THE INTERNATIONAL CRIMINAL TRIBUNAL FOR THE FORMER YUGOSLAVIA

CASE NO. IT-04-74-A

IN THE APPEALS CHAMBER

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

Registrar: **Mr. John Hocking**

Date filed: **28 July 2015**

THE PROSECUTOR

v.

JADRANKO PRLIĆ
BRUNO STOJIĆ
SLOBODAN PRALJAK
MILIVOJ PETKOVIĆ
VALENTIN ĆORIĆ
BERISLAV PUŠIĆ

PUBLIC

NOTICE OF FILING THE CORRIGENDUM TO THE PUBLIC REDACTED VERSION OF BRUNO STOJIĆ'S APPELLANT'S BRIEF

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THE INTERNATIONAL CRIMINAL TRIBUNAL FOR THE FORMER YUGOSLAVIA

Case No. IT-04-74-A
Prosecutor v. Jadranko Prlić et al.

NOTICE OF FILING THE CORRIGENDUM TO THE PUBLIC REDACTED VERSION OF BRUNO STOJIĆ'S APPELLANT'S BRIEF

1. The Defence for Bruno Stojić ("Defence") hereby files this Corrigendum to the Public Redacted Version of Bruno Stojić's Appellant's Brief.[1]

2. On 8 July 2015, the Appeals Chamber ordered the Appellants to refile their Public Redacted Appeals Briefs and gave guidance on the correct approach to redactions.[2]

3. The Defence has followed the Appeals Chamber's instruction to co-ordinate its approach to redactions with the Prosecution.[3] This Corrigendum maintains redactions to references and citations to evidence under seal or given in closed session for the reasons indicated in the original Notice of Filing the Public Redacted Version.[4] Further, in accordance with the Appeals Chamber's guidance, it lifts the redactions originally imposed on references to parts of the Trial Judgement and other passages suggested by the Prosecution.

Word Count – 219

Respectfully submitted,

Senka Nožica
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[1] Bruno Stojić's Appellant's Brief, 12 January 2015.
[2] *Prosecutor v. Prlić et al*., IT-04-74-A, Decision on the Prosecution's Urgent Motion to Reclassify Public Briefs and Modify the Public Redacted Briefing Schedule, 8 July 2015.
[3] *Prosecutor v. Prlić et al*., IT-04-74-A, Decision on the Prosecution's Urgent Motion to Reclassify Public Briefs and Modify the Public Redacted Briefing Schedule, 8 July 2015, p.4.
[4] At the Prosecution's request, additional redactions have been imposed on para. 292 and nn. 723, 729 and 731.

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THE INTERNATIONAL CRIMINAL TRIBUNAL FOR THE FORMER YUGOSLAVIA

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Before: **Judge Theodor Meron, Presiding**
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Date filed: **12 January 2015**

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BRUNO STOJIĆ
SLOBODAN PRALJAK
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PUBLIC REDACTED

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BRUNO STOJIĆ'S APPELLANT'S BRIEF

INTRODUCTION

1. Pursuant to Article 25 of the Statute and Rule 111 of the Rules, Bruno Stojić submits his Appellant's Brief in support of his appeal against the Trial Chamber's Judgement ("Judgement") in case IT-04-74 dated 29 May 2013. The Trial Chamber convicted Stojić pursuant to Article 7(1) of the Statute of Counts 1 to 13, 15, 16, 18, 19 and 21 to 25 of the Indictment[1] and sentenced Stojić to 20 years imprisonment.[2]

2. Stojić adopts the procedural history set out in the Judgement.[3]

OVERVIEW

3. The Majority of the Trial Chamber concluded that there was a colossal Joint Criminal Enterprise ("JCE") involving senior Croatian politicians and the political and military leaders of the Croatian Community of Herceg-Bosna ("HZHB") including the Accused and many others.[4] It found that all the crimes against Bosnian Muslims were committed in accordance with a JCE designed to ethnically cleanse parts of Bosnia and Herzegovina ("BiH") and, ultimately, create a "greater Croatia".

4. Three fundamental errors pervade and invalidate the Judgement. First, despite deliberating for 27 months and producing a 2,700-page Judgement, the

[1] Judgement, V.4 p.430; Second Amended Indictment, para. 229.
[2] Judgement, V.4 p.430 (Disposition).
[3] Judgement, V.5 pp 20–68.
[4] Judgement, V.4 paras 41, 44.

Trial Chamber failed to give a reasoned decision by consistently failing to consider critical Defence submissions or evidence. This error permeates the Judgement, affecting virtually every Ground of Appeal.[5] It failed to consider evidence establishing that, *inter alia*: Croatia and the Croatian Defence Council ("HVO") supplied substantial aid and military and technical equipment ("MTS") to the Armed Forces of the Republic of Bosnia and Herzegovina ("ABiH") – the supposed target of their aggression; there was substantial HVO–ABiH cooperation; the HVO responded to attacks initiated by the ABiH; and substantial numbers of Muslims were actually members of the HVO.

5. Second, the finding that there was a JCE is riddled with errors. The Majority's findings on the common purpose, the original and expanded JCE and the plurality of persons are inconsistent and ambiguous. It found a JCE which was not alleged in the Indictment. Its findings on the ultimate purpose of relevant individuals, the formation of the JCE and that all crimes flowed from a single JCE are manifestly unreasonable and internally inconsistent. It failed to establish that Stojić was a member of any JCE or shared the intent of any JCE. These errors are addressed in Grounds 1–19 and 25.

6. Third, the Trial Chamber repeatedly erred in overstating Stojić's powers and, thus, his contribution to the crimes. Stojić was not a military officer. He had no combat experience. He was not in the military chain of command, nor did he have operational command over the armed forces. He was an economist who occupied administrative roles throughout his career. In portraying him as "one of the most important members of the JCE",[6] the Chamber ascribed Stojić powers far beyond his actual authority by relying on findings which lack any reasonable basis in the evidence or are inconsistent with its own factual findings on the structure of the Croatian Community and Republic of Herceg-Bosna ("HZ(R)HB"). These errors are addressed in Grounds 20–41.

7. In light of all the errors in the Grounds set out below, the Trial Chamber's findings are so seriously flawed that they cannot be sustained. Stojić invites the

[5] *See, e.g.*, Grounds 2–5, 16, 20–21, 23–25, 29, 31–35, 37, 45, 47–48, 51, 54, *infra*.
[6] Judgement, V.4 para. 429.

Appeals Chamber to overturn the finding that he participated in a JCE. Since no factual findings were made on other modes of liability,[7] the Appeals Chamber should overturn his conviction on all counts. Alternatively, if the Appeals Chamber upholds the JCE findings, it should overturn Stojić's conviction on the specific counts identified in Grounds 25–26, 28–37, 39–42, 45, 47, 50, 54–55 below. Stojić additionally requests a reduction in sentence in the event any convicted counts remain; his sentence is manifestly excessive to his role and fails to deduct time spent under house arrest while on provisional release.

A: JCE

1: The Majority erred in law and/or in fact in finding beyond reasonable doubt, and/or without providing a reasoned decision by failing to take into account arguments advanced by the Defence and contrary evidence, that the ultimate purpose of the HZ(R)HB leaders and of Tuđman at all material times was to set up a Croatian entity that reconstituted the borders of the Banovina of 1939 and facilitated the reunion of the Croatian people.

8. The Majority's blinkered analysis of political positions adopted by Tuđman and the HZ(R)HB leaders led it to conclude that their ultimate purpose was to set up a Croatian entity reconstituting the borders of the Banovina of 1939 and facilitating the reunification of the Croatian people.[8] This laid the foundation for its later finding that they shared a common criminal purpose.[9]

9. This conclusion is vitiated by four errors: erroneous analysis of the intentions of Tuđman;[10] failure to consider the prevailing context of Serbian aggression;[11] misplaced reliance on certain meetings with Bosnian Serbs;[12] and ambiguous findings about the purposes of HZ(R)HB leaders.[13]

[7] *Ibid.*, para. 1234.
[8] *Ibid.*, paras 9–24.
[9] *Ibid.*, para. 41.
[10] *Ibid.*, paras 9–12, 14–18, 20–24.
[11] *Ibid.*, paras 14–15.
[12] *Ibid.*, paras 11, 18.
[13] *Ibid.*, para. 24.

10. First, no reasonable chamber could have concluded that reconstituting the Banovina was Tuđman's ultimate purpose. The presidential transcripts, which provide a verbatim record and document internal meetings where the participants spoke freely, are the most reliable basis for inferences about Tuđman's intentions.[14] The Majority's analysis of those meetings is wholly inadequate because it only considered a limited selection, while disregarding other relevant documents entirely; this error is striking in comparison with the thorough analysis in the dissent.[15]

11. Any reasonable analysis of these transcripts reveals that Tuđman consistently advocated an independent BiH[16] as a union or confederation of three constituent peoples.[17] Fundamentally, Tuđman and Croatia recognised BiH's independence[18] – a fact wrongly disregarded in the Majority's finding that, for Tuđman, "BiH was not supposed to exist".[19]

12. The transcripts also demonstrate the importance Tuđman placed on cooperation with Bosnian Muslims and on international opinion. Throughout the indictment period, he invariably insisted on cooperation with Bosnian Muslims,[20] criticising HVO leaders for fighting with them[21] and later rebuking Boban for saying that he did not believe in joint politics with Muslims.[22] Further, Tuđman was concerned about what outcome would be acceptable to Europe and the world.[23] He advocated solutions within the international order,[24] partly because he feared international sanctions.[25] Croatia backed these statements with actions, including inviting international observers inside its borders.[26] These documents,

[14] Judgement, V.6 p.5.
[15] *Ibid*., pp 7–50.
[16] P00080, p.46; P00167, p.6; P00336, p.42; P04740, p.6; P07198, p.8; P00822, p.52.
[17] P00167, p.6; P00498, p.75; P00822, p.52; P00866, p.9; P01544, p.24; P01883, pp 9–10; P02302, p.49; P03704, p.28. P03517, p.5.
[18] P00149.
[19] Judgement, V.4 para. 9.
[20] P01297, p.31; P01883, p.18; P07198, p.10; P07480; P07485, pp 8–9; Judgement, V.6 p.51.
[21] P03112, p.9.
[22] P06930, p.5.
[23] P00108, p.48.
[24] P02122, p.16; P01297, p.31.
[25] P02466, p.11.
[26] P03324, p.17; P03467, p.10; P02613, p.8.

which cannot be consistent with the Majority's conclusions, were entirely disregarded or not considered in the relevant section of V.4.

13. The Majority compounded this error by disregarding evidence that contradicted its interpretation of Tuđman's and Croatia's purposes. Croatia agreed to a succession of peace plans: the Cutilheiro plan,[27] which designated numerous parts of the Banovina as Serbian or Muslim territory;[28] the Vance-Owen plan,[29] which did not designate all of the Banovina as Croatian;[30] and the Owen-Stoltenburg plan,[31] which bore no resemblance to the Banovina.[32] This consistent agreement to settlements which did not give the Banovina to the Bosnian Croats directly contradicts the Majority's conclusions and should have been addressed.

14. Further, the Majority entirely disregarded witness 4D-AB, who stated that "there was no Croatian policy in the area".[33] It cited Josip Manolić's testimony selectively, failing to consider evidence that Tuđman was not enthusiastic about reconstituting the Banovina.[34]

15. The Majority was also inconsistent. It found that Tuđman supported the creation of the HZHB in order to "expand the Croatian borders,"[35] and in order "to protect the borders of Croatia".[36] It could not be both.

16. As a result, regarding Tuđman's intentions, the Majority unreasonably made conclusions from an impermissibly limited selection of the evidence. It disregarded clearly relevant evidence demonstrating that Tuđman usually advocated an independent BiH as a union of three nations and invariably promoted cooperation with the Bosnian Muslims and solutions within the international order. Considering this evidence, no reasonable chamber could have

[27] Judgement, V.1 para. 438; *see also* 3D03720, p.101.
[28] P09276, pp 6, 11.
[29] Judgement, V.1 paras 444, 451 and 462; 3D03720, p.108; P01391, pp 2–3; P01038, p.17.
[30] P09276, pp 6, 12.
[31] Judgement, V.1 para. 482.
[32] P09276, pp 6, 13.
[33] Witness 4D-AB, 23/11/2009, T.47098:10–14.
[34] Manolić, 03/07/2006, T.4282:6–14, T.4283:12–24.
[35] Judgement, V.4 para. 14.
[36] *Ibid.*, para. 15.

concluded that the only reasonable inference was that Tuđman's ultimate purpose was to reconstitute the Banovina.

17. Second, in considering the organisation of the Bosnian Croats, the Majority disregarded the context of Serbian aggression. Defence submissions explained that Herceg-Bosna and the HVO were created defensively in response to an aggressive 'Greater Serbia' policy.[37] In V.1, the Chamber acknowledged some of these submissions, noting that in August 1991, the Croatian Democratic Union ("HDZ") of BiH declared a state of emergency due to Serbian aggression, prompting the linking of municipal boards in a unified system of defence.[38] It noted that the HVO was established following a Serbian offensive against BiH.[39] Despite noting the need to evaluate these relevant facts in determining the existence of a JCE,[40] save for a cursory reference to the "backdrop" of Serbian aggression, the Majority entirely failed to evaluate its own findings regarding Serbian aggression in considering the ultimate purpose of the alleged JCE.[41]

18. In fact in V.4, the Majority focused exclusively on the formation of the HZHB in November 1991 and disregarded clearly relevant evidence about the formation of the HVO.[42] It disregarded evidence that the HVO was directed against the "ruthless aggression of the Yugoslav Army and Chetniks"[43] as a "defence body" created to protect "Croatian people as well as other peoples".[44] This evidence established that the HVO – allegedly the essential instrument of the JCE[45] – was not created in furtherance of a JCE but in defence against Serbian aggression. In light of this evidence and the above findings, no reasonable chamber could have found that the establishment of HZHB was part of an ultimate purpose to reconstitute the Banovina rather than a defensive reaction to Serbian aggression.

[37] Stojić FTB, paras 16–33.
[38] Judgement, V.1 para. 415.
[39] *Ibid.*, para. 434, 436.
[40] *Ibid.*, para. 408.
[41] Judgement, V.4 para. 15.
[42] *Ibid.*, paras 14–15.
[43] P08973, p.44.
[44] P00151, arts. 1–2.
[45] Second Amended Indictment, para. 25.

19. Third, no reasonable chamber could have relied on three meetings between Croats and Serbs as evidence of an ultimate purpose to set up a Croatian entity reconstituting the Banovina. In relation to the first meeting between Tuđman and Milošević on 25 March 1991, the Chamber found no evidence of the details of the plans discussed.[46] It disregarded Manolić's evidence that the alleged agreements were "stories and rumours"[47] and Kljuić's evidence.[48]

20. The second meeting (Graz, May 1992) was similarly misconstrued: [REDACTED][49] [REDACTED].[50] Further, the Majority overlooked its earlier conclusion that the meeting ended "without signing any agreement".[51]

21. Regarding the third meetings on 5 and 26 October 1992, no evidence supports the Majority's conclusion that the purpose of the meetings was to discuss the partition of BiH.[52] The meetings as a whole were hardly cooperative and Praljak and Prlić both rebuked the Serbs for failing to respect previous agreements.[53] The absence of any agreement is clearly demonstrated by the Croats' complaint that the Serbs were shelling Slavonski Brod[54] and the fact that the Serbs attacked Jajce immediately after the meetings.[55] Ultimately, the only result of the meeting was a release of prisoners.[56]

22. Thus, none of the meetings relied on by the Majority resulted in any relevant agreement. No reasonable chamber could have found that the evidence about these meetings suggested that the ultimate purposes of Tuđman and HZ(R)HB leaders was to reconstitute the Banovina.

23. Fourth, the Majority's conclusion was inadequately explained and ambiguous. When addressing the ultimate purpose, the Majority refers

[46] Judgement, V.4 para. 11.
[47] Manolić, 03/07/2006, T.4277:14–19.
[48] Kljuić, 26/06/2006, T.3845:12–3846:1.
[49] [REDACTED].
[50] [REDACTED].
[51] Judgement, V.1 para. 439.
[52] Judgement, V.4 para. 18; P11376; P11380. *See* para. 130, *infra*.
[53] P11380, pp 1–2.
[54] P11376, pp 6–8.
[55] 3D03527.
[56] P11380, p.3.

consistently to the intentions of "HZ(R) H-B leaders".[57] However, it failed to define which individuals fall within this category, or even whether all the Accused fall within it at all times.

24. These errors, individually and cumulatively, invalidate the Judgement or occasion a miscarriage of justice by fatally undermining the finding that the ultimate purpose of the alleged members of the JCE was to reconstitute the Banovina and hence also the finding that the alleged members shared a common criminal purpose. As a result, the Appeals Chamber should overturn the finding that a JCE existed and acquit Stojić on all Counts.

2: The Majority erred in law and/or fact and failed to give a reasoned decision by finding that there was a JCE without proper consideration of evidence and arguments that there was substantial cooperation between Croatia and/or the HVO and the ABiH, including by Croatia and the HVO providing MTS to the ABiH, during the indictment period and indeed both before and after the indictment period.

25. The Defence submitted that the provision of MTS by Croatia and the HVO to the ABiH[58] and the cooperation between the HVO and the ABiH[59] decisively rebutted the allegation that a JCE existed.

26. The Majority disregarded these submissions.[60] It did not even mention them in its summary of the Defence arguments on the JCE.[61] At no stage did it consider the relevant evidence or evaluate the effect that this evidence had on the alleged existence of a JCE. It disregarded, *inter alia*, the entire evidence of Miloš [62] and Ćehulić[63] and the relevant evidence of Dragan Pinjuh,[64] Majić,[65] Bahto[66] and Makar.[67]

[57] *See, e.g.*, Judgement, V.4 paras 24, 43, 65.
[58] Stojić FTB, paras 52–62; Stojić Closing Arguments, 15/02/2011, T.52309:6–52311:22.
[59] Stojić FTB, paras 36–51.
[60] *See* Judgement, V.4 paras 9–73.
[61] *Ibid.*, para. 39.
[62] Miloš, 30/03/2009, T.38638–38677.
[63] Ćehulić, 01/04/2009, T.38678–38723.
[64] D. Pinjuh, 04/03/2009, T.37000:5–9, T.37701:18–20.

27. By totally disregarding these submissions and evidence, the Majority failed to give a reasoned decision. The right to a reasoned opinion[68] requires a chamber to address evidence which is clearly relevant to a finding.[69] The requirements of a reasoned decision are more exacting in relation to issues which are complex[70] or in relation to evidence which is potentially decisive.[71] Further, the European Court of Human Rights ("ECtHR") has held that a court has a "duty...to show, in its reasoning, the reasons for which the relevant submissions were accepted or rejected" unless the submissions are "clearly irrelevant, unsubstantiated [or] abusive".[72] Where no reason is given for rejecting a submission which – like these submissions – is clearly and precisely formulated in writing, with evidence in support and which is potentially decisive to the result, the right to a fair hearing is violated.[73]

28. The Defence evidence and submissions established that throughout the period covered by the alleged JCE both Croatia and the HVO provided MTS to the ABiH. Their assistance was vital: at the outset of the conflict, the ABiH had no weapons of its own.[74] It received 90% of its weapons from Croatia.[75] Croatia also provided training to ABiH soldiers.[76] Myriad MTS were delivered from Croatia to the ABiH with HVO cooperation.[77] Further, the HVO directly issued its own MTS to the ABiH.[78] Throughout the Indictment period, MTS was sent, not only to Mostar as the Chamber acknowledged,[79] but also to Tuzla[80] and other locations through the Grude logistics base.[81] Large quantities of weapons were

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[65] Majić, 09/03/2009, T.37850:3–37852:14.
[66] Bahto, 11/03/2009, T.37897:5–378911:16, T.37910:22–25, T.37911:10–12.
[67] Makar, 23/03/2009, T.38453:18–38455:3, T.38455:19–38456:16, 24/03/2009. T.38472:2–20.
[68] ICTY Statute, art. 23(2).
[69] *Kvočka* AJ, para. 23.
[70] *Ibid.*, paras 23–24.
[71] *Haradinaj* AJ, para. 134.
[72] *Fomin v. Moldova* (ECtHR), para. 31.
[73] *Ruiz Torija v. Spain*, (ECtHR), para. 30.
[74] Stojić FTB, para. 53; Bahto, 11/01/2009, T.37897:5–18.
[75] Stojić FTB, para. 53; S. Praljak, 29/06/2009, T.42146:13–14.
[76] Stojić FTB, para. 56; S. Praljak, 03/06/2009, T.41132:5–41134:7; Biškić, 06/03/2007, T.15194:3–18; 3D00314; 3D00299.
[77] *See* Stojić FTB, para. 55; Miloš, 30/03/2009, T.38662:13–20; Ćehulić, 01/04/ 2009, T.38700:12–25; Akmadžić, 19/06/2008, T.29611:11–29612:2.
[78] Stojić FTB, paras 61–62; 2D00522; 2D01097; 2D01101; 2D01086; 2D01091; 2D00809; S. Praljak, 14/05/2009, T.40138:3–40140:12.
[79] Judgement, V.2 para. 696.
[80] 2D01091; 2D01093; 2D01078; 2D01101; 2D01107; 2D01111; 2D01116.
[81] 3D00436; 3D00437; 2D01243; 2D00955.

supplied *after* the alleged commencement of the JCE in January 1993.[82] For example, in February 1993 a report from the ABiH 4th Corps confirms that it had successfully concluded dealings with HVO regarding the entry of goods onto ABiH territory.[83] On 30 March 1993, a convoy of thirteen vehicles containing, *inter alia*, 3,000,000 bullets and 3,000 AK-47s was sent to ABiH.[84] Further, on 1 May 1993, the HVO, and Stojić in particular, authorised delivering a large amount of MTS to the ABiH 2nd Corps via the Grude-Prozor-Gradačac-Vitez route.[85] This arrived with General Anđelko Makar in Mostar in May 1993.[86] This date is significant because it was after the HVO-ABiH conflicts in Jablanica and Prozor[87] and immediately before the Majority found that the HVO launched an attack on Mostar.[88] These were not isolated occurrences; MTS was regularly sent to ABiH until at least June 1993.[89] As late as August 1993 – eight months after the alleged commencement of the JCE – ABiH still acquired weapons from Croatia.[90]

29. The aid provided was not limited to MTS. In May 1993, logistics centres were established in Croatia to provide aid to the ABiH.[91] Medical supplies were sent to ABiH throughout the Indictment period.[92] Muslim civilians and ABiH members were treated in Mostar and Croatian hospitals.[93] Over 100 humanitarian organisations operated in Croatia for the benefit of ABiH.[94] Substantial funds for ABiH were transferred through Croatia.[95] Croatia accommodated substantial numbers of BiH refugees, the majority of whom were Muslim.[96] The ABiH even

[82] Stojić FTB, paras 58, 61, 180.
[83] 2D00229.
[84] 2D00311.
[85] 2D01110; 2D01107; 2D01108; Makar, 23/03/2009, T.38447:15–38448:9.
[86] 2D01107; 2D01108; Makar, 23/03/2009, T.38447:15–38448:9.
[87] Second Amended Indictment, paras 51–53; Judgement, V.2 paras 80–91, 537–564.
[88] Judgement, V.2 para. 775.
[89] 2D01095; Čengić, 11/03/2009, T.37950:7–37951:25; 2D00527; 2D01100; 2D01048; 2D01046; 2D01069; 2D01068; 2D01050; 2D01070; Makar, 23/03/2009, T.38417:15–38418:9.
[90] Makar, 24/03/2009, T.38472:2–20; Miloš, 30/03/2009, T.38657:4–24, T.38659:11–38660:6, T.38656:10–38657:3; [REDACTED].
[91] 1D01302; Akmadžić, 17/06/2008, T.29443:12–24; 3D00667.
[92] 2D00502; 2D00318; 2D00319; 2D00325; 2D00119; 2D00120; 2D00320; 2D00504; 2D00321; 2D00322; 2D00323; [REDACTED]; [REDACTED]; [REDACTED]; [REDACTED]; [REDACTED].
[93] 2D00455; 2D00333; 2D00324; 2D00602; 2D00603; 2D00317; 3D00615; 3D01034.
[94] 3D01029.
[95] 2D00497.
[96] 2D00486; Krajsek, 20/06/2007, T.20212:2–13.

operated a military-economic office in Zagreb and logistics offices in Zagreb and Split.[97] The Majority disregarded this extensive aid.

30. Further, Defence evidence and submissions established close cooperation between the HVO and ABiH which continued during the alleged JCE. This cooperation took several forms. First, the HVO and ABiH actually fought side-by-side. For example, they fought together in October and November 1992 in Mostar[98] and Jajce,[99] until November 1992 in Sarajevo with extensive daily cooperation[100] and also in Tuzla, Gornji Vakuf, Prozor, Zepce and Konjic.[101]

31. Second, the ABiH recognised the HVO as a legitimate component of the BiH armed forces.[102] On 20 April 1993, agreement was reached that the ABiH and HVO both constituted legal BiH military forces and "are treated equally."[103] In May 1993, Akmadzić repeated that HVO forces were a "recognised element" of the BiH armed forces.[104] On 29 June 1993, Izetbegović recognised the HVO as "a constituent part" of the ABiH.[105]

32. Third, during 1993 effective joint commands and commissions were created between the ABiH and HVO. On 20 January 1993, the HVO and ABiH agreed a ceasefire in Gornji Vakuf and established joint commissions to resolve disputes.[106] On 11 February 1993, a joint coordinating team possessing the power to issue joint commands was established.[107] In March 1993 in Central Bosnia, an HVO-ABiH joint defence was organised and coordinated military actions were undertaken.[108] On 23 March 1993, a joint ceasefire order was issued regarding Konjic and a joint commission created and implemented to maintain the end of

[97] [REDACTED]; 2D00009 (although dated 15 July 1993, 3D00436 makes apparent that Bešlagić was already operating in this role in 1992).
[98] 3D00208; 3D00211; 2D03057; 4D00615; 2D01278, 2D01279, 2D01281, 2D01283, 2D01284, 2D01285, 2D01286, 2D01287, 2D01289, 2D01290, 2D01291, 2D01292, 2D01293.
[99] 3D00484.
[100] D. Pinjuh, 04/03/2009, T.37700:5–12, T.37701:2–37702:15.
[101] P00708 (Jablanica, Prozor, Gornji Vakuf); P00492 (Čapljina).
[102] P00339, point 6.
[103] P01988, point 1.
[104] 1D02096; Akmadžić, 17/06/2008, T. 29492:16–21.
[105] 1D02664, p.1; *see also* Filipović, 07/12/2009, T. 47778:5–11.
[106] P01238, points 1, 3.
[107] P01467, paras 1–3.
[108] 4D01700, especially pp 5, 7–8; Filipović, 30/11/2009, T.47444:8–13 (regarding the date).

hostilities.[109] On 20 April 1993, HVO-ABiH joint operation commissions, with the European Community Monitoring Mission ("ECMM") and United Nations Military Observer ("UNMO") were established in Mostar and Zenica[110] and the Vitez Joint Operational Centre was created.[111] On 30 April 1993, a joint command was established in Central Bosnia to plan, coordinate and control combat operations.[112] A joint police force was created in Mostar.[113] These initiatives were not illusory or ineffective. ECMM reported that the joint commission in Busovača and Gornji Vakuf was doing "excellent work."[114] [REDACTED].[115] The joint command took measures including visits to Sovići and Doljani and Konjic.[116]

33. Fourth, Muslims made up a substantial proportion of the HVO armed forces. On 8 June 1993, Muslims made up 16% of the soldiers across all HVO Units and in some units, for instance brigades 102 and 105 in the Posavina Operative Zone ("OZ"), more than 50%.[117] The HVO armed forces in Mostar still included significant numbers of non-Croats on 7 July 1993.[118] Though the Chamber acknowledged 2D00150 in its factual findings,[119] it was entirely disregarded in considering the existence of the alleged JCE.[120]

34. Consistent with all this evidence, on 17 March 1993, Halilović, Chief of Staff of ABiH, wrote to the HVO praising the "increasingly better relations" and hoping for "stronger and greater" friendship in the future.[121] Had the HVO embarked on the alleged JCE two months earlier, it is inconceivable that Halilović would have written to the HVO in those terms.

[109] P01709, point 8; Witness 4D-AB, 24/11/2009, T.47190:1–13; 2D00643; 4D00554; 4D00434.
[110] P02016, p.4; Pellnäs, 07/06/2007, T.19753:6–11.
[111] P01988, point 3.
[112] P02155.
[113] 2D00313, point 4; 5D02052.
[114] P02016, pp 2–3.
[115] [REDACTED].
[116] Filipović, 01/12/2009, T.47504:12–23, T.47498:3–10.
[117] 2D00150; Stojić FTB, para. 111.
[118] P03260, pp 2, 4–5.
[119] Judgement, V.1 para. 774.
[120] *See* Ground 5.1. *infra*.
[121] P01675 (disregarded by the Majority).

35. This evidence should have been decisive because it established that at the same time as the Majority found that a JCE commenced aimed at persecuting the Bosnian Muslims and taking territory from BiH, the leaders of the alleged JCE were providing extensive MTS and other support to the ABiH which existed to defend that territory and those people. This is absurd. No nation gives MTS to an enemy. No nation allows an enemy to operate logistics bases and military/economic offices on its territory. Moreover, for months after the Majority found that the HVO launched a criminal enterprise seeking to ethnically cleanse the Muslim population, this evidence shows that the HVO and the ABiH engaged in substantial military cooperation, establishing Joint Commissions, Commands and Police Forces as a common part of the BiH armed forces. The only reasonable conclusion from this evidence is that the HVO and Croatia did not regard the ABiH as their enemy.[122]

36. It is no answer to this submission to say that MTS and cooperation was only provided in areas where there was no conflict between ABiH and the HVO. First, as set out above, MTS was provided even in areas where there was conflict.[123] The HVO even gave MTS to ABiH in Mostar in May 1993.[124] Second, the MTS provided was portable; once given to the ABiH, the donor had no control over where it was deployed – particularly when it was delivered simply to a logistics centre for onward deployment.[125]

37. By failing to evaluate these submissions and disregarding the underlying evidence, the Majority failed to give a reasoned decision, invalidating the Judgement. Had the Majority evaluated the evidence and submissions, it could not have concluded that a JCE existed. The Appeals Chamber should evaluate the above evidence and submissions, reverse the finding that there was a JCE and hence acquit Stojić on all Counts.

[122] Nor did the ABiH regard the HVO as its enemy. General Bahto confirmed that "I couldn't possibly imagine that we were enemies" (Bahto, 11/03/2009, T.37910:22–23). This was disregarded.
[123] *See* para. 28, *supra*, especially nn 82–86.
[124] *See* para. 28, *supra*, nn 85-86.
[125] 3D00008; Miloš, 30/03/2009, T.38658:16–24; Ćehulić, 01/04/2009, T.38693:19–24; [REDACTED].

3: The Majority erred in law and/or in fact and failed to give a reasoned decision by finding that there was a JCE and/or that all crimes were committed pursuant to a common purpose without proper consideration of evidence or arguments that, rather than following a single common plan, the HVO's actions were a response to specific ABiH offensives.

38. The Defence argued that certain HVO military actions were a defensive response to specific ABiH attacks and therefore did not fall within any overarching common criminal purpose.[126] Specifically, HVO actions in April 1993 were a response to the ABiH offensives in Konjic and Jablanica; HVO actions in Mostar in May 1993 were a response to an ABiH attack on 9 May 1993;[127] HVO actions following 30 June 1993 were a response to a major ABiH offensive in central BiH which included the attack on the *Tihomir Mišić* barracks on 30 June 1993. Though it acknowledged some of these submissions,[128] the Majority offered inadequate, *if any*, reasons for reaching the contrary conclusion that all the HVO's military actions from January 1993 fell within one common criminal purpose.

39. This failure to consider and give a reasoned decision on potentially decisive submissions and evidence on complex issues is an error of law invalidating the Judgement.[129]

40. First, Defence evidence established that the HVO military action in April 1993 was a response to an ABiH offensive which was directed at Konjic, Jablanica and Prozor. After an earlier attack in March,[130] the ABiH attacked the HVO in Konjic on 13–14 April.[131] At around the same time, the ABiH attacked Bokševica, Zlatar, Pokojište, Čelebići, Radešine and Zenica and encircled HVO forces in Sovići and Doljani in Jablanica.[132] The ABiH intended to attack in the

[126] Stojić FTB, paras 132–151.
[127] This submission is developed in Ground 47, *infra*.
[128] Judgement, V.4 para. 39.
[129] *See* para. 27, *supra*.
[130] Jurić, 27/04/2009, T.39308:1–4; 2D00253.
[131] *Ibid.*, T.39313:5–7; 4D00453.
[132] 4D00453; 2D00689, p.1; P01879, pp 4–5; 2D00472; 2D00473.

directions of Jablanica/Mostar and Prozor/Rama after completing operations in Konjic.[133]

41. The Majority ignored the significance of this evidence, finding that "[w]hatever the underlying reasons may have been, clashes between the HVO and the ABiH did break out."[134] It disregarded the Stojić Defence submissions entirely.[135] In so doing, the Majority abrogated its responsibility to give a reasoned decision. The underlying reason for the clashes mattered because it was obliged to determine whether the attack was in pursuit of a common criminal purpose.

42. The Majority found that the attack on Sovići and Doljani on 17 April 1993 was not "a defensive reaction to the ABiH attack that same day",[136] failing to appreciate that the issue was not whether the attack on Sovići and Doljani was in response to a single ABiH action *that day*, but whether it was a response to the *entire* ABiH offensive in the area. This underlying issue was never addressed by the Majority. Similarly, it failed to consider the purpose of the April 1993 attacks in Prozor at all.[137] Having disregarded these matters, the Majority erred in finding that events in Prozor and Jablanica in April 1993 fell within a JCE.

43. Second, after April 1993, the ABiH began a major offensive in the Neretva valley, aimed at uniting Mostar, Jablanica and Konjic,[138] [REDACTED][139] [REDACTED].[140] In *Hadzihasanović*, the Prosecution argued that this "massive" and "heavy" attack was "launched" by the ABiH.[141] The scale of this offensive should not be underestimated; [REDACTED].[142]

[133] 4D00599.
[134] Judgement, V.2 para. 526.
[135] *Ibid.*, para. 523; Stojić FTB, paras 132–140.
[136] Judgement, V.2 para. 543 (relied on in V.4 para. 46).
[137] Judgement, V.2 paras 81–93.
[138] *Ibid.*, para. 883.
[139] 2D01407; 2D00902; P02019; [REDACTED]; P02872.
[140] 3D00837; 2D01464; 3D01914; [REDACTED].
[141] *Hadžihasanović* Amended Indictment, para. 40.
[142] [REDACTED].

44. In fact, evidence showed that the ABiH had prepared for conflict with the HVO for months.[143] In preparation, it took weapons from the HVO[144] or simply did not give the HVO its share of weapons produced in Konjic.[145] Part of the ABiH plan was to turn Muslim HVO members against the HVO. As early as September 1992 – months before the JCE was allegedly formed – the ABiH instructed HVO Muslims "not to join the BH Army until the hour strikes".[146] The evidence refers continuously to this plan through 1993.[147] For instance, an ABiH list of actions taken against the HVO on 2 May 1993 indicated that "connection with our men in the HVO has been done".[148]

45. In the course of the above offensive, on 30 June 1993, the ABiH attacked the HVO at the *Tihomir Mišić* barracks in Mostar, realising its plan to use HVO Muslims against the HVO.[149]

46. The Defence argued that this attack drew a response from the HVO; its actions following this ABiH offensive were a defensive reaction to it, not part of a common plan formulated in January 1993.[150] The Majority failed to give a reasoned decision by failing to evaluate evidence and submissions demonstrating the scale of the ABiH offensive and failing to address the critical question: whether the HVO's actions following this massive ABiH offensive were pursuant to a common criminal plan hatched months earlier or were an impromptu defensive response. One specific example is the detention of Muslim HVO members, ordered by Petković following the attack on 30 June 1993,[151] which led to the detention of Muslim men in Mostar, Stolac, Čapljina, Ljubuški and Prozor.[152] The Chamber expressly linked these detentions to the involvement of HVO Muslims in the attack on 30 June 1993[153] but failed to explain why it found

[143] *See, e.g.*, 1D01058 (04/01/1993); 1D01210; 2D00207 (20/01/1993), suggesting conflict with the HVO would be "premature"; 2D03061 (01/05/1993).
[144] 2D00281.
[145] 2D00147.
[146] 4D01461. Though SIS had this information, it took no action against the HVO Muslims.
[147] 2D00288; 4D00033; 2D00286; 4D00035.
[148] 3D00165, para. 3(b).
[149] Judgement, V.2 para. 882; 4D00480; P03025, point 1, point 5; 2D00082.
[150] Stojić FTB, paras 141–151.
[151] P03019.
[152] Judgement, V.4 para. 57.
[153] Judgement, V.2 paras 882–895.

that these arrests were nevertheless pursuant to a common plan concocted in January 1993. Similarly, the Majority found that a system of deportation was implemented after 30 June 1993, but offered no explanation for concluding that this was simply a "more efficient" implementation of the original common purpose.[154]

47. In disregarding these submissions and evidence, the Majority erred in law and failed to give a reasoned decision. These errors invalidate the Judgement because, had the Majority performed the proper analysis, it could not have found that actions taken by the HVO were pursuant to a single common criminal plan devised in January 1993 rather than defensive reactions to an evolving situation. The Appeals Chamber should review the above evidence and submissions, reverse the finding that a JCE existed and acquit Stojić on all Counts.

4: The Majority erred in law and/or in fact and/or failed to give a reasoned decision by failing to take into account arguments advanced by the Defence and contrary evidence in finding beyond reasonable doubt that the crimes committed in each locality formed part of a common criminal plan or erred in law by failing to make any specific finding that the crimes committed in each locality formed part of the common criminal plan.

48. The Majority concluded that the alleged JCE was "carried out in stages".[155] It listed the events in Gornji Vakuf,[156] Jablanica,[157] Prozor,[158] Mostar,[159] Vareš[160] and the detention centres at the Heliodrom, Ljubuški, Dretelj and Gabela.[161] Finally, it held that the crimes "tended to follow a clear pattern" and "the vast majority" were pursuant to a plan established by "the leaders of the HZ(R) H-B".[162]

[154] Judgement, V.4 paras 57, 64.
[155] *Ibid.*, para. 45.
[156] *Ibid.*
[157] *Ibid.*, para. 46.
[158] *Ibid.*, para. 47.
[159] *Ibid.*, paras 49, 56–57, 59.
[160] *Ibid.*, paras 61–62.
[161] *Ibid.*, para. 64.
[162] *Ibid.*, para. 65.

49. The Majority erred in law in failing to analyse whether each event formed part of the common plan. Alternatively, no reasonable chamber could have found that all the events formed part of a single common plan.

50. First, the Majority erred in law in failing to consider crimes in each municipality and detention centre individually and to assess whether each one had the objective of furthering the common plan. In *Tolimir*, the Trial Chamber analysed whether each military operation served the purpose of the JCE.[163] In *Kupreškić*, in determining whether crimes were part of a campaign of ethnic cleansing, the Trial Chamber also examined each military operation, finding that one attack in Ahmići was aimed at civilians for the purpose of ethnic cleansing,[164] but an earlier attack on the same village was not.[165] Finally, in *Boškoski & Tarčulovski* where the purpose of the JCE was defined as to direct an unlawful attack on civilians and civilian objects in the village of Ljuboten, the Trial Chamber analysed the predominant objective of that specific operation.[166]

51. The Majority omitted to perform this analysis. In relation to Gornji Vakuf,[167] Prozor,[168] Mostar,[169] Čapljina,[170] Stolac,[171] and the detention centres at the Heliodrom, Ljubuški, Dretelj and Gabela,[172] the Majority simply did not consider whether each crime served the common criminal purpose of the alleged JCE.

52. Further, the Majority expressly declined to determine the underlying purpose of the HVO actions in Jablanica.[173] Regarding Vareš, the Majority found that the attacks on Stupni Do were not ordered by the HVO leaders[174] but wrongly included them within its analysis of the common plan nonetheless.

[163] *Tolimir* TJ, paras 1021–1024, 1028–1030.
[164] *Kupreškić* TJ, paras 336–338.
[165] *Ibid.*, paras 163–164.
[166] *Boškoski* TJ, para. 572.
[167] Judgement, V.2 paras 343–488, V.4 para. 45.
[168] Judgement, V.2 paras 80–91, V.4 para. 47.
[169] Judgement, V.2 paras 758–1377, V.4 paras 56–59.
[170] Judgement, V.2 paras 2035–2191, V.4 para. 57.
[171] Judgement, V.2 paras 1879–2034, V.4 para. 57.
[172] Judgement, V.2 paras 1379–1663, 1787–1878, V.3 paras 1–274, V.4 para. 57.
[173] Judgement, V.2 para. 526.
[174] Judgement, V.4 para. 61.

Moreover, the detention centre at Vojno was not mentioned in the Majority's analysis of the JCE at all.[175]

53. Second, the fundamental fallacy in the Majority's conclusion is that if all the events described in paragraphs 44–68 of V.4 unfolded pursuant to a single common plan devised in mid-January 1993, the result would have been a consistent wave of attacks implementing that plan. That did not happen. Hostilities ceased days after the start of the conflict in Gornji Vakuf.[176] Three months passed until the second set of events analysed by the Majority in Jablanica and Prozor which began and ended in mid-April 1993.[177] This hiatus – immediately after the start of the alleged JCE – demanded an explanation. None was provided. Similarly, there is a further gap between June 1993[178] and the military actions in Vareš in October 1993.[179] Again, the Majority failed to consider the implications of this chronology. No reasonable Chamber could have determined that it was consistent with the alleged JCE. Instead, as the Presiding Judge concluded, "there were never any standing conflicts […] only sporadic conflicts here and there".[180]

54. Four other distinct errors are apparent. First, the Majority held that the crimes committed from January 1993 to March 1994 were "the result of a plan established by the leaders of the HZ(R) H-B".[181] This is was inconsistent with the Majority's formulation of a JCE which included the "leaders of Croatia".[182] If the crimes were the result of plan established by the leaders of the HZ(R)HB only, they cannot have formed part of the alleged JCE since that also required the involvement of the Croatian leaders.

55. Second, the above findings that the crimes "tended to follow a clear pattern" and that the "vast majority" were not committed by chance, are erroneously unspecific because they imply that some unidentified Indictment

[175] *Ibid.*, paras 41–68.
[176] *Ibid.*, para. 706.
[177] *Ibid.*, paras 46–47.
[178] *Ibid.*, paras 57–59.
[179] *Ibid.*, para. 61.
[180] Judgement, V.6 p.394.
[181] Judgement, V.4 para. 65.
[182] *Ibid.*, paras 43, 1222.

crimes were committed by chance and hence fell outside the clear pattern and the common plan.

56. Third, the Majority erred in applying its findings to Gornji Vakuf. It found that the JCE was established "at least as early as mid-January 1993"; the evidence did not support a finding that the JCE existed prior to that date.[183] However, it found the attacks in Gornji Vakuf which began on 18 January 1993 fell within the JCE.[184] This was unreasonable because the vague finding that a JCE commenced in mid-January does not establish that it had started prior to 18 January 1993. Moreover, in finding that the attack on Gornji Vakuf started on 18 January 1993, the Majority disregarded earlier findings that open fighting broke out on 11 January 1993[185] and continued from 14–16 January 1993.[186] The attack on 18 January 1993 cannot be divorced from those earlier engagements. It is unreasonable to suggest that fighting on 11 January 1993 was not part of the JCE, but its continuation on 18 January 1993 was part of the JCE.

57. Fourth, the Majority erred in entirely disregarding clearly relevant evidence that witnesses were not aware of any plan or did not believe that events unfolded according to a single plan.[187] This failure to consider obviously relevant evidence was an error of law.[188]

58. These errors of fact and law, individually or cumulatively, invalidate the Judgement and occasion a miscarriage of justice. As a result, the Appeals Chamber should overturn the finding that crimes in each locality were committed in furtherance of a JCE and acquit Stojić on all Counts. Fundamentally, by finding that everything occurred pursuant to one single common purpose, and hence convicting the accused of all the crimes in all the localities, the Majority obscured the reality of the conflict in BiH. Any reasonable analysis of the different local flashpoints could only have led to the conclusion reached by the

[183] *Ibid.*, paras 44, 69.
[184] *Ibid.*, para. 45.
[185] Judgement, V.2 para. 336.
[186] *Ibid.*, para. 337.
[187] *See, e.g.*, Nissen, 27/06/2007, T.20649–20650; Pringle, 07/11/ 2007, T.24259; Jasak, 20/01/2010, T.48682–48683; Ćurčić, 12/10/2009, T.45809; Bahto, 11/03/2009, T.37911:13–37913:1.
[188] *Kvočka* AJ, para. 23.

Presiding Judge that this was not a JCE but: *"a **classic internal conflict** where local political aspirations, the egos of some, and political ambition led to **unmanageable situations**"*.[189]

5: The Majority made a number of errors of law and denied Stojić a fair trial in refusing to admit relevant evidence and/or limiting lines of cross-examination, with the result that the Trial Chamber was unable to consider relevant evidence which would have affected its determination of issues relating to JCE.

59. "There is a risk that discarding a document earlier during the trial, for lack of familiarity with the case as a whole and the strategies of both Parties can in some cases lead to a **miscarriage of justice**."[190]

60. With these words, the Presiding Judge identified one of the Majority's key failings. By excluding defence evidence before considering its Judgement, the Chamber denied the Defence the opportunity to rely on evidence which would have proved crucial to its determination. In refusing to admit the documents, the Chamber reached decisions which were based on a patently incorrect conclusion of fact or were so unfair or unreasonable that they constituted an abuse of discretion.[191] During the trial process, a "rigorous" test must be applied before excluding evidence and, in terms of relevance, it only needs to be established that a document relates to a material issue to be admissible.[192]

5.1 The Majority erred in law in refusing to admit exculpatory evidence of the number of Muslims who were members of the HVO.

61. On 15 February 2010, the Majority denied the admission of documents 2D01541–2D01561, which consisted of lists of HVO combatants killed or disabled organised by ethnicity and hence demonstrated the number of Muslims actively serving in the HVO.[193] The reason given was that they were "too vague

[189] Judgement, V.6 p.395 (*italics added*).
[190] *Ibid.*, p.66.
[191] *Šainović* AJ, para. 161; Decision on Prlić Interlocutory Appeal on Admission of Evidence, para. 5; Decision on Praljak Appeal Regarding Witness Examination, para. 5.
[192] Decision on Prlić Interlocutory Appeal on Admission of Evidence, paras 15, 17.
[193] Admission of Evidence Relating to the Testimony of Praljak Order, pp 29–32.

with regard to the Indictment or have no obvious link to it".[194] A request for leave to appeal or in the alternative for reconsideration was rejected.[195]

62. The Majority was patently wrong that this evidence had no obvious link to the Indictment. It found that there was a common plan to ethnically cleanse the Muslim population or to move it outside the territory of the HZHB.[196] One of the crimes within the common purpose was persecution of the Muslim population.[197] Evidence that a significant number of Muslims were active members of the HVO and were killed or injured in the service of the HVO presents a direct challenge to these findings and is thus obviously relevant. It forces the Chamber to confront two uncomfortable questions: why would significant numbers of Muslims be members of an organisation whose purpose was to persecute them and to remove them from the territory of HZHB and, conversely, why, if they were intent on persecution, would the leaders of HZ(R)HB tolerate so many Muslim members?

63. The Majority's error in excluding this obviously relevant evidence led it to disregard the number of Muslim members of the HVO in evaluating whether a JCE existed. This error invalidates the Judgement and occasions a miscarriage of justice because had the Defence been allowed to prove that a significant number of Muslims were active members of HVO, no reasonable chamber could have found that the HVO discriminated against Muslims and intended to drive Muslims out of the HZHB. The foundation for the alleged JCE would therefore fall away. As a result, the Appeals Chamber should overturn the finding that a JCE existed and acquit Stojić on all Counts.

[194] *Ibid.*, pp 6–7.
[195] Decision on Stojić Request for Reconsideration or Appeal relating to the Testimony of Praljak, p.4.
[196] Judgement, V.4 paras 41, 43.
[197] *Ibid.*, paras 66–68.

5.2 The Trial Chamber erred in law in refusing to admit exculpatory evidence tendered by Bruno Stojić or in limiting lines of cross-examination on behalf of Bruno Stojić on the incorrect basis that cooperation between HVO and ABiH and the provision by HVO of MTS to ABiH in areas outside the geographic scope of the Indictment were not relevant to the allegation that a JCE existed and/or on the incorrect basis that the defence was relying on *tu quoque*.

64. The Chamber erred in declining to admit evidence relating to (1) the cooperation between the HVO and the ABiH and (2) the ABiH offensives on the incorrect basis that the Defence was relying on *tu quoque*.

65. The Chamber should have admitted all the evidence about cooperation between the HVO and ABiH. On 21 July 2009, it held that the delivery of military material by the Croatian Army ("HV") and HVO to the ABiH in geographical areas outside the scope of the Indictment did not contain "sufficient indicia of relevance".[198] On the same basis, it excluded evidence of medical aid provided by Croatia to Bosnian Muslims and evidence of the existence of good relations between the HVO and ABiH in geographic areas not covered by the Indictment.[199] This denial of relevance was the primary reason given for refusing to admit evidence of this type.[200]

66. This approach was wholly wrong. The close cooperation between the ABiH and the HVO and the provision of MTS by the HVO to the ABiH, is patently relevant because it fundamentally undermines the allegation of a JCE.[201] Cooperation, weapons and MTS are not given to enemies. It is inconceivable that the HVO and the ABiH would have cooperated in any locality, if the HVO had been engaged in a persecutory campaign to drive out the Bosnian Muslims from HZHB. By refusing to admit the supporting evidence, the Chamber drew the sting out of relevant Defence submissions.

[198] Decision on Stojić Motion for Admission of Documentary Evidence, para. 27.
[199] *Ibid*.
[200] *See, e.g.*, Admission of Evidence Relating to the Testimony of Praljak Order, p.6; Judgement, V.1 para. 274.
[201] *See* Ground 2, *supra.*

67. Second, the Chamber should have admitted evidence of ABiH offensives. The Defence did not rely on the defence of *tu quoque*, but argued that crimes could not be considered part of a common criminal purpose when, instead of following a plan formed by the HVO, they were part of a defensive reaction to an ABiH offensive.[202] The Chamber repeatedly excluded such evidence unless there was an obvious link to the Indictment at the point of rendering the admissibility decision.[203] This led to absurd results. For instance, on 21 July 2009, the Chamber denied the admission of 2D00403 (relating to the ABiH attack on Konjic in April 1993) because it "d[id] not establish a relationship between the attack by the ABiH on Konjic and the crimes alleged to have been committed in one or several municipalities of the Indictment".[204] However, Petković subsequently testified that, from a military point of view, Konjic and Jablanica were "an indivisible whole".[205] Thus 2D00403 was relevant to the Jablanica and should not have been excluded.

68. There was thus an abuse of discretion in refusing to admit documents that were patently relevant to the question of whether HVO military actions took place pursuant to a common plan or instead, as the Defence argued, were an unplanned defensive reaction to ABiH offensives.

69. By declining to admit this volume of exculpatory evidence, the Chamber erred in law. Had it been admitted, the Defence submissions would have carried more weight and no reasonable chamber would have concluded that a JCE existed. Hence, individually or cumulatively with Grounds 2 and 3, this error invalidates the Judgement. As a result, the Appeals Chamber should overturn the finding that a JCE existed and acquit Stojić on all Counts.

6: The Majority erred in law and/or fact and/or failed to give a reasoned decision by failing to take into account defence arguments and contrary evidence in finding beyond reasonable doubt that Tuđman, Šušak, Bobetko, Boban and other unnamed members of the JCE shared the common criminal intention,

[202] Stojić FTB, paras 132–151.
[203] *See* Judgement, V.1 paras 279–281.
[204] Decision on Stojić Motion for Admission of Documentary Evidence, para. 31.
[205] Judgement, V.2 para. 525; Petković, 15/02/2010, T.49432:6–19; 3D01843, pp 2–3.

without making any or any unambiguous finding that (a) they shared the intention to commit the individual crimes alleged in the Indictment, (b) had the specific intent required by the indictment crimes and/or (c) intended to participate in the common purpose.

70. The Majority identified Tuđman, Šušak, Bobetko and Boban as members of the JCE.[206] Its findings in relation to these individual's intent are wholly deficient. It found that:

- "the ultimate purpose of the HZ(R) H-B leaders and of Franjo Tuđman […] was to set up a Croatian entity that reconstituted, at least in part, the borders of the Banovina";[207]
- "the leaders of the HVO and certain Croatian leaders aimed to consolidate HVO control over Provinces 3, 8 and 10…";[208]
- "Stojić shared that intention with other members of the JCE, notably the other members of the HVO/Government of the HZ(R) H-B and the chiefs and commanders of the HVO Main Staff";[209]
- "a plurality of persons consulted with each other to devise and implement the common criminal purpose".[210]

71. The required *mens rea* is "the intent to perpetrate a certain crime (this being the shared intent on the part of all co-perpetrators)".[211] This requires proof of "a common state of mind, namely the state of mind that the statutory crimes forming part of the objective should be carried out".[212] In *Krnojelac*, the Appeals Chamber held that "the very concept of joint criminal enterprise presupposes that its participants […] share the perpetrators' joint criminal intent".[213] The law is clear: in order to find a JCE, it is necessary to find that *all* the participants intended the indictment crimes to be committed. Conversely, if some participants

[206] Judgement, V.4 para. 1231.
[207] *Ibid.*, para. 24.
[208] *Ibid.*, para. 44.
[209] *Ibid.*, para. 428.
[210] *Ibid.*, para. 1231.
[211] *Tadić* AJ, para. 228.
[212] *Krajišnik* AJ, para. 707.
[213] *Krnojelac* AJ, para. 84.

lacked the intent to commit certain crimes, those crimes cannot form part of any JCE.[214]

72. The Majority failed to make any finding that Tuđman, Šušak, Bobetko and Boban (or other unnamed individuals) shared an intent to commit the indictment crimes or intended to participate in a JCE. For instance, there is no finding that the above individuals intended to discriminate (count 1), to kill (counts 2 and 3), to destroy property (counts 19 and 20) including religious institutions (count 21) or inflict terror on civilians (count 25). The finding that they "devise[d] and implement[ed]"[215] the common purpose or that their ultimate purpose was to reconstitute the Banovina is insufficient because it stops short of finding that they intended the commission of specific crimes.

73. This absence of clear findings flows from a lack of evidence. There was no evidence, and the Majority cited none, about the intent of Šušak or Bobetko. Presumably, this explains why paragraph 24 of V.4 names only Tuđman and paragraph 428 fails to name any of the Croatian leaders. In the absence of evidence, no reasonable chamber could have found that Šušak and Bobetko shared the common intent of the JCE.

74. Further, the Majority erred in fact insofar as it found that Tuđman intended the Indictment crimes. The evidence established that Tuđman did not approve of any crimes: he said that what the HVO had done in Stupni Do "entirely compromises Croatian policy";[216] he referred to those who destroyed Mostar Old Bridge as "idiots";[217] he criticized the HVO for fighting with the Muslims[218] and expressed disapproval for the mistreatment of Muslims.[219] Taking into account this evidence, no reasonable chamber could have found that Tuđman intended to commit the Indictment crimes. That the man identified by

[214] Consistent with this analysis, the Majority found that offences of theft, murder and sexual abuse fell outside the JCE because it was not established that all members of the JCE had the necessary intent (Judgement, V.4 paras 70–71).
[215] Judgement, V.4 para. 1231.
[216] P06581, p.13.
[217] P07198, pp 13–14.
[218] P03112, p.9.
[219] P01739, p.27.

the Prosecution as the leader of the JCE[220] did not intend to commit the Indictment crimes entirely undermines the conclusion that a JCE existed and hence invalidates the Judgement.

75. Having made no findings or inadequate findings on shared intent, it was an error of law for the Majority to find that there was a JCE. Because all findings against Stojić were made on the basis of his participation in a JCE that was incorrectly found to exist, this error invalidates the Judgement. As a result, the Appeals Chamber should overturn the finding that a JCE existed and acquit Stojić on all Counts.

7: The Majority erred in law in failing to identify the members of the JCE with sufficient specificity.

76. In finding that there was a JCE, a chamber must identify the plurality of persons who were members of the JCE.[221] Whilst it is not necessary to identify every member by name,[222] it is necessary that the members can be determined at least by reference to their category as a group.[223] This is not a technicality. In the face of criticism that JCE liability is too vague and too expansive, the Appeals Chamber has responded that the doctrine of JCE itself provides sufficient safeguards by requiring all the necessary elements to be proved beyond reasonable doubt.[224] One such safeguard is identifying the plurality of persons belonging to the JCE.[225] A chamber which fails properly to identify the members of a JCE thus makes an error of law which impermissibly expands the scope of the JCE doctrine.

77. In *Krajišnik*, the Trial Chamber held that "the JCE rank and file consisted of local politicians, military and police commanders, paramilitary leaders, and others".[226] The Appeals Chamber held that this was "erroneously unspecific" because it failed to specify whether "all or only some" of the local politicians,

[220] Initial Indictment, para. 36.
[221] *Tadić* AJ, para. 227.
[222] *Brđanin* AJ, para. 430.
[223] *Limaj* AJ, para. 99.
[224] *Brđanin* AJ, paras 426–428.
[225] *Ibid.*, para. 430.
[226] *Krajišnik* TJ, para. 1087.

military and police commanders and paramilitary leaders were JCE members.[227] Further, the ambiguity was not dispelled by defining the JCE members in that paragraph by reference to a period of time or a sufficiently narrow geographic area.[228]

78. In identifying the plurality of persons, the Majority named ten individuals but then concluded "the group was certainly broader and had to include other members, notably commanders of the HVO armed forces, political and administrative officials of the HVO/government and municipal HVOs".[229]

79. This finding is erroneously unspecific. Just as in *Krajišnik,* the Majority failed to identify whether *all or only some* of the commanders of the armed forces and political and administrative officials were members of the JCE. Two factors illustrate the extraordinary breadth and vagueness of this finding. First, the lowliest administrative assistant in a municipal HVO might fall within the Majority's definition of the members of the JCE. Second, the use of the word "notably" can only mean that the Majority thought that there were other entirely unidentified members beyond even the vague categories identified. Moreover, just as in *Krajišnik,* nothing in paragraph 1231 of V.4 resolves this ambiguity by reference to any temporal or geographic limitation. The Majority therefore erred in law by failing unambiguously to identify the members of the JCE.

80. This error of law invalidates the Judgement because the Majority failed to identify the members of the JCE with sufficient specificity, which is an essential precursor to a finding that there was a JCE at all. The finding that a JCE existed must therefore be reversed, with the result that Stojić's conviction must be set aside on all counts.

8: The Majority erred in law and/or fact and/or failed to give a reasoned decision by finding that there was a JCE without (a) specifically finding that there was a common purpose which either had the objective of committing a crime within the Statute or contemplated specific crimes within the Statute, (b) consistently

[227] *Krajišnik* AJ, para. 157.
[228] *Ibid.*
[229] Judgement, V.4 para. 1231.

identifying the same common criminal purpose throughout the Judgement and (c) considering relevant defence arguments or contrary evidence.

81. Confusion pervades the Majority's findings in relation to the common purpose. It found that:

- "there was only one, single common criminal purpose – domination by the HR H-B [Croatian Republic of Herceg-Bosna] Croats through ethnic cleansing".[230] Here, the common purpose was domination by the HR H-B Croats and the criminal means of realizing that purpose was ethnic cleansing;

- "to achieve the political purpose in the long-term, namely, the establishment of a Croatian entity reconstituting in part the borders of the 1939 Banovina to facilitate to reunification of the Croatian people, it was necessary to change the ethnic make-up of the territories claimed to form part of the HR H-B".[231] Here, the common purpose was to reconstitute the borders of the Banovina and the criminal means of realizing this purpose was changing the ethnic make-up of the territory;

- There was a plan "to modify the ethnic composition of the so-called Croatian provinces in light of their interpretation of the Vance-Owen Plan in order to extend their political and military control over them, and to do so by political, administrative military action and also by the commission of crimes sanctioned under the Statute".[232] Here, the common purpose was modification of the ethnic composition of the territory, which was to be realized through the commission of unspecified crimes and through legal means;

- Stojić's involvement is analysed by reference to the shared intent to "expel the Muslim population from the HZ(R) H-B".[233] Here, the

[230] *Ibid.*, para. 41.
[231] *Ibid.*, para. 43.
[232] *Ibid.*, para. 65.
[233] *Ibid.*, para. 428.

common purpose was expelling the Muslim population from HZ(R)HB;

- Finally, the Majority held that the Accused used individuals to commit the "crimes that were part of the common criminal purpose to ethnically cleanse the Muslim population from the territory claimed as Croatian".[234] Here, ethnic cleansing was the common purpose and the indictment crimes were the means of realizing that purpose.

82. A chamber must define the common criminal purpose in order to find that there was a JCE. In so doing, it must "specify the common criminal purpose in terms of both the criminal goal intended and its scope".[235] Further, the common plan must amount to or involve the commission of a crime within the Statute.[236] There are two types of common purpose: those which are inherently criminal and those which are not inherently criminal, but which involve the commission of crimes in order to realize the common purpose.

83. The Majority erred by failing consistently to identify the same common purpose. Although it began by identifying "one, single" purpose, which was "domination" by the HR H-B Croats,[237] it subsequently identified at least four different common purposes – reconstituting the Banovina,[238] modifying the ethnic composition of the territory,[239] expelling the Muslim population[240] and ethnic cleansing.[241] Thus instead of identifying one, single common purpose, the Majority vacillated between five different common purposes.

84. In a further fatal inconsistency, the Majority alternated between defining ethnic cleansing as the common purpose which was to be achieved by

[234] *Ibid.*, para. 1232.
[235] *Brđanin* AJ, para. 430.
[236] *Tadić* AJ, para. 227(ii); *Brđanin* AJ, para. 418.
[237] Judgement, V.4 para. 41.
[238] *Ibid.*, para. 43.
[239] *Ibid.*, para. 65.
[240] *Ibid.*, para. 429.
[241] *Ibid.*, para. 1232.

committing other crimes[242] and defining ethnic cleansing as the criminal means to realize the common purpose.[243]

85. This inconsistency is a ground for appeal,[244] because it means that the common criminal purpose was not clearly identified. This inconsistency violates the right to a reasoned decision because it prevents the Defence from understanding and effectively appealing the Trial Chamber's decision.[245] Since the inconsistency relates to a fundamental feature of the Judgement – on a finding which was required in order to identify a JCE – the Judgement is invalidated and must be overturned.

86. In any event, the finding that the common purpose was "domination by the HR H-B Croats through ethnic cleansing"[246] is itself defective because this purpose does not necessarily amount to or involve the commission of crimes within the Statute. Domination by the HR H-B Croats is not inherently criminal; it could be achieved through lawful means. Nor does the stated common purpose necessarily involve the commission of crimes proscribed by the Statute because ethnic cleansing is not a crime proscribed by the Statute.[247] No doubt ethnic cleansing is contrary to international law[248] and the acts which make up ethnic cleansing may amount to crimes within the Statute,[249] but it is not a discrete crime in itself within the jurisdiction of the Tribunal. Insofar as the Majority did specifically define a common purpose, it therefore erred in law by defining a common purpose which did not amount to or involve the commission of crimes. This invalidates the Judgement. As a result, the Appeals Chamber should overturn the finding that a JCE existed and acquit Stojić on all Counts.

[242] *Ibid.*, paras 1232, 65, 429.
[243] *Ibid.*, paras 41, 43.
[244] *See, e.g. Krajišnik* AJ, para. 724.
[245] *See Limaj* AJ, para. 81.
[246] Judgement, V.4 para. 41.
[247] *See Stakić* AJ, Partial Dissent of Judge Shahabuddeen, para. 50.
[248] *Application of the Genocide Convention* (*Bosnia-Herzegovina/Serbia and Montenegro)*, ICJ, para. 190.
[249] *Ibid.*; *Krnojelac* AJ, paras 221–222; *Simić* TJ, para. 133.

9: Withdrawn.

10: The Majority erred in law and/or fact and/or failed to give a reasoned decision by finding beyond a reasonable doubt that a JCE was established at least as early as mid-January 1993 in the absence of any evidence to support that conclusion.

87. The Majority found that a JCE was established "at least as early as mid-January 1993".[250] The evidence in support of this finding is either contained in footnote 122 or "set forth below"[251] in what the Majority recounts as a sequence of attacks beginning in Gornji Vakuf on 18 January 1993[252] and spreading to Jablanica "between the beginning of February and mid-April 1993"[253] before reaching other municipalities.[254]

88. Every accused has the right to a reasoned opinion.[255] Where a finding is decisive or relates to a complex issue, a chamber has a higher duty to explain its reasoning.[256] The Majority failed to give a reasoned decision by failing sufficiently to explain its finding that a JCE was established at least as early as mid-January 1993. Alternatively, no reasonable chamber could have found that a JCE commenced in mid-January 1993.

89. First, none of the evidence cited at footnote 122 specifically relates to mid-January 1993.[257] It cannot therefore support the finding that a JCE was formed in mid-January 1993 as opposed to any other date. Nor can this conclusion be supported by a generic reference to earlier findings in V.1, which were "strictly historical and brief" and in relation to which the Chamber

[250] Judgement, V.4 para. 44.
[251] *Ibid.*
[252] *Ibid.*, para. 45.
[253] *Ibid.*, para. 46.
[254] *Ibid.*, paras 47–64.
[255] ICTY Statute, art. 23(2); ICTY Rules, rule 98*ter*(c); *Kvočka* AJ, para. 23.
[256] *Kvočka* AJ, para. 24; *Haradinaj* AJ, para. 134.
[257] [REDACTED]; [REDACTED]; P02787 (15/06/1993); P10041, para. 42, and P10356, p.10752, contain general impressions without specific dates; P10356, pp 10777–10779, relates to June 1993; P10356, pp 10871–10872, appears entirely irrelevant; Thornberry, 14/01/2008, T.26166–26168, T.26173–26176, addressed August 1993; [REDACTED].

expressly stated that it was "more appropriate" to address issues relevant to the responsibility of the Accused elsewhere.[258]

90. Second, the finding that a JCE came into being in mid-January 1993 is inconsistent with the Chamber's own finding that, at this exact point in time, the HZHB leaders were participating in peace talks.[259] It recognized that on 30 January 1993, the parties reached agreement on the Vance-Owen plan's constitutional principles[260] and after 30 January 1993, the "BiH Croats and Muslims attempted to cooperate in implementing the cessation of hostilities principle".[261] The finding that after January 1993 the BiH Croats attempted to cooperate with the BiH Muslims cannot be consistent with the finding that a JCE was formed in mid-January 1993.

91. Third, no sufficient reason was offered to explain the conclusion that the military actions in Gornji Vakuf formed part of the JCE, whereas military actions in Prozor in 1992 did not.[262] The Majority sought to explain its distinction by stating that the Indictment did not allege that Pušić was responsible for crimes in Prozor and therefore the members of the JCE were not acting in concert at that time.[263] This explanation is wrong: Pušić was only appointed in April 1993 and hence it was not alleged that he was responsible for indicted crimes in Gornji Vakuf either.[264] If his appointment was critical, the JCE could not have commenced until April 1993. In fact, there was no qualitative difference between Prozor and Gornji Vakuf.[265] Since the action in Prozor fell outside the alleged JCE, the only reasonable conclusion is that Gornji Vakuf did too.

92. Fourth, the attack on Gornji Vakuf on 18 January 1993 was the product of escalating tensions in that municipality which began in September 1992.[266] The

[258] Judgement, V.1 para. 408.
[259] *Ibid.*, paras 444–451.
[260] *Ibid.*, para. 462.
[261] *Ibid.*, para. 463.
[262] Judgement, V.4 para. 69.
[263] *Ibid.*, para. 69, n. 179.
[264] *Ibid.*, para. 1229.
[265] *See* Judgement, V.2 paras 35–73, 346–468.
[266] Judgement, V.2 para. 326.

HVO began building up its forces in late 1992.[267] There were clashes in October–November 1992[268] and early in January 1993.[269] In order to find that the JCE began in mid-January 1993, the Majority thus severed the final attack on Gornji Vakuf from the escalation of tension and earlier clashes.[270] No reasonable chamber could have made this finding.

93. This analysis reveals that the selection of the date of mid-January 1993 was entirely arbitrary and unreasoned. There was insufficient evidence that a JCE existed earlier.[271] There was no change in January 1993 which enabled the Majority to find that a JCE had commenced and no evidence that the episodic conflicts which followed that date were any different from those which preceded it. As a result, the Majority failed to give a reasoned decision and reached a decision which no reasonable chamber could have.

94. These errors invalidate the Judgement and occasion a miscarriage of justice, because they relate to the establishment of the JCE which is one of the required elements for a finding of JCE. As a result, the Appeals Chamber should overturn the finding that a JCE existed and acquit Stojić on all Counts.

11: The Majority erred in law in failing specifically to define which crimes were part of the original common criminal purpose and/or which crimes subsequently became part of the expanded JCE.

95. The Majority found that a JCE was established "at least as early as mid-January 1993".[272] It subsequently held that "[f]rom June 1993, the common criminal purpose was expanded with the siege of East Mostar and encompassed new crimes".[273] Finally, it listed all the crimes that "fall within the framework of

[267] *Ibid.*, para. 331.
[268] *Ibid.*, paras 328–330.
[269] *Ibid.*, paras 332–337.
[270] The same applies to Jablanica, where tensions started rising in April 1992: Judgement, V.2 paras 520–521.
[271] Judgement, V.4 paras 44, 1218.
[272] *Ibid.*, para. 44.
[273] *Ibid.*, para. 59.

the common plan of the Form 1 JCE" without differentiating between the original and the expanded crimes.[274]

96. In *Krajišnik*, the Appeals Chamber made it clear that a trial chamber must identify the original crimes, identify the expanded crimes and precisely find how and when the scope of the common objective broadened to encompass those expanded crimes.[275]

97. The Majority's ambiguous finding was an error of law because it failed to define which crimes were part of the original JCE and which were part of the expanded JCE.

98. It is no answer to say that this determination can be inferred from the surrounding passages in the Judgement. It cannot. It is entirely unclear whether the new crimes that the Majority found were encompassed in the expanded JCE from June 1993 are limited to new crimes committed in East Mostar (Counts 24–26 only) or perhaps extend to all crimes committed after June 1993.[276] For instance, it is ambiguous whether deportations which the Majority found began in June 1993 formed part of the original or expanded JCE.[277] In any event, the Appeals Chamber is not required "to engage in speculation on the meaning of the Trial Chamber's findings – or lack thereof – in relation to such a central element... as the scope of the common objective".[278]

99. Nor is the ambiguity cured by reference to the Prosecution's pleading, which specifically alleged that the original JCE crimes were Counts 1, 6–9 and 19–20[279] and the JCE later expanded to include Counts 10–11, 12–18, and 22–26.[280] The Majority did not adopt the Prosecution's pleading. For instance,

[274] *Ibid.*, para. 68.
[275] *Krajišnik* AJ, paras 161–178.
[276] Judgement, V.4 para. 59, 64 *et seq.*
[277] *Ibid.*, para. 64.
[278] *Krajišnik* AJ, para. 176.
[279] Prosecution FTB, paras 7–18.
[280] *Ibid.*, paras 18–56.

contrary to the Prosecution's position, the Majority regarded Count 21 as one of the expanded crimes.[281]

100. The ambiguity goes to the heart of the common objective of the JCE and cannot be lightly remedied. It compromises Stojić's right to a fair trial and the Appeals Chamber's ability to understand and review other findings of the Majority.[282] Without knowing which crimes the Majority allocated to the original or the expanded JCE, it is impossible for Stojić effectively to challenge whether the Majority correctly applied the law on shared intent or correctly determined that the new crimes had been incorporated into the JCE.

101. This error of law invalidates the Majority's findings on JCE in their entirety and as a result the Judgement must be set aside and the conviction of Stojić must be overturned on all counts.

12: The Majority erred in law and/or fact and/or failed to give a reasoned decision in determining that from June 1993 the common criminal objective expanded and came to encompass new crimes without (a) making the necessary finding that all JCE members were informed of the expansion of criminal activities and did nothing to prevent them and (b) determining at which precise point in time the additional crimes were integrated into the JCE.

102. The Defence is prejudiced in its ability to develop this ground by the ambiguity in the Judgement about which crimes were part of the expanded JCE.

103. Beyond the bald statement that "[f]rom June 1993, the common criminal purpose was expanded"[283], the Majority's findings about the process through which the new crimes were incorporated into the common plan are scarce or entirely absent.

104. In order to impute responsibility to JCE members for expanded crimes, a Trial Chamber is required to determine "(1) whether leading members of the JCE

[281] Judgement, V.4 para. 342.
[282] *M. Nikolić* Sentencing AJ, para. 96.
[283] Judgement, V.4 para. 59.

were informed of the crimes, (2) whether they did nothing to prevent their recurrence and persisted in the implementation of this expansion of the common objective, and (3) when the expanded crimes became incorporated into the common objective".[284]

105. The Majority erred in law in failing to make any findings about when leading JCE members were informed of the expanded crimes or about whether they did anything to prevent their recurrence.

106. This absence of findings cannot be cured by reference to the sections on the Accused's responsibility. The required finding relates to the knowledge of all members of the JCE. In *Krajišnik*, the Appeals Chamber specifically held that the failure to find when the "local component" of the JCE were aware of the expanded crimes was fatal to the Trial Chamber's decision.[285] In this case there is no finding whatsoever relating to the local component of the JCE or the Croatian leaders of the JCE. Further, even the section on Stojić's responsibility does not expressly determine when any expanded crimes were incorporated into the JCE.[286]

107. Further, in identifying when new crimes were encompassed into the JCE, it is not enough to identify when they occurred or when the members of the JCE became aware of them. The chamber must determine "when leading JCE members went from being merely aware of the crime to intending it".[287] This is logical; the process of acceptance of new crimes does not happen instantaneously. Since no such finding was made, the Majority also failed to find precisely when the expanded crimes were encompassed into the JCE.

108. The result is that the Majority's findings with regard to the expansion of the JCE are scarce or entirely absent.[288] This invalidates the Judgement with the result that Stojić cannot be held liable for the expanded crimes (whatever they may be) and his conviction in relation to them must be overturned.

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[284] *Krajišnik* AJ, para. 171.
[285] *Ibid.*,, para. 174.
[286] *See, e.g.*, Judgement, V.4 paras 359–370.
[287] *Krajišnik* AJ, para. 173.
[288] *Ibid.*, para. 175.

13: The Majority erred in law and contravened the rights of the defence by finding that there was a single common purpose, which was domination by the HR H-B Croats through ethnic cleansing of the Muslim population, which was not the theory pleaded by the Prosecution in the Indictment and in its Final Trial Brief and which Stojić responded to in his Final Trial Brief.

109. The Indictment must clearly define the charges so that the accused is informed in detail of the nature of the charges against him.[289] Where JCE is alleged, the indictment must plead the category of JCE and material facts including the purpose of the enterprise.[290]

110. A trial chamber may only convict the accused of crimes which are charged in the indictment.[291] It cannot amend the legal characterisation of the charges. Thus, if in the course of trial, the chamber decides that only a different offence to that charged in the indictment can be proved, the chamber may ask the Prosecution to amend the indictment, provided that the accused are given timely and clear information so that they have adequate time and facilities to prepare their defence.[292] If the Prosecution does not, the chamber cannot convict of a count that has not been charged.[293]

111. In relation to JCE, the Appeals Chamber has held that "it would contravene the rights of the defence if the Trial Chamber […] chose a theory not expressly pleaded by the Prosecution".[294] Further, "the accused must know whether the system he is charged with having contributed to involves all the acts being prosecuted or only some of them".[295]

112. The Majority's characterisation of the alleged JCE is fundamentally different from that advanced by the Prosecution. The Prosecution alleged that there were at least three different JCEs: the Herceg-Bosna criminal enterprise which was a JCE Form I and which expanded to include additional crimes around

[289] ICTY Statute, art. 21(4)(a).
[290] *Kvočka* AJ, para. 42.
[291] *Ibid.*, para. 33.
[292] *Ibid.*, para. 43; ICTY Statute, art. 21(4)(b); *Pélissier and Sassi v. France* (ECtHR), paras 55–63.
[293] *Kupreškić* TJ, para. 748.
[294] *Krnojelac* AJ, para. 117.
[295] *Ibid*.

June 1993,[296] a JCE Form II (prisoners) which was created on 1 July 1993[297] and a deportation and forcible transfer JCE which came into being on 1 July 1993.[298] It alleged Counts 2–5 and 21 fell within JCE Form III.[299] By contrast, the Majority found that all of the alleged crimes fell within a single JCE Form I or a linked JCE Form III.[300]

113. As a result of applying this different theory, clear distinctions emerge between the Judgement and the Indictment. For example, unlike the Prosecution, the Majority placed Counts 2, 3 and 21 within the JCE Form I.[301] Further, the Majority found that none of the crimes fell within a JCE Form II at all.

114. The Majority thus convicted Stojić on the basis of a theory which had not been pleaded by the Prosecution. It thereby fell into the above error identified by the Appeals Chamber.[302] It chose a theory which was not pleaded by the Prosecution: one single JCE rather than three JCEs. It placed crimes within the JCE Form I, which the Prosecution did not. In so doing, it impermissibly altered the characterisation of the charges and convicted Stojić on the basis of a theory which the Prosecution had not laid against him.

115. Moreover, contrary to the right to a fair hearing, the Majority did not put the Accused on notice of this re-characterisation. Until Judgement was handed down, Stojić did not know that he was to be convicted of contributing to one single system which involved all, or almost all, of the acts being prosecuted. This prejudiced the Defence. The Defence, properly, focused their arguments and evidence on the theory advanced by the Prosecution. Had they been aware of the Majority's re-characterisation of the JCE, the Defence's arguments, evidence and strategy would have been different. The merits of these different arguments, evidence and strategy cannot be assessed for the first time on appeal; it suffices for the appeal to succeed that contrary to the right to a fair hearing, the Defence

[296] Second Amended Indictment, paras 15–17; Prosecution FTB, paras 7–53.
[297] Second Amended Indictment, para. 224; Prosecution FTB, paras 63–65.
[298] Second Amended Indictment, para. 225; Prosecution FTB, paras 67–69.
[299] Prosecution FTB, paras 57–62.
[300] Judgement, V.4 paras 42–68.
[301] *Ibid.*, para. 68.
[302] *See* para. 111, *supra*.

were denied the opportunity to argue them at first instance because notice of the re-characterisation was not given.

116. This was an error of law which invalidates the Judgement because the Trial Chamber was not entitled to enter convictions based on a theory which was not pleaded in the Indictment. As a result, the Appeals Chamber should overturn the finding that a JCE existed and acquit Stojić on all Counts.

14: The Majority erred in law and/or fact and/or failed to give a reasoned decision by failing to take into account defence arguments and contrary evidence in finding beyond reasonable doubt that Tuđman and others directly collaborated with the HVO leaders and authorities in order to further the JCE and/or participated in the JCE.

117. The Majority found that Tuđman, Šušak and Bobetko "directly collaborated with the HVO leaders and authorities to further the JCE".[303] In support of this finding, it relied on evidence that Prlić and others attended presidential meetings in Croatia at which topics including the events in Stupni Do and the destruction of Mostar Old Bridge were discussed; that Prlić was one of the main people that Tuđman "spoke to about important subjects" and there was a "privileged and continuous link" between Praljak and the Croatian authorities.[304]

118. First, the Majority neglected to explain why the evidence it cited supported its conclusion that the Croatian leadership *directly collaborated* in order to further the JCE. That the Croatian leadership discussed issues relevant to the ongoing conflict with Prlić, Praljak and others is hardly surprising. But, critically, the Majority identified no link between these discussions and a JCE or the commission of crimes. There was therefore no evidence of direct collaboration.

119. Second, no reasonable chamber could have relied on the transcripts of meetings about Stupni Do and Mostar Old Bridge as evidence of direct collaboration; those transcripts actually show the absence of any shared intent.

[303] Judgement, V.4 para. 1222.
[304] *Ibid.*, para. 1223.

Tuđman said that what the HVO had done in Stupni Do was "bringing into question the position of Croatia"[305] and "entirely compromises Croatian policy".[306] He demanded that the HVO investigate, that Rajić be replaced[307] and asked the HVO leaders not "to do such stupidities".[308] Similarly, Tuđman said that the destruction of Mostar Old Bridge should not have happened[309] and that the HVO had harmed Croatian interests.[310] He referred to those who destroyed the bridge as "idiots".[311] The very documents relied on by the Majority thus show a dislocation between the Croatian leadership and the HVO. In both instances in which specific crimes were discussed at presidential meetings, the Croatian leaders criticised the HVO and refused to accept the crimes.

120. Additional meetings (which the Majority disregarded) further refute the suggestion that the Croatian leaders directly collaborated in actions taken by the HVO. Thus, Tuđman criticized HVO for fighting with the Muslims[312] and disapproved of mistreatment of Muslims.[313] Moreover, the presidential transcripts contain no evidence that the Croatian leaders were involved in planning key attacks or even discussed them after they occurred.[314] No reasonable Chamber could have found that the only reasonable interpretation of these meetings was that they evidenced direct collaboration in order to further a JCE.

121. For the above reasons, no reasonable chamber could have concluded that Tuđman, Bobetko and Šušak directly collaborated in the JCE. The evidence shows only general discussions at various levels, but not direct collaboration in either the JCE or the commission of crimes. This error caused a miscarriage of justice because without finding that Tuđman and others directly collaborated in the JCE, the Chamber could not have gone on to find that they were members of the JCE and its conclusions on the JCE would unravel. As a result, the Appeals

[305] P06581, p.11.
[306] P06581, p.13.
[307] P06581, pp 15, 57.
[308] P06581, p.16.
[309] P06930, p.20.
[310] P07198, p.13.
[311] P07198.
[312] P03112, p.9.
[313] P01739, p.27.
[314] *See, e.g.*, P01883 (not mentioning Jablanica); P02302 (not mentioning Mostar).

Chamber should overturn the finding that a JCE existed and acquit Stojić on all Counts.

15: The Majority erred in law and/or fact and/or failed to give a reasoned decision by failing to take into account arguments advanced by the defence and contrary evidence in finding beyond reasonable doubt that Stojić was a member of the JCE.

122. Throughout the sections on the ultimate purpose and common plan,[315] the Majority *assumed* – without analysis – that Stojić was a member of the JCE.[316] It either made no finding that Stojić knew that there was a criminal enterprise and knew of its ultimate purpose/common purpose or, insofar as it made such a finding, failed to sufficiently explain it. This was an error of law.

123. All findings about the ultimate purpose or common criminal purpose refer generically to the "leaders of the HZ(R) H-B".[317] The Majority never defined this term. It does not necessarily include Stojić; when the Majority intended to refer to the Accused, it used an expanded form of words: "the political and military leaders of the HZ(R) H-B, *including the Accused*".[318] The failure to find unambiguously that Stojić knew of the ultimate purpose or the existence of a JCE was an error of law which invalidates the decision.

124. To the extent that the Majority did find that Stojić had the requisite knowledge, it did not explain that finding. The sole finding in relation to his knowledge was that from October 1992 he knew that "the implementation of this purpose ran counter to the peace negotiations […] and would involve the Muslim population moving outside the territory".[319] Since the alleged JCE was only established in mid-January 1993,[320] this finding can only relate to Stojić's knowledge of a long-term political purpose. There was therefore no finding that he knew about the common criminal purpose of the JCE.

[315] Judgement, V.4 paras 9–69.
[316] For instance, it refers without explanation to "the Accused, as members of the JCE..." (Judgement, V.4 para. 67).
[317] Judgement, V.4 paras 24, 43.
[318] *Ibid.*, para. 66 (*emphasis added*).
[319] *Ibid.*, para. 43.
[320] *Ibid.*, para. 44.

125. It is wrong to assume his knowledge simply from Stojić's office. Stojić was appointed Head of the Department of Defence ("DoD") on 3 July 1992.[321] Many important findings pre-date his appointment, for instance he had no involvement in the creation of HZHB on which the Majority relied in finding the ultimate purpose of the HZ(R)HB leaders.[322] Further, he did not attend any of the presidential meetings with Tuđman referred to in V.4. In fact, the only relevant findings about Stojić were, first, that he attended the meetings on 5 and 26 October 1992,[323] though his primary contribution to those meetings was to address the release of prisoners.[324] Second, on 10 June 1993 along with Boban and Prlić he sought the assistance of the international community to move Croatians from Tuzla and Sarajevo.[325] No reasonable Chamber could have relied on the limited evidence about Stojić to find that he knew about the common or ultimate purpose of the JCE.

126. These errors invalidate the Judgement and occasion a miscarriage of justice because without finding that Stojić was aware of the common or ultimate purpose of the JCE, the Chamber could not have found that he was a member of the JCE. As a result, the Appeals Chamber should overturn the finding that Stojić was a member of a JCE and acquit him on all Counts.

[321] *Ibid.*, para. 293.
[322] *Ibid.*, paras 14, 15, 24.
[323] *Ibid.*, para. 18.
[324] P11380, p.3.
[325] Judgement, V.4 para. 54.

16: The Majority erred in law and/or fact and/or failed to give a reasoned decision by failing to consider contrary evidence and/or defence arguments in finding beyond reasonable doubt that Stojić was aware no later than October 1992 that the implementation of the common purpose would involve the Muslim population moving outside the territory of HZHB. In particular, the Trial Chamber erred in law in basing this finding solely on uncorroborated hearsay evidence from the Mladić diaries, contrary to Stojić's right to a fair hearing, without proper consideration of their reliability and authenticity and having wrongly denied Stojić's application to re-open his case in order to challenge this evidence.

127. The Majority found that "no later than October 1992" Stojić knew that the implementation of the common purpose "ran counter to the peace negotiations […] and would involve the Muslim population moving outside the territory".[326] This finding was solely based on P11380 – a purported extract from the Mladić diaries dated 26 October 1992.[327]

128. The Majority erred in law in making a decisive finding against Stojić solely on the basis of this document. It is unfair to base a verdict solely or preponderantly on a single item of evidence which was not subject to cross-examination.[328] P11380 was not the subject of cross-examination; it should not have been used as the sole basis for the finding that Stojić knew about the common purpose of the JCE.

129. Given the circumstances of their admission, the Mladić diaries should have been treated with particular caution. The Prosecution applied to rely on them on 9 July 2010,[329] eighteen months after it had closed its case[330] and after Stojić had closed his Defence. Having admitted P11380 and other extracts,[331] the Chamber denied Stojić leave to appeal that decision,[332] denied by majority

[326] *Ibid.*, para. 43.
[327] *Ibid.*, n. 121.
[328] Decision on Trial Chamber's Decision on Witness Babić (*Martić*), para. 20.
[329] Prosecution Motion to Admit Evidence in Reopening.
[330] *Ibid.*, para. 40.
[331] Decision on Prosecution Motion to Reopen Its Case, pp 28–29.
[332] Decision on Stojić Motion to Appeal the Decision on the Reopening of the Prosecution Case, p.10.

Stojić's application to re-open his case in response[333] and denied Stojić leave to appeal that decision also.[334] The result was to admit the diaries without allowing Stojić any opportunity to challenge them. This was unfair. In the circumstances, the Majority should not have used the diaries as the sole basis for a critical finding about Stojić's knowledge.

130. In any event, the contents of P11380 do not support the Majority's conclusions. First, at its highest the diary attributes to Praljak the comment "it is in our interests that the Muslims get their own canton so they have somewhere to move to".[335] No reasonable Chamber could have found that the only reasonable inference was that this statement evidenced a common criminal purpose which ran contrary to the peace negotiations. Statements must be considered in context.[336] Here the context was the Vance-Owen plan, which was based on the division of BiH into ten provinces, each with a local government led by the representatives of the local majority community.[337] One reasonable inference is that Praljak's comments relate to these ongoing negotiations, particularly given that earlier in the same document he referred to "compel[ling] Alija...to sit down at the table with Boban and Karadžić"[338] and "Alija Izetbegović is compelled to negotiate".[339] No reasonable Chamber could have concluded that the only reasonable inference was that there was a common purpose which ran contrary to the peace negotiations.

131. Further, no reasonable chamber could have relied on this document (alone or with P11376) as conclusive evidence of Stojić's knowledge.[340] Stojić did not associate himself with Praljak's comment. He said nothing about the peace negotiations or about Muslims leaving the territory of HZHB. His contribution was limited to the release of Serbian prisoners.[341] The very most the document established was thus that Stojić knew of a view expressed by Praljak, which is

[333] Decision on Stojić Request to Reopen Its Case, p.13.
[334] Decision on Stojić Motion to Appeal Decision on the Reopening of Its Case, p.6.
[335] P11380, p.3.
[336] *Stakić* AJ, para. 52.
[337] Judgement, V.1 paras 444–448.
[338] P11380, p.2.
[339] *Ibid.*, p.3.
[340] *See, e.g.*, *Krstić* AJ, para. 87.
[341] P11380, p.3.

plainly insufficient to support a finding relating to Stojić's knowledge of a common criminal purpose.

132. These errors, individually or cumulatively, invalidate the Judgement or cause a miscarriage of justice because they take away the only finding in relation to Stojić's knowledge of the common purpose of the JCE. Without this finding, the conviction of Stojić for participation in the JCE could not stand. As a result, the Appeals Chamber should overturn his conviction and acquit him on all Counts.

17: The Majority erred in law in basing its findings on the existence of a JCE on evidence relating almost exclusively to Tuđman, in circumstances where Tuđman died before the Indictment was issued with the result that no Defence team could fairly challenge the evidence of his involvement.

133. "An attentive observer cannot fail to ask whether the timing chosen for the Indictment shows that the Prosecution was not willing to place certain senior Croatian leaders in the position of potential Accused."[342]

134. Although the Prosecution alleges that Tuđman, Bobetko and Šušak were leading members of the JCE,[343] by the time the Indictment was laid on 4 March 2004 all three had died. By the words quoted above, Judge Antonetti highlighted his concern that the Prosecution "waited for these deaths to compile the Indictment".[344] Regardless of the reason for its delay, the death of Tuđman casts a long shadow over proceedings. Tuđman was alleged to be the leader of the JCE.[345] He plays a central role in the Majority's decision: of the sixteen paragraphs addressing the ultimate purpose of the alleged JCE,[346] thirteen relate directly to Tuđman[347] whilst Stojić features only once.[348]

[342] Judgement, V.6 pp 391–392.
[343] Initial Indictment, para. 16.
[344] Judgement, V.6 p.391.
[345] Initial Indictment, para. 36.
[346] Judgement, V.4 paras 9–24.
[347] *Ibid.*, paras 9–12, 14, 15, 17, 18, 20–24.
[348] *Ibid.*, para. 18.

135. The emphasis on the actions and inferred intentions of deceased alleged members of the JCE resulted in an unfair hearing. It is impossible to know how Tuđman[349] would have responded to these charges had he been alive. It is impossible to know the documents on which he would have relied, the witnesses he could have called or even the testimony that he himself would have given. Stojić cannot be assumed to have had access to this critical material.

136. The unavailability of key evidence may render a hearing unfair. First, unless there is the "most searching scrutiny" of procedural safeguards, it is unfair to base a conviction "solely or to a decisive degree" on hearsay evidence from an absent witness.[350] Second, it is unfair to base a determination "solely or to a decisive degree" on material which has not been disclosed.[351] Third, where the Defence is unable to obtain the attendance of relevant witnesses a fair trial may be impossible, with the result that proceedings must be stayed.[352] Fourth, if important items of evidence are not available at trial, the hearing may be unfair.[353] These authorities are all aspects of the same general principle that where potentially decisive evidence is unavailable, through no fault of the accused, the hearing is unfair.

137. The conviction of Stojić was decisively based on evidence about Tuđman. If the findings about Tuđman are removed from the section on the ultimate purpose of the JCE, the remaining findings amount to hearsay evidence about meetings between certain HZHB leaders and Mladić in which Praljak apparently made reference to the Banovina[354] and one undated interview with Prlić.[355] No reasonable Chamber could have concluded that this limited evidence established beyond reasonable doubt the ultimate purpose of a JCE.

138. The Prosecution's delay in laying the Indictment deprived the Chamber of the opportunity to hear the defence presented by Tuđman and others. It therefore

[349] And Bobetko, Šušak and Boban.
[350] *Al-Khawaja and Tahery v. UK* (ECtHR), paras 117, 147; Decision on Trial Chamber's Decision on Witness Babić (*Martić*), para. 20.
[351] *A. and Others v. UK* (ECtHR), para. 220.
[352] *Tadić* AJ, para. 55; *Simba* AJ (ICTR), para. 41.
[353] *Papageorgiou v. Greece* (ECtHR), paras 35–40; *Genie-Lacayo v. Nicaragua* (IACtHR), para. 76.
[354] Judgement, V.4 para. 18.
[355] *Ibid.*, para. 19.

placed Stojić at a substantial disadvantage because he had no way of challenging evidence about the state of mind and purposes of the deceased Tuđman, Bobetko, Šušak and Boban. It was an error of law to base the conviction of Stojić on this evidence. This error invalidates the Judgement because it relates to the finding on the common purpose of the alleged JCE which is an essential component in finding that a JCE existed. As a result, the Appeals Chamber should overturn the finding that a JCE existed and acquit Stojić on all Counts.

18: Withdrawn.

19: Withdrawn.

B. STOJIĆ'S RESPONSIBILITY

20: The Majority erred in law and/or fact in finding beyond reasonable doubt and/or without giving a reasoned decision by failing to take into account relevant evidence and Defence arguments that Stojić commanded and had effective control over the armed forces of the HVO and/or that Stojić had the authority to issue orders directly to the HVO armed forces and to ensure that his orders were carried out.

139. The Majority found that Stojić had effective control over the HVO armed forces and that he had the authority to issue orders directly to the HVO armed forces and to ensure their implementation.[356] These findings led to the conclusion that Stojić used the armed forces to commit crimes and thereby significantly contributed to the JCE.[357]

140. The Majority erred in fact in inferring that that Stojić had effective operational authority over the HVO armed forces from evidence that he had limited administrative competences. Further it reached unreasonable conclusions which were unsupported by the evidence in determining the extent of Stojić's control over the HVO armed forces and their finances, and as a result erred in concluding that he had effective control over the HVO armed forces.

[356] *Ibid.*, paras 299–312.
[357] *Ibid.*, para. 429.

Inferring Effective Control from Administrative Competences

141. The Majority erred in inferring effective operational control from evidence of administrative/logistical functions. It failed to distinguish the functions of a civilian administrator, e.g. logistics or payroll, from operational command of combat operations. Had this distinction been considered, no reasonable chamber could have found that Stojić had effective control over the armed forces.

142. The Majority entirely disregarded Stojić's qualifications and experience. Stojić was not a military officer. He was an economist. He had no combat experience.[358] Both before and after his time as Head of the DoD, he occupied administrative and logistical roles.[359] It is inconceivable that a man with no operational experience could have the authority to issue operational orders to the armed forces.

143. In fact, consistent with his *de jure* powers, experience and abilities, the Majority's own findings show that Stojić's functions were limited to administrative/logistical matters. The DoD itself was an "administrative organ" with limited logistical competences.[360] Further, the Majority relied on Stojić's responsibility for the human, financial and logistical resources of the armed forces.[361] All are clearly administrative matters. The Majority relied on orders relating to the assignment of troops as reinforcements to other units, the dismantling of units and troop movements as evidence of effective control.[362] These were part of the logistical tasks assigned to the DoD pursuant to Article 8 of the Decree on the Armed Forces.[363] Further, the Majority relied on evidence that on occasions Stojić forwarded decisions to the armed forces.[364] Forwarding decisions made by others is an administrative function.[365] No operational order was signed by Stojić alone. Properly understood, none of the evidence analysed

[358] 2D02000, para. 11; P00297.
[359] 2D01355; Jasak, 25/01/2010, T.48803; Judgement, V.4 para. 293.
[360] Judgement, V.1 para. 544.
[361] Judgement, V.4 paras 308–310, 312.
[362] Judgement, V.1 para. 565.
[363] P00588, pp 12–13.
[364] Judgement, V.4 paras 304–305.
[365] *Orić* TJ, para. 312.

by the Majority suggests that Stojić's role went beyond that of a civilian administrator.

144. The Majority similarly failed to distinguish between substantive and administrative competences when finding that Stojić had the power to appoint certain officers "at the proposal of the Assistant Head of the [DoD] responsible for security".[366] This conclusion suggests that Stojić merely administered appointments initiated by another. Moreover, the Majority disregarded the previous conclusion that Stojić's *de facto* competence in relation to appointments was even more limited.[367] The Chamber concluded that he only made appointments on the advice of others,[368] his role was appointing or "consent[ing] to" appointments.[369] These relevant conclusions demonstrated that Stojić's role in appointments was purely administrative.

145. The Majority's conclusions are thus vitiated by its failure to distinguish between administrative/logistical functions and effective operational command. None of the evidence it analysed suggested that Stojić's powers extended beyond administrative/logistical matters. No reasonable chamber could have found that these various administrative competences added up to effective operational control.

Unreasonable Conclusions

146. In any event, the Majority's conclusions were unreasonable and unsupported. It based its conclusion that Stojić had effective control on findings that Stojić (1) played a fundamental role in establishing and organising the armed forces, (2) reported to the government about military matters, (3) forwarded government decisions to the military, (4) could issue operational orders to the armed forces, (5) could delegate the power to represent the HVO in ceasefire negotiations, (6) could have received delegated powers from Boban and (7) had responsibility for human, financial and logistical resources. These findings were

[366] Judgement, V.4 para. 303.
[367] Judgement, V.1 paras 571–573.
[368] *Ibid.*, paras 574, 575, 577.
[369] *Ibid.*, para. 578.

factually unreasonable and were reached in disregard of relevant evidence or earlier findings.

147. First, it was unreasonable to find that Stojić played a "fundamental role in the establishment and organisation of the HZHB armed forces."[370] The Majority based this finding on one document, which contrary to its conclusions, does not contain any targets or objectives but merely work plans for individual components of the DoD (an administrative task).[371] Further, that report did not address Main Staff and the HVO Information and Security Service ("SIS") and provides no basis for finding that Stojić organised those departments.[372] Moreover, it is irrelevant to the *establishment* of the armed forces. The finding that Stojić was involved in the establishment of the armed forces is manifestly unsound since Main Staff and the armed forces existed prior to his appointment.[373]

148. Second, in finding that Stojić informed the HVO about the military situation and made proposals about defence which were adopted, the Majority analysed only two instances: January 1993 and November 1993.[374] On 19 January 1993, while Stojić did report on the situation in Gornji Vakuf, he simply repeated the contents of Šiljeg's report which, along with other reports had already been received by the HVO.[375] Thus Stojić merely reported on issues that were already well-known. No decisions were adopted on the basis of his reports. Indeed, when Šiljeg requested instructions on how to proceed from the HZHB Government,[376] he was answered not by Stojić but by Boban, whose order was implemented by Petković and Pašalić.[377] This illustrates the real chain of command in the HVO armed forces.

149. The Majority also found that the HZHB decided on 4 November 1993, based on information provided by Stojić, that the Office for Displaced Persons

[370] Judgement, V.4 para. 299.
[371] P00646.
[372] *Ibid.*, p.1.
[373] 1D02716; P00154.
[374] Judgement, V.4 para. 300; P01197; P01227.
[375] P01227; P01206; P01197, p.4.
[376] P01185, p.5.
[377] 1D00472, item 5; P01238.

and Refugees ("ODPR") would be responsible for the care of refugees from Vareš.[378] However, ODPR was already working on refugee services and had sent information to this effect to the HZHB on 3 November.[379] Once again, Stojić merely confirmed information which was already known and the decision to allow ODPR to *continue* with refugee relief was not based on Stojić's input, but on the information already received from ODPR. The remaining documents cited in footnote 707 add no support to the Majority's conclusion: military updates came from military commanders not from Stojić and any instructions issued to the armed forces relate to purely administrative matters such as office space.[380] There was therefore no basis for finding that Stojić made proposals which were adopted in relation to operational matters.

150. Third, the Majority relied on three orders to establish that Stojić was responsible for forwarding the decisions of the HZHB Government to Main Staff.[381] These orders show that Stojić forwarded decisions within his administrative competence. Thus the Chamber reviewed a series of orders: the first issued by Prlić,[382] the next by Stojić,[383] and the third by Petković to the OZ commanders.[384] In this sequence, Stojić acted as an administrative conduit, passing information from Prlić to Petković, but unable himself to issue operational orders. The other two orders were co-signed by Stojić because they contained administrative issues. Thus, P03038 was co-signed by Stojić and Prlić.[385] Stojić signed it because he had authority pertaining to certain administrative elements of mobilization.[386] Further, P03128 was signed by both Stojić and Petković; items 2(2) and 2(3) clearly relate to logistical tasks within the remit of the DoD.[387] These orders provide no evidence that Stojić's competence extended beyond administration. In any event, as set out above, forwarding decisions made by others does not amount to effective control.

[378] 1D02179.
[379] 1D01354.
[380] *See* Judgement, V.4 para. 300, n. 707: 1D01609; P01197; 1D01667; 1D01610; 1D01608; P00518; 2D00851; 4D00508; P05799; P05769.
[381] P01140; P03038; P03128; Judgement, V.4 paras 304–305.
[382] P01146.
[383] P01140; B. Pinjuh gave no relevant evidence about P01140 (24/02/2009, T. 37341:15–37342:14).
[384] P01139; P01156.
[385] P03038.
[386] B. Pinjuh, 23/02/2009, T.37279:11–37280:6; 2D01364; P00289, art. 37.
[387] P03128, which was regarded as a Main Staff Order (*see* P03117) m6.

151. Fourth, the Majority's conclusion that Stojić could issue operational orders to the armed forces and ensure they were carried out is unreasonable.[388]

152. This conclusion was unreasonable because the Majority disregarded previous relevant conclusions. Thus the Chamber found that "[t]he evidence showed that […] the Head of the [DoD] was not *de jure* part of the military chain of command […]"[389] and that only "administrative and technical tasks" were assigned to the DoD.[390] Further, it found that the "classic" chain of command, which was evidenced by "many orders", proceeded through Main Staff[391] and the few occasions on which Stojić issued orders did not "upset the proper functioning of the military chain of command."[392] For the Chamber, it was "incontrovertible that orders intended for the armed forces customarily flowed through the chain of command, whose pivotal link was the Main Staff".[393] Further, key parts of the armed forces were not *de jure* within the DoD at all,[394] or did not send regular reports to the DoD.[395] These findings cannot be consistent with the later conclusion that Stojić had operational control over all the armed forces.

153. Fundamentally, the Majority identified the subject matter of orders attributed to Stojić as: "ceasefires, the detention centres, the troop movements, the reorganisation of the military units, the assignment of troops as reinforcements for other units, freedom of movement of humanitarian or international organisations and the mobilisation of HVO troops".[396] The fact that Stojić's orders were confined to certain specified topics illustrates his lack of *overall* authority. Moreover, the specific topics overwhelmingly relate to logistical matters within the *de jure* competence of the DoD. At no point did the Majority refer to an active combat order issued by Stojić. The Majority's findings

[388] Judgement, V.4 para. 306.
[389] *Ibid.*
[390] Judgement, V.1 para. 559 (citing P00588, p.3); S. Praljak, 18/08/2009, T.43446:18–25; 4D01280; Marijan, 20/01/2009, T.35689:24–35690:9, 27/01/2009, T.36038; Petković, 22/02/2010, T.49778:22–49779:12, T.49780:8–13; 2D02000, para. 86.
[391] Judgement, V.1 para. 791.
[392] *Ibid.*, para. 796.
[393] *Ibid.*, para. 708.
[394] Judgement, V.4 paras 301, 307.
[395] *Ibid.*, para. 302.
[396] *Ibid.*, para. 306.

thus provide no basis for inferring that Stojić's powers exceeded his *de jure* administrative functions.

154. In any event, the conclusion that Stojić issued orders on the specified subjects is unsupported by the documents cited. The Majority relied on a report sent by Ćorić to the HVO generally, which does not refer to any order issued by Stojić and was not addressed to him.[397] It relied on two documents regarding mobilisation,[398] one signed by Stojić and the other by Praljak, disregarding Praljak's testimony that although drafted by Stojić the Order was corrected and signed by Praljak, showing that Praljak, not Stojić, had operational command.[399] It relied on an order issued by Stojić to withdraw stamps[400] – a clear example of administrative activity. Finally, the Majority relied on 4D00461, which is inauthentic and unreliable.[401] Properly understood, these orders therefore provided insufficient basis for a finding of effective control. Further, whilst on two occasions requests for instructions were sent to Stojić and Petković,[402] there was no evidence that Stojić responded to the requests. Passive receipt of a request does not establish effective control.

155. Moreover, there was no basis for the finding that Stojić could ensure that his orders were carried out. No evidence was cited by the Majority in support. The Majority disregarded its own conclusions that various orders issued by Stojić were not followed.[403] No reasonable chamber could have concluded that Stojić had the authority to issue operational orders directly and to ensure that they were carried out on the basis of this evidence.

156. Fifth, the Majority found that that Stojić could delegate authority to represent the HZ(R)HB armed forces in ceasefire negotiations.[404] Neither of the two documents cited supports this finding. In relation to P00811, whilst Stojić

[397] P00610.
[398] P05232; P05235.
[399] S. Praljak, 25/06/2009, T.42080:20–42082:1
[400] P00582.
[401] *See* Ground 35.1, *infra*.
[402] P02292; P03026.
[403] *See* Judgement, V.4 para. 1039 (a Commission established by Stojić was non-functional), para. 480 (Stojić's authorisation of passage was ignored until Praljak intervened), V.2 para. 2081 ("no evidence" that 4D00461 was obeyed); *see further* V.1 para. 772 (mobilisations).
[404] Judgement, V.4 para. 311.

signed the paperwork indicating the appointment of Kordić as deputy for Petković at one meeting,[405] the Majority disregarded P00812 – which demonstrated that the delegation was actually made by Petković.[406] Similarly, P03922 does not evidence a delegation made by Stojić but an explanation of the existing command structure.[407] In it, Stojić does not delegate to Petković but indicates that Petković *is* the "sole" individual with authority to negotiate and that any *change* in the HVO command structure would be communicated promptly.[408] The only reasonable inference is that Stojić communicated the authority which Petković already possessed, as the Chamber itself had previously concluded.[409] Moreover, there was no evidence that Stojić himself had the power to represent the HZ(R)HB in ceasefire negotiations; Stojić could hardly delegate a power that he did not possess.

157. Sixth, the Majority relied on Article 30 of the Amended Decree Regarding the Armed Forces of 17 October 1992, which indicates that the President of the HZHB "could" delegate certain command responsibilities to the Head of the DoD of the HVO.[410] This is irrelevant: no such delegation occurred.[411]

158. Seventh, the Majority overestimated Stojić's involvement in human, financial and logistical resources. Whilst these matters are administrative and do not establish effective control and operational command, no reasonable chamber could have found that Stojić "directly controlled" them.[412] It based this conclusion on findings that he directly financed the armed forces, was responsible for weapons procurement, prepared the budget for the DoD and the armed forces, could grant others access to HVO accounts and financed training and mobilised troops.[413]

[405] P00811.
[406] P00812.
[407] P03922.
[408] P03922.
[409] Judgement, V.1 para. 748.
[410] P00588, art. 30; Judgement, V.4 para. 306.
[411] Judgement, V.1 para. 562.
[412] Judgement, V.4 para. 308.
[413] *Ibid.*, paras 308–310.

159. The finding that Stojić directly financed the armed forces disregarded clearly relevant evidence and findings which established that relevant funding came from the Department of Finance of the HVO or from the municipalities.[414] The Majority disregarded minutes from an extraordinary session of the HVO,[415] a report from the Head of the HVO Department of Finance,[416] a letter signed and stamped by Prlić[417] and a directly relevant Annual Report,[418] which indicated that by default the Department of Finance controlled the finances of the armed forces. Additionally, it failed to evaluate twenty-four exhibits from municipalities[419] and a letter to Jozo Martinović, Minister of Finance, which all indicated that the HVO armed forces were financed by the municipalities.[420] Petković's testimony was mentioned and then discarded without explanation.[421] Other relevant submissions were likewise disregarded.[422] Had this evidence been properly considered, no reasonable chamber could have concluded that Stojić directly controlled the finances.

160. Further, the Majority's conclusions are unreasonable because the documents relied upon do not establish Stojić's personal responsibility. The cumulative effect of the errors detailed below is that the Majority's conclusions are unreliable. No reasonable chamber could have found that Stojić had direct control of the human and financial resources of the armed forces[423] based on: a document dated 24 November 1992 which pre-dates the JCE;[424] a document requesting that Stojić be informed of financial problems which does not show that Stojić had the power to resolve those problems;[425] a document demonstrating that technical resources for care of the wounded were provided by the Municipal

[414] Judgement, V.1 paras 675, 679, 681.
[415] 1D01609, item 2.1.
[416] 1D01934.
[417] P06689; *see also* 4D00508.
[418] P08118, arts. 1, 2, 5, 8.
[419] 1D00298; 1D00288; 1D00295; 1D00296; 1D00302; 1D00307; 1D00310; 1D00314; 1D00559; 1D00561; 1D01771; 1D02995; 1D02997; 1D03013; 1D03014; 1D01217; 1D01759; 1D01761; 2D01217; 2D01214; 2D00535; 2D00538; 2D00540; 2D00541.
[420] 1D03036; *see also* P07419, indicating the lack of systematic funding from the DoD's Department of Supply, Procurement and Manufacturing.
[421] Judgement, V.4 para. 308.
[422] Stojić FTB, paras 359–361.
[423] Judgement, V.4 paras 308–309.
[424] 2D01443.
[425] P04399/3D01206 (identical).

HVOs, rather than by Stojić;[426] a document relating to the administrative redistribution of telephone lines;[427] and a report of HVO Military Police ("MP") activities, which is irrelevant to the armed forces and to financial or logistical resources[428] and which the Prosecution did not prove was sent to Stojić.[429] No reasonable chamber could have concluded that these documents establish that Stojić had direct control over finances.

161. In relation to procurement, the Majority concluded that Stojić bought arms for the HVO from German arms dealers, based on testimony from one witness that he saw boxes of weapons in Stojić's office and persons coming in and out that he later claimed to have learned were arms dealers.[430] This conclusion is unreasonable. None of the other witnesses cited corroborate it: Buljan did not address procurement; [REDACTED] and Korać's evidence related to the Ministry of the Interior in July 1991–June 1992, before Stojić was head of DoD.[431] In the absence of any other evidence that Stojić had contact with arms dealers, to conclude on the basis of speculation from a single witness that Stojić bought arms from German dealers is unreasonable.

162. Similarly, once irrelevant documents are discarded,[432] the finding that Stojić was authorised to request weapons and materials from the HV turns out to be based on a single document.[433] One request, made in a state of emergency, does not prove that Stojić regularly sent requests to the HV or generally had the authority to do so. The finding that Stojić organised the purchase of weapons from the Bosnian Serb Army ("VRS") is equally unfounded. The evidence relied on, if relevant at all,[434] establishes only that Stojić was aware of the purchase of weapons from the VRS and that on occasions he relayed information about

[426] 2D01246.
[427] P06807.
[428] P00970.
[429] Andabak, 15/03/2010, T.50931 *et seq*.
[430] Beese, 23/08/2006, T.5386.
[431] Korać, 07/04/2009, T.38824.25-38825.5, T.38830:25–38832:2; Buljan, 11/02/2009, T.36754; [REDACTED].
[432] 2D00809 (unrelated to weapons from HV) and P01164 (relating to control of weapon trafficking. In any event no relevant order by Stojić was admitted).
[433] P03998.
[434] Jasak, 27/01/2010, T.49026 is cited by the Majority; however, Jasak did not address weapons procurement during that day's testimony.

pricing agreements to commanders.[435] It does not establish any personal involvement in the purchases themselves.

163. Further, the Majority relied on one paragraph of Marijan's report to establish that Stojić was responsible for preparing the budget for the DoD;[436] disregarding the very next paragraph which indicated that no such budget was actually prepared.[437] No relevant budget was admitted into evidence and a subsequent report confirms that the lack of a budget contributed to a significant lack of clarity on the financing of the HVO.[438]

164. In finding that Stojić contacted the Croatian DoD for payment of wages, the Majority relied on documents which are either not signed by Stojić[439] or else do not actually relate to requests for loans from Croatia.[440] Further, the evidence relied on does not support the Majority's finding that Stojić could authorize others to withdraw money from HVO bank accounts. It relied on an HVO payroll signed by Stojić,[441] which simply lists the employees of the Office of the Head of the DoD but cannot evidence Stojić's alleged ability to authorize access to HVO bank accounts. The remaining evidence – P10301 and the related testimony of Witness I – evidences a single incident in which Stojić requested a cash withdrawal, which was authorised by Witness I.[442] A single incident does not establish general authority. Similarly, P00098 only establishes that Stojić was one of five individuals authorised to sign payment orders; two signatures were required for each transaction so that Stojić did not have the power to authorise transactions on his own.[443]

165. Finally, the Majority found that Stojić was responsible for financing the training centres and mobilising the HZ(R)HB armed forces due to his

[435] P02934; P02966; P09820; P03403; P06364; P09967.
[436] Judgement, V.4 para. 309; 2D02000, para. 94.5.
[437] 2D02000, para. 95.
[438] P08118, especially p.4.
[439] P10291; Witness I, 08/10/2007, T.23375:9–10, T.23371:5–10; Petković, 08/03/ 2010, T.50515–50516; P00910; P10290.
[440] P00098; P00910; Marijan, 21/01/2009, T.35736; P10290; Witness I, 08/10/2007, T.23368–23371.
[441] 2D01352.
[442] P10301; Witness I, 08/10/2007, T.23388:4-5.
[443] P00098.

management of human resources.[444] Five of the seven evidentiary sources provide no support to this finding.[445] The remaining evidence consists of a request from Šiljeg and a part of Praljak's testimony.[446] The former is a request sent by Šiljeg to *both* Stojić and Petković for changes to the military recruitment and admissions process.[447] It once again illustrates mere administrative competence. The latter misrepresents Praljak's testimony: Praljak actually stated that "the Main Staff was not tied to the government. The government, through Mr. Bruno Stojić, did have some competence over one part of the army. They had to look after training, after their food, mobilisation".[448] The thrust of Praljak's evidence was that Stojić did not possess operational authority: plainly Praljak did not believe that he was under Stojić's command.[449] Further, Stojić is only mentioned as a conduit for the government's competence rather than identified as personally responsible. Thus the evidence does not support the Chamber's finding that Stojić was in charge of military training and mobilisation.

Conclusion

166. The Majority erred in fact in concluding that Stojić had effective control over the HVO armed forces. For all the reasons developed above, no reasonable chamber could have concluded that Stojić commanded and had effective control over the HVO armed forces. The evidence only established that he had some limited administrative competences. These errors occasion a miscarriage of justice because they provide the basis for the Majority's finding that Stojić had the necessary intent and significantly contributed to the JCE which are essential elements in his conviction.[450] The Appeals Chamber should reverse the finding that Stojić commanded and had effective control over the armed forces and hence overturn his conviction on all Counts.

21: The Majority erred in law and/or fact in finding beyond reasonable doubt and/or without giving a reasoned decision by failing to take into account relevant

[444] Judgement, V.4 para. 310.
[445] P00907; P00965; P04074; 2D01459; P01350.
[446] *See also* arguments about *de facto* control over mobilisation via orders, n.403, *supra*.
[447] 3D01460.
[448] S. Praljak, 20/05/2009, T.40422:23–40423:1.
[449] *Ibid.*, T.40421–40422.
[450] Judgement, V.4 paras 425–429.

evidence and Defence arguments that Stojić commanded and had effective control over the MP and that he could issue orders to the MP directly – including those directly linked to operations on the ground – and ensure that they were carried out.

167. The Majority found that Stojić commanded and had effective control over the MP.[451] This led it to conclude that he used the MP to commit crimes that were part of the common criminal purpose and that the actions of the members of the MP were attributable to him.[452] It based its conclusion on five factual findings: (1) that he had the power to make appointments within the MP,[453] (2) that he had the power to issue orders to the Chief of the MP Administration and to the MP Units and to ensure that they were carried out,[454] (3) that he was responsible for logistical and staffing needs,[455] (4) that he regularly received reports about MP activities[456] and (5) that he had the power to re-organise the MP.[457]

168. No reasonable chamber could have concluded on the evidence that Stojić commanded and had effective control of the MP. Fundamentally, the Majority's error was to add together evidence of limited administrative competences – consistent with Stojić's capabilities as an economist whose military experience was limited to logistics[458] – to reach the unreasonable conclusion that Stojić had operational command and effective control over the MP.

169. First, the Majority's conclusion that Stojić "appointed the people who would hold the most senior posts" is overly simplistic. Stojić had no involvement at all in the appointment of the most senior person in the department – the Chief of MP.[459] Moreover, the Chamber itself concluded that Stojić only made appointments "on the advice of the Chief of MP and with the approval of the Assistant Chief for Security of the [DoD]".[460] The Majority disregarded this

[451] *Ibid.*, para. 320.
[452] *Ibid.*, para. 429.
[453] *Ibid.*, para. 313.
[454] *Ibid.*, paras 314–316.
[455] *Ibid.*, para. 317.
[456] *Ibid.*, para. 318.
[457] *Ibid.*, para. 319.
[458] *See* paras 142–145, *supra*.
[459] Judgement, V.1 para. 853.
[460] *Ibid.*, para. 575 (citing P02477, 2D00567).

conclusion, which clearly established that Stojić was not the decision maker; he merely administered appointments initiated by others. This purely administrative role does not support the finding that he commanded or had effective control of the MP.

170. Second, the Majority erred in finding that orders issued by Stojić either to the Chief of the MP or the MP Units proved that he had effective control over the MP. In relation to the Chief of the MP, assuming *arguendo* that Stojić was his hierarchical superior, the Majority overlooked the earlier finding that the powers of the Chief of the MP were themselves primarily "administrative and logistical" and only "occasionally" went beyond purely administrative matters.[461] MP units answered to "a dual chain of command",[462] whereby their operational duties were within the Chain of Command of Main Staff[463] and this "fuzzy" chain of command led to "confusion".[464] Moreover, the MP Administration's authority did not remain consistent throughout the Indictment period but "diminished as the conflict progressed".[465] Even if Stojić was hierarchically superior to the Chief of the MP Administration, this does not mean he commanded and had effective control over the MP because the Chief of the MP's own powers were administrative rather than operational, the chain of command was confused and fuzzy and the extent of his control diminished over time.

171. Further, it was unreasonable to conclude from the orders attributed to Stojić that he had effective control over the MP. The Majority only relied on nine orders.[466] Consistent with this limited number, the Chamber had earlier held that it was "not persuaded" that Stojić issued "a substantial number of orders" to MP Units.[467] Yet in assessing Stojić's responsibility, the Majority disregarded this earlier conclusion and failed to consider whether issuing nine orders throughout the Indictment period really suggested effective control. Moreover, consistent with the dual chain of command recognized by the Chamber, the subject matter

[461] Judgement, V.1 para. 953.
[462] *Ibid.*, paras 945, 973.
[463] *Ibid.*, paras 945–950.
[464] *Ibid.*, para. 974.
[465] *Ibid.*, para. 964.
[466] Judgement, V.4 para. 314.
[467] Judgement, V.1 para. 965.

of all the orders attributed to Stojić was administrative or logistical not operational.[468]

172. The Majority further erred in finding that Stojić had the power to ensure that Orders were implemented by MP units. A fair analysis of the cited documents does not support this conclusion. The Majority relied on documents which actually demonstrated that command authority resided in the Main Staff,[469] including one showing that MP units were subordinated to the relevant armed forces command[470] at Praljak's instigation.[471] Thus, a request from Ćorić that the MP units should not be used on the front lines was not only sent to Stojić but also to the Commander of the HVO and the Chief of the Main Staff.[472] If Stojić had the power to order the withdrawal of MP Units from the front lines, he would have been the sole recipient. It then relied on orders or requests which did not come to or from Stojić alone and thus do not prove that Stojić - as opposed to the other signatories or addressees - had command authority.[473] It relied on Orders which apparently referred back to an original order from Stojić without ever producing the underlying Order.[474] It relied on purely administrative orders relating to internal discipline.[475] [REDACTED].[476] Thus none of the evidence relied on by the Majority supports its finding that Stojić issued orders consistent with operational command and could ensure their implementation.

173. Third, the Majority found that Stojić was responsible for logistics and staffing, including the payment of salaries to MP members and mobilisation.[477] These purely administrative matters cannot support its finding of effective control and operational command.[478]

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[468] *Ibid.*, para. 862.
[469] P00875.
[470] 5D02002.
[471] Judgement, V.4 para. 492.
[472] 5D00548.
[473] P01164; P00875; 5D00548; P02578 (based on a decision made by the Defence Council; *see* P02575).
[474] P01164; P01517; P01868.
[475] P01121; P01098.
[476] [REDACTED].
[477] Judgement, V.4 para. 317.
[478] P01707; P03146; P00968 (in any event, signed only by Ćorić not by Stojić); 2D01349; P00509.

174. Fourth, the Majority relied on orders from 28 December 1992, in which Stojić issued instructions for the reorganisation of the MP units.[479] Administrative re-organisation was one of the tasks assigned to the DoD by the Decree of Armed Forces.[480] It does not evidence effective control or operational command.

175. Fifth, no reasonable chamber could have found that Stojić *regularly* received reports about MP activities. At its highest, the evidence only established sporadic reporting. [REDACTED].[481] Nine reports by Franić were admitted, of which only one was sent to Stojić;[482] proving that he did not form part of the usual reporting chain. Furthermore, the Majority relied on two specific requests for reports,[483] which demonstrate *ad hoc* reporting rather than regular reporting – if Stojić had been receiving regular reports, he would not have needed to request these reports at all. The remaining evidence cited by the Majority consists of a letter from Vučina from the HZHB office of the President which Stojić passed on to Ćorić[484] and various reports which the Majority failed to establish were actually received by Stojić,[485] including one report from Ćorić (one report does not prove that Ćorić reported to Stojić regularly).[486] Other documents relied on are entirely irrelevant to the reporting procedure.[487] Thus the evidence actually established that Stojić received a limited number of reports on specific occasions rather than regular reports. Further, the Majority failed to stand back from these individual reports and consider whether, over the sixteen months that Stojić was Head of the DoD, the eight documents relied upon actually amounted to regular reporting consistent with effective control. In any event, simple receipt of reports, in the absence of evidence that Stojić actually acted on their contents, does not prove effective control.

[479] P00957; P00960.
[480] P00588, art. 9, number 5.
[481] [REDACTED].
[482] *See* P01917; P01952; P03325; P03262; P03375; P03480; P03510; P03531.
[483] P03274; P00518.
[484] "task for Vale" indicates that the document was passed to Ćorić (P04224).
[485] P01053; [REDACTED]; P02863. *See also* para. 295, *infra*, for an account of DoD's Receipt Protocol, which was not followed for these documents; it was thus not established that DoD received these documents.
[486] P01053.
[487] 2D02000, para. 94; P01409.

176. Any reasonable analysis of the documents thus shows, in relation to the five matters relied on by the Majority, that Stojić approved appointments initiated by others, carried out administrative tasks related to staffing or departmental re-organisations, issued a relatively small number of orders related to discreet logistical matters and received a relatively small number of reports from the MP. No reasonable chamber could have added these limited administrative competences together and arrived at the unreasonable conclusion that Stojić commanded and had effective control over the MP.

177. This error occasioned a miscarriage of justice because the finding that Stojić commanded and had effective control over the MP was critical to the finding that he had the requisite intention and significantly contributed to the JCE.[488] The Appeals Chamber should reverse the finding that he commanded and had effective control over the MP and hence overturn his conviction on all Counts.

22: Withdrawn.

23: The Majority made a number of errors of fact and/or law in finding that Stojić had the power to prevent or punish crimes committed by the HVO armed forces and knowingly failed to do so.

23.1 The Majority erred in law and/or fact and/or failed to give a reasoned decision by failing to take into account defence arguments or evidence in finding that Stojić had the *de facto* power to prevent or punish crimes committed by the HVO armed forces or MP.

178. The Majority concluded that Stojić had the *de facto* power to prevent and punish crimes committed by the armed forces and MP but did not intend to do so.[489] The Majority thereby failed to give a reasoned decision and disregarded earlier findings and clearly relevant evidence and submissions.

[488] Judgement, V.4 paras 425–430.
[489] *Ibid.*, para. 423.

179. First, the Majority failed sufficiently to explain the basis for its decision. It failed to identify any *de jure* or *de facto* power that Stojić possessed or any mechanism which he could have used to prevent or punish crimes.[490] The vague reference to "operative orders" is insufficient because the Majority did not explain how any such orders could have been used to prevent or, particularly, punish crimes.[491] Having failed to identify any way in which Stojić could have prevented or punished crimes, it was an error of law for the Majority to find that he failed to prevent or punish crimes.

180. Second, the Majority's conclusion is inconsistent with earlier factual findings. The Chamber found that Stojić was not in the military chain of command, though he could issue orders to the armed forces on certain subjects, which did not include the prevention or punishment of crime.[492] Further, it found that MP answered to a dual chain of command,[493] which resulted in "confusion" and a "fuzzy" chain of command[494] and that the control of the MP Administration ("MPA") diminished over the course of the conflict[495] These findings inexorably led to the correct conclusion that that Stojić did not have the *de jure* obligation to prevent or punish crimes committed by members of the armed forces or MP.[496] The Majority failed to explain how it reached the opposite conclusion despite these findings. Indeed, having found that Stojić had no obligation to punish crimes committed by members of the armed forces or MP, the Majority should not have relied on any omission to prevent or punish crimes as a way of establishing his culpability.

181. Third, the Majority disregarded findings about the conflict's effect on the prevention and punishment of crimes. The Chamber acknowledged that crimes "could not [...] be effectively opposed" because the "civilian police forces and the military tribunals failed to operate in satisfactory fashion".[497] It held that the courts faced "substantial operational difficulties" and their work was accordingly

[490] *Ibid.*, paras 409–415.
[491] *Ibid.*, para. 414.
[492] *Ibid.*, para. 306.
[493] Judgement, V.1 paras 949, 950, 971.
[494] *Ibid.*, para. 974.
[495] *Ibid.*, para. 964.
[496] Judgement, V.4 para. 413.
[497] Judgement, V.1 para. 972.

"seriously limited".[498] In assessing Stojić's responsibility, the Majority disregarded these earlier conclusions.[499] Having held that crimes could not be effectively opposed, no reasonable chamber could have found that Stojić failed to prevent or punish crimes.

182. Fourth, the Majority disregarded clearly relevant Defence submissions that the Department of Justice and Administration ("DoJA") was responsible for setting up and administering the military judiciary.[500] Though the Chamber held that the DoJA *de facto* proposed military judicial appointments,[501] it disregarded the remainder of this submission. By failing to address evidence and submissions about the role of the DoJA, the Majority failed to give a reasoned decision.

23.2 The Majority erred in law and/or fact and/or failed to give a reasoned decision in finding beyond reasonable doubt that Stojić allowed Naletilić's men to continue to take part in HVO military operations and that Stojić had the power to prevent or punish the crimes committed by Naletilić's men, a finding which was inconsistent with the Trial Chamber's earlier finding that there was no evidence that Stojić had command authority over Naletilić.

183. The Majority's held that Stojić knew about disciplinary problems in Naletilić's unit and, "although he had the power to do so", did not prevent or punish crimes committed by that unit.[502] This conclusion is unreasonable and inconsistent with earlier factual findings.

184. The Chamber found that the *Vinko Škrobo* Anti-Terrorist Group ("ATG") was under the command of Mladen Naletilić[503] and that the ATGs reported directly to the Main Staff.[504] Not only was Stojić not part of their chain of command,[505] but the Chamber expressly found that there was insufficient evidence to find that Stojić or the DoD "exercised command authority over the

[498] *Ibid.*, para. 986.
[499] It only referred to evidence that the military courts were not functioning in 1992 (Judgement, V.4 para. 411).
[500] Stojić FTB, para. 406 (relying on P03350, 1D01974, P01536, P01652, 1D01179, P00559).
[501] Judgement, V.1 para. 583.
[502] Judgement, V.4 para. 420.
[503] Judgement, V.1 para. 818.
[504] *Ibid.*, para. 829.
[505] *Ibid.*, paras 565, 708, 791, 795–796.

Kažnjenička Bojna (Convict's Battalion) ("KB") and its ATGs".[506] This finding was inevitable: not one order from Stojić to Naletilić, the KB or the ATGs was entered into evidence[507] and not one witness suggested that Stojić had command authority over those units.[508]

185. As a result, it was unreasonable and inconsistent for the Majority to hold that Stojić 'had the power' to prevent or punish those crimes, given its own finding that Stojić did not exercise any authority over the ATGs or Naletilić.

23.3 The Majority erred in law and fact in finding that Stojić made a significant contribution to the JCE by making no serious effort to prevent or punish crimes committed by the HVO armed forces or military police and, therefore, that he did not intend to punish them.

186. The Majority held that "if he [Stojić] did not issue orders to prevent or punish crimes or if those orders were not obeyed, it was because he knowingly did not want to take those measures".[509] It then relied on this finding as a basis for concluding that Stojić "did not intend to prevent or punish the crimes"[510] and therefore intended the shared objective of, and significantly contributed to, the JCE.[511]

187. No reasonable chamber could have reached these conclusions on the evidence. The Chamber accepted that Stojić issued instructions to encourage the investigation of crimes,[512] co-signed an order instructing commanders to respect international humanitarian law[513] and promulgated regulations for the treatment of prisoners of war.[514] A finding that he did not issue orders to combat crime is therefore manifestly unreasonable.

[506] *Ibid.*, para. 835.
[507] *Ibid.*
[508] *Ibid.*
[509] Judgement, V.4 para. 415.
[510] *Ibid.*, para. 423.
[511] *Ibid.*, paras 427–428.
[512] P02578, p.1, which the Majority held was intended to combat thefts (Judgement, V.4 para. 446); *see also* P01428 (relating to war crimes generally).
[513] P02050.
[514] P01474.

188. Moreover, it is unreasonable to infer that Stojić knowingly did not want to take measures from the fact that his orders were not implemented. The Majority did not explain this conclusion. In an active conflict, where the judicial system was "seriously limited"[515] and crime could not be effectively opposed,[516] no reasonable chamber could have found that the only reasonable inference was that Stojić intended that his instructions would not be implemented. Alternative reasonable inferences include that Stojić did not have the power to ensure that his instructions were carried out and that there was no functioning judicial system and crime could not be effectively opposed. Thus, the Majority's finding that Stojić made no serious effort to prevent or punish crimes is unreasonable.

189. For all the reasons set out in Ground 23, the Appeals Chamber should reverse the erroneous finding that Stojić had the power to prevent or punish crimes and deliberately failed to do so. These errors invalidate the Judgement and occasion a miscarriage of justice because the Majority relied on his failure to prevent and punish crimes in order to conclude that Stojić significantly contributed to the JCE and shared the intent of the other members of the JCE.[517] Accordingly, Stojić's conviction should be overturned on all Counts.

24: The Trial Chamber made a number of further errors of fact in determining the extent of Stojić's powers and responsibilities.

24.1 The Trial Chamber erred in fact in finding that Stojić participated in peace negotiations on behalf of the HVO.

190. The Chamber found that Stojić was authorized to represent the HVO at "peace negotiations at the highest level"[518] because he participated in three separate meetings.[519] However, no reasonable chamber could have concluded from these occasions that Stojić represented the HVO in 'peace negotiations at the highest level'. First, the meeting on 25 March 1993 was merely an attempt to

[515] Judgement, V.1 para. 986.
[516] *Ibid.*, para. 972.
[517] Judgement, V.4 paras 427–429.
[518] Judgement, V.4 para. 324.
[519] *Ibid.*, paras 321–323.

resolve a specific issue in the Konjic area.[520] [REDACTED].[521] [REDACTED]. Third, no reasonable chamber could have found that Stojić participated in high level peace negotiations around 2 June 1993. [REDACTED],[522] [REDACTED].[523]

191. Far from establishing involvement in peace negotiations 'at the highest level', at most the evidence establishes only that, on isolated occasions, Stojić participated in local meetings. There was no evidence that Stojić ever attended any high level or international negotiations.[524] The conclusion that Stojić participated in high level peace negotiations is therefore manifestly unreasonable.

24.2 The Trial Chamber erred in fact in finding that Stojić participated in many meetings of the HVO and therefore took part in the formulation of the defence policy of HZ(R)HB.

192. The Majority found that Stojić participated in many meetings of the HVO and "in that context took part in formulating the defence policy of the HZ(R) H-B".[525] The Majority thus erred in fact because the conclusion that Stojić took part in formulating Defence policy does not follow from the evidence or from the fact that he attended meetings of the HVO.

193. Mere attendance at a meeting establishes only that Stojić knew about the subjects under discussion at those meetings; without any analysis of the extent of his personal contribution to those meetings, no further inferences can permissibly be drawn.[526]

194. Whilst Stojić did attend many meetings, the Chamber erred, first, in failing to assess what contributions he actually made to the debate in those meetings. Most of the cited documents evidence no direct or relevant

[520] 2D00643.
[521] [REDACTED]; *see further* [REDACTED].
[522] [REDACTED].
[523] [REDACTED].
[524] Judgement, V.1 paras 443, 465–467, 477.
[525] Judgement, V.4 para. 298.
[526] *Krstić* AJ, para. 87; *Milutinović* TJ, V.3 para. 143.

contribution from Stojić,[527] or else pre-date the alleged establishment of the JCE and therefore have no relevance to the formulation of defence policy during the period of the JCE.[528] The remaining documents establish that during a meeting on 6 September 1993, Stojić spoke on an administrative issue relating to whether students were liable for military service, which was then referred to Boban for resolution.[529] Stojić did not discuss the establishment of detention centres, as the Chamber found. Further, on 4 November 1993, though Stojić briefed the meeting on the situation in Vareš, the HVO had already received the relevant information from ODPR on 3 November 1993[530] and as a result all urgent tasks arising were assigned to ODPR.[531] No reasonable chamber could have concluded on this evidence that Stojić contributed to the formulation of defence policy; in fact, the evidence does not establish that Stojić regularly contributed directly to the meetings, nor that his contributions related to the formulation of defence policy.

195. Second, the Chamber erred in finding that defence policy was formulated at those meetings. Whilst the military situation was discussed at two meetings, no relevant decisions were taken.[532] Similarly, the detention centres and the technical rules relating to military service were discussed at one session.[533] This evidence is plainly insufficient to substantiate the general conclusion that defence policy was formulated during those sessions.

196. No reasonable chamber could have determined that Stojić participated in the formulation of defence policy at the HVO meetings relied upon by the Chamber. The evidence established only that Stojić – and many other officials – attended HVO meetings at which various topics were discussed. It did not show that he played a leading role in any meeting, that defence policy was formulated during those meetings or that any meeting was directed towards the common purpose of the JCE or the commission of crimes.

[527] Stojić referred to purely administrative matters at P00559, p.3, item 1; there was no evidence that he contributed at all to the following sessions: 1D01666; P05955.
[528] P00578, p.5, item 5; P00672, pp 4, 6.
[529] P04841, pp 3–4.
[530] 1D01354.
[531] 1D02179, paras 1, 3.
[532] 1D02179; 1D01666.
[533] P04841.

24.3 The Chamber erred in fact in finding beyond reasonable doubt that Stojić exercised the functions of the Head of the DoD until 15 November 1993, when he was appointed Head of the Department for the Production of Military Equipment on 10 November 1993.

197. No reasonable chamber could have concluded that Stojić left office on 15 November 1993. Boban appointed Stojić's successor on 10 November 1993[534] and Stojić took up his new administrative position at the Department for the Production of Military Equipment on the same day.[535] There was no evidence that he performed any function related to the DoD after 10 November 1993. Under the circumstances, pursuant to the principle *in dubio pro reo*, no reasonable chamber could have found that he continued in office until 15 November 1993.

198. These three errors of fact occasion a miscarriage of justice because – cumulatively with the other flawed findings addressed in Grounds 20–23 above – they result in an overestimation of Stojić's powers and responsibilities, which directly led to the finding that he significantly contributed to the JCE.[536] Thus, the erroneous finding that Stojić made proposals to the HVO about military matters formed the basis for the conclusion that he was the "link" between the government and the military, which was relied on in support of the conclusion that he was "one of the most important members of the JCE".[537] In turn, this led to the critical finding that he significantly contributed to the JCE and to the severity of his sentence.[538] The Appeals Chamber should overturn his conviction on all counts.

[534] P06583.
[535] 2D03001; Judgement, V.4 para. 293.
[536] Judgement, V.4 paras 425–429.
[537] *Ibid.*, paras 425, 429.
[538] *Ibid.*, paras 429, 1328, 1330.

25: The Majority made a number of errors of law and fact in finding that Bruno Stojić possessed the required intent for JCE Form I.

199. The Majority's findings about Stojić's *mens rea* are vague and jumbled. Relevant findings are scattered across the Judgement.[539] Its approach is inconsistent, finding on some occasions that Stojić intended crimes in particular municipalities,[540] whilst on others no specific finding was made.[541] Given that establishing intent is required for JCE Form I, the Majority's conclusions and reasoning are wholly inadequate.

25.1 The Majority erred in law and/or fact and/or failed to give a reasoned decision in concluding that Stojić shared a common intention with all the members of the JCE, in particular in finding that Stojić intended to expel the Muslim population from HZ(R)HB, which was inconsistent with the Trial Chamber's earlier formulation of the common criminal plan.

200. The Majority found that the "common criminal purpose" of the JCE was "domination by the HR H-B Croats through ethnic cleansing of the Muslim population".[542] It found that Stojić "intended to expel the Muslim population from the HZ(R) H-B" and that he "shared that intention with other members of the JCE".[543]

201. A JCE Form I requires a shared intent to commit a particular crime;[544] a JCE Form I can only exist where "all co-defendants […] possess the same criminal intention".[545]

202. The Majority erred in law in that its finding in relation to Stojić's intent does not mirror its finding in relation to the shared criminal purpose. In relation to Stojić, the Majority only referred to the intent to "expel" Muslims from the HZ(R)HB. Its finding in relation to the common purpose is broader: "domination

[539] *Ibid.*, paras 67, 337, 357, 378, 426–428.
[540] *Ibid.*, paras 337, 357, 378.
[541] *Ibid.*, paras 329, 342, 349, 363, 370, 383.
[542] *Ibid.*, para. 41.
[543] *Ibid.*, para. 428.
[544] *Tadić* AJ, paras 196, 228.
[545] *Ibid.*, para. 196.

[…] through ethnic cleansing" encompasses a wider range of conduct, including murder or destruction of property which do not necessarily fall within an intent to "expel the Muslim population". Having thus found that Stojić's intent was narrower than the single common purpose, the Majority erred in law in finding that Stojić had the shared intent for JCE Form I. This error invalidates the Judgement and the conviction of Stojić should be overturned on all Counts.

25.2 The Majority erred in law in failing to make a specific finding that Stojić intended to participate in the JCE.

203. JCE Form I requires that "the accused must both intend the commission of the crime and intend to participate in a common plan aimed at its commission".[546] A chamber can only find that an accused intended to participate in a JCE, if this is the only reasonable inference on the evidence.[547]

204. Contrary to this requirement, the Majority made no express finding that Stojić intended to participate in the JCE.[548]

205. This defect cannot be cured by inferring the requisite intention from other findings. First, the failure to address an element of a crime is too serious to be lightly remedied. Second, the existing findings regarding intent, which relate to the common purpose or to specific crimes,[549] do not *inevitably* lead to the inference that Stojić intended to participate in a JCE. Intent to participate in a JCE is a discreet issue which connects the intent to commit specific crimes with contribution to the common purpose. Failing to make a finding on this issue is an error of law which invalidates the Judgement and the conviction of Stojić should be overturned on all Counts.

25.3 The Majority erred in law and/or fact in inferring that Stojić intended the commission of crimes from evidence which established only that Stojić offered general logistical assistance to military operations, was responsible for financing the armed forces or had power over the armed forces in a general sense and in failing to

[546] *Brđanin* AJ, para. 365.
[547] *Krajišnik* AJ, para. 685; *Brđanin* AJ, para. 429.
[548] Judgement, V.4 paras 425–431.
[549] *Ibid.*, paras 337, 357, 428, 429.

take into consideration the absence of evidence that Stojić ordered the commission of any crime.

206. In inferring Stojić's intent, the Majority relied on "all the evidence analysed above",[550] much of which related to Stojić's general responsibilities to the military.[551]

207. The generic reference to "all the evidence [...] above" makes it impossible for the Defence to understand exactly which pieces of evidence were relied upon. However, insofar as the Majority inferred intent from general logistical support to the armed forces, it erred in law. Inferences adverse to the accused may only be drawn when they are the only reasonable inference from the evidence.[552] The intent to commit crimes is not the only reasonable inference from logistical assistance to the military, financing the armed forces *or* general powers over the armed forces. There is no necessary connection between these general logistical acts, lawful in themselves, and the commission of crimes. To hold otherwise permits the conviction of every administrative assistant in the DoD without any consideration of their personal intent. This was an error of law which invalidates the Judgement and the conviction of Stojić should be overturned on all Counts.

[550] *Ibid.*, para. 428.
[551] *Ibid.*, paras 425–426.
[552] *See* paras 203, *supra*, 222, *infra*.

25.4 The Majority erred in law in failing to make a clear, specific and unambiguous finding about Stojić's intent to commit the specified crimes or failing to provide a reasoned decision on Stojić's intent to commit the specified crimes. In particular, the Majority erred in law and/or fact in failing to make any specific finding or failed to give a reasoned decision in relation to any finding that Stojić intended to commit murder (Count 2), wilful killing (Count 3), extensive destruction of property (Count 19), wanton destruction (Count 20), wilful damage to religious or education institutions (Count 21) and inflicting terror on civilians (Count 25).

208. It is settled law that "[if] the crime charged fell within the object of the JCE, the prosecution must establish that the accused shared with the person who personally perpetrated the crime the state of mind required for that crime."[553]

209. Insofar as the convictions in *Đorđević* were upheld, despite the failure to make specific findings on the Accused's intent in relation to each crime, that decision is limited to its own facts. That case concerned one Accused and five counts (deportation, forcible transfer, persecutions and two counts of murder),[554] each of which bore a clear and indisputable nexus to the common criminal purpose – which was to change the ethnic balance in Kosovo "by waging a campaign of terror and violence against Kosovo Albanians.[555] In those limited circumstances, the Chamber was able to find that sufficient findings of intent had been made, whilst indicating that individual findings in relation to each crime remained "preferable".[556] This approach cannot be sustained in relation to this case, which concerned six Accused and twenty five different counts, with differing *mens rea* requirements, many of which bear a less immediate connection to the common criminal purpose. In the complex circumstances of this case, individual findings were essential in order to explain the Majority's decision.

[553] *Krstić* TJ, para. 613; *Krajišnik* AJ, para. 200.
[554] *Đorđević* AJ, para. 930.
[555] *Ibid.*, para. 86.
[556] *Ibid.*, para. 470.

210. The Majority found Stojić guilty through participation in JCE Form I of committing Counts 2–3, 19–21 and 25.[557] It was therefore required to establish that he had the required state of mind for those crimes.

211. The required *mens rea* for murder (Count 2) and willful killing (Count 3) is "the intent (1) to cause the victim's death or (2) to cause grave bodily harm which he reasonably must have known might lead to death".[558] The Majority erred in law by failing to find that Stojić intended to cause death or grievous bodily harm to victims in any municipality.[559] Any finding that Stojić intended to commit murder in Mostar is inconsistent with the earlier finding that murders did not fall within the common purpose because there was a "lack of common intent".[560]

212. The required *mens rea* for Counts 19 and 20 is "the intent to destroy the property" or "reckless disregard of the likelihood of its destruction"[561]. The Majority erred in law in failing to find that Stojić possessed the required intent in Jablanica, Mostar or Vareš.[562] Regarding Gornji Vakuf, it found ambiguously that he "intended to commit those crimes" without specifying which crimes or what *mens rea* standard it applied.[563]

213. The *mens rea* for Count 21 is "intent to destroy the protected property."[564] The Majority erred in law in failing to find that Stojić had the intent to destroy protected property in Mostar,[565] which is inconsistent with its approach in making a specific finding on an identical issue regarding Čapljina.[566]

[557] Judgement, V.4 para. 431.
[558] *Kvočka* AJ, para. 259; *Kordić* AJ, paras 36–38.
[559] Judgement, V.4 paras 330–337, 343–372, 379–383, 388–395.
[560] *Ibid.*, para. 70.
[561] *Kordić* AJ, para. 74.
[562] Judgement, V.4 paras 342, 363, 370, 383.
[563] *Ibid.*, para. 337.
[564] Judgement, V.1 para. 176.
[565] Judgement, V.4 para. 363.
[566] Judgement, V.4 para. 378.

214. The required *mens rea* for Count 25, is "the specific intent to spread terror among [the civilian] population".[567] The Majority failed to find that Stojić possessed this specific intent.[568]

215. On each occasion, the Majority thus failed to find that Stojić had the requisite intent. The failure to make findings on this required element is an error of law which invalidates the Judgement. There was no evidence establishing Stojić's intent and the Appeals Chamber should therefore overturn the conviction of Stojić on Counts 2, 3, 19, 20, 21 and 25.

25.5 The Majority erred in law and/or fact and/or failed to provide a reasoned decision by failing to take into account defence arguments and/or evidence in finding that Stojić had the specific intention to discriminate against Muslims.

216. The Majority found, based on "all the evidence analysed above",[569] that Stojić intended to discriminate against Muslims "by participating in the JCE" and knew crimes were being committed against Muslims "with the sole purpose of forcing them to leave the territory of BiH".[570]

217. Persecution requires that the Accused shared the discriminatory intent common to the members of the JCE.[571] This requires "the specific intent to cause injury to a human being because he belongs to a particular community or group".[572] Hence, the *actus reus* must be carried out with the deliberate intention to discriminate on one of the prohibited grounds.[573]

218. The Majority erred in law in failing sufficiently to explain its reasoning. First, it failed to explain the basis for finding that crimes were committed for the "sole purpose of forcing them to leave the territory of BiH" or that Stojić knew

[567] Judgement, V.1 para. 197; *Galić* AJ, para. 104.
[568] Judgement, V.4 paras 343–372.
[569] *Ibid.* para. 429. The reference to "all the evidence above" is itself a failure to give a reasoned decision because it fails to identify precisely which pieces of evidence were relied upon against Stojić: *see* paras 27 and 206, *supra*.
[570] *Ibid*.
[571] *See Kvočka* AJ, para. 110.
[572] *Kordić* AJ, para. 111; *Blaškić* AJ, para. 165.
[573] *Stakić* AJ, para. 327.

that crimes were committed solely for that purpose.[574] Second, it failed to identify the evidence it relied on in support. A generic reference to "all the evidence analysed above" does not allow the Defence to understand its finding and prejudices the Defence's ability to challenge it on appeal. Third, it failed to explain its conclusion that mere participation in the JCE was sufficient to conclude that Stojić had discriminatory intent. These failures amount to a failure to give a reasoned decision.

219. Further, in finding that Stojić had discriminatory intent, the Majority disregarded clearly relevant evidence about his general attitude to Muslims. It disregarded the evidence of Bahto and Čengić – Bosnian Muslims who testified on Stojić's behalf.[575] It disregarded evidence that Van der Grinten never heard Stojić express any prejudiced views about Muslims.[576] It entirely disregarded the relevant evidence of Krešić, Korać, Buljan, and Bagarić.[577] It failed to address its own findings that Stojić himself supplied MTS to the ABiH[578] and that DoD provided humanitarian aid to East Mostar.[579] This evidence decisively rebutted the suggestion that Stojić had a discriminatory intent. The Majority did not explain why it was discarded. Its misunderstanding is demonstrated by the fact that it only referred to this material in the context of mitigation;[580] whereas the Defence had argued that it was relevant to Stojić's intent.[581] In disregarding it, the Majority failed to give a reasoned decision.

220. These errors of law invalidate the decision because the Majority failed to give a reasoned decision on a required element of the crime of persecution. The Appeals Chamber should review the above evidence, reverse the finding that Stojić intended to discriminate and overturn his conviction on Count 1.

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[574] Judgement, V.4 para. 429.
[575] "[Stojić] helped the army and my people during 1992 and 1993" (Bahto, 11/03/2009, T.37937:16–20; *see also* Čengić, 11/03/2009, T.37943–37944).
[576] van der Grinten, 10/07/2007, T.21023:8–21024:7.
[577] Korać, 07/04/2009, T.38827:13–20, T.38829:16–20, T.38829:23–25, T.38830:1–10; Krešić, 02/04/2009, T.38736:15–17; Buljan, 11/02/2009, T.36751:18–36752:24, T.36766:5–6, T.36768:5–6, Bagarić, 20/04/2009, T.38879:16–38880:15, T.38947:25–38948:3.
[578] Judgement, V.4 para. 308.
[579] Judgement, V.2 para. 1243; *see further* para 29, *supra*.
[580] Judgement, V.4 para. 1334.
[581] Stojić Closing Arguments, 15/02/2011, T.52302:25–52303:24.

25.6 The Majority erred in law in inferring Stojić's intent to commit crimes from his knowledge that crimes were committed and his continuation in office.

221. Whilst in relation to some of the crimes in some municipalities the Majority specifically found that Stojić intended to commit crimes,[582] in relation to Prozor, Jablanica, East Mostar, Čapljina, Vareš and the detention centres it made no express finding of intent but inferred that Stojić "accepted" the crimes because he knew that crimes had been committed and continued to exercise his official functions.[583]

222. The required *mens rea* for JCE Form I is that the accused must "intend the commission of the crime".[584] A Chamber may only rely on inferences to determine intent where the inference is "the only reasonable inference on the evidence".[585]

223. The Majority erred in law in inferring Stojić's intent from knowledge that crimes had been committed and continuation in office. First, intent must be assessed at the time when the crime was committed. Knowledge, typically obtained from reports days after the crimes were committed,[586] cannot support an inference that Stojić had the requisite intent to commit the crimes when they occurred.

224. Second, the Majority collapsed the distinction between JCE Forms I and III, which is based on differing *mens rea* requirements.[587] The *mens rea* for JCE Form III is that "the accused must also know that such a crime might be perpetrated by a member of the group, and willingly take the risk that the crime might occur by joining or continuing to participate in the enterprise".[588] Thus knowledge and acceptance by continued participation are intrinsic elements of

[582] Judgement, V.4 paras 337, 357, 378.
[583] *Ibid.*, paras 329, 342, 363, 370, 378, 383, 395, 396, 407. This led to further inconsistencies, thus, regarding Čapljina (paragraph 378), its only specific finding of intent related to property damage and not any other Count.
[584] *Brđanin* AJ, para. 365; *Vasiljević* AJ, paras 97, 101.
[585] *Krajišnik* AJ, para. 685; *Brđanin* AJ, para. 429.
[586] *See, e.g.*, Judgement, V.4 paras 338–339.
[587] The *actus reus* is the same (*Tadić* AJ, para. 227).
[588] *Kvočka* AJ, para. 83; *Tadić* AJ, para. 220.

JCE Form III. Inferring intent from knowledge and acceptance eradicates the distinction between the forms of JCE.[589]

225. Third, intent is not the only reasonable inference from continuation in office. Continuation in office might be motivated by many factors, including general support for the HZHB, but it cannot be linked to any specific crime. In the absence of other evidence or findings, mere continuation in office is an insufficient foundation for an inference of intent because there is no nexus between continuation in office and specific crimes.

226. Further, the Majority's reasoning is vitiated by errors of fact in that no reasonable chamber could have concluded that Stojić knew that crimes had been committed in the above municipalities and detention centres.[590]

227. For all the reasons set out above, the Majority erred in law and fact insofar as it inferred that Stojić intended the crimes committed in Prozor, Jablanica, East Mostar, Čapljina, Vareš and at the detention centres based purely on his knowledge of the crimes and his continuation in office. This invalidates the Judgement and occasions a miscarriage of justice because intent is a necessary element of JCE Form I. The Appeals Chamber should find that intent was not established and overturn all convictions pertaining to crimes in those locations. Moreover, given that this finding formed part of the basis for the Majority's inference that Stojić shared the intent to expel Muslims from the territory,[591] these errors fatally undermine Stojić's responsibility within a JCE Form I and thus his conviction on all counts arising from the JCE should be set aside.

[589] *Stanišić and Simatović* TJ, V.2 para. 2326, 2412–2415.
[590] *See generally* the submissions in Grounds 28, 29.2, 30, 33.1, 33.3, 34.1, 34.4, 35, 36.1, 36.3, 37.2, 40, *infra*.
[591] Judgement, V.4 para. 428.

26: The Trial Chamber erred in law in convicting Stojić of crimes against humanity without having established that he knew that his actions were committed in the framework of a widespread and systematic attack against the civilian population.

228. A required element of a crime against humanity under Article 5 of the Statute is that the Accused knows that his acts fit into a pattern of widespread or systematic crimes directed against a civilian population.[592] Where this knowledge cannot be established, crimes "should not be prosecuted as crimes against humanity".[593]

229. The Chamber erred in law in failing to find that Stojić knew that his acts formed part of a widespread and systematic attack on a civilian population. No such finding was made in considering Stojić's responsibility; the Majority only considered Stojić's knowledge that there was an international armed conflict.[594] Nor did the Chamber make any such finding in considering the general requirements for the application of Article 5, where its only express consideration of the knowledge requirement related only to direct perpetrators.[595] In failing specifically to consider and make findings on Stojić's knowledge about the alleged widespread and systematic nature of attacks on the civilian population, the Majority erred in law by failing to address an essential element of Article 5 of the Statute.

230. Since knowledge of the existence of a widespread and systematic attack is a prerequisite for responsibility under Article 5 of the Statute, the Chamber's failure to make a finding in this regard is an error of law which invalidates the Judgement. Accordingly, the Appeals Chamber should overturn Stojić's convictions on Counts 1, 2, 6, 8, 10 and 15.

[592] *Tadić* AJ, para. 248.
[593] *Ibid.*, para. 271; *Blaškić* AJ, paras 126–127.
[594] Judgement, V.4 para. 430.
[595] Judgement, V.3 paras 630–654.

27: The Majority made a number of errors of law and fact in finding that Stojić made a significant contribution to the JCE.

231. In establishing responsibility pursuant to a JCE, a chamber must find that the accused participated in the implementation of the common plan.[596] Such a contribution must "at least be a significant contribution to the crimes for which the accused is to be found responsible".[597] The Majority's findings in relation to Stojić's contribution are ambiguous and unreasonable. They rest on general assertions about Stojić's position[598] or on evidence of minimal involvement in some of the municipalities covered by the Indictment.[599] Each finding that Stojić significantly contributed to the commission of crimes is demonstrably flawed as set out below.

232. Ground 27 addresses the Majority's errors in finding that Stojić significantly contributed to the common purpose in general. Grounds 28 to 37 address the Majority's errors in finding that Stojić was culpable for crimes in individual municipalities and detention centres. Individually these errors caused a miscarriage of justice in that they resulted in Stojić's conviction for the crimes in each municipality within the framework of a JCE, which should be overturned. Cumulatively, they caused a further miscarriage of justice in that they led to the Majority's broader conclusion that Stojić significantly contributed to the JCE and was hence liable for all the crimes which were part of the common plan.[600] His conviction on all counts should therefore be overturned.

27.1 The Majority erred in law and/or fact in inferring that Stojić significantly contributed to the JCE from evidence that established only that Stojić offered general logistical assistance to military operations and was responsible for financing the armed forces or had power over the armed forces in a general sense.

233. The Majority found that Stojić made a significant contribution to the implementation of the common criminal purpose because he "controlled the

[596] *Tadić* AJ, para. 227.
[597] *Brđanin* AJ, paras 427, 430.
[598] Judgement, V.4 para. 429.
[599] Judgement, V.4 paras 329–407 (Stolac does not feature at all).
[600] Judgement, V.4 para. 432.

HVO armed forces and the [MP] and was the link between them and the government". [601]

234. Responsibility within JCE Form I, requires a link between the accused's conduct and the commission of crimes. The accused's conduct must "at least be a significant contribution to the crimes".[602] Moreover, the accused's actions must be "directed to the furthering" of the JCE.[603] This threshold cannot be crossed by general assistance to the military because such general assistance has no direct link to any individual crimes and is not necessarily directed to the furthering of a JCE.

235. The Majority erred by failing to establish that Stojić made a significant contribution to the commission of the crimes. The Majority failed to evaluate whether any of Stojić's orders actually contributed to any of the crimes. The finding that Stojić controlled the armed forces and MP[604] was based largely on findings that he controlled their financial and logistical resources.[605] Even the orders relied upon by the Majority relate to logistical matters such as mobilisations, troop movements, reorganisation of units, assignment of reinforcements, free movement of convoys and ceasefires.[606] This logistical support cannot amount to a contribution to the commission of specific crimes. The Majority entirely failed to explain how it connected these general logistical powers with the commission of crimes.

236. The source of the Majority's error is that it based its analysis on 'effective control',[607] a concept borrowed from the superior-subordinate relationship in command responsibility.[608] In that context, it expressly requires the ability to prevent and punish the offences of subordinates; therefore requiring control over the direct perpetrator of a specific crime.[609] Effective control is not directly

[601] *Ibid.*, para. 429.
[602] *Brđanin* AJ, para. 430; *Krajišnik* AJ, paras 215, 675, 695.
[603] *Tadić* AJ, para. 229.
[604] Challenged in Grounds 20–21, *supra*.
[605] Judgement, V.4 paras 308–310, 317, 319.
[606] *Ibid.*, paras 306, 314.
[607] *Ibid.*, paras 312, 429.
[608] Judgement, V.1 paras 234, 239.
[609] *Čelebići* AJ, paras 256, 266; *Krnojelac* AJ, para. 171.

relevant to significant contribution. By focussing on effective control rather than significant contribution, the Majority blurred the tests for command responsibility and JCE together, resulting in a lower threshold by establishing criminal responsibility without considering whether Stojić significantly contributed to crimes (JCE) or controlled specific perpetrators (command responsibility).

27.2 The Majority erred in law and/or fact in inferring that Stojić significantly contributed to the JCE because the actions of the armed forces and military police were attributable to him and/or because he was the link between the armed forces/MP and the government and in the absence of any evidence that Stojić ordered the commission of crimes.

237. The Majority relied on two further factors to establish that Stojić significantly contributed to the JCE: that he was the "link" between the armed forces and the government and that "the actions of the members of the armed forces and the [MP] are attributable to him".[610]

238. The finding that Stojić formed the "link" between the armed forces and the government cannot in itself establish that he made a significant contribution to crimes. Linking the armed forces and government is not inherently unlawful. The Majority failed to establish that by linking the civilian government and the armed forces Stojić made a significant contribution to the commission of any crimes.

239. The finding that all the actions of the armed forces and MP are *attributable* to Stojić was an error of law. The Majority did not articulate a legal basis for finding that all crimes committed by members of the armed forces or MP were attributable to Stojić.[611] By automatically attributing all crimes to Stojić, the Majority imposed a form of command responsibility without establishing that Stojić controlled the direct perpetrators of any specific crimes.[612]

[610] Judgement, V.4 para. 429.
[611] *Ibid.*
[612] *Šainović* AJ, para. 1520.

This analysis is irrelevant to JCE Form I, which instead requires a significant contribution to specific crimes – which the Majority failed to consider.

27.3 The Majority erred in law and/or in fact in finding, in the absence of any supporting evidence, that Stojić made a significant contribution to the implementation of the common criminal purpose in that he used the armed forces and MP to commit crimes.

240. The Majority found that Stojić "used the armed forces and the [MP] to commit crimes that were part of the common criminal purpose".[613] It erred in law in reaching this finding without any evidential basis. No evidence was cited in support, nor did the Majority explain how Stojić used the armed forces and military police to commit crimes.[614] No such finding was made in the Majority's analysis of Stojić's powers[615] or role in specific municipalities.[616] Moreover, this finding is inconsistent with earlier findings that Stojić was not in the military chain of command[617] and that he only issued orders in related to a limited set of logistical issues.[618] As a result, there was no basis whatsoever for the finding that Stojić *used* the armed forces or MP to commit crimes.

241. The Defence note that the Majority used identical language in relation to Praljak and Petković.[619] That it found, without distinguishing their different functions and powers, that civilian leaders and military generals both *used* the armed forces to commit crimes, highlights the Majority's failure to analyse individually whether each accused significantly contributed to the commission of crimes.

242. For all the reasons set out in Ground 27, the Majority erred in law and fact in finding that Stojić significantly contributed to the commission of crimes on the basis of his general responsibility for the armed forces. Individually, and cumulatively with the Majority's errors in assessing his contribution to specific

[613] Judgement, V.4 para. 429.
[614] *Ibid.*
[615] *Ibid.*, paras 292–325.
[616] *Ibid.*, paras 329–407.
[617] *Ibid.*, para. 306.
[618] Judgement, V.1 para. 565.
[619] Judgement, V.4 paras 628, 818.

municipalities,[620] these errors invalidate the Judgement or occasion a miscarriage of justice. Without them, there could be no finding that Stojić significantly contributed to the JCE and hence he could not have been found responsible within the framework of JCE Form I. His conviction should be overturned on all Counts.

28: The Majority erred in fact in finding that Stojić made a significant contribution to crimes committed in Prozor and at Ljubuški prison because he was informed that civilians were detained in Prozor in July 1993 and transferred to Ljubuški prison and, as a result of this error, erred in law and/or fact in finding that Stojić accepted the detention of civilians.

243. The Majority inferred that Stojić accepted the detention of civilians at Ljubuški prison in July 1993 based on a single document[621] which according to the Majority, informed Stojić and Petković that Šiljeg had "relocated detainees – mostly prisoners of war, but also some 'civilians' – from the secondary school in Prozor to Ljubuški".[622]

244. No reasonable Chamber could have found that Stojić was informed that civilians were detained in Prozor or Ljubuški in July 1993 on the basis of this report. The Majority reached the opposite conclusion in respect of Petković, who had received the same report.[623] This blatant inconsistency is unjustifiable; since the evidence was insufficient to establish knowledge on the part of Petković it was equally insufficient in relation to Stojić.

245. Moreover, the report was primarily a request for logistical assistance which contained one relevant paragraph.[624] That paragraph does not support the Majority's inference because, first, it does not clearly refer to the detention of

[620] *See* Grounds 28–37, *infra*.
[621] P03418.
[622] Judgement, V.2 para. 149; Judgement, V.4 paras 329, 396.
[623] Judgement, V.4 para. 799.
[624] P03418, paras 1–12, 14–19 deal with the allocation of resources, only paragraph 13 is relevant.

civilians. It relates to Muslims liable for military service. There is no evidence that Stojić *knew*[625] that they were civilians.

246. Second, contrary to the Chamber's findings, this report did not inform Stojić that the individuals were detained at Ljubuški prison. It does not mention a prison; it indicates that their accommodation was "unclear".[626] Indeed, they were not detained at Ljubuški but "quickly sent along to Dretelj Prison".[627]

247. Third, no reasonable chamber could have found that the only reasonable inference was that Stojić accepted the detention of civilians at Ljubuški. Stojić had no personal responsibility for Ljubuški prison.[628] He was not in the military chain of command;[629] though the Majority found that he could issue orders on certain specific issues, it did not establish that these included matters relating to detentions.[630] Therefore, Stojić had no authority to intervene, which is confirmed by the fact that Petković did not copy Stojić into his response to Šiljeg.[631]

248. For all the reasons set out above, no reasonable chamber could have concluded that Stojić knew about and accepted the detention of civilians. Further, no reasonable chamber could have concluded that the receipt of a single report relating to detentions at a facility outside of Stojić's control, which was being addressed by Main Staff, amounted to a significant contribution to the commission of that crime.

249. These errors of fact caused a miscarriage of justice, because they remove the only basis for the finding that Stojić significantly contributed to the commission of crimes in Prozor and Ljubuški. The Appeals Chamber should overturn Stojić's conviction in relation to Counts 1, 10 and 11.

29: The Majority made a number of errors of fact and law in finding that Stojić made a significant contribution to crimes committed in Gornji Vakuf by

[625] *Čelebići* AJ, para. 378–379.
[626] P03418, para. 13.
[627] Judgement, V.2 para. 148.
[628] *Ibid.*, paras 1789–1799.
[629] Judgement, V.1 paras 565, 791–796, V.4 para. 306.
[630] Judgement, V.4 para. 306.
[631] P03455, para. 12.

planning and facilitating HVO operations in Gornji Vakuf and as a result, erred in finding that he intended to commit crimes in that municipality.

250. On one piece of evidence – that Stojić sent Colonel Andrić to Gornji Vakuf in order to calm the situation – the Majority erroneously constructed a series of inferences to arrive at an unreasonable conclusion, that Stojić intended to commit crimes in Gornji Vakuf and planned and facilitated relevant operations.

29.1 The Majority erred in fact in finding that Stojić ordered Colonel Miro Andrić to use force in Gornji Vakuf.

251. The Majority found that the only possible inference from the fact that Stojić sent Andrić to Gornji Vakuf and that, in a report addressed to Stojić, Andrić stated that force was used "following an order from our superiors"[632] was that Stojić was one of the unnamed superiors who ordered him to use force.[633]

252. No reasonable Chamber could have concluded that this was the only reasonable inference. Andrić's report does not support the inference that Stojić ordered the use of force. First, it states that Stojić told Andrić that "the differences had to be resolved peacefully" and Andrić's objective was "calming the situation".[634] Thus Stojić sought a peaceful solution, diametrically opposed to the inference that he ordered the use of force. Second, the report is addressed to Stojić personally.[635] Where it refers to orders from Stojić, it uses his name: "[f]ollowing a verbal order from [...] Stojić".[636] It is inconceivable that later in the same document Andrić would have referred to an order from Stojić as an order "from our superiors" without identifying him by name.[637] Third, the report

[632] 4D00348, p.2.
[633] Judgement, V.4 para. 334.
[634] 4D00348, p.1.
[635] *Ibid.*
[636] *Ibid.*
[637] Prlić argues that this was a mistranslation and that the document actually reads "on a higher order" (Prlić Motion to Replace Translation). The correct translation further distances the Order from Stojić.

was completed on 27 January 1993.[638] If Stojić ordered Andrić to use force, it is astonishing that Andrić did not report back until nine days after the attack.

253. Fundamentally, the Majority's inference is inconsistent with its own findings about the chain of command. Stojić was not part of the military chain of command.[639] Though he did send orders to the military on certain listed issues,[640] these did not include direct combat orders. Rather, the usual chain of command "proceeded from the Main Staff".[641] Andrić was in the Main Staff.[642] His reference to "our superiors" could not relate to Stojić because he was not one of Andrić's superiors.

254. Moreover, the usual military chain of command operated in Gornji Vakuf at the material time. Thus, Praljak consulted with Andrić on 15 or 16 January 1993 (after his last evidenced contact with Stojić).[643] On 16 January 1993, Praljak told the ABiH they would be "annihilated if they [did] not accept the decisions of HZHB"[644] and, on 18 January 1993, Praljak ordered weapons to be sent to Gornji Vakuf due to "the need to engage in combat activity.[645] Further, the order to cease combat operations was issued by Boban,[646] transmitted by Petković[647] and actioned by Šiljeg.[648] A similar order from Boban on 27 January 1993[649] was again transmitted by Petković.[650] From these documents it is abundantly clear that the usual chain of command operated in Gornji Vakuf at the material time.[651]

255. No reasonable Chamber could have concluded that the only reasonable inference was that Stojić ordered the use of force in Gornji Vakuf. Andrić's

[638] 4D00348, p.3.
[639] Judgement, V.1 paras 565, 791–796, V.4 para. 306.
[640] Judgement, V.1 paras 565, 797, V.4 para. 306.
[641] Judgement, V.1 paras 791, 796.
[642] Judgement, V.2 para. 338.
[643] P01174.
[644] P01162.
[645] P01202; *see also* P01172; P01277.
[646] 1D00472.
[647] P01238; P01286.
[648] P01300.
[649] P01329.
[650] P01322.
[651] As the Majority itself subsequently found (Judgement, V.4 paras 558, 708).

report does not support Stojić's involvement and the true position – that relevant orders passed through Main Staff – is revealed by the surrounding documents.

29.2 The Majority erred in fact in finding beyond reasonable doubt that Stojić was aware of the commission of crimes from the reports of Željko Šiljeg, without establishing the reliability and authenticity of those reports, that they were received by Stojić and/or that the reports contained information about the detention of civilians.

256. The Majority found that the only reasonable inference from Stojić's involvement in operations in Gornji Vakuf and general responsibility for the armed forces was that he was aware of reports submitted by Šiljeg and therefore of the destruction of Muslim homes, the murder and detention of Muslims who did not belong to any armed force and the removal of inhabitants of the area by the HVO.[652]

257. No reasonable Chamber could have inferred that Stojić was aware of the commission of crimes on the sole basis of these reports. First, the Majority failed to analyse the reliability of P01357, which is plainly a compilation of reports and orders with different dates and different recipients.[653] Its authenticity cannot be established because it is impossible to be sure when the compilation was created or for what purpose. Nor is there any evidence that the constituent reports were received by Stojić.

258. Second, each report was simply addressed to the DoD.[654] Absent any mention of him, the Majority inferred that Stojić must have been aware of the report from its earlier flawed inference that he ordered the use of force in Gornji Vakuf. This cannot sustain the inference that Stojić was aware of all subsequent reports from the municipality.

259. Third, even if Stojić read the reports, their content does not support the inference that he knew about the destruction of Muslim homes, murder and detention of Muslim civilians and removal of inhabitants from the area. The

[652] *Ibid.*, para. 336.
[653] P01357.
[654] P01206, p.1; P01357, p.1; P01351, p.1.

reports state that properties were on fire[655] or destroyed[656] and record the death of a number of civilians.[657] But in the context of active combat between the HVO and the ABiH, nothing in the reports states that the HVO was responsible or that crimes had occurred. For instance, the Majority concluded from a report which said that "there is no civilian population left" in an area[658] that the HVO had removed the inhabitants of the area.[659] This conclusion does not follow from the report; only by reading it in the context of earlier factual findings about Gornji Vakuf could the Majority link it to crimes committed by the HVO.[660] Attributing this knowledge to Stojić at the material time in the absence of any evidence is unreasonable. In any event, none of the reports refer to the detention of civilians: P01351 confirms that the HVO was holding 136 members of the BiH army[661] and repeatedly states that civilians are not detainees.[662]

260. For all the reasons set out above, no reasonable chamber could have concluded that Stojić was aware that crimes had been committed in Gornji Vakuf.

29.3 The Majority erred in fact in finding that Stojić planned, closely followed and facilitated HVO military operations in Gornji Vakuf and as a result of this error also erred in finding that Stojić intended to commit the crimes committed in Gornji Vakuf.

261. The finding that Stojić planned, closely followed and facilitated military operations in Gornji Vakuf is a remarkable construction.[663] The Majority first inferred that Stojić "facilitated and closely followed" HVO operations.[664] From this inference, it constructed a second inference that Stojić must have been aware of the reports sent by Šiljeg.[665] These two inferences founded a third inference that Stojić planned and intended to commit crimes in Gornji Vakuf.[666] From

[655] P01206.
[656] P01357; P01351.
[657] P01351.
[658] P01357, p.6.
[659] Judgement, V.4 para. 336.
[660] *Ibid.*, paras 331–333.
[661] P01351, p.1.
[662] *Ibid.*, pp 2–3.
[663] Judgement, V.4 paras 335–337.
[664] *Ibid.*, para. 335.
[665] *Ibid.*, para. 336.
[666] *Ibid.*, para. 337.

meagre evidence, the Majority thus built a house of cards leading to the unsound conclusion that Stojić intended to commit the crimes in Gornji Vakuf and significantly contributed to them.

262. The foundation for this conclusion is unsound. The only direct evidence was that Stojić sent Andrić to Gornji Vakuf on 12 January 1993 to calm the situation and that Andrić subsequently sent one report to Stojić on 27 January 1993.[667] This cannot support an inference that Stojić planned or facilitated military operations. Nor could any reasonable Chamber find that receipt of one report days later, amounted to "closely following" events. Thus the first inference, on which all the other inferences about Gornji Vakuf are based, cannot be sustained and the finding that Stojić intended to commit and significantly contributed to the crimes in Gornji Vakuf must be overturned.

263. For all the reasons set out above, no reasonable chamber could have concluded that Stojić significantly contributed to or intended the commission of crimes in Gornji Vakuf. These errors invalidate the Judgement and occasion a miscarriage of justice because they led to the conviction of Stojić on Counts 1, 2–3, 8 -11, 15–17 and 19–20. His conviction on these Counts should be overturned.

30: The Majority made a number of errors of law and fact in finding that Stojić made a significant contribution to the commission of crimes in Jablanica because he was aware of and accepted the commission of those crimes.

30.1 The Majority erred in law and/or fact in finding that Stojić must have been aware that crimes had been committed in Sovići and Doljani.

264. The Majority found that Stojić must have been aware that crimes had been committed in Sovići and Doljani because he was informed of them by the International Committee of the Red Cross ("ICRC") and subsequently issued an Order requiring the armed forces to comply with international law.[668]

[667] 4D00348.
[668] Judgement, V.4 paras 340–341.

265. No reasonable Chamber could have come to this conclusion; there was no evidence that Stojić knew that crimes were committed in those locations. The cited ICRC report[669] did not state that crimes had been committed in Sovići and Doljani. Although it noted the deterioration of the situation "in HVO/BiH controlled areas",[670] it only mentions the commission of crimes in Zenica,[671] 100km away from Jablanica.[672] It made no mention of Sovići and stated only that Doljani was "cut-off by the fighting" and it was "impossible for relief organisations to send supplies there".[673] No reasonable Chamber could therefore have held that the report informed Stojić that crimes had been committed in Sovići and Doljani.

266. Further, the Majority held that the report informed Stojić of crimes including "the destruction of buildings, including mosques, and the arrests of persons who did not belong to any armed forces".[674] This is unreasonable; the report makes no mention of mosques or of the detention of civilians.[675]

267. It is true that on 23 April 1993, Stojić and Petković issued an order requiring the armed forces to comply with international law.[676] No reasonable Chamber could have held that the only reasonable inference was that this was linked to Sovići and Doljani. The Order was sent to all commanders and soldiers.[677] There is nothing to suggest that it was precipitated by events in any particular locality or by the ICRC report. Even if a reasonable Chamber could have linked the Order to the ICRC report, this does not establish a link to Sovići and Doljani because the report related to all "HVO/BiH controlled areas".[678]

268. To the extent that the Majority relied on the reference to "cleansing" of Doljani in the report dated 23 April 1993[679] to establish Stojić's knowledge of the

[669] P01989, p.1.
[670] *Ibid*.
[671] *Ibid.*
[672] P09276.
[673] P01989, p.1.
[674] Judgement, V.4 para. 341.
[675] P01989, p.1.
[676] P02050.
[677] *Ibid.*, p.1.
[678] P01989, p.1.
[679] 4D01034, para. 3. [REDACTED]. In any event, there is no evidence Stojić received this report.

commission of crimes,[680] this too was unreasonable. The term "cleansing" is ambiguous.[681] It could refer to lawful clean-up operations following military actions, which the Chamber indeed found were taking place in and around these villages in this very period.[682] Given the ambiguity of the term "cleansing", any reliance on this term to establish Stojić's knowledge was not the *only* reasonable inference on the evidence.

30.2 The Majority erred in law and/or fact in inferring, when it was not the only reasonable inference, that Stojić must have been aware of the plan in relation to HVO military operations in Jablanica from evidence that he was informed of the military operations after they had taken place on 23 April 1993 and from evidence that the military operations followed a preconceived plan.

269. The Majority inferred that Stojić knew of HVO plans in Jablanica because he was informed of the operation on 23 April 1993 and it followed a preconceived plan.[683]

270. No reasonable Chamber could have reached this conclusion. No evidence was cited that Stojić was aware of HVO operations in Jablanica *before* they happened. The Majority relied on a single report dated 23 April 1993[684] – six days after the attack[685] – which was not devoted to Jablanica but was a general update on various localities.[686] No reasonable Chamber could have concluded that the only reasonable inference from subsequent receipt of one general update was that Stojić was aware of the HVO plans in advance.

271. Similarly, no reasonable chamber could have inferred from its finding that events in Jablanica followed a preconceived plan (itself entirely unexplained) that Stojić must have been aware of that plan. The attack was directed by the usual

[680] It is not clear whether the Majority actually relied on the report in this way; it only expressly referred to the ICRC report in order to establish Stojić's knowledge (Judgement, V.4 para. 341).
[681] *Kordić* AJ, para. 403.
[682] Judgement, V.2 paras 558, 561.
[683] Judgement, V.4 para. 341.
[684] 4D01034.
[685] Judgement, V.2 paras 537–549.
[686] 4D01034, paras 1–5.

military chain of command.[687] Since he was not in that chain of command, none of the relevant orders mention Stojić.[688] No reasonable chamber could have concluded that the only reasonable inference was that Stojić was aware of the operations in Jablanica in advance.

272. The evidence thus established that Stojić was one recipient of a report which stated that the HVO had conquered Sovići and Doljani and one recipient of an ICRC report which referred to the deteriorating situation in all HVO/BiH controlled areas. No reasonable Chamber could have concluded on this evidence that the only reasonable inference was that Stojić was aware of crimes committed in those villages or that he was aware of HVO plans in advance. No reasonable Chamber could have constructed the further inference that he accepted those crimes. Further, evidence of such meagre involvement cannot support a finding that Stojić significantly contributed to those crimes.

273. These errors invalidate the Judgement and/or occasioned a miscarriage of justice because they led to the conviction of Stojić on Counts 1, 10–11, 19–20. His conviction on these Counts should be overturned.

31: The Majority made a number of errors of law and fact in finding that Stojić made a significant contribution to operations on 9 May 1993 in Mostar.

31.1 The Majority erred in law and/or fact in inferring from vague statements in an undated interview with a BBC journalist that Stojić participated in planning HVO military operations in Mostar and participated in the preparation of the HVO troops in Mostar in the days preceding the attack.

274. The Majority relied on an interview with a journalist,[689] which occurred after 9 May 1993,[690] to find that Stojić knew of "the troops' plans, of their ability and of their plan of action".[691] This was the basis for its inference that "Stojić

[687] Judgement, V.2 paras 527–538, V.4 paras 712–716.
[688] Judgement, V.1 paras 565, 791–796, V.4 para. 306; P01896; P01915, p.2; P01932; P02037, p.1.
[689] P04238.
[690] Judgement, V.4 para. 344.
[691] *Ibid.*, para. 348.

participated in planning the HVO military operations in Mostar that began on 9 May 1993".[692]

275. Statements must be considered in context.[693] In order to support inferences beyond reasonable doubt, statements must be sufficiently precise and specific;[694] an ambiguous statement may be insufficiently clear to allow the conclusion that no alternative explanation is possible.[695]

276. No reasonable Chamber could have held that the only reasonable inference from the interview was that Stojić participated in planning the HVO military operations in Mostar on 9 May 1993. First, the interview occurred after 9 May 1993.[696] Therefore, it cannot support an inference that Stojić participated in planning operations before 9 May 1993.[697]

277. Second, the only words directly attributed to Stojić were: "the Minister says his forces could clear their part of the city in five hours, and he charges the Muslim commander with not wanting a ceasefire".[698] These words are insufficiently clear to support the Majority's finding. They were not spoken by Stojić but voiced over by the journalist. No plan was mentioned, hence they cannot support the finding that Stojić "knew of the troops' plans".[699] Though it suggests Stojić said that HVO troops could clear their part of the city in five hours, the finding that he knew of "their ability" remains unsupported because the Majority did not pause to consider whether this assessment was realistic. That the conflict in Mostar continued for months rather than hours[700] proves that any assessment that it could be resolved in five hours bore no resemblance to reality.

278. Third, the Majority gave no consideration to the context. P04238 is a snippet from an interview. It did not specifically address the attack on 9 May

[692] *Ibid.*
[693] *Stakić* AJ, para. 52; *Krajišnik* TJ, para. 1092.
[694] *Stanišić and Simatović* TJ, V.2 para. 2309.
[695] *Krstić* AJ, para. 76.
[696] Judgement, V.4 para. 344.
[697] *Ibid.*, para. 348.
[698] P04238, 44:22–44:52.
[699] Judgement, V.4 para. 348.
[700] *See* Judgement, V.2 paras 1184, 1196.

1993 or eviction operations. The Majority assumed that statements in that interview were true, without considering other inferences – for instance that an individual might want to present an image of strength or control which was not the situation on the ground.

279. For all these reasons, no reasonable chamber could have inferred from P04238 that Stojić participated in preparing the troops and planning the HVO operations in Mostar on 9 May 1993.

31.2 The Majority erred in law and/or in fact and/or failed to give a reasoned decision in its assessment of the evidence of Davor Marijan about P04238, in circumstances where the Trial Chamber relied on other aspects of his testimony and gave no reason for rejecting the specific points made by this expert about the interview.

280. Marijan stated that P04238 did not prove that Stojić was in charge of military operations because the map shown in the video was not a military map and no military maps or devices were shown.[701] He added that if Stojić was in charge of military operations there would have been documentary evidence to that effect.[702] The Majority rejected this evidence because it held Marijan "had a bias in favour of Bruno Stojić"[703] and because Marijan was "not in the office at the time" and therefore "merely offered hypotheses".[704]

281. In rejecting Marijan's evidence, the Majority erred in law and fact. First, the finding that Marijan was biased is inconsistent with the Chamber's reliance on his evidence throughout the Judgement. His evidence regarding military structures was repeatedly relied upon without any suggestion of bias.[705] His evidence that Stojić did not issue any combat orders, for instance, was apparently accepted without concern that it was biased.[706] That Marijan's evidence was routinely accepted is inconsistent with the finding, apparently based on his

[701] Judgement, V.4 para. 345.
[702] *Ibid.*
[703] *Ibid.*, para. 346.
[704] *Ibid.*
[705] *See* Judgement, V.1 paras 495, 505, 536, 539, 544, 600, 604, 640, 676, 679, 694, 702, 767, 772, 855, 864, 867, 870, 924, 926, 946.
[706] *Ibid.*, paras 559, 565.

"entire testimony", that "instead of providing objective answers as an expert, he sought to exonerate Stojić".[707]

282. Second, the Majority erred in law in rejecting Marijan's evidence because he was not "in the office at the time" and "merely offered hypotheses".[708] Marijan was an expert.[709] Experts may offer opinions within their expertise which do not have to be based on first hand knowledge.[710] Indeed, the purpose of expert evidence is to offer hypotheses based on the evidence to assist the Chamber in understanding specialised issues. To reject expert evidence on the basis that it merely offered hypotheses was an error of law.

283. Third, the Majority failed to give sufficient reasons for rejecting the substance of Marijan's conclusions. It failed to consider whether the maps shown in the video resembled military maps, whether the office resembled that of a military commander or the absence of documentary evidence that Stojić directed military operations in Mostar. It disregarded evidence that corroborated Marijan; [REDACTED].[711] In so doing, it failed to sufficiently explain its decision.

284. These errors invalidate the Judgement and occasion a miscarriage of justice because no reasonable chamber could have disregarded this evidence. Had it been taken into account, the Majority could not have inferred from the video that Stojić participated in planning the military operations in Mostar which began on 9 May 1993.

31.3 The Majority erred in law and/or fact in finding beyond reasonable doubt in the absence of any supporting evidence that Stojić participated in planning acts of violence.

285. The Majority inferred that Stojić participated in planning acts of violence from its earlier unsound inference that Stojić participated in planning the military

[707] Judgement, V.4 para. 346.
[708] *Ibid.*
[709] 94*bis* Decision on Davor Marijan.
[710] Decision on the Defence Interlocutory Appeal on Expert Witness Butler (*Popović*), para. 27; *Semanza* AJ (ICTR), para. 303.
[711] [REDACTED].

operations in Mostar.[712] No reasonable Chamber could have found that this was the only reasonable inference. First, Stojić did not participate in planning the military operations.[713] Second, even if he did, it does not follow that he participated in planning acts of violence. The Majority gave no explanation for this inference.[714] There was no evidence that Stojić was involved in detailed planning of the manner in which operations should be carried out. The assumption that the Head of DoD was necessarily involved in planning the manner in which operations should be carried out is plainly not the only reasonable inference on the evidence.

286. For all the reasons set out in Ground 31, the Majority's conclusion that Stojić significantly contributed to operations in Mostar following 9 May 1993 is unreasonable and cannot be sustained. The Appeals Chamber should overturn his conviction arising from this operation on Counts 1–3, 7–10, 15 and 21.

32: The Majority erred in law and/or in fact and or failed to give a reasoned decision in relying on the evidence of Witness DZ without performing any assessment of the reliability and credibility of Witness DZ's evidence or considering relevant defence arguments or contrary evidence.

287. The Majority relied on Witness DZ for the primary evidence in support of findings that: the HVO was blocking humanitarian aid to Mostar,[715] HVO snipers were targeting International Organisations[716] and Stojić knew of this;[717] Stojić participated in planning eviction operations in Mostar beginning in June 1993[718] and Stojić was informed of crimes in East Mostar.[719]

288. The Majority failed to give a reasoned decision on Witness DZ's reliability. A chamber is required to address inconsistencies in a witness's evidence, where the witness provides the principal evidence relied on for a

[712] Judgement, V.4 para. 349.
[713] *See* Ground 31.1–31.2 *supra.*
[714] Judgement, V.4 para. 349.
[715] Judgement, V.2 paras 1228, 1235, 1239.
[716] *Ibid.*, paras 1257, 1259, 1263.
[717] *Ibid.*, para. 1266, Judgement V.4 para. 367.
[718] Judgement, V.4 paras 353–354.
[719] *Ibid.*, para. 359.

conviction.[720] The Majority entirely disregarded the Defence submission that Witness DZ was not credible.[721] It made no express findings on his credibility; it failed to analyse inconsistencies in his evidence. It even relied on matters contained in his statement, disregarding oral evidence and cross-examination on the same matters.[722] Since Witness DZ's evidence was the principal evidence relied on to find that Stojić significantly contributed to the commission of crimes in Mostar, this failure to assess his reliability was an error of law.

289. No reasonable Chamber could have relied on Witness DZ. First, none of the Witness DZ's contemporary reports contain the allegations that he made against Stojić in his statement.[723] [REDACTED].[724] [REDACTED].

290. Second, Witness DZ was obviously biased against Stojić. [REDACTED].[725] [REDACTED]. [REDACTED].[726] [REDACTED].[727] Witness DZ's statement thus distorted the facts to paint a negative picture of Stojić.

291. Third, [REDACTED]. [REDACTED].[728] [REDACTED].[729] [REDACTED].[730] His evidence should therefore be approached with caution.

292. Fourth, [REDACTED].[731] [REDACTED].[732] This [REDACTED] raises serious doubts about the accuracy of his evidence.

293. For the reasons set out above, no reasonable chamber could have concluded that Witness DZ was credible. Since this was the primary evidence relied on against Stojić, the findings that Stojić participated in planning eviction

[720] *Haradinaj* AJ, para. 134.
[721] Stojić Closing Arguments, 15/02/2011, T.52323:1–52325:8.
[722] Judgement, V.4 para. 354.
[723] *See, e.g.*, [REDACTED], which makes no mention of Stojić.
[724] [REDACTED].
[725] [REDACTED].
[726] [REDACTED].
[727] [REDACTED].
[728] [REDACTED].
[729] [REDACTED].
[730] [REDACTED]; [REDACTED].
[731] [REDACTED].
[732] [REDACTED].

operations in West Mostar[733] and that Stojić knew about attacks on international organisations[734] are unsustainable. His conviction should be set aside on Counts 1, 2, 3, 6–11, 15–17, 20, 22, 23–25.

33: The Majority made a number of errors of law and fact in finding that Stojić made a significant contribution to the transfer of the Muslim Population of West Mostar.

33.1 The Majority erred in fact in finding that Stojić received reports concerning the eviction of Muslims and crimes against Muslims in Mostar in June 1993.

294. The Majority found that, by 16 June 1993, international representatives had alerted Stojić to evictions from West Mostar.[735] It found that he received information on occupancy of vacant flats on 2 June 1993,[736] a report from HVO intelligence on 14 June 1993[737] and a report from Vrlić listing families from the Zahum neighbourhood on 5 July 1993.[738] This contributed to the inference that Stojić was actively involved in organising and conducting eviction campaigns.[739]

295. In so finding, the Majority erred in fact and disregarded clearly relevant evidence. The Defence argued that the Prosecution had failed to establish beyond reasonable doubt that P03181 and P02770 were received by Stojić.[740] These submissions were based on the evidence of Božić (which was disregarded), that whenever a document was received at the DoD there was a reception stamp, the document was registered in the intake register and then Stojić would sign the document and write on it who the document should be forwarded to.[741] Neither document is stamped or signed by Stojić.[742] The Chamber elsewhere disregarded documents which lacked signature, stamp and seal.[743] Moreover, the relevant register which would have established whether or not the documents were

[733] Judgement, V.4 paras 354–358.
[734] Judgement, V.2 para. 1266, V.4 paras 359, 362.
[735] Judgement, V.4 para. 350.
[736] *Ibid.*, para. 351; P02608.
[737] *Ibid.*, para. 351; P02770.
[738] Judgement, V.4 para. 352; P03181.
[739] Judgement, V.4 para. 355.
[740] Stojić FTB, para. 482; Stojić Closing Arguments, 16/02/2011, T.52399:17-23.
[741] Sl. Božić, 03/02/2009, T.36246:25–36247:16.
[742] P02770; P03181.
[743] Judgement, V.3 para. 117; *Haradinaj* Retrial Judgement, para. 13.

received was not entered in evidence.[744] In relation to P02770, the fact that only the name "Bruno" is handwritten on the document creates further doubt that it was seen by Stojić. P03181, further, bears the stamp of the MP showing that it was received by the MP.[745] Further, P02608 is irrelevant because Stojić had no role in the distribution of flats which was the responsibility of the municipal HVO.[746] Moreover, P09712 and P03804 do not relate to Stojić at all. No reasonable Chamber could therefore have concluded, beyond reasonable doubt, that these documents were ever seen by Stojić.

296. Whilst it was established that the ECMM visited Stojić on 16 June 1993 and reported evictions to him, no reasonable chamber could have found that the only reasonable inference from this single report was that he "was not only informed of the evictions [...] but was also actively involved in organising and conducting the eviction campaigns" or that any contribution he made was significant.[747]

33.2 The Majority erred in law and/or fact in finding beyond reasonable doubt that Stojić and the HVO authorities did not genuinely intend to punish the crimes against Muslims on the basis of one report in which Stojić said that only criminals were involved in the evictions.

297. The Majority concluded that on 2 June 1993 Stojić informed the HVO of measures taken to prevent thefts in flats[748] and that around 16 June 1993, Stojić told representatives of the international community that evictions were being carried out by criminals.[749] It concluded that Stojić did not genuinely intend to punish crimes against Muslims.[750]

298. No reasonable Chamber could have determined that this was the only reasonable inference. The evidence proved that, on 31 May 1993, the HVO required that "all appropriate measures are taken for the prevention of crimes,

[744] 2D01399 (disregarded by the Majority).
[745] P03181, p.1.
[746] As the Chamber concluded (Judgement, V.2 para. 730–733).
[747] Judgement, V.4 para. 355.
[748] *Ibid.*, para. 422; P02606, p.2.
[749] Judgement, V.4 para. 422.
[750] *Ibid.*, paras 422–423.

especially the looting of private property from apartments".[751] On the same day, Stojić ordered a curfew, mandatory vehicle checks and that persons who could not prove the origin of goods "must be arrested".[752] The Chamber found that this order was issued "in order to combat these thefts".[753] These measures were "fully endorsed" by the HVO.[754] [REDACTED].[755] The Majority disregarded other documents showing the steps taken to combat crime in Mostar.[756] No reasonable Chamber could have concluded that the only reasonable inference was that Stojić did not intend to punish crimes committed against Muslims. Rather, his statement to the ECMM reflects the fact that he had taken steps – as the Chamber itself found – to prevent the crimes. This cannot be consistent with the finding that he did not intend to punish this crime.

33.3 The Majority erred in law and/or fact and/or failed to give a reasoned decision taking into account defence arguments and contrary evidence in inferring from vague statements made in the course of a dinner on 17 July 1993 that Stojić was actively involved in organising and planning eviction campaigns in Mostar and/or that Stojić had knowledge of HVO plans and intentions in Mostar.

299. The Majority found that during a dinner on 17 July 1993, Stojić said that the HVO's objective was to exert maximum pressure on the southern part of the town of Mostar, suggested that the largest possible number of civilians should be evacuated and estimated that the conflict would be "resolved in twenty days".[757] The Majority inferred from this Stojić was actively involved in organising and conducting eviction campaigns.[758]

[751] P02575, pp 1–2 and item 7 (disregarded by the Majority).
[752] P02578, items 1–3.
[753] Judgement, V.4 para. 446; P02578, Preamble.
[754] P02606, item 1.
[755] [REDACTED].
[756] P04111; 2D00854; P06730; P07035.
[757] Judgement, V.4 para. 353.
[758] *Ibid.*, para. 355. 130 275

300. Caution is required when drawing inferences from vague statements.[759] A chamber must consider whether an inference is the only reasonable inference, taking into account the context of the statement.[760]

301. The Majority drew unreasonable inferences from statements attributed to Stojić during the above dinner. First, none of the comments attributed to Stojić relate to eviction operations.[761] [REDACTED],[762] [REDACTED].[763]

302. Second, none of the comments attributed to Stojić reflect the way in which events subsequently unfolded. The conflict in Mostar was not resolved within twenty days. There was no evidence that the HVO actually carried out the operation Stojić described to put pressure on Mostar from the South. Actually, the next military attack occurred more than a month later on 24 August 1993.[764] [REDACTED],[765] [REDACTED].

303. Third, Stojić expressed concern for the civilian population and offered his assistance in evacuating them. His concern is inconsistent with any inference that Stojić was actively involved in conducting eviction campaigns and intended mistreatment. In any event, the Majority failed to address the significant inconsistency between [REDACTED].[766]

304. Fourth, the Majority failed to consider the context. [REDACTED][767] [REDACTED]; it is hardly likely that anything inculpatory would have been said in the course of such a dinner.[768]

305. [REDACTED][769] [REDACTED].[770]

[759] *See* para. 275, *supra*.
[760] *See* para. 275, *supra*.
[761] Judgement, V.4 para. 353.
[762] [REDACTED]; [REDACTED].
[763] [REDACTED]; [REDACTED].
[764] Judgement, V.2 paras 945–972.
[765] [REDACTED]; [REDACTED].
[766] [REDACTED]; *contra* [REDACTED].
[767] [REDACTED].
[768] *Krstić* AJ, para. 87.
[769] [REDACTED].
[770] [REDACTED].

306. For all the reasons set out above, no reasonable chamber could have concluded that the only reasonable inference from statements made on 17 July 1993 was that Stojić was actively involved in organising and conducting the eviction campaigns.

33.4 The Majority erred in law and/or fact in relying on uncorroborated hearsay evidence in support of a finding that Stojić was actively involved in organizing and conducting the eviction campaigns in Mostar.

307. In finding that Stojić was actively involved in organising and conducting eviction campaigns, the Majority relied on evidence that "Pogarčić told Witness DZ that Stojić was in charge of implementing the plan to cleanse the town of Mostar" and "Witness DZ also heard HVO members say that Stojić had ordered that people be evicted from their homes and their houses burned".[771]

308. Whilst hearsay is admissible, its weight or probative value is less than that accorded to the sworn testimony of a witness who has been cross-examined.[772] In assessing weight, a chamber must consider whether the evidence was first-hand hearsay or more removed.[773] The Chamber itself indicated that it generally gave consideration to hearsay "only insofar as it was corroborated" and decided "not to rely on evidence that could be characterised as hearsay whose source was unknown".[774]

309. The Majority erred in law in attaching any weight to the above statements. First, they were uncorroborated. There was no other evidence that Stojić was in charge of implementing a plan to cleanse Mostar or that Stojić ordered that people be evicted from their homes and their houses burned. [REDACTED].[775] [REDACTED].

[771] Judgement, V.4 para. 354.
[772] Decision on Prosecution Evidence Admissibility Appeal (*Aleksovski*), para. 15 (cited with approval in Decision on Admissibility of Investigator's Evidence (*S. Milošević*), para. 18).
[773] Decision on Prosecution Evidence Admissibility Appeal (*Aleksovski*), para. 15.
[774] Judgement, V.1 para. 404 (relying on *Krajišnik* TJ, para. 1190).
[775] [REDACTED].

310. [REDACTED]. [REDACTED][776] [REDACTED].[777] [REDACTED].

311. For all the reasons set out above, no reasonable chamber could have concluded from the hearsay evidence reported by Witness DZ that Stojić was actively involved in the eviction campaigns.

33.5 The Majority erred in law and/or fact in finding beyond reasonable doubt that Stojić intended to have the mistreatment linked to the eviction campaigns committed.

312. In a further chain of inferences, the Majority inferred that Stojić intended to have mistreatment committed based on its earlier inferences that Stojić participated in planning the eviction operations and that the acts of violence were part of a preconceived plan.[778]

313. No reasonable Chamber could have concluded that this was the only reasonable inference on the evidence. There was no evidence that Stojić intended acts of violence. No evidence was cited in support of paragraphs 356–357. Moreover, the above evidence that Stojić expressed concern about civilians and sought the evacuation of children, was inconsistent with the conclusion that he intended them to be mistreated.

314. For all the reasons set out in Ground 33, the Majority erred in law and fact in finding that Stojić was actively involved in organising and conducting the eviction operations in West Mostar in June 1993. These errors invalidate the Judgement and occasion a miscarriage of justice because they form the basis for the finding that Stojić significantly contributed to and intended the commission of crimes in West Mostar in June 1993. His conviction should therefore be set aside on Counts, 1, 2, 3, 6–11, 15–17, 20, 22 and 23.

[776] [REDACTED]; *see also* [REDACTED].
[777] [REDACTED].
[778] Judgement, V.4 para. 357.

34: The Majority made a number of errors of law and fact in finding that Stojić made a significant contribution to the siege of East Mostar.

34.1 The Majority erred in law and/or fact and/or failed to give a reasoned decision in concluding that Stojić knew about and accepted the harsh living conditions of the population in East Mostar, in particular without considering the steps taken by the Health Sector to provide aid to that population.

315. The Majority found that Stojić knew about shortages of food, water, electricity and medical equipment in East Mostar from a report dated 21 August 1993.[779] It inferred from statements made in the course of a dinner on 17 July 1993 that the HVO plan was necessarily directed against the civilian population.[780] It concluded from his continuation in office that he accepted the crimes directly linked to HVO military operations against East Mostar.[781]

316. No reasonable Chamber could have drawn these conclusions from the evidence. First, the Majority's conclusion entirely disregards clearly relevant evidence and submissions demonstrating that extensive medical aid was supplied by DoD to Muslim civilians and even to the ABiH in Mostar.[782] It disregarded the evidence of Bagarić entirely.[783] This evidence showed, for instance, that on 3 June 1993, the HVO offered immediate and unconditional help including the supply of medicine and medical material for East Mostar[784] [REDACTED].[785] [REDACTED].[786] The HVO also offered "that [the ABiH] send [their] wounded to the HVO war hospitals where they will have completely identical treatment as [the HVO] soldiers",[787] [REDACTED][788] and to treat all civilians in the same way as its own sick and wounded.[789] Muslim children were evacuated for

[779] P04403.
[780] Judgement, V.4 paras 361–362.
[781] *Ibid.*, para. 363.
[782] *See* n.92, *supra*; its conclusion is inconsistent with Judgement, V.2 para. 1243.
[783] Bagarić, 20/04/2009, T.38880:12–15, T.38937:7–16, T.38946:16–17, T.38947:25–38948:13, T.38962:1–17.
[784] 2D00119.
[785] [REDACTED].
[786] van der Grinten, 11/07/2007, T.21164:18–20; 2D00504; 2D00321; [REDACTED].
[787] 2D00123.
[788] [REDACTED].
[789] 2D00455.

medical treatment.[790] Significant numbers of Muslim civilians were transported to Croatia for treatment.[791] This evidence proved that DoD, far from accepting harsh living conditions, took steps to supply medicine and medical equipment.

317. Further, the Majority erred in finding that Stojić accepted shortages of food and water, without finding that Stojić had the power to improve the situation. There was no evidence that Stojić had control over the food and water supply. Insofar as they were within HVO control, the HVO "attempted to manage the problem of water and electricity supplies in Mostar",[792] which cannot be consistent with the finding that Stojić accepted the harsh conditions.

318. Further, the Majority drew unreasonable inferences from the informal dinner on 17 July 1993. As set out above,[793] no plan referred to by Stojić at that meeting actually materialised.

319. For all the reasons set out above, no reasonable chamber could have found that Stojić accepted the harsh living conditions in East Mostar during the relevant period.

34.2 The Majority erred in law and/or in fact in finding beyond reasonable doubt and in the absence of evidence that Stojić knew about attacks on international organisations in Mostar.

320. The Majority found that Stojić knew about attacks on international organisations in Mostar based on the evidence of Witness DZ,[794] evidence of his involvement in the investigation of the death of a SpaBat officer[795] and the flawed finding that Stojić controlled all HVO snipers.[796] No reasonable Chamber could have reached these conclusions.

[790] 3D00615.
[791] 3D01034.
[792] Judgement, V.2 para. 1218.
[793] *See* para. 302, *supra*.
[794] Judgement, V.2 para. 1266, V.4 para. 359.
[795] Judgement, V.4 paras 364–365.
[796] *Ibid.*, para. 369.

321. No reasonable Chamber could have found that Stojić was in control of all the HVO snipers in Mostar.[797] In addition to his general unreliability,[798] no reasonable chamber could have relied on Witness DZ's specific evidence that Stojić was notified that international organisations were targeted. [REDACTED];[799] [REDACTED].[800] In relation to the death of a SpaBat lieutenant, the HVO investigation[801] found, based on inaccurate information provided by SpaBat,[802] that the HVO were not responsible.[803] There was therefore no evidential basis for the conclusion that Stojić knew about attacks by HVO on international organisations.

34.3 The Majority erred in law and/or fact in finding that all the HVO snipers in West Mostar were controlled by Stojić, which finding went beyond the allegations laid against Stojić in the Indictment.

322. The Majority found that Stojić told Antoon van der Grinten that the snipers in two specific locations were under his control.[804] From this the Majority inferred that all the snipers in West Mostar were under his control.[805]

323. In finding that Stojić stated that the snipers were under his personal control, the Majority made a pure error of fact. Whilst van der Grinten initially said in evidence that "he [Stojić] had all snipers under control",[806] he later clarified that he meant "under HVO control".[807] [REDACTED];[808] [REDACTED]. This is consistent with the limits of Stojić's powers since he was not in the military chain of command;[809] the effect of the Majority's erroneous finding is that snipers were the only members of the armed forces under Stojić's

[797] *See* Ground 34.3, *infra*.
[798] *See* Ground 32, *supra*.
[799] [REDACTED].
[800] [REDACTED]; [REDACTED].
[801] 2D00117.
[802] Judgement, V.4 paras 364, 369.
[803] 2D00116.
[804] Judgement, V.4 para. 365.
[805] *Ibid.*, para. 368.
[806] van der Grinten, 10/07/2007, T.21050:7–10.
[807] van der Grinten, 10/07/2007, T.21051:1–5.
[808] [REDACTED].
[809] Judgement, V.1 paras 565, 708, 796.

personal control. It follows that the inference that Stojić controlled all the snipers in Mostar cannot be sustained.

34.4 The Majority erred in law and/or fact in finding that Stojić must have known that HVO snipers were targeting civilians and members of international organisations in Mostar.

324. The Majority's finding that Stojić must have known that HVO snipers were targeting civilians and international organisations in Mostar is based on the earlier unreasonable finding that the Stojić controlled all of the snipers in Mostar.[810] Hence this finding is also unsustainable.

34.5 The Majority erred in law and/or fact in finding that Stojić had the power to grant access to East Mostar to international organisations but instead facilitated the hindering of access to humanitarian aid.

325. The Majority found that Stojić was one of the people with power to grant access to East Mostar to international organisations and that he justified blocking their passage by security considerations which the international organisations rejected.[811]

326. The Majority failed to sufficiently explain this conclusion. It cited no evidence in support, thereby failing to identify the evidence that it relied on to establish Stojić's responsibility and preventing him from effectively appealing its decision.

327. Nevertheless, the finding that Stojić had power to grant access to Mostar seems to be based on a single document, [REDACTED].[812] [REDACTED]. [REDACTED]. [REDACTED]. [REDACTED]. The convoy was not discussed at subsequent HVO meetings [813] and Prlić remained responsible for it.[814]

[810] Judgement, V.4 para. 369.
[811] *Ibid.*, para. 372.
[812] [REDACTED].
[813] 2D01272; P04008; P04111; P04220; P04275.
[814] [REDACTED]; P04358; Judgement, V.4 paras 184–185.

328. Further, in referring only to one paragraph of the Defence submissions on this issue,[815] the Majority disregarded clearly relevant evidence and submissions that matters relating to the access of humanitarian organisations were ordinarily addressed by [REDACTED],[816] ODPR or Main Staff.[817] Had this evidence been taken into account, no reasonable chamber could have determined that Stojić had the power to grant access to Mostar.

329. Finally, the Majority erred in finding that international representatives refuted security justifications for refusing access to Mostar. This finding is based solely on the evidence of Nissen.[818] Nissen did not reject the security justifications; his evidence was that "I think in diplomatic terms that [the refusal of access for security reasons] was correct".[819] Nissen thus agreed with the refusal of access for security reasons.

330. For all the reasons set out above, no reasonable chamber could have found that Stojić facilitated the hindering of humanitarian access to Mostar or that his contribution in this regard was significant.

331. For all the reasons set out in Ground 34, the Majority made numerous errors of law and fact in relation to Stojić's role in East Mostar. Individually or cumulatively, these errors occasion a miscarriage of justice or invalidate the Judgement because they entirely undermine the finding that Stojić significantly contributed to the commission of crimes in East Mostar. The Appeals Chamber should therefore overturn the conviction on Counts 1, 2, 3, 15, 16, 17, 20, 21, 24 and 25.

35: The Majority made a number of errors of law and fact in finding that Stojić made a significant contribution to the commission of crimes in Čapljina.

35.1 The Majority erred in law and/or fact in finding that Stojić was aware of and facilitated the detention of men who did not belong to any armed force based solely

[815] Stojić FTB, paras 447–459. The Majority only referred to para. 447 (Judgement, V.4 para. 371).
[816] Stojić FTB, para. 451; [REDACTED]; [REDACTED]; [REDACTED]; P04358.
[817] Stojić FTB, para. 452; Raguz, 26/08/2008, T.31353:24–31354:18; P03895; P05138.
[818] Judgement, V.2 para. 1236.
[819] Nissen, 25/06/2007, T.20456:23–20457:4.

upon document 4D00461, without giving a reasoned decision about the reliability and/or authenticity of this document.

332. The Majority found that Stojić knew of and facilitated the detention of civilians[820] because he issued an order on 3 July 1993 transferring responsibility for the men from the 1st Knez Domagoj Brigade to the local HVO.[821] That finding is solely based on 4D00461.[822]

333. Having admitted 4D00461 into evidence in circumstances where the Defence challenged its authenticity,[823] the Chamber was required to give a reasoned assessment of the weight attached to it in light of the trial record as a whole.[824] Authenticity and proof of authorship are vital to such an assessment.[825] The Chamber erred in law by failing properly to assess the weight to be attached to 4D00461.

334. First, the Chamber failed to give a reasoned assessment of the weight to be attached to 4D00461. Instead it relied on its earlier assessment that the document was sufficiently reliable "for admission into evidence".[826] In so doing it confused the interim assessment of admissibility, with the weight to be attached to a document in the final analysis. It should have considered afresh whether any weight should be attached to the document in light of submissions and the trial record.

335. Second, though it identified three relevant Defence submissions,[827] the Chamber disregarded further submissions that the original document was not provided, the chain of custody of the document was not evidenced and it did not

[820] Judgement, V.4 para. 375.
[821] *Ibid.*, para. 373.
[822] Judgement, V.2 para. 2081; 4D00461.
[823] Stojić FTB, paras 545–546.
[824] Decision on Defence Motion for Exclusion (*Halilović*).
[825] Decision on Prosecution Motion on Admissibility of Evidence (*Čelebići*), para. 20.
[826] Judgement, V.2 para. 2081, n. 5087.
[827] *Ibid.*

appear in the DoD's logbooks.[828] Had the Chamber considered all of the Defence submissions, it could only have concluded that the document was unreliable.

336. Third, the Chamber gave insufficient reasons for relying on 4D00461. It held that "the document was shown to Witness CG, who confirmed that the Muslim men had been detained".[829] That a witness confirmed the general proposition that Muslim men were detained cannot establish that an Order from a specific individual relating to the arrangements for those men was authentic. On authenticity, Witness CG could not assist[830] and no other witness testified to 4D00461's authenticity. The Chamber also held that 4D00461 was "similar to other Orders"[831] admitted, without explaining on what basis the Orders were similar and without considering that no other Orders by Stojić relating to Čapljina were admitted.

337. Fourth, the Chamber failed to assess the document in light of the whole trial record. Had it done so, it would have noted that, contrary to the purported Order, the Knez Domagoj Brigade continued to be in charge of the detainees in Čapljina.[832] Either the Order was ignored or it is not authentic. Further, the Order relates to a matter outside Stojić's responsibilities; he was not a member of the working group concerned with these individuals[833] and the relevant detention centres were solely controlled by Tomo Sakota.[834] There was therefore no reason for Stojić to issue the alleged order.

338. Finally, 4D00461 was the only evidence relied upon to link Stojić with orders related to these detentions. In those circumstances, its reliability should have been scrutinised with particular vigour. The Chamber failed to do this. For all the above reasons, the Chamber erred in law in attaching any weight to 4D00461. This error invalidates the decision because it was the only document

[828] Stojić FTB, paras 545–547.
[829] Judgement, V.2 para. 2081, n. 5087.
[830] Witness CG, 28/11/2006, T.10843–10844.
[831] Judgement, V.2 para. 2081, n. 5087.
[832] P03197; P03216; P03442; P03462; P03731; P04079; P04941.
[833] P03573, item 2, conclusion 2.
[834] P05133; P07341.

relied on to establish that Stojić facilitated the detention of civilians in Čapljina and as such, this finding should be overturned.

339. In any event, 4D00461 was not followed.[835] Since 4D00461 had no causal effect on the detentions, it was an error of law to conclude that Stojić thereby facilitated or significantly contributed to the commission of crimes even if it is authentic.

35.2 The Majority erred in law and/or fact and/or failed to give a reasoned decision in concluding that Stojić was informed of evictions and the manner in which they were carried out in Čapljina on the basis of evidence that "he himself contributed to planning the evictions following the same plan as in West Mostar" when there was no evidence that Stojić participated in planning the evictions in Čapljina.

340. The Majority found that "since he [Stojić] himself contributed to planning the evictions following the same plan as in West Mostar, it can only find that he was also informed about the evictions in Čapljina and the manner in which they were carried out".[836]

341. Contrary to the right to receive a reasoned decision,[837] this finding is ambiguous. It could either mean that Stojić planned the evictions in Čapljina which followed the same plan as those in West Mostar, or that since Stojić planned the evictions in West Mostar and the evictions in Čapljina were similar, he must also have been informed of the evictions in Čapljina. This ambiguity is an error of law which violates the right to a reasoned decision.

342. Neither explanation withstands scrutiny. There was no evidence that Stojić participated in planning evictions in Čapljina.[838] Further, the Majority later found that Stojić was only informed of operations in Čapljina after they happened[839] which is inconsistent with any finding that he participated in planning them. Moreover, no reasonable chamber could have found that the only

[835] Judgement, V.2 para. 2081.
[836] Judgement, V.4 para. 378.
[837] ICTY Statute, art. 23.
[838] None is cited in paragraphs 373–378 of Judgement, Vol. 4.
[839] Judgement, V.4 para. 448.

reasonable inference from an earlier finding that Stojić participated in planning the evictions in West Mostar was that he was also informed about the operations in Čapljina. Participation in planning one specific operation cannot support a finding that an individual was informed about an entirely separate operation in a different locality at a different time.

35.3 The Majority erred in fact in inferring that Stojić was informed about the evictions in Čapljina and the manner in which they were carried out, from the minutes of the 47th HVO session on 20 July 1993 which in fact established that reports of expulsions were untrue.

343. The Majority relied on the minutes of the 47th HVO session as evidence that Stojić knew about the allegations of the evictions of the Muslim population from Čapljina[840] and this formed part of the basis for finding that he was informed about the evictions and the manner in which they were carried out.[841]

344. No reasonable Chamber could have come to this conclusion. The 47th HVO session concluded that allegations of expulsions "were not true".[842] No reasonable Chamber could have concluded that Stojić was informed of the evictions and the manner in which they were carried out, from the minutes of a meeting which actually determined that the reports of expulsions were not true.

345. For all the reasons set out above, the Majority's findings in respect of Čapljina are based on an inauthentic document which it erred in relying upon, an ambiguous and unreasonable finding about evictions in West Mostar and an unreasonable construction of the minutes of the 47th HVO session. Taken together these errors invalidate the decision and/or cause a miscarriage of justice, because they take away the foundation for the finding that Stojić significantly contributed to the commission of crimes in Čapljina and intended to have Muslim property destroyed. The Appeals Chamber should overturn this unsound finding and overturn his conviction on Counts 1, 6–11, 19–21.

[840] *Ibid.*, paras 376–377.
[841] *Ibid.*, para. 378.
[842] P03573, item 2.

36: The Majority made a number of errors of law and fact in finding that Stojić made a significant contribution to the commission of crimes in Vareš.

36.1 The Majority erred in law and/or fact in inferring that Stojić knew that crimes had been committed in the municipality of Vareš in the absence of any supporting evidence and in circumstances where it was not the only reasonable inference on the evidence and therefore erred in finding that Stojić accepted those crimes.

346. The Majority inferred Stojić's knowledge of the death of Muslims and of the destruction of their property from the fact that Prlić, Boban, Petković and Praljak knew of the crimes, he was in charge of the armed forces and facilitated HVO operations in the area.[843]

347. No reasonable Trial Chamber could have found that the only reasonable inference was that Stojić knew of the death of Muslims and of the destruction of their property. First, there was no evidence that any report of the crimes was sent to him, or circulated widely within the DoD. Stojić did not attend the critical meeting on 4 November 1993 at which the crimes were discussed.[844] No witness testified that Stojić was aware of the crimes. There was thus no evidential basis for the inference, unless by virtue of his official role a reasonable Chamber could assume, without evidence, that he had knowledge of each and every crime committed by the armed forces.[845]

348. Moreover, based on this unsound inference, the Majority inferred that Stojić accepted the crimes by continuing in office and obtaining the promotion of Rajić. But Stojić did not continue in office. By 10 November 1993, he had been appointed to a different post.[846] Further, he did not obtain the promotion of Rajić *after* allegedly learning of his crimes.[847] Therefore, even if it is found that Stojić knew of the crimes committed in Vareš, there is no basis for finding that he accepted them.

[843] Judgement, V.4 para. 383. The latter finding is an error of fact addressed in Ground 36.2, *infra*.
[844] P06454.
[845] The Majority, rightly, generally required knowledge to be established by receipt of specific reports (*see, e.g.*, Judgement, V.4 paras 339–341, 376, 390–392).
[846] Judgement, V.4 para. 1227.
[847] *See* para. 354, *infra*.

36.2 The Majority erred in fact in finding that Stojić facilitated HVO military operations in Vareš in October 1993 from documents dated 29 to 31 October 1993 relating to the movement of troops along the Berkovići-Konjic route, which was in a geographically different direction from Vareš, and which date from after the attack on Stupni Do which occurred on 23 October 1993.

349. The Majority found that Stojić facilitated operations in Vareš based on communications passing between Stojić and Rajić, which it entirely misunderstood. The documents establish that: on 29 October 1993, Rajić asked Stojić to *establish* contact with Mr. Kovačević in relation to the movement of men both to and from Vareš.[848] On 30 October 1993, Stojić contacted Rajić with instructions in relation to the movement of a convoy "along the Berkovići-Nevesinje-Borci-Konjic route".[849] It cannot be assumed this was a response to the earlier communication, because in it Stojić asked Rajić to "issue the approval" and asked for the document to be sent "at once to Minister Kovačević via courier", whereas in the earlier document Rajić had asked Stojić to contact Kovačević. On 31 October 1993, Rajić confirmed that he had been in contact with VRS and realization of the agreement "was underway".[850]

350. No reasonable Chamber could have linked those documents to the crimes in Vareš. First, the Berkovići-Konjic route is unrelated to Vareš. [REDACTED].[851] Vareš is 100km away from Konjic.[852] No reasonable Chamber could have linked this movement of troops to the crimes in Vareš.

351. Second, the Chamber found that the HVO attacked Vareš and Stupni Do on 23 October 1993.[853] The attack had ended by 26 October 1993, when the UNPROFOR Norwegian Battalion ("NorBat") members entered Stupni Do.[854] The above communications cannot support the finding that Stojić facilitated the military operations in Vareš, since they post-date the military operations.

[848] P06219.
[849] P06267.
[850] P06307.
[851] [REDACTED]; Jurić, 27/04/2009, T.39331:24–39332:7.
[852] *See* P09276.
[853] Judgement, V.3 paras 333–404, 417.
[854] *Ibid.*, para. 466.

352. Third, the evidence clearly established that the military operations in Vareš were facilitated by the usual military chain of command. Relevant orders passed through Main Staff from Petković to Ivica Rajić,[855] Praljak to the HVO forces[856] and to and from Rajić.[857] None of those documents mention Stojić. Thus the usual military chain of command – which did not include Stojić[858] – operated in the municipality. This evidence left no gap which the Majority needed to fill by inferring Stojić's facilitation of military operation in Vareš from subsequent unrelated communications.

353. For all the reasons set out above, no reasonable chamber could have drawn the conclusion that Stojić facilitated operations in Vareš from the above communications with Rajić.

36.3 The Majority erred in fact in finding that Stojić requested and obtained the promotion of Ivica Rajić on 1 November 1993 despite knowing that crimes had been committed by Ivica Rajić and men under his command, without establishing that Stojić was aware of those crimes prior to requesting Rajić's promotion.

354. The Majority found that Stojić accepted the crimes committed in Vareš by obtaining the promotion of Rajic.[859] No reasonable Chamber could have made this finding. On 1 November 1993, Stojić requested the promotion of Rajić.[860] But the Majority found that Stojić knew of the commission of crimes "*as of 4 November 1993*".[861] Thus, the Majority's own finding was that the promotion was requested before Stojić knew that any crime had been committed. This cannot be consistent with the finding that he approved of or accepted the crimes, because the Majority did not establish that Stojić knew about the crimes before requesting the promotion.[862]

[855] *Ibid.*, paras 313–316.
[856] *Ibid.*, paras 318–326.
[857] *Ibid.*, paras 329–330.
[858] Judgement, V.4 para. 306.
[859] *Ibid.*, para. 383.
[860] *Ibid.*, para. 381; P06328.
[861] Judgement, V.4 para. 383 (*emphasis added*).
[862] *Ibid.*, paras 381, 383.

355. For all the reasons set out above, no reasonable chamber could have found that Stojić facilitated or accepted the crimes committed in Vareš. Nor did the evidence establish that he made a significant contribution to them. These errors occasioned a miscarriage of justice because they formed the basis for the conviction of Stojić on Counts 1–3 and 19–20.

37: The Majority made a number of errors of law and fact in finding that Stojić made a significant contribution to crimes committed in detention centres.

37.1 The Majority erred in law and/or in fact and/or failed to give a reasoned decision taking into account contrary evidence and defence arguments in finding that Stojić was responsible for the detention centres at Heliodrom, Dretelj and Gabela and/or had the *de facto* or *de jure* power to do anything to improve the conditions at those detention centres.

356. The Majority found that Stojić was responsible for Dretelj and Gabela because they were within the remit of the South-East OZ, combat-aged Muslim men were detained there[863] and a meeting on 2 September 1993 required reports on them to be submitted to Stojić.[864] By contrast, the Majority made no express finding that the Heliodrom lay within Stojić's responsibilities but held that Stojić made a significant contribution to crimes committed there because, having received reports about the detention conditions, he took no measures to rectify them.[865] These findings are unreasonable and inconsistent with earlier factual findings and the approach taken regarding other detention centres.

357. First, the Majority erred in law in finding that Stojić failed to rectify the conditions at the Heliodrom without making an unequivocal preliminary finding that he had the power to do so. No express finding that Stojić was responsible for the Heliodrom was made either in the factual findings regarding the Heliodrom[866] or those on Stojić's responsibility.[867] Moreover, the Majority's approach is inconsistent with its findings related to other detention centres. Having made no

[863] Judgement, V.4 para. 397.
[864] *Ibid.*, para. 398.
[865] *Ibid.*, para. 395.
[866] Judgement, V.2 paras 1379–1663.
[867] Judgement, V.4 paras 388–395.

factual finding that Stojić was responsible for the detention centres at Vojno, Ljubuski or Vitina-Otak,[868] the Majority made no further findings that Stojić failed to rectify conditions at those detention centres. In the absence of a reasoned finding that Stojić was responsible for the Heliodrom, there is no basis for finding that he failed to improve conditions there.

358. Second, no reasonable chamber could have found that Stojić was responsible for conditions at the Heliodrom. In its factual findings, the Chamber found that: it was not established that Stojić had any role in the establishment of the Heliodrom;[869] Stojić formalised the appointment of Mile Pušić as the warden of Heliodrom which was ordered by Ćorić;[870] and logistics, access to the prison and the release of detainees were controlled by the military chain of command,[871] which did not include Stojić.[872] Fundamentally, there is no evidence (nor any cited) that Stojić issued any orders to the wardens of the Heliodrom or had any involvement in its daily operations. In the circumstances, the Chamber's factual findings fail to provide any foundation for a finding that Stojić could have improved conditions at the Heliodrom.

359. The Majority further erred in failing to articulate a basis for finding that Stojić was responsible for any detained civilians. The DoD bore no responsibility for any detained civilians: general instructions issued by Stojić refer only to "prisoners of war and military detainees",[873] and evidence clearly establishes that civilians were either under the responsibility of ODPR[874] (which was not part of DoD)[875] or the DoJA.[876] Contrary to the Majority's conclusions, documents P04841 and P05104 did not place additional responsibilities on DoD.[877] The meeting on 6 September 1993, of which P04841 provides minutes, expressly required ODPR to improve conditions concerning accommodation and diet.[878]

[868] Judgement, V.2 paras 1675–1686, 1789–1799, 1852–1857.
[869] Judgement, V.2 para. 1395.
[870] P00452, p.1; P00352, pp 12–13.
[871] Judgement, V.2 paras 1416, 1428, 1445–1456.
[872] Judgement, V.4 para. 306, V.1 paras 595, 708, 791, 795–796.
[873] P03995.
[874] 1D01666, p.1; 5D01004.
[875] Judgement, V.1 para. 631.
[876] *See* 4D01105: SFRJ Law on Criminal Proceedings, art. 205; P02925; P02915.
[877] Judgement, V.4 para. 385.
[878] P04841, p.3, conclusion 3.

Whilst other conclusions were apparently directed to DoD, after the meeting Boban issued P05104 which, although copied to DoD, only contained action items for Main Staff to process through its own chain of command,[879] which indeed Main Staff did.[880] There was therefore no basis for finding that Stojić was responsible for detained civilians. Similarly, when HVO Muslims were later detained at the Heliodrom, the order for their detention was issued by Petković[881] and passed through the military chain of command.[882] There is no evidence of Stojić's involvement at any stage of this process and no reasonable chamber could therefore have found that he bore any responsibility.

360. The only evidence cited to connect Stojić with the Heliodrom was that he was one – of several – recipients of reports about detention conditions. Most were not received by Stojić.[883] Regarding the remaining document, mere receipt of one report from the Health Sector about security and medical care at the Heliodrom[884] does not establish that Stojić was responsible for those matters, especially since the Chamber found expressly that he was not responsible for medical care or security at the Heliodrom.[885] Rather, the report was created following Boban's order to Main Staff that detention conditions should be improved[886] and was sent to Boban, Main Staff, the warden of the Heliodrom and the 3rd Brigade Medical Service, who were actually responsible for conditions at the Heliodrom.

361. Third, the finding that Stojić was responsible for the detention centres at Dretelj and Gabela is manifestly inconsistent with earlier factual findings. The Chamber made no finding that Stojić had any powers or responsibilities regarding either detention centre.[887] Thus no finding was made that Stojić was involved in the establishment of Dretelj or Gabela.[888] Stojić did not appoint the

[879] P05104, Item 7.
[880] *See, e.g.*, P05199; P05188.
[881] P03019; P04745.
[882] P03151; P03300; P03234; P05581; P05621.
[883] *see* Ground 37.2 *infra*.
[884] P05503.
[885] Judgement, V.2 paras 1408, 1460.
[886] P05104, item 3.
[887] Judgement, V.3 paras 1–274.
[888] *Ibid.*, paras 16, 156–157.

warden of either institution: the warden of Dretelj was appointed by Boban,[889] the warden of Gabela by Prlić.[890] Moreover, the Chamber found that the detention conditions at both Dretelj and Gabela – including the supply of food, water and healthcare, the release of detainees and their security – were wholly and exclusively controlled by Colonel Obradović.[891] These extensive factual findings are manifestly inconsistent with the conclusion that Stojić bore any responsibility for the detention centres at Dretelj and Gabela.

362. Fourth, the conclusion that Stojić was responsible for Dretelj and Gabela because they fell "within the remit" of the South-East OZ and because reports on conditions there were ordered to be submitted to him at a meeting on 2 September 1993 is unreasonable.[892] Main Staff created and commanded four operating zones, including the South-East OZ.[893] It was thus part of the classic military chain of command, which Stojić was not.[894] Contrary to the Majority's conclusion, that Dretelj and Gabela fell within the remit of the South-East OZ actually demonstrates that Stojić was not responsible for them.

363. Moreover, the Majority erred in its assessment of the 2 September 1993 meeting. It noted that at that meeting, Stojić stated that he did not consider Dretelj and Gabela to be military facilities and "refused to personally endorse the work of these institutions".[895] In dismissing the accuracy of this statement,[896] the Majority failed to consider that it was not challenged by anyone present at the meeting – including the Deputy Head of Main Staff. The fact that his statement went unchallenged, evidenced its truth.

364. The Majority further entirely disregarded other evidence which supported Stojić's statement that these were not military facilities. [REDACTED].[897] It disregarded evidence that Dretelj was a municipal prison within the remit of

[889] Judgement, V.3 para. 16; P07341; P05133.
[890] Judgement, V.3 para. 156.
[891] Judgement V.3 paras 25–35, 169–192; *see further* 5D01064; P03462; P03197; P03161.
[892] Judgement, V.4 para. 397.
[893] Judgement, V.1 paras 747, 755, 781.
[894] Judgement, V.4 para. 306, V.1 paras 595, 708, 791, 795–796.
[895] P04756, p.4.
[896] Judgement, V.4 para. 397.
[897] *Ibid.*, para. 403; [REDACTED].

Čapljina municipality[898] and that DoD needed to request authorisation in order to visit.[899] It disregarded the fact that no representatives of DoD were assigned to the working group which was established on 29 July 1993 to find places to take Dretelj and Gabela detainees;[900] the working group consisted of Prlić, Zoran Buntić (DoJA) and Martin Raguz (ODPR).[901] No reasonable chamber could therefore have found that Stojić was responsible for Dretelj and Gabela.

365. Further, the Majority considered that Stojić was in control because reports on the detention centres were supposed to be submitted to him by 8 September 1993.[902] However, it disregarded the fact that the actual reports were sent not to Stojić, but by Main Staff directly to Boban.[903] Given that the critical reports were not actually sent to Stojić, no reasonable chamber could have found that they established that he was responsible for the detention centres.

366. Fifth, the Majority erred in inferring that Stojić was responsible for conditions at the detention centres from measures which were promulgated to improve conditions.[904] Regrettably, these measures were ineffective.[905] There was no evidence that the rules which Stojić issued in February 1993 (before any prisoners of war were detained) were ever followed.[906] Indeed, it is clear that the Heliodrom was operated according to different rules issued by Ćorić in September 1993.[907] Further, in August 1993, Stojić attempted to form a Commission for HVO prisons and detention centres with the intention of improving conditions.[908] However, the Chamber found no evidence that the Commission carried out its functions.[909] Indeed, in the following months, "nothing had been done" at Gabela[910] and Josip Praljak testified that the

[898] Buntić, 10/07/2008, T.30578:5–6, T.30580:23–25.
[899] P05133.
[900] Judgement, V.4 para. 401.
[901] P03573, item 2.
[902] Judgement, V.4 para. 398.
[903] 2D00926 (attaching P05222, P05225); Sl. Božić, 03/02/2009, T.36283:3–36284:3.
[904] Judgement, V.4 paras 384–386, 395, 407.
[905] Judgement, V.4 paras 407.
[906] Judgement, V.4 para. 386; P01474.
[907] Judgement, V.2 paras 1407, 1415, 1458; P00352 p.14.
[908] P03995.
[909] Judgement, V.1 para. 625.
[910] Judgement, V.3 para. 202.

Commission never met and its only identified decision was not implemented.[911] Similarly, on several occasions the Health Sector of the DoD requested improvements in detention conditions.[912] There was no evidence that the Health Sector had the *de jure* power to order such improvements[913] and their requests were not implemented in practice.[914] That these efforts by the DoD did not lead to an improvement in conditions, does not render it the only reasonable inference that Stojić accepted poor conditions or was responsible for them. The alternative and more plausible inference is that although Stojić and others attempted to improve conditions, they were not responsible for the detention centres and lacked the power to improve conditions.

367. These errors invalidate the Judgement and occasion a miscarriage of justice, because before finding that Stojić failed to improve conditions at the Heliodrom, Dretelj and Gabela, it was necessary to find that Stojić had the power to improve the conditions in those facilities. No such finding was made in respect of the Heliodrom. Moreover no reasonable chamber could have found on the evidence and consistent with earlier factual findings that Stojić was responsible for the Heliodrom, Dretelj or Gabela. Any finding that Stojić significantly contributed to the crimes at the detention centres therefore falls away and the Appeals Chamber should overturn his conviction on Counts 1–3 and 10–18.

37.2 The Majority erred in law and/or fact in finding beyond reasonable doubt that Stojić was aware of the conditions at the Heliodrom given there was no evidence that he actually received any of the cited reports.

368. The Majority found that Stojić knew about conditions at the Heliodrom from a series of letters and reports addressed to him.[915] This was an error of law and fact, because the Majority did not establish beyond reasonable doubt that any of these reports were actually received by Stojić. Documents received by the DoD were marked with a receipt stamp, recorded in an intake register and signed

[911] J. Praljak, 27/02/2007, T.14779.25–14780.7, T.14781.20–14782.6; P04002; P04141.
[912] P04145; 2D00412; P05503.
[913] Judgement, V.1 para. 619.
[914] Judgement, V.4 para. 405; 2D02000, para. 70; 2D00717.
[915] Judgement, V.4 paras 388–392.

by Stojić.[916] None of the documents bear the relevant stamp to confirm that they were received by the DoD.[917] None is signed by Stojić. The relevant register which would have established whether or not the documents were received was not entered in evidence.[918] Moreover, Stanko Božić, the author of several of the reports, did not give evidence.[919] There was therefore no evidence to establish beyond reasonable doubt that they were ever received or read by Stojić.[920] Further, the fact that Stojić did not go to the Heliodrom[921] gives a further indication that he was unaware of the conditions there.

369. This error occasioned a miscarriage of justice, because the finding that Stojić failed to improve conditions at the Heliodrom is necessarily contingent on finding that he knew the conditions needed to be improved. The Appeals Chamber should set aside his conviction on Counts 1–3 and 10–18.

38: Withdrawn.

39: The Majority erred in law and/or fact in finding that Stojić refused to punish members of the ATG or KB which was inconsistent with the Trial Chamber's earlier finding that there was no evidence that Stojić exercised command authority over these units and therefore erred in finding that Stojić accepted the crimes of sexual abuse committed by those units.

370. The Majority found that Stojić was informed that members of the *Vinko Škrobo* ATG had raped civilians during eviction operations in West Mostar[922] and that Stojić failed to prevent or punish these crimes.[923] From these findings, the Majority deduced that Stojić accepted the commission of sexual abuse,[924] providing the basis for Stojić's conviction on Counts 4 and 5.

[916] *See* para. 295, *supra*; Sl. Božić, 03/02/2009, T.36246:25–36247:21.
[917] P04352; P05812; P04186.
[918] 2D01399 (disregarded entirely by the Majority).
[919] Judgement, V.4, paras 388, 390-391.
[920] *See* para. 295 *supra*.
[921] Judgement, V.4 para. 393.
[922] *Ibid.*, para. 436.
[923] *Ibid.*
[924] *Ibid.*, 437.

371. These findings are unreasonable and inconsistent with earlier findings. The Chamber found that the *Vinko Škrobo* ATG was under the command of Naletilić,[925] that ATGs were integrated into the overall chain of command and reported directly to Main Staff.[926] Stojić was not part of that chain of command.[927] The Chamber found that there was insufficient evidence to find that Stojić "exercised command authority over the […] ATGs".[928] This finding was inevitable: not one order from Stojić to Naletilić, the KB or the ATGs was admitted[929] and no witnesses suggested that Stojić had command authority over them.[930]

372. In the absence of any evidence that Stojić had any power to prevent or punish crimes committed by the ATG, no reasonable chamber could have held that he failed to prevent or punish those crimes.

373. This error of fact causes a miscarriage of justice, because it was the sole basis for the finding that Stojić accepted the commission of crimes of sexual abuse. Acceptance must be established before finding criminal responsibility pursuant to JCE Form III.[931] Since this finding of acceptance is wholly unsupported without the improper finding that he failed to prevent or punish the crimes, the conviction of Stojić under Counts 4 and 5 must be overturned.

40: The Majority erred in law and/or fact in finding that eviction operations were taking place in an atmosphere of extreme violence and/or that Stojić knew that eviction operations were taking place in an atmosphere of extreme violence.

374. The Majority found that Stojić could have foreseen the commission of theft and sexual offences because he knew that eviction operations in Mostar and, possibly, military operations in Gornji Vakuf were carried out in a climate of extreme violence.[932] This was an error because the Majority failed sufficiently to

[925] Judgement, V.1 para. 818.
[926] *Ibid.*, para. 829.
[927] *Ibid.*, paras 565, 708, 791, 795–796.
[928] *Ibid.*, para. 835.
[929] *Ibid.*
[930] *Ibid.*
[931] *Ibid.*, para. 216; *Vasiljević* AJ, para. 101.
[932] Judgement, V.4 paras 435, 437, 438–439, 445–446.

explain its decision and made unreasonable findings in relation to Stojić's knowledge.

375. The Majority failed to explain its decision. First, it failed to define a "climate of extreme violence". Second, it gave no reasons for concluding that such a climate existed in Gornji Vakuf and Mostar. Instead it simply stated, without citing any evidence, that a climate of extreme violence existed.[933] No equivalent finding was made in V.2.[934] Third, the Majority also found that there was "a climate of extreme violence" in Jablanica,[935] Raštani[936] and Vareš[937] on each occasion without explaining its finding. Rather than suggesting a reasoned assessment of the level of violence, this demonstrates that the Majority arbitrarily found that extreme violence occurred in each locality in which it was considering JCE Form III. Finally, it failed to explain why a climate of extreme violence necessarily leads to the conclusion that crimes of theft or sexual offences were foreseeable to Stojić. This was an error of law because the Majority failed to give a sufficient explanation for its finding that a climate of extreme violence existed, so prejudicing Stojić's ability to understand and appeal the Judgement.

376. In any event, the Majority made no finding that Stojić *knew* that operations in Gornji Vakuf occurred in an atmosphere of extreme violence.[938] This was an error of law because in order to establish JCE Form III, the Prosecutor must prove that the crimes were foreseeable and the accused willingly took that risk.[939] This requires proof that "the accused had sufficient knowledge such that the additional crimes were a natural and foreseeable consequence to him".[940] Without any finding of knowledge, there was no justification for the conclusion that Stojić could have foreseen the commission of crimes.

[933] *Ibid.*, paras 435, 439, 445.
[934] Judgement, V.2 paras 346–484, 793–828, 860–876, 889–938.
[935] Judgement, V.4 para. 840.
[936] *Ibid.*, para. 638.
[937] *Ibid.*, para. 834.
[938] *Ibid.*, paras 438–439.
[939] *Tadić* AJ, para. 220; *Vasiljević* AJ, para. 101.
[940] *Kvočka* AJ, para. 86.

377. Regarding Mostar, the Majority inferred Stojić's knowledge from his participation in planning or organising eviction operations,[941] and a Main Staff Electronics Operations Centre ("CED") Report dated 14 June 1993.[942] However, it does not follow from planning an operation at a policy level, that Stojić was necessarily aware of the manner in which the plan was implemented. The only document relied on by the Majority was the CED report. As set out above, the Majority erred in fact in finding that this document was received and reviewed by Stojić.[943] Further, this single document does not establish that all eviction operations were carried out in a climate of extreme violence nor that Stojić was aware of such a climate, if it did exist. At its highest, it establishes that specific crimes were documented on one occasion.

378. For the reasons set out above, the Majority erred in law and fact in finding that there was a climate of extreme violence and that Stojić knew that there was such a climate. These errors occasion a miscarriage of justice and invalidate the judgment, because they provide the foundation for the conclusion that Stojić had sufficient knowledge to have foreseen the commission of thefts and sexual crimes. Foreseeability is one of the elements which must be established in order to prove responsibility for JCE Form III.[944] The Appeals Chamber should therefore overturn his conviction on Counts 4, 5, 22 and 23.

41: The Majority erred in law and/or fact in finding that Stojić could have foreseen the commission of crimes of theft and/or sexual abuse.

379. The *mens rea* of JCE Form III requires that "it was foreseeable that such a crime might be perpetrated by one or other members of the group".[945] This standard requires that "the possibility a crime could be committed is *sufficiently substantial* as to be foreseeable *to an accused*."[946] In order to impose

[941] Judgement, V.4 para. 435, 446; *see further* Grounds 31, 33, *supra.*
[942] Judgement, V.4 para. 436; P02770.
[943] *See* para. 295, *supra*.
[944] *Tadić* AJ, para. 228.
[945] *Ibid.*
[946] Decision on Prosecution Motion on Trial Chamber's JCE III Foreseeability Decision (*Karadžić*), para. 18 (*emphasis added*); *see also Đorđević* AJ, para. 907; *Šainović* AJ, paras 1081, 1538, 1575.

responsibility on him, the crime must have been foreseeable to Stojić based on his personal knowledge[947]

380. In assessing foreseeability, relevant factors include: the accused's knowledge of the background and previous criminal acts of the direct perpetrators[948] and the accused's knowledge and contribution to a climate of violence.[949] In *Krstić*, murders, rapes, beatings and abuses were held to be foreseeable on the basis of, *inter alia*, "the lack of shelter, the density of the crowds, the vulnerable condition of the refugees, the presence of many regular and irregular military and paramilitary units".[950] Importantly, unlike Stojić, that accused was "exposed to first hand knowledge" of the mistreatment because he was present at the scene himself.[951]

381. The Majority failed to give a reasoned decision, explaining its finding that Stojić could have foreseen the commission of sexual abuse in West Mostar.[952] If it was based on his receipt of the above CED report, that could only establish foreseeability after receipt of that report not before. Further, it disregarded relevant factors such as his knowledge of the background and past crimes of the units involved.

382. Insofar as the Chamber found that sexual abuse was foreseeable based on its earlier findings relating to a climate of extreme violence, this was an error of law. The Majority failed to explain any connection, which is not obvious, between knowledge of violence and foreseeability of sexual offences.

383. Regarding Gornji Vakuf, the Majority found that Stojić could have foreseen offences of theft because he was one of the officials who had ordered that the area be captured by force.[953] The Majority identified no factors specific to Gornji Vakuf or to Stojić to establish that thefts were foreseeable. That an individual ordered military operations, cannot be sufficient to establish that

[947] *Brđanin* AJ, para. 365; *Kvočka* AJ, para. 86, *Blaškić* AJ, para. 33; *Stakić* AJ, para. 65.
[948] *Stakić* AJ, para. 94; *Đorđević* TJ, paras 2139, 2145; *Milutinović* TJ, V.3 paras 470–471
[949] *Milutinović* TJ, V.3 paras 470–471; *Martić* TJ, para. 454.
[950] *Krstić* TJ, para. 616*; Kvočka* TJ, para. 327.
[951] *Krstić* TJ, para. 616.
[952] Judgement, V.4 para. 437.
[953] *See* Ground 29, *supra*.

individual could have foreseen offences of theft. Moreover, operations in Gornji Vakuf were the first that the Majority found were part of a JCE.[954] Stojić did not know of prior misconduct by the direct perpetrators, because there had been no prior conduct at that stage.

384. In relation to Mostar and Gornji Vakuf, the Majority found that Stojić could have foreseen the thefts in May 1993 because he was aware that evictions operations were occurring in an atmosphere of extreme violence.[955] The Majority offered no reasoning in support of this finding; there is no obvious nexus between violence and property offences such that extreme violence necessarily renders theft foreseeable. Additionally, save in relation to his awareness of prior thefts in West Mostar from 31 May 1993, the Majority neglected to analyse Stojić's knowledge of the background and past conduct of the perpetrators of crimes in Mostar or Gornji Vakuf.

385. For all the reasons set out above, the Majority erred in fact and law in finding that Stojić could have foreseen the commission of crimes of sexual abuse or theft. Since this is an essential element of the *mens rea* for JCE Form III, the Appeals Chamber should overturn his conviction on Counts 4, 5, 22 and 23.

C. CRIME BASE

42: The Trial Chamber erred in law in concluding that Muslim members of the HVO were protected persons according to Article 4 of Geneva Convention IV.

386. The Trial Chamber found that HVO Muslims detained by HVO forces were protected persons within the meaning of Article 4 of the Fourth Geneva Convention of 1949 ("GCIV") because they had fallen into the hands of the enemy,[956] enabling the Majority to enter convictions for crimes related to their treatment under Article 2 of the Statute. In concluding that the HVO Muslims were protected persons, the Chamber erred in law because they were neither civilians nor in the hands of an opposing party as required by GCIV.

[954] Judgement, V.4 para. 45.
[955] *Ibid.*, paras 439, 445–446.
[956] Judgement, V.3 para. 611.

387. First, GCIV only protects civilians. This is made clear by its title: "Protection of Civilian Persons in Time of War". Its purpose is to protect *civilians* living in a belligerent state or in occupied territory.[957] Persons protected by other Geneva Conventions of 1949 ("GCs") are expressly excluded from the ambit of GCIV; members of the armed forces are protected by the GCs I, II and III, and are hence excluded from GCIV.[958] For these reasons, jurisprudence treats GCIV as applicable only to civilians.[959] The HVO Muslims were not civilians – they were members of the armed forces and hence fall outside the protection of GCIV.[960]

388. Second, the HVO Muslims were not in the hands of a party of which they were not nationals. The crucial test is one of "allegiance to a Party to the conflict",[961] which refers to substantial relations as well as ethnicity,[962] rather than strict nationality, and requires consideration of "the different ethnicity of the victims and the perpetrators, and their bonds with the foreign intervening State".[963]

389. The Chamber held that the HVO's subjective suspicion that the loyalties of its Muslim members had changed meant that the HVO Muslims owed allegiance to the ABiH.[964] This was an error; the subjective suspicions of the detaining power are not determinative of status. Instead, the criteria are objective.[965] The Chamber failed to assess the objective allegiance of the HVO Muslims. Had it considered their objective allegiance, it would have taken into account that they were members of the HVO and therefore *prima facie* their allegiance lay with the HVO.

390. The artificiality of the Chamber's reasoning is exposed by its inconsistent conclusions. Regarding GC III, it correctly found that the HVO Muslims "clearly

[957] GCIV Commentary, art. 4, 'Definition of Protected Persons'.
[958] GCIV, art. 4.
[959] *Tadić* AJ, para. 164; *Blaškić* TJ, paras 144–145.
[960] Judgement, V.3 para. 603.
[961] *Aleksovski* AJ, para. 152 (citing *Tadić* AJ, para. 166).
[962] *Tadić* AJ, para. 166; *Blaškić* AJ, para. 175; *Čelebići* AJ, para. 84
[963] *Čelebići* AJ, para. 84.
[964] Judgement, V.3 paras 609–611.
[965] *Blaškić* AJ, para. 172; *see further Čelebići* AJ, paras 83–84.

belong to the armed forces of a Party to the conflict", though they "cannot be considered to have fallen into the power of the enemy" because they were detained by the HVO.[966] This cannot be reconciled with the later finding that the HVO Muslims "had indeed fallen into the hands of the enemy power".[967] The only consistent conclusion is that the HVO Muslims were not in the power of the enemy and hence GCIV did not apply.

391. For all the reasons set out above, the Chamber erred in law in determining that HVO Muslims were protected persons as defined by GCIV Article 4. This error invalidates the Judgement because without this erroneous determination, no conviction under Article 2 of the Statute – which itself only applies to acts committed against persons or property protected under the GCs – could have been entered on Counts 11, 13 and 16 in relation to these individuals. Accordingly, the conviction of Stojić should be overturned on these Counts.

43: Withdrawn.

44: Withdrawn.

45: The Trial Chamber made a number of errors of law and fact in its findings on Duša, Hrasnica, Uzričje and Ždrimci villages.

392. Sub-grounds 45.2–45.4 are withdrawn.

45.1 The Trial Chamber erred in law and/or in fact in concluding that HVO forces shelled Duša village in an indiscriminate manner and/or had the intention to cause serious bodily harm to civilians.

393. The Trial Chamber found that the shelling of Duša village was indiscriminate[968] and that the HVO intended to cause serious bodily harm to the civilians there[969] with the intention to discriminate against them.[970]

[966] Judgement, V.3 paras 603–604.
[967] *Ibid.*, para. 611.
[968] *Ibid.*, paras 663, 711.
[969] *Ibid.*, paras 663, 711, 1224, 1315.
[970] *Ibid.*, para. 1702.

394. In finding that the shelling was indiscriminate, the Chamber erred in law and fact. First, the Chamber held that the use of artillery shells is inherently indiscriminate.[971] It gave no reasons for this conclusion. Shells are not indiscriminate;[972] they can be aimed at military targets.[973] The analysis in *Gotovina* of the range of error for artillery shell attacks would have been otiose, and the Trial Chamber's findings need not have been reversed,[974] if shelling is inherently indiscriminate. Instead, shelling can only be deemed indiscriminate after "determining that no reasonable possibility existed that the victims […] were unintentionally harmed by combat in their vicinity".[975] The Chamber erred in failing to perform this analysis.

395. Second, it was unreasonable to find that the shelling was indiscriminate. ABiH members were in Duša in mid-January 1993.[976] One shell hit the home of Enver Šljivo – the "commander of the group of men defending the village"[977] – causing death or injury to civilians who were gathered in the cellar.[978] This shelling was not indiscriminate: the defenders of the village – including their commander – were legitimate targets.

396. This error invalidates the Judgement as it provides the basis for entering convictions under Counts 2 and 3 which should be reversed.[979]

397. Additionally, the Chamber held that by firing shells at Enver Šljivo's house, the HVO intended to cause seriously bodily harm or suffering to the civilians taking refuge there, thus satisfying the *mens rea* requirement of Counts 2, 3, 15 and 16.[980] The Chamber erred in law in failing to make *any* reasoned assessment of intent, instead assuming intent on the sole basis of its flawed

[971] *Ibid.*, paras 663, 711.
[972] CIHL Rules (ICRC), rule 71; contrast, e.g., cluster bombs, which are specifically prohibited because they are indiscriminate (Cluster Munitions Convention).
[973] *Legality of Nuclear Weapons* (ICJ Advisory Opinion), para. 78; *Galić* TJ, para. 57 (accepted on appeal, *Galić* AJ, para. 132).
[974] *Gotovina* AJ, paras 23–84.
[975] *Galić* AJ, paras 232–233, 235.
[976] Judgement, V.2 para. 364.
[977] *Ibid.*, para. 365.
[978] *Ibid.*, paras 366, 368.
[979] Judgement, V.3 paras 663, 711.
[980] *Ibid.*, paras 663, 711, 1224, 1315.

finding that the attack was indiscriminate.[981] Therefore, the Chamber's findings about the HVO's intent to cause harm to the civilian population through the shelling incident in Duša cannot stand. This error invalidates the Judgement as it provides the basis for entering convictions on Counts 1,[982] 2, 3, 15, and 16 which must be overturned.

46: Withdrawn.

47: The Trial Chamber erred in law and/or in fact and/or failed to give a reasoned decision in concluding beyond reasonable doubt and without giving a reasoned assessment of the conflicting evidence that the HVO launched the attack on Mostar on 9 May 1993.

398. The Majority found that the HVO launched an attack on Mostar on 9 May 1993.[983] This conclusion enabled it to find that the attack on Mostar fell within the common purpose of the JCE[984] and to convict Stojić for crimes committed in the course of or following that operation.[985]

399. The Majority erred in fact in finding that the HVO launched this attack. First, no reasonable chamber could have found that the evidence established beyond reasonable doubt that the HVO initiated the attack. The Chamber acknowledged that the evidence "remains very divided".[986] This stark division made it impossible to conclude beyond reasonable doubt that the attack was launched by the HVO; the doubt created by the divided evidence should be resolved in favour of the Accused.

400. Second, the basis for the Majority's conclusion was that the evidence of civilians and international observers "unanimously claimed that the HVO launched the attack".[987] This sweeping statement hides inadequacies in the evidence. Of the international observers who testified, contrary to the Majority's

[981] *Ibid.*, paras 663, 711.
[982] These unreasonable conclusions also led to the Chamber's conclusions in relation to Count 1 (Judgement, V.3 para. 1699).
[983] Judgement, V.2 para. 775.
[984] Judgement, V.4 para. 56.
[985] *Ibid.*, paras 344–349.
[986] Judgement, V.2 para. 764.
[987] *Ibid.*, para. 775.

assessment,[988] most were *not* in Mostar on 9 May 1993.[989] Finlayson was in the relevant area, but was unable to explain the basis for concluding that the HVO started the attack.[990] The evidence of international observers was, therefore, inconclusive. Additionally, the civilian witnesses could not establish that the HVO started the attack. Evidence established that civilians were aware of artillery fire around 05.00 and heard an HVO radio broadcast referring to the need to establish law and order.[991] This is inadequate; awareness of artillery fire around 05.00 does not prove that the HVO started the attack because it cannot exclude the possibility that the ABiH was firing or that any HVO fire was a response to an earlier ABiH attack. Further, the HVO radio broadcast referring to establishing "law and order" is equivocal; one reasonable inference is that the need to establish law and order arose *in response to* ABiH action.[992] The result is that no witness could reliably say that the first shot was fired by the HVO. As a result, there is no sound basis for concluding that the HVO started the attack on 9 May 1993.

401. Third, the Majority failed to explain why it disregarded evidence and submissions suggesting that the ABiH initiated the attack.[993] It disregarded evidence that the ABiH was planning an attack on Mostar in April 1993,[994] that MTS was supplied to the ABiH in Mostar in May 1993,[995] that minutes before the 9 May 1993 attack commenced, only five or six men were present at the relevant HVO command post,[996] that none of the Accused were in Mostar[997] and that the HVO subsequently needed to call reinforcements to Mostar.[998] The Majority failed to explain how these facts, which *prima facie* suggest that the HVO was surprised by an ABiH attack, could be consistent with the commencement of a planned HVO attack.

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[988] *Ibid.*
[989] Beese, 14/06/2006, T.3156, T.3167:17–18; Nissen, 27/06/2007, T.20602:6–7; [REDACTED].
[990] Finlayson, 07/05/2007, T.18021:22–18022:2.
[991] Judgement, V.2 para. 765.
[992] *Ibid.*, para. 766.
[993] Stojić FTB, para. 140; Stojić Closing Arguments, 15/02/2011, T.52337–52338.
[994] P01962; P01970 paras 1.1, 1.2, 1.3, 1.6, 1.7, 1.8, 1.9, 1.10.
[995] *See* para. 29 nn 85-86 *supra*.
[996] Judgement, V.2 para. 768.
[997] *Ibid.*, para. 773.
[998] *Ibid.*, para. 770; 3D01010; 3D01023; 3D01007; 3D01008; 3D01009.

402. For all the reasons set out above, no reasonable chamber could have concluded that the HVO initiated military action in Mostar on 9 May 1993. This occasioned a miscarriage of justice and invalidated the Judgement because it enabled the Majority to find that the action in Mostar was part of the common purpose of the JCE, rather than a defensive reaction to an ABiH attack.[999] Stojić's conviction for crimes arising from this attack should therefore be set aside, specifically Counts 1, 15, 16 and 24.

48: Withdrawn.

49: Withdrawn.

50: The Trial Chamber erred in law and/or in fact in concluding that the Muslim population could not leave East Mostar because of HVO checkpoints, which was inconsistent with the earlier finding that the ABiH forced the Muslim population to stay in the area.

403. In finding that crimes under Counts 1, 15, 16 and 24 of the Indictment were committed, the Chamber relied on a finding that the HVO "kept the population crowded in an enclave where it was forced to remain".[1000] It erred in law and in fact, because this finding was inconsistent with earlier findings that "a person wishing to leave East Mostar would first need to have an exit permit issued by the ABiH"[1001] and that "the ABiH wished to consolidate the territory of East Mostar by using 'civilians like pawns' and, consequently, 'did not want people to leave'".[1002] These findings demonstrate that the "first" barrier to civilians leaving East Mostar was not the HVO but the ABiH; there was no evidence that any individual who would have been allowed to leave by the ABiH was prevented from leaving by the HVO. Causation was therefore not established. Further the Chamber failed to consider the impact of the ABiH's policy in assessing Counts 1, 16 and 24.[1003] In the circumstances, no reasonable chamber could have found that the HVO was criminally responsible on the basis that it forced civilians to remain in East Mostar.

[999] *See* Ground 3 *supra*.
[1000] Judgement, V.3 paras 1255, 1349, 1685, 1711.
[1001] Judgement, V.2 para. 1248.
[1002] *Ibid.*, para. 1250.
[1003] Judgement, V.3 paras 1349, 1685, 1711 (*contra* para. 1256).

404. Moreover, the Chamber only found that HVO checkpoints controlled access to West Mostar. Otherwise, "certain routes" out of East Mostar remained open.[1004] In relation to these routes, the finding that "certain sections of the roads out of East Mostar…could also come under HVO control from time to time" is manifestly insufficient to establish that the HVO prevented the Muslim population from leaving East Mostar.[1005]

405. The erroneous finding that civilians could not leave East Mostar because of HVO checkpoints was critical to the conclusions on Counts 1, 15, 16 and 24.[1006] Moreover, the Majority failed to explain the basis for concluding that these crimes fell within the common purpose of a JCE, despite the critical role played by ABiH in causing civilians to remain in East Mostar. These errors occasioned a miscarriage of justice and the conviction of Stojić on Counts 1, 15, 16 and 24 should be overturned.

51: Withdrawn.

52: Withdrawn.

53: Withdrawn.

D. CHARACTERISATION OF THE CONFLICT

54: The Majority made a number of errors of law and fact in finding that the conflict was an international armed conflict.

54.1 The Majority erred in law and in fact in finding that HV Units participated in the conflict and that as a result the conflict was an international armed conflict.

406. The Majority found that the HV was directly involved in the conflict between the HVO and the ABiH[1007] because it was present in various municipalities[1008] and participated in military action in Prozor and Jablanica.[1009]

[1004] Judgement, V.2 para. 1252.
[1005] *Ibid.*, para. 1254.
[1006] Judgement, V.3 paras 1255, 1349, 1711, 1685.
[1007] Judgement, V.3 para. 544.
[1008] *Ibid.*, paras 529–530, 532–542.

407. First, the Majority erred in law in relying on the mere presence of HV troops without establishing that they actually participated in the conflict. Conflict is internationalised by a State "interven[ing] in that conflict through its troops".[1010] This test requires actually intervention. Thus, in *Kordić*, evidence that HV troops were present in some areas was insufficient to establish direct intervention.[1011] Similarly both the ICC and ICJ have held that mere *presence* of foreign troops is insufficient to internationalise a conflict or establish an occupation.[1012] Contrary to this standard, the Majority based its findings on presence rather than actual intervention.[1013] In so doing it erred in law; evidence that HV troops were present in BiH does not establish direct intervention.

408. Second, the Majority wrongly found that it "matters little" whether members of HV who participated in the conflict did so voluntarily.[1014] The Appeals Chamber has held that "[t]he fact that members of the HV were in the service of the HVO does not imply without doubt that they were there on the direct order of Croatia".[1015] Establishing that Croatia directly intervened therefore required proof that members of HV were present on the direct order of Croatia. The Majority erred in law in failing to acknowledge and resolve this issue.

409. Third, the Majority erred in fact in finding that the HV directly participated in the conflict in Prozor and Sovići – the only two occasions when it specifically found direct participation in the conflict.[1016]

410. No reasonable Chamber could have concluded that HV soldiers attacked Prozor on 23 October 1992.[1017] The evidence cited is wholly inconclusive. The only witness who personally saw HV troops observed them from his home in Kovačevo Polje (several kilometres away from Prozor) 10 days prior to the

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[1009] *Ibid.*, paras 532–535.
[1010] *Tadić* AJ, para. 84.
[1011] *Kordić* AJ, paras 352–355.
[1012] *Bemba* Confirmation of Charges (ICC), para. 246; *Lubanga* Confirmation of Charges (ICC), paras 209, 226; *Armed Activities in the Congo* (*DRC/Uganda*, ICJ), para. 173.
[1013] Judgement, V.3 paras 529, 530, 533, 534, 536–541.
[1014] *Ibid.*, para. 529.
[1015] *Kordić* AJ, para. 359.
[1016] In relation to Mostar, the evidence reviewed by the Chamber dealt only with the presence of HV troops not direct participation: Judgement, V.3 paras 536–537.
[1017] Judgement, V.3 para. 532.

attack,[1018] which clearly cannot prove participation in the attack. [REDACTED][1019] or [REDACTED].[1020] This is plainly inadequate; Croatia could simply have given logistical assistance to the HVO.[1021] The remaining evidence cited lends no support.[1022] No reasonable Chamber could have held on the basis of this evidence that HV troops participated in the conflict in Prozor in October 1992. Even if they did participate, the Majority failed to consider whether the HV troops participated voluntarily. In any event, evidence of Croatian involvement in one attack in October 1992 is irrelevant, because the Majority found that the JCE commenced in January 1993.[1023] Absent continuous direct intervention after the commencement of the JCE, earlier intervention was irrelevant.

411. No reasonable Chamber could have found that "soldiers from the HV participated alongside the HVO in the attack on Sovići on 17 April 1993".[1024] The two main witnesses cited assumed HV involvement because they saw HV patches on the uniforms of soldiers (which is inconclusive because badges were worn without Croatia's authorisation)[1025] and heard uncorroborated rumours.[1026] Moreover, the remaining evidence either does not relate to the specific attack on 17 April 1993[1027] or pertains to a single HV "combat troop in Tomislavgrad who admitted to…having taken part in the HVO offensive against Jablanica".[1028] This vague evidence does not support the conclusion beyond reasonable doubt that HV soldiers were directly involved in the attack. The Majority failed to consider whether individuals participated voluntarily without orders from Croatia. Insofar as the Majority's finding that the HV directly intervened in the conflict is based on its finding of actual HV participation in the attacks on Prozor and Sovići, it should be overturned.

[1018] P09989, p.3; P09925.
[1019] [REDACTED].
[1020] [REDACTED]. [REDACTED].
[1021] *See* Judgement, V.6 p.191.
[1022] P09400 and P09926 assert without evidential basis that HV were involved.
[1023] Judgement, V.4 para. 44.
[1024] Judgement, V.3 para. 535.
[1025] Judgement, V.3 para. 536.
[1026] P02620; 2D00285; [REDACTED].
[1027] Beese, 15/06/2006, T.3222–3224.
[1028] P02620, p.2.

54.2: The Majority erred in law and in fact in finding that Croatia had overall control of the HVO and that as a result the conflict was an international armed conflict.

412. The Majority found that Croatia had overall control of the HVO.[1029] Overall control requires that the HVO acted as "a *de facto* state organ".[1030] Evidence of financial, logistical and military assistance is "not sufficient"; "planning and supervision" of military operations is required.[1031] The Majority based its finding of overall control on the following: officers from the HV were sent to the HVO;[1032] the HV and the HVO jointly directed military operations;[1033] the HVO sent reports to the HV;[1034] Croatia provided logistical support to the HVO;[1035] and Croatia wielded political control over the HVO.[1036] Each finding is vitiated by errors of fact or law.

413. First, no reasonable chamber could have determined that officers from the HV were *sent* to the HVO by Croatia.[1037] Indeed all of the Majority's factual findings and almost all of the evidence relied on the Majority[1038] merely established that HV officers were present in HVO, not that they were sent by Croatia. This distinction is critical because it was necessary to show "that they were there on the direct order of Croatia."[1039] The sole direct evidence that Croatia deployed an individual concerned a "logistical assistant", hardly a role consistent with overall control.[1040] Further, the Majority disregarded evidence that the participation of HV Officers was voluntary[1041] and failed to analyse whether, once deployed, they carried out their duties on the orders of Croatia. The conclusion that Officers were *sent* by Croatia was therefore unreasonable.

[1029] Judgement, V.3 paras 567–568.
[1030] *Tadić* AJ, para. 137.
[1031] *Ibid.*, paras 130, 137, 145.
[1032] Judgement, V.3 paras 546–548.
[1033] *Ibid.*, paras 549–552.
[1034] *Ibid.*, para. 553.
[1035] *Ibid.*, paras 554–559.
[1036] *Ibid.*, paras 560–567.
[1037] *Ibid.*, paras 546–548.
[1038] *Ibid.*, paras 546–548; P00813; P05467; P01855; P01845; P01683; P08705; P00549; B. Pinjuh, 23/02/2009, T.37299–37300.
[1039] *Kordić* AJ, para. 359.
[1040] P00332.
[1041] Beneta, 10/11/2009, T.46632, T.46656, T.46640.

414. Second, no reasonable chamber could have concluded that the HV and HVO jointly directed military operations.[1042] There is no evidence that any specific operation was jointly directed. The Majority's finding rests on a misunderstanding. Although Ribičić stated that the HVO "co-ordinated its activities" with Croatia, he did so in the context of a constitutional analysis of the HZHB and linked his comment to "financial, personnel and other assistance".[1043] His evidence does not support joint direction of military operations, which fall outside his expertise in "the genesis of constitutional systems".[1044] Further, the Majority wrongly cites the evidence of Beneta in support of the conclusion that HV officers issued orders to HVO units.[1045] Beneta actually confirmed that "somebody from the HVO was in command".[1046] Thus, Beneta actually confirmed that if HV officers were also in HVO, they worked within the HVO chain of command and not under orders from Croatia.

415. Further, the Majority erred in relying on evidence relating to co-operation between intelligence departments[1047] or unsigned orders[1048] which cannot establish joint direction of military operations. Similarly, the Majority relied on meetings attended by Susak without analyzing the content of those meetings, which actually related to the prevention of crime, internal organization and traffic police – not joint direction of military operations.[1049]

416. Third, whilst some reports were exchanged between the HVO and Croatia, the Majority failed to explain how these reports evidenced overall control by Croatia.[1050] It failed to analyse the purpose of the reports or whether any action was taken as a result of them. Most are simply requests for logistical assistance.[1051] Moreover, the Majority failed to consider them in context. There was ongoing conflict with the Serbs, which concerned both Croatia and the HVO

[1042] Judgement, V.3 paras 549–552.
[1043] P08973, p.25.
[1044] *Ibid.*, p.2.
[1045] Judgement, V.3 para. 551.
[1046] Beneta, 10/11/2009, T.46633.
[1047] P07055.
[1048] P03048.
[1049] P04191; Biškić, 05/03/2007, T.15031–15032, 07/03/2007, T.15218–15220.
[1050] Judgement, V.3 para. 553.
[1051] P04061; P07135.

and they might therefore have been in contact with each other in relation to the ongoing Serbian threat rather than the conflict with the ABiH.

417. Fourth, whilst it is accepted that Croatia provided logistical support to the HVO[1052] – as it did to the ABiH[1053] – this factor is neutral because logistical or financial support alone is not a sufficient basis for a finding of overall control.

418. Fifth, the Majority erred in relying on evidence of indirect political influence.[1054] At its highest, the Majority found that Croatia could influence the structure of HR H-B, the appointment of its officials[1055] and that it approached the leaders of the HZ(R)HB to ask them to meet demands made by the international community.[1056] This stops short of overall control. None of the evidence suggested that Croatia planned or supervised any military operations. Moreover, that Croatia had to *ask* the leaders of HZ(R)HB to meet the demands of the international community suggests that Croatia was unable to compel them to comply.

419. Remarkably, in V.3, the Majority failed to analyse the legal threshold for overall control at all. As a result, it failed to consider whether the limited relationships which it identified between Croatia and the HVO actually amounted to "planning and supervision" of military operations such that the HVO was *de facto* an organ of the Croatian State. Had it performed this analysis, it would inevitably have concluded that the logistical assistance provided did not prove overall control beyond reasonable doubt.

420. For all the above reasons, the conclusions that Croatia directly intervened in the conflict or had overall control over the HVO are unsustainable. There is therefore no basis for finding that there was an international armed conflict. The Appeals Chamber should correct this error and reverse this conclusion. In consequence, Stojić's conviction on Counts 3, 5, 7, 9, 11, 13, 16, 19 and 22,

[1052] Judgement, V.3 paras 554–559.
[1053] *See* Ground 2, *supra*.
[1054] Judgement, V.3 paras 560–567.
[1055] Judgement, V.3 para. 565.
[1056] *Ibid.*, paras 561–563.

which depend on the existence of an international armed conflict,[1057] should be overturned.

55: The Trial Chamber erred in law and/or in fact in concluding that there was a state of occupation in BiH and/or that the HVO occupied parts of BiH.

421. The existence of a state of occupation is an alternative requirement for Article 2 of the Statute.[1058] The Chamber found that the HVO occupied Prozor, Gornji Vakuf, Jablanica, West Mostar, Ljubuški, Stolac, Čapljina and Vareš at various dates.[1059] In so finding, the Chamber erred in law and in fact.

422. First, the Chamber erred in law in failing to find that the above municipalities were occupied by Croatia rather than by the HVO. The Chamber found only that the HVO occupied each municipality[1060] and never specified that Croatia was the occupying power.[1061] This was an error of law; the HVO as the armed forces of a constituent part of BiH could not occupy BiH. Moreover, Croatian occupation cannot be assumed from any finding that Croatia had overall control over the HVO;[1062] overall control is not the test for the existence of an occupation, which requires that the territory be "actually placed under the authority" of the occupying power.[1063] This requires a "further degree of control".[1064] Having failed to make any findings about this further degree of control, there was no basis for any finding that Croatia occupied the relevant parts of BiH.

423. Second, the Chamber erred in applying the law regarding occupation. Having correctly identified the five guidelines set out in jurisprudence,[1065] the Chamber failed to perform any reasoned assessment. Its cursory analysis rests

[1057] Judgement, V.1 paras 83, 85.
[1058] Judgement, V.3 para. 515.
[1059] *Ibid.*, para. 589.
[1060] *Ibid.*, paras 578–589.
[1061] Other Trial Chambers have made this finding express. *See, e.g.*, *Blaškić* TJ, paras 149–150; *Tadić* TJ, 7 paras 586–588; Rule 61 Review of the Indictment (*Rajić*), para. 42.
[1062] Hinted at in Judgement, V.3 para. 575, n. 1175.
[1063] 1907 Hague Regulations, art. 42; *Legal Consequences of the Wall (*ICJ Advisory Opinion), para. 90; *Naletilić* TJ, paras 214–216.
[1064] *Naletilić* TJ, para. 214.
[1065] Judgement, V.1 para. 88, V.3 para. 570 (from *Naletilić* TJ, para. 217).

solely on the presence of the HVO military and its ability to issue orders.[1066] Presence of the military, even combined with certain administrative control, is insufficient.[1067] It neglected to consider whether the occupied authority remained capable of functioning or whether a temporary administration had been established. Had these factors been considered, the only available conclusion was that there was no occupation.

424. Third, the Chamber erred in finding that an occupation existed in several municipalities. Occupation cannot exist whilst combat operations are ongoing.[1068] Since effective authority takes time to establish, an occupation cannot commence immediately combat operations cease.[1069] The Chamber erred in finding that the HVO occupied parts of Gornji Vakuf from 18 January 1993, because the "first real lull in combat" was not until 26 or 27 January.[1070] It erred in finding that the HVO occupied Sovići and Doljani from 17 April 1993, because "mopping up" operations continued after this date.[1071] Further, it did not explain why it reached a contrary conclusion to the Trial Chamber in *Naletilić*, which found no occupation in these areas prior to 23 April 1993.[1072] It erred in finding that the HVO occupied West Mostar from May 1993, because there were ongoing combat operations affecting all of Mostar.[1073] It erred in finding that the HVO occupied Vareš and Stupni Do from 23 October 1993, because the HVO attack on Stupni Do only started on 23 October 1993 and the ABiH counter-offensive began shortly thereafter on 28 October 1993.[1074] All these findings were wrong in law, because they established the existence of an occupation before combat operations had ended.

[1066] Judgement, V.3 paras 578, 579, 580, 583–588.
[1067] *Armed Activities in the Congo* (*DRC/Uganda*, ICJ), paras 175–177 (noting control, including administrative control over an airport, was insufficient to establish occupation).
[1068] *Naletilić* TJ, para. 217.
[1069] *Western Front, Aerial Bombardment and Related Claims* (Ethiopia Eritrea Claims Commission), Eritrea's Claims 1, 3, 5, 9–13, 14, 21, 25, 26, para. 27.
[1070] Judgement, V.2 para. 395.
[1071] *Ibid.*, para. 549.
[1072] *Naletilić* TJ, para. 587.
[1073] *See, e.g.*, Judgement, V.2 paras 878–883.
[1074] Judgement, V.3 paras 417, 503–504.

425. Since the existence of either an international armed conflict or an occupation is fundamental to the application of Article 2 of the Statute,[1075] cumulatively with Ground 54, these errors invalidate the Judgement. The Appeals Chamber should correct the error, find that there was no occupation and hence set aside the conviction of Stojić on Counts 3, 7, 9, 11, 13, 16, 19 and 22.

E. SENTENCE

56: The Trial Chamber made a number of errors of law and fact in determining the sentence imposed on Stojić.

56.1 Withdrawn.

56.2 The Trial Chamber erred in law and/or fact in determining that Stojić played a key role in the commission of crimes and 'double counting' this factor both in relation to the extent of his participation and separately as an aggravating factor.

426. The Chamber relied on its finding that Stojić "played a key role in the commission of all the crimes" both in assessing the extent of his participation and as an aggravating circumstance.[1076]

427. Factors that are considered in determining the gravity of a crime "cannot additionally be taken into account as separate aggravating factors".[1077] In particular, considering abuse of an official position twice amounts to an error of law.[1078] Reliance on an Accused's official position requires an assessment of whether the Accused *abused* this authority; it is essential for a trial chamber to establish that it is not the Accused's position in itself that is an aggravating factor, "but rather the abuse of such position".[1079]

428. The Trial Chamber erred in law by counting Stojić's official role twice. Though it noted that Stojić "abused his authority",[1080] it failed to establish that

[1075] Judgement, V.1 para. 83.
[1076] Judgement, V.4 paras 1329–1330.
[1077] *D. Milošević* AJ, para. 306 (citing *M. Nikolić* Sentencing AJ, para. 58, *Deronjić* AJ, para. 106).
[1078] *D. Milošević* AJ, paras 306–307.
[1079] *Đorđević* AJ, paras 939, 940, 980 (citing, *inter alia*, *Hadžihasanović* AJ, para. 320; *Stakić* AJ, para. 411; *Babić* Sentencing AJ, para. 80; *Aleksovski* AJ, para. 183).
[1080] Judgement, V.4 para. 1330.

this abuse was a distinct factor from its earlier findings about his exercise of his authority.[1081] The Chamber held: "Stojić played a key role in the commission of crimes by virtue of his functions and powers within the DoD and the HZ(R) H-B government. He thus abused his authority…"[1082] Thus, the only basis for the finding that he abused his authority is his alleged powers and functions, which the Trial Chamber had already assessed in weighing the extent of his participation.[1083] The findings plainly overlap because both rely on the Chamber's (erroneous) findings about his authority over the military.[1084] Absent any meaningful additional finding on his abuse of office, the Trial Chamber double counted Stojić's functions and powers as the Head of the DoD as both demonstrating his "key" role in the crimes alleged and also as an aggravating factor.[1085] Although the Chamber did not explain in detail how it computed the sentence, since this was the primary aggravating factor, it must have had a significant impact. Accordingly, Stojić's sentence should be reduced.

429. Further, the finding that Stojić played a key role in the commission of *all* the crimes is based on the conclusions that he was a member of the alleged JCE, had significant authority over the armed forces and MP, planned operations in Mostar, intended to discriminate against Muslims and failed to prevent or punish crimes.[1086] Each of these findings is appealed;[1087] to the extent any relevant Defence submissions are accepted, the same submissions are relevant to sentencing because they demonstrate the true, limited, extent of Stojić's participation. Further, the conclusion that Stojić played a *key* role in *all* the crimes is unfounded and does not reflect the limited evidence of his contribution to specific crimes in specific municipalities.[1088] As a result, his sentence should be reduced.

[1081] *Ibid.*, para. 1328.
[1082] *Ibid.*, para. 1330.
[1083] *Ibid.*, para. 1328.
[1084] *Ibid.*, paras 1328, 1330.
[1085] *Ibid.*, paras 1328–1330.
[1086] *Ibid.*, para. 1328.
[1087] *See* Grounds 20, 21, 24, 25, 31–34, *supra*.
[1088] *See* Grounds 28–37, *supra*.

56.3 The Trial Chamber erred in law in imposing a sentence of 20 years imprisonment which was manifestly excessive and disproportionate.

430. Sentences must be proportionate to the crimes and must reflect the *relative* significance of the role of the Accused.[1089] Thus, the Appeals Chamber has held that a trial chamber should utilize gradations in sentences to reflect the comparative culpability of the accused.[1090]

431. This is particularly important in the context of a JCE, where disparities in culpability arise because multiple accused may have made a contribution sufficient to meet the JCE threshold, though some contributed to a much lesser extent than others. Such disparities should be "dealt with at the sentencing stage" by making a "formal distinction" between accused.[1091]

432. The Trial Chamber failed to utilize gradations in sentencing to formally distinguish between the Accused's culpability: Stojić was sentenced to 20 years imprisonment, the same sentence imposed on Praljak and Petković.[1092]

433. Judge Antonetti assessed that Stojić's responsibility was lesser than that of Praljak and Petković, noting that while they bore responsibility for giving military orders, Stojić bore a lesser responsibility for providing the armed forces with logistical support.[1093] On the Judgement findings, this assessment of the disparity in culpability was correct; through the military chain of command Praljak and Petković had direct command authority over the military and the direct perpetrators whereas Stojić did not.[1094] His contribution to the commission of crimes, if any, was thus less immediate. In consequence, Stojić should have received a comparatively lower sentence. His sentence for any convictions that remain should be reduced.

[1089] *Tadić* Sentencing AJ, paras 55–56.
[1090] *Aleksovski* AJ, para. 184.
[1091] *Brđanin* AJ, para. 432.
[1092] Judgement, V.4 p.430.
[1093] Judgement, V.6 pp 408–409.
[1094] Judgement, V.1 paras 708, 791–796.

57: The Trial Chamber erred in law in failing to deduct time spent on provisional release, when Stojić's liberty was significantly restricted, from the time he must serve in custody as part of his sentence.

434. In [REDACTED] separate decisions, the Trial Chamber provisionally released Stojić, during which time he was subject to extensive restrictions on his liberty including not changing his address without notification; regular reporting to the police; random unannounced checks and limitations on his contact with individuals and the media.[1095] [REDACTED].[1096]

435. The Chamber denied Stojić credit for time spent on provisional release against his sentence, which he would otherwise have been entitled to pursuant to Rule 101(C) of the Rules.[1097] In so finding it erred in law, because given the extensive restrictions imposed on Stojić, this time spent on provisional release was a form of detention and should be deducted from his sentence.

436. The restrictions imposed on Stojić whilst on provisional release are consistent with a deprivation of liberty. The ECtHR has indicated that an assessment of deprivation of liberty must consider all relevant criteria, including "the type, duration, effects and manner of implementation of the measure in question", such that "the difference between deprivation of and restriction upon liberty is nonetheless merely one of degree or intensity".[1098] Based on this formulation, house arrest, in particular, has been held to be a form of deprivation of liberty.[1099]

437. In *Blaškić*, the Trial Chamber confirmed that house arrest is a form of detention[1100] and gave credit for that time in determining his sentence.[1101] This finding was not disturbed on appeal. The conditions of house arrest imposed in

[1095] *See, e.g.*, Judgement, V.5 pp 52–68 (*see especially* para. 84) (listing almost all provisional release decisions and orders); *see also* 30/07/2004 Provisional Release Order; 09/08/2004 Denial of Stay of Release; 15/07/2005 Variation Order; [REDACTED].
[1096] [REDACTED]; [REDACTED]; [REDACTED]; [REDACTED]; [REDACTED]; [REDACTED].
[1097] Judgement, V.4 paras 1335–1336.
[1098] *Guzzardi v. Italy* (ECtHR), paras 92–93.
[1099] *Lavents v. Latvia* (Fr) (ECtHR), para. 63; *Ciobanu v. Italy and Romania* (Fr) (ECtHR), paras 63–65.
[1100] Decision on Defence Motion on Rule 64 (*Blaškić*), para. 13.
[1101] *Blaškić* TJ, para. 794 and p.270 (Disposition).

Blaškić cannot be distinguished from the conditions imposed on Stojić and therefore the same result should apply.[1102]

438. Stojić was subject to extensive restrictions on his liberty during his pre-trial and trial-phase provisional releases.[1103] He consistently cooperated with all the conditions.[1104] At all times, these restrictions amounted to a deprivation of liberty, for which Stojić is entitled to credit at sentencing. If the Appeals Chamber is not satisfied that the extensive restrictions placed on Stojić's liberty during all periods of provisional release amount to a full deprivation, he is still entitled to credit for time served during periods of provisions release that he was under house arrest. Denial of credit for this time served is not only inconsistent with Tribunal and human rights jurisprudence, it also has the effect of imposing an additional penalty on Stojić. Had he remained in the Detention Unit, he would have been given credit for time served there, [REDACTED].

439. Time spent on provisional release, when under the extensive restrictions set out above, amounts to detention. The Chamber erred in failing to give credit for this time served in calculating the period of imprisonment and the Defence invite the Appeal Chamber to correct this error.

RELIEF REQUESTED

As set out above, the Trial Chamber erred in law and fact in finding that there was a JCE, that Stojić participated in any JCE and that he intended the Indictment crimes and significantly contributed to them. The Appeals Chamber should therefore overturn his conviction on the basis of a JCE. The Appeals Chamber should not consider any other mode of liability, since the Trial Chamber made no factual findings in relation to any other mode of liability. The Appeals Chamber should therefore overturn Stojić's conviction on all counts. Alternatively, if the Appeals Chamber upholds the JCE findings, it should overturn Stojić's conviction on the specific counts identified in Grounds 25–26, 28–37, 39–42, 45, 47, 50, 54–55 above. Should any counts remain, the Appeals Chamber should reduce the sentence imposed on Stojić.

[1102] Decision on Defence Motion on Rule 64 (*Blaškić*), para. 24.
[1103] *See*, *e.g.*, 30/07/2004 Provisional Release Order; [REDACTED]; [REDACTED]; [REDACTED].
[1104] *See* Judgement, V.5 para. 84 (noting perfect compliance with all forms of release conditions, save for a small number of minor incidents involving other Accused).

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