN TRECHSEL, *HUMAN RIGHTS IN CRIMINAL PROCEEDINGS* 292 (Oxford University Press, 2005) (emphasis added).

<sup>34</sup> *Prosecutor v. Tadić*, IT- 94-1-A, Judgement, 15 June 1999, (“*Tadić* Appeal Judgement”), para. 52.

Dated: 4 June 2010  
The Hague, The Netherlands

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'M. Karnavas', written over a horizontal line.

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Michael G. Karnavas  
Counsel for Jadranko Prlić

Word Count: 2441

## Annex

### Introduction

To fully appreciate the nature and substance of the Mladić Diaries, it is imperative to examine the entries selected by the Prosecution in its 21 May 2010 Motion to Reopen its Case-in-Chief in context, taking into consideration the overall situation in and around BiH, including the involvement of and actions by the international community and the designated international negotiators. Thus, it behoves the Prlić Defence to first provide the necessary context and insight of the events listed by the Prosecution, as reflected by the evidence adduced thus far.

After setting the contextual backdrop, a narrative is offered concerning the various entries of the Mladić Diaries referenced by the Prosecution. For the sake of brevity, not *all* relevant evidence admitted is cited, though when necessary, large segments of documentary evidence are provided in the footnotes for the sake of recalling, explicitly, the evidence before the Trial Chamber.

The analysis provided herein will be limited to the extent necessary for Dr. Prlić's defence case. It is for the other Parties / Accused to provide, if necessary, any explanations in relation to the statements attributed to them in the Mladić Diaries.

### General overview of events in BiH related to the period of the selected entries

Ever since the sounds of the war drums began reverberating around the world heralding the inevitable hostile disintegration of Yugoslavia (SFRY), the international community pressed all parties concerned to hold meetings.<sup>1</sup> The purpose of the

<sup>1</sup> - **Exh. 1D00894**, DAVID OWEN, BALKAN ODESSY 1, (Indigo, 1996) ("OWEN"), EU, Netherlands proposal about redrawing borders in Yugoslavia, p. 1D19-0114.

- **Exh. 1D00893**, The European Community Conference (1991-1992), 4 November 1991, p. 1D190102

2. The republics recognize that cooperation between them and the creation of the association is part of the process of building a new Europe envisaged in the Paris Charter of November 1990, and will improve the prospects for cooperation and closer relations with the European Community. They will cooperate in the fields for which these agreements provide and other agreed fields, without thereby precluding closer forms of cooperation in such areas between republics that so wish..

- **Exh. 4D00540**, The opinions of the Badinter Arbitration Committee: A Second Breath for the Self-Determination of Peoples, 20 November 1991, p. 4D21-0217

“(3) – Consequently, the Arbitration Committee is of the opinion:

- that the Socialist Republic of Yugoslavia is in the process of dissolution;
- that it is incumbent upon Republics to settle such problems of state succession as may arise from this process in keeping with the principles and rules of international law, with particular regard for human rights and the rights of peoples and minorities.

- **Exh. 1D00398**, Extract from the International Conference on the former Yugoslavia, Volume 1 - Statement of Principles of 18 March 1992 for New Constitutional Arrangements for Bosnia and Herzegovina (Cutileiro Plan), p. 1D19-0037:

Annexes of 2 April 1992

#### ANNEXE I

The leaders of the three main parliamentary parties meeting in Brussels under the auspices of the European Community for the sixth round of talks on future constitutional arrangements for Bosnia and Herzegovina:

- Solemnly undertake to do all in their power to bring down the level of violence in Bosnia and Herzegovina,
- Urgently appeal to all in Bosnia and Herzegovina, regardless of ethnic origins, religious beliefs and political affiliation, to refrain from violence, provocation of violence and from any other military or political-action that might jeopardise the agreements already made by the three parties and cast doubts on a successful outcome of the talks.

They are firmly convinced that a peaceful environment will facilitate understanding, speed up negotiations and allow for the drafting of a new constitution acceptable to all in the shortest possible time.

- **Exh. P00205**, UN Security Council Resolution 752, 15 May 1992, p. ERN 0035-9896:
  1. Demands that all parties and others concerned in Bosnia-Herzegovina stop the fighting immediately, respect immediately and fully the cease-fire signed on 12 April 1992, and cooperate with the efforts of the European Community to bring about urgently a negotiated political solution respecting the principle that any change of borders by force is not acceptable.
- **Exh. P00232**, UN Security Council Resolution 757, 30 May 1992, p. ERN 0299-1290:
  20. Reiterates the call in paragraph 2 of resolution 752 (1992) that all parties continue their efforts in the framework of the Conference on Yugoslavia and that the three communities in Bosnia and Herzegovina resume their discussions on constitutional arrangements for Bosnia and Herzegovina.
- **Exh. P00387**, UN Security Council Resolution 770, 13 August 1992, p. ERN 0027- 5416:
 

Underlining once again the imperative need for an urgent negotiated political solution to the situation in the Republic of Bosnia and Herzegovina to enable that country to live in peace and security within its borders...
- **Exh. P00406**, Resolution adopted by the General Assembly at its 46th Session regarding the situation in Bosnia and Herzegovina. Ref: A/RES/46/242., 25 August 1992, p. ERN 0462-2821:
  1. Demands that all parties to the conflict immediately stop fighting and find a peaceful solution in line with the Charter of the United Nations and the principles of international law, in particular the principles of respect for sovereignty and territorial integrity of States, non-recognition of the fruits of aggression and non-recognition of the acquisition of territory by force.
- **Exh. 1D00814**, Lord Owen speech at Ministerial Level Meeting of the Steering Committee of the International Conference on the Former Yugoslavia, Geneva, 16 December 1992, dated 16.12.1992, p. 1D19-0070:
 

So far we have failed to get the Bosnia and Herzegovina Government, at political level, to come around the same table with the Bosnian Serbs and Bosnian Croats. With so much of the territory in which they would normally be in the majority under the control of the Bosnian Serbs they are afraid of negotiating now, as they see it, from a position of weakness. We will, I expect, need the support of countries particularly in the Islamic world to encourage President Izetbegovic to participate constructively in January. But if he is to compromise we will have to be able to demonstrate that we are capable of rolling back the present Bosnian Serb front line and obtaining their agreement to live under a rule of law that allows for ethnic cleansing to be reserved...
- **Exh. P00932**, Resolution of the General Assembly at its 47th Session regarding the situation in Bosnia and Herzegovina. Ref: A/RES/47/121, dated 18/12/1992, p. ERN 04622826 and 04622826:
 

Determined to restore peace in the Republic of Bosnia and Herzegovina as well as to preserve its unity, sovereignty, political independence and territorial integrity,

.....

  11. Requests the Co-Chairmen of the International Conference on the Former Yugoslavia to conclude expeditiously the work of the Working Group on the Republic of Bosnia and Herzegovina, to report on the reasons for the lack of progress and to submit proposals to overcome obstacles in the fulfilment of their mandate by 18 January 1993.
- **Exh. 1D01313**, Report of the Secretary-General on the International Conference on the Former Yugoslavia, dated 24 December 1992, pp. 1D36-0091 and 1D36-0091:
  2. The third meeting of the Steering Committee of the International Conference was held, in expanded form and at ministerial level, at Geneva on 16 December 1992, There was

an in-depth discussion of the situation in the former Yugoslavia and particularly in Bosnia and Herzegovina...

7. It emerged from the meeting that the Ministers wished the Co—Chairmen of the Steering Committee and the Chairpersons of Working Groups to press ahead with strategies for peaceful solutions to problems in the former Yugoslavia. Many participants expressed the view that negotiated solutions were possible, and preferable to expanding the war. In that regard the view was expressed repeatedly that pressure must be increased upon all parties to cooperate...

- **Exh. P01047**, Opening statement of Mr Cyrus Vance to Peace Talks, 2 January 1993, p. ERN 0171-0433;

Excellencies,

This is an historic meeting. It is our best chance for peace and we must ensure that it succeeds. From the beginning, we have sought to work together with you in the quest for peace. Now, for the first time, we have the leaders of all delegations assembled here, together with their political and military advisers. You can act decisively to bring an end to the plight of the people of Bosnia-Herzegovina, who have suffered so grievously.

The process we are starting today can make the difference between peace and war; between life and death for thousands of people. Those gathered around this table have it in their power to prevent us from sliding into escalation, or expansion, of the conflict. You, the leaders around this table, can control what comes next. Peace can only come about with your cooperation. We, in the International Conference, are here to assist you; the decision to choose peace or war rests with you.

It is your historic responsibility to see to it that peace prevails. We therefore welcome you and thank you for accepting our invitation to join us in these peace talks.

Peaceful solutions are within our grasp. The groundwork has been laid within the International Conference in the form of the principles agreed to, and the commitments made by all of the parties - many of which have unfortunately not been fulfilled. The road to peace lies in implementation of these principles and commitments. Time is running short.

We expect that the outcome of the process starting today will be the achievement, and consolidation, of tangible measures for peace.

- **Exh. P01187**, UN Report of the Secretary-General Pursuant to Paragraph 12 of General Assembly Resolution 47/121, United Nations Document A/47/869/1993., 18 January 1993, p. ERN 0040-1007;

27. On 8 January 1993. the President of the Security Council made the following statements with respect to the first phase of the peace talks: 'The Security Council fully supports the efforts of the Co-Chairmen of the Steering Committee of the International Conference on the Former Yugoslavia aimed at achieving an overall political settlement of the crisis through a complete cessation of hostilities and the establishment of a constitutional framework for the Republic of Bosnia and Herzegovina. In this connection, the Council reaffirms the need to respect fully the sovereignty, territorial integrity and political independence of the Republic of Bosnia and Herzegovina. The Council fully endorses the view of the Secretary-General described in his report (5/25050) that it is the duty of all the parties involved in the conflict in the Republic of Bosnia and Herzegovina, despite the recent provocation, to cooperate with the Co-Chairmen in bringing this conflict to an end swiftly. The Council appeals to all the parties involved to cooperate to the fullest with the peace efforts and warns any party which would oppose an overall political settlement against the consequences of such an attitude; lack of cooperation and non-compliance with its relevant resolutions will compel the Security Council to review the situation in an urgent and most serious manner, and to consider further necessary measures.

- **Exh. P01398**, Security Council Official Records S/25221 re. framework for the peace talks for the former Yugoslavia, 2 February 1993, p. ERN 0212-2310:

7. The Co-Chairmen are resolute in their conviction that there is no realistic alternative to dealing with the conflict in Bosnia and Herzegovina other than through negotiations in good faith by all sides to reach a comprehensive settlement.

- **Exh. 1D02852**, Note by the President of the UN Security Council. 3 March 1993, p. 1D54-0413, The Security Council demands that the leaders of all the parties to the conflict in the Republic of Bosnia and Herzegovina remain fully engaged in New York in a sustained

meetings was to find a commonly acceptable formula for either the survival of Yugoslavia, albeit under a different political and constitutional model, or for the secession of some or all of the Republics (and Autonomous Regions) from Yugoslavia, and their establishment and recognition as independent States under conditions that would ensure the rights of their citizens irrespective of their status - constituent peoples or national minorities.<sup>2</sup>

In trying to find a solution for the SRBiH – either as part of the SFRY or as an independent State - the international community embarked on a series of negotiations

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effort with the Co-Chairmen of the Steering Committee of the International Conference on the Former Yugoslavia to reach quickly a fair and workable settlement.

- **Exh. 1D02908**, Report of the UN Secretary-General on the activities of the International Conference on the Former Yugoslavia: Peace talks on BiH, 26 March 1993, p. 1D54-0636:

2. The Co-Chairmen of the Steering Committee of the International Conference on the Former Yugoslavia, Cyrus Vance and Lord Owen, have deployed their best endeavours for seven months to bring peace, with justice and respect for human rights, to Bosnia and Herzegovina. They and their colleagues have laboured night and day to help the parties to the conflict reach an honourable and durable settlement.

- **Exh. P01924**, UN Security Council Resolution 820: Bosnia and Herzegovina. Ref: S/RES/820., 17 April 1993, p. ERN 0299-1361:

(The Security Council)

1. Commends the peace plan for Bosnia and Herzegovina in the form agreed to by two of the Bosnian parties and set out in the report of the Secretary-General of 26 March 1993 (S/25479), namely the Agreement on Interim Arrangements (annex I), the nine Constitutional Principles (annex II), the provisional provincial map (annex III) and the Agreement for Peace in Bosnia and Herzegovina (annex IV).

- **Exh. P04483**, UN Security Council Resolution 859: To continue to support UNPROFOR and UNHCR, Bosnia and Herzegovina, Ref: S/RES/859, 24 August 1993, p. ERN 0299-1347:

(The Security Council)

2. Calls for an immediate cease—fire and cessation of hostilities throughout the Republic of Bosnia and Herzegovina as essential for achieving a just and equitable political solution to the conflict in Bosnia and Herzegovina through peaceful negotiations.

- **Exh. P07268**, Resolution adopted by the General Assembly at its 48th Session regarding the situation in Bosnia and Herzegovina, Ref: A/RES/48/153, 20 December 1993, p. ERN 0462-2816:

(General Assembly)

23. Reaffirms that all parties to the conflict in the territories of Bosnia and Herzegovina, Croatia and the Federal Republic of Yugoslavia (Serbia and Montenegro) share the responsibility for finding a peaceful solution through negotiations under the auspices of the International conference on the Former Yugoslavia, urges that human rights concerns be given proper priority in the peace process, and calls upon the parties to implement immediately all commitments made in the framework of the conference and to reach a just and durable solution as soon as possible.

- **Exh. 1D01545**, Note by the President of the Security Council S/PRST/1994/1, pp. 1 and 2:

The Security Council expresses its deep concern at the continuing widespread hostilities in the Republic of Bosnia and Herzegovina. It deplores the failure of the parties to honour the agreements they have already signed, in the context of the International Conference on the Former Yugoslavia, to implement a cease-fire and to permit the delivery of humanitarian assistance. It condemns the flagrant violations of international humanitarian law which have occurred, for which it holds the perpetrators personally responsible...

The Security Council calls on all the parties to cease hostilities throughout the Republic of Bosnia and Herzegovina and to honour the commitments they have entered into. It calls upon them to negotiate in earnest in the framework of the International Conference on the Former Yugoslavia to achieve an early settlement.

<sup>2</sup> **Exh. 4D00540**, The opinions of the Badinter Arbitration Committee: A Second Breath for the Self-Determination of Peoples, 20 November 1991.

among the leaders of the three constituent nations of SRBiH [later RBiH] (Muslims, Serbs and Croats).<sup>3</sup>

Democratic elections had been previously held on 18 November 1990.<sup>4</sup> The three dominant parties based on national affiliation (SDA – the Muslim party, SDS – the Serb Party and HDZ – the Croat party) won the elections.<sup>5</sup> Accordingly, the SDA, SDS and HDZ were entitled to form the government and allocate the top political and administrative positions both at the state and municipal level, in a way that would reflect the election results as well as the rights and privileges guaranteed by the Constitution of SRBiH to the three constituent peoples.<sup>6</sup> Thus, when time came to determine the future of RBiH, the duly elected representatives of the three constituent peoples inherited the authority to negotiate on behalf of their respective constituent interests.<sup>7</sup>

The first precondition to any change of the *status quo* was the voting for or against the holding of a referendum, the sole issue being whether to remain in a rump Yugoslavia or to seek independence.<sup>8</sup> With the war raging in the Republic of Croatia (with some of the attacks being launched from SRBiH territory by the JNA),<sup>9</sup> ostensibly due to Croatia's declaration of independence,<sup>10</sup> one would have to be afflicted with romantic naivety not to have felt the south-easterly bound winds of war.<sup>11</sup> One would have to have been in a sublime state of unconsciousness or utter ignorance not to have foreseen the dangers linked to either remaining in a rump Yugoslavia (in which case SRBiH and its territory would become an appendix to and an instrument of Slobodan Milošević's agenda) or breaking off from SFRY and suffering the consequences.

<sup>3</sup> Conference on Yugoslavia (The Hague Conference) established by EC in September 1991 under the chairmanship of Lord Carrington, International Conference on former Yugoslavia, established in London on and started to work on 3 September 1992. See also **Exh. 1D00894** OWEN, at 1, EU, Netherlands proposal about redrawing borders in Yugoslavia

<sup>4</sup> Witness 1D-AA, Trial Transcript, 3 June 2008, p. 29041. See also **Exh. 1D00920**, Elections in Bosnia and Herzegovina 1990, Arnautovic Senad.

<sup>5</sup> **Exh. 1D00920**, Elections in Bosnia and Herzegovina 1990, Arnautovic Senad, p. 1D30-0131.

<sup>6</sup> **Exh. 1D02994**, 1982 Constitution of SR BiH, Article II, p. 1D60-1599.

<sup>7</sup> **Exh. 1D00398**, Extract from the International Conference on the former Yugoslavia, Volume 1 - Statement of Principles of 18 March 1992 for New Constitutional Arrangements for Bosnia and Herzegovina (Cutileiro Plan), p. 1D19-0037:

Annexes of 2 April 1992

#### ANNEXE I

**The leaders of the three main parliamentary parties meeting in Brussels under the auspices of the European Community for the sixth round of talks on future constitutional arrangements for Bosnia and Herzegovina:**

- Solemnly undertake to do all in their power to bring down the level of violence in Bosnia and Herzegovina...

<sup>8</sup> **Exh. 1D00394**, Conference on Yugoslavia Arbitration Commission - Opinion 4, 11 January 1992.

<sup>9</sup> Witness Zuzul Momir, Trial Transcript, 7 May 2008, p. 27685 l. 4 – p. 27688 l. 8 (discussing document **Exh. P00089**), and 14 July 2008, p. 30669 – p. 30670 and 8 May 2008, p. 27758 l. 3 – p. 27760 l. 20. (discussing document **Exh. 1D00397**).

<sup>10</sup> **Exh. 3D01085**, Excerpt from the book 'The truth about Bosnia and Herzegovina', 8 November 1991.

<sup>11</sup> Witness Gagro Milivoj, Trial Transcript, 26 May 2006, p. 2695; Witness Kljucic Stjepan, Trial Transcript, 26 June 2006, pp. 3897-3900; 28 June 2006, pp. 4069-4074; 9 October 2006, pp. 7966-7977; Witness 1D-AA, Trial Transcript, 2 June 2008, pp. 28886-28888; Witness Bagaric Ivan, Trial Transcript, 22 April 2009, pp. 39087-39088.

As the Trial Chamber knows, a referendum was held in SRBiH on 29 February and 1 March 1992.<sup>12</sup> Though the Serbs boycotted the referendum,<sup>13</sup> without the support of the Croat vote in SRBiH, the requisite two-third majority of the votes needed for declaring independence from SFRY could not have been garnered.<sup>14</sup> Even before SRBiH declared its statehood and was recognized as an independent state, the three constituent peoples of SRBiH had begun to negotiate for a solution in solving the internal structure / organization of SRBiH. This process was facilitated by the international community, with the first proposal being crafted by Ambassador José Cutileiro, Secretary-General of Western European Union (WEU) and Coordinator of the Peace Conference on Yugoslavia (chaired negotiations on Bosnia-Herzegovina in the 1992 EC Peace Conference).<sup>15</sup> The proposal, as succinctly noted by Lord Owen, was effectively option 3, of the five options<sup>16</sup> that Martti Ahtisaari, International Conference on the Former Yugoslavia (“ICFY”) Chairman of Bosnia-Herzegovina 1992-1994, was to propose later as part of his mandate. This plan, calling for a loose federal state of three ethnic units, did not bear fruit. Though “President Izetbegovic had first accepted it on 18 March he had later changed his mind,”<sup>17</sup> thus casting away the most promising solution for the avoidance of a bloody conflict.<sup>18</sup> Ironically, the ultimate solution for ending the conflict was rooted in the Cutileiro plan<sup>19</sup> (as well as the Owen-Stoltenberg plan)<sup>20</sup> with two rather than three entities ultimately established in BiH and with each entity having more or less the constitutional competencies outlined by Cutileiro.<sup>21</sup> Even more ironic, if not tragic, is the fact that 15 years after the resolution of the conflict in RBiH (later, BiH), the same issues that precipitated the conflict exist today: how to craft the political and administrative division within

<sup>12</sup> **Exh. 1D00410**, M. Tadjman - The Truth About Bosnia and Herzegovina; Decision on the referendum of BiH independence, Referendum question of HDZ BiH (9 Feb. 1992), HDZ Report on future governmental status of BiH, Dr. F. Tadjman: Letter to Izetbegovic, 9 February 1992.

<sup>13</sup> *Id.*

<sup>14</sup> **Exh. P00132**, Republican referendum to determine the status of Bosnia and Herzegovina, held on 29 February 92 and 1 March 92. and 1D00920, Elections in Bosnia and Herzegovina 1990., Arnautovic Suad.

<sup>15</sup> **Exh. 1D00398**, Extract from the International Conference on the former Yugoslavia, Volume 1 - Statement of Principles of 18 March 1992 for New Constitutional Arrangements for Bosnia and Herzegovina (Cutileiro).

<sup>16</sup> Lord Owen recounts: “On 4 October [1992] we had received from Martti Ahtisaari an important paper on constitutional options, setting out the pros and cons of each.” For Vance and me, the five options essentially were:

1. a central state;
2. a centralized federal state with significant functions carried out by between four to ten regions;
3. a loose federal state of three ethnic units, not geographically continuous;
4. a loose confederation of three ethnically determined republics with significant independence, possibly even the security field;
5. a Muslim state, with Serbs becoming part of FRY and Croats becoming part of Croatia.”

OWEN, at 65,(footnotes omitted).

<sup>17</sup> *Id.*, at 68.

<sup>18</sup> **Exh. 1D01315**, Cutileiro's letter in *The Economist*, June 1992.

<sup>19</sup> **Exh. 1D00398**, Extract from the International Conference on the former Yugoslavia, Volume 1 - Statement of Principles of 18 March 1992 for New Constitutional Arrangements for Bosnia and Herzegovina (Cutileiro).

<sup>20</sup> **Exh. 1D00526**, The Stoltenberg Owen Plan – Extract, 30 July 1993.

<sup>21</sup> See **Exh. 4D01234**, Washington Agreement, 1 March 1994 and **Exh. 1D01536**, Dayton Peace Accord, 14 December 1995.

BiH in a manner that optimally preserves the constituent status and rights of the three peoples at the state and local level. These issues, regrettably, remain because of - not despite - the Washington Agreement and the Dayton Peace Accord. William Montgomery, former US Ambassador to Croatia with 15 years of diplomatic experience in the region, publicly proclaimed that the Croats of BiH should have their own entity much as the Serbs do, as well as the Muslims, who, for all intents and purposes, due to its majority population and voting rights, effectively have disenfranchised the Croats in the BiH Federation.<sup>22</sup> Tellingly, if not ominously, he is attributed to have said: “Obama’s administration includes persons who were intensely engaged in this area, such as Hillary Clinton, Joe Biden and Richard Hoolbroke ...But they will insist on the same old policy, which can be read from Biden’s messages which are complete opposite to mine<sup>23</sup>

With the failure of the Cutileiro Plan to bear any fruit, the Vance-Owen Peace Plan (VOPP) emerged as the next plan for solving the internal structure and division of authority (not territory or break up) of RBiH.<sup>24</sup> This plan was also one of the five options proposed by Martti Ahtisaari.<sup>25</sup> As Lord Owen notes:

**[w]e chose option 2 as the basis for what became known as the Vance-Owen Peace Plan – the VOPP – because, as the [Ahtisaari] working paper argued, it seemed the best compromise among the widely differing positions of the three parties and promised the most stable government for the whole of Bosnia-Herzegovina, since much of the predicted intercommunal friction could be kept from the central government by giving the provinces competence over the most divisive issues, e.g. police, education, health and culture, while depriving them of the right to be a state within a state. Instead, however, of adopting the description of the structure as ‘a centralized federal state’, which was almost a contradiction in terms with ‘federal’ meaning different things to different people, we called it a ‘decentralized state.’<sup>26</sup>**

As the conflict progressed, the negotiations dragged on. After countless attempts to refine certain aspects of the VOPP (primarily dealing with the maps), to have some sort of partial implementation (as reflected in the Medjugorje agreement),<sup>27</sup> after the US sabotaging the process by encouraging Izetbegović and his Muslim collaborators to hold off from agreeing to the VOPP and wait for a better solution<sup>28</sup> and publicly disseminating misinformation,<sup>29</sup> the Owen-Stoltenberg plan<sup>30</sup> emerged as the next

<sup>22</sup> **Exh. 1D03138**, A Surprising Proposal of the Former American Ambassador about BiH and Kosovo - William Montgomery, 5 June 2009.

<sup>23</sup> *Id.*

<sup>24</sup> **Exh. 1D00892**, International Conference on former Yugoslavia / Vance-Owen Plan.

<sup>25</sup> OWEN, at 65-68. (footnotes omitted)

<sup>26</sup> *Id.*

<sup>27</sup> **Exh. P01735**, Report of the Secretary-General on the activities of the International Peace Conference on the Former Yugoslavia: peace talks on Bosnia and Herzegovina, 26 March 1993; **Exh. 1D02322**, Public statement of the Croatian Muslim Democratic Party, Medjugorje agreement, 30 May 1993.

<sup>28</sup> **Exh. 1D02037**, OWEN, at 186-189.

<sup>29</sup> OWEN, at 98-101, 106-08, 110-14, 212.

<sup>30</sup> **Exh. 1D00526**, The Stoltenberg Owen Plan – Extract, July 1993.

proposal, calling for the establishment of three republics within RBiH, with each republic, essentially, possessing the same rights and authorities provided by the Cutileiro Plan, and ultimately the Dayton Peace Accords.<sup>31</sup>

Part of the negotiating process was the encouragement of the RBiH interlocutors to conduct multilateral and bilateral talks.<sup>32</sup> This encouragement for dialogue among conflicting or opposing parties - commonly referred to in conflict resolution negotiations as “constructive engagement” – came from the international negotiators, who, based on their remit, functioned more as facilitators rather than mediators. This can be seen from the numerous meetings held and the manner in which the international negotiators conducted themselves during such meetings.<sup>33</sup> Other than Lord Owen’s account of the negotiating process in his highly documented *Balkan Odyssey*, the contemporaneous hand-written notes of Ambassador Ocun (the entirety of which was rejected by the Trial Chamber)<sup>34</sup> are quite illuminating.

The point of outlining the negotiating process and the plans bandied about by the parties and international negotiators is to underscore that bilateral meetings between the constituent peoples of RBiH – whether Croats and Serbs (as is the case in the entries selected by the Prosecution) or Muslims and Serbs or Muslims and Croats, was not some sort of a clandestine exercise designed to accrue wicked results. The international negotiators, as the documentary evidence shows, were engaged in a process, whereby the parties were given the space and latitude to find mutually acceptable solutions.<sup>35</sup>

<sup>31</sup> **Exh. 1D01536**, Dayton Peace Agreement / General Framework Agreement for Peace in Bosnia and Herzegovina, 14 December 1995.

<sup>32</sup> Witness 1D-AA, Trial Transcript, 2 June 2008, p. 28950 l. 14 – p. 28954 l. 13; Witness Petković Milivoj, Trial Transcript, 22 February 2010, p. 49743 l. 16 – p. 49745 l. 11 and 24 February 2010, p. 49977 l. 22 – p. 49979 l. 8. *See also supra* note 1 and **Exh. P02960**, UNPROFOR HQ Kiseljak to UNPROFOR Zagreb report on meeting with Serb and Croat commanders in Stolac, 26 June 1993.

<sup>33</sup> **Exh. P01158**, Presidential transcript of the meeting between Dr. Franjo Tudjman, Co- Chairmen Cyrus Vance and Lord Owen, Alija Izetbegović, the President of Bosnia and Herzegovina, Mate Boban, the President of the Community of Herceg-Bosna, and aides, held in Zagreb in the Presidential Palace on 15/01/1993; **Exh. P02059**, Croatian Presidential Transcripts for 24-04-93; **Exh. P02613**, Croatian Presidential transcript of the meeting between the President of the Republic of Croatia, Dr. Franjo Tudjman, and the Co-Chairmen of the Conference on the Former Yugoslavia, Lord David Owen and Mr. Thorvald Stoltenberg, held at the Presidential Palace on 02/06/1993; **Exh. P03373**, Croatian Presidential Transcript of a conversation of the President of the Republic of Croatia, Dr. Franjo Tudjman, with the co chairmen of the Peace Conference for the former Yugoslavia, Lord David Owen and Thorvald Stoltenberg, held at the Presidential Palace on 10/07/93.

<sup>34</sup> Ordinance Portant Admission D’elements de Preuve Relatifs au Temoin Herbert Okun, 12 June 2007.

<sup>35</sup> **Exh. 1D01312**, Report of the Secretary-General on the International Conference on the Former Yugoslavia, dated 11/11/1992; **Exh. P00854**, Report of the Secretary-General to the General Assembly on the situation in Bosnia and Herzegovina, Ref: A/47/747, 3 December 1992; **Exh. 1D01313**, Report of the Secretary-General on the International Conference on the Former Yugoslavia, dated 24/12/1992; **Exh. 1D01314**, Report of the Secretary-General on the International Conference on the Former Yugoslavia, dated 6-Jan-1993; **Exh. P01391**, Report of the Secretary-General on the activities of the International Conference on the Former Yugoslavia, Ref: S/25221, 2 February 1993; **Exh. P01735**, Report of the Secretary-General on the activities of the International Peace Conference on the Former Yugoslavia: peace talks on Bosnia and Herzegovina, 26 March 1993, Ref: S/25479; **Exh. 1D02908**, Report of the UN Secretary-General on the activities of the International Conference on the Former Yugoslavia: Peace talks on BiH, 26 March 1993.

When considering the ongoing events (which will be covered in more detail below) with the manner in which the negotiations were being carried out and sanctioned by the international negotiators, is it any wonder that the parties would, on occasion, get together to work out not only long term solutions but also to resolve pressing issues that required immediate and intense attention.<sup>36</sup> To suggest that the Serbs could or should be left out of any negotiating process, or that the Serbs should not be *constructively engaged* in resolving humanitarian issues, is as irrational as it is absurd.

<sup>36</sup> Witness 1D-AA, Trial Transcript, 2 June 2008, p. 28950 l. 14 – p. 28954 l. 13; Witness Petković Milivoj, Trial Transcript, 22 February 2010, p. 49743 l. 16 – p. 49745 l. 11 and 24 February 2010, p. 49977 l. 22 – p. 49979 l. 8; See also **Exh. 1D00475**, Serbian-Muslim Historical agreement": Muhamed Filipovic - Radovan Karadzic", 2 August 1991; **Exh. 5D00049**, Historical Agreement between Croats and Muslims, 25 May 1992; **Exh. P00339**, Signed agreement between Izetbegović Alija and Tudjman Franjo on Friendship and Cooperation, 27 July 1992; **Exh. 1D01935**, Annex to the Agreement on friendship and cooperation between the Republic of Croatia and the Republic of Bosnia and Herzegovina, signed by Tudman Franjo and Izetbegović Alija, 23 September 1992; **Exh. 2D00798**, Announcement by the Commandant of ARBiH Konjic Headquarters and Commandant of HVO on 1992/10/23; agreement from October 23rd.1992; **Exh. 1D01543**, UN Security Council Doc. S/24748; Joint Comunique on talks between Tudjman Franjo and Izetbegović Alija in Geneva on 1 November 1992, implementation of Agreement for Friendship and Cooperation; **Exh. P00717**, Document issued by Halilović, Sefer, Armija Bosnia i Herzegovina Supreme Comd HQ Head re: agreement between Izetbegović Alija, Boban Mate, FNU and Stojić Bruno, FNU on forming joined Armija Bosnia - Herzegovina and Croatian Defence Council Comd. for the operation, 7 November 1992; **Exh. 2D00809**, Agreement signed by Bruno Stojić, Ivica Dzinović, Dzevad Hadzihuseinovic, Safet Prucević, Dzevdet Tinjić, Mato Nadjelić and Srecko Rebensten on 1993/01/08; transport of materials from Igmán to Konjic; **Exh. P10257**, Agreement by Franjo Tudjman and Serb leader Dobrica Cosic stating that Croatia and Serbia have no claims on each other's territory and pledging mutual recognition. 11 January 1993; **Exh. P01467**, Stamped and signed joint order by Petković Milivoj and Halilović Sefer to issue joint command orders to honour the mutual agreement between the HVO and the BiH Army to prevent the further disagreement between the two. Ref: 01-131., 11 February 1993; **Exh. 1D02853**, Letter dated 3 March 1993 from the Permanent Representative of BiH to the United Nations addressed to UN Secretary-General, with the Agreement signed by Izetbegovic, Silajdzic, Boban and Akmadzic; **Exh. P01988**, Agreement signed by Petkovic Milivoj, Halilovic Sefer, Morillon Phillipe and Thebault Jean-Pierre, 20 April 1993; **Exh. P11192**, Agreement between the ABiH and the VRS for the demilitarization of Zepa and Srebrenica, brokered by UNPROFOR, signed by Mladić Ratko, Halilović Sefer and Morillon Phillipe, 8 May 1993; **Exh. 4D01344**, Cease fire agreement on the territory of Bosnia and Herzegovina concluded between Ratko Mladic and Sefer Halilovic in the presence of Philippe Morillon, 8 May 1993; **Exh. P02259**, Stamped and signed Agreement Croatian Defence Council and Armija Bosnia I Herzegovina, signed by Tokic Zrinko, Zejnilagic Enver, Bandic Miro, Watkins Philip Roger and Graham Binns (Gornji Vakuf), 10 May 1993; **Exh. P02344**, Agreement on Cease Fire Reached by Gen Petkovic Milivoj (HVO) and General Halilović Sefer (ABiH) in Mostar in presence of Lieutenant General Morillon Philippe and ECMM/HRC Thebault Jean-Pierre, 12 May 1993; **Exh. 1D02404**, Medugorje Agreement, 18 May 1993; **Exh. P02726**, Agreement between Parties on Cease of Conflict in Bosnia and Herzegovina, Signed by PetkovicMilivoj for HVO and DELICRasim for ABiH, Ref: 82-1679/93, 12 June 1993; **Exh. P02960**, UNPROFOR HQ Kiseljak to UNPROFOR Zagreb report on meeting with Serb and Croat commanders in Stolac, 26 June 1003; **Exh. P10264**, Signed copy of the Makarska Agreement on movement of humanitarian aid in Bosnia and Herzegovina, signed by Jadranko Prlic, Hadzo Efendic and Mate Granic, with a cover letter by Ivan Mondovic, 10 July 1993; **Exh. 1D02896**, Preliminary Agreement between Croatia and Parties to Constitutional Agreement on the Union of Republics of BiH for implementing 1965 Convention on Transit Trade of Land-Locked States, 5 August 1993; **Exh. P04690**, Agreement, signed at Sarajevo airport, between Rasim Delić, Milivoj Petković, witnessed by Francis Briquemont, Ref: Z-1073, 03 August 1993; **Exh. 3D0029**, Secret agreement on Confederation between Izetbegovic Alija and Tudjman Franjo, 14 September 1993; **Exh. 4D01234**, Washington Agreement signed by Kresimir Zubak, Haris Silajdzic and Mate Granic, 01 March 1994, with the letter from Mario Nobilo and Muhamed Sacirbej to UN Secretary General, 03 March 1994

The Serbs of RBiH were and remain (as the Croats and Muslims/Bosniaks) a constituent peoples of RBiH, despite the utter falsehoods and rubbish passed on by Haris Silajđić while Minister of Foreign Affairs of RBiH in 1992-93 to the European Affairs Subcommittee of the US Senate Foreign Affairs Committee, chaired by then Senator Joseph Biden (current U.S. Vice President), that in RBiH there were only Bosnians of different religious confessionals: Islam, Christian Orthodox and Christian Catholic.<sup>37</sup> General Praljak is attributed to have told Mladić “[s]ince BH cannot be established without Serbs, it also cannot be established without Muslims and us [Croats].”<sup>38</sup> If anything, General Praljak’s remark encapsulates the essence of the need to find a mutually acceptable resolution that recognizes the inviolable rights of the Muslims, the Serbs and the Croats of RBiH.

### **Mladić Entries of 5-6 October 1992**

The city of Pécs, famous for its enduring and tolerant multi-cultural history, is located on the slopes of the Mecsek mountains in the south-west of Hungary, near the Croatian border. In October 1992 Pécs would have been easily accessible by car from both Zagreb and Belgrade. Mladić does not reveal how the meeting was arranged and at whose initiative (though in his order the following day he seems to imply that it was at the behest of the Croats see Order of 6 October 1992, Annex 2 to Prosecution Motion to Reopen); he simply notes the location of the meeting (Hotel Palatinus, situated in the town square) and the names of the participants.

By the time this meeting takes place in Pécs on 5 October 1992, the conflict in BiH has been ongoing for several months. The topics raised are easily discernable despite the laconic entries. No context concerning the issues being discussed is provided, though for the participants it can be safely assumed that none was needed. The issues and events raised during the meeting were both notorious and imminently pressing: exchange of prisoners, the shelling of Slavonski Brod by the VRS, the need to resolve the conflict around Jajce due in part to its hydro-electric plant – a prize which the VRS / RS authorities coveted, and other general matters.

### ***Entries related to Dr. Prlić***

The first entry related to this meeting is attributed to what Dr. Prlić purportedly said. Dr. Prlić’s comments about agreements not being adhered to and the issue of exchange of prisoners. There is nothing new about the warring factions concluding bilateral agreements<sup>39</sup> or about routinely meeting to discuss the exchange of prisoners.<sup>40</sup> In this sense, the substance of this entry in Mladić’s Diaries is cumulative.

<sup>37</sup> **Exh. 1D02940**, United States Senate Committee on Foreign Relations, Subcommittee on European Affairs / hearing: American Policy in Bosnia, 18 February 1993.

<sup>38</sup> See Annex to Prosecution Motion to Reopen its Case-in-Chief (Mladic Materials) (“Prosecution Motion”), 21 May 2010.

<sup>39</sup> *Supra* note 37.

<sup>40</sup> **Exh. 1D02435**, Agreement on release and transfer of prisoners, 1 October 1992; **Exh. P02512**, Agreement to implement cease-fire, no 1 / 93. Release of Prisoners of War and civilians after listing them, 25 May 1993; **Exh. P02461**, SPABAT intsum 30., 19 May 1993; **Exh. 3D03042**, q-34-13,

The second entry concerning Dr. Prlić merely shows that Dr. Prlić was seeking a solution which would provide for the transparent participation of the internationals. Dr. Prlić is noted to have said “ - *The signing is possible only in the presence of some of the international monitors – VANCE or OWEN.*” Presumably this remark relates to the issues raised by General Praljak, i.e., ceasefire line, suspension of the bombardment of Slavonski Brod, Jajce and the supply of electricity. All of the topics involve humanitarian issues. The requesting of assistance or participation of either “VANCE or OWEN” belies any inferences or conclusions the Prosecution would have the Trial Chamber draw that something nefarious (and attributable to the alleged JCE) was afoot.

***Contextual Background regarding Posavina: Bosanski Brod and Slavonski Brod***

The Posavina is commonly referred to the area around the renowned Sava River. Bosanski Brod in BiH and Slavonski Brod in the Republic of Croatia are adjacent to each other, as this fertile plane of flat land is separated by the flowing waters of the Sava River. Prior to the break up of Yugoslavia, the towns of Bosanski and Slavonski Brod, which since time in memoriam have been predominately resided by Croats, was divided by an administrative border, separating the Yugoslavian republics of SRBiH and Republic of Croatia.

Though these two towns were separated by the Sava River and linked by a bridge, for all intents and purposes, these two towns physically constituted a single living space / town. This is relevant because once Bosanski Brod comes under attack by the VRS (Bosnian Serb armed forces) lead by Mladić, the conflict spills over across the Sava River and onto Slavonski Brod, i.e, the Republic of Croatia.

There is evidence showing that Mladić’s forces were shelling the Croats of Slavonski Brod, as can be seen by Mladić’s Order of 6 October 1992, where in he orders “**The cease fire is to be realized as parts of the front near Bosanski Brod ... The cease fire also means no fire at Slavonski Brod, the left bank of the Sava river...**”<sup>41</sup> As a result of the shelling by Mladić’s forces, not only is there a flooding of Croat refugees coming to the Republic of Croatia from Bosanski Brod, but there are scores

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Response to the letter by Slobodan Praljak addressed to Spabat Medjugorje, commission for exchange of the 4th corps, revolting families of wounded HVO soldiers blockaded the helicopters, 29 March 1993; **Exh. P02520**, Report on the meeting of the HVO Commission for Exchanges signed by Maric Jozo Ref. Number 1/93, 25 May 1993; **Exh. 6D00006**, Formation of the AB-H Commission for Exchange, 28 May 1993; **Exh. 2D00438**, Letter from Ivan Negovetić and Fadil Alihodžić regarding Information on the Exchange of Civilians at the Travnik area, No. 106/39-1, dated 23 June 1993; **Exh. 6D00762**, Stjepan Siber’s order for exchange of prisoners; dated 25-08-1993; **Exh. P05031**, ECMM Report regarding exchange of prisoners, meeting in SpaBatCanarias, 14 September 1993; **Exh. 6D00580**, One to One Exchanges from President A. Izetbegovic, dated 25 September 1993; **Exh. 2D00590**, Decision by Konjic Municipality Wartime Presidency regarding the exchange of imprisoned individuals dated 01 October 1993, 1 October 1993; P06373, UNCIVAFF Report on follow up meetings re Medevac and POW Exchanges, 3 November 1993.

<sup>41</sup> Annex 2 to the Prosecutor’s Motion to Reopen its Case-in-Chief. See also Witness Buljan Stipo, Trial Transcript, 11 February 2009, p. 36738; Witness Praljak Slobodan, Trial Transcript, 4 May 2009, pp. 39459-39460; 13 May 2009, pp. 40095-40097; 8 June 2009, pp. 41340-41341.

of displaced persons fleeing Slavonski Brod to safer areas of Croatia.<sup>42</sup> Thus, the VRS is, by proxy, continuing the military aggression started by the JNA.

There is no evidence to support any claims or conclusions that the State authorities of RBiH, headed by Alija Izetbegović as the President of the Presidency made any meaningful efforts to suppress or contain the VRS from attacking the Croats in either Bosanski Brod or Slavonski Brod.<sup>43</sup> Moreover, there is no evidence that Alija Izetbegovic or any of his collaborators, made any efforts on behalf of BiH, to negotiate with the VRS concerning these attacks. Equally important is the fact that no military support to suppress these attacks was provided by the EU or its member States, the bordering States, the United Nations or any of its members. Simply, other than the occasional public pronouncements for the conflict to cease, no international or regional organizations (including NATO) and no States *actually* did anything to prevent this humanitarian crisis.

Against this backdrop, it would have been both cowardly and irresponsible for the Croats on both sides of the borders to have simply done nothing or to have adopted a posture of appeasement. Poignantly, notwithstanding the agreements reached at these negotiations concerning Bosanski and Slavonski Brod (as can be seen by Mladić's Order of 6 October 1992) the VRS, under Mladić's command, did in fact continue its military onslaught, resulting in the fall of Bosanski Brod on the very next day of this meeting, i.e., the day he issued his order resulting from the meeting.<sup>44</sup>

### **Mladić Entry 26 October 1992**

As noted in the introduction, it is for each participant to any reported meeting to explain his thoughts and representations as noted by Mladić in his diary. This particular entry is about a meeting in Njivice, Montenegro. Dr. Prlić is present, purportedly having said: "If we don't want to respect what we agreed last time, there is no point in any further talks."

It would appear that this is in reference to the discussions of 5 October 1992, which led to Mladić's Order of 6 October 1992, wherein it reflects what had been agreed upon: "On 5 October 1992, following an initiative of the leadership of the Croatian Community of Herceg-Bosna, a meeting was held... . An agreement was reached regarding a ceasefire, the repair of the "Jajce 2" hydroelectric plant, the release of water for other power plants, and the exchange of prisoners."<sup>45</sup> As noted above, Bosanski Brod fell to Mladić's forces the very next day after he had concluded the Pecs agreement (as can be seen from his Order; Annex 2 to Prosecution Motion to

<sup>42</sup> Witness Zoric Damir, Transcript 13 May 2008, p. 27890 l. 25 – p. 27893 l. 14; Witness Praljak Slobodan, Transcript 4 May 2009, p. 39459 l. 19 – p. 39460 l. 11; 1D02585, Number of refugees from Bosnia and Hercegovina according to the data provided by regional offices on Republic of Croatia, signed by A. Rebić, 11 September 1992; 3D00859, Resolution 713, map 1. Operational development of sfrj 1992, map 2. deployment of forces in BiH; 25 September 1991.

<sup>43</sup> Witness Kljujić Stjepan, Trial Transcript, 27 June 2006, pp. 4014-4019; Witness 1D-AA, Trial Transcript, 2 June 2008, pp. 28866-28888.

<sup>44</sup> Witness Buljan Stipo, Trial Transcript, 11 February 2009, pp. 36728-36730 and 12 February 2009, pp. 36844-36845.

<sup>45</sup> Prosecution Motion , Annex 2, p.1, opening paragraph.

Reopen) Noteworthy, is also the fact that despite the agreement and Mladić's order, one day after this meeting on 26 October 1992, Jajce will come under a relentless attack by Mladić's forces, resulting in an unprecedented exodus of Croats and Muslims, as Jajce falls into Mladić's hands on 29 October 1992.

Hence, it is preposterous to suggest that this meeting is between representatives of two cooperating or allied parties. Equally preposterous are claims, as it would appear the Prosecution argues or insinuates, that these meetings are actually part of some sort of an elaborate scheme, where the Croats and Serbs clandestinely planned the fall of Jajce, the self-ethnic cleansing of the Central Bosnian Croats and the turnover of the hydroelectric plant to the Serbs. While such fanciful musings may be entertained by cynical and conspiracy-inclined minds, there is no credible proof from which this Trial Chamber can draw such conclusions beyond a reasonable doubt.

The evidence before the Trial Chamber shows that Jajce was defended by units of both the HVO and the TO (Muslim forces). The evidence also shows that when Jajce came under attack by Mladić's forces subsequent to the agreements reached on 5 October 1992: a) the HVO sent reinforcements to repel the attack, and b) the Muslim forces in and around Jajce prevented the reinforcements from defending Jajce.<sup>46</sup> This again shows the lack of merit in the Prosecution's overly imaginative and creatively constructed claims that the HVO in alliance with the VRS planned and executed, in concert, the fall of Jajce.

#### ***Contextual Background regarding Jajce and the promise to provide electricity***

Before discussing the specific entries related to Jajce, a strategically located town on the main road to Banja Luka, it bears recalling that on 26 October 1992 there is a meeting in Njivice, Monenegro, where Prlić is alleged to have said: "If we don't want to respect what we agreed last time, there is no point in any further talks" (discussed in detail below), and that the following day, 27 October 1992, the VRS launched a ferocious attack on Jajce.<sup>47</sup> As noted, two days later the town would fall in the hands of the VRS,<sup>48</sup> resulting in what Edward Vulliamy has characterized as "the largest and most wretched single exodus" of the war in BiH.<sup>49</sup> The fall of Jajce to the Serbs should dispel any myths that the parties meeting at the Hotel Palatinus in Pécs on 5

<sup>46</sup> **Exh. 2D01028**, Telegram of support for Municipality Staff of HVO Jajce for their bravery in fight with Serbs issued by Bruno STOJIC on 1992/10/27; **Exh. 2D01335**, Approval for safe passage to Jajce signed by Bruno Stojic and Slobodan Praljak 1992/10/28; **Exh. 3D01669**, B-162/2-16, Permission given to soldiers to pass freely to the Jajce position, issued by Slobodan Praljak, 28 October 1992; **Exh. 3D00484**, IL-2-1020, Report on attempt to provide aid to Jajce, Ante Prkacin, 28 October 1992; **Exh. P00670**, Memo by Praljak Slobodan and Stojic Bruno to Blaškić Tihomir and Stjepan Blazević regarding: Muslim units would not let HVO unit pass to Jajce, 29 October 1992; **Exh. 3D03527**, Report on the organisation and conduct of evacuation of the wounded from Jajce, issued by Ivan Bagarić, 31 October 1992.

<sup>47</sup> Witness Vulliamy Edward, Trial Transcript, 8 May 2006, pp. 1541-1542,

<sup>48</sup> **Exh. 3D03527**, Report on the organisation and conduct of evacuation of the wounded from Jajce, issued by Ivan Bagarić, 31 October 1992.

<sup>49</sup> EDWARD VULLIAMY, SEASONS IN HELL: UNDERSTANDING BOSNIA'S WAR 179-180.

October 1992 were anything but enemies or were there concocting a joint criminal enterprise.<sup>50</sup>

Unless the Jajce events of 27-29 October 1992 are fully considered and appreciated, it is improbable to come to any meaningful understanding of the matters discussed at the meeting in Pécs some 22 days earlier. In his entry on this meeting, Mladić does not reveal his comments or sentiments. Nothing is offered by him betraying his understanding of the circumstances, the tenor of the meeting, the Serb/VRS position or expectations etc. concerning Jajce. The evidence adduced however does show that by this point in time, Jajce has come under attack and is effectively under seize.<sup>51</sup> Thus, one need not engage in an overly taxing analysis to conclude, with reasonable certainty, that the representatives of the peoples/nations being attacked, often by indiscriminate shelling, were there in Pecs to find an immediate solution, be it through boastful threats, compromising promises or artful connivance.

<sup>50</sup> - **Meeting on 17 September 1992** “- oko 4 **Ustasha** brigades are constantly attacking and 1 squad from the Trebava Mountain” Mladić’s notebook No. 33, ERN 0668-2041.

- **Meeting on 6 October 1992**, “- **Ustasha** forces are fleeing from the positions towards Bosanski Brod – They have big losses. - In Jajce, Ustashas are surrounded and cannot get supplies in food and ammunition.”, Mladić’s notebook No. 46, ERN 0668-4179.

- **Meeting on 12 October 1992**, “-**Ustashas** are preparing for the opening of the corridor towards Sarajevo – from the outside”, Mladić’s notebook No. 46, ERN 0668-4187.

- **Meeting on 27 October 1992** “- **Ustashas** will try to establish the green transversal along Drina”, Mladić’s notebook No. 46, ERN 0668-4248.

- **Meeting on 17 November 1992**, “**Ustashas** are preparing a new operation in the Neretva Valley, Žepa, Srebrenica and Cazinska Krajina.”, Mladić’s notebook No. 46, ERN 0668-4353.

- **Meeting on 1 December 1992**, “- for 5 Dec. 1992, **Ustashas** are planning an offensive towards the corridor”, Mladić’s notebook No. 46, ERN 0668-4387.

Mladić’s speech on 27 May 1993, “The injustice went that far that some peace forces’ contingents turned into logistics, medical units or utility services for the Croat-Muslim coalition, and at the same time they are turning a blind eye to far more complex problems of the people of RS, which are a result of the actions of the Ustasha formations on energy and water supply facilities, production plants and civilian targets.” Mladić’s notebook No. 36, ERN 0668-2451.

- **Meeting on 15 June 1993**, “**MEETING with Ustashas**”, Mladić’s notebook No. 36, ERN 0668-2500.

- **Meeting on 4 August 1993**, “Petković, through Gen. Brigman, asked me to receive him.- **USTASHAS KNEELED DOWN.**”, Mladić’s notebook No. 36, ERN 0668-2550.

- **Meeting on 24 September 1992**, “They need to be a sufficient threat to the **Ustasha** forces.”, Mladić’s notebook No. 36, ERN 0668-2631.

- **Meeting on 18 November 1993**, “**GENEVE- Negotiations With Ustashas**, with mediation by Ms. Ogata”, Mladić’s notebook No. 44, ERN 0668-3947.

- **Meeting on 3 September 1992**, “- the international community will be doing anything to strengthen the **Croat-Muslim coalition**, which will try to limit our advantage”, Mladić’s notebook No. 37, ERN 0668-2785 - 0668-2786.

- **Meeting on 31 October 1992**, “as our population is smaller, and considering the **Muslim-Croat coalition**, they are taking us to a worse position than we had in 1974”, Mladić’s notebook No. 37, ERN 0668-4265.

- **Meeting on 3 May 1993**, “Do the **coalition forces** have the strength for /unclear/ actions after their mutual struggle and what would be their goal and task?”, Mladić’s notebook No. 36, ERN 0668-2371.

- **Meeting on 3 May 1993**, “What would you suggest we do in order to stir up the fights within the **coalition**?”, Mladić’s notebook No. 36, ERN 0668-2371.

- **Meeting on 17 August 1993**, “4. We should define our attitude towards HVO! - everything that goes to our benefit and is in the interest of the spreading of the conflict within the **coalition.**” Mladić’s notebook No. 36, ERN 0668-2558.

<sup>51</sup> *Supra* note 48.

What emerges from Mladić's entries is that one of the issues concerning Jajce was its capacity to generate electricity because of its hydroelectric power plant. It is obvious from the entries attributed to Mr. Stojić that the VRS was in control of the water supply required for the hydroelectric power plant. The gist of the entries is rather obvious: there is no need for the VRS to continue its attack on Jajce in order to secure the uninterrupted flow of electricity; once the plant is repaired by the Croats and the water supply is made available by the Serbs, electricity will begin flowing. This can be gleaned from Mladić's Order of 6 October 1992, where he orders:

2. Create conditions for enabling repairs of the "Jajce 2" power plant: consequently, stop the activities of all weapons during the repairs, to last no less than four hours. The Croatian side should turn on the electricity for Republika Srpska.
3. After the completion of the repairs and after the electricity has been turned on, we should release the water needed for the operation of the other power plants, no later than three hours after the electricity has been turned on.<sup>52</sup>

These representations by Mr. Stojić were evidently insufficient to assuage the Serbian/VRS desire to capture and control the town of Jajce, and thus this strategic location. Obtaining electricity, in hindsight, seems only as a pretext; the real value for Mladić and the VRS was total control of Jajce.

### **Mladić Entry July 8 1993**

The Prosecution extracts a quote attributed to Karadžić, where he purportedly said "help the Croats in order to force the Muslims to agree on a division of Bosnia," as proof of the Prosecution theory that the goal (JCE) of the Croats was the carving up of RBiH. Even if one were to accept at face value what is being attributed to Karadžić, the term "division" has nothing to do with the carving up of RBiH. Once again, it is important to hark back to what is going on at the negotiating table and the proposals being discussed during that period.

For the sake of context and perspective, the best available documented source of the ongoing negotiating process is offered by Lord Owen. In his *Balkan Odyssey* he details, from different vantage points, the transmutation of the VOPP to the Owen-Stoltenberg Peace Plan. Lord Owen writes:

In Geneva on 23 June [1993] nine constitutional principles emerged. ... Karadzic and Boban seemed genuinely committed and we undertook to put their proposal to the seven members of the Presidency of Bosnia-Herzegovina. ... I asked my deputy, the French Ambassador Jean-Pierre Masset, to visit Sarajevo and give Izetbegovic a private letter ... I had in my letter of 1 July included a detailed annex on many issues which were at the time still very private. ... On 7 July Izetbegovic sent his reply. ... The Bosnian Croat town of Neum, along Bosnia-Herzegovina's few kilometres of historic coastline, was going to be troublesome. Izetbegovic

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<sup>52</sup> *Supra* note 46, Annex 2, p. 1.

recognized that our experts' assessment that it would make a bad harbour was correct, but it clearly had great symbolic importance in Sarajevo. ... The most important result from our two meetings of 9 July, respectively in Belgrade and Zagreb, was that Milosevic and Tudjman were now committed to reaching 30 percent of territory for a Muslim majority republic. ... A map of a predominately Muslim Republic from the Sava to the sea was now becoming closer to reality ... Izetbegovic was saying from Sarajevo that he could accept a confederal solution for Bosnia, although it was exceptionally difficult, for it effectively meant the ethnic division of Bosnia, but his was a 'delicate decision' which had to be taken collectively, not by him as an individual. ... On 12 July Izetbegovic wrote to us as ICFY Co-Chairmen ... saying that he was ready to attend the next round of talks on Bosnia in Geneva ... The Bosnian government also circulated a press release giving some detail of the constitutional proposals discussed by the Presidency in Zagreb on 11 July, namely that an agreement should be based on a federal arrangement with equality for all citizens and equal rights for all constituent nations. ... In effect, behind all the public relations propaganda being put out by all sides, we now had an agreement from the three parties to the principle of a Union of Three Republics with the predominately Muslim Republic having a minimum of 30 percent of territory and Croats arguing they should have more than 20 percent. We were embarking on negotiations based on an agreed framework. The transition from the VOPP had taken about eight weeks

<sup>53</sup>

...

Thus, when considering the events, as described by Lord Owen on or about the date of this entry in Mladić's diary, it is clear that when the term "division" is being used, it refers to the internal division of RBiH and not the carving up and disintegration of RBiH into three different independent states.

The Prosecution's claim that "division" stands for break-up, is not supported by the evidence; this excerpt from the Mladić diaries, other than being repetitive and redundant when seen in the context of the evidence that is already before the Trial Chamber, adds nothing. If anything, the Prosecution's use of such flimsy strands to support its JCE theory, parallels the calculating disinformation tactics employed by the Muslim leadership, as can be seen by the Muslim BiH Ambassador, Mohammed Sacirbey, the son of one of Izetbegović's closest associates from the days of his involvement in the Young Muslims movement.<sup>54</sup> As Lord Owen notes, on or about July 9 or 10, disinformation is being spread, with Mr. Stoltenberg and Mrs. Ogata, then UN High Commissioner for Refugees, being accused of blackmailing Izetbegović. Lord Owen recounts:

To complicate matters the Pakistani UN Ambassador was alleged to have told Security Council that Ambassador Sacirbey had stated that Mr.

<sup>53</sup> OWEN, at 207-211.

<sup>54</sup> Nedzib Sacirbegović (Mohamid Sacirbey's father) and Izetbegović were teenage friends, most likely having served together in the Nazi SS Handschar Division. See JOHN R. SCHINDLER, UNHOLY TERROR 36-37 (Zenith Press, 2007). While this book was not admitted into evidence, it was discussed with General Praljak during his testimony. See Trial Transcript, 25 June 2009, pp. 42016-42019.

Stoltenberg and Mrs. Ogata had personally told President Izetbegovic that unless he agreed to the partition of Bosnia-Herzegovina into three countries, the United Nations and the UNHCR would pull out of his country. These endless rumours, half-truths and general buck-passing made up one of the most unattractive aspects of the whole job. It was particularly objectionable that people in the State Department were trying to put the Co-Chairmen in the line of fire over the inevitable shift of policy following the US role in the demise of the VOPP.<sup>55</sup>

It can hardly be fathomed that Sacirbey would have dissimilated such a profound accusation against Mr. Stoltenberg and Mrs. Ogata without the knowledge and approval of Izetbegović.<sup>56</sup>

The Trial Chamber has heard testimony and has been provided with documentary evidence showing that the term “division” did not connote the “partitioning of Bosnia-Herzegovina into three countries” as Sacirbey had falsely accused Mr. Stoltenberg and Mrs. Ogata of pursuing. In particular, the Trial Chamber heard testimony from Mr. Akmadzić, a former Prime Minister (President of the Government) of RBiH in 1992-93, who enjoyed a close professional and personal relationship with Izetbegović.<sup>57</sup> In a letter - 1D 02888 - authored by Mr. Akmadzić and delivered by Mr. Sacirbey to the UN Security Council, he notes: “When considering the issue of internal political settlement of the Republic of Bosnia and Herzegovina, we must recognize three different constituencies ...”<sup>58</sup> In a letter - 1D 02848 - to the then Senator Biden, the then Chairman of the European Affairs Subcommittee of the US Senate Foreign Affairs Committee, Mr. Akmadzić complains about the cultural and ethnic/national disinformation, the then BiH Foreign Minister, Haris Silajdžić was spreading on Capitol Hill (the US legislative branch). Silajdžić’s target was indeed none other than Senator Biden and his staff.<sup>59</sup> In his letter, Mr. Akmadzić concretely notes: “The government has also determined that Bosnia and Herzegovina can be politically arranged as a decentralized state. The proposals concerning establishment of provinces are an acceptable solution if not based only on ethnic principles, but rather on a combination of ethnic, geographic, historic, economic, and other principles developed through negotiations. Our programme includes full equality for the three peoples of Bosnia and Herzegovina: Croats, Muslims, and Serbs, as recognized by the constitution of the Republic of Bosnia and Herzegovina.”<sup>60</sup> In response to a question from Judge Trechsel, Mr. Akmadzić also stated: “it was precisely at this time in New York in the UN building that we were discussing the Vance-Owen Plan. Mr. Izetbegovic and Mr. Karadzic are still in Geneva early January. ... [W]hat remained was to determine the borders

<sup>55</sup> OWEN, at 210.

<sup>56</sup> Lord Owen observes that Sacirbey had a “direct line to President Izetbegovic” allowing him “to circumvent his Foreign Minister, which did not endear him to his colleagues but made him a more powerful representative to deal with. OWEN, at 24.

<sup>57</sup> Witness Akmadzić Mile, Trial Transcript 16 June 2008, p. 29338.

<sup>58</sup> Discussed at Trial Transcript, 16 June 2008, p. 29374-29376.

<sup>59</sup> Discussed at Trial Transcript, 16 June 2008, pp. 29376-29379. Purportedly, Mr. Akmadzić had received reports claiming that Silajdžić “had deep and sentimental relations with or in the office of Senator Biden.” When pressed, he indicated that these “sentimental relations” were a euphemism for having a *sexual affair* with Senator Biden’s secretary (Trial Transcript, p. 29385).

<sup>60</sup> Trial Transcript, 16 June 2008, p. 29377.

of the provinces and to set up an interim government which is like a transitional government.”<sup>61</sup>

Granted, this period is January 1993. Nonetheless, it bears recalling that the Croat leadership of Bosnia and Herzegovina is the only one from the very beginning and throughout the conflict that signs every proposal for the internal re-organization and administration of RBiH drafted by the recognized international negotiators representing the UN and the EC (after November 1993 EU). To this end, it further bears recalling a letter by Dr. Prlić – 1D 01945 – dated 12 December 1992, which Mr. Akmadžić was asked to comment while giving evidence, since this letter was addressed to both the Presidency and Government of RBiH.<sup>62</sup> Specifically, Dr. Prlić urges Akmadžić “to have the Government and Presidency discuss this protest” which is, as Dr. Prlić prefaces in unequivocal terms, his wish as well as that of the Croat peoples in RBiH for a united RBiH State, organized on the basis of the concepts proposed by the European Community:

The general political position of the Croat people in the BH concerning the status of the BH has been repeatedly and unambiguously expressed and confirmed in practice. We have and will continue to advocate for BH as a sovereign, united, independent and internationally recognized state within the existing constitutional borders. It is for such a state that we have been making large sacrifices, both human and material. We are as unrelentingly in favour of preserving the BH statehood as we are committed to the idea that the state and its internal organization must match the interests of the Croat people residing within it. In this respect, we genuinely accepted the solutions for the internal organization of the BH offered by the European Community, namely for a BH as a compound state community of three constitutive peoples (Croats, Muslims, and Serbs), composed of three constitutive units, formed and organized on the basis of the already accepted principles, from ethnic to sacral ones. We consider this form of BH to be the only one real, possible and sustainable state system, not only because we believe that under such a system the Croat people stand on an equal footing in relation to the other two constitutive and state-building peoples, but also because we firmly believe that this concept of Europe is thoroughly thought-out and imperative if we wish to preserve our common homeland – the state of Bosnia and Herzegovina. Regrettably, we find that all those who did not wish to cooperate with the European Community on such significant matters have been directly or indirectly crushing the sovereignty of the BH.

The Trial Chamber also heard from Mr. Zoran Buntić, Head of the Justice Department of the HVO HZHB. Though he would not venture into what others may have thought, he did speak about “deeds” and of his own position and opinions. When pressed by the Prosecution, Mr. Buntić was emphatic that the Owen-Stoltenberg peace plan was not about dividing up, i.e., breaking up BiH

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<sup>61</sup> Trial Transcript, 16 June 2008, p. 29382 (*see generally* pp. 29380-29383).

<sup>62</sup> Trial Transcript, 17 June 2008, pp. 29429-29432.

into three separate states, but “about the way in which Bosnia and Herzegovina was to be structured on the basis of the principle of three constituent peoples.”<sup>63</sup>

In sum, the 8 July 1993 excerpt from the Mladić diaries is cumulative and redundant, thus not adding any fresh evidence. When considered in context and with the available trial testimony and documentary evidence, it is patently clear that the Prosecution’s assertions as to the value of this excerpt in supporting its Indictment are specious, at best. Indeed, the evidence suggests otherwise: the Croats were looking for and agreed to internationally proposed peace plans that retained the inviolability of RBiH within its internationally recognized borders, while preserving the constitutionally recognized constituent status of the Croatian people of RBiH. This will become even more apparent when the Mladić Diaries are fully translated, for there are several entries where the Serb political and military leadership is urging its subordinates to provide assistance to both Muslims and Croats to enable them to continue fighting each other. Perhaps as an entrée few examples are best served now:

“ Decision...SB (Služba Bezbjednosti – Security Services) to work out a system of secret contacts in order to stir up a war between the M(uslims) and H(Croats), so that we could realize our goals through their conflicts – to push them on the right bank of Neretva river with the promise of autonomy and to take over Mostar, even if only what belongs to us, as well as a part of Neretva valley. ...”<sup>64</sup>

“ ...it would be good to ensure continuation of further clashes between C (Croat)-M (Muslims) and M (Muslims) –M (Muslims).”<sup>65</sup>

“ ...Muslims should be let to defeat Croats near Vitez, Busovača, Gornji Vakuf as well as Kiseljak and Kreševo.”<sup>66</sup>

“...To have better intelligence coverage of Croatian enclaves loyal to us, with aim to spread the conflicts between the Muslims and the Croats.”<sup>67</sup>

### **3 February 1994 meeting**

Mladić’s entry in his notebook of a meeting in Njivice on 3 February 1994, does not refer to the Island of Kirk – as suggested by the Prosecution in its translation – but in Montenegro.

<sup>63</sup> Trial Transcript, 15 July 2008 p. 30777 (*see generally* pp. 30776 – 30779).

<sup>64</sup> Meeting with commander of Hecegovina Corps, 30 October 1993, Mladić’s notebook No. 44, ERN 0668-3916, unofficial translation.

<sup>65</sup> Briefing of the bodies of the Main Staff of the Army of Republic of Srpska, 27 November 1993; Mladić’s notebook No. 44, ERN 0668-3960, unofficial translation.

<sup>66</sup> Meeting in Belgrade with following persons present: a) from Serbia: Milošević, General Perišić, Sokolovic, Stanišić, Badža, Tepavcevic, General Mrkšić b) from RS: Karadžić, Krajišnik, Mladić, Milovanović, Cukić, Miletić, Marić, Salapura, Stanišić, Kovac, 13 December 1993, Mladić’s notebook No. 44, ERN 0668-3969, unofficial translation.

<sup>67</sup> Meeting of the representatives of the General Staff of the Army of RS, 3 January 1994, Mladić’s notebook No. 44, ERN 0668-4024, unofficial translation.

### ***Historical context on or about February 1994***

Context, the continuing refrain throughout this annex, is, yet again, needed to fully understand and appreciate the purpose of the meeting and the comments of the participants. The evidence adduced shows that in January / February 1994 the conflict between the Muslims and the Croats has anything but abated.<sup>68</sup> It would have been utterly disingenuous and hypocritical for Dr. Prlic to have considered or represented the Muslim leadership and the Muslim army (ABiH)<sup>69</sup> to be anything but the enemy.

At this point in time, the Muslim leadership, headed by Alia Izetbegović (backed by his hard-line collaborators from his Young Muslim days)<sup>70</sup> and his coterie of like minded SDA/Muslim *unitarians*,<sup>71</sup> was neither acting in good faith at the negotiating table nor decreasing the ABiH attacks against the Croats of BiH.<sup>72</sup> Hence, when considering the situation on the ground, particularly the events in Central Bosnia,<sup>73</sup> it is no surprise that Dr. Prlić would characterize the Muslims as “the common enemy” or that he would advocate for the breaking of the backbone of the Muslim army.

The second point Dr. Prlić discusses is the legitimacy of the perceived RBiH leadership, i.e., “AI (Alia Izetbegovic) and his Government ...” There is ample evidence to show that by this point in time, Alia Izetbegović is behaving as if he were

<sup>68</sup> **Exh. 1D01552**, OWEN, at 262-265; **Exh. 1D01545**, Note by the President of the Security Council S/PRST/1994/1, 7 January 1994; **Exh. P07548**, UNPROFOR Fax from Stoltenberg to Annan Kofi Re. Further meeting between Tudjman Franjo and IzetbegovicAlija, 10 January 1994.

<sup>69</sup> The Prlić Defence categorically submits that the evidence adduced overwhelmingly supports the conclusion that the ABiH was nothing other than a Muslim army by, for and of Muslims. It did not represent the interests of anyone other than Alia Izetbegović, the SDA and the Muslim people in BiH. See **Exh. P02852**, Signed reply from Bishop Perić Ratko to letters from Mufti Smajkic Seid regarding the killing of Mezit Salem and his request to visit sites of damaged mosques in West Mostar, 19 June 1993; Witness Smajkić Seid, Trial Transcript 25 May 2006, pp. 2565-2566; Witness Jurčević Josip, Trial Transcript, 15 September 2009, pp. 44839-44842, commenting on **Exh. 4D00766**; Witness Akmadžić Mile, Trial Transcript, 19 June 2008, p. 29622; Witness Praljak Slobodan, Trial Transcript 25 June 2009, pp. 42020 – 42022 commenting on **Exh. 1D00431**, The Islamic Declaration,

<sup>70</sup> *Id.*

<sup>71</sup> *Id.*

<sup>72</sup> *Id.*, *supra* note 68.

<sup>73</sup> **Exh. P03337**, Report from Harah Emil to Petković Milivoj and Jelavic Mate, Main Logistic on the expulsion of 15000 Croats from the Kakanj municipality into Vares by ABiH and the convoy organized through the territory of RS, 9 July 1993; **Exh. 2D00710**, Letter signed by Assistant to Head of HZ HB Defense Department for Health Sector Brigadier Dr. Ivan Bagarić on 1993/07/20 sent to UN regarding the War hospital Bugojno under siege by Muslim Forces; **Exh. 2D00466**, Report from Bugojno with the situation up to 15.30 hours; Sandrk Ivo, dated 23/07/1993; **Exh. 2D00461**, LAST APPEAL FOR THE RESCUE OF WOUNDED FROM Bugojno, FROM: Sandrkivo, Commander Colonel SiljegZeljko TO: UN British Battalio GornjiVakuf major BINS, captain HOLDEN, dated 22/07/1993; **Exh. P09503**, Cabled report dated 06 August 1993 issued by US Embassy, Zagreb. Subject: TFSROL: Croats forced from homes after army of B-H offensive around Bugojno, Ref: 061641Z AUG 93 (confidential); **Exh. 1D01523**, Appeal for rescue by Zvonko Mihaljević, M.D. / Bugojno, 22 August 1993; **Exh. P03337**, Report from Harah Emil to Petković Milivoj and Jelavic Mate Main Logistic. on the expulsion of 15000 Croats from the Kakanj municipality into Vares by ABiH and the convoy organized through the territory of RS, 9 July 1993; **Exh. 1D02168**, I. Sljivici (HVO Kakanj), letter to Boban and Prlić regarding: Croats from Kakanj that remained in Vares, 4 October 1993; **Exh. P05996**, Signed and stamped Report by TadićDarinko re. Refugees expelled from Kakanj and Zenica Ref. Number 10-577-II-93, 21 October 1993; **Exh. 1D02830**, A. Pejcinović (Presidency of Vares Municipality) letter to M. Boban re: appeal for help, 18 June 1993;

the President of RBiH rather than just the President of the Presidency.<sup>74</sup> There is also ample evidence to show that the perception – which Izetbegović unabashedly fostered – was that he was the legitimate representative of RBiH, as opposed to simply being the representative of his (as opposed to Fikret Abdić's)<sup>75</sup> Muslims in BiH. There is also the issue as to whether Alia Izetbegovic was lawfully occupying the position of President of the Presidency of RBiH.<sup>76</sup> While his mandate was lawfully extended to a second one-year term (with the help of the Croat members of the Presidency),<sup>77</sup> Alia Izetbegović refused to vacate the post and to allow the transfer of the position to one of the Croat members of the Presidency, as was lawfully mandated.<sup>78</sup> Moreover, as the evidence shows, Alia Izetbegović with his collaborators had already begun much prior to this point, to treat the Presidency as his own *fiefdom*, dismissing and replacing its members at will.<sup>79</sup>

When viewed in this context, the calling into question of the legitimacy of Alia Izetbegović and his government was more than warranted. Dr. Prlić is not calling for the disintegration or de-legitimization of RBiH. This is clear when considering that he postulates for going with Fikret Abdić or for the reinstatement of the old (and lawfully elected) Presidency.<sup>80</sup> While it is a bit fanciful of Dr. Prlić to think that Karadžić, Krajisnik, Mladić and the rest of the Serbian leadership would go along with the reconstitution of the old Presidency as the legitimate representative body of RBiH, it does provide some insight as to Dr. Prlić's *mens rea* concerning his abiding belief in and hope for RBiH as a viable and continuing State of the three constitutionally (and historically) recognized constituent peoples.<sup>81</sup>

As for suggesting an alliance (going) with Fikret Abdić, it bears highlighting that according to the 25 June 1993 entry in Mladić's diary (yet to be officially translated), General Morrillion makes a similar suggestion to Mladić:<sup>82</sup>

- ... Abdić has renounced the AI [Alia Izetbegovic] policy.
- Opposition against AI is growing in Tuzla
- ....
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<sup>74</sup> Witness Akmadzic Mile, Trila Transcript, 16 June 2008, pp. 29334 – 29344 commenting on **Exh. 2D00191**, OWEN, at 52-53; See also **Exh. P10458**, Article from Vercenji List by Lj. Djikic: If I Am Elected, I Will Set conditions, 14 October 1992.

<sup>75</sup> A Muslim member of the Presidency, having garnered the most votes of any SDA candidate during the first free elections of 199; *supra* note 4.

<sup>76</sup> *Supra* note 74.

<sup>77</sup> *Id.*

<sup>78</sup> *Id.*

<sup>79</sup> Witness 1D-AA, Trial Transcript, 2 June 2008, pp. 28877- 28878 and pp. 28989 – 28992; **Exh. P10263**, Letter from Franjo Boras, Miro Lasic and Mile Akmadzic indicating their withdrawal or nonparticipation in the Presidency of Bosnia and Herzegovina (or Bosnia and Herzegovina Government), 2 August 1993; **Exh. 1D02933**, Communiqué issued by Franjo Boras, 28 October 1993.

<sup>80</sup> *Supra* note 74.

<sup>81</sup> **Exh. 1D02078**, HTV (Croatian Television) Split / Smiljko Sagolj's interview with Jure Pelivan, Vlado Soljic, Jadranko Prlić, Mariofil Ljubić and Ignac Kostroman, 17 August 1992; **Exh. 1D02230**, HTV / U krupnom planu / Prlić, Jukić, Bender, on Declaration Tudman-Izetbegović, 21 September 1993.

<sup>82</sup> Meeting with General Morillon, Pale, 25 June 1993, Mladić's notebook No. 36, ERN 0668-2515 - 0668-2516, unofficial translation.

2. The wider wing around Abdic, who has a good image in Sarajevo.

...

- I asked AI to speak clearly. On one side, he is appealing to peace, and on the other hand he wants to get weapons.

\*All three nations seek peace.

**\*As far as Abdic is concerned, I will suggest that he meets you.**

**\*We have a feeling that something could start immediately**, something that would have effect in and outside the country.

- **he is ready to do something with you** in Cazinska Krajina (Kladusa, Bihac, Cazin). If /not clear who/ would withdraw forces there, it would be very useful.”

The Prosecution is focusing on a line from Mladic’s alleged diary where General Praljak is alleged to have said words to this effect: “The goal is Banovina 1939; if not, we will continue the war.” In doing so, the Prosecution attempts to advance its theory as reflected in the Indictment that there was a JCE, the purpose of which was, *inter alia*, to reconstitute the geographical borders of the Republic of Croatia to accord with the borders of the Banovina Hrvatska.<sup>83</sup> The raw language itself, when examined in context – a matter not done in this instance by the Prosecution – does not lend any credence or support to any supposition that Dr. Prlić or any of the other non-Serb participants of the meeting were there to negotiate, plead or advance the alleged JCE.

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<sup>83</sup> Indictment, para. 15.