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Tribunal Pénal
International pour
l'ex-Yougoslavie

JUDGEMENT SUMMARY

(Exclusively for the use of the media. Not an official document)

APPEALS CHAMBER

The Hague, 30 November 2006

PROSECUTOR V. STANISLAV GALIĆ SUMMARY OF APPEALS JUDGEMENT

Please find below the summary of the appeals judgement today read out by Judge Pocar:

Following the practice of the International Tribunal, I will not read out the text of the judgement except for the disposition. Instead, I will summarise the issues on appeal and the findings of the Appeals Chamber. I emphasise that this summary is not part of the written judgement, which is the only authoritative account of the Appeals Chamber's rulings and reasons. Copies of the written judgement will be made available to the parties at the conclusion of this hearing.

This case concerns the events that occurred in the city of Sarajevo, Bosnia and Herzegovina, between 10 September 1992 and 10 August 1994. During that period, Stanislav Galić was the *de jure* Sarajevo Romanija Corps (SRK) Commander, his superiors being the Chief of Staff of the Army of the Serbian Republic (VRS), General Ratko Mladić, and the supreme commander of the VRS, Radovan Karadžić. On 5 December 2003, the Trial Chamber found Galić guilty of acts of violence, the primary purpose of which was to spread terror among the civilian population, a violation of the laws or customs of war, as set forth in Article 51 of Additional Protocol I to the Geneva Conventions of 1949 (Count 1); murder as a crime against humanity through sniping (Count 2); inhumane acts other than murder as crimes against humanity through sniping (Count 3); murder as a crime against humanity through shelling (Count 5); and inhumane acts other than murder as crimes against humanity through shelling (Count 6). Galić was sentenced to a single sentence of 20 (twenty) years' imprisonment. Both the Prosecution and Galić appealed the decision. Galić filed his Notice of Appeal on 4 May 2004, containing 19 grounds of appeal alleging various errors of law and of fact. The Prosecution filed its Notice of Appeal on 18 December 2003. It appealed the sentence against Galić, arguing that it was "manifestly inadequate" in light of the gravity of the crimes and his degree of criminal responsibility. The Appeals Chamber heard oral submissions of the parties regarding this appeal on 29 August 2006.

I will now briefly address the grounds of appeal, starting with Galić's grounds of appeal, followed by the Prosecution's appeal.

In his **first ground of appeal**, Galić argues that the Trial Chamber made an error of law invalidating the Trial Judgement in requiring that if he choose to testify he would do so before the Defence called its expert witnesses. Galić claims that this ruling violated his right to a fair trial. The Appeals Chamber finds that Trial Chambers have discretion pursuant to Rule 90(F) of the Rules to determine when an accused may testify in his own defence. However, this power must be exercised with caution to ensure that the rights of the accused are respected. In the present case, the Trial Chamber only required that Galić testify, if he so desired, before the expert witnesses did. The Trial Chamber articulated the reason for its decision: it determined that ascertainment of the truth would be best served if all fact witnesses - including Galić - testified before the expert witnesses, so the experts could base their testimony on all the facts adduced, including those adduced by Galić. In addition, if Galić testified before the experts the Trial Chamber said that he would be able

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to apply to give further testimony after these expert testimonies, so that any opportunity denied to him to testify in relation to all the evidence adduced in the trial would have been mitigated by this further opportunity. In these circumstances, the Appeals Chamber is not satisfied that the conditions placed by the Trial Chamber on Galić's right to testify on his own behalf unreasonably interfered with his right to testify thereby infringing his right to a fair trial.

Galić's first ground of appeal is dismissed.

In his **second ground of appeal**, Galić challenges the fairness of the International Tribunal's procedure for determining applications for the disqualification of a Judge. The disqualification procedure of a Judge is governed by Rule 15(B) of the Rules. This Rule provided at the time relevant to this appeal that the disqualification and withdrawal of a Judge should be referred to the Presiding Judge of the Chamber, who shall confer with the Judge in question. After such consultation, Rule 15(B) of the Rules envisaged that the Presiding Judge had to decide whether it was necessary to refer the matter to the Bureau. Even if the Presiding Judge decided that it was not necessary to do so, the President had to refer the matter to the Bureau if the decision of the Presiding Judge not to withdraw a Judge was challenged by the accused. While no interlocutory appeal to the Appeals Chamber is available from a decision of the Presiding Judge pursuant to Rule 15(B) of the Rules and there is no interlocutory appeal from decisions of the Bureau, the Appeals Chamber nevertheless notes that, upon referral of a motion for disqualification to the Bureau, the Bureau reviewed the motion for disqualification *de novo*. Hence, while there is no interlocutory appeal of a decision under Rule 15(B) of the Rules, the role of the Bureau effectively provided a second course to an accused to have his arguments for disqualification reconsidered in full by an independent panel of Judges. Further, the fact that a decision on disqualification cannot be appealed at trial does not necessarily mean that the impartiality of a Judge cannot be considered in an appeal from a judgement. The Appeals Chamber therefore finds that the lack of an interlocutory appeal from a decision on disqualification of a Judge pursuant to Rule 15(B) of the Rules does not violate an accused's right to a fair trial.

In this ground of appeal Galić also claimed that the impartiality and the appearance of impartiality of Judge Orić, the Presiding Judge in his trial, was compromised by the Judge's confirmation of an indictment against Ratko Mladić. The Appeals Chamber finds that Galić's claim in relation to Judge Orić's alleged compromised impartiality is not supported.

Galić's second ground of appeal is dismissed.

Under his **third ground of appeal**, Galić submits that the Trial Chamber erred in law by determining in its "On-site Visit Decision" of 4 February 2003 that it was not necessary to travel to Sarajevo to view the alleged crime sites. Managerial decisions, such as whether to make a site visit, are left to the discretion of the Trial Chamber. The Appeals Chamber therefore examined whether the Trial Chamber abused its discretion in concluding that denying Galić's motion for an on-site visit did not affect his rights or its ability to decide upon the case against him. In light of Galić's submissions in his Appeal Brief and at the Appeal Hearing, the Appeals Chamber finds that Galić has not demonstrated that the Trial Chamber abused its discretion in denying his motion.

Galić's third ground of appeal is dismissed.

I now turn to Galić's **thirteenth, fourth and eleventh grounds of appeal**. Under grounds **four and thirteen**, Galić makes arguments pertaining to additional material disclosed by the Prosecution after the close of the trial which, he contends could have been exculpatory evidence under Rule 68 of the Rules. The Appeals Chamber notes that Galić's arguments under these grounds of appeal were dealt with by the Trial Chamber in the Trial

judgement. As Galić failed in these grounds to establish that a remedy on appeal was warranted, these grounds of appeal are dismissed.

With regard to Galić's argument, under **ground eleven**, that the Trial Chamber erred in the methodology it used for its appraisal of evidence and testimonies, in that it inferred from general evidence of incidents that particular incidents were proven, the Appeals Chamber finds that the Trial judgement shows that the Trial Chamber made clear that it assessed the evidence for each of the scheduled incidents.

With regard to his argument under that ground that the Trial Chamber failed to properly assess testimonies of UNPROFOR witnesses, the Appeals Chamber notes that in his Appeal Brief, Galić pointed to the evidence of many of those witnesses but failed to refer to specific parts of their evidence. He only alleges broadly that their evidence amounted to "assumptions" or that they did not refer to any specific incident, but does not provide concrete examples in support. The only specific reference is found in the Defence Reply Brief, in which he identifies the evidence of Witness Harding as illustrative of the "ambiguity of evidence given by these witnesses". However, Galić fails to show that any findings of fact became unreasonable in the absence of Witness Harding's testimony.

With regard to Galić's argument that the Trial Chamber erred when it found him "guilty of crimes which form part of a single campaign committed in a geographically limited territory over an uninterrupted period of time", whereas the Total Exclusion Zone agreement was efficiently implemented in Sarajevo in February 1994 and the shelling of Sarajevo was, in his words, "practically rendered impossible", the Appeals Chamber notes that, contrary to Galić's claim, although no scheduled incident of shelling concerned the period prior to June 1993, abundant evidence was nevertheless adduced that the shelling was "fierce in 1992 and 1993". Further, the finding of the Trial Chamber concerned not only shelling incidents but also sniping incidents, for which, in addition to Scheduled Sniping Incident number two of 13 December 1992, a plethora of evidence was also adduced.

For these reasons and those set out in the judgement, Galić's eleventh ground of appeal is dismissed.

I will now address in greater detail Galić's **fifth, seventh and sixteenth grounds of appeal**, concerning the crime charged under Count 1 of the Indictment pursuant to Article 3 of the Statute and on the basis of Article 51(2) of Additional Protocol I and Article 13(2) of Additional Protocol II, that is: the crime of acts or threats of violence the primary purpose of which is to spread terror among the civilian population. Under these grounds, the judgement only envisages such crime as encompassing the intent to spread terror when committed by combatants in a period of armed conflict. Therefore, the judgement does not envisage any other form of terror.

Under his **fifth ground of appeal**, Galić argues that he was convicted for an offence he was not charged with. However, the Appeals Chamber finds that the Trial Chamber merely identified the elements that needed to be established for the crime to be made out. While the Prosecution initially envisaged in its description of the charges in the Indictment that the crime of terror among the civilian population comprised actual infliction of terror, the Trial Chamber was acting within the confines of its jurisdiction in determining that the elements of this crime do not comprise the actual infliction of terror on that population. Further, and contrary to what Galić argues, he was properly informed of the nature and cause of the charges against him so that he was able to adequately prepare his defence.

The Appeals Chamber dismisses Galić's fifth ground of appeal.

Under his **sixteenth ground of appeal**, Galić argues that the purported re-qualification of the crime of acts or threats of violence the primary purpose of which is to spread terror among the civilian population violates the principle of *in dubio pro reo*. In the present case, the question whether there could have been doubt as to the culpability of

Galić is dependent on whether actual infliction of terror is an element of the offence charged under Count 1 or not. The Appeals Chamber finds that the actual infliction of terror is not an element of the crime of acts or threats of violence the primary purpose of which is to spread terror among the civilian population as charged under Count 1 of the Indictment. Therefore, Galić's argument that the principle of *in dubio pro reo* was violated is moot.

I now turn to Galić's **seventh ground of appeal**: whether the crime of acts or threats of violence the primary purpose of which is to spread terror among the civilian population is a crime punishable under Article 3 of the Statute. Under that ground, Galić makes several arguments, which I will address in turn.

His first argument is that the Trial Chamber erred in considering treaty law to be sufficient to give jurisdiction to the Tribunal, which may only exercise jurisdiction over crimes under customary international law. In that respect, the Appeals Chamber recalls that, when first seized of the issue of the scope of its jurisdiction *ratione materiae* - in the *Tadić* Jurisdiction Decision of 2 October 1995 - the International Tribunal interpreted its mandate as applying not only to breaches of international humanitarian law based on customary international law but also to those based on international instruments entered into by the conflicting parties. However, the Appeals Chamber also notes that, while conventional law can form the basis for the International Tribunal's jurisdiction, an analysis of the jurisprudence of the International Tribunal demonstrates that Judges have consistently endeavoured to satisfy themselves that the crimes charged in the indictments before them were crimes under customary international law at the time of their commission and were sufficiently defined under that body of law. Galić's argument is therefore dismissed.

Galić's second argument under ground seven is that the 22 May 1992 Agreement was not binding on the parties. The Appeals Chamber does not consider it necessary to address this argument on the ground that it is satisfied that the prohibition of terror against the civilian population as enshrined in Article 51(2) of Additional Protocol I and Article 13(2) of Additional Protocol II, was part of customary international law from the time of its inclusion in those treaties.

With regard to the prohibition of terror against the civilian population in customary international law, the Appeals Chamber confirms the Trial Chamber's finding that the prohibition of terror, as contained in the second sentences of both Article 51(2) of Additional Protocol I and Article 13(2) of Additional Protocol II, amounts to "a specific prohibition within the general (customary) prohibition of attacks on civilians". The principles underlying the prohibition of attacks on civilians, namely the principles of distinction and protection, have a long-standing history in international humanitarian law, incontrovertibly form the basic foundation of international humanitarian law and constitute intransgressible principles of international customary law. As the Appeals Chamber has held in previous decisions, the conventional prohibition on attack on civilians contained in Articles 51 of Additional Protocol I and 13 of Additional Protocol II constitutes customary international law.

With regard to the criminalisation of the prohibition of terror against the civilian population, the Appeals Chamber finds, by majority, Judge Schomburg dissenting, that customary international law imposed individual criminal liability for violations of the prohibition of terror against the civilian population as enshrined in Article 51(2) of Additional Protocol I and Article 13(2) of Additional Protocol II, from at least the period relevant to the Indictment.

I will now turn to the elements of the crime of acts or threats of violence the primary purpose of which is to spread terror among the civilian population. Having found that the prohibition on terror against the civilian population in the Additional Protocols was declaratory of customary international law, the Appeals Chamber bases its analysis of the elements of the crime under consideration under Count 1 of the Indictment on the

definition found therein: “Acts or threats of violence the primary purpose of which is to spread terror among the civilian population.” On that basis, the Appeals Chamber finds the following:

With regard to the *actus reus*, the Appeals Chamber finds that the crime of acts or threats of violence the primary purpose of which is to spread terror among the civilian population can comprise attacks or threats of attacks against the civilian population. Those acts or threats shall not however be limited to direct attacks against civilians or threats thereof but may include indiscriminate or disproportionate attacks or threats thereof. The nature of the acts or threats of violence directed against the civilian population can vary; the primary concern is that those acts or threats of violence be committed with the specific intent to spread terror among the civilian population. Further, the crime of acts or threats of violence the primary purpose of which is to spread terror among the civilian population is not a case in which an explosive device was planted outside of an ongoing military attack. Rather, and following the language of the Indictment, the crime under consideration concerns cases of “extensive trauma and psychological damage” being caused by “attacks [which] were designed to keep the inhabitants in a constant state of terror”. Such extensive trauma and psychological damage form part of the acts or threats of violence.

With regard to the *mens rea* and result requirement, the Appeals Chamber, relying on the plain language of Article 51(2) of Additional Protocol I, on its object and purpose and on the *travaux préparatoires* to Additional Protocol I, finds that actual terrorisation of the civilian population is not an element of the crime. The *mens rea* of the crime of acts or threats of violence the primary purpose of which is to spread terror among the civilian population is composed of the specific intent to spread terror among the civilian population. Further, the Appeals Chamber finds that a plain reading of Article 51(2) suggests that the purpose of the unlawful acts or threats to commit such unlawful acts need not be the only purpose of the acts or threats of violence. The fact that other purposes may have coexisted simultaneously with the purpose of spreading terror among the civilian population would not disprove this charge, provided that the intent to spread terror among the civilian population was principal among the aims. Such intent can be inferred from the circumstances of the acts or threats, that is from their nature, manner, timing and duration.

I now turn to Galić’s last argument under ground seven that he did not intend to spread terror among the civilian population. In that respect, the Appeals Chamber notes that the Trial Chamber relied on a plethora of evidence to demonstrate that terrorisation of the civilian population was the primary purpose of the campaign of sniping and shelling and that Galić ordered the commission of the underlying acts with the same specific intent. For the reasons given in the judgement, the Appeals Chamber finds that Galić has not demonstrated that no reasonable trier of fact could have reached the Trial Chamber’s conclusion that he had the intent to spread terror among the civilian population.

The Appeals Chamber dismisses Galić’s seventh ground of appeal.

I will now address Galić’s argument under his **sixth ground of appeal** that the Trial Chamber erred in law with respect to the crime of attack on civilians.

First, Galić makes several arguments pertaining to the applicability of Article 3 of the Statute to the count of “attack on civilians”. In that respect, the Appeals Chamber finds that Galić has not established that the Trial Chamber committed an “error on a question of law invalidating the decision”. The Trial Chamber was bound to apply the *ratio decidendi* of the relevant Appeals Chamber decisions, starting with the *Tadić* Jurisdiction Decision and the analysis of the *Tadić* conditions contained therein, which it did. Galić proffers no novel submissions as to why the interests of justice would require the Appeals Chamber to depart from its interpretation of Article 3 of the Statute. His argument therefore fails.

Second, Galić makes several arguments regarding the Trial Chamber's analysis of the elements of the crime of attack on civilians as a violation of the laws or customs of war. With regard to Galić's submission that the Trial Chamber erred in finding that the targeting of civilians cannot be justified by military necessity, the Appeals Chamber has previously emphasized that "there is an absolute prohibition on the targeting of civilians in customary international law" and that "the prohibition against attacking civilians and civilian objects may not be derogated from because of military necessity". Galić's argument is accordingly dismissed. With regard to Galić's contention that the Trial Chamber erred in law in holding that "indiscriminate attacks, that is to say, attacks which strike civilians or civilian objects and military objectives without distinction, may qualify as direct attacks against civilians", the Appeals Chamber notes that the Trial Chamber did not hold that such attacks always amount to direct attacks, but rather that they "may qualify" as such. The Appeals Chamber finds that the impugned finding does not conflate the two crimes but rather supports the view that a direct attack can be inferred from the indiscriminate character of the weapon used. In principle, the Trial Chamber was entitled to determine on a case-by-case basis that the indiscriminate character of an attack can assist it in determining whether the attack was directed against the civilian population. Galić's argument is accordingly dismissed. With regard to Galić's argument that the Trial Chamber erred in law in holding that "certain apparently disproportionate attacks *may* give rise to the inference that civilians were actually the object of attack", the Appeals Chamber notes that the Trial Chamber made clear that such inference had to be "determined on a case-by-case basis in light of the available evidence". The Trial Chamber's finding that disproportionate attacks "may" give rise to the inference of direct attacks on civilians was therefore a justified pronouncement on the evidentiary effects of certain findings, not a conflation of different crimes. The Trial Chamber clearly stated that it limited itself to attacks on civilians pursuant to Article 51(2) of Additional Protocol I, which only contemplates direct attacks against the civilian population. The definition it adopted of the offence is equally clear. No mention is made of indiscriminate or disproportionate attacks as the basis for conviction. Accordingly, this part of Galić's ground of appeal is dismissed.

With regard to Galić's argument that the Trial Chamber incorrectly interpreted the law when it held that "[t]he presence of individual combatants within the population does not change its civilian character", the Appeals Chamber finds that the jurisprudence of the International Tribunal in this regard is clear: the presence of individual combatants within the population attacked does not *necessarily* change the fact that the ultimate character of the population remains, for legal purposes, a civilian one. While the Trial Chamber may have appeared to have applied a stricter test than that established by the jurisprudence of the Tribunal, by its footnote references the Trial Chamber acknowledged the nuances of its position. The Appeals Chamber therefore finds that the Trial Chamber was correct in its interpretation of the law as it recognised the variable considerations with respect to determining the characterisation of a given population. Galić's argument is accordingly dismissed.

Lastly, with regard to Galić's argument that the Trial Chamber erred in law by including as a subjective element of the crime of attack on civilians the concept of "negligence or some other attitude of the person committing the action" or anything other than "the wish to cause the actual consequence" of the action, the Appeals Chamber notes that the Trial Chamber, in its discussion of the *mens rea* of the crime at issue, found that the perpetrator must undertake the attack "wilfully". The Trial Chamber relied on the ICRC Commentary to Article 85 of Additional Protocol I, which defines intent for the purposes of Article 51(2) and clearly distinguishes recklessness, "the attitude of an agent who, without being certain of a particular result, accepts the possibility of its happening", from negligence, which describes a person who "acts without having his mind on the act or its consequences". The Trial Chamber's reasoning in this regard is correct and Galić offers no support for his contention that the Trial Chamber committed an error of law. Thus, to the extent that Galić impugns this specific finding, his argument is without merit and accordingly dismissed.

Galić's sixth ground of appeal is dismissed

I now turn to Galić's **eighth ground of appeal** alleging errors of law concerning crimes under Article 5 of the Statute.

Galić first argues that the Trial Chamber erred in its definition of "civilians" in the context of an attack on a civilian population. The Trial Chamber held, when considering the *chapeau* requirement of a "civilian population", that "[t]he definition of a 'civilian' is expansive and includes individuals who at one time performed acts of resistance, as well as persons *hors de combat* when the crime was perpetrated". The Trial Chamber did not intend to give a definition of an individual civilian; indeed, it would not necessarily be correct to state, as the Trial Chamber's wording seems to suggest, that a person *hors de combat* is a civilian in the context of international humanitarian law. The Appeals Chamber understands the Trial Chamber to reiterate well-established jurisprudence regarding the *chapeau* element of "civilian population". As such, the Appeals Chamber has previously held that the presence within a population of members of resistance groups, or former combatants, who have laid down their arms, does not alter its civilian characteristic. Likewise, the presence of soldiers does not necessarily deprive a civilian population of its civilian character, nor does the presence of persons *hors de combat*. Galić's argument in this regard is therefore rejected.

Galić also argues that he did not have knowledge of the attacks on civilians but in support merely reiterates arguments made at trial and does not present argumentation as to why his claim should succeed on appeal. As the related findings of fact are addressed by Galić in greater detail in grounds 17 and 18 of his Defence Appeal Brief, his arguments here have also been dealt with under those grounds.

I will now address Galić's arguments, under that same ground, pertaining to **murder and inhumane acts**. With regard to his claim that an act cannot constitute murder if it consists of an omission, the Appeals Chamber recalls that murder can be committed through an act or an omission and that the commission of a positive act is not an absolute requirement of criminal responsibility. The same applies to the identical argument Galić makes with regard to inhumane acts. With regard to his argument that an act cannot constitute murder if the act of killing is carried out by another person, the Appeals Chamber notes that the Statute expressly contemplates attaching criminal responsibility to an accused for the acts of another, and the International Tribunal has done so on numerous occasions. Galić's argument is therefore rejected.

With regard to Galić's arguments pertaining to the *mens rea* requirement of murder that the Trial Chamber referred to the wrong standard, the Appeals Chamber notes that Galić was not convicted for committing murder, but for ordering murder under Article 7(1) of the Statute, which only requires that he was aware of the substantial likelihood that murder would be committed in the execution of his orders. Consequently, there is no reason for the Appeals Chamber to consider on their merits Galić's arguments pertaining to the *mens rea* required for committing murder. The same applies to his argument pertaining to the *mens rea* for inhumane acts. This part of Galić's ground of appeal is dismissed.

The Appeals Chamber accordingly dismisses Galić's eighth ground of appeal.

I now turn to Galić's **ninth ground of appeal**. First, the Appeals Chamber dismisses - based on its constant jurisprudence - Galić's argument that an accused cannot be cumulatively charged with different crimes on the basis of the same set of acts. With regard to his contention that the Trial Chamber erred in law by entering convictions under Article 3 of the Statute (intent to spread terror among the civilian population) and Article 5 of the Statute (murder and inhumane acts) for the same acts, the Appeals Chamber concurs with the Trial Chamber that convictions for the same conduct under Articles 3 and 5 of the Statute are permissible since those Articles require proof of distinct, non-cumulative elements. With regard to his claim that the Trial Chamber erred when entering convictions under Article 5(a) of the Statute (murder) and Article 5(i) of the Statute (inhumane acts) for the same conduct when that conduct resulted in the death of the victim, the Appeals

Chamber finds that Galić does not demonstrate that the Trial Chamber convicted him twice for injuring and killing the same victims.

Galić's ninth ground of appeal is dismissed

I will now address Galić's tenth ground of appeal regarding certain holdings of the Trial Chamber made in the context of the law relating to determining criminal responsibility under Articles 7(1) and 7(3) of the Statute. With regard to Galić's challenges to the Trial Chamber's holding that "the proof of all forms of criminal responsibility can be proved by direct or circumstantial evidence", the Appeals Chamber notes that it is well established that facts can be proven by either direct or circumstantial evidence. With regard to Galić's assertion that acts of persons accused under Article 7(1) of the Statute may not be acts committed by culpable omission and that the Trial Chamber made an erroneous legal finding in this regard, the Appeals Chamber affirms that the omission of an act, where there is a legal duty to act, can lead to individual criminal responsibility under Article 7(1) of the Statute. In the present case, the Trial Chamber did not find Galić guilty for having ordered the crimes by his failure to act or culpable omissions. That is, it did not infer from the evidence the fact that he omitted an act and that this omission constituted an order. Rather, where the Trial Chamber mentions failures to act, it took those failures into account as circumstantial evidence to prove the mode of liability of ordering. The Appeals Chamber thus concludes that the mode of liability of ordering can be proven, like any other mode of liability, by circumstantial or direct evidence, taking into account evidence of acts or omissions of the accused. Whether or not the Trial Chamber could have inferred from the evidence adduced at trial that Galić had ordered the crimes is a question of fact which is addressed as part of his eighteenth ground of appeal.

With regard to Galić's argument that the Trial Chamber erred in its assessment of the "had reason to know" standard under Article 7(3) of the Statute, the Appeals Chamber notes that the jurisprudence of the International Tribunal indicates that the "had reason to know" standard will only be satisfied if information was available to the superior which would have put him on notice of offences committed by his subordinates. However, the information in question need not, as Galić argues, "have the form of specific reports submitted pursuant to a monitoring system" and "does not need to provide specific information about unlawful acts committed or about to be committed".

With regard to Galić's challenge to concurrent application of Articles 7(1) and 7(3) of the Statute, the Appeals Chamber finds that, contrary to his assertion, the Trial Chamber did not hold that concurrent convictions under Articles 7(1) and 7(3) of the Statute are possible, but rather that the facts of any given case may satisfy both articles, in which case a Trial Chamber may then choose between them. As noted in the *Blaškić* appeal judgement, a conviction should be entered under Article 7(1) of the Statute only, while treating the accused's superior position as an aggravating factor in sentencing. Accordingly, there was no error on the part of the Trial Chamber.

Galić's tenth ground of appeal is dismissed.

I now turn to Galić's **twelfth ground of appeal** in which he argues that the issue of collateral damage was not examined by the Trial Chamber. Under this ground, the Appeals Chamber notes that Galić did not refer to any specific finding of the trial judgement to support his argument and as a result did not meet his obligation to clearly set out his ground of appeal. Therefore, the Appeals Chamber did not engage in an assessment of each scheduled incident but rather determined whether the Trial Chamber correctly understood its obligations in assessing the legality of the attacks and the evidence in respect thereof. The Appeals Chamber is satisfied that the Trial Chamber correctly enunciated the applicable law. Further, for the reasons set out in the judgement, the Appeals Chamber finds that the methodology used by the Trial Chamber to assess the legality of the attacks for the scheduled and non-scheduled incidents is in accordance with its enunciation of the applicable law.

Galić's twelfth ground of appeal is dismissed.

I will now briefly turn to Galić's fourteenth's ground of appeal, in which he argues that the Trial Chamber erred in either wrongly defining or failing to define certain terms. For the reasons set out in the judgement, the Appeals Chamber finds that Galić does not explain why a specific definition was required, or how the Trial Chamber erred by not providing a definition. Moreover, he fails to explain how these alleged errors would have changed the outcome of the trial judgement.

Galić's fourteenth ground of appeal is dismissed

I shall now turn to Galić's **fifteenth ground of appeal**, in which he challenges the Trial Chamber's approach to the evaluation of evidence, particularly in relation to the finding of a campaign of attacks against civilians. Galić first alleges legal errors in the Trial Chamber's approach to finding the existence of a campaign. The Appeals Chamber, however, for the reasons set out in the judgement, finds no error in the Trial Chamber's approach. Second, Galić disputes the Trial Chamber's conclusions on 12 of the 23 scheduled sniping incidents and three of the five shelling incidents, arguing that they could not have been proved beyond a reasonable doubt when the dissent of Judge Nieto-Navia expresses such reasonable doubt. The Appeals Chamber, however, finds that the presence of a dissenting opinion on questions of fact does not negate the validity of a trial judgement since verdicts at trial need only to be reached by a majority of the Trial Chamber. By merely pointing to the existence of a dissenting opinion, Galić fails to meet his burden on appeal because he has not demonstrated the unreasonableness of the majority's assessment of the evidence. Consequently, the Appeals Chamber dismisses this part of Galić's ground of appeal. In the remainder of his fifteenth ground of appeal, Galić submits numerous allegations of factual error in the trial judgement. His submissions are summarised and discussed in the judgement. For the most part they consist of bare assertions that are dismissed without substantial reasoning as they do not meet the requirements for appeal.

Galić's fifteenth ground of appeal is dismissed.

In his **seventeenth ground of appeal**, Galić alleges various erroneous factual findings and evaluations of evidence with regard to the Trial Chamber's findings related to the alleged campaign of sniping and shelling against the civilian inhabitants of Sarajevo. For the reasons set out in the judgement, Galić's arguments in that respect are dismissed and I will only address Galić's arguments pertaining to the attacks on the Markale market and the Koševo Hospital.

With regard to the **Markale market incident**, the Appeals Chamber notes the complexity of the testimony before the Trial Chamber, with a number of technical factors coming into play, experts providing different conclusions, and uncertainty as to the accuracy of the different findings. For the reasons set out in the judgement, the Appeals Chamber finds that the Trial Chamber's findings with regard to the bearing of the shell, the angle of descent and the depth of the crater are not findings that no reasonable Trial Chamber could have made. The Appeals Chamber however holds that the Trial Chamber was incorrect to find that the shell was deliberately aimed at the Markale market but that, in any case, this shelling incident was an example of shelling that deliberately targeted civilians. As a result, the Appeals Chamber does not overturn Galić's conviction for that incident.

I now turn to Galić's argument that it was not unlawful for SRK forces to fire at the **Koševo hospital** because ABiH forces were using it as a military base. After determining what restrictions international humanitarian law establishes, as set out in the Fourth Geneva Convention and Additional Protocols thereto, regarding attacks on hospitals, and having considered the various findings of the Trial Chamber, the Appeals Chamber finds that the Trial Chamber was incorrect not to find that a number of the SRK attacks were attacks on legitimate military targets. However, there is also evidence revealing that some of the

SRK attacks, either because of their timing or because of the weaponry deployed, cannot be construed as attacks on a legitimate military target. Therefore, when applying the correct standard of law, the Appeals Chamber finds that some, but not all, of the attacks on the hospital by the SRK constituted examples of the campaign of attacks on civilians. Other attacks were attacks on a legitimate military target. The Trial Chamber was thus only partially incorrect and its conclusion is revised accordingly.

Galić's seventeenth ground of appeal is dismissed

I will now turn to Galić's **eighteenth ground of appeal**, in which he points to numerous alleged errors of fact pertaining to his role and criminal responsibility. Considering the number of allegations made by Galić under that ground, I will only address the following:

With regard to Galić's arguments in relation to the Trial Chamber's findings on his control over sniping, shelling activity and control over SRK weaponry, the Appeals Chamber finds, for the reasons set out in the judgement, that Galić failed to demonstrate that no reasonable trier of fact could have reached the same conclusions as the Trial Chamber did.

With regard to Galić's argument that he was not in a position to punish his subordinates, the Appeals Chamber finds that, in Galić's own words, he had the authority to respond to illegal acts on the part of his subordinates. Thus, Galić has not shown that no reasonable trier of fact could have come to the same conclusion as the Trial Chamber in finding that, "[t]he Defence does not deny that General Galić had the ability to prevent or punish commissions of crimes but argues that he did not have the need to do so." With regard to Galić's argument that he was not aware that unlawful sniping and shelling at civilians were taking place in the city of Sarajevo and its surroundings, the Appeals Chamber finds, for the reasons set out in the judgement, that Galić fails to demonstrate that no reasonable trier of fact could have reached the same conclusions as the Trial Chamber did. Protests were delivered to him in person, to his subordinates, and Galić does not point to any part of the trial judgement where the Trial Chamber erred in this regard.

With regard to Galić's claim that artillery was not used unlawfully, the Appeals Chamber notes that he ignores the plethora of evidence of unlawful sniping and shelling activities. Finally, with regard to the reasonableness of the measures taken by Galić, the Appeals Chamber notes that the Trial Chamber did consider the evidence indicating that he conveyed instructions to respect the 1949 Geneva Conventions but that it also found that those instructions instilled an inadequate and erroneous understanding of the obligations under the Conventions. The Appeals Chamber does not find that no reasonable trier of fact could have come to the same conclusions as that of the Trial Chamber.

Galić's eighteenth ground of appeal is dismissed.

I now turn to the **grounds of appeal of Galić and the Prosecution** concerning the sentence of 20 years' imprisonment imposed by the Trial Chamber.

Under his **nineteenth ground of appeal**, Galić argues that the Trial Chamber erroneously applied the law when determining his sentence and that a more lenient sentence should have been imposed.

With regard to Galić's argument that a sentence of 20 years' imprisonment is the highest possible sentence that can be pronounced by the International Tribunal, due to the fact that the sentencing law and practices of the former Yugoslavia envisage maximum prison sentences of 20 years, the Appeals Chamber recalls that the International Tribunal, while bound to take the sentencing law and practice of the former Yugoslavia into account, does not have to follow it. The Appeals Chamber also finds that, contrary to Galić's argument, the Trial Chamber correctly identified the relevant provisions of the SFRY

Criminal Code and correctly found that the crimes he committed would have attracted the harshest of sentences in the former Yugoslavia.

With regard to Galić's argument that the Trial Chamber used his position of VRS Corps Commander both to establish his responsibility for the crimes and to aggravate his sentence, the Appeals Chamber finds that, while the mode of liability of ordering necessarily entails that the person giving the order has a position of authority, the level of authority may still play a role in sentencing as it is not an element of the mode of liability of "ordering" that an accused is high in the chain of command and thus wields a high level of authority. The Trial Chamber did not regard as an aggravating circumstance the fact that Galić had the authority to give orders. Rather, it took into account other factors that emanate from his position of authority as commander and found that he repeatedly breached his public duty from this very senior position, thereby abusing his position of authority. This part of Galić's ground of appeal is dismissed.

With regard to Galić's argument that the Trial Chamber should have taken into account as a mitigating circumstance that he received his command of the SRK units "practically in the state of chaos", the Appeals Chamber considers that, as a military commander, Galić had the authority and competence to order lawful combat operations, and it was his duty to work towards an effective chain of command. It is therefore not an argument the Trial Chamber was bound to take into account. With respect to the related factor concerning the dismantling of the paramilitary units, the Appeals Chamber notes that the Trial Chamber referred to the arguments put forward by Galić in this regard and thus considered this factor. It was perfectly within its discretion not to take it into account in mitigation of the sentence and Galić has not demonstrated that the Trial Chamber ventured outside its discretionary framework.

With regard to Galić's submission that the conditions of urban warfare considerably lessen his criminal responsibility, the Appeals Chamber notes that the Trial Chamber clearly considered this factor. Further, Galić failed to put forward this argument at trial as a mitigating circumstance. The Appeals Chamber reiterates that this is not the appropriate forum in which alleged mitigating circumstances, evidence of which was readily available at trial, should be presented the first time. In any case, Galić has failed to demonstrate a discernible error of the Trial Chamber.

With regard to Galić's argument that the Trial Chamber failed to take into account that - had he been given the opportunity to voluntarily surrender - he would have done so, the Appeals Chamber considers that the Trial Chamber did not commit a discernible error because it was not presented with any evidence in support thereof.

With regard to Galić's submission that he never discriminated against anybody, the Appeals Chamber finds that Galić's argument is misconceived. Respect towards all people, regardless of their nationality, ethnicity or religion, is the demeanour expected of any individual and does not constitute a factor to be considered in mitigation of sentence. As such, the Trial Chamber correctly found that this circumstance "is not so atypical that it is a relevant factor in this case to go towards mitigating [Galić's] sentence".

With regard to Galić's argument that the Trial Chamber failed to take into account his "very good cooperation" with the members of UNPROFOR, the Appeals Chamber notes that the Trial Chamber referred to his submission, and considered it. The Appeals Chamber finds that Galić failed to show that the Trial Chamber ventured outside its sentencing discretion by not considering his cooperation with UNPROFOR as a mitigating circumstance. With respect to his cooperation, even after the war, with representatives of the international community, Galić himself notes that "he performed his duties in a professional manner". As such, the fact that he, as a professional soldier, cooperated with the international community is not a factor that the Trial Chamber had to take into account as a mitigating circumstance. In addition, the Appeals Chamber notes that this argument was not put forward at trial. An appellant cannot expect the Appeals Chamber to consider

mitigating circumstances, evidence of which was available but not introduced at trial, for the first time on appeal.

With regard to Galić's submission pertaining to his cooperation with the Prosecution, the Appeals Chamber notes that he has not substantiated it in the Defence Appeal Brief, as there is only a reference to a "large number" of military documents without naming those documents nor providing any indication as to their content. In any case, the Appeals Chamber notes that no argument was put forward in Galić's Final Trial Brief in this regard.

With regard to his argument that his illness and his exemplary conduct throughout detention should be taken into account as mitigating circumstances, the Appeals Chamber finds that Galić has failed to demonstrate that his health was exceptionally poor. In addition, this factor was not raised in his sentencing submissions at trial and the Appeals Chamber is not the appropriate forum to do so for the first time. The same reasoning applies *mutatis mutandis* to Galić's argument with regard to his alleged exemplary conduct in the detention unit.

With regard to his argument that, should the Appeals Chamber find Article 7(1) of the Statute inapplicable, and rather apply Article 7(3) of the Statute, his responsibility would be considerably lessened and that this should in turn be reflected in the sentence, the Appeals Chamber need not consider this argument as it has found Article 7(1) applicable.

Galić's nineteenth ground of appeal against his sentence is dismissed

I now turn to the Prosecution's single ground of appeal.

Before addressing the core complaint of the Prosecution that the sentence rendered by the Trial Chamber is "manifestly inadequate" and that the Trial Chamber committed a "discernible error" as the sentence "does not reflect the entire gravity of the crimes and the high ranking position of [Galić]", the Appeals Chamber first addressed the other arguments raised by the Prosecution that: (1) Galić's case falls within the "worst case" category; and (2) a comparison with national practice shows that the crimes committed are "universally condemned as particularly grave". With regard to the first of those arguments, the Appeals Chamber reiterates that cases cannot be categorised systematically. Trial Chambers have an overriding obligation to individualise a sentence to fit the circumstances of the accused and the gravity of the crime and, as noted by the Trial Chamber, the gravity of the offence is the primary factor to be taken into account in imposing a sentence. With regard to the Prosecution's reference to national practice, the Appeals Chamber recalls that while some guidance may be found in sentencing practices of systems other than the former Yugoslavia, those must not be given undue weight as Trial Chambers are not bound by any maximum term of imprisonment applied in a national system. Again, the gravity of a crime must be determined by reference to the particular circumstances of the case and the form and degree of the accused's participation in the crime. The Prosecution's arguments in that respect are dismissed.

In support of its argument that the sentence rendered by the Trial Chamber was unreasonable, the Prosecution points to the Trial Chamber's assessment of the gravity of the crime, the aggravating circumstances and the alleged lack of mitigating circumstances. The Prosecution does not challenge the Trial Chamber's findings of fact but rather attempts to demonstrate, in view of those facts, that the sentence rendered by the Trial Chamber was "manifestly inadequate".

The Appeals Chamber duly considered the factors put forward by the Prosecution, as found in the Trial judgement, and pointed to other important factors demonstrating the exceptional brutality and cruelty of the crimes committed by Galić. Taking into account the related findings of the Trial Chamber, the Appeals Chamber, Judge Pocar partially dissenting and Judge Meron dissenting, finds that the Trial Chamber committed a

discernible error in assessing the factors in relation to the gravity of the crime, the role and participation of Galić, the aggravating circumstance of abuse of Galić's position of authority, and the single mitigating circumstance regarding his behaviour throughout the proceedings. Although the Trial Chamber did not err in its factual findings and correctly noted the principles governing sentencing, it committed an error in finding that the sentence imposed adequately reflects the level of gravity of the crimes committed by Galić and his degree of participation. As a result, the Appeals Chamber finds that the sentence imposed on Galić by the Trial Chamber falls outside the range of sentences available to it in the circumstances of this case. The Appeals Chamber considers that the sentence of only 20 years was so unreasonable and plainly unjust, in that it underestimated the gravity of Galić's criminal conduct, that it is able to infer that the Trial Chamber failed to exercise its discretion properly. The Appeals Chamber accordingly allows the Prosecution's appeal.

I will now read the disposition of the Appeals Chamber judgement.

Mr. Galić, will you please stand?

THIS IS THE DISPOSITION:

For the foregoing reasons, **THE APPEALS CHAMBER,**

PURSUANT to Article 25 of the Statute and Rules 117 and 118 of the Rules of Procedure and Evidence;

NOTING the respective written submissions of the Parties and the arguments they presented at the hearing of 29 August 2006;

SITTING in open session;

DISMISSES Galić's appeal;

ALLOWS, by majority, Judge Pocar partially dissenting and Judge Meron dissenting, the Prosecution's appeal, and **QUASHES** the sentence of twenty years' imprisonment imposed on Galić by the Trial Chamber; **IMPOSES** a sentence of life imprisonment, subject to credit being given under Rule 101(C) of the Rules for the period Galić has already spent in detention;

ORDERS in accordance with Rule 103(C) and Rule 107 of the Rules, that Galić is to remain in the custody of the International Tribunal pending the finalisation of arrangements for his transfer to the State in which his sentence will be served.

Judge Fausto Pocar appends a partially dissenting opinion.

Judge Mohamed Shahabuddeen appends a separate opinion.

Judge Theodor Meron appends a separate and partially dissenting opinion.

Judge Wolfgang Schomburg appends a separate and partially dissenting opinion.

Mr Galić, you may be seated.

Mr. Registrar, would you please deliver copies of the judgement to the Parties. This concludes the hearing. The Appeals Chamber stands adjourned.

The full text of the summary of the judgement can be found at the following link:

<http://www.un.org/icty/galic/trialc/judgement/index.htm>