

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

Case No. IT-08-91-PT

IN THE TRIAL CHAMBER

**Before: Judge Iain Bonomy, Presiding
Judge Ole Bjørn Støle
Judge Frederik Harhoff**

Registrar: Mr. John Hocking

Date Filed: 31 July 2009

THE PROSECUTOR

v.

**MIĆO STANIŠIĆ
STOJAN ŽUPLJANIN**

**PUBLIC
CONFIDENTIAL ANNEXES A, B, and C**

**SUPPLEMENTAL PRE-TRIAL BRIEF OF THE DEFENCE OF MIĆO
STANIŠIĆ**

The Office of the Prosecutor

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Counsel for the Accused

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Mr. Igor Pantelić for Mr. Stojan Župljanin**

SUPPLEMENTAL PRE-TRIAL BRIEF OF THE DEFENCE OF MIĆO STANIŠIĆ

1. At all times relevant to the indictment, Mr. Stanišić was the Minister of the Serbian Ministry of Internal Affairs in Bosnia and Herzegovina (“RS MUP”). He is charged under Article 7(1) of the Statute with committing – as a participant in a joint criminal enterprise (“JCE”) – instigating and aiding and abetting the crimes alleged in the indictment and under Article 7(3) of the Statute as a superior authority who failed to prevent or punish the crimes alleged in indictment.
2. Pursuant to Rule 65ter(F)(i) the Defence Pre-Trial Brief makes the following written statement setting out, in general terms, the nature of his defence:
 - a. Mr. Stanišić never acted criminally nor did ever harbour or manifest any criminal intent.
 - b. Legally and factually, there was no JCE as alleged by the Prosecution and Mr. Stanišić was never a part of any JCE or common plan to permanently remove Bosnian Muslims, Bosnian Croats, and other non-Serb from the territory of the planned Serbian state by means which included the commission of the crimes alleged in the indictment.
 - c. Legally and factually, Mr. Stanišić never instigated anyone to commit a crime. He never prompted anyone to commit a crime, nor did he ever intend to provoke or induce the commission of a crime.
 - d. Legally and factually, Mr. Stanišić never aided and abetted the commission of any crime. He never rendered any practical assistance, encouragement, moral support, or assistance in the commission of any crime.
 - e. Factually and legally, Mr. Stanišić never failed to discharge his duties and obligations as Minister of the Interior in relation to his subordinates.

3. The Prosecution cannot prove the allegations contained in the indictment beyond reasonable doubt.
4. Pursuant to Rule 65ter(F)(ii) the Defence Pre-Trial Brief must include a written statement setting out the matters with which Mr. Stanišić takes issue in the Prosecutor's pre-trial brief and pursuant to Rule 65ter(F)(iii), in the case of each such matter, the reason why he takes issue with it.
5. Before turning to the matters with which Mr. Stanišić takes issue with the Prosecutor and his reasons for taking issue, he wishes to specifically identify the following matters on which there has been agreement with the Prosecution:¹
 - a. For centuries the population of Bosnia and Herzegovina, more so than any other republic of the former Yugoslavia, has been multi-ethnic.
 - b. The large Muslim population of Bosnia and Herzegovina owes its religion and culture, and hence its identity, to the long Turkish occupation, during which time many Slavs adopted the Islamic faith.
 - c. Immediately after the First World War, and as part of the break-up of the Habsburg empire, the Kingdom of Serbs, Croats and Slovenes was created out of the union of the Kingdom of Serbia, which in the nineteenth century had already achieved independence from Turkey, with Montenegro, which had also been an independent principality, and with Croatia, Slovenia, and Bosnia and Herzegovina.
 - d. In 1929 that Kingdom changed its name to the Kingdom of Yugoslavia, that is, the Kingdom of the southern Slavs.
 - e. For many centuries Roman Catholicism had predominated in the northern and western sectors, whereas Orthodox Christianity and Islam prevailed in its southern and eastern sectors under the rule of the Ottoman Empire.

¹ *Prosecutor v. Mićo Stanišić*, Case No. IT-04-79-PT, Decision on Judicial Notice, 14 December 2007, para. 50.

This same general religious division persisted into this century and indeed still persists.

- f. The “Socialist Republic of Bosnia and Herzegovina” became one of the six republics in the Socialist Federal Republic of Yugoslavia (SFRY) a successor state of the Kingdom of Yugoslavia. Due to the century-long dramatic and complicated history of the Balkans and political developments in the former Yugoslavia after the two World Wars, the Republic of Bosnia and Herzegovina was populated primarily by Serbs, Croats and members of the Muslim-Slavic community. Apart from the differences in their cultural heritage and religious tradition, the three groups had much in common and peacefully coexisted for most of the time.
- g. During the time of Axis occupation, a portion of the territory of the state was annexed by Italy and two other areas were transferred to Bulgarian and Hungarian control respectively. Much of what remained became the formally independent but in fact Axis puppet state of Croatia, extending far beyond previous, and subsequent, Croatian boundaries and divided between Italian and German zones.
- h. The Second World War was a time of prolonged armed conflict in Yugoslavia, in part the product of civil war, in part a struggle against foreign invasion and subsequent occupation. Although this wartime situation was short-lived, lasting only from 1941 to 1945, it left bitter memories, not least in Bosnia and Herzegovina, large parts of which, including the Prijedor municipality, were included in the puppet state of Croatia.
- i. Three distinct Yugoslav forces each fought one another during the Second World War: the Ustaša forces of the strongly nationalist Croatian State, supported by the Axis powers, the Chetniks, who were Serb nationalist and monarchist forces, and the Partisans, a largely communist and Serb group.

- j. Many of the hard-fought and bloody conflicts took place in Bosnia and Herzegovina.
- k. After the occupation of the Kingdom of Yugoslavia in 1941, the German Nazi regime created the “Independent State of Croatia”, headed by an anti-Serb Ustaša regime. Allied with Germany and Italy, Croatian fascists (Ustaša fought both Serb monarchists (Chetniks) and communists (Tito’s partisans). Many Serbs, but also Jews and other targeted groups, were systematically killed in extermination camps because of their religion and ethnicity. One of the most infamous camps was located at Jasenovac in Western Slavonia, north of Prijedor municipality, near the border between Bosnia and Herzegovina and Croatia.
- l. During World War II, when Yugoslavia was occupied by Germany and Italy, the municipality of Prijedor formally became part of the aforementioned “Independent State of Croatia”, led by an anti-Serb Ustaša government. The municipality was the scene of many massacres of Serbs by the German Nazi regime and the Ustaša aided by a segment of the Muslim population. Croats and Muslims who sided with the predominantly Serb partisan resistance, which was particularly strong in a mountainous and heavily wooded northeastern area around Mount Kozara, also became victims. Thousands of Bosnian Serbs, Jews and other targeted groups were sent to concentration camps run by the forces of the German Nazi regime and the Ustaša.
- m. In the post-war years until about 1991, at least in the Prijedor municipality, particularly in rural areas, the three populations, Serbs, Croats and Muslims, tended to live separately so that in very many villages one or another nationality so predominated that they were generally regarded as Serb or Croat or Muslim villages. Many witnesses speak of good inter-communal relations, of friendships across ethnic and coincident religious divides, of intermarriages and of generally harmonious relations.

- n. Marshal Tito and his communist regime took stern measures to suppress and keep suppressed all nationalist tendencies.
- o. Under its Constitution of 1946, the country was to be composed of six Republics: Serbia, Croatia, Slovenia, Bosnia and Herzegovina, Macedonia, and Montenegro and two autonomous regions, Vojvodina and Kosovo.
- p. According to the 1946 Yugoslav Constitution, the peoples of the Republics, other than Bosnia and Herzegovina, were regarded as distinct nations of federal Yugoslav.
- q. The situation of Bosnia and Herzegovina was unique; although it was one of the six Republics, it, unlike the others, possessed no one single majority ethnic grouping and thus there was no recognition of a distinct Bosnian nation. However, by 1974 the Muslims were considered to be one of the nations or peoples of federal Yugoslavia.
- r. Throughout the years of Marshal Tito's communist Yugoslavia, religious observance was discouraged. Nevertheless, the population remained very conscious of so-called ethnic identity, as Serb, Croat or Muslim.
- s. Today, in Bosnia and Herzegovina, whether practising or non-practising, the great majority of Serbs remain Orthodox Christian and the Croats Roman Catholic, while the title Muslim speaks for itself.
- t. Post-war Yugoslavia was, at first, a highly centralist State, with substantial power exercised federally from Belgrade. Then, in the 1960s and on into the 1970s, there was a trend towards devolution of power to the governments of the Republics, a trend enhanced by a new Constitution adopted in 1974 and which continued on into the 1980s.
- u. After World War II, the Partisan resistance in Prijedor acquired almost mythical proportions. As a memorial to these events, the famous Kozara Monument was built in the early 1970s to honour the partisans and civilians who perished.
- v. The systematic efforts of Marshal (Josip Broz) Tito, the leader of Communist Yugoslavia founded by a declaration at Jajce on 29 November

1943, to boost friendship between the peoples of Yugoslavia influenced the public conscience, especially the conscience of the young generation. They promoted the re establishment of ethnic tolerance and a feeling of mutual confidence between the communities in the municipality of Prijedor. Marriages and personal friendships across ethnic lines were significant in number. Before, and immediately after the November 1990 multi-party election, the municipality remained an area of ethnic peace.

- w. Yugoslavia had long pursued its own unique system of socialist self-management which set it apart from the rest of the communist world. During the 1980s this system came to be widely regarded as responsible for Yugoslavia's protracted economic crisis. Towards the end of the 1980s, the economic crisis in Yugoslavia developed into a major political one. In 1988, a sweeping reform of the political and constitutional scene occurred. The whole structure of socialist self-management, entrenched as it had been in the federal Constitution, was abolished. The many constitutional references to the Yugoslav working class as the political actors and possessors of political power were removed and the leading political role of the League of Communists was brought to an end.
- x. Marshal Tito's death in 1980 and the rapid disintegration of the ruling League of Communists of Yugoslavia in the first months of 1990 resulted in a power vacuum and the emergence of national parties throughout the country.
- y. Slobodan Milošević already a powerful political figure in Serbia as a party chief, spoke at a mass rally at the site of the Kosovo battlefield itself. Slobodan Milošević spoke at the Kosovo battlefield as the protector and patron of Serbs throughout Yugoslavia and declared that he would not allow anyone to beat the Serb people. Slobodan Milošević speech greatly enhanced his role as the charismatic leader of the Serb people in each of the Republics, after which he rapidly rose in power.
- z. In 1989 Slovenia formally amended the Republic's Constitution to empower the Slovene Assembly to take measures to protect the Republic's

status and rights from violation by organs of the federation. This amendment was declared unconstitutional by Yugoslavia's constitutional court. In December 1989 Slovenia chose to ignore the decision of the court. In the following 18 months other Republics increasingly ignored federal authority.

- aa. In May 1990, a new government was elected into office in Slovenia after its first multi-party elections.
- bb. In December 1990, a plebiscite was held in Slovenia, resulting in an overwhelming majority vote for independence from Yugoslavia.
- cc. In Croatia the elections of 1990 produced a strongly nationalistic government led by Franjo Tudjman who, upon assuming power, amended the Republic's Constitution to recreate Croatia as the national state of the Croatian nation, with citizens of other ethnic groups as minorities, not having the status of nations. A plebiscite in Croatia in May 1991 produced an overwhelming majority for independence.
- dd. On 25 June 1991 Slovenia and Croatia declared their independence from the Socialist Federal Republic of Yugoslavia.
- ee. On 19 December 1991, the two autonomous Serb regions within Croatia proclaimed themselves to be the Republic of Serbian Krajina.
- ff. In Bosnia and Herzegovina, the Parliament declared the sovereignty of the Republic on 15 October 1991.
- gg. The Republic of Serbian People of Bosnia and Herzegovina (later to become the Republika Srpska) was declared on 9 January 1992, to come into force upon any international recognition of the Republic of Bosnia and Herzegovina.
- hh. In March 1992 Bosnia and Herzegovina declared its independence following a referendum held in February 1992 sponsored by the Bosnian Muslims with some support from Bosnian Croats. The holding of the February referendum had been opposed by Bosnian Serbs, who very largely abstained from voting.

- ii. The European Community and the United States of America recognised the independence of the Republic of Bosnia and Herzegovina in April 1992.
- jj. The Republic of Bosnia and Herzegovina was admitted as a State member of the United Nations, following decisions adopted by the Security Council and the General Assembly, on 22 May 1992, two days before the shelling and take-over of Kozarac.
- kk. Even before 22 May 1992, the Republic of Bosnia and Herzegovina was an organised political entity, as one of the republics of the Socialist Federal Republic of Yugoslavia, having its own republican secretariat for defence and its own TO.
- ll. Serbia and Montenegro meanwhile continued to support the concept of a federal state, no longer under its old name, but to be called the Federal Republic of Yugoslavia and wholly Serb dominated, consisting only of Serbia and Montenegro; it was formally established in April 1992. This completed the dissolution of the former Socialist Federal Republic of Yugoslavia.
- mm. What had taken the place of state socialism in Yugoslavia were the separate nationalisms of each of the Republics of the former Yugoslavia, other than Bosnia and Herzegovina, which alone possessed no single national majority.
- nn. The former Socialist Republic of Bosnia and Herzegovina was divided into territorial units of self-management which were possessed of a certain level of autonomy. Each of these municipalities (op were governed by a Municipal Assembly, consisting of members directly elected by the local population, which in turn elected an Executive Council from its own members. In Bosnia and Herzegovina there were 109 such municipalities.
- oo. Three new parties basing themselves on an ethnic-national identity became key players on the political scene of Bosnia and Herzegovina by the autumn of 1990: the Croat Democratic Union (HDZ), the Party for Democratic Action (SDA) and the Serbian Democratic Party (SDS).

- pp. During the campaign prior to the 18 November 1990 election, the HDZ, SDA and SDS reached an informal agreement not to confront one another, but rather to direct their campaign efforts against the League of Communists, the Social Democrats and other non-national parties.
- qq. When the votes had been counted, it was clear that the HDZ, SDA and SDS had won an overwhelming victory in most of the 109 municipalities in Bosnia and Herzegovina. The three victorious parties soon extended their pre-election inter-party agreement on the division of primary positions on the national level to the regional and municipal levels.
- rr. In 1990 the first free, multi-party elections were held in Bosnia and Herzegovina, for both municipal assemblies and for the Republican Legislature.
- ss. The most prominent political parties in Bosnia and Herzegovina were the Muslim Party of Democratic Action (“SDA”), the Serb Democratic Party (“SDS”) and the Croat Democratic Union (“HDZ”).
- tt. The outcome of the elections was, in effect, little more than a reflection of an ethnic census of the population with each ethnic group voting for its own nationalist party.
- uu. A census in April 1991 recorded that 43.7 percent of the residents of Bosnia and Herzegovina were ethnic Muslims, 32.4 percent were Serbs and 17.3 percent were Croats.
- vv. After the elections in Bosnia and Herzegovina held in November 1990, a coalition government was thus formed headed by a seven member State Presidency, with the leader of the SDA, Alija Izetbegović as the first President. In the Republican Assembly, co-operation between the Muslim and Serbian political parties proved increasingly difficult as time went by. What was initially a coalition government of the Republic broke down in October 1991 and failed completely in January 1992.
- ww. The disintegration of multi-ethnic federal Yugoslavia was thus swiftly followed by the disintegration of multi-ethnic Bosnia and

Herzegovina, and the prospect of war in Bosnia and Herzegovina increased.

- xx. The conflict between Serbia and Croatia, following the declaration of independence by Croatia in June 1991, served greatly to exacerbate the tension between Bosnia and Herzegovina's three ethnic groups. Further, the Bosnian Serbs retained vivid memories, albeit now some 50 years old, of their suffering at the hands of the Croats during the Second World War.
- yy. While the SDA and the HDZ promoted the secession of the SRBH from the Socialist Federal Republic of Yugoslavia ("SFRY"), the SDS strongly advocated the preservation of Yugoslavia as a state, in order to ensure that the Serbs would continue to live together in a single state, and would not become a minority in an independent Bosnian state. The SDS and the SDA failed to reconcile their differences and started moving in opposite directions. Hostile rhetoric used by the leaders of both parties, echoed in their party-controlled mass media, created mutual suspicions and contributed to the increase of inter-communal tension.
- zz. The Bosnian Serb deputies of the BiH parliament proclaimed a separate Assembly of the Serb Nation on 24 October 1991.
- aaa. In response, on 24 October 1991, the Serb deputies of the Assembly proclaimed a separate "Assembly of the Serbian People" which called for a plebiscite of the Serbian people in Bosnia and Herzegovina on the question of whether or not they wanted to remain in the federal Yugoslav state.
- bbb. Crisis Staffs were formed in the Serb Autonomous Regions to assume government functions and carry out general municipal management.
- ccc. In early May, after the official decision on its establishment was taken by the Executive Council of Krajina, the ARK Crisis Staff took over all powers of the government and other agencies. It was the highest-level decision-maker in the Autonomous Region of Krajina and its decisions had to be implemented throughout the Autonomous Region of Krajina by

means of municipal Crisis Staffs. The municipal Crisis Staffs had to report to the ARK Crisis Staff daily regarding the steps taken to implement the decisions of the Main Board located in Banja Luka.

ddd. On 31 May 1992, the Serbian Assembly of Bosnia and Herzegovina issued a “Decision on the Formation of War Presidencies in Municipalities in Times of War or the Immediate Threat of War”.

eee. In March 1992, the Assembly of Serbian People of Bosnia and Herzegovina promulgated the Constitution of the Serb Republic of Bosnia and Herzegovina and proclaimed itself a distinct republic.

fff. There were three principal governmental or quasi-governmental entities in Bosnia and Herzegovina in 1992-1993: the Government of the Republic of Bosnia and Herzegovina based in Sarajevo, the Croatian Community of Herceg-Bosna based in Mostar and the Republika Srpska based in Pale.

ggg. On 16 April 1992, the Ministry of National Defence of the SerBiH issued a decision on the establishment of the Territorial Defence (“TO”) as an army of the SerBiH, putting the command and control of the TO with municipal, district and regional staffs, as well as the staff of the SerBiH TO. In the same decision the Ministry of National Defence of the SerBiH declared an imminent threat of war and ordered public mobilisation of the TO in the entire territory of the SerBiH. Moreover, the formation of TO staffs in the newly established Bosnian Serb municipalities was ordered. Cooperative links between the military and civilian authorities were also established at the regional level. These links were concentrated in the ARK Crisis Staff, of which General Major Momir Talić Lieutenant Colonel Milorad Sajić and Major Zoran Jokić were all members. At one point or another, all three attended ARK Crisis Staff meetings. In addition, on 13 May 1992, the ARK Crisis Staff authorised two of its members, Vojo Kuprešanin and Predrag Radić “to deal with all military and political issues in the territory of the ARK”.

hhh. The Army of the Serbian Republic of BiH, later renamed VRS, was formally established on 19 May 1992.

- iii. On 4 March 1992, the ARK Assembly during its 15th session adopted a decision to form the Security Services Centre of the ARK (“CSB”) with its seat in Banja Luka. Stojan Župljanin was appointed Chief of the CSB. On 27 April 1992, the ARK Assembly issued a decision to establish a “Special Purpose Police Detachment” within the CSB.
- jjj. The CSB was divided into two principal departments, the State Security Department (SDB) and the Public Security Department (SJB). The State Security Department was occupied with intelligence work. Within the Public Security Department there were several sub-sections dealing, for example, with crime, traffic, personnel, passports, and aliens.
- kkk. A defence system known as “All People’s Defence” (or “Total National Defence”) was devised to protect the SFRY from external attack.
- lll. Prior to the break-up of the former Yugoslavia, the totality of Yugoslav armed forces included the regular army, navy and air force, collectively known as the JNA, consisting of an officer corps, non-commissioned officers and conscripts, together with a reserve force, and, as well as and distinct from the JNA, the TOs.
- mmm. The JNA was an entirely federal force with its headquarters in Belgrade.
- nnn. There was a distinct TO in each Republic, funded by that Republic and under the control of the Minister of Defence of that Republic.
- ooo. The JNA was a powerful national army, comprised of 45,000 - 70,000 regular officers and soldiers along with 110,000-135,000 conscripts who served on a more short-term basis, equipped with all the conventional weapons and equipment that modern European armies possess.
- ppp. The TOs were equipped with essentially infantry weapons; rifles, light machine-guns, some small calibre artillery, mortars, anti-personnel mines and the like.
- qqq. Traditionally all TO weapons were stored locally, within each municipality.

rrr. In 1991, the federal government formally controlled the armed forces of the SFRY, the JNA and the Territorial Defence (TO). The JNA and the TO were under the Supreme Command of the SFRY Presidency. The Federal Secretary for National Defence at the time was General Kadijević and his deputy was Admiral Brovet.

sss. The Muslim-dominated government of Bosnia and Herzegovina instructed the Bosnian population not to comply with the JNA's mobilisation order.

ttt. On 11 May 1992, the ARK Crisis Staff extended the "deadline for the surrender of illegally acquired weapons" to "2400 hours on 14 May 1992." The document reports that the deadline was extended "at the request of the citizens of all nationalities because of the wish to return the weapons in a peaceful way and without the intervention of the police" and also provides that: "After expiry of the deadline, the weapons will be seized by employees of the [CSB] of the [ARK] and the most severe sanctions shall be taken against those that disobey the proclamation of the Crisis Staff."

uuu. The Prijedor municipality is located in north-western Bosnia and Herzegovina.

vvv. The Prijedor municipality includes the town of Prijedor and the town of Kozarac some 10 kilometres to its east.

www. The municipality of Prijedor is located in the north-western region of Bosnia and Herzegovina known as the Bosnian Krajina. The municipality's main road and railroad connect the town of Prijedor with Banja Luka to the southeast and Bosanski Novi, which borders the Republic of Croatia, to the northwest. The municipality's second largest road connects Prijedor with the town of Sanski Most, which is located south of the municipality. The town of Prijedor is the largest settlement in the municipality.

xxx. For centuries, the municipality of Prijedor was inhabited predominantly by Serbs, Muslims and Croats. Each group formed a majority of the population in some areas of the municipality, while in other parts the population was mixed. Serbian, Muslim and Croatian

communities in the municipality of Prijedor usually co-existed in a rather peaceful manner, even during the Radical geopolitical changes in the Balkans at the end of the nineteenth and beginning of the twentieth century.

yyy. There is also testimony that in the spring and summer of 1992 the Secretariat for People's Defence started to develop reserve police units. A report by the Chief of the SJB Simo Drljača from January 1993 confirms this and shows the developments of these units over the period April-December 1992. With regard to the period relevant to the Indictment, the report provides the following:

<u>Month</u>	<u>Active Policemen</u>	<u>Reserve Policemen</u>	<u>Total</u>
April	145	308	453
May	145	1447	1663
June	148	1607	1755
July	153	1459	1612
August	171	1383	1554
September	177	1396	1573
October	180	995	1175

The increase in reserve policemen from the month of April to the month of May is particularly striking. A report signed by Simo Drljača of 30 April 1992 even states that on this very day: "Ten police stations and 1,587 policemen were mobilized".

zzz. Shortly after the takeover on 30 April 1992, the Prijedor Crisis Staff, presided over by Dr. Stakić, took over the role of the Municipal Assembly.

aaaa. There is ample documentary evidence to prove that the Crisis Staff set up detention camps and determined who should be responsible for the running of those camps. In relation to the Omarska camp, an order of 31

May 1992 from the Chief of the Prijedor SJB, Simo Drljača states the following:

With a view to the speedy and effective establishment of peace on the territory of Prijedor municipality and in accordance with the Decision of the Crisis Staff I hereby order the following:

1. The industrial compound of the “Omarska” Mines strip mine shall serve as a provisional collection centre for persons captured in combat or detained on the grounds of the Security Service’s operational information [...]

The list of recipients on the last page of the order has the Prijedor Crisis Staff in first position.

bbbb. The municipality of Bosanski Šamac is located in the north eastern part of the then Republic of Bosnia and Herzegovina. Situated on the banks of the Bosna and the Sava Rivers, on the border between Bosnia and Croatia, the town of Bosanski Šamac was an important commercial centre in an industrial region that contained ports, oil refineries and duty-free zones. The bridge over the Sava River was vital for the exchange of goods and services between Croatia and Bosnia and Herzegovina. The municipality of Odžak is similarly located, immediately to the west of Bosanski Šamac, on the Sava River and on the border with Croatia.

cccc. The town of Bosanski Šamac was of strategic importance for the conduct of military operations. The municipality formed part of the so-called Posavina Corridor, a narrow strip of flat land along the Sava River connecting the Serb-controlled areas within Croatia to the Bosnian Serb territories and the Republic of Serbia. The Corridor was the easiest and shortest way to establish a ground route between the Serb-controlled areas within Croatia to the west (Republika Srpska Krajina), and Serbia to the east. The Municipalities comprising the Posavina Corridor were inhabited by a population of mixed ethnic background, the Croats and the Muslims together forming a majority of the population. According to the 1991 census, the municipality of Bosanski Šamac was an ethnically diverse

community of 32,960 people; Serb (41.3%), Croat (44.7%), Muslim (6.8%), Others (7.2%).

6. In addition, the Stanišić Defence and the Prosecution are currently endeavouring to reach agreement on several matters.
 - a. The parties are reviewing issues relating to the MUP structure at the relevant time of the indictment, based on the ten charts contained in Appendix 6 to the Prosecution Pre-Trial Brief. So far there is agreement regarding “Socialist Republic of Bosnia-Herzegovina Presidency and Government January 1991-March 1992” (Chart 6.1) and the parties are close to agreement on “Socialist Republic of Bosnia-Herzegovina Ministry of Internal Affairs January 1991-March 1992” (Chart 6.3) The remaining charts could be agreed, if certain minor changes in text and facts are made.
 - b. In addition, the Stanišić defence offered 374 laws and regulations for stipulation out of which 49 are Prosecution exhibits.² To date, the Prosecution has not stated its position in relation to these laws and regulations.
 - c. Possible agreement on crime base is dependent on number of issues that have to be resolved before any meaningful negotiations can take place.³ In this connection, the Stanišić defence asked the Prosecution to identify who the members of RS MUP were in 1992. Depending on the outcome of these questions, the defence would be able to consider and evaluate the possibility of an agreement in relation to crime base.
 - d. Regarding the forensic experts and indictment schedules, before the discrepancies identified by the Stanišić defence are remedied (40 names are doubled (appear twice in the different schedules) there is little the defence can do in respect to forensic expert reports and possible stipulation to them.⁴

² Annex A, List of Laws and Regulations.

³ Annex B, Stanišić Defence letter, 15 June 2009.

⁴ Annex C, Discrepancies in indictment schedules.

7. Save and except, the matters contained in the paragraphs 5 and 6 of this Defence Pre-Trial Brief, Mr. Stanišić contests the truth and accuracy of all factual allegations made by the Prosecution in the Indictment and the Prosecution Pre-Trial Brief and he rejects the legal assessment of those factual allegations made by the Prosecution. Mr. Stanišić takes issues with all these matters in the Prosecutor's pre-trial for the following reasons:

a. Under Article 20 and 21 of the Statute he has the right to remain silent.⁵

This fundamental human right is enshrined in Article 21(4)(g) of the Statute and is recognized as an absolute right of the accused and he may remain silent at all times.⁶ The right to remain silent, the presumption of innocence and the corollary principle of *in dubio pro reo* are the cornerstones to criminal justice and the principal safeguards conferred on the accused by the Statute and Rules.⁷ It is noteworthy the *ICTY Manual on Developed Practices*, prepared by Staff members of the Tribunal and endorsed by Judge Pocar (then President of the Tribunal) to provide "valuable guidance and insights"⁸ into the practices of the Tribunal states: "since the burden is on the Prosecution to prove its case, the accused is under no obligation to agree to a narrowing of the issues in dispute, and may simply refuse to agree any facts"⁹.

⁵ *Prosecutor v. Todorović*, Sentencing Judgement, IT-95-9/1-S, 31 July 2001, para. 10, footnote 8; *Prosecutor v. Sikirica*, Sentencing Judgement, IT-95-8-S, 13 November 2001, para. 17, footnote 9; *Prosecutor v. Milan Simić*, Sentencing Judgement, IT-95-9/2-S, 17 October 2002, para. 14, footnote 30; *Prosecutor v. Momir Nikolić*, Sentencing Judgement, IT-02-60/1-S, 2 December 2003, para. 18.

⁶ Rule 42 states that a suspect and an accused (according to the jurisprudence of the Tribunal) has "the right to remain silent" and that any statement he makes shall be recorded and may be used in evidence. Pursuant to Rule 85(C) an accused has "an absolute right to remain silent" and no adverse inference can be drawn against an accused who exercises his right.: *Prosecutor v. Mucić et. al.*, Judgement, IT-96-21-A, 20 February 2001, paras. 544, 549, 782-785. See, also, *Prosecutor v. Vasiljević*, Judgement, IT-98-32-T, para. 298, *Prosecutor v. Stakić*, Judgement, IT-97-24-T, 31 July 2004, para. 17, *Prosecutor v. Brdjanin*, Judgement, IT-99-36-T, 1 September 2004, para. 24.

⁷ *Prosecutor v. Limaj et.al.*, Case No. IT-03-66-A, Judgement, 27 September 2007, par. 21.

⁸ ICTY Manual on Developed Practices (2009), page 1.

http://www.icty.org/x/file/About/Reports%20and%20Publications/ICTY_Manual_on_Developed_Practices.pdf

⁹ *Ibid.*, page 58, Part B.3, para. 19.

- b. The prosecution pre-trial brief is highly selective in its approach to the issues in this case and it provides incomplete information on the state of its case. The Prosecution states that “the pre-trial brief and appendices do not rehearse all the evidence which the Prosecution intends to call”.¹⁰ As set out below in detail, the pre-trial brief and appendices do not rehearse all the Prosecution evidence for several important reasons. First, the statements for 39 new witnesses identified for the first time to the Accused with the filing of the pre-trial brief have not been disclosed in a form which he can effectively prepare for trial. Second, the Prosecution has only recently been ordered by the Pre-Trial Judge to file the statements of all its witnesses by 31 July, with the additional proviso that disclosure after this date will be permitted. On 27 July 2009, the Prosecution filed a Supplemental Motion concerning proposed 92bis and 92ter evidence which significantly alters its existing proposals, and which will require significant time and effort to analyse its impact on the Prosecution’s case.¹¹ Third, 689 new exhibits were disclosed to the Accused for the first time with the filing of the Prosecution pre-trial brief. Fourth, significant disclosure continues to be made to the Accused – Batch 74 on 9 July 2009, Batch 75 on 21 July 2009 (four CDs), and Batch 76 on 29 July 2009 consisting of 5 DVDs of Rule 66(A)(ii), Rule 66(B), and Rule 68 material – and there is no indication when this will end. Fifth, the defence has been operating with extremely limited resources for the last year.
- c. Disclosure of witness statements and exhibits by the Prosecution is ongoing, and far from complete.
- i. Along with the filing of the Pre-Trial Brief on 8 June 2009, the Prosecution disclosed for the first time new evidence it intended to rely upon at trial, namely 39 new witnesses and 689 new

¹⁰ *Prosecutor v. Stanišić*, Public with Confidential Appendices, Prosecution’s Pre-Trial Brief, IT-08-91-PT, 8 June 2009, para. 3 (“Prosecution Pre-Trial Brief”).

¹¹ *Prosecutor v. Stanišić*, Prosecution’s Supplemental Motion for Admission of Evidence Pursuant to Rules 92bis and 92ter, with Confidential Annexes, IT-08-91-PT, 27 July 2009.

documents.¹² The Stanišić defence has not yet received statements of witnesses ST-201, ST-192, ST-209, ST-210 (the last two have not yet been identified by the Prosecution). Only audio or video recordings for two witnesses have been received, while for most of the witnesses, the transcripts exist only in one language, either English or BCS. Disclosure for witness ST-202 consists of a statement before the BiH Prosecutor's office only. Furthermore, it is clear that none of the 39 interviews are likely to be transcribed any time soon. The court reporters who will do this work have told the Prosecution that they will not accept any audio or video recording for transcription until after the summer recess, i.e. 14 August 2009.¹³ There is no indication how long after that date the transcripts will be completed and disclosed to the Accused. The transcriptions are the only form in which these interviews can effectively be used by the defence in the preparation for trial. They must be thoroughly read and analyzed to determine what investigation is needed, how they will affect cross-examination of Prosecution witnesses, and their relationship and impact on other Prosecution evidence.

- ii. As noted at the last 65ter conference held on 8 July 2009, disclosure from the Prosecution continues on a “daily basis”.¹⁴ For example, on 9 July 2009, the Prosecution disclosed Batch 74 of materials. These materials included transcripts or audio files of 22 witness statements and a number of exhibits. On 21 July 2009, the Prosecution disclosed Batch 75 of materials. These materials included transcripts or audio files of 32 witness statements and a number of exhibits. It has to be noted that the Prosecution only now discloses the documents and witness statements that have

¹² See, *Prosecutor v. Mićo Stanišić*, Joint Motion for Defence of Mićo Stanišić and Stojan Župljanin Requesting the Trial Chamber to Preclude Prosecution's New Witnesses and New Exhibits, IT-08-91-T, 19 June 2009.

¹³ 65ter Meeting, 8 July 2009, T. 225-227.

¹⁴ *Ibid.*, T. 234.

been in its possession for years. For example, batch 74 contains ICTY interview with witness ST-125 conducted on 3 March 2004, while this witness was on 65ter Witness list of 16 February 2007.

iii. The deadline for the Prosecution to file all copies of the statements of all witnesses whom the Prosecutor intends to call to testify at trial pursuant to Rule 66(A)(ii) was set by the Pre-Trial Judge for today, 31 July 2009.¹⁵ The Prosecutor was granted leave to provide the defence with statements after 31 July 2009.¹⁶

d. In regards to exhibits, the Prosecution pre-trial brief gives no indication whether exhibits will be led through any particular witness or whether they will be offered as hearsay under Article 89(C). In relation to the new 689 exhibits proposed to Mr. Stanišić on 8 June 2009 (disclosure of which is not yet complete), the Prosecutor was unable to say either in the pre-trial brief or at the 65ter Meeting held on 8 June 2009 whether they relate to any of the new 39 witnesses or any of the previously announced witnesses.¹⁷ Exhibits tendered through a witness at trial will be challenged by the defence through cross-examination and determinations on admissibility will be made at that time. Exhibits offered by way of wholesale bar table submissions will be evaluated by the defence at the time they are tendered in relation to the issue of admissibility. In keeping with the jurisprudence of the Tribunal, the authenticity, probative value or any weight which may be attached to any of the exhibits tendered at trial is made during final deliberations. For these reasons, Mr. Stanišić rejects any factual or legal assessment the Prosecution may make in relation to its exhibits and he puts the Prosecution to strict proof of its case.

e. In the light of the foregoing, the defence is in a position state the following in relation to the Prosecution pre-trial brief. It must be emphasized

¹⁵ *Ibid.*, T. 256.

¹⁶ *Ibid.*, T. 256.

¹⁷ *Ibid.*, T. 224-226.

however that given the incomplete and on-going state of disclosure, the changing parameters of the Prosecution position on matter such as 92bis and 92ter, the lack of resources available to the defence and preparations for trial on 31 August 2009, the defence can go no further. The defence's inability to make further comment on the Prosecution pre-trial brief is not be taken as an agreement or a concession of any kind in relation to the allegations or averments contained in the indictment.

- i. There was no plan, JCE, conspiracy or otherwise to forcibly remove the non-Serb population from the territory of RS.
- ii. Mr. Stanišić was not a part of any such JCE or criminal conspiracy, or otherwise.
- iii. Mr. Stanišić acted to the best of his abilities to maintain the rule of law and he set up an effective system for the prevention and punishment of any criminal act, which is the duty of the police in accordance with the law.¹⁸
- iv. Mr. Stanišić was never appointed to a leadership position in SRBiH MUP by the SDS.
- v. The division of the SR BiH MUP to three entities was a result of tri-party negotiations and agreement reached under the scrutiny of EU and headed by Jose Cutilliero.
- vi. The Ministry of the Interior is regulated by law.
- vii. Mr. Stanišić was never the member of any crisis staff.
- viii. Mr. Stanišić had no contact with any high level police officials in Serbia throughout the indictment period except for official ones as any other Minister of the Interior.
- ix. Mr. Stanišić always acted in conformity with the law: he always initiated appropriate measures concerning crime prevention and investigation of any alleged crimes, he never by passed the Prime

¹⁸ Prosecution Pre-Trial Brief, paras. 1-9, 93, 173-198.

Minister of the RS government, and he was not in close relationship to either Karadžić or Krajišnik.¹⁹

- x. The information contained in the section “Background” is fundamentally incorrect and will be challenged and corrected by the defence.²⁰
- xi. Mr. Stanišić disputes the proposed evidence of so-called “insiders” which the Prosecution describes as “reluctant” and whose evidence is expected to be “contradictory”. He challenges and disagrees with the assessment of many of the so-called “expert” witnesses the Prosecution intends to call who are either past or present employees of the Office of the Prosecutor. This evidence is fundamentally untrustworthy, biased and incomplete.²¹

All these matters will be challenged and the correct and complete presentation of the evidence will be presented through the cross-examination of Prosecution witnesses, the presentation of defence documents and through defence witnesses.

- f. There are significant problems concerning the crime base both in the indictment and in the information provided to the Defence in the Prosecution pre-trial brief. Confidential Annex A demonstrates that the names of some alleged murder victims appear twice in the same schedule to the indictment, whereas other alleged murder victims appear in two different schedules to the indictment. The Prosecution pre-trial brief does not assist the defence in evaluating these discrepancies nor does it provide any basis for knowing whether the names listed in these confidential annexes to the indictment are accurate. The defence has been given an unusable list of names. The Stanišić defence intends to challenge this evidence through cross-examination, the presentation of documents, and

¹⁹ *Ibid.*, paras. 1-11, 37-47, 56-83.

²⁰ *Ibid.*, paras. 22-36.

²¹ *Ibid.*, paras. 18, 56-83.

defence witnesses. In addition, in relation to adjudicated facts previously admitted²² (and pending motions²³) the defence intends to challenge this evidence by means of cross-examination, the presentation of contrary documents and by introducing reliable and credible evidence to the contrary, within the meaning of Rule 89(C).²⁴

- g. The Stanišić Defence has been operating with very limited resources for a little over one year. The current Lead Counsel, was appointed to this case on 13 June 2008 and faced a number of serious issues at the very beginning which were brought to the attention of both the Trial Chamber and OLAD. Namely, the previous counsel, Mr. Bezbradica used up all of the pre-trial resources and the original assessment of the new Lead Counsel was that the case preparation was 60% completed. However, after further review of previous preparation, Lead Counsel came to realise that there had been no assessment of either the Prosecution witness statements or exhibits. The hand over of the case came down to Mr. Bezbradica sending previous Prosecution disclosure to the new counsel and approximately 30 potential Defence exhibits. Prior to Mr. Zečević's appointment, the rest of the team was made aware of only 30% of the disclosure. Getting all disclosure was a new start for all the members of the team even though a Legal Consultant and Case Manager/Legal Assistant were on the team since July 2006. It took four months for the Defence to review all of the disclosure material, while the Prosecution kept disclosing more documents and witness statements. On 24 September 2008 the Defence gave notice to the Prosecution on OTP witnesses it wished to interview. On 21 October 2008 the Prosecution provided the Defence with partial contact information for the listed

²² *Prosecutor v. Mićo Stanišić*, Case No. IT-04-79-PT, Decision on Judicial Notice, 14 December 2007, para. 50.

²³ *Prosecutor v. Mićo Stanišić*, Defence Response to Prosecution's Third Motion for Judicial Notice of Adjudicated Facts, IT-04-79-PT, 8 February 2008 and *Prosecutor v. Mićo Stanišić*, Defence Response to Prosecution's Fourth Motion for Judicial Notice of Adjudicated Facts, IT-04-79-PT, 5 May 2008.

²⁴ *Prosecutor v. Karemera*, Decision on Joseph Nzirorera's Appeal of Decision on Admission of Evidence Rebutting Adjudicated Facts, ICTR-98-44-AR73.17, 29 May 2009, para. 14.

witnesses. The Defence has not received contact information for all of them to this date. On 8 June 2009, the Prosecution added 39 new witnesses to its 65th Witness List and majority of them are considered "insider witnesses" that the Defence would like to interview prior to commencement of the trial. With limited resources the Defence was unable to hire an investigator or any other support staff. The Defence was provided with very limited resources for only 6 months since appointment of the new counsel. Therefore, it was up to lead counsel, co-counsel, and the case manager/legal assistant to collect relevant documents which took enormous amount of time. Only after most of the documents were collected the Defence team was able to review all of the documents and decide what witnesses they pertain to. This work was completed approximately two weeks ago. The Defence is only now able to interview the OTP witnesses again with very limited resources and time left before the commencement of the trial.

- h. Mr. Stanišić will defend himself and show that the Prosecution cannot prove its case beyond reasonable doubt through the cross-examination of Prosecution witnesses and through his documents and defence witnesses.

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