UNITED
NATIONS

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

Case No. IT-00-39-A

Date: 4 November 2008

Original: English

IN THE APPEALS CHAMBER

Before: **Judge Fausto Pocar, Presiding**
Judge Mohamed Shahabuddeen
Judge Mehmet Güney
Judge Andrésia Vaz
Judge Theodor Meron

Registrar: **Mr. Hans Holthuis**

Order of: **4 November 2008**

PROSECUTOR

v.

MOMČILO KRAJIŠNIK

PUBLIC

ORDER ISSUING A PUBLIC REDACTED VERSION OF "DECISION ON APPELLANT MOMČILO KRAJIŠNIK'S MOTION TO PRESENT ADDITIONAL EVIDENCE" AND LIFTING CONFIDENTIALITY OF CERTAIN DOCUMENTS

The Office of the Prosecutor:
Mr. Peter Kremer, QC

The Appellant:

Mr. Momčilo Krajišnik

Counsel for the Appellant on the Matter of JCE:

Mr. Alan M. Dershowitz
Mr. Nathan Z. Dershowitz

***Amicus Curiae*:**
Mr. Colin Nicholls, QC

THE APPEALS CHAMBER of the International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the Former Yugoslavia Since 1991 ("Appeals Chamber" and "Tribunal", respectively),

NOTING the confidential "Decision on Appellant Momčilo Krajišnik's Motion to Present Additional Evidence" rendered on 20 August 2008 ("Decision"), wherein the Appeals Chamber adjudicated the Appellant Momčilo Krajišnik's "Motion to Present Additional Evidence Pursuant to Rule 115 to the Appeal By Momčilo Krajišnik to the ICTY Judgement of 27 September 2006",[1] filed on 29 May 2008 ("the Appellant" and "Rule 115 Motion", respectively);

NOTING that, whereas the Rule 115 Motion was filed publicly, all the documents the Appellant sought to have admitted in the annex thereto were ordered by the Pre-Appeal Judge to be filed confidentially until the Appeals Chamber had reviewed the translations of these documents;

FINDING that certain documents that the Appellant sought to have admitted in the Rule 115 Motion should be treated as confidential, as specified below;

CONSIDERING Article 21(2) of the Statute of the Tribunal and the general importance of transparency of the proceedings of the Tribunal;[2]

CONSIDERING that the Decision clarifies important legal issues and that it is in the interests of justice to render a public redacted version of the Decision and to make public, as far as possible, the documents whose admissibility it addresses;

CONSIDERING that the Decision includes arguments of the parties that were made in relation to the confidential documents, and that these arguments are not redacted unless they reveal confidential information;

HEREBY ISSUES a public redacted version of the Decision; and

ORDERS that all documents, including the translations thereof, sought to be admitted in the annex to the Rule 115 Motion are to be rendered public, except for the following documents, which will remain under seal: **13-K-0049** (Order of 14 July 1992;[3] Order on the Application of the Rules of International Law of War in the Army of the Serbian Republic of BiH, 13 June 1992);[4] **30-K-0212**;

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[1] Including the "Supplement to the Motion to Present Additional Evidence of 29 May Pursuant to Rule 115 by Momčilo Krajišnik to the ICTY Judgement of 27 September 2006", 7 June 2008.
[2] *See Prosecutor v. Vojislav Šešelj*, Case No. IT-03-67-AR77.2, Order Issuing a Public Redacted Version of 'Decision on the Prosecution's Appeal Against the Trial Chamber's Decision of 10 June 2008', 2 September 2008, p. 2.
[3] Registry page number: IT-00-39-A, 6438 (B/C/S version); 6417 (English version).
[4] Registry page number: IT-00-39-A, 6408-6407 (English version).

31-K-0213; **32-K-0090**; **59-K-0178**; **63-K-0191**; **64-K-0221**; **66-K-0215** (Muderizović Interview;[5] Letter on Return of Citizens;[6] List of Camps;[7] Alphabetic List of Names[8]); **68-K-0227**; **69-K-0005** (Statements by Dejan Brašić;[9] George Mano;[10] and Stefan Karganović[11]) and **70-K-3004** (in part[12]).

Done in English and French, the English text being authoritative.

Done this fourth day of November 2008,
At The Hague,
The Netherlands.

Judge Fausto Pocar
Presiding

[Seal of the Tribunal]

[5] Registry page number: 380/6668bis – 375/6668bis (English version), IT-00-39-A, 5843 – 5841 (B/C/S version).
[6] Registry page number: 372/6668bis – 369/6668bis (English version), IT-00-39-A, 5839 – 5836 (B/C/S version).
[7] Registry page number: 368/6668bis – 364/6668bis (English version); IT-00-39-A, 5835 – 5831 (B/C/S version).
[8] Registry page number: IT-00-39-A, 5830 – 5648.
[9] Registry page number: IT-00-39-A, 5638 – 5637.
[10] Registry page number: IT-00-39-A, 5630 – 5627 (English version); 5636 - 5633 (B/C/S version).
[11] Registry page number: IT-00-39-A, 233/6668bis – 231/6668bis (English version); 5626 - 5633 (B/C/S version).
[12] Registry page number: 126/6668bis – 125/6668bis (English version); IT-00-39-A, 5618.

UNITED
NATIONS

	International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the Former Yugoslavia since 1991	Case No.	IT-00-39-A
		Date:	20 August 2008
		Original:	English

IN THE APPEALS CHAMBER

Before: **Judge Fausto Pocar, Presiding**
Judge Mohamed Shahabuddeen
Judge Mehmet Güney
Judge Andrésia Vaz
Judge Theodor Meron

Registrar: **Mr. Hans Holthuis**

Decision of: **20 August 2008**

PROSECUTOR

v.

MOMČILO KRAJIŠNIK

PUBLIC REDACTED VERSION

DECISION ON APPELLANT MOMČILO KRAJIŠNIK'S MOTION TO PRESENT ADDITIONAL EVIDENCE

The Office of the Prosecutor:

Mr. Peter Kremer, QC

The Appellant:

Mr. Momčilo Krajišnik

Counsel for the Appellant on the Matter of JCE:

Mr. Alan M. Dershowitz

***Amicus Curiae*:**

Mr. Colin Nicholls, QC

1. The Appeals Chamber of the International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the Former Yugoslavia Since 1991 ("Appeals Chamber" and "International Tribunal", respectively) is seized of the "Motion to Present Additional Evidence Pursuant to Rule 115 to the Appeal By Momčilo Krajišnik to the ICTY Judgement of 27 September 2006" ("Motion"), and of the "Supplement to the Motion to Present Additional Evidence of 29 May Pursuant to Rule 115 by Momčilo Krajišnik to the ICTY Judgement of 27 September 2006" ("Supplement to the Motion"), filed publicly on 29 May 2008 and 7 June 2008, respectively. An English translation of these documents was filed publicly on 18 June 2008. On 18 July 2008, the Prosecution confidentially filed its "Prosecution Response to Krajišnik's Motion to Present Additional Evidence and Supplement" ("Response"). A "Reply to the Prosecution's Response to the Appellant's Motion to Present Additional Evidence Pursuant to Rule 115 to the Appeal to the ICTY Judgement of 27 September 2006" was filed publicly on 14 August 2008, the English translation of which was filed publicly on 18 August 2008 ("Reply").

I. BACKGROUND

2. On 27 September 2006, the Trial Chamber convicted Momčilo Krajišnik ("Appellant") for crimes against humanity of persecution, extermination, murder, deportation, and inhumane acts (forced transfer),[1] and imposed a single sentence of 27 years of imprisonment.[2] The Trial Chamber found that the Appellant had committed these crimes as a participant in a joint criminal enterprise ("JCE") to ethnically recompose the territories under the control of the Bosnian-Serb Republic by drastically reducing the proportion of Bosnian Muslims and Bosnian Croats.[3] The Appellant, who chose and was authorised to represent himself,[4] seeks a reversal of the Trial Judgement and argues that he should be acquitted of all charges, or alternatively that there be a re-trial.[5]

3. In the Motion and the Supplement to the Motion, the Appellant seeks to introduce a number of documents and to call ten witnesses as additional evidence on appeal, pursuant to Rule 115 of the

[1] Trial Judgement, para. 1182.
[2] Trial Judgement, para. 1183.
[3] *See* Trial Judgement, paras 1078-1121.
[4] Decision on Momčilo Krajišnik's Request to Self-Represent, on Counsel's Motions in relation to Appointment of *Amicus Curiae*, and on the Prosecution Motion of 16 February 2007, 11 May 2007 ("Decision on Self-Representation"), paras 13 and 24.
[5] Notice of Appeal, the original version being dated 12 February 2007 and the English translation having been filed on 20 February 2007; Appeal by Momčilo Krajišnik to the ICTY Judgement of 27 September 2006, further redacted version filed in English on 28 February 2008 p. 84; Appeal by Momčilo Krajišnik to the ICTY Judgement of 27 September 2006 (Confidential), the original version being dated 15 January 2008 and the English translation having

Rules of Procedure and Evidence ("Rules"). He claims that this material is of particular importance to his conviction as a participant in a JCE. He argues that it shows the "true content" of the evidence relied on by the Trial Chamber and "the overall historical and political context". He claims that if the Trial Chamber had had this material before it, it would have understood that his actions cannot be classified as a contribution to a JCE.[6] The Appellant alleges that the material was not admitted at trial mostly due to his counsel's oversight.[7]

4. In its Response, the Prosecution argues that the Motion and the Supplement to the Motion fail to comply with the requirements of Rule 115 of the Rules for admission of additional evidence on appeal and the relevant Practice Direction; that most of the documents sought to be admitted into evidence were available at trial; and that the documents are either irrelevant, not credible or could not have had an impact on the verdict.[8]

II. APPLICABLE LAW

5. For additional evidence to be admissible under Rule 115 of the Rules it must satisfy the following requirements. The applicant must first demonstrate that the additional evidence tendered on appeal was not available to him at trial in any form, or discoverable through the exercise of due diligence.[9] The applicant's duty to act with reasonable diligence includes making "appropriate use of all mechanisms of protection and compulsion available under the Statute and the Rules of the International Tribunal to bring evidence on behalf of an accused before the Trial Chamber."[10] With respect to the exercise of counsel's due diligence during trial the Appeals Chamber recalls its finding in *Tadić* that

> [c]ounsel may have chosen not to present the evidence at trial because of his litigation strategy or because of the view taken by him of the probative value of the evidence. The determination which the Chamber has to make, except in cases where there is evidence of gross negligence, is whether

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been filed on 1 February 2008 p. 84. *See* also Reply to Prosecution Response to Appeal by Momčilo Krajišnik to the ICTY Judgement of 27 September 2006, dated 14 May 2008, the English translation having been filed on 26 May 2008.

[6] Motion, para. 1(D).

[7] Motion, para. 1(E).

[8] Response, paras 1-3, with reference to IT/201, 7 March 2002. The Prosecution argues that while the standard for admission for documents available at trial is that they *would* have affected the decision, the Appellant even fails to show the lower standard that the proposed exhibits *could* have had an impact on the verdict, Response, para. 3.

[9] *Prosecutor v. Jovica Stanišić and Franko Simatović*, Case No. IT-03-69-AR65.4, Decision on Prosecution Appeal of Decision on Provisional Release and Motions to Present Additional Evidence Pursuant to Rule 115, 26 June 2008 ("*Stanišić* Rule 115 Decision"), para. 6; *Prosecutor v. Blagoje Simić*, Case No. IT-95-9-A, Decision on Blagoje Simić's Motion for Admission of Additional Evidence, Alternatively for Taking of Judicial Notice, 1 June 2006 ("*Simić* Rule 115 Decision"), para. 12; *Prosecutor v. Radislav Krstić*, Case No. IT-98-33-A, Decision on Applications for Admission of Additional Evidence on Appeal, 5 August 2003 ("*Krstić* Rule 115 Decision"), p. 3; *Prosecutor v. Tihomir Blaškić*, Case No. IT-95-14-A, Decision on Evidence, 31 October 2003 ("*Blaškić* Rule 115 Decision"), p. 2.

[10] *Simić* Rule 115 Decision, para. 12; *Krstić* Rule 115 Decision, p. 2; *Prosecutor v. Zoran Kupreškić et al.*, Case No. IT-95-16-A, Appeal Judgement, 23 October 2001 ("*Kupreškić et al.* Appeal Judgement"), para. 50; *Prosecutor v. Duško Tadić*, Case No. IT-94-1-A, Decision on Appellant's Motion for the Extension of the Time-Limit and Admission of Additional Evidence, 16 October 1998 ("*Tadić* Decision on Extension of Time Limit"), para. 47.

> the evidence was available at the time of trial. Subject to that exception, counsel's decision not to call evidence at trial does not serve to make it unavailable.[11]

6. The applicant must then show that the evidence is both relevant to a material issue and credible.[12] Evidence is relevant if it relates to findings material to the Trial Chamber's decision.[13] Evidence is credible if it appears to be reasonably capable of belief or reliance.[14] A finding that evidence is credible demonstrates nothing about the weight to be accorded to such evidence.[15]

7. Next, the applicant must demonstrate that the evidence *could* have had an impact on the verdict, in other words, the evidence must be such that, considered in the context of the evidence given at trial, it could demonstrate that the conviction was unsafe.[16] A party seeking to admit additional evidence bears the burden of specifying with clarity the impact the additional evidence could have on the Trial Chamber's decision.[17] A party that fails to do so runs the risk that the evidence will be rejected without detailed consideration.[18]

8. If the evidence was available at trial, it may still be admissible on appeal if the applicant can establish that exclusion of the evidence would lead to a miscarriage of justice, in that if it had been available at trial it *would* have affected the verdict.[19]

9. Whether the evidence was available at trial or not, the Appeals Chamber has recognised that the evidence shall not be assessed in isolation, but in the context of the totality of the evidence given at trial.[20]

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[11] *Tadić* Decision on Extension of Time Limit, para. 50. *See* also, *Ferdinand Nahimana et al. v. The Prosecutor*, Case No. ICTR-99-52-A, Decision on Appellant Jean-Bosco Barayagwiza's Motions for Leave to Present Additional Evidence Pursuant to Rule 115 of the Rules of Procedure and Evidence, 8 December 2006 ("*Nahimana et al.* Decision"), para. 31.
[12] *Stanišić* Rule 115 Decision, para. 6; *Simić* Rule 115 Decision, para. 12; *Krstić* Rule 115 Decision, p. 2.
[13] *Stanišić* Rule 115 Decision, para. 7.
[14] *Ibid.*; *Prosecutor v. Ramush Haradinaj et al.*, Case No. IT-04-84-AR65.1, Confidential Decision on Prosecution's Application to Present Additional Evidence in Its Appeal Against the Re-Assessment Decision, 10 March 2006 ("*Haradinaj et al.* Rule 115 Decision"), para. 16. *See The Prosecutor v. André Ntagerura et al.* Case No. ICTR-99-46-A, Decision on Prosecution Motion for Admission of Additional Evidence, 10 December 2004 ("*Ntagerura et al.* Rule 115 Decision"), para. 22.
[15] *Stanišić* Rule 115 Decision, para. 7; *Haradinaj et al.* Rule 115 Decision, para. 16.
[16] *Stanišić* Rule 115 Decision, para. 7; *Simić* Rule 115 Decision, para. 12; *Krstić* Rule 115 Decision, p. 2.
[17] *Stanišić* Rule 115 Decision, para. 6; *Simić* Rule 115 Decision, para. 12; *Kupreškić et al.* Appeal Judgement, para. 69.
[18] *Stanišić* Rule 115 Decision, para. 6; *Kupreškić et al.* Appeal Judgement, para. 69.
[19] *Stanišić* Rule 115 Decision, para. 8; *Simić* Rule 115 Decision, para. 13; *Blaškić* Rule 115 Decision, p. 2; *Krstić* Rule 115 Decision, p. 3.
[20] *Simić* Rule 115 Decision, para. 14; *Krstić* Rule 115 Decision, p. 4; *Kupreškić et al.* Appeal Judgement, paras 66, 75.

III. SUBMISSIONS OF THE PARTIES AND DISCUSSION

A. Request for Admission of Documents

1. Documents That Were Already Admitted at Trial

10. A number of documents the Appellant now seeks to have admitted into evidence have already been admitted at trial: **02-K-0180**,[21] **03-K-0218**,[22] **09-K-0192**,[23] **13-K-0049** (in part),[24] **28-K-0210**,[25] **37-K-0037**,[26] **42-K-0037**, **43-K-0038**, **44-K-0039**, **45-K-0040**, **46-K0177** (second document), **47-K-0041**,[27] **57-K-0156** (in part),[28] **73-K-0173**,[29] **74-K-0172**,[30] **76-K-0219**,[31] **Order No. 01-133/93**[32] and the document entitled "**Decision on Strategic Goals of the Serbian People in Bosnia and Herzegovina**".[33] Thus, his request to have these documents admitted is moot.

2. Documents Concerning Counsel's Conduct at Trial

11. The Appellant submits that a number of the documents he seeks to have admitted were not tendered at trial due to oversight by his former Counsel.[34] In addition, he seeks the admission of

[21] Exhibit D250. *Cf.* Motion, para. 2.
[22] Exhibit P64A, tab 792. The Appellant recognizes that the document's content is identical with the content of another of Karadžić's orders which was admitted into evidence at trial, *cf.* Motion, para. 3 (A), fn. 9.
[23] Exhibit P529, tab 130. *Cf.* Motion, para. 9.
[24] Radovan Karadžić's letter of 11 July 1992 (P64A, tab. 368); Radovan Karadžić's order of 14 July 1992 (P690 under seal); Presidency announcement concerning the arrest of illegally armed persons, 6 August 1992 (P64A, tab. 801); Decision of the Presidency, signed by Radovan Karadžić, 6 August 1992 (P583, tab. 82); Radovan Karadžić Order of 22 October 1992 (P64A, tab. 793); Instructions concerning conduct towards imprisoned persons of 13 June 1992 (P443); Radovan Karadžić's Order concerning the investigation of the activities of paramilitary groups in the region of the districts of Gacko and Nevesinje, 3 July 1992 (P64A, tab. 810); Presidency Order to the Main Staff of 19 August 1992 (P64A, tab. 792, identical with 03-K-0218); Radovan Karadžić's Order on the application of the rules of the international law of war in the army of the Serbian Republic of BiH, 13 June 1992 (P200, tab. 28 under seal); Presidency decision banning armed formations of 30 June 1992 (P1221); and Radovan Karadžić's Order to all combatants of the Serbian Forces of BiH (not dated) (P64A, tab. 794). *Cf.* Motion, paras 11-13.
[25] Exhibit P1265. *Cf.* Motion, para. 28.
[26] Contained in Exhibit P64A, tab. 798. *Cf.* Motion, para. 37(A).
[27] Documents 42-K-0037, 43-K-0038, 44-K-0039, 45-K-0040, 46-K0177 (second document, the first document is dealt with in the analysis of document 26-K-0209), and 47-K-0041 are part of Exhibits P64A, tab. 798, P892, tab. 84, and D252. *Cf.* Motion, paras 42-48(A).
[28] Presidency announcement on rebel arrests, 6 August 1992 (P64A, tab. 801); Decision No. 01-152/2/92 of President Karadžić to reinstate the work of political organizations, 6 August 1992 (P64A, tab. 365); Law on amendments to the constitutional law for implementation of the constitution of the Serbian Republic of BiH, No. 03-509/92, 2 June 1992 (contained in Exhibit P64A, tab. 554); Order No. 01-1251/92 of President Karadžić to General Mladić, Mićo Stanišić and Momčilo Mandić to allow the ICRC access to prisons and captives, 22 October 1992 (P64A, tab. 793); Law on the army, Official Gazette, p. 260, 1 June 1992 (P64A, tab. 806); and Law on amendments of the law on the army, No. 01-167/92, 25 June 1992 (P64A, tab. 819). *Cf.* Motion, para. 57(A).
[29] Exhibit P65, tab. 199. *Cf.* Motion, para. 73(A).
[30] Exhibit P537. *Cf.* Motion, para. 74.
[31] Exhibit D254. *Cf.* Motion, para. 76.
[32] Exhibit D242. *Cf.* Supplement to the Motion, para. 4(A). *See* also *infra* paras 43 *et seq.*
[33] Exhibits P47.1, P64A, tab. 607, P529, tab. 436, and P892, tab. 43. In these four exhibits, the decision in question is tendered as an excerpt from the Official Gazette of the Serbian People in BH. *Cf.* Supplement to the Motion, para. 3(A).
[34] The documents in question are: 04-K-0129; 06-K-0200; 07-K-0182; 15-K-0197; 16-K-0198; 17-K-0091; 18-K-0083; 19-K-0199; 20-K-0133; 31-K-0213 (confidential); 32-K-0090 (confidential); 33-K-0088; 34-K-0100; 39-K-0217; 41-K-0187; 48-K-0042; 50-K-0069; 51-K-0070; 52-K-0108; 53-K-0110; 54-K-0074; 55-K-0070; 56-K-0171; 60-K-0224;

document **69-K-0005**, which consists of statements given by Dejan Brašić (confidential), George Mano (confidential), John Ostojić and Stefan Karganović (confidential), on the "unprofessional behaviour of Counsel Nicholas Stewart".[35] He alleges that these statements show that the Trial Chamber "did not provide [him] with a fair trial, but assigned counsel who failed to provide a professional and high quality defence".[36] The Prosecution responds that the letters and memorandum produced do not comply with Rule 92 *bis* and therefore cannot be admitted as additional evidence.[37]

12. With respect to the alleged unavailability at trial of the statements in document **69-K-0005**, the Appeals Chamber recalls that a defence counsel has the duty to act with reasonable diligence to bring evidence on behalf of an accused before the Trial Chamber.[38] The information contained in the four statements could be considered as having been available at trial, because it could have been gathered with reasonable diligence.[39] However, failure of Counsel to exercise due diligence in order to obtain documents which could demonstrate his own incompetence to conduct the defence should not be to the detriment of the Appellant.[40] Moreover, whether or not the Appellant himself had a duty to act with reasonable diligence to make the Trial Chamber aware of the information contained in the four statements, the Appeals Chamber considers that in his oral request for self-representation at trial, the Appellant stated that his Defence team was unable to assist him because of the conditions prevailing at the time, adding that if the Trial Chamber wished that he provide more detailed explanations, he would gladly do so.[41] However, he was never requested to do so. In light of these circumstances, the Appeals Chamber finds that the information contained in the four statements was unavailable to the Appellant at trial. Consequently, they can be admitted if they are relevant, credible and could have had an impact on the verdict had they been considered at trial.

13. The statement of Dejan Brašić is irrelevant as it does not contain any information on the behaviour of Counsel. As for John Ostojić's letter on the financial conditions fixed by OLAD for

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62-K-0067 (and K-0068); 63-K-0191 (confidential); 64-K-0221 (confidential); 65-K-0089; 68-K-0227 (confidential); 70-K-3004 (confidential in part); 71-K-0087; and 72-K-0072; and the proposed additional witnesses and experts (*infra*, Section III.B). *See* also Reply, paras 1, 2, 54-57.

[35] Motion, para. 69.

[36] Motion, para. 69(C). *See* also Reply, para. 48.

[37] Response, para. 126. The Appeals Chamber notes that irrespective of whether the statements fulfill the requirements of Rule 92 *bis* of the Rules, in order to be admitted as additional evidence on appeal, the statements must fulfill the requirements of Rule 115 of the Rules.

[38] *Simić* Rule 115 Decision, para. 12; *Krstić* Rule 115 Decision, p. 2; *Kupreškić et al.* Appeal Judgement, para. 50; *Tadić* Decision on Extension of Time Limit, para. 47.

[39] Because the information contained in the statements concern events which all occurred during the trial, such information could have been put to the attention of the Trial Chamber at trial.

[40] *Cf. Nahimana et al.* Decision, para. 31: "[...] the interests of justice require that an appellant not be held responsible for the failures of counsel".

[41] *Prosecutor v. Momčilo Krajišnik*, Case No. IT-00-39-T, Reasons for Oral Decision Denying Mr. Krajišnik's Request to Proceed Unrepresented by Counsel, 18 August 2005 ("Decision 18 August 2005"), para. 2, referring to Momčilo Krajišnik, T.13399.

the representation of the Appellant by Counsel, the Appellant has not shown that it could have affected the verdict.

14. [redacted]

15. [redacted]

16. The Appeals Chamber finds that the documents signed by George Mano and Stefan Karganović are relevant and bear enough indicia of credibility. [redacted] In its response, the Prosecution accepts that "the Appeals Chamber may consider it appropriate to make enquiries with Nicholas Stewart QC to ascertain his position regarding the allegations",[42] although it argues that the letters, in their current form, "do no demonstrate gross negligence to rebut the presumption of due diligence".[43]

17. The Appeals Chamber finds that the Trial Chamber may not have been fully aware of the magnitude and recurrence of the problems in the Appellant's Defence team. For example, in the "Decision on Defence Motion for Adjournment" of 21 September 2004, the Trial Chamber stated that although it had been admitted that upon his assignment, Appellant's former Counsel was not working full time on the case, the Trial Chamber assumed that he started doing so as of the end of 2003.[44] [redacted]

18. In addition, it appears that the Trial Chamber was never fully informed of the Appellant's complaints regarding his former Counsel. The Appeals Chamber recalls that in his oral request for self-representation, the Appellant merely stated that his Defence team was unable to assist him because of the conditions prevailing at the time, adding that if the Trial Chamber wished him to provide more detailed explanations, he would gladly do so.[45] However, he was never requested to do so.

19. The Appeals Chamber considers that, as a general principle, an accused's right to a fair trial is infringed when counsel admittedly does not understand the case of his client and fails to prepare a proper defence strategy. The Appeals Chamber finds that had the Trial Chamber considered the letters of George Mano and Stefan Karganović, this could have affected the verdict. The Appeals

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[42] Response, para. 128.
[43] Response, para. 128.
[44] *Prosecutor v. Momčilo Krajišnik*, Case No. IT-00-39-T, Decision on Defence Motion for Adjournment (Written Reasons), 21 September 2004, para. 6.
[45] Decision of 18 August 2005, para. 2, referring to T. 13399, 25 May 2005.

Chamber emphasizes however that the above findings pertain strictly to the admissibility and not to the merits of the proffered additional evidence.[46]

20. For the foregoing reasons, the Appeals Chamber admits the letters of George Mano and Stefan Karganović as additional evidence under Rule 115 of the Rules.

21. As previously noted, the Appellant argues in relation to a number of documents that his former Counsel failed to tender them as evidence at trial, although for many of them the Appellant told him to do so.[47] The Appeals Chamber will only consider these documents as being unavailable at trial where the Appellant can show gross negligence of Counsel.[48]

22. The Appeals Chamber considers that, while the Appellant has shown that the letters of George Mano and Stefan Karganović could have affected the verdict [redacted], it does not necessarily follow that former Counsel acted with gross negligence in all the respects now alleged. Indeed, "[c]ounsel may have chosen not to present the evidence at trial because of his litigation strategy or because of the view taken by him of the probative value of the evidence".[49] Moreover, the Appellant does not substantiate his assertion that the documents at issue were unavailable at trial beyond bare assertions that former Counsel failed to tender them. Therefore, he fails to sufficiently demonstrate that these documents were unavailable at trial. As such, the other admissibility criteria being met, they will only be admitted if the Appellant can show that they *would* have affected the verdict.

3. Availability of Remainder of Documents

23. As for the remainder of the documents sought to be admitted, the Appeals Chamber finds that, with the exception of documents 40-K-0066 and 49-K-0208, the Appellant fails to demonstrate that they were not available to him at trial in any form, or discoverable through the exercise of due diligence. The Appellant either merely states that he did not have, or was not aware of the respective document at trial.[50] However, the Appellant does not provide any further information as to why he did not have, or was not aware of, documents at trial such as to establish that despite the exercise of due diligence he failed to uncover the documents. A simple assertion that the Appellant was unaware of the documents is insufficient to demonstrate that due diligence was exercised.

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[46] *Cf. Ferdinand Nahimana et al. v. The Prosecutor*, Case No. ICTR-99-52-A, Decision on Motions Relating to the Appellant Hassan Ngeze's and the Prosecution's Requests for Leave to Present Additional Evidence of Witnesses ABC1 and EB, 27 November 2006 (public redacted version), para. 38.
[47] *See supra* fn. 34.
[48] *Tadić* Decision on Extension of Time Limit, para. 50.
[49] *Tadić* Decision on Extension of Time Limit, para. 50.
[50] The Appeals Chamber notes that some of the documents in question were disclosed to the Appellant by the Prosecution at trial, *see* Response, Appendix B.

Accordingly, in the circumstances, the Appeals Chamber is not persuaded that the Appellant has met his burden of establishing that the documents were in fact unavailable to him at trial.

24. However, these documents may still be admissible on appeal if the Appellant can establish that exclusion of the evidence would lead to a miscarriage of justice, in that if it had been available at trial it *would* have affected the verdict.[51] As a result, the Appeals Chamber will only admit these documents, the other admissibility criteria being met, if the Appellant can demonstrate that they would have affected the verdict.

4. The Appellant Was Not a Member of the JCE and Advocated a Peaceful Solution in BiH

25. The Appellant seeks the admission of two essentially identical documents ("**01-K-0195**"),[52] namely a communiqué and an article published in *Javnost* on 16 May 1992.[53] He alleges that these documents demonstrate that "the Serbian side wanted peaceful negotiations on the resolution of the crisis in BH from the very beginning of the armed conflict".[54] In particular, he asserts that the documents refute the Trial Chamber's findings that (i) the Serbs "did not sincerely adopt a decision on a unilateral cease-fire at the 16th session of the [Bosnian-Serb Assembly] on 12 May 1992"; (ii) the Serbs did not sincerely adopt the platform for the resolution of the crisis in BiH and did not want a peaceful resolution in Lisbon; and (iii) the Serbs did not accept the unilateral cease-fire because it wanted to gain time to strengthen its hold of gained territories. In addition, the Appellant claims that the documents confirm that (i) he was not in RS from 26 April to 7 May 1992 and did not know of the events in Doboj, Brčko and other parts of BiH; and (ii) the Six Strategic Goals were merely a political platform, and not a "war assignment to occupy territories by force".[55] The Prosecution responds *inter alia* that the documents could not have impacted the verdict, because the Bosnian-Serb leadership initially participated in negotiations while at the same time preparing for the unilateral separation of claimed Serb territories.[56]

26. First, the Appellant alleges that had document **01-K-0195** been considered at trial, the Trial Chamber would have reversed the "guilty conclusions" in paragraph 111 of the Trial Judgement, where the Trial Chamber found that a meeting had been held on or about 12 February 1992 between

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[51] *Stanišić* Rule 115 Decision, para. 8; *Simić* Rule 115 Decision, para. 13; *Blaškić* Rule 115 Decision, p. 2; *Krstić* Rule 115 Decision, p. 3.
[52] One of the documents is the communiqué of the joint Serbian and Croatian "public announcement" and the other is an article which reproduces the entire text of the same communiqué. While the newspaper article is dated 16 May 1992, the communiqué is not dated. Nonetheless, for the purposes of this decision, the Appeals Chamber will consider that these two documents form in fact one single document.
[53] Motion, para. 1(A) and (B), with reference to Krajišnik's Appeal Brief, para. 14, fn. 13, and Trial Judgement, para. 977.
[54] Motion, para. 1(A).
[55] Motion, para. 1(C). *See* also Reply, para. 3.
[56] Response, para. 20.

representatives of the three Serb Autonomous Districts in which an exchange of populations was discussed.[57] The Appeals Chamber notes that while the Appellant asserts that the Trial Chamber's findings in paragraph 111 would have to be reversed in light of the evidence contained in document **01-K-0195**, according to which the Serbian side wished to have peaceful negotiations on the resolution of the crisis in BiH, this fact does not dispel the finding that there had been a meeting and that exchanges of populations had been discussed.

27. Second, the Appellant alleges that document **01-K-0195** would rebut the Trial Judgement's finding that "the Serbian side wanted to make a corridor between the western and eastern parts of RS by force".[58] The Appeals Chamber notes that the Trial Chamber's finding of a failure on the part of the Serbian side to open a corridor by force was based on a quote from Exhibit P892, tab. 6.[59] The Appellant does not demonstrate that the Trial Chamber would have relied upon document **01-K-0195** as rebutting the evidence of Exhibit P892, tab. 6.

28. Third, the Appellant claims that document **01-K-0195** allegedly demonstrates that he was not in RS from 26 April to 7 May 1992 and that he did not know of the events in Doboj, Brčko and other parts of BiH.[60] The Appeals Chamber notes that document **01-K-0195** makes no reference to the Appellant at all and as such is unable to establish the fact of his absence from RS as he alleges. The Appellant further submits that document **01-K-0195** would overturn the finding of the Trial Chamber that "the Serbian side did not sincerely adopt a decision on a unilateral cease-fire at the 16th session of the [Bosnian-Serb Assembly] on 12 May 1992".[61] The Appeals Chamber notes that it is not clear from the content of document **01-K-0195** whether the cease-fire referred to in it is the same cease-fire as that discussed in the minutes of the 12 May 1992 session of the Bosnian-Serb Assembly. While document **01-K-0195** refers to a cease-fire agreement concluded in Graz on 7 May 1992 between Serbs and Croats,[62] the latter, as recorded in the Bosnian-Serb Assembly minutes on 12 May 1992, appears to concern a unilateral cease-fire to be adopted sometime in the future.[63] In order for the Appellant to demonstrate the impact of document **01-K-0195** on the finding of the Trial Chamber it was necessary for the Appellant to demonstrate that document **01-K-0195's** reference to a concluded ceasefire on 7 May 1992 was the same ceasefire that was discussed in the minutes of the Bosnian-Serb Assembly on 12 May 1992.

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[57] Motion, para. 1(D).
[58] Motion, para. 1(D), with reference to Trial Judgement, paras 193 and 194.
[59] "Analysis of VRS Combat Readiness and Activities in 1992, April 1993", p. 69, quoted in Trial Judgement, para. 193.
[60] Motion, para. 1(C), fn. 4, with reference to Trial Judgement, paras 324 and 340.
[61] Motion, para. 1(C). *See* also para. 1(D), with reference to Trial Judgement, paras 111, 193, 194, 977, 978, 994 and 1119.
[62] *See* document 01-K-0195 (article published in the newspaper *Javnost* on 16 May 1992, first paragraph).
[63] *See* Exhibit P65, tab. 127, pp. 49-51.

29. The Appellant alleges that document **01-K-0195** would reverse the Trial Judgement's findings in paragraph 994, which outlines the "Six Strategic Goals of the Serbian People in [BiH]", as articulated by Radovan Karadžić in the BS Assembly Session of 12 May 1992.[64] However, contrary to the Appellant's submissions,[65] the Trial Chamber did not find that these six strategic goals were a "war assignment to occupy territories by force". Rather, for the Trial Chamber, the importance of these goals lied in symbolising a "new central authority at a time when the old order had disintegrated".[66]

30. Finally, the Appellant asserts that document **01-K-0195** would have an impact on the Trial Chamber's conclusion that "the [Appellant] held a central position in the JCE", and that he "not only participated in the implementation of the common objective, but was one of the driving forces behind it."[67] While the Appellant makes this assertion, he fails to provide any argument in support of it. He does not demonstrate how document **01-K-0195** would have impacted on the findings of the Trial Chamber concerning his participation in a joint criminal enterprise.

31. For the foregoing reasons, the Appellant does not show that, had the document been considered at trial, it would have affected the verdict.

5. Alleged Error in Relation to the Appellant's Statement Given at the 11th Session of the Bosnian-Serb Assembly on 18 March 1992

32. The Appellant seeks the admission into evidence of document **05-K-0196**, a video-recording of the 11th session of the Bosnian-Serb Assembly held on 18 March 1992.[68] A transcript of this Assembly session was admitted and relied on at trial as Exhibits P65, tab. 109 and P529, tab. 388.[69] Comparing the video-recording in **05-K-0196** with the transcript, the Appellant argues that the transcript is incomplete, leading to two erroneous findings of the Trial Chamber. First, he argues that, had the video been considered by the Trial Chamber, it would not have concluded that his speech at the 18 March 1992 Assembly was a "call to arms". Instead, he claims, he called for drawing maps in the field and "not in offices" in accordance with the adoption of the plan agreed with the Muslims and the Croats.[70] Second, the Appellant submits that the Trial Chamber would not

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[64] Motion, para. 1(C) and (D).
[65] Motion, para. 1(C).
[66] Trial Judgement, para. 995.
[67] Motion, para. 1(D), citing Trial Judgement, para. 1119.
[68] Motion, para. 5(A).
[69] Trial Judgement, paras 912-914.
[70] Motion, para. 5(A) and (C), referencing Trial Judgement, para. 912. He argues that the missing parts from the transcript supporting this contention are as follows (indicated in square brackets and italics): "[...] What we achieved was that the Muslims gave away everything that they thought was beyond dispute, and it was quite a chunk. [*But then*] Mahmutćehajić, [*probably*] acted as an advisor, [*so he*] suggested committees, referendum, etc. [*...because we*

have found that Deputy Miroslav Vještica was willing "to submit to the Accused's directions", because the video shows that, when Miroslav Vještica asked the "President" for an order, he meant Radovan Karadžić and not the Appellant.[71]

33. The Appeals Chamber considers that the few words allegedly missing in the transcript of the 18 March 1992 Assembly session do not necessarily warrant a different interpretation of the Appellant's speech than that of the Trial Chamber. Regarding the interpretation of Miroslav Vještica's statement, the Appellant made the same argument at trial as he now raises, and the Trial Chamber rejected it because other speakers also addressed the Appellant as "Mr. President".[72] As the Appellant does not challenge this reasoning by the Trial Chamber, the Appeals Chamber need not address his argument any further. Therefore, the Appellant fails to show that, had the video recording been considered by the Trial Chamber, it would have affected the verdict.

6. Alleged Error in Finding That the Conflict in Bijeljina Was Provoked by the Serbian Side

34. The Appellant argues that document **06-K-0200**, a brochure titled "The 1990 Elections in BH", demonstrates that before the armed conflict in Bijeljina, the SDS had absolute power in the municipal assembly of Bijeljina and that consequently the Serbian side had no need to take over this municipality by force. Furthermore, the Appellant argues that had the Trial Chamber taken into account this evidence, it would not have concluded that through the armed conflict in Bijeljina, the Serbian side began to take power in BiH, but would have found that the Muslims were to blame for the conflict in Bijeljina, with the same aim, and that local "outsiders" took part in it.[73]

35. The Trial Chamber found that Bijeljina was the first municipality in BiH to be taken over by the Bosnian Serbs in 1992 and that fighting started on 31 March 1992.[74] The Trial Chamber did not refer to the political majority the SDS had in the municipal assembly of Bijeljina. Instead, the findings refer to the seizure of total control of Bijeljina by Bosnian Serb paramilitary forces, together with *inter alia* the local SDS, with the aim of terrorizing the Muslim population and to ultimately expel them from the municipality.[75] As document **06-K-0200** does not refer to any

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shouldn't ... from offices, it must be done accurately in the field] we started what we have agreed on [...] to start ethnic separation in the field ...": Motion, para. 5(A). *See* also Reply, para. 6.

[71] Motion, para. 5(A) and (C), referencing Trial Judgement, para. 914. He argues that the missing parts from the transcript of Miroslav Vještica's address supporting this contention are as follows (indicated in square brackets and italics): "I think, Mr. President [*of the Assembly... the Party*], that you have to give us an order.": Motion, para. 5(A). *See* also Reply, para. 7.

[72] Trial Judgement, fn. 1781.

[73] Motion, para. 6(A) and (C); Krajišnik's Appeal Brief, paras 34, 362, 393, fn. 614 and Trial Judgement, paras 297-309 and 936-939. *See* also Reply, para. 8.

[74] Trial Judgement, paras 298 and 299.

[75] Trial Judgement, paras 298 and 299. *See* also Trial Judgement, paras 299, 302, 308, 309 and 936.

military activities in Bijeljina in 1992, the Appellant does not show that had the document been considered at trial, it would have affected the verdict.[76]

36. The Appellant further argues that document **07-K-0182**, an excerpt from Biljana Plavšić's book *I Testify*, describes her visit to Kupres and the crimes committed against the Serbs. He submits that had the Trial Chamber taken into consideration this document, it could not have found that the first power take-over was carried out by the Serbs in Bijeljina. He argues that the war in BiH did not start in Bijeljina or with an attack on Muslims, but that it started earlier when the Serbs were attacked in Kupres and Bosanski Brod. He further submits that the document describes the attack against Serbs in Čapljina before Bijeljina.[77] Similarly, he argues that document **15-K-0197**, an article published in *Politika* on 29 March 1992, entitled *Massacre of the Serbs (Events in Bosanski Brod)*, confirms that the first armed clashes in BiH did not take place against the Muslims in Bijeljina, but against the Serbs in Bosanski Brod.[78]

37. The Appeals Chamber notes that the Trial Chamber did not find that "the war in BiH" started in Bijeljina; instead, the Trial Chamber held that "Bijeljina was the first municipality in Bosnia-Herzegovina to be taken over by the Bosnian Serbs in 1992."[79] Thus, for this finding of the Trial Chamber, it is irrelevant whether any attacks on Serbs were committed prior to the forcible take-over in Bijeljina by Bosnian Serbs.[80] Similarly, the other impugned findings of the Trial Chamber[81] do not depend on whether Serbs were attacked in Bosanski Brod in March 1992. Hence, the Appellant does not show that the documents would have affected the verdict.

38. The Appellant argues that document **16-K-0198**, an article published in *Politika* on 22 April 1992, entitled *Barracks in Čapljina Blocked*,[82] shows that the Serbs were a minority in Čapljina and that it is not true that the Muslims were attacked in that municipality as a part of a JCE plan, as stated by Witness 583, who had allegedly testified that the Serbs in Čapljina had intimidated the Muslims and that "Zvornik was only a continuation of the Serbian JCE plan".[83] The Appellant

[76] *See* Response, para. 27.
[77] Motion, para. 7(A), with reference to Krajišnik's Appeal Brief, paras 34, 36, 362 and 393 (fn. 614) and Trial Judgement, paras 297-309 Trial Judgement, paras 298 and 299, 936-939. *See* also Reply, para. 8.
[78] Motion, para. 15, with reference to Krajišnik's Appeal Brief, paras 36 (fn. 29), 80 (fn. 85) and 362 (fn. 550), Trial Judgement, paras 298, 300, 308, 936, 967, 1108, and 1123.
[79] Trial Judgement, paras 298 and 936.
[80] *See* Response, paras 29 and 30.
[81] *Cf.* Trial Judgement, paras 300, 308, 967, 1108 and 1123.
[82] The Appeals Chamber notes that the translation of document 16-K-0198 entails other newspaper articles published in *Politika*, 22 April 1992. Since paragraph 16 of the Appellant's Motion refers to the article "Barracks in Čapljina blocked" only, the Appeals Chamber will not consider the other articles. Moreover, they do not contain information relevant to the issue raised in paragraph 16 of the Appellant's Motion.
[83] Motion, para 16(A) and (B). *See* also Reply, para. 13.

argues that the document shows that Witness 583, upon which the Trial Chamber relied, lacks credibility.[84]

39. Having considered the findings of the Trial Chamber with the evidence of document **16-K-0198** that at the end of April 1992, the barrack in Čapljina was blocked by Muslim and Croat forces, the Appeals Chamber is not persuaded that this evidence is reasonably capable of contradicting Witness 583's testimony that, in March 1992, he received reports about Muslims being threatened by Bosnian Serbs in many localities in BiH, including Čapljina.[85] Further, the fact that the Serbs were a minority in Čapljina was evidence before the Chamber and,[86] hence, had document **16-K-0198** been considered at trial, it would not have affected the Trial Chamber's finding on the credibility of Witness 583.

7. Alleged Error in Relation to "Variant A and B"

40. The Appellant submits that document **08-K-0104**, the "Declaration of the European Community of 17 December 1991", shows that the European Community gave a deadline to the leaderships of all Yugoslav Republics to apply for independence by 15 January 1992. This document, he argues, refutes the Trial Chamber's finding that Jovan Čizmović was tasked with the implementation of Variants A and B ("Variant A and B Instructions").[87] The Appellant argues that had the Trial Chamber taken into consideration this evidence, it would not have concluded that the aim of the RS Assembly meeting on 21 December 1991[88] was to distribute the Variant A and B Instructions but would have concluded that this was a session of the Assembly in response to the announced independence of BiH. The Appellant also argues without further specification that the Trial Chamber would not have held that he "attended the distribution of these 'incriminating Instructions'".[89]

41. The Appeals Chamber finds that the European Community's deadline to apply for independence by 15 January 1992 is not inconsistent with the Trial Chamber's finding that Jovan Čizmović was tasked with the implementation of the Variant A and B Instructions.[90] The European Community's declaration of 17 December 1991 was merely a common position with regard to the

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[84] *See* Motion, para. 16(B), with reference to Krajišnik's Appeal Brief, para. 407, fn. 653, and Trial Judgement, paras 363, 962, 963, 1030, 1097, 1110 and 1112.
[85] Witness 583, T.6883- 6884 (Closed Session). *See* Response, para. 37.
[86] Exhibit D217.
[87] Motion, para. 8, with reference to Krajišnik's Appeal Brief, para. 41, and Trial Judgement, para. 98. While the Appellant refers to the European Community's declaration, document 08-K-0104 contains a newspaper article from *Politika* dealing with this declaration. *See* also Reply, para. 9.
[88] While the Appellant erroneously referred to 21 November 1992 in the Motion, para. 8(C), he clarified in his Reply that he meant the session of 21 December 1992 (Reply, para. 9, fn. 8).
[89] Motion, para. 8(C). *See* also Response, para. 31.
[90] *See* Response, para. 31 (arguing that document 08-K-0104 is irrelevant).

recognition of Yugoslav Republics in line with their guidelines on the recognition of new states in Eastern Europe and in the Soviet Union. The Appellant fails to demonstrate that document **08-K-0104** would have affected the verdict, had it been available at trial.

8. Alleged Error in Concluding That "Top RS" Leadership Could Somehow Communicate With Those Executing Tasks in the Field

42. The Appellant submits that document **10-K-0193**, a transcript of a telephone conversation between him and Obrad Trifković of 20 May 1992, shows that communications between Pale and the southern part of the Bosnian-Serb Republic were not working.[91] He contends that this document refutes the Trial Chamber's finding that the Pale leadership communicated with other parts of the RS. Had the Trial Chamber considered this document, he argues, it would have concluded that he and other "top RS" leaders were not in touch with potential perpetrators of crimes in the field, and that local authorities acted on their own.[92] The Appeals Chamber notes that the indication in **10-K-0193** that "communications with Trebinje are not working" is not inconsistent with the Trial Chamber's finding that the armed conflict introduced communication difficulties, but that the Bosnian Serbs found ways to work around them.[93] In fact, suggesting an alternative solution, the Appellant asked Trifković whether he was "able to make contact by means of any kind of communications with our ... in Kikinda". Trifković answered: "Well, we can, the only thing we have here is the station, through the station or, I don't know, telephone, yes, yes, yes...".[94] The Appellant addresses none of the evidence of the Trial Chamber that the Pale leadership worked around the communications problems and were able to communicate with other parts of the RS. The Appellant thus fails to demonstrate that document **10-K-0193** would have affected the verdict.

9. Alleged Error in Finding That the Serbian Authorities Hindered the Return of Expelled Citizens

43. The Appellant further seeks the admission of document **11-K-0012**, a corrigendum to the Decision on the return of displaced persons,[95] document **12-K-0084**, a "Proclamation to the Citizens of the Serbian Republic of BH" of 11 July 1992, and document **13-K-0049**,[96] a set of documents regarding the protection of non-Serbs.

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[91] In his Reply, the Appellant specifies that the document shows that "telephones were down, not that there were problems in communications." Reply, para. 10.
[92] Motion, paras 9 and 10, referencing Krajišnik's Appeal, para. 56 and Trial Judgement, paras 149, 153, 200 and 1018.
[93] Trial Judgement, paras 149 and 1018. *See* also *ibid.*, paras 153 and 200, with references. *See* also Response, para. 33.
[94] Document 10-K-0193, p. 4.
[95] This "Correction" was published in the Official Gazette on 13 July 1992, replacing the deadline for the return of displaced persons, previously set for 20 May 1992, to 20 July 1992.
[96] "Registration for imprisonment card", a form to be filled in by a prisoner when imprisoned; Radovan Karadžić's Order to the Ministry of Interior to carry out an investigation with regard to the murder of five Muslim civilians in Bastasi, 19 August 1992; Radovan Karadžić's Directive to the Main Staff of 11 March 1993; and Radovan Karadžić's

44. The Appellant submits that document **11-K-0012** shows that the Decision on the return of displaced persons[97] was not a "false invitation to the Non-Serbs to return",[98] as allegedly found in the Trial Judgement. The Appeals Chamber notes that, while the question of the deadline for the return of displaced persons to Republika Srpska was discussed at trial,[99] the Trial Chamber made no findings in this regard in the Trial Judgement. Thus, document **11-K-0012** is irrelevant to the findings of the Trial Chamber and would not impact the verdict if admitted.

45. The Appellant argues that documents **12-K-0084** and **13-K-0049** confirm that he could not have been informed about intentions to commit crimes, but only about efforts and activities undertaken to protect the Muslims and the Croats from ungovernable individuals and groups.[100] The Appeals Chamber finds that the Appellant has shown that documents **12-K-0084** and **13-K-0049** are relevant to the material issues mentioned in paragraphs 138, 173 and 265 of the Trial Judgement, namely, the flow of information on the overall situation in BiH to the Appellant and to other members of the Bosnian-Serb Assembly,[101] and to paragraphs 890-893 of the Trial Judgement, where the Trial Chamber explains the approach it followed before reaching its conclusions about the Appellant's intent and state of knowledge.[102]

46. The Appeals Chamber notes, however, that the Trial Chamber considered a large amount of evidence from which it derived its finding that the Appellant knew about crimes committed "in the field".[103] Such evidence can be found, for example, in paragraph 1099 and in paragraphs 1006 *et seq.* of the Trial Judgement.[104] Furthermore, the Trial Chamber considered evidence of a similar

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Order to the Ministry of Interior to secure all religious buildings and institutions in the city of Banja Luka, 12 May 1993. *See* also *supra* para. 10.

[97] The "Presidential Decision on the Return of [the Displaced] to the Territory of the Serbian Republic of Bosnia-Herzegovina", in its wording as published in the Official Gazette of 8 June 1992, was admitted at trial as Exhibit P529, tab. 165.

[98] Motion, para. 11(B).

[99] Dorothea Hanson, T. 10198-10201.

[100] Motion, para. 11(B).

[101] Karadžić's messages and orders on the law governing the treatment of prisoners in document **13-K-0049** can be seen as information about the political and military, as well as the overall situation in BiH. The same is true with respect to Karadžić's appeals to the Serbian majority to treat members of other ethnicities with fairness and the statements in **12-K-0084** to the same effect. This information was delivered to the Appellant and other deputies to the Bosnian-Serb Assembly who in turn were often members of crisis staffs.

[102] This approach includes the extent to which it inferred such state of mind from direct evidence of the Appellant's knowledge of crimes as well as less direct evidence, such as the evidence of constant interaction between the Appellant and knowledgeable persons – Assembly deputies, army officers, local SDS leaders, *etc.* The Trial Chamber found that this evidence, combined with information about the Appellant's positions, powers, and interests, can be conclusive as to the kind of information that was made known to him. The Trial Chamber further found that it could assume, in the context of the times, documents produced by the Bosnian-Serb administration and by international organizations to have been shared among those persons who worked together very closely and were cleared to receive the most sensitive information, in particular the Appellant and Karadžić. It found no evidence suggesting that any matters were kept from the Appellant or that he was uninformed about any issue of substance to the present case, except when it found him actively seeking information following up on events. Inasmuch as documents **12-K-0084** and **13-K-0049** concern the information available to the Appellant, they are relevant to these findings.

[103] Motion, para. 9(C).

[104] *See* also Response, para. 35.

nature to documents **12-K-0084** and **13-K-0049**, namely evidence that Radovan Karadžić ordered the MUP and the Ministry of Justice to collect information on the conditions and treatment of "prisoners of war" by the Bosnian-Serb authorities, followed by the establishment of two commissions to look into the conditions in the detention centres and speed up the procedure of categorizing detainees. The Trial Chamber found that "[b]oth were a whitewash".[105] Given this plethora of evidence considered by the Trial Chamber with respect to the Appellant's knowledge of *inter alia* detention related crimes, the Appellant has not shown that the evidence contained in documents **12-K-0084** and **13-K-0049** would have impacted on the verdict.

10. Alleged Error in Attributing a Conspiratorial Role to Crisis Staffs

47. The Appellant submits that document **14-K-0181** is an SDS Crisis Staff document entitled "Conditions for Negotiating", dated 1 March 1992, showing that the Serbian and Muslim sides had crisis staffs. Had the Trial Chamber considered this document, he argues, it would not have concluded that the crisis staffs were established based on the Variant A and B Instructions and had a criminal, conspiratorial role in the establishment of the Bosnian-Serb Republic.[106]

48. The Appeals Chamber notes that document **14-K-0181** contains no information on the establishment of crisis staffs; rather, the Appellant appears to argue that its mere issuance is proof that crisis staffs existed notwithstanding the Variant A and B Instructions. However, **14-K-0181** indicates that it was issued on 2 March 1992, almost two and a half months after the Variant A and B Instructions were introduced[107] and after the majority of Serb crisis staffs were created.[108] Document 14-K-0181 is thus not inconsistent with the impugned findings.[109] As a result, it would not have affected the verdict.

11. Alleged Error in Not Believing the Appellant's Testimony That Some Representatives of the Muslim Side Advocated BiH as a Unitary and Islamic State

49. The Appellant argues that had the Trial Chamber considered document **17-K-0091**, excerpts from Muhamed Filipović's book *I was Alija's Diplomat*, it would not have concluded that the

[105] *See* Trial Judgement, paras 1065 *et seq.*
[106] Motion, para. 14, referencing Trial Judgement, paras 86-99 and 283 and Krajišnik's Appeal Brief, paras 230 and 346. *See* also Reply, para. 12, where the Appellant further argues that document 14-K-0181 refutes the conclusion that Crisis Staffs were formed on the basis of the Instruction of 19 September 1991.
[107] Trial Judgement, para. 86.
[108] Trial Judgement, para. 99.
[109] *See* Response, para. 36 (arguing *inter alia* that it is irrelevant whether establishing crisis staffs was common to all parties in conflict).

Appellant had an extreme position before the beginning of the armed conflict, as he talked about Muslim delegates who wanted to create an Islamic state.[110]

50. When the Trial Chamber made the impugned finding, it already took into consideration that "some Muslims may indeed have called for an Islamic state".[111] Hence, the Appellant does not show that, had the document been considered at trial, it would have affected the decision.

51. The Appellant also submits that document **41-K-0187**, an excerpt from David Owen's book "The Balkan Odyssey", supports his claim that the war started due to the premature recognition of BiH. He argues that this document would have affected the Trial Chamber's conclusion that "the war broke out" because of the Appellant's alleged "call to arms", which, the Appellant adds, was found to be the beginning of the implementation of the JCE.[112]

52. Having considered the findings of the Trial Chamber, the Appeals Chamber is satisfied that the Trial Chamber neither found that the war broke out because of the Appellant's "call to arms",[113] nor that it marked the beginning of the JCE.[114] Rather, it relied on his speech to find that the Appellant wanted "new facts created on the ground" in order to strengthen the position of the Bosnian-Serb representatives at international peace negotiations.[115] This finding was one among others showing the Bosnian-Serb leadership's expansionism and pursuit of ethnically recomposed territories. None of these findings are inconsistent with the evidence of document **41-K-0187**.[116] The Appellant accordingly fails to demonstrate that this document would have affected the verdict.

53. The Appellant submits that document **50-K-0069**, a statement by Alija Izetbegović in *Politika* of 30 March 1992, shows that the Muslim side would adopt by force a Declaration on BiH's sovereignty outside the Constitution, which latter had been agreed on by the BiH Assembly. Furthermore, the Appellant submits document **52-K-0108**, extracts from Muhamed Filipović's book *I was Alija's Diplomat*,[117] and argues that the consideration of both documents would have affected

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[110] Motion, para. 17, with reference to Krajišnik's Appeal Brief, para. 81, fn. 89, and Trial Judgement, para. 917. *See* also Reply, para. 14.
[111] Trial Judgement, para. 917. *See* also Response, para. 38.
[112] Motion, para. 41, referencing Trial Judgement, paras 910-912, 1084 and 1124; Krajišnik's Appeal Brief, paras 211-212. The Prosecution responds that the Appellant's conviction was not based on why the war broke out and that, in any event, the finding on his "call to arms" did not relate to the outbreak of the war: Response, paras 81 and 82. In his Reply, the Appellant submits further that the "war created the conditions for the crimes to be committed with impunity and without control" (Reply, para. 31).
[113] Trial Judgement, paras 910-912.
[114] *See* Trial Judgement, paras 1122-1124.
[115] Trial Judgement, para. 912.
[116] *See* Trial Judgement, paras 910-913. *See ibid.*, para. 925.
[117] Motion, para. 52, citing Trial Judgement, paras 48 and 49 and Krajišnik's Appeal Brief, para. 250, fn. 342.

the Trial Chamber's finding that the SDS was prepared to oppose by force an independent BiH. He contends that the Serbian side opposed BiH through political means, not by force.[118]

54. Regarding document **50-K-0069**'s potential impact on the verdict, the alleged statement therein by Alija Izetbegović is not inconsistent with the impugned finding. Moreover, the document does not provide any information on the stance of the SDS, nor does it address the organisation of the Bosnian Krajina's defence or the arming of the Serbian population, which facts underpinned the impugned finding.[119] As to document **52-K-0108**, the Appeals Chamber notes that the Trial Chamber based its impugned finding on facts relating to the period before the one to which the document relates (July 1991),[120] and that the document is not inconsistent with the impugned finding.[121] The Appellant thus fails to show that the documents would have affected the verdict.

55. The Appellant submits that document **51-K-0070**, a recommendation of the BiH Assembly of 11-12 April 1991 not to establish regions in BiH, shows that although regionalisation was in accordance with the Constitution, it was politically undesirable.[122] He argues that had the Trial Chamber considered this document, it would not have concluded that "the SDS was prepared to oppose even by force the possibility that Bosnia and Herzegovina would become an independent unitary state".[123]

56. The Appellant does not challenge the fact that communities of municipalities were established, but rather claims that these were established as a result of the Muslim side's failure to renounce their intention to declare an independent BiH. The impugned finding of the Trial

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[118] Motion, paras 50 and 52, referencing Trial Judgement, paras 48 and 49 and Krajišnik's Appeal Brief, para. 250, fn. 342. *See* also Reply, para. 34, where the Appellant argues that the RS Assembly was formed to make the other side abide by the Constitution again.
[119] Trial Judgement, para. 49. *See* also Response, para. 88.
[120] The Trial Chamber found that, during the first months of 1991 the SDS began to organise Serb-majority municipalities in BiH into communities of municipalities, which led to the creation of the Community of Municipalities of the Bosnian Krajina on 7 April 1991, followed by two other associations in May 1991 (Trial Judgement, para. 48). It found that, although SDS party leaders justified the associations in terms of economic necessity, among the functions the SDS assigned to the Bosnian Krajina community of municipalities was the organization of its defence in times of war or imminent threat of war (Trial Judgement, para. 49). Considered together with the arming and mobilization of the Serbian population, which had started already by spring 1991, the Trial Chamber found that "this policy shows that the SDS was prepared to oppose even by force the possibility that Bosnia-Herzegovina would become an independent unitary state" (Trial Judgement, paras 36 and 49).
[121] *See* also Response, para. 87.
[122] Motion, para. 51, with reference to Krajišnik's Appeal Brief, para. 250, fn. 342; Trial Judgement, paras 48 and 49. The document contains other material than the Recommendation of the BiH Assembly. As the Appellant does not make any submission with respect to these documents, they will not be addressed any further.
[123] *Ibid. See* also Reply, para. 34.

Chamber, however, is based on other evidence to which the Appellant does not refer.[124] The Appeals Chamber is thus not satisfied that the document would have affected the verdict.

57. The Appellant seeks the admission of document **53-K-0110**, containing the "Conclusions" on a peaceful solution to the danger of fighting in BiH, adopted at a Session of the BiH Assembly of 11 September 1991. He argues that had the Trial Chamber considered this document, it would not have found that "[i]n late August 1991, the SDS leadership began to consider the creation of a separate Serb territory in" BiH.[125]

58. The Appeals Chamber notes that the Trial Chamber based the above mentioned finding on various pieces of evidence[126] to which the Appellant does not refer. Hence, he does not show that the Trial Chamber, had it considered document **53-K-0110** at trial, would have found otherwise.[127]

59. The Appellant requests the admission into evidence of document **54-K-0074**, an article in *Politika* of 25 October 1991, entitled "Request to Annul Unlawful Decisions", which allegedly calls upon the Muslim-Croat side to annul the unconstitutional declaration of sovereignty and continue to adhere to the BiH constitution, or else "the Serbian side would have to make a corresponding political move".[128] The Appellant argues that had the Trial Chamber considered this document, it would have concluded that the Serbian side did not want to establish the Bosnian-Serb Assembly as a parallel institution with the BiH Assembly, and that it was the Muslim-Croat side's violation of the constitution that forced the Serbian side to establish the Bosnian-Serb Assembly.[129]

60. Contrary to the Appellant's submission, the Trial Chamber did not hold that the Bosnian-Serbs "wanted" to establish their own Assembly,[130] nor that its establishment was aimed at the destruction of BiH.[131] Furthermore, the Trial Chamber considered that since the BiH Assembly's "decision to adopt the declaration [of sovereignty] was illegal and unconstitutional, the SDS had to

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[124] Trial Judgement, paras 48 and 49. *See* also Response, para. 89, where the Prosecution submits that document 51-K-0070 cannot add anything to the Trial Chamber's finding that the SDS initiated the creation of communities of municipalities.
[125] Motion, para. 53, with reference to Krajišnik's Appeal Brief, para. 254; Trial Judgement, para. 55. *See* also Reply, para. 34. The Appeals Chamber notes that the document comprises documents other than the conclusions of 11 September 1991. As these other documents are unrelated to the submission of the Appellant, they are not dealt with in this decision. The Appeals Chamber further notes that document 72-K-0072 is a duplicate of 53-K-0110.
[126] Boro Bjelobrk, T. 8220, 8278, 8410-8416; Exhibit P392 (Bjelobrk statement), paras 20, 39; Witness 623, T. 5694-5695, 5686-5687 and 5829-5831; Exhibit P280 (Witness 623 statement, paras 36, 40 and 42-45).
[127] *See* also Response, para. 90, where the Prosecution submits that document 53-K-0110 is irrelevant to the Trial Chamber's finding in question.
[128] Motion, para. 54, with reference to Krajišnik's Appeal Brief, para. 259, and Trial Judgement, paras 65 and 67-68. The Appeals Chamber notes that this document includes a translation of excerpts of Muhamed Filipović's book *I was Alija's Diplomat*. As the Appellant does not refer to these excerpts in his submissions, the Appeals Chamber will not consider them for the purposes of the discussion of document 54-K-0074. The Prosecution responds that this document is irrelevant, Response, para. 91.
[129] Motion, para. 54. *See* also Reply, para. 34.
[130] Trial Judgement, para. 67, with further references.

find a method of denouncing it", and that "the idea emerged that the SDS should form its own institutions, which would function in parallel to those of Bosnia-Herzegovina".[132] This is in essence what the Appellant argues the Trial Chamber should have found had it taken into consideration document **54-K-0074**.[133] Hence, the Appellant does not show that, had the document been considered at trial, it would have affected the decision.

61. The Appellant submits that documents **62-K-0067** and **K-0068** contain extracts from BiH Assembly sessions held in January and February 1991. He argues that Alija Izetbegović advocated that BiH remain within a "reorganised" Yugoslavia at the January 1991 session, but retracted from that position at the February 1991 session, stating instead that he (Izetbegović) would sacrifice peace for the sovereignty of BiH. Faced with this evidence, the Appellant posits, the Trial Chamber would have found that the Serbs legitimately created regions in areas where they were in the majority in reaction to the unconstitutional behaviour of the Muslim side, and it would not have concluded that the escalating tensions in BiH were caused by the creation of Serbian regions.[134]

62. The Appellant's conviction did not depend on whether the Serbian regions were created illegitimately in the beginning of 1991.[135] The Trial Chamber's findings in this regard rather described the political precursors to the ensuing crimes for which it found the Appellant criminally responsible.[136] Further, the part of the Trial Judgement the Appellant refers to does not state that the creation of Serbian regions escalated tensions.[137] The Trial Chamber did note the tensions in BiH, but carefully considered that they were caused both by the Serbian and the Muslim sides.[138] Thus, the Appellant fails to show that the documents **62-K-0067** and **K-0068** would have affected the verdict.

63. The Appellant argues that document **04-K-0129**, an article published in *Politika* on 26 March 1992, entitled *SDA Withdrawing from the Agreement in Sarajevo*, confirms that a day before his departure to a conference on BiH in Brussels, the Muslim side withdrew from the Cutileiro plan, announcing that they would invite the people and political parties to reject the agreement reached. The Appellant alleges that the Muslim side wanted to trick the international community into recognising BiH, and that withdrawing from the plan forced the Serbs to

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[131] *See* also Response, para. 91.
[132] Trial Judgement, para. 65.
[133] Motion, para. 54(C): "The Chamber should have concluded that it was the violation of the Constitution on the part of the Muslim-Croat side that forced the Serbian side to establish the Assembly of the Serbian people in order to protect, in a parliamentary fashion, the Serbian people who had entrusted them to be their representatives in the BH Assembly".
[134] Motion, para. 62. *See* also Reply, para. 41.
[135] *See* also Response, paras 109 and 110.
[136] Trial Judgement, Part 2, Section 2.4, paras 48-62.
[137] Trial Judgement, para. 48.
[138] *See* Trial Judgement, paras 122, 295 and 1167. *See* also Response, para. 111.

promulgate the constitution of the RS. The Appellant argues that had the Trial Chamber considered the document at trial, it would not have concluded that the Serbian side had a plan to take over power immediately before the beginning of the armed conflict in BiH, nor that Krajisnik's "18 March speech was a call to arms".[139]

64. The Appeals Chamber finds that the Appellant misrepresents the content of document **04-K-0129**. The article states that SDA representatives in Brussels intended to convince José Cutileiro to abandon plans of turning the BiH into cantons. Further, the article claims that the Assembly of the Serbian People in BiH was likely to proclaim its constitution the following day – *i.e.* on 27 March 1992 – and thus independently of the outcome of the conference at Brussels. Hence, the article does not establish that the Serbian people promulgated the new constitution because of SDA representatives expressing harsh criticism on the Cutileiro plan. Similarly, the document is not relevant to the other findings mentioned by the Appellant.[140] It therefore would not have affected the verdict.

65. The Appellant also seeks the admission of item **71-K-0087**, a video footage and an excerpt of David Owen's book, *Balkan Odyssey*.[141] The Appellant submits that these materials constitute contextual evidence for his claim that the Serbian side was not responsible for starting the war or for breaking apart BiH by force in order to create a Serbian state.[142] He contends that, had the Trial Chamber considered these materials, it would not have found that the Serbian side had devised a criminal plan with the common purpose of expelling the non-Serbian population.[143]

66. The Appeals Chamber notes that contrary to the Appellant's submission, the Trial Chamber did not conclude that the Serbian side was responsible for starting the war by devising a criminal plan to "break [...] apart Bosnia and Herzegovina by force in order to create a Serbian state".[144] In fact, the common objective underlying the JCE identified by the Trial Chamber consisted of the "ethnic [...] recompos[ition of] the territories under [the] control [of the Bosnian-Serb leadership] by expelling and thereby drastically reducing the proportion of Bosnian Muslims and Bosnian

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[139] Motion, para. 4, with reference to Krajišnik's Appeal Brief, paras 28, 113, 118 and 279; Trial Judgement, paras 98, 109, 126, 236, 912, 1100 and 1121(d). *See* also Response, para. 22, referring to Trial Judgement, paras 45, 105, 114, 116, 123-127, 410, 731, 911, 812, 950, 998, 1020 and 1115; Reply, para. 5.
[140] *See ibid.*
[141] Motion, para. 71(A), referring to *Balkan Odyssey*, pp. 72 and 73 in the Serbian version, corresponding to pp. 48 and 49 in the English original.
[142] Motion, para. 71(B) and (C), referring to Krajišnik's Appeal Brief, paras 10, 14, 19-21 and 24, and Trial Judgement, para. 877.
[143] Motion, para. 71(C). *See* also Reply, para. 50.
[144] Motion, para. 71(C). *See* also Response, para. 131, where the Prosecution argues that the tendered material is thus irrelevant to the Trial Chamber's findings regarding the criminal goal of the JCE.

Croats living there".[145] The Appeals Chamber considers that the Trial Chamber's finding on a criminal plan is independent from the issue of responsibility for the war in BiH. Thus, had the evidence been considered at trial, it would not have affected the verdict.

12. Alleged Error That the Appellant Was a Member of the Presidency

67. The Appellant alleges that document **56-K-0171**, a BBC agency news item of 27 July 1992 and a Tanjug news item of 25 July 1992, shows that Radovan Karadžić, Nikola Koljević and the Appellant went to London on 26 July 1992, the former two as members of the RS Presidency, the Appellant as the President of the RS Assembly.[146] The Appellant argues that had the Trial Chamber considered this document, it would not have found that he was a member of the Presidency.[147]

68. The Appeals Chamber notes that the BBC news item reads: "A delegation of the [RS] government left for London"; "[t]he delegation is comprised of [RS] President Radovan Karadzic, presidency member Nikola Koljević and president of the [RS] Assembly Momcilo Krajisnik". However, the news item's reference to the Appellant solely as president of the RS Assembly rather than as a member of the Presidency is not inconsistent with the Trial Chamber's finding that he was a Presidency member.[148] Indeed, the Appellant has not shown that his position as president of the Assembly excluded that he was, at the same time, a member of the Presidency, a finding based on a broad range of evidence not addressed by the Appellant.[149] Hence, the Appellant does not show that had this document been considered at trial, it would have affected the decision.

69. The Appellant seeks the admission of document **57-K-0156**, a group of several documents of which only two were not exhibits at trial.[150] The Appellant alleges that these documents show that "in addition to the registered sessions (called Presidency sessions), other sessions were held where very important decisions were adopted and which [the Appellant] did not attend (or at least there is no evidence of him attending)".[151] The Appellant argues that had the Trial Chamber considered the document, it would not have concluded that the RS Presidency "operated in fact with

[145] Trial Judgement, para. 1090. *See* also Trial Judgement, para. 1097, referring to the implementation of the "common objective of removal by force of Bosnian Muslims and Bosnian Croats from large areas of Bosnia-Herzegovina".
[146] Motion, para. 56(A) and (B), with reference to Krajišnik's Appeal Brief, para. 306, fn. 420, and Trial Judgement, para. 177. The BBC news item refers to the information contained in the Tanjug news item.
[147] Trial Judgement, para. 177. *See* also Reply, para. 35.
[148] *See* Response, para. 92.
[149] Trial Judgement, para. 177, fns 372-377. *See* also Response, para. 92.
[150] *See supra*, para. 10. *See* also Response, para. 93 and fns 181 and 182. The documents not admitted as Exhibits at trial are (1) a Decision on the general mobilisation of forces and resources in the Republic, signed by Radovan Karadžić, 20 May 1992; and (2) an excerpt from the Official Gazette No. 11 of 13 July 1992, p. 402, containing several decisions and decrees signed by Radovan Karadžić.
[151] Motion, para. 57(A) and (B), with reference to Krajišnik's Appeal Brief, para. 309, Trial Judgement, paras 178 and 179.

five members from its inception on 12 May 1992",[152] or that the Appellant "was present at practically every recorded meeting of the Presidency from 12 May 1992 onwards [...]".[153]

70. Paragraphs 178 and 179 of the Trial Judgement relate to the functioning of the Bosnian-Serb Presidency, and the membership of the Appellant therein, as shown *inter alia*, by his presence "at practically every recorded meeting [...] as well as in informal meetings".[154] The Appellant does not show that the documents in question would overturn the Trial Chamber's findings on the functioning of the Bosnian-Serb Presidency, its composition and the membership of the Appellant.

71. The Appellant also seeks the admission of document **61-K-0226**, a decision on the appointment of members of the wartime board of commissioners for the Serbian municipality of Sokolac, of 23 June 1992 and signed by Radovan Karadžić. He argues that had this decision been considered by the Trial Chamber, it would not have found that he was the Presidency's contact person for war commissioners and had the responsibility to report about their work.[155]

72. The Trial Chamber found that the Appellant "signed at least two decisions appointing state commissioners",[156] a finding which is not inconsistent with document **61-K-0226**. Furthermore, this document is consistent with the Trial Chamber's finding that the Appellant was the contact person for war commissioners in the RS Presidency.[157] Hence, the Appellant does not show that, had the document been considered at trial, it would have affected the decision.

13. Alleged Error in Failing to Accept That, in January 1992, the Serbian Side Accepted an Independent BiH

73. The Appellant seeks the admission of documents **18-K-0083** and **19-K-0199**, transcripts of the BiH Assembly session on 26 January 1992, and **20-K-0133**, a *Politika* article of 17 January 1992. In his view, these documents show that the Serbian side would have accepted BiH independence and a referendum thereon, if the BiH Government would have regionalised BiH before the referendum. He argues that Muhamed Čengić accepted the Serbian proposal on behalf of the BiH Government and the Muslim side, but that Alija Izetbegović then withdrew the acceptance.

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[152] Motion, para. 57(C), citing Trial Judgement, para. 178. *See* also Reply, para. 36.
[153] Motion, para. 57(C), citing Trial Judgement, para. 179. The Appellant further argues that the Trial Chamber should have granted more credibility to Witness Subotić, who testified that Karadžić consulted with the two other members of the Presidency (Biljana Plavšić and Nikola Koljević) in making decisions, which according to the Appellant, is contrary to the finding in paragraph 178 of the Trial Judgement, that the Appellant attended all the sessions of the Presidency. The Appeals Chamber notes that this argument is apparently not linked with document 57-K-0156.
[154] Trial Judgement, para. 179.
[155] Motion, para. 61, with reference to Krajišnik's Appeal Brief, para. 346, fn. 528, and Trial Judgement, paras 277 and 278. Response, paras 107 and 108. *See* also Reply, para. 40.
[156] Trial Judgement, para. 278, referring to Dorothea Hanson, T. 9709, 9712-9714 and 10005-10007; Exhibits P65, tab. 205 and P65, tab. 206.

This, the Appellant posits, was the reason the Serbian side vetoed the decision to call for a referendum on BiH's independence, and the Muslim-Croatian call for a referendum led to war. If presented with **18-K-0083**, **19-K-0199** and **20-K-0133**, the Appellant argues, the Trial Chamber would not have found that he and the Serbian side had a negative opinion of peace and of BiH independence, and that he harboured extreme positions against a political solution in BiH.

74. The Prosecution responds that the evidence could not impact the finding that the SDS leadership was, on parallel tracks, negotiating on the one hand and using force on the other.[158] The Prosecution further claims the relationship between regionalisation and the declaration of independence was discussed at length during Krajišnik's testimony at trial.[159]

75. The Appeals Chamber notes that, while documents **18-K-0083** and **19-K-0199** essentially support the Appellant's recount of events preceding the Serbian withdrawal, so does the evidence the Trial Chamber relied on.[160] Moreover, document **19-K-0199** does not even contain the statement of Muhamed Čengić the Appellant has referred to. Document **20-K-0133** does not to add to the description of the events of 26 January 2006 in **18-K-0083** or in **19-K-0199** and in the evidence relied on by the Trial Chamber.

76. The remaining impugned findings concern the Bosnian-Serb leadership's justification of their claim to extensive territories by repeated references to the "genocide" against Serbs during the Second World War.[161] Documents **18-K-0083**, **19-K-0199** and **20-K-0133** are not inconsistent with these findings.[162] For these reasons, the Appeals Chamber is not persuaded that documents **18-K-0083**, **19-K-0199** and **20-K-0133** would have affected the verdict.

77. The Appellant further seeks the admission of document **55-K-0070**, an extract from the record of the BH Assembly session of 26 January 1992, showing that Serbian deputies participated in that session and that a political agreement had been reached, according to which the Serbian side was to invite the members of the Serbian people to come to the referendum and vote for the independence of BiH in exchange for the BiH Government carrying out, before the referendum, the regionalization of BiH without endangering the integrity of BiH as an independent state.[163]

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[157] Trial Judgement, para. 277. *See* also Response, para. 107.
[158] Response, para. 39. The Appellant disputes this, arguing that the Prosecution misinterprets the facts, Reply, para. 15.
[159] *Ibid.*, referring to Momčilo Krajišnik, T.23030 *et seq.*.
[160] Patrick Treanor, T. 1556; Exhibit P934, p. 35; Momčilo Krajišnik, T. 23684 and 23685.
[161] Trial Judgement, paras 45, 46 and 923.
[162] *See* Radovan Karadžić's statements in document 20-K-0133, p. 2 ("Germany obviously wants to dominate, but cannot do it without brutality") and document 18-K-0083, p. 8 ("...but nor will we allow you to impose what you want on us, that we remain in an independent Bosnia in which we are finished, ...").
[163] Motion, para. 55(A).

78. The Appellant asserts that had the Trial Chamber considered the document, it would not have found that on 15 February 1992, the "Bosnian-Serb Assembly discussed a draft Constitution, according to which the Bosnian-Serb Republic would become part of federal Yugoslavia."[164] The Appellant does not show, however, that this finding is inconsistent with the document.

79. The Appellant further alleges that had the Trial Chamber considered the document, it would have concluded that "it was the rejection of any compromise agreement [...] by the Muslim and the Croat sides that led to the war, not the existence of a JCE plan on the Serbian side", contrary to the findings in paragraphs 117 and 125 of the Trial Judgement.[165] The paragraphs referred to detail a 28 February 1992 meeting of the SDS Deputies' Club during which the Appellant talked about the objective of dividing BiH, and the 18 March 1992 meeting of the Bosnian-Serb Assembly during which deputies discussed a new proposal "aimed at a division of Bosnia-Herzegovina into three constituent unites based not only on nationality, but also on economic and geographic considerations."[166] The Appeals Chamber notes that the Appellant fails to explain how document **55-K-0070** would contradict these findings.[167]

80. The Appellant finally alleges that had the Trial Chamber considered document **55-K-0070**, it would not have concluded that "[o]n 12 May 1992, at a session of the Bosnian-Serb Assembly, the [Appellant] promoted the creation of the VRS, explaining that acquisition of territory was the ultimate goal."[168] The Trial Chamber based this finding on Exhibit P65, tab 127, and the Appellant does not refer to this Exhibit at all. Hence, the Appeals Chamber is not satisfied that had document **55-K-0070** been considered at trial, it would have affected this finding.

14. Alleged Error in Finding That the Appellant Was Obsessed With Separating the Ethnic Groups

81. The Appellant argues that document **21-K-0225**, containing four documents, allegedly proves that it was first the Muslim side that initiated the division of BiH.[169] He also seeks the admission of document **22-K-0228**, containing excerpts from Sefer Halilović's book *Cunning Strategy*, allegedly revealing that the Muslim side considered the division of BiH and exchanging

[164] Trial Judgement, para. 113.
[165] Motion, para. 55(D). *See* also Reply, para. 15.
[166] Trial Judgement, para. 125.
[167] *See* also Response, para. 40.
[168] Motion, para. 55(D) (emphasis omitted), citing Trial Judgement, para. 194.
[169] Motion, para. 21. The Appellant alleges that the four documents are (1) a Serbian-Muslim Joint Declaration of 18 September 1993; (2) a Joint Declaration by Franjo Tuđman and Alija Izetbegović of 14 September 1993 outlining a division of BiH and the establishment of a Muslim-Croatian entity in BiH; (3) a Declaration of 14 September 1993 signed by Tuđman and Izetbegović on a confederation of Croatia and a federal BiH; and (4) a Constitutional Law of 28 September 1993 on the establishment of an independent Muslim state following the division of BiH: *ibid.*

territories with the Serbian side.[170] He posits that had the Trial Chamber considered these documents it would not have believed Witness 623's statement that the Appellant was "obsessed" with ethnic separation. He argues that he wanted a decentralised BiH where the Serbs would have a constituent unit comprising the territories where they were in majority before the war,[171] and adds that the division of BiH was one of the official legal solutions to the BiH crisis during negotiations.[172]

82. The Appeals Chamber notes that the Appellant's conviction relies on events having occurred between 1 July 1991 and 30 December 1992, whereas the documents in **21-K-0225** relay information from September 1993.[173] In addition, contrary to Witness 623's statement, the documents do not reveal the Appellant's personal view on ethnic separation. Similarly, though document **22-K-0228** concerns events in November 1992, it too does not speak about the Appellant's view on ethnic separation. The Appellant therefore fails to show that documents **21-K-0225** and **22-K-0228** would have affected the verdict.

83. The Appellant further tenders document **36-K-0270**, a governmental decree temporarily prohibiting the sale of socially-owned apartments on RS territory.[174] He contends that, had the Trial Chamber considered this decree, it would not have found that the "influx of Serbs from other parts of [BiH] would help to consolidate Serb ethnic domination in the acquired territories".[175]

84. The decree provides, without any further specification, that the sale of socially-owned apartments is temporarily prohibited.[176] The Appellant has failed to explain any connexion between the "housing facilities ... that are vacant following the voluntary departure of Muslims"[177] and the "socially-owned apartments" referred to in the decree.[178] Also, the decree is not inconsistent with the finding that these housing facilities were used to accommodate Serbs. Thus, had this document been considered at trial, it would not have affected the verdict.

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[170] Motion, para. 22(A).
[171] Motion, para. 22(B) and (C) referencing Trial Judgement, para. 950 and Krajišnik's Appeal Brief, para. 101. *See* also Reply, para.17.
[172] Reply, paras 16 and 17.
[173] *See* also Response, para. 43.
[174] Adopted on 20 April 1992. Motion, para. 36(A).
[175] Motion, paras 36(B) and (C), referring to Trial Judgement, para. 1033, and Krajišnik's Appeal Brief, para. 45.
[176] Document 36-K-0270, Article 1.
[177] Exhibit P273, quoted in Trial Judgement, para. 1033.
[178] The Appeals Chamber notes the Prosecution's interpretation that the Appellant's "argument implies that Muslim apartments were or became socially owned apartments" (Response, para. 72).

15. Alleged Error in Finding That the Appellant "Could" Have Known of the Crimes Committed

85. The Appellant seeks the admission of document **23-K-0202**, an excerpt from Warren Zimmerman's book *Origin of a Catastrophe*, arguing that the excerpts show that Mr. Karadžic and Mr. Koljević met with the US Ambassador Zimmerman in Belgrade on 14 May 1992, and that the Appellant was in Belgrade at that time, too.[179] The Appellant argues that had the Trial Chamber seen this evidence, it would not have concluded that he knew "about the heavy and indiscriminate bombardment [...] of the city of Sarajevo [...] on 14 May" when he was not in Pale.[180]

86. The Appeals Chamber notes that the Appellant does not provide any evidence as to his being present in Belgrade but merely supplies evidence of the presence of both Karadžić and Koljević in Belgrade. Furthermore, even if he had been in Belgrade on 14 May 1992, this would not affect the finding that he knew about the heavy and indiscriminate bombardment by Bosnian-Serb forces of the city of Sarajevo in the course of May and June 1992.[181] Hence, the Appellant does not show that had the document been considered at trial it would have had an impact on the judgement.

87. The Appellant tenders document **24-K-0203**, a telephone conversation between Fikret Abdić and Colonel Milosav Gagović, dated 14 May 1992, where Gagović states that the Territorial Defence of BiH fired on Maršal Tito barracks, killing one and wounding four soldiers.[182]

88. The Appellant submits that, had the Trial Chamber seen this evidence, its conclusion at paragraph 951 would have been different, in that it would at least have concluded that the shelling of Sarajevo by the Serbian forces was not unilateral, indiscriminate, and unprovoked, and that he knew about this alleged shelling and supported it.[183]

89. The Appellant does not show the link between the evidence and his argument that the finding that "it is impossible that [he] knew nothing about the shelling in Sarajevo on 14 May 1992 because Sarajevo is down the road" is erroneous and contradicted by evidence that he was in Belgrade with Karadžić and Koljevic (see document **23-K-0202**).[184] The Trial Chamber did not find that the shelling of Sarajevo by Bosnian-Serb forces was "unilateral" or "unprovoked".[185] All of the

[179] Motion, para. 23(A) and (B), referring to Krajišnik's Appeal Brief, para. 102, fn. 117, and Trial Judgement, para. 951, fn. 1879.
[180] Trial Judgement, para. 951.
[181] *See* also Trial Judgement, para. 951 and 952. *See* also Response, para. 47.
[182] Motion, para. 24(A). *See* also document 24-K-0203, p. 2 of the English version. The Appeals Chamber notes that at p. 5 of the same document Colonel Gagović mentions four dead and four wounded.
[183] Motion, para. 24(C); Reply, para. 18, referring to Trial Judgement, paras 951 and 1110.
[184] Krajšnik's Appeal Brief, para. 102, fn. 117 referring to document 23-K-0202, an excerpt from Warren Zimmerman's book *Origin of a Catastrophe*.
[185] *See* also Response, paras 48 and 49 (arguing, in addition, that attacks against civilians are prohibited whether provoked or not).

portions of the Appellant's testimony supporting the Trial Chamber's finding either refer to the Appellant's knowledge of the shelling of Sarajevo by the Bosnian-Serb forces generally, or to specific incidents of shelling having occurred on 28 May and 7 and 9 June 1992. Hence, the document would not have affected the Trial Judgement, had it been considered at trial.

90. The Appellant seeks the admission of document **25-K-0201**,[186] a two-page excerpt from Biljana Plavšić's book "*I Testify*", in which she describes her visit to Zvornik in early April 1992, during which "she did not see the crimes mentioned [by] Witness 583 and [Witness] Đokanović".[187] The Appellant argues that she denied that she and other Bosnian-Serb leaders had been informed by Dragan Đokanović and Witness 583 about the crimes in Zvornik,[188] and that she therefore could not have informed the Bosnian-Serb leaders about these crimes.[189] He argues that, when excerpts from Plavšić's book were tendered as evidence, "these two pages were mistakenly omitted".[190] The Appeals Chamber notes that specific pages of Biljana Plavšić's book were admitted as Chamber Exhibit C8.[191] Thus, the whole book was available to the Appellant at trial.

91. The Trial Chamber relied on evidence provided by Witness 583 and by Witness Đokanović when it found that the Bosnian-Serb leadership, including the Appellant, was informed of the crimes committed in the municipality of Zvornik.[192] The Appeals Chamber notes that the Trial Chamber did not find, as suggested by the Appellant, that Biljana Plavšić saw the crimes in Zvornik and subsequently reported to the Bosnian-Serb leaders,[193] nor did the Trial Chamber find that Witness 583 informed her about these crimes.[194] With regard to Plavšić's denial of having been informed about crimes in Zvornik by Dragan Đokanović, the Appellant has failed to show why the Trial Chamber would have relied on her evidence rather than on the testimony of Witness

[186] While the Appellant requests the admission of pages 169-170 as additional evidence, the translation provided covers pages 168 to 171 of the original document. Considering that the Appellant, in his Motion, only refers to crimes committed in Zvornik, the Appeals Chamber will limit its consideration of the document to the part starting with "After a day of rest [...]" and extending to "[...] the crimes, happened later" (pages 2 to 3 of the translation).
[187] Motion, para. 25(A), referring to Trial Judgement, paras 962-964.
[188] Motion, para. 25(A).
[189] Motion, para. 25(A) and (B), referring to Trial Judgement, paras 962-964 and to Krajišnik's Appeal Brief, para. 108.
[190] Motion, para. 25(D).
[191] *See Prosecutor v. Momčilo Krajišnik*, Case No. IT-00-39-T, Reasons for Decision Denying Defence Motion Regarding Chamber Witnesses Biljana Plavšić and Branko Đerić and Decision on Admission into Evidence of Biljana Plavšić's Statement and Book Extracts, 14 August 2006. The Trial Chamber admitted the following pages of Biljana Plavšić's book as potentially relevant for the Appellant's case: 50, 54, 75, 76, 82, 85, 86, 89, 90, 98, 100, 101, 113, 172, 201-204, 211, 216, 217, 230, 237, 241, 242, 244, 250, 259, 261-264, 275-277, 286, 287, 294, 303, 306, 308, 309, 311, 323 and 329.
[192] Trial Judgement, paras 962-964. The Appeals Chamber notes that Witness 583's testimony related to his witnessing of crimes being committed in Zvornik in early April 1992, which he reported to Radovan Karadžić (Trial Judgement, paras 962 and 963, first sentence), while Witness Đokanović's testimony concerned crimes committed in Zvornik in June 1992 and his subsequent report to Radovan Karadžić, Biljana Plavšić, Nikola Koljević and the Appellant (Trial Judgement, para. 964).
[193] Motion, para. 25(A).
[194] Motion, para. 25(C). The Trial Chamber rather found that Witness 583 informed Radovan Karadžić, Biljana Plavšić and Nikola Koljević on 23 July 1992 about "ethnic cleansing" in Bosanski Novi (Trial Judgement, para. 963).

Đokanović. First, notwithstanding that she had been convicted prior to giving her testimony,[195] Biljana Plavšić may have had an interest in denying that she was informed.[196] Second, the fact that Đokanović testified that he informed the Bosnian-Serb leadership of crimes committed in Zvornik would not necessarily absolve his own potential responsibility for those crimes. The Appellant's challenge to Đokanović's testimony on this ground therefore fails.[197] Thus, had this excerpt been adduced at trial, it would not have affected the verdict.

92. The Appellant seeks admission of documents **26-K-0209, 27-K-0220**, **29-K-0211** and **30-K-0212** (confidential), as well as document **02141498**, which, he claims, show that a "comprehensive and determined investigation was conducted regarding the crime in Koricanske Stijene, of which [he] was not informed".[198] He contends that the documents demonstrate that an "investigation was conducted by the RS MUP and following its completion, the MUP submitted the case, together with a criminal report, to the responsible prosecutor's office".[199] He argues that, had the Trial Chamber had this evidence at its disposal, it would not have concluded that he was informed about the crime committed in Koricanske Stijene, but would have found that all necessary measures had been taken in order to punish the perpetrators thereof.[200]

93. The Appeals Chamber notes that documents **26-K-0209** and **27-K-0220** are, in fact, two versions of the same document, namely a dispatch from the Security Services Centre ("CSB") to the Chief of the Prijedor Public Security Station ("SJB"), dated 11 September 1992, requesting the immediate taking of written statements about the events at Skender Vakuf from the policemen who escorted the convoy.[201] The Appeals Chamber will therefore consider these two documents as one single piece of evidence ("document **27-K-0220**").

94. The Appeals Chamber finds that the content of documents **27-K-0220**, **29-K-0211** and **30-K-0212** (confidential) regarding investigations carried out by the Prijedor SJB and the Banja Luka CSB into the massacre in Koricanske Stijene were reflected in the evidence taken into account by the Trial Chamber.[202] Thus, the Appellant has not shown that these documents, had they been

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[195] Reply, para. 19.
[196] *See* Trial Judgement, para. 1203. *See* also Response, para. 51.
[197] Reply, para. 19.
[198] Motion, paras 26-30(A), as well as Supplement to the Motion, para. 2(A). Krajišnik's Appeal Brief, para. 110, fn. 137, and para. 198, fn. 287; Trial Judgement, paras 494, 499, 970 and 1109.
[199] Motion, para. 30(A).
[200] Motion, para. 30(C), with reference to Trial Judgement, para. 970. *See* also Reply, para. 20.
[201] While the Appellant refers to document 26-K-0209 as "Order of Mićo Stanišić, 31 August 1992" (Motion, para. 26), the Appeals Chamber notes that the quotation of the order of MUP Minister Mićo Stanišić to investigate the fate of approximately 150 Muslims in Koricanske Stijene is, in fact, merely one part of the dispatch from the Security Services Centre to the Chief of the Prijedor SJB. However, document 26-K-0209 contains only the first part of this dispatch and lacks the second page, including the signature of Stojan Župljanin, which can be found in document 27-K-0220.
[202] *See*, in particular, Exhibits P763 (the "Nielsen Report"), paras 290 and 291, and P1265. *See* also Response, paras 52 and 53.

available at trial, would have affected the Trial Chamber's finding that the Appellant had not been informed about this crime, nor that all necessary measures were taken for its perpetrators to be punished.[203]

95. The Appellant makes supplementary submissions with regard to **document 02141498**, a letter of the investigating judge from the Lower Court of Banja Luka to the prosecutor's office of the same court. According to the Appellant, this document shows that an investigation was conducted in full into the massacre at Koričanske Stijene and that the case had been handed over to the Prosecution by the investigating judge. He submits that the Trial Chamber therefore erred in finding that one of the JCE members tried to interrupt the investigations in order to cover up the crime.[204] He argues that, had the Trial Chamber considered the document, it would not have concluded that the extermination of Muslims, such as the incident at Koričanske Stijene, was reported to the Bosnian-Serb leadership, which tried to cover it up.[205]

96. Prior to its conclusion that the Bosnian-Serb leadership tried to "cover up" the massacre at Koričanske Stijene,[206] the Trial Chamber considered evidence indicating that the Bosnian-Serb leadership did not actively try to investigate the crime once it was informed about it, or sought prosecution of its perpetrators.[207] The letter in question, in which the investigating judge explains the return of the file after conducting investigating procedures, "in order that a public prosecutor's decision be passed",[208] is insufficient to invalidate these findings. Hence, the Appellant does not show that, had it been considered at trial, the letter would have affected the verdict.

97. The Appellant seeks the admission of document **31-K-0213** (confidential), containing documents relating to the death of his wife Milanka, on 23 August 1992.[209] He alleges that these documents confirm that he did not attend the meeting concerning the crimes on Koričanske Stijene,

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[203] *Cf.* Trial Judgement, para. 970. As to the Appellant's request to have Mićo Stanisić summoned as a witness, *see infra* Section III., B.
[204] Supplement to the Motion, para. 2(D). *See* also Reply, para. 20.
[205] Supplement to the Motion, para. 2(C). The Appellant refers to the Motion, para. 30, fn. 31, to Krajišnik's Appeal Brief, para. 110, fns 137-139, and 198, and to Trial Judgement, paras 494, 499, 970 and 1109.
[206] Trial Judgement, paras 970 and 1109.
[207] *See* Trial Judgement, paras 494 and 499. Minister Stanišić's order to Stojan Župljanin, chief of the Banja Luka CSB, to conduct an investigation, was never followed up: while Stojan Župljanin urged the Chief of SJB Prijedor, Simo Drljača, to send a report on the investigation, the latter never complied. In fact, in a report of the 1st Krajina Corps to the Main Staff, Simo Drljača was identified as responsible for the massacre and the Trial Chamber found that "a police unit from Prijedor, accompanied by Drljača and Župljanin, returned to Koričanske Stijene and removed the bodies" (Trial Judgement, para. 494). Moreover, while Defence Minister Subotić had been sent to Banja Luka to meet with people involved in the investigation and to report back to Pale, according to Simo Drljača, an investigation could not be carried out (Trial Judgement, para. 970). *See* also Exhibit P763, para. 291; Response, paras 52 and 53.
[208] Document 02141498. The Appeals Chamber notes that there is nothing in the document except for a file number of the case in question, which could identify and detail the nature of this case or even less the status of the investigations at the moment the case file was returned to the public prosecutor.
[209] Motion, para. 31(A); Reply, para. 21.

that he was not in Pale on 23 August 1992 and that the minutes of the Assembly meeting held on that day erroneously state that he was present.

98. First, the Appellant alleges that had document **31-K-0213** been considered at trial, the Trial Chamber would not have held that he was present "at all recorded official sessions in 1992, except possibly for one".[210] The Appeals Chamber notes that the Trial Chamber referred to a part of the Appellant's testimony, in which he refers to the death of his wife and to his absence from the 23 August 1992 meeting.[211] Furthermore, by stating "except possibly for one", the Trial Chamber accepted that the Appellant might not have attended the 23 August 1992 meeting of the Assembly.

99. Second, the Appellant contends that document **31-K-0213** would have an impact on the Trial Chamber's findings in paragraphs 494, 499, 970 and 1109 of the Trial Judgement, all relating to the events of 21 August 1992 in Koričanske Stijene. However, none of these paragraphs assume that the Appellant was present at the 23 August 1992 Assembly meeting.[212] Thus, the Appellant does not show that, had the document been considered at trial, it would have affected the decision.

100. Further, the Appellant seeks admission of **four documents containing different versions of the "Six Strategic Goals"**, outlining the strategic goals or priorities of the Serbian people in BiH.[213] According to him, these documents confirm that the "'Six Strategic Goals' was not a conspiratorial document or a military order for ethnic cleansing, but a document written by mistake, published by mistake and a document which was disclosed publicly and sent to international mediators in the negotiations".[214]

101. The Appeals Chamber first rejects as unfounded the Appellant's argument that the "Six Strategic Goals" were a document "written by mistake [and] published by mistake".[215] The Appeals

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[210] Motion, para. 31(C) (emphasis omitted), citing Trial Judgement, para. 168. *See* also Trial Judgement, para. 179.
[211] *See* Momčilo Krajišnik, T. 24789 (25 May 2006). *See* also Response, para. 56.
[212] *See* Trial Judgement, para. 970, which states that the "Accused did not attend, according to Subotić." *See* also Response, para. 54.
[213] Supplement to the Motion, para. 3(A). This set of documents includes: (a) "Conclusion on Strategic Goals": this document lists the six strategic goals and is signed by the Appellant as President of the National Assembly; (b) "Outline of the Decision on the Strategic Goals of the Serbian People in Bosnia and Herzegovina drafted in handwriting over the signed document entitled 'Conclusion on Strategic Goals'": this document is identical with (a), but has been partly amended by hand; (c) "Decision on Strategic Goals of the Serbian People in Bosnia and Herzegovina signed by Momčilo Krajišnik": this document is dated "12 May 1992", has a filing number, is stamped with the seal of Republika Srpska and has been signed by the Appellant as President of the National Assembly; (d) "Note on 'strategic goals' with a remark": this typed document is an excerpt from Radovan Karadžić's address outlining the six strategic goals at the 16th Session of the National Assembly on 12 May 1992, and includes a typed "Note" on the approval of these goals.
[214] Supplement to the Motion, para. 3(C). The Appellant refers to Krajišnik's Appeal Brief, para. 37, and Trial Judgement, paras 994, 995, 996 and 1002, *see* Supplement to the Motion, para. 3(B). *See* also Reply, para. 53.
[215] The Appeals Chamber notes, in particular, that the Appellant has not shown that the "Six Strategic Goals", as quoted by the Trial Chamber (Trial Judgement, para. 994) from a speech by Radovan Karadžić to the Bosnian-Serb Assembly on 12 May 1992 is inconsistent with the text published in the *Official Gazette* 26 November 1993 (*see*, for example P47.1). *See* also Response, para. 138.

Chamber considers that the Trial Chamber did not find that these "Six Strategic Goals" amounted to a "conspiratorial document or a military order for ethnic cleansing".[216] Rather, it found that they were "anodyne statements", and that, if any insidious hidden meaning could be found in them, it is because of the events that followed.[217] The Trial Chamber specifically held that "[t]ake-overs, killings, detention, abuse, expulsions, and appropriation and destruction of property had begun in the territories claimed by the Bosnian Serbs well before the pronouncement of the strategic goals on 12 May 1992".[218] As a consequence, the documents referring to these goals would not have affected the verdict, had they been considered at trial.[219]

16. Alleged Error in Finding That a Group of Witnesses and Reporters Lacked Credibility

102. The Appellant tenders document **32-K-0090** (confidential), statements of V. Đurković, D. Vuković and D. Mičić, allegedly taken in accordance with Rule 92 *bis* of the Rules. The Appellant argues that the statements show that Witness Davidović gave false testimony when he stated *inter alia* that the Appellant and V. Đurković made financial transactions; that Đurković took people over the Drina; and that he (Đurković) met a certain Pusović.[220] The Appellant argues that had the Trial Chamber considered these statements, it would not have trusted Witness Davidović's evidence on widespread looting in Bijeljina municipality in 1992; on the Appellant's presence in Bijeljina municipality; and on organized looting and expulsion.[221] The Trial Chamber referred to other evidence that supported what Witness Davidović said in relation to crimes committed in Bijeljina.[222] The Appellant does not refer to this evidence. Hence, he does not show that, had the Trial Chamber considered **32-K-0090**, it would have affected the decision.

103. The Appellant further seeks the admission of document **65-K-0089**, an extract from David Owen's book *Balkan Odyssey*, and an extract from Warren Zimmerman's book *Origins of a Catastrophe*.[223] The Appellant alleges that had the Trial Chamber considered these excerpts, it

[216] Supplement to the Motion, para. 3(C).
[217] Trial Judgement, para. 995. For the Trial Chamber, the importance of these goals lied in symbolising a "new central authority at a time when the old order had disintegrated" (Trial Judgement, para. 995). *See* also Response, para. 137.
[218] Trial Judgement, para. 996.
[219] Additionally, the Appeals Chamber notes that one of these three documents proffered as additional evidence, "Note on 'strategic goals' with a remark," (Document [3](d)), is of dubious credibility, as the document consists of an unsigned typed paper and does not bear any other proof of its origin.
[220] Motion, para. 32(A). According to the Appellant, these statements are linked to Krajišnik's Appeal Brief, para. 124, fns 161, 162 and 165, and to Trial Judgement, paras 306-308 (Motion, para. 32(B)).
[221] Trial Judgement, para. 967. The Prosecution responds that 32-K-0090 (confidential) is unreliable and could not have been a decisive factor at trial: Response, paras 59-65. *See* Reply, paras 22 and 23.
[222] Trial Judgement, paras 306-308, referring to Exhibits P777 (Report on activities of Bosnian-Serb MUP, 29 July 1992); P732 (Riedlmayer report); P857 (Tokača report); and P727, tab. 11 (TV interview with Ljubiša (Mauzer) Savić, 1 July 1992).
[223] Motion, para. 65, with reference to Krajišnik's Appeal Brief, para. 408, and Trial Judgement, para. 1031. The specific pages now tendered by the Appellant had not been admitted at trial.

would not have believed witness Okun's testimony,[224] but would have rather concluded that "the witness was biased because [...] he was working behind the scenes with the Muslim side against the Serb interests".[225]

104. Only one book excerpt mentions Herbert Okun.[226] David Owen writes that "[t]he Bosnian government was initially enthusiastic, to the extent that the Foreign Minister Haris Silajdzic pulled Herb Okun aside and asked that our constitutional proposal be 'imposed' on all parties".[227] No other mention is made of Herbert Okun. Moreover, while the Trial Chamber had the information contained in this document before it and knew of the Appellant's allegations of bias against Witness Okun,[228] it chose to rely on Witness Okun's testimony.[229] Hence, document **65-K-0089** would not have had any impact on the Trial Chamber's reliance on the testimony of Witness Okun.

105. The Appellant tenders document **66-K-0215** (confidential in part),[230] composed of (i) excerpts from Marko Mikerević's book *Sarajevo Cauldrons of Death*, describing the suffering of Serbs in the *Viktor Bubanj* prison in Sarajevo, and (ii) an interview with Besim Muderizović.[231] The Appellant argues that had the Trial Chamber considered these excerpts, it would have realised that Mr. Mazowiecki's report on the situation in BiH was biased, as he failed to mention a single crime committed against Serbs and the existence of any of the allegedly 138 "official and reception prisons" in Sarajevo.[232]

106. The Appeals Chamber notes that contrary to the submission of the Appellant, the Mazowiecki report *inter alia* refers to crimes committed against Serbs in prisons under Bosnian Croat control.[233] Thus, he does not show that the report's alleged failure to notice crimes in the *Viktor Bubanj* prison would have prompted the Trial Chamber to doubt his objectivity, thus affecting the findings based on the report.

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[224] Motion, para. 65(C), with reference to Trial Judgement, para. 1031.
[225] Motion, para. 65(C). *See* also Reply, para. 44.
[226] *See* David Owen, *Balkan Odyssey*, p. 63 (English original version, unknown edition).
[227] David Owen, *Balkan Odyssey*, p. 63 (English original version, unknown edition).
[228] Indeed, the Appellant read out this specific excerpt of David Owen's book during his own testimony (Momčilo Krajišnik, T. 24812) and challenged Witness Okun as being biased (Momčilo Krajišnik, T. 26257).
[229] *See* also Response, para. 118.
[230] The Appeals Chamber notes that the Appellant has added additional materials under document 66-K-0215 (*i.e.* a statement regarding a list of missing or killed Serbs in Sarajevo; a letter on the return of Serb citizens to Sarajevo (confidential); a list of camps in Sarajevo from 1992 to 1995 (confidential)), but has not made any submission as to their admission. The Appeals Chamber will therefore not consider them further. *See* also Response, para. 121 and fn. 238.
[231] The English translation of the name in paragraph 66 of the Motion is incorrectly spelled "Muderović".
[232] Motion, para. 66, with reference to Krajišnik's Appeal Brief, para. 410 (fns 664-669), and Trial Judgement, para. 1034. Document 66-K-0215 (confidential in part) contains a number of other documents. As the Appellant does not make any submissions in this respect, the Appeals Chamber will not consider them. *See* also Reply, para. 45.
[233] Exhibits P297, paras 14-15; P296, paras 21-25 and 36-39. Both exhibits are referred to in Trial Judgement, para. 1034. *See* also Response, para. 120.

17. Alleged Error in Finding That the Appellant Was a Member of the Presidency and the JCE

107. The Appellant further submits document **33-K-0088**, a statement by Radovan Karadžić on the Appellant's functions and role in the events pertaining to the Indictment, given to the Appellant's investigator Gojko Đoko on 21 August 2001.[234] The Prosecution responds that the statement does not meet the requirements of Rule 92 *bis* of the Rules and that, because it comes from a senior JCE member, it is incredible and unreliable. In any event, the Prosecution posits, the Appellant fails to show the statement could have been a decisive factor at trial.[235] The Appellant replies that Karadžić's statement was taken under Rule 92 *quater*. In addition, he disputes the Prosecution's credibility and reliability objection, because the Trial Chamber accepted evidence from other alleged leading JCE members and the statement is addressed to an investigator on his Defence team at the time. Moreover, the Appellant submits that since the filing of his Motion, Karadžić has become available, and so "the Tribunal could request that Karadžić confirm the credibility of his statement himself". He adds that the dismissal of the statement would greatly hinder establishing the truth on his contribution to the alleged JCE.[236]

108. With respect to the statement's credibility, the Appeals Chamber notes that according to the Appellant, "it was impossible to get in direct contact with Mr Karadžić".[237] Apart from this reference, the Appellant provides no further information as to the circumstances under which this document was produced and how it was communicated to him. As a result, the Appeals Chamber finds that **33-K-0088** is still of dubious credibility. The Appeals Chamber notes that it is yet unknown whether Radovan Karadžić will provide evidence in relation to the credibility of his alleged statement. Therefore, the Appeals Chamber dismisses the request to have the statement admitted at this juncture. This is, however, without prejudice to any renewed request to admit it in the context of a potential motion under Rule 115 of the Rules relating to evidence by Radovan Karadžić.[238]

18. Alleged Error in Concluding That the Appellant Was "Number Two" Official in the RS

109. The Appellant seeks the admission of document **34-K-0100**, a newspaper article entitled "Dr. Karadžić Is Withdrawing from Political Life", published in *Glas Sprski* of 20/21 July 1996.[239] The Appellant contends that, had the Trial Chamber considered this document, it would not have

[234] Motion, para. 33(A) and (B), referring to Krajišnik's Appeal Brief, paras 130-131, and Trial Judgement, paras 176-182, 188-189, 987, 994, 1001-1005 and 1078-1119.
[235] Response, paras 66 and 67.
[236] Reply, para. 24.
[237] Motion, para. 33(A).
[238] Motion to interview Radovan Karadžić with a view to then calling him as a witness pursuant to Rule 115, 13 August 2008.

concluded that he was "powerful and the second most important person after Karadžić",[240] which is shown by the fact that, when Radovan Karadžić resigned from all political and state offices in 1996, it was not the Appellant who replaced him. The Prosecution responds that there can be many reasons why Biljana Plavšić succeeded Karadžić four years after the Indictment period.[241]

110. The Trial Chamber made numerous findings regarding the Appellant's position within the RS leadership and his particular relationship with Radovan Karadžić, based on evidence not addressed by the Appellant.[242] The Appellant has not shown how Biljana Plavšić's succession to Radovan Karadžić as president of RS in 1996 shows that the Appellant was not "number two" behind Karadžić during the Indictment period,[243] and thus how the document would affect the verdict.

19. Alleged Error in Concluding That the Appellant Could Have Been Informed About How Military Operations Were Conducted and Crimes Committed by VRS or MUP

111. Document **35-K-0139** contains a chronicle of press clippings from the SRNA, the Bosnian Serb Radio and News Agency, from 2000. The Appellant claims that the Ministry of Information prepared its briefings for those attending the Presidency sessions on the basis of those press clippings.[244] He argues that with the clippings at hand, the Trial Chamber would not have concluded that he and the leadership were informed about when and where the crimes happened.[245]

112. The Prosecution responds that it is irrelevant that the clippings do not record crimes, since the Appellant knew of the crimes through various other sources of information.[246]

113. The Appeals Chamber notes that the Trial Judgement refers to the fact that the Appellant was informed of military operations by press clippings of the SRNA.[247] However, the press clippings in document **35-K-0139** constitute a chronicle of events that took place in BiH in 2000,

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[239] Motion, para. 34(A).
[240] Motion, para. 34(B) and (C), referring to Krajišnik's Appeal Brief, paras 130 and 208.
[241] Response, para. 69. The Appellant replies that the appointment of Biljana Plavšić as Radovan Karadžić's successor was the continuation of Karadžić's policy, who had appointed Plavšić as member of the Presidency in 1990, while the Appellant had merely been nominated by the Novi Grad municipality as reserve candidate for assemblyman (Reply, para. 25).
[242] *See, inter alia*, Trial Judgement, paras 169, 180, 183-185, 187, 957, 987, 1013 and 1085.
[243] *See* also Response, para. 69.
[244] Motion, para. 35(A).
[245] Motion, para. 35(B), referring to Krajišnik's Appeal Brief, paras 154 and 292; and Trial Judgement, paras 145, 1006 and 1019. *See* also Reply, para. 26.
[246] Response, para. 70.
[247] *See*, in particular, Trial Judgement, para. 1019.

thus being outside the Indictment period.[248] Consequently, the Appeals Chamber finds that had these chronicles been considered at trial, they would not have affected the decision.

20. Alleged Error in Relation to the Appellant Being Informed by Others About Crimes Committed in Municipalities and Prisons

114. The Appellant submits that document **38-K-0216**, a news agency item of 22 August 1992 reporting that local authorities had closed the Omarska prison that day, shows that the Government was not informed of illegal prisons and that it, once it learnt of them, ordered them to close.[249] He posits that the document corroborates Witness Trbojević's testimony of 6 April 2005.[250] He argues that, had the document been before the Trial Chamber, it would not have found that he knew about the detention of civilians.[251]

115. The Appeals Chamber considers that the document confirms Witness Trbojević's testimony that the Bosnian-Serb Government closed down detention facilities, but not his evidence that it did so "once [it] learned" of them.[252] As to the Appellant's knowledge of the detention of civilians – the subject matter of the impugned finding – **38-K-0216** remains silent. Furthermore, the Appellant does not address any of the evidence the Trial Chamber relied on to conclude that he knew about the detention of civilians well before August 1992, when **38-K-0216** was allegedly issued.[253] The Appellant therefore fails to show that the document would have affected the verdict.

116. The Appellant submits that document **40-K-0066** comprises statements of Milovan Milanović, vice-President of the Bosnian-Serb Assembly, and Vojo Kupreŝanin, President of the Autonomous Province of Krajina, both also deputies from Banja Luka.[254] He contends that he did not know of this document at trial and only received it thereafter under Rule 68 of the Rules.[255] Had it been available at trial, he argues that the Trial Chamber would not have concluded that he was

[248] Indictment, paras 5-8; *see* also Trial Judgment, para. 5, referring to Rule 98*bis* decision, T. 17133.
[249] Motion, para. 38(A) and (C). In his Reply, the Appellant adds that the fact that Stakić's statement that Omarska prison was closed at the order of the Government in Pale was given to rebelling policemen made it suspicious (Reply, para. 28).
[250] Motion, para. 38(D), referring to Milan Trbojević, T. 11573-11587.
[251] Motion, para. 38, with reference to Trial Judgement, paras 1035-1038. The Prosecution responds that the Appellant's argument is unclear and that the article could not have been a decisive factor at trial: Response, para. 74.
[252] Milan Trbojević, T. 11572-11573.
[253] Trial Judgement, paras 1037-1056. *Cf. Nahimana et al. v. The Prosecutor*, Case No. ICTR-99-52-A, Decision on Appellant Jean-Bosco Barayagwiza's Motion for Leave to Present Additional Evidence Pursuant to Rule 115 of the Rules of Procedure and Evidence, 8 December 2006, para. 30.
[254] Motion, para. 40(A). The Appellant refers to Krajišnik's Appeal Brief, paras 153 and 184, fn. 276; and Trial Judgement, paras 948, 1017, 1048 and 1102 (Motion, para. 40(B)).
[255] Motion, para. 40(D).

informed of the crimes, in particular those in the prisons in Prijedor, by deputies from the Banja Luka region.[256]

117. As the Appeals Chamber has found that document **40-K-0066** was unavailable at trial,[257] it can be admitted if the Appellant shows it *could* have affected the verdict. The Appeals Chamber notes that the document is relevant inasmuch as it describes the knowledge of Milovan Milanović and Vojo Kuprešanin about municipality crimes. The statements contained in **40-K-0066** do not give away their provenance aside from the titles, but their contents bear enough indicia of credibility to pass muster at the admissibility stage.[258]

118. However, the Appellant does not consider document **40-K-0066** in light of the evidence the Trial Chamber relied on for the impugned findings, nor does he otherwise attempt to substantiate that the "could" test is met. In addition, the alleged statement of Milovan Milanović contained in **40-K-0066** is not inconsistent with his statement in Exhibit P65, tab. 182, in which the Trial Chamber found that Milovan Milanović acknowledged before the Appellant at the July 1992 Assembly session that "[w]e have a huge problem with captured people of other nationalities, we have hundreds and thousands of these prisoners". This finding was relevant *inter alia* to the Appellant's knowledge of the detention of civilians.[259] Both statements are consistent with the impugned findings. Finally, the Trial Chamber did not rely solely on the information the Appellant received from the deputies to conclude on his knowledge of the crimes.[260] For these reasons, the Appeals Chamber finds that the Appellant fails to demonstrate that document **40-K-0066** could have affected the verdict.

119. The Appellant tenders document **48-K-0042**, a letter dated 5 August 1992 from the Prijedor SJB informing the Banja Luka CSB of the completion of the "operative processing of the prisoners of war".[261] He argues that it confirms that "even those who could have informed [him] about the crimes did not know about them, because they were misinformed from the municipal level".[262] The Appellant alleges that had the Trial Chamber considered the document, it would not have held that he was informed about the prisons and the crimes committed therein and that he was a JCE member

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[256] Motion, para. 40(C). In his Reply, the Appellant argues further that, had Milanović and Kuprešanin known about the crimes at a time when Pale was separated from Banja Luka, they should have discussed them in the ARK Crisis Staff, but they did not (Reply, para. 30).
[257] *Supra*, para. 23.
[258] *See Ntagerura et al.* Rule 115 Decision, para. 22.
[259] Trial Judgement, para. 1048. *See* also Trial Judgement, para. 1102.
[260] *See* Trial Judgement, Sections 6.8-6.10, 6.12-6.14. *See* also Response, para. 79.
[261] Document 48-K-0042.
[262] Motion, paras 42-48(A). *See* also Reply, para. 32, referring to Krajišnik's Appeal Brief, para. 396 and fn. 626.

together with people who denied to him the existence of crimes.[263] He further contends that the document refutes the allegations that crimes were committed in RS prisons.[264]

120. Document **48-K-0042** merely concerns an "operative processing" which occurred in August 1992 in the municipality of Prijedor and following which "persons [...] of no interest in terms of security [were to be] transferred to the reception camp in Trnopolje".[265] In light of the evidence examined in relation to the *mens rea* of the Appellant, in particular considering the Trial Chamber's findings on the information flow within the Bosnian-Serb leadership and its findings on the Appellant's knowledge of the detention of civilians,[266] he does not show that, had the Trial Chamber considered this document, it would have affected the verdict.

121. With respect to document **64-K-0221** (confidential), a 1st Krajina Corps report to the Main Staff of the RS Army of 16 July 1992, the Appellant argues that had the Trial Chamber considered this document, which allegedly shows the lack of objectivity of the ICRC with respect to the situation in the Manjača prison camp,[267] it would have most certainly believed that he did not know about the situation in this prison camp.[268] The Appellant does not provide any further information as to why the Trial Chamber would have preferred document **64-K-0221** over the report prepared by the ICRC in the Manjača prison camp.[269] In particular, in light of the Trial Chamber's findings on the information flow within the Bosnian-Serb leadership in general and its findings regarding his knowledge of the ICRC report in particular, the Appellant has not shown that document **64-K-0221** invalidates the finding that he had knowledge of the situation in Manjača prison.[270] Hence, he does not show that had the document been considered at trial, it would have affected the verdict.

21. Alleged Error in Concluding That the Minister of Interior Informed the Appellant and Withheld Information From Prime Minister Đerić

122. The Appellant tenders document **60-K-0224**, a letter of 18 July 1992, wherein the Minister of Interior Mićo Stanišić addressed Prime Minister Branko Đerić regarding the implementation of international laws of war.[271] He contends that this document would have affected the Trial

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[263] Motion, paras 42-48(C), with respect to Trial Judgement, paras 1051-1056, 1103-1119 and 1121(j).
[264] Motion, paras 42-48(A), with reference to Exhibits P849, P446 and P583, tab. 119.
[265] Document 48-K-0042. According to the Prosecution, document 48-K-0042 is also consistent with the Trial Chamber's finding in Trial Judgement, paras 1054 and 1056 *et seq.*, of a cover-up by the Bosnian-Serb leadership of the conditions in detention facilities (Response, para. 83).
[266] *See* Trial Judgement, paras 1006 *et seq.* and 1035 *et seq. See* also Response, para. 84.
[267] Motion, para. 64(A).
[268] Motion, para. 64(C). The Appellant submits that this document is linked to Krajišnik's Appeal Brief, para. 384, fn. 588, and Trial Judgement, para. 1056. *See* also Reply, para. 43.
[269] *Cf.* Trial Judgement, para. 1056.
[270] *See* also Response, para. 117.
[271] Motion, para. 60(A).

Chamber's finding that Stanišić would only report to Đerić on rare occasions.[272] He posits that, faced with the letter, the Trial Chamber would have relied on Momčilo Mandić's statement that the misunderstanding with Đerić stemmed from the latter's tendency to meddle in people's affairs.[273]

123. The impugned finding formed part of the basis for the Trial Chamber's conclusion that the RS Government was "nothing more than an agency implementing policies dictated by the SDS" under the auspices of Radovan Karadžić and the Appellant.[274] That conclusion was also supported by the finding that, in addition to Stanišić, a number of other Ministers reported directly to Karadžić and the Appellant instead of to the Government (in the form of Prime Minister Đerić).[275] The Appellant does not address the evidence underlying this finding and **60-K-0224** is silent on the issue. In addition, the document is not inconsistent with the finding that Stanišić would report directly to Karadžić and the Appellant.[276] Finally, as far as document **60-K-0224** is an example of Stanišić reporting to the Government, this is not inconsistent with the finding that such reporting would occur "on rare occasions".[277] For these reasons, the Appellant fails to show that document **60-K-0224** would have affected the verdict.

22. Alleged Error in Concluding That the Serbian Side Disbanded the Prisons

124. The Appellant submits document **67-K-0084**, a letter from Radovan Karadžić to the UN Security Council of 5 August 1992, informing it of the Serbian side's willingness to receive international representatives to inspect all Serb-controlled prisons.[278] This document, the Appellant argues, would have affected the findings that "[t]he authorities engaged [...] in a cover-up", that he was insincere in denying knowledge of crimes in prisons and that the Serbian side allowed journalists to visit prisons due to international media pressure.[279]

125. The Trial Chamber based its finding concerning the "cover-up" on actions taken within the Bosnian-Serb leadership in advance of international visits to prisons.[280] This is not inconsistent with **67-K-0084**, which, in addition, does not pertain to the Appellant's knowledge of crimes in prisons.[281] The Trial Chamber made no finding on whether the Serbian side allowed journalists in

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[272] Motion, para. 60(B) and (C), referring to Trial Judgement, para. 184. *See* also Reply, para. 39.
[273] Motion, para. 60(C), referencing Exhibit P65, tab. 213, and Motion, para. 67(B), referring to Krajišnik's Appeal Brief, para. 210.
[274] Trial Judgement, para. 187.
[275] Trial Judgement, paras 183-186.
[276] Trial Judgement, para. 184. *See* also Response, para. 105.
[277] Trial Judgement, para. 184.
[278] Motion, para. 67(A).
[279] Motion, para. 67(C) and (B), referencing Trial Judgement, paras 1052-1054 and Krajišnik's Appeal Brief, para. 431. *See* also Reply, para. 46, where the Appellant argues further that the prison was disbanded based on a decision by Karadžić and an agreement reached by all three sides at the London Conference.
[280] Trial Judgement, para. 1054.
[281] *See* Response, para. 122 (arguing that the document is irrelevant).

prisons due to international media pressure in the parts of its Judgement the Appellant refers to. For these reasons, he fails to demonstrate that document **67-K-0084** would have affected the verdict

23. Alleged Error in Concluding That the Appellant Was in a Position to Influence Prisoner Exchanges

126. The Appellant seeks the admission of document **39-K-0217**, a letter dated 21 July 1992 from Nedo Vanovac, President of the RS Prisoner Exchange Commission to Filip Vuković, chairman of the BiH State Commission for the Exchange of Prisoners of War and Detainees.[282] The Appellant maintains that had the Trial Chamber considered the document, it would have concluded that "the exchange of prisoners did not have the character of ethnic cleansing because it was carried out under the auspices of UNPROFOR and that a part of the conversation which Vuković had with Mandić was for propaganda purposes and not with the intention of preventing and warning the Serbian side of the crime of persecution".[283] The Appellant does not show, however, how this letter, whose scope is limited to one specific exchange of prisoners, would impact the impugned findings which are based on other evidence[284] and encompass more events over a longer period of time.[285]

24. Alleged Error in Finding That Momčilo Mandić Was a JCE Member

127. The Appellant erroneously files as document **49-K-0208** the indictment against Momčilo Mandić, instead of the judgement of acquittal before the BiH State Court in Sarajevo which was rendered on 17 July 2007 and thus unavailable at trial. The Appellant argues that had the Trial Chamber considered this judgement, it would not have convicted him "of the crimes for which it found Mandić responsible (in the Krajišnik Indictment)".[286] The Appellant submits that "the Appeals Chamber should dismiss the allegations from the Judgement pertaining to Mandić".[287]

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[282] Motion, para. 39(A) and (B), with reference to Krajišnik's Appeal Brief, para. 176, and Trial Judgement, paras 1041-1043. The Appeals Chamber notes that several pages of document 40-K-0066 have mistakenly been appended to document 39-K-0217. The Appeals Chamber will only analyse the letter dated 21 July 1992 for the purposes of the latter document.

[283] Motion, para. 39(D).

[284] In his Reply, the Appellant submits that, with regard to the Mazowiecki Report relied upon by the Trial Chamber, Mr. Mazowiecki "was biased and uninformed in his reporting" (Reply, para. 29, referring to Krajišnik's Appeal Brief, para. 410 and fns 664-669). However, the Appeals Chamber notes that the report in question was just one piece of evidence reflecting the "links between detention, exchange and expulsion" (Trial Judgement, para. 1043, relying on an order of 28 May 1992 from the commander of the VRS 1st Birač Brigade to the Zvornik TO, Exhibit P583, tab. 120).

[285] Trial Judgement, paras 1041-1043. *See* also Response, para. 76 (arguing, in addition, that the presence of UNPROFOR representatives does not render the displacements lawful, and that Vuković's statement about "ethnic cleansing" was not mere propaganda).

[286] Motion, para. 49(C). *See* also Reply, para. 33, where the Appellant further argues that Momčilo Mandić's acquittal "is the most credible proof that he cannot be considered a member of the JCE" in Krajišnik's case.

[287] Motion, para. 49(C). The Appellant maintains that document 49-K-0208 is linked to Krajišnik's Appeal Brief, paras 175, 204, 239, 412 and 420, and to Trial Judgement, paras 237, 969, 1041-1043, 1045-1047, 1110 and 1123.

128. The Prosecution responds *inter alia* that the Appellant is asking the Appeals Chamber to take judicial notice of the judgment of acquittal, but that judicial notice does not extend to proceedings before the BiH State Court.[288]

129. The Appeals Chamber has already found that the judgement of acquittal was unavailable at trial.[289] As such, it can be admitted if the Appellant shows it *could* have affected the verdict. The Appeals Chamber finds that irrespective of whether the judgement of acquittal can be admitted pursuant to Rule 94 of the Rules, the Appellant does not show that this judgement could have affected the verdict. The Appeals Chamber notes that the impugned findings in the Trial Judgement relate in particular to Mandić as a person who informed the Appellant about the looting of non-Serb property, the detention of civilians, forced displacement, forced labour and cruel treatment.[290] It was Mandić himself who "testified that by mid 1992 he had specifically informed the Accused about all matters within his knowledge concerning irregularities and inhumane treatment in detention facilities".[291] In light of these findings, the Appellant does not demonstrate that the judgement on acquittal of Mandić could have had an impact on the Trial Chamber's findings in relation to the Appellant's knowledge of the commission of such crimes.

130. Furthermore, the fact that Mandić was not convicted by the BiH State Court is irrelevant to the conviction of the Appellant, as his individual responsibility was not at issue in the Appellant's case. In addition, Mandić was not indicted before the BiH State Court as a JCE member. Thus, his acquittal does not affect his inclusion as a named but un-indicted JCE member in the case against the Appellant.

131. The Appellant further tenders document **70-K-3004** (confidential in part), an interview given by Momčilo Mandić to the Prosecution on 10 to 12 March 2004, in which he addresses his relationship with the Appellant.[292] The Appellant contends that, had the Trial Chamber considered this document, it would not have concluded that he and Mandić had close relations and that both were in the JCE.[293]

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[288] Response, para. 86, with reference to Rule 94(B) of the Rules.
[289] *Supra*, para. 23.
[290] Trial Judgement, paras 969, 1041-1043, 1045-1047, 1110 and 1123.
[291] Trial Judgement, para. 1047, with reference to Momčilo Mandić, T. 8932-8933, 9072-9074 and 9376.
[292] Motion, para. 70. The Appeals Chamber notes that the excerpt of the interview in question quoted in the Motion and indicated by the Appellant as "page 71 of the Serbian version", does not correspond to page 14 of the English translation, as submitted by the Appellant, but rather to pages 93-94. Thus, the Appeals Chamber will focus on the corresponding passages on pages 93-94 of the English version of the Interview for its analysis.
[293] Motion, para. 70(B) and (C). The Appellant refers to Krajišnik's Appeal Brief, paras 204 and 239, and Trial Judgement, para. 1085. *See* also Reply, para. 49.

132. The Appeals Chamber notes that both during the interview and during his testimony at trial, Momčilo Mandić confirmed that he was close to the Appellant.[294] This statement was also reflected in Biljana Plavšić's evidence relied upon by the Trial Chamber for the finding in question.[295] Also, the Appellant has not shown how the document would have affected the finding that he and Mandić were together in the JCE,[296] as there is no need to establish any specific "closeness" between members of a JCE, as contended by the Appellant. Hence, the Appeals Chamber finds that had the document been considered at trial, it would not have affected the decision.

25. Alleged Error in Concluding That Mladić Regularly Consulted and Informed the Presidency

133. The Appellant further seeks admission of document **58-K-0176**, an extract from the London Conference held on 27 July 1992 where decisions were adopted regarding the restriction of heavy weapons; the concession of the Serbian side to cede a significant part of the territory held by its armed forces; and the exchange of prisoners under the auspices of the ICRC.[297] He contends that, had the Trial Chamber considered the documents at trial, it would not have found that Ratko Mladić had regular consultations with the Presidency;[298] that the Serbian side advocated territorial gains; nor that the prisoner exchange was part of an ethnic cleansing policy.[299]

134. The Appeals Chamber notes that document **58-K-0176** consists of three different documents,[300] one of which is irrelevant to the Appellant's submissions.[301] With respect to the other

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[294] *See* Momčilo Mandić, T. 8645, where he stated that he "was close to Momčilo Krajišnik". *See* also document 70-K-3004 (confidential in part), pp 33-34, where Momčilo Mandić confirmed that after 1991 he became friends with the Appellant, and p. 92, where Momčilo Mandić stated that he was closer to the Appellant than to Radovan Karadžić, because the Appellant "was the one who trusted [him] more". Moreover, the Trial Chamber made various other findings illustrating the Appellant's close relationship with Momčilo Mandić, in particular regarding information provided by the latter to the Appellant about the commission of crimes (*see*, in particular, Trial Judgement, paras 205, 1041, 1046 and 1047). *See* also Response, para. 129

[295] Trial Judgement, para. 1085, relying on Biljana Plavšić, T. 26865-26866; and Exhibit C8, pp. 263-264. *See* also Trial Judgement, para. 144 on the *modus operandi* of appointment for ministers, and para. 184, finding that Radovan Karadžić and the Appellant did not allow Prime Minister Đerić to have Minister Mandić replaced.

[296] Motion, para. 70(C).

[297] Motion, para. 58(A).

[298] In his Reply, the Appellant adds that the meeting convened following the London Conference was one of the rare occasions when Ratko Mladić consulted with the leadership (Reply, para. 37).

[299] Motion, paras 58(B) and (C). The Appellant refers to Krajišnik's Appeal Brief, para. 312, fn. 438, para. 387, para. 422, fn. 694, and Trial Judgement, paras 205, 998 and 1097-1112.

[300] These documents are (a) an unsigned conference document entitled "Building Trust and Security and Verification", drafted following consultations with the delegations on 26 and 27 August 1992 by the co-chairs; (b) a document entitled "London Conference" between "Daglas Hog" (as spelled in the translated document, apparently referring to former British Foreign Minister Douglas Hogg), Radovan Karadžić and Nikola Koljević of 27 August 1992, in which the Serbian side pledges, *inter alia*, that "it will agree to withdraw from a considerable part of the territory currently under the control of its forces"; and (c) a letter of Radovan Karadžić to UN Secretary-General Boutros Boutros-Ghali of 16 December 1992.

[301] Radovan Karadžić's letter to Boutros Boutros-Ghali solely refers to the issue of establishing a no-fly zone over BiH and its enforcement by UN troops and is unrelated to the Appellant's submissions regarding the impact of the decisions taken at the London Conference on specific findings of the Trial Chamber.

two documents,[302] the Trial Chamber's findings that the Presidency discussed military-related issues and that General Mladić would regularly consult with the Bosnian-Serb leadership between May to November 1992,[303] are based on an abundance of evidentiary material which the Appellant fails to address. Also, the finding on the Bosnian-Serb leadership's support for territorial conquest "for the purpose of strengthening their negotiating position" is based on evidence to which the Appellant does not refer.[304] Finally, the fact that the exchange of prisoners was to be carried out under the auspices of the ICRC does not in itself contradict the Trial Chamber's findings regarding the forced nature of the prisoners' transfer, which was based on various pieces of evidence.[305] Thus, had these documents been considered at trial, they would not have affected the verdict.

26. Alleged Error in Concluding That the Appellant Was a Powerful Official in Republika Srpska

135. The Appellant seeks the admission of document **59-K-0178** (confidential), an ICRC certificate, arguing that the Trial Chamber would not have found that Momčilo Mandić arranged the release of a group of Croats detained at Manjača camp in July 1992 by contacting Radovan Karadžić (and that Mandić contacted Mladić or the Appellant for the same purpose), because the certificate shows that the group was exchanged on 19 July 1993, a year later, at a time when Mandić was no longer in the RS Government.[306]

136. The document only mentions one of the prisoners – if at all[307] – whose release found to be arranged in July 1992 according to the evidence relied on by the Trial Chamber for the impugned finding.[308] This finding was but one example of the Presidency's control over the VRS,[309] and the findings on the Appellant's involvement in military affairs, ultimately relevant to his contribution to the JCE,[310] were based on a multitude of other facts and evidence.[311] The Appeals Chamber is therefore not satisfied that document **59-K-1078** would have affected the verdict.

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[302] The Appeals Chamber notes that the Appellant refers consistently to the London Conference held in July 1992, while the documents relate to the London Conference of 26 and 27 August 1992, *cf.* Motion, para. 58.
[303] Trial Judgement, para. 205. *See* also Response, para. 96.
[304] Trial Judgement, para. 998 (referring to Exhibit P1236 and Momčilo Krajišnik, T. 25600-25602), and paras 999-1000. *See* also Response, para. 97, arguing further that the Appellant omits that General Mladić specifically stated that he wanted to force the Muslim population to leave.
[305] *See*, in particular, Trial Judgement, paras 1026 and 1097, and its reliance on two reports of the 1st Krajina Corps: Exhibits P891, para. 2.132, and P892, tab 99, p. 1.
[306] Motion, para. 59, referencing Trial Judgement, para. 205, and Krajišnik's Appeal Brief, para. 312, fns 448 and 449. *See* also Reply, para. 38.
[307] *See* Response, para. 100. *See* Reply, para. 38.
[308] Trial Judgement, fns 439, 440; Exhibit P461.A.1, pp. 11, 12 and 22; Momčilo Mandić, T. 9048-9049.
[309] In addition to the power to release prisoners of war, the Trial Chamber *inter alia* referred to the Presidency's authority to order cease-fires, halt military operations and issue direct orders to military officials: Trial Judgement, paras 205-206.
[310] Trial Judgement, para. 1121(d).
[311] *See* Trial Judgement, Sections 6.10-6.11.

27. Alleged Error in Declaring the Appellant Responsible for Assembly Deputies' Statements

137. The Appellant submits that document **63-K-0191** (confidential) contains transcripts from a Prosecution interview with Miroslav Vještica on 4 December 2002. He posits that Vještica stated that (i) municipal Muslim and Serb officials discussed the formation of two municipalities; (ii) the war was caused by an incident provoked by the Muslims; (iii) the Muslims were not expelled from Bosanska Krupa; and (iv) a conflict had occurred in the municipality before the 12 May 1992 discussion of the strategic goals.[312] Had the Trial Chamber considered this document, he argues, it would not have concluded that (i) the Muslims in Bosanska Krupa were expelled, but, that they provoked the war; (ii) the RS deputies carried out orders by the Appellant and other leaders, as opposed to being independent;[313] and (iii) Vještica was in constant contact with the Pale leadership.[314] Also, he contends the document would have been "another indication" that deputies were not informed of the Variant A and B Instructions,[315] and "another argument proving that" Radovan Karadžić did not threaten Muslims at the Assembly session of 10-15 October 1991.[316]

138. The first and fourth statements of Miroslav Vještica are not inconsistent with any of the impugned findings. The second and third statements relate only to the first impugned finding, leaving the Appellant's challenge to the remaining two findings unsupported. With regard to the first finding – that Muslims were expelled from Bosanska Krupa –, the document contains a statement by Vještica regarding an incident in Bosanska Krupa where in his view Muslims provoked Serbs.[317] The Appeals Chamber is not convinced that this statement alone would have affected the verdict. As to the expulsion of Muslims from Bosanska Krupa, Vještica's statement is not inconsistent with relevant findings.[318] Also, the Appellant does not address the evidence the Trial Chamber relied on for any of the impugned findings.[319] His additional claims that the document provides an "indication" or "argument" contrary to the findings fails to explain how the document would have affected the verdict and are, in any event, unsupported. Consequently, the Appellant fails to show that document **63-K-0191** would have affected the verdict.

[312] Motion, para. 63(A), referencing Krajišnik's Appeal Brief, paras 80, 88, 153, 291, 354 and 376, fns 87, 97, 544, 577 and 578. *See* also Reply, para. 42.
[313] Motion, para. 63(C), referencing Trial Judgement, para. 140.
[314] Motion, para. 63(C), referencing Trial Judgement, para. 395.
[315] Motion, para. 63(C).
[316] Motion, para. 63(C), referencing Trial Judgement, para. 1099.
[317] Document 63-K-0191, third tape, pp. 1-5 (confidential).
[318] Document 63-K-0191, third tape, pp. 30-32 (confidential); Trial Judgement, paras 396, 398 and 400.
[319] *See* also Response, para. 113.

28. Alleged Error in Concluding That the Appellant Supported the Commission of Crimes or "Closed His Eyes" When he Learned of Them

139. The Appellant submits that document **68-K-0227** (confidential), containing two statements of 25 November 1993, shows how he acted when informed of indications of crimes. He argues that he had his office verify information given by Muslim negotiator Haris Silajdžić that Muslim girls had been forcibly detained in Foča. He contends that he gave one of the girls, who, although she had not been detained illegally, had expressed a voluntary wish to cross over to Muslim territory, a lift to a meeting with Silajdžić and handed her over to him. The Appellant posits that he took a statement from Silajdžić that the departure was voluntary in order not to be accused of ethnic cleansing.[320] Had the Trial Chamber seen the document, he argues, it would not have found that he tolerated and supported crimes.[321] The Prosecution responds *inter alia* that the document is irrelevant to the challenged findings and that the one example it relays could not undermine the findings on the Appellant's contribution to the JCE.[322] The Appeals Chamber finds that the document itself is not inconsistent with the findings the Appellant refers to. In addition, the Trial Chamber relied on a large amount of evidence concerning the information available to the Appellant which he does not address.[323] He therefore fails to show that it would have affected the verdict.

29. Alleged Errors in Failing to Separate Crimes Committed as Part of JCE from Crimes Occurring as a Consequence of a Civil War

140. The Appellant submits document **75-K-0300**, a BiH Presidency "Opinion on relocating certain categories of the population from Sarajevo and other towns threatened by war in [BiH]", which, according to him, is "the platform for the moving out of the population from the Federation of [BiH] of 8 September 1992".[324] The Appellant argues that had the Trial Chamber considered this document, it would have found that the primary reason for the Muslims to leave RS was not persecution but the generally unfavourable life conditions in times of war, and that the Muslims were leaving at their own request.[325] The Trial Chamber considered, however, a vast amount of evidence on the forcible transfer and deportation of Muslims in BiH, to which the Appellant does not refer.[326] Further, the fact that the BiH Presidency in September 1992 also planned to relocate

[320] Motion, para. 68.
[321] Motion, para. 68(C), referencing Krajišnik's Appeal Brief, para. 14, Trial Judgement, paras 970 and 1054, and Momčilo Krajišnik, T. 26010, 26040 and 26041. *See* also Reply, para. 47.
[322] Response, paras 124 and 125.
[323] Trial Judgement, Sections 6.12, 6.14 and paras 891-893.
[324] Motion, para. 75.
[325] Motion, para. 75 (C). *See* also Reply, para. 51.
[326] *See, inter alia*, Trial Judgement, paras 298, 308, 309 (Bijeljina), 316, 320 (Bratunac), 365, 366 and 374 (Zvornik).

certain people from war-affected areas is irrelevant to the finding that ethnic cleansing of the non-Serb population occurred throughout the indictment municipalities.[327] Thus, he does not show that the document would have affected the decision.

30. Alleged Error in Blaming the Appellant and Other Alleged JCE Members for Dividing the BiH MUP and Thus Contributing to the Beginning of the War

141. The Appellant seeks the admission into evidence of document **77-K-0301**, a BiH MUP dispatch of 1 April 1992, informing lower-ranking organisational units of the agreement on the division of the BiH MUP, reached by the representatives of all three ethnic groups. He argues that had this document been considered by the Trial Chamber, it would have accepted his testimony that the division of the MUP was not the result of the RS Assembly's activities, but of the agreement in the BiH MUP. The Appellant further argues that he had not been informed of this division at the time and that "it was the result of a move made by Mandić on his own accord".[328]

142. The Appeals Chamber finds that while the division of the MUP may have been agreed upon by representatives of all peoples on 1 April 1992, this is not inconsistent with the finding that the Serbs established a functioning RS MUP already by the end of March 1992. Also, this finding relied on evidence that referred to "the Sarajevo agreement", *i.e.* the abovementioned agreement between all three sides.[329] Furthermore, the document does not provide any information as to whether the Appellant was informed of the division of the MUP at the time. Thus, he does not show that the document would have affected the relevant findings.

B. Request for Admission of Witness Testimony

143. The Appellant requests the Appeals Chamber to call ten witnesses and to admit three expert reports.[330] The Prosecution responds that he has not met the requirements of Rule 115 of the Rules, as he has not presented any arguments on the availability at trial of the witnesses and experts, whose evidence would not have had an impact on the Trial Judgement.[331]

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[327] Trial Judgement, paras.1090, 1117 and 1142. *See* Response, para. 134.
[328] Motion, para. 77, with reference to Krajišnik's Appeal Brief, para. 327, fns 474 and 475, and Trial Judgement, paras 237 and 238. *See* also Response, para. 135. *See* also Reply, para. 52.
[329] Trial Judgement, paras 237-238, with references to Exhibit P65, tab 117; Momčilo Mandić, T. 8688, 9314, 9315, 9324, 9412, 9413, 9429, 9448 and 9449; Exhibit D160, p. 2; Exhibit P763, paras 80 and 85; Momčilo Krajišnik, T. 23697-23699.
[330] The Appeals Chamber notes that the Appellant requests that witnesses should be called in case the Appeals Chamber does not decide "to either set aside the Judgement and acquit Krajišnik or have a re-trial" (Motion, para. 78). As these two conditions refer to the decision on the merits of the appeals, the Appellant's request could only be dealt with right before the delivery of the judgement in this appeal. Consequently, the Appeals Chamber interprets the Appellant's submission in his favour to the effect that it will consider it in the framework of this decision. *See* also Reply, paras 54-57.
[331] Response, paras 139-144.

144. The proposed witnesses Biljana Plavšić,[332] Mićo Stanišić, Thorvald Stoltenberg, Vojislav Đurković, Milovan Milanović, General Mackenzie, "a Muslim from Pale", "a commissioner of the Presidency", "a member of the crisis staff", the President of the RS Supreme Military Court, and the proposed experts were all available at trial.[333] Hence, the Appeals Chamber will now examine whether their evidence would have had an impact on the Trial Judgement.

145. Biljana Plavšić testified during the trial proceedings, and the Appellant had the opportunity to question her.[334] Mićo Stanišić, then Minister of Internal Affairs, could have given evidence on MUP related issues. However, the Trial Chamber heard a large amount of evidence on these matters, including evidence originating from Stanišić.[335] As to Thorvald Stoltenberg, the Appellant argues that he could give evidence on BiH peace negotiations, which relates to findings based on evidence the Appellant does not address.[336] Thus, he does not show how his evidence would impact the verdict. As for witnesses Vojislav Đurković[337] and Milovan Milanović,[338] the Appeals Chamber has already rejected the potential impact of their evidence on the issues with regard to which the Appellant seeks their testimonies. Consequently, the evidence of all these witnesses would not have affected the Trial Judgement.

146. General Mackenzie's evidence on the violations of ceasefires by the Muslim was already admitted into evidence at trial,[339] and the Trial Chamber did not base the criminal responsibility of the Appellant on the fact which side broke a ceasefire. As to the proposed evidence of a Muslim from Pale about the conditions under which the Muslims left Pale, the Appeals Chamber notes that the Trial Chamber already heard similar evidence.[340] Also, evidence from commissioners of the Presidency was heard[341] as well as evidence originating from crisis staff members.[342] Hence, the Appeals Chamber is not satisfied that the witnesses would have affected the decision at trial. While the President of the RS Supreme Military Court did not testify at trial, the Appellant does not show how this testimony on the operation of this Court would affect the verdict, taking into consideration

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[332] She was a Chamber witness in the trial proceedings: Trial Judgement, paras 1255-1257.
[333] The first five persons were included in the Appellant's witness list in *Prosecutor v. Momčilo Krajišnik*, Case No. IT-00-39-T, Defence Filing Pursuant to Rule 65 *ter* (G)(i) of the Rules of Procedure and Evidence, 4 October 2005 (confidential).
[334] *See*, for example, Biljana Plavšić, T. 26965 *et seq.*
[335] *See* Response, fn. 292.
[336] Trial Judgement, paras 950 and 1115, with reference to Witness 623, T. 5838.
[337] *See supra* para. 102.
[338] *See supra* paras 116-118.
[339] Exhibit D254. *See* also Motion, para. 76.
[340] *See* Trial Judgement, paras 583-588.
[341] Trial Judgement, paras 272-279, in particular, fns 594, 600 and 605.
[342] Trial Judgement, paras 280-288.

the evidence examined by the Trial Chamber on *inter alia* the cover-up of detention-centre crimes.[343]

147. Similarly, the Appeals Chamber notes the expert evidence heard at trial on the issues of propaganda and media,[344] the functioning of the State,[345] and demography and population movements.[346] In light of this evidence, the Appellant does not show that additional expert evidence would have affected the Trial Judgement.

148. For the foregoing reasons, the Appeals Chamber dismisses the Appellant's request to call the above mentioned persons and experts as witnesses on appeal.

IV. DISPOSITION

149. The Motion is **GRANTED** with respect to the confidential statements of George Mano and Stefan Karganović (part of document **69-K-0005**). The remainder of the Motion is **DISMISSED**.

150. The Appeals Chamber **INSTRUCTS** the Registrar to assign exhibit numbers to the confidential statements of George Mano and Stefan Karganović (part of document **69-K-0005**)

Done in English and French, the English text being authoritative.

Done this twentieth day of August 2008,
At The Hague,
The Netherlands

Judge Fausto Pocar
Presiding

[Seal of the International Tribunal]

[343] Trial Judgement, paras 1065-1075.
[344] P847 (Expert Report by Dr. Mark Thompson, entitled Report on media).
[345] P64 (Expert Report by Patrick Treanor, entitled The Bosnian Serb Leadership 1990-1992).
[346] P907 (Expert Report by Ewa Tabeau and Marcin Zóltkowski, entitled Ethnic Composition and Displaced Persons and Refugees in 37 Municipalities of Bosnia and Herzegovina 1991 and 1997). *See* also Motion, para. 78, and evidence referred to in Response, para. 142.

V. LIST OF ABBREVIATIONS

A. Legal Authorities

Blaškić Rule 115 Decision	*Prosecutor v. Tihomir Blaškić*, Case No. IT-95-14-A, Decision on Evidence, 31 October 2003
Haradinaj et al. Rule 115 Decision	*Prosecutor v. Ramush Haradinaj et al.*, Case No. IT-04-84-AR65.1, Confidential Decision on Prosecution's Application to Present Additional Evidence in Its Appeal Against the Re-Assessment Decision, 10 March 2006
Krstić Rule 115 Decision	*Prosecutor v. Radislav Krstić*, Case No. IT-98-33-A, Decision on Applications for Admission of Additional Evidence on Appeal, 5 August 2003
Kupreškić et al. Appeal Judgement	*Prosecutor v. Zoran Kupreškić et al.*, Case No. IT-95-16-A, Appeal Judgement, 23 October 2001
Ntagerura et al. Rule 115 Decision	*Prosecutor v. André Ntagerura et al.*, Case No. ICTR-99-46-A, Decision on Prosecution Motion for Admission of Additional Evidence, 10 December 2004
Simić Rule 115 Decision	*Prosecutor v. Blagoje Simić*, Case No. IT-95-9-A, Decision on Blagoje Simić's Motion for Admission of Additional Evidence, Alternatively for Taking of Judicial Notice, 1 June 2006
Stanišić Rule 115 Decision	*Prosecutor v. Jovica Stanišić and Franko Simatović*, Case No. IT-03-69-AR65.4, Decision on Prosecution Appeal of Decision on Provisional Release and Motions to Present Additional Evidence Pursuant to Rule 115, 26 June 2008
Tadić Decision on Extension of Time-Limit	*Prosecutor v. Duško Tadić*, Case No. IT-94-1-A, Decision on Appellant's Motion for the Extension of the Time-Limit and Admission of Additional Evidence, 16 October 1998

B. List of Designated Terms and Abbreviations

According to Rule 2(B) of the Rules of Procedure and Evidence, the masculine shall include the feminine and the singular the plural, and vice-versa.

Variant A and B Instructions	Instructions for the Organisation and Activity of the Organs of the Serbian People in Bosnia and Herzegovina in Extraordinary Circumstances, dated 19 December 1991, including the "Variants A and B", referred to in paragraphs 86-99 of the Trial Judgement
BiH	Bosnia and Herzegovina
Decision of 18 August 2005	*Prosecutor v. Momčilo Krajišnik*, Case No. IT-00-39-T, Reasons for

	Oral Decision Denying Mr. Krajišnik's Request to Proceed Unrepresented by Counsel, 18 August 2005
CSB	Centar Službi Bezbjednosti – Security Services Centre
ICRC	International Committee of the Red Cross
Indictment	*Prosecutor v. Momčilo Krajišnik and Biljana Plavšić,* Case No. IT-00-39&40-PT, Amended Consolidated Indictment, 7 March 2002
Indictment municipalities	Banja Luka, Bijeljina, Bileća, Bosanska Krupa, Bosanski Novi, Bosanski Petrovac, Bratunac, Brčko, Čajniče, Čelinac, Doboj, Donji Vakuf, Foča, Gacko, Hadžići, Ilidža, Ilijaš, Ključ, Kalinovik, Kotor Varoš, Nevesinje, Novi Grad, Novo Sarajevo, Pale, Prijedor, Prnjavor, Rogatica, Rudo,[347] Sanski Most, Šipovo,[348] Sokolac, Teslić, Trnovo, Višegrad, Vlasenica, Vogošća, Zvor
International Tribunal	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
JCE	Joint Criminal Enterprise
Krajišnik's Appeal Brief	*Prosecutor v. Momčilo Krajišnik*, Case No. IT-00-39-A, Appeal by Momčilo Krajišnik to the ICTY Judgement of 27 September 2006, final public redacted version filed in English on 28 February 2008
Main Staff	Main Staff of the Bosnian-Serb Republic Army
Motion	Motion to Present Additional Evidence Pursuant to Rule 115 to the Appeal By Momčilo Krajišnik to the ICTY Judgement of 27 September 2006, filed 29 May 2008
MUP	*Ministarstvo Unutrašnjih Poslova* – Ministry of Internal Affairs
OLAD	Office of Legal Aid and Detention Matters
Reply	Reply to the Prosecution's Response to the Appellant's Motion to Present Additional Evidence Pursuant to Rule 115 to the Appeal to the ICTY Judgement of 27 September 2006, filed 14 August 2008
Response	Prosecution Response to Krajišnik's Motion to Present Additional Evidence and Supplement, 18 July 2008
RS	*Republika Srpska* – Bosnian-Serb Republic
Rules	Rules of Procedure and Evidence of the International Tribunal,

[347] The parties agreed to exclude Rudo; Rule 98 *bis* decision, T. 17133.
[348] The parties agreed to exclude Šipovo, Rule 98 *bis* decision, T. 17133.

SDA	*Stranka Demokratske Akcije* – Party of Democratic Action (main political party of Bosnian Muslims)
SDS	*Srpska Demokratska Stranka* – Serbian Democratic Party of Bosnia and Herzegovina (main political party of Bosnian Serbs)
SJB	*Stanica Javne Bezbjednosti* – Public Security Station
SRNA	Bosnian Serb Radio and News Agency
Supplement to the Motion	Supplement to the Motion to Present Additional Evidence of 29 May Pursuant to Rule 115 by Momčilo Krajišnik to the ICTY Judgement of 27 September 2006
T.	Transcript page from hearings at trial in the present case. All transcript page numbers referred to are from the unofficial, uncorrected version of the transcript, unless specified otherwise. Minor differences may therefore exist between the pagination therein and that of the final transcripts released to the public.
TO	*Teritorijalna Odbrana* – Territorial Defence
Trial Judgement	*Prosecutor v. Momčilo Krajišnik,* Case No. IT-00-39-T, Judgement, 27 September 2006
UN	United Nations
UNPROFOR	United Nations Protection Force
VRS	*Vojska Srpske Republike Bosne i Herzegovine,* later *Vojska Republike Srpske* – Army of the Bosnian-Serb Republic