THE INTERNATIONAL CRIMINAL TRIBUNAL
FOR THE FORMER YUGOSLAVIA

Case No. IT-04-74-A
Original: English

APPEALS CHAMBER

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

Registrar: **Mr. John Hocking**

Filed: 29 July 2015

THE PROSECUTOR
v.
JADRANKO PRLIĆ
BRUNO STOJIĆ
SLOBODAN PRALJAK
MILIVOJ PETKOVIĆ
VALENTIN ĆORIĆ
BERISLAV PUŠIĆ

PUBLIC

NOTICE OF FILING OF REVISED PUBLIC REDACTED VERSION OF SLOBODAN PRALJAK'S APPEAL BRIEF WITH ANNEXES

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NOTICE OF FILING OF REVISED PUBLIC REDACTED VERSION OF SLOBODAN PRALJAK'S APPEAL BRIEF WITH ANNEXES

In accordance with the Appeals Chamber Decision (the "Decision")[1], Slobodan Praljak Defence (the "Defence") files the Revised Public Redacted Version[2] of its Appeal Brief with Annexes[3]. The redactions have been made, according to directions indicated in Decision and after consultations with the Prosecution, in order to protect confidential information (identity of protected witnesses and content of confidential documents).

Respectfully submitted,

By

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Word Count: 155

[1] Decision on the Prosecution Urgent Motion to Reclassify Public Briefs and Modify the Public Redacted Briefing Schedule, issued on 8 July 2015;
[2] Annex, Revised Public Redacted Version of Slobodan Praljak's Appeal Brief with Annexes;
[3] Slobodak Praljak's Appeal Brief with Annexes filed confidentially on 12 January 2015.

ANNEX

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SLOBODAN PRALJAK'S REVISED PUBLIC REDACTED APPEAL BRIEF WITH ANNEXES

I. INTRODUCTION

1. On 29-05-2013, the TC rendered its Judgment in Case n°IT-04-74, the Prosecutor v. Slobodan Praljak (the "Judgment"). The TC found Praljak (the "Accused") guilty of the following crimes:

- Persecutions, a CAH pursuant to Art.5(h) and 7.1 of the Statute (Count-1);
- Murder, a CAH pursuant to Art.5(a) and 7.1 of the Statute (Count-2);
- Willful killing, a grave breach of the GC, pursuant to Art.2 (a) and 7.1 of the Statute (Count-3);
- Deportation, a CAH pursuant to Art.5(d) and 7.1 of the Statute (Count-6);
- Unlawful deportation of a civilian, a grave breach of the GC, pursuant to Art.2(g) and 7.1 of the Statute (Count-7);
- Inhumane acts (forcible transfer), a CAH pursuant to Art.5(i) and 7.1 of the Statute (Count-8);
- Unlawful transfer of a civilian, a grave breach of the GC, pursuant to articles 2(g) and 7.1 of the Statute (Count-9);
- Imprisonment, a CAH, pursuant to Art.5(e) and 7.1 of the Statute of the Tribunal (Count-10);
- Unlawful confinement of a civilian, a grave breach of the GC, pursuant to Art.2(g) and 7.1 of the Statute (Count-11);
- Inhumane acts (conditions of confinement), a CAH, pursuant to Art.5(i) and 7.1 of the Statute (Count-12);
- Inhuman treatment (conditions of confinement), a grave breach of the GC, pursuant to Art.2(b) and 7.1 of the Statute (Count-13);
- Inhumane acts, CAH, pursuant to Art.5(i) and 7.1 of the Statute (Count-15);

- Inhuman treatment, a grave breach of the GC pursuant to Art.2(b) and 7.1 of the Statute (Count-16);
- Unlawful labor, a VLCW, pursuant to Art.3 and 7.1 of the Statute (Count-18);
- extensive destruction of property, not justified by military necessity and carried out unlawfully and wantonly, a grave breach of the GC pursuant to Art.2(d) and 7.1 of the Statute (Count-19);
- destruction or willful damage done to institutions dedicated to religion or education, a VLCW, pursuant to Art.3(d) and 7.1 of the Statute (Count-21);
- appropriation of property, not justified by military necessity and carried out unlawfully and wantonly, a grave breach of the GC pursuant to Art.2(d) and 7.1 of the Statute (Count-22);
- plunder of public or private property, a VLCW, pursuant to Art.3(e) and 7.1 of the Statute (Count-23);
- unlawful attack on civilians, a VLCW, pursuant to Art.3 and 7.1 of the Statute (Count-24); and
- unlawful infliction of terror on civilians, a VLCW of war, pursuant to Art.3 and 7.1 of the Statute (Count-25).[1]

2. The TC sentenced the Accused to a single term of 20-year imprisonment sentence.[2]

3. On 28-06-2013, the Praljak Defence (the "Defence") filed the Notice of Appeal.

4. In light of the errors identified in its Notice and pursuant to Art.25 of the Statute and R.111 of the Rules, the Defence files this Appeal Brief.

5. All errors of law indicated in this Brief are of such nature and importance that they render the Judgment invalid. All references to general principles of law comprise the presumption of innocence, *in dubio pro reo* and *onus probandi incombit actori.* Whenever the TC acted in violation of general principles of law it also acted in violation of Art.21.3 and 23.2 of the Statute and of R.87(A) of the Rules.

[1] J,Disposition,Vol-IV,p.446;
[2] J,Disposition,Vol-IV,pp.446-447;

6. All errors of fact indicated in this Brief led to a denial of justice. Due to these errors, the TC drew erroneous conclusions which no trier of fact could have reasonably reached on the basis of the evidence on the record.

II. GROUNDS FOR APPEAL

1st Ground: Errors related to the IAC

7. All errors indicated in this Ground render the conviction of the Accused pursuant to Art.2 of the Statute null and void. For all the reasons set forth in the 1st Ground, the Judgment should be reversed on Count-3, Count-7, Count-9, Count-11, Count-13, Count-16, Count-19 and Count-22 and Praljak should be acquitted of these charges.

1.1. The TC made an error of fact when it concluded that the south front mentioned in documents issued by the HV[3] covered a part of the HZ(R)H-B[4]

8. The TC omitted to consider that during the period, covered by the Indictment, the Croatia was in war and that southern part of its territory was cut from the rest of the Croatian territory and under constant threat from Serbian forces. Therefore, the TC failed to acknowledge that the southern front covered the Croatian territory situated in coastal area south of Split and spreading from Split to Dubrovnik and Prevlaka.[5]

9. While the HV units were sometimes obliged to use border areas in BiH, they did it with the sole purpose to defend the territory of the RC,[6] the territory which they naturally and legitimately defended.[7] The objective of these actions was to mount a defence against the VRS/JNA/JA and not to launch an attack on Bosnian population (Muslim/Serbian), since the frontline was in Dubrovnik.[8]

10. The Croatian territory in the area of southern front is so narrow, with 5-kilometer average wide, that any military intervention, limited to the Croatian territory, was almost impossible.[9]

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[3] P03677, P11033;
[4] J.Vol-III,para.529;
[5] Praljak,T.41628,T.43014,T.44546; SkenderT.45254; BenetaT.46698; JasakT.48632;
[6] BenetaT.46564,T.46668-46669; Praljak,T.39877,T.41821, PetkovicT.49302;
[7] PraljakT.43014;
[8] J.Vol-VI,Diss.Op,p.10;
[9] BenetaT.46572,T.46573; PraljakT.39877;

11. Having omitted that the southern front covered primarily the southern Croatia, the TC could not properly consider the meaning of documents issued by HV and concluded erroneously that the expression “southern front” mentioned in these documents refers to BiH. This error of the TC caused further errors regarding the HV implication in the conflict in BH and finally the erroneous qualification of the conflict as it is further explained in sub-grounds 2-4 of this ground.

1.2. <u>The TC made an error of fact when it concluded that the HV units participated in the conflict in BiH</u>

12. The TC considered that numerous elements confirm the HV units presence on the southern front in BiH[10] in municipalities[11] and even in DC[12] listed in the Indictment and concluded that the HV was present in that area during the conflict between HVO and ABiH[13] and directly intervened.[14]

13. The Defence acknowledges that some evidence mentions the HV elements presence in BiH. This evidence does not confirm the organized, planned or ordered intrusion of HV units into BiH territory, but only the presence of some individuals. Documents and testimonies indicating HV involvement in the conflict between HVO and ABiH are based on suspicions, suppositions and rumors which were never confirmed.

14. Thus, for instance Hujdur claimed that the HV was present in BiH without having any concrete knowledge of its presence. He does not know if the vehicles he saw belong to the HV, he did not see any insignia and he only thinks that they were owned by the HV.[15] Watkins also has no concrete knowledge about the HV presence in BiH, he said, based on type of weaponry he observed, that it was more likely that a formed military unit came from Croatia with a range of weaponry. He did not exclude the possibility that the HVO obtained these weapons.[16] Concerning the testimony of Witness-DW, he changed his statement after he saw documents,[17] he does not have any personal and direct knowledge of the HV presence in BiH and he stated in his 1997 interview that the

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[10] J.Vol-III,para.530;
[11] J.Vol-II,para.29; Vol-III,paras.532-538;
[12] J.Vol-III,paras.539-540;
[13] J.Vol-III,para.531;
[14] J.Vol-III,para.543;
[15] HujdurT.3502,T.3618;
[16] WatkinsT.18849;
[17] Witness-DWT.23090;

HV was not present in his area of responsibility.[18] More interesting, Nissen affirms that the ECMM did not have any concrete indications of the HV troops and that they did not see any of them.[19] The careful analysis of Nissen's testimony shows that the HV presence in BiH was presumed, but never confirmed despite the deployed means.[20]

15. The TC based its conclusions on HV presence in BiH on unverified statements which were not assessed with required scrutiny.[21] Therefore, it was not able to establish number of Croatian soldiers present in BiH, the exact period in which it believed the HV directly intervened in BiH or locations where such intervention would have taken place.

16. Authors of documents, which mention presence of the HV elements in BH, considered exclusively local situation and omitted to consider that HV elements were obliged to cross the borderline and to use the border area on the BiH territory in order to defend Croatian territory namely the area south of Split and specially around Dubrovnik[22] which was under attacks coming from the BiH territory.[23] While present on the BiH territory, the HV elements did not intervene in the conflict between HVO and ABiH, but used the BiH territory to defend territorial integrity of the RC, constantly threatened by Serbian forces.

17. While according to case-law it is not necessary that foreign military units are present on the location where crimes have been committed,[24] their presence shall be however, in some way, linked to the conflict in question. The presence of the HV elements in bordering area of BiH is not at all related to the conflict between HVO and ABiH, it is actually even not related to the conflict in BiH but it resulted from Serbian aggression on RC and is solely related to the conflict that at that time existed in Croatia.

18. Defence does not contest that individual HV members went to BiH to fight.These soldiers went to BiH individually as volunteers[25] and joined the HVO or ABiH. The HV did not make any difference between Croats and Muslims and enabled all volunteers to

[18] Witness-DWT.23090;
[19] NissenT.20486,T.20487,T.20501,T.20504;
[20] NissenT.20504;
[21] *Infra*,Ground 12.1,para.186;
[22] *Supra* para.9,10; Witness-DW,T.23166-23167;
[23] Zuzul,T.27777; PetkovicT.49303;
[24] Kordic AJ,para.321;
[25] Buljan,T.36853; PraljakT.39877,T.39879,T.40071; Beneta,T.46688; Jasak,T.48837; Petkovic,T.49299; 3D00453;

go to BiH.[26] The volunteers could equally join the HVO or the ABiH.[27] While the HV soldiers who joined the HVO kept administrative links with the HV, they were assigned to the HVO units,[28] incorporated into the HVO chain of command[29] and the TC itself established the incorporation of the HV officers into HVO units.[30] The HV soldiers who joined the ABiH enjoyed the same rights as those who joined the HVO[31] and some HV high officers hold positions in BiH political hierarchy as Jaganjac who was Izetbegovic military advisor.[32]

19. The Croatian policy allowed the individuals to go to BiH, however, the HV and its units could not[33] and did not go there[34] and any infringement of this rule was sanctioned.[35]

20. Having omitted to consider all relevant evidence, the TC satisfied itself with rumors and presumptions and reached, without any concrete and tangible evidence, erroneous conclusion that the HV units participated in the conflict between HVO and ABiH.

1.3. <u>The TC made an error of fact when it concluded that the RC exercised control over HVO units</u>

21. The TC concluded that Croatia exercised a global control over HVO units[36] While there is no doubt that some HV members were integrated in HVO units,[37] the TC erred when it concluded that they were sent by Zagreb. The TC based its conclusion exclusively on Galbraith testimony,[38] who actually does know nothing about the HV officers in the HVO. While he stated that Croatia appointed and dismissed the HVO officers,[39] he did not explain where and when he had learnt that. He was unable to tell who sent the officers to HVO or who was in charge of such decisions, satisfying himself with general and vague affirmation that Croatia appointed and dismissed the HVO officers. Contrary to his testimony and contrary to the TC conclusion, the HV officers were not sent to the

[26] PraljakT.39669,T.39847,T.41587,T.41590;
[27] Praljak,T.40076,T.40077;
[28] Praljak,T.43100;
[29] Praljak,T.43146; Petkovic, T.49299;
[30] J.Vol-I,para.775;
[31] 3D00299;
[32] Idrizovic,T.9878;
[33] 3D00300;3D00443;
[34] BenetaT.46698; PraljakT.41815; PetkovicT.49299;
[35] PraljakT.40084;
[36] J.Vol-III,paras.545-567
[37] J.Vol-I,para.775;
[38] J.Vol-III,para.546;
[39] Galbraith,T.6467;

HVO,[40] they went there on their own will as volunteers[41] because many of them were born in BiH and their families lived there,[42] so when the war broke out in BiH they returned there to defend their country.[43] The 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.[44]

22. The TC noted that the HV officers integrated into the HVO remained the HV officers, however it omitted to acknowledge that the same regime applied to the HV officers on service in the ABiH.[45] It also omitted to consider that during the period in which they volunteered in the HVO, none of them had duties in the HV.[46]

23. The RC continued to pay salaries to all HV officers on service in the HVO as all of them kept their status of the HV officers.The HV officers on service in the ABiH were also paid by the RC and kept their status in the Croatian Army. There was no difference in treatment of the HV officers who joined the HVO and those who joined the ABiH.[47] Thus, this fact does not confirm the RC global control of over the HVO.

24. The RC supplied MTS to the HVO, but it also provided the ABiH with MTS.[48] The same apply to military training which was provided by the HV to the HVO members but also to the ABiH members.[49] Moreover three logistical centers of the ABiH were allowed to freely operate in Croatia.[50]

25. Regarding the financial assistance,[51] the funds were collected by Croatian emigrants who originated from Croatia but also from BiH. These funds did not come from the Croatian budget,[52] they were collected by Croatian emigrants equally for Croats in Croatia and for Croats in BiH.[53] Furthermore, at least a part of these funds came from

[40] 3D00443, 3D00453;
[41] *Supra*,Ground.1.2,para.19;
[42] Biskic,T.15035,T.15068; Buljan,T.36852; Praljak,T.41892; Curcic,T.45916; Petkovic,T.50520;
[43] Rupcic,T.23379;
[44] Kordic AJ,para.359;
[45] 3D00299;
[46] Praljak,T.40068-40070,T.43078-43081, 3D00299,P00144,3D00278;
[47] 3D00299;
[48] P01502, 3D03008,3D00009, 1D02292,2D00147, 2D00195,3D02812, 3D00561;
[49] 3D0006,3D0009, 3D00143,3D02463, 3D03011,3D02633, 2D00196, 2D00527, 2D01086,2D01087, 2D1108;
[50] 3D02633, 3D03008,3D02811, 3D00302;
[51] J.Vol-III-paras.557-558;
[52] Rupcic,T.23551,T.23576;
[53] Rupcic,T.23540,T.23561,T.23562,T.23578,T.23581,T23582,1D01755,1D01754;

Croats originating from BiH,[54] so it was natural and logical that a part of these funds went for the HVO needs. The HVO was not an internationally organized entity, so it was easier for Croatia to take care about the collection of funds coming from abroad.

26. The TC erred when it concluded, on the basis of political concordance between the HZ(R)H-B and Croatia,[55] that the HV and HVO conducted jointly military operations.[56] While the HZ(R)H-B and Croatia might have had and certainly had similar/identical views on some issues, namely with respect to Serbian aggression and policy, it does not mean that they conducted military operations together.

27. In order to be able to reach such erroneous conclusion, the TC distorted Beneta's testimony who never said that the HV commanders gave orders to the HVO units.[57] Quite the contrary, Beneta said that the HV members integrated into the HVO were under the HVO command.[58]

28. Having rejected Biskic's testimony regarding Susak's presence in BiH,[59] the TC concluded that Susak went to BiH as Croatian Defence Minister[60] and it considered that this element supports its conclusion that the HV and HVO conducted jointly military operations. Even if Susak went to BiH in his capacity as RC Defence Minister, it does not mean that the HV was involved in planning/conducting of the HVO military operations or that they planned/conducted military operations jointly. Susak's presence in BiH can easily be explained by Croatian deep concerns regarding the situation in BiH and threats which this situation represented for the RC territorial integrity. Furthermore, the IC constantly asked Croatian authorities to intervene with the HVO and it was only natural and logical that the Croatian Defence Minister had contacts with the HVO.

29. The TC also misunderstood and misinterpreted documents addressed by the HVO to the HV and/or the Croatian authorities.[61] It is not in dispute that historical links exist between Croats in BiH and the RC. It is also not in dispute that the RC had privileged political and economic relationship with BiH Croats and that it had and still has its own

[54] Rupcic,T.23382;
[55] Ribicic,T.25513; P08973,p.25; Decision 07/09/06 adj.fact n°8;
[56] J.Vol-III,para.549;
[57] J.Vol.III.para.550;
[58] Beneta,T.46633;
[59] J.Vol.III,para.551-552;
[60] J.Vol.III,para.552;
[61] J.Vol.III,para.553;

interest in BiH as any State has in its bordering countries. It is thus only natural and logical that the RC got some information directly from the BiH Croats, HVO and other bodies of the HZ(R)H-B. Few documents that were addressed by these bodies to the Croatian authorities do not show regular reporting which would be required if the RC had intention to exercise global control over the HVO.

30. The TC misinterpreted historical links between Croatia and BiH Croats. Croats from Croatia and Croats from BiH lived for years, over a century, in the same country. They have had the same political, commercial and cultural interests. Therefore, the RC have had a certain influence on Croats in BiH, but this influence is not a result of Croatian policy, but of deep natural and historical links that existed between Croats from Croatia and those from BiH. However, such influence, which the TC describes itself as indirect,[62] cannot be considered as a global control.

31. The TC did not specify where and when Croatia, its army or its bodies would have participated in planning/conducting of military operations conducted by the HVO or how it would exercise its global control over the HVO. Therefore it reached, without any concrete and tangible evidence, erroneous conclusion that the RC and the HV exercised global control over the HVO.

1.4. <u>The TC made errors when it established the existence of an IAC in BiH</u>

32. The TC correctly established that an IAC opposes two or more States. It also correctly considered that a conflict would be international if military units of a foreign State intervene into the conflict.[63] The TC drew the erroneous conclusion when it concluded that the HV units participated directly in the conflict. The evidence does not support such conclusion but only the presence of individual HV soldiers and officers who cannot be assimilated to the HV units[64] and whose presence in the HVO "does not imply without doubt that they were there on direct orders of Croatia".[65] While some HV units were at some moments present on the BiH territory, it was in the frame of the war between Croatia and Serbia and without having received any order.[66]

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[62] J.Vol-III,para.560;
[63] J.Vol-I,para.85;
[64] *Supra*,Ground 1.2,para.19,Ground 1.3,para.22;
[65] Kordic AJ,para.359;
[66] J.Vol-VI,Diss.Op,p.10;

33. Regarding the global control, the TC correctly stated legal standard[67] as established in case-law.[68] While the RC provided assistance to the HVO, the global control "must comprise more than a mere provision of financial assistance, or military equipment or training".[69]

34. The TC erred when it concluded that the RC had requisite control. In order to establish the RC global control over the HVO, the TC should have establish beyond reasonable doubt that Croatia had "a role in organizing, coordinating or planning the military actions"[70] of the HVO. The global or overall control test "calls for an assessment of all the elements of control taken as a whole and a determination to be made on that basis as to whether there was a required degree of the control".[71]

35. The TC simply mentioned Croatian participation in planning/conducting of military operations,[72] but it did not give any detail. Moreover the conclusion reached by the TC is not based on any concrete and tangible evidence.

36. Global control is extremely disputed in international law and rejected by the ICJ. The ICJ held that although the ICTY could use the overall control test in order to determine whether the nature of an armed conflict is international, the effective control test remains applicable in order to decide whether "a State is responsible for acts committed by paramilitary groups, armed forces which are not among its official organs".[73] The ICJ reprimanded the ICTY for overstepping its jurisdiction by answering a question of State responsibility. The ICJ ruled that it has exclusive authority over State responsibility.[74] While the ICTY assesses individuals and individual responsibility, the international nature of an armed conflict remains the question of State involvement and thus of State responsibility and universally accepted and recognized standards of international law should be applied.

37. The Defence is conscious that in other cases related to the HVO officers responsibility in the conflict between the HVO and ABiH, the Tribunal established existence of an

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[67] J.Vol-I,para.86;
[68] Tadic AJ,paras.90-144; Aleksovski AJ,para.134;
[69] Tadic AJ,para.137;
[70] *Idem*;
[71] Aleksovski AJ,para.145;
[72] J.Vol-III,paras.549,552;
[73] ICJ.Judgment,26/02/2007,para.404.
[74] *Idem*,paras.403-406.

IAC.[75] However, "the issue as to whether an IAC existed at a particular time or place is a matter for each TC to determine based upon the evidence before it in the particular case".[76]

38. The Prosecution did not plead international character of the conflict in three cases concerning the responsibility of the ABiH officers in this same conflict between HVO and ABiH.[77] While the issue of the conflict nature shall be determined on a case-by-case basis,[78] such Prosecution policy casts doubts on the international nature of the conflict between HVO and ABiH as, according to correct interpretation of the case-law, once an armed conflict became international, it remains international throughout the respective territories of the warring parties.[79]

39. Generally, legal consequences of the characterization of the conflict as either internal or international are extremely important.[80] Consequences of the conflict characterization in cases before the Tribunal go beyond law. The Tribunal was established by the UNSC under Chapter VII of the UN Charter.[81] Therefore, the establishment of the Tribunal had not only for purpose to put an end to serious crimes and bring to justice persons suspected to be responsible, but also to contribute to the restoration and maintenance of peace.[82]

40. The inconsistent Prosecution approach to the nature of the conflict between the ABiH and the HVO may be prejudicial to the Tribunal's credibility but it also can be detrimental for durable maintenance of peace in region. In order to cure Prosecution inconsistencies and to prevent any prejudice that they may cause to the Tribunal and to the region, the TC should have considered with particular attention this issue, taking into account only the concrete reliable evidence before it. It should have examined all elements of the conflict in question and should have established beyond reasonable doubt that the conflict was international. The TC failed to do so. Therefore, the TC erred

[75] Kordic AJ,paras.299,313; NaletilicAJ,para.96; Blaskic AJ,paras.94,123;
[76] Decision Hadzihasanovic, 21/02/07,para.11; Decision Tadic, 02/10/95,para.77; Decision Simic, 25/03/99,p.4; Decision Krnojelac, 24/02/1999,para.43; Celebici TJ,paras.228-229;.
[77] Delic Indictment; Hadzihasanovic Indictment, Halilovic Indictment;
[78] Kordic AJ,para.320;
[79] Kordic AJ,para.321;
[80] Tadic AJ,para.97;
[81] S/RES/827,p.2;
[82] S/RES/808,p.2; Secretary-General Report, para.22;

in law and facts when it concluded that the armed conflict between the HVO and ABiH was an IAC.

41. Legally, in the present case the determination of the nature of the conflict is important for applicability of Art.2 of the Statute. According to case-law, the IAC is a prerequisite for the applicability of Art.2 of the Statute.[83] The TC erroneously concluded that the conflict between the HVO and ABiH was international and therefore made an error when it convicted the Accused pursuant to Art.2 of the Statute.

2nd Ground: Errors related to the occupation

42. All errors indicated in this Ground (sub-grounds 2.1-2.2) render the conviction of the Accused pursuant to Art.2 of the Statute null and void. For all the reasons set forth in the 2nd Ground, the Judgment should be reversed on Count-3, Count-7, Count-9, Count-11, Count-13, Count-16, Count-19 and Count-22 and Praljak should be acquitted of these charges.

2.1. The TC made errors when it established the existence of an occupation

43. The TC stated that, with respect to the establishment of the occupation, it adopted criteria from Neletilic case[84] and concluded that there is a state of occupation when a party, under overall control of a foreign State, fulfills criteria for a control over territory.[85]

44. Regarding the presence or Croatian forces on the ground or the ultimate and overall responsibility of Croatian forces/authorities for the said occupied territory the Defence recalls its arguments regarding the IAC.[86]

45. The TC interpretation of criteria established in Naletilic case is confusing and led to erroneous conclusions. It seems that the TC followed neither the Naletilic case-law nor the international law as it did not establish the facts that would correspond to specific criteria needed for occupation. The criteria required for occupation are not identical to global control criteria needed for an IAC as the occupation requires a further degree of

[83] Naletilic AJ,para.110; Blaskic AJ, 29,para.170; Tadic AJ,para.80; Tadic Decision, 02/10/95,para.84;
[84] J.Vol-I,para.88;
[85] J.Vol-I,para.96;
[86] Supra, Ground 1.3,paras.21-31;

control.[87] There is an essential distinction between the determination of a state of occupation and that of the existence of an IAC.[88]

46. The IHL distinguishes clearly the occupation and IAC considering the former as a "different situation from that of armed conflict in various respects: the occupier controls the occupied territory, there are no major military operations in the occupied zone and a minimum of order and security have been restored enabling civilian life to resume to some degree. The fact that the occupier has sufficient control over the occupied territory to assert itself, the *conditio sine qua non* for the existence of an occupation and a typical element found in Art.42 of the HR, facilitates its task of stabilizing the occupied territory that it can accomplish through the administrative/governmental powers.[89] The ICJ found that the presence of foreign armed forces in not *per se* sufficient to establish the occupation; the foreign State shall impose its own authority in order to constitute an occupation state.[90]

47. When the TC found that HVO occupied Prozor,[91] it ignored the fact that no changes in municipality occurred and that legally elected authorities[92] continued to exercise their activities. Thus, the legitimate authorities have never been rendered incapable of functioning publicly.

48. Regarding GV, Jablanica, Mostar, Ljubuski, Stolac, Capljina and Vares, the TC satisfied itself with statement that the military presence of the HVO in these villages was strong enough to enable the HVO to give orders to the population.[93] This ascertainment is not sufficient to establish the state of occupation and it constitutes only one of criteria for its establishment. As for Prozor, the TC did not establish that the criteria, necessary for state of occupation, had ever existed.

49. "Occupation" has been defined in case-law as being "a transitional period following invasion and preceding the agreement on the cessation of the hostilities".[94] Thus, it is important to establish that there was already a transitional period and that the

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[87] NaletilicTJ,para.214;
[88] *Idem*;
[89] ICRC Review Article,pp.659-660;.
[90] ICJ Judgment, 19/12/05,para.173;
[91] J.Vol-III,para.578;
[92] Infra, Ground 10.2,para.169;
[93] J.Vol-III,paras.579,580,583-585,587-588;
[94] Naletilić TJ,para.214, Brđanin TJ,para.638;

Occupying Power had a sufficient degree of authority.[95] Occupation requires that the occupying power has rendered the occupied authorities incapable of functioning or of controlling the area and that is in a position to exercise its authority over the territory. The TC has not established in any municipality that the HVO rendered the occupied authorities incapable of functioning or controlling the area. Actually, it did not establish which authorities were in place before the said occupation or that the occupied authorities existed and functioned in the relevant municipalities. The TC also omitted to establish the time-frame of the occupation with its starting and ending date.

50. The situation in relevant municipalities shows permanent changes and constant armed conflict, which intensity is incompatible with any state of occupation that necessary implies a certain degree of stability. Battle areas may not be considered as occupied territory.[96] The TC found the existence of an armed conflict[97] and of a state of occupation[98] in same time and place which is factually impossible and legally incorrect.

2.2. <u>The TC made errors when it concluded that the HVO occupied parts of BiH</u>

51. As the TC could establish neither physical presence of Croatian forces on the ground nor the ultimate and overall responsibility of Croatian forces/authorities for the occupied territory, it found that the HVO occupied some portions of the BiH territory. Such conclusion is not only legally and factually incorrect but it also constitutes a logical error in contradiction with common sense and with the principle of self-determination of peoples guaranteed by main international and human rights treaties.[99]

52. The HZ(R)HB/HVO were the organizations of Croatian people in BiH and having BiH citizenship.[100] It is legally and logically impossible that the HVO occupies the territory in which Croats legitimately live for centuries. Croats in BiH have right to freely determine their political status and freely pursue their economic, social and cultural development.[101] The HZ(R)HB/HVO as legitimate body of Croatian people in BiH pursued the legitimate goals of Croats living in BiH.

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[95] Brdjanin, TJ,para.638;
[96] Naletilic TJ,para.217;
[97] J.Vol-III,para.514;
[98] J.Vol-III, para.578-580,583-585,587-588;
[99] UN Charter,Art.1.2; ICCPR,Art.1.1; ICESCR,Art.1.1;
[100] P00151;
[101] ICCPR,Art.1.1; ICESCR,Art.1.1;

53. The HZ(R)HB/HVO took care of the territory which was in isolation and where central governmental organs were cut off.[102] Thus, the reason for the establishment of that entity was also to compensate the lack of governmental functions and to strength the defence.

54. In the absence of a definition of "occupation" in the GC, the definition provided by the HR, which have customary nature, still applies and is adopted by the case-law.[103] According to Art.42 of the HR, "territory is considered occupied when it is actually placed under the authority of the hostile army". The IHL requires, for establishment of an occupation, that a hostile army establishes its own authority and substitutes it to legitimate authority on territory on which it made an invasion.

55. The HVO was a body which was recognized by the BiH civil[104] and military authorities[105] and was from 1992 onwards a component of RBiH armed forces.[106] It is therefore legally and factually inconceivable that the HVO could have occupied the BiH territory.

56. Having omitted to consider the HVO status as component of the RBiH armed forces, the TC wrongly concluded that the HVO was the hostile army in the sense of the IHL and made an error when it concluded that a state of occupation existed.

3rd Ground: Errors related to status of Muslims, HVO members

57. The TC erroneously applied criteria established in case-law when it concluded that the detained Muslims, members of the HVO were protected persons within the meaning of Art.4 of the 4thGC.[107]

58. The object and purpose of the Art.4 of the 4thGC is the protection of civilians to the maximum extent possible.[108] The HVO members were all members of armed forces and cannot be considered as civilians. Thus, regardless the nationality or ethnicity of the HVO members, the Art.4 of the 4thGC cannot apply to them.

[102] Buntic,T.30290;
[103] Kordic TJ,para.339; Naletilic TJ,para.216;
[104] 3D00647;
[105] P01988;
[106] 3D00647,para.6; P00339,pp.3-4; P01988,para.1;
[107] J.Vol-III,para.611;
[108] Tadic AJ,para.168 ; Celebici AJ,paras.73,83; Aleksovski AJ,para.152; Blaskic AJ,para.172;

59. The TC made an error when it applied to HVO Muslim members the criterion of allegiance which "in modern inter-ethnic armed conflicts such as that in the former Yugoslavia" may rely rather on ethnicity than on nationality.[109] While the term "inter-ethnic armed conflict" is rather incompatible with IAC, the Tadic finding regarding the ethnically based allegiance had its logic as it dealt solely with civilians. Civilians in Tadic case found themselves in the middle of belligerents and the only criterion which could link them to one or other party to the conflict was their ethnicity. As the ethnicity was the only basis on which the allegiance could rely, it was logical to apply the ethnic allegiance in order to establish if these civilians fall in the category of protected persons within the article 4 of the 4thGC.

60. In all cases in which the Tribunal applied the ethnically based allegiance criterion, this criterion was applied to civilians who have never had an opportunity to give their allegiance to one or other party in the conflict. [110] However, this finding cannot be applied to Muslims, HVO members, which gave their allegiance to the HVO when they joined it. Persons "are protected as long as they owe no allegiance to the Party to the conflict in whose hands they find themselves and of which they are nationals".[111] Unless the TC had been able to establish that the Muslim HVO members were forced to join the HVO, it should have concluded that their joinder amounts to allegiance to the HVO. The fact that the Muslim HVO members posed a threat to the security of the HVO[112] does not invalidate in itself their allegiance to the HVO.

61. The GC pursue the objective to protect vulnerable persons and not to cover an inadmissible and fraudulent behavior of combatants. In order to obtain the protected persons statute the Muslim HVO members should have left the HVO. As they did not leave it, the TC should have respected their allegiance to the HVO and should not conclude that they were protected persons under 4thGC.

62. The IHL in general and GC in particular do not govern relations between the army powers and its own members. War crimes may be perpetrated by military personnel against enemy servicemen or civilians, or by civilians against either members of the enemy armed forces or enemy civilians. Conversely, crimes committed by servicemen

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[109] Tadic AJ,para.166;
[110] Celebici AJ,para.105; Blaskic AJ,para.175;
[111] Kordic AJ,para.330;
[112] J.Vol-III,para.609;

against their own military (whatever their nationality) do not constitute war crimes.[113] This position is confirmed by the international case-law as the SCSL found that "the law of armed conflict does not protect members of armed groups from acts of violence directed against them by their own forces".[114]

63. The TC made an error of law when it ruled, in violation of GC provisions that Muslims, members of HVO were, after 30-06-1993, protected persons according to Art.4 of the 4thGC. Therefore, for all the reasons set forth in the 3rd Ground, the conviction against Praljak should be set aside on Count-11, Count-13 and Count-16 and Praljak should be acquitted of these charges.

4th Ground: Errors related to status of the military aged men

64. The TC made an error when it ruled that military aged men, even if they, according to national law, were members of armed forces, were not members of armed forces according to IHL.[115] The TC omitted to consider that in IHL a civilian who is incorporated in an army becomes a member of the military throughout the duration of the hostilities, or until permanently demobilized by the responsible authority, whether or not he is in combat or armed.[116]

65. Regarding military aged men, their status cannot be determined without national laws and rules which regulated their status in the relevant period. Generally, reserve forces, together with the active forces, were a component of the ABiH.[117] Members of the armed forces resting in their homes in the area of the conflict, as well as members of the TO residing in their homes, remain combatants whether or not they are in combat.[118]

66. Besides that, in the state of imminent threat of war or in the state of war which were proclaimed in BiH,[119] the general mobilization may be proclaimed and the mobilization was actually declared on 20-06-1992.[120] According to IHL, the reservists become members of armed forces when they are mobilized. The general mobilization casts a

[113] Cassese, ICL(2008),p.82;
[114] SCSL,RUF TJ,para.1451;
[115] Judgment, Vol-III,para.618;
[116] GCAP-I,Art.43.2, Commentary,para.1677;
[117] 4D00412,art.7.
[118] Kordic AJ, para.616;
[119] P00150,p.4, D101218, P00274;
[120] 4D01164;

serious doubt on the civilian status of military aged men and creates at the same time the strong presumption that they were incorporated in the armed forces.

67. While in the case of military aged men a doubt exists regarding they civilian status,[121] in the absence of other evidence or clarification of their status, it cannot be concluded that these men are civilians.[122] The burden of proof to establish the status of victims remains on the Prosecution and there is no presumption of civilian status when civilian status is an element of the offence.

68. Therefore, the TC committed an error when it ruled that military aged men, were not members of armed forces according to IHL. This error has direct bearing on the Praljak's conviction on Count-11 which shall be invalidated and Praljak shall be acquitted of this charge.

5th Ground: Errors related to the involvement of the RC officials in the JCE

69. The TC erroneous conclusions and errors of law regarding the Croatian leaders participation in the JCE render its Judgment invalid in whole as the JCE, the core of the Accused responsibility, is improperly established. Therefore, for all the reasons set forth in the 5th Ground, the Judgment should be reversed and Praljak should be acquitted of all charges.

5.1. <u>The TC made errors when it concluded that Tudjman supported division of BiH</u>

and

5.2. <u>The TC made errors when it concluded that Tudjman supported creation of the HZ(R)H-B in the frame of project aimed to extension of Croatian borders</u>

70. The TC erroneously concluded that Tudjman supported division of BiH with incorporation of a part of BiH into Croatia or alternatively with establishment of an autonomous Croat entity within BiH which would be closely linked to Croatia.[123]

[121] Kordic AJ,para.616;
[122] Kordic AJ,para.619;
[123] J.Vol-IV,para.10;

71. The TC finding is contradictory *per se* as the TC could not establish that Tudjman supported the incorporation of a part of BIH in Croatia and left a possibility of establishment of an autonomous Croat entity within BiH.[124] The establishment of an autonomous Croat entity within BiH does not imply division of BiH and therefore directly contradicts the TC conclusion that Tudjman supported division of BiH.

72. While the division of BiH was an option at some moments, it was not Tudjman's choice but one of the solutions considered by the IC.[125] Tudjman pronounced himself against any division of the BiH and considered that any BiH division would be against the interests of the RC,[126] but he was aware that the BiH future depends on IC decisions.[127]

73. The TC omitted to consider Tudjman position which was always in favor of maintaining the BiH borders, as recognized by the IC.[128] Since the proclamation of the BiH independency, Tudjman had always spoken in favor of the RBiH claiming that BiH ought to remain independent as a State consisting of three constituent peoples.[129] His position was entirely consistent with the BiH position and with the BiH Constitution.[130]

74. Even in the heart of conflict between Croats and Muslims in Bosnia Tudjman indicated that for the sake of the viability of BiH, it was necessary to respect the existence of the three constituent peoples.[131] He spoke out against the creation of three States in BiH[132] and strongly opposed any separatist idea.[133] Moreover, he was constantly underlining the ties between the Mulsims and Croats of BiH[134] and from March 1992 onwards advocated an union between them.[135]

75. The RC recognized the BiH the same day as the IC, immediately after the proclamation of its independence. If Tudjman had had the expansionist intent to annex some BiH territories to Croatia, he, as the RC President, would not have accepted the BiH

[124] J.Vol-IV,para.10,16;
[125] P00108,p.48;
[126] P06454,page 2;
[127] J.Vol-VI,Diss.Op.pp.9-10;
[128] P00336; Manolic,T.4315,T.4318;
[129] P00498,P01544, P00167,p.6;
[130] 1D02994, 1D01236;
[131] P02302;
[132] P03112;
[133] P00336,p.44;
[134] P06454;
[135] P00134;

independence.[136] The RC never recognized Herceg-Bosna as an independent Republic/State and the later has never proclaimed itself as such. Furthermore, Tudjman was permanently against the creation of a separate Croatian entity in BiH.[137]

76. Having completely ignored Tudjman general recognition of the RBiH as an independent State in its internationally recognized borders, the TC distorted and erroneously assessed his particular acts and declarations. Thus, the TC found that from 1990 until at least 1992, Tudjman participated in several meetings with Milošević, President of Serbia, concerning the finalization of plans to divide BiH.[138] Besides the fact, that the TC identified only one meeting with Milosevic, the meeting in Karadjordjevo, the TC omitted to note that this meeting was held before the conception of the alleged JCE that according to TC was created in 01/1993.[139] Moreover, this meeting was held on 25-04-1991, when former Yugoslavia existed in its former borders with Croatia, Serbia and BiH being all parts of the same State. Discussions which were held shall be considered in their context and, at that time, BiH was not an independent State and, contrary to Croatia, it was not in war. Therefore, it is legally inconceivable and factually wrong to link any eventual discussion which took place in early 1991 with the presumed plan of division of the independent BiH.

77. While the TC recognized that it has not received details of plans that would have been discussed in Karadjordjevo and other unknown meetings,[140] it has however concluded, without any conclusive evidence, that these plans contemplated the division of the BiH.

78. The TC erroneous presumption that Tudjman planned the BiH division led to erroneous conclusion that Tudjman supported the creation of the HZ(R)H-B in connection with the plan to expand the Croatian borders.[141] Quite contrary, the evidence show that the RC was concerned only with its own defence. Thus, Tudjman indicated to Boban, only one week prior to creation of the HZ(R)H-B, that RC would support and coordinate military organization of only seven municipalities.[142] All these municipalities are situated in the north of BiH in border area extremely close to Croatian areas which were in war. When

[136] J.Vol-VI,Diss.Op.p.375;
[137] P00167,p.6;
[138] J.Vol-IV,para.11;
[139] J.Vol-IV,para.44 ;
[140] J.Vol-IV,para.11;
[141] J.Vol-IV,para.14;
[142] P00068;

the HZ(R)H-B was proclaimed, Tudjman declared that the decision in question was not a decision on establishing the Community of Herceg-Bosna but a declaration which proved that the BiH Croats were working to establish themselves as a community, without however separating from BiH.[143] This declaration, which TC noted,[144] contradicts directly the TC finding about alleged plan to expand the Croatian borders by dividing BiH.

79. The TC shows a general misunderstanding of Tudjman references to Banovina.[145] When Tudjman, who had historical background, referred to Banovina, he did not refer to a sovereign or independent State, he did not mean that territories that were included in Banovina should be secede from BiH and annexed to Croatia. His references to Banovina territories were historical rather than political[146] and he meant only that BiH territories which for centuries were peopled by Croats and have thus traditional, historical and cultural links with Croatia shall be, as recognized by VOPP, under control of Croatian people. Thus, during the meeting on 20-05-1993,[147] he placed the reference to Banovina in the frame of the VOPP reaffirming that this plan safeguarded Croatian interests.[148] According to this plan "The provinces shall not have any international legal personality and may not enter into agreements with foreign states or with IO".[149] The VOPP did not permit the concept of a State within a State and reaffirmed the independency and sovereignty of the BiH within its internationally recognized boundaries.[150] Two weeks later, Tudjman reaffirmed his intention to persuade the Croats to agree to remain in a confederal BiH[151] and informed Izetbegovic that Croats are supporting BiH in which their interests would be secured.[152]

80. Contrary to TC conclusion,[153] at the meeting held on 17 September 1992, Tudjman recalled Croatia's position which aimed at organizing BiH into three constituent units.[154] The question of BiH division was not a question discussed during that meeting, it was

[143] P00080,p.46;
[144] J.Vol-I,para.423;
[145] J.Vol-IV,para.22;
[146] J.Vol-VI,Diss.Op.p.391;
[147] P02466,p.10;
[148] P02466,p.12;
[149] P01116;
[150] Okun,T.16732;
[151] P02613,p.13;
[152] P02719,p.49;
[153] J.Vol-IV,para.18;
[154] P00498,p.80;

only mentioned as one of the solutions, considered at some past time by the IC, with aim to prevent the horrors of war.[155] At that meeting Tudjman stated that in his opinion the interests of Croatian people can be assured within BiH.[156]

81. When the BiH independency was proclaimed, the Croatia recognized it, Tudjman made all possible efforts to cooperate with Muslims[157] and, as TC recognized, signed in summer 1992 a treaty of friendship and cooperation between Croatia and the RBiH.[158] While, some international instances continued to envisage the partition of BiH[159] this option did not have preference of Tudjman and Croatia.

82. The TC unreservedly believed Okun and his appreciation of Tudjman position even when his statement is contradicted by other relevant and highly probative evidence. Thus, the TC concluded on the basis of Okun testimony that during the meeting in November 1992, Tudjman and Susak repeatedly spoke of the partition of BiH.[160] Okun could not explain his opinion[161] as his own notes on this meeting show a different picture. According to Okun's notes, Tudjman said that division of Bosnia was discussed before the war and not after its commencement[162] and that this discussion on BiH division became academic.[163] While Okun refused to give to the word "academic" the meaning that is its[164] and which means that something is not of practical relevance and is only of theoretical interest, the other evidence show that in November 1992 Tudjman and Croatia had no intention to divide BiH.[165]

83. Only a day before that meeting, Tudjman said to his closest collaborators that the Croats had to ensure that BiH be organized as a community of three constitutive peoples.[166] If Tudjman had had intention to divide BiH, he would have shared it with his collaborators. It would be meaningless to advocate, before the other high Croatian politicians, the sovereign BiH with three constitutive peoples, if he had any other idea.

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155 P00498,pp.80-81;
156 P00498,p.82;
157 P02719,pp.67,70; P00336, p.46;
158 J.Vol-I,paras.440,441;
159 1D00896,p.3;
160 J.Vol-IV,para.18;
161 Okun,T.16711-16715;
162 P00829,p.5;
163 P00829,p.5;
164 Okun,T.16715;
165 P00080,p.46; P00498, pp.80,82; P00822,p.52;
166 P00822,p.52;

84. The TC also unreservedly accepted Okun's statement according to which the representative of delegation of BiH Croats accepted the constitutional principles of the VOPP although they were not genuinely in agreement with them as they were aware that those principles would be later amended.[167] While Okun's statement is in itself highly speculative and not sustained by any concrete evidence, the TC conclusion goes even beyond his statement, as he could not ascertain that Croats were fully aware that principles would be amended. Rather, he stated that Croats "knew[…]or they thought there would have to be, some adjustment in the principles…".[168] In assessment of Croatian position on VOPP, the TC completely omitted to consider that few weeks before its acceptance, Tudjman stated that it was now possible to discuss the internal organization of BiH as a federal community of three nations.[169] This statement, in light of all other Tudjman's statements, shows that Tudjman did not envisage any division of BiH. He only insisted on the fact that three constituent nations live in BiH which is in complete accordance with the BiH Constitution.[170]

85. According to TC, the leaders of the HZ(R)H-B gradually established a Croatian "mini-State" within BiH.[171] The TC adoption of offensive and inappropriate attribute of "mini-State" eloquently shows its misunderstanding of political developments in BiH after VOPP. Actually, the HZ(R)H-B leaders only tried to implement VOPP that they signed. Immediately after the signature of VOPP, Tudjman expressed his reservations about the position of some Croats, who wanted to proclaim Herceg-Bosna as a constituent part of Croatia, and invited them to cooperate with Muslims.[172] Tudjman constantly reminded the need of cooperation with Muslims[173] and, in parallel, he continued to advocate for independent BiH.[174] Thus, whatever the position of HZ(R)H-B leaders and/or Croats living in BiH might have been, Tudjman and Croatia position was to preserve BiH as a sovereign and independent State in its internationally recognized borders.

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[167] J.Vol-IV,para.20;
[168] Okun,T.16735-16736;
[169] P00866,p.9;
[170] 1D01236;
[171] J.Vol-IV,para.21;
[172] P01158,p.45; J.Vol-VI,Diss.Op.p.22;
[173] P01883,p.18; P02122,pp.7,8 ;
[174] P01544,p.24; P02302,p.49;

86. As Tudjman statements contradict the TC findings, the TC concluded that "Tudjman spoke equivocally.[175] The TC did not give any example of the pretended Tudjman double language preferring to refer on Manolic testimony.Manolic did not speak about double language but about double policy which he mentioned in highly speculative response.[176] In the case in which the numerous transcripts were admitted and in which the numerous other exhibits contain Tudjman's statements and declarations, it was unreasonable to find that Tudjman spoke equivocally on the basis of witness statements rather than on the basis of Tudjman's words. It shall be noted that Tudjman statements were consistent and that the transcripts establish one constant feature in the Tudjman's statements: the BiH recognition by the RC.[177] It can even be noted that Tudjman insisted more on BiH sovereignty and independence when he was in Croat circle.[178]

87. If the TC had properly assessed the evidence in the case, it should have concluded that there is no disregard for BiH borders, independency or sovereignty in Tudjman statements and declarations.[179]

88. The TC wrongly presumed that Tudjman had a plan to divide BiH and extend Croatian borders and assessed all evidence in the light of this presumption. In the light of this presumption, the TC disregarded the real meaning of Tudjman statements, declarations and acts and therefore drew factually erroneous conclusions[180] which culminated in its finding that the RC officials were involved in the JCE.

5.3. <u>The TC made errors when it concluded that Tudjman was the real chief of the BiH Croats delegation</u>

89. The TC erroneously concluded, on the sole basis of Okun testimony,[181] that Tudjman was the real chief of the delegation of BiH Croats during international negotiations in 01/1993 and that Boban should obtain his approval before any decision.[182]

90. While the TC found that Tudjman took part in negotiations,[183] Okun's testimony does not bring it out clearly. He was only able to say that Tudjman was present in London[184]

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[175] J.Vol-IV,para.12;
[176] Manolic,T.4493;
[177] J.Vol-VI,Diss.Op.pp.392-393;
[178] P00822,p.52;
[179] J.Vol-VI,Diss.Op.p.376;
[180] J.Vol-IV,paras.10–24;
[181] J.Vol-IV,para.20,FN.64,65;
[182] J.Vol-I,para.443; Vol-IV,para.20;

and acknowledged that they principally dealt with Boban.[185] Okun testimony does not support either the finding that Boban told him on several occasions that he needed Tudjman's approval before taking any decisions.[186] Okun's testimony regarding the consultations between Boban and Tudjman is not based on his own observations, but on what Boban "might say" to him in informal conversations.[187] Okun did not explain if Boban alleged declaration was linked exclusively on BiH topics or if the conversations involved also Croatia. Okun explicitly recognized that they generally dealt with Boban which directly contradicts the thesis that Tudjman was in fact the chief of Croatian delegation. Contrary to informal conversations in which Boban allegedly said that he would have to check with Tudjman, there is no trace in the record that he used this or similar formulations during negotiations.

91. Okun's conversation with Tudjman does not confirm either that Tudjman participated in negotiations or even less that he was in fact the head of Croatian delegation. Apparently Tudjman told Okun that he was in charge, however at the same time he expressed a wish to be kept informed and indicated that he would be happy to deal with those issues.[188] If Tudjman participated in negotiations directly or through Boban over whom he allegedly had control, he would not need to ask Okun to be kept informed, he would be informed directly during the negotiations or by Boban. Equally, he would not need to express his readiness to deal with all these issues, he would deal with them directly or through Boban.

92. The abovementioned evidence and arguments show that the TC distorted and improperly assessed Okun's statement and Tudjman position during negotiations in London and thus, without any conclusive evidence, erroneously concluded that Tudjman was the real chief of the delegation of BiH Croats during negotiations in 01/1993 and that Boban should obtain his approval before any decision.

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[183] J.Vol-I,para.443;
[184] Okun,T.16673;
[185] Okun,T.16675
[186] J.Vol-I,para.443, Vol-IV,para.20;
[187] Okun,T.16675;
[188] Okun,T.16675;

5.4. The TC made errors when it concluded that the RC officials participated in the JCE

93. The TC found that it is clear from the evidence that as of 12/1991, the leaders of the HZ(R)H-B, including Boban, and Croatian leaders, including Tudjman, believed that to achieve the political purpose, namely, the establishment of a Croatian entity and the reunification of the Croatian people it was necessary to change the ethnic make-up of the territories claimed to form part of the HZ(R)H-B.[189] The TC finding is in contradiction with its other findings as the TC could not establish that the ultimate political purpose was the reconstitution of Banovina borders and reunification of the Croatian people.[190] Rather, the TC admitted that the possible aim was the establishment of the autonomous Croatian entity within BiH.[191]

94. According to the TC, the JCE was established only in 01/1993.[192] If Tudjman had ever had the idea to divide BiH and reconstitute Banovina, this idea vanished in early 1992 with proclamation of BiH independency which Croatia recognized immediately. From the recognition of the independent BiH, Tudman kept repeating that the future of Croatian people in BiH is within BiH and that any idea to divide BiH belongs to the past.[193]

95. The TC mixed up the CCP and political aims as it stated that a JCE was established to accomplish the political purpose.[194] The political purpose that might have been an autonomous Croatian entity within BiH is not a criminal purpose, it was a legitimate objective. If some Croatian leaders were involved in such political plan, it does not mean that they were involved in any criminal plan or in the JCE. In order to involve Croatian leaders in the JCE, the TC should have established that they were involved in a CCP.

96. The TC recognized that Tudjman was solely led by the RC.[195] Although it is quite unclear what the TC meant by this sentence, it is obvious that interests of the RC were the main concern of Tudjman and that he clearly express them to anyone including

[189] J.Vol-IV,para.43;
[190] *Supra*,Grounds 5.1-5.2,para.71
[191] J.Vol-IV,paras.10,24;
[192] J.Vol-IV,para.44;
[193] P00498,pp.80-81; P00829,p.5; *Supra*, Grounds 5.1-5.2,para.73-75,79,80,82-85;
[194] J.Vol-IV,para.44;
[195] J.Vol-IV,para.15;

Izetbegovic.[196] While the TC tried to establish the involvement of Croatia and its leaders in creation of an independent/autonomous Croatian entity on the BiH territory,[197] it did even not attempt to establish their involvement in the CCP.[198] Thus, in paragraphs pertaining to CCP, the TC, in its analysis of the said CPP, refers only to HVO/ HZ(R)H-B leaders.[199]

97. In the TC analysis of the existence of the CCP, Bobetko and Susak were never mentioned.[200] Tudjman was mentioned twice but in the context that does not place him in the JCE.[201] These findings are not sufficient to involve the RC leaders in the JCE.

98. The TC excluded itself the RC leaders from the CCP as it found that crimes were committed as the result of a plan established by the leaders of the HZ(R)H-B.[202] Equally, the TC excluded all Croatian leaders from any CCP when it found that the evidence demonstrates that the HVO and certain Croatian leaders aimed to consolidate HVO control over Provinces 3, 8 and 10, and, as the HVO leaders interpreted it, to eliminate all Muslim resistance within these provinces and to “ethnically cleanse” the Muslims.[203] This finding confirms that Croatian leaders might have had some political aims but that these aims did not include any criminal acts or intention which would have resulted, according to TC, from the interpretation the HVO leaders gave to Croatian legitimate political aims.

99. The TC is bound to establish several elements in order to convict an accused on the basis of the JCE doctrine. Certainly the same criteria do not apply to alleged members of the JCE who are not accused. However, it is highly problematic to involve in criminal acts, through the JCE doctrine, persons who cannot defend themselves. It is even more problematic to involve persons who had high political functions and which involvement implies in some way the involvement of a State. Therefore, the TC cannot satisfy itself with general statement that certain Croatian leaders, including Tudjman, were members of the JCE. The TC failed to give reasoned opinion on its findings and the evidence does not show any implication of Croatian leaders in any CCP.

[196] P00312,p.2 ;
[197] J.Vol-IV,paras.10-24 ;
[198] J.Vol-IV,paras.43-70;
[199] *Idem*;
[200] *Idem*;
[201] J.Vol-IV,paras.49,52;
[202] J.Vol-IV,para.65;
[203] J.Vol-IV,para.43;

6th Ground: Errors related to the JCE existence

100. The TC erroneous conclusions and errors of law regarding the existence of the JCE render its Judgment invalid in whole as the JCE, the core of the Accused responsibility, is improperly established. Therefore, for all the reasons set forth in the 6th Ground, the Judgment should be reversed and Praljak should be acquitted of all charges.

6.1. <u>The TC made errors when it concluded that representatives of Croatian and Serbian communities from BiH discussed its partition</u>

101. The TC concluded that during the period of tri-partite negotiations, the HVO negotiated the BiH partition with the BiH Serbs and that representatives of Croatian and Serbian communities met without Muslim representatives to discuss it.[204] The TC, thus, suggests that the HVO negotiations with Serbs were conducted secretly in parallel with tri-partite negotiations. It also suggests that the TC did not consider the relevant evidence which demonstrate that Izetbegović suspended internationally sponsored negotiations after Serbs had accepted the principles of further organization of BiH and that the EC then proposed bilateral meetings.[205] At the same time bilateral meetings were conducted with Muslims too.[206] While three parties participated in the conflict in BiH, the bilateral negotiations and agreements were frequent throughout the war[207] and the representatives of the IC were informed about them[208] and actively participated in these bilateral negotiations.[209] [REDACTED].[210] [REDACTED].[211] The Joint Statement issued by Boban and Karadzic confirms that these negotiations fell under ECCBiH.[212]

102. Contrary to the TC finding,[213] the partition of BiH was not discussed during that meeting[214] and there was no agreement which would have provided for the territorial division of BiH based on the Banovina borders. The Joint Statement shows that the

204 J.Vol-I, para.439;
205 P09526,p.1;
206 P09526,p.7, 1D02739,p.1, [REDACTED];
207 1D00475, P00339, 2D00798, 1D01543,P00717, 1D02853, P01988,P02259, P02344,1D02404, P02726, 4D01234;
208 1D01543, 1D02853,4D01234;
209 P01988, P02259,P02344, [REDACTED], P02726;
210 [REDACTED];
211 [REDACTED];
212 P00187,paras.4,5;
213 J.Vol-I,para.439, Vol-IV,para.13;
214 [REDACTED];

Croatian and Serbian representatives discussed Working Demarcation Mark, which was part of the Cutilheiro plan[215] and tried to solve their divergences about border lines between territories under Serb and Croat control in BiH.[216] Both parties expressed their adherence to the principles adopted at the ECCBiH and agreed to respect the agreed-upon criteria for defining ethnic territories under EC arbitration.[217]

103. The Joint Statement concerns only territories where Serbs and Croats were in contact and which were in dispute between them[218] because only these issues were discussed during the meeting which concluded without any agreement.[219] The official HVO statement, issued few days after the meeting clarified that the negotiations were held on the request of the ECCBiH with aim to resolve the matters in dispute.[220]

104. The TC obviously ignored all relevant documents and granted credence, without proper assessment, to Donia report[221] and testimony[222] which are based on articles published in a BiH newspaper[223] and on a press release issued by a Consultancy Firm which does not indicate the source of its information.[224] Moreover, the information contained in the press release is completely false as no agreement was reached during the meeting.[225] These open-source documents cannot constitute a serious basis for an expert report and even less for a Judgment.Donia gave no explanation who and where made a map that he represented as 'the Graz Agreement Map."[226]

105. Okun has no direct knowledge either about the Graz meeting. His knowledge is also based on media reporting[227] and he admitted that there was only an assumption that Serbs and Croats discussed the BiH partition[228] but that he had never seen an agreement.[229]

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[215] P09536,p.70, Map n°13;
[216] P00187;
[217] P00187;
[218] P00187;
[219] [REDACTED];
[220] 1D00428;
[221] P09536,pp.39,40;
[222] Donia,T.1832;
[223] P09536,pp.39,52, FN.112,113,114;
[224] P00192,p.3;
[225] P00192,p.3, [REDACTED];
[226] P09536,p.71, Map n°14;
[227] Okun,T.16662-16663;
[228] Okun,T.16663;
[229] Okun,T.16831;

106. The TC, which had before it the direct evidence about the meeting in Graz, preferred to grant credence to hear-say evidence and media reports while it misinterpreted the direct evidence or even ignored it and thus it reached erroneous and unreasonable conclusions.

6.2. The TC made errors when it concluded that HZ(R)H-B officials established a Croatian "mini-State" within BiH

107. The TC recognized that the HZ(R)H-B was created in response to the Serb aggression.[230] It omitted however to acknowledge that first meetings of Croat leaders in BiH were held in BiH that was still part of Yugoslavia[231] and as such was not an independent State. At the time of meeting, which resulted in Conclusions about the future of the Croat people in BiH,[232] the BiH State did not exist and non-Serb population in BiH were legitimately afraid of the Serbian aggression which was devastating Croatia. This meeting cannot be correctly understood out of its context.

108. The reached Conclusions were completely in line with the SRBiH Constitution[233] and even with the SFRY Constitution,[234] which were still in force when these Conclusions were adopted and which both provided for the right of people on self-determination including the right to secession.[235] The BiH Constitutional Court proclaimed the Conclusions unconstitutional on the basis of Constitutional amendments, laws and rules adopted after the Conclusions were issued[236] and after the BiH have become independent. The only conclusion that a reasonable trier of fact would be able to draw from this meeting and its conclusions is that Croat people did not want to stay in Yugoslavia under Serbian rule and wished to exercise its constitutional right to self-determination.

109. The TC recall of the UNSC Resolution issued on 16 November 1992[237] is misplaced in the context of the establishment of the HZ(R)H-B which occurred a year earlier. The Resolution concerns the independent BiH, member of the UN,[238] which did not exist when Croats founded the HZ(R)H-B. The TC admitted that in 12/1991, the BiH's

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[230] J.Vol-IV,para.15;
[231] J.Vol-I, para.419; Vol-IV,para.14;
[232] P00071;
[233] 1D02994,p.2;
[234] 1D02976,p.5;
[235] 1D02994,p.2; 1D02976,p.5;
[236] P00505;
[237] J.Vol-I, para.427;
[238] P00752,p.1;

existence as a state still lacked recognition at the international level[239] but it omitted to acknowledge that in 12/1991 the BiH could not be recognized as independent State as at that time it was not a State, it was still one of Yugoslav republics, a part of Yugoslavia.

110. While the TC recognized that Tudjman announced that the establishment of the HZ(R)H-B did not constitute a decision to separate from BiH,[240] it omitted to acknowledge that he also underlined that its aim was protection of the interest of the Croatian population in BiH facing Serbian mobilization for a war.[241]

111. The BiH HDZ constantly militated in favor of sovereign and independent BiH as State of three constituent nations.[242] During the meeting in Zagreb in 12/1991, the BiH HDZ clearly pronounced itself in favor of sovereign BiH.[243] The fact that it was Kljujic who pronounced these words is without any importance as he spoke about the whole BiH HDZ. The sovereign BiH was generally supported[244] and Tudjman supported it also.[245] The other possibilities that were envisaged during the meeting do not reflect Croatian policy but the research for the best solution to avoid the war.[246] While some Croats pronounced themselves for separation of HZ(R)H-B from BiH, Praljak, and other alleged members of the JCE, except Boban, were not among them.[247] Once again the TC did not appreciated the events in their context[248] and completely ignored the fact that the meeting was held at the moment when BiH was not yet sovereign and independent State, when Serbs held *de facto* a great portion of the territory over which the BiH central government had no authority at all and when the future of the BiH was completely uncertain.

112. While the TC referred to the meeting held on 09-02-1992,[249] it omitted to recognize that again there is no evidence that Praljak, and other alleged members of the JCE, except Boban, attended that meeting.[250] The TC focused on the dual citizenship question raised

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[239] J.Vol-I,para.428;
[240] J.Vol-I, para.423;
[241] P00080, p.46;
[242] 1D02759, 1D2700,p.3,para.10.1;
[243] P00089,p.3;
[244] P00089,pp.38,72,88;
[245] P00089,pp.29-30;
[246] P00089,p.35;
[247] P00089,p.20-21;
[248] J.Vol-I,para.428;
[249] J.Vol-I,para.429;
[250] P00117;

during this meeting,[251] but it completely ignored that the question of BiH referendum was discussed and that discussion shows that the HDZ preference was still in favor of sovereign and independent BiH.[252] Few days later the HDZ stated that its basic demand is maintaining BiH within its historical borders as an independent and sovereign State of three constitutive and sovereign nations who live on that territory.[253] As the TC recognized, Croats, strongly encouraged by Tudjman voted overwhelmingly in favor of BiH's independence[254] and Croatia immediately recognized BiH.[255]

113. The TC recognized that Serbs launched an offensive against BiH as soon as declaration of BiH's independence was announced.[256] In that context and solely with aim to protect Croatian people but also other people leaving on the territory of the HZ(R)H-B, the HVO was established.[257] The establishment of the HVO and other measures undertaken by the HZ(R)H-B were necessary measures as the central BiH power did not function and the BiH territory was attacked. The further events confirmed that the HVO had no objective contrary to the overall BiH interests and in 07/1992 it became an integral part of the united armed forces of the RBiH[258] and participated in defence of the whole BiH territory against the aggression.[259] Thus, contrary to the TC findings[260], the existence of the HZ(R)H-B and establishment of its organs was not contrary to the BiH interest but served them and contributed to preserve the BiH sovereignty and independence. On 03-07-1992 the HZ(R)H-B reiterated its support to the RBiH and its belonging to it.[261]

114. Contrary to TC findings, the BiH independency and sovereignty had never been put in question during meetings in 09/1992.[262] Actually, the political aim of the HVO was formulated as the forming and ordering of BiH in accordance with the EC principles,[263] but Croats, concerned by victims, were also permanently pursuing the goal to end the

[251] J.Vol-I,para.429;
[252] P00117;
[253] 1D00410,p.4 ;
[254] J.Vol-I,para.432;
[255] J.Vol-I, para.433;
[256] J.Vol-I, para.434;
[257] P00152;
[258] P00339,p.3,4;
[259] 1D02432;
[260] J.Vol-IV,paras.15,16;
[261] P00302;
[262] J.Vol-IV,para.18;
[263] P00498,p.28;

war.[264] Meeting between BiH Croats and Serbs in 10/1992[265] did not have for purpose the partition of BiH, but the research of solution to end the war or at least to minimize its disastrous consequences.[266] The TC made erroneous conclusions from documents which are completely unreliable and which should not have been admitted.[267]

115. The establishment of the HZ(R)H-B was in line with international proposals and the TC recognized that the Cutilheiro Plan principles envisaged the continuity of BiH while nevertheless dividing the State into three territorial entities, based on the ethnic self-identification of their majority populations, as well as on economic and geographic criteria.[268] The TC recognized[269] that the VOPP envisaged the creation of 10 provinces in BiH, each with a local government led by the representatives of the majority community in the province. In late 1992 IC, which until than envisaged several options, including the partition of BiH[270], recognized that the only viable and stable solution was a decentralized State.[271] The HZ(R)H-B completely complied with the concept of decentralized State which was always advocated by Croats who accepted the Plan in its entirety.[272]

116. The whole history of the establishment of the HZ(R)H-B shows that Croatian leaders had never meant to establish the State, but that they worked, in the frame of international plans and agreements, to strengthen the RBiH as State of three constituent nations. The BiH Croats never ceased to participate in BiH central organs and continuously made efforts aimed to coordinated/joint actions.[273] The Decision adopted on 28-08-1993 did not put in question the existence of independent and sovereign BiH[274] and shall be put in context of the war that existed between all three BiH constituent peoples. The fact is that the Croatian people in BiH was one of three BiH constituent people and the only objective of the Croatian BiH leaders was the protection

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[264] P00498,p.72;
[265] J.Vol-IV, para.451;
[266] P00498,pp.73,76;
[267] *Infra*, Ground 50.1,paras.547-553;
[268] J.Vol-I,para.438;
[269] J.Vol-I,para.447;
[270] 1D00896,p.3;
[271] 1D01312,pp.14,45; 1D00892,p.3;
[272] J.Vol-I,para.451;
[273] 1D01595;
[274] P04611,art.3;

of BiH Croats by assuring them the equality of rights with two other constituent peoples.[275]

117. The TC ignored the BiH constitutional provisions under which the HZ(R)H-B was established,[276] it ignored the international plans and agreements followed by Croats[277] and it ignored relevant statements and documents which show that the BiH Croats did not envisage any violation of the BiH sovereignty and integrity.The TC gave credence to witnesses, [REDACTED],[278] who pursued, in the time of events and in the time of their testimony, the policy of [REDACTED] and whose statements should have been assessed more than carefully. It is dangerous in criminal procedure to draw the inferences about someone intention from the interpretation that other people gave to someone's words, particularly when the other people came from other cultures and could even not communicate with the concerned persons directly, but through the interpreter.

118. For all the abovementioned reasons, the TC drew erroneous concluded with respect to intentions and objectives of the HZ(R)H-B leaders.[279]

6.3. <u>The TC made errors regarding the displaced Croats</u>

119. The TC acknowledged that the HVO documents show that from 04/1993, Croats from central and the northern BiH were under the BiH threat.[280] Documents to which the TC referred[281] show that Croats from Central Bosnia were expelled,[282] under threat to be expelled or even exterminated if appropriate measures were not undertaken.[283]

120. The TC misunderstood the meaning of expression "evacuation in organized manner",[284] used by the HVO authorities to explain that the expelled persons shall be taken in charge by the HVO authorities and that their reception and accommodation shall be organized.[285] While the HVO searched means to assist Croatian population in distress it

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[275] P00312,p.5;
[276] *Supra,*para.108;
[277] *Supra,*para.115; Buntic,T.30393-30395;
[278] [REDACTED];
[279] J.Vol-IV,para.24;
[280] J.Vol-IV,para.53;
[281] J.Vol-IV,para.53,FN n°142;
[282] P02142,pp.2,4, 1D01264;3D00837;
[283] P03413;
[284] P02142,p.4;
[285] P02142,p.4, 1D01829,1D01672,p.2;

constantly repeated that Croats must not be evacuated and that means shell be found to protect them and their land.[286]

121. According to TC, the HVO, based on its own interpretation of the VOPP, requested the assistance of IO for a population movement.[287] The request for assistance was not based on VOPP but on a disastrous situation of Croatian people in Zenica where ABiH operated with assistance of mujahedins.[288] The UN recognized that the evacuation of Croats was requested from areas where they were threatened[289] and Beese recognized that the events in Travnik area were not pure Croatian propaganda.[290]

122. The TC recognized that at least one part of the Croatian population in Central Bosnia was actually fleeing the fighting,[291] but it completely ignored that Croats were expelled from Kakanj,[292] Bugojno[293] and other areas that they were harassed not only by the ABiH regular units who launched an intensive offensive in late spring 1993[294] but also by mujahedins, particularly active in Travnik, Zenica and Konjic[295] where they were involved in atrocities and contributed to create fear and panic.[296]

123. Contrary to the TC finding according to which the HVO arranged the removals of Croats to Provinces 8 and 10[297] the HVO did not arrange anything. Croats were trying to escape from the ABiH and Mujahedins. While the TC refused to admit documents attesting the existence and presence of Mujahedins in Central Bosnia[298] which would have given the whole picture about horrors the Croatian population went through, the Mujahedins presence is however, confirmed.[299] Their presence in Central Bosnia has

[286] P02142,p.5;
[287] J.Vol-IV,para.54;
[288] 3D00331,p.17,paras.50,53;
[289] P02714,p.2;
[290] Beese,T.5443;
[291] J.Vol -IV,para.54;
[292] Raguz,T.31320-31321;
[293] Raguz,T.31378;
[294] 3D03724, Map n°8;
[295] 3D00331,pp.16-18,paras.47-57; 3D01914; Watkins,T.19104-19105;
[296] Filipovic,T.47561-47564;
[297] J.Vol-IV,para.55;
[298] *Infra*, Ground 51,para.570;
[299] 2D01407, 3D01914, 3D00331,paras.47-60, 2D01262,2D00016,4D00597, P06565, Beese,T.5443, Filipović,T.47561-47561;

been recognized by the UNSC.[300] The Deputy Commander of the ABiH admitted that Mujahedins operated in BiH and that "they have been killing, looting and stealing".[301]

124. On the basis of wrong premises and having ignored relevant evidence, the TC concluded that the HVO arranged removals to Provinces 8 and 10, in order to alter the balance of power in these provinces so that it favored the Croats.[302] No reasonable trier of fact could have reached this conclusion as the TC itself found that Croats were displaced from Travnik[303] that is from Province 8. The displaced Croats were only temporary accommodated on the territory of the HZ(R)H-B before their transfer to Croatia.[304] Thus, the argument that the HVO organized displacement of Croatian population through provinces 8 and 10 in order *inter alia* to change ethnic composition in these provinces is without any merit.

6.4. <u>The TC made errors when it established the JCE existence on the basis of events occurred before its creation</u>

125. In order to make a link between the Accused and Croatian officials, the TC refers to events and evidence indicating that some of the Accused and Croatian officials met mainly in 1991/1992.[305] There is no doubt, taking into account functions and positions of the concerned persons that they met on several occasions. The TC refers to political meetings and negotiations which took place in political environment drastically different of the situation in which the JCE would be created.

126. Namely, the TC used meetings and negotiations in period in which the BiH was not an independent State to demonstrate the Croatian positions and intentions. Moreover, the TC presented only one side of these negotiations leaving completely aside Muslim positions and neglecting the international proposals[306] in the frame of which Croatian officials and BiH Croats expressed their positions. Thus, the TC picture of events, considered completely out of context, is completely distorted and its conclusions necessary erroneous.

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300 3D00331,paras.47-60;
301 3D00331,para.52;
302 J.Vol-IV,para.55;
303 J.Vol-IV,para.60;
304 1D01355; 3D01731,p.9;Raguz,T.31336,T.31337, Rebic,T.28167,T.28304,T.28308;
305 J.Vol-IV,paras.11,13-15,17-18,43;
306 1D00896,p.3;

6.5. <u>The TC made errors when it established the JCE existence which ultimate goal was the establishment of the Croatian entity</u>

127. The TC found that the ultimate purpose of the HZ(R)H-B leaders and Tudjman was to set up a Croatian entity that would reconstitute, at least in part, the Banovina borders and facilitate the reunification of the Croatian people.[307] The Croatian political views, particularly those expressed before the BiH became an independent State, are irrelevant for determining the criminal responsibility of the individuals. The TC is required to establish the existence of a CCP which amounts to or involves the commission of a crime provided for in the Statute.[308] As the TC could not establish the CCP[309] required by the case-law for responsibility under JCE, it engaged itself in political considerations[310] which are out of its mandate.

128. The TC considered the events and evidence, out of context, [311] in the light of subsequent events and therefore its findings were improperly influenced by the irrelevant facts and are necessary erroneous.

7th Ground: Errors related to CCP

129. The TC erroneous conclusions and errors of law regarding the scope of the CCP render its Judgment invalid in whole as the CCP, the central issue for the Accused responsibility, is improperly established. Therefore, for all the reasons set forth in the 7th Ground, the Judgment should be reversed and Praljak should be acquitted of all charges.

7.1. <u>The TC made errors when it did not clearly define the scope of the initial CCP</u>

130. The TC found that a JCE was established to accomplish the political purpose at least as early as mid-January 1993.[312] A political purpose does not amount to a CCP and the TC made an error when it did not clearly establish the JCE CCP which would existe in 01/1993 and the crimes that would be envisaged in the scope of this initial CCP.

[307] J.Vol-IV,para.24;
[308] Brdjanin AJ,paras.364,418;
[309] *Infra,* Ground 7.1,paras.130-134
[310] J.Vol-IV,para.24;
[311] *Supra*, Ground 6.4,paras.125,126;
[312] J.Vol-IV,para.44;

131. According to case-law, the CCP shall amount to or involve the commission of a crime provide for in the Statute[313] and shall be specified in terms of both, the criminal goal and its scope.[314]

132. While the TC considered that there was only one, single CCP, domination by the HZ(R)H-B Croats through ethnic cleansing of the Muslim population,[315] it found that from 06/1993, the CCP was expanded with the siege of East-Mostar and encompassed new crimes.[316] The TC has never defined which crimes were envisaged in the scope of the initial CCP and which crimes were added after 30-06-1993. The TC did not establish that the JCE members agreed on the expansion of means. The case-law recognizes that the CCP can evolve over time, but it requires that the evidence show that the JCE members agreed on the expansion.[317] When the scope of the CCP changes, the TC is required to make findings as to whether leading members of the JCE were informed of the crimes, whether they did nothing to prevent their recurrence and persisted in the implementation of this expansion of the CCP.[318] The TC did not make any finding on these requirements.

133. Neither the AC nor the Parties can be required to engage in speculation on the meaning of the TC's findings, or lack thereof, in relation to such a central element of the Accused individual criminal responsibility as the scope of the JCE common objective.[319] In order to impute to any accused member of the JCE liability for a crime committed by another person, an essential requirement is that the crime in question forms part of the CCP.[320] If the CCP is unspecified, as it is in present case, it is impossible to impute the responsibility for crimes to anyone except to direct perpetrator.

134. Having failed to precisely define the CCP scope, the TC make an error of law which makes any conviction based on the JCE unlawful. As the Accused was convicted exclusively on the basis of his participation in the JCE this error renders the whole Judgment invalid.

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[313] Stakic AJ,para.64;
[314] Brdjanin AJ,para.430;
[315] J.Vol-IV,para.41;
[316] J.Vol-IV,para.57;
[317] Krajisnik AJ,para.163;
[318] Krajisnik AJ,para.171;
[319] Krajisnik AJ,para.176;
[320] Brdjanin AJ,para.418;

7.2. The TC made errors when it concluded that the CCP expanded in 06/1993

135. The TC found that in 06/1993 the ABiH forces attacked the HVO's positions in Mostar.[321] Thus, subsequent events could have been provoked by this attack rather than by an expanded plan. An accused must be acquitted if there is any reasonable explanation of the evidence other than the guilt of the accused.[322] In the present case it is not only reasonable to consider that the ABiH attack provoked the events, but it is unreasonable to consider, without any conclusive evidence, that the HVO members envisaged any plan in the middle of the ABiH attack.

136. While the agreement does not need to be explicit and may materialize extemporaneously and be inferred from circumstantial evidence,[323] it is however required to show that the agreement existed. The TC should have established that the criminal purpose is not merely the same, but also common to all of the persons acting together within a JCE.[324] However, there is no single evidence that the Accused shared any properly defined criminal purpose and even less that they agreed to expand its scope in 06/1993. If an inference is to be drawn from circumstantial evidence it must be the only reasonable conclusion available,[325] which is certainly not the case in the present case as another reasonable explanation for events is even more probable, that is that the events were provoked by the ABiH attack.

137. The TC findings are particularly confused and contradictory with respect to Praljak. Actually, according to TC the initial CCP was expanded in 06/1993 with the siege of East-Mostar.[326] While it is not clear if new crimes, comprised in expanded CPP, concern only Mostar or all municipalities, the TC findings[327] indicate that the enlarged CCP was primary implemented in Mostar. The TC found that it did not have evidence on Praljak's role in the criminal events in Mostar before 24-07-1993.[328] Thus, it is completely unclear when and where Praljak would get knowledge about any enlargement of the CCP and when and where he would adhere to it.

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[321] J.Vol-II,para.880, Vol-IV,para.57;
[322] Celebici AJ,para.458;
[323] Tadic AJ,para.227; Krajisnik AJ,para.163;
[324] Brdjanin, AJ,para.430;
[325] Martic TJ,para.24;
[326] J.Vol-IV,para.59;
[327] J.Vol-IV,para.57,59;
[328] J.Vol-IV,para.577;

138. The TC conclusions[329] regarding CCP, the crimes which would make part of it and the Accused adherence to the CCP are not only erroneous, but also contradictory and confused[330] and render the whole Judgment incomprehensive and thus invalid.

8th Ground: Errors related to events in Podgradje, Lapsunj and Duge

139. For all the reasons set forth in the 8th Ground, the Judgment should be reversed on Count-10, Count-11, Count-12 and Count-13 with respect to Prozor.

8.1. <u>The TC made errors when it concluded that civilians from Prozor were arrested and detained</u>

140. While the TC noticed that some Muslims had taken refuge in Podgradje,[331] it did not taken into consideration that a number of Muslims might have come in these villages voluntarily, without any intervention of the HVO.[332] When people arrived in Podgradje, they were not put into houses, but they found houses themselves and moved in.[333]

141. Thus, the TC could not establish any coercive intervention of the HVO in the transport of Muslims to these three villages or in placing them in houses. The TC recognized that it does not know which HVO unit would have been involved in arrest and detention of Muslims in Prozor.[334]

142. The TC acknowledged that the President of Prozor told that Muslims were moved to these three locations for their own safety.[335] However, it did not give any consideration to the possibility that the HVO authorities were concerned by safety of all civilians in Prozor.[336]

143. According to GC a belligerent has the possibility of moving the civilian population.[337] When Muslims were moved to these three villages, Prozor was in general chaos.[338] While the population suffered and was terrorized, it seems that it was not put in danger

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[329] J.Vol-IV,para.41,44,57;
[330] *Infra*, Ground 49, paras.540-544;
[331] J.Vol-II,para.239;
[332] Witness-BK,T.5527-5528;
[333] Witness-BK,T.5496-5497;
[334] J.Vol-II,para.232;
[335] J.Vol-II, para.227;
[336] Gerritsen,T.19227; P09627;
[337] 4thGC,Art.49;
[338] Islamovic,T.6924;

by the HVO.[339] In that situation, it seems that relocation of population was a necessary and reasonable measure taken in the interest of the population. Furthermore, it seems that many Muslims relocated in these three villages came from other parts of country,[340] which means that they had no houses in Prozor.

144. The TC could not establish that the relocation was ordered and forced. It did not find any element which would support that the population was arrested and detained. The TC acknowledged that people could go to Prozor and other villages.[341] It also found that houses in Podgradje were not under guard, but that population had a restricted freedom of movement.[342] The restriction of movement is not unlawful. In war time, the right to right to move about freely, can be made subject to certain restrictions made necessary by circumstances. So far as the local population is concerned, the freedom of movement of civilians of enemy nationality may be restricted, or even temporarily suppressed, if circumstances so require.[343] Taking into account the chaotic situation prevailing in Prozor in relevant period,[344] favorable to proliferation of criminal acts targeting everybody, including Croats,[345] the restriction of movement appeared as necessary and reasonable measure and does not amount to unlawful arrest and/or detention which can constitute CAH or grave breaches of GC.

145. According to case-law, the unlawful confinement as grave breach of GC exists when a civilians have been detained in contravention of Art;42 of 4thGC.[346] Regarding, imprisonment as CAH, it should be understood as arbitrary imprisonment, that is to say, the deprivation of liberty of the individual without due process of law, as part of a widespread or systematic attack directed against a civilian population.[347] These legal criteria apply only to detained people, people who are deprived of liberty, which was not the case with Muslims in Podgradje, Duga and Lapsunj.

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339 Islamovic,T.6924;
340 [REDACTED];
341 J.Vol-II,para.242;
342 J.Vol-II,para.241;
343 Commentary 4thGC, Art.27;
344 Islamovic,T.6924;
345 Islamovic,T.6943-6944;
346 Kordic AJ,para.73;
347 Kordic, AJ,para.116;

146. As the TC erroneously concluded that Muslim civilians were arrested and detained in Podgradje, Duge and Lapsunj, it applied wrong standard in evaluation of their living conditions applying standards concerning detained people.

147. Furthermore, the TC did not assess the evidence on living conditions with necessary scrutiny. Thus, it found, mainly on the basis of evidence on overcrowding, that conditions in Podgradje were very harsh.[348]The analysis of TC findings on number of Muslims in Podgradje shows the numerous contradictions and mathematical errors. While the TC established that about 1760 Muslims were held in about 100 houses in Podgradje,[349] it concluded that houses held 20-70 people with some houses holding more than 80 people.[350] This conclusion is mathematically impossible and thus necessarily erroneous. If 1760 Muslims were located in 100 houses, each house hold 17 – 18 persons which is considerably less than number reached by the TC.

148. In any case, inhumane acts and inhumane treatments constituted by conditions of confinement can be committed only against the detained people. As Muslim population in Podgradje, Duga and Lapsunj was not deprived of liberty, the necessary preliminary condition for crimes described in Counts 12 and 13 are not fulfilled.

8.2. <u>The TC made errors when it concluded that Muslims were placed in detention with purpose to accommodate the Croats</u>

149. The TC erroneously concluded that the objective of putting Muslims in three villages was to accommodate Croats who were arriving in the municipality.[351] Based on a SIS report,[352] the TC Chamber observed that the report made a relation between relocation of Muslim population and the arrival of Croats.[353] The report does not imply that Muslims were relocated in order to accommodate Croats. Rather, the massive arrival of Croats into the municipality has caused an increase in crime, prostitution, the removal of Muslims from prison and their liquidation, the extortion of gold, money and other valuables from Muslims, and liquidation after extortion.[354] The report confirms chaotic situation in which the major problem for the municipal authorities was to deal with a

[348] J.Vol-II,para.249;
[349] J.Vol-II,para.240;
[350] J.Vol-II,para.244, Vol-III,para.1009;
[351] J.Vol-II,para.232; Vol-III,para.958,1008;
[352] P04177;
[353] J.Vol-II,para.227;
[354] P04177,p.2;

great influx of displaced persons[355] and to care for the safety of all civilians.[356] In that situation it was not unreasonable to take measures in order to avoid contacts between Muslims and Croats and these measures necessary meant relocation of some portions of population.

150. The TC went well beyond the actual wording of the report[357] when it concluded that the objective of putting Muslims in villages was to accommodate the Croats. The TC conclusion is a free and unfounded interpretation of the report as the author of the document did not testify and could not explain what he meant when he made a link between the relocation of Muslims and the arrival of Croats. Besides that, the document does not offer any indication where and from whom the author of document obtained information.

151. Having freely interpreted the abovementioned report, the TC disregarded all other evidence relevant for assessment of situation in Prozor and of reasons which led to gathering of Muslims in three villages. The TC is not the only reasonable conclusion. The TC ignored any possibility that gathering of Muslim population in villages might have lawful purpose and therefore reached erroneous conclusions.

9th Ground: Errors related to displacement of Muslim population (Prozor)

152. According to case-law, forcible transfer assumes the forced removal of persons by expulsion or other forms of coercion from the area in which they are lawfully present without grounds permitted under IHL.[358] While physical force is not required,[359] the assessment of circumstances surrounding the removal is essential to determine whether the removed persons faced a genuine choice[360] as the absence of genuine choice renders removal unlawful.[361] The TC could not establish who moved the population, how many people were moved and what happened to the remaining Muslim population in these

[355] Gerritsen,T.19226;
[356] Gerritsen,T.19227;
[357] P04177,p.2;
[358] Krajisnik AJ,para.304;
[359] Krajišnik AJ,para.319; Krnojelac AJ,paras.229,233;
[360] Stakić AJ,para.282;
[361] Stakić AJ,para.279; Krnojelac AJ,para.229;

villages. It also omitted to establish, beyond reasonable doubt, that the displacement was not necessary and that Muslim population was not willing to leave Prozor.

153. The TC recognized that it could not determine the exact number of Muslims removed from Prozor on 28-08-1993[362] and concluded that at least 2.500 persons were removed,[363] while it found that in 08/1993 around 5,000 Muslims were held in Podgradje, Duga and Lapsunj.[364] It means that only a portion of Muslim population was removed from these villages.

154. Although it is possible to forcible transfer only a portion of a population, the TC should have establish that displaced Muslims were forced to leave and that they did not have any other choice. In the light of the fact that only a portion of Muslim population was displaced and that the HVO representative in Prozor talked about voluntary departure,[365] it is legitimate and reasonable to consider that those, who were displaced, expressed a genuine wish to leave.

155. The TC satisfied itself by [REDACTED] that removals required organization and planning by the HVO.[366] As the TC could not find any evidence regarding planning and organization of that removal, it referred to an order issued by Praljak.[367] This order, which refers to the execution of a combat task, became ineffective and as such it was not executed.[368] Praljak did not make any link between this order and the removal of population[369] and none asked him if this order was anyhow related to the removal. Therefore the TC referral to this order in the context of displacement of population is speculative.

156. While the TC recognized that IHL does provide an exception for the forcible removal of a person and does not prohibit total or partial evacuation if the security of the population or imperative military reasons so demand,[370] it did not establish if circumstances surrounding removal of Muslims from Podgradje, Lapsunj and Duga fall under GC

[362] J.Vol-II,para.277;
[363] J.Vol-II,para.277;
[364] J.Vol-II,para.227;
[365] P09636; Gerritsen,T.19235-19236;
[366] J.Vol-II, para.278; [REDACTED];
[367] J.Vol-II, para.278;
[368] 3D02448;
[369] Praljak,T.41060-41061;
[370] J.Vol-I,para.52;

provisions permitting the evacuation.[371] The TC also recognized that in certain situations the AC accepts removal of the population for humanitarian reasons[372] but again it did not make any effort to establish if the population was removed for humanitarian reasons, although it found that conditions in Podgradje, Lapsunj and Duga were harsh.[373]

157. The TC also failed to consider that the [REDACTED].[374] Without having even tried to establish if the partial removal of population was in the interest of population, the TC finding renders IHL ineffective as it considers as unlawful the action which was likely undertaken in the interest of the population.

158. The TC explanation that it was satisfied that the removal is not an evacuation as the HVO did not make any arrangements for the population[375] to return is baseless. Art.49.2 of the 4thGC provides that evacuated persons shall be transferred back to their homes as soon as hostilities in the area in question have ceased, it does not require that arrangements for the population return be made at the time of evacuation.

159. The TC completely omitted to consider that the concerned population was not in their homes as they were already displaced. Many of these persons were even not from Prozor area.[376] The TC has never tried to establish where this population came from and supposed that it came from Prozor. In the light of the fact that the international observers acknowledged that many of them came from other parts of country, it is reasonable to presume that at least some of them came from the territory which was not under the HVO control as it cannot be excluded that some of them came from the Republika Srpska territory.

160. Having omitted to establish the exact circumstances of the removal of population from Podgradje, Duga and Lapsunj and having completely ignored the possibility that the removal was an evacuation for humanitarian reasons, the TC could not properly

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[371] 4thGC Art.49.2; GCAP-II, Art.17;
[372] J.Vol-I,para.53;
[373] J.Vol-II,paras.249,257,267;
[374] [REDACTED];
[375] J.Vol-II,paras.841,895;
[376] [REDACTED];

consider the legal nature of this removal and therefore in violation of general principles of law reached erroneous conclusions[377].

161. For all the reasons set forth in the 9th Ground, the Judgment should be reversed on Count-8, Count-9 Count-15 and Count-16 and Praljak should be acquitted of these charges with respect to Prozor.

10th Ground: Errors related to crimes in Prozor

162. For all the reasons set forth in the 10th Ground, the Judgment should be reversed on Count-1, Count-8, Count-9, Count-10, Count-11, Count-12, Count-13, Count-15, Count-16, Count-18, Count-19 and Count-21 and Praljak should be acquitted of these charges with respect to Prozor.

10.1. The TC made errors when it included crimes in Prozor in CCP

163. The TC did not establish the identity of authors of the CCP that resulted in commission of crimes in Prozor. Therefore, these crimes cannot be included in CCP.

164. The TC noted which subjects were discussed in the period from 09/1992 to 03/1994 between persons considered as the JCE members and established that in that period Prlic, Praljak, Petkovic and Boban attended several presidential meetings in Croatia, in the presence of Tudjman, during which they discussed the military situation in BiH, the involvement of HVO troops in the events in Stupni Do, the destruction of the Bridge, the anticipated borders of the HZ(R)H-B and more generally, the conflict in Mostar".[378] According to TC own finding, Prozor and events which occurred there were not discussed between the JCE members.[379] Therefore, the crimes committed in Prozor cannot be included in the CCP.

165. The TC reached the conclusion about the ethnical cleansing plan in Prozor on the basis of document[380] which cannot be a basis for a conviction as it was admitted in violation of the Accused fundamental right to fair trial.[381]

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377 J.Vol-II,paras.272,280, Vol-III,paras.841,842,895-896;
378 J.Vol-IV,para.1223;
379 *Idem*;
380 P11380;
381 Infra, Ground 50,paras.547-553;

166. When the TC included the events in Prozor in CCP, it did it on the basis of circumstantial evidence. An inference drawn from circumstantial evidence must be the only reasonable conclusion available[382] The record shows that the TC's conclusion is not the only reasonable conclusion but that another likely possibility existed as the events in Prozor were actually consequence of the ABiH offensive.

167. The reasonable trier of fact would never ignore relevant evidence favorable to the Accused and it would give a reasoned opinion if these evidence were not appropriate or sufficient to put in doubt the existence of the CCP. If the TC properly and completely had assessed all relevant evidence and if it correctly applied general principles of law and Art.7.1 of the Statute it would not have concluded that any CPP existed with respect to events in Prozor.

10.2 <u>The TC made errors when it concluded that crimes in Prozor were committed pursuant to CCP</u>

168. The TC had no evidence that any HVO military activity undertaken in Prozor was planned in the frame of the JCE, which according to TC, involves Croatian officials also. There is also no evidence that these Croatian officials would have any knowledge about the events in Prozor before they occurred. The TC also did not establish the common action of the JCE members.

169. The TC completely ignored the fact that Croats constituted 62,2% of population in Prozor[383] and that the HDZ got the absolute majority at 1990 elections.[384] Thus, any plan to modify the ethnical composition in favor of Croats would be absurd.

170. The evidence shows that Muslim authorities/ABiH had a plan to reach the Adriatic coast.[385] In order to realize this aim the ABiH planned the offensive "Neretva 93" which plan was approved by ABiH General Delic.[386] It was a massive and intensive military action on the broad Prozor[387] during which numerous crimes against Croats were committed.[388] At the same time, the HVO had no plan and despite the savage killing of

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[382] Martic, TJ,para.24;
[383] P00020;
[384] 1D00920,p.15, Hujdur,T.3478;
[385] 3D02591, 3D02873,3D02438;
[386] 1D00541,p.4;
[387] 3D02613,1D00541,p.5,3D02591,3D02873, 3D2438,2D00253,2D00249,4D00599;
[388] 1D02243;

Croats in Uzdol, the people of Prozor continued to live together with Muslim without any mistreatment or abuse.[389]

171. The TC completely ignored evidence showing that from the beginning of 06/1993, during the ABiH offensive, the Croatian population in Central Bosnia drastically decreased. In Travnik it was reduced for 20.000 people, in Kakanj for 15.000 and in Bugojno for 15.000 as well. These people did not leave their homes on the basis of any plan, they left their homes because of blistering ABiH offensive and went to the HVO controlled territory looking for their own safety.[390] Many of them came to Prozor[391] where the situation became chaotic.[392]

172. At the same time, many Muslims arrived also in central Bosnia fleeing from territories controlled by Serbs. As Margaret Tatcher rightly noted, the arrival of thousands Muslim refugees that disrupted ethnic balance between Muslims and Croats is an important factor that contributed to the direct war that broke out in 1993 and brought the instability reaching thereby their aim.[393]

173. As the civilian population was under constant and serious threat, the HVO was forced to take certain measures, including arrest and detention of military aged Muslim men and relocation of civilian population, but these measures were solely the consequence of the existing situation in Prozor[394] and were not based on any plan as no plan existed regarding the events in this municipality.

174. The evidence demonstrate that the events in Prozor constituted a response to unexpected situation, provoked by the ABiH military activities[395] and that in no case they were planned or formed part of any plan. It also show that no CCP existed with respect to Prozor[396] and therefore the TC erroneously concluded that crimes in Prozor were committed pursuant to CCP.

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[389] [REDACTED];
[390] P03337, 3D00837,3D01731, 2D01407,3D02632,3D02775,4D00567, Filipović,T.47556-47564;
[391] 3D02632,3D02775,3D02777, [REDACTED], P03831, Praljak,T.40989-40990;
[392] P09630,3D01202,P05772;
[393] 3D02642;
[394] P03234;
[395] *Supra*, paras.170-171;
[396] *Supra*, Ground 10.1,paras.164-167

11th Ground: Errors related to burning of houses in Duse and Uzricje

175. The attack on Duse commenced on 18-01-1993[397] and the HVO took control of the village after one or two days of fighting.[398] Thus, the TC could not establish exactly when the fighting ended and, according to TC own finding, it cannot be considered that it ended before 20-01-1993.

176. The TC did not establish either when exactly the houses were burned. While Sljivo stated that houses were mainly burned between 18/22-01-1993,[399] he saw only the houses set in fire on 18-01-1993[400] and hence, according to TC findings,[401] during the attack. Witness-BY also situated the burning of houses in the period which at least partially covers the fighting.[402] She recognized that she does not remember dates,[403] but it seems that the day when all houses were burned, the fighting was still ongoing as she could still hear bullets.[404] Agic, member of the ABiH, confirmed that on 24-01-1993, the villages were captured and the houses burned.[405] Yet, he did not exclude possibility that houses were burned during fighting.

177. Therefore, the evidence does not support the TC finding that houses in Dusa were burned after the fighting ended. Regarding Uzricje, the TC did even not found that the burning of houses occurred after the ending of fighting.

178. In such situation the TC finding that the houses were burned on the occupied territory is legally erroneous.[406] Even if we suppose that houses were burned after the ending of combats, it is unrealistic and unreasonable to consider that the HVO could establish its authority immediately after it entered in these villages and particularly in the light of the fact that in GVT combats were still ongoing.[407]

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[397] J.Vol-II,para.358;
[398] J.Vol-II,para.365;
[399] J.Vol-II,para.399; P10109,p.2, P10110,p.2;
[400] J.Vol-II, para.399; P10108,p.4; P10109,p.2;
[401] J.Vol-II,paras.358,365;
[402] J.Vol-II,para.400;
[403] Witness-BY,T.9065,T.9122;
[404] Witness-BY,T.9090-9091;
[405] Agic,T.9332; P01291;
[406] Supra,Ground 2.1,paras,46,49-50;
[407] J.Vol-II,para.395;

179. The TC properly established the presence of the ABiH, in both villages.[408] While it established that the HVO took over the villages, it did not establish that the whole Muslim resistance stopped. Furthermore, the TC did not consider Muslim military positions, situated near civilian houses[409] and even in houses inhabited by civilians,[410] from which they opened fire on the HVO soldiers.

180. The conclusion that the HVO burned down houses in order to prevent inhabitants from returning[411] is deprived of any foundation. In reaching this finding the TC completely disregarded relevant evidence and namely the HVO order ordering that all Muslim civilians be released and go to their homes.[412]

181. Finally, the TC concluded without any conclusive evidence that houses in Dusa and Uzricje were burned by the HVO members. The TC based its conclusion with respect to Uzricje on a document drafted by the BiH Ministry and Kurbegovic's testimony.[413] However, these two pieces of evidence are contradictory as Kurbegovic could not recognize any of persons listed in document although two ofe these persons were her neighbors[414]. She made difference between "ustashas" who had black or camouflage uniforms without insignia and black painted faces[415] and would have torched Muslim houses[416] and the HVO members who wore camouflage uniforms with proper insignia.[417]

182. Regarding Dusa, Witness-BY said that the HVO soldiers were in Dusa[418] but she did not describe them or their uniforms and it is very likely that all armed Croats were for her the HVO members. [REDACTED][419] [REDACTED][420] [REDACTED] HOS unit

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408 J.Vol-II,paras.363,364,377;
409 3D00527;
410 Gerritsen,T.19350;
411 J.Vol-II,para.432;
412 4D00347;
413 J.Vol-II,para.436, FN n°1029,1030;
414 Kurbegovic,T.8981;
415 Basic,T.8893,T.8896;
416 P09711,p.3;
417 Basic,T.8895;
418 Witness-BY,T.9089-9091;
419 [REDACTED];
420 [REDACTED];

was in the village[421] as well as one unit composed of men dressed in black without any insignia.[422]

183. The TC noted the inscription “HOS” on burned houses in both villages[423] but it ignored the possibility that HOS soldiers, who were not under HVO command, burned houses although Short said that he saw HOS units in GVM.[424]

184. Therefore, and in violation of general principles of law and in violation of IHL and Art.2 of the Statute, the TC reached erroneous conclusions. [425] For all the reasons set forth in the 11th Ground, the Judgment should be reversed on Count-19 and Praljak should be acquitted of this charge.

12th Ground: Errors related to military action in Dusa village

185. For all the reasons set forth in the 12th Ground, the Judgment should be reversed on Count-1, Count-2, Count-3, Count-15 and Count-16 and Praljak should be acquitted of these charges with respect to events in GVM, Dusa

12.1. The TC made errors when it concluded that the HVO indiscriminately shelled Dusa

186. The TC erroneously concluded that the attack was led by the HVO and HV soldiers, among whom were 10-15 soldiers wearing black uniforms without insignia and black headbands.[426] The witnesses saw HOS units in GVM,[427] and the TC acknowledged that the inscription “HOS” was seen on some houses in Dusa.[428] It is well known that HOS soldiers wore black uniforms.[429] Furthremore, the TC concluded that the HV soldiers were present in GV solely on the basis of Sljivo 92bis statement[430] whose conclusion that soldiers were HV soldiers because they spoke Croatian[431] is meaningless as all

[421] [REDACTED];
[422] [REDACTED];
[423] J.Vol-II,paras.401,434;
[424] P09804, p.24258;
[425] J.Vol-II,paras.398,402,432,436; Vol-III,paras.1537,1572;
[426] J.Vol-II,para.358;
[427] [REDACTED]; P09804,p.24258;
[428] J.Vol-II,paras.401,434;
[429] P09804,p.24259; [REDACTED];
[430] J.Vol-II, para.358, FN,n°858;
[431] [REDACTED];

Croats, from Croatia and from BiH, spoke and speak Croatian. Moreover, the Defence had no opportunity to cross-examine him. Besides that, [REDACTED].[432]

187. The TC properly found that the ABiH was present in Dusa[433], however it omitted to take this fact in consideration when it assessed the legality of the HVO behavior during the military action in Dusa. The TC noted that the HVO had fired several shells on the village[434] and concluded that the nature of shells was such that it was impossible to distinguish military from civilian targets.[435]

188. The TC reached its conclusion without any basis and without any verification that the shelling of Duse enters into scope of Art.51.4 and 51.5 of GCAP-I which define indiscriminate attacks. Shells, in general terms, are not a prohibited weapon, they can be directed to military target and their precision depends on type of shell. Therefore, the TC should have established which type of shells was used in Dusa and in which circumstances. In most cases the indiscriminate character of an attack does not depend on the nature of the weapons concerned, but on the way in which they are used.[436]

189. The TC established also that the ABiH was preparing the defence of the village.[437] Besides the fact, that the TC did not establish beyond reasonable doubt who fired the shell which hit Sljivo's house, it did not consider that the HVO did not know that civilians were in house. The TC did acknowledge that Sljivo was the Commander of the village defence,[438] however it ignored that the HVO could not suppose that, during an attack, civilians would hide in the house belonging to the Commander.

190. The TC ignored that Muslim defence lines and their stronghold were situated in the proximity of that house[439] and that [REDACTED].[440] If the TC had considered the position of the house, it would have certainly concluded that the shell targeted Muslim defence lines as this is the only reasonable conclusion.

[432] [REDACTED];
[433] J.Vol-II,paras.362,364;
[434] J.Vol-II,para.366;
[435] J.Vol-III,paras.663,711;
[436] GCAP-I, Commentary, para.1965;
[437] J.Vol-II,para.362;
[438] J.Vol-II,para.365;
[439] 3D00527;
[440] [REDACTED];

191. The TC acknowledged[441] that "collateral civilian damage" is not *per se* unlawful provided that the customary rules of proportionality in the conduct of hostilities are observed.[442] In the present case, it is reasonably to conclude that the shell targeted Muslim defence lines which were legitimate military target.

192. According to Art.51.7 of the GCAP-I "The presence or movement of the civilian population or individual civilians shall not be used to render certain point or areas immune from military operations, in particular in attempts to shield military objectives from attacks or to shield, favour or impede military operations. The Parties to the conflict shall not direct the movement of the civilian population or individual civilians in order to attempt to shield military objectives from attacks or to shield military operations." In Duse, the civilian population found a refugee in the house of the military Commander which was extremely close to Muslim defence lines. It is therefore unreasonable that the HVO could know or presume that civilians would be in the Comander house so close to defence lines.

193. The TC finding that the HVO forces made no effort to allow the civilian population of Dusa to flee before the attack[443] is unfounded. The HVO took all necessary and possible measures to warn BiH[444] and UNPROFOR[445] about the possible attack.

194. If the TC had properly assessed evidence in the case and had considered relevant facts it would certainly not concluded that the attack on Dusa was an indiscriminate attack.

12.2. The TC made errors when it concluded that the HVO had intention to harm civilians

195. Besides the fact that the TC did not establish that the HVO fired the shell which hit Sljivo's house,[446] it did not properly establish the intent for CAH and grave breaches of the GC as required by the Statute. In addition to general "chapeau" requirements, Art.2 and 5 of the Statute require that particular acts be executed with a certain degree of intent which is a constituent element of offence and shall be established beyond reasonable doubt.[447]

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[441] J.Vol-I,para.189;
[442] Kordic AJ,para.52;
[443] J.Vol-III,paras.663,711;
[444] P01162;
[445] 4D00348,p.3;
[446] *Supra*,Ground 12.2,para.186;
[447] J.Vol-I,para.267; Martić AJ,para.55; Halilović AJ,paras.108-109;

196. Thus, murder as CAH and willful killing as grave breache of GC shall be carried out with the intent to cause the death or grave bodily harm which the author reasonably must have known might lead to death.[448] Inhumane acts and inhuman treatment must be carried out with the intent to inflict serious bodily or mental harm or to constitute a serious attack on the human dignity. These acts may also be committed when it is reasonably foreseeable that an act or an omission would likely give rise to serious bodily or mental harm or that would constitute a serious attack on the human dignity.[449]

197. The TC recognized that these elements are constitutive elements of the said crimes,[450] but it omitted to establish them with respect to killing of persons in Sljivo's house. The TC satisfied itself with the erroneous finding that the attack on Dusa was indiscriminate[451] and solely on that wrong basis incorrectly concluded that the HVO had intention to cause serious bodily harm to the civilians who had taken refuge there.[452]

198. Even if the attack were indiscriminate, which was not the case,[453] it does not permit to conclude that the authors of such attack had intention to cause serious bodily harm to civilians. In this particular case, those who fired a shell targeted Muslim defence lines which were military legitimate target.[454] The TC did not establish the degree of probability that the shell miss its legitimate target and hit the house which would permit to assess the state of mind of the authors of shelling. Either, it did not establish that those who fired a shell knew that civilians were in this particular house and it did not give any reason why they should or could know that civilians were there.[455]

199. Therefore, in violation of general principles of law and in violation of Art.2 and 5 of the Statute, the TC reached erroneous conclusion that the HVO shelled Sljivo's house with intention to cause serious bodily harm to civilians.[456]

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[448] Kvocka AJ,para.259; Celebići AJ,para.422 ;
[449] Kordić AJ,para.117; Vasiljević AJ,para.165;
[450] J.Vol-I, paras.46,77,111,120;
[451] J.Vol-III,paras.663,711; *Supra*,Ground 12.1,paras.187-191;
[452] *Idem*;
[453] *Supra*,Ground 12.1,paras.187-191;
[454] *Supra*,Ground 12.1,paras.190-192;
[455] *Supra*,Ground 12.1,para.192; .
[456] J.Vol-III,paras.663,711,1224,1315,1417;

13th Ground: Errors related to detention of civilians (GVM)

200. The evidence does not support that Muslim civilians were arrested after taking refuge in Šljivo"s house in Duša[457]. The TC concluded that the HVO soldiers ordered civilians to go to Paloc.[458] While [REDACTED],[459] [REDACTED] that the HVO ordered them to go to Paloc, Witness-BY said that Muslim troops sent them to Paloc and specified that at that time, they did not see any HVO soldiers in the village.[460]

201. The evidence does not show that civilians were detained in Paloc. There were no guards and women could leave the house.[461] It is quite possible that civilians from Dusa were blocked in Paloc, but it was due to the situation which did not permit to anyone to travel.[462] Thus, this situation cannot be attributed to the HVO.

202. The TC refers also to the HVO report which made reference to captured Muslim civilians in several villages and namely to 40 civilians captured in Uzricje and Dusa.[463] This report does not support the TC findings. It stated that only some of captured Muslims were detained and that all were immediately released.[464] The report does not contain any indication about the age or gender of captured persons and therefore it does not permit to conclude that it refers to civilians, accommodated in Paloc.Another HVO report specifies that civilians in Dusa and Uzricje were not detained.[465]

203. The situation was similar in Hrasnica. [REDACTED].[466] All other witnesses claim that fighting was ongoing after the civilian population left[467]. Therefore, no reasonable trier of fact could conclude that men of military age were separated from civilians after they surrendered.[468] Rather, they were arrested after the civilian population was taken to safer place as fighting was ongoing.

204. When the HVO entered into Hrasnica, the fighting was ongoing in the whole area and namely in Dolac which is very near Hrasnica and where some members of BiH TO

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[457] J.Vol--II,para.405, Vol-III,para.960-962,1011-1013;
[458] J.Vol-II,para.406;
[459] [REDACTED];
[460] Witness-BY,T.9083;
[461] Witness-BY,T.9085;
[462] [REDACTED];
[463] J.Vol-II,para.405,FN n°973;
[464] P01333;
[465] P01351;
[466] [REDACTED];
[467] [REDACTED], P10106,p.3-4, P10107, p.2; [REDACTED];
[468] J.Vol-II,para.416, Vol-III,paras.960-962,1011-1013;

from Hrasnica took refuge.[469] In that situation, the only solution was to take civilian population away from combat area and the HVO did that. Moreover, they told to civilians that they would be able to go home after the HVO took control of Dolac.[470]

205. The civilian population in Hrasnica was neither arrested nor detained. They were secured and evacuated from combat area according to Art.49 of the 4thGC.[471] After only one night spent in the collection center they were released and accommodated in houses with Trnovaca inhabitants.[472] Civilians were not prevented from leaving these houses[473] and they were imposed only the restrictions which were necessary for their own security and which are allowed by Article 27 of the 4thGC.[474]

206. Regarding Uzricje, the TC distorted and misinterpreted evidence and incorrectly concluded that the Muslim villagers were held by the HVO inside the village for about a month and a half.[475] The witnesses did noy say that houses were under guard[476] they acknowledged and that they had complete freedom of movement during the daytime.[477]

207. The TC acknowledged that Muslim population had some freedom of movement during the day.[478] They were not confined to the house and even not to the village as some of them left the village[479] [REDACTED].[480]

208. The TC seems to confound the imprisonment/ unlawful confinement with the curfew.[481] There is no evidence that the curfew was imposed only to Muslim population. At the contrary, it seems that it was introduced in GVM already in 06/1992 by decision issued by the Municipal Assembly which should have been implemented jointly by the HVO and TO.[482] The curfew is not an unusual measure in war time and it is not prohibited by IHL.[483] In any case it does not amount to imprisonment/unlawful confinement.

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[469] P10107, p.2;
[470] Witness-BX,T.8859, [REDACTED];
[471] *Supra,*Ground 8.1,para.143,145;
[472] P010107,p.4;
[473] Witness-BX,T.8874;
[474] *Supra,* Ground 8.1,para.144;
[475] J.Vol-II,para.446, Vol-III,paras.960-962,1011-1013;
[476] Kurbegovic,T.9026-9027, [REDACTED];
[477] Kurbegovic,T.8972,T.9026;
[478] J.Vol-II,paras.444, 446;
[479] J.Vol-II,para.451; Basic,T.8912-8914, Kurbegovic,T.8995, P09711,p.5, [REDACTED];;
[480] [REDACTED];
[481] Judgment, Vol-II,para.446;
[482] 1D01690;
[483] *Supra*, Ground 8,para.144;

209. The TC conclusions regarding the treatment of civilian population in Zdrimci[484] are exclusively based on Brica's statement. That R92bis statement[485] cannot constitute in itself the basis for conviction. Where the witness is not called to give the accused an adequate and proper opportunity to challenge the evidence and to question that witness, the evidence may lead to a conviction only if there is other corroborating evidence[486].

210. In assessment of evidence regarding Zdrimci, the TC adopted Brica statement although this statement, in relevant part, was contradicted by *viva voce* Witness Trkic.The TC did not properly assessed Brica statement and misrepresented its content as well as the Trkic's testimony[487] as Trkic said that the population was not forced to go anywhere, it was just told to stay in the houses.[488] The TC also misrepresented the HVO report[489] as it ignored that this report stated that all civilians were immediately released and that the HVO did not have any civilian detained.[490]

211. The TC omitted to consider the document dated 31-01-1993 which does not mention any confinement/imprisonment or any other distress situation in which population might have been, indicating only that about 100 Muslims remained in the village.[491] Several witnesses confirmed that the situation on the ground corresponded to the content of that document.[492]

212. The most that TC could reasonably conclude from the evidence is that some restrictions of movement were imposed to population. At that time, the fighting was still ongoing nearby, the ABiH was in the neighboring Vrse[493] and Zdrimci was located between Muslim and Croat military lines.[494] It is, thus, probable and cannot be excluded, that certain measures were undertaken to protect the population from military activities. That conclusion seems to be the only reasonable and logical conclusion as the villagers recovered a complete freedom of movement as soon as the cease-fire was signed.[495]

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[484] J.Vol-II,paras.463,467-468, Vol-III,paras.960-962,1011-1013
[485] P09797;
[486] Martic AJ,para.193, FN n°486; Galic Decision 07/06/02,para.12,FN n°34;
[487] J.Vol-II,para.463;
[488] Trkic,T.9173;
[489] J.Vol-II,para.462;
[490] P01333,*Supra*,Ground 13,para202;
[491] P01373;
[492] Carter,T.3364; Tokic,T.45373;
[493] Trkic,T.9199;
[494] Trkic,T.9200-9202;
[495] J.Vol-II,para.467; P09797,p.4;

213. The TC also wrongly concluded that the HVO arrested and then detained all the Muslims, irrespective of their status without making any individual assessments of the security reasons which could have led to their detention.[496] The HVO report indicates that some civilians were arrested in some villages, but that they were immediately released which means that the HVO made an assessment of the situation and released civilians who were arrested.[497]

214. The TC made, thus, in violation of general principles of law and of GC provisions and in violation of Art.2 and 5 of the Statute and without any conclusive evidence erroneous conclusions civilians were unlawfully arrested and detained.[498] Therefore, the Judgment should be reversed on Count-10 and Count-11 and Praljak shall be acquitted of these charges with respect to GVM.

14th Ground: Errors related to displacement of population from GVM

215. Regarding Duse, the TC concluded that the population was forcibly transferred, at the very least as far as Paloc.[499] It seems that the TC does not consider that the HVO is responsible for the subsequent removal of population from the area by UNPROFOR.[500]

216. Regarding the removal of population to Paloc, the TC found also that the population was arrested/detained in Paloc.[501] The TC should have decided if the population was forcibly transferred or detained in Paloc as the arrested/detained people cannot be considered as transferred/expelled people.

217. The TC did not properly establish that the HVO ordered civilians to go to Paloc as 3-BY said that Muslim troops ordered them to go there.[502] Among civilians in Dusa, many were from Paloc as they left Paloc some days before.[503] Therefore, the departure of civilians to Paloc cannot be attributed to the HVO and does not amount to forcibly transfer.

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[496] J.Vol-III,paras.961,1012;
[497] P01333;
[498] J.Vol-II,paras.405,416,446,463,467,468; Vol-III,paras.962,1013;
[499] J.Vol-III,paras.845-848,900-906;
[500] J.Vol-II,para.409;
[501] J.Vol-II,para.405; Vol-III,paras.960-962,1011-1013;
[502] Witness-BY,T.9083;
[503] [REDACTED]; Witness-BY, T.9073;

218. According to case-law, acknowledged by the TC,[504] for purpose of forcible transfer, the population shall be removed to the location sufficiently remote from its original location. The *actus reus* of forcibly removing comprises essential uprooting of individuals from the territory and the environment in which they have been lawfully present in many cases for decades and generations.[505] Paloc, remote only 500 to 1000 meters from Dusa,[506] is certainly not sufficiently remote from Dusa to fulfill this criterion for forcible transfer.

219. Futhermore, the population did not stay at Paloc. It returned to Dusa where it remained until the UNPROFOR arrived.[507] Therefore, it cannot be considered that civilian population was forcibly transferred from Dusa.

220. Regarding Hrasnica,[508] it is not clear if the TC considers that forcible transfer had been committed when the population was moved from Hrasnica or three weeks later when some of people decided to go elsewhere. As the TC found that the population removed from Hrasnica was arrested/detained,[509] this population cannot be considered as forcibly transferred.[510]

221. The TC conclusions are based on the incorrectly established fact that the civilians from Hrasnica were removed from the village after the end of combats without any security purposes.[511] The civilians were removed from the village during combats and for their own security.[512] According to ABiH document, it seems that the population evacuated Hrasnica on their own will[513] and when the security situation changed, they were allowed to go wherever they wanted.[514] As for finding that some of them were told to go to the ABiH territory, this finding is based on the hear-say as the [REDACTED][515] only heard about that without having any direct knowledge.[516]

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504 J.Vol-I,para.49;
505 Stakic, TJ,para.677; Simic TJ,para.130;
506 [REDACTED];
507 Witness-BY,T.9085-9086;
508 J.Vol-II,para.427, Vol-III,paras.846,902;
509 J.Vol-II,para.427, Vol-III,paras.846,902;
510 *Supra,*para.216;
511 J.Vol-III,para.846,902;
512 *Supra*, Ground 13 paras.203-204;
513 P01226;
514 [REDACTED];
515 [REDACTED];
516 [REDACTED];

222. The fact that some of villagers were unable to return to their homes because the area was devastated[517] does not suffice to establish forcible transfer. As the TC established that only some people were not able to return to their homes as these homes were destroyed, some other were obviously able to return. The TC did not establish if those who definitively left Hrasnica did so because they did not have any other choice or because they wanted to do so. It did not establish either how many people, originally from Hrasnica, left the village or where they went.

223. The TC only established that some people were taken by UNPROFOR to Bugojno.[518] The people who went to Bugojno, were originally from Bugojno and fled to Hrasnica because of the VRS attacks.[519] Their return to the municipality they lived before does not amount to forcible transfer.

224. As the TC did not establish elementary facts regarding circumstances in which the population would be removed it is impossible to consider that the Muslim population from Hrasnica was forcibly transferred.

225. The TC recognized that a number of villagers left Uzricje because they were afraid of the fighting.[520] The TC found solely on the basis of Kurbegovic testimony, that the HVO forced Muslim population to leave Uzricje.[521] Kurbegovic testimony lacks precision which would permit to conclude that the HVO used pressure in order to force Muslim population to leave the village. She was only able to say that a van with 5 soldiers arrived and that these soldiers asked her husband to leave the village.[522] Besides the fact that Kurbegovic and could not confirm that these soldiers belonged to the HVO[523], she did not say if they applied any kind of pressure or any threat of resorting to force. Thus, her testimony does not constitute any basis for conclusion that Muslim population from Uzricje was forcibly transferred. Furthermore, her testimony is in contradiction with the ABiH document which affirms that the population from Uzricje evacuated arbitrarily.[524]

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[517] J.Vol-II,para.427;
[518] J.Vol-II,para.426, Vol-III,paras.846,902;
[519] [REDACTED], Witness-BX,T.8845;
[520] J.Vol-II,para.451;
[521] J.Vol-II,para.453;
[522] Kurbegovic,T.8976;
[523] Kurbegovic,T.8976;
[524] P01226;

226. As the TC was not able to establish the constitutive elements of the forcible transfer and namely the use of any kind of force or pressure, it reached the erroneous conclusion when it concluded that Muslim population was forcibly removed from Uzricje.[525]

227. The TC acknowledged that in late 01/1993 all villagers from Zdrimci wanted to leave the village;[526] While the TC noted that some of villagers stayed in the village,[527] it found, without any evidence, that some villagers left because their houses had been destroyed.[528] The evidence point out that the villagers left the village because it was not safe.[529] When, for instance, Trkic left the village his house was not burnt, it was burnt only once he left the village.[530]

228. The TC found that the population was unable to return to their homes and that thus it was deprived of its right to enjoy a normal social and family life,[531] but some of people went to nearby villages where they were able to live with their families in familiar environment[532] and the TC failed to establish that the population was uprooted from the territory and environment in which it normally lived.[533]

229. The fact that the population was unable to return to its village or to stay in it, does not mean that it was forcibly transferred. The *actus reus* of the forcible transfer assumes the forced removal of persons by expulsion or other forms of coercion from the area in which they are lawfully present without grounds permitted under IHL.[534] The mere fact that the population is unable to return home because the village is devastated cannot constitute the sufficient basis for forcible transfer. While the burning of houses might constitute in some cases coercion,[535] the nexus between this act and the removal of population shall be established as well as the intent of those who burnt houses to forcible remove the population. The TC failed to establish any of these facts and omitted to consider that the commencement of the armed conflict may in itself have brought about fears of the violence associated with armed conflict, as a result of which

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[525] J.Vol-II,para.454, Vol-III,paras.847,904;
[526] J.Vol-II,para.466; P01373; Carter,T.3364; Tokic,T.45373;
[527] J.Vol-II,para.467;
[528] *Idem*;
[529] Trkic,T.9182;
[530] *Idem*;
[531] J.Vol-III,paras.848,906;
[532] Trkic,T.9181-9182;
[533] *Supra*,paras.218,222-223,227;
[534] Krajisnik AJ,para.304; Stakic AJ,paras.278,317;
[535] Simić TJ,para.126; Krstić TJ,para.147; Milutinovic TJ,para.165; Popovic TJ,para.896;

civilians fled".[536] It cannot be excluded that the people left because of a fear of the violence commonly associated with armed conflict.

230. Therefore, the TC did not establish the essential elements required for forcible transfer and reached, in violation of general principles of law and GC provisions and in violation of Art.2 and 5 of the Statute, erroneous conclusions when it concluded that Muslim population was unlawfully displaced from these villages.[537]

231. For all the reasons set forth in the 14th Ground, the Judgment should be reversed on Count-8 and Count-9 and Praljak should be acquitted of these charges with respect to GVM.

15th Ground: Errors related to crimes in GVM

232. For all the reasons set forth in the 15th Ground, the Judgment should be reversed on Count-1, Count-2, Count-3, Count-8, Count-9, Count-10, Count-11, Count-12, Count-13, Count-15, Count-16, Count-19 and Count-21 and Praljak should be acquitted of these charges with respect to GVM.

15.1. <u>The TC made errors when it concluded that the HVO attacked GV pursuant to CCP</u>

233. The TC concluded that fighting broke out between the HVO and ABiH in GVM on 11/12-01-1993.[538] In contradiction with this finding, the TC found that a JCE was established as early as mid-January 1993[539] and that the HVO attacks on GVT and several surrounding villages on 18-01-1993 were evidence of this plan.[540]

234. If the fighting started on 11/12-01-1993 and the HVO attacked only on 18-01-1993, the only reasonable conclusion is that the HVO was attacked between 11/18-01-1993 and that it responded to the ABiH attacks. In any case, if the fighting started on 11/12-01-1993, the following events cannot be included in any criminal plan[541] as there is a reasonable doubt that they were only the continuation of military operations initiated by the ABiH.

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[536] Gotovina TJ,para.1762;
[537] J.Vol-III,paras.845-848,900-906;
[538] J.Vol-II,para.336;
[539] J.Vol-IV,para.44;
[540] J.Vol-I,para.45;
[541] P01102, 3D01213,3D00527, P01226,3D01094;

235. The evidence show that the ABiH attacked Croats in GVM and that before the HVO undertook any action, it had 12 killed and about 30 injured solders.[542] Despite this, the HVO continuously tried to calm tensions and conflict in GVM.[543] The HVOMS instructed all HVO commands to solve the problems through talks and to prevent any use of force[544] while the HZ(R)-HB President forbid any offensive action against the ABiH.[545] At that time the HVO and ABiH were allies against the VRS[546] and the conflict with the ABiH could not be part of any HVO plan as it was not in its interest.[547]

236. The HVO was in position to take over the whole GVM, but instead of taking the control over the municipality, the HVO stopped all military activities.[548] The HVO limited scope of actions demonstrate that its actions were not planned and aimed to takeover of the town, but that they were provoked by the ABiH activities to which the HVO was obliged to respond in order to protect Croatian population.[549]

237. The TC did not establish any fact that would indicate that the HVO planned the attack on GVM or that this attack was part of any broader plan[550] or carried out to further CCP. While the CCP need not to be previously arranged or formulated and it may materialize extemporaneously[551] it must have been established prior to commission of an action or a crime. Crimes committed before conception of CCP, logically cannot be committed in its furtherance. The CCP can be inferred from the fact that a plurality of persons acts in unison to put into effect a JCE[552] but the sole commission of the crime cannot be evidence of the CCP existence as the TC seems to suggest.[553]

238. Therefore, the TC conclusion that the HVO attacked GV pursuant to CCP on 18-01-1993[554] is not only erroneous and in contradiction with the TC other findings,[555] but it is also legally untenable and contrary to well-established case-law on the JCE.[556]

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[542] 3D01783,3D02364, 3D00476;
[543] P01211, P01112,P01114, P01115,P01131, P01205,3D02081, P01236,P01216, P01299,3D00513;
[544] P01115;
[545] P01211;
[546] Tokić T.45358–45359, T.45360-45361, 4D00394;
[547] P01115;
[548] P01205;
[549] 3D01783;
[550] J.Vol-II,paras.347-355;
[551] Brdjanin AJ,para.418, Stakic AJ,para.64, Vasiljevic AJ,para.100, Kvocka AJ,para.117, Tadic AJ,para.227;
[552] Tadic AJ,para.227;
[553] J.Vol-IV,para.45;
[554] *Idem*;
[555] J.Vol-II,para.336;

15.2. The TC made an error of law when it included killing in Dusa in CCP

239. The TC did not properly establish that GVM was attacked in furtherance of CCP.[557] Equally, it did not give any reasons why the events in Dusa shall be included in CCP.

240. Besides the fact that there is no evidence that the events in Dusa form part of CCP, the TC did not properly establish that all co-perpetrators, JCE members shared intent to perpetrate this crime[558] and it did not establish the required intent for the said crime.[559]

241. Therefore, the TC made an error of law when it included killings in Dusa in CCP.

15.3. The TC made errors when it included the crimes in GV in CCP

and

15.4. The TC made errors when it concluded that crimes in GVM were committed pursuant to CCP

242. The TC stated that the evidence does not support a finding that there was an agreement concerning a CCP before mis-January 1993. [560] Thus, while the TC found that in GVM the armed conflict broke out already on 11/12-01-1993,[561] it could not find, beyond reasonable doubt, that the CCP existed before or at time the conflict broke out.[562]

243. The most that the TC could conclude on the basis of the evidence is the existence of an armed conflict in GV[563] and the constant HVO attempts to calm down tensions[564] which point out that the HVO did not have interest in military activities against the ABiH and that the existence of any such plan would be illogical.[565]

244. The CCP is a necessary constituent element for the JCE responsibility[566] and as such it shall be established beyond reasonable doubt.[567] When the evidence suggest a conclusion which seems to be very likely, the TC should examine whether such

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[556] Tadic AJ,para.227;
[557] *Supra*, ground 15.1,paras.234-238;
[558] Tadic AJ,para.228, Stakic AJ,para.65;
[559] *Supra*, ground 12.2,paras.196-198;
[560] J.Vol-IV,para.44;
[561] J.Vol-II,para.336 ;
[562] J.Vol-IV,para.44;
[563] P01115,3D02361,P01141,3D02369,P01102,3D01783,3D00496, P01205,P01214, P01211,P01216,P01238,3D03712
[564] P01211, P01112,P01114,P01131,3D02081,P01236,P01216, P01299,3D00513;
[565] *Supra*, Ground 15.1,para.235;
[566] Tadic, AJ,para.227;.
[567] Halilović AJ,paras.125,129; Ntagerura et al.AJ,paras.174,175;

conclusion is the only reasonable one[568]. If there is any reasonable explanation of the evidence other than the guilt of the accused, the accused must be acquitted.[569]

245. In the present case the TC was not able to establish that the CCP existed before the conflict broke in GV.[570] While it established that the CCP came to existence during the conflict in GV, there is another reasonable explanation for events that followed according to which the HVO was provoked by constant ABiH provocations[571] and acted with the sole aim to protect Croatian people.[572] Having omitted to consider this possibility, the TC made an error when it included the crimes in GV in CCP and concluded that these crimes were committed pursuant to CCP.

20th Ground: Errors related to sniping incidents

246. For all the reasons set forth in the 20th Ground, the Judgment should be reversed, on Count-1, Count-2, Count-3, Count-15, Count-16, Count-24 and Count-25 and Praljak should be acquitted of these charges with respect to Mostar.

20.1. <u>The TC made an error of fact when it established that areas used by snipers were under the HVO control</u>

247. The TC acknowledged that numerous international reports do not attribute the sniping attacks to either side.[573] It also admitted that it does not have abundant evidence showing that the HVO controlled Stotina when the incidents occurred and the Prosecution was unable to produce any evidence establishing the presence of a regular HVO unit in Stotina.[574]

248. The extent of the control that the HVO could have exercised over Stotina is very questionable as the ABiH, which had a sniper unit,[575] had positions above Stotina.[576] The TC considered however that the evidence allow the finding that the HVO was in

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[568] Vasiljević AJ,paras.120,128;
[569] Čelebići AJ,para.458;
[570] *Supra*, Ground 15.1,paras.234-237;
[571] *Supra*, Ground 15.1 para.235
[572] 3D01783;
[573] J.Vol-II,para.1032;
[574] J.Vol-VI,Diss.Op,p.298;
[575] [REDACTED];
[576] Salcin,T.14190-14191;

control of Stotina[577]. The TC cannot make a finding because the evidence allow it, it shall establish the facts constituting the factual basis of crimes and ultimately the basis for the Accused conviction, beyond reasonable doubt. When the evidence is not conclusive, the Accused is entitled to the benefit of the doubt.[578]

249. For all other locations, the TC satisfied itself with the finding that these locations were in West-Mostar which was under the HVO control.[579] Thus, as the sniper fire was opened from the western part of city, the TC considered that snipers could only have been under the HVO control.[580] Besides the fact that in this kind of conflict there may have been individuals acting outside of any control who decide to "take pot shots" at anyone,[581] there is evidence that the ABiH had its own people within the HVO.[582] While these persons were the HVO members, they were not under the HVO control and acted under the ABiH orders.There is no evidence that the HVO controlled access to the concerned buildings.[583] Thus, even if it were established that the sniper fire came from the HVO controlled territory, it does not mean that this fire can be attributed to the HVO.

20.14. The TC made errors with respect to sniping campaign

250. Contrary to the TC finding,[584] the evidence do not show that snipers were under the HVO control. Even the TC recognized that numerous reports of internationals present in Mostar do not attribute the sniping attacks to either side.[585]

251. The TC conclusions about suffering of Muslim population in East-Mostar are entirely based on the Turco's R92*bis* statement[586], which cannot constitute in itself the basis for conviction. [587] Furthermore Turco has knowledge only about events in Mostar after 10-

[577] J.Vol-II,para.1033;
[578] Martic AJ,para.55
[579] J.Vol-II,paras.1036-1037;
[580] J.Vol-II,para.1038;
[581] J.Vol-VI,Diss.Op,p.298;
[582] 3D00165;
[583] Van Der Grinten,T.21020-21021;
[584] J.Vol-II,para.1194;
[585] J.Vol-II,para.1032;
[586] P10047;
[587] Martic AJ,para.193,FN n°486 ; Galic Decision 07/06/02,para.12,FN n°34;

11-1993[588] and he has never been the eyewitness of a sniping incident Thus, he could not confirm that the HVO was responsible for these incidents.

252. The TC attributed the sniper shots to the HVO mainly because the HVO had a sufficient military presence to impose its authority in West-Mostar.[589] The TC therefore found that the HVO armed forces controlled the sniper locations on the dates the incidents occurred.[590] It remains unknown how the TC could reach this conclusion while, in most incidents, it recognized that it could not establish the exact location the shots came from.[591]

253. Moreover, even if snipers were located on the HVO controlled territory, it does not mean that the sniper was under the HVO control. The evidence show that the ABiH had its own people within the HVO[592] and there may have been individuals acting outside of any control.[593]

254. In its evaluation of evidence on sniping campaign, the TC failed to apply the standard beyond reasonable doubt which requires that all facts, material to the elements of the crime, be proven beyond reasonable doubt.[594] The TC satisfied itself with a possible finding without having established that this was the only reasonable conclusion available. Thus the TC did not apply the well-established case-law according to which it is not sufficient that a conclusion is a reasonable, but it must be the only reasonable conclusion available.[595]

21st Ground: Errors related to shelling

255. For all the reasons set forth in the 21st Ground, the Judgment should be reversed on Count-1, Count-2, Count-3, Count-16, Count-24 and Count-25 and Praljak should be acquitted of these charges with respect to Mostar.

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[588] P10047,p.6;
[589] J.Vol-II,para.1038;
[590] *Idem*;
[591] J.Vol-II,paras.1077,1087,1107,1130,1134,1147,1150,1151;
[592] 3D00165;
[593] J.Vol-VI,Diss.Op,p.289;
[594] Martic AJ,para.55; Blagojevic AJ,para.226;
[595] Čelebići AJ,para.458;

21.1. The TC made errors when it concluded that the HVO shelled intensively and indiscriminately East-Mostar

and

21.2. The TC made errors when it concluded that the HVO shelling caused numerous victims

256. With respect to the shelling of East-Mostar, the TC made a number of conflicting findings which render the Judgment unclear and incomprehensive.[596] The TC also distorted evidence[597] and made unfounded findings without assessing all relevant evidence[598] and therefore reached erroneous conclusions.[599]

257. Documents to which the TC referred in its finding about the HVO airplane[600] indicate only that a flyover by a light airplane was reported without any indication to whom this airplane belonged.[601] None of these documents confirms that the airplane dropped the shells, this information was given by the ABiH and was not confirmed.[602] It seems however that the airplane was used once,[603] but the TC omitted to consider that the HVO Command immediately forbade the aircraft use, unless authorized by the MS commander and used for medical evacuations.[604]

258. The TC considered the use of napalm bombs as established fact[605] on the basis of a document,[606] although several witnesses, including the ABiH members,[607] made clear that napalm bombs were not used. If they had been used the consequences would have been dramatically different.[608]

259. The TC accepted Salcin statement[609] which is in conflict with the TC findings that the ABiH had heavy weapons[610] including mobile mortars positioned in the vicinity of the

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[596] *Infra*,paras.259,269;
[597] *Infra*,para.268;
[598] J.Vol-II,paras.997,1006,1007; Vol-III,paras.1254,1256,1348,1350,1684,1688,1689;
[599] J.Vol-III,paras.1256,1350,1688,1689;
[600] J.Vol-II,para.997;
[601] [REDACTED]; P04785,p.2;
[602] [REDACTED]; P04785,p.2; P05091,p.8,para.26;
[603] Praljak,T.41607; P04265;
[604] 3D00779;
[605] J.Vol-II,para.1006; Vol-III,paras.1254,1348,1684;
[606] P04265;
[607] Salcin,T.14219-14220;
[608] Salcin,T.14219-14220; Praljak,T.41607-41609;
[609] J.Vol-II,para.1007;
[610] J.Vol-II,para.998;

hospital, which were in use and which were used,[611] and that 4th Corps and 41st ABiH Brigade had their headquarters in Marshal Tito street[612] Moreover, even if these soldiers did not have a fixed assembly point, as far as they are combatants they are an obvious military objective.[613]

260. Contrary to TC conclusions[614], based on documents which are not in evidence,[615] the evidence point out that the HVO was the weakest militarily body and that Croats in terms of strength were in a worse condition.[616] The evidence also contradict finding that between early 06/1993 and early March 1994, East-Mostar was under intense HVO shelling and firing[617] as the shelling was sporadic, except for few days in 06/1993.[618]

261. Thornberry statement[619] describes the situation Thornberry found when he came to Mostar and does not attribute any responsibility to the HVO for this situation.[620] Thornberry could not say which damages were provoked by Serb shelling and which can be attributed to the HVO.[621] [REDACTED][622] [REDACTED].[623]

262. There is no evidence about the origin of shelling[624] and victims made by the HVO. The TC justified its findings by number of victims admitted into the East-Mostar Hospital[625] but there is no indication that these victims were injured by the HVO shells and it has been established that Mostar was not shelled only by the HVO.[626]

263. Although the Spabat documents give the best information about the shelling, they do not permit to conclude how many shells were fired by the HVO. While the Spabat indicated the number of incoming and outgoing shells in East-Mostar, the information is lacking for West-Mostar. This manner of reporting indicates that the attention was focused on East-Mostar and that these reports do not reflect the complete situation in the

611 J.Vol-II,para.1013;
612 J.Vol-II,para.1009;
613 GCAP-I, Commentary, paragraph 2017;
614 J.Vol-II,para.1000; Vol-III,paras.1254,1256,1348,1684,1689;
615 J.Vol-II,para.1000,FN n°2309, P05278,P05452;
616 Thornberry,T.26286;
617 Judgment, Vol-II,para.1014,1018, Vol-III,para.1348,1350,1254,1256,1348,1350,1684,1689;
618 Fynlayson,T.18042;
619 J.Vol-II,para.1004;
620 P03858,p.6;
621 Thornberry,T.26221-26222,T.26331-26332;
622 [REDACTED];
623 [REDACTED];
624 [REDACTED];,P04573;
625 J.Vol-II,para.1016;
626 *Infra*,para.267;

whole town. Thus, the report for 09-11-1993 indicates that nothing is to be reported for West-Mostar although 26 mortars shells are reported to be fired over western zone of the East-Mostar among which only six were fired by the HVO.[627] It is unclear where these mortar shells came from as in West-Mostar no activity was recorded.

264. Home-made bombs[628] cannot be attributed to the HVO. The evidence shows that home-made bombs were used by the ABiH.[629] Furthermore, it cannot be excluded that these bombs were isolated criminal acts committed by the individuals who were not under anyone's control.

265. The continuous combats went on in Mostar.[630] Most of documents refer explicitly or implicitly to an exchange of fire[631] [REDACTED].[632] [REDACTED].[633] While the HVO shelling was concentrated on the frontlines, the ABiH would attract the HVO elsewhere by setting weapons at some places.[634]

266. The ABiH acted constantly in violation of GC provisions. According to Art.58 of the GCAP-I the Parties to the conflict shall endeavor to remove civilian population under their control from the vicinity of military objectives, avoid locating military objectives within or near densely populated areas and the other precautions to protect the population fromp military operations. In war, all parties are required to take precautions and it is not allowed to place military installations in the midst of a concentration of civilians with a view to using the latter as a shield or for the purpose of making the adverse party abandon an attack.[635] The danger for the population is increased if military objectives located in an urban area are camouflaged among civilian buildings and installations.[636] The ABiH placed military staff and equipment in civilian areas[637] and had military positions at Donja Mahala.[638] The ABiH also placed its heavy

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[627] P06554;
[628] J.Vol-II,para.1005;
[629] Forbes,T.21288-21289;
[630] Witness-DW,T23226; Thornberry,T.26320; Forbes,T.21291; [REDACTED];
[631] [REDACTED]; P05428, [REDACTED]; P06554;
[632] [REDACTED];
[633] [REDACTED];
[634] Fynlayson,T.18168;
[635] GCAP-I,Art.51.7; GCAP-II,Art.13.1,Commentary, para.4772;
[636] GCAP-I,Art.58, Commentary, para.2254;
[637] Finlayson,T.18041; 3D02395, [REDACTED]; Witness-DW,T 23105-23106;
[638] Salcin,T.14240-14241, T.14248;

weaponry in civilian areas, near civilian buildings.[639] The deployment of mortars near the hospital was so frequent that the Spabat permanently try to prevent it.[640] The ABiH prepared places for mortars[641] and positioned them randomly in whole East-Mostar[642] regardless the impact that such positioning might have on population. [REDACTED].[643] All these positions were used by the ABiH for attacks on the HVO positions.[644] As the TC recognized,[645] the ABiH attacked in 06/1993 the northern camp, Bijelo Polje and Rastane,[646] in 07/1993 the southern Mostar,[647] in 08/993 it launched several attacks on the HVO[648] and in 09/1993 a massive offensive.[649] [REDACTED].[650]

267. The TC should adopt a more careful approach to evidence as it admitted that Serbs, who had a dominant position over the city[651] were also shelling Mostar[652] firing sometimes 5-10 shells on the city.[653] Furthermore, a number of different groups, which were not in agreement with East-Mostar Government, operated within East-Mostar.[654] Thus, it cannot be excluded that at least some victims and damages can be attributed to the activities of these groups. [REDACTED][655] and the ABiH probably tried to expel the HVO from this pocket with collateral damages among its own population.

268. The TC conclusions about a nature of the HVO shelling[656] seem to be based on the Witness-DV testimony which the TC distorted.[657] The Witness-DV did not speak about the appropriate method of combat but about the military usefulness of the artillery in this kind of combat.[658]

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639 Witness-DW,T.23106,T.23136; [REDACTED]; Maric, T.48147; [REDACTED];
640 Witness-DW,T.23241;
641 Witness-DW,T.23244;
642 [REDACTED];
643 [REDACTED];
644 Witness-DV,T.23051; Salcin,T.14284;
645 J.Vol-II,para.880;
646 Salcin, T.14251,T.14312; 4D01222, [REDACTED];
647 P03428,p.1;
648 [REDACTED], P04468, [REDACTED];
649 Witness-DV,T.23051; Salcin,T.14281-14282; 3D00736; 3D00740;
650 [REDACTED];
651 Witness-CB,T.10155;
652 J.Vol-II,para.1001;
653 Finlayson,T.18224;
654 Thornberry,T.26273;
655 [REDACTED];
656 J.Vol-II,para.1003,1008,1254; Vol-III,paras.1254,1348,1684,1686,1689;
657 J.Vol-II,para.997;
658 Witness-DV,T.23046;

269. The TC conclusions are conflicting and its reasoning is confusing as it does not permit to understand if the TC considered that the HVO, due to means and method used, was unable to target military objectives or if it considered that the HVO was able to do it, but nevertheless shelled the whole area. It is also unclear if the TC considered that the HVO had directly targeted civilian population or if it considered that the civilian population suffered because of indiscriminate shelling.[659] While the TC constantly used the term "affected" for determination of the shelling impact on civilians,[660] it seems that it considered however that the shelling was aimed at the civilian population[661] which is incomprehensive.

270. Although, the indiscriminate character of an attack can be indicative of the fact that the attack was directed against the civilian population,[662] the TC is required to ascertain the the objective and the modalities of the attack with regard to each shelling incident.[663] The use of heavy weapons in populated area is risky and must be undertaken with the greatest caution, but it is not forbidden and the TC should have established unambiguously if the HVO targeted intentionally civilian population or if its attacks were indiscriminate.[664] The determination of whether civilians were targeted is a case-by-case analysis, based on a variety of factors.[665]

271. While the IHL prohibits any direct attack on civilian population,[666] combatants may be attacked at any time.[667] The members of the enemy army are legitimate military target as well as military installations, equipment and transports.[668] Furthermore, purely civilian buildings or installations may be attacked when they are occupied or used by the armed forces, provided that this does not result in excessive losses among the civilian population.[669] The IHL does not prohibit conduct of military actions against military targets even when they are situated in populated areas provided that a military action is conducted with required precautions. The armed forces and their installations

[659] J.Vol-II,paras.1008,1018;
[660] J.Vol-II,para.1004; Vol-II,paras.1254,1348,1684,1689;
[661] J.Vol-II,para.1688;
[662] Milosevic AJ,para. 66; Strugar AJ,para.275, Galić AJ,para.132;
[663] Milosevic AJ,para.143;
[664] GCAP-I,Art.51.4 and 51.5;
[665] Milosevic AJ,para.66 ; Strugar AJ,para.271; Galić AJ,paras.132-133; Kordić AJ,para.438;Blaskic AJ,para.106;
[666] GCAP-I,Art.51.2; GCAP-II,Art.13.2;
[667] GCAP-II,Art.13.1,Commentary,para.4789;
[668] GCAP-I,Art.51,Commentary,para.1951;
[669] GCAP-I,Art.51,Commentary,para.1951;

are objectives that may be attacked wherever they are, except when the attack could incidentally result in civilian damages which would be excessive in relation to the expected military advantage.[670] The shelling affecting the densely populated area[671] does not mean in itself either that civilian areas were targeted or that the attacks were indiscriminate or disproportionate. Collateral damages are known in wars and civilians are affected by shelling even if they are not targeted and when the belligerent acts with all possible and required caution. Attacks aimed at military objectives, including objects and combatants, may cause "collateral civilian damage" and the international customary law does not imply that collateral damage is unlawful *per se*.[672].

272. In its assessment of shelling, the TC did not make any effort to establish the nature of the alleged HVO attacks or the weapons used by the HVO. It did not establish if there were any shells which were not directed against military targets. Therefore the TC did not have any basis to assess if method or means could be directed at a specific military objective. The TC completely omitted to consider the HVO orders which confirm the selective nature of shelling aimed to military targets.[673] The HVO even issued orders to riposte on provocations only when the demarcation line is put in danger,[674] thus the HVO activities were not only selective but also limited.

273. The TC did not make any assessment of collateral damages and comparative military advantage, thus, its finding that the damage was excessive in relation to the anticipated advantage[675] is unfounded. Finally, the TC omitted to consider the ABiH mobile mortars which were also legitimately military objectives when it concluded that the HVO firing and shelling were not limited to specific military targets as the headquarters of the 4th Corps and the 41st Brigade of the ABiH.[676]

[670] GCAP-I,Art.51,Commentary,para.1953;
[671] J.Vol-II,para.1004; Vol-III,para.1254,1348,1684,1689;
[672] Kordic AJ,para.52;
[673] P06534,p.2, 4D00754,Maric,T.48149;
[674] 3D01745;
[675] J.Vol-III,para.1686 ;
[676] J.Vol-II,para.1018;

21.3. <u>The TC made errors when it concluded that the HVO committed acts with purpose to spread terror</u>

274. While the TC established that for unlawful infliction of terror on civilians the primary purpose of acts is to spread terror[677] it was not able to conclude that the purpose of shelling was spreading of terror. The TC actually concluded that the HVO targeted sectors where the ABiH military targets were situated.[678] These conclusions point out the legitimate military motivation and purpose of the HVO activities.

21.4. <u>The TC made errors when it concluded that the HVO committed crime of unlawful infliction of terror</u>

275. Although the crime of spreading terror does not require the proof that the population was terrorized, it is necessary to establish that it did undergo extensive trauma and psychological troubles.[679] Such trauma and psychological damage form part of violence which constitute the criminal act of infliction of terror.[680]

276. The TC did not establish the required degree of trauma and psychological damage. It could only conclude that the population was afraid and merely stated, without any conclusive evidence, that the shelling had the effect of terrifying the population of East-Mostar.[681]

277. The TC did not establish either the required intention for terror. While it recognized that the perpetrator of the crime shall have the specific intent to spread terror,[682] there is no evidence that the Accused or any HVO member had such intent. At the contrary, the HVO orders show[683] that the shelling was aimed to military targets and the TC admitted it.[684]

278. Acts of violence related to a state of war almost invariably lead to a certain terror among the population, but this sort of terror is not envisioned under the offence of infliction of terror.[685] The criminal provision of infliction of terror concerns an intentional conduct

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[677] J.Vol-I,paras.195,197
[678] J.Vol-II,paras.1003,1009,1013,1014;
[679] Milosevic AJ,para.35; Galic AJ,para.102;
[680] Galic AJ,para.102;
[681] J.Vol-II,para.1013;
[682] J.Vol-I,para.197;
[683] Supra,Ground 21.1,para.272;
[684] J.Vol-,paras. 1003,1009,1013,1014;
[685] GCAP-I,Art.51.2,Commentary, para.1940;

which aims at spreading terror and excludes unintended terror or terror which is simply a concomitant effect of acts of war having a different essential purpose.[686]

279. The intent to spread terror is a required element for the infliction of terror,[687] thus the TC should have established that the HVO actions were motivated by the specific intent to spread terror and that the Accused possessed this intent. Having failed to do it, the TC omitted to establish constitutive elements of the crime of infliction of terror on civilians.

23rd Ground: Errors related to the Bridge destruction

280. For all the reasons set forth in the 23rd Ground, the Judgment should be reversed, the conviction against Praljak should be set aside on Count-1 and Praljak should be acquitted of this charge with respect to Mostar.

23.1. <u>The TC made errors in its conclusions regarding the Tomislavgrad meeting</u>

281. Contrary to TC findings, [688] the evidence does not show that the November offensive was discussed during the Tomislavgrad meeting. The HVOMS order does not refer to the Tomislavgrad meeting.[689] The main objective of this order was defence of Croatian territories in Lasva valley.[690] While the MMD got a task to carry out some actions, these actions should have been of low intensity as the order foresaw actions "with smaller formations".[691] While the MMD order mentions the Tomislavgrad meeting, it refers to an unknown order issued on 07-11-1993.[692]

282. The Tomislavgrad meeting had for purpose the discussion on problems faced by the HVO and improvement of the army efficiency and structure.[693] Its conclusions show that no concrete military actions were discussed during this meeting.[694] Therefore it is completely unclear how the TC made a link between the Tomislavgrad meeting and the order issued on 08-11-1993.

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[686] IHL Official Records, Vol-XV,p.282;
[687] Milosevic AJ,para.37; Galic AJ,para.104;
[688] J.Vol-II,para.1305;
[689] P06534;
[690] P06534,pp.1-2;
[691] P06534,p.2,item 3;
[692] P06524,p.2;
[693] Praljak,T.44454;
[694] 3D00793;

23.2. <u>The TC made errors in its interpretation of "the target which was determined earlier"</u>

283. The TC admitted that the Bridge was not explicitly designated as a target in the HVO orders[695] and recognized that the 09-11-1993 report[696] remained vague about the "target which was determined earlier".[697] It considered however, without any conclusive evidence, that the "target" was the Bridge.[698] The report mentioned that the Bridge was destroyed.[699] If the Bridge was the target, the report would not refer to the "Bridge", but would indicate that the "target" was destroyed.

284. Maric, the OZ-SEH HVO artillery chief,[700] stated that the target in this report was not the Bridge[701] which was not a predetermined target.[702] The HVO knew military targets and their nature, and orders referred exclusively to those military targets which under the war doctrine served for planning/conducting of combat activities and operations.[703] The TC arbitrary decided that Maric was not credible without any other reason except the fact that it contradicted the TC own and unsupported theory about the "target".[704]

285. The TC has certainly a large discretionary power in assessment of evidence, but it cannot substitute the witness testimony by its own theory without any supporting evidence. Even if the TC decided not to accept Maric testimony, it had no other evidence on the "target".

23.3. <u>The TC made errors when it concluded that the HVO destroyed the Bridge</u>

286. The TC admitted that the JNA/VRS shelled the Bridge during 1992 and caused significant damages.[705] It recognized also that in 06/1992, the HVO, and namely Praljak, ordered that the Bridge be protected.[706] The TC also admitted that the Bridge was not explicitly designated as a target in the HVO orders[707] and recognized that the

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[695] J.Vol-II,para.1302;
[696] P09992,p.1;
[697] J.Vol-II,para.1321;
[698] *Idem*;
[699] P09992,p.1;
[700] Maric,T.48092;
[701] Maric,T.48372;
[702] Maric,T.48383;
[703] Maric,T.48350;
[704] J.Vol-II,para.1322;
[705] J.Vol-II,para.1297;
[706] *Idem*;
[707] J.Vol-II,para.1302 ;

evidence concerning the direction from which the Bridge was fired is contradictory.[708] It also recognized that there could have been at least one attempt to blow up the Bridge from the Neretva bank[709] and that the Bridge collapsed on 09-11-1993 possibly due to explosives activated from the left Neretva bank.[710]

287. As the TC could not establish who had destroyed the Bridge on 09-11-1993 when the bridge collapsed, it found that the Bridge could already be considered destroyed as of 08-11-1993 as a result of shelling by an HVO tank positioned on Stotina.[711] The bridge collapsed on 09-11-1993[712] and until than it was standing. The TC could have considered that the bridge was destroyed on 08-11-1993 only if it had established, beyond reasonable doubt, that the bridge would have collapsed as consequence of actions undertaken on 08-11-1993 without any further action. As the TC did not establish that fact, it made a gross error when it considered it as destroyed on 08-11-1993[713] and put on the equal level damaging and destruction.

288. The TC cannot held the HVO responsible for the state of the bridge before its collapse as it did not establish which damages were done by the JNA/VRS and which were subsequently inflicted to the bridge during the war between Muslims and Croats and particularly on 08-11-1993.

289. Finally, the TC admitted that there is a possibility that the bridge was destroyed due to explosives set off by a detonating cord from the left Neretva bank.[714] Thus, the TC should have applied the standard beyond reasonable doubt and ruled that it cannot conclude that the HVO destroyed the Bridge.

23.4. <u>The TC made errors when it concluded that the Bridge destruction was disproportionate</u>

290. The TC admitted that the ABiH, which hold positons in the immediate vicinity of the Bridge,[715] used the Bridge to supply and reinforce Muslim soldiers on the frontline.[716]

[708] J.Vol-II,para.1324 ;
[709] J.Vol-II,paras.1342,1343;
[710] J.Vol-II,para.1366;
[711] J.Vol-II,paras.1343,1345, Vol-III,para.1581;
[712] P08279,p.9,para.39, Watkins, T.18894;
[713] J.Vol-II,para.1343,1345, Vol-III,para.1581;
[714] J.Vol-II,para.1366;
[715] J.Vol-II,para.1289, Vol-III,para.1582;
[716] J.Vol-II,para.1288, Vol-III,para.1582;

Consequently, it admitted that the the HVO had a military interest in destroying the bridge and concluded that the Bridge was a military target.[717]

291. As the Bridge was a military target, it does not enjoy the protection that the civilian cultural property enjoys. Art.27 of the HR provides the protection to historic monuments if they are not used for military purposes". Art.4.1 of the HC requires the Parties to respect cultural property situated within their own territory as well by refraining from any use of the property and its immediate surroundings for purposes which are likely to expose it to destruction or damage in an armed conflict. Art.4.2 of the HC foresees that the obligations mentioned in paragraph 1 of the present Article may be waived only when military necessity imperatively requires such a waiver. Article 13.1.b of HC specifies that cultural property under enhanced protection shall only lose its protection if the property has become a military objective. R38.a of the IHL Rules provides that special care must be taken in military operations to avoid damage to historic and cultural monuments unless they are military objectives. Art.53 of GCAP-I and Art.16 of GCAP-II prohibit acts of hostility directed against the historic monuments which constitute the cultural heritage of peoples and to use such objects in support of the military effort. Thus, the relevant international norms make the protection of cultural property dependent on whether such property is used for military purposes.The case-law confirms the "military purposes" exception[718] which is consistent with the exceptions recognized by international instruments. Therefore the protection accorded to cultural property is lost where such property is used for military purposes.[719]

292. While the use of cultural objects in support of the military effort, obviously constitute a violation of the GCAP provisions, it does not necessarily justify the attack,[720] but when these objects are military objective as defined by Art.52 of the GCAP-I[721], the attack might be justified. According to Art.52.2 of the GCAP-I a military objective is an object which makes "an effective contribution to military action" for the adversary, and whose total or partial destruction, capture or neutralization offers a definite military advantage

[717] J.Vol-III,para.1582;
[718] Blaskic TJ,para.185; Kordic TJ,para.362; Naletilic TJ,para.922; Brdjanin TJ,para.598; Strugar TJ,para.310;
[719] Strugar, TJ,para.310;
[720] GCAP-I,Art.53,Commentary,para.2079;
[721] *Idem*;

for the attacker. The Art.1 of the HCSP defines the military objective similraly. The Art.13.2 of the HCSP specifies that cultural property may only be the object of attack if the attack is the only feasible means of terminating the military use of the property and all feasible precautions are taken in the choice of means and methods of attack, with a view to terminating such use and avoiding, or in any event minimizing, damage to the cultural property.

293. The TC concluded that the Bridge was essential to the ABiH for the combat activities of its units on the frontline and that it was used for military purpose.[722] Therefore, there is no doubt that an attack on it would be justified.

294. The TC committed an error when it applied the principle of proportionality to the destruction of the military target itself. The principle of proportionality does not protect military objectives, even when they primary purpose was not military. Proportionality is concerned with incidental effects which attacks may have on persons and objects, as appears from the reference to "incidental loss".[723] According to GC Commentary, "if the destruction of a bridge is of paramount importance for the occupation or non-occupation of a strategic zone, it is understood that some houses may be hit, but not that a whole urban area be levelled".[724] Furthermore, in order to apply the proportionality principle, the TC should have established that the military goals could have been achieved through other means.

295. Moreover, there is no evidence that the HVO targeted the Bridge in itself. [REDACTED] listed the targeted objectives, but the Bridge is not among them[725] and the TC recognized that the Bridge was not explicitly designated as a target in the HVO orders.[726]

296. The Bridge was near the frontline and the ABiH military installations. In the case when military activities or military installations are in the immediate vicinity of the cultural property, the result may be that it cannot be established that the acts which caused destruction of or damage to cultural property were "directed against" that cultural

[722] J.Vol-II,para.1290, Vol-III,para.1582;
[723] GCAP-I,Art.57,Commentary,para.2212;
[724] GCAP-I,Art.57,Commentary,para.2214;
[725] [REDACTED];
[726] J.Vol-II,para.1302;

property, rather than the military installation in its immediate vicinity.[727] As the TC did not establish that the Bridge was targeted in itself it is meaningless to debate if the destruction was proportional to the military advantage or not.

24th Ground: Errors related to the Mostar mosques

297. For all the reasons set forth in the 24th Ground, the Judgment should be reversed on Count-1 and Count-21 and Praljak should be acquitted of these charges with respect to Mostar.

24.1. <u>The TC made errors when it concluded that the HVO destroyed/damaged mosques in East-Mostar</u>

298. The TC noted that eight mosques were damaged/partially destroyed by JNA/VRS in 1992.[728] While the TC found that two mosques were still intact in 01/1993, it could not establish if they remained intact after January 1993.[729]

299. The evidence regarding destruction of Mostar mosques does not allow the finding that between June and December 1993, the HVO destroyed, ten mosques in East-Mostar[730] as all mosques except one, had been destroyed already in 05/1993.[731] Thus the TC conclusion that is manifestly erroneous.

300. While the TC established that eight mosques were damaged or partially destroyed by JNA/VRS in 1992.[732]it did not establish what further damages, if any, occurred in 1993. As the TC did not establish these facts it is unclear how the TC could conclude that there is no doubt that the HVO further damaged/destroyed the mosques.[733]

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[727] Strugar, TJ,para.310;
[728] J.Vol-II,paras.1369,1370-1371;
[729] Judgment, Vol-II,paras.1369,1371;
[730] J.Vol-II,para.1372; Vol-III,para.1580;
[731] P02563;
[732] J.Vol-II,paras.1369,1370;
[733] J.Vol-II,para.1375;

24.2. <u>The TC made errors when it concluded that the HVO intentionally targeted mosques</u>

301. According to TC certain evidence attests that the HVO knowingly attacked/destroyed mosques in East-Mostar.[734] Therefore, the TC concluded that the HVO deliberately targeted ten mosques.[735]

302. The TC refers to a document which stated that all Muslim monuments were systematically and intentionally destroyed without giving any indication about the particular acts and their authors.[736] As the document does not indicate who was systematically and intentionally destroying Muslim monuments and it claims the existence of multiple micro-wars and different groups under different leadership[737], it is impossible to attribute the destruction to the HVO.

303. As the TC could not establish how the Mosques in East-Mostar were destroyed and who destroyed them, it is impossible to conclude that the HVO deliberately targeted them.

304. Only one Mosque, located in West-Mostar, was destroyed by a HVO member. While Baba Besir Mosque was mined by a HVO member,[738] it has not been established that the HVO ordered its destruction. Although the person, who mined the mosque, stated that he was ordered to do so, his statement indicates that he was in conflict with some HVO members and that his statement was aimed to prejudice them.[739] Except for this unconfirmed and doubtful statement, there is no any evidence that the HVO was in any way involved in the destruction of the Baba Besir or any other mosque.

25th Ground: Errors related to the East-Mostar isolation

305. The TC admitted that persons who wished to leave East-Mostar needed an ABiH exit permit[740] and that the ABiH issued permits only for humanitarian grounds.[741] It also

[734] J.Vol-II,para.1376;
[735] J.Vol-II,para.1377, Vol-III,para.1579;
[736] P02636,p.4;
[737] P02636,p.2;
[738] J.Vol-II,para.792;
[739] P08287;
[740] J.Vol-II,para.1248;
[741] J.Vol-II,para.1249;

noted that the ABiH wished to consolidate the East-Mostar territory by using "civilians like pawns" and, consequently, "did not want people to leave”.[742]

306. The TC also noted that certain routes enabled the inhabitants of East-Mostar and members of the ABiH to leave,[743] but it concluded that the ABiH did not want the population to abandon East-Mostar.[744] It also admitted that the ABiH policy was to prevent the Muslim population from deserting East-Mostar and that therefore the ABiH took part in keeping and blocking the population in this zone.[745]

307. The evidence show that Mostar was not a besieged city.[746] There is abundant evidence that Muslim population could leave East-Mostar,[747] but that, as the TC recognized, the ABiH did not allow it.[748] The ABiH controlled the movement of population in East-Mostar and allowed movements only when it was needed for army needs.[749] While the practicale roads existed towards north and towards south[750] the population could leave East-Mostar only when the ABiH allowed it.[751] There is no evidence that the HVO checkpoints were erected on the roads and that the HVO interfered in any way with movements of population from East-Mostar. The evidence show that the HVO proposed the free movement of civilians and guaranteed the safety of movement.[752]

308. For all the abovementioned reasons, the Trial Chamber erroneously concluded that the HVO kept the population crowded in an enclave.[753] Therefore, for reasons set forth in the 25th Ground the Judgment should be reversed on Count-1, Count-15, Count-16, and Count-24 and Praljak should be acquitted of these charges with respect to Mostar.

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742 J.Vol-II,para.1250;
743 J.Vol-II,para.1251;
744 J.Vol-II,para.1255;
745 J.Vol-III,para.1256;
746 [REDACTED], Gorjanc,T.46144-46145;
747 3D03793,3D03794, Peric,T.47972,T.47976-47977, Maric,T.48216-48217;
748 [REDACTED],4D00545;
749 4D01721;
750 Gorjanc,T.46140-46141,T.46144,T.46150;
751 4D01721, [REDACTED];
752 1D01874,p.2;
753 J.Vol-III,paras.1255,1349,1685;

26th Ground: Errors related to the East-Mostar siege

309. Although the TC recognized that the roads from East-Mostar to the north and the south were open, it considered however that the town was besieged.[754] While the combats lasted in Mostar during several months, the town had never been target of the HVO attack. The evidence show that the ABiH attacked the HVO positions in the area[755] and that combats were conducted in the city.[756]The evidence does not show that the town, or its population, was targeted by the HVO. Rather, the HVO attacks were aimed at military objectives that the ABiH placed in the town.[757]

310. The TC conclusions regarding the siege of Mostar are based on erroneous conclusions regarding shelling[758] and sniping[759] of East-Mostar, targeting the IO members, destruction of the Bridge[760] and Mosques.[761] Moreover, the TC attributed to the HVO the responsibility for facts that were not under the HVO control and on which the HVO did not have any influence.[762]

311. The TC recognized that it does not have evidence on how and by whom the electricity was cut off[763] and the HVO made all possible efforts to restore electricity supplies to East-Mostar.[764]

312. The TC could not find either that the HVO cut off the water to East-Mostar.[765] The evidence show that in period from 06/1993 to 11/1993, the HVO attempted to manage the water-supply and performed the necessary repairs on its territory.[766] On the other hand, it seems that the BiH authorities did nothing to solve the problem although the water-supply system was also located on its territory.[767]

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754 *Idem*;
755 *Supra*, Ground 21.1,para.266;
756 *Supra*, Ground 21.1,para.265;
757 *Supra*, Ground 21.1,para.272;
758 *Supra,* Ground 21,paras.256-273;
759 *Supra*, Ground 20,paras.247-254;
760 *Supra*, Ground 23,paras.286-289,296;
761 *Supra*, Ground 24,para.298-304;
762 *Supra*, Ground 25,para.305-308;
763 J.Vol-II,para.1210;
764 J.Vol-II,para.1211;
765 J.Vol-II,para.1212;
766 J.Vol-II,para.1215,1218;
767 J.Vol-II,para.1216;

313. The HVO proposed assistance to East-Mostar population, including medical treatment in hospitals, preparation of food and free movement of civilians.[768] The BiH authorities were reluctant to accept the HVO offers.[769] Thus the fact that the inhabitants of East-Mostar lacked appropriate access to medical care[770] and suffered from a shortage of food between 06/1993 and 04/1994[771] cannot be attributed to the HVO.

314. For all the aforementioned reasons, the TC made erroneous findings when it concluded, without any conclusive evidence and ignoring relevant circumstances and evidence that the HVO hold East-Mostar under siege. Therefore, the Judgment should be reversed on Count-1, Count-15, Count-16 and Count-24 and Praljak should be acquitted of these charges with respect to the Mostar.

27th Ground Errors related to killing in Rastani

315. The TC found that the evidence allows finding that in Rastani on 24-08-1993, four Muslim men, including one ABiH member, were killed by HVO soldiers after they had surrendered.[772] The fact that the evidence allows something is not sufficient for conviction in criminal cases. The TC should have established beyond reasonable doubt that four Muslim men were killed by the HVO after they had surrendered.

316. The TC ignored that [REDACTED].[773] The TC failed to consider that [REDACTED],[774] with numerous ABiH bunkers.[775] It also omitted to note that [REDACTED][776] [REDACTED][777] [REDACTED].[778]

317. The TC also omitted to establish why the people gathered in the house of an ABiH soldier[779] and to note contradictory evidence with respect to their arrival in that house.[780]

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768 1D01874,p.2;
769 P05428,p.5;
770 J.Vol-II,para.1223,1378;
771 J.Vol-II,para.1204,1378;
772 J.Vol-II,para.963;
773 [REDACTED];
774 [REDACTED];
775 IC00263 ;
776 [REDACTED];
777 [REDACTED];
778 [REDACTED];
779 [REDACTED];

318. The TC accepted without any critical assessment [REDACTED] that three of four killed men were civilians,[781] [REDACTED][782] and although all Rastani male habitants, except one, were the ABiH members.[783]

319. While the possibly ABiH membership of victims would not have any impact on the TC findings if the events occurred [REDACTED][784] [REDACTED][785], which put in doubt [REDACTED] version of the event.

320. Although the TC acknowledged several contradictions in the statements,[786] it omitted to consider these significant contradictions which put in doubt the reality of event as described by witnesses. The doubt about the reality of this event is underlined by the ABiH document attesting that Zuskic was killed on combat mission and during combat activities.[787]

321. Furthermore, there is no evidence about unit to which the soldiers who would have killed these men belonged. There is actually no evidence at all about their identity and in such situation it is impossible to attribute these killings to the HVO.

322. Therefore, the TC reached, in violation of general principles of law erroneous conclusion when it concluded, without any conclusive evidence, that the HVO killed four Muslim men in Rastani after their surrender.[788]

323. For all the reasons set forth in the 27th Ground, the Judgment should be reversed on Count-1, Count-2 and Count-3 and Praljak should be acquitted of these charges with respect to events in Rastani.

28th Ground: Errors related to crimes in Mostar

324. For all the reasons set forth in the 28th Ground, the Judgment should be reversed on Count-1, Count-2, Count-3, Count-6, Count-7, Count-8, Count-9, Count-10, Count-11,

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[780] [REDACTED];, P10036,p.2,para.5;
[781] J.Vol-II,paras.961,962;
[782] [REDACTED];
[783] P04547,p.3;
[784] [REDACTED];
[785] [REDACTED]; P10038,p.4, para.30, [REDACTED];
[786] J.Vol-II,paras.957,FN n°2217; para.959,FN n°2222;
[787] P08696;
[788] J.Vol-II,para.963, Vol-III, paras.671,720;

Count-15, Count-16, Count-19, Count-21, Count-24 and Count-25 and Praljak should be acquitted of these charges with respect to Mostar.

28.1. The TC made errors when it included crimes in Mostar in CCP

And

28.3. The TC made errors when it concluded that crimes in Mostar were committed pursuant to CCP

325. The TC conclusion regarding the existence of the CCP for commission of crimes in Mostar is not the only reasonable conclusion as these events were consequence of the ABiH attacks and offensive.[789]

326. The TC did not establish the identity of the authors of the CCP that resulted in commission of crimes in Mostar and it could not find any evidence of Praljak involvement in the criminal events in Mostar before 24 July 1993.[790] Therefore, the crimes in Mostar cannot be included in CCP in which Praljak would have participated.

327. The TC did not establish joint action of the JCE members although this joint action must be proven.[791] The TC had no evidence that in Mostar the leaders of HZ(R)H-B and the representatives of the RC, who would have been together in the JCE,[792] undertook common actions. There is even no evidence that representatives of RC had any knowledge of actions in Mostar before these actions were undertaken.

328. The evidence show that Mostar was the battlefield and the HVO was exposed to the constant ABiH attacks[793] The ABiH attacks forced the HVO forces to protect themselves and Croatian population and to engage in the battle in the populated urban environment. In this situation the most of victims were unfortunately collateral damages. While some crimes might have been committed by the HVO members, these crimes were isolated acts which were not result of any plan and which cannot be imputed to anyone except to their direct perpetrators.

329. The evidence show that no CCP existed with respect to Mostar and therefore the TC erroneously concluded that the crimes were committed pursuant to CCP. Furthermore

[789] *Supra*, Ground 21.1,para.266;
[790] Judgment,Vol-IV,para.577;
[791] Krajisnik TJ, para. 884; Stanisic TJ, para.1259;
[792] Judgment,Vol-IV,paras.43,44;
[793] Supra, Ground 21,para.266;

the evidence demonstrate that the events in Mostar constituted a response to unexpected situation, provoked by the ABiH military activities[794] and that in no case they were planned or formed part of any plan.

32nd Ground: Errors related to crimes in Vares

330. The TC properly concluded that the military action in Vares was initiated by the ABiH attack on HVO positions in Kopjari[795] which provoked the displacement of the Croatian population.[796]The TC ignored evidence showing that the ABiH offensive in Central Bosnia started already in 06/1993 with dramatic consequences for Croatian population[797] and that Kopjari was attacked already in 08/1993.[798] While the TC recognized that, because of the ABiH offensive, 10-15,000 Croats arrived in Vareš[799], it omitted to take into account the chaotic situation[800] that this unexpected arrival provoked.

331. The TC did not take into account that situation in Vares was specific with many problems[801] and that the HVO tried constantly to prevent looting, inhuman treatment and indiscipline and to establish discipline.[802] Furthermore, it omitted to consider that in 10/1993, the HVO requested that the ABiH withdraw its units to their initial position with hope to prevent further conflicts.[803]

332. The TC completely ignored the fact that according to census in 1991, Croatian population was the majority in Vares as 40,6% of the total population were Croats while only 29,8% were Muslims[804]. In that situation any plan to modify the ethnical composition in favor of Croats would be absurd.

333. The TC acknowledged that in 10/1993 the ABiH started fortifying its positions around Stupni Do and that the HVO decision to increase the combat readiness was reaction to

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[794] *Supra*, Ground 21.1,para.266;
[795] J.Vol-III,para.311,Vol-IV,para.61;
[796] J.Vol-III,para.311;
[797] *Supra*, Ground 10,2,para.170-171;
[798] 3D00800;
[799] J.Vol-III,para.284,502;
[800] 3D00808;
[801] P06291, [REDACTED], P02980, p.19, Praljak,T.41905-41906, [REDACTED];
[802] 3D00802; 3D00804;
[803] [REDACTED]; 3D00809
[804] P00020;

the ABiH activities.[805] It also acknowledged that Rajic had taken the decision to attack Stupni Do on his own.[806]

334. While the TC admitted that the HVO Command was unaware of the attack on Stupni Do,[807] it did not give proper weight to the fact that these events were completely out of control of the HVOMS and that the HVOMS did not exercise any control or authority over persons who committed crimes. Besides the fact that the attack was decided by Rajic, without any order or even consultations with his command,[808] the HVOMS did not know what happened in Stupni Do[809] and the soldiers in the field did not obey to the HVO Command.[810] The UNPROFOR recognized that it was prevented to enter into village by the HVO local commanders who did not obey to their Command.[811]

335. Therefore, the TC conclusion that certain HVO leaders attempted to conceal the HVO's responsibility for the crimes committed in Stupni Do[812] is baseless. Equally the TC did not give any reason for its incomprehensive finding according to which the concealment of these events helped encourage the Croatian population of the Vareš region to move in the direction of BiH, which suited their plan.[813] While it is completely unclear how the abandon of a town in which Croats were majority[814] can suit any plan, this finding is in contradiction with the TC own finding according to which the threat of the ABiH attacks which indeed happened were sufficient to bring about the departure of Croats from the municipality.[815]

336. Having ignored relevant evidence and, in contradiction with its own findings[816], the TC omitted to consider the possibility that the events in Vares were provoked by the ABiH attacks[817] and chaotic situation in the town[818] and concluded without any conclusive evidence that these events were result of a CCP.

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[805] J.Vol-III,para.411;
[806] J.Vol-III,para.412; J.Vol-IV,para.61;
[807] J.Vol-IV,para.61;
[808] P06026;
[809] P06091; P06104;
[810] P06144,p.1; P06140,p.4 ;
[811] *Idem*;
[812] J.Vol-IV,paras.61,62;
[813] J.Vol-IV,para.62;
[814] J.Vol-III,para.283;
[815] J.Vol-III,para.508;
[816] J.Vol-III,paras.311, 312,411;
[817] 3D00808, P06026,P06140,p.4;
[818] *Supra,*para.331;

337. The record shows that the TC conclusion regarding the CCP in Vares is not the only reasonable conclusion but that another likely possibility existed as the events in Vares, including the events in Stupni Do[819] were consequence of the ABiH offensive.The criminal acts in Stupni Do were result of an isolated action, planned and executed by soldiers who did not obey to their Command[820] and about which the HVO leaders were even not informed.[821]

338. For all the reasons set forth in the 32nd Ground, the Judgment should be reversed on Count-1, Count-2, Count-3, Count-10, Count-11 Count-12 Count-13, Count-15 Count-16 and Count-19 and Praljak should be acquitted of these charges with respect to Vares.

34th Ground: Errors related to JCE-III

339. Having accepted the JCE-III concept, the TC made an error of law by violating the general principle *nullum crimen sine lege* which is one of the fundamental principles of criminal law,[822] applied in all of international courts and tribunals to criminal acts as well as to the forms of responsibility.[823] The UN Secretary-General underlined that in assigning to the IT the task of prosecuting persons responsible for serious violations of IHL, the UNSC would not be creating or purporting to "legislate" that law. Rather, the IT would have the task of applying existing IHL"[824]. The AC affirmed that the principle *nullum crimen sine lege* is first and foremost a principle of justice.[825]

340. The Tribunal's conclusion in relation to the existence of the JCE in CIL is based *inter alia* upon two international treaties:[826] the International Convention for the Suppression of Terrorist Bombings and the ICC Statute. Notwithstanding the fact that neither of these treaties existed when the facts of this case occurred, these treaties enshrine the notion of the CCP, but do not allow for responsibility for facts outside of that purpose and do not support the existence of JCE-III. The ICC appears to cast aside any notion of

[819] P06026, 3D00823, [REDACTED];, 3D01138;
[820] P06144,p.1; P06140,p.4;
[821] P06091; P06104;
[822] UDHR, Art.11(2); ICPCR,Art.15; ICC Statute,Art.22;
[823] ECCC, Judgment,para.28;
[824] Report of the Secretary-General, para. 29;
[825] Ojdanic Decision, 21/05/03,para.38;
[826] Tadic AJ,paras 221,222;

JCE[827] and held that Art.25.3(d) of its Statute provides for a residual form of accessory liability.[828]

341. The interpretation of the ICC Statute by the ICC Chambers is the sole authoritative one. It is therefore apparent that the Tribunal has committed an error. Although the ICC case-law casts doubt upon the entire theory of JCE, coaction, as defined under ICC case-law, approximates the basic forms of JCE while utterly disavowing the theory of JCE-III.

342. While certain international legal documents uphold the theory of the CCP, and thus the basic forms of the JCE, none of them supports the theory of JCE-III.[829] The ECCCs have accepted the existence of JCE-I and JCE-II in CIL,[830] but have rejected the JCE-III.[831] Although this case-law concern crimes committed during the period 1975-1979, there is nothing to suggest that CIL evoluated between 1979 and 1993 with respect to whether JCE-III existed. The ECCCs analyzed all of the citations from the Tadic case and concluded that it does not find that the authorities relied upon in Tadic constitute a sufficiently firm basis to conclude that the JCE-III formed part of CIL.[832]

343. The AC cannot ignore the decisions of other international jurisdictions regarding the existence of JCE-III in CIL. Although their decisions are not binding upon this Tribunal, these jurisdictions apply CIL, which is universally applicable. The rejection of JCE-III by certain international courts and tribunals, including the ICC, on grounds that its existence in CIL has not been established, proves that its application is contrary to the principle of *nullum crimen sine lege*.

344. Even though the AC must in principle follow its earlier decisions, it remains free to deviate from them if compelling reasons appear to commend it in the interests of justice.[833] The fact that the decisions based on a form of responsibility which has now been seen contrary to the principle of *nullum crimen sine lege*, constitutes a compelling reason.[834] Moreover, the interests of justice demand that earlier jurisprudence laid down

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[827] ICC,Lubanga Decision,para.335;
[828] ICC,Lubanga Decision,para.337, ICC,Katanga Decision,para.471
[829] London Charter,Art.6; CCL n°10,Art.II(2);
[830] ECCC,Decision,para. 69;ECCC Judgment,para.512;
[831] ECCC,Decision,para.77;
[832] ECCC,Decision,para.83;
[833] Aleksovski AJ,para.107;
[834] Aleksovski AJ,para.108;

in violation of the principle of legality be cast off to enable compliance with a fundamental principle of law.

345. In holding that the JCE-III, was a mode of responsibility firmly established under CIL[835] the TC committed an error of law, in violation of the general principle *nullum crimen sine lege*. This error renders the Prljak's convictions on Count-22 and Count-23 null and void as based on a mode of liability not existing at the time the facts occurred. Therefore, Praljak should be acquitted of these charges.

35th Ground: Errors related to military actions in Rastani/Hrasnica/Uzricje/Zdrimci

346. The TC indicated that military operations and takeover of Rastani/Hrasnica/Uzricje/ Zdrimci unfolded in an atmosphere of extreme violence,[836] without giving any reasons why it found the atmosphere of extreme violence.

347. In factual description of these events, the TC did even not mention extreme violence/ extremely violent atmosphere. The words violent, violence and violently appear only two times with respect to Zdrimci/Hrasnica[837] and also two times with respect to Rastani.[838] In both situations these words describe criminal acts they would have been committed after the takeover was completed. Besides the fact that the mentioned violence is a constitutive element of a crime, it occurred after the completion of the military operation.

348. In assessing the military operations and takeover of concerned localities, the TC did not examine any of criteria, established in case-law, [839] to be considered in evaluating the intensity of the conflict. While these criteria do not permit in themselves the characterization of a situation as extremely violent as they give only the indication of an intensive armed conflict, the TC could have established at least the existence of these factors.

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[835] J.Vol-I,para.210;
[836] J.Vol-IV,paras.635,638;
[837] J.Vol-II,paras.464,470;
[838] J.Vol-II,paras.968,969;
[839] Limaj TJ,para.90; Haradinaj TJ,para.49;

349. The war is *per se* violent and acts of violence relate to a state of war.[840] According to Art.49 of the GCAP-I, "attacks" means acts of violence against the adversary, whether in offence or in defence. While GC and IHL prohibit any kind of violence against civilians,[841] the commission of these acts constitutes an international crime but it does not create *per se* an atmosphere which can be characterized as extremely violent in the situation of armed conflict.

350. Therefore if the TC considers that these particular military operations and takeover of the concerned villages were conducted in an atmosphere of extreme violence, it should have given reasons for its finding. In failing to do that, the Trial Chamber, in violation of general principles of law, and in violation of Art.21.3 and 23.2 of the Statute and of R87(a) of the Rules, reached erroneous conclusions.[842]

351. For all the reasons set forth in the 35th Ground, the Judgment should be reversed on Count 22 and Count 23 and Praljak should be acquitted of these charges.

36th Ground: Errors related to JCE-III crimes

352. Although, the TC concluded that the theft did not form part of the CCP, it considered that the thefts were the NFC of its implementation.[843]

353. The TC did not give any reasons why it considered that the thefts were the NFC of the CCP implementation. The TC satisfied itself with assertion that in many cases, the Accused, as members of the JCE, knew that the thefts and other crimes might be committed by the members of the HVO, due to the atmosphere of violence to which they contributed, or for some, due to knowing the violent nature thereof.[844] The standard the TC applied is broader than the required standard.

354. According to case-law for the application of the JCE-III liability, it is necessary that crimes outside the CCP have occurred, that they were a NFC of effecting the CCP and that the participant in the JCE was aware that the crimes were a possible consequence of the execution of the CCP, and in that awareness, he nevertheless acted in furtherance of

[840] GCAP-I, Commentary,Art.51,para.1940;
[841] GCAP-I,Art.17,51.2,75.2; GCAP-II,Art.4.2,13.2;
[842] J.Vol-IV,paras.635,638;
[843] J.Vol-IV,para.72;
[844] *Idem*;

the CCP.[845] The objective element that the resulting crime was a NFC of the JCE's execution shall be distinguished from the subjective state of mind, namely that the accused was aware that the resulting crime was a possible consequence and participated with that awareness.[846] Therefore, the TC should have established that these crimes were a NFC of the CCP implementation independently of the Accused awareness of the possibility that these crimes occur.[847]

355. Furthermore it is improper to consider that in many cases, the Accused, as members of the JCE, knew that these crimes might be committed.[848] The TC should have established for each particular crime falling under the JCE-III that it was the NFC of the CCP implementation and that the actions of the group were most likely to lead to that result.[849]

356. Having omitted to establish without ambiguity that thefts in GVM and in Rastani were NFC of the CCP implemetnation, the TC made an error of law when it concluded that these thefts were committed under JCE-III.

357. For all the reasons set forth in the 36th Ground, the Judgment should be reversed on Count-22 and Count-23 and Praljak should be acquitted of these charges.

37th Ground: Errors related to the HVO chain of command

358. For all the reasons set forth in the 37th Ground, the Judgment should be reversed in its totality as these errors affect the Accused responsibility and Praljak should be acquitted of all charges.

37.1. <u>The TC made errors when it concluded that MP was under command of OZ commanders in its regular daily tasks</u>

359. The TC concluded that the chain of command governing the MP units was complex, unclear[850] and fuzzy.[851] This unclear chain of command and uncertainty that even the

[845] Stakic, AJ,para.87;
[846] Blaškić AJ,para.33;
[847] Tadic AJ, para.220;
[848] J.Vol-IV,para.72;
[849] Tadic, AJ,para.220;
[850] J.Vol-I,para.846;
[851] J.Vol-I,para.974;

HVO officers felt[852] should have alerted the TC and prompted it to careful scrutiny of evidence.

360. The TC noticed that the MPA was integrated into the DD of the HVO in 09/1992[853] that in 11/1993, that MPA was still part of the MD and that the DD security sector head was responsible for the MPA.[854]The TC concluded that the evidence support a finding that the MPA formed an integral part of the DD[855].

361. While the TC recognized that the MP reported to two different authorities, the MPA and the "classic" military hierarchy, *via* the commanding officers in the brigades and the OZs[856] and that the MPA maintained the command and control over the MP units in several areas, it seems that it considered that the MP was submitted only to the classic military hierarchy when it performed its daily duties.[857]

362. In reaching its conclusion, the TC improperly interpreted Instructions for the Work of HVO/HZ(R)H-B MP[858] as it considered paragraphs of these instructions in isolated way and neglected the general provision according to which the MPA leads and commands all MP units within the framework of operative groups, organizational units or within the MPA.[859] The TC also ignored the provision according to which the commanders of lower units are responsible for their work and execution of tasks to the commander of the battalion MP who answers to the MPA.[860]

363. Although MP units were required to execute all MP tasks at the demand of the commander of the HVO unit to which they were attached,[861] they were not completely subordinated to the HVO units commanders as even in these cases, they were still under supreme command of the MPA which led and commanded all MP units[862]. As attested

[852] J.Vol-I,paras.871,974;
[853] J.Vol-I,paras.847, 855;
[854] J.Vol-I,para.855;
[855] J.Vol-I,para.856;
[856] J.Vol-I,paras.846,971;
[857] J.Vol-I,para.949;
[858] P00837;
[859] P00837,p.4,para.1;
[860] P00837,p.5,para.5;
[861] J.Vol-I,paras.949; P00837, p.5,para.6;
[862] P00957,p.5;

by MPA, the HVO-MP is unique and is linked to battalions and companies under the command of the MPA Chief.[863]

364. The TC committed an error when it decided to assess daily duties and to determine to whom the MP reported on a case-by case basis[864]. Daily duties cannot be specified on a case-by-case basis. While no document defined daily duties, the documents issued by the MPA indicate which duties can be considered as daily duties and these are solely duties to secure barracks and commands, military transport for the brigade, entry into the frontline in the brigade's zone of responsibility and the taking into custody/detention of individuals for the brigade.[865] The MPA stated that the MP responsibility towards brigade ceases when the MP is used for general military and police affairs.[866]

365. Finally, and contrary to the TC conclusions,[867] only the MP units in Brigade were in charge of daily duties as all other units of the MP were responsible for all MP work in the OZ of the 1stMP Battalion which was directly subordinated to the MPA.[868] Even in the case of the brigade MP it is impossible to conclude that the MP was submitted only to the classic military hierarchy when it performed its daily duties[869] as the TC itself admitted that MPA issued numerous orders concerning daily duties as the establishment of checkpoints or freedom of movement in the HZ(R)H-B.[870]

366. The TC did not give any reason why it did not accept the ECMM report according to which the MP answered only to Stojic and Boban.[871] The MP subordination is important for determination of the Accused responsibility in many events and the TC should have explained why it did not accepted the relevant assessment of situation by an international mission.

367. Having omitted to define daily duties of the MP, the TC could not properly define the scope of the authority of the military commanders over MP. Thus, the TC prevented itself from proper establishment of the responsibility for the MP members acts.

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[863] P04922;
[864] J.Vol-I,para.947;
[865] P04922, P00957,p.5; 2D02000,p.27,para.49;
[866] P04922;
[867] J.Vol-I,para.952;
[868] P00957,p.5;
[869] J.Vol-I,para.949;
[870] J.Vol-I,para.971;
[871] J.Vol-I,para.973; P02803,p.4,para.16;

37.2. <u>The TC made errors when it concluded that KB unit was in the HVOMS chain of command</u>

368. The TC found that Naletilić served as commander that Andabak also exercised command responsibilities within the KB.[872] The TC omitted to consider that Andabak himslef recognized and affirmed that he was the order-issuing authority in the KB.[873]

369. The TC did not make any effort to establish exactly which functions Andabak had within the KB and satisfied itself with a statement that it does not know his precise function.[874] If the TC does not know the exact functions of Andabak within the KB, it cannot affirm that Naletilic served as the KB Commander.

370. While it is not clear who was the KB Commander, it is certain that Andabak and Naletilic were both the DD employees.[875] All documents written and signed by them in their functions within the KB were written on DD letterhead.[876] Commanders of the KB addressed their documents directly to the DD Head[877] and Andabak stated that the KB, responded exclusively to Boban[878] for operations in BiH. Even the TC recognized that numerous witnesses testified that the KB was under Boban's authority.[879]

371. Despite this evidence, the TC decided, because it did not have any order issued by Boban to the KB,[880] that the KB and its ATGs were integrated into the overall chain of command and reported directly to the HVOMS.[881] The witness testimony is evidence which is not less valuable than an order and the TC should have given more persuasive reasons why it did not give any credit to the witnesses who testified that Boban commanded the KB. Furthermore, if the TC did not have in its possession any order issued by Boban to the KB, it had in its possession documents which show that problems related to the KB were not reported to the HVOMS but to Boban directly.[882]

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[872] J.Vol-I,para.817;
[873] 4D01356;
[874] J.Vol-I,paras.817;
[875] P00464;
[876] P02783, P03309,P01776;
[877] P01701, P02118,P02783, P01776;
[878] 4D01356;
[879] J.Vol-I,para.825;
[880] J.Vol-I,para.825;
[881] J.Vol-I,para.829 ;
[882] P05226;

372. The TC based its finding regarding the HVOMS authority over the KB/ATG on documents[883] which only show that the KB/ATG participated in some HVO military actions but which do not show their overall subordination to HVOMS and even less their integration into the HVOMS chain of command.

373. The TC also erroneously interpreted Praljak's order.[884] First of all, the order does not concern Tuta's ATG but the ATG "TUTA"[885] and there is no evidence at all what unit this ATG was and who was its commander. The ATG TUTA does not appear on the list of units belonging to the KB or being under its Command.[886] Except for the name, which is written in capital letters ad which might be an abbreviation, there is no indication that this unit had any link with Naletilic-Tuta.

374. Equally, the Trial Chamber draw improper inference from the fact that in 12/1993 an ATG unit was formed out of the KB units and placed under the HVOMS command[887]. This fact does not indicate that the KB members were under the MS authority before 12/1993 or that the KB itself was ever under the MS Command.

375. The TC concluded that the members of the KB/ATGs engaged in "criminal" conduct, had serious disciplinary problems and were often in conflict with the HVO units.[888] This conclusion in itself points out that the KB was not integrated in regular HVO forces. It also shows the importance of carful and proper analysis of evidence regarding the subordination of the KB unit. If the KB unit was not in the regular HVO military chain of command its acts cannot be attributed to the HVOMS members.

376. The TC did not properly analyse evidence and therefore draw erroneous conclusions. In certain circumstances, insufficient analysis of evidence on the record can amount to a failure to provide a reasoned opinion. Such a failure constitutes an error of law requiring *de novo* review of evidence by the AC.[889] As the proper establishment of the KB integration in the chain of command is essential for the Accused responsibility, the TC failure amounts to serious error of law.

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[883] J.Vol-I,para.829,FN n°1948;
[884] J.Vol-I,para.826 ;
[885] P04131;
[886] P07009;
[887] J.Vol-I,para.827;
[888] J.Vol-I,para.820;
[889] Perisic AJ,para.92;

38th Ground: Errors related to Praljak's functions and authorities

377. For all the reasons set forth in the 38th Ground for Appeal, the Judgment should be reversed and Praljak should be acquitted of all charges.

38.1. The TC made errors when it concluded that Praljak had *de facto* commanding authority before 24-07-1993

378. Contrary to the TC assertion,[890] Praljak did not acknowledge his *de facto* authority in BiH before being appointed HVOMS commander. Praljak clearly stated that he had a certain amount of authority when it came to assistance,[891] based on his force of persuasion, but that he did not have command authority or ability to issue orders.[892]

379. Praljak confirmed that he went to BiH before July 1993 and that he stayed there for short periods of time.[893]The TC ignored evidence that show that Praljak went to BiH with Izetbegovic's consent in order to calm down the situation and to avoid the conflict[894]. Documents on which the TC based its conclusions on Praljak's *de facto* authority[895] demonstrate that, before 24-07-1993, Praljak went occasionally to BiH and that he had some moral authority, but they do not support the conclusion that he had *de facto* command authority. The analysis of these documents shows the TC improper understanding of these documents, their misinterpretation and distortion of their content.[896]

380. The fact that Praljak commanded the HVO units in 05/1992[897] is irrelevant for the present case as at that time the HVO comprised Muslims and Croats who fought together against JNA/VRS forces.

381. Contrary to the TC findings,[898] the document issued by the HVO DD in 10/1992[899] is not an order but an approval, it was not issued by Praljak, but by Stojic, the DD Head

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[890] J.Vol-IV,para.469;
[891] Praljak,T.43935;
[892] Praljak,T.43938;
[893] Praljak,T.43934-43935 ;
[894] Witness-BM,T.7067-7071; IdrizovicT.9602-9605,T.9616-9618,T.9627,T.9630-9638,T.9833-9834,T.9602-9605; Praljak T.41873-41874; 3D03519, P01622;
[895] J.Vol-IV,paras.469-480;
[896] *Infra*,paras.381-383;
[897] J.Vol-IV,para.472;
[898] *Idem*;

and it was not issued to the HVO units but to an ABiH unit. The document issued in 02/1993[900] was not an order but a permission and again it was not issued by Praljak but by Petkovic. While Praljak co-signed both document, his signature does not indicate his command authority. If he had had such authority it would not be necessary that Stojic and Petkovic issued and signed document.

382. The TC also misinterpreted the order issued by in 05/1993[901] as Petkovic did not order the on-site subordination of the unit from Ljubuski to Praljak. He order to the unit Commander to report to Praljak[902] which does not automatically mean that the unit had to be subordinated to Praljak. Praljak said that he was very briefly in Prozor area in 05/1993[903] as explained his role in the reception of the Ljubuski unit in Prozor area.[904] No evidence contradict his testimony.

383. The TC also misunderstood the report addressed by Blaskic to Stojic in 05/1993.[905] If Praljak received this report, he did not receive it from Blaskic but from Stojic. While the document seems to be addressed to two persons, the end of the report indicates that it was actually addressed only to one person[906] and that was certainly Stojic who should have transmitted the document to Praljak. However, it is logical that Praljak had to be informed about the content of the document which concerns the visit of the HV officials.[907]

384. It is impossible to conclude from events that happened in GV during few days in 01/1993 that Praljak had *de facto* command authority over the HVO units.[908]

385. Contrary to the TC finding,[909] there is no evidence that Praljak had any command role in Boksevica operation. While Petkovic nominated Praljak as member of the Operation Command[910] Praljak was there only as simple soldier[911].

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[899] 2D01335;
[900] 2D00195;
[901] J.Vol-IV,para.472;
[902] P02526;
[903] Praljak,T.43934-43935;
[904] Praljak,T..43935-43939;
[905] J.Vol-IV,para.473;
[906] P01864;
[907] 3D00566; 3D01091;
[908] *Infra,* Ground 42,paras.462-468;
[909] J.Vol-IV,para.472;
[910] P03246 ;
[911] Praljak,T.40773;

386. While Praljak issued some orders aimed at setting up a Joint Command for the HVO and ABiH,[912] these orders were never really executed and the Joint Command has never became effective. He signed these orders with an aim to calm down situation[913] and to allow Muslims and Croats to continue together the RBiH Defence against the JNA/VRS aggression. These orders show solely a tentative to stabilize a situation and to avoid a conflict, but they do not show his command authority. It is unfortunate and contrary to basic principles of criminal law that the TC systematically interpreted the Accused well-intentioned acts to his detriment without having any evidence which would support its conclusions.

387. Contrary to the TC findings[914] Praljak did not have any authority over the MP prior to 24-07-1993.[915]

388. The TC seems to draw conclusion on Praljak *de facto* command authority from his role as mediator.[916] It is not clear how this role could support commanding authority and the TC did not give any reasons why it considered the role of mediator as relevant for *de facto* commanding responsibility.

389. Finally the TC conclusion about Praljak's *de facto* command authority is in contradiction with its own findings regarding his role in events before 24-07-1993.

390. The TC erroneously interpreted Praljak's role and activities in BiH and made an error of law when it concluded on the basis of isolated actions limited in their temporary and geographical scope which moreover were misinterpreted,[917] that Praljak had *de facto* command authority over the HVO units before 24-07-1993. The ability to exercise effective control is necessary for the establishment of *de facto* command authority.[918] The mere influence on persons is not sufficient for proving the effective control and *de facto* command authority. In this case the evidence does not permit the conclusion that Praljak exercised effective control over the HVO units before 24-07-1993 and the TC actually did not concluded that he did it.

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[912] J.Vol-IV,para.474;
[913] Praljak,T.40466-40475,T.40672-40676,T.43289-43290, 3D00647, 1D00507, 2D00628, 4D00410, 3D003510, 3D00561,3D00289, P01622, P01739,P01738,1D02432, 3D02666,3D02233, Smajkic,T.2606, [REDACTED];
[914] J.Vol-IV,paras.476-477;
[915] *Infra,* Ground 38.3,paras.396-401;
[916] J.Vol-IV,paras.471-481;
[917] *Supra,*paras.381-383;
[918] Celebici, AJ,para.197;

38.2. The TC made errors when it concluded that Praljak had effective control over all components of the HVO

391. The TC erroneously concluded that Praljak had command and control authority and effective control over all components of the HVO between 24-07-1993 and 09-11-1993.[919]

392. The TC recognized that the primary mission of the MS was to command the armed forces and direct military operations.[920] Praljak's authority to command the HVO military operations between does not mean that he had effective control over all HVO components and particularly when they were not engaged in military operations.

393. The TC recognized that the orders issued by Praljak were not always followed up and that there were certain coordination problems which made the implementation of orders difficult.[921] While Praljak was present in the field to ensure the proper functioning of the chain of command and to assert his authority as the commander of HVO armed forces,[922] he could do it only in the area in which he was. The fact that he should go in the field to assert his authority confirms that he did not have the effective control over all HVO components.

394. The evidence clearly show that the HVO chain of command did not function properly, the MS orders were not implemented,[923] the municipal authorities interfered with military orders,[924] some units or individuals acted independently[925] and some, namely the KB, were not integrated in the MS chain of command.[926] During the whole period in which Praljak was the HVOMS Commander, the HVO did not have a single chain of command[927] as the need to establish one command line was expressed during the meeting in 11/1993[928] two days before Praljak left his functions.

395. The effective control cannot be proved by the sole fact that someone is *de iure* Commander. The effective control is a factual question and it should be proven beyond

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[919] J.Vol-IV,para.506;
[920] J.Vol-IV,para.483;
[921] J.Vol-IV,para.489;
[922] J.Vol-IV,para.489,
[923] P03706, P04640,P06269,3D01098;
[924] P06454,p.51, 67;
[925] P04594,p.4,5, 3D01169,3D01178;
[926] *Supra*,Ground 37.2,paras.370-376;
[927] P05772,p. 4,para.8; Praljak T.41220-41221;
[928] 3D00793;

reasonable doubt. The fact that a unit took part in combat operations within the framework established by the MS does not in itself necessarily provide sufficient support for the conclusion that the MS Commander had effective control over that unit.[929]

38.3. The TC made errors when it concluded that Praljak had command authorities and powers over MP

396. The TC established that inasmuch as the HVO brigades were subordinated to the MS Commander via the OZs, Praljak as the MS Commander had command authority over the MP platoons embedded in those brigades.[930] Praljak should have the command authority over brigades and all their components. Due to chaotic situation and lack of organization within the HVO, Praljak's command authority was even not secured over the brigades[931] and even less over the MP.

397. The MP obeyed to dual chain of command and MPA had a general and supreme control over it.[932] While MP could have been mobilized in combat activities in which it should have been subordinated to the military commander, the MP always reported to Coric.[933] Documents issued by Praljak[934] show that even during combat activities, the MP units continue to receive orders along their proper chain of command.

398. The MP was not automatically subordinated to Praljak as its subordination should have been requested from the MPA and was done upon the MPA Chief orders.[935] However, even in those cases, the MP maintained its proper chain of command as the Commanders of subordinated units continued to be responsible for securing permanent functional links between all MP units as well as links to the MPA[936] and had to inform regularly the MPA on all significant events.[937]

[929] Hadzihasanovic AJ,para.209;
[930] J.Vol-IV,para.490;
[931] *Supra*,Ground 38.2,para.394;
[932] Supra, Ground 37.1,paras.
[933] P03950, P05497, P05731,P03762;
[934] 5D04394, P03934 ;
[935] P03778, P03762;
[936] P03778,p.2;
[937] P03762;

399. Praljak did not have command authority over the MP which was always under overall and supreme control of the MPA.[938] If Praljak had the command authority over the MP, he would not request the MPA to issue orders to the MP units; he would do it himself.

400. Praljak could not take independently any decision regarding the MP,[939] he could not issue orders directly to it and could not sanction its members[940] if they engaged in unlawful activities.

401. The TC found that the MP operated under the authority of a fuzzy chain of command.[941] If the MP chain of command was fuzzy, unclear and confused, the TC cannot conclude that Praljak had effective control over it. The TC should have applied the general principle of law, *in dubio pro reo*, and resolved any uncertainty in favor of the Accused.

39th Ground: Errors related to Praljak JCE membership

402. The TC erroneous conclusions and errors regarding Praljak membership in the JCE render its Judgment invalid in whole as the Accused JCE membership, which is the core of the Accused responsibility, is improperly established. Therefore, for all the reasons set forth in the 39th Ground, the Judgment should be reversed and Praljak should be acquitted of all charges.

39.1. <u>The TC made an errors when it concluded that Praljak was aware of the JCE/CCP existence</u>

403. The TC found that from 04/1992 to 11/1993, Praljak participated in meetings of the senior Croatian leadership at which Croatia's policy in BiH was discussed and defined with a view to furthering the CCP.[942] The JCE was established only in 01/1993.[943] Thus, meetings hold before 01/1993,[944] are irrelevant for determination of Praljak participation in the JCE. Furthermore, while Praljak attended these meetings with the RC leaders, no representative of the HVO/HZ(HR)H-B attended them.[945] The TC itself

938 *Supra*, Ground 37.1,para.363;
939 P05376, P03829,3D01202, 3D01192;
940 P03829;
941 J.Vol-IV,para.974, *Supra*, Ground 37.1,para.359;
942 J.Vol-IV,para.522;
943 J.Vol-IV,para.44;
944 J.Vol-IV,paras.522,523,538;
945 P00466,p.1; P00524,p.1; P00147,p.1; P00353,p.1;

found that crimes were committed as the result of a plan established by the leaders of the HZ(R)-H-B.[946] Thus, the RC leaders did not participate in conception of the CCP and Praljak's presence at these meetings does not prove Praljak's involvement in any CCP.

404. The TC tried to establish that Praljak, before taking command of the HVOMS, implemented the RC policy in BiH.[947] As the TC itself could not find any criminal element in the RC policy[948] the implementation of this policy does not demonstrate Praljak's involvement in any CCP. Moreover, the TC isolated one Praljak's sentence from its context and distorted Praljak testimony. While Praljak said that he was implementing the RC policy he also stated that he implemented above all the BiH policy.[949]

405. Contrary to the TC finding,[950] Praljak could not use his role in negotiations during 1992 for implementation of the CCP as then no CCP existed.[951] Furthermore, the documents to which the TC refers[952] have been admitted in violation of basic rules of a fair trial and any conclusion based on these documents is necessary vitiated.[953]

406. The TC found Praljak's presence on only two meetings during the relevant period.[954] The purpose of the first meeting, held on 15-09-1993, was to persuade the HZ(HR)-HB representatives to accept the agreement with Muslims as it brings the peace.[955] Praljak listed problems in the HVO in order to give the best picture of the situation in the field[956] and his intervention during that meeting had the same objective as the whole meeting: the research of durable and overall peace solution which would put an end to all combats with Muslims and Serbs.[957] The principal objective of this meeting was to put an end to fighting with Muslims and Praljak adhered to this objective.[958] Equally, the objective of the meeting held on 05-11-1993 was the implementation of the

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[946] J.Vol-IV,para.65;
[947] J.Vol-IV,para.527;
[948] *Supra,*para.403
[949] Praljak,T.43001-43002;
[950] J.Vol-IV,para.525;
[951] J.Vol-IV,para.44;
[952] J.Vol-IV,para.525, FN n°1044-1046;
[953] *Infra,* Ground 50.1,paras.547-553;
[954] J.Vol-IV,para.523;
[955] P05080,p.2;
[956] P05080,p.18-19;
[957] P05080,p.11-23;
[958] P05080,p.19;

agreement with Muslims[959] and Praljak intervention was limited again to the description of the situation in the field.[960]

407. There is no evidence at all that Praljak had any knowledge of the CCP in 01/1993, when the JCE would have been formed, or later at any moment during the relevant period. Therefore, the TC could not establish that Praljak had any knowledge about the CCP or that he was aware of it.

408. Any conviction under the JCE concept requires a finding that the accused participated in a JCE[961] and that the Accused intended to participate in a CCP aimed at the commission of a crime.[962] In order to being able to participate in a JCE and further the CCP, the Accused shall at least be aware of the existence of the JCE/CPP. Having failed to establish that Praljak had knowledge about the JCE/CCP, the TC omitted to establish the crucial element of the Accused responsibility and therefore it could not legally convict Praljak under the JCE.

39.2. <u>The TC made errors when it concluded that Praljak was JCE member without having established that he shared intent with all JCE members</u>

409. The TC found that the JCE included Tudjman, Susak, Bobetko, Boban, Prlic, Stojic, Praljak, Petkovic, Coric and Pusic,[963] but stated that the group was certainly broader and had to include other members.[964]

410. According to TC findings, the composition of the group supporting the CCP fluctuated over time[965] and Praljak contributed to the JCE from 01/1993 to 11/1993.[966] While the TC established for the Accused the period in which they would have participated in the JCE, it did not do that regarding the other participants to the JCE and namely Croatian leaders. It only concluded that Tudjman, Susak and Bobetko directly collaborated with

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[959] P06454,p.3;
[960] P06454,p.49-55;
[961] Brdjanin AJ,para.364;
[962] Brdjanin, AJ,para.365, Kvocka AJ,para.82;
[963] J.Vol-IV,para.1231;
[964] *Idem*;
[965] J.Vol-IV,paras.1224,1230;
[966] J.Vol-IV,para.1230;

the HVO leaders and authorities to further the JCE[967] without specifying the period in which they would have joined this fluctuant JCE.

411. Although the TC is not required to specify all members of the JCE, it shall however establish some kind of interaction between its principal members aimed to the CPP furtherance. In the present case, the TC failed to establish that Praljak shared the intent with the other persons who would have been members of the JCE.

412. The TC satisfied itself with the statement that Praljak shared the intention to expel the Muslim population from the HZ(R)H-B with other JCE members, notably officials and commanders of the HVO/HZ(R)H-B.[968] While Praljak never had such intention, even if he had it, it would not be sufficient to conclude that he shared the intent to further CCP. It is not sufficient that the CCP is merely the same, it shall be also common to all of the persons acting together within a JCE.[969] The mere association is not sufficient[970] and thus, it is not sufficient that the Accused share the intent to commit the same crime, the JCE members shall share the intent to further the CCP.

413. As the JCE was fluctuant, the TC should have established exactly when and where Praljak reached an agreement with other members of the JCE, with whom he entered into agreement in 01/1993 and with whom he remained in agreement during the period between 01/1993-11/1993. Having omitted to do that, the TC improperly established the Accused intent required for the JCE-I.

414. Furthermore, if Praljak shared with other members of the JCE the intention to expel Muslims, he can be convicted on the basis of the JCE-I only for crimes implying the expelling of the population which are CAH (deportation and inhumane acts/forcible transfer) and grave breaches of the GC (unlawful deportation/unlawful transfer).

39.3. <u>The TC made errors when it concluded that Praljak shared intent with other JCE members</u>

415. The TC concluded that the only inference it could reasonably draw is that Praljak shared the intention to expel the Muslim population from the HZ(R)H-B with other JCE members.[971] Besides the fact that there is no evidence that Praljak shared any intent with

[967] J.Vol-IV,para.1222;
[968] J.Vol-IV,para.627;
[969] Brdjanin, AJ,para.430;
[970] Brdjanin, AJ,para.431; Martic, AJ,para.172;
[971] J.Vol-IV,para.627;

members of the JCE the TC misinterpreted the evidence and wrongly applied law, failing to apply the standard beyond reasonable doubt, in reaching this conclusion. The proper analysis of evidence show that Praljak did not have any criminal intent but that he continuously tried to calm down the situation and to put an end to the conflict.[972]

416. The TC inferred Praljak intention from his position in Croatia and in the HVO chain of command. In both situations, the Accused was fulfilling his functions and there is no single evidence that he had any criminal intent and even less that he would share it with other JCE members.

417. While the TC stated that Praljak's intention to expel Muslims is the only reasonable inference that the TC could draw,[973] the TC did even not take into consideration other possible explanations that could be drawn from the evidence.

40th Ground: Errors related to Praljak's contribution

418. The TC erroneous conclusions and errors of law regarding Praljak contribution to the JCE render its Judgment invalid in whole as the Accused contribution to the JCE, which is the core of the Accused responsibility, is improperly established. Therefore, for all the reasons set forth in the 40th Ground, the Judgment should be reversed on all Counts and Praljak should be acquitted of all charges.

40.1. <u>The TC made errors when it did not properly establish Praljak's contribution</u>

419. While the TC found that Praljak's contribution to implementing the CCP was significant and that he was one of the most important members of the JCE,[974] it did not clearly and unambiguously established his contribution. The TC satisfied itself by stating that Praljak used the armed forces and the MP to commit crimes that formed part of the CCP. This finding does not refer to any evidence and it does not specify the period or the geographical scope or even crimes which would be concerned by it. Thus, it is too vague to permit to the Accused to challenge it efficiently.

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972 *Infra,*Ground 41.4,paras.458-460;
973 J.Vol-IV,para.62 ;
974 J.Vol-IV,para. 628;

420. Moreover, it is somehow in contradiction with other TC findings on Praljak contribution to CCP[975] where the TC concentrated exclusively on his role as conduit between Croatia and the HZ(R)H-B[976] and on his role in individual crimes.[977]

421. Neither the AC nor the Parties can be required to engage in speculation on the meaning of the TC's findings, or lack thereof, in relation to such a central element of the Accused individual criminal responsibility as the scope of the JCE CPP.[978] The same applies to the Accused contribution to the JCE as it is also central element of the Accused responsibility.

422. The case-law clearly requires that the accused have participated in furthering the CCP at the core of the JCE[979] and that not every type of conduct would amount to a significant enough contribution to create criminal liability.[980] In order to permit the Accused to challenge efficiently the TC findings, the TC is required to define specifically which acts of Accused it considered as sufficiently significant contribution to the JCE.

423. Having omitted to specify sufficiently the Accused contribution to the JCE, the TC put the Accused in impossibility to appeal efficiently the TC findings on responsibility.The TC added to confusion when it concluded that as part of a project to establish Croatian control over the HZ(R)H-B territories, Praljak served as a conduit between Croatia and the HZ(R)H-B to further the CCP.[981] It is unclear if the project to establish Croatian control over the HZ(R)H-B territories is part of CCP considered in that case or if it is a separate project. It is also unclear if Praljak contribution was aimed to further this project to establish Croatian control over the HZ(R)H-B territories or it was aimed to further the JCE CCP.

424. Therefore, the TC failed to establish properly an essential element required for any responsibility under the JCE and without which no conviction based on the JCE can be permitted.

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975 J.Vol-IV,paras.515-545;
976 *Idem*;
977 J.Vol-IV,para.546-623;
978 Krajisnik, AJ,para.176;
979 Brdjanin, AJ,para.427;
980 Brdjanin, AJ,para.427, Kvocka AJ, para.99, Vasiljevic AJ,paras.110,119;
981 J.Vol-IV,para.545;

40.2. <u>The TC made errors when it deduced from Praljak's involvement in legitimate military operations his contribution to specific crimes</u>

and

40.7. <u>The Trial Chamber made errors when it concluded that Praljak used armed forces and MP for committing crimes</u>

425. The TC considered that the evidence confirms that Praljak facilitated and directed the military operations in the GVM around 18-01-1993[982] and it found that insofar as Praljak planned, directed, facilitated and was kept informed of the HVO military operations in GV around 18-01-1993, which unfolded according to a preconceived plan, Praljak intended to have crimes committed.

426. The Accused participation in military operations is not sufficient to conclude that his activities and conduct were aimed to furtherance of the CCP and that he had required intention for crimes. The Accused activities in GV were aimed to calm down the situation[983] and the TC did not give any explanation how the Accused activities in GVM were related to the committed crimes.

427. The TC found also that between 24-07-1993 and mid-September 1993 Praljak regularly issued orders regarding the redeployment and supplies of HVO units to Prozor for combat needs[984] and concluded that Praljak was directly involved in the planning/directing of the HVO military operations between July and mid-September 1993 in Prozor.[985] The fact that Praljak was involved in planning/directing of the HVO military operations does not in itself demonstrate his contribution to the JCE. When these events happened, Praljak was the HVOMS Commander and it is natural and logical that he was involved in the HVO military operations. However, his involvement in military operations is not sufficient to conclude that his activities were aimed to furtherance of the CCP and even the TC could not found that he had the required intent for that.[986]

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[982] J.Vol-IV,para.558;
[983] *Infra*, Ground 42,paras.462-466;
[984] J.Vol-IV,paras.568,569;
[985] J.Vol-IV,para.570;
[986] J.Vol-IV,para.573; *Infra*, Ground 43.2,paras.476-479;

428. Equally, the TC found that Praljak played an important role in planning/directing the military operations in Mostar between 24-07-1993 and 9-11-1993.[987] Once again the TC satisfied itself with the Accused function in order to convict him without having established that his acts constitute significant contribution[988] and that they were undertaken with the required intent.[989]

429. Regarding Praljak involvement in military operations in Vares, the Trial Chamber findings are unclear and contradictory.[990]

430. There is no doubt that Praljak participated in planning/directing of many military actions between 24-07-1993 and 09-11-1993 as in this period this was his function.The TC should have established that the Accused actions were intended to further the CCP.[991]

431. The TC considers any Accused act executed in fulfilling of his professional function as a contribution to committed crimes. This method led to absurd conclusions as the TC ended up to consider even the Accused positive actions aimed to prevention of crimes[992] as his contribution to committed crimes.

40.3. <u>The TC made errors when it deduced from Praljak's contribution to specific crimes his contribution to CCP</u>

432. The TC made a distinction between Praljak contribution to CCP and the ensuing crimes.[993] Thus, it found that Praljak used the armed forces and the MP to commit crimes that formed part of the CCP.[994] As the use of armed forces was nowhere considered as contribution to CCP but it was frequently quoted as contribution to individual crimes,[995] it can be concluded that the TC considered that the contribution to individual crimes constitute also the contribution to CCP.

433. The contribution to individual crimes does not amount automatically to the contribution to CCP. The contribution to specific crimes amounts to aiding and abetting which

[987] J.Vol-IV,paras.579,581;
[988] *Infra*, Ground 44.1,paras.482,484-488;
[989] *Infra*, Ground 44.2,para.490;
[990] J.Vol-IV,paras.61,524 ; *Infra*, Ground 45.1,paras.499,503-515
[991] Tadic AJ,para.229, Blagojevic AJ,para.185;
[992] J.Vol-IV,para.574, J.Vol-IV,para.600,602,608-609,611-613;
[993] J.Vol-IV,paras.512,513;
[994] J.Vol-IV,para.628;
[995] J.Vol-IV,paras.552-613;

requires acts specifically directed to assist, encourage or lend moral support to the perpetration of a specific crime.[996] By contrast, in the case of acting in pursuance of a CCP, participants are required to perform acts directed to the furthering of the CCP.[997]

434. The TC omitted to establish any link between the Accused acts and the CCP and therefore failed to show that the Accused acted in furtherance of CCP.

40.4. <u>The TC made errors regarding Praljak's intermediary role</u>

435. The TC considered that Praljak was an intermediary between Croatia and HZ(R)H-B. While Praljak had in some instances an intermediary role which is usual, normal and useful in conflict situation, this role has never been used for furthering any CCP.

436. The TC recognizes that sometimes Praljak went to BiH as envoy of Tudjman and Izetbegović.[998] If Praljak went to BiH as envoy of both Presidents, he could not convey to the HVO the Croatian instructions, he could only convey the instructions agreed by Tudjman and Izetbegovic which probably suited Croatian interests but which also served the interests of BiH.

437. The TC misinterpreted evidence and reached therefore erroneous conclusions. Thus, The TC stated that Praljak explained to the HVO MP Zagreb's position regarding how military operations in GV and Central Bosnia were unfolding and how they should be implemented in the field.[999] Praljak did not explained Zagreb's position, he explained the position he brought from Zagreb[1000] where he had meetings with Croatian leaders but also with Izetbegovic, Owen and Vance[1001] and where he was mandated by Tudjman and Izetbegovic to calm the conflict that broke out in GV.[1002]

438. Although Praljak was the HV General, he did not go to the meeting held on 02-04-1993 in any official function.[1003] He should go to that meeting accompanied by two Muslim representatives who unfortunately did not come.[1004] His aim was to explain the benefits

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[996] Tadic, AJ,para. 229(iii), Kvocka AJ,para.89; Vasiljevic AJ,para.102;
[997] Tadic, AJ,para.229(iii) ; Krajisnik, AJ,para.695;
[998] J.Vol-IV,para.534;
[999] J.Vol-IV,para.531;
[1000] Praljak,T.41601;
[1001] *Infra*, Ground 42,paras.462-466 ;
[1002] PraljakT.41599;
[1003] Praljak,T.43382;
[1004] Praljak,T.43383;

of the VOPP which was not understandable and acceptable for all Croats in BiH.[1005] While Praljak spoke about the homogenization of the population, it concerned all BiH populations.[1006] Although the TC is certainly invested by power to interpret evidence and draw inferences from it, it cannot distort evidence and transform it as needed for its preconceived conclusions.

439. The TC reference to the Spabat report[1007] is misplaced. First of all, this report, based on the unknown source, does not refer to any Praljak's mission on 15-06-1993[1008] and secondly, as the TC noted, the report does not provide details on the matter. Thus, this information is useless in a criminal procedure. Equally, the TC reference to Galbraith testimony regarding permit issuance to German journalists[1009] show the uncritical acceptance of evidence which is obviously and baselessly aimed to harm the Accused. Even if Galbraith intervened for issuance of this permit, which is highly unlikely, there is no evidence that his intervention reached Praljak. Contrary to Galbraith statement,[1010] before being cross-examined by Praljak, he had never spoken about any pressure aimed to allow press to access camps.[1011] Pressure was put on Croatian leaders [REDACTED] and it was done after Praljak had already issued permit to journalists.[1012] There is no single evidence that Praljak issued a permit to German journalists upon any intervention from anyone.[1013]

440. No reasonable trier of fact could conclude that on 05-11-1993 Tudjman referred to instructions that he would have given to Praljak.[1014] The most that a reasonable trier of fact could conclude from the evidence is that Tudman and Praljak had previously discussed the matter.

441. The fact that Praljak informed Croatian leadership about the situation in the field does not demonstrate that he contributed to CCP. In particular the information that he could

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[1005] Praljak, T.43393;
[1006] P01788,p.2;
[1007] J.Vol-IV,para.533;
[1008] P04573,p.5;
[1009] J.Vol-IV,para.535;
[1010] Galbraith,T.6541;
[1011] Galbraith,T.6506-6509;
[1012] [REDACTED];
[1013] P04716;
[1014] P06454,p.54;

have transmitted in 09/1992[1015] could not further CCP as at that time no CCP existed[1016].

442. While the TC concluded that Praljak took part in transmitting information, instructions, orders, requests and policies between the Croatian government and the HZ(R)H-B with the aim of furthering the CCP, the TC did not establish that any Praljak's act was made in the CCP furtherance. The TC satisfied itself with enumeration of Praljak's activities which mostly were undertaken before the CCP existed and which do not demonstrate any criminal intent.

40.5. <u>The TC made errors regarding Praljak's participation to meetings with Croatian officials</u>

443. Praljak's participation to meetings with Croatian officials does not demonstrate his knowledge about the CCP[1017] and it does not constitute the contribution. Meetings held before 01/1993[1018] cannot constitute the contribution to CCP as at that time the CCP did not exist. Regarding two meetings, held after 01/1993[1019] their purpose was quite opposite of any criminal purpose as they were aimed to the restauration of the peace and implementation of a Tudjman-Izetbegovic agreement.[1020]

444. It is not clear if the TC considered that Praljak participation to the meeting with French delegation constitute the contribution to the CCP.[1021] Whatever the TC might have considered, this meeting fell out of the CPP scope as the TC did not establish that the CCP existed on 13-01-1993 when this meeting was held.[1022]The TC once again took one single sentence out of context and completely ignored that this meeting had primary aim to provide an opinion about the possibility of Muslim and Croat joint action which was supported by Praljak.[1023] During this meeting Praljak stressed that the Croatian position was in favor of BiH integrity.[1024] It is also not clear if the TC considered the mere presence of Praljak at meeting in Medjugorje as contribution to the JCE,[1025] but it

[1015] J.Vol-IV,para.538;
[1016] J.Vol-IV,para.44;
[1017] *Supra*, Ground 39.1,paras.403-407
[1018] J.Vol-IV,paras.522,523;
[1019] J.Vol-IV,para.523;
[1020] *Supra*, Ground 39.1,para.406;
[1021] J.Vol-IV,para.524;
[1022] 3D00482;
[1023] 3D00482,p.3;
[1024] 3D00482,p.3;
[1025] J.Vol-IV,para.526;

is evident that his presence at a meeting [REDACTED][1026] cannot be considered as contribution to the JCE.

445. While the TC found that through the meetings and talks, Praljak was informed of the Croatian political positions and was involved in applying them on BiH territory,[1027] it did not pronounce itself how his knowledge about Croatian position furthered CCP. Actually, TC could not establish that Praljak's links with Croatia further in any way CCP as Croatian position was not aimed to any criminal objective.[1028]

40.6. <u>The TC made errors when it established that Praljak's efforts to obtain logistic support from RC were aimed to the CPP implementation.</u>

446. The TC found that Praljak contributed to posting HV members to the HVO armed forces.[1029] The HV members went eqully to the HVO/ABiH[1030]. Their status should have been regulated and Praljak did it personally when he was at function in the Croatian MD or by request when he was not any more Croatian official. In that context he appointed Primorac. It shall be noted that many of these appointments, and namely the appointment of Primorac in 04/1992,[1031] intervened during the war with the JNA/VRS and are in no way linked to the subsequent conflict between Muslims and Croats.

447. The TC found that at Praljak's request the Croatian government continued paying salaries to the HV soldiers who joined the HVO.[1032] The TC finding is erroneous as it refers to documents from 1992[1033] irrelevant for Praljak's contribution to CCP, issued at time when the HVO was in war, together with Muslims, against the JNA/VRS. Moreover, none of these documents show that the Croatian government continued paying salaries to the HV soldiers at the Praljak's request. These documents rather show that Praljak, who was an employee of the Croatian MD, applied the policy established by the government.

[1026] [REDACTED];
[1027] J.Vol-IV,para.530;
[1028] *Supra*, Ground 5.4,paras.93-98;
[1029] J.Vol-IV,para.542;
[1030] *Supra*, Ground 1.2,para.18
[1031] P00345, P00927;
[1032] J.Vol-IV,para.543;
[1033] P00734, P00891;

448. Reasons given by the TC do not support its findings that Praljak requested, organized and facilitated reinforcement in military personnel from the HV to the HVO with the aim of furthering the CCP.

41st Ground: Errors related to Praljak's *mens rea*

449. The TC erroneous conclusions and errors of law regarding Praljak *mens rea* render its Judgment invalid in whole as the Accused *mens rea*, a necessary element for any conviction, has been improperly established. Therefore, for all the reasons set forth in the 41st Ground, the Judgment should be reversed and Praljak should be acquitted of all charges.

41.1. <u>TC made errors when it concluded that Praljak knew that the HVO members committed crimes</u>

450. The TC conclusions regarding Praljak's knowledge about crimes are not based on evidence but on suppositions. While actual knowledge may be established through direct or circumstantial evidence it cannot be presumed.[1034]

451. While the TC found that Praljak was informed of the crimes committed by the members of the HZ(R)H-B forces primarily through HVO internal communication channels[1035] there is no evidence supporting this conclusion. It is unclear about which crimes Praljak was informed and where these crimes were committed as the TC refers to crimes committed in other municipalities.[1036] Praljak could have been informed through HVO internal communication channels only after 24-07-1993 as before that date he was not in the HVO structure. However even for the period after 24-07-1993 the TC should have established that Praljak was informed about crimes as the superior's position alone is insufficient to prove actual or constructive knowledge of the crimes.[1037]

452. Thus, the TC should have established when, how and by whom Praljak would have been informed about the committed crimes. By failing to do it, the TC failed to properly establish, Praljak's knowledge about committed crimes.

[1034] Hadzihasanovic TJ,para.94; Kordic TJ,para.427; Strugar TJ,para.368; Brdjanin TJ, para.278;
[1035] J.Vol-IV,para.625;
[1036] J.Vol-IV, para.625 ;
[1037] Oric, TJ.para.319 ;

41.2. <u>The TC made errors when it deduced Praljak's intent from his commanding functions and his involvement in military operations</u>

453. The TC drew Praljak intention from his participation in planning of the HVO military operations.[1038] Military activities have the objective to defeat the enemy army, they are not aimed to civilians. Planning/conduct of military actions do not in themselves involve the commission of crimes. Leading military operations does not equate with involvement in crimes.[1039] The Accused participation/association with planning/conduct does not mean that he had the requisite *mens rea* for crimes. Thus, the TC improperly drew Praljak's *mens rea* from his military functions and activities.

41.3. <u>The TC made errors when it concluded that Praljak had a discriminatory intent</u>

454. The discriminatory intent, which amounts to a *dolus specialis* is required for persecution *mens rea*[1040] and as element of crime it shall be established beyond reasonable doubt.[1041]

455. The TC concluded that Praljak by participating in the JCE, had the intention to discriminate.[1042] The TC included persecution in JCE CCP as it convicted Praljak on JCE-I basis for it. Thus a discriminatory intent is prerequisite for his participation in the JCE and it is therefore legally impossible to draw his discriminatory intent from his participation in the JCE.

456. The discriminatory intent[1043] shall be substantiated by evidence. The TC acknowledged that Praljak assisted Muslims in numerous occasions, inter alia, with securing convoys access to East-Mostar.[1044] Praljak personally assisted Muslims and accommodated a number of them in his house.[1045]

457. All these evidence militate against the TC finding that Praljak had discriminatory intent. Thus, the TC failed to properly establish the Accused intent and arbitrarily stated, without any basis, that he had it.

[1038] J.Vol-IV, para.625;
[1039] Kordic, AJ,para.957;
[1040] Stakic AJ,para.328;
[1041] Halilović AJ,paras.125,129; Ntagerura, AJ,paras.174-175;
[1042] J.Vol-IV,para.1340;
[1043] Popovic, TJ.para.2095;
[1044] J.Vol-IV, para.588;
[1045] 3D03652, [REDACTED], Praljak T.41679;

41.4. <u>The TC made errors when it concluded that Praljak had the required intent for committed crimes</u>

458. The TC concluded that Praljak intended to expel the Muslim population from the HZ(R)H-B.[1046] On the basis of this finding, the TC could not convict Praljak under JCE-I for any other crime than crimes implying the expelling of the population which are CAH (deportation and inhumane acts/forcible transfer) and grave breaches of the GC (unlawful deportation/unlawful transfer). For other crimes the TC should have established, beyond reasonable doubt, the required intent constituting *mens rea* of each crime for which it convicted Praljak.

459. Besides that, the TC erroneously concluded that Praljak intended to expel the Muslim population. The TC omitted to asses relevant evidence which show that Praljak did not have any criminal intent. Praljak did not tolerate unlawful behavior and always immediately reacted when he had information about such behavior. Contrary to the TC finding, Praljak did not have obligation to initiate criminal proceedings and could not do it as MP criminalistics department and SIS were in charge of that.[1047] Praljak could only request from competent bodies to do it and he made these requests whenever he was informed about an illegal act.[1048] The evidence show that Praljak continuously warned soldiers that crimes cannot be justified by military necessity[1049] and that he undertook measures in order to inform HVO members about the IHL rules.[1050]

460. The TC ignored this evidence and draw erroneous conclusion. When the state of mind of an accused is established by inference, that inference must be the only reasonable inference available on the evidence.[1051] In present case the TC drew inference on the Accused intent arbitrary, without any evidence.

42nd Ground: Errors related to Praljak's role in GVM

461. The TC concluded that Praljak was involved in the HVO military operations in GV around 18-01-1993 which, as well as the crimes directly linked to them unfolded

[1046] J.Vol-IV, par.627;
[1047] P00449, P01760,1D00201, P09552,4D00861;
[1048] P05530,3D03316;
[1049] 3D03316,3D01193,
[1050] 3D00840/IC00473, 3D02898, P04142,3D02322,3D02763,
[1051] Kvocka AJ,para.237, Vasiljevic, AJ.para.128, Mrksic AJ,para.220;

according to a preconceived plan.5[1052] As the TC made an error when it concluded that the events that occurred in GVM were part of CCP,[1053] its assessment of Praljak's role in these events is also erroneous.

462. The TC noted that on 15-01-1993, the HVO demanded the subordination of the ABiH troops present in provinces 3, 8 and 10 of the VOPP[1054]. It also noted that Praljak testified that the text of this document was drafted on 13/14-01-1993 in Zagreb, in the presence of Izetbegović and Owen and Vance.[1055] While the TC made no conclusion about Izetbegovic, Owen and Vance involvement in the drafting of the document that the TC called 'ultimatum",[1056] it recognized that Praljak was Tudjman and Izetbegovic envoy in the field.[1057] Furthermore, the evidence confirms the existence of the meeting in Zagreb.[1058] The participation of both parties and international representatives in drafting of the document called "ultimatum" shows that the document was not prepared with any criminal intention but in hope to prevent the conflict and thus the crimes. The document was drafted in line with international agreement which foresaw the return of forces to designated provinces.[1059]

463. The TC did not only ignore the circumstances in which this document was drafted, it completely ignored the text and spirit of the document. The document calls, on the basis of Geneva agreements[1060] and with goal of establishing peace on the whole territory of BiH,[1061] all units, ABiH/HVO, to act in accordance with agreements. The document treat equally the ABiH/HVO units, as it calls all ABiH units in provinces 3, 8 and 10 to subordinate to the HVOMS, but in parallel it calls also all HVO units in provinces 1, 5 and 9 to subordinate to the ABiHMS what the HVO did.[1062] Moreover in implementation of this document the HVO ordered that the ABiH officers be included in the HVO commands HVO.[1063]

[1052] J.Vol-IV,para.462;
[1053] *Supra*, Ground 15,paras.234-245;
[1054] J.Vol-IV,para.475;
[1055] *Idem*;
[1056] J.Vol-IV,para.553;
[1057] J.Vol-IV,para.534;
[1058] P01158,p.51;
[1059] P01391,p.33; 1D01314, p.12,13,30,36 ;
[1060] P01150, P01155;
[1061] P01150;
[1062] P01150, P01155,IC00047, [REDACTED], Kljujić,T 8009-8012;
[1063] P01139;

464. If the TC properly assessed the text of the document it would not came to conclusion that Praljak had any criminal intent. It could have only concluded that Praljak acted with intention to implement the peace agreement and calm down any tensions and conflicts.

465. While the TC did not find that Praljak used strong or inappropriate words,[1064] it however found that he was involved in implementing the "ultimatum" in GV and, consequently, in planning the HVO military operations in this area in 01/1993.[1065] Military actions in GV were not planned, they were provoked by the ABiH activities.[1066] As these military activities were not planned, Praljak could not participate in their planning. Praljak came to BiH pursuant to the Tudjman–Izetbegović request[1067] attempting to calm dawn the tensions that had arose between the TO/ABiH and HVO[1068] and to prevent spreading of conflict that would obviously harm the peace plans.[1069] The fact that in GV both sides had extremists who did not obey to their respective commanders[1070] militate in favour of thesis that events in GV were not planned and that Praljak came down in attempt to arrange the situation.

466. There is no doubt that Praljak went to Central Bosnia in 01/1993 and was involved in the conflict,[1071] but with the sole intention and aim to calm it down.[1072] The TC itself recognized that it did not have specific information as to nature of the instructions that Praljak might have given to local HVO Commanders.[1073] If the TC did not have sufficient information about these instructions it should have properly applied the principle beyond reasonable doubt and resolve any doubtful situation in favor of the Accused.

467. Contrary to the TC finding, the evidence does not allow the conclusion that Praljak was kept informed on the situation in GV in 01/1993.[1074]The TC based its finding on one

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[1064] J.Vol-IV,para.556;
[1065] *Idem*;
[1066] *Supra*, Ground 15,paras.234-245;
[1067] Praljak, T.42993,T.43289-43290,T.43693-43694; P01739,3D00561, Idrizovic,T.9872–9889,
[1068] Batinic,T.34299; P00708, 3D419. Praljak,T.40460-40463,T.40465-40471, Witness-BM,T.7067-7071, Idrizovic,T.9630-9638,T.9602-9605, P00718, P00720, P00776;
[1069] Praljak, T.40568-40582,T.43001;
[1070] P01163,p.3;
[1071] J.Vol-IV,paras.558,559;
[1072] Batinic,T.34299; Praljak,T.40568-40582,T.43001;
[1073] J.Vol-IV,para.559;
[1074] J.Vol-IV,para.560;

sole document[1075]which it interpreted erroneously. According to this order Siljeg should have contacted “Brada” in Mostar and should have sent a report. This order still does not demonstrate that Siljeg should have informed Praljak about situation in GV as it is not clear if the report should have been sent to Praljak or to Petkovic who gave the order and who at that time was in Geneva.[1076] Taking into account that Siljeg should have contacted Praljak in Mostar personally, it would be logical that the report shall be sent to Petkovic. Moreover and the most important, this order concern the implementation of the cease-fire in GV[1077] and as such confirms Praljak’s testimony on his role in calming down the situation.[1078]

468. No evidence suggest Praljak’s participation in any plan regarding GVM. With respect to Praljak role in GVM, the Trial Chamber ignored and/or misinterpreted evidence favorable to the Accused[1079] and therefore reached legally and factually erroneous conclusions.

469. For all the reasons set forth in the 42nd Ground, the Judgment should be reversed on Count-1, Count-2, Count-3, Count-8, Count-9, Count-10, Count-11, Count-12, Count-13, Count-15, Count-16, Count-19 and Count-21 and Praljak should be acquitted of these charges with respect to GVM.

43rd Ground: Errors related to Praljak’s role in Prozor

470. For all the reasons set forth in the 43rd Ground, the Judgment should be reversed on Count-1, Count-8, Count-9, Count-10, Count-11, Count-12, Count-13, Count-15, Count-16, Count-18 and Praljak should be acquitted of these charges with respect to Prozor.

43.1. The TC made errors relating to Praljak’s knowledge regarding the detainees labor

471. The TC concluded on the basis of Praljak’s order requesting withdrawal of all detainees used for labour[1080] that Praljak knew that Muslim detainees were being used for labour

[1075] P01293:
[1076] P01293;
[1077] P01293;
[1078] Praljak,T.40568-40582;
[1079] *Supra,*paras.462-466 ;
[1080] P04260 ;

in the zone of responsibility of the Prozor FCP.[1081] Praljak knew that the detainees were used for labour at the moment he issued the order, but there is no evidence that would indicate when he got this information.

472. Contrary to the TC finding[1082], none of documents[1083] show that Praljak had some knowledge or that he was aware about use of detainees for unlawful labour prior to 17-08-1993. The most that reasonable trier of fact could have concluded on the basis of these documents is that Praljak forbid the labour of detainees. According to the 3rdGC, the labour of prisoners is not forbidden *per se*.[1084] The documents quoted by TC do not indicate that the detainees were used for prohibited labour.

473. The TC inferred Praljak knowledge about unlawful labour of detainees on the frontline from his command authority over the HVO throughout the period between 06/1993 and 09/1993 when detainees were used for that work. As he was informed of the military situation on the field, the Chamber deemed that the only inference it could reasonably draw is that he was aware that the work being done by detainees was often on the front-line[1085].

474. While the TC is entitled to draw inferences from circumstantial evidence, such inference must be the only reasonable conclusion available.[1086] In the present case, the evidence show that Praljak on 17-08-1993 forbid the labour of detainees.[1087] As Praljak suddenly on 17-08-1993 ordered to withdraw all prisoners from labour, any reasonable trier of fact would have concluded that he did it as he got information that detainees might have been used for unlawful labour. Contrary to TC finding, Praljak's order shows his adherence to GC and his will to implement their provisions.

475. Although Praljak was certainly informed about the military situation on the field, the detainees labour is not directly linked to the military situation and he was not informed about that fact. In any case, there is no evidence that he got any information about unlawful use of prisoners. Praljak did not have any reason to suspect that war prisoners were used for unlawful labour as the HVO issued numerous orders requesting that war

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1081 J.Vol-IV,para.574;
1082 *Idem*;
1083 P04260, P04285;
1084 3rdGC, Art.49,50;
1085 J.Vol-IV,para.574;
1086 Martic TJ,para.24;
1087 P04260 ;

prisoners be treated in accordance with GC[1088] and strictly prohibiting unlawful labour of detainees.[1089]

43.2. <u>The TC made errors when it convicted Praljak for crimes in Prozor in the frame of the JCE-I without the required intent</u>

476. The TC concluded that Praljak must have known that members of the HVO armed forces were removing/detaining the Muslim population from Prozor in July-August 1993 and deemed that, insofar as he continued to exercise his functions, he accepted the detentions/removals.[1090]

477. While the TC generally stated that all Accused as JCE members, knew that most of crimes had been committed and intended that these crimes be committed in order to further the CCP,[1091] it could not find that Praljak had the required *mens rea* for crimes in Prozor. The TC could only conclude that Praljak must have known that members of the HVO armed forces were removing and detaining the Muslim population from Prozor and that he accepted it.[1092] Thus, the *mens rea* that the TC attributed to Praljak[1093] is not sufficient for his conviction under the JCE-I.

478. In order to convict an Accused for his participation in the JCE-1, the intent to perpetrate a certain crime is required.[1094] The accused must both intend the commission of the crime and intend to participate in a CCP aimed at its commission.[1095]

479. As the TC could not conclude that Praljak had the required intent[1096] it committed an error of law when it convicted him for crimes in the Prozor on the basis of JCE-I.

44th Ground: Errors related to Praljak's role in Mostar

480. For all the reasons set forth in the 44th Ground for Appeal, the Judgment should be reversed on Count-1, Count-2, Count-3, Count-6, Count-7, Count-8, Count-9, Count-

[1088] P00514,p.2, P01474,P02047, P02877,P04902, P04918,P05104, P05199,p.3;
[1089] P02877;
[1090] J.Vol-IV,para.573;
[1091] J.Vol-IV,para.67;
[1092] J.Vol-IV,para.573;
[1093] J.Vol-IV,para.573;
[1094] Tadic AJ,para.228;
[1095] Brdjanin, AJ,para.365;
[1096] J.Vol-IV,para.573;

10, Count-11, Count-15, Count-16, Count-19, Count-21, Count-24 and Count-25 and Praljak should be acquitted of these charges with respect to Mostar.

44.1. The TC made errors when it deduced Praljak's knowledge of crimes in Mostar from his involvement in military operations

481. The TC concluded that it does not have evidence that would allow it to determine Praljak's precise role in the events of 09-05-1993 in Mostar[1097] and that it does not have evidence to support a finding on Praljak's role in the criminal events in Mostar between 09-05-1993 and 24-07-1993.[1098]

482. The JCE is not an open-ended concept that permits convictions based on guilt by association[1099] and it does not allow that an Accused be declared guilty by mere association.[1100] The responsibility pursuant to JCE does require participation by the Accused in the execution of the CCP[1101] and although the accused need not have performed any part of the *actus reus* of the perpetrated crime to be held responsible for a crime committed pursuant to a JCE, he must have participated in furthering the common purpose at the core of the JCE.[1102]

483. The TC did not find any Praljak involvement in implementation of CCP in Mostar before 24-07-1993[1103] and it found that Praljak ceased to be member of the JCE on 09-11-1993[1104]. Thus, Praljak shall be acquitted for all crimes committed in Mostar before 24-07-1993 and after 09-11-1993.

484. The TC found that Praljak played an important role in planning/directing the military operations in Mostar between 24-07-1993 and 09-11-1993.[1105] The orders issued by Praljak, enumerated by the TC[1106] show that Praljak undertook lawful and military justified measures. The TC distorted Praljak order given on 12-08-1993[1107] when it indicated that Praljak mobilized all the manpower and materiel of the HVO, to eliminate

[1097] J.Vol-IV,para.576;
[1098] J.Vol-IV,para.577;
[1099] Brdanin AJ,para.428;
[1100] Brdanin AJ,para.424;
[1101] Brdanin AJ,para.424, Vasiljevic AJ,para.100;
[1102] Brdjanin, AJ,para.427;
[1103] J.Vol-IV,paras.576,577;
[1104] J.Vol-IV,para.1228;
[1105] J.Vol-IV,para.579;
[1106] J.Vol-IV,para.579;
[1107] P04125;

Muslim "terrorists" from Mostar.[1108] Praljak did not give an order to eliminate Muslim "terrorists", but to eliminated infiltrated Muslim Armed Forces terrorist groups.[1109] The TC omitted to specify[1110] that Praljak's instruction to "inflict as many losses on them as possible" targeted exclusively and explicitly Muslim Armed Forces[1111].

485. The Defence contests the TC findings regarding the destruction of the Old Bridge[1112] and namely that the military action that would have led to this destruction had been discussed during the meeting attended by Praljak.[1113]

486. The Defence contests TC findings regarding shelling and sniping of Mostar.[1114] Nevertheless, in order to establish Praljak's responsibility for the shelling and sniping, the TC should have established beyond reasonable doubt that the unlawful shelling and sniping occurred in the time frame falling under Praljak's command and that he ordered shelling or that he knew about it. The TC did not establish a single shelling incident with sufficient details, namely the date and place of shelling and the victims that the shelling would have provoked.[1115] Taking into account that the TC could find that Praljak had a role in the activities in Mostar only between 24-07-1993 and 09-11-1993[1116] and that it found that the shelling occurred between early 06/1993 and early 03/1994[1117], the TC should have established specific shelling incidents for which it held Praljak responsible. Regarding sniping incients, Praljak cannot be held responsible for incidents that occurred before 24-07-1993 and after 09-11-1993,[1118] therefore it cannot be responsible for incidents n°1,[1119] n°2,[1120] n°3,[1121] n°13[1122] and 14.[1123]

1108 J.Vol-IV,para.579;
1109 P04125;
1110 P05692, J.Vol-IV,para.579;
1111 P05692;
1112 *Supra*, Ground 23,paras.286-289;
1113 *Supra*, Ground 23.1,paras.281-282;
1114 *Supra*, Ground 21,paras.256-273, Ground 20,paras.247-254;
1115 J.Vol-II,paras.996-1018;
1116 J.Vol-IV,para.577,578,581;
1117 J.Vol-II,para.996, Vol-IV,para.582;
1118 *Supra*,paras.481,483;
1119 J.Vol-II,para.1043-1046;
1120 J.Vol-II,para.1047-1060;
1121 J.Vol-II,para.1048-1070;
1122 J.Vol-II,para.1152-1163;
1123 J.Vol-II,para.1164-1174;

487. For none of mosques in East-Mostar, the TC established the date of destruction.[1124] The only Mosque for which the date of destruction is established is situated in West-Mostar and was destroyed in 05/1993[1125]. As one Mosque was destroyed in the period in which Praljak had no role in events in Mostar[1126] and as the date of destruction of other Mosques was not established, Praljak cannot be held responsible for their destruction.

488. When the events in Rastani took place, Praljak was in Prozor and then he went to Citluk in order to assure the passage of a convoy for East-Mostar.[1127] While Praljak appointed Stampar as Commander of the Rastani battlefield,[1128] there is no evidence that he was informed about the events in Rastani or that he had any knowledge about them. The fact the Commander of a battlefield was appointed a day after combats[1129] militates in favor of Praljak's ignorance of any combat activities in this area. The HVO did not issue any order to attack Rastani or to conduct any offensive action in the area. The only HVO order regarding this area required that the defence lines be secured.[1130]

489. The TC concluded that the only conclusion that it could reasonably draw is that Praljak knew that these crimes would be committed during the operations in Raštani and Mostar.[1131] Except the fact that Praljak was the HVOMS Commander during a part of the relevant period, the TC did not give any reason how it came to this conclusion. There is no single evidence that Praljak was ever informed about any crime and the TC itself concluded that Praljak was not in Mostar area when the events in Rastani took place.[1132] On the basis of the sole fact that Praljak was a commander, the most that the TC could have concluded was that he must have known about crimes, but this fact without other evidence does not demonstrate that he actually knew what happened. While the TC stated that the more physically removed the superior is from the commission of the crimes, the more supplemental indicia will be required in order to

[1124] J.Vol-II,para.1369-1377;
[1125] J.Vol-II,para.791;
[1126] J.Vol-II,paras.577,578;
[1127] J.Vol-IV,para.588; 3D00366, Witness-BJ,T.5721-5724;
[1128] P04508;
[1129] J.Vol-II,para.956;
[1130] P04476;
[1131] J.Vol-IV,para.586;
[1132] J.Vol-IV,para.588;

establish actual knowledge,[1133] it did not apply this standard when it assessed Praljak knowledge of facts.

44.2 The TC made errors regarding Praljak's intent with respect to crimes in Mostar

490. The TC found that Praljak knew that crimes would be committed during the operations in Raštani and Mostar and concluded, therefore, that he intended to have the crimes committed.[1134] Besides the fact that the TC did not properly establish Praljak's knowledge about the committed crimes,[1135] it also failed to establish correctly his intention. The TC satisfied itself to draw the Accused intention from his knowledge. The Accused knowledge does not shows his intention. Knowledge and intention are two separate elements of *mens rea* and each shall be established separately and beyond reasonable doubt. In no case the mere knowledge that the crimes would be commit show the Accused intention to commit them. The most the TC can conclude in such case is that the Accused accepted that crimes be committed, but this kind of intent is not sufficient for the Accused responsibility in the frame of the JCE-I.

45th Ground: Errors related to Praljak's role in Vares

491. For all the reasons set forth in the 45th Ground, the Judgment should be reversed on Count-1, Count-2, Count-3 Count-10, Count-11, Count-12, Count-13, Count-15, Count-16 and Count-19 and Praljak should be acquitted of these charges with respect to Vares.

45.1. The TC made errors when it concluded that Praljak participated in planning/ directing of military operations in Vares

492. The TC found that Praljak participated in planning/directing HVO operations in Vareš in 10/1993.[1136]Taking into account the evidence and TC own findings it is unclear which operations Praljak planned/directed.

493. The main action in Vares in 10/1993 was in Stupni Do, but the TC found that Praljak did not take part in the decision to attack the village.[1137] There is no evidence that Praljak planed/directed or participated otherwise in that action.

[1133] J.Vol-I,para.248;
[1134] J.Vol-IV,para.586;
[1135] *Supra*, Grounds 41.1,paras.451-452;.
[1136] J.Vol-IV,para.594;

494. According to TC, Praljak issued an order requesting that the situation in Vares be sorted out without showing mercy towards anyone.[1138] The evidence show that on 23-10-1993, the Commander of the local Brigade informed Praljak about the ABiH strong attacks and intensive shelling of the town.[1139] This report does not contain a single word regarding any HVO military action.The situation in Vares was chaotic and the HVO had intern problems and local quarrels[1140]. The evidence show that the HVO, at that time, was principally concerned by the HVO chaotic internal situation and information that ethnic cleansing in Muslim and Croat villages might have occurred and that it attempted to place the situation under control.[1141] In that situation, Praljak instruction could not but concern the situation within HVO, particularly as the local Commander requested the assistance of experienced officers.[1142] The words that Praljak used in his own language indicate that this instruction was aimed to restauration of the order in organization.[1143] Thus, the TC interpretation of this document according to which the instruction targeted Muslim people[1144] is erroneous and without any basis in evidence.

495. The TC misunderstood Praljak testimony as it considered that he gave two versions about this document and contradicted himself.[1145] Praljak actually gave two times the same explanation of the document. Contrary to the TC finding, he never said that the words "show no mercy to anyone" concerned three HVO soldiers responsible for the problems in Stupni Do.[1146] He testified that these words concerned three persons put in isolation whose names were underlined in the document.[1147]When cross-examined by the Prosecution, he said that he wrote this instruction after he received various reports about smugglings[1148] and that this instruction concerned only Croat people.[1149] Actually, while Praljak used different words he said twice exactly the same thing as three persons

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[1137] J.Vol-IV,para.61;
[1138] J.Vol-III,para.318, Vol-IV,para.591;
[1139] P06020;
[1140] P06291, [REDACTED], P06069, [REDACTED];
[1141] P06022;
[1142] 3D00808;
[1143] Praljak,T.41904;
[1144] J.Vol-III,para.318, Vol-IV,para.591;
[1145] J.Vol-III,para.322;
[1146] *Idem*;
[1147] Praljak,T.41902-41903, 3D00823, p.8;
[1148] Praljak,T.43727;
[1149] Praljak,T.43730;

whose names were underlined in the documents[1150] were people who were accused of smuggling.[1151]

496. The TC made the same error with Petkovic testimony.[1152] [REDACTED].[1153] [REDACTED] confirms, in substance, Praljak testimony as the evidence confirm that persons placed into isolation were undermining the military potential of the Vareš HVO by demobilizing troops.[1154]

497. The TC, therefore, committed a gross error in assessment of evidence when it ignored Praljak and Petkovic concordant testimonies[1155] and concluded on the basis of improperly assessed evidence and [REDACTED][1156] that the HVO forces in Vares received and interpreted Praljak's order as permission to act violently at least from the time Praljak's order was received.[1157]

498. The TC did not only omit to properly consider the meaning of the document,[1158] but it also omitted to consider that the document is not an order and that it was not addressed to the HVO soldiers and it was not intended to be distributed among them.[1159] While the TC admitted that the content of document was leaked among the HVO soldiers[1160] it omitted to consider that this fact demonstrates not only that the document was not addressed to the HVO soldiers, but also the lack of discipline in the HVO local brigade. The criminal responsibility of the Accused cannot be established on someone interpretation of his intentions particularly when the TC is in possession of concordant direct evidence showing exact meaning of the Accused acts.[1161]

499. The TC conclusions are completely illogical and in contradiction with its own findings as violent and brutal acts were mostly committed on 23-10-1993,[1162] before the Praljak's document reached the local Vares soldiers.

[1150] 3D00823,p.8;
[1151] P06291,p.3;
[1152] J.Vol-IV, para.323;
[1153] [REDACTED];
[1154] J.Vol-III,para.328, [REDACTED], P06069;
[1155] J.Vol-III,para.324;
[1156] *Infra,* [REDACTED];
[1157] J.Vol-III,para.326 ; Vol-IV,para.591;
[1158] 3D00823, page 8 ;
[1159] 3D00823page 8,Praljak,T.43727;
[1160] J.Vol-III,para.325;
[1161] Praljak,T.41902-41903,T.43730, [REDACTED], 3D00823,p.8;
[1162] J.Vol-III,para.333-348;

500. The TC erroneously concluded that Rajic ordered the *Bobovac* Brigade to control the entry and exit checkpoints in Vareš located in its zone of responsibility in executing a Praljak's order.[1163] The TC omitted to consider that checkpoints existed in Vares well before this Rajic's order[1164] and that they were not established pursuant to Praljak's order.

501. The TC found also that Praljak issued an order on 05-11-1993 for the purpose of organizing the defence of Vareš.[1165] The TC properly concluded that Praljak issued that order, but this order was issued after the ABiH units launched the attack on Vares[1166] and at the very dramatic moment when the ABiH entered into the town.[1167] Besides the fact that in such situation it was logical for the MS Commander to issue an order to put up resistance, this order is a military regular order in execution of which no criminal acts were committed. Moreover, this order is completely disconnected from events in Vares in 10/1993 as it followed a newly arisen situation marked by the ABiH takeover of the town.

502. Therefore, the TC erroneously concluded, without any evidence and contrary to its own findings[1168] that Praljak participated in planning/directing HVO operations in Vareš in 10/1993.[1169]

45.2. <u>The TC made errors regarding Praljak knowledge of crimes committed in Stupni Do</u>

and

45.3. <u>The TC made errors regarding Praljak's role in crimes in Stupni Do</u>

503. The TC concluded that Praljak was informed of the murders of people and the destruction of Muslim property in Stupni Do no later than 05-11-1993.[1170] By reaching this conclusion, the TC recognized that the evidence on the record do not allow a conclusion that Praljak got knowledge about Stupni Do events before 05-11-1993. The TC admitted that Praljak was only later informed of some of the crimes committed by the HVO members during these campaigns (murders of Muslims who did not belong to

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[1163] J.Vol-IV,para.592;
[1164] 3D00803;
[1165] J.Vol-IV,para.593;
[1166] P06440;
[1167] J.Vol-III,para.507;
[1168] J.Vol-IV,para.61;
[1169] J.Vol-IV,para.594;
[1170] J.Vol-IV,para.595;

any armed force and the destruction of property).[1171] Thus, it is evident that Praljak had no knowledge of these crimes prior to their commission.

504. Under the JCE-I responsibility the accused must both intend the commission of the crime and intend to participate in a common plan aimed at its commission.[1172] If Praljak got knowledge about crimes only after their commission, it is evident that he could not have intention to commit them. This is particularly true in this case in which Praljak had even no knowledge of the military action during which the crimes were committed and which was decided by Commander of action[1173] who did not consult the MS.

505. Actually the TC found Praljak's contribution to crimes committed in Stupni Do in the concealment of the crime.[1174] While Praljak's contribution to concealment of the crimes in Stupni Do is contested,[1175] even if such contribution existed it cannot be considered as required contribution in the frame of the JCE-I. In the JCE, the Accused acts or omission constituting his contribution to the JCE must form a link in the chain of causation.[1176] The activities aimed to conceal a crime could have been a contribution to the JCE only if the crimes were envisaged in CCP and if the Accused intended to conceal them before they were committed. In the present case, the TC could not find any link between Praljak activities and crimes committed in Stupni Do and it failed to establish properly and the Accused contribution to the committed crimes and his *mens rea*.

45.4. <u>The TC made errors when it concluded that Praljak contributed to dissimulation of crimes in Stupni Do</u>

506. The TC found that HVO forces obstructed access for UNPROFOR to Stupni Do between 23/25-10-1993[1177] and that Praljak prevented UNPROFOR from uncovering the consequences of the HVO operations in Stupni Do.[1178]

[1171] J.Vol-IV,para.597;
[1172] Brdjanin AJ, para.365 ;
[1173] J.Vol-IV,para.61;
[1174] J.Vol-IV,para.597;
[1175] *Infra*,Ground.45.4,paras.507-515 ;
[1176] Milutinovic TJ,para.105;
[1177] J.Vol-III,para.475; Vol-IV,para.592;
[1178] J.Vol-IV,para.621;

507. The TC finding is illogical as it found itself that Praljak had no knowledge at all about events in Stupni Do until 05-11-1993[1179]. Thus, at the moment the UNPROFOR did not have access to Stupni Do, Praljak knew nothing about the events that occurred there.

508. The TC accepted the Prosecution interpretation of evidence without its proper assessment and referred to the Prosecution Pre-Trial Brief as basis of its findings.[1180] If the TC properly assessed evidence it would understand that documents P06066 [REDACTED] do not deal with access to Stupni Do, but [REDACTED][1181] [REDACTED].[1182] Equally and contrary to the Trial Chamber finding[1183] the fact that Bobovac Brigade was tasked to control entry and exit checkpoints[1184] has no link with UNPROFOR but with chaotic situation in Vares.

509. While local HVO forces did attempt to prevent UNPROFOR to enter into Stupni Do, this behavior cannot be attributed to the HVOMS or to Praljak. All UN documents confirm that the local HVO was obstructing the access[1185] and that they were not obeying to its command.[1186]

510. The TC admitted that the HVOMS, when it was informed about events in Stupni Do, requested report on these events in order to initiate investigations.[1187]

511. On the basis of Witness-EA testimony, the TC concluded that the HVO and Praljak intended to deceive the international community and make it believe that investigations were underway into the crimes committed by the HVO members in Stupni Do in 10/1993[1188].

512. While [REDACTED], it does not mean that it was the objective of the HVO and particularly of Praljak when he signed the order issued by Petkovic. The evidence show that the HVO initiated investigations when it was informed about the events in Stupni

[1179] J.Vol-IV,para.595;
[1180] J.Vol-III,para.471,FN n°1018Vol-IV,para.621,FN n°1218;
[1181] [REDACTED];
[1182] [REDACTED];
[1183] Judgment, Volume IV, paragraph 621;
[1184] P06114, *Supra*, Ground.45.1,para.500;
[1185] P06122 ; P06140 ;
[1186] P06144, page 1 ; P06140, page 4 ;
[1187] J.Vol-IV,para.596; 4D00834;
[1188] J.Vol-IV,paras.596,623;

Do.[1189] There is no evidence at all that the HVO request for reports in order to initiate investigation was not genuine and that Praljak had no real will to initiate investigations.

513. Praljak was informed about crimes in Stupni Do during the meeting on 05-11-1993.[1190] Contrary to the TC finding[1191] he did not attended this meeting as member of the HVO Government, as he has never been its member, but as the HVOMS Commander. During this meeting it was not only that the investigations be conducted but also that those who were responsible for crimes be adequately punished.[1192] Praljak was aware that the HVOMS took measures regarding investigations[1193] and had not reasons to believe that the investigations would not be properly conducted.

514. Praljak left the HVOMS upon his own request to be relieved from duty[1194] reiterated on 05-11-1993[1195] and there is no evidence that he knew anything about further conduct of investigation on Stupni Do events or about Rajic identity changes[1196] as he left the JCE, few days after he was informed about these crimes.[1197]

515. All factual findings underlying the elements of the crime or the form of responsibility alleged, as well as all those indispensable for a conviction, must be made beyond a reasonable doubt.[1198] In the present case there is no evidence at all that Praljak participated in the concealment of crimes in Stupni Do or that he had intention to conceal them.

46th Ground: Errors related to Praljak's role in crimes in DC

516. The TC admitted that Praljak authorized access to Gabela&Dretelj prisons[1199]. The TC admitted also that Praljak's orders authorizing the access to DC were not always respected.[1200] The TC also admitted that Praljak asked the Capljina barracks to send

[1189] 4D00834, P06137, P06454,p.112;
[1190] J.Vol-IV,para.595;
[1191] J.Vol-IV,para.595;
[1192] P06454,p.112;
[1193] 4D00834;
[1194] P05973;
[1195] P06454,p.56;
[1196] J.Vol-IV,para.497;
[1197] J.Vol-IV,para.1228;
[1198] Halilović AJ,paras.125,129; Ntagerura, AJ,paras.174-175;
[1199] J.Vol-IV,paras.603,611,612;
[1200] J.Vol-IV,para.603;

mattresses to Dretelj Prison when he learnt the detainees were sleeping on the floor.[1201]The TC recognized that Praljak issued orders for Gabela Prison to be reorganized so that the detainees would receive water, food, mattresses and be able to wash, in accordance with the laws of war[1202] and that he forwarded to persons in charge of prisons orders requesting the respect of GC.[1203] The TC also established that Praljak organized at least one conference on IHL and distributed pamphlets on this subject to the HVO forces.[1204]

517. Although all actions Praljak undertook with respect to DC were aimed to improvement of detainees conditions and to implementation of GC,[1205] the TC found that he did not make any real effort to remedy the conditions in these DC.[1206]

518. The omission of an act can lead to individual criminal responsibility under Art.7.1 of the Statute only where there is a legal duty to act[1207] as any criminal responsibility for omissions requires an obligation to act.[1208] The criminal responsibility may be engaged only if the omission constitutes a willful failure to discharge such a duty.[1209]

519. The TC did even not attempt to establish if Praljak had legal duty to act with respect to DC and therefore could not establish this fact which is necessary to engage the criminal responsibility for omission.

520. While the TC generally stated that all Accused as members of the JCE, knew that most of the crimes had been committed and intended that these crimes be committed in order to further the CCP,[1210] it could not find the required *mens rea* for crimes linked to Gabela&Dretelj DC with respect to Praljak. The TC could only conclude that Praljak had to have known that the conditions of confinement in Gabela Prison were problematic[1211] and that he was aware that the conditions in Dretelj Prison were poor[1212]

[1201] *Idem*;
[1202] J.Vol-IV,para.602;
[1203] J.Vol-IV,paras.607,608;
[1204] J.Vol-IV,para.498;
[1205] *Supra*, para.516;
[1206] J.Vol-IV,paras.611,614;
[1207] Galic AJ, para.175;
[1208] Ntagerura AJ,para.334;
[1209] Blaskic AJ,para. 663;
[1210] J.Vol-IV,para.67;
[1211] J.Vol-IV,para.609;
[1212] J.Vol-IV,para.614;

and accepted these crimes.[1213] The *mens rea* that the TC attributed to Praljak[1214] is not sufficient for conviction in the scope of the JCE-I. Besides the fact that words "problematic" and "poor" do not mean in themselves that crimes were committed in these DC and that the TC did not establish that Praljak was aware of any crime that might have been committed in these DC, the TC failed to establish the required intention of the Accused.

521. In order to convict an Accused for his participation in the JCE-1, the intent to perpetrate a certain crime is required[1215]. The TC could not conclude that Praljak had the required intent as it only concluded that he accepted crimes.[1216]

522. For all the reasons set forth in the 46th Ground, the Judgment should be reversed, on Count-1, Count-7, Count-8, Count-10, Count-11, Count-12, Count-13, Count-15 and Count-16 and Praljak should be acquitted of these charges with respect to DC.

47th Ground: Errors related to Praljak's conviction under JCE-III

523. The TC made general lump conclusion that the Accused, as the JCE members knew that thefts might be committed by the members of the HVO, due to the atmosphere of violence to which they contributed, or for some, due to knowing the violent nature thereof, and took this risk knowingly.

524. As the events in GVM and in Rastani did not form part of the CCP[1217], crimes that could have been committed in GVM in 01/1993 or in Rastani in 08/1993 cannot be considered as NFC of the CCP implementation and cannot fall under JCE-III responsibility.

525. In the case that the AC would find that these crimes were committed in implementation of the CCP, Praljak still cannot be responsible for them as these crimes were not the NFC of the CCP[1218] and were not foreseeable to Praljak.

[1213] J.Vol-IV,paras.611,614;
[1214] J.Vol-IV,paras.609,611,614;
[1215] Tadic AJ,para.228;
[1216] J.Vol-IV,paras.611,614;
[1217] *Supra*, Ground 15.,paras.234-245 *Supra*, Ground 29,paras.325,327-329 ;
[1218] *Supra*, Ground 36,paras.353-356 ;

526. According to case-law, the Accused can only be held responsible, under JCE-III, for a crime outside the CCP if, under the circumstances of the case it was *foreseeable* that such a crime might be perpetrated by one or other members of the group and if the accused willingly took the risk that such a crime might occur.[1219] The crime must be shown to have been foreseeable to the accused in particular.[1220]

527. The TC did not give any reason why it considered that Praljak should have foreseen these crimes. It satisfied itself by finding that the HVO military operations and the takeover of these localities unfolded in an atmosphere of extreme violence, and that therefore Praljak could have foreseen that the HVO members would commit thefts in these locations.[1221]

528. Whatever the circumstances of the events in GVM were, Praljak had no knowledge about them. He came to GV on 16-01-1993.[1222] At that moment, Croats and Muslims were still allies although ABiH started to attack the HVO position in and around GV.[1223] No precedent similar situation existed and the HVO had never been involved in theft of Muslims property. Praljak came to GV with intent to calm down the situation,[1224] he could not know that the conflict will outgrow into violent armed conflict and that the thefts might be committed as consequence of that armed conflict.

529. Praljak could not foresee that theft were to be committed in Rastani. There is no evidence at all that Praljak had any knowledge about activities in Rastani[1225] and there is no evidence of similar HVO behavior which would be known to Praljak and that would permit him to foresee the commission of thefts.

530. While, for the purposes of JCE-III liability, it is not necessary that an accused be aware of the past occurrence of a crime in order for the same crime to be foreseeable to him, the JCE-III *mens rea* standard requires that the possibility of crime be sufficiently substantial as to be foreseeable to the accused.[1226]

[1219] Brdjanin AJ,para.365; Sainovic AJ,para.1061;
[1220] Brdjanin AJ,para.365, Tadić AJ,para.220, Kvočka AJ,para.86, Blaškić AJ,para.33, Stakić AJ,para.65;
[1221] J.Vol-IV,paras.635 and 638;
[1222] Praljak,T.40570;
[1223] *Supra*, Ground 15.1,para.235;
[1224] *Supra*, Ground 42,paras.464-465;
[1225] *Supra* Ground 44,paras.488-489;
[1226] Sainovic AJ,para.1081;

531. The thefts in GVM and Rastani were not foreseeable to Praljak and he cannot be responsible for them in the frame of the JCE-III.

532. The Chamber drew inference that Praljak knowingly took the risk that thefts would take place from his role in planning/directing or facilitating the HVO military operations in GV and Rastani. Praljak did not planned/directed the HVO military operations in GVM[1227] and Rastani[1228] thus the TC inference is based on the erroneously established facts and it is also incorrect.

533. Finally, in order to convict an Accused under JCE-III, the TC should have established that he willingly took the risk that a crime might occur[1229] In the present case the TV did not establish that the Accused willingly took that risk and concluded that he took the risk "knowingly". Knowingly and willingly are not synonymous, knowingly being much broader. Thus, the TC applied wrong legal standard for establishment of the *mens res* required for the JCE-III.

534. For all the reasons set forth in the 47th Ground, the Judgment should be reversed, the conviction against Praljak should be set aside on Count-22 and Count-23 and Praljak should be acquitted of these charges.

48th Ground: Errors related to Praljak's conviction for CAH

535. The *mens rea* of CAH is satisfied when the accused has the requisite intent to commit the underlying offence(s) with which he is charged, and when he knows that there is a generalized or sustematic attack on the civilian population and that his acts comprise part of that attack[1230] or at least he must have taken the risk that his acts were part thereof.[1231] Thus, the Accused knowledge that there is an attack on the civilian population, as well as knowledge that his act is part thereof, is required.[1232]

[1227] *Supra*, Ground 42,paras.465-468;
[1228] *Supra* Ground 44, paras.488-489;
[1229] *Supra*,para.526;
[1230] Kordic AJ,para.99, Blaskic AJ,para.124, Tadic AJ,para.248;
[1231] Kunarac AJ,paras.99,102, Sainovic AJ,para.270,271;
[1232] Kordic AJ,para.100, Blaskic AJ,para.125, Kunarac AJ,para.99,103;

536. The fact that an accused is convicted in the frame of the JCE does not change or replace elements of crimes defined in the Statute and the *mens rea* elements required for an offence listed in the Statute cannot be altered.[1233]

537. The TC found that the perpetrator of the crime must have knowledge of the attack on the civilian population and of the fact that his act is part of that attack,[1234] it failed to establish that Praljak had knowledge about the attack on civilian population and that his acts were part of that attack. The TC satisfied itself with general lump finding that the acts constituting the widespread and systematic attack on the Muslim civilian population of HZ(R)H-B were committed and that the perpetrators of these acts had knowledge of the attack and were aware that their acts were part of this attack[1235]. However, this finding, as the TC indicated in title preceding the relevant paragraph, concerns the direct perpetrators and not the Accused.

538. Having omitted to establish a required element of the *mens rea* of the Accused, the TC failed to establish all constitutive elements of the CAH. As no conviction can be pronounced if *mens rea* is not established, the Judgment should be reversed on Count-1, Count-2, Count-3, Count-6, Count-8, Count-10 Count-12, and Count-15 and Praljak should be acquitted of these charges.

49th Ground: Lack of reasoned opinion

539. The fair trial requirements of the Statute include the right of each accused to a reasoned opinion by the TC under Art.23 of the Statute and R98*ter*(C) of the Rules. A reasoned opinion ensures that the accused can exercise his right of appeal and that the AC can carry out its statutory duty to review these appeals.[1236]

540. As a general rule, a TC is required only to make findings on those facts which are essential to the determination of guilt on a particular count.[1237] The TC failed to provide adequate reasons for its conclusions on crucial issues of crimes falling under JCE-I responsibility and on Praljak responsibility for these crimes. The TC failed to provide

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[1233] Stakic TJ,para.437;
[1234] J.Vol-I,para.45;
[1235] J.Vol-IV,para.651;
[1236] Krajisnik AJ,para.139, Limaj AJ,para.81, Hadžihasanović AJ,para.13, Naletilić AJ,para.603; Kvočka AJ,para.23,288;
[1237] Krajisnik AJ,para.139 ; Hadžihasanović AJ,para13;

reasons for the CCP scope[1238] and for its expnsion in 06/1993.[1239] It also failed to explain how, when and why crimes for which it convicted Praljak with respect to GVM,[1240] when only the initial CCP existed, entered in CPP.

541. In addition, the TC convicted Praljak for murders under JCE-I,[1241] although it found that murders in Mostar cannot be included in CCP.[1242] If murders in Mostar did not form part of CCP, it is not clear how Praljak could be convicted for these crimes under JCE-I. Furthermore it is not clear how certain crimes entered in CCP in some municipalities and did not enter in other municipalities. If CCP is not identical for all municipalities, then they were several CCP and thus several JCE. The TC did not give any reasons which would enable the Accused to understand his conviction for murders in Mostar and other municipalities.

542. The TC found Praljak guilty for crimes committed in GV, Prozor, Mostar and Vares and in DC Gabela&Dretelj.[1243] The TC concluded that Praljak is held responsible not only for these crimes but for all of the crimes forming part of the CCP. As stated before, the TC did not clearly establish crimes that were included in CCP. It failed also to establish which crimes formed part of the initial CPP and crimes which were added later. The TC finding is completely unclear as Praljak cannot know to what crimes the TC refers and if it found him guilty also for crimes committed in Jablanica, Stolac, Ljubuski and Capljina. Except the indication that unspecified crimes fall under unspecified CCP, the TC did not give any reasons why it holds Praljak responsible for them.

543. The TC rendered incomprehensive and contradictory Judgment without reasoned opinion with respect to JCE-I core crimes and Praljak responsibility, central issues for criminal responsibility, denying therefore Praljak's right on effective appeal.

544. The lack of reasoned opinion affect TC findings on CCP and thus the whole Judgment, therefore for all the reasons set forth in the 49th Ground, the Judgment should be reversed on all Counts and Praljak should be acquitted of all charges.

[1238] J.Vol- IV,paras.44,64,68; Supra, Grounds 7.1,paras.132-134, Ground 39.2,paras.412-414;
[1239] J.Vol- IV,para.59; Supra, Grounds 7.1,paras.132-134,Ground 7.2,para.137;
[1240] J.Vol- IV,para.630;
[1241] *Idem*;
[1242] J.Vol- IV,para.70 and 72;
[1243] J.Vol- IV,para.630;

50th Ground: Errors related to admission of Mladic diaries

545. The improper admission of Mladic diaries affect findings on Praljak's responsibility. Therefore for all the reasons set forth in the 50th Ground, the Judgment should be reversed on all Counts and Praljak should be acquitted of all charges.

50.1 The TC made errors when it admitted Mladic diaries into evidence

546. Under R89(C) and (D) of the Rules, the TC may admit any relevant evidence which it deems to have probative value and may exclude evidence if its probative value is substantially outweighed by the need to ensure a fair trial. If the TC properly applied these rules, it should not have admitted Mladic diaries.[1244]

547. When the TC admitted Mladic diaries it completely ignored the well-established case-law for admission of evidence in re-opening according to which only in exceptional circumstances where the justice of the case so demands the TC will exercise its discretion to allow the Prosecution to adduce new evidence after the parties to a criminal trial have closed their case.[1245] The strict application of the criteria developed must lead a professional judge to deny these submissions for the reason that the reopening of a case cannot occur at a late stage of the proceedings save in exceptional circumstances, and then the TC is obliged to proceed circumspectly in order to spare the accused from becoming the victim of an injustice, and, in addition, the probative value of this evidence must more than outweigh the prejudice thereof.[1246] The TC did not establish exceptional circumstances which warranted the admission of Mladic diaries and it did not give proper consideration to prejudice caused by the admission to the Accused.

548. The admitted Mladic diaries treat directly with acts and conduct of the Accused,[1247] but the Accused did not have proper opportunity to challenge the evidence.[1248] Thus the admission of these diaries violated the fundamental Accused right to fair trial.

549. The TC did not respect principles and standards required for admission of documents under R89 of the Rules.

[1244] P11376, P11377,P11380, P11386,P11388, P 11389,P 11391, P 11392;
[1245] Celebici Decision, 19/08/98,para.27;
[1246] Decision 06/10/10 Diss.Op,p.13;
[1247] P11380,p.1-3;
[1248] *Infra,* Ground 50.2,paras.559-565;

550. The authenticity of diaries was not properly established, the TC refused to undertake the graphological analysis of the diaries[1249] and Defence could not do it as it could not obtain the original documents.[1250] The Mladic diaries concern the essential issues[1251] and therefore there must not be even a shadow of a doubt concerning the authenticity of the Notebooks.[1252] The TC satisfied itself with Milovanovic statement according to which Milovanovic recognized Mladic handwriting.[1253] Milovanovic is not a handwriting expert and his statement should not have been accepted without further verification as it does not ensure from a technical perspective that these writings originate in whole or in part from Mladic's hand.[1254]

551. The TC relied on decision of another TC in another case[1255] which is completely improper in a criminal case.

552. Even if Mladic was the author of these documents, the TC did not establish in which circumstances these diaries were written and if their content represents the objective description of events or author subjective impressions and interpretations. Milovanovic said that some portions of diaries were written by someone else[1256] and that Mladic often wrote on loose sheets of paper.[1257] Thus, it is completely unclear if notes in diaries were written during the meetings or later. The admission of diaries without hearing their authors is sensible as it could result in unfairness to the Accused.[1258]

553. The TC treated Mladic diaries contrary to principles that it affirmed[1259] regarding the assessment of evidence and standard of proof and omitted to give reasons about their probative values although it based some key findings regarding existence of the JCE and the Accused role in it solely on the basis of these diaries.[1260]

554. Although the TC affirmed that it gave specific consideration to the source of the document, to its author, to the possibility of contradictions with other exhibits and to the

[1249] Decision 06/10/10,para.51;
[1250] Decision 23/11/10,paras.26,27;
[1251] Decision 06/10/10,para.59;
[1252] Decision 06/10/10 Diss.Op,p.5;
[1253] P11391,para.5;
[1254] Decision 06/10/10 Diss.Op,p.5;
[1255] Decision 06/10/10,paras.47,51;
[1256] P11391,paras.17-21;
[1257] P11391,para.12;
[1258] Delic Decision, 16/01/08,para.20;
[1259] J.Vol-I,paras.275,382,402,404;
[1260] J.Vol-IV,para.18, FN n°52,53,54;

fact that the Parties had contested its authenticity and that it has accounted for the fact that the Parties did not have an opportunity to put the document to the test in court,[1261] it did not apply any of this principles on assessment of Mladic diaries.

555. The TC also stated that it hold that evidence not subjected to adversarial argument in court, such as written statements admitted under R92*bis* and R92*quater* could be taken into account to establish the constituent elements of the crimes and the modes of responsibility of an accused only if it corroborated or would be corroborated by other evidence admitted into the record.[1262] While the TC specifically referred to written statements admitted under R92*bis* and R92*quater*, it should have applied this principle also to Mladic diaries, but it omitted to do it and used these diaries without any corroboration.[1263]

556. The TC affirmed that it gave consideration to hearsay evidence only insofar as it was corroborated by other evidence admitted into the record and that it decided not to rely on evidence that could be characterized as hearsay whose source is unknown.[1264] Mladic diaries are a hearsay evidence which source is at least uncertain, yet the TC failed to apply in their assessment principles that it announced to be applied on hearsay evidence.

557. The TC is not required to articulate every step of its reasoning for each particular finding it makes nor to set out in detail why it accepted or rejected a particular testimony[1265] however, the requirements to be met by the TC may be higher in certain cases.[1266] The TC should have given its reasons regarding the probative value of Mladic diaries because these documents were admitted in a very late stage of trial,[1267] the Accused strongly opposed to their admission[1268] and contested, *inter alia*, their authenticity[1269].The TC stated that it decided to limit the admission of the evidence presented in the Motion to evidence essential to the case, namely the evidence going directly to the alleged participation of certain accused in the JCE[1270] which indicates

[1261] J.Vol-I,para.382;
[1262] J.Vol-I,para.402;
[1263] J.Vol-I,paras.18;
[1264] J.Vol-I,paras.404;
[1265] Krajisnik AJ,para.139
[1266] Krajisnik AJ,para.139, Kvočka AJ,para.24;
[1267] Decision 06/10/10;
[1268] Response 23/07/10;
[1269] Response 23/07/10,paras.8-13;
[1270] Decision 06/10/10,para.59;

that the evidence is potentially highly prejudicial to the Accused who did not have opportunity to refute it.

558. As the TC informed the parties that a conclusive assessment of the relevance, reliability and probative value of the evidence would be done only at the close of the proceedings once all inculpatory and exculpatory evidence being on the record,[1271] it should have provided a reasoned opinion about the probative weight of Mladic diaries and their impact on its findings.

50.2. <u>The TC made errors when it denied to Praljak the right to challenge inculpatory evidence</u>

559. The TC denied the Accused right to re-open its case and to refute the Mladic diaries.[1272] Thus, the TC failed to assure the equality of arms between parties and refused to the Accused his right to fair trial.

560. The right to fair trial is fundamental Accused right, guaranteed by Art.21.2 and 21.4.(e) of the Statute. According to Art.20.1 of the Statute, the TC has a duty to ensure that a trial is fair and expeditious and that proceedings are conducted in accordance with the rules of procedure and evidence, with full respect for the rights of the accused.

561. The principle of equality of arms is inherent in the concept of fair trial.[1273] This principle shall assure to both parties an equal opportunity to present the case under conditions that do not place the Accused at an appreciable disadvantage vis-à-vis his opponent.[1274] Furthermore, both parties shall have knowledge of and comment on the observations filed or evidence adduced by either party.[1275]

562. The TC admitted in extremely late stage Mladic Diaries at the Prosecution request[1276] and denied the Accused request to re-open his case in order to refute the newly admitted Prosecution evidence.[1277] Thus the TC deprived the Accused of his right to present his own case in same conditions as the Prosecution did which is an essential element of the fair trial.

[1271] *Idem*;
[1272] Decision 23/11/10;
[1273] Brdjanin Decision 06/05/02,para.22;
[1274] *Idem*;
[1275] Kordic Decision, 11/09/01,para.5;
[1276] Decision 06/10/10;
[1277] Decision 23/11/10;

563. The TC denied the Accused request to testify *viva voce* and to refute himself the Mladic diaries evidence.[1278] The TC considered that the Accused Defence could exercise its right to respond in its closing brief and in its closing arguments.[1279] Thus the TC did not make any difference about Counsel submissions which are not and cannot be evidence and the Accused testimony which is evidence. The admitted Mladic diary concern the Accused acts and conduct and describe a meeting which the Accused would have attended.[1280] The Accused testified in his own case and it would be logical and legally correct to give him opportunity to testify about the facts which concern him directly and evidence which was not available when he testified.

564. While the TC acknowledged that the evidence proposed by Praljak intended to refute the intention of the BiH Croats pursuant to their meeting with Serb authorities to commit crimes in order to achieve their goal of a Herceg-Bosna dominated by Croats[1281], it found that the allegations the Praljak Defence intends to refute do not come under the scope of the motions to reopen the case.[1282] This conclusion proved to be completely incorrect as the TC used Mladic diaries in order to establish the existence of the JCE and its CCP[1283] which would be precisely Croat domination over Herceg Bosna.[1284]

565. Having deprived the Accused of the right to refute Prosecution evidence admitted not only after the closure of the Prosecution case but also after the closure of the Accused case, the TC denied to the Accused his fundamental right to fair trial and put him in a sensibly unfavorable position with respect to the Prosecution.

[1278] Decision 23/11/10,para.28;
[1279] *Idem*;
[1280] P11380,p.1-3;
[1281] Decision 23/11/10,para.22;
[1282] *Idem*;
[1283] J.Vol-IV,paras.14,18,43;
[1284] J.Vol-I,para.43;

51st Ground: Errors related to refusal to admit exculpatory evidence

566. The TC Decisions denying the admission of evidence proposed by Praljak put him in unequal and unfavorable position. The TC applied stricter standards to Praljak proposed evidence than to evidence proposed by the Prosecution.[1285]

567. From the beginning of the trial, the parties were called to use extensively R92*bis/ter* statements[1286]. When Praljak requested admission of R92*bis* statements,[1287] the TC denied his request and called Praljak to refile later his request[1288]. On 14-09-09, Praljak requested again the admission of R92*bis* statements.[1289] Four months after Praljak closed his case the TC denied Praljak request and ordered the Accused to file renewed request with maximum 20 statements/transcripts,[1290] specifying that it will not accept statements exceeding 30 pages.[1291] The Prosecution was not limited either in number of tendered R92*bis* statements or in their length and more that 100 Prosecution R92*bis* statements were admitted.[1292]

568. The aforementioned decision denied to the Accused the right to fair trial as he was put in unfavorable position.[1293] The TC did not indicate, before Praljak presented his case, that the possibility to tender R92bis statement would be limited. If he knew that the TC would limit R92bis statements, he would organize the presentation of his case differently.

569. The AC granted partly the Accused appeal with respect to page-limit considering that the TC order was not sufficiently clear.[1294] Finally, only six R92*bis* statements tendered by Praljak were admitted.[1295]

570. In its R92*bis* Decisions, and in other decisions regarding evidence tendered by Praljak, the TC did not apply the standards required for admission of documents and it

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[1285] DecisionR92*bis* 16/02/10,DissOp,p.5
[1286] T.6721-6722,T.7533,T.9983-9984,T.10090,T.27333,T.27339,T.27340;
[1287] Motion 27/01/09;
[1288] Decision 06/02/09;
[1289] Motion 14/09/09;
[1290] DecisionR92*bis* 16/02/10;
[1291] *Idem*,para.47;
[1292] DecisionR92*bis* 16/02/10,DissOp,p.3;
[1293] *Supra*, Ground 50.2,paras.561-562;
[1294] Decision 01/07/10,para.38
[1295] DecisionR92*bis* 06/10/10;

continuously applied the higher standard than that applied on Prosecution evidence[1296]. Instead of assessment of relevance and *prima facie* probative value of documents, the TC undertook the assessment of their overall probative value and weight that should have been done only at the close of the proceedings[1297]. Having applied the wrong standard, the TC denied admission of statements relating to mujahedins[1298] in Central Bosnia as irrelevant. This position was erroneous as the JCE was allegedly implemented by unfounded intimidation of Croats[1299] which resulted in displacement of population.[1300]

571. The TC also applied wrong standards on documents aimed to demonstrate the Accused pattern of conduct[1301] relevant for the Accused *mens rea* and documents on IAC and JCE[1302]. The incorrect assessment of submitted documents admissibility led to denial of admission of highly relevant documents directly linked to issues at trial.

572. The Trial Chamber considered that documents tendered by Defence were not authentic as they did not have stamp or signature,[1303] while during the trial it admitted the Prosecution documents with identical defects.[1304]

573. Other submitted documents were not admitted as irrelevant, while all of them were of outmost relevance for the case as they concerned Praljak's control over HVO and CCP.[1305] Having constantly refused[1306] to admit relevant documents, favorable to the Accused, the TC deprived itself of possibility to correctly assess the charges against the Accused and it deprived the Accused of his fundamental right to fair trial. It also deprived the AC of crucial evidence which would provide to it a complete view over the situation.

1296 DecisionR92*bis* 16/02/10,DissOp,p.5;
1297 Decision16/02/10,DissOp;
1298 3D03715,3D03668,3D03669,3D03638; 3D03238, 3D03700, 3d03690, 3D03573;
1299 Indictment, paras.17.d,39.a
1300 J.Vol-IV,para.55; *Supra*, Ground 6.3,paras.119-124;
1301 Order 15/02/10, 3D02504,3D02218, 3D02859**,** 3D02505**,**3D02608, 3D02891;
1302 3D00542, 3D01285,3D02186,3D01291,3D01294,3D01295, 3D01301,3D01302,3D01304, 3D02633, 3D01077, 3D01078;
1303 Decision 16/02/10, Decision 01/04/10; 3D00879, 3D00990,3D01200, 3D01688,30D1136;
1304 P01825,P00622, P02476,P01806, P03700,P06073, P08556;
1305 3D02610, 3D00936,3D02026, 3D01941,3DO0773, 3D00973,3D02630, 3D02406;
1306 Order 07/12/07, Order 14/01/10 Order 15/02/10; Decision 01/04/10;

574. The TC rejected admission of over 100 documents tendered through Praljak's testimony[1307] because they would not have sufficient link to Indictment or would not be relevant.These documents were commented by the Accused and needed for full comprehension of his testimony, they also seem to be relevant, related to Indictment, and to have probative value[1308].

575. The submitted evidence were relevant in explaining any of the incidents connected to the JCE. If admitted, documents would have provided alternative plausible explanations to the benefit of Praljak.

576. Thus the TC abused its discretionary power when it denied admission of R92*bis* Defence statements and submitted documents and deprived the Accused of his fundamental right to fair trial. The denial of admitted documents affect the whole Judgment as the TC rendered it on the basis of fragmental evidence without having the complete picture of event. Therefore, for all reasons set forth in the 51th Ground, the Judgment should be reversed on all Counts and Praljak should be acquitted of all charges.

53rd Ground: Errors related to Sakic expert report

577. The TC considered that the relationship between the Pilar Institute, which *Šakić* continues to direct, and Croatia, and likewise between the Institute and the CIS demonstrate that close ties united and continue to unite the witness and the Croatian authorities.[1309] As allegations about Croatia's role in the conflict in BiH were frequently debated by the parties, the TC concluded that the ties between the Pilar Institute, *Šakić*, the Croatian Government and the CIS cast doubt onto *Šakic*'s impartiality as an expert[1310].

578. The TC simply accepted the Prosecution allegations without any verification and impartial and independent assessment. The TC did not examine if there is any particular reason which would affect the expert's impartiality and did not give any reason why and how the fact that the expert is a State organ employee could influence his analysis. If the

[1307] Order 15/02/2010, Annex;
[1308] Order 15/02/2010,Diss.Op;
[1309] J.Vol-I,para.377;
[1310] *Idem*;

TC considered that the expert links with the RC and its organ had some impact on his impartiality, it should have properly assessed the impact of these links to his credibility.[1311]

579. The fact that the expert has ties with the RC is irrelevant in the present case. The RC is not a party to this procedure. According to case-law even the close links between an expert and the party in procedure do not in themselves discredit the expert. The Tribunal constantly hold that the mere fact that an expert witness is employed by a party does not disqualify him from testifying as an expert witness.[1312] The ECHE considered that the fact that an expert is employed by the same institute or laboratory as the expert on whose opinion the indictment is based, does not in itself justify fears that he will be unable to act with proper neutrality.[1313]

580. Thus, if the TC considered that the links between the expert and the RC had some impact on his impartiality it should have properly assessed this impact and give a reasoned opinion about that. In failing to do that, the TC showed partial approach to the evidence and violated the Accused right to fair trial. The TC partial approach is accentuated by the fact that the TC was not bother by the fact that the Prosecution expert was the Prosecution employee.[1314]

581. The TC found that the expert report addresses the issue of effective control theoretically, without any bearing on the conflict with which the TC has been seized and that the credibility and probative value of the report is very weak as the expert failed to review any document that specifically addresses the BiH conflict and particularly the documents from the HVO command.[1315] The TC obviously misunderstood the scope and objectives of Sakic's report and testimony. His report treated the socio-psychological aspects of the War in BiH[1316]. Sakic has Ph D in psychology[1317], he has no military background which would permit him to analyze military documents and comment on the HVO chain of command. This fact was well known to the TC when it

[1311] Lukic AJ,para.62;
[1312] Decision Popovic, 30/01/08,paras.20,23, Brdjanin Decision 03/06/03,p.4;
[1313] ECHR, J.Brandstetter,para.44;
[1314] Tomljanovich,T.5928-5929;
[1315] J.Vol-I,para.378;
[1316] 3D03721;
[1317] 3D03727;

accepted that the witness testify as an expert in socio-psychology on issues relating to the socio-psychological context of the war in BiH between 1991 and 1995[1318].

582. Finally, the TC misunderstood the expert task in a criminal trial. An expert appearing before the Tribunal is a person whom by virtue of some specialized knowledge, skills or training can assist the trier of fact to understand or determine an issue in dispute[1319]. According to ECHR an expert steps outside the duties attaching to his function by dealing in his report with matters relating to the assessment of evidence.[1320] Thus, it is not up to expert to assess the evidence and draw conclusions as the expert cannot substitute himself to the Judges.

583. The objective of the expert report and testimony was to explain the war as generally violent and chaotic situation which is important for proper assessment of evidence and correct establishment of the facts. The expert report and testimony were aimed to clarify for the TC the situation in which the Accused was and in which he acted and as such they were extremely important for proper assessment of the Accused responsibility. However it was the TC task to evaluate the evidence and to assess the effectiveness of the control that the Accused could have had over the HVO soldiers.

584. Having put aside Sakic's report, the TC ignored relevant and probative evidence which any reasonable and impartial trier of fact would take into account and put the Defence in an unfavorable position with respect to the Prosecution and thus it deprived the Accused of his fundamental right to fair trial.

585. For all the reasons set forth in the 53rd Ground, Sakic's report[1321] and testimony[1322] shall be taken into account, the Judgment should be reversed on all Counts and Praljak should be acquitted of all charges.

54th Ground: Errors related to [REDACTED]

586. [REDACTED].[1323] [REDACTED][1324] [REDACTED].[1325] [REDACTED].[1326]

[1318] Order 01/12/09,p.2;
[1319] Popovic Decision, 11/10/07,p.2;
[1320] ECHR,J.Brandstetter,para.45;
[1321] 3D03721;
[1322] Stakic,T.45590-45777;
[1323] [REDACTED];

587. [REDACTED].[1327] [REDACTED],[1328] [REDACTED].

588. [REDACTED],[1329] [REDACTED][1330] [REDACTED][1331] [REDACTED],[1332] [REDACTED].

589. [REDACTED].[1333] [REDACTED],[1334] [REDACTED][1335] [REDACTED].

590. [REDACTED].[1336] [REDACTED].[1337]

591. [REDACTED].

55th Ground for Appeal: Errors related to Praljak's testimony

592. As the errors committed with respect to Praljak testimony affect the Judgment in its wholeness, the Judgment on all Counts and Praljak should be acquitted of all charges.

55.1. The TC made errors when it denied to Praljak the right to reasoned opinion with respect to his credibility

593. The fair trial requirements of the Statute include the right of each accused to a reasoned opinion by the TC.[1338]

594. Praljak testified extensively in his own case from 04-05-09 to 10-09- 2009[1339] and his testimony consists of 5484 pages of trial transcript.

595. The TC recognized that the Prosecution relied extensively on the Accused testimony in support of certain allegations, particularly those pertaining to his responsibility.[1340] While the TC found that the Accused testimony was credible on certain points and

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[1324] [REDACTED];
[1325] [REDACTED];
[1326] [REDACTED];
[1327] [REDACTED];
[1328] [REDACTED];
[1329] [REDACTED];
[1330] [REDACTED];
[1331] [REDACTED];
[1332] [REDACTED];
[1333] [REDACTED];
[1334] [REDACTED];
[1335] [REDACTED];
[1336] [REDACTED];
[1337] *Idem*;
[1338] *Supra,* Ground 49,para.539;
[1339] Praljak,T.39483-44967;
[1340] J.Vol-I,para.399;

affirmed that it relied on his testimony in those instances, it found also that his testimony was hardly credible on others, in particular when he testified seeking to limit his responsibility in respect of certain allegations.[1341]

596. The TC did not give any indication to the Accused which portions of his testimony were considered as credible and which were not. Neither it gave to the Accused reasons why it considered some portions of his testimony as hardly credible. The mere statement that the Accused testified seeking to limit his responsibility is certainly not sufficient to be considered as reasoned opinion on one of the crucial findings in the case.

597. The TC stated that probative value to be assigned to the testimony of an accused electing to appear as a witness must be assessed during deliberations in light of the entire record.[1342] The Accused testimony shall be assessed as any other evidence and the sole fact that the Witness is also the Accused in the case shall not diminish the credibility of the Accused evidence.

598. Reasoned decisions serve the purpose of demonstrating to the parties that they have been heard, thereby contributing to a more willing acceptance of the decision on their part.[1343] Thus, it is even more important to give reasons which portions of the Accused testimony were not considered as credible and why.

599. In the present case, the TC failed to give to the Accused a reasoned opinion regarding the credibility of his testimony. While the TC is not bound to give reasons for each piece of evidence, it should certainly have done it for the Accused who testified over four months and which testimony of over 5.000 pages of the trial transcript[1344] covers all relevant issues and particularly those pertaining to his responsibility.

55.2. The TC made errors when it failed to properly assess Praljak's testmony

600. The Trial Chamber omitted to properly assess the Accused testimony which it frequently misunderstood, misinterpreted and distorted or ignored.

[1341] *Idem*;
[1342] J.Vol-IV,para.397;
[1343] ECHR, Guide,para.111;
[1344] *Supra,* para.594 ;

601. Thus it found that Praljak's testimony contained inherent contradictions when the evidence was coherent[1345] or gave to Praljak's words the inappropriate meaning which suited to it preconceived suppositions[1346]. In some situation, it ignored Praljak's testimony even when it was confirmed by other evidence[1347]. Taking into account length and extreme relevance of Praljak testimony, the TC should have given more consideration to his testimony.

602. Having failed to give proper consideration to Praljak testimony and to properly assess it, the TC missed important and relevant evidence and therefore reached erroneous conclusions.

III. CONCLUSIONS

603. For all of the reasons set forth under Grounds 1-55, whether_taken individually and/or cumulatively, the Judgement must be vacated, the conviction of Praljak on all Counts must be set aside and Praljak must be acquitted of all charges.

604. Alternatively, the Judgement must be quashed and remanded to the TC for trial de novo.

Respectfully submitted,

By

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Counsel for the Accused Slobodan Praljak

Word Count: 49.900

[1345] J.Vol-III,para.322, *Supra*, Ground 45.1,para.495;
[1346] J.Vol-IV,para.469, *Supra*, Ground 38.1,para.378; J.Vol-IV,para.527, *Supra*,Ground,39.1,para.404 ; J.Vol-IV,para.531, *Supra*, Ground 40.4,para.437;
[1347] J.Vol-IV,para.556,*Supra*, Ground 42,para.462;

ANNEX 1

SUMMARY

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ANNEX 2

ABREVIATIONS AND REFERENCES

ABREVIATIONS

Abbreviation	Full reference
ABiH	Army of the Republic Bosnia and Herzegovina
ABiHMS	Main Staff of the Army of the Republic Bosnia and Herzegovina
AC	Appeals Chamber of the Tribunal
ATG	Anti-Terrorist Group
BiH	Bosnia and Herzegovina
Bridge	Old Bridge in Mostar
CAH	Crimes against humanity
CCP	Common criminal plan / Common criminal purpose
CDNSC	Croatian Defence and National Security Council
CIL	Customary Interntional Law
CIS	Croatian Inteligence services
CS	Supreme Command
DC	Detention centers
DD	Department of Defence
Diss.Op.	Judge Jean-Claude Antonetti Dissenting Opinion
EC	European Community
ECCBiH	European Community Conference on Bosnia and Herzegovina
ECCC	Extraordinary Chambers in the Courts of Cambodia
ECMM	European Community Monitoring Mission

ECHR	European Court of Human Rights
FN	Footnote
GC	Geneva Conventions of 1949
GCAP	Geneva Conventions Additional Protocols
GV	Gornji Vakuf
GVM	Gornji Vakuf municipality
GVT	Gornji Vakuf town
HDZ	Croatian Democratic Union
HOS	Croatian Defence Forces
HC	Convention for the Protection of Cultural Property in the Event of Armed Conflict with Regulations for the Execution of the Convention, 1954
HCSP	Convention for the Protection of Cultural Property in the Event of Armed Conflict with Regulations for the Execution of the Convention, 1954, Second Protocol
HR	1907 Hague Regulations
HV	Army of the Republic of Croatia
HVO	Croatian Defence Council
HVOMS	Croatian Defence Council Main Staf
HZ(R)H-B	Croatian Community (Republic) of Herceg-Bosna
IAC	International Armed Conflict
IC	International Community
ICC	International Criminal Court
ICCPR	International Covenant on Civil and Political Rights,
ICESCR	International Covenant on Economic Social and Cultural Rights
ICJ	International Court of Justice
ICL	International Criminal Law

ICRC	International Committee of the Red Cross
ICTR	International Criminal Tribunal for Rwanda
IHL	International humanitarian law
IHL Rules	Rules of customary international humanitarian law
IO	International Organisaton(s)
IT	International Tribunal
J/Judgment	Judgment issued by Trial Chamber on 29 May 2013 in Case n°IT-04-74, the Prosecutor v. Slobodan Praljak
JA	Yugoslav Army
JCE	Joint criminal enterprise
JNA	Yugoslav People's Army
KB	*Kaznjeniĉka Bojna*, Convicts Battalion
MD	Ministry of Defence
MMD	Mostar Military District
MP	Military police
MPA	Military Police Administration
MS	Main Staff
MSF	Médecin sans frontières
MTS	Material and Technical Equipment
ODPR	Office for Displaced Persons and Refugees
NFC	Natural and foreseeable consequence
OZ	Operative zone
OZ-SEH	Operations zone South-East Herzegovina
RBiH	Republic of Bosnia and Herzegovina

R	Rule
RC	Republic of Croatia
Rules	Rules of Procedure and Evidence
SCSL	Special Court for Sierra Leone
SFRY	Socialist Federal Republic of Yugoslavia
SIS	HVO Information and Security Service
SPABAT	Spanish Battalion
SRBiH	Socialist Republic of Bosnia and Herzegovina
TC	Trial Chamber
TO	Territorial Defence
VOPP	Vance-Owen Peace Plan
VRS	Army of the Republic of Srpska
UDHR	Universal Declaration of Human Rights
UN	United Nations
UNCIVPOL	United Nations Civilian Police
UNHCR	United Nations High Commissioner for Refugees
UNMO	United Nations Military Observers
UNPROFOR	United Nations Protection Forces
UNSC	United Nations Security Council
VLCW	Violations of the laws and customs of war

DOCUMENTS
THE PROSECUTOR V. JADRANKO PRLIC ET AL
(IT-04-74)

Abbreviation	Full reference
Judgment	Judgment issued by Trial Chamber on 29 May 2013
Diss.Op.	Judge Jean-Claude Antonetti Dissenting Opinion
Decision 07/09/06	Decision on Prosecution Motions for Judicial Notice of Adjudicated Facts of 14 and 23 June 2006, issued by the TC on 7 September 2006
Decision 06/02/09	Decision on Praljak Defence Motion for Admission of Written Statements Pursuant to Rule 92 bis of the Rules dated 6 February 2009
Order 15/02/10	Order to Admit Evidence Relating to the to Testimony of Slobodan Praljak issued on 15 February 2010
Decision 16/02/10	Public Decision on the Order to Admit Evidence Relating to Testimony of Slobodan Praljak issued on 16 February 2010
Decision 16/02/10 Diss.Op	Dissenting opinion of the Presiding Judge on the Public Decision on the Order to Admit Evidence Relating to Testimony of Slobodan Praljak rendered by Judge Jean-Claude Antonetti on 16 February 2010
DecisionR92bis 16/02/10	[REDACTED]
DecisionR92bis 16/02/10 Diss.Op	Dissenting opinion to Confidential Decision on Slobodan Praljak's Motion to Admitt Evidence Pursuant to Rule 92 bis of the Rules, rendered by Judge Jean-Claude Antonetti 16 February 2010
Decision 01/04/10	Decision on Praljak Defence Motion for Admission of Documentary Evidence issued on 1 April 2010
Decision 01/07/10	Decision on Slobodan Praljak's Appeal of the Trial Chamber Refusal to Decide upon Evidence Tendered Pursuant to Rule 92 bis, issued by the Appeals Chamber on 1 July 2010
DecisionR92*bis* 06/10/10	[REDACTED]
Decision 06/10/10	Decision on the Prosecution Motion to Re-Open its Case issued by Trial Chamber on 6 October 2010

Decision 06/10/10 Diss.Op	Dissenting Opinion of the Presiding Judge of the Chamber Jean-Claude Antonetti Concerning the Decision on the Prosecution Motion to Re-open its Case rendered by Judge Jean-Claude Antonetti on 6 October 2010
Decision 23/11/10	Decision on Praljak Defence Motion to Reopen its Case issued by Trial Chamber on 23 November 2010
Order 07/12/07	[REDACTED]
Order 01/12/09	Order on Admission of Evidence Relating to Expert Witness Vlado Sakic, issued on 1 December 2009, page 2;
Order 14/11/10	Order to Admit Evidence Related to Witness 4D-AB issued on 14 January 2010
Motion 27/01/09	Slobodan Praljak's Motion for Admission of Written Statements Pursuant to rule 92 bis filed on 27 January 2009
Motion 14/09/09	Slobodan Praljak's Motion for Admission of Written Evidence in lieu of *Viva Voce* Testimony Pursuant to Rule 92 bis filed on 14 September 2009
Response 23/07/10	Slobodan Praljak's Response to the Prosecution Motion to Re-open, filed on 23 July 2010

ICTY CASE-LAW AND DOCUMENTS

Abbreviation	Full Reference
Aleksovski AJ	Appeal Judgment issued on 24 March 2000 in Case n° IT-95-14/1-A, the Prosecutor v. Zlatko Aleksovski
Blagojevic AJ	Appeal Judgment issued on 9 May 2007 in Case n° IT-02-60-A, the Prosecutor v. Vidoje Blagojevic and Dragan Jokic
Blagojevic TJ	Judgment issued on 17 January 2005 in Case n° IT-02-60-T, the Prosecutor v. Vidoje Blagojevic and Dragan Jokic
Blaskic AJ	Appeal Judgment issued on 29 July 2004 in Case n°IT-95-14-A, the Prosecutor v. Tihomir Blaskic
Brdjanin AJ	Appeal Judgment issued on 3 April 2007 in Case n°IT-99-36-A, the Prosecutor v. Radoslav Brdjanin
Brdjanin TJ	Judgment issued on 1 September 2004 in Case n°IT-99-36-T, the Prosecutor v. Radoslav Brdjanin
Celebici AJ	Appeal Judgment issued on 20 février 2001 in Case n°IT-96-21-A, the Prosecutor v. Zejnil Delalic et al
Celebici TJ	Judgment issued on 16 November 1998 in Case n° IT-96-21-T, the Prosecutor v. Zejnil Delalic et al.
Galic AJ	Appeal Judgment issued on 30 November 2006 in Case n°IT-98-29-A, the Prosecutor v. Stanislav Galic
Gotovina TJ	Judgment issued on 15 April 2011 in Case n°IT-06-90-T, the Prosecutor v. Ante Gotovina et al
Hadzihasanovic AJ	Appeal Judgment issued on 22 April 2008 in Case n°IT-01-47-A, the Prosecutor v. Enver Hadzihasanovic et Amir Kubura
Hadzihasanovic TJ	Judgment issued on 15 March 2006 in Case n°IT-01-47-T, the Prosecutor v. Enver Hadzihasanovic et Amir Kubura
Halilovic AJ	Appeal Judgment issued on 16 October 2007 in Case n° IT-01-48-A, the Prosecutor v. Sefer Halilovic
Haradinaj TJ	Judgment issued on 2 April 2008 in Case n°IT-04-84-T, the Prosecutor

	v. Ramus Haradinaj et al
Kordic AJ	Appeal Judgment issued on 17 December 2004 in Case n°IT-95-14/2-A, the Prosecutor v. Dario Kordic and Mario Cerkez
Kordic TJ	Judgment issued on 26 February 2001 in Case n°IT-95-14/2-T, the Prosecutor v. Dario Kordic and Mario Cerkez
Krajisnik AJ	Appeal Judgment issued on 17 March 2009 in Case IT-00-39-A, the Prosecutor v. Momcilo Krajisnik
Krajisnik TJ	Judgment issued on 27 September 2006 in Case IT-00-39-T, the Prosecutor v. Momcilo Krajisnik
Krnojelac AJ	Appeal Judgment issued on 17 September 2003 in Case n°IT-97-25-A, the Prosecutor v. Milorad Krnojelac
Krstic TJ	Judgment issued on 2 August 2001 in Case n°IT-97-25-T, the Prosecutor v. Radislav Krstic
Kunarac AJ	Appeal Judgment issued on 12 July 2002 in Case n°IT-96-23& IT-96-23/1-A, the Prosecutor v. Dragoljub Kunarac et al
Kvocka AJ	Appeal Judgment issued on 28 February 2005 in Case n° IT-98-30/1-A, the Prosecutor v. Miroslav Kvocka et al
Limaj AJ	Appeal Judgment issued on 27 septembre 2007 in Case n° IT-03-66-A, the Prosecutor v. Fatmir Limaj et al
Lukic AJ	Appeal Judgment issued on 4 December 2012 in Case n° IT-98-32/1-A, the Prosecutor v. Milan Lukic and Sredoje Lukic
Martic AJ	Appeal Judgment issued on 8 October 2008 in Case n°IT-95-11-A, the Prosecutor v. Milan Martic
Martic TJ	Judgment issued on 12 June 2007 in Case n°IT-95-11-T, the Prosecutor v. Milan Martic
Milosevic AJ	Appeal Judgment issued on 12 November 2009 in Case n°IT-98-29/1-A, the Prosecutor v. Dragomir Milosevic
Milutinovic TJ	Judgment issued on 26 February 2009 in Case n°IT-05-97-T, the Prosecutor v. Milan Milutinovic et al
Mrksic AJ	Appeal Judgment issued on 5 May 2009 in Case IT-85-13/1- A, the

	Prosecutor v. Mile Mrksic and Veselin Sljivancanin
Naletilic AJ	Appeal Judgment issued on 3 May 2006 in Case n°IT-98-34-A, the Prosecutor v. Mladen Naletilic and Vinko Martinovic
Naletilic TJ	Judgment issued on 31 March 2003 in Case n°IT-98-34-T, the Prosecutor v. Mladen Naletilic and Vinko Martinovic
Oric TJ	Judgment issued on 30 June 2006 in Case n°IT-03-6_-T, the Prosecutor v. Naser Oric
Perisic AJ	Appeal Judgment issued on 28 February 2013 in Case n°IT-04-81-A, the Prosecutor v. Momcilo Perisic
Popovic TJ	Judgment issued on 10 June 2010 in Case n°IT-05-88-T, the Prosecutor v. Vujadin Popovic et al
Sainovic AJ	Appeal Judgment issued on 23 January 2014 in Case n°IT-05-97-A, the Prosecutor v. Nikola Sainovic et al
Simic TJ	Judgment issued on 17 October 2003 in Case n° IT-95-9-T, the Prosecutor v. Blagoje Simic
Stanisic TJ	Judgment issued on 30 May 2013 in Case n°IT-03-69-T, the Prosecutor v. Jovica Stanisic and Franko Simatovic
Stakic AJ	Appeal Judgment issued on 22 March 2006 in Case n°IT-97-24-A, the Prosecutor v. Milomir Stakic
Stakic TJ	Judgment issued on 31 July 2003 in Case n°IT-97-24-T, the Prosecutor v. Milomir Stakic
Strugar AJ	Appeal Judgment issued on 17 July 2008 in Case n°IT-01-42-A, the Prosecutor v. Pavle Strugar
Strugar TJ	Judgment issued on 31 January 2005 in Case n°IT-01-42-T, the Prosecutor v. Pavle Strugar
Tadic AJ	Appeal Judgment issued on 15 July 1999 in Case n° IT-94-1-A , the Prosecutor v. Dusko Tadic
Vasiljevic AJ	Appeal Judgment issued on 25 February 2004 in Case n°IT-98-32-A, the Prosecutor v. Mitar Vasiljevic
Brdjanin	Public Version of the Confidential Decision on the Alleged Illegality of

Decision 06/05/02	Rule 70 of 6 May 2002, issued on 23 May 2002, in Case n° IT-99-36-T, the Prosecutor v. Radoslav Brđanin and Momir Talić
Brdjanin Decision 03/06/03	Decision on Prosecution's Submission of Statement of Expert Witness Ewan Brown Proçsecutor v.Brdjanin, issued on 3 June 2003 in Case n° IT-99-36-T, the Prosecutor v. Radoslav Brđanin
Celebici Decision 19/08/98	Decision on the Prosecution's Alternative Request to Reopen the Prosecution's Case issued on 19 August 1998 in Case n° IT-96-21-T, the Prosecutor v. Zejnil Delalić et al.
Delic Decision 16/01/08	Decision on Prosecution Submission on the Admission of Documentary Evidence, issued on 16 January 2008 in Case n° IT-04-83-T, the Prosecutor v. Rasim Delic,
Galic Decision 07/06/02	Decision on Interlocutory Appeal Concerning Rule 92 bis (C), issued on 7 June 2002, in Case n°IT-98-29-AR.73.2, the Prosecutor v. Stanislav Galic
Hadzihasanovic Decision 21/02/03	Decision Pursuant to Rule 72 as to validity of Appeal issued on 21 February 2003 in Case n° IT-01-47-AR72, the Prosecutor v. Enver Hadzihasanovic and Amir Kubura
Kordic Decsion 11/09/01	Decision on the Application by Mario Čerkez for Extension of Time to File his Respondent's Brief issued on 11 September 2001, in Case n° IT-95-14/2-A, the Prosecutor v. Kordić, IT-95-14/2-A,
Krnojelac Decision 24/02/99	Decision on the Defence Preliminary Motion on the Form of the Indictment, issued on 24 February 1999 in Case n° IT-97-25-PT, the Prosecutor v Milorad Krnojelac
Ojdanic Decision 21/05/03	Decision on Dragoljub Ojdanic's Motion Regarding Application of Joint Criminal Enterprise issued on 21 May 2003 in Case n°IT-99-37-AR72, the Prosecutor v.Dragoljub Ojdanic
Popovic Decision 11/10/07	Second Decision regarding the Evidence of General Rupert Smith, issued on 11/10/07 in Case n° IT-05-88-T, the Prosecutor v Popovic et al
Popovic Decision 30/01/08	Decision on Joint Defence Interlocutory Appeal Concerning the Status of Richard Butler as an Expert Witness issued on 30 January 2008 in Case n° IT-05-88-AR73.2, the Prosecutor v Popovic et al
Simic Decision 25/03/99	Decision on the Pre-Trial Motion by the Prosecution Requesting the Trial Chamber to Take Judicial Notice of the International Character of the Conflict in Bosnia-Herzegovina issued on 25 Mar 1999 in Case n°

	IT-95-9-PT, the Prosecutor v Milan Simic et al
Tadic Decision 02/10/95	Decision on the Defence Motion for Interlocutory Appeal on Jurisdiction, issued on 2 October 1995 in the Case IT-94-1-AR72, the Prosecutor v.Dusko Tadic
Delic Indictment	Amended Indictment, 14 July 2006, Case n° IT-04-83-PT, the Prosecutor v. Rasim Delic
Hadzihasanovic Indictment	Third Amended Indictment, 26 September 2003, Case n° IT-01-47-PT, the Prosecutor v. Enver Hadzihasanovic and Amir Kubura
Halilovic Indictment	Indictment, 10 September 2001, Case n° IT-01-48-I, the Prosecutor v. Sefer Halilovic

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ICTR CASE-LAW

Abbreviation	Full reference
Nahimana AJ	Appeal Judgment issued on 28 November 2007 in Case n° ICTR-99-52-A the Prosecutor v. Ferdinand Nahimana et al
Ntagerura AJ	Appeal Judgent issued on 7 July 2006 in Case n°ICTR-99-46-A, the Prosecutor v. André Ntagerura

SCSL CASE-LAW

Abbreviation	Full reference
SCSL RUF TJ	Judgment issued on 25 February 2009 in Case n° SCSL-04-15-A (RUF Case), the Prosecutor v. Issa Hasan Sessay et al

ECCC CASE-LAW

Abbreviation	Full reference
ECCC, Jugement	Judgment issued on 26 July 2010 in Case n°001/18-07-2007-ECCC/TC, the Proscutor v. Kaing Guev Eak
ECCC Decision	ECCC, Decision on the Appeals Against the Co-Investigative Judges Order on Joint Criminal Enterprise (JCE), issued on 20 May 2010 in Case n°002/19-09-2007-ECCC/OCIJ (PT35), the Prosecutor v. Ieng Thirith et al

ICC CASE-LAW

Abbreviation	Full reference
ICC Katanga Decision	Decision on confirmation of charges issued on 30 September 2008 in Case ICC-01/04-01/07, the Prosecutor v. Germain Katanga and Mathieu Ngudjolo Chui (ICC-01/04-01/07-717)
ICC Lubanga Decision	Decision on confirmation of charges issued on 29 January 2007 in Case ICC-01/04-01/06, the Prosecutor v. Thomas Lubanga Dyilo (ICC-01/04-01/06-803)

ICJ CASE-LAW

Abbreviation	Full reference
ICJ Judgment 26/02/07	Judgment Issued on 26 February 2006 on Application of the Convention on Prevention and Punishment of the Crime of Genocide, Bosnia and Herzegovina v. Serbia and Montenegro
ICJ Judgment 19/12/05	Judgment issued on 19 December 2005 on Armed activities on the territory of the Congo, Democratic Republicof the Congo v. Uganda

ECHR CASE LAW

Abbreviation	Full reference
ECHR, J.Brandstetter	ECHR, Judgment issued on 28 August 1991 in Case Brandstetter v. Austria, (Application n°1170/84; 12876/87; 13468/87)

OTHER DOCUMENTS

Abbreviation	Full reference
UDHR	Universal Declaration of Human Rights adopted by the United Nations General Assembly in 1948, General Assembly Resolution 217A(III)
ICCPR	International Covenant on Civil and Political Rights, adopted on 16 December 1966 by the United Nations General Assembly, Resolution 2200A(XXI)
ICESCR	International Covenant on Economic Social and Cultural Rights, adopted on 16 December 1966 by the United Nations General Assembly, Resolution 2200A(XXI)
Secretary-General Report	Report of the Secretary-General Pursuant to Paragraph 2 of Security Council Resolution 808 (1993), S/25704, 3 May 1993
S/RES/827	United Nations Security Council Resolution n° S/RES/827 (1993) 25 May 1993
S/RES/808	United Nations Security Council Resolution n° S/RES/808 (1993) 22 February 1993
ICC Statute	International Criminal Court Statute adopted on 17 July 1998
International Convention for the Suppression of Terrorist Bombings	International Convention for the Suppression of Terrorist Bombings, adopted by the United Nations General Assembly in 1997, General Assembly Resolution n° 52/164, 15 December 1997
London Charter	London Charter of the International Military Tribunal, 8 August 1945, Trial of the Major War Criminals Before the International Military Tribunal, Volume 1
CCL n°10	Control Council Law n°10, Official Gazette of the Control Council for Germany, 1946
3rd GC	Third Geneva Convention relative to the Treatment of Prisoners of War, Geneva, 12 August 1949
4th GC	Fourth Geneva Convention relative to the Protection of Civilian Persons in Time of War, Geneva, 12 August 1949

GCAP-I	Additional Protocol to the Geneva Conventions of 12 August 1949 and relating to the Protection of Victims of International Armed Conflicts (Protocol I), 8 June 1977
GCAP-II	Additional Protocol to the Geneva Conventions of 12 August 1949 and relating to the Protection of Victims of Non-International Armed Conflicts (Protocol II), 8 June 1977
Commentary	Commentary to Geneva Conventions and Additional Protocols
HC	Convention for the Protection of Cultural Property in the Event of Armed Conflict with Regulations for the Execution of the Convention, adopted on 14 May1954
HCSP	Second Protocol Convention of 1954 for the Protection of Cultural Property in the Event of Armed Conflict, adopted on 26 March 1999
IHL Rules	Rules of customary international humanitarian law
IHL Official Records	Official Records of the Diplomatic Conference on the Reaffirmation and Development of International Humanitarian Law Applicable in Armed Conflicts, Geneva, 1974-1977
ICRC Review Article	Danio Campanelli, "The law of military occupation put to the test of human rights law," International review of the Red Cross, No. 871, 2008, p. 659-660
ECHR Guide	ECHR, Guide to Article 6, Right to Fair Trial (criminal limb), 2014