



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

Case No. IT-01-42-T
Date: 21 June 2004
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IN TRIAL CHAMBER II

Before: Judge Kevin Parker, Presiding
Judge Krister Thelin
Judge Christine Van Den Wyngaert

Registrar: Mr. Hans Holthuis

Decision of: 21 June 2004

PROSECUTOR

v.

PAVLE STRUGAR

**DECISION ON DEFENCE MOTION REQUESTING
JUDGEMENT OF ACQUITTAL PURSUANT TO RULE 98 *BIS***

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I. INTRODUCTION

1. This decision of Trial Chamber II is in respect of the Defence motion of 28 May 2004, seeking the entry of a judgement of acquittal pursuant to Rule 98 *bis* of the Rules of Procedure and Evidence in relation to all the counts in the Third Amended Indictment.¹ It is contended in respect of all counts that there is no case for the Defence to answer; i.e. that the evidence is insufficient to sustain a conviction.

2. The Accused, Pavle Strugar, a retired General, is charged in the Indictment with crimes allegedly committed on 6 December 1991 in the course of a military campaign of the Yugoslav National Army (JNA) in and around Dubrovnik in October, November and December of 1991.

3. The broader municipality of Dubrovnik extends for approximately 120 kms along the coast of southern Dalmatia in present-day Croatia.² That part of Dubrovnik known as the Old Town is an area of some 13.38 hectares enclosed by the medieval city walls.³ The Old Town and its 1991 residents are the subjects of this Indictment. The Old Town is situated between the Adriatic sea on one side and steep slopes on the other, ascending to Mount Srdj, which is the dominant topographical feature overlooking the Old Town.⁴

4. The Old Town of Dubrovnik is endowed with an exceptional architectural heritage, including palaces, churches and public buildings.⁵ The city first rose to prominence as a significant trading centre in the 13th century,⁶ and the oldest buildings in the Old Town date from this period.⁷ The fortifications of the Old Town, begun in the 12th century and completed in the mid-17th century, are widely regarded as some of the finest examples of city fortifications in Europe.⁸ Demilitarisation of this historic area was a precondition to the recognition of the Old Town as a World Heritage site by UNESCO in 1979.⁹

5. One of the unique features of the Old Town is that it has remained a living city. In fact, in 1991, the Old Town had an estimated population of between 7,000 and 8,000 residents.¹⁰ Within its city walls, the Old Town is fairly densely populated. Its palaces, which would previously have

¹ Dated 10 December 2003 (hereinafter "Indictment").

² Expert report of Dr. John Allcock, filed 23 October 2003 ("Allcock Report"), p. 1.

³ Allcock Report, p. 1.

⁴ Dr. John Allcock, T. 467 – 470.

⁵ Allcock Report, p. 6.

⁶ *Ibid.*, p. 2.

⁷ *Ibid.*, p. 3.

⁸ *Ibid.*, p. 5.

⁹ *Ibid.*, p. 16.

¹⁰ See generally Dr. John Allcock, T. 461 – 464.

housed not more than a single noble family, have been divided up into flats and line the narrow streets of the Old Town. Stradun is the main street bisecting the Old Town on a west/east axis.¹¹

6. The Indictment alleges that in the course of an unlawful attack by the JNA on the Old Town of Dubrovnik on 6 December 1991, two people were killed, three were seriously wounded and many buildings of historic and cultural significance in the Old Town, including institutions dedicated to, *inter alia*, religion, and the arts and sciences, were damaged. These allegations support six counts of violations of the laws or customs of war under Article 3 of the Statute, namely murder, cruel treatment, attacks on civilians, devastation not justified by military necessity, attacks on civilian objects and destruction of institutions dedicated to, *inter alia*, religion and the arts and sciences. The Accused is charged with individual criminal liability under Article 7(1) of the Statute for allegedly ordering, and aiding and abetting the aforementioned crimes, as well as with superior responsibility pursuant to Article 7(3) of the Statute for the crimes of his subordinates. The Accused's liability is alleged to arise out of the position he then held as commander of the Second Operational Group (2nd OG) and is premised on the following factual allegations. It was, *inter alia*, forces under the command of Captain Vladimir Kovačević who conducted the unlawful artillery and mortar shelling of the Old Town on 6 December 1991.¹² The battalion commanded by Captain Vladimir Kovačević was at the time directly subordinated to the 9th VPS (Naval Sector), commanded by Vice-Admiral Miodrag Jokić, and the 9th VPS, in turn, was a component of the 2nd Operational Group, commanded by the Accused.¹³

7. While the Indictment is confined to the attack on the Old Town, the evidence indicates that the artillery attack that day was not confined to the Old Town and that there were also human casualties and property damage to the extended and more modern parts of the city of Dubrovnik which adjoin the Old Town but which are outside the historic walls.

8. The Chamber observes that Miodrag Jokić has pleaded guilty to six counts, alleging violations of the laws or customs of war punishable pursuant to Articles 3, 7(1) and 7(3) of the Statute, relating to the attack on Dubrovnik on 6 December 1991. He was subsequently sentenced by this Tribunal to seven years of imprisonment.¹⁴ The case against Vladimir Kovačević, also indicted for the attack, is still pending.

¹¹ *Ibid.*, T. 472.

¹² *Ibid.*

¹³ Indictment, paras 3 and 15.

¹⁴ *Prosecutor v Miodrag Jokić*, Case No. IT-01-42/1-S, Sentencing Judgement, 18 March 2004. The Judgement is presently pending appeal. Admiral Jokić, Captain Kovačević, the Accused and a fourth named indictee were originally charged together in February 2001 for violations of the laws or customs of war committed by alleged attacks on Dubrovnik between 1 October and 31 December 1991. The charges against the fourth individual were withdrawn in July 2001, and the cases against the remaining three were eventually separated.

9. The trial against the Accused commenced on 16 December 2003. The Prosecution case, comprising 29 *viva voce* witnesses and over 200 exhibits, was concluded on 18 May 2004. Pursuant to the schedule set by the Trial Chamber, the Defence filed its motion for judgement of acquittal pursuant to Rule 98 *bis* of the Rules of Procedure and Evidence on 28 May 2004.¹⁵ The Prosecution's response was filed on 7 June 2004.¹⁶ With permission of the Chamber, a Defence reply was filed on 14 June 2004.¹⁷

II. APPLICABLE STANDARD UNDER RULE 98 *BIS*

10. Pursuant to Rule 98*bis* (B) the Trial Chamber is to order an entry of judgement of acquittal on a charge "if it finds that the evidence is insufficient to sustain a conviction on that ... charge(s)." The Rule reflects the common law concept of "no case to answer". This is an issue raised and determined after the close of the prosecution case, but before the defence presents its case. It is an issue peculiar to an adversary system as the defence case is yet to be presented. A decision on a motion pursuant to Rule 98*bis* involves no evaluation of the guilt of the accused in light of all the evidence in the case to that stage, nor any evaluation of the respective credit of witnesses, or of the strengths and weaknesses of contradictory or different evidence, whether oral or documentary, which is then before the Chamber.

11. As been held by the Appeals Chamber in *Prosecutor v Jelisić*¹⁸:

The capacity of the prosecution evidence (if accepted) to sustain a conviction beyond reasonable doubt by a reasonable trier of fact is the key concept; thus the test is not whether the trier would in fact arrive at a conviction beyond reasonable doubt on the prosecution evidence (if accepted) but *whether it could*. At the close of the case for the prosecution, the Chamber may find that the prosecution evidence is sufficient to sustain a conviction beyond reasonable doubt and yet, even if no defence evidence is subsequently adduced, proceed to acquit at the end of the trial, if in its own view of the evidence, the prosecution has not in fact proved guilt beyond reasonable doubt" (emphasis added).¹⁹

The issue is often shortly stated as NOT being whether, on the evidence as it stands the accused *should* be convicted, but whether the accused *could* be convicted.

12. While the concept underlying Rule 98 *bis* derives from the common law, the Rule must be interpreted and applied in its own context and in light of the Statute. Differences may thus arise

¹⁵ Hereinafter "Defence Motion".

¹⁶ Hereinafter "Prosecution Response".

¹⁷ Hereinafter "Defence Reply".

¹⁸ *Prosecutor v Goran Jelisić*, Case No. IT-95-10-A, Judgement, 5 July 2001 (hereinafter "*Jelisić Appeals Judgement*"), para. 37.

¹⁹ See also *Prosecutor v. Zejnil Delalić et al. (Čelebići)*, Case No. IT-96-21-A, Judgement, 20 February 2001 (hereinafter "*Čelebići Appeal Judgment*"), para. 434.

between the application of the concept in this Tribunal and in domestic common law jurisdictions.²⁰ For example, the admissibility of hearsay evidence in this Tribunal provides a reason for such a difference.

13. The jury system which is used extensively in most common law jurisdictions could provide another reason for such a difference, as, in this Tribunal, Trial Chambers comprise three judges sitting without a jury. It should not be overlooked, however, that in common law jurisdictions the issue arises in trials by jury and also in trials before a judge or other judicial officer sitting without a jury. The same principles are applied in each setting although, typically, these are expressed in the context of a trial by jury. This would appear to be the case because the fundamental concept is the right of an accused not to be called on to answer a charge unless there is credible evidence of his implication in the offence with which he is charged.

14. While there is scope for differences of application of the concept between this Tribunal and a common law jurisdiction, leaving aside the effect of hearsay evidence, none appear to have been established in the jurisprudence of this Tribunal so far as that is relevant to this Motion.

15. In England, a classic statement of the principles to be applied is found in the decision of the Court of Appeal, Criminal Division, given by Lord Lane CJ in *Regina v Galbraith*:²¹

How then should the judge approach a submission of 'no case'? (1) If there is *no evidence* that the crime alleged has been committed by the defendant, there is no difficulty. The judge will of course stop the case. (2) The difficulty arises where there is some evidence but it is of a tenuous character, for example because of inherent weakness or vagueness or because it is inconsistent with other evidence. (a) Where the judge comes to the conclusion that the Crown's evidence, *taken at its highest*, is such that a jury properly directed *could not properly convict* on it, it is his duty, on a submission being made, to stop the case. (b) Where however the Crown's evidence is such that its strength or weakness depends on the view to be taken of a witness's reliability, or other matters which are generally speaking within the province of the jury and where *on one possible view* of the facts there is evidence on which a jury could properly come to the conclusion that the defendant is guilty, then the judge should allow the matter to be tried by the jury. (emphasis added).

In reaching this decision there was an express acceptance of earlier words of Lord Widgery CJ in *Regina v Barker*:²²

[...] even if the judge had taken the view that the evidence could not support a conviction because of the inconsistencies, he should nevertheless have left the matter to the jury. It cannot be too clearly stated that the judge's obligation to stop the case is an obligation which is concerned primarily with those cases where the *necessary minimum evidence to establish the facts* of the crime has not been called. It is not the judge's job to weigh the evidence, decide who is telling the truth, and to stop the case merely because he thinks the witness is lying. To do that is to usurp the function of the jury [...] (emphasis added).

²⁰ *Prosecutor v. Dario Kordić and Mario Čerkez*, Case No. IT-95-14/1-T, Decision on Defence Motions for Judgement of Acquittal, 6 April 2000, para. 9.

²¹ *Regina v Galbraith* [1981] 1 WLR 1039 at 1042, 73 Cr App R 124.

²² *Regina v Barker* (1977) 65 Cr App R 287 at 288.

It is in this sense that it was said by the High Court of Australia in *Doney v The Queen*:²³

It follows that, if there is evidence (even if tenuous or inherently weak or vague) which can be taken into account by the jury in its deliberations and that evidence is capable of supporting a verdict of guilty, the matter must be left to the jury for its decision. Or, to put the matter in more usual terms, a verdict of not guilty may be directed only if there is a defect in the evidence such that, taken at its highest, it will not sustain a verdict of guilty.

16. Of course, as the decision in *Jelisić* notes, the issue whether a Trial Chamber (or a jury) properly directed *could* convict, in the sense dealt with in the *Galbraith, Barker and Doney* decisions, involves proof beyond reasonable doubt. At the stage of a Rule 98*bis* motion, however, the issue is not whether *the* Trial Chamber would be persuaded beyond reasonable doubt to convict, after fully evaluating the evidence then before it, but rather, and quite differently, whether it would be properly open to *a* Trial Chamber, taking the evidence at its highest for the prosecution, to be persuaded beyond reasonable doubt to convict the accused.

17. Rarely, a case will arise where the only evidence in support of a conviction is so inherently incredible that no Trial Chamber could accept its truth. In such a case, of course, in truth the evidence is incapable of supporting a conviction, and a Rule 98 *bis* motion should succeed. This possibility was recognised by the Appeals Chamber in the *Jelisić* decision when it observed that in considering a Rule 98 *bis* motion “[...] the Trial Chamber was required to assume that the prosecution’s evidence was entitled to credence *unless incapable of belief*” (emphasis added).²⁴ In this sense, the Appeals Chamber went on to state that a Rule 98 *bis* motion should only be upheld if the Trial Chamber is “entitled to conclude that no reasonable trier of fact could find the evidence sufficient to sustain a conviction beyond reasonable doubt [...]”.²⁵

18. It follows that a decision by this Trial Chamber that there is sufficient evidence to sustain a conviction of the Accused on one of the charges is, in no sense, an indication of the view of the Chamber as to the guilt of the Accused on that charge. That is not the issue to be decided at this point. A decision that there is a case to answer in respect of a charge involves no more than an appreciation by this Trial Chamber that there is in the case *some evidence* which, when taken at its highest for the prosecution, could be sufficient to satisfy *a* Trial Chamber *i.e.* is capable of persuading *a* Trial Chamber of the guilt of the Accused of the charge being considered. If there is no evidence of an offence charged, or if, in what is likely to be a somewhat unusual case, the only relevant evidence when viewed as a whole is so incapable of belief that it could not properly support a conviction, even when taken at its highest for the Prosecution, a Rule 98*bis* motion for an acquittal will succeed.

²³ *Doney v The Queen* (1990) 171 CLR 207 at 214-215.

19. In the course of this decision, the Trial Chamber will evaluate in respect of each disputed element of each offence charged, whether there is evidence on which a Trial Chamber could be satisfied beyond reasonable doubt of the guilt of the Accused, as discussed in the preceding paragraphs. However, for brevity and convenience, the Chamber will often use different language or be more succinct in expressing its conclusion that there is sufficient evidence.

20. It is worth noting the extent and frequency to which Rule 98*bis* has come to be relied on in proceedings before this Tribunal, and the prevailing tendency for Rule 98*bis* motions to involve much delay, lengthy submissions, and therefore an extensive analysis of evidentiary issues in decisions. This appears to be in contrast to the position typically found in common law jurisdictions from which the procedure is derived. While Rule 98*bis* is an important procedural safeguard, the object and proper operation of the Rule should not be lost sight of. Its essential function is to separate out and bring to an end only those proceedings in respect of a charge for which there is no evidence on which a Chamber could convict, rather than to terminate prematurely cases where the evidence is merely weak.

III. ISSUES RAISED FOR DISMISSAL

21. The Chamber will essentially limit its consideration to the particular issues raised by the Defence in support of its Motion. Where no issue has been raised the Chamber will usually either say nothing about the issue or make only a brief observation in passing.

A. Preliminary matters

1. The attack on the Old Town

22. The alleged unlawful attack on the Old Town of Dubrovnik on 6 December 1991 underpins all the charges in the Indictment. In order to place the crimes in their proper context, the Chamber first turns to consider the allegations in the Indictment relating to the attack and those who are alleged to have participated directly in it. It should be borne in mind that as the Accused is charged, *inter alia*, with indirect criminal liability under Article 7(3), the acts, *mens rea* and position of the alleged principal perpetrators are directly relevant to an appropriate assessment of whether there is evidence which could establish the Accused's criminal liability.

²⁴ *Jelisić Appeals Judgement*, para. 55

²⁵ *Ibid.*, para. 56.

23. In this context, the Chamber is of the view that there is evidence to support the allegations that the Old Town was shelled on 6 December 1991²⁶ and that forces under the immediate command of Captain Vladimir Kovačević were responsible, at least substantially so, if not solely.²⁷

2. General requirements for the application of Article 3 of the Statute

24. The Trial Chamber recalls that all the crimes contained in the Indictment are charged under Article 3 of the Statute of this Tribunal. For a crime under Article 3 of the Statute to be proved, two preliminary requirements must be satisfied. First, there must have been an armed conflict, whether internal or international in character, at the time the offences were allegedly committed.²⁸ Secondly, there must be a close nexus between the armed conflict and the alleged offence, meaning that the acts of the accused must be “closely related” to the hostilities.²⁹ The Prosecution alleges that at all times relevant to the Indictment a state of armed conflict existed in Croatia and there is a nexus between the alleged crimes and that armed conflict.³⁰

25. The Trial Chamber notes that a number of witnesses³¹ referred in their testimony to a “conflict”³², “hostilities”³³ or “war”³⁴ between the Croatian forces and the JNA in respect of Dubrovnik in the relevant period. There is also an abundance of other evidence from which it could be inferred or directly accepted that an armed conflict existed.³⁵ The Trial Chamber further notes that all the offences alleged in the Indictment relate to the shelling of the Old Town of Dubrovnik, which was allegedly carried out in the course of and in close relation to the aforementioned armed conflict. On the basis of this evidence a Trial Chamber could conclude that the acts with which the

²⁶ Admiral Jokić, T. 4040-42. A number of witnesses indicated that fire on Dubrovnik came from Žarkovica. See for example Slobodan Vuković, T. 6018-21; Davorin Rudolf, T. 5564-65; Ivan Negodić, T. 5266. Admiral Jokić testified that the JNA unit positioned there was the 3rd battalion of the 472nd Motorised Brigade, T. 3935-54. See also Exhibit P132.

²⁷ See in particular, Witness B, T. 5035 – 5052. It is unnecessary in this decision to consider whether other forces actually inflicted damage on the Old Town in the course of the attack.

²⁸ As the Appeals Chamber ruled, “an armed conflict exists whenever there is a resort to armed force between States or protracted armed violence between governmental authorities and organised armed groups or between such groups within a State” (see *Prosecutor v. Duško Tadić*, Case No. IT-94-1-AR72, Decision on the Defence Motion for Interlocutory Appeal on Jurisdiction, 2 October 1995 (hereinafter “*Tadić* Jurisdiction Decision”), para. 70.

²⁹ See, among other authorities, *Prosecution v. Mladen Naletilić and Vinko Martinović*, Case No. IT-98-34-T, Judgement, 31 March 2003 (hereinafter “*Naletilić* Trial Judgment”), para. 225. The Appeals Chamber considered that the armed conflict “need not have been causal to the commission of the crime, but the existence of an armed conflict must, at a minimum, have played a substantial part in the perpetrator’s ability to commit it, his decision to commit it, the manner in which it was committed or the purpose for which it was committed (see *Prosecution v. Dragoljub Kunarac, Radomir Kovač and Zoran Vuković*, Case No. IT-96-23-A, Judgement, 12 June 2002, para. 58).

³⁰ Indictment, para. 6 and the Prosecution Pre-Trial Brief, para. 126.

³¹ Among others: Admiral Jokić, Per Hvalkof, Ljerka Alajbeg, Djordje Ciganović, Nikola Samardžić.

³² T. 361, T. 749, T. 2800-01, T. 3840-41.

³³ T. 310, T. 676, T. 2181.

³⁴ T. 993-95, T. 2854.

³⁵ E.g. evidence concerning ceasefire agreements: Slavko Grubišić, T. 1033, Per Hvalkof, T. 2148, 2181, Admiral Jokić, T. 4040; evidence relating to the presence of international organisations monitoring the implementation of such agreements: Per Hvalkof, T. 2236-37; evidence concerning the shelling of Dubrovnik in October, November and December 1991: Paul Davies, T. 577, Mato Valjalo, T. 1997-98, Nikola Jović, T. 2924.

Accused is charged were committed during an armed conflict and were closely related to that conflict.

3. Nature of the conflict

26. The Trial Chamber notes that the Defence has not challenged the part of the Indictment relating to the general requirements for the application of Article 3 of the Statute. The Prosecution, however, in their Response to the Defence Motion provided submissions in respect of the nature of the conflict at issue.³⁶

27. In the Indictment the Prosecution alleges that an *international* armed conflict and partial occupation existed in Croatia.³⁷ In opening the Prosecution case, it was submitted that “the offences alleged in the Indictment, however, have a sound legal foundation irrespective of the date of Croatian independence and irrespective of the classification of this conflict”.³⁸ The Trial Chamber observes that Article 3 of the Statute, on which the charges are based, is applicable to all armed conflicts irrespective of their nature.³⁹ In addition, the provisions to which the Prosecution refers in the Indictment apply to both international and internal conflicts.⁴⁰

28. For these reasons, the Trial Chamber sees no need in this decision to consider whether the conflict was of an international nature.

4. Mens rea

29. Apart from an attack for which the Accused may be directly liable, insofar as he is charged under Article 7(3) for the acts of his subordinates, or where he is charged with a form of accomplice liability, such as aiding and abetting, in order for the Accused to incur liability it must be shown that the direct perpetrator (i.e. in the case of Article 7(3) a subordinate, in the case of aiding and abetting, the principal perpetrator) committed a crime. For these purposes it is sufficient to show that the direct perpetrator had the requisite *mens rea* to commit the crime.

30. Having dealt with these preliminary matters, the Chamber now turns to consider in more detail questions raised in the Defence Motion. The following sections III.B and III.C will only

³⁶ Prosecution Response, paras 81-90, and the Prosecution’s Supplementary Authority to its “Response to Defence Motion for Acquittal” dated 17 June 2004.

³⁷ Indictment, para. 6.

³⁸ Prosecution opening statement, T. 271.

³⁹ See *Tadić* Jurisdiction Decision, para. 137.

⁴⁰ E.g. Article 3 (1) (a) common to the Geneva Conventions of 12 August 1949 (see *Tadić* Jurisdiction Decision, para. 102 and *Čelebići* Appeal Judgment, paras. 135 and 150) and Articles 51 and 52 of Protocol Additional to the Geneva Conventions of 12 August 1949, and Relating to the Protection of Victims of International Armed Conflicts (hereinafter “Additional Protocol I”) and Article 13 of Protocol Additional to the Geneva Conventions of 12 August 1949, and Relating to the Protection of Victims of Non-International Armed Conflicts (hereinafter “Additional Protocol II”) (see *Prosecutor v. Pavle Strugar*, Case No. IT-01-42-AR72, Decision on an Interlocutory Appeal, 22 November 2002, paras

address the question whether there is evidence to support the crimes charged in the six Counts. Issues relating to the responsibility of the Accused are dealt with in Section III.D of this decision.

B. Crimes Against Persons – Violations of the Laws or Customs of War

1. Murder (Count 1)

(a) The Law

31. The Indictment charges the Accused with criminal liability for murder as a violation of the laws or customs of war under Article 3 of the Statute. The alleged victims of this crime are identified in the Indictment as Pavo Urban and Tonči Skočko.⁴¹

32. The definition of murder as a violation of the laws or customs of war under Article 3 of the Statute is broadly settled in the jurisprudence of the Tribunal. To prove murder, it must be established that death resulted from an act or omission of the accused committed with the intent either to kill or to cause serious bodily harm in the reasonable knowledge that it would likely result in death.⁴² In addition, to prove murder under Article 3 of the Statute, it must be shown that the victims were persons taking no active part in the hostilities.⁴³

(b) Submissions

33. The Defence submits that there is no evidence that the Accused either caused anyone's death or intended to commit murder,⁴⁴ and therefore, presumably, that the count of murder against the Accused should fail. It is also an issue whether the deceased have been shown to be civilians.

34. The Prosecution submits there is evidence to support the charge of murder. It identifies specific evidence supporting the fact that both Pavo Urban and Tonči Skočko were killed in the Old Town by the shelling on 6 December 1991.⁴⁵ It further submits that in case of doubt as to whether an individual is properly characterised as a civilian or not, that person shall be considered a

10 and 14, and *Prosecutor v. Pavle Strugar*, Case No. IT-01-42-PT, Decision on Defence Preliminary Motion Challenging Jurisdiction, 7 June 2002, para. 21).

⁴¹ Para. 16.

⁴² See e.g. *Prosecutor v. Momir Stakić*, Case No. IT-97-24-T, Judgement, 31 July 2003, para. 584 (citing collected cases).

⁴³ *Ibid.* para. 581.

⁴⁴ Defence Motion, para. 33.

⁴⁵ See Prosecution Response, paras 16, 17 and 18.

civilian.⁴⁶ The Prosecution submits that the evidence is capable of supporting a finding that both men were civilians at the time of their death.⁴⁷

(c) Discussion

35. There is evidence that Pavo Urban and Tonči Skočko both died as a result of the attack on the Old Town of Dubrovnik on 6 December 1991.⁴⁸ In particular, Dr. Ciganović, the forensic pathologist who carried out the post-mortem examinations of both Pavo Urban and Tonči Skočko,⁴⁹ testified that he had concluded that both victims had died as a result of injuries caused by an explosive device.⁵⁰ The civilian status of the victims was also supported by evidence.⁵¹

36. For the purposes of Rule 98 *bis*, the direct perpetrators' intent, either to kill or to cause serious bodily harm, may be proved by inference from evidence of the intentional nature of the attack on the civilian population of the Old Town.⁵² Evidence relating to the *mens rea* of the Accused for this crime, to the extent that it is relevant to a consideration of his criminal liability therefor, is dealt with in Section III.D of this decision.

(d) Conclusion

37. On the basis of the foregoing, the Chamber is of the view that there is evidence on which a Trial Chamber could conclude that the charge of murder was established in relation to the two victims identified in the Indictment.

⁴⁶ *Ibid.*, para. 15.

⁴⁷ *Ibid.*, para. 16.

⁴⁸ According to Witness A, who testified as to the intense shelling of the Old Town of Dubrovnik on 6 December, he had heard around 2 o'clock that day that Pavo Urban had been hit (T. 3632-33). *See also* Ivan Mustac, T. 1470-72. Nikola Jović testified that a shell exploded nearby and minutes later he saw Tonči Skočko fall to the floor (T. 2941-43).

⁴⁹ T. 2745 (Pavo Urban) and T. 2838 (Tonči Skočko). *See also* Exhibit P70, item 15 (Pavo Urban) and item 11 (Tonči Skočko).

⁵⁰ T. 2747, T. 2837 (Pavo Urban); T. 2839 (Tonči Skočko).

⁵¹ Nikola Jović testified that Tonči Skočko was a civilian. T. 2933 – 34. According to Witness A, Pavo Urban was a professional photographer. T. 3628-30. Mato Valjalo testified that Pavo Urban was killed while filming the war. T. 2003. *See also* Exhibit P94 in which Pavo Urban can be seen wearing civilian clothes at the time of his death and carrying a camera.

⁵² *Infra*, para. 57.

2. Cruel treatment (Count 2)

(a) The Law

38. The Indictment charges the Accused with criminal liability for cruel treatment as a violation of the laws or customs of war under Article 3 of the Statute. The alleged victims of this crime are identified in the Indictment as Mato Valjalo, Nikola Jović and Ivo Vlašica.⁵³

39. The crime of cruel treatment as a violation of the laws or customs of war pursuant to Article 3 of the Statute is defined in the jurisprudence of the Tribunal as an intentional act or omission causing serious mental or physical suffering or injury or constituting a serious attack on human dignity.⁵⁴ In addition, in order to prove cruel treatment under Article 3 of the Statute, it must be shown that the victims were persons taking no active part in the hostilities.⁵⁵

(b) Submissions

40. The Defence submits that there is no evidence that the Accused either subjected anyone to cruel treatment or intended to inflict serious injury.⁵⁶ The Defence relies upon the definition of the crime of cruel treatment set forth in the *Čelebići* Trial Judgement, namely “an intentional act or omission, that is an act which, judged objectively, is deliberate and not accidental, which causes serious mental or physical injury or constitutes a serious attack on human dignity.” The Defence argues that there is no evidence that the Accused intentionally participated in the crime of cruel treatment.⁵⁷

41. In relation to Mato Valjalo, the Defence submits that he was not a civilian at the time he was injured, and that he cannot be considered to have been a civilian at the time of his injury as he was acting as the chauffeur for the President of Dubrovnik’s Crisis Staff in his fulfilment of various wartime assignments. It submits that this activity amounts to taking an “active part in hostilities”.⁵⁸ As regards Ivo Vlašica, the Defence submits that the evidence about his injury is so inconsistent and contradictory that it cannot form a reliable basis for establishing the nature of his injury.⁵⁹ The

⁵³ Para. 16.

⁵⁴ See *Čelebići* Appeal Judgment, para. 424; *Prosecutor v. Mitar Vasiljević*, Case No. IT-98-32-T, Judgment, 29 November 2002, para. 234; *Naletilić* Trial Judgment, para. 246.

⁵⁵ *Čelebići* Appeal Judgment, para. 424.

⁵⁶ Defence Motion, para. 33.

⁵⁷ *Ibid.*, para. 34.

⁵⁸ *Ibid.*, para. 41 and Defence Reply, para. 7.

⁵⁹ Defence Motion, para. 41.

Defence submits that Nikola Jović's injury does not rise to the level of seriousness required by the Statute for a crime to fall within the jurisdiction of the Tribunal.⁶⁰

42. The Prosecution submits that there is evidence to support the charge of cruel treatment in relation to each of the listed victims.⁶¹ It further submits that Mato Valjalo, Ivo Vlašica and Nikola Jović may appropriately be characterised as civilians on 6 December 1991 and that they did not take an active part in the hostilities that day.⁶²

(c) Discussion

43. There is evidence that on 6 December 1991 Mato Valjalo was seriously injured when a shell exploded on Stradun.⁶³ In relation to the Defence submission that Mr. Valjalo was not a civilian at the time of his injury, the Chamber reiterates that for the purposes of Rule 98 *bis* it is sufficient if there is some evidence capable of establishing the allegation that he was a civilian. The fact that there may be other evidence which tends to contradict that conclusion is a matter for consideration at the end of the trial. In this regard, the Chamber is satisfied that there is evidence that could support a conclusion that at the time Mr. Valjalo was a civilian.⁶⁴

44. Similarly, there is evidence that on 6 December 1991 Ivo Vlašica was seriously injured in front of his shop in the Old Town when a shell detonated nearby.⁶⁵ The Chamber does not agree with the submission of the Defence that the evidence of Mr. Vlašica's injury is so unreliable as to require the Chamber to disregard it at this stage. The Chamber is satisfied that there is evidence that could support a finding that Mr. Vlašica was a civilian when he was injured on 6 December 1991.⁶⁶

45. In relation to Nikola Jović only, the Defence has raised the question whether the injuries he sustained are serious enough to rise to the level of a crime within the jurisdiction of the Tribunal. The query has two parts: first, whether the injuries Mr. Jović described are capable of amounting to the crime of cruel treatment, and secondly, if that crime can be established on the evidence, whether the Tribunal has jurisdiction under Article 1 of the Statute to deal with such a violation.

⁶⁰ *Ibid.*

⁶¹ Prosecution Response, paras 19 – 23.

⁶² *Ibid.*, paras. 19 – 23.

⁶³ Mato Valjalo, T. 2001-05.

⁶⁴ Mato Valjalo testified that in 1991 he was unarmed and wore civilian clothes. T. 1996.

⁶⁵ Ivo Vlašica, T. 3322-23. He testified that as a result of the shelling, he sustained an injury to his leg and was unable to walk properly until the wound had fully healed after about a month. T. 3323 and T. 3335.

⁶⁶ Ivo Vlašica testified that he was not in the Croatian military and that he was accorded the status of civilian war invalid on account of the injuries he sustained. T. 3557 and Exhibit P86.1.

46. As to the first part, the Chamber recalls the case law of the Tribunal establishing that, in relation to the crime of outrages against personal dignity the element of humiliation or degradation should be assessed on an objective, rather than a subjective basis.⁶⁷ The Chamber is persuaded that the situation is the same in relation to the crime of cruel treatment. The Chamber is of the opinion that the evidence reveals Nikola Jović's injuries to have been minor, indeed he himself characterised them as "surface wounds".⁶⁸ Even when these injuries are considered together with the mental anguish occasioned by the death of his friend Tonči Skočko, the evidence is not capable of establishing the element of *serious* mental or physical suffering or injury for the crime of cruel treatment. Accordingly, there is no need to consider whether the jurisdictional requirements of the Statute are met in this case.

47. For the purposes of Rule 98 *bis*, the Chamber is of the view that a reasonable trial chamber could conclude that the direct perpetrators' intent for the crime of cruel treatment may be proved by inference from evidence of the intentional nature of the attack on the civilian population of the Old Town.⁶⁹ Evidence relating to the *mens rea* of the Accused for this crime, to the extent that it is relevant to a consideration of his criminal liability therefor, is dealt with in Section III.D of this decision.

(d) Conclusion

48. On the basis of the foregoing, the Chamber is of the opinion that there is evidence on which a Trial Chamber could conclude that the charge of cruel treatment was established in relation to two of the victims identified in the Indictment.

3. Attacks on civilians (Count 3)

(a) The Law

49. The Accused is charged with participation in the crime of attacks on civilians, a violation of the laws or customs of war, as recognised by Article 51 of Additional Protocol I and Article 13 of Additional Protocol II. The Prosecution alleges that, even assuming that military objectives were present in the Old Town, in any event, civilian losses in human lives and property caused by the attack were excessive in relation to the concrete and direct military advantage anticipated.⁷⁰

⁶⁷ See *Prosecutor v. Dragoljub Kunarac, Radomir Kovač and Zoran Vuković*, Case No. IT-96-23 and IT-96-23/1-T, Judgment, 22 February 2001 (hereinafter "*Kunarac Trial Judgment*"), paras 504 – 506 (citing *Prosecutor v. Zlatko Aleksovski*, Case No. IT-95-14/1-T, Judgment, 25 June 1999 (hereinafter "*Aleksovski Trial Judgment*"))

⁶⁸ T. 2945.

⁶⁹ *Infra*, para. 57.

50. Pursuant to the Tribunal's case-law, the crime of attacks on civilians is, as to the *actus reus*, an attack launched against a civilian population that caused deaths and/or serious bodily injury within that population,⁷¹ which, as to the *mens rea*, must have been conducted "intentionally in the knowledge, or when it was impossible not to know, that civilians were being targeted".⁷² The presence of certain non-civilians among the targeted population does not change the character of that population. It must be of a "predominantly civilian nature".⁷³ The following attacks are, among others, prohibited by Article 51: attacks the object of which is "the civilian population as such, as well as individual civilians" (§ 2); indiscriminate attacks, such as those which "are of a nature to strike military objectives and civilians or civilian objects without distinction" (§ 4) and those which "may be expected to cause incidental loss of civilian life, injury to civilians, damage to civilian objects, or a combination thereof, which would be excessive in relation to the concrete and direct military advantage anticipated" (§ 5 (b)).

(b) Submissions

51. The Defence submits that there is no evidence that the Accused committed any acts of attack on civilians.⁷⁴ It further states that the town of Dubrovnik was used for military purposes which rendered it a military target. In particular, it is submitted, the Crisis Staff, which allegedly controlled the activities of the Croatian defence,⁷⁵ was located in the Old Town and mortar positions were located from 100 to 130 metres from the Old Town.⁷⁶

52. The Prosecution refers to evidence relating to the use of the Municipal Assembly Building located in the Old Town by the Crisis Staff and, relying on the presumption of civilian status provided for by Additional Protocol 1, submits that this fact does not convert the building at issue into a military objective.⁷⁷ The Prosecution refers to the evidence showing that the vast majority of the projectiles were aimed at the Old Town and not at nearby military objectives, if such existed.⁷⁸

⁷⁰ The Prosecution opening statement, T. 263-7.

⁷¹ See *Prosecutor v. Tihomir Blaškić*, Case No. IT-95-14-T, Judgement, 3 March 2000 (hereinafter "*Blaškić* Trial Judgment"), para. 180, *Prosecutor v. Dario Kordić and Mario Čerkez*, Case No. IT-95-14/2-T, Judgement, 26 February 2001 (hereinafter "*Kordić* Trial Judgment"), para. 328 and *Prosecutor v. Stanislav Galić*, Case No. IT-98-29-T, Judgement, 5 December 2003 (hereinafter "*Galić* Trial Judgment"), para. 62.

⁷² See *Blaškić* Trial Judgment, para. 180. In the *Blaškić* and *Kordić* Trial Judgements an additional condition is mentioned, that the attack was launched not through military necessity (*Ibid.*). The Trial Chamber in the *Galić* case observed, however, that Article 51 (2) of Additional Protocol I states in clear language that civilians and the civilian population as such should not be the object of attack and does not mention any exceptions, in particular that provision does not contemplate derogating from that rule by invoking military necessity (*Ibid.*, para. 44).

⁷³ See *Prosecutor v. Duško Tadić*, Case No. IT-94-1-T, Judgement, 7 May 1997 (hereinafter "*Tadić* Trial Judgment"), para. 638 and *Blaskić* Trial Judgment, para. 214.

⁷⁴ Defence Motion, para. 35.

⁷⁵ Defence Reply, para. 12.

⁷⁶ Defence Motion, para. 42.

⁷⁷ Prosecution Response, para. 43.

⁷⁸ *Ibid.*, para. 45.

It further submits that, even assuming that there were military objectives in the Old Town, in any event, directing artillery fire into the Old Town in the circumstances would violate the proportionality principle.⁷⁹

(c) Discussion

53. As regards the particular elements of the crime of attacks on civilians, there is much evidence that on 6 December 1991 the Old Town of Dubrovnik was shelled.⁸⁰ As has been indicated, on the basis of this evidence, a Trial Chamber could conclude that there was an attack.

54. The evidence relating to deaths and/or injury resulting from the attack has been analysed above in connection with the charges of murder and cruel treatment.⁸¹

55. As regards the nature of the population at issue, there is a considerable body of evidence that no troops or soldiers were present within the Old Town in the relevant period of time⁸² or that, even if present, their numbers were very small.⁸³ The Trial Chamber is of the view that on the evidence a Trial Chamber could conclude that, even if there were some non-civilians in the Old Town, their number was not such as to deprive the Old Town of its “predominantly civilian” character.

56. The Defence has referred the Chamber to evidence which, in its view, demonstrates that the Old Town and its immediate vicinity were used for military purposes.⁸⁴ Acknowledging the existence of this, the Trial Chamber is of the view that this evidence is not sufficient to preclude a reasonable trier of fact making a finding as to the “predominantly civilian” character of the population in the Old Town.

57. The Trial Chamber recalls the above case-law to the effect that the crime of attacks on civilians concerns attacks launched intentionally in the knowledge, or when it was impossible not to know, that civilians were the object of the attack and observes that evidence to this effect has been presented.⁸⁵ This Chamber is of the view that on this evidence a Trial Chamber could make such findings.

⁷⁹ *Ibid.*, para. 46.

⁸⁰ Among many others: Per Hvalkof T. 2188-2207, Slavko Grubišić, T. 1036-38, Ivo Grbić; T. 1357-69, 1443-44; Nikola Jović, T. 2932-35; Exhibit P34; *see also supra* para. 23.

⁸¹ *See* Sections III.B.1 and 2.

⁸² Slavko Grubišić, T. 1030, 1031 and 1039; Ivo Grbić T. 1370-71; Ivan Mustac, T. 1476-77, 1511, 1520-21; Mato Valjalo, T. 2011-12, 2054; Nikola Jović, T. 2966; Zineta Ogręsta, T. 3493; Per Hvalkof, T. 2218-19; Ivan Negodić, T. 5240-41.

⁸³ Djordje Ciganović, T. 2902.

⁸⁴ Defence Motion, para. 42.

⁸⁵ Adrien Stringer describes a discussion with the Accused at which the issue of evacuation of people from Dubrovnik was mentioned (T. 342); Ambassador Fietelaars referred to a meeting of the EU ambassadors with Admiral Brovet from the JNA, when they expressed their concern about attacking a civilian population allegedly as a response to a military

58. Nonetheless, even assuming that the evidence before the Chamber indicates that there were military objectives in or in the immediate vicinity of the Old Town, there is evidence capable of establishing that the shelling was carried out with no distinction between military and other objectives⁸⁶, as well as evidence in support of the alternative allegation of launching a disproportionate attack, as defined above. In light of the evidence concerning the loss of civilian life and injury to civilians, on the one hand, and the evidence relating to the issue of military objectives within the Old Town on the other, the Trial Chamber considers that there is evidence on which a Trial Chamber could conclude that there was an excessive attack in the relevant sense.

(d) Conclusion

59. In the view of the Chamber, there is sufficient evidence on which a Trial Chamber could conclude that the charge of attacks on civilians has been established.

C. Crimes Against Property – Violations of the Laws or Customs of War (Counts 4-6)

1. The Law

60. The Indictment charges the Accused with criminal liability for the following violations of the laws or customs of war: devastation not justified by military necessity (*Count 4*), unlawful attacks on civilian objects (*Count 5*), and destruction or wilful damage done to institutions dedicated to religion, charity and education, the arts and sciences, historic monuments and works of art and science (hereinafter “Cultural Property”) (*Count 6*), punishable under Article 3 of the Statute. The elements of these crimes have been elaborated, to a certain extent, in the jurisprudence of the Tribunal and are, in part, overlapping. For this reason, the Chamber deems it sufficient to discuss the elements of these crimes jointly in one section of this decision. The Chamber does not find it necessary, at this stage, to discuss the law in detail relating to these crimes, since the Chamber can reach its findings for the purposes of Rule 98 *bis* based on the existing jurisprudence.⁸⁷

61. As regards *Count 4*, punishable under Article 3 (b) of the Statute, the Chamber observes that the definition of devastation not justified by military necessity has been considered by the Trial Chamber in *Kordić*, where it was held that the elements of this crime are satisfied if: “(i) the destruction of property occurs on a large scale; (ii) the destruction is not justified by military

threat (T. 4191); Witness B mentions some JNA soldiers who were wondering why the Old Town was being targeted when not a single shell from there fell on Žarkovica (T. 5040); Admiral Jokić says the JNA was aware that there were civilians living and working in the Old Town (T. 3921-22).

⁸⁶ Witness B, T. 5046-47; Ivan Negodić, T. 5267.

⁸⁷ See *supra* paras 24-28.

necessity; and (iii) the perpetrator acted with the intent to destroy the property in question or in reckless disregard of the likelihood of its destruction.”⁸⁸

62. Regarding *Count 5*,⁸⁹ the Chamber observes that civilian objects enjoy a similar level of protection as a civilian population.⁹⁰ Article 52 of the Additional Protocol I stipulates that “[c]ivilian objects shall not be the object of attack or of reprisals” and “civilian objects are all objects which are not military objectives”.⁹¹ “Military objectives” are limited to “those objects which by their nature, location, purpose or use make an effective contribution to military action and whose total or partial destruction, capture or neutralisation, in the circumstances ruling at the time, offers a definite military advantage.”⁹² In case of doubt as to whether an object is used for civilian or military purposes, this object shall be presumed not to be used for military purposes.⁹³

63. The jurisprudence of the Tribunal identifies the following elements of this crime: *actus reus* – an attack launched against civilian objects⁹⁴ and causing damage⁹⁵ to those objects; *mens rea* – “an attack must have been conducted intentionally in the knowledge, or when it was impossible not to know, that [...] civilian property [was] being targeted”⁹⁶

64. In relation to *Count 6*, punishable under Article 3 (d) of the Statute, it has been held by this Tribunal that the elements of this crime are satisfied if: (i) the damage or destruction has been committed to institutions which may clearly be identified or regarded as dedicated to religion;⁹⁷ (ii) the property was not used for military purposes⁹⁸ at the time of the acts and must not have been in

⁸⁸ *Kordić* Trial Judgement, para. 346. This definition has also been endorsed by the Trial Chamber in the *Naletilić* Trial Judgement, paras 578-579. See also *Blaškić* Trial Judgement, para. 183, where the only difference in the definition was the *mens rea* requirement, that “the devastation must have been perpetrated intentionally or have been the foreseeable consequence of the acts of the accused” as opposed to “intent” or “reckless disregard”.

⁸⁹ The Chamber has jurisdiction over the Accused under customary international law as recognised in Article 52 of the Additional Protocol I. See *supra* footnote 40.

⁹⁰ See *supra* para. 50; Additional Protocol I, Article 51, paras 4 and 5.

⁹¹ Additional Protocol I, Article 52, para. 1.

⁹² *Ibid.*, para. 2.

⁹³ *Ibid.*, para. 3.

⁹⁴ *Kordić* Trial Judgement, para. 328.

⁹⁵ *Blaškić* Trial Judgement, para. 180. The *Kordić* Trial Judgement held that the damage should be “extensive” *ibid.*, para. 328.

⁹⁶ *Blaškić* Trial Judgement, para. 180. Additionally, the *Blaškić* Trial Chamber held that “civilian property covers any property that could not be legitimately considered a military objective.” (emphasis added). In the *Blaškić* and *Kordić* Trial Judgements an additional condition is mentioned, that the attack was launched not through military necessity. *Ibid.*; For the latter condition see discussion at *supra* footnote 72.

⁹⁷ *Blaškić* Trial Judgement, para. 185; *Naletilić* Trial Judgement, para. 605. Both judgements dealt only with the destruction of an institution dedicated to religion and therefore limit the definition to this object.

⁹⁸ *Naletilić* Trial Judgement, para. 605. The *Kordić* Trial Chamber, relying on Article 27 of the Hague Regulations of 1907, held that “protection of whatever type will be lost if cultural property, [...], is used for military purposes.”, para. 362.

the immediate vicinity of military objectives⁹⁹; and (iii) “the perpetrator acted with the intent to destroy the property”.¹⁰⁰

2. Submissions

65. In relation to all three counts, the Defence submits that “there is no evidence that the Accused has participated in devastation not justified by military necessity, unlawful attacks on civilian objects or [d]estruction or wilful damage done to [Cultural Property]”.¹⁰¹

66. In respect to *Count 4*, the Defence submits that the *mens rea* element of the crime is that “the Accused acted with intention to destroy property or showed gross negligence as to the possibility that the same will be destroyed”.¹⁰² It subsequently claims that “[t]here is no evidence which could show that an element of wilful intent existed on the part of the Accused to commit the described crime”.¹⁰³

67. With regard to *Count 5*, the Defence submits that no evidence exists to support the count of unlawful attacks on civilian objects for the same reasons as presented for *Count 4*.¹⁰⁴

68. In relation to *Count 6*, the Defence submits that “protection is lost in cases where cultural heritage is used for military purposes”.¹⁰⁵ It further states that “[t]he fact that the Old Town and its immediate vicinity were used for military purposes means that the Old Town lost its protection envisaged by the United Nations Educational, Scientific and Cultural Organization.”¹⁰⁶ It claims that the Old Town and the immediate vicinity thereof, was used by various Croatian armed forces both before and on 6 December 1991 for military purposes, “whereby protected objects become legitimate military targets”.¹⁰⁷

69. Furthermore, the Defence submits that no evidence was presented on which one could distinguish damage to property on 6 December 1991 from what had happened before and after the

⁹⁹ *Blaškić* Trial Judgement, para. 185.

¹⁰⁰ *Naletilić* Trial Judgement, para. 605. See also *Blaškić* Trial Judgement, para. 185 and *Kordić* Trial Judgement, para. 361. In the *Kordić* Trial Judgement, it was held that while this offence overlaps to a certain extent with the offence of unlawful attacks on civilian objects, when the acts in question are directed against cultural heritage, the provision of Article 3 (d) is *lex specialis*, para. 361.

¹⁰¹ Defence Motion, para. 36.

¹⁰² *Ibid.*, para. 37 with reference to the *Kordić* Trial Judgement, para. 346. However, as pointed out *supra*, the *Kordić* Trial Judgement identifies the *mens rea* element as “intent or reckless disregard of the likelihood”. The Defence seems to have misquoted the case.

¹⁰³ Defence Motion, para. 37.

¹⁰⁴ *Ibid.*, para. 38.

¹⁰⁵ *Ibid.*, para. 39, referring to *Kordić* Trial Judgement, para. 362.

¹⁰⁶ *Ibid.* See also *supra* para. 51.

¹⁰⁷ *Ibid.*, para. 42.

said time.¹⁰⁸ In relation to Schedule II to the Indictment, the Defence claims that there is no evidence that damage occurred to 361 buildings and structures out of the 450 buildings or structures listed in Schedule II.¹⁰⁹

70. With regard to these three counts of the Indictment the Prosecution made a single submission. The Prosecution has not made submissions on the Accused's *mens rea* separately for each of the three counts.¹¹⁰ The Prosecution submits that "[e]ach structure or building within the Old Town is accorded protection" as an "historic monument" falling under the definition of Article 3 (d) of the Statute and as "a civilian object [...] under Article 52 of Additional Protocol I". It further submits that "[e]ach object was damaged as a result of the JNA's unlawful attack on the Old Town on 6 December 1991."¹¹¹

71. The Prosecution's submission in relation to the Defence claim that the Old Town was used for military purposes, has been already discussed in relation to Count 3.¹¹² Additionally, the Prosecution suggests that damage to the Old Town, a UNESCO World Cultural Heritage Site, "should weigh more heavily in the proportionality equation than damage to other similar civilian objects".¹¹³ The Prosecution acknowledges that "a number of buildings listed in Schedule II were also damaged by shelling in either October or November 1991". However, it submits that there is evidence enabling the Chamber "to distinguish between the earlier and later damage".¹¹⁴ Finally, the Prosecution submits that it has adduced evidence "of the total destruction of the six buildings [mentioned] in paragraph 23 of the [Indictment]"¹¹⁵ and "direct evidence of damage to 145 of the objects and structures listed [in Schedule II]"¹¹⁶.

3. Discussion

72. Initially, the Chamber notes that, apart from the six buildings mentioned in paragraph 23 of the Indictment, in their submissions the Parties have exclusively referred to buildings and structures listed in Schedule II, annexed to the Indictment. However, the Indictment as it stands in this part is

¹⁰⁸ *Ibid.*, para. 43.

¹⁰⁹ The Defence provided a list of 356 buildings and structures for which it is contended "there is no proof of any damage whatsoever"; for some of those 356 buildings and structures the Defence indicated double entries; Defence Motion, para. 46 and pp. 18-20. In its Reply the Defence identified damage to five additional buildings and structures which, in its submission, was not supported by any evidence. Defence Reply, paras 29-31.

¹¹⁰ *Cf.* Prosecution Response, section VII.

¹¹¹ Prosecution Response, para. 24.

¹¹² *See supra* para. 52.

¹¹³ Prosecution Response, para. 42.

¹¹⁴ *Ibid.*, para. 38.

¹¹⁵ *Ibid.*, para. 25.

¹¹⁶ *Ibid.*, para. 34. The Prosecution attaches an Annex II to their Response, which lists references to evidence of the alleged damage in relation to 145 buildings.

not limited to this listing.¹¹⁷ The Chamber has not interpreted the silence on the part of the Prosecution as a change in this respect and will in its assessment also deal with buildings and structures not listed in Schedule II when otherwise directly identifiable.

73. As discussed above,¹¹⁸ on the basis of the Prosecution evidence, a Trial Chamber could be satisfied that there was an attack on the Old Town of Dubrovnik on 6 December 1991.

74. The Chamber accepts that there is sufficient evidence, for the purposes of this Rule 98 *bis* decision, that substantial damage occurred to some buildings and structures during the attack on 6 December 1991.¹¹⁹ The Chamber accepts that some of the buildings and structures, which could be found to have been damaged on 6 December 1991, had already sustained some degree of damage from earlier shelling in October and November, but nevertheless retains them for the purposes of the Rule 98 *bis* decision, leaving the final evaluation of this matter for a later stage.

75. Both Parties agree that there is no evidence in relation to 302 of the 450 buildings and structures listed in Schedule II. The Chamber accepts this and therefore dismisses them on this basis.¹²⁰ As for the remaining 148 buildings and structures listed in Schedule II, the Defence has not raised any objections in relation to 89 of these.¹²¹ Therefore, the Chamber retains these 89 buildings and structures for the purposes of this Rule 98 *bis* decision as the subject of evidence of damage on 6 December 1991. In relation to the balance of the 59 buildings and structures which are contested by the Defence, the Chamber's findings, made only for the purposes of this Rule 98 *bis* decision, are included in an Annex attached to this decision.¹²²

76. Annex Part A lists 96 buildings and structures, which the Chamber was able to identify in Schedule II and for which there is evidence capable of establishing that those buildings and structures were damaged during the attack on 6 December 1991. The sum of 96 includes the 89 uncontested buildings and structures and 7 of the contested 59. Further, the Chamber finds that there is evidence capable of establishing that 6 buildings in this list were completely burnt down.¹²³

¹¹⁷ The Indictment in para. 24 charges the Accused with destruction or damage to the buildings and structures which are listed in Schedule II but is *not limited* to those listed.

¹¹⁸ See *supra* para. 53.

¹¹⁹ The Chamber notes the evidence of the witnesses who testified generally about the damage sustained to the buildings and structures in the Old Town but not specifically relating to a particular building, e.g. Luciana Peko, T. 1966-67, Lars Brolund, T. 879, 881, Nikola Jović, T. 3034-35.

¹²⁰ Defence Motion, pp. 18-20; Defence Reply, para. 30; Prosecution Response, Annex II.

¹²¹ *Ibid.*

¹²² See Annex, Part A. The Chamber has given sequential numbers to all 450 buildings and structures as they appear in Schedule II to the Indictment and uses these sequential numbers for the purposes of identification. Reference to the evidence, which the Chamber deems as being sufficient for the purposes of this 98 *bis* decision, is made in the Annex in the footnotes to the relevant *contested* buildings and structures.

¹²³ See Annex Part A, Nos A9, A10, A11, A57, A59 and A78 and para. 23 of the Indictment.

77. In addition to those 96 buildings and structures, the Chamber finds that there is sufficient evidence, for the purposes of Rule 98 *bis*, in respect of another 20 identified buildings and structures as having been damaged on 6 December 1991 in the attack. The Chamber lists them in Annex Part B. There is evidence capable of establishing that these 20 buildings and structures are located in the Old Town but, on the evidence, they cannot be readily identified in Schedule II. They are retained for the purposes of this Rule 98 *bis* decision.¹²⁴ There is evidence that among the buildings destroyed were residential blocks, public places and shops, which entailed grave consequences for the residents or the owners, i.e. their homes and businesses were destroyed.¹²⁵

78. In its decision to dismiss 52¹²⁶ buildings and structures of the 59 contested by the Defence, the Chamber, for the purposes of this Rule 98 *bis* decision, is persuaded that the Prosecution evidence is not sufficient because those dismissed buildings and structures are either (i) not mentioned in the evidence; or (ii) cannot be identified from the evidence; or (iii) while mentioned in the evidence no damage is identified; or (iv) confused with other object(s) or double listed.

79. Regarding the element of the civilian nature of the targets and the question of military necessity which have been discussed above, the Prosecution has provided sufficient evidence, as has been indicated earlier, for the purposes of Rule 98 *bis* as to the Old Town's "predominantly civilian" character. On this basis a Trial Chamber could conclude that the destruction of property in the Old Town was not justified by military necessity.¹²⁷ Moreover, there is no evidence to suggest that any of the, in total, 116 buildings and structures identified by the Chamber, for the purposes of Rule 98 *bis*, as having been damaged on 6 December 1991, were used for military purposes or served as military objectives.

80. In relation to *Count 6* specifically, the Chamber observes that there is evidence that the Old Town of Dubrovnik in its entirety was entered onto the World Heritage List in 1979 upon the nomination of the SFRY.¹²⁸ The properties inscribed on the World Heritage List are those cultural and natural properties deemed to be of outstanding universal value from the point of view of history, art or science.¹²⁹ Therefore, the Chamber is of the view that on the evidence property within the Old Town could be found to be within the scope of the phrase "institutions dedicated to religion, charity and education, the arts and sciences, historic monuments and works of art and science" under Article 3(d) of the Statute. Thus, a reasonable trier of fact could conclude that the

¹²⁴ See Annex, Part B.

¹²⁵ See Annex Part A, e.g. Nos A11, A15, A18, A20, A22, A92.

¹²⁶ The Chamber notes that among those 52 dismissed are the buildings and structures which were double entries in Schedule II.

¹²⁷ See *supra* paras 55 and 58.

¹²⁸ Dr. Kaiser, T. 2378-79, Exhibit P63/2.

¹²⁹ Exhibit P63/8, paras 6 and 23.

attack launched by the JNA forces against the Old Town on 6 December 1991, was an attack directed against Cultural Property within the meaning of Article 3(d) of the Statute. The Trial Chamber also observes that among those buildings, which for the purposes of Rule 98 *bis* have been found to be the subject of evidence as to damage in the attack, were monasteries, churches, a mosque and palaces.¹³⁰

81. In relation to *Count 4*, the Trial Chamber is of the view that for the purposes of Rule 98 *bis*, the direct perpetrators' intent to destroy property or to act in reckless disregard of the likelihood of its destruction could be inferred by a Trial Chamber from the evidence that could support findings that the attack on the Old Town was launched intentionally, and that the direct perpetrators were aware of the civilian or predominantly civilian character of the Old Town.¹³¹ For *Count 5*, the direct perpetrators' intent to deliberately attack civilian objects in the knowledge, or when it was impossible not to know, that civilian property was being targeted, can be inferred on the same basis. Similarly, for *Count 6*, the direct perpetrators' intent to deliberately destroy cultural property could be inferred by a Trial Chamber from the evidence capable of establishing that: the attack on the Old Town was launched intentionally;¹³² the unique cultural and historical character of which was a matter of renown; the Old Town was a UNESCO World Cultural Heritage Protected Site;¹³³ and protective UNESCO emblems were visible from the JNA positions at Žarkovica above the Old Town on 6 December 1991.¹³⁴

82. The Chamber reiterates that the issues relating to the responsibility of the Accused for these crimes are dealt with in Section III.D of this Decision.

4. Conclusion

83. On the basis of the foregoing, the Chamber is of the opinion that there is evidence on which a Trial Chamber could conclude that the allegations of damage in Counts 4, 5 and 6 of the Indictment were established in relation to 96 buildings and structures, remaining from the original list of 450 in Schedule II to the Indictment, including the six buildings mentioned in paragraph 23

¹³⁰ E.g. Franciscan Monastery, Orthodox Church, St. Vlaho Church, Mosque, Onofrio Fountain, Cathedral, Rector's Palace, Synagogue, etc. See Annex Part A, the buildings listed under Nos A4, A28, A14, A39, A7, A13, A93; and Part B, building B3.

¹³¹ See *supra* para. 57.

¹³² See *supra* para. 57.

¹³³ See *supra* para. 80.

¹³⁴ The video evidence shows clearly visible emblems indicating that the buildings and the structures within the Old Town were protected, e.g. Minceta Fort. P78 (13.11-13.20, 13.05-13.10, 17.19-17.27, 38.21-38.32). See especially evidence of Witness B, a JNA soldier positioned at Žarkovica during the attack on the Old Town on 6 December 1991. He testified that, on 6 December 1991, he observed some flags flying over the buildings. He personally did not know what the flags meant, "but the others were saying that those flags were there to protect the section of the town in the sense that that portion of the town was not to be targeted". Witness B, T. 5048.

of the Indictment, and an additional 20 buildings and structures which are otherwise within the scope of the Indictment.

D. The Accused's Individual Criminal Liability under Article 7 of the Statute

84. The Indictment alleges that the Accused bears direct criminal responsibility under Article 7(1) of the Statute for having ordered and aided and abetted the crimes set out in Counts 1 to 6. It further alleges that on all counts, he bears criminal responsibility under Article 7(3) as a commander of the JNA forces who committed the alleged crimes.

1. Ordering

85. This form of liability requires that an accused possessed the authority to order the commission of a crime. A formal superior-subordinate relationship between the person giving the order and the one executing it is not a requirement in itself, nor is it that the order be given in writing, or in any particular form, or directly to the individual executing it.¹³⁵ The existence of an order may be proven through direct or circumstantial evidence.¹³⁶ With regard to the requisite *mens rea*, it must be established that the accused intended the crime to be committed or was aware of the substantial likelihood that the commission of the crime would be a consequence of his acts.¹³⁷

86. With respect to the legal definition of this form of liability, the Defence submits that it must also be established that the person who has committed the crime “did so while acting in accordance with a plan or order”.¹³⁸ The jurisprudence of the Tribunal does not provide a clear answer whether the proof of a causal link between the order and the commission of the crime is required. However, with respect to an analogous form of responsibility, namely instigation, the jurisprudence of the Tribunal has established that a causal link between the act of instigation and the physical perpetration of a crime needs to be demonstrated as part of the *actus reus*. This link, however, need not be such as to show that the offence would not have been perpetrated without the participation of the instigator.¹³⁹ For present purposes, without reaching a final decision on these

¹³⁵ *Kordić* Trial Judgement, para. 388.

¹³⁶ *Blaškić* Trial Judgement, para. 281; *Kordić* Trial Judgement, para. 388. In this respect, ordering “may be inferred from a variety of factors, such as the number of illegal acts, the number, identity and type of troops involved, the effective command and control exerted over these troops, the logistics involved, the widespread occurrence of the illegal acts, the tactical tempo of the operations, the *modus operandi* of similar acts, the officers and staff involved, the location of the superior at the time and the knowledge of that officer of criminal acts committed under his command”, *Galić* Trial Judgement, para. 171.

¹³⁷ *Prosecutor v. Miroslav Kvočka et al*, Case No. IT-98-30/1-T, Judgement, 2 November 2001 (hereinafter “*Kvočka* Trial Judgement”), para. 252; *Galić* Trial Judgement, para. 172.

¹³⁸ Defence Motion, para. 18. The Defence referred to the *Blaškić* Trial Judgement, in which the Chamber stated that the person who perpetrated the *actus reus* of the crime “must have acted in furtherance of a plan or order”, *Blaškić* Trial Judgement, para. 278.

¹³⁹ *Kordić* Trial Judgement, para. 387; *Kvočka* Trial Judgement, para. 252; *Naletilić* Trial Judgement, para. 60. The “but for” test was not adopted in this respect.

matters, the Chamber will proceed on the basis that the form of liability described as “ordering” is closely associated with that of “instigating”, subject to the additional requirement that the person ordering the commission of a crime have authority over the person physically perpetrating the offence. Hence, the Trial Chamber will proceed on the basis that, with respect to “ordering”, a causal link between the order and the commission of the offence must be shown. Thus, in the present case, for the allegations that the Accused ordered the crimes charged under Counts 1 to 6 to remain, there must be evidence capable of establishing that an order of the Accused contributed in fact to the commission of the crime.

87. The Defence submits that there is no evidence that the Accused ordered the unlawful artillery shelling of Dubrovnik on 6 December 1991. It also submits that there is no evidence of the Accused’s intent to commit the alleged crimes.¹⁴⁰ It further argues that, to the contrary, the Accused issued direct orders forbidding attacks against the Old Town of Dubrovnik and took special measures to secure its protection.¹⁴¹ Finally, it maintains that the evidence of Prosecution witness Colm Doyle is inconclusive, and that the Prosecution pre-trial brief does not provide any information in support of the Prosecution’s case for engaging the Accused’s responsibility for ordering.¹⁴²

88. The Prosecution responds, in particular, that it has adduced circumstantial evidence that the Accused “indirectly or implicitly” ordered the unlawful attack on the Old Town.¹⁴³ It refers to the evidence that a battalion commander would not initiate combat activities without authorisation from his superior, that Vladimir Kovačević visited the command of the 2nd Operational Group on the evening of 5 December 1991 and that the same day he spent several hours preparing for the attack.¹⁴⁴ Further, it refers to the evidence on the failure of three senior officers to stop the attack,¹⁴⁵ on the Accused’s subsequent apparent endorsement of Vladimir Kovačević’s version of the events of 6 December 1991,¹⁴⁶ the absence of disciplinary action against Vladimir Kovačević and his promotion. By virtue of these events, it submits it should be implied that Vladimir Kovačević was acting under orders from the Accused. The Defence replies that the Prosecution evidence regarding “ordering” is based solely on a misinterpretation of the circumstantial evidence.

89. The Trial Chamber is satisfied that there is some evidence upon which a Trial Chamber could find the Accused responsible for ordering the unlawful shelling of the Old Town on 6

¹⁴⁰ Defence Motion, paras 18 and 19.

¹⁴¹ *Ibid.*, paras 22 and 23.

¹⁴² *Ibid.*, para. 21, footnote 20.

¹⁴³ Prosecution Response, para. 48.

¹⁴⁴ *Ibid.*, para. 48.

¹⁴⁵ *Ibid.*, para. 48.

¹⁴⁶ *Ibid.*, para. 48.

December 1991. Apart from the circumstantial evidence, the witness, Colm Doyle, testified that he met the Accused on 6 December 1991, shortly after 12.00 noon, in the outskirts of Trebinje.¹⁴⁷ The evidence was that, in the course of the meeting, the Accused explained to Colm Doyle through an interpreter that he was angry because paramilitaries in the territory of Bosnia and Herzegovina had attacked some of the troops under his command, that this was something he would not tolerate, and that he had responded by firing on the city of Dubrovnik.¹⁴⁸ This evidence may properly be understood by a Trial Chamber as an admission by the Accused that on 6 December 1991 there has been firing on the city of Dubrovnik by troops under his command,¹⁴⁹ which occurred as the Accused's deliberate response to conduct of opposing forces in Bosnia and Herzegovina. Although the Accused did not specify particularly the Old Town, the reference to the city of Dubrovnik is capable of being understood as a reference including the Old Town, which is consistent with the actual attack. There is, of course, much reason in the evidence to approach the evidence of this meeting and the Accused's words with caution, but it is apparently credible evidence, which a Trial Chamber might well accept and act on. That being so, this evidence alone is sufficient to preclude the acceptance of the Defence Motion in this respect.

90. There is also other evidence upon which relevant findings by inference could be made by a Trial Chamber. This includes evidence that on the eve of the 6 December 1991 attack, Vladimir Kovačević went to the post of the command of the 2nd Operational Group, and did so without the knowledge of his immediate superior Admiral Jokić,¹⁵⁰ that the attack involved planning and could not be characterised as spontaneous,¹⁵¹ and that more than one unit participated in the shelling of 6 December 1991¹⁵² which implies a degree of coordination as would be associated with an order from higher command. While the Accused relies on an order for a cease-fire issued on 5 December 1991, there is evidence that this order was only to take effect at 12.00 noon on 6 December 1991,¹⁵³ whereas the attack was launched well before that time. A Trial Chamber in considering the

¹⁴⁷ Colm Doyle, T. 1712-13.

¹⁴⁸ Colm Doyle, T. 1716.

¹⁴⁹ The fact that the shelling of 6 December was carried out by troops under the Accused's command was supported also by the following evidence: Admiral Jokić, T. 4049; Witness B testified that the firing was carried out by Vladimir Kovačević, T. 5035. A number of witnesses testified that the fire came from Zarkovica. *See* for example Slobodan Vuković, T. 6019; Davorin Rudolf, T. 5565. Admiral Jokić testified that the JNA unit positioned there was the 3rd Battalion of the 472nd Motorised Brigade, T. 4014. *See* also Exhibit P132.

¹⁵⁰ Admiral Jokić, T. 4132.

¹⁵¹ Admiral Jokić would not characterise the attack as a spontaneous attack. He testified that it could have been prepared on 5 December 1991, that Vladimir Kovačević would have had to carry out preparations with his company commander and would have needed several hours to prepare the attack, T. 4130-31. *See* also, Davorin Rudolf, who testified that it was his impression that the attack was synchronised and touched all parts of the city but that he does not know whether it was the work of organised units of the JNA or of a renegade one, T. 5612-13.

¹⁵² Admiral Jokić testified that on 6 December 1991 the 3rd Battalion of the 5th Brigade was firing at Babin Kuk and Lapad, T. 4092, 4944-45. *See* also Defence Exhibit D65, p. 2. Per Hvalkof testified that the shelling of 6 December 1991 was "from land and sea", T. 2190.

¹⁵³ Admiral Jokić, T. 4040-41.

inferences to be drawn from this evidence might also have regard to the evidence which could support a finding that the Accused had taken no disciplinary action following earlier attacks on the Old Town in October and November by forces under his command, and evidence from which it could be found that without military justification, he had kept the 3rd Battalion of the 472nd Motorised Brigade in the position from which that unit attacked the Old Town on 6 December, as noted later in this decision.¹⁵⁴ In view of the above, the Trial Chamber is satisfied that there is also circumstantial evidence capable of persuading a Trial Chamber that the Accused ordered the attack of 6 December 1991. If a Trial Chamber found that the Accused ordered the attack, it would also be open to that Chamber to infer the necessary intent because of the obvious risk to life and property of an artillery attack on an inhabited city.

2. Aiding and Abetting

91. Aiding and abetting has been defined in the case-law of the Tribunal as the act of rendering a substantial contribution to the commission of a crime, whether in the form of practical assistance, encouragement or moral support,¹⁵⁵ before, during or after the commission of the crime.¹⁵⁶ It is not necessary to establish a cause and effect relationship between the contribution and the commission of the crime.¹⁵⁷ Regarding the requisite *mens rea*, it must be established that the aider and abetter was aware that his acts were assisting in the commission of the crime by the principal.¹⁵⁸ While the aider and abetter need not share the *mens rea* of the principal, he must be aware of the essential elements of the crime ultimately committed by the principal.¹⁵⁹

92. Without turning to the detailed submissions, it can be said at once that the evidence in this case, which has just been identified, on which a reasonable Tribunal could conclude that the Accused ordered the attack on 6 December 1991, is also capable in the circumstances of the case, of supporting a finding by a Trial Chamber that the Accused aided and abetted the charged offences committed in the course of the attack. The submissions of the Defence to the contrary are founded essentially on the premise that the evidence cannot support a finding that the Accused ordered the attack.

¹⁵⁴ *Infra.*, para. 101.

¹⁵⁵ *Prosecutor v. Duško Tadić*, Case IT-94-1-A, Judgement, 15 July 1999 (hereinafter “*Tadić Appeals Judgement*”), para. 229; *Prosecutor v. Aleksovski*, Case No. IT-95-14/1-A, Judgement, 24 March 2000 (hereinafter “*Aleksovski Appeals Judgement*”), para. 164; *Čelebići Appeals Judgement*, para. 352.

¹⁵⁶ *Aleksovski Trial Judgement*, para. 62. See also *Kunarac Trial Judgement*, para. 391; *Kvočka Trial Judgement*, para. 256.

¹⁵⁷ *Aleksovski Appeals Judgement*, para. 164.

¹⁵⁸ *Tadić Appeals Judgement*, para. 229; *Aleksovski Appeals Judgement*, para. 162, referring to *Prosecutor v. Anto Furundžija*, Case No. IT-95-17/1-T, Judgement, 10 December 1998, para. 249.

¹⁵⁹ *Aleksovski Appeals Judgement*, para. 162.

3. Command responsibility

93. In order to invoke criminal responsibility under Article 7(3) of the Statute, three elements must be satisfied.¹⁶⁰ First, the existence of a *de jure* or *de facto* superior-subordinate relationship must be established.¹⁶¹ Such relationship presupposes that the superior has effective control over the offenders, otherwise described as the material ability to prevent or punish the alleged offences.¹⁶² Secondly, the superior must have known or had reason to know that the criminal act was about to be or had been committed. This may be established through proof that the superior had actual knowledge that his subordinates were about to or had committed the alleged offences or that he had in his possession information of such a nature as to put him on notice of such risk.¹⁶³ Thirdly, it must be established that the superior failed to take the necessary and reasonable measures within his capacity to prevent the criminal act or punish the perpetrator thereof.¹⁶⁴

94. The Defence submits that “the Prosecution has not provided a single piece of evidence in relation to the ambit of the Accused’s authority”¹⁶⁵ and that, in particular, “[t]here is no evidence whatsoever that the Accused is responsible in terms of Article 7(3) with regard to the allegation that the forces who were under his command committed the acts described in Counts 1 to 6 of the Indictment”¹⁶⁶ as “they continued to be subordinated within their regular chains of command”.¹⁶⁷

95. The Prosecution responds that it has adduced sufficient evidence of the Accused’s position of authority as commander of the 2nd Operational Group over the forces who carried out the attack on 6 December 1991.¹⁶⁸ The Prosecution further submits that there is evidence that the Accused knew of previous shelling of the Old Town in October and November by forces under his command, which occurred despite written orders precluding such attacks, but no disciplinary action

¹⁶⁰ *Prosecutor v. Zejnil Delalić et al.*, Case No. IT-96-21-T, Judgement, 16 November 1998 (hereinafter “*Čelebići* Trial Judgement”), para. 346. See also *Kordić* Trial Judgement, para. 401; *Blaškić* Trial Judgement, para. 294; *Kvočka* Trial Judgement, para. 314.

¹⁶¹ *Čelebići* Appeals Judgement, para. 195, referring to *Čelebići* Trial Judgement, paras 370 and 371.

¹⁶² *Čelebići* Appeals Judgement, para. 256.

¹⁶³ *Čelebići* Trial Judgement, para. 383, as endorsed by the Appeals Chamber in *Čelebići* Appeals Judgement, para. 241. In particular, while knowledge cannot be presumed, it may be established by way of circumstantial evidence, in light of the following indicia: the number, type and scope of illegal acts, the time during which the illegal acts occurred, the number and type of troops involved, the logistics involved, the geographical location of the acts, the widespread occurrence of the acts, the speed of the operations, the *modus operandi* of similar illegal acts, the officers and staff involved and the location of the commander at the time. *Čelebići* Trial Judgement, para. 386 referring to the Final Report of the United Nations Commission of Experts, S/1994/674, p. 17. See also, *Blaškić* Trial Judgement, para. 307.

¹⁶⁴ *Čelebići* Trial Judgement, para. 395. See also, *Kordić* Trial Judgement, para. 443-447.

¹⁶⁵ Defence Motion, para. 31.

¹⁶⁶ *Ibid.*, para. 32.

¹⁶⁷ *Ibid.*, para. 30.

¹⁶⁸ It refers *inter alia* to evidence establishing the structure of the 2nd Operational Group, including the fact that the 3rd Battalion of the 472nd Motorised Brigade was part of this group (Prosecution Response, paras 52, 53 and 58), to evidence on the role of the 2nd Operational Group in the Dubrovnik operation (Prosecution Response, paras 52 and 54), and to evidence establishing the Accused’s actual power of command over units within the 2nd Operational Group (Prosecution Response, paras 59 and 60).

was taken. Moreover, the Accused was aware of the low level of discipline in his subordinate units, which would have alerted him to the threat posed to the Old Town.¹⁶⁹ The Prosecution further submits that the evidence could properly establish that the Accused was put on notice that the Old Town had been shelled at the latest at 7.00 in the morning of 6 December 1991.¹⁷⁰ With respect to the Accused's failure to take necessary and reasonable measures to prevent the attack of 6 December 1991, the Prosecution refers to the evidence concerning the Accused's failure to enforce prior cease-fire orders, to fully carry out the proposed withdrawal of the 472nd Motorised Brigade, and to impose disciplinary measures.¹⁷¹ It further refers to evidence which could support a finding that on 6 December 1991 the Accused failed to take necessary measures to stop the attack.¹⁷² Regarding the Accused's failure to punish the perpetrators, the Prosecution refers to the evidence in support of his failure to take disciplinary measures against the perpetrators, his failure to use the criminal justice channels for enforcing military discipline that were available to him,¹⁷³ as well as to his recommendation for the promotion of Vladimir Kovačević because of, and shortly after, the 6 December shelling.¹⁷⁴

96. The Defence replies that the only relevant command of the 3rd Battalion of the 472nd Motorised Brigade was the 9th VPS commanded by Admiral Jokić.¹⁷⁵ Furthermore, it argues that the Accused was not informed of the attack by his subordinate Admiral Jokić, but rather by the superior command.¹⁷⁶ Finally, the Defence submits that Admiral Jokić did carry out an investigation in relation to the shelling on 6 December 1991 and reported his findings to the General Staff in Belgrade.¹⁷⁷ It alleges that in the course of this investigation, Admiral Jokić undertook measures to replace the commander of the 3rd Battalion of the 5th Brigade but failed to do the same with the commander of the 3rd Battalion of the 472nd Motorised Brigade.¹⁷⁸

97. This Chamber finds that there is sufficient evidence upon which a Trial Chamber could conclude that the elements required to invoke the Accused's command responsibility for the acts of his subordinates have been made out.

¹⁶⁹ Prosecution Response, para. 67.

¹⁷⁰ *Ibid.*, paras 69 and 70.

¹⁷¹ *Ibid.*, para. 71.

¹⁷² *Ibid.*, paras 73 to 76.

¹⁷³ *Ibid.*, paras 77 and 78.

¹⁷⁴ *Ibid.*, para. 78.

¹⁷⁵ Defence Reply, para. 14.

¹⁷⁶ *Ibid.*, paras 25 and 26.

¹⁷⁷ *Ibid.*, para. 27.

¹⁷⁸ *Ibid.*, para. 27.

98. First of all, the Trial Chamber is satisfied that there is evidence upon which a Trial Chamber could be persuaded that the Accused had the necessary control and authority over the forces which committed the alleged offences. As stated above, there is evidence capable of establishing that it was forces of the 2nd Operational Group which conducted the attack on 6 December 1991, in particular the 3rd Battalions of the 472nd and 5th Motorised Brigades.¹⁷⁹ The evidence could support a finding that included in this 2nd Operational Group was the 9th VPS, which was in turn under the immediate command of Admiral Jokić, and that the 9th VPS included or had directly subordinated to it at the time those two battalions and any naval forces that may have been engaged in the attack.¹⁸⁰ The evidence could also support a finding that the Accused, as commander of the 2nd Operational Group had military command¹⁸¹ and the necessary authority and control over all units within the Group.¹⁸²

99. The Chamber is also satisfied that there is evidence capable of persuading a Trial Chamber that the Accused had effective control over his subordinates. In this respect, in particular, Milovan Zorc stated that all principles of command and control for the armed forces applied to the 2nd Operational Group and that its commander was the sole commander issuing orders.¹⁸³ Prosecution witness Admiral Jokić testified that the 2nd Operational Group had the fundamental organs enabling it to control combat operations.¹⁸⁴ More specifically, there are in evidence combat orders issued by the Accused to his subordinate units,¹⁸⁵ according to which the units were not to move forward without the Accused's authorisation.¹⁸⁶ Finally, there is evidence on which it could be found that the Accused had the means to prevent the commission of offences¹⁸⁷ and to enforce disciplinary measures.¹⁸⁸

¹⁷⁹ Admiral Jokić, T. 4092; 4944-45.

¹⁸⁰ Admiral Jokić, T. 3830-34; *See also*, Exhibit P100. Admiral Jokić further stated that according to the chain of command, he was receiving orders from and reporting to the Accused while issuing orders to his subordinate units, including the 3rd Battalion of the 472nd Motorised Brigade, T. 3856-58. *See also*, Exhibits P121 and P128. According to Prosecution expert witness Milovan Zorc, on 6 December 1991, the highest command of the 3rd Battalions of the 472nd Motorised Brigade and of the 5th Brigade was that of the 2nd Operational Group, the 3rd battalions being at the second level of subordination to the 2nd Operational Group, through the 9th VPS, T. 6689-91.

¹⁸¹ Admiral Jokić, T. 3825; Adrien Paul Stringer also stated that the Accused took over the position of General Ruzinovski as commander of the 2nd Operational Group on 13 October 1991, T. 334; *See also* Exhibit P2.

¹⁸² Admiral Jokić, T. 3825.

¹⁸³ Milovan Zorc, T. 6433.

¹⁸⁴ Admiral Jokić, T. 3829-30.

¹⁸⁵ *See inter alia*, Exhibit P119.

¹⁸⁶ Adrien Paul Stringer, T. 344.

¹⁸⁷ Admiral Jokić testified that in light of the indiscipline in the units, the Accused had the authority to require military police reinforcements, which he never did, T. 3904-06. Admiral Jokić further testified that the 3rd Battalion of the 472nd Brigade was never removed from the theatre of operations, T. 3837-38.

¹⁸⁸ Milovan Zorc testified that the commander has command responsibility for discipline and misconduct committed in the course of combat, T. 6445. There is evidence that when the Accused issued an order to implement measures aimed at improving discipline, such order went down the chain of command, *see* Exhibits P112 and P113.

100. Furthermore, there is evidence capable of establishing the Accused's actual knowledge that *inter alia* the 3rd Battalion of the 472nd Motorised Brigade was committing or had committed the alleged crimes. Several witnesses testified that on 6 December 1991, the Accused was informed that an attack was taking place and that the Old Town was being shelled.¹⁸⁹ There is also evidence that could support a finding by a Trial Chamber that the Accused previously possessed information that would have put him on notice of the risk of an attack on the Old Town by forces under his command. In particular, Admiral Jokić testified in relation to the continuous and manifest lack of discipline among the troops of the 3rd Battalion of 472nd Motorised Brigade prior to 6 December 1991,¹⁹⁰ of which the Accused was regularly informed.¹⁹¹ There is evidence capable of establishing that the Accused knew of earlier incidents involving the shelling of the Old Town in October and November 1991 by forces of the 2nd Operational Group,¹⁹² and in particular in November by the 3rd Battalion of the 472nd Motorised Brigade.¹⁹³

101. There is also evidence capable of persuading a Trial Chamber that the Accused failed to take necessary measures to prevent the crimes of 6 December 1991. The recommendation made by Admiral Jokić to withdraw the 472nd Motorised Brigade was only partially implemented and the forces that remained could be found on the evidence to have been strong and equipped with artillery weapons, unnecessarily so having regard to the role to be performed which, the evidence indicates, was solely to enforce a blockade of Dubrovnik, there being no objective to attack or take any territory or the town itself.¹⁹⁴ Moreover, Milovan Zorc testified as to the "disastrous" consequences for the command and control climate of a commander's failure to take disciplinary measures against his subordinates who violate military discipline.¹⁹⁵ With respect to the issue of necessary and reasonable measures to stop a violation after it has begun, the evidence could support findings that

¹⁸⁹ Prosecution witness Admiral Jokić testified that he spoke with the Accused on the phone in the morning of 6 December 1991, who told him that he had received a phone call from General Kadjević of the General Staff who was furious about the attack and ordered both of them to come to Belgrade after having put an end to the attack, T. 4046-47. Prosecution witness Davorin Rudolf testified about his written communications with the Accused in relation to the 6 December 1991 attack, *see* Exhibits P23 and P61 (tab. 33). In particular, he mentioned that on 7 December 1991, he received a letter from the Accused apologising for the attack and stating that an investigation was being carried out, T. 5612-13. Per Hvalkof testified that on 6 December 1991, at around 4.10 p.m, he was informed by Davorin Rudolf that the Accused had ordered an immediate cease-fire, T. 2193.

¹⁹⁰ Admiral Jokić testified about the lack of discipline in the Trebinje Brigade, which included the non-compliance with orders and the uncontrolled use of weapons, T. 3851. *See* also Exhibits P108 and P109.

¹⁹¹ Admiral Jokić, T. 3887-89.

¹⁹² *See, e.g.* Ivo Grbić who testified about the Old Town being shelled around 23 and 24 October, T. 1347-50; Paul Davies testified about how the Old Town was shelled from 10 to 12 November 1991, T. 586-89. Admiral Jokić testified that after the combat operations on 23 to 25 October 1991, he received information that there had been impacts in the Old Town, T. 3959-60. *See* also, concerning the 10 November 1991 shelling, Exhibit P130, which is a letter of protest from the head of the International Monitoring Mission, Mr. Van Houten, addressed to the Accused. Per Hvalkof testified that he sent a letter to the Accused on 9 November 1991 asking him to stop the shelling of the Old Town, T. 2141-42 and Exhibit P61 (tab.17).

¹⁹³ Admiral Jokić, T. 3998. Admiral Jokić further stated that his attempts to have Vladimir Kovačević removed after the November shelling failed, T. 3999-4000.

¹⁹⁴ Admiral Jokić, T. 4093; 5006-06.

¹⁹⁵ Milovan Zorc, T. 6484-86.

after he was informed of the attack the Accused failed to take a number of measures available to him as a commander,¹⁹⁶ i.e. issuing an order to stop the violation immediately and withdraw the unit from this position; send his high-ranking officers or go personally to the field command; and if his orders were still not obeyed, detain the perpetrator and refer the case to the military prosecution.¹⁹⁷

102. There is also evidence capable of establishing that the Accused did not take necessary and reasonable measures to punish the perpetrators after the attack on 6 December 1991. There is evidence that the Accused was made aware that the JNA report on the damage incurred on 6 December 1991 might not reflect the actual situation.¹⁹⁸ Admiral Jokić testified that he never received an order from the Accused to conduct a thorough investigation.¹⁹⁹ There is evidence that formal charges against the officers who led the attack were never brought,²⁰⁰ and that Captain Vladimir Kovačević who commanded the 3rd Battalion of the 472nd Motorised Brigade was promoted with the Accused's approval.²⁰¹

103. The Defence also submits that there is an absence of evidence supporting some detailed particulars in the indictment *e.g.* that the Accused commanded paramilitary and other units, and concerning the 2nd Tactical Group (not the 2nd Operational Group). While this may be so, these allegations are peripheral and do not directly impinge on the merits of the charges, so that the Chamber will not delay to deal with such issues on this Motion.

4. Conclusion

104. On the basis of the foregoing, the Chamber is of the view that there is evidence on which a Trial Chamber could conclude that the Accused ordered and aided and abetted the crimes set out in Counts 1 to 6. The Chamber also finds that there is evidence on which a Trial Chamber could find the Accused responsible as a commander for the crimes committed by his subordinates as set out in Counts 1 to 6.

¹⁹⁶ Admiral Jokić, T. 4053.

¹⁹⁷ Milovan Zorc, T. 6503-06.

¹⁹⁸ Davorin Rudolf, T. 5800-01; *See* also Exhibit P61, Tab 33, a letter from Minister Davorin Rudolf to the Accused concerning the situation in Dubrovnik at the time, in which Davorin Rudolf invites the Accused to come and visit the town and see the damage; Per Hvalkof, T 2207.

¹⁹⁹ Admiral Jokić, T. 4116-17.

²⁰⁰ Admiral Jokić, T. 4330.

²⁰¹ Admiral Jokić, T. 4120-22; *see* also Exhibit P133.

IV. DISPOSITION

The Trial Chamber finds there is not sufficient evidence to allow a reasonable trier of fact to sustain a conviction in respect of Nikola Jović on Count 2, cruel treatment, or, in respect of the buildings and structures identified in Schedule II of the Indictment other than those listed in the Annex to this decision.

In these respects the Motion is upheld. Otherwise, it is denied.

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

Judge Kevin Parker
Presiding

Judge Krister Thelin

Judge Christine Van Den Wyngaert

Dated this twenty first day of June 2004
At The Hague
The Netherlands

[Seal of the Tribunal]

V. ANNEX

Part A:

96 buildings and structures identified in Schedule II of the Indictment. In column 2, the Chamber has given sequential numbers to all 450 buildings and structures as they appear in Schedule II. The Chamber has made reference to evidence in the footnotes to the relevant contested buildings and structures. When there is no footnote provided the building or structure has not been contested.

Number	Number in Schedule II	Object
A 1	31	The Arsenal (city walls) ²⁰²
A 2	26/35/36 ²⁰³	Vrata Od Pila (City gate, Pile) and fortification at Pile ²⁰⁴
A 3	43	Stradun
A 4	44-52 ²⁰⁵	Complex of Franciscan Monastery and Church, HQs of ICRC
A 5	53	Franciscan Monastery-Bell Tower
A 6	54	The Church of St. Saviour
A 7	57	Public fountain (Onofrio Fountain)
A 8	70	Complex of Sigurata Monastery
A 9	241	<i>Palace - Od Sigurate 2</i> ²⁰⁶ (Residential, Block Placa - Antuninska Street - Prijeko-Palmotićeve Street 2) ²⁰⁷

²⁰² Slobodan Vuković, T. 5989-90; P61/39, para. 12; P145 (20.33-36).

²⁰³ Objects were merged, because all three list the area of Pile, i.e. Pile gate and fortification at Pile (*see* also Defence Motion, fn. 63). The Chamber finds it unnecessary to keep these different parts of Pile separately, because most of the evidence does not make this distinction. The Chamber dismissed No. 25 and No. 40 (parts of city wall near Onofrio fountain), but does not exclude the possibility that those objects also form part of the area around Pile.

²⁰⁴ Nikola Jović, T. 3033-34; Slobodan Vuković, T. 5830, 5920, 5958-59; P61/39, para. 12; P63/6, p. 37; P66 (37.34-37.40), P145 (14.57-15.02, 15.25); P178.

²⁰⁵ The objects were merged, because each of them lists only a certain part of the same complex (*see* also Defence Motion, 28 May 2004, fn. 65-72). The Chamber finds it unnecessary to keep these different parts of the Monastery separately, because most of the evidence does not make this distinction.

²⁰⁶ Where the Chamber has identified a building in the Schedule, which is also mentioned in para. 23 of the Indictment as one of the six destroyed buildings, it is emphasised in *italics*.

²⁰⁷ Ivan Mustać, T. 1474, 1479; Lucijana Peko, T. 1966; Delo Jusić, T. 3088; Zineta Ogresta, T. 3472-74, 3477-80, 3482-83 (P87, P88); Slobodan Vuković, T. 5825-26, 5917, 5937-39; markings on P39 ("B"), P81 ("i"), P89 ("X"); P66

Number	Number in Schedule II	Object
A 10	244	<i>Palace- Od Sigurate 1 (Festival Palace)</i> (Commercial, Block Placa -Od Sigurate- Prijeko- C. Medović Street 1) ²⁰⁸
A 11	247	<i>Palace - Od Puča 16</i> (Residential, Od Puča 16)
A 12	275	Residential, Zlatarićeva 6
A 13	293/319 ²⁰⁹	Držićeva Poljana Cathedral
A 14	298	St. Vlaho Church (St. Blaise Church)
A 15	300	Residential, Lučarica 6
A 16	301	Residential, Lučarica 8
A 17	302	Entrance in front of St. Vlaho church
A 18	303/304 ²¹⁰	Residential business, Između Polača 10
A 19	305	Residential business, Između Polača 2 and 4
A 20	306	Residential business, Cvijete Žužorić 2 and 10

(35.52, 36.34, 36.44), P78 (24.00-24.35); P145 (03.27-03.42); P63/9; P90. The Prosecution submits that there is no evidence supporting the destruction on this object in Schedule II. However, the Chamber has been able to identify this building as one of the six destroyed buildings from para. 23 of the Indictment located at Od Sigurate 2, the adjacent palace to the Festival Palace. In this respect the Chamber also notes the Prosecution's submission in para. 28 of their Response.

²⁰⁸ Ivan Mustać, T. 1474; Slavko Grubišić, T. 1036-37; Delo Jusić, T. 3076, 3086; Nikola Jović, T. 2952; Ivo Grbić, T. 1375, 1377; Dorde Ciganović, T. 2735; Zineta Ogresta, T. 3473, 3477-80 (P87, P88); Slobodan Vuković, T. 5825-26, 5913-14; markings on P39 ("B"), P75 ("G"), P81 ("H"); P66 (36.40), P78 (23.36-24.03); P145 (12.00-12.50). The Prosecution submits that there is no evidence supporting the destruction on this object in Schedule II. However, the Chamber has been able to identify this building as one of the six destroyed buildings from para. 23 of the Indictment located at Od Sigurate 1, the Festival Palace. In this respect the Chamber also notes the Prosecution's submission in para. 27 of their Response.

²⁰⁹ Objects were merged, because both entries in Schedule II list "Držićeva Poljana Cathedral"; See also Defence Motion, footnote 79.

²¹⁰ Objects were merged, because both entries in Schedule II list Između Polača 10.

Number	Number in Schedule II	Object
A 21	307	Residential business, Marojice Kaboge 4
A 22	308	Business, Od Puča
A 23	309	Business, Između Polača 5
A 24	310	administration - business, Cvijete Žužorić 6
A 25	311	Residential business, Marojice Kaboge
A 26	312	Residential, Miha Pračata 6
A 27	313	Residential business, Od Puča 8
A 28	314	Serbian Orthodox Church
A 29	315	Residential business, Nikole Božidarevića 1
A 30	316	Residential business, Između Polača 9, 11
A 31	317	Residential business, Između Polača
A 32	320	Residential, Držićeva Poljana 3
A 33	321	Residential, 4 Bunićeva Poljana
A 34	322	Fountain
A 35	323	Residential, 2 Gundulićeva Poljana
A 36	324	Public facility, terrace, chapel, Od Puča Street

Number	Number in Schedule II	Object
A 37	325	Residential - commercial, 12 M. Kaboga Street
A 38	327	Residential - commercial, M. Pracat Street 7
A 39	328	Mosque
A 40	329	Residential, Uska Street 8, Kaboga Street
A 41	330	Residential, Marojica 8, Kaboga Street
A 42	331	Residential, M. Pracat Street 13
A 43	332	M. Simoni School
A 44	333	Residential, Pećarica 2
A 45	334	Residential, M. Pracat Street 8
A 46	335	Residential, Tmušasta Street 1
A 47	336	Residential, M. Pracat Street
A 48	337	Residential, M. Pracat Street 12
A 49	338	Residential, Tmušasta Street 2
A 50	339	Residential, Pećarica 8 and 10
A 51	340	Residential, Pećarica 6
A 52	341	Residential, Pećarica 4

Number	Number in Schedule II	Object
A 53	342	Residential, Strossmayer Street 12
A 54	343	Residential, M. Božidarević Street 13-15
A 55	344	Residential, Božidarević Street 9
A 56	345	Residential, Božidarević Street 7
A 57	346	<i>Palace Sorkocević – Miha Pracata 6</i> (Residential - commercial, 6 Miha Pracata Street)
A 58	347	Residential - commercial, Od Puča Street 9
A 59	348/295 ²¹¹	<i>Palace - Od Puča 11</i> (Residential - commercial, Od Puča Street 11) ²¹²
A 60	349	Residential - commercial, Nikola Božidarević Street 3
A 61	350	Residential, Nikola Božidarević Street 3
A 62	351	Residential, Nikola Gučetić 2
A 63	352	Residential, Nikola Božidarević Street 18
A 64	353	Residential, St. Josip Street 21
A 65	354	Residential, St. Josip Street 19
A 66	355	Residential, St. Josip Street 17

²¹¹ Objects were merged, because both entries in Schedule II list Od Puča Street 11; *See* also Defence Motion, footnote 80.

²¹² Ivan Mustać, T. 1474-75; Delo Jusić, T. 3096; Nikola Jović, T. 2952, 2961; Ivo Grbić, T. 1376-77; Slobodan Vuković, T. 5949-53, 6052-53, 6110-15; markings on P39 (“F”), P75 (“E”); P78 (29.54-31.10); P145 (13.23–14.39); P174.

Number	Number in Schedule II	Object
A 67	356	Residential, St. Josip Street 11
A 68	357	Commercial, Nikola Božidarević Street 14
A 69	358	Residential, St. Josip Street 14
A 70	359	Residential, Od Domina Street 9
A 71	360	Residential - commercial, Od Domina Street 3
A 72	361	Residential, Hidžina Street
A 73	362	Residential, Hidžina Street 2
A 74	363	Residential, Od Domina Street 1
A 75	364	Domino Church
A 76	365	Marin Držić House-Museum
A 77	366	Residential - commercial, Široka Street 5
A 78	367	<i>Palace Martinusic – Sv. Josipa 1</i> (Residential - commercial, St. Josip Street 1)
A 79	368	Church of St. Joseph
A 80	369	Residential, St. Josip Street 4,6,8
A 81	370	Residential, St. Josip Street 3
A 82	371	Residential, St. Josip Street 5,7,9

Number	Number in Schedule II	Object
A 83	372	Residential - commercial, Nikola Božidarević Street 10 and 12
A 84	390	St. Roko Church
A 85	395	Residential, Domino Street 6
A 86	396	Residential, Domino Street 8
A 87	397	Residential, Puzljiva Street 2
A 88	398	Residential, Puzljiva Street 10
A 89	399	Residential, Puzljiva Street 3
A 90	400	Residential, Puzljiva Street 5
A 91	429	Luka Sorkočević Music Education Centre
A 92	439	Cinema and Café
A 93	440	Rector's Palace ²¹³
A 94	442	Sponza Palace
A 95	444	Dominican Monastery
A 96	446	Annunciation Church

²¹³ Slavko Grubišić, T. 1043.

Part B:

20 buildings and structures that could not be readily identified in Schedule II of the Indictment but which are located in the Old Town.

Number	Object
B 1	City Port ²¹⁴
B 2	House of Grubišić (Celestina Medovića 4) ²¹⁵
B 3	Synagogue ²¹⁶
B 4	Boškovićeve Street 1 ²¹⁷
B 5	Boškovićeve Street 3 ²¹⁸
B 6	Mr. Srhoj's, house (Od Sigurate 4 or 5) ²¹⁹
B 7	Shop on the corner of Stradun and Široka ²²⁰
B 8	Building on the corner of Stradun and Cubranovićeve (Insula 8, building No 13) ²²¹
B 9	Residential building in Zlatarićeve Street ²²²
B 10	Birth place of artist Ivo Vojinović (facing Stradun) ²²³
B 11	Building on the corner of Između Polača and Nikole Božidarevića ²²⁴

²¹⁴ Colin Kaiser, T. 2712; P69.

²¹⁵ Slavko Grubišić, T. 1022, 1038; marked as "1." on P30 (T. 1050).

²¹⁶ Delo Jusić, T. 3081-82; P63/6, p. 27, no. 19; p. 37.

²¹⁷ P63/6, p. 21, p. 27 (no. 18a).

²¹⁸ P63/6, p. 27 (no. 18b).

²¹⁹ Zineta Ograsta, T. 3471-72, 3542, marked on P89 with "A".

²²⁰ Slobodan Vuković, T. 5916-17 (referring to it as a bookshop); P 66 (36.19); P78 (23.14-23.24); Colin Kaiser, T. 2451, P64.

²²¹ Slobodan Vuković, T. 5939-40, 5954-58, 5961-62; P145 (04.16, 15.08-15.20); marked as "15" on P178.

²²² Ivan Mustać, T. 1474-75, 1481; marked as "H" on P39.

²²³ Delo Jusić, T. 3084-85; P78 (22.38-22.42, 22.48-23.00); marked with "F" on P81.

²²⁴ Slobodan Vuković, T. 5965; P145 (17.36-17.40).

Number	Object
B 12	Između Polača 12 (IX-13) ²²⁵
B 13	Između Polača 14 (IX-14) ²²⁶
B 14	Jadran Restaurant ²²⁷
B 15	Residential building on St. Joseph's Street (with shops on the ground floor) ²²⁸
B 16	City Bell Tower ²²⁹
B 17	Miha Pračata 4 (IX-23) ²³⁰
B 18	Nikola Jović's shop (Miha Pračata 11) ²³¹
B 19	Lucijana Peko's house ²³²
B 20	Northern parts of the city walls/ walkways ²³³

²²⁵ Slobodan Vuković, T. 5870-73; P174.

²²⁶ Slobodan Vuković, T. 5878-81; P174.

²²⁷ Also called Klarisa/St. Klarisa Monastery; Slobodan Vuković, T. 5944-46; P61/39, para. 8; P145 (11.20-11.51, 16.01-16.07); marked as "2" on P178.

²²⁸ Ivan Mustać, T. 1481; marked with "i" on P39 (the marking lies in fact on the corner of Od Puča and Đordićeva St., but the witness introduced it in his testimony as: "This is what we refer to as St. Joseph's Street.", T. 1481)

²²⁹ Slavko Grubišić, T. 1046, 1116; P61/39, para. 15.

²³⁰ Slobodan Vuković, T. 5883-84; P174; P63/6, p. 27, no. 29.

²³¹ Nikola Jović, T. 2954-55, 3030-32; marked with "A" on P75.

²³² Lucijana Peko, T. 1843-44, 1914-17; marked with "X/A" on P50 (T. 1844, 1846).

²³³ Accounts pointing to different parts of the city walls/walkways in the northern part of the Old Town were reviewed together, because the identification of the exact location of each part of the city wall was not possible. Slobodan Vuković, T. 5963, 5988; P61/39, para. 12; P145 (17.10, 20.02).