

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

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

⁸⁵¹ Prosecution's Response Brief (Stojić), paras 383-384; Prosecution's Response Brief (Praljak), para. 16.

⁸⁵² Prosecution's Response Brief (Stojić), paras 383-384, referring to, *inter alia*, Trial Judgement, Vol. 3, para. 547 & fn. 1133, referring to, *inter alia*, Exs. P10336, P03957.

⁸⁵³ Prosecution's Response Brief (Praljak), para. 16.

⁸⁵⁴ Prosecution's Response Brief (Praljak), para. 17; Prosecution's Response (Petković), para. 293.

⁸⁵⁵ Prosecution's Response Brief (Prlić), para. 416; Prosecution's Response Brief (Stojić), para. 385; Prosecution's Response Brief (Petković), para. 291.

⁸⁵⁶ Prosecution's Response Brief (Prlić), para. 416. See also Prosecution's Response Brief (Stojić), para. 385, Appeal Hearing, AT. 205-207 (20 Mar 2017).

⁸⁵⁷ Prosecution's Response Brief (Prlić), para. 416; Prosecution's Response Brief (Stojić), para. 385; Prosecution's Response Brief (Praljak), para. 18. See also Prosecution's Response Brief (Petković), para. 291.

⁸⁵⁸ Prosecution's Response Brief (Prlić), para. 415; Prosecution's Response Brief (Praljak), para. 15. Regarding the challenge to Galbraith, the Prosecution argues that his testimony was based on his official interactions with Croatian authorities in his capacity as United States Ambassador to Croatia, and was corroborated by other evidence. Prosecution's Response Brief (Prlić), para. 415; Prosecution's Response Brief (Praljak), para. 15. See *infra*, para. 288.

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

(ii) Analysis

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

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

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

⁸⁵⁹ Prosecution's Response Brief (Prlić), para. 416; Prosecution's Response Brief (Petković), para. 291. The Prosecution responds to Čorić's arguments regarding Croatia also providing HV material and financial assistance to the ABiH by stating that this happened during times or in areas other than those subject of the Indictment. Appeal Hearing, AT. 657 (24 Mar 2017).

⁸⁶⁰ *Tadić* Appeal Judgement, para. 131. See also *Tadić* Appeal Judgement, paras 130, 137-138, 145.

⁸⁶¹ *Aleksovski* Appeal Judgement, para. 145. See also *Kordić and Čerkez* Appeal Judgement, para. 371 (upholding the Trial Chamber's decision to consider "a multitude of factors when making its analysis" regarding the planning, co-ordination, and organisation of the activities of the HVO).

⁸⁶² See Trial Judgement, Vol. 3, paras 545-568.

⁸⁶³ See Trial Judgement, Vol. 3, paras 546-548 and references cited therein.

⁸⁶⁴ See Trial Judgement, Vol. 3, paras 549-552 and references cited therein.

⁸⁶⁵ See Trial Judgement, Vol. 3, para. 553 and references cited therein.

⁸⁶⁶ See Trial Judgement, Vol. 3, paras 554-559 and references cited therein.

⁸⁶⁷ See Trial Judgement, Vol. 3, paras 560-566 and references cited therein.

⁸⁶⁸ *Tadić* Appeal Judgement, para. 137. See Trial Judgement, Vol. 1, para. 86.

⁸⁶⁹ *Tadić* Appeal Judgement, para. 137. See Trial Judgement, Vol. 3, paras 545-553.

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

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

⁸⁷⁰ See *supra*, para. 283. See also Trial Judgement, Vol. 3, paras 545-568.

⁸⁷¹ *Kordić and Čerkez* Appeal Judgement, para. 359 (referring to the content of HVO orders). In that context, the Appeals Chamber in *Kordić and Čerkez* held that "[t]he fact that members of the HV were in the service of the HVO does not imply without doubt that they were there on the direct order of Croatia". *Kordić and Čerkez* Appeal Judgement, para. 359.

⁸⁷² See *supra*, para. 283.

⁸⁷³ See Trial Judgement, Vol. 3, paras 549-552.

⁸⁷⁴ See Trial Judgement, Vol. 3, paras 545-567 and references cited therein. See also Trial Judgement, Vol. 3, fn. 1130, referring to, *inter alia*, Ex. P00332 (referred to by Stojić); Trial Judgement, Vol. 3, fn. 1133 referring, *inter alia*, to Exs. P10336, P03957 (correspondence from Stojić to Šušak showing that members of the HVO Main Staff leadership were simultaneously HVO officers).

⁸⁷⁵ To the extent that Stojić argues that direct evidence is required to prove Croatia's overall control of the HVO, the Appeals Chamber dismisses this argument as being based on an erroneous understanding of the jurisprudence. See *Kordić and Čerkez* Appeal Judgement, para. 308; *Čelebići* Appeal Judgement, para. 47; *Aleksovski* Appeal Judgement, paras 144-146; *Tadić* Appeal Judgement, paras 131, 137.

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

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

⁸⁷⁶ See Trial Judgement, Vol. 3, paras 549-552 & fns 1138-1140, 1145 and references cited therein.

⁸⁷⁷ *Strugar* Appeal Judgement, para. 58.

⁸⁷⁸ See Ex. P08973, p. 2; Trial Judgement, Vol. 3, fn. 1138.

⁸⁷⁹ See Trial Judgement, Vol. 3, fn. 1139, referring to Ex. P08973, p. 25 (stating that several provisions of the Decree on the Armed Forces of the HZ H-B, adopted by the Presidency of the HZ H-B on 3 July 1992, establishing the armed forces of the HZ H-B, indicated that the HZ H-B acted as an autonomous and sovereign state, separate from BiH, and with respect to the armed forces, it co-ordinated its activities with Croatia, and they formed the basis for financial, personnel, and other assistance from Croatia to the HVO).

⁸⁸⁰ See Trial Judgement, Vol. 3, para. 549 & fn. 1139.

⁸⁸¹ See Trial Judgement, Vol. 3, paras 549-552 and references cited therein.

⁸⁸² See Trial Judgement, Vol. 3, para. 550 & fn. 1140, referring to Exs. P03048, p. 3, P07055.

⁸⁸³ See Trial Judgement, Vol. 3, para. 550 & fn. 1140, referring to Ivan Beneta, T(F). 46632, 46634, 46639, 46656 (10 Nov 2009).

Adjudicated Fact as a further reference⁸⁸⁴ and thus considers that Prlić has failed to show that no reasonable trier of fact, based on the remaining evidence,⁸⁸⁵ could have reached the same conclusion as the Trial Chamber.

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

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

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

(i) Arguments of the Parties

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

⁸⁸⁴ See Trial Judgement, Vol. 3, fn. 1139.

⁸⁸⁵ See Trial Judgement, Vol. 3, paras 549-552 and references cited therein.

⁸⁸⁶ See Trial Judgement, Vol. 3, paras 546-548 and references cited therein.

⁸⁸⁷ See *Popović et al.* Appeal Judgement, paras 131-132. See also *supra*, paras 215-218.

⁸⁸⁸ See Trial Judgement, Vol. 3, paras 546-547 & fn. 1132. The Appeals Chamber further considers that Prlić, Stojić, Praljak, Petković, and Ćorić fail to demonstrate that the provision of HV logistical and other support to the ABiH against their common enemy, the Bosnian Serbs, undermines or is incompatible with the finding that through the HV, Croatia exercised overall control over the HVO.

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

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

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

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

⁸⁸⁹ Stojić’s Appeal Brief, paras 415-416; Praljak’s Appeal Brief, paras 29-30; Praljak’s Reply Brief, para. 12; Petković’s Appeal Brief, para. 427.

⁸⁹⁰ Stojić’s Appeal Brief, para. 416.

⁸⁹¹ Stojić’s Appeal Brief, para. 416.

⁸⁹² Praljak’s Appeal Brief, paras 29-30.

⁸⁹³ Petković’s Appeal Brief, para. 427.

⁸⁹⁴ Petković’s Appeal Brief, para. 427, referring to Ex. P03242, Trial Judgement, Vol. 3, para. 553, fn. 1146.

⁸⁹⁵ Petković’s Appeal Brief, para. 427, referring to Ex. P07135.

⁸⁹⁶ Petković’s Appeal Brief, para. 427.

⁸⁹⁷ Petković’s Appeal Brief, para. 427.

⁸⁹⁸ Prosecution’s Response Brief (Praljak), para. 19.

⁸⁹⁹ Prosecution’s Response Brief (Praljak), para. 19.

⁹⁰⁰ Prosecution’s Response Brief (Stojić), para. 386.

⁹⁰¹ Prosecution’s Response Brief (Stojić), para. 386.

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

(ii) Analysis

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

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

⁹⁰² Prosecution's Response Brief (Petković), para. 292.

⁹⁰³ Prosecution's Response Brief (Petković), para. 292, referring to Exs. P03242, P07135.

⁹⁰⁴ Prosecution's Response Brief (Petković), para. 292.

⁹⁰⁵ See Trial Judgement, Vol. 3, paras 545, 553, 567-568.

⁹⁰⁶ See Trial Judgement, Vol. 3, para. 553 and references cited therein. See also *supra*, paras 170-176, 179-183.

⁹⁰⁷ See Trial Judgement, Vol. 3, fns 1146-1147 and references cited therein.

⁹⁰⁸ See Trial Judgement, Vol. 3, paras 545-568. The Appeals Chamber has also considered Praljak's argument that if the HV possessed control over the HVO, the trial record would indicate that the HVO submitted reports to the HV and that the HV gave orders to the HVO, rather than the mutual exchange of information by two equal armies that emerges.

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

5. Conclusion

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

B. The State of Occupation

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

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

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

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

⁹⁰⁹ See *supra*, para. 233.

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

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

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

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

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

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

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

⁹¹³ See Trial Judgement, Vol. 1, para. 55, Vol. 3, para. 576.

⁹¹⁴ See Trial Judgement, Vol. 1, para. 55, Vol. 3, para. 576.

⁹¹⁵ See Geneva Convention IV, Art. 49. See also *Stakić* Appeal Judgement, para. 300 (relying on Article 49 of Geneva Convention IV to conclude that “displacement across a *de facto* border may be sufficient to amount to deportation” and that “the question whether a particular *de facto* border is sufficient for the crime of deportation should be examined on a case by case basis in light of customary international law”).

⁹¹⁶ *Stakić* Appeal Judgement, para. 278. See also *Stakić* Appeal Judgement, paras 296-297, 300.

⁹¹⁷ See Trial Judgement, Vol. 3, paras 575-581, 585-588; Appeal Hearing, AT. 307 (21 Mar 2017). See also Appeal Hearing, AT. 568-567 (23 Mar 2017), AT. 682 (27 Mar 2017). Cf. Appeal Hearing, AT. 305 (21 Mar 2017).

⁹¹⁸ See *supra*, para. 299.

⁹¹⁹ See Trial Judgement, Vol. 1, paras 106-108, 122, 128-129, Vol. 3, para. 575.

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

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

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

(a) Arguments of the Parties

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

⁹²⁰ See Trial Judgement, Vol. 1, paras 106, 108, 122 referring to, *inter alia*, Geneva Convention IV, Arts 18, 21-22. See also Geneva Convention IV, Art. 147; Commentary on Geneva Convention IV, pp. 301, 601.

⁹²¹ See Trial Judgement, Vol. 1, paras 106-107, 122 referring to, *inter alia*, Geneva Convention IV, Art. 53. See also Geneva Convention IV, Art. 147; Commentary on Geneva Convention IV, pp. 301, 601.

⁹²² See Indictment, paras 15-17.6, 39, 46, 48, 51, 53, 57, 66-68, 82-85, 99-100, 107-108, 116, 159, 162, 164-166, 175, 177, 179-180, 182, 209, 211, 213.

⁹²³ See Prlić's Appeal Brief, paras 671-676; Stojić's Appeal Brief, paras 421-425; Praljak's Appeal Brief, paras 42-56; Appeal Hearing, AT. 369, 371-372 (22 Mar 2017); Praljak's Reply Brief, paras 14-18; Petković's Appeal Brief, paras 436-444; Petković's Reply Brief, paras 83-89; Čorić's Appeal Brief, paras 75-83; Appeal Hearing, AT. 580 (24 Mar 2017); Čorić's Reply Brief, paras 26-27.

⁹²⁴ Stojić's Appeal Brief, para. 424; Praljak's Appeal Brief, para. 50; Praljak's Reply Brief, para. 14; Petković's Appeal Brief, paras 441-442, Appeal Hearing, AT. 568 (23 Mar 2017).

⁹²⁵ Stojić's Appeal Brief, para. 424; Petković's Appeal Brief, paras 441-442; Appeal Hearing, AT. 568 (23 Mar 2017).

“first real lull in combat” was not until 26 or 27 January 1993, that Sovići and Doljani in Jablanica Municipality were occupied from 17 April 1993 because “mopping up” operations continued after that date, and that West Mostar was occupied from May 1993 because there were “ongoing operations affecting all of Mostar”, referencing the attack by the ABiH on the HVO Tihomir Mišić Barracks in the north of Mostar town on 30 June 1993 (“Attack on the HVO Tihomir Mišić Barracks”).⁹²⁶ Stojić also argues that the Trial Chamber did not explain why it reached a contrary conclusion to the *Naletilić and Martinović* Trial Chamber, which had found no occupation in the areas of Sovići and Doljani in Jablanica Municipality prior to 23 April 1993.⁹²⁷

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

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

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

⁹²⁶ Stojić’s Appeal Brief, para. 424; Petković’s Appeal Brief, paras 441-442; Appeal Hearing, AT. 568 (23 Mar 2017).

⁹²⁷ Stojić’s Appeal Brief, para. 424.

⁹²⁸ Ćorić’s Appeal Brief, para. 81; Appeal Hearing, AT. 580-581 (24 Mar 2017); Ćorić’s Reply Brief, para. 27. See also Praljak’s Appeal Brief, para. 49; Appeal Hearing, AT. 370 (22 Mar 2017). Praljak, referring to the Tribunal’s jurisprudence that occupation is “a transitional period following invasion and preceding the agreement on the cessation of the hostilities”, submits that it is important to establish that there “already was a transitional period”. Praljak’s Appeal Brief, para. 49.

⁹²⁹ Prlić’s Appeal Brief, paras 672-673; Stojić’s Appeal Brief, para. 422; Praljak’s Appeal Brief, paras 55-56; Appeal Hearing, AT. 370-371 (22 Mar 2017); Ćorić’s Appeal Brief, paras 81-82; Appeal Hearing, AT. 581-582 (24 Mar 2017).

⁹³⁰ Praljak’s Appeal Brief, para. 49; Praljak’s Reply Brief, para. 14.

⁹³¹ Stojić’s Appeal Brief, para. 422; Praljak’s Reply Brief, para. 15.

⁹³² Praljak’s Reply Brief, para. 15.

⁹³³ Prlić’s Appeal Brief, para. 671; Stojić’s Appeal Brief, paras 422-423; Praljak’s Appeal Brief, para. 45; Petković’s Appeal Brief, paras 436-438.

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

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

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

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

⁹³⁴ Petković's Appeal Brief, para. 439; Appeal Hearing, AT. 569-570 (23 Mar 2017). See also Stojić's Appeal Brief, para. 422.

⁹³⁵ Stojić's Appeal Brief, para. 423; Prljak's Appeal Brief, paras 48, 51.

⁹³⁶ Petković's Appeal Brief, paras 436-437; Appeal Hearing, AT. 569 (23 Mar 2017).

⁹³⁷ Petković's Appeal Brief, para. 439, referring to *Naletilić and Martinović* Trial Judgement, para. 214.

⁹³⁸ Stojić's Appeal Brief, para. 422 referring to Hague Regulations, Art. 42, *Advisory Opinion on the Wall*, para. 90, *Naletilić and Martinović* Trial Judgement, paras 214-216.

⁹³⁹ Prlić's Appeal Brief, para. 674, referring to *Naletilić and Martinović* Trial Judgement, para. 217, *Armed Activities* Judgement, para. 173, *Hostage* Trial Case, pp. 55-56. Prljak further argues that the fact that the individuals elected in 1990, such as in Prozor, continued to govern through 1993 ultimately signals that no change in governmental authority took place and therefore it was impossible that the HVO occupied these municipalities. Prljak's Reply Brief, para. 17.

⁹⁴⁰ Prljak's Appeal Brief, para. 49.

⁹⁴¹ Prljak's Appeal Brief, para. 49.

⁹⁴² Prljak's Appeal Brief, paras 52-53; Prljak's Reply Brief, para. 16. See also Prlić's Appeal Brief, paras 674-675; Petković's Appeal Brief, para. 438.

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

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

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

⁹⁴³ Prosecution's Response Brief (Prlić), paras 418-421; Prosecution's Response Brief (Stojić), paras 388-395; Appeal Hearing, AT. 316-323, 328 (21 Mar 2017); Prosecution's Response Brief (Praljak), paras 23-30; Appeal Hearing, AT. 418 (22 Mar 2017); Prosecution's Response Brief (Petković), paras 296-303; Prosecution's Response Brief (Čorić), paras 68, 70-74; Appeal Hearing, AT. 656-657 (24 Mar 2017).

⁹⁴⁴ Prosecution's Response Brief (Stojić), para. 394; Prosecution's Response Brief (Petković), para. 301.

⁹⁴⁵ Prosecution's Response Brief (Stojić), para. 391. See also Prosecution's Response Brief (Praljak), para. 25.

⁹⁴⁶ Prosecution's Response Brief (Stojić), para. 392. See also Prosecution's Response Brief (Praljak), para. 25.

⁹⁴⁷ Prosecution's Response Brief (Stojić), para. 392.

⁹⁴⁸ Prosecution's Response Brief (Čorić), para. 73.

⁹⁴⁹ Prosecution's Response Brief (Praljak), para. 25.

⁹⁵⁰ Prosecution's Response Brief (Prlić), para. 421; Prosecution's Response Brief (Stojić), para. 389; Appeal Hearing, AT. 319, 328 (21 Mar 2017); Prosecution's Response Brief (Praljak), para. 29; Prosecution's Response Brief (Petković), para. 300; Prosecution's Response Brief (Čorić), para. 74; Appeal Hearing, AT. 656-657 (24 Mar 2017).

⁹⁵¹ Prosecution's Response Brief (Praljak), para. 29.

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

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

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

⁹⁵² Prosecution's Response Brief (Prlić), para. 419; Prosecution's Response Brief (Stojić), para. 388; Appeal Hearing, AT. 317-319, 321 (21 Mar 2017); Prosecution's Response Brief (Praljak), para. 23; Prosecution's Response Brief (Petković), paras 297, 300; Prosecution's Response Brief (Čorić), para. 70.

⁹⁵³ Prosecution's Response Brief (Stojić), para. 390. See also Prosecution's Response Brief (Čorić), para. 71.

⁹⁵⁴ Prosecution's Response Brief (Stojić), paras 390-394; Prosecution's Response Brief (Praljak), paras 26-28; Prosecution's Response Brief (Petković), paras 299, 301-302; Prosecution's Response Brief (Čorić), paras 71-72.

⁹⁵⁵ Prosecution's Response Brief (Praljak), para. 26; Appeal Hearing, AT. 320-323 (21 Mar 2017).

⁹⁵⁶ Prosecution's Response Brief (Petković), para. 298; Appeal Hearing, AT. 319-320, 328 (21 Mar 2017). The Prosecution also argues that the demographic make-up of the results of a 1990 election are irrelevant to determining whether Prozor was occupied during the relevant time period. Prosecution's Response Brief (Praljak), para. 27.

⁹⁵⁷ Prosecution's Response Brief (Prlić), fn. 1529, referring to Trial Judgement, Vol. 3, paras 401, 403, 465-466, 588, 1554, 1650; Prosecution's Response Brief (Stojić), fn. 1605; Prosecution's Response Brief (Praljak), fn. 121; Prosecution's Response Brief (Petković), fn. 1219; Prosecution's Response Brief (Čorić), fn. 250; Prosecution's Response Brief (Pušić), fn. 414.

⁹⁵⁸ Prosecution's Response Brief (Prlić), fn. 1529; Prosecution's Response Brief (Stojić), fn. 1605 (also stating that the Prosecution has appealed Stojić's acquittal under Count 22 for thefts in Vareš); Prosecution's Response Brief (Praljak), fn. 121 (also stating that the Prosecution has appealed Praljak's acquittal under Count 22 for thefts in Vareš); Prosecution's Response Brief (Petković), fn. 1219 (also stating that the Prosecution has appealed Petković's acquittal

(b) Analysis

316. Belligerent occupation⁹⁵⁹ forms part of the law of armed conflict. As the ICJ held with respect to Geneva Convention IV in its *Advisory Opinion on the Wall*:

The object of the second paragraph of Article 2⁹⁶⁰ is [...] directed simply to making it clear that, even if occupation effected during the conflict met no armed resistance, the Convention is still applicable. This interpretation reflects the intention of the drafters of the Fourth Geneva Convention to protect civilians who find themselves, in whatever way, in the hands of the occupying Power [...] [T]he Court considers that the Fourth Geneva Convention is applicable in any occupied territory in the event of an armed conflict arising between two or more High Contracting Parties.⁹⁶¹

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

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

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

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

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

⁹⁶¹ *Advisory Opinion on the Wall*, paras 95, 101.

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

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

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

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

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

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

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

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

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

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

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

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

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

⁹⁷¹ *Hostage* Trial Case, p. 56.

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

- (2) the enemy's forces have surrendered, been defeated or have withdrawn. In this respect, battle zones may not be considered as occupied territory. Despite this, the status of occupied territory remains unchallenged by sporadic local resistance, however successful;⁹⁷³
- (3) the occupying power has a sufficient force present, or the capacity to send troops within a reasonable time to make the authority of the occupying power felt;⁹⁷⁴

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

⁹⁸⁶ See *supra*, para. 307.

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

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

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

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

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

- (1) officers from the HV were sent by Zagreb to join the ranks of the HVO;⁹⁹⁶
- (2) the HV and the HVO jointly directed military operations;⁹⁹⁷
- (3) the HVO dispatched military reports concerning its activities to the Croatian authorities;⁹⁹⁸
- (4) there was logistical support from Croatia which included financial support, dispatching of arms and materiel,⁹⁹⁹ and assistance in the form of training and expertise;¹⁰⁰⁰ and

⁹⁹⁰ See Trial Judgement, Vol. 3, paras 523-526, 528-543.

⁹⁹¹ Trial Judgement, Vol. 3, para. 567. See also Trial Judgement, Vol. 3, paras 523-526, 545-567.

⁹⁹² See Trial Judgement, Vol. 3, paras 517-518, 523-589.

⁹⁹³ See *supra*, para. 325.

⁹⁹⁴ See *supra*, paras 307-308.

⁹⁹⁵ See Trial Judgement, Vol. 3, paras 545-567. Cf. Trial Judgement, Vol. 3, paras 575 & fn. 1175, 578-587.

⁹⁹⁶ See Trial Judgement, Vol. 3, paras 546-548. The Appeals Chamber notes that the Trial Chamber found that this included persons who held the positions of the highest responsibility within the HVO, such as Petković, Praljak, and Žarko Tole – who served as Chief of the Main Staff at various times – and Ivan Kapular, Assistant Chief of the Main Staff, all of whom were contemporaneously also officers in the HV. See Trial Judgement, Vol. 3, para. 547. It also included other high-ranking HVO officers who were likewise members of the HV. For instance, Željko Šiljeg, commanding officer of the North-West OZ of the HVO, was a colonel in the HV; Vladimir Primorac, who belonged to the 145th Brigade of the HV, held the office of deputy commander of the 3rd Military Police Battalion of the HVO; Nedeljko Obradović, commanding officer of the 1st Knez Domagoj Brigade of the HVO on 21 January 1993, was also assigned to the 116th Brigade of the HV on that same date; and Stanko Sopta, a colonel in the HV, held the posts of deputy commander for the Convicts Battalion of the HVO, and commander of the 3rd Brigade of the HVO. See Trial Judgement, Vol. 3, para. 548.

⁹⁹⁷ See Trial Judgement, Vol. 3, paras 549-552. The Appeals Chamber notes that the Trial Chamber found that: some evidence indicated that commanding officers of the HV issued orders to the units of the HVO for certain military operations. See Trial Judgement, Vol. 3, para. 550. The Trial Chamber further found that between November 1993 and early January 1994, Croatia’s Minister of Defence, Gojko Šušak, visited the territory of the HR H-B four to five times to participate in unofficial meetings relating to the prevailing situation in the territory of the HR H-B with Marijan Biškić, Mate Boban, Ćorić, General Roso, Perica Jukić, the Minister of Defence, as well as the Minister’s deputies and officers from the HVO Main Staff. See Trial Judgement, Vol. 3, para. 551.

⁹⁹⁸ See Trial Judgement, Vol. 3, para. 553.

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

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

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

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

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

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

¹⁰⁰³ See *supra*, paras 308, 321.

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

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

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

¹⁰⁰⁷ See Trial Judgement, Vol. 3, para. 587.

328. The Appeals Chamber recalls that the Trial Chamber reasoned that this evidence showed that the HVO's military presence was "sufficient",¹⁰⁰⁸ "strong enough",¹⁰⁰⁹ "sufficiently strong",¹⁰¹⁰ or "to the extent needed to impose its authority",¹⁰¹¹ thus enabling it to give orders to the population and to have them carried out.¹⁰¹² The Appeals Chamber considers that it was based on all of these factors, taken cumulatively, that the Trial Chamber found a state of occupation in these municipalities.¹⁰¹³

329. The Appeals Chamber considers that it would have been preferable for the Trial Chamber to have identified with precision the findings that supported its conclusion that Croatia exercised the authority required for occupation.¹⁰¹⁴ The Appeals Chamber recalls, however, that a trial judgement is to be read as a whole,¹⁰¹⁵ and notes that the Trial Chamber made a number of factual findings that established Croatia's authority over the HVO, its proxy.¹⁰¹⁶ These findings concerned: (1) the strong links between Croatia and the HVO as epitomised in the close relationship Prlić, Praljak, and Petković had with senior Croatian political, military, or administrative authorities; (2) the fact that the members of the JCE included both Croatian political, governmental, and military officials as well as officials of the HZ(R) H-B political, military, and administrative structures; and (3) HV troops directly intervening alongside the HVO in the conflict with the ABiH at the relevant time and in the relevant locations. The Appeals Chamber will address these findings in turn.

330. Turning to the first set of findings, the Appeals Chamber recalls that the Trial Chamber held, *inter alia*, that on 5 and 26 October 1992, Prlić, Stojić, Praljak, and Petković, as members of a "delegation of Croatia and the HZ H-B", met with Ratko Mladić to discuss the division of BiH between the Serbs and the Croats.¹⁰¹⁷ With regard to Prlić, the Trial Chamber found that between September 1992 and the end of April 1994, he attended meetings in Croatia with Tuđman and other Croatian leaders, and from 17 September 1992 onwards, he held discussions with Tuđman about the internal policy of the HZ(R) H-B.¹⁰¹⁸ The Trial Chamber also found that Prlić was one of Tuđman's

¹⁰⁰⁸ See Trial Judgement, Vol. 3, paras 578, 585, 587.

¹⁰⁰⁹ See Trial Judgement, Vol. 3, paras 579, 584.

¹⁰¹⁰ See Trial Judgement, Vol. 3, para. 580.

¹⁰¹¹ See Trial Judgement, Vol. 3, para. 583.

¹⁰¹² See Trial Judgement, Vol. 3, paras 578-580, 583-585, 587.

¹⁰¹³ The Appeals Chamber notes that the finding on occupation in Vareš Municipality is overturned elsewhere in the Judgement. See *infra*, para. 343.

¹⁰¹⁴ See *supra*, para. 325.

¹⁰¹⁵ See *Stanišić and Župljanin* Appeal Judgement, paras 1107, 1115, 1148, 1162, 1181; *Popović et al.* Appeal Judgement, para. 2006; *Mrkšić and Šljivančanin* Appeal Judgement, para. 379.

¹⁰¹⁶ See, e.g., Trial Judgement, Vol. 4, paras 15-24, 106, 111, 119, 121, 520, 522-545, 651, Vol. 3, paras 529-544. The Appeals Chamber notes that the underpinning factual findings have been upheld elsewhere in the Judgement. See *supra*, paras 237-240, 245-249, 265-275, 282-289, 294-297. See also *infra*, paras 835-836, 840-842, 1138-1139, 1521-1522, 1895-1897, 1900-1902, 1904-1905, 1911, 1914-1916.

¹⁰¹⁷ See Trial Judgement, Vol. 4, para. 18.

¹⁰¹⁸ See Trial Judgement, Vol. 4, para. 119.

principal interlocutors for discussions about the political and military strategy of the HZ(R) H-B.¹⁰¹⁹ The Trial Chamber further held that Prlić had influence on the defence strategy and the military operations of the HVO, including the power to, *inter alia*, take decisions which had a direct impact on the course of the military operations of the HVO.¹⁰²⁰

331. As to Praljak,¹⁰²¹ the Appeals Chamber recalls that the Trial Chamber held that his role in both the Croatian government and his *de facto* and/or *de jure* authority in the HVO, which he exercised simultaneously in both BiH and Croatia, demonstrated his knowledge of and willingness to implement the senior Croatian and HVO leadership's policies regarding Herceg-Bosna.¹⁰²² It found that Praljak contributed to the CCP by serving as a conduit between Croatia and the HZ(R) H-B.¹⁰²³ The Trial Chamber also found that Praljak personally and directly contributed to posting HV members to the HVO, and on his request, the Croatian government continued paying the salaries of HV soldiers who had been authorised by the Croatian government to go to BiH to join the HVO.¹⁰²⁴ With respect to Petković, the Appeals Chamber observes that in April 1992, on his request, he was released from active military service in the HV "for the purpose of joining the RBiH".¹⁰²⁵ After his stint in the HVO,¹⁰²⁶ in March 1993, Stojić requested Šušak to assign Petković to the rank of senior officer within the HV, in recognition of his contribution to defending a large part of HZ(R) H-B territory.¹⁰²⁷

332. These findings establish both: (1) the pivotal role played by Prlić and Praljak in facilitating the Croatian political and military support needed in HZ(R) H-B; and (2) the fact that the HVO accepted Praljak's and Petković's concurrent and subsequent membership respectively, in the HV and the HVO, at this crucial time in the conflict with the ABiH. The Appeals Chamber considers that this is indicative of the actual authority exercised by Croatia through the HVO over BiH territory.

333. Moving on to the second set of findings, the Appeals Chamber notes the Trial Chamber's findings that members of the Croatian and the HZ(R) H-B political, governmental, and military

¹⁰¹⁹ See Trial Judgement, Vol. 4, para. 119.

¹⁰²⁰ See Trial Judgement, Vol. 4, paras 106, 111, 121.

¹⁰²¹ The Trial Chamber found that from approximately March 1992 to 15 June 1993, Praljak was the Assistant Minister of Defence of Croatia and then its Deputy Minister of Defence, first at the rank of brigadier and then as major-general of the HV. See Trial Judgement, Vol. 4, para. 457.

¹⁰²² See Trial Judgement, Vol. 4, para. 545.

¹⁰²³ See Trial Judgement, Vol. 4, paras 520, 522-545.

¹⁰²⁴ See Trial Judgement, Vol. 4, paras 541-544.

¹⁰²⁵ See Trial Judgement, Vol. 4, fn. 1245.

¹⁰²⁶ Petković was appointed chief of the HVO Main Staff by Boban on 14 April 1992 and remained in that position until 24 July 1993. See Trial Judgement, Vol. 4, para. 651.

¹⁰²⁷ See Trial Judgement, Vol. 4, fn 1245.

structures consulted each other to devise and implement the CCP.¹⁰²⁸ The Appeals Chamber considers this to be another factor that shows the actual authority exercised by Croatia over the HVO and over BiH territory. Lastly, the Appeals Chamber notes that the Trial Chamber concluded that there was direct intervention by HV troops alongside the HVO in the conflict with the ABiH.¹⁰²⁹

334. In conclusion, and in light of the foregoing, the Appeals Chamber finds that there are a number of factors that indicate that Croatia through the HVO had actual authority over the relevant municipalities. These are: (1) the overall control Croatia had over the HVO;¹⁰³⁰ (2) the continued presence of the HVO in the relevant municipalities after the occupation;¹⁰³¹ (3) the HVO's issuance of directives to the population and having them enforced; (4) the close links Prlić, Praljak, and, to a lesser extent, Petković had with Croatia; (5) the ongoing consultations between members of the Croatian and the HZ(R) H-B political and governmental structures and the HVO, and their common membership in the JCE; and (6) the engagement of HV units with the HVO in combat in the attacks on towns and villages. Looking at all these factors and the situation in the various municipalities in its entirety, the Appeals Chamber considers that Prlić, Stojić, Praljak, and Petković have failed to show an error on the part of the Trial Chamber. The Appeals Chamber therefore dismisses all the relevant arguments.

335. Turning next to Praljak's argument that an armed conflict and occupation cannot co-exist, the Appeals Chamber notes that a state of occupation and that of an international armed conflict are not necessarily mutually exclusive.¹⁰³² Further, with regard to Stojić's and Petković's argument that ongoing combat and occupation cannot co-exist, the Appeals Chamber recalls that a finding of active hostilities in certain municipalities does not necessarily preclude the Trial Chamber from finding that a state of occupation existed on the ground in those municipalities. The Appeals Chamber considers that the issue is one of authority, *i.e.* whether the occupying power is able to maintain its authority over the territory in spite of some ongoing active combat.¹⁰³³

¹⁰²⁸ See Trial Judgement, Vol. 4, para. 1231, referring to Tudman, Šušak, Bobetko, Boban, Prlić, Stojić, Praljak, Petković, Čorić, and Pušić. See *infra*, paras 1521-1522.

¹⁰²⁹ See Trial Judgement, Vol. 3, paras 529-544. See also *supra*, paras 265-275. For instance, the Trial Chamber found that a mixed unit of HVO and HV troops attacked and took over the town of Prozor on 23 October 1992, HV troops were in the Prozor area on several dates between November 1992 and January 1994, and Prozor Municipality generally was occupied by the HVO during part of that period, from August to December 1993. See Trial Judgement, Vol. 3, paras 532-533, 589. The Trial Chamber also found that in the villages of Sovići and Doljani in Jablanica Municipality – which were occupied after 17 April 1993 – HV soldiers participated alongside the HVO in the attack on Sovići on 17 April 1993, and HV troops were seen there until May 1993. See Trial Judgement, Vol. 3, paras 535, 589.

¹⁰³⁰ See Trial Judgement, Vol. 3, paras 545-567 & fn. 1175.

¹⁰³¹ See Trial Judgement, Vol. 3, paras 578-580, 583-585, 587.

¹⁰³² See *Hostage* Trial Case, p. 56.

¹⁰³³ See also *supra*, para. 319.

336. The Appeals Chamber notes that the Trial Chamber found that once the HVO assumed control over the villages of Duša, Hrasnica, Ždrimci, and Uzričje on 18 January 1993, the HVO arrested and removed the Muslim population, and destroyed and stole property belonging to the Muslims there.¹⁰³⁴ In so doing, the Trial Chamber found that the HVO had sufficient authority for a finding of occupation in Duša, Hrasnica, Ždrimci, and Uzričje in Gornji Vakuf Municipality.¹⁰³⁵ Stojić's argument that this finding cannot stand because the "first real lull in combat" was not until 26 or 27 January 1993¹⁰³⁶ does not take into account the establishment of the HVO's authority over the area prior to this date – a fact inferred from its strong military presence and its ability to give orders to the Muslim population and to have such orders carried out.¹⁰³⁷

337. As to Stojić's argument that the Trial Chamber erred in finding that the HVO occupied Sovići and Doljani in Jablanica Municipality from 17 April 1993 because "mopping up" operations continued after this date is without merit.¹⁰³⁸ The Trial Chamber found that most of the fighting in Sovići and Doljani had ended late in the afternoon of 17 April 1993 following which the HVO and the MUP made the first Muslim arrests – showing that the HVO's military presence was sufficiently strong to enable it to give orders to the Muslim population and have them carried out.¹⁰³⁹ In fact, the Trial Chamber also found that such arrests continued between 18 and 23 April 1993, again showing the HVO still exercised control over Sovići and Doljani.¹⁰⁴⁰ With respect to Stojić's related argument that another trial chamber found differently (*i.e.* that there was no occupation in Sovići and Doljani in Jablanica Municipality at the relevant time), the Appeals Chamber recalls that the factual finding of one trial chamber is not binding upon that of another.¹⁰⁴¹

338. Further, in concluding that West Mostar was occupied by the HVO, the Trial Chamber took note that from May 1993 to February 1994, the HVO removed the Muslim population of West Mostar and that this attested to the fact that the HVO was present militarily to the extent needed to impose authority and was capable of giving orders to the inhabitants of West Mostar and having such orders carried out.¹⁰⁴² The Appeals Chamber is not convinced by Stojić's argument that

¹⁰³⁴ See Trial Judgement, Vol. 3, para. 579.

¹⁰³⁵ See Trial Judgement, Vol. 3, para. 579.

¹⁰³⁶ Stojić's Appeal Brief, para. 424, referring to Trial Judgement, Vol. 2, para. 395.

¹⁰³⁷ See Trial Judgement, Vol. 2, paras 369, 374, 386, 398, Vol. 3, paras 579, 589.

¹⁰³⁸ Stojić's Appeal Brief, para. 424, referring to Trial Judgement, Vol. 2, para. 549. The Appeals Chamber notes that the Trial Chamber found that occupation was established *after* 17 April 1993 and not *from* 17 April 1993 as argued by Stojić. See Stojić's Appeal Brief, para. 424; Trial Judgement, Vol. 3, para. 580.

¹⁰³⁹ See Trial Judgement, Vol. 2, paras 541, 545-548, 550, 552, 554, Vol. 3, paras 580, 589. The Appeals Chamber considers that the challenges to the finding of a state of occupation in Vareš town and Stupni Do in Vareš Municipality are moot. See *infra*, para. 343.

¹⁰⁴⁰ See Trial Judgement, Vol. 2, paras 558-564.

¹⁰⁴¹ See *Lukić and Lukić* Appeal Judgement, para. 260. *Aleksovski* Appeal Judgement, para. 114.

¹⁰⁴² See Trial Judgement, Vol. 3, paras 583, 589.

the Trial Chamber's finding that the Attack on the HVO Tihomir Mišić Barracks in Mostar on 30 June 1993 undermines its finding that West Mostar was occupied by the HVO, as the HVO was still able to arrest Muslim men, including members of the ABiH and Muslim HVO soldiers *after* the Attack on the HVO Tihomir Mišić Barracks.¹⁰⁴³ This reasonably shows the HVO still maintained actual authority over West Mostar.¹⁰⁴⁴ For these same reasons, Petković's argument that the whole of Mostar was a combat zone and therefore could not be occupied is unpersuasive.

339. With regard to Ćorić's argument that an occupation must follow an act of invasion, the Appeals Chamber recalls its statement of the law above, and holds that invasion is not a prerequisite for the determination of a state of occupation.¹⁰⁴⁵ This argument, as well as the argument that the Trial Chamber failed to make a finding on invasion being an element of occupation, are accordingly dismissed.¹⁰⁴⁶ Moreover, contrary to Praljak's argument, the Appeals Chamber highlights that the Trial Chamber established when occupation started in each relevant town and village in each affected municipality.¹⁰⁴⁷ The Appeals Chamber also considers that the Trial Chamber properly found that occupation can be established, once combat ceases, if the occupying power has the required control.¹⁰⁴⁸

340. The Appeals Chamber further considers unpersuasive Prlić's, Stojić's, and Praljak's arguments that the Trial Chamber should have determined that the pre-existing civil government had been displaced, and that the relevant test should have been whether either the pre-existing authority in the allegedly occupied territory remained capable of functioning, or if a temporary administration body had been put in its place.¹⁰⁴⁹ This is because they fail to demonstrate that the Trial Chamber did not find that the HVO was the authority replacing the pre-existing government, given the facts of the case.¹⁰⁵⁰ Moreover, even if the HVO was carrying out government functions

¹⁰⁴³ See Trial Judgement, Vol. 2, paras 878-883, 895.

¹⁰⁴⁴ See Trial Judgement, Vol. 2, paras 878-883, 895.

¹⁰⁴⁵ See *supra*, para. 318; *Armed Activities* Judgement, paras 43, 45, 51, 53, 149, 178 (Uganda was found to be the occupying power in a part of the Democratic Republic of the Congo following the expiration of Congolese consent which had allowed the presence of Ugandan troops in its territory); *Lepore* Case, pp. 354-357 (following the change of Italian government and Italy's declaration of war on Germany in 1943, Germany was found to be the occupying power of parts of Italy where it already had a military presence as a result of its alliance with Italy's previous government). The Appeals Chamber rejects Praljak's related argument that the Trial Chamber failed to establish there "already was a transitional period" as an undeveloped assertion. The Appeals Chamber also dismisses this argument.

¹⁰⁴⁶ See *supra*, paras 306, 318. As to Prlić's, Stojić's, Praljak's, and Ćorić's challenges that the HVO could not have invaded as it was a legitimate governing authority in BiH, the Appeals Chamber recalls that they ignore other relevant findings on the recognition of Izetbegović's government by the international community as the legitimate government of BiH, and that the HZ(R) H-B and its military, the HVO, were rejected by the BiH authorities throughout the period relevant to the Indictment. Further, the Appeals Chamber notes what it held above, that the law of occupation may be applicable to cases other than foreign invading armies. See *supra*, 318. It thus dismisses this argument. See Trial Judgement, Vol. 1, paras 426-428, 432-433, 457, 459, 467, Vol. 2, paras 339, 341.

¹⁰⁴⁷ See Trial Judgement, Vol. 3, paras 578-589.

¹⁰⁴⁸ See Trial Judgement, Vol. 3, paras 578-589 & fn. 1175. See *supra*, paras 335-338.

¹⁰⁴⁹ See *supra*, para. 319.

¹⁰⁵⁰ See *supra*, paras 319-320. The Appeals Chamber also rejects the argument that some individuals elected in a 1990 election in some municipalities were still governing locally in 1993, indicating that no change in governmental

because of a power vacuum, the Appeals Chamber finds that the factual test of the HVO substituting its authority for that of the pre-existing legitimate government is still met.¹⁰⁵¹ This argument is therefore also dismissed.

341. Lastly, with regard to the argument that the principle of self-determination of peoples negates any finding that the HVO occupied territory in BiH because Croats had been living in the territory of HZ(R) H-B for centuries, the Appeals Chamber considers that this is not inconsistent with the Trial Chamber's finding that the HVO occupied territory in BiH as an agent of Croatia.¹⁰⁵² This is because the test for occupation is actual authority over the territory and population and not the motivation behind such an occupation. The Appeals Chamber thus rejects this argument.

342. In conclusion, Prlić, Stojić, Praljak, Petković, and Ćorić have failed to show that the Trial Chamber erred in finding that the HVO occupied: (1) the villages of Duša, Hrasnica, Ždrimci, and Uzričje in Gornji Vakuf Municipality after 18 January 1993;¹⁰⁵³ (2) the villages of Sovići and Doljani in Jablanica Municipality after 17 April 1993;¹⁰⁵⁴ and (3) West Mostar from May 1993 until February 1994.¹⁰⁵⁵

343. Finally, the Appeals Chamber notes the Trial Chamber's findings that Vareš town and the village of Stupni Do in Vareš Municipality were occupied *after* 23 October 1993, that the crime of extensive destruction of property not justified by military necessity and carried out unlawfully and wantonly by the HVO occurred *on* 23 October 1993,¹⁰⁵⁶ as well as the Prosecution's submission that the evidence that the Trial Chamber relied upon demonstrates that the crime of extensive appropriation of property not justified by military necessity and carried out unlawfully and wantonly by the HVO also occurred *on* 23 October 1993.¹⁰⁵⁷ Taking into account these findings and evidence, the Prosecution concedes that it was not proven that these places were occupied when the crimes were committed.¹⁰⁵⁸ The Appeals Chamber considers that, based on the factual error made by the Trial Chamber, it is in the Appellants' interest and the interests of justice to vacate the Appellants' convictions for Count 19 (extensive destruction as a grave breach of the Geneva

authority had taken place, as Praljak fails to show that no reasonable trier of fact could have found a state of occupation in those municipalities, based on the entirety of the evidence before the Trial Chamber.

¹⁰⁵¹ See *supra*, paras 320-321.

¹⁰⁵² See Trial Judgement, Vol. 3, fn. 1175. See also Trial Judgement, Vol. 3, para. 568.

¹⁰⁵³ See Trial Judgement, Vol. 3, paras 579, 589.

¹⁰⁵⁴ See Trial Judgement, Vol. 3, paras 580, 589.

¹⁰⁵⁵ See Trial Judgement, Vol. 3, paras 581, 583, 589.

¹⁰⁵⁶ See Trial Judgement, Vol. 3, paras 588-589, 1554-1556.

¹⁰⁵⁷ See *supra*, para. 315. The Prosecution makes this submission despite the Trial Chamber's finding that the appropriation of Muslim property in question occurred "during and after the arrests of the Muslims in the town of Vareš between 23 October and 1 November 1993 and during and after the attack on the village of Stupni Do on 23 October 1993". See Trial Judgement, Vol. 3, paras 1650-1653; *supra*, para. 315. The Appeals Chamber observes that, in fact, the Prosecution's submission is in conformity with the evidence on which the Trial Chamber relied in making these findings. See Trial Judgement, Vol. 3, paras 401, 403, 465-467 and the evidence cited therein.

Conventions) and Count 22 (appropriation of property as a grave breach of the Geneva Conventions) with regard to Vareš Municipality. Exercising its discretion under Article 25(2) of the Statute,¹⁰⁵⁹ the Appeals Chamber refrains from entering new convictions on appeal for Count 20 (wanton destruction as a violation of the laws or customs of war) with regard to Vareš. In so finding, the Appeals Chamber considers the interests of fairness to the Appellants, the nature of the offences, and the circumstances of this case.¹⁰⁶⁰

(c) Conclusion

344. For the foregoing reasons, the Appeals Chamber dismisses Prlić's ground 20, Stojić's ground 55, Praljak's ground 2, Petković's sub-ground 7.2, and Ćorić's sub-ground 3.2.

345. The Appeals Chamber upholds the Trial Chamber's conclusion that it was necessary to examine whether a state of occupation existed in those municipalities where deportation (across a *de facto* border), extensive destruction and appropriation of property were alleged under the "grave breaches" regime of the Geneva Conventions and Article 2 of the Statute. It also dismisses Prlić's, Stojić's, Praljak's, Petković's, and Ćorić's arguments related to the legal requirements of occupation. Finally, the Appeals Chamber vacates the Appellants' convictions for extensive destruction and appropriation of property not justified by military necessity and carried out unlawfully and wantonly as grave breaches of the Geneva Conventions (Counts 19 and 22 respectively) for the incidents in Vareš Municipality.

C. The Protected Persons Requirement

346. The Appeals Chamber recalls that, to constitute grave breaches of the Geneva Conventions, the crimes enumerated under Article 2 of the Statute must be committed against persons or property protected under the provisions of the relevant Geneva Convention.¹⁰⁶¹ Geneva Convention IV protects "those who, at a given moment and in any manner whatsoever, find themselves, in case of

¹⁰⁵⁸ See *supra*, para. 315.

¹⁰⁵⁹ See *Stanišić and Župljanin* Appeal Judgement, para. 1096 & fn. 3625; *Dorđević* Appeal Judgement, para. 928; *Šainović et al.* Appeal Judgement, fn. 5269; *Jelišić* Appeal Judgement, para. 73.

¹⁰⁶⁰ Cf. *Stanišić and Župljanin* Appeal Judgement, para. 1096 & fn. 3626 and references cited therein; *Jelišić* Appeal Judgement, paras 73, 77.

¹⁰⁶¹ *Tadić* Appeal Decision on Jurisdiction, para. 81 (holding that the reference to "persons or property protected under the provisions of the relevant Geneva Conventions" under Article 2 of the Statute "is clearly intended to indicate that the offences listed under Article 2 can only be prosecuted when perpetrated against persons or property regarded as 'protected' by the Geneva Conventions under the strict conditions set out by the Conventions themselves. This reference in Article 2 to the notion of 'protected persons or property' must perforce cover the persons mentioned in Articles 13, 24, 25 and 26 (protected persons) and 19 and 33 to 35 (protected objects) of Geneva Convention I; in Articles 13, 36, 37 (protected persons) and 22, 24, 25 and 27 (protected objects) of Convention II; in Article 4 of Convention III on prisoners of war; and in Articles 4 and 20 (protected persons) and Articles 18, 19, 21, 22, 33, 53, 57 etc. (protected property) of Convention IV on civilians. Clearly, these provisions of the Geneva Conventions apply to persons or objects protected only to the extent that they are caught up in an international armed conflict.").

a conflict or occupation, in the hands of a Party to the conflict or Occupying Power of which they are not nationals”, excluding protected persons under other Geneva Conventions and nationals of States that have normal diplomatic representation in the detaining State.¹⁰⁶²

347. The Trial Chamber separately considered the protected status of two categories of Muslim men detained by the HVO: (1) Muslim members of the HVO; and (2) military-aged Muslim men. The Appeals Chamber will address each category in turn. It will then turn to arguments that the detention of the HVO’s Muslim members and the military-aged Muslim men was justified.

1. Muslim members of the HVO (Stojić’s Ground 42, Praljak’s Ground 3, Petković’s Sub-grounds 5.2.1.1 in part and 5.2.1.3 in part, and Ćorić’s Ground 4)

348. The Trial Chamber held that the Muslim members of the HVO who were detained by the HVO were not prisoners of war (“POWs”) protected under Geneva Convention III because, as members of the authority by which they were detained (*i.e.* the HVO), they “cannot be considered to ‘have fallen into the power of the enemy’” within the meaning of that Convention.¹⁰⁶³ Instead, the Trial Chamber held that the HVO Muslim members were protected by Geneva Convention IV because the criterion for determining the status of protected persons is not nationality but allegiance, and from at least 30 June 1993, the HVO Muslims were perceived by the HVO as loyal to the ABiH and therefore “had fallen into the hands of the enemy power”.¹⁰⁶⁴

(a) Arguments of the Parties

349. Stojić, Praljak, Petković, and Ćorić contend that the Trial Chamber erred by finding that Muslim members of the HVO, who were detained by the HVO, were protected persons pursuant to Article 4 of Geneva Convention IV.¹⁰⁶⁵ First, Stojić, Praljak, and Petković argue that Geneva Convention IV only protects civilians, and that the Muslim members of the HVO necessarily fall outside of its ambit.¹⁰⁶⁶ Second, Stojić, Praljak, Petković, and Ćorić assert that the HVO’s Muslim members detained by the HVO were not “in the hands of a Party to the conflict or Occupying Power of which they are not nationals”, as Article 4 of Geneva Convention IV requires.¹⁰⁶⁷ They

¹⁰⁶² Geneva Convention IV, Art. 4. See also Commentary on Geneva Convention IV, p. 51 (explaining that the definition of protected persons under Geneva Convention IV “is a very broad one which includes members of the armed forces [...] who fall into enemy hands” to whom, “for some reason, prisoner of war status [...] [was] denied”).

¹⁰⁶³ Trial Judgement, Vol. 3, para. 604.

¹⁰⁶⁴ Trial Judgement, Vol. 3, paras 608-611.

¹⁰⁶⁵ Stojić’s Appeal Brief, paras 386, 391; Praljak’s Appeal Brief, paras 57-63; Petković’s Appeal Brief, paras 186-191; Ćorić’s Appeal Brief, paras 84-94.

¹⁰⁶⁶ Stojić’s Appeal Brief, para. 387; Praljak’s Appeal Brief, para. 58; Praljak’s Reply Brief, para. 114; Petković’s Appeal Brief, paras 188, 191, 197; Petković’s Reply Brief, paras 37-38.

¹⁰⁶⁷ Stojić’s Appeal Brief, para. 388; Praljak’s Appeal Brief, para. 60; Petković’s Appeal Brief, para. 189; Petković’s Reply Brief, para. 37; Ćorić’s Appeal Brief, para. 87.

also argue that the Trial Chamber erred by considering the HVO's Muslim members' ethnicity¹⁰⁶⁸ and the HVO's subjective suspicions that their allegiance had changed, instead of objective criteria, to be determinative of their lack of allegiance to the HVO.¹⁰⁶⁹ Stojić, Petković, and Ćorić also argue that, in this regard, the Trial Chamber failed to take into account other factors – and according to Ćorić, also ignored evidence – showing that the HVO considered them members of the HVO itself and not of the ABiH.¹⁰⁷⁰

350. Stojić, Petković, and Ćorić further submit that the Trial Chamber made contradictory findings on this issue by finding, on one hand, that in the context of Geneva Convention III, the HVO's Muslim members cannot be considered to “have fallen into the power of the enemy”, while also finding, in the context of Geneva Convention IV, that they had “indeed fallen into the hands of the enemy power”.¹⁰⁷¹ Moreover, Stojić, Praljak, Petković, and Ćorić argue that national law and not international humanitarian law regulates a State's treatment of its soldiers (*e.g.*, its response to mutiny and other disciplinary issues) or any crimes committed by servicemen against their own forces.¹⁰⁷² Petković, in particular, submits that the Trial Chamber failed to give a reasoned opinion as to whether service personnel within an army fall within the jurisdiction of international

¹⁰⁶⁸ Praljak's Appeal Brief, paras 59-60.

¹⁰⁶⁹ Stojić's Appeal Brief, para. 389, referring to *Blaškić* Appeal Judgement, para. 172, *Čelebići* Appeal Judgement, paras 83-84. Stojić argues that while subjective suspicions of the detaining power are relevant, they are not determinative of allegiance, and refers to the *Čelebići* Trial Judgement, which found that the Bosnian authorities considered that the Bosnian Serb detainees owed them no allegiance on the basis of objective factors, including the Bosnian Serbs' declaration of independence and their subsequent receipt of arms from the Federal Republic of Yugoslavia. See Stojić's Reply Brief, para. 73, referring to *Čelebići* Trial Judgement, para. 265. Praljak also submits that, in the Tribunal's jurisprudence, the ethnically-based allegiance criterion was only applied to civilians who had never pledged allegiance to a party to the conflict. He argues that it cannot be applied to Muslim HVO members who had willingly joined the HVO. Praljak's Appeal Brief, para. 60, referring to *Čelebići* Appeal Judgement, para. 105, *Blaškić* Appeal Judgement, para. 175. Praljak further submits that the fact that they posed a threat to the security of the HVO does not invalidate in itself their allegiance to the HVO. Praljak's Appeal Brief, para. 60. See also Petković's Appeal Brief, para. 190; Ćorić's Appeal Brief, paras 87, 91.

¹⁰⁷⁰ Stojić's Reply Brief, para. 74, referring to Trial Judgement, Vol. 2, para. 1403; Petković's Appeal Brief, paras 189-190, referring to Ex. 4D01466, Petković's Final Trial Brief, para. 256; Ćorić's Appeal Brief, paras 87, 91-92, referring to Exs. 4D01466, P04756, P00514, p. 8, P00956, p. 14, Milivoj Petković, T. 49579 (17 Feb 2010), Witness CJ, T. 10952 (closed session) (30 Nov 2006), Slobodan Božić, T. 36379-36380 (4 Feb 2009), Josip Praljak, T. 14649-14651 (26 Feb 2007). Ćorić further argues that: (1) the Muslim HVO members could only be protected persons if they owed *no* allegiance to the party to the conflict in whose hands they found themselves and of which they were nationals; (2) the HVO cannot be an “enemy power” since it was one of the constituent members of the BiH armed forces; and (3) the Tribunal's jurisprudence requires that the Muslim HVO members had to be under the control of another party to the conflict, *i.e.* the ABiH, and the Trial Chamber did not fully analyse to whom they owed allegiance. Ćorić's Appeal Brief, paras 87, 89-91, referring to *Kordić and Čerkez* Appeal Judgement, para. 330, *Tadić* Appeal Judgement, para. 166.

¹⁰⁷¹ Stojić's Appeal Brief, para. 390; Stojić's Reply Brief, para. 75; Petković's Appeal Brief, paras 187-189; Ćorić's Appeal Brief, paras 85-87.

¹⁰⁷² Stojić's Reply Brief, para. 76, referring to *Sesay et al.* Trial Judgement, paras 1451-1453; Praljak's Appeal Brief, paras 61-62, referring to *Sesay et al.* Trial Judgement, para. 1451, Cassese, *International Criminal Law*, p. 82; Petković's Appeal Brief, paras 182-185, 196, referring to *Sesay et al.* Trial Judgement, paras 1451-1453, Cassese, *International Criminal Law*, p. 82; Appeal Hearing, AT. 519 (23 Mar 2017); Petković's Reply Brief, para. 40; Ćorić's Appeal Brief, paras 87, 91, 93-94, referring to, *inter alia*, *Sesay et al.* Trial Judgement, paras 1451-1453, Cassese, *International Criminal Law*, p. 82; Ćorić's Reply Brief, paras 28-29.

humanitarian law.¹⁰⁷³ In the alternative, he argues that if the HVO's Muslim members are considered to have "fallen into the hands of the enemy power" they should be deemed POWs under international humanitarian law and protected by Geneva Convention III, rather than under Geneva Convention IV.¹⁰⁷⁴

351. The Prosecution responds that the Trial Chamber did not err by deeming the HVO's Muslim members protected persons under Geneva Convention IV.¹⁰⁷⁵ First, citing the Commentary on Geneva Convention IV, the Prosecution contends that as members of the HVO, these men nevertheless had protected status, because the definition of protected persons under Geneva Convention IV "is a very broad one which includes members of the armed forces" and "[e]very person in enemy hands must have some status under international law".¹⁰⁷⁶ Second, the Prosecution submits that the Trial Chamber correctly applied the governing jurisprudence, interpreting "nationality" to mean "allegiance", and finding that the HVO's Muslim members fell into enemy hands when the HVO detained them, in light of their perceived loyalty to the ABiH.¹⁰⁷⁷ Further, the Prosecution points to evidence showing their indiscriminate and *en masse* arrest by the HVO and their treatment in detention, which more closely resembled that of other Muslim detainees than that of detained Croat HVO members.¹⁰⁷⁸

352. The Prosecution also responds that the Trial Chamber did not contradict itself by finding that the HVO's Muslim members were not POWs under Geneva Convention III because they did not belong to the armed forces of an enemy (the ABiH) as Article 4 of that Convention requires.¹⁰⁷⁹ It avers that the non-Tribunal authorities cited by Stojić, Praljak, Petković, and Ćorić purporting to show that international humanitarian law is not applicable to a State's treatment of its own soldiers

¹⁰⁷³ Petković's Appeal Brief, paras 181, 196.

¹⁰⁷⁴ Petković's Appeal Brief, paras 190-191, 197; Appeal Hearing, AT. 520-521 (23 Mar 2017); Petković's Reply Brief, para. 37. In this regard, Petković argues that the Trial Chamber erred by failing to first inquire whether the HVO's Muslim members detained by the HVO were denied POW status. See Petković's Reply Brief, paras 39-40. See *infra*, paras 373-374.

¹⁰⁷⁵ Prosecution's Response Brief (Stojić), paras 353-354; Prosecution's Response Brief (Praljak), paras 277-278; Prosecution's Response Brief (Petković), para. 144; Prosecution's Response Brief (Ćorić), para. 75.

¹⁰⁷⁶ Prosecution's Response Brief (Stojić), para. 355; Prosecution's Response Brief (Praljak), paras 279-281; Prosecution's Response Brief (Petković), paras 145-147; Appeal Hearing, AT. 551, 554 (23 Mar 2017); Prosecution's Response Brief (Ćorić), paras 77-79.

¹⁰⁷⁷ Prosecution's Response Brief (Stojić), paras 354, 356; Prosecution's Response Brief (Praljak), para. 278, referring to *Čelebići* Appeal Judgement, paras 83-84, *Tadić* Appeal Judgement, para. 166; Prosecution's Response Brief (Petković), para. 144; Prosecution's Response Brief (Ćorić), paras 76, 80. With respect to Ćorić, the Prosecution responds that he repeats the same arguments he made at trial without showing any error, which should be dismissed. Prosecution's Response Brief (Ćorić), paras 80, 82-83. See Ćorić's Appeal Brief, paras 89-90.

¹⁰⁷⁸ Prosecution's Response Brief (Stojić), para. 356; Prosecution's Response Brief (Praljak), paras 278, 282; Prosecution's Response Brief (Petković), para. 148; Appeal Hearing, AT. 551-556 (23 Mar 2017).

¹⁰⁷⁹ Prosecution's Response Brief (Stojić), para. 357; Prosecution's Response Brief (Praljak), paras 280-281; Prosecution's Response Brief (Petković), paras 146-147; Appeal Hearing, AT. 556-559 (23 Mar 2017); Prosecution's Response Brief (Ćorić), paras 78-80.

do not address the situation at hand, where detained soldiers are factually in the hands of the enemy.¹⁰⁸⁰

(b) Analysis

353. At the outset, the Appeals Chamber will address Stojić's, Praljak's, and Petković's arguments that only civilians are entitled to protection under Geneva Convention IV.¹⁰⁸¹ It considers that while Geneva Convention IV primarily concerns the protection of civilians, the plain language of Article 4 defines protected persons more broadly, encompassing all persons – not just civilians – who fall into the hands of a party to the conflict, or occupying power of which they are not nationals, and who are not protected under the other Geneva Conventions.¹⁰⁸² The Appeals Chamber thus dismisses this argument.

354. The Appeals Chamber now turns to Stojić's, Praljak's, Petković's, and Ćorić's arguments challenging the legal standard applied by the Trial Chamber to determine the status of the HVO's Muslim members and their protection under Geneva Convention IV. It reiterates its jurisprudence that:

depriving victims, who arguably are of the same nationality under domestic law as their captors, of the protection of the Geneva Conventions solely based on that national law would not be consistent with the object and purpose of the Conventions. Their very object could indeed be defeated if undue emphasis were placed on formal legal bonds [...]. It finds that Article 4 of Geneva Convention IV cannot be interpreted in a way that would exclude victims from the protected persons status merely on the basis of their common citizenship with a perpetrator. They are protected as long as they owe no allegiance to the Party to the conflict in whose hands they find themselves and of which they are nationals.¹⁰⁸³

The Appeals Chamber also recalls that it has held that:

already in 1949 the legal bond of nationality was not regarded as crucial and allowance was made for special cases. [In the case of World War II refugees], the lack of both allegiance to a State and diplomatic protection by this State was regarded as more important than the formal link of nationality. In the cases provided for in Article 4(2), in addition to nationality, account was taken of the existence or non-existence of diplomatic protection: nationals of a neutral State or a co-belligerent State are not treated as "protected persons" unless they are deprived of or do not enjoy diplomatic protection. In other words, those nationals are not "protected persons" as long as they benefit from the normal diplomatic protection of their State; when they lose it or in any event do not enjoy it, the Convention automatically grants them the status of "protected persons".¹⁰⁸⁴

¹⁰⁸⁰ Prosecution's Response Brief (Praljak), para. 282; Prosecution's Response Brief (Petković), para. 148; Prosecution's Response Brief (Ćorić), para. 85.

¹⁰⁸¹ See Stojić's Appeal Brief, para. 387; Praljak's Appeal Brief, para. 58; Praljak's Reply Brief, para. 114; Petković's Appeal Brief, paras 188, 191, 197; Petković's Reply Brief, paras 37-38.

¹⁰⁸² Geneva Convention IV, Art. 4(4). See also Commentary on Geneva Convention IV, pp. 50-51.

¹⁰⁸³ *Kordić and Čerkez* Appeal Judgement, para. 329 (internal references omitted). See also *Kordić and Čerkez* Appeal Judgement, para. 330.

¹⁰⁸⁴ *Tadić* Appeal Judgement, para. 165 (internal references omitted).



355. In this respect, the Appeals Chamber further notes that the allegiance analysis “hinging on substantial relations more than on formal bonds, becomes all the more important in present-day international armed conflicts [...] [where] ethnicity rather than nationality may become the grounds for allegiance”.¹⁰⁸⁵ In this case, the Trial Chamber correctly took into account the allegiance of the Muslim HVO members rather than merely considering their nationality.¹⁰⁸⁶ Moreover, to reach the conclusion that Muslim HVO members were protected by Geneva Convention IV from 30 June 1993 onwards, the Trial Chamber relied on the perceived allegiance of the Muslim HVO members by the HVO.¹⁰⁸⁷ Recalling that the detaining authority’s view of the victims’ allegiance has been considered a relevant factor by the Appeals Chamber,¹⁰⁸⁸ the Appeals Chamber considers that Stojić, Praljak, Petković, and Ćorić have failed to show an error on the part of the Trial Chamber.¹⁰⁸⁹

356. The Appeals Chamber notes Stojić’s, Petković’s, and Ćorić’s argument that the Trial Chamber failed to take into account other factors showing that the HVO viewed its Muslim members as belonging to the HVO.¹⁰⁹⁰ Recalling the relevant Trial Chamber findings, the Appeals Chamber considers that the Trial Chamber addressed Praljak’s, Petković’s, and Ćorić’s final briefs, and Petković’s Closing Arguments at trial, where it was argued that when placed in isolation by the HVO, the HVO Muslim members “did not forfeit their status as HVO soldiers”.¹⁰⁹¹ The Appeals Chamber further observes that the Trial Chamber also noted Ćorić’s argument that the HVO Muslim members, due to their membership in the HVO, owed allegiance to the authorities of the HZ(R) H-B.¹⁰⁹² The Appeals Chamber therefore considers that Stojić, Petković, and Ćorić have failed to show that the Trial Chamber ignored relevant factors allegedly showing that the HVO viewed its Muslim members as belonging to the HVO.¹⁰⁹³

357. With regard to Ćorić’s related argument that the Trial Chamber ignored evidence showing that the HVO considered Muslim members of the HVO to be members of the HVO itself and not of

¹⁰⁸⁵ *Tadić* Appeal Judgement, para. 166. See *Čelebići* Appeal Judgement, paras 83-84.

¹⁰⁸⁶ Trial Judgement, Vol. 3, para. 608.

¹⁰⁸⁷ Trial Judgement, Vol. 3, paras 609-611.

¹⁰⁸⁸ *Čelebići* Appeal Judgement, para. 98.

¹⁰⁸⁹ Nor have they shown any cogent reason for the Appeals Chamber to depart from the allegiance analysis jurisprudence. See *Aleksovski* Appeal Judgement, paras 107-109.

¹⁰⁹⁰ Stojić’s Reply Brief, para. 74, referring to Trial Judgement, Vol. 2, para. 1403; Petković’s Appeal Brief, paras 189-190, referring to Ex. 4D01466, Petković’s Final Brief, para. 256; Ćorić’s Appeal Brief, paras 87, 91, referring to Exs. 4D01466, P04756, Milivoj Petković, T. 49579 (17 Feb 2010), Witness CJ, T. 10952 (closed session) (30 Nov 2006).

¹⁰⁹¹ See Trial Judgement, Vol. 3, para. 594, referring to Praljak’s Final Brief, paras 85, 96, Petković’s Final Brief, paras 255-260, referring to Milivoj Petković, T. 49579 (17 Feb 2010), Ex. 4D01466, Petković Closing Arguments, T(F). 52545, 52549-52550, 52558 (21 Feb 2011), Ćorić’s Final Brief, paras 352-368, referring to Exs. 4D01466, P04756.

¹⁰⁹² See Trial Judgement, Vol. 3, para. 593, referring to Ćorić’s Final Brief, paras 352-360, referring to Exs. 4D01466, P04756.

¹⁰⁹³ See Trial Judgement, Vol. 3, paras 608-611.

the ABiH,¹⁰⁹⁴ the Appeals Chamber observes that the arguments that the Trial Chamber referred to, as just discussed, also identified supporting evidence.¹⁰⁹⁵ The Appeals Chamber notes that some of the evidence Ćorić claimed was ignored, purporting to show that the HVO distinguished between detained Muslim HVO members and POWs, was also included in the arguments the Trial Chamber referred to.¹⁰⁹⁶ In any event, the Appeals Chamber considers that Ćorić has failed to explain how this evidence showing that “military prisoners” were separated from the “enemy POWs” while in detention pertained to HVO Muslim members.¹⁰⁹⁷ It therefore dismisses Ćorić’s argument.

358. Turning to Stojić’s, Praljak’s, Petković’s, and Ćorić’s arguments relying on non-Tribunal authorities that war crimes cannot be committed by soldiers against members of their own military force, the Appeals Chamber first recalls that it is not bound by the findings of other courts – domestic, international, or hybrid.¹⁰⁹⁸ The Appeals Chamber also considers that these non-ICTY cases are inapposite to the case at hand. Although they relate to whether war crimes can be committed by service personnel against members of their own military force,¹⁰⁹⁹ none of these cases apply the allegiance criterion developed in ICTY jurisprudence to determine whether the service personnel had fallen into the hands of a party to the conflict, or occupying power of which they are not nationals, as required under Geneva Convention IV.¹¹⁰⁰ Moreover, the Appeals Chamber finds that Stojić’s, Praljak’s, Petković’s, and Ćorić’s arguments fall short of demonstrating that there are cogent reasons for the Appeals Chamber to depart from its established jurisprudence in this regard.¹¹⁰¹ Accordingly, these arguments are dismissed. Further, the Appeals Chamber therefore dismisses Stojić’s, Praljak’s, Petković’s, and Ćorić’s challenges to the Trial Chamber’s application of international humanitarian law in finding that the HVO’s Muslim members were protected under Geneva Convention IV.¹¹⁰²

¹⁰⁹⁴ See Ćorić’s Appeal Brief, para. 92, referring to Exs. P00514, p. 8, P00956, p. 14, Milivoj Petković, T. 49579 (17 Feb 2010), Slobodan Božić, T. 36379-36380 (4 Feb 2009), Josip Praljak, T. 14649-14651 (26 Feb 2007).

¹⁰⁹⁵ See Trial Judgement, Vol. 3, paras 593-594, referring to Petković’s Final Brief, paras 255, 257, referring to Exs. P00514, p. 8 (Instruction for the Operation of the Central Military Prison of the Croatian Defence Council, 22 September 1992), P00956, p. 14 (Military Police Report, 26 December 1992), Milivoj Petković, T. 49579 (17 Feb 2010). See also *supra*, para. 356.

¹⁰⁹⁶ See Exs. P00514, p. 8 (Instruction for the Operation of the Central Military Prison of the Croatian Defence Council, 22 September 1992), P00956, p. 14 (Military Police Report, 26 December 1992), Milivoj Petković, T. 49579 (17 Feb 2010).

¹⁰⁹⁷ Cf. Ćorić’s Appeal Brief, para. 92, referring to Exs. P00514, p. 8, P00956, p. 14, Milivoj Petković, T. 49579 (17 Feb 2010), Slobodan Božić, T. 36379-36380 (4 Feb 2009), Josip Praljak, T. 14649-14651 (26 Feb 2007); Trial Judgement, Vol. 3, paras 593-594, referring to Petković’s Final Brief, paras 255, 257, referring to Exs. P00514, p. 8 (Instruction for the Operation of the Central Military Prison of the Croatian Defence Council, 22 September 1992), P00956, p. 14 (Military Police Report, 26 December 1992), Milivoj Petković, T. 49579 (17 Feb 2010).

¹⁰⁹⁸ *Stanišić and Župljanin* Appeal Judgement, para. 598; *Popović et al.* Appeal Judgement, para. 1674. See also *Dorđević* Appeal Judgement, para. 50.

¹⁰⁹⁹ See *Pilz* Case, p. 391; *Motosuke* Case, p. 682; *Sesay et al.* Trial Judgement, paras 1388-1396, 1451-1453 & fn. 2754. See also Cassese, *International Criminal Law*, p. 82, referring to the *Pilz* and *Motosuke* cases.

¹¹⁰⁰ See Geneva Convention IV, Art. 4(4). See also Commentary on Geneva Convention IV, pp. 50-51.

¹¹⁰¹ See *Aleksovski* Appeal Judgement, paras 107-109.

¹¹⁰² See also *supra*, para. 349.

359. As to Stojić's, Petković's, and Ćorić's allegation that the Trial Chamber contradicted itself by finding that the HVO's Muslim members detained by the HVO were, on one hand, not "[m]embers of the armed forces of a Party to the conflict" who had "fallen into the power of the enemy" under Geneva Convention III, but on the other, that they had "indeed fallen into the hands of the enemy power", under Geneva Convention IV, the Appeals Chamber considers that the Trial Chamber's findings, read in context, are not contradictory. The Appeals Chamber finds that the Trial Chamber reasonably concluded that the Muslim HVO members could not be deemed POWs within the strict meaning of Geneva Convention III as they did not formally belong to the ABiH, the "armed forces of a Party other than the detaining Party".¹¹⁰³ They could nevertheless be protected under Geneva Convention IV because they were *in fact* in enemy hands, and "[e]very person in enemy hands must have some status under international law [...]. There is no intermediate status; nobody in enemy hands can be outside the law."¹¹⁰⁴ For these same reasons, Petković's alternative argument that the HVO's Muslim members should be deemed POWs under Geneva Convention III is dismissed.

(c) Conclusion

360. For the foregoing reasons, the Appeals Chamber affirms the Trial Chamber's ruling that the HVO's Muslim members who were detained by the HVO were protected persons under Geneva Convention IV. Consequently, the Appeals Chamber dismisses Stojić's ground of appeal 42, Praljak's ground of appeal 3, Petković's sub-ground of appeal 5.2.1 in part, and Ćorić's ground of appeal 4.

2. Muslim men of military age (Praljak's Ground 4, Petković's Sub-grounds 5.2.1.1 in part, 5.2.1.2, and 5.2.1.4, Ćorić's Ground 5, and Pušić's Sub-ground 7.1)

361. The Trial Chamber held that the Muslim men of military age, even if they were part of the reserves of the armed forces of BiH under national law, did not fit the definition of members of armed forces within the meaning of the applicable international humanitarian law.¹¹⁰⁵ It reasoned that a reservist becomes a member of the armed forces once he has been mobilised and has taken up active duty.¹¹⁰⁶ It held that it is only then that a member of the reserves acquires the status of combatant and becomes a POW if he falls into the hands of the opposing party during an

¹¹⁰³ See Trial Judgement, Vol. 3, paras 602-605. See also *supra*, paras 354-355; Stojić's Appeal Brief, para. 390; Stojić's Reply Brief, para. 75; Petković's Appeal Brief, paras 187-189; Ćorić's Appeal Brief, paras 85-87. The Appeals Chamber dismisses Ćorić's argument that the HVO cannot be an enemy power as it has affirmed the Trial Chamber's findings that the HVO was under the overall control of Croatia and was engaged in an international armed conflict with the ABiH. See *supra*, paras 234-240, 276-297.

¹¹⁰⁴ Commentary on Geneva Convention IV, p. 51.

¹¹⁰⁵ See Trial Judgement, Vol. 3, paras 616-618.

international armed conflict.¹¹⁰⁷ The Trial Chamber further reasoned that from that moment on, until he is demobilised, a member of the reserves is not a civilian.¹¹⁰⁸ It therefore concluded that a party to an international conflict cannot justify the detention of a group of men solely on the ground that they are of military age and that, at the outbreak of war, national law required the general mobilisation of the men in this age group.¹¹⁰⁹ According to the Trial Chamber, such a party must verify whether the person has actually mobilised and entered into active duty.¹¹¹⁰

(a) Arguments of the Parties

362. Praljak, Petković, Ćorić, and Pušić submit that the Trial Chamber erred when it found that military-aged Muslim men were not members of the armed forces under international humanitarian law.¹¹¹¹ Praljak, Petković, and Ćorić argue that the Trial Chamber failed to consider that: (1) BiH law regarded the reserve forces as a component of the ABiH; and (2) pursuant to a general mobilisation order,¹¹¹² the reservists were in fact mobilised as ABiH members which meant, under international humanitarian law, that they became members of the armed forces.¹¹¹³ Petković and Ćorić contend that the Trial Chamber failed to consider that non-combatants, such as the military-aged Muslim men detained by the HVO, may nevertheless be members of the armed forces and that it was necessary to consider national legislation to determine when reservists become members of the armed forces.¹¹¹⁴

363. Praljak, Petković, and Ćorić also submit that the reservists' obligations under BiH law, in addition to other evidence that both Bosnian Muslim and HVO authorities treated the reservists as members of the ABiH, create a strong presumption of their incorporation into the ABiH and that the Trial Chamber failed to apply the proper burden of proof by not requiring the Prosecution to prove

¹¹⁰⁶ See Trial Judgement, Vol. 3, para. 619.

¹¹⁰⁷ See Trial Judgement, Vol. 3, para. 619.

¹¹⁰⁸ See Trial Judgement, Vol. 3, para. 619.

¹¹⁰⁹ See Trial Judgement, Vol. 3, para. 620.

¹¹¹⁰ See Trial Judgement, Vol. 3, para. 620.

¹¹¹¹ Praljak's Appeal Brief, paras 64-68; Appeal Hearing, AT. 472 (22 Mar 2017); Petković's Appeal Brief, paras 200-202, 211; Petković's Reply Brief, para. 43; Ćorić's Appeal Brief, paras 95-100; Pušić's Appeal Brief, paras 228-229. Pušić adopts the Judge Antonetti Dissent on this issue. See Pušić's Appeal Brief, para. 229.

¹¹¹² See Praljak's Appeal Brief, para. 66, referring to Ex. 4D01164; Petković's Appeal Brief, para. 201, referring to Exs. 4D01030, 4D00412, 4D01731, para. 119, 4D01164; Ćorić's Appeal Brief, paras 97-98, referring to, *inter alia*, Exs. 1D00349, 4D01030, 4D00412, 4D01731, para. 64, 4D01164.

¹¹¹³ Praljak's Appeal Brief, paras 65-66; Petković's Appeal Brief, paras 200-201; Petković's Reply Brief, paras 41-42; Ćorić's Appeal Brief, paras 95-98, 100.

¹¹¹⁴ Petković's Appeal Brief, paras 199-200, referring to the Hague Regulations, Art. 3, Henckaerts and Doswald-Beck, *Customary International Humanitarian Law*, p. 14. In this context, Petković argues that the Trial Chamber did not provide a reasoned opinion about the difference between combat and non-combat members of the armed forces and the right of non-combatants to be given POW status if imprisoned. Petković's Appeal Brief, para. 200; Ćorić's Appeal Brief, para. 100, referring to the Hague Regulations, Art. 3, Henckaerts and Doswald-Beck, *Customary International Humanitarian Law*, p. 13. See also Praljak's Appeal Brief, para. 65 (arguing that members of the armed forces and the TO residing in their homes remained combatants whether or not they were in combat).

that the reservists were civilians.¹¹¹⁵ In this regard, Petković asserts that the Trial Chamber erred by repeatedly referring to Muslim men of military age as “men who did not belong to any armed force” without applying the appropriate evidentiary standard.¹¹¹⁶

364. The Prosecution responds that the Trial Chamber properly determined that the military-aged Muslim men, even if reservists under national law, retained their civilian status.¹¹¹⁷ The Prosecution submits that consistent with customary international law, the Trial Chamber correctly focused on whether the men had actually been incorporated into the ABiH and found that they had not been.¹¹¹⁸ Finally, the Prosecution asserts that the Trial Chamber properly applied the applicable burden of proof and correctly distinguished between civilians and members of the armed forces.¹¹¹⁹

(b) Analysis

365. The Appeals Chamber notes that Praljak’s, Petković’s, Ćorić’s, and Pušić’s challenges is essentially that the Trial Chamber failed to consider that, pursuant to a general mobilisation order, Muslim men of military age were reserve members of the ABiH, and therefore members of the armed forces, protected under Geneva Convention III.

366. At the outset, the Appeals Chamber recalls that the the Trial Chamber considered the arguments made by Petković at trial, and some of the evidence cited by him, Praljak, and Ćorić in their respective final trial briefs, purporting to show that reserve forces were part of the ABiH, and that reservists were mobilised as ABiH members.¹¹²⁰ The Appeals Chamber notes that one of the pieces of evidence that Petković and Ćorić relied upon is the “Decree Law on Compulsory Military Service”, published on 1 August 1992 (“Decree on Compulsory Military Service”), which states

¹¹¹⁵ Praljak’s Appeal Brief, paras 66-67; Praljak’s Reply Brief, paras 115-116; Petković’s Appeal Brief, paras 180, 201-203; Ćorić’s Appeal Brief, paras 99-100. Petković also notes that the Trial Chamber acknowledged, when considering the HVO, that conscripts were members of the armed forces. See Petković’s Appeal Brief, para. 204.

¹¹¹⁶ Petković’s Appeal Brief, paras 178-180. Petković raises the same argument with respect to the HVO’s Muslim members, which is, however, dismissed in light of the Appeals Chamber’s foregoing analysis on the status of the HVO’s Muslim members. See *supra*, paras 348-360.

¹¹¹⁷ Prosecution’s Response Brief (Praljak), para. 284; Prosecution’s Response Brief (Petković), para. 149; Prosecution’s Response Brief (Ćorić), para. 87.

¹¹¹⁸ Prosecution’s Response Brief (Praljak), paras 284-286; Prosecution’s Response Brief (Petković), paras 149-151; Prosecution’s Response Brief (Ćorić), para. 88. The Prosecution contends that the HVO itself did not treat the military-aged Muslim men as POWs, as it subjected them to the same treatment as the Muslim civilian detainees. See Prosecution’s Response Brief (Praljak), para. 287; Prosecution’s Response Brief (Petković), para. 152; Prosecution’s Response Brief (Ćorić), para. 89.

¹¹¹⁹ Prosecution’s Response Brief (Praljak), para. 283; Prosecution’s Response Brief (Petković), paras 140-141; Prosecution’s Response Brief (Ćorić), para. 92.

¹¹²⁰ See Trial Judgement, Vol. 3, para. 612, referring to the “RBIH’s Presidency’s Order for general mobilisation on 20 June 1992”, *i.e.* Ex. 4D01164. See also Trial Judgement, Vol. 3, paras 612-614 & fns 1222-1225, referring to, *inter alia*, Petković’s Final Trial Brief, paras 261-275, referring to Exs. 1D00349, 4D01030, 4D00412, 4D01731, 4D01164, Petković Closing Arguments, T. (F) 52551-52556 (21 Feb 2011), referring to, *inter alia*, Exs. 4D00412, 4D01030, 1D00349, Petković’s Rejoinder, T. (F) 52929-52930 (2 Mar 2011), referring to Exs. 4D00412, 4D01164. The Appeals Chamber also notes that the Trial Chamber refers to Ex. 4D01731 in the previous sub-section of the

that “all citizens of [BiH] who are fit to work shall be subject to compulsory military service”.¹¹²¹ It defines “compulsory military service” as “the recruitment obligation, the obligation to complete military service and the obligation to serve in the reserve forces.”¹¹²² However, the Appeals Chamber considers that this same Decree on Compulsory Military Service also defines several categories of citizens of BiH who are, or may be, excused from military service regardless of their age.¹¹²³ Similarly, the “Decree Law on Service in the Army of the Republic of Bosnia and Herzegovina”, also published on 1 August 1992, referred to by Petković and Ćorić, states that “military personnel shall be understood to mean active military personnel, soldiers and persons in the reserve force as long as they are on military duty in the Army”.¹¹²⁴ In other words, even according to the evidence referred to by Petković and Ćorić, military-aged Muslim men could not be considered as a group belonging to the ABiH. The Appeals Chamber therefore considers that Praljak, Petković, Ćorić, and Pušić fail to show that in the circumstances of this case no reasonable trier of fact could have concluded that military-aged Muslim men – as a general category – did not belong to the ABiH.

367. Further, the Appeals Chamber considers that the Trial Chamber made findings on the status of all Muslim men detained, *e.g.*, the Trial Chamber categorised the Muslims detained as elderly men, boys of 14 years of age or younger, HVO Muslim members, ABiH members, and “politicians or teachers who were not members of any armed forces”.¹¹²⁵ Moreover, where relevant, it also

Trial Judgement, in the context of the discussion on the status of the HVO’s Muslim members. See Trial Judgement, Vol. 3, fn. 1218.

¹¹²¹ Ex. 4D01030, Art. 2.

¹¹²² Ex. 4D01030, Art. 4.

¹¹²³ Ex. 4D01030, Art. 25(4). See also Ex. 4D01030, Arts 5-7, 24-26. For example “a person who has graduated from the School of Internal Affairs lasting at least two years and has worked as a policemen for at least two years”. Ex. 4D01030, Art. 25(4).

¹¹²⁴ Ex. 4D00412, Art. 3. The Appeals Chamber further notes that the “Order amending the Order of the War Presidency of Jablanica Municipality Assembly” refers to a general mobilisation in that municipality of all people between the ages of 15 and 65 for military units but also for labour units and civilian protection. See Ex. 1D00349. The “Order Proclaiming General Public Mobilisation in the Territory of the Republic of Bosnia and Herzegovina” of 20 June 1992 refers to the mobilisation of “military conscripts” on one hand, and the mobilisation of all “remaining citizens”, both men and women, to report to the civil protection units on the other. See Ex. 4D01164, Arts 1-2. Moreover, the Appeals Chamber notes that Defence expert Witness Milan Gorjanc’s Military Expert Report also states that even though “[f]rom that moment on [referring to Ex. 4D01164, dated 20 June 1992] all men became members of the armed forces of [BiH]. It is understandable that due to shortage of weapons and equipment, as well as initial problems in establishing and organising a [BiH] wartime army, not all men fit for military service and conscripts could be actively engaged in the armed forces. Those who were not immediately actively engaged in combat operations were in the reserve or performed other tasks important for the defence of the country.” Ex. 4D01731, para. 119.

¹¹²⁵ See, *e.g.*, Trial Judgement, Vol. 2, paras 1511 (finding that among the detainees in the Heliodrom were people under the age of 15 and over the age of 60 and that “due to their age, they did not belong to any armed force”), 1809 (finding that in the days after 9 May 1993, many Muslim detainees, for the most part members of the ABiH or the TO, again arrived at Ljubuški Prison from Mostar), 1816 (finding that, in September 1993, many Muslim intellectuals and prominent figures were transferred to Ljubuški Prison, which had become a detention site for “persons of interest” or “of importance”), 1915-1917, 1921 (finding that in April and July 1993, in Stolac Municipality, the HVO arrested and detained HVO Muslim members, members of the ABiH, and civilians, such as an economist, teachers, and the Director of Koštana Hospital, Dr. Kapić). See also Trial Judgement, Vol. 3, paras 1020-1027 (Mostar Municipality), 1030 (Ljubuški Municipality and Ljubuški Prison), 1032 (finding that with regard to the Muslim men held at the Vitina-Otok Camp, in July and August 1993, the HVO “detained Muslim men between 20 and 60 years of age, regardless of

considered that some of the men who were not members of the armed forces were accused of illegal activity related to the conflict.¹¹²⁶ Nonetheless, the Appeals Chamber considers that even in this latter case, Praljak, Petković, Ćorić, and Pušić have not demonstrated that a reasonable trier of fact could not have concluded that the HVO failed to carry out an individual assessment of the military-aged Muslim men within a reasonable time, as required by law. In this regard, the Appeals Chamber recalls that it has previously held that:

The detaining power has a reasonable time to determine whether a particular person is a civilian and further to determine whether there are reasonable grounds to believe that the security of the detaining power is threatened [...]. The assessment that each civilian taken into detention poses a particular risk to security of the State must be made on an individual basis. The Appeals Chamber, in the Čelebići Appeal Judgement, accepted that some reasonable time is given to the detaining power to determine, which of the detainees is a threat.¹¹²⁷

368. Moreover, the Appeals Chamber observes that the Trial Chamber made other relevant findings that demonstrate that the military-aged Muslim men were arrested *en masse* together with Muslim women, children, and the elderly, and *all* Muslims were detained and treated in the same manner, irrespective of their status.¹¹²⁸ Based on the foregoing, the Appeals Chamber considers that Petković and Ćorić have failed to show an error on the part of the Trial Chamber that invalidates the conclusion that the military-aged Muslim men could not be considered as a group as members of the armed forces. It therefore dismisses their arguments.

369. With regard to Praljak's, Petković's, and Ćorić's arguments that the Trial Chamber relieved the Prosecution from its burden of proving the civilian status of the military-aged Muslim men, the Appeals Chamber recalls that the Trial Chamber held that the Prosecution carried the burden of proving civilian status, and in the absence of such evidence, it stated that it would find, *in dubio pro reo*, that such persons are combatants.¹¹²⁹ In fact, when the evidence was insufficient to show what the circumstances of the military-aged Muslim men's detention were, the Trial Chamber did not find that the HVO unlawfully imprisoned civilians, *e.g.*, in October 1992 in Prozor Municipality, and between August 1993 and January 1994 in the Vojno Detention Centre.¹¹³⁰ The Appeals Chamber thus rejects Praljak's, Petković's, and Ćorić's arguments.

whether or not they were members of the ABiH"), 1034-1036, 1038 (finding that "Muslim men who were members of the HVO or the ABiH, or were not members of any armed forces, were arrested by the HVO in the Municipality of Stolac and held at Koštana Hospital between May and October 1993"), 1039, 1041.

¹¹²⁶ See Trial Judgement, Vol. 2, para. 1917 (noting evidence showing that some of the prominent Muslim men detained in April 1993 had been accused of setting up barricades in Stolac in March 1992, in order to prevent the leaders of the Stolac HVO from entering the town).

¹¹²⁷ *Kordić and Čerkez* Appeal Judgement, para. 609.

¹¹²⁸ See, *e.g.*, Trial Judgement, Vol. 2, paras 894-895, 1876-1877, 1920-1921, 2082-2083, 2170-2171, 2174, Vol. 3, paras 970-972, 974-975, 980, 984, 986-987, 995, 1003-1004, 1006-1007, 1014-1016, 1020-1023, 1025-1028, 1030-1033, 1035-1036, 1038-1042, 1049-1058.

¹¹²⁹ See Trial Judgement, Vol. 3, para. 621.

¹¹³⁰ See Trial Judgement, Vol. 3, paras 1000, 1006, 1028.

(c) Conclusion

370. For the foregoing reasons, the Appeals Chamber finds that Praljak, Petković, Ćorić, and Pušić have failed to show that no reasonable trier of fact could have reached the same conclusion as the Trial Chamber. Consequently, the Appeals Chamber dismisses Praljak's ground of appeal 4, Petković's sub-ground of appeal 5.2.1 in part, Ćorić's ground of appeal 5, and Pušić's sub-ground of appeal 7.1, insofar as they relate to the military-aged Muslim men.

3. Defences to detention (Petković Sub-grounds 5.2.1.1, 5.2.1.3, 5.2.1.4, all in part)

371. The Trial Chamber found that following the attack on the HVO Tihomir Mišić Barracks on 30 June 1993, which was executed by the ABiH in co-operation with HVO Muslim soldiers who had deserted, Petković issued an order ("30 June 1993 Order") to the South-East Herzegovina Operative Zone (HVO) ("South-East OZ"), indicating that all HVO Muslim members should be disarmed and isolated, and that all the military-aged Muslim men residing in the South-East OZ should also be isolated.¹¹³¹ The Trial Chamber further found that as a result of the 30 June 1993 Order, the HVO proceeded with a widespread and massive campaign to arrest Muslim men in and around the town of Mostar, whether members of an armed force or not.¹¹³²

372. The Trial Chamber rejected the argument that the HVO had a right to isolate all the HVO Muslims for security reasons because such limitation on the liberty "can result only from individual measures that must be determined on a case by case basis and cannot in any case be decided generally in respect to an entire segment of the population".¹¹³³ It also rejected the argument that military-aged Muslim men could be detained as a group,¹¹³⁴ and concluded that Petković "ordered the arrest of men who did not belong to any armed force".¹¹³⁵

(a) Arguments of the Parties

373. Petković raises two arguments regarding the HVO's detention of protected persons. First, Petković argues that even if the two categories of detainees – the HVO's Muslim members and military-aged Muslim men – were protected persons under Geneva Convention IV, evidence highlights that their detention was nevertheless necessary for security reasons and thus justified

¹¹³¹ See Trial Judgement, Vol. 2, paras 881-882, 890-891, Vol. 4, para. 737, referring to Ex. P03019.

¹¹³² See Trial Judgement, Vol. 2, paras 890-895, Vol. 4, paras 737-738, 757-759.

¹¹³³ Trial Judgement, Vol. 3, para. 599. See also Trial Judgement, Vol. 2, paras 894-895, Vol. 4, paras 737-738, 757-759.

¹¹³⁴ See Trial Judgement, Vol. 3, para. 620. See also Trial Judgement, Vol. 2, paras 894-895, Vol. 4, paras 737-738, 757-759.

¹¹³⁵ Trial Judgement, Vol. 4, para. 738.

under Article 42 of Geneva Convention IV.¹¹³⁶ Second, Petković contends that under the Tribunal's jurisprudence, a detaining authority is permitted to hold individuals while it determines their status and risk, and that he was only responsible for the initial decision to lawfully detain the military-aged Muslim men but not for their subsequent continuous detention when it was required that a case-by-case risk assessment be carried out.¹¹³⁷

374. The Prosecution responds that Petković's blanket order to arrest all able-bodied Muslim men was illegal and that the Trial Chamber properly rejected Petković's claim that the detention of military-aged Muslim men was a legitimate security measure.¹¹³⁸ Further, in the Prosecution's view, the evidence before the Trial Chamber confirmed the critical distinction, in line with customary international law, between a general call for mobilisation and the separate act of recruitment into the ABiH, and that the military-aged Muslim men were not treated as ABiH POWs.¹¹³⁹ Moreover, none of the Muslim prisoners were afforded the possibility to challenge their detention, and regardless of their status, no individualised inquiry was made to determine whether they posed a security risk.¹¹⁴⁰

(b) Analysis

375. According to Article 42 of Geneva Convention IV, protected persons may be detained "only if the security of the Detaining Power makes it absolutely necessary".¹¹⁴¹ While protected persons may be detained when it is absolutely necessary, the Appeals Chamber recalls that such deprivation of liberty is "permissible only where there are reasonable grounds to believe that the security of the State is at risk",¹¹⁴² based on "an assessment that each civilian taken into detention poses a *particular risk* to the security of the State".¹¹⁴³ As previously held by the Appeals Chamber:

To hold the contrary would suggest that, whenever the armed forces of a State are engaged in armed conflict, the entire civilian population of that State is necessarily a threat to security and therefore may be detained. It is perfectly clear from the provisions of Geneva Convention IV referred to above that there is no such blanket power to detain the entire civilian population of a party to the conflict in such circumstances.¹¹⁴⁴

¹¹³⁶ Petković's Appeal Brief, paras 192-195, 198, 205-207; Appeal Hearing, AT. 518-519 (23 Mar 2017).

¹¹³⁷ Petković's Appeal Brief, paras 208-210, referring to *Kordić and Čerkez* Appeal Judgement, paras 608-609, 615, 623; Appeal Hearing, AT. 485, 519-521 (23 Mar 2017); Petković's Reply Brief, para. 44.

¹¹³⁸ Prosecution's Response Brief (Petković), paras 149-150, 153; Appeal Hearing, AT. 535-536 (23 Mar 2017).

¹¹³⁹ Prosecution's Response Brief (Petković), paras 151-152.

¹¹⁴⁰ Prosecution's Response Brief (Petković), paras 152-153; Appeal Hearing, AT. 536 (23 Mar 2017).

¹¹⁴¹ Geneva Convention IV, Art. 42.

¹¹⁴² *Čelebići* Appeal Judgement, para. 321.

¹¹⁴³ *Čelebići* Appeal Judgement, para. 327 (emphasis in original).

¹¹⁴⁴ *Čelebići* Appeal Judgement, para. 327 (emphasis in original).

Thus, without such assessment, an individual may not be detained solely because he or she is a national of, or aligned with, an enemy party.¹¹⁴⁵

376. The Appeals Chamber recalls that the Trial Chamber found that the detention of HVO Muslim members and the military-aged Muslim men could not be justified solely on the concerns regarding the group¹¹⁴⁶ and, therefore, concluded that Petković's order to *arrest* these groups of Muslim men was not in compliance with Article 42 of Geneva Convention IV.¹¹⁴⁷ The Appeals Chamber therefore considers that Petković has failed to demonstrate that no reasonable trier of fact could have found that the detention of HVO Muslim members and the military-aged Muslim men following his 30 June 1993 Order was justified.

377. The Appeals Chamber highlights that the Trial Chamber's conclusion that the arrest of Muslim men following Petković's 30 June 1993 Order was not justified by military necessity, as set forth in Article 42, is also supported by its finding that boys around the age of 14 and men over the age of 60 were arrested as well.¹¹⁴⁸ Moreover, the Trial Chamber's more general findings with regard to the arrest and detention of civilians by the HVO in the different municipalities, including Mostar, demonstrate that civilians were arrested and detained "irrespective of their status"¹¹⁴⁹ or "without taking their civilian status into consideration",¹¹⁵⁰ that the "HVO did not hold these civilians because they posed a threat to the security of its armed forces",¹¹⁵¹ and that they included women, children, the elderly,¹¹⁵² and prominent Muslims.¹¹⁵³ The lack of legal basis for the arrest is reinforced by the Trial Chamber's findings that the HVO authorities did not make any individual assessment of the security reasons that could have led to their detention and that the detained Muslim civilians did not have the possibility of challenging their detention with the relevant authorities.¹¹⁵⁴ Petković has failed to show that no reasonable trier of fact could have found that the detention of the HVO Muslim members and military-aged Muslim men was not justified.¹¹⁵⁵

¹¹⁴⁵ *Čelebići Appeal Judgement*, para. 327. See Geneva Convention IV, Arts 42-43.

¹¹⁴⁶ See Trial Judgement, Vol. 3, para. 610.

¹¹⁴⁷ See Trial Judgement, Vol. 1, paras 134-135, Vol. 3, paras 599, 620. The Appeals Chamber recalls that it rejects elsewhere in the Judgement the argument that the Trial Chamber erred in finding that detention could not be justified solely on the grounds of HVO membership (in the case of the HVO's Muslim members), reservist status, or a legal obligation to mobilise (in the case of military-aged Muslim men). See *supra*, paras 360, 370; *infra*, paras 2384-2385, 2462 & fn. 8179.

¹¹⁴⁸ See Trial Judgement, Vol. 2, para. 895.

¹¹⁴⁹ Trial Judgement, Vol. 3, paras 1012, 1014, 1025, 1030, 1032, 1035-1036, 1039, 1041, 1050, 1054, 1057-1058.

¹¹⁵⁰ Trial Judgement, Vol. 3, para. 103.

¹¹⁵¹ Trial Judgement, Vol. 3, para. 1007.

¹¹⁵² Trial Judgement, Vol. 3, paras 1011, 1014, 1020, 1030.

¹¹⁵³ Trial Judgement, Vol. 3, para. 1035.

¹¹⁵⁴ See, e.g., Trial Judgement, Vol. 3, paras 1012, 1014, 1021, 1025, 1030, 1032, 1035-1036, 1038-1039, 1041, 1050, 1054, 1057-1058.

¹¹⁵⁵ Petković refers to several exhibits in support of his argument that the Trial Chamber ignored all evidence that proves that HVO Muslims were disarmed and isolated for justified security reasons. Petković's Appeal Brief, para. 193. However, the Appeals Chamber considers that Petković has failed to show that the Trial Chamber ignored the evidence

378. The Appeals Chamber further notes that Petković's argument, that the Trial Chamber erred when it failed to distinguish between the initial and continuing detention of the HVO's Muslim members and military-aged Muslim men, is premised on an erroneous understanding of the Trial Chamber's findings. The Trial Chamber did not find that the initial detention of the protected persons was legal and, therefore, it was not necessary for it to distinguish between their initial detention and the legality of the continued detention.¹¹⁵⁶ The Appeals Chamber thus rejects this argument.

(c) Conclusion

379. The Appeals Chamber therefore dismisses Petković's sub-grounds of appeal 5.2.1.1, 5.2.1.3, 5.2.1.4, all in part, as far as they concern his defences to the detention of the HVO's Muslim members and military-aged Muslim men.

D. Conclusion

380. The Appeals Chamber thus rejects the Appellants' challenges that the chapeau requirements for the application of Article 2 of the Statute were not met. The Appeals Chamber is satisfied that the Trial Chamber did not err in applying Article 2 for the purposes of convicting the Appellants for wilful killing, inhuman treatment, the extensive destruction and appropriation of property not justified by military necessity and carried out unlawfully and wantonly, unlawful deportation, the unlawful transfer of civilians, and the unlawful confinement of civilians as "grave breaches" under the Geneva Conventions.

381. Further, the Appeals Chamber vacates the Appellants' convictions under Counts 19 and 22, with respect to Vareš Municipality, for extensive destruction and appropriation of property not justified by military necessity and carried out unlawfully and wantonly as grave breaches of the Geneva Conventions. However, it declines to enter convictions under Count 20, with respect to Vareš Municipality, for wanton destruction of property and plunder as violations of the laws or customs of war. Finally, Stojić's, Praljak's, Petković's, and Ćorić's challenges to the Trial Chamber's findings on the protected status of persons under the Geneva Conventions have failed.

or that it could have affected the Trial Chamber's finding regarding the illegality of detaining the HVO Muslims based on security risks that are attached to the group rather than to the individual.

¹¹⁵⁶ The Appeals Chamber recalls that an initially *lawful* internment can become unlawful if the detaining party does not respect the basic procedural rights of the detained persons and does not establish an appropriate court or administrative board as prescribed in Article 43 of Geneva Convention IV. See *Čelebići* Appeal Judgement, paras 320, 328.

382. Based on the foregoing, the Appeals Chamber dismisses: (1) Prlić's grounds of appeal 19 and 20; (2) Stojić's grounds of appeal 42, 54, and 55; (3) Praljak's grounds of appeal 1, 2, 3, and 4; (4) Petković's sub-grounds of appeal 5.2.1, 7.1, and 7.2; (5) Ćorić's grounds of appeal 3, 4, and 5; and (6) Pušić's ground of appeal 7 in part.



VII. CHALLENGES TO THE UNDERLYING CRIMES

A. Introduction

383. The Trial Chamber found that members of the JCE, including the Appellants, implemented an entire system for deporting the Muslim population of the HR H-B, a system which consisted of the commission of crimes by HVO forces from January 1993 to April 1994, namely: the removal and detention of civilians, murders and the destruction of property during attacks, mistreatment and devastation during evictions, mistreatment in and poor conditions of confinement, the widespread, nearly systematic use of detainees for front line labour or as human shields, murders and mistreatment related to this labour and these human shields, and the removal of detainees and their families outside of the territory of the HZ(R) H-B following their release.¹¹⁵⁷ Prlić, Stojić, Praljak, Petković, Čorić, and Pušić were convicted of grave breaches of the Geneva Conventions under Article 2 of the Statute, violations of the laws or customs of war under Article 3 of the Statute, and crimes against humanity under Article 5 of the Statute, committed in various municipalities and detention centres by virtue of their participation in the JCE.¹¹⁵⁸

384. The Parties, including the Prosecution, present challenges to the Trial Chamber's findings regarding the underlying crimes of the JCE. These challenges relate to: (1) the Appellants' *mens rea* for crimes against humanity; (2) the Trial Chamber's alleged failure to enter convictions for wanton destruction of cities, towns, or villages, or devastation not justified by military necessity; (3) the HVO's attacks of 18 January 1993 in Gornji Vakuf Municipality and subsequent criminal events; (4) the arrest, detention, and removal of Muslims in Prozor Municipality in July and August 1993; and (5) crimes committed in Mostar Municipality, in particular relating to the siege of East Mostar.

B. Mens rea for Crimes Against Humanity (Stojić's Ground 26, Praljak's Ground 48, and Petković's Sub-grounds 4.1 and 4.4 both in part)

385. The Trial Chamber concluded that certain acts of violence committed on the territory of eight BiH municipalities from May 1992 until April 1994 constituted a widespread and systematic attack against a civilian population.¹¹⁵⁹ It further concluded that the perpetrators of these acts – "the armed and political forces of the HVO" – had knowledge of the attack and were aware that their

¹¹⁵⁷ Trial Judgement, Vol. 1, para. 26, Vol. 4, paras 65-66. See also Trial Judgement, Vol. 4, para. 68.

¹¹⁵⁸ Trial Judgement, Vol. 4, Disposition, pp. 430-431. See Trial Judgement, Vol. 4, paras 67-68, 278-279 (Prlić), 431-432 (Stojić), 630-631 (Praljak), 820-821 (Petković), 1006-1007 (Čorić), 1211-1212 (Pušić).

¹¹⁵⁹ Trial Judgement, Vol. 3, paras 646-648. See Trial Judgement, Vol. 3, paras 638-645.

acts were part of this attack.¹¹⁶⁰ Stojić, Praljak, and Petković were subsequently convicted of, *inter alia*, crimes against humanity by virtue of their participation in the JCE.¹¹⁶¹

1. Arguments of the Parties

386. Stojić, Praljak, and Petković submit that the Trial Chamber erred when it convicted them of crimes against humanity without making a finding that they knew or intended that their acts would form part of a widespread and systematic attack on a civilian population.¹¹⁶² Stojić, Praljak, and Petković therefore request that the Appeals Chamber overturn their convictions under the relevant counts.¹¹⁶³

387. The Prosecution responds that Stojić's, Praljak's, and Petković's knowledge that HVO crimes formed part of a widespread and systematic attack was implicit in the Trial Chamber's findings that they shared and contributed to the CCP.¹¹⁶⁴ Additionally, the Prosecution claims that in light of the finding that direct perpetrators within the HVO were aware that their crimes formed part of such an attack, the Trial Chamber was satisfied that Stojić, Praljak, and Petković, given their positions, also had the requisite knowledge.¹¹⁶⁵

¹¹⁶⁰ Trial Judgement, Vol. 3, para. 651.

¹¹⁶¹ Trial Judgement, Vol. 4, Disposition, pp. 430-431. See Trial Judgement, Vol. 4, paras 67-68, 431-432 (Stojić), 630-631 (Praljak), 820-821 (Petković).

¹¹⁶² Stojić's Appeal Brief, heading before para. 228, paras 229-230; Praljak's Appeal Brief, paras 537-538; Petković's Appeal Brief, paras 134, 136, 138. See Stojić's Appeal Brief, para. 228; Praljak's Appeal Brief, para. 535; Praljak's Reply Brief, para. 54; Petković's Appeal Brief, para. 90(i). Stojić argues that the Trial Chamber only determined whether the *mens rea* chapeau requirement of Article 5 of the Statute was satisfied with respect to direct perpetrators, and only considered his knowledge that there was an international armed conflict. Stojić's Appeal Brief, para. 229. Praljak argues that the Trial Chamber merely found that the direct perpetrators of acts constituting the widespread and systematic attack on the Muslim civilian population of HZ H-B had knowledge of the attack and were aware that their acts were part of this attack. Praljak's Appeal Brief, para. 537, referring to Trial Judgement, Vol. 3, para. 651. Petković submits that the Trial Chamber's error constituted a failure to render a reasoned opinion. Petković's Appeal Brief, paras 90(i), 134, 136. Further, Petković argues that the Trial Chamber "failed to consider or, if it did, to exclude through a reasoned opinion, evidence that contradicted its findings that [he] possessed the requisite *mens rea*", thereby rendering such findings unreasonable. Petković's Appeal Brief, para. 135. See Petković's Appeal Brief, para. 136.

¹¹⁶³ Stojić's Appeal Brief, para. 230; Praljak's Appeal Brief, para. 538; Petković's Appeal Brief, paras 138-139. See Praljak's Reply Brief, para. 55. Specifically, Stojić requests that the Appeals Chamber overturn his convictions under Counts 1, 2, 6, 8, 10, and 15. Stojić's Appeal Brief, para. 230. In addition to these counts, Praljak also requests to be acquitted of Counts 3 and 12. Praljak's Appeal Brief, para. 538.

¹¹⁶⁴ Prosecution's Response Brief (Stojić), paras 191-192; Prosecution's Response Brief (Praljak), paras 100, 102; Prosecution's Response Brief (Petković), paras 70-71.

¹¹⁶⁵ Prosecution's Response Brief (Stojić), paras 191, 193; Prosecution's Response Brief (Praljak), paras 101-102; Prosecution's Response Brief (Petković), paras 70, 72. With respect to Petković, the Prosecution argues that the Trial Judgement read as a whole supports this conclusion, notwithstanding his "self-serving testimony" denying such knowledge. Prosecution's Response Brief (Petković), para. 70.

388. Praljak replies that the Prosecution attempts to fill the gaps by drawing its own conclusions from the Trial Chamber's findings and that the requisite *mens rea* cannot be implicit but must be established unequivocally.¹¹⁶⁶

2. Analysis

389. The Appeals Chamber recalls that in order to satisfy the *mens rea* of crimes against humanity, the accused must have *knowledge* that there is an attack on the civilian population and that his act is part thereof.¹¹⁶⁷

390. The Appeals Chamber observes that the Trial Chamber did not make express findings that the Appellants fulfilled this requirement.¹¹⁶⁸ When reaching its conclusion that the chapeau requirements of Article 5 of the Statute were satisfied,¹¹⁶⁹ the Trial Chamber found that, in all the municipalities, evictions were accompanied in many instances by episodes of violence that were similar in nature and directed against Muslims, including, *inter alia*, the burning of their houses, the destruction of institutions dedicated to religion, and the confiscation of property belonging to Muslims.¹¹⁷⁰ The Trial Chamber held that such acts were carried out in an organised fashion by "the armed and political forces of the HVO" and constituted the means used to implement the attack on the civilian population.¹¹⁷¹ The Trial Chamber also found that the direct perpetrators of the acts constituting the widespread and systematic attack on the Muslim civilian population of HZ H-B – who "belonged to the HVO" – had knowledge of the attack and were aware that their acts were part of this attack.¹¹⁷²

391. When addressing the CCP, the Trial Chamber found that JCE members "implemented an entire system for deporting the Muslim population of the HR H-B" which involved the commission of numerous crimes, including those falling under Article 5 of the Statute.¹¹⁷³ The Trial Chamber further found that in the vast majority of cases the crimes committed by the HVO were not random,

¹¹⁶⁶ Praljak's Reply Brief, para. 54.

¹¹⁶⁷ *Popović et al.* Appeal Judgement, para. 570; *Kordić and Čerkez* Appeal Judgement, paras 99-100 and references cited therein.

¹¹⁶⁸ See Trial Judgement, Vol. 3, paras 630-654 ("Other General Requirements for the Application of Article 5 of the Statute: Widespread or Systematic Attack Directed Against a Civilian Population"), Vol. 4, paras 270-277 (summary of findings on Prlić's JCE I responsibility), 425-430 (summary of findings on Stojić's JCE I responsibility), 624-629 (summary of findings on Praljak's JCE I responsibility), 814-819 (summary of findings on Petković's JCE I responsibility), 1000-1005 (summary of findings on Čorić's JCE I responsibility), 1202-1210 (summary of findings on Pušić's JCE I responsibility).

¹¹⁶⁹ Trial Judgement, Vol. 3, para. 654.

¹¹⁷⁰ Trial Judgement, Vol. 3, paras 645-646. See also Trial Judgement, Vol. 3, paras 638-644, 648.

¹¹⁷¹ Trial Judgement, Vol. 3, para. 649. See Trial Judgement, Vol. 3, para. 646.

¹¹⁷² Trial Judgement, Vol. 3, para. 651.

¹¹⁷³ Trial Judgement, Vol. 4, paras 66, 68 (specifically, it included the crimes against humanity of persecution (Count 1), murder (Count 2), deportation (Count 6), inhumane acts through forcible transfer (Count 8), imprisonment (Count 10), inhumane acts through conditions of confinement (Count 12), and other inhumane acts (Count 15)). See Trial Judgement, Vol. 3, paras 646-648. See also *infra*, para. 886.

but followed a clear pattern of conduct.¹¹⁷⁴ The Trial Chamber concluded that insofar as Stojić, Praljak, and Petković controlled the HVO and the Military Police, and contributed to their operations, they knew these crimes were being committed and intended that they be committed in furtherance of the CCP.¹¹⁷⁵ Moreover, the Trial Chamber made numerous findings concerning the Appellants' awareness that the commission of crimes was pursuant to a plan and/or was of a widespread and systematic nature.¹¹⁷⁶ Notably, it found that they knew of or contributed to the atmosphere of violence in which the HVO operations in various municipalities took place.¹¹⁷⁷ In this respect, the Appeals Chamber also notes the Trial Chamber's findings that Stojić, Praljak, and Petković participated in the implementation of an ultimatum adopted by the HVO HZ-HB on 15 January 1993 envisaging, *inter alia*, the subordination of the ABiH to the HVO in Provinces 3, 8, and 10 within five days ("15 January 1993 Ultimatum"), which led to a "systematic and widespread attack in the Municipality of Gornji Vakuf".¹¹⁷⁸

392. In light of the foregoing, the Appeals Chamber considers that the Trial Chamber was satisfied that Stojić, Praljak, and Petković knew that there was an attack on the civilian population and that their acts were part thereof, and as such had the requisite *mens rea* for crimes against humanity.¹¹⁷⁹ The Appellants have not identified an error of law that invalidates the Trial Chamber's decision.¹¹⁸⁰ Accordingly, Stojić's ground of appeal 26, Praljak's ground of appeal 48, and Petković's sub-grounds of appeal 4.1 and 4.4, in relevant part, are dismissed.

¹¹⁷⁴ Trial Judgement, Vol. 4, para. 65.

¹¹⁷⁵ Trial Judgement, Vol. 4, paras 67, 426, 428-429, 624, 628, 814-818, 1232. The Appeals Chamber dismisses challenges to these findings elsewhere in the Judgement. See *infra*, paras 1806, 2083, 2468.

¹¹⁷⁶ See, e.g., Trial Judgement, Vol. 4, paras 341, 347-348, 356-357, 362-363, 377-378 (Stojić), 561-562, 572-573, 586 (Praljak), 704, 708, 717, 732-735, 737-738, 757-758, 807-808 (Petković).

¹¹⁷⁷ Trial Judgement, Vol. 4, paras 439, 445-446 (Stojić), 633-638 (Praljak), 734-735, 827, 830, 834, 837, 840, 844 (Petković). See also Trial Judgement, Vol. 4, para. 72.

¹¹⁷⁸ Trial Judgement, Vol. 4, para. 142 (also finding that the plan for an attack on several villages in Prozor Municipality was the result of the implementation of an ultimatum adopted by the HVO HZ H-B on 3 April 1993 and published on 4 April 1993 ("4 April 1993 Ultimatum"), which was identical to the one the HVO issued in January 1993). See, e.g., Trial Judgement, Vol. 4, paras 125-128, 146, 304, 475, 553, 556, 685, 702-704. See also, e.g., Trial Judgement, Vol. 4, para. 138 (regarding the implementation of the 4 April 1993 Ultimatum); *infra*, paras 1579, 1588, 1824, 2177, 2210.

¹¹⁷⁹ Cf. *Šainović et al.* Appeal Judgement, para. 281. When submitting that the Trial Chamber "failed to consider or, if it did, to exclude through a reasoned opinion, evidence that contradicted its findings that [he] possessed the requisite *mens rea*", Petković points particularly to his own testimony to demonstrate that he was unaware of crimes being committed on a widespread or systematic basis. See Petković's Appeal Brief, para. 135, referring to Milivoj Petković, T. 50698 (9 Mar 2010). The Appeals Chamber notes that the Trial Chamber explicitly considered Petković's testimony and stated that it did not accept it on occasions when he sought to limit his responsibility in respect of certain allegations, as it found it to be hardly credible. See Trial Judgement, Vol. 1, para. 399. The Appeals Chamber recalls that trial chambers are best placed to assess the evidence and that they have broad discretion in doing so. *Stanišić and Župljanin* Appeal Judgement, para. 654 and references cited therein. Since Petković is merely asserting that the Trial Chamber failed to give sufficient weight to evidence without showing that no reasonable trier of fact could have reached the same conclusion as the Trial Chamber did, his argument is dismissed.

¹¹⁸⁰ See, e.g., *Kvočka et al.* Appeal Judgement, para. 25.

**C. Alleged Errors Relating to Wanton Destruction Of Cities, Towns Or Villages, or
Devastation Not Justified by Military Necessity (Prosecution's Ground 3 in part, Praljak's
Ground 23, and Petković's Sub-ground 5.2.2.4 in part)**

1. Failure to enter convictions

393. The Trial Chamber made findings regarding the destruction or damage of: (1) Muslim property in Prozor Municipality between May/June and July 1993;¹¹⁸¹ (2) Muslim property in Gornji Vakuf Municipality on 18 January 1993;¹¹⁸² (3) the Old Bridge in Mostar on 8-9 November 1993;¹¹⁸³ and (4) ten mosques in East Mostar between June and December 1993 (collectively, "Four Groups of Incidents").¹¹⁸⁴ In the "Legal Findings of the Chamber" section of the Trial Judgement, the Trial Chamber found that these incidents constituted the crime of wanton destruction of cities, towns or villages, or devastation not justified by military necessity as a violation of the laws or customs of war under Article 3 of the Statute (Count 20),¹¹⁸⁵ but not the crime of extensive destruction of property not justified by military necessity and carried out unlawfully and wantonly as a grave breach of the Geneva Conventions under Article 2 of the Statute (Count 19), since these properties were not on an occupied territory when they were destroyed and, therefore, did not have the status of protected property within the meaning of Geneva Convention IV.¹¹⁸⁶ Subsequently, in the section of the Trial Judgement devoted to the law on cumulative convictions, the Trial Chamber determined that the crime of wanton destruction not justified by military necessity (Count 20) does not contain a materially distinct element from the crime of extensive destruction of property not justified by military necessity (Count 19), and consequently held that cumulative convictions based on the same criminal conduct for Count 20 and Count 19 are not possible and that only a single conviction under Count 19 may be entered.¹¹⁸⁷ However, when applying the law on cumulative convictions to the legal findings on wanton destruction not justified by military necessity (Count 20) and extensive destruction of property not justified by military necessity (Count 19), the Trial Chamber convicted Prlić, Stojić, Praljak, Petković, Ćorić, and Pušić under Count 19 only, thereby entering convictions for all incidents of criminal property destruction *except* the Four Groups of Incidents. It did not enter any convictions under Count 20, including for the Four Groups of Incidents.¹¹⁸⁸ The Trial Chamber recalled that

¹¹⁸¹ Trial Judgement, Vol. 2, paras 95-97, 102-105, Vol. 3, para. 1566.

¹¹⁸² Trial Judgement, Vol. 2, paras 367-368, 373, 379, 387, Vol. 3, para. 1570.

¹¹⁸³ Trial Judgement, Vol. 2, para. 1366, Vol. 3, para. 1587.

¹¹⁸⁴ Trial Judgement, Vol. 2, para. 1377, Vol. 3, para. 1580.

¹¹⁸⁵ Trial Judgement, Vol. 3, paras 1566, 1570, 1580, 1587.

¹¹⁸⁶ Trial Judgement, Vol. 3, paras 1530, 1534, 1545. See Trial Judgement, Vol. 3, para. 589.

¹¹⁸⁷ Trial Judgement, Vol. 4, paras 1254, 1264-1266.

¹¹⁸⁸ Trial Judgement, Vol. 4, Disposition, pp. 430-431.

Pušić was not prosecuted for the crimes committed in Gornji Vakuf Municipality in January 1993.¹¹⁸⁹

(a) Arguments of the Parties

394. The Prosecution submits that the Trial Chamber erred in failing to convict Prlić, Stojić, Praljak, Petković, Ćorić, and Pušić with regard to the Four Groups of Incidents, for wanton destruction of property as a war crime under Count 20 (Article 3 of the Statute), with the exception of Pušić for the destruction of Muslim property in Gornji Vakuf Municipality on 18 January 1993.¹¹⁹⁰ The Prosecution argues that the Trial Chamber declined to convict on the basis of the principle against cumulative convictions and because it “incorrectly assumed” that it had convicted the Appellants for these crimes for extensive destruction of property as a grave breach under Count 19 (Article 2 of the Statute).¹¹⁹¹ It submits that the convictions entered therefore do not fully reflect the criminality of the Appellants and that the Appeals Chamber should enter convictions against them under Count 20 for the Four Groups of Incidents.¹¹⁹²

395. Prlić responds that the Trial Chamber *may* have erred in its application of the principle against cumulative convictions.¹¹⁹³ Stojić concedes that the Trial Chamber erred.¹¹⁹⁴ Prlić, Stojić, Praljak, Ćorić, and Pušić dispute, however, the findings upon which the Prosecution relies for a conviction under Count 20.¹¹⁹⁵ Petković and Ćorić argue that the Prosecution’s appeal lacks merit as the Trial Chamber did in fact convict them for wanton destruction of property under Article 3 of the Statute (Count 20) for all or some of the Four Groups of Incidents.¹¹⁹⁶ Prlić claims that the Trial Chamber already mistakenly convicted him for extensive destruction of property under

¹¹⁸⁹ Trial Judgement, Vol. 4, fn. 178.

¹¹⁹⁰ Prosecution’s Appeal Brief, paras 325-326, 328-330; Prosecution’s Reply Brief, para. 132; Appeal Hearing, AT. 766-768, 771, 851-852 (28 Mar 2017).

¹¹⁹¹ Prosecution’s Appeal Brief, para. 328. See Prosecution’s Appeal Brief, paras 327, 329; Appeal Hearing, AT. 766-768, 771 (28 Mar 2017).

¹¹⁹² Prosecution’s Appeal Brief, paras 329-330; Prosecution’s Reply Brief, paras 137, 152-153; Appeal Hearing, AT. 766, 768, 771, 851-852 (28 Mar 2017). The Prosecution submits, however, that to the extent that the Trial Chamber already considered the conduct underlying convictions under Count 20, their sentences need not be increased. Prosecution’s Reply Brief, para. 153.

¹¹⁹³ Prlić’s Response Brief, para. 184.

¹¹⁹⁴ Stojić’s Response Brief, paras 145-146; Appeal Hearing, AT. 800 (28 Mar 2017).

¹¹⁹⁵ Prlić’s Response Brief, paras 171-173, 184; Stojić’s Response Brief, para. 147; Ćorić’s Response Brief, para. 95. See Praljak’s Response Brief, paras 145, 149-151, 153-154, 156-158; Pušić’s Response Brief, para. 28. See also Prlić’s Response Brief, paras 174-183; Stojić’s Response Brief, headings before paras 149, 154, paras 149-163; Appeal Hearing, AT. 800 (28 Mar 2017). Stojić argues that the fact that he first addressed these errors in his response brief does not prevent the Appeals Chamber from taking them into account when assessing the Prosecution’s ground of appeal. Stojić’s Response Brief, para. 147, heading before para. 164, paras 164-167.

¹¹⁹⁶ Petković’s Response Brief, paras 109-110; Ćorić’s Response Brief, para. 93; Appeal Hearing, AT. 822-823 (28 Mar 2017). See also Petković’s Appeal Brief, paras 277-278.

Article 2 of the Statute (Count 19) despite its finding that the Four Groups of Incidents did not constitute this crime.¹¹⁹⁷

396. Additionally, Stojić and Ćorić contend that any alleged error and/or consequence thereof in the application of the principle against cumulative convictions is immaterial as it would have no impact on the verdict.¹¹⁹⁸ Further, Stojić argues that, although the principle against cumulative convictions allows for the entering of a conviction under Count 20 in addition to his conviction under Count 21 (destruction or wilful damage done to institutions dedicated to religion or education as a violation of the laws or customs of war under Article 3 of the Statute) for the destruction of the ten mosques in Mostar, doing so would not promote the interests of justice.¹¹⁹⁹ The Appellants request that the Appeals Chamber dismiss the Prosecution's ground of appeal 3.¹²⁰⁰

397. The Prosecution replies that the Trial Judgement contradicts: (1) Petković's and Ćorić's submissions to the extent that they argue that they were convicted under Count 20; and (2) Prlić's argument that he was convicted for the Four Groups of Incidents under Count 19.¹²⁰¹

(b) Analysis

398. The Appeals Chamber observes that the Trial Chamber found that the crimes charged in Count 20 fell within the framework of the CCP.¹²⁰² It also found that, insofar as the Appellants committed crimes with the aim of furthering the CCP, they were responsible for all crimes that were part of the CCP.¹²⁰³ Therefore, it is clear that the Trial Chamber considered that the Appellants should be found guilty of, *inter alia*, the war crime of wanton destruction of property not justified by military necessity (Count 20) for the Four Groups of Incidents, with the exception of Pušić who was not found guilty for the destruction of Muslim property in Gornji Vakuf Municipality on 18 January 1993.¹²⁰⁴ As mentioned above, although the Trial Chamber found that the Four Groups of Incidents constituted wanton destruction of property not justified by military necessity under Article 3 of the Statute (Count 20),¹²⁰⁵ the Trial Chamber found that they did not constitute

¹¹⁹⁷ Prlić's Response Brief, para. 173. See Prlić's Response Brief, para. 170.

¹¹⁹⁸ Stojić's Response Brief, para. 146; Ćorić's Response Brief, paras 94, 96. See also Stojić's Response Brief, paras 148, 170-178; Ćorić's Response Brief, para. 93; Pušić's Response Brief, para. 28.

¹¹⁹⁹ Stojić's Response Brief, paras 147, 169. See also Stojić's Response Brief, para. 175.

¹²⁰⁰ Stojić's Response Brief, para. 178; Praljak's Response Brief, para. 159; Petković's Response Brief, para. 110; Ćorić's Response Brief, para. 96. See also Prlić's Response Brief, para. 184; Pušić's Response Brief, para. 28.

¹²⁰¹ Prosecution's Reply Brief, para. 133.

¹²⁰² Trial Judgement, Vol. 4, para. 68. See also Trial Judgement, Vol. 4, para. 66 (finding that the JCE members implemented an entire system for the commission of crimes including the destruction of property during attacks).

¹²⁰³ Trial Judgement, Vol. 4, paras 279 (Prlić), 432 (Stojić), 631 (Praljak), 821 (Petković), 1007 (Ćorić), 1212 (Pušić). See also Trial Judgement, Vol. 4, paras 66-68.

¹²⁰⁴ See Trial Judgement, Vol. 4, fn. 178 (recalling that Pušić was not prosecuted for the crimes committed in Gornji Vakuf Municipality in January 1993).

¹²⁰⁵ Trial Judgement, Vol. 3, paras 1566 (Prozor Municipality), 1570 (Gornji Vakuf Municipality), 1580 (mosques in East Mostar), 1587 (Old Bridge in Mostar).

extensive destruction of property not justified by military necessity as a grave breach of the Geneva Conventions under Article 2 of the Statute (Count 19), as the property that was destroyed was not “protected” within the meaning of Geneva Convention IV.¹²⁰⁶ It is therefore clear that the Trial Chamber did not intend to convict the Appellants under Count 19 for the Four Groups of Incidents.¹²⁰⁷

399. When entering convictions against the Appellants, the Trial Chamber applied the law on cumulative convictions, overlooking its previous finding that the Four Groups of Incidents did not fall under Article 2 of the Statute (Count 19).¹²⁰⁸ Consequently, the Trial Chamber did not enter convictions for the Four Groups of Incidents under either Count 19 or Count 20. The Appeals Chamber recalls that a trial chamber is bound to enter convictions for all distinct crimes which have been proven in order to fully reflect the criminality of the convicted person.¹²⁰⁹ Thus, the Appeals Chamber considers that the Trial Chamber erred by failing to enter convictions for wanton destruction of property not justified by military necessity under Article 3 of the Statute (Count 20) for the Four Groups of Incidents.

400. The Appeals Chamber recalls that pursuant to paragraph 5 of the Practice Direction on Formal Requirements, if an appellant relies on a ground of appeal to reverse an acquittal, the respondent may support the acquittal on additional grounds of appeal in the respondent’s brief. The Appeals Chamber notes that some of the Appellants advance submissions in their respective responses challenging the legal and factual findings underpinning the Trial Chamber’s finding that they committed wanton destruction of property under Article 3 of the Statute (Count 20) in the municipalities of Prozor, Mostar, and Gornji Vakuf. Moreover, the submissions concerning the Old Bridge of Mostar, in particular, are closely linked to those advanced separately by Praljak in his ground of appeal 23 and Petković in his sub-ground of appeal 5.2.2.4, in part.¹²¹⁰ All submissions concerning the Old Bridge will be addressed together. The Appeals Chamber will now address: (1) general submissions concerning the Four Groups of Incidents and submissions related to Muslim property in Prozor Municipality and the ten mosques in Mostar Municipality; and (2) submissions concerning the Old Bridge.¹²¹¹

¹²⁰⁶ Trial Judgement, Vol. 3, paras 1530, 1534, 1545. See also Trial Judgement, Vol. 3, para. 589.

¹²⁰⁷ Prlić’s submission to the contrary is therefore dismissed. See *supra*, para. 395.

¹²⁰⁸ Trial Judgement, Vol. 4, Disposition, pp. 430-431.

¹²⁰⁹ *Popović et al.* Appeal Judgement, para. 538; *Karemera and Ndirumapatse* Appeal Judgement, para. 711; *Gatete* Appeal Judgement, para. 261.

¹²¹⁰ See Praljak’s Appeal Brief, paras 280-296; Petković’s Appeal Brief, paras 277-278.

¹²¹¹ The submissions specifically related to the wanton destruction of property in Gornji Vakuf Municipality are addressed further below. See *infra*, paras 444-453.

2. Challenges to the legal and factual findings upon which the wanton destruction findings were based

(a) General submissions concerning the Four Groups of Incidents and submissions related to Muslim property in Prozor Municipality and the ten mosques in Mostar Municipality

401. The Trial Chamber found that Prlić, Stojić, Praljak, Petković, Ćorić, and Pušić should be found guilty, under Count 20 (wanton destruction of property under Article 3 of the Statute), for the Four Groups of Incidents, with the exception of Pušić who was not found guilty for the destruction of Muslim property in Gornji Vakuf Municipality on 18 January 1993, but failed to enter convictions for Count 20.¹²¹²

402. Prlić and Ćorić contest their responsibility for the Four Groups of Incidents on the basis that the Trial Chamber erred in its findings as to their authority or “effective control” over HVO forces.¹²¹³ Ćorić specifically contests his responsibility under JCE liability.¹²¹⁴ Likewise, Praljak submits that the Trial Chamber did not find him liable for the destruction of property in Prozor Municipality, considering the lack of clarity of its findings on the CCP.¹²¹⁵ Prlić submits that the Trial Chamber erred in its evidentiary assessments of his involvement in property destruction in Prozor and Mostar.¹²¹⁶ Praljak further submits that the Trial Chamber did not establish the date of the destruction of mosques in East Mostar and erroneously concluded that the HVO destroyed them.¹²¹⁷ Ćorić also contends that the Trial Chamber’s findings ignore the hostilities between the HVO and ABiH.¹²¹⁸

403. The Prosecution replies that Ćorić’s arguments relate to superior responsibility and are irrelevant.¹²¹⁹ Further, it contends that Praljak and Ćorić misunderstand the Trial Judgement and JCE liability, respectively.¹²²⁰ The Prosecution also argues that Ćorić fails to support or develop the contention that the Trial Chamber ignored the hostilities between the HVO and ABiH.¹²²¹

¹²¹² See Trial Judgement, Vol. 4, fn. 178 (recalling that Pušić was not prosecuted for the crimes committed in Gornji Vakuf Municipality in January 1993), paras 68 (finding that the crimes charged in Count 20 fell within the framework of the CCP), 279, 432, 631, 821, 1007, 1212 (finding that insofar as Prlić, Stojić, Praljak, Petković, Ćorić, and Pušić committed crimes with the aim of furthering the CCP, they were responsible for all crimes that were part of the CCP). See also *supra*, paras 393, 398.

¹²¹³ Prlić’s Response Brief, paras 171-172; Ćorić’s Response Brief, para. 95.

¹²¹⁴ Ćorić’s Response Brief, para. 95 & fn. 184, referring to his ground of appeal 7 regarding JCE I responsibility.

¹²¹⁵ Praljak’s Response Brief, para. 145.

¹²¹⁶ Prlić’s Response Brief, paras 182-183.

¹²¹⁷ Praljak’s Response Brief, paras 156-158.

¹²¹⁸ Ćorić’s Response Brief, para. 95.

¹²¹⁹ Prosecution’s Reply Brief, para. 134.

¹²²⁰ Prosecution’s Reply Brief, paras 134, 136.

¹²²¹ Prosecution’s Reply Brief, para. 135.

404. With respect to Prlić's and Ćorić's challenges regarding their authority or "effective control" over HVO forces, and insofar as these submissions appear to be premised on the notion of superior responsibility, the Appeals Chamber notes that the Trial Chamber did not find them responsible as superiors for wanton destruction of property with regard to any of the Four Groups of Incidents.¹²²² Their submissions are therefore dismissed. As to the other arguments advanced by Prlić, Praljak, and Ćorić, the Appeals Chamber observes that they are based on references to other grounds of appeals, which the Appeals Chamber dismisses elsewhere.¹²²³ Their arguments are therefore rejected.

(b) The Old Bridge of Mostar

405. The Trial Chamber found that throughout the day on 8 November 1993, an HVO tank fired at the Old Bridge of Mostar.¹²²⁴ The Trial Chamber found that the Old Bridge was destroyed by the evening of 8 November 1993 as it was unusable and on the verge of collapse.¹²²⁵ The Old Bridge collapsed the next morning after the tank shelling resumed and also possibly due to explosives set off by a detonating cord on the left bank of the Neretva River.¹²²⁶

406. The Trial Chamber found that the Old Bridge, real property normally used by civilians, was used by both the ABiH and the inhabitants of the right and left banks of the Neretva between May and November 1993.¹²²⁷ The Trial Chamber further found that the Old Bridge was essential to the ABiH for combat activities of its units on the front line, for evacuations, and for the sending of troops, food, and materiel, and that it was indeed utilised to this end.¹²²⁸ It found that the Old Bridge was a military target at the time of the attack given the HVO's military interest in destroying the

¹²²² See Trial Judgement, Vol. 4, paras 1234, 1251 (finding Ćorić guilty under Article 7(3) of the Statute only for crimes that occurred in Prozor Municipality in October 1992), Disposition, pp. 430-431. Insofar as Prlić's and Ćorić's submissions could also be interpreted to impugn the Trial Chamber's findings as to their respective contributions to the JCE, the Appeals Chamber considers that they are unsubstantiated except by cross-reference to grounds of appeal dismissed elsewhere. See *infra*, paras 1400, 2595.

¹²²³ See Praljak's Response Brief, paras 145, 156-158 & fns 351, 353, 373-374, 379-380, referring to his grounds of appeal 7, 24, and 49, and alleging that the Trial Chamber: (1) was not clear in its finding that he is held responsible for all crimes forming part of the CCP; (2) failed to establish precisely the scope of the CCP; and (3) did not establish the exact date of the destruction of mosques in East Mostar and erroneously concluded that the HVO destroyed them. See *supra*, para. 402; *infra*, paras 569, 814, 824. See, however, *infra*, paras 2002-2003. See Prlić's Response Brief, paras 180-183 & fns 369, 377, referring to or relying upon grounds of appeal 4, 6, and 16 and submitting that the Trial Chamber erroneously: (1) relied upon, *inter alia*, uncorroborated hearsay and a mischaracterisation of evidence with respect to his intent to commit crimes in Prozor; and (2) ignored evidence demonstrating that he did not encourage the destruction of property in Mostar. See *supra*, paras 211, 218, 402; *infra*, para. 1400. See Ćorić's Response Brief, para. 95 & fn. 184, referring to his ground of appeal 7 and: (1) contesting his responsibility under JCE liability; and (2) contending that the Trial Chamber's findings ignore and fail to analyse the battles between the HVO and ABiH and the number of casualties on the HVO side. See *supra*, para. 402; *infra*, para. 2595.

¹²²⁴ Trial Judgement, Vol. 2, paras 1315, 1366. See also Trial Judgement, Vol. 2, paras 1311-1313, 1343, 1345, Vol. 3, para. 1581.

¹²²⁵ Trial Judgement, Vol. 2, paras 1318, 1345, 1366. See also Trial Judgement, Vol. 2, para. 1343, Vol. 3, para. 1581.

¹²²⁶ Trial Judgement, Vol. 2, paras 1326, 1345, 1366. See also Trial Judgement, Vol. 2, paras 670, 1321, 1343.

¹²²⁷ Trial Judgement, Vol. 3, para. 1582. See Trial Judgement, Vol. 2, paras 1284-1293.

¹²²⁸ Trial Judgement, Vol. 3, para. 1582. See Trial Judgement, Vol. 2, para. 1290.

Old Bridge which cut off practically all possibilities for the ABiH to continue its supply operations.¹²²⁹ However, the Trial Chamber also found that the destruction of the Old Bridge put the residents of Donja Mahala in “virtually total isolation”, resulting in a serious deterioration of the humanitarian situation for the population living there, and had a “very significant psychological impact” on the Muslim population of Mostar.¹²³⁰ The HVO’s destruction of the Kamenica Bridge – a makeshift bridge that the ABiH constructed – a few days after the destruction of the Old Bridge definitively cut off all access across the Neretva River in Mostar.¹²³¹ The Trial Chamber therefore found that the impact of the destruction of the Old Bridge on the Muslim civilian population of Mostar was disproportionate to the concrete and direct military advantage expected.¹²³² It further found that the “destruction of the Old Bridge [...] was extensive”, and that it was intended by the HVO command, thereby sapping the morale of the Muslim population.¹²³³ The Trial Chamber therefore concluded that by destroying the Old Bridge, the HVO committed the crime of wanton destruction of cities, towns or villages, or devastation not justified by military necessity, a violation of the laws or customs of war and a crime recognised by Article 3 of the Statute.¹²³⁴

(i) Arguments of the Parties

407. Stojić submits that the Trial Chamber erred in law in finding that the destruction of the Old Bridge was disproportionate.¹²³⁵ With respect to the Trial Chamber’s finding that the Old Bridge’s destruction placed the civilian population in isolation, Stojić contends that it erroneously assessed the actual harm sustained after the subsequent destruction of the Kamenica Bridge, rather than the reasonably anticipated harm of the destruction of the Old Bridge.¹²³⁶ Further, he submits that the Trial Chamber erred in basing its finding that the destruction was disproportionate entirely on indirect effects, particularly the long-term harm through isolation and the psychological impact on the civilian population.¹²³⁷ More to this point, he submits that the Trial Chamber failed to analyse the harm caused by isolation and the psychological impact in terms of tangible injuries.¹²³⁸ Stojić also argues that the Trial Chamber should have placed more weight on its findings regarding the Old Bridge’s importance to the ABiH and properly assessed the HVO’s lack of alternative means to achieve the military objective of cutting off ABiH supply

¹²²⁹ Trial Judgement, Vol. 3, para. 1582. See Trial Judgement, Vol. 2, paras 1354, 1357.

¹²³⁰ Trial Judgement, Vol. 3, para. 1583. See Trial Judgement, Vol. 2, paras 1354, 1356-1357.

¹²³¹ Trial Judgement, Vol. 3, para. 1583. See Trial Judgement, Vol. 2, para. 1355.

¹²³² Trial Judgement, Vol. 3, para. 1584.

¹²³³ Trial Judgement, Vol. 3, para. 1585-1586.

¹²³⁴ Trial Judgement, Vol. 3, para. 1587.

¹²³⁵ Stojić’s Response Brief, heading before para. 154; paras 154, 156, 163. See Stojić’s Response Brief, para. 161. Stojić also argues that no reasonable chamber could have found that the destruction of the Old Bridge was disproportionate. Stojić’s Response Brief, para. 162.

¹²³⁶ Stojić’s Response Brief, paras 154, 158. See also Stojić’s Response Brief, paras 156, 162.

¹²³⁷ Stojić’s Response Brief, para. 157. See Stojić’s Response Brief, paras 154, 156, 159.

¹²³⁸ Stojić’s Response Brief, paras 158-159.

lines.¹²³⁹ Finally, he alleges that the Trial Chamber failed to explain why the expected harm to civilians was excessive given the anticipated military advantage.¹²⁴⁰ Stojić submits in response to the Prosecution's request for additional convictions that the Appeals Chamber should therefore refrain from doing so in relation to the destruction of the Old Bridge.¹²⁴¹

408. Praljak submits that the Trial Chamber erred in its conclusions pertaining to the Old Bridge, notably by finding that HVO forces were responsible for its destruction and in its analysis relating to the protection of cultural property and the principle of proportionality, and requests that the Appeals Chamber reverse his conviction under Count 1 (persecution as a crime against humanity).¹²⁴² Petković submits that the Trial Chamber erred in law and fact in this regard, notably in relation to the elements of the crime of wanton destruction of property not justified by military necessity and in its proportionality analysis.¹²⁴³

409. The Prosecution replies that Stojić fails to show that the Trial Chamber erred in concluding that the destruction of the Old Bridge was wanton.¹²⁴⁴ The Prosecution avers that the isolation of the population of Donja Mahala was the immediate effect of the destruction of the Old Bridge.¹²⁴⁵ It further submits that the Trial Chamber appropriately considered the psychological harm as well as the physical impact caused by isolation as these effects were not mere incidental by-products of an attack on a military objective, but were the primary aim of the HVO as part of its campaign of terror against the civilian population.¹²⁴⁶ The Prosecution also argues that Stojić fails to show that the Trial Chamber did not give appropriate weight to the anticipated military advantage of the Old Bridge's destruction.¹²⁴⁷

410. The Prosecution rejects Praljak's and Petković's arguments and submits that the Trial Chamber properly concluded that the destruction of the Old Bridge amounted to the crime of wanton destruction not justified by military necessity.¹²⁴⁸

¹²³⁹ Stojić's Response Brief, paras 154, 160-161. See also Stojić's Response Brief, paras 156, 162.

¹²⁴⁰ Stojić's Response Brief, para. 162. See also Stojić's Response Brief, para. 156.

¹²⁴¹ Stojić's Response Brief, para. 163. See *supra*, para. 394.

¹²⁴² Praljak's Appeal Brief, headings before paras 280, 283, 286, 290, paras 280, 283-296; Praljak's Response Brief, paras 153-154; Appeal Hearing, AT. 378 (22 Mar 2017).

¹²⁴³ Petković's Appeal Brief, paras 277-278(i)-(iii).

¹²⁴⁴ Prosecution's Reply Brief, paras 143, 145. See also Prosecution's Reply Brief, para. 151.

¹²⁴⁵ Prosecution's Reply Brief, para. 148. The Prosecution argues that, in any case, the subsequent destruction of the Kamenica Bridge was harm reasonably anticipated by the HVO. Prosecution's Reply Brief, para. 149.

¹²⁴⁶ Prosecution's Reply Brief, paras 147, 150. See Prosecution's Reply Brief, para. 144.

¹²⁴⁷ Prosecution's Reply Brief, para. 146. See Prosecution's Reply Brief, para. 143.

¹²⁴⁸ Prosecution's Response Brief (Praljak), paras 199-205, 207-210; Prosecution's Response Brief (Petković), paras 211-215. In response to the Appeals Chamber's request to discuss any impact an error regarding the Trial Chamber's legal findings on the destruction of the Old Bridge as a crime of wanton destruction would have on its findings that the destruction also constituted the crimes of persecution and unlawful infliction of terror on civilians, the Prosecution submits that the attack on the Old Bridge was unlawful because, although it was a lawful military target, it was not targeted for that reason. It argues that the bridge was instead destroyed as part of the HVO's protracted

(ii) Analysis

411. Turning to Stojić's and the Prosecution's submissions on the Trial Chamber's finding that the destruction of the Old Bridge was disproportionate and wanton, the Appeals Chamber notes that the Trial Chamber found that the Old Bridge, real property normally used by civilians, was used by both the ABiH and the inhabitants of the right and left banks of the Neretva between May and November 1993.¹²⁴⁹ The Trial Chamber further found that "the armed forces of the HVO had a military interest in destroying this structure" and, consequently, found that "at the time of the attack, the Old Bridge was a military target".¹²⁵⁰ The Trial Chamber, however, also found that the destruction of the bridge put the residents of Donja Mahala in virtually total isolation and that it had a very significant psychological impact on the Muslim population of Mostar.¹²⁵¹ It therefore held that:

[T]he damage to the civilian population was indisputable and substantial. It therefore holds by a majority, with Judge Antonetti dissenting, that the impact on the Muslim civilian population of Mostar was disproportionate to the concrete and direct military advantage expected by the destruction of the Old Bridge.¹²⁵²

The Appeals Chamber recalls that the elements of wanton destruction not justified by military necessity, as a violation of the laws or customs of war, include, *inter alia*, the destruction of property that occurs on a large scale and that the destruction is not justified by military necessity.¹²⁵³ Since the Trial Chamber found that the Old Bridge was a military target at the time of the attack,¹²⁵⁴ and, thus, its destruction offered a definite military advantage,¹²⁵⁵ the Appeals Chamber, Judge Pocar dissenting, finds that it cannot be considered, in and of itself, as wanton destruction not justified by military necessity.¹²⁵⁶ Moreover, the Appeals Chamber, Judge Pocar dissenting, notes that when outlining the damage caused to the civilian population in its determination of whether the crime of wanton destruction had been committed, the Trial Chamber did not make any finding about other property being collaterally destroyed as a result of the attack

campaign of terror directed against the Muslims of Mostar. It further submits that the attack was retribution for the fall of Vareš to ABiH forces, and that because the Old Bridge was completely unusable and could be considered destroyed after the shelling attacks on 8 November 1993, it "no longer had any military value" and no military advantage was to be gained "by bringing about its complete obliteration and collapse" on the following day. On these bases, the Prosecution submits that its destruction was not justified by military necessity. Appeal Hearing, AT. 450-454 (22 Mar 2017). See Order for the Preparation of the Appeal Hearing, p. 5, para. 2.

¹²⁴⁹ Trial Judgement, Vol. 3, para. 1582. See Trial Judgement, Vol. 2, paras 1284-1293.

¹²⁵⁰ Trial Judgement, Vol. 3, para. 1582.

¹²⁵¹ Trial Judgement, Vol. 3, para. 1583.

¹²⁵² Trial Judgement, Vol. 3, para. 1584.

¹²⁵³ *Hadžihasanović and Kubura* Decision on Rule 98bis, fn. 53; *Kordić and Čerkez* Appeal Judgement, para. 74.

¹²⁵⁴ Trial Judgement, Vol. 3, para. 1582.

¹²⁵⁵ *Kordić and Čerkez* Appeal Judgement, para. 53. See also Trial Judgement, Vol. 2, paras 1357, 1365, Vol. 3, paras 1582, 1584.

¹²⁵⁶ Cf. *Brđanin* Appeal Judgement, paras 337 ("Determining whether destruction occurred pursuant to military necessity involves a determination of what constitutes a military objective."), 341; *Kordić and Čerkez* Appeal Judgement, paras 54, 74.

on the Old Bridge.¹²⁵⁷ Rather, in reaching its conclusion that the attack on the Old Bridge was disproportionate, the Trial Chamber found that the attack isolated the Muslim population in Mostar and caused a very significant psychological impact.¹²⁵⁸ Thus, in the absence of any destruction of property *not justified by military necessity* in the Trial Chamber's legal findings for Count 20, the Appeals Chamber, Judge Pocar dissenting, concludes that a requisite element of the crime was not satisfied. Accordingly, the Appeals Chamber, Judge Pocar dissenting, finds that the Trial Chamber erred in finding that the destruction of the Old Bridge of Mostar constituted the crime of wanton destruction not justified by military necessity as a violation of the laws or customs of war.¹²⁵⁹ As a result, the Appeals Chamber, Judge Pocar dissenting, dismisses the Prosecution's submissions in this regard. The Appeals Chamber declines to enter convictions on appeal for wanton destruction not justified by military necessity, as a violation of the laws or customs of war, of the Old Bridge in Mostar.

412. In light of the preceding analysis and the Appeals Chamber's analysis, below, of its effects on the Trial Chamber's findings in relation to Count 1,¹²⁶⁰ the Appeals Chamber, Judge Pocar dissenting, considers that Praljak's and Petković's arguments are moot.

¹²⁵⁷ Trial Judgement, Vol. 3, paras 1583-1584. See Trial Judgement, Vol. 2, paras 1355-1357, 1365.

¹²⁵⁸ See Trial Judgement, Vol. 2, paras 1355-1357, 1365, Vol. 3, paras 1583-1586. The Appeals Chamber observes that the Trial Chamber found that "the destruction of the Old Bridge by the HVO may have been justified by military necessity", and subsequently, having discussed the question of proportionality, did not enter a discrete finding that the destruction was not justified by military necessity. Trial Judgement, Vol. 3, para. 1584. See also Trial Judgement, Vol. 3, para. 1587.

¹²⁵⁹ With regard to the Prosecution's submission that the attack on the Old Bridge was unlawful because, although it was a lawful military target, it was not targeted for that reason, and its argument that the bridge was instead destroyed as part of the HVO's protracted campaign of terror directed against the Muslims of Mostar, the Appeals Chamber considers that the Prosecution falls into circular reasoning. It cannot be said that destruction was not justified by military necessity because of the existence of a campaign of terror, if the fact that the bridge was a military target raises reasonable doubt as to whether its destruction was part of that campaign. Further, the argument that the destruction of the Old Bridge was retribution for the fall of Vareš to the ABiH forces deals with the question of the HVO's motive, which is irrelevant in law. *Limaj et al.* Appeal Judgement, para. 109; *Tadić* Appeal Judgement, paras 268-269; *Kanyarukiga* Appeal Judgement, para. 262. Finally, the Appeals Chamber turns to the Prosecution argument that because the Old Bridge was completely unusable and could be considered destroyed after the shelling attacks on 8 November 1993, it "no longer had any military value" and no military advantage was to be gained "by bringing about its complete obliteration and collapse" on the following day. The Trial Chamber found that the Old Bridge was or could be considered destroyed by the evening of 8 November 1993 as it was unusable and on the verge of collapse, and that it collapsed the following morning. However, it made no finding that the bridge ceased being a military target on the evening of 8 November 1993 or that the HVO knew that the ABiH could no longer use it for military purposes. Trial Judgement, Vol. 2, paras 1318, 1321, 1343, 1345, 1366. See also Trial Judgement, Vol. 2, para. 1326, Vol. 3, para. 1581. The Appeals Chamber notes in this regard that none of the evidence on which the Trial Chamber relied to find that the Old Bridge was destroyed by the evening of 8 November 1993 emanated from the HVO. See Trial Judgement, Vol. 2, paras 1316-1317. As such, the Prosecution fails to show that the HVO targeted the Old Bridge on any basis other than its status as a military target. The Appeals Chamber therefore dismisses its arguments.

¹²⁶⁰ See *infra*, paras 422-423.

3. Conclusion on wanton destruction not justified by military necessity

413. In sum, the Appeals Chamber agrees with the Prosecution's ground of appeal 3, in part, as it pertains to the Trial Chamber's failure to enter convictions under Count 20 against Prlić, Stojić, Praljak, Petković, Ćorić, and Pušić for the wanton destruction of property not justified by military necessity, as a violation of the laws or customs of war, in Prozor Municipality between May and early July 1993¹²⁶¹ and Mostar Municipality between June and December 1993 (ten mosques).¹²⁶² However, pursuant to its discretion under Article 25 of the Statute,¹²⁶³ the Appeals Chamber finds it appropriate to refrain from entering new convictions on appeal for wanton destruction not justified by military necessity as a violation of the laws or customs of war under Article 3 of the Statute.¹²⁶⁴ In so finding, the Appeals Chamber considers the interests of fairness to the Appellants balanced with considerations of the interests of justice, and taking into account the nature of the offences and the circumstances of this case.¹²⁶⁵

414. With respect to the Old Bridge in Mostar, the Appeals Chamber, Judge Pocar dissenting, recalls that the Trial Chamber erred in finding that the destruction of the Old Bridge of Mostar constituted the crime of wanton destruction not justified by military necessity.¹²⁶⁶ The Appeals Chamber, Judge Pocar dissenting in part, therefore dismisses the relevant part of the Prosecution's ground of appeal 3 seeking a conviction for wanton destruction not justified by military necessity, as a violation of the laws or customs of war (Count 20), with respect to the Old Bridge.

4. Impact of errors in relation to the Old Bridge on the crimes of persecution and unlawful infliction of terror on civilians

415. The Trial Chamber relied on its finding on the destruction of the Old Bridge as a basis for its findings that the HVO committed both persecution as a crime against humanity (Count 1) and unlawful infliction of terror on civilians as a violation of the laws or customs of war (Count 25),¹²⁶⁷ and consequently convicted the Appellants for these crimes in relation to the Old Bridge.¹²⁶⁸

¹²⁶¹ See Trial Judgement, Vol. 3, para. 1566.

¹²⁶² See Trial Judgement, Vol. 3, para. 1580. The Appeals Chamber notes in this regard that, for reasons set out elsewhere, this error applies only to the destruction of three mosques between June 1993 and: (1) 15 November 1993, in relation to Stojić; (2) 9 November 1993, in relation to Praljak; and (3) 10 November 1993, in relation to Ćorić. See *supra*, para. 105; *infra*, paras 2002-2003, fn. 5395.

¹²⁶³ Cf. *Stanišić and Župljanin* Appeal Judgement, para. 1096 & fn. 3625; *Dordević* Appeal Judgement, para. 928; *Šainović et al.* Appeal Judgement, fn. 5269; *Jelisić* Appeal Judgement, para. 73.

¹²⁶⁴ The Appeals Chamber notes however that insofar as the ten mosques in Mostar are concerned, the Trial Chamber also convicted the Appellants under Count 21. Trial Judgement, Vol. 3, paras 1609-1610.

¹²⁶⁵ Cf. *Stanišić and Župljanin* Appeal Judgement, para. 1096 & fn. 3626 and references cited therein.

¹²⁶⁶ See *supra*, para. 411.

¹²⁶⁷ Trial Judgement, Vol. 3, paras 1690-1692, 1711-1713.

¹²⁶⁸ See Trial Judgement, Vol. 3, paras 1690-1692, 1711-1713, Vol. 4, para. 59, Disposition, pp. 430-431.

416. Specifically, when finding that persecution had been committed, the Trial Chamber considered a number of “crimes against the Muslims of the Municipality of Mostar”,¹²⁶⁹ including the destruction of the Old Bridge, which it recalled as having “undeniable cultural, historical and symbolic value for the Muslims”.¹²⁷⁰ The Trial Chamber found that by committing all these crimes, the HVO specifically targeted Muslims, introduced *de facto* discrimination, and violated their basic rights to “life, freedom and dignity”.¹²⁷¹ Thus, it was satisfied that the HVO intended to discriminate against these Muslims and violate their basic rights to “life, human dignity, freedom and property”.¹²⁷²

417. In its legal findings on the unlawful infliction of terror on civilians, the Trial Chamber also considered various acts by the HVO including the destruction of the Old Bridge.¹²⁷³ It recalled that the destruction had a major psychological impact on the morale of the population and that the HVO had to be aware of that impact, in particular because of its “great symbolic, cultural and historical value”.¹²⁷⁴ The Trial Chamber was satisfied that the deliberate isolation of the population in East Mostar for several months, after forcibly transferring a large part of the population there, and thus the exacerbation of their distress and difficult living conditions, demonstrated the specific intention of the HVO to spread terror.¹²⁷⁵ The Trial Chamber concluded that the HVO committed acts of violence, “the main aim of which was to inflict terror on the population”, thereby committing unlawful infliction of terror on civilians.¹²⁷⁶

(a) Arguments of the Parties

418. At the Appeal Hearing, Stojić, Praljak, and the Prosecution were asked to discuss any impact an error regarding the Trial Chamber’s legal findings on the destruction of the Old Bridge as a crime of wanton destruction (Count 20) would have on its findings that the destruction also constituted the crimes of persecution (Count 1) and unlawful infliction of terror on civilians (Count 25).¹²⁷⁷

419. Stojić argues that to state that one can comply with international humanitarian law in relation to distinction and targeting but still be responsible for persecution, for example, for the

¹²⁶⁹ Trial Judgement, Vol. 3, para. 1712. See Trial Judgement, Vol. 3, paras 1707-1711, 1713.

¹²⁷⁰ Trial Judgement, Vol. 3, para. 1711.

¹²⁷¹ Trial Judgement, Vol. 3, para. 1712.

¹²⁷² Trial Judgement, Vol. 3, paras 1712-1713.

¹²⁷³ Trial Judgement, Vol. 3, paras 1689-1692.

¹²⁷⁴ Trial Judgement, Vol. 3, para. 1690.

¹²⁷⁵ Trial Judgement, Vol. 3, para. 1691.

¹²⁷⁶ Trial Judgement, Vol. 3, para. 1692.

¹²⁷⁷ Order for the Preparation of the Appeal Hearing, p. 5, para. 2.

destruction of the Old Bridge, leads to massive policy implications unsupported by law or practice.¹²⁷⁸

420. Praljak argues that the Trial Chamber's errors relating to the destruction of the Old Bridge have an impact on the crimes of persecution and terror as they show that these crimes have been tried on the basis of erroneous facts.¹²⁷⁹ Praljak submits that although the Trial Chamber considered a number of acts in Mostar Municipality – including the destruction of the Old Bridge and mosques, sniping, “bombings”, the isolation of the population, and forced transfer – when concluding that the crimes of persecution and terror had been committed, none of the facts relating to these acts had been properly established with regard to him or the HVO.¹²⁸⁰ In particular, Praljak challenges the underlying findings pertaining to sniping, “bombings”, and the destruction of or damage to mosques and submits that the “crime[s] of persecution and spreading terror” must be reversed.¹²⁸¹

421. The Prosecution submits that, if the Appeals Chamber were to find an error with respect to the legal findings under Count 20 on the destruction of the Old Bridge, it would have an impact on Stojić's and Praljak's convictions for persecution and the unlawful infliction of terror, but that the impact would be minimal.¹²⁸² In this regard, it argues that a determination that the destruction was lawful would mean that it could not form part of the convictions for persecution or unlawful infliction of terror given that the attack would not have been carried out with the primary intent to inflict terror or with the intent to discriminate.¹²⁸³ The Prosecution submits, however, that since the legal findings for persecution (Count 1) and unlawful infliction of terror on civilians (Count 25) are based on the aggregation of numerous crimes and acts, Stojić's and Praljak's convictions on those counts would remain intact.¹²⁸⁴

(b) Analysis

422. Turning first to persecution as a crime against humanity under Article 5 of the Statute (Count 1), the Appeals Chamber recalls that it consists of an act or omission which:

1. discriminates in fact and which denies or infringes upon a fundamental right laid down in international customary or treaty law (the *actus reus*); and

¹²⁷⁸ Appeal Hearing, AT. 283 (21 Mar 2017).

¹²⁷⁹ Appeal Hearing, AT. 377-378 (22 Mar 2017).

¹²⁸⁰ Appeal Hearing, AT. 377, 379-380 (22 Mar 2017).

¹²⁸¹ Appeal Hearing, AT. 378 (22 Mar 2017). See Appeal Hearing, AT. 379 (22 Mar 2017).

¹²⁸² Appeal Hearing, AT. 449 (22 Mar 2017).

¹²⁸³ Appeal Hearing, AT. 449 (22 Mar 2017).

¹²⁸⁴ Appeal Hearing, AT. 449-450 (22 Mar 2017), referring to Trial Judgement, Vol. 3, paras 1689-1692, 1694-1741.

2. was carried out deliberately with the intention to discriminate on one of the listed grounds, specifically race, religion or politics (the *mens rea*).¹²⁸⁵

Persecution as a crime against humanity requires evidence that the principal perpetrator had the specific intent to discriminate on one of these grounds.¹²⁸⁶ While the requisite discriminatory intent may not be inferred directly from the general discriminatory nature of an attack characterised as a crime against humanity, the “discriminatory intent may be inferred from such a context as long as, in view of the facts of the case, circumstances surrounding the commission of the alleged acts substantiate the existence of such intent”.¹²⁸⁷ Further, the Appeals Chamber has found that the destruction of property, depending on the nature and extent of the destruction, may constitute a crime of persecution of equal gravity to other crimes listed in Article 5 of the Statute.¹²⁸⁸

423. The Appeals Chamber, Judge Pocar dissenting, recalls that the Trial Chamber erred in finding that the destruction of the Old Bridge of Mostar constituted the crime of wanton destruction not justified by military necessity as a violation of the laws or customs of war.¹²⁸⁹ The Appeals Chamber notes that the Trial Chamber previously found that “the armed forces of the HVO had a military interest in destroying this structure” and that “at the time of the attack, the Old Bridge was a military target”.¹²⁹⁰ However, the Trial Chamber subsequently reached the conclusion that the destruction was carried out deliberately with the intent to discriminate against Muslims by noting that the Old Bridge “had undeniable cultural, historical and symbolic value for the Muslims”.¹²⁹¹ Considering the Trial Chamber’s findings that the HVO had a military interest in the destruction of the Old Bridge and that it was a military target, the Appeals Chamber, Judge Pocar dissenting, finds that no reasonable trier of fact could have found, beyond reasonable doubt, that the HVO had the specific intent to discriminate. The Appeals Chamber, Judge Pocar dissenting, finds that this error occasions a miscarriage of justice that invalidates the Trial Chamber’s conclusion on the crime of persecution as it concerns the destruction of the Old Bridge.

¹²⁸⁵ *Kvočka et al.* Appeal Judgement, para. 320, referring to *Krnojelac* Appeal Judgement, para. 185, *Vasiljević* Appeal Judgement, para. 113, *Blaškić* Appeal Judgement, para. 131, *Kordić and Čerkez* Appeal Judgement, para. 101. See also, e.g., *Nyiramasuhuko et al.* Appeal Judgement, para. 2138, citing *Nahimana et al.* Appeal Judgement, para. 985.

¹²⁸⁶ *Šainović et al.* Appeal Judgement, para. 579; *Blaškić* Appeal Judgement, para. 164; *Krnojelac* Appeal Judgement, para. 184.

¹²⁸⁷ *Šainović et al.* Appeal Judgement, para. 579; *Blaškić* Appeal Judgement, para. 164; *Krnojelac* Appeal Judgement, para. 184.

¹²⁸⁸ *Kordić and Čerkez* Appeal Judgement, para. 108; *Blaškić* Appeal Judgement, para. 149. See also *Blaškić* Appeal Judgement, para. 146.

¹²⁸⁹ See *supra*, para. 411.

¹²⁹⁰ Trial Judgement, Vol. 3, para. 1582. See also Trial Judgement, Vol. 2, paras 1290, 1354, 1357; *supra*, paras 406, 411.

¹²⁹¹ Trial Judgement, Vol. 3, para. 1711. See Trial Judgement, Vol. 3, paras 1712-1713.

424. With respect to the war crime of unlawful infliction of terror on civilians as a violation of the laws or customs of war (Count 25),¹²⁹² the Appeals Chamber notes that it is comprised of acts or threats of violence the primary purpose of which is to spread terror among the civilian population,¹²⁹³ and that the *mens rea* includes the specific intent to spread terror among the civilian population.¹²⁹⁴ Other purposes of the unlawful acts or threats may have coexisted simultaneously with the purpose of spreading terror among the civilian population, provided that the intent to spread terror among the civilian population was principal among the aims.¹²⁹⁵ Such intent can be inferred from the “nature, manner, timing and duration” of the acts or threats.¹²⁹⁶ The Appeals Chamber in the *Galić* case described the crime of terror as not being “a case in which an explosive device was planted outside of an ongoing military attack but rather a case of ‘extensive trauma and psychological damage’ being caused by ‘attacks [which] were designed to keep the inhabitants in a constant state of terror’”.¹²⁹⁷

425. The Trial Chamber considered the destruction of the Old Bridge as an “act[] of violence, the main aim of which was to inflict terror on the population”.¹²⁹⁸ Although, as stated above, the act of destroying the Old Bridge could have simultaneously served multiple purposes, the Trial Chamber made no express mention of its previous findings that the HVO had a military interest in destroying the bridge and that it was a military target¹²⁹⁹ – findings that would have been essential to an assessment of the purpose of its destruction. In a notable contrast, the Trial Chamber expressly considered the lack of military value of ten mosques destroyed in East Mostar.¹³⁰⁰ The Trial Chamber instead reached its conclusion about the purpose of the destruction of the Old Bridge after recalling its factual findings on the *impact* of the destruction on the population and that the HVO had to have been aware of such impact.¹³⁰¹ Considering the Trial Chamber’s findings that the HVO had a military interest in the destruction of the Old Bridge and that it was a military target, the Appeals Chamber, Judge Pocar dissenting, finds that no reasonable trier of fact could have found, beyond reasonable doubt, that the HVO had the specific intent to commit terror. The Appeals Chamber, Judge Pocar dissenting, finds that this error occasions a miscarriage of justice that

¹²⁹² Judge Liu dissents from all portions of this Judgement dealing with the unlawful infliction of terror on civilians as a violation of the laws or customs of war (Count 25) since he is of the view that the Tribunal does not have jurisdiction over this crime and that the elements of this offence as set out in the present paragraph do not adequately define a criminal charge.

¹²⁹³ *D. Milošević* Appeal Judgement, paras 32-33, 37; *Galić* Appeal Judgement, paras 69, 102.

¹²⁹⁴ *D. Milošević* Appeal Judgement, para. 37; *Galić* Appeal Judgement, paras 102, 104.

¹²⁹⁵ *Galić* Appeal Judgement, para. 104. See *D. Milošević* Appeal Judgement, para. 37.

¹²⁹⁶ *D. Milošević* Appeal Judgement, para. 37, citing *Galić* Appeal Judgement, para. 104.

¹²⁹⁷ *Galić* Appeal Judgement, para. 102 (internal references omitted).

¹²⁹⁸ Trial Judgement, Vol. 3, para. 1692. See Trial Judgement, Vol. 3, para. 1690.

¹²⁹⁹ See Trial Judgement, Vol. 3, para. 1582. See also Trial Judgement, Vol. 2, paras 1290, 1354, 1357; *supra*, paras 406, 411, 423.

¹³⁰⁰ See Trial Judgement, Vol. 3, para. 1690.

¹³⁰¹ See Trial Judgement, Vol. 3, para. 1690 & fn. 2625.

invalidates the Trial Chamber's conclusion on the crime of unlawful infliction of terror as it concerns the destruction of the Old Bridge.

426. In light of the foregoing, the Appeals Chamber, Judge Pocar dissenting, reverses the Trial Chamber's findings that the destruction of the Old Bridge constituted persecution as a crime against humanity (Count 1) and the unlawful infliction of terror on civilians as a violation of the laws or customs of war (Count 25) and, Judge Pocar dissenting, acquits the Appellants of these counts in relation to the Old Bridge. The Appeals Chamber, Judge Pocar dissenting, will consider below the impact of these acquittals, if any, upon the sentences of the Appellants. The Appeals Chamber further notes that the Trial Chamber considered a number of other underlying acts when holding that these crimes had been committed.¹³⁰² Praljak's submissions challenging the underlying findings of these other acts are dismissed elsewhere.¹³⁰³ Thus, to the extent that he contends that his convictions under Counts 1 and 25 should be reversed in their entirety,¹³⁰⁴ the Appeals Chamber, Judge Pocar dissenting in part, dismisses his argument.

D. Attacks of 18 January 1993 in Gornji Vakuf Municipality and Related Crimes

427. The Trial Chamber found that on 18 January 1993, the HVO attacked the villages of Duša, Hrasnica, Uzričje, and Ždrimci in Gornji Vakuf Municipality with mortar shells, heavy machine guns, and artillery.¹³⁰⁵ It found that in Duša, the HVO killed seven inhabitants who had gathered in the cellar of Enver Šljivo's house and who were not taking part in the fighting,¹³⁰⁶ while in all four villages houses belonging to the Muslim inhabitants were destroyed by shelling during the attacks.¹³⁰⁷

1. The killing of seven civilians in Duša (Stojić's Sub-ground 45.1 and Praljak's Ground 12)

428. The Trial Chamber found that "the HVO attacked the village [of Duša] by using weapons – more specifically, shells – the nature of which is such that it is impossible to distinguish military from civilian targets",¹³⁰⁸ It further found that the HVO forces made no effort to allow the civilian population of the village to flee before the attack. Consequently, it held that the shelling of Duša was an indiscriminate attack. On this basis, it found that the HVO, by firing several shells at the village and in particular at Enver Šljivo's house, intended to cause serious bodily harm to the

¹³⁰² See Trial Judgement, Vol. 3, paras 1689-1692, 1694-1741. See also *infra*, para. 563.

¹³⁰³ See *supra*, para. 419 & fns 1280-1281; *infra*, paras 541, 543 (sniping), 549, 554 (shelling), 567, 569 (destruction of or damage to mosques).

¹³⁰⁴ See *supra*, para. 419.

¹³⁰⁵ Trial Judgement, Vol. 2, paras 357-358, 369, 374, 381.

¹³⁰⁶ Trial Judgement, Vol. 2, paras 366, 368.

¹³⁰⁷ Trial Judgement, Vol. 2, paras 367-368, 373, 379, 387.

¹³⁰⁸ Trial Judgement, Vol. 3, paras 663, 711.

civilians who had taken refuge there, harm that it could reasonably have foreseen could cause their deaths, thereby committing murder as a crime against humanity (Count 2) and wilful killing as a grave breach of the Geneva Conventions (Count 3) against each of these persons, crimes under Articles 5 and 2 of the Statute, respectively.¹³⁰⁹ The Trial Chamber subsequently relied on these findings in its analysis of persecution as a crime against humanity under Article 5 (Count 1), inhumane acts as a crime against humanity under Article 5 (Count 15), and inhuman treatment as a grave breach of the Geneva Conventions under Article 2 (Count 16).¹³¹⁰

(a) Arguments of the Parties

429. Stojić and Praljak submit that the Trial Chamber erred in concluding that HVO forces indiscriminately shelled Duša and intended to cause serious bodily harm to civilians.¹³¹¹ Praljak argues that the Trial Chamber erroneously concluded that the attack was led by HVO and HV soldiers.¹³¹² Stojić and Praljak argue that the Trial Chamber erred in law and fact when concluding that shells are by their nature indiscriminate.¹³¹³ Stojić submits that the Trial Chamber erred when finding that the shelling of Enver Šljivo's house, in particular, was indiscriminate, rather than an attack on a legitimate military target.¹³¹⁴ Praljak argues that the Trial Chamber failed to consider that Muslim defence lines were situated in proximity to Enver Šljivo's house and that the shell that hit it was therefore aimed at a legitimate military target.¹³¹⁵ In this regard, he further submits that the Trial Chamber did not establish: (1) the probability of the shell missing its target;¹³¹⁶ and (2) that the HVO knew or should have known that civilians were in the house.¹³¹⁷ Stojić and Praljak contend that the Trial Chamber relied solely on its erroneous finding that the attack on Duša was indiscriminate to incorrectly conclude that the HVO intended to cause serious bodily harm to

¹³⁰⁹ Trial Judgement, Vol. 3, paras 663, 711.

¹³¹⁰ Trial Judgement, Vol. 3, paras 1224, 1315, 1699.

¹³¹¹ Stojić's Appeal Brief, heading before para. 393, paras 393-394; Praljak's Appeal Brief, headings before paras 186, 195, paras 194, 199; Appeal Hearing, AT. 396 (22 Mar 2017). See also Stojić's Reply Brief, para. 78.

¹³¹² Praljak's Appeal Brief, para. 186, referring to, *inter alia*, Trial Judgement, Vol. 2, para. 358; Appeal Hearing, AT. 397-398 (22 Mar 2017). See also Praljak's Appeal Brief, paras 189, 195.

¹³¹³ Stojić's Appeal Brief, para. 394; Praljak's Appeal Brief, paras 187-188. See Appeal Hearing, AT. 278 (21 Mar 2017) (specifying that it was a legal error), 398 (22 Mar 2017). See also Stojić's Response Brief, para. 150; *infra*, para. 448. Praljak also argues that the Trial Chamber's finding that the HVO made no effort to allow the civilian population to flee before the attack is unfounded. Praljak's Appeal Brief, para. 193, referring to, *inter alia*, Exs. P01162, 4D00348, p. 3.

¹³¹⁴ Stojić's Appeal Brief, para. 395. See also Stojić's Response Brief, paras 151-152; Appeal Hearing, AT. 278-279 (21 Mar 2017); *infra*, para. 448.

¹³¹⁵ Praljak's Appeal Brief, paras 190-192, 198; Praljak's Reply Brief, para. 66. See Praljak's Appeal Brief, paras 187 (referring to, *inter alia*, Trial Judgement, Vol. 2, paras 362, 366), 189.

¹³¹⁶ Praljak's Appeal Brief, para. 198. See also Appeal Hearing, AT. 403 (22 Mar 2017).

¹³¹⁷ Praljak's Appeal Brief, paras 189, 192, 198; Praljak's Reply Brief, para. 66; Appeal Hearing, AT. 397 (22 Mar 2017). Praljak submits in this regard that Enver Šljivo was the commander of the village defence. Praljak's Appeal Brief, paras 189 (referring to, *inter alia*, Trial Judgement, Vol. 2, para. 365), 192; Praljak's Reply Brief, para. 66.

civilians.¹³¹⁸ Stojić and Praljak request to be acquitted of these charges under Counts 1, 2, 3, 15, and 16.¹³¹⁹

430. The Prosecution responds that, contrary to Praljak's assertion, the Trial Chamber reasonably concluded that the HVO and HV soldiers attacked Duša.¹³²⁰ The Prosecution does not expressly dispute Stojić's and Praljak's submissions that the attack was not indiscriminate, but submits that the Trial Chamber reasonably rejected the argument that the HVO aimed at legitimate military targets.¹³²¹ It submits that the HVO directly targeted Enver Šljivo's house with the intent to kill and cause serious bodily and mental harm to civilians, and that this conclusion is supported by the evidence.¹³²²

431. Stojić replies that there is no basis in the Trial Chamber's findings for a conclusion that the HVO directly targeted civilians.¹³²³ Praljak replies that the Trial Chamber's and Prosecution's analyses of events in Duša are based on the erroneous finding that the HVO attack on Gornji Vakuf was part of an overall plan to take control of the area.¹³²⁴

432. At the Appeal Hearing, the Parties were invited to discuss the basis for the Trial Chamber's finding that during the attack on Duša on 18 January 1993, HVO forces intended to cause serious bodily harm to the civilians who had taken refuge in Enver Šljivo's house, harm which they could reasonably have foreseen could cause their deaths.¹³²⁵ The Prosecution reiterates its position that the attack on Enver Šljivo's house was a deliberate attack on civilians,¹³²⁶ and refers to further evidence in this regard.¹³²⁷ It also argues, however, that when assessed overall, "the Gornji Vakuf attack" was

¹³¹⁸ Stojić's Appeal Brief, heading before para. 393, para. 397; Praljak's Appeal Brief, paras 197-198. See also Praljak's Appeal Brief, para. 195.

¹³¹⁹ Stojić's Appeal Brief, paras 396-397; Stojić's Reply Brief, para. 78; Praljak's Appeal Brief, para. 185.

¹³²⁰ Prosecution's Response Brief (Praljak), para. 130; Appeal Hearing, AT. 418-419 (22 Mar 2017). See Prosecution's Response Brief (Praljak), paras 125-126.

¹³²¹ Prosecution's Response Brief (Stojić), paras 360-361; Prosecution's Response Brief (Praljak), paras 127-128. See also Prosecution's Reply Brief, para. 142 & fn. 550; *infra*, para. 449. The Prosecution also argues that the Trial Chamber reasonably found, in line with the evidence, that HVO forces made no effort to allow civilians to flee before the attack. Prosecution's Response Brief (Praljak), para. 129.

¹³²² Prosecution's Response Brief (Stojić), paras 361-362; Prosecution's Response Brief (Praljak), paras 128, 131 (referring to, *inter alia*, Trial Judgement, Vol. 3, paras 663, 711); Prosecution's Reply Brief, fn. 550. See also *infra*, para. 449; Prosecution's Response Brief (Stojić), paras 359, 363. Specifically, the Prosecution refers to evidence that an HVO tank, that is, a direct-fire weapon, penetrated the wall of Enver Šljivo's basement and continued firing on the house as civilians fled. Prosecution's Response Brief (Stojić), para. 360; Prosecution's Response Brief (Praljak), para. 127; Prosecution's Reply Brief, fn. 550.

¹³²³ Stojić's Reply Brief, para. 78. See also Stojić's Reply Brief, para. 77.

¹³²⁴ Praljak's Reply Brief, para. 65.

¹³²⁵ Order for the Preparation of the Appeal Hearing, pp. 5-6, para. 3.

¹³²⁶ Appeal Hearing, AT. 211, 214 (20 Mar 2017).

¹³²⁷ The Prosecution refers to evidence as to: (1) the locations and positions of the defenders of the village relative to Enver Šljivo's house and each other; (2) the HVO tank's line of sight to Enver Šljivo's house; (3) the supposedly "precise" nature of direct-fire weapons; (4) the fact that the tank fired "at least two" consecutive shells, including on fleeing civilians; and (5) the HVO's knowledge that the house was a civilian object. Appeal Hearing, AT. 211-214, 216-217 (20 Mar 2017), referring to, *inter alia*, Ex. P10108, p. 3. The Prosecution also submits that a residential house is a "*prima facie* civilian object". Appeal Hearing, AT. 419 (22 Mar 2017).

conducted with no regard for the principle of distinction, and that the Trial Chamber's conclusion that the civilians killed in Duša were victims of an indiscriminate attack was therefore correct.¹³²⁸ Finally, the Prosecution suggests that even under the Defence theory that the shelling of Enver Šljivo's house was an attack on a lawful target, the evidence discloses an indiscriminate or, at best, a "grossly disproportionate" attack.¹³²⁹ Stojić and Praljak argue that neither the Trial Chamber's findings nor the evidence referred to by the Prosecution establish that the HVO forces had the requisite intent.¹³³⁰ Stojić also impugns the Rule 92 *bis* evidence of Witness Kemal Šljivo.¹³³¹

(b) Analysis

433. As a preliminary matter, the Appeals Chamber observes that the Trial Chamber's legal findings in relation to the killing of seven civilians in Duša on 18 January 1993 under Counts 1 (persecution as a crime against humanity), 15 (inhumane acts as a crime against humanity), and 16 (inhuman treatment as a grave breach of the Geneva Conventions) are substantiated solely by reference to its legal findings under Counts 2 (murder as a crime against humanity) and 3 (wilful killing as a grave breach of the Geneva Conventions).¹³³² In other words, the Trial Chamber made no distinct legal findings on the killings in relation to Counts 1, 15, and 16. Insofar as Stojić's and Praljak's submissions impugn the Trial Chamber's findings under Counts 1, 15, and 16, they are premised exclusively on their challenges to findings under Counts 2 and 3. The Appeals Chamber will accordingly address the challenges to the findings through consideration of the challenges to Counts 2 and 3 before assessing any impact on the remaining counts.

434. The Trial Chamber found that the attack on Duša was indiscriminate on the basis that: (1) the HVO attacked the village using weapons – more specifically, shells – the nature of which is such that it is impossible to distinguish military from civilian targets; and (2) the HVO made no effort to allow the civilian population to flee before the attack.¹³³³ It provided no references in support of the finding that "shells" are of such a nature that it is impossible to distinguish between civilian and military targets.¹³³⁴ The Appeals Chamber would have expected such a finding to be

¹³²⁸ Appeal Hearing, AT. 215-216 (20 Mar 2017), referring to, *inter alia*, Trial Judgement, Vol. 2, para. 372, Vol. 4, paras 45, 48, 704.

¹³²⁹ Appeal Hearing, AT. 217-218 (20 Mar 2017), AT. 420 (22 Mar 2017).

¹³³⁰ Appeal Hearing, AT. 277-280 (21 Mar 2017), AT. 396-398, 400, 403 (22 Mar 2017). Ćorić also responds to the Prosecution's submissions in relation to the killing of seven civilians in Duša. Appeal Hearing, AT. 586-587 (24 Mar 2017).

¹³³¹ Appeal Hearing, AT. 279-280 (21 Mar 2017).

¹³³² Trial Judgement, Vol. 3, para. 1224 & fn. 1965 (Count 15, inhumane acts as a crime against humanity), para. 1315 & fn. 2116 (Count 16, inhuman treatment as a grave breach of the Geneva Conventions), para. 1699 (Count 1, persecution as a crime against humanity).

¹³³³ Trial Judgement, Vol. 3, paras 663, 711.

¹³³⁴ See Trial Judgement, Vol. 3, paras 663, 711 and references cited therein.

based on evidence that the weapon employed in the attack, when used in its normal or designed circumstances, will inevitably be indiscriminate, in the sense that it is incapable of being directed at a specific military objective or its effects are incapable of being limited as required by law.¹³³⁵ In the absence of such an assessment, the Appeals Chamber considers that no reasonable trier of fact could have found that “shells”, without further specification, are inherently indiscriminate, and accordingly reverses this finding.

435. In light of this error, the Trial Chamber’s finding that the attack on Duša was indiscriminate therefore rests exclusively on its finding that the HVO made no effort to allow the civilian population to flee before the attack.¹³³⁶ The Appeals Chamber considers that no reasonable trier of fact could have reached the conclusion that the attack on Duša was indiscriminate on this basis alone.¹³³⁷

436. The Appeals Chamber notes that the Trial Chamber relied on its finding that the attack on the village of Duša was indiscriminate to substantiate its finding that the HVO forces had the requisite *mens rea* for murder and wilful killing.¹³³⁸ Having reversed this finding, therefore, the Appeals Chamber now turns to the question of whether the Trial Chamber’s conclusion that the HVO forces had the requisite *mens rea* for murder and wilful killing still stands on the basis of the Trial Chamber’s remaining findings and evidence referred to by the Parties, in order to determine if its error of fact occasioned a miscarriage of justice.

437. It will first address the Prosecution’s argument that when assessed overall, “the Gornji Vakuf attack” was conducted with no regard for the principle of distinction, and that the Trial Chamber’s conclusion that the civilians killed in Duša were victims of an indiscriminate attack is therefore correct. The Prosecution refers in support to, *inter alia*, Trial Chamber findings in relation to the attack on Hrasnica and on how the Gornji Vakuf attacks formed part of a “preconceived plan”, that is, the implementation of the CCP in Gornji Vakuf.¹³³⁹ The Appeals Chamber notes, however, that the Trial Chamber’s finding that the attacks on Hrasnica, Uzričje, and Ždrimci on 18 January 1993 were indiscriminate is reversed elsewhere.¹³⁴⁰ This argument is therefore dismissed.

¹³³⁵ See, e.g., William H. Boothby, *Weapons and the Law of Armed Conflict* (1st ed., 2009), pp. 83, 226-227, referring to, *inter alia*, Steven Haines, “Weapons, Means and Methods of Warfare”, in Elizabeth Wilmshurst and Susan Breau (eds.), *Perspectives on the ICRC Study on Customary International Humanitarian Law* (2007), p. 266.

¹³³⁶ Trial Judgement, Vol. 3, paras 663, 711.

¹³³⁷ Praljak’s argument with regard to the Trial Chamber’s finding that the HVO made no effort to allow the civilian population to flee before the attack is therefore moot.

¹³³⁸ Trial Judgement, Vol. 3, paras 663, 711.

¹³³⁹ See *supra*, para. 432 & fn. 1328.

¹³⁴⁰ See *infra*, para. 453.

438. The Prosecution's remaining arguments seek, on the basis of the evidence, to characterise the HVO attack as a deliberate attack on civilians, a "grossly disproportionate attack", or an indiscriminate attack (the latter on an alternative basis to that of the Trial Chamber's finding).¹³⁴¹ The Appeals Chamber notes that the Prosecution's submissions are in effect offered as an alternative to the Trial Chamber's findings on the attack rather than in support of them, and in some instances even appear to contradict them. The crux of the Prosecution's argument, for example, is that Enver Šljivo's house was targeted by tank fire,¹³⁴² where the Trial Chamber made no such finding, and in fact found that the HVO attacked Duša with mortar shells, heavy machine guns, and artillery.¹³⁴³

439. In the present case, the Trial Chamber found that there were members of the ABiH in Duša in mid-January 1993,¹³⁴⁴ and that prior to the attack on 18 January 1993, men from the ABiH and the village defence were "preparing to defend the village, taking up positions in particular in the forest of Duša".¹³⁴⁵ An HVO intelligence report dated 16 January 1993 indicated that there were 25 Muslim soldiers in Duša and that they were situated in the middle of the village "near the big house".¹³⁴⁶ The Appeals Chamber notes in particular that Witness BW explicitly accepted that Enver Šljivo's house was *between* the position of HVO forces which fired the shells and the Muslim defence lines,¹³⁴⁷ *i.e.* the house was situated in the line of fire between the HVO forces and the defenders of the village.

440. The Appeals Chamber notes that Witness BY testified that there was gunfire after the civilians taking shelter left the basement,¹³⁴⁸ and that Kemal Šljivo stated that he heard "gun shots coming from all directions".¹³⁴⁹ Neither of these statements clearly establishes whether the Muslim defenders of the village returned fire at the HVO forces, nor do other relevant sections of the trial record referred to by the Parties.¹³⁵⁰

441. In light of these findings and the relevant evidence considered as a whole, the Appeals Chamber finds that no reasonable trier of fact could have concluded that the HVO forces in

¹³⁴¹ See *supra*, paras 430, 432.

¹³⁴² See *supra*, fns 1322, 1327.

¹³⁴³ Trial Judgement, Vol. 2, para. 357. See Trial Judgement, Vol. 2, para. 358.

¹³⁴⁴ Trial Judgement, Vol. 2, para. 364.

¹³⁴⁵ Trial Judgement, Vol. 2, para. 362 (internal reference omitted).

¹³⁴⁶ Ex. 3D00527. The "big house" appears to refer to the house of Enver Šljivo. See Ex. P10108, p. 3. See also Ex. IC00059 (confidential); Witness BY, T. 9076-9077 (27 Oct 2006); Witness BW, T. 8770 (closed session) (19 Oct 2006).

¹³⁴⁷ Witness BW, T. 8807 (closed session) (19 Oct 2006). See also Ex. IC00059 (confidential). The Trial Chamber expressly gave credence to Witness BW's evidence. Trial Judgement, Vol. 2, para. 344.

¹³⁴⁸ Witness BY, T. 9077 (27 Oct 2006). The Trial Chamber expressly gave credence to Witness BY's evidence. Trial Judgement, Vol. 2, para. 344.

¹³⁴⁹ Ex. P10108, p. 4. The Trial Chamber expressly gave credence to Kemal Šljivo's evidence. Trial Judgement, Vol. 2, para. 344.

Duša possessed the requisite *mens rea* for murder and wilful killing, given the ongoing combat activity in the vicinity of the house and, in particular, the position of the defenders of the village relative to the house. As such, the Trial Chamber's factual error occasioned a miscarriage of justice insofar as it underpinned the Trial Chamber's finding that the killing of seven civilians during the attack on Duša constituted murder as a crime against humanity (Count 2) and wilful killing as a grave breach of the Geneva Conventions (Count 3).¹³⁵¹ The Appeals Chamber accordingly reverses these findings.

442. Further, as the Appeals Chamber has noted above, the Trial Chamber's findings under Counts 2 and 3 provided the sole basis for its subsequent findings in relation to the killings in Duša under Counts 1, 15, and 16.¹³⁵² As this sole basis is reversed, so too are these subsequent findings.

443. The Appeals Chamber accordingly grants Stojić's sub-ground of appeal 45.1 and Praljak's ground of appeal 12. The convictions of the Appellants under Counts 1, 2, 3, 15, and 16 with regard to the killing of seven civilians in Duša are reversed.¹³⁵³ The impact of this reversal, if any, on the Trial Chamber's findings as to the CCP, as well as on the Appellants' sentences, will be assessed below.¹³⁵⁴

2. Wanton destruction of cities, towns or villages, or devastation not justified by military necessity in Gornji Vakuf Municipality (Prosecution's Ground 3 in part)

444. With regard to the destruction of houses by shelling during the attacks on Duša, Hrasnica, Uzričje, and Ždrimci, the Trial Chamber noted that the destruction was extensive.¹³⁵⁵ It further noted that members of the ABiH were present in the villages at the time of the HVO attacks and that some armed Muslim men were hidden inside the houses from time to time.¹³⁵⁶ The Trial Chamber then referred to its legal findings in relation to murder and wilful killing in Gornji Vakuf Municipality and recalled its finding that the shelling of these villages was an indiscriminate attack.¹³⁵⁷ It therefore found that the destruction of houses by shelling during the attacks constituted

¹³⁵⁰ See, e.g., Witness BY, T. 9077-9078 (27 Oct 2006); Witness BW, T. 8781 (19 Oct 2006).

¹³⁵¹ Trial Judgement, Vol. 3, paras 663, 711.

¹³⁵² See *supra*, para. 433.

¹³⁵³ The Appeals Chamber recalls that Pušić was not convicted of any charges in relation to these killings as he was not a member of the JCE as of January 1993. Trial Judgement, Vol. 4, para. 1229.

¹³⁵⁴ See *infra*, paras 886, 3359-3365.

¹³⁵⁵ Trial Judgement, Vol. 3, para. 1568. See Trial Judgement, Vol. 3, paras 1569-1570. See also Trial Judgement, Vol. 2, paras 367-368 (referring to evidence that two houses in Duša had been destroyed by shelling), 373 (referring to testimony that three houses in Hrasnica were destroyed by shelling), 379 (referring to evidence that at least two houses in Uzričje were destroyed by shelling), 387 (referring to evidence that "a number" of houses in Ždrimci were destroyed by shelling).

¹³⁵⁶ Trial Judgement, Vol. 3, para. 1569.

¹³⁵⁷ Trial Judgement, Vol. 3, para. 1569 & fn. 2468.

wanton destruction of cities, towns or villages, or devastation not justified by military necessity as a violation of the laws or customs of war (Count 20).¹³⁵⁸

(a) Arguments of the Parties

445. The Appeals Chamber recalls that the Prosecution has requested that it enter convictions against Prlić, Stojić, Praljak, Petković, and Ćorić for wanton destruction of cities, towns or villages, or devastation not justified by military necessity (Count 20), a violation of the laws or customs of war and a crime punishable under Article 3 of the Statute, in relation to the destruction of houses belonging to Bosnian Muslims in the villages of Duša, Hrasnica, Uzričje, and Ždrimci in Gornji Vakuf Municipality on 18 January 1993.¹³⁵⁹ It further recalls that pursuant to paragraph 5 of the Practice Direction on Formal Requirements, if an appellant relies on a ground of appeal to reverse an acquittal, the respondent may support the acquittal on additional grounds of appeal in the respondent's brief.¹³⁶⁰

446. Prlić responds that he was not responsible for destruction in Gornji Vakuf and claims that the Trial Chamber relied upon a mischaracterisation of evidence and unreliable testimony when making findings regarding his participation in the attack on Gornji Vakuf and regarding his intent to commit property destruction crimes.¹³⁶¹

447. Praljak responds that the Trial Chamber made erroneous findings with regard to "his role in Gornji Vakuf municipality" and the inclusion of the crimes committed there in the CCP.¹³⁶² Praljak also submits that the Trial Chamber did not properly consider evidence or establish certain factual findings with respect to the destruction of houses in the Gornji Vakuf Municipality.¹³⁶³

448. Stojić responds that the Trial Chamber erred in law in finding that the destruction of houses on 18 January 1993 in the villages of Duša, Hrasnica, Uzričje, and Ždrimci in the Gornji Vakuf Municipality was indiscriminate and thus wanton and/or not justified by military necessity.¹³⁶⁴ Specifically, he submits that the Trial Chamber: (1) relied on its erroneous finding that shells are inherently indiscriminate;¹³⁶⁵ (2) failed to give adequate weight to the presence of

¹³⁵⁸ Trial Judgement, Vol. 3, para. 1570. The Trial Chamber noted, however, that as the HVO had not yet occupied the municipality of Gornji Vakuf as of the time of the attacks, this property was not protected under the Geneva Conventions, and that these incidents therefore did not constitute extensive destruction of property not justified by military necessity and carried out unlawfully and wantonly as, a grave breach of the Geneva Conventions (Count 19). Trial Judgement, Vol. 3, para. 1534. See also *supra*, para. 398.

¹³⁵⁹ See *supra*, para. 394.

¹³⁶⁰ See *supra*, para. 400.

¹³⁶¹ Prlić's Response Brief, paras 174-179. See Prlić's Response Brief, heading before para. 174.

¹³⁶² Praljak's Response Brief, paras 150-151.

¹³⁶³ Praljak's Response Brief, para. 149, referring to, *inter alia*, Praljak's Appeal Brief, para. 179.

¹³⁶⁴ Stojić's Response Brief, para. 147, heading before para. 149, paras 149-150, 153.

¹³⁶⁵ Stojić's Response Brief, para. 150.

armed defenders in or around the property in question;¹³⁶⁶ (3) failed to identify exactly which houses were destroyed or where they were located in relation to the legitimate military targets;¹³⁶⁷ and (4) did not assess how the absence of civilian casualties in three of the villages could be consistent with an indiscriminate attack.¹³⁶⁸

449. The Prosecution replies that Stojić and Praljak fail to show that the Trial Chamber's findings on wanton destruction of property in Gornji Vakuf Municipality on 18 January 1993 were erroneous.¹³⁶⁹ The Prosecution submits that: (1) the Trial Chamber considered the presence of armed Muslim defenders in the villages;¹³⁷⁰ and (2) the evidence shows that the destruction of property was not the incidental by-product of military targeting.¹³⁷¹ It argues that the HVO's intent to destroy Muslim property is in line with its preconceived plan and confirmed by subsequent events, including the burning of houses after the villages were taken by the HVO.¹³⁷²

450. At the Appeal Hearing, the Prosecution, Prlić, Stojić, Praljak, Petković, and Ćorić were invited to discuss the basis for the Trial Chamber's finding that the property destruction caused during the attacks on the villages of Duša, Hrasnica, Ždrimci, and Uzričje was wanton and not justified by military necessity, and whether there would be any effect, if this finding were overturned, on the finding that the property destruction caused during attacks on several localities in Gornji Vakuf Municipality was "extensive".¹³⁷³ The Prosecution submits that if the Appeals Chamber were to overturn the Trial Chamber's finding that the property destruction caused during the attacks on the four villages was wanton and not justified by military necessity, there would be no effect on the Trial Judgement as no conviction was entered.¹³⁷⁴ Praljak and Ćorić argue that the Trial Chamber erred in its finding that the destruction was wanton and not justified by military necessity, pointing in particular to the ongoing clashes between the defenders of the villages and the HVO.¹³⁷⁵ Prlić, Stojić, and Petković make no submissions on this particular matter.

¹³⁶⁶ Stojić's Response Brief, paras 151-152.

¹³⁶⁷ Stojić's Response Brief, para. 152.

¹³⁶⁸ Stojić's Response Brief, para. 152.

¹³⁶⁹ Prosecution's Reply Brief, paras 138, 142. See Prosecution's Reply Brief, paras 139-141.

¹³⁷⁰ Prosecution's Reply Brief, para. 141; Appeal Hearing, AT. 769 (28 Mar 2017).

¹³⁷¹ Prosecution's Reply Brief, para. 142.

¹³⁷² Prosecution's Reply Brief, para. 142; Appeal Hearing, AT. 655-656 (24 Mar 2017), 768-770 (28 Mar 2017).

See Prosecution's Reply Brief, paras 139-140.

¹³⁷³ Order for the Preparation of the Appeal Hearing, pp. 6-7, para. 5.

¹³⁷⁴ Appeal Hearing, AT. 770 (28 Mar 2017).

¹³⁷⁵ Appeal Hearing, AT. 404-405 (22 Mar 2017), 600-603 (24 Mar 2017). In addition, Praljak argues that the Trial Chamber did not establish the perpetrators or timing of the destruction of the property, while Ćorić argues that there was no evidence as to the location of civilians relative to combatants and military objectives, or any assessment by the Trial Chamber of the margin of error of artillery shelling. Appeal Hearing, AT. 405 (22 Mar 2017), 601-603 (24 Mar 2017).

(b) Analysis

451. The Appeals Chamber recalls that the Trial Chamber, after noting that it had received evidence that members of the ABiH were present in each of the locations, based its finding that the destruction of the houses belonging to the Muslim inhabitants of the villages of Duša, Hrasnica, Ždrimci, and Uzričje was wanton and not justified by military necessity on a supposed prior finding that the attacks were indiscriminate.¹³⁷⁶ In addressing this part of the Prosecution's ground of appeal 3, the Appeals Chamber will first assess the impact of its analysis in relation to the killing of seven civilians in Duša on the finding that the destruction of Muslim-owned houses during the attack on that village constituted wanton destruction. It will then address the Prosecution's ground of appeal 3 in relation to the remaining three villages.

452. With regard to Duša, the Appeals Chamber recalls that it finds elsewhere that the Trial Chamber's finding of indiscriminate attack was premised on an error of fact occasioning a miscarriage of justice, leading to its reversal.¹³⁷⁷ In light of the reversal of this underlying finding, the Appeals Chamber considers that no reasonable trier of fact could have reached the conclusion that the attack was wanton and not justified by military necessity, and reverses that conclusion. The Prosecution's ground of appeal 3 is accordingly dismissed with regard to Duša.

453. With regard to the other three villages, the Appeals Chamber notes that the Trial Chamber only expressly found the attack on Duša to be indiscriminate; it made no direct findings on whether the attacks on Hrasnica, Ždrimci, and Uzričje were indiscriminate or otherwise.¹³⁷⁸ The Appeals Chamber recalls, however, that a trial judgement is to be read as a whole.¹³⁷⁹ In this instance, the Trial Chamber found that the attacks all began on the morning of 18 January 1993, and that all the villages were attacked with mortar shells, heavy machine guns, and artillery.¹³⁸⁰ It further found that the HVO operations "unfolded in exactly the same way", including by firing "shells" that destroyed several houses.¹³⁸¹ Having regard to these findings, it is clear that the Trial Chamber considered that the attacks on Hrasnica, Ždrimci, and Uzričje were indiscriminate on the same bases as its finding in relation to the attack on Duša: that the HVO attacked the village by using weapons – more specifically, shells – the nature of which is such that it is impossible to distinguish military from civilian targets, and that they made no effort to allow the civilian

¹³⁷⁶ See *supra*, para. 444; Trial Judgement, Vol. 3, paras 1569 (referring to, *inter alia*, Trial Judgement, Vol. 3, paras 663-664, 711-712), 1570.

¹³⁷⁷ See *supra*, paras 435, 442.

¹³⁷⁸ Trial Judgement, Vol. 3, paras 663-664, 711-712. See also Trial Judgement, Vol. 2, paras 356-388.

¹³⁷⁹ See *Stanišić and Župljanin* Appeal Judgement, paras 1107, 1115, 1148, 1162, 1181; *Popović et al.* Appeal Judgement, para. 2006; *Mrkšić and Šljivančanin* Appeal Judgement, para. 379.

¹³⁸⁰ Trial Judgement, Vol. 2, para. 357.

¹³⁸¹ Trial Judgement, Vol. 4, para. 561. See also Trial Judgement, Vol. 4, para. 45.

population of the village to flee before the attack. Recalling that this finding is reversed in relation to Duša,¹³⁸² the Appeals Chamber reverses it in relation to Hrasnica, Ždrimci, and Uzričje for the same reasons. In light of the fact that the Trial Chamber relied on its finding of indiscriminate attack to conclude that the destruction of the houses was wanton and not justified by military necessity,¹³⁸³ the Appeals Chamber reverses this finding also, and the subsequent finding that the elements of the crime of wanton destruction not justified by military necessity were met.¹³⁸⁴ The Prosecution's ground of appeal 3 is accordingly dismissed in relevant part. Finally, insofar as the Trial Chamber appears to have found the destruction of the houses during attacks on the four villages to have constituted an underlying act of the crime of persecution,¹³⁸⁵ the Appeals Chamber reverses this finding and the convictions of all Appellants under Count 1 in this regard.

3. Burning of houses in Duša and Uzričje (Praljak's Ground 11)

454. The Trial Chamber found that, on 18 January 1993, the HVO attacked the villages of Duša and Uzričje.¹³⁸⁶ Thereafter, the HVO took control of Duša "after one or two days of fighting",¹³⁸⁷ and occupied Uzričje from 19 January 1993 onwards.¹³⁸⁸ The Trial Chamber further found that, after the attack and takeover of Duša, HVO soldiers set fire to houses there.¹³⁸⁹ In so finding, it noted, *inter alia*, that, once the fighting ended, several witnesses specifically reported houses burned down by HVO soldiers.¹³⁹⁰ It also found that the HVO set fire to houses belonging to the Muslims of Uzričje to prevent those who lived there from returning.¹³⁹¹ Further, it considered testimony that some houses that were burned down in Duša and Uzričje bore the inscription "HOS", that is, the abbreviated name of the paramilitary wing of the Croatian Party of Rights.¹³⁹² The Trial Chamber concluded that, since the houses were burned down once the HVO had taken control of the villages, they did not constitute a military target.¹³⁹³ It accordingly found that the destruction of property belonging to the Muslim residents of Duša and Uzričje in the days following the attack of 18 January 1993 and the takeover of the villages constituted extensive destruction of property, not justified by military necessity and carried out unlawfully and wantonly as a grave breach of the

¹³⁸² See *supra*, paras 435, 442.

¹³⁸³ Trial Judgement, Vol. 3, para. 1569.

¹³⁸⁴ Trial Judgement, Vol. 3, para. 1570.

¹³⁸⁵ See Trial Judgement, Vol. 3, para. 1699.

¹³⁸⁶ Trial Judgement, Vol. 2, paras 358, 374. See also Trial Judgement, Vol. 2, paras 357, 431.

¹³⁸⁷ Trial Judgement, Vol. 2, paras 365, 398.

¹³⁸⁸ Trial Judgement, Vol. 2, paras 374, 431.

¹³⁸⁹ Trial Judgement, Vol. 2, para. 402.

¹³⁹⁰ Trial Judgement, Vol. 2, para. 398.

¹³⁹¹ Trial Judgement, Vol. 2, paras 432, 436.

¹³⁹² Trial Judgement, Vol. 1, para. 777, Vol. 2, paras 401, 434.

¹³⁹³ Trial Judgement, Vol. 3, paras 1537, 1572.

Geneva Conventions (Count 19) and wanton destruction of property not justified by military necessity as a violation of the laws or customs of war (Count 20).¹³⁹⁴

(a) Arguments of the Parties

455. Praljak submits that the Trial Chamber erroneously concluded that after the HVO took over the villages of Duša and Uzričje, HVO soldiers burned down houses therein in order to prevent inhabitants from returning.¹³⁹⁵ Praljak argues that the Trial Chamber's finding that the houses were burned on occupied territory is legally erroneous,¹³⁹⁶ considering that: (1) the evidence does not support the Trial Chamber's finding that houses in Duša were burned after fighting ended;¹³⁹⁷ (2) the Trial Chamber did not make a finding that houses in Uzričje were burned after fighting ended;¹³⁹⁸ and (3) even if houses were burned after combat ended, it was unreasonable to consider that the HVO could establish authority immediately after entering the villages.¹³⁹⁹ Praljak contends that the Trial Chamber's conclusion that the HVO burned houses in Uzričje in order to prevent inhabitants from returning is "deprived of any foundation" and in complete disregard of relevant evidence.¹⁴⁰⁰ He further submits that the Trial Chamber could not properly establish whether the houses were military targets as it: (1) incorrectly found that houses were burned down after the end of combat; and (2) did not consider military positions – situated in and near the houses – from which Muslims opened fire on HVO soldiers.¹⁴⁰¹ In addition, Praljak submits that the Trial Chamber concluded that houses in Uzričje and Duša were burned by HVO members on the basis of inconclusive evidence.¹⁴⁰² He claims that the Trial Chamber ignored the possibility that HOS soldiers, not under HVO command, burned the houses.¹⁴⁰³ Praljak requests that his conviction under Count 19 (extensive destruction of property as a grave breach of the Geneva Conventions) be reversed with respect to the relevant charges.¹⁴⁰⁴

456. The Prosecution responds that Praljak fails to demonstrate any error with respect to the Trial Chamber's findings.¹⁴⁰⁵ It submits that the Trial Chamber: (1) applied the correct legal

¹³⁹⁴ Trial Judgement, Vol. 3, paras 1539, 1574.

¹³⁹⁵ Praljak's Appeal Brief, para. 184, referring to Trial Judgement, Vol. 2, paras 398, 402, 432, 436, Vol. 3, paras 1537, 1572. See Praljak's Appeal Brief, paras 180-181; Praljak's Reply Brief, para. 64.

¹³⁹⁶ Praljak's Appeal Brief, para. 178.

¹³⁹⁷ Praljak's Appeal Brief, paras 175-177. See also Praljak's Appeal Brief, para. 179; Praljak's Reply Brief, paras 63-64. In further support, Praljak submits that the Trial Chamber could not establish exactly when the fighting ended in Duša and did not establish that the whole Muslim resistance stopped in both villages. Praljak's Appeal Brief, paras 175, 179.

¹³⁹⁸ Praljak's Appeal Brief, para. 177. See also Praljak's Appeal Brief, para. 179; Praljak's Reply Brief, paras 63-64.

¹³⁹⁹ Praljak's Appeal Brief, para. 178.

¹⁴⁰⁰ Praljak's Appeal Brief, para. 180, referring to, *inter alia*, Trial Judgement, Vol. 2, para. 432, Ex. 4D00347.

¹⁴⁰¹ Praljak's Appeal Brief, para. 179; Praljak's Reply Brief, paras 63-64.

¹⁴⁰² Praljak's Appeal Brief, paras 181-182. See also Appeal Hearing, AT. 398, 404-405 (22 Mar 2017).

¹⁴⁰³ Praljak's Appeal Brief, para. 183; Praljak's Reply Brief, para. 62.

¹⁴⁰⁴ Praljak's Appeal Brief, para. 184.

¹⁴⁰⁵ Prosecution's Response Brief (Praljak), para. 118.

standard when determining whether the property was in occupied territory; and (2) carefully analysed the evidence concerning the timing of the burning of the houses.¹⁴⁰⁶ Regarding Praljak's challenge to the Trial Chamber's conclusion that the HVO burned houses in Uzričje to prevent the Muslim population from returning, the Prosecution submits that the evidence upon which Praljak relies is unpersuasive.¹⁴⁰⁷ The Prosecution argues that the houses were not legitimate military targets and that the evidence does not support the claim that the Trial Chamber failed to consider possible military positions.¹⁴⁰⁸ Concerning Praljak's submission that the Trial Chamber's finding that HVO soldiers were responsible for the burning of houses was based on inconclusive evidence, the Prosecution argues that: (1) Praljak merely offers his own interpretation of the evidence; and (2) the Trial Chamber's finding that some burned houses bore the inscription "HOS" does not undermine its finding that HVO soldiers set the fires.¹⁴⁰⁹

(b) Analysis

457. Concerning Praljak's submission that the Trial Chamber's finding that the houses were burned on occupied territory is legally erroneous because the evidence does not support its finding that houses in Duša were burned after fighting ended, the Appeals Chamber notes that Praljak refers to evidence which, according to him, demonstrates that *some*, but not all, houses were or may have been destroyed prior to the end of combat.¹⁴¹⁰ The evidence he points to is therefore not inconsistent with the Trial Chamber's finding.¹⁴¹¹ In further support, Praljak submits that the Trial Chamber could not establish exactly when the fighting ended in Duša or did not establish that the whole Muslim resistance stopped in both villages.¹⁴¹² The Appeals Chamber considers that Praljak fails to show how the Trial Chamber's finding that the HVO took control of Duša "after one or two days of fighting"¹⁴¹³ invalidates its finding that after the attack and takeover, HVO soldiers set fire to houses.¹⁴¹⁴ Additionally, in submitting that the Trial Chamber did not establish that the whole Muslim resistance stopped in both villages, Praljak misrepresents the Trial Judgement as he actually points to the Trial Chamber's findings that ABiH members were present *during* the attacks on Duša

¹⁴⁰⁶ Prosecution's Response Brief (Praljak), para. 122. See also Prosecution's Response Brief (Praljak), para. 123; Appeal Hearing, AT. 419 (22 Mar 2017). The Prosecution submits that if any argument of Praljak's ground of appeal 11 succeeds and the Appeals Chamber finds that the villages were not occupied, it should enter convictions under Count 20 (wanton destruction as a violation of the laws or customs of war). Prosecution's Response Brief (Praljak), para. 124 & fn. 662.

¹⁴⁰⁷ Prosecution's Response Brief (Praljak), para. 121, referring to, *inter alia*, Trial Judgement, Vol. 2, para. 432.

¹⁴⁰⁸ Prosecution's Response Brief (Praljak), para. 119.

¹⁴⁰⁹ Prosecution's Response Brief (Praljak), para. 120.

¹⁴¹⁰ See Praljak's Appeal Brief, paras 176-177, referring to, *inter alia*, Exs. P01291, P10108, p. 4, P10109, p. 2, P10110, p. 2, Fahrudin Agić, T. 9332 (1 Nov 2006), Witness BY, T. 9065, 9090-9091, 9122 (27 Oct 2006).

¹⁴¹¹ See Trial Judgement, Vol. 2, paras 398, 402, Vol. 3, paras 1535, 1537, 1539, 1571-1572, 1574.

¹⁴¹² Praljak's Appeal Brief, paras 175, 179.

¹⁴¹³ Trial Judgement, Vol. 2, paras 365, 398.

¹⁴¹⁴ Trial Judgement, Vol. 2, para. 402. See also Trial Judgement, Vol. 2, para. 398 (noting that once the fighting ended, several witnesses specifically reported houses burned down by HVO soldiers).

and Uzričje, prior to their surrender and the HVO's takeover.¹⁴¹⁵ His arguments are therefore dismissed.

458. As to his submission that the Trial Chamber failed to make a finding that houses in Uzričje were burned after fighting ended, the Appeals Chamber finds that Praljak demonstrates no error, considering that the Trial Chamber assessed evidence and made findings demonstrating that Uzričje was occupied from 19 January 1993 and that houses were burned after the attack which had occurred on the previous day.¹⁴¹⁶ In addition, when submitting that even if houses were burned after combat ended, it was unreasonable to consider that the HVO could establish authority immediately after entering the villages, Praljak argues that this is particularly true given that combat was still ongoing in Gornji Vakuf and refers to the Trial Chamber's consideration of testimony in this regard.¹⁴¹⁷ Praljak bases his overall contention on his sub-ground of appeal 2.1 in which he challenges the Trial Chamber's finding that a state of occupation existed by arguing, *inter alia*, that armed conflict existed at the same time.¹⁴¹⁸ The Appeals Chamber recalls that this submission is dismissed elsewhere,¹⁴¹⁹ and therefore rejects Praljak's argument.

459. In support of his contention that the Trial Chamber's conclusion that the HVO burned houses in Uzričje in order to prevent inhabitants from returning is "deprived of any foundation" and in complete disregard of relevant evidence, Praljak draws attention to an HVO document ordering the release of Muslim civilians "to go home freely".¹⁴²⁰ He does not engage, however, with the evidence on which the Trial Chamber relied.¹⁴²¹ The Appeals Chamber therefore considers that Praljak asserts that the Trial Chamber must have failed to consider relevant evidence, without showing that no reasonable trier of fact could have reached the same conclusion based on the evidence upon which the Trial Chamber relied. His argument is therefore dismissed. In arguing that the Trial Chamber could not properly establish whether the houses were military targets as it incorrectly found that houses were burned down after the end of combat, Praljak relies upon his submission dismissed above.¹⁴²² His argument is therefore dismissed. Concerning Praljak's submission that the Trial Chamber did not consider military positions from which Muslims opened

¹⁴¹⁵ See Praljak's Appeal Brief, para. 179 & fn. 408, referring to Trial Judgement, Vol. 2, paras 363-364, 377; Trial Judgement, Vol. 2, paras 365, 378.

¹⁴¹⁶ Trial Judgement, Vol. 2, paras 431-433. See also *supra*, para. 344.

¹⁴¹⁷ Praljak's Appeal Brief, para. 178 & fn. 407, referring to Trial Judgement, Vol. 2, para. 395.

¹⁴¹⁸ Praljak's Appeal Brief, para. 178 & fn. 406, referring to Praljak's Appeal Brief, paras 46, 49-50.

¹⁴¹⁹ See *supra*, para. 344.

¹⁴²⁰ See Praljak's Appeal Brief, para. 180, referring to Ex. 4D00347.

¹⁴²¹ See Trial Judgement, Vol. 2, para. 432 & fn. 1023 and references cited therein (noting that the Croat-owned houses in Uzričje were left intact, finding that the evidence indicated that "the HVO burned down houses belonging to Muslims particularly", and referring in this regard to the testimony of Andrew Williams, Zijada Kurbegović, Senada Basić, and Fahrudin Agić).

¹⁴²² See *supra*, paras 457-458; Praljak's Reply Brief, para. 64 & fn. 136, referring to Praljak's Appeal Brief, paras 176-177.

fire on HVO soldiers, the Appeals Chamber notes that Praljak relies upon evidence and Trial Chamber findings indicating that there was an ABiH presence prior to and during the HVO's attack.¹⁴²³ Insofar as most of the houses were burned down after the HVO's attack and the subsequent surrender of ABiH soldiers,¹⁴²⁴ his submission is temporally irrelevant. The Appeals Chamber considers that he merely presents an alternative explanation and fails to show that no reasonable trier of fact could have reached the Trial Chamber's conclusion.¹⁴²⁵ Thus, his argument is dismissed.

460. As to his argument that the Trial Chamber concluded that houses in Uzričje were burned by HVO members on the basis of inconclusive evidence, Praljak claims that a document of the BiH Ministry of the Interior and the testimony of Witness Zijada Kurbegović, on which the Trial Chamber relied, are contradictory.¹⁴²⁶ The Appeals Chamber notes that the document of the BiH Ministry of the Interior lists HVO soldiers allegedly responsible for burning houses and that Praljak merely claims that "Kurbegovi[ć] could not recognize any of [the] persons listed in [the] document although two [of] these persons were her neighbors".¹⁴²⁷ The Appeals Chamber dismisses this argument as Praljak fails to demonstrate any contradiction.

461. With respect to Duša, Praljak claims that the Trial Chamber's finding was based on the inconclusive evidence of Kemal Šljivo and Witness BY, and further argues that although Witness BY said HVO soldiers were in Duša, "she did not describe them or their uniforms and it is very likely that all armed Croats were for her the HVO members".¹⁴²⁸ The Appeals Chamber notes that in the testimony to which Praljak refers, Witness BY explicitly states that the soldiers were HVO members.¹⁴²⁹ While the testimony does not explain how she identified them as such, Praljak's argument that "it is very likely that all armed Croats were for her the HVO members" falls short of demonstrating that no reasonable trier of fact could have relied on this evidence in the absence of a

¹⁴²³ Praljak's Appeal Brief, para. 179, referring to, *inter alia*, Trial Judgement, Vol. 2, paras 363-364, 377, Ex. 3D00527. Praljak relies on other evidence to demonstrate that there were Muslim military positions inside houses inhabited by civilians. However, the Appeals Chamber notes that the testimony to which he points does not indicate when this allegedly occurred. See Praljak's Appeal Brief, para. 179, referring to, *inter alia*, Rudy Gerritsen, T. 19350 (30 May 2007).

¹⁴²⁴ See Trial Judgement, Vol. 2, paras 365, 378, 398-402, 432-436, Vol. 3, paras 1535, 1537.

¹⁴²⁵ See Trial Judgement, Vol. 3, para. 1537.

¹⁴²⁶ See Praljak's Appeal Brief, para. 181, referring to, *inter alia*, Zijada Kurbegović, T. 8981 (26 Oct 2006), Trial Judgement, Vol. 2, para. 436 & fns 1029-1030, referring to, *inter alia*, Ex. P07350 (document of the BiH Ministry of the Interior), Zijada Kurbegović, T(F). 8982, 8988 (26 Oct 2006).

¹⁴²⁷ Praljak's Appeal Brief, para. 181. See Ex. P07350. In this regard, Praljak misrepresents the testimony wherein Kurbegović clearly stated that she recognised persons listed in the document and that they were her neighbours. See Zijada Kurbegović, T. 8981 (26 Oct 2006). The Appeals Chamber also considers that Praljak notes statements he alleges were made by Kurbegović while citing instead to the evidence of another witness. Praljak does not adequately develop or explain the relevance of his assertions in this regard. See Praljak's Appeal Brief, para. 181 & fns 415-417, referring to Senada Bašić, T. 8893, 8895-8896 (25 Oct 2006), Ex. P09711 (witness statement by Senada Bašić), p. 3.

¹⁴²⁸ Praljak's Appeal Brief, para. 182, referring to Witness BY, T. 9089-9091 (27 Oct 2006), Exs. P09202 (confidential), pp. 21-22, P10109, p. 2, P10110, p. 2. See also Praljak's Appeal Brief, para. 181.

¹⁴²⁹ Witness BY, T. 9090 (27 Oct 2006).

specific description of their uniforms. Further, Praljak misrepresents the evidence of Šljivo who, according to Praljak, “never claimed that the HVO members burned houses in Du[š]a”.¹⁴³⁰ The Appeals Chamber notes that Šljivo stated that HVO members burned down houses in Duša in the evidence to which Praljak cites as well as evidence ignored by Praljak and upon which the Trial Chamber relied.¹⁴³¹ Thus, these arguments are dismissed.

462. When contending that the Trial Chamber ignored the possibility that HOS soldiers burned the houses, Praljak: (1) challenges the Trial Chamber’s reliance on a 1994 report to find that most of the former members of the HOS joined the ranks of the HVO, while it failed to acknowledge that the report states that former HOS soldiers were targeted by the HVO; and (2) submits that the evidence shows that some HOS members joined the ABiH ranks.¹⁴³² With respect to the Trial Chamber’s reference to this report, the Appeals Chamber recalls that a failure to discuss an inconsistency or contradiction in the evidence is not necessarily indicative of disregard; rather, “it is within the discretion of the Trial Chamber to evaluate it and to consider whether the evidence as a whole is credible, without explaining its decision in every detail”.¹⁴³³ Moreover, the Appeals Chamber notes that Praljak ignores the other evidence upon which the Trial Chamber relied when finding that most of the former members of the HOS joined the ranks of the HVO, and considers that he fails to show that the Trial Chamber could not have reached its conclusion in light of this evidence.¹⁴³⁴ Further, Praljak fails to show how the fact that some HOS members may have joined the ABiH – which the Trial Chamber explicitly noted – is inconsistent with the Trial Chamber’s finding that *most* of the former HOS members joined the HVO.¹⁴³⁵ Insofar as Praljak is implicitly suggesting, by this assertion, that Muslim houses may have been destroyed by the HOS members who may have joined the ABiH, he fails to provide any support for this claim.

463. For the above reasons, the Appeals Chamber dismisses Praljak’s ground of appeal 11.

¹⁴³⁰ Praljak’s Appeal Brief, para. 182. See also Appeal Hearing, AT. 398 (22 Mar 2017).

¹⁴³¹ See Praljak’s Appeal Brief, para. 182, referring to, *inter alia*, Ex. P10110, p. 2; Trial Judgement, Vol. 2, para. 399, referring to, *inter alia*, Ex. P10108, p. 4.

¹⁴³² Praljak’s Reply Brief, para. 62, referring to, *inter alia*, Ex. 3D00331.

¹⁴³³ *Stanišić and Župljanin* Appeal Judgement, para. 458; *Popović et al.* Appeal Judgement, para. 1151; *Kvočka et al.* Appeal Judgement, para. 23. The Appeals Chamber notes that although the Trial Chamber did not address any inconsistency in Exhibit 3D00331, it did note, in light of an order by Sefer Halilović, that “one might conceivably conclude [...] that some former members of the HOS swore allegiance to the ABiH”. Trial Judgement, Vol. 1, para. 778.

¹⁴³⁴ Trial Judgement, Vol. 1, para. 778 & fns 1821-1825 and references cited therein. For example, when reaching this conclusion, it relied on a number of pieces of evidence to find that HOS and HVO soldiers conducted military operations alongside each other during which some former HOS members were still allowed to display their uniforms and insignia. See Trial Judgement, Vol. 1, para. 778 & fns 1822-1825 and references cited therein.

¹⁴³⁵ See Trial Judgement, Vol. 1, para. 778.

4. Arrest and detention of civilians from Duša, Hrasnica, Uzričje, and Ždrimci
(Praljak's Ground 13)

464. The Trial Chamber concluded that, following the attack on 18 January 1993, the HVO unlawfully imprisoned and confined civilians from the villages of Duša, Hrasnica, Uzričje, and Ždrimci.¹⁴³⁶ With regard to Duša specifically, the Trial Chamber found that women, children, and the elderly were arrested after taking refuge in Enver Šljivo's house,¹⁴³⁷ after which HVO soldiers ordered them to go to Paloč, where they were further detained.¹⁴³⁸ In respect of Hrasnica, the Trial Chamber found that the HVO separated the men of military age from the women, children, and elderly, and arrested them, thereby creating two distinct groups of detainees.¹⁴³⁹ The arrested women, children, and elderly were then removed and detained by the HVO at various places, including the furniture factory in Trnovača and houses in Hrasnica and Trnovača.¹⁴⁴⁰ Regarding Uzričje, the Trial Chamber found that the Muslim villagers were held by the HVO inside the village as of 19 January 1993 for about a month-and-a-half.¹⁴⁴¹ The villagers of Uzričje were assembled in houses in the village and had to observe a curfew, despite having some freedom of movement during the day.¹⁴⁴² As for Ždrimci, the Trial Chamber found that the HVO detained Muslim women and children in houses that were under guard.¹⁴⁴³ It based this finding, *inter alia*, on: (1) the 27 January 1993 HVO report stating that 70 Muslim "civilians" from Ždrimci were arrested and detained;¹⁴⁴⁴ (2) the testimony of Witness Muamer Trkić estimating that 40 Muslim men and a greater number of women were arrested;¹⁴⁴⁵ and (3) the testimony of Witness Đulka Brica that HVO soldiers held her and others for a period of 15 days to a month in the basement of a house in Ždrimci.¹⁴⁴⁶ The Trial Chamber held that the HVO authorities did not make any individual assessments of the security reasons which could have led to the detention of civilians from Duša, Hrasnica, Uzričje, and Ždrimci.¹⁴⁴⁷ Based on all those findings the Trial Chamber concluded that the detention of the civilians from Duša, Hrasnica, Uzričje, and Ždrimci amounted to imprisonment

¹⁴³⁶ Trial Judgement, Vol. 3, paras 962, 1013. See also Trial Judgement, Vol. 3, paras 960-961, 1011-1012.

¹⁴³⁷ Trial Judgement, Vol. 2, para. 405. With respect to both Duša and Uzričje, the Trial Chamber considered Exhibit P01333, a 27 January 1993 HVO report, noting the arrest and detention of 40 "Muslim civilians" from the villages. Trial Judgement, Vol. 2, paras 405, 445 & fns 973, 1042.

¹⁴³⁸ Trial Judgement, Vol. 2, paras 406-410. The Trial Chamber considered the evidence of Witness BY when finding that HVO soldiers ordered the women, children, and the elderly to go to Paloč, where they were detained. Trial Judgement, Vol. 2, paras 406-409 and references cited therein.

¹⁴³⁹ Trial Judgement, Vol. 2, para. 416.

¹⁴⁴⁰ Trial Judgement, Vol. 2, para. 427. See Trial Judgement, Vol. 2, paras 418-426.

¹⁴⁴¹ Trial Judgement, Vol. 2, para. 446.

¹⁴⁴² Trial Judgement, Vol. 2, para. 446.

¹⁴⁴³ Trial Judgement, Vol. 2, para. 468.

¹⁴⁴⁴ Trial Judgement, Vol. 2, para. 462.

¹⁴⁴⁵ Trial Judgement, Vol. 2, para. 462.

¹⁴⁴⁶ Trial Judgement, Vol. 2, para. 463.

¹⁴⁴⁷ Trial Judgement, Vol. 3, paras 961, 1012.

as a crime against humanity (Count 10) and unlawful confinement of civilians as a grave breach of the Geneva Conventions (Count 11).¹⁴⁴⁸

(a) Arguments of the Parties

465. Praljak submits that the Trial Chamber erred in law and fact when it concluded that civilians from the villages of Duša, Hrasnica, Uzričje, and Ždrimci in Gornji Vakuf Municipality were unlawfully arrested and detained by the HVO.¹⁴⁴⁹ With respect to the arrest of Muslim civilians in Duša in particular, Praljak argues that Witness BY's testimony indicates that HVO soldiers were not in the village and that it was Muslim troops who sent the civilians to the village of Paloč.¹⁴⁵⁰ He also submits that the 27 January 1993 HVO report to which the Trial Chamber referred does not support its findings as the report: (1) states that only some of the captured Muslims were detained; (2) does not allow for a conclusion that it refers to civilians from Duša accommodated in Paloč; and (3) contradicts another HVO report specifying that civilians in Duša and Uzričje were not detained.¹⁴⁵¹ Concerning the treatment of civilians in Ždrimci, Praljak argues that the Trial Chamber based a conviction exclusively on Brica's untested Rule 92 *bis* statement.¹⁴⁵² He argues that moreover, Brica's statement was contradicted by Trkić's testimony.¹⁴⁵³ He further submits that the Trial Chamber misrepresented Brica's statement and Trkić's evidence and failed to consider other evidence which makes no mention of confinement or imprisonment.¹⁴⁵⁴ Praljak disputes that civilians in Duša, Hrasnica, and Uzričje were detained by pointing to evidence allegedly indicating that they could leave the houses in which they were accommodated and that, with respect to Duša and Uzričje, these houses were not under guard.¹⁴⁵⁵ He additionally relies on the Trial Chamber's acknowledgement that the Muslim population in Uzričje had some freedom of movement during the day and that some left the village.¹⁴⁵⁶

¹⁴⁴⁸ Trial Judgement, Vol. 3, paras 962, 1013.

¹⁴⁴⁹ Praljak's Appeal Brief, para. 214, referring to, *inter alia*, Trial Judgement, Vol. 2, paras 416, 446, 468. See Praljak's Appeal Brief, paras 200 (referring to, *inter alia*, Trial Judgement, Vol. 3, paras 960-962, 1011-1013), 201, 203, 206, 209. See also Praljak's Reply Brief, para. 67.

¹⁴⁵⁰ Praljak's Appeal Brief, para. 200. See Trial Judgement, Vol. 2, para. 410.

¹⁴⁵¹ Praljak's Appeal Brief, para. 202, referring to, *inter alia*, Trial Judgement, Vol. 2, para. 405 & fn. 973, Ex. P01333. Praljak also submits, referring to Exhibit P01351, that he does not "accept the qualification of the Trial Chamber" that 23 of the people who were detained in Duša were "defenders of the village", when they were in fact ABiH soldiers. Appeal Hearing, AT. 403 (22 Mar 2017). See Appeal Hearing, AT. 402 (22 Mar 2017), referring to Ex. P01351.

¹⁴⁵² Praljak's Appeal Brief, para. 209, referring to, *inter alia*, Trial Judgement, Vol. 2, paras 463, 467.

¹⁴⁵³ Praljak's Appeal Brief, para. 210.

¹⁴⁵⁴ Praljak's Appeal Brief, paras 210-211.

¹⁴⁵⁵ Praljak's Appeal Brief, paras 201, 205-207 & fns 461, 472-473, 476-477, 479-480, referring to, *inter alia*, Articles 27 and 49 of Geneva Convention IV.

¹⁴⁵⁶ Praljak's Appeal Brief, para. 207, referring to, *inter alia*, Trial Judgement, Vol. 2, paras 444, 446, 451.

466. Further, Praljak argues that the Trial Chamber ignored that the 27 January 1993 HVO report stated that arrested and detained civilians, in some villages, were immediately released.¹⁴⁵⁷ He alleges that the Trial Chamber therefore erroneously concluded that the HVO did not conduct any individual assessments of the security reasons which could have led to the detention.¹⁴⁵⁸ Praljak, moreover, refers to evidence allegedly demonstrating that fighting was ongoing in or near Hrasnica and Ždrimci at the relevant time.¹⁴⁵⁹ Thus, he contends that the only reasonable conclusion is that the HVO evacuated the civilian population of Hrasnica from the combat area and imposed only the restrictions necessary for the security of the population of both Ždrimci and Hrasnica.¹⁴⁶⁰ In this regard, Praljak argues that a curfew – not limited to the Muslim population and legal under international humanitarian law – was imposed already in June 1992 upon Gornji Vakuf Municipality.¹⁴⁶¹ Praljak requests that his convictions under Counts 10 (imprisonment as a crime against humanity) and 11 (unlawful confinement as a grave breach of the Geneva Conventions) be reversed with respect to the relevant charges for Gornji Vakuf Municipality.¹⁴⁶²

467. The Prosecution responds that Praljak fails to show that the Trial Chamber erred in convicting him under Counts 10 and 11.¹⁴⁶³ It submits that the Trial Chamber's findings pertaining to Duša are supported by the evidence.¹⁴⁶⁴ As to Ždrimci, the Prosecution avers that the Trial Chamber's findings are not dependent on just one witness, but on several.¹⁴⁶⁵ The Prosecution further submits that the Trial Chamber's finding that HVO soldiers detained Muslim civilians in Uzričje is not undermined by the fact that they had limited freedom of movement.¹⁴⁶⁶ According to the Prosecution, the 27 January 1993 HVO report confirms the Trial Chamber's reasonable finding that the HVO failed to conduct individual security evaluations in the four villages.¹⁴⁶⁷ Finally, the Prosecution argues that Praljak's unsupported and unpersuasive assertions that civilians in Hrasnica

¹⁴⁵⁷ Praljak's Appeal Brief, paras 202, 210, 213, referring to, *inter alia*, Trial Judgement, Vol. 3, paras 961, 1012, Ex. P01333.

¹⁴⁵⁸ Praljak's Appeal Brief, para. 213.

¹⁴⁵⁹ Praljak's Appeal Brief, paras 203-204, 212.

¹⁴⁶⁰ Praljak's Appeal Brief, paras 203-205, 212, referring to, *inter alia*, Articles 27 and 49 of Geneva Convention IV. In further support of this contention, Praljak notes that: (1) the HVO told civilians that they would be able to go home after the HVO took control of Dolac; and (2) the Ždrimci villagers recovered complete freedom of movement as soon as the cease-fire was signed. Praljak's Appeal Brief, paras 204, 212.

¹⁴⁶¹ Praljak's Appeal Brief, para. 208.

¹⁴⁶² Praljak's Appeal Brief, para. 214. See also Praljak's Reply Brief, para. 68.

¹⁴⁶³ Prosecution's Response Brief (Praljak), para. 132.

¹⁴⁶⁴ Prosecution's Response Brief (Praljak), para. 133.

¹⁴⁶⁵ Prosecution's Response Brief (Praljak), para. 136.

¹⁴⁶⁶ Prosecution's Response Brief (Praljak), para. 135. The Prosecution submits in this regard that Praljak merely disagrees with the Trial Chamber's interpretation of the evidence without showing any error. Prosecution's Response Brief (Praljak), para. 135.

¹⁴⁶⁷ Prosecution's Response Brief (Praljak), para. 137, referring to, *inter alia*, Trial Judgement, Vol. 3, paras 961, 1012.

and Ždrimci were merely evacuated from the combat area and their movement restricted for their protection, respectively, must fail.¹⁴⁶⁸

(b) Analysis

468. In relying on Witness BY's testimony to posit that the HVO did not arrest civilians in Duša and send them to Paloč, Praljak merely disagrees with the Trial Chamber's interpretation of the testimony. In that regard, the Appeals Chamber notes that the Trial Chamber interpreted Witness BY's testimony as stating that it was the HVO that ordered the civilians to go to Paloč.¹⁴⁶⁹ The Appeals Chamber considers that a reasonable trier of fact could have adopted this interpretation.¹⁴⁷⁰ In addition, Praljak fails to explain why the conviction should not stand on the basis of the remaining evidence.¹⁴⁷¹

469. With respect to Praljak's assertion that the 27 January 1993 HVO report does not support the Trial Chamber's findings, he fails to demonstrate how the fact that only some captured Muslims were detained or that the report may have referred to other detained Muslims from Duša shows any error in the impugned finding that civilians from Duša and Uzričje were detained. As to Praljak's related argument that the 27 January 1993 HVO report contradicts another HVO report, issued two days later,¹⁴⁷² specifying that civilians in Duša and Uzričje were not detained, the Appeals Chamber first notes that Praljak ignores that the Trial Chamber did in fact note such a contradiction.¹⁴⁷³ Having reviewed the 27 January 1993 HVO report, the Appeals Chamber observes that the Trial Chamber referred only to page 1 of that report, which states that civilians were arrested and detained. It made no mention of page 2 of that same report, which states that they were released immediately, suggesting that no such contradiction exists. Nevertheless, the Trial Chamber relied on other evidence, including the evidence of those detained, indicating that the civilians in all four villages were not released immediately.¹⁴⁷⁴ In any event, the two reports, and the Trial Chamber's assessment thereof, do not support Praljak's contention that civilians were not detained in the first place. Thus, the Appeals Chamber dismisses Praljak's argument.¹⁴⁷⁵

¹⁴⁶⁸ Prosecution's Response Brief (Praljak), paras 134, 136.

¹⁴⁶⁹ See Trial Judgement, Vol. 2, para. 406, referring to, *inter alia*, Witness BY, T(F). 9082-9083 (27 Oct 2006).

¹⁴⁷⁰ The Appeals Chamber notes that, when asked who told the civilians to go to Paloč, Witness BY testified that "they told our troops" and then said that "[o]ur troops ordered us to do this because we didn't see any HVO soldiers in the village then". The Appeals Chamber notes that Witness BY also explained that the Muslim men from the village had surrendered to the HVO before the civilians were told to go to Paloč. See Witness BY, T. 9083 (27 Oct 2006).

¹⁴⁷¹ See Trial Judgement, Vol. 2, paras 405-407 and references cited therein.

¹⁴⁷² See *infra*, fn. 3703.

¹⁴⁷³ Trial Judgement, Vol. 2, para. 445, referring to Exs. P01351, P01333, p. 1.

¹⁴⁷⁴ See Trial Judgement, Vol. 2, paras 409-410, 421, 426-427, 441-443, 446, 463, 467-468 and references cited therein. See also Trial Judgement, Vol. 3, paras 961, 1012.

¹⁴⁷⁵ With regard to Praljak's submission that he does not "accept the qualification of the Trial Chamber" that 23 of the people who were detained in Duša were "defenders of the village", when they were in fact ABiH soldiers, the

470. The Appeals Chamber now turns to Praljak's arguments concerning the treatment of civilians in Ždrimci.¹⁴⁷⁶ Regarding Praljak's argument that the Trial Chamber based a conviction exclusively on Brica's Rule 92 *bis* statement, the Appeals Chamber considers that when making its finding that Muslim women and children were detained by the HVO in guarded houses in Ždrimci, the Trial Chamber also relied on other evidence.¹⁴⁷⁷ As to the argument that Brica's evidence was contradicted by Trkić's testimony, the Appeals Chamber considers that Praljak has failed to establish any contradiction.¹⁴⁷⁸ Praljak asserts but has failed to demonstrate that the Trial Chamber misrepresented Brica's evidence.¹⁴⁷⁹ Similarly, Praljak's argument that the Trial Chamber misrepresented Trkić's evidence is a mere assertion, referenced to a part of the Trial Judgement that makes no mention of his evidence.¹⁴⁸⁰ The Appeals Chamber further rejects the argument that the Trial Chamber failed to consider certain evidence, specifically a 31 January 1993 document, making no mention of confinement or imprisonment¹⁴⁸¹ as the Trial Chamber in fact did consider this evidence.¹⁴⁸² Praljak also points to witness testimony that, according to him, confirms that the situation on the ground corresponded to his interpretation of the 31 January 1993 document.¹⁴⁸³ The Appeals Chamber considers that, in so doing, Praljak merely asserts that the Trial Chamber must have failed to consider relevant evidence, without showing that no reasonable trier of fact, based on the evidence, could have reached the same conclusion as the Trial Chamber did. Finally, in advancing the possibility that the HVO imposed only the restrictions necessary for the security of the population of Ždrimci, Praljak merely presents his own alternative explanation of the evidence

Appeals Chamber recalls that the Trial Chamber found that the persons that the HVO arrested included women, children, and the elderly who had taken refuge in Enver Šljivo's house in Duša, that is, persons who had not defended the village. Trial Judgement, Vol. 2, para. 405. See Trial Judgement, Vol. 2, paras 406-410 & fn. 979. The argument is therefore dismissed.

¹⁴⁷⁶ See Praljak's Appeal Brief, paras 209-211 and references cited therein. The Appeals Chamber considers that it is unclear whether Praljak impugns the Trial Chamber's findings regarding whether the civilians were detained or regarding how they were treated while in detention. However, the Trial Chamber found that it did not have sufficient evidence to determine the conditions of detention in Ždrimci and how detainees were treated there. Trial Judgement, Vol. 2, para. 468. See also Trial Judgement, Vol. 2, para. 464. The Appeals Chamber therefore understands that he impugns the Trial Chamber's finding that the HVO detained Muslim women and children in guarded houses in Ždrimci. Trial Judgement, Vol. 2, para. 468.

¹⁴⁷⁷ See Trial Judgement, Vol. 2, paras 461-462, 466, 468 and references cited therein.

¹⁴⁷⁸ Praljak merely alleges that "Trkić said that the population was not forced to go anywhere, it was just told to stay in the houses". Praljak's Appeal Brief, para. 210.

¹⁴⁷⁹ See Praljak's Appeal Brief, para. 210 & fn. 487, referring to Trial Judgement, Vol. 2, para. 463, referring to, *inter alia*, Ex. P09797, paras 9, 13-14, 23. The Appeals Chamber notes that the cited evidence provides support for the Trial Chamber's findings.

¹⁴⁸⁰ See Praljak's Appeal Brief, para. 210 & fn. 487, referring to Trial Judgement, Vol. 2, para. 463. To the extent that Praljak means to challenge the Trial Chamber's consideration of Trkić's testimony in paragraph 462 of Volume 2 of the Trial Judgement, the Appeals Chamber considers that the Trial Chamber merely noted therein that Trkić "estimated the total number of Muslims arrested at 40 men and a greater number of women". In asserting that "Trkić said that the population was not forced to go anywhere, it was just told to stay in the houses", Praljak does not demonstrate how the Trial Chamber's statement was a misrepresentation of the testimony. See Praljak's Appeal Brief, para. 210.

¹⁴⁸¹ Praljak's Appeal Brief, para. 211 & fn. 491, referring to Ex. P01373.

¹⁴⁸² Trial Judgement, Vol. 2, para. 466, referring to Ex. P01373, p. 2. The Appeals Chamber considers that Praljak merely asserts that the Trial Chamber failed to interpret the evidence in a particular manner.

¹⁴⁸³ Praljak's Appeal Brief, para. 211 & fn. 492, referring to Jacqueline Carter, T. 3364 (19 June 2006), Zrinko Tokić, T. 45373 (29 Sept 2009).

without showing that no reasonable trier of fact could have reached the same conclusion as the Trial Chamber did.¹⁴⁸⁴ All these arguments are dismissed.

471. Regarding Praljak's argument that civilians in Duša, Hrasnica, and Uzričje were not detained, the Appeals Chamber recalls that unlawful confinement as a grave breach of the Geneva Conventions arises in the following two circumstances:

(i) [...] a civilian or civilians have been detained in contravention of Article 42 of Geneva Convention IV, *i.e.* they are detained without reasonable grounds to believe that the security of the Detaining Power makes it absolutely necessary; and

(ii) [...] the procedural safeguards required by Article 43 of Geneva Convention IV are not complied with in respect of detained civilians, even where their initial detention may have been justified.¹⁴⁸⁵

In adopting this definition, the Appeals Chamber noted that restrictions on the rights of civilians, such as the "*deprivation of their liberty by confinement*" are subject to the safeguards in Article 42, as well as Article 5, of Geneva Convention IV.¹⁴⁸⁶ As for imprisonment as a crime against humanity, the Appeals Chamber recalls that it "should be understood as arbitrary imprisonment, that is to say, *the deprivation of liberty* of the individual without due process of law, as part of a widespread or systematic attack directed against a civilian population".¹⁴⁸⁷

472. Thus, it is clear from the above that both crimes concern the deprivation of liberty of an individual. Further, with the exception of chapeau requirements for war crimes and crimes against humanity, imprisonment – in the context of armed conflict – and unlawful confinement of civilians overlap significantly given that the Appeals Chamber has confirmed that the legality of imprisonment and the procedural safeguards pertaining to it are to be determined based on Articles 42 and 43 of Geneva Convention IV.¹⁴⁸⁸

473. Finally, the Appeals Chamber considers that determining whether a person has been deprived of his or her liberty will depend on the circumstances of each particular case and must take into account a range of factors, including the type, duration, effects, and the manner of implementation of the measures allegedly amounting to deprivation of liberty.¹⁴⁸⁹ In that respect, the Appeals Chamber notes that it has in the past confirmed that both imprisonment and unlawful

¹⁴⁸⁴ See Trial Judgement, Vol. 3, paras 961, 1012.

¹⁴⁸⁵ *Kordić and Čerkez* Appeal Judgement, para. 73. See *Čelebići* Appeal Judgement, para. 322.

¹⁴⁸⁶ *Kordić and Čerkez* Appeal Judgement, para. 72 (emphasis added). See *Čelebići* Appeal Judgement, para. 321.

¹⁴⁸⁷ *Kordić and Čerkez* Appeal Judgement, para. 116 (emphasis added, internal reference omitted). See also *Kordić and Čerkez* Appeal Judgement, para. 1043 (listing, in the context of cumulative convictions for persecution and imprisonment, deprivation of liberty without due process of law as an element of the crime of imprisonment).

¹⁴⁸⁸ See *Kordić and Čerkez* Appeal Judgement, paras 114-115.

¹⁴⁸⁹ See *Nada* Decision, para. 225; *Guzzardi* Decision, para. 92. The Appeals Chamber recalls that even though the ECtHR case-law is not binding on the Tribunal, it may be instructive in cases where there is no well-established

confinement of civilians can occur even in situations where the civilians are held in houses in villages, including those who are held in their own village and their own houses, without guards, and where they have some freedom of movement. In *Kordić and Čerkez*, the Appeals Chamber upheld the Trial Chamber's finding that the civilians in the village of Rotilj were imprisoned and unlawfully confined since the village was surrounded by HVO, the civilians were not held there for their own safety, and they were prevented from leaving while at the same time were subjected to beatings, thefts, and sexual abuse.¹⁴⁹⁰ Accordingly, the mere fact that the civilians from Duša, Hrasnica, and Uzričje had some freedom of movement does not necessarily mean that they were not deprived of their liberty and thus imprisoned or unlawfully confined. The Appeals Chamber will examine the facts relied on by the Trial Chamber in relation to each of the three locations, bearing in mind the evidence Praljak puts forward for this ground of appeal.

474. In support of his argument that civilians from Duša, Hrasnica, and Uzričje were not detained, Praljak points to evidence and testimony which, according to him, suggest that civilians were able to move within certain areas at certain times.¹⁴⁹¹ Specifically, he argues that: (1) in Paloč, according to Witness BY, there were no guards and women could leave the house;¹⁴⁹² (2) the civilian population from Hrasnica was "secured and evacuated" from the combat area in the vicinity of Hrasnica according to Article 49 of Geneva Convention IV; after one night in a "collection center", it was "released" and "accommodated" in houses in Trnovača village and, according to Witness BX, was not prevented from leaving those houses;¹⁴⁹³ and (3) the Muslim population in Uzričje had some freedom of movement during daytime, which was acknowledged by the Trial Chamber.¹⁴⁹⁴

Tribunal jurisprudence, as is the case here. See, e.g., *Popović et al.* Appeal Judgement, para. 436; *Dordević* Appeal Judgement, para. 83; *Šainović et al.* Appeal Judgement, paras 1647-1648; *Čelebići* Appeal Judgement, para. 24.

¹⁴⁹⁰ *Kordić and Čerkez* Trial Judgement, paras 792-793 & fn. 1688, 800 (finding that despite detainees having some liberty of movement inside the village of Rotilj, their conditions, which included overcrowding and forced labour, still amounted to detention); *Kordić and Čerkez* Appeal Judgement, paras 638-640 (upholding the detention finding). See also *Simić et al.* Trial Judgement, paras 563-567, 666, 680 (finding that despite detainees having some liberty of movement inside and outside of the village of Zasavica, where certain witnesses testified that detainees were essentially "free" and living a "normal life there" in individual houses, their conditions still amounted to detention); *Blaškić* Trial Judgement, paras 684, 691, 700 (finding that despite the defence argument that Bosnian Muslims in the village of Rotilj were not detained because their freedom of movement was not limited, their conditions still amounted to detention). These Trial Chamber findings in the *Simić et al.* and *Blaškić* cases on the nature of detentions in Zasavica and Rotilj, respectively, were not an issue on appeal.

¹⁴⁹¹ Praljak's Appeal Brief, paras 201, 205-207 & fns 461, 472-473, 476-477, 479-480.

¹⁴⁹² Praljak's Appeal Brief, para. 201, referring to Witness BY, T. 9085 (27 Oct 2006).

¹⁴⁹³ Praljak's Appeal Brief, paras 204-205, referring to Witness BX, T. 8874 (25 Oct 2006). In connection with his argument that restrictions on movement of the Hrasnica villagers were necessary for the villagers' own security, Praljak argues that these were allowed under Article 27 of Geneva Convention IV. Praljak's Appeal Brief, para. 205, referring to his ground of appeal 8.1 where he relies on the Commentary to Article 27 of Geneva Conventions IV. The Appeals Chamber dismisses this ground of appeal elsewhere. See *infra*, paras 514, 517.

¹⁴⁹⁴ Praljak's Appeal Brief, para. 207, referring to, *inter alia*, Trial Judgement, Vol. 2, paras 444, 446, 451.

475. The Appeals Chamber notes that the Trial Chamber explicitly considered the evidence relied upon by Praljak.¹⁴⁹⁵ Thus, with respect to Paloč and Trnovača, the Trial Chamber considered and relied on the evidence of Witnesses BY and BX, as well as the evidence of other witnesses, and ultimately concluded that civilians in both locations were detained and thus imprisoned and unlawfully confined.¹⁴⁹⁶ Concerning specifically Witness BY's evidence on Paloč, while she did state that there were "no guards protecting" them and that women could leave the house, she also stated that only some women did so in order to prepare food.¹⁴⁹⁷ As for Witness BX, the relevant portion of her evidence relied on by Praljak indicates in fact that she considered herself a "prisoner" as she could not go anywhere except to get food.¹⁴⁹⁸ Indeed, the Trial Chamber found, relying on the evidence of Witness BX, that the houses in Trnovača were guarded by HVO soldiers.¹⁴⁹⁹

476. As for Uzričje, the Trial Chamber noted trial arguments raised by Petković that the civilians in Uzričje "were neither locked-in nor kept prisoner, but sheltered from the hostilities" and that as soon as fighting stopped, the civilians were again authorised to move about as they wished.¹⁵⁰⁰ The Trial Chamber then considered evidence that villagers held in two Muslim houses in Uzričje retained a certain freedom of movement during the day to do domestic chores, listen to news reports, or find food, and that they were required to return by nightfall.¹⁵⁰¹ However, the Trial Chamber also considered that after the villagers surrendered, on 19 January 1993, the HVO arrested and separated them into two main groups which were put in these two houses.¹⁵⁰² It further considered witness testimony that villagers were held until March or April 1993 at one house and 45 days at another, and that HVO soldiers guarded both houses.¹⁵⁰³ The Trial Chamber also took into account evidence of a witness who stated that she was held under HVO guard in various houses in Uzričje until February 1993 and that although one house at which she stayed was not under HVO control, HVO soldiers armed with rifles and stationed in the neighbouring house frequently made rounds about the house.¹⁵⁰⁴ The Trial Chamber found, in view of the evidence, that the Muslim villagers were indeed held by the HVO inside the village for about a month-and-a-half, considering, in this regard, that despite having some freedom of movement during the day, they were assembled in houses and had to observe a curfew.¹⁵⁰⁵ In its legal findings, the Trial Chamber concluded that

¹⁴⁹⁵ See, e.g., Trial Judgement, Vol. 2, paras 406-407, 409, 418-420, 422, 424-426, 441-442, 444 & fns 974-975, 983-984, 991-998, 1001-1002, 1004-1009, 1032-1033, 1036-1040.

¹⁴⁹⁶ See Trial Judgement, Vol. 2, paras 406-407, 409, 418-419, 424-426 & fns 974-975, 983-984, 993-995, 997-998, 1002, 1004-1009, Vol. 3, paras 962, 1013.

¹⁴⁹⁷ See Witness BY, T. 9085 (27 Oct 2006).

¹⁴⁹⁸ See Witness BX, T. 8874 (25 Oct 2006).

¹⁴⁹⁹ Trial Judgement, Vol. 2, para. 425 and references cited therein.

¹⁵⁰⁰ Trial Judgement, Vol. 2, para. 439.

¹⁵⁰¹ Trial Judgement, Vol. 2, para. 444.

¹⁵⁰² Trial Judgement, Vol. 2, paras 440-441.

¹⁵⁰³ Trial Judgement, Vol. 2, paras 441-442.

¹⁵⁰⁴ Trial Judgement, Vol. 2, para. 443.

¹⁵⁰⁵ Trial Judgement, Vol. 2, para. 446.

these civilians, arrested by the HVO in the course of large-scale operations during which the HVO arrested and then detained all the Muslims, were imprisoned and unlawfully confined, crimes under Articles 5 and 2 of the Statute, respectively.¹⁵⁰⁶

477. Given the evidence and the findings outlined above, the Appeals Chamber considers that Praljak fails to demonstrate that the Trial Chamber erred in qualifying its factual findings as amounting to deprivation of liberty in relation to the civilians from Duša, Hrasnica, and Uzričje. While these civilians had some freedom of movement, that freedom consisted of individuals occasionally leaving the houses they were in, notably to obtain food.¹⁵⁰⁷ Additionally, the evidence and the factual findings outlined above indicate that armed HVO troops ordered and even moved the civilians to various locations and also were present in those locations, such that the civilians did not feel free to leave; indeed, in Trnovača and Uzričje the houses were in fact guarded by the HVO.¹⁵⁰⁸

478. Regarding Praljak's remaining submission on freedom of movement, the Appeals Chamber notes that in further support of his argument that the Trial Chamber acknowledged that the Muslim population in Uzričje had some such freedom,¹⁵⁰⁹ he points to, *inter alia*, a paragraph in the Trial Judgement and states that the Muslims "were not confined to the house and even not to the village as some of them left the village".¹⁵¹⁰ The Trial Chamber indeed noted evidence according to which a number of villagers being held by the HVO in houses under guard left the village because "they were still afraid of the fighting or of what might happen to them".¹⁵¹¹ It proceeded to find that a witness, who was held for 45 days in a house guarded by the HVO and fled with members of her family, was "seizing the opportunity when there were no HVO guards around the house".¹⁵¹² Praljak misrepresents the Trial Judgement to the extent that he suggests that the Trial Chamber's consideration of evidence of villagers who escaped as a result of fear is demonstrative of the fact that they were not deprived of their liberty.

479. As for Praljak's arguments relating to the lawfulness of the detentions in Hrasnica, while he argues that the civilians from Hrasnica were "evacuated" to Trnovača, relying on Article 49 of Geneva Convention IV, the Appeals Chamber notes that in referring to the removal of the population as an "evacuation" Praljak merely disagrees with the Trial Chamber's qualification of what happened to the civilians. Indeed, the Trial Chamber specifically found that this removal was

¹⁵⁰⁶ Trial Judgement, Vol. 3, paras 961-962, 1012-1013.

¹⁵⁰⁷ See *supra*, paras 475-476.

¹⁵⁰⁸ See *supra*, paras 464, 475-476.

¹⁵⁰⁹ See *supra*, paras 465, 471 & fn. 1494.

¹⁵¹⁰ Praljak Appeal Brief, para. 207, referring to Trial Judgement, Vol. 2, para. 451.

¹⁵¹¹ Trial Judgement, Vol. 2, para. 451.

¹⁵¹² Trial Judgement, Vol. 2, para. 452.

not an evacuation.¹⁵¹³ Further, with respect to his submission that these civilians had their movement restricted for their own security, which is permitted under Article 27 of Geneva Convention IV, the Appeals Chamber notes that Article 27(4) of Geneva Convention IV is broadly worded and provides that the Parties to the conflict “may take such measures of control and security in regard to protected persons as may be necessary as a result of the war”. The Commentary to Article 27 then states that while restriction of movement is one of the measures a belligerent may inflict on protected persons, internment of civilians and the placing of civilians in assigned residences are the two most severe measures that may be inflicted on protected persons under Article 27 and, as such, are subject to strict rules outlined in Articles 41-43 and 78 of Geneva Convention IV.¹⁵¹⁴ One of these rules is that the internment or placement in assigned residence may be ordered only if the security of the detaining party makes it absolutely necessary, while another provides that an initially lawful internment or placement in assigned residence clearly becomes unlawful if the detaining party does not respect the basic procedural rights of the detained persons and does not establish an appropriate court or administrative board as prescribed in Article 43 of Geneva Convention IV.¹⁵¹⁵ As explained earlier, the Appeals Chamber considers that the Trial Chamber did not err in concluding that the events concerning Hrasnica villagers amounted to deprivation of liberty and thus concerned more than a mere restriction of movement.¹⁵¹⁶ Further, using the Geneva Convention IV terminology, the Appeals Chamber considers that the Trial Chamber findings and the evidence it relied on indicate that the civilians from Hrasnica were placed by the HVO in a number of “assigned residences” in Trnovača and elsewhere.¹⁵¹⁷ In fact, Praljak himself argues that the civilians first spent a night in a “collection centre” and then were “accommodated” in houses in Trnovača.¹⁵¹⁸ That being the case, this placement was subject to strict rules and requirements noted above. However, there is nothing in the factual findings outlined above to indicate that these rules were followed, namely that the civilians were moved to various locations because the HVO had reasonable grounds to believe that this was absolutely necessary for reasons of security,¹⁵¹⁹ or that

¹⁵¹³ Trial Judgement, Vol. 3, paras 846, 902. See also *infra*, para. 482.

¹⁵¹⁴ Commentary on Geneva Convention IV, Article 27, p. 207.

¹⁵¹⁵ Geneva Convention IV, Arts. 42 and 78; *Čelebići* Appeal Judgement, para. 320. See also *Čelebići* Appeal Judgement, para. 327 (“the reasonable time which is to be afforded to a detaining power to ascertain whether detained civilians pose a security risk must be the minimum time necessary to make enquiries to determine whether a view that they pose a security risk has any objective foundation such that it would found a ‘definite suspicion’ of the nature referred to in Article 5 of Geneva Convention IV”).

¹⁵¹⁶ See *supra*, para. 477.

¹⁵¹⁷ See *Kordić and Čerkez* Trial Judgement, para. 283 (noting that, according to the Commentary on Geneva Convention IV, assigned residence consists of moving people from their domicile and forcing them to live in a locality which is generally out of the way and where supervision is more easily exercised).

¹⁵¹⁸ See Praljak’s Appeal Brief, para. 205.

¹⁵¹⁹ See Trial Judgement, Vol. 3, paras 961, 1012 (concluding that the HVO made no individual assessments of security reasons which could have led to the detention of civilians).

the HVO established an appropriate court or administrative board in line with Article 43 of Geneva Convention IV.¹⁵²⁰

480. The Appeals Chamber considers as speculative Praljak's assertion that a statement in the 27 January 1993 HVO report – that civilians arrested in some villages were released immediately – demonstrates that the HVO conducted individual assessments of the security reasons which could have led to the detention. As to his assertion that the Trial Chamber ignored this statement, Praljak disregards the Trial Chamber's reliance on other evidence indicating that the civilians in all four villages were not released immediately.¹⁵²¹ As such, it is a mere assertion that the Trial Chamber must have failed to consider relevant evidence without showing that no reasonable trier of fact, based on the evidence, could have reached the same conclusion as the Trial Chamber did. With respect to his argument, in particular, that a curfew was imposed already in June 1992 upon the whole population of Gornji Vakuf Municipality, the Appeals Chamber considers that Praljak fails to demonstrate how this assertion, and the evidence upon which he relies, is temporally relevant to the impugned findings. All these arguments are dismissed.

481. For the foregoing reasons, the Appeals Chamber dismisses Praljak's ground of appeal 13.

5. Displacement of Muslims from Duša, Hrasnica, Uzričje, and Ždrimci (Praljak's Ground 14)

482. The Trial Chamber found that, following the attack on 18 January 1993, the HVO forcibly removed and transferred women, children, and the elderly from the villages of Duša, Hrasnica, Uzričje, and Ždrimci.¹⁵²²

483. With regard to Duša, the Trial Chamber found that after the inhabitants and the defenders of the village had surrendered, the HVO ordered women, children, and the elderly to go to Paloč, where they were further held for about a fortnight.¹⁵²³ The Trial Chamber also found that, during the first half of February 1993, these civilians were then taken from Paloč to Gornji Vakuf by UNPROFOR, noting that most of them were never able to return to their homes as their houses had been destroyed by the HVO.¹⁵²⁴ In that context, the Trial Chamber found that, by burning the

¹⁵²⁰ See Trial Judgement, Vol. 3, paras 961, 1012 (holding that the Muslim civilians had no possibility of challenging their confinement with the relevant authorities).

¹⁵²¹ See Trial Judgement, Vol. 2, paras 409-410, 421, 426-427, 441-443, 446, 463, 467-468 and references cited therein. See also Trial Judgement, Vol. 3, paras 961, 1012.

¹⁵²² Trial Judgement, Vol. 3, paras 845-848, 900-906.

¹⁵²³ Trial Judgement, Vol. 2, paras 406, 410, Vol. 3, paras 845, 899.

¹⁵²⁴ Trial Judgement, Vol. 2, para. 410, Vol. 3, paras 845, 900.

houses belonging to Bosnian Muslims at the time the fighting in Duša had ceased, the HVO deliberately prevented the Duša population from returning.¹⁵²⁵

484. With respect to Hrasnica, the Trial Chamber found that after the attack on the village, and after having arrested the men of military age and separated them from the women, children, and the elderly, the HVO removed the women, children, and the elderly and detained them successively at various places: in Hrasnica, a house in the hamlet of Volari, the furniture factory in Trnovača (arriving in three buses), and eventually houses surrounding the Trnovača factory.¹⁵²⁶ After about three weeks in detention in those houses, the HVO released the civilians without instructing them to go to any specific place but the Trial Chamber found that UNPROFOR “had to take” some of them to Bugojno as they could not return to their houses, which had been burnt down by the HVO.¹⁵²⁷ Other Hrasnica civilians detained in Volari were taken by the HVO to the Trnovača School; they were released after about a fortnight and ordered by the HVO to go to ABiH-held territory.¹⁵²⁸ The Trial Chamber was satisfied that the removal of these civilians from Hrasnica was “on no account an evacuation carried out for security purposes” and emphasised that by destroying the houses belonging to Bosnian Muslims in Hrasnica, while in control of the village, the HVO deliberately prevented the Hrasnica population from returning.¹⁵²⁹

485. Regarding Uzričje, the Trial Chamber found that, after the attack on the village, the HVO stole property from Muslim houses, set fire to them, and detained the Muslim population of Uzričje in a number of houses in the village, for about a month-and-a-half.¹⁵³⁰ The Trial Chamber also found that some detained Muslims fled Uzričje in the direction of ABiH-controlled territory, in fear of what lay ahead or following pressure from HVO soldiers.¹⁵³¹ In regard to the latter, the Trial Chamber considered, *inter alia*, the testimony of Witness Zijada Kurbegović, who testified that the HVO ordered some Uzričje villagers, including herself and her family, to leave.¹⁵³² The Trial Chamber also held that by burning the Muslim houses, the HVO deliberately prevented the Muslim population of Uzričje from returning.¹⁵³³

486. As for Ždrimci, the Trial Chamber found that, after the attack on the village, the HVO set fire to Muslim houses, stole Muslim property, arrested the men, and detained the Muslim women

¹⁵²⁵ Trial Judgement, Vol. 3, paras 845, 900. See Trial Judgement, Vol. 2, paras 398-402.

¹⁵²⁶ Trial Judgement, Vol. 2, paras 416, 418-424, 427, 473, Vol. 3, paras 846, 902.

¹⁵²⁷ Trial Judgement, Vol. 2, paras 426-427, Vol. 3, paras 846, 902.

¹⁵²⁸ Trial Judgement, Vol. 2, paras 420-421, Vol. 3, paras 846, 902. See Trial Judgement, Vol. 2, para. 421.

¹⁵²⁹ Trial Judgement, Vol. 3, paras 846, 902. See Trial Judgement, Vol. 2, paras 412-415 (where the Trial Chamber found that before burning Muslim houses the HVO searched them and stole property from them).

¹⁵³⁰ Trial Judgement, Vol. 2, paras 432-436, 440-443, 446.

¹⁵³¹ Trial Judgement, Vol. 2, para. 454.

¹⁵³² Trial Judgement, Vol. 2, para. 453.

¹⁵³³ Trial Judgement, Vol. 3, paras 847, 904.

and children in a number of houses in the village.¹⁵³⁴ After about a month-and-a-half in detention, these civilians were told by the joint HVO-ABiH commission, under the auspices of UNPROFOR, that they had been released and, according to the Trial Chamber, many had no choice but to leave the village since the HVO burned down at least about 30 houses belonging to Muslim families.¹⁵³⁵ The Trial Chamber also found that by destroying numerous Muslim houses the HVO deliberately prevented the Muslim population of Ždrimci from returning.¹⁵³⁶

487. On the basis of all these findings, the Trial Chamber concluded that the events in Duša, Hrasnica, Uzričje, and Ždrimci constituted inhumane acts (forcible transfer) as a crime against humanity (Count 8) and an unlawful transfer of civilians as a grave breach of the Geneva Conventions (Count 9).¹⁵³⁷

(a) Arguments of the Parties

488. Praljak submits that the Trial Chamber erroneously concluded that the Muslim population was unlawfully displaced from the villages of Duša, Hrasnica, Uzričje, and Ždrimci in Gornji Vakuf Municipality.¹⁵³⁸ With respect to Duša, Praljak argues that Witness BY stated that Muslim troops, not the HVO, ordered civilians in Duša to go to Paloč.¹⁵³⁹ He also submits that Paloč is not sufficiently remote from Duša to fulfil the *actus reus* of forcible transfer.¹⁵⁴⁰ In the same vein, Praljak contends that given that some people from Ždrimci went to nearby villages where they lived with their families in a familiar environment, the Trial Chamber failed to establish that the population was uprooted from the territory and environment in which it normally lived.¹⁵⁴¹ Regarding Hrasnica, Praljak submits that: (1) it is not clear whether the Trial Chamber considered that forcible transfer was committed when the population was removed from Hrasnica or three weeks later when some decided to go elsewhere;¹⁵⁴² and (2) the finding that some people were told to go to ABiH territory was based on hearsay.¹⁵⁴³ With respect to Duša and Hrasnica, Praljak submits that: (1) as the populations were found to be “arrested/detained”, they could not be considered to have been forcibly transferred;¹⁵⁴⁴ (2) people who left Duša and Hrasnica were

¹⁵³⁴ Trial Judgement, Vol. 2, paras 456-468.

¹⁵³⁵ Trial Judgement, Vol. 3, paras 848, 905-906. See Trial Judgement, Vol. 2, paras 466-468.

¹⁵³⁶ Trial Judgement, Vol. 3, paras 848, 906.

¹⁵³⁷ Trial Judgement, Vol. 3, paras 845-848, 899-906.

¹⁵³⁸ Praljak's Appeal Brief, para. 230, referring to, *inter alia*, Trial Judgement, Vol. 3, paras 845-848, 900-906. See also Praljak's Reply Brief, para. 67.

¹⁵³⁹ Praljak's Appeal Brief, para. 217. Praljak also submits that “[i]t seems that the [Trial Chamber] does not consider that the HVO is responsible for the subsequent removal of [the] population from the area by UNPROFOR”. Praljak's Appeal Brief, para. 215.

¹⁵⁴⁰ Praljak's Appeal Brief, para. 218.

¹⁵⁴¹ Praljak's Appeal Brief, para. 228, referring to, *inter alia*, Trial Judgement, Vol. 3, paras 848, 906.

¹⁵⁴² Praljak's Appeal Brief, para. 220. See Praljak's Appeal Brief, para. 224.

¹⁵⁴³ Praljak's Appeal Brief, para. 221.

¹⁵⁴⁴ Praljak's Appeal Brief, paras 216 (referring to, *inter alia*, Trial Judgement, Vol. 2, para. 405), 220.

returning to the places from which they originally came;¹⁵⁴⁵ and (3) people were able to and did return to their homes.¹⁵⁴⁶

489. Praljak argues that, in any case, forcible transfer assumes force or coercion and that therefore the Trial Chamber's findings that the populations were unable to return to their homes cannot constitute a sufficient basis for the crime.¹⁵⁴⁷ Praljak further argues that while the burning of houses might sometimes constitute coercion, the Trial Chamber failed to establish: (1) the nexus between this act and the removal of the population;¹⁵⁴⁸ and (2) that those who burned houses did so with the intent to forcibly remove.¹⁵⁴⁹ He submits that the Trial Chamber did not consider that civilians may have fled out of fear for their safety following the "commencement of the armed conflict".¹⁵⁵⁰ Praljak requests that his convictions under Counts 8 (inhumane acts (forcible transfer) as a crime against humanity) and 9 (unlawful transfer as a grave breach of the Geneva Conventions) be reversed with respect to the relevant charges for Gornji Vakuf Municipality.¹⁵⁵¹

490. The Prosecution responds that Praljak merely disagrees with the Trial Chamber's interpretation of evidence without showing an error.¹⁵⁵² The Prosecution argues that the Trial Chamber's findings that villagers were unlawfully detained do not preclude its well-grounded findings that they were forcibly transferred or expelled.¹⁵⁵³ It also contends that, given that the Muslims had no choice in leaving, their transfer was unlawful, notwithstanding the type of coercion or distance.¹⁵⁵⁴ The Prosecution avers that the displacements were not intended to be temporary but to drive the Muslims from their homes.¹⁵⁵⁵

¹⁵⁴⁵ Praljak's Appeal Brief, paras 217, 223. See Praljak's Appeal Brief, para. 222.

¹⁵⁴⁶ Praljak's Appeal Brief, paras 219, 222.

¹⁵⁴⁷ Praljak's Appeal Brief, paras 222 (referring to Trial Judgement, Vol. 2, para. 427), 226, 229. With specific regard to Uzričje, Praljak also argues that the Trial Chamber's finding that the HVO forced the Muslim population to leave was based solely on Kurbegović's testimony, which was imprecise and contradicted by an ABiH document (Ex. P01226). Praljak's Appeal Brief, para. 225.

¹⁵⁴⁸ Praljak's Appeal Brief, para. 229. Praljak submits that the Trial Chamber found, without evidence, that some Ždrimci villagers left because their houses had been destroyed. Praljak's Appeal Brief, para. 227.

¹⁵⁴⁹ Praljak's Appeal Brief, para. 229.

¹⁵⁵⁰ Praljak's Appeal Brief, para. 229. See Praljak's Appeal Brief, paras 221-222, 227. Praljak also argues that civilians were removed from Hrasnica during combat for their own security. Praljak's Appeal Brief, para. 221.

¹⁵⁵¹ Praljak's Appeal Brief, para. 231. See also Praljak's Reply Brief, para. 68.

¹⁵⁵² Prosecution's Response Brief (Praljak), para. 138. The Prosecution also submits that UNPROFOR's efforts relating to the removal of some victims does not alter the unlawfulness of the HVO's conduct. Prosecution's Response Brief (Praljak), para. 140.

¹⁵⁵³ Prosecution's Response Brief (Praljak), para. 139.

¹⁵⁵⁴ Prosecution's Response Brief (Praljak), para. 139.

¹⁵⁵⁵ Prosecution's Response Brief (Praljak), paras 140-141. The Prosecution also submits that the Trial Chamber explicitly rejected the possibility that the Muslims were removed for their own security or for compelling military reasons. Prosecution's Response Brief (Praljak), para. 140.

(b) Analysis

491. The Appeals Chamber recalls that it has already dismissed Praljak's argument concerning Witness BY's evidence relating to Duša.¹⁵⁵⁶ Regarding Praljak's arguments that Paloč is not sufficiently remote from Duša and that some people from Ždrimci went to nearby villages where they lived with their families in a familiar environment, the Appeals Chamber recalls that it has found in the context of the crime against humanity of persecution through forcible displacement that:

The prohibition against forcible displacements aims at safeguarding the right and aspiration of individuals to live in their communities and homes without outside interference. The forced character of displacement and the forced uprooting of the inhabitants of a territory entail the criminal responsibility of the perpetrator, not the destination to which these inhabitants are sent.¹⁵⁵⁷

The Appeals Chamber considers that this rationale applies equally to the crime of unlawful transfer of a civilian as a grave breach of the Geneva Conventions and the crime against humanity of other inhumane acts through forcible transfer.

492. The Trial Chamber found that the HVO burned down about 16 and 30 houses belonging to Muslim families in Duša and Ždrimci, respectively.¹⁵⁵⁸ The Trial Chamber considered that because it was impossible for them to return to their homes, these persons were deprived of their right to enjoy a normal social and family life.¹⁵⁵⁹ The Appeals Chamber notes that, contrary to Praljak's claim, the *actus reus* of forcible displacement does not require that the population be removed to a "location sufficiently remote from its original location".¹⁵⁶⁰ Given the findings set out above, Praljak's arguments regarding Duša and Ždrimci are dismissed.

493. Regarding Hrasnica, the Appeals Chamber considers that Praljak misrepresents the Trial Chamber's findings when submitting that it is not clear whether the Trial Chamber considered that forcible transfer was committed when the population was removed from Hrasnica or three weeks later when some decided to go elsewhere. In that respect, the Trial Chamber concluded that the "women, children and elderly person from the village of Hrasnica were forcibly removed *from their village*" indicating that the removal started at the moment when they were forced to leave the village.¹⁵⁶¹ This is in line with the rationale outlined above.¹⁵⁶² The Appeals Chamber further notes

¹⁵⁵⁶ See *supra*, para. 468. The Appeals Chamber notes that Praljak's assertion that "[i]t seems that the [Trial Chamber] does not consider that the HVO is responsible for the subsequent removal of [the] population from the area by UNPROFOR" does not allege any error. Praljak's Appeal Brief, para. 215.

¹⁵⁵⁷ *Krnojelac* Appeal Judgement, para. 218. See *Naletilić and Martinović* Appeal Judgement, para. 153.

¹⁵⁵⁸ Trial Judgement, Vol. 3, paras 845, 848, 900, 906. See Trial Judgement, Vol. 2, paras 402, 467-468.

¹⁵⁵⁹ Trial Judgement, Vol. 3, paras 845, 848, 900, 906.

¹⁵⁶⁰ Praljak's Appeal Brief, para. 218. See *Krnojelac* Appeal Judgement, para. 222.

¹⁵⁶¹ Trial Judgement, Vol. 3, para. 902 (emphasis added).

¹⁵⁶² See *supra*, para. 491.

that the Trial Chamber reached this conclusion based on the totality of the events, namely that: (1) after the HVO attack on the village, the HVO took civilians to various locations where they were subsequently detained; (2) after about three weeks in detention, the HVO released them – admittedly without instructing them to go to a specific location – but UNPROFOR had to take some of them to Bugojno, since their houses had been burnt by the HVO; and (3) another group of civilians held at the Trnovača school was released after a fortnight and ordered by the HVO to go to ABiH-held territory.¹⁵⁶³ The Trial Chamber additionally found that by making sure that all the houses belonging to Muslim families had been destroyed, the HVO – which was in control of the village – deliberately prevented the civilian population from returning.¹⁵⁶⁴ Praljak ignores the latter finding. As to Praljak's submission that the Trial Chamber's finding that some people from Hrasnica were told to go to ABiH territory was based on hearsay, the Appeals Chamber recalls that the Trial Chamber is entitled to rely upon hearsay evidence, provided it is reliable and credible,¹⁵⁶⁵ and notes that Praljak provides no argument to the contrary.¹⁵⁶⁶ For the foregoing reasons, his arguments are dismissed.

494. As to Praljak's argument, pertaining to Duša and Hrasnica, that the populations found to be "arrested/detained" could not be considered to have been forcibly removed, the Appeals Chamber considers that Praljak merely makes a blanket statement and fails to show how a finding that people were detained detracts from a finding that they were forcibly transferred. In support of his contentions that people who left were returning to the places from which they originally came and that people were able to and did return to their homes, Praljak relies on evidence and a Trial Chamber finding that, at most, indicate this to be the case for *some* people.¹⁵⁶⁷ In that respect, the Appeals Chamber notes that for Duša Praljak relies on the evidence of Witness BY and Witness BW, who testified that a few people from Paloč arrived to Duša prior to the removal of the population because they felt unsafe in Paloč.¹⁵⁶⁸ The Appeals Chamber does not consider that the presence of a small number of locals from Paloč among the population of Duša undermines the impugned finding. As for Hrasnica, Praljak relies on the evidence of Witness BX who testified that she was from the village of Planinci in Bugojno and came to Hrasnica with her family in 1992.¹⁵⁶⁹ Her testimony shows that following the detention in Trnovača factory and

¹⁵⁶³ Trial Judgement, Vol. 3, paras 846, 902. See Trial Judgement, Vol. 2, paras 419-427.

¹⁵⁶⁴ Trial Judgement, Vol. 3, paras 846, 902. See Trial Judgement, Vol. 2, paras 426-427.

¹⁵⁶⁵ *Stanišić and Župljanin* Appeal Judgement, para. 463 & fn. 1574; *Popović et al.* Appeal Judgement, para. 1276; *Šainović et al.* Appeal Judgement, para. 846.

¹⁵⁶⁶ See Praljak's Appeal Brief, para. 221.

¹⁵⁶⁷ See Praljak's Appeal Brief, para. 217 & fn. 503 (referring to Witness BW, T. 8769 (closed session) (19 Oct 2006), Witness BY, T. 9073 (27 Oct 2006)), para. 219 & fn. 507 (referring to Witness BY, T. 9085-9086 (27 Oct 2006)), paras 222-223 & fn. 519 (referring to Ex. P09710 (confidential), pp. 2, 4, Witness BX, T. 8845 (25 Oct 2006)).

¹⁵⁶⁸ Witness BY, T. 9073 (27 Oct 2006); Witness BW, T. 8769 (closed session) (19 Oct 2006) (stating that a group of six people from Paloč came to Duša).

¹⁵⁶⁹ See Ex. P09710 (confidential), p. 2; Witness BX, T. 8845 (25 Oct 2006).

Trnovača houses she was able to go back home to Bugojno.¹⁵⁷⁰ The Appeals Chamber does not consider that the mere fact that Witness BX was ultimately able to go back home undermines the Trial Chamber's finding that the women, children, and the elderly from Hrasnica were forcibly removed and transferred. Praljak fails to show how these arguments contradict the impugned finding. These arguments are therefore dismissed.

495. Concerning Praljak's claim that forcible transfer assumes force or coercion and that the Trial Chamber's findings that the populations were unable to return to their homes therefore cannot constitute a sufficient basis for the crime, the Appeals Chamber recalls that it is the absence of genuine choice that makes displacement unlawful.¹⁵⁷¹ Factors other than force itself may render displacement involuntary and include "the threat of force or coercion, such as that caused by fear of violence, duress, detention, psychological oppression or abuse of power [...] or by taking advantage of a coercive environment".¹⁵⁷² The Appeals Chamber has previously also confirmed that creating "severe living conditions" for a certain population – which in turn makes it impossible for that population to remain in their homes – can amount to forced displacement.¹⁵⁷³ Finally, whether a transferred person had a genuine choice is a determination to be made within the context of a particular case.¹⁵⁷⁴ The Appeals Chamber therefore considers that Praljak has failed to show that no reasonable trier of fact could reach the conclusion that civilians in the four villages were forcibly transferred because the HVO destroyed their houses and deliberately made it impossible for them to return.¹⁵⁷⁵ Praljak's argument that the Trial Chamber failed to establish the nexus between the act of burning houses and the removal of the population also fails as the Trial Chamber clearly made findings establishing that nexus in relation to all four villages.¹⁵⁷⁶

¹⁵⁷⁰ See Ex. P09710 (confidential), p. 4; Trial Judgement, Vol. 2, para. 422.

¹⁵⁷¹ *Dorđević* Appeal Judgement, para. 727 (in the context of the crime against humanity of other inhumane acts through underlying acts of forcible transfer); *Stakić* Appeal Judgement, para. 279 (in the context of deportation as a crime against humanity); *Krnojelac* Appeal Judgement, para. 229 (in the context of the crime against humanity of persecution through underlying acts of forcible displacement).

¹⁵⁷² *Dorđević* Appeal Judgement, para. 727 (in the context of the crime against humanity of other inhumane acts through underlying acts of forcible transfer); *Krajišnik* Appeal Judgement, para. 319 (in the context of deportation as a crime against humanity); *Stakić* Appeal Judgement, para. 279 (in the context of deportation as a crime against humanity); *Krnojelac* Appeal Judgement, para. 229 (in the context of the crime against humanity of persecution through underlying acts of forcible displacement).

¹⁵⁷³ *Krajišnik* Appeal Judgement, paras 308, 319.

¹⁵⁷⁴ *Dorđević* Appeal Judgement, para. 727 (in the context of the crime against humanity of other inhumane acts through underlying acts of forcible transfer); *Stakić* Appeal Judgement, para. 282 (in the context of deportation as a crime against humanity); *Krnojelac* Appeal Judgement, para. 229 (in the context of the crime against humanity of persecution through underlying acts of forcible displacement).

¹⁵⁷⁵ See, e.g., Trial Judgement, Vol. 3, paras 845-848, 900, 902, 904, 906. The Appeals Chamber dismisses Praljak's challenge to Kurbegović's testimony as he fails to demonstrate that no reasonable trier of fact could have concluded that the HVO forcibly transferred the Muslim population, having considered, *inter alia*, her evidence as well as Exhibit P01226. See Trial Judgement, Vol. 2, paras 451-454, Vol. 3, paras 847, 904.

¹⁵⁷⁶ See *supra*, paras 483-486. Moreover, contrary to Praljak's related submission, the Trial Chamber did in fact rely on evidence that some Ždrimci villagers left because their houses had been destroyed. See Trial Judgement, Vol. 2, para. 467 & fn. 1071, referring to Ex. P09797, para. 23. This argument is therefore dismissed.

496. As for Praljak's argument that the Trial Chamber failed to consider that civilians may have fled out of fear for their safety following "the commencement of the armed conflict",¹⁵⁷⁷ the Appeals Chamber notes that the Trial Chamber was satisfied that the removals in Duša, Hrasnica, and Uzričje occurred at a time when the HVO controlled the villages and there was no more fighting. The Trial Chamber also found that the HVO made no arrangements for the population to return and, in fact, deliberately prevented them from returning by destroying property.¹⁵⁷⁸ Further, with respect to Ždrimci, the Trial Chamber established that following the 18 January 1993 attack, numerous civilians also had no choice but to leave the village given that the HVO burned down at least about 30 houses, all of which belonged to Muslim families.¹⁵⁷⁹ In light of these findings, the Appeals Chamber dismisses Praljak's argument, as he merely disagrees with the Trial Chamber's findings without demonstrating an error. Finally, contrary to Praljak's assertion, the Trial Chamber established that those who burned the houses did so with the intent to forcibly remove.¹⁵⁸⁰

497. For the foregoing reasons, the Appeals Chamber dismisses Praljak's ground of appeal 14.

6. Commission of crimes by the Bruno Bušić Regiment in Ždrimci and Uzričje
(Petković's Sub-grounds 5.2.2.2 and 5.2.3.1 both in part)

498. The Trial Chamber found that on 18 January 1993, the inhabitants of Ždrimci gradually surrendered to HVO soldiers, including soldiers from the Bruno Bušić Regiment.¹⁵⁸¹ It further found that the arrested inhabitants included women, children, and the elderly, and that the HVO detained all Muslims irrespective of their status.¹⁵⁸² With regard to the village of Uzričje, it found that members of the Bruno Bušić Regiment were among the HVO soldiers most implicated in thefts and in setting fire to houses.¹⁵⁸³

499. Petković submits that there is no evidence that members of the Bruno Bušić Regiment committed crimes in Gornji Vakuf.¹⁵⁸⁴ He challenges the Trial Chamber's reliance on the testimony of Witness Nedžad Čaušević with regard to the arrest of the inhabitants of Ždrimci, arguing that Čaušević actually stated that the HVO, including members of the Bruno Bušić Regiment, detained him and other men *who defended the village*, and that the detention of combatants is not a war

¹⁵⁷⁷ Praljak's Appeal Brief, para. 229. When arguing that civilians were removed from Hrasnica during combat for their own security, Praljak relies on his ground of appeal 13 which the Appeals Chamber dismisses elsewhere. See Praljak's Appeal Brief, para. 221 & fn. 512; *supra*, paras 468-481. See also Trial Judgement, Vol. 2, paras 451-454.

¹⁵⁷⁸ Trial Judgement, Vol. 3, paras 845-847, 900, 902, 904.

¹⁵⁷⁹ Trial Judgement, Vol. 3, paras 848, 906.

¹⁵⁸⁰ Trial Judgement, Vol. 3, paras 845-848, 900, 902, 904, 906.

¹⁵⁸¹ Trial Judgement, Vol. 2, para. 384.

¹⁵⁸² Trial Judgement, Vol. 2, para. 468.

¹⁵⁸³ Trial Judgement, Vol. 2, para. 436.

crime.¹⁵⁸⁵ Petković further notes that the Trial Chamber's finding that members of the Bruno Bušić Regiment were implicated in the thefts and fires in Uzričje is based on: (1) a document of the BiH intelligence service in which three soldiers allegedly belonging to the Regiment are mentioned; and (2) the testimony of Witness Zijada Kurbegović, which he contends does not mention the Regiment.¹⁵⁸⁶

500. The Prosecution responds that the villagers in Ždrimci who were detained by members of the Bruno Bušić Regiment included civilians and that the evidence leaves no doubt that it was members of the Regiment who perpetrated the crimes in Uzričje.¹⁵⁸⁷

501. The Appeals Chamber rejects Petković's suggestion that only combatants were detained in Ždrimci. In the testimony to which Petković refers, Čaušević stated that he and others surrendered because they "could see that the other civilians were in danger if we still tried to hide" and that those detained by the soldiers from the Bruno Bušić Regiment were "mostly older men and young boys, one was only 12 years old".¹⁵⁸⁸ As such, Petković misrepresents the evidence. With regard to Uzričje, the Appeals Chamber notes that Petković fails to articulate an error in the Trial Chamber's reliance on the report of the BiH intelligence service under reference. His argument that there is no evidence that members of the Bruno Bušić Regiment committed crimes in Gornji Vakuf is accordingly dismissed,¹⁵⁸⁹ as are his sub-grounds of appeal 5.2.2.2 and 5.2.3.1, both in relevant part.

E. Arrest, Detention, and Displacement of Muslims in Prozor Municipality in July-August 1993

1. Arrest and detention of civilians from Prozor (Praljak's Ground 8)

502. The Trial Chamber concluded that, between late July and early August 1993, the HVO unlawfully imprisoned civilians in the Podgrade neighbourhood of Prozor and the villages of Lapsunj and Duge, in Prozor Municipality, thereby committing imprisonment as a crime against humanity (Count 10) and unlawful confinement of civilians as a grave breach of the Geneva

¹⁵⁸⁴ Petković's Appeal Brief, paras 234(iii), 343; Petković's Reply Brief, paras 34(ii), 35; Appeal Hearing, AT. 573-574 (23 Mar 2017). Petković also submits that "no document dating from the first half of 1993 exists indicating that the Bruno Bušić unit committed any crimes in Jablanica in April 1993". Appeal Hearing, AT. 573 (23 Mar 2017).

¹⁵⁸⁵ Petković's Appeal Brief, paras 234(iii)(a), 343.

¹⁵⁸⁶ Petković's Appeal Brief, paras 234(iii)(b), 343.

¹⁵⁸⁷ Prosecution's Response Brief (Petković), para. 177. See also Prosecution's Response Brief (Petković), para. 134. The Prosecution notes that the Bruno Bušić Regiment was also present in Duša, where HVO troops also committed crimes against Muslims and their property. Prosecution's Response Brief (Petković), para. 177.

¹⁵⁸⁸ Ex. P09201, p. 20.

¹⁵⁸⁹ The Appeals Chamber also dismisses as an undeveloped assertion Petković's submission that "no document dating from the first half of 1993 exists indicating that the Bruno Bušić unit committed any crimes in Jablanica in April 1993". Appeal Hearing, AT. 573 (23 Mar 2017).

Conventions (Count 11).¹⁵⁹⁰ Further, it found that the conditions in which the Muslims of Podgrade, Lapsunj, and Duge were held between late July and late August 1993 were very harsh,¹⁵⁹¹ amounting to inhumane acts (conditions of confinement) as a crime against humanity (Count 12) and inhuman treatment (conditions of confinement) as a grave breach of the Geneva Conventions (Count 13).¹⁵⁹² In reaching these conclusions, the Trial Chamber found that in late July and early August 1993, following the arrests of Muslim men, the HVO rounded up and escorted a number of Muslim women, children, and elderly from Prozor Municipality to Podgrade, Lapsunj, and Duge.¹⁵⁹³ Further, the Trial Chamber held that: (1) from about 19 August 1993 until 28 August 1993, at least 1,760 Muslims were being held in Podgrade in about 100 houses;¹⁵⁹⁴ (2) the houses in Podgrade held 20 to 70 women, children, and elderly people, and some houses held more than 80 people;¹⁵⁹⁵ (3) in August 1993, the Muslims in Lapsunj were crowded together, 20-30 per house, and had no running water or hygienic products thus contracting lice and various skin problems;¹⁵⁹⁶ and (4) on 20 August 1993, between 700 and 800 Muslims were held in the houses in Duge in overcrowded conditions, with around 30 people per house, and without sufficient food.¹⁵⁹⁷ The Trial Chamber also found that the HVO soldiers and members of the Military Police committed thefts against Muslims in all three locations and that Muslim women and girls were subjected to sexual attacks and rapes by those forces.¹⁵⁹⁸ The Trial Chamber further concluded that the objective of placing the Muslim civilians in detention was to accommodate the Croats who were arriving in the municipality.¹⁵⁹⁹ It arrived at this conclusion after having found, on the basis of, *inter alia*, a report by Luka Markešić ("Luka Markešić Report"), who was in charge of the Rama Brigade of the HVO Information and Security Service ("SIS"), that the removal of the Muslim population was related to the arrival *en masse* of Croats and that the HVO authorities took properties of Muslims who had been moved to Podgrade, Lapsunj, and Duge so that they could house these newly arrived Croats.¹⁶⁰⁰

¹⁵⁹⁰ Trial Judgement, Vol. 3, paras 958-959, 1009-1010. See Trial Judgement, Vol. 2, paras 225, 232. Specifically, the Trial Chamber considered that HVO soldiers – the Trial Chamber did not know to which unit they belonged – as well as Military Police officers under Ilija Franjić's command, arrested Muslim women, children, and elderly people. Trial Judgement, Vol. 2, para. 232.

¹⁵⁹¹ Trial Judgement, Vol. 2, paras 249, 257, 267, Vol. 3, para. 958.

¹⁵⁹² Trial Judgement, Vol. 3, paras 1059-1067, 1102-1111.

¹⁵⁹³ Trial Judgement, Vol. 2, paras 225-227, 239, 254, 263.

¹⁵⁹⁴ Trial Judgement, Vol. 2, para. 240.

¹⁵⁹⁵ Trial Judgement, Vol. 2, para. 244. See Trial Judgement, Vol. 3, para. 1009.

¹⁵⁹⁶ Trial Judgement, Vol. 2, paras 255-256.

¹⁵⁹⁷ Trial Judgement, Vol. 2, paras 263, 266.

¹⁵⁹⁸ Trial Judgement, Vol. 2, paras 250-253, 258-262, 268-272.

¹⁵⁹⁹ Trial Judgement, Vol. 2, para. 232, Vol. 3, paras 958, 1008.

¹⁶⁰⁰ Trial Judgement, Vol. 2, paras 227-228, referring to, *inter alia*, Ex. P04177, p. 2. The Trial Chamber also considered evidence that Mijo Jozić, President of Prozor Municipality, stated that the most important problem facing them was the massive influx of Croats and that they needed to make more room for them. Trial Judgement, Vol. 2, para. 227.

(a) Arguments of the Parties

503. Praljak submits that the Trial Chamber erred when concluding that civilians from Prozor were arrested and detained.¹⁶⁰¹ He argues that the Trial Chamber “could not” establish that the HVO coercively transported Muslims to Podgrade, Lapsunj, and Duge or placed them in houses therein.¹⁶⁰² In this regard, he submits that: (1) the Trial Chamber did not consider that “a number of Muslims”¹⁶⁰³ might have relocated voluntarily; (2) people found and moved into houses themselves upon their arrival in Podgrade; and (3) the Trial Chamber recognised that it did not know which HVO unit would have arrested and detained the Muslims.¹⁶⁰⁴ Further, Praljak submits that: (1) relocation was a necessary and reasonable measure taken in the interest of the population;¹⁶⁰⁵ and (2) the Trial Chamber did not consider the reasonable possibility that the HVO was concerned with the safety of all civilians in Prozor.¹⁶⁰⁶ In particular, Praljak submits that the Trial Chamber erroneously concluded, on the basis of its “free and unfounded interpretation” of the Luka Markešić Report, that Muslims were put into the three villages and detained for the purpose of accommodating Croats who were arriving in the municipality.¹⁶⁰⁷

504. With regard specifically to the Trial Chamber’s finding that the population was detained, Praljak contends that the Trial Chamber: (1) acknowledged that people could go to Prozor and other villages; and (2) found that houses in Podgrade were not under guard but that the population had restricted freedom of movement, which Praljak argues was lawful under the circumstances.¹⁶⁰⁸ He submits that, as the Muslims in Podgrade, Lapsunj, and Duge were not detained, a necessary condition for a conviction for imprisonment, unlawful confinement, inhumane acts, and inhuman treatment was not satisfied.¹⁶⁰⁹ Praljak finally submits that the Trial Chamber erred in finding that living conditions in Podgrade were very harsh, mainly on the basis of evidence of overcrowding and, specifically, in drawing a conclusion as to the number of Muslims held in houses that was

¹⁶⁰¹ Praljak’s Appeal Brief, heading before para. 140, para. 146. See also Praljak’s Appeal Brief, para. 144.

¹⁶⁰² Praljak’s Appeal Brief, paras 141, 144.

¹⁶⁰³ Praljak’s Appeal Brief, para. 140.

¹⁶⁰⁴ Praljak’s Appeal Brief, paras 140-141.

¹⁶⁰⁵ Praljak’s Appeal Brief, para. 143. See Praljak’s Appeal Brief, para. 149. Praljak also submits that many Muslims who relocated to these three villages seemingly came from other parts of the country, so they presumably had no houses in Prozor. Praljak’s Appeal Brief, para. 143.

¹⁶⁰⁶ Praljak’s Appeal Brief, para. 142. See Praljak’s Appeal Brief, para. 151.

¹⁶⁰⁷ Praljak’s Appeal Brief, heading before para. 149, paras 149-150, referring to Ex. P04177. Praljak contends that: (1) Markešić did not testify and could not explain what he meant when making a link between the relocation of Muslims and the arrival of Croats; and (2) the report does not indicate Markešić’s source of information. Praljak’s Appeal Brief, para. 150.

¹⁶⁰⁸ Praljak’s Appeal Brief, para. 144. Praljak argues that the restriction of movement was a necessary and reasonable measure given the chaotic situation prevailing in Prozor at the time. Praljak’s Appeal Brief, para. 144, referring to the Commentary on Geneva Convention IV, Article 27.

¹⁶⁰⁹ Praljak’s Appeal Brief, paras 145-146, 148; Praljak’s Reply Brief, para. 76. See Praljak’s Appeal Brief, para. 139.

“mathematically impossible”.¹⁶¹⁰ Praljak requests that his convictions under Counts 10, 11, 12, and 13 with respect to Prozor be reversed.¹⁶¹¹

505. The Prosecution responds that Praljak merely disagrees with the Trial Chamber’s interpretation of evidence without showing that it erred.¹⁶¹² It submits that Praljak’s arguments that Muslims relocated voluntarily and that their freedom of movement was merely restricted must fail in light of the crimes committed.¹⁶¹³ The Prosecution further submits that the Trial Chamber considered the argument that Muslims were held for their protection, but nonetheless reasonably established that they were: (1) unlawfully arrested and detained; and (2) removed to accommodate newly arrived Croats.¹⁶¹⁴ Regarding Praljak’s submission that the Trial Chamber failed to properly assess the conditions of confinement for the purposes of the crimes of inhumane acts and inhuman treatment, the Prosecution argues that: (1) Praljak ignores relevant findings and evidence; and (2) the Trial Chamber’s conclusion concerning detention conditions in Podgrade was not based on a mathematical calculation of civilians in detention.¹⁶¹⁵

(b) Analysis

506. The Appeals Chamber notes that in support of his arguments that a number of Muslims might have voluntarily relocated and that people found and moved into houses upon their arrival in Podgrade, Praljak relies on evidence reflective of the experience of one particular witness, Witness BK, and her family.¹⁶¹⁶ In contrast, the Trial Chamber relied upon various pieces of evidence when finding that the HVO and some Military Police officers rounded up, arrested, and relocated Muslims from Prozor Municipality¹⁶¹⁷ and that “around 5,000 women, children and elderly people were held in Podgrade and in the villages of Lapsunj and Duge”.¹⁶¹⁸ Accordingly, Praljak merely asserts that the Trial Chamber failed to give sufficient weight to Witness BK’s testimony, without explaining why the conviction should not stand on the basis of the remaining evidence.¹⁶¹⁹ Further,

¹⁶¹⁰ Praljak’s Appeal Brief, para. 147.

¹⁶¹¹ Praljak’s Appeal Brief, para. 139.

¹⁶¹² Prosecution’s Response Brief (Praljak), para. 159. See Prosecution’s Response Brief (Praljak), para. 162.

¹⁶¹³ Prosecution’s Response Brief (Praljak), para. 161. See Prosecution’s Response Brief (Praljak), para. 160.

¹⁶¹⁴ Prosecution’s Response Brief (Praljak), paras 161, 163. The Prosecution also contends that Praljak’s assertion that Muslims were held for their own protection is untenable in light of the crimes they suffered. Prosecution’s Response Brief (Praljak), para. 161.

¹⁶¹⁵ Prosecution’s Response Brief (Praljak), para. 162. The Prosecution argues in this regard that the Trial Chamber’s conclusion that civilians lived in a climate of terror in overcrowded houses, with restricted freedom of movement, was based on substantial evidence concerning detention conditions. Prosecution’s Response Brief (Praljak), para. 162.

¹⁶¹⁶ See Praljak’s Appeal Brief, para. 140 & fns 332-333, referring to Witness BK, T. 5496-5497, 5527-5528 (24 Aug 2006).

¹⁶¹⁷ See Trial Judgement, Vol. 2, paras 225 (and references cited therein), 232. See also, *e.g.*, Trial Judgement, Vol. 2, paras 229-231 and references cited therein.

¹⁶¹⁸ Trial Judgement, Vol. 2, para. 227 and references cited therein. See also, *e.g.*, Trial Judgement, Vol. 2, paras 231 (and references cited therein), 232.

¹⁶¹⁹ In this regard, the Appeals Chamber notes that the Trial Chamber considered the testimony to which Praljak points. See Trial Judgement, Vol. 2, paras 225-226 & fns 566, 569.

with respect to Praljak's assertion that the Trial Chamber did not know which HVO unit was involved in the arrest and detention of the population, the Appeals Chamber notes that the Trial Chamber considered, in view of all the evidence, that "HVO soldiers [...] as well as some military police officers under Il[ji]a Franji[ć]'s command" arrested and detained the population.¹⁶²⁰ The Trial Chamber's acknowledgement that it did "not know to which unit [the HVO soldiers] belonged"¹⁶²¹ does not undermine its finding that the HVO soldiers and the Military Police were involved in the arrest and detention of the population. Therefore, Praljak fails to demonstrate any error of fact and his arguments are dismissed.

507. As to Praljak's submission that the Muslims were relocated in the interest of the population, the Appeals Chamber notes that the Trial Chamber considered a statement by Mijo Jozić, the President of Prozor Municipality, that the Muslims were relocated for their own safety, but found, on the basis of the Luka Markešić Report, that Muslims were arrested in the course of a large-scale operation to make room for newly arrived Croats.¹⁶²² The Trial Chamber also: (1) considered evidence that Jozić stated that they needed to make more room for the Croats;¹⁶²³ and (2) found that the HVO took the properties of the relocated Muslims so they could house Croats who arrived in Prozor.¹⁶²⁴ Praljak argues that the Trial Chamber failed to consider the reasonable possibility that the HVO was concerned with the safety of *all* civilians in Prozor, but he does not show that no reasonable trier of fact, based on the above evidence, could have reached the same conclusion as the Trial Chamber did. The Appeals Chamber further finds that Praljak merely asserts that the Trial Chamber failed to interpret the Luka Markešić Report in a particular manner.¹⁶²⁵ His argument therefore warrants dismissal.¹⁶²⁶

508. Regarding Praljak's argument that the requisite element of detention of the crimes charged in Counts 10, 11, 12, and 13 had not been satisfied, the Appeals Chamber recalls its earlier finding that both unlawful confinement and imprisonment concern the deprivation of liberty of an individual.¹⁶²⁷ Further, with the exception of chapeau requirements for war crimes and crimes against humanity, imprisonment and unlawful confinement of civilians in the context of armed

¹⁶²⁰ Trial Judgement, Vol. 2, para. 232. See also, *e.g.*, Trial Judgement, Vol. 2, paras 225, 229-231.

¹⁶²¹ Trial Judgement, Vol. 2, para. 232.

¹⁶²² Trial Judgement, Vol. 2, paras 227, 232, Vol. 3, paras 958, 1008.

¹⁶²³ Trial Judgement, Vol. 2, para. 227.

¹⁶²⁴ Trial Judgement, Vol. 2, para. 228.

¹⁶²⁵ With respect to Praljak's arguments that Markešić did not testify and could not explain what he meant when making a link between the relocation of Muslims and the arrival of Croats and that the report does not indicate Markešić's source of information, the Appeals Chamber finds that it was within the Trial Chamber's discretion to rely on the report.

¹⁶²⁶ As to Praljak's related argument that many Muslims who relocated came from other parts of the country and presumably did not have houses in Prozor, the Appeals Chamber finds that Praljak has not sufficiently explained the relevance of this argument to the impugned findings, and dismisses it as obscure.

¹⁶²⁷ See *supra*, paras 471-473.

conflict overlap significantly since the Appeals Chamber has confirmed that the legality of imprisonment and the procedural safeguards pertaining to it are to be determined based on Articles 42 and 43 of Geneva Convention IV.¹⁶²⁸

509. The Appeals Chamber notes that Praljak supports his contention on detention by pointing only to findings made by the Trial Chamber regarding the freedom of movement of Muslims in Podgrade, and not referring to Lapsunj and Duge.¹⁶²⁹ However, given the importance of his submissions and the fact that they ultimately challenge the detention in all three locations, the Appeals Chamber will exercise its discretion and consider this issue also in relation to the Trial Chamber's findings concerning the villages of Lapsunj and Duge. The Appeals Chamber recalls that the question of whether the civilians in Podgrade, Lapsunj, and Duge were deprived of their liberty will depend on the circumstances of each particular case and must take into account a range of factors, including the type, duration, effects, and the manner of implementation of the measures allegedly amounting to deprivation of liberty.¹⁶³⁰

510. The Trial Chamber found that between late July and the beginning of August 1993, the HVO held Muslim civilians in Podgrade, Lapsunj, and Duge without legal justification, thereby committing the crimes of imprisonment and unlawful confinement.¹⁶³¹ With respect to Podgrade, in its factual findings on the arrests, detention, and removal of civilians in Prozor Municipality, the Trial Chamber found that "[a]lthough the Military Police were indeed present within [Podgrade], the evidence shows that the houses themselves were not under guard and that there was some freedom of movement, with restrictions".¹⁶³² The Trial Chamber also found that most of the Muslims did not leave Podgrade, with the exception of, *inter alios*, probably one person per house who went to seek food at the Prozor distribution centre.¹⁶³³ Further, it found that some women left the houses at night and hid in the woods around Podgrade out of fear of being raped by HVO soldiers.¹⁶³⁴ However, the Trial Chamber also found that:¹⁶³⁵ (1) there was only one road for

¹⁶²⁸ *Kordić and Čerkez* Appeal Judgement, paras 114-115.

¹⁶²⁹ See Praljak's Appeal Brief, para. 144 & fns 341-342, referring to Trial Judgement, Vol. 2, paras 241-242.

¹⁶³⁰ See *Nada* Decision, para. 225; *Guzzardi* Decision, para. 92. The Appeals Chamber recalls that even though ECtHR case-law is not binding on the Tribunal, it may be instructive in cases where there is no well-established Tribunal jurisprudence, as is the case here. See, e.g., *Popović et al* Appeal Judgement, para. 436; *Dordević* Appeal Judgement, para. 83; *Šainović et al* Appeal Judgement, paras 1647-1648; *Čelebići* Appeal Judgement, para. 24.

¹⁶³¹ Trial Judgement, Vol. 3, paras 958-959, 1008-1010.

¹⁶³² Trial Judgement, Vol. 2, para. 241.

¹⁶³³ Trial Judgement, Vol. 2, para. 242.

¹⁶³⁴ Trial Judgement, Vol. 2, para. 242.

¹⁶³⁵ The Appeals Chamber notes that the Trial Chamber made these findings specifically when it assessed the conditions of detention in Podgrade and not when determining whether arrest and detention actually occurred. See Trial Judgement, Vol. 2, paras 238-249. Cf. Trial Judgement, Vol. 2, paras 225-232. In any event, considering the margin of deference to be given to the Trial Chamber's evaluation of the evidence and findings, the Appeals Chamber is satisfied that the Trial Chamber considered the evidence underlying these findings when concluding that HVO soldiers and Military Police officers detained Muslims in Podgrade, Lapsunj, and Duge. See Trial Judgement, Vol. 2, para. 232. See also *Aleksovski* Appeal Judgement, para. 63.

entering and leaving Podgrade, which was controlled by the HVO with a barrier;¹⁶³⁶ (2) Muslim civilians from other Prozor villages arrived in Podgrade by truck, under the escort of HVO members;¹⁶³⁷ (3) at least 1,760 Muslims were “collected into about 100 houses”;¹⁶³⁸ (4) the Muslims were guarded by the Military Police – although houses themselves were not under guard – and most of them did not leave Podgrade;¹⁶³⁹ (5) Muslim men were terrified by the Military Police presence while the women were “afraid of stepping outside the houses and being ‘raped’ by HVO soldiers, who entered Podgrade freely”;¹⁶⁴⁰ and (6) HVO members stole the property of the Muslims in Podgrade, and forced Muslim women and girls there to have sexual relations under the threat of weapons and subjected them to sexual abuse.¹⁶⁴¹

511. With respect to the freedom of movement in Duge, the Trial Chamber noted Witness Rudy Gerritsen’s testimony that Duge village was not a “prison proper”, but that the people felt imprisoned because they could not leave as they had nowhere to go.¹⁶⁴² However, it also noted evidence indicating that the Military Police units came to Duge regularly to patrol that sector.¹⁶⁴³ Further, as with Podgrade, the Trial Chamber also found that: (1) Muslim women, children, and elderly from Prozor and the villages surrounding Prozor were arrested and taken to Lapsunj and Duge by the HVO and Military Police;¹⁶⁴⁴ (2) both Lapsunj and Duge were overcrowded as the Muslims lived together, 20 to 30 per house, and slept on the floor;¹⁶⁴⁵ and (3) the Muslims held there were exposed to thefts and assaults by HVO soldiers and the Military Police, while Muslim women were taken away, humiliated, sexually abused, and raped.¹⁶⁴⁶ While it did not describe in detail how the freedom of movement of civilians located in Lapsunj was restricted, the Trial Chamber found that the running water in Lapsunj had been cut off and that there was no soap for washing, as a result of which the Muslims contracted lice.¹⁶⁴⁷

512. Finally, when reaching its findings with respect to all three locations, the Trial Chamber considered the Luka Markešić Report which indicated that the Military Police “rounded up the

¹⁶³⁶ Trial Judgement, Vol. 2, para. 238.

¹⁶³⁷ Trial Judgement, Vol. 2, para. 239. See Trial Judgement, Vol. 2, paras 225-226.

¹⁶³⁸ Trial Judgement, Vol. 2, para. 240.

¹⁶³⁹ Trial Judgement, Vol. 2, paras 241-242.

¹⁶⁴⁰ Trial Judgement, Vol. 2, para. 242. See also Trial Judgement, Vol. 2, para. 243.

¹⁶⁴¹ Trial Judgement, Vol. 2, paras 252-253.

¹⁶⁴² Trial Judgement, Vol. 2, para. 264.

¹⁶⁴³ Trial Judgement, Vol. 2, para. 264.

¹⁶⁴⁴ Trial Judgement, Vol. 2, paras 254, 263 (noting that by 20 August 1993 between 700 to 800 Muslim women, children, and elderly persons were held in the village of Duge).

¹⁶⁴⁵ Trial Judgement, Vol. 2, paras 256, 266.

¹⁶⁴⁶ Trial Judgement, Vol. 2, paras 259-262, 269-272. In reaching these findings, the Trial Chamber relied on, among other things, the Luka Markešić Report and another HVO report dated 13 August 1993, which refer to the thefts, abuse, humiliating acts, brutality, sexual assault, forced prostitution, and rape being committed against the Muslim population in Podgrade, Lapsunj, and Duge by the Rama Brigade members, local soldiers, and the Military Police. See Trial Judgement, Vol. 2, paras 235, 250, 258, 268, referring to Exs. P04161 (confidential), P04177.

¹⁶⁴⁷ Trial Judgement, Vol. 2, para. 256.

entire Muslim population of Prozor Municipality into the three 'collection centres' in Podgrade, Duge and Lapsunj".¹⁶⁴⁸

513. The Appeals Chamber recalls that it has in the past confirmed that detention amounting to imprisonment and unlawful confinement of civilians can occur even in situations where the civilians are held in houses without guards and where they have some freedom of movement. In *Kordić and Čerkez*, the Appeals Chamber confirmed the Trial Chamber's finding that the civilians in the village of Rotilj were imprisoned and unlawfully confined since the village was surrounded by HVO, the civilians were not held there for their own safety, and they were prevented from leaving while at the same time subjected to beatings, thefts, and sexual abuse.¹⁶⁴⁹ Bearing that in mind and in light of the Trial Chamber's findings outlined above,¹⁶⁵⁰ the Appeals Chamber considers that Praljak fails to demonstrate that the Trial Chamber erred in concluding that Muslims in Podgrade, Lapsunj, and Duge were deprived of their liberty. In that respect, the Appeals Chamber notes that even though the civilians had some freedom of movement in those three locations, the factual findings outlined above show that it was limited and that the great majority of the civilians were in fact confined to the three locations in very harsh conditions, as was the case in *Kordić and Čerkez*. The freedom of movement consisted of some individuals occasionally leaving the houses they were housed in, either to obtain food or to hide from potential abuse and sexual assaults at night-time. The Appeals Chamber considers that, given the findings on the presence of HVO soldiers and Military Police in those locations and the fact that the civilians were arrested and brought there by those forces, the Trial Chamber did not err in concluding that the population could not leave Podgrade, Lapsunj, and Duge.

514. As to Praljak's contention that the events in the three locations illustrated mere restrictions of movement which were also lawful under the circumstances, the Appeals Chamber notes that he relies on the Commentary to Article 27 of Geneva Convention IV.¹⁶⁵¹ While referring to restriction of movement as one of the measures a belligerent may inflict on protected persons under Article 27, the Commentary also elaborates that internment of civilians and the placing of civilians in assigned

¹⁶⁴⁸ Trial Judgement, Vol. 2, para. 231. See also Trial Judgement, Vol. 2, paras 225, 227.

¹⁶⁴⁹ *Kordić and Čerkez* Trial Judgement, paras 793, 800 (finding that despite detainees having some liberty of movement inside the village of Rotilj, their conditions, which included overcrowding and forced labour, still amounted to detention); *Kordić and Čerkez* Appeal Judgement, paras 638-640 (upholding the detention finding). See also *Simić et al.* Trial Judgement, paras 563-567, 666, 680 (finding that despite detainees having some liberty of movement inside and outside of the village of Zasavica, where certain witnesses testified that detainees were essentially "free" and living a "normal life there" in individual houses, their conditions still amounted to detention); *Blaškić* Trial Judgement, paras 684, 691, 700 (finding that despite the defence argument that Bosnian Muslims in the village of Rotilj were not detained because their freedom of movement was not limited, their conditions still amounted to detention). These Trial Chamber findings in the *Simić et al.* and *Blaškić* cases on the nature of detentions in Zasavica and Rotilj, respectively, were not an issue on appeal.

¹⁶⁵⁰ See *supra*, paras 510-512.

residences are the two most severe measures that may be inflicted on protected persons under Article 27 and, as such, are subject to strict rules outlined in Articles 41-43 and 78 of Geneva Convention IV.¹⁶⁵² One of these rules is that the internment or placement in assigned residence may be ordered only if the security of the detaining party makes it absolutely necessary, while another provides that an initially lawful internment or placement in assigned residence clearly becomes unlawful if the detaining party does not respect the basic procedural rights of the detained persons and does not establish an appropriate court or administrative board as prescribed in Article 43 of Geneva Convention IV.¹⁶⁵³

515. As explained above, the Appeals Chamber considers that the Trial Chamber made no error when it concluded that the events in Podgrade, Lapsunj, and Duge did not constitute a mere restriction of movement as alleged by Praljak, but were more serious, amounting to deprivation of liberty and thus could amount to imprisonment and unlawful confinement.¹⁶⁵⁴ Using the Geneva Convention IV terminology, this deprivation of liberty was achieved by the HVO and the Military Police placing Muslim civilians in "assigned residences" in the three locations in question.¹⁶⁵⁵ Specifically, the Muslim population was rounded up, arrested, and then escorted by the HVO and the Military Police to those three locations.¹⁶⁵⁶ As such, this placement was subject to strict rules and requirements.¹⁶⁵⁷ However, there is nothing in the factual findings outlined above to indicate that these rules were followed, namely that the civilians were moved to the three locations because the HVO and the Military Police had reasonable grounds to believe that this was absolutely necessary for reasons of security,¹⁶⁵⁸ or that the HVO and the Military Police established an appropriate court or administrative board in line with Article 43 of Geneva Convention IV.¹⁶⁵⁹ Instead, the Trial Chamber findings indicate that Muslim civilians were taken to Podgrade, Lapsunj,

¹⁶⁵¹ See *supra*, fn. 1608. Article 27(4) of Geneva Convention IV provides that parties to a conflict may take such measures of control and security in regard to protected persons as may be necessary as a result of the war.

¹⁶⁵² Commentary on Geneva Convention IV, Article 27, p. 207.

¹⁶⁵³ Geneva Convention IV, Arts. 42 and 78; *Čelebići* Appeal Judgement, para. 320. See also *Čelebići* Appeal Judgement, para. 327 ("the reasonable time which is to be afforded to a detaining power to ascertain whether detained civilians pose a security risk must be the minimum time necessary to make enquiries to determine whether a view that they pose a security risk has any objective foundation such that it would found a 'definite suspicion' of the nature referred to in Article 5 of Geneva Convention IV").

¹⁶⁵⁴ See *supra*, para. 513.

¹⁶⁵⁵ See *Kordić and Čerkez* Trial Judgement, para. 283 (noting that, according to the Commentary on Geneva Convention IV, assigned residence consists of moving people from their domicile and forcing them to live in a locality which is generally out of the way and where supervision is more easily exercised).

¹⁶⁵⁶ See *supra*, paras 510-511. In addition, the Appeals Chamber notes that the Luka Markešić Report, which the Trial Chamber relied on to make its findings concerning detentions in Prozor, refers to the entire Muslim population of Prozor Municipality being "rounded up" into three "collection centres" in Podgrade, Lapsunj, and Duge, See *supra*, para. 512.

¹⁶⁵⁷ See *supra*, para. 514.

¹⁶⁵⁸ See Trial Judgement, Vol. 3, paras 958, 1008 (concluding that the HVO made no individual assessments of security reasons which could have led to the detention of civilians but rather had the intention of holding the civilians without legal justification for the purpose of making room for the newly-arrived Croats).

¹⁶⁵⁹ See Trial Judgement, Vol. 3, para. 1008 (holding that the Muslim civilians had no possibility of challenging their confinement with the relevant authorities).

and Duge for the purpose of making space for newly-arrived Croats.¹⁶⁶⁰ Accordingly, Praljak's arguments that what transpired in Podgrade, Lapsunj, and Duge was not detention but rather a lawful restriction of movement is dismissed.

516. Regarding Praljak's final submission that the Trial Chamber erred in finding that living conditions in Podgrade were very harsh, on the basis of evidence of overcrowding and, specifically, in drawing a conclusion as to the number of Muslims held in houses that was "mathematically impossible",¹⁶⁶¹ the Appeals Chamber notes that while the Trial Chamber found that Muslims were collected into about 100 houses,¹⁶⁶² each holding 20 to 70 people (some holding more),¹⁶⁶³ it also found that *at least* 1,760 Muslims were held in Podgrade.¹⁶⁶⁴ This finding was clearly a minimum approximation, as further supported by the fact that the Trial Chamber noted evidence indicating that there were about 6,000 Muslims held in Podgrade.¹⁶⁶⁵ In any event, the Trial Chamber reached its conclusion that living conditions were very harsh by also relying on its findings that the Muslims: (1) had to sleep on the ground due to lack of space;¹⁶⁶⁶ and (2) lived in fear because of the Military Police presence.¹⁶⁶⁷ The Appeals Chamber finds that Praljak has failed to demonstrate any error in the impugned finding.¹⁶⁶⁸ His argument is therefore dismissed.

517. For the above reasons, the Appeals Chamber dismisses Praljak's ground of appeal 8.

2. Displacement of Muslims from Prozor Municipality (Praljak's Ground 9)

518. The Trial Chamber concluded that on 28 August 1993 the HVO forcibly transferred Muslim women, children, and elderly persons who were held in the Podgrade neighbourhood of Prozor and in the villages of Lapsunj and Duge.¹⁶⁶⁹ The Trial Chamber found that these Muslims were moved to ABiH territory.¹⁶⁷⁰ In reaching these findings, the Trial Chamber: (1) could not determine exactly the number of Muslims from Prozor Municipality removed by the HVO on 28 August 1993, but considered that the evidence supports a finding that at least 2,500 people were removed;¹⁶⁷¹ (2) considered the testimony of Witness CC that the removals required organisation

¹⁶⁶⁰ See Trial Judgement, Vol. 2, para. 227 & fn. 571 (referring to Exs. P09627, P10030, p. 8, Rudy Gerritsen, T(F). 19226, 19228 (29 May 2007)), Vol. 3, paras 958, 1008.

¹⁶⁶¹ See Praljak's Appeal Brief, para. 147.

¹⁶⁶² Trial Judgement, Vol. 2, para. 240.

¹⁶⁶³ Trial Judgement, Vol. 2, para. 244.

¹⁶⁶⁴ Trial Judgement, Vol. 2, para. 240.

¹⁶⁶⁵ Trial Judgement, Vol. 2, fn. 599.

¹⁶⁶⁶ Trial Judgement, Vol. 2, para. 244.

¹⁶⁶⁷ Trial Judgement, Vol. 2, paras 242-243.

¹⁶⁶⁸ See Trial Judgement, Vol. 2, para. 249.

¹⁶⁶⁹ Trial Judgement, Vol. 3, paras 842, 896. See Trial Judgement, Vol. 2, paras 225, 280.

¹⁶⁷⁰ Trial Judgement, Vol. 2, para. 280, Vol. 3, paras 841, 895.

¹⁶⁷¹ Trial Judgement, Vol. 2, para. 277 and references cited therein.

and planning by the HVO;¹⁶⁷² and (3) considered evidence that, on 28 August 1993, the day Muslims were removed from Prozor to Kučani and then towards ABiH territories, Praljak ordered the commander of the Rama Brigade to deploy 30 soldiers in the Kučani area between 28 and 31 August 1993.¹⁶⁷³ The Trial Chamber concluded that this transfer and removal, at a time when these persons were being held by HVO soldiers and there was no fighting in the area, was “on no account an evacuation carried out for security purposes nor was it justified for compelling military reasons”, further demonstrated by the fact that the HVO had not made any arrangements for the population to return.¹⁶⁷⁴ The Trial Chamber concluded that these events in Podgrađe, Lapsunj, and Duge constituted inhumane acts (forcible transfer) as a crime against humanity (Count 8), unlawful transfer of civilians as a grave breach of the Geneva Conventions (Count 9), inhumane acts as a crime against humanity (Count 15), and inhuman treatment as a grave breach of the Geneva Conventions (Count 16).¹⁶⁷⁵

(a) Arguments of the Parties

519. Praljak submits that the Trial Chamber erroneously concluded that the HVO unlawfully displaced Muslims from Prozor Municipality, who were being held in Podgrađe, Lapsunj, and Duge, and removed them to territory under ABiH control.¹⁶⁷⁶ Praljak submits that the Trial Chamber did not establish that the displaced Muslims were forced to leave, and argues in this regard that they may have had a genuine choice and wish to leave since: (1) only a portion of the population was displaced; and (2) Šiljeg, “the HVO representative in Prozor”, “talked about voluntary departure”.¹⁶⁷⁷ Praljak submits further that the Trial Chamber “could not” establish who displaced the Muslims, and that it referred speculatively to an order he issued, which he contends was ineffective and not executed, as evidence that the HVO planned and organised the removal.¹⁶⁷⁸ Further, Praljak claims that the Trial Chamber did not establish whether the removal of Muslims was permitted for the security of the population, imperative military reasons, and/or humanitarian reasons.¹⁶⁷⁹ He also challenges as “baseless” the Trial Chamber’s explanation that the removal was not a lawful evacuation because the HVO did not make arrangements for the population to

¹⁶⁷² Trial Judgement, Vol. 2, para. 278, referring to, *inter alia*, Ex. P09731 (confidential), p. 3.

¹⁶⁷³ Trial Judgement, Vol. 2, para. 278, referring to, *inter alia*, Ex. 3D02448.

¹⁶⁷⁴ Trial Judgement, Vol. 3, paras 841, 895.

¹⁶⁷⁵ Trial Judgement, Vol. 3, paras 840-842, 894-896, 1220-1221, 1310-1311.

¹⁶⁷⁶ Praljak’s Appeal Brief, para. 160, referring to Trial Judgement, Vol. 2, paras 272, 280, Vol. 3, paras 841-842, 895-896; Praljak’s Reply Brief, para. 77. See also Praljak’s Appeal Brief, para. 152.

¹⁶⁷⁷ Praljak’s Appeal Brief, para. 154, referring to Ex. P09636, Rudy Gerritsen, T. 19235-19236 (29 May 2007). See Praljak’s Appeal Brief, paras 152-153. See also Praljak’s Reply Brief, para. 77.

¹⁶⁷⁸ Praljak’s Appeal Brief, paras 152, 155. Praljak also submits that, during his testimony, he was not asked whether this order was related to the removal of the population and he did not make any link between the two. Praljak’s Appeal Brief, para. 155.

return.¹⁶⁸⁰ Finally, Praljak avers that the Trial Chamber failed to consider that members of the population were not in their homes as they had already been displaced.¹⁶⁸¹ Praljak requests that his convictions under Counts 8, 9, 15, and 16 with respect to Prozor be reversed.¹⁶⁸²

520. The Prosecution responds that Praljak ignores the totality of the Trial Chamber's findings and fails to show an error.¹⁶⁸³ It submits that Praljak's assertion that the Trial Chamber could not establish who moved the population must fail when considering the Trial Chamber's findings and the evidence on which it relied.¹⁶⁸⁴ The Prosecution also submits that it is irrelevant whether those expelled originated from Prozor or elsewhere.¹⁶⁸⁵ The Prosecution further argues that: (1) the fact that only some members of the population were removed does not mean they left voluntarily; and (2) the claim by Šiljeg, "the HVO's regional commander", that the Muslims left voluntarily does not impact the Trial Chamber's findings.¹⁶⁸⁶ Moreover, the Prosecution submits that the Trial Chamber properly relied on Praljak's order as corroborative of other evidence indicating that the removal required organisation and planning.¹⁶⁸⁷ Finally, the Prosecution contends that the Trial Chamber reasonably rejected the argument that the Muslims' removal from Podgrade, Lapsunj, and Duge was for humanitarian, security, or military reasons.¹⁶⁸⁸

(b) Analysis

521. With regard to Praljak's assertion that the Trial Chamber did not establish that the displaced Muslims were forced to leave, the Appeals Chamber notes that, to the contrary, the Trial Chamber found that HVO soldiers used military and civilian trucks to move Muslims being held in Podgrade, Lapsunj, and Duge and that when the Muslims reached Kučani, they were forced to walk on foot towards Čelina, escorted by HVO soldiers.¹⁶⁸⁹ The Trial Chamber also noted evidence that HVO soldiers surrounded the village of Duge and fired into the air to force the Muslims to get into trucks.¹⁶⁹⁰ Moreover, Praljak fails to demonstrate how the fact that only a portion of the population in the three locations was displaced¹⁶⁹¹ is inconsistent with the Trial Chamber's finding that Muslims were forcibly displaced. As to Praljak's argument that,

¹⁶⁷⁹ Praljak's Appeal Brief, para. 156. See Praljak's Appeal Brief, paras 152, 157, 160. Praljak argues that the Trial Chamber also failed to consider that international observers considered that the "exchange of minorities" might be the best solution in the area. Praljak's Appeal Brief, para. 157.

¹⁶⁸⁰ Praljak's Appeal Brief, para. 158.

¹⁶⁸¹ Praljak's Appeal Brief, para. 159. See also Praljak's Appeal Brief, para. 152; Praljak's Reply Brief, para. 77.

¹⁶⁸² Praljak's Appeal Brief, para. 161.

¹⁶⁸³ Prosecution's Response Brief (Praljak), para. 164. See Prosecution's Response Brief (Praljak), para. 165.

¹⁶⁸⁴ Prosecution's Response Brief (Praljak), paras 165-166.

¹⁶⁸⁵ Prosecution's Response Brief (Praljak), para. 166.

¹⁶⁸⁶ Prosecution's Response Brief (Praljak), para. 166.

¹⁶⁸⁷ Prosecution's Response Brief (Praljak), para. 167.

¹⁶⁸⁸ Prosecution's Response Brief (Praljak), para. 168.

¹⁶⁸⁹ Trial Judgement, Vol. 2, paras 273, 276, 280.

¹⁶⁹⁰ Trial Judgement, Vol. 2, para. 274.

according to the evidence of Witness Rudy Gerritsen, Šiljeg “talked about voluntary departure”,¹⁶⁹² the Appeals Chamber notes that Praljak ignores that, although Gerritsen stated that Šiljeg told him that the population was moved on a voluntary basis, Gerritsen did not believe this to be the case.¹⁶⁹³ Because Praljak merely asserts that the Trial Chamber failed to give sufficient weight to the statement attributed to Šiljeg – that the population was moved on a voluntary basis – his argument is dismissed.

522. The Appeals Chamber now turns to Praljak’s submission that the Trial Chamber could not establish who displaced the Muslims and that, in this regard, it referred speculatively to an order he issued, which he alleges was ineffective and not executed, as evidence that the HVO planned and organised the removal. The Appeals Chamber notes the impugned finding that the HVO moved women, children, and elderly persons who were held in Podgrade, Lapsunj, and Duge to ABiH-controlled territories.¹⁶⁹⁴ In reaching this conclusion, the Trial Chamber found, *inter alia*, that on 28 August 1993, the same day Muslims were moved from Prozor to Kučani and then towards ABiH-controlled territories, Praljak ordered the commander of the Rama Brigade to deploy 30 soldiers in the Kučani area between 28 and 31 August 1993.¹⁶⁹⁵ However, the Appeals Chamber notes that the Trial Chamber relied on other evidence and findings, including that of civilians who were moved to Kučani,¹⁶⁹⁶ to find that HVO soldiers moved people being held in Podgrade, Lapsunj, and Duge to ABiH-controlled territories.¹⁶⁹⁷ Praljak’s argument ignores relevant factual findings and therefore warrants dismissal.¹⁶⁹⁸

523. As to Praljak’s claim that the Trial Chamber did not establish whether the removal of Muslims was permitted for the security of the population and/or imperative military reasons, the Appeals Chamber notes that the Trial Chamber considered that: (1) the people in Podgrade, Lapsunj, and Duge were being held by the HVO; (2) there was no fighting in the area at the time of the transfer; and (3) the HVO did not make arrangements for the population to return.¹⁶⁹⁹ On this basis, the Trial Chamber found that the HVO held the Muslims in Podgrade, Lapsunj, and Duge in order to be able to remove them from their homes without the possibility of returning, and it explicitly rejected the possibility that this constituted an evacuation for security or compelling

¹⁶⁹¹ See Trial Judgement, Vol. 2, paras 227, 277. See also Trial Judgement, Vol. 2, paras 281-292.

¹⁶⁹² See Praljak’s Appeal Brief, para. 154, referring to Ex. P09636, Rudy Gerritsen, T. 19235-19236 (29 May 2007).

¹⁶⁹³ Rudy Gerritsen, T. 19235-19236 (29 May 2007). See also Ex. P10030, pp. 11-12.

¹⁶⁹⁴ Trial Judgement, Vol. 2, para. 280.

¹⁶⁹⁵ Trial Judgement, Vol. 2, para. 278.

¹⁶⁹⁶ Trial Judgement, Vol. 2, paras 273-274, 276-278.

¹⁶⁹⁷ Trial Judgement, Vol. 2, para. 280.

¹⁶⁹⁸ For the same reasons, the Appeals Chamber dismisses Praljak’s corresponding argument that he was not asked whether this order was related to the removal of the population and he did not make any link between the two.

¹⁶⁹⁹ Trial Judgement, Vol. 3, paras 841, 895.

military reasons.¹⁷⁰⁰ The Appeals Chamber dismisses Praljak's argument as it ignores several relevant factual findings.

524. When challenging as "baseless" the Trial Chamber's explanation that the removal was not a lawful evacuation because the HVO did not make arrangements for the population to return, Praljak argues that Article 49(2) of Geneva Convention IV "does not require that arrangements for the population return be made at the time of evacuation".¹⁷⁰¹ The Appeals Chamber recalls that Article 49 of Geneva Convention IV states that an evacuation is not prohibited "if the security of the population or imperative military reasons so demand" and provided that "[p]ersons thus evacuated shall be transferred back to their homes as soon as hostilities in the area in question have ceased".¹⁷⁰² As noted above, when reaching its conclusion that the transfer was on no account a lawful evacuation, the Trial Chamber found that the transfer had already taken place "at a time when [...] there was no fighting in the area".¹⁷⁰³ The Appeals Chamber considers that the Trial Chamber could conclude on this basis alone that the transfer was unlawful. Praljak has therefore failed to show an error of law that invalidates the Trial Chamber's decision.

525. With regard to Praljak's contention that the Trial Chamber did not establish whether the removal of Muslims was permitted for humanitarian reasons, the Appeals Chamber notes that he points to the Trial Chamber's findings that conditions in Podgrade, Lapsunj, and Duge were harsh.¹⁷⁰⁴ However, displacement of a population is not justified where a humanitarian crisis that caused the displacement is the result of the accused's own unlawful activity.¹⁷⁰⁵ Praljak ignores the Trial Chamber's findings that the HVO and Military Police officers arrested Muslims from Prozor Municipality, unlawfully detained them, and imposed the harsh conditions in which they lived.¹⁷⁰⁶ His argument is therefore dismissed.¹⁷⁰⁷

526. With respect to Praljak's submission that the Trial Chamber failed to consider that members of the population were not in their homes as they had already been displaced, the Appeals Chamber understands him to argue that the Trial Chamber should have considered that

¹⁷⁰⁰ Trial Judgement, Vol. 3, paras 841, 895.

¹⁷⁰¹ Praljak's Appeal Brief, para. 158.

¹⁷⁰² See also Trial Judgement, Vol. 1, para. 52.

¹⁷⁰³ Trial Judgement, Vol. 3, paras 841, 895.

¹⁷⁰⁴ See Praljak's Appeal Brief, para. 156 & fn. 373, referring to Trial Judgement, Vol. 2, paras 249, 257, 267.

¹⁷⁰⁵ *Tolimir* Appeal Judgement, para. 158; *Krajišnik* Appeal Judgement, para. 308 & fn. 739; *Stakić* Appeal Judgement, para. 287.

¹⁷⁰⁶ Trial Judgement, Vol. 3, paras 1008-1010. See also, e.g., Trial Judgement, Vol. 3, paras 958-959, 1059-1067, 1102-1111.

¹⁷⁰⁷ With regard to Praljak's argument that the Trial Chamber failed to consider that international observers considered that the exchange of minorities might be the best solution in the area, the Appeals Chamber finds that Praljak has not sufficiently explained the relevance of this argument to the impugned findings, and dismisses it as obscure.

they could not have been forcibly removed from a location in which they did not reside.¹⁷⁰⁸ The Appeals Chamber notes that the Trial Chamber found that Muslims were removed from their homes and detained in Podgrade, Lapsunj, and Duge.¹⁷⁰⁹ It found that the HVO subsequently moved Muslims detained in these three locations to ABiH-controlled territories.¹⁷¹⁰ An overall reading of the relevant findings demonstrates that the Trial Chamber duly considered that the Muslims who were relocated to ABiH-controlled territories were previously relocated from their homes. Particularly, when assessing the lawfulness of the transfer, the Trial Chamber considered that “they were evicted from their homes without the possibility of returning”.¹⁷¹¹ Praljak’s argument is therefore dismissed.

527. For the above reasons, the Appeals Chamber dismisses Praljak’s ground of appeal 9.

F. Crimes Committed in Mostar Municipality

1. The siege of East Mostar and related crimes

528. The Trial Chamber concluded that, from June 1993 to April 1994, East Mostar was under siege by the HVO.¹⁷¹² It found that, during that siege, the HVO: (1) intentionally inflicted serious bodily and mental harm on the inhabitants of East Mostar and caused a serious attack on their dignity;¹⁷¹³ (2) intentionally subjected the civilian population of East Mostar to serious deprivation and acts of violence that led to death or caused serious injury to body or health;¹⁷¹⁴ (3) committed acts of violence the main aim of which was to inflict terror on the population;¹⁷¹⁵ and (4) committed crimes with the intention of discriminating against the Muslims of Mostar Municipality and violating their basic rights to life, human dignity, freedom, and property.¹⁷¹⁶ The Trial Chamber therefore concluded that the HVO committed, *inter alia*, persecution as a crime against humanity (Count 1), inhumane acts as a crime against humanity (Count 15), inhuman treatment as a grave breach of the Geneva Conventions (Count 16), unlawful attack on civilians as a violation of the

¹⁷⁰⁸ The Appeals Chamber recalls that the “prohibition against forcible displacements aims at safeguarding the right and aspiration of individuals to live in their communities and homes without outside interference”. *Krnojelac* Appeal Judgement, para. 218. See also *Krajišnik* Appeal Judgement, para. 308 (“[D]eportation and forcible transfer both entail the forcible displacement of persons from the area in which they are lawfully present, without grounds permitted under international law.”).

¹⁷⁰⁹ Trial Judgement, Vol. 2, paras 227, 232.

¹⁷¹⁰ Trial Judgement, Vol. 2, paras 273, 276, 280.

¹⁷¹¹ Trial Judgement, Vol. 3, para. 841. See Trial Judgement, Vol. 3, para. 895.

¹⁷¹² Trial Judgement, Vol. 2, para. 1378. See also Trial Judgement, Vol. 3, para. 1255.

¹⁷¹³ Trial Judgement, Vol. 3, paras 1256, 1350.

¹⁷¹⁴ Trial Judgement, Vol. 3, para. 1687. See Trial Judgement, Vol. 3, para. 1688.

¹⁷¹⁵ Trial Judgement, Vol. 3, para. 1692. See Trial Judgement, Vol. 3, para. 1689.

¹⁷¹⁶ Trial Judgement, Vol. 3, para. 1713. See Trial Judgement, Vol. 3, para. 1711. See also Trial Judgement, Vol. 3, para. 1712.

laws or customs of war (Count 24), and unlawful infliction of terror on civilians as a violation of the laws or customs of war (Count 25).¹⁷¹⁷

529. The Appeals Chamber will examine the Appellants' challenges relating to: (1) the HVO keeping Muslims of East Mostar crowded in an enclave; (2) the humanitarian conditions during the siege of East Mostar; (3) the sniping campaign in Mostar; (4) the shelling of East Mostar; and (5) the destruction of or damage to mosques in East Mostar.¹⁷¹⁸

(a) Keeping Muslims of East Mostar crowded in an enclave (Stojić's Ground 50 and Praljak's Ground 25)

530. As part of the siege of East Mostar, the Trial Chamber found that the HVO "kept the population crowded in an enclave where it was forced to remain".¹⁷¹⁹ The Trial Chamber based this finding on, *inter alia*, the following findings: (1) from June 1993 until, at least, February 1994 the HVO blocked Muslims from East Mostar from entering West Mostar by erecting checkpoints;¹⁷²⁰ (2) the only possible way to cross the checkpoints was to have, first, an exit permit issued by the ABiH, and, second, an entry permit issued by the HVO;¹⁷²¹ (3) there was a mountain path out of East Mostar but there was evidence indicating that it was physically difficult and dangerous to use;¹⁷²² (4) using the M-17 main road linking East Mostar and Jablanica could be dangerous and risky because of HVO artillery shelling;¹⁷²³ and (5) certain sections of the roads out of East Mostar also came under HVO control from time to time.¹⁷²⁴ The finding that the HVO kept the population crowded in an enclave formed part of the basis of the Trial Chamber's conclusion that the HVO committed the crimes under Counts 1, 15, 16, 24, and 25 in East Mostar.¹⁷²⁵

531. Stojić and Praljak submit that the Trial Chamber erred by finding that the HVO kept the population of East Mostar crowded in an enclave.¹⁷²⁶ They argue that it was the ABiH that

¹⁷¹⁷ Trial Judgement, Vol. 3, paras 1256, 1350, 1688, 1692, 1713.

¹⁷¹⁸ The Appeals Chamber addresses elsewhere the destruction of the Old Bridge of Mostar. See *supra*, paras 405-411, 415-426.

¹⁷¹⁹ Trial Judgement, Vol. 3, paras 1255, 1349, 1685. See Trial Judgement, Vol. 2, para. 1255, Vol. 3, para. 1711. See also Trial Judgement, Vol. 2, para. 1378.

¹⁷²⁰ Trial Judgement, Vol. 2, para. 1247.

¹⁷²¹ Trial Judgement, Vol. 2, para. 1248. See also Trial Judgement, Vol. 2, paras 1249-1250.

¹⁷²² Trial Judgement, Vol. 2, paras 1252-1253.

¹⁷²³ Trial Judgement, Vol. 2, para. 1254.

¹⁷²⁴ Trial Judgement, Vol. 2, para. 1254.

¹⁷²⁵ Trial Judgement, Vol. 3, paras 1255-1256, 1349-1350, 1685, 1688, 1691-1692, 1711, 1713.

¹⁷²⁶ Stojić's Appeal Brief, para. 403; Praljak's Appeal Brief, para. 308. Stojić contends in particular that the Trial Chamber erred in finding that civilians could not leave East Mostar because of HVO checkpoints. Stojić's Appeal Brief, heading before para. 403, para. 405. He argues that the Trial Chamber's findings that the Muslim population could not leave East Mostar because of HVO checkpoints and that the HVO kept the population crowded in an enclave where it was forced to remain were erroneous in law and fact as they were inconsistent with the Trial Chamber's findings that the ABiH did not want Muslims to leave East Mostar and forced them to remain in the area by requiring that individuals obtain exit permits. Stojić's Appeal Brief, heading before para. 403, para. 403.

prevented the population from leaving East Mostar.¹⁷²⁷ Stojić submits that since the ABiH was the “first” barrier to civilians leaving East Mostar, it was not established that the HVO caused the isolation of the Muslim population.¹⁷²⁸ Moreover, Stojić argues that the Trial Chamber only found that the HVO checkpoints controlled access to West Mostar and that “certain routes” out of East Mostar remained open.¹⁷²⁹ Praljak argues that no evidence exists indicating that the HVO interfered with the population’s movement from East Mostar, and that the evidence shows that the HVO proposed free movement and guaranteed safety when doing so.¹⁷³⁰ Stojić submits that the Trial Chamber did not explain the basis for the inclusion of the crimes under Counts 1, 15, 16, and 24 within the CCP, despite the ABiH’s “critical role” in causing civilians to remain.¹⁷³¹ Stojić further contends that, with the exception of Count 15, the Trial Chamber failed to address the impact of the ABiH’s policy in forcing civilians to remain.¹⁷³² Stojić and Praljak therefore request that the Appeals Chamber acquit them under Counts 1, 15, 16, and 24 of the relevant charges with respect to Mostar.¹⁷³³

532. The Prosecution responds that the Trial Chamber’s findings are reasonable and that Stojić and Praljak fail to demonstrate an error.¹⁷³⁴ The Prosecution argues that Stojić misrepresents the Trial Judgement when asserting that other routes out of East Mostar remained open when, in actuality, these routes were at risk of shelling by the HVO or at times under its control.¹⁷³⁵ Further, the Prosecution contends that the HVO’s alleged proposal for the free movement of East Mostar’s population does not impact the Trial Chamber’s finding.¹⁷³⁶ Finally, the Prosecution submits that, in

¹⁷²⁷ Stojić’s Appeal Brief, heading before para. 403, para. 403; Praljak’s Appeal Brief, paras 305-307; Praljak’s Reply Brief, para. 93.

¹⁷²⁸ Stojić’s Appeal Brief, para. 403. Further to this point, Stojić submits that there was no evidence that the HVO prevented the departure of anyone whom the ABiH would have allowed to leave. Stojić’s Appeal Brief, para. 403.

¹⁷²⁹ Stojić’s Appeal Brief, para. 404. Stojić also argues that the Trial Chamber’s finding that “[c]ertain sections of the roads out of East Mostar [...] could also come under HVO control from time to time” was “manifestly insufficient” to establish that the HVO prevented the Muslim population from leaving the area. Stojić’s Appeal Brief, para. 404, referring to Trial Judgement, Vol. 2, para. 1254.

¹⁷³⁰ Praljak’s Appeal Brief, para. 307. Praljak further argues that: (1) the lack of evidence that the proposal was ever implemented “does not undermine the HVO willingness to allow free movement of civilians”; and (2) the fact that the proposal was made six months into the siege “is without importance as the proposal was made in December 1993 and the siege would have lasted from June 1993 to April 1994”. Praljak’s Reply Brief, para. 92.

¹⁷³¹ Stojić’s Appeal Brief, para. 405.

¹⁷³² Stojić’s Appeal Brief, para. 403.

¹⁷³³ Stojić’s Appeal Brief, para. 405; Praljak’s Appeal Brief, para. 308. See Stojić’s Appeal Brief, para. 403.

¹⁷³⁴ Prosecution’s Response Brief (Stojić), paras 373-374, 376; Prosecution’s Response Brief (Praljak), paras 217, 219-220. The Prosecution argues that there is no inconsistency between the Trial Chamber’s finding that the HVO kept Muslims in East Mostar in isolation and its finding that individuals needed to obtain exit permits from the ABiH. Prosecution’s Response Brief (Stojić), para. 374. The Prosecution also contends that Praljak repeats arguments that the Trial Chamber considered and rejected. Prosecution’s Response Brief (Praljak), para. 217.

¹⁷³⁵ Prosecution’s Response Brief (Stojić), para. 374.

¹⁷³⁶ Prosecution’s Response Brief (Praljak), para. 221.

any event, the Trial Chamber's conclusion that crimes under Counts 1, 15, 16, and 24 occurred did not depend on its finding that the HVO isolated Muslims in East Mostar.¹⁷³⁷

533. The Appeals Chamber observes that the Trial Chamber extensively considered what contributed to the Muslim population being forced to remain in East Mostar.¹⁷³⁸ The Trial Chamber acknowledged that the ABiH did not want the population to leave¹⁷³⁹ and considered the ABiH's role in isolating the Muslim population in East Mostar.¹⁷⁴⁰ However, the Trial Chamber also articulated the ways in which the HVO prevented departure from the region.¹⁷⁴¹ Specifically, it found that: (1) the HVO refused to allow Muslims in East Mostar to cross its positions and blocked them from entering West Mostar by erecting checkpoints;¹⁷⁴² (2) the HVO would only issue entry permits to cross the checkpoints for humanitarian evacuations which were "laboriously negotiated between the parties under the auspices of the international officials";¹⁷⁴³ and (3) of the few roads open to the outside, one was dangerous because of HVO artillery shelling and others could also come under HVO control from time to time.¹⁷⁴⁴ The Trial Chamber considered that the HVO intensely shelled East Mostar and fired at civilians on a daily basis while they were obliged to remain in that sector,¹⁷⁴⁵ forcing them to live underground and in "extremely harsh living conditions".¹⁷⁴⁶ It considered that these conditions were exacerbated by the HVO's blocking or hindering of humanitarian aid and access for humanitarian organisations.¹⁷⁴⁷ On this basis, the Trial Chamber was satisfied that the HVO intended to cause serious bodily and mental harm and suffering to the Muslims of East Mostar, attack their dignity, and subject them to serious deprivations and acts of violence.¹⁷⁴⁸ Stojić and Praljak ignore these relevant factual findings, thereby misrepresenting the Trial Chamber's analysis and overlooking the evidence relied upon for their convictions for crimes in East Mostar under Counts 1, 15, 16, and 24.

534. Further, in submitting that the ABiH was the "first" barrier to civilians leaving East Mostar, that "certain routes" out of East Mostar remained open, and that the ABiH had a "critical role" in

¹⁷³⁷ Prosecution's Response Brief (Stojić), para. 375. The Prosecution argues in this regard that the Trial Chamber also considered the HVO's shelling and sniping attacks on East Mostar, its blocking of humanitarian aid, and the harsh conditions in which civilians were forced to live. Prosecution's Response Brief (Stojić), para. 375.

¹⁷³⁸ See Trial Judgement, Vol. 2, paras 1247-1255.

¹⁷³⁹ Trial Judgement, Vol. 2, para. 1255. See Trial Judgement, Vol. 2, para. 1250.

¹⁷⁴⁰ Trial Judgement, Vol. 3, para. 1256. See Trial Judgement, Vol. 2, paras 1248-1249, 1255.

¹⁷⁴¹ See Trial Judgement, Vol. 2, paras 1247-1249, 1254-1255.

¹⁷⁴² Trial Judgement, Vol. 2, para. 1247.

¹⁷⁴³ Trial Judgement, Vol. 2, para. 1249. See Trial Judgement, Vol. 2, para. 1248.

¹⁷⁴⁴ Trial Judgement, Vol. 2, paras 1254-1255.

¹⁷⁴⁵ Trial Judgement, Vol. 3, paras 1253-1256, 1349-1350, 1686, 1688, 1711, 1713. See Trial Judgement, Vol. 2, para. 1255.

¹⁷⁴⁶ Trial Judgement, Vol. 3, paras 1256, 1350. See Trial Judgement, Vol. 2, para. 1255, Vol. 3, paras 1255, 1349, 1711. See also Trial Judgement, Vol. 3, paras 1685-1686.

¹⁷⁴⁷ Trial Judgement, Vol. 3, paras 1255, 1349, 1685-1686, 1688, 1711.

causing civilians to remain, Stojić essentially disagrees with the Trial Chamber's interpretation of the evidence without demonstrating that no reasonable trier of fact could have found that the HVO "kept the population crowded in an enclave where it was forced to remain".¹⁷⁴⁹ As to Praljak's argument that the evidence shows that the HVO proposed free movement and guaranteed safety when doing so, he relies on a document containing a proposal signed by Prlić which was issued on 2 December 1993, approximately six months after the start of the siege.¹⁷⁵⁰ Additionally, the Trial Chamber noted that it did not have any evidence to support a finding that the proposal was ever implemented.¹⁷⁵¹ In light of this,¹⁷⁵² and considering the basis for the Trial Chamber's conclusion,¹⁷⁵³ Praljak has failed to demonstrate that no reasonable trial chamber could have found that the HVO kept the population crowded in an enclave where it was forced to remain. Stojić's and Praljak's arguments are therefore dismissed.

535. In light of the foregoing, the Appeals Chamber dismisses Stojić's ground of appeal 50 and Praljak's ground of appeal 25.

(b) Humanitarian conditions during the siege of East Mostar (Praljak's Ground 26)

536. The Trial Chamber concluded that, from June 1993 to April 1994, East Mostar was under siege by the HVO. It considered, *inter alia*, that: (1) although the roads to the north and south of East Mostar were open, the town was the target of a prolonged military attack by the HVO that included intense constant shooting and shelling, including sniper fire, on a cramped densely-populated residential zone; (2) the population could not leave East Mostar of its own free will and had to live under extremely harsh conditions, without food, water, electricity, or appropriate medical care; and (3) the HVO hindered and at times blocked the arrival of humanitarian aid and deliberately targeted members of international organisations.¹⁷⁵⁴

¹⁷⁴⁸ Trial Judgement, Vol. 3, paras 1256, 1350, 1688, 1711-1713 (finding that the HVO committed the crimes of inhumane acts, inhuman treatment, and unlawful attack on civilians with the intention to discriminate against Muslims and violate their basic rights to life, freedom, dignity, and property).

¹⁷⁴⁹ Trial Judgement, Vol. 3, paras 1255, 1349, 1685. See Trial Judgement, Vol. 3, para. 1711; *supra*, para. 530.

¹⁷⁵⁰ Praljak's Appeal Brief, para. 307, referring to Ex. 1D01874, p. 2; Trial Judgement, Vol. 2, para. 1203, Vol. 4, para. 181. See Trial Judgement, Vol. 2, paras 1196, 1378 (noting that the siege took place between June 1993 and April 1994). See also Trial Judgement, Vol. 2, para. 1222.

¹⁷⁵¹ Trial Judgement, Vol. 2, para. 1203, Vol. 4, para. 181. See also Trial Judgement, Vol. 2, para. 1222.

¹⁷⁵² With regard to Praljak's argument in reply that the lack of evidence that the proposal was ever implemented does not undermine the HVO's willingness to allow free movement of civilians, the Appeals Chamber finds that he fails to show that no reasonable trial chamber could have come to the opposite conclusion. In addition, the Appeals Chamber considers that in arguing that it is not important that the proposal was made six months into the siege, Praljak merely advances his own preferred interpretation of the evidence. These arguments are dismissed.

¹⁷⁵³ See *supra*, para. 533.

¹⁷⁵⁴ Trial Judgement, Vol. 2, para. 1378.

537. Praljak submits that the Trial Chamber erred in finding that the HVO held East Mostar under siege without any conclusive evidentiary basis and while ignoring relevant evidence.¹⁷⁵⁵ Specifically, he argues that the evidence: (1) does not show that the HVO targeted the town or its population but rather that it targeted ABiH military objectives within the town;¹⁷⁵⁶ and (2) does show that the "HVO" offered assistance to the East Mostar population, including providing medical treatment and food, while it was the BiH authorities who were reluctant to accept the HVO's offers.¹⁷⁵⁷ Praljak further argues that the Trial Chamber based its conclusion on various other erroneous conclusions, including wrongly attributing responsibility to the HVO for certain facts.¹⁷⁵⁸ He additionally argues that the Trial Chamber's conclusion contradicts its acknowledgement that: (1) the roads from East Mostar to the north and south were open;¹⁷⁵⁹ and (2) it lacked evidence as to who cut off the electricity and water supplies to East Mostar, while evidence showed HVO efforts to restore them.¹⁷⁶⁰ Praljak therefore requests that the Appeals Chamber overturn the Trial Judgement and acquit him under Counts 1, 15, 16, and 24 of the relevant charges with respect to Mostar.¹⁷⁶¹

538. The Prosecution responds that Praljak shows no error in the Trial Chamber's findings and repeats arguments that the Trial Chamber considered and rejected.¹⁷⁶² It argues that the Trial Chamber reasonably rejected Praljak's argument that the HVO only targeted military objectives in East Mostar and reasonably found that during the siege of East Mostar, the HVO created and aggravated the extremely harsh living conditions for the Muslim population.¹⁷⁶³ The Trial Chamber made reasonable and nuanced findings, the Prosecution submits, acknowledging that the HVO did not have exclusive responsibility for electricity and water shortages.¹⁷⁶⁴ The Prosecution contends that the Trial Chamber properly attributed responsibility to the HVO for food shortages.¹⁷⁶⁵ It also argues that the Trial Chamber considered evidence regarding Prlić's proposals

¹⁷⁵⁵ Praljak's Appeal Brief, paras 309-310, 313-314.

¹⁷⁵⁶ Praljak's Appeal Brief, para. 309.

¹⁷⁵⁷ Praljak's Appeal Brief, para. 313, referring to Ex. P05428, p. 5, Ex. 1D01874, p. 2 (a letter by Prlić containing such offers). Praljak replies that in any event, he cannot be held responsible for shortages of food or medical care, since the Trial Chamber could not find that he participated in or knew of the HVO hindering humanitarian aid and since he in fact personally intervened to facilitate access to such aid. Praljak's Reply Brief, para. 94.

¹⁷⁵⁸ Praljak's Appeal Brief, para. 310. Praljak refers to the Trial Chamber's conclusions on shelling, sniping, and the destruction of the Old Bridge and mosques in Mostar. See Praljak's Appeal Brief, para. 310.

¹⁷⁵⁹ Praljak's Appeal Brief, para. 309.

¹⁷⁶⁰ Praljak's Appeal Brief, paras 311-312.

¹⁷⁶¹ Praljak's Appeal Brief, para. 314.

¹⁷⁶² Prosecution's Response Brief (Praljak), paras 217, 222.

¹⁷⁶³ Prosecution's Response Brief (Praljak), para. 222.

¹⁷⁶⁴ Prosecution's Response Brief (Praljak), para. 222.

¹⁷⁶⁵ Prosecution's Response Brief (Praljak), para. 223.

for providing food and medical care and the BiH's reluctance to accept HVO offers, but ultimately concluded that the HVO impeded evacuations by setting onerous conditions.¹⁷⁶⁶

539. The Appeals Chamber observes that the Trial Chamber acknowledged that it could not establish that the HVO was responsible for cutting off electricity or water supplies to East Mostar;¹⁷⁶⁷ and that the roads to the north and south were open and, therefore, East Mostar was not completely surrounded.¹⁷⁶⁸ It likewise did consider evidence of Prlić's offer of medical care and food to the East Mostar population¹⁷⁶⁹ and evidence indicating that the BiH authorities were unlikely to accept an HVO offer to medically evacuate women and children.¹⁷⁷⁰ The Appeals Chamber notes that the Trial Chamber nonetheless found that the HVO caused harsh living conditions in East Mostar, with shortages of food and medical care, by creating an influx of Muslims into the town and hindering humanitarian convoys.¹⁷⁷¹ Praljak ignores these relevant factual findings that support the finding that the HVO besieged East Mostar.¹⁷⁷² The Appeals Chamber therefore dismisses his ground of appeal 26.¹⁷⁷³

(c) Sniping campaign in Mostar (Praljak's Ground 20)

540. In concluding that East Mostar was under siege by the HVO, the Trial Chamber determined, *inter alia*, that the town was the target of a prolonged military attack by the HVO that included sniper fire.¹⁷⁷⁴ The Trial Chamber identified several shooting positions involved in sniping incidents, which included Stotina hill and other West Mostar locations.¹⁷⁷⁵ The Trial Chamber considered that the evidence "allow[ed]" for a finding that Stotina hill was controlled by the HVO.¹⁷⁷⁶ The Trial Chamber then found that the HVO controlled the hill on all of the dates of the relevant sniping incidents.¹⁷⁷⁷ It also found that the HVO "had a sufficient military presence to impose its authority in the western part of town", and therefore controlled other shooting positions in West Mostar – such as the Ledera and Centar II buildings – on the dates the relevant incidents occurred.¹⁷⁷⁸ The Trial Chamber relied on the evidence of several witnesses, including Witness

¹⁷⁶⁶ Prosecution's Response Brief (Praljak), para. 224, referring to Ex. P05428, p. 5.

¹⁷⁶⁷ Trial Judgement, Vol. 2, paras 1210-1212, 1218.

¹⁷⁶⁸ Trial Judgement, Vol. 2, para. 1378.

¹⁷⁶⁹ Trial Judgement, Vol. 2, paras 1203, 1222, referring to, *inter alia*, Ex. 1D01874, p. 2. See also Trial Judgement, Vol. 2, para. 1244.

¹⁷⁷⁰ Trial Judgement, Vol. 2, para. 1249 & fn. 3118, referring to Ex. P05428, p. 5.

¹⁷⁷¹ See Trial Judgement, Vol. 2, paras 1202, 1204, 1223, 1242, 1244, 1249, Vol. 3, paras 1255, 1349.

¹⁷⁷² Trial Judgement, Vol. 2, para. 1378, Vol. 3, paras 1255, 1349, 1685.

¹⁷⁷³ The Appeals Chamber notes that it dismisses elsewhere Praljak's arguments submitted under other grounds of appeal and incorporated in Praljak's ground of appeal 26 by way of reference. Praljak's Appeal Brief, paras 309-310. See *supra*, paras 412, 533; *infra*, paras 543, 565, 569.

¹⁷⁷⁴ Trial Judgement, Vol. 2, para. 1378.

¹⁷⁷⁵ Trial Judgement, Vol. 2, para. 1032.

¹⁷⁷⁶ Trial Judgement, Vol. 2, para. 1033; Trial Judgement (French original), Vol. 2, para. 1033 ("*permettent*").

¹⁷⁷⁷ Trial Judgement, Vol. 2, para. 1035. See also Trial Judgement, Vol. 2, para. 1034.

¹⁷⁷⁸ Trial Judgement, Vol. 2, para. 1038. See Trial Judgement, Vol. 2, paras 1036-1037, 1041.

Anthony Turco's Rule 92 *bis* statement, in finding that HVO snipers targeted women, children, and the elderly.¹⁷⁷⁹

541. Praljak submits that the Trial Chamber failed to apply the beyond reasonable doubt standard in evaluating evidence on a sniping campaign in Mostar, and instead made a "possible finding" without establishing that it was the only reasonable conclusion.¹⁷⁸⁰ Specifically, Praljak submits that the Trial Chamber erred in fact when it found that areas in Mostar where snipers operated were under the HVO's control.¹⁷⁸¹ He submits that the HVO's control over Stotina is "very questionable" in light of ABiH positions above that location,¹⁷⁸² and that the Trial Chamber erred in deeming that the evidence allowed the finding that the HVO was in control of Stotina, instead of making a finding beyond reasonable doubt.¹⁷⁸³ He further submits that even if the Trial Chamber found that sniper fire came from HVO-controlled territory in West Mostar, it does not mean that it can be attributed to the HVO as the evidence shows that the ABiH had its own people within the HVO who, although HVO members, were under ABiH orders.¹⁷⁸⁴ Praljak additionally argues that it "remains unknown" how the Trial Chamber could attribute the sniper shots to the HVO as it acknowledged that it could not verify the exact location from where the shots came, and no evidence points to HVO control over access to "concerned buildings".¹⁷⁸⁵ Finally, Praljak contends that the Trial Chamber based its conclusions on the suffering of the Muslim population in East Mostar "entirely" on Turco's Rule 92 *bis* statement, which cannot constitute in itself the basis for a conviction.¹⁷⁸⁶ Praljak therefore requests that the Appeals Chamber acquit him under Counts 1, 2, 3, 15, 16, 24, and 25 of the relevant charges with respect to Mostar.¹⁷⁸⁷

542. The Prosecution responds that the Trial Chamber applied the correct standard of proof, properly finding that HVO-controlled snipers in West Mostar deliberately targeted Muslim civilians, and that Praljak fails to demonstrate that the Trial Chamber erred in attributing such responsibility to the HVO.¹⁷⁸⁸ It contends that Praljak ignores the Trial Chamber's findings that the HVO controlled Stotina when its snipers were positioned there and relevant testimony that the

¹⁷⁷⁹ Trial Judgement, Vol. 2, para. 1188. See Trial Judgement, Vol. 2, paras 1186-1187, 1194.

¹⁷⁸⁰ Praljak's Appeal Brief, para. 254. See Praljak's Appeal Brief, para. 246; Praljak's Reply Brief, para. 85.

¹⁷⁸¹ Praljak's Appeal Brief, heading before para. 247; Appeal Hearing, AT. 378 (22 Mar 2017). See Praljak's Appeal Brief, para. 246.

¹⁷⁸² Praljak's Appeal Brief, para. 248. See Praljak's Appeal Brief, paras 247, 250.

¹⁷⁸³ Praljak's Appeal Brief, para. 248.

¹⁷⁸⁴ Praljak's Appeal Brief, paras 249, 253. Praljak also argues that individuals could be acting outside of any control, taking "pot shots" at anyone. Praljak's Appeal Brief, para. 249.

¹⁷⁸⁵ Praljak's Appeal Brief, paras 249, 252; Appeal Hearing, AT. 378-379 (22 Mar 2017).

¹⁷⁸⁶ Praljak's Appeal Brief, para. 251. Praljak also argues that Turco could not confirm that the HVO was responsible for the sniping events. Praljak's Appeal Brief, para. 251.

¹⁷⁸⁷ Praljak's Appeal Brief, para. 246.

¹⁷⁸⁸ Prosecution's Response Brief (Praljak), paras 185-186.

ABiH did not fire from its positions above Stotina.¹⁷⁸⁹ The Prosecution submits that Praljak's claim about HVO members under ABiH control is speculative and unsupported, and his claim regarding "concerned buildings" ignores Stojic's admission that HVO-controlled snipers were in the "Blue Bank" building at the time of the sniping incidents.¹⁷⁹⁰ Additionally, the Prosecution contends that the Trial Chamber reasonably concluded that the HVO was responsible, even without pinpointing where the shots originated, as there was no indication of firing from the ABiH or from Serb positions.¹⁷⁹¹ Finally, the Prosecution argues that the Trial Chamber did not rely solely on Turco to find that HVO snipers targeted women, children, and the elderly.¹⁷⁹²

543. The Appeals Chamber observes that the Trial Chamber focused on establishing who was in control of the areas from where HVO snipers allegedly opened fire on Mostar, noting with specificity potential shooting positions.¹⁷⁹³ On the basis of the evidence, the Trial Chamber then established that the HVO controlled most of these positions.¹⁷⁹⁴ Finally, the Trial Chamber examined the evidence pertaining to specific sniping incidents. When it was unable to determine the precise locations from which the shots were fired, it proceeded to examine – and eliminate – the possibility that they may have originated from the ABiH or Serbian forces.¹⁷⁹⁵ In light of these findings, which Praljak misrepresents when arguing that it "remains unknown" how the Trial Chamber could attribute the sniper shots to the HVO,¹⁷⁹⁶ the Appeals Chamber finds that he merely disagrees with the Trial Chamber's assessment of the evidence without showing that the Trial Chamber erred.

544. Further, while the Trial Chamber used the phrase "the consistency of the testimonies and the evidence collected *allow*" a finding that Stotina hill was controlled by the HVO,¹⁷⁹⁷ the Appeals Chamber notes that immediately thereafter, the Trial Chamber continued its examination of whether the HVO controlled Stotina hill, considering further evidence,¹⁷⁹⁸ rejecting Praljak's trial submissions to the contrary,¹⁷⁹⁹ and concluding that Stotina hill "was controlled by the HVO armed forces on all of the dates of the alleged incidents".¹⁸⁰⁰ In the opinion of the Appeals Chamber, the Trial Judgement does not reflect that the Trial Chamber failed to apply the correct "beyond

¹⁷⁸⁹ Prosecution's Response Brief (Praljak), para. 187.

¹⁷⁹⁰ Prosecution's Response Brief (Praljak), para. 188.

¹⁷⁹¹ Prosecution's Response Brief (Praljak), para. 189. The Prosecution further contends that this conclusion is confirmed by other Trial Chamber findings. Prosecution's Response Brief (Praljak), para. 189.

¹⁷⁹² Prosecution's Response Brief (Praljak), para. 190.

¹⁷⁹³ Trial Judgement, Vol. 2, para. 1032.

¹⁷⁹⁴ Trial Judgement, Vol. 2, paras 1033-1038. See also Trial Judgement, Vol. 2, paras 1039-1041.

¹⁷⁹⁵ Trial Judgement, Vol. 2, paras 1042 *et seq.*

¹⁷⁹⁶ See Praljak's Appeal Brief, para. 252.

¹⁷⁹⁷ Trial Judgement, Vol. 2, para. 1033 (emphasis added); Trial Judgement (French original), Vol. 2, para. 1033 ("*la constance des témoignages et des éléments recueillis permettent de conclure en ce sens*").

¹⁷⁹⁸ Trial Judgement, Vol. 2, para. 1033.

¹⁷⁹⁹ Trial Judgement, Vol. 2, para. 1034.

reasonable doubt” standard.¹⁸⁰¹ Rather, Praljak suggests reading out of context a finding relied upon by the Trial Chamber to reach its ultimate conclusion beyond reasonable doubt that Stotina hill was controlled by the HVO armed forces.

545. Finally, the Appeals Chamber observes that, contrary to Praljak’s contention, the Trial Chamber did not base its conclusions on the suffering of the Muslim population in East Mostar “entirely” on a Rule 92 *bis* statement. In particular, the Trial Chamber stated that “[a]lthough [it] notes that the testimony of *Anthony Turco* was taken pursuant to Rule 92 *bis* of the Rules, it deems that all the evidence relating to the victims of the sniping incidents examined above corroborates what he said”.¹⁸⁰² In this regard, the Trial Chamber found that several witnesses “testified before the Chamber that women and children were targeted by snipers positioned in sectors controlled by the HVO”.¹⁸⁰³ Notably, Witness Dževad Hadžizukić testified about his wife being killed by a sniper, and Witness Grant Finlayson testified about a woman and a child who were killed by sniper fire.¹⁸⁰⁴ Finally, the Trial Chamber relied on several contemporaneous documents describing incidents in which women and children were wounded or killed by snipers.¹⁸⁰⁵ Accordingly, the Appeals Chamber dismisses Praljak’s ground of appeal 20.

(d) Shelling of East Mostar (Praljak’s Ground 21 and Petković’s Sub-ground 5.2.2.4 both in part)

546. The Trial Chamber concluded that East Mostar was subjected to intense and uninterrupted firing and shelling from the HVO between June 1993 and March 1994.¹⁸⁰⁶ In reaching this conclusion, the Trial Chamber noted, *inter alia*, that: (1) it received information indicating that the HVO used small aeroplanes to drop shells or bombs;¹⁸⁰⁷ (2) the ABiH chiefly had light infantry weapons and, even if the ABiH had heavy weapons, the HVO was better equipped, chiefly used

¹⁸⁰⁰ Trial Judgement, Vol. 2, para. 1035.

¹⁸⁰¹ The Appeals Chamber further notes that the Trial Chamber set out the correct standard in a general section devoted to evidentiary standards and stated that, although it did not systematically restate the expression “beyond reasonable doubt” in each finding of fact or in respect of the criminal responsibility of the Appellants, it applied this standard throughout the Trial Judgement. Trial Judgement, Vol. 1, para. 267.

¹⁸⁰² Trial Judgement, Vol. 2, para. 1188.

¹⁸⁰³ Trial Judgement, Vol. 2, para. 1186 (internal reference omitted).

¹⁸⁰⁴ Trial Judgement, Vol. 2, para. 1186 & fn. 2952, referring to, *inter alia*, Dževad Hadžizukić, T(F). 13343, 13350 (1 Feb 2007), Ex. P09859 (witness statement of Dževad Hadžizukić), pp. 3-4, Grant Finlayson, T(F). 18045 (7 May 2007), referring to Ex. P02751, p. 2. See also Trial Judgement, Vol. 2, para. 1186 & fns 2951-2952, referring to, *inter alia*, Jeremy Bowen, T(F). 12744-12745, 12748 (23 Jan 2007) (sniper fire over the heads of women, children, and the elderly), P10039 (witness statement by Martin Mol), para. 42 (woman wounded by sniping), fn. 2965, referring to Ratko Pejanović, T. 1329-1330 (4 May 2006) (an elderly man wounded by sniper fire), Miro Salčin, T(F). 14184 (15 Feb 2007) (women, children, and the elderly being subjected to sniper fire).

¹⁸⁰⁵ Trial Judgement, Vol. 2, para. 1186 & fns 2951-2952, referring to, *inter alia*, Exs. P06925 (confidential), pp. 2-3 (woman killed by sniper fire), P02751, p. 2 (woman and child killed by sniper fire), P02947 (confidential), pp. 4-5 (girl wounded by sniper fire).

¹⁸⁰⁶ Trial Judgement, Vol. 2, para. 1018.

¹⁸⁰⁷ Trial Judgement, Vol. 2, para. 997.

heavy artillery, and proceeded to shell and fire on East Mostar daily, intensely, and closely;¹⁸⁰⁸ (3) there was also shelling from the Serbian armed forces between June and December 1993;¹⁸⁰⁹ (4) in an UNPROFOR communiqué, Witness Cedric Thornberry stressed that not a single structure seemed to have been spared by the shelling;¹⁸¹⁰ (5) the Donja Mahala neighbourhood was hit by home-made bombs in the form of tyres filled with explosives launched from Hum mountain, located in HVO-controlled territory;¹⁸¹¹ (6) an HVO report sent to the Main Staff mentioned that the HVO dropped two napalm bombs on the Donja Mahala neighbourhood;¹⁸¹² and (7) the HVO firing and shelling killed and injured many people in East Mostar, evidenced by, *inter alia*, the records of the East Mostar Hospital showing the number of patients treated for injuries caused by bullets or explosives.¹⁸¹³

547. As for the targets of the HVO shelling, the Trial Chamber found that the attack was indiscriminate in light of the weapons used and how they were used, which were not suited to the destruction of military targets alone.¹⁸¹⁴ It found, in particular, that the zone in which obvious military targets were located – such as the ABiH headquarters – was a small residential area with a high population density into which the HVO forcibly transferred Muslims from West Mostar. As a result, repeated heavy artillery attacks would have to result in civilian loss of life and injury, as well as damage to property, which was substantial and excessive in relation to the concrete and direct military advantage anticipated.¹⁸¹⁵ The Trial Chamber found that the firing and shelling were not limited to specific targets.¹⁸¹⁶ In reaching these findings, the Trial Chamber noted, *inter alia*, that: (1) according to Witness DV, a professional soldier, the use of heavy artillery by the HVO was not an appropriate method of combat for the type of conflict in the town of Mostar;¹⁸¹⁷ (2) the HVO was technically able to identify its targets, notably using adjustment calculations; (3) East Mostar, overall, came under HVO shelling and fire, but certain locations were targeted more particularly by the HVO, including the Donja Mahala sector and Marshal Tito Street;¹⁸¹⁸ (4) the evidence showed that HVO shelling and artillery fire affected all of East Mostar, made up of densely inhabited and

¹⁸⁰⁸ Trial Judgement, Vol. 2, paras 996-998, 1000.

¹⁸⁰⁹ Trial Judgement, Vol. 2, para. 1001.

¹⁸¹⁰ Trial Judgement, Vol. 2, para. 1004.

¹⁸¹¹ Trial Judgement, Vol. 2, para. 1005.

¹⁸¹² Trial Judgement, Vol. 2, para. 1006.

¹⁸¹³ Trial Judgement, Vol. 2, para. 1016.

¹⁸¹⁴ Trial Judgement, Vol. 3, paras 1686, 1689.

¹⁸¹⁵ Trial Judgement, Vol. 3, para. 1686. See Trial Judgement, Vol. 3, para. 1689.

¹⁸¹⁶ Trial Judgement, Vol. 2, para. 1018, Vol. 3, paras 1254, 1348, 1684, 1689. See Trial Judgement, Vol. 2, para. 1014.

¹⁸¹⁷ Trial Judgement, Vol. 2, para. 997.

¹⁸¹⁸ Trial Judgement, Vol. 2, para. 1003. See also Trial Judgement, Vol. 3, paras 1254, 1348, 1684. The Trial Chamber noted that Marshal Tito Street – one of the main streets in East Mostar – was the location of the headquarters of the 4th Corps of the 41st ABiH Brigade. Trial Judgement, Vol. 2, para. 1009. It also noted that, according to Witness Miro Salčin, there was no specific headquarters or fixed assembly point in Donja Mahala for the 120 ABiH soldiers who were present and armed with only light infantry weapons. Trial Judgement, Vol. 2, para. 1007.

populated areas, and that many buildings were destroyed;¹⁸¹⁹ (5) it was impossible for the HVO to precisely target with shots, shells, and tyres filled with explosives ABiH soldiers who were not assembled at a specific location in Donja Mahala;¹⁸²⁰ and (6) evidence indicated that the ABiH positioned mobile mortars near the East Mostar Hospital.¹⁸²¹

548. The Trial Chamber also found that the constant and intense shelling and artillery fire had the effect of terrifying the population of East Mostar.¹⁸²² In arriving at this finding, the Trial Chamber took into consideration evidence of the fear of the population living under the deafening sounds of HVO shelling and firing and them having to run for cover in the streets.¹⁸²³ It referred to this terrifying effect when finding that the HVO committed the crime of unlawful infliction of terror on civilians.¹⁸²⁴ Moreover, it relied on the indiscriminate nature of the attack, taking into consideration that the HVO's shelling and firing were not limited to military targets; rather, the whole of East Mostar was subjected to daily and intense shelling and artillery fire in which heavy artillery was used.¹⁸²⁵ Finally, the Trial Chamber considered, *inter alia*, the HVO's deliberate shelling and destruction of ten mosques in East Mostar.¹⁸²⁶

(i) Arguments of the Parties

549. Praljak submits that the Trial Chamber erred when concluding that the HVO shelled East Mostar intensively and indiscriminately and that the HVO shelling caused numerous victims.¹⁸²⁷ First, Praljak puts forth evidence which he alleges contradicts the following Trial Chamber findings: (1) the HVO used napalm bombs;¹⁸²⁸ (2) the HVO was better equipped than the ABiH and intensely shelled and fired at East Mostar between early June 1993 and early March 1994;¹⁸²⁹ and (3) home-made bombs, which hit the Donja Mahala neighbourhood, were attributable to the HVO, rather than the ABiH.¹⁸³⁰ He contends that the Trial Chamber should have

¹⁸¹⁹ Trial Judgement, Vol. 2, para. 1004.

¹⁸²⁰ Trial Judgement, Vol. 2, para. 1008. See also Trial Judgement, Vol. 3, paras 1254, 1348, 1684.

¹⁸²¹ Trial Judgement, Vol. 2, para. 1013.

¹⁸²² Trial Judgement, Vol. 2, para. 1015.

¹⁸²³ Trial Judgement, Vol. 2, para. 1015.

¹⁸²⁴ Trial Judgement, Vol. 3, paras 1689, 1692.

¹⁸²⁵ Trial Judgement, Vol. 3, para. 1689.

¹⁸²⁶ Trial Judgement, Vol. 2, paras 1367-1377, Vol. 3, para. 1690.

¹⁸²⁷ Praljak's Appeal Brief, headings before para. 256. See also Praljak's Appeal Brief, para. 256; Praljak's Reply Brief, para. 86.

¹⁸²⁸ Praljak's Appeal Brief, para. 258, referring to, *inter alia*, Trial Judgement, Vol. 2, para. 1006, Vol. 3, paras 1254, 1348, 1684.

¹⁸²⁹ Praljak's Appeal Brief, para. 260, referring to, *inter alia*, Trial Judgement, Vol. 2, para. 1000. Praljak also submits that the Trial Chamber based its conclusions on Exhibits P05278 and P05452, which were not in evidence. Praljak's Appeal Brief, para. 260 & fn. 615.

¹⁸³⁰ Praljak's Appeal Brief, para. 264, referring to, *inter alia*, Trial Judgement, Vol. 2, para. 1005. Praljak further submits that it cannot be excluded that these bombs were isolated criminal acts committed by individuals who were not under anyone's control. Praljak's Appeal Brief, para. 264.

adopted a more careful approach to the evidence as it admitted that Serbs also shelled Mostar.¹⁸³¹ Praljak further submits that particular pieces of evidence to which the Trial Chamber referred do not: (1) attribute any responsibility to the HVO for the situation in Mostar; or (2) confirm that an HVO aeroplane dropped shells.¹⁸³² Additionally, he argues that the UNPROFOR Spanish Battalion (“SpaBat”) documents do not allow for a conclusion on the number of shells fired by the HVO as they only indicate the number of incoming and outgoing shells in East Mostar, not West Mostar.¹⁸³³ Praljak alleges that there is no evidence about the origin of the shelling and victims injured by the HVO as the Trial Chamber justified its findings on the basis of the number of victims admitted into the East Mostar Hospital.¹⁸³⁴

550. Praljak avers that the Trial Chamber should have unambiguously established whether the HVO was able to target military objectives and yet intentionally targeted the civilian population or whether it was unable to do so and therefore its attacks were indiscriminate.¹⁸³⁵ Petković argues that the Trial Chamber did not infer that the HVO targeted civilian objects and/or the civilian population, as is required to establish the crime of unlawful attack on civilians.¹⁸³⁶ Praljak contends that: (1) the Trial Chamber was required to ascertain “the objective and the modalities” of the attack as to each shelling incident;¹⁸³⁷ and (2) the fact that shelling affected a densely populated area does not mean that civilian areas were targeted or that the attacks were indiscriminate or disproportionate.¹⁸³⁸ Praljak submits that the Trial Chamber had no basis to assess whether the method or means of the attack were such that it could be directed at a specific military objective.¹⁸³⁹ Specifically, he submits that the Trial Chamber: (1) made no effort to establish the nature of the alleged attacks – seemingly basing its finding in this regard on a distortion of Witness DV’s testimony – or the weapons used by the HVO;¹⁸⁴⁰ and (2) failed to consider evidence confirming that the shelling was limited and aimed at military targets.¹⁸⁴¹ Moreover, Praljak contends that the

¹⁸³¹ Praljak’s Appeal Brief, para. 267. See Praljak’s Appeal Brief, para. 262. Praljak also submits that: (1) it cannot be excluded that at least some victims and damage can be attributed to the activities of groups operating within East Mostar who did not agree with the East Mostar government; and (2) the ABiH probably tried to expel the HVO from a small pocket it held on the east side of the Neretva River, thereby causing collateral damage among its own population. Praljak’s Appeal Brief, para. 267.

¹⁸³² Praljak’s Appeal Brief, paras 257, 261, referring to, *inter alia*, Trial Judgement, Vol. 2, para. 1004.

¹⁸³³ Praljak’s Appeal Brief, para. 263, referring to Ex. P06554.

¹⁸³⁴ Praljak’s Appeal Brief, para. 262, referring to, *inter alia*, Ex. P04573, Trial Judgement, Vol. 2, para. 1016; Appeal Hearing, AT. 379 (22 Mar 2017), referring to Ex. P04573.

¹⁸³⁵ Praljak’s Appeal Brief, paras 269-270. See also Praljak’s Appeal Brief, para. 256 & fn. 596.

¹⁸³⁶ Petković’s Appeal Brief, para. 269. See also Petković’s Appeal Brief, fn. 356. The Appeals Chamber notes that Petković also states, conversely, that he “does not challenge the Chamber’s findings that crimes were committed by shelling”. Petković’s Reply Brief, para. 61.

¹⁸³⁷ Praljak’s Appeal Brief, para. 270. See Praljak’s Reply Brief, para. 87.

¹⁸³⁸ Praljak’s Appeal Brief, para. 271. See also Praljak’s Appeal Brief, paras 265-266, 270.

¹⁸³⁹ Praljak’s Appeal Brief, para. 272.

¹⁸⁴⁰ Praljak’s Appeal Brief, paras 268, 272. See Praljak’s Appeal Brief, para. 256 & fn. 597.

¹⁸⁴¹ Praljak’s Appeal Brief, para. 272. See Praljak’s Appeal Brief, para. 265 & fn. 633. Additionally, Praljak argues that the Trial Chamber accepted Witness Miro Salčin’s statements although they conflicted with its own findings that: (1) the ABiH had heavy weapons, including mobile mortars near the hospital; and (2) the headquarters of the 4th Corps

Trial Chamber's finding that the damage was excessive in relation to the anticipated military advantage was unfounded.¹⁸⁴²

551. Finally, Praljak alleges errors related to the Trial Chamber's conclusion that the HVO committed the crime of unlawful infliction of terror by shelling the population of East Mostar.¹⁸⁴³ He submits that, in light of the Trial Chamber's admission that the shelling was aimed at military targets, it failed to establish that the purpose of the shelling was to spread terror and that any HVO member had the specific intent to spread terror.¹⁸⁴⁴ He further submits that the Trial Chamber merely stated that the shelling terrified the population, without any conclusive evidence and without establishing the required degree of trauma and psychological damage.¹⁸⁴⁵ Praljak requests that his convictions under Counts 1, 2, 3, 16, 24, and 25 be reversed with respect to the relevant charges for Mostar.¹⁸⁴⁶ Petković requests to be acquitted on Count 24.¹⁸⁴⁷

552. The Prosecution responds that Praljak merely disagrees with the Trial Chamber's interpretation of evidence without showing error.¹⁸⁴⁸ It submits that, contrary to Praljak's claims: (1) the Trial Chamber's reasonable considerations regarding the nature of the attack were based on the totality of evidence; (2) the Trial Chamber did not distort Witness DV's evidence; and (3) the HVO's home-made tyre bombs were different from ABiH handheld bombs.¹⁸⁴⁹ The Prosecution submits that claims concerning alleged shelling by forces other than the HVO do not undermine the Trial Chamber's finding that the HVO "daily, intensely and closely" shelled East Mostar.¹⁸⁵⁰ In this regard, it submits that: (1) the Trial Chamber's finding that occasional Serb shelling occurred is well-grounded; and (2) the Trial Chamber properly relied on SpaBat reports confirming the HVO's responsibility for the shelling.¹⁸⁵¹ Further, the Prosecution argues that the Trial Chamber was not required to establish the "objective and modalities" of each shelling incident.¹⁸⁵² It submits,

of the 41st ABiH Brigade was located on Marshal Tito Street. He further alleges that the Trial Chamber failed to consider the ABiH mobile mortars when concluding that the HVO firing and shelling were not limited to specific military targets. Praljak's Appeal Brief, paras 259 (referring to, *inter alia*, Trial Judgement, Vol. 2, paras 1007, 1009), 273. See also Praljak's Appeal Brief, para. 256 & fn. 596, para. 266.

¹⁸⁴² Praljak's Appeal Brief, para. 273, referring to, *inter alia*, Trial Judgement, Vol. 3, para. 1686; Praljak's Reply Brief, para. 87.

¹⁸⁴³ Praljak's Appeal Brief, headings before paras 274-275. See Praljak's Appeal Brief, paras 274, 276. See also Praljak's Appeal Brief, para. 256; Praljak's Reply Brief, paras 86, 88.

¹⁸⁴⁴ Praljak's Appeal Brief, paras 274, 277-279; Appeal Hearing, AT. 380-381 (22 Mar 2017). Praljak also submits that HVO orders show that shelling was aimed at military targets. Praljak's Appeal Brief, para. 277.

¹⁸⁴⁵ Praljak's Appeal Brief, paras 275-276.

¹⁸⁴⁶ Praljak's Appeal Brief, para. 255.

¹⁸⁴⁷ Petković's Appeal Brief, paras 251, 269, 282.

¹⁸⁴⁸ Prosecution's Response Brief (Praljak), paras 191, 194.

¹⁸⁴⁹ Prosecution's Response Brief (Praljak), para. 194. The Prosecution submits that Praljak's claim that these bombs were used in isolated criminal acts is unsupported and speculative. Prosecution's Response Brief (Praljak), para. 194.

¹⁸⁵⁰ Prosecution's Response Brief (Praljak), para. 196. The Prosecution submits that the Trial Chamber cited many other supporting exhibits apart from two documents not in evidence. Prosecution's Response Brief (Praljak), para. 196.

¹⁸⁵¹ Prosecution's Response Brief (Praljak), para. 196.

¹⁸⁵² Prosecution's Response Brief (Praljak), para. 195.

moreover, that Praljak ignores the extensive evidence considered by the Trial Chamber and its explicit findings that, *inter alia*, intense and continuous shelling formed a key part of the HVO's unlawful attack on and terrorisation of the civilian population.¹⁸⁵³ Finally, the Prosecution argues that, contrary to Petković's claim, the Trial Chamber "explicitly found that HVO shelling targeted the civilian population and civilian property".¹⁸⁵⁴

553. Regarding Praljak's challenge to his conviction under Count 25 (unlawful infliction of terror on civilians as a violation of the laws or customs of war), the Prosecution argues that: (1) the Trial Chamber's findings amply demonstrate that the HVO committed acts of violence the primary purpose of which was to spread terror; and (2) it applied the correct *mens rea* standard.¹⁸⁵⁵ The Prosecution argues that Praljak merely repeats his untenable claim that HVO shelling targeted military objects and not Muslims.¹⁸⁵⁶

(ii) Analysis

554. The Appeals Chamber will first address Praljak's arguments regarding the Trial Chamber's findings on the HVO's use of napalm bombs and home-made bombs and its findings that the HVO was better equipped than the ABiH and intensely shelled and fired at East Mostar between early June 1993 and early March 1994. With respect to Praljak's submission that the Trial Chamber erred in relying on proposed Exhibits P05278 and P05452 as they were not in evidence, the Appeals Chamber considers that Praljak ignores the voluminous amount of evidence upon which the Trial Chamber relied in addition to these exhibits.¹⁸⁵⁷ The Appeals Chamber notes that his remaining arguments are substantiated solely by reference to isolated pieces of evidence which Praljak claims support an alternative conclusion to that reached by the Trial Chamber.¹⁸⁵⁸ He does not, in these arguments, identify the evidence actually relied upon by the Trial Chamber in making the relevant findings, let alone articulate error in that reliance.¹⁸⁵⁹ As such and in each case, his arguments challenge the Trial Chamber's failure to rely on one piece of

¹⁸⁵³ Prosecution's Response Brief (Praljak), paras 192-193. The Prosecution submits that the HVO intended to attack Muslim civilians and destroy Muslim civilian objects and that this was not collateral damage. Prosecution's Response Brief (Praljak), para. 192.

¹⁸⁵⁴ Prosecution's Response Brief (Petković), para. 205.

¹⁸⁵⁵ Prosecution's Response Brief (Praljak), paras 197-198.

¹⁸⁵⁶ Prosecution's Response Brief (Praljak), para. 198.

¹⁸⁵⁷ See Trial Judgement, Vol. 2, para. 1000 and references cited therein. Cf. *Kordić and Čerkez* Appeal Judgement, para. 865.

¹⁸⁵⁸ See Praljak's Appeal Brief, paras 258 (referring to, *inter alia*, Miro Salčin, T. 14219-14220 (15 Feb 2007)), 260 (referring to, *inter alia*, Cedric Thornberry, T. 26286 (15 Jan 2008), Grant Finlayson, T. 18042 (7 May 2007)), 264 (referring to, *inter alia*, Larry Forbes, T. 21288-21289 (16 Aug 2007)).

¹⁸⁵⁹ See Trial Judgement, Vol. 2, paras 996, 1000, 1005-1006 and references cited therein. See also Trial Judgement, Vol. 2, para. 1018. As to Praljak's argument that it cannot be excluded that the home-made bombs were isolated criminal acts committed by individuals who were not under anyone's control, the Appeals Chamber finds it to be unsubstantiated and speculative.

evidence, without explaining why the relevant findings, and by extension the conviction, should not stand on the basis of the remaining evidence. They are accordingly dismissed.

555. With respect to Praljak's argument that the Trial Chamber should have adopted a more careful approach to the evidence as it admitted that Serbs also shelled Mostar, he ignores that the Trial Chamber ultimately found, on the basis of the evidence, that Serbian forces only occasionally fired shells.¹⁸⁶⁰ Further, Praljak merely challenges the Trial Chamber's failure to rely on particular evidence without explaining why the conviction should not stand on the basis of the remaining evidence.¹⁸⁶¹ In this regard, the Appeals Chamber notes that the Trial Chamber considered extensive evidence when finding that the HVO shelled and fired at East Mostar daily, intensely, and closely, thereby killing and injuring people.¹⁸⁶² When arguing that evidence to which the Trial Chamber referred does not attribute any responsibility to the HVO for the situation in Mostar, Praljak points to the Trial Chamber's finding that HVO shelling and artillery fire affected all of East Mostar,¹⁸⁶³ and ignores the other evidence the Trial Chamber relied upon in this regard.¹⁸⁶⁴ The Appeals Chamber further rejects Praljak's allegations – that there is no evidence about the origin of the shelling and victims injured by the HVO as the Trial Chamber justified its findings on the basis of the number of victims admitted into the East Mostar Hospital – as he ignores the other evidence upon which the Trial Chamber relied when reaching its findings that the HVO shelled and fired at East Mostar and killed and injured many people, notably women, children, and the elderly.¹⁸⁶⁵ The foregoing arguments are dismissed.

556. Regarding Praljak's claim that the evidence to which the Trial Chamber referred does not confirm that an HVO aeroplane dropped shells, the Appeals Chamber notes that the Trial Chamber merely noted that it received information indicating that the HVO had small aeroplanes with which

¹⁸⁶⁰ Trial Judgement, Vol. 2, para. 1001.

¹⁸⁶¹ See Praljak's Appeal Brief, para. 267 & fns 651, 653, referring to Witness CB, T. 10155 (14 Nov 2006), Grant Finlayson, T. 18224 (9 May 2007) (both referred to in Trial Judgement, Vol. 2, para. 1001).

¹⁸⁶² See, e.g., Trial Judgement, Vol. 2, paras 996-997, 1000, 1003-1004, 1014, 1016, 1018 and references cited therein. The Appeals Chamber finds speculative Praljak's submissions that it cannot be excluded that at least some victims and damage can be attributed to the activities of groups operating within East Mostar and that the ABiH probably tried to expel the HVO from a small pocket it held on the east side of the Neretva River, thereby causing collateral damage among its own population.

¹⁸⁶³ Praljak's Appeal Brief, para. 261, referring to, *inter alia*, Trial Judgement, Vol. 2, para. 1004.

¹⁸⁶⁴ See, e.g., Trial Judgement, Vol. 2, para. 1004 & fns 2321, 2324-2325. When pointing to evidence contrary to the Trial Chamber's finding, Praljak merely asserts that the Trial Chamber must have failed to consider relevant evidence, without showing that no reasonable trier of fact, based on the evidence, could have reached the same conclusion as the Trial Chamber did. See Praljak's Appeal Brief, para. 261 & fns 622-623. In this regard, the Appeals Chamber recalls that the Trial Chamber found, on the basis of various pieces of evidence, that HVO shelling and artillery fire affected all of East Mostar, made up of densely inhabited and populated areas, in which homes, stores, and public buildings were destroyed. Trial Judgement, Vol. 2, para. 1004 and references cited therein.

¹⁸⁶⁵ Trial Judgement, Vol. 2, paras 996-997, 1000, 1004-1006, 1009-1012, 1015-1016 & fns 2352-2354 and references cited therein. Insofar as Praljak also puts forth evidence to challenge the Trial Chamber's findings on the origin of the shelling, he is merely asserting that the Trial Chamber must have failed to consider relevant evidence without showing that no reasonable trier of fact, based on the evidence, could have reached the same conclusion as the Trial Chamber did.

it dropped shells or bombs, notably on Donja Mahala, which is amply supported by the evidence on which it relied.¹⁸⁶⁶ Praljak fails to demonstrate any error. As to his argument that the SpaBat documents do not allow for a conclusion on the number of shells fired by the HVO and only indicate the number of incoming and outgoing shells in East Mostar, not West Mostar, the Appeals Chamber notes that Praljak refers only to a 9 November 1993 report and fails to identify the Trial Chamber finding he is challenging or cite to the other evidence to which he refers.¹⁸⁶⁷ His argument is dismissed.

557. With regard to the argument that the Trial Chamber should have unambiguously established whether the HVO was able to target military objectives and yet intentionally targeted the civilian population or whether it was unable to do so and therefore its attacks were indiscriminate, the Appeals Chamber notes that the Trial Chamber found that the attack was indiscriminate in light of the weapons used and, most of all, how they were used.¹⁸⁶⁸ The HVO used napalm bombs and tyres filled with explosives,¹⁸⁶⁹ and although it was technically able to identify its targets using adjustment calculations, the whole of East Mostar was subjected to intense and daily firing and shelling in which heavy artillery was used.¹⁸⁷⁰ Praljak has failed to demonstrate how the question of whether the shelling and firing constituted a direct attack on civilians or an indiscriminate attack would have any bearing on the Trial Chamber's decision as to the commission of the crime of an unlawful attack.¹⁸⁷¹ His argument is dismissed. In light of the above, the Appeals Chamber also dismisses Petković's submission that the Trial Chamber did not infer that the HVO targeted civilian objects and/or the civilian population.

558. When contending that the Trial Chamber was required to ascertain the objectives and modalities of the attack with regard to each shelling incident, Praljak points to the *D. Milošević* Appeal Judgement.¹⁸⁷² In its assessment therein, the Appeals Chamber referred to a limited number of sniping and shelling incidents.¹⁸⁷³ In the present case, the Trial Chamber reviewed a large volume of evidence establishing the various weapons used by the HVO, the impact on specific neighbourhoods and zones, and incidents in which locations and buildings may have been targeted

¹⁸⁶⁶ Trial Judgement, Vol. 2, para. 997, referring to, *inter alia*, Exs. P04785, p. 2 (reporting the HVO's use of aircraft to drop clusters of mortar bombs), P05091, para. 26 (noting allegations that the HVO dropped mortar grenades from two crop-duster aeroplanes), P05210 (confidential), p. 6 (reporting a flyover by a light airplane at times coinciding with the times at which, according to the ABiH, it was shelled from the air), P09834, para. 16 (stating that the HVO had a small plane which it would use to drop bombs on Donja Mahala as well as the areas of Luka and Tekija), Miro Salčin, T(F). 14276-14277 (private session) (19 Feb 2007) (confirming the HVO's use of aircraft).

¹⁸⁶⁷ See Praljak's Appeal Brief, para. 263.

¹⁸⁶⁸ Trial Judgement, Vol. 3, paras 1686, 1689.

¹⁸⁶⁹ Trial Judgement, Vol. 2, paras 1005-1006, Vol. 3, paras 1254, 1348, 1451, 1684.

¹⁸⁷⁰ Trial Judgement, Vol. 2, paras 997, 1000, 1003-1004, 1018, Vol. 3, paras 1254, 1348, 1451, 1684, 1686, 1689.

¹⁸⁷¹ See *Kordić and Čerkez* Appeal Judgement, para. 48 (recalling the fundamental principle of customary international law, as outlined in Article 51 of Additional Protocol I, whereby a civilian population shall not be the object of attack).

¹⁸⁷² Praljak's Appeal Brief, para. 270 & fn. 663, referring to *D. Milošević* Appeal Judgement, para. 143.

for military purposes.¹⁸⁷⁴ In light of the Trial Chamber's finding that intense shelling and artillery fire occurred on a daily basis over the course of nine months,¹⁸⁷⁵ and bearing in mind that a trial chamber must make its own final assessment based on the totality of the evidence before it,¹⁸⁷⁶ the Appeals Chamber is satisfied that a reasonable trier of fact could have taken such an approach and therefore finds that Praljak has failed to demonstrate any error. His argument is therefore dismissed.

559. When submitting that the fact that shelling affected a densely populated area does not mean that civilian areas were targeted or that the attack was indiscriminate or disproportionate, Praljak recalls that international humanitarian law does not *per se* prohibit attacks aimed at military targets when they are situated in populated areas.¹⁸⁷⁷ He presents numerous pieces of evidence to demonstrate that, *inter alia*, the ABiH placed military staff, equipment, and positions in civilian areas and used them for attacks on HVO positions.¹⁸⁷⁸ The Appeals Chamber notes that the Trial Chamber considered evidence of the locations and shelling of ABiH positions in East Mostar.¹⁸⁷⁹ Praljak merely points to evidence he prefers without showing that no reasonable trier of fact, based on the evidence, could have reached the conclusion that the firing and shelling were not limited to specific military targets.¹⁸⁸⁰ His argument is therefore dismissed.

560. In support of his submission that the Trial Chamber made no effort to establish the nature of the alleged attacks, Praljak argues that the Trial Chamber distorted Witness DV's testimony which, according to him, did not address the appropriateness of the method of combat used in East Mostar, but rather the military usefulness of the artillery in this kind of combat.¹⁸⁸¹ The Appeals Chamber rejects this argument as Praljak merely disagrees with the Trial Chamber's interpretation of the evidence, without showing that no reasonable trier of fact could have adopted

¹⁸⁷³ See *D. Milošević* Appeal Judgement, paras 140-143.

¹⁸⁷⁴ Trial Judgement, Vol. 2, paras 996-997, 1000, 1003-1014 and references cited therein.

¹⁸⁷⁵ See, e.g., Trial Judgement, Vol. 2, paras 996, 1000, 1018, Vol. 3, para. 1689.

¹⁸⁷⁶ *Lukić and Lukić* Appeal Judgement, para. 260, referring to *Stakić* Appeal Judgement, para. 346; *Karemera and Ngirumpatse* Appeal Judgement, para. 52.

¹⁸⁷⁷ Praljak's Appeal Brief, para. 271.

¹⁸⁷⁸ See Praljak's Appeal Brief, paras 265-266.

¹⁸⁷⁹ Trial Judgement, Vol. 2, paras 1007-1014, noting: (1) that there was no specific headquarters or fixed assembly point in Donja Mahala for the ABiH soldiers there; (2) the presence on Marshal Tito Street of the war presidency headquarters of the Muslim political authorities, the headquarters of the 4th Corps of the 41st ABiH Brigade, the United Nations Military Observers ("UNMO") premises, the SpaBat premises, and the East Mostar Hospital; and (3) the presence of ABiH mobile mortars near the hospital.

¹⁸⁸⁰ Trial Judgement, Vol. 2, para. 1018. Particularly, with respect to ABiH positions in the vicinity of Marshal Tito Street, the Trial Chamber found that assuming those positions were the HVO's only targets, the firing and shelling inevitably affected that whole zone, which was the location of not only the East Mostar Hospital where injured people were being treated but also numerous homes and a significant proportion of the population. Trial Judgement, Vol. 2, para. 1014. See Trial Judgement, Vol. 2, paras 1009-1013.

¹⁸⁸¹ Praljak's Appeal Brief, para. 268, referring to, *inter alia*, Trial Judgement, Vol. 2, para. 997, Witness DV, T. 23046 (2 Oct 2007).

it.¹⁸⁸² Moreover, Praljak's claim that the Trial Chamber made no effort to establish the weapons used by the HVO is unfounded.¹⁸⁸³ As to his submission that the Trial Chamber failed to consider evidence confirming that the shelling was limited and aimed at military targets, the Appeals Chamber notes that Praljak repeats his submission expressly addressed, analysed at length, and rejected by the Trial Chamber, that the shelling was "selective and minimal".¹⁸⁸⁴ The Appeals Chamber considers that he merely asserts that the Trial Chamber must have failed to consider relevant evidence without showing that no reasonable trier of fact, based on the evidence, could have concluded that the HVO firing and shelling were not limited to specific military targets.¹⁸⁸⁵ Praljak's overall submission – based on the above-mentioned arguments – that the Trial Chamber had no basis to assess whether the method or means of the attack were such that it could be directed at a specific military objective is therefore dismissed.

561. With respect to the crime of unlawful attacks on civilians under Article 3 of the Statute, the Appeals Chamber recalls that although the principles of distinction and the protection of a civilian population do not exclude the possibility of legitimate civilian casualties incidental to the conduct of military operations, those expected casualties must not be disproportionate to the concrete and direct military advantage anticipated before the attack.¹⁸⁸⁶ In support of his contention that the Trial Chamber's finding – that the damage was excessive in relation to the anticipated military advantage – was unfounded, Praljak argues that the Trial Chamber did not make any assessment of the collateral damage and comparative military advantage.¹⁸⁸⁷ The Appeals Chamber notes that the Trial Chamber found that the damage was excessive in relation to the concrete and direct military advantage anticipated,¹⁸⁸⁸ without determining this military advantage,¹⁸⁸⁹ and as

¹⁸⁸² See Witness DV, T. 23046 (2 Oct 2007) ("Mostar is a different kettle of fish. Mostar is not an open battlefield. The artillery is not as useful and perhaps it was infantry that was needed most, but I am not familiar about the preparation for the attack.").

¹⁸⁸³ See, e.g., Trial Judgement, Vol. 2, paras 997, 1005-1006, Vol. 3, paras 1254, 1348, 1451, 1684, 1686, 1689. See also *supra*, paras 554-558.

¹⁸⁸⁴ Trial Judgement, Vol. 2, para. 1002. See Trial Judgement, Vol. 2, paras 1003-1014 (and references cited therein), 1018.

¹⁸⁸⁵ See Trial Judgement, Vol. 2, para. 1018. As to Praljak's additional argument that the Trial Chamber accepted Salčin's statements although they conflicted with its own findings that the ABiH had heavy weapons and that the headquarters of the 4th Corps of the 41st ABiH Brigade was located on Marshal Tito Street, the Appeals Chamber dismisses his submission as he: (1) ignores the Trial Chamber's finding that the ABiH chiefly had light infantry weapons; and (2) conflates its separate assessments of the situations in Donja Mahala and the zone of Marshal Tito Street. See Trial Judgement, Vol. 2, paras 998, 1007, 1009-1014. Concerning his related allegation that the Trial Chamber failed to consider the ABiH mobile mortars when concluding that the HVO firing and shelling were not limited to specific military targets, Praljak fails to demonstrate any error as the Trial Chamber considered the mobile mortars and found that the firing and shelling were not limited to specific targets, possibly military ones "such as" the headquarters of the 4th Corps and the 41st Brigade of the ABiH. Trial Judgement, Vol. 2, para. 1018. See Trial Judgement, Vol. 2, paras 1013-1014. His arguments are dismissed.

¹⁸⁸⁶ See *Galić* Appeal Judgement, paras 190-192; Article 51(5)(b) of Additional Protocol I. See also *Gotovina and Markač* Appeal Judgement, para. 82.

¹⁸⁸⁷ Praljak's Appeal Brief, para. 273; Praljak's Reply Brief, para. 87.

¹⁸⁸⁸ Trial Judgement, Vol. 3, para. 1686. See Trial Judgement, Vol. 3, para. 1689.

¹⁸⁸⁹ See Trial Judgement, Vol. 3, paras 1684-1686.

such erred in law by failing to provide a reasoned opinion. Nevertheless, in light of the preceding analysis,¹⁸⁹⁰ and considering the basis for the Trial Chamber's finding that the HVO committed the crime of unlawful attack on civilians,¹⁸⁹¹ the Appeals Chamber considers that Praljak has failed to identify an error that would invalidate the Trial Chamber's decision.

562. Turning to Praljak's submissions related to the Trial Chamber's finding that the crime of unlawful infliction of terror was committed, the Appeals Chamber first recalls that the Trial Chamber was required to establish that the primary purpose of the acts or threats of violence committed in East Mostar was to spread terror among the civilian population and that the perpetrators of the crime acted with the specific intent to spread terror.¹⁸⁹² The Appeals Chamber considers that Praljak ignores findings when submitting that, in light of the Trial Chamber's admission that the shelling was aimed at military targets, it failed to establish that the purpose of the shelling was to spread terror and that any HVO member had the specific intent to spread terror. Namely, the Trial Chamber found that the attack was indiscriminate as the HVO's shelling and firing were not limited to military targets; rather, the whole of East Mostar was subjected to daily and intense shelling and artillery fire in which heavy artillery was used.¹⁸⁹³ The indiscriminate nature of an attack was a reasonable factor for the Trial Chamber to consider in determining specific intent to spread terror.¹⁸⁹⁴ The Trial Chamber also considered, *inter alia*, the HVO's deliberate shelling and destruction of ten mosques in East Mostar.¹⁸⁹⁵ Finally, it expressly linked shelling and sniping as factors contributing to the terrorisation of the population of East Mostar.¹⁸⁹⁶ The Appeals Chamber considers that a reasonable trier of fact could conclude that HVO actions were conducted with the requisite specific intent to spread terror on these bases. Praljak fails to show that the Trial Chamber erred in this respect.¹⁸⁹⁷ His argument is dismissed.

563. The Appeals Chamber recalls that although it has previously found that the crime of unlawful infliction of terror involves cases in which "extensive trauma and psychological damage"

¹⁸⁹⁰ See *supra*, paras 557-560 (recalling that the Trial Chamber assessed the various weapons used by the HVO, the impact on specific neighbourhoods and zones, and incidents in which locations and buildings may have been targeted for military purposes, and that the Trial Chamber found that, in light of the weapons used and, most of all, how they were used, the attack was indiscriminate) & fn. 1871 (referring to *Kordić and Čerkez* Appeal Judgement, para. 48, recalling the fundamental principle of customary international law, as outlined in Article 51 of Additional Protocol I, whereby a civilian population shall not be the object of an attack).

¹⁸⁹¹ See Trial Judgement, Vol. 3, para. 1688 (finding that by, *inter alia*, "shelling and firing at the civilian population of East Mostar", the HVO committed the crime of an unlawful attack on civilians).

¹⁸⁹² *D. Milošević* Appeal Judgement, para. 37; *Galić* Appeal Judgement, para. 104.

¹⁸⁹³ Trial Judgement, Vol. 2, paras 997, 1000, 1004, 1018, Vol. 3, paras 1254, 1348, 1451, 1684, 1686, 1689. See *supra*, para. 557. In submitting that HVO orders show that shelling was aimed at military targets, Praljak points to submissions that the Appeals Chamber previously rejected. Praljak's Appeal Brief, fn. 683. See *supra*, para. 560.

¹⁸⁹⁴ See *D. Milošević* Appeal Judgement, para. 37; *Galić* Appeal Judgement, para. 102 ("The acts or threats of violence constitutive of the crime of terror shall not however be limited to direct attacks against civilians or threats thereof but may include indiscriminate or disproportionate attacks or threats thereof.").

¹⁸⁹⁵ Trial Judgement, Vol. 2, paras 1367-1377, Vol. 3, para. 1690. See *infra*, paras 566-569.

¹⁸⁹⁶ Trial Judgement, Vol. 3, para. 1689. See *supra*, paras 540-545.

are caused by “attacks [which] were designed to keep the inhabitants in a constant state of terror”,¹⁸⁹⁸ the actual terrorisation of the civilian population is not an element of the crime of unlawful infliction of terror.¹⁸⁹⁹ Thus, with respect to Praljak’s assertion that the Trial Chamber merely stated that the shelling terrified the East Mostar population, without any conclusive evidence and without establishing the “required” degree of trauma and psychological damage, the Appeals Chamber considers that the Trial Chamber was not, *stricto sensu*, required to establish such.

564. The Appeals Chamber notes, however, that evidence of actual terrorisation may contribute to establishing other elements of the crime of terror.¹⁹⁰⁰ In the instant case, the Trial Chamber considered evidence regarding the terrifying effect on the civilian population, particularly evidence of the fear of the civilian population of East Mostar living under the deafening sound of HVO shelling and firing and them having to run for cover in the streets.¹⁹⁰¹ It recalled this terrifying effect in its legal findings on unlawful infliction of terror on civilians,¹⁹⁰² and while it did not expressly indicate why it did so, the Appeals Chamber notes that it has previously held that psychological impact on a population may satisfy the required gravity threshold of the crime.¹⁹⁰³ The Appeals Chamber considers that a reasonable trier of fact could rely on the evidence regarding the terrifying effect on the civilian population outlined above for this purpose. In light of the fact that this psychological impact was therefore relevant to the Trial Chamber’s legal conclusion that the crime of unlawful infliction of terror had been established, the Appeals Chamber considers that Praljak fails to show that the Trial Chamber erred in law in its reasoning. In light of the foregoing, the Appeals Chamber finds that Praljak fails to show that the Trial Chamber erred. Accordingly, Praljak’s allegations related to the Trial Chamber’s conclusion that the HVO committed the crime of unlawful infliction of terror on the civilian population of East Mostar are dismissed.

565. For the above reasons, the Appeals Chamber dismisses Praljak’s ground of appeal 21 and Petković’s sub-ground of appeal 5.2.2.4 both in relevant part.¹⁹⁰⁴

¹⁸⁹⁷ See Trial Judgement, Vol. 1, paras 194-197, Vol. 3, paras 1689-1692.

¹⁸⁹⁸ *Galić* Appeal Judgement, para. 102. See *D. Milošević* Appeal Judgement, para. 35.

¹⁸⁹⁹ *D. Milošević* Appeal Judgement, para. 35, citing *Galić* Appeal Judgement, para. 104.

¹⁹⁰⁰ *D. Milošević* Appeal Judgement, para. 35.

¹⁹⁰¹ Trial Judgement, Vol. 2, para. 1015 & fns 2350-2351. See also Trial Judgement, Vol. 2, para. 1016.

¹⁹⁰² Trial Judgement, Vol. 3, para. 1689. Moreover, in establishing that the HVO committed the crime of unlawful infliction of terror on civilians, the Trial Chamber considered multiple underlying acts including the HVO’s campaign of sniper fire which left the population under constant threat of being killed or wounded and prevented them from carrying out activities that were indispensable for their survival. Trial Judgement, Vol. 3, para. 1689. See Trial Judgement, Vol. 2, para. 1176, Vol. 3, paras 1690-1692.

¹⁹⁰³ *D. Milošević* Appeal Judgement, para. 35.

¹⁹⁰⁴ The Appeals Chamber observes that a review of the Trial Chamber’s legal findings reveals that killings resulting from shellings were not considered under Counts 2 or 3. See *infra*, para. 2264. Therefore Praljak’s request to be acquitted under those counts is moot.

(e) Destruction of or damage to mosques in East Mostar (Praljak's Ground 24)

566. The Trial Chamber found that the HVO's constant shooting and shelling of East Mostar destroyed or significantly damaged ten mosques between June and December 1993.¹⁹⁰⁵ It was satisfied that the HVO deliberately targeted these ten mosques.¹⁹⁰⁶ In reaching these findings, the Trial Chamber noted, *inter alia*, that: (1) eight out of the ten mosques were damaged or partially destroyed by the JNA and/or the VRS in 1992, while the remaining two mosques did not sustain damage and were still intact in January 1993, and probably until 9 May 1993;¹⁹⁰⁷ (2) each of the mosques in East Mostar was damaged or destroyed essentially by artillery fire between June and December 1993 and, in 1994, all mosques in Mostar town had been destroyed;¹⁹⁰⁸ and (3) various sources of evidence indicated that the HVO knowingly, systematically, and deliberately attacked the mosques in East Mostar.¹⁹⁰⁹

567. Praljak submits that the Trial Chamber erred when it concluded that the HVO deliberately targeted and destroyed or damaged ten mosques in East Mostar between June and December 1993.¹⁹¹⁰ He submits that while the Trial Chamber noted that eight of the ten mosques had been damaged or partially destroyed by non-HVO forces in 1992, it did not establish what further damage occurred to those mosques in 1993, nor could it establish whether the two other mosques remained intact after January 1993.¹⁹¹¹ Praljak further submits that the evidence does not allow for the Trial Chamber's finding because all but one of the mosques had been destroyed by May 1993.¹⁹¹² Additionally, Praljak submits that it was impossible for the Trial Chamber to attribute the destruction to the HVO and conclude that the HVO deliberately targeted the mosques because Exhibit P02636, on which it relied to do so, did not indicate how they were destroyed or who destroyed them.¹⁹¹³ Finally, Praljak submits that with the exception of one mosque in West Mostar, there is no evidence that the HVO was involved in the destruction of any mosque in Mostar.¹⁹¹⁴ Praljak therefore requests that the Appeals Chamber acquit him under Counts 1 (persecution as a crime against humanity) and 21 (destruction or wilful damage done to institutions

¹⁹⁰⁵ Trial Judgement, Vol. 2, para. 1377. See Trial Judgement, Vol. 2, paras 1372-1375.

¹⁹⁰⁶ Trial Judgement, Vol. 2, para. 1377.

¹⁹⁰⁷ Trial Judgement, Vol. 2, para. 1369. See Trial Judgement, Vol. 2, paras 1370-1371.

¹⁹⁰⁸ Trial Judgement, Vol. 2, paras 1372-1375.

¹⁹⁰⁹ Trial Judgement, Vol. 2, para. 1376.

¹⁹¹⁰ Praljak's Appeal Brief, headings before paras 298, 301, paras 299, 301.

¹⁹¹¹ Praljak's Appeal Brief, paras 298, 300, referring to, *inter alia*, Trial Judgement, Vol. 2, paras 1369-1371; Appeal Hearing, AT. 379 (22 Mar 2017). See Praljak's Reply Brief, para. 91. The non-HVO forces Praljak refers to are the JNA and VRS. See Praljak's Appeal Brief, para. 298.

¹⁹¹² Praljak's Appeal Brief, para. 299; Appeal Hearing, AT. 379 (22 Mar 2017).

¹⁹¹³ Praljak's Appeal Brief, paras 302-303 & fns 736-737. Praljak further argues that attribution to the HVO is also impossible because multiple micro-wars were ongoing in East Mostar with different groups under different command. See Praljak's Appeal Brief, para. 302.

dedicated to religion or education as a violation of the laws or customs of war) of the relevant charges with respect to Mostar.¹⁹¹⁵

568. The Prosecution responds that Praljak repeats his claims from trial, ignoring the Trial Chamber's explicit findings that the HVO subjected East Mostar to intense and uninterrupted shelling and constant shooting which damaged nearly all the buildings, as well as its analysis of evidence indicating systematic and intentional attacks on mosques.¹⁹¹⁶ The Prosecution argues that the Trial Chamber considered evidence regarding each of the ten mosques, and properly determined that the HVO deliberately damaged and destroyed them between June and December 1993.¹⁹¹⁷ Additionally, the Prosecution submits that the Trial Chamber considered what further damage the HVO inflicted on each mosque during the siege.¹⁹¹⁸ Further, the Prosecution contends that Praljak's interpretation of the evidence, that all mosques in Mostar (except for one) were destroyed by May 1993, is undermined by other evidence.¹⁹¹⁹ The Prosecution contends that Praljak's argument regarding Exhibit P02636 shows no error in the Trial Chamber's finding.¹⁹²⁰

569. The Appeals Chamber observes that the Trial Chamber considered the condition of each of the ten mosques prior to June 1993, and noted with specificity which mosques were previously damaged and which mosques remained intact at the time.¹⁹²¹ The Trial Chamber then systematically articulated how each mosque was either completely destroyed or sustained further damage as a result of HVO attacks between June and December 1993.¹⁹²² In light of these findings, which Praljak misrepresents when claiming that the Trial Chamber did not establish what further damage occurred to the mosques in 1993, the Appeals Chamber dismisses his arguments regarding the extent of the damage done to the mosques in 1993. Regarding Praljak's argument that Exhibit P02636 did not indicate how the mosques were destroyed or who destroyed them, the Appeals Chamber observes that he ignores all the other evidence on which the Trial Chamber relied to attribute the destruction to the HVO and conclude that the HVO deliberately targeted the

¹⁹¹⁴ Praljak's Appeal Brief, para. 304; Appeal Hearing, AT. 379 (22 Mar 2017). Praljak specifically refers to one mosque in West Mostar that was destroyed by an HVO member, but contends that the only evidence that the HVO ordered its destruction is unconfirmed and doubtful. Praljak's Appeal Brief, para. 304.

¹⁹¹⁵ Praljak's Appeal Brief, para. 297.

¹⁹¹⁶ Prosecution's Response Brief (Praljak), paras 211-212, 215. The Prosecution submits that even though the Trial Chamber did not need to establish the intent of perpetrators used by JCE members, it properly determined that the HVO forces did possess the required intent. Prosecution's Response Brief (Praljak), para. 215.

¹⁹¹⁷ Prosecution's Response Brief (Praljak), para. 213.

¹⁹¹⁸ Prosecution's Response Brief (Praljak), para. 213. The Prosecution also states that Praljak's argument regarding the West Mostar mosque is unpersuasive because whether or not the HVO ordered its destruction, Praljak could foresee that mosques would be destroyed for the purposes of JCE III liability. Prosecution's Response Brief (Praljak), para. 216, referring to, *inter alia*, Praljak's Appeal Brief, para. 304.

¹⁹¹⁹ Prosecution's Response Brief (Praljak), para. 214, referring to, *inter alia*, Praljak's Appeal Brief, para. 299. See Prosecution's Response Brief (Praljak), para. 211.

¹⁹²⁰ Prosecution's Response Brief (Praljak), para. 215, referring to Trial Judgement, Vol. 2, para. 1376.

¹⁹²¹ Trial Judgement, Vol. 2, paras 1369-1371.

¹⁹²² Trial Judgement, Vol. 2, paras 1372-1375.

mosques, and therefore finds that he fails to demonstrate that no reasonable trier of fact could have concluded as the Trial Chamber did.¹⁹²³ Similarly, in arguing that there is no evidence that the HVO was involved in the destruction of any mosque in East Mostar, Praljak disregards the evidence the Trial Chamber relied upon in this respect.¹⁹²⁴ Accordingly, the Appeals Chamber dismisses Praljak's ground of appeal 24.

2. Deaths of four Muslim men during the attack on Raštani (Praljak's Ground 27)

570. The Trial Chamber deemed "that the evidence allows finding" that on 24 August 1993, during the attack on the village of Raštani, HVO soldiers killed four Muslim men who had surrendered.¹⁹²⁵ It made this finding having noted, *inter alia*, that: (1) around 15 people including two Muslim families sought refuge in the house of Mirsad Žuškić, an ABiH soldier, to escape from the HVO attack;¹⁹²⁶ (2) a group of HVO soldiers fired at the house demanding that the occupants come out, and subsequently killed four men who had come out to surrender;¹⁹²⁷ and (3) according to Witness DA, only one of the men was a member of the ABiH and none of them wore a military uniform when they surrendered.¹⁹²⁸

571. Praljak submits that the Trial Chamber erred in deeming "that the evidence allows finding", where there was not enough evidence for a finding beyond reasonable doubt, that in Raštani on 24 August 1993 four Muslim men (one of whom was an ABiH member) were killed by HVO soldiers after the four men had surrendered.¹⁹²⁹ He submits that the Trial Chamber ignored that Raštani was a place of "constant combats" between the HVO and ABiH and that the ABiH used many buildings in Raštani for military purposes, including the house where the four men were sheltered.¹⁹³⁰ Praljak also submits that the Trial Chamber accepted but did not critically assess the witnesses' questionable assertions that three of the four men were civilians.¹⁹³¹ Further, Praljak submits that the Trial Chamber did not consider significant contradictions in the witnesses' statements, which cast doubt on their version of the event.¹⁹³² Finally, Praljak submits that it is

¹⁹²³ See, e.g., Trial Judgement, Vol. 2, paras 1375-1377 and references cited therein. Cf. Praljak's Appeal Brief, para. 302, referring to Ex. P02636, pp. 2, 4.

¹⁹²⁴ Trial Judgement, Vol. 2, paras 1372-1376 and references cited therein.

¹⁹²⁵ Trial Judgement, Vol. 2, para. 963. See Trial Judgement, Vol. 2, paras 955-962.

¹⁹²⁶ Trial Judgement, Vol. 2, para. 956.

¹⁹²⁷ Trial Judgement, Vol. 2, paras 957-961.

¹⁹²⁸ Trial Judgement, Vol. 2, para. 962.

¹⁹²⁹ Praljak's Appeal Brief, para. 315, referring to Trial Judgement, Vol. 2, para. 963. See Praljak's Appeal Brief, para. 322; Praljak's Reply Brief, para. 95.

¹⁹³⁰ Praljak's Appeal Brief, para. 316. Praljak further argues that the Trial Chamber neither explained why people gathered in the house of an ABiH soldier nor noted contradictory evidence regarding their arrival there. Praljak's Appeal Brief, para. 317.

¹⁹³¹ Praljak's Appeal Brief, para. 318. Praljak admits, however, that if the events matched the witnesses' descriptions, the three men's possible ABiH affiliation would have no bearing on the Trial Chamber's finding. Praljak's Appeal Brief, para. 319.

¹⁹³² Praljak's Appeal Brief, paras 319-320.

impossible to attribute the killings to the HVO because there is no evidence about the identities of the perpetrators or the unit of which they were a part.¹⁹³³ Praljak therefore requests that the Appeals Chamber acquit him under Counts 1 (persecution as a crime against humanity), 2 (murder as a crime against humanity), and 3 (wilful killing as a grave breach of the Geneva Conventions) of the charges relating to the event in Raštani.¹⁹³⁴

572. The Prosecution responds that Praljak reiterates arguments – that the HVO conducted legitimate military operations in Raštani and that the four men were not civilians – which the Trial Chamber considered but rejected as irrelevant, because the killings occurred after they surrendered, rendering their civilian or combatant status immaterial.¹⁹³⁵ The Prosecution submits that Praljak merely disagrees with the Trial Chamber’s interpretation of evidence without showing error, and that the Trial Chamber assessed contradictions in the evidence and reasonably concluded that the house was not used for military purposes.¹⁹³⁶ Therefore, the Prosecution contends that Praljak’s assertion that the Trial Chamber failed to apply the correct burden of proof is wrong, and further, Praljak ignores his own burden.¹⁹³⁷ Finally, the Prosecution argues that Praljak ignores the fact that the Trial Chamber properly attributed the killings to the HVO.¹⁹³⁸

573. The Appeals Chamber notes that while the Trial Chamber used the phrase “the evidence allows finding”,¹⁹³⁹ it in fact set out the correct standard in a general section on evidentiary standards and stated that although it did not systematically restate the expression “beyond reasonable doubt” in each finding of fact or in respect of the criminal responsibility of the Appellants, it applied this standard throughout the Trial Judgement.¹⁹⁴⁰ The specific language identified by Praljak must be considered in this context. Regarding Praljak’s argument that the Trial Chamber did not consider significant contradictions in witness statements, the Appeals Chamber notes that the Trial Chamber referred to all of the evidence on which Praljak relies,¹⁹⁴¹ and finds that Praljak fails to show that no reasonable trier of fact, based on the evidence, could have reached the same conclusion as the Trial Chamber did, namely that the four Muslim men were killed “even though they had surrendered”.¹⁹⁴² As a result, the following arguments are dismissed as irrelevant: that Raštani was a place of “constant combats” between the HVO and ABiH, that the ABiH used

¹⁹³³ Praljak’s Appeal Brief, para. 321.

¹⁹³⁴ Praljak’s Appeal Brief, para. 323. See Praljak’s Reply Brief, para. 96.

¹⁹³⁵ Prosecution’s Response Brief (Praljak), paras 225-226.

¹⁹³⁶ Prosecution’s Response Brief (Praljak), paras 225, 227. The Prosecution states that the Trial Chamber found that the house was instead used for refuge. Prosecution’s Response Brief (Praljak), para. 227.

¹⁹³⁷ Prosecution’s Response Brief (Praljak), para. 227.

¹⁹³⁸ Prosecution’s Response Brief (Praljak), paras 225, 228.

¹⁹³⁹ Trial Judgement, Vol. 2, para. 963; Trial Judgement (French original), Vol. 2, para. 963 (“*ces éléments de preuve lui permettent de conclure*”).

¹⁹⁴⁰ Trial Judgement, Vol. 1, para. 267.

¹⁹⁴¹ Cf. Praljak’s Appeal Brief, fns 784-785, 787; Trial Judgement, Vol. 2, fns 2217, 2222.

¹⁹⁴² Trial Judgement, Vol. 2, para. 963. See Trial Judgement, Vol. 2, paras 958-959, 962.

the house where the four men were sheltered for military purposes, and that the Trial Chamber did not critically assess the witnesses' assertions that three of the four men killed were civilians. Finally, the Appeals Chamber dismisses his arguments regarding the soldiers' identities and unit affiliation, considering that the Trial Chamber was not required to establish those as a prerequisite for its finding that the perpetrators belonged to the HVO.¹⁹⁴³ Accordingly, the Appeals Chamber dismisses Praljak's ground of appeal 27.

3. Commission of crimes by the Bruno Bušić Regiment at the Heliodrom
(Petković's Sub-ground 5.2.3.1 in part)

574. The Trial Chamber found that from May 1993 to mid-April 1994, members of the Military Police and "[m]embers of the HVO armed forces, including those of KB professional units and the *Bruno Bušić* Regiment as well as other individuals [...] brutally and regularly beat the Heliodrom prisoners".¹⁹⁴⁴

575. Petković submits that the finding that members of the HVO, including the Bruno Bušić Regiment, "regularly and brutally" beat Heliodrom detainees is incorrect and groundless.¹⁹⁴⁵ He argues that the finding is based solely on the testimony of Witness A, who was detained for several days in May 1993 and who testified that he saw members of the Regiment take prisoners out of the room where they were held in order to beat them.¹⁹⁴⁶

576. The Prosecution responds that the Trial Chamber reasonably found that soldiers from the Bruno Bušić Regiment regularly and brutally beat detainees at the Heliodrom in May 1993.¹⁹⁴⁷

577. The Appeals Chamber notes that Petković's submission is unclear as to whether he is challenging the Trial Chamber's findings on the beatings of Heliodrom detainees generally, or specifically the implication of members of the Bruno Bušić Regiment in these beatings.¹⁹⁴⁸ It considers, however, that in light of the context in which the argument is made, it relates to the latter.¹⁹⁴⁹ In this regard, the Trial Chamber found that HVO members, including from the Bruno Bušić Regiment, regularly and brutally beat the Heliodrom prisoners, referring to the evidence of

¹⁹⁴³ Trial Judgement, Vol. 2, para. 963. See Trial Judgement, Vol. 2, paras 957-959, 962.

¹⁹⁴⁴ Trial Judgement, Vol. 2, para. 1591. See Trial Judgement, Vol. 2, paras 1580-1590.

¹⁹⁴⁵ Petković's Appeal Brief, para. 347; Petković's Reply Brief, paras 34(vi), 35.

¹⁹⁴⁶ Petković's Appeal Brief, para. 347.

¹⁹⁴⁷ Prosecution's Response Brief (Petković), para. 136.

¹⁹⁴⁸ See Petković's Appeal Brief, para. 347.

¹⁹⁴⁹ See Petković's Appeal Brief, paras 339-351. The Appeals Chamber considers in any event that the Trial Chamber based its findings on the beatings of Heliodrom detainees on a wide range of evidence, which Petković ignores. See Trial Judgement, Vol. 2, paras 1580-1590 and references cited therein.

Witness A.¹⁹⁵⁰ The Appeals Chamber recalls that there is no general requirement that the testimony of a witness be corroborated if deemed otherwise credible.¹⁹⁵¹ In this instance, Witness A stated that soldiers who had on their left arm a Bruno Bušić patch would beat prisoners, sometimes until they could barely walk, and that this occurred “frequently”.¹⁹⁵² Petković has failed to show that no reasonable trier of fact could have made the impugned finding based on this evidence which was accepted by the Trial Chamber to be credible, and the credibility of which is not challenged by Petković. His argument, and sub-ground of appeal 5.2.3.1 in relevant part, is accordingly dismissed.

G. Conclusion

578. The Appeals Chamber grants Stojić’s sub-ground of appeal 45.1 and Praljak’s ground of appeal 12 and consequently reverses the convictions of the Appellants¹⁹⁵³ under Counts 1 (persecution as a crime against humanity), 2 (murder as a crime against humanity), 3 (wilful killing as a grave breach of the Geneva Conventions), 15 (inhumane acts as a crime against humanity), and 16 (inhuman treatment as a grave breach of the Geneva Conventions) with regard to the killing of seven civilians in Duša.¹⁹⁵⁴ In addition, the Appeals Chamber reverses the Trial Chamber’s finding that the shelling during attacks on the villages of Duša, Hrasnica, Uzričje, and Ždrimci was indiscriminate and amounted to wanton destruction not justified by military necessity (Count 20) and persecution (Count 1), and reverses the convictions of all Appellants under Count 1 in this regard.¹⁹⁵⁵ Finally, the Appeals Chamber reverses the Trial Chamber’s finding that the destruction of the Old Bridge constituted wanton destruction not justified by military necessity (Count 20), and thus persecution as a crime against humanity (Count 1) and unlawful infliction of terror on civilians as a violation of the laws or customs of war (Count 25),¹⁹⁵⁶ and reverses the Appellants’ convictions on these counts insofar as they concern the Old Bridge. The impact of these reversals, if any, on the Trial Chamber’s findings as to the CCP, as well as on the Appellants’ sentences, will be assessed below.¹⁹⁵⁷

579. The Appeals Chamber dismisses all remaining grounds of appeal regarding the underlying crimes of the JCE.

¹⁹⁵⁰ Trial Judgement, Vol. 2, para. 1591. See Trial Judgement, Vol. 2, para. 1584 & fn. 3996, referring to Witness A, T(F). 14044 (closed session) (13 Feb 2007).

¹⁹⁵¹ *Popović et al.* Appeal Judgement, paras 243, 1264; *D. Milošević* Appeal Judgement, para. 215. See also *Kordić and Čerkez* Appeal Judgement, para. 274.

¹⁹⁵² Witness A, T. 14044-14045 (closed session) (13 Feb 2007).

¹⁹⁵³ The Appeals Chamber recalls that Pušić was not convicted of any charges in relation to these killings as he was not a member of the JCE as of January 1993. Trial Judgement, Vol. 4, para. 1229.

¹⁹⁵⁴ See *supra*, para. 442.

¹⁹⁵⁵ See *supra*, para. 453. See also *supra*, paras 399, 413 (agreeing with the Prosecution that the Trial Chamber erred in not entering convictions for the Four Groups of Incidents under Count 20).

¹⁹⁵⁶ See *supra*, paras 411-412, 414, 426.

¹⁹⁵⁷ See *infra*, paras 886, 3359-3365.