UNITED NATIONS

International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the Former Yugoslavia since 1991

Case No.: IT-04-74-A

Date: 29 November 2017

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IN THE APPEALS CHAMBER

Before: **Judge Carmel Agius, Presiding**
Judge Liu Daqun
Judge Fausto Pocar
Judge Theodor Meron
Judge Bakone Justice Moloto

Registrar: **Mr. John Hocking**

Judgement of: **29 November 2017**

PROSECUTOR

v.

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

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JUDGEMENT
Volume I

The Office of the Prosecutor:

Mr. Douglas Stringer
Ms. Laurel Baig
Ms. Barbara Goy
Ms. Katrina Gustafson

Counsel for the Accused:

Mr. Michael G. Karnavas and Ms. Suzana Tomanović for Mr. Jadranko Prlić
Ms. Senka Nožica and Mr. Karim A. A. Khan for Mr. Bruno Stojić
Ms. Nika Pinter and Ms. Natacha Fauveau-Ivanović for Mr. Slobodan Praljak
Ms. Vesna Alaburić and Mr. Davor Lazić for Mr. Milivoj Petković
Ms. Dijana Tomašegović-Tomić and Mr. Dražen Plavec for Mr. Valentin Ćorić
Mr. Fahrudin Ibrišimović and Mr. Roger Sahota for Mr. Berislav Pušić

TABLE OF CONTENTS

VOLUME I

VOLUME II

VOLUME III

I. INTRODUCTION

1. The Appeals Chamber of the International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the former Yugoslavia since 1991 ("Appeals Chamber" and "ICTY", respectively) is seised of the appeals filed by Jadranko Prlić ("Prlić"), Bruno Stojić ("Stojić"), Slobodan Praljak ("Praljak"), Milivoj Petković ("Petković"), Valentin Ćorić ("Ćorić"), and Berislav Pušić ("Pušić"), and the Office of the Prosecutor ("Prosecution") against the judgement rendered by Trial Chamber III of the Tribunal ("Trial Chamber") on 29 May 2013 in the case *Prosecutor v. Jadranko Prlić, Bruno Stojić, Slobodan Praljak, Milivoj Petković, Valentin Ćorić, and Berislav Pušić*, Case No. IT-04-74-T ("Trial Judgement").

A. Background

2. The events giving rise to this case took place in eight municipalities and five detention camps in the territory of Bosnia and Herzegovina ("BiH") claimed as part of the Croatian Community and Republic of Herceg-Bosna ("HZ(R) H-B") between 1992 and 1994.[1] The Prosecution charged Prlić, Stojić, Praljak, Petković, Ćorić, and Pušić with: (1) grave breaches of the Geneva Conventions of 12 August 1949 ("Geneva Conventions") pursuant to Article 2 of the Statute, namely wilful killing (Count 3), inhuman treatment (sexual assault) (Count 5), unlawful deportation of a civilian (Count 7), unlawful transfer of a civilian (Count 9), unlawful confinement of a civilian (Count 11), inhuman treatment (conditions of confinement) (Count 13), inhuman treatment (Count 16), extensive destruction of property, not justified by military necessity and carried out unlawfully and wantonly (Count 19), and appropriation of property, not justified by military necessity and carried out unlawfully and wantonly (Count 22); (2) violations of the laws or customs of war pursuant to Article 3 of the Statute, namely cruel treatment (conditions of confinement) (Count 14), cruel treatment (Count 17), unlawful labour (Count 18), wanton destruction of cities, towns or villages, or devastation not justified by military necessity (Count 20), destruction or wilful damage done to institutions dedicated to religion or education (Count 21), plunder of public or private property (Count 23), unlawful attack on civilians (Mostar) (Count 24), unlawful infliction of terror on civilians (Mostar) (Count 25), and cruel treatment (Mostar siege) (Count 26); and (3) crimes against humanity pursuant to Article 5 of the Statute, namely persecution on political, racial and religious grounds (Count 1), murder (Count 2), rape (Count 4), deportation (Count 6), inhumane acts (forcible transfer) (Count 8), imprisonment (Count 10),

[1] Trial Judgement, Vol. 1, para. 1.

inhumane acts (conditions of confinement) (Count 12), and inhumane acts (Count 15).[2] The Indictment alleges Prlić, Stojić, Praljak, Petković, Ćorić, and Pušić to be responsible for these crimes pursuant to both Article 7(1) (committing, including through participation in a joint criminal enterprise ("JCE"), planning, instigating, ordering, or aiding and abetting) and Article 7(3) (failing to prevent or punish the crimes committed by their subordinates) of the Statute.[3]

3. The Trial Chamber concluded that crimes occurred across the BiH municipalities of Prozor, Gornji Vakuf, Jablanica (Sovići and Doljani), Mostar, Ljubuški, Stolac, Čapljina, and Vareš as well as the five detention centres, namely, the Heliodrom Camp in Mostar Municipality ("Heliodrom"), the buildings clustered in the Vojno sector in Mostar Municipality ("Vojno Detention Centre"), the military remand prison in Ljubuški town ("Ljubuški Prison"), the Dretelj Military District Prison in Čapljina Municipality ("Dretelj Prison"), and the Gabela Military District Prison in Čapljina Municipality ("Gabela Prison") during the relevant time under the Indictment.[4] The Trial Chamber found that as early as mid-January 1993, a single JCE existed with a common criminal purpose which was the domination by the Croats of the Croatian Republic of Herceg-Bosna ("HR H-B") through ethnic cleansing of the Muslim population.[5] The Trial Chamber further found that the JCE was set up in order to create a Croatian entity in BiH reconstituting in part the borders of the Croatian Banovina, facilitating the reunification of the Croatian people.[6] The Trial Chamber concluded that Prlić, Stojić, Praljak, Petković, Ćorić, and Pušić were members of that JCE.[7] Specifically, it found that: (1) Prlić, Petković, and Ćorić contributed to the JCE from January 1993

[2] Indictment, para. 229. In discussing the underlying offences of rape as a crime against humanity under Article 5 of the Statute and inhuman treatment (sexual assault) as a grave breach of the Geneva Conventions under Article 2 of the Statute in the Trial Judgement, the Trial Chamber employed the phrases "sexual abuse" ("*sévices sexuels*") or "sexual violence" ("*violences sexuelles*") as umbrella terms to refer to those offences. See, *e.g.*, Trial Judgement, Vol. 4, paras 70, 72, 434, 437, 826, 830, 1014. Similarly, in discussing the underlying offences of appropriation of property, not justified by military necessity and carried out unlawfully and wantonly as a grave breach of the Geneva Conventions under Article 2 of the Statute and plunder of public or private property as a violation of the laws or customs of war under Article 3 of the Statute in the Trial Judgement, the Trial Chamber employed the phrase "thefts" ("*vols*") as an umbrella term to refer to those offences. See, *e.g.*, Trial Judgement, Vol. 4, paras 70, 72, 445-447, 838, 840, 842, 845, 1010-1011. While it would have been preferable for the Trial Chamber to precisely refer to these offences as the crimes they constitute under the Statute, for consistency and readability, the Appeals Chamber will likewise use these umbrella terms in this Judgement.

[3] Indictment, paras 218-228.

[4] Trial Judgement, Vol. 3, paras 655-1741.

[5] Trial Judgement, Vol. 4, paras 41, 65-66. Specifically, the Trial Judgement found that the members of the JCE ("implemented an entire system for deporting the Muslim population of the HR H-B consisting of the removal and placement in detention of civilians, of murders and the destruction of property during attacks, of mistreatment and devastation caused during eviction operations, of mistreatment and poor conditions of confinement as well as the widespread, nearly systematic use of detainees on the front lines for labour or even to serve as human shields, as well as murders and mistreatment related to this labour and these shields, and lastly, the removal of detainees and their families outside of the territory of the HZ(R) H-B once they were released").
Trial Judgement, Vol. 4, para. 66. See also Trial Judgement, Vol. 4, paras 44-65, 67-73.

[6] Trial Judgement, Vol. 4, paras 24, 43-44. This Croatian territorial entity in BiH was either to be united with Croatia, or become an independent state within BiH with ties to Croatia. Trial Judgement, Vol. 4, para. 24.

[7] Trial Judgement, Vol. 4, paras 66-67, 276, 429, 627-628, 818, 1004, 1209, 1217-1231.

to April 1994;[8] (2) Stojić and Praljak contributed to the JCE from January 1993 to November 1993;[9] and (3) Pušić contributed to the JCE from April 1993 to April 1994.[10]

4. Prlić was born on 10 June 1959 in Đakovo, Socialist Republic of Croatia.[11] On 14 August 1992, Prlić was appointed President of the executive organ of the Croatian Community of Herceg-Bosna ("HVO HZ H-B") and as of 28 August 1993, he exercised duties of the President of the Government of the HR H-B.[12] In June 1994, he became Vice-President of the Government and Minister of Defence of BiH and of the Federation of BiH.[13] Pursuant to Article 7(1) of the Statute, the Trial Chamber found Prlić guilty of Counts 1 to 13, 15, 16, 18, 19, and 21 to 25 of the Indictment.[14] Prlić was sentenced to a single sentence of 25 years of imprisonment.[15]

5. Stojić was born on 8 April 1955 in the village of Hamzići, Čitluk Municipality, the Socialist Republic of Bosnia and Herzegovina ("SRBiH").[16] From July 1992 until 15 November 1993, Stojić was Head of the Department of Defence and subsequently became the Head of the HR H-B Department for the Production of Military Equipment, where he remained until 27 April 1995.[17] Pursuant to Article 7(1) of the Statute, the Trial Chamber found Stojić guilty of Counts 1 to 13, 15, 16, 18, 19, and 21 to 25 of the Indictment.[18] Stojić was sentenced to a single sentence of 20 years of imprisonment.[19]

6. Praljak was born on 2 January 1945 in Čapljina, Čapljina Municipality, the SRBiH.[20] Between March 1992 and 15 June 1993, Praljak was Assistant Minister and later Deputy Minister of Defence of Croatia.[21] With respect to his functions in the Croatian Defence Council ("HVO"), from April 1992 to mid-May 1992, Praljak was the commander of the South-Eastern Herzegovina operations group and, following that period, he remained in BiH alongside the HVO without

[8] Trial Judgement, Vol. 4, paras 1225, 1230.
[9] Trial Judgement, Vol. 4, paras 1227-1228, 1230.
[10] Trial Judgement, Vol. 4, paras 1229-1230.
[11] Trial Judgement, Vol. 4, para. 78.
[12] Trial Judgement, Vol. 4, para. 82.
[13] Trial Judgement, Vol. 4, para. 83.
[14] Trial Judgement, Vol. 4, Disposition, p. 430. See also Trial Judgement, Vol. 4, paras 278-279, 288. On the basis of the principle of cumulative convictions, the Trial Chamber did not enter a conviction for Counts 14, 17, and 20 of the Indictment. Trial Judgement, Vol. 4, Disposition, p. 430.
[15] Trial Judgement, Vol. 4, Disposition, p. 430.
[16] Trial Judgement, Vol. 4, para. 292.
[17] Trial Judgement, Vol. 4, paras 293, 1227.
[18] Trial Judgement, Vol. 4, Disposition, p. 430. See also Trial Judgement, Vol. 4, paras 431-432, 450. On the basis of the principle of cumulative convictions, the Trial Chamber did not enter a conviction for Counts 14, 17, and 20 of the Indictment. Trial Judgement, Vol. 4, Disposition, p. 430.
[19] Trial Judgement, Vol. 4, Disposition, p. 430.
[20] Trial Judgement, Vol. 4, para. 456 & fn. 91, referring to, *inter alia*, *Prosecutor v. Slobodan Praljak*, Case No. IT-04-74-I, Warrant of Arrest and Order for Surrender (confidential), 4 Mar 2004.
[21] Trial Judgement, Vol. 4, para. 457.

holding official functions until 24 July 1993.[22] From 24 July 1993 until 9 November 1993, Praljak was Commander of the HVO Main Staff, before returning to Croatia to serve as advisor to the Croatian Minister of Defence.[23] Pursuant to Article 7(1) of the Statute, the Trial Chamber found Praljak guilty of Counts 1 to 3, 6 to 13, 15, 16, 18, 19, and 21 to 25 of the Indictment.[24] Praljak was acquitted of Counts 4 and 5 of the Indictment.[25] He was sentenced to a single sentence of 20 years imprisonment.[26]

7. Petković was born on 11 October 1949 in Šibenik, Croatia.[27] Between 14 April 1992 and 23 July 1993, Petković was Chief of the HVO Main Staff and subsequently served as Deputy Commander until 26 April 1994.[28] From 26 April 1994 to 5 August 1994 he served again as Chief of the HVO Main Staff.[29] Pursuant to Article 7(1) of the Statute, the Trial Chamber found Petković guilty of Counts 1 to 13, 15, 16, 18, 19, and 21 to 25 of the Indictment.[30] Petković was sentenced to a single sentence of 20 years imprisonment.[31]

8. Ćorić was born on 23 June 1956 in the village of Paoča, Čitluk Municipality, the SRBiH.[32] As of 24 June 1992, Ćorić was Chief of the Military Police Administration before becoming Minister of the Interior of the HR H-B in November 1993.[33] On 16 February 1994, Ćorić was appointed as a member of the Presidential Council of the HR H-B.[34] Pursuant to Article 7(1) of the Statute, the Trial Chamber found Ćorić guilty of Counts 1 to 13, 15, 16, 18, 19, and 21 to 25 of the Indictment.[35] Pursuant to Article 7(3) of the Statute, the Trial Chamber also found Ćorić guilty of Counts 15, 16, 19, and 23 of the Indictment with respect to the crimes that occurred in Prozor

[22] Trial Judgement, Vol. 4, para. 459.
[23] Trial Judgement, Vol. 4, para. 459.
[24] Trial Judgement, Vol. 4, Disposition, p. 430. See also Trial Judgement, Vol. 4, paras 630-631, 644. On the basis of the principle of cumulative convictions, the Trial Chamber did not enter a conviction for Counts 14, 17, and 20 of the Indictment. Trial Judgement, Vol. 4, Disposition, p. 430.
[25] Trial Judgement, Vol. 4, Disposition, p. 430.
[26] Trial Judgement, Vol. 4, Disposition, p. 430.
[27] Trial Judgement, Vol. 4, para. 650.
[28] Trial Judgement, Vol. 4, para. 651.
[29] Trial Judgement, Vol. 4, para. 652.
[30] Trial Judgement, Vol. 4, Disposition, p. 431. See also Trial Judgement, Vol. 4, paras 820-821, 853. On the basis of the principle of cumulative convictions, the Trial Chamber did not enter a conviction for Counts 14, 17, and 20 of the Indictment. Trial Judgement, Vol. 4, Disposition, p. 431.
[31] Trial Judgement, Vol. 4, Disposition, p. 431.
[32] Trial Judgement, Vol. 4, para. 860.
[33] Trial Judgement, Vol. 4, para. 861.
[34] Trial Judgement, Vol. 4, para. 861.
[35] Trial Judgement, Vol. 4, Disposition, p. 431. See also Trial Judgement, Vol. 4, paras 1006-1007, 1021.

Municipality in October 1992.[36] Ćorić was sentenced to a single sentence of 16 years of imprisonment.[37]

9. Pušić was born on 8 June 1952 in Mostar, Mostar Municipality, the SRBiH.[38] The Trial Chamber found that between February and July 1993, Pušić occupied various positions in the HVO Military Police, and was a "control officer" within the Department of Criminal Investigations of the Military Police Administration.[39] At the same time, he also represented the Military Police Administration and the HVO in negotiations for the exchange of detainees or bodies.[40] From at least 25 May 1993, Pušić was a member of the Commission for the Exchange of Prisoners and Other Persons ("Exchange Commission") and, from 5 July 1993, he was the Head of the Service for the Exchange of Prisoners and Other Persons, ("Exchange Service"), the executive organ of the Exchange Commission.[41] Pursuant to Article 7(1) of the Statute, the Trial Chamber found Pušić guilty of Counts 1 to 3, 6 to 13, 15, 16, 18, 19, 21, 24, and 25 of the Indictment.[42] Pušić was acquitted of Counts 4, 5, 22, and 23 of the Indictment.[43] He was sentenced to a single sentence of ten years of imprisonment.[44]

B. The Appeals

1. Prlić's appeal

10. Prlić advances 21 grounds of appeal.[45] Prlić requests that the Appeals Chamber reverse the convictions entered by the Trial Chamber and acquit him on all counts.[46] Alternatively, he submits that the Trial Chamber committed discernible errors in determining the sentence against him and the Appeals Chamber should therefore reduce it.[47] In response, the Prosecution submits that the

[36] Trial Judgement, Vol. 4, Disposition, p. 431. See also Trial Judgement, Vol. 4, paras 1245-1251. On the basis of the principle of cumulative convictions, the Trial Chamber did not enter a conviction for Counts 14, 17, and 20 of the Indictment. Trial Judgement, Vol. 4, Disposition, p. 431.
[37] Trial Judgement, Vol. 4, Disposition, p. 431.
[38] Trial Judgement, Vol. 4, para. 1027.
[39] Trial Judgement, Vol. 4, para. 1028.
[40] Trial Judgement, Vol. 4, para. 1029.
[41] Trial Judgement, Vol. 4, para. 1030.
[42] Trial Judgement, Vol. 4, Disposition, p. 431. See also Trial Judgement, Vol. 4, paras 1211-1212, 1216.
[43] Trial Judgement, Vol. 4, Disposition, p. 431. On the basis of the principle of cumulative convictions, the Trial Chamber did not enter a conviction for Counts 14, 17, and 20 of the Indictment. Trial Judgement, Vol. 4, Disposition, p. 431.
[44] Trial Judgement, Vol. 4, Disposition, p. 431.
[45] The Appeals Chamber notes that, in his appeal brief, Prlić does not develop the arguments contained in his notice of appeal in sub-grounds of appeal 10.9, 10.11, and 21.3. See Prlić's Appeal Brief, pp. 96-98, 197. Accordingly, the Appeals Chamber considers that Prlić has abandoned these contentions.
[46] Prlić's Notice of Appeal, para. 11; Prlić's Appeal Brief, p. 197.
[47] Prlić's Appeal Brief, para. 682.

Appeals Chamber should dismiss Prlić's appeal, with the exception of part of his ground of appeal 20.[48]

2. Stojić's appeal

11. Stojić presents 44 grounds of appeal.[49] Stojić requests that the Appeals Chamber overturn his convictions on all counts or, alternatively, overturn his convictions on specific counts and reduce his sentence.[50] The Prosecution responds that Stojić's appeal should be dismissed, with the exception of part of his ground of appeal 55.[51]

3. Praljak's appeal

12. Praljak advances 45 grounds of appeal.[52] He requests that the Appeals Chamber acquit him of all charges or, alternatively, quash the Judgement and remand his case to the Trial Chamber for a trial *de novo*.[53] The Prosecution responds that Praljak's appeal should be dismissed with the exception of part of his ground of appeal 2.[54]

4. Petković's appeal

13. Petković presents seven grounds of appeal.[55] Petković requests that the Appeals Chamber quash and reverse his conviction on all counts or, in the alternative, order a corresponding reduction of his sentence if his appeal partly succeeds.[56] In further alternative, he requests the

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[48] Prosecution's Response Brief (Prlić), paras 15, 429. In relation to Prlić's ground of appeal 20, the Prosecution requests that the Appeals Chamber either partly reverse Prlić's conviction under Count 19 and substitute it with a conviction under Count 20 or otherwise dismiss the relevant appeal. Prosecution's Response Brief (Prlić), para. 429.

[49] Stojić originally advanced 57 grounds of appeal, but withdrew his grounds of appeal 9, 18-19, 22, 38, 43-44, 46, 48-49, 51-53. See Stojić's Appeal Brief, pp. 32, 48, 64, 127, 134, 136, 138-139. The Appeals Chamber also observes that Stojić withdrew his sub-ground of appeal 56.1. See Stojić's Appeal Brief, p. 147.

[50] Stojić's Appeal Brief, para. 7, p. 152.

[51] Prosecution's Response Brief (Stojić), paras 8, 410. In relation to Stojić's ground of appeal 55, the Prosecution requests that the Appeals Chamber either partly reverse Stojić's conviction under Count 19 or otherwise dismiss the relevant appeal. Prosecution's Response Brief (Stojić), para. 410.

[52] Praljak originally advanced 58 grounds of appeal, but withdrew his grounds of appeal 16-19, 22, 29-31, 33, 52, and 56-58. See Praljak's Appeal Brief, Annex 1, pp. 4-8. The Appeals Chamber also observes that Praljak withdrew his sub-grounds of appeal 20.2 to 20.13, and 28.2. See Praljak's Appeal Brief, Annex 1, pp. 4-5; Praljak's Notice of Appeal, p. 46, sub-ground of appeal 28. 2.

[53] Praljak's Appeal Brief, paras 5-6, 603-604.

[54] Prosecution's Response Brief (Praljak), paras 5, 334. In relation to Praljak's ground of appeal 2, the Prosecution requests that the Appeals Chamber either partly reverse Praljak's conviction under Count 19 and substitute it with a conviction under Count 20 or dismiss it. Prosecution's Response Brief (Praljak), paras 5, 334.

[55] The Appeals Chamber notes that in his appeal brief, Petković uses Roman numerals to number his grounds of appeal and Arabic numerals to number the sub-headings pertaining thereto, and that these numbers do not correspond. For example, Petković titles one section of his appeal brief "Ground IV: Errors Pertaining to Actus Reus of JCE", but the sub-headings pertaining thereto are numbered "5.1 Errors regarding Petković's 'Powers'" through "5.3 Conclusions and Relief Sought". For ease of reference, the Appeals Chamber will adhere to the numbering of Petković's brief throughout this Judgement. In general, it will use the numbering of the sub-headings, except where it is necessary to refer to a ground of appeal in its entirety. There, the Appeals Chamber will use the pertinent Roman numeral used by Petković.

[56] Petković's Appeal Brief, paras 470-471.

Appeals Chamber to reduce his sentence.[57] The Prosecution responds that Petković's appeal should be dismissed with the exception of part of his ground of appeal 6.[58]

5. Ćorić's appeal

14. Ćorić presents 17 grounds of appeal. Ćorić requests that the Appeals Chamber acquit him of all counts or, if any of his convictions are upheld, reduce his sentence.[59] The Prosecution responds that Ćorić's appeal should be dismissed in its entirety.[60]

6. Pušić's appeal

15. Pušić advances eight grounds of appeal.[61] Pušić requests the Appeals Chamber to reverse the Trial Judgement or, in the alternative, to reduce his sentence.[62] The Prosecution responds that the Appeals Chamber should dismiss Pušić's appeal in its entirety.[63]

7. Prosecution's appeal

16. The Prosecution advances four grounds of appeal. It argues that the Trial Chamber erred in partly acquitting Prlić, Stojić, Praljak, Petković, Ćorić, and Pušić and in failing to: (1) convict them of the crimes under the third form of joint criminal enterprise liability ("JCE III"); (2) consider and adjudicate their liability under Article 7(3) of the Statute; and (3) enter convictions for wanton destruction of cities, towns or villages, or devastation not justified by military necessity (Count 20).[64] The Prosecution also submits that the Trial Chamber erred in imposing manifestly inadequate sentences and requests that the Appeals Chamber increase them.[65] Prlić, Praljak, Petković, and Pušić respond that the Appeals Chamber should dismiss the Prosecution's appeal in its entirety.[66] Stojić submits that the Appeals Chamber should dismiss the Prosecution's appeal or, in the alternative, should the Appeals Chamber grant any of the Prosecution's grounds, decline to increase his sentence.[67] Similarly, Ćorić responds that the Appeals Chamber should dismiss the

[57] Petković's Appeal Brief, para. 472.
[58] Prosecution's Response Brief (Petković), paras 8, 323. In relation to Petković's ground of appeal VI, the Prosecution requests that the Appeals Chamber either partly reverse Petković's conviction under Count 19 or otherwise dismiss the relevant challenge. Prosecution's Response Brief (Petković), para. 323.
[59] Ćorić's Appeal Brief, paras 5, 340.
[60] Prosecution's Response Brief (Ćorić), paras 6, 373.
[61] The Appeals Chamber observes that Pušić withdrew part of his ground of appeal 3. Pušić's Appeal Brief, para. 107.
[62] Pušić's Appeal Brief, paras 6-7.
[63] Prosecution's Response Brief (Pušić), paras 7, 241.
[64] Prosecution's Appeal Brief, paras 2, 420-422, 424.
[65] Prosecution's Appeal Brief, paras 2, 424.
[66] Prlić's Response Brief, para. 25, p. 103; Praljak's Response Brief, para. 215; Petković's Response Brief, para. 120; Pušić's Response Brief, para. 1.
[67] Stojić's Response Brief, p. 83.

Prosecution's appeal or, in the alternative, remit the case to the Trial Chamber for a new determination of the sentence.[68]

C. Appeal Hearing

17. The Appeals Chamber heard the oral submissions of the Parties regarding their appeals from 20 March 2017 to 28 March 2017 ("Appeal Hearing"). Having considered their written and oral submissions, the Appeals Chamber hereby renders its Judgement.

[68] Ćorić's Response Brief, paras 4, 9, 153, p. 72.

II. STANDARD OF APPELLATE REVIEW

18. Article 25 of the Statute states that the Appeals Chamber may affirm, reverse, or revise the decisions taken by the trial chamber. On appeal, the parties must limit their arguments to errors of law that invalidate the decision and to factual errors that result in a miscarriage of justice.[69] These criteria are set forth in Article 25 of the Statute and are well established in the jurisprudence of both the Tribunal and the International Criminal Tribunal for the Prosecution of Persons Responsible for Genocide and Other Serious Violations of International Humanitarian Law Committed in the Territory of Rwanda and Rwandan Citizens Responsible for Genocide and Other Violations Committed in the Territory of Neighbouring States between 1 January 1994 and 31 December 1994 ("ICTR").[70] In exceptional circumstances, the Appeals Chamber will also hear appeals in which a party has raised a legal issue that would not lead to the invalidation of the trial judgement, but that is nevertheless of general significance to the Tribunal's jurisprudence.[71]

19. A party alleging an error of law must identify the alleged error, present arguments in support of its claim, and explain how the error invalidates the decision.[72] An allegation of an error of law that has no chance of changing the outcome of a decision may be rejected on that ground.[73] However, even if the party's arguments are insufficient to support the contention of an error, the Appeals Chamber may still conclude for other reasons that there is an error of law.[74] It is necessary for any appellant claiming an error of law on the basis of the lack of a reasoned opinion to identify the specific issues, factual findings, or arguments that the appellant submits the trial chamber omitted to address and to explain why this omission invalidates the decision.[75]

20. The Appeals Chamber reviews the trial chamber's findings of law to determine whether or not they are correct.[76] Where the Appeals Chamber finds an error of law in the trial judgement arising from the application of the wrong legal standard, the Appeals Chamber will articulate the

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[69] *Stanišić and Župljanin* Appeal Judgement, para. 17; *Stanišić and Simatović* Appeal Judgement, para. 15; *Tolimir* Appeal Judgement, para. 8; *Vasiljević* Appeal Judgement, para. 5. See *Furundžija* Appeal Judgement, paras 35-37.
[70] *Stanišić and Župljanin* Appeal Judgement, para. 17; *Stanišić and Simatović* Appeal Judgement, para. 15; *Popović et al.* Appeal Judgement, para. 16; *Vasiljević* Appeal Judgement, para. 5. See *Nyiramasuhuko et al.* Appeal Judgement, para. 29; *Nzabonimana* Appeal Judgement, para. 7.
[71] *Stanišić and Župljanin* Appeal Judgement, para. 17; *Stanišić and Simatović* Appeal Judgement, para. 15; *Tolimir* Appeal Judgement, para. 8; *Kupreškić et al.* Appeal Judgement, para. 22; *Tadić* Appeal Judgement, para. 247.
[72] *Stanišić and Župljanin* Appeal Judgement, para. 18; *Stanišić and Simatović* Appeal Judgement, para. 16; *Tolimir* Appeal Judgement, para. 9; *Krnojelac* Appeal Judgement, para. 10.
[73] *Stanišić and Župljanin* Appeal Judgement, para. 18; *Stanišić and Simatovič* Appeal Judgement, para. 16; *Tolimir* Appeal Judgement, para. 9; *Krnojelac* Appeal Judgement, para. 10.
[74] *Stanišić and Župljanin* Appeal Judgement, para. 18; *Stanišić and Simatović* Appeal Judgement, para. 16; *Tolimir* Appeal Judgement, para. 9; *Furundžija* Appeal Judgement, para. 35.
[75] *Stanišić and Župljanin* Appeal Judgement, para. 18; *Stanišić and Simatović* Appeal Judgement, para. 16; *Tolimir* Appeal Judgement, para. 9; *Kvočka et al.* Appeal Judgement, para. 25, referring to *Kordić and Čerkez* Appeal Judgement, para. 21.

correct legal standard and review the relevant factual findings of the trial chamber accordingly.[77] In so doing, the Appeals Chamber not only corrects the error of law, but, when necessary, applies the correct legal standard to the evidence contained in the trial record and determines whether it is itself convinced beyond reasonable doubt as to the factual finding challenged by an appellant before the finding is confirmed on appeal.[78] The Appeals Chamber will not review the entire trial record *de novo*. Rather, it will in principle only take into account evidence referred to by the trial chamber in the body of the judgement or in a related footnote, evidence contained in the trial record and referred to by the parties, and, where applicable, additional evidence admitted on appeal.[79]

21. When considering alleged errors of fact, the Appeals Chamber will apply a standard of reasonableness.[80] In reviewing the findings of the trial chamber, the Appeals Chamber will only substitute its own finding for that of the trial chamber when no reasonable trier of fact could have reached the original decision.[81] The Appeals Chamber applies the same reasonableness standard to alleged errors of fact regardless of whether the finding of fact was based on direct or circumstantial evidence.[82] Further, only an error of fact which has occasioned a miscarriage of justice will cause the Appeals Chamber to overturn a decision by the trial chamber.[83]

22. In determining whether or not a trial chamber's finding was reasonable, the Appeals Chamber will not lightly disturb findings of fact by a trial chamber.[84] The Appeals Chamber recalls, as a general principle, that:

> Pursuant to the jurisprudence of the Tribunal, the task of hearing, assessing and weighing the evidence presented at trial is left primarily to the Trial Chamber. Thus, the Appeals Chamber must give a margin of deference to a finding of fact reached by a Trial Chamber. Only where the evidence relied on by the Trial Chamber could not have been accepted by any reasonable tribunal

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[76] *Stanišić and Župljanin* Appeal Judgement, para. 19; *Stanišić and Simatović* Appeal Judgement, para. 17; *Tolimir* Appeal Judgement, para. 10; *Krnojelac* Appeal Judgement, para. 10.
[77] *Stanišić and Župljanin* Appeal Judgement, para. 19; *Stanišić and Simatović* Appeal Judgement, para. 17; *Tolimir* Appeal Judgement, para. 10; *Blaškić* Appeal Judgement, para. 15.
[78] *Stanišić and Župljanin* Appeal Judgement, para. 19; *Stanišić and Simatović* Appeal Judgement, para. 17; *Tolimir* Appeal Judgement, para. 10; *Blaškić* Appeal Judgement, para. 15.
[79] *Stanišić and Župljanin* Appeal Judgement, para. 19; *Stanišić and Simatović* Appeal Judgement, para. 17; *Tolimir* Appeal Judgement, para. 10; *Kordić and Čerkez* Appeal Judgement, para. 21 & fn. 12.
[80] *Stanišić and Župljanin* Appeal Judgement, para. 20; *Stanišić and Simatović* Appeal Judgement, para. 18; *Tolimir* Appeal Judgement, para. 11; *Popović et al.* Appeal Judgement, para. 19; *Tadić* Appeal Judgement, para. 64.
[81] *Stanišić and Župljanin* Appeal Judgement, para. 20; *Stanišić and Simatović* Appeal Judgement, para. 18; *Tolimir* Appeal Judgement, para. 11; *Kvočka et al.* Appeal Judgement, para. 18; *Tadić* Appeal Judgement, para. 64.
[82] *Stanišić and Župljanin* Appeal Judgement, para. 20; *Stanišić and Simatović* Appeal Judgement, para. 18; *Tolimir* Appeal Judgement, para. 11; *Galić* Appeal Judgement, para. 9 & fn. 21.
[83] *Stanišić and Župljanin* Appeal Judgement, para. 20; *Stanišić and Simatović* Appeal Judgement, para. 18; *Tolimir* Appeal Judgement, para. 11; *Furundžija* Appeal Judgement, para. 37.
[84] *Stanišić and Župljanin* Appeal Judgement, para. 21; *Stanišić and Simatović* Appeal Judgement, para. 19; *Tolimir* Appeal Judgement, para. 12; *Popović et al.* Appeal Judgement, para. 20; *Furundžija* Appeal Judgement, para. 37.

> of fact or where the evaluation of the evidence is "wholly erroneous" may the Appeals Chamber substitute its own finding for that of the Trial Chamber.[85]

23. The same standard of reasonableness and the same deference to factual findings applies when the Prosecution appeals against an acquittal.[86] Thus, when considering an appeal by the Prosecution, the Appeals Chamber will only hold that an error of fact was committed when it determines that no reasonable trier of fact could have made the impugned finding.[87] Considering that it is the Prosecution that bears the burden at trial of proving the guilt of an accused beyond reasonable doubt, the significance of an error of fact occasioning a miscarriage of justice is somewhat different for a Prosecution appeal against acquittal from that of a defence appeal against conviction.[88] An accused must show that the trial chamber's factual errors create reasonable doubt as to his guilt.[89] The Prosecution must show that, when account is taken of the errors of fact committed by the trial chamber, all reasonable doubt of the accused's guilt has been eliminated.[90]

24. The Appeals Chamber recalls that it has inherent discretion in selecting which submissions merit a detailed reasoned opinion in writing, and may dismiss arguments which are evidently unfounded without providing detailed reasoning.[91] Indeed, the Appeals Chamber's mandate cannot be effectively and efficiently carried out without focused contributions by the parties.[92] In order for the Appeals Chamber to assess a party's arguments on appeal, the party is expected to present its case clearly, logically, and exhaustively.[93] The appealing party is also expected to provide precise references to relevant transcript pages or paragraphs in the decision or judgement to which the challenges are being made.[94] The Appeals Chamber will not consider a party's submission in detail

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[85] *Kupreškić et al.* Appeal Judgement, para. 30. See *Stanišić and Župljanin* Appeal Judgement, para. 21; *Stanišić and Simatović* Appeal Judgement, para. 19; *Tolimir* Appeal Judgement, para. 12; *Popović et al.* Appeal Judgement, para. 20. See also *Tadić* Appeal Judgement, para. 64.

[86] *Stanišić and Župljanin* Appeal Judgement, para. 22; *Stanišić and Simatović* Appeal Judgement, para. 20; *Đorđević* Appeal Judgement, para. 18; *Limaj et al.* Appeal Judgement, para. 13; *Brđanin* Appeal Judgement, para. 14.

[87] *Stanišić and Župljanin* Appeal Judgement, para. 22; *Stanišić and Simatović* Appeal Judgement, para. 20; *Popović et al.* Appeal Judgement, para. 21; *Brđanin* Appeal Judgement, para. 14.

[88] *Stanišić and Župljanin* Appeal Judgement, para. 22; *Stanišić and Simatović* Appeal Judgement, para. 20; *Popović et al.* Appeal Judgement, para. 21; *Limaj et al.* Appeal Judgement, para. 13.

[89] *Stanišić and Župljanin* Appeal Judgement, para. 22; *Stanišić and Simatović* Appeal Judgement, para. 20; *Popović et al.* Appeal Judgement, para. 21; *Limaj et al.* Appeal Judgement, para. 13.

[90] *Stanišić and Župljanin* Appeal Judgement, para. 22; *Stanišić and Simatović* Appeal Judgement, para. 20; *Popović et al.* Appeal Judgement, para. 21; *Limaj et al.* Appeal Judgement, para. 13.

[91] *Stanišić and Župljanin* Appeal Judgement, para. 24; *Stanišić and Simatović* Appeal Judgement, para. 21; *Tolimir* Appeal Judgement, para. 13; *Kunarac et al.* Appeal Judgement, paras 47-48.

[92] *Stanišić and Župljanin* Appeal Judgement, para. 24; *Stanišić and Simatović* Appeal Judgement, para. 21; *Popović et al.* Appeal Judgement, para. 22; *Kunarac et al.* Appeal Judgement, para. 43.

[93] *Stanišić and Župljanin* Appeal Judgement, para. 24; *Stanišić and Simatović* Appeal Judgement, para. 21; *Tolimir* Appeal Judgement, para. 13; *Kunarac et al.* Appeal Judgement, para. 43.

[94] Practice Direction on Formal Requirements for Appeals from Judgement, IT/201, 7 March 2002 ("Practice Direction on Formal Requirements"), paras 1(c)(iii)-(iv), 4(b)(ii). See also *Stanišić and Župljanin* Appeal Judgement, para. 24; *Stanišić and Simatović* Appeal Judgement, para. 21; *Tolimir* Appeal Judgement, para. 13; *Kunarac et al.* Appeal Judgement, para. 44.

when they are obscure, contradictory, vague, or suffer from other formal and obvious insufficiencies.[95]

25. When applying these basic principles, the Appeals Chamber recalls that it has identified the types of deficient submissions on appeal which need not be considered on the merits.[96] In particular, the Appeals Chamber will dismiss without detailed analysis: (1) arguments that fail to identify the challenged factual findings, that misrepresent the factual findings or the evidence, or that ignore other relevant factual findings; (2) mere assertions that the trial chamber must have failed to consider relevant evidence, without showing that no reasonable trier of fact, based on the evidence, could have reached the same conclusion as the trial chamber; (3) challenges to factual findings on which a conviction does not rely, and arguments that are clearly irrelevant, that lend support to, or that are not inconsistent with the challenged finding; (4) arguments that challenge a trial chamber's reliance or failure to rely on one piece of evidence, without explaining why the conviction should not stand on the basis of the remaining evidence; (5) arguments contrary to common sense; (6) challenges to factual findings where the relevance of the factual finding is unclear and has not been explained by the appealing party; (7) mere repetition of arguments that were unsuccessful at trial without any demonstration that their rejection by the trial chamber constituted an error warranting the intervention of the Appeals Chamber; (8) allegations based on material not on record; (9) mere assertions unsupported by any evidence, undeveloped assertions, or failure to articulate an error; and (10) mere assertions that the trial chamber failed to give sufficient weight to evidence or failed to interpret evidence in a particular manner.[97]

[95] *Stanišić and Župljanin* Appeal Judgement, para. 24; *Stanišić and Simatović* Appeal Judgement, para. 21; *Tolimir* Appeal Judgement, para. 13; *Kunarac et al.* Appeal Judgement, para. 43 & fn. 21.
[96] *Stanišić and Župljanin* Appeal Judgement, para. 25; *Stanišić and Simatović* Appeal Judgement, para. 22; *Tolimir* Appeal Judgement, para. 14; *Krajišnik* Appeal Judgement, paras 17-27; *Brđanin* Appeal Judgement, paras 17-31.
[97] *Stanišić and Župljanin* Appeal Judgement, para. 25; *Stanišić and Simatović* Appeal Judgement, para. 22; *Tolimir* Appeal Judgement, para. 14; *Popović et al.* Appeal Judgement, para. 23; *Krajišnik* Appeal Judgement, paras 17-27.

III. CHALLENGES CONCERNING FAIR TRIAL AND THE INDICTMENT

A. Applicable Law

1. Applicable law on the Right to a Fair Trial

26. The Appeals Chamber recalls that, where a party alleges on appeal that its right to a fair trial has been infringed, it must prove that the trial chamber violated a provision of the Statute and/or the Rules and that this caused prejudice to the alleging party, such as to amount to an error of law invalidating the trial judgement.[98] Trial chambers enjoy considerable discretion in relation to the management of the proceedings before them.[99] The Appeals Chamber will only overturn a trial chamber's discretionary decision where it is found to be: (1) based on an incorrect interpretation of governing law; (2) based on a patently incorrect conclusion of fact; or (3) so unfair or unreasonable as to constitute an abuse of the trial chamber's discretion.[100] The Appeals Chamber will also consider whether the trial chamber has given weight to extraneous or irrelevant considerations or has failed to give weight or sufficient weight to relevant considerations in reaching its decision.[101]

2. Applicable law on the Indictment

27. The Appeals Chamber recalls that, in accordance with Article 21(4)(a) of the Statute, an accused has the right "to be informed promptly and in detail in a language which he understands of the nature and cause of the charge against him".[102] In application of this right, Rule 47(C) of the Rules states that an indictment must set forth "a concise statement of the facts of the case and of the crime with which the suspect is charged."[103] The Appeals Chamber recalls that in determining whether an accused was adequately put on notice of the nature and cause of the charges against him, the indictment must be considered as a whole.[104] In order to provide proper notice to the accused, the Prosecution is required to plead in an indictment all of the charges and the

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[98] *Šainović et al.* Appeal Judgement, para. 29; *Haradinaj et al.* Appeal Judgement, para. 17; *Krajišnik* Appeal Judgement, para. 28, referring to *Kordić and Čerkez* Appeal Judgement, para. 119.
[99] *Šainović et al.* Appeal Judgement, para. 29; *Lukić and Lukić* Appeal Judgement, para. 17, referring to *Krajišnik* Appeal Judgement, paras 81, 99.
[100] *Šainović et al.* Appeal Judgement, para. 29; *Lukić and Lukić* Appeal Judgement, para. 17, referring to *Krajišnik* Appeal Judgement, para. 81.
[101] *Šainović et al.* Appeal Judgement, para. 29; *Lukić and Lukić* Appeal Judgement, para. 17, referring to *Krajišnik* Appeal Judgement, para. 81.
[102] *Šainović et al.* Appeal Judgement, para. 213.
[103] *Šainović et al.* Appeal Judgement, para. 213.
[104] *Nyiramasuhuko et al.* Appeal Judgement, paras 1263, 2512; *Karemera and Ngirumpatse* Appeal Judgement, para. 370.

underpinning material facts with sufficient precision, but is not required to set out the evidence by which the material facts are to be proven.[105]

28. Whether or not a fact is considered material depends on the nature of the Prosecution's case.[106] The Prosecution's characterisation of the alleged criminal conduct and the proximity of the accused to the underlying crimes are decisive factors in determining the degree of specificity with which the Prosecution must plead the material facts of its case in the indictment in order to provide the accused with adequate notice.[107] The Appeals Chamber recalls the distinction between those material facts upon which the Prosecution relies, which must be pleaded in an indictment, and the evidence by which those material facts will be proved, which need not be pleaded.[108]

29. An indictment which fails to set forth the specific material facts underpinning the charges against the accused is defective.[109] The Appeals Chamber has held: "[a]n indictment may also be defective when the material facts are pleaded without sufficient specificity, such as, unless there are special circumstances, when the times refer to broad date ranges, the places are only generally indicated, and the victims are only generally identified."[110] The prejudicial effect of a defective indictment may only be "remedied" if the Prosecution provided the accused with clear, timely, and consistent information that resolves the ambiguity or clarifies the vagueness, thereby compensating for the failure of an indictment to give proper notice of the charges.[111] In this regard, defects concerning vagueness in an indictment can be cured in certain circumstances and through post-indictment documents such as the pre-trial briefs, Rule 65*ter* witness summaries, and witness statements.[112]

30. A defective indictment which has not been cured causes prejudice to the accused.[113] The defect may only be deemed harmless through a demonstration that the accused's ability to prepare

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[105] *Đorđević* Appeal Judgement, para. 574; *Šainović et al.* Appeal Judgement, para. 213; *Martić* Appeal Judgement para. 162; *Simić* Appeal Judgement, para. 20; *Naletilić and Martinović* Appeal Judgement, para. 23; *Kvočka et al.* Appeal Judgement, para. 27; *Kupreškić et al.* Appeal Judgement, para. 88.

[106] *Đorđević* Appeal Judgement, para. 575; *Naletilić and Martinović* Appeal Judgement, para. 24; *Kvočka et al.* Appeal Judgement, para. 28; *Kupreškić et al.* Appeal Judgement, para. 89; *Karera* Appeal Judgement, para. 292; *Nahimana et al.* Appeal Judgement, para. 322.

[107] *Đorđević* Appeal Judgement, para. 575; *Naletilić and Martinović* Appeal Judgement, para. 24; *Kvočka et al.* Appeal Judgement, para. 28; *Kupreškić et al.* Appeal Judgement, para. 89.

[108] *Popović et al.* Appeal Judgement, para. 47; *Blaškić* Appeal Judgement, para. 210. See *Đorđević* Appeal Judgement, para. 331; *Šainović et al.* Appeal Judgement, para. 213; *Nzabonimana* Appeal Judgement, para. 29.

[109] *Kvočka et al.* Appeal Judgement, para. 28; *Kupreškić et al.* Appeal Judgement, para. 114; *Renzaho* Appeal Judgement, para. 55; *Karera* Appeal Judgement, para. 293; *Ntagerura et al.* Appeal Judgement, para. 22.

[110] *Kvočka et al.* Appeal Judgement, para. 31.

[111] *Martić* Appeal Judgement, para. 163; *Simić* Appeal Judgement, para. 23; *Naletilić and Martinović* Appeal Judgement, para. 26; *Kvočka et al.* Appeal Judgement, para. 33; *Kupreškić et al.* Appeal Judgement, para. 114.

[112] *Đorđević* Appeal Judgement, para. 574. See *Simić* Appeal Judgement, para. 24; *Naletilić and Martinović* Appeal Judgement, para. 27; *Kvočka et al.* Appeal Judgement, para. 33.

[113] *Popović et al.* Appeal Judgement, para. 66; *Šainović et al.* Appeal Judgement, para. 262; *Renzaho* Appeal Judgement, para. 125. See *Đorđević* Appeal Judgement, para. 576.

his or her defence was not materially impaired.[114] Where an accused has previously raised the issue of lack of notice before the Trial Chamber, the burden rests on the Prosecution to prove on appeal that the ability of the accused to prepare his defence was not materially impaired.[115] When, however, the accused raises indictment defects for the first time on appeal, the burden of proof shifts from the Prosecution to the Defence who is then required to demonstrate the existence of the said prejudice.[116]

B. Alleged Errors Concerning Reliance on Evidence Related to Franjo Tuđman (Stojić's Ground 17)

31. The Trial Chamber found that for all times relevant to the Indictment, the Ultimate Purpose of the HZ(R) H-B leaders, as well as Franjo Tuđman, was to set up a Croatian entity that reconstituted, at least in part, the borders of the Banovina of 1939, and facilitated the reunification of the Croatian people ("Ultimate Purpose").[117] It further found that a JCE was established to implement the Ultimate Purpose of the JCE from at least as early as mid-January 1993, the common criminal plan of which was "domination by the HR H-B Croats through ethnic cleansing of the Muslim population" (the "Common Criminal Plan" or "CCP").[118]

32. Stojić submits that the Trial Chamber erred in law by basing this finding almost exclusively on evidence related to Tuđman, which remained untested since he died before the proceedings in this case started.[119] Stojić further submits that his passing, as well as that of the other alleged JCE members Janko Bobetko, Gojko Šušak, and Mate Boban, rendered the trial unfair as Stojić did not have access to the critical evidence that they could have provided.[120] Stojić argues that the Trial Chamber's legal error invalidates the judgement as it "relates to" the Trial Chamber's finding on the common purpose of the alleged JCE constituting an essential component of the further

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[114] *Popović et al.* Appeal Judgement, para. 66; *Šainović et al.* Appeal Judgement, para. 262; *Renzaho* Appeal Judgement, para. 125. See *Đorđević* Appeal Judgement, para. 576.
[115] See, *e.g.*, *Nyiramasuhuko et al.* Appeal Judgement, paras 1105, 2738; *Nzabonimana* Appeal Judgement, para. 30; *Ntabakuze* Appeal Judgement, fn. 189; *Niyitegeka* Appeal Judgement, para. 200; *Kupreškić et al.* Appeal Judgement, paras 122-123.
[116] *Đorđević* Appeal Judgement, para. 573; *Šainović et al.* Appeal Judgement, paras 223-224. See *Nyiramasuhuko et al.* Appeal Judgement, para. 2738.
[117] Trial Judgement, Vol. 4, para. 24. See Trial Judgement, Vol. 4, paras 6-23.
[118] Trial Judgement, Vol. 4, paras 41, 65-66. Specifically, the Trial Judgement found that the members of the JCE "implemented an entire system for deporting the Muslim population of the HR H-B consisting of the removal and placement in detention of civilians, of murders and the destruction of property during attacks, of mistreatment and devastation caused during eviction operations, of mistreatment and poor conditions of confinement as well as the widespread, nearly systematic use of detainees on the front lines for labour or even to serve as human shields, as well as murders and mistreatment related to this labour and these shields, and lastly, the removal of detainees and their families outside of the territory of the HZ(R) H-B once they were released". Trial Judgement, Vol. 4, para. 66. See also Trial Judgement, Vol. 4, paras 44-65, 67-73.
[119] Stojić's Appeal Brief, heading before para. 133, paras 134-138. See also Stojić's Appeal Brief, para. 133.
[120] Stojić's Appeal Brief, paras 134-136, 138 & fn. 349.

finding that a JCE existed, which he alleges was decisively based on evidence related to Tuđman.[121] He requests that the Appeals Chamber acquit him on all Counts.[122]

33. The Prosecution responds that the Trial Chamber reasonably relied on evidence related to Tuđman's statements and conduct.[123] The Prosecution asserts that Stojić fails to demonstrate that he was unable to challenge such evidence, which is not by definition hearsay from an absent witness.[124] The Prosecution further submits that Stojić's conviction and the finding on the Ultimate Purpose are not decisively based on evidence related to Tuđman.[125] It asserts that Stojić fails to consider other findings and supporting evidence unrelated to Tuđman's statements and conduct, which underpin the Trial Chamber's finding on the CCP.[126]

34. In alleging that the Trial Chamber erred in law in basing its finding on the common purpose of the alleged JCE decisively on evidence related to Tuđman, Stojić neither refers to a single paragraph in the relevant section of the Trial Judgement,[127] nor identifies or addresses any factual findings within it that rely on untested evidence related to Tuđman. The Appeals Chamber therefore finds that Stojić has failed to demonstrate that the Trial Chamber's finding on the CCP of the JCE was decisively based on such evidence, and has failed to explain how the alleged error would invalidate the decision of the Trial Chamber.[128]

35. With regard to Stojić's argument that he was deprived of tendering allegedly critical evidence of Tuđman, Bobetko, Šušak, and Boban, rendering the trial unfair, the Appeals Chamber notes that the authorities that Stojić cites to show unfairness deal with distinctly different issues[129] or are otherwise not pertinent to the issues at hand. Particularly, it is not alleged in this case that the conviction is solely or to a decisive degree based on *hearsay* evidence from an absent witness (*i.e.* one of the deceased persons), rendering the proceedings unfair.[130] Nor does the

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[121] Stojić's Appeal Brief, heading before para. 133, paras 137-138.
[122] Stojić's Appeal Brief, para. 138.
[123] Prosecution's Response Brief (Stojić), para. 102.
[124] Prosecution's Response Brief (Stojić), para. 102.
[125] Prosecution's Response Brief (Stojić), paras 103-104.
[126] Prosecution's Response Brief (Stojić), paras 103-104.
[127] Trial Judgement, Vol. 4, paras 25-73.
[128] In alleging that the Trial Chamber erroneously based its finding on the Ultimate Purpose almost exclusively on evidence about Tuđman, Stojić misrepresents factual findings and the evidence and ignores other relevant factual findings when he incorrectly alleges that only two findings in the Ultimate Purpose chapter are not "about Tuđman". Stojić's Appeal Brief, paras 134, 137, referring to Trial Judgement, Vol. 4, paras 18-19. *Cf., e.g.,* Trial Judgement, Vol. 4, paras 13-16, 18, 20-21 at fns 28-30, 36-40, 48-49, 58-59, 66-72. In any event, Stojić only alleges that the Trial Chamber based its finding on the Ultimate Purpose almost exclusively on evidence *about* Tuđman, but not that this evidence consisted of hearsay evidence. See *infra*, fn. 130. The Appeals Chamber therefore dismisses this argument.
[129] Namely with disclosure. Stojić's Appeal Brief, para. 136 & fn. 351, refering to *A. and others* Decision, para. 220.
[130] Stojić's Appeal Brief, para. 136 & fn. 350, referring to *Prosecutor v. Milan Martić*, Case No. IT-95-11-AR73.2, Decision on Appeal against the Trial Chamber's Decision on the Evidence of Witness Milan Babić, 14 September 2006, para. 20, *Al-Khawaja and Tahery* Decision, paras 117, 147. Stojić's submissions rather challenge only that the

Appeals Chamber find that the case at hand can be likened to two cases holding that fair trial may be impacted because witnesses central or crucial to the Defence fail to testify due to State interference.[131] The Appeals Chamber notes in this regard that no fair trial violation was found in either of these cases.[132] Moreover, while general evidentiary rules limit the use of hearsay emanating from absent persons,[133] there is no categorical bar to eliciting evidence *on* deceased persons. The Appeals Chamber observes that a wealth of evidence, both hearsay and non-hearsay, is examined in two voluminous chapters of the Trial Judgement on the Ultimate Purpose and the CCP, including evidence on the deceased persons.[134] In light of the foregoing, the Appeals Chamber finds that the mere possibility that the deceased persons could have tendered evidence, had they remained alive and been charged with the same crimes as JCE members,[135] cannot render the trial unfair. In this regard, it notes in particular that the nature of the evidence that could potentially have been tendered by the deceased persons is uncertain. His allegation that the trial was unfair is therefore dismissed.

36. Thus, the Appeals Chamber dismisses Stojić's ground of appeal 17.

C. Alleged Errors Concerning Prlić's Right to Have Adequate Time and Facilities for the Defence (Prlić's Ground 7)

37. Prlić contends that the Trial Chamber erred in law and fact by systematically denying him adequate time and facilities to question witnesses, thereby invalidating the Trial Judgement and occasioning a miscarriage of justice.[136] Specifically, referring to the *Prlić et al.* Trial Decision on Cross-Examination,[137] Prlić submits that the Trial Chamber violated his right to confront witnesses and present a defence, limiting the time for cross-examination by adopting a "mathematical *one-sixth-solution*", in which, as a rule, each Defence Counsel would have one-sixth of the time allocated to the Prosecution for direct examination.[138] Prlić argues that the Trial Chamber's

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Trial Chamber relied on evidence "*relating to*" or "*about*" Tudman and other deceased persons. Stojić's Appeal Brief, heading before para. 133, paras 134, 137-138 (emphases added). The Appeals Chamber notes that Stojić does not allege that this evidence does not include direct evidence that he had the opportunity to challenge.

[131] Stojić's Appeal Brief, para. 136 & fn. 352, referring to *Tadić* Appeal Judgement, para. 55, *Simba* Appeal Judgement, para. 41.

[132] *Tadić* Appeal Judgement, para. 55; *Simba* Appeal Judgement, paras 40-61.

[133] See, *e.g.*, Rule 92 *bis* and Rule 92 *quater* of the Rules.

[134] Trial Judgement, Vol. 4, paras 6-24 (Ultimate Purpose), 41-66 (CCP). The Appeals Chamber further finds that the case at hand is therefore distinct from the other cases that Stojić cites where a violation of fair trial due to important unavailable evidence was established in the particular circumstances of those cases. Stojić's Appeal Brief, para. 136 & fn. 353, referring to *Papageorgiou* Decision, paras 35-40, *Genie-Lacayo* Judgement, para. 76.

[135] *Cf.* Trial Judgement, Vol. 4, para. 1231.

[136] Prlić's Appeal Brief, paras 213, 216.

[137] Prosecutor v. Jadranko Prlić, Bruno Stojić, Slobodan Praljak, Milivoj Petković, Valentin Ćorić, and Berislav Pušić, Case No. IT-04-74-T, T. 1475-1476, 1485-1486 (8 May 2006) ("Prlić et al. Trial Decision on Cross-Examination").

[138] Prlić's Appeal Brief, paras 208-209, 211, 213. See T. 1475-1476, 1485-1486 (8 May 2006). Prlić also argues that the Trial Chamber: (1) erred in law by treating him as a member of a group, not an individual as required by Rule 82(A) of the Rules; and (2) failed to provide sufficient reasons why it did not adopt a "less restrictive approach" to time

subsequent attempt to remedy the lack of time by allocating additional time upon the Defence's request was not appropriate, since a thorough and proper cross-examination must be prepared in advance in full knowledge of the available time.[139] Prlić contends that the Trial Chamber committed factual errors by relying on the testimony of witnesses who were not properly cross-examined.[140] Prlić requests that the Appeals Chamber acquit him on all counts of the Indictment.[141]

38. The Prosecution responds that Prlić fails to demonstrate any error in the *Prlić et al.* Trial Decision on Cross-Examination.[142] The Prosecution argues that: (1) Prlić reiterates trial arguments which were already considered and dismissed by the Appeals Chamber; and (2) Prlić's challenge is tantamount to a request for reconsideration without showing any clear error of reasoning or that "particular circumstances" would justify reconsideration in order to avoid an injustice.[143] The Prosecution submits that, in any event, the Trial Chamber applied the one-sixth approach flexibly and repeatedly granted him additional cross-examination time.[144] According to the Prosecution, Prlić disregards instances where he did not use part of his allocated time as well as an occasion where he rejected an offer of additional time.[145] The Prosecution further submits that Prlić used significantly more than one-sixth of the time used by the Prosecution for its examination-in-chief and that, in any event, he fails to substantiate the prejudice allegedly caused.[146] The Prosecution requests that Prlić's ground of appeal 7 be dismissed.[147]

39. At the outset, the Appeals Chamber recalls that in the *Prlić et al.* Appeal Decision on Cross-Examination, it dismissed the joint Defence interlocutory appeal against the *Prlić et al.* Trial Decision on Cross-Examination.[148] In its decision, the Appeals Chamber concluded that the Trial Chamber did not "impose rigid time limits on the cross-examination" and that it adopted a "sufficiently flexible approach", preserving the right of cross-examination by each of the Defence counsel and complying with the right to cross-examine witnesses provided under Article 21(4) of

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management, considering that he had to defend against a different case than the other accused. Prlić's Appeal Brief, paras 212, 214. Prlić further submits that the Trial Chamber erred in law by violating his right to equality of arms, putting him at a disadvantage vis-à-vis the Prosecution. Prlić's Appeal Brief, para. 215.

[139] Prlić's Appeal Brief, paras 210, 213.

[140] Prlić's Appeal Brief, paras 213, 216.

[141] Prlić's Appeal Brief, para. 217.

[142] Prosecution's Response Brief (Prlić), para. 124.

[143] Prosecution's Response Brief (Prlić), para. 125, referring to *Prosecutor v. Jadranko Prlić, Bruno Stojić, Slobodan Praljak, Milivoj Petković, Valentin Ćorić, and Berislav Pušić*, Case No. IT-04-74-AR73.2, Decision on Joint Defence Interlocutory Appeal against the Trial Chamber's Oral Decision of 8 May 2006 Relating to Cross-Examination by Defence and on Association of Defence Counsel's Request for Leave to File an Amicus Curiae Brief, 4 July 2006 ("*Prlić et al.* Appeal Decision on Cross-Examination"), pp. 2, 4.

[144] Prosecution's Response Brief (Prlić), para. 126.

[145] Prosecution's Response Brief (Prlić), para. 126. See Prosecution's Response Brief (Prlić), para. 127.

[146] Prosecution's Response Brief (Prlić), paras 126-128.

[147] Prosecution's Response Brief (Prlić), para. 129.

[148] *Prlić et al.* Appeal Decision on Cross-Examination, pp. 1, 5.

the Statute.[149] In this light, the Appeals Chamber recalls that it may reconsider a previous interlocutory decision under its inherent discretionary power to do so if a clear error of reasoning has been demonstrated or if it is necessary to do so to prevent an injustice.[150] To the extent that Prlić challenges the approach upheld on appeal, the Appeals Chamber considers that he provides no reason for reconsideration of that appeal decision. The Appeals Chamber therefore dismisses all arguments relating to the approach set out in the *Prlić et al.* Trial Decision on Cross-Examination.

40. Regarding the Trial Chamber's alleged subsequent attempt to remedy the lack of time by allocating additional time upon the Defence's request, the Appeals Chamber recalls that following the *Prlić et al.* Appeal Decision on Cross-Examination, the Trial Chamber issued a decision implementing the *Prlić et al.* Trial Decision on Cross-Examination.[151] Underscoring the flexibility of its approach, the Trial Chamber allowed for the possibility of allocating additional time for cross-examination upon the Defence's request "if one or several accused are directly concerned by the testimony of a witness".[152] To this end, the Trial Chamber ordered the Prosecution to submit to the Trial Chamber and to the Defence a schedule of witnesses it intended to call for the month in question and announced that it: (1) would estimate the time to be allocated for cross-examination upon receipt of the schedule; and (2) would examine the preliminary witness statements and summaries "in order to establish to what extent one or several accused are directly concerned by the hearing of witnesses".[153] The Appeals Chamber recalls that a trial chamber enjoys considerable discretion in setting the parameters of cross-examination and in outlining the exercise of this right, as well as in allocating time to the parties for the presentation of their cases.[154] In these circumstances, there is no indication that the Trial Chamber did not act within the reasonable exercise of its discretion when adopting measures to allocate additional time for cross-examination upon the Defence's request. The Appeals Chamber therefore finds that Prlić has failed to show that the Trial Chamber's subsequent attempt to remedy the lack of time by allocating additional time upon the Defence's request was inappropriate. Finally, since Prlić has not shown any error relating

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[149] *Prlić et al.* Appeal Decision on Cross-Examination, p. 4.
[150] See, *e.g.*, *Nyiramasuhuko et al.* Appeal Judgement, paras 56, 127; *Prosecutor v. Jadranko Prlić et al.*, Case No. IT-04-74-AR73.16, Decision on Jadranko Prlić's Interlocutory Appeal Against the Decision on Prlić Defence Motion for Reconsideration of the Decision on Admission of Documentary Evidence, 3 November 2009 ("*Prlić et al.* Appeal Decision on Motion for Reconsideration"), para. 6; *Prosecutor v. Vojislav Šešelj*, Case No. IT-03-67-AR72.1, Decision on Motion for Reconsideration of the 'Decision on the Interlocutory Appeal Concerning Jurisdiction' dated 31 August 2004, 15 June 2006 ("*Šešelj* Appeal Decision on Motion for Reconsideration"), para. 9.
[151] *Prosecutor v. Jadranko Prlić, Bruno Stojić, Slobodan Praljak, Milivoj Petković, Valentin Ćorić, and Berislav Pušić*, Case No. IT-04-74-T, Decision on the Implementation of the Decision of 8 May 2006 on Time Allocated for Cross-Examination by Defence, 18 July 2006 (French original 12 July 2006) ("*Prlić et al.* Trial Decision on Implementation").
[152] *Prlić et al.* Trial Decision on Implementation, p. 2.
[153] *Prlić et al.* Trial Decision on Implementation, pp. 2-3.
[154] *Šainović et al.* Appeal Judgement, paras 123, 171.

to cross-examination, his argument concerning factual errors also fails. Accordingly, the Appeals Chamber dismisses Prlić's ground of appeal 7.

D. Alleged Errors Concerning the JCE Theory (Stojić's Ground 13, Petković's Sub-ground 3.1)

41. The Indictment alleges that a joint criminal enterprise existed "[f]rom on or before 18 November 1991 to about April 1994" to "politically and militarily subjugate, permanently remove and ethnically cleanse Bosnian Muslims and other non-Croats who lived in areas on the territory of the Republic of Bosnia and Herzegovina".[155] In addressing the forms of JCE liability applicable, the Indictment specifies that the Appellants are responsible under all three forms.[156]

42. Regarding the individual criminal responsibility of the Appellants, the Indictment alleges that each Appellant committed the crimes charged in the Indictment.[157] Specifically in relation to the first form of joint criminal enterprise liability ("JCE I"), paragraph 221 of the Indictment states that:

> The crimes charged in this indictment were part of the joint criminal enterprise described in Paragraphs 2 to 17 (including 17.1 to 17.6) and 39 and were committed in the course of the enterprise [...]. Pursuant to Article 7(1), each of the accused [Prlić, Stojić, Praljak, Petković, Ćorić, and Pušić] is criminally responsible for the crimes which were committed as part of the joint criminal enterprise, in the sense that each of the accused committed these crimes as a member of or participant in such enterprise.[158]

43. The Indictment also alleges the second form of joint criminal enterprise liability ("JCE II") for each Appellant's: (1) participation in a system of ill-treatment involving "a network of Herceg-Bosna/HVO prisons, concentration camps and other detention facilities which were systematically used in arresting, detaining and imprisoning thousands of Bosnian Muslims [...] which amounted to or involved the commission of crimes charged in this indictment";[159] and (2) participation in a system of ill-treatment which "deported Bosnian Muslims to other countries or transferred them to parts of Bosnia and Herzegovina not claimed or controlled by Herceg-Bosna or the HVO [...] which amounted to or involved the commission of crimes charged in this indictment".[160]

44. With regard to the pleading of the JCE III form of responsibility, paragraph 227 of the Indictment alleges that "[i]n addition or in the alternative, as to any crime charged in this indictment which was not within the objective or an intended part of the joint criminal enterprise, such crime

[155] Indictment, para. 15.
[156] Indictment, paras 221, 224-225, 227. See Indictment, para. 222.
[157] Indictment, para. 218.
[158] Indictment, para. 221. See Indictment, para. 222 (setting out the *mens rea*).
[159] Indictment, para. 224.
[160] Indictment, para. 225.

was the natural and foreseeable consequence of the joint criminal enterprise [...] and each accused was aware of the risk of such crime or consequence and, despite this awareness, willingly took that risk [...] and is therefore responsible for the crime charged".[161]

45. In the Prosecution's Final Brief, the Prosecution qualified Counts 1, 6-9, and 19-20 as the "core" JCE crimes.[162] Similarly, the Prosecution qualified the "expanded" JCE crimes as: (1) Counts 10-18 as of 1 July 1993;[163] (2) Counts 22-23 as of 15 June 1993;[164] and (3) Counts 24-26 as of 1 June 1993.[165] In respect of Counts 2-5 and 21, these crimes were qualified as JCE III crimes in the Prosecution's Final Brief.[166] Moreover, the Prosecution alleged that, as of 1 July 1993, Counts 10-18 for incidents identified in paragraph 224 of the Indictment as well as Counts 6-9 for incidents identified in paragraph 225 of the Indictment were JCE II crimes.[167]

46. The Trial Chamber, after noting that the Prosecution alleged the existence of several JCEs, considered that "the evidence demonstrate[d] that there was only one, single common criminal purpose – domination by the HR H-B Croats through ethnic cleansing of the Muslim population" from mid-January 1993 until April 1994.[168] It found that a JCE was established to accomplish the political purpose and was carried out in stages.[169]

47. The Trial Chamber, after summarising its factual findings on the events of the JCE based on the evidence, also determined which crimes fell "within the framework of the common plan of the Form 1 JCE"; and found that these crimes included all counts with the exception of the following JCE III crimes: (1) Counts 2 and 3 (murder and wilful killing) committed during evictions or closely linked to evictions and as a result of mistreatment and poor conditions of confinement during detentions; (2) Counts 4 and 5 (rape and inhuman treatment through sexual assault); (3) Count 21 (destruction or wilful damage to institutions dedicated to religion or education) committed before June 1993; and (4) Counts 22 and 23 (appropriation of property and plunder).[170]

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[161] Indictment, para. 227.
[162] Prosecution's Final Brief, paras 7-18. The Prosecution also alleged that if extensive destruction as charged in Counts 19-20 were found not to be "core" crimes, these crimes should be considered as JCE III crimes, however the Prosecution did not make a similar statement regarding Counts 1, and 6-9. Prosecution's Final Brief, para. 18. See Prosecution's Final Brief, paras 7-15.
[163] Prosecution's Final Brief, paras 19-46. The Prosecution also alleged that Counts 10-18 committed prior to 1 July 1993 were attributable to the Appellants as JCE III crimes, and for the crimes committed as of 1 July 1993, JCE III was alleged in the alternative. Prosecution's Final Brief, paras 26-27, 33-34, 45-46.
[164] Prosecution's Final Brief, paras 47-53. The Prosecution also alleged that Counts 22 and 23 committed prior to 15 June 1993 were attributable to the Appellants as JCE III crimes, and for the crimes committed as of 15 June 1993, JCE III was alleged in the alternative. Prosecution's Final Brief, paras 52-53.
[165] Prosecution's Final Brief, paras 54-56.
[166] Prosecution's Final Brief, paras 57-62, 516, 636, 850, 970, 1179, 1276.
[167] Prosecution's Final Brief, paras 63-70. The Prosecution, however, noted that these incidents also formed part of the "larger Herceg-Bosna JCE". Prosecution's Final Brief, paras 65, 69, fn. 111.
[168] Trial Judgement, Vol. 4, paras 41, 44, 65. See Trial Judgement, Vol. 4, paras 26-38, 66, 68.
[169] Trial Judgement, Vol. 4, paras 44-45. See Trial Judgement, Vol. 4, paras 46-66.
[170] Trial Judgement, Vol. 4, paras 68, 70-73, 342, 433, 1213.

In addition, the Trial Chamber found that Counts 2 and 3 committed during attacks and by virtue of forced labour as well as Count 21 committed as of June 1993 were JCE I crimes.[171] The Trial Chamber also considered that the JCE "expanded" to include Counts 24 and 25 (unlawful attack on civilians and unlawful infliction of terror on civilians) as of June 1993.[172]

48. Stojić and Petković both present grounds of appeal alleging that the Trial Chamber erred by modifying the JCE theory pleaded by the Prosecution.

1. Arguments of the Parties

49. Stojić contends that the Trial Chamber erred in law by entering convictions based on a JCE theory which was not "pleaded by the Prosecution in the Indictment and in its Final Trial Brief", thereby impermissibly altering the charges against him.[173] Stojić submits that the Trial Chamber's characterisation of the JCE is fundamentally different from that advanced by the Prosecution, which alleged that there were at least three different JCEs.[174] He argues that as the Trial Chamber applied a different theory – the existence of a single JCE by placing all the alleged crimes under JCE I or JCE III liability – clear distinctions between the Trial Judgement and the Indictment resulted.[175] In this regard, Stojić submits that the Trial Chamber: (1) placed Counts 2, 3, and 21 within JCE I while the Prosecution alleged that Counts 2-5 and 21 fell under JCE III; and (2) found that none of the crimes fell under a JCE II form of liability.[176]

50. Stojić further contends that the Trial Chamber violated his right to a fair trial as he was not put on notice of its re-characterisation of the JCE. Stojić argues that he suffered prejudice as had he been aware of this re-characterisation, his arguments, strategy, and evidence presented would have been different.[177] Stojić requests that the Trial Chamber's finding that a JCE existed be overturned.[178]

51. Petković submits that the Trial Chamber rejected the Prosecution's theory of multiple JCEs and changed the starting date of the JCE to mid-January 1993 resulting in significant differences

[171] Trial Judgement, Vol. 4, paras 66, 68, 342, 433, 1213.
[172] Trial Judgement, Vol. 4, paras 59, 68.
[173] Stojić's Appeal Brief, heading before para. 109, paras 114, 116.
[174] Stojić's Appeal Brief, paras 112, 114. See Appeal Hearing, AT. 253-254 (21 Mar 2017). Stojić contends that the Prosecution alleged a "Herceg-Bosna criminal enterprise which was a JCE Form I and which expanded to include additional crimes around June 1993, a JCE Form II (prisoners) which was created on 1 July 1993 and a deportation and forcible transfer JCE which came into being on 1 July 1993". Stojić's Appeal Brief, para. 112.
[175] Stojić's Appeal Brief, paras 112-114.
[176] Stojić's Appeal Brief, para. 112 & fn. 299.
[177] Stojić's Appeal Brief, para. 115.
[178] Stojić's Appeal Brief, para. 116.

between the Prosecution's case and the "Chamber's case".[179] According to Petković, these differences relate to, *inter alia*, the alleged common criminal purpose, the temporal scope, the alleged *mens rea*, the number and categories of core crimes, and the classification of certain crimes as falling under JCE I or JCE III.[180] Petković argues that he was prejudiced as he was denied a fair opportunity to prepare for, and confront at trial, the theory of a single JCE.[181] He further contends that the Trial Chamber had no power to replace the Prosecution's "failed case" and in effect transformed its adjudicative function into a prosecutorial one.[182] Petković contends that the Trial Chamber's reformulation of the Prosecution's case is impermissible and violates: (1) his right to adequate notice of charges; (2) the presumption of innocence; and (3) his right to an impartial tribunal.[183]

52. Petković further submits that the Trial Chamber "pronounced its verdict contrary to the case as presented by the OTP in their final brief". While agreeing with the Prosecution "that [this] does not impact on the right [of the] accused to a fair trial in the sense that they were informed in a timely fashion of the counts of their indictment because the indictment did cover all the possible time modalities and types of liability",[184] Petković argues that the Trial Chamber erred as it went "beyond the framework of the [I]ndictment".[185] He requests that the Appeals Chamber quash the Trial Chamber's JCE findings and acquit him of "the case pleaded at trial".[186]

53. In response to contentions from both Stojić and Petković, the Prosecution argues that the Indictment provided them with sufficient notice of the relevant crimes,[187] and that the Trial Chamber did not depart from the Indictment by finding the existence of a single common criminal purpose.[188] The Prosecution argues that at no point relevant to Stojić's notice did it narrow the scope of its case from what was pleaded in the Indictment.[189] It also submits that its opening statement and Rule 98 *bis* submissions were consistent with the Indictment.[190] The Prosecution

[179] Petković's Appeal Brief, paras 17-18. See Petković's Appeal Brief, paras 15-16; Appeal Hearing, AT. 487-489, 500-501 (23 Mar 2017).
[180] Petković's Appeal Brief, paras 18-19. See Petković's Reply Brief, paras 5-6; Appeal Hearing, AT. 489 (23 Mar 2017).
[181] Petković's Appeal Brief, para. 20. Petković also argues that he was denied the opportunity to properly litigate the inadequate pleading of the JCE in the Indictment as his request for certification to appeal a decision by the Trial Chamber was denied. Petković's Reply Brief, para. 5(iii). As Petković raises this point for the first time in his reply brief, the Appeals Chamber will not consider it any further. See Practice Direction on Formal Requirements, para. 6.
[182] Petković's Appeal Brief, para. 21.
[183] Petković's Appeal Brief, para. 22.
[184] Appeal Hearing, AT. 490 (23 Mar 2017).
[185] Appeal Hearing, AT. 490 (23 Mar 2017).
[186] Petković's Appeal Brief, para. 23.
[187] Prosecution's Response Brief (Stojić), para. 86; Prosecution's Response Brief (Petković), para. 19. See Appeal Hearing, AT. 550 (23 Mar 2017).
[188] Prosecution's Response Brief (Stojić), para. 87, referring to Indictment, para. 15, Trial Judgement, Vol. 4, paras 24, 41, 44, 65; Prosecution's Response Brief (Petković), para. 18.
[189] Prosecution's Response Brief (Stojić), para. 88.
[190] Prosecution's Response Brief (Petković), para. 19.

submits that it is immaterial that the Trial Chamber did not adopt the allegation that there were two JCEs under JCE II liability as the Indictment alleged responsibility for all charged crimes under JCE I.[191]

54. The Prosecution also contends that: (1) its final trial brief contains submissions on the evidence at the end of the trial and is not relevant for the preparation of an accused's case; and (2) it is irrelevant that it "took a narrower view of the core JCE I crimes" in its final trial brief than what the Trial Chamber found.[192] It also submits that it is the Indictment which sets the parameters of the case and not the Prosecution's Final Brief and that the Trial Chamber did not reformulate the charges as its findings were within the scope of the Indictment.[193] The Prosecution further responds that both Appellants fail to show any prejudice resulting from any possible lack of notice as they categorically rejected any criminal enterprise in their closing submissions at trial.[194]

2. Analysis

55. The Appeals Chamber recalls that "[i]n order for an accused charged with joint criminal enterprise to fully understand which acts he is allegedly responsible for, the indictment should clearly indicate which form of joint criminal enterprise is being alleged".[195] The Appeals Chamber considers that it is patent from the relevant paragraphs of the Indictment that liability under the first form of JCE was pleaded for all the crimes charged.[196] Further, the Appeals Chamber considers that the operative pleading of the crimes under JCE III is that they were "in the alternative" to falling under JCE I. The Appeals Chamber recalls that while the three forms of JCE are mutually incompatible to the extent that a defendant may not be convicted for the same criminal incident under multiple forms, an indictment may charge a defendant cumulatively with multiple forms of JCE.[197] The Appeals Chamber notes that the Prosecution may "alternatively rely on one or more legal theories, on condition that it is done clearly, early enough and, in any event, allowing enough time to enable the accused to know what exactly he is accused of and to enable him to prepare his defence accordingly".[198] In this case, the Appellants were clearly on notice that a common criminal purpose was expressly pleaded in the Indictment and that they were alleged to be responsible for crimes committed pursuant to this criminal plan under all three forms of JCE liability based on

[191] Prosecution's Response Brief (Stojić), para. 87.
[192] Prosecution's Response Brief (Stojić), para. 88; Prosecution's Response Brief (Petković), para. 21.
[193] Prosecution's Response Brief (Petković), paras 20-21.
[194] Prosecution's Response Brief (Stojić), para. 89; Prosecution's Response Brief (Petković), para. 22.
[195] *Ntagerura et al.* Appeal Judgement, para. 24. See *Stakić* Appeal Judgement, para. 66; *Kvočka et al.* Appeal Judgement, para. 28; *Krnojelac* Appeal Judgement, paras 115-117; *Nizeyimana* Appeal Judgement, para. 315.
[196] Indictment, para. 221. See Indictment, paras 15, 17, 39, 222. See also *supra*, paras 41-44.
[197] *Simba* Appeal Judgement, para. 77. See also *Čelebići* Appeal Judgement, para. 400.
[198] *Krnojelac* Appeal Judgement, para. 115. See *Krnojelac* Appeal Judgement, para. 117.

alternative theories.[199] The Appeals Chamber finds that the Trial Chamber did not exceed the scope of the Indictment in concluding that a legal theory expressly pleaded by the Prosecution in the Indictment – a common criminal plan resulting in JCE I liability, and alternatively JCE III liability for crimes ultimately found not to have fallen within the CCP – was established on the evidence.

56. Further, the Appeals Chamber considers Petković's argument concerning the differences in the JCEs pleaded in the Indictment and the one the Trial Chamber found to have existed to be unpersuasive. In the Appeals Chamber's view, the findings of the Trial Chamber concerning the CCP, the time-frame of the JCE, the *mens rea* of the participants, and the number and categories of crimes are within allegations pleaded in the Indictment.[200] Notably, for example, paragraphs 15, 17, 39, 221, and 222 of the Indictment allege that Counts 2-3 and 21 are pleaded as JCE I crimes, and alternatively as JCE III crimes.[201] The Appeals Chamber thus finds that Stojić and Petković have not shown that the Trial Chamber exceeded the scope of the Indictment regarding the theory of the JCE and the crimes falling within the common criminal purpose as pleaded in the Indictment.

57. As noted above,[202] the Prosecution qualified certain crimes in various circumstances as JCE I (core or expanded) crimes, JCE II crimes, or JCE III crimes in its final trial brief.[203]

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[199] The Appeals Chamber also notes that the Pre-Trial Chamber dismissed Prlić's challenge that the Indictment failed to specify which form of JCE liability the Prosecution was charging under Article 7(1) of the Statute. In doing so, it relied in particular on paragraphs 15, 224-225, and 227 of the Indictment, and held that they sufficiently informed the Appellants of "the nature, time frame, geographical frame, criminal objective, *form of the JCE and whether the crimes not included in the objective of the JCE could be the natural and foreseeable consequence of the alleged criminal enterprise*". *Prosecutor v. Jadranko Prlić et al.*, Case No. IT-04-74-PT, Decision on Defence Preliminary Motions Alleging Defects in the Form of the Indictment, 22 July 2005, paras 18-21 (emphasis added). See *Prosecutor v. Jadranko Prlić et al.*, Case No. IT-04-74-PT, Preliminary Motion to Dismiss the Defective Indictment Against Jadranko Prlić Pursuant to Rule 72(A)(ii), 15 December 2004, para. 7; *Prosecutor v. Jadranko Prlić et al.*, Case No. IT-04-74-PT, Jadranko Prlić's Reply to Prosecutor's Response to Defence Motions on the Form of the Indictment, 4 February 2005, para. 5.

[200] The Indictment states that from on or before 18 November 1991 to about April 1994 various persons established and participated in the JCE, while the Trial Chamber found that the JCE was established "at least as early as mid-January 1993". Indictment, para. 15; Trial Judgement, Vol. 4, para. 44. For the CCP, see Indictment, paras 15-16, 23-28; Trial Judgement, Vol. 4, paras 41-44, 65. Regarding the charges and categories of crimes, see Indictment, paras 17, 39, 221, 229; Trial Judgement, Vol. 4, paras 66, 68. Concerning the *mens rea* requirements, see Indictment, para. 222; Trial Judgement, Vol. 4, paras 43, 67.

[201] The Indictment pleads that each accused participated in the JCE in one or more ways including by organising, commanding, directing, ordering, facilitating, participating in, or operating the HVO military and police forces through which the objectives of the JCE were pursued and implemented and by which various crimes charged such as "persecutions, killing [...] and destruction of property, were committed". Indictment, para. 17(b). See Indictment, paras 17.1(n)-(o), 17.1(u) (Prlić), 17.2(j)-(k), 17.2(m) (Stojić), 17.3(h), 17.3(k) (Praljak), 17.4 (h)-(j) (Petković), 17.5(f), 17.5(i) (Ćorić), 17.6(c) (Pušić). See also Prosecution's Pre-Trial Brief, para. 17. At paragraph 39 of the Indictment, it is pleaded that all the Accused engaged in the use of force, intimidation, terror, forced labour, and destruction of property which specifically included killings during mass arrests, evictions, and forced labour as well as destruction of mosques. Indictment, para. 39(b), (c), (f). See Prosecution's Pre-Trial Brief, paras 39(b)-(c), 39(f). Lastly, the Indictment alleges that each Accused was responsible for Counts 2, 3, and 21 "punishable under Statute Articles 5(a), 7(1) and 7(3)" followed by a list of each paragraph in the Indictment which outlined the factual narrative of each incident of killing and destruction of mosques, including paragraph 39. Indictment, para. 229.

[202] See *supra*, para. 45.

[203] In its closing arguments, the Prosecution did not address the categorisation of Counts 2-3, 10-18, and 21 as JCE I or JCE III crimes. See, generally, Prosecution Closing Arguments, T. 51765-51873 (7 Feb 2011), 51874-51975 (8 Feb 2011), 51976-52080 (9 Feb 2011), 52081-52171 (10 Feb 2011), 52819-52898 (1 Mar 2011).

Specifically, the Prosecution qualified Counts 2, 3, and 21 as JCE III crimes, and qualified Counts 10-18 as being part of the CCP only as of 1 July 1993 in its final trial brief. The Appeals Chamber will now address whether the Trial Chamber impermissibly transformed the Prosecution's case as alleged in the Prosecution's Final Brief.

58. The core argument presented by Petković is that the Trial Chamber impermissibly changed the Prosecution's theory of the case as articulated *only* in the Prosecution's Final Brief. In this regard, the Appeals Chamber notes that Petković does not refer to any post-Indictment disclosure or the presentation of evidence.[204] Moreover, the Appeals Chamber recalls that "Prosecution final trial briefs are only filed at the end of a trial, after the presentation of all the evidence, and are therefore not relevant for the preparation of an accused's case".[205] In this regard, Petković and Stojić had sufficient notice that the case against them included charges of Counts 2-3, 10-18, and 21 under the JCE I form of liability[206] from the Indictment, Prosecution's Pre-Trial Brief and throughout the presentation of the evidence.[207] Thus, as conceded by Petković,[208] the Prosecution's categorisation of these counts as falling only under JCE III liability (Counts 2, 3, and 21) and under JCE III liability prior to 1 July 1993 (Counts 10-18) in its final trial brief does not affect this notice.[209] Therefore, Petković's and Stojić's argument that they did not have adequate notice is dismissed.[210]

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[204] See Petković's Appeal Brief, paras 15-23; Petković's Reply Brief, paras 5-6.

[205] *Simba* Appeal Judgement, para. 73. See *Simba* Appeal Judgement, para. 69. The ICTR Appeals Chamber concluded in the *Mugenzi and Mugiraneza* case that "closing submissions cannot constitute proper notice. Accordingly, the Appeals Chamber is not persuaded that any minor ambiguity at that stage demonstrates that the notice provided by the Prosecution Pre-Trial Brief and opening statement lacked clarity or consistency". *Mugenzi and Mugiraneza* Appeal Judgement, para. 124. See *Ntabakuze* Appeal Judgement, para. 80; *Ntawukulilyayo* Appeal Judgement, para. 202.

[206] The Appeals Chamber will focus only on Counts 2, 3, 10-18, and 21 because these were the counts which the Trial Chamber found fell within the CCP from January 1993 contrary to the Prosecution's submission in its final brief that, in the period between January and July 1993, they were in fact JCE III crimes. In other words, the Appeals Chamber will not consider Counts 22 and 23 for which the Trial Chamber followed the Prosecution's submission in the alternative when it found that crimes encompassed by Counts 22 and 23 were JCE III crimes throughout the relevant period.

[207] See *supra*, para. 57. A reading of Petković's final trial brief indicates that he understood the case against him to be that all crimes charged fell under JCE I liability, with JCE III and the other modes of liability charged in the alternative. A reading of Stojić's final trial brief also leads to a similar conclusion. Petković's Final Brief, paras 513-557, 568-570, 664-665; Stojić's Final Brief, paras 548-556. See Praljak's Final Brief, paras 5, 606-610. See also Ćorić's Final Brief, paras 136-139, 772; Pušić's Final Brief, paras 27-36, 54-63.

[208] Appeal Hearing, AT. 490 (23 Mar 2017). See *supra*, para. 52.

[209] Similarly, the closing arguments on this issue would not affect the notice given to Petković and Stojić that the case against them included charges of Counts 2-3, 10-18, and 21 under JCE I. See Petković Closing Arguments, T. 52526-52527 (21 Feb 2011) (Petković noted in his closing arguments that the "Prosecution, in its final trial brief, stated that the crimes of murders and wilful killings were not planned by the HVO or in the context of JCE, that these crimes were not part of the criminal common plan"). Other than Petković, the Accused did not address the categorisation of Counts 2 and 3 as JCE I or JCE III crimes in the closing arguments. Further, none of the Accused addressed the categorisation of Counts 10-18, 21. At times, the Appellants briefly mentioned killings or raised other issues where the Prosecution departed from the Indictment in its final trial brief, but did not mention the mode of liability applicable. See Stojić Closing Arguments, T. 52399 (16 Feb 2011); Praljak Closing Arguments, T. 52508 (17 Feb 2011); Ćorić Closing Arguments, T. 52636 (22 Feb 2011); Pušić Closing Arguments, T. 52789-52790 (24 Feb 2011).

[210] See *supra*, paras 50-51.

59. Moreover, the Appeals Chamber is of the view that the primary purpose of requiring the parties to file a final trial brief is to benefit a trial chamber as such briefs will set out the parties' factual and legal arguments.[211] Notably, the ICTR Appeals Chamber in *Semanza* stated that the purpose of a final trial brief is for each party "to express its own position regarding the charges set out in the indictment and the evidence led in the case".[212] In this context, and having reviewed the Prosecution's relevant submissions in its final brief, the Appeals Chamber, Judge Pocar dissenting, observes that in qualifying the crimes at issue as JCE III crimes rather than JCE I crimes, the Prosecution is merely putting forward what it believes can be established on the evidence beyond a reasonable doubt.[213]

60. As the Prosecution did not expressly and formally withdraw JCE I as a form of liability that could possibly be applied to all counts,[214] the Appeals Chamber, Judge Pocar dissenting, considers that the Prosecution's Final Brief cannot be reasonably interpreted to mean that the Prosecution abandoned JCE I as a possible mode of liability for some crimes by qualifying those crimes as only

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[211] See *International Criminal Procedure: Principles and Rules*, Göran Sluiter, Håkan Friman, Suzannah Linton, Sergey Vasiliev, Salvatore Zappalà, OUP Oxford, 21 March 2013, pp. 675, 679. See also *International Criminal Trials: A Normative Theory*, Vasiliev, S. (2014), p. 830.

[212] *Semanza* Appeal Judgement, para. 36. In the *Setako* case, the ICTR Trial Chamber first stated that the Prosecution's final trial brief contained a comprehensive list of the events on which it was seeking a conviction for a particular count. It then considered based on a number of factors, including the comprehensive list, that "although the Prosecution expressly withdrew only paragraph 62 of the Indictment", it left the strong impression that it is equally not pursuing two other events which were not referred to in its final trial brief as part of its case. It therefore decided not to address them "in detail". However, it went on to state that "it suffices to note" that the evidence presented in support of the relevant events is uncorroborated, explaining its concerns regarding the reliability of the evidence and declined to accept it in the absence of corroboration. See *Setako* Trial Judgement, paras 71-72.

[213] See, *e.g.*, Prosecution's Final Brief, para. 516 ("The evidence proves beyond a reasonable doubt that the crimes of murder/wilful killing, rape/inhuman treatment and destruction of religious and educational institutions, as charged in Counts 2-5 and 21, were the natural and foreseeable consequence[s] of [the] implementation of the Herceg-Bosna JCE").

[214] The Appeals Chamber further notes that the Prosecution did not request leave to amend the indictment to withdraw Counts 2, 3, and 21 as JCE I crimes and Counts 10-18 as JCE I crimes prior to 1 July 1993 in accordance with Rule of 50 of the Rules. See, *e.g.*, *Popović et al.* Trial Judgement, fns 1614 (noting that the Prosecution dropped allegations from the Indictment and referred to the corrigendum to the Prosecution's final trial brief where it was stated that some killings were "no longer charged" as "the Prosecution recognises that there is insufficient evidence upon this record for a finding beyond reasonable doubt" (see *Prosecutor v Vujadin Popović et al.*, Case No. IT-05-88-T, Corrigendum to the Prosecution Final Trial Brief, 1 September 2009, para. 9)), 2866 (noting that the Prosecution dropped allegations on two killings referred to in the same corrigendum where the Prosecution noted that it previously dropped these allegations in a separate filing (see *Prosecutor v Vujadin Popović et al.*, Case No. IT-05-88-T, Prosecution Submission Concerning Paragraphs 31.1b and 31.1c of the Indictment, 18 February 2008, "withdrawing" the latter charges)); *The Prosecutor v. Édouard Karemera et al.*, Case No. ICTR-98-44-AR73, Decision on Prosecutor's Interlocutory Appeal Against Trial Chamber III Decision of 8 October 2003 Denying Leave to File an Amended Indictment, 19 December 2003, paras 12, 15, 25, 27; *The Prosecutor v. Emanuel Ndindabahizi*, Case No. ICTR-2001-71-I, Decision on Prosecution Request to Amend Indictment, 30 June 2003, paras 2, 4 (the Prosecution requested leave to amend the indictment so as to withdraw charges and allegations, including superior responsibility as a mode of liability); *Prosecutor v. Stanislav Galić*, Case No. IT-98-29-AR72, Decision on Application by Defence for Leave to Appeal, 30 November 2001, paras 14-16. The Appeals Chamber recalls that Rule 50(A)(i)(c) of the Rules provides that after a case has been assigned to a Trial Chamber, the Prosecutor may amend an indictment with leave of that Trial Chamber or a Judge of that Chamber after having heard the parties. See *Prosecutor v. Vujadin Popović et al. and Prosecutor v. Milorad Trbić*, Case Nos. IT-05-88-PT & IT-05-88/1-PT, Decision on Further Amendments and Challenges to the Indictment, 13 July 2006, paras 6-11 ("Under Rule 50, a Trial Chamber has wide discretion to allow an indictment to be amended, even in the late stages of pre-trial proceedings, or indeed even after trial has begun. Nevertheless, [...] such leave will not be granted unless the amendment" meets various conditions (see, para. 8)).

JCE III crimes or as JCE I crimes only as of 1 July 1993 in its final trial brief. The Appeals Chamber, Judge Pocar dissenting, is of the view that the Prosecution merely articulated its view on the more appropriate mode of liability.

61. Moreover, the Appeals Chamber, Judge Pocar dissenting, considers that the Trial Chamber, after summarising the Prosecution's positions in its final trial brief, did not interpret the Prosecution's qualifications as reflecting a decision not to pursue the relevant crimes as JCE I crimes.[215] In this respect, the Appeals Chamber recalls the Prosecution's submission, made in response to Stojić's and Petković's arguments, that it is the Indictment that sets out the parameters of the case and not the Prosecution's Final Brief.[216] The Appeals Chamber, Judge Pocar dissenting, further notes that the Prosecution stated that the relevant section in its final trial brief "described the crimes involved in the JCEs" and that the "accused are also responsible for those crimes pursuant to other modes of liability contained in Article 7(1) and 7(3)".[217] Thus, the Appeals Chamber, Judge Pocar dissenting, considers that the Prosecution's qualification of some crimes as only JCE III crimes in its final trial brief was not binding on the Trial Chamber's assessment of the evidence. The Appeals Chamber, Judge Pocar dissenting, therefore finds that the Trial Chamber was entitled to exercise its discretion to characterise the Appellants' form of responsibility for incidents of Counts 2-3, 10-18, and 21 as JCE I liability once it was satisfied that this was the most appropriate mode of liability based on the evidence.

62. Under these circumstances, the Appeals Chamber, Judge Pocar dissenting, finds that, for the same reasons discussed above, the Trial Chamber cannot be seen as acting partially or in a prosecutorial manner merely because its assessment of the evidence at the end of the trial led it to conclude that one of the modes of liability alleged in the Indictment is more appropriate than the one articulated in the Prosecution's Final Brief. Thus, the Appeals Chamber, Judge Pocar dissenting, dismisses as unsubstantiated Petković's arguments on the violation of his rights to the presumption of innocence and to an impartial tribunal.[218]

63. Based on the foregoing, the Appeals Chamber, Judge Pocar dissenting, finds that Stojić and Petković have failed to demonstrate that they were not put on notice of the JCE liability allegations, that their fair trial rights were violated, or that the Trial Chamber impermissibly altered the

[215] See Trial Judgement, Vol. 4, paras 28-38.
[216] See *supra*, para. 54.
[217] Prosecution's Final Brief, fn. 2.
[218] See *supra*, para. 51.

Prosecution's case.[219] The Appeals Chamber, Judge Pocar dissenting in part, dismisses Stojić's ground of appeal 13 and Petković's sub-ground of appeal 3.1.

E. Alleged Error Concerning the Attack on the Village of Skrobućani (Petković's Sub-ground 5.2.2.1 in part)

64. The Indictment alleges that between June and mid-August 1993, HVO forces attacked Bosnian Muslim civilians and destroyed and looted Muslim property in, *inter alia*, Skrobućani.[220] The Indictment also states that HVO forces burned down the mosque in Skrobućani.[221] After noting the time-period alleged in the Indictment and considering evidence from Witness BS, the Trial Chamber found that the attack on Skrobućani occurred "probably in May or June 1993"[222] and that the Skrobućani mosque was burned down in May or June 1993.[223]

65. Petković argues that the Trial Chamber erroneously "modified the Prosecution case" by finding, without evidence, that the village of Skrobućani in Prozor Municipality was attacked in May.[224] He contends that the Prosecution did not allege that any HVO military action was launched, or crimes committed, in May 1993.[225]

66. The Prosecution responds that Petković had sufficient notice and that the discrepancy between the Indictment and the Trial Chamber's findings regarding the date of the attack was immaterial.[226] It also submits that Petković presented a defence on the substance of the evidence and the timing of the attack.[227]

67. The Appeals Chamber recalls that charges against an accused and the material facts supporting those charges must be pleaded with sufficient precision in an indictment so as to provide notice to an accused.[228] Moreover, the Appeals Chamber recalls "that, in general, minor differences

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[219] The Appeals Chamber considers that it is unnecessary to address the arguments on prejudice or remedies.
[220] Indictment, para. 53.
[221] Indictment, para. 53.
[222] Trial Judgement, Vol. 2, para. 95, referring to Witness BS, T(F). 8189-8190 (closed session) (11 Oct 2006). See Trial Judgement, Vol. 2, paras 92, 96-97, Vol. 4, para. 695.
[223] Trial Judgement, Vol. 2, para. 97, Vol. 4, para. 695.
[224] Petković's Appeal Brief, para. 218, referring to, *inter alia*, Trial Judgement, Vol. 2, paras 95-97, Vol. 3, para. 1564. See Trial Judgement, Vol. 4, para. 695. The Appeals Chamber notes that as Petković does not refer to the Indictment or the subsequent trial proceedings, it is not clear whether Petković argues that the Indictment does not plead that Skrobućani village was attacked in May 1993 or that the Trial Chamber impermissibly exceeded the scope of the Prosecution's case as presented during the trial. See Petković's Appeal Brief, para. 218. However, as the presentation of the Prosecution's case on this issue is consistent with the Indictment, the lack of clarity in Petković's argument is immaterial. See *infra*, para. 68.
[225] Petković's Appeal Brief, para. 218.
[226] Prosecution's Response Brief (Petković), para. 162, referring to, *inter alia*, Indictment, para. 53, Trial Judgement, Vol. 2, paras 96-97, Witness BS, T. 8189-8190, 8238-8239 (closed session) (11 Oct 2006).
[227] Prosecution's Response Brief (Petković), para. 162, referring to Witness BS, T. 8238-8240 (closed session) (11 Oct 2006).
[228] *Popović et al.* Appeal Judgement, para. 65; *Šainović et al.* Appeal Judgement, para. 225.

between the indictment and the evidence presented at trial are not such as to prevent the trial chamber from considering the indictment in light of the evidence presented at trial".[229]

68. In the instant case, it is clear that the attack on Skrobućani referred to in the Indictment was a single, clearly identifiable event which included the destruction of property belonging to Muslims and the burning of the village mosque.[230] As to the alleged discrepancy between the material facts pleaded in the Indictment and the Trial Chamber's ultimate conclusions concerning the date of the attack, the Appeals Chamber considers that this discrepancy does not constitute a significant variation in this case. Therefore, although the Indictment and the Trial Judgement refer to different but partially overlapping date ranges, the material facts as pleaded in the Indictment were sufficient to inform Petković of the charge as ultimately found by the Trial Chamber.[231] Thus, Petković was provided with timely and clear notice of the attack on Skrobućani and approximately when it occurred, and that this event formed part of the charges against him. Moreover, the evidence adduced by the Prosecution in relation to the incident was consistent with the Indictment and Petković cross-examined the relevant witness, particularly on the date of the attack.[232] His sub-ground of appeal 5.2.2.1 is therefore dismissed in relevant part.

F. Alleged Errors in Concluding That the Existence of a State of Occupation was Pleaded (Ćorić's Sub-ground 3.2.1)

69. The Indictment states that at the relevant time, "a state of armed conflict, international armed conflict and partial occupation existed in Bosnia and Herzegovina [...]. All acts and omissions charged in this indictment as Grave Breaches of the Geneva Conventions of 1949, [...] occurred during and in nexus with such international armed conflict and partial occupation".[233] The Trial Chamber noted that a state of partial occupation was alleged in the Indictment before considering specific arguments from Praljak and Petković and concluding that "the Defence teams were adequately informed of the allegations brought against the Accused Praljak and Petković as commanding officers in a zone of occupation".[234] The Trial Chamber later found that the HVO occupied the villages of Duša, Hrsanica, Ždrimci, Uzričje, Sovići, Doljani, and Stupni Do; Vareš

[229] *Nyiramasuhuko et al.* Appeal Judgement, para. 478.
[230] Indictment, para. 53. See also Prosecution's Pre-Trial Brief, para. 53 (The Prosecution referred to the attack on Skrobućani and the destruction of the mosque as occurring between June and mid-August 1993).
[231] See *Kvočka et al.* Appeal Judgement, para. 436. *Cf. Đorđević* Appeal Judgement, paras 598, 615.
[232] See Trial Judgement, Vol. 2, paras 95-97, and references cited therein; Ex. 2D00200, pp. 2-3 (confidential); Witness BS, T. 8192, 8209, 8238-8240 (closed session) (11 Oct 2006).
[233] Indictment, para. 232. See Indictment, paras 235-238; Trial Judgement, Vol. 3, paras 569, 577.
[234] Trial Judgement, Vol. 1, para. 91, referring to, *inter alia*, Indictment, paras 8, 10, 218-228. See Trial Judgement, Vol. 1, para. 90.

town; West Mostar; as well as the municipalities of Prozor, Ljubuški, Stolac, and Čapljina, all during different time spans.[235]

70. Ćorić argues that the Trial Chamber erred in law and in fact by concluding that the Defence teams were adequately informed that a state of occupation was pleaded in the Indictment.[236] Ćorić contends that this conclusion is unsupported by the Trial Chamber's reliance on paragraphs 8 and 10 of the Indictment and that, unlike its reference to Petković and Praljak, the Trial Chamber was silent on allegations against Ćorić in relation to the state of occupation due to lack of notice.[237] Ćorić submits that the Trial Chamber erred by entering convictions based on what he refers to as "full occupation" when the Indictment referred only to the existence of a state of partial occupation, thereby exceeding the scope of the Indictment.[238]

71. The Prosecution responds that Ćorić had notice that a state of occupation formed part of the case against him and that his failure to object at trial to any lack of notice amounts to waiver.[239]

72. Ćorić replies that as the issue of occupation, which he objected to, was not clearly stated in the Prosecution's final trial brief and closing arguments, waiver is not an available argument.[240]

73. The Appeals Chamber will first consider whether the Indictment was defective with regard to the pleading of a state of occupation. It is recalled that an indictment which fails to set forth the specific material facts underpinning the charges against the accused is defective.[241] As noted above,[242] the Indictment pleaded that at the relevant time, "a state of armed conflict, international armed conflict and partial occupation existed in Bosnia and Herzegovina".[243] The material facts supporting the allegations on the existence of a state of occupation and the relevant crimes committed in occupied territory are also clearly set out in the Indictment.[244] The Trial Chamber noted the reference to "partial occupation" in the Indictment,[245] and proceeded to enter findings – after discussing the evidence – on whether certain municipalities, towns, and villages were

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[235] Trial Judgement, Vol. 3, paras 577-589.
[236] Ćorić's Appeal Brief, paras 75, 80. See Ćorić's Appeal Brief, paras 76, 79. See also Appeal Hearing, AT. 579-580 (24 Mar 2017).
[237] Ćorić's Appeal Brief, para. 80. See Appeal Hearing, AT. 580 (24 Mar 2017).
[238] Ćorić's Appeal Brief, para. 80. See Ćorić's Reply Brief, para. 26.
[239] Prosecution's Response Brief (Ćorić), para. 69.
[240] Ćorić's Reply Brief, para. 26. See Appeal Hearing, AT. 580 (24 Mar 2017). See also Appeal Hearing, AT. 609-611, 626-628 (24 Mar 2017).
[241] *Kvočka et al.* Appeal Judgement, para. 28. See *supra*, para. 29.
[242] See *supra*, para. 69.
[243] Indictment, para. 232.
[244] Indictment, paras 45-59 (Prozor Municipality), 66-72 (Duša, Hrsanica, Ždrimci, and Uzričje), 73-87 (Sovići and Doljani), 100, 105, 107, 118 (West Mostar), 150 (Ljubuški Municipality), 159, 162, 164-168 (Stolac Municipality), 175, 177, 179-180, 182-183, 185 (Čapljina Municipality), 211, 213 (Vareš Municipality). See Trial Judgement, Vol. 3, paras 577-588.
[245] Trial Judgement, Vol. 1, para. 91. See Trial Judgement, Vol. 3, para. 569.

occupied by the HVO.[246] The Appeals Chamber considers that the Indictment clearly provided notice to the Appellants that they were charged with responsibility for certain crimes committed during an international armed conflict and partial occupation.

74. Turning to the question of whether the Trial Chamber's findings were within the scope of the Indictment, the Appeals Chamber notes that although the Trial Chamber did not use the specific term "partial" in its findings, its analysis on whether specific geographical areas within the BiH were occupied is consistent with the allegations in the Indictment. There is nothing in the Trial Judgement which suggests that the Trial Chamber considered a state of "full occupation" as argued by Ćorić.[247] The Appeals Chamber thus finds Ćorić's argument that the Trial Chamber exceeded the scope of the Indictment to be unsubstantiated and unpersuasive.[248]

75. Further, the Appeals Chamber finds that Ćorić's contention concerning the Trial Chamber's observation that "the Defence teams were adequately informed of the allegations brought against the Accused Praljak and Petković as commanding officers in a zone of occupation"[249] to be irrelevant to the notice given to Ćorić on the charges against him concerning the state of occupation. In this respect, the Appeals Chamber observes that the Trial Chamber did not find that there was "full occupation" as Ćorić suggests,[250] but rather made this observation in response to Petković's argument at trial that the Prosecution gave no notice of allegations that Praljak and Petković were responsible as commanding officers of an occupied territory in various municipalities in the BiH.[251]

76. Based on the foregoing, the Appeals Chamber finds that Ćorić has failed to demonstrate that he lacked adequate notice that a state of occupation was alleged and that the Trial Chamber exceeded the scope of the Indictment. Ćorić's sub-ground of appeal 3.2.1 is thus dismissed.

G. Alleged Errors Regarding Notice of the Protected Status of Muslim HVO Members (Ćorić's Ground 4 in part)

77. The Trial Chamber found that HVO Muslims, detained by the HVO from 30 June 1993 onwards, had fallen into the hands of the enemy power and were thus persons protected within the meaning of Article 4 of Geneva Convention IV.[252]

[246] Trial Judgement, Vol. 3, paras 577-589.
[247] *Contra* Ćorić's Appeal Brief, para. 80.
[248] To the extent that it can be interpreted that Ćorić argues that there is a legal distinction between "full occupation" and partial occupation, the Appeals Chamber notes that he provides no support for this assertion and will not consider it. See Ćorić's Appeal Brief, para. 80.
[249] Trial Judgement, Vol. 1, para. 91, referring to, *inter alia*, Indictment, paras 8, 10, 218-228.
[250] See *supra*, para. 70.
[251] Trial Judgement, Vol. 1, para. 90.
[252] Trial Judgement, Vol. 3, para. 611. See Trial Judgement, Vol. 3, paras 591-601.

78. Ćorić argues that the Trial Chamber's holding "overstepped" the Indictment, which purportedly only alleged that the HVO's Muslim members were protected under Additional Protocol I and Common Article 3 of the Geneva Conventions.[253]

79. The Prosecution argues that the Trial Judgement did not overstep the Indictment, which gave the Appellants sufficient notice of the charges brought under Article 2 of the Statute.[254]

80. The Appeals Chamber considers that the Indictment provided the Appellants notice of the charges against them under Article 2 of the Statute,[255] and specifically alleged that "[a]ll acts and omissions charged as crimes against persons were committed against or involved persons protected under the Geneva Conventions of 1949 (and the additional protocols thereto) and the laws and customs of war".[256] The Indictment referred clearly to the arrest and detention of "Bosnian Muslim military-aged men (including many who had served in the HVO)"[257] as part of the pattern of the HVO's actions. The Indictment also specified that during the time from 30 June 1993 until mid-July 1993, the HVO conducted mass arrests of Bosnian Muslim men, including Muslim members of the HVO, and detained many of them at Dretelj Prison.[258] Thus, the Indictment gave clear notice to the Appellants that their responsibility covered crimes committed against detained Muslim members of the HVO in contravention of the Geneva Conventions of 1949, which included Geneva Convention IV, and the Additional Protocols thereto.

81. To the extent that Ćorić argues that the Indictment alleged that detained Muslim members of the HVO were protected only under Additional Protocol I and Common Article 3 of the Geneva Conventions, he fails to support this argument. Ćorić does not refer to any statement in the Indictment or post-Indictment documents which could indicate that allegations were limited to breaches of Additional Protocol I and Common Article 3 of the Geneva Conventions. Further, Ćorić extensively addressed the status of detained Muslim HVO members under Geneva Convention IV at trial.[259] Notably, the Trial Chamber summarised Ćorić's arguments concerning this issue, but nonetheless concluded that detained Muslim members of the HVO were protected under Geneva Convention IV as they had fallen into the hands of the enemy power.[260]

[253] Ćorić's Appeal Brief, para. 90.
[254] Prosecution's Response Brief (Ćorić), para. 86.
[255] Indictment, paras 229, 235-238.
[256] Indictment, para. 236.
[257] Indictment, para. 38. See Indictment, para. 39.
[258] Indictment, para. 189. See Indictment, para. 197.
[259] Ćorić's Final Brief, paras 352-368.
[260] Trial Judgement, Vol. 3, paras 593-594, 597, 606-611, referring to, *inter alia*, Ćorić's Final Brief, paras 352-360, 373-375.

82. Therefore, the Appeals Chamber rejects Ćorić's assertion that the Trial Chamber's finding on the HVO Muslims' protected status under Geneva Convention IV overstepped the Indictment. Ćorić's ground of appeal 4 is dismissed in part.

H. Alleged Errors Concerning Ćorić's Notice of Allegations Regarding His Responsibility as Minister of the Interior (Ćorić's Ground 11 in part)

83. The Trial Chamber concluded that on 24 June 1992, at the latest, Ćorić became Chief of the Military Police Administration, where he remained until 10 November 1993, when he was appointed Minister of the Interior of the HR H-B.[261] The Trial Chamber examined Ćorić's powers throughout the Indictment period and found that as Minister of the Interior he had the: (1) ability to participate in fighting crime within the HVO; and (2) power to control the freedom of movement of people and goods in the territory of the HZ(R) H-B, including humanitarian convoys.[262] The Trial Chamber also examined whether, in the exercise of his powers in both positions, Ćorić acted or failed to act resulting in a significant contribution to the achievement of the CCP.[263] In this regard, the Trial Chamber referred to Ćorić's powers as Minister of the Interior once in relation to movement of people and convoys, but subsequently found that regarding this power he only contributed to the CCP through his actions concerning the blockade of the Muslim population of East Mostar and of humanitarian aid until April 1994.[264] The Trial Chamber found that Ćorić remained a member of the JCE after he became Minister of the Interior and continued to carry out important functions supporting the CCP until April 1994.[265] Ćorić appeals against the Trial Chamber's consideration of his powers and actions as Minister of the Interior for lack of notice.

1. Arguments of the Parties

84. Ćorić submits that the Trial Chamber erred by considering the exercise of his powers as Minister of the Interior from 10 November 1993 to April 1994 as contributing to the JCE since this was not charged in the Indictment.[266] Ćorić argues that the Trial Chamber erroneously found that the Prosecution could address his responsibility as Minister of the Interior in its final trial brief, as no reasonable trial chamber could conclude that he had adequate notice.[267] In this regard, Ćorić contests the Trial Chamber's interpretation of his reference in his own final trial brief to his power

[261] Trial Judgement, Vol. 4, para. 861.
[262] Trial Judgement, Vol. 4, paras 863-887, 917.
[263] Trial Judgement, Vol. 4, paras 918-1006.
[264] Trial Judgement, Vol. 4, paras 939-945, 1003. See Trial Judgement, Vol. 4, paras 919-938, 946-1002, 1004-1005.
[265] Trial Judgement, Vol. 4, para. 1226.
[266] Ćorić's Appeal Brief, paras 248, 250, 258.
[267] Ćorić's Appeal Brief, para. 250. See Ćorić's Appeal Brief, para. 253; Ćorić's Reply Brief, para. 60.

over civilian police as Minister of the Interior since he was simply comparing a request he issued in that capacity to one he issued as Chief of the Military Police Administration.[268]

85. Ćorić further submits that the Trial Chamber exceeded the scope of the Indictment and "impermissibly tried to cure pleading deficiencies".[269] Ćorić argues that the Indictment is defective as it failed to specify the material facts concerning allegations for the period after he was appointed Minister of the Interior. These material facts include: (1) his alleged conduct; (2) the crimes committed; and (3) how his actions in this position led to the commission of the crimes.[270] He argues that no appropriate notice was given throughout the trial which would have allowed him to lead evidence on this issue or to rebut the allegations.[271] Ćorić contends that his right to a fair trial was violated as he was not fully informed of the charges until final briefs and closing arguments.[272]

86. The Prosecution responds that the Indictment provided Ćorić with clear notice that charges against him encompassed crimes committed after his appointment as Minister of the Interior.[273] It argues that the Indictment specifically mentions Ćorić's position as Minister of the Interior and that, apart from one paragraph which limits his acts to his role as Chief of the Military Police Administration, all other paragraphs speaking to his actions are general and without reference to his specific position.[274] The Prosecution also contends that the Indictment pleaded the material facts, including many which arose after 10 November 1993,[275] as well as the nature of his participation in the JCE which was not limited to the time-period when Ćorić was Chief of the Military Police Administration.[276]

87. Referring to its pre-trial brief, opening statement, and witness summaries pursuant to Rule 65*ter* of the Rules, the Prosecution submits that Ćorić suffered no prejudice as any perceived defect was cured through timely, clear, and consistent notice of the case against him.[277] The Prosecution also contends that as Ćorić never objected to evidence being led at trial concerning his role as Minister of the Interior, he must now demonstrate that his ability to prepare his defence was

[268] Ćorić's Appeal Brief, para. 253.
[269] Ćorić's Appeal Brief, para. 254.
[270] Ćorić's Appeal Brief, paras 254-255, 257-258. See Ćorić's Reply Brief, para. 57.
[271] Ćorić's Appeal Brief, para. 256. See Ćorić's Appeal Brief, para. 258; Ćorić's Reply Brief, paras 57-59.
[272] Ćorić's Appeal Brief, para. 258. See Ćorić's Appeal Brief, para. 256; Ćorić's Reply Brief, para. 58.
[273] Prosecution's Response Brief (Ćorić), paras 272, 275, 279, 285.
[274] Prosecution's Response Brief (Ćorić), paras 276-277, referring to, *inter alia*, Indictment, paras 11-12, 15, 17.5(a)-(n).
[275] Prosecution's Response Brief (Ćorić), paras 276-277, referring to, *inter alia*, Indictment, paras 60, 118, 135, 143, 153, 203. The Prosecution also argues that several paragraphs of the Indictment detail allegations which continued after November 1993. Prosecution's Response Brief (Ćorić), para. 277 & fn. 1044.
[276] Prosecution's Response Brief (Ćorić), para. 278.
[277] Prosecution's Response Brief (Ćorić), paras 272, 280.

materially impaired.[278] It argues that Ćorić fails to meet this burden as he presented a defence concerning his actions as Minister of the Interior.[279] The Prosecution further responds that the Trial Chamber did not misconstrue Ćorić's arguments in his final brief and was not seeking "to cure a pleading deficiency".[280]

88. Ćorić replies that as soon as he had notice of the defect in the Indictment, he raised it before the Trial Chamber, which erred in its assessment of the matter. He argues, therefore, that the burden is with the Prosecution to prove that his ability to prepare his defence was not materially impaired.[281]

2. Analysis

89. In order to determine whether the Trial Chamber erred in considering Ćorić's powers and actions as Minister of the Interior, the Appeals Chamber will assess whether: (1) the Indictment was defective in this regard; (2) any defect was curable and, if so, whether it was cured; and (3) Ćorić suffered any prejudice.

(a) Whether the Indictment was defective

90. The Appeals Chamber notes that at trial Ćorić submitted that the Prosecution alleged his responsibility as Minister of the Interior for the first time in its final brief and closing arguments.[282] The Trial Chamber – relying on, *inter alia*, paragraphs 12 and 17.5(b)-(n) of the Indictment – considered that the Prosecution could do so as allegations of Ćorić's responsibility in the Indictment were not limited to the time-period when he was Chief of the Military Police Administration.[283] The Appeals Chamber will first consider whether the Trial Chamber erred in its consideration of this issue.

91. The Appeals Chamber recalls that when the Prosecution alleges JCE liability in an indictment, it must plead, among other material facts, the nature of the accused's participation in the joint criminal enterprise.[284] The Appeals Chamber recalls the distinction between the material facts upon which the Prosecution relies, which must be pleaded in an indictment, and the evidence by

[278] Prosecution's Response Brief (Ćorić), paras 273, 281-283. According to the Prosecution, Ćorić's failure to object also amounts to waiver. Prosecution's Response Brief (Ćorić), para. 282.
[279] Prosecution's Response Brief (Ćorić), para. 283.
[280] Prosecution's Response Brief (Ćorić), para. 284.
[281] Ćorić's Reply Brief, para. 60.
[282] Trial Judgement, Vol. 4, para. 863, fn. 1595.
[283] Trial Judgement, Vol. 4, para. 863, fn. 1597, referring to Indictment, paras 12, 17.5(a)-(n).
[284] *Popović et al.* Appeal Judgement, paras 47, 58; *Šainović et al.* Appeal Judgement, para. 214; *Simić* Appeal Judgement, para. 22; *Karemera and Ngirumpatse* Appeal Judgement, para. 105.

which those material facts will be proved, which need not be pleaded.[285] A decisive factor in determining the degree of specificity with which the Prosecution is required to particularise the facts of its case in the indictment is the nature of the alleged criminal conduct of the accused.[286] The Appeals Chamber further recalls that in determining whether an accused was adequately put on notice of the nature and cause of the charges against him, the indictment must be considered as a whole.[287]

92. The Appeals Chamber considers that since a large component of the case against Ćorić concerned the exercise of his powers and functions – both in relation to JCE liability and superior responsibility[288] – facts concerning his acts and conduct after the change of an official position should have been clearly pleaded in the Indictment as material facts.[289] The Appeals Chamber will now consider whether the Indictment sufficiently pleaded Ćorić's role as Minister of the Interior as material facts.

93. The Appeals Chamber notes that Ćorić was generally alleged to have participated in the JCE by, *inter alia*, acting through his "positions and power",[290] but the sole mention of Ćorić's position as Minister of the Interior is found in paragraph 11 of the Indictment. In this regard, paragraph 11 of the Indictment only states that "[i]n November 1993, [Ćorić] was appointed Minister of Interior in the Croatian Republic of Herceg-Bosna".[291] The Appeals Chamber also notes that the Trial Chamber relied on paragraphs 17.5(a)-(n), which set out Ćorić's acts and conduct by which he participated in the JCE, to state that his position was not specified except in paragraph 17.5(a).[292] This paragraph refers to Ćorić as Chief of the Military Police Administration.[293] Further, while the Indictment states that Ćorić was a member of the JCE, which was alleged to be in existence from on or before 18 November 1991 to about April 1994,[294] it is not apparent whether his contributions to the JCE spanned this entire time-period.[295] Thus, while the Indictment clearly alleges that Ćorić's

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[285] *Popović et al.* Appeal Judgement, para. 47; *Blaškić* Appeal Judgement, para. 210. See *Đorđević* Appeal Judgement, para. 331; *Šainović et al.* Appeal Judgement, para. 213; *Nzabonimana* Appeal Judgement, para. 29.
[286] *Popović et al.* Appeal Judgement, para. 65; *Krnojelac* Appeal Judgement, para. 132; *Bagosora and Nsengiyumva* Appeal Judgement, para. 132. See *Đorđević* Appeal Judgement, para. 575.
[287] See, *e.g.*, *Nyiramasuhuko et al.* Appeal Judgement, paras 1263, 2512. See also *supra*, para. 27.
[288] Indictment, paras 12, 17, 17.5, 218-223, 228. See Trial Judgement, Vol. 4, paras 854-855, 915-918, 1000-1006, 1247-1251.
[289] *Cf. Šainović et al.* Appeal Judgement, paras 214-215.
[290] Indictment, para. 17.
[291] Indictment, para. 11.
[292] Trial Judgement, Vol. 4, para. 863, fn. 1597, referring to Indictment, paras 12, 17.5(a)-(n).
[293] Trial Judgement, Vol. 4, fn. 1597. While other passages in the Indictment could be interpreted as referring to bodies under Ćorić's authority as Minister of the Interior, the Appeals Chamber considers them to be vague as they relate to Ćorić's alleged responsibility for his conduct as Minister of the Interior. See Indictment, paras 17.5(b), 25. See also Trial Judgement, Vol. 1, para. 652, Vol. 4, para. 883.
[294] Indictment, para. 15.
[295] Indictment, paras 17, 17.5. The Indictment alleged that crimes continued to be committed after 10 November 1993 and generally state that Ćorić was responsible. The Appeals Chamber, though, notes that this is ambiguous regarding

JCE acts and conduct stemmed from his position as Chief of the Military Police Administration, it is unclear whether his conduct as Minister of the Interior was also pleaded in this respect.

94. Moreover, the Appeals Chamber notes that paragraph 12 of the Indictment states that "[i]n his various positions and functions, [Ćorić], *from at least April 1992 to November 1993*, played a central role in the establishment, administration and operation of the HVO Military Police",[296] before setting out his control and influence over the Military Police. The Appeals Chamber considers that this paragraph is limited to Ćorić's powers or functions as Chief of the Military Police Administration. This conclusion is based on the limited time-frame stated ("to November 1993") and the explicit mention of his role regarding the Military Police.[297] Based on the generality of the remaining relevant paragraphs of the Indictment,[298] the Appeals Chamber finds that paragraph 12 of the Indictment would lead Ćorić to understand that the Prosecution's case against him, as set out in the Indictment, based on the exercise of his powers and functions was confined to his acts and conduct as Chief of the Military Police Administration. The Appeals Chamber therefore finds that the Indictment itself did not provide clear notice to Ćorić that his alleged responsibility extended to his acts and conduct as Minister of the Interior between 10 November 1993 and April 1994.

95. In light of the above, the Appeals Chamber finds that the ambiguous nature of the Indictment on Ćorić's alleged responsibility for crimes committed based on the exercise of his powers and functions as well as his control over the perpetrators as Minister of the Interior renders the Indictment vague and defective.[299] However, the Appeals Chamber considers that this defect is curable as the allegations of Ćorić's acts and conduct as Minister of the Interior do not constitute a new charge but fell within the broader allegations on his authority over and use of the perpetrators of crimes. In this regard, the Appeals Chamber notes that the Prosecution's case against Ćorić primarily concerned: (1) his authority over the perpetrators of crimes; (2) his knowledge of crimes; (3) his failure to prevent crimes or punish the perpetrators as well his use of them, particularly, the Military Police; and (4) his control over checkpoints and the provision of humanitarian assistance

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whether Ćorić's alleged responsibility arose *before* 10 November 1993 or throughout the Indictment period. See Indictment, paras 35, 37, 54, 59-60, 117-119, 128, 135-136, 143, 148, 153, 188, 194, 196, 203.

[296] Indictment, para. 12 (emphasis added).

[297] The Appeals Chamber further considers that the phrase "his various positions", read in light of the remainder of paragraph 12 of the Indictment as well as the allegations that most of the Appellants acted in accordance with their "various positions and functions", to be at best ambiguous. See Indictment, paras 8, 10, 12, 14.

[298] See *supra*, para. 93. Notably, the Indictment does not set out his functions and powers as Minister of the Interior. *Cf.* Indictment, para. 12.

[299] The Appeals Chamber recalls that an indictment which fails to set forth the specific material facts underpinning the charges against the accused is defective. *Popović et al.* Appeal Judgement, para. 65; *Đorđević* Appeal Judgement, paras 574, 576; *Karemera and Ngirumpatse* Appeal Judgement, para. 371.

and public services.[300] These factors then formed the basis of Ćorić's responsibility as a JCE member and the crimes committed as charged under the relevant Counts of the Indictment. Notably, the Trial Chamber discussed his role and actions as Minister of the Interior in relation to his communications with the Military Police Administration,[301] his power to control the freedom of movement of people and goods, including humanitarian convoys,[302] and his ability to participate in fighting crime.[303] Thus, the material facts concerning Ćorić's acts and conduct as Minister of the Interior do not, on their own, support separate charges.[304] The Appeals Chamber will now consider whether this defect has been subsequently cured.

(b) Whether the defect in the Indictment was cured

96. The Appeals Chamber recalls that the omission of a material fact underpinning a charge in the indictment can, in certain cases, be cured by the provision of timely, clear and consistent information detailing the factual basis underpinning the charges.[305] This can be done in post-indictment documents such as the pre-trial briefs, Rule 65*ter* witness summaries, as well as in opening statements.[306]

97. In its pre-trial brief, the Prosecution provides no clear notice to Ćorić that his alleged responsibility extended to his acts and conduct as Minister of the Interior, as its references relate to the time-period when Ćorić was Chief of the Military Police Administration.[307] Likewise, the Prosecution's opening statement does not make it apparent that the allegations against Ćorić extended beyond 10 November 1993.[308] The Appeals Chamber also notes that the Prosecution's Rule 65*ter* witness summaries did not provide clear information on this issue.[309] The Prosecution refers to the Rule 65*ter* witness summary of Marijan Biškić to support its argument that it provided notice.[310] However, the Appeals Chamber notes that while the summary of Biškić's evidence speaks

[300] See Trial Judgement, Vol. 4, paras 854-855, referring to Indictment, paras 17, 17.5(a), 17.5(d), 17.5(g)-(l), 17.5(n), Prosecution's Final Brief, paras 981-1175.
[301] Trial Judgement, Vol. 4, para. 872. See *supra*, para. 83; *infra*, para. 103
[302] Trial Judgement, Vol. 4, paras 886-887. See *supra*, para. 83; *infra*, para. 103.
[303] Trial Judgement, Vol. 4, para. 883. See *supra*, para. 83; *infra*, para. 103.
[304] See *Đorđević* Appeal Judgement, para. 575; *Nyiramasuhuko et al.* Appeal Judgement, para. 2785.
[305] *Popović et al.* Appeal Judgement, para. 66; *Šainović et al.* Appeal Judgement, para. 262; *Karemera and Ngirumpatse* Appeal Judgement, para. 371; *Bizimungu* Appeal Judgement, para. 46.
[306] See *Đorđević* Appeal Judgement, para. 574, and references cited therein. See also *Šainović et al.* Appeal Judgement, para. 263; *Ndindiliyimana et al.* Appeal Judgement, paras 187-189.
[307] See Prosecution's Pre-Trial Brief, paras 146.5, 189.2, 189.4, 196.2, fns 49-56, 287.
[308] See Prosecution Opening Statement, T. 880-881 (26 Apr 2006) (The Prosecution summarised Ćorić's functions and powers as Chief of the Military Police Administration and stated that "he continued in this position until approximately the 20th of November of 1993, at which time he was appointed the minister of interior [...]"). The Prosecution did not elaborate on Ćorić's functions and powers as Minister of the Interior and all mention of Ćorić's acts relate to the time-period before this appointment.
[309] See Prosecution's List of *Viva Voce* Witnesses; Prosecution's List of Rule 92 *bis* Witnesses.
[310] Prosecution's Response Brief (Ćorić), para. 280.

to events occurring between 6 November 1993 and December 1993,[311] this information did not provide Ćorić with adequate notice that his alleged responsibility also covered the period after 10 November 1993 when he was appointed Minister of the Interior.[312] Notably, any specific reference to Ćorić in the witness summaries relates to his position as Chief of the Military Police Administration.[313]

98. The Appeals Chamber will now address Ćorić's challenge to the Trial Chamber's use of a reference in his final brief to his capacity as Minister of the Interior as support for its conclusion that his powers as Minister of the Interior could be considered.[314] In this regard, the Trial Chamber noted that Ćorić raised the issue of his power over the civilian police in his capacity as Minister of the Interior in his final brief.[315] Notably, the single reference in Ćorić's Final Brief cited by the Trial Chamber speaks to Ćorić issuing a request to the civilian police, which, he argued, showed his lack of criminal intent and genuine belief that he was participating in legitimate practices to enforce the law and prevent crimes.[316] Thus, the context of this reference does not clearly support a conclusion that Ćorić was aware that his acts and conduct as Minister of the Interior were alleged to be part of his JCE contribution. While an accused's understanding of the nature of the Prosecution's case can also be observed in their final trial briefs and closing arguments,[317] the Appeals Chamber finds that the Trial Chamber erred in considering the reference in paragraph 221 of Ćorić's Final Brief to his position as Minister of the Interior as support for its conclusion that the Prosecution could present allegations on Ćorić's responsibility in this capacity.

99. The Appeals Chamber thus finds that the defect in the Indictment was not subsequently cured through post-Indictment disclosures. The Appeals Chamber will now consider whether Ćorić suffered any prejudice as a result.

(c) Whether Ćorić suffered any prejudice

100. The Appeals Chamber recalls that a defective indictment which has not been cured causes prejudice to the accused. The defect may only be deemed harmless through a demonstration that the

[311] Prosecution's List of *Viva Voce* Witnesses, pp. 38-39.
[312] The Appeals Chamber notes that this conclusion relates to various witness summaries. See, *e.g.*, Prosecution's List of *Viva Voce* Witnesses, pp. 32-34, 255, 339-343; Prosecution's List of Rule 92 *bis* Witnesses, pp. 98-99.
[313] See, *e.g.*, Prosecution's List of *Viva Voce* Witnesses, pp. 23-24, 49-53, 81-83, 271-272, 311-314, 331-339.
[314] See *supra*, para. 84.
[315] Trial Judgement, Vol. 4, para. 863, referring to Ćorić's Final Brief, para. 211.
[316] Ćorić's Final Brief, paras 210-212.
[317] *Kvočka et al.* Appeal Judgement, para. 53. See *Naletilić and Martinović* Appeal Judgement, para. 27 ("an accused's submissions at trial, for example the motion for judgement of acquittal, final trial brief or closing arguments, may in some instances assist in assessing to what extent the accused was put on notice of the Prosecution's case and was able to respond to the Prosecution's allegations").

accused's ability to prepare his or her defence was not materially impaired.[318] Where an accused has previously raised the issue of lack of notice before the Trial Chamber, the burden rests on the Prosecution to prove on appeal that the ability of the accused to prepare his defence was not materially impaired.[319] However, "[i]n the case of objections based on lack of notice, the Defence must challenge the admissibility of evidence of material facts not pleaded in the indictment by interposing a specific objection at the time the evidence is introduced".[320] The Appeals Chamber also recalls that "where the Trial Chamber has treated a challenge to an indictment as being adequately raised, the Appeals Chamber should not invoke the waiver doctrine".[321] When, however, the accused raises indictment defects for the first time on appeal, the burden of proof shifts from the Prosecution to the Defence who is then required to demonstrate the existence of the said prejudice.[322]

101. The Appeals Chamber notes that the Trial Chamber considered that "in its Closing Arguments, the Ćorić Defence criticised the Prosecution for having raised the issue of Valentin Ćorić's responsibility as Minister of the Interior for the first time in its Final Brief and its Closing Arguments".[323] The Trial Chamber concluded that the Prosecution could do so.[324] As Ćorić raised the issue in his closing arguments and the Trial Chamber addressed his claim without considering it untimely, the Appeals Chamber considers that the burden of proof rests with the Prosecution to demonstrate Ćorić's ability to prepare his defence was not materially impaired.

102. The Prosecution argues that Ćorić never objected to the evidence it led on his role as Minister of the Interior and that Ćorić, in fact, presented a defence concerning his actions in this position.[325] The Prosecution relies on Ćorić's submission on his power over the civilian police in his capacity as Minister of the Interior in his final brief.[326] As noted above, this reference speaks to Ćorić issuing a request to the civilian police which, he argued, showed his lack of criminal intent and genuine belief that he was participating in legitimate practices to enforce the law and prevent

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[318] *Popović et al.* Appeal Judgement, para. 66; *Šainović et al.* Appeal Judgement, para. 262; *Renzaho* Appeal Judgement, para. 125. See *Đorđević* Appeal Judgement, para. 576; *Nyiramasuhuko et al.* Appeal Judgement, para. 2738.
[319] See, *e.g.*, *Nyiramasuhuko et al.* Appeal Judgement, paras 1105, 2738; *Nzabonimana* Appeal Judgement, para. 30; *Ntabakuze* Appeal Judgement, fn. 189; *Niyitegeka* Appeal Judgement, para. 200; *Kupreškić et al.* Appeal Judgement, paras 122, 123.
[320] *Niyitegeka* Appeal Judgement, para. 199. See *Gacumbitsi* Appeal Judgement, para. 51; *Ndindiliyimana et al.* Appeal Judgement, paras 196, 230.
[321] *Gacumbitsi* Appeal Judgement, para. 54, referring to *Ntakirutimana* Appeal Judgement, para. 23.
[322] *Đorđević* Appeal Judgement, para. 573; *Šainović et al.* Appeal Judgement, paras 223-224. See *Nyiramasuhuko et al.* Appeal Judgement, para. 2738.
[323] Trial Judgement, Vol. 4, para. 863, fn. 1595, referring to Ćorić Closing Arguments, T(F). 52639-52640 (22 Feb 2011). See Ćorić Closing Arguments, T. 52636 (22 Feb 2011).
[324] Trial Judgement, Vol. 4, para. 863, fn. 1597, referring to Indictment, paras 12, 17.5(a)-(n).
[325] Prosecution's Response Brief (Ćorić), paras 281, 283-285.
[326] Prosecution's Response Brief (Ćorić), paras 283-284, referring to Ćorić's Final Brief, paras 210-211. See *supra*, para. 98.

crimes.[327] In making this submission, Ćorić relied on the Prosecution's evidence – Exhibit P06837 – which the Trial Chamber also considered when discussing Prlić's powers. In this regard, the Trial Chamber noted that Ćorić informed Mate Boban, Prlić, and others on 28 November 1993 that he planned on implementing a Government decision that active police be replaced by HVO reserve units on the front lines.[328]

103. The Appeals Chamber recalls that Ćorić's only submission in his final trial brief and closing arguments at trial on his role as Minister of the Interior was limited to showing his lack of criminal intent as it concerns one issue.[329] Thus, the Appeals Chamber is not convinced that the Prosecution has shown on appeal that this trial submission is sufficient to show that Ćorić mounted a defence to allegations on his responsibility as Minister of the Interior.

104. Moreover, in its conclusions on Ćorić's JCE I and JCE III responsibilities,[330] the Trial Chamber's only express reference to the exercise of his powers as Minister of the Interior or events after 10 November 1993 concerned his power to control the freedom of movement of people and goods, including the movement of humanitarian convoys, until April 1994 – particularly by way of HVO checkpoints.[331] In this regard, the Trial Chamber primarily considered the evidence of Defence Witness Martin Raguž, head of the Office for Displaced Persons and Refugees ("ODPR"), that he asked Ćorić on 31 January 1994 for assistance in providing an escort for a convoy transporting a field hospital to a checkpoint.[332] Notably, the Ćorić Defence did not cross-examine this witness despite this evidence.[333] The fact that Ćorić did not call any witness or make any

[327] Ćorić's Final Brief, paras 210-212, referring to Ex. P06837, p. 1. See *supra*, para. 98.
[328] Trial Judgement, Vol. 4, para. 110, referring to Ex. P06837 (discussing Prlić's powers in military matters, but providing no indication that this evidence was considered in relation to Ćorić's responsibilities).
[329] See *supra*, paras 98, 102.
[330] The Appeals Chamber also notes that Ćorić's only conviction for superior responsibility stemmed from events in Prozor in October 1992, and thus, is irrelevant to this discussion. See Trial Judgement, Vol. 4, paras 1245-1251.
[331] Trial Judgement, Vol. 4, para. 1003. See Trial Judgement, Vol. 4, paras 886-887, 1000-1002, 1004-1006, 1008-1020. Notably, in analysing Ćorić's powers, contributions, and knowledge in relation to the JCE, the Trial Chamber referred to his role and actions as Minister of the Interior after 10 November 1993 in the following circumstances by noting that he: (1) that he received daily bulletins compiled by the Military Police Administration but there was no evidence that he still retained some power over the Military Police units subordinated to the HVO (Trial Judgement, Vol. 4, para. 872, referring to Marijan Biškić, T(F). 15054-15056 (5 Mar 2007), Ex. P06722, pp. 6-7 (tendered through Marijan Biškić). See Marijan Biškić, T. 15054-15056 (5 Mar 2007)); and (2) that he had the ability to participate in fighting crimes until at least February 1994 as he participated in several meetings about the security situation in the HR H-B territory until that time, and as he was instructed to work with the Minister of Defence to improve collaboration between the civilian police and the Military Police. Trial Judgement, Vol. 4, para. 883, referring to Ex. P07850, Marijan Biškić, T(F). 15063, 15073-15074 (5 Mar 2007). See Marijan Biškić, T. 15060-15063, 15073-15074 (5 Mar 2007). The Appeals Chamber notes that in finding that Ćorić had the ability to fight crime as Minister of the Interior, the Trial Chamber relied on Prosecution Witness Marijan Biškić, who was cross-examined by the Ćorić Defence and Ćorić himself on the co-operation between Military Police stations and the Ministry of the Interior. Marijan Biškić, T. 15061-15063, 15072-15074, 15256-15311, 15309-15310 (7 Mar 2007).
[332] Trial Judgement, Vol. 4, para. 886, referring to Martin Raguž, T(F). 31339 (26 Aug 2008), Ex. 1D02182. See Trial Judgement, Vol. 1, para. 635, referring to Martin Raguž, T(F). 31353-31355 (26 Aug 2008), Exs. 1D02025, Art. 1, P05926, p. 2.
[333] Martin Raguž, T. 31414 (26 Aug 2008). The Appeals Chamber also notes that Raguž was called as a witness by Prlić.

attempt at trial to refute any allegation concerning his power – as Minister of the Interior – to control the freedom of movement of people and goods, including the movement of humanitarian convoys, demonstrates his lack of preparation to address this issue. Thus, Ćorić did not mount a defence on this power as Minister of the Interior as his ability to defend against the allegations on this power was materially impaired due to a lack of notice. The exercise of this power was eventually considered to be part of Ćorić's significant contribution to the JCE, and in fact, his only explicit contribution to the JCE after 10 November 1993.[334] Therefore, Ćorić suffered prejudice in this regard.

105. Based on the foregoing, the Appeals Chamber finds that the Prosecution has failed to demonstrate that Ćorić's defence was not materially impaired in relation to his role in the JCE as Minister of the Interior, thus, it has not met its burden on appeal. Considering the prejudice suffered by Ćorić, the Appeals Chamber grants his ground of appeal 11 in part, reverses the Trial Chamber's findings on his role in the JCE as Minister of the Interior as of 10 November 1993, and vacates his convictions in relation to his JCE responsibility as Minister of the Interior. The impact, if any, on Ćorić's sentence will be addressed in the relevant sections below.[335]

I. Conclusion

106. The Appeals Chamber has granted Ćorić's ground of appeal 11 in part, and dismissed all other challenges relating to the fair trial rights of the Appellants and the Indictment covered in the present chapter.

[334] See Trial Judgement, Vol. 4, paras 918-1004. *Cf.* Trial Judgement, Vol. 4, paras 934 (the evidence showed "that from at least mid-June 1993, Valentin Ćorić was aware that members of the HVO were committing crimes during the eviction operations in Mostar. By avoiding to take measures against those HVO members, Valentin Ćorić facilitated and encouraged the commission of crimes which continued until February 1994"), 1000 (Ćorić "as Chief of the HVO Military Police Administration [...] while having the duty to fight crime [...] knowingly turned a blind eye to crimes perpetrated by the HVO members against Muslims in West Mostar during eviction operations [...] which continued to be carried out with impunity until September 1993").

[335] See *infra*, para. 3364.

IV. ADMISSIBILITY AND WEIGHT OF THE EVIDENCE

A. Introduction

107. Prlić, Stojić, Praljak, and Ćorić challenge various decisions by the Trial Chamber to admit evidence (documentary and testimonial) or to deny admission of evidence. They further challenge the Trial Chamber's evaluation of the evidence, purportedly resulting in erroneous findings.

B. The Mladić Diaries (Prlić's Ground 5, Stojić's Ground 16, Praljak's Ground 50)

1. Introduction

108. On 6 October 2010, the Trial Chamber, by majority, partially granted the Prosecution's request to reopen its case on the basis of the discovery of Ratko Mladić's diaries ("Mladić Diaries"), admitting eight of the 18 tendered documents, including four excerpts from the diaries.[336] On 23, 24, and 25 November 2010, the Trial Chamber denied Prlić's, Praljak's, and Stojić's requests for reopening their cases to admit evidence, and partially granted Petković's request.[337]

109. Prlić, Stojić, and Praljak challenge the Trial Chamber's: (1) admission into evidence of extracts of the Mladić Diaries in a reopening of the Prosecution's case; (2) decisions to deny Defence requests to reopen their cases and to present evidence in rebuttal; and/or (3) assessment of the evidence from the Mladić Diaries. The Prosecution responds that their arguments should be dismissed.

2. Arguments of the Parties

(a) Prlić's, Stojić's, and Praljak's submissions

110. Prlić and Praljak submit that the Trial Chamber erred in admitting and relying on evidence from the Mladić Diaries, while denying them the opportunity to tender evidence in response.[338]

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[336] *Prlić et al.* Trial Decision on Reopening the Prosecution's Case, para. 1, pp. 28-29 (Disposition). The Trial Chamber admitted Exhibits P11376, P11377, P11380, P11386, P11388, P11389, P11391, and P11392, of which the following are diary entries: Exhibits P11376, P11380, P11386, and P11389. *Prlić et al.* Trial Decision on Reopening the Prosecution's Case, fn. 1, p. 28 (Disposition).

[337] *Prlić et al.* Trial Decision on Reopening Praljak's Case; *Prlić et al.* Trial Decision on Reopening Petković's Case; *Prlić et al.* Trial Decision on Prlić's Motion to Admit Evidence in Rebuttal; *Prlić et al.* Trial Decision on Reopening Stojić's Case. In reopening Petković's case, the Trial Chamber admitted into evidence three excerpts of the Mladić Diaries. *Prlić et al.* Trial Decision on Reopening Petković's Case, para. 1 & fn. 1, paras 22-23, p. 11 (Disposition).

[338] Prlić's Appeal Brief, paras 160-161, 165, 168, 174-176; Prlić's Reply Brief, para. 51; Praljak's Appeal Brief, paras 545-546, 549, 559, 562, 565; Praljak's Reply Brief, para. 125; Appeal Hearing, AT. 170-171, 173 (20 Mar 2017); AT. 472-473 (22 Mar 2017); AT. 796 (28 Mar 2017). See also Stojić's Appeal Brief, heading before para. 127, para. 129. Prlić and Praljak submit in this regard that the Trial Chamber applied a double standard in the admission of evidence. Prlić's Appeal Brief, para. 174; Praljak's Reply Brief, paras 119-120. See also Prlić's Appeal Brief, para. 164;

Praljak argues that the Trial Chamber did not establish exceptional circumstances justifying the admission of the diaries and did not properly consider the prejudice to the Appellants in admitting the evidence at a late stage of the trial proceedings.[339] Praljak further argues that the Trial Chamber did not properly establish the authenticity of the diaries as it: (1) declined a graphological analysis of the diaries; (2) improperly relied on a decision of another trial chamber; and (3) did not sufficiently establish the circumstances in which the diaries were written.[340]

111. Prlić argues that the Trial Chamber erred in finding that he was not diligent in requesting to reopen his defence case, considering that: (1) he had filed a notice of intent to reopen his case conditioned on the reopening of the Prosecution's case; (2) only once the Trial Chamber had decided on whether to grant the Prosecution's request to reopen the case could he make an informed decision about whether to reopen his own case; and (3) it is the Prosecution that bears the burden of proof.[341] Prlić argues that the Trial Chamber also erred in denying, without a reasoned opinion, admission of evidence, including additional excerpts from the Mladić Diaries, that he presented in rebuttal to the Prosecution's new evidence, even though: (1) the documents met the Trial Chamber's criteria for rebuttal; (2) they were relevant as recognised in large part by at least one of the Judges; and (3) the Prosecution had no objection to many of the tendered diary entries.[342] Specifically with regard to documents 1D03193 and 1D03194, Prlić argues that he became aware of their significance after the admission of the Prosecution's entries from the Mladić Diaries, and that the Trial Chamber admitted Prosecution documents on the same basis.[343]

112. Praljak submits that the Trial Chamber erred by denying him the opportunity to challenge entries of the Mladić Diaries that dealt with his own acts and conduct.[344] Prlić and Praljak argue that in denying Praljak's request to reopen his case, the Trial Chamber conceived of Praljak's Counsel's submissions in his final brief and closing arguments as a substitute for Praljak's *viva voce*

Prlić's Reply Brief, para. 51. Prlić and Praljak contend that by denying the reopening of their cases, the Trial Chamber violated their rights to equality of arms, to confrontation, to present an effective defence, and/or to a fair trial. Prlić's Appeal Brief, paras 160, 163, 174-175; Praljak's Appeal Brief, paras 548, 559-562, 565. See also Stojić's Appeal Brief, para. 129.

[339] Praljak's Appeal Brief, para. 547; Appeal Hearing, AT. 472-473 (22 Mar 2017). See Praljak's Appeal Brief, paras 557, 565.

[340] Praljak's Appeal Brief, paras 550-552; Appeal Hearing, AT. 472 (22 Mar 2017). Stojić alleges that the Trial Chamber did not give proper consideration to the authenticity of the Mladić Diaries. Stojić's Appeal Brief, heading before para. 127.

[341] Prlić's Appeal Brief, paras 161-163; Prlić's Reply Brief, para. 51; Appeal Hearing, AT. 171 (20 Mar 2017). See also Prlić's Appeal Brief, para. 165. Prlić further submits that "there was a lack of clarity on a host of issues related to the Mladić Diaries". Prlić's Appeal Brief, para. 162.

[342] Prlić's Appeal Brief, paras 160-161, 163-164, 166, 174-175; Prlić's Reply Brief, para. 51; Appeal Hearing, AT. 171 (20 Mar 2017); AT. 796 (28 Mar 2017).

[343] Prlić's Appeal Brief, para. 164. See also Prlić's Appeal Brief, para. 166.

[344] Praljak's Appeal Brief, paras 548, 563; Praljak's Reply Brief, para. 119; Appeal Hearing, AT. 472-473 (22 Mar 2017). Praljak adds that the Mladić Diaries were not available when he previously testified. Praljak's Appeal Brief, para. 563; Praljak's Reply Brief, para. 119.

testimony, thereby wrongly conflating evidence and submissions.[345] Prlić argues that by denying Praljak's request to testify, the Trial Chamber denied Prlić his right to confront Praljak in cross-examination to test the uncorroborated hearsay statements attributed to Praljak in the Mladić Diaries.[346] Praljak argues that the Trial Chamber incorrectly found that the material he tendered aimed to refute allegations that did not fall within the scope of the motions to reopen the case, as it proceeded to use the Mladić Diaries to prove those same allegations in the Trial Judgement.[347] Finally, Stojić submits that the Trial Chamber wrongly denied his application to reopen his case, thereby depriving him of an opportunity to challenge the Mladić Diaries.[348]

113. Praljak contends that the Trial Chamber did not apply to the Mladić Diaries the principles it announced it would apply to documentary evidence, evidence not subjected to adversarial argument in court, and hearsay evidence.[349] Praljak argues that the Trial Chamber failed to provide a reasoned opinion on the probative value of the Mladić Diaries and their impact on its findings, despite basing key findings regarding the existence of the JCE and the Appellants' role in it solely on these diaries.[350] Prlić also argues that the Trial Chamber assessed two entries from the Mladić Diaries (Exhibits P11376 and P11380) without the context of other evidence and the material that was denied admission.[351] He submits that it thereby failed to consider "alternative explanations" for these two entries and that it drew unsustainable conclusions regarding his membership and participation in a JCE.[352]

114. Stojić submits that in finding that no later than October 1992 he knew that the implementation of the CCP would involve the Muslim population moving outside the territory of the Croatian Community of Herceg-Bosna ("HZ H-B"), the Trial Chamber erred in law and fact and

[345] Prlić's Appeal Brief, para. 167; Praljak's Appeal Brief, para. 563; Appeal Hearing, AT. 171-172 (20 Mar 2017); AT. 472 (22 Mar 2017). See Prlić's Appeal Brief, para. 161; Prlić's Reply Brief, para. 51. Prlić also submits that the Trial Chamber denied without a reasoned opinion Praljak's request for certification to appeal the decision on the request to reopen his case. Prlić's Appeal Brief, para. 167. See also Prlić's Appeal Brief, para. 161.
[346] Prlić's Appeal Brief, paras 160-161; Prlić's Reply Brief, para. 51; Appeal Hearing, AT. 172 (20 Mar 2017). See Prlić's Appeal Brief, para. 167.
[347] Praljak's Appeal Brief, para. 564; Appeal Hearing, AT. 472-473 (22 Mar 2017).
[348] Stojić's Appeal Brief, heading before para. 127, para. 129; Appeal Hearing, AT. 284-285 (21 Mar 2017).
[349] Praljak's Appeal Brief, paras 553-556; Appeal Hearing, AT. 472 (22 Mar 2017).
[350] Praljak's Appeal Brief, paras 553, 557-558; Appeal Hearing, AT. 472-473 (22 Mar 2017). Praljak argues that the Trial Chamber was obliged to provide a reasoned opinion on this because: (1) these documents were admitted at a very late stage of the trial; (2) the Accused strongly opposed their admission; and (3) they contested, *inter alia*, their authenticity. Praljak's Appeal Brief, para. 557. See also Praljak's Appeal Brief, para. 558.
[351] Prlić's Appeal Brief, paras 160, 168, 172-174, 176; Prlić's Reply Brief, para. 51.
[352] Prlić's Appeal Brief, paras 160, 168-174, 176; Prlić's Reply Brief, para. 51. See Prlić's Appeal Brief, para. 167. As for Exhibit P11376, Prlić claims that the meeting discussed in the diary entry was about pressing issues, such as the exchange of prisoners, the shelling of Slavonski Brod, the conflict around Jajce in BiH and implications for the electricity supply, the need for international involvement, and not about Prlić discussing the partition of BiH to re-establish the 1939 Banovina. Prlić's Appeal Brief, para. 169. According to Prlić, Exhibit P11380 records his remark at a follow-up meeting, made in light of the developments around Jajce, that he considered further discussions with the Serbian side to be futile if there was no intention to respect agreements reached, implying that the meeting was not about the division of BiH. Prlić's Appeal Brief, paras 170-176.

failed to give a reasoned opinion by failing to consider contradicting evidence and defence arguments.[353] He further submits that the Trial Chamber erred in law and violated his right to a fair trial by basing this finding solely on alleged extracts of the Mladić Diaries, which constituted uncorroborated and untested hearsay.[354] According to him, in any event, the content of the diary extracts does not support the Trial Chamber's finding.[355] Prlić, Stojić, and Praljak request that the Appeals Chamber reverse all of their convictions.[356]

(b) The Prosecution's response

115. The Prosecution responds that the Trial Chamber did not abuse its discretion in admitting into evidence two extracts from the Mladić Diaries (Exhibits P11376 and P11380).[357] It argues that the Trial Chamber thoroughly assessed multiple indicators of their authenticity, of which a decision on admission by another trial chamber was merely one, and properly determined that a graphological analysis was not necessary.[358]

116. The Prosecution submits that the Trial Chamber provided the Appellants with the opportunity to challenge the admitted extracts, and that the Appellants fail to demonstrate that the Trial Chamber abused its discretion in denying their requests to reopen their cases.[359] Regarding Prlić's argument that he could only make an informed decision to reopen his case after a decision was taken to reopen the Prosecution's case, the Prosecution submits that his reasoning could only apply to material that would directly rebut new Prosecution evidence.[360] It points out that for such material the Trial Chamber had explicitly allowed Prlić to file a request to reopen.[361] The Prosecution also contends that Prlić's argument that his notice of intent to reopen his case was a

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[353] Stojić's Appeal Brief, heading before para. 127, paras 127, 132. See Stojić's Appeal Brief, para. 130.
[354] Stojić's Appeal Brief, heading before para. 127, paras 127-129, 131-132; Stojić's Reply Brief, paras 33-34; Appeal Hearing, AT. 284-285 (21 Mar 2017). In connection with this argument, Stojić alleges that the Mladić Diaries were the sole evidence to support the finding that he "was linked as an individual to the JCE". Appeal Hearing, AT. 284-285 (21 Mar 2017).
[355] Stojić's Appeal Brief, paras 130-131; Stojić's Reply Brief, para. 35.
[356] Prlić's Appeal Brief, para. 177; Stojić's Appeal Brief, para. 132; Stojić's Reply Brief, para. 35; Praljak's Appeal Brief, para. 545; Appeal Hearing, AT. 472 (22 Mar 2017). See also Praljak's Reply Brief, para. 125.
[357] Prosecution's Response Brief (Praljak), para. 305, referring to, *inter alia*, *Prlić et al.* Trial Decision on Reopening the Prosecution's Case; Appeal Hearing, AT. 478 (22 Mar 2017). See Prosecution's Response Brief (Praljak), paras 307-308.
[358] Prosecution's Response Brief (Praljak), para. 306. See Prosecution's Response Brief (Praljak), para. 307. The Prosecution also argues that by seeking to tender other entries from the Mladić Diaries, Prlić and Praljak accepted their overall authenticity and reliability. Prosecution's Response Brief (Prlić), para. 93; Prosecution's Response Brief (Praljak), para. 306.
[359] Prosecution's Response Brief (Prlić), paras 79, 81-83; Prosecution's Response Brief (Stojić), paras 94, 99-100; Prosecution's Response Brief (Praljak), paras 305, 309. See Prosecution's Response Brief (Praljak), paras 310-312; Appeal Hearing, AT. 478-479 (22 Mar 2017). In particular, the Prosecution argues that Prlić had the same opportunity as the Prosecution to request a reopening of his case, but failed to avail himself of that opportunity, and that he therefore fails to demonstrate any violation of his rights to an effective defence or equality of arms. Prosecution's Response Brief (Prlić), paras 79, 81-82.
[360] Prosecution's Response Brief (Prlić), para. 83.
[361] Prosecution's Response Brief (Prlić), para. 83. See Prosecution's Response Brief (Prlić), para. 81.

proper substitute for filing an actual motion fails to show how the Trial Chamber erred by not taking this into account in evaluating diligence.[362]

117. The Prosecution contends that the Trial Chamber properly found that Praljak failed to substantiate his request to testify in the reopening of his case and noted that he could respond to the Prosecution evidence in his closing brief and submissions.[363] It submits that in so doing the Trial Chamber did not conflate Praljak's evidence and his Counsel's submissions.[364] The Prosecution argues that Prlić fails to explain how the Trial Chamber violated his rights by not allowing him to cross-examine Praljak on testimony he never gave.[365] In any event, the Prosecution argues that Prlić has waived the right to raise this issue on appeal, as he took no position at trial on the reopening of Praljak's case.[366]

118. The Prosecution submits that the Trial Chamber drew straightforward, common-sense inferences from the plain words of the excerpts from the Mladić Diaries (Exhibits P11376 and P11380).[367] The Prosecution argues that there is no requirement that all hearsay evidence be corroborated, and that the extracts from the Mladić Diaries were in any event corroborated by other evidence.[368] According to the Prosecution, Prlić's "alternative explanations" for Exhibits P11376 and P11380[369] are not based on the evidence he tendered in reopening and are anyhow unsustainable.[370] The Prosecution submits that the Trial Chamber based the finding challenged by Stojić also on other evidence and that Stojić's conviction therefore does not rest solely, or in a decisive manner, on the diaries.[371] The Prosecution also contends that the Mladić Diaries support the challenged finding.[372] Finally, the Prosecution submits that Prlić and Praljak fail to demonstrate that the admission into evidence of extracts from the Mladić Diaries had any impact on the Trial Judgement, considering the wealth of other evidence on which the Trial Chamber based its conclusions.[373]

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[362] Prosecution's Response Brief (Prlić), para. 83.
[363] Prosecution's Response Brief (Praljak), para. 312; Appeal Hearing, AT. 479 (22 Mar 2017).
[364] Prosecution's Response Brief (Praljak), para. 312.
[365] Prosecution's Response Brief (Prlić), para. 90. See Prosecution's Response Brief (Prlić), para. 93.
[366] Prosecution's Response Brief (Prlić), para. 90. Further, the Prosecution argues that Prlić's silence at trial signals his implicit recognition that the decision on the reopening of Praljak's case does not affect his rights. Prosecution's Response Brief (Prlić), para. 90.
[367] Prosecution's Response Brief (Prlić), para. 78; Prosecution's Response Brief (Stojić), paras 94-96, 98; Appeal Hearing, AT. 353-354 (21 Mar 2017). See Prosecution's Response Brief (Prlić), paras 89, 93.
[368] Prosecution's Response Brief (Prlić), para. 93; Prosecution's Response Brief (Praljak), para. 308; Appeal Hearing, AT. 479 (22 Mar 2017). See Prosecution's Response Brief (Praljak), para. 307.
[369] See *supra*, fn. 352.
[370] Prosecution's Response Brief (Prlić), paras 87-88.
[371] Prosecution's Response Brief (Stojić), para. 95; Appeal Hearing, AT. 354 (21 Mar 2017). The Prosecution submits that prior knowledge of the JCE is not a prerequisite for JCE liability. Appeal Hearing, AT. 354 (21 Mar 2017).
[372] Prosecution's Response Brief (Stojić), paras 96-97.
[373] Prosecution's Response Brief (Prlić), paras 79, 81, 84, 89; Prosecution's Response Brief (Praljak), para. 313. The Prosecution also argues that Prlić fails to explain the relevance of the evidence he tendered to the Trial Chamber's

3. Analysis

119. The Appeals Chamber recalls the law applicable to a trial chamber's decision on whether to reopen a party's case:

> [W]hen considering an application for reopening a case to allow for the admission of fresh evidence, a Trial Chamber should first determine whether the evidence could, with reasonable diligence, have been identified and presented in the case-in-chief of the party making the application. If not, the Trial Chamber has the discretion to admit it, and should consider whether its probative value is substantially outweighed by the need to ensure a fair trial. When making this determination, the Trial Chamber should consider the stage in the trial at which the evidence is sought to be adduced and the potential delay that would be caused to the trial.[374]

The Appeals Chamber recalls that a trial chamber's decision to allow the reopening of a party's case is a discretionary decision to which the Appeals Chamber must accord deference. The Appeals Chamber's examination is therefore limited to establishing whether the trial chamber has abused its discretion by committing a "discernible error". The Appeals Chamber will only overturn a trial chamber's exercise of its discretion where it is found to be: (1) based on an incorrect interpretation of governing law; (2) based on a patently incorrect conclusion of fact; or (3) so unfair or unreasonable as to constitute an abuse of the trial chamber's discretion. The Appeals Chamber will also consider whether the Trial Chamber has given weight to extraneous or irrelevant considerations or has failed to give weight or sufficient weight to relevant considerations in reaching its decision.[375]

(a) Admission into evidence of extracts from the Mladić Diaries in the reopening of the Prosecution's case

120. The Appeals Chamber observes that Praljak, in arguing that the Trial Chamber did not establish "exceptional circumstances" justifying the admission of the diaries and did not properly consider the prejudice to the Appellants in admitting the evidence at a late stage of the trial proceedings, misrepresents the applicable law, as recalled above, which does not require "exceptional circumstances".[376] The Trial Chamber correctly articulated the law,[377] and applied it, finding that the criteria for reopening the Prosecution's case were met with regard to some of the

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findings relating to Exhibits P11376 and P11380 or how the evidence would have affected those findings. Prosecution's Response Brief (Prlić), para. 85. See Prosecution's Response Brief (Prlić), para. 86. Similarly, the Prosecution contends that Prlić fails to show how the Trial Chamber's denial of Praljak's request to testify on the admitted extracts of the Mladić Diaries had any impact on the Trial Judgement. Prosecution's Response Brief (Prlić), paras 79, 91-92.

[374] *Gotovina et al.* Appeal Decision on Reopening, para. 23. See *Gotovina et al.* Appeal Decision on Reopening, para. 24.

[375] *Gotovina et al.* Appeal Decision on Reopening, para. 5; *Popović et al.* Appeal Decision on Reopening, para. 3.

[376] Praljak's Appeal Brief, para. 547 and references cited therein. See *supra*, para. 119.

[377] *Prlić et al.* Trial Decision on Reopening of the Prosecution's Case, paras 32-33. See also *Prlić et al.* Trial Decision on Reopening of the Prosecution's Case, paras 31, 34.

tendered exhibits.[378] Praljak fails to engage with the Trial Chamber's application of the law, much less demonstrate any error in it. His argument is therefore dismissed.

121. Turning to Praljak's argument that the Trial Chamber did not properly establish the authenticity of the Mladić Diaries, the Appeals Chamber observes that the Trial Chamber in its admission decision considered the issue at length, finding sufficient indicia of authenticity in: (1) the fact that another trial chamber had admitted them into evidence; (2) a witness statement recognising Mladić's handwriting in the diaries; (3) a witness statement pertaining to the chain of custody of the Mladić Diaries; and (4) documents corroborating certain facts reported in the diaries.[379] Considering these indicia on which the Trial Chamber relied, of which the admission into evidence of the diaries by another trial chamber was only one, the Appeals Chamber finds that Praljak has failed to show an error in this regard. In light of the various indicia relied upon for admission, and the fact that proving authenticity is not a separate threshold requirement for the admissibility of documentary evidence,[380] the Appeals Chamber further considers that Praljak has failed to show that the Trial Chamber erred in the exercise of its discretion by admitting the diaries into evidence without ordering a graphological analysis of them or without further information about the circumstances in which the diaries were written. Praljak's argument is therefore dismissed.[381]

(b) Denial of Defence requests to reopen their cases and present evidence in rebuttal

122. At the outset, the Appeals Chamber turns to Prlić's argument that the Trial Chamber erred in finding that he was not diligent in requesting to reopen his defence case. It recalls in this regard the pertinent procedural background as was considered by the Trial Chamber: (1) Prlić received an electronic version of the Mladić Diaries in Cyrillic script on 11 June 2010 and was informed of the contents of the specific entries tendered for admission on 9 July 2010;[382] (2) the Prosecution disclosed the translated versions of the Mladić Diaries to Prlić in the Bosnian/Croatian/Serbian language ("BCS") and English within approximately one month between 11 June and

[378] *Prlić et al.* Trial Decision on Reopening of the Prosecution's Case, paras 40, 55-59, 61-63. Notably, the Trial Chamber found that the Prosecution did not have the Mladić Diaries when it closed its case and would have been unable to obtain them by then even if it had deployed "all diligence". *Prlić et al.* Trial Decision on Reopening of the Prosecution's Case, para. 40. Further, weighing the probative value of the Mladić Diaries against the need to ensure a fair trial, the Trial Chamber decided to only admit "evidence going directly to the alleged participation of certain accused in the JCE". *Prlić et al.* Trial Decision on Reopening of the Prosecution's Case, para. 59. See *Prlić et al.* Trial Decision on Reopening of the Prosecution's Case, paras 57-58.
[379] *Prlić et al.* Trial Decision on Reopening of the Prosecution's Case, paras 46-51.
[380] See *Naletilić and Martinović* Appeal Judgement, para. 402.
[381] Stojić's allegation that the Trial Chamber did not give proper consideration to the authenticity of the Mladić Diaries is an undeveloped assertion not supported by any references to the trial record. It is therefore dismissed.
[382] *Prlić et al.* Trial Decision on Reopening the Prosecution's Case, para. 40 & fn. 110, paras 56, 64.

16 July 2010;[383] (3) Prlić filed a notice on 14 July 2010, announcing his intent of submitting a future request to reopen his case should the Prosecution's request to reopen its case be granted;[384] and (4) at the time of the Trial Chamber's decision on the Prosecution's motion to reopen its case on 6 October 2010, Prlić had failed to submit a general request for reopening based on the discovery of the diaries.[385]

123. The Appeals Chamber observes that in its decision on the Prosecution's motion to reopen its case, the Trial Chamber made specific reference to the fact that Prlić had not filed a motion for reopening his case, almost four months after learning about the contents of the Mladić Diaries.[386] The Trial Chamber further held that in assessing diligence concerning Prlić's general request for reopening, it could not take into account his notice of intent of 14 July 2010, since such a notice "cannot be likened to a formal request for re-opening".[387] The Trial Chamber thus found that any general request for reopening his case based on the diaries (*i.e.* other than to refute the diary entries tendered by the Prosecution and admitted by the Trial Chamber in the Prosecution's reopened case) would fail due to lack of diligence.[388] Prlić impugnes this finding.[389]

124. The Appeals Chamber first notes that the Trial Chamber's decision not to take into account Prlić's notice of intent when assessing diligence concerning his request to reopen his case was based on its established practice prior to that date concerning notices.[390] This practice would have alerted Prlić to the fact that the Trial Chamber would not entertain his notice of intent to request a reopening of his case, and would have only considered such a request by way of a motion. Prlić does not show how the Trial Chamber's decision not to consider his notice of intent when assessing

[383] *Prlić et al.* Trial Decision on Reopening the Prosecution's Case, paras 40, 64.
[384] *Prlić et al.* Trial Decision on Reopening the Prosecution's Case, fn. 143. See *infra*, para. 123.
[385] *Prlić et al.* Trial Decision on Reopening the Prosecution's Case, para. 64.
[386] *Prlić et al.* Trial Decision on Reopening the Prosecution's Case, para. 64.
[387] *Prlić et al.* Trial Decision on Reopening the Prosecution's Case, fn. 145. See *Prlić et al.* Trial Decision on Reopening the Prosecution's Case, fn. 143.
[388] *Prlić et al.* Trial Decision on Reopening the Prosecution's Case, para. 64. See also *Prlić et al.* Trial Decision on Reopening the Prosecution's Case, p. 29 (Disposition).
[389] See *supra*, para. 111.
[390] *Prlić et al.* Trial Decision on Reopening the Prosecution's Case, fn. 145, referring to *Prosecutor v. Jadranko Prlić, Bruno Stojić, Slobodan Praljak, Milivoj Petković, Valentin Ćorić, and Berislav Pušić*, Case No. IT-04-74-T, Decision on the Prosecution Motion for Reconsideration or Certification to Appeal Concerning Ordonnance Relative à la Demande de l'Accusation de Suspendre le Délai de Dépôt de sa Demande de Réplique, 6 July 2010, p. 10 & fn. 44 (where the Trial Chamber relied on its "established practice [...] in this proceeding with respect to notices" to find that a "Notice of 27 April 2010 [simply informing the Chamber of the Prosecution's desire to file a request to reply generally after the close of the Defence cases] could not and cannot now in any way be likened to a request, [...] remind[ing] the parties that it can only be seized of a matter when a party properly and timely files a request"), T(F). 41355 (15 June 2009) (where the Trial Chamber held that: "For clarity's sake, the Chamber will recall that pursuant to the rules, it is seized of a matter only when the party concerned files it as a proper motion, which then enables the other parties to respond. Therefore, the Chamber does not consider that it is seized of the questions presented in the forms of notices or correspondence exchanged between the parties. Therefore, it invites the parties to abstain from sending such notices to the Chamber").

diligence concerning a general request for reopening constituted an abuse of discretion so as to amount to a discernible error.

125. The Appeals Chamber next recalls that the Mladić Diaries were first disclosed to Prlić in Cyrillic script on 11 June 2010 with the translations provided throughout the period of approximately one month thereafter.[391] From this period onwards, Prlić had the opportunity to identify any material that he considered relevant to his case, and could have sought a reopening of his case at that stage. Prlić's argument that he could only make an informed decision as to whether to seek a reopening of his case if the Prosecution's request to reopen its case were granted, is not convincing. A party's request to open its case cannot be conditional upon the Trial Chamber granting the other party's respective request to do the same.

126. Finally, the Appeals Chamber observes that with respect to any material necessitating a reopening of Prlić's case for the purpose of rebutting evidence admitted in the Prosecution's reopened case, the Trial Chamber expressly allowed Prlić this opportunity[392] and he availed himself of it.[393] Accordingly, Prlić has failed to show any discernible error in the impugned finding.[394]

127. The Appeals Chamber recalls that the Trial Chamber expressly allowed Prlić the opportunity to request the reopening of his case to refute entries of the Mladić Diaries admitted into evidence in the reopening of the Prosecution's case.[395] It considers that the Trial Chamber, in doing so, inherently took into consideration that the Prosecution bears the burden of proof at trial, and allowed Prlić to make an informed decision about whether to reopen his own case for that purpose. The Appeals Chamber considers that Prlić has failed to demonstrate that the Trial Chamber committed a discernible error.[396] Prlić's argument is therefore dismissed.

128. Turning to Prlić's argument that the Trial Chamber erred in denying admission of evidence that he tendered in rebuttal to the Prosecution's new evidence, the Appeals Chamber observes that

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[391] See *supra*, fns 382-383.
[392] *Prlić et al.* Trial Decision on Reopening the Prosecution's Case, pp. 28-29 (Disposition).
[393] *Prosecutor v. Jadranko Prlić, Bruno Stojić, Slobodan Praljak, Milivoj Petković, Valentin Ćorić, and Berislav Pušić*, Case No. IT-04-74-T, Jadranko Prlić's Motion to Rebut the Evidence Admitted by the Trial Chamber in the Decision on the Prosecution's Motion to Reopen its Case, 20 October 2010 (public with confidential annex); *Prosecutor v. Jadranko Prlić, Bruno Stojić, Slobodan Praljak, Milivoj Petković, Valentin Ćorić, and Berislav Pušić*, Case No. IT-04-74-T, Jadranko Prlić's Revised Motion to Rebut the Evidence Admitted by the Trial Chamber in the Decision on the Prosecution's Motion to Reopen its Case, 1 November 2010 (public with confidential annex); *Prlić et al.* Trial Decision on Prlić's Motion to Admit Evidence in Rebuttal. See also *Prlić et al.* Trial Decision on Prlić's Motion to Admit Evidence in Rebuttal, paras 19-20 (clarifying that these motions should be treated as motions for the reopening of the case noting that both referred to the applicable law for the reopening of a case, notably to the interpretation of the nature of "fresh" evidence).
[394] See *supra*, paras 119, 123.
[395] *Prlić et al.* Trial Decision on Reopening the Prosecution's Case, para. 64, p. 29 (Disposition).
[396] See *supra*, para. 119. The Appeals Chamber dismisses as vague and obscure Prlić's submission that "there was a lack of clarity on a host of issues related to the Mladić Diaries".

Prlić merely asserts that the Trial Chamber erred and refers to his arguments at trial.[397] This amounts to a mere repetition of arguments that were unsuccessful at trial without any demonstration that their rejection by the Trial Chamber constituted an error warranting the intervention of the Appeals Chamber.[398] In support of his contention that the Trial Chamber did not provide a reasoned opinion, Prlić refers to the Trial Chamber's finding that "none of the exhibits deal with the statement or actions of the Accused Prlić himself".[399] Prlić thereby ignores other relevant findings of the Trial Chamber and fails to demonstrate that the Trial Chamber did not provide a reasoned opinion.[400] Notably, the Trial Chamber found, in light of its previous decisions on the matter, that it could not "admit fresh evidence unless it goes to refute the alleged participation of the Accused in achieving the objectives of the JCE and, in particular, in the case of the Accused Prlić".[401] With regard to documents 1D03193 and 1D03194, Prlić asserts an error without even referring to the reasons provided by the Trial Chamber for denying their admission into evidence.[402] These undeveloped and unsupported arguments are therefore dismissed.

129. With regard to the Trial Chamber's denial of Praljak's request to reopen his case in order to testify, the Appeals Chamber considers that Prlić and Praljak misrepresent the Trial Chamber's reasoning. First, the Appeals Chamber observes that the Trial Chamber offered Praljak an opportunity to challenge the entries of the Mladić Diaries admitted into evidence during the reopening of the Prosecution's case as he was given the opportunity to file a request to reopen his case for that purpose.[403] Second, the Trial Chamber reasoned, in relevant parts, that Praljak merely invoked the right of an accused to respond without providing facts justifying why he needed to testify *viva voce* before the Trial Chamber within the context of the reopening of his case.[404] The Trial Chamber then recalled that the Praljak Defence "could once again exercise its right to *respond* in its closing brief and closing arguments".[405] The Appeals Chamber can discern no indication that the Trial Chamber either denied Praljak the opportunity to challenge the Mladić Diaries or conflated Praljak's evidence with his Counsel's submissions. With regard to Prlić's right of confrontation, the Appeals Chamber notes that Prlić does not refute the Prosecution's submission that he took no

[397] See Prlić's Appeal Brief, paras 163-166 and references cited therein. See, in particular, Prlić's Appeal Brief, fns 384, 387-388, 392-393 and references cited therein.
[398] See *Prlić et al.* Trial Decision on Prlić's Motion to Admit Evidence in Rebuttal, paras 6-9, 15-26. In addition, the Appeals Chamber observes that the fact that a dissenting judge finds tendered documents to be relevant and that the Prosecution does not object to their admission into evidence do not suffice to demonstrate that the Trial Chamber erred by denying admission into evidence.
[399] Prlić's Appeal Brief, paras 161, 174; Prlić Reply Brief, para. 51, referring to *Prlić et al.* Trial Decision on Prlić's Motion to Admit Evidence in Rebuttal, para. 24.
[400] See *Prlić et al.* Trial Decision on Prlić's Motion to Admit Evidence in Rebuttal, paras 22-24.
[401] *Prlić et al.* Trial Decision on Prlić's Motion to Admit Evidence in Rebuttal, para. 22.
[402] See Prlić's Appeal Brief, para. 164. *Cf. Prlić et al.* Trial Decision on Prlić's Motion to Admit Evidence in Rebuttal, paras 25-26.
[403] *Prlić et al.* Trial Decision on Reopening the Prosecution's Case, para. 64, p. 29 (Disposition).
[404] *Prlić et al.* Trial Decision on Reopening Praljak's Case, para. 28.

position at trial on the reopening of Praljak's case.[406] The Appeals Chamber therefore concludes that Prlić has waived his right to claim any prejudice resulting from the Trial Chamber's decision not to allow Praljak's testimony.[407] All these arguments are therefore dismissed.

130. The Appeals Chamber turns to Praljak's argument that the Trial Chamber incorrectly found that the material he tendered aimed to refute allegations that did not fall within the scope of the motions to reopen the case, as it proceeded to use the Mladić Diaries to prove those same allegations in the Trial Judgement. The Appeals Chamber notes that Praljak misrepresents the Trial Chamber's finding. Contrary to his contentions, the Trial Chamber identified for only one document (3D03845) that the allegation to be refuted would be the intention of the Bosnian Croats, pursuant to their meetings with Serb authorities, to commit crimes in order to achieve their goal of a Herceg-Bosna dominated by Croats, which is an issue that the Trial Chamber concluded fell outside the scope of the Prosecution's reopened case.[408]

131. The Appeals Chamber notes the proximity between the allegations to be rebutted by the document tendered by Praljak (namely, the intention of the Bosnian Croats, pursuant to their meetings with Serb authorities, to commit crimes in order to achieve their goal of a Herceg-Bosna dominated by Croats)[409] and those for which reopening was allowed (namely, the possible involvement of the Appellants in achieving the objectives of the JCE, *i.e.* a change in the ethnic make-up in the territories concerned through the commission of crimes under the Statute, to achieve the political goal of establishing a Croatian entity).[410] The Appeals Chamber therefore finds that no reasonable trier of fact could have found that the former allegation did not fall into the scope of the latter and of the motions to reopen the case. In this regard, the Appeals Chamber notes additionally, as correctly pointed out by Praljak, that the Trial Chamber in its judgement in fact proceeded to rely on entries of the Mladić Diaries admitted in the reopened Prosecution case to prove precisely the existence of this JCE.[411]

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[405] *Prlić et al.* Trial Decision on Reopening Praljak's Case, para. 28 (emphasis added).
[406] *Cf.* Prosecution's Response Brief (Prlić), para. 90; Prlić's Reply Brief, para. 51.
[407] *Cf. Popović et al.* Appeal Judgement, para. 176. By implication, the Appeals Chamber also dismisses Prlić's submission that the Trial Chamber denied without a reasoned opinion Praljak's request for certification to appeal the decision on the request to reopen his case.
[408] *Prlić et al.* Trial Decision on Reopening Praljak's Case, para. 22 & fn. 43, referring to Annex A to Supplement of Praljak's Motion, pp. 7-8 (concerning document 3D03845). The Trial Chamber identified as other allegations to be refuted by the other documents: (1) the existence of co-operation between the Army of the Serbs of Bosnia and Herzegovina ("VRS") and the ABiH (for 3D03844); and (2) the siege of Mostar (for 3D03846). *Prlić et al.* Trial Decision on Reopening Praljak's Case, para. 22 & fns 42 (referring to Annex A to Supplement of Praljak's Motion, pp. 6-7), 44 (referring to Annex A to Supplement of Praljak's Motion, p. 12).
[409] *Prlić et al.* Trial Decision on Reopening Praljak's Case, para. 22.
[410] *Prlić et al.* Trial Decision on Reopening Praljak's Case, paras 21-22, referring to, *inter alia*, *Prlić et al.* Trial Decision on Reopening the Prosecution's Case, paras 59, 61; Trial Judgement, Vol. 4, paras 43, 65.
[411] Trial Judgement, Vol. 4, paras 43 (referring to, *inter alia*, Trial Judgement, Vol. 4, paras 14, 18), 65; Praljak's Appeal Brief, para. 564.

132. However, the Appeals Chamber considers that the Trial Chamber found that the document concerned did not qualify as "fresh" evidence and was inadmissible not only on the ground that the allegation to be rebutted did not fall within the scope of the motion to reopen the case, which was the only ground that Praljak addressed.[412] The Trial Chamber also deemed that the document in question did not qualify as "fresh" evidence and consequently was inadmissible because Praljak failed to substantiate how it would constitute "fresh" evidence and to identify which of the exhibits admitted as the Prosecution's new evidence would be refuted by it.[413] The Appeals Chamber concurs with this assessment and notes that Praljak's submissions in relation to document 3D03845 lack clarity to an extent that they do not assist in assessing whether the document was in fact "fresh".[414] In addition, the passages of the document as referred to by Praljak in his submissions have no apparent value and relevance to the allegations to be rebutted.[415] Praljak has therefore failed to show that the Trial Chamber erred by denying admission into evidence of this document and that the error identified above occasioned a miscarriage of justice.[416] His argument is therefore dismissed.

133. Regarding Stojić's submission that the Trial Chamber deprived him of an opportunity to challenge the Mladić Diaries by denying his application to reopen his case, the Appeals Chamber observes that the Trial Chamber gave him an opportunity to challenge the Mladić Diaries,[417] but found he did not meet the criteria for reopening his case since the tendered documents failed to qualify as "fresh" evidence for a number of reasons.[418] Stojić ignores the Trial Chamber's reasoning in this regard and has therefore failed to show any error. His submission is dismissed.

(c) The Trial Chamber's assessment of the Mladić Diaries in the Trial Judgement

134. The Appeals Chamber finds that Praljak fails to provide support for his contention that the Trial Chamber weighed the Mladić Diaries contrary to the principles it affirmed with regard to the assessment of evidence.[419] Moreover, the Appeals Chamber observes that the challenged findings that are based on the diaries[420] are a few out of a large number of findings stretching over seven

[412] *Prlić et al.* Trial Decision on Reopening Praljak's Case, para. 22, referring to, *inter alia*, document 3D03845.
[413] *Prlić et al.* Trial Decision on Reopening Praljak's Case, para. 22. See also *Prlić et al.* Trial Decision on Reopening Praljak's Case, para. 21.
[414] Annex A to Supplement of Praljak's Motion, pp. 7-8.
[415] Annex A to Supplement of Praljak's Motion, pp. 7-8.
[416] See *supra*, para. 131.
[417] *Prlić et al.* Trial Decision on Reopening the Prosecution's Case, para. 64, p. 29 (Disposition).
[418] *Prlić et al.* Trial Decision on Reopening Stojić's Case, paras 21-30 (pointing out that the proposed exhibits either: (1) were not tendered with the aim to refute the exhibits admitted in the Prosecution's reopened case (para. 26); (2) did not concern the statements or behaviour of Stojić and thus did not refute these exhibits (paras 27-28); (3) failed to do so because they were irrelevant (paras 28-29); or (4) did not satisfy the diligence test as Stojić failed to show that he was unable to identify and present them during his case-in-chief (para. 29)).
[419] *Cf.* Praljak's Appeal Brief, paras 553-556 and references cited therein.
[420] Praljak's Appeal Brief, paras 553, 555, referring to, *inter alia*, Trial Judgement, Vol. 4, para. 18 & fns 52-54.

pages of the Trial Judgement, based on various sources of evidence, which support the concluding finding on the Ultimate Purpose of Croatian political leaders.[421] Having examined all these findings, the Appeals Chamber sees no indication that the challenged findings were in any way decisive to the concluding finding. Praljak thus fails to show that the concluding finding and the conviction should not stand on the basis of the remaining evidence.[422] In sum, he has failed to demonstrate that the Trial Chamber erred in its assessment of documentary evidence, evidence not subjected to adversarial argument in court, and hearsay evidence, and his contention is therefore dismissed.

135. With regard to Praljak's argument that the Trial Chamber failed to provide a reasoned opinion on the probative value of the Mladić Diaries and their impact on its findings, the Appeals Chamber recalls:

> As a general rule, a Trial Chamber "is required only to make findings on those facts which are essential to the determination of guilt on a particular count"; it "is not required to articulate every step of its reasoning for each particular finding it makes" nor is it "required to set out in detail why it accepted or rejected a particular testimony." However, the requirements to be met by the Trial Chamber may be higher in certain cases.[423]

The Appeals Chamber recalls the aforementioned fact that the challenged findings based on the Mladić Diaries make up only a fraction of a large number of findings underlying the concluding finding of the Ultimate Purpose,[424] and that the challenged findings were in no way decisive to the concluding finding. It therefore disagrees with Praljak's characterisation of the findings based "solely on [...] these diaries" as "key findings regarding the existence of the JCE and the Accused's role in it" that would constitute special circumstances requiring a heightened standard to provide a reasoned opinion.[425] In these circumstances, the Appeals Chamber is not persuaded that the Trial Chamber failed to provide a reasoned opinion and consequently dismisses Praljak's argument.

136. With regard to Prlić's argument that the Trial Chamber assessed Exhibits P11376 and P11380 without the context offered by other evidence and the material denied admission into evidence, the Appeals Chamber recalls that it dismissed all challenges to the Trial Chamber's

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[421] Trial Judgement, Vol. 4, para. 24, relying on findings and evidence in Trial Judgement, Vol. 4, paras 8-23. For an overview of these many findings, see *infra*, para. 592.
[422] See *infra*, para. 782.
[423] *Krajišnik* Appeal Judgement, para. 139 (internal references omitted). See *Stanišić and Župljanin* Appeal Judgement, paras 378, 1063; *Popović et al.* Appeal Judgement, paras 972, 1906; *Šainović et al.* Appeal Judgement, paras 325, 378, 392, 461, 490; *Kvočka et al.* Appeal Judgement, para. 398. See also *Kvočka et al.* Appeal Judgement, para. 23. However, factual and legal findings on which the trial chamber relied to convict or acquit an accused should be set out in a clear and articulate manner. *Stanišić and Župljanin* Appeal Judgement, para. 137; *Stanišić and Simatović* Appeal Judgement, para. 78; *Popović et al.* Appeal Judgement, para. 1906; *Hadžihasanović and Kubura* Appeal Judgement, para. 13.
[424] *Cf.* Praljak's Appeal Brief, para. 553 & fn. 1260 (referring to the findings based on the diaries in Trial Judgement, Vol. 4, para. 18 & fns 52-54). See *supra*, para. 134.
[425] See *infra*, paras 828-973. The Appeals Chamber considers the late and contested admission into evidence of the Mladić Diaries to be irrelevant to the Trial Chamber's obligation to provide a reasoned opinion in the Trial Judgement. Regarding the authenticity of the Mladić Diaries, see *supra*, para. 121.

decisions to deny admission of evidence.[426] With regard to Prlić's challenges that are based on evidence on the record,[427] the Appeals Chamber finds that Prlić fails to show, with this evidence, that no reasonable trier of fact could have found that the partition of BiH was discussed in meetings held on 5 and 26 October 1992, in which Prlić, Stojić, Praljak, Petković, and Mladić participated.[428] To the extent Prlić contests that they met "for the specific purpose of discussing the partition of BiH",[429] the Appeals Chamber observes that the French original version of the Trial Judgement does not convey that this was necessarily the specific purpose of the meeting.[430] Prlić's argument is therefore dismissed.

137. Turning to Stojić's arguments, the Appeals Chamber notes that he fails to identify the allegedly contradictory evidence and defence arguments he contends the Trial Chamber did not consider, and therefore dismisses this argument as an undeveloped assertion. Concerning his allegation that the Trial Chamber erred in finding that he knew at least as of October 1992 "that the implementation of the common purpose would involve the Muslim population moving outside the territory of HZHB" solely based on the extracts of the Mladić Diaries,[431] the Appeals Chamber recalls that a conviction may not rest solely, or in a decisive manner, on the evidence of a witness whom the accused has had no opportunity to examine or to have examined either during the investigation or at trial, and that it is considered "to run counter to the principles of fairness [...] to allow a conviction based on evidence of this kind without sufficient corroboration".[432] The Appeals Chamber notes that the Trial Chamber based its finding on various other findings regarding the development of the HZ H-B and the functions, aspirations, and dealings of the main political and military actors, including Stojić, which in turn were based on extensive evidence,[433] and not

[426] See *supra*, paras 122-133.
[427] See Prlić's Appeal Brief, paras 169-170 and references cited therein. See also Prlić's Appeal Brief, para. 171.
[428] Trial Judgement, Vol. 4, para. 18 and references cited therein. The Appeals Chamber notes in particular that one of the exhibits on which the Trial Chamber relied reports about this meeting, *inter alia*: "PRALJAK: [...] We're on a good path to compel Alija to divide Bosnia.- - We will compel Alija, partly by logistics partly by force, to sit down at the table with BOBAN and KARADŽIČ. [...] *President TUĐMAN agreed to a meeting with KARADŽIĆ, ĆOSIĆ and BOBAN. [...] PRALJAK: - We must stop with the shooting, the Croatian state borders are obvious, but in BH, they are yet to be established." Exhibit P11380, pp. 1-2. The Appeals Chamber notes that Prlić in his submissions opts to merely focus on other topics discussed at the same meeting thereby simply denying the issue of partition. The Appeals Chamber finds that Prlić has failed to explain why these other topics and evidence he cites in support should detract from Praljak's remarks about dividing BiH. See Prlić's Appeal Brief, paras 169-170.
[429] Trial Judgement, Vol. 4, para. 18.
[430] "Les 5 et 26 octobre 1992, Jadranko Prlić, Bruno Stojić, Slobodan Praljak et Milivoj Petković rassemblés au sein d'une 'délégation de Croatie et de la HZ H-B' ont rencontré Ratko Mladić, général de la VRS, pour notamment discuter de la division de la BiH." Trial Judgement (French Original), Vol. 4, para. 18 (internal references omitted).
[431] Stojić's Appeal Brief, heading before para. 127, paras 127, 132, referring to Trial Judgement, Vol. 4, para. 43 & fn. 121. The Appeals Chamber notes that Stojić misrepresents the Trial Chamber's finding insofar as he states that it found that the implementation of the *common purpose* would involve removing Muslims from the area, when in fact the Trial Chamber's finding referred to the implementation of the *Ultimate Purpose*. Trial Judgement, Vol. 4, para. 43, in particular fns 119, 121.
[432] *Popović et al.* Appeal Judgement, para. 96.
[433] Trial Judgement, Vol. 4, para. 43 & fn. 121, referring to, *inter alia*, Trial Judgement, Vol. 1, paras 426-490, Vol. 4, paras 6-24, 289-450. See also Trial Judgement, Vol. 4, fn. 120.

solely on extracts of the Mladić Diaries. In any event, Stojić fails to explain why the conviction should not stand on the basis of the remaining evidence, considering that the challenged finding predates the start of the JCE in mid-January 1993.[434] This warrants dismissal of the argument.[435] Finally, the Appeals Chamber is not persuaded that no reasonable trier of fact could have relied on the extracts of the Mladić Diaries in support of the finding. The Appeals Chamber therefore dismisses Stojić's arguments.

4. Conclusion

138. In light of the foregoing, the Appeals Chamber finds that the Appellants have failed to demonstrate any error in the Trial Chamber's: (1) admission into evidence of extracts of the Mladić Diaries in the reopening of the Prosecution's case; (2) decisions to deny Defence requests to reopen their cases and to present evidence in rebuttal; and (3) assessment of the Mladić Diaries.[436] Consequently, the Appeals Chamber dismisses Prlić's ground of appeal 5, Stojić's ground of appeal 16, and Praljak's ground of appeal 50.

C. Admission of Evidence

1. Denial of admission of Stojić's evidence (Stojić's Ground 5)

139. On 21 July 2009, the Trial Chamber rejected the admission of a number of documents submitted by Stojić related to the co-operation between the HVO and the ABiH.[437] Having concluded that the proposed exhibits are too vague as regards the allegations in the Indictment or do not allow a relationship to be established between them and the Indictment, it refused their admission as not presenting sufficient indicia of relevance.[438] The Trial Chamber also rejected the admission of a number of documents related to crimes committed against Croatian civilians in Bosnia or to the conflict between the HVO and the ABiH. It found that these documents did not

[434] *Cf.* Trial Judgement, Vol. 4, paras 41, 44, 65-66, 1218.
[435] Consequently, Stojić's submission that the Mladić Diaries were the sole evidence to support the finding that he "was linked as an individual to the JCE" and constituted uncorroborated hearsay evidence which the Defence had no opportunity to confront, misrepresents the factual findings and the evidence and ignores other relevant factual findings, and is therefore dismissed. See Trial Judgement, Vol. 4, paras 289-450; *infra*, para. 1401 *et seq.*
[436] Thus, the Appeals Chamber also dismisses the submissions that the Trial Chamber applied a double standard in the admission of evidence and, by denying the reopening of Defence cases, violated the Appellants' rights to equality of arms, to confrontation, to present an effective defence, and to a fair trial.
[437] *Prosecutor v. Jadranko Prlić et al.*, Case No. IT-04-74-T, Decision on Stojić Defence Motion for the Admission of Documentary Evidence (Cooperation between the Authorities and the Armed Forces of Herceg-Bosna and the Authorities and the Armed Forces of the ABiH), 28 July 2009 (French original 21 July 2009) ("*Prlić et al.* Trial Decision on Admission of Evidence on Co-operation"), para. 27, p. 14.
[438] *Prlić et al.* Trial Decision on Admission of Evidence on Co-operation, para. 27. The Trial Chamber stated that the same was true for the proposed exhibits relating to medical aid provided to Bosnian Muslims by the Croatian Government, the HV, or the HVO, as well as to the existence of good relations between the HVO and the ABiH. See *Prlić et al.* Trial Decision on Admission of Evidence on Co-operation, para. 27.

contribute to disproving allegations made against the accused in the Indictment,[439] due to a lack of explanation of the geographical and temporal link with the crimes charged in the Indictment and/or with the Appellants' alleged responsibility for these crimes.[440] As such, it held that these documents similarly did not present sufficient indicia of relevance.[441]

140. On 15 February 2010, the Trial Chamber denied Stojić's request to admit certain evidence including documents 2D01541 to 2D01561 in the context of Praljak's testimony in this case.[442] The Trial Chamber stated that Stojić had failed to establish through the testimony of Praljak that there is a sufficiently relevant link between proposed Exhibits 2D01541 to 2D01561 and the Indictment, referring back to the topics covered in the *Prlić et al.* Trial Decision on Admission of Evidence on Co-operation, concerning non-admission of documents.[443]

141. Stojić submits that the Trial Chamber erred in law, abused its discretion, and denied him a fair trial by not admitting relevant evidence and by limiting certain lines of cross-examination, which resulted in the erroneous finding that there was a JCE to drive Muslims out of the territory of the HZ H-B.[444] Specifically, he alleges that the Trial Chamber erred by not admitting into evidence: (1) lists of HVO combatants grouped according to ethnicity, which show that Muslims also served in the ranks of the HVO;[445] (2) material on the co-operation between the HVO and the ABiH, which would be inconceivable if the JCE had existed; and (3) material on the existence of ABiH offensive operations (including Exhibit 2D00403), showing that crimes allegedly committed by the HVO were merely a reaction to ABiH offensive operations.[446] Stojić asserts that the Trial Chamber's error of law invalidates the Trial Judgement, and requests that the Appeals Chamber overturn the Trial Chamber's finding that a JCE existed, and to acquit him on all Counts.[447]

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[439] *Prlić et al.* Trial Decision on Admission of Evidence on Co-operation, paras 28, 33.
[440] *Prlić et al.* Trial Decision on Admission of Evidence on Co-operation, paras 30-31. See also *Prlić et al.* Trial Decision on Admission of Evidence on Co-operation, paras 32-33.
[441] *Prlić et al.* Trial Decision on Admission of Evidence on Co-operation, paras 32-33.
[442] *Prosecutor v. Jadranko Prlić et al.*, Case No. IT-04-74-T, Order to Admit Evidence Relating to the Testimony of Slobodan Praljak, 24 February 2010 (French original 15 February 2010) ("*Prlić et al.* Order to Admit Evidence in relation to Praljak's Testimony"), pp. 9, 29-32. On 29 March 2010, the Trial Chamber denied Stojić's request for reconsideration or certification to appeal the Order of 15 February 2010. See *Prosecutor v. Jadranko Prlić et al.*, Case No. IT-04-74-T, Decision on the Request of the Stojić's Defence for Reconsideration, or, in the Alternative, for Certification to Appeal the Order Admitting Evidence Relating to the Testimony of Slobodan Praljak, 6 May 2010 (French original 29 March 2010).
[443] *Prlić et al.* Order to Admit Evidence in relation to Praljak's Testimony, pp. 6, 29-32.
[444] Stojić's Appeal Brief, headings before paras 59, 64, paras 60, 62-64, 66, 68-69; Appeal Hearing, AT. 267-268 (21 Mar 2017).
[445] Stojić's Appeal Brief, heading before para. 61, paras 61-63.
[446] Stojić's Appeal Brief, heading before para. 64, paras 64-69; Appeal Hearing, AT. 267, 272 (21 Mar 2017). Stojić singles out document 2D00959 as an example of the non-admitted documents addressed in his appeal brief on the topic of military materiel being provided by the HVO to the ABiH. Appeal Hearing, AT. 272 (21 Mar 2017); Stojić's Appeal Brief, para. 65 & fn. 198.
[447] Stojić's Appeal Brief, paras 63, 69.

142. The Prosecution responds that Stojić fails to show that the Trial Chamber abused its discretion when declining to admit these materials into evidence, or that their admission would have impacted the finding on the CCP.[448] It submits that none of this material was geographically or otherwise connected to the Indictment,[449] and that in any event, the Trial Chamber considered that the HVO included Muslims and that there were instances of HVO-ABiH co-operation.[450] With regard to material on ABiH attacks, the Prosecution submits that Stojić's argument concerning Exhibit 2D00403 is moot, since it was admitted by the Trial Chamber.[451]

143. At the outset, regarding Stojić's assertion that the Trial Chamber erroneously limited certain lines of cross-examination, the Appeals Chamber notes that he does not point to any specific lines of cross-examination which were allegedly not allowed, and therefore dismisses the assertion as unsupported and undeveloped.[452] Concerning the material that the Trial Chamber did not admit into evidence, the Appeals Chamber recalls that it is well established that trial chambers exercise a broad discretion in determining the admissibility of evidence and must be accorded deference in this respect.[453] By pointing to findings in the Trial Judgement to show that the documents were relevant, Stojić falls short of demonstrating that the Trial Chamber abused its discretion in denying their admission on the basis of a lack of explanation of the geographical and temporal link with crimes charged in the Indictment and/or with the Appellants' alleged responsibility for these crimes.[454]

144. Moreover, the Appeals Chamber notes that the Trial Chamber took into account other evidence on the presence of Muslims within the HVO, co-operation between the HVO and the ABiH, and the existence of ABiH offensives.[455] Its finding on the CCP relied on extensive evidence establishing a "clear pattern of conduct" of crimes committed by HVO forces between

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[448] Prosecution's Response Brief (Stojić), paras 40-46. See also Appeal Hearing, AT. 347 (21 Mar 2017).
[449] Prosecution's Response Brief (Stojić), paras 41, 43, 45.
[450] Prosecution's Response Brief (Stojić), paras 42, 44.
[451] Prosecution's Response Brief (Stojić), paras 45-46.
[452] See Stojić's Appeal Brief, headings before paras 59, 64.
[453] *Prosecutor v. Jadranko Prlić et al.*, Case No. IT-04-74-AR73.19, Decision on Jadranko Prlić's Consolidated Interlocutory Appeal Against the Trial Chamber's Orders of 6 and 9 October 2008 on Admission of Evidence, 12 January 2009 ("*Prlić et al.* Appeal Decision on Admission of Evidence"), para. 5, referring to *Prosecutor v. Vujadin Popović et al.*, Case No. IT-05-88-AR73.3, Decision on Appeals Against Decision on Impeachment of a Party's Own Witness, 1 February 2008, para. 12. See also *Čelebići* Appeal Judgement, para. 533. The Appeals Chamber recalls, further, that it will only overturn a trial chamber's exercise of its discretion where it is found to be: (1) based on an incorrect interpretation of governing law; (2) based on a patently incorrect conclusion of fact; or (3) so unfair or unreasonable as to constitute an abuse of discretion. See *Prlić et al.* Appeal Decision on Admission of Evidence, para. 5, referring to *Prosecutor v. Jadranko Prlić et al.*, Case No. IT-04-74-AR73.11, Decision on Slobodan Praljak's Appeal of the Trial Chamber's Decision on the Direct Examination of Witnesses Dated 26 June 2008, 11 September 2008, para. 5 and references cited therein.
[454] The Appeals Chamber also dismisses Stojić's argument in relation to Exhibit 2D00403 since the document was admitted into evidence on 14 January 2010. See *Prosecutor v. Jadranko Prlić et al.*, Case No. IT-04-74-T, Order to Admit Evidence Regarding Witness 4D-AB, 3 February 2010 (French original 14 January 2010).
[455] Trial Judgement, Vol. 1, paras 463, 774, Vol. 2, paras 524-525, Vol. 4, para. 308.

January 1993 and April 1994.[456] Stojić has failed to demonstrate how the Trial Chamber's decision not to admit these documents impacts its finding on the CCP, and therefore how, in light of other evidence on the record, the conviction could not stand even if the referenced material had been admitted. The Appeals Chamber therefore dismisses Stojić's ground of appeal 5.

2. Denial of admission of Praljak's evidence (Praljak's Ground 51)

145. On 15 February 2010, in its *Prlić et al.* Order to Admit Evidence in relation to Praljak's Testimony, the Trial Chamber decided on the admission of 250 documents submitted by Praljak, specifying the reasons for their admission or non-admission in an annex thereto.[457]

146. On 16 February 2010, the Trial Chamber rejected the admission of 155 written statements and transcripts of testimonies submitted by Praljak.[458] The Trial Chamber noted, *inter alia*, that: (1) *prima facie* the figure of 155 was "disproportionate and excessive"[459]; (2) some of the statements submitted for admission did not meet the formal requirements enumerated in Rule 92 *bis* (B) of the Rules[460]; and (3) the majority of the statements or transcripts of testimonies requested for admission dealt with character evidence relating to the "acts and conduct of the accused as charged in the Indictment" and were as such not admissible pursuant to Rule 92 *bis* of the Rules.[461] On this basis, the Trial Chamber deemed it appropriate to send back the request for admission, inviting Praljak to proceed with a new selection, and ordering him to refile a maximum of 20 statements and transcripts.[462] On 1 July 2010, the Appeals Chamber upheld the Trial Chamber's decision of non-admission.[463]

147. Praljak submits that the Trial Chamber abused its discretion in denying admission into evidence of Rule 92 *bis* statements and transcripts, and other documents tendered by him, thereby violating his right to a fair trial.[464] He argues that the Trial Chamber applied a stricter standard of

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[456] Trial Judgement, Vol. 4, paras 41-65.
[457] *Prlić et al.* Order to Admit Evidence in relation to Praljak's Testimony, pp. 2, 11-40.
[458] *Prosecutor v. Jadranko Prlić et al.*, Case No. IT-04-74-T, Decision on Slobodan Praljak's Motion to Admit Evidence Pursuant to Rule 92 *bis* of the Rules, 21 December 2010 (French original 16 February 2010) ("*Prlić et al.* Trial Decision on Admission of Evidence Pursuant to Rule 92 *bis*"), paras 1, 48, p. 21.
[459] *Prlić et al.* Trial Decision on Admission of Evidence Pursuant to Rule 92 *bis*, para. 32.
[460] *Prlić et al.* Trial Decision on Admission of Evidence Pursuant to Rule 92 *bis*, para. 37.
[461] *Prlić et al.* Trial Decision on Admission of Evidence Pursuant to Rule 92 *bis*, paras 42-47.
[462] *Prlić et al.* Trial Decision on Admission of Evidence Pursuant to Rule 92 *bis*, paras 47-48.
[463] *Prosecutor v. Jadranko Prlić et al.*, Case No. IT-04-74-AR73.17, Decision on Slobodan Praljak's Appeal of the Trial Chamber's Refusal to Decide upon Evidence Tendered Pursuant to Rule 92 *bis*, 1 July 2010 ("*Prlić et al.* Appeal Decision on Admission of Evidence Pursuant to Rule 92 *bis*"), para. 37. It is noted that in this decision, the Appeals Chamber did find that the Trial Chamber erred in relation to restricting the number of pages per tendered Rule 92 *bis* statement, and remanded the issue to the Trial Chamber for reconsideration and clarification. See *Prlić et al.* Appeal Decision on Admission of Evidence Pursuant to Rule 92 *bis*, para. 38 and p. 24.
[464] Praljak's Appeal Brief, paras 566-568, 573, 576; Praljak's Reply Brief, para. 120. See Praljak's Appeal Brief, paras 569-572, 574. See also Appeal Hearing, AT. 472-474 (22 Mar 2017).

admission to evidence tendered by him than to evidence tendered by the Prosecution.[465] He also asserts that the Trial Chamber misapplied the law on admission of evidence by assessing the documents' overall probative value and weight at the time of its decision on admissibility rather than at the close of the proceedings.[466] He submits that having applied the wrong standard, the non-admission of the statements relating to the Mujahideen in Central Bosnia led the Trial Chamber to find that the HVO and Praljak "conceived a transfer of Croats and the threat from the Mujahideen in the absence of any real danger".[467] Praljak contends, further, that the non-admission of these and other tendered documents deprived the Judges of evidence providing a complete picture and "alternative plausible explanations to the benefit of Praljak", affecting the Trial Judgement in its entirety.[468] He requests that the Trial Judgement be reversed and that he be acquitted on all Counts.[469]

148. The Prosecution responds that the Trial Chamber did not misapply the law on admission of evidence, nor did it apply a stricter standard of admission to evidence tendered by him.[470] It avers that Praljak merely disagrees with the Trial Chamber's decisions on admission and evaluation of evidence, without showing an abuse of its discretion.[471] According to the Prosecution, the Trial Chamber properly denied admission into evidence of the Rule 92 *bis* statements and transcripts, and other documents.[472] With regard to the Rule 92 *bis* statements and transcripts specifically, the Prosecution submits that the Appeals Chamber already approved their non-admission and that Praljak has failed to show exceptional circumstances warranting reconsideration.[473] With regard to the other documents, the Prosecution submits that Praljak's mere

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[465] Praljak's Appeal Brief, paras 566-568, 570, 572; Praljak's Reply Brief, para. 120; Appeal Hearing, AT. 472-474 (22 Mar 2017). Praljak submits in particular that, had he known before the presentation of his defence case that, unlike the Prosecution, he was allowed to tender only a maximum number of 20 Rule 92 *bis* statements not exceeding 30 pages each, he would have organised his case differently. Praljak's Appeal Brief, paras 567-568. Similarly, he submits that the Trial Chamber considered that documents tendered by the Defence lacking a stamp or signature were not authentic, while it admitted documents with identical defects tendered by the Prosecution. Praljak's Appeal Brief, para. 572.

[466] Praljak's Appeal Brief, paras 570-571.

[467] Appeal Hearing, AT. 474-475 (22 Mar 2017), referring to Trial Judgement, Vol. 4, paras 54-55. See also Appeal Hearing, AT. 471 (22 Mar 2017). He submits in particular that the Trial Chamber erred in finding that the tendered documents were not relevant, considering that they concerned the presence of Mujahideen in Central Bosnia and that the JCE was allegedly implemented through frightening Croats into leaving Central Bosnia based on unfounded fear of the Mujahideen. Praljak's Appeal Brief, paras 570-571, 573-575; Appeal Hearing, AT. 474-475 (22 Mar 2017).

[468] Praljak's Appeal Brief, paras 575-576; Appeal Hearing, AT. 473-474 (22 Mar 2017). See Praljak's Appeal Brief, para. 573. Praljak submits that this "simplification and reduction of facts" resulting from the non-admission affected his conviction "with regard to the existence of the JCE, *de facto* control, [and] effective control". Appeal Hearing, AT. 473 (22 Mar 2017). He further asserts that it is impossible to assess his *mens rea* without determining a pattern of conduct, his motivations, and his actions. Appeal Hearing, AT. 474 (22 Mar 2017).

[469] Praljak's Appeal Brief, para. 576.

[470] Prosecution's Response Brief (Praljak), paras 318-320.

[471] Prosecution's Response Brief (Praljak), para. 304.

[472] Prosecution's Response Brief (Praljak), paras 304, 314-320. The Prosecution asserts that one document listed by Praljak as having erroneously been denied admission appears to not have been tendered. Prosecution's Response Brief (Praljak), fn. 1570.

[473] Prosecution's Response Brief (Praljak), para. 315. See Prosecution's Response Brief (Praljak), paras 316-317.

assertion that, if admitted, they would have offered "alternative plausible explanations" to his benefit falls short of showing that he suffered prejudice.[474]

149. The Appeals Chamber first notes that the Trial Chamber did not misapply the law on admission of evidence. As Praljak does not demonstrate that the Trial Chamber did, in fact, consider the overall probative value and weight of the tendered evidence at the time of admission, the Appeals Chamber dismisses this argument.[475] Concerning the general submission that the Trial Chamber applied a stricter standard to the admission of evidence tendered by him than that tendered by the Prosecution, the Appeals Chamber finds that Stojić has not sufficiently substantiated this argument.[476]

150. Concerning Praljak's argument on the non-admission of Rule 92 *bis* statements and transcripts specifically, the Appeals Chamber observes that Praljak's contention regarding their admission is also based in part on the restriction imposed by the Trial Chamber to limit the number of Rule 92 *bis* statements and transcripts that he could tender for admission.[477] The Appeals Chamber notes that the Rule 92 *bis* statements and transcripts at issue are among those the non-admission of which the Appeals Chamber has already upheld.[478] In this decision, it found that the Trial Chamber's limitation of the number of Rule 92 *bis* statements and transcripts that Praljak could tender for admission did not amount to a denial of his right to present evidence and was within the Trial Chamber's discretion.[479] The Appeals Chamber recalls that it may reconsider a previous interlocutory decision under its inherent discretionary power to do so if a clear error of reasoning has been demonstrated or if it is necessary to do so to prevent an injustice.[480] However in this case, Praljak merely repeats arguments already addressed by the Appeals Chamber without showing a clear error of reasoning or that reconsideration is necessary to prevent an injustice.

151. With regard to the other documents at issue, the Appeals Chamber observes that the Trial Chamber rejected their admission on the basis that Praljak failed to establish a relevant link between the documents and the Indictment, or failed to demonstrate with sufficient clarity their

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[474] Prosecution's Response Brief (Praljak), paras 314, 320.
[475] See *Prlić et al.* Trial Decision on Admission of Evidence Pursuant to Rule 92 *bis*.
[476] The Appeals Chamber notes that in the *Prlić et al.* Appeal Decision on Admission of Evidence concerning a challenge brought by Prlić against the alleged '"more lenient approach"' to the admission of evidence tendered by the Prosecution than to the evidence tendered by Prlić, it dismissed Prlić's allegations, recalling that the assessment of admissibility criteria must be done on a case-by-case basis with respect to each tendered document. See *Prlić et al.* Appeal Decision on Admission of Evidence, para. 25. The Appeals Chamber adopts this consideration for purposes of dismissing Praljak's similar unsubstantiated challenge at issue here.
[477] See Praljak's Appeal Brief, paras 567-568.
[478] *Prlić et al.* Appeal Decision on Admission of Evidence Pursuant to Rule 92 *bis*, paras 15-17; Praljak's Appeal Brief, paras 567-569, 576.
[479] *Prlić et al.* Appeal Decision on Admission of Evidence Pursuant to Rule 92 *bis*, para. 37.
[480] See, *e.g.*, *Nyiramasuhuko et al.* Appeal Judgement, paras 56, 127; *Prlić et al.* Appeal Decision on Motion for Reconsideration, para. 6; *Šešelj* Appeal Decision on Motion for Reconsideration, para. 9.

relevance and probative value.[481] Recalling a trial chamber's broad discretion in assessing admissibility of evidence it deems relevant,[482] the Appeals Chamber finds that Stojić has not demonstrated that the Trial Chamber abused its discretion in not admitting the documents. The Appeals Chamber further observes that Praljak merely alleges in a sweeping manner that the documents, if admitted, would have offered "alternative plausible explanations" to his benefit[483] but fails to explain what these alternative plausible explanations would be or to identify any particular factual finding that is affected and to explain how the documents, if admitted, would have impacted the finding.[484]

152. On the basis of the above, the Appeals Chamber finds that Praljak has failed to demonstrate that the Trial Chamber abused its discretion and committed a discernible error by denying admission of the Rule 92 *bis* statements and transcripts, and other documents at issue. Praljak's ground of appeal 51 is therefore dismissed.

3. Erroneous decisions relating to evidence (Ćorić's Ground 12)

(a) Arguments of the Parties

153. Ćorić submits that the Trial Chamber erred by admitting the evidence of a co-Appellant as well as inauthentic documents.[485] Ćorić first submits that the Trial Chamber erred in law and fact and violated his fair trial rights when it admitted and relied on a statement given by Prlić to the Prosecution in December 2001 against his co-Appellants ("Prlić's Statement").[486] Ćorić contends in particular that: (1) Prlić's rights were violated since he was not properly informed before his questioning; (2) the other Parties did not have an opportunity to cross-examine him; (3) the admission of the statement violates requirements under Rules 92 *bis,* 92 *ter* and 92 *quater* of the Rules; (4) the statement contains answers to leading questions; and (5) it should have been excluded

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[481] See *Prlić et al.* Order to Admit Evidence in Relation to Praljak's Testimony, Annex, pp. 11-40. *Cf.* Praljak's Appeal Brief, fns 1301-1302, 1307-1308. The Appeals Chamber notes that with respect to documents referred to by Praljak in paragraphs 572-573 (and cited in footnotes 1303-1306) of his appeal brief, he fails to identify with sufficient clarity the specific Trial Chamber decisions and respective reasoning which he challenges. The Appeals Chamber recalls that an appellant is expected to provide precise references to relevant paragraphs in the decision to which the challenges are being made. See *supra*, para. 24. His arguments relating to these decisions are therefore dismissed.

[482] See *supra*, para. 143.

[483] See *supra,* para. 147.

[484] The Appeals Chamber recalls that an appellant is expected to provide precise references to relevant paragraphs in the judgement to which the challenges are being made. See *supra*, para. 24. Praljak does identify one challenged finding in Trial Judgement, Vol. 4, paras 54-55. See Appeal Hearing AT. 475 (22 Mar 2017); *supra*, fn. 467. The Appeals Chamber notes, however, that he ignores other relevant factual findings in the same paragraphs which in fact acknowledge that part of the Croatian population was in danger due to the clashes in Central Bosnia. His argument is dismissed.

[485] Ćorić's Appeal Brief, para. 260; Appeal Hearing, AT. 611 (24 Mar 2017). See Ćorić's Appeal Brief, heading before para. 260.

[486] Ćorić's Appeal Brief, para. 260; Ćorić's Reply Brief, para. 62.

pursuant to Rule 89 (D) of the Rules.[487] Ćorić also asserts that the Trial Chamber's error in admitting Prlić's Statements is further compounded by its error in not admitting Praljak's and Petković's respective statements, since: (1) they could have been admitted pursuant to Rule 89 of the Rules like Prlić's Statements; (2) unlike Prlić, both Praljak and Petković testified and could be cross-examined; (3) consequently, their statements did not need to be excluded pursuant to Rule 89 (D) of the Rules; and (4) the fact that they contain hearsay evidence does not pose problems since the Trial Chamber relied on other hearsay evidence.[488]

154. Ćorić further contends that the Trial Chamber erred when it admitted and relied on Exhibits P03216/P03220 and P03666 as they are forgeries.[489] Regarding Exhibit P03216/P03220,[490] Ćorić submits that the Trial Chamber erred in admitting it and in not recognising in the Trial Judgement that it was not authentic.[491] He argues that no reasonable trier of fact could have concluded that it was authentic since: (1) it is not Ćorić's signature on the document; (2) [Redacted, see Annex C – Confidential Annex] and none of the witnesses who could have been recipients confirmed receiving it; and (3) it is not recorded in the Heliodrom Prison Logbook while the Trial Chamber for other documents required verification in the Heliodrom Prison Logbook as proof of authenticity.[492] He asserts that in admitting and relying on Exhibit P03216/P03220 the Trial Chamber erred in law and fact, violated his fair trial rights, and failed to provide a reasoned opinion.[493]

155. Regarding Exhibit P03666, Ćorić contends that the Trial Chamber erred in admitting this evidence despite his objections as it is missing the most essential indicia of authenticity and reliability.[494] He adds that the Trial Chamber erred in concluding in the Trial Judgement that Exhibit P03666 was authentic since: (1) the Trial Chamber erroneously relied on similarities between the exhibit and other documents; and (2) contrary to what the Trial Chamber found,

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[487] Ćorić's Appeal Brief, para. 260. See also Ćorić's Reply Brief, para. 62.
[488] Ćorić's Appeal Brief, para. 261.
[489] Ćorić's Appeal Brief, paras 262-266, 268-270; Appeal Hearing, AT. 611-616 (24 Mar 2017).
[490] The Appeals Chamber observes that Exhibit P03216 and Exhibit P03220 are the same document. See Trial Judgement, Vol. 1, para. 913 & fn. 2234. For the sake of clarity, the Appeals Chamber will refer to this document as Exhibit P03216/P03220.
[491] Ćorić's Appeal Brief, paras 263-264, 266-267.
[492] Ćorić's Appeal Brief, paras 264-265, referring to, *inter alia*, Exhibit P00285 ("the Heliodrom Prison Logbook"). See Ćorić's Reply Brief, para. 63. He also contends that Witness C confirmed that people could only be released from Dretelj Prison with Colonel Neđeljko Obradović's approval which is the complete opposite to Exhibit P03216/P03220. See Ćorić's Appeal Brief, para. 264.
[493] Ćorić's Appeal Brief, paras 262-266; Appeal Hearing, AT. 611-616 (24 Mar 2017). He also asserts that the Trial Chamber relied heavily on this exhibit in its findings on: (1) his responsibility in the alleged network of Herceg-Bosna/HVO prisons; (2) the Military Police Administration's authority to release the HVO's prisoners; and (3) Ćorić's belief that only this administration held the power to release prisoners. See Ćorić's Appeal Brief, paras 262-265; Appeal Hearing, AT. 611-613, 616-617 (24 Mar 2017). He asserts that without Exhibit P03216/P03220, his link to prisons and his alleged responsibility or membership in the alleged JCE "would not exist or would have [to be] significantly differently evaluated". Appeal Hearing, AT. 617 (24 Mar 2017).
[494] Ćorić's Appeal Brief, paras 268-269.

Witness BB did not confirm substantial parts of Exhibit P03666.[495] Ćorić requests that due to the Trial Chamber's erroneous reliance on these documents, and erroneous rulings, his convictions be vacated.[496]

156. The Prosecution responds that the Trial Chamber acted well within its broad discretion in admitting Prlić's Statement and Exhibits P03216/P03220 and P03666, and in denying admission of Praljak's and Petković's statements.[497] With regard to Prlić's Statements, the Prosecution contends that the Appeals Chamber has already confirmed their admission in an interlocutory appeal, and that Ćorić has not shown that reconsideration of the Appeals Chamber's decision is warranted.[498] With regard to Praljak's and Petković's statements, the Prosecution asserts that Ćorić should be precluded from raising on appeal the issue of their admissibility, since he argued at trial that these statements should be denied admission, and that in any event, he fails to show any error.[499] The Prosecution submits with regard to Exhibits P03216/P03220 and P03666 that Ćorić largely repeats his trial arguments without showing any error in the Trial Chamber's consideration of their authenticity and decision to admit them.[500] In relation to Exhibit P03216/P03220 specifically, the Prosecution contends that: (1) the document bears the stamp of the chief of the Military Police Administration; (2) Ćorić misrepresents Witness E's testimony; and (3) the Trial Chamber did not require verification in the Heliodrom Prison Logbook as proof of authenticity.[501] Finally, the Prosecution submits that Ćorić fails to show how the Trial Chamber's decision to admit Prlić's Statements and Exhibit P03666 had any impact on his convictions or occasioned a miscarriage of justice.[502]

(b) Analysis

(i) Admission of Prlić's Statements

157. On 22 August 2007, the Trial Chamber admitted Prlić's Statement essentially considering that its probative value was not substantially outweighed by the need to ensure a fair trial.[503] On 23 November 2007, the Appeals Chamber dismissed the Appellants' interlocutory appeal against

[495] Ćorić's Appeal Brief, paras 269-270.
[496] Ćorić's Appeal Brief, para. 270; Appeal Hearing, AT. 611-612 (24 Mar 2017).
[497] Prosecution's Response Brief (Ćorić), paras 286-292, 294-300, 302.
[498] Prosecution's Response Brief (Ćorić), paras 286-288.
[499] Prosecution's Response Brief (Ćorić), paras 286, 290-291.
[500] Prosecution's Response Brief (Ćorić), paras 292, 294, 298-300. See also Prosecution's Response Brief (Ćorić), paras 197 (responding to Ćorić's ground of appeal 7), 295-297 (responding to Ćorić's ground of appeal 12), 329-332 (responding to Ćorić's ground of appeal 14). The Prosecution further submits that Ćorić's assertion that he had no power to release prisoners is proven incorrect by a wealth of evidence. Appeal Hearing, AT. 646-647, 651 (24 Mar 2017).
[501] Prosecution's Response Brief (Ćorić), paras 294-296. The Prosecution adds that the information in the exhibit is consistent with the evidence as a whole. Prosecution's Response Brief (Ćorić), para. 297.
[502] Prosecution's Response Brief (Ćorić), paras 289, 301.

the *Prlić et al.* Trial Decision on Admission of Prlić's Statement.[504] The Appeals Chamber concluded that the Trial Chamber, in light of its careful balancing exercise of the probative value of Prlić's Statements and the potential prejudice to the co-Appellants resulting from their admission, had not misinterpreted or misapplied the law governing admission of evidence.[505] On 5 September 2007 and 17 October 2007, the Trial Chamber denied the Prosecution's request to admit Praljak's and Petković's prior testimonies in other cases before the Tribunal, on the basis that admitting these prior testimonies would be a serious violation of the right of the accused as Praljak and Petković had not been informed about their right to remain silent.[506]

158. The Appeals Chamber observes that it has already addressed and dismissed the Appellants' arguments, including those of Ćorić, in the *Prlić et al.* Appeal Decision on Admission of Prlić's Statements.[507] It recalls that it may reconsider a previous interlocutory decision in exceptional cases under its inherent discretionary power to do so if a clear error of reasoning has been demonstrated or if it is necessary to do so to prevent an injustice.[508] The Appeals Chamber finds that Ćorić's arguments on appeal merely repeat arguments previously addressed by the Appeals Chamber without showing a clear error of reasoning or that reconsideration is necessary to prevent an injustice.[509] In addition, the fact that Prlić was not going to ultimately testify at trial was not known at the time of the *Prlić et al.* Appeal Decision on Admission of Prlić's Statement. Nevertheless, the possibility that he would not testify had already been expressly considered by the Appeals Chamber when it concluded that Prlić's Statement could be introduced into evidence even if his co-Appellants might not be able to cross-examine him, since as a matter of principle nothing bars the

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[503] *Prosecutor v. Jadranko Prlić et al.*, Case No. IT-04-74-T, Decision on Request for Admission of the Statement of Jadranko Prlić, 6 September 2007 (French original 22 August 2007) ("*Prlić et al.* Trial Decision on Admission of Prlić's Statement"), paras 1, 31-32, p. 16. See Trial Judgement, Vol. 1, para. 391.

[504] *Prosecutor v. Jadranko Prlić et al.*, Case No. IT-04-74-AR73.6, Decision on Appeals Against Decision Admitting Transcript of Jadranko Prlić's Questioning into Evidence, 23 November 2007 ("*Prlić et al.* Appeal Decision on Admission of Prlić's Statement"), paras 1, 7, p. 20. See Trial Judgement, Vol. 1, para. 392.

[505] *Prlić et al.* Appeal Decision on Admission of Prlić's Statements, para. 62.

[506] *Prosecutor v. Jadranko Prlić et al.*, Case No. IT-04-74-T, Decision on the Admission into Evidence of Slobodan Praljak's Evidence in the Case of [Naletelić] and Martinović, 17 September 2007 (French original 5 September 2007) ("*Prlić et al.* Trial Decision on Admission of Praljak's Prior Testimony"), para. 22, p. 11; *Prosecutor v. Jadranko Prlić et al.*, Case No. IT-04-74-T, Decision on Prosecution Motion for the Admission into Evidence of the Testimony of Milivoj Petković Given in Other Cases Before the Tribunal, 25 October 2007 (French original 17 October 2007) ("*Prlić et al.* Trial Decision on Admission of Petković's Prior Testimony"), para. 20, p. 9.

[507] *Prlić et al.* Appeal Decision on Admission of Prlić's Statement, paras 7, 31-63, p. 20.

[508] See, *e.g.*, *Nyiramasuhuko et al.* Appeal Judgement, para. 127; *Prosecutor v. Jadranko Prlić et al.*, Case No. IT-04-74-AR73.16, Decision on Jadranko Prlić's Interlocutory Appeal Against the *Decision on Prlić Defence Motion for Reconsideration of the Decision on Admission of Documentary Evidence*, 3 November 2009, para. 6; *Prosecutor v. Vojislav Šešelj*, Case No. IT-03-67-AR72.1, Decision on Motion for Reconsideration of the "Decision on the Interlocutory Appeal Concerning Jurisdiction" dated 31 August 2004, 15 June 2006, para. 9. See also *Nyiramasuhuko et al.* Appeal Judgement, para. 56.

[509] In particular, the Appeals Chamber already dismissed arguments related to analogies with Rules 92 *bis* and 92 *quater* of the Rules, the possibility of cross-examination, and the distinction between the admission of Prlić's Statement and its evaluation in light of the whole trial record. See *Prlić et al.* Appeal Decision on Admission of Prlić's Statement, paras 31-63.

admission of evidence that is not tested or might not be tested through cross-examination.[510] As such, the Appeals Chamber is not convinced that Ćorić has shown that the fact that Prlić did not testify at trial should lead the Appeals Chamber to reconsider its previous decision in order to prevent an injustice. To the extent that Ćorić also argues that the Trial Chamber erred in relying on Prlić's Statements, the Appeals Chamber observes that he does not point to any Trial Chamber findings where the Trial Chamber in fact relied on them.[511] His unsupported argument is dismissed.

159. The Appeals Chamber also fails to see how a possible error of the Trial Chamber in not admitting Praljak's and Petković's prior testimonies in other cases at the Tribunal would assist in showing that the Trial Chamber erred in admitting Prlić's Statements. Moreover, none of Ćorić's arguments alleging errors with the *Prlić et al.* Trial Decision on Admission of Praljak's Prior Testimony and the *Prlić et al.* Trial Decision on Admission of Petković's Prior Testimony address the Trial Chamber's finding that admitting these prior testimonies would be a serious violation of the rights of the accused as they were not informed about their right to remain silent.[512]

(ii) Exhibit P03216/P03220

160. On 27 September 2007 and 10 October 2007 respectively, the Trial Chamber admitted Exhibits P03216 and P03220.[513] In the Trial Judgement, the Trial Chamber observed that Exhibits P03216 and P03220 are the same document and noted Ćorić's objection that Exhibit P03216/P03220 was a forgery.[514] However, the Trial Chamber recalled that by admitting Exhibit P03216/P03220, it considered that it had sufficient indicia of authenticity and reliability.[515] The Trial Chamber relied on Exhibit P03216/P03220 to find, *inter alia*, that the Military Police Administration had the power and authority to order the release of persons detained by the HVO.[516]

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[510] *Prlić et al.* Appeal Decision on Admission of Prlić's Statement, para. 55. See also *Prlić et al.* Appeal Decision on Admission of Prlić's Statements, paras 50-54.
[511] See Ćorić's Appeal Brief, para. 260.
[512] *Prlić et al.* Trial Decision on Admission of Praljak's Prior Testimony, para. 22; *Prlić et al.* Trial Decision on Admission of Petković's Prior Testimony, para. 20. In addition, the Appeals Chamber observes that Ćorić's position at trial was that the Prosecution's request to admit Praljak's and Petković's prior testimonies in other cases before the Tribunal should be rejected. See *Prlić et al.* Trial Decision on Admission of Praljak's Prior Testimony, para. 3 (incorrectly spelling Ćorić's name as "Joric"); *Prlić et al.* Trial Decision on Admission of Petković's Prior Testimony, para. 4. Ćorić also does not show that he requested the admission at trial of Praljak's and Petković's prior testimonies in other cases at the Tribunal, or that he raised at trial the arguments he raised on appeal.
[513] *Prosecutor v. Jadranko Prlić et al.*, Case No. IT-04-74-T, Order on Admission of Evidence Relative to Witness E, 2 November 2007 (French original 27 September 2007), pp. 2-3, 5; *Prosecutor v. Jadranko Prlić et al.*, Case No. IT-04-74-T, Order to Admit Evidence Regarding Witness C, 19 October 2007 (French original 10 October 2007), pp. 2-4.
[514] Trial Judgement, Vol. 1, para. 913 & fn. 2231, referring to Ćorić's Final Brief, paras 699-701.
[515] Trial Judgement, Vol. 1, para. 913.
[516] Trial Judgement, Vol. 1, paras 913-914.

161. The Appeals Chamber observes that Exhibit P03216/P03220 bears the stamp of the Military Police Administration and the type written name of Valentin Ćorić.[517] Ćorić does not challenge these aspects but asserts that the handwritten signature was not his.[518] Ćorić further makes contradictory arguments suggesting on the one hand that it looks like his deputy Rade Lavrić's signature but on the other hand states that Witness Slobodan Božić testified that it was neither Ćorić nor Lavrić's signature but a forgery.[519] Having reviewed the relevant part of Božić's testimony, the Appeals Chamber is not convinced that the witness testified that Exhibit P03216/P03220 was a forgery, nor that he was in a position to conclusively state that the signature was not that of Rade Lavrić.[520] Even accepting that the handwritten signature on the document does not belong to Ćorić, the Appeals Chamber is not convinced that Ćorić has demonstrated that the document did not come from the Military Police Administration, or that it indeed was a forgery. Consequently, Ćorić has not shown that the Trial Chamber could not have relied on it to conclude that the Military Police Administration had the power and authority to order the release of persons detained by the HVO.[521]

162. In addition, as pointed out by the Prosecution, even though Witness E testified that,[Redacted, see Annex C – Confidential Annex] and further testified that Ćorić had the authority to release prisoners.[522] The Appeals Chamber is further not convinced that the absence of a mention of Exhibit P03216/P03220 in the Heliodrom Prison Logbook[523] establishes that the document is not authentic. Ćorić has not demonstrated that the Trial Chamber in fact required verification in the Heliodrom Prison Logbook for a document to be considered authentic.[524] Nor does the Appeals Chamber consider that the fact that Exhibit P00316, an order from Colonel Obradović mentioned in Exhibit P03216/P03220, is recorded in the Heliodrom Prison Logbook demonstrates that Exhibit P03216/P03220 is inauthentic,[525] since the fact that other documents were entered in the Heliodrom Prison Logbook does not establish that the entries contained therein were exhaustive.[526]

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[517] See Exs. P03216, P03220.
[518] See *supra*, para. 154.
[519] See Ćorić's Appeal Brief, para. 264.
[520] See Slobodan Božić, T. 36412-36414 (4 Feb 2009), T. 36642-36644 (10 Feb 2009).
[521] Trial Judgement, Vol. 1, paras 913-914.
[522] Witness E, T. 22051-22053 (closed session) (10 Sept 2007). Moreover the fact that Witness C testified that people could only be released from Dretelj Prison with Colonel Neđeljko Obradović's approval does not establish that Exhibit P03216/P03220 was a forgery. Ćorić's argument in this respect is dismissed. See Ćorić's Appeal Brief, para. 264, referring to, *inter alia*, Witness C, T. 22398 (closed session) (18 Sept 2007).
[523] See Ćorić's Appeal Brief, para. 264, referring to Ex. P00285.
[524] Ćorić's Appeal Brief, para. 264, referring to Trial Judgement, Vol. 2, para. 1431. The Appeals Chamber notes that in this paragraph, the Trial Chamber relied on the Heliodrom Prison Logbook to reach the conclusion that the instructions of Stojić were sent to and received at the Heliodrom, but does not address specifically whether the document was authentic. See Trial Judgement, Vol. 2, para. 1431. Even if Ćorić had demonstrated that the Trial Chamber required verification in the Heliodrom Prison Logbook for a document to be considered authentic, the Appeals Chamber notes that this would not have detracted from the fact that the admissibility decision had remained in the discretion of the Trial Chamber. See *Naletilić and Martinović* Appeal Judgement, para. 402.
[525] Ćorić's Appeal Brief, para. 265 & fn. 710, referring, *inter alia*, to Ex. P00316.
[526] See Ex. P00285, p. 121.

163. In light of the foregoing, the Appeals Chamber is not convinced that Ćorić has shown that the Trial Chamber erred in considering that Exhibit P03216/P03220 had sufficient indicia of authenticity and reliability for the purpose of admission, and that no reasonable trier of fact could have relied on Exhibit P03216/P03220 to conclude that the Military Police Administration had the power and authority to order the release of persons detained by the HVO.[527] Consequently, the Appeals Chamber dismisses Ćorić's arguments relating to Exhibit P03216/P03220.

(iii) Exhibit P03666

164. On 23 August 2007, the Trial Chamber admitted into evidence Exhibit P03666.[528] In the Trial Judgement, the Trial Chamber noted Ćorić's claim raised in his final trial brief that Exhibit P03666 is a forgery, but recalled the *Prlić et al.* Trial Decision on Admission of Evidence related to the Municipalities of Čapljina and Stolac whereby it admitted the exhibit.[529] The Trial Chamber further stated that Ćorić had raised no objection to the authenticity of this document until his final trial brief.[530] It then found that the document was shown to Witness BB who confirmed a substantial part of its contents and that the format of the document is entirely similar to other reports admitted and whose authenticity was not contested by Ćorić.[531] On this basis, the Trial Chamber held that Exhibit P03666 was indeed authentic.[532]

165. The Appeals Chamber observes that Ćorić challenges both the admission into evidence of Exhibit P03666 at trial as well as the Trial Chamber's confirmation in the Trial Judgement that it considered that Exhibit P03666 was indeed authentic.[533] The Appeals Chamber recalls that if a party raises no objection to a particular issue before a trial chamber when it could have reasonably done so, in the absence of special circumstances, the Appeals Chamber will find that the party has waived his right to raise the issue on appeal.[534] Having reviewed the *Prlić et al.* Trial Decision on Admission of Evidence related to the Municipalities of Čapljina and Stolac and the Joint Defence Response of 12 July 2007 pointed out by Ćorić to show that he had objected to the admission of Exhibit P03666,[535] the Appeals Chamber confirms the Trial Chamber's finding that he did not raise

[527] The Appeals Chamber further observes that the Trial Chamber did not rely only on Exhibit P03216/P03220 to reach this conclusion but found that it was corroborated by further evidence. See Trial Judgement, Vol. 1, paras 912-913.
[528] *Prosecutor v. Jadranko Prlić et al.*, Case No. IT-04-74-T, Decision on the Motions For Admission of Documentary Evidence (Čapljina/Stolac Municipalities), 3 September 2007 (French original 23 August 2007) ("*Prlić et al.* Trial Decision on Admission of Evidence related to the Municipalities of Čapljina and Stolac"), p. 9.
[529] Trial Judgement, Vol. 3, para. 75.
[530] Trial Judgement, Vol. 3, para. 75.
[531] Trial Judgement, Vol. 3, para. 75.
[532] Trial Judgement, Vol. 3, para. 75.
[533] Ćorić's Appeal Brief, paras 268-270.
[534] *Popović et al.* Appeal Judgement, para. 176. See *Haradinaj et al.* Appeal Judgement, para. 112.
[535] Ćorić's Appeal Brief, para. 269, referring to *Prosecutor v. Jadranko Prlić et al.*, Case No. IT-04-74-T, Joint Defence Response to Prosecution Motion for Admission of Documentary Evidence (Čapljina/Stolac Municipalities),

specific issues with the authenticity of Exhibit P03666 at the time of its admission at trial.[536] Accordingly, Ćorić cannot claim for the first time on appeal that the Trial Chamber erred in admitting Exhibit P03666 because it was not authentic.

166. As for Ćorić's distinguishable argument challenging the Trial Chamber's confirmation of Exhibit P03666's authenticity in the Trial Judgement,[537] the Appeals Chamber observes that he does not point to any Trial Chamber finding relying on this evidence. The Appeals Chamber notes, however, that the Prosecution points to three findings where the Trial Chamber relied on Exhibit P03666,[538] unrelated specifically to Ćorić's responsibility.[539] Nevertheless, the Appeals Chamber observes that the Trial Chamber relied on other evidence to reach these findings,[540] and that in any event, Ćorić does not explain how, even if the document was found to be inauthentic, it would affect his convictions. Accordingly, the Appeals Chamber dismisses the remainder of Ćorić's arguments related to the Trial Chamber's finding that Exhibit P03666 was authentic.

167. Ćorić's ground of appeal 12 is therefore dismissed.

D. Assessment of Evidence

1. Erroneous approach to the evaluation of evidence (Prlić's Ground 1)

(a) Arguments of the Parties

168. Under his ground of appeal 1, Prlić submits that the Trial Chamber erred in law and fact by failing to properly assess relevant evidence on the record when making various findings in relation to the historical background to the creation, development, and structure of the HZ(R) H-B.[541] Prlić argues that such erroneous findings form the basis of findings on his JCE responsibility, which led the Trial Chamber to unreasonably conclude that the HZ(R) H-B was linked to the reconstitution of

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12 July 2007 ("Joint Defence Response of 12 July 2007"), Ćorić's Final Brief, para. 698. Ćorić mistakenly refers to the 2 July 2007 as the filing date of the Joint Defence Response of 12 July 2007. Ćorić's Appeal Brief, para. 269.

[536] See *Prlić et al.* Trial Decision on Admission of Evidence related to the Municipalities of Čapljina and Stolac, Joint Defence Response of 12 July 2007. See also Joint Defence Response of 12 July 2007, Annex, Specific Objections of the Ćorić Defence (where Ćorić notes that the Prosecution had already proposed to tender proposed Exhibit P03666 into evidence through the testimony of Witness BB and that pending a decision, the Prosecution should not be allowed to push this document in through other provisions).

[537] See Ćorić's Appeal Brief, paras 268-270. See also Trial Judgement, Vol. 3, para. 75.

[538] See Prosecution's Response Brief (Ćorić), para. 301, referring to Trial Judgement, Vol. 3, para. 74 & fn. 180, para. 587 & fn. 1195, Vol. 4, para. 939 & fn. 1761.

[539] The Trial Chamber relied on Exhibit P03666 to find that: (1) some prisoners were released from Dretelj Prison; (2) the HVO conducted a campaign of mass arrests of Muslim men of military age throughout Čapljina Municipality in July 1993; and (3) from June 1993 and until at least the end of February 1994, nobody could pass through the HVO checkpoints. See Trial Judgement, Vol. 3, para. 74 & fn. 180, para. 587 & fn. 1195, Vol. 4, para. 939 & fn. 1761.

[540] See Trial Judgement, Vol. 3, para. 74.

[541] Prlić's Appeal Brief, paras 26-89 (sub-grounds of appeal 1.1-1.4). See also Appeal Hearing, AT. 128-129, 134-136, 149 (20 Mar 2017). See also Prlić's Reply Brief, paras 32-36.

the Banovina 1939 borders, in furtherance of a JCE.[542] He avers that a proper assessment of the evidence would have shown that: (1) the HZ H-B was established out of necessity; (2) he and the Executive organs/Governments of the Croatian Community and Republic of Herceg-Bosna, referred to jointly ("HVO/Government of the HZ(R) H-B") had no power over the municipalities or their presidents; (3) "the Departments, Sub-departments, Services, and Commissions" were independent and not subordinated to him or the HVO/Government of the HZ(R) H-B; and (4) the HR H-B was created as a result of the Owen-Stoltenberg Peace Plan, rather than in furtherance of the JCE.[543] Prlić requests that the Appeals Chamber overturn his convictions on all Counts.[544]

169. The Prosecution responds that Prlić fails to explain how the alleged errors support his claim that no reasonable trier of fact would have linked the HZ(R) H-B to reconstituting the Banovina 1939 borders in furtherance of a JCE.[545] The Prosecution further argues that Prlić relies on sweeping, unexplained assertions that the supposed errors lead to erroneous conclusions regarding the existence of a JCE and Prlić's membership therein.[546] Consequently, the Prosecution submits that Prlić fails to demonstrate an error affecting the verdict.[547] It further argues that the alleged legal errors are undeveloped, because: (1) Prlić fails to identify the allegedly incorrect legal standard used to assess evidence; (2) much of the allegedly ignored evidence either was expressly considered by the Trial Chamber, is irrelevant, or supports the Trial Chamber's findings; and (3) the alleged mischaracterisations of the evidence merely reflect his disagreement with the Trial Chamber's interpretation of the evidence, without demonstrating that it was unreasonable.[548]

(b) Analysis

170. The Appeals Chamber observes that Prlić takes issue with a number of discrete findings in three sections in Volume 1 of the Trial Judgement concerning: (1) the historical background of the proclamation of the HZ H-B;[549] (2) the events following the creation of the HZ(R) H-B;[550] and (3) the structure of the HZ(R) H-B.[551]

[542] Prlić's Appeal Brief, paras 27, 45, 77, 87, referring to his grounds of appeal 9-10. See also Prlić's Appeal Brief, paras 24-25, 30, 33, 36, 46.
[543] Prlić's Appeal Brief, para. 88, referring to his grounds of appeal 9-10 and sub-grounds of appeal 11.3-11.9, 12.1.
[544] Prlić's Appeal Brief, para. 89.
[545] Prosecution's Response Brief (Prlić), para. 16.
[546] Prosecution's Response Brief (Prlić), paras 16, 20, 29, 36, 40.
[547] Prosecution's Response Brief (Prlić), paras 16, 18, 20, 29-30, 37, 40.
[548] Prosecution's Response Brief (Prlić), paras 17, 21-27, 31, 33-35, 39, 42-43.
[549] Trial Judgement, Vol. 1, paras 406-425 ("The Creation of Herceg-Bosna: Background").
[550] Trial Judgement, Vol. 1, paras 426-490 ("Principal Events Following the Creation of Herceg-Bosna").
[551] Trial Judgement, Vol. 1, paras 491-986 ("Political, Administrative, Military and Judicial Structure of the HZ(R) H-B").

171. With respect to Prlić's challenges concerning the findings on the historical background to the creation of the HZ H-B,[552] the Appeals Chamber observes that in the introduction of this section, the Trial Chamber expressly stated that this analysis was "strictly historical" and did not concern any events which might have "an impact on the criminal responsibility of the Accused, particularly as to whether there was a JCE or whether the Accused participated in the said enterprise".[553] Moreover, the relevant portions of Volume 4 of the Trial Judgement concerning the existence of the JCE and Prlić's contribution thereto show that in reaching its conclusions, the Trial Chamber did not refer to its analysis or any of the findings contained in the section concerned.[554] Accordingly, the Appeals Chamber finds that Prlić's convictions do not rely on the impugned factual findings on the historical background to the creation of the HZ H-B and, thus, dismisses Prlić's arguments in this respect.

172. As to Prlić's claims concerning the findings on the events following the creation of the HZ(R) H-B and the structure of the HZ(R) H-B contained in the other two sections of Volume 1 of the Trial Judgement,[555] the Appeals Chamber notes that the Trial Chamber referred to some of the findings therein in the sections related to the Ultimate Purpose of the JCE, the CCP, and Prlić's contribution to the JCE.[556] However, other than claiming that these alleged errors resulted in a "false narrative" affecting the conclusions concerning his JCE responsibility,[557] Prlić does not attempt to explain how his challenges to the Trial Chamber's sections concerning the events following the creation of the HZ(R) H-B and its structure, even if accepted, could affect any findings material to his conviction.

173. Further, the Appeals Chamber observes that in concluding his submissions under this ground of appeal, Prlić refers to his grounds of appeal 9, 10, 11, and 12, where he challenges the Trial Chamber's findings with respect to the Ultimate Purpose of the JCE, the CCP, and his contribution to the JCE.[558] Nevertheless, the Appeals Chamber considers that the use of the cross-references does not provide any further clarity to Prlić's arguments.

174. On the contrary, a review of his grounds of appeal 9, 10, 11, and 12 shows that in several instances, Prlić simply asserts that he adopts "by reference" single excerpts or entire portions of his

[552] Prlić's Appeal Brief, paras 27-37.
[553] Trial Judgement, Vol. 1, para. 408. The Trial Chamber added that it "considered it more appropriate to address these events in the parts concerning the responsibility of the Accused". Trial Judgement, Vol. 1, para. 408.
[554] Trial Judgement, Vol. 4, paras 6-24 (Ultimate Purpose of the JCE), 41-73 (Existence of a Common Criminal Plan), 74-289 (Prlić's contribution to the JCE).
[555] Prlić's Appeal Brief, paras 38-86.
[556] See Trial Judgement, Vol. 4, paras 13, 17 (Ultimate Purpose of the JCE), 43-44 (Existence of a Common Criminal Plan) 82, 88-89, 91, 95, 99, 101, 105-106, 110, 125, 198 (Prlić's contribution to the JCE).
[557] Prlić's Appeal Brief, paras 27, 45, 77.

submissions contained in his ground of appeal 1 without providing any explanation as to how these arguments have any merit in the context of his challenges against different Trial Chamber conclusions reached with respect to his criminal liability.[559] In this regard, a joint reading of Prlić's submissions under his ground of appeal 1 and his challenges concerning the Ultimate Purpose of the JCE, the CCP, and his contribution to the JCE in light of these cross-references, reveals an incoherent and often convoluted narrative, which is decidedly unhelpful to understanding the crux of his contentions or any purported impact on his conviction. While nothing prevents a party from cross-referencing to arguments in different sections of its appeal brief, in order for the Appeals Chamber to assess a party's arguments, the party is expected to present its case clearly, logically, and exhaustively.[560] The manner and degree to which Prlić cross-references to arguments in other sections under his ground of appeal 1 renders the merits of his contentions unclear and obscure.[561]

175. Moreover, Prlić's submissions are undeveloped and abstract and for this reason alone do not warrant appellate review. Specifically, Prlić's arguments are principally based on assertions: (1) that the Trial Chamber failed to consider certain evidence, yet lacking any explanation as to why no reasonable trier of fact, based on the evidence, could have reached the same conclusion;[562] and (2) reflecting mere disagreement with the Trial Chamber's assessment of the evidence.[563] In none of his challenges, under this ground of appeal, does Prlić explain why it was unreasonable for the Trial Chamber to have reached its conclusions. In combination with the lack of clarity and obscurity referred to above, the Appeals Chamber is unable to properly assess what, if any, impact Prlić's

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[558] See Prlić's Appeal Brief, paras 87-88, referring to his grounds of appeal 9-10 and sub-grounds of appeal 11.3-11.9, 12.1.

[559] See Prlić's Appeal Brief, paras 234 (referring to Prlić's sub-ground of appeal 1.1, paras 27-28, 36-41), 235 (referring to Prlić's sub-grounds of appeal 1.1, para. 30, 1.2, para. 51), 240 (referring to Prlić's sub-ground of appeal 1.3, paras 80-81), 241 (referring to Prlić's sub-ground of appeal 1.3, paras 80-82), 253 (referring to Prlić's sub-ground of appeal 1.1, para. 44), 257 (referring to Prlić's sub-grounds of appeal 1.1, paras 27-40, 1.2, paras 48-49, 53, 58-59), 263 (referring to Prlić's sub-grounds of appeal 1.1, para. 36, 1.3, para. 82), 276 (referring to Prlić's sub-ground of appeal 1.3), 283 (referring to Prlić's sub-grounds of appeal 1.1, 1.3), 302 (referring to Prlić's sub-ground of appeal 1.3, para. 82), 309 (referring to Prlić's sub-grounds of appeal 1.1, 1.3), 315 (referring to Prlić's sub-ground of appeal 1.2, paras 45-47, 1.4), 318 (referring to Prlić's sub-ground of appeal 1.1), 320 (referring to Prlić's sub-ground of appeal 1.2, paras 50-51, 54-55), 324 (referring to Prlić's sub-grounds of appeal 1.2, paras 45-57, 1.4, paras 83-86), 328 (referring to Prlić's sub-ground of appeal 1.3, paras 47-57), 339 (recalling Prlić's sub-ground of appeal 1.2, para. 54), 343 (referring to Prlić's sub-ground of appeal 1.2), 344 (referring to Prlić's sub-grounds of appeal 1.2, para. 52, 1.2.4-1.2.5), 351 (referring to Prlić's sub-ground of appeal 1.2, para. 51), 354 (referring to Prlić's sub-grounds of appeal 1.2, para. 52, 1.2.4-1.2.5), 361 (recalling Prlić's sub-grounds of appeal 1.2, para. 52, 1.2.4-1.2.5), 364 (referring to Prlić's sub-grounds of appeal 1.2, para. 52, 1.2.4-1.2.5), 375 (referring to Prlić's sub-grounds of appeal 1.2, paras 54-55, 1.2.6), 401 (referring to Prlić's ground of appeal 1, paras 184-185).

[560] See *supra*, para. 24.

[561] In addition, the Appeals Chamber observes that Prlić's relevant arguments in grounds 9, 10, 11, and 12 are all dismissed. See *infra*, paras 592-782 (Ground of Appeal 9), 783-1014 (Ground of Appeal 10), 831, 849, 1097, 1127.

[562] Prlić's Appeal Brief, paras 28-31, 35-40, 43, 45-64, 67-68, 70, 73-74, 79-80, 83-84.

[563] Prlić's Appeal Brief, paras 32-33, 41-42, 44, 62-64, 66, 69-72, 78, 80-82. In some cases, Prlić's arguments are only supported by cross-references to other arguments of his appeal brief. Prlić's Appeal Brief, paras 58-61.

challenges might have upon the verdict, when read alone or in the context of the other grounds of his appeal.

176. Based on the foregoing, the Appeals Chamber dismisses Prlić's ground of appeal 1.

2. Failure to explain assessment of documentary evidence (Prlić's Ground 3)

(a) Arguments of the Parties

177. Prlić submits that the Trial Chamber systematically failed to make specific findings on how it assessed documentary evidence, thereby erring in law by applying an incorrect legal standard and failing to provide a reasoned opinion.[564] Prlić argues that the Trial Chamber made general statements on how it assessed documentary evidence, without indicating how it applied its general approach to specific evidence.[565] Prlić asserts in this regard that the Trial Chamber's general statements do not allow for verification that it actually assessed the evidence in the manner it claims.[566] He also submits that numerous examples in the Trial Judgement indicate that the Trial Chamber did not apply its own approach when assessing documentary evidence.[567] Prlić argues that the Trial Chamber provided no analysis as to how it assessed the evidence upon which it based its findings, placing him in the dark as to which pieces of evidence the Trial Chamber actually assessed and relied upon and which ones it ignored.[568] Consequently, Prlić contends that he could not meet his burden as an appellant, which denied him his right to an effective appeal.[569] Prlić concludes that the Appeals Chamber should overturn his convictions on Counts 1-25.[570]

178. The Prosecution responds that Prlić fails to develop his assertion that the Trial Chamber applied an incorrect legal standard.[571] The Prosecution further argues that Prlić misconstrues the obligation to issue a reasoned opinion, which does not require a trial chamber to set out an item-by-item analysis of numerous pieces of evidence.[572] The Prosecution contends that Prlić's assertion that he cannot tell which pieces of evidence the Trial Chamber assessed and which ones it did not rests on the unfounded premise that it ignored evidence.[573] Finally, the Prosecution argues that Prlić fails to demonstrate any denial of his right of appeal, considering that the Trial Chamber's

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[564] Prlić's Appeal Brief, paras 134-136, 146. See Prlić's Appeal Brief, paras 137, 140, 142, 144.
[565] Prlić's Appeal Brief, paras 134, 137, 140, 142, 144, referring to, *inter alia*, Trial Judgement, Vol. 1, paras 287, 380-382; Prlić's Reply Brief, para. 45.
[566] Prlić's Appeal Brief, paras 134, 138, 141, 143, 145.
[567] Prlić's Appeal Brief, paras 134, 138-139, 141, 143, 145; Prlić's Reply Brief, para. 45.
[568] Prlić's Appeal Brief, paras 139, 141, 143, 145-146.
[569] Prlić's Appeal Brief, para. 146.
[570] Prlić's Appeal Brief, para. 147.
[571] Prosecution's Response Brief (Prlić), fn. 184.
[572] Prosecution's Response Brief (Prlić), paras 59-62.
[573] Prosecution's Response Brief (Prlić), para. 63.

clearly referenced factual findings gave him the opportunity to challenge the Trial Chamber's reliance or non-reliance on particular pieces of evidence in reaching those findings.[574]

(b) Analysis

179. The Appeals Chamber notes that the Trial Chamber set out its approach to the assessment of documentary evidence in a general section of the Trial Judgement entitled "Standards Governing the Assessment of the Evidence Admitted".[575] The Trial Chamber explained that "whenever something a witness said disputed a logical sequence of documents in a manner less than persuasive", it "afforded greater weight to the documentary evidence than to his oral statements".[576] The Trial Chamber stated that, in general, it "assigned greater weight to the contents of a document convincingly explained by a witness than to documents admitted by way of written motion".[577] Nevertheless, the Trial Chamber explained that it "did assign some weight to documents not commented on by witnesses in cases where their contents were corroborated by other documents, and particularly when they belonged to a cohesive set of documentary evidence constituting a reliable whole".[578] Finally, the Trial Chamber stated that it "considered all the documentary evidence admitted by way of written motion and assessed it in the context of the other evidence admitted".[579]

180. At the outset, the Appeals Chamber considers that Prlić does not explain why the alleged failure to make specific findings amounts to an application of an incorrect legal standard and therefore dismisses this submission as an undeveloped assertion.[580] With regard to the alleged failure to provide a reasoned opinion, the Appeals Chamber recalls that the reasoned opinion requirement relates to a trial chamber's judgement rather than to each and every submission made at trial.[581] The Appeals Chamber further recalls that the assessment of the credibility of evidence cannot be undertaken by a piecemeal approach – rather, individual documents admitted into evidence have to be analysed in the light of the entire body of evidence adduced.[582] Finally, the Appeals Chamber recalls:

> With regard to factual findings, a Trial Chamber is required only to make findings on those facts which are essential to the determination of guilt on a particular count. It is not necessary to refer to the testimony of every witness or every piece of evidence on the trial record. In short, a

[574] Prosecution's Response Brief (Prlić), para. 63.
[575] Trial Judgement, Vol. 1, p. 100.
[576] Trial Judgement, Vol. 1, para. 287.
[577] Trial Judgement, Vol. 1, para. 380.
[578] Trial Judgement, Vol. 1, para. 381.
[579] Trial Judgement, Vol. 1, para. 382.
[580] The Appeals Chamber notes that Prlić neither advances specific submissions in this respect, nor points to any authority in support of his assertion. See, in particular, Prlić's Appeal Brief, paras 134, 146.
[581] *Limaj et al.* Appeal Judgement, para. 81; *Kvočka et al.* Appeal Judgement, para. 23.
[582] *Halilović* Appeal Judgement, para. 125.

> Trial Chamber should limit itself to indicating in a clear and articulate, yet concise manner, which, among the wealth of jurisprudence available on a given issue and the myriad of facts that emerged at trial, are the legal and factual findings on the basis of which it reached the decision either to convict or acquit an individual. A reasoned opinion consistent with the guidelines provided here allows for a useful exercise of the right of appeal by the Parties and enables the Appeals Chamber to understand and review the Trial Chamber's findings as well as its evaluation of the evidence.[583]

181. In light of this case-law, the Appeals Chamber considers that Prlić does not demonstrate any error. The Trial Chamber's general approach to the assessment of documentary evidence, as set out at the beginning of the Trial Judgement,[584] is to be read in conjunction with factual findings that reference the underlying evidence and sources throughout the Trial Judgement. The Trial Chamber was not required to explain in detail how it applied this general approach to specific evidence in every factual finding. Thus, the Appeals Chamber concludes that in setting out in general its approach to documentary evidence, the Trial Chamber did not violate its obligation to provide a reasoned opinion allowing for the useful exercise of the right of appeal.[585] As for each individual factual finding, the Trial Judgement contains references to the sources, allowing Prlić to determine on which evidence, adjudicated facts, or other factual findings the Trial Chamber relied, thereby allowing him to usefully exercise his right of appeal.[586] Further, Prlić does not identify any specific factual finding lacking sufficient references.[587]

182. As for the argument that Prlić was unable to determine which pieces of evidence the Trial Chamber actually assessed and which ones it ignored, the Appeals Chamber recalls that it is to be presumed that a trial chamber evaluated all the evidence presented to it, as long as there is no indication that the trial chamber completely disregarded any particular piece of evidence.[588] In the present case, Prlić has failed to provide any indication that the Trial Chamber completely disregarded any particular piece of evidence.

183. For the foregoing reasons, the Appeals Chamber concludes that Prlić has failed to demonstrate any error of law, and dismisses his ground of appeal 3.

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[583] *Hadžihasanović and Kubura* Appeal Judgement, para. 13 (internal references omitted).
[584] See *supra*, para. 179.
[585] *Cf. infra*, para. 189 at fn. 605 with further reference.
[586] See generally Trial Judgement, Vol. 4, paras 74-288. In his submissions under his ground of appeal 3, Prlić provides no specific references to the contrary.
[587] The Appeals Chamber observes that Prlić supports his argument that the Trial Chamber did not actually assess the evidence in the manner it claims with cross-references to arguments made under other grounds of appeal, which the Appeals Chamber dismisses elsewhere. See Prlić's Appeal Brief, para. 138, referring to (sub-)grounds of appeal 1.2, 4-6; Prlić's Reply Brief, para. 45, referring to, *inter alia*, Prlić's Appeal Brief, paras 137-140, 142, 144 (ground of appeal 3), 330-331, 333 (sub-ground of appeal 11.1), 345-347 (sub-ground of appeal 11.3), 356 (sub-ground of appeal 11.4), 372 (sub-ground of appeal 11.8), 376-378 (sub-ground of appeal 11.9), 383 (sub-ground of appeal 12.1), 425 (ground of appeal 13), 430 (ground of appeal 14), 467 (sub-ground of appeal 16.1.3), 489 (sub-grounds of appeal 16.2.3-16.2.5), 492 (sub-ground of appeal 16.2.6), 521 (sub-ground of appeal 16.4.2), 555 (sub-grounds of appeal 16.5.1-16.5.2), 562-564, 566 (sub-ground of appeal 16.6.2), 588 (sub-ground of appeal 16.7.2); Prlić's Reply Brief, para. 42 (ground of appeal 2); *infra*, paras 107-138, 168-191, 204-218, 1021-1043, 1048-1070, 1089-1096, 1099-1122, 1128-1134, 1162-1167, 1193-1204, 1225-1230, 1317, 1335-1343, 1286-1298, 1318-1333, 1335-1343, 1356-1373.

E. Disregard of Evidence

1. Prlić's witnesses (Prlić's Ground 2)

(a) Arguments of the Parties

184. Prlić submits that the Trial Chamber erred in law by ignoring the evidence of almost all of his witnesses, thereby violating his right under Article 21(4) of the Statute to present a defence and challenge evidence.[589] Prlić further submits that the Trial Chamber erred in applying a double standard by choosing to rely on the Prosecution's evidence rather than his evidence without pointing to inconsistencies in the evidence or identifying reasons for doubting witnesses' credibility.[590] He contends that these errors amount to failures to provide a reasoned opinion and invalidate the Trial Judgement.[591]

185. Prlić also contends that the Trial Chamber disregarded relevant evidence of Defence Witnesses 1D-AA, Mile Akmadžić, Zdravko Batinić, Zoran Buntić, Milan Cvikl, Ilija Kožulj, Miroslav Palameta, Zoran Perković, Žarko Primorac, Borislav Puljić, Martin Raguž, Adalbert Rebić, Zdravko Sančević, Marinko Šimunović, Neven Tomić, Mirko Zelenika, Damir Zorić, and Miomir Žužul ("Prlić's Defence Witnesses"), who testified "on all issues related to the alleged JCE and JCE core crimes". Because of the failure to consider these witnesses' evidence, he submits, the Trial Chamber erred in fact by drawing unsustainable conclusions regarding the existence of a JCE and Prlić's powers and responsibilities, leading to a miscarriage of justice.[592] In support of his contentions, Prlić points to background information concerning the function and role of these witnesses during the period encompassed by the Indictment and refers to other sub-grounds of his appeal.[593] Prlić concludes that the Appeals Chamber should overturn his convictions on Counts 1-25.[594]

186. The Prosecution responds that the Trial Chamber properly considered the evidence and credibility of Prlić's Defence Witnesses, and expressly considered significant aspects of his case.[595]

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[588] *Popović et al.* Appeal Judgement, paras 306, 340, 830; *Đorđević* Appeal Judgement, fn. 2527; *Haradinaj et al.* Appeal Judgement, para. 129; *Kvočka et al.* Appeal Judgement, para. 23. See also Trial Judgement, Vol. 1, para. 382.
[589] Prlić's Appeal Brief, paras 90, 94-95, 132. See Prlić's Appeal Brief, para. 93; Prlić's Reply Brief, paras 37-38. See also Appeal Hearing, AT. 150-154, 157-159, 168-169 (20 Mar 2017).
[590] Prlić's Appeal Brief, paras 90, 132. See Prlić's Reply Brief, paras 41-44; Appeal Hearing, AT. 162-165 (20 Mar 2017) (focusing on the Trial Chamber's credibility assessments of Batinić, Buntić, and Zelenika).
[591] Prlić's Appeal Brief, paras 90, 132; Appeal Hearing, AT. 151-152, 154, 169 (20 Mar 2017). See also Prlić's Appeal Brief, paras 91-92.
[592] Prlić's Appeal Brief, paras 94-132.
[593] Prlić's Appeal Brief, paras 96-131.
[594] Prlić's Appeal Brief, para. 133.
[595] Prosecution's Response Brief (Prlić), paras 44, 46-52, 54-58; Appeal Hearing, AT. 194 (20 Mar 2017). See also Appeal Hearing, AT. 193 (20 Mar 2017).

It further submits that much of the allegedly ignored evidence does not contradict the Trial Chamber's findings.[596]

(b) Analysis

187. The Appeals Chamber recalls that every accused has the right to a reasoned opinion under Article 23 of the Statute and Rule 98 *ter* (C) of the Rules. However, it is not necessary to refer to the testimony of every witness or every piece of evidence on the trial record. It is to be presumed that the trial chamber evaluated all the evidence presented to it, as long as there is no indication that the trial chamber completely disregarded any particular piece of evidence. There may be an indication of disregard when evidence which is clearly relevant to the findings is not addressed by the Trial Chamber's reasoning. If the Trial Chamber did not refer to the evidence given by a witness, even if it is in contradicton to the Trial Chamber's finding, it is to be presumed that the Trial Chamber assessed and weighed the evidence, but found that the evidence did not prevent it from arriving at its actual findings.[597] The Appeals Chamber notes that, in certain cases, the requirements to be met by the trial chamber are higher.[598] But even in those cases, the trial chamber is only expected to identify the *relevant* factors, and to address the *significant* negative factors. If the Defence adduced the evidence of several other witnesses, who were unable to make any meaningful contribution to the facts of the case, even if the conviction of the accused rested on the testimony of only one witness, the trial chamber is not required to state that it found the evidence of each Defence witness irrelevant. On the contrary, it is to be presumed that the trial chamber took notice of this evidence and duly disregarded it because of its irrelevance. In general, as the *Furundžija* Appeal Judgement stated:

> The case-law that has developed under the European Convention on Human Rights establishes that a reasoned opinion is a component of the fair hearing requirement, but that "the extent to which this duty [...] applies may vary according to the nature of the decision" and "can only be determined in the light of the circumstances of the case".[599]

The Appeals Chamber therefore emphasises that it is necessary for any appellant claiming an error of law because of the lack of a reasoned opinion to identify the specific issues, factual findings, or

[596] Prosecution's Response Brief (Prlić), paras 44, 53; Appeal Hearing, AT. 194 (20 Mar 2017).
[597] *Kvočka et al.* Appeal Judgement, paras 23-24. See also *Tolimir* Appeal Judgement, paras 53, 161, 299; *Popović et al.* Appeal Judgement, paras 925, 1017.
[598] *Krajišnik* Appeal Judgement, para. 139, referring to *Kvočka et al.* Appeal Judgement, para. 24 (concerning the appraisal of witness testimony with regard to the identity of the accused). See also *Popović et al.* Appeal Judgement, para. 133.
[599] *Kvočka et al.* Appeal Judgement, para. 24, referring to *Furundžija* Appeal Judgement, para. 69. See *Kvočka et al.* Appeal Judgement, para. 23.

arguments which he submits the trial chamber omitted to address and to explain why this omission invalidated the decision.[600]

188. As to Prlić's argument that the Trial Chamber failed to provide a reasoned opinion with respect to its assessment of testimonial evidence, the Appeals Chamber notes that the Trial Chamber stated that it "analysed and assessed all the evidence admitted into the record".[601] It set out its general approach to the assessment of *viva voce* witnesses, including credibility issues, and provided examples of witnesses whose testimony lacked credibility.[602] The Trial Chamber also "disregarded the testimony of witnesses whose credibility seemed doubtful throughout the session" and provided the testimony of Mirko Zelenika as an example in this regard.[603] The Appeals Chamber notes that the Trial Chamber did not further discuss in detail the credibility of each Prlić Defence Witness.

189. In light of the applicable law set out above,[604] and the Trial Chamber's general explanation of its approach to the assessment of witness testimony, the Appeals Chamber is not persuaded that the fact that the Trial Chamber did not address specifically and in detail its assessment of each witness's evidence shows that the Trial Chamber contravened its obligation to provide a reasoned opinion.[605] On the contrary, it was open to the Trial Chamber to rely on the evidence of certain witnesses over that of other witnesses, without necessarily referring to the testimony of each and every witness who testified on a given topic.[606] While the requirements to be met by a trial chamber may be higher in certain cases,[607] Prlić's underdeveloped arguments fail to demonstrate that the Trial Chamber had to meet a higher burden in the present case. Accordingly, the Appeals Chamber finds that Prlić has not shown that the Trial Chamber failed to provide a reasoned opinion with respect to the assessment of evidence.

190. Turning to Prlić's arguments that the Trial Chamber failed to consider relevant evidence of Prlić's Defence Witnesses, the Appeals Chamber observes that it has already addressed and dismissed his specific allegations concerning these witnesses in the respective sub-grounds of appeal he refers to.[608] Under this ground of appeal, Prlić only provides background information about these witnesses and points to other sub-grounds of his appeal without articulating the

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[600] *Krajišnik* Appeal Judgement, para. 139; *Kvočka et al.* Appeal Judgement, para. 25.
[601] Trial Judgement, Vol. 1, para. 282.
[602] Trial Judgement, Vol. 1, para. 284. See also Trial Judgement, Vol. 1, paras 285-288.
[603] Trial Judgement, Vol. 1, para. 286.
[604] See *supra*, para. 187.
[605] *Cf. Krajišnik* Appeal Judgement, paras 140-141, 147. See also *supra*, para. 181.
[606] *Cf. Čelebići* Appeal Judgement, para. 481.
[607] See *supra*, para. 187.
[608] See, *supra*, para. 176; *infra,* paras 211, 592-782 (Ground of Appeal 9), 783-1014 (Ground of Appeal 10), 1144-1399 (Ground of Appeal 16).

relevance of their evidence vis-à-vis a specific Trial Chamber finding.[609] As a result, the Appeals Chamber finds that Prlić has failed to rebut the presumption that the Trial Chamber duly considered the evidence of these witnesses and consequently has failed to show that the Trial Chamber disregarded relevant evidence.[610]

191. For the foregoing reasons, Prlić fails to show that the Trial Chamber contravened its obligation to provide a reasoned opinion or that any of its conclusions were unsustainable. In light of the applicable law and Prlić's undeveloped assertions, the Appeals Chamber considers that he has failed to show any error, and consequently dismisses his ground of appeal 2.

2. Defence expert Witness Vlado Šakić's evidence (Praljak's Ground 53)

192. The Trial Chamber found that the objective of Defence expert Witness Vlado Šakić's report was to examine the difficulties which superiors may encounter in ensuring effective control of their troops, particularly in wartime, and apply this analysis to the conflict in BiH, concluding that it was impossible for political and military powers in BiH to establish control over various defence groups who committed crimes.[611] The Trial Chamber found that the Prosecution succeeded in casting doubt on Šakić's impartiality as an expert by revealing his ties with the Croatian Government and the Croatian Intelligence Services.[612] It further found that Šakić failed to review any document specifically addressing the BiH conflict, particularly from the HVO command, and that his report therefore addressed the issue of effective troop control from a purely theoretical perspective.[613] Finally, the Trial Chamber found that Šakić was evasive during cross-examination.[614] Based on the foregoing, the Trial Chamber concluded that it could not rely on his expert report.[615]

193. Praljak argues that the Trial Chamber erred in setting aside the evidence of Šakić based on his irrelevant ties with Croatia and without providing a reasoned opinion.[616] In doing so, the

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[609] See Prlić's Appeal Brief, paras 97, 99, 101, 103, 105, 107, 109, 111, 113, 115, 117, 119, 121, 123, 125, 127, 129, 131-132.
[610] See *supra*, para. 187. The Appeals Chamber also rejects Prlić's unsupported argument that the Trial Chamber applied a double standard by choosing to rely on the Prosecution's evidence rather than his evidence since he does not refer to any specific Trial Chamber finding. To the extent that, in support of his argument, he refers to other sub-grounds of appeal (Prlić's Appeal Brief, paras 97, 99, 101, 103, 105, 107, 109, 111, 113, 115, 117, 119, 121, 123, 125, 127, 129, 131-132), the Appeals Chamber dismisses these grounds of appeal elsewhere in the Judgement. See *supra*, fn. 608. The Appeals Chamber further observes that, in his reply brief, Prlić refers to specific paragraphs of the Trial Judgement but does not identify any specific findings. See Prlić's Reply Brief, paras 39-40.
[611] Trial Judgement, Vol. 1, paras 358-360. See Trial Judgement, Vol. 1, para. 356.
[612] Trial Judgement, Vol. 1, paras 377, 379.
[613] Trial Judgement, Vol. 1, paras 378-379.
[614] Trial Judgement, Vol. 1, para. 379.
[615] Trial Judgement, Vol. 1, para. 379.
[616] Praljak's Appeal Brief, paras 577-580, 584, referring to Trial Judgement, Vol. 1, para. 377; Appeal Hearing, AT. 475-476 (22 Mar 2017). See also Praljak's Reply Brief, para. 121. Praljak argues that the obligation to provide a reasoned opinion required the Trial Chamber to explain why Šakić's ties with Croatia affected his credibility. Praljak's Appeal Brief, paras 578-580 & fn. 1311, referring to *Lukić and Lukić* Appeal Judgement, para. 62.

Trial Chamber purportedly treated Praljak in a biased manner vis-à-vis the Prosecution, and violated his right to a fair trial.[617] Praljak further submits that the Trial Chamber erred when it found Šakić's report to be of low probative value because the report addressed the topic of effective control from a theoretical point of view without considering specific documents.[618] Praljak argues in this regard that the Trial Chamber misunderstood the role of an expert in a criminal trial, which is not to assess the evidence in lieu of the Judges.[619] In addition, Praljak argues that the Trial Chamber misunderstood the purpose of the report which was to provide a socio-psychological view, and not that of a military analyst, on the 1991-1995 war in BiH.[620] In Praljak's submission, the report aimed to highlight: (1) that the war was "generally violent and chaotic", which was important for the "proper assessment of evidence and correct establishment of the facts"; and (2) the situation in which he found himself, which was "extremely important" to assess his responsibility properly.[621] Praljak concludes that he should be acquitted of all charges.[622]

194. The Prosecution responds that Praljak shows no error with the Trial Chamber's decision not to rely on Šakić's expert evidence.[623] It submits that Praljak largely affirms the Trial Chamber's findings on the report in conceding that Šakić had no military background.[624] The Prosecution further submits that Praljak fails to demonstrate that the report is relevant and probative to any live issue in this case.[625] It asserts that Praljak also fails to show that the Trial Chamber abused its discretion in concluding that Šakić was biased since it carefully considered his ties to Croatia.[626] In the Prosecution's submission, the Trial Chamber's detailed analysis of Šakić's report and testimony also refutes Praljak's claim that the Trial Chamber failed to provide a reasoned opinion.[627]

195. On that point, the Appeals Chamber notes that the Trial Chamber discussed its evaluation of Šakić's evidence and credibility in great detail, referring to his ties to Croatia among several other reasons not to rely on his expert report,[628] thus allowing Praljak to exercise his right of appeal in a meaningful manner and the Appeals Chamber to understand and review the Trial Chamber's findings as well as its evaluation of the evidence.[629] The Appeals Chamber therefore dismisses

[617] Praljak's Appeal Brief, paras 580, 584; Appeal Hearing, AT. 472, 475-476 (22 Mar 2017).
[618] Praljak's Appeal Brief, para. 581, referring to Trial Judgement, Vol. 1, para. 378.
[619] Praljak's Appeal Brief, para. 582. See also Praljak's Appeal Brief, para. 583.
[620] Praljak's Appeal Brief, para. 581; Praljak's Reply Brief, para. 121.
[621] Praljak's Appeal Brief, para. 583.
[622] Praljak's Appeal Brief, para. 585.
[623] Prosecution's Response Brief (Praljak), para. 321. See also Prosecution's Response Brief (Praljak), para. 323.
[624] Prosecution's Response Brief (Praljak), paras 321-322.
[625] Prosecution's Response Brief (Praljak), para. 322.
[626] Prosecution's Response Brief (Praljak), para. 323.
[627] Prosecution's Response Brief (Praljak), para. 323.
[628] Trial Judgement, Vol. 1, paras 377-379. See *supra*, para. 192.
[629] Art. 23(2) of the Statute; Rule 98 *ter*(C) of the Rules. See *Stanišić and Župljanin* Appeal Judgement, para. 137; *Popović et al.* Appeal Judgement, paras 1123 (and references cited therein), 1367, 1771.

Praljak's claim that the Trial Chamber violated its obligation to provide a reasoned opinion.[630] Insofar as Praljak claims a violation of fair trial in that the Trial Chamber assessed a Prosecution expert witness with ties to the Prosecution differently, the Appeals Chamber notes that Praljak has failed to show that the Trial Chamber applied the identical set of factors in assessing the credibility of both witnesses and nevertheless arrived at different conclusions, thereby committing an error.[631] The Appeals Chamber recalls in this regard the broad discretion of the Trial Chamber in considering relevant factors on a case-by-case basis and assessing the appropriate weight and credibility to be accorded to the testimony of a witness since it is best placed to assess these issues, and that the Appeals Chamber's review is limited to establishing whether the challenging party has demonstrated that the trial chamber has committed an error.[632]

196. The Appeals Chamber now turns to the submission that the Trial Chamber erred when it found Šakić's report to be of low probative value because the report addressed the topic of effective control from a theoretical point of view without considering specific documents. The Appeals Chamber recalls that the purpose of expert testimony is to supply specialised knowledge that might assist the trier of fact in understanding the evidence before it, and that in the ordinary case an expert witness offers a view based on specialised knowledge regarding a technical, scientific or otherwise discrete set of ideas or concepts that is expected to fall outside the lay person's ken.[633] The Appeals Chamber understands that the Trial Chamber considered that Šakić's expert report did not assist it in understanding the evidence, when it found that he failed to review any document specifically addressing the BiH conflict, particularly from the HVO command, and that his report therefore addressed the issue of effective troop control from a purely theoretical perspective.[634] In light of this, the Appeals Chamber can see no indication that the Trial Chamber considered that an expert in a criminal trial should assess the evidence in lieu of the judges, or in any other way misunderstood the role of an expert, and consequently dismisses this argument.

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[630] Contrary to what Praljak alleges, the obligation to provide a reasoned opinion does not entail an obligation to provide a reasoned opinion specifically on the impact of the mentioned ties on the witness's credibility. His reliance on *Lukić and Lukić* Appeal Judgement, para. 62, is inapposite, since it deals with a situation where the trial chamber in that case had failed to address the witnesses' ties. See *Lukić and Lukić* Appeal Judgement, para. 62. *Cf. Lukić and Lukić* Appeal Judgement, para. 61. In any event, the Appeals Chamber notes that the Trial Chamber explicitly considered several factors in assessing Šakić's credibility which also play a role in the assessment of how his ties to Croatia influence his credibility, namely: (1) it recalled that experts must provide expertise that is objective, impartial, and independent, if they are to assist the Trial Chamber in ruling beyond a reasonable doubt; (2) it further recalled that Šakić's expert testimony concerns an essential issue in this case, namely superior responsibility, and found that under these circumstances a particularly close attention to his impartiality was warranted; and, above all, (3) it noted Šakić's evasive conduct during cross-examination. Trial Judgement, Vol. 1, paras 377, 379.

[631] *Cf. supra*, fn. 630, with Praljak's Appeal Brief, para. 580 & fn. 1314, referring to William Tomljanovich, T. 5928-5929 (4 Sept 2006); Praljak's Reply Brief, para. 121. In particular, Praljak has not shown that this witness was also evasive in cross-examination. See *infra*, para. 200 *et seq.*

[632] *Popović et al.* Appeal Judgement, paras 131-132. See *infra*, para. 200 *et seq.*

[633] *Popović et al.* Appeal Judgement, para. 375 and references cited therein.

[634] Trial Judgement, Vol. 1, paras 378-379.

197. Finally, the Appeals Chamber notes Praljak's argument that the Trial Chamber misunderstood the purpose of Šakić's report, which was to provide a socio-psychological view on the 1991-1995 war, highlighting the above-mentioned two aspects.[635] Praljak merely asserts that these aspects were "important" for the "proper assessment of evidence and correct establishment of facts" and "extremely important" for the proper assessment of his responsibility, without expanding on these assertions. In particular, he does not show in which regard these aspects were important for the Trial Chamber's findings and assessment of his responsibility. Thus, Praljak challenges the Trial Chamber's failure to rely on Šakić's evidence without explaining why the conviction should not stand even if the Trial Chamber had relied on it in combination with the remaining evidence. The Appeals Chamber therefore dismisses this argument.

198. For the foregoing reasons, the Appeals Chamber dismisses Praljak's ground of appeal 53.

F. Conclusion

199. The Appeals Chamber dismisses all challenges with regard to the admissibility or weight of evidence as discussed in the present chapter.

[635] See *supra*, para. 193 at fn. 621.

V. WITNESS CREDIBILITY

A. Introduction

200. The Appeals Chamber recalls that a trial chamber is best placed to assess the credibility of a witness and reliability of the evidence adduced.[636] Therefore, trial chambers have broad discretionary power in assessing the credibility of a witness and in determining the weight to be accorded to his or her testimony.[637] This assessment is based on a number of factors, including the witness's demeanour in court, his or her role in the events in question, the plausibility and clarity of the witness's testimony, whether there are contradictions or inconsistencies in his or her successive statements or between his or her testimony and other evidence, any prior examples of false testimony, any motivation to lie, and the witness's responses during cross-examination.[638] In addition, the Appeals Chamber has previously stated that it is within a trial chamber's discretion to accept or reject a witness's testimony, after seeing the witness, hearing the testimony, and observing him or her under cross examination.[639]

201. In the context of the deference accorded to the trier of fact with respect to the assessment of evidence, the jurisprudence of both the Tribunal and the ICTR has reiterated that it is within a trial chamber's discretion to, *inter alia*: (1) assess and resolve any inconsistencies that may arise within or among witnesses' testimonies, consider whether the evidence taken as a whole is reliable and credible, and to accept or reject the fundamental features of the evidence;[640] (2) decide, in the circumstances of each case, whether corroboration of evidence is necessary and to rely on uncorroborated, but otherwise credible, witness testimony;[641] (3) accept a witness's testimony, notwithstanding inconsistencies between the said testimony and his or her previous statements, as it is for the trial chamber to determine whether an alleged inconsistency is sufficient to cast doubt on the evidence of the witness concerned;[642] and (4) rely on hearsay evidence, provided that it is

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[636] *Popović et al.* Appeal Judgement, para. 513; *Šainović et al.* Appeal Judgement, para. 464; *Nahimana et al.* Appeal Judgement, para. 949.
[637] *Lukić and Lukić* Appeal Judgement, paras 86, 112; *Nzabonimana* Appeal Judgement, para. 45; *Ndindiliyimana et al.* Appeal Judgement, para. 331; *Kanyarukiga* Appeal Judgement, para. 121.
[638] *Nzabonimana* Appeal Judgement, para. 45; *Kanyarukiga* Appeal Judgement, para. 121; *Nchamihigo* Appeal Judgement, para. 47.
[639] *Nzabonimana* Appeal Judgement, para. 45; *Kanyarukiga* Appeal Judgement, para. 121; *Nchamihigo* Appeal Judgement, para. 210.
[640] *Popović et al.* Appeal Judgement, para. 1228; *Karemera and Ngirumpatse* Appeal Judgement, para. 467; *Nzabonimana* Appeal Judgement, para. 319.
[641] *Popović et al.* Appeal Judgement, paras 243, 1009; *Gatete* Appeal Judgement, para. 138; *Ntawukulilyayo* Appeal Judgement, para. 21.
[642] *Lukić and Lukić* Appeal Judgement, para. 234; *Hategekimana* Appeal Judgement, para. 190, referring to *Rukundo* Appeal Judgement, para. 86; *Kajelijeli* Appeal Judgement, para. 96.

reliable and credible.[643] The Appeals Chamber further recalls that it is not unreasonable for a trial chamber to accept the substance of a witness's evidence notwithstanding the witness's inability to recall certain details, especially when a significant amount of time has elapsed since the events to which the witness's evidence relates[644] as well as to accept some but reject other parts of a witness's testimony.[645]

202. The Appeals Chamber further recalls that a trial chamber is not required to set out in detail why it accepted or rejected a particular testimony, and that an accused's right to a reasoned opinion does not ordinarily demand a detailed analysis of the credibility of particular witnesses.[646] However, "[u]nder some circumstances, a reasoned explanation of the Trial Chamber's assessment of a particular witness's credibility *is* a crucial component of a 'reasoned opinion' – for instance, where there is a genuine and significant dispute surrounding a witness's credibility and the witness's testimony is truly central to the question whether a particular element is proven".[647]

203. Prlić, Stojić, and Praljak allege that the Trial Chamber erred in its assessment of the credibility of certain witnesses and/or failed to provide a reasoned opinion in this regard.

B. Expert Witnesses Donia, Tomljanovich, and Ribičić (Prlić's Ground 4)

204. Prlić submits that the Trial Chamber erred in law and fact by failing to properly assess the evidence and credibility of Prosecution expert Witnesses Robert Donia, William Tomljanovich, and Ciril Ribičić.[648] In particular, Prlić argues that the Trial Chamber failed to consider that: (1) the witnesses lacked qualifications or otherwise lacked credibility as expert witnesses;[649] (2) the witnesses were employees of the Prosecution or entertained close ties with the Prosecution;[650] and (3) the reports of the witnesses contained methodological flaws and were framed to fit the

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[643] *Stanišić and Župljanin* Appeal Judgement, para. 510; *Popović et al.* Appeal Judgement, paras 1276, 1307; *Šainović et al.* Appeal Judgement, para. 846.
[644] *Nchamihigo* Appeal Judgement, para. 149; *Kvočka et al.* Appeal Judgement, para. 591.
[645] *Popović et al.* Appeal Judgement, paras 1126, 1243; *Nizeyimana* Appeal Judgement, paras 17, 93, 108; *Šainović et al.* Appeal Judgement, paras 294, 336, 342.
[646] *Popović et al.* Appeal Judgement, para. 133 and references cited therein.
[647] *Bizimungu* Appeal Judgement, para. 64; *Kajelijeli* Appeal Judgement, para. 61.
[648] Prlić's Appeal Brief, paras 148-158. See Prlić's Reply Brief, paras 46, 48-50.
[649] With respect to Witness Donia, Prlić argues that he "was not a lawyer, ethnographer, demographer, or political scientist, and his Ph.D. was constrained to BiH Muslims in the late 19th century". See Prlić's Appeal Brief, para. 152 (internal references omitted). As to Witness Tomljanovich, Prlić contends that he did not understand the role of expert witness in legal proceedings, that he is not a lawyer or political scientist and that his "Ph.D. was constrained to early modern Central European History, focusing on a 19th Century Croatian Bishop". See Prlić's Appeal Brief, para. 154 (internal references omitted). With respect to Witness Ribičić, Prlić submits that he lacked credibility as an expert, and in support refers to testimony purportedly showing that he: (1) was not aware that every municipality in the former Yugoslavia had official gazettes; (2) relied on extraneous political statements; (3) did not go beyond the documents provided by the Prosecution; and (4) did not consider "newly available evidence" against his original analysis to verify if it was correct. See Prlić's Appeal Brief, para. 156.
[650] Prlić's Appeal Brief, paras 152, 154, 156.

Prosecution's narrative.[651] Prlić argues that the Trial Chamber relied heavily on these witnesses for a series of critical findings against him.[652] Prlić contends that the Trial Chamber thereby failed to provide reasoned opinions and applied an incorrect legal standard in assessing the evidence, invalidating the Trial Judgement.[653] Prlić further submits that there was a miscarriage of justice as the Trial Chamber drew unsustainable conclusions on the existence of a JCE and Prlić's powers and responsibilities.[654] As a result, Prlić avers that the Appeals Chamber should overturn his convictions on Counts 1-25 of the Indictment.[655]

205. The Prosecution responds that Prlić's submissions are unfounded and that he fails to articulate any error or explain why the convictions should not stand on the remainder of the evidence.[656] The Prosecution submits that the Trial Chamber properly assessed the evidence of the expert witnesses and that the factors Prlić alleges the Trial Chamber failed to consider consist of mischaracterised and irrelevant claims.[657]

206. With respect to Prlić's challenge that the Trial Chamber failed to provide a reasoned opinion with respect to its assessment of the expert evidence, the Appeals Chamber observes that while not discussing in detail the credibility of Expert Witnesses Donia, Tomljanovich, and Ribičić, the Trial Chamber did explain in general its approach to expert evidence.[658] The Trial Chamber noted that when analysing the experts' reports it "gave consideration to the experts' field of professional expertise, their impartiality, the methodology employed in their report, the material available to the experts for conducting their analyses and the credibility of the conclusions drawn in light of these factors and the other evidence admitted".[659] In addition, the Trial Chamber determined in advance of each expert witness appearing to testify that, having given due consideration to the information and arguments submitted by the Parties, the witnesses were competent to testify as experts.[660]

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[651] Prlić's Appeal Brief, paras 152, 154, 156; Prlić's Reply Brief, paras 48-50; Appeal Hearing, AT. 165-167 (20 Mar 2017).
[652] Prlić's Appeal Brief, paras 148-149, 153, 155, 157.
[653] Prlić's Appeal Brief, paras 151, 158. Prlić argues that the Trial Chamber applied a double standard in which Defence witnesses closely associated with the accused were found to lack credibility, while Prosecution witnesses employed by the Office of the Prosecutor were not. Appeal Hearing, AT. 166 (20 Mar 2017). See Appeal Hearing, AT. 162, 165 (20 Mar 2017).
[654] Prlić's Appeal Brief, paras 149, 158.
[655] Prlić's Appeal Brief, para. 159.
[656] Prosecution's Response Brief (Prlić), paras 65-66, 76-77.
[657] Prosecution's Response Brief (Prlić), paras 65, 67-75.
[658] Trial Judgement, Vol. 1, paras 291-292. See also Trial Judgement, Vol. 1, paras 289-290, 293. Moreover, the Trial Chamber provided a lengthy and detailed decision to disregard the evidence of two other expert witnesses. See Trial Judgement, Vol. 1, paras 293-379.
[659] Trial Judgement, Vol. 1, para. 291.
[660] Trial Judgement, Vol. 1, para. 290. With respect to Witness Ribičić, the Appeals Chamber observes that he testified in the *Kordić and Čerkez* case as an expert witness and his evidence was further admitted by the Trial Chamber pursuant to Rules 92 *bis* and 94 *bis* of the Rules. See *The Prosecutor v. Jadranko Prlić et al.*, Case No. IT-04-74-T, *Décision relative aux demandes de l'accusation aux fins du versement de comptes rendus de témoinage en application de l'article 92 bis du règlement,* 8 December 2006, paras 17-27.

Recalling that a trial chamber is not required to set out in detail why it accepted or rejected a particular testimony,[661] the Appeals Chamber finds that Prlić's reference to excerpts of each expert witnesses' testimony fails to show that the Trial Chamber's analysis of the reports and the testimony of the experts was insufficient to explain its assessment of their credibility and evidence. In addition, the Appeals Chamber considers that the mere fact that the Trial Chamber did not expressly discuss specific challenges related to the credibility of Donia, Tomljanovich, and Ribičić does not establish that the Trial Chamber failed to consider these challenges when assessing the witnesses' credibility.

207. Turning to Prlić's specific argument that the Trial Chamber erred in its assessment of the qualifications of Donia, Tomljanovich, and Ribičić as experts, the Appeals Chamber observes that the matter was addressed by the Trial Chamber in its decision to admit the relevant evidence under Rule 94 *bis* of the Rules.[662] Moreover, the Appeals Chamber finds that Prlić's argument fails to articulate any error in the Trial Chamber's assessment of their status as expert witnesses warranting appellate review.[663]

208. As to the relationships of Donia, Tomljanovich, and Ribičić with the Office of the Prosecutor, the Appeals Chamber recalls that the mere fact that an expert witness is employed or paid by a party does not disqualify him or her from testifying as an expert witness.[664] Accordingly, Prlić's assertion that the expert witnesses were employed or entertained close ties with the Office of the Prosecutor is insufficient to demonstrate that the Trial Chamber failed to consider these relationships or incorrectly assessed the witnesses' evidence.

209. With respect to Prlić's argument that the expert evidence provided by Donia, Tomljanovich, and Ribičić is affected by methodological flaws, the Appeals Chamber observes that Prlić merely refers to excerpts of their testimony without showing why it was unreasonable for the

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[661] *Popović et al.* Appeal Judgement, para. 133. See also *Lukić and Lukić* Appeal Judgement, para. 112.
[662] See T(F). 790-791 (25 Apr 2006) (Witness Donia); T(F). 3805-3806 (Witness Tomljanovich); The Prosecutor v. Jadranko Prlić et al., Case No. IT-04-74-T, Décision relative aux demandes de l'accusation aux fins du versement de comptes rendus de témoinage en application de l'article 92 bis du règlement, 8 December 2006, paras 17-27 (Witness Ribičić).
[663] Specifically, the Appeals Chamber fails to see how the fact that Donia "was not a lawyer, ethnographer, demographer, or political scientist, and his Ph.D. was constrained to BiH Muslims in the late 19th century" and that Tomljanovich's "Ph.D. was constrained to early modern Central European History, focusing on a 19th Century Croatian Bishop" would, in and of itself, undermine each witness's credibility as an expert. See Prlić's Appeal Brief, paras 152, 154 (references omitted). Similarly, the Appeals Chamber finds no merit in Prlić's speculative assertion that Witness Tomljanovich did not understand the role of an expert witness in criminal proceedings. See Prlić's Appeal Brief, para. 152. With respect to Ribičić, Prlić merely points to aspects of his testimony without showing how these excerpts would undermine the credibility of the witness or that the Trial Chamber failed to consider them. See Prlić's Appeal Brief, para. 156.
[664] *Tolimir* Appeal Judgement, para. 69; *Prosecutor v. Vujadin Popović et al.*, Case No. IT-05-88AR73.2, Decision on Joint Defence Interlocutory Appeal Concerning the Status of Richard Butler as an Expert Witness, 30 January 2008, para. 20; *Nahimana et al.* Appeal Judgement, para. 199.

Trial Chamber to rely on these witnesses and their evidence. Prlić's argument reflects mere disagreement with the Trial Chamber's assessment of the relevant evidence. Accordingly, Prlić's assertion that the Trial Chamber applied an incorrect legal standard in assessing the evidence of the expert witnesses fails to include any demonstration that the Trial Chamber strayed from its broad discretion in the assessment of witness credibility.[665]

210. In relation to Prlić's argument that the Trial Chamber heavily relied on Donia, Tomljanovich, and Ribičić for a series of critical findings against him, the Appeals Chamber considers that Prlić refers to instances where the Trial Chamber relied on the evidence of these expert witnesses, but ignores the fact that in those instances the Trial Chamber also relied on numerous other testimonial and documentary evidence.[666] Prlić fails to elaborate how the reliance by the Trial Chamber on the evidence of the three expert witnesses was inconsistent with their role in assisting the Trial Chamber in its assessment of the evidence before it or how it constituted an error by the Trial Chamber. This argument is therefore dismissed.

211. Based on the foregoing, the Appeals Chamber finds that Prlić has failed to show any error in the Trial Chamber's assessment of the evidence and credibility of Witnesses Donia, Tomljanovich, and Ribičić. Accordingly, the Appeals Chamber dismisses Prlić's ground of appeal 4.

C. Witnesses BA, BB, BC, BD, Beese, BH, DZ, Galbraith, Lane, and Manolić (Prlić's Ground 6)

1. Arguments of the Parties

212. Prlić submits that the Trial Chamber erred in law and fact by failing to properly assess the credibility and evidence of certain Prosecution witnesses upon whom it heavily relied in "drawing unsustainable conclusions regarding the existence of a JCE and [his] powers and responsibilities".[667] He proposes that a proper credibility assessment of a witness's evidence must encompass its internal consistency, its strength during cross-examination and coherence against

[665] In support of his argument that the Trial Chamber applied a double standard in assessing the evidence of Defence witnesses who are closely associated with the accused as compared to Prosecution witnesses who are employees of the Prosecution, Prlić offers only one example – between Defence Witness Zdravko Batinić and Prosecution expert Witness William Tomljanovich. See Appeal Hearing, AT. 162, 165-166 (20 Mar 2017). The Appeals Chamber considers that this example comparing the evidentiary assessment of a lay witness with an expert witness does not assist in showing that the Trial Chamber applied a double standard. See Trial Judgement, Vol. 1, para. 407, Vol. 2, para. 308. See also *Tolimir* Appeal Judgement, para. 69.

[666] Prlić's Appeal Brief, fns 300-302, referring to Trial Judgement, Vol. 1, paras 409, 413, 420-422, 424, 426, 428-429, 432, 436, 438-440, 442, 447, Vol. 4, paras 13-14 (in respect of Donia); Vol. 1, paras 419, 421, 436-437, 452-454, 467, 483-484, 500-501, 504, 506, 511, 515, 522, 525, 528, 532, 534, 555, 640, 670, Vol. 4, paras 21, 81-82, 88, 125, 138, 158 (in respect of Tomljanovich); Vol. 1, paras 421-422, 424, 465, 480, 483-484, 493, 495-496, 498, 500-511, 515-516, 522-525, 527-528, 531, 631, 633, 638, 685, 689, 694, 698, 711, 769, Vol. 3, paras 549, 552, 556, Vol. 4, paras 11, 14-16, 18, 21, 82 (in respect of Ribičić).

[667] Prlić's Appeal Brief, para. 204. See Prlić's Appeal Brief, paras 178-203; Prlić's Reply Brief, para. 53.

prior statements, its credibility in light of other evidence, and the possible motives of the witness.[668] According to Prlić, if the testimony of a witness "shows weakness in any of these respects", the Trial Chamber cannot rely on this evidence without corroboration.[669]

213. Specifically, Prlić submits that the Trial Chamber erred in assessing the testimonies of Prosecution Witnesses BA, BB, BC, BD, Christopher Beese, BH, DZ, Peter Galbraith, Ray Lane, and Josip Manolić.[670] He contends that the Trial Chamber failed to take into account specific aspects of these witnesses' testimonies that affect their credibility, namely: (1) alleged discrepancies within and among their testimonies; (2) the witnesses' failure to recollect the details of the events or the fact that they testified on the basis of documents shown to them; (3) their lack of knowledge of background information concerning the events they testified about; (4) the fact that some witnesses provided exculpatory or uncorroborated hearsay evidence; and (5) their bias against the Croats or possible motives in implicating him with their testimony.[671] As a result, Prlić contends that the Trial Chamber erred in relying on the evidence of these witnesses in reaching specific findings pertaining to the existence of the JCE, as well as his powers and responsibility.[672]

214. The Prosecution responds that Prlić's allegations are unfounded and that he fails to demonstrate any error or impact on the verdict.[673] The Prosecution further submits that the Trial Chamber reasonably relied upon and correctly assessed the witnesses' credibility and that the factors which Prlić claims the Trial Chamber failed to consider consist of mischaracterised trivial claims.[674]

2. Analysis

215. The Appeals Chamber dismisses Prlić's incorrect claim that corroboration of a witness's testimony is required whenever that testimony contains internal discrepancies or is inconsistent with other evidence or prior statements. It is within the discretion of a trial chamber to determine whether, in the circumstances of the case, corroboration is necessary.[675] This principle applies

[668] Prlić's Appeal Brief, para. 179.
[669] Prlić's Appeal Brief, para. 179.
[670] Prlić's Appeal Brief, paras 181-203.
[671] See Prlić's Appeal Brief, paras 182, 184, 187, 189, 191, 193-194, 196, 198, 200, 202. Prlić's Reply Brief, paras 54-55. In addition, Prlić avers that the Trial Chamber: (1) erred in relying on the prior statements and testimonies of Witnesses BA and DZ as during the interviewing sessions they were shown documents not referenced in their statements and the interviewing sessions were not properly recorded, thus denying Prlić the right to effective confrontation; and (2) failed to consider that the interview of Witnesses BH and Lane were not properly recorded. Prlić's Appeal Brief, paras 181-182, 184, 193, 202. See also Prlić's Reply Brief, para. 53.
[672] Prlić's Appeal Brief, paras 183, 185, 188, 190, 192, 195, 197, 199, 201, 203.
[673] Prosecution's Response Brief (Prlić), paras 94-95, 122-123.
[674] Prosecution's Response Brief (Prlić), paras 94, 101-120. The Prosecution also submits that Prlić's arguments that he was deprived of the right to confront Witnesses BA, BH, DZ, and Lane are unmeritorious and should be dismissed. Prosecution's Response Brief (Prlić), paras 96-100, 114, 121.
[675] See, *e.g.*, *Popović et al.* Appeal Judgement, paras 243, 1009; *D. Milošević* Appeal Judgement, para. 215.

equally to the evidence of witnesses who may have a motive to implicate the accused, provided that the trier of fact applies the appropriate caution in assessing such evidence.[676] Finally, there is no general requirement that the testimony of a witness be corroborated if deemed otherwise credible.[677] Accordingly, the Appeals Chamber rejects this argument.

216. As to the specific challenges concerning Witnesses BA, BB, BC, BD, Beese, BH, DZ, Galbraith, Lane, and Manolić, the Appeals Chamber observes that Prlić lists specific features of their testimony that he claims the Trial Chamber disregarded without explaining how such aspects, whether taken individually or together, would undermine the Trial Chamber's assessment of the evidence or its impugned findings.[678] By merely arguing that the witnesses' testimonies were inconsistent, or that these witnesses failed to recollect events or lacked knowledge thereof, provided exculpatory or uncorroborated hearsay evidence, and had motives which could affect their reliability, Prlić fails to show any error in the Trial Chamber's assessment of the evidence.[679] Thus, Prlić's contentions fail.

217. Moreover, the Appeals Chamber observes that in the portion of the Trial Judgement titled "Standards Governing the Assessment of the Evidence Admitted", the Trial Chamber discussed its general approach to assessing witness evidence in this case.[680] The Trial Chamber stated that, in assessing testimonial evidence, it took into account the demeanour of the witnesses, any discrepancies in their evidence, and their possible motives which could call into question their reliability, as well as the time that had elapsed since the events.[681] The Trial Chamber also explicitly addressed arguments that some Prosecution witnesses, *e.g.*, European Community Monitoring Mission ("ECMM") and United Nations Protection Force ("UNPROFOR") personnel, lacked first-hand local knowledge and were unable to evaluate the information received from other sources, finding that in certain cases these witnesses "had limited knowledge of the sequence of events and limited preparation for their mission in the field".[682] Recalling that a trial chamber does

[676] *Popović et al.* Appeal Judgement, para. 135; *Šainović et al.* Appeal Judgement, para. 1101; *Nchamihigo* Appeal Judgement, para. 48.
[677] *Popović et al.* Appeal Judgement, paras 243, 1264; *D. Milošević* Appeal Judgement, para. 215. See also *Kordić and Čerkez* Appeal Judgement, para. 274.
[678] See Prlić's Appeal Brief, paras 182, 184, 187, 189, 191, 193, 196, 198, 200, 202.
[679] As to Prlić's argument that he was deprived of the right to effectively confront Witnesses BA and DZ, the Appeals Chamber observes that Prlić cross-examined each witness on the circumstances in which their respective statements were taken. See Witness BA, T. 7328-7333 (closed session) (26 Sept 2006), T. 7395-7405 (closed session) (27 Sept 2006); Witness DZ, T. 26651-26652 (closed session) (23 Jan 2008). Further, Prlić fails to explain how the manner in which the witnesses were questioned by the Prosecution affected the reliability of their evidence. Similarly, regarding Prlić's claim that he could not properly challenge the evidence of Witnesses BH and Lane, he fails to show any resulting prejudice. Accordingly, these arguments are dismissed.
[680] Trial Judgement, Vol. 1, paras 284-288.
[681] Trial Judgement, Vol. 1, paras 284-287.
[682] Trial Judgement, Vol. 1, para. 288.

not need to set out in detail why it accepted or rejected a particular witness's testimony,[683] the Appeals Chamber finds that the mere fact that the Trial Chamber did not expressly discuss the specific aspects noted by Prlić of the testimonies of Witnesses BA, BB, BC, BD, Beese, BH, DZ, Galbraith, Lane, and Manolić does not establish that the Trial Chamber failed to consider these aspects when assessing the witnesses' credibility. Therefore, the Appeals Chamber finds that Prlić has not shown that the Trial Chamber failed to consider some aspects of the witnesses' testimonies and erroneously assessed their evidence.

218. Accordingly, the Appeals Chamber finds that Prlić has failed to show any error in the Trial Chamber's assessment of the evidence of Witnesses BA, BB, BC, BD, Beese, BH, DZ, Galbraith, Lane, and Manolić and, accordingly, dismisses his ground of appeal 6.

D. Praljak's testimony (Praljak's Ground 55)

1. Alleged denial of a reasoned opinion (Sub-ground 55.1)

219. Praljak submits that the Trial Chamber erred by not providing a reasoned opinion with regard to the credibility assessment of his testimony.[684] Specifically, Praljak argues that the Trial Chamber failed to explain which parts of his testimony it found credible or not credible, and why.[685] Praljak further argues that the Trial Chamber should have done so given the importance and extent of his evidence.[686] Praljak concludes that the error affects the entire Trial Judgement and that he should therefore be acquitted of all charges.[687]

220. The Prosecution responds that Praljak identifies neither any failure to address aspects of his testimony that is sufficiently prejudicial to invalidate the Trial Judgement, nor any error that would occasion a miscarriage of justice.[688] In particular, the Prosecution argues that the Trial Chamber properly assessed Praljak's testimony in the context of the totality of the evidence and that it was not obliged to explain its assessment in detail.[689]

221. The Appeals Chamber recalls that a trial chamber is not required to set out in detail why it accepted or rejected the testimony of an accused person, nor systematically justify why it rejected each part of that evidence.[690] The Trial Chamber found that Praljak's testimony was credible on certain points, and relied on his testimony in those instances, but was hardly credible on others, in

[683] See *supra*, para. 202.
[684] Praljak's Appeal Brief, paras 592-593, 596, 599. See also Appeal Hearing, AT. 472 (22 Mar 2017).
[685] Praljak's Appeal Brief, paras 595-596, 598.
[686] Praljak's Appeal Brief, paras 594-595, 598-599.
[687] Praljak's Appeal Brief, para. 592; Praljak's Reply Brief, para. 125.
[688] Prosecution's Response Brief (Praljak), para. 329. See Prosecution's Response Brief (Praljak), para. 333.
[689] Prosecution's Response Brief (Praljak), paras 330-331.

particular when seeking to limit his responsibility in respect of certain allegations.[691] In making this finding, the Trial Chamber does not cite to specific parts of Praljak's evidence, nor does it refer to other parts of the Trial Judgement where it discussed Praljak's testimony in more detail. However, in referring generally to the volume and importance of his evidence, Praljak does not demonstrate how the lack of a more detailed discussion of this evidence invalidates the Trial Judgement. As such, he has not met the burden of proof required for an appellant alleging an error of law on the basis of a lack of a reasoned opinion. Praljak's sub-ground of appeal 55.1 is dismissed.

2. Alleged failure to properly assess Praljak's testimony (Sub-ground 55.2)

222. Praljak submits that the Trial Chamber erred by failing to properly assess his testimony.[692] In particular, Praljak argues that the Trial Chamber: (1) wrongly found that his testimony contained inherent contradictions and distorted his words to suit its preconceptions; and (2) ignored some of his testimony even if it was confirmed by other evidence.[693] As a result, Praljak submits that the Trial Chamber reached erroneous conclusions affecting the entire Trial Judgement and that he should be acquitted of all charges.[694]

223. The Prosecution responds that Praljak fails to show that the Trial Chamber abused its discretion when assessing his credibility.[695] Specifically, the Prosecution submits that Praljak's arguments should be summarily dismissed, as: (1) his contention that the Trial Chamber distorted his testimony in order to confirm its preconceptions merely repeats arguments made elsewhere; and (2) the alleged disregard of his testimony is a mere assertion that the Trial Chamber failed to interpret the evidence in a particular manner.[696]

224. The Appeals Chamber observes that Praljak bases his arguments on cross-references to other sections of his appeal brief,[697] which the Appeals Chamber dismisses elsewhere.[698] His arguments that the Trial Chamber wrongly found that his testimony contained inherent contradictions and distorted his words to suit its preconceptions are dismissed as either

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[690] *Karera* Appeal Judgement, paras 20-21. See also *supra*, para. 202.
[691] Trial Judgement, Vol. 1, para. 399.
[692] Praljak's Appeal Brief, paras 592, 600-602.
[693] Praljak's Appeal Brief, paras 600-601; Praljak's Reply Brief, para. 124.
[694] Praljak's Appeal Brief, paras 592, 602; Praljak's Reply Brief, para. 125.
[695] Prosecution's Response Brief (Praljak), para. 329. See Prosecution's Response Brief (Praljak), para. 333.
[696] Prosecution's Response Brief (Praljak), para. 332.
[697] See Praljak's Appeal Brief, para. 601, referring to, *inter alia*, Praljak's Appeal Brief, paras 378 (sub-ground of appeal 38.1), 404 (sub-ground of appeal 39.1), 437 (sub-ground of appeal 40.4), 462 (ground of appeal 42), 495 (sub-ground of appeal 45.1).
[698] See *infra*, paras 1837, 1844-1852 (dismissing Praljak's Appeal Brief, para. 378), 1892, 1895 (dismissing Praljak's Appeal Brief, para. 437), 1912, 1914-1918 (dismissing Praljak's Appeal Brief, para. 404), 1950, 1954-1957 (dismissing Praljak's Appeal Brief, para. 462), 2038, 2042-2054 (dismissing Praljak's Appeal Brief, para. 495).

unsubstantiated or for lack of possible impact on the relevant findings of the Trial Chamber.[699] His argument that the Trial Chamber ignored some of his testimony even if it was confirmed by other evidence is not supported by the reference he provides to his appeal brief.[700] The Appeals Chamber considers that Praljak has failed to demonstrate that the Trial Chamber abused its discretion in assessing his testimony and reached erroneous conclusions affecting the entire Trial Judgement. The Appeals Chamber therefore dismisses Praljak's sub-ground of appeal 55.2.

E. Conclusion

225. The Appeals Chamber dismisses all challenges to the Trial Chamber's assessment of the credibility of witnesses.

[699] See *infra*, paras 1837, 1844-1852 (dismissing Praljak's Appeal Brief, para. 378), 1892, 1895 (dismissing Praljak's Appeal Brief, para. 437), 1912, 1914-1918 (dismissing Praljak's Appeal Brief, para. 404), 2038, 2042-2054 (dismissing Praljak's Appeal Brief, para. 495).
[700] See Praljak's Appeal Brief, para. 601, referring to, *inter alia*, Praljak's Appeal Brief, para. 462. See also *infra*, paras 1950, 1954-1957 (dismissing Praljak's Appeal Brief, para. 462).

VI. CHALLENGES TO CHAPEAU REQUIREMENTS OF ARTICLE 2 OF THE STATUTE

226. The Trial Chamber convicted Prlić, Stojić, Praljak, Petković, Ćorić, and Pušić of various crimes as grave breaches of the Geneva Conventions under Article 2 of the Statute, namely, wilful killing, inhuman treatment, the extensive destruction of property not justified by military necessity and carried out unlawfully and wantonly, the appropriation of property not justified by military necessity and carried out unlawfully and wantonly, deportation, the unlawful transfer of civilians, and the unlawful confinement of civilians. In so doing, the Trial Chamber found that the chapeau requirements of Article 2 of the Statute were satisfied on the basis that in almost all municipalities relevant to the Indictment: (1) an armed conflict existed between the HVO and the ABiH;[701] (2) the armed conflict was international in character due to both the direct involvement of the Army of the Republic of Croatia ("HV") in the conflict, and the overall control wielded by Croatia and its military, the HV, over the HVO;[702] (3) the acts charged as crimes pursuant to Article 2 of the Statute were closely linked to that international armed conflict;[703] and (4) the relevant acts were committed against persons and property protected under the relevant Geneva Conventions.[704]

227. Recalling that the civilian population and civilian property in occupied territory are protected and may be the subject of grave breaches of the Geneva Conventions, the Trial Chamber also held that it was necessary for it to establish the existence of an occupation when crimes were alleged under Article 2 of the Statute in places and on dates for which the Trial Chamber was unable to establish the existence of a conflict between the HVO and ABiH.[705] Accordingly the Trial Chamber analysed the evidence and found that the HVO, over which Croatia's army, the HV, wielded overall control, occupied: (1) Prozor Municipality from August to December 1993;[706] (2) the villages of Duša, Hrasnica, Ždrimci, and Uzričje in Gornji Vakuf Municipality after 18 January 1993; (3) the villages of Sovići and Doljani in Jablanica Municipality after 17 April 1993; (4) West Mostar from May 1993 to February 1994; (5) Ljubuški Municipality in August 1993; (6) Stolac Municipality in July and August 1993; (7) Čapljina Municipality from

[701] See Trial Judgement, Vol. 3, para. 514.
[702] SeeTrial Judgement, Vol. 3, paras 529-531, 543-544, 567-568.
[703] SeeTrial Judgement, Vol. 3, para. 624.
[704] See, *e.g.*, Trial Judgement, Vol. 3, paras 611, 618-619.
[705] See Trial Judgement, Vol. 3, paras 574-575. See also Trial Judgement, Vol. 3, para. 576 (on the crime of deportation as a transfer across the boundary of occupied territory).
[706] The Trial Chamber in particular found that the town of Prozor was occupied by the HVO from 24 to 30 October 1992 and that the village of Parcani was occupied at least during the days following the attack of 17 April 1993. See Trial Judgement, Vol. 3, para. 589.

July to September 1993; and (8) the town of Vareš and the village of Stupni Do in Vareš Municipality after 23 October 1993.[707]

228. The Appellants do not contest the chapeau requirements laid down by the Trial Chamber for the application of Article 2 of the Statute,[708] but rather challenge the Trial Chamber's findings that the requirements were satisfied in this case.[709] The Appeals Chamber will address these challenges below.

A. Existence of an International Armed Conflict

1. Scope of the international armed conflict

229. At the outset, the Appeals Chamber observes that the Trial Chamber examined whether a state of occupation existed in those municipalities where, in its view, no international armed conflict had been proven.[710] Limiting the scope to situations where "there is resort to armed force between States or protracted armed violence between government authorities and organised armed group or between such groups within a State",[711] the Trial Chamber examined the "resort to armed force" on a municipality-by-municipality basis, concluding that an international armed conflict existed in most, but not all, of the municipalities covered by the Indictment.[712] This conclusion was reached despite all of these municipalities being part of BiH that constituted the territory of the conflict between the HVO and ABiH.

230. The Appeals Chamber recalls that an armed conflict is not limited to the specific geographical municipalities where acts of violence and actual fighting occur, or to the specific periods of actual combat. Rather, the question of whether a situation constitutes an "armed conflict" requires a holistic evaluation of the parameters of the conflict. As the Appeals Chamber held in the *Tadić* case, "the temporal and geographical scope of both internal and international armed conflicts extends beyond the exact time and place of hostilities".[713] In the *Kordić and Čerkez* case, the Appeals Chamber upheld the Trial Chamber's conclusion that in determining the international character of a conflict "all that is required is a showing that a state of armed conflict existed in the

[707] See Trial Judgement, Vol. 3, paras 578-589.
[708] See Trial Judgement, Vol. 1, para. 83.
[709] Prlić's Appeal Brief, paras 652-668; Stojić's Appeal Brief, paras 406-420; Praljak's Appeal Brief, paras 7-41; Praljak's Reply Brief, paras 6-13; Petković's Appeal Brief, paras 410-429; Ćorić's Appeal Brief, paras 67-74; Pušić's Appeal Brief, paras 230-234.
[710] See Trial Judgement, Vol. 3, paras 575, 577-580, 583-585, 587-589. The Trial Chamber also examined the existence of a state of occupation where the crime of deportation was alleged. See Trial Judgement, Vol. 3, para. 576.
[711] See Trial Judgement, Vol. 1, para. 84, referring to *Kunarac et al.* Appeal Judgement, para. 56, *Tadić* Appeal Decision on Jurisdiction, para. 70.
[712] See Trial Judgement, Vol. 3, paras 528-544. See also Trial Judgement, Vol. 3, paras 545-568.
[713] *Tadić* Appeal Decision on Jurisdiction, para. 67.

larger territory of which a given location forms a part".[714] Concerning the temporal scope, the Appeals Chamber has emphasised that:

> International humanitarian law applies from the initiation of [an armed conflict] and extends beyond the cessation of hostilities until a general conclusion of peace is reached; or, in the case of internal conflicts, a peaceful settlement is achieved. Until that moment, [it] continues to apply in the whole territory of the warring States or, in the case of internal conflicts, the whole territory under the control of a party, whether or not actual combat takes place there.[715]

231. The Appeals Chamber recalls that the Trial Chamber held, in accordance with the Appeals Chamber's jurisprudence, that it was not necessary, for the purpose of classifying an armed conflict as international or non-international, to prove that troops were present in each of the places where crimes were committed.[716] Similarly, it noted that to prove the nexus between the crimes and the armed conflict or occupation, it was not necessary to show that fighting took place in the same municipalities where alleged crimes were committed, but only that the crimes were directly connected with the hostilities taking place in other parts of the territory.[717]

232. The Appeals Chamber considers that while stating the law correctly, the Trial Chamber erred when applying it and in finding that crimes committed where no active combat occurred were not committed in an international armed conflict situation.[718] The Appeals Chamber is satisfied that the Trial Chamber's finding that the HVO and ABiH were engaged in hostilities amounting to an international armed conflict in specific parts of BiH territory and during specific time periods relevant to the Indictment,[719] was sufficient for the Trial Chamber to apply the "grave breaches" regime of the Geneva Conventions to all crimes committed anywhere on the entire BiH territory and at any time until the end of the armed conflict and in close connection with that conflict. Article 2 of the Statute thus applies irrespective of whether such crimes were perpetrated in zones of active combat. In light of the above principles, the Trial Chamber's rigid differentiation between crimes committed in places where and while active fighting was taking place, and crimes committed in places where no active combat was taking place at the time of the commission of the

[714] *Kordić and Čerkez* Appeal Judgement, para. 314. See also *Kordić and Čerkez* Appeal Judgement, para. 320, referring to *Kordić and Čerkez* Trial Judgement, para. 70 ("it would be wrong to construe the Appeals Chamber's Decision [in *Tadić*] as meaning that evidence as to whether a conflict in a particular locality has been internationalised must necessarily come from activities confined to the specific geographical area where the crimes were committed, and that evidence of activities outside that area is necessarily precluded in determining that question").
[715] *Tadić* Appeal Decision on Jurisdiction, para. 70. The Appeals Chamber also stated that "the very nature of the [Geneva] Conventions [...] dictates their application throughout the territories of the parties to the conflict; any other construction would substantially defeat their purpose". *Tadić* Appeal Decision on Jurisdiction, para. 68. See also *Kordić and Čerkez* Appeal Judgement, para. 321 ("Once an armed conflict has become international, the Geneva Conventions apply throughout the respective territories of the warring parties.").
[716] See Trial Judgement, Vol. 1, para. 85, Vol. 3, para. 518.
[717] See Trial Judgement, Vol. 3, para. 623. See also Trial Judgement, Vol. 1, para. 109.
[718] See Trial Judgement, Vol. 1, para. 85, Vol. 3, paras 514, 517-518. *Cf.* Trial Judgement, Vol. 3, para. 575 (in the context of occupation), Appeal Hearing, AT. 302-305 (21 Mar 2017).
[719] See Trial Judgement, Vol. 3, paras 514, 517.

crimes but which were occupied by the HVO (and during that occupation)[720] was only necessary vis-à-vis crimes allegedly committed against persons or property in the context of occupied territory, as will be discussed below.[721]

233. The Appeals Chamber, therefore, reverses as legally erroneous the Trial Chamber's conclusions that there was no international armed conflict in the places covered by the Indictment where no active combat was taking place, *i.e.* West Mostar, the municipalities of Prozor, Gornji Vakuf, Jablanica, Stolac, Ljubuški, and Čapljina, the town of Vareš, and the village of Stupni Do.[722]

2. Alleged error of law with regard to the application of the overall control test (Praljak's Sub-ground 1.4 and Ćorić's Sub-ground 3.1 in part)

(a) Arguments of the Parties

234. Praljak and Ćorić allege that the Trial Chamber erred in finding that the armed conflict between the HVO and ABiH was international in character on the basis of its erroneous conclusions that: (1) HV units participated directly in the conflict; and (2) the Republic of Croatia had overall control over the HVO, based on its organising, co-ordinating, or planning of military operations and its financing, training, and equipping of the HVO.[723] In this respect, the Appeals Chamber understands Praljak's argument that "global control is extremely disputed in international law and rejected by the International Court of Justice ("ICJ"), and Ćorić's related argument that the "ICJ emphasizes the concept of effective control of operations" to be that the Trial Chamber should have applied the "effective control" test, consistent with the precedent of the ICJ, and not the "overall control" test, as established by the Appeals Chamber in the *Tadić* Appeal Judgement ("Overall Control Test").[724]

235. In his submissions, Praljak recognises that, irrespective of the similarities between the various cases tried by the Tribunal, each trial chamber of the Tribunal is to make an individual assessment as to whether the evidence before it establishes the existence of an international armed

[720] See Trial Judgement, Vol. 3, para. 575 where "the Trial Chamber was unable to establish the existence of a conflict between the ABiH and the HVO").
[721] See Trial Judgement, Vol. 3, paras 574-576. See *infra*, paras 298-345.
[722] See Trial Judgement, Vol. 3, paras 578-589. The Appeals Chamber notes that the related issue of whether a state of armed conflict and occupation can co-exist will be discussed below. See *infra*, para. 335.
[723] Praljak's Appeal Brief, paras 32-41; Ćorić's Appeal Brief, paras 67-74.
[724] Praljak's Appeal Brief, paras 33-36 (emphasis removed), referring to, *inter alia*, *Tadić* Appeal Judgement, paras 90-144, *Aleksovski* Appeal Judgement, paras 134, 145, *Bosnia Genocide* Judgement, paras 403-406; Appeal Hearing, AT. 375-377 (22 Mar 2017); Ćorić's Appeal Brief, paras 71, 73, referring, *inter alia*, to *Tadić* Appeal Judgement, paras 137-138, *Nicaragua Activities* Judgement, paras 110, 112, 115, 215-220.

conflict at a particular place and time.[725] Nevertheless, Praljak argues that the Prosecution's failure to plead an international armed conflict in three other cases before the Tribunal, involving the responsibility of ABiH officers in the same HVO-ABiH conflict,[726] casts doubt on the international character of the conflict at issue in this case.[727] Praljak argues that this inconsistent approach by the Prosecution could prejudice the Tribunal's credibility and should have prompted the Trial Chamber to consider "with particular attention" the issue and to have established beyond reasonable doubt that the conflict was international, which, he asserts, it failed to do.[728]

236. The Prosecution responds that the Trial Chamber's application of the Overall Control Test was consistent with the jurisprudence of the Appeals Chamber.[729] It also submits that Praljak's arguments are irrelevant and unsubstantiated.[730] The Prosecution asserts that Praljak's claims contradict his own submission regarding the importance of maintaining a case-by-case approach to these determinations.[731]

(b) Analysis

237. The Trial Chamber found that the armed conflict was international in character due both to the direct involvement of the HV in the conflict pitting the HVO and ABiH against each other, and to the overall control wielded by the HV and by Croatia over the HVO.[732]

238. The Appeals Chamber recalls that the *Tadić* Appeal Judgement established the Overall Control Test to specify "what *degree of authority or control* must be wielded by a foreign State over armed forces fighting on its behalf in order to render international an armed conflict which is *prima facie* internal".[733] The Appeals Chamber notes in this regard that the ICJ refrained from taking a position on whether the Overall Control Test employed by the Appeals Chamber in the *Tadić* case was correct.[734] The Appeals Chamber considers that Praljak and Ćorić have presented no

[725] Praljak's Appeal Brief, para. 37.
[726] Praljak's Appeal Brief, para. 38, referring to *Delić* Indictment, *Hadžihasanović et al.* Indictment; *Halilović* Indictment.
[727] Praljak's Appeal Brief, para. 38.
[728] Praljak's Appeal Brief, paras 39-41.
[729] Prosecution's Response Brief (Praljak), para. 13; Prosecution's Response Brief (Ćorić), para. 63.
[730] Prosecution's Response Brief (Praljak), para. 22.
[731] Prosecution's Response Brief (Praljak), para. 22.
[732] See Trial Judgement, Vol. 3, para. 568. See also Trial Judgement, Vol. 3, paras 528-556, 559-567.
[733] *Tadić* Appeal Judgement, para. 97 (emphasis in original). See also *Tadić* Appeal Judgement, para. 145. This test has since also been applied by the ICC. See *The Prosecutor v. Thomas Lubanga Dyilo*, Case No. ICC-01/04-01/06, Decision on the Confirmation of Charges, 29 January 2007 ("*Lubanga* Confirmation of Charges Decision"), para. 211; *Lubanga* Article 74 Judgement, para. 541.
[734] *Bosnia Genocide* Judgement, para. 404. The ICJ specifically held that, "[i]nsofar as the 'overall control' test is employed to determine whether or not an armed conflict is international, which was the sole question which the [ICTY] Appeals Chamber was called upon to decide [in the *Tadić* case], it may well be that the test is applicable and suitable." *Bosnia Genocide* Judgement, para. 404. See also *Bosnia Genocide* Judgement, paras 405-407.

cogent reason why the Appeals Chamber should depart from its well-settled precedent regarding the Overall Control Test as applied by the Trial Chamber.[735] It therefore dismisses this argument.

239. With regard to Praljak's argument that the Prosecution failed to plead an international armed conflict in other cases before the Tribunal, the Appeals Chamber recalls that Praljak himself concedes that the character of a conflict alleged in a case shall only be determined on the basis of the facts and evidence pertaining to that case.[736] It is well-settled in the Tribunal's jurisprudence that the Prosecution possesses broad discretion as to what to plead in each case.[737] Moreover, contrary to what Praljak suggests, there is no indication that the Trial Chamber did not consider the nature of the conflict with the required attention. Rather, this issue was extensively considered by the Trial Chamber.[738] The Appeals Chamber therefore dismisses this argument.

240. The Appeals Chamber therefore dismisses Praljak's sub-ground of appeal 1.4 and Ćorić's sub-ground of appeal 3.1 in part.

3. Alleged errors of fact with regard to classifying the conflict as international (Prlić's Sub-ground 19.1, Praljak's Sub-grounds 1.1 and 1.2, Petković's Sub-grounds 7.1.1 in part, 7.1.2, and 7.1.4)

(a) Arguments of the Parties

241. Petković submits that as the internal conflict was between "two equal entities in BiH", the HVO and the ABiH, and not between the HVO and the State or *de jure* government of BiH, the Trial Chamber erred by classifying the conflict as international.[739] In his view, to qualify as international, an internal conflict must necessarily involve an official or *de jure* government.[740]

242. Prlić, Praljak, and Petković further argue that the Trial Chamber erred in finding that there was an international armed conflict in BiH because HV troops were deployed on the "southern front" which covered part of HZ(R) H-B in BiH but also neighbouring territory in Croatia, and Montenegro.[741] Prlić and Praljak submit that the Trial Chamber ignored evidence that because of

[735] See *Aleksovski* Appeal Judgement, paras 107-109; *Tadić* Appeal Judgement, paras 116-123. See also *Tadić* Appeal Judgement, paras 125-144.
[736] See Praljak's Appeal Brief, para. 37 & fns 75-76. The Appeals Chamber recalls that the principle that the character of an armed conflict should be determined on a case-by-case basis has been affirmed by this Tribunal. See, *e.g.*, *Kordić and Čerkez* Appeal Judgement, para. 320.
[737] See generally *Čelebići* Appeal Judgement, paras 601-605.
[738] See Trial Judgement, Vol. 3, paras 517-568.
[739] Petković's Appeal Brief, para. 415 (emphasis omitted); Petković's Reply Brief, para. 83.
[740] Petković's Appeal Brief, paras 413-415, referring to, *inter alia*, *Tadić* Appeal Judgement, para. 84; Petković's Reply Brief, paras 83-84.
[741] Prlić's Appeal Brief, paras 652-653; Praljak's Appeal Brief, paras 8-11; Petković's Appeal Brief, para. 418.

persistent JNA attacks from BiH territory and BiH's inability or unwillingness to stop them, Croatia had to cross into BiH to defend its own territory and that this was done in self-defence.[742]

243. The Prosecution responds that the conflict was not between two equal entities of BiH but between the ABiH – acting under Alija Izetbegović, whose government was the legitimate authority of BiH – and the HZ(R) H-B, which was not a legitimate power.[743] The Prosecution points in this regard to the Trial Chamber's findings that the HZ(R) H-B had been declared unconstitutional by the BiH Constitutional Court in September 1992, and that the legitimate authorities of BiH had continuously rejected the HZ(R) H-B and the HVO's authority.[744]

244. As to Prlić's, Praljak's, and Petković's arguments with regard to the location of the southern front, the Prosecution responds that the Trial Chamber reasonably concluded that the southern front included both territory in BiH and areas of southern Croatia, and submits that the Trial Chamber correctly found that HV forces were present on BiH territory during the conflict in question, thus evidencing the HV's direct involvement in BiH.[745]

(b) Analysis

245. The Trial Chamber found that there was an international armed conflict between the HVO and the ABiH which was:

> fundamentally internal, inasmuch as it took place between two entities of the [Republic of Bosnia and Herzegovina (following independence) ("RBiH")]. In determining whether this conflict, internal as of first impression, possesses the qualification of an international armed conflict, it is necessary to prove either (1) the direct involvement of armed troops from Croatia in BiH alongside the HVO, or (2) that the HVO was either an organised hierarchically structured group over which Croatia wielded overall control, or was not an organised group, or was a group of isolated individuals, and that this group or these individuals acted as instruments of Croatia or complicitly with the Croatian authorities.[746]

246. The Appeals Chamber notes that the Trial Chamber applied the Overall Control Test as laid down in the *Tadić* Appeal Judgement to determine when armed forces fighting in an armed conflict which is "*prima facie* internal" may be regarded as acting on behalf of a foreign Power.[747] The Appeals Chamber notes that the Trial Chamber then went on to examine the evidence adduced to

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[742] Prlić's Appeal Brief, paras 653-654, referring to, *inter alia*, Ivan Beneta, T. 46570-46572 (9 Nov 2009), 46697-46698 (10 Nov 2009), Radmilo Jasak, T. 48632 (20 Jan 2010); Praljak's Appeal Brief, paras 8-11, referring to, *inter alia*, Ivan Beneta, T. 46564, 46572-46573 (9 Nov 2009), 46668-46669 (10 Nov 2009), Radmilo Jasak, T. 48632 (20 Jan 2010).
[743] Prosecution's Response Brief (Petković), para. 300.
[744] Prosecution's Response Brief (Petković), para. 300, referring to Trial Judgement, Vol. 1, paras 426, 432-433, 457, 459, 467, Vol. 2. para. 341.
[745] Prosecution's Response Brief (Prlić), para. 414; Prosecution's Response Brief (Praljak), paras 11-12.
[746] Trial Judgement, Vol. 3, para. 523.
[747] *Tadić* Appeal Judgement, paras 90, 97. See also *Tadić* Appeal Judgement, para. 120, referring to "an organised and hierarchically structured group."

find that the HVO, an organised and hierarchically-structured group, was under Croatia's overall control, concluding that the conflict was therefore international.[748] The Appeals Chamber considers that Petković consequently has failed to show any error on the part of the Trial Chamber in classifying the conflict as international.

247. As to his argument that an international armed conflict requires an official or *de jure* government as one of its parties, the Appeals Chamber notes that Petković ignores relevant findings of the Trial Chamber that, at the time, Izetbegović's government was recognised by the international community as the legitimate government of BiH, with the ABiH as its army.[749] Petković's argument that there was no State or *de jure* government involved in the armed conflict therefore fails. With regard to Petković's claim that the HVO and the ABiH were "equal entities of the RBiH", the Appeals Chamber observes that the Trial Chamber did not deem them to be "equal" entities but "two entities of the RBiH".[750] The Appeals Chamber therefore dismisses Petković's arguments.

248. With respect to the challenges made to the findings on the location of the southern front, the Trial Chamber found that the southern front crossed through a portion of the HZ(R) H-B and that there were HV troops on the southern front in BiH at all times relevant to the Indictment.[751] The Appeals Chamber notes that Prlić, Praljak, and Petković concede that the southern front crossed through portions of the HZ(R) H-B, and considers that even if this may have been done in self-defence, as Prlić and Praljak contend, this consideration does not undermine the Trial Chamber's impugned finding that the HV in fact crossed into BiH territory. With regard to the allegation that the Trial Chamber ignored evidence of JNA attacks in making this finding,[752] the Appeals Chamber notes that, contrary to Prlić's, Praljak's, and Petković's submissions, the Trial Chamber relied on, *inter alia*, some of the allegedly ignored evidence, including Defence Witnesses Ivan Beneta's and Radmilo Jasak's testimonies, to find that there were HV troops on the southern front in BiH at times relevant to the Indictment.[753] The Appeals Chamber thus dismisses these arguments.

249. For the foregoing reasons, the Appeals Chamber dismisses Prlić's sub-ground of appeal 19.1 in part, Praljak's sub-ground of appeal 1.1 in part, and Petković's sub-grounds 7.1.1 in part, 7.1.2, and 7.1.4 in part.

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[748] See Trial Judgement, Vol. 3, paras 524-567.
[749] See Trial Judgement, Vol. 1, paras 426-427, 432-433.
[750] See *supra*, para. 245.
[751] See Trial Judgement, Vol. 3, paras 529-530.
[752] See Prlić's Appeal Brief, para. 653, fns 1659, 1661 and references cited therein; Praljak's Appeal Brief, para. 8, fn. 5 and references cited therein.
[753] See Trial Judgement, Vol. 3, paras 529-530 & fns 1100-1102, referring to Ivan Beneta, T. 46559-46560 (9 Nov 2009), 46672(10 Nov 2009), Radmilo Jasak, T. 48860 (25 Jan 2010). See also *infra*, para. 267.

4. Challenges to Croatian intervention in the HVO-ABiH conflict

250. The Trial Chamber found that the HV, and thus Croatia, was directly involved alongside the HVO in the conflict between the HVO and the ABiH at all relevant times and in most of the camps and municipalities relevant to the Indictment.[754] The Trial Chamber also found that Croatia intervened indirectly and wielded overall control over the HVO.[755] Because of both the HV's and Croatia's direct and indirect involvement – the overall control wielded by the HV and Croatia – over the HVO, the Trial Chamber concluded that the armed conflict between the HVO and the ABiH was international in character.[756]

251. The Appeals Chamber will now turn to the Appellants' various challenges to the Trial Chamber's finding that the armed conflict was international in character, due to both the direct involvement of Croatia's military, the HV, in the conflict, and the overall control wielded by Croatia and the HV over the HVO.[757] It will specifically discuss the challenges made to the findings on: (1) the presence and engagement of HV soldiers in the conflict; (2) Croatia's organisation, co-ordination, and planning of the military operations of the HVO, including the alleged voluntary nature of the participation of HV troops in the HVO-ABiH conflict; and (3) the military reports shared between the HVO and the HV.

(a) Direct involvement of HV soldiers and units in the conflict (Prlić's Sub-grounds 19.1 in part and 19.2, Stojić's Sub-ground 54.1, Praljak's Sub-grounds 1.1 in part, 1.2 in part, 1.3 in part, and 1.4 in part, Petković's Sub-grounds 7.1.1 in part, 7.1.3 and 7.1.4 in part, Ćorić's Sub-ground 3.1 in part, and Pušić's Ground 7 in part)

(i) Arguments of the Parties

252. Ćorić argues that there was no documentary evidence showing there was an international armed conflict between BiH and Croatia and no reasonable trier of fact could have reached such a conclusion.[758] Ćorić asserts that, in fact, there is documentary evidence to the contrary – showing that the HVO and ABiH were allies and any support given to the HVO by Croatia was support

[754] Trial Judgement, Vol. 3, paras 528-543.
[755] Trial Judgement, Vol. 3, paras 545-567.
[756] Trial Judgement, Vol. 3, paras 544-545, 568.
[757] See Prlić's Appeal Brief, paras 653-658, 660, 662-668; Stojić's Appeal Brief, paras 406-419; Praljak's Appeal Brief, paras 12-15, 18-20, 29-30, 35; Praljak's Reply Brief, paras 7, 9, 12; Petković's Appeal Brief, paras 418-423, 425-429; Petković's Reply Brief, paras 85-87; Ćorić's Appeal Brief, paras 67-68, 70-74; Ćorić's Reply Brief, para. 24; Pušić's Appeal Brief, paras 230, 232-233.
[758] Ćorić's Appeal Brief, paras 70-71; Appeal Hearing, AT. 581-582 (24 Mar 2017).

given to one of the constituent parts of the ABiH and as such cannot be considered hostile to or an act of war against BiH.[759] Petković also argues that the HVO and ABiH were allies at the time.[760]

253. Petković additionally points out that the Indictment includes allegations about the existence of an international armed conflict for the period from July 1993 and thus the Trial Chamber should not have made factual findings for the period prior to July 1993.[761] Pušić likewise notes that the Indictment only refers to Croatian involvement in the HVO-ABiH conflict in July 1993.[762] According to Petković, the two reports cited by the Trial Chamber to demonstrate the HV's participation in HVO operations were from July and November 1993 and neither of these reports nor any other evidence cited by the Trial Chamber showed the deployment of HV troops to the southern front prior to July 1993.[763]

254. Prlić and Praljak claim that the Trial Chamber erroneously concluded that HV units participated in the conflict between the HVO and the ABiH, and that the mere presence of HV soldiers or units on BiH territory is neither sufficient nor conclusive evidence that the HV was operating at the behest of Croatia.[764] Petković submits that the Trial Chamber erred in inferring that whole HV units were present in BiH from the presence of HV members in the HVO.[765] Prlić, Stojić, and Praljak further argue that the Trial Chamber erred in concluding from the mere presence of some HV elements "in the service of the HVO" that they were there on the direct order of Croatia.[766] Prlić and Praljak contend that while individual HV *members* were permitted to volunteer for either the HVO or the ABiH, HV *units* were not permitted to join the HVO or the ABiH.[767] Praljak adds that HV officers volunteering for both the HVO and the ABiH were temporarily relieved of their duties in the HV.[768] Citing ICC and ICJ jurisprudence, as well as the *Tadić* Appeal Judgement and *Kordić and Čerkez* Appeal Judgement, Stojić contends that the mere presence of

[759] Ćorić's Appeal Brief, para. 70 & fns 177-185 and references cited therein; Appeal Hearing, AT. 582-583 (24 Mar 2017).
[760] Petković's Appeal Brief, para. 418. Petković asserts that the HV was engaged in the spring and summer of 1992 until July 1992 when HV General Janko Bobetko withdrew HV troops from BiH territory. Petković's Appeal Brief, para. 418.
[761] Petković's Appeal Brief, paras 416-417; Petković's Reply Brief, para. 84.
[762] Pušić's Appeal Brief, para. 232.
[763] Petković's Appeal Brief, paras 419-420.
[764] Prlić's Appeal Brief, paras 657-658; Praljak's Appeal Brief, para. 32; Praljak's Reply Brief, para. 9.
[765] Petković's Appeal Brief, paras 422, 425. The Appeals Chamber also considers this argument in the context of Petković's challenges to the findings on Croatia's indirect control over the HVO. See *infra*, para. 278.
[766] Prlić's Appeal Brief, para. 659, referring to *Kordić and Čerkez* Appeal Judgement, para. 359; Stojić's Appeal Brief, para. 408, referring to *Kordić and Čerkez* Appeal Judgement, para. 359; Praljak's Reply Brief, para. 7. See also Praljak's Appeal Brief, paras 22, 32, referring to *Kordić and Čerkez* Appeal Judgement, para. 359. Stojić also argues that the Trial Chamber erroneously held that it "matters little" whether HV members participated in the BiH conflict as volunteers to determine whether they were there on Croatia's direct order. Stojić's Appeal Brief, para. 408. See *infra*, paras 277, 285.
[767] Prlić's Appeal Brief, paras 660-661; Praljak's Appeal Brief, paras 18-19. The Appeals Chamber observes that Praljak repeats these same arguments when challenging the Trial Chamber's findings on the Overall Control Test. See *infra*, paras 277, 285.
[768] Praljak's Appeal Brief, paras 18-19, 32.

foreign troops in a conflict zone is insufficient to render a conflict international and thus asserts that the Trial Chamber's relevant findings were wrong.[769] Stojić also claims that the Trial Chamber erred in finding that the HV directly participated in the conflict in Prozor and Sovići – the only two occasions when the Trial Chamber specifically found HV direct participation.[770] In this regard, Stojić argues that no reasonable trier of fact could have found that the HV attacked Prozor on 23 October 1992 based on the inconclusive evidence cited by the Trial Chamber.[771] Similarly, Stojić argues that no reasonable trier of fact could have concluded that soldiers from the HV participated alongside the HVO in the 17 April 1993 Sovići attack, as the Trial Chamber erroneously relied on inconclusive and vague evidence.[772]

255. Prlić and Praljak argue that in establishing the presence of HV units in the conflict zone, the Trial Chamber erroneously relied upon the uncorroborated testimonies of Prosecution Witnesses Omer Hujdur, Philip Watkins, DW, and Klaus Johann Nissen.[773] Prlić and Praljak argue that: (1) Witness DW, a member of an international organisation, only provided hearsay testimony, recanted his statement, and had no direct knowledge of the HV's presence in BiH; (2) Hujdur, a Muslim inhabitant of Prozor, did not have actual knowledge of the HV's presence in BiH; (3) Watkins, an ECMM observer, inappropriately inferred the HV's presence solely on the basis of the weapons he saw; and (4) Nissen testified that the ECMM, of which he was a member, had no direct knowledge and had not observed HV troops in BiH.[774]

256. To the extent that HV troops were present on BiH territory during the relevant period, Prlić and Praljak allege that this presence – and any military operations by the HV inside the territory – was justified on self-defence grounds, as the JNA was crossing into BiH territory to attack Croatia.[775] Prlić and Praljak note that because the topography of the area prevented the HV forces from properly defending Croatia against VRS/JNA attacks from within Croatian borders, the HV needed to use border regions to defend Croatia.[776] According to Prlić and Praljak, the Trial Chamber failed to take into account the Serbian aggression against Croatia in determining

[769] Stojić's Appeal Brief, paras 406-407.
[770] Stojić's Appeal Brief, paras 409-411.
[771] Stojić's Appeal Brief, para. 410, referring to Exs. P09989, P09925, P09204 (confidential), P01542, P01656 (confidential), P09926, P09400, Omer Hujdur, T. 3508-3510 (20 June 2006). Stojić also submits that since the Trial Chamber found that the JCE commenced in January 1993, the HV's involvement in the earlier 17 October 1992 Prozor attack is irrelevant. Stojić's Appeal Brief, para. 410. Stojić also argues that the Trial Chamber failed to consider that, even if HV troops participated in this attack, they may have done so voluntarily. Stojić's Appeal Brief, para. 410.
[772] Stojić's Appeal Brief, para. 411, referring to Exs. P02620, 2D00285, P09870 (confidential), Christopher Beese, T. 3222-3224 (15 June 2006). Stojić also argues that the Trial Chamber failed to consider that, even if HV soldiers participated in this attack, they may have done so voluntarily. Stojić's Appeal Brief, para. 411.
[773] Prlić's Appeal Brief, para. 658; Praljak's Appeal Brief, paras 13-15.
[774] Prlić's Appeal Brief, para. 658; Praljak's Appeal Brief, paras 14-15.
[775] Prlić's Appeal Brief, paras 653-656, 659; Praljak's Appeal Brief, paras 9-11, 16; Praljak's Reply Brief, para. 8.
[776] Prlić's Appeal Brief, para. 655; Praljak's Appeal Brief, paras 9-10, 16-17.

whether the HV's presence on the southern front was on its own account or in support of the HVO.[777]

257. The Prosecution submits that the Trial Chamber reasonably relied on evidence showing that: (1) HV officers were appointed to positions within the HVO; (2) the members of the HVO Main Staff were simultaneously HV officers; (3) HV soldiers were paid by Croatia, commanded by HV commanders, including Praljak himself, and re-subordinated to the HV upon returning to Croatia; and (4) HV units could not be sent to BiH without the order of the HV Supreme Commander, demonstrating that HV units could only enter BiH at Croatia's command.[778] The Prosecution further submits that Prlić's and Praljak's arguments that HV soldiers were incorporated into the HVO command but that HV units could not go to BiH or be incorporated into the HVO is contradictory, and fails to show an error on the part of the Trial Chamber.[779] Moreover, it notes that other evidence showing that HV units could not go to BiH without the Supreme Commander's order further supports the Trial Chamber's conclusion.[780] Further, in the Prosecution's view, evidence of HV soldiers' subordination into the HVO command chain supports rather than undermines the Trial Chamber's findings that they were there at Croatia's behest.[781] According to the Prosecution, the question of whether HV soldiers were able to voluntarily join either the HVO or the ABiH is irrelevant.[782]

258. Responding to Ćorić's challenge that there was no armed conflict between the HVO and the ABiH, the Prosecution argues that Ćorić fails to show why the Trial Chamber's findings regarding the existence of an international armed conflict are unreasonable.[783] The Prosecution submits that it is irrelevant whether the HVO and ABiH were allies before the intervention of the HV alongside the HVO against the ABiH.[784] Further, the Prosecution avers that the HVO was not, in fact, a constituent part of the ABiH.[785]

259. With regard to Petković's contention that, based on the parameters of the Indictment, the Trial Chamber should not have made factual findings concerning the intervention of HV troops prior to July 1993, the Prosecution asserts that Petković ignores the parts of the Indictment where it

[777] Prlić's Appeal Brief, paras 653-655; Praljak's Appeal Brief, paras 8-10, 16-17.
[778] Prosecution's Response Brief (Praljak), para. 9. See also Prosecution's Response Brief (Prlić), para. 413.
[779] Prosecution's Response Brief (Prlić), para. 413.
[780] Prosecution's Response Brief (Prlić), para. 413, referring to Ex. 3D00300.
[781] Prosecution's Response Brief (Petković), para. 288.
[782] Prosecution's Response Brief (Prlić), para. 413; Prosecution's Response Brief (Praljak), para. 10.
[783] Prosecution's Response Brief (Ćorić), para. 67.
[784] Prosecution's Response Brief (Petković), para. 286. The Prosecution also points to evidence of the HVO's attack on Gornji Vakuf, the siege of East Mostar, and the HVO arrest and eviction campaign that followed the ABiH offensive of 30 June 1993, to counter the argument that Croatia was never hostile to BiH. Prosecution's Response Brief (Ćorić), para. 67.
[785] Prosecution's Response Brief (Ćorić), para. 67, referring to Prosecution's Response Brief (Ćorić), para. 74.

explicitly alleged a state of international armed conflict at all times relevant to the Indictment.[786] Moreover, the Prosecution notes that Petković ignores evidence of the presence of HV troops on the southern front from May 1992 into 1994, which was cited by the Trial Chamber.[787]

260. As to Petković's argument that the Trial Chamber should not have inferred the presence of HV units from the mere presence of HV soldiers, the Prosecution submits that the intervention of individual soldiers is sufficient.[788] The Prosecution further argues that the Trial Chamber relied on evidence showing that entire HV units and brigades were present on the southern front and on other parts of BiH territory.[789] It argues that the Trial Chamber did not only rely on evidence of HV officers' presence in the HVO to find that Croatia appointed HV officers within the HVO but also on other evidence, including Stojić's own correspondence to Gojko Šušak, showing that members of the HVO Main Staff leadership were simultaneously HV officers.[790] The Prosecution argues that the Trial Chamber also relied on evidence that the salaries of the HV soldiers integrated in the HVO continued to be paid by Croatia.[791]

261. The Prosecution also avers that the Trial Chamber reasonably rejected the argument that HV soldiers involved in BiH were volunteers, finding that they were only characterised as such for the express purpose of hiding Croatia's involvement.[792] The Prosecution further argues that the *Kordić and Čerkez* Appeal Judgement does not require anything more than mere presence of foreign troops in a conflict zone for the conflict to qualify as international.[793] In any case, according to the Prosecution, the Trial Chamber correctly found that the HV was directly involved, and not merely present, in the HVO-ABiH conflict.[794]

262. Regarding the attacks on Prozor and Sovići, the Prosecution asserts that Stojić fails to demonstrate an error or show that the Trial Chamber acted unreasonably in finding that the HV participated in the Prozor attack on the side of the HVO.[795] The Prosecution notes that even if the

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[786] Prosecution's Response Brief (Petković), para. 285.
[787] Prosecution's Response Brief (Petković), para. 286.
[788] Prosecution's Response Brief (Petković), para. 287.
[789] Prosecution's Response Brief (Petković), para. 288. The Prosecution argues that Petković ignores this evidence. Prosecution's Response Brief (Petković), para. 288.
[790] Prosecution's Response Brief (Stojić), para. 381. See also Prosecution's Response Brief (Stojić), para. 383.
[791] Prosecution's Response Brief (Stojić), para. 381.
[792] Prosecution's Response Brief (Stojić), para. 381; Appeal Hearing, AT. 311-313 (21 Mar 2017); Prosecution's Response Brief (Praljak), para. 9. See also Prosecution's Response Brief (Prlić), para. 413.
[793] Prosecution's Response Brief (Stojić), para. 378 & fn. 1558.
[794] Prosecution's Response Brief (Prlić), para. 412, referring to, *inter alia*, Trial Judgement, Vol. 3, paras 532-541; Prosecution's Response Brief (Stojić), para. 378, referring to, *inter alia*, Trial Judgement, Vol. 3, paras 543-544, 568; Prosecution's Response Brief (Praljak), para. 7, referring to, *inter alia*, Trial Judgement, Vol. 1, para. 85, Vol. 3, paras 543-544, 568; Prosecution's Response Brief (Petković), para. 286, referring to, *inter alia*, Trial Judgement, Vol. 3, paras 529-531.
[795] Prosecution's Response Brief (Stojić), paras 379-380. In this respect, the Prosecution points to Witness DR's testimony that soldiers told him that the HV took part in the attack, as well as to various eyewitness testimonies

crimes in Prozor occurred before the start date of the JCE, this has no bearing on the separate question of whether the conflict was international.[796] Similarly, according to the Prosecution, the Trial Chamber reasonably relied upon eyewitness testimony identifying HV soldiers as participating in the Sovići attack.[797]

263. In response to challenges to the credibility of Hujdur, Watkins, and Witness DW, the Prosecution contends that Prlić and Praljak did not demonstrate how the Trial Chamber's reliance on these witnesses was unreasonable, since, contrary to Prlić's and Praljak's claims, these testimonies were corroborated.[798] With regard to Nissen, the Prosecution points to other evidence demonstrating that ECMM monitors observed HV troops in territory claimed by the HZ(R) H-B.[799]

264. The Prosecution also rejects the self-defence claims of Prlić and Praljak, arguing that the threat of Serb attacks on Croatia, and the co-ordination between the HV and ABiH in response to these attacks, by no means contradicts the finding of Croatia's intervention in the HVO-ABiH conflict.[800] The Prosecution notes that for a large part of the 1992-to-1994 period, there is no evidence of attacks by Serb forces against Croatia.[801] More specifically, the Prosecution avers that co-ordination between the HV and ABiH in late 1992 to fight the Serb forces along the Croatian border does not undermine the Trial Chamber's finding that Croatia also intervened alongside the HVO against the ABiH elsewhere, as evidenced by HV units operating in the Heliodrom.[802]

(ii) Analysis

265. With regard to Ćorić's contention that there was no documentary evidence showing there was an armed conflict which was international in character between Croatia and BiH, the Appeals Chamber considers that he ignores the evidence, including various *viva voce* testimony and documentary evidence, on which the Trial Chamber relied.[803] As to Petković's and Ćorić's related arguments that documentary evidence shows the contrary – that the HVO and ABiH were allies at the time – the Appeals Chamber notes that the Trial Chamber considered evidence of military co-operation between the HVO and ABiH at times relevant to the Indictment, and in fact, refers to

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corroborating Witness DR's account, and other testimony identifying HV troops, based on the weapons and equipment they had. Prosecution's Response Brief (Stojić), para. 379.

[796] Prosecution's Response Brief (Stojić), para. 379.

[797] Prosecution's Response Brief (Stojić), para. 380. The Prosecution submits that this evidence was also corroborated by other evidence. Prosecution's Response Brief (Stojić), para. 380. The Prosecution further submits that the Trial Chamber considered and reasonably rejected the argument that HV soldiers were volunteers. Prosecution's Response Brief (Stojić), para. 381.

[798] Prosecution's Response Brief (Prlić), para. 412; Prosecution's Response Brief (Praljak), para. 8.

[799] Prosecution's Response Brief (Prlić), para. 412; Prosecution's Response Brief (Praljak), para. 8.

[800] Prosecution's Response Brief (Prlić), para. 414; Prosecution's Response Brief (Praljak), para. 12.

[801] Prosecution's Response Brief (Praljak), para. 12.

[802] Prosecution's Response Brief (Prlić), para. 414; Prosecution's Response Brief (Praljak), para. 12.

[803] See Trial Judgement, Vol. 3, paras 514, 528-568 and references cited therein.

some of the same evidence as Ćorić.[804] Nevertheless, the Appeals Chamber considers that this did not prevent the Trial Chamber from concluding that the support given by Croatia to the HVO was a hostile act or an act of war against the BiH. Nor did it preclude it from finding that there was an armed conflict which was international in character. The Appeals Chamber accordingly dismisses these arguments.

266. With respect to Petković's and Pušić's contentions that, on the basis of the parameters of the Indictment, the Trial Chamber should not have made factual findings concerning the intervention of HV troops prior to July 1993, the Appeals Chamber observes that they ignore the parts of the Indictment where it explicitly alleged a state of international armed conflict *at all times* relevant to it and the evidence the Trial Chamber pointed to with regard to the presence of HV troops on the southern front from May 1992 into 1994.[805] This argument is therefore dismissed.

267. Turning to Prlić's, Stojić's, Praljak's, and Petković's claim that the Trial Chamber erred in concluding that HV units participated in the conflict between the HVO and ABiH, the Appeals Chamber recalls that the Trial Chamber's finding of Croatia's and the HV's intervention in the HVO-ABiH conflict was not solely based on the presence of HV troops in the area claimed by the HZ(R) H-B throughout the relevant period, *i.e.* in 1992, 1993, and 1994.[806] The Trial Chamber also found that HV troops actively participated in the conflict alongside the HVO between October 1992 and January 1994.[807] Relying on several exhibits and witness testimonies, the Trial Chamber found in particular that the HV participated in the fighting on the side of the HVO in the HVO's attacks on Prozor and Sovići.[808] The Appeals Chamber therefore considers that Stojić's reliance on ICC and ICJ jurisprudence to support his claim that mere presence of foreign troops within a State is insufficient to constitute foreign intervention in a conflict is inapposite. [809]

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[804] See Ćorić's Appeal Brief, para. 70 & fns 177-185 and references cited therein; Trial Judgement, Vol. 1, paras 440-441 & fns 1038, 1040, referring to Exs. 1D02458 and P10481, Annex, pp. 2-4. The Appeals Chamber notes that this annex is Ex. P00339, the agreement between the Republics of Croatia and BiH, dated 21 July 1992, that Ćorić refers to. The Appeals Chamber considers the other evidence referred to by Ćorić to be irrelevant to the Indictment. See Exs. 2D00439, P02155. Further, the Appeals Chamber rejects Petković's assertion in this regard as unsubstantiated.

[805] See Indictment, para. 232. See also Trial Judgement, Vol. 3, paras 529-543.

[806] See Trial Judgement, Vol. 3, paras 528-544.

[807] See Trial Judgement, Vol. 3, paras 529-544. With regard to Stojić's argument that the Trial Chamber erred in holding that "it matters little" whether HV members participated in the BiH conflict as volunteers to determine that they were there on the direct order of Croatia, the Appeals Chamber recalls that the Trial Chamber made this finding in light of other evidence showing that Croatia paid the salaries of the HV personnel deployed in BiH. In any event, the Trial Chamber had addressed the issue of volunteers earlier in that same paragraph and dismissed it because of evidence to the contrary. See Trial Judgement, Vol. 3, para. 529 & fns 1098-1099. The Appeals Chamber thus dismisses Stojić's argument misrepresenting the Trial Chamber's findings.

[808] See Trial Judgement, Vol. 3, paras 514, 532-533, 535.

[809] In any event, the Appeals Chamber considers that the determination that there was no international armed conflict in the ICC and ICJ jurisprudence relied upon by Stojić was based on a lack of evidence in those cases. *Prosecutor v. Jean-Pierre Bemba Gombo*, Case No. ICC-01/05-01/08, Decision Pursuant to Article 67(1)(a) of the Rome Statue on

268. Moreover, the Appeals Chamber recalls that, contrary to Prlić's, Stojić's, Praljak's, and Petković's contentions, the Trial Chamber considered multiple indicators of Croatian involvement in the conflict, and not merely the presence of individual HV members or units in the ranks of the HVO. In particular, the Trial Chamber considered evidence that: (1) the Croatian government paid HV personnel; (2) an HV commander brought disciplinary proceedings against HV soldiers for refusing to follow their unit to the southern front; (3) the Croatian government and military leaders appointed HVO leadership; and (4) HV officers within the HVO structure, including Praljak and Petković, maintained their positions as members of the HV.[810] As such, the Appeals Chamber dismisses Prlić's, Stojić's, Praljak's, and Petković's arguments regarding the presence of individual HV members or units in the ranks of the HVO on BiH territory.

269. Further, the Appeals Chamber considers that Prlić's, Stojić's, Praljak's, and Petković's submissions that the evidence only establishes the presence of individual HV soldiers in BiH are contradicted by other pieces of evidence, relied upon by the Trial Chamber, which show that entire HV units were, in fact, present on the southern front.[811] Moreover, with respect to Prlić's and Praljak's specific submissions that the Trial Chamber erred by finding that the mere presence of HV soldiers or units was sufficient and conclusive evidence that the HV was operating at the behest of Croatia, the Appeals Chamber notes that the Trial Chamber considered, as discussed above,[812] multiple indicators of Croatian involvement in the conflict, and not merely the presence of individual HV members in the ranks of the HVO. Prlić and Praljak therefore have failed to show that no reasonable trier of fact could have reached the Trial Chamber's conclusion.

270. With regard to Praljak's argument that the Trial Chamber failed to consider that some HV members joined the HVO voluntarily, the Appeals Chamber recalls that the Trial Chamber assessed but rejected the claim that the HV officers and soldiers integrated in the HVO command were acting as mere volunteers.[813] It did so based on unchallenged evidence, showing the contrary.[814] The Appeals Chamber considers that Praljak has failed to show that no reasonable trier of fact could have reached the same conclusion as the Trial Chamber. With respect to Prlić's and Praljak's arguments that individual HV members were allowed to volunteer for both the HVO and the ABIH,

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the Charges of the Prosecutor Against Jean-Pierre Bemba Gombo, 15 June 2009, paras 245-246; *Lubanga* Confirmation of Charges Decision, para. 226; *Armed Activities* Judgement, paras 174-177 (in the context of occupation).

[810] See Trial Judgement, Vol. 3, paras 529, 546-548, 555 and evidence referred to therein.

[811] See Trial Judgement, Vol. 3, paras 530, 539, 541 referring to, *inter alia*, Exs. P00854, pp. 3-4, P01187, para. 32, P07587, P00785 (confidential), P02738, P03990, p. 4, P07959, pp. 1-2, P07887, pp. 7-8, P07789, P07365, P02787, p. 5, P09807(confidential), pp. 5-9, P03587(confidential), p. 8, P03771 (confidential), p. 4, para. 6(a)(2) Witness DZ, T. 26541 (closed session) (22 Jan 2008), Peter Galbraith, T. 6483-6484 (12 Sept 2006), Witness CW, T. 12674 (closed session), 12689-12692 (22 Jan 2007).

[812] See *supra*, para. 268.

[813] See Trial Judgement, Vol. 3, para. 529.

[814] See Trial Judgement, Vol. 3, paras 529-567 and references cited therein.

and Praljak's argument that HV soldiers who joined both the HVO and the ABiH continued to be paid by Croatia, and were all relieved of their duties in the HV, the Appeals Chamber considers that Prlić and Praljak have failed to show how the HV's similar treatment of HV members who joined either the HVO or the ABiH in the two distinct conflicts Croatia was involved in at the time, precluded the Trial Chamber from finding that the HV soldiers reinforcing the HVO were sent on behalf of Croatia.[815] Moreover, the Appeals Chamber considers that Prlić has failed to show how his contention that HV members who were allowed to volunteer were not incorporated in either the HVO or the ABiH, detracts from the Trial Chamber's finding that HV soldiers reinforcing the HVO were sent on behalf of Croatia.[816] The Appeals Chamber thus dismisses these arguments.

271. Further, the Appeals Chamber notes Stojić's arguments that the Trial Chamber based its finding that the HV participated in the attacks in Prozor and Sovići on the side of the HVO, on insufficient evidence, and observes that the Trial Chamber relied on various pieces of evidence, including eyewitness accounts and a report from an international organisation.[817] The Appeals Chamber has reviewed the challenged evidence[818] and considers that Stojić has failed to show that no reasonable trier of fact could have concluded that there was direct involvement of the HV on the side of the HVO in these attacks based on this evidence, especially when assessed cumulatively.[819] The Appeals Chamber therefore dismisses these arguments.

272. Turning to Stojić's argument that since the Trial Chamber had found that the JCE was conceived in January 1993, the HV's involvement in the October 1992 Prozor attack is not relevant to the question of whether the conflict was international, the Appeals Chamber recalls the Trial Chamber's finding that it could not conclude that the crimes committed in Prozor in October 1992 formed part of the JCE.[820] The Appeals Chamber considers that this matter is separate from, and not relevant to, the question of whether an international armed conflict existed between the HVO and the ABiH even as early as October 1992. Stojić has demonstrated no reason why the Trial Chamber could not consider the October 1992 attack against Prozor and the HV's participation in it as evidence of the existence of an international armed conflict. His argument is therefore dismissed.

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[815] See Trial Judgement, Vol. 3, paras 529-531.
[816] See Trial Judgement, Vol. 3, paras 529-531.
[817] See Trial Judgement, Vol. 3, paras 532-533, 535 and references cited therein.
[818] See, *e.g.*, Exs. P09989, P09925, P09204 (confidential), P01542, P01656 (confidential), P02620, P09870 (confidential), 2D00285; Omer Hujdur, T. 3508-3510 (20 June 2006); Christopher Beese, T. 3222-3224 (15 June 2006).
[819] As to Stojić's argument that even if HV troops had participated in these attacks, the Trial Chamber failed to consider that they may have done so voluntarily, the Appeals Chamber dismisses this as misconstrued because the Trial Chamber considered but rejected this possibility. See Trial Judgement, Vol. 3, paras 529-531 and references cited therein.
[820] See Trial Judgement, Vol. 4, para. 44. See also *infra*, para. 854.

273. As to Prlić's and Praljak's challenges to the evidence on which the Trial Chamber relied to establish the HV's involvement on BiH territory, the Appeals Chamber considers that, contrary to what they claim, the testimonies of Hujdur, Witness DW, and Watkins were, in fact, corroborated.[821] As to the challenge that Nissen, an ECMM monitor, lacked personal knowledge of the presence of HV troops on BiH territory, Prlić and Praljak have failed to show that no reasonable trier of fact could have reached the same conclusion as the Trial Chamber, based on other evidence from international organisations confirming the presence of HV troops in areas claimed by the HZ(R) H-B.[822] As a result, the Appeals Chamber dismisses these arguments.

274. With respect to Prlić's and Praljak's argument that, to the extent that HV troops were on BiH territory, this was in self-defence as the JNA was crossing into BiH territory to attack Croatia, the Appeals Chamber notes that this argument was considered and rejected by the Trial Chamber.[823] In any case, the Appeals Chamber further considers that they have failed to demonstrate that no reasonable trier of fact could have reached the same conclusion as the Trial Chamber – that there was an international armed conflict between BiH and Croatia. This finding was based on evidence of the existence of a conflict between the HVO and the ABiH and of the HV's involvement, on the side of the HVO, at all relevant times.[824] The Appeals Chamber thus dismisses this argument.

275. In light of the foregoing, the Appeals Chamber concludes that the Appellants have failed to show that the Trial Chamber erred in finding that the HV's presence on BiH territory, in conjunction with its direct intervention in the HVO-ABiH conflict, rendered the conflict international. Thus, the Appeals Chamber dismisses Prlić's sub-grounds of appeal 19.1 in part and 19.2, Stojić's sub-ground of appeal 54.1, Praljak's sub-grounds of appeal 1.1 in part, 1.2 in part, 1.3 in part, and 1.4 in part, Petković's sub-grounds of appeal 7.1.1 in part, 7.1.3, and 7.1.4 in part, Ćorić's sub-ground of appeal 3.1 in part, and Pušić's ground of appeal 7 in part, to the extent that these grounds of appeal concern the presence of HV troops on BiH territory and their direct and voluntary participation in the conflict between the HVO and the ABiH.

[821] See Trial Judgement, Vol. 3, paras 532-533, 539-540 and references cited therein. With regard to the challenges to the credibility of these Prosecution witnesses, the Appeals Chamber further recalls that "[i]n any event, there is no general requirement that the testimony of a witness be corroborated if deemed otherwise credible". *Popović et al.* Appeal Judgement, paras 243, 1264; *D. Milošević* Appeal Judgement, para. 215. See also *Kordić and Čerkez* Appeal Judgement, para. 274.
[822] See Trial Judgement, Vol. 3, paras 534-535 and references cited therein.
[823] See Trial Judgement, Vol. 3, paras 521, 525.
[824] See Trial Judgement, Vol. 3, paras 514, 518-544 and references cited therein.

(b) Croatia's organisation, co-ordination, and planning of the HVO's military operations (Prlić's Sub-ground 19.3, Stojić's Sub-ground 54.2 in part, Praljak's Sub-grounds 1.3 in part and 1.4 in part, Petković's Sub-grounds 7.1.1 in part and 7.1.5 in part, Ćorić's Sub-ground 3.1 in part, and Pušić's Ground 7 in part)

(i) Arguments of the Parties

276. The Appellants challenge the Trial Chamber's finding that the HVO-ABiH conflict was international due to Croatia's overall control over the HVO as evidenced by, *inter alia*, the HV and HVO's joint organisation, co-ordination, supervision, and direction of such operations.[825] Praljak alleges that the Trial Chamber failed to specify exactly where and when Croatia participated in planning or conducting military operations and how it exercised overall control over the HVO.[826] According to Pušić, for purposes of the Overall Control Test, the Trial Chamber was required to find that the HVO's military operations were planned either by the Croatian government in Zagreb or by the HV, which the Trial Chamber did not find.[827] Pušić submits that pursuant to the evidence presented to the Trial Chamber, operational leadership on the ground remained with the HVO and the material and logistical assistance provided by the HV to the HVO fell short of the Overall Control Test.[828] To the extent that the Trial Chamber relied upon evidence of the Croatian President Franjo Tuđman's involvement in the dispute, Pušić relies on the Judge Antonetti Dissent, which allegedly points to evidence that President Tuđman was not always cognisant of the HVO's activities.[829] Pušić also contests the Trial Chamber's finding that HV officers were actively involved in the HVO's operations and asserts that evidence of the transfer of certain Croatian officers to BiH does not, *per se*, suffice to demonstrate Croatia's overall control over the HVO.[830]

277. Stojić, Praljak, and Petković argue that the mere presence of individual HV members in the ranks of the HVO is insufficient to establish that the HV was operating at the behest of Croatia.[831] Petković further submits that the Trial Chamber erred in inferring that whole HV units were present

[825] Prlić's Appeal Brief, paras 662, 664-668 (also referring to his submissions in ground of appeal 15); Stojić's Appeal Brief, paras 412-413, 417-419; Praljak's Appeal Brief, para. 35; Petković's Appeal Brief, para. 429; Ćorić's Appeal Brief, paras 71, 73-74; Ćorić's Reply Brief, para. 24; Pušić's Appeal Brief, paras 232-233. Ćorić reiterates, on appeal, the argument raised in the Judge Antonetti Dissent from the Trial Judgement: that there was only one undated exhibit evidencing HV involvement in the planning of the HVO's military operations, arguing that it was insufficient to prove the HV's overall control over the HVO for the entire period covered by the Indictment. The Appeals Chamber dismisses this argument as Ćorić has failed to identify the exhibit to which he refers. See Ćorić's Appeal Brief, para. 71.
[826] Praljak's Appeal Brief, para. 31; Appeal Hearing, AT. 373-374 (22 Mar 2017).
[827] Pušić's Appeal Brief, para. 232.
[828] Pušić's Appeal Brief, paras 232-233.
[829] Pušić's Appeal Brief, para. 232 & fn. 375.
[830] Pušić's Appeal Brief, para. 232.
[831] Stojić's Appeal Brief, para. 413; Praljak's Appeal Brief, paras 21-22, 32; Petković's Appeal Brief, paras 419, 421-423, 425; Petković's Reply Brief, paras 85-86.

in BiH from the presence of HV members in the HVO.[832] In this regard Stojić and Praljak argue that even if some HV elements were "in the service of the HVO", the Trial Chamber erred in concluding that this implied that they were there on the direct order of Croatia.[833] Further, Praljak argues that the Trial Chamber failed to consider that some HV members joined the HVO voluntarily, especially given that many of them were born on BiH territory where their families still lived.[834] While Praljak concedes that HV officers who integrated into the HVO remained HV officers and continued to receive their salaries from Croatia, he alleges that the Trial Chamber overlooked the fact that this was the same for those HV officers integrated into the ABiH and thus not indicative of Croatian control.[835] He adds that HV officers volunteering for both the HVO and the ABiH were temporarily relieved of their duties in the HV.[836]

278. Prlić, Stojić, Praljak, and Petković further challenge the evidence on which the Trial Chamber relied to find that the HV was actively involved in the planning and conduct of the HVO's military operations.[837] In particular, they challenge as erroneous the Trial Chamber's interpretation of the testimonies of: (1) constitutional expert Witness Ciril Ribičič; (2) Witness Marijan Biškić of the HR H-B Ministry of Defence; and (3) Witness Ivan Beneta, an HV Commander.[838] Stojić, in particular, claims that whether the HV and the HVO jointly conducted military operations was beyond the scope of Ribičič's expertise.[839] Prlić and Praljak assert that the Trial Chamber erroneously rejected Biškić's claim that the Croatian Minister of Defence, Gojko Šušak, visited BiH in his personal capacity and not in his official capacity, as the Trial Chamber found.[840] Praljak adds that even if Šušak had travelled in his official capacity, such contacts between Šušak and the HVO were natural and logical, and did not prove the HV's involvement in the HVO's operational planning.[841] As to Beneta, they allege that the Trial Chamber distorted his testimony by finding that HV commanders gave orders to HVO units, when in fact Beneta testified

[832] Petković's Appeal Brief, paras 422, 425.
[833] Stojić's Appeal Brief, para. 413, referring to *Kordić and Čerkez* Appeal Judgement, para. 359; Praljak's Appeal Brief, para. 22. In this respect, Stojić contends that the only direct evidence of Croatian involvement in HVO activities concerned the deployment by Croatia of a "logistical assistant" to the HVO, which falls short of demonstrating overall control over the HVO. Stojić's Appeal Brief, para. 413 & fn. 1040, referring to Ex. P00332.
[834] Praljak's Appeal Brief, para. 21. Similarly, Stojić contends that the Trial Chamber disregarded evidence that HV officers joined voluntarily and failed to consider whether they acted on the orders of Croatia. Stojić's Appeal Brief, para. 413.
[835] Praljak's Appeal Brief, para. 22. See also Praljak's Reply Brief, para. 11.
[836] Praljak's Appeal Brief, paras 21-23. See also Praljak's Reply Brief, para. 11.
[837] Prlić's Appeal Brief, paras 664-666; Stojić's Appeal Brief, para. 414; Praljak's Appeal Brief, paras 26-28, Appeal Hearing, AT. 372-373 (22 Mar 2017); Petković's Appeal Brief, para. 426.
[838] Prlić's Appeal Brief, paras 664-666; Stojić's Appeal Brief, para. 414; Praljak's Appeal Brief, paras 26-28; Petković's Appeal Brief, para. 426.
[839] Stojić's Appeal Brief, para. 414.
[840] Prlić's Appeal Brief, para. 666; Praljak's Appeal Brief, para. 28. Praljak also submits that even if Šušak was in BiH in his capacity as Defence Minister, it does not mean that the HV was involved in planning and conducting HV-HVO military operations. Praljak's Appeal Brief, para. 28, Appeal Hearing, AT. 374-375 (22 Mar 2017). See also Stojić's Appeal Brief, para. 415.
[841] Praljak's Appeal Brief, para. 28.

that the HV members integrated into the HVO were under HVO command.[842] Prlić and Praljak additionally contend that the Trial Chamber erroneously relied on the testimony of Witness Peter Galbraith, the United States Ambassador to Croatia during the relevant time, to find that the HV wielded overall control over the HVO.[843] Finally, Prlić and Petković challenge the Trial Chamber's reliance on adjudicated facts to find that the HV and the HVO jointly directed military operations,[844] while Stojić also argues that the Trial Chamber erred in relying on evidence of indirect political influence.[845]

279. The Prosecution responds that the Trial Chamber correctly found that Croatia had an active role in jointly co-ordinating, planning, and conducting military operations in BiH with the HVO.[846] According to the Prosecution, the Appellants fail to show that the Trial Chamber's findings in this regard were erroneous.[847] The Prosecution points, *inter alia*, to the Trial Chamber's findings that: (1) the Croatian government assigned HV officers to the HVO; (2) the HV and HVO jointly directed operations in BiH; and (3) HVO organs reported on their operations to Croatian/HV authorities, while HV members in BiH reported to HVO officers.[848] The Prosecution also points to evidence of Stojić's communications with Croatian Defence Minister Šušak concerning the re-assignment of HV members to the HVO, arguing that this proves that the HVO leadership was composed, in essence, of HV officers who retained their positions in the HV while posted to the HVO.[849] The Prosecution notes that, under the Overall Control Test, the Trial Chamber was not required to find that the HV or the Croatian government issued specific orders to the HVO or directed any particular relevant operations.[850]

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[842] Prlić's Appeal Brief, paras 664-665; Stojić's Appeal Brief, para. 414; Praljak's Appeal Brief, para. 27; Petković's Appeal Brief, para. 426.
[843] Prlić's Appeal Brief, paras 662-663; Praljak's Appeal Brief, para. 21. Praljak also claims that the Trial Chamber exclusively relied on the testimony of Peter Galbraith. Praljak's Appeal Brief, para. 21.
[844] Prlić's Appeal Brief, para. 663; Petković's Appeal Brief, para. 426.
[845] Stojić's Appeal Brief, para. 418. The Appeals Chamber also notes the argument raised by Prlić, Stojić, Praljak, Petković, and Ćorić that the Trial Chamber erroneously failed to acknowledge that, in addition to the support provided to the HVO, Croatia also provided, through the HV, material and technical equipment, supplies, training, and financial assistance to the ABiH, which, in Prlić's, Stojić's, Praljak's, Petković's, and Ćorić's view, undermines the finding of overall control over the HVO. See Prlić's Appeal Brief, para. 667; Stojić's Appeal Brief, para. 417; Praljak's Appeal Brief, para. 24; Petković's Appeal Brief, para. 428; Ćorić's Appeal Brief, paras 70, 72. See also Appeal Hearing, AT. 657 (24 Mar 2017).
[846] Prosecution's Response Brief (Prlić), paras 415-417; Prosecution's Response Brief (Stojić), paras 382-387; Appeal Hearing, AT. 308-311, 313-316, (21 Mar 2017); Prosecution's Response Brief (Praljak), paras 18-22; Prosecution's Response Brief (Petković), paras 289-295; Prosecution's Response Brief (Ćorić), para. 64; Prosecution's Response Brief (Pušić), paras 213, 215.
[847] Prosecution's Response Brief (Prlić), paras 415-417; Prosecution's Response Brief (Stojić), paras 382-387; Prosecution's Response Brief (Praljak), paras 18-22; Prosecution's Response Brief (Petković), paras 289-295; Prosecution's Response Brief (Ćorić), para. 65; Prosecution's Response Brief (Pušić), paras 213, 215.
[848] Prosecution's Response Brief (Prlić), paras 415-416; Prosecution's Response Brief (Stojić), paras 382-386; Prosecution's Response Brief (Praljak), paras 15-18; Prosecution's Response Brief (Petković), paras 289-290, 292-293; Prosecution's Response Brief (Ćorić), paras 64-65. See also Prosecution's Response Brief (Pušić), para. 215.
[849] Prosecution's Response Brief (Stojić), para. 383.
[850] Prosecution's Response Brief (Stojić), para. 382.

280. The Prosecution responds that the Trial Chamber reasonably found that HV soldiers were present in BiH at the behest of Croatia.[851] It argues that the Trial Chamber did not only rely on evidence of HV officers' presence in the HVO to find that Croatia appointed HV officers within the HVO but also on other evidence, including Stojić's own correspondence to Šušak, showing that members of the HVO Main Staff leadership were simultaneously HV officers.[852] The Prosecution also avers that the Trial Chamber reasonably rejected the argument that HV soldiers involved in BiH were volunteers, finding that they were only characterised as such for the express purpose of hiding Croatia's involvement.[853] According to the Prosecution, the question of whether HV soldiers were able to voluntarily join either the HVO or the ABiH is irrelevant.[854]

281. The Prosecution avers that Prlić, Stojić, and Petković fail to show why the Trial Chamber's reliance upon the testimony of Ribičič or the rejection of the claim that Defence Minister Šušak met with the HVO military leadership in his personal capacity, were unreasonable.[855] According to the Prosecution, the Trial Chamber correctly interpreted and relied upon Biškić's testimony and other evidence (most notably the transcripts of a meeting held on 24 April 1993 in Zagreb, between among others, President Tuđman of Croatia, President Izetbegović of BiH, Mate Boban, President of HZ(R) H-B, and Lord David Owen, Co-Chairman of the International Conference on the Former Yugoslavia ("ICFY")) to establish that the HV and the leadership of the HZ(R) H-B met to plan military operations.[856] Regarding the claim that Beneta did not testify that HV commanders issued orders to HVO units, the Prosecution points to his evidence that HV officer Luka Džanko issued an attack order for, and personally commanded, a joint HV/HVO operation, which, according to the Prosecution, the Trial Chamber considered.[857] The Prosecution also refutes the challenges to Galbraith's testimony regarding the appointment of officers, which, according to the Prosecution, was both well-corroborated and based on the witness's particular experience as United States Ambassador to Croatia.[858] Further, the Prosecution responds that Prlić's and Petković's mere

[851] Prosecution's Response Brief (Stojić), paras 383-384; Prosecution's Response Brief (Praljak), para. 16.
[852] Prosecution's Response Brief (Stojić), paras 383-384, referring to, *inter alia*, Trial Judgement, Vol. 3, para. 547 & fn. 1133, referring to, *inter alia*, Exs. P10336, P03957.
[853] Prosecution's Response Brief (Praljak), para. 16.
[854] Prosecution's Response Brief (Praljak), para. 17; Prosecution's Response (Petković), para. 293.
[855] Prosecution's Response Brief (Prlić), para. 416; Prosecution's Response Brief (Stojić), para. 385; Prosecution's Response Brief (Petković), para. 291.
[856] Prosecution's Response Brief (Prlić), para. 416. See also Prosecution's Response Brief (Stojić), para. 385, Appeal Hearing, AT. 205-207 (20 Mar 2017).
[857] Prosecution's Response Brief (Prlić), para. 416; Prosecution's Response Brief (Stojić), para. 385; Prosecution's Response Brief (Praljak), para. 18. See also Prosecution's Response Brief (Petković), para. 291.
[858] Prosecution's Response Brief (Prlić), para. 415; Prosecution's Response Brief (Praljak), para. 15. Regarding the challenge to Galbraith, the Prosecution argues that his testimony was based on his official interactions with Croatian authorities in his capacity as United States Ambassador to Croatia, and was corroborated by other evidence. Prosecution's Response Brief (Prlić), para. 415; Prosecution's Response Brief (Praljak), para. 15. See *infra*, para. 288.

assertions that the Trial Chamber relied exclusively on adjudicated facts (and on Ribičič's testimony, in Prlić's case) demonstrates no error and is belied by other evidence.[859]

(ii) Analysis

282. At the outset, the Appeals Chamber recalls its jurisprudence that in order for acts of a military group to be attributed to a State, the Overall Control Test requires proof that "the State wields overall control over the group, not only by equipping and financing the group, but also by co-ordinating or helping in the general planning of its military activity".[860] Indeed, the Overall Control Test "calls for an assessment of all the elements of control taken as a whole, and a determination to be made on that basis as to whether there was the required degree of control".[861]

283. The Trial Chamber found that Croatia wielded overall control over the HVO and that such control manifested itself in several ways.[862] Specifically, the Trial Chamber relied on evidence that: (1) HV officers were placed within the HVO;[863] (2) the HV and the HVO jointly directed military operations;[864] (3) the HV sent reports on its activities to the Croatian authorities and/or the HVO;[865] (4) there was logistical support from Croatia, including financial support, dispatching of arms and materiel, and assistance in the form of training and expertise;[866] and (5) Croatia wielded political influence over the HVO and the HZ(R) H-B authorities.[867]

284. Contrary to the Appellants' suggestions, the Trial Chamber did not need to find that the HV maintained the ultimate decision-making authority and command over each and every military operation conducted or planned by the HVO on BiH territory, or that HV troops were present and participated in every single operation undertaken by the HVO against the ABiH.[868] Nor was it necessary, as Praljak argues, for the Trial Chamber to concretely identify when and where the HV participated in the planning of specific military operations by the HVO.[869] Further, the Appeals Chamber finds that Pušić's argument, that the presence of HV troops in BiH was not

[859] Prosecution's Response Brief (Prlić), para. 416; Prosecution's Response Brief (Petković), para. 291. The Prosecution responds to Ćorić's arguments regarding Croatia also providing HV material and financial assistance to the ABiH by stating that this happened during times or in areas other than those subject of the Indictment. Appeal Hearing, AT. 657 (24 Mar 2017).
[860] *Tadić* Appeal Judgement, para. 131. See also *Tadić* Appeal Judgement, paras 130, 137-138, 145.
[861] *Aleksovski* Appeal Judgement, para. 145. See also *Kordić and Čerkez* Appeal Judgement, para. 371 (upholding the Trial Chamber's decision to consider "a multitude of factors when making its analysis" regarding the planning, co-ordination, and organisation of the activities of the HVO).
[862] See Trial Judgement, Vol. 3, paras 545-568.
[863] See Trial Judgement, Vol. 3, paras 546-548 and references cited therein.
[864] See Trial Judgement, Vol. 3, paras 549-552 and references cited therein.
[865] See Trial Judgement, Vol. 3, para. 553 and references cited therein.
[866] See Trial Judgement, Vol. 3, paras 554-559 and references cited therein.
[867] See Trial Judgement, Vol. 3, paras 560-566 and references cited therein.
[868] *Tadić* Appeal Judgement, para. 137. See Trial Judgement, Vol. 1, para. 86.
[869] *Tadić* Appeal Judgement, para. 137. See Trial Judgement, Vol. 3, paras 545-553.

sufficient for overall control to be established, is not inconsistent with the challenged finding. This was only one factor considered by the Trial Chamber in reaching its finding.[870] In this regard, the Appeals Chamber considers Pušić's argument that Tuđman himself was not aware of the HVO's operations in BiH as unsubstantiated and dismisses it accordingly. For the foregoing reasons, the Appeals Chamber considers that the Appellants have failed to show that no reasonable trier of fact, based on the evidence as a whole, could have reached the same conclusion as the Trial Chamber and thus dismisses their arguments.

285. Turning to Prlić's, Stojić's, and Praljak's reliance on the *Kordić and Čerkez* Appeal Judgement to argue that the Trial Chamber erred in inferring that the HV members were in BiH on the direct order of Croatia because of HV officers' presence there and because some HV members were in the service of the HVO, the Appeals Chamber recalls that in the *Kordić and Čerkez* case, it was merely considering the reliance on certain evidence in that case.[871] The mere reference to a conclusion in a different appeal judgement concerning an alleged error does not show that no reasonable trier of fact could have reached the same conclusion as the Trial Chamber did in the present case, based on the evidence adduced at trial. Accordingly, the Appeals Chamber dismisses this contention. Additionally, contrary to Prlić's, Stojić's, and Praljak's arguments, the Appeals Chamber recalls that the Trial Chamber in this case did not only rely on the presence of the HV personnel integrated into the HVO to find that Croatia had overall control of the HVO but on various factors.[872] Specifically, the Appeals Chamber observes that the Trial Chamber considered evidence showing that: (1) high-ranking HV officers, such as Praljak and Petković, were sent by Croatia to join the ranks of the HVO; (2) the HV and HVO jointly directed military operations;[873] (3) the HVO dispatched reports concerning its activities to the Croatian authorities; (4) Croatia provided logistical support to the HVO; and (5) Croatia exercised political influence over the HVO and the HZ(R) H-B.[874] The Appeals Chamber thus dismisses this argument as a misrepresentation of the factual findings.[875]

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[870] See *supra*, para. 283. See also Trial Judgement, Vol. 3, paras 545-568.
[871] *Kordić and Čerkez* Appeal Judgement, para. 359 (referring to the content of HVO orders). In that context, the Appeals Chamber in *Kordić and Čerkez* held that "[t]he fact that members of the HV were in the service of the HVO does not imply without doubt that they were there on the direct order of Croatia". *Kordić and Čerkez* Appeal Judgement, para. 359.
[872] See *supra*, para. 283.
[873] See Trial Judgement, Vol. 3, paras 549-552.
[874] See Trial Judgement, Vol. 3, paras 545-567 and references cited therein. See also Trial Judgement, Vol. 3, fn. 1130, referring to, *inter alia*, Ex. P00332 (referred to by Stojić); Trial Judgement, Vol. 3, fn. 1133 referring, *inter alia*, to Exs. P10336, P03957 (correspondence from Stojić to Šušak showing that members of the HVO Main Staff leadership were simultaneously HVO officers).
[875] To the extent that Stojić argues that direct evidence is required to prove Croatia's overall control of the HVO, the Appeals Chamber dismisses this argument as being based on an erroneous understanding of the jurisprudence. See *Kordić and Čerkez* Appeal Judgement, para. 308; *Čelebići* Appeal Judgement, para. 47; *Aleksovski* Appeal Judgement, paras 144-146; *Tadić* Appeal Judgement, paras 131, 137.

286. Turning to Prlić's, Stojić's, Praljak's, and Petković's challenges to the Trial Chamber's assessment of the testimonies of Ribičič, Biškić, and Beneta on which the Trial Chamber relied to find that the HV and the HVO jointly directed military operations,[876] the Appeals Chamber considers their challenges amount to disagreements with the Trial Chamber's evidentiary assessments. As such the Appeals Chamber dismisses their arguments as a mere assertion that the Trial Chamber failed to interpret evidence in a particular way. Regarding Stojić's specific argument that Ribičič's testimony exceeded the scope of his expertise, the Appeals Chamber recalls its jurisprudence that "it is for the Trial Chamber to accept or reject, in whole or in part, the contribution of an expert witness" and that "a Trial Chamber's decision with respect to evaluation of evidence received pursuant to Rule 94 *bis* of the Rules is a discretionary one".[877] The Appeals Chamber observes that Stojić has failed to show that the Trial Chamber abused its discretion when relying on Ribičič, a constitutional law expert and "expert on the genesis of constitutional systems in the territory of the former Yugoslavia",[878] and his evidence on the establishment of the armed forces of HZ H-B and their relationship with neighbouring Croatia,[879] to find that the HZ(R) H-B co-ordinated its military activities with Croatia.[880] In any event, the Appeals Chamber observes that Ribičič's testimony was only one of several pieces of evidence relied upon by the Trial Chamber to find that the HV and the HVO jointly directed military operations.[881] Stojić has failed to demonstrate that the Trial Chamber erred in relying on the remaining evidence. This argument is therefore dismissed.

287. Further, with regard to Beneta's testimony, the Appeals Chamber considers that Prlić, Stojić, Praljak, and Petković misconstrue the relevant finding. In particular, the Trial Chamber found, based on evidence other than – but consistent with – his testimony,[882] that commanding officers of the HV issued orders to the units of the HVO for *certain* military operations, implying that operational control for other HVO activities remained in the hands of the HVO.[883] It thus rejects this argument. As to Prlić's contention that the Trial Chamber erred in relying on adjudicated facts, the Appeals Chamber notes that the Trial Chamber merely referred to one

[876] See Trial Judgement, Vol. 3, paras 549-552 & fns 1138-1140, 1145 and references cited therein.
[877] *Strugar* Appeal Judgement, para. 58.
[878] See Ex. P08973, p. 2; Trial Judgement, Vol. 3, fn. 1138.
[879] See Trial Judgement, Vol. 3, fn. 1139, referring to Ex. P08973, p. 25 (stating that several provisions of the Decree on the Armed Forces of the HZ H-B, adopted by the Presidency of the HZ H-B on 3 July 1992, establishing the armed forces of the HZ H-B, indicated that the HZ H-B acted as an autonomous and sovereign state, separate from BiH, and with respect to the armed forces, it co-ordinated its activities with Croatia, and they formed the basis for financial, personnel, and other assistance from Croatia to the HVO).
[880] See Trial Judgement, Vol. 3, para. 549 & fn. 1139.
[881] See Trial Judgement, Vol. 3, paras 549-552 and references cited therein.
[882] See Trial Judgement, Vol. 3, para. 550 & fn. 1140, referring to Exs. P03048, p. 3, P07055.
[883] See Trial Judgement, Vol. 3, para. 550 & fn. 1140, referring to Ivan Beneta, T(F). 46632, 46634, 46639, 46656 (10 Nov 2009).

Adjudicated Fact as a further reference[884] and thus considers that Prlić has failed to show that no reasonable trier of fact, based on the remaining evidence,[885] could have reached the same conclusion as the Trial Chamber.

288. As to Prlić's and Praljak's arguments that the testimony of Galbraith was insufficient to find that officers from the HV were sent by Croatia to join the ranks of the HVO, and that the HV wielded overall control over the HVO, the Appeals Chamber observes that the Trial Chamber did not solely rely on Galbraith's testimony to make these findings but also on other pieces of evidence that showed the presence of HV officers on BiH territory and their integration into the HVO command structure.[886] The Appeals Chamber finds that Prlić and Praljak have failed to demonstrate that no reasonable trier of fact, based on this evidence, could have reached the same conclusion as the Trial Chamber. Further, with regard to their challenges to Galbraith's credibility and the Trial Chamber's assessment of his testimony, they have failed to show that the Trial Chamber abused its discretion.[887] Consequently, the Appeals Chamber will not disturb the Trial Chamber's assessment of that witness's credibility and the probative value of his testimony.[888] It thus dismisses their arguments.

289. In light of the foregoing, the Appeals Chamber finds that the Appellants have failed to show an error in the Trial Chamber's conclusion that Croatia, through the HV, had overall control over the HVO through its involvement in the organisation, co-ordination, and planning of the HVO's military operations. The Appeals Chamber therefore dismisses Prlić's sub-ground of appeal 19.3, Stojić's sub-ground of appeal 54.2 in part, Praljak's sub-grounds of appeal 1.3 in part and 1.4 in part, Petković's sub-grounds 7.1.1 in part and 7.1.5 in part, Ćorić's sub-ground of appeal 3.1 in part, and Pušić's ground of appeal 7 in part.

(c) Other challenges – shared military reports (Stojić's Sub-ground 54.2, Praljak's Sub-ground 1.3, and Petković's Sub-ground 7.1.5, all in part)

(i) Arguments of the Parties

290. Stojić, Praljak, and Petković object to the Trial Chamber's reliance on the HV's and the HVO's sharing of military reports in support of its finding of Croatia's overall control over the

[884] See Trial Judgement, Vol. 3, fn. 1139.
[885] See Trial Judgement, Vol. 3, paras 549-552 and references cited therein.
[886] See Trial Judgement, Vol. 3, paras 546-548 and references cited therein.
[887] See *Popović et al.* Appeal Judgement, paras 131-132. See also *supra*, paras 215-218.
[888] See Trial Judgement, Vol. 3, paras 546-547 & fn. 1132. The Appeals Chamber further considers that Prlić, Stojić, Praljak, Petković, and Ćorić fail to demonstrate that the provision of HV logistical and other support to the ABiH against their common enemy, the Bosnian Serbs, undermines or is incompatible with the finding that through the HV, Croatia exercised overall control over the HVO.

HVO.[889] Stojić argues that the Trial Chamber failed to analyse the purpose of these reports from the HVO to the HV, which were mostly requests for logistical assistance.[890] Stojić also asserts that the military reports involved co-ordination against the common "Serbian threat", rather than the conflict with the ABiH.[891] Praljak in particular states that any exchange of communications between the HV and HVO was attributable to the geographical proximity of the two armies and the historical connection of their people.[892]

291. Like Stojić and Praljak, Petković concedes that HVO reports were sent to the Croatian authorities, but points out that the HVO chose the topics of the shared reports, which is inconsistent with the Trial Chamber's finding concerning Croatia's control over the HVO.[893] Petković also contests the Trial Chamber's reliance on: (1) the order from the Croatian Ministry of Defence to the Head of the Defence Department of the HZ(R) H-B to provide more information;[894] (2) the internal HVO report mentioning Šušak's order for the reorganisation of HVO logistical operations;[895] as well as (3) the testimony of Witness Josip Manolić, a high-level Croatian political official.[896] This evidence, in Petković's view, does not support a finding of overall control.[897]

292. The Prosecution responds that Praljak fails to demonstrate how the existence of historical links between Croatia and the Bosnian Croats and common enemies undermines the finding of Croatia's overall control over the HVO.[898] The Prosecution further argues that the claim that the Trial Chamber misinterpreted the documents is unsubstantiated, pointing specifically to Manolić's testimony that the HVO officers reported regularly to Šušak.[899] The Prosecution contends that Stojić does not demonstrate how the exchange of reports between the HV and HVO regarding the conflict with the Serbs undermines the proposition that Croatia and its armed forces possessed overall control over the HVO.[900] The Prosecution rejects as unfounded Stojić's claim that most reports relied upon by the Trial Chamber pertained to logistics.[901]

293. In response to Petković, the Prosecution contends that he does not cite any evidence supporting his argument that the HVO decided independently which topics to raise in reports shared

[889] Stojić's Appeal Brief, paras 415-416; Praljak's Appeal Brief, paras 29-30; Praljak's Reply Brief, para. 12; Petković's Appeal Brief, para. 427.
[890] Stojić's Appeal Brief, para. 416.
[891] Stojić's Appeal Brief, para. 416.
[892] Praljak's Appeal Brief, paras 29-30.
[893] Petković's Appeal Brief, para. 427.
[894] Petković's Appeal Brief, para. 427, referring to Ex. P03242, Trial Judgement, Vol. 3, para. 553, fn. 1146.
[895] Petković's Appeal Brief, para. 427, referring to Ex. P07135.
[896] Petković's Appeal Brief, para. 427.
[897] Petković's Appeal Brief, para. 427.
[898] Prosecution's Response Brief (Praljak), para. 19.
[899] Prosecution's Response Brief (Praljak), para. 19.
[900] Prosecution's Response Brief (Stojić), para. 386.
[901] Prosecution's Response Brief (Stojić), para. 386.

with the HV, nor did he sufficiently establish why this fact could impact the Trial Chamber's conclusion.[902] The Prosecution also argues that Petković failed to demonstrate why it was unreasonable for the Trial Chamber to rely upon an instruction from the Croatian Ministry of Defence to the Head of the Defence Department of the HZ(R) H-B and on the relevant report of the HVO Chief of Staff.[903] The Prosecution notes that contrary to Petković's assertion, Manolić did, in fact, testify that HVO authorities sent reports to the HV.[904]

(ii) Analysis

294. The Trial Chamber concluded, based on the evidence before it, that the exchange of military reports between the HV and HVO was one of multiple indicators of Croatia's overall control over the HVO.[905] Stojić, Praljak, and Petković all contest the Trial Chamber's assessment of various exhibits and testimony relied upon by the Trial Chamber in this respect as evidence of overall control without demonstrating that the Trial Chamber erred in its assessment of the probative value of the evidence or testimony.[906] The Appeals Chamber rejects Petković's contentions concerning the sufficiency of the evidence because he has failed to submit any reason why the reports considered by the Trial Chamber, including the information from the Croatian Ministry of Defence and Manolić's testimony,[907] are not relevant to, or probative of, Croatia's overall control over the HVO.

295. With respect to Stojić's arguments in particular, the Appeals Chamber finds that he has not demonstrated why the mere possibility that HV-HVO reporting may have also covered the common "Serbian threat" ultimately invalidates the Trial Chamber's reliance on the exchange of reports as proof of Croatia's overall control. Similarly, the Appeals Chamber considers that Praljak's argument that the long-standing historical links between Croatia and the Bosnian Croat community could explain the exchange of reports between the HV and HVO is unpersuasive. Praljak has failed to show how the impugned finding would not stand on the basis of the remaining evidence of the close interaction between the HV and HVO, and of the Croatian government's involvement in the HVO-ABiH conflict and in the governance of the HZ(R) H-B, which was relied upon by the Trial Chamber.[908] Stojić's and Praljak's arguments therefore have failed.

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[902] Prosecution's Response Brief (Petković), para. 292.
[903] Prosecution's Response Brief (Petković), para. 292, referring to Exs. P03242, P07135.
[904] Prosecution's Response Brief (Petković), para. 292.
[905] See Trial Judgement, Vol. 3, paras 545, 553, 567-568.
[906] See Trial Judgement, Vol. 3, para. 553 and references cited therein. See also *supra*, paras 170-176, 179-183.
[907] See Trial Judgement, Vol. 3, fns 1146-1147 and references cited therein.
[908] See Trial Judgement, Vol. 3, paras 545-568. The Appeals Chamber has also considered Praljak's argument that if the HV possessed control over the HVO, the trial record would indicate that the HVO submitted reports to the HV and that the HV gave orders to the HVO, rather than the mutual exchange of information by two equal armies that emerges.

296. In light of the above, the Appeals Chamber dismisses Stojić's sub-ground of appeal 54.2 in part, Praljak's sub-ground of appeal 1.3 in part, and Petković's sub-ground 7.1.5 in part.

5. Conclusion

297. For the foregoing reasons, the Appeals Chamber finds that the Trial Chamber erred in finding that a state of international armed conflict only existed in places where active combat took place and reverses this finding. The Appeals Chamber also finds that the Appellants have failed to show an error in the Trial Chamber's application of the Overall Control Test to assess the character of the armed conflict, its findings on the parties to the international armed conflict, on the location of the southern front, on the sharing of military reports, and Croatia's intervention in the HVO-ABiH conflict, both directly and indirectly.

B. The State of Occupation

1. Whether the inquiry into a state of occupation was necessary (Prlić's Ground 20, Stojić's Ground 55, Praljak's Ground 2, Petković's Sub-ground 7.2, and Ćorić's Sub-ground 3.2)

298. Given that a state of international armed conflict was established throughout the whole territory of BiH during the time relevant to the Indictment,[909] the Appeals Chamber will now turn to whether the Trial Chamber properly found that a state of occupation also existed in some places where the crimes of deportation, extensive destruction and appropriation of property not justified by military necessity and carried out unlawfully and wantonly as grave breaches of the Geneva Conventions were alleged.[910]

299. The Trial Chamber held that it was necessary to examine whether there was a state of occupation in places where the crime of unlawful deportation of a civilian as a grave breach of the Geneva Conventions was charged under Count 7 of the Indictment,[911] even where it had already found that there was an international armed conflict and for which the threshold requirement for Article 2 had already been met.[912] The Trial Chamber reasoned that the crime of unlawful

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See Praljak's Reply Brief, para. 12. The Appeals Chamber notes that a two-way exchange of information between a military group participating in an internal conflict and a foreign State's army does not *a priori* preclude the possibility that the State possesses overall control over the foreign military group. Further, the Overall Control Test does not require the existence of a hierarchical relationship between the HV and HVO, a relationship that Praljak's argument erroneously presumes. The Appeals Chamber thus dismisses this argument.

[909] See *supra*, para. 233.

[910] Prlić's Appeal Brief, paras 671-676 (ground of appeal 20); Stojić's Appeal Brief, paras 421-425 (ground of appeal 55); Praljak's Appeal Brief, paras 42-56 (ground of appeal 2); Praljak's Reply Brief, paras 14-17; Petković's Appeal Brief 434-444 (sub-ground of appeal 7.2); Petković's Reply Brief, paras 88-89; Ćorić's Appeal Brief paras 75-83 (sub-ground of appeal 3.2); Ćorić's Reply Brief, paras 26-27.

[911] See Trial Judgement, Vol. 3, para. 576.

[912] See Trial Judgement, Vol. 3, paras 575-576.

deportation can only occur when a person is transferred by force over a *de facto* border, *i.e.* the boundary of an occupied territory, or a *de jure* border.[913] According to the Trial Chamber, a finding of occupation was required to find that a *de facto* border existed and, consequently, for it to find that there had been a forced crossing of a *de facto* border.[914]

300. At the outset, the Appeals Chamber recalls that Article 49 of Geneva Convention IV applies to instances of displacement across the *de facto* borders of an occupied territory.[915] In the *Stakić* case, the Appeals Chamber held that "the *actus reus* of deportation is the forced displacement of persons by expulsion or other forms of coercion from the area in which they are lawfully present, across a *de jure* state border or, in certain circumstances, a *de facto* border, without grounds permitted under international law".[916]

301. The Appeals Chamber considers, therefore, that the Trial Chamber properly examined whether a state of occupation existed in those places in relation to which the Indictment raised allegations of deportation as a grave breach of the Geneva Conventions, *i.e.* in West Mostar and the municipalities of Prozor, Ljubuški, Stolac, and Čapljina.[917] That inquiry involved an element of the crime of deportation itself – the crossing of a *de facto* border, *i.e.* the boundary of the occupied territory, or across a *de jure* border – which was separate and distinct from the general requirements for the application of the "grave breaches" regime under Article 2 of the Statute.

302. Turning to the crimes of extensive destruction and appropriation of property not justified by military necessity and carried out unlawfully and wantonly as grave breaches of the Geneva Conventions, the Appeals Chamber recalls that the Trial Chamber found it necessary to establish the existence of an occupation not only when it had been unable to establish the existence of a conflict between the ABiH and the HVO, based on its erroneous interpretation of an armed conflict,[918] but also because, in the Trial Chamber's view, two categories of property are protected pursuant to Article 2(d) of the Statute – property falling under the general protection of the Geneva Conventions, as well as property in occupied territory.[919]

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[913] See Trial Judgement, Vol. 1, para. 55, Vol. 3, para. 576.
[914] See Trial Judgement, Vol. 1, para. 55, Vol. 3, para. 576.
[915] See Geneva Convention IV, Art. 49. See also *Stakić* Appeal Judgement, para. 300 (relying on Article 49 of Geneva Convention IV to conclude that "displacement across a *de facto* border may be sufficient to amount to deportation" and that "the question whether a particular *de facto* border is sufficient for the crime of deportation should be examined on a case by case basis in light of customary international law").
[916] *Stakić* Appeal Judgement, para. 278. See also *Stakić* Appeal Judgement, paras 296-297, 300.
[917] See Trial Judgement, Vol. 3, paras 575-581, 585-588; Appeal Hearing, AT. 307 (21 Mar 2017). See also Appeal Hearing, AT. 568-567 (23 Mar 2017), AT. 682 (27 Mar 2017). *Cf.* Appeal Hearing, AT. 305 (21 Mar 2017).
[918] See *supra*, para. 299.
[919] See Trial Judgement, Vol. 1, paras 106-108, 122, 128-129, Vol. 3, para. 575.

303. With respect to the grave breaches of extensive destruction and appropriation of property, the Appeals Chamber recalls that the Trial Chamber held that Article 2(d) of the Statute offers protection to certain property, *e.g.*, civilian hospitals and medical convoys, from acts of destruction wherever such property is located.[920] The Trial Chamber further held that protection is also afforded to real or personal, public or private property, if situated on occupied territory.[921] Because there were allegations of grave breaches of extensive destruction and appropriation of real or personal, public or private property in the Indictment,[922] the Appeals Chamber finds that it was necessary for the Trial Chamber to inquire into whether there was a state of occupation in the municipalities at times when such alleged grave breaches of extensive destruction and appropriation occurred.

304. The Appeals Chamber will now turn to Prlić's, Stojić's, Praljak's Petković's, and Ćorić's challenges to the Trial Chamber's finding of a state of occupation in the limited context of the relevant crimes, *i.e.* deportation and extensive destruction and appropriation of property.

2. The legal requirements of occupation (Prlić's Ground 20, Stojić's Ground 55, Praljak's Ground 2, Petković's Sub-ground 7.2 and Ćorić's Sub-ground 3.2)

(a) Arguments of the Parties

305. Prlić, Stojić, Praljak, Petković, and Ćorić argue that the Trial Chamber erred in law and in fact by finding a state of occupation in certain municipalities.[923] More specifically, Praljak contends that the Trial Chamber erroneously found that a state of armed conflict and a state of occupation co-existed in some municipalities, while Stojić and Petković argue that the Trial Chamber erred in finding that an armed conflict existed in certain municipalities that were occupied.[924] In particular, Stojić – and Petković with respect to West Mostar and Vareš – claims that the Trial Chamber therefore erred in finding a state of occupation in Gornji Vakuf, Sovići, Doljani, West Mostar, Vareš, and Stupni Do at certain times because it established the existence of an occupation before combat had ended.[925] In this regard, Stojić and Petković submit, *inter alia*, that the Trial Chamber erred in finding that the HVO occupied parts of Gornji Vakuf from 18 January 1993, because the

[920] See Trial Judgement, Vol. 1, paras 106, 108, 122 referring to, *inter alia*, Geneva Convention IV, Arts 18, 21-22. See also Geneva Convention IV, Art. 147; Commentary on Geneva Convention IV, pp. 301, 601.
[921] See Trial Judgement, Vol. 1, paras 106-107, 122 referring to, *inter alia*, Geneva Convention IV, Art. 53. See also Geneva Convention IV, Art. 147; Commentary on Geneva Convention IV, pp. 301, 601.
[922] See Indictment, paras 15-17.6, 39, 46, 48, 51,53, 57, 66-68, 82-85, 99-100, 107-108, 116, 159, 162, 164-166, 175, 177, 179-180, 182, 209, 211, 213.
[923] See Prlić's Appeal Brief, paras 671-676; Stojić's Appeal Brief, paras 421-425; Praljak's Appeal Brief, paras 42-56; Appeal Hearing, AT. 369, 371-372 (22 Mar 2017); Praljak's Reply Brief, paras 14-18; Petković's Appeal Brief, paras 436-444; Petković's Reply Brief, paras 83-89; Ćorić's Appeal Brief, paras 75-83; Appeal Hearing, AT. 580 (24 Mar 2017); Ćorić's Reply Brief, paras 26-27.
[924] Stojić's Appeal Brief, para. 424; Praljak's Appeal Brief, para. 50; Praljak's Reply Brief, para. 14; Petković's Appeal Brief, paras 441-442, Appeal Hearing, AT. 568 (23 Mar 2017).
[925] Stojić's Appeal Brief, para. 424; Petković's Appeal Brief, paras 441-442; Appeal Hearing, AT. 568 (23 Mar 2017).

"first real lull in combat" was not until 26 or 27 January 1993, that Sovići and Doljani in Jablanica Municipality were occupied from 17 April 1993 because "mopping up" operations continued after that date, and that West Mostar was occupied from May 1993 because there were "ongoing operations affecting all of Mostar", referencing the attack by the ABiH on the HVO Tihomir Mišić Barracks in the north of Mostar town on 30 June 1993 ("Attack on the HVO Tihomir Mišić Barracks").[926] Stojić also argues that the Trial Chamber did not explain why it reached a contrary conclusion to the *Naletilić and Martinović* Trial Chamber, which had found no occupation in the areas of Sovići and Doljani in Jablanica Municipality prior to 23 April 1993.[927]

306. Ćorić contends that a state of occupation is a transitional period that must follow an act of invasion, and that the Trial Chamber failed to find that there was an invasion which is an essential element of occupation.[928] Prlić, Stojić, Praljak, and Ćorić also argue that the HVO could not have invaded because it was a legitimate governing authority within BiH and could not be considered a foreign invading army.[929] Praljak notes further that the Trial Chamber erroneously failed to establish the start and end of the occupation which could only have happened when combat activity had ceased, a finding the Trial Chamber also failed to make.[930]

307. According to Stojić and Praljak, the Trial Chamber erred in law in failing to find that it was Croatia, rather than the HVO, that occupied the relevant municipalities.[931] Praljak contends that the Trial Chamber did not find that the HVO occupied BiH as Croatia's agent and erred when it did not establish that the HVO acted in each municipality on behalf of Croatia and under its control.[932]

308. Moreover, Prlić, Stojić, Praljak and Petković argue that the Trial Chamber misapplied the *Naletilić and Martinović* Trial Judgement criteria to establish the level of authority required of a power that is occupying a territory, leading to the erroneous conclusion that a state of occupation existed in BiH.[933] Stojić and Petković challenge the Trial Chamber's finding that the HV's overall control over the HVO was sufficient to establish a state of occupation by the State of Croatia in BiH

[926] Stojić's Appeal Brief, para. 424; Petković's Appeal Brief, paras 441-442; Appeal Hearing, AT. 568 (23 Mar 2017).
[927] Stojić's Appeal Brief, para. 424.
[928] Ćorić's Appeal Brief, para. 81; Appeal Hearing, AT. 580-581 (24 Mar 2017); Ćorić's Reply Brief, para. 27. See also Praljak's Appeal Brief, para. 49; Appeal Hearing, AT. 370 (22 Mar 2017). Praljak, referring to the Tribunal's jurisprudence that occupation is "a transitional period following invasion and preceding the agreement on the cessation of the hostilities", submits that it is important to establish that there "already was a transitional period". Praljak's Appeal Brief, para. 49.
[929] Prlić's Appeal Brief, paras 672-673; Stojić's Appeal Brief, para. 422; Praljak's Appeal Brief, paras 55-56; Appeal Hearing, AT. 370-371 (22 Mar 2017); Ćorić's Appeal Brief, paras 81-82; Appeal Hearing, AT. 581-582 (24 Mar 2017).
[930] Praljak's Appeal Brief, para. 49; Praljak's Reply Brief, para. 14.
[931] Stojić's Appeal Brief, para. 422; Praljak's Reply Brief, para. 15.
[932] Praljak's Reply Brief, para. 15.
[933] Prlić's Appeal Brief, para. 671; Stojić's Appeal Brief, paras 422-423; Praljak's Appeal Brief, para. 45; Petković's Appeal Brief, paras 436-438.

at the relevant time.[934] In Stojić's and Praljak's view, the mere presence of HVO troops in HZ(R) H-B, even combined with certain administrative control, is insufficient to indicate control for the purposes of occupation.[935] Petković further argues that the criteria found in the *Naletilić and Martinović* Trial Judgement are cumulative, and that the Trial Chamber erred when it found a state of occupation in some municipalities on the basis of only two criteria.[936] In this regard, Petković submits that the correct test to apply is the effective control test.[937] Stojić argues that occupation requires that the territory be "actually placed under the authority" of the occupying power, which is a "further degree of control" than overall control, and therefore that the Trial Chamber erred in finding that the municipalities were occupied by Croatia rather than by the HVO.[938]

309. Further, Prlić avers that an occupying power must completely displace the pre-existing civil government in order for the requisite degree of control to be established.[939] Praljak argues further that the relevant test which the Trial Chamber failed to consider, and which would not have been satisfied, was either whether the pre-existing authority in the allegedly occupied territory remained capable of functioning, or if a temporary administrative body had been put in its place.[940] Praljak also submits that the Trial Chamber ought to have identified which authorities were in place prior to the occupation or established that the occupied authorities in fact had continued to function.[941]

310. Lastly, Praljak argues that the principle of self-determination of peoples negates any finding that the HVO occupied territory in BiH because Croats had been living in the territory of HZ(R) H-B for centuries, possessed a right to assert their own political, economic, and cultural identity there, constituted legitimate governing authorities, compensated for the lack of government functions, and therefore did not in any way qualify as an occupying power.[942]

311. The Prosecution responds that the Trial Chamber correctly found that Croatia exercised overall control over the HVO, that the HVO had sufficient authority in the municipalities to occupy parts of BiH during the Indictment period, and that Prlić, Stojić, Praljak, Petković, and Ćorić fail to

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[934] Petković's Appeal Brief, para. 439; Appeal Hearing, AT. 569-570 (23 Mar 2017). See also Stojić's Appeal Brief, para. 422.
[935] Stojić's Appeal Brief, para. 423; Praljak's Appeal Brief, paras 48, 51.
[936] Petković's Appeal Brief, paras 436-437; Appeal Hearing, AT. 569 (23 Mar 2017).
[937] Petković's Appeal Brief, para. 439, referring to *Naletilić and Martinović* Trial Judgement, para. 214.
[938] Stojić's Appeal Brief, para. 422 referring to Hague Regulations, Art. 42, *Advisory Opinion on the Wall*, para. 90, *Naletilić and Martinović* Trial Judgement, paras 214-216.
[939] Prlić's Appeal Brief, para. 674, referring to *Naletilić and Martinović* Trial Judgement, para. 217, *Armed Activities* Judgement, para. 173, *Hostage* Trial Case, pp. 55-56. Praljak further argues that the fact that the individuals elected in 1990, such as in Prozor, continued to govern through 1993 ultimately signals that no change in governmental authority took place and therefore it was impossible that the HVO occupied these municipalities. Praljak's Reply Brief, para. 17.
[940] Praljak's Appeal Brief, para. 49.
[941] Praljak's Appeal Brief, para. 49.
[942] Praljak's Appeal Brief, paras 52-53; Praljak's Reply Brief, para. 16. See also Prlić's Appeal Brief, paras 674-675; Petković's Appeal Brief, para. 438.

demonstrate any error.[943] The Prosecution submits that areas such as West Mostar could be administered by the occupying power or its agent despite armed resistance and could therefore be occupied, including areas behind battle lines, thus allowing the HVO to set up important administrative and other offices there.[944] With regard to the Gornji Vakuf villages of Duša, Hrasnica, Ždrimci, and Uzričje, found by the Trial Chamber to have been occupied, the Prosecution avers that sporadic local resistance or combat operations in other parts of the municipality do not affect the occupied status of those villages.[945] As to Sovići and Doljani in Jablanica Municipality, the Prosecution avers that combat operations there ceased on 17 April 1993 and sporadic fighting in the hills ceased the following morning, when mopping up operations were nearly completed.[946] With regard to Stojić's argument that another trial chamber had found differently that there was no occupation in Sovići and Doljani, the Prosecution avers that another trial chamber's different conclusion based on the evidence in that case does not impact the reasonableness of the Trial Chamber's finding.[947] It argues that invasion is not a required element of occupation.[948] Further, the Prosecution submits that occupation can be established immediately once combat ceases.[949]

312. According to the Prosecution, the HVO was an agent of Croatia as the occupying power and was not a recognised authority within BiH – the legitimate authority in BiH was the BiH government with Izetbegović at its head.[950] The Prosecution also submits that the HVO's actions were not in accordance with the principle of self-determination of peoples as they did not represent the free will of the peoples concerned and they infringed upon the human rights of others.[951]

313. The Prosecution further contends that the Trial Chamber applied the correct legal test, that a foreign State may be an occupying power by agency if it exercises overall control over the armed

[943] Prosecution's Response Brief (Prlić), paras 418-421; Prosecution's Response Brief (Stojić), paras 388-395; Appeal Hearing, AT. 316-323, 328 (21 Mar 2017); Prosecution's Response Brief (Praljak), paras 23-30; Appeal Hearing, AT. 418 (22 Mar 2017); Prosecution's Response Brief (Petković), paras 296-303; Prosecution's Response Brief (Ćorić), paras 68, 70-74; Appeal Hearing, AT. 656-657 (24 Mar 2017).
[944] Prosecution's Response Brief (Stojić), para. 394; Prosecution's Response Brief (Petković), para. 301.
[945] Prosecution's Response Brief (Stojić), para. 391. See also Prosecution's Response Brief (Praljak), para. 25.
[946] Prosecution's Response Brief (Stojić), para. 392. See also Prosecution's Response Brief (Praljak), para. 25.
[947] Prosecution's Response Brief (Stojić), para. 392.
[948] Prosecution's Response Brief (Ćorić), para. 73.
[949] Prosecution's Response Brief (Praljak), para. 25.
[950] Prosecution's Response Brief (Prlić), para. 421; Prosecution's Response Brief (Stojić), para. 389; Appeal Hearing, AT. 319, 328 (21 Mar 2017); Prosecution's Response Brief (Praljak), para. 29; Prosecution's Response Brief (Petković), para. 300; Prosecution's Response Brief (Ćorić), para. 74; Appeal Hearing, AT. 656-657 (24 Mar 2017).
[951] Prosecution's Response Brief (Praljak), para. 29.

forces of a party to the armed conflict and provided that such forces have established the requisite authority over the territory.[952]

314. The Prosecution also submits that establishing a temporary administration is an indicator of, but not necessary for, occupation.[953] As to the argument that the Trial Chamber relied only on the HVO's mere presence to establish occupation, the Prosecution rejects this as, in its view, the Trial Chamber also based its finding on evidence that the HVO issued orders to the local population and had them carried out.[954] The Prosecution submits that Praljak's argument that the HVO compensated for the "lack of governmental functions" in the municipalities supports the conclusion that the HVO was able to exercise authority instead of the local authorities.[955] In the Prosecution's view, the Trial Chamber correctly noted that the criteria found in the *Naletilić and Martinović* Trial Judgement were not cumulative, and further that it is not required that the occupying power substitute its authority for that of the occupied power, but only that it be in a position to do so.[956]

315. Finally, after noting the Trial Chamber's findings that Vareš town and the village of Stupni Do in Vareš Municipality were occupied *after* 23 October 1993, and the evidence the Trial Chamber relied upon showing that the crimes of extensive appropriation and destruction of property by the HVO occurred *on* 23 October 1993, the Prosecution concedes that it was not proven that these places were occupied when such crimes were committed.[957] Accordingly, the Prosecution argues that the Appellants' convictions for Count 19 (extensive destruction of property not justified by military necessity and carried out unlawfully and wantonly as a grave breach of the Geneva Conventions) as to Vareš "should be vacated, and substituted with a conviction for Count 20" (wanton destruction of cities, towns, or villages, or devastation not justified by military necessity as a violation of the laws or customs of war).[958]

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[952] Prosecution's Response Brief (Prlić), para. 419; Prosecution's Response Brief (Stojić), para. 388; Appeal Hearing, AT. 317-319, 321 (21 Mar 2017); Prosecution's Response Brief (Praljak), para. 23; Prosecution's Response Brief (Petković), paras 297, 300; Prosecution's Response Brief (Ćorić), para. 70.
[953] Prosecution's Response Brief (Stojić), para. 390. See also Prosecution's Response Brief (Ćorić), para. 71.
[954] Prosecution's Response Brief (Stojić), paras 390-394; Prosecution's Response Brief (Praljak), paras 26-28; Prosecution's Response Brief (Petković), paras 299, 301-302; Prosecution's Response Brief (Ćorić), paras 71-72.
[955] Prosecution's Response Brief (Praljak), para. 26; Appeal Hearing, AT. 320-323 (21 Mar 2017).
[956] Prosecution's Response Brief (Petković), para. 298; Appeal Hearing, AT. 319-320, 328 (21 Mar 2017). The Prosecution also argues that the demographic make-up of the results of a 1990 election are irrelevant to determining whether Prozor was occupied during the relevant time period. Prosecution's Response Brief (Praljak), para. 27.
[957] Prosecution's Response Brief (Prlić), fn. 1529, referring to Trial Judgement, Vol. 3, paras 401, 403, 465-466, 588, 1554, 1650; Prosecution's Response Brief (Stojić), fn. 1605; Prosecution's Response Brief (Praljak), fn. 121; Prosecution's Response Brief (Petković), fn. 1219; Prosecution's Response Brief (Ćorić), fn. 250; Prosecution's Response Brief (Pušić), fn. 414.
[958] Prosecution's Response Brief (Prlić), fn. 1529; Prosecution's Response Brief (Stojić), fn. 1605 (also stating that the Prosecution has appealed Stojić's acquittal under Count 22 for thefts in Vareš); Prosecution's Response Brief (Praljak), fn. 121 (also stating that the Prosecution has appealed Praljak's acquittal under Count 22 for thefts in Vareš); Prosecution's Response Brief (Petković), fn. 1219 (also stating that the Prosecution has appealed Petković's acquittal

(b) Analysis

316. Belligerent occupation[959] forms part of the law of armed conflict. As the ICJ held with respect to Geneva Convention IV in its *Advisory Opinion on the Wall*:

> The object of the second paragraph of Article 2[960] is [...] directed simply to making it clear that, even if occupation effected during the conflict met no armed resistance, the Convention is still applicable. This interpretation reflects the intention of the drafters of the Fourth Geneva Convention to protect civilians who find themselves, in whatever way, in the hands of the occupying Power [...] [T]he Court considers that the Fourth Geneva Convention is applicable in any occupied territory in the event of an armed conflict arising between two or more High Contracting Parties.[961]

317. The Appeals Chamber notes that a definition of occupation can be found in the Hague Regulations, which constitute customary international law.[962] Article 42 of the Hague Regulations provides that "[t]erritory is considered occupied when it is actually placed under the authority of the hostile army. The occupation extends only to the territory where such authority has been established and can be exercised."[963] The Appeals Chamber considers this to be the controlling law.[964]

318. The notion of occupation is traditionally described as one State invading another State and establishing military control over part or all of its territory.[965] However, while occupation normally

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under Count 22 for thefts in Vareš); Prosecution's Response Brief (Ćorić), fn. 250; Prosecution's Response Brief (Pušić), fn. 414. See also Prosecution's Appeal Brief, para. 31.

[959] The Appeals Chamber emphasises that the discussion that follows is on *occupatio bellica* and not occupation as an original mode of acquisition of unclaimed territory by States. See Jennings and Watts, *Oppenheim's International Law*, pp. 686-687.

[960] Article 2, second paragraph states that: "The Convention shall also apply to all cases of partial or total occupation of the territory of a High Contracting Party, even if the said occupation meets with no armed resistance."

[961] Advisory Opinion on the Wall, paras 95, 101.

[962] *Mrkšić and Šljivančanin* Appeal Judgement, fn. 248 ("The Hague Regulations undoubtedly form part of customary international law"); *Kordić and Čerkez* Appeal Judgement, para. 92 ("Hague Convention IV is considered by the Report of the Secretary-General [Report of the Secretary-General Pursuant to Paragraph 2 of Security Council Resolution 808 (1993), S/25704, 3 May 1993] as being without doubt part of international customary law").

[963] Hague Regulations, Art. 42. See *Armed Activities* Judgement, para. 172.

[964] See *Mrkšić and Šljivančanin* Appeal Judgement, fn. 248. See also *Brđanin* Trial Judgement, para. 638; *Naletilić and Martinović* Trial Judgement, para. 216; *Kordić and Čerkez* Trial Judgement, para. 339. With regard to Stojić's and Petković's suggestions that the Trial Chamber erred in not finding that a state of occupation requires the "effective control" of the occupying power, the Appeals Chamber observes that both Stojić and Petković rely on a statement in the *Naletilić and Martinović* Trial Judgement, and that the *Naletilić and Martinović* Trial Chamber expressly endorsed the definition of occupation provided by Article 42 of the Hague Regulations. The Appeals Chamber dismisses these challenges. See *Naletilić and Martinović* Trial Judgement, para. 216. See also Stojić's Appeal Brief, para. 422 & fn. 1064; Petković's Appeal Brief, para. 439 & fn. 577. Stojić also refers to Article 42 of the Hague Regulations when he identifies "the test for the existence of an occupation". Stojić's Appeal Brief, para. 422 & fn. 1063. The Appeals Chamber will utilise the terminology of "actual authority" from the Hague Regulations, which it has recognised to form part of customary international law.

[965] ICRC, *International Humanitarian Law: A Comprehensive Introduction*, https://shop.icrc.org/e-books/international-humanitarian-law-ebook/international-humanitarian-law-a-comprehensive-introduction.html, p. 60. The Appeals Chamber distinguishes between the traditional notion of occupation relevant to this case, and the contemporary notion of transformative occupation. See, *e.g.*, ICRC, *International Humanitarian Law, A Comprehensive Introduction*, https://shop.icrc.org/e-books/international-humanitarian-law-ebook/international-humanitarian-law-a-comprehensive-introduction.html, p. 237; Carcano, *The Transformation of Occupied Territory in International Law*, pp. 70, 72-108, 436-439.

follows invasion by a hostile armed force, this is not necessarily always the case.[966] Indeed, the ICJ has held that a non-invading State became an occupying power when its armed forces remained in another State's territory after the withdrawal of consent for their presence.[967]

319. The Appeals Chamber further notes that occupation is a question of fact and needs to be examined on a case-by-case basis.[968] Vagaries of war and the changing situation on the ground may influence the parameters of the territory under occupation.[969] The fact that a territory is occupied does not exclude the possibility that hostilities may resume.[970] If the occupying power continues to maintain control of the territory in spite of resistance and sporadic fighting, the territory is still considered occupied.[971]

320. In this regard, the Appeals Chamber considers that the following indicators of authority, as first outlined in the *Naletilić and Martinović* Trial Judgement ("Occupation Guidelines"), assist in the factual determination of whether the authority of an occupying power has been proven:

(1) the occupying power must be in a position to substitute its own authority for that of the occupied power, rendered incapable of functioning publicly from that time forward;[972]

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[966] See Oppenheim, *International Law, War and Neutrality*, p. 170; Dinstein, *The International Law of Belligerent Occupation*, para. 95. See also *Katanga* Article 74 Judgement, para. 1179, referring, *inter alia*, to Arai-Takahashi, *The Law of Occupation*, p. 8.

[967] See *Armed Activities* Judgement, paras 45, 47, 49-51, 53.

[968] See *Brđanin* Trial Judgement, fn. 1632; *Naletilić and Martinović* Trial Judgement, para. 211; *Kordić and Čerkez* Trial Judgement, para. 339. See also *Hostage* Trial Case, para. 55; *Armed Activities* Judgement, para. 173; Oppenheim, *International Law, War and Neutrality*, p. 171; Benvenisti, *The International Law of Occupation*, pp. 43, 51, 56.

[969] Dinstein, The International Law of Belligerent Occupation, para. 103.

[970] See *Naletilić and Martinović* Trial Judgement, para. 217 referring to, *inter alia*, 1958 UK Manual on the Law of War, para. 509, 1956 US Manual on the Law of War, para. 360; Dinstein, *The International Law of Belligerent Occupation*, para. 101.

[971] *Hostage* Trial Case, p. 56.

[972] See *Naletilić and Martinović* Trial Judgement, para. 217 & fn. 584, referring to *Prosecutor v. Ivica Rajić a/k/a Vitktor Andrić*, Review of the Indictment Pursuant to Rule 61 of the Rules of Procedure and Evidence, Case No. IT-95-12-R61, 13 September 1996 ("*Rajić* Review Decision"), paras 41-42; 1956 US Manual on the Law of War, para. 355 ("Military occupation is a question of fact. It presupposes a hostile invasion, resisted or unresisted, as a result of which the invader has rendered the invaded government incapable of publicly exercising its authority, and that the invader has successfully substituted its own authority for that of the legitimate government in the territory invaded"); 1958 UK Manual on the Law of War, para. 503 ("It has been proposed as a test of occupation that two conditions should be satisfied: first, that the legitimate government should, by the act of the invader, be rendered incapable of publicly exercising its authority within the occupied territory; secondly, that the invader should be in a position to substitute his own authority for that of the legitimate government. These conditions afford in most cases a useful guide. This is so even though Hague Rules 42 stipulates distinctly that the authority of the Occupant must actually have been established. For it must always be a question of degree when the occupation is actually established. The advent of mechanised warfare and the use of airborne forces has emphasised the difference between mere invasion and occupation, but the test formulated at the beginning of this paragraph will in most cases provide an answer to the question whether the occupation is actually established"); New Zealand Defence Force, 26 Nov 1992, paras 1302.2, 1302.5; Adam Roberts, "What is a Military Occupation?", Vol. 55, British Yearbook of International Law, https://academic.oup.com/bybil/issue/55/1, pp. 249, 300.

(2) the enemy's forces have surrendered, been defeated or have withdrawn. In this respect, battle zones may not be considered as occupied territory. Despite this, the status of occupied territory remains unchallenged by sporadic local resistance, however successful;[973]

(3) the occupying power has a sufficient force present, or the capacity to send troops within a reasonable time to make the authority of the occupying power felt;[974]

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[973] See *Naletilić and Martinović* Trial Judgement, para. 217 & fn. 585, referring to 1958 UK Manual on the Law of War, paras 502 ("Occupation must be actual and effective, that is, there must be more than a mere declaration or proclamation that possession has been taken, or that there is the intention to take possession. Occupation does not take effect merely because the main forces of the county have been defeated. On the other hand, to occupy a district it is not necessary to keep troops permanently stationed in every isolated house, village, or town. It is sufficient that the national forces should not be in possession, that the inhabitants have been disarmed, that measures have been taken to protect life and property and to secure order, and that, if necessary, troops can within a reasonable time be sent to make the authority of the occupying army felt. It does not matter by what means in what ways the authority is exercised, whether by military enclaves or mobile columns, by large or by small. The manner of occupation will usually vary with the density of the population-a thinly populated country requiring, as a rule, a smaller number of centries to be garrisoned than the one which is thickly populated. The fact that there is a defended place or zone still in possession of the national forces within an occupied district does not make the occupation of the remainder invalid, provided that such place or defended zone is surrounded and effectively cut off from the rest of the occupied district"), 506 ("The test of the commencement of occupation is the establishment of the Occupant's authority by the presence of sufficient force following on the cessation of local resistance, in consequence of the surrender, defeat, or withdrawal of the enemy's forces, and the submission of the inhabitants. In practice the moment may be difficult to determine, and considerable latitude must therefore be allowed"), 509 ("Occupation does not become invalid because some of the inhabitants are in a state of rebellion, or through occasional successes of guerrilla bands or žresistance' fighters. Even a temporarily successful rebellion is not sufficient to interrupt or terminate occupation, provided that the authority of the legitimate government is not effectively re-established and that the Occupant suppresses the rebellion at once. If, however, the power of the Occupant is effectively displaced for any length of time, his position *vis-à-vis* the inhabitants is the same as before the occupation"); 1956 US Manual on the Law of War, paras 356 ("It follows from the definition that belligerent occupation must be both actual and effective, that is, the organized resistance must have been overcome and the force in possession must have taken measures to establish its authority. It is sufficient that the occupying force can, within a reasonable time, send detachments of troops to make its authority felt within the occupied district. It is immaterial whether the authority of the occupant is maintained by fixed garrisons or flying columns, whether by small or large forces, so long as the occupation is effective. The number of troops necessary to maintain effective occupation will depend on various considerations such as the disposition of the inhabitants, the number and density of the population, the nature of the terrain, and similar factors. The mere existence of a fort or defended area within the occupied district, provided the fort or defended area is under attack, does not render the occupation of the remainder of the district ineffective. Similarly, the mere existence of local resistance groups does not render the occupation ineffective"), 360 ("Occupation, to be effective, must be maintained. In case the occupant evacuates the district or is driven out by the enemy, the occupation ceases. It does not cease, however, if the occupant, after establishing its authority, moves forward against the enemy, leaving a smaller force to administer the affairs of the district. Nor does the existence of a rebellion or the activity of guerrilla or para-military units of itself cause the occupation to cease, provided the occupant could at any time it desired assume physical control of any part of the territory. If, however, the power of the occupant is effectively displaced for any length of time, its position towards the inhabitants is the same as before occupation"); 1992 German Manual on the Law of War, para. 528 ("Occupied territory does not include battle areas, *i.e.* areas which are still embattled and not subject to permanent occupation authority (area of invasion, withdrawal area). The general rules of international humanitarian law shall be applicable here."), New Zealand Defence Force, 26 Nov 1992, paras 1302.2, 1302.5.

[974] See *Naletilić and Martinović* Trial Judgement, para. 217 & fn. 586, referring to 1958 UK Manual on the Law of War, paras 502 ("Occupation must be actual and effective, that is, there must be more than a mere declaration or proclamation that possession has been taken, or that there is the intention to take possession. Occupation does not take effect merely because the main forces of the county have been defeated. On the other hand, to occupy a district it is not necessary to keep troops permanently stationed in every isolated house, village, or town. It is sufficient that the national forces should not be in possession, that the inhabitants have been disarmed, that measures have been taken to protect life and property and to secure order, and that, if necessary, troops can within a reasonable time be sent to make the authority of the occupying army felt. It does not matter by what means in what ways the authority is exercised, whether by military enclaves or mobile columns, by large or by small. The manner of occupation will usually vary with the density of the population-a thinly populated country requiring, as a rule, a smaller number of centries to be garrisoned

(4) a temporary administration has been established over the territory;[975]

(5) the occupying power has issued and enforced directions to the civilian population.[976]

321. The Appeals Chamber considers that in order to make a finding as to whether a state of occupation exists in any given place, a trier of fact must look at the situation in its entirety.[977] The Appeals Chamber further considers the Occupation Guidelines to form a non-exhaustive set of indicators that can assist in this factual determination of whether actual authority has been established and can be exercised for the purposes of occupation.[978]

322. The Appeals Chamber also considers that the occupying power need only be in a position to exercise its authority.[979] This is supported by a plain reading of the relevant article of the Hague Regulations, which states in part that "[t]he occupation extends only to the territory where such authority has been established and *can* be exercised".[980] Such authority may be exercised by proxy

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than the one which is thickly populated. The fact that there is a defended place or zone still in possession of the national forces within an occupied district does not make the occupation of the remainder invalid, provided that such place or defended zone is surrounded and effectively cut off from the rest of the occupied district"), 506 ("The test of the commencement of occupation is the establishment of the Occupant's authority by the presence of sufficient force following on the cessation of local resistance, in consequence of the surrender, defeat, or withdrawal of the enemy's forces, and the submission of the inhabitants. In practice the moment may be difficult to determine, and considerable latitude must therefore be allowed"); 1956 US Manual on the Law of War, para. 356 ("It follows from the definition that belligerent occupation must be both actual and effective, that is, the organized resistance must have been overcome and the force in possession must have taken measures to establish its authority. It is sufficient that the occupying force can, within a reasonable time, send detachments of troops to make its authority felt within the occupied district. It is immaterial whether the authority of the occupant is maintained by fixed garrisons or flying columns, whether by small or large forces, so long as the occupation is effective. The number of troops necessary to maintain effective occupation will depend on various considerations such as the disposition of the inhabitants, the number and density of the population, the nature of the terrain, and similar factors. The mere existence of a fort or defended area within the occupied district, provided the fort or defended area is under attack, does not render the occupation of the remainder of the district ineffective. Similarly, the mere existence of local resistance groups does not render the occupation ineffective"); New Zealand Defence Force, 26 Nov 1992, paras 1302.2, 1302.3, 3102.5.

[975] See *Naletilić and Martinović* Trial Judgement, para. 217 & fn. 587, referring to 1958 UK Manual on the Law of War, para. 501 ("Invasion is not necessarily occupation, although as a rule occupation will be coincident with invasion. Reconnoitring parties, patrols, commando units, and similar bodies which move on or withdraw after carrying out their special mission, cannot, however, be considered to occupy the country which they have traversed. They certainly occupy every locality of which they are in possession and where they set up a temporary administration, but such occupation ceases the moment they move on or withdraw"); Lauterpacht, *Oppenheim's International Law*, para. 167.

[976] See *Naletilić and Martinović* Trial Judgement, para. 217 & fn. 588, referring to Hague Regulations, Art. 43 ("The authority of the legitimate power having in fact passed into the hands of the occupant, the latter shall take all the measures in his power to restore, and ensure, as far as possible, public order and safety, while respecting, unless absolutely prevented, the laws in force in the country");1992 German Manual on the Law of War, para. 527 ("A force invading hostile territory will not be able to substantiate its occupational authority unless it is capable of enforcing directions issued to the civilian population."); Fleck, *The Handbook of Humanitarian Law in Armed Conflicts*, para. 525.2.

[977] See Oppenheim, International Law, War and Neutrality, pp. 171-173.

[978] See generally Oppenheim, *International Law, War and Neutrality*, pp. 171-172.

[979] See *Hostage* Trial Case, p. 55; *Armed Activities* Judgement, Separate Opinion of Judge Kooijmans, paras 44-49. See also Benvenisti, *The International Law of Occupation*, p. 5; Dinstein, *The International Law of Belligerent Occupation*, paras 96-100, 130; von Glahn, *The Occupation of Enemy Territory*, p. 29.

[980] Hague Regulations, Art. 42 (emphasis added).

through *de facto* organised and hierarchically structured groups.[981] The rationale behind this is that States should not be allowed to evade their obligations under the law of occupation through the use of proxies.[982] This legal position has been implicitly accepted by the ICJ and it is the position taken by this Tribunal in a number of trial judgements.[983]

323. Turning to the Trial Chamber's assessment of occupation in this case, the Appeals Chamber notes that the Trial Chamber relied on Croatia/the HV's overall control over the HVO,[984] and the Occupation Guidelines to determine that there was the level of authority required for a finding of occupation.[985]

324. The Appeals Chamber will first examine whether the Trial Chamber found Croatia to be the occupying power. It will then address challenges concerning the level of authority that Croatia, through the HVO, wielded over the territory. and whether such level of authority met the legal threshold necessary for a finding of a state of occupation in the relevant municipalities. Finally, it will consider the other challenges made regarding the finding of occupation.

325. Stojić and Praljak allege that the Trial Chamber failed to find that Croatia, rather than the HVO, occupied the relevant municipalities.[986] In this regard, the Appeals Chamber recalls that the Trial Chamber held that a state of occupation is established "if the Prosecution proves that the party to the armed conflict under the overall control of a foreign State fulfils the criteria for control of a territory" as set out in the Occupation Guidelines.[987] The Trial Chamber also found that "the occupation by the HVO can be established, inasmuch as Croatia/the HV wielded overall control over the HVO",[988] and that the HVO occupied the relevant parts of Prozor, Gornji Vakuf, Jablanica, West Mostar, Ljubuški, Stolac, and Čapljina.[989] With regard to Croatia's role, the Trial Chamber found that: (1) Croatia, through the HV, directly intervened alongside the HVO in the conflict

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[981] ICRC, *International Humanitarian Law: A Comprehensive Introduction*, https://shop.icrc.org/e-books/international-humanitarian-law-ebook/international-humanitarian-law-a-comprehensive-introduction.html, p. 60. See also Dinstein, *The International Law of Belligerent Occupation*, para. 98; Haupais, "Les Obligations de la Puissance Occupante au Regard de la Jurisprudence et de la Pratique Récentes", pp. 121-122; Benvenisti, *The International Law of Occupation*, pp. 61-62; Dinstein, *The International Law of Belligerent Occupation*, paras 98-99.

[982] See ICRC, *International Humanitarian Law: A Comprehensive Introduction*, https://shop.icrc.org/e-books/international-humanitarian-law-ebook/international-humanitarian-law-a-comprehensive-introduction.html, p. 60.

[983] See *Naletilić and Martinović* Trial Judgement, paras 213-214; *Blaškić* Trial Judgement, paras 149-150; *Rajić* Decision, para. 42. See also *Armed Activities* Judgement, paras 173-177; Benvenisti, *The International Law of Occupation*, p. 62; Haupais, "Les Obligations de la Puissance Occupante au Regard de la Jurisprudence et de la Pratique Récentes", pp. 121-122.

[984] See Trial Judgement, Vol. 1, paras 96, 575 & fn. 1175.

[985] See Trial Judgement, Vol. 1, para. 88, Vol. 3, paras 578-587, 589. The Appeals Chamber notes that the finding on occupation in Vareš Municipality is overturned elsewhere in the Judgement. See *infra*, para. 343.

[986] See *supra*, para. 307.

[987] See Trial Judgement, Vol. 1, para. 96.

[988] See Trial Judgement, Vol. 3, fn. 1175. See also Trial Judgement, Vol. 3, para. 568.

[989] See Trial Judgement, Vol. 3, paras 578-589. The Appeals Chamber notes that the finding on occupation in Vareš Municipality is overturned elsewhere in this Judgement. See *infra*, para.343.

between the HVO and the ABiH;[990] and (2) "the authorities of Croatia and the HV wielded overall control of the HVO in the period relevant to the Indictment".[991] The Appeals Chamber considers that while it would have been preferable for the Trial Chamber to expressly state that Croatia, through the HVO, occupied the relevant municipalities in BiH, reading the Trial Chamber's findings in their entirety,[992] the Appeals Chamber considers it is clear that the Trial Chamber was considering an occupation by Croatia through the HVO.[993] Accordingly, the Appeals Chamber finds that Stojić and Praljak fail to show an error on the part of the Trial Chamber. It therefore dismisses their arguments.

326. Turning next to Prlić's, Stojić's, Praljak's, and Petković's challenges concerning the level of authority that Croatia and/or the HVO wielded over the territory,[994] the Appeals Chamber recalls that the Trial Chamber concluded Croatia wielded overall control over the HVO based on the following findings:[995]

(1) officers from the HV were sent by Zagreb to join the ranks of the HVO;[996]

(2) the HV and the HVO jointly directed military operations;[997]

(3) the HVO dispatched military reports concerning its activities to the Croatian authorities;[998]

(4) there was logistical support from Croatia which included financial support, dispatching of arms and materiel,[999] and assistance in the form of training and expertise;[1000] and

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[990] See Trial Judgement, Vol. 3, paras 523-526, 528-543.
[991] Trial Judgement, Vol. 3, para. 567. See also Trial Judgement, Vol. 3, paras 523-526, 545-567.
[992] See Trial Judgement, Vol. 3, paras 517-518, 523-589.
[993] See *supra*, para. 325.
[994] See *supra*, paras 307-308.
[995] See Trial Judgement, Vol. 3, paras 545-567. *Cf.* Trial Judgement, Vol. 3, paras 575 & fn. 1175, 578-587.
[996] See Trial Judgement, Vol. 3, paras 546-548. The Appeals Chamber notes that the Trial Chamber found that this included persons who held the positions of the highest responsibility within the HVO, such as Petković, Praljak, and Žarko Tole – who served as Chief of the Main Staff at various times – and Ivan Kapular, Assistant Chief of the Main Staff, all of whom were contemporaneously also officers in the HV. See Trial Judgement, Vol. 3, para. 547. It also included other high-ranking HVO officers who were likewise members of the HV. For instance, Željko Šiljeg, commanding officer of the North-West OZ of the HVO, was a colonel in the HV; Vladimir Primorac, who belonged to the 145th Brigade of the HV, held the office of deputy commander of the 3rd Military Police Battalion of the HVO; Nedeljko Obradović, commanding officer of the 1st Knez Domagoj Brigade of the HVO on 21 January 1993, was also assigned to the 116th Brigade of the HV on that same date; and Stanko Sopta, a colonel in the HV, held the posts of deputy commander for the Convicts Battalion of the HVO, and commander of the 3rd Brigade of the HVO. See Trial Judgement, Vol. 3, para. 548.
[997] See Trial Judgement, Vol. 3, paras 549-552. The Appeals Chamber notes that the Trial Chamber found that: some evidence indicated that commanding officers of the HV issued orders to the units of the HVO for certain military operations. See Trial Judgement, Vol. 3, para. 550. The Trial Chabmer further found that between November 1993 and early January 1994, Croatia's Minister of Defence, Gojko Šušak, visited the territory of the HR H-B four to five times to participate in unofficial meetings relating to the prevailing situation in the territory of the HR H-B with Marijan Biškić, Mate Boban, Ćorić, General Roso, Perica Jukić, the Minister of Defence, as well as the Minister's deputies and officers from the HVO Main Staff. See Trial Judgement, Vol. 3, para. 551.
[998] See Trial Judgement, Vol. 3, para. 553.

(5) there were political aspects to the control Croatia wielded over the HVO.[1001]

327. The Appeals Chamber further notes that the Trial Chamber then applied the Occupation Guidelines to determine the authority required for occupation over the territory.[1002] As discussed above, given that the Occupation Guidelines are a non-exhaustive list of indicators of actual authority over territory, the Appeals Chamber dismisses Prlić's, Stojić's, Praljak's, and Petković's arguments that the Trial Chamber misapplied the Occupation Guidelines.[1003] Further, contrary to what Stojić and Praljak claim, the Trial Chamber did not only rely on the military presence of the HVO or on some administrative control, or on only both these factors, to find occupation in the municipalities. It considered more than one of the Occupation Guidelines, showing that in August 1993, in Prozor Municipality and Ljubuški Municipality, the HVO carried out mass arrests of Muslims without encountering any resistance from the ABiH.[1004] It found that after 18 January 1993, in Gornji Vakuf Municipality (in Duša, Hrasnica, Ždrimci, and Uzričje), after 17 April 1993, in Jablanica Municipality (in Sovići and Doljani), from May 1993 until February 1994 in West Mostar, and in July and August 1993, in Stolac Municipality, the HVO arrested and removed the Muslim population in these places.[1005] Further, it found that in July 1993, in Čapljina Municipality, the HVO conducted a campaign of mass arrests of Muslim men of military age without encountering any resistance from the ABiH and in so doing, the HVO also destroyed or stole property belonging to the Muslims there.[1006] The Trial Chamber also found that between July and September 1993, in Čapljina Municipality, the HVO forcibly removed the Muslim population.[1007]

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[999] See Trial Judgement, Vol. 3, paras 554-556. The Appeals Chamber notes that the Trial Chamber found that the salaries of some HVO soldiers were paid by Croatia, *e.g.*, Marijan Biškić's salary was paid in Croatia by the Croatian government and he never received any emoluments from the government of the RBiH. The Trial Chamber also found that the Croatian Ministry of Defence supplied arms and materiel and transferred funds to the HVO. See Trial Judgement, Vol. 3, para. 556.

[1000] See Trial Judgement, Vol. 3, para. 559.

[1001] See Trial Judgement, Vol. 3, paras 560-566. The Appeals Chamber notes that the Trial Chamber found that the HV Military Police assisted the HVO Military Police by providing training and helping it to structure its work, and that the Croatian MUP likewise created training programmes intended for the HVO police. See Trial Judgement, Vol. 3, para. 559. The Trial Chamber also found that the international community frequently requested the Croatian leadership, particularly President Franjo Tuđman, to use their influence with the leaders of the HZ(R) H-B to bring about the end of hostilities between the HVO and the ABiH. Trial Judgement, Vol. 3, paras 561-564. Croatian leaders, specifically Gojko Šušak, Mate Granić and Tuđman, decisively influenced decisions taken in relation to the political structure of the HR H-B and the appointment of its most senior officials – for example, at a meeting in Zagreb on 10 November 1993, Boban and Prlić agreed with Granić and Tuđman on which persons would be appointed to head certain ministries in the HR H-B. See Trial Judgement, Vol. 3, para. 565. Tuđman presented himself as the representative of the BiH Croats in the peace talks held under the auspices of the international community and he took decisions on their behalf. See Trial Judgement, Vol. 3, para. 566.

[1002] See Trial Judgement, Vol. 1, para. 88, Vol. 3, para. 570.

[1003] See *supra*, paras 308, 321.

[1004] See Trial Judgement, Vol. 3, paras 578, 584.

[1005] See Trial Judgement, Vol. 3, paras 579-581, 585.

[1006] See Trial Judgement, Vol. 3, para. 587.

[1007] See Trial Judgement, Vol. 3, para. 587.

328. The Appeals Chamber recalls that the Trial Chamber reasoned that this evidence showed that the HVO's military presence was "sufficient",[1008] "strong enough",[1009] "sufficiently strong",[1010] or "to the extent needed to impose its authority",[1011] thus enabling it to give orders to the population and to have them carried out.[1012] The Appeals Chamber considers that it was based on all of these factors, taken cumulatively, that the Trial Chamber found a state of occupation in these municipalities.[1013]

329. The Appeals Chamber considers that it would have been preferable for the Trial Chamber to have identified with precision the findings that supported its conclusion that Croatia exercised the authority required for occupation.[1014] The Appeals Chamber recalls, however, that a trial judgement is to be read as a whole,[1015] and notes that the Trial Chamber made a number of factual findings that established Croatia's authority over the HVO, its proxy.[1016] These findings concerned: (1) the strong links between Croatia and the HVO as epitomised in the close relationship Prlić, Praljak, and Petković had with senior Croatian political, military, or administrative authorities; (2) the fact that the members of the JCE included both Croatian political, governmental, and military officials as well as officials of the HZ(R) H-B political, military, and administrative structures; and (3) HV troops directly intervening alongside the HVO in the conflict with the ABiH at the relevant time and in the relevant locations. The Appeals Chamber will address these findings in turn.

330. Turning to the first set of findings, the Appeals Chamber recalls that the Trial Chamber held, *inter alia*, that on 5 and 26 October 1992, Prlić, Stojić, Praljak, and Petković, as members of a "delegation of Croatia and the HZ H-B", met with Ratko Mladić to discuss the division of BiH between the Serbs and the Croats.[1017] With regard to Prlić, the Trial Chamber found that between September 1992 and the end of April 1994, he attended meetings in Croatia with Tuđman and other Croatian leaders, and from 17 September 1992 onwards, he held discussions with Tuđman about the internal policy of the HZ(R) H-B.[1018] The Trial Chamber also found that Prlić was one of Tuđman's

[1008] See Trial Judgement, Vol. 3, paras 578, 585, 587.
[1009] See Trial Judgement, Vol. 3, paras 579, 584.
[1010] See Trial Judgement, Vol. 3, para. 580.
[1011] See Trial Judgement, Vol. 3, para. 583.
[1012] See Trial Judgement, Vol. 3, paras 578-580, 583-585, 587.
[1013] The Appeals Chamber notes that the finding on occupation in Vareš Municipality is overturned elsewhere in the Judgement. See *infra*, para. 343.
[1014] See *supra*, para. 325.
[1015] See *Stanišić and Župljanin* Appeal Judgement, paras 1107, 1115, 1148, 1162, 1181; *Popović et al.* Appeal Judgement, para. 2006; *Mrkšić and Šljivančanin* Appeal Judgement, para. 379.
[1016] See, *e.g.*, Trial Judgement, Vol. 4, paras 15-24, 106, 111, 119, 121, 520, 522-545, 651, Vol. 3, paras 529-544. The Appeals Chamber notes that the underpinning factual findings have been upheld elsewhere in the Judgement. See *supra*, paras 237-240, 245-249, 265-275, 282-289, 294-297. See also *infra*, paras 835-836, 840-842, 1138-1139, 1521-1522, 1895-1897, 1900-1902, 1904-1905, 1911, 1914-1916.
[1017] See Trial Judgement, Vol. 4, para. 18.
[1018] See Trial Judgement, Vol. 4, para. 119.

principal interlocutors for discussions about the political and military strategy of the HZ(R) H-B.[1019] The Trial Chamber further held that Prlić had influence on the defence strategy and the military operations of the HVO, including the power to, *inter alia*, take decisions which had a direct impact on the course of the military operations of the HVO.[1020]

331. As to Praljak,[1021] the Appeals Chamber recalls that the Trial Chamber held that his role in both the Croatian government and his *de facto* and/or *de jure* authority in the HVO, which he exercised simultaneously in both BiH and Croatia, demonstrated his knowledge of and willingness to implement the senior Croatian and HVO leadership's policies regarding Herceg-Bosna.[1022] It found that Praljak contributed to the CCP by serving as a conduit between Croatia and the HZ(R) H-B.[1023] The Trial Chamber also found that Praljak personally and directly contributed to posting HV members to the HVO, and on his request, the Croatian government continued paying the salaries of HV soldiers who had been authorised by the Croatian government to go to BiH to join the HVO.[1024] With respect to Petković, the Appeals Chamber observes that in April 1992, on his request, he was released from active military service in the HV "for the purpose of joining the RBiH".[1025] After his stint in the HVO,[1026] in March 1993, Stojić requested Šušak to assign Petković to the rank of senior officer within the HV, in recognition of his contribution to defending a large part of HZ(R) H-B territory.[1027]

332. These findings establish both: (1) the pivotal role played by Prlić and Praljak in facilitating the Croatian political and military support needed in HZ(R) H-B; and (2) the fact that the HVO accepted Praljak's and Petković's concurrent and subsequent membership respectively, in the HV and the HVO, at this crucial time in the conflict with the ABiH. The Appeals Chamber considers that this is indicative of the actual authority exercised by Croatia through the HVO over BiH territory.

333. Moving on to the second set of findings, the Appeals Chamber notes the Trial Chamber's findings that members of the Croatian and the HZ(R) H-B political, governmental, and military

[1019] See Trial Judgement, Vol. 4, para. 119.
[1020] See Trial Judgement, Vol. 4, paras 106, 111, 121.
[1021] The Trial Chamber found that from approximately March 1992 to 15 June 1993, Praljak was the Assistant Minister of Defence of Croatia and then its Deputy Minister of Defence, first at the rank of brigadier and then as major-general of the HV. See Trial Judgement, Vol. 4, para. 457.
[1022] See Trial Judgement, Vol. 4, para. 545.
[1023] See Trial Judgement, Vol. 4, paras 520, 522-545.
[1024] See Trial Judgement, Vol. 4, paras 541-544.
[1025] See Trial Judgement, Vol. 4, fn. 1245.
[1026] Petković was appointed chief of the HVO Main Staff by Boban on 14 April 1992 and remained in that position until 24 July 1993. See Trial Judgement, Vol. 4, para. 651.
[1027] See Trial Judgement, Vol. 4, fn 1245.

structures consulted each other to devise and implement the CCP.[1028] The Appeals Chamber considers this to be another factor that shows the actual authority exercised by Croatia over the HVO and over BiH territory. Lastly, the Appeals Chamber notes that the Trial Chamber concluded that there was direct intervention by HV troops alongside the HVO in the conflict with the ABiH.[1029]

334. In conclusion, and in light of the foregoing, the Appeals Chamber finds that there are a number of factors that indicate that Croatia through the HVO had actual authority over the relevant municipalities. These are: (1) the overall control Croatia had over the HVO;[1030] (2) the continued presence of the HVO in the relevant municipalities after the occupation;[1031] (3) the HVO's issuance of directives to the population and having them enforced; (4) the close links Prlić, Praljak, and, to a lesser extent, Petković had with Croatia; (5) the ongoing consultations between members of the Croatian and the HZ(R) H-B political and governmental structures and the HVO, and their common membership in the JCE; and (6) the engagement of HV units with the HVO in combat in the attacks on towns and villages. Looking at all these factors and the situation in the various municipalities in its entirety, the Appeals Chamber considers that Prlić, Stojić, Praljak, and Petković have failed to show an error on the part of the Trial Chamber. The Appeals Chamber therefore dismisses all the relevant arguments.

335. Turning next to Praljak's argument that an armed conflict and occupation cannot co-exist, the Appeals Chamber notes that a state of occupation and that of an international armed conflict are not necessarily mutually exclusive.[1032] Further, with regard to Stojić's and Petković's argument that ongoing combat and occupation cannot co-exist, the Appeals Chamber recalls that a finding of active hostilities in certain municipalities does not necessarily preclude the Trial Chamber from finding that a state of occupation existed on the ground in those municipalities. The Appeals Chamber considers that the issue is one of authority, *i.e.* whether the occupying power is able to maintain its authority over the territory in spite of some ongoing active combat.[1033]

[1028] See Trial Judgement, Vol. 4, para. 1231, referring to Tuđman, Šušak, Bobetko, Boban, Prlić, Stojić, Praljak, Petković, Ćorić, and Pušić. See *infra*, paras 1521-1522.
[1029] See Trial Judgement, Vol. 3, paras 529-544. See also *supra*, paras 265-275. For instance, the Trial Chamber found that a mixed unit of HVO and HV troops attacked and took over the town of Prozor on 23 October 1992, HV troops were in the Prozor area on several dates between November 1992 and January 1994, and Prozor Municipality generally was occupied by the HVO during part of that period, from August to December 1993. See Trial Judgement, Vol. 3, paras 532-533, 589. The Trial Chamber also found that in the villages of Sovići and Doljani in Jablanica Municipality – which were occupied after 17 April 1993 – HV soldiers participated alongside the HVO in the attack on Sovići on 17 April 1993, and HV troops were seen there until May 1993. See Trial Judgement, Vol. 3, paras 535, 589.
[1030] See Trial Judgement, Vol. 3, paras 545-567 & fn. 1175.
[1031] See Trial Judgement, Vol. 3, paras 578-580, 583-585, 587.
[1032] See *Hostage* Trial Case, p. 56.
[1033] See also *supra*, para. 319.

336. The Appeals Chamber notes that the Trial Chamber found that once the HVO assumed control over the villages of Duša, Hrasnica, Ždrimci, and Uzričje on 18 January 1993, the HVO arrested and removed the Muslim population, and destroyed and stole property belonging to the Muslims there.[1034] In so doing, the Trial Chamber found that the HVO had sufficient authority for a finding of occupation in Duša, Hrasnica, Ždrimci, and Uzričje in Gornji Vakuf Municipality.[1035] Stojić's argument that this finding cannot stand because the "first real lull in combat" was not until 26 or 27 January 1993[1036] does not take into account the establishment of the HVO's authority over the area prior to this date – a fact inferred from its strong military presence and its ability to give orders to the Muslim population and to have such orders carried out.[1037]

337. As to Stojić's argument that the Trial Chamber erred in finding that the HVO occupied Sovići and Doljani in Jablanica Municipality from 17 April 1993 because "mopping up" operations continued after this date is without merit.[1038] The Trial Chamber found that most of the fighting in Sovići and Doljani had ended late in the afternoon of 17 April 1993 following which the HVO and the MUP made the first Muslim arrests – showing that the HVO's military presence was sufficiently strong to enable it to give orders to the Muslim population and have them carried out.[1039] In fact, the Trial Chamber also found that such arrests continued between 18 and 23 April 1993, again showing the HVO still exercised control over Sovići and Doljani.[1040] With respect to Stojić's related argument that another trial chamber found differently (*i.e.* that there was no occupation in Sovići and Doljani in Jablanica Municipality at the relevant time), the Appeals Chamber recalls that the factual finding of one trial chamber is not binding upon that of another.[1041]

338. Further, in concluding that West Mostar was occupied by the HVO, the Trial Chamber took note that from May 1993 to February 1994, the HVO removed the Muslim population of West Mostar and that this attested to the fact that the HVO was present militarily to the extent needed to impose authority and was capable of giving orders to the inhabitants of West Mostar and having such orders carried out.[1042] The Appeals Chamber is not convinced by Stojić's argument that

[1034] See Trial Judgement, Vol. 3, para. 579.
[1035] See Trial Judgement, Vol. 3, para. 579.
[1036] Stojić's Appeal Brief, para. 424, referring to Trial Judgement, Vol. 2, para. 395.
[1037] See Trial Judgement, Vol. 2, paras 369, 374, 386, 398, Vol. 3, paras 579, 589.
[1038] Stojić's Appeal Brief, para. 424, referring to Trial Judgement, Vol. 2, para. 549. The Appeals Chamber notes that the Trial Chamber found that occupation was established *after* 17 April 1993 and not *from* 17 April 1993 as argued by Stojić. See Stojić's Appeal Brief, para. 424; Trial Judgement, Vol. 3, para. 580.
[1039] See Trial Judgement, Vol. 2, paras 541, 545-548, 550, 552, 554, Vol. 3, paras 580, 589. The Appeals Chamber considers that the challenges to the finding of a state of occupation in Vareš town and Stupni Do in Vareš Municipality are moot. See *infra*, para. 343.
[1040] See Trial Judgement, Vol. 2, paras 558-564.
[1041] See *Lukić and Lukić* Appeal Judgement, para. 260. *Aleksovski* Appeal Judgement, para. 114.
[1042] See Trial Judgement, Vol. 3, paras 583, 589.

the Trial Chamber's finding that the Attack on the HVO Tihomir Mišić Barracks in Mostar on 30 June 1993 undermines its finding that West Mostar was occupied by the HVO, as the HVO was still able to arrest Muslim men, including members of the ABiH and Muslim HVO soldiers *after* the Attack on the HVO Tihomir Mišić Barracks.[1043] This reasonably shows the HVO still maintained actual authority over West Mostar.[1044] For these same reasons, Petković's argument that the whole of Mostar was a combat zone and therefore could not be occupied is unpersuasive.

339. With regard to Ćorić's argument that an occupation must follow an act of invasion, the Appeals Chamber recalls its statement of the law above, and holds that invasion is not a prerequisite for the determination of a state of occupation.[1045] This argument, as well as the argument that the Trial Chamber failed to make a finding on invasion being an element of occupation, are accordingly dismissed.[1046] Moreover, contrary to Praljak's argument, the Appeals Chamber highlights that the Trial Chamber established when occupation started in each relevant town and village in each affected municipality.[1047] The Appeals Chamber also considers that the Trial Chamber properly found that occupation can be established, once combat ceases, if the occupying power has the required control.[1048]

340. The Appeals Chamber further considers unpersuasive Prlić's, Stojić's, and Praljak's arguments that the Trial Chamber should have determined that the pre-existing civil government had been displaced, and that the relevant test should have been whether either the pre-existing authority in the allegedly occupied territory remained capable of functioning, or if a temporary administration body had been put in its place.[1049] This is because they fail to demonstrate that the Trial Chamber did not find that the HVO was the authority replacing the pre-existing government, given the facts of the case.[1050] Moreover, even if the HVO was carrying out government functions

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[1043] See Trial Judgement, Vol. 2, paras 878-883, 895.
[1044] See Trial Judgement, Vol. 2, paras 878-883, 895.
[1045] See *supra*, para. 318; *Armed Activities* Judgement, paras 43, 45, 51, 53, 149, 178 (Uganda was found to be the occupying power in a part of the Democratic Republic of the Congo following the expiration of Congolese consent which had allowed the presence of Ugandan troops in its territory); *Lepore* Case, pp. 354-357 (following the change of Italian government and Italy's declaration of war on Germany in 1943, Germany was found to be the occupying power of parts of Italy where it already had a military presence as a result of its alliance with Italy's previous government). The Appeals Chamber rejects Praljak's related argument that the Trial Chamber failed to establish there "already was a transitional period" as an undeveloped assertion. The Appeals Chamber also dismisses this argument.
[1046] See *supra*, paras 306, 318. As to Prlić's, Stojić's, Praljak's, and Ćorić's challenges that the HVO could not have invaded as it was a legitimate governing authority in BiH, the Appeals Chamber recalls that they ignore other relevant findings on the recognition of Izetbegović's government by the international community as the legitimate government of BiH, and that the HZ(R) H-B and its military, the HVO, were rejected by the BiH authorities throughout the period relevant to the Indictment. Further, the Appeals Chamber notes what it held above, that the law of occupation may be applicable to cases other than foreign invading armies. See *supra*, 318. It thus dismisses this argument. See Trial Judgement, Vol. 1, paras 426-428, 432-433, 457, 459, 467, Vol. 2. paras 339, 341.
[1047] See Trial Judgement, Vol. 3, paras 578-589.
[1048] See Trial Judgement, Vol. 3, paras 578-589 & fn. 1175. See *supra*, paras 335-338.
[1049] See *supra*, para. 319.
[1050] See *supra*, paras 319-320. The Appeals Chamber also rejects the argument that some individuals elected in a 1990 election in some municipalities were still governing locally in 1993, indicating that no change in governmental

because of a power vacuum, the Appeals Chamber finds that the factual test of the HVO substituting its authority for that of the pre-existing legitimate government is still met.[1051] This argument is therefore also dismissed.

341. Lastly, with regard to the argument that the principle of self-determination of peoples negates any finding that the HVO occupied territory in BiH because Croats had been living in the territory of HZ(R) H-B for centuries, the Appeals Chamber considers that this is not inconsistent with the Trial Chamber's finding that the HVO occupied territory in BiH as an agent of Croatia.[1052] This is because the test for occupation is actual authority over the territory and population and not the motivation behind such an occupation. The Appeals Chamber thus rejects this argument.

342. In conclusion, Prlić, Stojić, Praljak, Petković, and Ćorić have failed to show that the Trial Chamber erred in finding that the HVO occupied: (1) the villages of Duša, Hrasnica, Ždrimci, and Uzričje in Gornji Vakuf Municipality after 18 January 1993;[1053] (2) the villages of Sovići and Doljani in Jablanica Municipality after 17 April 1993;[1054] and (3) West Mostar from May 1993 until February 1994.[1055]

343. Finally, the Appeals Chamber notes the Trial Chamber's findings that Vareš town and the village of Stupni Do in Vareš Municipality were occupied *after* 23 October 1993, that the crime of extensive destruction of property not justified by military necessity and carried out unlawfully and wantonly by the HVO occurred *on* 23 October 1993,[1056] as well as the Prosecution's submission that the evidence that the Trial Chamber relied upon demonstrates that the crime of extensive appropriation of property not justified by military necessity and carried out unlawfully and wantonly by the HVO also occurred *on* 23 October 1993.[1057] Taking into account these findings and evidence, the Prosecution concedes that it was not proven that these places were occupied when the crimes were committed.[1058] The Appeals Chamber considers that, based on the factual error made by the Trial Chamber, it is in the Appellants' interest and the interests of justice to vacate the Appellants' convictions for Count 19 (extensive destruction as a grave breach of the Geneva

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authority had taken place, as Praljak fails to show that no reasonable trier of fact could have found a state of occupation in those municipalities, based on the entirety of the evidence before the Trial Chamber.

[1051] See *supra*, paras 320-321.

[1052] See Trial Judgement, Vol. 3, fn. 1175. See also Trial Judgement, Vol. 3, para. 568.

[1053] See Trial Judgement, Vol. 3, paras 579, 589.

[1054] See Trial Judgement, Vol. 3, paras 580, 589.

[1055] See Trial Judgement, Vol. 3, paras 581, 583, 589.

[1056] See Trial Judgement, Vol. 3, paras 588-589, 1554-1556.

[1057] See *supra*, para. 315. The Prosecution makes this submission despite the Trial Chamber's finding that the appropriation of Muslim property in question occurred "during and after the arrests of the Muslims in the town of Vareš between 23 October and 1 November 1993 and during and after the attack on the village of Stupni Do on 23 October 1993". See Trial Judgement, Vol. 3, paras 1650-1653; *supra*, para. 315. The Appeals Chamber observes that, in fact, the Prosecution's submission is in conformity with the evidence on which the Trial Chamber relied in making these findings. See Trial Judgement, Vol. 3, paras 401, 403, 465-467 and the evidence cited therein.

Conventions) and Count 22 (appropriation of property as a grave breach of the Geneva Conventions) with regard to Vareš Municipality. Exercising its discretion under Article 25(2) of the Statute,[1059] the Appeals Chamber refrains from entering new convictions on appeal for Count 20 (wanton destruction as a violation of the laws or customs of war) with regard to Vareš. In so finding, the Appeals Chamber considers the interests of fairness to the Appellants, the nature of the offences, and the circumstances of this case.[1060]

(c) Conclusion

344. For the foregoing reasons, the Appeals Chamber dismisses Prlić's ground 20, Stojić's ground 55, Praljak's ground 2, Petković's sub-ground 7.2, and Ćorić's sub-ground 3.2.

345. The Appeals Chamber upholds the Trial Chamber's conclusion that it was necessary to examine whether a state of occupation existed in those municipalities where deportation (across a *de facto* border), extensive destruction and appropriation of property were alleged under the "grave breaches" regime of the Geneva Conventions and Article 2 of the Statute. It also dismisses Prlić's, Stojić's, Praljak's, Petković's, and Ćorić's arguments related to the legal requirements of occupation. Finally, the Appeals Chamber vacates the Appellants' convictions for extensive destruction and appropriation of property not justified by military necessity and carried out unlawfully and wantonly as grave breaches of the Geneva Conventions (Counts 19 and 22 respectively) for the incidents in Vareš Municipality.

C. The Protected Persons Requirement

346. The Appeals Chamber recalls that, to constitute grave breaches of the Geneva Conventions, the crimes enumerated under Article 2 of the Statute must be committed against persons or property protected under the provisions of the relevant Geneva Convention.[1061] Geneva Convention IV protects "those who, at a given moment and in any manner whatsoever, find themselves, in case of

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[1058] See *supra*, para. 315.
[1059] See *Stanišić and Župljanin* Appeal Judgement, para. 1096 & fn. 3625; *Đorđević* Appeal Judgement, para. 928; *Šainović et al.* Appeal Judgement, fn. 5269; *Jelisić* Appeal Judgement, para. 73.
[1060] *Cf. Stanišić and Župljanin* Appeal Judgement, para. 1096 & fn. 3626 and references cited therein; *Jelisić* Appeal Judgement, paras 73, 77.
[1061] *Tadić* Appeal Decision on Jurisdiction, para. 81 (holding that the reference to "persons or property protected under the provisions of the relevant Geneva Conventions" under Article 2 of the Statute "is clearly intended to indicate that the offences listed under Article 2 can only be prosecuted when perpetrated against persons or property regarded as 'protected' by the Geneva Conventions under the strict conditions set out by the Conventions themselves. This reference in Article 2 to the notion of 'protected persons or property' must perforce cover the persons mentioned in Articles 13, 24, 25 and 26 (protected persons) and 19 and 33 to 35 (protected objects) of Geneva Convention I; in Articles 13, 36, 37 (protected persons) and 22, 24, 25 and 27 (protected objects) of Convention II; in Article 4 of Convention III on prisoners of war; and in Articles 4 and 20 (protected persons) and Articles 18, 19, 21, 22, 33, 53, 57 etc. (protected property) of Convention IV on civilians. Clearly, these provisions of the Geneva Conventions apply to persons or objects protected only to the extent that they are caught up in an international armed conflict.").

a conflict or occupation, in the hands of a Party to the conflict or Occupying Power of which they are not nationals", excluding protected persons under other Geneva Conventions and nationals of States that have normal diplomatic representation in the detaining State.[1062]

347. The Trial Chamber separately considered the protected status of two categories of Muslim men detained by the HVO: (1) Muslim members of the HVO; and (2) military-aged Muslim men. The Appeals Chamber will address each category in turn. It will then turn to arguments that the detention of the HVO's Muslim members and the military-aged Muslim men was justified.

1. Muslim members of the HVO (Stojić's Ground 42, Praljak's Ground 3, Petković's Sub-grounds 5.2.1.1 in part and 5.2.1.3 in part, and Ćorić's Ground 4)

348. The Trial Chamber held that the Muslim members of the HVO who were detained by the HVO were not prisoners of war ("POWs") protected under Geneva Convention III because, as members of the authority by which they were detained (*i.e.* the HVO), they "cannot be considered to 'have fallen into the power of the enemy'" within the meaning of that Convention.[1063] Instead, the Trial Chamber held that the HVO Muslim members were protected by Geneva Convention IV because the criterion for determining the status of protected persons is not nationality but allegiance, and from at least 30 June 1993, the HVO Muslims were perceived by the HVO as loyal to the ABiH and therefore "had fallen into the hands of the enemy power".[1064]

(a) Arguments of the Parties

349. Stojić, Praljak, Petković, and Ćorić contend that the Trial Chamber erred by finding that Muslim members of the HVO, who were detained by the HVO, were protected persons pursuant to Article 4 of Geneva Convention IV.[1065] First, Stojić, Praljak, and Petković argue that Geneva Convention IV only protects civilians, and that the Muslim members of the HVO necessarily fall outside of its ambit.[1066] Second, Stojić, Praljak, Petković, and Ćorić assert that the HVO's Muslim members detained by the HVO were not "in the hands of a Party to the conflict or Occupying Power of which they are not nationals", as Article 4 of Geneva Convention IV requires.[1067] They

[1062] Geneva Convention IV, Art. 4. See also Commentary on Geneva Convention IV, p. 51 (explaining that the definition of protected persons under Geneva Convention IV "is a very broad one which includes members of the armed forces [...] who fall into enemy hands" to whom, "for some reason, prisoner of war status [...] [was] denied").
[1063] Trial Judgement, Vol. 3, para. 604.
[1064] Trial Judgement, Vol. 3, paras 608-611.
[1065] Stojić's Appeal Brief, paras 386, 391; Praljak's Appeal Brief, paras 57-63; Petković's Appeal Brief, paras 186-191; Ćorić's Appeal Brief, paras 84-94.
[1066] Stojić's Appeal Brief, para. 387; Praljak's Appeal Brief, para. 58; Praljak's Reply Brief, para. 114; Petković's Appeal Brief, paras 188, 191, 197; Petković's Reply Brief, paras 37-38.
[1067] Stojić's Appeal Brief, para. 388; Praljak's Appeal Brief, para. 60; Petković's Appeal Brief, para. 189; Petković's Reply Brief, para. 37; Ćorić's Appeal Brief, para. 87.

also argue that the Trial Chamber erred by considering the HVO's Muslim members' ethnicity[1068] and the HVO's subjective suspicions that their allegiance had changed, instead of objective criteria, to be determinative of their lack of allegiance to the HVO.[1069] Stojić, Petković, and Ćorić also argue that, in this regard, the Trial Chamber failed to take into account other factors – and according to Ćorić, also ignored evidence – showing that the HVO considered them members of the HVO itself and not of the ABiH.[1070]

350. Stojić, Petković, and Ćorić further submit that the Trial Chamber made contradictory findings on this issue by finding, on one hand, that in the context of Geneva Convention III, the HVO's Muslim members cannot be considered to "have fallen into the power of the enemy", while also finding, in the context of Geneva Convention IV, that they had "indeed fallen into the hands of the enemy power".[1071] Moreover, Stojić, Praljak, Petković, and Ćorić argue that national law and not international humanitarian law regulates a State's treatment of its soldiers (*e.g.*, its response to mutiny and other disciplinary issues) or any crimes committed by servicemen against their own forces.[1072] Petković, in particular, submits that the Trial Chamber failed to give a reasoned opinion as to whether service personnel within an army fall within the jurisdiction of international

[1068] Praljak's Appeal Brief, paras 59-60.
[1069] Stojić's Appeal Brief, para. 389, referring to *Blaškić* Appeal Judgement, para. 172, *Čelebići* Appeal Judgement, paras 83-84. Stojić argues that while subjective suspicions of the detaining power are relevant, they are not determinative of allegiance, and refers to the *Čelebići* Trial Judgement, which found that the Bosnian authorities considered that the Bosnian Serb detainees owed them no allegiance on the basis of objective factors, including the Bosnian Serbs' declaration of independence and their subsequent receipt of arms from the Federal Republic of Yugoslavia. See Stojić's Reply Brief, para. 73, referring to *Čelebići* Trial Judgement, para. 265. Praljak also submits that, in the Tribunal's jurisprudence, the ethnically-based allegiance criterion was only applied to civilians who had never pledged allegiance to a party to the conflict. He argues that it cannot be applied to Muslim HVO members who had willingly joined the HVO. Praljak's Appeal Brief, para. 60, referring to *Čelebići* Appeal Judgement, para. 105, *Blaškić* Appeal Judgement, para. 175. Praljak further submits that the fact that they posed a threat to the security of the HVO does not invalidate in itself their allegiance to the HVO. Praljak's Appeal Brief, para. 60. See also Petković's Appeal Brief, para. 190; Ćorić's Appeal Brief, paras 87, 91.
[1070] Stojić's Reply Brief, para. 74, referring to Trial Judgement, Vol. 2, para. 1403; Petković's Appeal Brief, paras 189-190, referring to Ex. 4D01466, Petković's Final Trial Brief, para. 256; Ćorić's Appeal Brief, paras 87, 91-92, referring to Exs. 4D01466, P04756, P00514, p. 8, P00956, p. 14, Milivoj Petković, T. 49579 (17 Feb 2010), Witness CJ, T. 10952 (closed session) (30 Nov 2006), Slobodan Božić, T. 36379-36380 (4 Feb 2009), Josip Praljak, T. 14649-14651 (26 Feb 2007). Ćorić further argues that: (1) the Muslim HVO members could only be protected persons if they owed *no* allegiance to the party to the conflict in whose hands they found themselves and of which they were nationals; (2) the HVO cannot be an "enemy power" since it was one of the constituent members of the BiH armed forces; and (3) the Tribunal's jurisprudence requires that the Muslim HVO members had to be under the control of another party to the conflict, *i.e.* the ABiH, and the Trial Chamber did not fully analyse to whom they owed allegiance. Ćorić's Appeal Brief, paras 87, 89-91, referring to *Kordić and Čerkez* Appeal Judgement, para. 330, *Tadić* Appeal Judgement, para. 166.
[1071] Stojić's Appeal Brief, para. 390; Stojić's Reply Brief, para. 75; Petković's Appeal Brief, paras 187-189; Ćorić's Appeal Brief, paras 85-87.
[1072] Stojić's Reply Brief, para. 76, referring to *Sesay et al.*Trial Judgement, paras 1451-1453; Praljak's Appeal Brief, paras 61-62, referring to *Sesay et al.* Trial Judgement, para. 1451, Cassese, *International Criminal Law*, p. 82; Petković's Appeal Brief, paras 182-185, 196, referring to *Sesay et al.* Trial Judgement, paras 1451-1453, Cassese, *International Criminal Law*, p. 82; Appeal Hearing, AT. 519 (23 Mar 2017); Petković's Reply Brief, para. 40; Ćorić's Appeal Brief, paras 87, 91, 93-94, referring to, *inter alia*, *Sesay et al.*Trial Judgement, paras 1451-1453, Cassese, *International Criminal Law*, p. 82; Ćorić's Reply Brief, paras 28-29.

humanitarian law.[1073] In the alternative, he argues that if the HVO's Muslim members are considered to have "fallen into the hands of the enemy power" they should be deemed POWs under international humanitarian law and protected by Geneva Convention III, rather than under Geneva Convention IV.[1074]

351. The Prosecution responds that the Trial Chamber did not err by deeming the HVO's Muslim members protected persons under Geneva Convention IV.[1075] First, citing the Commentary on Geneva Convention IV, the Prosecution contends that as members of the HVO, these men nevertheless had protected status, because the definition of protected persons under Geneva Convention IV "is a very broad one which includes members of the armed forces" and "[e]very person in enemy hands must have some status under international law".[1076] Second, the Prosecution submits that the Trial Chamber correctly applied the governing jurisprudence, interpreting "nationality" to mean "allegiance", and finding that the HVO's Muslim members fell into enemy hands when the HVO detained them, in light of their perceived loyalty to the ABiH.[1077] Further, the Prosecution points to evidence showing their indiscriminate and *en masse* arrest by the HVO and their treatment in detention, which more closely resembled that of other Muslim detainees than that of detained Croat HVO members.[1078]

352. The Prosecution also responds that the Trial Chamber did not contradict itself by finding that the HVO's Muslim members were not POWs under Geneva Convention III because they did not belong to the armed forces of an enemy (the ABiH) as Article 4 of that Convention requires.[1079] It avers that the non-Tribunal authorities cited by Stojić, Praljak, Petković, and Ćorić purporting to show that international humanitarian law is not applicable to a State's treatment of its own soldiers

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[1073] Petković's Appeal Brief, paras 181, 196.
[1074] Petković's Appeal Brief, paras 190-191, 197; Appeal Hearing, AT. 520-521(23 Mar 2017); Petković's Reply Brief, para. 37. In this regard, Petković argues that the Trial Chamber erred by failing to first inquire whether the HVO's Muslim members detained by the HVO were denied POW status. See Petković's Reply Brief, paras 39-40. See *infra*, paras 373-374.
[1075] Prosecution's Response Brief (Stojić), paras 353-354; Prosecution's Response Brief (Praljak), paras 277-278; Prosecution's Response Brief (Petković), para. 144; Prosecution's Response Brief (Ćorić), para. 75.
[1076] Prosecution's Response Brief (Stojić), para. 355; Prosecution's Response Brief (Praljak), paras 279-281; Prosecution's Response Brief (Petković), paras 145-147; Appeal Hearing, AT. 551, 554 (23 Mar 2017); Prosecution's Response Brief (Ćorić), paras 77-79.
[1077] Prosecution's Response Brief (Stojić), paras 354, 356; Prosecution's Response Brief (Praljak), para. 278, referring to *Čelebići* Appeal Judgement, paras 83-84, *Tadić* Appeal Judgement, para. 166; Prosecution's Response Brief (Petković), para. 144; Prosecution's Response Brief (Ćorić), paras 76, 80. With respect to Ćorić, the Prosecution responds that he repeats the same arguments he made at trial without showing any error, which should be dismissed. Prosecution's Response Brief (Ćorić), paras 80, 82-83. See Ćorić's Appeal Brief, paras 89-90.
[1078] Prosecution's Response Brief (Stojić), para. 356; Prosecution's Response Brief (Praljak), paras 278, 282; Prosecution's Response Brief (Petković), para. 148; Appeal Hearing, AT. 551-556 (23 Mar 2017).
[1079] Prosecution's Response Brief (Stojić), para. 357; Prosecution's Response Brief (Praljak), paras 280-281; Prosecution's Response Brief (Petković), paras 146-147; Appeal Hearing, AT. 556-559 (23 Mar 2017); Prosecution's Response Brief (Ćorić), paras 78-80.

do not address the situation at hand, where detained soldiers are factually in the hands of the enemy.[1080]

(b) Analysis

353. At the outset, the Appeals Chamber will address Stojić's, Praljak's, and Petković's arguments that only civilians are entitled to protection under Geneva Convention IV.[1081] It considers that while Geneva Convention IV primarily concerns the protection of civilians, the plain language of Article 4 defines protected persons more broadly, encompassing all persons – not just civilians – who fall into the hands of a party to the conflict, or occupying power of which they are not nationals, and who are not protected under the other Geneva Conventions.[1082] The Appeals Chamber thus dismisses this argument.

354. The Appeals Chamber now turns to Stojić's, Praljak's, Petković's, and Ćorić's arguments challenging the legal standard applied by the Trial Chamber to determine the status of the HVO's Muslim members and their protection under Geneva Convention IV. It reiterates its jurisprudence that:

> depriving victims, who arguably are of the same nationality under domestic law as their captors, of the protection of the Geneva Conventions solely based on that national law would not be consistent with the object and purpose of the Conventions. Their very object could indeed be defeated if undue emphasis were placed on formal legal bonds [...]. It finds that Article 4 of Geneva Convention IV cannot be interpreted in a way that would exclude victims from the protected persons status merely on the basis of their common citizenship with a perpetrator. They are protected as long as they owe no allegiance to the Party to the conflict in whose hands they find themselves and of which they are nationals.[1083]

The Appeals Chamber also recalls that it has held that:

> already in 1949 the legal bond of nationality was not regarded as crucial and allowance was made for special cases. [In the case of World War II refugees], the lack of both allegiance to a State and diplomatic protection by this State was regarded as more important than the formal link of nationality. In the cases provided for in Article 4(2), in addition to nationality, account was taken of the existence or non-existence of diplomatic protection: nationals of a neutral State or a co-belligerent State are not treated as "protected persons" unless they are deprived of or do not enjoy diplomatic protection. In other words, those nationals are not "protected persons" as long as they benefit from the normal diplomatic protection of their State; when they lose it or in any event do not enjoy it, the Convention automatically grants them the status of "protected persons".[1084]

[1080] Prosecution's Response Brief (Praljak), para. 282; Prosecution's Response Brief (Petković), para. 148; Prosecution's Response Brief (Ćorić), para. 85.
[1081] See Stojić's Appeal Brief, para. 387; Praljak's Appeal Brief, para. 58; Praljak's Reply Brief, para. 114; Petković's Appeal Brief, paras 188, 191, 197; Petković's Reply Brief, paras 37-38.
[1082] Geneva Convention IV, Art. 4(4). See also Commentary on Geneva Convention IV, pp. 50-51.
[1083] *Kordić and Čerkez* Appeal Judgement, para. 329 (internal references omitted). See also *Kordić and Čerkez* Appeal Judgement, para. 330.
[1084] *Tadić* Appeal Judgement, para. 165 (internal references omitted).

355. In this respect, the Appeals Chamber further notes that the allegiance analysis "hinging on substantial relations more than on formal bonds, becomes all the more important in present-day international armed conflicts [...] [where] ethnicity rather than nationality may become the grounds for allegiance".[1085] In this case, the Trial Chamber correctly took into account the allegiance of the Muslim HVO members rather than merely considering their nationality.[1086] Moreover, to reach the conclusion that Muslim HVO members were protected by Geneva Convention IV from 30 June 1993 onwards, the Trial Chamber relied on the perceived allegiance of the Muslim HVO members by the HVO.[1087] Recalling that the detaining authority's view of the victims' allegiance has been considered a relevant factor by the Appeals Chamber,[1088] the Appeals Chamber considers that Stojić, Praljak, Petković, and Ćorić have failed to show an error on the part of the Trial Chamber.[1089]

356. The Appeals Chamber notes Stojić's, Petković's, and Ćorić's argument that the Trial Chamber failed to take into account other factors showing that the HVO viewed its Muslim members as belonging to the HVO.[1090] Recalling the relevant Trial Chamber findings, the Appeals Chamber considers that the Trial Chamber addressed Praljak's, Petković's, and Ćorić's final briefs, and Petković's Closing Arguments at trial, where it was argued that when placed in isolation by the HVO, the HVO Muslim members "did not forfeit their status as HVO soldiers".[1091] The Appeals Chamber further observes that the Trial Chamber also noted Ćorić's argument that the HVO Muslim members, due to their membership in the HVO, owed allegiance to the authorities of the HZ(R) H-B.[1092] The Appeals Chamber therefore considers that Stojić, Petković, and Ćorić have failed to show that the Trial Chamber ignored relevant factors allegedly showing that the HVO viewed its Muslim members as belonging to the HVO.[1093]

357. With regard to Ćorić's related argument that the Trial Chamber ignored evidence showing that the HVO considered Muslim members of the HVO to be members of the HVO itself and not of

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[1085] *Tadić* Appeal Judgement, para. 166. See *Čelebići* Appeal Judgement, paras 83-84.
[1086] Trial Judgement, Vol. 3, para. 608.
[1087] Trial Judgement, Vol. 3, paras 609-611.
[1088] *Čelebići* Appeal Judgement, para. 98.
[1089] Nor have they shown any cogent reason for the Appeals Chamber to depart from the allegiance analysis jurisprudence. See *Aleksovski* Appeal Judgement, paras 107-109.
[1090] Stojić's Reply Brief, para. 74, referring to Trial Judgement, Vol. 2, para. 1403; Petković's Appeal Brief, paras 189-190, referring to Ex. 4D01466, Petković's Final Brief, para. 256; Ćorić's Appeal Brief, paras 87, 91, referring to Exs. 4D01466, P04756, Milivoj Petković, T. 49579 (17 Feb 2010), Witness CJ, T. 10952 (closed session) (30 Nov 2006).
[1091] See Trial Judgement, Vol. 3, para. 594, referring to Praljak's Final Brief, paras 85, 96, Petković's Final Brief, paras 255-260, referring to Milivoj Petković, T. 49579 (17 Feb 2010), Ex. 4D01466, Petković Closing Arguments, T(F). 52545, 52549-52550, 52558 (21 Feb 2011), Ćorić's Final Brief, paras 352-368, referring to Exs. 4D01466, P04756.
[1092] See Trial Judgement, Vol. 3, para. 593, referring to Ćorić's Final Brief, paras 352-360, referring to Exs. 4D01466, P04756.
[1093] See Trial Judgement, Vol. 3, paras 608-611.

the ABiH,[1094] the Appeals Chamber observes that the arguments that the Trial Chamber referred to, as just discussed, also identified supporting evidence.[1095] The Appeals Chamber notes that some of the evidence Ćorić claimed was ignored, purporting to show that the HVO distinguished between detained Muslim HVO members and POWs, was also included in the arguments the Trial Chamber referred to.[1096] In any event, the Appeals Chamber considers that Ćorić has failed to explain how this evidence showing that "military prisoners" were separated from the "enemy POWs" while in detention pertained to HVO Muslim members.[1097] It therefore dismisses Ćorić's argument.

358. Turning to Stojić's, Praljak's, Petković's, and Ćorić's arguments relying on non-Tribunal authorities that war crimes cannot be committed by soldiers against members of their own military force, the Appeals Chamber first recalls that it is not bound by the findings of other courts – domestic, international, or hybrid.[1098] The Appeals Chamber also considers that these non-ICTY cases are inapposite to the case at hand. Although they relate to whether war crimes can be committed by service personnel against members of their own military force,[1099] none of these cases apply the allegiance criterion developed in ICTY jurisprudence to determine whether the service personnel had fallen into the hands of a party to the conflict, or occupying power of which they are not nationals, as required under Geneva Convention IV.[1100] Moreover, the Appeals Chamber finds that Stojić's, Praljak's, Petković's, and Ćorić's arguments fall short of demonstrating that there are cogent reasons for the Appeals Chamber to depart from its established jurisprudence in this regard.[1101] Accordingly, these arguments are dismissed. Further, the Appeals Chamber therefore dismisses Stojić's, Praljak's, Petković's, and Ćorić's challenges to the Trial Chamber's application of international humanitarian law in finding that the HVO's Muslim members were protected under Geneva Convention IV.[1102]

[1094] See Ćorić's Appeal Brief, para. 92, referring to Exs. P00514, p. 8, P00956, p. 14, Milivoj Petković, T. 49579 (17 Feb 2010), Slobodan Božić, T. 36379-36380 (4 Feb 2009), Josip Praljak, T. 14649-14651 (26 Feb 2007).
[1095] See Trial Judgement, Vol. 3, paras 593-594, referring to Petković's Final Brief, paras 255, 257, referring to Exs. P00514, p. 8 (Instruction for the Operation of the Central Military Prison of the Croatian Defence Council, 22 September 1992), P00956, p. 14 (Military Police Report, 26 December 1992), Milivoj Petković, T. 49579 (17 Feb 2010). See also *supra*, para. 356.
[1096] See Exs. P00514, p. 8 (Instruction for the Operation of the Central Military Prison of the Croatian Defence Council, 22 September 1992), P00956, p. 14 (Military Police Report, 26 December 1992), Milivoj Petković, T. 49579 (17 Feb 2010).
[1097] *Cf.* Ćorić's Appeal Brief, para. 92, referring to Exs. P00514, p. 8, P00956, p. 14, Milivoj Petković, T. 49579 (17 Feb 2010), Slobodan Božić, T. 36379-36380 (4 Feb 2009), Josip Praljak, T. 14649-14651 (26 Feb 2007); Trial Judgement, Vol. 3, paras 593-594, referring to Petković's Final Brief, paras 255, 257, referring to Exs. P00514, p. 8 (Instruction for the Operation of the Central Military Prison of the Croatian Defence Council, 22 September 1992), P00956, p. 14 (Military Police Report, 26 December 1992), Milivoj Petković, T. 49579 (17 Feb 2010).
[1098] *Stanišić and Župljanin* Appeal Judgement, para. 598; *Popović et al.* Appeal Judgement, para. 1674. See also *Đorđević* Appeal Judgement, para. 50.
[1099] See *Pilz* Case, p. 391; *Motosuke* Case, p. 682; *Sesay et al.*Trial Judgement, paras 1388-1396, 1451-1453 & fn. 2754. See also Cassese, *International Criminal Law*, p. 82, referring to the *Pilz* and *Motosuke* cases.
[1100] See Geneva Convention IV, Art. 4(4). See also Commentary on Geneva Convention IV, pp. 50-51.
[1101] See *Aleksovski* Appeal Judgement, paras 107-109.
[1102] See also *supra*, para. 349.

359. As to Stojić's, Petković's, and Ćorić's allegation that the Trial Chamber contradicted itself by finding that the HVO's Muslim members detained by the HVO were, on one hand, not "[m]embers of the armed forces of a Party to the conflict" who had "fallen into the power of the enemy" under Geneva Convention III, but on the other, that they had "indeed fallen into the hands of the enemy power", under Geneva Convention IV, the Appeals Chamber considers that the Trial Chamber's findings, read in context, are not contradictory. The Appeals Chamber finds that the Trial Chamber reasonably concluded that the Muslim HVO members could not be deemed POWs within the strict meaning of Geneva Convention III as they did not formally belong to the ABiH, the "armed forces of a Party other than the detaining Party".[1103] They could nevertheless be protected under Geneva Convention IV because they were *in fact* in enemy hands, and "[e]very person in enemy hands must have some status under international law [...]. There is no intermediate status; nobody in enemy hands can be outside the law."[1104] For these same reasons, Petković's alternative argument that the HVO's Muslim members should be deemed POWs under Geneva Convention III is dismissed.

(c) Conclusion

360. For the foregoing reasons, the Appeals Chamber affirms the Trial Chamber's ruling that the HVO's Muslim members who were detained by the HVO were protected persons under Geneva Convention IV. Consequently, the Appeals Chamber dismisses Stojić's ground of appeal 42, Praljak's ground of appeal 3, Petković's sub-ground of appeal 5.2.1 in part, and Ćorić's ground of appeal 4.

2. Muslim men of military age (Praljak's Ground 4, Petković's Sub-grounds 5.2.1.1 in part, 5.2.1.2, and 5.2.1.4, Ćorić's Ground 5, and Pušić's Sub-ground 7.1)

361. The Trial Chamber held that the Muslim men of military age, even if they were part of the reserves of the armed forces of BiH under national law, did not fit the definition of members of armed forces within the meaning of the applicable international humanitarian law.[1105] It reasoned that a reservist becomes a member of the armed forces once he has been mobilised and has taken up active duty.[1106] It held that it is only then that a member of the reserves acquires the status of combatant and becomes a POW if he falls into the hands of the opposing party during an

[1103] See Trial Judgement, Vol. 3, paras 602-605. See also *supra*, paras 354-355; Stojić's Appeal Brief, para. 390; Stojić's Reply Brief, para. 75; Petković's Appeal Brief, paras 187-189; Ćorić's Appeal Brief, paras 85-87. The Appeals Chamber dismisses Ćorić's argument that the HVO cannot be an enemy power as it has affirmed the Trial Chamber's findings that the HVO was under the overall control of Croatia and was engaged in an international armed conflict with the ABiH. See *supra*, paras 234-240, 276-297.
[1104] Commentary on Geneva Convention IV, p. 51.
[1105] See Trial Judgement, Vol. 3, paras 616-618.

international armed conflict.[1107] The Trial Chamber further reasoned that from that moment on, until he is demobilised, a member of the reserves is not a civilian.[1108] It therefore concluded that a party to an international conflict cannot justify the detention of a group of men solely on the ground that they are of military age and that, at the outbreak of war, national law required the general mobilisation of the men in this age group.[1109] According to the Trial Chamber, such a party must verify whether the person has actually mobilised and entered into active duty.[1110]

(a) Arguments of the Parties

362. Praljak, Petković, Ćorić, and Pušić submit that the Trial Chamber erred when it found that military-aged Muslim men were not members of the armed forces under international humanitarian law.[1111] Praljak, Petković, and Ćorić argue that the Trial Chamber failed to consider that: (1) BiH law regarded the reserve forces as a component of the ABiH; and (2) pursuant to a general mobilisation order,[1112] the reservists were in fact mobilised as ABiH members which meant, under international humanitarian law, that they became members of the armed forces.[1113] Petković and Ćorić contend that the Trial Chamber failed to consider that non-combatants, such as the military-aged Muslim men detained by the HVO, may nevertheless be members of the armed forces and that it was necessary to consider national legislation to determine when reservists become members of the armed forces.[1114]

363. Praljak, Petković, and Ćorić also submit that the reservists' obligations under BiH law, in addition to other evidence that both Bosnian Muslim and HVO authorities treated the reservists as members of the ABiH, create a strong presumption of their incorporation into the ABiH and that the Trial Chamber failed to apply the proper burden of proof by not requiring the Prosecution to prove

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[1106] See Trial Judgement, Vol. 3, para. 619.
[1107] See Trial Judgement, Vol. 3, para. 619.
[1108] See Trial Judgement, Vol. 3, para. 619.
[1109] See Trial Judgement, Vol. 3, para. 620.
[1110] See Trial Judgement, Vol. 3, para. 620.
[1111] Praljak's Appeal Brief, paras 64-68; Appeal Hearing, AT. 472 (22 Mar 2017); Petković's Appeal Brief, paras 200-202, 211; Petković's Reply Brief, para. 43; Ćorić's Appeal Brief, paras 95-100; Pušić's Appeal Brief, paras 228-229. Pušić adopts the Judge Antonetti Dissent on this issue. See Pušić's Appeal Brief, para. 229.
[1112] See Praljak's Appeal Brief, para. 66, referring to Ex. 4D01164; Petković's Appeal Brief, para. 201, referring to Exs. 4D01030, 4D00412, 4D01731, para. 119, 4D01164; Ćorić's Appeal Brief, paras 97-98, referring to, *inter alia*, Exs. 1D00349, 4D01030, 4D00412, 4D01731, para. 64, 4D01164.
[1113] Praljak's Appeal Brief, paras 65-66; Petković's Appeal Brief, paras 200-201; Petković's Reply Brief, paras 41-42; Ćorić's Appeal Brief, paras 95-98, 100.
[1114] Petković's Appeal Brief, paras 199-200, referring to the Hague Regulations, Art. 3, Henckaerts and Doswald-Beck, *Customary International Humanitarian Law*, p. 14. In this context, Petković argues that the Trial Chamber did not provide a reasoned opinion about the difference between combat and non-combat members of the armed forces and the right of non-combatants to be given POW status if imprisoned. Petković's Appeal Brief, para. 200; Ćorić's Appeal Brief, para. 100, referring to the Hague Regulations, Art. 3, Henckaerts and Doswald-Beck, *Customary International Humanitarian Law*, p. 13. See also Praljak's Appeal Brief, para. 65 (arguing that members of the armed forces and the TO residing in their homes remained combatants whether or not they were in combat).

that the reservists were civilians.[1115] In this regard, Petković asserts that the Trial Chamber erred by repeatedly referring to Muslim men of military age as "men who did not belong to any armed force" without applying the appropriate evidentiary standard.[1116]

364. The Prosecution responds that the Trial Chamber properly determined that the military-aged Muslim men, even if reservists under national law, retained their civilian status.[1117] The Prosecution submits that consistent with customary international law, the Trial Chamber correctly focused on whether the men had actually been incorporated into the ABiH and found that they had not been.[1118] Finally, the Prosecution asserts that the Trial Chamber properly applied the applicable burden of proof and correctly distinguished between civilians and members of the armed forces.[1119]

(b) Analysis

365. The Appeals Chamber notes that Praljak's, Petković's, Ćorić's, and Pušić's challenges is essentially that the Trial Chamber failed to consider that, pursuant to a general mobilisation order, Muslim men of military age were reserve members of the ABiH, and therefore members of the armed forces, protected under Geneva Convention III.

366. At the outset, the Appeals Chamber recalls that the the Trial Chamber considered the arguments made by Petković at trial, and some of the evidence cited by him, Praljak, and Ćorić in their respective final trial briefs, purporting to show that reserve forces were part of the ABiH, and that reservists were mobilised as ABiH members.[1120] The Appeals Chamber notes that one of the pieces of evidence that Petković and Ćorić relied upon is the "Decree Law on Compulsory Military Service", published on 1 August 1992 ("Decree on Compulsory Military Service"), which states

[1115] Praljak's Appeal Brief, paras 66-67; Praljak's Reply Brief, paras 115-116; Petković's Appeal Brief, paras 180, 201-203; Ćorić's Appeal Brief, paras 99-100. Petković also notes that the Trial Chamber acknowledged, when considering the HVO, that conscripts were members of the armed forces. See Petković's Appeal Brief, para. 204.
[1116] Petković's Appeal Brief, paras 178-180. Petković raises the same argument with respect to the HVO's Muslim members, which is, however, dismissed in light of the Appeals Chamber's foregoing analysis on the status of the HVO's Muslim members. See *supra*, paras 348-360.
[1117] Prosecution's Response Brief (Praljak), para. 284; Prosecution's Response Brief (Petković), para. 149; Prosecution's Response Brief (Ćorić), para. 87.
[1118] Prosecution's Response Brief (Praljak), paras 284-286; Prosecution's Response Brief (Petković), paras 149-151; Prosecution's Response Brief (Ćorić), para. 88. The Prosecution contends that the HVO itself did not treat the military-aged Muslim men as POWs, as it subjected them to the same treatment as the Muslim civilian detainees. See Prosecution's Response Brief (Praljak), para. 287; Prosecution's Response Brief (Petković), para. 152; Prosecution's Response Brief (Ćorić), para. 89.
[1119] Prosecution's Response Brief (Praljak), para. 283; Prosecution's Response Brief (Petković), paras 140-141; Prosecution's Response Brief (Ćorić), para. 92.
[1120] See Trial Judgement, Vol. 3, para. 612, referring to the "RBIH's Presidency's Order for general mobilisation on 20 June 1992", *i.e.* Ex. 4D01164. See also Trial Judgement, Vol. 3, paras 612-614 & fns 1222-1225, referring to, *inter alia*, Petković's Final Trial Brief, paras 261-275, referring to Exs. 1D00349, 4D01030, 4D00412, 4D01731, 4D01164, Petković Closing Arguments, T. (F) 52551-52556 (21 Feb 2011), referring to, *inter alia*, Exs. 4D00412, 4D1030, 1D00349, Petković's Rejoinder, T. (F) 52929-52930 (2 Mar 2011), referring to Exs. 4D00412, 4D01164. The Appeals Chamber also notes that the Trial Chamber refers to Ex. 4D01731 in the previous sub-section of the

that "all citizens of [BiH] who are fit to work shall be subject to compulsory military service".[1121] It defines "compulsory military service" as "the recruitment obligation, the obligation to complete military service and the obligation to serve in the reserve forces."[1122] However, the Appeals Chamber considers that this same Decree on Compulsory Military Service also defines several categories of citizens of BiH who are, or may be, excused from military service regardless of their age.[1123] Similarly, the "Decree Law on Service in the Army of the Republic of Bosnia and Herzegovina", also published on 1 August 1992, referred to by Petković and Ćorić, states that "military personnel shall be understood to mean active military personnel, soldiers and persons in the reserve force as long as they are on military duty in the Army".[1124] In other words, even according to the evidence referred to by Petković and Ćorić, military-aged Muslim men could not be considered as a group belonging to the ABiH. The Appeals Chamber therefore considers that Praljak, Petković, Ćorić, and Pušić fail to show that in the circumstances of this case no reasonable trier of fact could have concluded that military-aged Muslim men – as a general category – did not belong to the ABiH.

367. Further, the Appeals Chamber considers that the Trial Chamber made findings on the status of all Muslim men detained, *e.g.*, the Trial Chamber categorised the Muslims detained as elderly men, boys of 14 years of age or younger, HVO Muslim members, ABiH members, and "politicians or teachers who were not members of any armed forces".[1125] Moreover, where relevant, it also

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Trial Judgement, in the context of the discussion on the status of the HVO's Muslim members. See Trial Judgement, Vol. 3, fn. 1218.

[1121] Ex. 4D01030, Art. 2.

[1122] Ex. 4D01030, Art. 4.

[1123] Ex. 4D01030, Art. 25(4). See also Ex. 4D01030, Arts 5-7, 24-26. For example "a person who has graduated from the School of Internal Affairs lasting at least two years and has worked as a policemen for at least two years". Ex. 4D01030, Art. 25(4).

[1124] Ex. 4D00412, Art. 3. The Appeals Chamber further notes that the "Order amending the Order of the War Presidency of Jablanica Municipality Assembly" refers to a general mobilisation in that municipality of all people between the ages of 15 and 65 for military units but also for labour units and civilian protection. See Ex. 1D00349. The "Order Proclaiming General Public Mobilisation in the Territory of the Republic of Bosnia and Herzegovina" of 20 June 1992 refers to the mobilisation of "military conscripts" on one hand, and the mobilisation of all "remaining citizens", both men and women, to report to the civil protection units on the other. See Ex. 4D01164, Arts 1-2. Moreover, the Appeals Chamber notes that Defence expert Witness Milan Gorjanc's Military Expert Report also states that even though "[f]rom that moment on [referring to Ex. 4D01164, dated 20 June 1992] all men became members of the armed forces of [BiH]. It is understandable that due to shortage of weapons and equipment, as well as initial problems in establishing and organising a [BiH] wartime army, not all men fit for military service and conscripts could be actively engaged in the armed forces. Those who were not immediately actively engaged in combat operations were in the reserve or performed other tasks important for the defence of the country." Ex. 4D01731, para. 119.

[1125] See, *e.g.*, Trial Judgement, Vol. 2, paras 1511 (finding that among the detainees in the Heliodrom were people under the age of 15 and over the age of 60 and that "due to their age, they did not belong to any armed force"), 1809 (finding that in the days after 9 May 1993, many Muslim detainees, for the most part members of the ABiH or the TO, again arrived at Ljubuški Prison from Mostar), 1816 (finding that, in September 1993, many Muslim intellectuals and prominent figures were transferred to Ljubuški Prison, which had become a detention site for "persons of interest" or "of importance"), 1915-1917, 1921 (finding that in April and July 1993, in Stolac Municipality, the HVO arrested and detained HVO Muslim members, members of the ABiH, and civilians, such as an economist, teachers, and the Director of Koštana Hospital, Dr. Kapić). See also Trial Judgement, Vol. 3, paras 1020-1027 (Mostar Municipality), 1030 (Ljubuški Municipality and Ljubuški Prison), 1032 (finding that with regard to the Muslim men held at the Vitina-Otok Camp, in July and August 1993, the HVO "detained Muslim men between 20 and 60 years of age, regardless of

considered that some of the men who were not members of the armed forces were accused of illegal activity related to the conflict.[1126] Nonetheless, the Appeals Chamber considers that even in this latter case, Praljak, Petković, Ćorić, and Pušić have not demonstrated that a reasonable trier of fact could not have concluded that the HVO failed to carry out an individual assessment of the military-aged Muslim men within a reasonable time, as required by law. In this regard, the Appeals Chamber recalls that it has previously held that:

> The detaining power has a reasonable time to determine whether a particular person is a civilian and further to determine whether there are reasonable grounds to believe that the security of the detaining power is threatened [...]. The assessment that each civilian taken into detention poses a particular risk to security of the State must be made on an individual basis. The Appeals Chamber, in the Čelebići Appeal Judgement, accepted that some reasonable time is given to the detaining power to determine, which of the detainees is a threat.[1127]

368. Moreover, the Appeals Chamber observes that the Trial Chamber made other relevant findings that demonstrate that the military-aged Muslim men were arrested *en masse* together with Muslim women, children, and the elderly, and *all* Muslims were detained and treated in the same manner, irrespective of their status.[1128] Based on the foregoing, the Appeals Chamber considers that Petković and Ćorić have failed to show an error on the part of the Trial Chamber that invalidates the conclusion that the military-aged Muslim men could not be considered as a group as members of the armed forces. It therefore dismisses their arguments.

369. With regard to Praljak's, Petković's, and Ćorić's arguments that the Trial Chamber relieved the Prosecution from its burden of proving the civilian status of the military-aged Muslim men, the Appeals Chamber recalls that the Trial Chamber held that the Prosecution carried the burden of proving civilian status, and in the absence of such evidence, it stated that it would find, *in dubio pro reo*, that such persons are combatants.[1129] In fact, when the evidence was insufficient to show what the circumstances of the military-aged Muslim men's detention were, the Trial Chamber did not find that the HVO unlawfully imprisoned civilians, *e.g.*, in October 1992 in Prozor Municipality, and between August 1993 and January 1994 in the Vojno Detention Centre.[1130] The Appeals Chamber thus rejects Praljak's, Petković's, and Ćorić's arguments.

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whether or not they were members of the ABiH"), 1034-1036, 1038 (finding that "Muslim men who were members of the HVO or the ABiH, or were not members of any armed forces, were arrested by the HVO in the Municipality of Stolac and held at Koštana Hospital between May and October 1993"), 1039, 1041.

[1126] See Trial Judgement, Vol. 2, para. 1917 (noting evidence showing that some of the prominent Muslim men detained in April 1993 had been accused of setting up barricades in Stolac in March 1992, in order to prevent the leaders of the Stolac HVO from entering the town).

[1127] *Kordić and Čerkez* Appeal Judgement, para. 609.

[1128] See, *e.g.*, Trial Judgement, Vol. 2, paras 894-895, 1876-1877, 1920-1921, 2082-2083, 2170-2171, 2174, Vol. 3, paras 970-972, 974-975, 980, 984, 986-987, 995, 1003-1004, 1006-1007, 1014-1016, 1020-1023, 1025-1028, 1030-1033, 1035-1036, 1038-1042, 1049-1058.

[1129] See Trial Judgement, Vol. 3, para. 621.

[1130] See Trial Judgement, Vol. 3, paras 1000, 1006, 1028.

(c) Conclusion

370. For the foregoing reasons, the Appeals Chamber finds that Praljak, Petković, Ćorić, and Pušić have failed to show that no reasonable trier of fact could have reached the same conclusion as the Trial Chamber. Consequently, the Appeals Chamber dismisses Praljak's ground of appeal 4, Petković's sub-ground of appeal 5.2.1 in part, Ćorić's ground of appeal 5, and Pušić's sub-ground of appeal 7.1, insofar as they relate to the military-aged Muslim men.

3. Defences to detention (Petković Sub-grounds 5.2.1.1, 5.2.1.3, 5.2.1.4, all in part)

371. The Trial Chamber found that following the attack on the HVO Tihomir Mišić Barracks on 30 June 1993, which was executed by the ABiH in co-operation with HVO Muslim soldiers who had deserted, Petković issued an order ("30 June 1993 Order") to the South-East Herzegovina Operative Zone (HVO) ("South-East OZ"), indicating that all HVO Muslim members should be disarmed and isolated, and that all the military-aged Muslim men residing in the South-East OZ should also be isolated.[1131] The Trial Chamber further found that as a result of the 30 June 1993 Order, the HVO proceeded with a widespread and massive campaign to arrest Muslim men in and around the town of Mostar, whether members of an armed force or not.[1132]

372. The Trial Chamber rejected the argument that the HVO had a right to isolate all the HVO Muslims for security reasons because such limitation on the liberty "can result only from individual measures that must be determined on a case by case basis and cannot in any case be decided generally in respect to an entire segment of the population".[1133] It also rejected the argument that military-aged Muslim men could be detained as a group,[1134] and concluded that Petković "ordered the arrest of men who did not belong to any armed force".[1135]

(a) Arguments of the Parties

373. Petković raises two arguments regarding the HVO's detention of protected persons. First, Petković argues that even if the two categories of detainees – the HVO's Muslim members and military-aged Muslim men – were protected persons under Geneva Convention IV, evidence highlights that their detention was nevertheless necessary for security reasons and thus justified

[1131] See Trial Judgement, Vol. 2, paras 881-882, 890-891, Vol. 4, para. 737, referring to Ex. P03019.
[1132] See Trial Judgement, Vol. 2, paras 890-895, Vol. 4, paras 737-738, 757-759.
[1133] Trial Judgement, Vol. 3, para. 599. See also Trial Judgement, Vol. 2, paras 894-895, Vol. 4, paras 737-738, 757-759.
[1134] See Trial Judgement, Vol. 3, para. 620. See also Trial Judgement, Vol. 2, paras 894-895, Vol. 4, paras 737-738, 757-759.
[1135] Trial Judgement, Vol. 4, para. 738.

under Article 42 of Geneva Convention IV.[1136] Second, Petković contends that under the Tribunal's jurisprudence, a detaining authority is permitted to hold individuals while it determines their status and risk, and that he was only responsible for the initial decision to lawfully detain the military-aged Muslim men but not for their subsequent continuous detention when it was required that a case-by-case risk assessment be carried out.[1137]

374. The Prosecution responds that Petković's blanket order to arrest all able-bodied Muslim men was illegal and that the Trial Chamber properly rejected Petković's claim that the detention of military-aged Muslim men was a legitimate security measure.[1138] Further, in the Prosecution's view, the evidence before the Trial Chamber confirmed the critical distinction, in line with customary international law, between a general call for mobilisation and the separate act of recruitment into the ABiH, and that the military-aged Muslim men were not treated as ABiH POWs.[1139] Moreover, none of the Muslim prisoners were afforded the possibility to challenge their detention, and regardless of their status, no individualised inquiry was made to determine whether they posed a security risk.[1140]

(b) Analysis

375. According to Article 42 of Geneva Convention IV, protected persons may be detained "only if the security of the Detaining Power makes it absolutely necessary".[1141] While protected persons may be detained when it is absolutely necessary, the Appeals Chamber recalls that such deprivation of liberty is "permissible only where there are reasonable grounds to believe that the security of the State is at risk",[1142] based on "an assessment that each civilian taken into detention poses a *particular risk* to the security of the State".[1143] As previously held by the Appeals Chamber:

> To hold the contrary would suggest that, whenever the armed forces of a State are engaged in armed conflict, the entire civilian population of that State is necessarily a threat to security and therefore may be detained. It is perfectly clear from the provisions of Geneva Convention IV referred to above that there is no such blanket power to detain the entire civilian population of a party to the conflict in such circumstances.[1144]

[1136] Petković's Appeal Brief, paras 192-195, 198, 205-207; Appeal Hearing, AT. 518-519 (23 Mar 2017).
[1137] Petković's Appeal Brief, paras 208-210, referring to *Kordić and Čerkez* Appeal Judgement, paras 608-609, 615, 623; Appeal Hearing, AT. 485, 519-521 (23 Mar 2017); Petković's Reply Brief, para. 44.
[1138] Prosecution's Response Brief (Petković), paras 149-150, 153; Appeal Hearing, AT. 535-536 (23 Mar 2017).
[1139] Prosecution's Response Brief (Petković), paras 151-152.
[1140] Prosecution's Response Brief (Petković), paras 152-153; Appeal Hearing, AT. 536 (23 Mar 2017).
[1141] Geneva Convention IV, Art. 42.
[1142] *Čelebići* Appeal Judgement, para. 321.
[1143] *Čelebići* Appeal Judgement, para. 327 (emphasis in original).
[1144] *Čelebići* Appeal Judgement, para. 327 (emphasis in original).

Thus, without such assessment, an individual may not be detained solely because he or she is a national of, or aligned with, an enemy party.[1145]

376. The Appeals Chamber recalls that the Trial Chamber found that the detention of HVO Muslim members and the military-aged Muslim men could not be justified solely on the concerns regarding the group[1146] and, therefore, concluded that Petković's order to *arrest* these groups of Muslim men was not in compliance with Article 42 of Geneva Convention IV.[1147] The Appeals Chamber therefore considers that Petković has failed to demonstrate that no reasonable trier of fact could have found that the detention of HVO Muslim members and the military-aged Muslim men following his 30 June 1993 Order was justified.

377. The Appeals Chamber highlights that the Trial Chamber's conclusion that the arrest of Muslim men following Petković's 30 June 1993 Order was not justified by military necessity, as set forth in Article 42, is also supported by its finding that boys around the age of 14 and men over the age of 60 were arrested as well.[1148] Moreover, the Trial Chamber's more general findings with regard to the arrest and detention of civilians by the HVO in the different municipalities, including Mostar, demonstrate that civilians were arrested and detained "irrespective of their status"[1149] or "without taking their civilian status into consideration",[1150] that the "HVO did not hold these civilians because they posed a threat to the security of its armed forces",[1151] and that they included women, children, the elderly,[1152] and prominent Muslims.[1153] The lack of legal basis for the arrest is reinforced by the Trial Chamber's findings that the HVO authorities did not make any individual assessment of the security reasons that could have led to their detention and that the detained Muslim civilians did not have the possibility of challenging their detention with the relevant authorities.[1154] Petković has failed to show that no reasonable trier of fact could have found that the detention of the HVO Muslim members and military-aged Muslim men was not justified.[1155]

[1145] *Čelebići* Appeal Judgement, para. 327. See Geneva Convention IV, Arts 42-43.
[1146] See Trial Judgement, Vol. 3, para. 610.
[1147] See Trial Judgement, Vol. 1, paras 134-135, Vol. 3, paras 599, 620. The Appeals Chamber recalls that it rejects elsewhere in the Judgement the argument that the Trial Chamber erred in finding that detention could not be justified solely on the grounds of HVO membership (in the case of the HVO's Muslim members), reservist status, or a legal obligation to mobilise (in the case of military-aged Muslim men). See *supra*, paras 360, 370; *infra*, paras 2384-2385, 2462 & fn. 8179.
[1148] See Trial Judgement, Vol. 2, para. 895.
[1149] Trial Judgement, Vol. 3, paras 1012, 1014, 1025, 1030, 1032, 1035-1036, 1039, 1041, 1050, 1054, 1057-1058.
[1150] Trial Judgement, Vol. 3, para. 103.
[1151] Trial Judgement, Vol. 3, para. 1007.
[1152] Trial Judgement, Vol. 3, paras 1011, 1014, 1020, 1030.
[1153] Trial Judgement, Vol. 3, para. 1035.
[1154] See, *e.g.*, Trial Judgement, Vol. 3, paras 1012, 1014, 1021, 1025, 1030, 1032, 1035-1036, 1038-1039, 1041, 1050, 1054, 1057-1058.
[1155] Petković refers to several exhibits in support of his argument that the Trial Chamber ignored all evidence that proves that HVO Muslims were disarmed and isolated for justified security reasons. Petković's Appeal Brief, para. 193. However, the Appeals Chamber considers that Petković has failed to show that the Trial Chamber ignored the evidence

378. The Appeals Chamber further notes that Petković's argument, that the Trial Chamber erred when it failed to distinguish between the initial and continuing detention of the HVO's Muslim members and military-aged Muslim men, is premised on an erroneous understanding of the Trial Chamber's findings. The Trial Chamber did not find that the initial detention of the protected persons was legal and, therefore, it was not necessary for it to distinguish between their initial detention and the legality of the continued detention.[1156] The Appeals Chamber thus rejects this argument.

(c) Conclusion

379. The Appeals Chamber therefore dismisses Petković's sub-grounds of appeal 5.2.1.1, 5.2.1.3, 5.2.1.4, all in part, as far as they concern his defences to the detention of the HVO's Muslim members and military-aged Muslim men.

D. Conclusion

380. The Appeals Chamber thus rejects the Appellants' challenges that the chapeau requirements for the application of Article 2 of the Statute were not met. The Appeals Chamber is satisfied that the Trial Chamber did not err in applying Article 2 for the purposes of convicting the Appellants for wilful killing, inhuman treatment, the extensive destruction and appropriation of property not justified by military necessity and carried out unlawfully and wantonly, unlawful deportation, the unlawful transfer of civilians, and the unlawful confinement of civilians as "grave breaches" under the Geneva Conventions.

381. Further, the Appeals Chamber vacates the Appellants' convictions under Counts 19 and 22, with respect to Vareš Municipality, for extensive destruction and appropriation of property not justified by military necessity and carried out unlawfully and wantonly as grave breaches of the Geneva Conventions. However, it declines to enter convictions under Count 20, with respect to Vareš Municipality, for wanton destruction of property and plunder as violations of the laws or customs of war. Finally, Stojić's, Praljak's, Petković's, and Ćorić's challenges to the Trial Chamber's findings on the protected status of persons under the Geneva Conventions have failed.

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or that it could have affected the Trial Chamber's finding regarding the illegality of detaining the HVO Muslims based on security risks that are attached to the group rather than to the individual.

[1156] The Appeals Chamber recalls that an initially *lawful* internment can become unlawful if the detaining party does not respect the basic procedural rights of the detained persons and does not establish an appropriate court or administrative board as prescribed in Article 43 of Geneva Convention IV. See *Čelebići* Appeal Judgement, paras 320, 328.

382. Based on the foregoing, the Appeals Chamber dismisses: (1) Prlić's grounds of appeal 19 and 20; (2) Stojić's grounds of appeal 42, 54, and 55; (3) Praljak's grounds of appeal 1, 2, 3, and 4; (4) Petković's sub-grounds of appeal 5.2.1, 7.1, and 7.2; (5) Ćorić's grounds of appeal 3, 4, and 5; and (6) Pušić's ground of appeal 7 in part.

VII. CHALLENGES TO THE UNDERLYING CRIMES

A. Introduction

383. The Trial Chamber found that members of the JCE, including the Appellants, implemented an entire system for deporting the Muslim population of the HR H-B, a system which consisted of the commission of crimes by HVO forces from January 1993 to April 1994, namely: the removal and detention of civilians, murders and the destruction of property during attacks, mistreatment and devastation during evictions, mistreatment in and poor conditions of confinement, the widespread, nearly systematic use of detainees for front line labour or as human shields, murders and mistreatment related to this labour and these human shields, and the removal of detainees and their families outside of the territory of the HZ(R) H-B following their release.[1157] Prlić, Stojić, Praljak, Petković, Ćorić, and Pušić were convicted of grave breaches of the Geneva Conventions under Article 2 of the Statute, violations of the laws or customs of war under Article 3 of the Statute, and crimes against humanity under Article 5 of the Statute, committed in various municipalities and detention centres by virtue of their participation in the JCE.[1158]

384. The Parties, including the Prosecution, present challenges to the Trial Chamber's findings regarding the underlying crimes of the JCE. These challenges relate to: (1) the Appellants' *mens rea* for crimes against humanity; (2) the Trial Chamber's alleged failure to enter convictions for wanton destruction of cities, towns, or villages, or devastation not justified by military necessity; (3) the HVO's attacks of 18 January 1993 in Gornji Vakuf Municipality and subsequent criminal events; (4) the arrest, detention, and removal of Muslims in Prozor Municipality in July and August 1993; and (5) crimes committed in Mostar Municipality, in particular relating to the siege of East Mostar.

B. *Mens rea* for Crimes Against Humanity (Stojić's Ground 26, Praljak's Ground 48, and Petković's Sub-grounds 4.1 and 4.4 both in part)

385. The Trial Chamber concluded that certain acts of violence committed on the territory of eight BiH municipalities from May 1992 until April 1994 constituted a widespread and systematic attack against a civilian population.[1159] It further concluded that the perpetrators of these acts – "the armed and political forces of the HVO" – had knowledge of the attack and were aware that their

[1157] Trial Judgement, Vol. 1, para. 26, Vol. 4, paras 65-66. See also Trial Judgement, Vol. 4, para. 68.
[1158] Trial Judgement, Vol. 4, Disposition, pp. 430-431. See Trial Judgement, Vol. 4, paras 67-68, 278-279 (Prlić), 431-432 (Stojić), 630-631 (Praljak), 820-821 (Petković), 1006-1007 (Ćorić), 1211-1212 (Pušić).
[1159] Trial Judgement, Vol. 3, paras 646-648. See Trial Judgement, Vol. 3, paras 638-645.

acts were part of this attack.[1160] Stojić, Praljak, and Petković were subsequently convicted of, *inter alia*, crimes against humanity by virtue of their participation in the JCE.[1161]

1. Arguments of the Parties

386. Stojić, Praljak, and Petković submit that the Trial Chamber erred when it convicted them of crimes against humanity without making a finding that they knew or intended that their acts would form part of a widespread and systematic attack on a civilian population.[1162] Stojić, Praljak, and Petković therefore request that the Appeals Chamber overturn their convictions under the relevant counts.[1163]

387. The Prosecution responds that Stojić's, Praljak's, and Petković's knowledge that HVO crimes formed part of a widespread and systematic attack was implicit in the Trial Chamber's findings that they shared and contributed to the CCP.[1164] Additionally, the Prosecution claims that in light of the finding that direct perpetrators within the HVO were aware that their crimes formed part of such an attack, the Trial Chamber was satisfied that Stojić, Praljak, and Petković, given their positions, also had the requisite knowledge.[1165]

[1160] Trial Judgement, Vol. 3, para. 651.
[1161] Trial Judgement, Vol. 4, Disposition, pp. 430-431. See Trial Judgement, Vol. 4, paras 67-68, 431-432 (Stojić), 630-631 (Praljak), 820-821 (Petković).
[1162] Stojić's Appeal Brief, heading before para. 228, paras 229-230; Praljak's Appeal Brief, paras 537-538; Petković's Appeal Brief, paras 134, 136, 138. See Stojić's Appeal Brief, para. 228; Praljak's Appeal Brief, para. 535; Praljak's Reply Brief, para. 54; Petković's Appeal Brief, para. 90(i). Stojić argues that the Trial Chamber only determined whether the *mens rea* chapeau requirement of Article 5 of the Statute was satisfied with respect to direct perpetrators, and only considered his knowledge that there was an international armed conflict. Stojić's Appeal Brief, para. 229. Praljak argues that the Trial Chamber merely found that the direct perpetrators of acts constituting the widespread and systematic attack on the Muslim civilian population of HZ H-B had knowledge of the attack and were aware that their acts were part of this attack. Praljak's Appeal Brief, para. 537, referring to Trial Judgement, Vol. 3, para. 651. Petković submits that the Trial Chamber's error constituted a failure to render a reasoned opinion. Petković's Appeal Brief, paras 90(i), 134, 136. Further, Petković argues that the Trial Chamber "failed to consider or, if it did, to exclude through a reasoned opinion, evidence that contradicted its findings that [he] possessed the requisite *mens rea*", thereby rendering such findings unreasonable. Petković's Appeal Brief, para. 135. See Petković's Appeal Brief, para. 136.
[1163] Stojić's Appeal Brief, para. 230; Praljak's Appeal Brief, para. 538; Petković's Appeal Brief, paras 138-139. See Praljak's Reply Brief, para. 55. Specifically, Stojić requests that the Appeals Chamber overturn his convictions under Counts 1, 2, 6, 8, 10, and 15. Stojić's Appeal Brief, para. 230. In addition to these counts, Praljak also requests to be acquitted of Counts 3 and 12. Praljak's Appeal Brief, para. 538.
[1164] Prosecution's Response Brief (Stojić), paras 191-192; Prosecution's Response Brief (Praljak), paras 100, 102; Prosecution's Response Brief (Petković), paras 70-71.
[1165] Prosecution's Response Brief (Stojić), paras 191, 193; Prosecution's Response Brief (Praljak), paras 101-102; Prosecution's Response Brief (Petković), paras 70, 72. With respect to Petković, the Prosecution argues that the Trial Judgement read as a whole supports this conclusion, notwithstanding his "self-serving testimony" denying such knowledge. Prosecution's Response Brief (Petković), para. 70.

388. Praljak replies that the Prosecution attempts to fill the gaps by drawing its own conclusions from the Trial Chamber's findings and that the requisite *mens rea* cannot be implicit but must be established unequivocally.[1166]

2. Analysis

389. The Appeals Chamber recalls that in order to satisfy the *mens rea* of crimes against humanity, the accused must have *knowledge* that there is an attack on the civilian population and that his act is part thereof.[1167]

390. The Appeals Chamber observes that the Trial Chamber did not make express findings that the Appellants fulfilled this requirement.[1168] When reaching its conclusion that the chapeau requirements of Article 5 of the Statute were satisfied,[1169] the Trial Chamber found that, in all the municipalities, evictions were accompanied in many instances by episodes of violence that were similar in nature and directed against Muslims, including, *inter alia*, the burning of their houses, the destruction of institutions dedicated to religion, and the confiscation of property belonging to Muslims.[1170] The Trial Chamber held that such acts were carried out in an organised fashion by "the armed and political forces of the HVO" and constituted the means used to implement the attack on the civilian population.[1171] The Trial Chamber also found that the direct perpetrators of the acts constituting the widespread and systematic attack on the Muslim civilian population of HZ H-B – who "belonged to the HVO" – had knowledge of the attack and were aware that their acts were part of this attack.[1172]

391. When addressing the CCP, the Trial Chamber found that JCE members "implemented an entire system for deporting the Muslim population of the HR H-B" which involved the commission of numerous crimes, including those falling under Article 5 of the Statute.[1173] The Trial Chamber further found that in the vast majority of cases the crimes committed by the HVO were not random,

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[1166] Praljak's Reply Brief, para. 54.
[1167] *Popović et al.* Appeal Judgement, para. 570; *Kordić and Čerkez* Appeal Judgement, paras 99-100 and references cited therein.
[1168] See Trial Judgement, Vol. 3, paras 630-654 ("Other General Requirements for the Application of Article 5 of the Statute: Widespread or Systematic Attack Directed Against a Civilian Population"), Vol. 4, paras 270-277 (summary of findings on Prlić's JCE I responsibility), 425-430 (summary of findings on Stojić's JCE I responsibility), 624-629 (summary of findings on Praljak's JCE I responsibility), 814-819 (summary of findings on Petković's JCE I responsibility), 1000-1005 (summary of findings on Ćorić's JCE I responsibility), 1202-1210 (summary of findings on Pušić's JCE I responsibility).
[1169] Trial Judgement, Vol. 3, para. 654.
[1170] Trial Judgement, Vol. 3, paras 645-646. See also Trial Judgement, Vol. 3, paras 638-644, 648.
[1171] Trial Judgement, Vol. 3, para. 649. See Trial Judgement, Vol. 3, para. 646.
[1172] Trial Judgement, Vol. 3, para. 651.
[1173] Trial Judgement, Vol. 4, paras 66, 68 (specifically, it included the crimes against humanity of persecution (Count 1), murder (Count 2), deportation (Count 6), inhumane acts through forcible transfer (Count 8), imprisonment (Count 10), inhumane acts through conditions of confinement (Count 12), and other inhumane acts (Count 15)). See Trial Judgement, Vol. 3, paras 646-648. See also *infra*, para. 886.

but followed a clear pattern of conduct.[1174] The Trial Chamber concluded that insofar as Stojić, Praljak, and Petković controlled the HVO and the Military Police, and contributed to their operations, they knew these crimes were being committed and intended that they be committed in furtherance of the CCP.[1175] Moreover, the Trial Chamber made numerous findings concerning the Appellants' awareness that the commission of crimes was pursuant to a plan and/or was of a widespread and systematic nature.[1176] Notably, it found that they knew of or contributed to the atmosphere of violence in which the HVO operations in various municipalities took place.[1177] In this respect, the Appeals Chamber also notes the Trial Chamber's findings that Stojić, Praljak, and Petković participated in the implementation of an ultimatum adopted by the HVO HZ-HB on 15 January 1993 envisaging, *inter alia*, the subordination of the ABiH to the HVO in Provinces 3, 8, and 10 within five days ("15 January 1993 Ultimatum"), which led to a "systematic and widespread attack in the Municipality of Gornji Vakuf".[1178]

392. In light of the foregoing, the Appeals Chamber considers that the Trial Chamber was satisfied that Stojić, Praljak, and Petković knew that there was an attack on the civilian population and that their acts were part thereof, and as such had the requisite *mens rea* for crimes against humanity.[1179] The Appellants have not identified an error of law that invalidates the Trial Chamber's decision.[1180] Accordingly, Stojić's ground of appeal 26, Praljak's ground of appeal 48, and Petković's sub-grounds of appeal 4.1 and 4.4, in relevant part, are dismissed.

[1174] Trial Judgement, Vol. 4, para. 65.
[1175] Trial Judgement, Vol. 4, paras 67, 426, 428-429, 624, 628, 814-818, 1232. The Appeals Chamber dismisses challenges to these findings elsewhere in the Judgement. See *infra*, paras 1806, 2083, 2468.
[1176] See, *e.g.*, Trial Judgement, Vol. 4, paras 341, 347-348, 356-357, 362-363, 377-378 (Stojić), 561-562, 572-573, 586 (Praljak), 704, 708, 717, 732-735, 737-738, 757-758, 807-808 (Petković).
[1177] Trial Judgement, Vol. 4, paras 439, 445-446 (Stojić), 633-638 (Praljak), 734-735, 827, 830, 834, 837, 840, 844 (Petković). See also Trial Judgement, Vol. 4, para. 72.
[1178] Trial Judgement, Vol. 4, para. 142 (also finding that the plan for an attack on several villages in Prozor Municipality was the result of the implementation of an ultimatum adopted by the HVO HZ H-B on 3 April 1993 and published on 4 April 1993 ("4 April 1993 Ultimatum"), which was identical to the one the HVO issued in January 1993). See, *e.g.*, Trial Judgement, Vol. 4, paras 125-128, 146, 304, 475, 553, 556, 685, 702-704. See also, *e.g.*, Trial Judgement, Vol. 4, para. 138 (regarding the implementation of the 4 April 1993 Ultimatum); *infra*, paras 1579, 1588, 1824, 2177, 2210.
[1179] *Cf. Šainović et al.* Appeal Judgement, para. 281. When submitting that the Trial Chamber "failed to consider or, if it did, to exclude through a reasoned opinion, evidence that contradicted its findings that [he] possessed the requisite *mens rea*", Petković points particularly to his own testimony to demonstrate that he was unaware of crimes being committed on a widespread or systematic basis. See Petković's Appeal Brief, para. 135, referring to Milivoj Petković, T. 50698 (9 Mar 2010). The Appeals Chamber notes that the Trial Chamber explicitly considered Petković's testimony and stated that it did not accept it on occasions when he sought to limit his responsibility in respect of certain allegations, as it found it to be hardly credible. See Trial Judgement, Vol. 1, para. 399. The Appeals Chamber recalls that trial chambers are best placed to assess the evidence and that they have broad discretion in doing so. *Stanišić and Župljanin* Appeal Judgement, para. 654 and references cited therein. Since Petković is merely asserting that the Trial Chamber failed to give sufficient weight to evidence without showing that no reasonable trier of fact could have reached the same conclusion as the Trial Chamber did, his argument is dismissed.
[1180] See, *e.g.*, *Kvočka et al.* Appeal Judgement, para. 25.

C. Alleged Errors Relating to Wanton Destruction Of Cities, Towns Or Villages, or Devastation Not Justifed by Military Necessity (Prosecution's Ground 3 in part, Praljak's Ground 23, and Petković's Sub-ground 5.2.2.4 in part)

1. Failure to enter convictions

393. The Trial Chamber made findings regarding the destruction or damage of: (1) Muslim property in Prozor Municipality between May/June and July 1993;[1181] (2) Muslim property in Gornji Vakuf Municipality on 18 January 1993;[1182] (3) the Old Bridge in Mostar on 8-9 November 1993;[1183] and (4) ten mosques in East Mostar between June and December 1993 (collectively, "Four Groups of Incidents").[1184] In the "Legal Findings of the Chamber" section of the Trial Judgement, the Trial Chamber found that these incidents constituted the crime of wanton destruction of cities, towns or villages, or devastation not justified by military necessity as a violation of the laws or customs of war under Article 3 of the Statute (Count 20),[1185] but not the crime of extensive destruction of property not justified by military necessity and carried out unlawfully and wantonly as a grave breach of the Geneva Conventions under Article 2 of the Statute (Count 19), since these properties were not on an occupied territory when they were destroyed and, therefore, did not have the status of protected property within the meaning of Geneva Convention IV.[1186] Subsequently, in the section of the Trial Judgement devoted to the law on cumulative convictions, the Trial Chamber determined that the crime of wanton destruction not justified by military necessity (Count 20) does not contain a materially distinct element from the crime of extensive destruction of property not justified by military necessity (Count 19), and consequently held that cumulative convictions based on the same criminal conduct for Count 20 and Count 19 are not possible and that only a single conviction under Count 19 may be entered.[1187] However, when applying the law on cumulative convictions to the legal findings on wanton destruction not justified by military necessity (Count 20) and extensive destruction of property not justified by military necessity (Count 19), the Trial Chamber convicted Prlić, Stojić, Praljak, Petković, Ćorić, and Pušić under Count 19 only, thereby entering convictions for all incidents of criminal property destruction *except* the Four Groups of Incidents. It did not enter any convictions under Count 20, including for the Four Groups of Incidents.[1188] The Trial Chamber recalled that

[1181] Trial Judgement, Vol. 2, paras 95-97, 102-105, Vol. 3, para. 1566.
[1182] Trial Judgement, Vol. 2, paras 367-368, 373, 379, 387, Vol. 3, para. 1570.
[1183] Trial Judgement, Vol. 2, para. 1366, Vol. 3, para. 1587.
[1184] Trial Judgement, Vol. 2, para. 1377, Vol. 3, para. 1580.
[1185] Trial Judgement, Vol. 3, paras 1566, 1570, 1580, 1587.
[1186] Trial Judgement, Vol. 3, paras 1530, 1534, 1545. See Trial Judgement, Vol. 3, para. 589.
[1187] Trial Judgement, Vol. 4, paras 1254, 1264-1266.
[1188] Trial Judgement, Vol. 4, Disposition, pp. 430-431.

Pušić was not prosecuted for the crimes committed in Gornji Vakuf Municipality in January 1993.[1189]

(a) Arguments of the Parties

394. The Prosecution submits that the Trial Chamber erred in failing to convict Prlić, Stojić, Praljak, Petković, Ćorić, and Pušić with regard to the Four Groups of Incidents, for wanton destruction of property as a war crime under Count 20 (Article 3 of the Statute), with the exception of Pušić for the destruction of Muslim property in Gornji Vakuf Municipality on 18 January 1993.[1190] The Prosecution argues that the Trial Chamber declined to convict on the basis of the principle against cumulative convictions and because it "incorrectly assumed" that it had convicted the Appellants for these crimes for extensive destruction of property as a grave breach under Count 19 (Article 2 of the Statute).[1191] It submits that the convictions entered therefore do not fully reflect the criminality of the Appellants and that the Appeals Chamber should enter convictions against them under Count 20 for the Four Groups of Incidents.[1192]

395. Prlić responds that the Trial Chamber *may* have erred in its application of the principle against cumulative convictions.[1193] Stojić concedes that the Trial Chamber erred.[1194] Prlić, Stojić, Praljak, Ćorić, and Pušić dispute, however, the findings upon which the Prosecution relies for a conviction under Count 20.[1195] Petković and Ćorić argue that the Prosecution's appeal lacks merit as the Trial Chamber did in fact convict them for wanton destruction of property under Article 3 of the Statute (Count 20) for all or some of the Four Groups of Incidents.[1196] Prlić claims that the Trial Chamber already mistakenly convicted him for extensive destruction of property under

[1189] Trial Judgement, Vol. 4, fn. 178.
[1190] Prosecution's Appeal Brief, paras 325-326, 328-330; Prosecution's Reply Brief, para. 132; Appeal Hearing, AT. 766-768, 771, 851-852 (28 Mar 2017).
[1191] Prosecution's Appeal Brief, para. 328. See Prosecution's Appeal Brief, paras 327, 329; Appeal Hearing, AT. 766-768, 771 (28 Mar 2017).
[1192] Prosecution's Appeal Brief, paras 329-330; Prosecution's Reply Brief, paras 137, 152-153; Appeal Hearing, AT. 766, 768, 771, 851-852 (28 Mar 2017). The Prosecution submits, however, that to the extent that the Trial Chamber already considered the conduct underlying convictions under Count 20, their sentences need not be increased. Prosecution's Reply Brief, para. 153.
[1193] Prlić's Response Brief, para. 184.
[1194] Stojić's Response Brief, paras 145-146; Appeal Hearing, AT. 800 (28 Mar 2017).
[1195] Prlić's Response Brief, paras 171-173, 184; Stojić's Response Brief, para. 147; Ćorić's Response Brief, para. 95. See Praljak's Response Brief, paras 145, 149-151, 153-154, 156-158; Pušić's Response Brief, para. 28. See also Prlić's Response Brief, paras 174-183; Stojić's Response Brief, headings before paras 149, 154, paras 149-163; Appeal Hearing, AT. 800 (28 Mar 2017). Stojić argues that the fact that he first addressed these errors in his response brief does not prevent the Appeals Chamber from taking them into account when assessing the Prosecution's ground of appeal. Stojić's Response Brief, para. 147, heading before para. 164, paras 164-167.
[1196] Petković's Response Brief, paras 109-110; Ćorić's Response Brief, para. 93; Appeal Hearing, AT. 822-823 (28 Mar 2017). See also Petković's Appeal Brief, paras 277-278.

Article 2 of the Statute (Count 19) despite its finding that the Four Groups of Incidents did not constitute this crime.[1197]

396. Additionally, Stojić and Ćorić contend that any alleged error and/or consequence thereof in the application of the principle against cumulative convictions is immaterial as it would have no impact on the verdict.[1198] Further, Stojić argues that, although the principle against cumulative convictions allows for the entering of a conviction under Count 20 in addition to his conviction under Count 21 (destruction or wilful damage done to institutions dedicated to religion or education as a violation of the laws or customs of war under Article 3 of the Statute) for the destruction of the ten mosques in Mostar, doing so would not promote the interests of justice.[1199] The Appellants request that the Appeals Chamber dismiss the Prosecution's ground of appeal 3.[1200]

397. The Prosecution replies that the Trial Judgement contradicts: (1) Petković's and Ćorić's submissions to the extent that they argue that they were convicted under Count 20; and (2) Prlić's argument that he was convicted for the Four Groups of Incidents under Count 19.[1201]

(b) Analysis

398. The Appeals Chamber observes that the Trial Chamber found that the crimes charged in Count 20 fell within the framework of the CCP.[1202] It also found that, insofar as the Appellants committed crimes with the aim of furthering the CCP, they were responsible for all crimes that were part of the CCP.[1203] Therefore, it is clear that the Trial Chamber considered that the Appellants should be found guilty of, *inter alia*, the war crime of wanton destruction of property not justified by military necessity (Count 20) for the Four Groups of Incidents, with the exception of Pušić who was not found guilty for the destruction of Muslim property in Gornji Vakuf Municipality on 18 January 1993.[1204] As mentioned above, although the Trial Chamber found that the Four Groups of Incidents constituted wanton destruction of property not justified by military necessity under Article 3 of the Statute (Count 20),[1205] the Trial Chamber found that they did not constitute

[1197] Prlić's Response Brief, para. 173. See Prlić's Response Brief, para. 170.
[1198] Stojić's Response Brief, para. 146; Ćorić's Response Brief, paras 94, 96. See also Stojić's Response Brief, paras 148, 170-178; Ćorić's Response Brief, para. 93; Pušić's Response Brief, para. 28.
[1199] Stojić's Response Brief, paras 147, 169. See also Stojić's Response Brief, para. 175.
[1200] Stojić's Response Brief, para. 178; Praljak's Response Brief, para. 159; Petković's Response Brief, para. 110; Ćorić's Response Brief, para. 96. See also Prlić's Response Brief, para. 184; Pušić's Response Brief, para. 28.
[1201] Prosecution's Reply Brief, para. 133.
[1202] Trial Judgement, Vol. 4, para. 68. See also Trial Judgement, Vol. 4, para. 66 (finding that the JCE members implemented an entire system for the commission of crimes including the destruction of property during attacks).
[1203] Trial Judgement, Vol. 4, paras 279 (Prlić), 432 (Stojić), 631 (Praljak), 821 (Petković), 1007 (Ćorić), 1212 (Pušić). See also Trial Judgement, Vol. 4, paras 66-68.
[1204] See Trial Judgement, Vol. 4, fn. 178 (recalling that Pušić was not prosecuted for the crimes committed in Gornji Vakuf Municipality in January 1993).
[1205] Trial Judgement, Vol. 3, paras 1566 (Prozor Municipality), 1570 (Gornji Vakuf Municipality), 1580 (mosques in East Mostar), 1587 (Old Bridge in Mostar).

extensive destruction of property not justified by military necessity as a grave breach of the Geneva Conventions under Article 2 of the Statute (Count 19), as the property that was destroyed was not "protected" within the meaning of Geneva Convention IV.[1206] It is therefore clear that the Trial Chamber did not intend to convict the Appellants under Count 19 for the Four Groups of Incidents.[1207]

399. When entering convictions against the Appellants, the Trial Chamber applied the law on cumulative convictions, overlooking its previous finding that the Four Groups of Incidents did not fall under Article 2 of the Statute (Count 19).[1208] Consequently, the Trial Chamber did not enter convictions for the Four Groups of Incidents under either Count 19 or Count 20. The Appeals Chamber recalls that a trial chamber is bound to enter convictions for all distinct crimes which have been proven in order to fully reflect the criminality of the convicted person.[1209] Thus, the Appeals Chamber considers that the Trial Chamber erred by failing to enter convictions for wanton destruction of property not justified by military necessity under Article 3 of the Statute (Count 20) for the Four Groups of Incidents.

400. The Appeals Chamber recalls that pursuant to paragraph 5 of the Practice Direction on Formal Requirements, if an appellant relies on a ground of appeal to reverse an acquittal, the respondent may support the acquittal on additional grounds of appeal in the respondent's brief. The Appeals Chamber notes that some of the Appellants advance submissions in their respective responses challenging the legal and factual findings underpinning the Trial Chamber's finding that they committed wanton destruction of property under Article 3 of the Statute (Count 20) in the municipalities of Prozor, Mostar, and Gornji Vakuf. Moreover, the submissions concerning the Old Bridge of Mostar, in particular, are closely linked to those advanced separately by Praljak in his ground of appeal 23 and Petković in his sub-ground of appeal 5.2.2.4, in part.[1210] All submissions concerning the Old Bridge will be addressed together. The Appeals Chamber will now address: (1) general submissions concerning the Four Groups of Incidents and submissions related to Muslim property in Prozor Municipality and the ten mosques in Mostar Municipality; and (2) submissions concerning the Old Bridge.[1211]

[1206] Trial Judgement, Vol. 3, paras 1530, 1534, 1545. See also Trial Judgement, Vol. 3, para. 589.
[1207] Prlić's submission to the contrary is therefore dismissed. See *supra*, para. 395.
[1208] Trial Judgement, Vol. 4, Disposition, pp. 430-431.
[1209] *Popović et al.* Appeal Judgement, para. 538; *Karemera and Ngirumpatse* Appeal Judgement, para. 711; *Gatete* Appeal Judgement, para. 261.
[1210] See Praljak's Appeal Brief, paras 280-296; Petković's Appeal Brief, paras 277-278.
[1211] The submissions specifically related to the wanton destruction of property in Gornji Vakuf Municipality are addressed further below. See *infra*, paras 444-453.

2. Challenges to the legal and factual findings upon which the wanton destruction findings were based

(a) General submissions concerning the Four Groups of Incidents and submissions related to Muslim property in Prozor Municipality and the ten mosques in Mostar Municipality

401. The Trial Chamber found that Prlić, Stojić, Praljak, Petković, Ćorić, and Pušić should be found guilty, under Count 20 (wanton destruction of property under Article 3 of the Statute), for the Four Groups of Incidents, with the exception of Pušić who was not found guilty for the destruction of Muslim property in Gornji Vakuf Municipality on 18 January 1993, but failed to enter convictions for Count 20.[1212]

402. Prlić and Ćorić contest their responsibility for the Four Groups of Incidents on the basis that the Trial Chamber erred in its findings as to their authority or "effective control" over HVO forces.[1213] Ćorić specifically contests his responsibility under JCE liability.[1214] Likewise, Praljak submits that the Trial Chamber did not find him liable for the destruction of property in Prozor Municipality, considering the lack of clarity of its findings on the CCP.[1215] Prlić submits that the Trial Chamber erred in its evidentiary assessments of his involvement in property destruction in Prozor and Mostar.[1216] Praljak further submits that the Trial Chamber did not establish the date of the destruction of mosques in East Mostar and erroneously concluded that the HVO destroyed them.[1217] Ćorić also contends that the Trial Chamber's findings ignore the hostilities between the HVO and ABiH.[1218]

403. The Prosecution replies that Ćorić's arguments relate to superior responsibility and are irrelevant.[1219] Further, it contends that Praljak and Ćorić misunderstand the Trial Judgement and JCE liability, respectively.[1220] The Prosecution also argues that Ćorić fails to support or develop the contention that the Trial Chamber ignored the hostilities between the HVO and ABiH.[1221]

[1212] See Trial Judgement, Vol. 4, fn. 178 (recalling that Pušić was not prosecuted for the crimes committed in Gornji Vakuf Municipality in January 1993), paras 68 (finding that the crimes charged in Count 20 fell within the framework of the CCP), 279, 432, 631, 821, 1007, 1212 (finding that insofar as Prlić, Stojić, Praljak, Petković, Ćorić, and Pušić committed crimes with the aim of furthering the CCP, they were responsible for all crimes that were part of the CCP). See also *supra*, paras 393, 398.
[1213] Prlić's Response Brief, paras 171-172; Ćorić's Response Brief, para. 95.
[1214] Ćorić's Response Brief, para. 95 & fn. 184, referring to his ground of appeal 7 regarding JCE I responsibility.
[1215] Praljak's Response Brief, para. 145.
[1216] Prlić's Response Brief, paras 182-183.
[1217] Praljak's Response Brief, paras 156-158.
[1218] Ćorić's Response Brief, para. 95.
[1219] Prosecution's Reply Brief, para. 134.
[1220] Prosecution's Reply Brief, paras 134, 136.
[1221] Prosecution's Reply Brief, para. 135.

404. With respect to Prlić's and Ćorić's challenges regarding their authority or "effective control" over HVO forces, and insofar as these submissions appear to be premised on the notion of superior responsibility, the Appeals Chamber notes that the Trial Chamber did not find them responsible as superiors for wanton destruction of property with regard to any of the Four Groups of Incidents.[1222] Their submissions are therefore dismissed. As to the other arguments advanced by Prlić, Praljak, and Ćorić, the Appeals Chamber observes that they are based on references to other grounds of appeals, which the Appeals Chamber dismisses elsewhere.[1223] Their arguments are therefore rejected.

(b) The Old Bridge of Mostar

405. The Trial Chamber found that throughout the day on 8 November 1993, an HVO tank fired at the Old Bridge of Mostar.[1224] The Trial Chamber found that the Old Bridge was destroyed by the evening of 8 November 1993 as it was unusable and on the verge of collapse.[1225] The Old Bridge collapsed the next morning after the tank shelling resumed and also possibly due to explosives set off by a detonating cord on the left bank of the Neretva River.[1226]

406. The Trial Chamber found that the Old Bridge, real property normally used by civilians, was used by both the ABiH and the inhabitants of the right and left banks of the Neretva between May and November 1993.[1227] The Trial Chamber further found that the Old Bridge was essential to the ABiH for combat activities of its units on the front line, for evacuations, and for the sending of troops, food, and materiel, and that it was indeed utilised to this end.[1228] It found that the Old Bridge was a military target at the time of the attack given the HVO's military interest in destroying the

[1222] See Trial Judgement, Vol. 4, paras 1234, 1251 (finding Ćorić guilty under Article 7(3) of the Statute only for crimes that occurred in Prozor Municipality in October 1992), Disposition, pp. 430-431. Insofar as Prlić's and Ćorić's submissions could also be interpreted to impugn the Trial Chamber's findings as to their respective contributions to the JCE, the Appeals Chamber considers that they are unsubstantiated except by cross-reference to grounds of appeal dismissed elsewhere. See *infra*, paras 1400, 2595.
[1223] See Praljak's Response Brief, paras 145, 156-158 & fns 351, 353, 373-374, 379-380, referring to his grounds of appeal 7, 24, and 49, and alleging that the Trial Chamber: (1) was not clear in its finding that he is held responsible for all crimes forming part of the CCP; (2) failed to establish precisely the scope of the CCP; and (3) did not establish the exact date of the destruction of mosques in East Mostar and erroneously concluded that the HVO destroyed them. See *supra*, para. 402; *infra*, paras 569, 814, 824. See, however, *infra*, paras 2002-2003. See Prlić's Response Brief, paras 180-183 & fns 369, 377, referring to or relying upon grounds of appeal 4, 6, and 16 and submitting that the Trial Chamber erroneously: (1) relied upon, *inter alia*, uncorroborated hearsay and a mischaracterisation of evidence with respect to his intent to commit crimes in Prozor; and (2) ignored evidence demonstrating that he did not encourage the destruction of property in Mostar. See *supra*, paras 211, 218, 402; *infra*, para. 1400. See Ćorić's Response Brief, para. 95 & fn. 184, referring to his ground of appeal 7 and: (1) contesting his responsibility under JCE liability; and (2) contending that the Trial Chamber's findings ignore and fail to analyse the battles between the HVO and ABiH and the number of casualties on the HVO side. See *supra*, para. 402; *infra*, para. 2595.
[1224] Trial Judgement, Vol. 2, paras 1315, 1366. See also Trial Judgement, Vol. 2, paras 1311-1313, 1343, 1345, Vol. 3, para. 1581.
[1225] Trial Judgement, Vol. 2, paras 1318, 1345, 1366. See also Trial Judgement, Vol. 2, para. 1343, Vol. 3, para. 1581.
[1226] Trial Judgement, Vol. 2, paras 1326, 1345, 1366. See also Trial Judgement, Vol. 2, paras 670, 1321, 1343.
[1227] Trial Judgement, Vol. 3, para. 1582. See Trial Judgement, Vol. 2, paras 1284-1293.
[1228] Trial Judgement, Vol. 3, para. 1582. See Trial Judgement, Vol. 2, para. 1290.

Old Bridge which cut off practically all possibilities for the ABiH to continue its supply operations.[1229] However, the Trial Chamber also found that the destruction of the Old Bridge put the residents of Donja Mahala in "virtually total isolation", resulting in a serious deterioration of the humanitarian situation for the population living there, and had a "very significant psychological impact" on the Muslim population of Mostar.[1230] The HVO's destruction of the Kamenica Bridge – a makeshift bridge that the ABiH constructed – a few days after the destruction of the Old Bridge definitively cut off all access across the Neretva River in Mostar.[1231] The Trial Chamber therefore found that the impact of the destruction of the Old Bridge on the Muslim civilian population of Mostar was disproportionate to the concrete and direct military advantage expected.[1232] It further found that the "destruction of the Old Bridge [...] was extensive", and that it was intended by the HVO command, thereby sapping the morale of the Muslim population.[1233] The Trial Chamber therefore concluded that by destroying the Old Bridge, the HVO committed the crime of wanton destruction of cities, towns or villages, or devastation not justified by military necessity, a violation of the laws or customs of war and a crime recognised by Article 3 of the Statute.[1234]

(i) Arguments of the Parties

407. Stojić submits that the Trial Chamber erred in law in finding that the destruction of the Old Bridge was disproportionate.[1235] With respect to the Trial Chamber's finding that the Old Bridge's destruction placed the civilian population in isolation, Stojić contends that it erroneously assessed the actual harm sustained after the subsequent destruction of the Kamenica Bridge, rather than the reasonably anticipated harm of the destruction of the Old Bridge.[1236] Further, he submits that the Trial Chamber erred in basing its finding that the destruction was disproportionate entirely on indirect effects, particularly the long-term harm through isolation and the psychological impact on the civilian population.[1237] More to this point, he submits that the Trial Chamber failed to analyse the harm caused by isolation and the psychological impact in terms of tangible injuries.[1238] Stojić also argues that the Trial Chamber should have placed more weight on its findings regarding the Old Bridge's importance to the ABiH and properly assessed the HVO's lack of alternative means to achieve the military objective of cutting off ABiH supply

[1229] Trial Judgement, Vol. 3, para. 1582. See Trial Judgement, Vol. 2, paras 1354, 1357.
[1230] Trial Judgement, Vol. 3, para. 1583. See Trial Judgement, Vol. 2, paras 1354, 1356-1357.
[1231] Trial Judgement, Vol. 3, para. 1583. See Trial Judgement, Vol. 2, para. 1355.
[1232] Trial Judgement, Vol. 3, para. 1584.
[1233] Trial Judgement, Vol. 3, para. 1585-1586.
[1234] Trial Judgement, Vol. 3, para. 1587.
[1235] Stojić's Response Brief, heading before para. 154, paras 154, 156, 163. See Stojić's Response Brief, para. 161. Stojić also argues that no reasonable chamber could have found that the destruction of the Old Bridge was disproportionate. Stojić's Response Brief, para. 162.
[1236] Stojić's Response Brief, paras 154, 158. See also Stojić's Response Brief, paras 156, 162.
[1237] Stojić's Response Brief, para. 157. See Stojić's Response Brief, paras 154, 156, 159.
[1238] Stojić's Response Brief, paras 158-159.

lines.[1239] Finally, he alleges that the Trial Chamber failed to explain why the expected harm to civilians was excessive given the anticipated military advantage.[1240] Stojić submits in response to the Prosecution's request for additional convictions that the Appeals Chamber should therefore refrain from doing so in relation to the destruction of the Old Bridge.[1241]

408. Praljak submits that the Trial Chamber erred in its conclusions pertaining to the Old Bridge, notably by finding that HVO forces were responsible for its destruction and in its analysis relating to the protection of cultural property and the principle of proportionality, and requests that the Appeals Chamber reverse his conviction under Count 1 (persecution as a crime against humanity).[1242] Petković submits that the Trial Chamber erred in law and fact in this regard, notably in relation to the elements of the crime of wanton destruction of property not justified by military necessity and in its proportionality analysis.[1243]

409. The Prosecution replies that Stojić fails to show that the Trial Chamber erred in concluding that the destruction of the Old Bridge was wanton.[1244] The Prosecution avers that the isolation of the population of Donja Mahala was the immediate effect of the destruction of the Old Bridge.[1245] It further submits that the Trial Chamber appropriately considered the psychological harm as well as the physical impact caused by isolation as these effects were not mere incidental by-products of an attack on a military objective, but were the primary aim of the HVO as part of its campaign of terror against the civilian population.[1246] The Prosecution also argues that Stojić fails to show that the Trial Chamber did not give appropriate weight to the anticipated military advantage of the Old Bridge's destruction.[1247]

410. The Prosecution rejects Praljak's and Petković's arguments and submits that the Trial Chamber properly concluded that the destruction of the Old Bridge amounted to the crime of wanton destruction not justified by military necessity.[1248]

[1239] Stojić's Response Brief, paras 154, 160-161. See also Stojić's Response Brief, paras 156, 162.
[1240] Stojić's Response Brief, para. 162. See also Stojić's Response Brief, para. 156.
[1241] Stojić's Response Brief, para. 163. See *supra*, para. 394.
[1242] Praljak's Appeal Brief, headings before paras 280, 283, 286, 290, paras 280, 283-296; Praljak's Response Brief, paras 153-154; Appeal Hearing, AT. 378 (22 Mar 2017).
[1243] Petković's Appeal Brief, paras 277-278(i)-(iii).
[1244] Prosecution's Reply Brief, paras 143, 145. See also Prosecution's Reply Brief, para. 151.
[1245] Prosecution's Reply Brief, para. 148. The Prosecution argues that, in any case, the subsequent destruction of the Kamenica Bridge was harm reasonably anticipated by the HVO. Prosecution's Reply Brief, para. 149.
[1246] Prosecution's Reply Brief, paras 147, 150. See Prosecution's Reply Brief, para. 144.
[1247] Prosecution's Reply Brief, para. 146. See Prosecution's Reply Brief, para. 143.
[1248] Prosecution's Response Brief (Praljak), paras 199-205, 207-210; Prosecution's Response Brief (Petković), paras 211-215. In response to the Appeals Chamber's request to discuss any impact an error regarding the Trial Chamber's legal findings on the destruction of the Old Bridge as a crime of wanton destruction would have on its findings that the destruction also constituted the crimes of persecution and unlawful infliction of terror on civilians, the Prosecution submits that the attack on the Old Bridge was unlawful because, although it was a lawful military target, it was not targeted for that reason. It argues that the bridge was instead destroyed as part of the HVO's protracted

(ii) Analysis

411. Turning to Stojić's and the Prosecution's submissions on the Trial Chamber's finding that the destruction of the Old Bridge was disproportionate and wanton, the Appeals Chamber notes that the Trial Chamber found that the Old Bridge, real property normally used by civilians, was used by both the ABiH and the inhabitants of the right and left banks of the Neretva between May and November 1993.[1249] The Trial Chamber further found that "the armed forces of the HVO had a military interest in destroying this structure" and, consequently, found that "at the time of the attack, the Old Bridge was a military target".[1250] The Trial Chamber, however, also found that the destruction of the bridge put the residents of Donja Mahala in virtually total isolation and that it had a very significant psychological impact on the Muslim population of Mostar.[1251] It therefore held that:

> [T]he damage to the civilian population was indisputable and substantial. It therefore holds by a majority, with Judge Antonetti dissenting, that the impact on the Muslim civilian population of Mostar was disproportionate to the concrete and direct military advantage expected by the destruction of the Old Bridge.[1252]

The Appeals Chamber recalls that the elements of wanton destruction not justified by military necessity, as a violation of the laws or customs of war, include, *inter alia*, the destruction of property that occurs on a large scale and that the destruction is not justified by military necessity.[1253] Since the Trial Chamber found that the Old Bridge was a military target at the time of the attack,[1254] and, thus, its destruction offered a definite military advantage,[1255] the Appeals Chamber, Judge Pocar dissenting, finds that it cannot be considered, in and of itself, as wanton destruction not justified by military necessity.[1256] Moreover, the Appeals Chamber, Judge Pocar dissenting, notes that when outlining the damage caused to the civilian population in its determination of whether the crime of wanton destruction had been committed, the Trial Chamber did not make any finding about other property being collaterally destroyed as a result of the attack

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campaign of terror directed against the Muslims of Mostar. It further submits that the attack was retribution for the fall of Vareš to ABiH forces, and that because the Old Bridge was completely unusable and could be considered destroyed after the shelling attacks on 8 November 1993, it "no longer had any military value" and no military advantage was to be gained "by bringing about its complete obliteration and collapse" on the following day. On these bases, the Prosecution submits that its destruction was not justified by military necessity. Appeal Hearing, AT. 450-454 (22 Mar 2017). See Order for the Preparation of the Appeal Hearing, p. 5, para. 2.

[1249] Trial Judgement, Vol. 3, para. 1582. See Trial Judgement, Vol. 2, paras 1284-1293.

[1250] Trial Judgement, Vol. 3, para. 1582.

[1251] Trial Judgement, Vol. 3, para. 1583.

[1252] Trial Judgement, Vol. 3, para. 1584.

[1253] *Hadžihasanović and Kubura* Decision on Rule 98*bis*, fn. 53; *Kordić and Čerkez* Appeal Judgement, para. 74.

[1254] Trial Judgement, Vol. 3, para. 1582.

[1255] *Kordić and Čerkez* Appeal Judgement, para. 53. See also Trial Judgement, Vol. 2, paras 1357, 1365, Vol. 3, paras 1582, 1584.

[1256] *Cf. Brđanin* Appeal Judgement, paras 337 ("Determining whether destruction occurred pursuant to military necessity involves a determination of what constitutes a military objective."), 341; *Kordić and Čerkez* Appeal Judgement, paras 54, 74.

on the Old Bridge.[1257] Rather, in reaching its conclusion that the attack on the Old Bridge was disproportionate, the Trial Chamber found that the attack isolated the Muslim population in Mostar and caused a very significant psychological impact.[1258] Thus, in the absence of any destruction of property *not justified by military necessity* in the Trial Chamber's legal findings for Count 20, the Appeals Chamber, Judge Pocar dissenting, concludes that a requisite element of the crime was not satisfied. Accordingly, the Appeals Chamber, Judge Pocar dissenting, finds that the Trial Chamber erred in finding that the destruction of the Old Bridge of Mostar constituted the crime of wanton destruction not justified by military necessity as a violation of the laws or customs of war.[1259] As a result, the Appeals Chamber, Judge Pocar dissenting, dismisses the Prosecution's submissions in this regard. The Appeals Chamber declines to enter convictions on appeal for wanton destruction not justified by military necessity, as a violation of the laws or customs of war, of the Old Bridge in Mostar.

412. In light of the preceding analysis and the Appeals Chamber's analysis, below, of its effects on the Trial Chamber's findings in relation to Count 1,[1260] the Appeals Chamber, Judge Pocar dissenting, considers that Praljak's and Petković's arguments are moot.

[1257] Trial Judgement, Vol. 3, paras 1583-1584. See Trial Judgement, Vol. 2, paras 1355-1357, 1365.

[1258] See Trial Judgement, Vol. 2, paras 1355-1357, 1365, Vol. 3, paras 1583-1586. The Appeals Chamber observes that the Trial Chamber found that "the destruction of the Old Bridge by the HVO may have been justified by military necessity", and subsequently, having discussed the question of proportionality, did not enter a discrete finding that the destruction was not justified by military necessity. Trial Judgement, Vol. 3, para. 1584. See also Trial Judgement, Vol. 3, para. 1587.

[1259] With regard to the Prosecution's submission that the attack on the Old Bridge was unlawful because, although it was a lawful military target, it was not targeted for that reason, and its argument that the bridge was instead destroyed as part of the HVO's protracted campaign of terror directed against the Muslims of Mostar, the Appeals Chamber considers that the Prosecution falls into circular reasoning. It cannot be said that destruction was not justified by military necessity because of the existence of a campaign of terror, if the fact that the bridge was a military target raises reasonable doubt as to whether its destruction was part of that campaign. Further, the argument that the destruction of the Old Bridge was retribution for the fall of Vareš to the ABiH forces deals with the question of the HVO's motive, which is irrelevant in law. *Limaj et al.* Appeal Judgement, para. 109; *Tadić* Appeal Judgement, paras 268-269; *Kanyarukiga* Appeal Judgement, para. 262. Finally, the Appeals Chamber turns to the Prosecution argument that because the Old Bridge was completely unusable and could be considered destroyed after the shelling attacks on 8 November 1993, it "no longer had any military value" and no military advantage was to be gained "by bringing about its complete obliteration and collapse" on the following day. The Trial Chamber found that the Old Bridge was or could be considered destroyed by the evening of 8 November 1993 as it was unusable and on the verge of collapse, and that it collapsed the following morning. However, it made no finding that the bridge ceased being a military target on the evening of 8 November 1993 or that the HVO knew that the ABiH could no longer use it for military purposes. Trial Judgement, Vol. 2, paras 1318, 1321, 1343, 1345, 1366. See also Trial Judgement, Vol. 2, para. 1326, Vol. 3, para. 1581. The Appeals Chamber notes in this regard that none of the evidence on which the Trial Chamber relied to find that the Old Bridge was destroyed by the evening of 8 November 1993 emanated from the HVO. See Trial Judgement, Vol. 2, paras 1316-1317. As such, the Prosecution fails to show that the HVO targeted the Old Bridge on any basis other than its status as a military target. The Appeals Chamber therefore dismisses its arguments.

[1260] See *infra*, paras 422-423.

3. Conclusion on wanton destruction not justified by military necessity

413. In sum, the Appeals Chamber agrees with the Prosecution's ground of appeal 3, in part, as it pertains to the Trial Chamber's failure to enter convictions under Count 20 against Prlić, Stojić, Praljak, Petković, Ćorić, and Pušić for the wanton destruction of property not justified by military necessity, as a violation of the laws or customs of war, in Prozor Municipality between May and early July 1993[1261] and Mostar Municipality between June and December 1993 (ten mosques).[1262] However, pursuant to its discretion under Article 25 of the Statute,[1263] the Appeals Chamber finds it appropriate to refrain from entering new convictions on appeal for wanton destruction not justified by military necessity as a violation of the laws or customs of war under Article 3 of the Statute.[1264] In so finding, the Appeals Chamber considers the interests of fairness to the Appellants balanced with considerations of the interests of justice, and taking into account the nature of the offences and the circumstances of this case.[1265]

414. With respect to the Old Bridge in Mostar, the Appeals Chamber, Judge Pocar dissenting, recalls that the Trial Chamber erred in finding that the destruction of the Old Bridge of Mostar constituted the crime of wanton destruction not justified by military necessity.[1266] The Appeals Chamber, Judge Pocar dissenting in part, therefore dismisses the relevant part of the Prosecution's ground of appeal 3 seeking a conviction for wanton destruction not justified by military necessity, as a violation of the laws or customs of war (Count 20), with respect to the Old Bridge.

4. Impact of errors in relation to the Old Bridge on the crimes of persecution and unlawful infliction of terror on civilians

415. The Trial Chamber relied on its finding on the destruction of the Old Bridge as a basis for its findings that the HVO committed both persecution as a crime against humanity (Count 1) and unlawful infliction of terror on civilians as a violation of the laws or customs of war (Count 25),[1267] and consequently convicted the Appellants for these crimes in relation to the Old Bridge.[1268]

[1261] See Trial Judgement, Vol. 3, para. 1566.
[1262] See Trial Judgement, Vol. 3, para. 1580. The Appeals Chamber notes in this regard that, for reasons set out elsewhere, this errror applies only to the destruction of three mosques between June 1993 and: (1) 15 November 1993, in relation to Stojić; (2) 9 November 1993, in relation to Praljak; and (3) 10 November 1993, in relation to Ćorić. See *supra*, para. 105; *infra*, paras 2002-2003, fn. 5395.
[1263] *Cf. Stanišić and Župljanin* Appeal Judgement, para. 1096 & fn. 3625; *Đorđević* Appeal Judgement, para. 928; *Šainović et al.* Appeal Judgement, fn. 5269; *Jelisić* Appeal Judgement, para. 73.
[1264] The Appeals Chamber notes however that insofar as the ten mosques in Mostar are concerned, the Trial Chamber also convicted the Appellants under Count 21. Trial Judgement, Vol. 3, paras 1609-1610.
[1265] *Cf. Stanišić and Župljanin* Appeal Judgement, para. 1096 & fn. 3626 and references cited therein.
[1266] See *supra*, para. 411.
[1267] Trial Judgement, Vol. 3, paras 1690-1692, 1711-1713.
[1268] See Trial Judgement, Vol. 3, paras 1690-1692, 1711-1713, Vol. 4, para. 59, Disposition, pp. 430-431.

416. Specifically, when finding that persecution had been committed, the Trial Chamber considered a number of "crimes against the Muslims of the Municipality of Mostar",[1269] including the destruction of the Old Bridge, which it recalled as having "undeniable cultural, historical and symbolic value for the Muslims".[1270] The Trial Chamber found that by committing all these crimes, the HVO specifically targeted Muslims, introduced *de facto* discrimination, and violated their basic rights to "life, freedom and dignity".[1271] Thus, it was satisfied that the HVO intended to discriminate against these Muslims and violate their basic rights to "life, human dignity, freedom and property".[1272]

417. In its legal findings on the unlawful infliction of terror on civilians, the Trial Chamber also considered various acts by the HVO including the destruction of the Old Bridge.[1273] It recalled that the destruction had a major psychological impact on the morale of the population and that the HVO had to be aware of that impact, in particular because of its "great symbolic, cultural and historical value".[1274] The Trial Chamber was satisfied that the deliberate isolation of the population in East Mostar for several months, after forcibly transferring a large part of the population there, and thus the exacerbation of their distress and difficult living conditions, demonstrated the specific intention of the HVO to spread terror.[1275] The Trial Chamber concluded that the HVO committed acts of violence, "the main aim of which was to inflict terror on the population", thereby committing unlawful infliction of terror on civilians.[1276]

(a) Arguments of the Parties

418. At the Appeal Hearing, Stojić, Praljak, and the Prosecution were asked to discuss any impact an error regarding the Trial Chamber's legal findings on the destruction of the Old Bridge as a crime of wanton destruction (Count 20) would have on its findings that the destruction also constituted the crimes of persecution (Count 1) and unlawful infliction of terror on civilians (Count 25).[1277]

419. Stojić argues that to state that one can comply with international humanitarian law in relation to distinction and targeting but still be responsible for persecution, for example, for the

[1269] Trial Judgement, Vol. 3, para. 1712. See Trial Judgement, Vol. 3, paras 1707-1711, 1713.
[1270] Trial Judgement, Vol. 3, para. 1711.
[1271] Trial Judgement, Vol. 3, para. 1712.
[1272] Trial Judgement, Vol. 3, paras 1712-1713.
[1273] Trial Judgement, Vol. 3, paras 1689-1692.
[1274] Trial Judgement, Vol. 3, para. 1690.
[1275] Trial Judgement, Vol. 3, para. 1691.
[1276] Trial Judgement, Vol. 3, para. 1692.
[1277] Order for the Preparation of the Appeal Hearing, p. 5, para. 2.

destruction of the Old Bridge, leads to massive policy implications unsupported by law or practice.[1278]

420. Praljak argues that the Trial Chamber's errors relating to the destruction of the Old Bridge have an impact on the crimes of persecution and terror as they show that these crimes have been tried on the basis of erroneous facts.[1279] Praljak submits that although the Trial Chamber considered a number of acts in Mostar Municipality – including the destruction of the Old Bridge and mosques, sniping, "bombings", the isolation of the population, and forced transfer – when concluding that the crimes of persecution and terror had been committed, none of the facts relating to these acts had been properly established with regard to him or the HVO.[1280] In particular, Praljak challenges the underlying findings pertaining to sniping, "bombings", and the destruction of or damage to mosques and submits that the "crime[s] of persecution and spreading terror" must be reversed.[1281]

421. The Prosecution submits that, if the Appeals Chamber were to find an error with respect to the legal findings under Count 20 on the destruction of the Old Bridge, it would have an impact on Stojić's and Praljak's convictions for persecution and the unlawful infliction of terror, but that the impact would be minimal.[1282] In this regard, it argues that a determination that the destruction was lawful would mean that it could not form part of the convictions for persecution or unlawful infliction of terror given that the attack would not have been carried out with the primary intent to inflict terror or with the intent to discriminate.[1283] The Prosecution submits, however, that since the legal findings for persecution (Count 1) and unlawful infliction of terror on civilians (Count 25) are based on the aggregation of numerous crimes and acts, Stojić's and Praljak's convictions on those counts would remain intact.[1284]

(b) Analysis

422. Turning first to persecution as a crime against humanity under Article 5 of the Statute (Count 1), the Appeals Chamber recalls that it consists of an act or omission which:

> 1. discriminates in fact and which denies or infringes upon a fundamental right laid down in international customary or treaty law (the *actus reus*); and

[1278] Appeal Hearing, AT. 283 (21 Mar 2017).
[1279] Appeal Hearing, AT. 377-378 (22 Mar 2017).
[1280] Appeal Hearing, AT. 377, 379-380 (22 Mar 2017).
[1281] Appeal Hearing, AT. 378 (22 Mar 2017). See Appeal Hearing, AT. 379 (22 Mar 2017).
[1282] Appeal Hearing, AT. 449 (22 Mar 2017).
[1283] Appeal Hearing, AT. 449 (22 Mar 2017).
[1284] Appeal Hearing, AT. 449-450 (22 Mar 2017), referring to Trial Judgement, Vol. 3, paras 1689-1692, 1694-1741.

> 2. was carried out deliberately with the intention to discriminate on one of the listed grounds, specifically race, religion or politics (the *mens rea*).[1285]

Persecution as a crime against humanity requires evidence that the principal perpetrator had the specific intent to discriminate on one of these grounds.[1286] While the requisite discriminatory intent may not be inferred directly from the general discriminatory nature of an attack characterised as a crime against humanity, the "discriminatory intent may be inferred from such a context as long as, in view of the facts of the case, circumstances surrounding the commission of the alleged acts substantiate the existence of such intent".[1287] Further, the Appeals Chamber has found that the destruction of property, depending on the nature and extent of the destruction, may constitute a crime of persecution of equal gravity to other crimes listed in Article 5 of the Statute.[1288]

423. The Appeals Chamber, Judge Pocar dissenting, recalls that the Trial Chamber erred in finding that the destruction of the Old Bridge of Mostar constituted the crime of wanton destruction not justified by military necessity as a violation of the laws or customs of war.[1289] The Appeals Chamber notes that the Trial Chamber previously found that "the armed forces of the HVO had a military interest in destroying this structure" and that "at the time of the attack, the Old Bridge was a military target".[1290] However, the Trial Chamber subsequently reached the conclusion that the destruction was carried out deliberately with the intent to discriminate against Muslims by noting that the Old Bridge "had undeniable cultural, historical and symbolic value for the Muslims".[1291] Considering the Trial Chamber's findings that the HVO had a military interest in the destruction of the Old Bridge and that it was a military target, the Appeals Chamber, Judge Pocar dissenting, finds that no reasonable trier of fact could have found, beyond reasonable doubt, that the HVO had the specific intent to discriminate. The Appeals Chamber, Judge Pocar dissenting, finds that this error occasions a miscarriage of justice that invalidates the Trial Chamber's conclusion on the crime of persecution as it concerns the destruction of the Old Bridge.

[1285] *Kvočka et al.* Appeal Judgement, para. 320, referring to *Krnojelac* Appeal Judgement, para. 185, *Vasiljević* Appeal Judgement, para. 113, *Blaškić* Appeal Judgement, para. 131, *Kordić and Čerkez* Appeal Judgement, para. 101. See also, *e.g.*, *Nyiramasuhuko et al.* Appeal Judgement, para. 2138, citing *Nahimana et al.* Appeal Judgement, para. 985.

[1286] *Šainović et al.* Appeal Judgement, para. 579; *Blaškić* Appeal Judgement, para. 164; *Krnojelac* Appeal Judgement, para. 184.

[1287] *Šainović et al.* Appeal Judgement, para. 579; *Blaškić* Appeal Judgement, para. 164; *Krnojelac* Appeal Judgement, para. 184.

[1288] *Kordić and Čerkez* Appeal Judgement, para. 108; *Blaškić* Appeal Judgement, para. 149. See also *Blaškić* Appeal Judgement, para. 146.

[1289] See *supra*, para. 411.

[1290] Trial Judgement, Vol. 3, para. 1582. See also Trial Judgement, Vol. 2, paras 1290, 1354, 1357; *supra*, paras 406, 411.

[1291] Trial Judgement, Vol. 3, para. 1711. See Trial Judgement, Vol. 3, paras 1712-1713.

424. With respect to the war crime of unlawful infliction of terror on civilians as a violation of the laws or customs of war (Count 25),[1292] the Appeals Chamber notes that it is comprised of acts or threats of violence the primary purpose of which is to spread terror among the civilian population,[1293] and that the *mens rea* includes the specific intent to spread terror among the civilian population.[1294] Other purposes of the unlawful acts or threats may have coexisted simultaneously with the purpose of spreading terror among the civilian population, provided that the intent to spread terror among the civilian population was principal among the aims.[1295] Such intent can be inferred from the "nature, manner, timing and duration" of the acts or threats.[1296] The Appeals Chamber in the *Galić* case described the crime of terror as not being "a case in which an explosive device was planted outside of an ongoing military attack but rather a case of 'extensive trauma and psychological damage' being caused by 'attacks [which] were designed to keep the inhabitants in a constant state of terror'".[1297]

425. The Trial Chamber considered the destruction of the Old Bridge as an "act[] of violence, the main aim of which was to inflict terror on the population".[1298] Although, as stated above, the act of destroying the Old Bridge could have simultaneously served multiple purposes, the Trial Chamber made no express mention of its previous findings that the HVO had a military interest in destroying the bridge and that it was a military target[1299] – findings that would have been essential to an assessment of the purpose of its destruction. In a notable contrast, the Trial Chamber expressly considered the lack of military value of ten mosques destroyed in East Mostar.[1300] The Trial Chamber instead reached its conclusion about the purpose of the destruction of the Old Bridge after recalling its factual findings on the *impact* of the destruction on the population and that the HVO had to have been aware of such impact.[1301] Considering the Trial Chamber's findings that the HVO had a military interest in the destruction of the Old Bridge and that it was a military target, the Appeals Chamber, Judge Pocar dissenting, finds that no reasonable trier of fact could have found, beyond reasonable doubt, that the HVO had the specific intent to commit terror. The Appeals Chamber, Judge Pocar dissenting, finds that this error occasions a miscarriage of justice that

[1292] Judge Liu dissents from all portions of this Judgement dealing with the unlawful infliction of terror on civilians as a violation of the laws or customs of war (Count 25) since he is of the view that the Tribunal does not have jurisdiction over this crime and that the elements of this offence as set out in the present paragraph do not adequately define a criminal charge.
[1293] *D. Milošević* Appeal Judgement, paras 32-33, 37; *Galić* Appeal Judgement, paras 69, 102.
[1294] *D. Milošević* Appeal Judgement, para. 37; *Galić* Appeal Judgement, paras 102, 104.
[1295] *Galić* Appeal Judgement, para. 104. See *D. Milošević* Appeal Judgement, para. 37.
[1296] *D. Milošević* Appeal Judgement, para. 37, citing *Galić* Appeal Judgement, para. 104.
[1297] *Galić* Appeal Judgement, para. 102 (internal references omitted).
[1298] Trial Judgement, Vol. 3, para. 1692. See Trial Judgement, Vol. 3, para. 1690.
[1299] See Trial Judgement, Vol. 3, para. 1582. See also Trial Judgement, Vol. 2, paras 1290, 1354, 1357; *supra*, paras 406, 411, 423.
[1300] See Trial Judgement, Vol. 3, para. 1690.
[1301] See Trial Judgement, Vol. 3, para. 1690 & fn. 2625.

invalidates the Trial Chamber's conclusion on the crime of unlawful infliction of terror as it concerns the destruction of the Old Bridge.

426. In light of the foregoing, the Appeals Chamber, Judge Pocar dissenting, reverses the Trial Chamber's findings that the destruction of the Old Bridge constituted persecution as a crime against humanity (Count 1) and the unlawful infliction of terror on civilians as a violation of the laws or customs of war (Count 25) and, Judge Pocar dissenting, acquits the Appellants of these counts in relation to the Old Bridge. The Appeals Chamber, Judge Pocar dissenting, will consider below the impact of these acquittals, if any, upon the sentences of the Appellants. The Appeals Chamber further notes that the Trial Chamber considered a number of other underlying acts when holding that these crimes had been committed.[1302] Praljak's submissions challenging the underlying findings of these other acts are dismissed elsewhere.[1303] Thus, to the extent that he contends that his convictions under Counts 1 and 25 should be reversed in their entirety,[1304] the Appeals Chamber, Judge Pocar dissenting in part, dismisses his argument.

D. Attacks of 18 January 1993 in Gornji Vakuf Municipality and Related Crimes

427. The Trial Chamber found that on 18 January 1993, the HVO attacked the villages of Duša, Hrasnica, Uzričje, and Ždrimci in Gornji Vakuf Municipality with mortar shells, heavy machine guns, and artillery.[1305] It found that in Duša, the HVO killed seven inhabitants who had gathered in the cellar of Enver Šljivo's house and who were not taking part in the fighting,[1306] while in all four villages houses belonging to the Muslim inhabitants were destroyed by shelling during the attacks.[1307]

1. The killing of seven civilians in Duša (Stojić's Sub-ground 45.1 and Praljak's Ground 12)

428. The Trial Chamber found that "the HVO attacked the village [of Duša] by using weapons – more specifically, shells – the nature of which is such that it is impossible to distinguish military from civilian targets".[1308] It further found that the HVO forces made no effort to allow the civilian population of the village to flee before the attack. Consequently, it held that the shelling of Duša was an indiscriminate attack. On this basis, it found that the HVO, by firing several shells at the village and in particular at Enver Šljivo's house, intended to cause serious bodily harm to the

[1302] See Trial Judgement, Vol. 3, paras 1689-1692, 1694-1741. See also *infra*, para. 563.
[1303] See *supra*, para. 419 & fns 1280-1281; *infra*, paras 541, 543 (sniping), 549, 554 (shelling), 567, 569 (destruction of or damage to mosques).
[1304] See *supra*, para. 419.
[1305] Trial Judgement, Vol. 2, paras 357-358, 369, 374, 381.
[1306] Trial Judgement, Vol. 2, paras 366, 368.
[1307] Trial Judgement, Vol. 2, paras 367-368, 373, 379, 387.
[1308] Trial Judgement, Vol. 3, paras 663, 711.

civilians who had taken refuge there, harm that it could reasonably have foreseen could cause their deaths, thereby committing murder as a crime against humanity (Count 2) and wilful killing as a grave breach of the Geneva Conventions (Count 3) against each of these persons, crimes under Articles 5 and 2 of the Statute, respectively.[1309] The Trial Chamber subsequently relied on these findings in its analysis of persecution as a crime against humanity under Article 5 (Count 1), inhumane acts as a crime against humanity under Article 5 (Count 15), and inhuman treatment as a grave breach of the Geneva Conventions under Article 2 (Count 16).[1310]

(a) Arguments of the Parties

429. Stojić and Praljak submit that the Trial Chamber erred in concluding that HVO forces indiscriminately shelled Duša and intended to cause serious bodily harm to civilians.[1311] Praljak argues that the Trial Chamber erroneously concluded that the attack was led by HVO and HV soldiers.[1312] Stojić and Praljak argue that the Trial Chamber erred in law and fact when concluding that shells are by their nature indiscriminate.[1313] Stojić submits that the Trial Chamber erred when finding that the shelling of Enver Šljivo's house, in particular, was indiscriminate, rather than an attack on a legitimate military target.[1314] Praljak argues that the Trial Chamber failed to consider that Muslim defence lines were situated in proximity to Enver Šljivo's house and that the shell that hit it was therefore aimed at a legitimate military target.[1315] In this regard, he further submits that the Trial Chamber did not establish: (1) the probability of the shell missing its target;[1316] and (2) that the HVO knew or should have known that civilians were in the house.[1317] Stojić and Praljak contend that the Trial Chamber relied solely on its erroneous finding that the attack on Duša was indiscriminate to incorrectly conclude that the HVO intended to cause serious bodily harm to

[1309] Trial Judgement, Vol. 3, paras 663, 711.
[1310] Trial Judgement, Vol. 3, paras 1224, 1315, 1699.
[1311] Stojić's Appeal Brief, heading before para. 393, paras 393-394; Praljak's Appeal Brief, headings before paras 186, 195, paras 194, 199; Appeal Hearing, AT. 396 (22 Mar 2017). See also Stojić's Reply Brief, para. 78.
[1312] Praljak's Appeal Brief, para. 186, referring to, *inter alia*, Trial Judgement, Vol. 2, para. 358; Appeal Hearing, AT. 397-398 (22 Mar 2017). See also Praljak's Appeal Brief, paras 189, 195.
[1313] Stojić's Appeal Brief, para. 394; Praljak's Appeal Brief, paras 187-188. See Appeal Hearing, AT. 278 (21 Mar 2017) (specifying that it was a legal error), 398 (22 Mar 2017). See also Stojić's Response Brief, para. 150; *infra*, para. 448. Praljak also argues that the Trial Chamber's finding that the HVO made no effort to allow the civilian population to flee before the attack is unfounded. Praljak's Appeal Brief, para. 193, referring to, *inter alia*, Exs. P01162, 4D00348, p. 3.
[1314] Stojić's Appeal Brief, para. 395. See also Stojić's Response Brief, paras 151-152; Appeal Hearing, AT. 278-279 (21 Mar 2017); *infra*, para. 448.
[1315] Praljak's Appeal Brief, paras 190-192, 198; Praljak's Reply Brief, para. 66. See Praljak's Appeal Brief, paras 187 (referring to, *inter alia*, Trial Judgement, Vol. 2, paras 362, 366), 189.
[1316] Praljak's Appeal Brief, para. 198. See also Appeal Hearing, AT. 403 (22 Mar 2017).
[1317] Praljak's Appeal Brief, paras 189, 192, 198; Praljak's Reply Brief, para. 66; Appeal Hearing, AT. 397 (22 Mar 2017). Praljak submits in this regard that Enver Šljivo was the commander of the village defence. Praljak's Appeal Brief, paras 189 (referring to, *inter alia*, Trial Judgement, Vol. 2, para. 365), 192; Praljak's Reply Brief, para. 66.

civilians.[1318] Stojić and Praljak request to be acquitted of these charges under Counts 1, 2, 3, 15, and 16.[1319]

430. The Prosecution responds that, contrary to Praljak's assertion, the Trial Chamber reasonably concluded that the HVO and HV soldiers attacked Duša.[1320] The Prosecution does not expressly dispute Stojić's and Praljak's submissions that the attack was not indiscriminate, but submits that the Trial Chamber reasonably rejected the argument that the HVO aimed at legitimate military targets.[1321] It submits that the HVO directly targeted Enver Šljivo's house with the intent to kill and cause serious bodily and mental harm to civilians, and that this conclusion is supported by the evidence.[1322]

431. Stojić replies that there is no basis in the Trial Chamber's findings for a conclusion that the HVO directly targeted civilians.[1323] Praljak replies that the Trial Chamber's and Prosecution's analyses of events in Duša are based on the erroneous finding that the HVO attack on Gornji Vakuf was part of an overall plan to take control of the area.[1324]

432. At the Appeal Hearing, the Parties were invited to discuss the basis for the Trial Chamber's finding that during the attack on Duša on 18 January 1993, HVO forces intended to cause serious bodily harm to the civilians who had taken refuge in Enver Šljivo's house, harm which they could reasonably have foreseen could cause their deaths.[1325] The Prosecution reiterates its position that the attack on Enver Šljivo's house was a deliberate attack on civilians,[1326] and refers to further evidence in this regard.[1327] It also argues, however, that when assessed overall, "the Gornji Vakuf attack" was

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[1318] Stojić's Appeal Brief, heading before para. 393, para. 397; Praljak's Appeal Brief, paras 197-198. See also Praljak's Appeal Brief, para. 195.
[1319] Stojić's Appeal Brief, paras 396-397; Stojić's Reply Brief, para. 78; Praljak's Appeal Brief, para. 185.
[1320] Prosecution's Response Brief (Praljak), para. 130; Appeal Hearing, AT. 418-419 (22 Mar 2017). See Prosecution's Response Brief (Praljak), paras 125-126.
[1321] Prosecution's Response Brief (Stojić), paras 360-361; Prosecution's Response Brief (Praljak), paras 127-128. See also Prosecution's Reply Brief, para. 142 & fn. 550; *infra*, para. 449. The Prosecution also argues that the Trial Chamber reasonably found, in line with the evidence, that HVO forces made no effort to allow civilians to flee before the attack. Prosecution's Response Brief (Praljak), para. 129.
[1322] Prosecution's Response Brief (Stojić), paras 361-362; Prosecution's Response Brief (Praljak), paras 128, 131 (referring to, *inter alia*, Trial Judgement, Vol. 3, paras 663, 711); Prosecution's Reply Brief, fn. 550. See also *infra*, para. 449; Prosecution's Response Brief (Stojić), paras 359, 363. Specifically, the Prosecution refers to evidence that an HVO tank, that is, a direct-fire weapon, penetrated the wall of Enver Šljivo's basement and continued firing on the house as civilians fled. Prosecution's Response Brief (Stojić), para. 360; Prosecution's Response Brief (Praljak), para. 127; Prosecution's Reply Brief, fn. 550.
[1323] Stojić's Reply Brief, para. 78. See also Stojić's Reply Brief, para. 77.
[1324] Praljak's Reply Brief, para. 65.
[1325] Order for the Preparation of the Appeal Hearing, pp. 5-6, para. 3.
[1326] Appeal Hearing, AT. 211, 214 (20 Mar 2017).
[1327] The Prosecution refers to evidence as to: (1) the locations and positions of the defenders of the village relative to Enver Šljivo's house and each other; (2) the HVO tank's line of sight to Enver Šljivo's house; (3) the supposedly "precise" nature of direct-fire weapons; (4) the fact that the tank fired "at least two" consecutive shells, including on fleeing civilians; and (5) the HVO's knowledge that the house was a civilian object. Appeal Hearing, AT. 211-214, 216-217 (20 Mar 2017), referring to, *inter alia*, Ex. P10108, p. 3. The Prosecution also submits that a residential house is a "*prima facie* civilian object". Appeal Hearing, AT. 419 (22 Mar 2017).

conducted with no regard for the principle of distinction, and that the Trial Chamber's conclusion that the civilians killed in Duša were victims of an indiscriminate attack was therefore correct.[1328] Finally, the Prosecution suggests that even under the Defence theory that the shelling of Enver Šljivo's house was an attack on a lawful target, the evidence discloses an indiscriminate or, at best, a "grossly disproportionate" attack.[1329] Stojić and Praljak argue that neither the Trial Chamber's findings nor the evidence referred to by the Prosecution establish that the HVO forces had the requisite intent.[1330] Stojić also impugns the Rule 92 *bis* evidence of Witness Kemal Šljivo.[1331]

(b) Analysis

433. As a preliminary matter, the Appeals Chamber observes that the Trial Chamber's legal findings in relation to the killing of seven civilians in Duša on 18 January 1993 under Counts 1 (persecution as a crime against humanity), 15 (inhumane acts as a crime against humanity), and 16 (inhuman treatment as a grave breach of the Geneva Conventions) are substantiated solely by reference to its legal findings under Counts 2 (murder as a crime against humanity) and 3 (wilful killing as a grave breach of the Geneva Conventions).[1332] In other words, the Trial Chamber made no distinct legal findings on the killings in relation to Counts 1, 15, and 16. Insofar as Stojić's and Praljak's submissions impugn the Trial Chamber's findings under Counts 1, 15, and 16, they are premised exclusively on their challenges to findings under Counts 2 and 3. The Appeals Chamber will accordingly address the challenges to the findings through consideration of the challenges to Counts 2 and 3 before assessing any impact on the remaining counts.

434. The Trial Chamber found that the attack on Duša was indiscriminate on the basis that: (1) the HVO attacked the village using weapons – more specifically, shells – the nature of which is such that it is impossible to distinguish military from civilian targets; and (2) the HVO made no effort to allow the civilian population to flee before the attack.[1333] It provided no references in support of the finding that "shells" are of such a nature that it is impossible to distinguish between civilian and military targets.[1334] The Appeals Chamber would have expected such a finding to be

[1328] Appeal Hearing, AT. 215-216 (20 Mar 2017), referring to, *inter alia*, Trial Judgement, Vol. 2, para. 372, Vol. 4, paras 45, 48, 704.
[1329] Appeal Hearing, AT. 217-218 (20 Mar 2017), AT. 420 (22 Mar 2017).
[1330] Appeal Hearing, AT. 277-280 (21 Mar 2017), AT. 396-398, 400, 403 (22 Mar 2017). Ćorić also responds to the Prosecution's submissions in relation to the killing of seven civilians in Duša. Appeal Hearing, AT. 586-587 (24 Mar 2017).
[1331] Appeal Hearing, AT. 279-280 (21 Mar 2017).
[1332] Trial Judgement, Vol. 3, para. 1224 & fn. 1965 (Count 15, inhumane acts as a crime against humanity), para. 1315 & fn. 2116 (Count 16, inhuman treatment as a grave breach of the Geneva Conventions), para. 1699 (Count 1, persecution as a crime against humanity).
[1333] Trial Judgement, Vol. 3, paras 663, 711.
[1334] See Trial Judgement, Vol. 3, paras 663, 711 and references cited therein.

based on evidence that the weapon employed in the attack, when used in its normal or designed circumstances, will inevitably be indiscriminate, in the sense that it is incapable of being directed at a specific military objective or its effects are incapable of being limited as required by law.[1335] In the absence of such an assessment, the Appeals Chamber considers that no reasonable trier of fact could have found that "shells", without further specification, are inherently indiscriminate, and accordingly reverses this finding.

435. In light of this error, the Trial Chamber's finding that the attack on Duša was indiscriminate therefore rests exclusively on its finding that the HVO made no effort to allow the civilian population to flee before the attack.[1336] The Appeals Chamber considers that no reasonable trier of fact could have reached the conclusion that the attack on Duša was indiscriminate on this basis alone.[1337]

436. The Appeals Chamber notes that the Trial Chamber relied on its finding that the attack on the village of Duša was indiscriminate to substantiate its finding that the HVO forces had the requisite *mens rea* for murder and wilful killing.[1338] Having reversed this finding, therefore, the Appeals Chamber now turns to the question of whether the Trial Chamber's conclusion that the HVO forces had the requisite *mens rea* for murder and wilful killing still stands on the basis of the Trial Chamber's remaining findings and evidence referred to by the Parties, in order to determine if its error of fact occasioned a miscarriage of justice.

437. It will first address the Prosecution's argument that when assessed overall, "the Gornji Vakuf attack" was conducted with no regard for the principle of distinction, and that the Trial Chamber's conclusion that the civilians killed in Duša were victims of an indiscriminate attack is therefore correct. The Prosecution refers in support to, *inter alia*, Trial Chamber findings in relation to the attack on Hrasnica and on how the Gornji Vakuf attacks formed part of a "preconceived plan", that is, the implementation of the CCP in Gornji Vakuf.[1339] The Appeals Chamber notes, however, that the Trial Chamber's finding that the attacks on Hrasnica, Uzričje, and Ždrimci on 18 January 1993 were indiscriminate is reversed elsewhere.[1340] This argument is therefore dismissed.

[1335] See, *e.g.*, William H. Boothby, *Weapons and the Law of Armed Conflict* (1st ed., 2009), pp. 83, 226-227, referring to, *inter alia*, Steven Haines, "Weapons, Means and Methods of Warfare", *in* Elizabeth Wilmshurst and Susan Breau (eds.), *Perspectives on the ICRC Study on Customary International Humanitarian Law* (2007), p. 266.
[1336] Trial Judgement, Vol. 3, paras 663, 711.
[1337] Praljak's argument with regard to the Trial Chamber's finding that the HVO made no effort to allow the civilian population to flee before the attack is therefore moot.
[1338] Trial Judgement, Vol. 3, paras 663, 711.
[1339] See *supra*, para. 432 & fn. 1328.
[1340] See *infra*, para. 453.

438. The Prosecution's remaining arguments seek, on the basis of the evidence, to characterise the HVO attack as a deliberate attack on civilians, a "grossly disproportionate attack", or an indiscriminate attack (the latter on an alternative basis to that of the Trial Chamber's finding).[1341] The Appeals Chamber notes that the Prosecution's submissions are in effect offered as an alternative to the Trial Chamber's findings on the attack rather than in support of them, and in some instances even appear to contradict them. The crux of the Prosecution's argument, for example, is that Enver Šljivo's house was targeted by tank fire,[1342] where the Trial Chamber made no such finding, and in fact found that the HVO attacked Duša with mortar shells, heavy machine guns, and artillery.[1343]

439. In the present case, the Trial Chamber found that there were members of the ABiH in Duša in mid-January 1993,[1344] and that prior to the attack on 18 January 1993, men from the ABiH and the village defence were "preparing to defend the village, taking up positions in particular in the forest of Duša".[1345] An HVO intelligence report dated 16 January 1993 indicated that there were 25 Muslim soldiers in Duša and that they were situated in the middle of the village "near the big house".[1346] The Appeals Chamber notes in particular that Witness BW explicitly accepted that Enver Šljivo's house was *between* the position of HVO forces which fired the shells and the Muslim defence lines,[1347] *i.e.* the house was situated in the line of fire between the HVO forces and the defenders of the village.

440. The Appeals Chamber notes that Witness BY testified that there was gunfire after the civilians taking shelter left the basement,[1348] and that Kemal Šljivo stated that he heard "gun shots coming from all directions".[1349] Neither of these statements clearly establishes whether the Muslim defenders of the village returned fire at the HVO forces, nor do other relevant sections of the trial record referred to by the Parties.[1350]

441. In light of these findings and the relevant evidence considered as a whole, the Appeals Chamber finds that no reasonable trier of fact could have concluded that the HVO forces in

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[1341] See *supra*, paras 430, 432.
[1342] See *supra*, fns 1322, 1327.
[1343] Trial Judgement, Vol. 2, para. 357. See Trial Judgement, Vol. 2, para. 358.
[1344] Trial Judgement, Vol. 2, para. 364.
[1345] Trial Judgement, Vol. 2, para. 362 (internal reference omitted).
[1346] Ex. 3D00527. The "big house" appears to refer to the house of Enver Šljivo. See Ex. P10108, p. 3. See also Ex. IC00059 (confidential); Witness BY, T. 9076-9077 (27 Oct 2006); Witness BW, T. 8770 (closed session) (19 Oct 2006).
[1347] Witness BW, T. 8807 (closed session) (19 Oct 2006). See also Ex. IC00059 (confidential). The Trial Chamber expressly gave credence to Witness BW's evidence. Trial Judgement, Vol. 2, para. 344.
[1348] Witness BY, T. 9077 (27 Oct 2006). The Trial Chamber expressly gave credence to Witness BY's evidence. Trial Judgement, Vol. 2, para. 344.
[1349] Ex. P10108, p. 4. The Trial Chamber expressly gave credence to Kemal Šljivo's evidence. Trial Judgement, Vol. 2, para. 344.

Duša possessed the requisite *mens rea* for murder and wilful killing, given the ongoing combat activity in the vicinity of the house and, in particular, the position of the defenders of the village relative to the house. As such, the Trial Chamber's factual error occasioned a miscarriage of justice insofar as it underpinned the Trial Chamber's finding that the killing of seven civilians during the attack on Duša constituted murder as a crime against humanity (Count 2) and wilful killing as a grave breach of the Geneva Conventions (Count 3).[1351] The Appeals Chamber accordingly reverses these findings.

442. Further, as the Appeals Chamber has noted above, the Trial Chamber's findings under Counts 2 and 3 provided the sole basis for its subsequent findings in relation to the killings in Duša under Counts 1, 15, and 16.[1352] As this sole basis is reversed, so too are these subsequent findings.

443. The Appeals Chamber accordingly grants Stojić's sub-ground of appeal 45.1 and Praljak's ground of appeal 12. The convictions of the Appellants under Counts 1, 2, 3, 15, and 16 with regard to the killing of seven civilians in Duša are reversed.[1353] The impact of this reversal, if any, on the Trial Chamber's findings as to the CCP, as well as on the Appellants' sentences, will be assessed below.[1354]

2. Wanton destruction of cities, towns or villages, or devastation not justified by military necessity in Gornji Vakuf Municipality (Prosecution's Ground 3 in part)

444. With regard to the destruction of houses by shelling during the attacks on Duša, Hrasnica, Uzričje, and Ždrimci, the Trial Chamber noted that the destruction was extensive.[1355] It further noted that members of the ABiH were present in the villages at the time of the HVO attacks and that some armed Muslim men were hidden inside the houses from time to time.[1356] The Trial Chamber then referred to its legal findings in relation to murder and wilful killing in Gornji Vakuf Municipality and recalled its finding that the shelling of these villages was an indiscriminate attack.[1357] It therefore found that the destruction of houses by shelling during the attacks constituted

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[1350] See, *e.g.*, Witness BY, T. 9077-9078 (27 Oct 2006); Witness BW, T. 8781 (19 Oct 2006).
[1351] Trial Judgement, Vol. 3, paras 663, 711.
[1352] See *supra*, para. 433.
[1353] The Appeals Chamber recalls that Pušić was not convicted of any charges in relation to these killings as he was not a member of the JCE as of January 1993. Trial Judgement, Vol. 4, para. 1229.
[1354] See *infra*, paras 886, 3359-3365.
[1355] Trial Judgement, Vol. 3, para. 1568. See Trial Judgement, Vol. 3, paras 1569-1570. See also Trial Judgement, Vol. 2, paras 367-368 (referring to evidence that two houses in Duša had been destroyed by shelling), 373 (referring to testimony that three houses in Hrasnica were destroyed by shelling), 379 (referring to evidence that at least two houses in Uzričje were destroyed by shelling), 387 (referring to evidence that "a number" of houses in Ždrimci were destroyed by shelling).
[1356] Trial Judgement, Vol. 3, para. 1569.
[1357] Trial Judgement, Vol. 3, para. 1569 & fn. 2468.

wanton destruction of cities, towns or villages, or devastation not justified by military necessity as a violation of the laws or customs of war (Count 20).[1358]

(a) Arguments of the Parties

445. The Appeals Chamber recalls that the Prosecution has requested that it enter convictions against Prlić, Stojić, Praljak, Petković, and Ćorić for wanton destruction of cities, towns or villages, or devastation not justified by military necessity (Count 20), a violation of the laws or customs of war and a crime punishable under Article 3 of the Statute, in relation to the destruction of houses belonging to Bosnian Muslims in the villages of Duša, Hrasnica, Uzričje, and Ždrimci in Gornji Vakuf Municipality on 18 January 1993.[1359] It further recalls that pursuant to paragraph 5 of the Practice Direction on Formal Requirements, if an appellant relies on a ground of appeal to reverse an acquittal, the respondent may support the acquittal on additional grounds of appeal in the respondent's brief.[1360]

446. Prlić responds that he was not responsible for destruction in Gornji Vakuf and claims that the Trial Chamber relied upon a mischaracterisation of evidence and unreliable testimony when making findings regarding his participation in the attack on Gornji Vakuf and regarding his intent to commit property destruction crimes.[1361]

447. Praljak responds that the Trial Chamber made erroneous findings with regard to "his role in Gornji Vakuf municipality" and the inclusion of the crimes committed there in the CCP.[1362] Praljak also submits that the Trial Chamber did not properly consider evidence or establish certain factual findings with respect to the destruction of houses in the Gornji Vakuf Municipality.[1363]

448. Stojić responds that the Trial Chamber erred in law in finding that the destruction of houses on 18 January 1993 in the villages of Duša, Hrasnica, Uzričje, and Ždrimci in the Gornji Vakuf Municipality was indiscriminate and thus wanton and/or not justified by military necessity.[1364] Specifically, he submits that the Trial Chamber: (1) relied on its erroneous finding that shells are inherently indiscriminate;[1365] (2) failed to give adequate weight to the presence of

[1358] Trial Judgement, Vol. 3, para. 1570. The Trial Chamber noted, however, that as the HVO had not yet occupied the municipality of Gornji Vakuf as of the time of the attacks, this property was not protected under the Geneva Conventions, and that these incidents therefore did not constitute extensive destruction of property not justified by military necessity and carried out unlawfully and wantonly as, a grave breach of the Geneva Conventions (Count 19). Trial Judgement, Vol. 3, para. 1534. See also *supra*, para. 398.
[1359] See *supra*, para. 394.
[1360] See *supra*, para. 400.
[1361] Prlić's Response Brief, paras 174-179. See Prlić's Response Brief, heading before para. 174.
[1362] Praljak's Response Brief, paras 150-151.
[1363] Praljak's Response Brief, para. 149, referring to, *inter alia*, Praljak's Appeal Brief, para. 179.
[1364] Stojić's Response Brief, para. 147, heading before para. 149, paras 149-150, 153.
[1365] Stojić's Response Brief, para. 150.

armed defenders in or around the property in question;[1366] (3) failed to identify exactly which houses were destroyed or where they were located in relation to the legitimate military targets;[1367] and (4) did not assess how the absence of civilian casualties in three of the villages could be consistent with an indiscriminate attack.[1368]

449. The Prosecution replies that Stojić and Praljak fail to show that the Trial Chamber's findings on wanton destruction of property in Gornji Vakuf Municipality on 18 January 1993 were erroneous.[1369] The Prosecution submits that: (1) the Trial Chamber considered the presence of armed Muslim defenders in the villages;[1370] and (2) the evidence shows that the destruction of property was not the incidental by-product of military targeting.[1371] It argues that the HVO's intent to destroy Muslim property is in line with its preconceived plan and confirmed by subsequent events, including the burning of houses after the villages were taken by the HVO.[1372]

450. At the Appeal Hearing, the Prosecution, Prlić, Stojić, Praljak, Petković, and Ćorić were invited to discuss the basis for the Trial Chamber's finding that the property destruction caused during the attacks on the villages of Duša, Hrasnica, Ždrimci, and Uzričje was wanton and not justified by military necessity, and whether there would be any effect, if this finding were overturned, on the finding that the property destruction caused during attacks on several localities in Gornji Vakuf Municipality was "extensive".[1373] The Prosecution submits that if the Appeals Chamber were to overturn the Trial Chamber's finding that the property destruction caused during the attacks on the four villages was wanton and not justified by military necessity, there would be no effect on the Trial Judgement as no conviction was entered.[1374] Praljak and Ćorić argue that the Trial Chamber erred in its finding that the destruction was wanton and not justified by military necessity, pointing in particular to the ongoing clashes between the defenders of the villages and the HVO.[1375] Prlić, Stojić, and Petković make no submissions on this particular matter.

[1366] Stojić's Response Brief, paras 151-152.
[1367] Stojić's Response Brief, para. 152.
[1368] Stojić's Response Brief, para. 152.
[1369] Prosecution's Reply Brief, paras 138, 142. See Prosecution's Reply Brief, paras 139-141.
[1370] Prosecution's Reply Brief, para. 141; Appeal Hearing, AT. 769 (28 Mar 2017).
[1371] Prosecution's Reply Brief, para. 142.
[1372] Prosecution's Reply Brief, para. 142; Appeal Hearing, AT. 655-656 (24 Mar 2017), 768-770 (28 Mar 2017). See Prosecution's Reply Brief, paras 139-140.
[1373] Order for the Preparation of the Appeal Hearing, pp. 6-7, para. 5.
[1374] Appeal Hearing, AT. 770 (28 Mar 2017).
[1375] Appeal Hearing, AT. 404-405 (22 Mar 2017), 600-603 (24 Mar 2017). In addition, Praljak argues that the Trial Chamber did not establish the perpetrators or timing of the destruction of the property, while Ćorić argues that there was no evidence as to the location of civilians relative to combatants and military objectives, or any assessment by the Trial Chamber of the margin of error of artillery shelling. Appeal Hearing, AT. 405 (22 Mar 2017), 601-603 (24 Mar 2017).

(b) Analysis

451. The Appeals Chamber recalls that the Trial Chamber, after noting that it had received evidence that members of the ABiH were present in each of the locations, based its finding that the destruction of the houses belonging to the Muslim inhabitants of the villages of Duša, Hrasnica, Ždrimci, and Uzričje was wanton and not justified by military necessity on a supposed prior finding that the attacks were indiscriminate.[1376] In addressing this part of the Prosecution's ground of appeal 3, the Appeals Chamber will first assess the impact of its analysis in relation to the killing of seven civilians in Duša on the finding that the destruction of Muslim-owned houses during the attack on that village constituted wanton destruction. It will then address the Prosecution's ground of appeal 3 in relation to the remaining three villages.

452. With regard to Duša, the Appeals Chamber recalls that it finds elsewhere that the Trial Chamber's finding of indiscriminate attack was premised on an error of fact occasioning a miscarriage of justice, leading to its reversal.[1377] In light of the reversal of this underlying finding, the Appeals Chamber considers that no reasonable trier of fact could have reached the conclusion that the attack was wanton and not justified by military necessity, and reverses that conclusion. The Prosecution's ground of appeal 3 is accordingly dismissed with regard to Duša.

453. With regard to the other three villages, the Appeals Chamber notes that the Trial Chamber only expressly found the attack on Duša to be indiscriminate; it made no direct findings on whether the attacks on Hrasnica, Ždrimci, and Uzričje were indiscriminate or otherwise.[1378] The Appeals Chamber recalls, however, that a trial judgement is to be read as a whole.[1379] In this instance, the Trial Chamber found that the attacks all began on the morning of 18 January 1993, and that all the villages were attacked with mortar shells, heavy machine guns, and artillery.[1380] It further found that the HVO operations "unfolded in exactly the same way", including by firing "shells" that destroyed several houses.[1381] Having regard to these findings, it is clear that the Trial Chamber considered that the attacks on Hrasnica, Ždrimci, and Uzričje were indiscriminate on the same bases as its finding in relation to the attack on Duša: that the HVO attacked the village by using weapons – more specifically, shells – the nature of which is such that it is impossible to distinguish military from civilian targets, and that they made no effort to allow the civilian

[1376] See *supra*, para. 444; Trial Judgement, Vol. 3, paras 1569 (referring to, *inter alia*, Trial Judgement, Vol. 3, paras 663-664, 711-712), 1570.
[1377] See *supra*, paras 435, 442.
[1378] Trial Judgement, Vol. 3, paras 663-664, 711-712. See also Trial Judgement, Vol. 2, paras 356-388.
[1379] See *Stanišić and Župljanin* Appeal Judgement, paras 1107, 1115, 1148, 1162, 1181; *Popović et al.* Appeal Judgement, para. 2006; *Mrkšić and Šljivančanin* Appeal Judgement, para. 379.
[1380] Trial Judgement, Vol. 2, para. 357.
[1381] Trial Judgement, Vol. 4, para. 561. See also Trial Judgement, Vol. 4, para. 45.

population of the village to flee before the attack. Recalling that this finding is reversed in relation to Duša,[1382] the Appeals Chamber reverses it in relation to Hrasnica, Ždrimci, and Uzričje for the same reasons. In light of the fact that the Trial Chamber relied on its finding of indiscriminate attack to conclude that the destruction of the houses was wanton and not justified by military necessity,[1383] the Appeals Chamber reverses this finding also, and the subsequent finding that the elements of the crime of wanton destruction not justified by military necessity were met.[1384] The Prosecution's ground of appeal 3 is accordingly dismissed in relevant part. Finally, insofar as the Trial Chamber appears to have found the destruction of the houses during attacks on the four villages to have constituted an underlying act of the crime of persecution,[1385] the Appeals Chamber reverses this finding and the convictions of all Appellants under Count 1 in this regard.

3. Burning of houses in Duša and Uzričje (Praljak's Ground 11)

454. The Trial Chamber found that, on 18 January 1993, the HVO attacked the villages of Duša and Uzričje.[1386] Thereafter, the HVO took control of Duša "after one or two days of fighting",[1387] and occupied Uzričje from 19 January 1993 onwards.[1388] The Trial Chamber further found that, after the attack and takeover of Duša, HVO soldiers set fire to houses there.[1389] In so finding, it noted, *inter alia*, that, once the fighting ended, several witnesses specifically reported houses burned down by HVO soldiers.[1390] It also found that the HVO set fire to houses belonging to the Muslims of Uzričje to prevent those who lived there from returning.[1391] Further, it considered testimony that some houses that were burned down in Duša and Uzričje bore the inscription "HOS", that is, the abbreviated name of the paramilitary wing of the Croatian Party of Rights.[1392] The Trial Chamber concluded that, since the houses were burned down once the HVO had taken control of the villages, they did not constitute a military target.[1393] It accordingly found that the destruction of property belonging to the Muslim residents of Duša and Uzričje in the days following the attack of 18 January 1993 and the takeover of the villages constituted extensive destruction of property, not justified by military necessity and carried out unlawfully and wantonly as a grave breach of the

[1382] See *supra*, paras 435, 442.
[1383] Trial Judgement, Vol. 3, para. 1569.
[1384] Trial Judgement, Vol. 3, para. 1570.
[1385] See Trial Judgement, Vol. 3, para. 1699.
[1386] Trial Judgement, Vol. 2, paras 358, 374. See also Trial Judgement, Vol. 2, paras 357, 431.
[1387] Trial Judgement, Vol. 2, paras 365, 398.
[1388] Trial Judgement, Vol. 2, paras 374, 431.
[1389] Trial Judgement, Vol. 2, para. 402.
[1390] Trial Judgement, Vol. 2, para. 398.
[1391] Trial Judgement, Vol. 2, paras 432, 436.
[1392] Trial Judgement, Vol. 1, para. 777, Vol. 2, paras 401, 434.
[1393] Trial Judgement, Vol. 3, paras 1537, 1572.

Geneva Conventions (Count 19) and wanton destruction of property not justified by military necessity as a violation of the laws or customs of war (Count 20).[1394]

(a) Arguments of the Parties

455. Praljak submits that the Trial Chamber erroneously concluded that after the HVO took over the villages of Duša and Uzričje, HVO soldiers burned down houses therein in order to prevent inhabitants from returning.[1395] Praljak argues that the Trial Chamber's finding that the houses were burned on occupied territory is legally erroneous,[1396] considering that: (1) the evidence does not support the Trial Chamber's finding that houses in Duša were burned after fighting ended;[1397] (2) the Trial Chamber did not make a finding that houses in Uzričje were burned after fighting ended;[1398] and (3) even if houses were burned after combat ended, it was unreasonable to consider that the HVO could establish authority immediately after entering the villages.[1399] Praljak contends that the Trial Chamber's conclusion that the HVO burned houses in Uzričje in order to prevent inhabitants from returning is "deprived of any foundation" and in complete disregard of relevant evidence.[1400] He further submits that the Trial Chamber could not properly establish whether the houses were military targets as it: (1) incorrectly found that houses were burned down after the end of combat; and (2) did not consider military positions – situated in and near the houses – from which Muslims opened fire on HVO soldiers.[1401] In addition, Praljak submits that the Trial Chamber concluded that houses in Uzričje and Duša were burned by HVO members on the basis of inconclusive evidence.[1402] He claims that the Trial Chamber ignored the possibility that HOS soldiers, not under HVO command, burned the houses.[1403] Praljak requests that his conviction under Count 19 (extensive destruction of property as a grave breach of the Geneva Conventions) be reversed with respect to the relevant charges.[1404]

456. The Prosecution responds that Praljak fails to demonstrate any error with respect to the Trial Chamber's findings.[1405] It submits that the Trial Chamber: (1) applied the correct legal

[1394] Trial Judgement, Vol. 3, paras 1539, 1574.
[1395] Praljak's Appeal Brief, para. 184, referring to Trial Judgement, Vol. 2, paras 398, 402, 432, 436, Vol. 3, paras 1537, 1572. See Praljak's Appeal Brief, paras 180-181; Praljak's Reply Brief, para. 64.
[1396] Praljak's Appeal Brief, para. 178.
[1397] Praljak's Appeal Brief, paras 175-177. See also Praljak's Appeal Brief, para. 179; Praljak's Reply Brief, paras 63-64. In further support, Praljak submits that the Trial Chamber could not establish exactly when the fighting ended in Duša and did not establish that the whole Muslim resistance stopped in both villages. Praljak's Appeal Brief, paras 175, 179.
[1398] Praljak's Appeal Brief, para. 177. See also Praljak's Appeal Brief, para. 179; Praljak's Reply Brief, paras 63-64.
[1399] Praljak's Appeal Brief, para. 178.
[1400] Praljak's Appeal Brief, para. 180, referring to, *inter alia*, Trial Judgement, Vol. 2, para. 432, Ex. 4D00347.
[1401] Praljak's Appeal Brief, para. 179; Praljak's Reply Brief, paras 63-64.
[1402] Praljak's Appeal Brief, paras 181-182. See also Appeal Hearing, AT. 398, 404-405 (22 Mar 2017).
[1403] Praljak's Appeal Brief, para. 183; Praljak's Reply Brief, para. 62.
[1404] Praljak's Appeal Brief, para. 184.
[1405] Prosecution's Response Brief (Praljak), para. 118.

standard when determining whether the property was in occupied territory; and (2) carefully analysed the evidence concerning the timing of the burning of the houses.[1406] Regarding Praljak's challenge to the Trial Chamber's conclusion that the HVO burned houses in Uzričje to prevent the Muslim population from returning, the Prosecution submits that the evidence upon which Praljak relies is unpersuasive.[1407] The Prosecution argues that the houses were not legitimate military targets and that the evidence does not support the claim that the Trial Chamber failed to consider possible military positions.[1408] Concerning Praljak's submission that the Trial Chamber's finding that HVO soldiers were responsible for the burning of houses was based on inconclusive evidence, the Prosecution argues that: (1) Praljak merely offers his own interpretation of the evidence; and (2) the Trial Chamber's finding that some burned houses bore the inscription "HOS" does not undermine its finding that HVO soldiers set the fires.[1409]

(b) Analysis

457. Concerning Praljak's submission that the Trial Chamber's finding that the houses were burned on occupied territory is legally erroneous because the evidence does not support its finding that houses in Duša were burned after fighting ended, the Appeals Chamber notes that Praljak refers to evidence which, according to him, demonstrates that *some*, but not all, houses were or may have been destroyed prior to the end of combat.[1410] The evidence he points to is therefore not inconsistent with the Trial Chamber's finding.[1411] In further support, Praljak submits that the Trial Chamber could not establish exactly when the fighting ended in Duša or did not establish that the whole Muslim resistance stopped in both villages.[1412] The Appeals Chamber considers that Praljak fails to show how the Trial Chamber's finding that the HVO took control of Duša "after one or two days of fighting"[1413] invalidates its finding that after the attack and takeover, HVO soldiers set fire to houses.[1414] Additionally, in submitting that the Trial Chamber did not establish that the whole Muslim resistance stopped in both villages, Praljak misrepresents the Trial Judgement as he actually points to the Trial Chamber's findings that ABiH members were present *during* the attacks on Duša

[1406] Prosecution's Response Brief (Praljak), para. 122. See also Prosecution's Response Brief (Praljak), para. 123; Appeal Hearing, AT. 419 (22 Mar 2017). The Prosecution submits that if any argument of Praljak's ground of appeal 11 succeeds and the Appeals Chamber finds that the villages were not occupied, it should enter convictions under Count 20 (wanton destruction as a violation of the laws or customs of war). Prosecution's Response Brief (Praljak), para. 124 & fn. 662.
[1407] Prosecution's Response Brief (Praljak), para. 121, referring to, *inter alia*, Trial Judgement, Vol. 2, para. 432.
[1408] Prosecution's Response Brief (Praljak), para. 119.
[1409] Prosecution's Response Brief (Praljak), para. 120.
[1410] See Praljak's Appeal Brief, paras 176-177, referring to, *inter alia*, Exs. P01291, P10108, p. 4, P10109, p. 2, P10110, p. 2, Fahrudin Agić, T. 9332 (1 Nov 2006), Witness BY, T. 9065, 9090-9091, 9122 (27 Oct 2006).
[1411] See Trial Judgement, Vol. 2, paras 398, 402, Vol. 3, paras 1535, 1537, 1539, 1571-1572, 1574.
[1412] Praljak's Appeal Brief, paras 175, 179.
[1413] Trial Judgement, Vol. 2, paras 365, 398.
[1414] Trial Judgement, Vol. 2, para. 402. See also Trial Judgement, Vol. 2, para. 398 (noting that once the fighting ended, several witnesses specifically reported houses burned down by HVO soldiers).

and Uzričje, prior to their surrender and the HVO's takeover.[1415] His arguments are therefore dismissed.

458. As to his submission that the Trial Chamber failed to make a finding that houses in Uzričje were burned after fighting ended, the Appeals Chamber finds that Praljak demonstrates no error, considering that the Trial Chamber assessed evidence and made findings demonstrating that Uzričje was occupied from 19 January 1993 and that houses were burned after the attack which had occurred on the previous day.[1416] In addition, when submitting that even if houses were burned after combat ended, it was unreasonable to consider that the HVO could establish authority immediately after entering the villages, Praljak argues that this is particularly true given that combat was still ongoing in Gornji Vakuf and refers to the Trial Chamber's consideration of testimony in this regard.[1417] Praljak bases his overall contention on his sub-ground of appeal 2.1 in which he challenges the Trial Chamber's finding that a state of occupation existed by arguing, *inter alia*, that armed conflict existed at the same time.[1418] The Appeals Chamber recalls that this submission is dismissed elsewehere,[1419] and therefore rejects Praljak's argument.

459. In support of his contention that the Trial Chamber's conclusion that the HVO burned houses in Uzričje in order to prevent inhabitants from returning is "deprived of any foundation" and in complete disregard of relevant evidence, Praljak draws attention to an HVO document ordering the release of Muslim civilians "to go home freely".[1420] He does not engage, however, with the evidence on which the Trial Chamber relied.[1421] The Appeals Chamber therefore considers that Praljak asserts that the Trial Chamber must have failed to consider relevant evidence, without showing that no reasonable trier of fact could have reached the same conclusion based on the evidence upon which the Trial Chamber relied. His argument is therefore dismissed. In arguing that the Trial Chamber could not properly establish whether the houses were military targets as it incorrectly found that houses were burned down after the end of combat, Praljak relies upon his submission dismissed above.[1422] His argument is therefore dismissed. Concerning Praljak's submission that the Trial Chamber did not consider military positions from which Muslims opened

[1415] See Praljak's Appeal Brief, para. 179 & fn. 408, referring to Trial Judgement, Vol. 2, paras 363-364, 377; Trial Judgement, Vol. 2, paras 365, 378.
[1416] Trial Judgement, Vol. 2, paras 431-433. See also *supra*, para. 344.
[1417] Praljak's Appeal Brief, para. 178 & fn. 407, referring to Trial Judgement, Vol. 2, para. 395.
[1418] Praljak's Appeal Brief, para. 178 & fn. 406, referring to Praljak's Appeal Brief, paras 46, 49-50.
[1419] See *supra*, para. 344.
[1420] See Praljak's Appeal Brief, para. 180, referring to Ex. 4D00347.
[1421] See Trial Judgement, Vol. 2, para. 432 & fn. 1023 and references cited therein (noting that the Croat-owned houses in Uzričje were left intact, finding that the evidence indicated that "the HVO burned down houses belonging to Muslims particularly", and referring in this regard to the testimony of Andrew Williams, Zijada Kurbegović, Senada Basić, and Fahrudin Agić).
[1422] See *supra*, paras 457-458; Praljak's Reply Brief, para. 64 & fn. 136, referring to Praljak's Appeal Brief, paras 176-177.

fire on HVO soldiers, the Appeals Chamber notes that Praljak relies upon evidence and Trial Chamber findings indicating that there was an ABiH presence prior to and during the HVO's attack.[1423] Insofar as most of the houses were burned down after the HVO's attack and the subsequent surrender of ABiH soldiers,[1424] his submission is temporally irrelevant. The Appeals Chamber considers that he merely presents an alternative explanation and fails to show that no reasonable trier of fact could have reached the Trial Chamber's conclusion.[1425] Thus, his argument is dismissed.

460. As to his argument that the Trial Chamber concluded that houses in Uzričje were burned by HVO members on the basis of inconclusive evidence, Praljak claims that a document of the BiH Ministry of the Interior and the testimony of Witness Zijada Kurbegović, on which the Trial Chamber relied, are contradictory.[1426] The Appeals Chamber notes that the document of the BiH Ministry of the Interior lists HVO soldiers allegedly responsible for burning houses and that Praljak merely claims that "Kurbegovi[ć] could not recognize any of [the] persons listed in [the] document although two [of] these persons were her neighbors".[1427] The Appeals Chamber dismisses this argument as Praljak fails to demonstrate any contradiction.

461. With respect to Duša, Praljak claims that the Trial Chamber's finding was based on the inconclusive evidence of Kemal Šljivo and Witness BY, and further argues that although Witness BY said HVO soldiers were in Duša, "she did not describe them or their uniforms and it is very likely that all armed Croats were for her the HVO members".[1428] The Appeals Chamber notes that in the testimony to which Praljak refers, Witness BY explicitly states that the soldiers were HVO members.[1429] While the testimony does not explain how she identified them as such, Praljak's argument that "it is very likely that all armed Croats were for her the HVO members" falls short of demonstrating that no reasonable trier of fact could have relied on this evidence in the absence of a

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[1423] Praljak's Appeal Brief, para. 179, referring to, *inter alia*, Trial Judgement, Vol. 2, paras 363-364, 377, Ex. 3D00527. Praljak relies on other evidence to demonstrate that there were Muslim military positions inside houses inhabited by civilians. However, the Appeals Chamber notes that the testimony to which he points does not indicate when this allegedly occurred. See Praljak's Appeal Brief, para. 179, referring to, *inter alia*, Rudy Gerritsen, T. 19350 (30 May 2007).
[1424] See Trial Judgement, Vol. 2, paras 365, 378, 398-402, 432-436, Vol. 3, paras 1535, 1537.
[1425] See Trial Judgement, Vol. 3, para. 1537.
[1426] See Praljak's Appeal Brief, para. 181, referring to, *inter alia*, Zijada Kurbegović, T. 8981 (26 Oct 2006), Trial Judgement, Vol. 2, para. 436 & fns 1029-1030, referring to, *inter alia*, Ex. P07350 (document of the BiH Ministry of the Interior), Zijada Kurbegović, T(F). 8982, 8988 (26 Oct 2006).
[1427] Praljak's Appeal Brief, para. 181. See Ex. P07350. In this regard, Praljak misrepresents the testimony wherein Kurbegović clearly stated that she recognised persons listed in the document and that they were her neighbours. See Zijada Kurbegović, T. 8981 (26 Oct 2006). The Appeals Chamber also considers that Praljak notes statements he alleges were made by Kurbegović while citing instead to the evidence of another witness. Praljak does not adequately develop or explain the relevance of his assertions in this regard. See Praljak's Appeal Brief, para. 181 & fns 415-417, referring to Senada Bašić, T. 8893, 8895-8896 (25 Oct 2006), Ex. P09711 (witness statement by Senada Bašić), p. 3.
[1428] Praljak's Appeal Brief, para. 182, referring to Witness BY, T. 9089-9091 (27 Oct 2006), Exs. P09202 (confidential), pp. 21-22, P10109, p. 2, P10110, p. 2. See also Praljak's Appeal Brief, para. 181.
[1429] Witness BY, T. 9090 (27 Oct 2006).

specific description of their uniforms. Further, Praljak misrepresents the evidence of Šljivo who, according to Praljak, "never claimed that the HVO members burned houses in Du[š]a".[1430] The Appeals Chamber notes that Šljivo stated that HVO members burned down houses in Duša in the evidence to which Praljak cites as well as evidence ignored by Praljak and upon which the Trial Chamber relied.[1431] Thus, these arguments are dismissed.

462. When contending that the Trial Chamber ignored the possibility that HOS soldiers burned the houses, Praljak: (1) challenges the Trial Chamber's reliance on a 1994 report to find that most of the former members of the HOS joined the ranks of the HVO, while it failed to acknowledge that the report states that former HOS soldiers were targeted by the HVO; and (2) submits that the evidence shows that some HOS members joined the ABiH ranks.[1432] With respect to the Trial Chamber's reference to this report, the Appeals Chamber recalls that a failure to discuss an inconsistency or contradiction in the evidence is not necessarily indicative of disregard; rather, "it is within the discretion of the Trial Chamber to evaluate it and to consider whether the evidence as a whole is credible, without explaining its decision in every detail".[1433] Moreover, the Appeals Chamber notes that Praljak ignores the other evidence upon which the Trial Chamber relied when finding that most of the former members of the HOS joined the ranks of the HVO, and considers that he fails to show that the Trial Chamber could not have reached its conclusion in light of this evidence.[1434] Further, Praljak fails to show how the fact that some HOS members may have joined the ABiH – which the Trial Chamber explicitly noted – is inconsistent with the Trial Chamber's finding that *most* of the former HOS members joined the HVO.[1435] Insofar as Praljak is implicitly suggesting, by this assertion, that Muslim houses may have been destroyed by the HOS members who may have joined the ABiH, he fails to provide any support for this claim.

463. For the above reasons, the Appeals Chamber dismisses Praljak's ground of appeal 11.

[1430] Praljak's Appeal Brief, para. 182. See also Appeal Hearing, AT. 398 (22 Mar 2017).
[1431] See Praljak's Appeal Brief, para. 182, referring to, *inter alia*, Ex. P10110, p. 2; Trial Judgement, Vol. 2, para. 399, referring to, *inter alia*, Ex. P10108, p. 4.
[1432] Praljak's Reply Brief, para. 62, referring to, *inter alia*, Ex. 3D00331.
[1433] *Stanišić and Župljanin* Appeal Judgement, para. 458; *Popović et al.* Appeal Judgement, para. 1151; *Kvočka et al.* Appeal Judgement, para. 23. The Appeals Chamber notes that although the Trial Chamber did not address any inconsistency in Exhibit 3D00331, it did note, in light of an order by Sefer Halilović, that "one might conceivably conclude [...] that some former members of the HOS swore allegiance to the ABiH". Trial Judgement, Vol. 1, para. 778.
[1434] Trial Judgement, Vol. 1, para. 778 & fns 1821-1825 and references cited therein. For example, when reaching this conclusion, it relied on a number of pieces of evidence to find that HOS and HVO soldiers conducted military operations alongside each other during which some former HOS members were still allowed to display their uniforms and insignia. See Trial Judgement, Vol. 1, para. 778 & fns 1822-1825 and references cited therein.
[1435] See Trial Judgement, Vol. 1, para. 778.

4. Arrest and detention of civilians from Duša, Hrasnica, Uzričje, and Ždrimci (Praljak's Ground 13)

464. The Trial Chamber concluded that, following the attack on 18 January 1993, the HVO unlawfully imprisoned and confined civilians from the villages of Duša, Hrasnica, Uzričje, and Ždrimci.[1436] With regard to Duša specifically, the Trial Chamber found that women, children, and the elderly were arrested after taking refuge in Enver Šljivo's house,[1437] after which HVO soldiers ordered them to go to Paloč, where they were further detained.[1438] In respect of Hrasnica, the Trial Chamber found that the HVO separated the men of military age from the women, children, and elderly, and arrested them, thereby creating two distinct groups of detainees.[1439] The arrested women, children, and elderly were then removed and detained by the HVO at various places, including the furniture factory in Trnovača and houses in Hrasnica and Trnovača.[1440] Regarding Uzričje, the Trial Chamber found that the Muslim villagers were held by the HVO inside the village as of 19 January 1993 for about a month-and-a-half.[1441] The villagers of Uzričje were assembled in houses in the village and had to observe a curfew, despite having some freedom of movement during the day.[1442] As for Ždrimci, the Trial Chamber found that the HVO detained Muslim women and children in houses that were under guard.[1443] It based this finding, *inter alia*, on: (1) the 27 January 1993 HVO report stating that 70 Muslim "civilians" from Ždrimci were arrested and detained;[1444] (2) the testimony of Witness Muamer Trkić estimating that 40 Muslim men and a greater number of women were arrested;[1445] and (3) the testimony of Witness Đulka Brica that HVO soldiers held her and others for a period of 15 days to a month in the basement of a house in Ždrimci.[1446] The Trial Chamber held that the HVO authorities did not make any individual assessments of the security reasons which could have led to the detention of civilians from Duša, Hrasnica, Uzričje, and Ždrimci.[1447] Based on all those findings the Trial Chamber concluded that the detention of the civilians from Duša, Hrasnica, Uzričje, and Ždrimci amounted to imprisonment

[1436] Trial Judgement, Vol. 3, paras 962, 1013. See also Trial Judgement, Vol. 3, paras 960-961, 1011-1012.
[1437] Trial Judgement, Vol. 2, para. 405. With respect to both Duša and Uzričje, the Trial Chamber considered Exhibit P01333, a 27 January 1993 HVO report, noting the arrest and detention of 40 "Muslim civilians" from the villages. Trial Judgement, Vol. 2, paras 405, 445 & fns 973, 1042.
[1438] Trial Judgement, Vol. 2, paras 406-410. The Trial Chamber considered the evidence of Witness BY when finding that HVO soldiers ordered the women, children, and the elderly to go to Paloč, where they were detained. Trial Judgement, Vol. 2, paras 406-409 and references cited therein.
[1439] Trial Judgement, Vol. 2, para. 416.
[1440] Trial Judgement, Vol. 2, para. 427. See Trial Judgement, Vol. 2, paras 418-426.
[1441] Trial Judgement, Vol. 2, para. 446.
[1442] Trial Judgement, Vol. 2, para. 446.
[1443] Trial Judgement, Vol. 2, para. 468.
[1444] Trial Judgement, Vol. 2, para. 462.
[1445] Trial Judgement, Vol. 2, para. 462.
[1446] Trial Judgement, Vol. 2, para. 463.
[1447] Trial Judgement, Vol. 3, paras 961, 1012.

as a crime against humanity (Count 10) and unlawful confinement of civilians as a grave breach of the Geneva Conventions (Count 11).[1448]

(a) Arguments of the Parties

465. Praljak submits that the Trial Chamber erred in law and fact when it concluded that civilians from the villages of Duša, Hrasnica, Uzričje, and Ždrimci in Gornji Vakuf Municipality were unlawfully arrested and detained by the HVO.[1449] With respect to the arrest of Muslim civilians in Duša in particular, Praljak argues that Witness BY's testimony indicates that HVO soldiers were not in the village and that it was Muslim troops who sent the civilians to the village of Paloč.[1450] He also submits that the 27 January 1993 HVO report to which the Trial Chamber referred does not support its findings as the report: (1) states that only some of the captured Muslims were detained; (2) does not allow for a conclusion that it refers to civilians from Duša accommodated in Paloč; and (3) contradicts another HVO report specifying that civilians in Duša and Uzričje were not detained.[1451] Concerning the treatment of civilians in Ždrimci, Praljak argues that the Trial Chamber based a conviction exclusively on Brica's untested Rule 92 *bis* statement.[1452] He argues that moreover, Brica's statement was contradicted by Trkić's testimony.[1453] He further submits that the Trial Chamber misrepresented Brica's statement and Trkić's evidence and failed to consider other evidence which makes no mention of confinement or imprisonment.[1454] Praljak disputes that civilians in Duša, Hrasnica, and Uzričje were detained by pointing to evidence allegedly indicating that they could leave the houses in which they were accommodated and that, with respect to Duša and Uzričje, these houses were not under guard.[1455] He additionally relies on the Trial Chamber's acknowledgement that the Muslim population in Uzričje had some freedom of movement during the day and that some left the village.[1456]

[1448] Trial Judgement, Vol. 3, paras 962, 1013.
[1449] Praljak's Appeal Brief, para. 214, referring to, *inter alia*, Trial Judgement, Vol. 2, paras 416, 446, 468. See Praljak's Appeal Brief, paras 200 (referring to, *inter alia*, Trial Judgement, Vol. 3, paras 960-962, 1011-1013), 201, 203, 206, 209. See also Praljak's Reply Brief, para. 67.
[1450] Praljak's Appeal Brief, para. 200. See Trial Judgement, Vol. 2, para. 410.
[1451] Praljak's Appeal Brief, para. 202, referring to, *inter alia*, Trial Judgement, Vol. 2, para. 405 & fn. 973, Ex. P01333. Praljak also submits, referring to Exhibit P01351, that he does not "accept the qualification of the Trial Chamber" that 23 of the people who were detained in Duša were "defenders of the village", when they were in fact ABiH soldiers. Appeal Hearing, AT. 403 (22 Mar 2017). See Appeal Hearing, AT. 402 (22 Mar 2017), referring to Ex. P01351.
[1452] Praljak's Appeal Brief, para. 209, referring to, *inter alia*, Trial Judgement, Vol. 2, paras 463, 467.
[1453] Praljak's Appeal Brief, para. 210.
[1454] Praljak's Appeal Brief, paras 210-211.
[1455] Praljak's Appeal Brief, paras 201, 205-207 & fns 461, 472-473, 476-477, 479-480, referring to, *inter alia*, Articles 27 and 49 of Geneva Convention IV.
[1456] Praljak's Appeal Brief, para. 207, referring to, *inter alia*, Trial Judgement, Vol. 2, paras 444, 446, 451.

466. Further, Praljak argues that the Trial Chamber ignored that the 27 January 1993 HVO report stated that arrested and detained civilians, in some villages, were immediately released.[1457] He alleges that the Trial Chamber therefore erroneously concluded that the HVO did not conduct any individual assessments of the security reasons which could have led to the detention.[1458] Praljak, moreover, refers to evidence allegedly demonstrating that fighting was ongoing in or near Hrasnica and Ždrimci at the relevant time.[1459] Thus, he contends that the only reasonable conclusion is that the HVO evacuated the civilian population of Hrasnica from the combat area and imposed only the restrictions necessary for the security of the population of both Ždrimci and Hrasnica.[1460] In this regard, Praljak argues that a curfew – not limited to the Muslim population and legal under international humanitarian law – was imposed already in June 1992 upon Gornji Vakuf Municipality.[1461] Praljak requests that his convictions under Counts 10 (imprisonment as a crime against humanity) and 11 (unlawful confinement as a grave breach of the Geneva Conventions) be reversed with respect to the relevant charges for Gornji Vakuf Municipality.[1462]

467. The Prosecution responds that Praljak fails to show that the Trial Chamber erred in convicting him under Counts 10 and 11.[1463] It submits that the Trial Chamber's findings pertaining to Duša are supported by the evidence.[1464] As to Ždrimci, the Prosecution avers that the Trial Chamber's findings are not dependent on just one witness, but on several.[1465] The Prosecution further submits that the Trial Chamber's finding that HVO soldiers detained Muslim civilians in Uzričje is not undermined by the fact that they had limited freedom of movement.[1466] According to the Prosecution, the 27 January 1993 HVO report confirms the Trial Chamber's reasonable finding that the HVO failed to conduct individual security evaluations in the four villages.[1467] Finally, the Prosecution argues that Praljak's unsupported and unpersuasive assertions that civilians in Hrasnica

[1457] Praljak's Appeal Brief, paras 202, 210, 213, referring to, *inter alia*, Trial Judgement, Vol. 3, paras 961, 1012, Ex. P01333.
[1458] Praljak's Appeal Brief, para. 213.
[1459] Praljak's Appeal Brief, paras 203-204, 212.
[1460] Praljak's Appeal Brief, paras 203-205, 212, referring to, *inter alia*, Articles 27 and 49 of Geneva Convention IV. In further support of this contention, Praljak notes that: (1) the HVO told civilians that they would be able to go home after the HVO took control of Dolac; and (2) the Ždrimci villagers recovered complete freedom of movement as soon as the cease-fire was signed. Praljak's Appeal Brief, paras 204, 212.
[1461] Praljak's Appeal Brief, para. 208.
[1462] Praljak's Appeal Brief, para. 214. See also Praljak's Reply Brief, para. 68.
[1463] Prosecution's Response Brief (Praljak), para. 132.
[1464] Prosecution's Response Brief (Praljak), para. 133.
[1465] Prosecution's Response Brief (Praljak), para. 136..
[1466] Prosecution's Response Brief (Praljak), para. 135. The Prosecution submits in this regard that Praljak merely disagrees with the Trial Chamber's interpretation of the evidence without showing any error. Prosecution's Response Brief (Praljak), para. 135.
[1467] Prosecution's Response Brief (Praljak), para. 137, referring to, *inter alia*, Trial Judgement, Vol. 3, paras 961, 1012.

and Ždrimci were merely evacuated from the combat area and their movement restricted for their protection, respectively, must fail.[1468]

(b) Analysis

468. In relying on Witness BY's testimony to posit that the HVO did not arrest civilians in Duša and send them to Paloč, Praljak merely disagrees with the Trial Chamber's interpretation of the testimony. In that regard, the Appeals Chamber notes that the Trial Chamber interpreted Witness BY's testimony as stating that it was the HVO that ordered the civilians to go to Paloč.[1469] The Appeals Chamber considers that a reasonable trier of fact could have adopted this interpretation.[1470] In addition, Praljak fails to explain why the conviction should not stand on the basis of the remaining evidence.[1471]

469. With respect to Praljak's assertion that the 27 January 1993 HVO report does not support the Trial Chamber's findings, he fails to demonstrate how the fact that only some captured Muslims were detained or that the report may have referred to other detained Muslims from Duša shows any error in the impugned finding that civilians from Duša and Uzričje were detained. As to Praljak's related argument that the 27 January 1993 HVO report contradicts another HVO report, issued two days later,[1472] specifying that civilians in Duša and Uzričje were not detained, the Appeals Chamber first notes that Praljak ignores that the Trial Chamber did in fact note such a contradiction.[1473] Having reviewed the 27 January 1993 HVO report, the Appeals Chamber observes that the Trial Chamber referred only to page 1 of that report, which states that civilians were arrested and detained. It made no mention of page 2 of that same report, which states that they were released immediately, suggesting that no such contradiction exists. Nevertheless, the Trial Chamber relied on other evidence, including the evidence of those detained, indicating that the civilians in all four villages were not released immediately.[1474] In any event, the two reports, and the Trial Chamber's assessment thereof, do not support Praljak's contention that civilians were not detained in the first place. Thus, the Appeals Chamber dismisses Praljak's argument.[1475]

[1468] Prosecution's Response Brief (Praljak), paras 134, 136.
[1469] See Trial Judgement, Vol. 2, para. 406, referring to, *inter alia*, Witness BY, T(F). 9082-9083 (27 Oct 2006).
[1470] The Appeals Chamber notes that, when asked who told the civilians to go to Paloč, Witness BY testified that "they told our troops" and then said that "[o]ur troops ordered us to do this because we didn't see any HVO soldiers in the village then". The Appeals Chamber notes that Witness BY also explained that the Muslim men from the village had surrendered to the HVO before the civilians were told to go to Paloč. See Witness BY, T. 9083 (27 Oct 2006).
[1471] See Trial Judgement, Vol. 2, paras 405-407 and references cited therein.
[1472] See *infra*, fn. 3703.
[1473] Trial Judgement, Vol. 2, para. 445, referring to Exs. P01351, P01333, p. 1.
[1474] See Trial Judgement, Vol. 2, paras 409-410, 421, 426-427, 441-443, 446, 463, 467-468 and references cited therein. See also Trial Judgement, Vol. 3, paras 961, 1012.
[1475] With regard to Praljak's submission that he does not "accept the qualification of the Trial Chamber" that 23 of the people who were detained in Duša were "defenders of the village", when they were in fact ABiH soldiers, the

470. The Appeals Chamber now turns to Praljak's arguments concerning the treatment of civilians in Ždrimci.[1476] Regarding Praljak's argument that the Trial Chamber based a conviction exclusively on Brica's Rule 92 *bis* statement, the Appeals Chamber considers that when making its finding that Muslim women and children were detained by the HVO in guarded houses in Ždrimci, the Trial Chamber also relied on other evidence.[1477] As to the argument that Brica's evidence was contradicted by Trkić's testimony, the Appeals Chamber considers that Praljak has failed to establish any contradiction.[1478] Praljak asserts but has failed to demonstrate that the Trial Chamber misrepresented Brica's evidence.[1479] Similarly, Praljak's argument that the Trial Chamber misrepresented Trkić's evidence is a mere assertion, referenced to a part of the Trial Judgement that makes no mention of his evidence.[1480] The Appeals Chamber further rejects the argument that the Trial Chamber failed to consider certain evidence, specifically a 31 January 1993 document, making no mention of confinement or imprisonment[1481] as the Trial Chamber in fact did consider this evidence.[1482] Praljak also points to witness testimony that, according to him, confirms that the situation on the ground corresponded to his interpretation of the 31 January 1993 document.[1483] The Appeals Chamber considers that, in so doing, Praljak merely asserts that the Trial Chamber must have failed to consider relevant evidence, without showing that no reasonable trier of fact, based on the evidence, could have reached the same conclusion as the Trial Chamber did. Finally, in advancing the possibility that the HVO imposed only the restrictions necessary for the security of the population of Ždrimci, Praljak merely presents his own alternative explanation of the evidence

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Appeals Chamber recalls that the Trial Chamber found that the persons that the HVO arrested included women, children, and the elderly who had taken refuge in Enver Šljivo's house in Duša, that is, persons who had not defended the village. Trial Judgement, Vol. 2, para. 405. See Trial Judgement, Vol. 2, paras 406-410 & fn. 979. The argument is therefore dismissed.

[1476] See Praljak's Appeal Brief, paras 209-211 and references cited therein. The Appeals Chamber considers that it is unclear whether Praljak impugns the Trial Chamber's findings regarding whether the civilians were detained or regarding how they were treated while in detention. However, the Trial Chamber found that it did not have sufficient evidence to determine the conditions of detention in Ždrimci and how detainees were treated there. Trial Judgement, Vol. 2, para. 468. See also Trial Judgement, Vol. 2, para. 464. The Appeals Chamber therefore understands that he impugns the Trial Chamber's finding that the HVO detained Muslim women and children in guarded houses in Ždrimci. Trial Judgement, Vol. 2, para. 468.

[1477] See Trial Judgement, Vol. 2, paras 461-462, 466, 468 and references cited therein.

[1478] Praljak merely alleges that "Trkić said that the population was not forced to go anywhere, it was just told to stay in the houses". Praljak's Appeal Brief, para. 210.

[1479] See Praljak's Appeal Brief, para. 210 & fn. 487, referring to Trial Judgement, Vol. 2, para. 463, referring to, *inter alia*, Ex. P09797, paras 9, 13-14, 23. The Appeals Chamber notes that the cited evidence provides support for the Trial Chamber's findings.

[1480] See Praljak's Appeal Brief, para. 210 & fn. 487, referring to Trial Judgement, Vol. 2, para. 463. To the extent that Praljak means to challenge the Trial Chamber's consideration of Trkić's testimony in paragraph 462 of Volume 2 of the Trial Judgement, the Appeals Chamber considers that the Trial Chamber merely noted therein that Trkić "estimated the total number of Muslims arrested at 40 men and a greater number of women". In asserting that "Trki[ć] said that the population was not forced to go anywhere, it was just told to stay in the houses", Praljak does not demonstrate how the Trial Chamber's statement was a misrepresentation of the testimony. See Praljak's Appeal Brief, para. 210.

[1481] Praljak's Appeal Brief, para. 211 & fn. 491, referring to Ex. P01373.

[1482] Trial Judgement, Vol. 2, para. 466, referring to Ex. P01373, p. 2. The Appeals Chamber considers that Praljak merely asserts that the Trial Chamber failed to interpret the evidence in a particular manner.

[1483] Praljak's Appeal Brief, para. 211 & fn. 492, referring to Jacqueline Carter, T. 3364 (19 June 2006), Zrinko Tokić, T. 45373 (29 Sept 2009).

without showing that no reasonable trier of fact could have reached the same conclusion as the Trial Chamber did.[1484] All these arguments are dismissed.

471. Regarding Praljak's argument that civilians in Duša, Hrasnica, and Uzričje were not detained, the Appeals Chamber recalls that unlawful confinement as a grave breach of the Geneva Conventions arises in the following two circumstances:

> (i) [...] a civilian or civilians have been detained in contravention of Article 42 of Geneva Convention IV, *i.e.* they are detained without reasonable grounds to believe that the security of the Detaining Power makes it absolutely necessary; and
>
> (ii) [...] the procedural safeguards required by Article 43 of Geneva Convention IV are not complied with in respect of detained civilians, even where their initial detention may have been justified.[1485]

In adopting this definition, the Appeals Chamber noted that restrictions on the rights of civilians, such as the "*deprivation of their liberty* by confinement" are subject to the safeguards in Article 42, as well as Article 5, of Geneva Convention IV.[1486] As for imprisonment as a crime against humanity, the Appeals Chamber recalls that it "should be understood as arbitrary imprisonment, that is to say, *the deprivation of liberty* of the individual without due process of law, as part of a widespread or systematic attack directed against a civilian population".[1487]

472. Thus, it is clear from the above that both crimes concern the deprivation of liberty of an individual. Further, with the exception of chapeau requirements for war crimes and crimes against humanity, imprisonment – in the context of armed conflict – and unlawful confinement of civilians overlap significantly given that the Appeals Chamber has confirmed that the legality of imprisonment and the procedural safeguards pertaining to it are to be determined based on Articles 42 and 43 of Geneva Convention IV.[1488]

473. Finally, the Appeals Chamber considers that determining whether a person has been deprived of his or her liberty will depend on the circumstances of each particular case and must take into account a range of factors, including the type, duration, effects, and the manner of implementation of the measures allegedly amounting to deprivation of liberty.[1489] In that respect, the Appeals Chamber notes that it has in the past confirmed that both imprisonment and unlawful

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[1484] See Trial Judgement, Vol. 3, paras 961, 1012.
[1485] *Kordić and Čerkez* Appeal Judgement, para. 73. See *Čelebići* Appeal Judgement, para. 322.
[1486] *Kordić and Čerkez* Appeal Judgement, para. 72 (emphasis added). See *Čelebići* Appeal Judgement, para. 321.
[1487] *Kordić and Čerkez* Appeal Judgement, para. 116 (emphasis added, internal reference omitted). See also *Kordić and Čerkez* Appeal Judgement, para. 1043 (listing, in the context of cumulative convictions for persecution and imprisonment, deprivation of liberty without due process of law as an element of the crime of imprisonment).
[1488] See *Kordić and Čerkez* Appeal Judgement, paras 114-115.
[1489] See *Nada* Decision, para. 225; *Guzzardi* Decision, para. 92. The Appeals Chamber recalls that even though the ECtHR case-law is not binding on the Tribunal, it may be instructive in cases where there is no well-established

confinement of civilians can occur even in situations where the civilians are held in houses in villages, including those who are held in their own village and their own houses, without guards, and where they have some freedom of movement. In *Kordić and Čerkez*, the Appeals Chamber upheld the Trial Chamber's finding that the civilians in the village of Rotilj were imprisoned and unlawfully confined since the village was surrounded by HVO, the civilians were not held there for their own safety, and they were prevented from leaving while at the same time were subjected to beatings, thefts, and sexual abuse.[1490] Accordingly, the mere fact that the civilians from Duša, Hrasnica, and Uzričje had some freedom of movement does not necessarily mean that they were not deprived of their liberty and thus imprisoned or unlawfully confined. The Appeals Chamber will examine the facts relied on by the Trial Chamber in relation to each of the three locations, bearing in mind the evidence Praljak puts forward for this ground of appeal.

474. In support of his argument that civilians from Duša, Hrasnica, and Uzričje were not detained, Praljak points to evidence and testimony which, according to him, suggest that civilians were able to move within certain areas at certain times.[1491] Specifically, he argues that: (1) in Paloč, according to Witness BY, there were no guards and women could leave the house;[1492] (2) the civilian population from Hrasnica was "secured and evacuated" from the combat area in the vicinity of Hrasnica according to Article 49 of Geneva Convention IV; after one night in a "collection center", it was "released" and "accommodated" in houses in Trnovača village and, according to Witness BX, was not prevented from leaving those houses;[1493] and (3) the Muslim population in Uzričje had some freedom of movement during daytime, which was acknowledged by the Trial Chamber.[1494]

Tribunal jurisprudence, as is the case here. See, *e.g.*, *Popović et al.* Appeal Judgement, para. 436; *Đorđević* Appeal Judgement, para. 83; *Šainović et al* Appeal Judgement, paras 1647-1648; *Čelebići* Appeal Judgement, para. 24.

[1490] *Kordić and Čerkez* Trial Judgement, paras 792-793 & fn. 1688, 800 (finding that despite detainees having some liberty of movement inside the village of Rotilj, their conditions, which included overcrowding and forced labour, still amounted to detention); *Kordić and Čerkez* Appeal Judgement, paras 638-640 (upholding the detention finding). See also *Simić et al.* Trial Judgement, paras 563-567, 666, 680 (finding that despite detainees having some liberty of movement inside and outside of the village of Zasavica, where certain witnesses testified that detainees were essentially "free" and living a "normal life there" in individual houses, their conditions still amounted to detention); *Blaškić* Trial Judgement, paras 684, 691, 700 (finding that despite the defence argument that Bosnian Muslims in the village of Rotilj were not detained because their freedom of movement was not limited, their conditions still amounted to detention). These Trial Chamber findings in the *Simić et al.* and *Blaškić* cases on the nature of detentions in Zasavica and Rotilj, respectively, were not an issue on appeal.

[1491] Praljak's Appeal Brief, paras 201, 205-207 & fns 461, 472-473, 476-477, 479-480.

[1492] Praljak's Appeal Brief, para. 201, referring to Witness BY, T. 9085 (27 Oct 2006).

[1493] Praljak's Appeal Brief, paras 204-205, referring to Witness BX, T. 8874 (25 Oct 2006). In connection with his argument that restrictions on movement of the Hrasnica villagers were necessary for the villagers' own security, Praljak argues that these were allowed under Article 27 of Geneva Convention IV. Praljak's Appeal Brief, para. 205, referring to his ground of appeal 8.1 where he relies on the Commentary to Article 27 of Geneva Conventions IV. The Appeals Chamber dismisses this ground of appeal elsewhere. See *infra*, paras 514, 517.

[1494] Praljak's Appeal Brief, para. 207, referring to, *inter alia*, Trial Judgement, Vol. 2, paras 444, 446, 451.

475. The Appeals Chamber notes that the Trial Chamber explicitly considered the evidence relied upon by Praljak.[1495] Thus, with respect to Paloč and Trnovača, the Trial Chamber considered and relied on the evidence of Witnesses BY and BX, as well as the evidence of other witnesses, and ultimately concluded that civilians in both locations were detained and thus imprisoned and unlawfully confined.[1496] Concerning specifically Witness BY's evidence on Paloč, while she did state that there were "no guards protecting" them and that women could leave the house, she also stated that only some women did so in order to prepare food.[1497] As for Witness BX, the relevant portion of her evidence relied on by Praljak indicates in fact that she considered herself a "prisoner" as she could not go anywhere except to get food.[1498] Indeed, the Trial Chamber found, relying on the evidence of Witness BX, that the houses in Trnovača were guarded by HVO soldiers.[1499]

476. As for Uzričje, the Trial Chamber noted trial arguments raised by Petković that the civilians in Uzričje "were neither locked-in nor kept prisoner, but sheltered from the hostilities" and that as soon as fighting stopped, the civilians were again authorised to move about as they wished.[1500] The Trial Chamber then considered evidence that villagers held in two Muslim houses in Uzričje retained a certain freedom of movement during the day to do domestic chores, listen to news reports, or find food, and that they were required to return by nightfall.[1501] However, the Trial Chamber also considered that after the villagers surrendered, on 19 January 1993, the HVO arrested and separated them into two main groups which were put in these two houses.[1502] It further considered witness testimony that villagers were held until March or April 1993 at one house and 45 days at another, and that HVO soldiers guarded both houses.[1503] The Trial Chamber also took into account evidence of a witness who stated that she was held under HVO guard in various houses in Uzričje until February 1993 and that although one house at which she stayed was not under HVO control, HVO soldiers armed with rifles and stationed in the neighbouring house frequently made rounds about the house.[1504] The Trial Chamber found, in view of the evidence, that the Muslim villagers were indeed held by the HVO inside the village for about a month-and-a-half, considering, in this regard, that despite having some freedom of movement during the day, they were assembled in houses and had to observe a curfew.[1505] In its legal findings, the Trial Chamber concluded that

[1495] See, *e.g.*, Trial Judgement, Vol. 2, paras 406-407, 409, 418-420, 422, 424-426, 441-442, 444 & fns 974-975, 983-984, 991-998, 1001-1002, 1004-1009, 1032-1033, 1036-1040.
[1496] See Trial Judgement, Vol. 2, paras 406-407, 409, 418-419, 424-426 & fns 974-975, 983-984, 993-995, 997-998, 1002, 1004-1009, Vol. 3, paras 962, 1013.
[1497] See Witness BY, T. 9085 (27 Oct 2006).
[1498] See Witness BX, T. 8874 (25 Oct 2006).
[1499] Trial Judgement, Vol. 2, para. 425 and references cited therein.
[1500] Trial Judgement, Vol. 2, para. 439.
[1501] Trial Judgement, Vol. 2, para. 444.
[1502] Trial Judgement, Vol. 2, paras 440-441.
[1503] Trial Judgement, Vol. 2, paras 441-442.
[1504] Trial Judgement, Vol. 2, para. 443.
[1505] Trial Judgement, Vol. 2, para. 446.

these civilians, arrested by the HVO in the course of large-scale operations during which the HVO arrested and then detained all the Muslims, were imprisoned and unlawfully confined, crimes under Articles 5 and 2 of the Statute, respectively.[1506]

477. Given the evidence and the findings outlined above, the Appeals Chamber considers that Praljak fails to demonstrate that the Trial Chamber erred in qualifying its factual findings as amounting to deprivation of liberty in relation to the civilians from Duša, Hrasnica, and Uzričje. While these civilians had some freedom of movement, that freedom consisted of individuals occasionally leaving the houses they were in, notably to obtain food.[1507] Additionally, the evidence and the factual findings outlined above indicate that armed HVO troops ordered and even moved the civilians to various locations and also were present in those locations, such that the civilians did not feel free to leave; indeed, in Trnovača and Uzričje the houses were in fact guarded by the HVO.[1508]

478. Regarding Praljak's remaining submission on freedom of movement, the Appeals Chamber notes that in further support of his argument that the Trial Chamber acknowledged that the Muslim population in Uzričje had some such freedom,[1509] he points to, *inter alia*, a paragraph in the Trial Judgement and states that the Muslims "were not confined to the house and even not to the village as some of them left the village".[1510] The Trial Chamber indeed noted evidence according to which a number of villagers being held by the HVO in houses under guard left the village because "they were still afraid of the fighting or of what might happen to them".[1511] It proceeded to find that a witness, who was held for 45 days in a house guarded by the HVO and fled with members of her family, was "seizing the opportunity when there were no HVO guards around the house".[1512] Praljak misrepresents the Trial Judgement to the extent that he suggests that the Trial Chamber's consideration of evidence of villagers who escaped as a result of fear is demonstrative of the fact that they were not deprived of their liberty.

479. As for Praljak's arguments relating to the lawfulness of the detentions in Hrasnica, while he argues that the civilians from Hrasnica were "evacuated" to Trnovača, relying on Article 49 of Geneva Convention IV, the Appeals Chamber notes that in referring to the removal of the population as an "evacuation" Praljak merely disagrees with the Trial Chamber's qualification of what happened to the civilians. Indeed, the Trial Chamber specifically found that this removal was

[1506] Trial Judgement, Vol. 3, paras 961-962, 1012-1013.
[1507] See *supra*, paras 475-476.
[1508] See *supra*, paras 464, 475-476.
[1509] See *supra*, paras 465, 471 & fn. 1494.
[1510] Praljak Appeal Brief, para. 207, referring to Trial Judgement, Vol. 2, para. 451.
[1511] Trial Judgement, Vol. 2, para. 451.
[1512] Trial Judgement, Vol. 2, para. 452.

not an evacuation.[1513] Further, with respect to his submission that these civilians had their movement restricted for their own security, which is permitted under Article 27 of Geneva Convention IV, the Appeals Chamber notes that Article 27(4) of Geneva Convention IV is broadly worded and provides that the Parties to the conflict "may take such measures of control and security in regard to protected persons as may be necessary as a result of the war". The Commentary to Article 27 then states that while restriction of movement is one of the measures a belligerent may inflict on protected persons, internment of civilians and the placing of civilians in assigned residences are the two most severe measures that may be inflicted on protected persons under Article 27 and, as such, are subject to strict rules outlined in Articles 41-43 and 78 of Geneva Convention IV.[1514] One of these rules is that the internment or placement in assigned residence may be ordered only if the security of the detaining party makes it absolutely necessary, while another provides that an initially lawful internment or placement in assigned residence clearly becomes unlawful if the detaining party does not respect the basic procedural rights of the detained persons and does not establish an appropriate court or administrative board as prescribed in Article 43 of Geneva Convention IV.[1515] As explained earlier, the Appeals Chamber considers that the Trial Chamber did not err in concluding that the events concerning Hrasnica villagers amounted to deprivation of liberty and thus concerned more than a mere restriction of movement.[1516] Further, using the Geneva Convention IV terminology, the Appeals Chamber considers that the Trial Chamber findings and the evidence it relied on indicate that the civilians from Hrasnica were placed by the HVO in a number of "assigned residences" in Trnovača and elsewhere.[1517] In fact, Praljak himself argues that the civilians first spent a night in a "collection centre" and then were "accommodated" in houses in Trnovača.[1518] That being the case, this placement was subject to strict rules and requirements noted above. However, there is nothing in the factual findings outlined above to indicate that these rules were followed, namely that the civilians were moved to various locations because the HVO had reasonable grounds to believe that this was absolutely necessary for reasons of security,[1519] or that

[1513] Trial Judgement, Vol. 3, paras 846, 902. See also *infra*, para. 482.
[1514] Commentary on Geneva Convention IV, Article 27, p. 207.
[1515] Geneva Convention IV, Arts. 42 and 78; *Čelebići* Appeal Judgement, para. 320. See also *Čelebići* Appeal Judgement, para. 327 ("the reasonable time which is to be afforded to a detaining power to ascertain whether detained civilians pose a security risk must be the minimum time necessary to make enquiries to determine whether a view that they pose a security risk has any objective foundation such that it would found a 'definite suspicion' of the nature referred to in Article 5 of Geneva Convention IV").
[1516] See *supra*, para. 477.
[1517] See *Kordić and Čerkez* Trial Judgement, para. 283 (noting that, according to the Commentary on Geneva Convention IV, assigned residence consists of moving people from their domicile and forcing them to live in a locality which is generally out of the way and where supervision is more easily exercised).
[1518] See Praljak's Appeal Brief, para. 205.
[1519] See Trial Judgement, Vol. 3, paras 961, 1012 (concluding that the HVO made no individual assessments of security reasons which could have led to the detention of civilians).

the HVO established an appropriate court or administrative board in line with Article 43 of Geneva Convention IV.[1520]

480. The Appeals Chamber considers as speculative Praljak's assertion that a statement in the 27 January 1993 HVO report – that civilians arrested in some villages were released immediately – demonstrates that the HVO conducted individual assessments of the security reasons which could have led to the detention. As to his assertion that the Trial Chamber ignored this statement, Praljak disregards the Trial Chamber's reliance on other evidence indicating that the civilians in all four villages were not released immediately.[1521] As such, it is a mere assertion that the Trial Chamber must have failed to consider relevant evidence without showing that no reasonable trier of fact, based on the evidence, could have reached the same conclusion as the Trial Chamber did. With respect to his argument, in particular, that a curfew was imposed already in June 1992 upon the whole population of Gornji Vakuf Municipality, the Appeals Chamber considers that Praljak fails to demonstrate how this assertion, and the evidence upon which he relies, is temporally relevant to the impugned findings. All these arguments are dismissed.

481. For the foregoing reasons, the Appeals Chamber dismisses Praljak's ground of appeal 13.

5. Displacement of Muslims from Duša, Hrasnica, Uzričje, and Ždrimci (Praljak's Ground 14)

482. The Trial Chamber found that, following the attack on 18 January 1993, the HVO forcibly removed and transferred women, children, and the elderly from the villages of Duša, Hrasnica, Uzričje, and Ždrimci.[1522]

483. With regard to Duša, the Trial Chamber found that after the inhabitants and the defenders of the village had surrendered, the HVO ordered women, children, and the elderly to go to Paloč, where they were further held for about a fortnight.[1523] The Trial Chamber also found that, during the first half of February 1993, these civilians were then taken from Paloč to Gornji Vakuf by UNPROFOR, noting that most of them were never able to return to their homes as their houses had been destroyed by the HVO.[1524] In that context, the Trial Chamber found that, by burning the

[1520] See Trial Judgement, Vol. 3, paras 961, 1012 (holding that the Muslim civilians had no possibility of challenging their confinement with the relevant authorities).
[1521] See Trial Judgement, Vol. 2, paras 409-410, 421, 426-427, 441-443, 446, 463, 467-468 and references cited therein. See also Trial Judgement, Vol. 3, paras 961, 1012.
[1522] Trial Judgement, Vol. 3, paras 845-848, 900-906.
[1523] Trial Judgement, Vol. 2, paras 406, 410, Vol. 3, paras 845, 899.
[1524] Trial Judgement, Vol. 2, para. 410, Vol. 3, paras 845, 900.

houses belonging to Bosnian Muslims at the time the fighting in Duša had ceased, the HVO deliberately prevented the Duša population from returning.[1525]

484. With respect to Hrasnica, the Trial Chamber found that after the attack on the village, and after having arrested the men of military age and separated them from the women, children, and the elderly, the HVO removed the women, children, and the elderly and detained them successively at various places: in Hrasnica, a house in the hamlet of Volari, the furniture factory in Trnovača (arriving in three buses), and eventually houses surrounding the Trnovača factory.[1526] After about three weeks in detention in those houses, the HVO released the civilians without instructing them to go to any specific place but the Trial Chamber found that UNPROFOR "had to take" some of them to Bugojno as they could not return to their houses, which had been burnt down by the HVO.[1527] Other Hrasnica civilians detained in Volari were taken by the HVO to the Trnovača School; they were released after about a fortnight and ordered by the HVO to go to ABiH-held territory.[1528] The Trial Chamber was satisfied that the removal of these civilians from Hrasnica was "on no account an evacuation carried out for security purposes" and emphasised that by destroying the houses belonging to Bosnian Muslims in Hrasnica, while in control of the village, the HVO deliberately prevented the Hrasnica population from returning.[1529]

485. Regarding Uzričje, the Trial Chamber found that, after the attack on the village, the HVO stole property from Muslim houses, set fire to them, and detained the Muslim population of Uzričje in a number of houses in the village, for about a month-and-a-half.[1530] The Trial Chamber also found that some detained Muslims fled Uzričje in the direction of ABiH-controlled territory, in fear of what lay ahead or following pressure from HVO soldiers.[1531] In regard to the latter, the Trial Chamber considered, *inter alia*, the testimony of Witness Zijada Kurbegović, who testified that the HVO ordered some Uzričje villagers, including herself and her family, to leave.[1532] The Trial Chamber also held that by burning the Muslim houses, the HVO deliberately prevented the Muslim population of Uzričje from returning.[1533]

486. As for Ždrimci, the Trial Chamber found that, after the attack on the village, the HVO set fire to Muslim houses, stole Muslim property, arrested the men, and detained the Muslim women

[1525] Trial Judgement, Vol. 3, paras 845, 900. See Trial Judgement, Vol. 2, paras 398-402.
[1526] Trial Judgement, Vol. 2, paras 416, 418-424, 427, 473, Vol. 3, paras 846, 902.
[1527] Trial Judgement, Vol. 2, paras 426-427, Vol. 3, paras 846, 902.
[1528] Trial Judgement, Vol. 2, paras 420-421, Vol. 3, paras 846, 902. See Trial Judgement, Vol. 2, para. 421.
[1529] Trial Judgement, Vol. 3, paras 846, 902. See Trial Judgement, Vol. 2, paras 412-415 (where the Trial Chamber found that before burning Muslim houses the HVO searched them and stole property from them).
[1530] Trial Judgement, Vol. 2, paras 432-436, 440-443, 446.
[1531] Trial Judgement, Vol. 2, para. 454.
[1532] Trial Judgement, Vol. 2, para. 453.
[1533] Trial Judgement, Vol. 3, paras 847, 904.

and children in a number of houses in the village.[1534] After about a month-and-a-half in detention, these civilians were told by the joint HVO-ABiH commission, under the auspices of UNPROFOR, that they had been released and, according to the Trial Chamber, many had no choice but to leave the village since the HVO burned down at least about 30 houses belonging to Muslim families.[1535] The Trial Chamber also found that by destroying numerous Muslim houses the HVO deliberately prevented the Muslim population of Ždrimci from returning.[1536]

487. On the basis of all these findings, the Trial Chamber concluded that the events in Duša, Hrasnica, Uzričje, and Ždrimci constituted inhumane acts (forcible transfer) as a crime against humanity (Count 8) and an unlawful transfer of civilians as a grave breach of the Geneva Conventions (Count 9).[1537]

(a) Arguments of the Parties

488. Praljak submits that the Trial Chamber erroneously concluded that the Muslim population was unlawfully displaced from the villages of Duša, Hrasnica, Uzričje, and Ždrimci in Gornji Vakuf Municipality.[1538] With respect to Duša, Praljak argues that Witness BY stated that Muslim troops, not the HVO, ordered civilians in Duša to go to Paloč.[1539] He also submits that Paloč is not sufficiently remote from Duša to fulfil the *actus reus* of forcible transfer.[1540] In the same vein, Praljak contends that given that some people from Ždrimci went to nearby villages where they lived with their families in a familiar environment, the Trial Chamber failed to establish that the population was uprooted from the territory and environment in which it normally lived.[1541] Regarding Hrasnica, Praljak submits that: (1) it is not clear whether the Trial Chamber considered that forcible transfer was committed when the population was removed from Hrasnica or three weeks later when some decided to go elsewhere;[1542] and (2) the finding that some people were told to go to ABiH territory was based on hearsay.[1543] With respect to Duša and Hrasnica, Praljak submits that: (1) as the populations were found to be "arrested/detained", they could not be considered to have been forcibly transferred;[1544] (2) people who left Duša and Hrasnica were

[1534] Trial Judgement, Vol. 2, paras 456-468.
[1535] Trial Judgement, Vol. 3, paras 848, 905-906. See Trial Judgement, Vol. 2, paras 466-468.
[1536] Trial Judgement, Vol. 3, paras 848, 906.
[1537] Trial Judgement, Vol. 3, paras 845-848, 899-906.
[1538] Praljak's Appeal Brief, para. 230, referring to, *inter alia*, Trial Judgement, Vol. 3, paras 845-848, 900-906. See also Praljak's Reply Brief, para. 67.
[1539] Praljak's Appeal Brief, para. 217. Praljak also submits that "[i]t seems that the [Trial Chamber] does not consider that the HVO is responsible for the subsequent removal of [the] population from the area by UNPROFOR". Praljak's Appeal Brief, para. 215.
[1540] Praljak's Appeal Brief, para. 218.
[1541] Praljak's Appeal Brief, para. 228, referring to, *inter alia*, Trial Judgement, Vol. 3, paras 848, 906.
[1542] Praljak's Appeal Brief, para. 220. See Praljak's Appeal Brief, para. 224.
[1543] Praljak's Appeal Brief, para. 221.
[1544] Praljak's Appeal Brief, paras 216 (referring to, *inter alia*, Trial Judgement, Vol. 2, para. 405), 220.

returning to the places from which they originally came;[1545] and (3) people were able to and did return to their homes.[1546]

489. Praljak argues that, in any case, forcible transfer assumes force or coercion and that therefore the Trial Chamber's findings that the populations were unable to return to their homes cannot constitute a sufficient basis for the crime.[1547] Praljak further argues that while the burning of houses might sometimes constitute coercion, the Trial Chamber failed to establish: (1) the nexus between this act and the removal of the population;[1548] and (2) that those who burned houses did so with the intent to forcibly remove.[1549] He submits that the Trial Chamber did not consider that civilians may have fled out of fear for their safety following the "commencement of the armed conflict".[1550] Praljak requests that his convictions under Counts 8 (inhumane acts (forcible transfer) as a crime against humanity) and 9 (unlawful transfer as a grave breach of the Geneva Conventions) be reversed with respect to the relevant charges for Gornji Vakuf Municipality.[1551]

490. The Prosecution responds that Praljak merely disagrees with the Trial Chamber's interpretation of evidence without showing an error.[1552] The Prosecution argues that the Trial Chamber's findings that villagers were unlawfully detained do not preclude its well-grounded findings that they were forcibly transferred or expelled.[1553] It also contends that, given that the Muslims had no choice in leaving, their transfer was unlawful, notwithstanding the type of coercion or distance.[1554] The Prosecution avers that the displacements were not intended to be temporary but to drive the Muslims from their homes.[1555]

[1545] Praljak's Appeal Brief, paras 217, 223. See Praljak's Appeal Brief, para. 222.
[1546] Praljak's Appeal Brief, paras 219, 222.
[1547] Praljak's Appeal Brief, paras 222 (referring to Trial Judgement, Vol. 2, para. 427), 226, 229. With specific regard to Uzričje, Praljak also argues that the Trial Chamber's finding that the HVO forced the Muslim population to leave was based solely on Kurbegović's testimony, which was imprecise and contradicted by an ABiH document (Ex. P01226). Praljak's Appeal Brief, para. 225.
[1548] Praljak's Appeal Brief, para. 229. Praljak submits that the Trial Chamber found, without evidence, that some Ždrimci villagers left because their houses had been destroyed. Praljak's Appeal Brief, para. 227.
[1549] Praljak's Appeal Brief, para. 229.
[1550] Praljak's Appeal Brief, para. 229. See Praljak's Appeal Brief, paras 221-222, 227. Praljak also argues that civilians were removed from Hrasnica during combat for their own security. Praljak's Appeal Brief, para. 221.
[1551] Praljak's Appeal Brief, para. 231. See also Praljak's Reply Brief, para. 68.
[1552] Prosecution's Response Brief (Praljak), para. 138. The Prosecution also submits that UNPROFOR's efforts relating to the removal of some victims does not alter the unlawfulness of the HVO's conduct. Prosecution's Response Brief (Praljak), para. 140.
[1553] Prosecution's Response Brief (Praljak), para. 139.
[1554] Prosecution's Response Brief (Praljak), para. 139.
[1555] Prosecution's Response Brief (Praljak), paras 140-141. The Prosecution also submits that the Trial Chamber explicitly rejected the possibility that the Muslims were removed for their own security or for compelling military reasons. Prosecution's Response Brief (Praljak), para. 140.

(b) Analysis

491. The Appeals Chamber recalls that it has already dismissed Praljak's argument concerning Witness BY's evidence relating to Duša.[1556] Regarding Praljak's arguments that Paloč is not sufficiently remote from Duša and that some people from Ždrimci went to nearby villages where they lived with their families in a familiar environment, the Appeals Chamber recalls that it has found in the context of the crime against humanity of persecution through forcible displacement that:

> The prohibition against forcible displacements aims at safeguarding the right and aspiration of individuals to live in their communities and homes without outside interference. The forced character of displacement and the forced uprooting of the inhabitants of a territory entail the criminal responsibility of the perpetrator, not the destination to which these inhabitants are sent.[1557]

The Appeals Chamber considers that this rationale applies equally to the crime of unlawful transfer of a civilian as a grave breach of the Geneva Conventions and the crime against humanity of other inhumane acts through forcible transfer.

492. The Trial Chamber found that the HVO burned down about 16 and 30 houses belonging to Muslim families in Duša and Ždrimci, respectively.[1558] The Trial Chamber considered that because it was impossible for them to return to their homes, these persons were deprived of their right to enjoy a normal social and family life.[1559] The Appeals Chamber notes that, contrary to Praljak's claim, the *actus reus* of forcible displacement does not require that the population be removed to a "location sufficiently remote from its original location".[1560] Given the findings set out above, Praljak's arguments regarding Duša and Ždrimci are dismissed.

493. Regarding Hrasnica, the Appeals Chamber considers that Praljak misrepresents the Trial Chamber's findings when submitting that it is not clear whether the Trial Chamber considered that forcible transfer was committed when the population was removed from Hrasnica or three weeks later when some decided to go elsewhere. In that respect, the Trial Chamber concluded that the "women, children and elderly person from the village of Hrasnica were forcibly removed *from their village*" indicating that the removal started at the moment when they were forced to leave the village.[1561] This is in line with the rationale outlined above.[1562] The Appeals Chamber further notes

[1556] See *supra*, para. 468. The Appeals Chamber notes that Praljak's assertion that "[i]t seems that the [Trial Chamber] does not consider that the HVO is responsible for the subsequent removal of [the] population from the area by UNPROFOR" does not allege any error. Praljak's Appeal Brief, para. 215.
[1557] *Krnojelac* Appeal Judgement, para. 218. See *Naletilić and Martinović* Appeal Judgement, para. 153.
[1558] Trial Judgement, Vol. 3, paras 845, 848, 900, 906. See Trial Judgement, Vol. 2, paras 402, 467-468.
[1559] Trial Judgement, Vol. 3, paras 845, 848, 900, 906.
[1560] Praljak's Appeal Brief, para. 218. See *Krnojelac* Appeal Judgement, para. 222.
[1561] Trial Judgement, Vol. 3, para. 902 (emphasis added).
[1562] See *supra*, para. 491.

that the Trial Chamber reached this conclusion based on the totality of the events, namely that: (1) after the HVO attack on the village, the HVO took civilians to various locations where they were subsequently detained; (2) after about three weeks in detention, the HVO released them – admittedly without instructing them to go to a specific location – but UNPROFOR had to take some of them to Bugojno, since their houses had been burnt by the HVO; and (3) another group of civilians held at the Trnovača school was released after a fortnight and ordered by the HVO to go to ABiH-held territory.[1563] The Trial Chamber additionally found that by making sure that all the houses belonging to Muslim families had been destroyed, the HVO – which was in control of the village – deliberately prevented the civilian population from returning.[1564] Praljak ignores the latter finding. As to Praljak's submission that the Trial Chamber's finding that some people from Hrasnica were told to go to ABiH territory was based on hearsay, the Appeals Chamber recalls that the Trial Chamber is entitled to rely upon hearsay evidence, provided it is reliable and credible,[1565] and notes that Praljak provides no argument to the contrary.[1566] For the foregoing reasons, his arguments are dismissed.

494. As to Praljak's argument, pertaining to Duša and Hrasnica, that the populations found to be "arrested/detained" could not be considered to have been forcibly removed, the Appeals Chamber considers that Praljak merely makes a blanket statement and fails to show how a finding that people were detained detracts from a finding that they were forcibly transferred. In support of his contentions that people who left were returning to the places from which they originally came and that people were able to and did return to their homes, Praljak relies on evidence and a Trial Chamber finding that, at most, indicate this to be the case for *some* people.[1567] In that respect, the Appeals Chamber notes that for Duša Praljak relies on the evidence of Witness BY and Witness BW, who testified that a few people from Paloč arrived to Duša prior to the removal of the population because they felt unsafe in Paloč.[1568] The Appeals Chamber does not consider that the presence of a small number of locals from Paloč among the population of Duša undermines the impugned finding. As for Hrasnica, Praljak relies on the evidence of Witness BX who testified that she was from the village of Planinci in Bugojno and came to Hrasnica with her family in 1992.[1569] Her testimony shows that following the detention in Trnovača factory and

[1563] Trial Judgement, Vol. 3, paras 846, 902. See Trial Judgement, Vol. 2, paras 419-427.
[1564] Trial Judgement, Vol. 3, paras 846, 902. See Trial Judgement, Vol. 2, paras 426-427.
[1565] *Stanišić and Župljanin* Appeal Judgement, para. 463 & fn. 1574; *Popović et al.* Appeal Judgement, para. 1276; *Šainović et al.* Appeal Judgement, para. 846.
[1566] See Praljak's Appeal Brief, para. 221.
[1567] See Praljak's Appeal Brief, para. 217 & fn. 503 (referring to Witness BW, T. 8769 (closed session) (19 Oct 2006), Witness BY, T. 9073 (27 Oct 2006)), para. 219 & fn. 507 (referring to Witness BY, T. 9085-9086 (27 Oct 2006)), paras 222-223 & fn. 519 (referring to Ex. P09710 (confidential), pp. 2, 4, Witness BX, T. 8845 (25 Oct 2006)).
[1568] Witness BY, T. 9073 (27 Oct 2006); Witness BW, T. 8769 (closed session) (19 Oct 2006) (stating that a group of six people from Paloč came to Duša).
[1569] See Ex. P09710 (confidential), p. 2; Witness BX, T. 8845 (25 Oct 2006).

Trnovača houses she was able to go back home to Bugojno.[1570] The Appeals Chamber does not consider that the mere fact that Witness BX was ultimately able to go back home undermines the Trial Chamber's finding that the women, children, and the elderly from Hrasnica were forcibly removed and transferred. Praljak fails to show how these arguments contradict the impugned finding. These arguments are therefore dismissed.

495. Concerning Praljak's claim that forcible transfer assumes force or coercion and that the Trial Chamber's findings that the populations were unable to return to their homes therefore cannot constitute a sufficient basis for the crime, the Appeals Chamber recalls that it is the absence of genuine choice that makes displacement unlawful.[1571] Factors other than force itself may render displacement involuntary and include "the threat of force or coercion, such as that caused by fear of violence, duress, detention, psychological oppression or abuse of power [...] or by taking advantage of a coercive environment".[1572] The Appeals Chamber has previously also confirmed that creating "severe living conditions" for a certain population – which in turn makes it impossible for that population to remain in their homes – can amount to forced displacement.[1573] Finally, whether a transferred person had a genuine choice is a determination to be made within the context of a particular case.[1574] The Appeals Chamber therefore considers that Praljak has failed to show that no reasonable trier of fact could reach the conclusion that civilians in the four villages were forcibly transferred because the HVO destroyed their houses and deliberately made it impossible for them to return.[1575] Praljak's argument that the Trial Chamber failed to establish the nexus between the act of burning houses and the removal of the population also fails as the Trial Chamber clearly made findings establishing that nexus in relation to all four villages.[1576]

[1570] See Ex. P09710 (confidential), p. 4; Trial Judgement, Vol. 2, para. 422.
[1571] *Đorđević* Appeal Judgement, para. 727 (in the context of the crime against humanity of other inhumane acts through underlying acts of forcible transfer); *Stakić* Appeal Judgement, para. 279 (in the context of deportation as a crime against humanity); *Krnojelac* Appeal Judgement, para. 229 (in the context of the crime against humanity of persecution through underlying acts of forcible displacement).
[1572] *Đorđević* Appeal Judgement, para. 727 (in the context of the crime against humanity of other inhumane acts through underlying acts of forcible transfer); *Krajišnik* Appeal Judgement, para. 319 (in the context of deportation as a crime against humanity); *Stakić* Appeal Judgement, para. 279 (in the context of deportation as a crime against humanity); *Krnojelac* Appeal Judgement, para. 229 (in the context of the crime against humanity of persecution through underlying acts of forcible displacement).
[1573] *Krajišnik* Appeal Judgement, paras 308, 319.
[1574] *Đorđević* Appeal Judgement, para. 727 (in the context of the crime against humanity of other inhumane acts through underlying acts of forcible transfer); *Stakić* Appeal Judgement, para. 282 (in the context of deportation as a crime against humanity); *Krnojelac* Appeal Judgement, para. 229 (in the context of the crime against humanity of persecution through underlying acts of forcible displacement).
[1575] See, *e.g.*, Trial Judgement, Vol. 3, paras 845-848, 900, 902, 904, 906. The Appeals Chamber dismisses Praljak's challenge to Kurbegović's testimony as he fails to demonstrate that no reasonable trier of fact could have concluded that the HVO forcibly transferred the Muslim population, having considered, *inter alia*, her evidence as well as Exhibit P01226. See Trial Judgement, Vol. 2, paras 451-454, Vol. 3, paras 847, 904.
[1576] See *supra*, paras 483-486. Moreover, contrary to Praljak's related submission, the Trial Chamber did in fact rely on evidence that some Ždrimci villagers left because their houses had been destroyed. See Trial Judgement, Vol. 2, para. 467 & fn. 1071, referring to Ex. P09797, para. 23. This argument is therefore dismissed.

496. As for Praljak's argument that the Trial Chamber failed to consider that civilians may have fled out of fear for their safety following "the commencement of the armed conflict",[1577] the Appeals Chamber notes that the Trial Chamber was satisfied that the removals in Duša, Hrasnica, and Uzričje occurred at a time when the HVO controlled the villages and there was no more fighting. The Trial Chamber also found that the HVO made no arrangements for the population to return and, in fact, deliberately prevented them from returning by destroying property.[1578] Further, with respect to Ždrimci, the Trial Chamber established that following the 18 January 1993 attack, numerous civilians also had no choice but to leave the village given that the HVO burned down at least about 30 houses, all of which belonged to Muslim families.[1579] In light of these findings, the Appeals Chamber dismisses Praljak's argument, as he merely disagrees with the Trial Chamber's findings without demonstrating an error. Finally, contrary to Praljak's assertion, the Trial Chamber established that those who burned the houses did so with the intent to forcibly remove.[1580]

497. For the foregoing reasons, the Appeals Chamber dismisses Praljak's ground of appeal 14.

6. Commission of crimes by the Bruno Bušić Regiment in Ždrimci and Uzričje (Petković's Sub-grounds 5.2.2.2 and 5.2.3.1 both in part)

498. The Trial Chamber found that on 18 January 1993, the inhabitants of Ždrimci gradually surrendered to HVO soldiers, including soldiers from the Bruno Bušić Regiment.[1581] It further found that the arrested inhabitants included women, children, and the elderly, and that the HVO detained all Muslims irrespective of their status.[1582] With regard to the village of Uzričje, it found that members of the Bruno Bušić Regiment were among the HVO soldiers most implicated in thefts and in setting fire to houses.[1583]

499. Petković submits that there is no evidence that members of the Bruno Bušić Regiment committed crimes in Gornji Vakuf.[1584] He challenges the Trial Chamber's reliance on the testimony of Witness Nedžad Čaušević with regard to the arrest of the inhabitants of Ždrimci, arguing that Čaušević actually stated that the HVO, including members of the Bruno Bušić Regiment, detained him and other men *who defended the village*, and that the detention of combatants is not a war

[1577] Praljak's Appeal Brief, para. 229. When arguing that civilians were removed from Hrasnica during combat for their own security, Praljak relies on his ground of appeal 13 which the Appeals Chamber dismisses elsewhere. See Praljak's Appeal Brief, para. 221 & fn. 512; *supra*, paras 468-481. See also Trial Judgement, Vol. 2, paras 451-454.
[1578] Trial Judgement, Vol. 3, paras 845-847, 900, 902, 904.
[1579] Trial Judgement, Vol. 3, paras 848, 906.
[1580] Trial Judgement, Vol. 3, paras 845-848, 900, 902, 904, 906.
[1581] Trial Judgement, Vol. 2, para. 384.
[1582] Trial Judgement, Vol. 2, para. 468.
[1583] Trial Judgement, Vol. 2, para. 436.

crime.[1585] Petković further notes that the Trial Chamber's finding that members of the Bruno Bušić Regiment were implicated in the thefts and fires in Uzričje is based on: (1) a document of the BiH intelligence service in which three soldiers allegedly belonging to the Regiment are mentioned; and (2) the testimony of Witness Zijada Kurbegović, which he contends does not mention the Regiment.[1586]

500. The Prosecution responds that the villagers in Ždrimci who were detained by members of the Bruno Bušić Regiment included civilians and that the evidence leaves no doubt that it was members of the Regiment who perpetrated the crimes in Uzričje.[1587]

501. The Appeals Chamber rejects Petković's suggestion that only combatants were detained in Ždrimci. In the testimony to which Petković refers, Čaušević stated that he and others surrendered because they "could see that the other civilians were in danger if we still tried to hide" and that those detained by the soldiers from the Bruno Bušić Regiment were "mostly older men and young boys, one was only 12 years old".[1588] As such, Petković misrepresents the evidence. With regard to Uzričje, the Appeals Chamber notes that Petković fails to articulate an error in the Trial Chamber's reliance on the report of the BiH intelligence service under reference. His argument that there is no evidence that members of the Bruno Bušić Regiment committed crimes in Gornji Vakuf is accordingly dismissed,[1589] as are his sub-grounds of appeal 5.2.2.2 and 5.2.3.1, both in relevant part.

E. Arrest, Detention, and Displacement of Muslims in Prozor Municipality in July-August 1993

1. Arrest and detention of civilians from Prozor (Praljak's Ground 8)

502. The Trial Chamber concluded that, between late July and early August 1993, the HVO unlawfully imprisoned civilians in the Podgrađe neighbourhood of Prozor and the villages of Lapsunj and Duge, in Prozor Municipality, thereby committing imprisonment as a crime against humanity (Count 10) and unlawful confinement of civilians as a grave breach of the Geneva

[1584] Petković's Appeal Brief, paras 234(iii), 343; Petković's Reply Brief, paras 34(ii), 35; Appeal Hearing, AT. 573-574 (23 Mar 2017). Petković also submits that "no document dating from the first half of 1993 exists indicating that the Bruno Bušić unit committed any crimes in Jablanica in April 1993". Appeal Hearing, AT. 573 (23 Mar 2017).
[1585] Petković's Appeal Brief, paras 234(iii)(a), 343.
[1586] Petković's Appeal Brief, paras 234(iii)(b), 343.
[1587] Prosecution's Response Brief (Petković), para. 177. See also Prosecution's Response Brief (Petković), para. 134. The Prosecution notes that the Bruno Bušić Regiment was also present in Duša, where HVO troops also committed crimes against Muslims and their property. Prosecution's Response Brief (Petković), para. 177.
[1588] Ex. P09201, p. 20.
[1589] The Appeals Chamber also dismisses as an undeveloped assertion Petković's submission that "no document dating from the first half of 1993 exists indicating that the Bruno Bušić unit committed any crimes in Jablanica in April 1993". Appeal Hearing, AT. 573 (23 Mar 2017).

Conventions (Count 11).[1590] Further, it found that the conditions in which the Muslims of Podgrađe, Lapsunj, and Duge were held between late July and late August 1993 were very harsh,[1591] amounting to inhumane acts (conditions of confinement) as a crime against humanity (Count 12) and inhuman treatment (conditions of confinement) as a grave breach of the Geneva Conventions (Count 13).[1592] In reaching these conclusions, the Trial Chamber found that in late July and early August 1993, following the arrests of Muslim men, the HVO rounded up and escorted a number of Muslim women, children, and elderly from Prozor Municipality to Podgrađe, Lapsunj, and Duge.[1593] Further, the Trial Chamber held that: (1) from about 19 August 1993 until 28 August 1993, at least 1,760 Muslims were being held in Podgrađe in about 100 houses;[1594] (2) the houses in Podgrađe held 20 to 70 women, children, and elderly people, and some houses held more than 80 people;[1595] (3) in August 1993, the Muslims in Lapsunj were crowded together, 20-30 per house, and had no running water or hygienic products thus contracting lice and various skin problems;[1596] and (4) on 20 August 1993, between 700 and 800 Muslims were held in the houses in Duge in overcrowded conditions, with around 30 people per house, and without sufficient food.[1597] The Trial Chamber also found that the HVO soldiers and members of the Military Police committed thefts against Muslims in all three locations and that Muslim women and girls were subjected to sexual attacks and rapes by those forces.[1598] The Trial Chamber further concluded that the objective of placing the Muslim civilians in detention was to accommodate the Croats who were arriving in the municipality.[1599] It arrived at this conclusion after having found, on the basis of, *inter alia*, a report by Luka Markešić ("Luka Markešić Report"), who was in charge of the Rama Brigade of the HVO Information and Security Service ("SIS"), that the removal of the Muslim population was related to the arrival *en masse* of Croats and that the HVO authorities took properties of Muslims who had been moved to Podgrađe, Lapsunj, and Duge so that they could house these newly arrived Croats.[1600]

[1590] Trial Judgement, Vol. 3, paras 958-959, 1009-1010. See Trial Judgement, Vol. 2, paras 225, 232. Specifically, the Trial Chamber considered that HVO soldiers – the Trial Chamber did not know to which unit they belonged – as well as Military Police officers under Ilija Franjić's command, arrested Muslim women, children, and elderly people. Trial Judgement, Vol. 2, para. 232.
[1591] Trial Judgement, Vol. 2, paras 249, 257, 267, Vol. 3, para. 958.
[1592] Trial Judgement, Vol. 3, paras 1059-1067, 1102-1111.
[1593] Trial Judgement, Vol. 2, paras 225-227, 239, 254, 263.
[1594] Trial Judgement, Vol. 2, para. 240.
[1595] Trial Judgement, Vol. 2, para. 244. See Trial Judgement, Vol. 3, para. 1009.
[1596] Trial Judgement, Vol. 2, paras 255-256.
[1597] Trial Judgement, Vol. 2, paras 263, 266.
[1598] Trial Judgement, Vol. 2, paras 250-253, 258-262, 268-272.
[1599] Trial Judgement, Vol. 2, para. 232, Vol. 3, paras 958, 1008.
[1600] Trial Judgement, Vol. 2, paras 227-228, referring to, *inter alia*, Ex. P04177, p. 2. The Trial Chamber also considered evidence that Mijo Jozić, President of Prozor Municipality, stated that the most important problem facing them was the massive influx of Croats and that they needed to make more room for them. Trial Judgement, Vol. 2, para. 227.

(a) Arguments of the Parties

503. Praljak submits that the Trial Chamber erred when concluding that civilians from Prozor were arrested and detained.[1601] He argues that the Trial Chamber "could not" establish that the HVO coercively transported Muslims to Podgrađe, Lapsunj, and Duge or placed them in houses therein.[1602] In this regard, he submits that: (1) the Trial Chamber did not consider that "a number of Muslims"[1603] might have relocated voluntarily; (2) people found and moved into houses themselves upon their arrival in Podgrađe; and (3) the Trial Chamber recognised that it did not know which HVO unit would have arrested and detained the Muslims.[1604] Further, Praljak submits that: (1) relocation was a necessary and reasonable measure taken in the interest of the population;[1605] and (2) the Trial Chamber did not consider the reasonable possibility that the HVO was concerned with the safety of all civilians in Prozor.[1606] In particular, Praljak submits that the Trial Chamber erroneously concluded, on the basis of its "free and unfounded interpretation" of the Luka Markešić Report, that Muslims were put into the three villages and detained for the purpose of accommodating Croats who were arriving in the municipality.[1607]

504. With regard specifically to the Trial Chamber's finding that the population was detained, Praljak contends that the Trial Chamber: (1) acknowledged that people could go to Prozor and other villages; and (2) found that houses in Podgrađe were not under guard but that the population had restricted freedom of movement, which Praljak argues was lawful under the circumstances.[1608] He submits that, as the Muslims in Podgrađe, Lapsunj, and Duge were not detained, a necessary condition for a conviction for imprisonment, unlawful confinement, inhumane acts, and inhuman treatment was not satisfied.[1609] Praljak finally submits that the Trial Chamber erred in finding that living conditions in Podgrađe were very harsh, mainly on the basis of evidence of overcrowding and, specifically, in drawing a conclusion as to the number of Muslims held in houses that was

[1601] Praljak's Appeal Brief, heading before para. 140, para. 146. See also Praljak's Appeal Brief, para. 144.
[1602] Praljak's Appeal Brief, paras 141, 144.
[1603] Praljak's Appeal Brief, para. 140.
[1604] Praljak's Appeal Brief, paras 140-141.
[1605] Praljak's Appeal Brief, para. 143. See Praljak's Appeal Brief, para. 149. Praljak also submits that many Muslims who relocated to these three villages seemingly came from other parts of the country, so they presumably had no houses in Prozor. Praljak's Appeal Brief, para. 143.
[1606] Praljak's Appeal Brief, para. 142. See Praljak's Appeal Brief, para. 151.
[1607] Praljak's Appeal Brief, heading before para. 149, paras 149-150, referring to Ex. P04177. Praljak contends that: (1) Markešić did not testify and could not explain what he meant when making a link between the relocation of Muslims and the arrival of Croats; and (2) the report does not indicate Markešić's source of information. Praljak's Appeal Brief, para. 150.
[1608] Praljak's Appeal Brief, para. 144. Praljak argues that the restriction of movement was a necessary and reasonable measure given the chaotic situation prevailing in Prozor at the time. Praljak's Appeal Brief, para. 144, referring to the Commentary on Geneva Convention IV, Article 27.
[1609] Praljak's Appeal Brief, paras 145-146, 148; Praljak's Reply Brief, para. 76. See Praljak's Appeal Brief, para. 139.

"mathematically impossible".[1610] Praljak requests that his convictions under Counts 10, 11, 12, and 13 with respect to Prozor be reversed.[1611]

505. The Prosecution responds that Praljak merely disagrees with the Trial Chamber's interpretation of evidence without showing that it erred.[1612] It submits that Praljak's arguments that Muslims relocated voluntarily and that their freedom of movement was merely restricted must fail in light of the crimes committed.[1613] The Prosecution further submits that the Trial Chamber considered the argument that Muslims were held for their protection, but nonetheless reasonably established that they were: (1) unlawfully arrested and detained; and (2) removed to accommodate newly arrived Croats.[1614] Regarding Praljak's submission that the Trial Chamber failed to properly assess the conditions of confinement for the purposes of the crimes of inhumane acts and inhuman treatment, the Prosecution argues that: (1) Praljak ignores relevant findings and evidence; and (2) the Trial Chamber's conclusion concerning detention conditions in Podgrađe was not based on a mathematical calculation of civilians in detention.[1615]

(b) Analysis

506. The Appeals Chamber notes that in support of his arguments that a number of Muslims might have voluntarily relocated and that people found and moved into houses upon their arrival in Podgrađe, Praljak relies on evidence reflective of the experience of one particular witness, Witness BK, and her family.[1616] In contrast, the Trial Chamber relied upon various pieces of evidence when finding that the HVO and some Military Police officers rounded up, arrested, and relocated Muslims from Prozor Municipality[1617] and that "around 5,000 women, children and elderly people were held in Podgrađe and in the villages of Lapsunj and Duge".[1618] Accordingly, Praljak merely asserts that the Trial Chamber failed to give sufficient weight to Witness BK's testimony, without explaining why the conviction should not stand on the basis of the remaining evidence.[1619] Further,

[1610] Praljak's Appeal Brief, para. 147.
[1611] Praljak's Appeal Brief, para. 139.
[1612] Prosecution's Response Brief (Praljak), para. 159. See Prosecution's Response Brief (Praljak), para. 162.
[1613] Prosecution's Response Brief (Praljak), para. 161. See Prosecution's Response Brief (Praljak), para. 160.
[1614] Prosecution's Response Brief (Praljak), paras 161, 163. The Prosecution also contends that Praljak's assertion that Muslims were held for their own protection is untenable in light of the crimes they suffered. Prosecution's Response Brief (Praljak), para. 161.
[1615] Prosecution's Response Brief (Praljak), para. 162. The Prosecution argues in this regard that the Trial Chamber's conclusion that civilians lived in a climate of terror in overcrowded houses, with restricted freedom of movement, was based on substantial evidence concerning detention conditions. Prosecution's Response Brief (Praljak), para. 162.
[1616] See Praljak's Appeal Brief, para. 140 & fns 332-333, referring to Witness BK, T. 5496-5497, 5527-5528 (24 Aug 2006).
[1617] See Trial Judgement, Vol. 2, paras 225 (and references cited therein), 232. See also, *e.g.*, Trial Judgement, Vol. 2, paras 229-231 and references cited therein.
[1618] Trial Judgement, Vol. 2, para. 227 and references cited therein. See also, *e.g.*, Trial Judgement, Vol. 2, paras 231 (and references cited therein), 232.
[1619] In this regard, the Appeals Chamber notes that the Trial Chamber considered the testimony to which Praljak points. See Trial Judgement, Vol. 2, paras 225-226 & fns 566, 569.

with respect to Praljak's assertion that the Trial Chamber did not know which HVO unit was involved in the arrest and detention of the population, the Appeals Chamber notes that the Trial Chamber considered, in view of all the evidence, that "HVO soldiers [...] as well as some military police officers under Il[ji]a Franji[ć]'s command" arrested and detained the population.[1620] The Trial Chamber's acknowledgement that it did "not know to which unit [the HVO soldiers] belonged"[1621] does not undermine its finding that the HVO soldiers and the Military Police were involved in the arrest and detention of the population. Therefore, Praljak fails to demonstrate any error of fact and his arguments are dismissed.

507. As to Praljak's submission that the Muslims were relocated in the interest of the population, the Appeals Chamber notes that the Trial Chamber considered a statement by Mijo Jozić, the President of Prozor Municipality, that the Muslims were relocated for their own safety, but found, on the basis of the Luka Markešić Report, that Muslims were arrested in the course of a large-scale operation to make room for newly arrived Croats.[1622] The Trial Chamber also: (1) considered evidence that Jozić stated that they needed to make more room for the Croats;[1623] and (2) found that the HVO took the properties of the relocated Muslims so they could house Croats who arrived in Prozor.[1624] Praljak argues that the Trial Chamber failed to consider the reasonable possibility that the HVO was concerned with the safety of *all* civilians in Prozor, but he does not show that no reasonable trier of fact, based on the above evidence, could have reached the same conclusion as the Trial Chamber did. The Appeals Chamber further finds that Praljak merely asserts that the Trial Chamber failed to interpret the Luka Markešić Report in a particular manner.[1625] His argument therefore warrants dismissal.[1626]

508. Regarding Praljak's argument that the requisite element of detention of the crimes charged in Counts 10, 11, 12, and 13 had not been satisfied, the Appeals Chamber recalls its earlier finding that both unlawful confinement and imprisonment concern the deprivation of liberty of an individual.[1627] Further, with the exception of chapeau requirements for war crimes and crimes against humanity, imprisonment and unlawful confinement of civilians in the context of armed

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[1620] Trial Judgement, Vol. 2, para. 232. See also, *e.g.*, Trial Judgement, Vol. 2, paras 225, 229-231.
[1621] Trial Judgement, Vol. 2, para. 232.
[1622] Trial Judgement, Vol. 2, paras 227, 232, Vol. 3, paras 958, 1008.
[1623] Trial Judgement, Vol. 2, para. 227.
[1624] Trial Judgement, Vol. 2, para. 228.
[1625] With respect to Praljak's arguments that Markešić did not testify and could not explain what he meant when making a link between the relocation of Muslims and the arrival of Croats and that the report does not indicate Markešić's source of information, the Appeals Chamber finds that it was within the Trial Chamber's discretion to rely on the report.
[1626] As to Praljak's related argument that many Muslims who relocated came from other parts of the country and presumably did not have houses in Prozor, the Appeals Chamber finds that Praljak has not sufficiently explained the relevance of this argument to the impugned findings, and dismisses it as obscure.
[1627] See *supra*, paras 471-473.

conflict overlap significantly since the Appeals Chamber has confirmed that the legality of imprisonment and the procedural safeguards pertaining to it are to be determined based on Articles 42 and 43 of Geneva Convention IV.[1628]

509. The Appeals Chamber notes that Praljak supports his contention on detention by pointing only to findings made by the Trial Chamber regarding the freedom of movement of Muslims in Podgrađe, and not referring to Lapsunj and Duge.[1629] However, given the importance of his submissions and the fact that they ultimately challenge the detention in all three locations, the Appeals Chamber will exercise its discretion and consider this issue also in relation to the Trial Chamber's findings concerning the villages of Lapsunj and Duge. The Appeals Chamber recalls that the question of whether the civilians in Podgrađe, Lapsunj, and Duge were deprived of their liberty will depend on the circumstances of each particular case and must take into account a range of factors, including the type, duration, effects, and the manner of implementation of the measures allegedly amounting to deprivation of liberty.[1630]

510. The Trial Chamber found that between late July and the beginning of August 1993, the HVO held Muslim civilians in Podgrađe, Lapsunj, and Duge without legal justification, thereby committing the crimes of imprisonment and unlawful confinement.[1631] With respect to Podgrađe, in its factual findings on the arrests, detention, and removal of civilians in Prozor Municipality, the Trial Chamber found that "[a]lthough the Military Police were indeed present within [Podgrađe], the evidence shows that the houses themselves were not under guard and that there was some freedom of movement, with restrictions".[1632] The Trial Chamber also found that most of the Muslims did not leave Podgrađe, with the exception of, *inter alios*, probably one person per house who went to seek food at the Prozor distribution centre.[1633] Further, it found that some women left the houses at night and hid in the woods around Podgrađe out of fear of being raped by HVO soldiers.[1634] However, the Trial Chamber also found that:[1635] (1) there was only one road for

[1628] *Kordić and Čerkez* Appeal Judgement, paras 114-115.
[1629] See Praljak's Appeal Brief, para. 144 & fns 341-342, referring to Trial Judgement, Vol. 2, paras 241-242.
[1630] See *Nada* Decision, para. 225; *Guzzardi* Decision, para. 92. The Appeals Chamber recalls that even though ECtHR case-law is not binding on the Tribunal, it may be instructive in cases where there is no well-established Tribunal jurisprudence, as is the case here. See, *e.g.*, *Popović et al* Appeal Judgement, para. 436; *Đorđević* Appeal Judgement, para. 83; *Šainović et al* Appeal Judgement, paras 1647-1648; *Čelebići* Appeal Judgement, para. 24.
[1631] Trial Judgement, Vol. 3, paras 958-959, 1008-1010.
[1632] Trial Judgement, Vol. 2, para. 241.
[1633] Trial Judgement, Vol. 2, para. 242.
[1634] Trial Judgement, Vol. 2, para. 242.
[1635] The Appeals Chamber notes that the Trial Chamber made these findings specifically when it assessed the conditions of detention in Podgrađe and not when determining whether arrest and detention actually occurred. See Trial Judgement, Vol. 2, paras 238-249. *Cf.* Trial Judgement, Vol. 2, paras 225-232. In any event, considering the margin of deference to be given to the Trial Chamber's evaluation of the evidence and findings, the Appeals Chamber is satisfied that the Trial Chamber considered the evidence underlying these findings when concluding that HVO soldiers and Military Police officers detained Muslims in Podgrađe, Lapsunj, and Duge. See Trial Judgement, Vol. 2, para. 232. See also *Aleksovski* Appeal Judgement, para. 63.

entering and leaving Podgrađe, which was controlled by the HVO with a barrier;[1636] (2) Muslim civilians from other Prozor villages arrived in Podgrađe by truck, under the escort of HVO members;[1637] (3) at least 1,760 Muslims were "collected into about 100 houses";[1638] (4) the Muslims were guarded by the Military Police – although houses themselves were not under guard – and most of them did not leave Podgrađe;[1639] (5) Muslim men were terrified by the Military Police presence while the women were "afraid of stepping outside the houses and being 'raped' by HVO soldiers, who entered Podgrađe freely";[1640] and (6) HVO members stole the property of the Muslims in Podgrađe, and forced Muslim women and girls there to have sexual relations under the threat of weapons and subjected them to sexual abuse.[1641]

511. With respect to the freedom of movement in Duge, the Trial Chamber noted Witness Rudy Gerritsen's testimony that Duge village was not a "prison proper", but that the people felt imprisoned because they could not leave as they had nowhere to go.[1642] However, it also noted evidence indicating that the Military Police units came to Duge regularly to patrol that sector.[1643] Further, as with Podgrađe, the Trial Chamber also found that: (1) Muslim women, children, and elderly from Prozor and the villages surrounding Prozor were arrested and taken to Lapsunj and Duge by the HVO and Military Police;[1644] (2) both Lapsunj and Duge were overcrowded as the Muslims lived together, 20 to 30 per house, and slept on the floor;[1645] and (3) the Muslims held there were exposed to thefts and assaults by HVO soldiers and the Military Police, while Muslim women were taken away, humiliated, sexually abused, and raped.[1646] While it did not describe in detail how the freedom of movement of civilians located in Lapsunj was restricted, the Trial Chamber found that the running water in Lapsunj had been cut off and that there was no soap for washing, as a result of which the Muslims contracted lice.[1647]

512. Finally, when reaching its findings with respect to all three locations, the Trial Chamber considered the Luka Markešić Report which indicated that the Military Police "rounded up the

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[1636] Trial Judgement, Vol. 2, para. 238.
[1637] Trial Judgement, Vol. 2, para. 239. See Trial Judgement, Vol. 2, paras 225-226.
[1638] Trial Judgement, Vol. 2, para. 240.
[1639] Trial Judgement, Vol. 2, paras 241-242.
[1640] Trial Judgement, Vol. 2, para. 242. See also Trial Judgement, Vol. 2, para. 243.
[1641] Trial Judgement, Vol. 2, paras 252-253.
[1642] Trial Judgement, Vol. 2, para. 264.
[1643] Trial Judgement, Vol. 2, para. 264.
[1644] Trial Judgement, Vol. 2, paras 254, 263 (noting that by 20 August 1993 between 700 to 800 Muslim women, children, and elderly persons were held in the village of Duge).
[1645] Trial Judgement, Vol. 2, paras 256, 266.
[1646] Trial Judgement, Vol. 2, paras 259-262, 269-272. In reaching these findings, the Trial Chamber relied on, among other things, the Luka Markešić Report and another HVO report dated 13 August 1993, which refer to the thefts, abuse, humiliating acts, brutality, sexual assault, forced prostitution, and rape being committed against the Muslim population in Podgrađe, Lapsunj, and Duge by the Rama Brigade members, local soldiers, and the Military Police. See Trial Judgement, Vol. 2, paras 235, 250, 258, 268, referring to Exs. P04161 (confidential), P04177.
[1647] Trial Judgement, Vol. 2, para. 256.

entire Muslim population of Prozor Municipality into the three 'collection centres' in Podgrađe, Duge and Lapsunj".[1648]

513. The Appeals Chamber recalls that it has in the past confirmed that detention amounting to imprisonment and unlawful confinement of civilians can occur even in situations where the civilians are held in houses without guards and where they have some freedom of movement. In *Kordić and Čerkez*, the Appeals Chamber confirmed the Trial Chamber's finding that the civilians in the village of Rotilj were imprisoned and unlawfully confined since the village was surrounded by HVO, the civilians were not held there for their own safety, and they were prevented from leaving while at the same time subjected to beatings, thefts, and sexual abuse.[1649] Bearing that in mind and in light of the Trial Chamber's findings outlined above,[1650] the Appeals Chamber considers that Praljak fails to demonstrate that the Trial Chamber erred in concluding that Muslims in Podgrađe, Lapsunj, and Duge were deprived of their liberty. In that respect, the Appeals Chamber notes that even though the civilians had some freedom of movement in those three locations, the factual findings outlined above show that it was limited and that the great majority of the civilians were in fact confined to the three locations in very harsh conditions, as was the case in *Kordić and Čerkez*. The freedom of movement consisted of some individuals occasionally leaving the houses they were housed in, either to obtain food or to hide from potential abuse and sexual assaults at night-time. The Appeals Chamber considers that, given the findings on the presence of HVO soldiers and Military Police in those locations and the fact that the civilians were arrested and brought there by those forces, the Trial Chamber did not err in concluding that the population could not leave Podgrađe, Lapsunj, and Duge.

514. As to Praljak's contention that the events in the three locations illustrated mere restrictions of movement which were also lawful under the circumstances, the Appeals Chamber notes that he relies on the Commentary to Article 27 of Geneva Convention IV.[1651] While referring to restriction of movement as one of the measures a belligerent may inflict on protected persons under Article 27, the Commentary also elaborates that internment of civilians and the placing of civilians in assigned

[1648] Trial Judgement, Vol. 2, para. 231. See also Trial Judgement, Vol. 2, paras 225, 227.
[1649] *Kordić and Čerkez* Trial Judgement, paras 793, 800 (finding that despite detainees having some liberty of movement inside the village of Rotilj, their conditions, which included overcrowding and forced labour, still amounted to detention); *Kordić and Čerkez* Appeal Judgement, paras 638-640 (upholding the detention finding). See also *Simić et al.* Trial Judgement, paras 563-567, 666, 680 (finding that despite detainees having some liberty of movement inside and outside of the village of Zasavica, where certain witnesses testified that detainees were essentially "free" and living a "normal life there" in individual houses, their conditions still amounted to detention); *Blaškić* Trial Judgement, paras 684, 691, 700 (finding that despite the defence argument that Bosnian Muslims in the village of Rotilj were not detained because their freedom of movement was not limited, their conditions still amounted to detention). These Trial Chamber findings in the *Simić et al.* and *Blaškić* cases on the nature of detentions in Zasavica and Rotilj, respectively, were not an issue on appeal.
[1650] See *supra*, paras 510-512.

residences are the two most severe measures that may be inflicted on protected persons under Article 27 and, as such, are subject to strict rules outlined in Articles 41-43 and 78 of Geneva Convention IV.[1652] One of these rules is that the internment or placement in assigned residence may be ordered only if the security of the detaining party makes it absolutely necessary, while another provides that an initially lawful internment or placement in assigned residence clearly becomes unlawful if the detaining party does not respect the basic procedural rights of the detained persons and does not establish an appropriate court or administrative board as prescribed in Article 43 of Geneva Convention IV.[1653]

515. As explained above, the Appeals Chamber considers that the Trial Chamber made no error when it concluded that the events in Podgrađe, Lapsunj, and Duge did not constitute a mere restriction of movement as alleged by Praljak, but were more serious, amounting to deprivation of liberty and thus could amount to imprisonment and unlawful confinement.[1654] Using the Geneva Convention IV terminology, this deprivation of liberty was achieved by the HVO and the Military Police placing Muslim civilians in "assigned residences" in the three locations in question.[1655] Specifically, the Muslim population was rounded up, arrested, and then escorted by the HVO and the Military Police to those three locations.[1656] As such, this placement was subject to strict rules and requirements.[1657] However, there is nothing in the factual findings outlined above to indicate that these rules were followed, namely that the civilians were moved to the three locations because the HVO and the Military Police had reasonable grounds to believe that this was absolutely necessary for reasons of security,[1658] or that the HVO and the Military Police established an appropriate court or administrative board in line with Article 43 of Geneva Convention IV.[1659] Instead, the Trial Chamber findings indicate that Muslim civilians were taken to Podgrađe, Lapsunj,

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[1651] See *supra*, fn. 1608. Article 27(4) of Geneva Convention IV provides that parties to a conflict may take such measures of control and security in regard to protected persons as may be necessary as a result of the war.
[1652] Commentary on Geneva Convention IV, Article 27, p. 207.
[1653] Geneva Convention IV, Arts. 42 and 78; *Čelebići* Appeal Judgement, para. 320. See also *Čelebići* Appeal Judgement, para. 327 ("the reasonable time which is to be afforded to a detaining power to ascertain whether detained civilians pose a security risk must be the minimum time necessary to make enquiries to determine whether a view that they pose a security risk has any objective foundation such that it would found a 'definite suspicion' of the nature referred to in Article 5 of Geneva Convention IV").
[1654] See *supra*, para. 513.
[1655] See *Kordić and Čerkez* Trial Judgement, para. 283 (noting that, according to the Commentary on Geneva Convention IV, assigned residence consists of moving people from their domicile and forcing them to live in a locality which is generally out of the way and where supervision is more easily exercised).
[1656] See *supra*, paras 510-511. In addition, the Appeals Chamber notes that the Luka Markešić Report, which the Trial Chamber relied on to make its findings concerning detentions in Prozor, refers to the entire Muslim population of Prozor Municipality being "rounded up" into three "collection centres" in Podgrađe, Lapsunj, and Duge, See *supra*, para. 512.
[1657] See *supra*, para. 514.
[1658] See Trial Judgement, Vol. 3, paras 958, 1008 (concluding that the HVO made no individual assessments of security reasons which could have led to the detention of civilians but rather had the intention of holding the civilians without legal justification for the purpose of making room for the newly-arrived Croats).
[1659] See Trial Judgement, Vol. 3, para. 1008 (holding that the Muslim civilians had no possibility of challenging their confinement with the relevant authorities).

and Duge for the purpose of making space for newly-arrived Croats.[1660] Accordingly, Praljak's arguments that what transpired in Podgrađe, Lapsunj, and Duge was not detention but rather a lawful restriction of movement is dismissed.

516. Regarding Praljak's final submission that the Trial Chamber erred in finding that living conditions in Podgrađe were very harsh, on the basis of evidence of overcrowding and, specifically, in drawing a conclusion as to the number of Muslims held in houses that was "mathematically impossible",[1661] the Appeals Chamber notes that while the Trial Chamber found that Muslims were collected into about 100 houses,[1662] each holding 20 to 70 people (some holding more),[1663] it also found that *at least* 1,760 Muslims were held in Podgrađe.[1664] This finding was clearly a minimum approximation, as further supported by the fact that the Trial Chamber noted evidence indicating that there were about 6,000 Muslims held in Podgrađe.[1665] In any event, the Trial Chamber reached its conclusion that living conditions were very harsh by also relying on its findings that the Muslims: (1) had to sleep on the ground due to lack of space;[1666] and (2) lived in fear because of the Military Police presence.[1667] The Appeals Chamber finds that Praljak has failed to demonstrate any error in the impugned finding.[1668] His argument is therefore dismissed.

517. For the above reasons, the Appeals Chamber dismisses Praljak's ground of appeal 8.

2. Displacement of Muslims from Prozor Municipality (Praljak's Ground 9)

518. The Trial Chamber concluded that on 28 August 1993 the HVO forcibly transferred Muslim women, children, and elderly persons who were held in the Podgrađe neighbourhood of Prozor and in the villages of Lapsunj and Duge.[1669] The Trial Chamber found that these Muslims were moved to ABiH territory.[1670] In reaching these findings, the Trial Chamber: (1) could not determine exactly the number of Muslims from Prozor Municipality removed by the HVO on 28 August 1993, but considered that the evidence supports a finding that at least 2,500 people were removed;[1671] (2) considered the testimony of Witness CC that the removals required organisation

[1660] See Trial Judgement, Vol. 2, para. 227 & fn. 571 (referring to Exs. P09627, P10030, p. 8, Rudy Gerritsen, T(F). 19226, 19228 (29 May 2007)), Vol. 3, paras 958, 1008.
[1661] See Praljak's Appeal Brief, para. 147.
[1662] Trial Judgement, Vol. 2, para. 240.
[1663] Trial Judgement, Vol. 2, para. 244.
[1664] Trial Judgement, Vol. 2, para. 240.
[1665] Trial Judgement, Vol. 2, fn. 599.
[1666] Trial Judgement, Vol. 2, para. 244.
[1667] Trial Judgement, Vol. 2, paras 242-243.
[1668] See Trial Judgement, Vol. 2, para. 249.
[1669] Trial Judgement, Vol. 3, paras 842, 896. See Trial Judgement, Vol. 2, paras 225, 280.
[1670] Trial Judgement, Vol. 2, para. 280, Vol. 3, paras 841, 895.
[1671] Trial Judgement, Vol. 2, para. 277 and references cited therein.

and planning by the HVO;[1672] and (3) considered evidence that, on 28 August 1993, the day Muslims were removed from Prozor to Kučani and then towards ABiH territories, Praljak ordered the commander of the Rama Brigade to deploy 30 soldiers in the Kučani area between 28 and 31 August 1993.[1673] The Trial Chamber concluded that this transfer and removal, at a time when these persons were being held by HVO soldiers and there was no fighting in the area, was "on no account an evacuation carried out for security purposes nor was it justified for compelling military reasons", further demonstrated by the fact that the HVO had not made any arrangements for the population to return.[1674] The Trial Chamber concluded that these events in Podgrađe, Lapsunj, and Duge constituted inhumane acts (forcible transfer) as a crime against humanity (Count 8), unlawful transfer of civilians as a grave breach of the Geneva Conventions (Count 9), inhumane acts as a crime against humanity (Count 15), and inhuman treatment as a grave breach of the Geneva Conventions (Count 16).[1675]

(a) Arguments of the Parties

519. Praljak submits that the Trial Chamber erroneously concluded that the HVO unlawfully displaced Muslims from Prozor Municipality, who were being held in Podgrađe, Lapsunj, and Duge, and removed them to territory under ABiH control.[1676] Praljak submits that the Trial Chamber did not establish that the displaced Muslims were forced to leave, and argues in this regard that they may have had a genuine choice and wish to leave since: (1) only a portion of the population was displaced; and (2) Šiljeg, "the HVO representative in Prozor", "talked about voluntary departure".[1677] Praljak submits further that the Trial Chamber "could not" establish who displaced the Muslims, and that it referred speculatively to an order he issued, which he contends was ineffective and not executed, as evidence that the HVO planned and organised the removal.[1678] Further, Praljak claims that the Trial Chamber did not establish whether the removal of Muslims was permitted for the security of the population, imperative military reasons, and/or humanitarian reasons.[1679] He also challenges as "baseless" the Trial Chamber's explanation that the removal was not a lawful evacuation because the HVO did not make arrangements for the population to

[1672] Trial Judgement, Vol. 2, para. 278, referring to, *inter alia*, Ex. P09731 (confidential), p. 3.
[1673] Trial Judgement, Vol. 2, para. 278, referring to, *inter alia*, Ex. 3D02448.
[1674] Trial Judgement, Vol. 3, paras 841, 895.
[1675] Trial Judgement, Vol. 3, paras 840-842, 894-896, 1220-1221, 1310-1311.
[1676] Praljak's Appeal Brief, para. 160, referring to Trial Judgement, Vol. 2, paras 272, 280, Vol. 3, paras 841-842, 895-896; Praljak's Reply Brief, para. 77. See also Praljak's Appeal Brief, para. 152.
[1677] Praljak's Appeal Brief, para. 154, referring to Ex. P09636, Rudy Gerritsen, T. 19235-19236 (29 May 2007). See Praljak's Appeal Brief, paras 152-153. See also Praljak's Reply Brief, para. 77.
[1678] Praljak's Appeal Brief, paras 152, 155. Praljak also submits that, during his testimony, he was not asked whether this order was related to the removal of the population and he did not make any link between the two. Praljak's Appeal Brief, para. 155.

return.[1680] Finally, Praljak avers that the Trial Chamber failed to consider that members of the population were not in their homes as they had already been displaced.[1681] Praljak requests that his convictions under Counts 8, 9, 15, and 16 with respect to Prozor be reversed.[1682]

520. The Prosecution responds that Praljak ignores the totality of the Trial Chamber's findings and fails to show an error.[1683] It submits that Praljak's assertion that the Trial Chamber could not establish who moved the population must fail when considering the Trial Chamber's findings and the evidence on which it relied.[1684] The Prosecution also submits that it is irrelevant whether those expelled originated from Prozor or elsewhere.[1685] The Prosecution further argues that: (1) the fact that only some members of the population were removed does not mean they left voluntarily; and (2) the claim by Šiljeg, "the HVO's regional commander", that the Muslims left voluntarily does not impact the Trial Chamber's findings.[1686] Moreover, the Prosecution submits that the Trial Chamber properly relied on Praljak's order as corroborative of other evidence indicating that the removal required organisation and planning.[1687] Finally, the Prosecution contends that the Trial Chamber reasonably rejected the argument that the Muslims' removal from Podgrađe, Lapsunj, and Duge was for humanitarian, security, or military reasons.[1688]

(b) Analysis

521. With regard to Praljak's assertion that the Trial Chamber did not establish that the displaced Muslims were forced to leave, the Appeals Chamber notes that, to the contrary, the Trial Chamber found that HVO soldiers used military and civilian trucks to move Muslims being held in Podgrađe, Lapsunj, and Duge and that when the Muslims reached Kučani, they were forced to walk on foot towards Ćelina, escorted by HVO soldiers.[1689] The Trial Chamber also noted evidence that HVO soldiers surrounded the village of Duge and fired into the air to force the Muslims to get into trucks.[1690] Moreover, Praljak fails to demonstrate how the fact that only a portion of the population in the three locations was displaced[1691] is inconsistent with the Trial Chamber's finding that Muslims were forcibly displaced. As to Praljak's argument that,

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[1679] Praljak's Appeal Brief, para. 156. See Praljak's Appeal Brief, paras 152, 157, 160. Praljak argues that the Trial Chamber also failed to consider that international observers considered that the "exchange of minorities" might be the best solution in the area. Praljak's Appeal Brief, para. 157.
[1680] Praljak's Appeal Brief, para. 158.
[1681] Praljak's Appeal Brief, para. 159. See also Praljak's Appeal Brief, para. 152; Praljak's Reply Brief, para. 77.
[1682] Praljak's Appeal Brief, para. 161.
[1683] Prosecution's Response Brief (Praljak), para. 164. See Prosecution's Response Brief (Praljak), para. 165.
[1684] Prosecution's Response Brief (Praljak), paras 165-166.
[1685] Prosecution's Response Brief (Praljak), para. 166.
[1686] Prosecution's Response Brief (Praljak), para. 166.
[1687] Prosecution's Response Brief (Praljak), para. 167.
[1688] Prosecution's Response Brief (Praljak), para. 168.
[1689] Trial Judgement, Vol. 2, paras 273, 276, 280.
[1690] Trial Judgement, Vol. 2, para. 274.

according to the evidence of Witness Rudy Gerritsen, Šiljeg "talked about voluntary departure",[1692] the Appeals Chamber notes that Praljak ignores that, although Gerritsen stated that Šiljeg told him that the population was moved on a voluntary basis, Gerritsen did not believe this to be the case.[1693] Because Praljak merely asserts that the Trial Chamber failed to give sufficient weight to the statement attributed to Šiljeg – that the population was moved on a voluntary basis – his argument is dismissed.

522. The Appeals Chamber now turns to Praljak's submission that the Trial Chamber could not establish who displaced the Muslims and that, in this regard, it referred speculatively to an order he issued, which he alleges was ineffective and not executed, as evidence that the HVO planned and organised the removal. The Appeals Chamber notes the impugned finding that the HVO moved women, children, and elderly persons who were held in Podgrađe, Lapsunj, and Duge to ABiH-controlled territories.[1694] In reaching this conclusion, the Trial Chamber found, *inter alia*, that on 28 August 1993, the same day Muslims were moved from Prozor to Kučani and then towards ABiH-controlled territories, Praljak ordered the commander of the Rama Brigade to deploy 30 soldiers in the Kučani area between 28 and 31 August 1993.[1695] However, the Appeals Chamber notes that the Trial Chamber relied on other evidence and findings, including that of civilians who were moved to Kučani,[1696] to find that HVO soldiers moved people being held in Podgrađe, Lapsunj, and Duge to ABiH-controlled territories.[1697] Praljak's argument ignores relevant factual findings and therefore warrants dismissal.[1698]

523. As to Praljak's claim that the Trial Chamber did not establish whether the removal of Muslims was permitted for the security of the population and/or imperative military reasons, the Appeals Chamber notes that the Trial Chamber considered that: (1) the people in Podgrađe, Lapsunj, and Duge were being held by the HVO; (2) there was no fighting in the area at the time of the transfer; and (3) the HVO did not make arrangements for the population to return.[1699] On this basis, the Trial Chamber found that the HVO held the Muslims in Podgrađe, Lapsunj, and Duge in order to be able to remove them from their homes without the possibility of returning, and it explicitly rejected the possibility that this constituted an evacuation for security or compelling

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[1691] See Trial Judgement, Vol. 2, paras 227, 277. See also Trial Judgement, Vol. 2, paras 281-292.
[1692] See Praljak's Appeal Brief, para. 154, referring to Ex. P09636, Rudy Gerritsen, T. 19235-19236 (29 May 2007).
[1693] Rudy Gerritsen, T. 19235-19236 (29 May 2007). See also Ex. P10030, pp. 11-12.
[1694] Trial Judgement, Vol. 2, para. 280.
[1695] Trial Judgement, Vol. 2, para. 278.
[1696] Trial Judgement, Vol. 2, paras 273-274, 276-278.
[1697] Trial Judgement, Vol. 2, para. 280.
[1698] For the same reasons, the Appeals Chamber dismisses Praljak's corresponding argument that he was not asked whether this order was related to the removal of the population and he did not make any link between the two.
[1699] Trial Judgement, Vol. 3, paras 841, 895.

military reasons.[1700] The Appeals Chamber dismisses Praljak's argument as it ignores several relevant factual findings.

524. When challenging as "baseless" the Trial Chamber's explanation that the removal was not a lawful evacuation because the HVO did not make arrangements for the population to return, Praljak argues that Article 49(2) of Geneva Convention IV "does not require that arrangements for the population return be made at the time of evacuation".[1701] The Appeals Chamber recalls that Article 49 of Geneva Convention IV states that an evacuation is not prohibited "if the security of the population or imperative military reasons so demand" and provided that "[p]ersons thus evacuated shall be transferred back to their homes as soon as hostilities in the area in question have ceased".[1702] As noted above, when reaching its conclusion that the transfer was on no account a lawful evacuation, the Trial Chamber found that the transfer had already taken place "at a time when [...] there was no fighting in the area".[1703] The Appeals Chamber considers that the Trial Chamber could conclude on this basis alone that the transfer was unlawful. Praljak has therefore failed to show an error of law that invalidates the Trial Chamber's decision.

525. With regard to Praljak's contention that the Trial Chamber did not establish whether the removal of Muslims was permitted for humanitarian reasons, the Appeals Chamber notes that he points to the Trial Chamber's findings that conditions in Podgrađe, Lapsunj, and Duge were harsh.[1704] However, displacement of a population is not justified where a humanitarian crisis that caused the displacement is the result of the accused's own unlawful activity.[1705] Praljak ignores the Trial Chamber's findings that the HVO and Military Police officers arrested Muslims from Prozor Municipality, unlawfully detained them, and imposed the harsh conditions in which they lived.[1706] His argument is therefore dismissed.[1707]

526. With respect to Praljak's submission that the Trial Chamber failed to consider that members of the population were not in their homes as they had already been displaced, the Appeals Chamber understands him to argue that the Trial Chamber should have considered that

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[1700] Trial Judgement, Vol. 3, paras 841, 895.
[1701] Praljak's Appeal Brief, para. 158.
[1702] See also Trial Judgement, Vol. 1, para. 52.
[1703] Trial Judgement, Vol. 3, paras 841, 895.
[1704] See Praljak's Appeal Brief, para. 156 & fn. 373, referring to Trial Judgement, Vol. 2, paras 249, 257, 267.
[1705] *Tolimir* Appeal Judgement, para. 158; *Krajišnik* Appeal Judgement, para. 308 & fn. 739; *Stakić* Appeal Judgement, para. 287.
[1706] Trial Judgement, Vol. 3, paras 1008-1010. See also, *e.g.*, Trial Judgement, Vol. 3, paras 958-959, 1059-1067, 1102-1111.
[1707] With regard to Praljak's argument that the Trial Chamber failed to consider that international observers considered that the exchange of minorities might be the best solution in the area, the Appeals Chamber finds that Praljak has not sufficiently explained the relevance of this argument to the impugned findings, and dismisses it as obscure.

they could not have been forcibly removed from a location in which they did not reside.[1708] The Appeals Chamber notes that the Trial Chamber found that Muslims were removed from their homes and detained in Podgrađe, Lapsunj, and Duge.[1709] It found that the HVO subsequently moved Muslims detained in these three locations to ABiH-controlled territories.[1710] An overall reading of the relevant findings demonstrates that the Trial Chamber duly considered that the Muslims who were relocated to ABiH-controlled territories were previously relocated from their homes. Particularly, when assessing the lawfulness of the transfer, the Trial Chamber considered that "they were evicted from their homes without the possibility of returning".[1711] Praljak's argument is therefore dismissed.

527. For the above reasons, the Appeals Chamber dismisses Praljak's ground of appeal 9.

F. Crimes Committed in Mostar Municipality

1. The siege of East Mostar and related crimes

528. The Trial Chamber concluded that, from June 1993 to April 1994, East Mostar was under siege by the HVO.[1712] It found that, during that siege, the HVO: (1) intentionally inflicted serious bodily and mental harm on the inhabitants of East Mostar and caused a serious attack on their dignity;[1713] (2) intentionally subjected the civilian population of East Mostar to serious deprivation and acts of violence that led to death or caused serious injury to body or health;[1714] (3) committed acts of violence the main aim of which was to inflict terror on the population;[1715] and (4) committed crimes with the intention of discriminating against the Muslims of Mostar Municipality and violating their basic rights to life, human dignity, freedom, and property.[1716] The Trial Chamber therefore concluded that the HVO committed, *inter alia*, persecution as a crime against humanity (Count 1), inhumane acts as a crime against humanity (Count 15), inhuman treatment as a grave breach of the Geneva Conventions (Count 16), unlawful attack on civilians as a violation of the

[1708] The Appeals Chamber recalls that the "prohibition against forcible displacements aims at safeguarding the right and aspiration of individuals to live in their communities and homes without outside interference". *Krnojelac* Appeal Judgement, para. 218. See also *Krajišnik* Appeal Judgement, para. 308 ("[D]eportation and forcible transfer both entail the forcible displacement of persons from the area in which they are lawfully present, without grounds permitted under international law.").
[1709] Trial Judgement, Vol. 2, paras 227, 232.
[1710] Trial Judgement, Vol. 2, paras 273, 276, 280.
[1711] Trial Judgement, Vol. 3, para. 841. See Trial Judgement, Vol. 3, para. 895.
[1712] Trial Judgement, Vol. 2, para. 1378. See also Trial Judgement, Vol. 3, para. 1255.
[1713] Trial Judgement, Vol. 3, paras 1256, 1350.
[1714] Trial Judgement, Vol. 3, para. 1687. See Trial Judgement, Vol. 3, para. 1688.
[1715] Trial Judgement, Vol. 3, para. 1692. See Trial Judgement, Vol. 3, para. 1689.
[1716] Trial Judgement, Vol. 3, para. 1713. See Trial Judgement, Vol. 3, para. 1711. See also Trial Judgement, Vol. 3, para. 1712.

laws or customs of war (Count 24), and unlawful infliction of terror on civilians as a violation of the laws or customs of war (Count 25).[1717]

529. The Appeals Chamber will examine the Appellants' challenges relating to: (1) the HVO keeping Muslims of East Mostar crowded in an enclave; (2) the humanitarian conditions during the siege of East Mostar; (3) the sniping campaign in Mostar; (4) the shelling of East Mostar; and (5) the destruction of or damage to mosques in East Mostar.[1718]

(a) Keeping Muslims of East Mostar crowded in an enclave (Stojić's Ground 50 and Praljak's Ground 25)

530. As part of the siege of East Mostar, the Trial Chamber found that the HVO "kept the population crowded in an enclave where it was forced to remain".[1719] The Trial Chamber based this finding on, *inter alia*, the following findings: (1) from June 1993 until, at least, February 1994 the HVO blocked Muslims from East Mostar from entering West Mostar by erecting checkpoints;[1720] (2) the only possible way to cross the checkpoints was to have, first, an exit permit issued by the ABiH, and, second, an entry permit issued by the HVO;[1721] (3) there was a mountain path out of East Mostar but there was evidence indicating that it was physically difficult and dangerous to use;[1722] (4) using the M-17 main road linking East Mostar and Jablanica could be dangerous and risky because of HVO artillery shelling;[1723] and (5) certain sections of the roads out of East Mostar also came under HVO control from time to time.[1724] The finding that the HVO kept the population crowded in an enclave formed part of the basis of the Trial Chamber's conclusion that the HVO committed the crimes under Counts 1, 15, 16, 24, and 25 in East Mostar.[1725]

531. Stojić and Praljak submit that the Trial Chamber erred by finding that the HVO kept the population of East Mostar crowded in an enclave.[1726] They argue that it was the ABiH that

[1717] Trial Judgement, Vol. 3, paras 1256, 1350, 1688, 1692, 1713.
[1718] The Appeals Chamber addresses elsewhere the destruction of the Old Bridge of Mostar. See *supra*, paras 405-411, 415-426.
[1719] Trial Judgement, Vol. 3, paras 1255, 1349, 1685. See Trial Judgement, Vol. 2, para. 1255, Vol. 3, para. 1711. See also Trial Judgement, Vol. 2, para. 1378.
[1720] Trial Judgement, Vol. 2, para. 1247.
[1721] Trial Judgement, Vol. 2, para. 1248. See also Trial Judgement, Vol. 2, paras 1249-1250.
[1722] Trial Judgement, Vol. 2, paras 1252-1253.
[1723] Trial Judgement, Vol. 2, para. 1254.
[1724] Trial Judgement, Vol. 2, para. 1254.
[1725] Trial Judgement, Vol. 3, paras 1255-1256, 1349-1350, 1685, 1688, 1691-1692, 1711, 1713.
[1726] Stojić's Appeal Brief, para. 403; Praljak's Appeal Brief, para. 308. Stojić contends in particular that the Trial Chamber erred in finding that civilians could not leave East Mostar because of HVO checkpoints. Stojić's Appeal Brief, heading before para. 403, para. 405. He argues that the Trial Chamber's findings that the Muslim population could not leave East Mostar because of HVO checkpoints and that the HVO kept the population crowded in an enclave where it was forced to remain were erroneous in law and fact as they were inconsistent with the Trial Chamber's findings that the ABiH did not want Muslims to leave East Mostar and forced them to remain in the area by requiring that individuals obtain exit permits. Stojić's Appeal Brief, heading before para. 403, para. 403.

prevented the population from leaving East Mostar.[1727] Stojić submits that since the ABiH was the "first" barrier to civilians leaving East Mostar, it was not established that the HVO caused the isolation of the Muslim population.[1728] Moreover, Stojić argues that the Trial Chamber only found that the HVO checkpoints controlled access to West Mostar and that "certain routes" out of East Mostar remained open.[1729] Praljak argues that no evidence exists indicating that the HVO interfered with the population's movement from East Mostar, and that the evidence shows that the HVO proposed free movement and guaranteed safety when doing so.[1730] Stojić submits that the Trial Chamber did not explain the basis for the inclusion of the crimes under Counts 1, 15, 16, and 24 within the CCP, despite the ABiH's "critical role" in causing civilians to remain.[1731] Stojić further contends that, with the exception of Count 15, the Trial Chamber failed to address the impact of the ABiH's policy in forcing civilians to remain.[1732] Stojić and Praljak therefore request that the Appeals Chamber acquit them under Counts 1, 15, 16, and 24 of the relevant charges with respect to Mostar.[1733]

532. The Prosecution responds that the Trial Chamber's findings are reasonable and that Stojić and Praljak fail to demonstrate an error.[1734] The Prosecution argues that Stojić misrepresents the Trial Judgement when asserting that other routes out of East Mostar remained open when, in actuality, these routes were at risk of shelling by the HVO or at times under its control.[1735] Further, the Prosecution contends that the HVO's alleged proposal for the free movement of East Mostar's population does not impact the Trial Chamber's finding.[1736] Finally, the Prosecution submits that, in

[1727] Stojić's Appeal Brief, heading before para. 403, para. 403; Praljak's Appeal Brief, paras 305-307; Praljak's Reply Brief, para. 93.
[1728] Stojić's Appeal Brief, para. 403. Further to this point, Stojić submits that there was no evidence that the HVO prevented the departure of anyone whom the ABiH would have allowed to leave. Stojić's Appeal Brief, para. 403.
[1729] Stojić's Appeal Brief, para. 404. Stojić also argues that the Trial Chamber's finding that "[c]ertain sections of the roads out of East Mostar [...] could also come under HVO control from time to time" was "manifestly insufficient" to establish that the HVO prevented the Muslim population from leaving the area. Stojić's Appeal Brief, para. 404, referring to Trial Judgement, Vol. 2, para. 1254.
[1730] Praljak's Appeal Brief, para. 307. Praljak further argues that: (1) the lack of evidence that the proposal was ever implemented "does not undermine the HVO willingness to allow free movement of civilians"; and (2) the fact that the proposal was made six months into the siege "is without importance as the proposal was made in December 1993 and the siege would have lasted from June 1993 to April 1994". Praljak's Reply Brief, para. 92.
[1731] Stojić's Appeal Brief, para. 405.
[1732] Stojić's Appeal Brief, para. 403.
[1733] Stojić's Appeal Brief, para. 405; Praljak's Appeal Brief, para. 308. See Stojić's Appeal Brief, para. 403.
[1734] Prosecution's Response Brief (Stojić), paras 373-374, 376; Prosecution's Response Brief (Praljak), paras 217, 219-220. The Prosecution argues that there is no inconsistency between the Trial Chamber's finding that the HVO kept Muslims in East Mostar in isolation and its finding that individuals needed to obtain exit permits from the ABiH. Prosecution's Response Brief (Stojić), para. 374. The Prosecution also contends that Praljak repeats arguments that the Trial Chamber considered and rejected. Prosecution's Response Brief (Praljak), para. 217.
[1735] Prosecution's Response Brief (Stojić), para. 374.
[1736] Prosecution's Response Brief (Praljak), para. 221.

any event, the Trial Chamber's conclusion that crimes under Counts 1, 15, 16, and 24 occurred did not depend on its finding that the HVO isolated Muslims in East Mostar.[1737]

533. The Appeals Chamber observes that the Trial Chamber extensively considered what contributed to the Muslim population being forced to remain in East Mostar.[1738] The Trial Chamber acknowledged that the ABiH did not want the population to leave[1739] and considered the ABiH's role in isolating the Muslim population in East Mostar.[1740] However, the Trial Chamber also articulated the ways in which the HVO prevented departure from the region.[1741] Specifically, it found that: (1) the HVO refused to allow Muslims in East Mostar to cross its positions and blocked them from entering West Mostar by erecting checkpoints;[1742] (2) the HVO would only issue entry permits to cross the checkpoints for humanitarian evacuations which were "laboriously negotiated between the parties under the auspices of the international officials";[1743] and (3) of the few roads open to the outside, one was dangerous because of HVO artillery shelling and others could also come under HVO control from time to time.[1744] The Trial Chamber considered that the HVO intensely shelled East Mostar and fired at civilians on a daily basis while they were obliged to remain in that sector,[1745] forcing them to live underground and in "extremely harsh living conditions".[1746] It considered that these conditions were exacerbated by the HVO's blocking or hindering of humanitarian aid and access for humanitarian organisations.[1747] On this basis, the Trial Chamber was satisfied that the HVO intended to cause serious bodily and mental harm and suffering to the Muslims of East Mostar, attack their dignity, and subject them to serious deprivations and acts of violence.[1748] Stojić and Praljak ignore these relevant factual findings, thereby misrepresenting the Trial Chamber's analysis and overlooking the evidence relied upon for their convictions for crimes in East Mostar under Counts 1, 15, 16, and 24.

534. Further, in submitting that the ABiH was the "first" barrier to civilians leaving East Mostar, that "certain routes" out of East Mostar remained open, and that the ABiH had a "critical role" in

[1737] Prosecution's Response Brief (Stojić), para. 375. The Prosecution argues in this regard that the Trial Chamber also considered the HVO's shelling and sniping attacks on East Mostar, its blocking of humanitarian aid, and the harsh conditions in which civilians were forced to live. Prosecution's Response Brief (Stojić), para. 375.
[1738] See Trial Judgement, Vol. 2, paras 1247-1255.
[1739] Trial Judgement, Vol. 2, para. 1255. See Trial Judgement, Vol. 2, para. 1250.
[1740] Trial Judgement, Vol. 3, para. 1256. See Trial Judgement, Vol. 2, paras 1248-1249, 1255.
[1741] See Trial Judgement, Vol. 2, paras 1247-1249, 1254-1255.
[1742] Trial Judgement, Vol. 2, para. 1247.
[1743] Trial Judgement, Vol. 2, para. 1249. See Trial Judgement, Vol. 2, para. 1248.
[1744] Trial Judgement, Vol. 2, paras 1254-1255.
[1745] Trial Judgement, Vol. 3, paras 1253-1256, 1349-1350, 1686, 1688, 1711, 1713. See Trial Judgement, Vol. 2, para. 1255.
[1746] Trial Judgement, Vol. 3, paras 1256, 1350. See Trial Judgement, Vol. 2, para. 1255, Vol. 3, paras 1255, 1349, 1711. See also Trial Judgement, Vol. 3, paras 1685-1686.
[1747] Trial Judgement, Vol. 3, paras 1255, 1349, 1685-1686, 1688, 1711.

causing civilians to remain, Stojić essentially disagrees with the Trial Chamber's interpretation of the evidence without demonstrating that no reasonable trier of fact could have found that the HVO "kept the population crowded in an enclave where it was forced to remain".[1749] As to Praljak's argument that the evidence shows that the HVO proposed free movement and guaranteed safety when doing so, he relies on a document containing a proposal signed by Prlić which was issued on 2 December 1993, approximately six months after the start of the siege.[1750] Additionally, the Trial Chamber noted that it did not have any evidence to support a finding that the proposal was ever implemented.[1751] In light of this,[1752] and considering the basis for the Trial Chamber's conclusion,[1753] Praljak has failed to demonstrate that no reasonable trial chamber could have found that the HVO kept the population crowded in an enclave where it was forced to remain. Stojić's and Praljak's arguments are therefore dismissed.

535. In light of the foregoing, the Appeals Chamber dismisses Stojić's ground of appeal 50 and Praljak's ground of appeal 25.

(b) Humanitarian conditions during the siege of East Mostar (Praljak's Ground 26)

536. The Trial Chamber concluded that, from June 1993 to April 1994, East Mostar was under siege by the HVO. It considered, *inter alia*, that: (1) although the roads to the north and south of East Mostar were open, the town was the target of a prolonged military attack by the HVO that included intense constant shooting and shelling, including sniper fire, on a cramped densely-populated residential zone; (2) the population could not leave East Mostar of its own free will and had to live under extremely harsh conditions, without food, water, electricity, or appropriate medical care; and (3) the HVO hindered and at times blocked the arrival of humanitarian aid and deliberately targeted members of international organisations.[1754]

[1748] Trial Judgement, Vol. 3, paras 1256, 1350, 1688, 1711-1713 (finding that the HVO committed the crimes of inhumane acts, inhuman treatment, and unlawful attack on civilians with the intention to discriminate against Muslims and violate their basic rights to life, freedom, dignity, and property).
[1749] Trial Judgement, Vol. 3, paras 1255, 1349, 1685. See Trial Judgement, Vol. 3, para. 1711; *supra*, para. 530.
[1750] Praljak's Appeal Brief, para. 307, referring to Ex. 1D01874, p. 2; Trial Judgement, Vol. 2, para. 1203, Vol. 4, para. 181. See Trial Judgement, Vol. 2, paras 1196, 1378 (noting that the siege took place between June 1993 and April 1994). See also Trial Judgement, Vol. 2, para. 1222.
[1751] Trial Judgement, Vol. 2, para. 1203, Vol. 4, para. 181. See also Trial Judgement, Vol. 2, para. 1222.
[1752] With regard to Praljak's argument in reply that the lack of evidence that the proposal was ever implemented does not undermine the HVO's willingness to allow free movement of civilians, the Appeals Chamber finds that he fails to show that no reasonable trial chamber could have come to the opposite conclusion. In addition, the Appeals Chamber considers that in arguing that it is not important that the proposal was made six months into the siege, Praljak merely advances his own preferred interpretation of the evidence. These arguments are dismissed.
[1753] See *supra*, para. 533.
[1754] Trial Judgement, Vol. 2, para. 1378.

537. Praljak submits that the Trial Chamber erred in finding that the HVO held East Mostar under siege without any conclusive evidentiary basis and while ignoring relevant evidence.[1755] Specifically, he argues that the evidence: (1) does not show that the HVO targeted the town or its population but rather that it targeted ABiH military objectives within the town;[1756] and (2) does show that the "HVO" offered assistance to the East Mostar population, including providing medical treatment and food, while it was the BiH authorities who were reluctant to accept the HVO's offers.[1757] Praljak further argues that the Trial Chamber based its conclusion on various other erroneous conclusions, including wrongly attributing responsibility to the HVO for certain facts.[1758] He additionally argues that the Trial Chamber's conclusion contradicts its acknowledgement that: (1) the roads from East Mostar to the north and south were open;[1759] and (2) it lacked evidence as to who cut off the electricity and water supplies to East Mostar, while evidence showed HVO efforts to restore them.[1760] Praljak therefore requests that the Appeals Chamber overturn the Trial Judgement and acquit him under Counts 1, 15, 16, and 24 of the relevant charges with respect to Mostar.[1761]

538. The Prosecution responds that Praljak shows no error in the Trial Chamber's findings and repeats arguments that the Trial Chamber considered and rejected.[1762] It argues that the Trial Chamber reasonably rejected Praljak's argument that the HVO only targeted military objectives in East Mostar and reasonably found that during the siege of East Mostar, the HVO created and aggravated the extremely harsh living conditions for the Muslim population.[1763] The Trial Chamber made reasonable and nuanced findings, the Prosecution submits, acknowledging that the HVO did not have exclusive responsibility for electricity and water shortages.[1764] The Prosecution contends that the Trial Chamber properly attributed responsibility to the HVO for food shortages.[1765] It also argues that the Trial Chamber considered evidence regarding Prlić's proposals

[1755] Praljak's Appeal Brief, paras 309-310, 313-314.
[1756] Praljak's Appeal Brief, para. 309.
[1757] Praljak's Appeal Brief, para. 313, referring to Ex. P05428, p. 5, Ex. 1D01874, p. 2 (a letter by Prlić containing such offers). Praljak replies that in any event, he cannot be held responsible for shortages of food or medical care, since the Trial Chamber could not find that he participated in or knew of the HVO hindering humanitarian aid and since he in fact personally intervened to facilitate access to such aid. Praljak's Reply Brief, para. 94.
[1758] Praljak's Appeal Brief, para. 310. Praljak refers to the Trial Chamber's conclusions on shelling, sniping, and the destruction of the Old Bridge and mosques in Mostar. See Praljak's Appeal Brief, para. 310.
[1759] Praljak's Appeal Brief, para. 309.
[1760] Praljak's Appeal Brief, paras 311-312.
[1761] Praljak's Appeal Brief, para. 314.
[1762] Prosecution's Response Brief (Praljak), paras 217, 222.
[1763] Prosecution's Response Brief (Praljak), para. 222.
[1764] Prosecution's Response Brief (Praljak), para. 222.
[1765] Prosecution's Response Brief (Praljak), para. 223.

for providing food and medical care and the BiH's reluctance to accept HVO offers, but ultimately concluded that the HVO impeded evacuations by setting onerous conditions.[1766]

539. The Appeals Chamber observes that the Trial Chamber acknowledged that it could not establish that the HVO was responsible for cutting off electricity or water supplies to East Mostar;[1767] and that the roads to the north and south were open and, therefore, East Mostar was not completely surrounded.[1768] It likewise did consider evidence of Prlić's offer of medical care and food to the East Mostar population[1769] and evidence indicating that the BiH authorities were unlikely to accept an HVO offer to medically evacuate women and children.[1770] The Appeals Chamber notes that the Trial Chamber nonetheless found that the HVO caused harsh living conditions in East Mostar, with shortages of food and medical care, by creating an influx of Muslims into the town and hindering humanitarian convoys.[1771] Praljak ignores these relevant factual findings that support the finding that the HVO besieged East Mostar.[1772] The Appeals Chamber therefore dismisses his ground of appeal 26.[1773]

(c) Sniping campaign in Mostar (Praljak's Ground 20)

540. In concluding that East Mostar was under siege by the HVO, the Trial Chamber determined, *inter alia*, that the town was the target of a prolonged military attack by the HVO that included sniper fire.[1774] The Trial Chamber identified several shooting positions involved in sniping incidents, which included Stotina hill and other West Mostar locations.[1775] The Trial Chamber considered that the evidence "allow[ed]" for a finding that Stotina hill was controlled by the HVO.[1776] The Trial Chamber then found that the HVO controlled the hill on all of the dates of the relevant sniping incidents.[1777] It also found that the HVO "had a sufficient military presence to impose its authority in the western part of town", and therefore controlled other shooting positions in West Mostar – such as the Ledera and Centar II buildings – on the dates the relevant incidents occurred.[1778] The Trial Chamber relied on the evidence of several witnesses, including Witness

[1766] Prosecution's Response Brief (Praljak), para. 224, referring to Ex. P05428, p. 5.
[1767] Trial Judgement, Vol. 2, paras 1210-1212, 1218.
[1768] Trial Judgement, Vol. 2, para. 1378.
[1769] Trial Judgement, Vol. 2, paras 1203, 1222, referring to, *inter alia*, Ex. 1D01874, p. 2. See also Trial Judgement, Vol. 2, para. 1244.
[1770] Trial Judgement, Vol. 2, para. 1249 & fn. 3118, referring to Ex. P05428, p. 5.
[1771] See Trial Judgement, Vol. 2, paras 1202, 1204, 1223, 1242, 1244, 1249, Vol. 3, paras 1255, 1349.
[1772] Trial Judgement, Vol. 2, para. 1378, Vol. 3, paras 1255, 1349, 1685.
[1773] The Appeals Chamber notes that it dismisses elsewhere Praljak's arguments submitted under other grounds of appeal and incorporated in Praljak's ground of appeal 26 by way of reference. Praljak's Appeal Brief, paras 309-310. See *supra*, paras 412, 533; *infra*, paras 543, 565, 569.
[1774] Trial Judgement, Vol. 2, para. 1378.
[1775] Trial Judgement, Vol. 2, para. 1032.
[1776] Trial Judgement, Vol. 2, para. 1033; Trial Judgement (French original), Vol. 2, para. 1033 ("*permettent*").
[1777] Trial Judgement, Vol. 2, para. 1035. See also Trial Judgement, Vol. 2, para. 1034.
[1778] Trial Judgement, Vol. 2, para. 1038. See Trial Judgement, Vol. 2, paras 1036-1037, 1041.

Anthony Turco's Rule 92 *bis* statement, in finding that HVO snipers targeted women, children, and the elderly.[1779]

541. Praljak submits that the Trial Chamber failed to apply the beyond reasonable doubt standard in evaluating evidence on a sniping campaign in Mostar, and instead made a "possible finding" without establishing that it was the only reasonable conclusion.[1780] Specifically, Praljak submits that the Trial Chamber erred in fact when it found that areas in Mostar where snipers operated were under the HVO's control.[1781] He submits that the HVO's control over Stotina is "very questionable" in light of ABiH positions above that location,[1782] and that the Trial Chamber erred in deeming that the evidence allowed the finding that the HVO was in control of Stotina, instead of making a finding beyond reasonable doubt.[1783] He further submits that even if the Trial Chamber found that sniper fire came from HVO-controlled territory in West Mostar, it does not mean that it can be attributed to the HVO as the evidence shows that the ABiH had its own people within the HVO who, although HVO members, were under ABiH orders.[1784] Praljak additionally argues that it "remains unknown" how the Trial Chamber could attribute the sniper shots to the HVO as it acknowledged that it could not verify the exact location from where the shots came, and no evidence points to HVO control over access to "concerned buildings".[1785] Finally, Praljak contends that the Trial Chamber based its conclusions on the suffering of the Muslim population in East Mostar "entirely" on Turco's Rule 92 *bis* statement, which cannot constitute in itself the basis for a conviction.[1786] Praljak therefore requests that the Appeals Chamber acquit him under Counts 1, 2, 3, 15, 16, 24, and 25 of the relevant charges with respect to Mostar.[1787]

542. The Prosecution responds that the Trial Chamber applied the correct standard of proof, properly finding that HVO-controlled snipers in West Mostar deliberately targeted Muslim civilians, and that Praljak fails to demonstrate that the Trial Chamber erred in attributing such responsibility to the HVO.[1788] It contends that Praljak ignores the Trial Chamber's findings that the HVO controlled Stotina when its snipers were positioned there and relevant testimony that the

[1779] Trial Judgement, Vol. 2, para. 1188. See Trial Judgement, Vol. 2, paras 1186-1187, 1194.
[1780] Praljak's Appeal Brief, para. 254. See Praljak's Appeal Brief, para. 246; Praljak's Reply Brief, para. 85.
[1781] Praljak's Appeal Brief, heading before para. 247; Appeal Hearing, AT. 378 (22 Mar 2017). See Praljak's Appeal Brief, para. 246.
[1782] Praljak's Appeal Brief, para. 248. See Praljak's Appeal Brief, paras 247, 250.
[1783] Praljak's Appeal Brief, para. 248.
[1784] Praljak's Appeal Brief, paras 249, 253. Praljak also argues that individuals could be acting outside of any control, taking "pot shots" at anyone. Praljak's Appeal Brief, para. 249.
[1785] Praljak's Appeal Brief, paras 249, 252; Appeal Hearing, AT. 378-379 (22 Mar 2017).
[1786] Praljak's Appeal Brief, para. 251. Praljak also argues that Turco could not confirm that the HVO was responsible for the sniping events. Praljak's Appeal Brief, para. 251.
[1787] Praljak's Appeal Brief, para. 246.
[1788] Prosecution's Response Brief (Praljak), paras 185-186.

ABiH did not fire from its positions above Stotina.[1789] The Prosecution submits that Praljak's claim about HVO members under ABiH control is speculative and unsupported, and his claim regarding "concerned buildings" ignores Stojić's admission that HVO-controlled snipers were in the "Blue Bank" building at the time of the sniping incidents.[1790] Additionally, the Prosecution contends that the Trial Chamber reasonably concluded that the HVO was responsible, even without pinpointing where the shots originated, as there was no indication of firing from the ABiH or from Serb positions.[1791] Finally, the Prosecution argues that the Trial Chamber did not rely solely on Turco to find that HVO snipers targeted women, children, and the elderly.[1792]

543. The Appeals Chamber observes that the Trial Chamber focused on establishing who was in control of the areas from where HVO snipers allegedly opened fire on Mostar, noting with specificity potential shooting positions.[1793] On the basis of the evidence, the Trial Chamber then established that the HVO controlled most of these positions.[1794] Finally, the Trial Chamber examined the evidence pertaining to specific sniping incidents. When it was unable to determine the precise locations from which the shots were fired, it proceeded to examine – and eliminate – the possibility that they may have originated from the ABiH or Serbian forces.[1795] In light of these findings, which Praljak misrepresents when arguing that it "remains unknown" how the Trial Chamber could attribute the sniper shots to the HVO,[1796] the Appeals Chamber finds that he merely disagrees with the Trial Chamber's assessment of the evidence without showing that the Trial Chamber erred.

544. Further, while the Trial Chamber used the phrase "the consistency of the testimonies and the evidence collected *allow*" a finding that Stotina hill was controlled by the HVO,[1797] the Appeals Chamber notes that immediately thereafter, the Trial Chamber continued its examination of whether the HVO controlled Stotina hill, considering further evidence,[1798] rejecting Praljak's trial submissions to the contrary,[1799] and concluding that Stotina hill "was controlled by the HVO armed forces on all of the dates of the alleged incidents".[1800] In the opinion of the Appeals Chamber, the Trial Judgement does not reflect that the Trial Chamber failed to apply the correct "beyond

[1789] Prosecution's Response Brief (Praljak), para. 187.
[1790] Prosecution's Response Brief (Praljak), para. 188.
[1791] Prosecution's Response Brief (Praljak), para. 189. The Prosecution further contends that this conclusion is confirmed by other Trial Chamber findings. Prosecution's Response Brief (Praljak), para. 189.
[1792] Prosecution's Response Brief (Praljak), para. 190.
[1793] Trial Judgement, Vol. 2, para. 1032.
[1794] Trial Judgement, Vol. 2, paras 1033-1038. See also Trial Judgement, Vol. 2, paras 1039-1041.
[1795] Trial Judgement, Vol. 2, paras 1042 *et seq.*
[1796] See Praljak's Appeal Brief, para. 252.
[1797] Trial Judgement, Vol. 2, para. 1033 (emphasis added); Trial Judgement (French original), Vol. 2, para. 1033 ("*la constance des témoignages et des éléments recueillis permettent de conclure en ce sens*").
[1798] Trial Judgement, Vol. 2, para. 1033.
[1799] Trial Judgement, Vol. 2, para. 1034.

reasonable doubt" standard.[1801] Rather, Praljak suggests reading out of context a finding relied upon by the Trial Chamber to reach its ultimate conclusion beyond reasonable doubt that Stotina hill was controlled by the HVO armed forces.

545. Finally, the Appeals Chamber observes that, contrary to Praljak's contention, the Trial Chamber did not base its conclusions on the suffering of the Muslim population in East Mostar "entirely" on a Rule 92 *bis* statement. In particular, the Trial Chamber stated that "[a]lthough [it] notes that the testimony of *Anthony Turco* was taken pursuant to Rule 92 *bis* of the Rules, it deems that all the evidence relating to the victims of the sniping incidents examined above corroborates what he said".[1802] In this regard, the Trial Chamber found that several witnesses "testified before the Chamber that women and children were targeted by snipers positioned in sectors controlled by the HVO".[1803] Notably, Witness Dževad Hadžizukić testified about his wife being killed by a sniper, and Witness Grant Finlayson testified about a woman and a child who were killed by sniper fire.[1804] Finally, the Trial Chamber relied on several contemporaneous documents describing incidents in which women and children were wounded or killed by snipers.[1805] Accordingly, the Appeals Chamber dismisses Praljak's ground of appeal 20.

(d) Shelling of East Mostar (Praljak's Ground 21 and Petković's Sub-ground 5.2.2.4 both in part)

546. The Trial Chamber concluded that East Mostar was subjected to intense and uninterrupted firing and shelling from the HVO between June 1993 and March 1994.[1806] In reaching this conclusion, the Trial Chamber noted, *inter alia*, that: (1) it received information indicating that the HVO used small aeroplanes to drop shells or bombs;[1807] (2) the ABiH chiefly had light infantry weapons and, even if the ABiH had heavy weapons, the HVO was better equipped, chiefly used

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[1800] Trial Judgement, Vol. 2, para. 1035.
[1801] The Appeals Chamber further notes that the Trial Chamber set out the correct standard in a general section devoted to evidentiary standards and stated that, although it did not systematically restate the expression "beyond reasonable doubt" in each finding of fact or in respect of the criminal responsibility of the Appellants, it applied this standard throughout the Trial Judgement. Trial Judgement, Vol. 1, para. 267.
[1802] Trial Judgement, Vol. 2, para. 1188.
[1803] Trial Judgement, Vol. 2, para. 1186 (internal reference omitted).
[1804] Trial Judgement, Vol. 2, para. 1186 & fn. 2952, referring to, *inter alia*, Dževad Hadžizukić, T(F). 13343, 13350 (1 Feb 2007), Ex. P09859 (witness statement of Dževad Hadžizukić), pp. 3-4, Grant Finlayson, T(F). 18045 (7 May 2007), referring to Ex. P02751, p. 2. See also Trial Judgement, Vol. 2, para. 1186 & fns 2951-2952, referring to, *inter alia*, Jeremy Bowen, T(F). 12744-12745, 12748 (23 Jan 2007) (sniper fire over the heads of women, children, and the elderly), P10039 (witness statement by Martin Mol), para. 42 (woman wounded by sniping), fn. 2965, referring to Ratko Pejanović, T. 1329-1330 (4 May 2006) (an elderly man wounded by sniper fire), Miro Salčin, T(F). 14184 (15 Feb 2007) (women, children, and the elderly being subjected to sniper fire).
[1805] Trial Judgement, Vol. 2, para. 1186 & fns 2951-2952, referring to, *inter alia*, Exs. P06925 (confidential), pp. 2-3 (woman killed by sniper fire), P02751, p. 2 (woman and child killed by sniper fire), P02947 (confidential), pp. 4-5 (girl wounded by sniper fire).
[1806] Trial Judgement, Vol. 2, para. 1018.
[1807] Trial Judgement, Vol. 2, para. 997.

heavy artillery, and proceeded to shell and fire on East Mostar daily, intensely, and closely;[1808] (3) there was also shelling from the Serbian armed forces between June and December 1993;[1809] (4) in an UNPROFOR communiqué, Witness Cedric Thornberry stressed that not a single structure seemed to have been spared by the shelling;[1810] (5) the Donja Mahala neighbourhood was hit by home-made bombs in the form of tyres filled with explosives launched from Hum mountain, located in HVO-controlled territory;[1811] (6) an HVO report sent to the Main Staff mentioned that the HVO dropped two napalm bombs on the Donja Mahala neighbourhood;[1812] and (7) the HVO firing and shelling killed and injured many people in East Mostar, evidenced by, *inter alia*, the records of the East Mostar Hospital showing the number of patients treated for injuries caused by bullets or explosives.[1813]

547. As for the targets of the HVO shelling, the Trial Chamber found that the attack was indiscriminate in light of the weapons used and how they were used, which were not suited to the destruction of military targets alone.[1814] It found, in particular, that the zone in which obvious military targets were located – such as the ABiH headquarters – was a small residential area with a high population density into which the HVO forcibly transferred Muslims from West Mostar. As a result, repeated heavy artillery attacks would have to result in civilian loss of life and injury, as well as damage to property, which was substantial and excessive in relation to the concrete and direct military advantage anticipated.[1815] The Trial Chamber found that the firing and shelling were not limited to specific targets.[1816] In reaching these findings, the Trial Chamber noted, *inter alia*, that: (1) according to Witness DV, a professional soldier, the use of heavy artillery by the HVO was not an appropriate method of combat for the type of conflict in the town of Mostar;[1817] (2) the HVO was technically able to identify its targets, notably using adjustment calculations; (3) East Mostar, overall, came under HVO shelling and fire, but certain locations were targeted more particularly by the HVO, including the Donja Mahala sector and Marshal Tito Street;[1818] (4) the evidence showed that HVO shelling and artillery fire affected all of East Mostar, made up of densely inhabited and

[1808] Trial Judgement, Vol. 2, paras 996-998, 1000.
[1809] Trial Judgement, Vol. 2, para. 1001.
[1810] Trial Judgement, Vol. 2, para. 1004.
[1811] Trial Judgement, Vol. 2, para. 1005.
[1812] Trial Judgement, Vol. 2, para. 1006.
[1813] Trial Judgement, Vol. 2, para. 1016.
[1814] Trial Judgement, Vol. 3, paras 1686, 1689.
[1815] Trial Judgement, Vol. 3, para. 1686. See Trial Judgement, Vol. 3, para. 1689.
[1816] Trial Judgement, Vol. 2, para. 1018, Vol. 3, paras 1254, 1348, 1684, 1689. See Trial Judgement, Vol. 2, para. 1014.
[1817] Trial Judgement, Vol. 2, para. 997.
[1818] Trial Judgement, Vol. 2, para. 1003. See also Trial Judgement, Vol. 3, paras 1254, 1348, 1684. The Trial Chamber noted that Marshal Tito Street – one of the main streets in East Mostar – was the location of the headquarters of the 4th Corps of the 41st ABiH Brigade. Trial Judgement, Vol. 2, para. 1009. It also noted that, according to Witness Miro Salčin, there was no specific headquarters or fixed assembly point in Donja Mahala for the 120 ABiH soldiers who were present and armed with only light infantry weapons. Trial Judgement, Vol. 2, para. 1007.

populated areas, and that many buildings were destroyed;[1819] (5) it was impossible for the HVO to precisely target with shots, shells, and tyres filled with explosives ABiH soldiers who were not assembled at a specific location in Donja Mahala;[1820] and (6) evidence indicated that the ABiH positioned mobile mortars near the East Mostar Hospital.[1821]

548. The Trial Chamber also found that the constant and intense shelling and artillery fire had the effect of terrifying the population of East Mostar.[1822] In arriving at this finding, the Trial Chamber took into consideration evidence of the fear of the population living under the deafening sounds of HVO shelling and firing and them having to run for cover in the streets.[1823] It referred to this terrifying effect when finding that the HVO committed the crime of unlawful infliction of terror on civilians.[1824] Moreover, it relied on the indiscriminate nature of the attack, taking into consideration that the HVO's shelling and firing were not limited to military targets; rather, the whole of East Mostar was subjected to daily and intense shelling and artillery fire in which heavy artillery was used.[1825] Finally, the Trial Chamber considered, *inter alia*, the HVO's deliberate shelling and destruction of ten mosques in East Mostar.[1826]

(i) Arguments of the Parties

549. Praljak submits that the Trial Chamber erred when concluding that the HVO shelled East Mostar intensively and indiscriminately and that the HVO shelling caused numerous victims.[1827] First, Praljak puts forth evidence which he alleges contradicts the following Trial Chamber findings: (1) the HVO used napalm bombs;[1828] (2) the HVO was better equipped than the ABiH and intensely shelled and fired at East Mostar between early June 1993 and early March 1994;[1829] and (3) home-made bombs, which hit the Donja Mahala neighbourhood, were attributable to the HVO, rather than the ABiH.[1830] He contends that the Trial Chamber should have

[1819] Trial Judgement, Vol. 2, para. 1004.
[1820] Trial Judgement, Vol. 2, para. 1008. See also Trial Judgement, Vol. 3, paras 1254, 1348, 1684.
[1821] Trial Judgement, Vol. 2, para. 1013.
[1822] Trial Judgement, Vol. 2, para. 1015.
[1823] Trial Judgement, Vol. 2, para. 1015.
[1824] Trial Judgement, Vol. 3, paras 1689, 1692.
[1825] Trial Judgement, Vol. 3, para. 1689.
[1826] Trial Judgement, Vol. 2, paras 1367-1377, Vol. 3, para. 1690.
[1827] Praljak's Appeal Brief, headings before para. 256. See also Praljak's Appeal Brief, para. 256; Praljak's Reply Brief, para. 86.
[1828] Praljak's Appeal Brief, para. 258, referring to, *inter alia*, Trial Judgement, Vol. 2, para. 1006, Vol. 3, paras 1254, 1348, 1684.
[1829] Praljak's Appeal Brief, para. 260, referring to, *inter alia*, Trial Judgement, Vol. 2, para. 1000. Praljak also submits that the Trial Chamber based its conclusions on Exhibits P05278 and P05452, which were not in evidence. Praljak's Appeal Brief, para. 260 & fn. 615.
[1830] Praljak's Appeal Brief, para. 264, referring to, *inter alia*, Trial Judgement, Vol. 2, para. 1005. Praljak further submits that it cannot be excluded that these bombs were isolated criminal acts committed by individuals who were not under anyone's control. Praljak's Appeal Brief, para. 264.

adopted a more careful approach to the evidence as it admitted that Serbs also shelled Mostar.[1831] Praljak further submits that particular pieces of evidence to which the Trial Chamber referred do not: (1) attribute any responsibility to the HVO for the situation in Mostar; or (2) confirm that an HVO aeroplane dropped shells.[1832] Additionally, he argues that the UNPROFOR Spanish Battalion ("SpaBat") documents do not allow for a conclusion on the number of shells fired by the HVO as they only indicate the number of incoming and outgoing shells in East Mostar, not West Mostar.[1833] Praljak alleges that there is no evidence about the origin of the shelling and victims injured by the HVO as the Trial Chamber justified its findings on the basis of the number of victims admitted into the East Mostar Hospital.[1834]

550. Praljak avers that the Trial Chamber should have unambiguously established whether the HVO was able to target military objectives and yet intentionally targeted the civilian population or whether it was unable to do so and therefore its attacks were indiscriminate.[1835] Petković argues that the Trial Chamber did not infer that the HVO targeted civilian objects and/or the civilian population, as is required to establish the crime of unlawful attack on civilians.[1836] Praljak contends that: (1) the Trial Chamber was required to ascertain "the objective and the modalities" of the attack as to each shelling incident;[1837] and (2) the fact that shelling affected a densely populated area does not mean that civilian areas were targeted or that the attacks were indiscriminate or disproportionate.[1838] Praljak submits that the Trial Chamber had no basis to assess whether the method or means of the attack were such that it could be directed at a specific military objective.[1839] Specifically, he submits that the Trial Chamber: (1) made no effort to establish the nature of the alleged attacks – seemingly basing its finding in this regard on a distortion of Witness DV's testimony – or the weapons used by the HVO;[1840] and (2) failed to consider evidence confirming that the shelling was limited and aimed at military targets.[1841] Moreover, Praljak contends that the

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[1831] Praljak's Appeal Brief, para. 267. See Praljak's Appeal Brief, para. 262. Praljak also submits that: (1) it cannot be excluded that at least some victims and damage can be attributed to the activities of groups operating within East Mostar who did not agree with the East Mostar government; and (2) the ABiH probably tried to expel the HVO from a small pocket it held on the east side of the Neretva River, thereby causing collateral damage among its own population. Praljak's Appeal Brief, para. 267.
[1832] Praljak's Appeal Brief, paras 257, 261, referring to, *inter alia*, Trial Judgement, Vol. 2, para. 1004.
[1833] Praljak's Appeal Brief, para. 263, referring to Ex. P06554.
[1834] Praljak's Appeal Brief, para. 262, referring to, *inter alia*, Ex. P04573, Trial Judgement, Vol. 2, para. 1016; Appeal Hearing, AT. 379 (22 Mar 2017), referring to Ex. P04573.
[1835] Praljak's Appeal Brief, paras 269-270. See also Praljak's Appeal Brief, para. 256 & fn. 596.
[1836] Petković's Appeal Brief, para. 269. See also Petković's Appeal Brief, fn. 356. The Appeals Chamber notes that Petković also states, conversely, that he "does not challenge the Chamber's findings that crimes were committed by shelling". Petković's Reply Brief, para. 61.
[1837] Praljak's Appeal Brief, para. 270. See Praljak's Reply Brief, para. 87.
[1838] Praljak's Appeal Brief, para. 271. See also Praljak's Appeal Brief, paras 265-266, 270.
[1839] Praljak's Appeal Brief, para. 272.
[1840] Praljak's Appeal Brief, paras 268, 272. See Praljak's Appeal Brief, para. 256 & fn. 597.
[1841] Praljak's Appeal Brief, para. 272. See Praljak's Appeal Brief, para. 265 & fn. 633. Additionally, Praljak argues that the Trial Chamber accepted Witness Miro Salčin's statements although they conflicted with its own findings that: (1) the ABiH had heavy weapons, including mobile mortars near the hospital; and (2) the headquarters of the 4th Corps

Trial Chamber's finding that the damage was excessive in relation to the anticipated military advantage was unfounded.[1842]

551. Finally, Praljak alleges errors related to the Trial Chamber's conclusion that the HVO committed the crime of unlawful infliction of terror by shelling the population of East Mostar.[1843] He submits that, in light of the Trial Chamber's admission that the shelling was aimed at military targets, it failed to establish that the purpose of the shelling was to spread terror and that any HVO member had the specific intent to spread terror.[1844] He further submits that the Trial Chamber merely stated that the shelling terrified the population, without any conclusive evidence and without establishing the required degree of trauma and psychological damage.[1845] Praljak requests that his convictions under Counts 1, 2, 3, 16, 24, and 25 be reversed with respect to the relevant charges for Mostar.[1846] Petković requests to be acquitted on Count 24.[1847]

552. The Prosecution responds that Praljak merely disagrees with the Trial Chamber's interpretation of evidence without showing error.[1848] It submits that, contrary to Praljak's claims: (1) the Trial Chamber's reasonable considerations regarding the nature of the attack were based on the totality of evidence; (2) the Trial Chamber did not distort Witness DV's evidence; and (3) the HVO's home-made tyre bombs were different from ABiH handheld bombs.[1849] The Prosecution submits that claims concerning alleged shelling by forces other than the HVO do not undermine the Trial Chamber's finding that the HVO "daily, intensely and closely" shelled East Mostar.[1850] In this regard, it submits that: (1) the Trial Chamber's finding that occasional Serb shelling occurred is well-grounded; and (2) the Trial Chamber properly relied on SpaBat reports confirming the HVO's responsibility for the shelling.[1851] Further, the Prosecution argues that the Trial Chamber was not required to establish the "objective and modalities" of each shelling incident.[1852] It submits,

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of the 41st ABiH Brigade was located on Marshal Tito Street. He further alleges that the Trial Chamber failed to consider the ABiH mobile mortars when concluding that the HVO firing and shelling were not limited to specific military targets. Praljak's Appeal Brief, paras 259 (referring to, *inter alia*, Trial Judgement, Vol. 2, paras 1007, 1009), 273. See also Praljak's Appeal Brief, para. 256 & fn. 596, para. 266.

[1842] Praljak's Appeal Brief, para. 273, referring to, *inter alia*, Trial Judgement, Vol. 3, para. 1686; Praljak's Reply Brief, para. 87.

[1843] Praljak's Appeal Brief, headings before paras 274-275. See Praljak's Appeal Brief, paras 274, 276. See also Praljak's Appeal Brief, para. 256; Praljak's Reply Brief, paras 86, 88.

[1844] Praljak's Appeal Brief, paras 274, 277-279; Appeal Hearing, AT. 380-381 (22 Mar 2017). Praljak also submits that HVO orders show that shelling was aimed at military targets. Praljak's Appeal Brief, para. 277.

[1845] Praljak's Appeal Brief, paras 275-276.

[1846] Praljak's Appeal Brief, para. 255.

[1847] Petković's Appeal Brief, paras 251, 269, 282.

[1848] Prosecution's Response Brief (Praljak), paras 191, 194.

[1849] Prosecution's Response Brief (Praljak), para. 194. The Prosecution submits that Praljak's claim that these bombs were used in isolated criminal acts is unsupported and speculative. Prosecution's Response Brief (Praljak), para. 194.

[1850] Prosecution's Response Brief (Praljak), para. 196. The Prosecution submits that the Trial Chamber cited many other supporting exhibits apart from two documents not in evidence. Prosecution's Response Brief (Praljak), para. 196.

[1851] Prosecution's Response Brief (Praljak), para. 196.

[1852] Prosecution's Response Brief (Praljak), para. 195.

moreover, that Praljak ignores the extensive evidence considered by the Trial Chamber and its explicit findings that, *inter alia*, intense and continuous shelling formed a key part of the HVO's unlawful attack on and terrorisation of the civilian population.[1853] Finally, the Prosecution argues that, contrary to Petković's claim, the Trial Chamber "explicitly found that HVO shelling targeted the civilian population and civilian property".[1854]

553. Regarding Praljak's challenge to his conviction under Count 25 (unlawful infliction of terror on civilians as a violation of the laws or customs of war), the Prosecution argues that: (1) the Trial Chamber's findings amply demonstrate that the HVO committed acts of violence the primary purpose of which was to spread terror; and (2) it applied the correct *mens rea* standard.[1855] The Prosecution argues that Praljak merely repeats his untenable claim that HVO shelling targeted military objects and not Muslims.[1856]

(ii) Analysis

554. The Appeals Chamber will first address Praljak's arguments regarding the Trial Chamber's findings on the HVO's use of napalm bombs and home-made bombs and its findings that the HVO was better equipped than the ABiH and intensely shelled and fired at East Mostar between early June 1993 and early March 1994. With respect to Praljak's submission that the Trial Chamber erred in relying on proposed Exhibits P05278 and P05452 as they were not in evidence, the Appeals Chamber considers that Praljak ignores the voluminous amount of evidence upon which the Trial Chamber relied in addition to these exhibits.[1857] The Appeals Chamber notes that his remaining arguments are substantiated solely by reference to isolated pieces of evidence which Praljak claims support an alternative conclusion to that reached by the Trial Chamber.[1858] He does not, in these arguments, identify the evidence actually relied upon by the Trial Chamber in making the relevant findings, let alone articulate error in that reliance.[1859] As such and in each case, his arguments challenge the Trial Chamber's failure to rely on one piece of

[1853] Prosecution's Response Brief (Praljak), paras 192-193. The Prosecution submits that the HVO intended to attack Muslim civilians and destroy Muslim civilian objects and that this was not collateral damage. Prosecution's Response Brief (Praljak), para. 192.
[1854] Prosecution's Response Brief (Petković), para. 205.
[1855] Prosecution's Response Brief (Praljak), paras 197-198.
[1856] Prosecution's Response Brief (Praljak), para. 198.
[1857] See Trial Judgement, Vol. 2, para. 1000 and references cited therein. *Cf. Kordić and Čerkez* Appeal Judgement, para. 865.
[1858] See Praljak's Appeal Brief, paras 258 (referring to, *inter alia*, Miro Salčin, T. 14219-14220 (15 Feb 2007)), 260 (referring to, *inter alia*, Cedric Thornberry, T. 26286 (15 Jan 2008), Grant Finlayson, T. 18042 (7 May 2007)), 264 (referring to, *inter alia*, Larry Forbes, T. 21288-21289 (16 Aug 2007)).
[1859] See Trial Judgement, Vol. 2, paras 996, 1000, 1005-1006 and references cited therein. See also Trial Judgement, Vol. 2, para. 1018. As to Praljak's argument that it cannot be excluded that the home-made bombs were isolated criminal acts committed by individuals who were not under anyone's control, the Appeals Chamber finds it to be unsubstantiated and speculative.

evidence, without explaining why the relevant findings, and by extension the conviction, should not stand on the basis of the remaining evidence. They are accordingly dismissed.

555. With respect to Praljak's argument that the Trial Chamber should have adopted a more careful approach to the evidence as it admitted that Serbs also shelled Mostar, he ignores that the Trial Chamber ultimately found, on the basis of the evidence, that Serbian forces only occasionally fired shells.[1860] Further, Praljak merely challenges the Trial Chamber's failure to rely on particular evidence without explaining why the conviction should not stand on the basis of the remaining evidence.[1861] In this regard, the Appeals Chamber notes that the Trial Chamber considered extensive evidence when finding that the HVO shelled and fired at East Mostar daily, intensely, and closely, thereby killing and injuring people.[1862] When arguing that evidence to which the Trial Chamber referred does not attribute any responsibility to the HVO for the situation in Mostar, Praljak points to the Trial Chamber's finding that HVO shelling and artillery fire affected all of East Mostar,[1863] and ignores the other evidence the Trial Chamber relied upon in this regard.[1864] The Appeals Chamber further rejects Praljak's allegations – that there is no evidence about the origin of the shelling and victims injured by the HVO as the Trial Chamber justified its findings on the basis of the number of victims admitted into the East Mostar Hospital – as he ignores the other evidence upon which the Trial Chamber relied when reaching its findings that the HVO shelled and fired at East Mostar and killed and injured many people, notably women, children, and the elderly.[1865] The foregoing arguments are dismissed.

556. Regarding Praljak's claim that the evidence to which the Trial Chamber referred does not confirm that an HVO aeroplane dropped shells, the Appeals Chamber notes that the Trial Chamber merely noted that it received information indicating that the HVO had small aeroplanes with which

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[1860] Trial Judgement, Vol. 2, para. 1001.

[1861] See Praljak's Appeal Brief, para. 267 & fns 651, 653, referring to Witness CB, T. 10155 (14 Nov 2006), Grant Finlayson, T. 18224 (9 May 2007) (both referred to in Trial Judgement, Vol. 2, para. 1001).

[1862] See, *e.g.*, Trial Judgement, Vol. 2, paras 996-997, 1000, 1003-1004, 1014, 1016, 1018 and references cited therein. The Appeals Chamber finds speculative Praljak's submissions that it cannot be excluded that at least some victims and damage can be attributed to the activities of groups operating within East Mostar and that the ABiH probably tried to expel the HVO from a small pocket it held on the east side of the Neretva River, thereby causing collateral damage among its own population.

[1863] Praljak's Appeal Brief, para. 261, referring to, *inter alia*, Trial Judgement, Vol. 2, para. 1004.

[1864] See, *e.g.*, Trial Judgement, Vol. 2, para. 1004 & fns 2321, 2324-2325. When pointing to evidence contrary to the Trial Chamber's finding, Praljak merely asserts that the Trial Chamber must have failed to consider relevant evidence, without showing that no reasonable trier of fact, based on the evidence, could have reached the same conclusion as the Trial Chamber did. See Praljak's Appeal Brief, para. 261 & fns 622-623. In this regard, the Appeals Chamber recalls that the Trial Chamber found, on the basis of various pieces of evidence, that HVO shelling and artillery fire affected all of East Mostar, made up of densely inhabited and populated areas, in which homes, stores, and public buildings were destroyed. Trial Judgement, Vol. 2, para. 1004 and references cited therein.

[1865] Trial Judgement, Vol. 2, paras 996-997, 1000, 1004-1006, 1009-1012, 1015-1016 & fns 2352-2354 and references cited therein. Insofar as Praljak also puts forth evidence to challenge the Trial Chamber's findings on the origin of the shelling, he is merely asserting that the Trial Chamber must have failed to consider relevant evidence without showing that no reasonable trier of fact, based on the evidence, could have reached the same conclusion as the Trial Chamber did.

it dropped shells or bombs, notably on Donja Mahala, which is amply supported by the evidence on which it relied.[1866] Praljak fails to demonstrate any error. As to his argument that the SpaBat documents do not allow for a conclusion on the number of shells fired by the HVO and only indicate the number of incoming and outgoing shells in East Mostar, not West Mostar, the Appeals Chamber notes that Praljak refers only to a 9 November 1993 report and fails to identify the Trial Chamber finding he is challenging or cite to the other evidence to which he refers.[1867] His argument is dismissed.

557. With regard to the argument that the Trial Chamber should have unambiguously established whether the HVO was able to target military objectives and yet intentionally targeted the civilian population or whether it was unable to do so and therefore its attacks were indiscriminate, the Appeals Chamber notes that the Trial Chamber found that the attack was indiscriminate in light of the weapons used and, most of all, how they were used.[1868] The HVO used napalm bombs and tyres filled with explosives,[1869] and although it was technically able to identify its targets using adjustment calculations, the whole of East Mostar was subjected to intense and daily firing and shelling in which heavy artillery was used.[1870] Praljak has failed to demonstrate how the question of whether the shelling and firing constituted a direct attack on civilians or an indiscriminate attack would have any bearing on the Trial Chamber's decision as to the commission of the crime of an unlawful attack.[1871] His argument is dismissed. In light of the above, the Appeals Chamber also dismisses Petković's submission that the Trial Chamber did not infer that the HVO targeted civilian objects and/or the civilian population.

558. When contending that the Trial Chamber was required to ascertain the objectives and modalities of the attack with regard to each shelling incident, Praljak points to the *D. Milošević* Appeal Judgement.[1872] In its assessment therein, the Appeals Chamber referred to a limited number of sniping and shelling incidents.[1873] In the present case, the Trial Chamber reviewed a large volume of evidence establishing the various weapons used by the HVO, the impact on specific neighbourhoods and zones, and incidents in which locations and buildings may have been targeted

[1866] Trial Judgement, Vol. 2, para. 997, referring to, *inter alia*, Exs. P04785, p. 2 (reporting the HVO's use of aircraft to drop clusters of mortar bombs), P05091, para. 26 (noting allegations that the HVO dropped mortar grenades from two crop-duster aeroplanes), P05210 (confidential), p. 6 (reporting a flyover by a light airplane at times coinciding with the times at which, according to the ABiH, it was shelled from the air), P09834, para. 16 (stating that the HVO had a small plane which it would use to drop bombs on Donja Mahala as well as the areas of Luka and Tekija), Miro Salčin, T(F). 14276-14277 (private session) (19 Feb 2007) (confirming the HVO's use of aircraft).
[1867] See Praljak's Appeal Brief, para. 263.
[1868] Trial Judgement, Vol. 3, paras 1686, 1689.
[1869] Trial Judgement, Vol. 2, paras 1005-1006, Vol. 3, paras 1254, 1348, 1451, 1684.
[1870] Trial Judgement, Vol. 2, paras 997, 1000, 1003-1004, 1018, Vol. 3, paras 1254, 1348, 1451, 1684, 1686, 1689.
[1871] See *Kordić and Čerkez* Appeal Judgement, para. 48 (recalling the fundamental principle of customary international law, as outlined in Article 51 of Additional Protocol I, whereby a civilian population shall not be the object of attack).
[1872] Praljak's Appeal Brief, para. 270 & fn. 663, referring to *D. Milošević* Appeal Judgement, para. 143.

for military purposes.[1874] In light of the Trial Chamber's finding that intense shelling and artillery fire occurred on a daily basis over the course of nine months,[1875] and bearing in mind that a trial chamber must make its own final assessment based on the totality of the evidence before it,[1876] the Appeals Chamber is satisfied that a reasonable trier of fact could have taken such an approach and therefore finds that Praljak has failed to demonstrate any error. His argument is therefore dismissed.

559. When submitting that the fact that shelling affected a densely populated area does not mean that civilian areas were targeted or that the attack was indiscriminate or disproportionate, Praljak recalls that international humanitarian law does not *per se* prohibit attacks aimed at military targets when they are situated in populated areas.[1877] He presents numerous pieces of evidence to demonstrate that, *inter alia*, the ABiH placed military staff, equipment, and positions in civilian areas and used them for attacks on HVO positions.[1878] The Appeals Chamber notes that the Trial Chamber considered evidence of the locations and shelling of ABiH positions in East Mostar.[1879] Praljak merely points to evidence he prefers without showing that no reasonable trier of fact, based on the evidence, could have reached the conclusion that the firing and shelling were not limited to specific military targets.[1880] His argument is therefore dismissed.

560. In support of his submission that the Trial Chamber made no effort to establish the nature of the alleged attacks, Praljak argues that the Trial Chamber distorted Witness DV's testimony which, according to him, did not address the appropriateness of the method of combat used in East Mostar, but rather the military usefulness of the artillery in this kind of combat.[1881] The Appeals Chamber rejects this argument as Praljak merely disagrees with the Trial Chamber's interpretation of the evidence, without showing that no reasonable trier of fact could have adopted

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[1873] See *D. Milošević* Appeal Judgement, paras 140-143.
[1874] Trial Judgement, Vol. 2, paras 996-997, 1000, 1003-1014 and references cited therein.
[1875] See, *e.g.*, Trial Judgement, Vol. 2, paras 996, 1000, 1018, Vol. 3, para. 1689.
[1876] *Lukić and Lukić* Appeal Judgement, para. 260, referring to *Stakić* Appeal Judgement, para. 346; *Karemera and Ngirumpatse* Appeal Judgement, para. 52.
[1877] Praljak's Appeal Brief, para. 271.
[1878] See Praljak's Appeal Brief, paras 265-266.
[1879] Trial Judgement, Vol. 2, paras 1007-1014, noting: (1) that there was no specific headquarters or fixed assembly point in Donja Mahala for the ABiH soldiers there; (2) the presence on Marshal Tito Street of the war presidency headquarters of the Muslim political authorities, the headquarters of the 4th Corps of the 41st ABiH Brigade, the United Nations Military Observers ("UNMO") premises, the SpaBat premises, and the East Mostar Hospital; and (3) the presence of ABiH mobile mortars near the hospital.
[1880] Trial Judgement, Vol. 2, para. 1018. Particularly, with respect to ABiH positions in the vicinity of Marshal Tito Street, the Trial Chamber found that assuming those positions were the HVO's only targets, the firing and shelling inevitably affected that whole zone, which was the location of not only the East Mostar Hospital where injured people were being treated but also numerous homes and a significant proportion of the population. Trial Judgement, Vol. 2, para. 1014. See Trial Judgement, Vol. 2, paras 1009-1013.
[1881] Praljak's Appeal Brief, para. 268, referring to, *inter alia*, Trial Judgement, Vol. 2, para. 997, Witness DV, T. 23046 (2 Oct 2007).

it.[1882] Moreover, Praljak's claim that the Trial Chamber made no effort to establish the weapons used by the HVO is unfounded.[1883] As to his submission that the Trial Chamber failed to consider evidence confirming that the shelling was limited and aimed at military targets, the Appeals Chamber notes that Praljak repeats his submission expressly addressed, analysed at length, and rejected by the Trial Chamber, that the shelling was "selective and minimal".[1884] The Appeals Chamber considers that he merely asserts that the Trial Chamber must have failed to consider relevant evidence without showing that no reasonable trier of fact, based on the evidence, could have concluded that the HVO firing and shelling were not limited to specific military targets.[1885] Praljak's overall submission – based on the above-mentioned arguments – that the Trial Chamber had no basis to assess whether the method or means of the attack were such that it could be directed at a specific military objective is therefore dismissed.

561. With respect to the crime of unlawful attacks on civilians under Article 3 of the Statute, the Appeals Chamber recalls that although the principles of distinction and the protection of a civilian population do not exclude the possibility of legitimate civilian casualties incidental to the conduct of military operations, those expected casualties must not be disproportionate to the concrete and direct military advantage anticipated before the attack.[1886] In support of his contention that the Trial Chamber's finding – that the damage was excessive in relation to the anticipated military advantage – was unfounded, Praljak argues that the Trial Chamber did not make any assessment of the collateral damage and comparative military advantage.[1887] The Appeals Chamber notes that the Trial Chamber found that the damage was excessive in relation to the concrete and direct military advantage anticipated,[1888] without determining this military advantage,[1889] and as

[1882] See Witness DV, T. 23046 (2 Oct 2007) ("Mostar is a different kettle of fish. Mostar is not an open battlefield. The artillery is not as useful and perhaps it was infantry that was needed most, but I am not familiar about the preparation for the attack.").
[1883] See, *e.g.*, Trial Judgement, Vol. 2, paras 997, 1005-1006, Vol. 3, paras 1254, 1348, 1451, 1684, 1686, 1689. See also *supra*, paras 554-558.
[1884] Trial Judgement, Vol. 2, para. 1002. See Trial Judgement, Vol. 2, paras 1003-1014 (and references cited therein), 1018.
[1885] See Trial Judgement, Vol. 2, para. 1018. As to Praljak's additional argument that the Trial Chamber accepted Salčin's statements although they conflicted with its own findings that the ABiH had heavy weapons and that the headquarters of the 4th Corps of the 41st ABiH Brigade was located on Marshal Tito Street, the Appeals Chamber dismisses his submission as he: (1) ignores the Trial Chamber's finding that the ABiH chiefly had light infantry weapons; and (2) conflates its separate assessments of the situations in Donja Mahala and the zone of Marshal Tito Street. See Trial Judgement, Vol. 2, paras 998, 1007, 1009-1014. Concerning his related allegation that the Trial Chamber failed to consider the ABiH mobile mortars when concluding that the HVO firing and shelling were not limited to specific military targets, Praljak fails to demonstrate any error as the Trial Chamber considered the mobile mortars and found that the firing and shelling were not limited to specific targets, possibly military ones "such as" the headquarters of the 4th Corps and the 41st Brigade of the ABiH. Trial Judgement, Vol. 2, para. 1018. See Trial Judgement, Vol. 2, paras 1013-1014. His arguments are dismissed.
[1886] See *Galić* Appeal Judgement, paras 190-192; Article 51(5)(b) of Additional Protocol I. See also *Gotovina and Markač* Appeal Judgement, para. 82.
[1887] Praljak's Appeal Brief, para. 273; Praljak's Reply Brief, para. 87.
[1888] Trial Judgement, Vol. 3, para. 1686. See Trial Judgement, Vol. 3, para. 1689.
[1889] See Trial Judgement, Vol. 3, paras 1684-1686.

such erred in law by failing to provide a reasoned opinion. Nevertheless, in light of the preceding analysis,[1890] and considering the basis for the Trial Chamber's finding that the HVO committed the crime of unlawful attack on civilians,[1891] the Appeals Chamber considers that Praljak has failed to identify an error that would invalidate the Trial Chamber's decision.

562. Turning to Praljak's submissions related to the Trial Chamber's finding that the crime of unlawful infliction of terror was committed, the Appeals Chamber first recalls that the Trial Chamber was required to establish that the primary purpose of the acts or threats of violence committed in East Mostar was to spread terror among the civilian population and that the perpetrators of the crime acted with the specific intent to spread terror.[1892] The Appeals Chamber considers that Praljak ignores findings when submitting that, in light of the Trial Chamber's admission that the shelling was aimed at military targets, it failed to establish that the purpose of the shelling was to spread terror and that any HVO member had the specific intent to spread terror. Namely, the Trial Chamber found that the attack was indiscriminate as the HVO's shelling and firing were not limited to military targets; rather, the whole of East Mostar was subjected to daily and intense shelling and artillery fire in which heavy artillery was used.[1893] The indiscriminate nature of an attack was a reasonable factor for the Trial Chamber to consider in determining specific intent to spread terror.[1894] The Trial Chamber also considered, *inter alia*, the HVO's deliberate shelling and destruction of ten mosques in East Mostar.[1895] Finally, it expressly linked shelling and sniping as factors contributing to the terrorisation of the population of East Mostar.[1896] The Appeals Chamber considers that a reasonable trier of fact could conclude that HVO actions were conducted with the requisite specific intent to spread terror on these bases. Praljak fails to show that the Trial Chamber erred in this respect.[1897] His argument is dismissed.

563. The Appeals Chamber recalls that although it has previously found that the crime of unlawful infliction of terror involves cases in which "extensive trauma and psychological damage"

[1890] See *supra*, paras 557-560 (recalling that the Trial Chamber assessed the various weapons used by the HVO, the impact on specific neighbourhoods and zones, and incidents in which locations and buildings may have been targeted for military purposes, and that the Trial Chamber found that, in light of the weapons used and, most of all, how they were used, the attack was indiscriminate) & fn. 1871 (referring to *Kordić and Čerkez* Appeal Judgement, para. 48, recalling the fundamental principle of customary international law, as outlined in Article 51 of Additional Protocol I, whereby a civilian population shall not be the object of an attack).

[1891] See Trial Judgement, Vol. 3, para. 1688 (finding that by, *inter alia*, "shelling and firing at the civilian population of East Mostar", the HVO committed the crime of an unlawful attack on civilians).

[1892] *D. Milošević* Appeal Judgement, para. 37; *Galić* Appeal Judgement, para. 104.

[1893] Trial Judgement, Vol. 2, paras 997, 1000, 1004, 1018, Vol. 3, paras 1254, 1348, 1451, 1684, 1686, 1689. See *supra*, para. 557. In submitting that HVO orders show that shelling was aimed at military targets, Praljak points to submissions that the Appeals Chamber previously rejected. Praljak's Appeal Brief, fn. 683. See *supra*, para. 560.

[1894] See *D. Milošević* Appeal Judgement, para. 37; *Galić* Appeal Judgement, para. 102 ("The acts or threats of violence constitutive of the crime of terror shall not however be limited to direct attacks against civilians or threats thereof but may include indiscriminate or disproportionate attacks or threats thereof.").

[1895] Trial Judgement, Vol. 2, paras 1367-1377, Vol. 3, para. 1690. See *infra*, paras 566-569.

[1896] Trial Judgement, Vol. 3, para. 1689. See *supra*, paras 540-545.

are caused by "attacks [which] were designed to keep the inhabitants in a constant state of terror",[1898] the actual terrorisation of the civilian population is not an element of the crime of unlawful infliction of terror.[1899] Thus, with respect to Praljak's assertion that the Trial Chamber merely stated that the shelling terrified the East Mostar population, without any conclusive evidence and without establishing the "required" degree of trauma and psychological damage, the Appeals Chamber considers that the Trial Chamber was not, *stricto sensu*, required to establish such.

564. The Appeals Chamber notes, however, that evidence of actual terrorisation may contribute to establishing other elements of the crime of terror.[1900] In the instant case, the Trial Chamber considered evidence regarding the terrifying effect on the civilian population, particularly evidence of the fear of the civilian population of East Mostar living under the deafening sound of HVO shelling and firing and them having to run for cover in the streets.[1901] It recalled this terrifying effect in its legal findings on unlawful infliction of terror on civilians,[1902] and while it did not expressly indicate why it did so, the Appeals Chamber notes that it has previously held that psychological impact on a population may satisfy the required gravity threshold of the crime.[1903] The Appeals Chamber considers that a reasonable trier of fact could rely on the evidence regarding the terrifying effect on the civilian population outlined above for this purpose. In light of the fact that this psychological impact was therefore relevant to the Trial Chamber's legal conclusion that the crime of unlawful infliction of terror had been established, the Appeals Chamber considers that Praljak fails to show that the Trial Chamber erred in law in its reasoning. In light of the foregoing, the Appeals Chamber finds that Praljak fails to show that the Trial Chamber erred. Accordingly, Praljak's allegations related to the Trial Chamber's conclusion that the HVO committed the crime of unlawful infliction of terror on the civilian population of East Mostar are dismissed.

565. For the above reasons, the Appeals Chamber dismisses Praljak's ground of appeal 21 and Petković's sub-ground of appeal 5.2.2.4 both in relevant part.[1904]

[1897] See Trial Judgement, Vol. 1, paras 194-197, Vol. 3, paras 1689-1692.
[1898] *Galić* Appeal Judgement, para. 102. See *D. Milošević* Appeal Judgement, para. 35.
[1899] *D. Milošević* Appeal Judgement, para. 35, citing *Galić* Appeal Judgement, para. 104.
[1900] *D. Milošević* Appeal Judgement, para. 35.
[1901] Trial Judgement, Vol. 2, para. 1015 & fns 2350-2351. See also Trial Judgement, Vol. 2, para. 1016.
[1902] Trial Judgement, Vol. 3, para. 1689. Moreover, in establishing that the HVO committed the crime of unlawful infliction of terror on civilians, the Trial Chamber considered multiple underlying acts including the HVO's campaign of sniper fire which left the population under constant threat of being killed or wounded and prevented them from carrying out activities that were indispensable for their survival. Trial Judgement, Vol. 3, para. 1689. See Trial Judgement, Vol. 2, para. 1176, Vol. 3, paras 1690-1692.
[1903] *D. Milošević* Appeal Judgement, para. 35.
[1904] The Appeals Chamber observes that a review of the Trial Chamber's legal findings reveals that killings resulting from shellings were not considered under Counts 2 or 3. See *infra*, para. 2264. Therefore Praljak's request to be acquitted under those counts is moot.

(e) Destruction of or damage to mosques in East Mostar (Praljak's Ground 24)

566. The Trial Chamber found that the HVO's constant shooting and shelling of East Mostar destroyed or significantly damaged ten mosques between June and December 1993.[1905] It was satisfied that the HVO deliberately targeted these ten mosques.[1906] In reaching these findings, the Trial Chamber noted, *inter alia*, that: (1) eight out of the ten mosques were damaged or partially destroyed by the JNA and/or the VRS in 1992, while the remaining two mosques did not sustain damage and were still intact in January 1993, and probably until 9 May 1993;[1907] (2) each of the mosques in East Mostar was damaged or destroyed essentially by artillery fire between June and December 1993 and, in 1994, all mosques in Mostar town had been destroyed;[1908] and (3) various sources of evidence indicated that the HVO knowingly, systematically, and deliberately attacked the mosques in East Mostar.[1909]

567. Praljak submits that the Trial Chamber erred when it concluded that the HVO deliberately targeted and destroyed or damaged ten mosques in East Mostar between June and December 1993.[1910] He submits that while the Trial Chamber noted that eight of the ten mosques had been damaged or partially destroyed by non-HVO forces in 1992, it did not establish what further damage occurred to those mosques in 1993, nor could it establish whether the two other mosques remained intact after January 1993.[1911] Praljak further submits that the evidence does not allow for the Trial Chamber's finding because all but one of the mosques had been destroyed by May 1993.[1912] Additionally, Praljak submits that it was impossible for the Trial Chamber to attribute the destruction to the HVO and conclude that the HVO deliberately targeted the mosques because Exhibit P02636, on which it relied to do so, did not indicate how they were destroyed or who destroyed them.[1913] Finally, Praljak submits that with the exception of one mosque in West Mostar, there is no evidence that the HVO was involved in the destruction of any mosque in Mostar.[1914] Praljak therefore requests that the Appeals Chamber acquit him under Counts 1 (persecution as a crime against humanity) and 21 (destruction or wilful damage done to institutions

[1905] Trial Judgement, Vol. 2, para. 1377. See Trial Judgement, Vol. 2, paras 1372-1375.
[1906] Trial Judgement, Vol. 2, para. 1377.
[1907] Trial Judgement, Vol. 2, para. 1369. See Trial Judgement, Vol. 2, paras 1370-1371.
[1908] Trial Judgement, Vol. 2, paras 1372-1375.
[1909] Trial Judgement, Vol. 2, para. 1376.
[1910] Praljak's Appeal Brief, headings before paras 298, 301, paras 299, 301.
[1911] Praljak's Appeal Brief, paras 298, 300, referring to, *inter alia*, Trial Judgement, Vol. 2, paras 1369-1371; Appeal Hearing, AT. 379 (22 Mar 2017). See Praljak's Reply Brief, para. 91. The non-HVO forces Praljak refers to are the JNA and VRS. See Praljak's Appeal Brief, para. 298.
[1912] Praljak's Appeal Brief, para. 299; Appeal Hearing, AT. 379 (22 Mar 2017).
[1913] Praljak's Appeal Brief, paras 302-303 & fns 736-737. Praljak further argues that attribution to the HVO is also impossible because multiple micro-wars were ongoing in East Mostar with different groups under different command. See Praljak's Appeal Brief, para. 302.

dedicated to religion or education as a violation of the laws or customs of war) of the relevant charges with respect to Mostar.[1915]

568. The Prosecution responds that Praljak repeats his claims from trial, ignoring the Trial Chamber's explicit findings that the HVO subjected East Mostar to intense and uninterrupted shelling and constant shooting which damaged nearly all the buildings, as well as its analysis of evidence indicating systematic and intentional attacks on mosques.[1916] The Prosecution argues that the Trial Chamber considered evidence regarding each of the ten mosques, and properly determined that the HVO deliberately damaged and destroyed them between June and December 1993.[1917] Additionally, the Prosecution submits that the Trial Chamber considered what further damage the HVO inflicted on each mosque during the siege.[1918] Further, the Prosecution contends that Praljak's interpretation of the evidence, that all mosques in Mostar (except for one) were destroyed by May 993, is undermined by other evidence.[1919] The Prosecution contends that Praljak's argument regarding Exhibit P02636 shows no error in the Trial Chamber's finding.[1920]

569. The Appeals Chamber observes that the Trial Chamber considered the condition of each of the ten mosques prior to June 1993, and noted with specificity which mosques were previously damaged and which mosques remained intact at the time.[1921] The Trial Chamber then systematically articulated how each mosque was either completely destroyed or sustained further damage as a result of HVO attacks between June and December 1993.[1922] In light of these findings, which Praljak misrepresents when claiming that the Trial Chamber did not establish what further damage occurred to the mosques in 1993, the Appeals Chamber dismisses his arguments regarding the extent of the damage done to the mosques in 1993. Regarding Praljak's argument that Exhibit P02636 did not indicate how the mosques were destroyed or who destroyed them, the Appeals Chamber observes that he ignores all the other evidence on which the Trial Chamber relied to attribute the destruction to the HVO and conclude that the HVO deliberately targeted the

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[1914] Praljak's Appeal Brief, para. 304; Appeal Hearing, AT. 379 (22 Mar 2017). Praljak specifically refers to one mosque in West Mostar that was destroyed by an HVO member, but contends that the only evidence that the HVO ordered its destruction is unconfirmed and doubtful. Praljak's Appeal Brief, para. 304.
[1915] Praljak's Appeal Brief, para. 297.
[1916] Prosecution's Response Brief (Praljak), paras 211-212, 215. The Prosecution submits that even though the Trial Chamber did not need to establish the intent of perpetrators used by JCE members, it properly determined that the HVO forces did possess the required intent. Prosecution's Response Brief (Praljak), para. 215.
[1917] Prosecution's Response Brief (Praljak), para. 213.
[1918] Prosecution's Response Brief (Praljak), para. 213. The Prosecution also states that Praljak's argument regarding the West Mostar mosque is unpersuasive because whether or not the HVO ordered its destruction, Praljak could foresee that mosques would be destroyed for the purposes of JCE III liability. Prosecution's Response Brief (Praljak), para. 216, referring to, *inter alia*, Praljak's Appeal Brief, para. 304.
[1919] Prosecution's Response Brief (Praljak), para. 214, referring to, *inter alia*, Praljak's Appeal Brief, para. 299. See Prosecution's Response Brief (Praljak), para. 211.
[1920] Prosecution's Response Brief (Praljak), para. 215, referring to Trial Judgement, Vol. 2, para. 1376.
[1921] Trial Judgement, Vol. 2, paras 1369-1371.
[1922] Trial Judgement, Vol. 2, paras 1372-1375.

mosques, and therefore finds that he fails to demonstrate that no reasonable trier of fact could have concluded as the Trial Chamber did.[1923] Similarly, in arguing that there is no evidence that the HVO was involved in the destruction of any mosque in East Mostar, Praljak disregards the evidence the Trial Chamber relied upon in this respect.[1924] Accordingly, the Appeals Chamber dismisses Praljak's ground of appeal 24.

2. Deaths of four Muslim men during the attack on Raštani (Praljak's Ground 27)

570. The Trial Chamber deemed "that the evidence allows finding" that on 24 August 1993, during the attack on the village of Raštani, HVO soldiers killed four Muslim men who had surrendered.[1925] It made this finding having noted, *inter alia*, that: (1) around 15 people including two Muslim families sought refuge in the house of Mirsad Žuškić, an ABiH soldier, to escape from the HVO attack;[1926] (2) a group of HVO soldiers fired at the house demanding that the occupants come out, and subsequently killed four men who had come out to surrender;[1927] and (3) according to Witness DA, only one of the men was a member of the ABiH and none of them wore a military uniform when they surrendered.[1928]

571. Praljak submits that the Trial Chamber erred in deeming "that the evidence allows finding", where there was not enough evidence for a finding beyond reasonable doubt, that in Raštani on 24 August 1993 four Muslim men (one of whom was an ABiH member) were killed by HVO soldiers after the four men had surrendered.[1929] He submits that the Trial Chamber ignored that Raštani was a place of "constant combats" between the HVO and ABiH and that the ABiH used many buildings in Raštani for military purposes, including the house where the four men were sheltered.[1930] Praljak also submits that the Trial Chamber accepted but did not critically assess the witnesses' questionable assertions that three of the four men were civilians.[1931] Further, Praljak submits that the Trial Chamber did not consider significant contradictions in the witnesses' statements, which cast doubt on their version of the event.[1932] Finally, Praljak submits that it is

[1923] See, *e.g.*, Trial Judgement, Vol. 2, paras 1375-1377 and references cited therein. *Cf.* Praljak's Appeal Brief, para. 302, referring to Ex. P02636, pp. 2, 4.
[1924] Trial Judgement, Vol. 2, paras 1372-1376 and references cited therein.
[1925] Trial Judgement, Vol. 2, para. 963. See Trial Judgement, Vol. 2, paras 955-962.
[1926] Trial Judgement, Vol. 2, para. 956.
[1927] Trial Judgement, Vol. 2, paras 957-961.
[1928] Trial Judgement, Vol. 2, para. 962.
[1929] Praljak's Appeal Brief, para. 315, referring to Trial Judgement, Vol. 2, para. 963. See Praljak's Appeal Brief, para. 322; Praljak's Reply Brief, para. 95.
[1930] Praljak's Appeal Brief, para. 316. Praljak further argues that the Trial Chamber neither explained why people gathered in the house of an ABiH soldier nor noted contradictory evidence regarding their arrival there. Praljak's Appeal Brief, para. 317.
[1931] Praljak's Appeal Brief, para. 318. Praljak admits, however, that if the events matched the witnesses' descriptions, the three men's possible ABiH affiliation would have no bearing on the Trial Chamber's finding. Praljak's Appeal Brief, para. 319.
[1932] Praljak's Appeal Brief, paras 319-320.

impossible to attribute the killings to the HVO because there is no evidence about the identities of the perpetrators or the unit of which they were a part.[1933] Praljak therefore requests that the Appeals Chamber acquit him under Counts 1 (persecution as a crime against humanity), 2 (murder as a crime against humanity), and 3 (wilful killing as a grave breach of the Geneva Conventions) of the charges relating to the event in Raštani.[1934]

572. The Prosecution responds that Praljak reiterates arguments – that the HVO conducted legitimate military operations in Raštani and that the four men were not civilians – which the Trial Chamber considered but rejected as irrelevant, because the killings occurred after they surrendered, rendering their civilian or combatant status immaterial.[1935] The Prosecution submits that Praljak merely disagrees with the Trial Chamber's interpretation of evidence without showing error, and that the Trial Chamber assessed contradictions in the evidence and reasonably concluded that the house was not used for military purposes.[1936] Therefore, the Prosecution contends that Praljak's assertion that the Trial Chamber failed to apply the correct burden of proof is wrong, and further, Praljak ignores his own burden.[1937] Finally, the Prosecution argues that Praljak ignores the fact that the Trial Chamber properly attributed the killings to the HVO.[1938]

573. The Appeals Chamber notes that while the Trial Chamber used the phrase "the evidence allows finding",[1939] it in fact set out the correct standard in a general section on evidentiary standards and stated that although it did not systematically restate the expression "beyond reasonable doubt" in each finding of fact or in respect of the criminal responsibility of the Appellants, it applied this standard throughout the Trial Judgement.[1940] The specific language identified by Praljak must be considered in this context. Regarding Praljak's argument that the Trial Chamber did not consider significant contradictions in witness statements, the Appeals Chamber notes that the Trial Chamber referred to all of the evidence on which Praljak relies,[1941] and finds that Praljak fails to show that no reasonable trier of fact, based on the evidence, could have reached the same conclusion as the Trial Chamber did, namely that the four Muslim men were killed "even though they had surrendered".[1942] As a result, the following arguments are dismissed as irrelevant: that Raštani was a place of "constant combats" between the HVO and ABiH, that the ABiH used

[1933] Praljak's Appeal Brief, para. 321.
[1934] Praljak's Appeal Brief, para. 323. See Praljak's Reply Brief, para. 96.
[1935] Prosecution's Response Brief (Praljak), paras 225-226.
[1936] Prosecution's Response Brief (Praljak), paras 225, 227. The Prosecution states that the Trial Chamber found that the house was instead used for refuge. Prosecution's Response Brief (Praljak), para. 227.
[1937] Prosecution's Response Brief (Praljak), para. 227.
[1938] Prosecution's Response Brief (Praljak), paras 225, 228.
[1939] Trial Judgement, Vol. 2, para. 963; Trial Judgement (French original), Vol. 2, para. 963 ("*ces éléments de preuve lui permettent de conclure*").
[1940] Trial Judgement, Vol. 1, para. 267.
[1941] *Cf.* Praljak's Appeal Brief, fns 784-785, 787; Trial Judgement, Vol. 2, fns 2217, 2222.
[1942] Trial Judgement, Vol. 2, para. 963. See Trial Judgement, Vol. 2, paras 958-959, 962.

the house where the four men were sheltered for military purposes, and that the Trial Chamber did not critically assess the witnesses' assertions that three of the four men killed were civilians. Finally, the Appeals Chamber dismisses his arguments regarding the soldiers' identities and unit affiliation, considering that the Trial Chamber was not required to establish those as a prerequisite for its finding that the perpetrators belonged to the HVO.[1943] Accordingly, the Appeals Chamber dismisses Praljak's ground of appeal 27.

3. Commission of crimes by the Bruno Bušić Regiment at the Heliodrom (Petković's Sub-ground 5.2.3.1 in part)

574. The Trial Chamber found that from May 1993 to mid-April 1994, members of the Military Police and "[m]embers of the HVO armed forces, including those of KB professional units and the *Bruno Bušić* Regiment as well as other individuals [...] brutally and regularly beat the Heliodrom prisoners".[1944]

575. Petković submits that the finding that members of the HVO, including the Bruno Bušić Regiment, "regularly and brutally" beat Heliodrom detainees is incorrect and groundless.[1945] He argues that the finding is based solely on the testimony of Witness A, who was detained for several days in May 1993 and who testified that he saw members of the Regiment take prisoners out of the room where they were held in order to beat them.[1946]

576. The Prosecution responds that the Trial Chamber reasonably found that soldiers from the Bruno Bušić Regiment regularly and brutally beat detainees at the Heliodrom in May 1993.[1947]

577. The Appeals Chamber notes that Petković's submission is unclear as to whether he is challenging the Trial Chamber's findings on the beatings of Heliodrom detainees generally, or specifically the implication of members of the Bruno Bušić Regiment in these beatings.[1948] It considers, however, that in light of the context in which the argument is made, it relates to the latter.[1949] In this regard, the Trial Chamber found that HVO members, including from the Bruno Bušić Regiment, regularly and brutally beat the Heliodrom prisoners, referring to the evidence of

[1943] Trial Judgement, Vol. 2, para. 963. See Trial Judgement, Vol. 2, paras 957-959, 962.
[1944] Trial Judgement, Vol. 2, para. 1591. See Trial Judgement, Vol. 2, paras 1580-1590.
[1945] Petković's Appeal Brief, para. 347; Petković's Reply Brief, paras 34(vi), 35.
[1946] Petković's Appeal Brief, para. 347.
[1947] Prosecution's Response Brief (Petković), para. 136.
[1948] See Petković's Appeal Brief, para. 347.
[1949] See Petković's Appeal Brief, paras 339-351. The Appeals Chamber considers in any event that the Trial Chamber based its findings on the beatings of Heliodrom detainees on a wide range of evidence, which Petković ignores. See Trial Judgement, Vol. 2, paras 1580-1590 and references cited therein.

Witness A.[1950] The Appeals Chamber recalls that there is no general requirement that the testimony of a witness be corroborated if deemed otherwise credible.[1951] In this instance, Witness A stated that soldiers who had on their left arm a Bruno Bušić patch would beat prisoners, sometimes until they could barely walk, and that this occurred "frequently".[1952] Petković has failed to show that no reasonable trier of fact could have made the impugned finding based on this evidence which was accepted by the Trial Chamber to be credible, and the credibility of which is not challenged by Petković. His argument, and sub-ground of appeal 5.2.3.1 in relevant part, is accordingly dismissed.

G. Conclusion

578. The Appeals Chamber grants Stojić's sub-ground of appeal 45.1 and Praljak's ground of appeal 12 and consequently reverses the convictions of the Appellants[1953] under Counts 1 (persecution as a crime against humanity), 2 (murder as a crime against humanity), 3 (wilful killing as a grave breach of the Geneva Conventions), 15 (inhumane acts as a crime against humanity), and 16 (inhuman treatment as a grave breach of the Geneva Conventions) with regard to the killing of seven civilians in Duša.[1954] In addition, the Appeals Chamber reverses the Trial Chamber's finding that the shelling during attacks on the villages of Duša, Hrasnica, Uzričje, and Ždrimci was indiscriminate and amounted to wanton destruction not justified by military necessity (Count 20) and persecution (Count 1), and reverses the convictions of all Appellants under Count 1 in this regard.[1955] Finally, the Appeals Chamber reverses the Trial Chamber's finding that the destruction of the Old Bridge constituted wanton destruction not justified by military necessity (Count 20), and thus persecution as a crime against humanity (Count 1) and unlawful infliction of terror on civilians as a violation of the laws or customs of war (Count 25),[1956] and reverses the Appellants' convictions on these counts insofar as they concern the Old Bridge. The impact of these reversals, if any, on the Trial Chamber's findings as to the CCP, as well as on the Appellants' sentences, will be assessed below.[1957]

579. The Appeals Chamber dismisses all remaining grounds of appeal regarding the underlying crimes of the JCE.

[1950] Trial Judgement, Vol. 2, para. 1591. See Trial Judgement, Vol. 2, para. 1584 & fn. 3996, referring to Witness A, T(F). 14044 (closed session) (13 Feb 2007).
[1951] *Popović et al.* Appeal Judgement, paras 243, 1264; *D. Milošević* Appeal Judgement, para. 215. See also *Kordić and Čerkez* Appeal Judgement, para. 274.
[1952] Witness A, T. 14044-14045 (closed session) (13 Feb 2007).
[1953] The Appeals Chamber recalls that Pušić was not convicted of any charges in relation to these killings as he was not a member of the JCE as of January 1993. Trial Judgement, Vol. 4, para. 1229.
[1954] See *supra*, para. 442.
[1955] See *supra*, para. 453. See also *supra*, paras 399, 413 (agreeing with the Prosecution that the Trial Chamber erred in not entering convictions for the Four Groups of Incidents under Count 20).
[1956] See *supra*, paras 411-412, 414, 426.
[1957] See *infra*, paras 886, 3359-3365.