

**UNITED
NATIONS**

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

Case No. IT-04-74-A

Date: 29 July 2015

IN THE APPEALS CHAMBER

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

Registrar: Mr. John Hocking

THE PROSECUTOR

v.

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

PUBLIC

**NOTICE OF FILING OF PROSECUTION REVISED PUBLIC
REDACTED APPEAL BRIEF**

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

Case No. IT-04-74-A

THE PROSECUTOR

v.

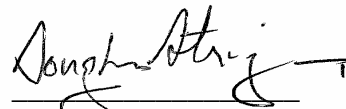
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SLOBODAN PRALJAK
MILIVOJ PETKOVIĆ
VALENTIN ČORIĆ
BERISLAV PUŠIĆ**

PUBLIC

**NOTICE OF FILING OF PROSECUTION REVISED PUBLIC REDACTED
APPEAL BRIEF**

1. The Prosecution hereby files a revised public redacted version of its Appeal Brief. Where necessary, redactions have been made to protect the identity of protected witnesses and the contents of confidential documents.

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Dated this 29th day of July 2015
At The Hague, The Netherlands

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International Tribunal for the
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Date: 12 January 2015

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Judge Carmel Agius
Judge Fausto Pocar
Judge Liu Daqun
Judge Bakone Justice Moloto

Registrar: Mr. John Hocking

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I. OVERVIEW

1. The Prosecution appeals the Chamber's acquittals, its failure to adjudicate and the sentences it imposed on Jadranko Prlić ("Prlić"), Bruno Stojić ("Stojić"), Slobodan Praljak ("Praljak"), Milivoj Petković ("Petković"), Valentin Ćorić ("Ćorić") and Berislav Pušić ("Pušić") (collectively, "the Accused"). The Accused held key leadership positions in the political, military and administrative structures of the HZ(R)HB. As members of a joint criminal enterprise ("JCE") they used their positions of authority to achieve a Croat-dominated entity called "Herceg-Bosna" or HZ(R)HB on the territory of Bosnia and Herzegovina ("BiH") through criminal means.

2. Although the Chamber convicted the Accused for a large number of crimes under JCE1,¹ and for a number of other foreseeable crimes under JCE3,² it erroneously failed to convict the Accused for numerous serious crimes under JCE3 or,

¹ All Accused were found responsible for the following crimes under JCE1: Count 1 (persecutions as a crime against humanity); Count 2 (murder as a crime against humanity); Count 3 (wilful killing as a grave breach of the Geneva Conventions); Count 6 (deportation as a crime against humanity); Count 7 (unlawful deportation of civilians as a grave breach of the Geneva Conventions); Count 8 (inhumane acts [forcible transfer] as a crime against humanity); Count 9 (unlawful transfer of a civilian as a grave breach of the Geneva Conventions); Count 10 (imprisonment as a crime against humanity); Count 11 (unlawful confinement of a civilian as a grave breach of the Geneva Conventions); Count 12 (inhumane acts [conditions of confinement] as a crime against humanity); Count 13 (inhuman treatment [conditions of confinement] as a grave breach of the Geneva Conventions); Count 14 (cruel treatment [conditions of confinement] as a violation of the laws or customs of war); Count 15 (inhumane acts as a crime against humanity); Count 16 (inhuman treatment as a grave breach of the Geneva Conventions); Count 17 (cruel treatment as a violation of the laws or customs of war); Count 18 (unlawful labour as a violation of the laws or customs of war); Count 19 (extensive destruction of property not justified by military necessity and carried out unlawfully and wantonly as a grave breach of the Geneva Conventions); Count 20 (wanton destruction of cities, towns or villages, or devastation not justified by military necessity as a violation of the laws or customs of war); Count 21 (destruction or wilful damage done to institutions dedicated to religion or education as a violation of the laws or customs of war); Count 24 (unlawful attack on civilians in Mostar as a violation of the laws or customs of war); and Count 25 (unlawful infliction of terror on civilians in Mostar as a violation of the laws or customs of war). *See* Judgement, Vol.4, paras.278 (Prlić), 431 (Stojić), 630 (Praljak), 820 (Petković), 1006 (Ćorić), 1211 (Pušić).

² All but Pušić were found responsible for the following JCE3 crimes: Count 2 (murder as a crime against humanity) during eviction operations (Prlić); Count 2 (murder as a crime against humanity) in detention (Prlić, Stojić, Ćorić); Count 3 (wilful killing as a grave breach of the Geneva Conventions) during eviction operations (Prlić); Count 3 (wilful killing as a grave breach of the Geneva Conventions) in detention (Prlić, Stojić, Ćorić); Count 4 (rape as a crime against humanity) (Prlić, Stojić, Petković, Ćorić); Count 5 (inhuman treatment (sexual assault) as a grave breach of the Geneva Conventions) (Prlić, Stojić, Petković, Ćorić); Count 21 (destruction or wilful damage done to institutions dedicated to religion or education as a violation of the laws or customs of war) (Prlić, Petković); Count 22 (extensive appropriation of property, not justified by military necessity and carried out unlawfully and wantonly as a grave breach of the Geneva Conventions) (Prlić, Stojić, Praljak, Petković, Ćorić); and Count 23 (plunder of public or private property as a violation of the laws or customs of war) (Prlić, Stojić, Praljak, Petković, Ćorić). *See* Judgement, Vol.4, paras.288 (Prlić), 450 (Stojić), 644 (Praljak), 853 (Petković), 1021 (Ćorić).

alternatively, under Article 7(3) for failure to punish. The Chamber further erred in its assessment of cumulative convictions and by imposing sentences which are manifestly inadequate as they do not reflect the gravity of the crimes and the roles of the Accused.³

A. Background: the common criminal purpose

3. The Chamber found that the HZ(R)HB leadership together with leaders of the Republic of Croatia, including President Franjo Tuđman, shared the aim of establishing a Croatian entity that reconstituted, in part, the 1939 borders of the Croatian Banovina and facilitated the unification of the Croatian people in both Croatia and BiH.⁴ As of December 1991, they believed that their goal could only be achieved by changing the ethnic composition of the claimed territories.⁵ At least by mid-January 1993, the Accused and other JCE members shared the common purpose to achieve this goal through criminal means and started to implement it.⁶

4. Several of the Accused participated at the highest level in formulating the common purpose before its implementation in January 1993. On 17 September 1992, Prlić and other Croat representatives from BiH met with Tuđman in Zagreb to discuss the situation in BiH and the incorporation of the HZHB into Croatia.⁷ One week later, Praljak, referring to the Muslim refugees living in the territories inhabited by Croats, informed Tuđman, “unless we evict those people from there, we will not have a majority there”.⁸ Shortly thereafter, in October 1992, Prlić, Praljak, Stojić and Petković met secretly with VRS Commander Ratko Mladić and discussed the division of BiH, the goal of re-establishing the Banovina and the creation of a canton for the Muslims “so they have somewhere to move to”.⁹

5. On the basis of a pre-conceived plan, and by using the political and military apparatus of the HZ(R)HB, members of the JCE, including the Accused, implemented

³ The Chamber imposed sentences of 25 years for Prlić, 20 years for Stojić, Praljak, and Petković, 16 years for Čorić, and 10 years for Pušić: *see* Judgement, Vol.4, Disposition, pp.430-431.

⁴ Judgement, Vol.4, paras.24, 43.

⁵ Judgement, Vol.4, para.43.

⁶ Judgement, Vol.4, paras.44, 65, 66. Pušić joined the JCE only in April 1993; Judgement, Vol.4, para.1229.

⁷ Judgement, Vol.4, para.18; Exh.P498 pp.29, 80-81 (Prlić: “We believe that we shall not hold on to anything that is not under our boot”).

⁸ Judgement, Vol.4, para.522; Exh.P524, pp.9-10.

⁹ Judgement, Vol.4, para.18; Exh.P11380, p.3. *See also* Exh.P11376.

their goal through a broad variety of crimes directed at Bosnian Muslims.¹⁰ The crimes committed on the territory of the HZ(R)HB from mid-January 1993 to April 1994 followed a clear pattern.¹¹ HVO forces took control of all or parts of the municipalities of Gornji Vakuf, Jablanica, Prozor, Mostar, Ljubuški, Stolac, Čapljina and Vareš. The takeovers were accompanied by the systematic destruction of Muslim property; mass arrests of both Muslim civilians and combatants alike; separation of the men from the women, children and elderly; detention in inhumane conditions in a unified network of HVO detention centres; mistreatment; killings; and the forcible displacement of the Muslim population either out of the territory of the HZ(R)HB or out of BiH altogether.¹² The HVO further used detainees at the front lines for forced labour or as human shields.¹³

6. From June 1993 the JCE members added an additional dimension to the common criminal purpose: they laid siege to East Mostar for some 10 months using HVO forces under their control to spread terror amongst the civilian population, which was forced to live in extremely harsh conditions under constant sniping and shelling.¹⁴

B. The Accused were some of the most important members of the JCE

7. The Accused in this case were among the architects, leaders and implementers of this ethnic cleansing campaign.

8. Prlić—President of the HZHB's supreme executive authority, the HVO HZHB, and later President of the Government of the HRHB¹⁵—was a key figure in setting the strategy for the implementation of the common criminal purpose, including the HVO military operations, and was one of the most important members of the JCE.¹⁶ He was one of Tuđman's principal interlocutors for discussions about the political and military strategy of the HVO HZ(R)HB.¹⁷ By drafting ultimatums, he planned and encouraged widespread crimes against Muslims committed in the course

¹⁰ Judgement, Vol.3, para.646; Vol.4, paras.142, 146, 154-155, 166, 171, 271, 341, 347, 356-357, 377-378, 561-562, 572, 692, 695, 704, 708, 717, 922, 926-927, 1099.

¹¹ Judgement, Vol.4, para.65. *See also* Vol.3, para.646 (the "acts of violence were similar in every one of the municipalities concerned").

¹² Judgement, Vol.4, para.66.

¹³ Judgement, Vol.4, para.66.

¹⁴ Judgement, Vol.4, paras.67-68, 1231.

¹⁵ Judgement, Vol.1, para.534; Vol.4, para.82.

¹⁶ Judgement, Vol.4, paras.276, 1315-1317.

¹⁷ Judgement, Vol.4, para.119.

of military attacks on several villages.¹⁸ He endorsed arrests and detentions in inhumane conditions,¹⁹ and intended and contributed to the expulsion of Muslims and movement of Croats in order to establish Croat controlled territory to the detriment of Muslims.²⁰ Prlić knowingly turned a blind eye to the increasingly violent ethnic cleansing operations conducted by the HVO in Mostar in the summer of 1993, supported the HVO's sniping and shelling campaign there, and contributed to blocking delivery of humanitarian aid.²¹ Rather than exercise his power to intervene, Prlić denied, concealed and encouraged crimes against Muslims in order to facilitate the implementation of the JCE.²²

9. As Head of the Defence Department of the HVO,²³ Stojić played a key role in the JCE.²⁴ He was the link between the civilian government of the HZ(R)HB and the HVO armed forces.²⁵ Stojić had significant powers over most components of the HZ(R)HB armed forces, including the MP.²⁶ He contributed to violent military operations designed to evict the Muslim population²⁷ and the illegal detention of Muslims.²⁸ He was involved in restricting humanitarian aid to Mostar²⁹ and controlled the HVO snipers.³⁰ He made no serious effort to stop the commission of crimes. On the contrary, he commended or rewarded those responsible for crimes.³¹

10. Praljak was the commander of the HVO Main Staff from 24 July 1993 until 9 November 1993.³² Prior to that, he was Assistant Minister, then Deputy Minister of Defence of Croatia.³³ Praljak participated in meetings of the senior Croatian leadership at which Croatia's policy in BiH was discussed and defined with a view to further the common criminal purpose.³⁴ Praljak served as an intermediary between the

¹⁸ *E.g.* Judgement, Vol.4, paras.271, 1220. *See also* Vol.4, paras.125-133, 136-146.

¹⁹ *E.g.* Judgement, Vol.4, paras.272, 1220. *See also* Vol.4, paras.165, 149-155.

²⁰ Judgement, Vol.4, paras.215, 234-235, 275-276.

²¹ *E.g.* Judgement, Vol.4, para.272. *See also* Vol.4, paras.172-176, 179-185.

²² Judgement, Vol.4, paras.259-263, 268-269.

²³ Judgement, Vol.1, paras.555-556; Vol.4, para.293.

²⁴ Judgement, Vol.4, para.429.

²⁵ Judgement, Vol.4, paras.425, 429.

²⁶ Judgement, Vol.4, para.425.

²⁷ *E.g.* Judgement, Vol.4, paras.337, 348-349, 355-357, 378, 426, 1220.

²⁸ *E.g.* Judgement, Vol.4, paras.151, 155, 329, 375, 396, 1220.

²⁹ Judgement, Vol.4, para.372.

³⁰ Judgement, Vol.4, paras.365-369.

³¹ *E.g.* Judgement, Vol.4, paras.410-423, 427.

³² Judgement, Vol.4, para.459; Vol.1, paras.716-717, 725.

³³ Judgement, Vol.4, para.457.

³⁴ Judgement, Vol.4, para.522.

Croatian and the HZ(R)HB leaderships.³⁵ He participated in planning violent HVO military operations in a number of locations³⁶ and made no serious efforts to stop crimes being committed against Muslims despite his authority over the armed forces including the MP.³⁷

11. Petković was Praljak's predecessor as Chief of the HVO Main Staff.³⁸ From 24 July 1993 he was Deputy Commander of the Main Staff.³⁹ Petković planned or directed the violent military operations in several locations.⁴⁰ He personally ordered the arrest and detention of all Muslim men of military age who were found in the HVO South-East OZ, contributing to the campaign of arrests and mass detentions of Muslims and the separation of thousands of Muslim men from vulnerable women, children and elderly.⁴¹ He authorised the use of detainees to perform forced labour in dangerous front line positions, knowing that many of them would be killed or wounded.⁴² Petković did not make serious efforts to end the commission of crimes.⁴³ Rather, he participated in a cover-up to protect HVO commander Ivica Rajić after the massacre at Stupni Do in October 1993.⁴⁴

12. Ćorić was Chief of the MP Administration between June 1992 and 10 November 1993,⁴⁵ and after that Minister of the Interior of the HRHB.⁴⁶ Ćorić supplied MP units for eviction and arrest operations in a number of locations,⁴⁷ and was one of the "architects" of the network of HVO detention centres.⁴⁸ Through the blockade and siege Ćorić deprived the Muslim population in East Mostar of basic necessities and contributed to the creation of unbearable living conditions.⁴⁹ He authorised the use of detainees to perform unlawful labour and—despite being repeatedly informed that detainees were being mistreated, wounded and killed while

³⁵ Judgement, Vol.4, paras.545, 624, 628. *See also* Vol.4, para.1223.

³⁶ *E.g.* Judgement, Vol.4, paras.556, 558, 562, 570, 579, 581, 594, 597, 625, 1220.

³⁷ *E.g.* Judgement, Vol.4, para.626.

³⁸ Judgement, Vol.1, para.715; Vol.4, para.651.

³⁹ Judgement, Vol.1, paras.716-717, 726-727; Vol.4, para.652.

⁴⁰ *E.g.* Judgement, Vol.4, paras.691, 694, 696, 699, 708, 716, 765, 767, 815, 1220.

⁴¹ Judgement, Vol.4, para.737-738, 757-759. *See also* Vol.2, para.894.

⁴² *E.g.* Judgement, Vol.4, paras.672, 790-796, 800-802, 815.

⁴³ *E.g.* Judgement, Vol.4, paras.730, 734-735, 783, 785, 798, 804, 816.

⁴⁴ Judgement, Vol.4, paras.774-777.

⁴⁵ Judgement, Vol.4, para.861.

⁴⁶ Judgement, Vol.4, para.861.

⁴⁷ *E.g.* Judgement, Vol.4, paras.1000, 1220. *See also* Vol.4, paras.919-923, 929-934, 945, 996.

⁴⁸ Judgement, Vol.4, para.982.

⁴⁹ Judgement, Vol.4, para.944.

performing forced labour—he did nothing to stop the practice.⁵⁰ He planned and facilitated the forced departure of Muslims to third countries via Croatia.⁵¹ While under a duty to fight crime in the territory of the HZ(R)HB, Čorić turned a blind eye to the crimes perpetrated by HVO members against Muslims in West Mostar during the evictions.⁵²

13. Although Pušić was less high-ranking than the other Accused,⁵³ he was central to important aspects of the JCE. Through his role as a military police officer and, subsequently, as head of the Exchange Service and President of the Commission for HVO Prisons and Detention Centres, Pušić was a key player in the negotiations on the exchange of prisoners and population movements.⁵⁴ He represented the HVO before the international community regarding release and exchange of Muslim detainees.⁵⁵ He was the link between the workings of the network of HVO detention centres and the most important JCE members, such as Prlić and Čorić.⁵⁶ Pušić obstructed and even paralysed humanitarian evacuation requests in besieged East Mostar⁵⁷ and actively participated in the removal of Muslim detainees from HVO detention centres to third countries or ABiH-held territories.⁵⁸

14. In light of their respective roles, knowledge and interactions, the Chamber concluded that all Accused were members of the JCE and shared the intent that the crimes encompassed by the common criminal purpose should be committed.⁵⁹

C. The Prosecution's Appeal

15. While the Chamber also convicted five of the Accused for a number of foreseeable crimes under JCE3,⁶⁰ it should have convicted all of them for numerous other crimes which occurred in the execution of this common purpose. In light of their intent to commit a violent campaign of ethnic cleansing, their important contributions

⁵⁰ Judgement, Vol.4, paras.964-966.

⁵¹ Judgement, Vol.4, para.970.

⁵² Judgement, Vol.4, para.1000.

⁵³ Judgement, Vol.4, paras.1028-1031.

⁵⁴ Judgement, Vol.4, para.1202.

⁵⁵ Judgement, Vol.4, para.1081.

⁵⁶ Judgement, Vol.4, paras.1093, 1209.

⁵⁷ Judgement, Vol.4, para.1122.

⁵⁸ Judgement, Vol.4, paras.1132-1133, 1166.

⁵⁹ Judgement, Vol.4, para.1231. Prlić, Čorić and Petković participated in the JCE between January 1993 and April 1994 (Vol.4, paras.1225, 1230), Stojić between January 1993 and 15 November 1993 (Vol.4, paras.1227, 1230), Praljak between January 1993 and 9 November 1993 (Vol.4, paras.1228, 1230) and Pušić between April 1993 and April 1994 (Vol.4, paras.1229-1230).

⁶⁰ See above fn.2.

to the implementation of the common criminal purpose and their detailed knowledge of events in HZ(R)HB, the Accused were aware that the Muslim population was at risk of a wider range of other criminal acts: murder during evictions and in detention; rape and sexual assault; destruction of religious property, prior to June 1993, when the common criminal purpose expanded to include this crime;⁶¹ and theft. They willingly took this risk by continuing to implement the common criminal purpose.

16. The Chamber did not enter these additional convictions under JCE3 because of its erroneously narrow understanding and application of the JCE3 *mens rea* standard, its failure to fully adjudicate the Accused's responsibility for a large number of established crimes and its erroneous or compartmentalized assessment of the evidence (Ground 1).⁶²

17. Prlić, Stojić, Praljak, Petković and Ćorić also had effective control over the perpetrators committing crimes within the timeframe of the JCE, knew or had reason to know of the commission of these crimes and failed to punish the perpetrators. Yet, the Chamber did not enter convictions or even make findings on the elements of superior responsibility for the crimes of which these Accused were acquitted. It erroneously limited its analysis of Article 7(3) liability to crimes which fell outside of the timeframe of the JCE (Ground 2).⁶³

18. Moreover, the Chamber incorrectly assumed that all incidents established as wanton destruction not justified by military necessity (Count 20) had also been established as extensive destruction of property not justified by military necessity (Count 19).⁶⁴ It therefore did not enter separate convictions under Count 20 for the four groups of incidents which constituted only wanton destruction (Ground 3).

19. The Chamber further imposed manifestly insufficient sentences. Sentences of 25 years' imprisonment for Prlić, 20 years' for Stojić, Praljak, and Petković, 16 years' for Ćorić, and 10 years' for Pušić⁶⁵ do not reflect the gravity of the crimes and the key role each Accused played in their commission (Ground 4).

⁶¹ See Judgement, Vol.4, para.59.

⁶² All errors of law set out in this brief are those that invalidate the Judgement; all errors of fact are those that occasion a miscarriage of justice.

⁶³ Only Ćorić was found responsible under Article 7(3) for crimes committed in Prozor in October 1992. See Judgement, Vol.4, para.1251.

⁶⁴ Judgement, Vol.4, paras.1264-1266.

⁶⁵ Judgement, Vol.4, Disposition, pp.430-431.

20. For the reasons set out in this brief, the Appeals Chamber should convict the Accused for additional crimes under JCE3 or failure to punish and increase their sentences.

II. GROUND ONE: THE CHAMBER ERRED IN FAILING TO CONVICT THE ACCUSED OF JCE3 CRIMES

A. Overview

21. Despite convicting the Accused of a number of crimes that were a foreseeable consequence of the JCE pursuant to JCE3, it erroneously did not find the Accused guilty of many other crimes that were equally natural and foreseeable consequences of the implementation of the common criminal purpose. These criminal incidents included: murder and wilful killing during evictions and in detention; rape and inhuman treatment (sexual assault); destruction or wilful damage to institutions dedicated to religion (before June 1993); and appropriation of property and plunder. In light of the Chamber's own findings—including those concerning the Accused's involvement in the implementation of the common criminal purpose,⁶⁶ the Accused's leading positions in the HVO hierarchy,⁶⁷ their personal knowledge of the pattern of crimes,⁶⁸ their knowledge of the vulnerable position of the Muslim population,⁶⁹ and the evidence on the record, the Chamber should have convicted the Accused of these "additional JCE3 crimes".

22. The Chamber's failure to convict the Accused of these additional JCE3 crimes is attributable to five distinct but interrelated errors. Although the sub-grounds are in many instances mutually supporting, conviction is warranted if the Appeals Chamber is satisfied of any one of them.

23. Sub-grounds 1(A) through 1(D) address the Chamber's legal errors in assessing the foreseeability of JCE3 crimes:

- The Chamber applied an incorrect *mens rea* standard for JCE3 liability. It required foreseeability of the "probability" that these crimes "would" be committed; rather than the correct "possibility" that they "might" be (Sub-ground 1(A)).

⁶⁶ See above paras.3-6.

⁶⁷ See above paras.8-13.

⁶⁸ See above paras.8-13 and below, paras.54-59 (Prlić); 85-89 (Stojić); 123-126 (Praljak); 160-166 (Petković); 198-205 (Ćorić); 243-266 (Pušić).

⁶⁹ See below, paras.54, 59 (Prlić); 85, 89 (Stojić); 123, 126 (Praljak); 160, 166 (Petković); 205 (Ćorić); 243 (Pušić).

- The Chamber unduly limited the scope of evidence it deemed relevant to its determination of foreseeability (Sub-ground 1(B)).
- The Chamber failed to adjudicate the Accused's liability for many JCE3 crimes which it found to be established—in total, over 50 murders, dozens of sexual violence crimes, the destruction of four mosques and countless thefts—or failed to provide a reasoned opinion as to why the elements of JCE3 *mens rea* were not proven (Sub-ground 1(C)).
- In relation to Ćorić, the Chamber erroneously required proof of a contribution to the specific JCE1 crimes in order to find the required foresight for JCE3 crimes (Sub-ground 1(D)).

24. Further, or in the alternative, the Chamber erred in fact by acquitting the Accused of many JCE3 crimes (Sub-ground 1(E)).

25. In Section G below, the Prosecution demonstrates how these errors impacted the verdict in relation to each of the Accused. The Appeals Chamber should correct the Chamber's errors and convict the Accused pursuant to JCE3 for the additional JCE3 crimes listed in the Tables below,⁷⁰ under Counts 2 to 5 and 21 to 23, and increase their sentences accordingly.

B. Sub-ground 1(A): The Chamber applied an erroneous *mens rea* standard for JCE3 liability

1. Overview

26. The Chamber erred in law by setting out and applying an erroneous *mens rea* standard for JCE3 liability. It incorrectly required foreseeability to be proven to a “probability” standard, rather than the correct “possibility” standard.⁷¹ This error resulted in the acquittal of Stojić, Praljak, Petković, Ćorić and Pušić for foreseeable crimes.

2. The correct standard is: Awareness of the possibility that the JCE3 crimes might be committed

27. The Chamber applied an incorrect *mens rea* standard for liability pursuant to JCE3. In the section on the applicable law, it held that liability attaches when the

⁷⁰ See below Prlić Table (II.G.1.(e)), Stojić Table (II.G.2.(f)), Praljak Table (II.G.3.(f)), Petković Table (II.G.4.(g)), Ćorić Table (II.G.5.(g)), Pušić Table (II.G.6.(f)).

accused knew that a crime was the “probable” consequence (“*conséquence probable*”) of the implementation of the common criminal purpose and willingly took the risk that the crime “would” be committed (“*soit commis*”) by deciding to participate in the JCE.⁷²

28. Appeals Chamber jurisprudence confirms that JCE3 liability arises if the JCE member knows that the commission of the crime is a “possible” consequence of the execution of the common criminal purpose.⁷³ The correct standard for JCE3 *mens rea* requires that: (i) it was foreseeable that the crimes “might” be perpetrated in executing the common criminal purpose; and (ii) the accused willingly took that risk by deciding or continuing to participate in that enterprise.⁷⁴

29. Although it occasionally referred to the correct “possibility” standard,⁷⁵ the Chamber applied the incorrect “probability” standard in its factual findings for the majority of JCE3 crimes. It thus often erroneously required that the Accused knew that the crimes were a “*probable consequence* of the implementation of the common goal”⁷⁶ or that the Accused reasonably foresaw or took the risk that the JCE3 crimes “would” be committed (“*que le(s) [crime(s)] soit/soient/seraient/allaient être commis*”, or that the perpetrators “*commettent/commettraient/allaient commettre*” the crime(s)).⁷⁷

30. In relation to many criminal incidents, the evidence satisfied the higher “probability” standard. In other instances, however, the application of the incorrect legal standard resulted in acquittals. As shown in Section G below, had the Chamber not erred, it would have convicted the five Accused of additional crimes.

⁷¹ The Prosecution relies on the original version of the Judgement in French.

⁷² Judgement, Vol.1, paras.216, 220.

⁷³ *Tadić* AJ, para.228; *Karadžić* JCE3 Foreseeability AD, paras.15, 17-18.

⁷⁴ *Šainović* AJ, para.1557; *Karadžić* JCE3 Foreseeability AD, paras.15, 17-18.

⁷⁵ *E.g.* Judgement, Vol.1, para.218 (citing *Brdanin* AJ, para.411); Vol.4, paras.72-73, 282-284. The Prosecution no longer alleges an error in Vol.4, paras.72-73, 822, 825 with respect to the *mens rea* standard for JCE3. *See* Prosecution Notice, fn.2.

⁷⁶ Judgement, Vol.4, para.281 (emphasis added). *See also* Vol.4, para.858 (Ćorić).

⁷⁷ Judgement, Vol.4, paras.433, 437, 439, 441, 443, 445, 446, 447, 448, 449 (Stojić), 632, 635, 638, 643 (Praljak), 824, 830, 834, 837, 840-841, 845, 848-849, 852 (Petković), 1008-1009, 1011, 1014 (Ćorić), 1213, 1214, 1215 (Pušić). In relation to Vol.4, para.439, the Prosecution notes that the French original “*Stojić a sciemment pris le risque ce [sic] ces crimes soient commis*” was translated as “Stojić knowingly took the risk that these crimes *might* be committed” (emphasis added).

31. As a result of this error, the Chamber wrongly acquitted the Accused of the following foreseeable crimes committed in the execution of the common criminal purpose:

- Stojić: destruction of or wilful damage to institutions dedicated to religion (Count 21) in the municipality of Jablanica;⁷⁸ appropriation of property (Count 22) and plunder (Count 23) in the municipalities of Jablanica, Vareš and Čapljina.⁷⁹
- Praljak: rape (Count 4), inhuman treatment (sexual assault) (Count 5), appropriation of property (Count 22) and plunder (Count 23) in the municipality of Vareš.⁸⁰
- Petković: appropriation of property (Count 22) and plunder (Count 23) in the municipality of Vareš (Stupni Do).⁸¹
- Ćorić: murder (Count 2) and wilful killing (Count 3) in the municipalities of Stolac and Čapljina and in Dretelj Prison (in July 1993);⁸² appropriation of property (Count 22) and plunder (Count 23) in the municipalities of Stolac and Čapljina.⁸³
- Pušić: murder (Count 2) and wilful killing (Count 3) in the municipalities of Prozor (in 1993), Jablanica, Mostar, Stolac, Čapljina, in Gabela and Dretelj Prisons, and in the Vojno Detention Centre;⁸⁴ rape (Count 4) and inhuman treatment (sexual assault) (Count 5) in the municipalities of Prozor (in 1993), Mostar and Vareš;⁸⁵ destruction of or wilful damage to institutions dedicated to religion (Count 21) in the municipalities of Jablanica, Prozor (in 1993) and Mostar;⁸⁶ appropriation of property (Count 22) and plunder (Count 23) in the municipalities of Jablanica, Prozor (in 1993), Mostar, Stolac, Čapljina and Vareš.⁸⁷

⁷⁸ Judgement, Vol.4, paras.449-450. *See below* Stojić Table.

⁷⁹ Judgement, Vol.4, paras.441, 443, 448, 450. *See below* Stojić Table.

⁸⁰ Judgement, Vol.4, paras.643-644. *See below* Praljak Table.

⁸¹ Judgement, Vol.4, paras.849, 853. *See below* Petković Table.

⁸² Judgement, Vol.4, paras.1016, 1019, 1021. *See below* Ćorić Table.

⁸³ Judgement, Vol.4, paras.1016, 1021. *See below* Ćorić Table.

⁸⁴ Judgement, Vol.4, paras.1215-1216. *See below* Pušić Table.

⁸⁵ Judgement, Vol.4, para.1216. *See below* Pušić Table.

⁸⁶ Judgement, Vol.4, paras.1214, 1216. *See below* Pušić Table.

⁸⁷ Judgement, Vol.4, para.1216. *See below* Pušić Table.

3. Conclusion

32. As set out in section G below, had the Chamber applied the correct “possibility” standard for JCE3 *mens rea*, it would have convicted the Accused for these crimes pursuant to JCE3. The Appeals Chamber should overturn these acquittals, find that the Accused met the *mens rea* requirements for liability under JCE3 and convict them accordingly.

C. Sub-ground 1(B): The Chamber erred by compartmentalizing its analysis of foreseeability

1. Overview

33. The Chamber erred in law by compartmentalizing its assessment of the evidence demonstrating the foreseeability of JCE3 crimes.⁸⁸ Instead of assessing foreseeability for each Accused in light of the totality of the evidence, the Chamber analysed the evidence in relation to each of the relevant incidents in isolation.

2. The Chamber misapplied legal standards for the evaluation of evidence

34. A chamber must consider all evidence presented to it⁸⁹ and assess and weigh the evidence in its totality and in context.⁹⁰ As regards the foreseeability of JCE3 crimes, the Appeals Chamber has confirmed that evidence of the accused’s awareness of the totality of the circumstances surrounding the implementation of the common purpose is relevant to the foreseeability analysis.⁹¹ Relevant evidence can include:

- The accused’s participation in the JCE, including their intent and the means used to implement the common purpose;⁹²

⁸⁸ Judgement, Vol.4, paras.286-288 (Prlić), 441, 443, 448-450 (Stojić), 641-644 (Praljak), 824-825, 841, 844-845, 849, 853 (Petković), 1016, 1019, 1021 (Ćorić), 1214-1216 (Pušić), pp.430-431 (Disposition).

⁸⁹ See *Kvočka* AJ, para.23 (although the Appeals Chamber presumes that the Trial Chamber evaluated all evidence presented to it, error is established if there is an indication that the Trial Chamber completely disregarded any particular piece of evidence).

⁹⁰ See *Martić* AJ, para.233; *Halilović* AJ, para.125. See also *Ntagerura* AJ, para.174.

⁹¹ E.g. *Šainović* AJ, paras.1581-1582 (“in light of his awareness of the atmosphere of aggression and violence that prevailed”), 1591-1592 (“environment of ethnic animosity”), 1602 (“aware of various criminal acts and acts of violence [...] and therefore was aware of the context”); *Dorđević* AJ, para.920 (stating that the Chamber will consider the context in which the JCE3 crimes occurred).

⁹² *Šainović* AJ, para.1089 (approving the Trial Chamber’s consideration of “the means through which the common purpose was to be achieved [...] among the factors which made the commission of a specific type of crimes [sic] falling outside the common purpose foreseeable to Šainović”); *Dorđević* AJ, paras.921-922, 925-926.

- Awareness of the violent nature of a campaign or the prevailing atmosphere of ethnic animosity, aggression and violence, which rendered victims more vulnerable;⁹³
- The forcible displacement of hundreds of thousands, or the chaotic overall nature of an operation;⁹⁴
- Awareness of the pattern of crimes;⁹⁵
- The open or notorious nature of the crimes;⁹⁶
- The accused's involvement in operations, generating awareness of the overall security situation and the commission of serious crimes;⁹⁷
- The accused's active role in the operation during which the crimes occurred, such as by supervising the logistical aspects on the ground;⁹⁸
- The accused's presence on the ground, and the fact that he or she witnessed the commission of crimes (for instance, detention, forcible transfer, mistreatment);⁹⁹
- The accused's awareness of factors increasing the vulnerability of victims (for instance, detention or separation of men from the women);¹⁰⁰

⁹³ *Šainović* AJ, paras.1581-1582, 1591-1592, 1602; *Đorđević* AJ, paras.921, 926.

⁹⁴ *Šainović* AJ, paras.1581-1582, 1591-1592, 1602; *Đorđević* AJ, paras.925 (witnessed displacement of thousands of persons and received reports).

⁹⁵ *Martić* TJ, paras.443, 451, 454 (holding that attacks in the SAO Krajina "followed a generally similar pattern, which involved the killing and the removal of the Croat population. Furthermore, after these attacks, widespread crimes of violence and intimidation and crimes against private and public property were perpetrated against the Croat population, including detention in facilities run by MUP forces of the SAO Krajina and the JNA". The accused was found liable for crimes outside the JCE as he "was aware that the non-Serb population was being subjected to widespread and systematic crimes, including killings, unlawful detentions, beatings while detained, and crimes against property, as a result of the coercive atmosphere in the SAO Krajina and the RSK"). The Appeals Chamber overturned a number of Martić's convictions pursuant to JCE3 for specific incidents due to the absence of any link between the accused and the principal perpetrators. These reversals did not affect the Trial Chamber's overall findings of guilt in relation to the JCE3 crimes. *Martić* AJ, paras.213-214.

⁹⁶ *Karemera* AJ, paras.628, 630.

⁹⁷ *Đorđević* AJ, paras.923-924 (the accused had detailed knowledge of events on the ground through his role and involvement in operations in Kosovo).

⁹⁸ *Tadić* AJ, paras.230-231; *Krstić* AJ, para.149, citing *Krstić* TJ, para.616.

⁹⁹ *Krstić* TJ, para.616, upheld by *Krstić* AJ, para.149 (Krstić was on the scene and exposed to firsthand knowledge that the refugees were being mistreated by VRS or other armed forces). *See also Šainović* AJ, para.1588.

¹⁰⁰ *Đorđević* AJ, para.922 (separation, detention of men separately from women and children); *Šainović* AJ, para.1588; *Krstić* TJ, para.616, upheld by *Krstić* AJ, para.149.

- Awareness of the criminal propensity of the persons used by the accused to implement the crimes forming part of the common purpose;¹⁰¹ and
- The climate of impunity in which the physical perpetrators acted.¹⁰²

35. In contrast, the Chamber only took into account evidence of the Accused's knowledge of the climate of violence or crimes in the specific municipality, village or detention centre where the relevant crimes occurred. The Chamber thus failed to consider its own findings and relevant evidence that provided context to those incidents, such as findings and evidence demonstrating:

- The Accused shared the common purpose to create a Croat-dominated entity, the HZ(R)HB, through a violent campaign of ethnic cleansing of the Muslim population;¹⁰³
- The JCE members knew that during HVO military operations against Muslim-majority locations, mosques might also be destroyed and they took that risk knowingly;¹⁰⁴
- The Accused knew of similar crimes committed in other locations in the implementation of the JCE;¹⁰⁵
- The Accused knew of specific events and crimes on the ground;¹⁰⁶ and
- In many cases, murder, sexual violence and thefts were foreseeable to the Accused "due to the atmosphere of violence to which they contributed, or for

¹⁰¹ *Šainović* AJ, para.1581 (awareness of allegations of excessive and disproportionate force used by police and military forces); *Dorđević* AJ, paras.924, 926 (knowledge that some units had committed violent crimes).

¹⁰² *Dorđević* AJ, para.922 (perpetrators knew that they could act with near impunity); *Stakić* AJ, paras.95-96, citing *Stakić* TJ, paras.603, 615-616.

¹⁰³ Judgement, Vol.4, paras.41, 66-68, 270-276 (Prlić), 425-429 (Stojić), 624-628 (Praljak), 814-818 (Petković), 999-1004 (Čorić), 1202-1209 (Pušić), 1225, 1230.

¹⁰⁴ Judgement, Vol.4, para.73.

¹⁰⁵ *E.g. below* paras.61-63, 69-70, 75-76, 79 (Prlić); 88, 93-96, 104-107, 111, 113-114, 116 (Stojić); 129, 132-133, 142, 144, 148, 150, 154 (Praljak); 160, 163, 165, 168, 175-176, 181-182, 186 (Petković); 201-204, 210-213, 215, 217, 221, 228, 231, 233 (Čorić); 251, 256-258, 262-263, 265-266 (Pušić).

¹⁰⁶ *E.g.* Judgement, Vol.4, paras.90, 108, 145-146, 155, 165, 167-168, 171, 174, 184-185, 219-220, 229, 232, 235-238, 245, 247, 249, 253, 255, 259, 273 (Prlić); Vol.4, paras.336, 339-341, 350-355, 359-363, 367, 369, 375-376, 378, 382-383, 384-387, 388-392, 395, 396, 400-406, 416-417, 419-420, 421, 426 (Stojić); Vol.1, paras.735-742; Vol.4, paras.470, 481-482, 489, 494, 503, 528, 538-540, 560, 562, 566-567, 573, 625, 633 (Praljak); Vol.1, paras.735, 741-742, 767; Vol.4, paras.668, 686, 691-694, 696, 699, 704-708, 710-717, 721, 745-747, 750, 764-767, 815, 819, 836-837, 839, 1220 (Petković); Vol.4, paras.878, 921-923, 936, 945, 1000, 1002, 1005, 1220 (Čorić); Vol.1, para.908; Vol.4, paras.1031, 1046, 1087, 1099, 1100-1104, 1110, 1111-1113, 1120, 1122, 1123, 1133, 1136-1138, 1140-1141,

some, due to knowing the violent nature thereof, and took that risk knowingly".¹⁰⁷

By limiting its consideration to evidence relating to a given locality, the Chamber drew erroneous conclusions on the foreseeability of the JCE3 crimes based on only a narrow subset of the relevant evidence.

36. Because of this error, the Chamber erroneously acquitted the Accused of the following crimes:

- Prlić: murder (Count 2) and wilful killing (Count 3) in Dretelj Prison and Vojno Detention Centre.¹⁰⁸
- Stojić: destruction of or wilful damage to institutions dedicated to religion (Count 21) in the municipality of Jablanica;¹⁰⁹ and appropriation of property (Count 22) and/or plunder (Count 23) in the municipalities of Jablanica, Čapljina and Vareš.¹¹⁰
- Praljak: rape (Count 4), inhuman treatment (sexual assault) (Count 5); and appropriation of property (Count 22) and plunder (Count 23) in the municipality of Vareš.¹¹¹
- Petković: murder (Count 2) and wilful killing (Count 3) in Dretelj Prison;¹¹² and appropriation of property (Count 22) and plunder (Count 23) in the municipality of Vareš (Stupni Do).¹¹³
- Čorić: murder (Count 2) and wilful killing (Count 3) in the municipalities of Stolac and Čapljina and in Dretelj Prison (in July 1993);¹¹⁴ and appropriation of property (Count 22) and plunder (Count 23) in the municipalities of Stolac and Čapljina.¹¹⁵

1143-1145, 1148-1151, 1169-1170, 1172-1173, 1175-1176, 1181-1182, 1186-1187, 1195, 1198, 1203, 1205, 1206, 1209, 1210 (Pušić).

¹⁰⁷ Judgement, Vol.4, paras.72, 282-284 (Prlić), 435, 437, 439, 443, 445-447 (Stojić), 635, 638 (Praljak), 827, 830, 834, 837, 840, 844-845, 848 (Petković), 1009, 1011-1012, 1014 (Čorić).

¹⁰⁸ Judgement, Vol.4, paras.286-288. *See below* Prlić Table.

¹⁰⁹ Judgement, Vol.4, paras.449, 450. *See below* Stojić Table.

¹¹⁰ Judgement, Vol.4, paras.441, 443, 448, 450. *See below* Stojić Table.

¹¹¹ Judgement, Vol.4, paras.641-644. *See below* Praljak Table.

¹¹² Judgement, Vol.4, paras.825, 853. *See below* Petković Table.

¹¹³ Judgement, Vol.4, paras.849, 853. *See below* Petković Table.

¹¹⁴ Judgement, Vol.4, paras.1015-1016, 1019, 1021. *See below* Čorić Table.

¹¹⁵ Judgement, Vol.4, paras.1015-1016. *See below* Čorić Table.

- Pušić: murder (Count 2) and wilful killing (Count 3) in the municipalities of Prozor (in 1993), Jablanica, Mostar, Stolac, Čapljina, and in Gabela and Dretelj Prisons and the Vojno Detention Centre;¹¹⁶ rape (Count 4) and inhuman treatment (sexual assault) (Count 5) in the municipalities of Prozor (in 1993), Mostar and Vareš;¹¹⁷ destruction of or wilful damage to institutions dedicated to religion (Count 21) in the municipalities of Jablanica, Prozor (in 1993) and Mostar;¹¹⁸ and appropriation of property (Count 22) and plunder (Count 23) in the municipalities of Jablanica, Prozor (in 1993), Mostar, Vareš, Stolac and Čapljina.¹¹⁹

3. Conclusion

37. As set out in section G below, had the Chamber applied the correct legal standard for the assessment of the evidence it would have found that the Accused met the requirements for liability under JCE3. The Appeals Chamber should overturn the acquittals listed in the previous paragraph, find that the Accused met the requirements for liability under JCE3 and convict them accordingly.

D. Sub-ground 1(C): The Chamber failed to adjudicate the Accused's liability for JCE3 crimes or failed to provide a reasoned opinion

1. Overview

38. The Chamber failed to adjudicate the Accused's responsibility under JCE3 for a large number of crimes set out in the Tables below in relation to each Accused, despite having found that these crimes were proven.¹²⁰ In the alternative, the Chamber failed to provide a reasoned opinion on the Accused's acquittals for liability under JCE3. Either way, the Chamber erred in law.

2. The Chamber overlooked JCE3 crimes

39. The Chamber found that numerous crimes which fell outside the common criminal purpose were established and constituted natural and foreseeable consequences of its implementation.¹²¹ However, the Chamber did not adjudicate the

¹¹⁶ Judgement, Vol.4, paras.1215-1216. *See below* Pušić Table.

¹¹⁷ Judgement, Vol.4, para.1216. *See below* Pušić Table.

¹¹⁸ Judgement, Vol.4, paras.1214, 1216. *See below* Pušić Table.

¹¹⁹ Judgement, Vol.4, para.1216. *See below* Pušić Table.

¹²⁰ Judgement, Vol.4, paras.288 (Prlić), 450 (Stojić), 644 (Praljak), 853 (Petković), 1021 (Ćorić), 1216 (Pušić), pp.430-431 (Disposition).

¹²¹ Judgement, Vol.4, paras.70, 72-73.

majority of these crimes when deciding the responsibility of Prlić, Stojić, Praljak, Petković and Ćorić under JCE3.

40. The Chamber's failure to adjudicate these serious crimes led to the following erroneous acquittals of incidents of murder (Count 2),¹²² wilful killing (Count 3), rape (Count 4), inhuman treatment (sexual assault) (Count 5), destruction or wilful damage to institutions dedicated to religion (Count 21), appropriation of property (Count 22) and plunder (Count 23):

- Prlić: in relation to the municipalities of Prozor (in 1993), Mostar, Stolac, Čapljina and Vareš, and in the Dretelj and Gabela Prisons.¹²³
- Stojić: in relation to the municipalities of Prozor (in 1993), Jablanica, Mostar, Stolac, Čapljina and Vareš, and in the Dretelj and Gabela Prisons.¹²⁴
- Praljak: in relation to the municipalities of Prozor (in 1993), Jablanica, Mostar, Stolac and Čapljina, and in the Dretelj and Gabela Prisons.¹²⁵
- Petković: in relation to the municipalities of Prozor (in 1993), Jablanica, Mostar, Stolac and Vareš, and in the Dretelj and Gabela Prisons and Vojno Detention Centre.¹²⁶
- Ćorić: in relation to the municipalities of Prozor (in 1993), Jablanica, Mostar, Stolac, Čapljina and Vareš, and in the Gabela Prison and Vojno Detention Centre.¹²⁷

3. The Chamber failed to provide a reasoned opinion

41. For all Accused other than Pušić, the Chamber included no discussion whatsoever for the JCE3 crimes that fall within this Sub-ground. If the Appeals Chamber nevertheless finds that the Chamber acquitted the five Accused of any of the above-listed crimes,¹²⁸ then it erred in law by failing to provide a reasoned opinion as

¹²² The Accused were convicted pursuant to JCE1 of the killing of two Muslim civilians during the attack on Tošćanica on 19 April 1993. The Prosecution no longer alleges a JCE3 error in relation to this incident (*compare* Prosecution Notice, fn.5, 11 and Annexes I-VI).

¹²³ Judgement, Vol.4, para.288, p.430 (Disposition). *See below* Prlić Table.

¹²⁴ Judgement, Vol.4, para.450, p.430 (Disposition). *See below* Stojić Table.

¹²⁵ Judgement, Vol.4, para.644, p.430 (Disposition). *See below* Praljak Table.

¹²⁶ Judgement, Vol.4, para.853, p.431 (Disposition). *See below* Petković Table.

¹²⁷ Judgement, Vol.4, para.1021, p.431 (Disposition). *See below* Ćorić Table. The Prosecution no longer alleges an error in Judgement, Vol.4, para.1216 (in relation to Ćorić). *See* Prosecution Notice, fn.5.

¹²⁸ *See above* para.40.

to why the requirements for liability pursuant to JCE3 were not met.¹²⁹ Chambers must provide a reasoned opinion in writing to enable the parties' right to appeal.¹³⁰

42. The Chamber also failed to give a reasoned opinion for why it acquitted Pušić of all JCE3 crimes. For all but two incidents, it merely stated:

With regard to the other crimes of destroying institutions dedicated to religion and education before June 1993, murders related to the conditions of confinement and treatment of detainees in the detention centres and the murders, sexual abuse and thefts committed during eviction operations, the Chamber does not have evidence enabling it to find that Berislav Pušić is guilty — by participating in a JCE3 — of these crimes.¹³¹

As shown in detail below,¹³² the Chamber's own findings and evidence demonstrate that these crimes were foreseeable to Pušić.¹³³

4. Conclusion

43. The Chamber erred in law by failing to fully adjudicate the case before it or to provide a reasoned opinion. Had the Chamber not committed these errors of law, it would have found that the findings and evidence eliminated any doubt of the Accused's guilt. A *de novo* review by the Appeals Chamber, taking into account the findings and evidence highlighted in section G below, should result in a conviction for all Accused of these crimes.

E. Sub-ground 1(D) (in relation to Ćorić): The Accused need not contribute to the specific JCE1 crime giving rise to the JCE3 crime

1. Overview

44. The Chamber found that in July, August and September 1993, HVO forces committed 16 murders, appropriation of property and plunder during the evictions of Muslim women, children and elderly in the municipalities of Stolac and Čapljina.¹³⁴ It further found that Ćorić contributed to the arrest and detention of Muslim men in those municipalities.¹³⁵ However, since the Chamber did not find that he specifically contributed to the forcible displacement of the women, children and elderly, it

¹²⁹ See below Prlić Table (II.G.1.(e)), Stojić Table (II.G.2.(f)), Praljak Table (II.G.3.(f)), Petković Table (II.G.4.(g)), Ćorić Table (II.G.5.(g)), Pušić Table (II.G.6.(f)).

¹³⁰ Art.23(2) Statute; *Dordević* AJ, para.14; *Perišić* AJ, para.9.

¹³¹ Judgement, Vol.4, para.1216.

¹³² See below Section II.G.6.(d).

¹³³ See below Pušić Table.

¹³⁴ Judgement, Vol.3, paras.684-692, 735-743.

concluded that he could not have foreseen the JCE3 crimes committed during those eviction operations.¹³⁶ The Chamber erred in law by requiring Ćorić to have specifically contributed to the JCE1 crimes (forcible displacements) in those municipalities in order to be liable for the JCE3 crimes (murder, wilful killing, appropriation of property and plunder) there.

2. Contribution to specific JCE1 crimes is not required for JCE3 liability

45. Contribution to specific JCE1 crimes is not a requirement for either JCE1 or JCE3 liability. The law on JCE only requires an accused to make a significant contribution to the common criminal purpose as such, not to each aspect of it, such as its execution in all locations or each and every crime forming a part thereof.¹³⁷

46. For JCE3 liability, the requirements are that: (i) a crime is committed in the execution of the common criminal purpose; (ii) the accused made a significant contribution to the common purpose; (iii) the crime in question was a natural and foreseeable consequence of the implementation of the common criminal purpose; (iv) the crime falling outside the common purpose was foreseeable to the accused in particular; and (v) he or she willingly took the risk that this crime might be committed.¹³⁸

¹³⁵ Judgement, Vol.4, paras.953-954.

¹³⁶ Judgement, Vol.4, paras.1015-1016.

¹³⁷ *Karemera* AJ, paras.109, 153 (holding that, in cases concerning a nation-wide JCE, trial chambers are not required to find that the accused contributed to each criminal act, but rather that he made a significant contribution to the common purpose and that each of the crimes for which he was held responsible formed part of that purpose); *Kvočka* AJ, para.263 (holding that “to find an accused guilty of the crime of murder it is not necessary to establish his participation in each murder. For crimes committed as part of a joint criminal enterprise it is sufficient to prove not the participation of the accused in the commission of a specific crime but the responsibility of the accused in furthering the common criminal purpose. The Appeals Chamber finds that the Trial Chamber did not err in finding *Kvočka* guilty of the crime of murder without establishing his specific responsibility for each murder committed”).

¹³⁸ *Šainović* AJ, paras.983, 988-989, 1052, 1058, 1062, 1069-1082, 1084-1085, 1089-1092 (Šainović’s responsibility for murder and persecution through destruction or damage to religious property through JCE3), 1250, 1265-1270, 1277-1283 (Pavković’s responsibility for murder and persecution through murder, sexual assault, and destruction or damage to religious property), 1286, 1451, 1522-1527, 1532-1541, 1542, 1545-1549 (Lukić’s responsibility for murder and persecution through murder, destruction or damage to religious property), 1575-1604 (Šainović’s, Lukić’s and Pavković’s responsibility for persecution through sexual assault); *Đorđević* AJ, paras.458-462, 512-513, 906-908, 919-926 (sexual assaults were foreseeable to Đorđević). In both cases, the Appeals Chamber confirmed the existence of a JCE whose common purpose involved the commission of crimes throughout the territory of Kosovo. *Šainović* AJ, para.664 (“to forcibly displace a number of Kosovo Albanians within and outside Kosovo”); *Đorđević* AJ, para.159 (“to modify Kosovo’s ethnic balance and ensure Serbian control over the territory by waging a campaign of terror and violence against the Kosovo Albanian population”).

47. An accused can thus incur liability under JCE3 irrespective of whether he contributed to the specific JCE1 crimes (for example, forcible displacements at specific locations) that gave rise to the resulting JCE3 crimes (for example, murder or plunder).

48. In this case, the Chamber erred in law by imposing an additional requirement for JCE3 liability. Having found that Ćorić was a JCE member who shared the intent to forcibly displace the Muslim population from the territory of the HZ(R)HB (which includes the municipalities of Stolac and Čapljina) and who significantly contributed to the common criminal purpose,¹³⁹ the Chamber was not required to find that Ćorić contributed to the forcible displacement operations in those two locations in order to conclude that he could foresee that the killings and thefts might be committed there.

3. Conclusion

49. As set out in section G below, had the Chamber not added this erroneous requirement for JCE3 liability, it would have found that Ćorić could foresee that HVO forces might commit murder, wilful killing, appropriation of property and plunder during the forcible displacement operations in Stolac and Čapljina and that he willingly took that risk. The Appeals Chamber should overturn Ćorić's acquittal, find that Ćorić met the *mens rea* requirements for liability under JCE3 and convict him of the crimes committed in Stolac and Čapljina that were foreseeable consequences of the implementation of the common criminal purpose.

F. Sub-ground 1(E): The only reasonable conclusion is that the Accused were responsible under JCE3

50. The Chamber erred in fact in acquitting the Accused of the additional JCE3 crimes that were established beyond reasonable doubt.¹⁴⁰ As set out in section G in relation to each of the Accused, the Chamber's findings and the evidence on the record show that the Accused could have foreseen the additional JCE3 crimes.

51. In relation to the following criminal incidents, the Chamber reached an unreasonable factual conclusion:

¹³⁹ E.g. Judgement, Vol.4, paras.1004, 1226, 1230.

¹⁴⁰ Judgement, Vol.4, paras.286-288 (Prlić), 441, 443, 448-450 (Stojić), 641-644 (Praljak), 824-825, 841, 844-845, 849, 853 (Petković), 1016, 1019, 1021 (Ćorić), 1214-1216 (Pušić), pp.430-431 (Disposition). See also the crimes referred to in Annexes I-VI to the Prosecution Notice.

- Prlić: murder (Count 2) and wilful killing (Count 3) in the municipalities of Prozor, Mostar (in May 1993), Stolac, Čapljina, and in the Dretelj and Gabela Prisons and Vojno Detention Centre;¹⁴¹ rape (Count 4) and inhuman treatment (sexual assault) (Count 5) in the municipalities of Prozor and Vareš;¹⁴² destruction of or wilful damage to institutions dedicated to religion (Count 21) in the municipalities of Prozor and Mostar;¹⁴³ and appropriation of property (Count 22) and plunder (Count 23) in the municipalities of Prozor, Mostar (in May 1993), Stolac, Čapljina and Vareš.¹⁴⁴
- Stojić: murder (Count 2) and wilful killing (Count 3) in the municipalities of Prozor, Jablanica, Mostar, Stolac, Čapljina, and in the Dretelj and Gabela Prisons;¹⁴⁵ rape (Count 4) and inhuman treatment (sexual assault) (Count 5) in the municipalities of Prozor and Vareš;¹⁴⁶ destruction of or wilful damage to institutions dedicated to religion (Count 21) in the municipalities of Jablanica, Prozor and Mostar;¹⁴⁷ and appropriation of property (Count 22) and plunder (Count 23) in the municipalities of Jablanica, Prozor, Mostar, Stolac, Čapljina and Vareš.¹⁴⁸
- Praljak: murder (Count 2) and wilful killing (Count 3) in the municipalities of Prozor, Jablanica, Mostar, Stolac, Čapljina, and in the Dretelj and Gabela Prisons;¹⁴⁹ rape (Count 4) and inhuman treatment (sexual assault) (Count 5) in the municipalities of Prozor, Mostar and Vareš;¹⁵⁰ destruction of or wilful damage to institutions dedicated to religion (Count 21) in the municipalities of Jablanica, Prozor and Mostar;¹⁵¹ and appropriation of property (Count 22) and plunder (Count 23) in the municipalities of Jablanica, Prozor, Mostar, Stolac, Čapljina and Vareš.¹⁵²

¹⁴¹ Judgement, Vol.4, paras.281, 284-288. *See below* Prlić Table.

¹⁴² Judgement, Vol.4, paras.281, 288. *See below* Prlić Table.

¹⁴³ Judgement, Vol.4, paras.281, 284, 288. *See below* Prlić Table.

¹⁴⁴ Judgement, Vol.4, paras.281, 284, 288. *See below* Prlić Table.

¹⁴⁵ Judgement, Vol.4, paras.433, 450. *See below* Stojić Table.

¹⁴⁶ Judgement, Vol.4, paras.433, 434-437, 450. *See below* Stojić Table.

¹⁴⁷ Judgement, Vol.4, paras.433, 449-450. *See below* Stojić Table.

¹⁴⁸ Judgement, Vol.4, paras.433, 438-448, 450. *See below* Stojić Table.

¹⁴⁹ Judgement, Vol.4, paras.632, 644. *See below* Praljak Table.

¹⁵⁰ Judgement, Vol.4, paras.632, 641-644. *See below* Praljak Table.

¹⁵¹ Judgement, Vol.4, paras.632, 644. *See below* Praljak Table.

¹⁵² Judgement, Vol.4, paras.632, 641-644. *See below* Praljak Table.

- Petković: murder (Count 2) and wilful killing (Count 3) in the municipalities of Prozor, Jablanica, Mostar, Stolac and in the Dretelj and Gabela Prisons and Vojno Detention Centre;¹⁵³ rape (Count 4) and inhuman treatment (sexual assault) (Count 5) in the municipalities of Prozor and Vareš;¹⁵⁴ and appropriation of property (Count 22) and plunder (Count 23) in the municipalities of Prozor, Mostar, and Vareš.¹⁵⁵
- Čorić: murder (Count 2) and wilful killing (Count 3) in the municipalities of Prozor, Jablanica, Mostar, Stolac and Čapljina,¹⁵⁶ and in the Dretelj and Gabela Prisons and Vojno Detention Centre;¹⁵⁷ rape (Count 4) and inhuman treatment (sexual assault) (Count 5) in the municipalities of Prozor and Vareš;¹⁵⁸ destruction of or wilful damage to institutions dedicated to religion (Count 21) in the municipalities of Jablanica, Prozor and Mostar;¹⁵⁹ and appropriation of property (Count 22) and plunder (Count 23) in the municipalities of Jablanica, Prozor, Mostar, Stolac, Čapljina and Vareš.¹⁶⁰
- Pušić: murder (Count 2) and wilful killing (Count 3) in the municipalities of Prozor, Jablanica, Mostar, Stolac and Čapljina, in the Gabela and Dretelj Prisons and the Vojno Detention Centre;¹⁶¹ rape (Count 4) and inhuman treatment (sexual assault) (Count 5) in the municipalities of Prozor, Mostar and Vareš;¹⁶² destruction of or wilful damage to institutions dedicated to religion (Count 21) in the municipalities of Prozor, Mostar and Jablanica;¹⁶³ and appropriation of property (Count 22) and plunder (Count 23) in the municipalities of Jablanica, Prozor, Mostar, Stolac, Čapljina and Vareš.¹⁶⁴

52. As explained in section G below in relation to each Accused, in light of the totality of the evidence, no reasonable trial chamber could have found that the Accused could not foresee the possibility that HVO forces might commit the

¹⁵³ Judgement, Vol.4, paras.824-825, 853. *See below* Petković Table.

¹⁵⁴ Judgement, Vol.4, para.853. *See below* Petković Table.

¹⁵⁵ Judgement, Vol.4, paras.841, 844-845, 849, 853. *See below* Petković Table.

¹⁵⁶ Judgement, Vol.4, paras.1008, 1016, 1021. *See below* Čorić Table.

¹⁵⁷ Judgement, Vol.4, paras.1008, 1019, 1021. *See below* Čorić Table.

¹⁵⁸ Judgement, Vol.4, paras.1008, 1021. *See below* Čorić Table.

¹⁵⁹ Judgement, Vol.4, paras.1008, 1021. *See below* Čorić Table.

¹⁶⁰ Judgement, Vol.4, paras.1008, 1016, 1021. *See below* Čorić Table.

¹⁶¹ Judgement, Vol.4, paras.1215-1216. *See below* Pušić Table.

¹⁶² Judgement, Vol.4, para.1216. *See below* Pušić Table.

¹⁶³ Judgement, Vol.4, paras.1214, 1216. *See below* Pušić Table.

¹⁶⁴ Judgement, Vol.4, para.1216. *See below* Pušić Table.

additional JCE3 crimes in implementing the common criminal purpose. Properly assessed, the evidence eliminates all reasonable doubt concerning the Accused's guilt. The Appeals Chamber should overturn these acquittals, make the relevant findings and convict the Accused pursuant to JCE3.

G. The Appeals Chamber should find the Accused liable pursuant to JCE3

53. In the following sub-sections, the Prosecution demonstrates in relation to each Accused that if the Chamber had not erred in law or fact as described above, it would have convicted the Accused of numerous additional JCE3 crimes that were foreseeable to them.

1. Prlić is responsible for the additional JCE3 crimes

54. From his position at the top of the HVO Government—as President of the HVO of the HZHB, and later of the Government of the HRHB¹⁶⁵—Prlić could foresee that the additional JCE3 crimes might be committed in the execution of the common criminal purpose. The Chamber found that he intended to inflict a broad range of crimes on the Muslim population.¹⁶⁶ He was aware of, intended and participated in implementing the violent HVO campaign of attacks, expulsions and destruction of Muslim houses and religious institutions in numerous villages and crimes against HVO detainees.¹⁶⁷ He therefore must have been aware of the resulting vulnerability of the Muslim population. By remaining in his post, intending or aware of an array of crimes committed by HVO forces against Bosnian Muslims,¹⁶⁸ Prlić willingly took the risk that the additional JCE3 crimes might be committed.¹⁶⁹

(a) Prlić could foresee the additional JCE3 crimes

55. Prlić was a key figure in setting the strategy for the HVO and implementing the common criminal purpose.¹⁷⁰ He played a central role in planning and implementing the campaign of violence directed against the Muslim population throughout the HZ(R)HB. For instance: he “planned, facilitated and encouraged” HVO crimes in Gornji Vakuf, Prozor and Jablanica;¹⁷¹ “knowingly turned a blind eye

¹⁶⁵ Judgement, Vol.1, para.534; Vol.4, para.82.

¹⁶⁶ Judgement, Vol.4, paras.65-68, 271-276.

¹⁶⁷ *E.g.* Judgement, Vol.4, paras.271-279.

¹⁶⁸ *E.g.* Judgement, Vol.4, paras.134, 147, 165, 168, 171, 232, 238, 282-284.

¹⁶⁹ The Prosecution is not proceeding with Sub-ground 1(A) in relation to Prlić. *See* Prosecution Notice, para.5, fn.2.

¹⁷⁰ Judgement, Vol.4, paras.276, 1315-1317.

¹⁷¹ Judgement, Vol.4, paras.271, 282-283.

to the increasingly violent” HVO ethnic cleansing operations against the Muslim population in Mostar in the summer of 1993;¹⁷² intended the mass, indiscriminate detention of Muslim men in several municipalities;¹⁷³ “supported the HVO campaign of fire and shelling against East Mostar” and accepted the consequent crimes against its civilian population;¹⁷⁴ “personally contributed” to blocking aid to East Mostar thus knowingly contributing to causing serious bodily harm to its inhabitants;¹⁷⁵ “accepted and encouraged the extremely precarious conditions and the mistreatment” of detainees at Dretelj, Gabela and the Heliodrom;¹⁷⁶ “facilitated and accepted” the use of detainees for front line labour, their abuse while working, and the use of detainees as human shields;¹⁷⁷ and supported and intended the expulsion of the Muslim population outside territory claimed as part of the HZ(R)HB.¹⁷⁸

56. Prlić was informed of the situation in the territory of the HZ(R)HB¹⁷⁹ through various sources, including his participation in government meetings,¹⁸⁰ his involvement in the supervision and activities of Departments and Ministries,¹⁸¹ his supervision of municipal HVO bodies,¹⁸² his involvement in military discussions¹⁸³ and receipt of HVO Main Staff reports,¹⁸⁴ and his dealings with representatives of international organisations.¹⁸⁵ Representatives of the international community confirmed that Prlić appeared to be “very well informed of the situation on the ground” in the claimed territory of the HZ(R)HB between October 1992 and April 1994.¹⁸⁶

57. Prlić received a steady stream of information regarding the campaign of violence being carried out by HVO forces against Muslims in the territory encompassed by the common criminal purpose. At the very outset of that campaign, Prlić was copied on Željko Šiljeg’s detailed 29 January 1993 report describing the

¹⁷² Judgement, Vol.4, para.272.

¹⁷³ Judgement, Vol.4, paras.154, 272.

¹⁷⁴ Judgement, Vol.4, para.272.

¹⁷⁵ Judgement, Vol.4, para.272.

¹⁷⁶ Judgement, Vol.4, para.273.

¹⁷⁷ Judgement, Vol.4, para.274.

¹⁷⁸ Judgement, Vol.4, paras.234-235, 275-276.

¹⁷⁹ Judgement, Vol.4, para.90.

¹⁸⁰ Judgement, Vol.4, para.88.

¹⁸¹ Judgement, Vol.4, paras.92, 94, 96.

¹⁸² Judgement, Vol.1, paras.668, 670; Vol.4, para.105.

¹⁸³ Judgement, Vol.4, paras.106, 119, 174. *See also* Vol.4, para.277.

¹⁸⁴ Judgement, Vol.1, paras.767-768.

¹⁸⁵ Judgement, Vol.4, para.273. *See also* Vol.4 paras.109, 167.

¹⁸⁶ Judgement, Vol.4, para.108.

HVO crimes that accompanied the attack on Gornji Vakuf: theft, torching of Muslim houses, deaths of Muslim civilians through shelling and mistreatment of detainees.¹⁸⁷ For the duration of the campaign he continued to receive regular reports, from both internal and external sources, of violent crimes against Muslims perpetrated across the region such as: forced evictions (becoming increasingly violent over time) and other expulsions; mass, indiscriminate arrests and detentions; fire and shelling directed against civilians; use of human shields; forced front line labour causing injury and death; abuse and mistreatment of detainees; and appalling detention conditions.¹⁸⁸

58. The Chamber concluded that, having been informed of the commission of crimes, and despite his authority to intervene and change the course of events, Prlić neither sincerely condemned these crimes nor demanded that an investigation be carried out and the perpetrators be punished.¹⁸⁹ He therefore denied, concealed and encouraged crimes committed by HVO members in order to facilitate the implementation of the common criminal purpose.¹⁹⁰ He knew that his failure to act would result in the commission of crimes with “complete impunity”.¹⁹¹ Prlić also encouraged the commission of crimes by engendering fear, mistrust and hatred towards Muslims among Bosnian Croats, and exacerbating nationalist sentiments.¹⁹² And he “knowingly sought to minimise or conceal” HVO crimes “in order to facilitate the implementation of the JCE.”¹⁹³

59. In sum, Prlić was a key figure in implementing a discriminatory and violent campaign against Muslims, was regularly informed of the results, and must have been aware of the consequent vulnerability of the Muslim population. It was therefore foreseeable to him that other violent crimes against Muslims or their property might be committed in the course of the campaign. As set out below, the Chamber’s findings and the evidence on the record demonstrate that such foreseeable crimes included murders during evictions and in detention centres, rape and other forms of sexual violence, destruction or damage to institutions dedicated to religion (before June 1993), and appropriation of property and plunder.

¹⁸⁷ Judgement, Vol.4, paras.130-132; Exh.P1351.

¹⁸⁸ Judgement, Vol.4, paras.145-146, 155, 165, 167-168, 171, 174, 184-185, 219-220, 229, 232, 235, 236-238, 245, 247, 249, 253, 255 259.

¹⁸⁹ Judgement, Vol.4, para.268.

¹⁹⁰ Judgement, Vol.4, paras.268-269.

¹⁹¹ Judgement, Vol.4, para.273.

¹⁹² Judgement, Vol.4, paras.265, 267.

¹⁹³ Judgement, Vol.4, paras.259-263.

(b) Sub-ground 1(B): Compartmentalization of evidence

60. The Chamber failed to properly consider the full scope of the evidence on the record in assessing whether Prlić could foresee the murder of a detainee in Dretelj Prison due to dehydration and the killing of a detainee shot at the Vojno Detention Centre.¹⁹⁴ Instead, the Chamber limited its evidentiary analysis of foreseeability to Prlić's prior knowledge of events at the particular location of the incident in question. The Chamber ignored relevant findings and evidence concerning Prlić's intent, his overarching role in the JCE, and his knowledge of and involvement in the pattern of crimes in the broader area.¹⁹⁵ These findings and evidence demonstrate Prlić's knowledge that Muslim detainees might be killed in the execution of the common criminal purpose.

61. The Chamber found that Prlić could not foresee the 16 July 1993 murder in Dretelj because he did not know of the bad conditions at Dretelj until after the incident.¹⁹⁶ The Chamber then concluded that Prlić could not have foreseen the 5 December 1993 murder of a Vojno detainee because it was only after this date that Prlić was informed of the alleged deaths of detainees at Vojno due to poor conditions and mistreatment.¹⁹⁷ The Chamber's compartmentalization of the evidence is apparent. It did not even consider its own finding that Prlić knew of the bad conditions in Dretelj and Gabela as of 19 July 1993 when it found that he could not have foreseen the killing in Vojno—another detention facility within the same unified network—a few months later.¹⁹⁸

62. Moreover, in reaching these findings, the Chamber ignored its own conclusions that, at the time of these killings, Prlić shared the intent to remove the Muslim population from the region through the commission of JCE1 crimes, including murder and inhumane conditions of detention, and that he could foresee other murders.¹⁹⁹ In particular, by the time of the 16 July 1993 murder of the Dretelj detainee:

¹⁹⁴ Prlić Table, incidents 8 and 13.

¹⁹⁵ See above paras.8, 54-59; below paras.67-82.

¹⁹⁶ Judgement, Vol.4, paras.285-286.

¹⁹⁷ Judgement, Vol.4, para.287.

¹⁹⁸ Judgement, Vol.4, paras.286-287.

¹⁹⁹ Judgement, Vol.4, paras.270-278, 283-284.

- Prlić shared the intent to detain in poor conditions and mistreat Muslim detainees as part of the “system for deporting the Muslim population of the HR H-B”,²⁰⁰
- Prlić was aware of—and shared the intent for—murders perpetrated during the January 1993 Gornji Vakuf attack;²⁰¹
- Prlić could foresee JCE3 crimes in Jablanica Municipality in April 1993, including murders of detainees;²⁰²
- As of June 1993, Prlić could foresee violent crimes against Muslims in Mostar—including murder—linked to eviction campaigns.²⁰³

63. By the time of the 5 December 1993 murder of the Vojno detainee, Prlić’s awareness of the risk that detainees might be murdered in detention facilities had mounted. For instance, the Chamber found that Prlić was, by then, aware of, and had accepted, “the extremely precarious conditions in which the Muslim detainees were living.”²⁰⁴ Prlić chaired the HVO working meetings of 19 and 20 July 1993 at which the poor detention conditions were discussed.²⁰⁵ He also knew of the illegal treatment of detainees held in the network of HVO detention centres, and instead of exercising his authority to close the detention centres, he sought to “minimise or conceal” the HVO’s crimes.²⁰⁶ He was also aware of, and facilitated, the use of Heliodrom detainees for front line labour, accepted the abuse and death of some of them,²⁰⁷ and thus shared the intent for the resulting crimes of murder and mistreatment.²⁰⁸ Although Prlić took some measures to improve detention conditions and the treatment of detainees, the Chamber concluded that these were insufficient or inappropriate, as demonstrated by the fact that the situation in the HVO detention centres remained critical until they were closed.²⁰⁹

²⁰⁰ Judgement, Vol.4, paras.64, 66-68, 155.

²⁰¹ Judgement, Vol.4, para.134; Exh.P1351, pp.3-4. The Trial Chamber concluded that Prlić was informed of the contents of this report. Vol.4, paras.130, 132.

²⁰² Judgement, Vol.4, para.283.

²⁰³ Judgement, Vol.4, para.284.

²⁰⁴ Judgement, Vol.4, paras.219-220.

²⁰⁵ Judgement, Vol.4, para.286.

²⁰⁶ Judgement, Vol.4, paras.260-263.

²⁰⁷ Judgement, Vol.4, para.232.

²⁰⁸ Judgement, Vol.4, paras.66-68.

²⁰⁹ Judgement, Vol.4, paras.220, 248, 255.

64. These findings, in addition to other evidence and findings regarding Prlić's awareness of, intent to perpetrate and role in implementing the campaign of violence against the Muslim population of HR(Z)HB,²¹⁰ demonstrate that Prlić knew that murders might take place during the execution of this campaign, regardless of whether he had specific prior knowledge of poor conditions of detention or mistreatment of detainees in a particular detention facility on a particular date.

65. It was only by looking in isolation at Prlić's knowledge of the specific conditions in Dretelj and Vojno that the Chamber could have reached its erroneous conclusion that Prlić was not aware of the risk that Dretelj or Vojno detainees might be killed.

66. Based on the totality of the evidence and the Chamber's findings, the Appeals Chamber should correct the Chamber's errors, find that the elements of JCE3 *mens rea* are met and convict Prlić for the following criminal incidents, as set out in the Prlić Table below:

- Murder (Count 2) and wilful killing (Count 3) (incidents 8 and 13).
 - (c) Sub-ground 1(C): Failure to adjudicate or provide a reasoned opinion
 - (i) The Chamber failed to adjudicate many JCE3 crimes

67. The Chamber erred in law by failing to adjudicate Prlić's criminal responsibility for a large number of foreseeable crimes. After acknowledging that Prlić's criminal responsibility for crimes falling outside the common criminal purpose should be analysed pursuant to JCE3, the Chamber failed to do so.²¹¹ Instead, in the subsequent paragraphs the Chamber only examined a small subset of the JCE3 crimes.²¹² In particular:

- The Chamber's analysis of JCE3 murders omitted a number of incidents;
- The Chamber only considered the foreseeability of sexual violence crimes in Mostar municipality, while ignoring numerous other incidents;
- The Chamber only analysed the foreseeability of the destruction of mosques with respect to Jablanica Municipality; and

²¹⁰ See above paras.8, 54-59; below paras.67-82.

²¹¹ Judgement, Vol.4, para.281.

- The Chamber considered the foreseeability of crimes of theft only with respect to the municipalities of Gornji Vakuf, Jablanica and Mostar from June 1993, while failing to adjudicate numerous other incidents.

68. In light of the Chamber's findings and evidence discussed above and below, Prlić was aware of the risk that these additional crimes might be committed in the execution of the common criminal purpose, and he willingly took that risk. Had Prlić's responsibility for these non-adjudicated crimes been properly addressed under JCE3, he should have been convicted of them.

a. Prlić could foresee killings during the evictions and detention

69. It was foreseeable to Prlić that HVO forces might commit murders during eviction operations and against detainees between April and September 1993. In addition to the general factors discussed above,²¹³ Prlić was specifically alerted to this risk because he intended murder and wilful killing (both during attack operations and in relation to Muslim detainees used for forced labour and as human shields) as a means of implementing the common purpose.²¹⁴ He intended that detainees be mistreated and confined in poor conditions.²¹⁵ Moreover, the Chamber found that Prlić could foresee the murder of detainees in Jablanica Municipality in April 1993,²¹⁶ and, as of June 1993, could foresee the murder of Muslims in Mostar linked to eviction campaigns.²¹⁷

70. Not only did Prlić play a key role in implementing the common criminal purpose throughout the area, he intended some types of murder as part of the common criminal purpose, and could foresee the murders of Muslims killed in detention or during eviction campaigns in some locations.²¹⁸ These factors lead to the conclusion that Prlić must have foreseen the possibility that similar detention or eviction-related murders might occur in other locations in which the common criminal purpose was being implemented.

²¹² Judgement, Vol.4, paras.282-288.

²¹³ See above paras.8, 54-59.

²¹⁴ Judgement, Vol.4, paras.66-68, 134, 232, 238, 272, 274. See also above paras.61-63.

²¹⁵ Judgement, Vol.4, paras.64, 66-68, 155. See also above paras.61-63.

²¹⁶ Judgement, Vol.4, para.283.

²¹⁷ Judgement, Vol.4, para.284.

²¹⁸ Judgement, Vol.4, paras.66-68, 134, 270-278, 283-284.

71. In light of the above, Prlić could foresee the possibility of murders and wilful killing during evictions and against detainees. When Prlić's liability is properly considered, he should be held responsible for the unadjudicated incidents of murder and wilful killing, as set out in the Prlić Table below.

b. Prlić could foresee rape and inhuman treatment (sexual assault)

72. In addition to the factors discussed above relating to Prlić's central role in implementing the common criminal purpose and creating a climate of violence,²¹⁹ Prlić was aware of factors that have been accepted in the Appeals Chamber's case law as placing an accused on notice of the risk of sexual violence crimes, including:

- The violent nature of the ethnic cleansing campaign, to which he personally contributed;²²⁰
- The vulnerability of the Muslim population as a result of displacements, detention²²¹ or the separation of men from the women.²²²

73. In fact, the Chamber found that Prlić could foresee rapes and sexual assaults in Mostar from June 1993, as he was informed of the violent evictions of Muslims from West Mostar,²²³ and did nothing to prevent the crimes or punish the perpetrators.²²⁴ Indeed, the Chamber convicted him under JCE3 for these criminal incidents.²²⁵

74. In light of the above, Prlić could foresee that the same type of crime might be committed by HVO forces again between August and December 1993 in the course of similarly violent eviction campaigns in the municipalities of Prozor and Vareš. When Prlić's JCE3 liability is properly considered, he should be held responsible for these incidents of sexual violence, as set out in the Prlić Table below.

²¹⁹ See above paras.8, 54-59.

²²⁰ See above paras.8, 54-59. See also Šainović AJ, paras.1581-1582, 1591-1592, 1602; Đorđević AJ, para.920.

²²¹ See above paras.54-59. See also Šainović AJ, paras.1581-1582, 1591-1592, 1602; Đorđević AJ, para.925.

²²² By issuing the joint proclamation of 30 June 1993 with Stojić, Prlić set in motion the indiscriminate arrests of Muslim men in the municipalities of Mostar, Stolac, Čapljina and Prozor. Judgement, Vol.4, paras.154, 272. See also Šainović AJ, para.1588; Đorđević AJ, para.922.

²²³ Judgement, Vol.4, para.167; [REDACTED]. See also Judgement, Vol.2, paras.873, 876. [REDACTED].

See [REDACTED]; [REDACTED]; [REDACTED]; [REDACTED].

²²⁴ Judgement, Vol.4, para.284.

²²⁵ Judgement, Vol.4, paras.284, 288.

c. Prlić could foresee destruction of Muslim religious institutions (before June 1993)

75. In addition to his general role in creating the climate of violence and ethnic animosity surrounding the implementation of the common criminal purpose,²²⁶ by January 1993, Prlić was specifically informed of the destruction of Muslim property by HVO forces. Prlić learned of the destruction of buildings in Gornji Vakuf through reports sent to the HVO HZHB by North-West OZ Commander Šiljeg between 19 and 30 January 1993.²²⁷ In a report dated 19 January 1993, Šiljeg stated that several facilities in Gornji Vakuf and the villages of Duša and Uzričje were “on fire”.²²⁸ On 28 January 1993, a subsequent report from Šiljeg detailed the number of Muslim homes burnt down in the villages of Uzričje, Duša and Trnovaća.²²⁹ In a report from 30 January 1993 also addressed to the HVO HZHB, Šiljeg wrote that most of the buildings in Donja Hrasnica had been burnt down or demolished and that there was no “civilian population” left in Gornji Hrasnica and in Donja Hrasnica.²³⁰

76. With regard to the Skrobućani mosque in Prozor, the Chamber found that Prlić intended to destroy property belonging to Muslims in the municipality of Prozor.²³¹ It thus convicted him of the crime of wanton destruction of cities, towns or villages, or devastation not justified by military necessity (Counts 19 and 20) under JCE1, including for the destruction of the Skrobućani mosque.²³² The Chamber’s finding that Prlić intended the wanton destruction of the village leads to the conclusion that Prlić knew the destruction of the mosque, a religious site, was a possible consequence of the execution of the plan to destroy property belonging to Muslims in the village of Skrobućani.

77. In light of the above, Prlić could foresee that HVO forces might also destroy institutions dedicated to the Muslim religion. Indeed, the Chamber convicted Prlić under JCE3 for the foreseeable destruction of the mosques in Sovići and Doljani by

²²⁶ See above paras.8, 54-59.

²²⁷ Judgement, Vol.4, para.127; Exhs.P1206, P1351, P1357. The Chamber found that since Prlić was directly involved in planning HVO military operations in Gornji Vakuf and was kept informed of the execution of the plan, he was also informed of the contents of Šiljeg’s reports. Vol.4, paras.131-132, 282.

²²⁸ Exh.P1206, p.1.

²²⁹ Judgement, Vol.4, para.130; Exh.P1351.

²³⁰ Judgement, Vol.4, para.127; Exh.P1357.

²³¹ Judgement, Vol.4, para.147.

²³² Judgement, Vol.3, paras.1564-1566; Vol.4, para.278.

HVO forces in April 1993.²³³ When Prlić's JCE3 liability is properly considered, he should similarly be held responsible for the destruction of the Skrobućani mosque in May or June 1993 (Prozor) and the Baba Bešir mosque in Mostar on 10 May 1993, as set out in the Prlić Table below. These mosques were also destroyed prior to June 1993, when the JCE1 expanded to include this crime.²³⁴

d. Prlić could foresee appropriation of property and plunder

78. Given Prlić's intent and his central role in implementing the campaign of violence directed at Muslims,²³⁵ Prlić must have foreseen that appropriation of property and plunder were possible consequences of its implementation. In light of his involvement in planning the attack on Gornji Vakuf and in the ceasefire negotiations, his knowledge of events on the ground throughout the operations, including the commission of crimes by HVO forces, the Chamber found that Prlić could foresee that appropriation of property and plunder were possible consequences of the attack on Gornji Vakuf and convicted him under JCE3 for those crimes.²³⁶

79. Prlić's awareness of the risk of appropriation of property and plunder only increased as he received actual knowledge that HVO forces had stolen property belonging to Muslims in the aftermath of the attack on Gornji Vakuf. In the 28 January 1993 report mentioned above,²³⁷ Šiljeg detailed the number of Muslim homes burnt down and the amount of goods stolen in villages in Gornji Vakuf Municipality. The Chamber found further that Prlić could foresee the appropriation of property and plunder that took place in the municipality of Jablanica following the HVO attack of 17 April 1993 on Sovići and Doljani, and in Mostar as of June 1993.²³⁸

80. In light of the above, and given Prlić's awareness of the climate of ethnic animosity and the vulnerability of the Muslim population, he could foresee the possibility that HVO forces might commit appropriation of property and plunder in connection with similar HVO operations in the municipalities of Prozor, Mostar (in May 1993), Stolac, Čapljina and Vareš. When Prlić's JCE3 liability is properly

²³³ Judgement, Vol.4, paras.283, 288.

²³⁴ Judgement, Vol.4, paras.59, 342, 433, heading before 449, 1216.

²³⁵ See above paras.8, 54-59.

²³⁶ Judgement, Vol.4, paras.282, 288.

²³⁷ Exh.P1351; see above para.75.

²³⁸ Judgement, Vol.4, paras.283-284, 288.

considered, he should be convicted for these incidents, as set out in the Prlić Table below.

(ii) Alternatively, the Chamber failed to provide a reasoned opinion

81. If the Appeals Chamber considers that the Chamber acquitted Prlić of these JCE3 crimes, it erred in law by failing to provide a reasoned opinion. For the reasons set out above and in sub-section (a), a *de novo* review by the Appeals Chamber should result in findings that it was foreseeable to Prlić that these crimes might be committed in the execution of the common criminal purpose and he willingly took that risk.

(iii) Conclusion

82. Based on the totality of the evidence and the Chamber's findings, the Appeals Chamber should correct the Chamber's errors, find that the elements of JCE3 *mens rea* are met and convict Prlić for the following criminal incidents, as set out in the Prlić Table below:

- Murder (Count 2) and wilful killing (Count 3) (incidents 1-7 and 9-12);
- Rape (Count 4) and inhuman treatment (sexual assault) (Count 5) (incidents 14-19);
- Destruction or wilful damage to institutions dedicated to religion (Count 21): (incidents 20-21); and
- Appropriation of property (Count 22) and plunder (Count 23) (incidents 22-28).

(d) Sub-ground 1(E): Error of fact

83. The Chamber's findings and evidence summarised above demonstrate that Prlić was aware of the risk that the additional JCE3 crimes might be committed in the execution of the common criminal purpose. He willingly took that risk. No reasonable trier of fact could have failed to convict Prlić of the additional JCE3 crimes. Properly assessed, the Chamber's findings and evidence on the record eliminate any reasonable doubt of Prlić's guilt.

84. The Appeals Chamber should find that the elements of JCE3 *mens rea* are met and convict Prlić under Counts 2-5 and 21-23 in relation to the incidents listed in the Prlić Table below.

(e) Prlić Table: Overview of the Chamber's errors

Incident	Errors of law		Error of fact (1(E))
	Compartmentalized analysis of evidence (1(B))	Failure to adjudicate or provide a reasoned opinion (1(C))	
Murder (Count 2) and wilful killing (Count 3)²³⁹			
1. Prozor: The killing of six captured Muslim civilians in Prajine and Tolovac on 19 July 1993 ²⁴⁰		X	X
2. Mostar: The killing of 10 Muslim ABiH detainees at the Faculty of Mechanical Engineering between 10 and 11 May 1993 ²⁴¹		X	X
3. Stolac: The killing of a Muslim civilian girl in Pješivac Greda on 13 July 1993 ²⁴²		X	X
4. Stolac: The killings of five Muslim detainees at the Koštana Hospital in August and September 1993 ²⁴³		X	X
5. Čapljina: The killing of two young Muslim civilian women in Domanovići on or around 13 July 1993 ²⁴⁴		X	X
6. Čapljina: The killing of an 83-year old Muslim disabled civilian man in Bivolje Brdo on 14 July 1993 ²⁴⁵		X	X
7. Čapljina: The killing of 12 Muslim men during the evictions from Bivolje Brdo on or about 16 July 1993 ²⁴⁶		X	X
8. Dretelj: The killing of one Muslim detainee by dehydration in mid-July 1993 ²⁴⁷	X		X
9. Dretelj: The killing of three Muslim detainees in mid-July 1993 ²⁴⁸		X	X

²³⁹ All incidents listed in this section of the Prlić Table constitute murder (Count 2) and wilful killing (Count 3).

²⁴⁰ Judgement, Vol.2, paras.109-112; Vol.3, paras.658-660, 707-708; Indictment, para.53.

²⁴¹ Judgement, Vol.2, paras.845-853; Vol.3, paras.668, 717; Indictment, para.95.

²⁴² Judgement, Vol.2, paras.1934-1938; Vol.3, paras.684, 735; Indictment, para.161.

²⁴³ Judgement, Vol.2, paras.2014-2019 (Salko Kaplan died in Dretelj Prison and Ibro Razić died in Gabela Prison); Vol.3, paras.685-686, 736-737; Indictment, para.169.

²⁴⁴ Judgement, Vol.2, paras.2105-2106; Vol.3, paras.687-688, 738-739; Indictment, para.176.

²⁴⁵ Judgement, Vol.2, paras.2116-2117; Vol.3, paras.689-690, 740-741; Indictment, para.177.

²⁴⁶ Judgement, Vol.2, paras.2085-2090; Vol.3, paras.691-692, 742-743; Indictment, para.177.

²⁴⁷ Judgement, Vol.4, paras.286, 288; Vol.3, paras.85-91, 693-694, 696, 744-745, 748; Indictment, para.190.

²⁴⁸ Judgement, Vol.3, paras.113-115, 122, 693, 695-696, 744-746, 748; Indictment, paras.191-192.

Incident	Errors of law		Error of fact (1(E))
	Compartmentalized analysis of evidence (1(B))	Failure to adjudicate or provide a reasoned opinion (1(C))	
Murder (Count 2) and wilful killing (Count 3)²³⁹			
10. Dretelj: The death of two Muslim detainees as a result of mistreatment in August 1993 ²⁴⁹		X	X
11. Gabela: The killing of one Muslim detainee on 19 or 29 August 1993 ²⁵⁰		X	X
12. Gabela: The killing of an ABiH detainee between 2 October and 11 December 1993 ²⁵¹		X	X
13. Vojno: The killing of a Muslim detainee on 5 December 1993 ²⁵²	X		X
Rape (Count 4) and inhuman treatment (sexual assault) (Count 5)			
14. Prozor: The rape of Muslim women and girls in Podgrađe, Lapsunj and Duge between August and December 1993 (Counts 4-5) ²⁵³		X	X
15. Prozor: Sexual assault against Muslim women and girls in Podgrađe and Duge in August 1993 (Count 5) ²⁵⁴		X	X
16. Prozor: Sexual assault against five Muslim detainees in Jurići in August 1993 (Count 5) ²⁵⁵		X	X
17. Vareš: The rape of two Muslim women (Witnesses DF and DG) in Vareš Town in October 1993 (Counts 4-5) ²⁵⁶		X	X
18. Vareš: The rape of a Muslim girl (Witness DH) in Stupni Do on 23 October 1993 (Counts 4-5) ²⁵⁷		X	X

²⁴⁹ Judgement, Vol.3, paras.119-122, 693, 696, 744-745, 747-748; Indictment, paras.191-192.

²⁵⁰ Judgement, Vol.3, paras.250, 253, 697, 749-750; Indictment, para.200.

²⁵¹ Judgement, Vol.3, paras.251, 253, 698, 749, 751; Indictment, para.200.

²⁵² Judgement, Vol.4, paras.287-288; Vol.2, paras.1715-1716; Vol.3, paras.680, 730-731; Indictment, para.138.

²⁵³ Judgement, Vol.2, paras.233-237, 250, 252-253, 258-262, 268-272, 283-292; Vol.3, paras.757-760, 769; Indictment, paras.57, 59.

²⁵⁴ Judgement, Vol.2, paras.233, 235, 250, 252-253, 268-272; Vol.3, paras.771-774; Indictment, paras.57, 59.

²⁵⁵ Judgement, Vol.2, paras.169-170; Vol.3, para.770; Indictment, para.55.

²⁵⁶ Judgement, Vol.3, paras.401-402, 404, 767, 779; Indictment, para.213.

²⁵⁷ Judgement, Vol.3, paras.426, 428-429, 768, 779; Indictment, para.211.

Incident	Errors of law		Error of fact (1(E))
	Compartmentalized analysis of evidence (1(B))	Failure to adjudicate or provide a reasoned opinion (1(C))	
Murder (Count 2) and wilful killing (Count 3)²³⁹			
19. Vareš: Sexual assault against a Muslim girl (Witness EG) in Stupni Do on 23 October 1993 (Count 5) ²⁵⁸		X	X
Destruction or wilful damage to institutions dedicated to religion or education (Count 21)			
20. Prozor: Destruction of the Skrobućani mosque in May or June 1993 ²⁵⁹		X	X
21. Mostar: Destruction of the Baba Bešir mosque on 10 May 1993 ²⁶⁰		X	X
Appropriation of property (Count 22) and plunder (Count 23)			
22. Prozor: Appropriation of property and plunder in Podgrade in August 1993 (Counts 22-23) ²⁶¹		X	X
23. Mostar: Appropriation of property and plunder in West Mostar in May 1993 (Counts 22-23) ²⁶²		X	X
24. Stolac: Appropriation of property and plunder in Pješivac Greda between 2 and 13 July 1993 (Counts 22-23) ²⁶³		X	X
25. Čapljina: Plunder in Bivolje Brdo between 13 and 16 July 1993 (Count 23) ²⁶⁴		X	X
26. Čapljina: Appropriation of property and plunder of property belonging to Muslims detained at the Silos on 23 August 1993 (Counts 22-23) ²⁶⁵		X	X

²⁵⁸ Judgement, Vol.3, paras.427, 429, 780; Indictment, para.211.

²⁵⁹ Judgement, Vol.2, paras.96-97; Vol.3, paras.1600-1601; Indictment, para.53.

²⁶⁰ Judgement, Vol.2, paras.789, 791-792; Vol.3, para.1608; Indictment, para.97.

²⁶¹ Judgement, Vol.2, paras.233, 235, 250-251, 253; Vol.3, paras.1620-1621, 1655; Indictment, para.57.

²⁶² Judgement, Vol.2, paras.823-824, 826-827, 924; Vol.3, paras.1632-1637, 1664-1666; Indictment, paras.99-100, 107.

²⁶³ Judgement, Vol.2, paras.1944-1946; Vol.3, paras.1642-1643, 1669-1671; Indictment, paras.159, 161.

²⁶⁴ Judgement, Vol.2, paras.2122-2124; Vol.3, paras.1674-1676; Indictment, para.175.

²⁶⁵ Judgement, Vol.2, paras.2179-2181; Vol.3, paras.1647-1648, 1677-1679; Indictment, para.182.

Incident	Errors of law		Error of fact (1(E))
	Compartmentalized analysis of evidence (1(B))	Failure to adjudicate or provide a reasoned opinion (1(C))	
Murder (Count 2) and wilful killing (Count 3)²³⁹			
27. Vareš: Appropriation of property and plunder in Vareš Town between 23 October and 1 November 1993 (Counts 22-23) ²⁶⁶		X	X
28. Vareš: Appropriation of property and plunder in Stupni Do on 23 October 1993 (Counts 22-23) ²⁶⁷		X	X

2. Stojić is responsible for the additional JCE3 crimes

85. As Head of the Defence Department of the HVO,²⁶⁸ Stojić could foresee that the additional JCE3 crimes might be committed in the execution of the common criminal purpose. Stojić was the link between the civilian government of the HZ(R)HB and the military component of the HVO²⁶⁹ and was one of the most important members of the JCE.²⁷⁰ The Chamber found that Stojić intended to inflict a broad range of crimes against the Muslim population.²⁷¹ He was aware of, intended and participated in the violent HVO campaign of attacks, expulsions and destruction of Muslim houses and religious institutions in numerous villages, and in the arrest and detention of Muslims in HVO detention centers.²⁷² He knew of the vulnerability of the Muslim population and the criminal propensity of HVO units.²⁷³ By remaining in his position and continuing to contribute to the JCE1 while aware of the risk that additional crimes might be committed by HVO forces, Stojić willingly took the risk that those crimes might be committed.

²⁶⁶ Judgement, Vol.3, paras.343, 345, 348, 401, 403-404, 1650-1653, 1681-1683; Indictment, para.209.

²⁶⁷ Judgement, Vol.3, paras.465, 467, 1650-1653, 1681-1683; Indictment, para.211.

²⁶⁸ Judgement, Vol.1, paras.555-556; Vol.4, para.293.

²⁶⁹ Judgement, Vol.4, paras.425, 429.

²⁷⁰ Judgement, Vol.4, para.429. *See also above* para.9.

²⁷¹ Judgement, Vol.4, paras.65-68, 426-429.

²⁷² E.g. Judgement, Vol.4, paras.151-153, 329, 336-337, 341-342, 348-349, 355-357, 362-363, 369-370, 372, 375, 378, 380-381, 387, 395-396, 406-407, 415, 420, 423, 426-429, 431-432, 1220.

²⁷³ *See below* paras.86-89, 92-97, 104-118.

(a) Stojić could foresee the additional JCE3 crimes

86. Stojić shared the intent to remove the Muslim population from the HZ(R)HB through acts of violence,²⁷⁴ and was one of the most important members of the JCE.²⁷⁵ In furtherance of the common criminal purpose Stojić ensured that violent HVO operations were executed through the military chain of command.²⁷⁶ For instance, he planned, facilitated and/or organized violent operations in West Mostar²⁷⁷ and the municipalities of Gornji Vakuf,²⁷⁸ Čapljina²⁷⁹ and Vareš.²⁸⁰ He also planned the campaign of arrests and mass detention of Muslims who did not belong to any armed force in the summer of 1993.²⁸¹

87. Beyond his participation in HVO operations, Stojić was informed of events on the ground through a variety of sources including: the HVO Main Staff;²⁸² the Head of the VOS;²⁸³ the assistant heads of the SIS assigned to the Defence Department, who were placed within OZ commands and brigades;²⁸⁴ and the MP.²⁸⁵ Stojić also attended approximately 40 meetings of the HVO HZ(R)HB government between September 1992 and November 1993. At these meetings, decisions were made regarding, *inter alia*, matters relating to defence, such as the military situation in the field, the mobilisation of HVO forces and the situation in HVO detention centres.²⁸⁶ In addition to being informed through HVO channels, international representatives also put Stojić on notice of crimes committed by HVO forces.²⁸⁷

88. Based on the information available to him, Stojić knew of the violent crimes committed during HVO operations and in detention centres,²⁸⁸ yet he made no serious

²⁷⁴ Judgement, Vol.4, paras.65-68, 428-429, 431-432.

²⁷⁵ Judgement, Vol.4, para.429. *See also above* paras.9, 85.

²⁷⁶ Judgement, Vol.4, paras.425, 429.

²⁷⁷ Judgement, Vol.4, paras.348-349, 355-357, 426.

²⁷⁸ Judgement, Vol.4, paras.334-335, 337, 1220.

²⁷⁹ Judgement, Vol.4, paras.375, 378.

²⁸⁰ Judgement, Vol.4, paras.380, 426.

²⁸¹ Judgement, Vol.4, paras.151-155, 305, 373-374, 973, 984, 996, 1220. *See also* Vol.4, para.57.

²⁸² Judgement, Vol.4, para.300. *See also* Vol.1, para.768.

²⁸³ Judgement, Vol.1, para.736; Vol.4, para.301.

²⁸⁴ Judgement, Vol.1, para.737. *But see* Vol.1, para.606; Vol.4, para.302 (finding that Stojić did not regularly receive reports from the SIS, but that when an SIS agent in an HVO battalion compiled a report on an important security issue such as the exchange of prisoners of war, it was customary to send the report to Stojić amongst others).

²⁸⁵ Judgement, Vol.4, para.318.

²⁸⁶ Judgement, Vol.4, para.297.

²⁸⁷ Judgement, Vol.4, paras.350, 359, 367, 422, 426. *See also* Vol.1, para.554.

²⁸⁸ *E.g.* Judgement, Vol.4, paras.329, 336, 349, 355, 357, 363, 369-370, 375, 395-396, 406-407.

effort to stop or prevent HVO crimes.²⁸⁹ Instead, he praised the perpetrators, encouraging the commission of further crimes.²⁹⁰

89. In sum, Stojić was a key figure in implementing a discriminatory and violent campaign against Muslims, was regularly informed of the results, and must have been aware of the consequent vulnerability of the Muslim population. It was therefore foreseeable to him that other violent crimes against Muslims or their property might be committed in the course of the campaign. As set out below, the Chamber's findings and the evidence on the record demonstrate that such foreseeable crimes included: murders during evictions and in detention centres; rape and other forms of sexual violence; destruction or damage to institutions dedicated to religion (before June 1993); and appropriation of property and plunder.

(b) Sub-ground 1(A): Application of the wrong legal standard

90. The Chamber applied an elevated "probability" standard in assessing whether Stojić could foresee JCE3 crimes by requiring proof of whether Stojić could reasonably have foreseen that the crimes "would" be committed.²⁹¹ In its subsequent analysis, the Chamber applied the "would" test throughout.²⁹² In certain instances, it convicted on this higher standard.²⁹³ However, in relation to thefts and the destruction of religious property in the municipality of Jablanica after the attack there in April 1993, and thefts in the municipalities of Čapljina in July 1993 and Vareš between October and November 1993,²⁹⁴ the Chamber erroneously concluded that Stojić could not foresee that these crimes "would" be committed.²⁹⁵

91. In each instance, the Chamber found that the evidence was not sufficient to meet the "probability" standard because Stojić was not informed of HVO operations in the municipality ahead of time or did not participate in the operations by the date on which the JCE3 crimes occurred.²⁹⁶ The correct standard, however, does not require that the accused be aware of the precise context, location or date on which the crime occurs to be criminally responsible pursuant to JCE3. Nor is the accused legally required to be involved in a particular part of the implementation of the common

²⁸⁹ Judgement, Vol.4, paras.414-415, 423, 427, 1328.

²⁹⁰ Judgement, Vol.4, paras.381, 418-420, 427.

²⁹¹ Judgement, Vol.4, para.433.

²⁹² Judgement, Vol.4, paras.437, 439 (also referring to "might"), 441, 443, 445-449.

²⁹³ Judgement, Vol.4, paras.437-439, 444-447, 450.

²⁹⁴ See below Stojić Table, incidents 20, 23, 27, 29 and 30.

²⁹⁵ Judgement, Vol.4, paras.440-443, 448-449.

criminal purpose. It is sufficient that the accused is aware of the “possibility” that the crimes “might” be committed in the execution of the common criminal purpose.²⁹⁷

Applying the correct legal standard, Stojić knew that thefts and the destruction of religious property might occur during the execution of the common criminal purpose throughout the HZ(R)HB, regardless of whether he had specific prior knowledge that HVO troops would be entering a particular town on a particular date.

92. In addition to his shared intent, the degree of his JCE involvement and the general sources of information available to him,²⁹⁸ by April 1993, when the crimes in Jablanica occurred, Stojić knew that HVO forces had engaged in thefts and destroyed Muslim property in connection with prior military operations. He thus knew that thefts and the destruction of religious property might occur in April 1993 and thereafter in the execution of the common criminal purpose.

93. As early as October 1992, Stojić was on notice that HVO forces had committed thefts. That month, his Defence Department received a report that MPs had illegally seized and stolen property after HVO forces took over Prozor.²⁹⁹

94. In January 1993, Stojić planned and facilitated the violent HVO operations in Gornji Vakuf Municipality and was informed of the outcome of these operations.³⁰⁰ He received information that HVO forces had committed acts of theft,³⁰¹ and had “torched”, “burned down” and “demolished” property during these operations.³⁰²

95. Stojić knew that these types of crimes might occur in April 1993 because the attack on the municipality of Jablanica closely followed the expiry of the HVO’s April ultimatum (set for 15 April 1993), which Stojić knew was drafted along the lines of Prlić’s 15 January ultimatum that preceded the attack on the municipality of Gornji Vakuf.³⁰³ Since Stojić knew of the violence that ensued following the attack on the municipality of Gornji Vakuf in January 1993, including the destruction and theft

²⁹⁶ Judgement, Vol.4, paras.441, 443, 448-449.

²⁹⁷ See above para.28.

²⁹⁸ See above paras.86-89.

²⁹⁹ Exh.P648; Judgement, Vol.2, para.59.

³⁰⁰ Judgement, Vol.4, para.337.

³⁰¹ Judgement, Vol.4, paras.333 (referring to a report prepared by Željko Šiljeg documenting the theft of property in the villages of Uzričje, Duša and Trnovača), 336 (finding that “Stojić was aware of the [...] reports sent by Željko Šiljeg to the HVO”).

³⁰² Judgement, Vol.4, paras.331-333, 336.

³⁰³ Judgement, Vol.4, paras.125-128, 138, 140, 142-144.

of property,³⁰⁴ he must have foreseen that the implementation of the April ultimatum by force might have a similar outcome.³⁰⁵

96. In May and June 1993, Stojić received additional notice of thefts by HVO forces during operations in West Mostar.³⁰⁶ Further information concerning the commission of thefts by HVO forces, this time in the municipality of Prozor, reached the Defence Department in August 1993.³⁰⁷

97. Therefore, prior to the incidents in question in the municipalities of Jablanica, Čapljina and Vareš, Stojić knew full well that HVO forces might commit thefts and destroy religious property when implementing the common criminal purpose. The Chamber acknowledged as much in its findings. For instance, it found that the Accused were aware that HVO troops might destroy mosques—including the mosques in Sovići and Doljani in Jablanica Municipality—during operations in which HVO troops destroyed many non-military structures.³⁰⁸ Furthermore, the Chamber’s findings³⁰⁹ that Stojić could foresee the appropriation and plunder of property in Gornji Vakuf and West Mostar—given the climate of violence that accompanied the operations in these locations—demonstrates that it was equally foreseeable to Stojić that HVO forces might commit these crimes in other locations when implementing the common criminal purpose.

98. On the basis of the totality of the evidence and the findings set out above, the Appeals Chamber should correct the Chamber’s errors, find that the elements of JCE3 are met and convict Stojić under the following Counts:

- Destruction or wilful damage to institutions dedicated to religion or education (Count 21) (incident 20); and
- Appropriation of property (Count 22) and plunder (Count 23) (incidents 23, 27, 29 and 30).

³⁰⁴ Judgement, Vol.4, paras.331-333 (referring to the crimes reported in Željko Šiljeg’s reports concerning the operations in Gornji Vakuf, including the destruction and theft of property), 336 (finding that “Stojić was aware of the [...] reports sent by Željko Šiljeg to the HVO”).

³⁰⁵ See Judgement, Vol.4, para.146 (in relation to Prlić, but the same reasoning applies to Stojić).

³⁰⁶ Judgement, Vol.4, para.446; Exh.P2770 (referring to “forcible moves into apartments” in the context of the eviction of Muslims).

³⁰⁷ Exhs.P4177, pp.2-3; [REDACTED]. See also Judgement, Vol.4, para.302 (noting evidence that when an SIS agent in an HVO battalion compiled a report on an important security issue such as the exchange of prisoners of war, it was customary to send the report to Stojić amongst others).

³⁰⁸ Judgement, Vol.4, para.73.

³⁰⁹ Judgement, Vol.4, paras.438-439, 444-445.

(c) Sub-ground 1(B): Compartmentalization of evidence

99. The Chamber erroneously failed to consider the totality of the evidence on the record when assessing whether Stojić could foresee the thefts and destruction of religious property in Jablanica Municipality, and thefts in the municipalities of Čapljina and Vareš, discussed above in relation to sub-ground 1(A). Instead, the Chamber limited its evidentiary analysis of foreseeability to Stojić's knowledge of events at the particular location of the incident in question.³¹⁰

100. As discussed above,³¹¹ in analysing Stojić's responsibility for the crimes in a particular location, the Chamber only considered whether Stojić was either informed ahead of time of the HVO operations being conducted there or whether he had participated in the operations by the date on which the JCE3 crimes occurred. It ignored evidence about the nature of the campaign that Stojić intended, his overall role in the JCE1 and his knowledge of the pattern of crimes in other areas.

101. On the basis of the totality of the evidence and the findings set out above, the Appeals Chamber should correct the Chamber's errors, find that the elements of JCE3 are met and convict Stojić under the following Counts:

- Destruction or wilful damage to institutions dedicated to religion or education (Count 21) (incident 20); and
- Appropriation of property (Count 22) and plunder (Count 23) (incidents 23, 27, 29 and 30).

(d) Sub-ground 1(C): Failure to adjudicate or provide a reasoned opinion(i) The Chamber failed to adjudicate many JCE3 crimes

102. The Chamber erred in law by failing to adjudicate Stojić's criminal responsibility for a large number of foreseeable crimes. After acknowledging that Stojić's criminal responsibility for crimes falling outside the common criminal purpose should be analysed pursuant to JCE3,³¹² the Chamber failed to do so. Instead,

³¹⁰ Judgement, Vol.4, paras.434-449.

³¹¹ See above para.91.

³¹² Judgement, Vol.4, para.433.

in the subsequent paragraphs the Chamber only examined a small subset of the JCE3 crimes.³¹³ It failed to adjudicate:

- 13 incidents of murder and wilful killing;
- Rapes and other forms of sexual assault against numerous victims in the municipalities of Prozor and Vareš between August and November 1993;
- The destruction of two mosques in the municipalities of Prozor and Mostar in May/June 1993; and
- The appropriation of property in the municipalities of Prozor, Mostar, Stolac and Čapljina.³¹⁴

103. In light of the Chamber's findings and the evidence, Stojić was aware of the risk that these additional crimes might be committed in the execution of the common criminal purpose and willingly took that risk. Had Stojić's responsibility for these crimes been adjudicated under JCE3, he would have been convicted of them.

a. Stojić could foresee killings during evictions and detention

104. It was foreseeable to Stojić that HVO forces might commit murders and wilful killings during eviction operations and against detainees between April and September 1993. In addition to the general factors discussed above,³¹⁵ Stojić was alerted to this risk because he intended that murder and wilful killing be committed during HVO attacks that were linked to the expulsion operations.³¹⁶ Equally, Stojić was aware that Muslim detainees were at risk of being killed because he intended that detainees used for forced labour and as human shields be killed³¹⁷ and intended that detainees be mistreated and confined in poor conditions.³¹⁸

105. Stojić also received specific information that alerted him to the risk that murders might occur during eviction operations and against detainees. As of January 1993, at the earliest stage of the implementation of the common criminal purpose, Stojić knew that HVO forces had in fact killed Muslim civilians during attacks aimed

³¹³ Judgement, Vol.4, paras.434-450.

³¹⁴ See below Stojić Table.

³¹⁵ See above paras.86-89.

³¹⁶ E.g. Judgement, Vol.4, paras.66-68, 336-337, 428-429, 431-432.

³¹⁷ E.g. Judgement, Vol.4, paras.66-68, 395, 428-429, 431-432.

³¹⁸ E.g. Judgement, Vol.4, paras.66-68, 395, 407, 428-429, 431-432.

at expelling Muslims from the municipality of Gornji Vakuf.³¹⁹ On 28 January 1993, in a report on the situation in the Gornji Vakuf area, Željko Šiljeg informed the Defence Department, amongst others, of the torching of houses and looting by HVO soldiers, and included the names of seven Muslim civilians killed during the shelling of Duša by the HVO.³²⁰

106. Stojić continued to be informed of subsequent murders. For instance:

- An HVO “special report” dated 14 June 1993 specifically informed him that during the eviction of 90 Muslims the day before in West Mostar, there were rapes and beatings as well as “indications” that civilians had been murdered;³²¹
- [REDACTED];³²²

and

- Also in August 1993, the warden of the Heliodrom notified Stojić that certain detainees taken to the front line to perform work had been killed.³²³

107. After having been informed between July and September 1993 of the poor detention conditions and mistreatment in the HVO detention centres,³²⁴ including the Heliodrom³²⁵ and Dretelj Prison,³²⁶ Stojić was also alerted to the risk that Muslim detainees might be murdered and wilfully killed.

108. In light of the above, Stojić could foresee the possibility of murders and wilful killing during evictions and against detainees. When Stojić’s liability is properly considered, he should be held responsible for the unadjudicated incidents of murder and wilful killing, as set out in the Stojić Table below.

³¹⁹ Judgement, Vol.4, paras.333, 336; Exh.P1351. *See also* Vol.4, paras.44-45, 48, 65-66.

³²⁰ Judgement, Vol.4, paras.333, 336; Exh.P1351, pp.1, 2-4. The Chamber found that Stojić was aware of the content of Šiljeg’s reports (Judgement, Vol.4, para.336).

³²¹ Judgement, Vol.2, paras.868-870; Vol.4, para.351; Exh.P2770.

³²² [REDACTED].

³²³ Judgement, Vol.4, paras.388, 391; Exh.P4352.

³²⁴ Judgement, Vol.4, paras.401-402.

³²⁵ Judgement, Vol.4, para.395.

³²⁶ Judgement, Vol.4, paras.401, 403.

b. Stojić could foresee rape and inhuman treatment (sexual assault)

109. Stojić could foresee the possibility of rapes and other forms of sexual assault in the municipalities of Prozor from August to November 1993 and Vareš in October 1993. In addition to the general factors discussed above,³²⁷ the “climate of violence” which made crimes of sexual violence in West Mostar foreseeable to Stojić³²⁸ would have also made it foreseeable to him that HVO forces might commit sexual violence in other locations when implementing the common criminal purpose.

110. Moreover, Stojić must have been aware that the Muslim civilian population was vulnerable to acts of sexual violence because he helped plan eviction operations in which men and older boys were separated from women and children.³²⁹ This, as well as awareness of the violent nature of the ethnic cleansing campaign, has been accepted by the Appeals Chamber as placing an accused on notice of the risk of sexual violence crimes.³³⁰

111. By the time of the Prozor sexual violence in August 1993, Stojić also received specific information concerning rapes during HVO operations. As of 14 June 1993, Stojić knew that HVO troops had raped Muslim women during the eviction campaign in West Mostar.³³¹ In August 1993, information concerning the incidence of rapes and sexual assaults in Podgrađe, Lapsunj and Duge in Prozor Municipality reached Stojić’s Defence Department.³³²

112. In light of the above, Stojić could foresee the possibility of the Prozor and Vareš sexual violence. When Stojić’s liability is properly considered, he should be held responsible for the unadjudicated incidents of sexual violence, as set out in the Stojić Table below.

³²⁷ See above paras.86-89.

³²⁸ Judgement, Vol.4, paras.435, 437.

³²⁹ In relation to events in Mostar *e.g.* Judgement, Vol.2, paras.801-803, 805, 891-895, 897, 900; Vol.4, paras.151-155, 348-349, 355-357.

³³⁰ See *Šainović* AJ, paras.1581-1582, 1591-1592, 1602; *Dorđević* AJ, paras.920, 925-926.

³³¹ Judgement, Vol.4, para.351; Exh.P2770.

³³² Exhs.P4177, pp.2-3; [REDACTED]. See also Judgement, Vol.4, para.302 (noting evidence that when an SIS agent in an HVO battalion compiled a report on an important security issue such as the exchange of prisoners of war, it was customary to send the report to Stojić amongst others).

c. Stojić could foresee destruction of Muslim religious institutions (before June 1993)

113. Stojić could foresee the possibility that HVO forces might damage or destroy mosques in Prozor and Mostar, prior to June 1993. In addition to the general factors discussed above,³³³ Stojić knew of this risk because he intended that the JCE be implemented through violent crimes that included the destruction of Muslim property.³³⁴ As discussed above, Stojić also received information that Muslim property had been “torched”, “burned down” and “demolished” during the operations in Gornji Vakuf Municipality in January 1993.³³⁵ On the Chamber’s own analysis this was sufficient to alert Stojić to the risk that mosques might be damaged or destroyed during subsequent HVO operations because it found that the Accused could foresee that mosques might be destroyed during HVO military operations in which troops destroyed many non-military structures.³³⁶

114. Furthermore, by late April 1993, Stojić had actual knowledge that the mosques in Sovići and Doljani had been destroyed. A report dated 23 April 1993 containing this information was sent to Stojić’s immediate subordinate³³⁷ Slobodan Božić.³³⁸ Given that the author of the report sought further instructions from Božić in relation to the matters discussed in the report, the serious nature of the information contained in the report, that the recipient was Stojić’s immediate subordinate, and that Stojić was regularly informed of military operations by the armed forces,³³⁹ Stojić would have been alerted to the contents of this report.

115. In light of the above, Stojić could foresee the possibility of the subsequent destruction of mosques in Prozor and Mostar in May/June 1993. When Stojić’s JCE3 liability is properly considered, he should be held responsible for these incidents, as set out in the Stojić Table below.

³³³ See above paras.86-89.

³³⁴ E.g. Judgement, Vol.4, paras.66-68, 336-337, 428-429, 431-432.

³³⁵ Judgement, Vol.4, paras.331-333, 336.

³³⁶ Judgement, Vol.4, para.73.

³³⁷ Božić, T.36158-36159.

³³⁸ Judgement, Vol.4, para.338; Vol.2, paras.646-650; Exh.P2063.

³³⁹ Judgement, Vol.4, para.312.

d. Stojić could foresee appropriation of property and plunder

116. Stojić could foresee the possibility that HVO forces might appropriate and plunder property in Prozor, Mostar, Stolac, and Čapljina between July and August 1993. In addition to the general factors discussed above,³⁴⁰ by July 1993, Stojić knew that HVO forces had engaged in thefts in connection with earlier military operations.³⁴¹ His Defence Department received further information in August 1993 concerning the commission of thefts by HVO forces.³⁴²

117. At the very least, as discussed above, the Chamber's findings³⁴³ that Stojić could foresee the appropriation and plunder of property in Gornji Vakuf and West Mostar—given the climate of violence that accompanied the operations in these locations—demonstrates that it was foreseeable to him that HVO forces might commit these crimes in other locations when implementing the common criminal purpose.

118. In light of the above, Stojić could foresee the possibility of thefts occurring in Prozor, Mostar, Stolac and Čapljina. When Stojić's JCE3 liability is properly considered, he should be held responsible for these unadjudicated incidents of theft, as set out in the Stojić Table below.

(ii) Alternatively, the Chamber failed to provide a reasoned opinion

119. If the Appeals Chamber considers that the Chamber acquitted Stojić of these JCE3 crimes, the Chamber erred in law by failing to provide a reasoned opinion. For the reasons set out above, a *de novo* review by the Appeals Chamber should result in findings that it was foreseeable to Stojić that these crimes might be committed in the execution of the common criminal purpose and he willingly took that risk.

(iii) Conclusion

120. Based on the totality of the evidence and the Chamber's findings, the Appeals Chamber should correct the Chamber's errors, find that the elements of JCE3 *mens rea* are met and convict Stojić for the following criminal incidents, as set out in the Stojić Table below:

- Murder (Count 2) and wilful killing (Count 3) (incidents 1-13);

³⁴⁰ See above paras.86-89.

³⁴¹ See above paras.93-96.

³⁴² See above para.96.

- Rape (Count 4) and inhuman treatment (sexual assault) (Count 5) (incidents 14-19);
- Destruction or wilful damage to institutions dedicated to religion or education (Count 21) (incidents 21-22); and
- Appropriation of property (Count 22) and plunder (Count 23) (incidents 24-26 and 28).

(e) Sub-ground 1(E): Error of fact

121. The Chamber's findings and evidence summarized above demonstrate that Stojić was aware of the risk that the additional JCE3 crimes might be committed in the execution of the common criminal purpose and willingly took that risk. No reasonable trier of fact could have failed to convict Stojić of the additional JCE3 crimes. Properly assessed, the Chamber's findings and evidence on the record eliminate any reasonable doubt of Stojić's guilt.

122. The Appeals Chamber should find that the elements of JCE3 are met and convict Stojić under Counts 2-5 and 21-23 in relation to the incidents listed in the Stojić Table below.

(f) Stojić Table: Overview of the Chamber's errors

Incident	Errors of law			Error of fact (1(E))
	Incorrect <i>mens rea</i> standard (1(A))	Compartmentalized evidence (1(B))	Failure to adjudicate or provide a reasoned opinion (1(C))	
Murder (Count 2) and wilful killing (Count 3)³⁴⁴				
1. Prozor: The killing of six captured Muslim civilians in Prajine and Tolovac on 19 July 1993 ³⁴⁵			X	X

³⁴³ Judgement, Vol.4, paras.438-439, 444-445.

³⁴⁴ All incidents listed in this section of the Stojić Table constitute murder (Count 2) and wilful killing (Count 3).

³⁴⁵ Judgement, Vol.2, paras.109-112; Vol.3, paras.658-660, 707-708; Indictment, para.53.

Incident	Errors of law			Error of fact (1(E))
	Incorrect <i>mens rea</i> standard (1(A))	Compartmentalized evidence (1(B))	Failure to adjudicate or provide a reasoned opinion (1(C))	
2. Jablanica: The killing of four Muslim ABiH detainees at the Sovići School on 20 or 21 April 1993 ³⁴⁶			X	X
3. Mostar: The killing of 10 Muslim ABiH detainees at the Faculty of Mechanical Engineering between 10 and 11 May 1993; the killing of two other Muslim detainees between 8 and 11 July 1993 ³⁴⁷			X	X
4. Mostar: The killing of a Muslim civilian in Buna on 14 July 1993 ³⁴⁸			X	X
5. Stolac: The killing of a Muslim civilian girl in Pješivac Greda on 13 July 1993 ³⁴⁹			X	X
6. Stolac: The killings of five Muslim detainees at the Koštana Hospital in August and September 1993 ³⁵⁰			X	X
7. Čapljina: The killing of two young Muslim civilian women in Domanovići on or around 13 July 1993 ³⁵¹			X	X
8. Čapljina: The killing of an 83-year old Muslim disabled civilian man in Bivolje Brdo on 14 July 1993 ³⁵²			X	X
9. Čapljina: The killing of 12 Muslim men during the evictions from Bivolje Brdo on or about 16 July 1993 ³⁵³			X	X
10. Dretelj: The killing of one Muslim detainee by dehydration in mid-July 1993 ³⁵⁴			X	X
11. Dretelj: The killing of three Muslim detainees in mid-July 1993 ³⁵⁵			X	X

³⁴⁶ Judgement, Vol.2, paras.569, 580-581, 584; Vol.3, paras.665-666, 713-715; Indictment, para.77.

³⁴⁷ Judgement, Vol.2, paras.845-853, 905-909; Vol.3, paras.668-669, 717-718; Indictment, paras.95, 104.

³⁴⁸ Judgement, Vol.2, paras.940-944; Vol.3, paras.670, 719; Indictment, para.106.

³⁴⁹ Judgement, Vol.2, paras.1934-1938; Vol.3, paras.684, 735; Indictment, para.161.

³⁵⁰ Judgement, Vol.2, paras.2014-2019 (Salko Kaplan died in Dretelj Prison and Ibro Razić died in Gabela Prison); Vol.3, paras.685-686, 736-737; Indictment, para.169.

³⁵¹ Judgement, Vol.2, paras.2105-2106; Vol.3, paras.687-688, 738-739; Indictment, para.176.

³⁵² Judgement, Vol.2, paras.2116-2117; Vol.3, paras.689-690, 740-741; Indictment, para.177.

³⁵³ Judgement, Vol.2, paras.2085-2090; Vol.3, paras.691-692, 742-743; Indictment, para.177.

³⁵⁴ Judgement, Vol.3, paras.85-91, 693-694, 696, 744-745, 748; Indictment, para.190.

³⁵⁵ Judgement, Vol.3, paras.113-115, 122, 693, 695-696, 744-746, 748; Indictment, paras.191-192.

Incident	Errors of law			Error of fact (1(E))
	Incorrect <i>mens rea</i> standard (1(A))	Compartmentalized evidence (1(B))	Failure to adjudicate or provide a reasoned opinion (1(C))	
12. Dretelj: The death of two Muslim detainees as a result of mistreatments in August 1993 ³⁵⁶			X	X
13. Gabela: The killing of one Muslim detainee on 19 or 29 August 1993 ³⁵⁷			X	X
Rape (Count 4) and inhuman treatment (sexual assault) (Count 5)				
14. Prozor: The rape of Muslim women and girls in Podgrade, Lapsunj and Duge between August and November 1993 (Counts 4-5) ³⁵⁸			X	X
15. Prozor: Sexual assault against Muslim women and girls in Podgrade and Duge in August 1993 (Count 5) ³⁵⁹			X	X
16. Prozor: Sexual assault against five Muslim detainees in Jurići in August 1993 (Count 5) ³⁶⁰			X	X
17. Vareš: The rape of two Muslim women (Witnesses DF and DG) in Vareš Town in October 1993 (Counts 4-5) ³⁶¹			X	X
18. Vareš: The rape of a Muslim girl (Witness DH) in Stupni Do on 23 October 1993 (Counts 4-5) ³⁶²			X	X
19. Vareš: Sexual assault against a Muslim girl (Witness EG) in Stupni Do on 23 October 1993 (Count 5) ³⁶³			X	X
Destruction or wilful damage to institutions dedicated to religion or education (Count 21)				
20. Jablanica: Destruction of the mosques in Sovići and Doljani between 18 and 24 April 1993 ³⁶⁴	X	X		X

³⁵⁶ Judgement, Vol.3, paras.119-122, 693, 696, 744-745, 747-748; Indictment, paras.191-192.

³⁵⁷ Judgement, Vol.3, paras.250, 253, 697, 749-750; Indictment, para.200.

³⁵⁸ Judgement, Vol.2, paras.233-237, 250, 252-253, 258-262, 268-272, 283-287, 290-292; Vol.3, paras.757-760, 769; Indictment, paras.57, 59.

³⁵⁹ Judgement, Vol.2, paras.233, 235, 250, 252-253, 268-272; Vol.3, paras.771-774; Indictment, paras.57, 59.

³⁶⁰ Judgement, Vol.2, paras.169-170; Vol.3, para.770; Indictment, para.55.

³⁶¹ Judgement, Vol.3, paras.401-402, 404, 767, 779; Indictment, para.213.

³⁶² Judgement, Vol.3, paras.426, 428-429, 768, 779; Indictment, para.211.

³⁶³ Judgement, Vol.3, paras.427, 429, 780; Indictment, para.211.

³⁶⁴ Judgement, Vol.4, paras.449-450; Vol.2, paras.646-650; Vol.3, paras.1606-1607; Indictment, para.83.

Incident	Errors of law			Error of fact (1(E))
	Incorrect <i>mens rea</i> standard (1(A))	Compartmentalized evidence (1(B))	Failure to adjudicate or provide a reasoned opinion (1(C))	
21. Prozor: Destruction of the Skrobućani mosque in May or June 1993 ³⁶⁵			X	X
22. Mostar: Destruction of the Baba Bešir mosque on 10 May 1993 ³⁶⁶			X	X
Appropriation of property (Count 22) and plunder (Count 23)				
23. Jablanica: Appropriation of property and plunder in Sovići and Doljani after the attack of 17 April 1993 (Counts 22-23) ³⁶⁷	X	X		X
24. Prozor: Appropriation of property and plunder in Podgrađe in August 1993 (Counts 22-23) ³⁶⁸			X	X
25. Mostar: Appropriation of property and plunder in Raštani on 24 August 1993 (Counts 22-23) ³⁶⁹			X	X
26. Stolac: Appropriation of property and plunder in Pješivac Greda between 2 and 13 July 1993 (Counts 22-23) ³⁷⁰			X	X
27. Čapljina: Plunder in Bivolje Brdo between 13 and 16 July 1993 (Count 23) ³⁷¹	X	X		X
28. Čapljina: Appropriation of property and plunder of property belonging to Muslims detained at the Silos on 23 August 1993 (Counts 22-23) ³⁷²			X	X
29. Vareš: Appropriation of property and plunder in Vareš Town between 23 October and 1 November 1993 (Counts 22-23) ³⁷³	X	X		X

³⁶⁵ Judgement, Vol.2, paras.96-97; Vol.3, paras.1600-1601; Indictment, para.53.

³⁶⁶ Judgement, Vol.2, paras.789, 791-792; Vol.3, para.1608; Indictment, para.97.

³⁶⁷ Judgement, Vol.4, paras.441, 450; Vol.2, paras.652-655; Vol.3, paras.1629-1631, 1661-1663; Indictment, para.85.

³⁶⁸ Judgement, Vol.2, paras.233, 235, 250-251, 253; Vol.3, paras.1620-1621, 1655; Indictment, para.57.

³⁶⁹ Judgement, Vol.2, paras.965-966; Vol.3, paras.1638-1641, 1667-1668; Indictment, para.108.

³⁷⁰ Judgement, Vol.2, paras.1944-1946; Vol.3, paras.1642-1643, 1669-1671; Indictment, paras.159, 161.

³⁷¹ Judgement, Vol.4, paras.448, 450; Vol.2, paras.2122-2124; Vol.3, paras.1674-1676; Indictment, para.175.

³⁷² Judgement, Vol.2, paras.2179-2181; Vol.3, paras.1647-1648, 1677-1679; Indictment, para.182.

³⁷³ Judgement, Vol.4, paras.443, 450; Vol.3, paras.343, 345, 348, 401, 403-404, 1650-1653, 1681-1683; Indictment, para.209.

Incident	Errors of law			Error of fact (1(E))
	Incorrect <i>mens rea</i> standard (1(A))	Compartmentalized evidence (1(B))	Failure to adjudicate or provide a reasoned opinion (1(C))	
30. Vareš: Appropriation of property and plunder in Stupni Do on 23 October 1993 (Counts 22-23) ³⁷⁴	X	X		X

3. Praljak is responsible for the additional JCE3 crimes

123. As the top HVO commander from 24 July 1993 until 9 November 1993,³⁷⁵ and prior to that, as Assistant Minister and then Deputy Minister of Defence of Croatia,³⁷⁶ Praljak could foresee that the additional JCE3 crimes might be committed in the execution of the common criminal purpose. Praljak served as an intermediary between the Croatian and the HZ(R)HB leadership³⁷⁷ and was one of the most important members of the JCE.³⁷⁸ The Chamber found that he intended to inflict a broad range of crimes against the Muslim population.³⁷⁹ He was aware of and participated in the violent HVO campaign of attacks, expulsions and destruction of Muslim property and religious institutions in numerous villages and HVO detention centres.³⁸⁰ Through his role and functions and his presence on the ground, Praljak knew of the vulnerability of the Muslim population and the criminal propensity of the HVO units committing those crimes.³⁸¹ By remaining in his post and continuing to contribute to the JCE1 even though he knew of the crimes being committed by HVO forces, Praljak willingly took the risk that JCE3 crimes might be committed.

³⁷⁴ Judgement, Vol.4, paras.443, 450; Vol.3, paras.465, 467, 1650-1653, 1681-1683; Indictment, para.211.

³⁷⁵ Judgement, Vol.4, para.459; Vol.1, paras.716-717, 725.

³⁷⁶ Judgement, Vol.4, para.457.

³⁷⁷ Judgement, Vol.4, paras.545, 624, 628. *See also* Vol.4, para.1223.

³⁷⁸ Judgement, Vol.4, para.628.

³⁷⁹ Judgement, Vol.4, paras.65-68, 625-628.

³⁸⁰ *E.g.* Judgement, Vol.4, paras.630-631.

³⁸¹ *See* Judgement, Vol.4, paras.620, 621-623, 625-626.

(a) Praljak could foresee the additional JCE3 crimes

124. Through his exercise of *de facto* and subsequently *de jure* authority over the HVO armed forces,³⁸² Praljak was one of the most important members of the JCE.³⁸³ He participated in meetings with the leadership of Croatia during which Croatia's policy vis-à-vis BiH was shaped with a view to furthering the violent ethnic cleansing campaign.³⁸⁴ He advocated the expulsion of the Muslim population from Croat territories in BiH.³⁸⁵ In his role as intermediary between the leadership of Croatia and the HZ(R)HB,³⁸⁶ Praljak transmitted information, instructions and orders from the Croatian leadership to the HZ(R)HB government and armed forces to further the common criminal purpose.³⁸⁷ Moreover, Praljak was a key figure in making decisions regarding the HVO military operations and implementing the discriminatory and violent campaign against the Muslims.³⁸⁸ He planned and directed numerous HVO operations that contributed to the climate of violence throughout the HZ(R)HB. These included operations in Gornji Vakuf, Prozor, Mostar and Vareš.³⁸⁹ He was involved in the campaign of arrests and mass detentions of Muslims and their use for forced labour.³⁹⁰

125. Praljak was thoroughly informed of the situation on the ground. He was well aware of the crimes committed by the HZ(R)HB forces against Muslims through HVO internal communication channels,³⁹¹ but he nevertheless condoned these crimes.³⁹² Moreover, Praljak's style of command was hands-on. Both before and after he became Commander of the HVO armed forces, he spent more time in the field than in his office.³⁹³ Between January and July 1993, he was present on the ground, particularly in the municipalities of Gornji Vakuf, Ljubuški, Prozor, Jablanica and

³⁸² Judgement, Vol.4, paras.457, 482, 484, 1218, 1220.

³⁸³ Judgement, Vol.4, para.628.

³⁸⁴ Judgement, Vol.4, paras.522-530.

³⁸⁵ E.g. Judgement, Vol.4, paras, 18, 522, 525; Exhs.P11376; P11380.

³⁸⁶ Judgement, Vol.4, paras.545, 624, 628. See also Vol.4, para.1223.

³⁸⁷ Judgement, Vol.4, paras.534-545. For example, in January 1993, Praljak participated in drafting the ultimatum that preceded the attack on Gornji Vakuf. He personally delivered the text of the ultimatum from Zagreb, where it was drafted, to Prlić, Stojić and Petković to be made public. See Vol.4, paras.475, 553.

³⁸⁸ Judgement, Vol.4, paras.525, 528, 530, 540, 544-545, 624, 1340.

³⁸⁹ E.g. Judgement, Vol.4, paras.562, 1340; see also below paras.130, 132-133.

³⁹⁰ Judgement, Vol.4, paras.562, 573-575, 586, 599-600, 609, 611, 613-614.

³⁹¹ Judgement, Vol.4, para.625.

³⁹² Judgement, Vol.4, para.620; Exh.P5365 (Praljak congratulating the HVO troops deployed in Mostar, while knowing that HVO members were committing crimes against Muslims).

³⁹³ Witness Z.Andabak, T.51011.

Mostar,³⁹⁴ and received reports from commanders in the field.³⁹⁵ After 24 July 1993, he continued being “very present in the field” to ensure the proper functioning of the chain of command and to affirm his authority.³⁹⁶ Praljak, therefore, had a clear overview of the development of military operations on the ground and the progressive implementation of the common criminal purpose.³⁹⁷ Based on his direct observations in the field or on accounts provided by the HVO commanders on site, he informed the Croatian leadership about the military situation in the field.³⁹⁸

126. In sum, through his role, functions and presence on the ground, Praljak knew of the vulnerability of the Muslim population and the criminal propensity of HVO units committing crimes.³⁹⁹ It was therefore foreseeable to him that other violent crimes against Muslims or their property might be committed in the course of the campaign. As set out below, the Chamber’s findings and the evidence in the record demonstrate that such foreseeable crimes included: murders during evictions and in detention centres; rape and other forms of sexual violence; destruction or damage to institutions dedicated to religion (before June 1993); and appropriation of property and plunder.

(b) Sub-ground 1(A): Application of the wrong legal standard

127. The Chamber applied an elevated “probability” standard in assessing whether Praljak could foresee JCE3 crimes. The Chamber specifically set out to determine whether Praljak could reasonably have foreseen that the crimes “would” be committed.⁴⁰⁰ In its subsequent analysis, the Chamber applied the “would” test throughout.⁴⁰¹ In relation to thefts in Gornji Vakuf and Mostar (Raštani), it convicted on this higher standard.⁴⁰² In relation to thefts and sexual assaults in Vareš Town and

³⁹⁴ Judgement, Vol.4, paras.470, 481-482, 489, 538, 567, 573. *See also* Vol.4, paras.566-567 (Praljak confirmed that he was well aware of the situation in the North-West OZ (comprising, amongst others, the municipalities of Gornji Vakuf, Prozor and Jablanica) as a result of his presence on the ground); Exh.P3516, p.4.

³⁹⁵ Judgement, Vol.4, para.482.

³⁹⁶ Judgement, Vol.4, paras.489, 538.

³⁹⁷ Judgement, Vol.4, para.540.

³⁹⁸ Judgement, Vol.4, para.538.

³⁹⁹ Judgement, Vol.4, paras.65-67, 628.

⁴⁰⁰ Judgement, Vol.4, para.632.

⁴⁰¹ Judgement, Vol.4, paras.635, 638, 643.

⁴⁰² Judgement, Vol.4, paras.635, 638, 644.

Stupni Do (Vareš Municipality), however, it found that Praljak could not foresee that these crimes “would” be committed.⁴⁰³

128. For the crimes committed in Vareš, the Chamber found that, based on “the vague nature of his [23 October 1993] order and his lack of knowledge about any crime committed in the town of Vareš and Stupni Do”, Praljak could not foresee that HVO members “would” commit thefts and sexual assaults in Vareš Municipality.⁴⁰⁴

129. Applying the correct standard, these crimes in Vareš were foreseeable to Praljak. He shared the intent to remove the Muslim population from the region, and he was convicted for the expulsions and other JCE1 crimes which took place throughout the HZ(R)HB.⁴⁰⁵ By October 1993—when the common criminal purpose had already been brutally implemented in places such as Jablanica, Mostar, Čapljina and Stolac—Praljak was well aware that previous HVO operations had resulted in extensive violence against the Muslim population, including murders, physical and psychological abuse, sexual assaults, destruction of property, widespread looting, theft, arrests, mass detention and removals.⁴⁰⁶ Indeed, Praljak, through his command position over the HVO armed forces,⁴⁰⁷ was personally involved in planning and directing HVO military operations in the area and was thus aware of the situation on the ground and the extent of the violence.⁴⁰⁸

130. In January 1993, Praljak participated in drafting the ultimatum that preceded the attack on Gornji Vakuf⁴⁰⁹ and was subsequently involved in planning HVO military operations in the municipality.⁴¹⁰ In performing those functions, he was kept informed of the situation on the ground.⁴¹¹ Praljak’s knowledge of the events on the ground would have made him aware of the climate of violence that accompanied implementation of the JCE when he planned and directed HVO military operations in the municipalities of Prozor (in the summer of 1993),⁴¹² and Mostar (between 24 July

⁴⁰³ Judgement, Vol.4, para.643.

⁴⁰⁴ Judgement, Vol.4, paras.642-643.

⁴⁰⁵ Judgement, Vol.4, paras.627-628, 630.

⁴⁰⁶ Judgement, Vol.4, paras.66-67, 72, 562, 572-573, 586, 628. *See also* Vol.3, paras.645-646.

⁴⁰⁷ Judgement, Vol.4, paras.482, 484, 495, 506.

⁴⁰⁸ Judgement, Vol.4, para.625.

⁴⁰⁹ Judgement, Vol.4, paras.475, 553.

⁴¹⁰ Judgement, Vol.4, paras.472, 531, 556, 558, 562, 633, 1220.

⁴¹¹ Judgement, Vol.4, paras.560, 562, 633; Exh.P1293 (order from Petković to Šiljeg to report to “Brada” in Mostar and send a report on the situation in Gornji Vakuf).

⁴¹² Judgement, Vol.4, paras.472, 570, 573, 625.

and 9 November 1993).⁴¹³ The Chamber found that these eviction operations and the crimes directly linked to them unfolded according to a preconceived plan.⁴¹⁴ Since Praljak knew of the atmosphere of extreme violence following the attacks on Gornji Vakuf,⁴¹⁵ Prozor⁴¹⁶ and Mostar,⁴¹⁷ it was foreseeable to him that the attacks on Vareš Municipality—10 months into the JCE’s implementation⁴¹⁸—might have a similar outcome.

131. Praljak therefore knew of the risk that thefts and sexual assaults might take place in Vareš during the execution of the common criminal purpose, regardless of whether he had specific prior knowledge that HVO troops would be engaged in operations there on a particular date.

132. Moreover, the Chamber found that Praljak participated in planning and directing the HVO operations in Vareš Municipality,⁴¹⁹ and contributed to the murders of Muslims and destruction of Muslim property in Stupni Do.⁴²⁰ The eviction operations were carried out by subordinates of Ivica Rajić, HVO commander in Vareš, and included soldiers from the *Maturice* and *Apostoli* special units who were “notorious for their violent behaviour”.⁴²¹ The Chamber found that, on the evening of 23 October 1993, Praljak ordered Petković and Rajić to “sort out the situation in Vareš showing no mercy to anyone”, using people who were “up to both the times and tasks”.⁴²² Praljak’s 23 October 1993 order was handwritten on the bottom of a report from Rajić of the same date,⁴²³ which reported that Rajić’s forces had attacked Stupni Do, killing “some civilians”, that Vareš Town had been “mopped up”, and that all Muslims of military age had been “placed under surveillance”.⁴²⁴

133. Praljak’s 23 October 1993 order shows that he was well aware of the precise context and the violent character of HVO operations in Vareš.⁴²⁵ Praljak’s order to “find a solution for Vareš showing no mercy to anyone”, coming from the highest

⁴¹³ Judgement, Vol.4, paras.579, 581, 586, 625, 629, 636.

⁴¹⁴ Judgement, Vol.4, paras.65, 562, 572, 586.

⁴¹⁵ Judgement, Vol.4, para.635.

⁴¹⁶ Judgement, Vol.4, paras.566-567, 573.

⁴¹⁷ Judgement, Vol.4, para.638 (Raštani village).

⁴¹⁸ Judgement, Vol.4, paras.44-48, 59-63, 625, 1220.

⁴¹⁹ Judgement, Vol.4, paras.594, 597, 625.

⁴²⁰ Judgement, Vol.4, paras.61, 597.

⁴²¹ Judgement, Vol.3, para.302; Vol.4, paras.639-640.

⁴²² Exhs.P6028; P6051; P9813, *relied on at* Judgement, Vol.3, para.318. *See also* Vol.3, paras.320, 325-326; Exh.P6026.

⁴²³ Petković, T.50580-50582.

⁴²⁴ Exh.P6026. *See also* Judgement, Vol.3, para.340.

HVO authority, was clear and explicit licence for his subordinate units to act with brutality towards Muslims.⁴²⁶ The Chamber also found that his 23 October 1993 order was received by the HVO troops present in Vareš Municipality and interpreted as allowing them to act with brutality.⁴²⁷ In light of Praljak's knowledge of rapes, sexual assaults and thefts in past HVO operations⁴²⁸ and the violent character of the operation in Vareš Municipality,⁴²⁹ he could thus foresee that thefts and sexual assaults might occur during these operations as well.

134. Based on the totality of the evidence and the Chamber's findings, the Appeals Chamber should correct the Chamber's errors, find that the elements of JCE3 *mens rea* are met and convict Praljak for the following criminal incidents, as set out in the Praljak Table below:

- Rape (Count 4) and inhuman treatment (sexual assault) (Count 5) (incidents 19-21); and
- Appropriation of property (Count 22) and plunder (Count 23) (incidents 31-32).

(c) Sub-ground 1(B): Compartmentalization of evidence

135. The Chamber erroneously failed to consider the full scope of the evidence when adjudicating Praljak's responsibility for JCE3 crimes in Vareš Municipality. In assessing Praljak's ability to foresee thefts and sexual assaults there, the Chamber erroneously limited its analysis to whether Praljak had knowledge of the atmosphere of violence in Vareš Town and Stupni Do.⁴³⁰ It ignored relevant findings and the totality of the evidence concerning Praljak's role in the JCE, his position and his knowledge of the pattern of crimes committed in other municipalities before the HVO operation in Vareš Municipality.⁴³¹

⁴²⁵ *Contra* Judgement, Vol.4, para.642.

⁴²⁶ Judgement, Vol.3, para.326.

⁴²⁷ Judgement, Vol.4, para.591; *see also* Vol.3, para.326.

⁴²⁸ *See also below* paras.147-148, 153-155.

⁴²⁹ Judgement, Vol.4, paras.61, 66-67, 72, 591-594, 597.

⁴³⁰ Judgement, Vol.4, para.642. However, as discussed above, Praljak had specific prior knowledge that the HVO troops would be in Vareš Municipality. He was also well aware of the violent character of HVO operations in that area. *See also above* para.128.

⁴³¹ *See also above* paras.124-125, 129-130.

136. In addition to the evidence of Praljak's knowledge of crimes in Vareš and his encouragement of further crimes discussed above,⁴³² the Chamber should have taken into account that the HVO operations in Vareš closely followed the pattern of HVO operations that took place in other municipalities, such as Gornji Vakuf, Prozor and Mostar.⁴³³ Praljak was personally involved in planning and directing HVO military operations throughout the HZ(R)HB and thus was aware of the extent of violence that accompanied such operations.⁴³⁴

137. The Chamber also failed to consider that Praljak, through his leadership position,⁴³⁵ was well informed of events on the ground.⁴³⁶ Assessing the totality of the evidence in relation to foreseeability, by October 1993 Praljak therefore knew of the risk that thefts, rapes and other sexual assaults might occur in Vareš during the violent implementation of the common criminal purpose there.⁴³⁷

138. Based on the totality of the evidence and the Chamber's findings, the Appeals Chamber should correct the Chamber's errors, find that the elements of JCE3 *mens rea* are met and convict Praljak for the following criminal incidents, as set out in the Praljak Table below:

- Rape (Count 4) and inhuman treatment (sexual assault) (Count 5) (incidents 19-21); and
- Appropriation of property (Count 22) and plunder (Count 23) (incidents 31-32).

(d) Sub-ground 1(C): Failure to adjudicate or provide a reasoned opinion

(i) The Chamber failed to adjudicate many JCE3 crimes

139. The Chamber erred in law by failing to adjudicate Praljak's criminal responsibility for a large number of foreseeable crimes. After concluding that

⁴³² See also above paras.132-133.

⁴³³ Judgement, Vol.4, paras.45, 47-48, 57, 61, 1220. See above para.130.

⁴³⁴ See above para.124.

⁴³⁵ Between March 1992 and 15 June 1993, Praljak was Assistant Minister of Defence and then Deputy Minister of Defence of Croatia, at the rank of brigadier first and then as major-general of the HV. From September 1992 to mid-June 1993, he was also a member of the VONS. During approximately the same time period, he was the commander of the South-East OZ (from early April to mid-May 1992) and then had *de facto* command authority over the HVO armed forces (from autumn 1992 to 24 July 1993). Judgement, Vol.4, paras.457-459.

⁴³⁶ See above para.125.

⁴³⁷ Judgement, Vol.4, paras.66-67, 72, 625, 627-628.

Praljak's criminal responsibility for crimes falling outside the common criminal purpose must be analysed pursuant to JCE3, the Chamber failed to do so.⁴³⁸ Instead, in the subsequent paragraphs of the Judgement, the Chamber only examined a small subset of the JCE3 crimes, overlooking many others.⁴³⁹

- The Chamber only considered the foreseeability of thefts in Gornji Vakuf, Mostar (Raštani) and Vareš, failing to address numerous incidents of theft in the municipalities of Jablanica, Prozor (in 1993), Mostar, Stolac and Čapljina;
- The Chamber adjudicated some of the JCE3 crimes of sexual violence in Vareš (against Witnesses DF and DG) and Stupni Do (against Witnesses DH and EG), but did not adjudicate Praljak's criminal responsibility for the widespread sexual violence in Prozor (in 1993) and Mostar; and
- The Chamber failed to adjudicate a total of 51 murders, and the destruction of four mosques.

140. In light of the Chamber's findings and evidence discussed above and below, Praljak was aware that these additional crimes might be committed in the execution of the common criminal purpose and willingly took that risk. Had Praljak's responsibility for these non-adjudicated crimes been properly addressed under JCE3, he would have been convicted of them.

a. Praljak could foresee killings during evictions and detention

141. It was foreseeable to Praljak that HVO forces might commit murders during eviction operations and against detainees in Prozor, Jablanica, Mostar, Stolac, Čapljina, Dretelj and Gabela between April and September 1993. Praljak could foresee the possibility of such killings because, since mid-January 1993, he intended that murder and wilful killing be committed during HVO attacks that were linked to expulsion operations.⁴⁴⁰ Equally, Praljak was aware of the risk that Muslim detainees might be killed, because he intended that detainees be mistreated and confined in poor conditions as means of implementing the common purpose.⁴⁴¹

⁴³⁸ Judgement, Vol.4, para.632.

⁴³⁹ Judgement, Vol.4, paras 633-643.

⁴⁴⁰ Judgement, Vol.4, paras.66-68, 562.

⁴⁴¹ Judgement, Vol.4, paras.66-68, 609, 614. *See also* Vol.4, para.574

142. Praljak also received specific information that alerted him to the risk that murders might occur during eviction operations and against detainees.⁴⁴² As of January 1993, at the earliest stage of the implementation of the common criminal purpose, Praljak knew that HVO forces had killed Muslim civilians during attacks aimed at expelling them from Gornji Vakuf.⁴⁴³ Further, the Chamber found that Praljak was kept abreast of the situation the field.⁴⁴⁴ In light of his knowledge of the violence of the ethnic cleansing campaign, he could foresee the possibility of killings during subsequent eviction operations.

143. Moreover, Praljak admitted in his testimony that he was aware of the risk that Muslims might be killed during eviction operations:

In a given theatre of war, you realise you cannot prevent killings, perhaps rape, and other acts like that. The only thing for you to do is to simply move a population out of the area. This is the lesser evil. That's exactly what it means regardless of how it may sound in the court of law. This is not an act of expulsion.⁴⁴⁵

144. After being regularly informed of the poor detention conditions and mistreatment in the HVO detention centres, Praljak was further alerted to the risk that Muslim detainees might be murdered or wilfully killed.⁴⁴⁶ Praljak acknowledged that when he took command of the HVO armed forces in July 1993 he was aware that the conditions of confinement in the HVO detention centres did not conform to international standards.⁴⁴⁷ From September 1993, Praljak's awareness only increased when the appalling conditions in HVO detention centres, including at Gabela and Dretelj Prisons, became a matter of international concern.⁴⁴⁸ Nevertheless, he accepted these crimes.⁴⁴⁹

145. In light of the above, Praljak could foresee the possibility of murders and wilful killings of 51 Muslim people committed by HVO forces in the municipalities of Prozor, Jablanica, Mostar, Stolac and Čapljina, and in the Dretelj and Gabela

⁴⁴² Judgement, Vol.4, paras.558-561.

⁴⁴³ Judgement, Vol.4, para.562. *See also* Vol.4, paras.44-45, 48, 65-66.

⁴⁴⁴ Judgement, Vol.4, paras.560, 562.

⁴⁴⁵ Praljak, T.44247.

⁴⁴⁶ *See below* Praljak Table, incidents 2, 3, 6, 10-13. *See also* Judgement, Vol.4, paras.609-611, 612-614.

⁴⁴⁷ Judgement, Vol.4, para.599 (relying on Praljak's own admission in an interview to a Croatian newspaper in 1997, *see* Exh.P8765, p.9).

⁴⁴⁸ Judgement, Vol.4, paras.607-609, 612-614.

⁴⁴⁹ Judgement, Vol.4, paras.609-611, 612-614.

Prisons. When Praljak's JCE3 liability is properly considered, he should be held responsible for these incidents, as set out in the Praljak Table below.

b. Praljak could foresee rape and inhuman treatment (sexual assault)

146. Praljak could foresee the possibility that HVO forces might commit rape and other forms of sexual assault in the municipalities of Prozor and Mostar between June and November 1993.

147. In addition to the factors discussed above relating to Praljak's central role in the implementation of the common criminal purpose,⁴⁵⁰ Praljak had knowledge of facts which the Appeals Chamber has previously held place an accused on notice of the risk of sexual violence crimes. In particular, Praljak was aware of the vulnerability of the Muslim civilian population to acts of sexual violence, given his knowledge of the separation of men from women,⁴⁵¹ the violent nature of the ethnic cleansing campaign,⁴⁵² the displacements,⁴⁵³ and the detentions.⁴⁵⁴

148. As set out above, the Chamber's findings demonstrate that Praljak had detailed knowledge of events on the ground in the municipalities of Prozor⁴⁵⁵ and Mostar,⁴⁵⁶ where crimes of sexual violence were perpetrated. Praljak admitted that he was aware of the risk that rapes might be committed during the eviction operations.⁴⁵⁷ Praljak could foresee the possibility of sexual violence perpetrated by HVO forces against Muslim men, women and children in the municipalities of Prozor and Mostar between June and November 1993. When Praljak's JCE3 liability is properly considered, he should be held responsible for these incidents, as set out in the Praljak Table below.

⁴⁵⁰ See above paras.124-125.

⁴⁵¹ E.g. Judgement, Vol.4, paras.561-562 (arrest of the Muslim men in Gornji Vakuf). See Šainović AJ, para.1588; Đorđević AJ, para.922.

⁴⁵² See above paras.124-125, 129-130. See also Šainović AJ, paras.1581-1582, 1591-1592, 1602; Đorđević AJ, para.920.

⁴⁵³ See above paras.124, 142-143. See also Šainović AJ, paras.1581-1582, 1591-1592, 1602; Đorđević AJ, para.985.

⁴⁵⁴ See above paras.124, 144. See also Šainović AJ, para.1588; Đorđević AJ, para.922.

⁴⁵⁵ Judgement, Vol.4, para.573 (Praljak must have known about the mass arrests and displacements carried out by HVO forces in the municipality of Prozor in the summer 1993, including the confinement of women, children and elderly (who had been separated from the men) in Podgrade and in the villages of Lapsunj and Duge).

⁴⁵⁶ Judgement, Vol.4, paras.579-581, 586 (Praljak participated in directing and planning the HVO military operations in the municipality of Mostar and intended the crimes committed therein, including the physical and psychological violence and the forcible displacement of Bosnian Muslims).

⁴⁵⁷ See above para.143; Praljak, T.44247.

c. Praljak could foresee destruction of Muslim religious institutions (before June 1993)

149. The Chamber found that, in June 1993, the common criminal purpose expanded to include the destruction of mosques.⁴⁵⁸ However, four mosques were destroyed prior to this expansion: two in Sovići and Doljani (Jablanica Municipality) in April 1993, one in Skrobućani (Prozor Municipality) in May or June 1993, and one in Mostar in May 1993. Because the destruction of these mosques was foreseeable to Praljak, the Chamber erred in not convicting him for their destruction pursuant to JCE3.

150. The Chamber found that Praljak intended the destruction of Muslim private property from January 1993.⁴⁵⁹ He had actual knowledge of the destruction of Muslim property: he witnessed extensive destruction of Muslim property by HVO forces [REDACTED]⁴⁶⁰ in Gornji Vakuf in January 1993 to direct military operations.⁴⁶¹ Coupled with his awareness of the climate of ethnic violence in which implementation of the common criminal purpose was occurring, he must have been aware of the possibility that HVO forces might also destroy mosques. The Chamber itself acknowledged this when it found that the Accused were aware that during operations—in which HVO troops destroyed many civilian structures—HVO troops might also destroy mosques, including the mosques in Sovići and Doljani.⁴⁶²

151. In light of the above, Praljak could foresee the possibility of destruction of mosques. When Praljak's JCE3 liability is properly considered, he should be held responsible for the incidents of destruction of four mosques, as set out in the Praljak Table below.

⁴⁵⁸ Judgement, Vol.4, paras.59, 342, 433, heading before para.449, 1216.

⁴⁵⁹ E.g. Judgement, Vol.4, paras.66-68, 561-562 (Gornji Vakuf), 580-586 (Mostar), 597 (Vareš).

⁴⁶⁰ [REDACTED].

⁴⁶¹ Judgement, Vol.4, paras.556-558, 560-562.

⁴⁶² Judgement, Vol.4, para.73.

d. Praljak could foresee appropriation of property and plunder

152. Praljak could foresee the possibility that HVO forces might appropriate or plunder property in the municipalities of Jablanica, Prozor, Mostar, Stolac and Čapljina between April and November 1993.⁴⁶³

153. Through his personal involvement in the common criminal purpose's implementation and his knowledge of events on the ground, Praljak was aware since the JCE's inception of the general climate of violence and the vulnerability of the Muslim population. In particular, the Chamber found that Praljak could foresee that HVO forces "would" commit appropriation of property and plunder in Gornji Vakuf in January 1993⁴⁶⁴ and in Mostar (Raštani) at the end of August 1993.⁴⁶⁵ Appropriation and plunder in other locations as part of HVO operations was therefore foreseeable as well.

154. As early as October 1992, Praljak knew of appropriation of property and plunder by HVO forces.⁴⁶⁶ [REDACTED].⁴⁶⁷

[REDACTED],

Praljak and Ćorić ordered the 2nd Battalion commander to return the stolen cars.⁴⁶⁸

155. Given the clear pattern of commission of these crimes⁴⁶⁹ and the numerous incidents of appropriation of property and plunder committed by HVO forces in implementing the JCE's common purpose, Praljak could foresee the possibility of additional cases of appropriation and plunder. When Praljak's JCE3 liability is properly considered, he should be held responsible for the incidents of appropriation of property and plunder, as set out in Praljak Table below.

(ii) Alternatively, the Chamber failed to provide a reasoned opinion

156. If the Appeals Chamber considers that the Chamber acquitted Praljak of these JCE3 crimes, the Chamber nonetheless erred in law by failing to provide a reasoned

⁴⁶³ See Praljak Table, incidents 25-30, in particular for the dates, incidents 25 (April 1993), 27 (November 1993).

⁴⁶⁴ Judgement, Vol.4, para.635.

⁴⁶⁵ Judgement, Vol.4, paras.635, 638.

⁴⁶⁶ Judgement, Vol.4, para.1239.

⁴⁶⁷ [REDACTED].

⁴⁶⁸ Judgement, Vol.4, paras.476, 1237-1239; Exh.3D424; [REDACTED]. The Chamber found that no punitive measures were taken against the perpetrators of the thefts (Vol.4, paras.1238-1239).

⁴⁶⁹ Judgement, Vol.4, paras.65, 70, 72, 633-635, 636-638.

opinion. For the reasons set out in Sub-section (a) above, a *de novo* review by the Appeals Chamber should result in findings that Praljak could foresee that these crimes might be committed.

(iii) Conclusion

157. Based on the totality of the evidence and the Chamber's findings, the Appeals Chamber should correct the Chamber's errors, find that the elements of JCE3 *mens rea* are met and convict Praljak for the following criminal incidents, as set out in the Praljak Table below:

- Murder (Count 2) and wilful killing (Count 3) (incidents 1-13);
- Rape (Count 4) and inhuman treatment (sexual assault) (Count 5) (incidents 14-18);
- Destruction or wilful damage to institutions dedicated to religion (Count 21) (incidents 22-24); and
- Appropriation of property (Count 22) and plunder (Count 23) (incidents 25-30).

(e) Sub-ground 1(E): Error of fact

158. The Chamber's own findings and the evidence summarized above demonstrate that Praljak was aware of the risk that additional JCE3 crimes might be committed and willingly took that risk. No reasonable trier of fact could have failed to convict Praljak of the additional JCE3 crimes. Properly assessed, the evidence on the record eliminates any reasonable doubt of Praljak's guilt.

159. The Appeals Chamber should find that the elements of JCE3 are met and convict Praljak under Counts 2-5 and 22-23 in relation to the incidents listed in the Praljak Table below.

(f) Praljak Table: Overview of the Chamber's errors

Incident	Errors of law			Error of fact (1(E))
	Incorrect <i>mens rea</i> standard (1(A))	Compartmentalized evidence (1(B))	Failure to adjudicate or provide a reasoned opinion (1(C))	
Murder (Count 2) and wilful killing (Count 3)⁴⁷⁰				
1. Prozor: The killing of six captured Muslim civilians in Prajine and Tolovac on 19 July 1993 ⁴⁷¹			X	X
2. Jablanica: The killing of four Muslim ABiH detainees at the Sovići School on 20 or 21 April 1993 ⁴⁷²			X	X
3. Mostar: The killing of 10 Muslim ABiH detainees at the Faculty of Mechanical Engineering between 10 and 11 May 1993 and of two other Muslim detainees between 8 and 11 July 1993 ⁴⁷³			X	X
4. Mostar: The killing of a Muslim civilian in Buna on 14 July 1993 ⁴⁷⁴			X	X
5. Stolac: The killing of a Muslim civilian girl in Pješivac Greda on 13 July 1993 ⁴⁷⁵			X	X
6. Stolac: The killings of five Muslim detainees at the Koštana Hospital in August and September 1993 ⁴⁷⁶			X	X
7. Čapljina: The killing of two young Muslim civilian women in Domanovići on or around 13 July 1993 ⁴⁷⁷			X	X

⁴⁷⁰ All incidents listed in this section of the Praljak Table constitute murder (Count 2) and wilful killing (Count 3).

⁴⁷¹ Judgement, Vol.2, paras.109-112; Vol.3, paras.658-660, 707-708; Indictment, para.53.

⁴⁷² Judgement, Vol.2, paras.569, 580-581, 584; Vol.3, paras.665-666, 713-715; Indictment, para.77.

⁴⁷³ Judgement, Vol.2, paras.845-853, 905-909; Vol.3, paras.668-669, 717-718; Indictment, paras.95, 104.

⁴⁷⁴ Judgement, Vol.2, paras.940-944; Vol.3, paras.670, 719; Indictment, para.106.

⁴⁷⁵ Judgement, Vol.2, paras.1934-1938; Vol.3, paras.684, 735; Indictment, para.161.

⁴⁷⁶ Judgement, Vol.2, paras.2014-2019 (Salko Kaplan died in Dretelj Prison and Ibro Razić died in Gabela Prison); Vol.3, paras.685-686, 736-737; Indictment, para.169.

⁴⁷⁷ Judgement, Vol.2, paras.2105-2106; Vol.3, paras.687-688, 738-739; Indictment, para.176.

Incident	Errors of law			Error of fact (1(E))
	Incorrect <i>mens rea</i> standard (1(A))	Compartmentalized evidence (1(B))	Failure to adjudicate or provide a reasoned opinion (1(C))	
8. Čapljina: The killing of an 83-year old Muslim disabled civilian man in Bivolje Brdo on 14 July 1993 ⁴⁷⁸			X	X
9. Čapljina: The killing of 12 Muslim men during the evictions from Bivolje Brdo on or about 16 July 1993 ⁴⁷⁹			X	X
10. Dretelj: The killing of one Muslim detainee by dehydration in mid-July 1993 ⁴⁸⁰			X	X
11. Dretelj: The killing of three Muslim detainees in mid-July 1993 ⁴⁸¹			X	X
12. Dretelj: The death of two Muslim detainees as a result of mistreatment in August 1993 ⁴⁸²			X	X
13. Gabela: The killing of one Muslim detainee on 19 or 29 August 1993 ⁴⁸³			X	X
Rape (Count 4) and inhuman treatment (sexual assault) (Count 5)				
14. Prozor: The rape of Muslim women and girls in Podgrade, Lapsunj and Duge between August and November 1993 (Counts 4-5) ⁴⁸⁴			X	X
15. Prozor: Sexual assault against Muslim women and girls in Podgrade and Duge in August 1993 (Count 5) ⁴⁸⁵			X	X

⁴⁷⁸ Judgement, Vol.2, paras.2116-2117; Vol.3, paras.689-690, 740-741; Indictment, para.177.

⁴⁷⁹ Judgement, Vol.2, paras.2085-2090; Vol.3, paras.691-692, 742-743; Indictment, para.177.

⁴⁸⁰ Judgement, Vol.3, paras.85-91, 693-694, 696, 744-745, 748; Indictment, para.190.

⁴⁸¹ Judgement, Vol.3, paras.113-115, 122, 693, 695-696, 744-746, 748; Indictment, paras.191-192.

⁴⁸² Judgement, Vol.3, paras.119-122, 693, 696, 744-745, 747-748; Indictment, paras.191-192.

⁴⁸³ Judgement, Vol.3, paras.250, 253, 697, 749-750; Indictment, para.200.

⁴⁸⁴ Judgement, Vol.2, paras.233-237, 250, 252-253, 258-262, 268-272, 283-287, 290-292; Vol.3, paras.757-760, 769; Indictment, paras.57, 59.

⁴⁸⁵ Judgement, Vol.2, paras.233, 235, 250, 252-253, 268-272; Vol.3, paras.771-774; Indictment, paras.57, 59.

Incident	Errors of law			Error of fact (1(E))
	Incorrect <i>mens rea</i> standard (1(A))	Compartmentalized evidence (1(B))	Failure to adjudicate or provide a reasoned opinion (1(C))	
16. Prozor: Sexual assault against five Muslim detainees in Jurići in August 1993 (Count 5) ⁴⁸⁶			X	X
17. Mostar: Rape of Muslim women expelled from West Mostar on 13 June, in mid-July and on 4 and 29 September 1993 (Counts 4-5) ⁴⁸⁷			X	X
18. Mostar: Sexual assault against Muslim women expelled from West Mostar on 29 September 1993 (Count 5) ⁴⁸⁸			X	X
19. Vareš: The rape of two Muslim women (Witnesses DF and DG) in Vareš Town in October 1993 (Counts 4-5) ⁴⁸⁹	X	X		X
20. Vareš: The rape of a Muslim girl (Witness DH) in Stupni Do on 23 October 1993 (Counts 4-5) ⁴⁹⁰	X	X		X
21. Vareš: Sexual assault against a Muslim girl (Witness EG) in Stupni Do on 23 October 1993 (Count 5) ⁴⁹¹	X	X		X
Destruction or wilful damage to institutions dedicated to religion or education (Count 21)				
22. Jablanica: Destruction of the mosques in Sovići and Doljani in April 1993 ⁴⁹²			X	X
23. Prozor: Destruction of the Skrobućani mosque in May or June 1993 ⁴⁹³			X	X
24. Mostar: Destruction of the Baba Bešir mosque on 10 May 1993 ⁴⁹⁴			X	X

⁴⁸⁶ Judgement, Vol.2, paras.169-170; Vol.3, para.770; Indictment, para.55.

⁴⁸⁷ Judgement, Vol.2, paras.868, 870-873, 876, 925, 935, 978, 982, 985-986; Vol.3, paras.761-764, 775; Indictment, paras.99, 102, 109.

⁴⁸⁸ Judgement, Vol.2, paras.981-983, 985-986; Vol.3, para.776; Indictment, paras.99, 109.

⁴⁸⁹ Judgement, Vol.4, paras.643-644; Vol.3, paras.401-402, 404, 767, 779; Indictment, para.213.

⁴⁹⁰ Judgement, Vol.4, paras.643-644; Vol.3, paras.426, 428-429, 768, 779; Indictment, para.211.

⁴⁹¹ Judgement, Vol.4, paras.643-644; Vol.3, paras.427, 429, 780; Indictment, para.211.

⁴⁹² Judgement, Vol.2, paras.646-650; Vol.3, paras.1606-1607; Indictment, para.83.

⁴⁹³ Judgement, Vol.2, paras.96-97; Vol.3, paras.1600-1601; Indictment, para.53.

⁴⁹⁴ Judgement, Vol.2, paras.789, 791-792; Vol.3, para.1608; Indictment, para.97.

Incident	Errors of law			Error of fact (1(E))
	Incorrect <i>mens rea</i> standard (1(A))	Compartmentalized evidence (1(B))	Failure to adjudicate or provide a reasoned opinion (1(C))	
Appropriation of property (Count 22) and plunder (Count 23)				
25. Jablanica: Appropriation of property and plunder in Sovići and Doljani after the attack of 17 April 1993 (Counts 22-23) ⁴⁹⁵			X	X
26. Prozor: Appropriation of property and plunder in Podgrade in August 1993 (Counts 22-23) ⁴⁹⁶			X	X
27. Mostar: Appropriation of property and plunder in West Mostar in May and June 1993, and from August 1993 to November 1993 (Counts 22-23) ⁴⁹⁷			X	X
28. Stolac: Appropriation of property and plunder in Pješivac Greda between 2 and 13 July 1993 (Counts 22-23) ⁴⁹⁸			X	X
29. Čapljina: Plunder in Bivolje Brdo between 13 and 16 July 1993 (Count 23) ⁴⁹⁹			X	X
30. Čapljina: Appropriation of property and plunder of property belonging to Muslims detained at the Silos on 23 August 1993 (Counts 22-23) ⁵⁰⁰			X	X
31. Vareš: Appropriation of property and plunder in Vareš Town between 23 October and 1 November 1993 (Counts 22-23) ⁵⁰¹	X	X		X

⁴⁹⁵ Judgement, Vol.2, paras.652-655; Vol.3, paras.1629-1631, 1661-1663; Indictment, para.85.

⁴⁹⁶ Judgement, Vol.2, paras.233, 235, 250-251, 253; Vol.3, paras.1620-1621, 1655; Indictment, para.57.

⁴⁹⁷ Judgement, Vol.2, paras.823-824, 826-827, 864-867, 871-876, 924, 930-932, 937, 977, 979-987; Vol.3, paras.1632-1637, 1664-1666; Indictment, paras.99-100, 107.

⁴⁹⁸ Judgement, Vol.2, paras.1944-1946; Vol.3, paras.1642-1643, 1669-1671; Indictment, paras.159, 161.

⁴⁹⁹ Judgement, Vol.2, paras.2122-2124; Vol.3, paras.1674-1676; Indictment, para.175.

⁵⁰⁰ Judgement, Vol.2, paras.2179-2181; Vol.3, paras.1647-1648, 1677-1679; Indictment, para.182.

⁵⁰¹ Judgement, Vol.4, paras.643-644; Vol.3, paras.343, 345, 348, 401, 403-404, 1650-1653, 1681-1683; Indictment, para.209.

Incident	Errors of law			Error of fact (1(E))
	Incorrect <i>mens rea</i> standard (1(A))	Compartmentalized evidence (1(B))	Failure to adjudicate or provide a reasoned opinion (1(C))	
32. Vareš: Appropriation of property and plunder in Stupni Do on 23 October 1993 (Counts 22-23) ⁵⁰²	X	X		X

4. Petković is responsible for the additional JCE3 crimes

160. As the Chief of the HVO Main Staff from 14 April 1992 until 24 July 1993,⁵⁰³ and thereafter as its Deputy Commander,⁵⁰⁴ Petković could foresee that the additional JCE3 crimes might be committed in the execution of the common criminal purpose. The Chamber found that he intended to inflict a broad range of crimes against the Muslim population.⁵⁰⁵ He was aware of and participated in the violent HVO campaign of attacks, expulsions and destruction of Muslim property in numerous villages and HVO detention facilities.⁵⁰⁶ He knew of the vulnerability of the Muslim population and the criminal propensity of certain HVO units committing those crimes.⁵⁰⁷ By remaining in his post and continuing to contribute to the JCE1 even though he knew of the crimes being committed by the HVO forces, Petković willingly took the risk that JCE3 crimes might be committed.

(a) Petković could foresee the additional JCE3 crimes

161. In his role as Chief of the HVO Main Staff⁵⁰⁸ and—from 24 July 1993—Deputy Commander of the HVO Main Staff,⁵⁰⁹ Petković was one of the most important JCE members.⁵¹⁰ Petković planned and directed numerous HVO military operations that contributed to the climate of violence throughout the HZ(R)HB,

⁵⁰² Judgement, Vol.4, paras.643-644; Vol.3, paras.465, 467, 1650-1653, 1681-1683; Indictment, para.211.

⁵⁰³ Judgement, Vol.1, para.715; Vol.4, para.651.

⁵⁰⁴ Judgement, Vol.1, paras.716-717, 726-727; Vol.4, para.652.

⁵⁰⁵ Judgement, Vol.4, paras.65-68, 815-818.

⁵⁰⁶ E.g. Judgement, Vol.4, paras.820-821.

⁵⁰⁷ Judgement, Vol.3, para.302; Vol.4, paras.720, 806-810, 813.

⁵⁰⁸ Judgement, Vol.1, para.715; Vol.4, paras.651-652.

⁵⁰⁹ Judgement, Vol.1, paras.716-717, 726-727; Vol.4, para.652.

including in the municipalities of Gornji Vakuf,⁵¹¹ Prozor,⁵¹² Jablanica,⁵¹³ Mostar⁵¹⁴ and Vareš.⁵¹⁵ He personally ordered the arrest and detention of all Muslim men of military age who were found in the HVO South-East OZ, contributing to a campaign of arrests and mass detentions of Muslims and the separation of thousands of Muslim men from vulnerable women, children and elderly.⁵¹⁶ He personally ordered and authorised the HVO units to use detainees to perform forced labour in dangerous front line positions knowing that many of them would be killed or wounded.⁵¹⁷

162. As part of his command functions over the armed forces,⁵¹⁸ Petković had a clear overview of the development of military operations on the ground and the progressive implementation of the common criminal purpose. Due to his high position in the HVO chain of command, Petković received regular reports from his subordinates regarding the situation in the field.⁵¹⁹ This information included daily reports from the director of military intelligence sent to Petković and Stojić, concerning the situation in the OZs.⁵²⁰ Petković also kept HZ(R)HB political authorities informed of the military situation in the field.⁵²¹

163. From military and other sources, Petković was specifically informed of: the “cleansing” and destruction of villages in Gornji Vakuf;⁵²² “mop-up” actions and

⁵¹⁰ Judgement, Vol.4, para.818.

⁵¹¹ Judgement, Vol.4, paras.704-705, 707-708, 710, 815, 819, 836-837 (including in Duša, Hrasnica, Uzričje and Ždrimci), 1220.

⁵¹² Judgement, Vol.4, paras.691-694 (between 23 April 1993 and 22 June 1993, he “continued to participate in operations” in the Prozor area), 696-697 (in July and August 1993, he “ordered and planned the organization of combat operations” in Prozor Municipality), 699 (between 17-19 April 1993, he “directed operations” in Parčani, Lizoperci and Tošćanica), 815, 819, 1220.

⁵¹³ Judgement, Vol.2 paras.518, 527 (Petković himself sent the *Bruno Bušić* Regiment and the special unit *Ludvig Pavlović* to Jablanica); Vol.4, paras.711-718, 721 (in April 1993 he “contributed to planning and directing operations” in Sovići and Doljani), 815, 819, 839.

⁵¹⁴ Judgement, Vol.2, paras.1300-1301, 1315, 1345, 1362, 1366; Vol.4, paras.756 (on 8 November 1993 he “planned the military offensive on the Old Town of Mostar”), 815; Vol.4, paras.668, 745-747 (he “planned the shelling during the siege of Mostar,” and “ordered the Mostar ZP to launch offensive operations in the towns of Bijelo Polje, Blagaj and Mostar”), 750 (“he ordered and contributed to planning [the] shelling”), 815, 819, 1220.

⁵¹⁵ Judgement, Vol.3, paras.313-316; Vol.4, paras.764-767, 815, 819, 1220.

⁵¹⁶ Judgement, Vol.4, paras.737-738, 757-759.

⁵¹⁷ *E.g.* Judgement, Vol.4, paras.672, 790-796, 800-802, 815.

⁵¹⁸ Judgement, Vol.4, paras.653, 656-663.

⁵¹⁹ Judgement, Vol.1, paras.735, 739-742, 794. *See also* Exh.P3516 (report from Šiljeg indicating that the HVO Main Staff received daily reports on the situation on the ground and the incidents that had occurred).

⁵²⁰ Judgement, Vol.1, para.736.

⁵²¹ Judgement, Vol.1, para.767; Vol.4, para.686.

⁵²² Judgement, Vol.4, paras.705, 707.

detentions in Prozor;⁵²³ the destruction of Sovići and Doljani villages and the “cleansing” of Doljani;⁵²⁴ extensive violence against civilians and property in Mostar;⁵²⁵ “cleansing” and destruction perpetrated by the HVO in Vareš Municipality;⁵²⁶ and the terrible conditions and crimes committed in detention centres.⁵²⁷

164. On 15 July 1993, Petković issued the first of his orders or authorisations approving the use of detainees for forced labour, here for “fortification and barricading of defence lines”.⁵²⁸ In expressly ordering this crime, Petković made clear to his subordinates that mistreatment of HVO detainees was approved at the highest level of the HVO armed forces. Having given his subordinates the green light to abuse detainees, it was foreseeable to Petković that the detainees might also be mistreated or killed inside the detention facilities.

165. The Chamber concluded that despite Petković’s knowledge of these crimes, and despite his command over the HVO, Petković continued to deploy units he knew had engaged in criminal behaviour.⁵²⁹ Predictably, these units continued to commit atrocities.⁵³⁰ In addition, Petković enabled further criminality by failing to punish the perpetrators.⁵³¹ In the case of Ivica Rajić (responsible for a host of crimes committed in Stupni Do), Petković conducted a sham investigation in order to deceive the international community and ensure Rajić’s continued service.⁵³² Petković also hindered international efforts to enter Sovići and Doljani villages with the express purpose of concealing atrocities committed there.⁵³³ As a result of these and other actions and omissions, the Chamber found that Petković facilitated, encouraged and concealed crimes committed by those under his command.⁵³⁴

166. In sum, through his role and functions and his presence on the ground, Petković knew of the vulnerability of the Muslim population and the criminal

⁵²³ Judgement, Vol.4, paras.691, 696.

⁵²⁴ Judgement, Vol.4, paras.714, 718, 720.

⁵²⁵ Judgement, Vol.4, paras.730, 732, 734, 748-750, 754 (Petković was “kept regularly informed” by international organisations of the situation in Mostar).

⁵²⁶ Judgement, Vol.4, paras.760-765.

⁵²⁷ Judgement, Vol.4, paras.778-784, 789, 794, 796-799.

⁵²⁸ Judgement, Vol.4, para.672; Exh.P3474.

⁵²⁹ Judgement, Vol.4, paras.720, 803, 806-813.

⁵³⁰ Judgement, Vol.4, paras.806-807, 810, 812-813.

⁵³¹ Judgement, Vol.4, paras.709, 735, 774, 808, 813.

⁵³² Judgement, Vol.4, paras.772-777.

⁵³³ Judgement, Vol.4, para.721.

⁵³⁴ Judgement, Vol.4, para.815.

propensity of the HVO units committing crimes. It was therefore foreseeable to him that other violent crimes against Muslims or their property might be committed in the course of the campaign. As set out below, the Chamber's findings and the evidence in the record demonstrate that such foreseeable crimes included: murders during evictions and in detention centres; rape and other forms of sexual violence; destruction or damage to institutions dedicated to religion (before June 1993); and appropriation of property and plunder.

(b) Sub-ground 1(A): Application of the wrong legal standard

167. Although the Chamber referred to the correct *mens rea* standard,⁵³⁵ it applied the erroneous "probability" standard throughout its analysis of Petković's responsibility.⁵³⁶ In many instances, it convicted Petković at this higher standard.⁵³⁷ In relation to the 23 October 1993 thefts in Stupni Do, however, it acquitted him.⁵³⁸

168. Assessed at the correct "possibility" standard, these thefts were foreseeable to Petković. Petković was well informed that many previous HVO operations had resulted in widespread looting and theft.⁵³⁹ He was therefore aware that such crimes might be repeated in Stupni Do following the 23 October 1993 attack.

169. In fact, the Chamber found that Petković could foresee that HVO forces "would" commit thefts in the course of earlier forcible displacement operations.⁵⁴⁰ At this higher standard, it found that Petković could foresee the thefts in the municipalities of Gornji Vakuf, in January 1993;⁵⁴¹ in Jablanica, in the aftermath of the attack of 17 April 1993;⁵⁴² and in West Mostar, between June 1993 and February 1994.⁵⁴³

⁵³⁵ Judgement, Vol.4, para.822.

⁵³⁶ E.g. Judgement, Vol.4, paras.824, 830, 834, 837, 840, 841, 845, 848, 849, 852.

⁵³⁷ Judgement, Vol.4, paras.830, 834, 837, 840, 845, 848, 852.

⁵³⁸ Although the Chamber applied the erroneous "would" standard, the Prosecution withdraws its appeal against the Chamber's finding that Petković could not foresee the murders and thefts in Stolac and Čapljina, based on Petković's order of 30 June 1993, Judgement, Vol.4, paras.824, 841. The Prosecution is no longer pursuing a Sub-Ground 1(A) error in relation to the murders in Dretelj Prison, but *see below* under Sub-Ground 1(B), 1(C) and 1(E).

⁵³⁹ Judgement, Vol.2, paras.57, 59; Vol.4, paras.706-707, 732 (citing Exh.P2770, describing HVO occupation of Muslim apartments in Mostar); Exhs.P648 (public), P1344 (public), P1351, pp.2-3 (public), P1357, p.9 (public), P2770 (public). *See also* Vol.3, paras.645-646.

⁵⁴⁰ Judgement, Vol.4, paras.837, 840, 845.

⁵⁴¹ Judgement, Vol.4, para.837.

⁵⁴² Judgement, Vol.4, para.840.

⁵⁴³ Judgement, Vol.4, para.845. The Chamber failed to enter a conviction despite making all the relevant findings. *See also* Judgement, Vol.4, para.853; *below* para.190.

170. The Chamber similarly found that Petković could foresee the JCE3 thefts that occurred in Vareš Town following the 23 October 1993 attack.⁵⁴⁴ Nevertheless, it found that Petković could not foresee that thefts “would” also be committed three kilometres away⁵⁴⁵ in Stupni Do as part of the same operation involving the same units on the same day.⁵⁴⁶ The Chamber explained that the evidence did not meet the “probability” standard because the “decision to attack [Stupni Do] did not come from Milivoj Petković, who was informed of it only when the attack was over.”⁵⁴⁷

171. Under the correct standard, such knowledge or direct participation is not required;⁵⁴⁸ it is sufficient that Petković was aware of the risk that thefts might occur in the execution of the criminal purpose. Moreover, in this instance, Petković was well aware that the troops would be in that area, since he was the person who “planned the operations on the Municipality of Vareš”⁵⁴⁹ and “ordered Ivica Rajić to deploy to Vareš with soldiers from the *Maturice* and *Apostoli* special units”⁵⁵⁰ who the Chamber found were “notorious for their violent behaviour.”⁵⁵¹

172. Based on the totality of the evidence and the Chamber’s findings, the Appeals Chamber should correct the Chamber’s errors, find that the elements of JCE3 *mens rea* are met and convict Petković for the following criminal incident, as set out in the Petković Table below:

- Appropriation of property (Count 22) and plunder (Count 23) (incident 21).

(c) Sub-ground 1(B): Compartmentalization of evidence

173. The Chamber also erroneously failed to consider the totality of the evidence on the record. Instead, the Chamber limited its evidentiary analysis of foreseeability to events that happened in a particular location.

174. In relation to three incidents, this error resulted in an acquittal.⁵⁵² The Chamber found that Petković could not foresee two mid-July 1993 killings in

⁵⁴⁴ Judgement, Vol.4, para.848.

⁵⁴⁵ Judgement, Vol.3, para.282.

⁵⁴⁶ Judgement, Vol.4, paras.834, 847.

⁵⁴⁷ Judgement, Vol.4, para.849.

⁵⁴⁸ See above paras.27-30.

⁵⁴⁹ Judgement, Vol.4, para.767.

⁵⁵⁰ Judgement, Vol.4, para.846.

⁵⁵¹ Judgement, Vol.3, para.302; Vol.4, paras.834, 847.

⁵⁵² See below Petković Table.

Dretelj,⁵⁵³ where detainees died as a result of poor conditions of confinement and shooting.⁵⁵⁴ In its foreseeability analysis, the Chamber referred only to a 20 January 1994 letter from the ICRC informing Petković of these deaths several months after they occurred.⁵⁵⁵ In limiting its analysis to this letter, the Chamber ignored a significant body of relevant evidence demonstrating Petković's knowledge of the risk that detainees might be killed in the HVO network of detention facilities, including in Dretelj Prison.⁵⁵⁶ Looking at the situation in Dretelj in isolation, the Chamber ignored its own findings that the HVO was running a unified network of detention facilities in which extensive crimes were being committed in the execution of the common purpose.⁵⁵⁷

175. When properly considered, the evidence demonstrates that by July 1993, Petković was well-aware of the risk that detainees might be killed, including in Dretelj Prison. From mid-January 1993, Petković shared the intent for killing during attacks, killing of detainees used for forced labour, mistreatment of Muslim detainees and poor conditions of confinement.⁵⁵⁸ On 18 April 1993, Petković issued an order to cease hostilities, which instructed HVO units in all Operational Zones to gather information on "the killing of captured soldiers and civilians".⁵⁵⁹ This demonstrates that he was already aware of the possibility of killings in detention at that time. Moreover, the Chamber found that in May 1993 he was "alerted to problems related to the conditions of confinement"⁵⁶⁰ in HVO detention facilities after personally witnessing the deplorable conditions in Sovići School.⁵⁶¹

176. The Chamber applied a similarly compartmentalized approach to the evidence in assessing Petković's ability to foresee thefts in Stupni Do in Vareš Municipality. Instead of looking at the totality of the evidence, the Chamber focused only on whether Petković personally took the decision to attack the village.⁵⁶² In doing so, it ignored important evidence about Petković's direct role in planning the attack on the

⁵⁵³ See below Petković Table, incidents 6 and 7.

⁵⁵⁴ As discussed below in Sub-Ground 1C, the Chamber overlooked a third incident involving the killing of two detainees in that facility. See below Petković Table, incident 8.

⁵⁵⁵ Judgement, Vol.4, para.825.

⁵⁵⁶ See Judgement, Vol.4, paras.66-67.

⁵⁵⁷ See Judgement, Vol.4, paras.980, 982, 1209, 1367.

⁵⁵⁸ See Judgement, Vol.4, paras.66, 1225.

⁵⁵⁹ Exh.P1959.

⁵⁶⁰ Judgement, Vol.4, para.780.

⁵⁶¹ Judgement, Vol.2, para.575; Vol.4, paras.724, 780. The Chamber found that Petković ordered the removal of these detainees. Judgement, Vol.4, para.724.

⁵⁶² Judgement, Vol.4, para.849.

nearby town of Vareš, involving the same troops on the same date.⁵⁶³ It also ignored relevant findings and evidence concerning Petković's role in the JCE, his position and his knowledge of the pattern of crimes, including theft, occurring in other areas. As set out above,⁵⁶⁴ the possibility of these thefts was foreseeable to Petković.

177. Based on the totality of the evidence and the Chamber's findings, the Appeals Chamber should correct the Chamber's errors, find that the elements of JCE3 *mens rea* are met and convict Petković for the following criminal incidents, as set out in the Petković Table below:

- Murder (Counts 2 and 3) (incidents 6-7); and
 - Appropriation of property (Count 22) and plunder (Count 23) (incident 21).
- (d) Sub-ground 1(C): Failure to adjudicate or provide a reasoned opinion
- (i) The Chamber failed to adjudicate many JCE3 crimes

178. The Chamber erred in law by failing to adjudicate Petković's criminal responsibility for a large number of foreseeable crimes. After acknowledging that Petković's criminal responsibility for crimes falling outside of the common criminal purpose should be analysed pursuant to JCE3, the Chamber failed to do so.⁵⁶⁵ Instead, in the subsequent paragraphs the Chamber only examined a small subset of the JCE3 crimes, overlooking many others.⁵⁶⁶

- The Chamber only considered the foreseeability of eviction-related murders in Stolac and Čapljina, failing to adjudicate the murders of five detainees in the Koštana Hospital in Stolac. Nor did the Chamber address seven other eviction-related JCE3 murders that occurred in the municipalities of Prozor and Mostar.
- The Chamber only adjudicated two of the JCE3 murder incidents in Dretelj Prison, overlooking a third incident involving the killing of two detainees in that facility. The Chamber also neglected to adjudicate 19 other detention-related murders in the municipalities of Jablanica, Mostar and in Gabela Prison and Vojno Detention Centre.

⁵⁶³ See above paras.167-171.

⁵⁶⁴ See above paras.167-171.

⁵⁶⁵ Judgement, Vol.4, para.822.

⁵⁶⁶ Judgement, Vol.4, paras.823-853.

- The Chamber adjudicated the JCE3 crimes of sexual violence in Vareš against Witnesses DF and DG, but did not adjudicate Petković's criminal responsibility for sexual violence against Witnesses DH and EG, who were also detained by the notorious *Maturice* or *Apostoli* special units. It also failed to address widespread sexual violence in Prozor.
- Although the Chamber considered thefts in a number of locations, it failed to adjudicate incidents of thefts in Pograda (Prozor Municipality), West Mostar in May 1993 and Raštani (Mostar Municipality).

179. In light of the Chamber's findings and evidence discussed below, Petković was aware that these additional crimes might be committed in the execution of the common criminal purpose and willingly took that risk. Had Petković's responsibility for these non-adjudicated crimes been addressed under JCE3, he would have been convicted of them.

a. Petković could foresee killings during evictions and detention

180. Petković could foresee that HVO forces might murder detainees and commit murders during eviction operations in the municipalities of Prozor, Jablanica, and Mostar and in Dretelj Prison, Gabela Prison, Koštana Hospital and the Vojno Detention Centre between April and December 1993. In addition to the factors discussed above,⁵⁶⁷ Petković could foresee the possibility of such killings because—from mid-January 1993—he intended murder and wilful killing be committed during attack operations as means to implement the common purpose.⁵⁶⁸ He also intended killings of Muslim detainees used for forced labour or as human shields.⁵⁶⁹

181. Petković was aware of the risk that detainees might be killed before the first overlooked detention killing occurred:

- When four ABiH detainees were killed in Sovići School on 20 or 21 April 1993, Petković already had specific knowledge that detainees were being killed in HVO custody. As discussed above,⁵⁷⁰ the fact that Petković ordered a

⁵⁶⁷ See above paras.174-175, 178-179

⁵⁶⁸ Judgement, Vol.4, paras.66-68, 710, 815.

⁵⁶⁹ Judgement, Vol.4, paras.66-68, 796, 815.

⁵⁷⁰ See above para.175.

report on the killing of captured ABiH soldiers on 18 April 1993 proves that he was aware of the risk at that time.

- By the time of the killing of the Mostar detainees in May and July, Petković had further information alerting to the risk that detainees might be killed as he was aware of the deplorable conditions in HVO detention facilities.⁵⁷¹
- As discussed above,⁵⁷² Petković was already aware of the risk of detainees being killed in Dretelj in July 1993. For the same reasons, he could foresee that more detainees might be killed in Dretelj and Gabela Prisons in August 1993.
- By September 1993—prior to the autumn 1993 killings in Gabela Prison and Vojno Detention Centre—Petković knew of poor detention conditions in Gabela Prison.⁵⁷³ On 29 September and 19 October 1993, the HVO Main Staff received two reports detailing these conditions, including the overcrowding, lack of nourishment and poor hygiene.⁵⁷⁴ Moreover, by this time, these abysmal conditions were a fact of public knowledge.⁵⁷⁵ On 14 September 1993, the UN Security Council expressed “profound concern” over reports of the “deplorable conditions” in the HVO detention camps.⁵⁷⁶

182. By July 1993, when the relevant killings occurred in Prozor and Mostar,⁵⁷⁷ Petković could also foresee that civilians might be killed as part of the expulsion operations. In addition to his general knowledge of the climate of violence, and the Chamber’s findings that he intended and knew about killings during attacks from the beginning of the implementation of the common criminal purpose in January 1993,⁵⁷⁸ Petković was also specifically informed of killings during eviction operations. The 14 June 1993 CED (Electronic Operations Centre) special report—specifically addressed to Petković—stated that there were “indications that ‘civilians’ were murdered” during HVO eviction operations the previous day in Mostar.⁵⁷⁹

⁵⁷¹ Judgement, Vol.2, para.575; Vol.4, paras.724, 780.

⁵⁷² *See above* paras.174-175.

⁵⁷³ Judgement, Vol.4, para.782.

⁵⁷⁴ Judgement, Vol.4, para.778; Exhs.P5485, p.2; P5948, pp.1-2.

⁵⁷⁵ Judgement, Vol.4, para.782; Exh.P977A.

⁵⁷⁶ Judgement, Vol.3, para.563; Exh.P5047.

⁵⁷⁷ *See below* Petković Table, incidents 1 and 4.

⁵⁷⁸ Judgement, Vol.4, paras.705, 710; Exh.P1351, p.3. *See also above* para.164.

⁵⁷⁹ Judgement, Vol.4, para.732.

183. The Chamber's analysis of the murders in Stolac was limited to crimes committed "in the course of" or "in connection with" the July 1993 eviction operations.⁵⁸⁰ The Chamber therefore failed to adjudicate the foreseeable murders in August and September 1993 of five male Muslim detainees at the Koštana hospital.⁵⁸¹ The Chamber's reasoning concerning the July 1993 eviction-related Stolac murders⁵⁸² could not apply to these crimes. Petković's order to leave women and children in their homes does not diminish the foreseeability of the murders of detained men. On the contrary, Petković's 30 June 1993 order—commanding the South-East OZ to "isolate" any remaining Muslim soldiers within HVO units and "all able-bodied men in Muslim-inhabited villages"⁵⁸³—put Petković on notice of the vulnerability of the detainees who might foreseeably be killed in detention.⁵⁸⁴

184. In light of the above, Petković could foresee the possibility of murders and wilful killings in detention centres and during the evictions. When Petković's JCE3 liability is properly considered, he should be held responsible for these incidents, as set out in the Petković Table below.

b. Petković could foresee rape and inhuman treatment (sexual assault)

185. Petković could foresee that HVO forces might commit rape or sexual assault against vulnerable Muslims detained in Prozor Municipality between August and December 1993, and in the aftermath of the attack on Stupni Do on 23 October 1993.

186. Petković was aware of the vulnerability of the Muslim civilian population to acts of sexual violence given his knowledge of: the separation of men from women, including his order of 30 June 1993;⁵⁸⁵ the violent nature of the ethnic cleansing campaign;⁵⁸⁶ the displacements; and detentions.⁵⁸⁷ The Chamber found he could

⁵⁸⁰ Judgement, Vol.4, paras.823-824.

⁵⁸¹ Judgement, Vol.2, paras.2012, 2015-2019; Vol.3, paras.685-686.

⁵⁸² Judgement, Vol.4, paras.823-824.

⁵⁸³ Exh.P3019, p.1.

⁵⁸⁴ See Judgement, Vol.2, paras.2012, 2015-2018.

⁵⁸⁵ E.g. Judgement, Vol.4, paras.696-697, 704, 710, 737. See also Šainović AJ, para.1588; Đorđević AJ, para.922.

⁵⁸⁶ See above para.162-165. See also Šainović AJ, paras.1581-1582, 1591-1592, 1602; Đorđević AJ, para.920.

⁵⁸⁷ See above para.162-165. See also Šainović AJ, paras.1581-1582, 1588, 1591-1592, 1602; Đorđević AJ, paras.922, 925.

foresee the sexual violence in Mostar “from April 1993 onwards”.⁵⁸⁸ By 14 June 1993, the risk of sexual violence was confirmed to Petković when he received a report from the HVO that during eviction operations members of the HVO had raped several women in West Mostar.⁵⁸⁹

187. The Chamber also held that Petković could foresee the sexual violence perpetrated in Vareš Town in October 1993 based on his knowledge that military operations were “taking place in an atmosphere of extreme violence and that sexual abuse was a natural and foreseeable consequence thereof”.⁵⁹⁰ The Chamber overlooked the two other incidents of sexual violence committed that same day against two others in nearby Stupni Do, also by members of the *Maturice* or *Apostoli* special units. These Stupni Do crimes were also foreseeable, regardless of whether Petković had planned that the operation would include Stupni Do village.

188. In light of the above, Petković could foresee the possibility that sexual violence might occur in Prozor and Stupni Do. When Petković’s JCE3 liability is properly considered, he should be held responsible for these incidents of rape and inhuman treatment, as set out in the Petković Table below.

c. Petković could foresee appropriation of property and plunder

189. In light of the findings and evidence discussed above—showing that Petković could foresee theft from as early as October 1992⁵⁹¹—and given the clear and predictable pattern of commission of these crimes,⁵⁹² Petković could foresee the possibility that HVO forces might commit appropriation of property and plunder in implementing the common purpose. When Petković’s JCE3 liability is properly considered, he should be held responsible for the incidents of appropriation of property and plunder in Prozor and Mostar (West Mostar in May 1993 and Raštani on 24 August 1993), as set out in the Petković Table below.

⁵⁸⁸ Judgement, Vol.4, para.830.

⁵⁸⁹ Judgement, Vol.4, para.828.

⁵⁹⁰ Judgement, Vol.4, para.834.

⁵⁹¹ See above paras.168-171.

⁵⁹² See above paras.161-166.

(ii) The Chamber failed to enter a conviction

190. Despite having found that from June 1993 Petković could foresee thefts in West Mostar,⁵⁹³ the Chamber failed to enter a conviction for these incidents.⁵⁹⁴ The Chamber found that between May 1993 and June 1994, during the forcible displacement of the Muslim inhabitants of West Mostar, members of the HVO took valuables and seized movable property belonging to those being expelled.⁵⁹⁵ The Chamber found that Petković could foresee that appropriation of property and plunder⁵⁹⁶ “would” be committed during these operations and that he willingly took that risk.⁵⁹⁷ Having found that the crimes were foreseeable to Petković—even at the higher *mens rea* standard (“would”) than legally required⁵⁹⁸—the Chamber erroneously failed to enter convictions pursuant to JCE3 for these incidents of appropriation of property and plunder in relation to Mostar,⁵⁹⁹ as set out in the Petković Table below.

(iii) Alternatively, the Chamber failed to provide a reasoned opinion

191. If the Appeals Chamber considers that the Chamber acquitted Petković of these JCE3 crimes, the Chamber nonetheless erred in law by failing to provide a reasoned opinion. For the reasons set out above, a *de novo* review by the Appeals Chamber should result in findings that Petković could foresee that these crimes might be committed.

(iv) Conclusion

192. Based on the totality of the evidence and the Chamber’s findings, the Appeals Chamber should correct the Chamber’s errors, find that the elements of JCE3 *mens rea* are met and convict Petković for the following criminal incidents, as set out in the Petković Table below:

- Murder (Count 2) and wilful killing (Count 3) (incidents 1-5, 8-11);

⁵⁹³ Judgement, Vol.4, paras.844-845.

⁵⁹⁴ Judgement, Vol.4, para.853.

⁵⁹⁵ Judgement, Vol.2, paras.866, 871-872, 875, 924, 930-932, 937, 977, 979-987.

⁵⁹⁶ Judgement, Vol.3, paras.1632-1637, 1664-1666.

⁵⁹⁷ Judgement, Vol.4, para.845. The Chamber erroneously acquitted Petković of the crimes committed in May 1993. The Prosecution has appealed this acquittal, *see above* para.178.

⁵⁹⁸ Since on the basis of the Chamber’s findings a higher degree of foreseeability was met, a lower degree of foreseeability is necessarily satisfied as well. *See Šainović* AJ, para.1092.

⁵⁹⁹ Judgement, Vol.4, para.853.

- Rape (Count 4) and inhuman treatment (sexual assault) (Count 5) (incidents 12-16); and
- Appropriation of property (Count 22) and plunder (Count 23) (incidents 17-20).

(e) Sub-ground 1(E): Error of fact

193. The Chamber's own findings and the evidence summarized above demonstrate that Petković was aware of the risk that additional JCE3 crimes might be committed and willingly took that risk. No reasonable trier of fact could have failed to convict Petković of the additional JCE3 crimes. Properly assessed, the findings and evidence on the record eliminate any reasonable doubt of Petković's guilt.

194. The Appeals Chamber should find that the elements of JCE3 are met and convict Petković under Counts 2-5 and 22-23 in relation to the incidents listed in the Petković Table below.

(f) Petković should have been convicted under JCE3 for wilful damage to institutions dedicated to religion (before June 1993)

195. Petković was convicted pursuant to JCE1 of the destruction of the Skrobućani mosque in the municipality of Prozor (which was destroyed in May or June 1993) and the Baba Bešir mosque in Mostar (which was destroyed on or around 10 May 1993 upon the order of Petković's subordinate, Miljenko Lasić).⁶⁰⁰ However, the Chamber found that the destruction of or wilful damage to institutions dedicated to religion or education became part of the common criminal purpose only in June 1993.⁶⁰¹ Prior to that date, the Chamber should have analysed Petković's responsibility pursuant to JCE3.

196. Since Petković has been held accountable at a higher *mens rea* standard—the Chamber found that he intended the destruction of those mosques⁶⁰²—he could also foresee the possibility that the HVO might carry out the destructions and willingly took that risk. Moreover, Petković intended the destruction of Muslim private property from January 1993.⁶⁰³ Coupled with his awareness of the climate of ethnic violence, he must have been aware of the possibility that HVO forces might destroy

⁶⁰⁰ Judgement, Vol.4, paras.695, 699, 729-730, 820.

⁶⁰¹ Judgement, Vol.4, paras.342, 433, 1213. *See also* para.718 and heading before para.449.

⁶⁰² Judgement, Vol.4, paras.695, 730.

mosques in implementing the common criminal purpose. In fact, the Chamber found that Petković could foresee the destruction of the mosques in Sovići and Doljani in April 1993.⁶⁰⁴

197. The Appeals Chamber should correct the Chamber's error and revise Petković's conviction for the destruction of the Skrobućani and the Baba Bešir mosques—as set out in the Petković Table below—to reflect his responsibility for committing these crimes pursuant to JCE3 rather than JCE1.

(g) Petković Table: Overview of the Chamber's errors⁶⁰⁵

Incident	Errors of law			Error of fact (1(E))
	Incorrect <i>mens rea</i> standard (1(A))	Compartmentalized evidence (1(B))	Failure to adjudicate/ provide a reasoned opinion (1(C))	
Murder (Count 2) and wilful killing (Count 3) ⁶⁰⁶				
1. Prozor: The killing of six captured Muslim civilians in Prajine and Tolovac on 19 July 1993 ⁶⁰⁷			X	X
2. Jablanica: The killing of four Muslim ABiH detainees at the Sovići School on 20 or 21 April 1993 ⁶⁰⁸			X	X

⁶⁰³ Judgement, Vol.4, paras.66-68, 704, 708-710, 815.

⁶⁰⁴ Judgement, Vol.4, paras.850-852.

⁶⁰⁵ The Prosecution no longer alleges an error under Ground 1 in relation to Petković concerning the incidents involving killing of a Muslim girl in Pješivac Greda on 13 July 1993; the killing of two young Muslim women in Domanovići on or around 13 July 1993; the killing of an 83-year old Muslim disabled man in Bivolje Brdo on 14 July 1993; the killing of 12 Muslim men during the evictions from Bivolje Brdo on or about 16 July 1993; the appropriation of property and plunder in Pješivac Greda between 2 and 13 July 1993; plunder in Bivolje Brdo between 13 and 16 July 1993; and appropriation of property and plunder of property belonging to Muslims detained at the Silos on 23 August 1993 (*see* Prosecution Notice, fns.5, 11 & Annex IV).

⁶⁰⁶ All incidents listed in this section of the Petković Table constitute murder (Count 2) and wilful killing (Count 3).

⁶⁰⁷ Judgement, Vol.2, paras.109-112; Vol.3, paras.658-660, 707-708; Indictment, para.53.

⁶⁰⁸ Judgement, Vol.2, paras.569, 580-581, 584; Vol.3, paras.665-666, 713-715; Indictment, para.77.

Incident	Errors of law			Error of fact (1(E))
	Incorrect <i>mens rea</i> standard (1(A))	Compartmentalized evidence (1(B))	Failure to adjudicate/ provide a reasoned opinion (1(C))	
3. Mostar: The killing of 10 Muslim ABiH detainees at the Faculty of Mechanical Engineering between 10 and 11 May 1993 and of two other Muslim detainees between 8 and 11 July 1993 ⁶⁰⁹			X	X
4. Mostar: The killing of a Muslim civilian in Buna on 14 July 1993 ⁶¹⁰			X	X
5. Stolac: The killing of five Muslim detainees at the Koštana Hospital in August and September 1993 ⁶¹¹			X	X
6. Dretelj: The killing of one Muslim detainee by dehydration in mid-July 1993 ⁶¹²		X		X
7. Dretelj: The killing of three Muslim detainees in mid-July 1993 ⁶¹³		X		X
8. Dretelj: The death of two Muslim detainees as a result of mistreatment in August 1993 ⁶¹⁴			X	X
9. Gabela: The killing of one Muslim detainee on 19 or 29 August 1993 ⁶¹⁵			X	X
10. Gabela: The killing of an ABiH detainee between 2 October and 11 December 1993 ⁶¹⁶			X	X

⁶⁰⁹ Judgement, Vol.2, paras.845-853, 905-909; Vol.3, paras.668-669, 717-718; Indictment, paras.95, 104.

⁶¹⁰ Judgement, Vol.2, paras.940-944; Vol.3, paras.670, 719; Indictment, para.106.

⁶¹¹ Judgement, Vol.4, para.1216; Vol.2, paras.2014-2019 (Salko Kaplan died in Dretelj Prison and Ibro Razić died in Gabela Prison); Vol.3, paras.685-686, 736-737; Indictment, para.169.

⁶¹² Judgement, Vol.4, paras.825, 853; Vol.3, paras.85-91, 693-694, 696, 744-745, 748; Indictment, para.190.

⁶¹³ Judgement, Vol.4, paras.825, 853; Vol.3, paras.113-115, 122, 693, 695-696, 746, 748; Indictment, paras.191-192.

⁶¹⁴ Judgement, Vol.4, paras.825, 853; Vol.3, paras.119-122, 693, 696, 744-745, 747-748; Indictment, paras.191-192.

⁶¹⁵ Judgement, Vol.3, paras.250, 253, 697, 749-750; Indictment, para.200.

⁶¹⁶ Judgement, Vol.3, paras.251, 253, 698, 749, 751; Indictment, para.200.

Incident	Errors of law			Error of fact (1(E))
	Incorrect <i>mens rea</i> standard (1(A))	Compartmentalized evidence (1(B))	Failure to adjudicate/ provide a reasoned opinion (1(C))	
11. Vojno: The killing of a Muslim detainee on 5 December 1993 ⁶¹⁷			X	X
Rape (Count 4) and inhuman treatment (sexual assault) (Count 5)				
12. Prozor: The rape of Muslim women and girls in Podgrade, Lapsunj and Duge between August and December 1993 (Counts 4-5) ⁶¹⁸			X	X
13. Prozor: Sexual assault against Muslim women and girls in Podgrade and Duge in August 1993 (Count 5) ⁶¹⁹			X	X
14. Prozor: Sexual assault against five Muslim detainees in Jurići in August 1993 (Count 5) ⁶²⁰			X	X
15. Vareš: The rape of a Muslim girl (Witness DH) in Stupni Do on 23 October 1993 (Counts 4-5) ⁶²¹			X	X
16. Vareš: Sexual assault against a Muslim girl (Witness EG) in Stupni Do on 23 October 1993 (Count 5) ⁶²²			X	X
Appropriation of property (Count 22) and plunder (Count 23)				
17. Prozor: Appropriation of property and plunder in Podgrade in August 1993 (Counts 22-23) ⁶²³			X	X

⁶¹⁷ Judgement, Vol.2, paras.1715-1716; Vol.3, paras.680, 730-731; Indictment, para.138.

⁶¹⁸ Judgement, Vol.2, paras.233-237, 250, 252-253, 258-262, 268-272, 283-292; Vol.3, paras.757-760, 769; Indictment, paras.57, 59.

⁶¹⁹ Judgement, Vol.2, paras.233, 235, 250, 252-253, 235, 268-272; Vol.3, paras.771-774; Indictment, paras.57, 59.

⁶²⁰ Judgement, Vol.2, paras.169-170; Vol.3, para.770; Indictment, para.55.

⁶²¹ Judgement, Vol.3, paras.426, 428-429, 768, 779; Indictment, para.211.

⁶²² Judgement, Vol.3, paras.427, 429, 780; Indictment, para.211.

⁶²³ Judgement, Vol.2, paras.233, 235, 250-251, 253; Vol.3, paras.1620-1621, 1655; Indictment, para.57.

Incident	Errors of law			Error of fact (1(E))
	Incorrect <i>mens rea</i> standard (1(A))	Compartmentalized evidence (1(B))	Failure to adjudicate/ provide a reasoned opinion (1(C))	
18. Mostar: Appropriation of property and plunder in West Mostar in May 1993 (Counts 22-23) ⁶²⁴			X	X
19. Mostar: Appropriation of property and plunder in West Mostar from June 1993 to February 1994 (Counts 22-23) ⁶²⁵			X	X
20. Mostar: Appropriation of property and plunder in Raštani on 24 August 1993 (Counts 22-23) ⁶²⁶			X	X
21. Vareš: Appropriation of property and plunder in Stupni Do on 23 October 1993 (Counts 22-23) ⁶²⁷	X	X		X

5. Ćorić is responsible for the additional JCE3 crimes

198. As Chief of the HVO MP Administration and later Minister of the Interior,⁶²⁸ Ćorić could foresee that the additional JCE3 crimes might be committed in the execution of the common criminal purpose. The Chamber found that Ćorić intended to commit a wide range of crimes against the Muslim population.⁶²⁹ In addition, Ćorić was aware of and participated in the HVO campaign of attacks and expulsions, crimes against detainees and destruction of Muslim homes and religious institutions.⁶³⁰ By remaining in positions of authority, intending or aware of ongoing crimes committed

⁶²⁴ Judgement, Vol.2, paras.823-824, 826-827, 924; Vol.3, paras.1632-1637, 1664-1666; Indictment, paras.99-100, 107.

⁶²⁵ Judgement, Vol.2, paras.864-867, 871-876, 924, 930-932, 937, 977, 979-987; Vol.3, paras.1632-1637, 1664-1666; Indictment, paras.99-100, 107.

⁶²⁶ Judgement, Vol.2, paras.965-966; Vol.3, paras.1638-1641, 1667-1668; Indictment, para.108.

⁶²⁷ Judgement, Vol.4, paras.849, 853; Vol.3, paras.465, 467, 1650-1653, 1681-1683; Indictment, para.211.

⁶²⁸ Judgement, Vol.4, para.861.

⁶²⁹ Judgement, Vol.4, paras.65-68, 1000-1007.

⁶³⁰ E.g. Judgement, Vol.4, paras.1006-1007.

by HVO forces against Bosnian Muslims, Ćorić willingly took the risk that JCE3 crimes might be committed.

(a) Ćorić could foresee the additional JCE3 crimes

199. Between June 1992 and 10 November 1993, Ćorić was Chief of the HVO MP Administration,⁶³¹ which formed an integral part of the Department of Defence.⁶³² The MP Administration was responsible for ensuring punishment of offences committed by members of the MP itself.⁶³³ On 10 November 1993, Ćorić was appointed Minister of the Interior of the HRHB.⁶³⁴ In this capacity, he was responsible for national security and the safety of persons and property, for preventing and detecting criminal acts and arresting the offenders.⁶³⁵ The Chamber found that he continued to be informed of events on the ground⁶³⁶ and continued to participate in fighting crime within the HVO.⁶³⁷

200. From January 1993, Ćorić was an active JCE member. He facilitated and participated in the January 1993 attack on Gornji Vakuf, aware of and intending the accompanying crimes of murder, unlawful detention, expulsions and destruction of mosques and other property.⁶³⁸ He continued his JCE participation by contributing to a range of crimes against Muslims and their property in the municipalities of Mostar,⁶³⁹ Ljubuški,⁶⁴⁰ Stolac⁶⁴¹ and Čapljina,⁶⁴² as well as in relation to the Heliodrom,⁶⁴³ Ljubuški Prison,⁶⁴⁴ Vitina-Otok camp,⁶⁴⁵ Dretelj Prison,⁶⁴⁶ Gabela Prison⁶⁴⁷ and Prozor Secondary School.⁶⁴⁸

⁶³¹ Judgement, Vol.4, para.861.

⁶³² Judgement, Vol.1, para.856.

⁶³³ Judgement, Vol.1, para.925.

⁶³⁴ Judgement, Vol.4, para.861.

⁶³⁵ Judgement, Vol.4, para.883.

⁶³⁶ Judgement, Vol.4, para.1226.

⁶³⁷ Judgement, Vol.4, para.883.

⁶³⁸ Judgement, Vol.4, paras.923, 1000.

⁶³⁹ Judgement, Vol.4, paras.928, 934, 938, 945, 1000.

⁶⁴⁰ Judgement, Vol.4, para.948.

⁶⁴¹ Judgement, Vol.4, paras.953, 1000.

⁶⁴² Judgement, Vol.4, paras.953, 1000.

⁶⁴³ Judgement, Vol.4, paras.952-953, 957, 962, 966, 970-971.

⁶⁴⁴ Judgement, Vol.4, paras.973, 980-982.

⁶⁴⁵ Judgement, Vol.4, paras.977, 982.

⁶⁴⁶ Judgement, Vol.4, paras.987, 990, 993-994.

⁶⁴⁷ Judgement, Vol.4, paras.996-997.

⁶⁴⁸ Judgement, Vol.4, para.998.

201. Ćorić “was one of the architects of the unified network of HVO detention centres”⁶⁴⁹ and played a “key role in the operation of the network of HVO detention centres.”⁶⁵⁰ He contributed to the “arrest and detention of thousands of Muslims” in “harsh conditions where they were mistreated, beaten and abused.”⁶⁵¹ Ćorić accepted the use of detainees to work on the front line,⁶⁵² in the face of regular reports that they were being mistreated, wounded or killed, thus intending these crimes.⁶⁵³ By continuing to condone the use of detainees for forced labour, Ćorić made clear that mistreatment of detainees was approved at the highest level of the MP Administration.

202. Ćorić facilitated and participated in mass arrests⁶⁵⁴ and eviction operations,⁶⁵⁵ with the intent for accompanying violent crimes. He supported the HVO campaign of fire and shelling against East Mostar intending to facilitate the resulting murders and property destruction.⁶⁵⁶ By participating in the blockade of East Mostar, Ćorić “knowingly contributed” to the siege of East Mostar and the creation of unbearable living conditions for its population.⁶⁵⁷

203. Ćorić “was informed of many crimes” committed by HVO armed forces, including the MP.⁶⁵⁸ Instead of using his authority as Chief of the HVO MP Administration or Minister of Interior to intervene to change the course of events, Ćorić used his powers to further the common criminal purpose.⁶⁵⁹ For instance, he “knowingly turned a blind eye” to the crimes committed by HVO forces during the evictions from West Mostar, thereby intending the commission of further such crimes.⁶⁶⁰ Ćorić’s failure to punish the perpetrators contributed to a culture of impunity that encouraged the commission of further crimes.⁶⁶¹

⁶⁴⁹ Judgement, Vol.4, para.982.

⁶⁵⁰ Judgement, Vol.4, para.1001.

⁶⁵¹ Judgement, Vol.4, para.1001.

⁶⁵² Judgement, Vol.4, paras.966, 1001.

⁶⁵³ Judgement, Vol.4, paras.965-966.

⁶⁵⁴ Judgement, Vol.4, paras.928, 945, 952-953, 973, 996, 998.

⁶⁵⁵ Judgement, Vol.4, paras.934, 945.

⁶⁵⁶ Judgement, Vol.4, paras.938, 945.

⁶⁵⁷ Judgement, Vol.4, paras.944-945.

⁶⁵⁸ Judgement, Vol.4, para.1002.

⁶⁵⁹ Judgement, Vol.4, paras.933-934, 957, 966, 987, 1002.

⁶⁶⁰ Judgement, Vol.4, para.1000. *See also* Exh.P2802 (a 16 June 1993 daily report from an MP company commander to the MP Administration reporting that there was “[n]o crime or incident” reported in Mostar on the previous day, while also noting that “the town was ethnically cleansed of Muslims by members of the 4th Battalion and members of the *Baja Krlajević* ATG”).

⁶⁶¹ Judgement, Vol.4, paras.933-934.

204. Ćorić knew as early as January 1993 that HVO troops carrying out the common criminal purpose of the JCE had murdered Bosnian Muslim civilians and had destroyed mosques.⁶⁶² He knew as early as May and June that HVO troops carrying out the common criminal purpose of the JCE had raped Bosnian Muslims and stolen their property.⁶⁶³ Ćorić also knew or had reason to know as early as July 1993 of the dire conditions in HVO detention facilities he oversaw, including Heliodrom and Dretelj.⁶⁶⁴

205. In sum, Ćorić played an active role in implementing a discriminatory and violent campaign against Muslims, well-aware of the resulting crimes. He must have been aware of the consequent vulnerability of the Muslim population. It was therefore foreseeable to Ćorić that other violent crimes against Muslims or their property might be committed in the course of the campaign.

206. As set out below, the Chamber's findings and the evidence in the record demonstrate that such foreseeable crimes included: murders during evictions and in detention centres; rape and other forms of sexual violence; destruction or damage to institutions dedicated to religion (before June 1993); and appropriation of property and plunder.

(b) Sub-ground 1(A): Application of the wrong legal standard

207. In determining whether Ćorić was guilty of the crimes outside the JCE, the Chamber inquired whether Ćorić could have reasonably foreseen that the crimes "would" be committed.⁶⁶⁵ This is incorrect. The Chamber should have considered whether the commission of these crimes was a possible consequence of the execution of the JCE.⁶⁶⁶ This error led the Chamber to wrongly acquit Ćorić of murder, wilful killing, and appropriation of property.⁶⁶⁷

(i) Ćorić could foresee that the mid-July 1993 killings in Stolac, Čapljina and in the Dretelj Prison might occur

208. Applying the correct legal standard, Ćorić should be convicted of the murders and wilful killings committed during evictions in Stolac and Čapljina and in Dretelj

⁶⁶² See Judgement, Vol.4, paras.921, 923.

⁶⁶³ See Judgement, Vol.4, paras.926, 928, 934

⁶⁶⁴ Judgement, Vol.4, paras.955-957, 987, 990.

⁶⁶⁵ Judgement, Vol.4, paras.1008, 1009, 1011, 1014, 1016, 1019.

⁶⁶⁶ See above paras.26-32.

⁶⁶⁷ Judgement, Vol.4, para.1016.

Prison in mid-July 1993.⁶⁶⁸ As the Chamber's own findings show, Čorić could foresee that these crimes were a possible consequence of the execution of a JCE that he knew was characterized by violent killings.⁶⁶⁹

209. Čorić intended that murder and wilful killing (both during the attack operations and of detainees used for forced labour and as human shields) be used as means to implement the common purpose of the JCE,⁶⁷⁰ which started "at least as early as mid-January 1993".⁶⁷¹

210. At the very outset of the JCE, Čorić was aware of and intended the murders that accompanied the attack on Gornji Vakuf in January 1993.⁶⁷² He also intended to facilitate murder during HVO operations during the siege of East Mostar, starting in June 1993.⁶⁷³

211. More broadly, Čorić had been aware since mid-June that HVO members were committing violent crimes—including assault—during the May 1993 eviction operations in West Mostar.⁶⁷⁴

212. Like the criminally violent operations in Gornji Vakuf and Mostar that preceded them, the operations in the municipalities of Stolac and Čapljina in mid-July 1993 were carried out in furtherance of the JCE⁶⁷⁵ and in a climate of extreme violence⁶⁷⁶ against Bosnian Muslims, by HVO members in furtherance of a JCE aimed at eliminating the Bosnian Muslim population the claimed territory. By ordering and facilitating the indiscriminate arrest of the men in Stolac and Čapljina,⁶⁷⁷ Čorić must have been aware of the heightened vulnerability of the remaining women, children and elderly, whom he intended would be expelled in accordance with the common criminal purpose.⁶⁷⁸ He would also have known the arrests of the men would facilitate the expulsion of the rest of the Muslim population. In light of his involvement in the pattern of violent crimes, and his intent for similar crimes in other places, Čorić must have anticipated that the evictions of the women, children and

⁶⁶⁸ See below Čorić Table, incidents 7-11.

⁶⁶⁹ Judgement, Vol.4, paras.68, 72, 923, 938, 966.

⁶⁷⁰ Judgement, Vol.4, paras.66-68, 938, 945, 966, 1004.

⁶⁷¹ Judgement, Vol.4, para.44. See also Judgement, Vol.4, paras.1000, 1006.

⁶⁷² Judgement, Vol.4, paras.923, 1006.

⁶⁷³ Judgement, Vol.4, paras.59, 938, 1006.

⁶⁷⁴ Judgement, Vol.4, para.934.

⁶⁷⁵ Judgement, Vol.4, para.1000.

⁶⁷⁶ See Judgement, Vol.2, paras.1936-1938, 1941.

⁶⁷⁷ See Judgement, Vol.4, paras.953, 1015.

⁶⁷⁸ Judgement, Vol.4, para.1004.

elderly from Stolac and Čapljina would be carried out in a similar climate of violence as in the earlier operations in Gornji Vakuf and Mostar. Therefore, Čorić was aware of the risk that HVO forces might commit murders during the evictions from these locations. The mid-July 1993 murders committed by HVO forces during operations in the municipalities of Stolac and Čapljina, listed in the Čorić Table below were foreseeable to Čorić.⁶⁷⁹

213. The mid-July murders of the detainees at Dretelj were also foreseeable to Čorić. In addition to the general climate of violence he knew reigned in HZHB generally in July 1993, he was also aware that detainees were being mistreated by the HVO in other camps. By early July 1993, Čorić had reason to know that detainees in the Heliodrom were being mistreated.⁶⁸⁰ Čorić also visited the Dretelj Prison on 9 July 1993,⁶⁸¹ at a time when it was overcrowded and the detainees deprived of space and air, proper hygiene, food, water and medical care.⁶⁸² Čorić “must have known that Dretelj Prison was overcrowded at that time” and “accepted the bad detention conditions at that prison” by doing nothing to rectify the situation.⁶⁸³ As noted above,⁶⁸⁴ Čorić accepted the use of detainees to work on the front line,⁶⁸⁵ in the face of regular reports that they were being mistreated, wounded or killed, thus intending these crimes.⁶⁸⁶ If he knew and approved that the detainees be subjected to dangerous unlawful labour outside of HVO detention facilities, it was clearly foreseeable to him that they might also be mistreated in those facilities. Consequently, applying the proper legal standard, the deaths of the detainees in Dretelj Prison were foreseeable to Čorić.⁶⁸⁷

⁶⁷⁹ This argument is made in the alternative in relation to incidents 8 and 9. The Chamber’s legal findings on Čorić’s responsibility omit to refer to the factual and/or legal findings for these crimes: *see* Judgement, Vol.4, fn.1896. The Prosecution’s primary position is that these crimes were not adjudicated by the Chamber, *see below* Ground 1(C). If, however, the Chamber considers that Čorić’s acquittal for JCE3 murders in Čapljina includes these crimes (Judgement, Vol.4, paras.1016, 1021), then the Prosecution argues in the alternative that the Chamber made errors under Sub-grounds 1(A), 1(B), 1(D) and/or 1(E).

⁶⁸⁰ Judgement, Vol.4, paras.955-957.

⁶⁸¹ Judgement, Vol.4, para.987.

⁶⁸² Judgement, Vol.3, paras.64, 67, 72, 80.

⁶⁸³ Judgement, Vol.4, para.987.

⁶⁸⁴ *See above* para.202.

⁶⁸⁵ Judgement, Vol.4, paras.966, 1001.

⁶⁸⁶ Judgement, Vol.4, paras.965-966.

⁶⁸⁷ *See below* Čorić Table, incidents 10-11.

214. Ćorić could foresee the possibility of murders and wilful killings in detention centres and during the evictions. When Ćorić's JCE3 liability is properly considered, he should be held responsible for incidents 10-11 in the Ćorić Table below.

(ii) Ćorić could foresee that thefts in Stolac and Čapljina might occur

215. As set out above, Ćorić had been aware of the general climate of violence and the vulnerability of the Muslim population since the JCE's inception.⁶⁸⁸ He was also on notice since the attack on Prozor in October 1992 that HVO forces had stolen property belonging to Muslims.⁶⁸⁹

216. Furthermore, the Chamber found that Ćorić could foresee the risk of appropriation of property and plunder in executing the violent ethnic cleansing campaign.⁶⁹⁰ It thus convicted him of the thefts committed by HVO forces in the municipality of Gornji Vakuf.⁶⁹¹

217. Ćorić's awareness of the risk of appropriation of property and plunder increased as the evictions continued in Mostar from May 1993 onwards and he was informed of the violence there and failed to take measures against the perpetrators.⁶⁹² The fact that Ćorić validated the practice of military policemen moving into the apartments of the evicted Muslims⁶⁹³ shows that he was aware of and approved such crimes. Indeed, the Chamber convicted Ćorić of the foreseeable thefts committed in Mostar as of May 1993.⁶⁹⁴

218. In light of the above, Ćorić was aware of the climate of violence and could foresee the possibility that HVO forces might commit appropriation of property and plunder in implementing the JCE's common purpose in the municipalities of Čapljina and in Stolac in mid-July 1993. When Ćorić's JCE3 liability is properly considered, he should be held responsible for these incidents, as set out in the Ćorić Table below.

219. Based on the totality of the evidence and the Chamber's findings, the Appeals Chamber should correct the Chamber's errors, find that the elements of JCE3 *mens rea* are met and convict Ćorić for the following criminal incidents, as set out in the Ćorić Table below:

⁶⁸⁸ See above paras.44-49.

⁶⁸⁹ Judgement, Vol.4, paras.1247-1250.

⁶⁹⁰ Judgement, Vol.4, para.1009.

⁶⁹¹ Judgement, Vol.4, paras.1009, 1021.

⁶⁹² Judgement, Vol.4, paras.934, 945, 1011.

- Murder (Count 2) and wilful killing (Count 3) (incidents 5, 7-11); and
- Appropriation of property (Count 22) and plunder (Count 23) (incidents 27-29).

(c) Sub-ground 1(B): Compartmentalization of evidence

220. With regard to incidents 5, 9-11 and 27-29 set out in the Table below, the Chamber also erred by taking an incorrect approach to its analysis of the evidence: rather than assessing foreseeability to Čorić in light of the totality of the evidence, it analysed the evidence in relation to each of the incidents in isolation.⁶⁹⁵ This error led the Chamber to wrongly acquit Čorić of murder, wilful killing, and appropriation of property for incidents stemming from the evictions in the municipalities of Stolac and Čapljina and the detentions in Dretelj Prison.⁶⁹⁶

(i) Čorić could foresee murder and wilful killing

221. In assessing whether the murders committed during the operations to evict the vulnerable Muslim women, children and elderly people from Stolac and Čapljina in July 1993 were foreseeable to Čorić, the Chamber erroneously considered only whether he had “contribut[ed]” to these eviction operations.⁶⁹⁷ Similarly, in assessing whether the murders committed in the Dretelj Prison in July 1993 were foreseeable to Čorić, the Chamber failed to consider its own findings demonstrating Čorić’s awareness of the circumstances surrounding the implementation of the common purpose in its totality.⁶⁹⁸ This includes that:

- As a member of a JCE characterized by violent ethnic cleansing, Čorić intended murder and wilful killing as means to implement its common purpose;⁶⁹⁹
- Čorić was regularly informed of the violence with which the JCE was being implemented;⁷⁰⁰

⁶⁹³ Judgement, Vol.4, para.929.

⁶⁹⁴ Judgement, Vol.4, paras.1011, 1021.

⁶⁹⁵ *See above* paras.33-37

⁶⁹⁶ Judgement, Vol.4, para.1016.

⁶⁹⁷ Judgement, Vol.4, para.1016.

⁶⁹⁸ Judgement, Vol.4, para.1019.

⁶⁹⁹ Judgement, Vol.4, paras.1000-1006.

⁷⁰⁰ Judgement, Vol.4, paras.921, 923, 930, 933, 938, 955, 962, 966, 971, 1002.

- Ćorić visited the Dretelj Prison on 9 July 1993⁷⁰¹ at a time when it was overcrowded and in which its detainees were deprived of space and air, proper hygiene, food, water and medical care⁷⁰² and accepted the bad conditions by doing nothing to rectify the situation;⁷⁰³
- Ćorić condoned the use of detainees to perform forced labour despite being on notice that they were being wounded and killed;⁷⁰⁴
- Ćorić ordered the arrest of the men from Stolac and Čapljina, thus facilitating the removal of the women, children and elderly in what he had to have known would be a climate of violence.⁷⁰⁵

222. In light of the above, Ćorić could foresee the possibility of these murders and wilful killings. When Ćorić's JCE3 liability is properly considered, he should be held responsible for these incidents, as set out in the Ćorić Table below.

(ii) Ćorić could foresee appropriation of property and plunder

223. The Chamber repeated its error in assessing whether the thefts and plunder resulting from the eviction operations in the municipalities of Stolac and Čapljina were foreseeable to Ćorić: it considered only whether he “contribut[ed]” to the eviction operations.⁷⁰⁶ An analysis of the totality of the evidence, as noted above, shows that these crimes were foreseeable to Ćorić. This compartmentalized view of the evidence led the Chamber to erroneously acquit Ćorić of these crimes. When Ćorić's JCE3 liability is properly considered, he should be held responsible for these incidents, as set out in the Ćorić Table below.

224. Based on the totality of the evidence and the Chamber's findings, the Appeals Chamber should correct the Chamber's errors, find that the elements of JCE3 *mens rea* are met and convict Ćorić for the following criminal incidents, as set out in the Ćorić Table below:

- Murder (Count 2) and wilful killing (Count 3) (incidents 5, 7-11); and

⁷⁰¹ Judgement, Vol.4, para.987.

⁷⁰² Judgement, Vol.3, paras.64, 67, 72, 80; Vol.4, para.987.

⁷⁰³ Judgement, Vol.4, para.987.

⁷⁰⁴ Judgement, Vol.4, paras.965-966, 1001.

⁷⁰⁵ Judgement, Vol.4, para.1015.

⁷⁰⁶ Judgement, Vol.4, para.1016.

- Appropriation of property (Count 22) and plunder (Count 23) (incidents 27-29).

(d) Sub-ground 1(C): Failure to adjudicate or provide a reasoned opinion

(i) The Chamber failed to adjudicate many JCE3 crimes

225. The Chamber erred in law by failing to adjudicate Ćorić's responsibility under JCE3 for the killings, rapes, sexual assaults, thefts, plunder and the destruction of mosques, despite having found that those crimes were proven. The Chamber expressly found that the crimes were committed and were foreseeable to the members of the JCE. After acknowledging that Ćorić's criminal responsibility for crimes falling outside of the common criminal purpose should be analysed pursuant to JCE3,⁷⁰⁷ the Chamber failed to do so. Instead, in the subsequent paragraphs the Chamber only examined a small subset of the JCE3 crimes, overlooking many others.⁷⁰⁸

226. In light of the Chamber's findings and evidence discussed below, Ćorić was aware of the risk that these additional crimes might be committed in the execution of the common criminal purpose and willingly took that risk. Had Ćorić's responsibility for these non-adjudicated crimes been properly addressed under JCE3, he would have been convicted of them.

a. Ćorić could foresee murder and wilful killing

227. As noted above, Ćorić intended that the common criminal purpose of the JCE be executed, in part, through the commission of murder and wilful killing. At the very outset of the criminal campaign, in January 1993 he knew that HVO troops had murdered Bosnian Muslims during the execution of operations in furtherance of the JCE, in Gornji Vakuf, and intended those crimes.⁷⁰⁹ Given this, and in light of the general factors discussed above demonstrating Ćorić's awareness of, and contributions to the common criminal purpose, it was foreseeable to Ćorić that other murders might be committed in the furtherance of the JCE in the course of eviction operations and in detention facilities.

⁷⁰⁷ Judgement, Vol.4, paras.70, 72, 1008.

⁷⁰⁸ Judgement, Vol.4, paras.1009-1021.

⁷⁰⁹ Judgement, Vol.4, paras.923, 1006.

228. Ćorić's awareness of the risk of such crimes only mounted over time. For instance, as of June 1993, Ćorić was aware of, and intended, murder and other violent crimes in connection with the brutal siege of East Mostar,⁷¹⁰ and knowingly contributed to the creation of unbearable living conditions for its population.⁷¹¹ From July 1993 to October 1993, Ćorić was "regularly informed that the Heliudrom detainees were being mistreated, wounded or killed while working on the front line" and intended those crimes.⁷¹² Similarly, by July 1993, Ćorić knew of the poor conditions of detention in HVO detention facilities and that some detainees had died as a result of mistreatment.⁷¹³ He must have foreseen the possibility of subsequent murders of detainees in other detention facilities within the unified network, of which he was one of the architects.⁷¹⁴

229. In light of the above, Ćorić could foresee the possibility of murders and wilful killings in detention centres and during the evictions. When Ćorić's JCE3 liability is properly considered, he should be held responsible for these incidents, as set out in the Ćorić Table below.

b. Ćorić could foresee rape and inhuman treatment (sexual assault)

230. The Chamber's findings also show that the rapes and sexual assaults were foreseeable to Ćorić. The Chamber found that as of May 1993 Ćorić could foresee that HVO forces "would" commit sexual violence crimes in implementing the common purpose based on his awareness of the violent nature of the ethnic cleansing campaign.⁷¹⁵

231. Moreover, Ćorić had actual knowledge of the commission of rapes. The Chamber found that from 14 June 1993, he was informed by representatives of the international community of "events" (the evictions and the crimes committed in connection thereto) in Mostar.⁷¹⁶ On 16 July 1993, representatives of the international community informed Ćorić (as well as Pušić, Stojić and Prlić) that HVO soldiers beat Muslims while expelling them from their homes, stole from them, and raped Muslim

⁷¹⁰ Judgement, Vol.4, paras.59, 938.

⁷¹¹ Judgement, Vol.4, para.944.

⁷¹² Judgement, Vol.4, paras.965-966.

⁷¹³ Judgement, Vol.4, para.1018.

⁷¹⁴ Judgement, Vol.4, paras.982, 1001.

⁷¹⁵ Judgement, Vol.4, paras.1012, 1014.

⁷¹⁶ Judgement, Vol.2, paras.873, 876.

women, before displacing the population to East Mostar.⁷¹⁷ Further, on 9 August 1993, Ćorić signed a report on the work of the Mostar Centre of the Department for Criminal Investigations of the MP Administration for the period 1 July-1 August 1993 which mentioned an increase in crimes, including rapes, committed in Mostar during the eviction campaign.⁷¹⁸

232. Considering Ćorić's notice, coupled with his awareness of and contribution to the prevailing climate of violence and the vulnerability of the Muslim population as a result of forcible displacement, detention and the separation of men from the women,⁷¹⁹ Ćorić could foresee the possibility that HVO forces might commit sexual violence crimes in implementing the common purpose. The Chamber therefore erred in failing to convict Ćorić of the foreseeable rapes and sexual assaults perpetrated by HVO forces against Muslim men, women and young girls in the municipalities of Prozor and Vareš between August and December 1993. When Ćorić's JCE3 liability is properly considered, he should be held responsible for these incidents, as set out in the Ćorić Table below.

c. Ćorić could foresee appropriation and plunder

233. From the very outset of the criminal campaign, Ćorić could foresee that HVO troops "would" commit theft and plunder during the January 1993 HVO attack on Gornji Vakuf.⁷²⁰ He also knew—as of mid-June 1993—that "HVO soldiers were confiscating Muslim property during evictions in West Mostar".⁷²¹ Ćorić consented to HVO soldiers and members of the MP taking over the flats of Muslims evicted from West Mostar.⁷²² He was also on notice since the attack on Prozor in October 1992 that HVO forces had stolen property belonging to Muslims.⁷²³ Like the thefts that occurred during these operations, the thefts that occurred in Sovići and Doljani (April 1993),⁷²⁴ Podgrađe (August 1993),⁷²⁵ Raštani (August 1993),⁷²⁶ Vareš (October and

⁷¹⁷ Judgement, Vol.2, paras.872-873, 876. See [REDACTED]; [REDACTED]; [REDACTED]; [REDACTED]; [REDACTED]; Van der Grinten, T.21046-21049.

⁷¹⁸ Judgement, Vol.4, para.1013; Exh.P4058, pp.4, 7, 14.

⁷¹⁹ See above paras.5-6, 12.

⁷²⁰ Judgement, Vol.4, para.1009.

⁷²¹ Judgement, Vol.4, para.1011.

⁷²² Judgement, Vol.4, para.1011.

⁷²³ Judgement, Vol.4, paras.1247-1250.

⁷²⁴ See below Ćorić Table, incident 24.

⁷²⁵ See below Ćorić Table, incident 25.

⁷²⁶ See below Ćorić Table, incident 26.

November 1993)⁷²⁷ and Stupni Do (October 1993)⁷²⁸ were committed by HVO forces during the execution of attacks on Bosnian Muslims in furtherance of the JCE. When Ćorić's JCE3 liability is properly considered, he should be held responsible for the criminal incidents set out in the Table below.

d. Ćorić could foresee destruction of Muslim religious institutions (before June 1993)

234. Ćorić was on notice since the attack on Prozor in October 1992 of the extensive destruction of Muslim houses by HVO soldiers and members of the MP.⁷²⁹ Moreover, the Chamber found that Ćorić knew of, and intended, the destruction of mosques and of Muslim private property carried out in the course of the January 1993 Gornji Vakuf attack.⁷³⁰

235. This actual knowledge, coupled with Ćorić's awareness of the climate of ethnic tension and violence, demonstrates that Ćorić was aware of the risk that HVO forces might destroy or damage other mosques in implementing the common criminal purpose. The Chamber erred in failing to adjudicate Ćorić's responsibility for the destruction of four mosques (Sovići and Doljani, Skrobućani and the Baba Bešir mosques in Mostar) by HVO forces before this crime became encompassed in the common criminal purpose in June 1993.⁷³¹ When Ćorić's JCE3 liability is properly considered, he should be held responsible for these incidents, as set out in the Ćorić Table below.

(ii) Alternatively, the Chamber failed to provide a reasoned opinion

236. If the Appeals Chamber considers that the Chamber acquitted Ćorić of these JCE3 crimes, the Chamber nonetheless erred in law by failing to provide a reasoned opinion. For the reasons set out above, a *de novo* review by the Appeals Chamber should result in findings that Ćorić could foresee that these crimes might be committed.

⁷²⁷ See below Ćorić Table, incident 30.

⁷²⁸ See below Ćorić Table, incident 31.

⁷²⁹ Judgement, Vol.4, para.1249. Exh.P536, p.3.

⁷³⁰ Judgement, Vol.4, para.923.

⁷³¹ See Judgement, Vol. 4, paras.59, 342, 433

(iii) Conclusion

237. Based on the totality of the evidence and the Chamber's findings, the Appeals Chamber should correct the Chamber's errors, find that the elements of JCE3 *mens rea* are met and convict Ćorić for the following criminal incidents, as set out in the Ćorić Table below:

- Murder (Count 2) and wilful killing (Count 3) (incidents 1-4, 6, 8-9 and 12-14);
- Rape (Count 4) and inhuman treatment (sexual assault) (Count 5) (incidents 15-20);
- Destruction or wilful damage to institutions dedicated to religion (Count 21) (incidents 21-23); and
- Appropriation of property (Count 22) and plunder (Count 23) (incidents 24-26, 30-31).

(e) Sub-ground 1(D): Contribution to JCE1 crimes

238. The Chamber erred in law by requiring Ćorić to have specifically contributed to particular JCE1 crimes (forcible displacements) in the municipalities of Stolac and in Čapljina in order to be liable for the JCE3 crimes committed during the evictions (murder, wilful killing, appropriation of property and plunder).⁷³² This led the Chamber to erroneously acquit Ćorić of several criminal incidents.

239. For the reasons listed above, the murders, appropriation of property and plunder arising from the eviction campaigns in the municipalities of Stolac and in Čapljina in July 1993 were foreseeable to Ćorić, regardless of whether he contributed to the specific eviction operations there.

240. Based on the totality of the evidence and the Chamber's findings, the Appeals Chamber should correct the Chamber's errors, find that the elements of JCE3 are met and convict Ćorić for the following criminal incidents, as set out in the Ćorić Table below:

- Murder (Count 2) and wilful killing (Count 3) (incidents 5, 7-9); and

⁷³² See above paras.44-49. See also Judgement, Vol.4, paras.1015-1016.

- Appropriation of property (Count 22) and plunder (Count 23) (incidents 27-29).

(f) Sub-ground 1(E): Errors of fact

241. The Chamber's own findings and the evidence summarized above demonstrate that Ćorić was aware of the risk that additional JCE3 crimes might be committed and willingly took that risk. No reasonable trier of fact could have failed to convict Ćorić of the additional JCE3 crimes. Properly assessed, the findings and evidence on the record eliminate any reasonable doubt of Ćorić's guilt.

242. The Appeals Chamber should find that the elements of JCE3 are met and convict Ćorić under Counts 2-5 and 21-23 in relation to the incidents listed in the Table below.

(g) Ćorić Table: Overview of the Chamber's errors

Incident	Errors of law				Error of fact (1(E))
	Incorrect <i>mens rea</i> standard (1(A))	Compartmentalized evidence (1(B))	Failure to adjudicate or provide a reasoned opinion (1(C))	Contribution to JCE1 crimes (1(D))	
Murder (Count 2) and wilful killing (Count 3)⁷³³					
1. Prozor: The killing of six captured Muslim civilians in Prajine and Tolovac on 19 July 1993 ⁷³⁴			X		X
2. Jablanica: The killing of four Muslim ABiH detainees at the Sovići School on 20 or 21 April 1993 ⁷³⁵			X		X
3. Mostar: The killing of 10 Muslim ABiH detainees at the Faculty of Mechanical Engineering between 10 and 11 May 1993 and of two other Muslim detainees between 8 and 11 July 1993 ⁷³⁶			X		X

⁷³³ All incidents listed in this section of the Ćorić Table constitute murder (Count 2) and wilful killing (Count 3).

⁷³⁴ Judgement, Vol.2, paras.109-112; Vol.3, paras.658-660, 707-708; Indictment, para.53.

⁷³⁵ Judgement, Vol.2, paras.569, 580-581, 584; Vol.3, paras.665-666, 713-715; Indictment, para.77.

⁷³⁶ Judgement, Vol.2, paras.845-853, 905-909; Vol.3, paras.668-669, 717-718; Indictment, paras.95, 104.

Incident	Errors of law				Error of fact (1(E))
	Incorrect <i>mens rea</i> standard (1(A))	Compartmentalized evidence (1(B))	Failure to adjudicate or provide a reasoned opinion (1(C))	Contribution to JCE1 crimes (1(D))	
4. Mostar: The killing of a Muslim civilian in Buna on 14 July 1993 ⁷³⁷			X		X
5. Stolac: The killing of a Muslim civilian girl in Pješivac Greda on 13 July 1993 ⁷³⁸	X	X		X	X
6. Stolac: The killings of five Muslim detainees at the Koštana Hospital in August and September 1993 ⁷³⁹			X		X
7. Čapljina: The killing of two young Muslim civilian women in Domanovići on or around 13 July 1993 ⁷⁴⁰	X	X		X	X
8. Čapljina: The killing of an 83-year old Muslim disabled civilian man in Bivolje Brdo on 14 July 1993 ⁷⁴¹	X	X	X	X	X
9. Čapljina: The killing of 12 Muslim men during the evictions from Bivolje Brdo on or about 16 July 1993 ⁷⁴²	X	X	X	X	X
10. Dretelj: The killing of one Muslim detainee by dehydration in mid-July 1993 ⁷⁴³	X	X			X
11. Dretelj: The killing of three Muslim detainees in mid-July 1993 ⁷⁴⁴	X	X			X

⁷³⁷ Judgement, Vol.2, paras.940-944; Vol.3, paras.670, 719; Indictment, para.106.

⁷³⁸ Judgement, Vol.4, paras.1016, 1021; Vol.2, paras.1934-1938; Vol.3, paras.684, 735; Indictment, para.161.

⁷³⁹ Judgement, Vol.2, paras.2014-2019 (Salko Kaplan died in Dretelj Prison and Ibro Razić died in Gabela Prison); Vol.3, paras.685-686, 736-737; Indictment, para.169.

⁷⁴⁰ Judgement, Vol.4, paras.1016, 1021; Vol.2, paras.2105-2106; Vol.3, paras.687-688, 738-739; Indictment, para.176.

⁷⁴¹ Judgement, Vol.4, paras.1016, 1021; Vol.2, paras.2116-2117; Vol.3, paras.689-690, 740-741; Indictment, para.177.

⁷⁴² Judgement, Vol.4, paras.1016, 1021; Vol.2, paras.2085-2090; Vol.3, paras.691-692, 742-743; Indictment, para.177.

⁷⁴³ Judgement, Vol.4, paras.1019, 1021; Vol.3, paras.85-91, 693-694, 696, 744-745, 748; Indictment, para.190.

⁷⁴⁴ Judgement, Vol.4, paras.1019, 1021; Vol.3, paras.113-115, 122, 693, 695-696, 744-746, 748; Indictment, paras.191-192.

Incident	Errors of law				Error of fact (1(E))
	Incorrect <i>mens rea</i> standard (1(A))	Compartmentalized evidence (1(B))	Failure to adjudicate or provide a reasoned opinion (1(C))	Contribution to JCE1 crimes (1(D))	
12. Gabela: The killing of one Muslim detainee on 19 or 29 August 1993 ⁷⁴⁵			X		X
13. Gabela: The killing of an ABiH detainee soldier between 2 October and 11 December 1993 ⁷⁴⁶			X		X
14. Vojno: The killing of a Muslim detainee on 5 December 1993 ⁷⁴⁷			X		X
Rape (Count 4) and inhuman treatment (sexual assault) (Count 5)					
15. Prozor: The rape of Muslim women and girls in Podgrađe, Lapsunj and Duge between August and December 1993 (Counts 4-5) ⁷⁴⁸			X		X
16. Prozor: Sexual assault against Muslim women and girls in Podgrađe and Duge in August 1993 (Count 5) ⁷⁴⁹			X		X
17. Prozor: Sexual assault against five Muslim detainees in Jurići in August 1993 (Count 5) ⁷⁵⁰			X		X
18. Vareš: The rape of two Muslim women (Witnesses DF and DG) in Vareš Town in October 1993 (Counts 4-5) ⁷⁵¹			X		X
19. Vareš: The rape of a Muslim girl (Witness DH) in Stupni Do on 23 October 1993 (Counts 4-5) ⁷⁵²			X		X
20. Vareš: Sexual assault against a Muslim girl (Witness EG) in Stupni Do on 23 October 1993 (Count 5) ⁷⁵³			X		X

⁷⁴⁵ Judgement, Vol.3, paras.250, 253, 697, 749-750; Indictment, para.200.

⁷⁴⁶ Judgement, Vol.3, paras.251, 253, 698, 749, 751; Indictment, para.200.

⁷⁴⁷ Judgement, Vol.2, paras.1715-1716; Vol.3, paras.680, 730-731; Indictment, para.138.

⁷⁴⁸ Judgement, Vol.2, paras.233-237, 250, 252-253, 258-262, 268-272, 283-292; Vol.3, paras.757-760, 769; Indictment, paras.57, 59.

⁷⁴⁹ Judgement, Vol.2, paras.233, 235, 250, 252-253, 235, 268-272; Vol.3, paras.771-774; Indictment, paras.57, 59.

⁷⁵⁰ Judgement, Vol.2, paras.169-170; Vol.3, para.770; Indictment, para.55.

⁷⁵¹ Judgement, Vol.3, paras.401-402, 404, 767, 779; Indictment, para.213.

⁷⁵² Judgement, Vol.3, paras.426, 428-429, 768, 779; Indictment, para.211.

⁷⁵³ Judgement, Vol.3, paras.427, 429, 780; Indictment, para.211.

Incident	Errors of law				Error of fact (1(E))
	Incorrect <i>mens rea</i> standard (1(A))	Compartmentalized evidence (1(B))	Failure to adjudicate or provide a reasoned opinion (1(C))	Contribution to JCE1 crimes (1(D))	
Destruction or wilful damage to institutions dedicated to religion or education (Count 21)					
21. Jablanica: Destruction of the mosques in Sovići and Doljani in April 1993 ⁷⁵⁴			X		X
22. Prozor: Destruction of the Skrobućani mosque in May or June 1993 ⁷⁵⁵			X		X
23. Mostar: Destruction of the Baba Bešir mosque on 10 May 1993 ⁷⁵⁶			X		X
Appropriation of property (Count 22) and plunder (Count 23)					
24. Jablanica: Appropriation of property and plunder in Sovići and Doljani after the attack of 17 April 1993 (Counts 22-23) ⁷⁵⁷			X		X
25. Prozor: Appropriation of property and plunder in Podgrađe in August 1993 (Counts 22-23) ⁷⁵⁸			X		X
26. Mostar: Appropriation of property and plunder in Raštani on 24 August 1993 (Counts 22-23) ⁷⁵⁹			X		X
27. Stolac: Appropriation of property and plunder in Pješivac Greda between 2 and 13 July 1993 (Counts 22-23) ⁷⁶⁰	X	X		X	X
28. Čapljina: Plunder in Bivolje Brdo between 13 and 16 July 1993 (Count 23) ⁷⁶¹	X	X		X	X

⁷⁵⁴ Judgement, Vol.2, paras.646-650; Vol.3, paras.1606-1607; Indictment, para.83.

⁷⁵⁵ Judgement, Vol.2, paras.96-97; Vol.3, paras.1600-1601; Indictment, para.53.

⁷⁵⁶ Judgement, Vol.2, paras.789, 791-792; Vol.3, para.1608; Indictment, para.97.

⁷⁵⁷ Judgement, Vol.2, paras.652-655; Vol.3, paras.1629-1631, 1661-1663; Indictment, para.85.

⁷⁵⁸ Judgement, Vol.2, paras.233, 235, 250-251, 253; Vol.3, paras.1620-1621, 1655; Indictment, para.57.

⁷⁵⁹ Judgement, Vol.2, paras.965-966; Vol.3, paras.1638-1641, 1667-1668; Indictment, para.108.

⁷⁶⁰ Judgement, Vol.4, paras.1016, 1021; Vol.2, paras.1944-1946; Vol.3, paras.1642-1643, 1669-1671; Indictment, paras.159, 161.

⁷⁶¹ Judgement, Vol.4, paras.1016, 1021; Vol.2, paras.2122-2124; Vol.3, paras.1674-1676; Indictment, para.175.

Incident	Errors of law				Error of fact (1(E))
	Incorrect <i>mens rea</i> standard (1(A))	Compartmentalized evidence (1(B))	Failure to adjudicate or provide a reasoned opinion (1(C))	Contribution to JCE1 crimes (1(D))	
29. Čapljina: Appropriation of property and plunder of property belonging to Muslims detained at the Silos on 23 August 1993 (Counts 22-23) ⁷⁶²	X	X		X	X
30. Vareš: Appropriation of property and plunder in Vareš Town between 23 October and 1 November 1993 (Counts 22-23) ⁷⁶³			X		X
31. Vareš: Appropriation of property and plunder in Stupni Do on 23 October 1993 (Counts 22-23) ⁷⁶⁴			X		X

6. Pušić is responsible for the additional JCE3 crimes

243. The Chamber erroneously acquitted Pušić of all JCE3 crimes. The Chamber's own findings and evidence demonstrate that Pušić could foresee that the additional JCE3 crimes might be committed in the execution of the common criminal purpose. Pušić was a key player in the negotiations on the exchange of prisoners and population movements⁷⁶⁵ and served as a link between the network of HVO detention centres and the most important members of the JCE.⁷⁶⁶ The Chamber found that from April 1993 onwards, Pušić intended to inflict a broad range of crimes on the Muslim population and was aware of the violent nature of the ethnic cleansing campaign.⁷⁶⁷ Through his role and functions, his interaction with the HVO leadership⁷⁶⁸ and his presence on the ground, Pušić knew of the vulnerability of the Muslim population. By

⁷⁶² Judgement, Vol.4, paras.1016, 1021; Vol.2, paras.2179-2181; Vol.3, paras.1647-1648, 1677-1679; Indictment, para.182.

⁷⁶³ Judgement, Vol.3, paras.343, 345, 401, 403-404, 1650-1653, 1681-1683; Indictment, para.209.

⁷⁶⁴ Judgement, Vol.3, paras.465, 467, 1650-1653, 1681-1683; Indictment, para.211.

⁷⁶⁵ Judgement, Vol.4, para.1202.

⁷⁶⁶ Judgement, Vol.4, para.1209.

⁷⁶⁷ Judgement, Vol.4, paras.66, 1229.

⁷⁶⁸ Between April 1993 and April 1994, Pušić regularly interacted with some HVO leaders, such as Prlić, Čorić and Perica Jukić. Furthermore, from time to time he also interacted with Croatian leaders, such as Mate Granić. Judgement, Vol.4, para.1093. *See also* Vol.4, paras.1086-1087.

remaining in his post and by continuing to contribute to the common criminal purpose even though he knew of the risk that the additional crimes might be committed by the HVO forces, Pušić willingly took the risk that those crimes might be committed.

(a) Pušić could foresee the additional JCE3 crimes

244. The Chamber found that from April 1993 onwards, Pušić shared the intent to conduct a violent ethnic cleansing campaign aimed at the creation of a Croatian entity.⁷⁶⁹ Together with the other JCE members he:

implemented an entire system for deporting the Muslim population of the HR H-B consisting of the removal and placement in detention of civilians, of murders and the destruction of property during attacks, of mistreatment and devastation caused during eviction operations, of mistreatment and poor conditions of confinement as well as the widespread, nearly systematic use of detainees on the front lines for labour or even to serve as human shields, as well as murders and mistreatment related to this labour and these shields, and, lastly, the removal of detainees and their families outside of the territory of the HZ(R) H-B once they were released.⁷⁷⁰

Through his role and functions, his interactions with the HVO leadership and his presence on the ground, Pušić was aware of the violent nature of the ethnic cleansing campaign, the situation on the ground and the vulnerability of the Muslim population.

245. From at least February to 3 July 1993, Pušić was a “control officer” within the Department of Criminal Investigations of the MP Administration.⁷⁷¹ Pušić began representing the HVO in exchanges with the ABiH in April 1993, and his power in this regard grew over the following year.⁷⁷² He was appointed as a member of the Exchange Commission on 25 May 1993, and became Head of the Exchange Service on 5 July 1993.⁷⁷³ On 6 August 1993, Pušić became Head of the Commission for HVO Prisons and Detention Centres.⁷⁷⁴ Representatives of the international community perceived or were introduced to Pušić as Ćorić’s assistant or deputy within the MP Administration.⁷⁷⁵ At all times relevant to the Indictment, Pušić held *de facto* authority to represent the HVO before the international community on questions

⁷⁶⁹ Judgement, Vol.4, para.1229.

⁷⁷⁰ Judgement, Vol.4, para.66.

⁷⁷¹ Judgement, Vol.4, para.1028.

⁷⁷² Judgement, Vol.4, para.1029. Pušić was proposed for the position of “Officer for Cooperation and Contact with the opposite side regarding exchanges of prisoners” on 1 April 1993, and by 22 April 1993 he was fulfilling this role (Judgement, Vol.4, para.1029; Exhs.P1773; P2020, p.2).

⁷⁷³ Judgement, Vol.4, para.1030.

⁷⁷⁴ Judgement, Vol.4, para.1031.

⁷⁷⁵ Judgement, Vol.4, para.1091.

regarding the exchange or release of Muslim detainees.⁷⁷⁶ After his appointment as head of the Exchange Service on 5 July 1993, he exercised this authority also on a *de jure* basis.⁷⁷⁷

246. In his role as a MP officer and subsequently head of the Exchange Service and President of the Commission for HVO Prisons and Detention Centres, Pušić was a key player in the negotiations on the exchange of prisoners and movement of persons.⁷⁷⁸ He had authority over the registration and categorisation of detainees, their release, access to detention centres, the use of detainees for work on the front line and the treatment of detainees.⁷⁷⁹ His offices were located in West Mostar, and he was present there during the siege of East Mostar.⁷⁸⁰

(b) Sub-ground 1(A): Application of the wrong legal standard

247. The Chamber applied an elevated “probability” standard in assessing whether Pušić could foresee the additional JCE3 crimes. When addressing Pušić’s responsibility under JCE3, it set out to analyse whether Pušić could reasonably have foreseen that the crimes “would” be committed.⁷⁸¹ The Chamber applied this elevated standard to the two incidents that it explicitly considered—the destruction of mosques in Sovići and Doljani (Jablanica Municipality), and the killing of one detainee in Vojno Detention Centre—and to its summary dismissal of JCE3 liability for the remaining crimes.⁷⁸²

(i) Destruction of the mosques in Sovići and Doljani (Jablanica Municipality) on 17 April 1993

248. The Chamber applied the erroneous “probability” standard—as set out in its introductory paragraph concerning Pušić’s JCE3 liability⁷⁸³—to its assessment of Pušić’s responsibility for the destruction of the Sovići and Doljani mosques (Jablanica Municipality).⁷⁸⁴ The Chamber found that Pušić could not foresee the destruction solely because he was informed of the destruction of the village, including the

⁷⁷⁶ Judgement, Vol.4, paras.1071, 1081. *See also* Vol.4, paras.1029, 1085, 1093. *E.g.* Exh.P1773; P2020; [REDACTED]; Mašović, T.25025-25028.

⁷⁷⁷ Judgement, Vol.4, para.1081.

⁷⁷⁸ Judgement, Vol.4, para.1202.

⁷⁷⁹ Judgement, Vol.4, paras.1042-1081.

⁷⁸⁰ Judgement, Vol.4, para.1120.

⁷⁸¹ Judgement, Vol.4, para.1213.

⁷⁸² Judgement, Vol.4, paras.1213-1216.

⁷⁸³ Judgement, Vol.4, para.1213.

⁷⁸⁴ Judgement, Vol.4, para.1213-1215.

mosques, only after it took place.⁷⁸⁵ Had the Chamber applied the correct standard, it would not have limited its analysis to determining when Pušić actually learned of the occurrence of the crimes. Instead, it would have analysed whether Pušić could foresee the possibility that the crimes might occur.

249. Applying the correct “possibility” standard, the destruction of the mosques in Sovići and Doljani in April 1993 was foreseeable to Pušić. Pušić joined the JCE as of April 1993.⁷⁸⁶ He therefore intended and was convicted pursuant to JCE1 for, among other crimes, persecution, displacement, extensive destruction of property and wanton destruction of cities, towns and villages in relation to the attack on Jablanica.⁷⁸⁷ Because Pušić shared the intent to ethnically cleanse the municipality of Jablanica of Bosnian Muslims, including through destruction of property, it was foreseeable to him that Muslim religious property, such as mosques, might be destroyed as well. The Chamber itself acknowledged this in an earlier part of the Judgement:

Concerning the destruction of the mosques at Sovići and Doljani in April 1993, the Chamber considers that inasmuch as it occurred during HVO military operations against Muslim-majority localities in which these troops destroyed many non-military structures, the Accused, as members of the JCE, knew that during these military operations the mosques might also be destroyed and took this risk knowingly.⁷⁸⁸

(ii) Killing of a Muslim detainee in Vojno Detention Centre on 5 December 1993

250. The Chamber also applied the probability standard in determining whether Pušić could foresee the death of a Muslim detainee in Vojno Detention Centre on 5 December 1993. It found that Pušić could not foresee that the mistreatment inflicted on detainees at Vojno Detention Centre by Mario Mihalj “would” lead to their death.⁷⁸⁹ The Chamber reasoned that Pušić was only aware on 29 January 1994 that Mario Mihalj was mistreating detainees he was guarding at Vojno Detention Centre.⁷⁹⁰

251. Had the Chamber applied the correct possibility standard, it would have found Pušić responsible for this killing. Since April 1993, Pušić shared the intent for

⁷⁸⁵ Judgement, Vol.4, para.1214.

⁷⁸⁶ Judgement, Vol.4, para.1229.

⁷⁸⁷ Judgement, Vol.4, para.1211.

⁷⁸⁸ Judgement, Vol.4, para.73.

⁷⁸⁹ Judgement, Vol.4, para.1215.

mistreatment of Muslim detainees and poor conditions of confinement.⁷⁹¹ The Chamber found that Pušić tolerated the poor conditions of confinement and mistreatment to which Muslim detainees were subjected.⁷⁹² In particular from July 1993, as Head of the Exchange Commission, Pušić knew of and facilitated the HVO system of detention and the crimes committed in connection thereto.⁷⁹³ Pušić therefore knew, well before 5 December 1993, of the risk that detainees might die through mistreatment in detention facilities.

(iii) The remaining crimes

252. Read together with the introductory paragraph of the JCE3 section on Pušić's liability,⁷⁹⁴ the Chamber must similarly have applied the "probability" standard in summarily dismissing Pušić's liability for all the other charged JCE3 crimes.⁷⁹⁵

253. Applying the correct "possibility" standard, the Chamber would have convicted Pušić for the remaining crimes. Pušić shared intent for a violent ethnic cleansing campaign,⁷⁹⁶ was involved in it and was aware of how it was implemented. It was foreseeable to him that the murders related to conditions of confinement and treatment of detainees in detention centres; the murders, sexual assaults and thefts committed during the eviction operations; and the destruction of institutions dedicated to religion might be committed in the execution of the common criminal purpose, as listed in the Pušić Table below.

a. Pušić could foresee murder and wilful killing

254. It was foreseeable to Pušić that murder and wilful killing might be committed in the execution of the violent ethnic cleansing campaign. Although the Chamber made specific findings regarding the Vojno Detention Centre,⁷⁹⁷ it failed to find Pušić responsible pursuant to JCE3 for the 14 other incidents of murder and wilful killing

⁷⁹⁰ Judgement, Vol.4, para.1215.

⁷⁹¹ Judgement, Vol.4, paras.66, 1229.

⁷⁹² Judgement, Vol.4, paras.1101-1102, 1104 (harsh conditions of confinement in Jablanica), 1137-1139, 1141-1145 (poor conditions and mistreatment at the Heliodrom), 1169-1170 (poor detention conditions at Dretelj), 1175-1176 (overcrowding and poor conditions in Gabela Prison), 1182 (overcrowding at Ljubuški Prison).

⁷⁹³ Judgement, Vol.4, paras.1030, 1204.

⁷⁹⁴ Judgement, Vol.4, para.1213.

⁷⁹⁵ Judgement, Vol.4, para.1216.

⁷⁹⁶ See above para.244.

⁷⁹⁷ See above paras.250-251; Pušić Table, incident 15.

between 20 April 1993 and 11 December 1993 resulting from poor conditions of confinement or treatment of detainees or in the course of eviction operations.⁷⁹⁸

255. In light of Pušić's knowledge of and involvement in detention matters;⁷⁹⁹ his shared intent for murder and wilful killing during attack operations and in relation to detainees used for forced labour and as human shields;⁸⁰⁰ and his knowledge of the ethnically charged atmosphere, it must have been foreseeable to him that murder/wilful killing might occur in detention facilities due to conditions or mistreatment. All but one of the incidents of murder/wilful killing in detention, moreover, occurred after Pušić had visited Jablanica in early May 1993, where he saw first-hand the deplorable conditions in which the detainees were being held.⁸⁰¹ Particularly after this visit, he must have foreseen the possibility of killings in other detention facilities due to detention conditions or mistreatment.

256. Moreover, the Chamber found that on more than 30 occasions between 17 February and 24 July 1993, Pušić authorised or gave a written or verbal order for detainees to be used to perform forced labour, including along the front line.⁸⁰² The Chamber further found that Pušić knew that the work they were being forced to perform was "fundamentally dangerous"⁸⁰³ and that some of these detainees had been wounded or killed while working for the HVO.⁸⁰⁴ In ordering or authorising detainees to be used in this manner, Pušić made clear to other HVO personnel engaged with detainees that mistreatment of HVO detainees was approved by the higher echelons of the HVO armed forces and gave them a green light to abuse detainees. In light of these facts, Pušić could also foresee that detainees might be mistreated and killed in detention facilities. Thus, Pušić must have foreseen the possibility of killings in other detention facilities due to detention conditions or mistreatment.

257. Additionally, between April and September 1993, Pušić visited the Ljubuški Prison on at least two occasions and was therefore aware of the overcrowding.⁸⁰⁵ Pušić was aware, as of mid-May 1993, that the HVO was unable to provide for the basic needs of the hundreds of Muslim civilians from West Mostar that it had

⁷⁹⁸ See below Pušić Table, incidents 1-14.

⁷⁹⁹ See above paras.243, 246, 251.

⁸⁰⁰ Judgement, Vol.4, paras.66-68, 1122, 1211.

⁸⁰¹ Judgement, Vol.4, paras.1100-1102, 1086, 1214, 1205; Exhs.P10358; P2187.

⁸⁰² Judgement, Vol.4, para.1147

⁸⁰³ Judgement, Vol.4, para.1149.

⁸⁰⁴ Judgement, Vol.4, para.1150.

⁸⁰⁵ Judgement, Vol.4, para.1182.

imprisoned at the Heliodrom,⁸⁰⁶ creating inherently dangerous conditions. After the HVO government meeting of 19 July 1993 where the situation in the HVO detention centres was discussed, Pušić was appointed as a member of the working group tasked to visit the municipality of Čapljina to inspect the detention centres and make suggestions on how to improve detention conditions.⁸⁰⁷ The Chamber found that Pušić knew of the appalling detention conditions in both Gabela and Dretelj Prisons, specifically the overcrowding in July 1993.⁸⁰⁸

258. Pušić's offices were located in West Mostar and he saw first-hand the violent way the ethnic cleansing campaign was implemented.⁸⁰⁹ In light of his shared intent for killing during attacks and in relation to detainees used for forced labour at the front line and as human shields, coupled with his knowledge of how the common purpose was implemented, it was foreseeable to Pušić that murder/wilful killing might be committed during the evictions.

259. In light of the above, Pušić could foresee the possibility of murders and wilful killings in detention centres and during evictions. When his JCE3 liability is properly considered, he should be held responsible for these incidents, as set out in the Pušić Table below.

b. Pušić could foresee rape and inhuman treatment (sexual assault)

260. Pušić could foresee the possibility that rape and sexual assault might occur in the execution of the common criminal purpose in Prozor, Mostar and Vareš between June 1993 and October 1993.⁸¹⁰

261. By that time, Pušić was clearly aware of the vulnerability of the Muslim population. He knew that men and women were being separated as part of the arrest and expulsion campaigns.⁸¹¹ In May 1993, for example, he supervised a convoy of

⁸⁰⁶ [REDACTED]; [REDACTED]. [REDACTED]. [REDACTED].

⁸⁰⁷ Judgement, Vol.4, para.1123; Exh.P3560, pp.4-5.

⁸⁰⁸ Judgement, Vol.4, paras.1170, 1176.

⁸⁰⁹ Judgement, Vol.4, para.1120.

⁸¹⁰ For the dates of the incidents, *see below* Pušić Table, incidents 16-23.

⁸¹¹ *See above* para.5.

buses transporting women, children and elderly—but no men between the ages of 16 and 50—from West to East Mostar.⁸¹²

262. Moreover, from mid-June 1993—before all but two incidents of sexual violence in Mostar occurred—Pušić had actual knowledge of the commission of rapes and other forms of sexual violence against Muslims.⁸¹³ The Chamber found that on 16 June 1993, he was informed by representatives of the international community of violence during evictions in Mostar, including rapes.⁸¹⁴ When Pušić’s JCE3 liability is properly considered, he should be held responsible for the foreseeable incidents of sexual violence, as set out in the Pušić Table below.⁸¹⁵

c. Pušić could foresee the destruction of institutions dedicated to religion in Prozor and Mostar

263. In addition to the destruction of the mosques in Sovići and Doljani (Jablanica Municipality) in April 1993,⁸¹⁶ Pušić could also foresee the possibility that mosques in Prozor and Mostar might be destroyed in May and June 1993.⁸¹⁷ During his visit to Sovići and Doljani on 4 May 1993, Pušić personally witnessed the destruction caused by the HVO forces to Muslim property, including the destruction of the mosques.⁸¹⁸ The Chamber found that Pušić “had a detailed knowledge of and accepted the events and crimes that took place in Sovići and Doljani during the HVO attack on 17 April 1993 and in the days that followed,” including the destruction of the mosques.⁸¹⁹ From that point forward, there can be no doubt that Pušić knew that other mosques might be destroyed during the course of the HVO campaign, as occurred in Mostar and Prozor. When Pušić’s JCE3 liability is properly considered, he should be held responsible for these foreseeable incidents, as set out in the Pušić Table below.⁸²⁰

⁸¹² Judgement, Vol.4, para.1111.

⁸¹³ E.g. [REDACTED]; [REDACTED]; [REDACTED]; [REDACTED]; [REDACTED];

Witness Van der Grinten, T.21046-21049.

⁸¹⁴ Judgement, Vol.2, paras.872, 873, 876.

⁸¹⁵ See below Pušić Table, incidents 16-23.

⁸¹⁶ See above paras.248-249.

⁸¹⁷ See below Pušić Table, incidents 25-26.

⁸¹⁸ Judgement, Vol.4, paras.1101, 1214.

⁸¹⁹ Judgement, Vol.4, para.1104.

⁸²⁰ See below Pušić Table, incidents 25-26.

d. Pušić could foresee appropriation of property and plunder

264. Pušić was aware of the possibility that HVO forces might commit thefts during the execution of the common plan in the municipalities of Prozor, Jablanica, Mostar, Stolac, Čapljina and Vareš. In a violent ethnic cleansing campaign where property crimes in the form of destruction of houses form part of the common criminal purpose,⁸²¹ other property crimes are a “natural and foreseeable consequence”.⁸²²

265. Moreover, even before he was found to have joined the JCE—as early as 1 February 1993—Pušić was aware that the MP were stealing from detainees. At the time, he was a control officer within the Department of Criminal Investigations of the MP Administration.⁸²³ He and two other officers interviewed detainees in Ljubuški and reported that members of the MP had beaten detainees and stolen from them.⁸²⁴

266. From 16 June 1993 onwards—prior to incidents 28-35 set out in the Table below—Pušić had actual knowledge that thefts were committed during the eviction operations. Representatives of the international community informed him that members of the HVO stole from the homes of the evicted persons.⁸²⁵

267. In light of the above, Pušić could foresee the possibility appropriation of property and plunder. When his JCE3 liability is properly considered, he should be held responsible for these incidents, as set out in the Pušić Table below.

(iv) Conclusion

268. Based on the totality of the evidence and the Chamber’s findings, the Appeals Chamber should correct the Chamber’s errors, find that the elements of JCE3 *mens rea* are met and convict Pušić for the following criminal incidents, as set out in the Pušić Table below:

- Murder (Count 2) and wilful killing (Count 3) (incidents 1-15);
- Rape (Count 4) and inhuman treatment (sexual assault) (Count 5) (incidents 16-23);

⁸²¹ Judgement, Vol.4, para.66.

⁸²² Judgement, Vol.4, para.72.

⁸²³ Judgement, Vol.4, para.1028; Exh.P1393.

⁸²⁴ Exh.P1393.

⁸²⁵ Judgement, Vol.2, paras.872, 873, 876.

- Destruction of institutions dedicated to religion (Count 21) (incidents 24-26); and
- Appropriation of property (Count 22) and plunder (Count 23) (incidents 27-35).

(c) Sub-ground 1(B): Compartmentalization of evidence

269. In addition to applying the wrong *mens rea* standard, the Chamber also improperly compartmentalized the evidence when assessing Pušić's liability under JCE3.

270. The Chamber limited its evidentiary analysis of foreseeability to events that happened in a particular location. This is clearly illustrated in the Chamber's consideration of two specific incidents and reflects the Chamber's overall evaluative method. For the destruction of the mosques in Sovići and Doljani, the Chamber only looked at whether Pušić had information about the military operation in this location and about its impact.⁸²⁶ For the death of a detainee due to mistreatment in Vojno Detention Centre, the Chamber considered only whether Pušić could have foreseen the seriousness of the mistreatment in this particular location.⁸²⁷

271. For all the other remaining crimes, the Chamber simply found that it "does not have evidence enabling it to find that Berislav Pušić is guilty" under JCE3.⁸²⁸ Given the considerable evidence on the record showing that Pušić had actual knowledge of the HVO forces committing similar crimes in other locations,⁸²⁹ the Chamber's summary treatment of these crimes demonstrates that it applied the same compartmentalized approach to the evidence of these crimes as well.

272. Based on the totality of the evidence and the Chamber's findings, the Appeals Chamber should correct the Chamber's errors, find that the elements of JCE3 *mens rea* are met and convict Pušić for the following criminal incidents, as set out in the Pušić Table below:

- Murder (Count 2) and wilful killing (Count 3) (incidents 1-15);

⁸²⁶ Judgement, Vol.4, para.1214.

⁸²⁷ Judgement, Vol.4, para.1215.

⁸²⁸ Judgement, Vol.4, para.1216.

⁸²⁹ Judgement, Vol.2, paras.872-873, 876; Vol.4, paras.66, 73, 1028, 1030, 1101-1102, 1104, 1120, 1137-1139, 1141-1145, 1147-1150, 1204. *See also above* para.262.

- Rape (Count 4) and inhuman treatment (sexual assault) (incidents 16-23) (Count 5);
- Destruction of institutions dedicated to religion (Count 21) (incidents 24-26); and
- Appropriation of property (Count 22) and plunder (Count 23) (incidents 27-35).

(d) Sub-ground 1(C): Failure to provide a reasoned opinion

273. The Chamber failed to provide a reasoned opinion in relation to all additional JCE3 crimes, except for the destruction of the mosques in Sovići and Doljani and the death of a detainee in Vojno Detention Centre.

274. As set out above,⁸³⁰ the Chamber merely stated that there was insufficient evidence of Pušić's liability for the JCE3 crimes charged.⁸³¹ Such a summary dismissal might be enough in a case where no relevant evidence had been admitted. As demonstrated above, however, the Chamber's own findings and the evidence in the record showed that the crimes were foreseeable to Pušić. The Chamber therefore erred in law by failing to give reasons why the evidence adduced by the Prosecution did not enable it to conclude that Pušić was guilty of these crimes. The Appeals Chamber should correct the Chamber's errors, find that the elements of JCE3 *mens rea* are met and convict Pušić for the following criminal incidents, as set out in the Pušić Table below:⁸³²

- Murder (Count 2) and wilful killing (Count 3) (incidents 1-14);
- Rape (Count 4) and inhuman treatment (sexual assault) (Count 5) (incidents 16-23);
- Destruction or wilful damage to institutions dedicated to religion (Count 21) (incidents 25-26); and
- Appropriation of property (Count 22) and plunder (Count 23) (incidents 27-35).

⁸³⁰ See above para.252.

⁸³¹ Judgement, Vol.4, para.1216.

⁸³² See below Pušić Table, incidents 1-14, 16-23, 25-35.

(e) Sub-ground 1(E): Error of fact

275. In light of the Chamber's own findings and the evidence set out above demonstrate that Pušić was aware of the risk that additional JCE3 crimes might be committed and willingly took that risk. No reasonable trier of fact could have failed to convict Pušić of the additional JCE3 crimes listed in the Pušić Table below. Properly assessed, the findings and evidence on the record eliminate any reasonable doubt of Pušić's guilt.

276. The Appeals Chamber should find that the elements of JCE3 are met and convict Pušić under Counts 2-5 and 21-23 in relation to the incidents listed in the Pušić Table below.

(f) Pušić Table: Overview of the Chamber's errors

Incident	Errors of law			Error of fact (1(E))
	Incorrect <i>mens rea</i> standard (1(A))	Compartmentalized evidence (1(B))	Failure to provide a reasoned opinion (1(C))	
Murder (Count 2) and wilful killing (Count 3)⁸³³				
1. Prozor: The killing of six Muslims civilians in Prajine and Tolovac on 19 July 1993 ⁸³⁴	X	X	X	X
2. Jablanica: The killing of four Muslim ABiH detainees at the Sovići School on 20 or 21 April 1993 ⁸³⁵	X	X	X	X
3. Mostar: The killing of 10 Muslim ABiH detainees at the Faculty of Mechanical Engineering between 10 and 11 May 1993 and of two other Muslim detainees between 8 and 11 July 1993 ⁸³⁶	X	X	X	X
4. Mostar: The killing of a Muslim civilian in Buna on 14 July 1993 ⁸³⁷	X	X	X	X
5. Stolac: The killing of a Muslim civilian girl in Pješivac Greda on 13 July 1993 ⁸³⁸	X	X	X	X

⁸³³ All incidents listed in this section of the Pušić Table constitute murder (Count 2) and wilful killing (Count 3).

⁸³⁴ Judgement, Vol.4, para.1216; Vol.2, paras.109-112; Vol.3, paras.658-660, 707-708; Indictment, para.53.

⁸³⁵ Judgement, Vol.4, para.1216; Vol.2, paras.569, 580-581, 584; Vol.3, paras.665-666, 713-715; Indictment, para.77.

⁸³⁶ Judgement, Vol.4, para.1216; Vol.2, paras.845-853, 905-909; Vol.3, paras.668-669, 717-718; Indictment, paras.95, 104.

⁸³⁷ Judgement, Vol.4, para.1216; Vol.2, paras.940-944; Vol.3, paras.670, 719; Indictment, para.106.

Incident	Errors of law			Error of fact (1(E))
	Incorrect <i>mens rea</i> standard (1(A))	Compartmentalized evidence (1(B))	Failure to provide a reasoned opinion (1(C))	
6. Stolac: The killing of five Muslim detainees at the Koštana Hospital in August and September 1993 ⁸³⁹	X	X	X	X
7. Čapljina: The killing of two young Muslim civilian women in Domanovići on or around 13 July 1993 ⁸⁴⁰	X	X	X	X
8. Čapljina: The killing of an 83-year old Muslim disabled civilian man in Bivolje Brdo on 14 July 1993 ⁸⁴¹	X	X	X	X
9. Čapljina: The killing of 12 Muslim men during the evictions from Bivolje Brdo on or about 16 July 1993 ⁸⁴²	X	X	X	X
10. Dretelj: The killing of one Muslim detainee by dehydration in mid-July 1993 ⁸⁴³	X	X	X	X
11. Dretelj: The killing of three Muslim detainees in mid-July 1993 ⁸⁴⁴	X	X	X	X
12. Dretelj: The death of two Muslim detainees as a result of mistreatment in August 1993 ⁸⁴⁵	X	X	X	X
13. Gabela: The killing of one Muslim detainee on 19 or 29 August 1993 ⁸⁴⁶	X	X	X	X
14. Gabela: The killing of an ABiH detainee between 2 October and 11 December 1993 ⁸⁴⁷	X	X	X	X
15. Vojno: The killing of a Muslim detainee on 5 December 1993 ⁸⁴⁸	X	X		X

⁸³⁸ Judgement, Vol.4, para.1216; Vol.2, paras.1934-1938; Vol.3, paras.684, 735; Indictment, para.161.

⁸³⁹ Judgement, Vol.4, para.1216; Vol.2, paras.2014-2019 (Salko Kaplan died in Dretelj Prison and Ibro Razić died in Gabela Prison); Vol.3, paras.685-686, 736-737; Indictment, para.169.

⁸⁴⁰ Judgement, Vol.4, para.1216; Vol.2, paras.2105-2106; Vol.3, paras.687-688, 738-739; Indictment, para.176.

⁸⁴¹ Judgement, Vol.4, para.1216; Vol.2, paras.2116-2117; Vol.3, paras.689-690, 740-741; Indictment, para.177.

⁸⁴² Judgement, Vol.4, para.1216; Vol.2, paras.2085-2090; Vol.3, paras.691-692, 742-743; Indictment, para.177.

⁸⁴³ Judgement, Vol.4, para.1216; Vol.3, paras.85-91, 693-694, 696, 744-745, 748; Indictment, para.190.

⁸⁴⁴ Judgement, Vol.4, para.1216; Vol.3, paras.113-115, 122, 693, 695-696, 744-746, 748; Indictment, paras.191-192.

⁸⁴⁵ Judgement, Vol.4, para.1216; Vol.3, paras.119-122, 693, 696, 744-745, 747-748; Indictment, paras.191-192.

⁸⁴⁶ Judgement, Vol.4, para.1216; Vol.3, paras.250, 253, 697, 749-750; Indictment, para.200.

⁸⁴⁷ Judgement, Vol.4, para.1216; Vol.3, paras.251, 253, 698, 749, 751; Indictment, para.200.

⁸⁴⁸ Judgement, Vol.4, para.1215; Vol.2, paras.1715-1716; Vol.3, paras.680, 730-731; Indictment, para.138.

Incident	Errors of law			Error of fact (1(E))
	Incorrect <i>mens rea</i> standard (1(A))	Compartmentalized evidence (1(B))	Failure to provide a reasoned opinion (1(C))	
Rape (Count 4) and inhuman treatment (sexual assault) (Count 5)				
16. Prozor: The rape of Muslim women and girls in Podgrade, Lapsunj and Duge between August and December 1993 (Counts 4-5) ⁸⁴⁹	X	X	X	X
17. Prozor: Sexual assault against Muslim women and girls in Podgrade and Duge in August 1993 (Count 5) ⁸⁵⁰	X	X	X	X
18. Prozor: Sexual assault against five Muslim detainees in Jurići in August 1993 (Count 5) ⁸⁵¹	X	X	X	X
19. Mostar: Rape of Muslim women expelled from West Mostar on 13 June, in mid-July and on 4 and 29 September 1993 (Counts 4-5) ⁸⁵²	X	X	X	X
20. Mostar: Sexual assault against Muslim women and girls expelled from West Mostar on 29 September 1993 (Count 5) ⁸⁵³	X	X	X	X
21. Vareš: The rape of two Muslim women (Witnesses DF and DG) in Vareš Town in October 1993 (Counts 4-5) ⁸⁵⁴	X	X	X	X
22. Vareš: The rape of a Muslim girl (Witness DH) in Stupni Do on 23 October 1993 (Counts 4-5) ⁸⁵⁵	X	X	X	X
23. Vareš: Sexual assault against a Muslim girl (Witness EG) in Stupni Do on 23 October 1993 (Count 5) ⁸⁵⁶	X	X	X	X
Destruction or wilful damage to institutions dedicated to religion or education (Count 21)				
24. Jablanica: Destruction of the mosques in Sovići and Doljani in April 1993 ⁸⁵⁷	X	X		X

⁸⁴⁹ Judgement, Vol.4, para.1216; Vol.2, paras.233-237, 250, 252-253, 258-262, 268-272, 283-292; Vol.3, paras.757-760, 769; Indictment, paras.57, 59.

⁸⁵⁰ Judgement, Vol.4, para.1216; Vol.2, paras.233, 235, 250, 252-253, 235, 268-272; Vol.3, paras.771-774; Indictment, paras.57, 59.

⁸⁵¹ Judgement, Vol.4, para.1216; Vol.2, paras.169-170; Vol.3, para.770; Indictment, para.55.

⁸⁵² Judgement, Vol.4, para.1216; Vol.2, paras.868, 870-873, 876, 925, 935, 978, 982, 985-986; Vol.3, paras.761-764, 775; Indictment, paras.99, 102, 109.

⁸⁵³ Judgement, Vol.4, para.1216; Vol.2, paras.981-983, 985-986; Vol.3, para.776; Indictment, paras.99, 109.

⁸⁵⁴ Judgement, Vol.4, para.1216; Vol.3, paras.401-402, 404, 767, 779; Indictment, para.213.

⁸⁵⁵ Judgement, Vol.4, para.1216; Vol.3, paras.426, 428-429, 768, 779; Indictment, para.211.

⁸⁵⁶ Judgement, Vol.4, para.1216; Vol.3, paras.427, 429, 780; Indictment, para.211.

⁸⁵⁷ Judgement, Vol.4, para.1214; Vol.2, paras.646-650; Vol.3, paras.1606-1607; Indictment, para.83.

Incident	Errors of law			Error of fact (1(E))
	Incorrect <i>mens rea</i> standard (1(A))	Compartmentalized evidence (1(B))	Failure to provide a reasoned opinion (1(C))	
25. Prozor: Destruction of the Skrobućani mosque in May or June 1993 ⁸⁵⁸	X	X	X	X
26. Mostar: Destruction of the Baba Bešir mosque on 10 May 1993 ⁸⁵⁹	X	X	X	X
Appropriation of property (Count 22) and plunder (Count 23)				
27. Jablanica: Appropriation of property and plunder in Sovići and Doljani after the attack of 17 April 1993 (Counts 22-23) ⁸⁶⁰	X	X	X	X
28. Prozor: Appropriation of property and plunder in Podgrađe in August 1993 (Counts 22-23) ⁸⁶¹	X	X	X	X
29. Mostar: Appropriation of property and plunder in West Mostar between May 1993 and February 1994 (Counts 22-23) ⁸⁶²	X	X	X	X
30. Mostar: Appropriation of property and plunder in Raštani on 24 August 1993 (Counts 22-23) ⁸⁶³	X	X	X	X
31. Stolac: Appropriation of property and plunder in Pješivac Greda between 2 and 13 July 1993 (Counts 22-23) ⁸⁶⁴	X	X	X	X
32. Čapljina: Plunder in Bivolje Brdo between 13 and 16 July 1993 (Count 23) ⁸⁶⁵	X	X	X	X
33. Čapljina: Appropriation of property and plunder of property belonging to Muslims detained at the Silos on 23 August 1993 (Counts 22-23) ⁸⁶⁶	X	X	X	X

⁸⁵⁸ Judgement, Vol.4, para.1216; Vol.2, paras.96-97; Vol.3, paras.1600-1601; Indictment, para.53.

⁸⁵⁹ Judgement, Vol.4, para.1216; Vol.2, paras.789, 791-792; Vol.3, para.1608; Indictment, para.97.

⁸⁶⁰ Judgement, Vol.4, para.1216; Vol.2, paras.652-655; Vol.3, paras.1629-1631, 1661-1663; Indictment, para.85.

⁸⁶¹ Judgement, Vol.4, para.1216; Vol.2, paras.233, 235, 250-251, 253; Vol.3, paras.1620-1621, 1655; Indictment, para.57.

⁸⁶² Judgement, Vol.4, para.1216; Vol.2, paras.823-824, 826-827, 924 (May 1993), 864-867, 871-876, 924, 930-932, 937, 977, 979-987; Vol.3, paras.1632-1637, 1664-1666; Indictment, paras.99-100, 107.

⁸⁶³ Judgement, Vol.4, para.1216; Vol.2, paras.965-966; Vol.3, paras.1638-1641, 1667-1668; Indictment, para.108.

⁸⁶⁴ Judgement, Vol.4, para.1216; Vol.2, paras.1944-1946; Vol.3, paras.1642-1643, 1669-1671; Indictment, paras.159, 161.

⁸⁶⁵ Judgement, Vol.4, para.1216; Vol.2, paras.2122-2124; Vol.3, paras.1674-1676; Indictment, para.175.

⁸⁶⁶ Judgement, Vol.4, para.1216; Vol.2, paras.2179-2181; Vol.3, paras.1647-1648, 1677-1679; Indictment, para.182.

Incident	Errors of law			Error of fact (1(E))
	Incorrect <i>mens rea</i> standard (1(A))	Compartmentalized evidence (1(B))	Failure to provide a reasoned opinion (1(C))	
34. Vareš: Appropriation of property and plunder in Vareš Town between 23 October and 1 November 1993 (Counts 22-23) ⁸⁶⁷	X	X	X	X
35. Vareš: Appropriation of property and plunder in Stupni Do on 23 October 1993 (Counts 22-23) ⁸⁶⁸	X	X	X	X

H. Relief sought

277. The Appeals Chamber should find that the Chamber erred in law or fact in acquitting the Accused of the additional JCE3 crimes or in failing to adjudicate upon their responsibility. Applying the correct legal standard for JCE3 responsibility to the totality of the evidence on the record eliminates any doubt about the Accused's guilt for these additional crimes. The Chamber should enter convictions against them under Counts 2-5 and 21-23 and increase their sentences accordingly.

⁸⁶⁷ Judgement, Vol.4, para.1216; Vol.3, paras.343, 345, 348, 401, 403-404, 1650-1653, 1681-1683; Indictment, para.209.

⁸⁶⁸ Judgement, Vol.4, para.1216; Vol.3, paras.465, 467, 1650-1653, 1681-1683; Indictment, para.211.

III. GROUND TWO: THE CHAMBER ERRED BY FAILING TO ADJUDICATE THE ACCUSED'S RESPONSIBILITY UNDER ARTICLE 7(3) FOR FAILURE TO PUNISH THE CRIMES OF THEIR SUBORDINATES

A. Overview

278. The Chamber erred in law by failing to adjudicate the Accused's responsibility under Article 7(3) for certain crimes. Having determined that the Accused were not responsible for committing those crimes as members of a JCE,⁸⁶⁹ the Chamber was required to consider other charged modes of liability before entering an acquittal.

279. Had the Chamber properly considered the Accused's responsibility under Article 7(3), it would have found Prlić, Stojić, Praljak, Petković and Čorić criminally responsible for failing to punish certain crimes committed by forces under their effective control.⁸⁷⁰ The Chamber's findings and the totality of the evidence record eliminate any doubt about the Accused's superior responsibility. The five Accused should have been convicted pursuant to Article 7(3) for failing to punish the following crimes (together "relevant crimes"):

- Prlić: Murder (Count 2) and wilful killing (Count 3) with respect to Dretelj Prison;⁸⁷¹
- Stojić: Appropriation of property not justified by military necessity (Count 22) and/or plunder (Count 23) with respect to Čapljina and Vareš Municipalities;⁸⁷²

⁸⁶⁹ The Prosecution appeals these findings in Ground 1.

⁸⁷⁰ To the extent that the Chamber found that these crimes were not intended JCE1 or foreseeable JCE3 crimes, the Prosecution considers that the most appropriate mode of liability relevant on the facts relating to the outstanding charges would be superior responsibility for failure to punish pursuant to Article 7(3).

⁸⁷¹ Judgement, Vol.4, paras.286, 288. The Prosecution no longer alleges an error under Ground 2 in Vol.4, para.287, with respect to Prlić's criminal responsibility for murder (Count 2) or wilful killing (Count 3) at Vojno Detention Centre (*see* Prosecution Notice, fn.12).

⁸⁷² Judgement, Vol.4, paras.443, 448, 450. The Prosecution no longer alleges an error under Ground 2 in Vol.4, paras.441, 449 with respect to Stojić's criminal responsibility for appropriation of property not justified by military necessity (Count 22), plunder (Count 23) or destruction or wilful damage done to institutions dedicated to religion or education (Count 21) with respect to Jablanica Municipality (*see* Prosecution Notice, fn.12).

- Praljak: Rape (Count 4), inhuman treatment (sexual assault) (Count 5), appropriation of property not justified by military necessity (Count 22) and plunder (Count 23) with respect to Vareš Municipality;⁸⁷³
- Petković: Murder (Count 2) and wilful killing (Count 3) with respect to Dretelj Prison, and appropriation of property not justified by military necessity (Count 22) and plunder (Count 23) with respect to Vareš Municipality (Stupni Do);⁸⁷⁴
- Čorić: Murder (Count 2) and wilful killing (Count 3) with respect to Dretelj Prison.⁸⁷⁵

280. In the alternative, in light of the Chamber's findings and the totality of the evidence, no reasonable trier of fact could have concluded that the five Accused were not criminally responsible for failing to punish the perpetrators of the relevant crimes pursuant to Article 7(3).

B. The Chamber should have adjudicated the Accused's responsibility under Article 7(3) for failing to punish the crimes of their subordinates

281. The Chamber erred in law by entering acquittals before considering all charged modes of liability. The Chamber expressly stated at the outset that "the correct legal approach" would be to consider the Accused's responsibility "from the perspective of their participation in a JCE".⁸⁷⁶ The Chamber decided that "the other modes of participation alleged in the Indictment will be examined solely for those crimes not falling within the JCE."⁸⁷⁷ It then limited its evaluation of "other modes" to the crimes committed in Prozor in 1992, the only crimes falling outside the temporal scope of the JCE:

Insofar as *only* the crimes committed in the Municipality of Prozor in October 1992 are not part of the common criminal purpose, the Chamber will analyse the responsibility of the Accused pursuant to other modes of participation under the Statute *only* with respect to these crimes.⁸⁷⁸

⁸⁷³ Judgement, Vol.4, paras.641-644.

⁸⁷⁴ Judgement, Vol.4, paras.825, 849, 853. The Prosecution no longer alleges an error under Ground 2 in Vol.4, paras.844-845 with respect to Petković's criminal responsibility for appropriation of property not justified by military necessity (Count 22) or plunder (Count 23) in West Mostar in May 1993 (*see* Prosecution Notice, fn.12).

⁸⁷⁵ Judgement, Vol.4, paras.1019, 1021.

⁸⁷⁶ Judgement, Vol.4, para.2.

⁸⁷⁷ Judgement, Vol.4, para.2.

⁸⁷⁸ Judgement, Vol.4, para.1234 (emphasis added).

The Chamber incorrectly concluded that this was permissible on the basis that “the Appeals Chamber does not require that the Trial Chambers reach findings in respect of every one of the modes of responsibility alleged in an Indictment.”⁸⁷⁹ This reasoning cannot apply to acquittals or to concurrent Article 7(3) charges.

282. The case law establishes that a trial chamber has discretion to enter a *conviction* on the basis of the Article 7(1) mode(s) of liability which best reflect(s) the totality of the accused’s criminal conduct.⁸⁸⁰ Before entering an *acquittal*, however, a chamber must adjudicate an accused’s responsibility under all charged modes. The Appeals Chamber has accepted this obvious conclusion: when it has found an error of law or fact that requires a conviction under Article 7(1) be overturned, it has considered the accused’s responsibility under Article 7(3) before entering its final verdict.⁸⁸¹ It necessarily follows that a trial chamber must do the same.⁸⁸²

283. Moreover, as “distinct categories of criminal responsibility”,⁸⁸³ cumulative charges under Articles 7(1) and 7(3) must always be separately considered. Even where a trial chamber enters a conviction under Article 7(1), it is still obliged to make explicit findings on the elements of superior responsibility under Article 7(3) for sentencing purposes.⁸⁸⁴ If it is an error of law to fail to consider the Article 7(3) charges even when a conviction has already been entered under Article 7(1), it must also be an error to fail to consider Article 7(3) charges for the purposes of assessing the more fundamental question of the accused’s liability for that crime.

C. The elements of Article 7(3) are met with respect to the relevant crimes

284. The Chamber’s own findings and the totality of the evidence demonstrate that the elements required to establish the Accused’s criminal responsibility for failing to

⁸⁷⁹ Judgement, Vol.4, fn.3 citing *Stanišić & Župljanin* 16 January 2013 Decision, which held (at para.2) that Appeals Chamber jurisprudence did not “establish a rule that a Trial Chamber must make findings on all modes of liability charged in an indictment”. See also *Milutinović* TJ, Vol.1, para.76.

⁸⁸⁰ *Dorđević* AJ, para.831. See also *Ndindabahizi* AJ, para.123. In such circumstances, the chamber can be treated as having “implicitly” considered those Article 7(1) modes upon which it has ultimately chosen not to rely (*Kalimanzira* AJ, paras.206-207).

⁸⁸¹ E.g. *Milošević* AJ, paras.277-282.

⁸⁸² E.g. *Stakić* TJ, para.467.

⁸⁸³ *Blaškić* AJ, para.91; *Kordić* AJ, para.34. See also Judgement, Vol.1, para.263.

⁸⁸⁴ *Setako* AJ, para.268, “[T]he Trial Chamber was required to make a finding as to whether Setako incurred superior responsibility for the purpose of sentencing. The Trial Chamber’s failure to make such a finding constituted an error of law.” Thus, if the Appeals Chamber were to allow the Prosecution’s appeal under Ground 1, it should still make a finding as to whether the conduct of the five Accused satisfies the elements of Article 7(3) with respect to the relevant crimes.

punish the crimes of their subordinates under Article 7(3) were proven beyond reasonable doubt in respect of each of the relevant crimes. As set out in detail below:

- The Accused were superior to and exercised effective control over the perpetrators of the relevant crimes and therefore had the material ability to punish their criminal conduct;⁸⁸⁵
- The Accused knew or had reason to know that the crimes had been committed because they had either actual knowledge that their subordinates had committed the relevant crimes or possessed “information sufficiently alarming to justify further inquiry”;⁸⁸⁶ and
- The Accused failed to take necessary and reasonable measures to punish the perpetrators of the relevant crimes (that is, measures which reasonably fell within the Accused’s material powers and showed that they genuinely tried to punish the perpetrators).⁸⁸⁷

1. Prlić failed to punish his subordinates for the deaths of six detainees in Dretelj Prison

285. Three Muslim detainees died on 14 July 1993 in Dretelj as a result of shots fired by HVO MP at the hangars where they were confined.⁸⁸⁸ Another Muslim detainee, Plavuškić, died from dehydration in Dretelj on 16 July 1993 after members of the HVO deprived detainees of food and water on the orders of the 1st Brigade *Knez Domagoj* commander.⁸⁸⁹ Two other Muslim detainees died as a result of mistreatment in August 1993: members of the HVO beat Omer Kohnić to death on 2 or 3 August 1993,⁸⁹⁰ and Emir Repak died in August 1993 from the blows of another Muslim detainee acting on the orders of members of the HVO MP.⁸⁹¹ After determining that Prlić “could not have reasonably foreseen the murder [of Plavuškić]”

⁸⁸⁵ *Čelebići* AJ, para.256; *Halilović* AJ, para.59.

⁸⁸⁶ *Hadžihasanović* AJ, para.28. *See also* *Čelebići* AJ, para.239.

⁸⁸⁷ *Halilović* AJ, para.63.

⁸⁸⁸ Judgement, Vol.3, paras.113-115, 122. *See also* Vol.3, para.18; Exh.P3446. These deaths were found to constitute murder (Count 2) and wilful killing (Count 3) (Vol.3, paras.693, 695-696, 744, 746, 748).

⁸⁸⁹ Judgement, Vol.3, paras.85-91. *See also* Vol.3, paras.17-22, 25, 27-28, 30, 85-87, 91. This death was found to constitute murder (Count 2) and wilful killing (Count 3) (Vol.3, paras.693, 694, 696, 744-745, 748).

⁸⁹⁰ Judgement, Vol.3, paras.119-120, 122. This death was found to constitute murder (Count 2) and wilful killing (Count 3) (Vol.3, paras.693, 696, 744, 747-748).

⁸⁹¹ Judgement, Vol.3, paras.121-122. This death was found to constitute murder (Count 2) and wilful killing (Count 3) (Vol.3, paras.693, 696, 744, 747-748).

for the purposes of JCE3 liability, the Chamber acquitted Prlić with respect to this murder without any consideration of his liability under Article 7(3) for his failure to punish the perpetrators of this crime or the other five murders at Dretelj.⁸⁹²

286. Prlić was the superior of,⁸⁹³ and had effective control over, the perpetrators of these crimes. As President of the HVO/Government of the HZ(R)HB, Prlić “had the hierarchical authority and the power to intervene within the hierarchy of the HVO and the HRHB, and particularly in relation to the other Accused, in order to prevent and punish the commission of crimes and change the course of events”.⁸⁹⁴ This included the power to intervene with respect to detention centres.⁸⁹⁵ He held “significant *de jure* and *de facto* powers to coordinate and direct the activities of the HVO/HR H-B government”.⁸⁹⁶ This included participation in the supervision and activities of the Ministries of Defence, the Interior, Justice and Administration and Finance, and power in military matters.⁸⁹⁷ Through the exercise of his authority over other members of the government and government institutions, Prlić therefore had the material ability to punish members of the HVO MP who fired at the hangars,⁸⁹⁸ those responsible for the denial of food and water to detainees in mid-July 1993,⁸⁹⁹ and the HVO MP and/or HVO soldiers who caused the deaths of Kohnić and Repak.⁹⁰⁰

287. Prlić also had actual knowledge of deaths of detainees at Dretelj. He was informed by the ICRC in a letter dated 20 January 1994 that detainees had died at Dretelj as a result of ill-treatment or “because of the appalling detention conditions” during the summer of 1993, and that others had been killed when guards opened fire in the barracks on 14 July 1993.⁹⁰¹ This report was preceded by ample information about the terrible conditions at Dretelj. For example, Prlić presided over HVO working meetings where the conditions of detention at Dretelj—particularly

⁸⁹² Judgement, Vol.4, paras.285-286, 288. While the Chamber referred to the death of Plavuškić in its JCE3 analysis, the Chamber failed to address the murder of the other five detainees. The Prosecution appeals Prlić’s acquittal with respect to all six murders under Ground 1.

⁸⁹³ Judgement, Vol.4, paras.106-107, 268, 1315.

⁸⁹⁴ Judgement, Vol.4, para.268. *See also* Vol.4, para.273. An example of Prlić exercising this power to intervene with respect to crime is his decision of 27 December 1993, whereby the Ministries of Defence, the Interior, Justice and Administration and Finance were “entrusted with preparing [...] reports on measures and activities taken to prevent crime in the territory of the Croatian Republic of Herceg-Bosna” (Exh.P7354, p.2, *relied on at* Judgement, Vol.4, para.93).

⁸⁹⁵ Judgement, Vol.4, para.121. *See also* Vol.4, paras.114, 218, 270.

⁸⁹⁶ Judgement, Vol.4, para.1315.

⁸⁹⁷ Judgement, Vol.1, paras.536-537; Vol.4, paras.91-96, 106-107, 111, 121, 270.

⁸⁹⁸ *See above* fn.888.

⁸⁹⁹ *See above* fn.889.

⁹⁰⁰ *See above* fns.890-891.

overcrowding—were discussed on 19 and 20 July 1993,⁹⁰² and another on 6 September 1993 where the issue of detention conditions was declared “unsatisfactory and harmful to the reputation and interests of the [HRHB]”.⁹⁰³ The situation in the HVO detention centres was so grave that it was brought to the attention of the UN Security Council, which, on 14 September 1993, expressed its “profound concern” over the camps.⁹⁰⁴ It called for the ICRC to be given access to the HVO camps and called upon Croatia to use its influence and take immediate steps to bring this about.⁹⁰⁵ Prlić visited Dretelj on 20 September 1993 after being informed by ICRC representatives that [REDACTED].⁹⁰⁶

288. While Prlić did take some measures to alleviate the detention conditions, those measures were found to be “insufficient or inappropriate”.⁹⁰⁷ The Chamber therefore concluded that Prlić “accepted the extremely precarious conditions and the mistreatment” at Dretelj, and “even facilitated them” by not releasing the detainees.⁹⁰⁸ In any event, measures to alleviate the detention conditions were not aimed at punishing the individuals responsible for murdering the Dretelj detainees and thus did not amount to the necessary and reasonable measures which Prlić should have taken. Moreover, Prlić knowingly sought to minimise or conceal the crimes committed by the HVO armed forces, including detention-related crimes.⁹⁰⁹ He “knowingly turned a blind eye” to the crimes committed by HVO members, and continued to act in his position while aware that his conduct would result in complete impunity.⁹¹⁰

289. The Chamber’s own findings and the evidence on which it expressly relied therefore demonstrate that the elements of Article 7(3) are met with respect to murder (Count 2) and wilful killing (Count 3) in Dretelj Prison.

⁹⁰¹ Exhs.P7636/P7629 (partial duplicates), pp.1-2, *relied on at* Judgement, Vol.4, para.247.

⁹⁰² Judgement, Vol.4, paras.241, 286. *See also* Vol.4, paras.219-220.

⁹⁰³ Exh.P4841, pp.1-2, *relied on at* Judgement, Vol.4, paras.219, 244.

⁹⁰⁴ Exh.P5047, p.1.

⁹⁰⁵ Judgement, Vol.3, para.563; Exh.P5047.

⁹⁰⁶ [REDACTED], *relied on at* Judgement, Vol.4, para.245.

⁹⁰⁷ Judgement, Vol.4, paras.220, 248-249, 268, 273.

⁹⁰⁸ Judgement, Vol.4, para.249. *See also* Vol.4, paras.220, 273.

⁹⁰⁹ Judgement, Vol.4, paras.260-263. *See also* Vol.4, para.273.

⁹¹⁰ Judgement, Vol.4, para.273.

2. Stojić failed to punish his subordinates for thefts committed in Čapljina and Vareš Municipalities

(a) Thefts in Bivolje Brdo (Čapljina Municipality)

290. HVO members stole Muslim property in the village of Bivolje Brdo between 13 and 16 July 1993,⁹¹¹ during the “waves of evictions” which took place in Čapljina Municipality.⁹¹² After erroneously determining that the evidence did not support a finding that Stojić “could have predicted that members of the HVO would commit acts of theft during those operations” for the purposes of JCE3 liability, the Chamber acquitted Stojić with respect to those thefts without any consideration of his liability under Article 7(3) for his failure to punish the perpetrators.⁹¹³

291. Stojić was the superior of and had effective control over the HVO armed forces and the MP.⁹¹⁴ Stojić therefore had the material ability to punish the HVO soldiers and MP who participated in the eviction operations in the village of Bivolje Brdo between 13 and 16 July 1993 and the thefts of Muslim property which accompanied them.⁹¹⁵

292. In light of Stojić’s awareness of the widespread crimes (including thefts) committed by HVO forces during violent eviction operations, including in Gornji Vakuf Municipality in January 1993 and West Mostar from May 1993,⁹¹⁶ his knowledge of the eviction operations in Čapljina Municipality was sufficiently alarming information in itself to justify inquiry into whether thefts were committed during those operations. Like the operations in Gornji Vakuf Municipality and West Mostar, the Chamber found that the eviction operations which took place in Čapljina Municipality in the summer of 1993 “were part of an HVO-orchestrated and

⁹¹¹ Judgement, Vol.2, paras.2122-2124. These acts were found to constitute plunder (Count 23) (Judgement, Vol.3, paras.1674-1676). Although the Chamber may have had no evidence as to the perpetrators’ specific identities (Judgement, Vol.2, para.2124), it is clear from the Chamber’s previous findings that the perpetrators were amongst the members of the HVO who participated in the eviction operations (Judgement, Vol.2, paras.2113-2114). There is no indication that the KB participated in those operations.

⁹¹² Judgement, Vol.4, para.377.

⁹¹³ Judgement, Vol.4, paras.448, 450. The Prosecution appeals Stojić’s acquittal under JCE3 in Ground 1.

⁹¹⁴ Judgement, Vol.4, paras.312, 320, 326. *See also* Vol.4, paras.299-311, 313-319, 410, 414-415, 425-426, 429.

⁹¹⁵ *See above* fn.911.

⁹¹⁶ Judgement, Vol.4, paras.331-333 (referring to the crimes reported in Željko Šiljeg’s reports during HVO operations in Gornji Vakuf, including the destruction and theft of property), 336 (finding that “Stojić was aware of the [...] reports sent by Željko Šiljeg to the HVO”) (Gornji Vakuf); Vol.2, para.826; Vol.4, para.422 (West Mostar). *See also* Vol.3, paras.645-646. *See also* Exhs.P2770; P648.

organised campaign to expel the Muslim population”.⁹¹⁷ Stojić contributed to planning and facilitating the Čapljina operations and was informed of the manner in which those operations were carried out.⁹¹⁸

293. As the continuation of crimes in West Mostar from August 1993 to February 1994 demonstrates,⁹¹⁹ Stojić “made no serious effort to prevent or punish crimes by the HVO armed forces and the Military Police”.⁹²⁰

294. The Chamber’s own findings and the evidence therefore demonstrate that the elements of Article 7(3) are met with respect to plunder (Count 23) in Čapljina Municipality.

(b) Thefts in Vareš Town and Stupni Do (Vareš Municipality)

295. HVO soldiers, some of whom belonged to the *Maturice* and/or *Apostoli* special units, systematically stole property during the attack on Stupni Do and during the arrests of Muslim men from Vareš Town on 23 October 1993, and plundered Muslim apartments and shops in Vareš Town before 1 November 1993.⁹²¹ After erroneously determining that the evidence did not support a finding that Stojić “could have foreseen that members of the HVO would commit acts of theft” for the purposes of JCE3 liability, the Chamber acquitted Stojić with respect to the thefts in Vareš Town and Stupni Do without any consideration of his liability under Article 7(3) for his failure to punish the perpetrators.⁹²²

296. As discussed above, Stojić was the superior of and had effective control over the HVO armed forces.⁹²³ The *Maturice* and *Apostoli* special units were directly integrated into the *Ban Josip Jelačić* Brigade, under the command of Ivica Rajić.⁹²⁴ Stojić therefore had the material ability to punish the HVO soldiers, including

⁹¹⁷ Judgement, Vol.4, para.377. *See also* Vol.4, para.65.

⁹¹⁸ Judgement, Vol.4, para.378. *See also* Vol.4, paras.375-376.

⁹¹⁹ *E.g.* Judgement, Vol.4, paras.444, 446-447.

⁹²⁰ Judgement, Vol.4, paras.422-423, 427.

⁹²¹ Judgement, Vol.3, paras.343, 345, 403-404, 465, 467. *See also* Vol.3, paras.312-313, 316, 339, 423. These acts were found to constitute appropriation of property not justified by military necessity (Count 22) and plunder (Count 23) (Vol.3, paras.1650-1653, 1681-1683).

⁹²² Judgement, Vol.4, paras.442-443, 450. The Prosecution appeals Stojić’s acquittal under JCE3 in Ground 1.

⁹²³ *See above* para.291.

⁹²⁴ Judgement, Vol.1, para.789; Vol.3, paras.294, 300.

members of the *Maturice* and/or *Apostoli* special units, who committed these crimes.⁹²⁵

297. In light of his knowledge of the violent character of the operations in Vareš Municipality, Stojić had sufficiently alarming information to justify inquiry into whether thefts had been committed during operations in Vareš Town and the attack on Stupni Do. By October 1993, Stojić was well aware that HVO operations which had resulted in violence against the Muslim population and destruction of their property had also been accompanied by widespread looting and theft.⁹²⁶ In the days following the attack on Stupni Do, news of the violent character of the operations spread quickly and would have reached Stojić at the latest by the end of October 1993. For example:

- By 24 October 1993, UNPROFOR responded to news of the attack on Stupni Do with a letter of protest to Boban and Petković,⁹²⁷ to which the HVO immediately responded indicating Petković's personal interest in an investigation of ethnic cleansing in the villages in Vareš Municipality.⁹²⁸
- By 25 October 1993, the HVO Main Staff was responding to claims that Croatian television possessed video footage of the massacre at Stupni Do.⁹²⁹ The following day Petković ordered an investigation of the events in response to a "powerful media campaign [...] waged on BH radio and television" claiming HVO units had "abus[ed] the civilian population" and "torch[ed] family homes and businesses".⁹³⁰
- On 27 October 1993, UNPROFOR's Zagreb Headquarters issued a press release confirming that "a massacre has occurred" in Stupni Do, and that "all 52 houses in the village had been burned to the ground".⁹³¹ [REDACTED].⁹³²

⁹²⁵ See above fn.921.

⁹²⁶ See above paras.86-89, 93-96; Judgement, Vol.4, paras.331-333 (referring to the crimes reported in Željko Šiljeg's reports during HVO operations in Gornji Vakuf, including the destruction and theft of property), 336 (finding that "Stojić was aware of the [...] reports sent by Željko Šiljeg to the HVO") (Gornji Vakuf); Vol.2, para.826; Vol.4, para.422 (West Mostar). See also Vol.3, paras.645-646. See also Exhs.P2770; P648.

⁹²⁷ Exh.P6053, p.3.

⁹²⁸ Exh.P6049.

⁹²⁹ Exhs.P6102; P6104; P6083.

⁹³⁰ Exh.P6131, pp.1-2.

⁹³¹ Exh.P6182.

⁹³² [REDACTED].

Also on 27 October 1993, Stojić's immediate subordinate was informed of civilian deaths in Stupni Do.⁹³³

- [REDACTED].⁹³⁴
- News of the massacre reached Zagreb on 29 October 1993 when US Ambassador Galbraith urged Tudman to “exert [his] influence” on the Bosnian Croats to bring the perpetrators to justice.⁹³⁵
- [REDACTED].⁹³⁶

298. In addition, Stojić and Rajić were in direct contact regarding the HVO's operations in Vareš Municipality between 29 and 31 October 1993.⁹³⁷

299. Rather than punish Rajić for his involvement in the crimes committed in Vareš Municipality, Stojić requested and obtained Rajić's promotion from Mate Boban on 1 November 1993, thus demonstrating his approval of the manner in which the HVO's operations in Vareš were carried out.⁹³⁸ The Chamber therefore concluded that Stojić accepted the crimes committed by Rajić's troops.⁹³⁹

300. The Chamber's own findings and the evidence therefore demonstrate that the elements of Article 7(3) are met with respect to appropriation of property not justified by military necessity (Count 22) and plunder (Count 23) in Vareš Municipality.

3. Praljak failed to punish his subordinates for rape, sexual assault and thefts committed in Vareš Town and Stupni Do (Vareš Municipality)

301. On 23 October 1993, during and after the attack on the village of Stupni Do, members of the *Maturice* and/or *Apostoli* special units systematically stole from houses in the village and confiscated livestock, money, jewellery and other

⁹³³ Exh.P6180. See also Judgement, Vol.1, paras.616-617.

⁹³⁴ [REDACTED].

⁹³⁵ Exh.P6251, p.11.

⁹³⁶ [REDACTED].

⁹³⁷ Judgement, Vol.4, para.380.

⁹³⁸ Judgement, Vol.3, para.493; Vol.4, para.381. See also Vol.4, para.383.

⁹³⁹ Judgement, Vol.4, para.383.

valuables,⁹⁴⁰ raped a Muslim girl,⁹⁴¹ and sexually abused a Muslim woman.⁹⁴² HVO soldiers, including some belonging to the *Maturice* special unit, stole property and money from Muslim inhabitants of Vareš Town on 23 October 1993 and plundered Muslim apartments and shops before 1 November 1993.⁹⁴³ Finally, HVO members, some of whom belonged to the *Maturice* special unit, raped two Muslim women from Vareš Town between 23 and 25 October 1993.⁹⁴⁴ After determining that the evidence did not support a finding that Praljak “could have foreseen that members of the HVO would commit thefts and sexual abuse” for the purposes of JCE3 liability, the Chamber acquitted Praljak with respect to these incidents without any consideration of his liability under Article 7(3) for his failure to punish the perpetrators.⁹⁴⁵

302. As Commander of the HVO Main Staff,⁹⁴⁶ Praljak was the superior of and had effective control over all components of the HVO armed forces,⁹⁴⁷ including the *Maturice* and *Apostoli* special units, which were directly integrated into the *Ban Josip Jelačić* Brigade under the command of Ivica Rajić.⁹⁴⁸

303. Praljak had sufficiently alarming information to justify inquiry into whether rape, sexual assaults and thefts had been committed during operations in Vareš Town and the attack on Stupni Do in light of his knowledge of the violent character of the operations in Vareš Municipality. By October 1993, Praljak was well aware that HVO operations which had resulted in violence against the Muslim population and destruction of their property had also been accompanied by widespread looting and

⁹⁴⁰ Judgement, Vol.3, paras.465, 467. *See also* Vol.3, paras.312-313, 316, 423. These acts were found to constitute appropriation of property not justified by military necessity (Count 22) and plunder (Count 23) (Vol.3, paras.1650-1653, 1681-1683).

⁹⁴¹ Judgement, Vol.3, paras.426, 428-429. *See also* Vol.3, paras.312-313, 316, 423. This conduct was found to constitute rape (Count 4) and inhuman treatment (sexual assault) (Count 5) (Vol.3, paras.768, 779).

⁹⁴² Judgement, Vol.3, paras.427-429. *See also* Vol.3, paras.312-313, 316, 423. This conduct was found to constitute inhuman treatment (sexual assault) (Count 5) (Vol.3, para.780).

⁹⁴³ Judgement, Vol.3, paras.343, 345, 403-404. *See also* Vol.3, paras.312-313, 316, 339. These acts were found to constitute appropriation of property not justified by military necessity (Count 22) and plunder (Count 23) (Vol.3, paras.1650-1653, 1681-1683).

⁹⁴⁴ Judgement, Vol.3, paras.401-402, 404. *See also* Vol.3, paras.312-313, 316, 339. This conduct was found to constitute rape (Count 4) and inhuman treatment (sexual assault) (Count 5) (Judgement, Vol.3, paras.767, 779).

⁹⁴⁵ Judgement, Vol.4, paras.639-644. The Prosecution appeals Praljak’s acquittal under JCE3 in Ground 1.

⁹⁴⁶ Judgement, Vol.1, paras.716-717, 725; Vol.4, para.459.

⁹⁴⁷ Judgement, Vol.4, para.506. *See also* Vol.4, paras.483-505.

⁹⁴⁸ Judgement, Vol.1, para.789; Vol.3, paras.294, 300.

theft,⁹⁴⁹ and the risk of sexual violence crimes.⁹⁵⁰ Praljak was aware of the violent character of HVO operations in Vareš Municipality.⁹⁵¹ For example:

- Praljak participated in planning and directing the HVO operations in Vareš,⁹⁵² which were carried out by Ivica Rajić's troops—including soldiers from the *Maturice* and *Apostoli* special units, who the Chamber found were “notorious for their violent behaviour”.⁹⁵³ On the evening of 23 October 1993, for example, Praljak ordered Petković and Rajić (among others) to “sort out the situation in Vareš showing no mercy to anyone”, using people who were “up to both the times and tasks”.⁹⁵⁴
- Praljak's 23 October 1993 order was handwritten on the bottom of a report from Rajić of the same date,⁹⁵⁵ in which Rajić reported that his forces had attacked Stupni Do, killing “some civilians”, that Vareš Town had been “mopped up”, and that all Muslims of military age had been “placed under surveillance”.⁹⁵⁶
- The Chamber found that Praljak's 23 October 1993 order was leaked to HVO forces in Vareš early on the morning of 24 October 1993 and was interpreted as allowing them to act with brutality.⁹⁵⁷
- As discussed above,⁹⁵⁸ by 25 October 1993, the HVO Main Staff was responding to claims that Croatian television possessed video footage of the massacre at Stupni Do.⁹⁵⁹
- By 27 October 1993, UNPROFOR had publicly confirmed that “a massacre has occurred” in Stupni Do, that “all 52 houses in the village had been burned

⁹⁴⁹ Judgement, Vol.4, para.1239 (as early as October 1992, Praljak knew of thefts by HVO forces); [REDACTED]; Vol.4, paras.634 (the possibility of thefts in Gornji Vakuf in January 1993 was foreseeable to Praljak), 638 (the possibility of thefts in Raštani (Mostar) in August 1993 was foreseeable to Praljak). *See also above* paras.129-131, 153-155.

⁹⁵⁰ Praljak, T.44247. *See also above* paras.129-131, 147-148. *See further* Judgement, Vol.3, paras.645-646.

⁹⁵¹ *Contra* Judgement, Vol.4, para.642. This finding has been challenged under Sub-grounds 1(A) and (B) (*see above* paras.127-138, and in particular 132-133, 136).

⁹⁵² Judgement, Vol.4, paras.594, 597.

⁹⁵³ Judgement, Vol.3, para.302.

⁹⁵⁴ Exhs.P6028; P6051; P9813, *relied on at* Judgement, Vol.3, para.318. *See also* Vol.3, paras.320, 325-326; Exh.P6026.

⁹⁵⁵ Petković, T.50580-50582.

⁹⁵⁶ Exh.P6026. *See also* Judgement, Vol.3, para.340.

⁹⁵⁷ Judgement, Vol.3, paras.325-326; Vol.4, para.591.

⁹⁵⁸ *See above* para.297.

⁹⁵⁹ Exhs.P6102; P6104; P6083. *See also* Exh.P6131, pp.1-2.

to the ground”, and that two young women who had escaped from the village had made accusations of rape.⁹⁶⁰

- News of the massacre reached Zagreb on 29 October 1993 when US Ambassador Galbraith urged Tudman to “exert [his] influence” on the Bosnian Croats to bring the perpetrators to justice.⁹⁶¹
- By 29 October 1993, news of the crimes committed by Rajić’s troops was widespread.⁹⁶²

304. Indeed, by 5 November 1993, when key members of the HRHB government, including Praljak, met with Tudman and other Croatian officials, the Chamber found that events in Stupni Do had already become “public knowledge”.⁹⁶³

305. Praljak failed to take necessary and reasonable measures to punish the perpetrators of the crimes committed in Vareš Town and Stupni Do. Instead, he contributed to the HVO’s efforts to conceal those crimes.⁹⁶⁴ The Chamber found that in the immediate aftermath of the attack on Stupni Do, Praljak sought to prevent UNPROFOR access to the village despite knowing that UNPROFOR sought access following the allegations of crimes.⁹⁶⁵ The Chamber therefore concluded that Praljak “sought to prevent UNPROFOR from uncovering the consequences of the HVO’s operations in Stupni Do”.⁹⁶⁶ In addition, the Chamber found that Praljak contributed to Petković’s “fake investigation” of the events.⁹⁶⁷

306. The Chamber’s own findings and the evidence therefore demonstrate that the elements of Article 7(3) are met with respect to rape (Count 4), inhuman treatment (sexual assault) (Count 5), appropriation of property not justified by military necessity (Count 22) and plunder (Count 23) with respect to Vareš Municipality.

⁹⁶⁰ Exh.P6182.

⁹⁶¹ Exh.P6251, p.11.

⁹⁶² *See above* para.297.

⁹⁶³ Judgement, Vol.4, para.595, relying on Exh.P6454, p.59. *See also* Vol.4, para.597.

⁹⁶⁴ Judgement, Vol.4, paras.596-597, 623.

⁹⁶⁵ Judgement, Vol.4, para.621. *See also* Vol.3, paras.470-475.

⁹⁶⁶ Judgement, Vol.4, para.621.

⁹⁶⁷ Judgement, Vol.3, para.489; Vol.4, paras.596-597, 623. *See below* para.315.

4. Petković failed to punish his subordinates for the deaths of six detainees in Dretelj Prison and thefts committed in Stupni Do (Vareš Municipality)

(a) Deaths of six detainees in Dretelj Prison

307. Three Muslim detainees died on 14 July 1993 in Dretelj as a result of shots fired by HVO MP at the hangars where they were confined.⁹⁶⁸ Another Muslim detainee, Plavuškić, died in Dretelj on 16 July 1993 from dehydration after members of the HVO deprived detainees of food and water on the orders of the 1st Brigade *Knez Domagoj* commander.⁹⁶⁹ Two other Muslim detainees died as a result of mistreatment in August 1993: members of the HVO beat Omer Kohnić to death on 2 or 3 August 1993,⁹⁷⁰ and Emir Repak died in August 1993 from the blows of another Muslim detainee acting on the orders of members of the HVO MP.⁹⁷¹ After erroneously determining that the evidence did not support a finding that Petković “could have foreseen these murders” for the purposes of JCE3 liability, the Chamber acquitted Petković with respect to these deaths without any consideration of his liability under Article 7(3) for his failure to punish the perpetrators.⁹⁷²

308. As Deputy Commander of the HVO Main Staff,⁹⁷³ Petković was the superior of and had effective control over the MP, either as a result of their integration into the HVO brigades or through the Main Staff’s ultimate authority over MP battalions when carrying out their “daily duties”.⁹⁷⁴ He also had effective control over the HVO brigades and *Domobrani* units.⁹⁷⁵ Petković therefore had the material ability to punish members of the HVO MP who fired at the hangars,⁹⁷⁶ those responsible for the denial

⁹⁶⁸ Judgement, Vol.3, paras.113-115, 122. *See also* Vol.3, para.18; Exh.P3446. These deaths were found to constitute murder (Count 2) and wilful killing (Count 3) (Vol.3, paras.695-696, 744, 746, 748).

⁹⁶⁹ Judgement, Vol.3, paras.85-91. *See also* Vol.3, paras.17-22, 25, 27-28, 30, 85-87, 91. This death was found to constitute murder (Count 2) and wilful killing (Count 3) (Vol.3, paras.693-694, 696, 744-745, 748).

⁹⁷⁰ Judgement, Vol.3, paras.119-120, 122. This death was found to constitute murder (Count 2) and wilful killing (Count 3) (Vol.3, paras.693, 696, 744, 747-748).

⁹⁷¹ Judgement, Vol.3, paras.121-122. This death was found to constitute murder (Count 2) and wilful killing (Count 3) (Vol.3, paras.693, 696, 744, 747-748).

⁹⁷² Judgement, Vol.4, paras.825, 853. The Prosecution appeals Petković’s acquittal under JCE3 in Ground 1.

⁹⁷³ Judgement, Vol.1, paras.726-727; Vol.4, para.652.

⁹⁷⁴ Judgement, Vol.1, paras.945, 949-950, 952, fn.2347; Vol.4, paras.661-663. *See also* Vol.4, paras.679, 816.

⁹⁷⁵ Judgement, Vol.4, paras.663, 679. *See also* Vol.1, paras.755, 779, 790-791, 843; Vol.4, paras.657-662, 664-678, 803, 814, 816.

⁹⁷⁶ *See above* fn.968.

of food and water to detainees in mid-July 1993,⁹⁷⁷ and the HVO MP and/or HVO soldiers who caused the deaths of Kohnić and Repak.⁹⁷⁸

309. Petković had actual knowledge of deaths of detainees at Dretelj. The conditions in the HVO camps were public knowledge and attracted UN Security Council condemnation on 14 September 1993.⁹⁷⁹ It called for the ICRC to be given access to the HVO camps and called upon Croatia to use its influence and take immediate steps to bring this about.⁹⁸⁰ Petković was informed by the ICRC in a letter dated 20 January 1994 that detainees had died as a result of ill-treatment or “because of the appalling detention conditions” during the summer of 1993, and that others had been killed when guards opened fire in the barracks on 14 July 1993.⁹⁸¹ The Chamber therefore concluded that Petković was aware of the poor conditions of confinement and the murders as of January 1994.⁹⁸²

310. The Chamber found that Petković failed to take any measures against the perpetrators of the shooting, and concluded that he accepted the mistreatment of detainees and harsh conditions at Dretelj.⁹⁸³ Moreover, the Chamber found that Petković did not make serious efforts to end the commission of crimes by the armed forces or MP under his authority, but instead attempted to conceal their crimes.⁹⁸⁴

311. The Chamber’s own findings and the evidence therefore demonstrate that the elements of Article 7(3) are met with respect to murder (Count 2) and wilful killing (Count 3) in Dretelj Prison.

(b) Thefts in Stupni Do (Vareš Municipality)⁹⁸⁵

312. On 23 October 1993, during and after the attack on the village of Stupni Do, members of the *Maturice* and/or *Apostoli* special units systematically stole property from houses in the village and confiscated livestock, money, jewellery and other

⁹⁷⁷ See above fn.969.

⁹⁷⁸ See above fns.970-971.

⁹⁷⁹ Exh.P5047, p.1.

⁹⁸⁰ Judgement, Vol.3, para.563; Exh.P5047.

⁹⁸¹ Exhs.P7636/P7629 (partial duplicates), pp.1-2, *relied on at* Judgement, Vol.4, paras.783-785, 825.

⁹⁸² Judgement, Vol.4, paras.783-785, 825.

⁹⁸³ Judgement, Vol.4, paras.783, 785.

⁹⁸⁴ Judgement, Vol.4, paras.815, 816.

⁹⁸⁵ Petković was convicted of rape (Count 4), inhuman treatment (sexual assault) (Count 5), appropriation of property (Count 22) and plunder (Count 23) in Vareš Municipality with respect to crimes committed in Vareš Town. Judgement, Vol.4, para.853.

valuables.⁹⁸⁶ After determining that the evidence did not support a finding that Petković “could have foreseen that the HVO members would commit theft in Stupni Do” for the purposes of JCE3 liability, the Chamber acquitted Petković with respect to the thefts in Stupni Do without any consideration of his liability under Article 7(3) for his failure to punish the perpetrators.⁹⁸⁷

313. As Deputy Commander of the HVO Main Staff,⁹⁸⁸ Petković was the superior of and had effective control over the HVO brigades,⁹⁸⁹ including the *Maturice* and *Apostoli* special units, which were directly integrated into the *Ban Josip Jelačić* Brigade under the command of Ivica Rajić.⁹⁹⁰ Petković therefore had the material ability to punish the HVO soldiers, including members of the *Maturice* and/or *Apostoli* special units, who committed these crimes.⁹⁹¹

314. Petković had sufficiently alarming information to justify inquiry into whether thefts had been committed during the attack on Stupni Do in light of his knowledge of the violent character of the operations in Vareš Municipality. By October 1993, Petković was well aware that HVO operations which had resulted in violence against the Muslim population and destruction of their property had also been accompanied by widespread looting and theft.⁹⁹² In the days following the attack on Stupni Do, Petković was informed of the violent character of that attack. For example:

- On 22 October 1993, Petković sent Ivica Rajić to Vareš with 200 men⁹⁹³— amongst them soldiers from the *Maturice* and *Apostoli* special units, whom the Chamber found were “notorious for their violent behaviour”.⁹⁹⁴ On 23 October 1993, Rajić reported to Petković that his forces had attacked Stupni Do, killing “some civilians”.⁹⁹⁵
- On the evening of 23 October 1993, Praljak ordered Petković and Rajić (among others) to “sort out the situation in Vareš showing no mercy to

⁹⁸⁶ Judgement, Vol.3, paras.465, 467. See also Vol.3, paras.312-313, 316, 423. These acts were found to constitute appropriation of property not justified by military necessity (Count 22) and plunder (Count 23) (Vol.3, paras.1650-1653, 1681-1683).

⁹⁸⁷ Judgement, Vol.4, paras.846-849, 853. The Prosecution appeals Petković’s acquittal under JCE3 in Ground 1.

⁹⁸⁸ Judgement, Vol.1, paras.716-717, 727; Vol.4, para.652.

⁹⁸⁹ See above para.308.

⁹⁹⁰ Judgement, Vol.1, para.789; Vol.3, paras.294, 300.

⁹⁹¹ See above fn.986.

⁹⁹² See above para.168. See also Vol.3, paras.645-646.

⁹⁹³ Judgement, Vol.3, paras.312-314, 316; Vol.4, para.846.

⁹⁹⁴ Judgement, Vol.3, para.302.

anyone”, using people who were “up to both the times and tasks”.⁹⁹⁶ The Chamber found that this order, which was leaked to HVO forces in Vareš on 24 October 1993, made it increasingly difficult for Rajić to control his troops.⁹⁹⁷

- As discussed above,⁹⁹⁸ by 24 October 1993, UNPROFOR responded to news of the attack on Stupni Do with a letter of protest to Boban and Petković,⁹⁹⁹ to which the HVO immediately responded indicating Petković’s personal interest in an investigation of ethnic cleansing in the villages in Vareš Municipality.¹⁰⁰⁰
- The Chamber found that by 25 October 1993, Petković had again been informed that civilians had been killed, and that Rajić’s forces had torched “practically everything”.¹⁰⁰¹
- In the following days, news of the crimes committed by Rajić’s troops spread quickly.¹⁰⁰²

315. Petković failed to take the necessary or reasonable measures to punish the perpetrators of the crimes in Stupni Do. Having instructed Rajić to conduct an investigation,¹⁰⁰³ Petković subsequently ordered Rajić not to follow those instructions.¹⁰⁰⁴ Rajić was then promoted and commended for his actions.¹⁰⁰⁵ He was later permitted to remain in command under the assumed name of Viktor Andrić.¹⁰⁰⁶ The Chamber found that Petković participated in setting up a “fake investigation” of the events in Stupni Do and actively worked to shelter Rajić from justice by

⁹⁹⁵ Exh.P6026, pp.2-3, *relied on at Judgement*, Vol.4, para.765. *See also* Vol.3, paras.340-342, 412.

⁹⁹⁶ Exhs.P6028; P6051; P9813, *relied on at Judgement*, Vol.3, para.318. *See also* Judgement, Vol.3, paras.320, 325-326; Petković, T.49614, 50582-50583; Exh.P6026.

⁹⁹⁷ Judgement, Vol.3, paras.325-326; Vol.4, para.591.

⁹⁹⁸ *See above* para.297.

⁹⁹⁹ Exh.P6053, p.3.

¹⁰⁰⁰ Exh.P6049.

¹⁰⁰¹ Exh.P6454, p.59, *relied on at Judgement*, Vol.4, para.761. *See also* [REDACTED]; Judgement, Vol.4, para.766.

¹⁰⁰² *See above* para.297.

¹⁰⁰³ Judgement, Vol.3, para.480; Exhs.P6022; P6137, p.1.

¹⁰⁰⁴ Judgement, Vol.3, paras.480, 484; Vol.4, para.772.

¹⁰⁰⁵ Judgement, Vol.3, para.493.

¹⁰⁰⁶ Judgement, Vol.3, paras.494-498; Vol.4, para.774.

fabricating his new identity with the sole aim of deceiving the international community which was demanding action.¹⁰⁰⁷

316. The Chamber's own findings and the evidence therefore demonstrate that the elements of Article 7(3) are met with respect to appropriation of property not justified by military necessity (Count 22) and plunder (Count 23) in Vareš Municipality (Stupni Do).

5. Ćorić failed to punish his subordinates for the deaths of three detainees in Dretelj Prison

317. Three Muslim detainees died in Dretelj on 14 July 1993 as a result of shots fired by HVO MP at the hangars where they were confined.¹⁰⁰⁸ After determining that the evidence did not support a finding that Ćorić "could have foreseen the murders of detainees at that time" for the purposes of JCE3 liability, the Chamber acquitted Ćorić with respect to this incident without any further consideration of his liability under Article 7(3) for his failure to punish the perpetrators.¹⁰⁰⁹

318. As Chief of the MP Administration between June 1992 and November 1993,¹⁰¹⁰ Ćorić was the superior of and exercised effective control over the MP,¹⁰¹¹ including after the restructuring of the MP Administration in July 1993.¹⁰¹² Further, Ćorić had power regarding the security of detainees in Dretelj.¹⁰¹³ Finally, the MP Administration was responsible for initiating proceedings against members of the MP suspected of committing crimes.¹⁰¹⁴ Ćorić therefore had the material ability to punish members of the HVO MP who fired at the hangars.¹⁰¹⁵

¹⁰⁰⁷ Judgement, Vol.4, paras.772, 775, 777. See also Vol.3, paras.480, 484, 489, 492.

¹⁰⁰⁸ Judgement, Vol.3, paras.113-115, 122. See also Vol.3, para.18; Exh.P3446. These deaths were found to constitute murder (Count 2) and wilful killing (Count 3) (Vol.3, paras.695-696, 744, 746, 748).

¹⁰⁰⁹ Judgement, Vol.4, paras.1017-1019, 1021. The Prosecution appeals Ćorić's acquittal under JCE3 in Ground 1.

¹⁰¹⁰ Judgement, Vol.4, para.861.

¹⁰¹¹ Judgement, Vol.1, paras.941, 971, 973; Vol.4, paras.871, 915. See also *Bagosora* AJ, para.495.

¹⁰¹² See also Judgement, Vol.1, para.964; Vol.4, para.868. See also *Strugar* AJ, para.254, quoting *Blaškić* AJ, para.69 ("indicators of effective control are more a matter of evidence than of substantive law, and those indicators are limited to showing that the accused had the power to prevent, punish, or initiate measures leading to proceedings against the alleged perpetrators where appropriate" (emphasis added)).

¹⁰¹³ Judgement, Vol.4, paras.897, 916.

¹⁰¹⁴ Judgement, Vol.1, para.927.

¹⁰¹⁵ See above fn.1008.

319. In mid-July 1993, Ćorić was informed that members of the MP in charge of the security of the detainees had fired on them on 14 July 1993.¹⁰¹⁶ Ćorić was again informed on 29 July 1993 that three detainees had been shot dead.¹⁰¹⁷ The Chamber therefore concluded that as of mid-July 1993, Ćorić was aware that detainees at Dretelj were being mistreated, resulting in deaths.¹⁰¹⁸

320. The Chamber found that Ćorić failed to act, continued to exercise his functions in the MP Administration, and therefore “deliberately took the risk that more detainees might be killed as a result of the mistreatment, as indeed occurred in August 1993” (a crime for which Ćorić was found responsible under JCE3).¹⁰¹⁹

321. The Chamber’s own findings and the evidence therefore demonstrate that the elements of Article 7(3) are met with respect to murder (Count 2) and wilful killing (Count 3) in Dretelj Prison.

D. Relief sought

322. To the extent that the Appeals Chamber grants the Prosecution’s appeal under Ground 1 with respect to the relevant crimes, the Prosecution requests the Appeals Chamber to:

- correct the Chamber’s errors;
- make a finding that each of the Accused are responsible under Article 7(3) for failing to punish the relevant crimes; and
- treat the Accused’s responsibility under Article 7(3) as an aggravating factor when adjusting their sentences.

323. To the extent that the Appeals Chamber dismisses the Prosecution’s appeal under Ground 1 with respect to the relevant crimes, the Prosecution requests the Appeals Chamber to:

- correct the Chamber’s errors;
- convict the Accused pursuant to Article 7(3) for failing to punish the relevant crimes; and

¹⁰¹⁶ Judgement, Vol.4, paras.988, 1018; Exh.P3446. *See also* [REDACTED]; Exh.P3478, p.2.

¹⁰¹⁷ Judgement, Vol.4, paras.988, 1018; Exh.P3794. *See also* Exh.P3630, p.1.

¹⁰¹⁸ Judgement, Vol.4, para.1018. *See also* Vol.4, paras.990, 994.

¹⁰¹⁹ Judgement, Vol.4, paras.990, 994, 1020.

- increase the Accused's sentences accordingly.

324. Alternatively, the Prosecution requests that the Appeals Chamber exercise its discretion to remand this issue to a bench of the Tribunal to determine the liability of the Accused pursuant to Article 7(3) for failure to punish based on the evidence on the record.

IV. GROUND THREE: THE CHAMBER ERRED IN FAILING TO ENTER CONVICTIONS FOR WANTON DESTRUCTION

325. The Chamber erred in failing to enter convictions for four groups of incidents of wanton destruction not justified by military necessity in violation of the laws or customs of war (“Wanton Destruction”) under Count 20 against Prlić, Petković, Čorić, Stojić and Praljak for crimes committed in Prozor, Gornji Vakuf and Mostar, and against Pušić for crimes committed in Prozor and Mostar.

326. The Chamber established that:

- The HVO destroyed houses and stables and killed cattle belonging to Bosnian Muslims in Skrobućani, Lug and Podaniš (or Podonis) in Prozor Municipality in May or June through July 1993;¹⁰²⁰
- The HVO destroyed houses belonging to Bosnian Muslims in the villages of Duša, Hrasnica, Uzričje and Ždrimci in Gornji Vakuf Municipality on 18 January 1993;¹⁰²¹
- The HVO destroyed the Old Bridge (“Stari Most”) in Mostar on 8-9 November 1993;¹⁰²² and
- The HVO destroyed or heavily damaged 10 mosques in East Mostar between June and December 1993.¹⁰²³

327. The Chamber found that these four groups of incidents constituted the crime of Wanton Destruction (Count 20) but did not constitute extensive destruction of property not justified by military necessity (“Extensive Destruction”) (Count 19), a grave breach of the Geneva Conventions. The requirements of Extensive Destruction were not met because the objects destroyed were not located in occupied territory and therefore did not benefit from the protection of the Geneva Conventions.¹⁰²⁴

328. The Chamber correctly held that to enter convictions for the same incident as both Extensive Destruction and Wanton Destruction would be impermissibly cumulative.¹⁰²⁵ However, it incorrectly assumed that all incidents established as

¹⁰²⁰ Judgement, Vol.2, paras.95-97, 102, 103-105; Vol.3, para.1566; Indictment, para.53.

¹⁰²¹ Judgement, Vol.2, paras.367-368, 373, 379, 387; Vol.3, para.1570; Indictment, para.66.

¹⁰²² Judgement, Vol.2, para.1366; Vol.3, para.1587; Indictment, para.116.

¹⁰²³ Judgement, Vol.2, para.1377; Vol.3, para.1580; Indictment, para.116.

¹⁰²⁴ Judgement, Vol.3, paras.589, 1530, 1534, 1545.

¹⁰²⁵ Judgement, Vol.4, paras.1265-1266.

Wanton Destruction had also been established as Extensive Destruction.¹⁰²⁶ It therefore did not enter separate convictions under Count 20 for the four groups of incidents described above which constituted only Wanton Destruction, a war crime not requiring proof of occupation.

329. The Chamber found that each of the Accused was liable for these groups of incidents of Wanton Destruction in line with their individual criminal responsibility.¹⁰²⁷ In light of a trial chamber's obligation to enter convictions for all distinct crimes for which an accused has been found responsible,¹⁰²⁸ the Chamber erred by failing to enter convictions for Count 20 for these groups of incidents.

330. Given the Chamber's error, the convictions entered against the Accused do not fully reflect their criminality. The Appeals Chamber should rectify the Chamber's error by entering convictions for Count 20 against Prlić, Petković, Čorić, Stojić and Praljak for the crimes committed in Prozor, Gornji Vakuf and Mostar, and against Pušić for crimes committed in Prozor and Mostar in line with their individual criminal responsibility. Their sentences should be correspondingly increased.

¹⁰²⁶ Judgement, Vol.4, paras.1264-1266.

¹⁰²⁷ Judgement, Vol.4, paras.278, 431-432, 630-631, 820, 1006-1007, 1211, 1251.

¹⁰²⁸ *Gatete* AJ, para.261. *See also Strugar* AJ, para.324; *Stakić* AJ, para.358.

V. GROUND FOUR: THE SENTENCES IMPOSED ARE MANIFESTLY INSUFFICIENT

A. Overview

331. While the Statute gives trial chambers considerable discretion when sentencing accused, sentences must nevertheless reflect the gravity and scale of the crimes for which the accused are convicted and adequately account for their involvement and contribution to these crimes. Architects of massive campaigns of ethnic cleansing who are responsible for serious crimes against tens of thousands of victims must be given sentences in the highest range available under the Statute. The sentences of 10 to 25 years imposed by the Chamber in this case manifestly fall outside this sentencing framework. The Chamber therefore abused its discretion in sentencing the Accused, thus committing an error of law.

332. The Accused in this case devised and implemented a protracted, violent campaign of ethnically-based crimes to change the demographic composition in their self-declared “Herceg-Bosna” or HZ(R)HB. The crimes committed during the course of the JCE occurred throughout a large part of BiH: eight municipalities extending from Western Herzegovina in the south to Vareš in central Bosnia.

333. The Accused have been found guilty of crimes on an immense scale. They are responsible for the violent eviction of tens of thousands of Muslims from their homes as part of the ethnic cleansing of entire communities,¹⁰²⁹ the arrest and detention of thousands,¹⁰³⁰ large scale murder and mistreatment in HVO military operations¹⁰³¹

¹⁰²⁹ Judgement, Vol.2, para.277 (the HVO removed “at least” 2,500 Muslims from the municipality of Prozor on 28 August 1993); Vol.4, para.153 (July 1993 forcible expulsion of 6,000 Muslim men that had been arrested and detained), 235 (in July 1993, Prlić planned and facilitated the departure of 2,500 Heliodrom detainees to Croatia), 1131 (in December 1993, 1,953 detainees in HVO detention centres were transported to ABiH-held territory and 743 to third countries; 1,017 detainees were exchanged between 18 January and 30 March 1994), 1297, 1299 (in August 1993, approximately 5,000 women, children and elderly were arrested and detained in the Municipality of Prozor to make room for arriving Croats (*see also* Vol.2, para.232); by September and October 1993, the Muslim population decreased by 19,881 in the Municipalities of Ljubuški, Čapljina and Stolac).

¹⁰³⁰ *E.g.* Judgement, Vol.4, para.1299.

¹⁰³¹ *E.g.* Judgement, Vol.3, paras.656-660, 663, 665-666, 670-673, 684, 687-692, 699-700, 705, 707, 711, 720-722, 735-743, 752-753, 1207, 1209, 1212, 1221-1226, 1246-1250, 1252-1256, 1272-1273, 1276-1281, 1294-1295, 1299, 1302, 1315-1317, 1346-1350, 1368-1370, 1374-1380, 1396-1397; Vol.4, paras.134, 176, 182, 185, 278, 288, 334-336, 340, 349, 351, 357-358, 360-363, 366-370, 372, 381-383, 431, 434-437, 450, 561-562, 573, 579, 582, 584, 586, 595-597, 630, 699, 704-710, 717, 721, 724, 732-733, 736, 743, 749-750, 755, 761-762, 765, 767, 776, 820, 826-834, 853, 922-923, 929, 933, 937-938, 939, 944-945, 1006, 1021, 1091-1099, 1101, 1104, 1122, 1211.

and detention facilities,¹⁰³² the destruction of innumerable houses and numerous religious institutions in the targeted communities,¹⁰³³ and widespread plunder.¹⁰³⁴ Over 50,000 people were terrorized in the besieged East Mostar.¹⁰³⁵ In addition, the Accused are responsible for the commission of foreseeable rapes and sexual assaults that accompanied the violent ethnic cleansing campaign that they planned, organised and implemented.

334. A number of factors make these crimes particularly grave:

- The crimes were not only large in scale but were implemented pursuant to a plan and over a protracted period of time.
- The Accused established and maintained a vicious siege of East Mostar for some 10 months, subjecting the Muslim population to conditions that witnesses described as even more severe than those during the siege of Sarajevo.
- They made sinister use of a highly organised system to expel Muslims to third countries via Croatia in a unique scheme in which Muslim detainees could “buy” their freedom in exchange for a promise to depart Herceg-Bosna (and BiH) altogether.
- They made extensive, “nearly systematic”, use of detainees to perform forced labour on dangerous confrontation lines.¹⁰³⁶

335. The Accused were the architects and leading implementers of the common criminal purpose that is at the heart of this case:

- Prlić was at the highest level of the JCE and was a key figure in setting the strategy for implementing the common purpose, including HVO military

¹⁰³² Judgement, Vol.4, para.64.

¹⁰³³ E.g. Judgement, Vol.3, paras.1523-1524, 1526-1529, 1536-1544, 1546-1549, 1551-1552, 1554-1556, 1557, 1559-1562, 1564-1566, 1568-1591, 1593-1594, 1596-1601, 1606-1610, 1613-1614, 1616-1617; Vol.4, paras.127-128, 141, 144, 147-148, 176, 278, 288, 331-332, 341-342, 349, 354, 362-363, 377, 381-383, 431, 450, 561-562, 582, 586, 595, 597, 692-693, 695, 699, 709-710, 717-718, 728-730, 743, 749-750, 761, 767, 820, 853, 922-923, 937-938, 945, 1006, 1101, 1104, 1122, 1211.

¹⁰³⁴ E.g. Judgement, Vol.3, paras.1623-1643, 1647-1648, 1650-1655, 1657-1659, 1661-1671, 1674-1679, 1681-1683; Vol.4, paras.130, 135, 144, 169-170, 176, 278, 288, 332-333, 349, 358, 431, 438-448, 450, 635, 638, 644, 705-710, 718, 762-763, 776, 835-837, 842-845, 846-848, 853, 929, 933, 1009, 1010-1014, 1021. Pušić has not been held responsible for appropriation of property and plunder.

¹⁰³⁵ Judgement, Vol.4, para.1299. *See also* Vol.2, paras.1198-1200.

¹⁰³⁶ Judgement, Vol.4, para.66.

operations.¹⁰³⁷ Together with Croatian President Tudman, Croatian Defence Minister Šušak, HZHB President Boban and other top Croat leaders, Prlić was involved in the planning and establishment of the HZ(R)HB prior to the implementation of the common criminal purpose in mid-January 1993.¹⁰³⁸ He was therefore found to be one of the “principal” members of the JCE.¹⁰³⁹

- As head of the HVO Department of Defence,¹⁰⁴⁰ Stojić helped formulate the persecutory defence policy of the HZ(R)HB.¹⁰⁴¹ He was “one of the most important members of the JCE”¹⁰⁴² and served as the link between the civilian government and its armed forces.¹⁰⁴³
- Praljak was the Assistant Minister of Defence for Croatia and then the Commander of the HVO Main Staff.¹⁰⁴⁴ He was a conduit between Croatia and the HVO Government.¹⁰⁴⁵ As Commander of the HVO Main Staff, Praljak used the armed forces and MP to commit the crimes that formed part of the JCE.¹⁰⁴⁶ He was also “one of the most important members of the JCE.”¹⁰⁴⁷
- As Praljak’s predecessor as Chief of the HVO Main Staff,¹⁰⁴⁸ Petković planned or directed military operations in several locations where crimes were committed.¹⁰⁴⁹ He ordered and approved the campaign of arrests and mass detentions of Muslims as well as their use for forced labour, knowing many would be wounded or killed.¹⁰⁵⁰ He too was “one of the most important members of the JCE”.¹⁰⁵¹

¹⁰³⁷ *E.g.* Judgement, Vol.4, paras.90, 94, 96, 98, 100, 104, 111, 114.

¹⁰³⁸ *E.g.* Judgement, Vol.4, paras.81 (Mate Boban appointed Prlić head of the HVO Department of Finance on 25 May 1992), 82 (on 14 August 1992, Prlić was appointed President of the HVO HZHB).

¹⁰³⁹ Judgement, Vol.4, para.276.

¹⁰⁴⁰ Judgement, Vol.4, para.293.

¹⁰⁴¹ Judgement, Vol.4, para.298. *See also* Vol.4, paras.151-155, 337, 341-342, 348-349, 355-357, 363, 369-370, 372, 375, 378, 380-381, 395-396, 406-407, 415, 420, 423, 426-427, 429, 1220.

¹⁰⁴² Judgement, Vol.4, para.429.

¹⁰⁴³ Judgement, Vol.4, para.425.

¹⁰⁴⁴ Judgement, Vol.4, paras.457, 459.

¹⁰⁴⁵ Judgement, Vol.4, para.624.

¹⁰⁴⁶ Judgement, Vol.4, para.628.

¹⁰⁴⁷ Judgement, Vol.4, para.628.

¹⁰⁴⁸ Judgement, Vol.1, para.715; Vol.4, para.651.

¹⁰⁴⁹ *E.g.* Judgement, Vol.4, paras.691, 694, 696, 699, 708, 716, 765, 767, 815, 1220.

¹⁰⁵⁰ *E.g.* Judgement, Vol.4, paras.672, 737, 790-796, 800-802, 815.

¹⁰⁵¹ Judgement, Vol.4, para.818.

- Ćorić, as Chief of the MP Administration¹⁰⁵² and then Minister of the Interior of the HRHB,¹⁰⁵³ was one of the “architects” of the network of HVO detention centres¹⁰⁵⁴ that played a key role in the execution of the JCE.
- Pušić was essential to the exchange of prisoners and the execution of population movements.¹⁰⁵⁵ He was the link between the network of HVO detention centres and the most important members of the JCE.¹⁰⁵⁶

336. The Chamber sentenced Prlić to 25 years’ imprisonment, Stojić, Praljak, and Petković to 20 years’ imprisonment, Ćorić to 16 years’ imprisonment and Pušić to 10 years’ imprisonment.¹⁰⁵⁷ These sentences manifestly do not reflect the immensity and gravity of the crimes for which the Accused were found responsible and their contributions and involvement in them. They therefore fall outside the sentencing framework that was available to the Chamber in this case. Thus, the Chamber abused its discretion and erred in law.

337. This inadequacy of the sentences imposed is further confirmed by contemporary national practice in cases involving leaders charged with serious violations of international humanitarian law. It undermines the credibility of the Tribunal if its sentences are not in line with this national sentencing practice.

338. The Appeals Chamber must correct the Chamber’s error. It should revise the sentences imposed by the Chamber to imprisonment sentences of 40 years for Prlić, Stojić, Praljak, and Petković, 35 years for Ćorić, and 25 years for Pušić, irrespective of whether the Appeals Chamber grants the Prosecution’s other grounds of appeal.

B. The gravity of the crimes warrants an increase in the Accused’s sentences

339. The sentences are manifestly inadequate in light of the extreme gravity of the crimes committed by the Accused. In particular, the Chamber’s sentences fail to adequately reflect the scale and the planned and systematic nature of the crimes as well as the gravity of a unique set of crimes devised and utilised by the Accused to achieve their criminal purpose: the siege of Mostar, the highly organised deportation system and the almost systematic use of forced labour at the front lines.

¹⁰⁵² Judgement, Vol.4, para.861.

¹⁰⁵³ Judgement, Vol.4, para.861.

¹⁰⁵⁴ Judgement, Vol.4, para.982.

¹⁰⁵⁵ Judgement, Vol.4, para.1202.

¹⁰⁵⁶ Judgement, Vol.4, para.1209.

¹⁰⁵⁷ Judgement, Vol.4, Disposition, pp.430-431.

1. The scale as well as the planned and systematic implementation of the crimes makes them particularly grave

340. The Chamber acknowledged the scale and brutality of the crimes, their “extreme” gravity, their widespread, systematic and discriminatory nature, and their devastating impact upon the lives of thousands of victims, who were often particularly vulnerable.¹⁰⁵⁸ However, it failed to give these factors sufficient weight.

341. The Chamber’s cursory sentencing analysis minimised the seriousness and impact of the 25 types of crimes against humanity, war crimes and grave breaches of the Geneva Conventions committed in the tens of thousands of individual instances of persecution, forcible eviction, murder, rape, sexual assault, terror, attacks on civilians, mistreatment, imprisonment, forced labour, use of human shields, theft and destruction of property and religious sites for which these Accused are responsible.¹⁰⁵⁹

342. To reach their goal—Croatian political and military control over the territory of Herceg-Bosna by modifying the ethnic composition of Provinces 3, 8 and 10 of the Vance-Owen Plan¹⁰⁶⁰—the JCE members conceived of and implemented a plan to expel the Muslim population from Herceg-Bosna. They implemented their plan between mid-January 1993 and April 1994.¹⁰⁶¹ It encompassed the commission of 21 types of JCE1 crimes against humanity, war crimes, and grave breaches of the Geneva Conventions in eight municipalities, namely:

- Persecutions (Count 1);
- Deportation (Count 6), unlawful deportation of a civilian (Count 7), inhumane acts (forcible transfer) (Count 8) and unlawful transfer of a civilian (Count 9);
- Murder (Count 2) and wilful killing (Count 3) during the HVO attacks and as a result of forced labour or use as human shields;
- Imprisonment (Count 10) and unlawful confinement of a civilian (Count 11);

¹⁰⁵⁸ Judgement, Vol.4, paras.1297-1306.

¹⁰⁵⁹ *E.g.* Judgement, Vol.4, paras.1297, 1299.

¹⁰⁶⁰ Judgement, Vol.4, paras.24, 41, 43-44, 65.

¹⁰⁶¹ Judgement, Vol.4, paras.44-65. *See also* Vol.4, paras.1218, 1220-1230, 1298. Not all Accused were found to be JCE members through this full period: Prlić, Petković and Čorić were members of the JCE from mid-January 1993 to April 1994 (*see* Judgement, Vol.4, paras.44, 65, 1225, 1230). Stojić was a member of the JCE from mid-January 1993 to 15 November 1993 (*see* Judgement, Vol.4, paras.44, 425, 1227, 1230). Praljak was a member of the JCE from mid-January 1993 to 9 November 1993 (*see* Judgement, Vol.4, paras.44, 459, 624, 1228, 1230). Pušić was a member of the JCE from April 1993 until April 1994 (*see* Judgement, Vol.4, paras.65, 1202, 1229-1230).

- Inhumane acts (Count 15), inhuman treatment (Count 16) and cruel treatment (Count 17) during the eviction operations, detention and when using detainees for forced labour;
- Inhumane acts (Count 12), inhuman treatment (Count 13) and cruel treatment (Count 14) (conditions of confinement);
- Widespread and nearly systematic use of detainees on the front lines for forced labour or to serve as human shields (Count 18);
- Extensive destruction (Count 19) and wanton destruction (Count 20) during the HVO attacks and eviction operations;
- Destruction or wilful damage to institutions dedicated to religion or education (Count 21);
- Illegal attacks upon civilians (Count 24); and
- Unlawful infliction of terror on civilians (Count 25).¹⁰⁶²

343. Using the political and military apparatus of the HZ(R)HB,¹⁰⁶³ the JCE members implemented the common purpose in stages.¹⁰⁶⁴ Only a few weeks after the Vance-Owen Plan was proposed, Prlić issued his January 1993 ultimatum demanding that the ABiH submit to the HVO in the areas considered Croatian according to the HVO interpretation of the Plan.¹⁰⁶⁵ After the ultimatum expired in mid-January 1993, HVO armed forces took control of Gornji Vakuf.¹⁰⁶⁶ Prlić approved a similar ultimatum in April 1993,¹⁰⁶⁷ and immediately after its expiry HVO forces took control of Prozor¹⁰⁶⁸ and parts of Jablanica.¹⁰⁶⁹ These HVO operations followed a similar pattern in which crimes were committed systematically pursuant to a preconceived plan. To expel Muslims from HZ(R)HB, JCE members used HVO forces to:

- Shell the towns and villages of these municipalities (killing civilians in Duša, Gornji Vakuf Municipality);
- Forcibly remove the Muslim population;

¹⁰⁶² Judgement, Vol.4, paras.66-68.

¹⁰⁶³ Judgement, Vol.4, paras.41, 1232.

¹⁰⁶⁴ Judgement, Vol.4, para.45.

¹⁰⁶⁵ Judgement, Vol.4, paras.125, 131, 142, 146, 271, 553, 556, 1220, 1315.

¹⁰⁶⁶ Judgement, Vol.4, para.45.

¹⁰⁶⁷ Judgement, Vol.4, paras.138-142, 146-147, 271, 1220, 1315.

- Destroy Muslim houses and property to prevent Muslims from returning;
- Arrest and detain Muslims *en masse*, including those not belonging to armed forces (and even children, women and elderly); and
- Subject many to inhuman detention conditions.¹⁰⁷⁰

344. During the summer and autumn of 1993, HVO eviction operations in Čapljina¹⁰⁷¹ and Stolac¹⁰⁷² Municipalities followed a similar pattern. The eviction campaign was so frighteningly effective that by October/November 1993, none of Stolac's 8,000 Muslim inhabitants remained.¹⁰⁷³

345. As part of a military operation launched against the ABiH in Mostar on 9 May 1993, the HVO initiated its campaign to evict the Muslim population of West Mostar, detaining some 1,500 to 2,500 Muslim inhabitants at the Heliodrom for several days.¹⁰⁷⁴ The HVO continued to conduct these eviction operations in waves, in a systematic, orchestrated and organised manner until February 1994.¹⁰⁷⁵ As in the other HVO-controlled areas, expulsions were characterised by repetitive violence against Muslims.¹⁰⁷⁶ The HVO forces expelled the Muslims of West Mostar into the East Mostar enclave and/or arrested and detained them, often under dreadful conditions, and severely mistreated them.¹⁰⁷⁷ Their apartments were allocated to HVO soldiers, members of the MP and Croatian families.¹⁰⁷⁸ This practice, in part validated by Prlić's decree of 6 July 1993, made the Muslim's return to West Mostar impossible.¹⁰⁷⁹

¹⁰⁶⁸ Judgement, Vol.4, para.47.

¹⁰⁶⁹ Judgement, Vol.4, paras.46, 338.

¹⁰⁷⁰ Judgement, Vol.4, paras.45-48, 65, 128, 131, 134, 143-144, 146-147, 331-335, 338, 341-342, 561-562, 571-572, 692-693, 695, 704, 708, 717-718, 922, 1099.

¹⁰⁷¹ Judgement, Vol.4, para.377; *see also e.g.* Vol.2, paras.2097, 2161, 2174, 2178, 2186; Vol.3, paras.643, 645-646.

¹⁰⁷² Judgement, Vol.4, para.377; *see also e.g.* Vol.2, paras.1924, 1973, 1962, 1976-1977, 1980-1982, 1989-1991, 2001-2004, 2010-2012; Vol.3, paras.643, 645-646.

¹⁰⁷³ Judgement, Vol.2, paras.1888, 2034; Vol.4, para.1299.

¹⁰⁷⁴ Judgement, Vol.4, paras.56-57, 347, 417.

¹⁰⁷⁵ Judgement, Vol.4, paras.161, 166, 171, 347, 349, 352, 356, 733, 929; Vol.3, paras.782-783.

¹⁰⁷⁶ Judgement, Vol.4, paras.161, 166, 171, 347, 417, 733-734, 807, 923, 929; Vol.3, para.782.

¹⁰⁷⁷ Judgement, Vol.4, paras.56-57, 161, 347, 352, 356-357, 925, 927, 929, 952, 1111, 1114.

¹⁰⁷⁸ Judgement, Vol.4, paras.170, 417, 926, 929.

¹⁰⁷⁹ Judgement, Vol.4, paras.169-170.

346. June 1993 marked the beginning of the siege of East Mostar and the JCE's expansion to the additional crimes of terror (count 25), unlawful attack against the besieged civilians (count 24),¹⁰⁸⁰ and destruction of religious property (count 21).¹⁰⁸¹

347. From 30 June 1993, the implementation of the JCE became even more widespread and violent. Following the Prlić-Stojić joint declaration of 30 June 1993 calling Croats to arms against Muslims and Petković's order of the same day to arrest and isolate the Muslim men of military age,¹⁰⁸² the HVO forces arrested thousands of Muslim men (including civilians) from the municipalities of Mostar, Stolac, Čapljina, Ljubuški and Prozor.¹⁰⁸³ These Muslim men—as well as some women, children and elderly—were imprisoned within a unified network of HVO detention facilities located throughout Herceg-Bosna, including the Heliodrom, Vojno Detention Centre, Dretelj, Gabela and Ljubuški Prisons and Vitina-Otok Camp.¹⁰⁸⁴

348. The arrest and detention of thousands of Muslim men left the women, children and elderly alone and vulnerable.¹⁰⁸⁵ This set the stage for the HVO's violent campaign to evict the Muslim population from the municipalities of Stolac¹⁰⁸⁶ and Čapljina.¹⁰⁸⁷

349. The conditions in the HVO detention facilities ranged from very difficult to horrific.¹⁰⁸⁸ Many detainees were held in overcrowded facilities and suffered from hunger, thirst, lack of hygiene and lack of access to medical treatment.¹⁰⁸⁹ Beatings and other forms of mistreatment were common.¹⁰⁹⁰ Many detainees were also injured or killed when forced to work on the front lines or used as human shields against the ABiH.¹⁰⁹¹

350. The situation in the HVO detention centres was so grave that it was brought to the attention of the UN Security Council, which, on 14 September 1993, expressed its

¹⁰⁸⁰ Judgement, Vol.4, para.59; *see also below* paras.357-364.

¹⁰⁸¹ Judgement, Vol.4, paras.342, 433.

¹⁰⁸² Judgement, Vol.4, paras.151-154, 294, 305, 737-738, 757-759

¹⁰⁸³ Judgement, Vol.4, paras.57, 154-155, 373-374, 737-738, 757-759, 955, 973, 984, 996, 1220.

¹⁰⁸⁴ Judgement, Vol.4, paras.890, fn.1677.

¹⁰⁸⁵ *E.g.* Judgement, Vol.4, para.1305.

¹⁰⁸⁶ Judgement, Vol.3, paras.881-884, 937-941.

¹⁰⁸⁷ Judgement, Vol.3, paras.800-802, 886-887, 943-944.

¹⁰⁸⁸ Judgement, Vol.4, paras.394, 252, 779.

¹⁰⁸⁹ Judgement, Vol.4, paras.224, 243, 253-255, 779, 784.

¹⁰⁹⁰ Judgement, Vol.4, paras.812, 955; *see also below* para.370.

¹⁰⁹¹ Judgement, Vol.4, paras.230, 236, 394, 790-796, 802, 807, 813, 908, 955.

“profound concern” over the camps.¹⁰⁹² It called for the ICRC to be given access to the HVO camps and called upon Croatia to use its influence and take immediate steps to bring this about.¹⁰⁹³

351. Using the network of detention facilities,¹⁰⁹⁴ the JCE members devised an elaborate system to forcibly deport the Muslim detainees (usually with their families) to third countries via Croatia or to ABiH-held territory by mistreating them so severely and/or subjecting them to such harsh detention conditions that they eventually “agreed” to leave Herceg-Bosna in exchange for being released.¹⁰⁹⁵

352. In addition to the 21 types of crimes which formed part of the common criminal purpose, the Accused were convicted for crimes which were committed as a foreseeable consequence of the implementation of the JCE.¹⁰⁹⁶

- Murder (Count 2) and wilful killing (Count 3) committed during or in connection with the eviction operations or detention¹⁰⁹⁷ in Jablanica¹⁰⁹⁸ and Mostar¹⁰⁹⁹ Municipalities, and Dretelj Prison;¹¹⁰⁰
- Rape (Count 4) and inhuman treatment (sexual assault) (Count 5)¹¹⁰¹ in Mostar¹¹⁰² and Vareš¹¹⁰³ Municipalities;
- Appropriation of property not justified by military necessity (Count 22) and plunder (Count 23)¹¹⁰⁴ in Gornji Vakuf,¹¹⁰⁵ Jablanica,¹¹⁰⁶ Mostar¹¹⁰⁷ and Vareš¹¹⁰⁸ Municipalities; and

¹⁰⁹² Exh.P5047, p.1.

¹⁰⁹³ Judgement, Vol.3, para.563; Exh.P5047.

¹⁰⁹⁴ Judgement, Vol.4, para.980.

¹⁰⁹⁵ Judgement, Vol.4, paras.57, 64, 233-234, 1220-1221; *see also below* para.370.

¹⁰⁹⁶ Judgement, Vol.4, paras.72-73. See fn.2, above, for the list of JCE3 convictions per Accused.

¹⁰⁹⁷ Judgement, Vol.4, paras.70, 72, 240, 250, 281, 433, 632, 736, 786, 822, 929, 989, 1008, 1187, 1213.

¹⁰⁹⁸ Judgement, Vol.4, para.283 (Prlić).

¹⁰⁹⁹ Judgement, Vol.4, para.284 (Prlić).

¹¹⁰⁰ Judgement, Vol.4, paras.1017-1018, 1020 (Ćorić).

¹¹⁰¹ Judgement, Vol.4, paras.70, 72, 281, 358, 433, 632, 736, 822, 1008, 1213.

¹¹⁰² Judgement, Vol.4, paras.274 (Prlić), 434-437 (Stojić), 826-830 (Petković), 1012-1014 (Ćorić).

¹¹⁰³ Judgement, Vol.4, paras.831-834 (Petković).

¹¹⁰⁴ Judgement, Vol.4, paras.70, 72, 135, 281, 358, 632, 710, 736, 763, 822, 1008, 1213.

¹¹⁰⁵ Judgement, Vol.4, paras.282 (Prlić), 438-439 (Stojić), 633-635 (Praljak), 835-837 (Petković), 1009 (Ćorić).

¹¹⁰⁶ Judgement, Vol.4, paras.283 (Prlić), 838-840 (Petković).

¹¹⁰⁷ Judgement, Vol.4, paras.284 (Prlić), 444-447 (Stojić), 636-638 (Praljak), 842-845 (Petković), 1010-1011 (Ćorić).

¹¹⁰⁸ Judgement, Vol.4, paras.846-848 (Petković).

- Destruction or wilful damage of religious buildings (Count 21) before June 1993¹¹⁰⁹ in Jablanica Municipality.¹¹¹⁰

353. The crimes committed in furtherance of the extremely violent ethnic cleansing campaign are also of severe gravity. The Chamber, however, failed to consider this. It referred to only a few specific instances of the JCE3 crimes in its discussion of the particular vulnerability of the victims, but ignored many altogether.¹¹¹¹

354. The result of this ethnic cleansing campaign was profound demographic change in many parts of Herceg-Bosna. As the Chamber recognised, the Muslim populations of Stolac, Ljubuški and Čapljina Municipalities were decimated by September and October 1993, with almost 20,000 displaced. Their populations decreased from 8,093 to zero in Stolac, from 2,381 to 826 in Ljubuški, and from 14,085 to 3,852 in Čapljina.¹¹¹² During the same period the number of Croats entering those municipalities increased from 1,524 to 6,135 (Ljubuški) and 1,436 to 9,098 (Čapljina).¹¹¹³ Between late May and late August 1993, the population of East Mostar rose from 20,000 to 55,000 as a result of HVO operation to evict Muslims from West Mostar, Stolac and Čapljina.¹¹¹⁴ On 28 August 1993, the HVO removed at least 2,500 Muslims from the Municipality of Prozor.¹¹¹⁵

355. The Chamber's sentences do not reflect the massive scale of the crimes through which this demographic change was achieved throughout much of Herceg-Bosna.

2. The siege of East Mostar and the terrorisation of its population make the crimes there particularly grave

356. The terrorisation of the population of East Mostar alone warrants significantly higher sentences. While the Chamber referred briefly and by way of example to the crimes in East Mostar in its sentencing discussion,¹¹¹⁶ it failed to analyse their inherent gravity or give them proper weight.

¹¹⁰⁹ Judgement, Vol.4, paras.73, 148, 342, 433, 632, 718, 822, 1008, 1213.

¹¹¹⁰ Judgement, Vol.4, paras.283 (Prlić), 850-852 (Petković).

¹¹¹¹ Judgement Vol.4, para.1305. Vol.4, para.1298 discusses only the gravity of the JCE1 crimes.

¹¹¹² Judgement, Vol.4, paras.57, 1299. *See also* IC833, IC834; Exh.P9851 (confidential); T.31464-31477.

¹¹¹³ IC833, IC834; [REDACTED]; T.31462-31472. *See also* Judgement, Vol.4, paras.41, 43.

¹¹¹⁴ Judgement, Vol.2, paras.1199-1200; Vol.4, para.1299.

¹¹¹⁵ Judgement, Vol.2, para.277.

¹¹¹⁶ Judgement, Vol.3, paras.1299 (last two lines), 1304, 1305 (last three lines).

357. The HVO besieged East Mostar and terrorised the Muslim civilians trapped in this narrow and densely-populated enclave from June 1993 to March 1994.¹¹¹⁷ During these 10 months, the HVO subjected them to intense, daily and uninterrupted shelling and sniping. This resulted in the death and injury of hundreds of persons, caused substantial damage (including to numerous homes, the Old Bridge, 10 mosques, and the only hospital),¹¹¹⁸ and prevented the civilian population from carrying out activities indispensable to its survival.¹¹¹⁹

358. The brutality of the Mostar siege is graphically depicted in the video documentary made by BBC journalist Jeremy Bowen who was present in East Mostar in August and September 1993,¹¹²⁰ on which the Chamber relied.¹¹²¹

359. According to Witness DW, East Mostar received on average between 20 and 100 shelling impacts from HVO positions per day.¹¹²² The HVO mainly used mortars, tanks, rocket launchers, anti-aircraft weapons and guns, and machine-guns. They also used infantry weapons and had small aeroplanes which dropped shells or bombs.¹¹²³

360. As a result, the civilian population lived for months under constant shelling and gunfire and the ever-present threat of being killed or wounded.¹¹²⁴ As Bowen put it, one could be “killed or maimed at any time on any street corner”.¹¹²⁵ Indeed, the HVO gunfire and shelling killed and injured hundreds, mainly women, children and elderly. The records of East Mostar Hospital document that out of the 1,037 patients admitted between 15 June and 18 August 1993, 832 (80%) were treated for injuries caused by bullets or explosions; out of the 1,004 patients admitted between 18 August and 13 October 1993, 808 were treated for the same types of injuries.¹¹²⁶ Between 6

¹¹¹⁷ Judgement, Vol.3, paras.1689, 1691; Vol.2, paras.1016, 1378; Vol.4, para.740. East Mostar encompassed the part of Mostar located on the left bank of the Neretva River and a narrow strip of territory on the right bank, between the front line and the riverside. This strip included notably the Donja Mahala and Černica neighbourhoods (Judgement, Vol.2, para.992).

¹¹¹⁸ Judgement, Vol.3, para.1689; Vol.2, paras.1018, 1378; Vol.4, paras.59, 173, 582, 743, 937, 939, 1304-1305; *see also* Vol.2, paras.996, 1000, 1015, 1377.

¹¹¹⁹ Judgement, Vol.3, para.1689.

¹¹²⁰ Exh.P6365.

¹¹²¹ Judgement, Vol.2, paras.981, 1015, 1016, 1038, 1184, 1189, 1200, 1252, 1253, 1288, 1356.

¹¹²² Judgement, Vol.2, para.1000.

¹¹²³ Judgement, Vol.2, para.997.

¹¹²⁴ Judgement, Vol.3, para.1689; *see also* Vol.2, para.1015; Vol.4, para.582.

¹¹²⁵ Judgement, Vol.2, para.1016.

¹¹²⁶ Judgement, Vol.2, para.1016.

and 16 October 1993 alone, 23 persons were admitted who were injured by HVO sniper fire, five of whom died.¹¹²⁷

361. By the end of August 1993, some 55,000 people were besieged in East Mostar, suffering in the increasingly overcrowded conditions.¹¹²⁸ Despite full knowledge of these conditions, the HVO exacerbated the situation¹¹²⁹ by blocking or hindering the provision of humanitarian aid and access by international organisations.¹¹³⁰ As a result, during some 10 months, East Mostar inhabitants:

- Generally ate only once a day and in insufficient quantities;¹¹³¹
- Had insufficient access to electricity and drinking water (in particular, during the hot and dry summer of 1993 there was no running water or electricity),¹¹³² which caused several cases of typhoid fever;¹¹³³
- Lacked medicine and adequate medical care (the sanitary conditions at the East Mostar Hospital were “horrendous” and surgery had to be performed by candlelight during electricity and gas shortages).¹¹³⁴

As Witness DZ concluded, “[s]tarving the population was important leverage to remove them”.¹¹³⁵

362. The types of victims targeted by the Accused increase the gravity of the Accused’s crimes. HVO snipers targeted civilians, including women, children and elderly, who were going about their daily business as well as firefighters assisting the population.¹¹³⁶ Thousands of the civilians trapped in besieged East Mostar had already experienced the trauma of being brutally expelled by HVO forces from their homes in West Mostar or elsewhere.¹¹³⁷

¹¹²⁷ Judgement, Vol.2, para.1184.

¹¹²⁸ Judgement, Vol.4, para.1299; Vol.3, para.1691; Vol.2, para.1200 (20,000 persons lived in East Mostar by the end of May 1993; 30,000 at the end of June 1993; 35,000 by 18 July 1993 to reach 55,000 by the end of August 1993. The number remained stable at least until mid-November 1993).

¹¹²⁹ Judgement, Vol.2, paras.1196-1197, 1378; Vol.4, paras.940, 944.

¹¹³⁰ Judgement, Vol.3, para.1691; Vol.2, paras.1202, 1228, 1244; Vol.4, paras.59, 183-185, 372, 587 (the HVO completely blocked any access of humanitarian convoys to East Mostar during almost two months in the summer of 1993 and again in winter, in December 1993), 939.

¹¹³¹ Judgement, Vol.2, paras.1201, 1204.

¹¹³² Judgement, Vol.2, paras.1205-1208.

¹¹³³ Judgement, Vol.2, para.1219.

¹¹³⁴ Judgement, Vol.2, paras.1219-1221, 1223; Vol.4, para.59.

¹¹³⁵ Judgement, Vol.2, para.1228; *see also* Vol.4, paras.362-363.

¹¹³⁶ Judgement, Vol.3, para.1689; Vol.2, paras.1020, 1176, 1188, 1194; Vol.4, paras.366, 369.

¹¹³⁷ Judgement, Vol.3, para.1691; Vol.4, para.1304; Vol.2, para.1199; *see also* Vol.2, paras.815, 818, 866, 872, 876, 897, 900, 919-920, 977, 981, 985-986.

363. Everyone was a target. For instance:

- At the end of September 1993, Damir Katica, 12 years old, Neno Mačkić, 14, and Ibrahim Dedović, 13, were going from Damir's residence to the shelter where his family had taken refuge from HVO shelling in Donja Mahala. To do so, they had to cross an exposed section of the street which was targeted by HVO snipers so often that a warning sign had been placed. Ibrahim managed to cross without being shot, but as soon as Neno and Damir started to run across it, an HVO sniper shot Neno in the left forearm and Damir in the stomach. A second later, another HVO sniper shot Neno in the hip, causing him to collapse on the ground. While Damir was trying to drag him to a sheltered area, an HVO sniper bullet whistled above his head and, immediately after, another bullet grazed his left forearm. Both children were later transported to East Mostar Hospital for surgery.¹¹³⁸
- On 2 February 1994, an HVO sniper shot and killed eight year old Orhan Beriša while he ran from the entrance of the building in which he was playing to a nearby stairway.¹¹³⁹

364. The HVO targeting of firefighters further illustrates the malicious nature of HVO sniping. First, the HVO set homes on fire with incendiary bullets. Then, as soon as a fire truck would head off to the burning house, HVO snipers and anti-aircraft guns targeted it. HVO forces continued targeting the fire truck at the scene of the fire, thereby making the firefighters' work much more dangerous and difficult.¹¹⁴⁰ Several firefighters were killed or wounded while on duty.¹¹⁴¹ For instance:

- In September 1993, while four firefighters were battling a fire that had engulfed a house, the HVO shot in their direction, forcing them to continue fighting the fire from inside the house. The house was then targeted by mortar shells which exploded all around, forcing the firefighters to leave the scene. While the fire truck was on its way back to the fire station, and 50 to 150 meters from the burning house, HVO snipers targeted the truck and opened fire three or four times in intervals of a few seconds. The shots first hit the

¹¹³⁸ Judgement, Vol.2, paras.1110-1112, 1121-1124 (Sniping Incident No.9).

¹¹³⁹ Judgement, Vol.2, paras.1154-1155, 1160-1163 (Sniping Incident No.13).

¹¹⁴⁰ Judgement, Vol.2, paras.1028-1029; *see also* Vol.2, para.1192.

¹¹⁴¹ Judgement, Vol.2, para.1190.

water tank and then the truck cab, wounding the driver at the back of his head.¹¹⁴²

- On 29 September 1993, when Witness DB left the fire station in a firefighter uniform to assist Refik Šarić (wearing civilian clothing), who had been hit in the hand by a sniper at about 15 metres from the fire station, he was shot by HVO snipers in the right shoulder blade.¹¹⁴³
- On 1 March 1994, HVO sniper fire killed Uzeir Jugo, a fire brigade driver, while he was repairing the tyre of a red fire truck parked on the street in front of the fire station. The sniper continued shooting as the firefighters came out of the station to help the victim.¹¹⁴⁴

365. While the siege of Mostar did not last as long as the siege of Sarajevo, the humanitarian situation was described as worse. UN Military Observer Finlayson explained:

The conditions for the people on west side was probably better than in Sarajevo. However, the people on the east side, due to the sheer number in such a small area, was worse—was worse both in the humanitarian side, in food side, and—and because a condensed area and the number of impacts. And when I say the number of impacts compared with—with Sarajevo, the per metre—I know I looked at it a couple of times and I can't recall the figure, but the number of times per square kilometre, rather, rounds per day or whatever was—was significantly more over much of the time in Mostar.¹¹⁴⁵

366. BBC journalist Bowen described Mostar as “the most devastated city in the former Yugoslavia, worse than Sarajevo or Vukovar”.¹¹⁴⁶ The Chief of UN Civilian Affairs, Cedric Thornberry, confirmed that Mostar “was in a worse condition, and that meant, *inter alia*, for utilities, water, electricity. Much worse than anything than I had seen in Sarajevo, for example, or in Vukovar.”¹¹⁴⁷

367. In light of this terror, the sentences imposed by the Chamber—ranging from 10 to 25 years’ imprisonment—clearly fall outside the range of what is reasonable.¹¹⁴⁸

¹¹⁴² Judgement, Vol.2, paras.1091, 1096-1099 (Sniping Incident No.7).

¹¹⁴³ Judgement, Vol.2, paras.1100, 1106-1109 (Sniping Incident No.8).

¹¹⁴⁴ Judgement, Vol.2, paras.1165-1166, 1171-1174 (Sniping Incident No.14).

¹¹⁴⁵ Finlayson, T.18052-18053.

¹¹⁴⁶ Exh.P6365, 0034:56-0035:05 (BBC documentary *Unfinished Business*).

¹¹⁴⁷ Thornberry, T.26328; Exh.P10041, para.57.

¹¹⁴⁸ See *Galić* AJ, paras.455-456.

368. In comparison, for their responsibility for the siege of Sarajevo and the terrorisation of its population, the Appeals Chamber imposed a life sentence and 29 years' imprisonment respectively on Stanislav Galić¹¹⁴⁹ and Dragomir Milošević,¹¹⁵⁰ the commanders of the Sarajevo Romanija Corps of the VRS. Unlike Galić and Milošević, here the Accused's crimes are not limited to those committed during a vicious and protracted siege, but include a much broader campaign of ethnic cleansing committed throughout Herceg-Bosna.

3. The highly organised system of deporting Muslim detainees and their families to third countries makes these crimes extremely grave

369. The Chamber found that “one of the key aspects” of the implementation of the common criminal purpose was the organised system of deportation of Muslim detainees and their families to third countries, via Croatia.¹¹⁵¹ Detainees could gain release from HVO detention centres by agreeing to take their families and leave Herceg-Bosna.¹¹⁵² The highly organised nature of this system, as well as the involvement of Croatian authorities in its implementation,¹¹⁵³ distinguish this case from others before the Tribunal and warrant higher sentences. The Chamber cursorily referred to this system of deportation in its sentencing analysis,¹¹⁵⁴ but failed to give it sufficient weight.

370. The Accused used the dire conditions in the detention centres to coerce Muslims to leave HZ(R)HB. The HVO detained Muslims in detention facilities, subjecting them to appalling detention conditions and brutal mistreatment while their wives, children and elders were left to fend for themselves against HVO armed forces. Then detainees were offered an opportunity to be released—on the condition that they agreed to leave the HVO-controlled territory altogether.¹¹⁵⁵ Moreover, detainees were sent to work on the front line, further coercing them to “consent” to their deportation to third countries.¹¹⁵⁶

¹¹⁴⁹ *Galić* AJ, Disposition, p.185.

¹¹⁵⁰ *Milošević* AJ, p.144

¹¹⁵¹ Judgement, Vol.4, para.999.

¹¹⁵² *E.g.* Judgement, Vol.2, paras.921-923.

¹¹⁵³ Judgement, Vol.4, para.1210.

¹¹⁵⁴ Judgement, Vol.4, para.1298.

¹¹⁵⁵ Judgement, Vol.4, paras.233-234, 999, 1132; Vol.3, para.787; Vol.2, para.1642.

¹¹⁵⁶ Judgement, Vol.4, paras.66, 999; *see also below* paras.374-375.

371. To be released, detainees were generally required to produce a letter of guarantee and/or a transit visa issued by Croatia.¹¹⁵⁷ Many detainees signed a form supplied by the HZ(R)HB ODPB (which was under Prlić's direct authority) indicating the country of destination.¹¹⁵⁸ The forms and transit visas were honoured by ODPB Croatia, which worked in cooperation with the HVO in facilitating the Muslim detainees' departure through Croatian territory. Some had to guarantee that they would leave the HVO-controlled territory with their families within 24 hours of their release,¹¹⁵⁹ while others had only 30 minutes to pack their belongings and gather their family members before being expelled to Croatia.¹¹⁶⁰ Ljubuški and Gabela Prisons were used as transit facilities to house detainees from other detention facilities awaiting deportation to third countries via Croatia.¹¹⁶¹

372. Thousands of Muslims were deported through this system.¹¹⁶² For instance, in July, August, October and November 1993, several hundred Heliodrom detainees were released on the condition that they leave BiH with their families to third countries via Croatia.¹¹⁶³ On 18-19 July 1993, 2,500 Heliodrom detainees were deported to Croatia.¹¹⁶⁴ In August 1993, hundreds of detainees from the Heliodrom, Dretelj, Gabela and Ljubuški Prisons as well as Vitina-Otok Camp were released and deported to third countries via Croatia pursuant to an order by Čorić.¹¹⁶⁵ Muslim detainees continued to be deported as the HVO implemented Boban's decision of 10 December 1993 to close all HVO detention facilities. Within three weeks 743 more Muslim detainees were deported to third countries.¹¹⁶⁶

373. It is settled law that the vulnerability of the victims is a factor when assessing the gravity of the crime.¹¹⁶⁷ Deportation is a more serious offence than forcible transfer because it requires displacement of the victims across a *de jure* or *de facto*

¹¹⁵⁷ Judgement, Vol.2, paras.1446-1447, 1870-1876; Vol.3, paras.140, 189, 273, 804-805; Vol.4, paras.912, 946-948, 997; *see also* Vol.1, para.911.

¹¹⁵⁸ Judgement, Vol.4, paras.233, 248-249, 1221; Vol.2, para.1642.

¹¹⁵⁹ Judgement, Vol.4, paras.912, 946-948; Vol.2, paras.1870-1876; Vol.3, paras.189, 793, 807.

¹¹⁶⁰ Judgement, Vol.3, para.786; Vol.2, para.1642.

¹¹⁶¹ Judgement, Vol.2, paras.1653, 1806; Vol.3, paras.158, 272; Vol.4, paras.254, 1179.

¹¹⁶² *E.g.* Judgement, Vol.2, paras.1873-1876; Vol.3, paras.145, 270, 272-274, 786, 790, 793, 798, 804, 807.

¹¹⁶³ Judgement, Vol.4, para.1159; Vol.2, paras.1643-1644, 1650.

¹¹⁶⁴ Judgement, Vol.4, paras.234-235; Vol.2, para.1648.

¹¹⁶⁵ Judgement, Vol.4, paras.912, 946-948, 997, 1178-1179; Vol.2, paras.1870-1876.

¹¹⁶⁶ Judgement, Vol.4, para.1131; *see also* Vol.4, paras.1160-1161; Vol.2, paras.1654-1655; Vol.3, para.273. Boban's order to close the HVO prisons, itself the result of condemnation by the UN Security Council (Exh.P5047), was carried out by this systematic deportation of Muslim detainees.

¹¹⁶⁷ *Mrkšić* AJ, para.400; *Blaškić* AJ, para.683; *Kunarac* AJ, para.352.

border,¹¹⁶⁸ rendering the victims more vulnerable than those forcibly displaced within their own State. The Chamber failed to give this particular vulnerability sufficient weight.

4. The institutional use of detainees on the front lines makes these crimes exceptionally grave

374. The JCE members used detainees to perform unlawful labour on dangerous front lines on an unprecedented scale, resulting in many deaths and injuries. This practice was not simply employed opportunistically by low-level individuals, but rather was found by the Chamber to be “nearly systematic”.¹¹⁶⁹ The Chamber should have given more weight to this uniquely cruel feature of the JCE,¹¹⁷⁰ which warrants higher sentences.

375. For 10 months—between May 1993 and March 1994—the HVO used Muslim detainees at the front lines to perform unlawful labour or used them as human shields.¹¹⁷¹ The detainees had to build or repair military fortifications and shelters, dig trenches, or collect the bodies of soldiers.¹¹⁷² In one incident in Mostar, Heliodrom prisoners were forced to wear HVO uniforms and carry fake wooden weapons to draw fire away from HVO soldiers.¹¹⁷³ As a result, prisoners were, expectedly, killed or injured, which formed part of the JCE members’ plan.¹¹⁷⁴

C. The form and degree of participation of each Accused warrant higher sentences

376. This is a leadership case. Each of the six Accused “played a key role in the commission of the crimes” in furtherance of the JCE.¹¹⁷⁵ The Accused were architects and leading implementers of the JCE. The Chamber acknowledged the magnitude of their respective involvement in the crimes, but imposed sentences that fall far short of reflecting it.

¹¹⁶⁸ *Popović* TJ, paras.893, 904.

¹¹⁶⁹ Judgement, Vol.4, para.66.

¹¹⁷⁰ *See* Judgement, Vol.4, para.1298.

¹¹⁷¹ Judgement, Vol.4, paras.66, 1146, 1298.

¹¹⁷² Judgement, Vol.3, paras.1501, 1503-1505, 1508-1511, 1513-1521; Vol.4, para.1146.

¹¹⁷³ Judgement, Vol.3, paras.677-679; Vol.4, paras.230, 1298.

¹¹⁷⁴ Judgement, Vol.3, paras.677-679, 1503-1504, 1513-1521; Vol.4, paras.66, 229-230, 394, 795, 1146.

¹¹⁷⁵ Judgement, Vol.4, paras.1317-1318 (Prlić), 1329-1330 (Stojić), 1341-1342 (Praljak), 1354-1355 (Petković), 1369-1370 (Čorić), 1381 (Pušić); *see also* Vol.4, paras.1219-1223.

377. The Accused were all convicted of committing crimes through a JCE—one of the most serious forms of liability.¹¹⁷⁶ Their respective functions and authority allowed them to collaboratively use and abuse¹¹⁷⁷ the HVO political and military apparatus, structures and personnel to implement key aspects of the JCE.¹¹⁷⁸ All were members of the JCE at the key period of its implementation, from April 1993 to November 1993.¹¹⁷⁹ None of the mitigating circumstances addressed by the Chamber justify such low sentences.¹¹⁸⁰

1. 25 years' imprisonment does not reflect Prlić's leadership role in the JCE as President of the HVO HZHB / President of the government of the HRHB

378. Prlić was one of the key JCE members through the entire period of the implementation of the common criminal purpose.¹¹⁸¹ He was involved in early planning of the establishment of a Croat-dominated Herceg-Bosna well before the implementation of the JCE began in mid-January 1993. After being appointed President of the HVO of the HZHB in August 1992,¹¹⁸² Prlić had direct discussions with Tuđman from 17 September 1992 onwards regarding HVO policy and was one of Tuđman's principal interlocutors for the discussion of HVO political and military strategy.¹¹⁸³

379. In October 1992, Prlić, along with Praljak, Stojić and Petković, met secretly with VRS Commander Ratko Mladić to discuss the division of BiH, the goal of re-creating the Banovina,¹¹⁸⁴ and the creation of a canton for the Muslims “so they have somewhere to move to”.¹¹⁸⁵

¹¹⁷⁶ See *Mrkšić* AJ, para.407; *Krnojelac* AJ, para.75.

¹¹⁷⁷ Judgement, Vol.4, paras.1318 (Prlić), 1330 (Stojić), 1342 (Praljak), 1355 (Petković), 1370 (Ćorić), 1381 (Pušić).

¹¹⁷⁸ Judgement, Vol.4, paras.41, 66, 1219-1223, 1232; see also Vol.4, paras.429, 628, 818.

¹¹⁷⁹ Judgement, Vol.4, paras.1219, 1225-1231. See above fn.1061.

¹¹⁸⁰ For all Accused, the Chamber found that their voluntary surrender and good behaviour while in pre-trial detention and on provisional release amounted to mitigating circumstances. It is well-established, however, that such circumstances are of only limited weight (*Kordić* AJ, para.1053; *Obrenović* SJ, para.138; *M.Nikolić* SJ, para.168; *Jokić* SAJ, para.62). The Chamber also found that Petković's preference for negotiations and the absence of any prior criminal record could only carry limited weight given the gravity of the crimes and the extent of his participation. For Prlić, the Chamber considered his role in the Dayton Agreement and in the post-conflict reconciliation in BiH as mitigating. This can, however, have only limited weight in light of his extensive role in the crimes. Judgement, Vol.4, paras.1319-1320, 1322 (Prlić), 1331-1332 (Stojić), 1344-1345 (Praljak), 1356-1357 (Petković), 1371-1372 (Ćorić), 1382-1383 (Pušić).

¹¹⁸¹ Judgement, Vol.4, paras.276, 1230, 1315.

¹¹⁸² Judgement, Vol.4, para.82.

¹¹⁸³ Judgement, Vol.4, paras.18, 119.

¹¹⁸⁴ Judgement, Vol.4, para.18. See also Exh.P11380, p.3.

¹¹⁸⁵ Judgement, Vol.4, para.18. See also Exh.P11376.

380. From the beginning of the JCE's implementation in mid-January 1993, Prlić used his extensive powers as President of the HVO HZHB, and then as the President of the government of the HRHB, to further the common criminal purpose, including at crucial moments in the JCE.¹¹⁸⁶ Between January 1993 and April 1994, he "continuously contributed to the JCE" by performing his functions within the HZ(R)HB.¹¹⁸⁷ He planned, facilitated and encouraged the HVO crimes in Gornji Vakuf, Prozor and Jablanica by drafting the January 1993 and April 1993 ultimatums.¹¹⁸⁸ His 30 June 1993 joint call to arms with Stojić contributed to the mass arrest and detention of thousands of Muslims and the commission of other crimes.¹¹⁸⁹

381. Prlić encouraged the crimes committed during the sniping and shelling campaign against the besieged population of East Mostar.¹¹⁹⁰ He coldly called them "rules of the game" and "just part of the routine for the HVO".¹¹⁹¹ He not only failed to act to improve the population's living conditions,¹¹⁹² but for at least seven months, from June to at least December 1993, he impeded the delivery of humanitarian aid to East Mostar, thereby intending to cause "great suffering" to this already vulnerable population.¹¹⁹³ When a representative of an international organisation informed Prlić that the commander of an HVO unit was a criminal and had inflicted violence on the Muslims of West Mostar, Prlić replied that he knew about those acts of violence but considered the commander to be useful.¹¹⁹⁴

382. In July 1993, Prlić planned and facilitated the deportation of 2,500 Heliodrom detainees despite knowing that an international organisation had qualified it as "ethnic cleansing".¹¹⁹⁵

383. Rather than using his powers to fight HVO crimes,¹¹⁹⁶ Prlić sought to minimise or conceal them¹¹⁹⁷ and spread fear, mistrust and hatred of Bosnian Muslims among the Bosnian Croat population.¹¹⁹⁸

¹¹⁸⁶ Judgement, Vol.4, paras.82, 121, 270-276, 1219, 1315, 1318.

¹¹⁸⁷ Judgement, Vol.4, para.1225.

¹¹⁸⁸ Judgement, Vol.4, para.271. *See also* paras.125-127, 131, 138, 146-147, 272, 282-283, 1220, 1315.

¹¹⁸⁹ Judgement, Vol.4, paras.57, 151-155, 272, 1220, 1315.

¹¹⁹⁰ Judgement, Vol.4, paras.176, 272, 1221, 1315.

¹¹⁹¹ Judgement, Vol.4, para.174.

¹¹⁹² Judgement, Vol.4, para.182.

¹¹⁹³ Judgement, Vol.4, paras.184-185, 272, 1315.

¹¹⁹⁴ Judgement, Vol.4, para.164.

¹¹⁹⁵ Judgement, Vol.4, paras.234-235; Vol.2, para.1648.

¹¹⁹⁶ Judgement, Vol.4, paras.272-274, 1316.

¹¹⁹⁷ Judgement, Vol.4, paras.259-263.

2. 20 years' imprisonment does not reflect Stojić's leadership role in the JCE as Head of the HZ(R)HB Defence Department

384. Stojić was one of the architects of the plan to establish Herceg-Bosna as an ethnic Croat entity in BiH before the JCE was implemented in mid-January 1993. For example, he was among the Herceg-Bosna delegation that secretly met with Mladić on 5 and 26 October 1992 to discuss collaboration and the division of BiH.¹¹⁹⁹

385. As the Head of the HZ(R)HB Defence Department, Stojić was one of the key JCE members¹²⁰⁰ from the JCE's inception in mid-January 1993 until 15 November 1993.¹²⁰¹ In this capacity Stojić exercised his powers to achieve the common criminal purpose.¹²⁰² He served as a link between the HVO civilian government and the HVO military component,¹²⁰³ over which he had effective control.¹²⁰⁴ He played a fundamental role in establishing and structuring the HVO armed forces, issued military-related government decisions through the military chain of command and issued direct orders to the armed forces and the MP.¹²⁰⁵

386. Stojić played a decisive role in initiating the implementation of the JCE by ordering the HVO Main Staff and MP Administration to carry out Prlić's January 1993 ultimatum.¹²⁰⁶ He planned, facilitated and/or organised violent operations, including those in West Mostar¹²⁰⁷ and the municipalities of Gornji Vakuf,¹²⁰⁸ Čapljina¹²⁰⁹ and Vareš.¹²¹⁰ On 30 June 1993, together with Prlić, he called on the Croatian population to take up arms against the "Muslim aggression", which led to the mass arrest and detention of thousands of Muslims.¹²¹¹

¹¹⁹⁸ Judgement, Vol.4, para.267.

¹¹⁹⁹ Judgement, Vol.4, para.18. *See also* Exhs.P11376; P11380.

¹²⁰⁰ Judgement, Vol.4, paras.429, 1328.

¹²⁰¹ Judgement, Vol.4, paras.1220, 1227, 1230.

¹²⁰² *E.g.* Judgement, Vol.4, paras.293, 335, 337, 348-349, 355-357, 372, 375, 378, 383, 420, 423, 425-427, 429, 1220-1221, 1328, 1330.

¹²⁰³ Judgement, Vol.4, paras.425, 429, 1328.

¹²⁰⁴ Judgement, Vol.4, paras.312, 320, 326, 365, 368-369, 414, 425-426, 1328, except for the KBs and its ATGs (Vol.4, paras.307, 326).

¹²⁰⁵ Judgement, Vol.4, paras.312, 320, 414-415.

¹²⁰⁶ Judgement, Vol.4, paras.44-45, 125-126, 304, 330, 334, 438-439, 1220.

¹²⁰⁷ Judgement, Vol.4, paras.348-349, 355-357, 426.

¹²⁰⁸ Judgement, Vol.4, paras.334-335, 337, 1220.

¹²⁰⁹ Judgement, Vol.4, paras.375, 378.

¹²¹⁰ Judgement, Vol.4, paras.380, 426.

¹²¹¹ Judgement, Vol.4, paras.151-155, 305, 373-374, 973, 984, 996, 1220, 1315; Exh.P3038. *See also* Vol.4, para.57.

387. Stojić was well aware of the suffering of the civilian population of East Mostar,¹²¹² yet he actively involved himself in the siege of East Mostar by facilitating the blockade of humanitarian aid.¹²¹³ He knew that Muslims were being illegally detained, mistreated, confined in poor conditions and killed, but did not take measures to stop these crimes.¹²¹⁴ In fact, Stojić made no serious effort to stop or prevent HVO crimes.¹²¹⁵ Instead, he heaped praise on those responsible for them, encouraging the commission of further crimes.¹²¹⁶

3. 20 years' imprisonment does not reflect Praljak's leadership role in the JCE as Croatian Deputy Minister of Defence, Major-General of the Croatian Army and Commander of the HVO Main Staff

388. Praljak was “one of the most important members of the JCE” and played a major role in the crimes through his functions and powers within the HV, the Croatian Ministry of Defence and the HVO.¹²¹⁷ He continuously abused his powers to achieve the common criminal purpose from the JCE's inception in mid-January 1993 until early November 1993.¹²¹⁸

389. Even before the common criminal purpose was formed, Praljak was a strong advocate of its ultimate goal and of the criminal means used to achieve it.¹²¹⁹ From April 1992 to November 1993, Praljak participated in meetings of the senior Croatian leadership at which Croatia's policy on BiH was discussed and defined with a view to furthering the violent ethnic cleansing campaign.¹²²⁰ In particular, during a 26 September 1992 meeting of the Defence and National Security Council of the Republic of Croatia in Zagreb with Tudman, referring to the Muslim refugees living in the territories inhabited by Croats, Praljak stated that “unless we evict those people from there, we will not have a majority there”.¹²²¹ In his capacity as Croatian Assistant Minister of Defence, Praljak met with Mladić on 5 and 26 October 1992 and discussed the partition of BiH.¹²²² Praljak stated, “[w]e're on a good path to compel

¹²¹² Judgement, Vol.4, paras.363, 369-370.

¹²¹³ Judgement, Vol.4, para.372.

¹²¹⁴ Judgement, Vol.4, paras.329, 375, 395-396, 406-407.

¹²¹⁵ Judgement, Vol.4, paras.414-415, 423, 427, 1328.

¹²¹⁶ Judgement, Vol.4, paras.381, 418-420, 427.

¹²¹⁷ Judgement, Vol.4, paras.628, 1342.

¹²¹⁸ Judgement, Vol.4, paras.44, 624-629, 1228, 1230, 1342.

¹²¹⁹ Judgement, Vol.4, paras.14, 43, 522-525.

¹²²⁰ Judgement, Vol.4, para.522.

¹²²¹ Judgement, Vol.4, para.522.

¹²²² Judgement, Vol.4, para.18; Exhs.P11376, P11380.

Alija [Izetbegović] to divide Bosnia.”¹²²³ He added, “it is in our interest that the Muslims get their own canton so that they have somewhere to move to.”¹²²⁴

390. Praljak was also a key figure in making decisions regarding HVO military operations and implementing the discriminatory and violent eviction campaign against the Muslims.¹²²⁵ While he had no *de jure* position within the HVO until 24 July 1993,¹²²⁶ he played an important role in the implementation of the JCE from the outset, in particular in Gornji Vakuf, Ljubuški, Prozor, Jablanica and Mostar Municipalities.¹²²⁷ For instance, Praljak participated in the drafting of Prlić’s January 1993 ultimatum¹²²⁸ and directed the subsequent military operations in Gornji Vakuf Municipality, which “unfolded in an atmosphere of extreme violence”.¹²²⁹

391. From 24 July 1993, as Commander of the HVO Main Staff and with effective control over all HVO armed forces,¹²³⁰ Praljak continued to plan and direct the violent eviction operations in the municipalities of Prozor,¹²³¹ Mostar (including the shelling and sniping campaign against the besieged population of East Mostar and the destruction of the Old Bridge)¹²³² and Vareš.¹²³³

392. Praljak made no serious effort to stop or prevent crimes.¹²³⁴ Rather, he encouraged the commission of more crimes. In particular, he concealed the HVO’s responsibility for the crimes in Stupni Do,¹²³⁵ and congratulated HVO troops for the combat waged in Mostar, “while knowing that the HVO members were committing crimes against the Muslims”.¹²³⁶ Similarly, he did not address the appalling detention conditions in HVO detention facilities or punish those who mistreated detainees. On the contrary, he turned a blind eye and argued that the management of the detention facilities did not fall under his competency.¹²³⁷ He also encouraged crimes through his own orders. For example, his order “to sort out the situation in Vareš showing no

¹²²³ Exh.P11380, pp.1-2.

¹²²⁴ Judgement, Vol.4, para.18; Exh.P11380, p.3.

¹²²⁵ Judgement, Vol.4, paras.525, 528, 530, 540, 544-545, 624, 1340.

¹²²⁶ Judgement, Vol.4, paras.459, 484.

¹²²⁷ E.g. Judgement, Vol.4, paras.470, 472, 477, 530, 540, 544-545, 566, 573, 624, 1340.

¹²²⁸ Judgement, Vol.4, paras.482, 553, 556.

¹²²⁹ Judgement, Vol.4, paras.558, 562, 635, 1220.

¹²³⁰ Judgement, Vol.4, paras.484, 494, 503, 506, 625.

¹²³¹ Judgement, Vol.4, paras.570-573, 625, 1340.

¹²³² Judgement, Vol.4, paras.579-581, 586, 620, 625, 638, 1340.

¹²³³ Judgement, Vol.4, paras.591-594, 597, 625, 1220, 1340.

¹²³⁴ Judgement, Vol.4, para.626.

¹²³⁵ Judgement, Vol.4, paras.61, 595-597, 621-623, 626, 1220.

¹²³⁶ Judgement, Vol.4, para.620.

¹²³⁷ Judgement, Vol.4, paras.611, 614.

mercy to anyone” with men who are “up [...] to the tasks” was understood as a blank cheque to act with brutality.¹²³⁸

393. Praljak served as a continuous link between the Croatian authorities, including JCE members Tudman and Šušak, and the HZ(R)HB to ensure Croat control over the HZ(R)HB territory and to implement the JCE.¹²³⁹ In his role as an intermediary between the Croatian and the HZ(R)HB leadership,¹²⁴⁰ he transmitted information, instructions and orders from the Croatian leadership to the HZ(R)HB government and HVO armed forces in furtherance of the common criminal purpose.¹²⁴¹ He also informed the Croatian leadership about the military situation in the field.¹²⁴² He facilitated securing Croatia’s logistic and military support for the HVO armed forces.¹²⁴³

4. 20 years’ imprisonment does not reflect Petković’s leadership role in the JCE as Chief/Deputy Commander of the HVO Main Staff

394. Formerly a career officer with the JNA and Croatian Army, Petković was one of the key JCE members¹²⁴⁴ from the JCE’s inception in mid-January 1993 until its end in April 1994.¹²⁴⁵

395. As Chief of the HVO Main Staff or Deputy Commander under Praljak and Ante Roso, Petković continuously abused his command and effective control over all HVO armed forces to achieve the common purpose, including at key moments of its implementation.¹²⁴⁶

396. For instance, in accordance with Prlić’s ultimatums, Petković planned, directed and/or facilitated the military attacks against Gornji Vakuf, Prozor and

¹²³⁸ Judgement, Vol.4, para.591. *But see* Vol.4, para.642-643 (the findings in this paragraph are challenged in Ground 1 of the Prosecution Appeal, *see above* paras.127-138, 158-159). *See also for another example*, Vol.4, para.579; Exh.P5365, p.2 (Praljak’s 24 September 1993 message to all the HVO troops congratulating them for the actions they carried out in Mostar); Exh.P5692, p.1 (where Praljak ordered HVO troops to have at “all costs” the Jablanica-Mostar route under control before the winter and to “inflict as many losses upon them as possible”).

¹²³⁹ Judgement, Vol.4, paras.530, 540, 545, 628, 1223, 1340; *see also* Vol.4, paras.520, 522-540, 595.

¹²⁴⁰ Judgement, Vol.4, paras.545, 624, 628. *See also* Vol.4, para.1223.

¹²⁴¹ Judgement, Vol.4, paras.534-545

¹²⁴² Judgement, Vol.4, para.538.

¹²⁴³ Judgement, Vol.4, paras.511, 523, 541-545, 624.

¹²⁴⁴ Judgement, Vol.4, paras.818, 1353.

¹²⁴⁵ Judgement, Vol.4, paras.44, 1225, 1230.

¹²⁴⁶ Judgement, Vol.4, paras.651-652, 679, 803, 814-819, 1219, 1353, 1355.

Jablanica Municipalities.¹²⁴⁷ Similarly, pursuant to Prlić's and Stojić's joint call of 30 June 1993 to take up arms, Petković ordered the arrest of all able-bodied Muslim men in the South-East OZ, including those not belonging to any armed force.¹²⁴⁸ Under his authority "the HVO proceeded with a widespread and massive campaign to arrest Muslim men" and to detain them in HVO camps.¹²⁴⁹

397. Petković planned the shelling of besieged East Mostar¹²⁵⁰ and the military operation resulting in the destruction of the Old Bridge.¹²⁵¹

398. He planned the military operations in Vareš Municipality¹²⁵² and participated in the sham investigation designed to conceal responsibility for the Stupni Do massacre.¹²⁵³ In particular, while he ordered HVO commander Ivica Rajić to launch an investigation into the events in Stupni Do, Petković informed him that the investigation order was not to be carried out and that its only purpose was to make UNPROFOR believe that the HVO was conducting an investigation.¹²⁵⁴

399. Petković then participated in "replacing" Rajić with the fictitious "Viktor Andrić" to mislead the international community about his replacement and to protect Rajić from the consequences of the HVO's crimes at Stupni Do.¹²⁵⁵ This cynical abuse of authority shows Petković's attitude towards crimes committed by HVO personnel.

400. In addition, Petković personally and repeatedly ordered and authorised the widespread use of detainees for forced labour at the front line.¹²⁵⁶

5. 16 years' imprisonment does not reflect Čorić's leadership role in the JCE as Chief of the MP Administration and HRHB Minister of Interior

401. Čorić played a major role in the commission of the crimes in furtherance of the JCE,¹²⁵⁷ first as the Chief of the MP Administration until 10 November 1993, then

¹²⁴⁷ Judgement, Vol.4, paras.693-699, 708, 710, 714-717, 721, 723, 810, 815, 836, 839, 851, 1220, 1353.

¹²⁴⁸ Judgement, Vol.4, paras.151-155, 272, 373-374, 737-738, 757-759, 815, 1220, 1353.

¹²⁴⁹ Judgement, Vol.4, para.737; *see also* paras.738, 757-759, 815, 984, 996.

¹²⁵⁰ Judgement, Vol.4, paras.740, 747, 750, 815.

¹²⁵¹ Judgement, Vol.4, para.756.

¹²⁵² Judgement, Vol.4, paras.767, 776, 815, 831, 846, 1353.

¹²⁵³ Judgement, Vol.4, paras.772, 774-777, 815, 1220.

¹²⁵⁴ Judgement, Vol.4, para.772; *see also* Vol.2, paras.480-484, 492.

¹²⁵⁵ Judgement, Vol.4, paras.774-777.

¹²⁵⁶ Judgement, Vol.4, paras.790-793, 796-798, 800-802, 811, 813, 815, 908, 1353.

¹²⁵⁷ Judgement, Vol.4, paras.1369-1370.

as Minister of Interior of the HRHB.¹²⁵⁸ He was a JCE member at all times, from its inception in mid-January 1993 to the end of its implementation in April 1994.¹²⁵⁹

402. Ćorić contributed to the JCE from the beginning of its implementation in Gornji Vakuf by sending units of the MP to take part in the military takeover and operations there.¹²⁶⁰ He continued providing MP units, notably in Mostar, where they participated in the eviction¹²⁶¹ and arrest¹²⁶² of Muslims from West Mostar, and in the HVO sniping and shelling campaign against the besieged population of East Mostar.¹²⁶³ Despite being aware of the unbearable living conditions in East Mostar, Ćorić contributed to the misery of the population by impeding the delivery of humanitarian aid.¹²⁶⁴

403. Rather than fighting crime, Ćorić created a climate of impunity and encouraged the commission of more crimes.¹²⁶⁵ Rather than condemning members of the MP for their participation in expelling Muslims from West Mostar, he rewarded them by consenting to them moving into the houses and apartments of those expelled.¹²⁶⁶ Ćorić ordered that crimes committed in Mostar by certain members of the *Vinko Škrobo* and *Benko Penavić* ATGs be disregarded, thus protecting the criminals.¹²⁶⁷ Ćorić's conduct in this regard is particularly egregious because the MP were the very group responsible for enforcing the law and preventing crime by HVO soldiers.

404. As of May 1993, Ćorić was one of the architects of the network of HVO detention facilities¹²⁶⁸ used to detain thousands of Muslims, and played a key role in its functioning until 10 November 1993.¹²⁶⁹ He repeatedly authorised the use of detainees for forced labour, notably at the front lines.¹²⁷⁰ Ćorić was responsible for

¹²⁵⁸ Judgement, Vol.4, paras.861, 1000.

¹²⁵⁹ Judgement, Vol.4, paras.1225, 1230.

¹²⁶⁰ Judgement, Vol.4, paras.919-923, 1000, 1005, 1220, 1367.

¹²⁶¹ Judgement, Vol.4, paras.925, 928, 945, 1000, 1005, 1012.

¹²⁶² Judgement, Vol.4, paras.945, 952, 1000.

¹²⁶³ Judgement, Vol.4, paras.936-938, 945, 1005, 1367.

¹²⁶⁴ Judgement, Vol.4, paras.944-945, 1003, 1368.

¹²⁶⁵ Judgement, Vol.4, paras.933, 1000, 1367.

¹²⁶⁶ Judgement, Vol.4, paras.929, 1011.

¹²⁶⁷ Judgement, Vol.4, paras.931, 933, 945, 1000, 1367.

¹²⁶⁸ Judgement, Vol.4, para.982; *see also* Vol.4, para.980.

¹²⁶⁹ Judgement, Vol.4, para.1001; *see also* Vol.4, paras.893-899, 916 (in particular, Ćorić established the Heliodrom and the Ljubuški Prison, their directors were directly subordinated to him and he was responsible for the security of the Muslims detained there.)

¹²⁷⁰ Judgement, Vol.4, paras.910, 916, 964, 977, 982, 1001; *see also* Vol.4, para.966.

providing security in several HVO detention facilities,¹²⁷¹ including the Heliodrom where detainees were taken by the dozens by Ćorić's MP and used for forced labour by the HVO armed forces on the front lines.¹²⁷² There, detainees were mistreated and forced to work under extremely dangerous conditions, during which dozens were wounded or killed.¹²⁷³ Ćorić intended that these crimes be committed.¹²⁷⁴

405. He played a key role in the arrest and detention of civilians, including by ordering the MP to arrest all conscripts who had not regularised their status following the Prlić-Stojić joint declaration of 30 June 1993.¹²⁷⁵

406. The HVO detention centres were a key staging area for the eventual deportation of Muslims out of Herceg-Bosna. By controlling HVO detention facilities, Ćorić and his MP played a central role in this deportation system, which was a key aspect of the JCE.¹²⁷⁶ In August 1993, Ćorić participated in establishing a procedure whereby detainees at the Heliodrom, Dretelj, Gabela and Ljubuški Prisons and Vitina-Otok Camp bought their release by agreeing to depart BiH, transit through Croatia and go to third countries.¹²⁷⁷ Hundreds of Muslim detainees and their families were deported in this way.¹²⁷⁸

407. Ćorić exercised his authority to move detainees from one HVO detention facility to another, including to transit centres where they had to wait to be expelled to ABiH-held territory or to third countries.¹²⁷⁹

408. In addition, Ćorić is responsible, under Article 7(3), for the crimes committed by his subordinates in Prozor in October 1992,¹²⁸⁰ a factor that the Chamber failed to take into account when assessing the form and degree of his responsibility.¹²⁸¹

¹²⁷¹ Judgement, Vol.4, paras.896-897, 899.

¹²⁷² Judgement, Vol.2, paras.1596-1599.

¹²⁷³ Judgement, Vol.2, paras.1600-1612; *see also* Vol.2, paras.1741-1757.

¹²⁷⁴ Judgement, Vol.4, paras.964-966.

¹²⁷⁵ Judgement, Vol.4, paras.953, 973, 984-986, 996, 1000-1001, 1367.

¹²⁷⁶ Judgement, Vol.4, paras.64, 66, 999, 1001; *see also above* para.201.

¹²⁷⁷ Judgement, Vol.4, paras.912, 946-948, 969-971, 981-982, 993-994, 997, 1001.

¹²⁷⁸ Judgement, Vol.3, para.274; *see also* Vol.2, paras.1643, 1648, 1650, 1654, 1878; Vol.3, paras.145, 270.

¹²⁷⁹ Judgement, Vol.4, paras.911, 979, 998, Vol.2, para.270.

¹²⁸⁰ Judgement, Vol.4, para.1251: Inhumane acts (Count 15); inhuman treatment (Count 16); cruel treatment (Count 17); extensive destruction of property, not justified by military necessity and carried out unlawfully and wantonly (Count 19); wanton destruction of cities, towns or villages, or devastation not justified by military necessity (Count 20) and plunder of public or private property (Count 23).

¹²⁸¹ Judgement, Vol.4, paras.1366-1370; *see also* Vol.4, para.1297.

6. 10 years' imprisonment does not reflect Pušić's important role as an HVO official in relation to prisoners and prisoner exchanges

409. Pušić played a major and increasingly significant role in executing the HVO policy towards Muslims and in implementing the JCE¹²⁸² from April 1993 until the end of the JCE's implementation in April 1994.¹²⁸³ He was the link between the network of HVO detention facilities and the most important JCE members.¹²⁸⁴ He organised the forcible displacement of Muslim detainees to third countries or to ABiH-held territory.¹²⁸⁵

410. In the exercise of his powers,¹²⁸⁶ Pušić played a key role in the detention and release of Muslim detainees,¹²⁸⁷ first as a member of the Department of Criminal Investigations of the MP Administration, then as a member of the Exchange Commission and subsequently as Chief of the Exchange Service and Head of the Commission for the HVO Prisons and Detention Centres.¹²⁸⁸

411. He was very active in the exchange of HVO and ABiH detainees,¹²⁸⁹ and had the authority to select those to be released, to propose exchanges and to organise them.¹²⁹⁰ His significant authority to represent the HVO before the international community and before the leadership of Croatia and BiH made him a key player in prisoner exchanges and release negotiations, and in the movement of people.¹²⁹¹ The Chamber found that Pušić exercised his authority to hinder and even paralyse the handling of humanitarian evacuation requests of Muslims in besieged East Mostar.¹²⁹²

412. Pušić participated in the functioning of HVO detention facilities,¹²⁹³ including the registration and classification of detainees on the basis of their status.¹²⁹⁴ Although Pušić regularly moved detainees within the HVO detention network, including to

¹²⁸² Judgement, Vol.4, paras.1093, 1204, 1381; *see also* Vol.4, paras.1050, 1081, 1157, 1202.

¹²⁸³ Judgement, Vol.4, paras.1029, 1032, 1063, 1229-1230.

¹²⁸⁴ Judgement, Vol.4, para.1209; *see also* Vol.4, paras.1093, 1131, 1221.

¹²⁸⁵ Judgement, Vol.4, paras.1184, 1209; *see also* Vol.4, paras.1166, 1178, 1180.

¹²⁸⁶ Judgement, Vol.4, para.1381.

¹²⁸⁷ Judgement, Vol.4, paras.1049, 1062, 1156-1157, 1166, 1202, 1204; *see also* Vol.4, paras.1040, 1109-1110, 1168, 1379.

¹²⁸⁸ Judgement, Vol.4, paras.1028-1032, 1060, 1071, 1081.

¹²⁸⁹ Judgement, Vol.4, para.1062; *see also* Vol.4, para.1060.

¹²⁹⁰ Judgement, Vol.4, para.1063.

¹²⁹¹ Judgement, Vol.4, paras.1081, 1202; *see also* Vol.4, paras.1070, 1073, 1075.

¹²⁹² Judgement, Vol.4, para.1122

¹²⁹³ Judgement, Vol.4, para.1054; *see also* Vol.4, para.1052.

¹²⁹⁴ Judgement, Vol.4, paras.1045-1046, 1135-1136, 1173, 1181, 1203.

transit centres when necessary for their deportation to a third country,¹²⁹⁵ he failed to do so to improve their detention conditions or prevent additional mistreatment.¹²⁹⁶ He repeatedly ordered and/or authorised the use of detainees at the front lines.¹²⁹⁷

413. His powers increased in December 1993¹²⁹⁸ when he used criminal means to implement Boban's decision of 10 December 1993 to close all HVO detention facilities.¹²⁹⁹ He issued numerous orders releasing Muslim detainees only for them to be deported to ABiH-held territory or to third countries, via Croatia.¹³⁰⁰ For instance, by the beginning of January 1994, 3,000 detainees had been released: 1,935 to ABiH-held territory and 743 to third countries. Between 18 January and March 1994, 1,017 Muslim detainees were exchanged.¹³⁰¹ Pušić not only organised these releases until the very last ones on 21 April 1994,¹³⁰² he also kept many Muslims in detention for several additional months as collateral to allow him to negotiate the release of HVO soldiers.¹³⁰³

414. Moreover, his role within the JCE was broader than his crucial contribution to detaining, exchanging and deporting Muslim detainees. For instance, on 26 May 1993, he participated in the forced displacement of at least 300 Muslim women, children, and elderly from West Mostar to East Mostar.¹³⁰⁴

415. Pušić sought to conceal the HVO's responsibility for the crimes committed in HVO detention facilities and during the forced displacement of the Muslim population.¹³⁰⁵ He suggested destroying the Helišćak archives.¹³⁰⁶

D. National sentencing practice confirms that the sentences imposed are manifestly insufficient

416. The ICTY was established to deal with serious violations of international humanitarian law. The establishment of the ICTY and the ICTR has prompted national authorities to also prosecute such serious cases at the domestic level. Since

¹²⁹⁵ Judgement, Vol.4, paras.1056, 1160, 1204; fn.2123.

¹²⁹⁶ Judgement, Vol.4, paras.1143, 1176, 1182, 1203, 1207.

¹²⁹⁷ Judgement, Vol.4, paras.1147-1151, 1203-1204; *see also* Vol.4, paras.1054, 1187, 1202, 1379.

¹²⁹⁸ Judgement, Vol.4, para.1050.

¹²⁹⁹ Judgement, Vol.4, paras.1092, 1126-1133, 1160, 1178, 1203, 1220.

¹³⁰⁰ Judgement, Vol.4, paras.1130, 1166, 1220.

¹³⁰¹ Judgement, Vol.4, para.1131; *see also* Vol.4, paras.1160-1166, 1178-1180, 1183-1184.

¹³⁰² Judgement, Vol.4, paras.1032, 1062-1063.

¹³⁰³ Judgement, Vol.4, para.1166; *see also* Vol.4, paras.1121, 1127.

¹³⁰⁴ Judgement, Vol.4, paras.1111-1112.

¹³⁰⁵ Judgement, Vol.4, paras.1201, 1207.

¹³⁰⁶ Judgement, Vol.4, para.1194.

the establishment of the ICTY, many national jurisdictions have therefore tried cases concerning such crimes.

417. The emerging sentencing practice from these national cases demonstrates that leaders who are found guilty of serious violations of international humanitarian law receive sentences at the top range of the Tribunal's sentencing framework. For instance, Peruvian,¹³⁰⁷ Argentinean,¹³⁰⁸ Canadian,¹³⁰⁹ US,¹³¹⁰ Finnish,¹³¹¹ Swiss,¹³¹² British,¹³¹³ French,¹³¹⁴ Spanish¹³¹⁵ and German¹³¹⁶ criminal courts have imposed

¹³⁰⁷ The Special Criminal Chamber of the Supreme Court of Peru sentenced the former President of Peru, Alberto Fujimori, to 25 years' imprisonment for the murder of 25 persons and the illegal detention of two persons as crimes against humanity: Sullivan, Aimee, *The Judgment Against Fujimori for Human Rights Violations*, American University International Law Review 25, no. 4 (2010), pp. 834-836.

¹³⁰⁸ For example, the Federal Criminal Tribunal No.1 of La Plata sentenced to life imprisonment Miguel Osvaldo Etchecolatz, Commissioner General of Police for the province of Buenos Aires and responsible for 21 clandestine detention camps, for the crimes against humanity of detention and torture of two persons and the murder of six others: *Prosecutor v. Miguel Osvaldo Etchecolatz*, Federal Criminal Tribunal No.1 of La Plata, Case No.2251/06, 19 September 2006.

The Federal Criminal Tribunal of Tucumán sentenced to life imprisonment the governor of Tucumán, Bussi, and Colonel Menéndez for the forced disappearance and murder of one politician as crimes against humanity: *Bussi y Menendez (Causa Vargas Aignasse s/ Secuestro y desaparicion)* Federal Criminal Tribunal of Tucumán, Case No.V-03/08, 28 August 2008.

The Federal Criminal Tribunal No.5 of Buenos Aires sentenced to life imprisonment Alfredo Ignacio Astiz, an Argentinean Navy officer, for 13 counts of premeditated murder, 18 counts of torture aggravated by the political persecution of the victim, 18 counts of aggravated unlawful deprivation of liberty and aggravated robbery, as crimes against humanity: *Alfredo Ignacio Astiz*, Federal Criminal Tribunal No.5 of Buenos Aires, Case No.1270 and higher, 26 October 2011.

¹³⁰⁹ The Quebec Superior Court sentenced Munyaneza, one of the leaders of the Interahamwe militia in Butare, to life imprisonment with no chance of parole for 25 years for two counts of genocide (intentional killing and causing serious mental/bodily harm), two counts of crimes against humanity (intentional killing and sexual violence) and three counts of war crimes (intentional killing, sexual violence, and pillage): *R. v. Munyaneza*, 2009 QCCS 2201 (CanLII) (Quebec Superior Court); *R. v. Munyaneza*, 2009 QCCS 4865 (CanLII) (Quebec Superior Court – Sentencing Judgement); The verdict and sentence were upheld on Appeal: *Munyaneza v. R.*, 2014 QCCA 906 (CanLII).

¹³¹⁰ The US District Court for the Southern District of Florida sentenced Charles "Chuckie" Taylor, the son of Liberia's ex-president Charles Taylor, to 97 years for six counts of torture and conspiracy to commit torture and one count of possession of a firearm while committing a violent crime: *US v. Roy M. Belfast (A/K/A Chuckie Taylor)*, United States District Court Southern District of Florida, Case No. 06-20758-CR-ALTONAGA(s)(s), Judgment in a Criminal Case, 9 January 2009; *US v. Roy M. Belfast (A/K/A Chuckie Taylor)*, United States Court of Appeals for the Eleventh Circuit, Appeal No. 09-10461-AA, 18 September 2009, p.74.

¹³¹¹ The Supreme Court of Finland sentenced Bazaramba, a former Rwandan pastor, to life imprisonment for genocide and murder of at least five persons: *The Prosecutor v. François Bazaramba*, Case No.R09/404, Porvoo District Court, 11 June 2010, pp.110-112.

¹³¹² The Geneva Criminal Court sentenced Erwin Sperisen to life imprisonment for his involvement in the extra-judicial killings of seven prisoners in 2006 in Guatemala while serving as Guatemalan Chief of Police between 2004 and 2007, *M. Erwin Sperisen*, Jugement du Tribunal Criminel, République et Canton de Genève, 6 June 2014, pp.128-129, 132.

¹³¹³ The UK Court of Appeal upheld the sentence of Anthony Sawoniuk, a Belarusian who collaborated with the Nazis, of life imprisonment for the killing of two persons, as war crimes: *R. v. Sawoniuk*, Court of Appeal (Criminal Division), 10 February 2000, 2 Criminal Appeal Reports 220, p.17; for a summary of the trial judgement in this case, see *United Kingdom v. Sawoniuk* at <http://www.internationalcrimesdatabase.org/Case/744/Sawoniuk/>.

sentences ranging from 25 years' to life imprisonment covering, in most cases, significantly smaller crime bases.

418. The Accused in this case committed crimes so extensive that they drastically changed the demographic composition of the large area of BiH they sought to control. They were found guilty of having committed tens of thousands of serious crimes. Their current sentences are so manifestly low that they significantly undermine the gravity of the crimes committed and the scale of injury inflicted on the victims and their communities. These sentences cannot be reconciled with those imposed by national courts in similar but smaller cases, and thus risk undermining the Tribunal's standing as a pre-eminent international judicial body and tribunal.

E. Relief sought

419. For the reasons stated above, the Accused's crimes call for sentences commensurate with the extreme gravity of those crimes and the Accused's key role in their commission as members of a JCE. The sentences imposed by the Chamber fall outside the discretionary framework that was available in a case of this nature. The Prosecution requests the Appeals Chamber to correct the Chamber's abuse of discretion and increase the sentences imposed to 40 years' imprisonment for Prlić, Stojić, Praljak and Petković, 35 years' for Ćorić, and 25 years' for Pušić.

¹³¹⁴ The Assize Court of Paris sentenced Pascal Simbikangwa, former Head of Central Intelligence in Rwanda, to 25 years' imprisonment for genocide and crimes against humanity: *Ministère Public c. Pascal Simbikangwa*, No. 13/0033, Cour d'assise de Paris, 14 May 2014, pp.3-4.

¹³¹⁵ The Spanish Supreme Court sentenced Adolfo Scilingo, an Argentinean Navy Officer, to 1084 years' imprisonment for 30 murders, one crime of illegal detention and complicity in 255 others, as crimes against humanity. However, the sentence is limited to a maximum of 25 years' by Article 76 of the Spanish Penal Code: *Adolfo Scilingo*, Tribunal Supremo, 3 July 2007, Case No. 10049/2006-P, Press release by Equipo Nizkor, 30 January 2013, available at <http://www.derechos.org/nizkor/espana/juicial/doc/sentenciats1.html>.

¹³¹⁶ The German Federal Supreme Court sentenced Djuradj Kusljić, the police commander of Vrbanjci in Northern Bosnia, to life imprisonment for one count of murder, as an underlying act of genocide: *Djuradj Kusljić*, Federal Supreme Court, 21 February 2001, 3StR 244/00, Trial Watch summary, available at <http://www.trial-ch.org/en/resources/trial-watch/trial-watch/profiles/profile/140/action/show/controller/Profile/tab/legal-procedure.html>.

VI. CONCLUSION

420. In Ground 1 it is demonstrated that the Chamber erred in law by failing to convict the Accused for committing serious crimes on a massive scale—including murder, rape and sexual assault, theft and destruction of religious property—pursuant to JCE3. This was a result its application of an erroneous JCE3 *mens rea* standard, a compartmentalized assessment of evidence and a failure to adjudicate the Accused's responsibility for numerous crimes. If the Appeals Chamber determines that the Chamber did not err in law in relation one or more incidents discussed in Ground 1, the Chamber erred in fact because, based on its findings and the evidence in the record, no reasonable trier of fact could have acquitted the Accused of these crimes.

421. Further, the Chamber failed to consider all charged modes of liability before acquitting the Accused. As demonstrated in Ground 2 this resulted in erroneous acquittals of Prlić, Stojić, Praljak, Petković and Čorić who should have been held responsible for a large number of crimes pursuant to Article 7(3).

422. Moreover, as shown in Ground 3, the Chamber incorrectly assumed that all incidents of Wanton Destruction it had found the Accused guilty of also had been established as Extensive Destruction of property not justified by military necessity. To avoid impermissible cumulative convictions, the Chamber therefore did not enter separate convictions for the four groups of incidents which constituted wanton destruction. As shown in Ground 3 the Chamber thereby erred in law and fact.

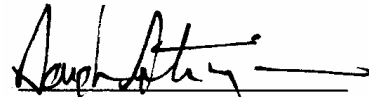
423. As shown in Ground 4, although the Chamber convicted the Accused of numerous serious crimes, the Judgement does not reflect the full culpability of the Accused and the gravity of their crimes.

424. The Appeals Chamber should correct these errors as follows:


- a. enter convictions against the Accused for the additional JCE3 crimes;
- b. enter convictions against the Accused under Article 7(3) for failure to punish for the relevant crimes, or—if the Appeals Chamber enters convictions in relation to these incidents under JCE3—treat the Accused's responsibility under Article 7(3) as an aggravating factor in sentencing;
- c. enter additional convictions under Count 20; and
- d. correct manifestly inadequate sentences imposed by the Chamber and increase the Accused's sentences to 40 years' imprisonment for Prlić, Stojić, Praljak

and Petković, 35 years' imprisonment for Ćorić, and 25 years' imprisonment for Pušić.

Word Count: 59,325



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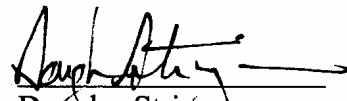
Mathias Marcussen
Senior Legal Officer, OTP MICT

Dated this 12th day of January 2015

At The Hague, The Netherlands

DECLARATION PURSUANT TO RULE 111

The Prosecutor will exercise due diligence to comply with his continuing Rule 68 disclosure obligations during the appeal stage of this case. As of the date of this filing, the Prosecutor has disclosed, or is in the process of disclosing, to the Accused all material under Rule 68(i) which has come into the Prosecutor's actual knowledge and, in addition, has made available to him collections of relevant material held by the Prosecutor.



Douglas Stringer
Senior Appeals Counsel

VII. PROSECUTION'S GLOSSARY

Pleadings, Orders, Decisions etc. from *Prosecutor v. Jadranko Prlić et al.*

Abbreviation used in Prosecution Appeal Brief	Full citation
Chamber	Trial Chamber in <i>Prosecutor v. Jadranko Prlić, Bruno Stojić, Slobodan Praljak, Milivoj Petković, Valentin Ćorić and Berislav Pušić</i> , Case No. IT-04-74
Judgement	<i>Prosecutor v. Jadranko Prlić, Bruno Stojić, Slobodan Praljak, Milivoj Petković, Valentin Ćorić and Berislav Pušić</i> , Case No. IT-04-74, T.Ch., Judgement, 29 May 2013
Indictment	<i>Prosecutor v. Jadranko Prlić, Bruno Stojić, Slobodan Praljak, Milivoj Petković, Valentin Ćorić and Berislav Pušić</i> , Case No. IT-04-74, Second Amended Indictment, 11 June 2008
Prosecution Notice	<i>Prosecutor v. Jadranko Prlić, Bruno Stojić, Slobodan Praljak, Milivoj Petković, Valentin Ćorić and Berislav Pušić</i> , Case no.IT-04-74, Prosecution's Notice of Appeal, 27 August 2013

Other ICTY authorities

Abbreviation used in Prosecution Appeal Brief	Full citation
<i>Blaškić</i> AJ	<i>Prosecutor v. Tihomir Blaškić</i> , Case No. IT-95-14-A, App.Ch., Judgement, 29 July 2004
<i>Brdanin</i> AJ	<i>Prosecutor v. Radoslav Brdanin</i> , Case No. IT-99-36-A, App.Ch., Judgement, 3 April 2007

Abbreviation used in Prosecution Appeal Brief	Full citation
Čelebići AJ	<i>Prosecutor v. Zejnil Delalić, Zdravko Mucić, a.k.a. "Pavo", Hazim Delić & Esad Landžo, a.k.a. "Zenga"</i> , Case No. IT-96-21-A, App.Ch., Judgement, 20 February 2001
Đorđević AJ	<i>Prosecutor v. Vlastimir Đorđević</i> , Case No. IT-05-87/1-A, App.Ch., Judgement, 27 January 2014
Galić AJ	<i>Prosecutor v. Stanislav Galić</i> , Case No. IT-98-29-A, App.Ch., Judgement, 30 November 2006
Hadžihasanović AJ	<i>Prosecutor v. Enver Hadžihasanović & Amir Kubura</i> , Case No. IT-01-47-A, App.Ch., Judgement, 22 April 2008
Halilović AJ	<i>Prosecutor v. Sefer Halilović</i> , Case No. IT-01-48-A, App.Ch., Judgement, 16 October 2007
Jokić SAJ	<i>Prosecutor v. Miodrag Jokić</i> , Case No. IT-01-42/1-A, App.Ch., Judgement on Sentencing Appeal, 30 August 2005
Karadžić JCE3 Foreseeability AD	<i>Prosecutor v. Radovan Karadžić</i> , Case No. IT-95-5/18-AR72.4, App.Ch., Decision on Prosecution's Motion Appealing Trial Chamber's Decision on JCE III Foreseeability, 25 June 2009
Kordić AJ	<i>Prosecutor v. Dario Kordić & Mario Čerkez</i> , Case No. IT-95-14/2-A, App.Ch., Judgement, 17 December 2004
Kunarac AJ	<i>Prosecutor v. Dragoljub Kunarac, Radomir Kovač & Zoran Vuković</i> , Case No. IT-96-23 & IT-96-23/1-A, App.Ch., Judgement, 12 June 2002
Krnojelac AJ	<i>Prosecutor v. Milorad Krnojelac</i> , Case No. IT-97-25-A, App.Ch., Judgement, 17 September 2003
Krstić AJ	<i>Prosecutor v. Radislav Krstić</i> , Case No. IT-98-33-A, App.Ch., Judgement, 19 April 2004

Abbreviation used in Prosecution Appeal Brief	Full citation
<i>Krstić</i> TJ	<i>Prosecutor v. Radislav Krstić</i> , Case No. IT-98-33-T, T.Ch., Judgement, 2 August 2001
<i>Kvočka</i> AJ	<i>Prosecutor v. Miroslav Kvočka, Mlado Radić, Zoran Žigić & Dragoljub Prcać</i> , Case No. IT-98-30/1-A, App.Ch., Judgement, 28 February 2005
<i>Martić</i> AJ	<i>Prosecutor v. Milan Martić</i> , Case No. IT-95-11-A, App.Ch., Judgement, 8 October 2008
<i>Martić</i> TJ	<i>Prosecutor v. Milan Martić</i> , Case No. IT-95-11-T, T.Ch., Judgement, 12 June 2007
<i>Milošević</i> AJ	<i>Prosecutor v. Dragomir Milošević</i> , Case No. IT-98-29/1-A, App.Ch., Judgement, 12 November 2009
<i>Milutinović</i> TJ	<i>Prosecutor v. Milan Milutinović, Nikola Šainović, Dragoljub Ojdanić, Nebojša Pavković, Vladimir Lazarević & Sreten Lukić</i> , Case No. IT-05-87-T, T.Ch., Judgement, 26 February 2009
<i>Mrkšić</i> AJ	<i>Prosecutor v. Mile Mrkšić & Veselin Šljivančanin</i> , Case No. IT-95-13/1-A, App.Ch., Judgement, 5 May 2009
<i>Naletilić</i> AJ	<i>Prosecutor v. Mladen Naletilić & Vinko Martinović</i> , Case No. IT-98-34-A, App.Ch., Judgement, 3 May 2006
<i>M.Nikolić</i> SJ	<i>Prosecutor v. Momir Nikolić</i> , Case No. IT-02-60/1-S, T.Ch., Sentencing Judgement, 2 December 2003
<i>Obrenović</i> SJ	<i>Prosecutor v. Dragan Obrenović</i> , Case No. IT-02-60/2-S, T.Ch., Sentencing Judgement, 10 December 2003

Abbreviation used in Prosecution Appeal Brief	Full citation
<i>Perišić</i> AJ	<i>Prosecutor v. Momčilo Perišić</i> , Case No. IT-04-81-A, App.Ch., Judgement, 28 February 2013
<i>Popović</i> TJ	<i>Prosecutor v. Vujadin Popović, Ljubiša Beara, Drago Nikolić, Ljubomir Borovčanin, Radivoje Miletić, Milan Gvero & Vinko Pandurević</i> , Case No. IT-05-88-T, T.Ch., Judgement, 10 June 2010 (Public Redacted)
<i>Šainović</i> AJ	<i>Prosecutor v. Nikola Šainović, Nebojša Pavković, Vladimir Lazarević & Sreten Lukić</i> , Case No. IT-05-87-A, App.Ch., Judgement, 23 January 2014
<i>Stakić</i> AJ	<i>Prosecutor v. Milomir Stakić</i> , Case No. IT-97-24-A, App.Ch., Judgement, 22 March 2006
<i>Stakić</i> TJ	<i>Prosecutor v. Milomir Stakić</i> , Case No. IT-97-24-T, T.Ch., Judgement, 31 July 2003
<i>Stanišić & Župljanin</i> 16 January 2013 Decision	<i>Prosecutor v. Mićo Stanišić & Stojan Župljanin</i> , Case No. IT-08-91-T, T.Ch., Decision Denying Prosecution Motion Requesting Findings on All Modes of Liability Charged in the Indictment, 16 January 2013
<i>Strugar</i> AJ	<i>Prosecutor v. Pavle Strugar</i> , Case No. IT-01-42-A, App.Ch., Judgement, 17 July 2008
<i>Tadić</i> AJ	<i>Prosecutor v. Duško Tadić</i> , Case No. IT-94-1-A, App.Ch., Judgement, 15 July 1999

ICTR authorities

Abbreviation used in Prosecution Appeal Brief	Full citation
<i>Bagosora</i> AJ	<i>Prosecutor v. Théoneste Bagosora & Anatole Nsengiyumva</i> , Case No. ICTR-98-41-A, App.Ch., Judgement, 14 December 2011
<i>Gatete</i> AJ	<i>Jean-Baptiste Gatete v. Prosecutor</i> , Case No. ICTR-00-61-A, App.Ch., Judgement, 9 October 2012
<i>Kalimanzira</i> AJ	<i>Callixte Kalimanzira v. Prosecutor</i> , Case No. ICTR-05-88-A, App.Ch., Judgement, 20 October 2010
<i>Karemera</i> AJ	<i>Prosecutor v. Édouard Karemera & Matthieu Ngirumpatse</i> , Case No. ICTR-98-44-A, App.Ch., Judgement, 29 September 2014
<i>Ndindabahizi</i> AJ	<i>Emmanuel Ndindabahizi v. Prosecutor</i> , Case No. ICTR-01-71-A, App.Ch., Judgement, 16 January 2007
<i>Ntagerura</i> AJ	<i>Prosecutor v. André Ntagerura, Emmanuel Bagambiki & Samuel Imanishimwe</i> , Case No. ICTR-99-46-A, App.Ch., Judgement, 7 July 2006
<i>Setako</i> AJ	<i>Ephrem Setako v. Prosecutor</i> , Case No. ICTR-04-81-A, App.Ch., Judgement, 28 September 2011

Other Abbreviations

Abbreviation used in Prosecution Appeal Brief	Full citation
ABiH	Army of the Republic of Bosnia and Herzegovina
Art.	Article
ATG	Anti-Terrorist Group
BiH	Bosnia and Herzegovina
CED	Electronic Operations Centre (a service of the Main Staff)
Croatia	Republic of Croatia
Dretelj Prison	Dretelj Military District Prison, Čapljina Municipality
ECMM	European Community Monitor Mission
Exchange Service	Service for the Exchange of Prisoners and Other Persons
Exh.	Exhibit
Exhs.	Exhibits
fn.	footnote
fns.	footnotes
Gabela Prison	Gabela Military District Prison, Čapljina Municipality

Abbreviation used in Prosecution Appeal Brief	Full citation
Geneva Conventions	Geneva Conventions I to IV of 12 August 1949
Heliodrom	Heliodrom Camp, Mostar Municipality
HRHB	Croatian Republic of Herceg Bosna
HV	Army of the Republic of Croatia
HVO	Croatian Defence Council (army of the Bosnian Croats)
HZHB	Croatian Community of Herceg-Bosna
HZ(R)HB	Croatian Republic and Community of Herceg Bosna
ICRC	International Committee of the Red Cross
JCE	Joint criminal enterprise
JCE1	Joint criminal enterprise, first category
JCE3	Joint criminal enterprise, third category
JNA	Yugoslav People's Army (Army of the Socialist Federal Republic of Yugoslavia)
KB	<i>Kažnjenička Bojna</i> , Convicts Battalion
Ljubuški Prison	Military remand prison in the town of Ljubuški
MP	Military Police

Abbreviation used in Prosecution Appeal Brief	Full citation
MUP	Ministry of the Interior Police
North-West OZ	North-West Herzegovina Operative Zone (HVO)
ODPR	Office for Displaced Persons and Refugees
OZ	Operational Zone
para.	paragraph
paras.	paragraphs
p.	page
pp.	pages
POW	Prisoner of war
Prozor Secondary School	Secondary school in Prozor Municipality, as identified in para. 54 of the Indictment
RSK	Republic of Serbian Krajina
SAO	Serbian Autonomous District
SIS	HVO Security and Information Service
South-East OZ	South-East Herzegovina Operative Zone (HVO)
Sovići School	School in Sovići, Jablanica Municipality

Abbreviation used in Prosecution Appeal Brief	Full citation
Statute	Statute of the International Criminal Tribunal for the Former Yugoslavia established by the Security Council Resolution 827 (1993)
T.	Trial Transcript
UN	United Nations
UNCIVPOL	United Nations Civilian Police
UNHCR	United Nations High Commissioner for Refugees
UNPROFOR	United Nations Protection Forces
Vance-Owen Peace Plan	Reproduced in pp.13-44 of the Report of the Secretary-General on Activities of the International Conference on the former Yugoslavia, 2 February 1993 (S/23221)
Vitina-Otok Camp	Detention facility in the hamlets of Vitina and Otok, Ljubuški Municipality
Vojno Detention Centre	Buildings clustered in the Vojno sector, Mostar Municipality, and termed "Vojno Camp" in the Indictment
Vol.	Volume
VOS	HVO Military Intelligence Services
VPD	<i>Vaspitno Popravni Dom</i> or Stolac Correctional Education Facility
VRS	Army of the Serbs of Bosnia and Herzegovina