



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

Case No.: IT-04-74-A

Date: 29 November 2017

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IN THE APPEALS CHAMBER

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

Registrar: Mr. John Hocking

Order of: 29 November 2017

PROSECUTOR

v.

**JADRANKO PRLIĆ
BRUNO STOJIĆ
SLOBODAN PRALJAK
MILIVOJ PETKOVIĆ
VALENTIN ČORIĆ
BERISLAV PUŠIĆ**

PUBLIC

SUMMARY OF JUDGEMENT

The Office of the Prosecutor:

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

Counsel for the Accused:

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

1. The Appeals Chamber is sitting today in accordance with Rule 117(D) of the Tribunal's Rules of Procedure and Evidence and the Scheduling Order issued on 5 October 2017. This will be the last sitting of, and the final judgement pronounced by, the International Criminal Tribunal for the former Yugoslavia.
2. This has been a long and complex case, with much time having passed since the trial proceedings began in 2006 and since the Appeals Chamber was first seised by a notice of appeal in June 2013. The appeal hearing in this case was held between 20 and 28 March of this year. The Appeals Chamber would like to thank the parties for their cooperation and professionalism, as well as all sections of the Registry for their dedication and support.
3. I will now summarise the findings of the Appeals Chamber in the case of Jadranko Prlić, Bruno Stojić, Slobodan Praljak, Milovoj Petković, Valentin Ćorić, and Berislav Pušić. Not every issue discussed in the judgement will be addressed in this summary. This oral summary does not constitute any part of the authoritative written judgement of the Appeals Chamber, which will be distributed to the parties at the close of this hearing.

Background of the Case

4. The events giving rise to the appeals in this case occurred between 1992 and 1994, in eight municipalities and five detention centres in the territory of Bosnia and Herzegovina that was claimed as part of the Croatian Community, and later the Croatian Republic, of Herceg-Bosna. Prlić, Stojić, and Ćorić served in the government of these entities, respectively, as President of the government, Head of the Department of Defence, and Chief of the Military Police Administration, with Ćorić later being appointed Minister of the Interior. Praljak and Petković served at different times as the Commander or Chief of the Main Staff of the Bosnian Croat army (or the "HVO"). Pušić served as an officer in the Military Police of the HVO and was later appointed as the head of its Exchange Service and Detention Commission, bodies which were mandated with responsibilities in the areas of detention and prisoner exchange. Praljak also served as the Assistant, and then Deputy, Minister of Defence of Croatia, before later returning to Croatia as an advisor to the Croatian Minister of Defence.
5. The Trial Chamber, by majority, found that by mid-January 1993, a joint criminal enterprise (or a "JCE") had come into existence that was aimed at creating a Croatian entity in Bosnia and Herzegovina that would facilitate the reunification of the Croatian people. According to the Trial Chamber, by majority, this JCE had as its common criminal purpose the "domination by [Croats of the Croatian Republic of Herceg-Bosna] through ethnic cleansing of the Muslim population".

6. The members of this JCE were found, by majority, to have implemented an entire system for deporting the Muslim population of the Croatian Republic of Herceg-Bosna. This system consisted of a wide range of crimes: the removal and placement in detention of civilians, murders and destruction of property during attacks, mistreatment and destruction of property during eviction operations, mistreatment and very harsh conditions of confinement in HVO detention centres, the use of detainees on the front lines for labour or as human shields, and the removal of detainees and their families to other territory once they were released from detention. The Trial Chamber found that thousands of persons lay victim to these acts of violence, which were committed in an organised fashion by the military and political forces of the HVO.
7. The Trial Chamber, by majority, concluded that all six Defence appellants were participants in this JCE. They were convicted for committing grave breaches of the Geneva Conventions, violations of the laws or customs of war, and crimes against humanity, including murder, persecution, imprisonment, unlawful labour, forcible transfer, deportation, inhumane acts, inhuman treatment, extensive destruction of property not justified by military necessity, destruction of institutions dedicated to religion or education, unlawful attack on civilians, and unlawful infliction of terror on civilians. In addition, under the third category of JCE liability, Prlić, Stojić, Petković, and Čorić were also convicted of rape and sexual assault, and Defence appellants with the exception of Pušić were found guilty of plunder and extensive appropriation of property. Čorić was also found to bear superior responsibility for certain crimes which occurred in 1992.
8. The Trial Chamber sentenced Prlić to 25 years of imprisonment, Stojić, Praljak, and Petković to 20 years each, Čorić to 16 years, and Pušić to 10 years of imprisonment. All six Defence appellants, as well as the Prosecution, have lodged appeals against the Trial Judgement. I now turn to those appeals.

Fair Trial and Indictment

9. Starting with the fairness of the proceedings, Prlić contends that he was systematically denied adequate time and facilities to question witnesses, while Stojić alleges that the Trial Chamber erroneously relied on evidence related to Franjo Tudman and other senior leaders of the Republic of Croatia who passed away before the proceedings started. The Appeals Chamber finds no merit in either contention, and dismisses them accordingly
10. With regard to the Indictment and other fair trial issues, Stojić and Petković allege that the Trial Chamber impermissibly altered the Prosecution's charges against them by contemplating

a JCE other than the one pleaded in the Indictment. Petković adds that the Prosecution's final trial brief indicated that it was pursuing a narrower case than the one for which he was convicted. The Prosecution responds that the Trial Chamber did not depart from the Indictment, that the Prosecution's opening statement, presentation of evidence, and mid-case submissions were consistent with the Indictment, and that its final trial brief did not alter the notice of its charges. The Appeals Chamber observes that the Indictment clearly put the Defence appellants on notice of the crimes and modes of responsibility with which they were charged. The Appeals Chamber further considers, Judge Pocar dissenting, that the Prosecution's final trial brief, which did not expressly and formally withdraw any allegations, cannot reasonably be interpreted to mean that the Prosecution was abandoning modes of liability charged in the Indictment. The Appeals Chamber therefore finds, Judge Pocar dissenting, that Stojić and Petković have failed to demonstrate any error.

11. Ćorić also challenges three aspects of the notice of charges against him. The first and second, alleging that the Trial Chamber exceeded the Indictment in finding a state of occupation and in finding the extent of protections applicable to certain detainees, are unsubstantiated and unpersuasive. The third such challenge is that the Trial Chamber erred by considering that he contributed to the JCE by exercising his powers as Minister of the Interior, since this was not charged in the Indictment. The Prosecution responds that he was provided with clear notice, that any defect was appropriately cured, and that, in any event, Ćorić's ability to prepare his defence was not materially impaired. The Appeals Chamber finds that the Indictment was ambiguous on this point, thereby rendering it vague and defective. This defect was not cured through the Prosecution's post-Indictment disclosures. A defective indictment which has not been cured causes prejudice to the accused, and this defect can only be deemed harmless through a demonstration that the accused's ability to prepare his or her defence was not materially impaired. The Prosecution has not met its burden in this regard. In light of the prejudice suffered, the Appeals Chamber grants Ćorić's appeal in part, reverses the Trial Chamber's findings on his role in the JCE as Minister of the Interior as of 10 November 1993, and vacates his convictions in relation to his responsibility as Minister of the Interior based on JCE liability.

Admissibility and Assessment of Evidence

12. I now turn to the challenges regarding admissibility and weight of the evidence as well as witness credibility.
13. Prlić and Praljak contend that the Trial Chamber erred when it admitted and relied on extracts of Ratko Mladić's diaries, while denying them the opportunity to reopen their case or tender

evidence in response. Stojić adds that this constituted uncorroborated and untested hearsay. The Appeals Chamber finds that they have not demonstrated that the Trial Chamber abused its discretion in admitting the extracts. Prlić never unconditionally requested that his case be reopened and, in any event, the Trial Chamber expressly permitted him to admit evidence to rebut these diary extracts, which he did. Praljak was likewise offered an opportunity to challenge these extracts. Neither Prlić and Praljak, nor Stojić, show that no reasonable trier of fact could have relied on this evidence. Their arguments are dismissed.

14. Prlić, Stojić, Praljak, and Ćorić also contest decisions pertaining to the admission or assessment of evidence, including with regard to witness credibility and Praljak's own testimony. The Appeals Chamber finds that they fail to show any error. With respect to Praljak's claim that the Trial Chamber failed to explain what parts of his testimony it found credible or not credible and why, the Appeals Chamber finds that he does not demonstrate how the lack of a more detailed discussion would invalidate the Trial Judgement, and dismisses this challenge accordingly.

Legal Requirements for Grave Breaches of the Geneva Conventions

15. I now turn to the legal requirements for grave breaches of the Geneva Conventions.
16. The Appeals Chamber reverses, *proprio motu*, the Trial Chamber's conclusion that an international armed conflict between the HVO and the Bosnian Muslim army (or the "ABiH") only existed where active combat was taking place. The Appeals Chamber recalls that the temporal and geographic scope of an international armed conflict extends beyond the exact time and place of hostilities, and considers that the Trial Chamber's findings of an international armed conflict in specific parts of Bosnian territory were sufficient for the grave breaches regime to be applied to crimes committed anywhere in Bosnia and Herzegovina until the end of the armed conflict, so long as the necessary nexus to the armed conflict was established.
17. With regard to the Trial Chamber's finding of a state of occupation, the Appeals Chamber considers that the Trial Chamber appropriately examined whether a state of occupation existed in the relevant municipalities at the time certain crimes were committed against protected persons in and protected property on occupied territory. The Appeals Chamber considers that occupation is a question of fact that needs to be examined on a case-by-case basis. The Appeals Chamber further considers that a power can, by proxy, exercise the authority necessary for occupation through *de facto* organised and hierarchically structured groups. There were numerous factors indicating that Croatia, through the HVO, had actual authority over the relevant municipalities, and the Appeals Chamber finds that Prlić, Stojić, Praljak, Petković, and Ćorić have failed to show any error by the Trial Chamber in reaching this conclusion.

18. The Trial Chamber also found that two locations in Vareš Municipality were occupied *after* 23 October 1993, and the Prosecution concedes that occupation was not proven at the time that certain property was destroyed and appropriated in these locations. The Appeals Chamber thus vacates the Defence appellants' convictions for extensive destruction and appropriation of property insofar as these incidents are concerned.
19. The Trial Chamber further found that the HVO detained two categories of Muslim men who benefited from the overarching protections of Geneva Convention IV, rather than being prisoners of war receiving the different protections of Geneva Convention III. First, with respect to Muslim members of the HVO, Stojić, Praljak, Petković, and Ćorić allege that war crimes cannot be committed by soldiers against members of their own military force. The Appeals Chamber considers that, in this case, the Trial Chamber correctly took into account the allegiance of Muslim HVO members rather than merely considering their nationality. Since the detaining authority's view of the victims' allegiance is a relevant factor in this assessment, the Appeals Chamber finds that no error has been demonstrated.
20. Second, with respect to Muslim men of military age, Praljak, Petković, Ćorić, and Pušić submit that the Trial Chamber erred in finding that such men were not members of the armed forces. They refer to Bosnian law regarding reserve forces as well as a general mobilisation order. The Trial Chamber duly considered these arguments at trial. The Appeals Chamber further finds that a reasonable trier of fact could have concluded that the HVO failed to carry out individualised assessments of military-aged Muslim men within a reasonable time, as required by law. Moreover, the Trial Chamber made findings demonstrating that such men were arrested *en masse* together with Muslim women, children, and the elderly, and that all Muslims were detained and treated in the same manner irrespective of their status. The challenges to these findings are dismissed.
21. Petković finally submits that the detention was necessary for security reasons and therefore justified under Geneva Convention IV. The Appeals Chamber observes that such a detention requires an individualised assessment that each civilian poses a particular security risk. The Trial Chamber concluded that the arrests were not justified, and that Petković's orders to arrest these groups of Muslim men also ran afoul of Geneva Convention IV. Petković has not shown that the Trial Chamber erred in reaching these conclusions.

Underlying Crimes

22. I now turn to the underlying crimes for which the Defence appellants were convicted. Before doing so, I note that Judge Liu dissents from all portions of the Judgement dealing with the

unlawful infliction of terror on civilians as a violation of the laws or customs of war because 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 Judgement do not adequately define a criminal charge.

23. Praljak appeals the Trial Chamber's findings that the HVO unlawfully imprisoned more than 1,000 Muslim civilians in houses in Prozor Municipality and held them in harsh and overcrowded conditions. He argues that some Muslims might have gone to the houses voluntarily, that their relocation was necessary to ensure their safety, and that, although restricted, they still enjoyed some freedom of movement and were not detained. The Appeals Chamber dismisses his first two contentions, which ignore the extent of the evidence relied upon by the Trial Chamber or otherwise fail to show that no reasonable trier of fact could have reached the same conclusion. With respect to his third contention, the Appeals Chamber recalls that imprisonment and unlawful confinement can occur even where civilians are held in houses without guards and where they have some freedom of movement. In light of the findings that HVO soldiers and Military Police arrested civilians, brought them to the houses, and remained present in those locations, the Appeals Chamber finds no error in the conclusion that these civilians were imprisoned and unlawfully confined. Even if their internment had been a necessary restriction on their movement under Geneva Convention IV, this would have been subject to strict rules and requirements, which the HVO failed to respect, thereby belying the true nature of the detention. Praljak's appeal is dismissed.
24. A month into this detention, the HVO forcibly removed and transferred Muslim women, children, and elderly persons, according to the Trial Chamber. Praljak submits that the Trial Chamber wrongly found that they were forced to leave, instead of considering that they may have left by choice, and that in any event the removal may have been necessary for security or military reasons. The Trial Chamber found that HVO soldiers used trucks to transfer these civilians, fired into the air to force the Muslims to get into the trucks, and later forced them to walk on foot under military escort. Praljak fails to demonstrate any error in these findings. As for the necessity of relocating civilians, the Appeals Chamber recalls that the displacement of a population cannot be justified where it is caused by a humanitarian crisis resulting from the accused's own unlawful activity. The Trial Chamber found that Praljak shared responsibility for the harsh conditions of detention, that the transfer took place when there was no fighting in the area, and that there was no possibility of return. The Appeals Chamber identifies no error in these findings and rejects Praljak's appeal.
25. The Appeals Chamber now turns to the appeals concerning the wanton destruction of cities, towns or villages, or devastation not justified by military necessity.

26. The Trial Chamber found that, throughout the day on 8 November 1993, an HVO tank fired at the Old Bridge of Mostar, rendering it on the verge of collapse by the evening. The Trial Chamber also found that the Old Bridge was essential for combat activities and that, at the time of the attack, it was a military target given that its destruction would cut off practically all possibilities for the ABiH to continue its supply operations. The destruction of the Old Bridge resulted in virtually total isolation of certain residents and had a significant psychological impact on the Muslim population of Mostar, and the Trial Chamber therefore concluded that the impact of the destruction was disproportionate to the concrete and direct military advantage expected. The Trial Chamber also found that the HVO destroyed the Old Bridge in order to sap the morale of the Muslim population, and therefore concluded that the HVO committed wanton destruction not justified by military necessity.
27. Stojić, Praljak, and Petković challenge the Trial Chamber's findings concerning this event. Stojić alleges that the Trial Chamber focused on actual harm rather than reasonably anticipated harm, failed to analyse the harm caused in terms of tangible injuries, and should have placed more weight on the Old Bridge's crucial importance as a military objective. Praljak and Petković also submit that the Trial Chamber erred in assessing proportionality. The Prosecution responds that Stojić, Praljak, and Petković have not shown an error, that the Trial Chamber did not give insufficient weight to the anticipated military advantage, and that the Trial Chamber appropriately considered that the HVO's primary aim was to cause psychological and physical harm of the population. The Appeals Chamber finds, Judge Pocar dissenting, that since the Old Bridge was a military target at the time of the attack, and thus its destruction offered a definite military advantage, it cannot be considered, in and of itself, as wanton destruction not justified by military necessity. In the absence of any destruction of property not justified by military necessity in the Trial Chamber's legal findings, the Appeals Chamber concludes, Judge Pocar dissenting, that a requisite element of the crime was not satisfied, and therefore overturns the finding that, in this case, the Prosecution proved that destroying the Old Bridge constituted the crime of wanton destruction of cities, towns or villages, or devastation not justified by military necessity.
28. The Trial Chamber relied on these finding as a basis to find that the HVO committed persecution and unlawful infliction of terror on civilians when it destroyed the Old Bridge. At the appeal hearing, the Appeals Chamber invited submissions as to what impact an error on wanton destruction would have on these other two crimes. In light of the Trial Chamber's finding that the HVO had a military interest in destroying the Old Bridge and that it was a military target, the Appeals Chamber finds that no reasonable trier of fact could have found that the HVO forces had the specific intent to discriminate or the specific intent to commit terror

when it destroyed the Old Bridge. The Appeals Chamber reverses, Judge Pocar dissenting, the Trial Chamber's findings that the destruction of the Old Bridge constituted persecution and the unlawful infliction of terror on civilians, and acquits the Defence appellants of these crimes in relation to the Old Bridge. The Appeals Chamber also considers that these conclusions warrant the reversal of the Trial Chamber's further finding that Prlić knew about HVO crimes in destroying the Old Bridge and contributed to the JCE by attempting to minimise or deny this criminal destruction.

29. The Trial Chamber further found that the HVO laid siege to East Mostar from June 1993 to April 1994, confining the population to a cramped enclave. The population could not leave East Mostar and was forced to endure extremely harsh conditions without food, water, electricity, or appropriate medical care, while the HVO subjected East Mostar to intense and uninterrupted shelling, engaged in a campaign of sniper fire, deliberately targeted members of international organisations, and hindered or blocked humanitarian aid. The Trial Chamber concluded that these actions were specifically intended to discriminate against the Muslims of Mostar Municipality and to inflict terror on the civilian population. Stojić, Praljak, and Petković contest these and related findings. They fail to demonstrate any error by the Trial Chamber. The Appeals Chamber dismisses their challenges.
30. The Trial Chamber also found that, during attacks, the HVO targeted and destroyed or significantly damaged ten mosques in East Mostar, as well as Muslim property in Prozor Municipality. The Trial Chamber, however, overlooked its finding that these incidents did not qualify as a grave breach of the Geneva Conventions, and neglected to enter convictions for wanton destruction as a violation of the laws or customs of war. This was an error, and the Appeals Chamber allows the Prosecution's ground of appeal in this respect, but declines to enter new convictions on appeal.
31. With respect to the attacks in Gornji Vakuf Municipality in January 1993, the Trial Chamber found that the HVO attacked four villages including Duša, which the HVO shelled indiscriminately, thereby killing seven civilians. The Trial Chamber found that the attack on Duša was indiscriminate because the HVO: (1) used weapons – more specifically, “shells” – the nature of which makes it impossible to distinguish military from civilians targets; and (2) made no effort to allow the civilian population to flee. Stojić and Praljak argue that the Trial Chamber erred when concluding that shells are inherently indiscriminate, and in disregarding that the house destroyed by the HVO in Duša was a legitimate military target. The Appeals Chamber finds that the Trial Chamber's conclusion in relation to the nature of “shells” was not based on any evidence that the weapons used during the attack were inevitably

indiscriminate. Absent such a basis, the Appeals Chamber reverses the finding that “shells” are inherently indiscriminate. The Trial Chamber’s remaining finding is insufficient for a reasonable trier of fact to conclude that the attack on Duša was indiscriminate. Because the Trial Chamber’s reasoning with respect to Duša applied equally to the attacks on the other three villages, the Appeals Chamber also reverses the finding that those attacks were indiscriminate.

32. The Trial Chamber relied on the indiscriminate nature of this attack to substantiate its finding that the HVO forces had the *mens rea* for murder and wilful killing. The Prosecution argues that the Trial Chamber reasonably rejected the argument that the HVO aimed at legitimate military targets, and if the attack was not indiscriminate, then it was a deliberate attack on civilians. Given the combat activity and the position of the defenders of the village, the Appeals Chamber finds that no reasonable trier of fact could have concluded that the HVO forces in Duša possessed the *mens rea* for murder and wilful killing. The Trial Chamber’s factual error occasioned a miscarriage of justice, and the Appeals Chamber reverses the subsequent findings and convictions in relation to the killings in Duša. The Appeals Chamber also reverses the Trial Chamber’s findings on the wanton destruction of property during the attacks on the four villages on the same day and the related convictions for persecution.
33. The reversal of the findings in relation to the Duša killings also impacts the Trial Chamber’s conclusion that the HVO engaged in a clear pattern of murderous conduct from January until June 1993, when the siege of East Mostar started. The Appeals Chamber therefore considers that the Trial Chamber’s remaining findings establish that wilful killing and murder were part of the JCE’s common criminal purpose only as of June 1993, and not from January 1993 until June 1993. Consequently, the Appeals Chamber reverses the Defence appellants’ convictions for the murder of two unarmed men in April 1993 in Tošćanica, Prozor Municipality as being outside the scope of the JCE. The Appeals Chamber also finds that this reversal impacts the reasonableness of the Trial Chamber’s conclusion that Prlić could have foreseen the possible commission of other murders that took place in April 1993 and willingly took this risk, and reverses this conclusion.
34. The Trial Chamber also found that following these attacks on Duša and the other villages, HVO soldiers set fire to the houses of Bosnian Muslims, illegally arrested and detained civilians, and forcibly removed and unlawfully displaced women, children, and elderly persons. Praljak appeals against these findings. He fails to substantiate his allegations of error, and his arguments are therefore dismissed.

Joint Criminal Enterprise

35. I now turn to the Trial Chamber's findings on the JCE and the responsibility of the Defence appellants pursuant to the first and third categories of this mode of liability. The Appeals Chamber's consideration of these grounds of appeal amounts to the majority of the appeal judgement. For the sake of brevity, I will focus only on key outcomes. Before doing so, I note that, in light of his dissenting opinion on the scope of the JCE charged by the Prosecution, Judge Pocar does not join the majority opinion with respect to its findings that Counts 2, 3, and 21 constitute JCE I crimes.
36. I first address the Defence appellants' contentions concerning the existence of JCE liability in customary international law. Prlić, Praljak, Čorić, and Pušić maintain that there are cogent reasons for the Appeals Chamber to depart from its prior jurisprudence that JCE, in all of its forms, was a mode of liability firmly established in customary international law at the relevant time. They have failed to demonstrate any such cogent reasons, and their contentions are dismissed.
37. Turning next to how the Trial Chamber described the ultimate purpose of the JCE, Prlić, Stojić, Praljak, and Pušić challenge the Trial Chamber's finding that this ultimate purpose was shared by Franjo Tuđman and other leaders and was aimed at setting up a Croatian entity that reconstituted earlier borders and that facilitated the reunification of the Croatian people. The Appeals Chamber finds that they have not demonstrated that the Trial Chamber misinterpreted the relevant evidence, disregarded any evidence, or otherwise erred in reaching its conclusion. They, along with Petković, also allege a variety of factual errors underpinning the Trial Chamber's conclusion concerning the ultimate purpose of the JCE. Their arguments are lacking in merit and are dismissed.
38. All six Defence appellants challenge the Trial Chamber's conclusion that the common criminal purpose shared by the JCE members was the "domination by [Croats of the Croatian Republic of Herceg-Bosna] through ethnic cleansing of the Muslim population". In particular, they allege errors with regards to this definition of the common criminal purpose, the Trial Chamber's approach to its scope and subsequent expansion, and the findings on the stages of its implementation. Despite the extent of their appeals, none of the Defence appellants demonstrate any error of fact or law in the Trial Chamber's consideration of these issues.
39. Prlić challenges the Trial Chamber's finding that he was a principal member of the JCE and significantly contributed to it from January 1993 to April 1994, including through his involvement in blocking humanitarian aid as well as in the mass arrests of Muslims, the

participation in planning the attack on Gornji Vakuf Municipality, the eviction and movement of the population, and the concealment of crimes. Prlić submits that the Trial Chamber erred with respect to his powers in both civilian and military matters, the ways in which he significantly contributed to the JCE, his intent, and his ability to foresee crimes not within the scope of the JCE and willingness to accept this risk. The Appeals Chamber finds no such error, and dismisses his appeal in this respect.

40. Stojić alleges that the Trial Chamber erred in finding that he commanded and had effective control over the HVO and its Military Police, that he failed to prevent and punish their crimes, that he used the HVO and its Military Police to commit crimes, and that he significantly contributed to the JCE. Stojić also challenges the Trial Chamber's findings on his knowledge of crimes in the various municipalities and detention centres. Having examined his arguments, the Appeals Chamber finds that he fails to establish that the Trial Chamber reached its conclusions in error. However, the Appeals Chamber grants his appeal of the finding that he learned and accepted that civilians, who were relocated from Prozor Secondary School, were being detained in Ljubuški Prison in July 1993, but considers that this does not affect his overall responsibility for these crimes as a member of the JCE. The Appeals Chamber also finds that the Trial Chamber failed to provide a reasoned opinion on Stojić's intent for the crime of unlawful infliction of terror on civilians but concludes that Stojić fails to show how this error invalidates his conviction for this crime. Nor has Stojić demonstrated any error in the findings that he specifically intended to discriminate against the Muslim population, intended to commit crimes in various municipalities and detention centres, and willingly took the risk that rape, sexual assault, and thefts would take place. His appeals are dismissed.
41. Praljak appeals the findings that he wielded command authority over the HVO and its Military Police, was a conduit between the Croatian government and the HVO in furtherance of the JCE, and that he significantly contributed to the JCE with the requisite intent. He also challenges the Trial Chamber's conclusions concerning his involvement, knowledge, and intent for crimes committed in various municipalities and detention centres. The Trial Chamber stated that when Praljak relinquished his functions within the HVO Main Staff on 9 November 1993, he ceased being a member of the JCE. The Trial Chamber, however, failed to provide a reasoned opinion as to whether it convicted him for crimes occurring after 9 November 1993, in particular the destruction of seven mosques in East Mostar that could not reasonably be found to have occurred before this date, and sniping incidents committed in East Mostar the following year. The Appeals Chamber finds that Praljak cannot be held responsible for crimes occurring after 9 November 1993. The Appeals Chamber also finds that the Trial Chamber failed to provide a reasoned opinion on Praljak's intent for the crime of unlawful infliction of

terror on civilians but concludes that Praljak fails to show how this error invalidates his conviction for this crime. The Appeals Chamber also grants Praljak's appeal that no reasonable trier of fact could have concluded that he facilitated the murders and property destruction that took place in Stupni Do, Vareš Municipality on 23 October 1993. Praljak, however, has not demonstrated an error in the finding that he participated in planning and directing the operations in Vareš Municipality, and the Appeals Chamber affirms his contribution to the JCE in this regard. The remainder of Praljak's challenges are dismissed.

42. Petković contends that the Trial Chamber erred with regard to his powers and functions, his involvement in crimes committed in municipalities and detention centres, his intent, and his ability to foresee crimes not within the scope of the JCE and willingness to accept this risk, as well as his responsibility for crimes committed by certain groups. With respect to the murders and property destruction in Stupni Do, as well as arrests of Muslim men in Vareš town, the Appeals Chamber finds that there was insufficient support for a reasonable trier of fact to conclude that Petković directly contributed to these crimes. This has no impact, however, on the Trial Chamber's findings that Petković was informed of these crimes, failed to take measures against the perpetrators, launched a fake investigation with regard to Stupni Do, and accepted the crimes. The Appeals Chamber also finds that the Trial Chamber erroneously concluded, without referring to any evidence, that Petković knew that the Bruno Bušić Regiment committed crimes in Gornji Vakuf Municipality in January 1993, even though there was sufficient support for its conclusion that Petković learned of the regiment's crimes three months later. The Appeals Chamber reverses the finding that Petković contributed to the regiment's crimes by ordering its redeployment while knowing of the crimes it committed before April 1993. Finally, the Appeals Chamber grants Petković's appeal to his responsibility, based on the first category of JCE liability, for the destruction of two mosques that occurred before the Trial Chamber found that destruction or wilful damage to religious institutions was part of the JCE's common criminal purpose. The findings of the Trial Chamber, however, support responsibility for the destruction of these mosques pursuant to the third category of JCE liability, and the Appeals Chamber finds that Petković is so responsible. Petković's appeal is otherwise dismissed.
43. Ćorić challenges the Trial Chamber's findings relating to his JCE contribution, as well as his *mens rea*. That is, he challenges both his intent and his ability to foresee crimes not within the scope of the JCE combined with his willingness to take this risk. The Appeals Chamber observes that he repeats arguments that were unsuccessful at trial without any demonstration that their rejection by the Trial Chamber constitutes an error warranting appellate intervention. Ćorić also regularly fails to identify the findings that he purports to contest, misrepresents the

Trial Chamber's factual findings, and puts forward arguments that are undeveloped, irrelevant, or obscure. With respect to his submissions that are in accordance with the standard of appellate review, the Appeals Chamber finds that they fail to demonstrate an error. In particular, he has not demonstrated any error in the Trial Chamber's conclusions concerning his powers, his involvement in HVO detention centres, and his involvements in other crimes committed in municipalities. Ćorić's challenges are dismissed.

44. Pušić appeals against the Trial Chamber's finding that he was a member of the JCE from April 1993 until April 1994, which the Trial Chamber based on his powers and contributions to crimes in the HVO network of detention centres, through prisoner exchanges, and in various municipalities, his spreading of false information in relation to HVO crimes, and his intent. The Appeals Chamber finds merit in some aspects of his appeal, and accordingly overturns three findings of the Trial Chamber with respect to Pušić's contribution to the JCE. Nevertheless, the Appeals Chamber upholds a majority of the Trial Chamber's findings, including those which formed the bedrock for the Trial Chamber's conclusion that he contributed significantly to the JCE. These related to his role in organising the release of Muslim detainees to ABiH-held territories or to third countries, and his role as the link between the network of HVO detention centres and the most important JCE members. The Appeals Chamber finds that Pušić has failed to demonstrate any error in the Trial Chamber's conclusion that he contributed significantly to the JCE and intended the crimes which formed part of it.
45. Turning now to the Prosecution's appeal, the Prosecution argues that the Trial Chamber erred in assessing the appellants' responsibility pursuant to the third category of JCE liability. All six Defence appellants respond that these acquittals were appropriate. The Appeals Chamber considers, Judge Liu dissenting, that a close examination of the Trial Judgement reveals that the Trial Chamber frequently used language indicating the use of an incorrect foreseeability standard for this category of JCE liability. In light of the context and manner in which the Trial Chamber used the terminology in question, at least with respect to the incidents specifically challenged by the Prosecution, the Appeals Chamber finds, Judge Liu dissenting, that when assessing foreseeability, the Trial Chamber applied a higher threshold than required by the correct legal standard. This was an error of law. The Appeals Chamber also finds, Judge Liu dissenting, that the Trial Chamber committed an error of law by failing to provide a reasoned opinion for why it found Prlić, Stojić, Praljak, Petković, and Ćorić not responsible for numerous crimes pursuant to the third category of JCE liability.
46. Collectively, these errors concern Prlić's alleged responsibility for 26 separate incidents of murder, sexual violence, theft, and destruction of mosques; Stojić's alleged responsibility for

30 such incidents; for Praljak's alleged responsibility for 32 such incidents; Petković's alleged responsibility for 18 such incidents except none for the destruction of mosques; Ćorić's alleged responsibility for 31 such incidents; and Pušić's alleged responsibility for 35 such incidents.

47. The Prosecution requests that the Appeals Chamber correct these errors, engage in a *de novo* review, find that requisite elements are met, overturn the acquittals, convict the Defence appellants, and increase their sentences accordingly. In the alternative, the Prosecution asks the Appeals Chamber to exercise its discretion to remand this issue to a bench of the Tribunal to apply the correct legal standards to the trial record. The Appeals Chamber observes that if it were to conduct its own review of the relevant evidence and factual findings of the Trial Chamber, it would have to make findings on each of the six Defence appellants' responsibility for the numerous incidents, involving four different types of crimes that occurred in six municipalities and three detention centres over a period of 11 months. Moreover, the evidence concerning *mens rea* is of a circumstantial nature pertaining to their conduct, knowledge, and intent over more than a year in various locations. Conducting such an analysis would amount to a re-evaluation of the entire trial record and, in effect, require the Appeals Chamber to decide the case anew. However, an appeal is not a trial *de novo*, and the Appeals Chamber cannot be expected to act as a primary trier of fact. The Appeals Chamber accordingly declines to determine whether the elements of the third category of JCE liability are met with respect to the incidents at issue. Moreover, taking into account, *inter alia*, the protracted length of the proceedings which have been ongoing for more than 13 years, with sentences ranging from 10 to 25 years of imprisonment, the Appeals Chamber also declines to order a retrial or remit limited issues for further proceedings.
48. With respect to certain incidents concerning the killing of persons who were detained, the Appeals Chamber finds, Judge Liu dissenting, that the Prosecution has shown that all reasonable doubt as to Prlić's and Petković's guilt under the third category of JCE liability has been eliminated and that no reasonable trier of fact could have acquitted them for these crimes. Thus, the Trial Chamber committed errors of fact. The Appeals Chamber declines to enter new convictions in this regard on appeal.

Superior Responsibility

49. The Prosecution also alleges that the Trial Chamber failed to adjudicate the superior responsibility of Prlić, Stojić, Praljak, Petković, and Ćorić, who respond either that there was no such error or that it would be unfair to remedy the error by entering a conviction on appeal. The Appeals Chamber recalls that, when an accused is charged cumulatively under both Articles 7(1) and 7(3) of the Statute, the Trial Chamber is legally required to make findings as

to whether the accused incurred superior responsibility. The Appeals Chamber finds that the Trial Chamber erred by failing to make findings on whether Prlić, Stojić, Praljak, Petković, and Ćorić bear superior responsibility for failing to punish certain crimes. The Appeals Chamber grants this aspect of the Prosecution's appeal. It declines, however, to embark on a *de novo* determination of their superior responsibility or to order a remittance or retrial of this case for that purpose.

50. The Trial Chamber did find Ćorić responsible as a superior for crimes committed in Prozor Municipality in October 1992, specifically the destruction of around 75 Muslim homes and other property as well as the theft of vehicles. Ćorić disputes the Trial Chamber's assessment of the evidence, as well as its findings that he exercised effective control over the perpetrators, knew or had reason to know of the crimes, and failed to punish his subordinates. The Appeals Chamber finds that Ćorić has not demonstrated any error by the Trial Chamber and dismisses his appeal accordingly.

Cumulative Convictions

51. Ćorić also alleges that the Trial Chamber erred by entering convictions cumulatively for grave breaches of the Geneva Conventions and violations of the laws or customs of war, as well as for war crimes and crimes against humanity. The Appeals Chamber finds that he misinterprets the well-established legal standard that convictions can be entered where there is a materially distinct element for the same set of crimes, and that he fails to demonstrate any error by the Trial Chamber in entering such convictions in this case. His argument is dismissed.

Sentencing

52. Turning now to sentencing, all parties appeal except for Praljak.
53. The Appeals Chamber finds merit in the Prosecution's argument that the Trial Chamber failed to take into account Ćorić's superior responsibility in sentencing. The Appeals Chamber dismisses all other grounds of appeal raised by the Prosecution as well as by the Defence appellants concerning gravity, aggravating circumstances, mitigating circumstances, and comparisons to sentencing practices in the former Yugoslavia and to other cases.
54. As for the calculation of time already served, Stojić, Petković, Ćorić, and Pušić submit that the Trial Chamber wrongly excluded their time spent on provisional release, including while being under home confinement or receiving medical treatment. The Appeals Chamber recalls that Rule 101(C) of the Rules provides that credit shall be given for the period "during which the convicted person was detained in custody" pending surrender, trial, or appeal.

The Appeals Chamber considers, Judge Liu dissenting in part, that the provisional release conditions imposed on Stojić, Petković, Ćorić, and Pušić fall short of being tantamount to detention in custody, and therefore rejects their submissions that the Trial Chamber erred when it excluded the periods of their provisional release when calculating the time they have already been detained in custody.

55. Finally, with regard to the impact of the Appeals Chamber's findings on the sentence imposed by the Trial Chamber, the Appeals Chamber has taken into account the extent to which it has reversed certain convictions and findings of culpability for all six Defence appellants. All six, however, remain convicted of numerous, very serious crimes.

Disposition

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

PURSUANT TO Article 25 of the Statute and Rules 117 and 118 of the Rules;

NOTING the respective written submissions of the Parties and the arguments presented at the Appeal Hearing on 20-24 and 27-28 March 2017;

SITTING in open session;

WITH RESPECT TO JADRANKO PRLIĆ,

DISMISSES Prlić's appeal in its entirety;

REVERSES, as a result of granting Stojić's sub-ground of appeal 45.1 and Praljak's ground of appeal 12, Prlić's convictions as a participant in a JCE for: (1) persecution, murder, and inhumane acts as crimes against humanity and wilful killing and inhuman treatment as grave breaches of the Geneva Conventions with regard to the killing of seven civilians in Duša, Gornji Vakuf Municipality (Counts 1, 2, 3, 15, and 16, all in part); (2) murder as a crime against humanity and wilful killing as a grave breach of the Geneva Conventions for the killing of two unarmed men in Tošćanica, Prozor Municipality (Counts 2 and 3, both in part); and (3) murder as a crime against humanity and wilful killing as a grave breach of the Geneva Conventions for the murders linked to detentions committed in Jablanica Municipality in April 1993 (Counts 2 and 3, both in part);

REVERSES, as a result of allowing the additional grounds of appeal submitted by, variously, Prlić, Stojić, Praljak, and Ćorić in response to the Prosecution's ground of appeal 3, Prlić's convictions as a participant in a JCE for: (1) persecution as a crime against humanity in relation to the destruction, during attacks, of houses in Gornji Vakuf Municipality on 18 January 1993 (Count 1 in part); and

(2) Judge Pocar dissenting, persecution as a crime against humanity and unlawful infliction of terror on civilians as a violation of the laws or customs of war in relation to the destruction of the Old Bridge of Mostar (Counts 1 and 25, both in part);

REVERSES *proprio motu* Prlić's conviction as a participant in a JCE for extensive destruction of property, not justified by military necessity and carried out unlawfully and wantonly, as a grave breach of the Geneva Conventions, in relation to the destruction of houses and buildings in Vareš Municipality (Count 19 in part);

AFFIRMS, Judge Liu dissenting with respect to Count 25 and Judge Pocar dissenting, in part, with respect to Counts 2, 3, and 21, the remainder of Prlić's convictions under Counts 1-13, 15-16, 18-19, 21-25;

ALLOWS, Judge Liu dissenting, the Prosecution's ground of appeal 1(C) concerning Prlić's responsibility as a participant in a JCE for the incidents as set out in paragraphs 3079 and 3114 of this Judgement, but **DECLINES** to quash the acquittals in this regard, or to order a retrial or a remittance;

ALLOWS, Judge Liu dissenting, the Prosecution's ground of appeal 1(E) in part and **FINDS**, Judge Liu dissenting, that the Trial Chamber incorrectly found Prlić not guilty for committing through his participation in a JCE murder as a crime against humanity and wilful killing as a grave breach of the Geneva Conventions with respect to the killings of: (1) a Muslim detainee in Dretelj Prison on 16 July 1993; and (2) a detainee in Vojno Detention Centre on 5 December 1993 (Counts 2 and 3, both in part), but **DECLINES** to enter new convictions against him in this regard;

ALLOWS the Prosecution's ground of appeal 2 concerning Prlić's superior responsibility for the incidents as set out in paragraphs 3134 and 3151 of this Judgement, but **DECLINES** to quash the acquittals in this regard, or to order a retrial or a remittance;

ALLOWS the Prosecution's ground of appeal 3 in part and **FINDS** that the Trial Chamber erred by failing to enter convictions for wanton destruction of cities, towns or villages, or devastation not justified by military necessity as a violation of the laws or customs of war with respect to the destruction, during attacks, of: (1) Muslim property in Prozor Municipality between May or June and early July 1993; and (2) mosques in East Mostar, Mostar Municipality, between June and December 1993 (Count 20 in part), but **DECLINES** to enter new convictions against Prlić in this regard;

DISMISSES the Prosecution's appeal concerning Prlić in all other respects;

AFFIRMS the sentence of 25 years of imprisonment, subject to credit being given under Rule 101(C) of the Rules for the period he has already spent in detention;

WITH RESPECT TO BRUNO STOJIĆ,

GRANTS Stojić's sub-ground of appeal 45.1 and **REVERSES** his convictions as a participant in a JCE for persecution, murder, and inhumane acts as crimes against humanity and wilful killing and inhuman treatment as grave breaches of the Geneva Conventions with regard to the killing of seven civilians in Duša, Gornji Vakuf Municipality (Counts 1, 2, 3, 15, and 16, all in part);

DISMISSES, Judge Liu dissenting in part and Judge Pocar dissenting in part, Stojić's appeal in all other respects;

REVERSES, as a result of granting Stojić's sub-ground of appeal 45.1 and Praljak's ground of appeal 12, Stojić's convictions as a participant in a JCE for murder as a crime against humanity and wilful killing as a grave breach of the Geneva Conventions for the killing of two unarmed men in Tošćanica, Prozor Municipality (Counts 2 and 3, both in part);

REVERSES, as a result of allowing the additional grounds of appeal submitted by, variously, Prlić, Stojić, Praljak, and Čorić in response to the Prosecution's ground of appeal 3, Stojić's convictions as a participant in a JCE for: (1) persecution as a crime against humanity in relation to the destruction, during attacks, of houses in Gornji Vakuf Municipality on 18 January 1993 (Count 1 in part); and (2) Judge Pocar dissenting, persecution as a crime against humanity and unlawful infliction of terror on civilians as a violation of the laws or customs of war in relation to the destruction of the Old Bridge of Mostar (Counts 1 and 25, both in part);

REVERSES *proprio motu* Stojić's conviction as a participant in a JCE for extensive destruction of property, not justified by military necessity and carried out unlawfully and wantonly, as a grave breach of the Geneva Conventions, in relation to the destruction of houses and buildings in Vareš Municipality (Count 19 in part);

REVERSES *proprio motu* Stojić's conviction as a participant in a JCE, under JCE III liability, for murder as a crime against humanity and wilful killing as a grave breach of the Geneva Conventions with respect to the killings of detainees from the Heliodrom during forced labour or while being used as human shields, but **AFFIRMS** his convictions for the same crimes in relation to these killings under JCE I liability (Counts 2 and 3, both in part);

AFFIRMS, Judge Liu dissenting with respect to Count 25 and Judge Pocar dissenting with respect to Counts 2, 3, and 21, the remainder of Stojić's convictions under Counts 1-13, 15-16, 18-19, 21-25;

ALLOWS, Judge Liu dissenting, the Prosecution's ground of appeal 1(A) and 1(C) concerning Stojić's responsibility as a participant in a JCE for the incidents as set out in paragraphs 3018, 3030, 3079, and 3114 of this Judgement, but **DECLINES** to quash the acquittals in this regard, or to order a retrial or a remittance;

ALLOWS the Prosecution's ground of appeal 2 concerning Stojić's superior responsibility for the incidents as set out in paragraphs 3134 and 3151 of this Judgement, but **DECLINES** to quash the acquittals in this regard, or to order a retrial or a remittance;

ALLOWS the Prosecution's ground of appeal 3 in part and **FINDS** that the Trial Chamber erred by failing to enter convictions for wanton destruction of cities, towns or villages, or devastation not justified by military necessity as a violation of the laws or customs of war with respect to the destruction, during attacks, of: (1) Muslim property in Prozor Municipality between May or June and early July 1993; and (2) mosques in East Mostar, Mostar Municipality, between June and 15 November 1993 (Count 20 in part), but **DECLINES** to enter new convictions against Stojić in this regard;

DISMISSES the Prosecution's appeal concerning Stojić in all other respects;

AFFIRMS the sentence of 20 years of imprisonment, subject to credit being given under Rule 101(C) of the Rules for the period he has already spent in detention;

WITH RESPECT TO SLOBODAN PRALJAK,

GRANTS Praljak's ground of appeal 12 and **REVERSES** his convictions as a participant in a JCE for persecution, murder, and inhumane acts as crimes against humanity and wilful killing and inhuman treatment as grave breaches of the Geneva Conventions with regard to the killing of seven civilians in Duša, Gornji Vakuf Municipality (Counts 1, 2, 3, 15, and 16, all in part);

GRANTS Praljak's sub-ground of appeal 44.1 in part to the extent that it concerns Praljak's responsibility as a participant in a JCE for the incidents as set out in paragraph 2003 of this Judgement;

DISMISSES Praljak's appeal in all other respects;

REVERSES, as a result of granting Stojić's sub-ground of appeal 45.1 and Praljak's ground of appeal 12, Praljak's convictions as a participant in a JCE for murder as a crime against humanity and wilful killing as a grave breach of the Geneva Conventions for the killing of two unarmed men in Tošćanica, Prozor Municipality (Counts 2 and 3, both in part);

REVERSES, as a result of allowing the additional grounds of appeal submitted by, variously, Prlić, Stojić, Praljak, and Čorić in response to the Prosecution's ground of appeal 3, Praljak's convictions as a participant in a JCE for: (1) persecution as a crime against humanity in relation to the destruction, during attacks, of houses in Gornji Vakuf Municipality on 18 January 1993 (Count 1 in part); and (2) Judge Pocar dissenting, persecution as a crime against humanity and unlawful infliction of terror on civilians as a violation of the laws or customs of war in relation to the destruction of the Old Bridge of Mostar (Counts 1 and 25, both in part);

REVERSES *proprio motu* Praljak's conviction as a participant in a JCE for extensive destruction of property, not justified by military necessity and carried out unlawfully and wantonly, as a grave breach of the Geneva Conventions, in relation to the destruction of houses and buildings in Vareš Municipality (Count 19 in part);

AFFIRMS, Judge Liu dissenting with respect to Count 25 and Judge Pocar dissenting with respect to Counts 2, 3, and 21, the remainder of Praljak's convictions under Counts 1-3, 6-13, 15-16, 18-19, 21-25;

ALLOWS, Judge Liu dissenting, the Prosecution's ground of appeal 1(A) and 1(C) concerning Praljak's responsibility as a participant in a JCE for the incidents as set out in paragraphs 3018, 3030, 3079, and 3114 of this Judgement, but **DECLINES** to quash the acquittals in this regard, or to order a retrial or a remittance;

ALLOWS the Prosecution's ground of appeal 2 concerning Praljak's superior responsibility for the incidents as set out in paragraphs 3134 and 3151 of this Judgement, but **DECLINES** to quash the acquittals in this regard, or to order a retrial or a remittance;

ALLOWS the Prosecution's ground of appeal 3 in part and **FINDS** that the Trial Chamber erred by failing to enter convictions for wanton destruction of cities, towns or villages, or devastation not justified by military necessity as a violation of the laws or customs of war with respect to the destruction, during attacks, of: (1) Muslim property in Prozor Municipality between May or June and early July 1993; and (2) mosques in East Mostar, Mostar Municipality, between June and 9 November 1993 (Count 20 in part), but **DECLINES** to enter new convictions against Praljak in this regard;

DISMISSES the Prosecution's appeal concerning Praljak in all other respects;

AFFIRMS the sentence of 20 years of imprisonment, subject to credit being given under Rule 101(C) of the Rules for the period he has already spent in detention;

WITH RESPECT TO MILIVOJ PETKOVIĆ,

GRANTS Petković's sub-ground of appeal 5.2.2.4 in part and the Prosecution's ground of appeal 1 in part and **REVERSES** the Trial Chamber's findings that Petković was responsible as a participant in a JCE, under JCE I liability, for destruction or wilful damage done to institutions dedicated to religion or education as a violation of the laws or customs of war, in relation to the destruction of Baba Bešir Mosque in Mostar Municipality and the Skrobućani mosque in Prozor Municipality (Count 21 in part), but **FINDS** him responsible in this regard as a participant in a JCE, under JCE III liability;

DISMISSES, Judge Liu dissenting in part and Judge Pocar dissenting in part, Petković's appeal in all other respects;

REVERSES, as a result of granting Stojić's sub-ground of appeal 45.1 and Praljak's ground of appeal 12, Petković's convictions as a participant in a JCE for: (1) persecution, murder, and inhumane acts as crimes against humanity and wilful killing and inhuman treatment as grave breaches of the Geneva Conventions with regard to the killing of seven civilians in Duša, Gornji Vakuf Municipality (Counts 1, 2, 3, 15, and 16, all in part); and (2) murder as a crime against humanity and wilful killing as a grave breach of the Geneva Conventions for the killing of two unarmed men in Tošćanica, Prozor Municipality (Counts 2 and 3, both in part);

REVERSES, as a result of allowing the additional grounds of appeal submitted by, variously, Prlić, Stojić, Praljak, and Ćorić in response to the Prosecution's ground of appeal 3, Petković's convictions as a participant in a JCE for: (1) persecution as a crime against humanity in relation to the destruction, during attacks, of houses in Gornji Vakuf Municipality on 18 January 1993 (Count 1 in part); and (2) Judge Pocar dissenting, persecution as a crime against humanity and unlawful infliction of terror on civilians as a violation of the laws or customs of war in relation to the destruction of the Old Bridge of Mostar (Counts 1 and 25, both in part);

REVERSES *proprio motu* Petković's convictions as a participant in a JCE 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, in relation to the destruction of houses and buildings and the appropriation of property committed in Vareš Municipality (Counts 19 and 22, both in part);

AFFIRMS, Judge Liu dissenting with respect to Count 25 and Judge Pocar dissenting with respect to Counts 2 and 3 and, in part, Count 21, the remainder of Petković's convictions under Counts 1-13, 15-16, 18-19, 21-25;

ALLOWS, Judge Liu dissenting, the Prosecution's ground of appeal 1(A) and 1(C) concerning Petković's responsibility as a participant in a JCE for the incidents as set out in paragraphs 3018, 3030, 3079, and 3114 of this Judgement, but **DECLINES** to quash the acquittals in this regard, or to order a retrial or a remittance;

ALLOWS, Judge Liu dissenting, the Prosecution's ground of appeal 1(E) in part and **FINDS**, Judge Liu dissenting, that the Trial Chamber incorrectly found Petković not guilty for committing through his participation in a JCE murder as a crime against humanity and wilful killing as a grave breach of the Geneva Conventions with respect to the killings, in Dretelj Prison, of one Muslim detainee on 16 July 1993 and three other detainees in mid-July 1993 (Counts 2 and 3, both in part), but **DECLINES** to enter new convictions against him in this regard;

ALLOWS the Prosecution's ground of appeal 2 concerning Petković's superior responsibility for the incidents as set out in paragraphs 3134 and 3151 of this Judgement, but **DECLINES** to quash the acquittals in this regard, or to order a retrial or a remittance;

ALLOWS the Prosecution's ground of appeal 3 in part and **FINDS** that the Trial Chamber erred by failing to enter convictions for wanton destruction of cities, towns or villages, or devastation not justified by military necessity as a violation of the laws or customs of war with respect to the destruction, during attacks, of: (1) Muslim property in Prozor Municipality between May or June and early July 1993; and (2) mosques in East Mostar, Mostar Municipality, between June and December 1993 (Count 20 in part), but **DECLINES** to enter new convictions against Petković in this regard;

DISMISSES the Prosecution's appeal concerning Petković in all other respects;

AFFIRMS the sentence of 20 years of imprisonment, subject to credit being given under Rule 101(C) of the Rules for the period he has already spent in detention;

WITH RESPECT TO VALENTIN ČORIĆ,

GRANTS Čorić's ground of appeal 11 in part and **REVERSES** his convictions as a participant in a JCE for crimes committed as of 10 November 1993;

DISMISSES, Judge Liu dissenting in part, Čorić's appeal in all other respects;

REVERSES, as a result of granting Stojić's sub-ground of appeal 45.1 and Praljak's ground of appeal 12, Čorić's convictions as a participant in a JCE for: (1) persecution, murder, and inhumane acts as crimes against humanity and wilful killing and inhuman treatment as grave breaches of the Geneva Conventions with regard to the killing of seven civilians in Duša, Gornji Vakuf Municipality (Counts 1, 2, 3, 15, and 16, all in part); and (2) murder as a crime against humanity and wilful killing as a grave breach of the Geneva Conventions for the killing of two unarmed men in Tošćanica, Prozor Municipality (Counts 2 and 3, both in part);

REVERSES, as a result of allowing the additional grounds of appeal submitted by, variously, Prlić, Stojić, Praljak, and Čorić in response to the Prosecution's ground of appeal 3, Čorić's convictions as a participant in a JCE for: (1) persecution as a crime against humanity in relation to the destruction, during attacks, of houses in Gornji Vakuf Municipality on 18 January 1993 (Count 1 in part); and (2) Judge Pocar dissenting, persecution as a crime against humanity and unlawful infliction of terror on civilians as a violation of the laws or customs of war in relation to the destruction of the Old Bridge of Mostar (Counts 1 and 25, both in part);

REVERSES *proprio motu* Čorić's conviction as a participant in a JCE for extensive destruction of property, not justified by military necessity and carried out unlawfully and wantonly, as a grave breach of the Geneva Conventions, in relation to the destruction of houses and buildings in Vareš Municipality (Count 19 in part);

AFFIRMS, Judge Liu dissenting with respect to Count 25 and Judge Pocar dissenting with respect to Counts 2 and 3, both in part, and Count 21, the remainder of Čorić's convictions under Counts 1-13, 15-16, 18-19, 21-25;

ALLOWS, Judge Liu dissenting, the Prosecution's ground of appeal 1(A) and 1(C) concerning Čorić's responsibility as a participant in a JCE for the incidents as set out in paragraphs 3018, 3030, 3079, and 3114 of this Judgement, but **DECLINES** to quash the acquittals in this regard, or to order a retrial or a remittance;

ALLOWS the Prosecution's ground of appeal 2 concerning Čorić's superior responsibility for the incidents as set out in paragraphs 3134 and 3151 of this Judgement, but **DECLINES** to quash the acquittals in this regard, or to order a retrial or a remittance;

ALLOWS the Prosecution's ground of appeal 3 in part and **FINDS** that the Trial Chamber erred by failing to enter convictions for wanton destruction of cities, towns or villages, or devastation not justified by military necessity as a violation of the laws or customs of war with respect to the destruction, during attacks, of: (1) Muslim property in Prozor Municipality between May or June

and early July 1993; and (2) mosques in East Mostar, Mostar Municipality, between June and 10 November 1993 (Count 20 in part), but **DECLINES** to enter new convictions against Čorić in this regard;

GRANTS the Prosecution's ground of appeal 4 concerning sentencing in part insofar as it relates to Čorić's superior responsibility;

DISMISSES the Prosecution's appeal concerning Čorić in all other respects;

AFFIRMS the sentence of 16 years of imprisonment, subject to credit being given under Rule 101(C) of the Rules for the period he has already spent in detention;

WITH RESPECT TO BERISLAV PUŠIĆ,

DISMISSES, Judge Liu dissenting in part, Pušić's appeal in its entirety;

REVERSES, as a result of granting Stojić's sub-ground of appeal 45.1 and Praljak's ground of appeal 12, Pušić's convictions as a participant in a JCE for murder as a crime against humanity and wilful killing as a grave breach of the Geneva Conventions for the killing of two unarmed men in Tošćanica, Prozor Municipality (Counts 2 and 3, both in part);

REVERSES, as a result of allowing the additional grounds of appeal submitted by, variously, Prlić, Stojić, Praljak, and Čorić in response to the Prosecution's ground of appeal 3, and Judge Pocar dissenting, Pušić's convictions as a participant in a JCE for persecution as a crime against humanity and unlawful infliction of terror on civilians as a violation of the laws or customs of war in relation to the destruction of the Old Bridge of Mostar (Counts 1 and 25, both in part);

REVERSES *proprio motu* Pušić's conviction as a participant in a JCE for extensive destruction of property, not justified by military necessity and carried out unlawfully and wantonly, as a grave breach of the Geneva Conventions, in relation to the destruction of houses and buildings in Vareš Municipality (Count 19 in part);

AFFIRMS, Judge Liu dissenting with respect to Count 25 and Judge Pocar dissenting with respect to Counts 2, 3, and 21, the remainder of Pušić's convictions under Counts 1-3, 6-13, 15-16, 18-19, 21, 24-25;

ALLOWS, Judge Liu dissenting, the Prosecution's sub-ground of appeal 1(A) concerning Pušić's responsibility as a participant in a JCE for the incidents as set out in paragraphs 3018 and 3030 of this Judgement, but **DECLINES** to quash the acquittals in this regard, or to order a retrial or a remittance;

ALLOWS the Prosecution's ground of appeal 3 in part and **FINDS** that the Trial Chamber erred by failing to enter convictions for wanton destruction of cities, towns or villages, or devastation not justified by military necessity as a violation of the laws or customs of war with respect to the destruction, during attacks, of: (1) Muslim property in Prozor Municipality between May or June and early July 1993; and (2) mosques in East Mostar, Mostar Municipality, between June and December 1993 (Count 20 in part), but **DECLINES** to enter new convictions against Pušić in this regard;

DISMISSES the Prosecution's appeal concerning Pušić in all other respects;

AFFIRMS the sentence of 10 years of imprisonment, subject to credit being given under Rule 101(C) of the Rules for the period he has already spent in detention;

RULES that this Judgement shall be enforced immediately pursuant to Rule 118(A) of the Rules;

ORDERS, pursuant to Rule 118(B) of the Rules, the arrest or surrender of Berislav Pušić to the UNDU in The Hague, to be facilitated as early as practicable; and

ORDERS, in accordance with Rules 103(C) and 107 of the Rules, that the Appellants are to remain in the custody of the Tribunal pending the finalisation of arrangements for their transfer to the State where their sentences will be served.

Judge Liu Daqun appends dissenting opinions, a partially dissenting opinion, and a declaration.

Judge Fausto Pocar appends dissenting opinions.