**THE INTERNATIONAL CRIMINAL TRIBUNAL
FOR THE FORMER YUGOSLAVIA**

Case No. IT-04-74-A

PROCEEDINGS IN THE APPEALS CHAMBER

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

Registrar: **Mr. John Hocking**

Date: **22 March 2016**

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

PUBLIC REDACTED
(Amended)

CORRIGENDUM TO APPELLANT'S BRIEF OF VALENTIN ĆORIĆ

The Office of the Prosecutor
Mr. Douglas Stringer
Mr. Mathias Marcussen

Counsel for the Appellants:
Mr. Michael Karnavas and Ms. Suzana Tomanović for Jadranko Prlić
Ms. Senka Nožica and Mr. Karim A. A. Khan for Bruno Stojić
Ms. Nika Pinter and Ms. Natasha Faveau-Ivanović for Mr. Slobodan Praljak
Ms. Vesna Alaburić and Mr. Guénaël Mettraux for Milivoj Petković
Ms. Dijana Tomašegović-Tomić and Mr. Dražen Plavec for Valentin Ćorić
Mr. Fahrudin Ibrišimović and Mr. Roger Sahota for Berislav Pušić

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APPELLANT'S BRIEF OF VALENTIN ĆORIĆ

I. Introduction and Procedural History

1. On 29 May 2013 the Chamber issued a Judgment in the case of *Prosecutor v Prlić et al.* (the "**Judgment**"). In the Judgment, Ćorić was found guilty of 22 counts of the Indictment, and was sentenced to 16 years imprisonment.

2. On 4 August 2014 the Defence filed its Notice of Appeal setting forth a total of 17 grounds of Appeal from the Judgment, against both conviction and sentence. On 23 December 2014, the Defence re-filed its Notice to address the Appeals Chamber's Ruling in regard to Grounds 12 and 14.

3. The legal/factual arguments in support of the Notice of Appeal follow, herein, in this Appeals Brief submitted by the Defence pursuant to Article 25 of the Statute of the ICTY and Rule 111(A) of the RPE. Where Grounds overlap, prior arguments have been cited.

4. In the following grounds, where reference is made to an error of law, it is one that, individually or cumulatively, invalidates the Judgment. Where reference is made to an error of fact, it is an error of fact that no reasonable Chamber would have made and one that, individually or cumulatively, occasioned a miscarriage of justice. The use of Chamber/Majority/Judgment herein all refer to the Judgment.

5. It is respectfully submitted, that on the basis of the grounds set out herein below, the Judgment is demonstrated to be based on discernible error. The Defence thus invites the Appeals Chamber to reverse the Judgment in whole or in part. Alternatively, the Defence asks the Appeals Chamber to intervene to reduce the manifestly excessive sentence that the Judgment imposed on him, or at least give due credit to time he has served in conditions akin to detention, while away from the UNDU.

II. **1st Ground for Appeal:** ***The Chamber made numerous errors in concluding that a JCE existed and that a Common Criminal plan existed.***

A. Error by the Majority that JCE is or even should be considered firmly established under customary international law.

6. The Judgment is in error when it concludes that JCE is firmly established under customary international law.

7. As a preliminary point, only a Majority agreed that a JCE existed.[1] This is indicative of a flawed analysis. Rather than give a reasoned opinion, the Majority states that it "does not want to enter into an analysis of the jurisprudence of the ECCC or the ICC ... the Appeals Chamber clearly established that the JCE was a mode of responsibility firmly established under customary international law."[2] Such a failure to address arguments on the validity of JCE is error, and breaches the fair trial protections afforded to the accused.

8. The right of an accused under Article 23(2) to a reasoned opinion is an aspect of the fair trial requirement of Articles 20 and 21.[3] Only a reasoned opinion allows the Appeals Chamber to understand

[1] Vol.1/210
[2] Vol.1/210
[3] *Babic*, *Judgment on Sentencing Appeal* at para. 17; *Natelic & Martinovic*, *AJ* at para. 603; *Furundzija*, *AJ* at para. 69

and review the findings of the Chamber as well as its evaluation of evidence.[4] Accordingly then the Judgment is in error for failing to analyze and consider the arguments as to a JCE being improper as a mode of liability.

9. Contrary to the Judgment, the construction of JCE under the ICTY Statute is the subject of debate. The Presiding Judge of the Chamber and a former Appeals Judge are of the opinion that "The ICTY Statute does not in effect mention the term 'JCE' and there are many who consider that the extended interpretation of the Appeals Chamber in *Tadić* runs contrary to the principle of the legality of crimes, since in criminal law, statutory texts must be strictly construed."[5]

10. Stressing that collective responsibility for persons based on membership in a group is directly contrary to the Tribunal's mandate, Judge Antonetti cites to the legislative history of the ICTY being against the notion of criminal responsibility based on group membership, and that the Tadic AJ took the opposite approach that is "far from unanimous and contested even by the Judges of the Tribunal."[6] The Antonetti dissent analyzes not only Judge Schomburg, but also Judge Per-Johan Lindholm as standing against the notion of JCE as being accepted or appropriate. It concludes that the concept of *nullem crimen sine lege stricta* should have prevented the Tadic AJ's construction of JCE, and cites to numerous SCSL cases calling into question JCE doctrine.[7] The dissent embarks on a very lengthy analysis of cases addressing the inappropriateness of JCE, including the ICC, ECCC and SCSL and domestic jurisdictions. That such an analysis was rejected by the Majority without a reasoned opinion is indicative of discernible error.

11. Antonetti's dissent goes on to criticize even more robustly the concept of JCE III liability. Since the Judgment, and since the dissent were published, on 23.01.2014 the Appeals Judgment in Milutinovic was rendered, with a dissenting opinion of Judge Liu declaring "*While I acknowledge that convictions under JCE III for specific intent crimes, such as persecution, are allowed under the Tribunal's jurisprudence, I respectfully disagree with this approach. For the reasons briefly set out below, I believe that JCE III should not be applied to specific intent crimes, such as genocide and persecution. In particular, I consider such an approach to be highly problematic as, in application, it can lead to a paradoxical result whereby an accused*

[4] *Kunarac*, *AJ* at para.. 41
[5] Vol. 6/p.107, citing *Martić AJ*, Dissenting Opinion of Judge Schomburg.
[6] Vol. 6/p.131
[7] Vol. 6/p.139

is held responsible for a specific intent crime as a co-perpetrator although the requisite mens rea standard for such a crime is not met."[8] Thus it is increasingly clear that JCE III, at the very least is not universally accepted under customary law, and the failure of the Judgment to perform an analysis of the same can only be considered discernible error.

12. It is respectfully submitted that cogent reasons exist for the Appeals Chamber to depart from its previous jurisprudence on JCE, as it is in the interests of justice to do so, and such an principle of departure was recognized in the Aleksovski Appeal.[9]

13. It is respectfully submitted that a rule of customary international law is demonstrated by uniformity and consistency of state practice together with *opinio juris*. Decisions of international and national tribunals may provide evidence of custom, or it is submitted, the lack thereof. Tadic failed to explain how-even if it correctly assessed the authorities it considered - they could establish a rule of criminal liability in customary international law. Based on the review of Judge Antonetti's dissent, it is clear that the ICTY approach is at odds with these other institutions enforcing customary international law.

14. The Majority also based its finding on the concept of JCE3. The concept has been widely criticized both by representatives of international criminal judicial bodies[10] and the academia.[11] The extended form of JCE is highly controversial with regard to the principle of culpability, individual criminal responsibility and legality. No one can be held criminally responsible for acts in which he or she was not personally involved or in any other way participated in. The concept is taking the shape of collective responsibility, and its specific requirements are not clearly defined that leads to uncertainty as to what the law says. It has been widely viewed by experts of international criminal law as a concept created by judges and lacking a solid basis in customary international law. The *Tadić* Appeals Chamber could not demonstrate a general and

[8] *Milutinovic, et al. Appeal Judgment, Partially Dissenting Opinion and Declaration of Judge Liu* para. 12
[9] *Aleksovski* Appeal Judgment, para. 107
[10] Simić, TJ Separate and Partly Dissenting Opinion of Judge Per-Johan Lindholm, par. 2; Simić, AJ Dissenting opinion of Judge Wolfgang Schomburg, par. 3
[11] See e.g., Gunel Guliyeva, 'The Concept of Joint Criminal Enterprise and ICC Jurisdiction', 5 *Eyes on the ICC*, 2008-2009; Harmen van der Wilt, 'Joint Criminal Enterprise: Possibilities and Limitations', 5 *Journal of International Criminal Justice* (2007); William Schabas, 'Mens Rea and the International Criminal Tribunal for the Former Yugoslavia', 37 *New England Law Review,* 2002-2003; M. Badar, 'Just Convict Everyone!' – Joint Perpetration: From Tadic to Stakic and Back Again', 6 *International Criminal Law Review,* 2006; M.J. Osiel, 'The Banality of Good: Aligning Incentives Against Mass Atrocity', 105 *Columbia Law Review* (2005); J.S. Martinez – A.M. Danner, 'Guilty Associations: Joint Criminal Enterprise, Command Responsibility and the Development of International Criminal Law' 93 *California Law Review* (2005)

consistent practice of states that would have been required in order to step over the wording of the Statute. Instead, the Chamber relied on sporadically selected judicial decisions taken in post-World War II cases.[12] The future of the concept is clearly predictable based on the fact that the ICC has rejected the application of JCE *expressis verbis*.[13] This mirrors the current evaluation of this judge-made concept and even though the reassessment of the concept would have an obviously significant impact on the earlier convictions based on the concept, we respectfully request the Appeal Chamber to revisit the issue and conduct an in-depth analysis of customary international law to reassess this widely criticized concept and as such, to take a significant step of contribution to the development of international criminal law and the legacy of the Tribunal.

15. The Defence stresses that it has presented good faith arguments against the JCE concept based on the how the ICC explicitly limited group liability to co-perpetration and definitively linked accessorial liability, in order to comply with the principle of *nullum crimen sine lege*;[14] and that the ECCC recognized that the third form of the doctrine of JCE does not reflect customary international law and thereby refused to incorporate it into its jurisprudence.[15] The failure of the Judgment to address the same is discernible error.

16. The steadfast refusal by national courts and legislative bodies to apply 'JCE', over a period of ten years and regardless of the authoritativeness of ICTY practice, shows these branches reject the concept. As to the actions of the executive branches, the careful drafting of modes of international criminal liability by States Party to the Rome Statute shows States have dismissed 'JCE' in favor of a doctrine based on functional perpetratorship. This doctrine is distinct from JCE.[16] In short, State practice on modes of criminal responsibility for international crimes does not reflect 'JCE' doctrine, or that it is customarily engaged in.[17]

[12] Tadić, AJ paras 204-220
[13] Prosecutor v. Lubanga Dyilo, Case No. ICC-01/04-01/06, Decision on the Confirmation of Charges (29 January 2007); Prosecutor v. Katanga & Ngdujolo, Case No. ICC-01/04-01/07, Decision on the Confirmation of Charges (30 September 2008), paras 493-508
[14] Rome Statute, Art.25.
[15] ECCC, Case File No.: 002/19-09-2007-ECCC/OCIJ, Pre-Chamber, Decision on the Appeals Against the Co-Investigative Judges Order on Joint Criminal Enterprise (JCE), 20 May 2010
[16] ICC Pre-Chamber, Prosecutor v. Thomas Lubanga Dyilo, ICC-01/04-01/06, Decision on the Confirmation of Charges, 29 January 2007, par. 323, 334-8. See also Héctor Olásolo, The Criminal Responsibility of Senior Political and Military Leaders as Principals to International Crimes, Hart, Oxford (2009), page 270 *et seq.*.
[17] Extensive references to relevant domestic practice is provided by: ICC Pre-Chamber, The Prosecutor v. Katanga et al. (ICC-01/04-01/07), Decision on the Confirmation of Charges, 30 September 2008, par. 510.

17. Similarly, it is respectfully submitted that application of JCE to leadership cases is equally inappropriate, as it dilutes the standard for Command-Superior responsibility that has previously been required to be proven.

*B. **Error concluding a JCE was adequately proven.***

18. The Majority erred when assessing the intentions of alleged JCE members and when concluding that there existed a widespread and systematic attack directed against the civilian population because it failed to weigh, adequately, other reasonable interpretations available under the evidence, as required by *in dubio pro reo.* The Majority failed to consider that there was an ongoing war, with combat operations between armed combatants ongoing in the areas that are alleged to be the crime-base of the JCE. The Majority also ignores other evidence, as set forth below.

19. The Majority erred in determining that the purpose of self-defensive activities of the HZ-HB were to reconstitute the borders of Banovina 1939 and reunify the Croat peoples, either by joining to Croatia or becoming an independent state with links to Croatia.[18] It extended this error by concluding that the goal was to change the ethnic makeup of the territories, by ethnically cleansing and removing the Muslim population through offensive military actions.[19]

20. It is instructive that there was no such criminal purpose or plan proven, for the various examples that the Majority cited. Indeed, throughout this brief it will be seen that equally reasonable, alternative explanations under the facts/evidence can be drawn that do not put a criminal spin on the actions of the HZ-HB in trying to defend its people during a period of war and uncertainty.

21. The Majority took facts out of context and ignored the available evidence to construct an interpretation of facts that was indicative of criminal guilt, and in this way erred in determining that there was a meeting of the minds on a "common criminal plan".

22. There was ample evidence, demonstrating that there was no criminal plan. No such plan was shown to exist in documents, orders and meeting notes introduced into evidence. The Majority erred in starting from the premise that there was no other factor in the formation of the HZ-HB, the detention of Muslims (including HVO members), combat in the municipalities, and the departure of civilians, other than

[18] Vol.4/10-24; 43
[19] Vol.4/43-72

the acts of HVO personnel pursuant to a criminal plan. Contrary to that there is abundant evidence of non nefarious explanations for the same.

23. Witnesses uniformly denied knowledge of a criminal plan or participation in any such plan.[20] Rather the evidence from these witnesses demonstrated that the acts of the HZ-HB were in essence self-defense from planned and actual attacks of the ABIH aimed against them. For instance, Colonel Andabak testified that many of his men were socializing with Muslims and making future social plans when the conflict broke out.[21] Witness Jasak testified that there was no plan for offensive activities against Mostar by the HVO, and was never provided any such orders by the HVO Main Staff.[22] He further testified that the ABiH's attack upon the HVO on 30.06.1993 with a planned aim to link its territories would have been the death knell to the HVO if it had been left unopposed.[23] Colonel Nissen confirmed that international observers had no information of any preparations underway for either mass arrest of Muslims or their mass-deportation.[24]

24. The Majority also ignored the reasonable conclusions to be drawn from documentary evidence that ran counter to any JCE or plan on the part of the HZ-HB. The HZ-HB was established by way of a decision dated 18 November 1991, not as part of any criminal plan, but rather as a temporary community in reaction to aggression.[25] The latest Decision on the HZ-HB's establishment contains 10 Articles, with one stating that the 'authority of the Republic of BiH' will be 'respected'. Another reads that it 'will honor all valid international laws which are the basis for modern, civilized relations in society.'[26] The latter provision is repeated in various forms in core Decrees pertaining to military conduct and the operation of prisons.[27] The governing bodies are temporary[28], whilst the inability of the BiH Government to protect its people necessitated the establishment of HVO.[29] The HVO's stated objective is to protect 'the Croatian peoples *as*

[20] e.g. Nissen (T.20649/4-20650/3; 20648/20-20649/3); Pringle (T.24259/1-9); Jasak (T.48682/21-46863/22); Praljak (T.41832/9-41833/4); Curcic (T.45809/18-19);[REDACTED]; Vidovic (T.51462/3-22)
[21] Andabak (T.50965/1-19.)
[22] Jasak (T.48682/21-46863/22)
[23] Jasak (T.48684/7-48685/25)
[24] Nissen (T.20648/20-20649/3)
[25] P79; P81
[26] P78 (translation in P302), Articles 5 and 6.
[27] See P289: Decree on the Armed Forces of the HZ H-B, 3 July 1992, Article 23. Similar is Article 1 of P292: Decree on the Treatment of Persons Captured in Armed Fighting in the HZ H-B, 3 July 1992.
[28] P303, revised Statutory Decision on the Temporary Organization of Executive Authority and Administration on the Territory of the HZ H-B, Article 2.
[29] P152; Decision on the Creation of the Croatian Defence Council, September 1992, preamble.

well as other peoples in the Community that are attacked by an aggressor [emphasis added]'.[30] It is clear under such evidence that self-defence rather than a criminal purpose drove the formation of the HZ-HB.

25. The evidence showed that the HDZ BiH's aim was constantly to defend a Bosnia-Herzegovina together with all others.[31] The association of HDZ BiH regional organizations developed as a response to the threat of potential aggression.[32] The referendum on the independence of BiH took place 29 February to 1 March 1992, and was supported by the HDZ-BiH.[33] Thereafter an invitation was sent by the HDZ BiH to the Bosnian Muslim leadership to organize a joint defence.[34] The formation of the HZ-HB arose only after the pre-war central government in Sarajevo showed its inability to defend the territory and peoples of Bosnia-Herzegovina from Serb aggression.[35] The HZ-HB was not an effort to create a separate state nor a unification with Croatia as stated by the Majority, instead all documents demonstrated that the HZ-HB respected the democratically elected bodies of the Republic of Bosnia-Herzegovina and very explicitly expressed the desire for an independent BiH, rather than its own independence.[36] The aims of the HZ-HB leadership can be described from their own words as «[...] forming and ordering of Bosnia and Herzegovina in accordance with the principles of the European Community. That is, the constituting of Bosnia and Herzegovina through three national units.»[37] Respectfully the only common purpose that this establishes is a common purpose to peacefully resolve the crisis in the former Yugoslavia together with the European Community. The evidence showed the HZ-HB consistently supported and participated in all peace negotiations and the peace process.[38]

26. [REDACTED].[39] By 5.4.1992 Sarajevo was cut off from the rest of BiH[40] and the HVO was formed as a temporary executive body to coordinate military, civilian, and administrative activities within the HZ-HB against Serb aggression.[41] Prlic was empowered by the RBiH government to represent it and coordinate measures passed by it and the HVO.[42] The HVO closely cooperated with the ABIH and was regarded as

[30] P152; Decision on the Creation of the Croatian Defence Council, September 1992, Article 2.
[31] P52
[32] P47, P50, Kljuic (T.3937/16-3938/4)
[33] 1D410; P117
[34] P60
[35] P128; Kljuic (T.4216/21-4217/17)
[36] P81; P543; Ribicic (T.25462/22-25463/5)
[37] P498
[38] Akmadzic(T.28482/16-21); 1D2314; 2D93; P1467; 1D2908; P1798; P2088; P339; P1988; 1D2096
[39] [REDACTED]
[40] Kljuc (T.4187/4-4188/17)
[41] Donia(T.1830/23-25); Puljic (TT32251/25-32252/5);P151; P155; 1D2441
[42]Akmadzic (T.29424/10-29426/12); 1D2147

an integral part of the Armed Forces of Bosnia-Herzegovina including by its leaders and those of the RBiH.[43] Efforts to establish joint commands of the HVO and the RBiH TO continued throughout the war.[44] In various areas either the HVO unit or the ABiH unit would command over both formations, depending on which was stronger.[45] As of 20 April 1993 the HVO was treated equally with other military forces of the RBiH.[46] The evidence is that HVO units were placed under the command of ABiH, including within the territory of the HZ-HB.[47] HVO forces fought alongside the ABiH as comrades in arms in Tuzla and Sarajevo for almost the entire war.[48] Weapons/MTS were shared with the ABiH, and provided passage through the HZ-HB.[49] Thus the formation of the HVO was in accord with the existing laws and not done on any criminal purpose.

27. Of critical importance for explaining the events that happened, is the fact that the ABiH was planning attacks against the HZ-HB, even as its leaders participated in negotiations.[50] The ABiH was shown to have committed attacks on Croat settlements in Travnik/Kakanj[51]. The ABiH was planning to utilize Muslims within the HVO against the HVO.[52] The HVO feared an all out attack by the ABiH.[53] Ultimately, the HVO fears of an attack were proven true, as on 30 June 1993 the Army BH attacked the Mostar barracks, after Muslim HVO mutinied and joined the Army BH attack.[54] Difficulties in cooperation were exacerbated when the ABiH independently negotiated with the Serbs without the HVO.[55] For example, efforts to form a joint defence in Konjic[56] were undermined by the ABiH's organizing of offensive actions against the HVO in that same area.[57] Despite a ceasefire the ABiH continued to try and provoke conflict in that area.[58] in other areas the HVO tried to end conflict and stress greater cooperation.[59]

[43] e.g. 1D2432; P339; 1D507; 4D410; 4D397; 1D2664 Filipovic (T.47778/5-11); Zelenika (T.33248/11-25); Pellnas (T.19730/5-10)
[44] Akmadzic (T.29735/17-29736/1); P2091
[45] 4D1521; 4D1026, 4D1048; 4D478; 4D476
[46] P1988; P2002
[47] [REDACTED]; Pinjuh (T.37700/5-9)
[48] 2D1185; 2D1177; Makar (T.38381/6-38386/8)
[49] Akmadzic (T.29601/15-25, 29603/11-18, 29604/11-14); Bahto (T.T.37916/9-37918/8); Cengic (T.37850/3-37851/20); Milos (T.38651/1-6); 2D1253; 3D437; 2D630; [REDACTED], 2D809; 2D311; 3D8; 2D522; 2D523; 2D147
[50] P1240; 1D2729; P1305; P1317; 1D1652; P2346; 2D229
[51] 3D00837; 1D01264; P03337; P02849
[52] 4D568
[53] P2760
[54] P3038; Buntic (T.30723/21-30724/18)
[55] 4D896
[56] P1675; 4D1700; Filipovic (T.T47444/8-13);
[57] 2D253; Juric (T.T39308/3-4)
[58] Juric (T.39345/7-39346/18)

Isolated incidents in the municipalities did not prevent the HVO from again in 1993 facilitating the transfer of MTS to the ABiH using the Prozor-Gradacac-Vitez Route.[60] Under this backdrop it is clear that self-defence was the guiding principle of the HVO, not any pre-conceived criminal plan to ethnically cleanse Muslims from the territory.

28. The lack of discriminatory intent against Muslims has also not been adequately addressed by the Majority. For instance, Muslims were appointed to posts at all institutional levels of the HZ-HB.[61] The three official languages were maintained in the HZ-HB and the constitution of RBiH was adhered to.[62] The central government in Sarajevo continued to appoint Muslim judges within the HZ-HB.[63] Steps taken by the HVO within the HZ-HB during the war demonstrate a sincere effort to oppose any demographic changes, including decisions as to maintenance of voting rolls and restricting transfers of ownership in real-estate.[64] [REDACTED]. [65] [REDACTED].[66] whereas the HVO as a whole had 30% of soldiers that were Muslims.[67] Evidence demonstrated that HVO and HZ-HB officials had discussions on how to enforce law and order and to prevent criminal activity of all sorts,[68] and how to implement law and order,[69] and set up a commission to investigate and deal with war crimes allegations.[70] Further a Joint Command was declared respecting the separate identities and organization between the HVO and ABiH.[71] That this Joint Command failed to function because of the ABiH's failure to adhere to it[72] cannot attribute a criminal taint on the HZ-HB.

29. The evidence demonstrates that the disarming and detention of Muslim members of the HVO was a military necessity, following security concerns that arose from the aforementioned attack by the ABiH, assisted by Muslim HVO members who betrayed their posts.[73] [REDACTED].[74] The consequences of the

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[59] 4D895; P633; [REDACTED]
[60] 2D1107
[61] 1D442; P672; P824
[62] P1264
[63] 1D2001; 1D2124; 1D2381
[64] 1D669; P1652; 1D1153; P7279
[65] [REDACTED]
[66] [REDACTED]
[67] Petkovic (T.49342/1-11); Buntic (T.30724/19-30725/3)
[68] P4008
[69] P4111, P128, P1097, P1439, P1511, P1536, P1563, P1627, P4699, P4735
[70] P128, P1536, P1652, P4699, P7674
[71] Makar (T.38414/2-17);P2059; P2091; 4D455; 2D439; P2155
[72] 2D439, point 7
[73] P3673

Majority's failure to consider the totality of the evidence, invalidates its conclusion that a JCE existed and that an attack was directed against the civilian population. The Majority itself indicates that it could not distinguish criminal events during the attacks and after.[75] That being said means that it cannot distinguish damage and injury that occurred as a part of legitimate combat apart from those that were criminally incurred. As such there is no way that the only reasonable conclusion to be drawn from the evidence is that a JCE existed.

III. 2nd Ground for Appeal: *The Chamber made numerous errors of law and of fact when it concluded that Ćorić was a member of the JCE and made a significant contribution to the execution of that JCE*

30. In determining that Ćorić significantly contributed to the JCE and intended that all crimes be committed, using discrimination to target Muslims,[76] the Majority erred, and ignored the bulk of evidence to the contrary. In doing so the Majority violated the principle of *in dubio pro reo*. To comply with the law, it must be established that an accused not only possessed the required intent, but that this intent was the **only** reasonable inference based on the evidence.[77] Respectfully the Majority failed to apply that standard. It is submitted that the true intent of Ćorić can be seen to be against the furthering of any criminal purpose as a JCE, as is evident under the evidence ignored by the Majority. Thus the convictions entered under JCE[78] are erroneous and should be vacated.

31. If the principal perpetrator is not a member of the JCE, the Chamber must further establish that the crime can be imputed to at least one of the members of the JCE who, while using the principal perpetrator, acted in accordance with the common criminal plan.[79] With regard to the *actus reus* it can be seen under the evidence that Appellant did not knowingly participate in any actions intending to facilitate a criminal plan, nor did he use any principal perpetrators in accord with a criminal plan.

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[74] [REDACTED]
[75] Vol.2/412
[76] Vol.4/1004
[77] *Vasiljevic*, *AJ* at paras. 120, 131; *Brdjanin*, *AJ* at para. 429.
[78] Vol.4/1006
[79] *Brdjanin*, *AJ* at para 365.

32. With regard to the mental elements required, it is clear Ćorić did not voluntarily agree to any common purpose. Quite the contrary, the totality of the evidence shows that Ćorić did everything in his power to prevent commission of crimes, bearing in mind that, he did not have power to discipline/issue orders those subordinated to the military, including MP. Ćorić did not share any intent to commit crimes. There must, be total clarity as to the nature of the plan in order to establish a common state of mind.[80] To the contrary here there is not such total clarity, at least as respect to Ćorić.

33. Multiple facets of the evidence demonstrate Ćorić had an intent contrary to criminal. Ćorić at the MPA did not discriminate against Muslims, but rather recruited and appointed them to command positions. Further, while acknowledging that Ćorić was engaged in training[81] - the Majority ignores the substance of the training implemented by Ćorić, which shows no intent to participate in a criminal JCE. Evidence demonstrated that, Ćorić instituted professional training for MP, using instructors and texts geared for the work of the police during war-time as well as rules of war.[82] Desnica testified that he was engaged to help in a professional sense in educating military and civilian policemen in BiH.[83] Desnica confirmed the intent of the training was to insure that the MP procedure would be coordinated with the International Law.[84] The texts utilized for training were 5D5113, 5D5114, 5D5115, 2D751 and P7.[85] None of the texts used in the training authorize or teach any criminal conduct. The topics of the training were: a)to humanely treat prisoners;[86] b)ensuring detainees were not subjected to cruel treatment or torture;[87]c)ensuring detainees were protected from physical violence;[88]d)ensuring detainees were provided access to food and water; [89] and e)ensuring detainees were not compelled to do dangerous work.[90] Both Muslims and Croats were trained side by side[91], and when a trainer used a ethnic slur for a Muslim he was demoted and relieved.[92]

[80] *Simic* , *AJ, para. 22; Krnojelac, AJ, para. 116-117*
[81] Vol.4/861
[82] See, herein Sec. V. A.
[83] Desnica (5D5109 para. 3)
[84] Desnica (5D5109 para. 6)
[85] Desnica (T.50875/8-50877/7)
[86] Desnica (T.50890/7-9)
[87] Desnica (T.50890/10-13)
[88] Desnica (T.50890/14-15)
[89] Desnica (T. 50890/16-7)
[90] Desnica (T.50890/18-21)
[91] Desnica (5D5109 para. 9)
[92] Desnica (T.50887/15-25)

Ćorić also banned fascist symbols and unprofessional appearance of MP at checkpoints.[93] Given these efforts of Ćorić it does not stand that he intended a JCE, especially through the work of the MP.

34. [REDACTED].[94] Organized education courses on the same topics were held at the battalion command and individual companies, with the help of the ICRC, where booklets were distributed on the conduct of soldiers during combat.[95] Ćorić and the MPA issued the decision to set up such training centers and were involved in certifying persons completed the same. [96]

35. Other evidence ignored by the Chamber shows that Ćorić's intent was counter to a JCE. [REDACTED].[97] [REDACTED].[98] A HVO report dealing with the MP activities from July-December 1993 stressed efforts to cooperate with other law enforcement organs to engage in several operations to increase traffic security and identify perpetrators of crimes were carried out.[99]

36. Further - very clear indication of Ćorić's lack of any criminal intent and genuine belief that he was participating in legitimate practices to enforce law, arise from requests he issued when combat operations were resulting in military commanders sending MP and civilian police to the frontlines. While at the MPA, Ćorić took the reasonable measures within his authority, as follows:

> "I claim with responsibility that we are not able to perform even regular MP tasks with the forces remaining after the deployment of the MP on frontlines, not to mention complex interventions and other significant MP tasks. In view of the above, we request that the engagement of the MP on frontlines in this scope be reconsidered and propose that MP units be withdrawn from frontlines to perform MP duties and be sent to the lines only to intervene in exceptional situations."[100]

37. Similarly, when Ćorić became Minister of the Interior, he issued a similar request aimed at the civilian police that were being used by the HVO military commanders in the frontlines:

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[93] 2D1365
[94] [REDACTED]
[95] Andabak (T.5092/9-17)
[96] Desnica (T.50891/18-50892/24); P1629; P2189
[97] [REDACTED]; 5D4288
[98] [REDACTED]; 5D5027; 5D5032; 5D5024
[99] P7419 pg. 2; see also 2D138; 1D2577
[100] P5471, p. 3

> […] this engagement of our employees has slowed down our activities relating to efficient enforcement of basic police operations, which resulted in deterioration of the state of public law and order, traffic security and detection of criminal acts. In order to prevent such dangerous developments, which could threaten the whole defence of the Croatian people, and the very existence of the HZ-HB, we have decided to withdraw our officers from the first line of defense […][101]

In both instances Ćorić demonstrated an intent to enforce the law and prevent crimes.

38. It is noteworthy that the Majority, in portraying the opposite of Ćorić, discounts his order to collect information about the crimes of the *Vinko Škrobo* and *Benko Penavič* ATGs in Mostar with a view to using it in a comprehensive operation to arrest perpetrators and start proceedings against perpetrators[102], because the "Spider" operation occurred only in June 1994.[103] However the Majority ignored the evidence that it took time to get manpower and resources in place to take on these large and armed units.[104] Indeed, even OTP expert Tomljanovic affirmed that the MP had staffing problems affecting its ability to prevent crimes, especially in 1993.[105] Both the civilian police and the MP were experiencing problems to confront this well armed group alone such that a meeting was held to coordinate efforts together with other authorities.[106]

39. In examining the powers/authorities in relation to the structure/command of the MP, the Judgment made ambiguous conclusions that are often contradictory, and are in conflict with facts/evidence adduced. From the analysis that follows, it is clear that the Chamber has used an erroneous and improper method to reach its conclusions. Rather than looking at the *de facto* situation during the relevant time period in determining the authority of Ćorić over the MP, they focus solely on the de jure authority of various governmental organs and persons. The end to which the Chamber erroneously proceeds in its flawed methodology is that it concludes effective control solely on *de jure* conclusions, despite numerous exhibits and evidence that show a drastically differing *de facto* picture. Apart from that the Chamber ignores the testimony of Defence/Prosecution witnesses without giving any reasoning/rationale why they neglected to take into account such testimony. Instead of relying on reliable witnesses whose evidence is confirmed by considerable documentary evidence, the Chamber brings its conclusions on dis-credited and unreliable

[101] P6837, p. 1
[102] Vol.4/931
[103] Vol.4/932
[104] Bandic (T.38212/21-38213/22); [REDACTED]; 5D5074l 5D5077; 5D5079; 5D5080
[105] Tomljanovic (T.6347/23-6348/11); also P128
[106] Vidovic (T.51600/15-51603/14)

witnesses[107] and irregular documents which are either erroneously analyzed or in fact are drafted by the same dis-credited witnesses.

40. To reach its erroneous conclusion, the Majority determined that Ćorić had some effective control over the MP despite the fact that they were re-subordinated to military commanders.[108] The majority also errs in that it concludes that Ćorić had command/control power over the MP and that he employed that power to engage them in evictions in Gornji Vakuf, Mostar, Stolac and Capljina as part of a common criminal goal and turning a blind eye to the crimes.[109] The majority further erred that Ćorić had a key role in relation to detention facilities and knowingly kept harsh conditions at them.[110] This is error is especially identified given the new evidence is the subject of a Rule 115 application.

41. The specific errors in including Ćorić's tenure at the MUP is addressed elsewhere.[111] However it is submitted that asserting responsibility for Ćorić due to the police nature of his position in the MUP is in essence contrary to the caution contained in the jurisprudence against holding a police officer responsibility for any crimes in his jurisdiction.[112] Other parts of this brief are devoted to the alleged evictions in the municipalities, and the detention facilities, and thus they will not be dealt with in detail here either.[113]

42. The conclusions as to command/control over the MP are clearly erroneous. There can be only one commander in a combat situation, and once MP were re-subordinated to HVO military commanders, Ćorić could not retain some form of command/control over them. A superior may only be held criminally responsible for failing to take measures that are within his powers.[114] It has been held that the material ability to punish or control subordinates is the threshold/minimum requirement in establishing a command-superior relationship and thus liability under Art. 7(3).[115] The *Delalic* Chamber warned: "While the Chamber must at all times be alive to the realities of any given situation and be prepared to pierce such

[107] discussed herein at Ground 12
[108] Vol.4/871
[109] Vol.4/918-999, 1000
[110] Vol.4/1001
[111] Ground 11
[112] *Halilovic*, *AJ* para. 59

[113] Ground 7
[114] *Stakic,* , TJ, p. 138: 461
[115] *Halilovic*, AJ) at para. 59

veils of formalism that may shield those individuals carrying the greatest responsibility for heinous acts, great care must be taken lest an injustice be committed in holding individuals responsible for the acts of others in situations where ***the link of control is absent or too remote***."[116]

43. In establishing that Ćorić had powers over the MP[117], the Majority does not differentiate between MP and Brigade MP. The Chamber concluded that the MPA had command authority over units of the MP in brigades and the Battalions of MP. [118] The Chamber further found that there was confusion in the chain of management and control.[119] The evidence is clear that brigade MP are established by the Brigade and subordinated to the brigade commander, and not the MPA.[120] Further it is clear reporting by the brigade MP did not go to the MPA.[121] The Majority's approach is fraught with error in that it does not account for this in its analysis.

44. [REDACTED]. [REDACTED].[122]

45. The Chamber concludes that in the indictment period there existed a dual chain of command for the MP battalions.[123] The Chamber brings such a conclusion on the written orders issued by Ćorić, without regard for the substance of the orders, or if they were actually effectuated. In this context, the Chamber claims that HVO officers did not exactly know in which command chain the MP belonged. The Defence considers that it is not relevant whether one knows what the situation would be in normal times, and per the regulations but rather what the actual situation on the ground was and how people performed/complied. The Chamber relies on the recommendations and orders issued in case of conflicting orders, but again in this analysis stops at that statement instead of an analysis to determine whether they were acted on.[124]

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[116] *Delalic,* AJ at para *377.*
[117] vol.4/873-917
[118] Vol.1/961
[119] Vol.1/961
[120]Andabak (T.50906/24-50907/23); [REDACTED]; Petkovic (T.50226/5-50227/3; 50229/11-12); [REDACTED]); Tokic (T.45507/14-18); P4413; P4262
[121] Andabak (T.50929/16-50930/12); P4110
[122] [REDACTED]
[123] Vol.1/971
[124] Vol.1/971

50. The Chamber concludes erroneously that the MP units were under a dual command chain.[125] Coincidentally, the Chamber cites to Skender, who clearly described the manner of command over the MP as it existed *de facto* in the field,[126] but bypasses this to maintain conclusions based solely on documentary evidence in orders, without regard if they were followed/effectuated in reality. The Chamber concludes that the dual command chain brought confusion to the commanders of the MP units.[127] [REDACTED].

51. Even the Chamber's claim that officers did not know to which chain of command the MP belonged is based on a erroneous interpretation of Witness C,[128] and for which the Defence submits as follows. [REDACTED]. In fact, this was an anomaly unique to the chaotic situation in that zone, where the Brigade MP were acting outside of their jurisdiction, trying to arrest/disarm members of the 3. Light Assault Battalion. In fact, as the report stated, the situation was only calmed upon complaints to the Brigade's SIS Commander. Thus, even this instance demonstrates the Command of the Brigade, and not the MPA, had effective control over the Brigade MP.[129]

52. The Chamber concludes that Ćorić, had limited authority and effective control over MP units and in particular had the power to re-subordinate them.[130] Thus, despite the re-subordination of the units to the HVO commanders, Ćorić is alleged to have held on to some authority/control over them. The Chamber reaches such conclusion on the basis of orders and transcripts of meetings, without questioning and analyzing the factual circumstances, to ascertain the actual situation in the relevant time period.

53. In relation to all MP units save the Brigade MP, the evidence is counter to the Chamber's findings, and is clear that there was no such dual chain of command, or lack of clarity in that sense, rather in all OZ there functioned a single/unitary and clear command chain.[131] Witnesses confirmed that the HVO OZ and Brigade commanders had effective control/command MP units both in combat and daily duties.[132]

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[125] Vol.1/973
[126] Skender(T.45239-45241)
[127] Vol.1/974
[128] Vol.1/971 (footnote 2442)
[129][REDACTED]; P3970
[130] Vol.4/871
[131] Ćorić Final Brief par. 91-135
[132] Ćorić Final Brief par. 91-124

54. From all the foregoing it is clear that there is not any evidence confirming any dual command chain. Even if some random documents may infer the eventual possibility that Ćorić had some authority over MP, the same cannot override the bulk of other evidence to the contrary.

55. The Chamber concluded that the aim of reforms of the MP from December 1993 was to clarify the chain of command so as to permit the MP units to function better.[133] However, in contradiction to this finding the Chamber later says that the reforms were intended to refocus the activities of the MP to its original mandate, law enforcement and freedom of movement.[134] The Chamber concludes that the reforms of the MP in July and December 1993 came about to clarify the chain of command, citing Biskic.[135] However Biskic merely describes that by end December 1993 all MP units had been withdrawn from the frontlines and that allowed them to be more effective.

56. The Chamber's conclusions are thus contradictory. The very evidence mis-cited by the Chamber does not speak of some phantom dual chain of command, but only says that the MP had not carried out its regular work as well before due to being engaged at the frontlines. From such testimony two facts are established, that the MP are not at fault that they could not perform police crime activities, and certainly Ćorić cannot be blamed for that fact.

57. With the new organization of MP the system of command/control of the MP was changed also, envisaging that all MP units were under command of the MPA but in performance of daily tasks within their competence, the said units were subordinated to HVO military commanders. This new organization disbanded Brigade MP platoons, thus creating conditions for more efficient working of the MP.[136] The Chamber in the analysis of evidence missed the fact that if you claim that after the new changes the MP units were commanded by the MPA, it means that until these changes they were not.

58. The Chamber conclusions as to Ćorić's powers/contribution to the JCE, relies on their finding of his authority to re-subordinate them to HVO OZ.[137] The Chamber agreed with the Defence that the MPA's

[133] Vol.1/879
[134] Vol.1/885
[135] Vol.1/974
[136] P07018; Tomljanovich (T.6374/22-6378/2); Biskic (T.15058/1-15060/9)
[137] Vol.4/869,

command ability over the MP diminished, as the war progressed.[138] However, rather than accept the only reasonable conclusion, that Ćorić was not part of any JCE, nor could he know of the same if it even existed, the Chamber draws the impermissible/illogical inference that this reduction did not lead to the complete renunciation of its prerogatives of command over the MP units. Just as with Prisons, as discussed elsewhere[139] all of Ćorić's *du jure* powers as envisaged previously, deteriorated dramatically after the conflict with the ABiH, such that he did not retain effective control over MP or de facto authority at all.

The trial described how MP reinforcements were effectuated. The involvement of the MPA was not required to move reinforcements within the same OZ, which was done at the Battalion level upon order of the HVO OZ commander. For movement of MP between zones, the HVO commander of a OZ would make request upon the HVO Main staff for a MP unit to be removed from one zone to another whether it was need, the HVO Main Staff would then order the MPA to effectuate the transfer, the MPA would comply, and the unit once transferred was re-subordinated to the HVO Commander in the new OZ.[140] The system functioned in this manner until 28.07.1993, at which time the Department of Defense issued an order formally "re-subordinating"all light assault battalions of the MP to the Military Commanders in the OZ such that the Military Command could re-deploy them directly, both within the zone and to another zone, without going through the MPA. This was done to remove red-tape and delay from the previous procedure. In this sense from 28 July 1993 on, the MPA ceased even to perform the limited administrative logistical task of "sending" units to the terrain.[141] The Chamber concedes this chain of events, but nonetheless relies upon 2 documents[142] to asset Ćorić did not completely lose command over the MP Battalions. The Chamber, contrary to its criteria in other circumstances, did not examine if said documents were indeed delivered to the intended recipients, nor if they were enacted, or if any other evidence corroborates their content. Rather, in accepting these documents the Chamber ignored the above-referenced bulk of evidence standing in opposition to these documents. The Chamber found that the engagement of the MP at the frontlines acted so that the MP could not carry out its normal duties for which it is entrusted,[143] just as Ćorić proclaimed in his letter of 29.9.93[144] where he sought for MP units to be withdrawn from the combat positions. But the Chamber stands firm on its illogical conclusions without bringing the more reasonable

[138] Vol.1/964
[139] Grounds 6, 10, 14
[140] Andabak (T.50919/10-50920/13;50934/7-22; 50935/17-50937/11; 51147/1-51149/21); P5478
[141] Andabak (T.50937/12-24; 50937/25-509839/13); P3778
[142] P05478 i P04947
[143] Vol.1/940,972
[144] P05471

conclusions that is abundantly clear on the evidence. If Ćorić was a person who intended to significantly contribute to the JCE, , and had knowledge of the common criminal purpose, he would not be the person calling for the MP to be withdrawn from combat. Secondly, if he kept all the command power over the MP that the Chamber attributes to him, he would not have to appeal to others to remove the MP from combat, he simply would order it himself.

59. In determining the powers the Ćorić held despite the re-subordination of the MP to Military Commanders, the Majority cited recruitment and powers of appointment.[145] It does not demonstrate how such powers were a significant contribution to the JCE. Indeed, the evidence demonstrates that rather than discriminate against Muslims, Ćorić at the MPA recruited and maintained Muslims in its ranks, even at command positions. Throughout the conflict Muslims made up a considerable part of MP units.[146] At the height of the conflict Ćorić officially recommended appointment of a Muslim, as commander of an entire MP battalion.[147] In fact, other command positions for Muslims within the MP existed.[148] By way of example, through the relevant time period 25-30% of the 2nd MP Battalion remained staffed by Muslims.[149] Clearly such evidence militates against a finding that Ćorić exercised his limited authority in furtherance of a common criminal goal that had at its core discrimination against Muslims.

60. If one looks at Ćorić's instructions to MP's within his limited powers, they too show no criminal intent. Ćorić called for severe pay decreases to be enforced for disciplinary proceedings arising out of misconduct, and which was even stricter than the military's regulations.[150] Likewise Ćorić's personal attitude as to discipline of MP found to have engaged in misconduct, was described as stringent:

> "[…] any such perpetrators should be persecuted and a criminal report filed […] anybody who besmirched the name of the MP on battlegrounds throughout Bosnia and Herzegovina, that they should be thrown out of the unit".[151]

61. The Majority erred that Ćorić was informed of crimes including by MP or must have been known of them due to his position.[152] An accused's position of authority cannot lead to an automatic presumption,

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[145] Vol.4/873-876.
[146] [REDACTED]; Andabak (T.50949/2 – 50950/6); P4850
[147] P2970 (26 June 1993); 5D4094
[148] Andabak (T.50950/5-6).
[149] Andabak (T.50949/12-50950/6)
[150] P1444
[151] Andabak (T.50953/19-50954/9)

that he or she knew or had reason to know of the crimes for which a conviction is sought.[153] Respectfully the Majority is making baseless conclusions solely on the position held by the accused, ignoring the realities on the ground. This error is compounded by the admission of the Majority that it is not in a position to find that all reports on crimes against Muslims were actually brought to the attention of Ćorić.[154] Surely criminal responsibility requires proof of knowledge. The Majority fails to address Ćorić's actions when crimes were indeed brought to his attention. The record is clear when crimes were committed by MP, and made known to Ćorić, he adhered to the stringent policy stated above, and dismissed the perpetrators from their duties, and called for criminal reports to be forwarded to prosecutors, because in his words – "the above-named have sullied the honor of the MP and their further presence in this unit is DETRIMENTAL."[155]

62. In regards to the reporting which was sent to the MPA by the MP, it is clear under the evidence that such reports were benign in nature, dealing with logistics, etc. and not providing any information that would alert of any criminal plan or propensity for criminal activity.[156] Further, the only knowledge of Ćorić that could be attributed from these reports is a good-faith belief that MP organs were doing their proper job in terms of law enforcement.[157] Post combat reports of the MP were given to the military commanders, not the MPA.[158] When tasked in the field to perform MP duties, the MP reported directly to military commanders rather than the MPA[159], as these were the officers with authority to enact discipline.[160] Thus reporting sent Ćorić does not support the findings of the Majority.

63. [REDACTED],[161] [REDACTED]. There is no support for the conclusion that knowledge of a common criminal purpose was conveyed to Ćorić.

64. Similarly, given that Ćorić was faced with personnel shortages at the MPA/MUP, and warned military commanders of a lack of personnel to engage in law enforcement activities because personnel

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[152] Vol.4/1002
[153] *Delalic, AJ* at para 313.
[154] Vol.4/878
[155] P3571
[156] P2784; P420; P423; P6722; 5D4092; 5D4094; [REDACTED]
[157] P420; P423; P6722
[158] 5D4385; 5D5110, para.5
[159] [REDACTED]; Andabak (T.50940/2-11; 50942/7-23; 50950/25-50951/18; 51158/2-10; 51158/11-51159/3); P4063; P2836; P1359; P377; P458
[160] Andabak (T.50910/17-50911/10);[REDACTED]; 5D4039; 5D4031
[161] [REDACTED]

were being used at the front-lines, this at the same time shows he did not retain command/control over these personnel, nor was he intending to further criminal goals in towns, rather the opposite.

65. The Majority further erred that Ćorić had control of freedom of movement of people and goods and that he performed a blockade of east Mostar for purposes of the common criminal goal.[162] Further the Majority erred that the MPA had the played an important role in the distribution of humanitarian aid, even after confirming no evidence showed the MPA had authority to issue permits for passage of humanitarian convoys.[163] This position concedes the Majority is concluding with no evidentiary base, and fails to adequately address or take into account the evidence that that checkpoints were conducted in accordance with tasking of military commanders, rather than the MPA and for legitimate crime prevention. Ćorić's exercise of limited authority as to checkpoints whilst at the MPA demonstrate a lack of any knowledge of or criminal intent to participate in or contribute to a JCE. P355 was issued by Ćorić and instructed those carrying out checkpoints under orders of military commanders to check even HVO vehicles and to enforce vehicle registration laws. Clearly the only intent was to prevent crime and enforce law and order, without discriminatory intent aimed at civilians or non-Croats. Further a work program of the HVO MP dated 4.2.1993[164], demonstrates that MP were to enforce stricter controls at checkpoints on HVO military vehicles. Ćorić undertook efforts to enter into an agreement with the Red Cross to assist humanitarian convoys in passing through checkpoints on the territory of HZ-HB.[165] Other documents demonstrate that, within his limited authority, he did all he could to clear up misunderstandings caused by legitimate security concerns and worked with humanitarian organizations to adhere to the commitment to assist properly registered and announced aid convoys get where they were going.[166] Thus, a determination that Ćorić controlled freedom of movement and blockaded against delivery of humanitarian supplies is **not** the only reasonable conclusion available under the evidence, and the Majority was thus duty-bound to in accord with *in dubio pro reo* find Ćorić did not participate in nor contribute to a JCE.

66. The consequences of the Majority's failure to consider the totality of the evidence invalidates its conclusion that a JCE existed. The Appeals Chamber is invited to quash all of Ćorić's convictions: the

[162] Vol.4/884-887, 1003
[163] Vol.1/636
[164] P1416
[165] 5D524
[166] P1451; 5D526; 5D529

vacuum in which the Majority performed its analysis renders the verdict unsustainable. No reasonable trier of fact could have reached the verdict of guilt beyond reasonable doubt as to Ćorić.[167]

IV. 3rd Ground for Appeal: *The Chamber made numerous errors of law and of fact when it concluded that an international armed conflict and a state of occupation existed in Bosnia and Herzegovina during the relevant time period.*

A. Sub Ground 1: *International Armed Conflict*

67. The Chamber erred in deciding that the armed conflict was international in nature. The fact that this finding was only made by a majority, demonstrates that this finding is erroneous. This error invalidates the conviction/judgment.

68. The Majority is satisfied that the armed conflict was international in nature due both to the direct involvement of the HV in the conflict and due to overall control wielded by the HV and by Croatia over the HVO.[168] Per the Majority the HV MP assisted the HVO MP by providing training and helping it to structure its work, the Croatian MUP likewise created training programs intended for the HVO police.[169] The Chamber relied on *Peter Galbraith*, who on several occasions personally requested that President Tuđman and Mate Granić intervene to ensure access to the HVO detention camps and to ensure freedom of movement for humanitarian convoys, as well as to bring the atrocities committed by the HVO to an end.[170] Relying on such evidence for finding an international armed conflict is inappropriate under the remainder of the evidence, which shows otherwise, namely that the conflict was internal in nature, and that Croatia was not at war with the RBiH.

69. An armed conflict is international if it takes place between two or more States. In addition, an internal armed conflict may become international if another State intervenes in that conflict through its troops, or alternatively if some of the participants in the internal armed conflict act on behalf of that other

[167] *Limaj AJ* at para. 12

[168] Vol.3/568
[169] Vol.3/559;
[170] Vol.3/562

State.[171] Control by a State over subordinate armed forces/militias or paramilitary units may be of an overall character (and must comprise more than the mere provision of financial assistance or military equipment or training).[172] Under international law it is by no means necessary that the controlling authorities should plan all the operations of the units dependent on them, choose their targets, or give specific instructions concerning the conduct of military operations and any alleged violations of international humanitarian law. The control required by international law may be deemed to exist when a State (or Party to the conflict) has a role in organizing, coordinating or planning the military actions of the military group, in addition to financing, training and equipping or providing operational support to that group. Acts performed by the group or members thereof may be regarded as acts of *de facto* State organs regardless of any specific instruction by the controlling State concerning the commission of each of those acts." If the controlling State is not the territorial State where the armed clashes occur or where at any rate the armed units perform their acts, more compelling evidence is required to show that the State is genuinely in control of the units not merely by financing/equipping them, but also by generally directing or helping plan their actions.[173]

70. The Majority erred when it concluded that there was an international conflict, counter to the standards set in the Tadić AJ. According to the Majority, the two states that were in international armed conflict were Croatia and Bosnia-Herzegovina. There is not any document presented in evidence or relied upon by the Majority stating that Croatia and Bosnia-Herzegovina are engaged in armed conflict with one another. The record has no document of any state, or any international organization naming these two states in conflict. But, there are documents that state the opposite. During all times BiH President Izetbegovic traveled to other countries across Croatia.[174] When the JNA started a war with Croatia, Izetbegovic declared this war was not supported by Bosnia-Herzegovina[175] and he called on BiH conscripts not to fight in the JNA war on Croatia.[176] As the JNA's war spread to Bosnia-Herzegovina, the Republics of Croatia and Bosnia-Herzegovina entered into a Agreement on Friendship and Cooperation on 21.07.1992 which recognized the ABiH and HVO as integral parts of the BiH armed forces.[177] On 20.04.1993 the ABiH

[171] *Tadic, AJ* para. 84
[172] *Tadic, AJ*, para. 130, 131, 132, 137
[173] *Tadic, AJ*, para. 137, 138
[174] P00336, P00414 (Izetbegović says: 'The situation is clear for us – the friendship between Moslem and Croatian people suit us. The friendship with Croatia suits us also because everything from our side has to go through Croatia. And also everything that goes to Europe has to pass through Croatia.'), P01158, P02059, P02719,
[175] P10451; [REDACTED]
[176] Zuzul (T.31115/25-31116/2)
[177] P339

and HVO were again to be treated as equal members of the BiH Armed Forces.[178] On 29.06.1993 President Izetbegovic himself declared the HVO as a constituent part of the BiH armed forces.[179] On 24.04.1993 the Presidents of Croatia, Bosnia-Herzegovina and the HVO met in Zagreb to discuss a Joint Command between the HVO and ABiH.[180] Thereafter such joint commands were set up.[181] Croatia and Bosnia-Herzegovina entered an agreement whereby Arms/MTS were provided to the ABiH by the Republic of Croatia and HVO.[182] 90% of the weapons and MTS of the ABiH were provided by the Republic of Croatia and HVO.[183] Transport was provided for arms/ MTS to get from Croatia to the ABiH.[184] Oil for the use of ABiH was imported via the Croatian port of Ploca.[185] Given this evidence, it is unclear when, according to the Majority, it was established that Croatia and Bosnia-Herzegovina are in war, with one another. Respectfully, no reasonable Chamber could reach such a conclusion. Any support given to the HVO by Croatia is support given to one of the constituent parts of the RBiH armed forces, and thus cannot be considered hostile to or an act of war against the RBiH.

71. Official Croatian/Bosnian sources do not mention any such war between Croatia and Bosnia-Herzegovina. Per *Tadić* the control required by international law may be deemed to exist when a State (or Party to the conflict) has a role in organizing, coordinating or planning the military actions of the military group, in addition to financing, training and equipping or providing operational support to that group. Even Judge Antonetti, says - the material and logistical assistance to the HVO do not suffice to be characterized as **overall control**; that also requires **the planning of military operations**, and with respect to this criterion, no evidence from anyone was able to establish it.[186] The only exhibit which is undated, refers to the 5th Tactical Group, without further detail. It may be that this document concerns the 1992 period pitting Croatia against the Serbian forces. As a reasonable Judge, I must be satisfied beyond a **reasonable doubt** that an intervention by the Croatian Army took place.[187] The fact that this intervention amounted to General Praljak or Petković sending officers from the Croatian Army is not enough to say that the HVO was under the **total control** of the HV. Burden of proof is on Prosecution, and in this case there are no evidence that

[178] P1988.
[179] Filipovic (T.47778/5-1); 1D2664
[180] P2059
[181] Makar (T.38414/2-17); 2D439; P2155; 4D455
[182] Bahto (T.37898/6-37899/3)
[183] Praljak (T.42146/13-14)
[184] Milos (T.38651/1-6)
[185] 1D2458
[186] Vol.6/page 188
[187] Ibid.

support all elements from the standard set in Tadić – because overall control of Croatian Army over HVO has not been proved in entirety, it does not go beyond technical and financial aspects and do not encompass aspects of planning and monitoring military operations, which is necessary for overall control to exist – precisely, of all charges mentioned in Indictment, there is no single mention of Croatian Army involvement. Also, the International Court of Justice emphasizes the concept of **effective control** of operations; thus, it is not enough to assist, it is required to direct – that is to say, to have authority over – the military operations.[188]

72. The Majority's focus on assistance/training given to the HVO by Croatia, is selectively/improperly viewing the evidence . There is sufficient evidence that Croatia likewise provided training and assistance to ABiH personnel on like manner[189] This training continued even into 1993.[190] Arms were provided jointly to the HVO and ABiH by Croatia.[191] As stated above, Arms/MTS were provided to the ABiH continuously, even when there is conflict between HVO and ABiH in some municipalities.[192]

73. So, the Majority, erred in its conclusion that international armed conflict existed, because there was no war, i.e. international armed conflict between Croatia and Bosnia-Herzegovina, there was no overall control of Croatian Army over HVO because there is no proof that Croatian Army was involved in any kind of planning of military operations or any actions which are part of the charges of the Indictment. The State is genuinely in control of the units/groups not merely by financing and equipping them, but also by generally directing or helping plan their actions.[193] This criteria has not been met. The only proof that the Majority raised concerning this element is that, according to Biškić, Croatian Minister Šušak went to Herzegovina, where he is from and where his family lives, and met some of the important military/political figures of HVO- but there is no any evidence what they were talking about, and this cannot be proof of overall control of the Croatian state over HVO/HR-HB.[194] Any inferences from this one visit cannot override the contrary picture of Croatia and BiH being allies and partners which is abundantly clear from the evidence.

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[188] *Case Concerning Military and Paramilitary Activities In and Against Nicaragua (Nicaragua v. United States of America)*(ICJ), Merits, Judgment of 27 June 1986, paras 110, 112, 115, 215 to 220
[189] 3D314; Biskic (T.15194/3-18); Praljak (T.41132/5-41134/7)
[190] 3D299
[191] 3D437
[192] 2D809; 2D229
[193] *Tadić AJ* , para. 137, 138
[194] Vol.3/551-552

74. Financing/equipping of HVO by Croatia is not enough, so the Majority erred concluding that all criteria for existence of an armed conflict were met, and when it concluded that the HV units participated in the conflict between HVO and ABiH, and concluded that the Croatia exercised direct global control. The Judgment's finding of International Armed Conflict should be vacated.

B. Sub Ground 2: *State of Occupation*

75. The Chamber erred as a matter of law and fact when it concluded that Defence teams were adequately informed that an alleged state of occupation is part of the Indictment.

76. The Chamber observed that a partial occupation of the territory existed in paragraph 232 in the Indictment. The Chamber notes, that occupation was discussed by the Praljak Defence in paragraph 31 of its Pre-Trial Brief. Furthermore, both the Praljak and Petković Defences addressed occupation in their Final Briefs, which were filed contemporaneously with that of the Prosecution. Consequently, the Chamber concluded Defence teams were adequately informed of the allegations brought against the Accused Praljak and Petković as to occupation. The Chamber, however, recalled that the Prosecution must first prove that such an occupation existed.[195] In paragraph 232 it is said: At all times relevant to this indictment, a state of armed conflict, international armed conflict and partial occupation existed in Bosnia and Herzegovina, which involved, in whole or part, the State of the Republic of Croatia and its government, armed forces and representatives in an armed conflict against the State of the Republic of Bosnia and Herzegovina and/or against the ABiH and/or Bosnian Muslims on the territory of the State of the Republic of Bosnia and Herzegovina. The Chamber thus found acts and omissions which the Accused are responsible, occurred during and in nexus with such international armed conflict and partial occupation.[196]

79. An indictment is defective if it does not plead the material facts in sufficient detail so as to enable the accused to prepare his/her defence.[197] Where evidence is presented at trial which, in the view of the accused, falls outside the scope of the indictment, an objection as to lack of fair notice may be raised and

[195] Vol.1/91
[196] Vol.1/90, Indictment par. 232, Prosecution Final Brief, paras 323 to 360,
[197] *Sainovic et al*, AJ at para. 262; *Nahimana* , AJ at para. 322; *Simic*, AJ at para. 20

an appropriate remedy may be provided by the Chamber, either by way of an adjournment, allowing the Defense adequate time to respond to the additional allegations, or by excluding the challenged evidence.[198]

80. Vol.1/91 says that Accused were indicted and put on notice that there existed a state of partial occupation, and they were convicted for more – full occupation. Occupation and partial occupation are not the same. Chamber went beyond the Indictment, in a matter that is not permitted, rather than allowing the Defence adequate notice, or excluding the new evidence/arguments. Also, in par 91 the Judgment makes a case that the allegation of occupation was known to and against Petković and Praljak, but what about notice to Ćorić? The Chamber is silent on this issue because there was no proper notice. Also, Chamber says that in the Indictment, par 8 and 10, Petković and Praljak are alleged to have "exercised *de jure* and/or *de facto* command over the Herceg-Bosna/HVO armed forces', but there is no mention of occupation, zone of occupation or partial occupation in these paragraphs of the Indictment.[199] So, this is an error of law and fact, because it shows that Defence teams were not aware of allegations of occupation. The error is apparent when the Chamber can only point in Vol.1/91 to the mere fact partial occupation was mentioned once in the Indictment, and points to Paragraphs 8 and 10 in which occupation is not mentioned at all.

81. The Chamber erred when it established the existence of a state of occupation in Bosnia-Herzegovina.[200] Occupation is defined as a transitional period following invasion and preceding agreement on the cessation of the hostilities.[201] This distinction imposes more onerous duties on an occupying power than on a party to an international armed conflict.[202] The first definition of occupation is according to the Institute for International Law, circa 1880, and it defines occupation - territory is regarded as occupied when, as the consequence of invasion by hostile forces, the State to which it belongs has ceased, in fact, to exercise its ordinary authority therein, and the invading State is alone in a position to maintain order there.[203] This position has since been endorsed by the US Military Tribunal of Nuremberg in the Hostages trial, which stated that 'whether an invasion has developed into an occupation is a 'question of fact'[204] Establishing, on a factual basis, that foreign forces exert a significant degree of authority over a territory is a

[198] *Furundzija*, TJ at para. 61
[199] Indictment, par 8, 10
[200] Vol.3/569-589
[201] Naletilic TJ, para. 214
[202] Naletilić TJ, par. 214
[203] the Institute of International Law, in Article 41 of its Manual on the Laws of War on Land (the Oxford Manual), 1880
[204] US Tribunal at Nuremberg, Hostages trial, Law Reports of Trial of War Criminals, Vol. III, UN War Crimes Commission, 1949, London, p. 55, Naletilic, TJ para. 211

complex exercise, the transition between the invasion and occupation phases is particularly difficult to identify with exactness. It is clear that, according to international law, state of occupation follows invasion. And it must be foreign forces to take territory for occupation to be established. HVO was on that territory from the beginning of the war and did not invade. Croatia did not invade, and the conflict was not an International Armed Conflict between Croatia and Bosnia-Herzegovina.[205] The Chamber made an error of law because it did not mention invasion, as an essential element of establishing a state of occupation. But, without invasion, there is no occupation. The Chamber does not cite evidence nor conclude that the HVO invaded the territory that after that becomes occupied. Chamber does not therefore satisfy the test set in the Nuremberg Hostage trial, which asked– do facts confirm that an invasion has developed into an occupation. The Chamber has neither identified nor found based on evidence that an invasion existed or when said invasion developed into occupation, as required by law. Thus the Judgment misses the most important element – thereby invalidating its other findings as to occupation.

82. The Judgment does not establish the important elements of occupation. Also, it does not satisfy that occupation must be done by foreign power. Occupation implies some degree of control by hostile troops over a foreign territory. The HVO is not a foreign power, it did not come from anywhere. According to ample evidence, including BiH authorities, the HVO was an equal and constituent part of the RBiH armed forces on par with the ABiH.[206] Thus the HVO is not a foreign army, and could not invade its own state of RBiH, nor occupy same. Having in mind that there was no Army of BiH prior to HVO on this territory, nor institutions of BiH state,[207] it is unclear how the Chamber reached its erroneous decision. Indeed there is also evidence that the HVO cooperated with the nascent Territorial Defence first established by the RBiH before the ABiH formed.[208] Accordingly, no reasonable chamber could reach the conclusion of a state of occupation.

83. The Chamber erred, in violation of general principles of international law and provisions of the Geneva Conventions, when it established the existence of a state of occupation in Bosnia-Herzegovina, a legally flawed conclusion that no reasonable finder of fact could reasonably have drawn on the basis of the

[205] See, Ground 3, sub-ground 1
[206] 1D2432; P339; 1D507; 4D410; 4D826; 1D2664; P2002; P2091; Filipovic (T.47778/5-11); Zelenika (T.33248/11-25); [REDACTED]; Pinjuh (T.37700/5-9)
[207] For example in Stolac where Moslem mebers of HVO formed ABiH Bregava brigade: Buntic (T. 30669/5-30671/19), Praljak (T. 40401/7-40403/3; 40509/3-40510/12)
[208] Akmadzic (T.29735/17-29736/1)

evidence. Adding to this is that in order to reach a conclusion as to whether a State, the military forces of which are present on the territory of another State as the result of an intervention, is an 'occupying Power' in the meaning of the term as understood in the *jus in bello*, the Court must examine whether there is sufficient evidence to demonstrate that the said authority was in fact established and exercised by the intervening State in the areas in question.[209] The Judgment's findings should be vacated.

V. **4th Ground for Appeal: *The Chamber made an error of law when it concluded that members of HVO of Muslim ethnicity, were protected persons according to article 4 of the IV Geneva Convention***

84. The Majority erred when it concluded that in violation of provisions of Geneva Conventions that Muslims, members of HVO were, after 30.06.1993, protected persons according to article 4 of the IV Geneva Convention. No reasonable Chamber could make such a determination upon the evidence. The fact that the HVO in this particular instance detained its own soldiers, many of whom had mutinied, weighs against the notion that these detainees could be characterized protected persons.

85. The Majority first correctly states that Muslim HVO members clearly belong to the armed forces of a Party to the conflict: the HVO.[210] Further, in determining that members of one's own army cannot be considered prisoners of war when detained by their own armed forces, the Majority concludes that the objective of the Third Convention unambiguously leads to the conclusion that only those persons belonging to the armed forces of a Party other than the detaining Party are concerned.[211] In doing so the Majority clearly states that the purpose of protection is to allow belligerents to place members of "enemy" armed forces *hors de combat.*[212] After appropriately denying POW status to Muslim HVO soldiers based on their allegiance and membership to the HVO rather than a "enemy" armed force, the Majority then erroneously concludes that they qualify for protection under the Fourth Geneva convention as having fallen into the hands of an "enemy" power.[213] No reasonable chamber could consider the HVO an "enemy power" after determining that Muslim detainees belonged to the HVO, and owed allegiance to the HVO. In short, after

[209] ICJ, DRC v. Uganda, para. 173
[210] Vol.3/603
[211] Vol.3/603-605
[212] Vol.3/604
[213] Vol.3/611

finding that the HVO was not the "enemy" forces in denying Article 3 protection, a chamber cannot then under the same evidence qualify the HVO as an "enemy" power under Article 4.

86. Article 4 of the said Convention provides that "persons protected [by the Convention …] are those who, at a given moment and in any manner whatsoever, find themselves, in case of a conflict or occupation, in the hands of a Party to the conflict or Occupying Power of which they are not nationals."[214]

87. The Majority to attempt to ascertain whether the Fourth Convention applies, asserts it is merely necessary to establish whether the Muslim HVO had fallen into the hands of a party to the conflict of which they were not nationals.[215] The Appeals Chamber clearly established that the criterion applicable to determine the status of protected persons is not nationality but allegiance.[216] The Majority erroneously considered that from at least 30.06.1993, the Muslim HVO were perceived by the HVO as loyal to the ABiH, and consequently finds that the Muslim HVO, detained by the HVO from 30.06.1993 onwards, had indeed fallen into the hands of the enemy power and were thus persons protected within the meaning of Article 4 of the Fourth Geneva Convention.[217] Such approach ignores the fact that these Muslims, as members of the HVO held some allegiance to the HVO, and were viewed as member of the HVO by the HVO commanders, and thus the HVO could not be an "enemy power." They wore HVO uniforms and were registered members of the HVO, they utilized HVO weapons, and were billeted in HVO barracks. No evidence was led to demonstrate if and how these Muslim soldiers de-registered their status, turned in weapons and uniform, or vacated their barracks so as to give up these allegiances' to the HVO. Under the Jurisprudence, Muslim HVO detainees could not be protected persons unless they owe **no** allegiance to the party to the conflict in whose hands they find themselves and of which they are nationals."[218] The HVO could not be an "enemy power" when it was one of the constituent members of the RBiH armed forces[219] especially since it was precisely the one these soldiers were enlisted in, and the ABiH they mutinied alongside with was also a constituent member of the same armed forces. The evidence is clear that the time spent by them in detention counted as time spent in service of the HVO, [220] which means they were viewed by the HVO as its members. Even Petković, then Chief of HVO Main Staff clearly states that the

[214] Vol3./607
[215] Vol.3/608
[216] Vol.3/608; *Tadić* AJ , para. 166
[217] Vol.3/610,611
[218] Kordic and Cerkez, AJ , para. 330. (emphasis added)
[219] 1D2432; P339; 1D507; 4D410; 4D397; 1D2664 Filipovic (T.47778/5-11); Zelenika (T.33248/11-25); Pellnas (T.19730/5-10)
[220] 4D1466

isolated Muslim soldier of the HVO retained their status as HVO soldiers.[221] This was a classic case of mutiny, which does not fit the conclusions of the Chamber, which are contradicted by one another, insofar as the Chamber first recognizes that Muslim HVO belonged to the HVO,[222] but then reaches a legal determination that implies no allegiances' to the HVO.

88. Appeal Chamber in Tadić case states - "hinging on substantial relations more than on formal bonds"[223] becomes more important "in modern inter-ethnic armed conflicts such as that in the former Yugoslavia".[224] Or, put another way, ethnicity may become determinative of national allegiance over other more traditional factors. Under these conditions, the requirement of nationality is even less adequate to define protected persons. In such conflicts, not only the text and the drafting history of the Convention but also, and more importantly, the Convention's object and purpose suggest that allegiance to a Party to the conflict and, correspondingly, control by this Party over persons in a given territory, may be regarded as the crucial test.[225]

89. The Majority erred in performing this test – while it acknowledged that the HVO had control over them, it did not establish that any other armed party has control over them, nor did it fully analyze to whom allegiances of any kind were owed by the detained soldiers. The Majority merely quoted evidence from which is seen that HVO view the Moslem soldiers in their units as a security threat[226], but to fulfill the test set in Tadić, persons who are viewed as threat have to be controlled by another party. To fulfill the standard in Kordic and Cerkez, they have to owe no allegiance to the power in whose hands they are. If the HVO regards Muslim HVO soldiers as a security threat, this does not mean that the soldiers themselves or the HVO have renounced the allegiance that is owed to the HVO by its soldiers. The same would be true if the HVO regarded certain Croat soldiers as threats. A mutinying soldier is a threat, but is not by definition under the control of another armed force. The ABiH may have had an influence upon these mutineers, but it has not been established nor has evidence been led that they were under the control of the ABiH and more importantly, that they owed no allegiance to the HVO anymore, that their pre-existing allegiances had been severed.

[221] Petković, (T.49579/11-24)
[222] Vol.3/603
[223] *Tadić* AJ , para. 166
[224] *Tadić* AJ , para. 166
[225] *Tadić* AJ , para. 166
[226] Vol.3/609

90. The Majority, finds that Article 4 of the IV Geneva Conventions is satisfied, contrary to the Prosecution indictment which states that they are protected under Article 75 of Additional Protocol I and under Common Article 3 of the Geneva.[227] Thus the Majority has over-stepped the indictment. According to the Tadić test, possible allegiance to ABiH of the detained Muslim HVO members is just a part of the condition which has to be to met under Article 4 of Fourth Geneva Convention, the control of these persons by the ABiH, also has to be established. In this case under the evidence it is not.

91. As HVO Soldiers, the detention of these Muslims is an accepted occurrence which falls within the exclusive internal competence and provenance of any armed force.[228] While the Muslim HVO were of a different ethnicity from their captors, ethnicity is only determinative of a protected person's allegiance when there are no other substantial relations. In this case the Muslim HVO voluntarily joined the ranks of the HVO, having accepted the HVO code, had substantial ties/allegiance that lay wholly with the HVO. They were legally entitled to the same benefits as their Croat colleagues in the HVO.[229] While the Majority only focuses on the threat they posed,[230] and the perceived loyalty they had to the ABiH,[231] there is not a reasoned analysis of to whom they owed allegiance, and in particular if they owed allegiance to the HVO. The Majority has thus erred invalidating the finding that Muslim HVO were protected persons. The law of armed conflict does not protect members of armed groups from acts of violence directed against them by their own forces, one cannot commit a war crime against their own forces, regardless of nationality[232].

92. Further the Majority completely ignored the evidence that even after the some Muslim HVO attacked the barracks in Mostar 09.05.1993, the rest were not disarmed by the HVO as they were considered loyal to the HVO.[233] Also the Majority ignored the evidence confirming that the HVO authorities made a clear distinction between the detained Muslim HVO and enemy prisoners of war.[234] Thus they were not viewed as "enemy" POWs and thus the HVO could not be an "enemy" power.

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[227] Vol.3/596
[228] for example: National Defence Act, R.S.C. 1985, c. N-5, Section 139. (1)(f) (Canada); The Army Act, 1950 1 Act No. 46 of 1950, Section 80 (India); Armed Forces Act 2006, Chapter 52, Section 132 (United Kingdom); Title 10, Subtitle A, Part II, Chapter 47, Uniform Code of Military Justice, Section 809 Article 9 (United States);
[229] P04756; [REDACTED]
[230] Vol.3/609
[231] Vol.3/610
[232] Special Court for Sierra Leone, RUF Judgement 2 March 2009, ¶ 1451 (page 435). ; A.Cassese, *International Criminal Law*, 82 (2008), A. Harrington, *25TH of May 2006 Massacre & War Crimes in Timor-Leste;* East Timor Law Journal, at 32 (2007).
[233] Bozic (T.36379/4-36380/16)
[234] P00514. p.8.;P00956, p. 14; Petković, (T.49579/11-24) Josip Praljak (T.14649/21-14651/17)

93. Servicemen within the army of the detaining Power do *not* fall within the jurisdiction of IHL at all.[235] The Majority erred in ignoring this principle.[236] The principle was renewed in the RUF case of the Special Court for Sierra Leone[237], RUF case: *The law of international armed conflict was never intended to criminalise acts of violence committed by one member of an armed group against another, such conduct remaining first and foremost the province of the criminal law of the State of the armed group concerned and human rights law. In our view, a different approach would constitute an inappropriate re-conceptualisation of a fundamental principle of humanitarian law. We are not prepared to embark on such an exercise.*[238]

94. The post-World War II cases to deal with this issue such as *Pilz* and *Motosuke* hold that the nationality was overruled by military allegiance.[239] The Majority failed to discuss the military allegiance of Muslim HVO. From the above, it is clear that international jurisprudence does not support the conclusion of the Majority, and same should be vacated.

VI. **5th Ground for Appeal: *The Chamber made an error of law when it concluded that military aged men were not members of armed forces***

95. The Chamber erred when it found in violation of provisions of Geneva Conventions that military-age men, were not members of armed forces according to IHL. This error is compounded by the fact that under the national law, they were members of the armed forces.

96. Per the Majority a reservist becomes a member of the armed forces within the meaning of international humanitarian law once he has been mobilized and has taken up active duty, that is, once he has been incorporated into an organized structure and placed under a command accountable for the conduct of its subordinates.[240] According to the Majority, it is only then that a member of the reserves acquires the status of combatant and becomes a prisoner of war if he falls into the hands of the opposing

[235] Cassese, *International Criminal Law* (2008), p.82,
[236] Vol.3/604
[237] RUF TJ, para.1451: 'the law of armed conflict does not protect members of armed groups from acts of violence directed against them by their own forces'
[238] RUF TJ, para 1453
[239] *In re Pilz,* International Law Reports vol.17, 391 (1957), p.391, *Motosuke*, 13 *Law Reports of Trials of War Criminals* (1949), p.129
[240] Vol.3/619

party.[241] Such a person thus retains the status of combatant from the instant he is mobilized and enters into active duty until such time as he is permanently demobilized.[242] Outside this temporal framework, a member of the reserves is a civilian and cannot in any event be considered a prisoner of war if put in detention by the opposing party during a conflict.[243] For this reason, a party to an international conflict cannot justify the detention of a group of men solely on the ground that they are of military age and that national law obliges the general mobilization of the men in this age group in the event of war, rather such a party must verify whether the person has actually entered into active duty. [244] Respectfully the Majority mis-understands the laws of mobilization in the Ex-Yugoslavia.

97. According to the BiH Constitution a member of the armed forces is every citizen who, with arms or on any other way, take part in the resistance against enemy.[245] The Decree passed by the RBiH on 14.04.1992 also defined compulsory work, civilian protection services, training for defence, and participation in another forms of "all-peoples defence" as obligation of all its citizens.[246] All citizens fit for work were compelled to perform military service, and thereafter to serve in the reserve forces.[247] Units and institutions of Territorial Defence and other forms of organizations of working people and citizens organize and prepare during peace, and they activate in war, in the case of Direct War Danger and in other extraordinary situations, as during exercises and other tasks during peace predicted by this law. So, it was known to everyone in Ex-Yugoslavia that any male, capable of serving army, is a member of Territorial Defence with tasks that were given to him during peace, for the case of war. Especially given the RBiH laws cited above. So, factually this is precisely what the Majority describes as the situation in which reservist becomes military person, member of the armed forces within the meaning of IHL - once he has been incorporated into an organised structure and placed under a command accountable for the conduct of its subordinates. The Majority's understanding of "reserve" is different from that under the national law.

98. Further, the Majority focused on when someone is mobilized as being the lynchpin of becoming a combatant[248] and criticizes that a party cannot rely merely on national law that one is subject to mobilization

[241] Vol.3/619
[242] Vol.3/619
[243] Vol.3/619
[244] Vol.3/618-620
[245] 4D1731 para.64
[246] 4D1030, Art.1
[247] 4D1030, Art 2, 4/1, 4D00412, Article 7,8,9
[248] Vol.3/619

but must verify their status.[249] Such an approach represents a misunderstanding of the evidence/facts. It is not merely that under law they were subject to mobilization, rather they were in fact mobilized. On 09.04.1992 the state of imminent threat of war was declared by the RBiH.[250] Thereafter on 20.06.1992 a state of war was declared.[251] On that same day a general mobilization was effectuated (not just existing under the law, it was actually undertaken), making all men 18-55 members of the Territorial Defence.[252] From the moment of general mobilization, all male able-bodied citizens became active members of the armed forces of BH. Military recruits were not allowed to leave the municipality during the period of war.[253] ABiH commanders treated Croat military recruits as members of the HVO.[254] ABiH treated their own conscripts as non-civilians.[255] Able-bodied Muslim men, military conscripts of the ABiH, were considered by the HVO authorities as the reservists of the ABiH and thus, if interned, they would come under the category of POWs.[256]

99. Given that this all happened and was not rescinded, there was not anything necessary to verify if the military-aged men were combatants. They were detained after 30.06.1993 as a security threat, as persons who had physical and mental capacity and legal status under domestic law as members of the armed forces having been mobilized precisely one year prior under BiH laws to join the BIH Armed forces and said mobilization never being rescinded. There was actual evidence the ABiH not only had mobilized them but had issued plans and orders for their use to attack the HR-HB and HVO.[257] The threat posed by these men was precisely as soldiers, not civilians, and the intent of the HVO to detain them was to detain them as military men, not civilians.[258] Under such evidence, no reasonable Chamber could determine that these men were not yet "combatants." The Majority, in doing so, violated the principle of *in dubio pro reo* by ignoring equally valid conclusions available under the evidence.

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[249] Vol.3/620
[250] P150
[251] P274
[252] 4D1164
[253] 1D01410, Military expert witness Andrew Pringle in his report, P09549, para.78:' In general terms, women, children and elderly could be set aside as probably noncombatant.Where there is suspicion the individuals could be questioned toascertain their true identity and role. It would be reasonable to question carefully men of fighting age who claimed non-combatant status. Questioning would have to be carefully regulated and in accordance with the Laws of War.'
[254] Idrizović (T.9903/20-9904/3)
[255] 4D00430, Mahmutović (T.25694/2-11); 1D00349;
[256] P04841, Tokić (T.45373/25-45374/11)
[257] 2D281; 2D288
[258] *Kordic* and Čerkez, AJ, para. 609

100. Men of military age are not considered civilians, unless proved otherwise.[259] On the other hand, men younger and older then those of military age, as well as women, are considered civilians, unless proved otherwise.[260] The burden of proof to establish the status of an alleged victim is at all times on the Prosecution and there is no presumption of civilian status in that context when civilian status is an element of the offence.[261] The Majority failed to apply this. The Majority erred because it concluded that military-aged men were civilians without having the Prosecution meet their affirmative burden of proof. According to BiH legislature, they were members of Reserve Forces, and the Prosecution had to prove that they were not assigned to ABiH units, that they were not in some non-combat activity inside the ABiH. The error of the Majority is further problematic given that the armed forces may consist of combatants and non-combatants. In case of capture by the enemy, both have a right to be treated as Prisoner Of War.[262] Non-combatant members of armed forces include administrative services, medical personnel, military legal services, auxiliary services, civil defence, and civilians incorporated in an army is a member of the military until demobilized by the responsible authority.[263] According to the Constitution of BiH, any citizen who with arms or otherwise participates in resistance to an aggressor shall be considered a member of the armed forces of the Republic.[264] All citizens of the Republic of BH who were fit for work were subject to compulsory military service. Compulsory military service consisted of the recruitment obligation, the obligation to complete military service and the obligation to serve in the reserve forces.[265] Reserve forces are a structural component of the ABiH. Military conscripts who had completed their military service were liable for service in the reserve forces. The Majority thus set the threshold lower than permitted by the jurisprudence. The findings of the Majority should thus be reversed/vacated.

VII. **6th Ground for Appeal:** ***The Chamber made a numerous errors of law and fact with regard to Valentin Ćorić's powers, functions and authorities as a Chief of MP within HVO, in determining that he had both Art. 7(1) and Art. 7(3) liability for the crimes charged.***

[259] Kordić and Čerkez, AJ , paras. 608, 609, 615, 623
[260] Ibid.
[261] Kordić AJ, par. 608, 609, 615, 623, see par. 609: "in the circumstances the evidence does not support that the HVO carried out blanket detentions of all Muslim civilians, but rather suggests that men of military age between 18 and 60 were targeted"
[262] Article 3 of the Hague Regulations
[263] *Commentary on the Additional Protocols*, p. 1677; Henckaerts and Doswald-Beck, *Customary International Humanitarian Law*, Volume I: Rules, Rule 3, p.13
[264] 4D01731, par 64
[265] 4D01030

A. Introduction

101. The errors in relation to JCE liability and 7(3) as to remaining topics have been discussed elsewhere.[266] This section deals with detention facilities.

102. The Chamber in analyzing Ćorić's responsibility for prisons supports its conclusions based on *de jure* factors and does not take into consideration evidence which sets forth the de facto situation. Despite the statements of the witnesses whose authenticity has not been questioned, and numerous and prevailing evidence, the Chamber attempts by force to establish Ćorić's responsibility with several documents whose authenticity is open to question and two witnesses who cannot be trusted. The Chamber erred in finding Ćorić having authority as MPA Chief over detention centres in determining that he had Art. 7(1) and Art. 7(3) liability.

103. The Chamber erred when it concluded that Ćorić ordered the establishment of Heliodrom and Ljubuški Prisons, and that, as a MPA Chief, he was hierarchically superior to the wardens of those prisons and that he was ultimately responsible for the security of the detainees, and that he was involved in the security of detainees at Dretelj Prison. The Chamber erred in finding that Ćorić, in his capacity as MPA Chief, had the power to grant representatives of international organizations access to the Heliodrom, Dretelj Prison, Ljubuški Prison and the MUP buildings in Prozor, that he supervised access to the Heliodrom for the members of the HVO, that from September 1992 until 14 October 1993 he had the power to authorize the use of detainees for work on the front line, that he had the power to order transfer of detainees at the Heliodrom, Dretelj, Gabela and Ljubuški prisons and the Vitina camp.

B. Ćorić did not order the establishment of Heliodrom or Ljubuški Prison.

104. As for the establishment of Heliodrom, the Chamber ignored evidence, specifically, the HZHB Decree dated 3.7.1992. relating to persons captured in armed conflicts, the Head of the Department of Justice and Public Administration in cooperation with the Head of Defense and Head of the Department of

[266] Grounds 2, 10, 13

the Interior shall determine the location where prisoners of war will be kept.[267]The Central Military Prison was founded in this manner.[268]

105. The Chamber held that the testimonies were very often contradictory and did not enable the Chamber to gain a clear view of the decision-making process that led to the establishment of the Heliodrom.[269] Documentary evidence proves that Heliodrom was established by an order of the Head of the Defence Department issued on 09.09.1992.[270] Due to the fact that the prison was already set up, the order issued by Ćorić on 22.09.1992[271] did not have any relevance. The Chamber based its conclusion on the dairy of Praljak,[272] the *de facto* deputy warden of the Heliodrom.[273] According to Praljak's diary, a meeting took place on 8 September 1992 between Ćorić, Pero Nikolić and Praljak to discuss renovations at Heliodrom. The testimony of Nikolić sheds doubts on this document, since he denied such a meeting had ever taken place.[274] His testimony, since he was personally involved in the construction of the Heliodrom, proves that Ćorić did not play any role in that.[275] The diary of Praljak itself cannot be given any weight in general due to the fact that in addition to the inconsistencies in it, a number of witnesses confirmed that the diary was false.[276] This clearly demonstrates that in spite of the fact that even the *de jure* situation on which the Chamber otherwise relies shows otherwise, the Chamber will ignore a document that goes against the dubious evidence it relies upon rather than undermine the forced arguments it has adopted for the conviction Ćorić.

106. At the time of its establishment, no plan existed for the detention of a large number of prisoners in Heliodrom. This detention facility, composed of only one building, was designed to accommodate not more

[267] P292
[268] P452
[269] Vol.2/1393.
[270] P452
[271] P513
[272] P352
[273] Vol.2/1394.
[274] 5D5111, Nikolić (T.51402/22-51403/6; 51401/10-12; 51431/6-14)
[275] Nikolić (T.51395/23-51396/6)
[276] Vidovic (T.51740/14-51741/25), Nikolic (T.51401/13-51403/6), [REDACTED]

than 500 prisoners.[277] The situation changed only on 30.06.1993 with the disarmament, arrest and detention of Muslim members of HVO units ordered due to an urgent military necessity.[278]

107. The above cited evidence demonstrate the fact that (1) no plan existed for the detention of large number of detainees at the Heliodrom site, it was established to serve as a military detention centre, and (2) Ćorić did not play any role in its establishment.

108. The Chamber approved the arguments presented by the Defence,[279] and decided not to take into account the sole document presented by the Prosecution to underpin its allegation that Ćorić was involved in the establishment of Ljubuški Prison, namely a security plan for the prisoner of war camp at Kerestinec.[280] Apart from this, the Chamber referred to two documents[281] which prove that the Ljubuški Prison served the sole purpose of military detention managed by the brigade.

109. Overwhelming evidence shows that from October 1992 on, the Ljubuški site was used for military detention and that it was managed by the relevant brigade,[282] and therefore, Ćorić was not involved either in its establishment nor management.

110. Given the lack of evidence, the Chamber's conclusion that Ćorić established the Heliodrom and Ljubuški does not comply with the principle of *in dubio pro reo,* and is unreasonable.

C. Ćorić was not hierarchically superior to the wardens of Heliodrom and Ljubuški Prison

[277] P1635, P3942, P4186, P5812, Item 3 c, Josip Praljak (T.14923/13-18)
[278] Grounds 4-5
[279] Closing Arguments (T.52722-52723)
[280] Vol.2/1790.
[281] P128, P956
[282] P956, pp 14, P916, P1478, P5642, [REDACTED], P5302, [REDACTED]

111. The Chamber erroneously concluded that the wardens of Heliodrom and Ljubuški were subordinated to Ćorić.[283]

112. The Chamber possesed evidence proving that Mile Pusic, the first warden of Heliodrom was appointed by the Head of the Defence Department,[284] and did not have any direct and credible evidence proving that Ćorić appointed the warden of any detention centre. [REDACTED][285] [REDACTED]. [REDACTED]. [REDACTED.[286] [REDACTED].[287] [REDACTED].[288] [REDACTED].[289]

113. The lack of any superior-subordinate relationship between the wardens of Heliodrom and the MPA/Ćorić is proven also by the fact that reports prepared by Praljak/Božić had headings with different registration numbers from those in use of the MP.[290] That the reports of Heliodrom's wardens were not sent to the MPA/Ćorić is simply due to the fact that prisons were not part of the organization of the MPA.[291]

114. There was no credible evidence on the superior-subordinate relationship between Ćorić and the warden of Ljubuški Prison. [REDACTED].[292] [REDACTED].[293] [REDACTED].[294] [REDACTED].[295] [REDACTED].

D. Ćorić was not responsible for the security of the detainees

[283] Vol.1/897, 899-900; Vol. 2/1401-1405
[284] P452
[285] P352
[286] [REDACTED].
[287] [REDACTED]
[288] [REDACTED]
[289] [REDACTED]
[290] P786, P4544
[291] P4544
[292] [REDACTED]
[293] [REDACTED]
[294] [REDACTED]
[295] [REDACTED]

115. The Chamber held that the Provisional Instructions for the Work of the MP Units of April 1992 and those promulgated in November 1992 did not clearly define the role of MPA and MP with regard to the security of detention sites. However, the Chamber referred to the regulations for the Central Military Prison of **Heliodrom** dated 22 September 1992 issued by Ćorić.[296] The document demonstrates that he did not draft the general house rules for the prison and merely intended to regulate the conduct of members of the MP assisting in the security of Heliodrom.[297] The Chamber failed to properly weigh the instructions on the house rules issued by the Head of the Defence Department[298] which could qualify as a stronger basis for conclusions on ultimate responsibility of higher authorities over Heliodrom and the security of detainees.

116. Both duties that fell under the authority of the MP, namely (1) to contribute to the maintenance of security within the prison and (2) to conduct criminal investigations, were accomplished under the command of the prison warden or the HVO command of the OZ. Daily duties were conducted on orders issued by the prison warden,[299] and any MP unit belonging to the 3rd (later 5th) MP Battalion, including its CPD had to follow the orders coming from the OZ commander.[300] The erroneous finding of the Chamber that the "commander for security" was appointed by Ćorić was based solely on Praljak's diary[301] which is dubious in its credibility as discussed above.

117. As regards **Dretelj Prison**, the Chamber relied on a report/request drafted by Tucak, Assistant Chief of MPA for Security on account of an *ad hoc* visit paid to Dretelj Prison on 11 July 1993.[302] [REDACTED].[303] This fact does not indicate that MPA had an overall authority/responsibility to ensure the security of detainees. [REDACTED]. [REDACTED].[304]

[296] Vol.1/896.
[297] P514
[298] P1474
[299] P1001
[300] Vidovic (T.51442/23-25, T.51512/20-25)
[301] Vol.1/897.
[302] P3377
[303] [REDACTED]
[304] [REDACTED]

118. House rules of the Dretelj Prison were issued by brigade commander Obradovic and the prison fell under the overall authority of the 1st Knez Domagoj Brigade,[305] the MPA or Ćorić did not play any role either in the maintenance of the prison or the security of the detainees held there.

119. The Chamber erred in finding that Ćorić played a significant role in maintaining security in **Ljubuški Prison.** This assertion was based solely on the erroneous finding that its warden was subordinated to Ćorić as discussed above. Overwhelming evidence prove that the prison was under the overall authority of the 4th "Stjepan Radic" Brigade, which was responsible also for the security of detainees within the prison.[306]The Chamber, among other things, concludes[307] that the assignments of the MP in regard to detainees and the detention centers was supposed to be performed in cooperation with the MUP, SIS, and other units of the HVO armed forces, and also required the involvement of the courts. It also cites the example that Slobodan Praljak, in his testimony said that the detained and arrested persons were in the jurisdiction of not only the MP, but also the MUP and SIS. The Chamber thus concludes that these organs had great difficulties in coordinating actions.

120. In Vol.1/894, the Chamber notes that the Temporary Instruction for the work of MP from April 1992 clearly determine the total responsibility for "internal security for military prisons" in HZ-HB and other "premises for keeping detained persons" belonged to the MP and the MPA, and that the MP participated in "securing prisoners of war".

121. In Vol.1/901 the Chamber states how it considered the Heliodrom Regulations and those for Ljubuski clearly talk of the authority of the MP and MPA for the internal security of the detention center, and that they illustrate the concrete duties of the MP in those centers. The Chamber fails to identify what document it considers to be the Regulations for Ljubuski, so the Defence can only assume that the Chamber is thinking of the security plan for prisoner of war camps from Kerestinec in Croatia of May 1992. In relation to this same document the same Chamber in Vol.2/1790 says that this document was not shown

[305] Vidovic (T.51737/17-51738/1), [REDACTED]
[306] P1987, P3793, P3421, P3784, P3367, [REDACTED]
[307] Vol.1/889

to any witnesses that could confirm that Ćorić was the author of the same. The Chamber then concludes it cannot beyond reasonable doubt find that this document was annotated/revised by Ćorić, such that it could be used in Ljubuski Prison, and thus the Chamber concluded that this document is not to be considered.

122. In relation to the formation of Ljubuski prison, in October 1992 the Geneva agreement was reached on the liberation, release and exchange of all POWs. In order to effectuate this agreement, most of the POWs were relocated to Heliodrom. After this relocation was carried out exchanges were completed in which all the prisoners of war from Heliodrom were released and exchanged, as well as those who were still found in other prisons.[308] From this operation on, all the other premises, including Ljubuski, could serve the sole purpose of military detention managed by the relevant brigade.[309]

123. From the beginning of the conflict with the ABiH, HVO military commanders in the field take over control of POW including their arrest, release and exchange.[310] Insofar as the military commanders arrested them, in line with the decisional authority, these same commanders had a duty for all further well-being of these detainees.[311]

124. A proper review of the evidence shows that in fact, detention facilities were managed according to the same system of command. HVO military commanders and not the MPA had the authority concerning the following factors: arrests, food and accommodations, security, health condition of prisoners and detainees, transfer of prisoners and detainees and release of prisoners and detainees.[312]

[308] 1D2435; 2D417; P677; Vidovic (T.51545/1-51548/25)
[309] P956, pg 14; P916; P1478; P5642; [REDACTED]; P5302; [REDACTED]
[310] P1913; 2D89; P1959; P5138; P1994; P1478; 4D1205; 5D4379; P2120; P3546; 3D525; P1333; P1636; P2182; P5138; P4862; P4432; P4217; P10164; 2D1319
[311] *Mrksic and Sljivancanin*, AJ, para 73
[312] P5647; P2649; 5D1057; P3266; P4156; [REDACTED]
P3019; P3222; P2132; P1913; P2120; P3546; P3234; P1359; Pavlovic (T.46851/16-46852/2); P3119; P680; P3270; P3954;[REDACTED]; Pavlovic (T.47007/20-47008/10); P3197; 2D1538; 2D1537; P4145; 2D412; P3129; 5D1066; 2D715; P3286; 2D278; Vidovic (T.51737/17-51738/1); P6658; P1913; P6662; P9732; P3380;[REDACTED]; P4941; P4946; P5138; P3604; P3169; 5D2184; P3201; P1636; P4193; [REDACTED]

125. The above discussed evidence clearly demonstrates that the Chamber erroneously came to the conclusion that Ćorić bore any responsibility for the security of detainees. Neither the MPA, nor Ćorić had authority over any aspect of the maintenance of the Heliodrom, the Dretelj or the Ljubuški detention facilities. Accordingly, no reasonable trier of fact would hold him responsible for the security of detainees.

E. Ćorić did not have the power to grant representatives of international organizations access to detention centres, and he did not supervise access to the Heliodrom for the members of the HVO.

126. The Chamber was not in the possession of evidence which would have proven that Ćorić had power to grant representatives of international organizations access to detention centres. The Chamber referred to documents[313] which indicated that Ćorić issued authorization to grant access to representatives of international organizations with regard to cases where (1) [REDACTED],[314] or (2) it was proven that the visit took place upon the authorization of the competent authority, namely the relevant HVO commander and not upon the approval of Ćorić.[315] No evidence proves that Ćorić was in charge of granting access, the available documents only prove that when he was requested, he never restricted access to detention centres for representatives of international organizations,[316] which assertion was confirmed by the Chamber.[317]

127. The Chamber relied on the diary of Josip Praljak[318] when it found that Ćorić supervised access to the Heliodrom for the members of the HVO.[319] This document cannot be given weight, as discussed earlier.[320]

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[313] [REDACTED], P2601
Vol.2/1438, 1441 and 1834
[314] [REDACTED]
[315] 5D1001
[316] 5D2008
[317] Vol.4/961 and 992
[318] P352
[319] Vol.2/1421 and 1428
[320] See, para. 105, 112, 116 herein

128. Visits, in general, either those paid by international organizations or HVO units, including interrogating authorities were authorized by the relevant HVO OZ, Sector or Brigade commanders as proven by overwhelming oral and written evidence.[321] The MPA or Valentin Ćorić did not have any authority in that respect.

F. Ćorić did not have the power to authorize the use of detainees for work on the front line.

129. Concluding that Ćorić had the authority to send detainees to labor in August 1993 and at the same time relying upon the order of Petkovic,[322] the Chamber ignores all documents and evidence proving otherwise in practice.[323]

130. Here it is important to emphasize Ćorić's position at a meeting with members of the crime section of the MPA held on 22.7.1993. Ćorić advises participants that the crime section of the MP should deal only with those detained persons suspected of committing criminal offenses. For all other persons, insofar as the MP did not detain them, it has no authority over them.[324] Ćorić's only involvement with transfer of detainees was precisely for those limited number of individuals being investigated as criminal perpetrators from the military, to transfer them to Ljubuski when the same became a military investigative prison.[325]

131. The Defence must stress that mere knowledge of Ćorić that enemy soldiers were detained does not presume knowledge of the mistreatment of those detainees.[326] Buntic stated, as to these prisons: These facilities, were not under the control of the civilian judiciary, the civilian courts, which is why I did not have any powers to enter them at all. We received information, and on the basis of this information we

[321] P3163, P3238, 5D3008, P2177, 5D4096, Vidovic (T.51529/17-51530/15)
[322] P0420, P04039; and P04030)
[323] Ćorić Final Brief, para. 473-503
[324] P3651
[325] P4838
[326] *Hadzihasanovic & Kubura*, *TJ* at para. 1291

drafted proposals for the HVO. The proposal was that on the basis of the information we obtained in the Capljina municipality, to release half of the people immediately and to relocate the other half to facilities which would provide better conditions.[327] The evidence is clear that military district courts were foreseen to be the organs that were to oversee and supervise the prisons, including the appointment of wardens, logistic support and functioning of the same.[328]

132. The Chamber based its erroneous finding that Ćorić and the MPA also had the power to authorize detainee labour outside of **Heliodrom** on arbitrarily selected parts of the testimony of Vidović.[329] He in fact testified about having been notified by warden Božić on certain detainees taken out of the Heliodrom for labour.[330] However, the Chamber failed to take into consideration the clarification and further details of Vidovic that he had the duty to conduct investigation into the cases where detainees were wounded/killed while taken from Heliodrom for work only if the person involved was subject to an earlier procedure of the CPD for another criminal offence.[331] At this point again, the Chamber ignored the fact that the regulation issued by Ćorić in September 1992[332] was overruled by the house rules issued by the Defence Department on 11.02.1993,[333] and therefore, it was not in force at the time of the incidents resulting from detainees taken out for labour from the prison.

133. The Chamber refers to two documents which are contradictory, and therefore cannot be regarded as proving the MPA's authority in August 1993.[334] The Chamber itself cites the relevant sentence in these orders issued by the Deputy Commander of the Main Staff in August 1993 addressed to the OZ and brigade command. One of the orders refers to the authorisation of the MPA and the other one to the approval of the MP Department. Due to the contradiction, these documents do not prove the authority of the MPA for the labour of detainees, and shed doubt on the conclusion that the MPA CPD was in charge of

[327] Buntic (T.30997/6-13)
[328] Buntic (T.30655/13-30657/6); Vidovic (T.51729/9-23); P4530; P4475; 1D1797; 2D1412; P3651
[329] Vol.1/909.
[330] Vidović (T.51655)
[331] Vidović (T.51664/20-51665/9)
[332] P514
[333] P1474
[334] P4020, P4039

surveillance of use of detainees falling within its authority due to a conviction for a previously committed criminal offence.

134. The dubious nature of the above document is underpinned by the request issued by the Posusje brigade based on the above cited order of the Main Staff.[335] The request was allegedly addressed to Ćorić. The report sent to the Brigade commander by the MP about the action of taking 100 detainees from **Vitina-Otok** to work indicates that the "prisoners were delivered by Krešo Tolj".[336] However, Vidović testified that Tolj worked for the **CPD** of Ljubuški Prison and had no official post or duty in the Military Prison of Otok.[337] Due to the fact that Tolj was not affiliated with Vitina-Otok, he did not have the power to deliver detainees held at that detention site, and this undermines also the credibility of the request/report drafted on this action.

135. [REDACTED]. [REDACTED]. Both documentary evidence and witness testimonies prove beyond reasonable doubt that (1) it was the Main Staff who had the power to regulate and to authorize the taking of detainees for work,[338] and (2) prisoners were taken out for labour upon the orders of the competent HVO military commanders with the authorization of the Commander of the respective OZ whom they were subordinated to.[339] Not even prison wardens, who were involved in handing over detainees to military commanders for labour outside the prison,[340] were in any superior-subordinated relationship with the MPA as discussed above.[341] [REDACTED].[342]

136. The Chamber needed to rely on such vague documentary evidence when trying to establish that the MPA was involved in any way in the labour of prisoners, since its conclusion could not be supported by direct and credible evidence due to the fact that Ćorić and the MPA did not have any authority to approve

[335] P4030
[336] P4068
[337] Vidović (T.51534/15-51535/16)
[338] P3592, P3474, P5873, P5874, P5881, P5882, P5895, P6133, P7878, P5922, [REDACTED]
[339] P4273, P4750, P1987, P3793, P3421, P3535, P3582, P5307, Pavlovic (T.47020/9-11), [REDACTED]
[340] P4233, P4902, P4093
[341] Section C, above
[342] [REDACTED]

or order the use of detainees for work. A reasonable trier of fact would have drawn the conclusion that due to the lack of authority, Ćorić did not know and did not have a reason to know about alleged forced labour.

G. Ćorić did not have the power to order transfer of detainees.

137. The Chamber[343] considered that in addition to providing security to detention centers, the MP played an important role in the exchange of "prisoners of war", because a report on the work of the HVO HZ-HB for the period April-December 1992 talks about the active participation of MP in exchanges, and that the MPA is in charge of keeping the records of enemy prisoners and the imprisoned members of the HVO. The Chamber specifically noted that on 14.10.1992 Pusic, as a member of MP, made the selection of POW and ordered those who would be exchanged, and that on 22.04.1993, Pusic became the representative of the MP of the HVO in the exchange of prisoners in Mostar. From the above, the Chamber presented the opinion that the MP and MPA were responsible for a prisoner exchange at least during the period from April 1992 to April in 1993.[344] It should be noted two things. The first is that during this period (April 1992 to April 1993) there is no mistreatment in prison for which Ćorić has been found responsible.

138. The Chamber erred Ćorić had the authority to order transfer of detainees.[345] The assertion was based on documentary evidence[346] which indicate that following 1.9.1993 Ćorić issued orders about the transfer of specific persons who allegedly committed criminal acts as a necessary measure in order to conduct military investigation against these persons. [REDACTED][347] [REDACTED]. As regards the transfer of 726 detainees from the Dretelj to Heliodrom on or about 20.7.1993, the Chamber based its finding that Ćorić was involved in the operation on a report[348] which was allegedly sent to him by Praljak who was not even in a superior-subordinate relationship with Ćorić, as discussed above. Due to the fact that Ćorić did not have any authority over detention facilities, as partially conceded by the Chamber, he did

[343] Vol.1/905
[344] Vol.1/906
[345] Vol.1/907-908.
[346] [REDACTED], P5302, [REDACTED], P5642, P4838
[347][REDACTED], [REDACTED], [REDACTED], [REDACTED]
[348] P3942

not play any role in the transfer of detainees either. This also fell under the authority of the competent HVO military commanders.[349]

H. Ćorić's actions were proper and demonstrate efforts to try to improve conditions, despite lacking authority for same.

139. In July 1993 Ćorić is first made aware of the problems of the prisons in the OZJIH and he immediately informed the HVO of the same. The HVO at its session then establishes a commission that should investigate the situation on the ground and solve the situation whatever it is found to be. The evidence is that the commission issued a report after its review, indicating nothing that would put Ćorić or others on notice of any criminal enterprise or system of ill-treatment.[350]

140. However, it is obvious that the HVO had no authority over military commanders and was unable to do anything, because by the end of July Mate Boban himself, as supreme military commander, appoints Tomo Sakota as coordinator of all the centers for prisoners of war (that is to say all prisons).[351] It is stressed that Boban was the President of the presidency HZHB, which is composed of Mayors of municipalities. This is important because these are precisely the presidents of municipalities that have a decisive influence on the local military commanders.

141. The situation, does not get better, and Ćorić again warns everyone about the functioning of military prisons at the collegium of the Department of defense in early September 1993.[352] Subsequently, in September 1993 Boban again sends an order to military commanders, from the level of the Main Staff down to the lowest HVO unit, which refers to the rules of pertaining to detained persons.[353] The fact that Boban did not address the MPA by the order and that the Main Staff transferred the order to the OZs and brigades clearly proves who was in charge of detention facilities and that Ćorić did not have any de facto

[349] P4838, [REDACTED]
[350] P3560; P3573
[351] 2D517; P7341
[352] P4756
[353] P5104; P5188; 3D915; P5199; 1D1704

authority concerning them. At the very end in December 1993, Mate Boban issues an order for disbandment of all the prisons.[354]

142. Under such evidence no reasonable Chamber could find Ćorić liable for mistreatment in Prisons. Any De Jure authority he was supposed to have changed with the conflict with the ABiH, such that at that time he had no de facto influence. All he could do when he got word of problems, was to inform all superior officials including those superior to him, which he did and which shows his true intent, namely that he would never support mistreatment in Prisons.

VIII. 7th Ground for Appeal: *The Chamber erred in law and facts regarding Ćorić's responsibility under JCE I*

143. The Defence incorporates the arguments made previously, about errors in relation to JCE.[355]

144. The Chamber erred that Ćorić from January 1993 through November 10, 1993, as MPA Chief had command/control of MP, including a power of re-subordination to HVO OZ's, and that he knowingly engaged MP in the eviction operations in Gornji Vakuf in January 1993, in Stolac and Čapljina in the summer of 1993 and in Mostar from 9 May 1993 until at least October 1993 during which crimes that were part of the common goal were committed.

145. The Chamber holds that by deploying MP for the operations in Uzričje, Ćorić participated in the HVO military operations in that area and, consequently, knew of the HVO plan for the whole area and not only for Uzričje. Therefore, the only inference the Chamber can reasonably draw is that Ćorić knew that the murders, detention and removals of Muslims not belonging to any armed force as well as the destruction of property, including mosques, formed part of the HVO military operations. The Chamber infers that by having facilitated those operations, Ćorić intended to have these crimes committed.[356] Given the perfect similarity between those crimes, the Chamber holds that they were part of a preconceived plan and were not acts of a few undisciplined soldiers.

[354] P7096
[355] See, Ground 1-2
[356] Vol.4/919-923

146. As Ćorić himself referred to MP combat participation in two reports, the Chamber holds that he knew about the course of the HVO operations in Gornji Vakuf and must have been aware of the crimes resulting from this campaign.[357] These reports only demonstrate the presence of MP in Uzričje, not any crimes by them.

147. Based scant evidence the Majority erred in finding Ćorić responsible under JCE1, because it does not give any explanation how it came to the conclusion that facilitating legitimate military operations automatically equates to knowledge of and shared intent for murders, and other crimes.

148. The Chamber concludes that HVO military operations are by default involving crimes, the Chamber does not even mention the ABiH and clashes between them and HVO.[358] In addition to their regular tasks, the MP are also combat units, and are used as such.[359] Commanders of MP received that order and acted according to it.[360] There are no any evidence that Ćorić was ever involved in planning HVO operations; there is evidence that he was NOT in BIH during these operations[361], so, his personal contribution to the operations in Gornji Vakuf is overstated by the Chamber. On 5.1.1993 he sent an MP, because he was told to do that, by his superior, and from the report[362] it is clear that they were sent for reasons of security, and that is legitimate MP activity. MP were part of HVO forces in battles in villages Uzričje and Zdrimci,[363] but there is no mentioning that members of MP were involved in any crime. No any witness confirms such behaviour of MP. There is no report sent to MPA that implicates the MP with any crimes in Gornji Vakuf, such that Ćorić, after he returned from the Zagreb hospital, would learn anything about it.

149. Two months after the clashes in Gornji Vakuf he made the two reports mentioned by the Majority as crucial evidence for his responsibility, but what he actually says in them is not what the Majority alleged that he says:[364] He mentions ten dead and sixty three injured MP[365] in Gornji Vakuf, and the report talks only about military clashes with the ABiH, no mentioning of crimes or attacks upon unarmed civilians.

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[357] Vol.4/921
[358] P01104, [REDACTED], P01174, P01209, P01221,
[359] 5D02102,
[360] Andabak (T.50967, 51089, 50935); P01359
[361] Andabak (T.50967, 51082; 51087-88); P01350
[362] P01053
[363] P03090
[364] P01635, P03090

150. The Chamber erred when concluding that Ćorić made significant contribution to crimes committed in Gornji Vakuf under a JCE; that Ćorić facilitated the operations in Gornji Vakuf in January 1993 by sending MP to take part and that he knew about the course of operation, and must have been aware of the crimes resulting from the campaign; that the murders, detention and removals of Muslims not belonging to any armed force as well as the destruction of property, formed part of the HVO military operations, and Ćorić intended to have these crimes committed.

151. The Chamber erred that Ćorić contributed to planning the arrest campaign in West Mostar 09.05.1993 and to the violence inflicted during that campaign by making members of the MP available to carry out the operations and by coordinating the detention of Muslims at the Heliodrom; and by avoiding to take measures against the perpetrators of those crimes; and participated in blocking the Muslim population and the delivery of humanitarian aid to East Mostar in the summer of 1993, which deprived the inhabitants of basic necessities, thus knowingly contributing to the siege of and the creation of unbearable living conditions for the population of East Mostar. [366]

152. The Chamber erred when it found Ćorić intended to have Muslims arrested around 09.05.1993 – arrests which were accompanied by acts of violence; The evidence demonstrates that civilians were evacuated for their safety to Heliodrom by the ODPR[367]. This is corroborated by the letter of the Head of the ODPR.[368] ODPR had exclusive/overall authority over the transfer/accommodation of the civilians who moved out of their homes in May 1993. No one else had the authority to interfere in these affairs.[369] So, in the context of this evidence, Ćorić informed the warden, that a large number of people would be arriving at Heliodrom and asked him to let them in, not for any criminal purpose, but rather a humane purpose, he is informing of something that is ODPR's authority. The Chamber says that these people were arrested, but they were free to go after few days, when fighting in the city stopped.[370] Ćorić was not in charge in

[365] P03090 says 10 dead and 63 injured, and P01635 says 8 dead and 64 injured
[366] Vol.4/924-945
[367] Josip Praljak (T.14921/2 – 14922/9)
[368] 2D1321, para 2
[369] 5D1004; 5D2016; 6D576
[370] as confirmed by Vol.4/925

Heliodrom, at least at this time, as shown by approval of OZ Commander Lasic, concerning the visit of the ICRC.[371]

153. The Chamber erred that from at least mid-June 1993, Ćorić was aware that members of the HVO were committing crimes during the eviction operations in Mostar; and that by avoiding to take measures against them, Ćorić facilitated and encouraged the commission of crimes and that in August 1993, Ćorić ordered Vidović not to investigate the crimes committed in Mostar by "some people" from the Vinko Škrobo and Benko Penavić ATGs.[372] It concluded Ćorić knowingly failed to fight the crimes committed the KB and thus contributed to creating a climate of impunity which encouraged the commission of other crimes, as attested to by the numerous crimes committed by members of the KB after 03.08.1993.[373] The Chamber's conclusion is the complete opposite of what Vidović said about this order[374]; as conceded by the Chamber, that he had received Ćorić's order to collect information about the crimes committed by solders of the Vinko Škrobo and Benko Penavić ATGs in Mostar with a view to using it in a "comprehensive operation" whose purpose would be to arrest the perpetrators and institute proceedings against them. The only reasonable conclusion from this is that Ćorić gave orders to investigate crimes in Mostar. These is ample evidence that shows criminal investigations/procedures against members of HVO, including members of mentioned units, and KB, but the Chamber just ignored it.[375] From this document , it is seen the MP did not tolerate nor participate in evictions or displacements, but rather worked to arrest/detain perpetrators, such as KB member Ajanović.[376] The evidence is clear where information of rapes by 4 MP members reached him that Ćorić acted appropriately and swiftly in calling that the perpetrators immediately be relieved of duty, placed in military detention, and their file turned over to the military prosecutor for charges to be filed, with the notation that "[…]the above-named have sullied the honor of the MP and their further presence in this unit is detrimental."[377]

[371] 5D1001
[372] Vol.4/933
[373] Vol.4/929-934,
[374] Vol.4/929
[375] P05893, P05841, P02749, P2754, P02769, P2802 , P2871, 5D2113,[REDACTED]
[376] 5D4233; P6908
[377] P3571

154. In Mostar, in addition to the MP, the civilian police and Brigade SIS all operated with concurrent authority, with the civilian MUP and Brigade SIS taking primary role in investigating crimes.[378] P4058 gives an overview of the work of the CPD during the period July-August 1993, including crime statistics and anti-crime measures being employed to prevent crime, including 20 criminal reports. The report also highlights problems with lack of equipment and personnel. As a response to these reports we see Ćorić outlining anti-crime measures that have been implemented in Mostar with "noticeable results," namely when the MP undertook control of parts of the city to prevent looting.[379] Ćorić took the reasonable measures within his authority by addressing a request to the competent authorities to reconsider the engagement of members of the MP at the front-line so that they could accomplish their duties of crime prevention in an appropriate way.[380] So, it is clear that the Judgment disregarded evidence that goes to show that Ćorić did not fail to fight crimes in Mostar, committed by members of KB or anyone else and thus could not have contributed to creating a climate of impunity.

155. This also goes to Chambers findings that Ćorić must have been aware of the HVO campaign of fire/shelling against East Mostar, the systematic nature of the HVO sniper campaign against East Mostar civilians.[381] The Chamber held that Ćorić intended to facilitate the crimes directly linked to the HVO military operations against East Mostar, that is, the murders and destruction of property.[382]

156. MP light assault battalions were re-subordinated before these crimes were committed. [REDACTED].[383] The Judgment does not even establish that any re-subordinated MP committed crimes, it only says they were in Mostar, while crimes were committed, although, Mostar is war zone, with military operations and sniper activity by both sides. Even the Chamber concedes international organizations were attacked by ABiH.[384] Chamber says that Ćorić must have been aware of the snipers in HVO – but sniper is not an illegal weapon, all armies have snipers. Victims of sniping incidents mentioned in this case were all on Muslim side of Mostar, unreachable to MP/Ćorić. The Chamber claims that Ćorić was aware that the death of Aguilar Fernandez was done by HVO, but ignores that the investigation did not confirm that he

[378] P2889; [REDACTED]
[379] P4508, 5D2113
[380] P5471, p. 3
[381] Vol.4/938
[382] Vol.4/938
[383] [REDACTED]
[384] P10047, para. 47

was killed by a HVO sniper, as weapons of members of ABiH needed to be checked to exclude them. [385] So, Ćorić supported investigation by SIS, and he did what he was able. The Chamber did not gave evidence beyond reasonable doubt that Aguilar was killed by HVO, only that UCIVPOL investigation suggested shooting came from HVO territory but conceded no proof to support this hypothesis.[386] Chamber then concludes that, in the absence of supporting evidence other than from the HVO that the shots came from the ABiH, the Chamber is satisfied that the shot that killed Fernandez had indeed come from the HVO. That kind of deduction is contrary to fundamental law principle *in dubio pro reo*, because disputed facts must go in favour of the Accused. But, the Chambers performs the opposite.

157. The Chamber erred that Ćorić participated in blocking the Muslim population in East Mostar and the delivery of humanitarian aid, thus knowingly contributing to the siege and the creation of unbearable living conditions. The evidence shows that Ćorić's orders in regards to checkpoints were always based on implementing decisions reached at a higher authority, and in the vein of implementing peace agreements reached.[387] MP did not have efficient means to control persons moving in or out of Mostar, as this authority was held by the OZ commander Lasic.[388] MP were to be deployed by Lasic who retained authority to directly command in the case of incidents arising.[389] Ćorić is excluded from the formulation of P01868, and is neither a recipient of the same, nor is he listed among those with authority for its implementation, thus he is not a key figure for checkpoints in Mostar. Based upon Lasic's order Ćorić brought an order for joint HVO MP and ABiH patrols.[390] And it shows, Ćorić could only bring an order on the basis of the authority of a higher organ, and nothing in the document demonstrates a discriminatory intent or illegal purpose. Ćorić had a very limited role and his role is not substantial/criminal.

158. The Chamber found that Ćorić had a general power to control the freedom of movement of people and goods in the territory of the HZ(R) H-B, including the movement of members of international organizations and humanitarian convoys, particularly in Mostar, and supports this with orders to 5th and 6th MP battalion to them that they allow foreign journalists and personnel of humanitarian organizations to move freely around the territory of the HZ H-B only if they had a special permit that could be signed, by

[385] Vol.4/938, 2D00117, Forbes, (T(F)21350 and 21351)
[386] Vol.2/1275
[387] P04174, P04258, P2030, P1988, P2002, 2D470, 2D313, 3D00676,3D00016, P2020; [REDACTED]
[388] P5007 pg. 2 point 3
[389] P1868
[390] P2020

Bruno Stojić, Slobodan Praljak or Milivoj Petković.[391] And then commander of 5th battalion Ančić reproduced this rule into an order. From this order it is obvious that even Ćorić just reproduces the rule given by higher authority and he is not entitled to pass someone through the checkpoint, or sign that special permit. MP did not decide where checkpoints would be held – positions were determined either by higher military structure, or political authorities, mostly local.[392] Main Staff or Commander of OZ could give any order to any checkpoint, either held by MP, or other units; they could establish or eliminate checkpoints,[393] or can issue any order for any kind of conduct of MP on checkpoints.[394] Main Staff could give order to blockade communications, MPA never give such an order, neither is possible that MPA gives orders to other HVO units.[395] It's not Ćorić who controlled/directed/regulated the movement of Muslims, through HVO checkpoints which were used in persecuting/arresting/detaining Muslims. But if there were such orders those were done by military command in Mostar, i.e. Obradović.[396] Ćorić conducts all measures that MP work is done properly, on checkpoints.[397] And because of this limited role, he cannot be responsible under JCE1 for crimes in Mostar.

159. The Chamber erred regarding Ćorić's knowledge of the factual circumstances that there was an international armed conflict between the HVO and ABiH,.[398] The defence reincorporates arguments from Ground 3.

160. The Chamber erred finding that Ćorić, while performing his functions, was informed about many crimes committed by members of HVO forces, including members of MP, or, must have been aware of them.[399] The defence reincorporates arguments from Ground 6.

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391 P04529
392 P00708, P02801
393 P00581, P01238, P01300, P01487, P01876, 5D02009, Praljak (T.42745); P02527. P03835, 3D00967, 4D00399,
394 P04792, Witness DV transcript 22907
395 P00602, P01153, P02249
396 P03300, 5D04392, Praljak (T. 44020; 40766), [REDACTED], P04527, P04529, [REDACTED], witness DV (T.22908), P02249, Finlayson (T.18021), [REDACTED]
397 2D01365
398 Vol.4/1005
399 *Vol.4/879-883*

161. The Chamber erred in finding that Ćorić occupied a key role in the operation of the network of HVO Detention Centres, and knowingly contributed to keeping detainees in harsh conditions where they were mistreated.

162. Ćorić was not responsible for the security of detainees within detention facilities.[400] Since he was not in a superior-subordinate relationship with either the wardens of Heliodrom or the MP contributing to the security,[401] Ćorić was not informed on the conditions of detention or the treatment of prisoners, therefore, he was not informed about the alleged killing/mistreatment of detainees. The Chamber refers to only one relevant document,[402] namely a report allegedly sent by Božić *inter alia* to Ćorić about an incident which did not result in any death/physical harm of detainees.[403] No evidence proved that Božić's reports were received by Ćorić.[404] The Chamber even found Ćorić was not informed of mistreatment and had no reason to believe detainees were mistreated[405] The only conclusion that can be drawn is that due to the lack of evidence, the knowledge of Ćorić about the alleged mistreatment of detainees at Heliodrom was not proven.

163. Since Ćorić had no authority related to the management of Heliodrom,[406] there was no reason to inform him about the conditions at same. This is proven also by the report,[407] which the Chamber refers to as evidence that Ćorić was informed about logistical difficulties.[408] The report was sent to the Head of the Defence Department and not to Ćorić which is in line with the fact that he had no authority with over management of Heliodrom. The document proves no previous plan existed for taking in a large number of detainees.

[400] Ground 6
[401] Ground 6
[402] Vol.2/1579.
[403] P3209
[404] Ground 6
[405] Vol.4/955
[406] Ground 6
[407] P4186
[408] Vol.2/1529.

164. The Chamber based its assertion on another report submitted by Božić.[409] The report which was allegedly addressed to Ćorić was not shown to any witnesses and did not have any incoming proving Ćorić received it. The above are far from sufficient, therefore, the Chamber erroneously found that Ćorić was informed about and must have been aware that the detention conditions at the Heliodrom were bad and accepted this.[410]

165. The Chamber erred in finding that Ćorić had the power to authorise the sending of Heliodrom detainees to do work,[411] as discussed previously. He did not order/facilitate the use of detainees for forced labour. The Chamber itself admitted that beginning in October 1992, there is no evidence that detainees were sent to perform labour with Ćorić's approval.[412] Even for the preceding period, the strongest evidence underpinning its allegation is the regulations for the Central Military Prison dated 22.09.1992 issued by Ćorić[413] which was overruled on this issue by the instructions on the house rules issued by the Head of the Defence Department on 11.02.1993.[414] In addition, the regulations in themselves do not prove that Ćorić in fact authorised labour of detainees in any specific cases.

166. The Chamber pointed out that the Instructions issued in August 1993 by the deputy warden provided that a request should be submitted for taking detainees out for work, but it did not include any indication as to whom the request was to be submitted.[415] The Chamber points to those commanders who authorised Heliodrom detainees to be sent to work between June-December 1993,[416] Ćorić is not among them. The Chamber names the subsequent MPA Chief, Željko Šiljeg, as being involved only with regard to the period from the end of December 1993 to March 1994, which is irrelevant to the alleged liability of Ćorić. At the same time, overwhelming evidence demonstrated that the authorities who were entitled to authorize taking out detainees for labour were the HVO brigade and OZ commanders and the Main Staff.[417]

[409] P5563
[410] Vol.4/962.
[411] Vol.4/964.
[412] Vol.2/1470.
[413] P514
[414] P1474
[415] Vol.2/1468.
[416] Vol.2/1472-1476.
[417] Ground 6

167. Under the evidence, no reasonable chamber could have found that Ćorić was regularly informed that the Heliodrom detainees were being mistreated/wounded/killed while working on the frontline. Since he had no authority with regard to labour of detainees, he did not receive any report on incidents occurring during the work of detainees. The Chamber correctly concluded that neither the MPA nor MP were involved in any incident inducing the alleged mistreatment of detainees working on the frontline.[418]

168. The Chamber based its finding that Ćorić was aware of the incidents on reports drafted by Praljak/Božić.[419] They did not have a reason to submit reports to Ćorić, since they were not subordinated to him.[420] This is underpinned by the fact that the reports in question[421] had headings where registration numbers appeared that are not in use in MP. Furthermore, the Chamber included a report of Božić [422] for its assertion which he addressed to Ćorić after he already left the MPA. In addition, no evidence was presented to prove that the reports of Praljak and Božić were received by Ćorić. On most of the reports no incoming stamp appears that could prove that the MPA received them, and where an incoming stamp appears, those do not derive from the MPA. The only verified complaints that could potentially have reached Ćorić[423] were acted on properly/promptly. Branimir Tucak, subordinate of Ćorić at the MPA submitted a request to CPD to initiate an investigation into the allegations.[424] This indicates that Ćorić and the MPA did not condone mistreatment of detainees.

169. As opposed to the findings of the Chamber[425] a reasonable chamber should have found based on the above discussed that Ćorić was not aware of the alleged mistreatment of detainees within or outside **Heliodrom**; he did not receive any information about bad conditions in Heliodrom and did not have the authority to improve them; he did not have the power to approve taking of detainees for work at the frontline and did not facilitate mistreatment during work; and he did not contribute to the alleged forced departure of detainees from BiH.

[418] Vol.2/1612, 1617 and 1633.
[419] Vol.2/1484-1492.
[420] Ground 6
[421] P3414, P3435, P3468, P3518, P3525, P3633, P4016, P4393, P5563, P3939
[422] P6552
[423] P5008
[424] P4553
[425] Vol.4/971.

170. The Chamber erroneously found that Ćorić was involved in the work of detainees taken out of the Vitina-Otok Camp. The Chamber based its conclusion on a request[426] whereby the commander of the Posušje brigade asked Ćorić to supply him with 100 Muslim detainees for work invoking Petković's orders of 8.08.1993.[427] The contradictory nature of Petković's orders[428] as to the role of the MPA is discussed above.[429]

171. The action taken on the request of the commander of the Posušje brigade, namely that 100 detainees from the Vitina-Otok were taken to work, was sent to the Brigade commander by the MP and indicates that the "prisoners were delivered by Krešo Tolj".[430] However, Vidović testified that Krešimir Tolj worked for the CPD of Ljubuški Prison and had no official post or duty in the Military Prison of Otok.[431] Due to the fact that Tolj was not affiliated with Vitina-Otok, he did not have the power to deliver detainees held at that detention site. Consequently, the two documents, both the request and the report should not be given weight. The only reasonable inference that can follow from the above facts is that Ćorić was not involved taking the detainees held in Vitina-Otok for work on the frontline.

172. Due to the lack of evidence, the Chamber erred that Ćorić was informed that Dretelj Prison was overcrowded and accepted the bad detention conditions.[432] The Chamber based its erroneous finding on two documents. One of them is a report drafted by the commander of the 5th MP Battalion allegedly sent to Ćorić, which included the information that more than 2,500 Muslims were detained at Dretelj between 30 June and 5 August 1993.[433] Overwhelming evidence proved that the MPA/Ćorić did not have any authority over the Dretelj Prison,[434] therefore, the reason why the MP might appear in documents as being responsible for any kind of mismanagement of Dretelj Prison is the result of a negative campaign conducted from August 1993 on for shifting the blame from the relevant military and civilian authorities to the MP.[435] The other document which the Chamber relied on was a report drafted by Branimir Tucak,

[426] P4030
[427] Vol.2/1866; Vol. 4/977.
[428] P4020, P4039
[429] Ground 6
[430] P4068
[431] Vidović (T.51534/15-51535/16)
[432] Vol.3/46 and 60; Vol. 4/994.
[433] P3960
[434] Ground 6
[435] Ćorić Final Brief Section VI, H.10

Assistant Chief of MPA for Security on account of an *ad hoc* visit paid to Dretelj Prison on 11 July 1993.[436] [REDACTED].[437] The report itself included only positive feedback about the experiences gained through the visit as to the conditions of detention. As the Chamber itself pointed out, it appears from the report that rooms were ventilated once every two hours and that the detainees received "set" rations of water and food,[438] and it did not identify any logistical problems in the Dretelj Prison. The inference drawn by the Chamber does not follow from the above two documentary evidence. Ćorić did not know that Dretelj Prison was overcrowded and did not accept the bad detention conditions.

173. The Chamber drew an erroneous inference[439] from the official notes issued on 14 and 15.07.1993 by the commander of the 3rd Company of the 5th Battalion,[440] sent to Ćorić. The Chamber erroneously found that he failed to take the necessary measures in order to investigate the incident where two detainees were wounded and one detainee died as a result of the shooting of Frano Vulic, member of the MP who tried to prevent the escape of detainees. [REDACTED],[441] (2) Branimir Tucak, Assistant MPA Chief was sent to Dretelj at the end of July 1993 in order to inspect the situation,[442] and (3) Ćorić once again cast attention on the situation in Dretelj at a collegium meeting of the heads of Defence Department on 2.09.1993.[443] However, the measures taken by Ćorić did not succeed due to the fact that Obradović was under a much stronger influence of the municipal authorities. It is clear an investigation was undertaken[444] and knowing of the investigation Ćorić would only know the MP acted professionally.

173. Having assessed the evidence, a reasonable chamber would have drawn the conclusion that Ćorić did not fail to act properly when he was informed about the above incident. Instead, the Chamber assessed the reports prepared by Tucak on his two visits as simply indicating that Ćorić was informed about the incidents.[445] The Chamber disregarded the measures taken by Ćorić as efforts for the amelioration of the state of detainees.

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[436] P3794
[437] [REDACTED]
[438] Vol.3/60 and 68.
[439] Vol.3/115; Vol.4/990.
[440] P3446, P3476
[441] [REDACTED]
[442] [REDACTED]; P3794
[443] P4756, Item 3
[444] para. 245-246, herein
[445] Vol.4/988.

174. The Chamber erroneously based its finding as to forced departure of detainees held in the **Ljubuški Prison**[446] [REDACTED].[447] The credibility of these documents is highly questionable. [REDACTED][448] [REDACTED].[449] [REDACTED]. [REDACTED].[450]

175. Similarly, the Chamber erroneously found that Ćorić was involved in forced departure of detainees held in **Dretelj and Gabela Prisons** based on a single document issued on 21.08.1993 [REDACTED][451] indicating that two men held "in the military prisons in Dretelj or (!) Gabela" were to be handed over to the Ljubuški MP to be reunited with their families and leave Herzegovina[452] [REDACTED].[453] In addition, at this point again the Chamber referred to a document[454] which is an order dated 6.07.1993 allegedly issued by Ćorić disregarding the serious concerns authenticity issues discussed above.[455]

176. [REDACTED].[456]

177. The Chamber found that Ćorić planned/facilitated the forced departure of Muslims by participating in establishing the procedure for the release of detainees from Heliodrom in July 1993 and by ordering the release of all Muslims from Ljubuški in August 1993 with a view to their departure for third countries.[457] The Chamber erred because it found Ćorić guilty twice for the same act, under the same form of responsibility[458]. It is contrary to universal law priciple *non bis in idem*.

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[446] Vol.2/1815, 1870 and 1871.
[447] [REDACTED]
[448] [REDACTED]
[449] [REDACTED]
[450] [REDACTED]
[451] [REDACTED]
[452] Vol.3/188.
[453] Vol.4/993 and 997.
[454] P3220/P3216
[455] Ground 6
[456] P10187, P10175, P4572
Vol.4/981.
[457] Vol.4/946-948, 969, 970, 971, P 10187, Witness E, T(F), pp. 22089-22091 and 22094-22095, closed session; P 10328, pp. 19 and 20; P 10175; P 04267; P 04263; P 04404; P 10190; P 04572
[458] VOl.4/948 and 971

178. The Chamber points out that the MP assigned to the 4th Brigade drafted numerous reports in August 1993 attesting to this "release" procedure for the Muslims from Ljubuški held in the HVO detention centers, contingent upon their departure towards a third country.[459] "Assigned to 4th brigade" means re-subordinated/excluded from chain of command inside MPA, and they received orders from brigade commander.[460]. All reports identify them as Brigade MP. Commander of platoon of brigade of MP dismissed commander of brigade MP.[461] So, based on the evidence relied on by the Chamber it is brigade, and not MP who deals with letters of guarantee, and not Ćorić who could not give orders to any non-MP. In paragraph 1872, Volume 2 of the Judgment it states that the Muslims from Ljubuški held in the HVO detention centres had, under SIS Chief Majic's order, 24 hours to leave the territory of the municipality with their families. SIS is beyond the control of the MPA. Ćorić and MP under his authority were not involved with departures to third countries.

179. Chamber based Ćorić's responsibility for expelling Muslims from Ljubuški on order of undefined day in August 1993 that he allegedly gave to Jure Herceg, deputy brigade MP commander. [REDACTED][462], [REDACTED]. [REDACTED]. [REDACTED][463] [REDACTED]. [REDACTED].

180. P4620 says that letters of guarantee were forwarded via members of MP, because these letters were a way out of detention centres, so, no matter that we do not know if it means MP or brigade MP, those MP in the context of the situation they work in favor of these people who received letters.

181. The Chamber erred when finding that Ćorić planned and facilitated the forced departure of Muslims from BiH by participating in establishing the procedure for the release of detainees from the Heliodrom in July 1993 and by ordering the release of all Muslims in August 1993 with a view to their departure for third countries via Croatia.[464] [REDACTED].[465]

[459] Vol.4/1872, 1873
[460] P04752, P04262, P00990
[461] P00990
[462] [REDACTED]
[463] [REDACTED]
[464] Vol.4/970.
[465] [REDACTED]

182. [REDACTED][466] [REDACTED]. This abstract reference was enough for the Chamber to conclude that "we" must have referred to Ćorić.[467] This inference is far from being based on solid evidence. At the same time, it is clearly demonstrated by the testimony of Vidović that the CPD of the MP had only administrative functions with regard to the release of prisoners. The CPD provided information about the eventual criminal accountability of the specific prisoners who were to be released and if the competent authorities requested such information.[468]

183. No direct evidence was presented that would prove that any order of Ćorić existed which was implemented through the release of detainees and their transfer to third countries. The Chamber was not in a possession of a single original order which would have been issued by Ćorić for the release of detainees held in Heliodrom in possession of letters of guarantees and transit visas or a single witness testimony which would have confirmed that such orders were issued and executed. Even though the Chamber admits the lack of evidence, it still insisted on the conclusion that Ćorić issued such orders.[469] It relied on orders issued and lists of detainees drafted by Ante Prlić[470] and documents referring to a request allegedly submitted by Ćorić in May 1993 for the release of several detainees.[471] These documents cannot be given weight. [REDACTED].[472] The documents referring to a request of Ćorić similarly raise some concerns with regard to their credibility. They were not confirmed by any other evidence, they were inconsistently drafted (once referring to command then to request), [REDACTED].[473]

184. The Chamber based its finding on an order dated 6.7.1993[474] which, allegedly was issued by Ćorić and proved his authority to release detainees. The Chamber disregarded the serious doubts that can be raised related to the authenticity of the document.[475] The signature appearing on the original of the document derives from the assistant of Ćorić, namely Lavrić. The fact that it was not the signature of Ćorić

[466] [REDACTED]
[467] Vol.4/969.
[468] Vidovic (T.51523/14-51524/10)
[469] Vol.2/1446.
[470] P4263, P4404, P10191
[471] P2285, P2289, P2297
[472] Para. 105, 112, 116 herein
[473] [REDACTED]
[474] P3220/P3216
[475] Vol.2/1448.

was confirmed by both [REDACTED] and Slobodan Božić.[476] Moreover, Vidović testified that the document is a fake.[477] The only plausible conclusion that can be drawn is that the document is neither authentic nor authored by Ćorić and it should be disregarded in its entirety.[478]

185. Due to the lack of evidence, it was unreasonable for the Chamber to draw the inference that Ćorić was in any capacity involved in the alleged forced departure of detainees with a view to their departure to third countries.

IX. 8th Ground for Appeal: *The Chamber made a numerous errors of law and of fact regarding Valentin Ćorić's responsibility under JCE III*

186. The Judgment makes multiple errors in establishing the responsibility of Ćorić under JCE 3. The Defence continues to stand by the previous arguments as to the inappropriateness of JCE liability.[479]

187. The Chamber erred in finding that Ćorić, by having facilitating the HVO operations in Gornji Vakuf, knowingly took the risk that acts of theft would be committed.[480]

188. The Chamber concludes that, having facilitated the HVO operations in Gornji Vakuf and having knowledge of them, Ćorić must have been aware of the crimes resulting from those operations, and the Chamber observed that HVO members committed acts of theft following the operations in Hrasnica, Uzriče and Ždrimci.[481] As the military operations took place in a climate of extreme violence, the Chamber holds that Ćorić could have foreseen that members of the HVO would commit acts of theft in these localities. [482]The Chamber infers that by having facilitated the HVO operations in Gornji Vakuf, Ćorić knowingly took the risk that acts of theft would be committed. [483]

[476] [REDACTED]; Bozic (T.36412/18-36414/2)
[477] Vidović (T.51738/25-51739/4)
[478] para. 296, 297, 298, herein
[479] See, Ground 1-2
[480] Vol.4/1009, 1021
[481] Vol.4/1009
[482] Vol.4/1009
[483] Vol.4/1009

189. Ćorić is therefore found to be responsible under JCE 3 for the extensive appropriation of property, not justified by military necessity and carried out unlawfully and wantonly, under Article 2 of the Statute, and plunder of public or private property, under Article 3 of the Statute.[484]

190. The Chambers erred in those conclusions: it says that military operations took place in the climate of extreme violence. If Ćorić was not in Gornji Vakuf during operations, and he wasn't present in mentioned villages, and he was not informed during operations about what is going on, he could not know about the climate in which military operations took place, especially not in advance.[485] The Chamber's explanation is illogical – if Ćorić would have to foresee that crimes would be committed and took that risk, willingly, and if reason why would he know that crimes would be committed is the extreme violence that operations took place – how could Ćorić be aware of that extreme violence before it happened? How could he have foreseen that crimes would be committed and took the risk by facilitating operations because he had to be aware of the extreme violence that took part during operations – when this 'extreme violent' operations comes after he had to decide if he would send military units to Gornji Vakuf? Furthermore, the Chamber has found Ćorić sent units to Uzričje but asserts that he knew of the HVO plan for the whole area and not only for Uzričje where he sent the MP, so it found Ćorić responsible for crimes committed in Hrasnica, Uzričje and Ždrimci.[486]

191. The Chamber erroneously equates military operations with committing crimes – it asserts that if Ćorić knew about the military operations other than where MP were present, and also military operations in the whole of Gornji Vakuf, that he knew for the alleged crimes committed there.[487] Basically, what the Chamber say is that there can never be legitimate military operations in a war, and that HVO military operations are by default criminal. Such a standard would impose automatic liability for every officer in every military operation. The Chamber does not address the war situation and mutual military operations/combat in Uzričje, Hrasnica, and other villages in Gornji Vakuf area, it just mention the attack of HVO on these villages, without mentioning members of ABiH and clashes between them and HVO members. The report relied on as proof of Ćorić's knowledge of what happened in Gornji Vakuf in January

[484] Vol.4/1021
[485] P01135, p. 2: Milivoj Petković's Order of 15 January 1993, P 00645, p. 1; 3D02131, p. 4; IC01056, 3D00478, 3D 02212, 3D03065, p. 3; Zrinko Tokić, T(F), pp. 45372 and 45373; P01286 ; P01300 /4D00346; Zrinko Tokić, T(F), p. 45373 ; P01185, P01206
[486] Vol.4/920; Vol.3/322
[487] P01635, p. 1; P03090, p. 6 and 7

1993, also mentions high number of killed MP during this operations.[488] It is not possible that members of MP were part of the type of operation asserted by the Chamber, where there were only unarmed civilians in villages around Gornji Vakuf, otherwise there would be no explanation why so many members of MP attached to HVO military units, were killed. And there were casualties among other HVO units. Ćorić or anyone from these reports would only be apprised of mutual combat between armed forces with casualties on both sides, rather than any criminal operation. So, the assertions of the Judgment lack consistency, if members of MP were killed in battle, then it is clear that MP units were sent to Gornji Vakuf to be the part of HVO units under command of OZ NorthWest, they were sent as combat units. And those that sent them could know and foresee only that they are part of military operations, that they were in combat. And the Chamber does not give and explanation why participation in combat would automatically implicate a common criminal purpose, especially thefts – without differentiating from as situation that this type of crime can also be the result of by undisciplined individuals, or even groups who misuse the combat situation. And crimes committed in places where members of MP were not present, like Hrasnica and Duša, are erroneously attributed to the Head of MPA, because MP units were part of the same military combat operation in another area.

192. The evidence ignored by the Chamber demonstrates that Ćorić did not have a criminal or discriminatory intent as to Gornji Vakuf. Before the conflict in Gornji Vakuf, the HVO and ABiH had common checkpoints, and Ćorić gave an order to set up mixed checkpoints, with HVO and ABiH soldiers together, and his order was based on orders of higher structures.[489] Those check-points were set up, and they were manned by MP members from the HVO and the TO and later the ABiH.[490]

193. Conflict in Gornji Vakuf broke after the incident with the flag[491,] Both sides were deploying forces and equipment was arriving to Gornji Vakuf;[492] There were big combat losses on both sides, HVO and the ABiH, especially a large number of MP were wounded/ killed.[493] The destruction was quite vast and mainly

[488] P01635, P03090, P01226
[489] 5D04282
[490] Agić (T.9250/14)
[491] Carter (T.3342), Williams (T.8446), Batinic (T.34517), 4D00352
[492] P01104, [REDACTED]
[493] P03090, p. 6 and 7

as a result of artillery action,[494] which cannot be attributed to the HVO MP because it was not shown to have/used artillery.

194. All HVO units were under the command of Commander of OZ SZBH, and subsequently Main Staff of HVO MP was part of HVO forces under command of Željko Šiljeg.[495]

195. The Chamber references the Prosecution argument that Ćorić had knowledge for crimes during operations because he was on the territory of BiH.[496] During the events in Gornji Vakuf, in January 1993, Ćorić is not present at all in the territory of BiH. He is hospitalized in Croatia, during the entire indictment period for Gornji Vakuf .[497] During that period, his deputy took over and performed as chief of the MPA.[498] For example, there is a document written on 14.01.1993, with Ćorić's name, but not signed by him.[499]

196. Andabak states the MP took part in combat in Gornji Vakuf.[500] He was under command of the OZ, and when his unit was in town they were under the command of Ante Starčević brigade.[501] when MP was in Gornji Vakuf, nobody mentioned that their members set fire to houses or looting property.[502] If Andabak didn't know, how could Ćorić? On 27.1.1993. there was a meeting convened by General Praljak, where Ćorić was also present –his first meeting after he returned from hospital treatment - the purpose of the meeting was to discuss such a big losses of MP, and the role of MP.[503]

197. The Judgment ignores battles between HVO and ABiH, it goes to say that HVO just attacked Muslim villages inhabited by civilians and committed crimes, despite casualties among MP, and despite evidence that there was mutual combat. It found Ćorić guilty for JCE3, that he could have foreseen that members of the HVO would commit acts of theft, and by having facilitated the HVO operations in Gornji Vakuf he knowingly took the risk that theft would be committed.[504]

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494 P01174, P01209, P01221,
495 Andabak (T.50910, 50913, 50967); P01359
496 Vol.4/877
497 Andabak (T.50967, 51082; 51087-88), P01350
498 Andabak, (T.51082, 51083)
499 Andabak, (T.51087)
500 Andabak (T.50964)
501 Andabak (T.50967)
502 ibid.
503 Andabak (T.50967), P01350
504 P01126, 3D01783, 3D02369, P01203, P01205, P01226 (ABiH commander states : The upper part of the city and all the Moslem inhabitated villages are under the control of Army BiH, bar the village of Uzričje part of whose residents have been

198. Furthermore, the Judgment fails to use the standard of JCE set by jurisprudence.[505] It uses low standard for determining responsibility under JCE3, because it does not take into account all elements necessary . It does not find occurrence of such crime – thefts – was foreseeable to the accused and that he willingly took the risk that thefts might be committed, and that the Accused intentionally created conditions making the commission of a crime falling outside the alleged common purpose possible. The way crimes of theft were committed, in different villages, by different members of different units, do not cause the conclusion that Ćorić in any way created conditions for those crimes to be committed, having broaden the common purpose that way. MP were part of combat operations, during war time, they had several dead and many injured[506] so the only thing that would be known to Ćorić would be that men died in combat.

199. The Chamber erred finding that Ćorić, contributed to the campaigns to remove the Muslims of West Mostar as of May 1993, knowingly took the risk that acts of theft would be committed as of that time, and he knew that eviction operations in Mostar were being carried out in a climate of extreme violence, and Ćorić could have reasonably foreseen that the HVO members would commit acts of sexual violence.

200. The Chamber asserts that after evicting the Muslims, HVO soldiers and MP moved into their flats with Ćorić's consent.[507] As the Muslims were evicted in a climate of extreme violence, the Chamber holds that as of May 1993, Ćorić could have foreseen that HVO members would steal and appropriate Muslim property.

201. The Chamber notes that on 9.08.1993, Ćorić signed a report on the work of the Mostar centre of the Department for Criminal Investigations of the MPA for the period 1 to 31 July 1993, which mentions, *inter alia*, an increase in the number of crimes committed in Mostar in the context of the campaigns to evict

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arbitrarily evacuated and moved to Gornji Vakuf, as well as the village of Hrasnice whose residents evacuated to Gračanica), P01236, [REDACTED], P01291, P01326

[505] Tadić AJ, par 228:
, par 232; Martić AJ, par 83

[506] P01635

[507] Vol.4/1011, P 02879

the Muslims – more specifically, "crimes against property", crimes of "rape" and "crimes against life" – and the discovery of bodies probably of Muslims who had died of gunshot wounds.[508]

202. The Chamber finds that by having contributed to the campaigns to remove the Muslims of West Mostar as of May 1993, Ćorić knowingly took the risk that these acts of theft would be committed. [509] P2879, does not show that these were Muslim apartments, and, it does not show if members of MP moved into these apartments in 1993 or 1992. During 1992, many Serbs left Mostar, and they made up almost 20% of the population, and, therefore, their apartments were available. Also, there were also many former JNA apartments which were placed at the disposal of the municipal authorities[510]. This document does not show that the apartments were forcibly occupied. The Decree on the Use of Abandoned Apartments, dated July 1993,[511] defines what is an abandoned apartment, and can be given for use to a member of HVO or a person who, due to war, was left without his/her apartment. The temporary use of an apartment may last up to one year and is to be determined by the municipal HVO administration. MPA thus acted in accordance with the procedure as prescribed by the quoted decree.

203. Lavrić, Ćorić's deputy signed this document, and in the same time he was president for control and monitoring of the use of military apartments at the level of the South-Eastern Herzegovina OZ, in which a housing commission was formed. The housing commission submitted reports to the commander Lasić of the South-Eastern Herzegovina OZ[512]. The existence of abandoned apartments is the subject of decreed laws, and the fact that someone submitted a request to be issued a decision on temporary use of those apartments, in accordance with the legal regulations, does not justify anyone to draw a conclusion that the previous tenants were evicted by force from these apartments and that these were automatically criminal acts. Abandoned apartments were allocated to members of various HVO units[513], the municipal HVO authorities also allocated apartments to Muslims who met the criteria set out in the decree.[514]

[508] Vol.4/1013,1014, P 04058, pp. 3, 4, 7 and 14
[509] Vol.4/1014
[510] 1D03016
[511] P03089
[512] An example of such a report is P6860, In the report, the chairman of the commission says that the military police shall evict all persons who illegally moved into such apartments, that is to say, all those who do not have a decision permitting them to use these apartments and which was issued to them by the said commission.
[513] P02538, P02608
[514] P00344, 1D00641

204. In Mostar both the HVO and the ABIH were experiencing problems with criminals breaking into homes and looting same, and that a joint ABiH/HVO commission was established to try and prevent this[515]. There is ample evidence that MP did not tolerate nor participate in evictions or displacements, but rather worked to arrest and detain perpetrators.[516] P2749, for example, demonstrates that some members of the KB were breaking into homes of ethnic Croats to commit crimes, not only Moslems, and that the MP reported unlawful evictions of both Muslims and Croats to the Main Staff. Furthermore, P2754 evidences the MP investigated those committed these acts as criminal perpetrators. P2769 demonstrates the MP is investigating the same incident P2770 demonstrates this information was made known to military commanders. P2802 and P2871, show that MP organs discovered the identities of the foregoing perpetrators and detained and arrested same. P01635 is a report signed by Ćorić, in which he mentions as one of the biggest problems in the work of MP: 'Numerous instances of moving into business premises or apartments under the patronage of local power-brokers(Mostar, Central Bosnia). So, it is indisputable that there are activities of MP that goes to show that they fought that type of crime, with more or less success. If MP filed reports against those who break into and occupy apartments and stole goods from them, and informed military commanders of the perpetrators if they were HVO soldiers, that does not support the conclusion that MP encouraged those crimes or that Ćorić, willing took the risk that these acts of theft in Mostar would be committed outside the scope of alleged Common Criminal plan, and that he could foresee them. It is clear Ćorić is preventing these crimes. There are documents that show the persons conducting the evictions were opportunistic criminals rather than operating according to some plan.[517] We remind of the testimony of Forbes, that the Chamber do not take into account although is very relevant to this topic - he said that many persons who did not belong to military units were wearing uniforms without insignia, victims reporting on perpetrators wearing uniforms without insignia who misrepresented themselves as members of units, such persons wearing unmarked uniforms were practically impossible to identify, that authorities including [REDACTED].[518]

205. Judgment asserts Ćorić knew that the eviction operations were being carried out in a climate of extreme violence, and the Chamber holds that Ćorić could have reasonably foreseen that the HVO members participating in these operations would commit acts of sexual violence. The evidence shows that

[515] P02146
[516] P5893, P5841, P2749, P2754, P2769, P2770, P2802, P2871, P01635 page 3,
[517] P5721
[518] Forbes (T. 21421/23-25; 21422/1-6; 21422/19-24; 21422/25; 21423/1-9; 21423/10-22; [REDACTED]); [REDACTED]

when victims of rape reported the same to the authorities, and perpetrators could be identified, the MP took steps to locate the same and arrest them for criminal prosecution.[519] Information of rapes by 4 MP members reached Ćorić and he acted promptly in calling that the perpetrators immediately be relieved of duty, placed in military detention, and their file turned over to the military prosecutor for charges to be filed, with the notation that "[…]the above-named have sullied the honour of the MP and their further presence in this unit is detrimental."[520] This is the behaviour opposite to what the Chamber asserts.[521] It does not show that Ćorić wants crimes of rape in Mostar to be committed, and it does not support the conclusion that he willingly takes the risk for these crimes to be committed. The fact that he mentioned rapes in his report clearly shows that he does not intend to conceal them, he does not create the conditions making the commission of a crime falling outside the common purpose possible.[522] Putting those crimes into report, the Ćorić shows that he does not accept these crimes, that he took steps in fighting same.

206. The Chamber erred because it does not take into account evidence that show that Ćorić's behaviour is not accepting crimes in Mostar, the evidence shows that Ćorić does not willingly took the risk of committing crimes of theft and rape by anyone, and that he took steps preventing and fighting these crimes.

207. The Chamber erred as a matter of law and fact in finding Ćorić, from the moment he learned of the murder of detainees in Dretelj Prison following mistreatment by HVO members in mid July 1993, it became possible for him to foresee that murders could be committed during detention, and, by failing to act and by continuing to exercise his function in the MPA, he deliberately took the risk that more detainees might be killed. The Chamber found that in August 1993 Omer Kohnić and Emir Repak, died as a result of mistreatment.[523]

208. The Dretelj and Gabela military remand prisons were under the effective authority of the 1st Knez Domagoj Brigade and its commander Obradovic.[524] The evidence shows the MPA did not have such authority and Ćorić could not influence the conditions of detention in these facilities. [REDACTED].

[519] 5D2113, [REDACTED], [REDACTED]
[520] P03571
[521] Vol.4/1010-1014
[522] Martić AJ, par 83
[523] Vol.3/122
[524] P3731; P4253

[REDACTED].[525] Branimir Tucak, the assistant MPA Chieffor security was sent to Dretelj on two occasions in order to inspect the situation.[526] Ćorić once again cast attention on the situation in Dretelj and Gabela at a collegium meeting of the heads of Defence Department on 2 September 1993[527]. Boban appointed Tomo Sakota Coordinator for Centres for POWs and Isolated Persons[528], but conditions did not change due to the strong power of the brigade and the local municipal authorities.[529] The brigade took measures even against the orders of Mate Boban, as it happened in the case of the action directed by Tomo Sakota to release detainees from Dretelj according to the orders of Mate Boban. Local authorities and the 1st HVO Brigade attempted to hinder the accomplishment of the action.[530] Having in mind this, it is not Ćorić who willingly took the risk of committing crimes of murder after he had to foresee it. He did what he could, inform Government, he sent his assistant to conduct inspection and inform him about what he found. There is no evidence that he was informed about murders/deaths in Dretelj in August 1993. He could have not foreseen it because circumstances of these deaths are different then deaths prior to it, from July 1993. Victim Repak died after several beating by other inmate, so called Trebinjac, named Senad Bašić, and it did not happened before. Also, the way victim Kohnić died did not happened before, and it occurred in environment in which 1st brigade had effective control over Detention facility Dretelj, so the standard in which Ćorić would have to foresee these murders as natural and foreseen consequences of the mistreatment is set to high. All these show, the lack of elements set by Tadić Appeal Chamber for establishing responsibility under JCE3.

209. The Chamber erroneously found that, even though the evidence does not support the allegation that Ćorić knew that detention of people at Dretelj Prison was taking place in a climate of extreme violence, it was possible for him to foresee that murders might be committed during detention.[531] When Ćorić was informed about an incident where detainees were harmed and murdered, he did not fail to react and did not take the risk that more detainees might be killed as a result of mistreatment.

210. Focusing on the facts of the present case, the lack of authority of Ćorić with regard to detention sites cannot be ignored. As discussed elsewhere, he was not informed about the mistreatment of

[525] [REDACTED]
[526] [REDACTED]; P3377; P3794
[527] P4756, Item 3
[528] 5D2090; P7341
[529] P7341; [REDACTED]
[530] P7341, Item 2-3
[531] Vol.4/1019-1020

detainees, and when he learned of incidents, which the Chamber refers to,[532] he took all the reasonable steps in order to prevent future incidents, previously. Therefore, the Chamber erroneously found that he failed to act. In fact, when Ćorić learned of the incident, he acted properly. At the same time, the fact that positive results did not follow his action again proves that he did not have the power to substantially influence the series of events, hence, even if in theory he could foresee potential mistreatment in abstract terms, he was not in a position to be able to foresee the specific crimes or to prevent the commission of crimes against detainees and as such, he obviously could not facilitate the commission of those crimes, either. Consequently, he cannot be found criminally liable for the crimes allegedly committed against detainees held in Dretelj Prison. The convictions based on JCE3 liability should be vacated.

X. **9th Ground for Appeal:** ***The Chamber made errors of law and fact when it convicted Ćorić for crimes against humanity in Prozor Municipality.***

211. The Majority erred when it found Ćorić guilty under Article 7(3) of the Statute for crimes by MP in Prozor in October 1992.[533] The Majority erred that Ćorić had effective control over MP present in Prozor in October 1992, and that he had means of knowing which crimes were committed by MP in Prozor. [534]

212. The Majority concluded that the report of 25.10.1992 and the order of 14.11.1992 show that Ćorić knew that vehicles had been seized illegally.[535] The Majority deemed that the return of property to its owners does not constitute a "reasonable" measure by way of which Ćorić would have discharged his obligation to punish.[536] Moreover, the Majority infers from the promotion of Andabak in February 1993 that Ćorić failed to inquire about the crimes or to launch an investigation.[537]

213. The Majority ignored the evidence when it assigned little weight to the statements of Andabak, who denied any involvement at all in theft of Muslim property.[538] The Majority found that Andabak participated in the attack and takeover of the town of Prozor, and his involvement in the sequence of events as

[532] Vol.4/1018
[533] Vol.4/1246- 1251,
[534] Vol.4/ 1250
[535] Vol.4/1248
[536] Vol.4/1248
[537] Vol.4/1248
[538] Vol.2/59

Commander of the 2nd MP Battalion necessarily vitiated the credibility of his testimony on this point.[539] For the same reason, the Majority has also decided to assign little weight to an undated report by Andabak recounting his activities in the period between 21 and 29 October 1992 and in which he indicates that members of the HOS were the sole perpetrators of thefts committed in Prozor.[540] In this respect, the Majority erred concluding that in October 1992 the HOS had already been dissolved and the majority of its members had joined the HVO.[541]

214. Andabak says theft never happened, or he would be arrested/processed[542]. As set forth later herein, Andabak was a respected officer in the post-Dayton Armed Forces of BiH.[543] The Majority's finding that Andabak's testimony has little weight because he was involved as a commander of MP unit in fighting in Prozor during 23-24 October 1992 is erroneous and inconsistent, since the Majority does attribute weight to the words of OZ Northwest HVO Commander Šiljeg.[544] This is contradictory, because Šiljeg was also involved in fighting, because he was HVO commander and he was even Andabak's superior in the field.[545] So, if involvement in fighting is reasonable to disqualify the veracity of witness Andabak, then this same reason discredits Šiljeg's accusations as well. At least Andabak came to Court as a witness, and under oath answered questions in direct examination and cross examination. Unlike Šiljeg, Andabak's statements were put to the test and verified, whereas Šiljeg was not a witness, and his statement are not subject to a oath to tell the truth. The Majority failed to assess the credibility of Andabak in relation to his demeanor and other evidence, but rather disqualifies him because of his position and being in Prozor. This is improper. With Šiljeg The Majority gives no explanation why he is a reliable witness, or what analysis it followed to reach such determination.

215. The Majority did not adequately take into account that Šiljeg may be self-interested and unreliable. The Majority failed to address that Šiljeg complained of MP misappropriation of fuel trucks from an UNPROFOR Convoy.[546] The evidence from UNPROFOR is that these trucks were found in Šiljeg's

[539] Vol.2/59
[540] Vol.2/59
[541] Vol.2/59
[542] Andabak (T.51069/10)
[543] Ground 14
[544] Vol.2/59
[545] Vol.1/783, footnote 1839,
[546] P2697

possession and that he refused to return them.[547] Further Colonel Šiljeg denied even the existence of the detention facilities in Prozor to the Health Section of the Defence Department.[548] This despite the fact they were under his command. Thus the veracity/reliability of Šiljeg is such that no reasonable Chamber could rely upon his untested over other evidence.

216. [REDACTED] and P00648 are about vehicles, i.e. allegedly stolen property, but say nothing destruction of property, destruction of cities, inhumane acts, inhumane treatment and other atrocities in Prozor for which the Majority found Ćorić responsible under Article 7(3) of the Statute. Thus these document cannot serve as a basis for the alleged knowledge of Ćorić, or the failure to act. There is no any single evidence that connect Andabak's unit of MP with allegations for those other crimes, but, based on Šiljeg's out of court allegations that were not subjected to confrontation or cross-examination, the Majority finds Ćorić liable for these crimes also. The Majority conclusion is that 'The HVO soldiers and various members of the HVO MP destroyed not just Muslim homes but also other property, such as vehicles owned by Muslims' and that ' the Muslim properties were targeted by the fires started by the HVO forces'. [549]

217. To hold a commander responsible for the crimes of subordinates, it must be established beyond reasonable doubt that: (1) there existed a superior-subordinate relationship between the superior and the perpetrator; (2) the superior knew or had reason to know that the criminal act was about to be or had been committed; and (3) the superior failed to take the necessary and reasonable measures to prevent the criminal act or to punish the perpetrator thereof.[550] A superior may discharge his duty to punish by reporting the matter to the competent authorities.[551]

218. In Prozor there were brigade MP, there were local units of MP attached to the HVO Rama brigade, as well as the 2nd Battalion of the MP, re-subordinated to Šiljeg and the Majority does not identify the perpetrators that performed these other crimes, let alone how they are subordinated to Ćorić. There is ample evidence under the record demonstrating that Ćorić did not have command authority over any of the

[547] P2709; [REDACTED]
[548] P6203
[549] Vol.2/54
[550] *Blagojevic & Jokic*, TJ at para. 790; *Kordic & Cerkez*, AJ at para. 827; *Oric*, TJ at para. 294
[551] *Hadzihasanovic & Kubura*, AJ at para. 154

brigade MP, local MP, nor the Battalions of the MP once re-subordinated.[552] The Majority failed to adequately or correctly analyze this evidence or address these arguments in finding Art. 7(3) liability for Prozor. The Majority's finding of Ćorić's command-superior role is contradicted by its earlier finding which acknowledged that the MP were re-subordinated to the HVO military commanders, such that he only retained limited powers over them.[553] It has been held by the relevant jurisprudence that the material ability to punish/control subordinates is the threshold/minimum requirement in establishing a command-superior relationship and thus liability under Art. 7(3).[554] The Majority has determined that Ćorić held powers despite the re-subordination of the MP to Military Commanders, focused exclusively on recruitment and powers of appointment.[555] Respectfully there has been no showing of how this rises to "effective control" or the "power to punish" that is required under the jurisprudence.

219. In order to be a 7(3) superior, Ćorić has to have effective control over persons who destroyed property in Prozor and has to have knowledge of those crimes. Just part of what allegedly happened in Prozor is mentioned in [REDACTED] and P00648, but the Majority imputes knowledge of all crimes committed in Prozor from those documents and then finds Ćorić responsible. The Majority erred when it established that other crimes, other than stolen vehicles, committed after fighting in Prozor were linked to MP units under effective control of Ćorić. The Majority can only point to evidence that Ćorić may have had about damage occurring during combat, which is insufficient to raise his notice of crimes, since damage is identified as collateral to combat.[556]

220. The Majority considers evidence in a vacuum, and ignores the surrounding circumstances in Prozor. Specifically, Andabak, the commander of the 2nd MP Battalion testified that neither Franjic nor the Brigade SIS reported to him of any crimes in Prozor.[557] Thus certainly Ćorić at the MPA could not receive any such reports either. Franjic, who was first the HVO Brigade Commander of the Rama Brigade, became the commander of the elements of the 2nd MP Battalion, and then later again became Rama Brigade Commander.[558] When Andabak asks Franjic to report to him regarding complaints of Franjic's "bullying" and abuse of position – Franjic instead writes his resignation to the MPA and becomes Rama Brigade

[552] See, Ćorić Final Trial Brief, Section III.
[553] Vol.4/871
[554] *Halilovic*, *AJ* at para. 59
[555] Vol.4/873-876.
[556] Vol.4/1249
[557] Andabak (T.50954/10-50956/20)
[558] 4D901; 4D903, 5D2077

Commander.[559] In the aftermath of Franjic's resignation the evidence is clear that the MPA sent the CPD to Prozor afterwards, took stock of all unsolved crimes and begin processing them, and brought MP from another zone and eventually arrested persons for crimes, including Franjic for questioning.[560] It should be noted in this regard that Franjic and Šiljeg continue to engage in personal attacks against Andabak[561] whereas Šiljeg supports Franjic.[562] No reasonable Chamber would attribute that Ćorić was well informed about crimes in Prozor by HVO forces, under these circumstances.

221. The Majority fails to consider, as required under *in dubio pro reo*, that "Stolen vehicles"[563] identified by Šiljeg were actually confiscated by the MP from criminals at checkpoints, and were being safeguarded for return to their owners.[564] The Majority further ignores that Šiljeg's claims were not ignored- a commission was formed in the MPA, and that commission, in cooperation with Andabak's MP made a list of the cars and the cars had been returned to the owners, so certain legitimate measures were taken based on the information from document P648. [565]

222. The joint Order signed by Praljak and Ćorić, 14.11.1993, confirms that, and in particular in the Croat original, Praljak directly ordered Šiljeg to comply.[566] It seems everyone had a different image of the events except Šiljeg, and the Majority. Ćorić and MPA took some measures, and if they decided not to punish Andabak or others, it could also be, because according to Criminal Code of Bosnia and Herzegovina, Article 147, if the offender had restored stolen movable property to the injured party before he learned of the commencement of criminal proceedings, he may be relieved from the punishment.[567] Thus the requirements of the law were satisfied by the return of property, and we don't know from the evidence if the investigation implicated any MP for these incidents, because no action by Ćorić or anyone under law was required.

223. A Closer look at P648 (Šiljeg's report dated 25.10.1992) shows that it differs from what the Majority found. This document is addressed to the Defence Department of HVO, Main Staff HVO, and on the third

[559] 5D2049
[560] Andabak (T.50960/14-50961/22); [REDACTED]
[561] 5D2049
[562] P648
[563] P00687, SIS report does not identify perpetrators
[564] Andabak (T.51072/16-23)
[565] Andabak (T.51070/1-12)
[566] Andabak (T.51070/1-12), 3D424
[567] 2D00907, page 57, Criminal Code of Bosnia-Herzegovina, Article 147(2),

place the MP Administration. Thus is is not as the Majority stated - as Šiljeg's documents sent Ćorić. Rather it was the MP Administration, and not Ćorić, that is just one of the recipients of the letter, ranked at 3rd position among recipients. Then, in the text, is obvious that Šiljeg's report was not talking about whole unit of MP under command of Andabak, but part of the unit. Furthermore, it says that according to the report by the HVO Rama Brigade Commander, Andabak is no longer in Prozor, and there are indications that the houses and property in possessions of the Croats was looted. And in the end of the report, Šiljeg says: 'I require the Head of the MP Administration to inspect urgently MP units in Livno and Tomislavgrad, consider the situation and take appropriate measures against individuals who behave like that.' So, it is clear that Šiljeg proposes that the Head of the MPA 'consider the situation', which means that Šiljeg is convinced that Head of MPA does not know what is going on out on terrain. In BCS original text, it is literally said: 'to examine the situation', and it shows that Šiljeg does not claim that eventual perpetrators act under the control of the Head of the MP Administration.

224. The Majority finds that on 14.11.1992, Praljak and Ćorić ordered Andabak specifically to return all the vehicles "taken" by the MP to their owners and further finds that some of the "stolen" or "confiscated" vehicles were in fact returned to their owners.[568] A closer look at that document shows differences in understanding what it says: It is an order but not addressed directly to Andabak but it says: Order that all vehicles taken in Prozor municipality by HVO MP, must be transported and given to in Ljubuski, to deputy of Chief Alilović, of the General and Traffic Department of MP and that Alilović and Andabak, as commander of the 2nd Battalion of MP are responsible for conducting this order.[569] So, The Majority erred in its factual findings, because this document does not confirm that Ćorić knew who committed crimes, and that Andabak is not reliable, because this document appoints Andabak as responsible for return of the vehicles. So, in the moment of issuing this order, Andabak does not figure as a perpetrator of any criminal act, and there is no reason for Ćorić to punish him.

225. Another error by the Majority is their discrediting of Andabak's account based on their belief that the HOS were disarmed and disbanded till 23 August 1992,when members of HOS became members of HVO and that it is impossible for them to be active in October 1992 in Prozor.[570] The majority ignored

[568] Vol.4/1247
[569] 3D00424
[570] Vol.2/59

evidence to the contrary, that HOS units existed until 1993,[571] and that not all HOS units became members of HVO, because many HOS members joined the ABIH, even whole HOS was, for a while, part of Army BiH.[572] Indeed in a MP report for period January – June 1993 members of HOS are mentioned as one of the main troublemakers.[573]

226. Lastly, even looking at the plain text of the document which is the fundamental evidence relied on by the Majority to find Ćorić's responsibility concerning Prozor, it is clear that in document said that there were stolen vehicles from Croats and destroyed property of Croats as well, not just acts against the Muslim population. The report thus would not raise Ćorić's notice to anything other than crimes of unknown perpetrators and not MP. Under this backdrop, it is clear that the Majority erred in dismissing Andabak's testimony and the other corroborative evidence, and wrongly found Ćorić guilty under 7(3) liability for acts in Prozor.

XI. 10th Ground of Appeal: *The Chamber made numerous errors of law and fact to establish Ćorić's alleged mens rea for the Crimes Charged*

227. Pursuant to the relevant legal standards, including the presumption of innocence, the prosecution must establish each and every element of the offences beyond a reasonable doubt.[574] The Chamber must resolve every doubt in favor of the accused in accordance with the principle of *in dubio pro reo.*[575] It is respectfully submitted that the conclusions reached by the Judgment as to Ćorić's criminal intent are not "the only reasonable conclusion" under the evidence such that it cannot be called into question by another rational conclusion.[576]

A. HVO Operations in municipalities

[571] P1901; 2D3080;[REDACTED]; Gagro (T.2733/6-25); Petkovic (T.50071/16-50073/21); Pinjuh (T.T37726/3-37727/11); Tokic (T.45351/24-45352/8)
[572] 5D00130, P00687, P10984; Pinjuh (T.T37726/3-37727/11)
[573] P03090, par 1.3
[574] *Delic*, *TJ* at para. 23
[575] *Delic*, *TJ* at para. 24
[576] *Delalic, AJ* at para. 458

228. Some of these errors have already been dealt with elsewhere in this Appeal.[577] The Judgment makes conclusions which are unsupported by evidence, or interpret evidence out of context, rendering the conviction against Ćorić unsound. Much of the Chamber's discussion of Ćorić's criminal intent is based on evidence that MP units were sent to assist other units in combat.[578] Respectfully, the sending of units to participate in combat against hostile forces is not indicative of a criminal intent. The Chamber's findings do NOT demonstrate anything other than participation of MP in combat, which can be understood as a legitimate function of armed units in a time of warfare. Further, the Chamber often asserts that Ćorić must have known of crimes and intended same, but does not cite to any evidence demonstrating why or how it is that Ćorić "must have known."[579] Even more erroneously, the Chamber views that by his participation in the "war effort" and the long duration of operations Ćorić must have known of crimes and intended to facilitate them - again without citations to any evidence.[580] Bare assertions, based on impermissible inferences drawn from legitimate wartime activities are not sufficient to establish intent. The Appeals Chamber has held that were intent is to be established by inference, that inference must be the only reasonable inference available on the evidence - and the benefit of the doubt must always go to the accused.[581]

229. The Judgment's findings ignore the lack of effective control of Ćorić over MP units when subordinated to Military commanders.[582] They likewise ignore the lack of reporting from the MP units in the field to the MPA on combat.[583] They furthermore fail to give the benefit of doubt to Ćorić for his own contemporaneous appeals to withdraw the MP from frontlines so that they can perform law enforcement functions in the municipalities--

> "I claim with responsibility that we are not able to perform even regular MP tasks with the forces remaining after the deployment of the MP on frontlines, not to mention complex interventions and other significant MP tasks. In view of the above, we request that the engagement of the MP on frontlines in this scope be reconsidered and propose

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577 Ground 12 and Ground 14
578 Vol.4/869, 925, 936, 920, 923
579 Vol.4/921, 923
580 Vol.4/938
581 *Kvocka et al*, *AJ* at para. 237
582[REDACTED];[REDACTED];[REDACTED]; Andabak (T.50906/16-50908/2; T.50908/4-9; T.50909/17-50910/6; 50912/4-17; 50913/23-50914/2; 50915/1-14; 50915/15-50916/18; 50917/21-50918/10; 50920/14-20; T.50923/20-50924/1; 51146/2-25; 51147/1-51149/2151154/2-51155/7; 51156/14-51157/19): [REDACTED]
[REDACTED], P1121; P1517; P1562; P4174; P2020; P3077; P323; P5478; 5D4282; 3D419; P957; P1888; P1913; P1972; P3135; 5D3046; 5D3048; 5D3052; 5D2195; 5D3019; 5D1054; 5D4392; Pavlovic (T.46894/10-46895/16; 46905/6-11); Skender (T.45241/8-15)
583 Andabak (T.50932/24-50933/18; T.50933/19-24; T.50961/23-50964/7); 5D4385, [REDACTED]

> that MP units be withdrawn from frontlines to perform MP duties and be sent to the lines only to intervene in exceptional situations."[584]

Such actions on the part of Ćorić demonstrate a lack of criminal *mens rea* on the part of Ćorić. That he continued to voice such concerns when he became MUP Minister[585] demonstrate clearly that his intent was never to facilitate crimes or a JCE.

230. Additionally the Judgment focuses much of the discussion of Ćorić's intent based on his knowledge through reports, of the criminal evictions and other crimes conducted by the ATG's/KB in Mostar.[586] These conclusions that Ćorić intended these crimes or facilitated them[587] fails to take into account the totality of the evidence and fails to give benefit of doubt to the Appellant as required.

231. Firstly, the Chamber itself concluded that Ćorić's alleged power over the KB was not appropriate to consider, since it was not alleged in the Indictment.[588] Accordingly, it is inappropriate to draw inferences based entirely upon the activities of the KB that in essence take for granted Ćorić's alleged power over the KB.

232. Secondly, the Chamber's analysis of evidence of KB/ATG's crimes ignores the bulk of evidence as to the Pauk/Spider operation.[589] Indeed a working meeting was held 11.08.1993 (attended by Ćorić) with the proposal to have the MP and civilian police work more closely together especially against armed criminal groups.[590] Ćorić was informed about the practice of the MP to conduct investigations and to react promptly whenever a crime was committed by military unit members.[591] Ćorić was aware of the fact that the MP accomplished its duties under law.[592]

233. If we look closer at the reporting available to Ćorić, we see that he reasonably could believe that organs were functioning the best they could under the circumstances to fight crime. P4058[593] gives a

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[584] P5471, p. 3
[585] P6837
[586] Vol.4/925-926, 929, 930, 933, 934
[587] Vol.4/933
[588] Vol.4/914
[589] See, Ground 2
[590] P4111
[591] P1635
[592] P3508
[593] Sent to Ćorić and in regard to Mostar

comprehensive overview of the work of the CPD during July-August 1993, including crime trends/statistics and anti-crime measures being employed to prevent crime. The report also highlights problems with lack of equipment and personnel. As a response to these reports we see 5D2113, a report from Ćorić to the Defense Department that outlines anti-crime measures that have been implemented in Mostar with "noticeable results," namely when the MP undertook control of parts of the city to prevent looting. Similarly we see in 5D4110 Ćorić taking those steps within his limited domain to contribute to law-enforcement efforts, trying to increase the effectiveness of anti-crime measures, supporting training of additional crime technicians and encouraging the MP to work closely with the civilian police.

234. The Chamber, on the one hand confirms that Ćorić and other officials cooperated in Operation Pauk/Spider to arrest criminal perpetrators in the HVO (including the KB)[594] then erroneously tries to claim it is NOT the logical progression of Ćorić's previous order to Vidovic to collect information on ATG's crimes with the aim to perform a comprehensive operation to arrest and institute proceedings, simply because it is one year later that the arrests occurred.[595] In doing so the Chamber had to disregard Vidovic's own testimony[596] and that of others[597] about the difficulties encountered in facing such a large and well-armed ATG without adequate manpower. The Judgment relies upon Vidovic to testify about both Ćorić 's order and Operation Pauk/Spider but then refuses to give credence to the same witness' explanations as to both. Further, in making such a conclusion the Chamber had to ignore its own finding that the MP was forced to devote the major part of its forces and equipment to combat operations, such that crime could not be effectively opposed in satisfactory fashion in HZ-HB.[598] Such errors make the conviction unsafe.

B. Checkpoints/Humanitarian Aid

235. The Judgment asserts Ćorić's criminal intent/responsibility for crimes as part of a JCE for his alleged power/authority at the MPA and later the MUP to control freedom of movement and operation of checkpoints, especially in Mostar.[599] The errors relative to the same have already been made, in part.[600]

[594] Vol.4/932
[595] Vol.4/931-932
[596] Vol.4/934; Vidovic (T.51518/2-18; 51444/4-13; 51600/15-51603/14)
[597][REDACTED]; P5471; 5D548; P1654
[598] Vol.1/972
[599] Vol.4/867-945

236. Additionally the Chamber relies upon acts of Ćorić that cannot reasonably give rise to an inference of criminal intent. These findings relate to Ćorić's: a)ordering of reinforcements[601]; b)facilitating a field hospital to be escorted by the Police[602]; c)issuing instructions for conduct at Check-points[603]; and d)conveying orders to PERMIT humanitarian organizations free movement.[604] Respectfully such events do not give rise to the conclusion of a criminal intent, but rather demonstrate ordinary and normal efforts in legitimate activities.

237. While citing to Ćorić's instructions[605] the Judgment fails to address their content. Ćorić's instructions to Checkpoints in Mostar were always based on implementing decisions reached at a higher authority, and were always implementing peace agreements reached.[606] P4174 and P4258 are examples based upon an order of the Main Staff of the HVO, and prevailing security concerns at the time. The text of both demonstrates that there is no criminal intent and that Humanitarian organizations are exempt. The other instructions relied upon by the Judgment[607] were when Ćorić no longer has any authority over MP at checkpoints, since he is MUP Minister, as even confirmed by the Chamber.[608] The finding of the guilt by the Chamber ignores the agreement on free passage of convoys signed by the HVO HDZ Bih and RBiH on 8.7.1993 that foresaw the mechanism for cooperation and organization of humanitarian convoys. This agreement envisaged a joint commission. The way in which the contents of the humanitarian convoys was to be checked was also arranged in this agreement.[609] Humanitarian vehicles were allowed free passage,[610] when proper documentation was present.[611]

238. The purpose of the checkpoints was legitimate, and documents demonstrate the goal of checkpoints, as understood by Ćorić, was to prevent crimes.[612] Under the evidence, international

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[600] See, Ground 2
[601] Vol.4/867, 885
[602] Vol.4/886
[603] Vol.4/886
[604] Vol.4/943
[605] Vol.4/885
[606] P1988; P2002; 2D470; 2D313; P2030; 3D676; 3D16
[607] Vol.4/886
[608] Vol.4/872
[609] 1D1591, [REDACTED]
[610] 3D921
[611] 1D2103; 1D1854; P4470
[612] P2575; P2578; 5D2113

observers testified that checkpoints were a necessity and used legitimately by all sides.[613] Fears of arms smuggling were entirely justified based upon the evidence of confirmed incidents and documents evidencing the mis-use of UNHCR convoys for smuggling of arms and munitions on the part of the Muslim forces.[614] OTP witness Beese conceded that, given the situation prevalent at the time, it was reasonable to hold back a humanitarian convoy, if they did not have the necessary documents and there was a risk that it might have been a convoy of Mujahedin forces packed with smuggled goods.[615] In cases where Humanitarian convoys were delayed, the evidence is that Ćorić acted to resolve misunderstandings that arose with such humanitarian organizations, and to apologize for the same, and that the MP had acted based on legitimate concerns of preventing smuggling of weapons and contraband.[616] Again there no reasonable chamber could infer criminal intent from same.

C. Detention Facilities

239. In relation to Detention Facilities, the Judgment erroneously concludes that Ćorić is guilty, by way of JCE liability, for crimes therein,[617] despite evidence that he lacked the *mens rea* for said crimes. Further the finding of criminal intent is counter to the Judgment's own conclusion that the Chamber received evidence attesting to Ćorić's direct involvement in fighting crime within the HVO, including criminal events at Ljubuski Prison.[618]

240. The Judgment also ignores its own findings that there was no evidence Ćorić could supervise access to prisons other than Heliodrom;[619] and that Ćorić allowed international humanitarian organizations into Heliodrom[620] and Ljubuski[621] prisons; that there was no evidence he ever refused access of international humanitarian organizations access to these 2 prisons[622]; and that restrictions or obstructions to such access could not be said to have been ordered by Ćorić.[623] Under such body of evidence it cannot

[613] Lane (T.23824/10-13); [REDACTED]
[614] [REDACTED]; 1D1856; 1D934; 1D935; 1D1921; 1D1922; [REDACTED]; Watkins (T.18975/1-18976/10)
[615] Beese (T.5241/7 – 5244/16)
[616] P1451; 5D526; 5D529
[617] Vol. 4/999, 982, 971, 994, 996, 997
[618] Vol.4/881
[619] Vol.4/906, 916
[620] Vol.4/905, 960
[621] Vol.4/975
[622] Vol.4/959, 961, 976
[623] Vol.4/960-961

be said that Ćorić had any criminal intent as to the detention facilities. The EECM when visiting Heliodrom albeit stating the conditions were poor, concluded detainees were "satisfactorily" nourished and detained.[624] Thus Ćorić had no notice of any problems and was entitled to rely on the international organizations that things were satisfactory in the detention facilities.

241. Further, while relying on the mere fact Ćorić issued instructions or house rules for certain detention facilities[625] the Judgment fails to analyze the content of same to determine if Ćorić is giving any instructions that would give rise to proof of a *mens rea* to commit or facilitate the crimes alleged in the JCE. Respectfully, the house rules in question regulate the conduct of the MP who were providing security to the facility, and therein it is emphasized the obligation to respect the rules of IHL, ordering that treatment shall be in accordance with the Geneva Conventions that free entrance shall be guaranteed for the representatives of the ICRC and that a precise list of prisoners shall be drafted.[626] Accordingly, under this evidence it is not possible to infer a criminal intent or *mens rea* to Ćorić, and the Judgment is in error for doing so.

242. The Judgment also makes conclusions of Ćorić's failure to intervene to address bad conditions and mistreatment in the detention facilities[627], despite his lack of access to reports about the conditions.[628] This is despite its own findings that Ćorić was not informed of same and had no reason to believe detainees were mistreated[629] in Heliodrom; and that the Chamber could not conclude Ćorić deliberately avoiding intervening to stop abuse in Ljubuski, since there was no evidence he was informed of the same.[630] Further, in relation to the items that are complained of, overcrowding and lack of food, from the same Ćorić cannot be said to have known of any criminal intent behind the same, as anyone intending such results would not complain of lack of resources to prevent them. The Chamber ignores the evidence that Ćorić was not involved in health matters including its own finding that Ćorić was not involved in logistics for the prisons.[631] Documentary evidence and witness testimonies show that the Health Care Section of the Defence Department and the medical corps of the military units were in charge of **medical**

[624] P5035 item 7
[625] Vol.4/893
[626] P514
[627] Vol.4/957, 999, 982, 971, 994, 996, 997
[628] Vol.4/897, 899, 955, 956, 957, 962, 985, 988, 1018
[629] Vol.4/955
[630] Vol.4/974
[631] Vol.4/904

care within the detention centers and in the Heliodrom prison as well.[632] The reports as to medical issues were addressed to other organs but were not addressed to either the MPA or Ćorić.[633] Ćorić cannot be said to have the requisite intent for crimes of which he is not even aware.

243. The main focus of the Chamber's assessment of Ćorić's criminal intent as to detention facilities is the evidence and their finding that provided MP for Heliodrom security and he informed of a large number of people coming to Heliodrom, and thus knew of arrest of Bosnian Muslim civilians[634] and also knew of the arrest of Muslim males following the ABiH attacks,[635] and facilitated both, in relation to Heliodrom and Ljubuski. Such a position is unreasonable as it ignores the bulk of evidence and context which demonstrates on 9 May 1993 because of the ongoing fighting and in order to protect civilians and provide for their safety, civilians were evacuated from the front line to Heliodrom. [REDACTED].[636] Per Vidovic, "[…]the situation escalated and there was an armed conflict between the ABiH and the HVO, which made it a war zone again."[637] [REDACTED].[638] This was confirmed by documentary evidence which stated -

> [...]The Mostar HVO thwarted the attack of the Army of BiH and literally picked up the entire civilian population from Santiceva Street, that is from the front line, the line of separation, and moved them to the Heliodrom. The Croats and Muslims who had somewhere to go in the direction of Siroki Brijeg and Citluk left themselves, and the remaining Muslims, who had nowhere to go, were accommodated at the reception centre at the Heliodrom, in the southern part of Mostar."[639]

Evidence proves that the civilians were not kept longer than a few days in Heliodrom.[640] The Chamber itself confirmed that they went home.[641] This underpins the fact that they were kept in Heliodrom only for their own safety, and therefore, their detention cannot be qualified as unlawful. As to Stolac/Ljubuski, the detention of Muslim HVO members following their assisting a ABiH attack and detention of the reserve members of the ABiH armed forces following the attack of the ABiH are discussed elsewhere herein.[642] Under this evidence, it cannot be said the only reasonable conclusion is that they prove Ćorić's criminal

[632] P3197; Bagaric (T.38992/5 – 38995/1)
[633] P4653; 2D917; P4145; 2D412;
[634] Vol.4/928, 952
[635] Vol.4/953, 973, 982
[636] [REDACTED]
[637] Vidovic (T.51467/17-19)
[638] [REDACTED]
[639] 2D1321, para 2
[640] P2853; 5D2016; [REDACTED]
[641] Vol.4/925
[642] Ground 7

intent. To the contrary, there is a more benign conclusion that is more reasonable under the evidence, namely that Ćorić's actions were in response to what was perceived as legitimate and appropriate activities.

244. The errors as to forced labor are addressed elsewhere.[643]

245. The Dretelj and Gabela military remand prisons were under the effective authority of the 1st Knez Domagoj Brigade and its commander, Nedjeljko Obradovic.[644] Brigade commander Obradovic was the command-superior of wardens of Dretelj and Gabela.[645] In the case of Gabela, as of November 1993, the warden, Bosko Previsic, and his deputy, Nikola Andron were members of the 1st Knez Domagoj Brigade subordinated to Colonel Obradovic.[646] [REDACTED]. [647] [REDACTED]. [REDACTED]. [REDACTED]. [REDACTED].[648]

246. [REDACTED].[649] The form of the criminal [REDACTED] in this case was verified by Vidovic to whom the document was shown.[650] From this situations, it is obvious that Ćorić, as Chief of MPA, even if he knew of the incident, could be assured the MP acted professionally.

247. MPA had no authority nor role concerning the appointment of wardens of Prozor detention facility.[651] The MPA/Ćorić did not have any authority concerning the detentions at Prozor[652]. The system of security was organized according to the same principles as in most of the other detention centres. The commander of the Rama Brigade made the Home Guards chiefly responsible for ensuring security within the Prozor compound.[653] Home Guards were deployed by the brigade commander.[654] [REDACTED].[655] Ćorić was not reported to about the release or transfer of detainees, such that he is not responsible for violations of law that occurred within the Prozor detention facilities.[656] The testimony of Andabak is an

[643] Ground 6
[644] P3731; P4253
[645] P4266; P3462
[646] P6729, pg 3
[647] [REDACTED]
[648] [REDACTED]
[649] 5D4181; 5D4182 [REDACTED]
[650] Vidovic (T.51503/7-15)
[651] 2D899; [REDACTED], Praljak (T.42767/19-23), 2D268;[REDACTED],
[652] P3604; P2649; P3266; P4156; P3286; P4156; P6569; P6662; P6658; P3380; P4285, P3266; P4156

[653] P3270
[654] P3954
[655] [REDACTED]
[656] P4156; P6569; P6662; P6658; P3380

additional piece of evidence which proves that the MPA was not informed in any way about the events that occurred concerning the detainees or prisoners held in the Prozor area, since the Brigade MP did not report to him, and thus he could not report to the MPA about their activities. [657] Ćorić is not responsible for any criminal acts committed in Prozor Prison.

XII. **11th Ground for Appeal: *The Chamber violated Ćorić's right to fair trial regarding the scope of incrimination when it took into account positions held beyond the scope of the indictment***

248. The Majority erred in examining Ćorić's responsibility not only as Chief of the MPA until 10.11.1993 but beyond that date until April 1994 as Minister of Interior of HR-HB, for purposes of finding him guilty under JCE liability.

249. The Majority concluded that the Accused participated in the commission of alleged crimes by means of the offices they held within this structure, by exercising the powers/authorities of positions he held[658].

250. The Majority, further, erroneously considered that the Prosecution had grounds to address Ćorić's responsibility as the Minister of the Interior, insofar as the allegations of responsibility in the Indictment are not limited only to the period when he was Chief of the MPA but also beyond that date while he was Minister of the Interior.[659] It is respectfully submitted no reasonable chamber could conclude adequate notice was given of such an extended scope of the indictment.

251. The Majority observes that the Ministry of the Interior was responsible for national security and for protecting the government system as a whole, for the safety of persons and property, for preventing and detecting criminal acts, for arresting criminals, for ensuring and maintaining law and order, and for matters pertaining to citizenship. The Majority found that until at least February 1994 Ćorić still had the ability, as Minister of the Interior, to participate in fighting crime within the HVO, and that he still had the power to control the freedom of movement of people and goods in the territory of the HZ(R) H-B, including that of

[657] Andabak (T.50931/22-25)
[658] Vo.4/491, 497-498
[659] Vol.4/863, 872,

humanitarian convoys.[660] In relation to this conclusion, it is instructive to note that for movement of goods and people the entire findings of the Majority are focused on acts of the MP, but do not make any findings of wrongdoing attributable to Ćorić.[661] More importantly, insofar as the Majority has already concluded as Minister of the Interior, Ćorić had no command over the MP,[662] its conclusions that he maintained power over the work of the MP at checkpoints whilst at the MUP is clearly contradictory and erroneous.

252. The Majority found Ćorić remained a member of the group supporting the common criminal purpose as the Minister of the Interior of, carrying out important functions within the HVO until the end of the JCE in April 1994, all the while remaining informed of the situation on the field and continuing to interact with the other members of that group.[663] The Majority concluded that Ćorić continued to support the common criminal purpose with the other members of the group even after leaving the MP Administration.[664]

253. The Majority erroneously claims the Defence had notice of this time period because in its Final Trial Brief it brought up Ćorić's power over the civilian police in his capacity as Minister of the Interior.[665] Putting this observation out of context, the Majority has changed the meaning of this Defence's argument – it in its Final Brief simply compared that Ćorić, as Minister of Interior, issued a request, similar to that he issued when he was Chief of the MPA, aimed at the civilian police that were being used by the HVO military commanders in the frontlines:

> *[…] this engagement of our employees has slowed down our activities relating to efficient enforcement of basic police operations, which resulted in deterioration of the state of public law and order, traffic security and detection of criminal acts. In order to prevent such dangerous developments, which could threaten the whole defence of the Croatian people, and the very existence of the HZ-HB, we have decided to withdraw our officers from the first line of defense […]*[666]

From this passage it is obvious that Ćorić warns HVO military commanders on the untenable situation of Police not having enough men to fulfil their duties of protection public law and order, traffic security, and fighting crime. And it is mentioned because as a Chief of MP he issued a similar request.[667] Both requests

[660] Vol.4/883, 886, 887, 917, 1003, 1226
[661] Vol.4/884-887
[662] Vol.4/872
[663] Vol.4/1226
[664] Vol.4/1226
[665] Vol.4/863
[666] Ćorić Final Brief, par 211, P6837, p. 1
[667] P5471, p. 3

show that he was conducting some actions which are aimed at fighting crime, contrary to conclusions of the Majority. The Majority erred by using this reference to claim the time period of the indictment was properly extended, and then failing to use the substance of this evidence to analyse whether Ćorić could be found to have the intent to further a common criminal purpose as Minister of Interior. It is submitted Ćorić demonstrated an intent to enforce the law and prevent crimes, rather than to engage in any crimes or assist others in the engagement of crimes, and no reasonable chamber could conclude as the Majority did under this evidence.

254. The Majority explicitly concedes that Paragraphs 12 and 17.5 (b), (c), (d), (e), (f), (g) (h), (i), (j), (k), (l), (m) and (n) of the Indictment simply refer to Ćorić without specifying his position.[668] Only paragraph 17.5 (a) limits the allegations to the period while he was the Chief of the MP Administration. [669] This position of the Majority shows that it took into account positions held beyond the scope of the indictment – and impermissibly tried to cure pleading deficiencies. If Ćorić's position as Minister of Interior was part of the Prosecution Case then he way in which he participated in the enterprise in that capacity must be specified in the indictment.[670] This would mean specifying which crimes are committed during his stay at this function, how he was related to it, why his acts in this position made this crime possible to be committed. This Indictment lacks those material elements, beyond the period while he was the MPA Chief. According to Rule 47(C), the indictment shall set a concise statement of the facts of the case and of the crime with which the suspect is charged. According to Article 21 of the Statute, paragraph 4(a) states that the Accused shall guaranteed, to be informed promptly and in detail in a language which he understands of the nature and cause of the charge against him.

255. No conviction may be pronounced where the accused's right to a fair trial has been violated by lack of sufficient notice of the legal and factual grounds underpinning the charges against him. A specific, precise, clear, and unambiguous indictment is an essential prerequisite for a fair and expeditious trial. Besides being a right of the accused, a specific indictment assists the prosecution in focusing its case and

[668] Vol.4/863, footnote 1597
[669] Vol.4/863, footnote 1597
[670] *Prosecutor v Prlic et al*, No. IT-04-74-PT, *Decision on Defence Preliminary Motions Alleging Defects in the Form of the Indictment* (22 July 2005) at para. 27; *Prosecutor v Gotovina et al*, No. IT-06-90-PT, *Decision on Ante Gotovina's Preliminary Motions Alleging Defects in the form of the Joinder Indictment* (19 March 2007) at para. 23

assists the Chamber in ensuring the efficient use of court time.[671] Respectfully here the Indictment failed to have specificity for any alleged conduct beyond the time period at the MPA, as conceded by the Majority. Accordingly, an indictment that fails to set forth material facts in sufficient detail is defective.[672]

256. In accordance with Article 21(4)(a), an accused has the right "to be informed promptly and in detail in a language which he understands of the nature and cause of the charge against him"[673] An accused cannot be expected to engage in guesswork in order to ascertain what the case against him is, nor can he be expected to prepare alternative or entirely new lines of defence because the prosecution has failed to make its case clear.[674] If an accused is not properly notified of the material facts of his alleged criminal activity until the trial itself, it will be difficult for his Defence to conduct a meaningful investigation prior to the commencement of the trial.[675] Respectfully, pleading deficiencies of the Indictment cannot be cured by reference to the final trial briefs of the parties. The nature of the participation of the accused in the joint criminal enterprise must be specified in the indictment. Where such participation is to be established by inference, the prosecution must identity in the indictment the facts and circumstances from which that inference is sought to be drawn.[676] Through the entire trial there was not any appropriate notice to the Defence that this extended period fell within the indictment, so as to permit them to lead evidence on this time period as well which would rebut any such allegations. Not a single witness was called by the prosecution to cover the time period when Ćorić was Minister of Interior, and likewise, the Defence did not lead any evidence in its case because there was nothing to rebut.

257. Before a Chamber holds that an alleged fact is not material or that differences between the wording of the indictment and the evidence adduced are minor, it should generally ensure that such a finding is not prejudicial to the accused. An example of such prejudice would be vagueness capable of misleading the accused as to the nature of the criminal conduct with which he is charged.[677] The issue as to whether a fact is material or not cannot be determined in the abstract: whether or not a fact is considered "material"

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[671] *Prosecutor v Zigiranyirazo*, No. ICTR-01-73-I, *Decision on the Defence Preliminary Motion Objecting to the Form of the Indictment* (15 July 2004) at para. 28
[672] *Ndindiliyimana AJ* at para. 172; *Djordjevic*, AJ at para. 576; *Nahimana AJ* at para. 322
[673] *Simic*, AJ at para. 20
[674] *Simic*, AJ at para. 71
[675] *Ntagerura AJ* at para. 22
[676] *Prosecutor v Pavkovic et al*, No. IT-03-70-PT, *Decision on Vladimir Lazarevic's Preliminary Motion on the Form of the Indictment* (8 July 2005) at para. 7
[677] *Krnoljelac*, AJ at para. 133

depends on the nature of the Prosecution's case.[678] The Prosecution's characterization of the alleged criminal conduct and the proximity of the accused to the underlying crime are decisive factors in determining the degree of specificity with which the Prosecution must plead the material facts of its case in the indictment in order to provide the accused with adequate notice.[679] As the proximity of the accused person to those events becomes more distant, less precision is required in relation to those particular details, and greater emphasis is placed upon the conduct of the accused person himself upon which the Prosecution relies to establish his responsibility as an accessory or a superior to the persons who personally committed the acts giving rise to the charges against him.[680] Individual actions of an accused that contribute to crimes will require more specific notice than proof of the crimes themselves, where they are physically committed by others. The specificity of the notice required is proportional to the extent of the Accused's direct involvement.[681] Here the individual allegations relating to the alleged personal conduct of the Accused and the position he is alleged to have held while furthering a JCE are not pled with specificity, and the Defence was not adequately put on notice the time period when he was Minister of Interior would be taken into account for the JCE.

258. Respectfully no reasonable Chamber could conclude that the Indictment complied with all these requirements. Per the Majority's concession,[682] and under the facts, Ćorić was not informed fully of the charges against him, until final briefs and closing arguments, so his rights to defend himself, were violated. Charges against him for the period of 10 November 1993 till April 1994, were not brought against him in accord with the Statute and RPE, nor the jurisprudence.

259. Furthermore, the Majority fails to specify any conduct of Ćorić while Minister of Interior demonstrating he "participated in the commission of alleged crimes by means of the offices they held within this structure, by exercising the powers and authorities of positions he held."[683] Despite the Majority claiming it will analyze the evidence relating to the political, administrative, military and judicial structure of Herceg-Bosnia and the position of the Accused within this structure to determine whether – and to what extent – the Accused participated in the commission of any crimes by means of the offices they held within

[678] *Nahimana AJ* at para. 322
[679] *Kvocka AJ* at para. 28
[680] *Kvocka*, *AJ* at para. 65
[681] *Prosecutor v Bagosora et al*, No. ICTR-98-41-T, *Decision on Kabiligi Motion for Exclusion of Evidence* (4 September 2006) at para. 3
[682] Vol.4/863, footnote 1597
[683] Vol.1/491

this structure,[684] it failed to do so. In its examination of the Ministry of Interior[685], apart from naming that Ćorić was appointed to that function on 10 November 1993, the only analysis is in connection with the Prosecution's allegations that the Police was under direct authority of another Accused. The analysis is brief and related to the period before Ćorić held the position of Minister.[686] By comparison when analyzing MP structure and organization, 60 pages of Volume 1 of the Judgment focus on Ćorić.[687] The Majority fails to establish what conduct of Ćorić as Minister of Interior acted in furtherance of the JCE. As such no reasonable Chamber could conclude Ćorić was guilty for conduct as Minister of Interior.

XIII. **12th Ground for Appeal:** ***The Chamber violated Valentin Ćorić's right to fair trial when it denied the admission of exculpatory evidence and relied on dubious documents of questioned authenticity***

[684] Vol.1/491
[685] Vol.1/651-655
[686] Vol.1/491, 497-498, 651-655
[687] Vol.1/845-974

260. The Chamber erred as a matter of law and fact when it admitted Jadranko Prlić's statement, and relied on it as evidence against the other Accused.[688] Prlić gave his statement before the case existed, there were no other accused, even Prlic's rights were violated because he was not aware of all implications of his questioning, other parties did not have opportunity to cross-examine him, and his statement should have been removed from the case after he said he would not testify in his case-in-chief. If any other witness testifies *viva voce*, or pursuant to Rule 92*ter* or if their evidence is admitted via Rule 92*bis* or *quater*, their prior and non-tendered statements are not available as evidence. In such a circumstance the safe-guards of the rules permit the other Accused to confront and cross-examine that witness, or in the case of Rule *92bis* and *quater*, the rules limit the type of evidence appropriate for the same, and that it cannot go towards acts and conduct of the accused. The Admission of Prlić's statement is a violation of these fair trial safeguards to all other five Accused. The formalities of any of the Rule 92 provisions were not followed. The other Accused were not even aware of the statement being taken and were not present for the same. They did not have a chance to cross-examine Prlić. The statement itself contains leading questions and answers that go towards acts and conduct of the Accused. Simply such statement is not appropriate written evidence in accord with Rule 92, and yet it was admitted in lieu of *viva voce* testimony. Prlić's statement has negative implications for the other Accused, and goes to their acts and conduct, and yet they did not have a chance to cross-examine which is the fundamental and most basic right of the Accused to confront the accusations[689]. So, for all other Accused, including Ćorić, admitting Prlić's statement is a violation of

[688] Vol.1/390-392; "Decision on Request for Admission of the Statement of Jadranko Prlić", public, 22 August 2007; *The Prosecutor v. Prlić et al.*, IT-04-74-AR73.6 "Decision on Appeals Against Decision Admitting Transcript of Jadranko Prlić's Questioning into Evidence", public, 23 November 2007 ("Decision of 23 November 2007")

[689] Statute of the Tribunal 21.4.(E); also European Convention of Human Rights, Article 6.3.D.: Everyone charged with a criminal offence has the following minimum rights: ....D) to examine or have examined witnesses against him andto obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him;
Article 7 and 10 of Universal Declaration of Human Rights; Article 14.2.e. of International Covenant of Civil and Political Rights;
European Court of Human Rights, 33354/96, Luca vs. Italy: As a general rule, paragraphs 1 and 3(d) of article 6 required that the defendant be given an adequate and proper opportunity to challenge and question a witness against him, either when he made his statement or at a later stage. In that regard, the fact that the depositions had been made, as here, by a co-accused rather than by a witness was of no relevance, since the term "witness" had an "autonomous" meaning in the Convention system. Thus, where a deposition could serve to a material degree as the basis for a conviction, then, irrespective of whether it had been made by a witness in the strict sense or by a co-accused, it constituted evidence for the prosecution to which the guarantees provided by article 6(1) and (3)(d) applied. As such, their admission in evidence would not in itself contravene article 6(1) and (3)(d). However, where a conviction was based solely or to a decisive degree on depositions that had been made by a person whom the accused had had no opportunity to examine or to have examined, whether during the investigation or at the trial, the rights of the defence were restricted to an extent that was incompatible with the guarantees provided by article 6. Following its case-law on the subject, the Court said that it was furthermore clear that the cross-examination of prosecution witnesses in the wide sense of that term under the Convention system should necessarily always take place at the trial. Although the evidence, including the evidence for the prosecution, normally had to be examined at the hearing, certain special circumstances such as those referred to above could make it difficult, or even impossible, for depositions made at an earlier date to be repeated at a public hearing. In such cases, article 6 required only that the accused should have been given an adequate

their minimal rights, guaranteed by all international conventions, and RPE. According to the case-law of the Tribunal, a prior statement by an accused may be admitted during trial if it is relevant, has a certain probative value and if all of the procedural guarantees and protections were complied with at the time the statement was taken – per the Chamber.[690] However, according to Rule 89 (D) a Chamber may exclude evidence if its probative value is substantially outweighed by the need to ensure a fair trial. In this case, Prlić's statement should have been excluded from evidence because of the violation of minimal rights of the other Accused.

261. The Chamber compounded its error in rejecting the prior statements of Praljak and Petković.[691] Basically, it says that Praljak and Petković were not duly notified of their option to remain silent, and the Chamber could not find that they had waived this right. Rule 42 and 43 concerns suspects examined during investigation, and according to Rule 89 (which the Chamber used to admit Prlić's statement), these statements can also be admitted. Unlike Prlic, both of these accused testified. Any document signed by a witness or accused is a kind of statement by him, and may be admitted as a previous statements or as any other evidence, not as statements, according to Rule 89(C) when they testify. And there is no reason to exclude that evidence under Rule 89(D) because, these statements were used during cross examination of, for example, Petković[692] Sometimes, hearsay evidence is used, despite its obvious flaws – many factors affect probative value of hearsay evidence (such as the subject of solemn declaration, memory, no opportunity to cross-examine, is the hearsay first or second hand) which are even bigger concerns then in these statements, and yet has not prevented the Chamber from using such statements. Thus the lack of

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and proper opportunity to challenge the evidence concerned, even before trial. The Court also implicitly rejected the Government's argument based on the need to protect the right to remain silent of a co-accused called to repeat at a public hearing statements he had made previously. It was not the right to remain silent that was in issue. The co-accused retained his right to remain silent and not to incriminate himself. However, if he exercised that right, as in the case before the Court, his previous depositions could only be used against other persons as material evidence of guilt if the accused had had the opportunity of cross-examining him at some stage in the proceedings. In the case before the Court, the domestic courts had convicted the applicant solely on the basis of statements made by a co-accused before the trial in connected proceedings and neither the applicant nor his lawyer had been given an opportunity at any stage of the proceedings to question him. The Court therefore concluded that the applicant had not been given an adequate and proper opportunity to contest the statements on which he had been found guilty;
European Court of Human Rights, Sadak and others vs. Turkey nr 29900/96 par.67 , Perna vs. Italy 48898/99 par. 26, Colozza vs. Italy page 15, par 26

[690] *Kvocka* AJ, para. 128; *Prosecutor v. Milutinović et al.*, Case no. IT-05-87-T, "Decision on Motion to Admit Documentary Evidence", public, 10 October 2006, paras 43-44.

[691] Vol.1/391; Decision of 5 September 2007, paras 19-22; Decision of 17 October 2007, paras 18 and 20.

[692] Petkovic (T.50232/13-50235/3; 50255/20-50256/17; 50232/13-50236/7),

this or other elements, doesn't justify non-admission of these statements.[693] Even in this case hearsay evidence was used, although persons affected by them had no opportunity to deal with the source of it.[694]

262. The Chamber erred as a matter of law and fact in admitting into evidence documents with questioned authenticity and accepting hearsay evidence, which it then relied upon. The Chamber submitted several documents with questioned authenticity. Those documents are crucial for the conclusions as to Ćorić. The Chamber in establishing Ćorić 's responsibility relies heavily on these fake documents, especially P3216.[695]

263. The Chamber observed that Ćorić, by means of P3216 issued on 6.7.1993, demanded that Colonel Obradović rescind his order of 5.7.1993 which prevented the wardens at the Heliodrom , Ljubuški, Dretelj and Gabela Prisons from releasing anyone without his personal approval.[696] Thus, it was specified in the said notice that the "military prisons (…) were exclusively under the authority of the MP Administration and that therefore [he was not] authorised to issue orders for the release of prisoners." The Chambers regarded that P3216 shows that Ćorić believed that only the MPA was authorised to allow detainee releases.[697] Admittedly, the Chamber takes note of the Ćorić Defence's position that P3216 is a forgery, but errs in not determining that it is a forgery.

264. The Chamber erred in admitting P3216 into evidence, and erred that it had sufficient indicia of authenticity/reliability.[698] The Chamber found in light of the exhibits previously examined that the MPA therefore had the power/authority to order the release of persons detained by the HVO.[699] In this sense, the Chamber rejected the arguments of the Defence whereby the detainees at the Heliodrom could be released only with the consent of Colonel Obradović because the MP Administration merely exercised "administrative" oversight.[700] This document is a fundamental basis for the Majority's finding of Ćorić's responsibility concerning the so-called ' network of Heceg-Bosna/HVO prisons' and the acceptance of this

[693] *Simić TJ* at para. 23:"'the source has not been the subject of solemn declaration and that its reliability may be affected by a potential compounding of errors of perception and memory."
[694] Williams (T.8680/2-8682/7), Witness BR (T.8156/18-8157/2); Witness BK (T.5526/15-17), [694][REDACTED]: [REDACTED]
[695] P3216 and P3220 refer to the same document
[696] Vol.1/912
[697] Vol.1/913, 914
[698] Ibid.
[699] Vol.1/914
[700] Ćorić Final Brief, paras 699 to 701;

document is thus discernible error. First, it is indisputably not Ćorić's signature on this document,[701] it looks like his deputy Rade Lavrić. Witness Božić who was familiar with signatures of Lavrić and Ćorić said that this is neither Ćorić's nor Lavrić's signature, he even said in his testimony that Lavrić told him that this is not his signature, rather that this is a forgery.[702] [REDACTED][703]. [REDACTED][704], [REDACTED][705]. And the most importantly as to the lack of authenticity P3216– it is not recorded in the Heliodrom prison logbook[706]. This is especially important, and it is a clear violation of the Accused's right to fair trial because in regard to other documents, this Chamber required verification in the Heliodrom logbook as proof of authenticity.[707] The Chamber thus regarded the Heliodrom logbook, which was created at the time of the events, shows that the instructions of Bruno Stojić were indeed sent and received at the Heliodrom.'[708] Obradovic's order is in the logbook, it is thus incredulous to believe P3216 is authentic if it is not in the logbook.[709]

265. It is unreasonable that the Chamber would not use the same test for authenticity, the Heliodrom logbook, for one of the most important documents it uses to conclude Ćorić's responsibility for detention centers. It is error to consider a document to be authentic and reliable when it is not recorded in the Heliodrom logbook, and all Prosecution and Defense Witnesses who should know of it if authentic, denied knowledge of the same.[710] No reasonable Chamber could so conclude under the evidence.

266. [REDACTED][711], [REDACTED][712], [REDACTED].

[701] [REDACTED] Bozic (T.36412/18-36413/2), [REDACTED]
[702] Bozic (T.36413/6-36414/2), Vidovic (T.51738/25-51739/4),
[703] [REDACTED]
[704][REDACTED]; [REDACTED]
[705] [REDACTED]
[706] P00285
[707] Vol.2/1431
[708] Vol.2/1431
[709] para. 297
[710] Colonel Obradović's order(Exhibit P0316) - mentioned in disputed document -, is recorded in Heliodrom logbook(Exhibit P00285), the entry number in logbook is 683;
[711] [REDACTED]
[712] [REDACTED]

267. The Chamber concluded that document P3216 was admitted first on 27 September 2007; P3220 was admitted on 10 October 2007. The two orders admitting evidence nevertheless refer to the same single document. The Chamber 'draws an identical conclusion with regard to the authenticity of these two exhibits and notes that the Defence did not request certification to appeal the two decisions'[713]. The Chamber does not give any reason in the Judgment for the authenticity of P3216 it just say that it is accepted because it has probative value, and the Defence did not request certification to appeal it. Admission of evidence itself does not prove full authenticity by itself, but when there is no any other evidence to corroborate it, it has to be examined in entirety with all other evidence.[714] And there is no evidence, witness or documentary evidence that corroborates P3216 or 3220. This document was accepted over the objection of the Defence who did oppose it's admission even before its Final Brief.[715] There is no requirement known of to the Defence that requires it to seek certification to appeal every exhibit that is accepted over its objection.

268. The Chamber erred as in its "Decision on admission of documentary evidence relating to municipalities Čapljina and Stolac."[716] The findings that the document had all sufficient indicia of reliability, relevance and probative value to be admitted into evidence, are clearly erroneous given the remaining evidence presented at trial.

269. The Defence opposed the admission of this documents by Joint Defence response on 2.7. 2007.[717] Among other documents, P3666 was admitted, the activity report of 23.7.1993, which Defence opposed as a forgery, because it lacks signature, stamp, and bears a clearly wrong logbook sequence number.[718] The Chamber say that this document looks like another document, that Ćorić Defence did not oppose before closing arguments and it was shown to witness BB who confirmed a substantial part of its content. The Chambers decision is based on an erroneous conclusion, P3666 is missing the most essential indicia of authenticity and reliability, such as signature, stamp and has an impossible logbook number. It has to be

[713] Vol.1/2234
[714] [REDACTED]
[715] Ćorić Defence Objection IC 00665, [REDACTED], Joint Defence Motion to Dismiss Certain Prosecution Motions for Admission of Documentary Evidence as an Abuse of Process, filed on 4 September 2007,
[716] publicly released on August 23 2007
[717] Ćorić Final Brief par. 698
[718] Allegation that Ćorić Defence did not oppose this document mentioned in Vol.3/75 is erroneous and contradictory because first sentence of the paragraph in which it is stated that Ćorić did not oppose the document is:'
The Defence claims that the activity report from 23.7.1993 is a fake, arguing that it is lacking both a signature and a stamp and that its register number begins with the digits "06" (a register number not used by the Military Police at that time)' with footnote directing to Ćorić Final Brief, par. 698.

reviewed very carefully and no reasonable Chamber could lightly conclude such document is authentic despite not containing 3 mentioned elements simply because it is "similar" to other documents that do have these indicia.[719]

270. The Chamber erred that Witness BB confirmed substantial parts of P3666.[720] Witness BB was shown P3666 during direct examination, but his testimony has nothing about the authenticity of the document.[721] [REDACTED]. [REDACTED]. [REDACTED]. [REDACTED]. As a result of the Chamber's flawed reliance on these documents and rulings, the convictions should be vacated.

XIV. 13th Ground of Appeal: *The Trial Chamber violated the principle of "in dubio pro reo" in evaluating the evidence and in determining Valentin Ćorić's ordinary performance of police duties as Chief of the HVO Military Police Administration and later as Minister of Interior constituted proof of criminal conduct.*

271. The Defence references its prior Grounds herein,[722] which are supplemented as follows.

272. The Judgment, draws conclusions of Ćorić's criminal responsibility exclusively from his *de jure* powers and functions. Furthermore, Chamber misinterpreted the facts/evidence, and without a valid analysis yields conclusions about Ćorić's intention and contribution to alleged criminal plan. In doing so, the Chamber does not provide analysis or demonstrate and state the method it used - method of simply enumerating Ćorić's *de jure* powers, and then based on these enumerated powers, concluding that Ćorić intended to further the alleged criminal plan. Contrary to the Chamber's conclusions, accurate and systematic analysis of facts/evidence clearly shows otherwise.

273. The Chamber was provided with significant documentary evidence of the operation of the MPA which clearly demonstrates that no such plan existed or was participated in by Ćorić. There is no mention

[719] Vol.3/75 (P3542; P3580 and P3624). But none of these documents misses those 3 essential components
[720] Vol.3/75
[721] Witness BB, (T(F).17229-17231)
[722] See, Grounds 2, 10

of any criminal plan in any of the documentation to/from the MPA. It is correct that Ćorić had some authorities related to appointments and personal administrative matters. But, the Chamber does not go further in analysis and does not try to find how he used these authorities. Within this area of competence MPA and Ćorić did not pursue a cadre/personnel policy that could in any way be referred to as discriminatory or aimed at perpetrating crimes against Muslims. The evidence confirmed that Muslims throughout the conflict made up a considerable part of MP units. By way of example, through the relevant time period 25-30% of the 2nd MP Battalion remained staffed by Muslims demonstrating that there was no discriminatory intent on the part of Ćorić's MPA.[723]

274. In the Judgment, it is just stated that MPA was in charge for training of MP. It is, also, stated, that this training consisted of lessons in Geneva Conventions and IHL, but it does not go further in analyzing what this proves. Evidence demonstrated that, contrary to any plan to commit/instigate crimes, military policemen from HZ-HB were instructed on adherence to the rules of IHL. Specifically Ćorić instituted professional training for MP, using instructors/texts geared for the work of the police during war-time as well as rules of war.[724] Based on this evidence, any reasonable Chamber would come to conclusion that: Ćorić had a reasonable expectation, based upon the foregoing training, that MP would adhere to the principles expressed in the training and conduct themselves in accord with the same whilst performing their duties. As such, there is simply not any notice to Ćorić, from this training, that crimes would be committed/condoned. Further, by promoting such training, Ćorić's actions are contrary to participation in a JCE.

275. The Chamber cites to checkpoints as another activity which led them to conclusion that Ćorić intended to further criminal plan. The Defence has already addressed the errors as to checkpoints.[725] The evidence is that checkpoints were conducted in accordance with tasking of military commanders and for the legitimate purpose of crime prevention.[726] Clearly the only intent was to prevent crime and enforce law and order, aimed at everybody, such that checkpoints served a wholly legitimate purpose.[727]

[723][REDACTED]; Andabak (T.50949/2 – 50950/6); P4850; P2970; 5D4094
[724] 5D5113; 5D5114; 5D5115; 2D751; P7; see also Coric final Brief, para. 190-194
[725] See, Grounds 2, 10, 13
[726] Coric Final Brief, Sec. VI
[727] P355, P1416, P1095

276. Also from the evidence we see that Ćorić entered an agreement with the ICRC to assist humanitarian convoys in passing through checkpoints. Other documents demonstrate that, within his limited authority, Ćorić did all he could to clear up misunderstandings caused by legitimate security concerns and worked with humanitarian organizations to adhere to assist passage of properly registered and announced aid convoys.[728] Documents originating from Ćorić, demonstrate a dedication to legitimate law enforcement, rather than participation in any JCE.

277. In view of Ćorić's alleged responsibility as Minister of Interior, The Chambers does not try to analyze whether civilian police had checkpoints. It just states that Ćorić is Minister and, without analyzing his powers and authorities, just make conclusion about his contribution to the criminal plan. The Chamber finds Ćorić's responsibility to criminal investigations by just stating the general tasking of the MP and MUP. Again, Chamber is satisfied with merely stating *de jure* powers/authorities, without making effort to analyze and correctly interpret presented evidence. Every reasonable trier of the facts, based on presented evidence, would make conclusions opposite to the Judgment.

278. The evidence/ arguments demonstrating that Ćorić did not fail to prevent/punish, within his limited competency.[729] From that analysis we can see credible evidence that the relevant law enforcement authorities did investigate, arrest, and file criminal reports to punish perpetrators who were committing crimes against Muslims. [REDACTED].[730]

279. A good example of inadequate evaluation of evidence in the Judgment is shown at several places, where poor coordination between the military and civilian police and the SIS, related to investigations is cited as a reason that created an atmosphere in which crimes are tolerated. However, the Chamber does not specify if Ćorić is responsible for this bad cooperation. The evidence is that Ćorić encouraged and

[728] 5D524, P1451, 5D526, 5D529
[729] Coric Final Brief Sec. V
[730] [REDACTED];[REDACTED]; 5D5027; 5D5032; 5D5024; 5D4288

supported criminal investigation, encouraging cooperation between the MP and civilian police.[731] The record is clear that within his limited competencies, Ćorić sought to have the behavior of the MP comply with the utmost degree of professionalism.[732] The evidence is that when crimes were committed by MP, and made known to Ćorić, he adhered to the stringent policy stated above and dismissed the perpetrators from their duties, and called for criminal reports to be forwarded to prosecutors, because - "the above-named have sullied the honor of the MP and their further presence in this unit is detrimental.[733]

280. The flawed/unfair way in which the Chamber evaluated evidence is best illustrated when it found that MP could not perform its regular duties due to the fact that MP were utilized as combat units, as their priority. It just says that Ćorić released one document, but fails to determine what came out of Ćorić's activity, and this is something that a reasonable chamberwould not miss. Very clear indicator of Ćorić's lack of any criminal intent and genuine belief that he was participating in legitimate practices to enforce law and lawful orders, arises from above mentioned document.[734] That document he issued when combat operations were resulting in military commanders sending MP to the frontlines and Ćorić took the reasonable measures within his authority by addressing a request to the competent authorities to reconsider said engagement of MP at the frontline so that they could accomplish their duties of crime prevention. Similarly, when Ćorić became Minister of Interior, he issued a similar request aimed at the civilian police that were being used by HVO military commanders in the frontlines.[735]

281. The Defence will not repeat arguments already made as to errors in relation to command over MP and authority over Prisons.[736]

282. The Chamber erred as a matter of law and fact in drawing conclusions indicative of guilt from facts/evidence for which a reasonable alternative conclusion indicative of innocence was available under

[731] 5D4110; P7419 pg. 2; 2D138; 1D2577
[732] Andabak (T.50953/19-50954/9); P1444; P129
[733] P3571
[734] P5471, p.3
[735] P6837, p. 1
[736] see Ground 6 and 7

the evidence. The Chamber ignored evidence that showed the opposite of what it concluded. The Judgment's conclusions are based on rare documents, misinterpreted documents, from irrelevant time period or testimonies of implausible witnesses – and no reasonable Chamber could conclude thereunder that Ćorić is guilty beyond any reasonable doubt.

283. Contrary to the evidence of command, especially *de facto* control over MP units, The Chamber's conclusions about his facilitating military operations in January 1993 relies on two reports.[737]

284. As an introduction to the responsibility of Ćorić based on JCE 1[738] the Chamber concluded "certain" powers of Ćorić, and then tried to determine[739] whether, in the exercising powers, he acted or failed to act in order to achieve common criminal purpose. In fact the proper analysis shows that the Chamber brought conclusions on the basis of dubious/rare documents, neglecting the *de facto* situation and the lack of effective control that Ćorić had over the events and the MP.[740]

285. The Chambers conclusions are based on a small number of documents, mainly of structural and instructive nature without operational commands, thereby ignoring the witnesses (prosecution/defence), who spoke about the actual situation on the ground. The Chamber has repeatedly interpreted the documents in the wrong way, and ignores or even mis-cites witness testimony on same documents.

286. In regard to the Mostar blockade and checkpoints, we emphasize that this Chamber's findings are not based on facts and admitted evidence. Evidence was adduced that checkpoints were established at Mostar's entrance by HVO military commanders again without any involvement of the MPA.[741] [REDACTED].[742]

[737] P01635, P03090,see Ground 7
[738] Vol.4/915
[739] Vol.4/918
[740] see Ground 6,7,10
[741] P2249, Praljak (T.40766/2-40767/21)
[742] [REDACTED]

287. Instead of credible witnesses whose testimonies were corroborated by documentary evidence, the Chamber based its findings on statements of witnesses of low credibility[743] and the few documents that the Chamber simply misinterpreted or these documents were created by the same witnesses of low credibility.

288. The Chambers concluded that clarification of command chain was reason for reform of MP in July and December 1993.[744] It states that Biškić testified that command chain was clarified and system of informing was improved, when he left Military police[745] Biškić said that all units of MP were withdrawn from the frontline, and it made them more efficient, there is no talk of a phantom dual chain of command.

289. The above conclusion of the Chamber is incomprehensible and contradictory to itself. From the fact that the Chamber recalls there is no indication of problems in command the MP or some kind of phantom double chains of command, but it says that the military police, because of combat engagement, was unable to perform their regular activities. With the new organization of MP in December 1993 the system of command and control of the MP was changed also, envisaging that all MP units were under command of the MPA but in performance of daily tasks within their competence, the said units were subordinated to HVO military commanders. This new organization disbanded Brigade MP platoons, thus creating conditions for more efficient working of the MP.[746]

290. In reaching another conclusion[747] contrary to *in dubio pro reo* is conclusion despite the evidence, which is contrary, the Chamber has chosen, among multiple possible conclusions, the one which is the most damaging to Ćorić.[748]

[743] see, Ground 12
[744] Vol.1/974,
[745] Biškić, T(F), pp. 15181-15182 :
[746] P07018; Tomljanovich (T.6374/22-6378/2); Biskic (T.15058/1-15060/9)
[747] Vol.2/59-60
[748] Coric Final Brief, para. 617

291. It is respectfully submitted that it is inconceivable that such a plan could have existed and that Ćorić participated in same, without even alluding to it in the MPA documentation. This is particularly true in that the documentation demonstrates a devotion to the opposite behavior, namely a devotion to law-abiding behavior.

292. Given the absence of any specific evidence that a criminal plan against non-Croat civilians existed, Chamber inferred the existence of such a plan from circumstantial evidence which weren't proofed beyond reasonable doubt.

XV. **14th Ground of Appeal: *The Chamber erred in disregarding Defence Witnesses and Evidence, or at least failed to give a clearly reasoned analysis of why such evidence and testimony was disregarded.***

293. The Judgment appears to disregard certain Defence evidence, as if it was non-existent. A Judgment should demonstrate the clear analysis and application of the evidence and jurisprudence raised in the Defence final brief so as to demonstrate that due care has been exercised. The right of an accused under Article 23(2) to a reasoned opinion is an aspect of the fair trial requirement.[749] Only a reasoned opinion allows the Appeals Chamber to understand and review the findings of the Chamber as well as its evaluation of evidence.[750]

[749] *Babic*, *Judgment on Sentencing Appeal* at para. 17; *Natelic & Martinovic*, *AJ* at para. 603; *Furundzija*, *AJ* at para. 69
[750] *Kunarac*, TJ at para.. 41

294. The Judgment implies that Ćorić was responsible for the fact that perpetrators of crimes were not prosecuted/punished. The Ćorić Defence tendered into evidence log-books and registers of some Court Offices in Bosnia-Herzegovina, and some Prosecutor's offices.[751] These registers/logbooks contain criminal proceedings against known and unknown perpetrators. For example, contained therein are hundreds of criminal reports for crimes where Moslems are victims, including thefts and murders, just in Mostar, and likewise for all areas where Defence could obtain such documents. [REDACTED].[752] A number of "unfinished" cases were transferred by the judicial organs to the new courts after the Washington Agreements.[753] For example, we find criminal reports against Klemo Drago for murder and against Bunoza Dragan, Rajić Tvrtko, Limov Jakov, etc, where Muslims were victims and there is a criminal prosecution against Croats, many of the them HVO, just from the register book of the County Prosecutor in Mostar alone.[754]

Also, in the evidence, there is a Mostar Military Court register, P100 and P101, similar to documents in 5D04288, in which there is a large number of proceedings against Croats, for crimes against Croats, Muslims and Serbs[755]. Having in mind existence of these registers and logbooks with numerous criminal reports against many members of HVO and other Croats as perpetrators of crimes against Muslims, it is obvious that Ćorić, as Chief of the MPA, did fight the crime. The Judgment's conclusion to the contrary is in error.

[751] Buntic (T.30449, 30450, 30451, [REDACTED]); 5D04288; (3 CDs) containing Prosecution Registers for the period from 1992 until 1995:Mostar Military Prosecution Office register books from 1992, 1993, 1994 and until 31 July 1995; District Prosecution Office registers from 1992, 1993, 1994 and 1995; Capljina Municipal Prosecution register books from 1992, 1993 and 1994; Mostar Municipal Prosecution Office registers from 1992, 1993, 1994 and 1995; excerpts from Livno Military Prosecution Office register books from 1992, 1993, 1994 and 1995
[752] [REDACTED]
[753] 5D5027; 5D5032; 5D5024, [REDACTED]
[754] 5D04288
[755] P00100, P00101,

295. The Judgment found that, as MPA Chief, Ćorić had the ability to participate in fighting crime within the HVO but that his power was limited to investigating the perpetrators of crimes, while the responsibility for their prosecution rested with the Military Prosecutor. [756] So, according to those registers and log-books the Ćorić complied with the duties he had because the MP filed criminal reports against known perpetrators and brought them to the Military Prosecutor, and also filed reports against unknown perpetrators.[757] The conclusion in the Judgment dealing with Ćorić's responsibility,[758] that: a) crimes done by members of HVO were not random acts of undisciplined servicemen, but were an integral part of the preconceived plan of the common criminal purpose; b) that Ćorić participated in crimes and abuse against Bosnian Muslims by Herceg-Bosna/HVO forces by minimising or failing to report and investigate the more severe crimes, failing to follow up on various investigations and failing to prevent and punish such crimes, are not sound conclusions based on the evidence in the record, but rather are totally opposite to the evidence. The lack of a reasoned analysis of such evidence shows the Judgment ignored a large amount of presented in 5D4248.

If the Chamber took into account 5D4248, such a conclusion would be impossible, and Ćorić's convictions under JCE 1 and JCE 3 responsibility would fall apart, because it is illogical to conclude someone who uses his authority at the MPA to file hundreds of criminal reports against HVO and MP perpetrators for crimes against Muslims, intends to further the commission of crimes by these same perpetrators against Muslims. Thus, the filing of criminal reports renders the Judgment's analysis flawed and erroneous, as it introduces reasonable doubt Ćorić wanted crimes against Muslims to go unpunished, such that no reasonable Chamber could so conclude under the evidence. The Judgment's disregard of such evidence and failure to analyze same renders the convictions unsound.

296. Compounding this error, the Chamber disregarded the above evidence in favor of contrary evidence of questioned authenticity, such that the essence of Ćorić's responsibility is based on fake

[756] Vol.4/882

[757] Some examples of filed criminal reports with original registered numbers from 5D04288 ; District Office of the Prosecution in Mostar (**several filed by MP**) : 1.KT-44/93 Bunoza Dragan and RAJ ić Tvrtko, (Image 2112**);** 2. KT-46/93 –Sesar Miro, Kolobarić Robert, Pehar Antonio, Dugandžić Franjo, (Image 2112) 3. KT-4/94 Ulaković Alen (Image 2116)
District Military Prosecution of Mostar(**all filed by MP**) : 1. KT-40/92 BrAJ ković Jelenko, (Image 1627)**;** 2. KT- 86/92, Zelenika Ivan (image 1632); 3. KT-88/92 Jurić Slavko, (Image 1632), 4. KT-265/93, Bušić Mario, Mario Pažin, Mario Čavić i Knezović Blaško ***(all members of military police)*** (Image 1828); 5. KT-588/93 Zelenika Stanko (Image 1869); 6. KT-1033/93, Bijuk Vedran (Image 1957); 7. KT-1116/93, Kordić Milenko, (Image 1965), 8. KT-1556/93, Kozina Veselko, (Image 2010); 9. KT-2789/93, Škobić Božidar, (Image 1223), 9. KT-312/94, Šilić Zeljko, (Image 1264)

[758] Vol.4/921,922, 926, 931, 932, 933,934, 938, 945, 1000, 1001, 1004,

documents, and especially P03216.[759] P03216 is fundamental to the Judgment's findings of Ćorić's responsibility prisons. First, it is indisputably not Ćorić's signature on this document.[760] Witness Božić said that this is neither Ćorić's signature nor that of his deputy, Lavric; Lavrić confirmed to him that the document is a forgery.[761] [REDACTED][762]. [REDACTED].[763] [REDACTED][764].

297. Furthermore – P03216 is not registered in the Heliodrom prison logbook[765]. There are other documents in the logbook, sent to Heliodrom among them Obradovic's order[766] (that P03216 is alleged to be a reply to). But there is no entry recording receipt of P03216. In regards other evidence the Chamber required entry in the Heliodrom logbook as proof of authenticity.[767] The Chamber erred in disregarding all the mentioned evidence showing P03216 is not authentic, and then erred in relying solely on P03216 contrary to other evidence, to determine Ćorić's 'membership' in a JCE. The evidence and arguments cited by the Defence as to the lack of authenticity of P03216 is not even cited in the Judgment. Curiously, in disregarding another document, P03630, the Chamber relied on the same indicia argued by the Defence for P03216.[768] If Obradovic's order is in the logbook, it would stand to reason P3216, if authentic, would be present in same. Since it is not in the logbook, the only logical conclusion is that it is not authentic. That Obradovic was in control of Heliodrom and that detainees were taken out only under Obradovic's reign is confirmed by [REDACTED].

298. The Judgment also erred in accepting P3179 as authentic, which purports to be an unsigned report by a MP commander relating to the participation in evictions of civilians in Mostar. It is a document without

[759] P3216 and P3220 refer to the same document . It's already been examined in the Ground 12 Section, but for Ground 14 emphases is on Chamber's disregard of other evidence in favor of this document
of counterevidence.
[760] [REDACTED], Bozic (T.36412/18-36413/2), [REDACTED]
[761] Bozic (T.36413/6-36414/2), Vidovic (T.51738/25-51739/4),
[762] [REDACTED]
[763] [REDACTED]; [REDACTED]
[764] [REDACTED]
[765] P00285
[766] P03201, order of 05. July 1993, Entry number 683 in logbook,
[767] Vol.2/1431: 'However, the Chamber observes that a logbook at the Heliodrom refers to the receipt of the instructions issued by Bruno Stojić on 11 February 1993. The Chamber thus finds that the Heliodrom logbook, which was created at the time of the events, shows that the instructions of Bruno Stojić were indeed sent and received at the Heliodrom.'
[768] Vol.3/117: 'After evaluating the other documents coming from Ivica Kraljević and admitted to the record, and having noted the lack of signature, stamp and seal, as well as pointing out the Prosecution's own explanations, the Chamber has decided to disregard this document and take no account thereof.'

stamp or signature, and bearing the logbook sequence beginning with "06" which was not in use in the MP during the relevant time.[769] [REDACTED].[770] [REDACTED].[771]

299 The Judgment erred in giving little weight to the testimony of the witness Andabak,[772] who denied any involvement at all in the theft of Muslim property.[773] The Chamber discounted Andabak because he is said to have participated in the attack of Prozor,[774] and his involvement in the sequence of events as Commander of the 2nd MP Battalion necessarily vitiates the credibility of his testimony on this point. For the same reason, the Chamber assigned little weight to a report by Andabak for the period between 21 and 29 October 1992 and in which he indicates that HOS were the sole perpetrators of thefts committed in Prozor. In this respect, the Chamber is in error in concluding HOS was not existing at that time.[775] Andabak did not say that he participated in attack on Prozor. He said he was there on his way to Central Bosnia when clashes in Prozor occurred, and then he participated, but not as a part of an attack - he said he was part of the defence of the city.[776] The Chamber is thus in error that his participation vitiates his credibility.[777]

The Judgment also says that Andabak had to be punished, and return of 'stolen' goods is not enough[778] but according to Criminal Code of Bosnia-Herzegovina, Article 147, if the offender had restored stolen movable property to the injured party before he learned of the commencement of criminal proceedings, he may be relieved from punishment.[779] Conclusion of Chamber is thus erroneous, even if theft was committed, commander of unit, as Andabak, responsible according to command responsibility, could have been unpunished if property was restored, as it was. This manner of disregard for the evidence is present throughout the Judgment in asserting Ćorić's responsibility under 7(3) crimes in Prozor.[780]

[769] P4548; P786
[770] [REDACTED]
[771] [REDACTED]
[772] This is discussed further in Ground 14 herein
[773] Vol.2/59,60, Witness Andabak
[774] Andabak, (T. 51065), Judgment, Vol II, par. 59,60
[775] Ground 9, herein
[776] Andabak (T.50962); P00712
[777] Vol.2/60, Chamber gives full credibility to colonel Siljeg, commander of HVO forces around Prozor, and his position and his involvement does not vitiate his credibility
[778] Vol.4/1248
[779] 2D00907, page 57, Criminal Code of Bosnia and Herzegovina, Article 147(2),
[780] Vol.2/46-60 ; and Vol.4/1246-1251

300. Andabak also testified that Ćorić was absent from Bosnia-Herzegovina during January, during clashes in Gornji Vakuf, since he was in a hospital in Zagreb,[781] and Ćorić was seen by him for the first time afterwards in a meeting with General Praljak.[782] Ćorić was found responsible for events in Gornji Vakuf under JCE 1, without regard for the evidence that he was not even on the territory of Bosnia-Herzegovina at that time.

301. The Chamber's discrediting of Andabak, and their negative inference from his promotion by Ćorić, ignores the evidence that after 2001, Andabak joined Army of the Federation of Bosnia-Herzegovina until 2007, when he was retired in the rank of colonel.[783] It would not be possible for him to be promoted to colonel in the Army of Bosnia-Herzegovina if there was any credible allegegation of his involvement in crimes concerning Prozor. If anything his rank in the Army demonstrates his high credibility and respectable character.

302. Andabak, confirmed the Brigade MP was under the command of the HVO brigade commander, and further stated the MPA was only duty bound, logistically, to ensure MP equipment and professional training were provided to Brigade MP.[784] This is corroborated by other evidence about the Brigade MP.[785]

303. Andabak, and other witnesses, testified that the four battalions of MP that were assigned to OZ's, and the one active battalion that rotated through various of the OZ were fully and exclusively subordinated under the operative command of the OZ commander and his brigade commanders on whose territory they operated, for the duration of their deployment.[786] Any MP unit transferred to another brigade or OZ would immediately become subordinated to the command of that brigade or zone who would issue orders to it.[787] Andabak confirmed that he at all times was under the command of the military OZ Commander Siljeg, for both combat and performance of daily police duties, and did not need the prior consent of the MPA to do

[781] Andabak (T.50967) ' and he (Ćorić) was in Zagreb at the time, so he didn't know that we were involved in the Gornji Vakuf operations and combat.', 51009, 51082 – Witness Andaabak says: 'I know for sure he wasn't there during all the events in Gornji Vakuf, that he arrived only prior to the meeting that we held.', 51087, 51089
[782] P01350, minutes from the meeting held on 29th January 1993.
[783] Andabak (T.50904/4-50905/6)
[784] Andabak (T.50906/24-50907/23)
[785] Ćorić Final Brief, par. 73-85
[786] [REDACTED];[REDACTED];[REDACTED]; Andabak (T.50906/16-50908/2; 50912/4-17; 50915/1-14; 50917/21-50918/10; 50920/14-20); [REDACTED]; P3792
[787] Andabak(T.50912/9-7; 50920/14-20; 51147/1-51149/21);[REDACTED], P3792

so.[788] No reasonable Chamber could thus fail to take this into account when assessing Ćorić's powers and authorities in relation to the MP.

304. [REDACTED]. [REDACTED],[789] [REDACTED].[790] [REDACTED]. [REDACTED].[791] [REDACTED]. [REDACTED]. This evidence, disregarded by the Chamber, affects the findings that Ćorić was found guilty concerning Ljubuški.[792]

305. [REDACTED].[793] [REDACTED].[794] [REDACTED].[795] [REDACTED][796] .[797] [REDACTED].[798] [REDACTED]:

[REDACTED]."[799]

[REDACTED].[800] [REDACTED].[801] [REDACTED].[802]

306. The Judgment erroneously disregarded Witness NO, and made findings contrary to his evidence in regard to Mostar[803], Gornji Vakuf,[804] Ćorić's power over MP units[805], and Ćorić's knowledge of the activities of MP[806]. [REDACTED][807], [REDACTED].[808]

307. Another Defence witness erroneously disregarded was Vidovic who said that, by submitting said criminal reports to the prosecutor's office, the job of the MP was completed and all further efforts were

[788] Andabak (T.51146/2-25)
[789] [REDACTED]
[790] [REDACTED]
[791] [REDACTED]
[792] Vol.4/946-948, Vol.2/1761-1762,1786,1790-1791,1797-1798,1802,1804,1808,1811-1818,1833-1838,1856,1866, 1870,1871,1873,
[793] [REDACTED]
[794] [REDACTED]
[795] [REDACTED]
[796] [REDACTED]
[797] [REDACTED]
[798] [REDACTED]
[799] [REDACTED]
[800] [REDACTED]
[801] [REDACTED]
[802] [REDACTED]
[803] Vol.4/924-945,
[804] Vol.4/919-923
[805] Vol.4/867-871
[806] Vol.4/877-878
[807] [REDACTED]
[808] [REDACTED]

within the competency of the prosecutors and courts.[809] The contemporary criminal procedure law confirms this.[810] Even more curiously the Judgment itself concedes that Ćorić's power was limited to investigating perpetrators, while the responsibility for prosecuting the cases rested with the Military Prosecutor.[811]

308. Vidovic testified[812] that the MP Crime Prevention Department did not have enough manpower nor equipment for its work; (confirmed by OTP Expert Tomljanovic)[813], that the MP CPD did not have enough cars or officers, The MP CPD had to rely on the Civilian MUP which had inherited the bulk of police equipment from the previous structures; (confirmed by Tomljanovic)[814], the MP CPD did not have forensic experts, and relied on the civilian MUP for such services,the MP CPD did not have a ballistics expert and relied on an expert from Croatia with whom communications were disrupted by war, the MP CPD did not have pathologists and had to seek such experts from Croatia. Vidović testimony has to be consider together with document P05471, in which Ćorić , as Chief of MP, took the reasonable measures within his authority by addressing a request to the competent authorities to reconsider the engagement of members of the MP at the front-line so that they could accomplish their duties of crime prevention in an appropriate way.[815] Also, Vidović testified that document P3220 was a fake.[816] Vidovic's testimony shows that the factual situation at the time was NOT as P3220 purports to present.[817]

309. From cited testimony and documents, especially P05471, it is obvious that Ćorić, as Chief of MPA, did fight crime, despite shortage of men and means. No reasonable Chamber could thus find otherwise, and the Judgment's counter finding is erroneous and should be vacated. The Chamber moreover established that the HVO MP present in Buna on 14.7.1993 arrested and beat a Muslim boy and his grandfather at the Buna MP station and then took them to a roadside and shot them, killing the grandfather and seriously wounding the young boy who was left at the site. The Chamber finds that on 14.7.1993, members of the HVO MP shot two Muslim civilians with the intention of causing their deaths and did kill one

[809] Vidovic (T.51462/3-22)
[810] 4D1105
[811] Vol.4/882
[812] Vidovic (T.51469/16-51470/2-15)
[813] Tomljanovic (T.6347/23-6348/11)
[814] Tomljanovic (T.6346/7-12)
[815] P5471, p. 3. Similarly, when Ćorić became Minister of the Interior, he issued a similar request aimed at the civilian police that were being used by the HVO military commanders in the front lines - P6837, p. 1.
[816] Vidovic (T.51738/25-51739/4) [emphasis added]
[817] Vidovic (T.51732/10-51738/11)

of them, thereby committing the crime of murder against the grandfather, a crime recognised by Article 5 of the Statute. [818]

310. The Chamber finds that members of the HVO MP committed the crime of wilful killing against the grandfather, a crime recognised by Article 2 of the Statute.[819] The Chamber also found this constituted an inhumane act, a crime recognised by Article 5 of the Statute, [820] and inhuman treatment, a crime recognised by Article 2 of the Statute, [821] and a cruel treatment, recognized by Article 3 of the Statute.[822] The Chamber disregarded the evidence of Witness CY who said he did not recognize these people who were wearing uniforms of HVO MP, he never saw them earlier,[823] [REDACTED].[824] What occured there in Buna is not present in any report, so, there is no any evidence that Ćorić, or any MP superior officer knew what happened, or could have known what happened. So, Ćorić cannot be responsible for what happened in Buna in July 1993, because there is not any evidence that connects him to it, nor he could know what happened, and no reasonable trier of the facts would find him responsible for this crime.

XVI. 15th Ground for Appeal: *The Chamber erred in law and fact by entering cumulative convictions*

311. The Chamber erred as a matter of law and fact, in violation of Article 2, 3 and 5 of the Statute in finding that cumulative convictions for the offences under Articles 2 and 5 of the Statute and 3 and 5 of the Statute are possible. As such the convictions for Counts 2 and 3, 6 and 7, 8 and 9, 10 and 11, 15 and 16 are cumulative and unfair. Ćorić was prejudiced by being convicted of several counts arising from the same alleged conduct.

312. The Chamber alleged that the question of cumulative convictions arises where several charges, corresponding to different offences under the Statute, are retained for what is essentially the same criminal

[818] Vol.2/944, Vol.3/670, 719, 1247, 1248, 1341, 1444, 1445
[819] Vol.3/719
[820] Vol.3/1248
[821] Vol.3/1341, 1342
[822] Vol.3/1444, 1445
[823] Witness CY, (T.13056)
[824] [REDACTED]; [REDACTED]

conduct.[825] The Chamber recalled that the criterion for cumulative convictions serves twin aims: ensuring that the accused is convicted only for distinct offences, and at the same time, ensuring that the convictions entered fully reflect his criminality.[826]

313. In accordance with the Tribunal's established jurisprudence, cumulative convictions entered under different statutory provisions, but based on the same criminal conduct, are permissible only if each statutory provision has a materially distinct element not found within the other, meaning that it requires proof of a fact not required by the other[827] ("*Ĉelebići* test"). Assessment of the notion of a "distinct element" is a question of law.[828] It must therefore be based on an analysis of the legal elements of the crimes, "including those contained in the provisions' introductory paragraph",[829] for which cumulative convictions are likely to be entered. Where this condition of a distinct element has not been met, cumulative convictions are not possible and the Chamber must then decide in relation to which offence it will enter a conviction against an accused, and must do so on the basis of the principle that the conviction under the more specific provision should be upheld, namely that which contains "an additional materially distinct element".[830] In that case, "the more specific offence subsumes the less specific one, because the commission of the former necessarily entails the commission of the latter. The Chamber also says that conduct of the accused cannot be considered as criteria for the Čelebići test.[831]

314. According to the Chamber, the applicability requirements for crimes against humanity, punishable under Article 5 of the Statute, and grave breaches of the Geneva Conventions, punishable under Article 2 of the Statute, each contain a materially distinct element not contained within the other. Crimes against humanity require proof that the act is part of a widespread or systematic attack against a civilian population, which is not a requirement for grave breaches of the Geneva Conventions. The latter require proof of a nexus between the acts of the accused and the existence of an international armed conflict, and that the persons and property have protected status under the Geneva Conventions, conditions that are not required for crimes against humanity.

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[825] Vol.4/1253
[826] *Kordić & Ĉerkez* AJ, para. 1033.
[827] *Galić* AJ, para. 163
[828] Vol.4/1254
[829] *Nahimana* AJ, para. 1019
[830] *Galić* AJ, para. 163; *Ĉelebići* AJ, para. 413
[831] Vol.4/1254, footnote 2340

315. Consequently, in application of the Čelebići test, cumulative convictions for the offences under Articles 2 and 5 of the Statute and 3 and 5 of the Statute are possible insofar as each of these provisions contains a materially distinct applicability requirement not contained within the other. On the other hand, insofar as the crimes under Article 3 of the Statute do not contain applicability requirements that are materially distinct from those of the crimes under Article 2 of the Statute, the Chamber must examine for each one of the alleged crimes whether a cumulative conviction is possible and whether a materially distinct constituent element not contained within the other exists. If so, and in application of the Čelebići test, cumulative conviction is therefore permissible.

316. The Chamber erred in law because according to what is said, Crimes against humanity punishable under Article 5 of the Statute contain all material elements of crimes punishable by Article 2 of the Statute. The Chamber does not identify which are the material elements that crimes punishable under Article 2 that Article 5 do not contain. The fact that Article 3 of the Statute requires a close link between the acts of the accused and the armed conflict, and Article 5 of the Statute requires proof that the act occurred as part of a widespread or systematic attack against a civilian population, an element not required by Article 3 does not mean that Article 5 excludes the armed conflict, so, when the act occurred in armed conflict and as a part of a widespread or systematic attack against a civilian population, then the act has to be punished by Article 5, because it contains all of the elements that contains Article 3 – so, convictions under Article 2 and 5, as explained in the Judgement, is not possible without breaching the rule *ne bis in idem*. So, the Chamber made an error of law by punishing the Accused with cumulative convictions, by punishing him for acts under Article 5 and Article 2, because the way it is used in the Judgement, cannot pass Čelebići test, and the Judgement does not ensure that the accused is convicted only for distinct offences. Also, in international law, in a most notably the case of *Blockburger v United States*,[832] which established what is known as the Blockburger test:

317. The applicable rule is that where the same act or transaction constitutes a violation of two distinct statutory provisions, the test to be applied to determine whether there are two offences or only one, is whether each provision requires proof of an additional fact which the other does not. In relation to the Blockburger test, the Chamber in Kupreskic noted that: The test then lies in determining whether each offence contains an element not required by the other. If so, where the criminal act in question fulfils the

[832] 284 US 299 (1932)

extra requirements of each offence, the same act will constitute an offence under each provision. If the Blockburger test is not satisfied, 'it follows that one of the offences falls entirely within the ambit of the other offence (since it does not possess any element which the other lacks).[833]

318. So, the Chamber made an error of law when it accepted extensive interpretation of cumulative sanctioning because it does not satisfy the Blockburger test – the Chamber does not take into account that crimes punishable by Article 5 do contain all elements of crime punishable by Article 2, and the result is that Accused is convicted for the same offences multiple times, and not for different offences. In this way the Rule '*in dubio pro reo'* has not been respected. So, Count 10 includes Count 11 crimes concerning Gornji Vakuf, Prozor , Mostar, Heliodrom, Ljubuški, Dretelj and Gabela Prison, Count 3 is just repeating Count 2 in all crime scenes, Count 9 is repeating Count 8 and Count 11 has no difference in facts then Count 10. Also, Count 15 includes all elements of Count 16, and Count 6 has all elements of Count 7 – according to the Blockburger test. Also, Akayesu judgement states that it is acceptable to convict the accused of two offences in relation to the same set of facts in the following circumstances: (1) where the offences have different elements; or (2) where the provisions creating the offences protect different interests; or (3) where it is necessary to record a conviction for both offences in order fully to describe what the accused did. In this Judgement, The Chamber uses exactly the same facts for different offences – it does not say anywhere which are the facts that differ Count 10 from Count 11 offences in Gornji Vakuf, for example, and in all other cases of multiple convictions and thus entered cumulative convictions that are erroneous.

319. The Chamber erred considering that, according to Čelebići test, cumulative convictions entered for the crimes of extensive destruction of property not justified by military necessity and carried out unlawfully and wantonly and the destruction or willful damage done to institutions dedicated to religion or education is permissible.[834] The Chambers erred saying that the destruction of property not justified by military necessity must be extensive, which is not a requirement for the destruction or willful damage to institutions dedicated to religion or education.[835] The latter requires that the act or omission caused the destruction or damage to a cultural or religious property, which is not a requirement for the destruction of property not justified by military necessity under Article 2 of the Statute.[836] This is not accurate, because the fact that

[833] *Kupreskic*, TJ para. 682
[834] Vol.4/1268
[835] Vol.4/1267
[836] Vol.4/1267

former does not exclusively mention cultural or religious property, but says property which logically includes all property including cultural and religious also. Also, Chamber says that the destruction of property not justified by military necessity must be extensive, which is not a requirement for the destruction or willful damage to institutions dedicated to religion or education – this implies that destruction or willful damage to institutions dedicated to religion or education cannot be extensive.[837] The difference to those offences is possible, but it must include *mens rea* of the perpetrator – what offence he intends - does he want destruction of property or specifically the damage of cultural and religious property – but that is contrary to the statement of the Chamber that *mens rea* is not to be a criteria for type of offense – which leads to unlawful multiple convictions.[838] In this case, cumulative convictions entered for the crimes of extensive destruction of property not justified by military necessity and carried out unlawfully and wantonly and the destruction or willful damage done to institutions dedicated to religion or education is not permissible.

320. The Appeals Chamber is invited to quash the Ćorić's multiple convictions to the extent that they are cumulative and reflect the same conduct. Ćorić's sentence should be reduced accordingly.

XVII. 16th Ground for Appeal: *The Chamber erred in determining the length of the sentence*

321. The Chamber erred as a matter of law and fact when it imposed on Ćorić a sentence of 16 years imprisonment.[839] Having properly assessed all the evidence in the case, no reasonable Chamber could have imposed such an excessive and disproportionate sentence, especially under the relevant jurisprudence, including the following.

322. It is up to the trier of fact to consider the level of contribution – as well as the category of JCE under which responsibility attaches – when assessing the appropriate sentence, which shall reflect not only the intrinsic gravity of the crime, but also the personal criminal conduct of the convicted person and take into account any other relevant circumstance.[840] A position of authority does not in and of itself attract a higher

[837] Vol.4/1254, footnote 2340
[838] Kunarac, AJ, par 102
[839] Vol.4/Disposition
[840] *Martic*, *AJ* at para. 84

sentence.[841] The family situation of an accused may also be a mitigating factor.[842] Post conflict conduct has also been recognized as mitigating factor.[843] Aggravating factors must be proved beyond a reasonable doubt, whereas mitigating factors must be proven by a preponderance of the evidence.[844]

Errors in sentencing include:

a) taking the position of authority of the accused into account in both the gravity of the offense and as an aggravating factor;[845] and

b) double counting the accused's status of a commander as an element of Article 7(3) and as an aggravating factor.[846]

323. The Chamber made discernible errors that had significant effect on determining sentence by overestimation of the role of Ćorić's participation in the crimes, based on the positions that he held. The Chambers erred concluding that there are aggravated circumstances namely, that Ćorić played a key role in the commission of crimes by virtue of his functions and powers within the HVO MP, and abused his authority as Chief of the of the HVO MP Administration to facilitate crimes using the resources at his disposal for the implementation of all crimes.[847] Such a position fails to take into account its own finding on the weakening of and limitations on his power/authority over MP owing to their subordination to HVO commanders.[848] It likewise fails to take into account the evidence: a)that Ćorić did not have effective control over MP on the frontlines engaged in combat; b)its own findings he did not have knowledge of mistreatment at detention facilities;[849] c)his lack of authority in regard to detention facilities;[850] d)its finding he had no role in logistics[851] for detention facilities and the evidence that he had no role in health care at detention facilities;[852] and e) the evidence that reports from the MP in combat were not sent to him.[853]

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[841] *Hadzihasanovic AJ* at para. 320
[842] Vol.4/1373
[843] *Plavsic*, *TJ at para. 110*
[844] *Delalic, AJ* at para 763; *Natelic & Martinovic*, *AJ* at para. 592
[845] *Nikolic*, *Judgment on Sentencing Appeal* at para. 62; *Rajic*, *Sentencing Judgment* at para. 108
[846] *Natelic & Martinovic*, *AJ* at para. 610, 626; *Hadzihasanovic AJ* at para. 320
[847] Vol.4/1370
[848] Vol.4/867-871
[849] Vol.4/955, 974
[850] Ground 7
[851] Vol.4/904
[852] P4653; 2D917; P4145; 2D412; P3197; Bagaric (T.38992/5 – 38995/1)
[853] see, Ground 2

324. Further the Chamber's use of the alleged authority position of Ćorić as an aggravating factor[854] is impermissible double counting, since it has already used such a finding of the gravity of the crimes. Such is a violation of *ne bis in idem* and is also in violation of the Chamber's requirement to take into account the practices of the Former Yugoslavia.[855] Such double counting was impermissible under the existing criminal procedure code of the SFRY.[856]

325. The Chamber declined to consider the medical situation of Ćorić 's family as a mitigating factor.[857] This was an error given that the specific family circumstances of Ćorić and his family were deemed by this Chamber to be compelling circumstances to order extended periods of provisional release under conditions akin to detention, to permit Ćorić to be with his family, in accord with the recommendations of medical professionals.[858] Respectfully, the family situation of Ćorić was established by a preponderance of the evidence, as a mitigating factor, and the Chamber was in error in not considering the same.

326. The Chamber likewise found that Ćorić's voluntary surrender and good behavior thereafter were mitigating circumstances[859] but did not take adequate consideration of these factors nor attribute sufficient weight to the same to reduce the sentence in accord with these findings.

327. The Chamber erred as a matter of fact and law when it failed to properly consider other mitigating evidence such as conduct after conflict, assisting victims etc., according to Chamber's own standard[860]. The Chamber found that the evidence attested to Ćorić's direct involvement in fighting crime within the HVO[861], yet it failed to address the same in sentencing or consider it as a mitigating circumstance. Other evidence attested to Ćorić taking those steps within his limited domain to contribute to law-enforcement efforts, trying to increase the effectiveness of anti-crime measures, supporting training of additional crime technicians and encouraging the MP to work closely with the civilian police.[862] The Chamber further conceded Ćorić's involvement in Operation Pauk/Spider, to arrest members of the HVO (including the KB)

[854] Vol.4/1370
[855] Vol.4/1291
[856] KZ SFRY Art.41 part 1
[857] Vol.4/1373
[858] see, Vol.4/1373, footnote 2536
[859] Vol.4/1371-1372
[860] Vol.4/1288
[861] Vol.4/881
[862] 5D4110

involved in crime[863] but did not give credit to Vidovic's testimony about Ćorić's instructions in the prevailing period to prepare for this operation,[864] and did not grant him credit in mitigation for the same.

328. Other evidence attested to Ćorić's involvement in training the MP that stressed adherence to IHL.[865] The Chamber confirmed his involvement in such training, [866] but failed to consider the substance as mitigation evidence. The Chamber also confirmed he issued instructions to MP working at Heliodrom,[867] but failed to consider that these instructions emphasized respect of IHL, ordered that treatment shall be in accordance with the Geneva Conventions that free entrance shall be guaranteed for the representatives of the ICRC and that a precise list of prisoners shall be drafted.[868] Respectfully these are mitigation factors that should have been considered by the Chamber.

329. The Chamber failed to consider as a mitigating factor the circumstances of the MP re-subordination and its own finding that the MP "was forced to devote the major part of its forces and equipment to combat operations. For this reason, the Chamber notes that crime within the ranks of the HVO armed forces – including the MP – as well as on the territory of the HZ H-B, could not, for example, be effectively opposed, especially inasmuch as the civilian police forces and the military tribunals failed to operate in satisfactory fashion."[869]

330. The Chamber also failed to consider Ćorić's own appeals to try and address this very same problem, when as MPA Chief he called for MP to be withdrawn from the frontlines, so as to permit them to perform their law enforcement police functions.[870] Ćorić also made a similar appeal when he was Minister of Interior, aimed to withdraw civilian police from the frontlines so they could fight crime.[871] This is evidence in mitigation, which the Chamber ought to have considered.

[863] Vol.4/932
[864] Vol.4/934
[865] See Ground 2
[866] Vol.4/861
[867] Vol.4/893
[868] P514
[869] Vol.1/972
[870] P5471, p. 3
[871] P6837, p. 1

331. Lastly, the Chamber failed to consider the contributions of Ćorić after the war, contributing to law and order in the FBiH – he was deputy minister for civilian affairs and communications in the Council of Ministers of BIH, in Sarajevo.[872]

332. These foregoing errors render the sentence unsound and in error. The Defence respectfully submits that the sentence should be significantly reduced, in light of the number and magnitude of the aforesaid errors.

XVIII. 17th Ground for Appeal: *The Chamber erred as a matter of fact and law when determining the appropriate credit to be deducted from the Appellant's Sentence for the time already served in custody pending trial.*

333. The Chamber erred when it determined that periods of provisional release should be deducted from time spent in custody.[873] The Chamber did not give a reasoned analysis of why the provisional release periods should be deducted, and did not address relevant law/jurisprudence.

334. Ćorić has been in custody at UNDU since his voluntary surrender 5 April 2004, with several periods of provisional release under conditions/circumstances akin to detention, as recognized under both Croatian and International law. The aforesaid periods of provisional release were undertaken pursuant to conditions imposed by the Chamber and enforced by the Croatian Police. During these periods the Chamber ordered that Ćorić be placed "under 24-hour monitored home confinement during his stay in Zagreb, at the address provided to the Chamber and the Croatian authorities."[874] It is respectfully submitted that these conditions are akin to detention, rather than bail or some less restrictive provisional release. These periods essentially involved house arrest where the accused was guarded/controlled by police while at his residence, and he was unable to move freely, such that he was not permitted to leave his home in Zagreb to move/travel freely; was not permitted even to visit his home in Bosnia-Herzegovina; nor was he allowed to travel to visit his parents' graves; nor was he free to socialize with friends who were news journalists by profession. Ćorić was also provisionally released for medical treatment,[875] during which the Chamber ordered he be

[872] P09053, page 6, of English translation
[873] Vol.4/1375
[874] See, e.g. "Decision on Request for Provisional Release of Accused Valentin Ćorić" of 22 June 2011, pg 22
[875] 1 May 2009 to 18 October 2009

subject to police monitoring and surveillance at the hospital during the week, and at the residence during weekends. Due to these restrictions during these provisional releases, they should constitute periods of detention, for purposes of calculating the time served.

335. Croatia is the state of Ćorić's citizenship, and his primary domicile, as well as where he was provisional released to. The periods of provisional release closely resembled house arrest under Article 119 of the Croatian Law of Criminal Procedure, which allow house arrest in lieu of detention in remand prison. Under this provision, the movements of the accused from the home are limited, and subjected to police monitoring precisely of the nature as employed during the provisional release periods. Similarly, under Article 120, these periods of house arrest are treated the same as detention in remand prison. Under, Article 325, which provides provisional release for psychiatric medical purposes, the time spent released from prison for treatment is counted as if in detention, remand or prison. Ćorić was released precisely for such purpose.

336. Under Article 106 of the Croatian Law on the Enforcement of Jail Sentences, the detainee can be released from prison to receive medical treatment. Time spent away from prison for treatment is treated as a period of detention for purposes of the sentence. Similarly Article 128 of this law permits convicted persons to be temporarily released from prison for purposes of visiting ill family members. Such release is also counted as time spent in prison. Also, under Article 130 of this law, regular visits to one's home or family as permitted by law from prison are still counted as time served in prison. Ćorić was released precisely for purposes of his own medical treatment and to visit ill family members.

337. The Chamber in *Blaskic*[876] specified as follows:

> *[...] it would constitute a middle of the road measure between what is regarded by the Rules as the norm, namely detention on remand (Rule 64) and the exception, ie. provisional release (Rule 65). It would be an intermediate measure only because it would be milder than incarceration, whilst it would be harsher than provisional release, for house arrest is a form of detention.*

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[876] *Prosecutor v Blaskic* (IT-95-14-T) 'Decision on the Motion of the Defence Filed Pursuant to Rule 64 of the Rules of Procedure and Evidence' (3 April 1996), para. 15

In the *Blaskic* Trial Judgment the time served was calculated without any distinction between time spent in UNDU and in house detention.[877] In the *Milutinovic* Trial Judgment, the time spent in pre-trial detention does not distinguish between time spent at UNDU or on provisional release.[878]

338. At the SCSL, the Chamber in *Norman* regarded that house arrest that included the Accused being guarded by officials whilst at home, indicated a form of detention rather than a form of bail.[879]

339. The Judgment erred in that it did not consider the foregoing when calculating time to be give credit under Rule 101(c), and deducting periods of provisional release.

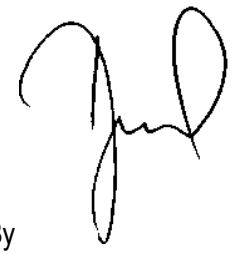
[877] *Blaskic TJ* para 794
[878] *Milutinovic TJ* Vol.2/1208-1212
[879] *Prosecutor v Norman* (SCSL-03-08-PT) 'Decision on Motion for Modification of the Conditions of Detention (26 November 2003) §4, 12

XIX. Relief Sought

340. The Judgment is in error when it found Ćorić participated in a JCE and pursuant to 7(3), and that he intended the crimes he is convicted of. The Appeals Chamber is invited quash the Verdict and disposition of the Judgment, and find him NOT GUILTY on all counts, or alternatively, should any of the verdicts against him stand, the Appeals Chamber is invited to consider the discernible errors identified herein and significantly reduce the sentence against Ćorić.

WORD COUNT: 49,973

Respectfully submitted,



By

Ms. Dijana Tomašegović-Tomić
Counsel for Valentin Ćorić