

**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

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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, Čorić, 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, Čorić, and Pušić were members of that JCE.⁷ Specifically, it found that: (1) Prlić, Petković, and Čorić 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" ("*sérvices 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

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

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 Simatović* 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

⁷⁶ *Stanišić and Župljanin* Appeal Judgement, para. 19; *Stanišić and Simatović* Appeal Judgement, para. 17; *Tolimir* Appeal Judgement, para. 10; *Krnjelac* 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

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; *Dordević* 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

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 65ter 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

¹⁰⁵ *Dordević* 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 *Dordević* 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 *Dordević* 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 *Dordević* 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 *Dordević* 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 *Dordević* 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

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 Tudman.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 Tudman'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 Tudman.¹²⁵ It asserts that Stojić fails to consider other findings and supporting evidence unrelated to Tudman'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 Tudman, 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 Tudman. 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 Tudman, 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 issues¹²⁹ 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

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 Tudman, 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 Tudman". 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* Tudman, 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, referring 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

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

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

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

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

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) (Čorić), 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 liability²⁰⁶ 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

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

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 corroborated, 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

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 Plead (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

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 65ter 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 Čorić concerned the exercise of his powers and functions – both in relation to JCE liability and superior responsibility²⁸⁸ – 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 Čorić's role as Minister of the Interior as material facts.

93. The Appeals Chamber notes that Čorić was generally alleged to have participated in the JCE by, *inter alia*, acting through his "positions and power",²⁹⁰ but the sole mention of Čorić'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, [Čorić] 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 Čorić'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 Čorić as Chief of the Military Police Administration.²⁹³ Further, while the Indictment states that Čorić 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 Čorić's

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 Čorić's authority as Minister of the Interior, the Appeals Chamber considers them to be vague as they relate to Čorić'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 Čorić 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

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 Ndirumpatse* 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 65ter 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 65ter witness summaries did not provide clear information on this issue.³⁰⁹ The Prosecution refers to the Rule 65ter 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 *Dorđević* 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 Ndirumpatse* Appeal Judgement, para. 371; *Bizimungu* Appeal Judgement, para. 46.

³⁰⁶ See *Dorđević* 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

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

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

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 P11380³⁶⁹ 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

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

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 opportunity³⁹² 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

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

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 diaries⁴²⁰ 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

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 KARADŽIĆ. [...] *President TUĐMAN agreed to a meeting with KARADŽIĆ, ČOSIĆ 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

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

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 Rules⁴⁶⁰; 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

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

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

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 benefit⁴⁸³ 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

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,

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 Nedeljko 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

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

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 "Jorić"); *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 Logbook⁵²³ 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

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 Nedeljko 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

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

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

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.

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 Cviki, 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

⁵⁸⁸ *Popović et al.* Appeal Judgement, paras 306, 340, 830; *Dorđević* 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 contradiction 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

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

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.

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

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; *Karempera 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; *Hategukimana* 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 relates⁶⁴⁴ 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

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

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 témoignage 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

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 témoignage 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

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, Čorić, 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 See Trial Judgement, Vol. 3, paras 529-531, 543-544, 567-568.

⁷⁰³ See Trial 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 complicity 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

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.

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 Prljak 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 Prljak'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; Prljak's Appeal Brief, paras 8-10, 16-17.

⁷⁷⁸ Prosecution's Response Brief (Prljak), 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 (Prljak), 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

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

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

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 Statute 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,

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 Prljak'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 Prljak 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 evidence⁸¹⁸ 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.

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 ECOMM 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 Ribičić; (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 Ribičić’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

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.