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International pour
l'ex-Yougoslavie

Office of the
Prosecutor

Bureau du
Procureur

RR328685

17 June 2003

Our Ref: 036340/CDP/RR1104

Office of the District Prosecutor, Republika Srpska
Ref: Kt-17/2002

Dear Mr. Jovičić

RE: Rules of the Road File: ROR 1104

This letter concerns the papers, and supporting materials, received by me at the International Tribunal in July 2002, pursuant to the Rome Statement on Sarajevo, Agreed Measures, February 18 1996 (the "Rome Agreement") with regard to allegations of serious violations of international humanitarian law, against:

NAME: GANIĆ Ejup
DOB: Not Stated
POB: Not Stated

On legal review of the papers and supporting materials transmitted, I have placed this case in the following Standard Marking pursuant to the *Procedures and Guidelines for Parties for the Submission of Cases to the International Criminal Tribunal for the Former Yugoslavia under the Agreed Measures of 18 February 1996* ("The Rules of the Road"), paragraph 16 and Appendix B, thereto:

Standard Marking "B"

War Crimes against POW's: In respect of all charges

For the purpose of determining whether criminal proceedings should be pursued at this stage, I have taken the view that **the evidence is insufficient** by international standards to provide reasonable grounds for the belief that GANIĆ Ejup may have committed the above-noted serious violations of international humanitarian law.

Mr Trivun Jovičić
Liaison Officer to ICTY

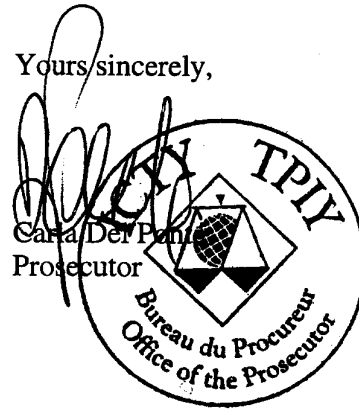
RR328686

In the event that you have any concerns with regard to this legal review, please do not hesitate to contact the Rules of the Road Unit at the International Tribunal directly at 31-70-512-8918.

I shall be obliged that you convey this information to the appropriate authorities.

Please be advised that I shall send a copy of this letter to The Office of the High Representative.

Yours sincerely,



Rules of the Road Recommendation

Caveat: *The legal opinions expressed herein are based solely upon the legal review of the papers, and supporting materials, provided to the International Tribunal by the national authorities signatory to The Rome Statement on Sarajevo, February 18 1996 ("The Rome Agreement"), and pursuant to the Agreed Measures, Paragraph 5, therein. The legal opinions expressed herein are strictly confidential to the United Nations International Criminal Tribunal for the Former Yugoslavia and are limited exclusively to the issue of the sufficient disclosure of prima facie evidence of serious violations of International Humanitarian Law within the jurisdiction of the International Tribunal. The legal opinions expressed herein DO NOT constitute a communication of the Standard Markings pursuant to the protocols of The Rome Agreement.*

ROR File: 1104

Suspects:

1. **Ejup GANIĆ**
Date of birth: not stated
Place of birth: not stated
2. **Stepan KLJUJIC**
Date of birth: not stated
Place of birth: not stated
3. **Jusuf PUŠINA**
Date of birth: not stated
Place of birth: not stated
4. **Hasan EFENDIĆ, son of Orhan**
Date of birth: 11 April 1934
Place of birth: Čajniče
5. **Jovan DIVJAK, son of Dušan**
Date of birth: 11 March 1937
Place of birth: Belgrade
6. **Fikret MUSLIMOVIĆ, son of Osmo**
Date of birth: 09 December 1948
Place of birth: Gračanica
7. **Izet BAJRAMOVIĆ**
Date of birth: not stated
Place of birth: not stated

AB/0001
11/05/03
[Signature]

8. **Jusuf PRAZINA aka "Juka"**
Date of birth: not stated
Place of birth: not stated

9. **Jovica BEROVIĆ**
Date of birth: not stated
Place of birth: not stated

Court/case reference: Office of the District Prosecutor, Republika Srpska
Ref: Kt-17/2002

Name of the Prosecutor: Rajko BOJAT

Legal Review: Janet Manuell
Legal Officer, ROR

Date of Review: 25 April 2003

Crimes Alleged: War Crimes Against POWs

Recommendations:

Standard Marking "C" in respect of the charge of Torture against Jovica BEROVIĆ (Slavoljub BELOŠEVIĆ)

Standard Marking "B" in respect of all other charges against all suspects

File Overview:

In a "Ruling to Conduct an Investigation" issued by the Belgrade Military Court on 21 July 1994 (reference number Ki 651/93) it is alleged that these nine suspects organised and carried out criminal acts against the JNA in Sarajevo in May 1992. In particular, it is alleged that the suspects were responsible for:

1. an attack on the JNA Centre in Sarajevo on 2 May 1992, in which six JNA soldiers were injured. It is alleged that a group of JNA soldiers who came in "vehicles clearly marked with a red cross" to take the injured away were ambushed and that all of those soldiers were killed, most of them after they had surrendered; and

2. an attack on a convoy of JNA soldiers passing along Dobrovljačka Street, travelling from the JNA Command centre to the Lukavica barracks on 3 May 1992. It is alleged that up to ten members of the JNA were killed during and after the attack, and approximately 200 were taken prisoner. Some of those captured were allegedly beaten and mistreated during their imprisonment. It is alleged that the attack was in breach of a promise of safe passage given to the JNA by President IZETBEGOVIĆ.

There are autopsy reports on the file, together with various lists of those who were killed or injured on 2 and 3 May 1992. It is unclear whether the alleged victims were killed on 2 or 3 May 1992.

There is insufficient *prima facie* evidence to establish any charges arising from most of these allegations. However, further *prima facie* evidence is required in respect of the allegation that Jovica BEROVIĆ participated in the torture of Slavoljub BELOŠEVIĆ.

There is evidence on the file that the eighth-named suspect, Jusuf PRAZINA aka "Juka", was killed in Brussels in 1994. For that reason, there is no analysis of his alleged participation. A separate letter has been sent to the local authorities to confirm the death of this suspect (dated 16 April 2003, our ref: 036322/JM/js/ROR).

Advice has been sought from, and given by, Bill Fenrick of the OTP's Legal Advisory Section (see emails dated 15 April 2003 attached) in respect of the allegation concerning the attack on the JNA convoy.

Although this file has been submitted by the RS prosecuting authorities, most of the investigation of the allegations has been conducted by the Belgrade Military Court, and the "Ruling to Conduct an Investigation" was issued by that court. This raises a jurisdictional issue however, in light of the conclusions reached on review of this file, it is not necessary to examine that issue closely. There is no explanation as to why the Belgrade prosecutors have chosen to have this file submitted through the Republika Srpska to *Rules of the Road* for review. There is no statutory impediment to a prosecution being conducted in Serbia.

Clearly there has been a keen public interest in the subject matter of this file, and historically there have been attempts to blame the UN as well as the then Muslim-Croat forces for the attack. The media coverage given to this attack by Serb television (some of which is on a video-tape submitted with the file) illustrates the way in which the coverage was used for propaganda purposes.

File Analysis:

1. **Attack on the JNA Centre and subsequent attack on JNA vehicles "clearly marked with a red cross", on 2 May 1992**

There was an attack by Muslim-Croat forces on the JNA Dom (Command centre) in Sarajevo on 2 May 1992. The 2nd Military District unit of the JNA were blockaded in the building, and they were outnumbered and relatively poorly armed. The Commander of the unit, General Milutin KUKANJAC, called for assistance.

In an attempt to reach the JNA Command centre to provide that assistance, twenty-six JNA soldiers left the "Viktor Bubanj" barracks in Sarajevo on 2 May 1992 in a convoy of two armoured convoy vehicles and three infantry combat vehicles. There is evidence on the file from four of the JNA soldiers who travelled in the convoy.

Colonel Milan ŠUPUT was the Commander of the 65th Protective Motorised Regiment in Sarajevo. He says that, on 2 May 1992, General KUKANJAC contacted him and ordered him to de-block the Command centre and evacuate the JNA members. Milan ŠUPUT says he organised twenty-five "people", including four officers, into three APCs and two PUCH (military) vehicles. The witness does not say that any of the "people" he took with him were medical staff, and nor does he say that any of his vehicles were marked with a red cross.

BiH paramilitary units ambushed the witness' unit when it was on its way to the Command centre. Two JNA soldiers were killed and one officer was injured. Members of the unit took refuge in a nearby cinema which was then surrounded. The BiH paramilitary units' attack continued into the next day, and despite calls for help to the JNA, no assistance arrived. On 3 May 1992, after the BiH paramilitary units had thrown tear-gas into the cinema, the JNA troops surrendered. The surrendering soldiers were stripped of their weapons. The witness was taken first to the Presidency building and then to the Central Prison, where he was detained for 10 days. He says he was not mistreated while in detention, although he was interrogated several times.

Gordan VUKOVIĆ says he was in the JNA convoy of two armoured convoy vehicles and three infantry combat vehicles that left the "Viktor Bubanj" barracks for the JNA Command centre at about 13:00 hours on 2 May 1992. The witness was in the first vehicle, which did not have any communication with the other vehicles in the convoy so did not receive a message to return to the "Viktor Bubanj" barracks because of the attack. The witness' vehicle was fired at but nonetheless it, and another one of the vehicles in the convoy, reached the Command centre. The witness does not say what happened to the other three vehicles.

Veselko TAMAŠ was also in the five-vehicle JNA convoy on 2 May 1992. He was in an armoured combat vehicle with his twin brother and six other soldiers. He says they saw snipers shooting at four wounded JNA soldiers lying on the road, so his crew collected the wounded soldiers and took them to hospital. The vehicle then drove to the Command centre "at breakneck speed" to break through the roadblocks, and when it arrived at the centre, the soldiers in the witness' vehicle joined in the fighting that was then taking place.

Danilo BERIBAKA was also in the convoy. His infantry combat vehicle arrived at the JNA Command centre but was attacked when it arrived. The witness started firing from his vehicle when it was outside the Command centre and thinks he managed to "neutralise" three machine-gun nests. His vehicle was hit, but he managed to get inside the Command centre.

Nine other witnesses give hearsay accounts of attacks on JNA vehicles on 2 May 1992: statements of Milutin KUKANJAC, Rajko BANDUKA, Nedeljko VLAŠKOVIĆ, Enes TASO, Aleksandar VASILJEVIĆ, Miloš JEVTOVIĆ, Tomislav DEJANOVIĆ, Nikola OSTOJIĆ and Miloslav GAGOVIĆ.

Milutin KUKANJAC was the General in command of the 2nd Military Division unit barricaded in the JNA Command centre in Sarajevo on 2 and 3 May 1992. He says "...witnesses have to remember that Sarajevo was on fire that day". In his view, the events of 2 May 1992 have been downplayed by the JNA in an attempt to maximise sympathy for the JNA and the convoy ambush of 3 May 1992. The witness says he never managed to get reliable information from the JNA about the casualties of 2 May 1992 because "of the way I had been treated by them" (the witness was unceremoniously retired by the JNA days after these incidents). Despite not having reliable figures, this witness is noted as saying "thirteen people, that is eight officers, one civilian and ten soldiers" (*sic*) were killed on 2 May 1992 "in various combat locations". In the Command centre itself, one soldier and one officer were killed. He thinks it is "worrying" that these JNA members were presented (in the media) as having been killed on 3 May 1992.

Rajko BANDUKA, who was General KUKANJAC's aide-de-camp, says a JNA food convoy was attacked on 2 May 1992, killing the soldier driver (a certain "DIVČIĆ") and injuring the accompanying officer. General KUKANJAC then ordered the units of Colonel ŠUPUT and Colonel LABUDOVIĆ to intervene. The witness heard Colonel LABUDOVIĆ's radio call for help after he had been injured, but it "was not possible at that moment" to send help, and Colonel LABUDOVIĆ later died from his injuries.

Nedeljko VLAŠKOVIĆ says a JNA food transport vehicle was attacked on 2 May 1992, killing the driver (a certain "DIVAČ") and injuring a lieutenant. The vehicle still managed to reach the Command centre.

Enes TASO says that, on 2 May 1992, a JNA convoy bringing food to the JNA Command centre was attacked, killing the soldier driver and injuring 1st Lieutenant Goran BELIĆ. The vehicles still managed to reach the Command centre, and the "all-out" Muslim-Croat forces' attack started about two hours' later.

Retired General Aleksandar VASILJEVIĆ says that, in addition to the 65th Protective Motorised Regiment, the JNA anti-terrorist unit headed by Colonel LABUDOVIĆ was also sent to the JNA Command centre on 2 May 1992. That unit was similarly attacked before it reached the Command centre, and Colonel LABUDOVIĆ was killed. The witness says the attack resulted "in the death of nine and the wounding of twenty JNA members", but he does not name those people, other than Colonel LABUDOVIĆ.

The remaining witnesses who give hearsay accounts (Tomislav DEJANOVIĆ, Nikola OSTOJIĆ, Miloš JEVTOVIĆ and Miloslav GAGOVIĆ) repeat in part what the above-mentioned witnesses say.

None of these thirteen witnesses say that any of the JNA vehicles attacked by Muslim-Croat forces on 2 May 1992 were "clearly marked with a red cross", despite that being the basis of the allegation made by the local prosecuting authorities. Relevantly, the witnesses say the attacked vehicles were all either infantry or

armoured military vehicles. There is no evidence that any of the vehicles were medical vehicles which should have been afforded protection pursuant to the *Geneva Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field of August 12, 1949*, Article 19 and *Additional Protocol I*, Articles 12 and 21. In those circumstances, all of the JNA vehicles referred to in the evidence, and the military personnel inside those vehicles, were legitimate military targets. There is no evidence of any JNA soldiers being killed after their capture.

There is insufficient *prima facie* evidence in respect of this allegation to establish any serious violations of international humanitarian law as against any of the suspects.

Ambush of JNA convoy – 3 May 1992

This allegation arises out of an incident in Sarajevo on 3 May 1992. The local prosecuting authorities allege that President IZETBEGOVIĆ, while a prisoner of the JNA, gave his personal guarantee that the approximately 400 JNA troops besieged in the JNA Command centre in Sarajevo on 3 May 1992 would be given safe passage to the Lukavica barracks. The plan to exchange President IZETBEGOVIĆ for the 400 troops was mediated and, it is alleged by some of the witnesses, sponsored by the UN. In spite of President IZETBEGOVIĆ's alleged guarantee, the convoy in which the troops were travelling was ambushed by Muslim-Croat forces. Some JNA soldiers were killed or injured during the ambush, and approximately 200 JNA soldiers were captured and detained.

The most apposite offence in respect of these allegations is that of Perfidy. Perfidy is a war crime pursuant to Article 37 of *Additional Protocol I*, and perfidious acts are relevantly defined as:

"(a)cts inviting the confidence of an adversary to lead him to believe he is entitled to ... protection under the rules applicable in armed conflict, with intent to betray that confidence..."

The violation of an agreement for safe passage has never been prosecuted before as a breach of Article 37 of *Additional Protocol I* although that is not determinative in this file.

To establish Perfidy on a *prima facie* basis in respect of these allegations, it would be necessary for the local prosecuting authorities to establish that:

1. President IZETBEGOVIĆ freely gave his personal guarantee of safe passage to JNA forces;
2. President IZETBEGOVIĆ told Ejup GANIĆ (or another commanding officer) of his personal guarantee;
3. Ejup GANIĆ (or another commanding officer) accepted that guarantee and agreed to participate in it;
4. the JNA and the UN acted in reliance on that guarantee; and

5. the guarantee was falsely given with the specific intent of trapping JNA soldiers in an ambush.

None of these elements, other than the fourth, are established on the evidence in this file.

President IZETBEGOVIĆ flew into Sarajevo airport on 2 May 1992, after meeting with members of the European Community in Lisbon. Upon arriving at the airport, he, his daughter and bodyguard were kidnapped by JNA soldiers (on General KUKANJAC's orders) and taken to the JNA's Lukovica barracks. It appears that the reason General KUKANJAC ordered the kidnapping of President IZETBEGOVIĆ was to strengthen his (and maybe his troops') chances of being evacuated from the JNA Command centre, where they were barricaded and under siege from Muslim-Croat forces.

Shortly after the President was kidnapped, negotiations commenced in an attempt to resolve the situation. The negotiations were mediated by UN General Lewis MACKENZIE, and continued into 3 May 1992. General MACKENZIE says he assisted because Ejup GANIĆ had asked him to. General MACKENZIE says Ejup GANIĆ told him that he (GANIĆ) was not a strong leader and needed the release of President IZETBEGOVIĆ.

Early in the morning of 3 May 1992 a deal was done between President IZETBEGOVIĆ, General KUKANJAC and General MACKENZIE to exchange President IZETBEGOVIĆ, his daughter and bodyguard for General KUKANJAC alone. There is evidence on the file that this deal was communicated to Ejup GANIĆ. However, after the deal had been agreed upon and communicated to Ejup GANIĆ, General KUKANJAC's soldiers prevented the General from leaving the Command centre by himself for "negotiations". They accused him of treason and self-interest, and one soldier is said to have threatened General KUKANJAC with a weapon. JNA soldiers at the Command centre apparently thought that because General KUKANJAC had packed his personal possessions he had no intention of returning to the Command centre after the negotiations. It appears that the soldiers' interpretation was correct, because the first agreement was for the exchange of General KUKANJAC alone.

After being stopped from leaving the JNA Command centre, General KUKANJAC returned to his office and telephoned President IZETBEGOVIĆ. In his book, *"Peacekeeper - The Road to Sarajevo"*, General MACKENZIE (who was then in the Lukavica barracks with President IZETBEGOVIĆ) described what happened next (at pp.165-166):

"The phone rang; it was General KUKANJAC again. He and the President talked for five minutes. The President was obviously agitated. He took the phone away from his ear and explained, 'General KUKANJAC now insists that he be permitted to remove his entire staff of 400 along with himself in exchange for my release'.

'No way!' I exclaimed, 'I can't accept responsibility for those kinds of numbers. I'll have enough trouble just keeping the four of you alive'.

Izetbegović was in a box, and Kukanjac was holding the key. The President looked at me and said very carefully, 'General Mackenzie, don't worry. I will accept responsibility for the safety of JNA personnel'.

I was surprised; this was quite a commitment. 'You guarantee it?' I asked.

'Yes,' he said.

I paused, and Colm [Doyle, EC representative] and I exchanged glances again. 'Okay,' I said. 'We'll give it a try'."

General MACKENZIE says he had concerns about the safety of evacuating so many JNA members, and would have refused to participate if it had not been for President IZETBEGOVIĆ's personal guarantee of safe passage for the JNA troops.

This is the only available evidence concerning the manner in which President IZETBEGOVIĆ decided to offer safe passage to the JNA forces, and it suggests that the President was effectively forced into making the decision. General MACKENZIE says President IZETBEGOVIĆ "was in a box, and Kukanjac was holding the key". General KUKANJAC had ordered the kidnapping and detention of the President, and the only real possibility of the President's early release lay in his agreement to whatever General KUKANJAC demanded. However, President IZETBEGOVIĆ was not in effective control of the Muslim-Croat forces at the relevant time, and he did not have the power to give a guarantee of any sort. He was a prisoner, in JNA custody at the Lukavica barracks, and was not even able to guarantee his own safety. He did not have normal communication with his forces, and was not free to discuss the matter with his advisers or fellow members of the BiH Presidency. In those circumstances, President IZETBEGOVIĆ's decision was not freely made and reliance upon it by either the JNA or General MACKENZIE was unwarranted.

There is no evidence at all on the file to establish that President IZETBEGOVIĆ gave his personal guarantee of safe passage with the intent to betray that confidence.

Alija DELIMUSTAFIĆ (who was then the BiH Minister for the Interior) says that after President IZETBEGOVIĆ was arrested on 2 May 1992, he appeared on television to say he had appointed Ejup GANIĆ (1) as acting President until such time as he was released. The witness says that, on 3 May 1992, Ejup GANIĆ formed the "Board for the Exchange of the State President and Commander of the 2nd Military District (ie. General KUKANJAC)". Being the acting President of the BiH Presidency, Ejup GANIĆ was the Supreme Commander of the Army, and, the witness says, Hasan EFENDIĆ (4), Jovan DIVJAK (5) and Fikret MUSLIMOVIĆ (6) were all his assistants. The witness does not name Stjepan KLJUJIĆ (2) as having participated in any of the negotiations or planning of the ambush which is somewhat odd given that Stjepan KLJUJIĆ was a fellow member of the Presidency, and was noted by other witnesses to have been actively involved at this time.

Although President IZETBEGOVIĆ had some telephone contact with Ejup GANIĆ while he was in JNA custody, it appears that he was not able to spend any time alone with Ejup GANIĆ prior to the ambush. There is no firm evidence on the file that Ejup GANIĆ was told by President IZETBEGOVIĆ that he had personally guaranteed the

safe passage of all of the 400 JNA troops. Similarly, there is no evidence that Ejup GANIĆ agreed to abide by President IZETBEGOVIĆ's guarantee.

The only evidence to suggest that President IZETBEGOVIĆ may have communicated his personal guarantee to Ejup GANIĆ before the ambush is that of Colonel Miloslav GAGOVIĆ. He says he was present during the exchange negotiations, and that President IZETBEGOVIĆ was in telephone contact with Ejup GANIĆ throughout. At some stage after the first exchange plan had been aborted, the witness says he heard the President on the phone to Ejup GANIĆ asking: "Can that man guarantee the transfer of the Command out of Sarajevo?" to which Ejup GANIĆ replied that he could. It is not clear how the witness could have heard the reply from Ejup GANIĆ however, in any event, the witness says he did not know the identity of the man they were referring to.

This is no other evidence to establish that President IZETBEGOVIĆ told Ejup GANIĆ of the second exchange plan.

Even it could be established that Ejup GANIĆ was the acting President in the absence of President IZETBEGOVIĆ, that he knew of the President's guarantee, that he knew the guarantee was falsely made and that he agreed to ostensibly abide by it with the intent of betraying the JNA's confidence, evidence would still be needed to establish that it was Ejup GANIĆ or one of the other suspects who ordered the Muslim-Croat forces' to ambush the JNA convoy.

Shortly before the ambush, radio communications between the Muslim-Croat forces were intercepted and recorded by Colonel Petar SIMOVIĆ, a JNA communications' officer based in Lukavica. He says interception of the communications was straightforward because the radio frequencies being used by the Muslim-Croat forces were still the same as those used by the JNA. The transcript of the radio intercepts may lend some support to the contention that Ejup GANIĆ had some control over the military forces however, it is apparent that Stjepan KLJUJIĆ and others (who are not properly identified) also had some control.

Despite the relative ease with which they were obtained, the radio intercepts are apparently of a very poor quality; they comprise what seem to be only parts of conversations, recorded against a background of loud noises and other, irrelevant, conversations. There are also many speakers, who are for the most part unidentified. The only identification evidence of the speakers on the file is that of Alija DELIMUSTAFIĆ and Petar SIMOVIĆ. In his testimony to the Military Court in Belgrade on 6 March 2002 (while he was a prisoner in Belgrade), Alija DELIMUSTAFIĆ said he could identify the voices of Ejup GANIĆ, Jovo DIVJAK and Hasan EFENDIĆ (all of whom were his former colleagues or peers) on the radio intercepts. However, his identification evidence is relatively poor. He says he "thinks" he can recognise the voice of Ejup GANIĆ especially when English is spoken on the tape however, he says, Ejup GANIĆ and another (named) person have very similar voices, although "GANIĆ speaks slightly softer". The witness also says he recognises a voice on the tape as "most probably" being that of Hasan EFENDIĆ. The last of the suspects, Jovo DIVJAK, whose voice is identified by this witness, is in fact named on the tape by other participants in the conversations; it would seem to be self-evident from the context of the tape that Jovo DIVJAK was a participant in the recorded conversation. Video footage of the ambush, which was widely shown in Sarajevo in the following days, is also on the file. It clearly shows Jovo DIVJAK standing on the

first vehicle at the time of the ambush, so there is no issue that Jovo DIVJAK was present at the time.

Petar SIMOVIĆ says he recognised the voices of Ejup GANIĆ and Stjepan KLJUJIĆ because they were heard so often on television or radio at the time that it was "absolutely impossible" not to recognise them. He also recognised the voice of the commander of the Muslim units in the Bistrik area, because he knew the commander personally. This witness says he heard Ejup GANIĆ issue orders relating to the convoy, saying that "not even one letter should leave the Command" which he assumed was an order to attack the convoy. The transcript on the file does not record this as having been said. The witness also says he heard the Bistrik Commander issue an order to attack the convoy and take prisoners but, similarly, this is not recorded on the transcript.

Overall, the transcript indicates a lack of knowledge amongst the Muslim-Croat forces' commanding officers that President IZETBEGOVIĆ had given a personal guarantee of safe passage to all of the JNA troops. In the transcript, there is a reference to a deal having been done to exchange the President (and his group) for General KUKANJAC alone, and there is also a reference to a deal having been done to exchange the President (and his group) for the whole of the JNA convoy. This latter deal was scoffed at by a senior officer (maybe Ejup GANIĆ) who said he thought the deal was a JNA trick because (correctly) it had not been part of the original plan. A voice on the transcript, attributed to Ejup GANIĆ, is recorded as saying: "This is not what we agreed upon ... I publicly invite General MACKENZIE or Mr DOYLE to immediately come to the Presidency where the Articles of Surrender have remained, and we can re-negotiate everything again. I cannot make decisions without the President ... We cannot negotiate about this over the radio, not in this way ... if changes are made in the six [heads of the] agreement that we reached in UNPROFOR this morning, then either General MACKENZIE or Mr DOYLE should immediately come to the Presidency, to meet here and start again...". This recorded conversation indicates that the speaker did not know of the second plan, and that he was not a party to it.

Two other witnesses also say they heard Ejup GANIĆ giving some orders over the radio at the time of the ambush, but neither of them says he heard Ejup GANIĆ give the order to attack the convoy: statements of Dragoljub PAVLOVIĆ and Nedeljko VLAŠKOVIĆ.

The transcript is not of great assistance in determining who controlled the Muslim-Croat forces on 3 May 1992, and who gave the ultimate order for those forces to ambush the JNA convoy, because the voice identification evidence is not very good. Importantly however, the transcript does suggest that the second deal, namely the personal guarantee by President IZETBEGOVIĆ, was not properly communicated to the Muslim-Croat forces' commanding officers.

The evidentiary value of the transcript is that it reflects the obvious confusion in the decision-making process in the upper echelons of the Muslim-Croat forces in the absence of President IZETBEGOVIĆ. It also reflects the enormous mistrust, tension and disorganisation experienced by the Muslim-Croat forces as a result (partly at least) of President IZETBEGOVIĆ's kidnapping less than twenty-four hours previously.

There is no evidence on the file to establish any of the five elements, other than the fourth. It would appear that the JNA and the UN did rely on President IZETBEGOVIĆ's guarantee but, for the reasons stated above, it was inappropriate for them to have done so.

In the absence of proof to establish the elements of the offence of Perfidy, there must be a presumption that the JNA convoy was a legitimate military target and was thus lawfully attacked. The capture and imprisonment of the JNA soldiers within the convoy was also therefore legitimate.

Killing and wounding of JNA soldiers before capture

It is alleged that some JNA soldier were killed or wounded during the attack on the convoy. However, in view of the finding that the convoy and the soldiers within the convoy were legitimate military targets, no serious violations of international humanitarian law can be established in respect of these casualties. Also, there is some evidence that the JNA initially resisted the Muslim-Croat attack. All of the JNA members in the convoy (including the civilian members) were armed (statements of Josip NOVAK, civilian Ivanka STANKOV, Enes TASO, Gordan VUKOVIĆ, Nedeljko VLASKOVIĆ, Milutin KUKANJAC, Rajko BANDUKA, Komlen ŽARKOVIĆ, Danilo BERIBAKA and Goran MILANOVIĆ). Some of these soldiers say they did not fire and other witnesses are silent on this issue but Goran MILANOVIĆ says JNA soldiers did use their weapons at the time of the ambush. He says he does not know who fired first, but says the situation was very tense and "we were shooting at them, they were shooting at us, on a very short range". He says some JNA soldiers were killed or wounded during this shooting, but he does not specify the names of those soldiers. There is evidence that Zdravko TOMOVIĆ was killed and Enes TASO, Franjo PATAČKO, Josip IVANOVIĆ, Ivanka STANKOV (a JNA civilian reservist), Komlen ŽARKOVIĆ and Dragoljub PAVLOVIĆ were wounded during the attack. These alleged victims were legitimate military targets, and their injuries or deaths do not give rise to criminal charges.

Killing and wounding of JNA soldiers after capture

It is also alleged that the Muslim-Croat forces also killed and wounded JNA soldiers *after* they had been captured.

It is alleged that a JNA soldier who had been in the convoy of vehicles when it was ambushed, Ratko KATALINA, was lying captured on the pavement when he was identified by Muslim-Croat soldiers as a being a member of the JNA special forces. When Ratko KATALINA denied his military position, he was shot in the back. It is alleged that when another JNA soldier, Boško MIHAJLOVIĆ, then asked the Muslim-Croat soldier why he had shot Ratko KATALINA, the soldier said: "Silence", and shot Boško MIHAJLOVIĆ in the head. A physical description is given of the alleged perpetrator: statements of Ratko KATALINA, Tomislav DEJANOVIĆ and Nikola OSTOJIĆ.

Dragoljub PAVLOVIĆ says he saw some Muslim-Croat soldiers pull a JNA soldier from his vehicle and shoot him in the spine, killing him. Danilo BERIBAKA says he saw four (unnamed) JNA soldiers being dragged from their vehicles, beaten and then

shot. This witness and Gordan VUKOVIĆ say the Muslim-Croat forces shot at the JNA soldiers as they left their vehicles, and that Ivica SIMIĆ and Dragan (or Goran) PANTIĆ were injured in this way.

The evidence suggests that the JNA soldiers who were seriously injured at the time of their capture were taken by car straight to the hospital where they received treatment for their injuries.

There is insufficient evidence of the names of all of those JNA soldiers who were allegedly killed or injured after capture. Lists of name of those allegedly killed on both 2 and 3 May 1992 have been provided by the local authorities but it is apparent that many of these soldiers were killed or wounded during the course of the fighting the day before. Danilo BERIBAKA Dragoljub PAVLOVIĆ Gordan VUKOVIĆ and any other relevant witness should be re-interviewed and asked to provide detailed statements concerning injuries they saw the Muslim-Croat forces inflict on unarmed, captured JNA soldiers. They should be asked to provide full identification details of the alleged Muslim-Croat perpetrators, and they should be shown an array of photographs if that is possible.

One other matter that arises is the alleged killing of Dr Budimir RADULOVIĆ, a JNA doctor. It is said that he was killed while driving in an ambulance either in or near the convoy at the time of the attack: statements of Slobodan JAKOVLJEVIĆ, Ivanka STANKOV, Miloslav GAGOVIĆ, Milutin KUKANJAC and Komlen ŽARKOVIĆ. There is no evidence other than this in respect of this allegation; there is no description of how he was allegedly killed, of the vehicle he was travelling in at the time or of the alleged perpetrator. There is insufficient *prima facie* evidence to establish any charges against any person in respect of this alleged killing.

There is no evidence that any of the suspects on this file personally committed any acts of killing or wounding. In terms of their criminal responsibility for the alleged criminal acts of their subordinates pursuant to *ICTY Statute* Article 7(3), there is evidence that the Muslim-Croat forces were told to disarm the JNA soldiers and "take prisoners". It is not clear who gave this order, but it would appear that there was an order not to shoot the captured JNA soldiers. However, *ICTY Statute* Article 7(3) relevantly provides that:

"The fact that any of the acts referred to in Articles 2 to 5 of the present Statute was committed by a subordinate does not relieve his superior of criminal responsibility if he knew or had reason to know that the subordinate ... had done so and the superior failed to take the necessary and reasonable measures ... to punish the perpetrators thereof".

There is no evidence of any investigation being conducted by senior officers of the Muslim-Croat forces after the attack to determine whether any criminal acts had been committed. Similarly, there is no evidence that any of the alleged perpetrators of the killings or woundings that were committed after the capture of the JNA soldiers were ever punished. If such evidence is available, it should be submitted. If the local prosecuting authorities allege that an investigation and punishment of the perpetrators did not take place, then the local authorities should provide evidence in support of that allegation.

An issue arises as to whether an investigation and punishment would have been practicable in any event in this case, where this attack effectively marked the beginning of the war in BiH which was to continue for another three years. If it is alleged that an investigation and punishment of the alleged perpetrators were practicable, then evidence should be submitted in support of those allegations.

Mistreatment of JNA soldiers in custody after arrest on 3 May 1992

Finally, there is an allegation that some of the JNA soldiers who were arrested and imprisoned were beaten and otherwise mistreated while in detention.

Gordan VUKOVIĆ was arrested and taken to the FIS Building. Although he was released on 4 May 1992, he says that in the intervening 24 hours he was subjected to cruel treatment. He was filmed by the television crew from the "Hajat" station. They introduced him as a "chetnik from Foča", and asked him how many men, women and children he had slaughtered. Then a guard ordered the witness to squat for more than an hour before ordering the witness into the bathroom. There, "a gauntlet of armed civilians" beat him with rifles butts, punched and kicked him. The witness thinks a rifle butt was broken on his back by the force of one of the blows. He says he saw other soldiers being "tortured and beaten" in the bathroom and outside it, but he does not name those people. The witness says that the perpetrators who "stood out" in his beating were Rešad JUSUPOVIĆ, a person named "Rus" (translation: "the Russian") and a third unknown person (physical description given). Danilo BERIBAKA corroborates the mistreatment of Gordan VUKOVIĆ.

Nedeljko VLAŠKOVIĆ says Hasan EFENDIĆ came into the FIS gym where the prisoners were being held. The witness says he made an insulting, ideological speech, and refused to meet JNA officers to talk about the conditions they were being held under. The witness says that, if anything, the treatment got worse after Hasan EFENDIĆ left.

Slavoljub BELOŠEVIĆ was captured and taken to the headquarters of the Territorial Defence. When he arrived there, Hasan EFENDIĆ (whom he had known for 25 years) cursed him, accusing him of "having sided with the chetniks". Fikret MUSLIMOVIĆ then began to interrogate the witness, and the witness says that when his answers were too uninformative, Fikret MUSLIMOVIĆ handed the witness to Jovica BEROVIĆ (9). The witness says that for the next 36 hours, without a break, he was interrogated. During the interrogation, he was threatened and inducements were offered to him if he agreed to spy for the BiH authorities, but he was not physically injured. After a short break, the witness was taken to another floor of the building where he was cursed, threatened, pushed, spat upon, thrown onto the ground and otherwise mistreated for four hours by a group of unnamed people. Later that day, after another rest, the witness was taken to the basement by two interrogators (it is unclear whether one of them was Jovica BEROVIĆ), and forced to watch a reflector which was placed about 5cm from his eyes. When the witness tried to look away, the "younger" interrogator hit him with a baton in the head and the shoulders. The other interrogator grabbed the witness' hair, hit him in the head with a baton and kicked him in the genitals. The interrogators also threatened to cut off the witness' tongue and placed a hand grenade next to his face. This mistreatment continued for about eleven hours, and the witness says he was blinded for days afterwards, and was also badly bruised. He was exchanged on 13 May 1992.

This is the only witness who makes any allegations against Jovica BEROVIĆ, and it is not clear whether Jovica BEROVIĆ either participated in or ordered the physical mistreatment of the witness. The only clear allegation against this suspect is that he interrogated the witness for 36 hours without a break which is not sufficient to establish a serious violation of international humanitarian law. Further *prima facie* evidence is needed to determine the alleged role of this suspect.

The evidence concerning the role of any of the suspects in the mistreatment of the captured JNA prisoners is not clear. Apart from the evidence discussed above in relation to Jovica BEROVIĆ, it appears that none of the suspects were present when the prisoners were being mistreated. The evidence that they knew of the alleged mistreatment (by, for example, seeing the injuries) is not sufficiently detailed.

Izet BAJRAMOVIĆ (7)

Blagoje BOŽINOVSKI was a Lieutenant Colonel in the JNA, and was the most senior officer in charge of defence when the JNA Dom (Command centre) was attacked on 2 May 1992 by members of the "Green Berets" paramilitary group. One JNA soldier was killed in the attack, and four were injured, including this witness. Only eleven JNA soldiers had weapons, and they persuaded the witness to surrender to the "Green Berets". The witness says this suspect was the leader of the group. When the suspect heard of the witness' rank, he told his men to take good care of the witness because he could be valuable on an exchange. The "Green Berets" lined up the witness' soldiers along a wall. One of the "Green Berets" soldiers asked one of the JNA soldiers, Vojislav DUCAN, "Aren't you wounded?". When Vojislav DUCAN said he was not wounded, the "Green Berets" soldiers shot him in both of his legs. There is no statement from Vojislav DUCAN on the file, and there is no explanation as to why not. There is no evidence as to whether Vojislav DUCAN survived this injury, and his name is not included at all on the list of killed and wounded JNA soldiers.

The witness was taken to hospital, where he says television crews "occasionally" visited him because they wanted to film a war criminal. Two days later, the suspect and his group took the witness to the funeral of a "Green Berets" member who had died in the fighting at the JNA Command centre. People who attended the funeral were invited to abuse the witness, and he was spat at, beaten, threatened with knives and urinated upon. The witness was then taken to the basement of a house in the Vratnik area, where he was kept for an unknown number of days. He was kept in the dark and mistreated. He says he was once taken for execution "by firing squad" by members of the "Green Berets". They all cocked their rifles and made him walk ahead of them. They then told him to stop, and let him wait for a while. They told him to turn around and he saw all of the rifles pointing at him. They then lowered their rifles and said that there was "time enough" to shoot him. During his time in the Vratnik basement, the witness says he received only the occasional glass of water. From the basement, he was transferred to the BiH Presidency where he was interrogated, and then to the Central Prison, where he witnessed many violent acts. He says that he once saw members of the "Green Berets" strip Bogoljub PELEMIŠ naked and threaten to circumcise him. However, he says he was "only" beaten twice while in the Prison. The witness was exchanged on 19 May 1992.

There is no statement on the file from Bogoljub PELEMIŠ and there is no explanation as to why not. Other witnesses do say that Bogoljub PELEMIŠ was taken away and not seen again, but he is not on the list of JNA soldiers allegedly killed by the Muslim-Croat forces.

No other witnesses make allegations against Izet BAJRAMOVIĆ personally. The only allegations against him therefore are that he was present when one of "his" paramilitaries allegedly shot Vojislav DUCAN in the legs, and that he took Blagoje BOŽINOVSKI to a funeral and invited mourners to mistreat him. There is no statement from Vojislav DUCAN and there is no explanation as to why not.

In terms of this suspect's command responsibility pursuant to *ICTY Statute* Article 7(3), although a number of allegations are made about the "Green Berets" paramilitary group, there is some confusion on the file as to who was in fact its commander in May 1992. Alija DELIMUSTAFIĆ, the BiH Interior Minister at the time (and presumably sufficiently informed to know), says the commander was in fact Emin ŠVRAKIĆ, who is not a suspect on this file. This should be clarified.

Conclusion:

1. **Ejup GANIĆ**
Date of birth: not stated
Place of birth: not stated
2. **Stepan KLJUJIĆ**
Date of birth: not stated
Place of birth: not stated
3. **Jusuf PUŠINA**
Date of birth: not stated
Place of birth: not stated
4. **Hasan EFENDIĆ, son of Orhan**
Date of birth: 11 April 1934
Place of birth: Čajniče
5. **Jovan DIVJAK, son of Dušan**
Date of birth: 11 March 1937
Place of birth: Belgrade
6. **Fikret MUSLIMOVIĆ, son of Osmo**
Date of birth: 09 December 1948
Place of birth: Gračanica

The Prosecution file **DOES NOT** disclose sufficient *prima facie* evidence that Ejup GANIĆ, Stepan KLJUJIĆ, Jusuf PUŠINA, Hasan EFENDIĆ, Jovan DIVJAK and

Fikret MUSLIMOVIĆ committed any serious violations of International Humanitarian Law within the jurisdiction of the International Tribunal in respect of any charges.

The Prosecutor, for the purpose of determining whether criminal proceedings should be pursued at this stage, has taken the view the evidence is insufficient by international standards to provide reasonable grounds for the belief that Ejup GANIĆ, Stepan KLJUJIĆ, Jusuf PUŠINA, Hasan EFENDIĆ, Jovan DIVJAK and Fikret MUSLIMOVIĆ may have committed any serious violations of international humanitarian law.

The Prosecutor advises the evidence is deficient in the following regard:

Attack on the JNA Command centre and JNA forces – 2 May 1992

The evidence clearly establishes that there was extensive fighting between the JNA and Muslim-Croat forces in Sarajevo on 2 May 1992. Despite many witnesses giving evidence about what happened on 2 May 1992, there is no evidence on the file of any JNA vehicles "clearly marked with a red cross" being attacked by Muslim-Croat forces. Similarly, there is no other evidence of serious violations of international humanitarian law having been committed by Muslim-Croat forces on that day. Those members of the JNA who were killed or injured on 2 May 1992 appear to have been legitimate military targets.

Muslim-Croat forces' attack on the JNA convoy – 3 May 1992

The most apposite offence in respect of these allegations is that of Perfidy. Perfidy is a war crime pursuant to Article 37 of *Additional Protocol 1*, and perfidious acts are relevantly defined as:

"(a)cts inviting the confidence of an adversary to lead him to believe he is entitled to ... protection under the rules applicable in armed conflict, with intent to betray that confidence..."

To establish Perfidy on a *prima facie* basis in respect of these allegations, it would be necessary for the local prosecuting authorities to establish the following five elements:

1. *that the guarantee of safe passage of the JNA forces given by President IZETBEGOVIĆ was freely made by him;*

The evidence establishes that President IZETBEGOVIĆ was a prisoner of the JNA at the time he gave General KUKANJAC his guarantee of safe passage to all of the JNA members. An earlier deal to exchange President IZETBEGOVIĆ, his daughter and bodyguard for General KUKANJAC alone had failed when General KUKANJAC's subordinates had refused to let him leave the JNA Command centre by himself, accusing him of treason. General KUKANJAC then came to the view that a second exchange deal had to be organised.

General MACKENZIE, in his book "*Peacekeeper – The Road to Sarajevo*", gives the only account (on the file) of the manner in which President IZETBEGOVIĆ gave his guarantee (at pp.165-166):

"The phone rang; it was General KUKANJAC again. He and the President talked for five minutes. The President was obviously agitated. He took the phone away from his ear and explained, 'General KUKANJAC now insists that he be permitted to remove his entire staff of 400 along with himself in exchange for my release'.

'No way!' I exclaimed, 'I can't accept responsibility for those kinds of numbers. I'll have enough trouble just keeping the four of you alive'.

Izetbegović was in a box, and Kukanjac was holding the key. The President looked at me and said very carefully, 'General Mackenzie, don't worry. I will accept responsibility for the safety of JNA personnel'.

I was surprised; this was quite a commitment. 'You guarantee it?' I asked.

'Yes,' he said.

I paused, and Colm [Doyle, EC representative] and I exchanged glances again. 'Okay,' I said. 'We'll give it a try'."

It is clear from this excerpt that General MACKENZIE's view is that President IZETBEGOVIĆ thought he had no choice but to accept whatever conditions for his release that were imposed upon him by General KUKANJAC.

However, because he was a JNA prisoner at the time, President IZETBEGOVIĆ was not in the position to guarantee his own safety let alone the safety of the approximately 400 JNA soldiers and civilian staff under siege in the JNA Command centre in Sarajevo. President IZETBEGOVIĆ was not then in effective military command of the Muslim-Croat forces.

In these circumstances, it cannot be said that President IZETBEGOVIĆ's decision to give a guarantee was freely made. Negotiations for President IZETBEGOVIĆ's release should have been conducted by General KUKANJAC with the acting BiH President.

2. *that President IZETBEGOVIĆ told Ejup GANIĆ (or another commanding officer) of his personal guarantee;*

There is very little evidence that President IZETBEGOVIĆ communicated his guarantee of safe passage to Ejup GANIĆ before the convoy was attacked. Although President IZETBEGOVIĆ was in telephone contact with Ejup GANIĆ prior to the attack on the convoy, the only evidence on the file that the President told Ejup GANIĆ of his guarantee to General KUKANJAC is the evidence of Colonel Miloslav GAGOVIĆ. Colonel GAGOVIĆ says he was present during the exchange negotiations, and that President IZETBEGOVIĆ was in telephone contact with Ejup GANIĆ throughout. At some stage after the first exchange plan had been aborted, the witness says he heard the President on the phone to Ejup GANIĆ asking: "Can that

man guarantee the transfer of the Command out of Sarajevo?" to which Ejup GANIĆ replied that he could. It is not clear how the witness could have heard the reply from Ejup GANIĆ however, in any event, the witness says he did not know the identity of the man they were referring to.

This is no other evidence to establish that President IZETBEGOVIĆ or anyone else told Ejup GANIĆ of the second exchange plan.

3. *that Ejup GANIĆ (or another commanding officer) accepted President IZETBEGOVIĆ's guarantee and agreed to abide by it;*

The first plan agreed between the parties was to exchange President IZETBEGOVIĆ, his daughter and bodyguard for General KUKANJAC alone. There is evidence on the file that Ejup GANIĆ was aware of, and had agreed to abide by, this plan. This plan was aborted when General KUKANJAC's subordinates refused to let him leave the JNA Command centre alone.

There is no firm evidence that Ejup GANIĆ (or any other commanding officer) accepted and agreed to participate in the guarantee given by President IZETBEGOVIĆ. The evidence in fact suggests that neither Ejup GANIĆ nor any other Muslim-Croat commanding officer had accepted the guarantee or agreed to participate in it.

Muslim-Croat forces' radio transmissions were intercepted by the JNA around the time the JNA convoy left the JNA Command centre. A transcript of the radio transmissions is on the file. On that transcript, a voice (attributed to Ejup GANIĆ) is recorded as saying: "This is not what we agreed upon ... I publicly invite General MACKENZIE or Mr DOYLE to immediately come to the Presidency where the Articles of Surrender have remained, and we can re-negotiate everything again. I cannot make decisions without the President ... We cannot negotiate about this over the radio, not in this way ... if changes are made in the six [heads of the] agreement that we reached in UNPROFOR this morning, then either General MACKENZIE or Mr DOYLE should immediately come to the Presidency, to meet here and start again...".

The transcript indicates that the speaker did not know of the second plan and that he was not a party to it.

4. *that the JNA and the UN acted in reliance on that guarantee;*

The evidence on the file does establish that the JNA and the UN acted in reliance upon the guarantee given by President IZETBEGOVIĆ. However, the evidence demonstrates that the reliance was unwarranted.

5. *that the guarantee was falsely given with the specific intent of trapping JNA soldiers in an ambush.*

There is no evidence at all on the file to suggest that President IZETBEGOVIĆ falsely gave his guarantee with the specific intent of trapping JNA soldiers in an ambush. It is

apparent that President IZETBEGOVIĆ "was in a box" and had no alternative but to agree with the second plan as put forward by General KUKANJAC. There is also no evidence that Ejup GANIĆ or any other commanding officer ostensibly agreed to be bound by the guarantee, or that they did so with the specific intent of trapping the JNA soldiers in an ambush.

In summary, only one of the five elements required to establish the charge of Perfidy on a *prima facie* basis is sufficiently proven on the evidence in this file. Consequently, Perfidy cannot be established on the basis of the evidence and there is no other offence more relevant to the circumstances of the attack.

In those circumstances, the JNA convoy was a legitimate military target and the attack by the Muslim-Croat forces on 3 May 1992 was, on a *prima facie* basis, lawful.

Alleged killing and wounding of JNA soldiers before capture

There is evidence that all of the members of the JNA convoy were armed. There is also evidence that some of the JNA members used their weapons at the time of the ambush. Some of JNA soldiers say they did not fire and other witnesses are silent on this issue but Goran MILANOVIĆ says JNA soldiers *did* use their weapons at the time of the ambush. He says he does not know who fired first, but he says the situation was very tense and "we were shooting at them, they were shooting at us, on a very short range". He says some JNA soldiers were killed or wounded during this shooting, but he does not specify the names of those soldiers. There is evidence that Zdravko TOMOVIĆ was killed and Enes TASO, Franjo PATAČKO, Josip IVANOVIĆ, Ivanka STANKOV (a JNA civilian reservist), Komlen ŽARKOVIĆ and Dragoljub PAVLOVIĆ were wounded during the attack. These alleged victims were legitimate military targets, and their injuries or deaths do not give rise to criminal charges.

Alleged killing and wounding of JNA soldiers after capture

There is also evidence that some JNA members were killed or injured after they had been captured. There is insufficient evidence of the names of all of those JNA soldiers who were allegedly killed or injured after capture. Lists of name of those allegedly killed on both 2 and 3 May 1992 have been provided by the local authorities but it is apparent that many of these soldiers were killed or wounded during the course of the fighting the day before. General KUKANJAC says the reason that the JNA inflated the numbers of JNA soldiers killed on 3 May 1992 was because it suited the propaganda purposes of the JNA at the time. The names of the alleged victims killed or wounded after capture on 3 May 1992 need clarification.

Danilo BERIBAKA, Dragoljub PAVLOVIĆ, Gordan VUKOVIĆ and any other relevant witness could be re-interviewed and asked to provide detailed statements concerning injuries they saw the Muslim-Croat forces inflict on unarmed, *captured* JNA soldiers. They could be asked to provide full identification details of the alleged Muslim-Croat perpetrators, and they could be shown an array of photographs of possible suspects if that is possible.

It is also alleged that Dr Budimir RADULOVIĆ, a JNA doctor, was killed while driving in an ambulance either in or near the convoy at the time of the attack: statements of Slobodan JAKOVLJEVIĆ, Ivanka STANKOV, Miloslav GAGOVIĆ, Milutin KUKANJAC and Komlen ŽARKOVIĆ. There is no evidence other than this in respect of this allegation; there is no description of how he was allegedly killed, of the vehicle he was travelling in at the time or of the alleged perpetrator. There is insufficient *prima facie* evidence to establish any charges against any person in respect of this alleged killing.

There is no evidence that any of the suspects on this file personally committed any acts of killing or wounding. In terms of their criminal responsibility for the alleged criminal acts of their subordinates pursuant to *ICTY Statute* Article 7(3), there is evidence that the Muslim-Croat forces were told to disarm the JNA soldiers and "take prisoners". It is not clear who gave this order, but it would appear that there was an order not to shoot the captured JNA soldiers. However, *ICTY Statute* Article 7(3) relevantly provides that:

"The fact that any of the acts referred to in Articles 2 to 5 of the present Statute was committed by a subordinate does not relieve his superior of criminal responsibility if he knew or had reason to know that the subordinate ... had done so and the superior failed to take the necessary and reasonable measures ... to punish the perpetrators thereof".

There is no evidence of any investigation being conducted by senior officers of the Muslim-Croat forces after the attack to determine whether any criminal acts had been committed. Similarly, there is no evidence that any of the alleged perpetrators of the killings or woundings committed after the capture of the JNA soldiers were ever punished.

An issue arises as to whether an investigation and punishment would have been practicable in any event in this case, where this attack effectively marked the beginning of the war in BiH which was to continue for another three years. If it is alleged that an investigation and punishment of the alleged perpetrators was practicable, then evidence should be submitted in support of that allegation.

Mistreatment of Prisoners of War

One final issue is the treatment of the JNA prisoners captured by the Muslim-Croat forces. On the basis of the findings made in respect of the attack on the convoy, those prisoners were prisoners of war, and were entitled to the safeguards given in the *Geneva Convention Relative to the Treatment of Prisoners of War of August 12, 1949*. It appears that certain guards breached their responsibilities in relation to the JNA prisoners of war, but there is no evidence that any of these six suspects ordered or were aware of the mistreatment of the prisoners. If it is alleged that any of these six suspects had command responsibility for the criminal acts allegedly committed by their subordinates against the JNA prisoners, then evidence should be submitted of:

- (a) the suspect's position and any orders given by him;
- (b) the suspect's knowledge that his subordinates were going to commit criminal acts, or had done so; and

(c) the suspect's failure to prevent or punish such criminal acts.

7. Izet BAJRAMOVIĆ

Date of birth: not stated

Place of birth: not stated

The Prosecution file **DOES NOT** disclose sufficient *prima facie* evidence that Izet BAJRAMOVIĆ committed any serious violations of International Humanitarian Law within the jurisdiction of the International Tribunal in respect of any charges.

The Prosecutor, for the purpose of determining whether criminal proceedings should be pursued at this stage, has taken the view the evidence is insufficient by international standards to provide reasonable grounds for the belief that Izet BAJRAMOVIĆ may have committed any serious violations of international humanitarian law.

The Prosecutor advises the evidence is deficient in the following regard:

It is alleged that this suspect had command responsibility for the alleged criminal acts of the "Green Beret" paramilitary unit in or about May 1992. Although a number of allegations are made about the "Green Berets" paramilitary group, there is confusion on the file as to who was in fact its commander in May 1992. Blagoje BOŽINOVSKI says this suspect was the commander of the "Green Berets". However, Alija DELIMUSTAFIĆ, the BiH Interior Minister at the time (and presumably sufficiently informed to know), says the commander of the "Green Berets" was in fact Emin ŠVRAKIĆ, who is not a suspect on this file. This should be clarified.

If it is alleged that this suspect was the commander of the "Green Berets", then evidence should be submitted of:

- (a) the suspect's position and any orders given by him;
- (b) the suspect's knowledge that his subordinates were going to commit criminal acts, or had done so; and
- (c) the suspect's failure to prevent or punish such criminal acts.

8. Jusuf PRAZINA aka "Juka"

Date of birth: not stated

Place of birth: not stated

The Prosecution file discloses that this suspect died in Brussels in 1994. A separate letter has been sent to the local prosecuting authorities (dated 16 April 2003, our ref: 036322/JM/js/ROR) seeking confirmation of this suspect's death. Pending receipt of a reply to that letter, the file has not been reviewed by *Rules of the Road* in respect of this suspect.

9. **Jovica BEROVIĆ**
Date of birth: not stated
Place of birth: not stated

The Prosecution file **DOES NOT** disclose sufficient *prima facie* evidence that Jovica BEROVIĆ committed any serious violations of International Humanitarian Law within the jurisdiction of the International Tribunal in respect of the charges of Torture (Slavoljub BELOŠEVIĆ).

The Prosecutor, for the purpose of determining whether criminal proceedings should be pursued at this stage, is unable to determine the sufficiency of the evidence in this case, without the following further information:

- (a) Slavoljub BELOŠEVIĆ is the only witness who makes any allegations against this suspect, however his evidence is not clear as to whether Jovica BEROVIĆ either participated in, or ordered, the physical mistreatment of the witness. The only clear allegation against this suspect is that he interrogated the witness for 36 hours without a break. Further *prima facie* evidence is needed to determine the alleged role of this suspect. Slavoljub BELOŠEVIĆ should be re-interviewed and asked to provide a detailed statement concerning the role of the suspect in his alleged Torture.