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

Case No. IT-04-74-A

PROCEEDINGS IN THE APPEALS CHAMBER

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

Registrar: **Mr. John Hocking**

Date: **2 June 2015**

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

Public Redacted Version

RESPONDENT'S BRIEF OF VALENTIN ĆORIĆ

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I. Introduction and Relevant Procedural History

A. Overview

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

2. On 27 August 2013 the Prosecution filed its Prosecution's Notice of Appeal, with four grounds of appeal identified therein, arising from the Judgment.

3. Thereafter, pursuant to the briefing schedule adopted after various requests to enlarge time, the Prosecution filed their Prosecution Appeal Brief on 12 January 2015, filed confidentially. (the **"Prosecution Appeal"**). The Prosecution Appeal presented arguments based on four grounds of appeal, concerning the Judgment's findings as to all of the Defendants. Said Prosecution Appeal essentially seeks the entry of additional

convictions in three of the grounds, and an increase in sentences in the fourth ground. Additionally, each of the first 3 grounds also seek increases in the sentences of each of the Defendants. As to Ćorić the Prosecution Appeal seeks to increase the sentence from 16 years to 35 years.

4. The instant Respondent's Brief is filed pursuant to Rule 112 of the Rules of Procedure and Evidence and is filed within the time period set by the briefing schedule previously entered by the Appeals Chamber, and is filed confidentially owing to the filing status of the Prosecution Appeal. The purpose of the Respondent's Brief is to address and respond to all four grounds raised in the Prosecution Appeal as they relate to Ćorić. Ćorić opposes the relief sought by the Prosecution in all four grounds of the Prosecution Appeal. Ćorić takes no position regarding the relief sought by the Prosecution Appeal which concern the other Defendants.

5. As a preliminary matter, it should be noted that the Defence has filed its own Appeal against the Judgment on 12 January 2015 (the **"Defence Appeal"**). The Respondent's Brief is filed without prejudice to that Defence Appeal and should not be construed as conceding any findings in the Judgment, any convictions in the Judgment, and the sentence imposed in the Judgment as to Ćorić, and nothing in the Respondent's Brief should be construed as having any implications for Ćorić's Defence Appeal. Ćorić stands behind and re-affirms all the grounds/arguments filed in his Defence Appeal.

6. The Prosecution Appeal suffers from fundamental flaws that preclude any appellate relief. The Prosecution challenges factual conclusions that a reasonable trier of fact could have made, unacceptably seeks to substitute its own evaluation of the evidence for that of the Trial Chamber, and repeats arguments that did not succeed at trial without demonstrating that rejecting them constituted such error as to warrant the intervention of the Appeals Chamber. Stripped to its essentials, the Prosecution Appeal is an emotive yet unprincipled plea for a harsher sentence to be imposed. As such, it falls outside the parameters of appellate review.

7. Rather than presenting legal arguments demonstrating discernible error, the Prosecution Appeal merely repeats the same factual arguments about the key leadership positions of the Defendants, and repeats recitation to factual findings of the Judgment as to the existence of unfortunate crimes, which it presents are serious and grave, in all four of the grounds of appeal. These are the same arguments that it presented at trial, which are attempted to be re-argued. To the extent that all issues raised in the Prosecution Appeal were already fully considered and taken into consideration by the Trial Chamber in reaching the Judgment, the Prosecution Appeal should be summarily dismissed, as they lack proper foundation. It is well-established that: (a) a party may not merely repeat on appeal arguments that did not succeed at trial; and (b) submissions will be dismissed without detailed reasoning where the appealing party's argument unacceptably seeks to substitute its own evaluation of the evidence for that of the Trial Chamber [1]

8. Nevertheless, the Defence hereby submits detailed arguments against each of the four grounds of the Prosecution Appeal, and alternatively asks for the dismissal of these grounds after due consideration of the Defence arguments.

9. In the alternative, should the Appeals Chamber consider that the Judgment is in error and grant any of the four grounds of the Prosecution Appeal, then the appropriate remedy would be for the matter to be remitted to the Trial Chamber re-sentencing in light of the Appeal's Chamber's rulings. For the Appeals Chamber to substitute a harsher penalty than that imposed by the Judgment would deprive the Defence of its right to appeal the new sentence, and thus would effectively deprive Ćorić of a crucial component of the right to appeal.[2]

[1] *Halilović* AJ, para 12.
[2] Article 14(5) of the ICCPR provides for a convicted person's right to have his sentence reviewed by a higher tribunal.

B. Legal Standards of Appellate Review

10. Appellate proceedings do not constitute a trial *de novo* and are, rather, of a corrective nature.[3] Accordingly, on appeal, the parties must limit their arguments to errors of law that invalidate the decision of the Trial Chamber and to errors of fact that result in a miscarriage of justice.[4]

11. Since the Prosecution must establish the guilt of the accused at trial, the significance of an error of fact occasioning a miscarriage of justice takes on its specific character when alleged by the Prosecution.[5] In this context, the ICTY Appeals Chamber has followed[6] the holding by the ICTR Appeals Chamber: "*because the Prosecution bears the burden at trial of proving the guilt of the accused beyond a reasonable doubt, the significance of an error of fact occasioning a miscarriage of justice is somewhat different for a Prosecution appeal against acquittal than for a defence against conviction. An accused must show that the Trial Chamber's factual errors create a reasonable doubt as to his guilt. The Prosecution faces a more difficult task. It must show that, when account is taken of the errors of fact committed by the Trial Chamber, all reasonable doubt of the accused's guilt has been eliminated*."[7]

12. As for alleged errors of fact raised on appeal by the Prosecution, the Appeals Chamber had held that it will reverse only if it finds that no reasonable trier of fact could have failed to make the particular finding of fact beyond reasonable doubt and the acquittal relied on the absence of this finding.[8]

13. For alleged errors as to sentencing, the applicable legal standards are enumerated herein in Part V, the Respondent's response to Ground 4 of the Prosecution Appeal.

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[3] *Čelebići* AJ, para 724.
[4] *Blagojević* AJ, para 6.
[5] *Krnojelac* AJ, para 14.
[6] see, e.g. *Sainovic* AJ, para. 24, *Limaj* AJ, para. 13; *Strugar* AJ, para. 14; *Oric* AJ, para. 12;
[7] *Bagilishema* AJ, para 14
[8] *Blagojević* AJ, para 9

14. It is respectfully submitted that when viewed in the light of applicable legal standards, the Prosecution Appeal has failed to demonstrate any discernible errors which would warrant the intervention of the Appeals Chamber.

II. Ground 1 of the Prosecution Appeal

A. Ground 1 Should be Dismissed as the Prosecution has not Demonstrated that the Trial Chamber used an Improper Standard, or that Errors were Otherwise Committed by Entering Acquittals of Certain JCE3 Crimes.

15. Ground 1 of the Prosecution Appeal alleges that while the Chamber convicted the Respondent for a number of foreseeable crimes under JCE3, it should have also convicted him for numerous other crimes which occurred in the execution of this common purpose. The Prosecution Appeal alleges that in light of their intent to commit a violent campaign of ethnic cleansing, their important contributions 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, and the Prosecution Appeal alleges that the Chamber did not enter the additional convictions under JCE3 because of its erroneously narrow understanding and application of the JCE3 *mens rea* standard, and in their opinion the Chamber failed to adjudicate the Accused's responsibility for a number of established crimes.[9] The Prosecution claims the Chamber's failure to convict the Accused of these additional JCE3 crimes arises from five distinct but interrelated errors: a) the Chamber applied incorrect *mens rea* standard; b) unduly limited the scope of evidence it deemed relevant to its determination of foreseeability; c) the Chamber failed to adjudicate the Accused's liability for many JCE3 crimes; d) in relation to Ćorić, the Chamber erroneously required proof of contribution to the specific JCE1 crimes in order to find the

[9] Prosecution Appeal, para. 15,16,21

required foresight for JCE3 crimes; and e) the Chamber erred in acquitting the Accused for many JCE3 crimes.[10]

1. Sub-ground 1(A) Should Be Dismissed as the Prosecution Appeal Fails to Demonstrate any Error Requiring Appellate Intervention.

16. The Prosecution Appeal alleges that the Chamber applied an erroneous *mens rea* standard for JCE3 liability, that it required, incorrectly, foreseeability to be proven to a 'probability' standard rather than the, as they say, correct 'possibility' standard.[11] The Prosecution quotes the version of the Judgment in French – it says that the Chamber held that liability attaches when the accused knew that a crime was a '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.[12]

17. The Prosecution Appeal submits that the appeals jurisprudence confirms that JCE3 liability arises if the JCE members know that the commission of crime is 'possible' consequence of the execution of the common criminal purpose.[13] The Prosecution says that correct standard for JCE 3 *mens rea* requires that the crimes 'might be' perpetrated in executing the common criminal purpose and the accused willingly took that risk by deciding or continuing to participate in that enterprise.[14]

18. The Prosecution alleges that the Chamber occasionally referred to the possibility standard, but the Chamber applied the 'incorrect' probability standard in its factual findings for majority of JCE3 crimes.[15] The Prosecution alleges that in relation to many criminal incidents, the evidence satisfied the higher probability standard, and in other instances the application of this legal standard resulted in acquittals; in relation to Ćorić the Prosecution Appeal highlights murder (Count 2) and wilful killing (Count 3) in the

[10] Prosecution Appeal, para. 22-25
[11] Prosecution Appeal, para.26; OTP refers to Judgement Vol I, paras, 216, 220
[12] Prosecution Appeal, para. 27
[13] Prosecution Appeal, para.28; *Tadić* AJ, par. 228; *Karadžić* JCE3 Foreseeability AD, paras 15, 17-18
[14] Prosecution Appeal, para. 28; *Šainović* AJ, par. 1557,
[15] Prosecution Appeal, para.29; OTP refers to Judgment Vol. 4, paras 1008-1009, 1011, 1014

municipalities of Stolac and Čapljina and in Dretelj Prison, appropriation of property (Count 22) and plunder (Count 23) in the municipalities of Stolac and Čapljina.[16]

19. The Prosecution does not give any proof, any evidence that these crimes they mention, murder in the municipalities Stolac and Čapljina, and Dretelj Prison are the result of application of, as they say, a lower, standard, they just have self-servingly chosen crimes for which convictions have not been entered and they state that this is because of the application of wrong standard. We haven't been told about the link between these crimes, or criminal incidents, or incidents, and the standard of 'possibility' for which they say hasn't been applied. What is the link between these specific crimes and not applying the 'right' theory? In section 1 (G) of the Appeal we see that the Prosecution considers more crimes that had to result in conviction, but they choose just these from Count 1 and Count 2, without giving reasonable opinion why just these crimes were selected. And how did actions of the Accused result in committing these crimes, according to the Prosecution, this is not revealed, they just state that they are the result of the accused's participating in the common criminal plan.

20. Besides what the Prosecution alleges, besides the fact that the Trial Chamber really uses words probability, and 'crime would be 'committed[17] , the totality of Chambers findings must be taken into account. It is respectfully submitted when the totality of the findings are considered, that the Trial Chamber did not use the wrong standard and that the acquittals were properly rendered in accord with the proper standard. The Trial Chamber cites the ***Brđanin*** Appeal Judgment to support its findings

[16] Prosecution Appeal, para. 30-31

[17] Vol.1/216, 220, 216

As concerns JCE Form 3, the requisite mental element is first the intent to participate in and to contribute to furthering the common criminal purpose. Moreover, responsibility for a crime other than the one envisaged in the common purpose attaches only when, in the context of that case, (1) it was foreseeable that such a crime might be committed by one or more members of the group;(2) the accused deliberately assumed the risk that the crime would be committed because he knew that a crime of this sort was the probable outcome of the furtherance of the common purpose; and (3) he accepted the crime being carried out while nevertheless deciding to take part in the JCE. para 220:

The Chamber would first recall that determination of the foreseeability that a crime – other than one forming part of the common plan – will be committed is evaluated according to the circumstances at hand. The Prosecution must therefore prove (i) that for the accused in question it was foreseeable that a new crime was likely to be committed by the direct perpetrator from outside the JCE who was used by a member of the JCE to achieve the physical element of the crimes included in the common plan and (ii) that the Accused knew that the new crime was the probable outcome of the furtherance of the common goal but nevertheless decided to take part in the JCE.

and position[18] in which the exact same 'possibility' standard is cited, exactly the same thing as the Prosecution now quote in their Appeal as being the correct standard.[19] So, it is obvious that the Trial Chamber corroborate its position by quoting the ***Brđanin*** Appeal Judgment, which set the standard for, so called, 'possibility' standard; it is obvious that the Trial Chamber do not want to take the stricter position by basing its findings on the so-called 'probability' side, as Prosecution alleges in their Appeal. The Trial Chamber in the instant Judgment have in mind and utilized just that exact possibility standard, which is obvious from the footnotes and quotations in the Judgment.[20] Besides that, the apart from the occasional use of words 'probable' and 'would be' in passing and dicta, the Trial Chamber actually applied and relied upon the possibility standard in its holding and ruling, by its essence, and that is what even the Prosecution as Appellant must admit, but says that the Chamber used this standard in the Judgment 'occasionally'.[21] The Prosecution uses just verbal interpretation of expressions in paras 216, and 220 of the Judgment, and not the logical and systematic interpretation of law, i.e. explanation of the legal text according to the rules of formal logic, and according to comparison with other legal norms, and with other Chamber's findings. So, the Prosecution's allegations are baseless, the Chamber used the correct standard, standard as developed and applied by the relevant Appeal Chamber jurisprudence. For this reason this ground of appeal should be dismissed.

21. Furthermore, in relation to murders in Stolac and Čapljina, the Chamber stated:

[18] Judgment, VOl 1, par. 218, Brđanin AJ, par. 411: When the accused, or any other member of the JCE, in order to further the common criminal purpose, uses persons who, in addition to (or instead of) carrying out the *actus reus* of the crimes forming part of the common purpose, commit crimes going beyond that purpose, the accused may be found responsible for such crimes provided that he participated in the common criminal purpose with the requisite intent and that, in the circumstances of the case, (i) it was foreseeable that such a crime might be perpetrated by one or more of the persons used by him (or by any other member of the JCE) in order to carry out the *actus reus* of the crimes forming part of the common purpose; and (ii) the accused willingly took that risk – that is the accused, with the awareness that such a crime was a possible consequence of the implementation of that enterprise, decided to participate in that enterprise.

[19] Prosecution Appeal, para. 28

[20] *Tadić* AJ, paras 204, 220 and 228; *Martić* AJ, para. 83; *Vasiljević* AJ, para. 101; *Tadić* AJ, para. 220. *Krstić* AJ, para. 150; *Brđanin*, "Decision on Interlocutory Appeal", 19 March 2004, para. 5, *Kvočka* AJ, para. 86, *Brđanin* AJ, para. 411,

[21] Prosecution even mention the trial chamber's qutation of *Brđanin* AJ in par. 218 of Vol. 1 of the Judgment, in footnote 75 of their appeal, so, it is obvious that they understand that the Trial Chamber esentially uses the correct possibility standard

> *Inasmuch as the evidence did not enable the Chamber to establish any contribution by Valentin Ćorić to the operations to remove women, children and elderly people from these municipalities, the Chamber is not in a position to find that Valentin Ćorić could have foreseen the murders and thefts committed during these operations. Consequently, the Chamber does not hold Valentin Ćorić responsible for those crimes.* [22]

As is clear from the aforesaid, the focus of the Chamber's ruling is whether or not the crimes in question were foreseable to Ćorić, which is the appropriate analysis.

22. For Dretelj, the Chamber stated:

> *Even if Valentin Ćorić facilitated the detention of Muslims not belonging to any armed force as of early July 1993, the evidence does not support a finding that he knew that the detention of people at Dretelj Prison was taking place in a climate of extreme violence. Therefore, the Chamber cannot find that Valentin Ćorić could have foreseen the murders of detainees at that time.* [23]

It is obvious from the explanation of the Trial Chamber, that the entry of acquittals for these charged crimes instead of convictions is not the result of a lower or higher standard being applied to weigh the evidence of Ćorić's liability for these crimes, it is rather the utter lack of existing evidence at all, the Chamber stated that there is not any evidence that Ćorić could have foreseen the murders and thefts committed. So, the reason for not entering conviction is lack of evidence for criminal responsibility for particular crimes, not the application of incorrect judicial standard. This position is in accordance with jurisprudence, which states that the crime must be shown to have been foreseeable to the accused in particular.[24]

23. The conclusion of the Prosecution's Ground 1 Sub-ground 1 is not concerned with factual findings and legal standards of the Judgment, because the acquittal that

[22] Vol.4/1016
[23] Vol.4/1019
[24] *Brđanin*, AJ, par. 365, *Tadić* AJ, para. 220., *Kvočka* AJ, para. 86, *Blaškić* AJ, para. 33, *Stakić* AJ, paras 65, 99-103.

they complain of in their Appeal is not the result of any error in applying legal standards, as they submitted. The Trial Chamber used one and only standard throughout the whole Judgment, no matter that it occasionally uses different terms for it, and that standard is the possibility standard, and this is the correct standard according to jurisprudence, and is the one that the Prosecution Appeal labels as correct. Accordingly this sub-ground of appeal should be denied.

2. Sub-ground 1(B) Should Be Dismissed as the Prosecution Appeal Fails to Demonstrate any Error Requiring Appellate Intervention.

24. The Prosecution alleges that the Trial Chamber erred in law by compartmentalizing its assessment of the evidence demonstrating the foreseeability of JCE3 crimes. Instead of assessing foreseeability for each Accused in light of the totality of evidence, the Chamber analysed the evidence in relation to each of the relevant incidents in isolation, thus misapplying legal standards for the evaluation of evidence.[25] They say the Chamber must consider all evidence presented to it and assess and weigh ¸the evidence in its totality and in context.[26]

25. The Prosecution Appeal states that regarding to JCE3 foreseeability, the Appeals Chambers 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.[27] For purposes of the Prosecution, the relevant evidence is presented as: a) the Accused's participation in JCE, including their intent and the means; b) awareness of the violent nature of a campaign or the prevailing atmosphere of ethnic animosity, aggression and violence, which rendered victims more vulnerable; c) the forcible displacements of hundreds of thousands[28]; d) awareness of the crimes, open nature of crimes; e) the accused's involvement in operations, generating

[25] Prosecution Appeal, para. 33
[26] Prosecution Appeal, para. 34, *Martić* AJ/233, *Halilović* AJ, par. 125
[27] Prosecution Appeal, para. 34, *Šajnović* AJ, paras 1581-1582, *Đorđević,* AJ, par. 920
[28] We note this could be a mistake in the Prosecution Appeal, because during Trial, the case of the Prosecution mentioned thousands or dozens of thousands, but never hundreds of thousands. In this regard, it is a fact that the entire area covered by the indictment, including all municipalities, has a total population of less than 200,000 inhabitants (Muslims and Croats and Serbs in total), such that the affected population in these few municipalities is considerably less.

awareness of the overall security situation and the commission of serious crimes; f) the accused's active role in operations in which crimes occured, such as by supervising the logistical aspects of the ground, the accused's presence at the ground; g) the accused's awareness of factors increasing the vulnerability of victims (for instance, detention or separation of men from the women), awareness of the criminal propensity of the persons used by the accused to implement the crimes forming part of the common criminal purpose; h) the climate of impunity in which the physical perpetrator acted.[29] The Prosecution alleges that the Trial Chamber only took into account evidence of the Accused's knowledge of the climate of the violence or crimes in specific municipality, village or detention center where the relevant crimes occured, and the Chamber failed to consider its own findings and relevant evidence that provided context to those incidents, such as findings and evidence demonstrating that the accused shared the common purpose to create a Croat dominated entity through a violent campaign of ethnic cleansing of Muslim population, JCE members knew that mosques could be destroyed and they willingly took that risk, the Accused knew of similar crimes committed in other locations in implementation of JCE, the Accused knew of specific events and crimes on the ground, and that in many cases murder, sexual violence and thefts were foreseeable to the Accused due to the atmosphere of violence they contributed, and took that risk knowingly.[30] Because of this error, the Prosecution alleges, the Chamber erroneously acquitted the Accused Ćorić for murder (Count 2) and wilful killing (Count 3) in the municipalities of Stolac and Čapljina and Dretelj Prison and appropration of property (Count 22) and plunder (Count 23) in the municipalities of Stolac and Čapljina.[31]

26. The Chamber must consider all evidence presented to it and assess and weigh the evidence in its totality and in context[32] Totality of evidence of includes the evidence presented by each side at trial, not just the Prosecution's evidence. Appeal Chamber jurisprudence states that --

[29] Prosecution Appeal, para. 34
[30] Prosecution Appeal, para. 35
[31] Prosecution Appeal, para. 36-37
[32] *Kvočka* AJ, para 23

> "*It is to be presumed that the Trial Chamber evaluated all the evidence presented to it, as long as there is no indication that the Trial Chamber completely disregarded any particular piece of evidence. There may be an indication of disregard when evidence which is clearly relevant to the findings is not addressed by the Trial Chamber's reasoning, but not every inconsistency which the Trial Chamber failed to discuss renders its opinion defective."*[33]

27. In this sub ground of Ground 1 of the Appeal, the Prosecution does not indicate which evidence has been disregard by Trial Chamber, it just states that the Chamber did not evaluate the evidence in the way that the Prosecution reckons to be the correct way concerning the matter of foreseeability. But, this is not a case of disregarding the evidence, because there is no Prosecution evidence that has been disregarded – even Prosecution in its appeal does not mention or specifically identify any disregarded evidence (for example – there is no citation to this and this document not being taken into account, or the Chamber did not take into account this or that witness' testimony), they do not mention a single disregarded document or witness testimony. What they provide as disregarded evidence in their appeal[34], are conclusions, possible conclusions based on evidence, but that is no evidence. Such a position is contrary to the principle of *in dubio pro reo* that must also be adhered to by a Trial Chamber in rendering its rulings. Under such a principle, the interpretation of the evidence must favor the innocence of the accused if there are multiple conclusions available from the same evidence.[35]

28. So, the whole of sub ground 1(B) is legally wrong, because the Prosecution does not present us disregarded evidence, but, in their opinion, wrong conclusions of Trial Chamber, and, possibly, the Trial Chamber error in not taking account their own findings. But, the Prosecution does not give us any example of disregarded evidence – they just want to create impression that these evidence haven't been valued enough. The Prosecution position ignores the requirements of *in dubio pro reo* and ignores the

[33] *Kvočka* AJ, para 23
[34] Prosecution Appeal, para. 34-35
[35] *Kordic & Cerkez,* AJ, para. 691

bulk of defence evidence which was presented, and which support the acquittals entered by the Chamber.

29. Contrary to what the Prosecution states about not taking into account the totality of evidence and disregarding of evidence, any errors of the Trial Chamber went the other way, namely that evidence supportive of acquittal was not considered. The Defence demonstrated how a lot of its own evidence was disregarded by the Trial Chamber, in its Appeal[36] - the Defence presented Court registers from all Municipal and County Counts in ex-Herceg Bosna , all registers we could find, and in it, there are hundreds of criminal reports against perpetrators of crimes against Muslim victims, they were all presented to the courts, Prosecutor's Offices and Military Prosecutor, and it is to be seen that Military Police filed reports for all kind of criminal deeds – murders, thefts, etc., and after processing, they were all given to Courts and Judicial authorities [37]– but, in the Judgment, it's not even mentioned and the conclusion of the Trial Chamber was that Military Police did not fight the crime, although, thousands of pages of Court registers were presented to Trial Chamber. [38]The Trial Judgment appears to disregard and not even cite to certain Defence evidence, as if it was non-existent. And here we can talk about disregarded evidence, because Defence give exact numbers of documents, number of lot of documents and transcript pages that have not been taken into account, and if this evidence was evaluated, the conclusion of Chamber would not be able to stand a test of a Trier of facts – no any trier of facts would make conclusion that someone who is the Chief of Military Police Administration and where the military police submitted thousands criminal reports against Croats for crimes against Muslims, can draw a conclusion that this person is acting to fulfil a common criminal purpose' to

[36] Defence Appeal, Ground 14, par. 295
[37] More than 2000 criminal reports were filed by the military police against Croat perpetrators by the relevant law enforcement authorities in HZ-HB, Witness NO: (T.51215/22-51216/3). Also, in the evidence, there is a Mostar Military Court register, P00100 and P00101, similar to documents in 5D04288, in which there is a large number of proceedings against Croats, for crimes against Croats, Moslems and Serbs
[38] 5D04288; Surrogate sheet (for 3 CDs) containing Prosecution Registers for the period from 1992 until 1995:Mostar MilitaryProsecution Office register books from 1992, 1993, 1994 and until 31 July 1995; District Prosecution Office registers from 1992, 1993, 1994 and 1995; Capljina Municipal Prosecution register books from 1992, 1993 and 1994; Mostar Municipal Prosecution Office registers from 1992, 1993, 1994 and
1995; excerpts from Livno Military Prosecution Office register books from 1992, 1993, 1994 and 1995, Witness Buntic (T.30449, 30450, 30451, 30524-30561)

move out Muslims from this territory.[39] Defence wants to show that if there is a matter of non-applying the principal of totality of evidence, the error on the part of the Trial Chamber, is not in the way the Prosecution wants to show, but contrary. If the totality of the evidence was taken into account as required under the jurisprudence, then the result would be acquittals on most of the Prosecution's allegations, not just these few JCE3 crimes.

30. Furthermore, what the Prosecution presents as evidence which the Chamber failed to consider[40], and what we just describe not as disregarded evidence, but conclusions for which the Prosecution says it is not evaluated enough, all of these elements have been used by the Trial Chamber for establishing JCE1 and other form of responsibilities,[41] it is a part of the accused's responsibility, any single part of what the Prosecution submits as disregarded evidence[42]. These are the elements of JCE1 responsibility and Article 7(3) responsibility, so, if the Chamber would use it again for establishing complete JCE3 responsibility, it would be violation of known legal standard *non bis in idem*.[43] For example, the Accused's participation in JCE.[44] It was the main allegation in the Indictment, the whole trial was focused around it, the goal of

[39] Also, there is a highly important matter (for Ćorić Defence) of forged documents, because Defence presented a lot evidence that indicates some documents are product of forgery, like P03216, and this particular document is fundamental for TC's conclusion that Ćorić was part of Herceg Bosna Detention Center network, Ćorić Appeal, Ground 14, par. 296

[40] Prosecution Appeal, para. 34,35,

[41] Vol.4/1000-10006, 1021

[42] Prosecution Appeal, para. 34,35 : ' the Accused's participation in JCE, including their intent and the means; awareness of the violent nature of a campaign or the prevailing atmosphere of ethnic animosity, aggression and violence, which rendered victims more vulnerable; the forcible displacements of thousands, awareness of the crimes, open nature of crimes, the accused's involvement in operations, generating awareness of the overall security situation and the commission of serious crimes, the accused's active role in operations in which crimes occured, such as by supervising the logistical aspects of the ground, the accused's presence at the ground; the accused's awareness of factors increasing the vulnerability of victims (for instance, detention or separation of men from the women), awareness of the criminal propensity of the persons used by the accused to implement the crimes forming part of the common criminal purpose; the climate of impunity in which the physical perpetrator acted. the accused shared the common purpose to create a Croat dominated entity through a violent campaign of ethnic cleansing of Moslem population, JCE members knew that mosques could be destroyed and they willingly took that risk, the Accused knew of similar crimes committed in other locations in implementation of JCE, the Accused knew of specific events and crimes on the ground, and that in many cases murder, sexual violence and thefts were foreseeable to the Accused due to the atmosphere of violence they contributed, and took that risk knowingly.'

[43] Prosecution Appeal, para. 35, footnotes 103,104,105,106,107,115

[44] Prosecution Appeal, para. 34,

Prosecution was to use all evidence to prove it; and Trial Chamber accepted it[45], and based on that conclusion entered convictions; and now in this Ground and sub ground of appeal, the Prosecution demands that this conclusion would be treated as evidence to prove other forms of the same type of liability. What Prosecution is doing is as follows: foreseeability is an essential part of JCE3, and conclusion of the Trial Chamber that JCE1 exists, so it means that JCE3 exist anywhere where it is charged[46]: the Accused is responsible for JCE because he participates in JCE and he must be entered convictions for whatever is charged. Other arguments are the same. All what they state in par. 34 and 35 were recognized by Trial Chamber when deliberating about existence of JCE 1 and JCE 3 and all was accepted by Trial Chamber. Acquittals for JCE3 mentioned in par. 36 of the Prosecution's Appeal, for Ćorić were result of lack of evidence of his involvement in those crimes, and not application of incorrect legal standards as alleged by the Prosecution Appeal.

31. Furthermore, the Prosecution does not explain for every particular alleged crime[47] how the acquittal entered is a consequence of the alleged error and applying an incorrect legal standard. This sub ground of an appeal does not provide the type of reasonable opinion analysis that is required for a Trial Chamber. It is assumed that the Prosecution say which evidence is disregarded in any incident that they mention in par. 36 of their Appeal. Prosecution does not take into account the gap of doubt, because all of their arguments do not lead to the conclusion that foreseeability of possible crimes for the accused was the only reasonable conclusion of his responsibility, with no reasonable doubt. It is settled that the benefit of the doubt must always go to the accused when equally reasonable conclusions are available from the same evidence.[48]

32. Accordingly, for these reasons this sub-ground should be denied.

[45] Vol.4/72; 1000-10006,.
[46] Vol.4/1008-10021, in par. 1008, Trial Chamber states ' Even though these crimes fell outside the scope of that purpose, the Chamber will analyse whether Valentin Ćorić could reasonably have foreseen that they would be committed and took that risk.' If there is foreseeability, than there is JCE, JCE can not be proof for existence of foreseeability
[47] murder (Count 2) and wilful killing (Count 3) in the municipalities of Stolac and Čapljina and Dretelj Prison and appropration of property (Count 22) and plunder (Count 23) in the municipalities of Stolac and Čapljina
[48] *Kvočka* AJ, par. 237, *Vasiljević*, AJ, par. 120

3. SUB GROUND 1(C) Should Be Dismissed as the Prosecution Appeal Fails to Demonstrate any Error Requiring Appellate Intervention.

33. The Prosecution alleges that the Chamber failed to adjudicate the Accused's responsibility under JCE3 for a large number of crimes despite having found that these crimes were proven. Or, in the alternative, the Chamber failed to provide a reasoned opinion on Accused's acquittal for liability under JCE3, and either way, such a failure constituted an error of law, by the Prosecution's opinion.[49] It is the allegation of the Prosecution that the Chamber found that numerous crimes that fell outside the common criminal purpose were established and constituted natural and foreseeable consequences of its implementation.[50] The Chamber failure to adjudicate these crimes led to acquittals of incidents of murder (Count 2), wilful killing (Count 3), rape (Count 4) inhuman treatment (sexual assault) (Count 5), destruction of wilful damage to institutions dedicated to religion (Count 21), appropriation of property (Count 22), plunder (Count 23) in relation to the municipalities of Prozor in 1993, Jablanica, Mostar, Stolac, Čapljina, Vareš and in the Gabela Prison and Vojno Detention Center for Valentin Ćorić.[51]

34. Furthermore, the Prosecution Appeal alleges that the Chamber erred in law by failing to provide a reasoned opinion as why requirements for liability pursuant to JCE3 were not met, as Chamber must provide a reasoned opinion in writing to enable the parties' right to appeal.[52] However the Prosecution Appeal ignores that the Trial Chamber's assessment and reasoned opinion is not "required to articulate...every step of its reasoning in reaching particular findings."[53]

35. A party alleging an error of law must identify the alleged error, present arguments in support of its claim, and explain how the error invalidates the decision.[54] The Chamber provided opinions why requirements for liability pursuant to JCE3 for

[49] Prosecution Appeal, para. 38
[50] Prosecution Appeal, para. 38, footnote 121: Vol.4/70, 72-73
[51] Prosecution Appeal, para. 40, footnote 127
[52] Prosecution Appeal, para. 41, *Đorđević* AJ, par. 14, *Perišić* AJ, par.
[53] *Čelebić*i AJ, para 481; *Kupreskić* AJ, para. 458; *Babić* AJ, para. 43
[54] *Đorđević* AJ, par. 14, *Šainović* et al. AJ, para. 20; *Perišić* AJ, para. 8; *Lukić and Lukić* AJ, para. 11;; *Ndahimana* AJ, para. 8; *Mugenzi and Mugiraneza* AJ, para. 12; *Gatete* AJ, para. 8.

convictions in the same matter as they provided opinions for acquittals[55]. The Prosecution did not fulfill the standard set out in Appeal Chamber jurisprudence, and did not present arguments in support of its claim and did not explain how the error invalidates the decision - in their Ground 1 sub ground 1 (C) they just state that there is no reasoned opinion. Defence does not agree, Defence reckons that opinions elaborated in the judgment concerning allegations where the Chamber did not find JCE3 responsibility are sufficient, and that there is no evidence for Chamber to meet JCE3 liability for allegations in Indictment that Prosecution is pointing to. The Prosecution's arguments presented in this sub ground of Ground 1 of their appeal are insufficient to support the contention of an error, they did not provide us with all their arguments, we do not know what exactly is without reasoned opinion, is there disregarded evidence or the error lies somewhere else. It is necessary for appellant claiming an error of law on the basis of the lack of a reasoned opinion to identify the specific issues, factual findings, or arguments that the appellant submits the trial chamber omitted to address and to explain why this omission invalidates the decision.[56] The Prosecution must show that, when account is taken of the errors of fact committed by the trial chamber, all reasonable doubt of the accused's guilt has been eliminated.[57] In order for the Appeals Chamber to assess a party's arguments on appeal, the party is expected to present its case clearly, logically, and exhaustively. The Appeals Chamber may dismiss submissions as unfounded without providing detailed reasoning if a party's submissions are obscure, contradictory, vague, or suffer from other formal and obvious insufficiencies.[58]

36. The Appeals Chamber will generally dismiss: (i) arguments that fail to identify the challenged factual findings, that misrepresent the factual findings or the evidence, or

[55] Vol.4/1008-1021
[56] *Šainović* et al. AJ, para. 20; *Perišić* AJ, para. 9; *Lukić and Lukić* AJ, para. 11; *D. Milošević* AJ, para. 13; *Krajišnik* AJ, para. 12; *Martić* AJ, para. 9; *Halilović* AJ, para. 7; *Brđanin* AJ, para. 9; *Đorđević* AJ, par. 14, par. 18
[57] *Šainović* AJ, para. 24; *Boškoski and Tarčulovski* AJ, para. 15; *Mrkšić and Šljivančanin* AJ, para. 15; *Martić* AJ, para. 12; *Strugar* AJ, para. 14; *Ndahimana* AJ, para. 10; *Seromba* AJ, para. 11; *Rutaganda* AJ, para. 24; *Đorđević* AJ, par. 18-19
[58] *D. Milošević* AJ, para. 16, referring to *Mrkšić and Šljivančanin* AJ, para. 17, *Krajišnik* AJ, para. 16, *Martić* AJ, para. 14, *Strugar* AJ, para. 16; *Orić* AJ, paras 13-14 and references cited therein, *Karera* AJ, para. 12. See *Perišić* AJ, para. 12; *Gotovina and Markač* AJ, para. 15; *Ndahimana* AJ, para. 12; *Mugenzi and Mugiraneza* AJ, para. 16; *Gatete* AJ, para. 12

that ignore other relevant factual findings; (ii) mere assertions that the trial chamber must have failed to consider relevant evidence without showing that no reasonable trier of fact, based on the evidence, could have reached the same conclusion as the trial chamber did; (iii) challenges to factual findings on which a conviction does not rely and arguments that are clearly irrelevant, that lend support to, or that are not inconsistent with the challenged finding; (iv) arguments that challenge a trial chamber's reliance or failure to rely on one piece of evidence without explaining why the conviction should not stand on the basis of the remaining evidence; (v) arguments contrary to common sense; (vi) challenges to factual findings where the relevance of the factual finding is unclear and has not been explained by the appealing party; (vii) mere repetition of arguments that were unsuccessful at trial without any demonstration that their rejection by the trial chamber constituted an error warranting the intervention of the Appeals Chamber; (viii) allegations based on material not on the trial record; (ix) mere assertions unsupported by any evidence, undeveloped assertions, failure to articulate errors; and (x) mere assertions that the trial chamber failed to give sufficient weight to evidence or failed to interpret evidence in a particular manner.[59] Defence has an opinion that this sub ground of Ground 1 of the Prosecution Appeal met several of the aforesaid criteria for summary dismissal, and thus should be dismissed.

4. SUB GROUND 1(D) Should Be Dismissed as the Prosecution Appeal Fails to Demonstrate any Error Requiring Appellate Intervention.

37. The Chamber found that in July, August, and September 1993, HVO forces committed 16 murders, appropriation of property and plunder during eviction of Muslim women, children and elderly in Stolac and Čapljina municipalities. The Chamber further found that Ćorić contributed to the arrest and detention of Muslim men in those municipalities, and then, by the Prosecution's interpretation in the appeal, since Chamber have not found that he specifically contributed to the forcible displacement of the women, children and elderly, it concluded that he could not have foreseen the JCE3 crimes committed during those eviction operations. The Prosecution alleges that the

[59] *Šainović* et al. AJ, para. 27; *Lukić and Lukić* AJ, para. 15; *Boškoski and Tarčulovski* AJ, para. 18; *D. Milošević* AJ, para. 17; *Krajišnik* AJ, paras 17-27; *Martić* AJ, paras 14-21; *Strugar* AJ, paras 18-24; *Brđanin* AJ, paras 17-31; *Galić* AJ, paras 256-313.

Chamber erred in law by requiring Ćorić to have specifically contributed to particular JCE1 crimes in the municipalities of Stolac and Čapljina in order to be liable for the JCE3 crimes committed during the evictions, and this led Chamber to erroneously acquit Ćorić of several criminal incidents.[60]

38. The Prosecution further alleges that an accused can incur liability under JCE3 irrespective of whether he contributed to the specific JCE1 crimes that give rise to the resulting JCE3 crimes, so, Chamber erred in law, by the Prosecution's opinion, by imposing an additional requirement for JCE3 liability. The Prosecution holds the position that having found that Ćorić was a JCE member who shared the intent to forcibly displace Muslims from the territory of HZ(R)HB and who significantly contributed to the common criminal purpose, 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 he killings and thefts might be committed there.[61]

39. There is no error in law that Prosecution alleges, the Chamber did not require any specific contribution to particular JCE1 crimes in municipalities Stolac and Čapljina in order to be liable for the JCE3 crimes committed during evictions, i.e. during JCE1 crimes. It is nowhere to be said by the Chamber, it is just a misinterpretation of the Judgment, Volume 4, paragraphs 1015 and 106. Chamber did not link committing JCE3 crimes to committing specific JCE1 crimes, it just say in those paragraphs that there is no evidence for Ćorić to commit JCE3 crimes, that he had no information, which is essential part of JCE3 form of liability, and essential part of foreseeability. The crime must be shown to have been foreseeable to the accused in particular.[62] It has to be reasonably foreseeable on the basis of the information available to the accused that the crime or underlying offence would be committed.[63] The law requires that the extended crime be reasonably foreseeable based upon the information available to the accused at the time that the crime or underlying offence would be committed and the Prosecution must prove that the accused had sufficient knowledge that the extended crime was a

[60] Prosecution Appeal para. 44, Vol.4/1015-1016
[61] Prosecution Appeal, para. 45-49
[62] *Stakic*, *TJ* para. 65
[63] *Milutinovic et al*, *TJ* para. 111

natural and foreseeable consequence of the common criminal purpose.[64] The knowledge of any kind of risk, however low, does not suffice for the imposition of criminal responsibility for serious violations of international humanitarian law…an awareness of a higher likelihood of risk and a volitional element must be incorporated in the legal standard.[65] It was not necessarily forseeable to the accused that opportunistic killings would result from the forcible transfer of members of the population.[66]

40. It is clear from the prevailing jurisprudence that an accused needs to have information on which he can foresee the possibility that crimes might be committed, that is to say some information must exist. The Chamber established from its review of the evidence that there is no evidence that Ćorić had such information on which his awareness of the crimes could be based. Thus he could not have foreseen the same. The Chamber is showing that there is no such evidence, and there is no any kind of linkage with JCE1 crimes, so this sub-ground of Ground 1 of the Prosecution Appeal is not based on jurisprudence and factual findings, it has to be dismissed.

5. SUB GROUND 1 (E) Should Be Dismissed as the Prosecution Appeal Fails to Demonstrate any Error Requiring Appellate Intervention.

41. The Prosecution alleges that the Chamber erred in fact in acquitting the Accused of the additional JCE3 crimes that were established beyond reasonable doubt. The Prosecution Appeal alleges that the Chamber's findings and the evidence on the record show that the Accused could have foreseen the additional JCE3 crimes and further alleges that no reasonable trial chamber could have found that the Accused could not foresee the possibility that HVO forces might commit the additional JCE3 crimes in implementing the common criminal purpose.[67]

42. Additional crimes for Ćorić are, according to the Prosecution, murder (Count 2), wilful killing (Count 3) in the municipalities Prozor, Jablanica, Mostar, Stolac and Čapljina, and in the Dretelj and Gabela Prisons and Vojno Detention Center, rape

[64] *Tolimir, TJ* para. 1139
[65] *Blaskic*,TJ parar. 41
[66] *Popovic et al*, TJ, para. 1830
[67] Prosecution Appeal, para.50-52

(Count 4) and inhuman treatment (sexual assault) (Count 5) in the municipalities of Prozor and Vareš, destruction of or wilful damage to institutions dedicated to religion (Count 21) in the municipalities of Jablanica, Prozor, Mostar, and appropriation of property (Count 22) and plunder (Count 23) in the municipalities Jablanica, Prozor, Mostar, Stolac, Čapljina and Vareš.[68]

43. This sub ground is just repeating the arguments of the previous Prosecution's sub ground, especially in sub ground 1(C) so this sub ground is fully redundant, because it does not reveal new specific allegations of any legal errors. It is just listing out the crimes mentioned in the Indictment for which convictions have not been entered, re-stating, that which has been mentioned in previous sub grounds. According to the Prosecution's working method, specific aspects will be explained in Section G, because The Prosecution merely in this sub ground points to Section G, concerning explanation.

44. Even if one were to accept the proposition that some or all military police units were under the chain of command of the MPA, which proposition the Defence rejects, its rejection based on the evidence at trial that proved military police were not under the MPA's command, the Judgment still does not establish any participation or responsibility of those same military police units in the crimes themselves. Most of these crimes happened in the areas where there was no units of military police, or in isolated areas, like Vareš or Sovići and Doljani, where there is no role of the military police which has been demonstrated.

45. There is no way that a link could be established between him and occurrences in those areas, so it is not possible to draw conclusions that what happened there, could be a natural and foreseen consequence by him, far away and with no contact to anyone in the area.

46. According to the relevant jurisprudence, the third, "extended" form of joint criminal enterprise entails responsibility for crimes committed beyond the common purpose, but which are nevertheless a natural and foreseeable consequence of the common purpose. The requisite *mens rea* for the extended form is twofold. First, the

[68] Prosecution Appeal, para.51

accused must have the intention to participate in and contribute to the common criminal purpose. Second, in order to be held responsible for crimes which were not part of the common criminal purpose, but which were nevertheless a natural and foreseeable consequence of it, the accused must also know that such a crime might be perpetrated by a member of the group, and willingly take the risk that the crime might occur by joining or continuing to participate in the enterprise.[69] There are two requirements for the third form of joint criminal enterprise, one objective and one subjective. The objective element requires that the crime be the natural and foreseeable consequence of the execution of the JCE. The subjective element requires that the accused was aware that the resulting crime was a possible consequence of the JCE and participated with that awareness.[70] It has to be reasonably foreseeable on the basis of the information available to the accused that the crime or underlying offence would be committed.[71] The law requires that the extended crime be reasonably foreseeable based upon the information available to the accused at the time that the crime or underlying offence would be committed and the Prosecution must prove that the accused had sufficient knowledge that the extended crime was a natural and foreseeable consequence of the common criminal purpose.[72] It is respectfully submitted that the aforementioned Standard set in the jurisprudence is not met in this case, for the accused Ćorić.

6. SECTION 1G Does Not Raise Any Discernible Error Requiring Intervention of the Appeals Chamber.

47. The Prosecution alleges that as Chief of HVO Military Administration and later Minister of Interior, Ćorić could foresee that the additional JCE3 crimes might be committed in the execution of the common criminal purpose. They say that the Chamber found that Ćorić intended to commit a wide range of crimes against the Muslim population, which he was aware of and participated in the HVO campaign of attacks and expulsions, crimes against detainees, destruction of Muslim homes and

[69] *Kvocka, AJ* para. 83; *Stakic*, AJ para. 65
[70] *Krajisnik*, TJ, para. 882; *Stanisic & Simatovic*, TJ, para. 1257
[71] *Milutinovic, TJ,* para. 111
[72] *Tolimir, TJ,* para. 1139

religious institutions. By remaining in positions of authority, intending or aware of ongoing crimes committed by HVO forces against Muslim forces, he took the risk that JCE3 crimes might be committed.[73] The Prosecution alleges that Ćorić played a key role in implementing discriminatory and violent campaign against Muslims, well-aware of the resulting crimes, that he must have been aware of the consequent vulnerability of the Muslim population, so, it was foreseeable for Ćorić that other violent crimes against Muslims or their property might be committed in the course of the campaign.[74] To support that claim, the Prosecution merely quotes the Chamber's findings in the Judgment.[75]

Sub-ground 1(A)

48. PROSECUTION alleges that Trial Chamber applied an erroneous *mens rea* standard for JCE3 liability, when applying, as they say, the correct standard, the Trial Chamber would be able to conclude that Ćorić could foresee the possibility of murders and wilful killings in detention centres and during the evictions, the Prosecution alleges, and if Ćorić's JCE3 liability is properly considered he should be held responsible for additional JCE 3 crimes - murder (Count 2) and wilful killing (Count 3) in the municipalities of Stolac and Čapljina and in Dretelj Prison, appropriation of property (Count 22) and plunder (Count 23) in the municipalities of Stolac and Čapljina.[76]

49. The Prosecution repeats their arguments concerning participation of accused Ćorić in joint criminal enterprise, that he was member of JCE since January 1993, that he knew that Dretelj Prison was overcrowded, that he was aware of force labour, if he knew and approved that the detainees be subjected to dangerous unlawful labour outside of HVO detention facilities, then, he 'facilitated murder' during HVO operations during the siege of East Mostar starting in June 1993, at the very outset of the JCE he was aware of and intended murders in Gornji Vakuf in January 1993, therefore Ćorić must have anticipated that the eviction of the women, children and elderly from Stolac and Čapljina would be carried out in a similar climate of violence as in the earlier

[73] Prosecution Appeal para. 198
[74] Prosecution Appeal, paa. 205
[75] Prosecution Appeal, footnotes 631-664
[76] Prosecution Appeal, para. 207-214

operations in Gornji Vakuf and Mostar.[77] All of the previous allegations of the Prosecution are the subject of the Defence Appeal, and the Prosecution Appeal is thus founded upon errors. The Defence deny existence of such conclusions – Valentin Ćorić was not part of the Gornji Vakuf mid-January attack on Gornji Vakuf, because he was not on even on territory of Herceg Bosna, he was in hospital in Zagreb.[78] He did not intend to facilitate murder during siege of Mostar - the evidence shows that Ćorić's orders in regards to checkpoints were always based on implementing decisions reached at a higher authority, and in the vein of implementing peace agreements reached.,[79] Ćorić was not aware of the violence during May 1993 evictions in Mostar[80], Ćorić did not order and facilitate indiscriminate arrest of the men in Stolac and Čapljina[81], Ćorić did not accept the use of detainees in the frontline and mistreatment of detainees in detention centres – he did not have any authority to approve or order the use of detainees for work,[82] he did not accepted the bad detention conditions at detention centres by doing nothing to rectify situation, but to the contrary, he informed government about bad conditions and Government created official organ for detention centres after that, he again informed his superior Department [83] so these are not elements which make basis for conclusions that he had to foresee that HVO soldiers might commit murders during the evictions from Stolac and Čapljina. The Prosecution gives no findings to link accused Ćorić to those specific crimes – crimes of murder in Stolac and Čapljina, murder on 14th July 1993 in Dretelj Prison, just repeating the Chamber's findings of other crimes, and responsibility for those crimes is also challenged by Defence Appeal.[84]

[77] Prosecution Appeal, para. 207-214
[78] Defence Appeal, par. 148, 195,196, 300; Andabak (T.50967) ' and he (Ćorić) was in Zagreb at the time, so he didn't know that we were involved in the Gornji Vakuf operations and combat.', 51009, 51082 – Witness Andabak says: 'I know for sure he wasn't there during all the events in Gornji Vakuf, that he arrived only prior to the meeting that we held.', 51087, 51089
[79] Defence Appeal, par. 151, 157; P04174, P04258, P2030, P1988, P2002, 2D470, 2D313, 3D00676,3D00016, P2020; Witness A (T.14011/12-14012/7)
[80] Defence Appeal, para. 153, 154, 199, 200, 202, 204
[81] Defence Appeal, para. 144
[82] Defence Appeal, para. 136, 165
[83] Defence Appeal, para. 173, 208
[84] Prosecution strictly stands for possibility standard, and not probability standard, 'could be' and not 'would be', but in par. 212 of their appeal they use term WOULD BE, although they stand for 'could be standard': ', *therefore Ćorić must have anticipated that the eviction of the women, children and elderly*

50. Furthermore, the Prosecution alleges that 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, and when his JCE3 is properly considered he should be held responsible for these incidents.[85] The Prosecution consider that because of evictions in Mostar and because Ćorić validated practice of military policemen moving into the apartments of evicted Muslims showed that he was aware and approved such practice.[86] Ćorić did not participate in Mostar evictions, as set out above and according to evidence that show how military policemen put problems of evictions into their official reports and did not try to hide it, they submitted several reports about their efforts and actions under the law against evictions[87]. Ćorić did not validate practice of MP+s entering abandoned apartments – Municipal authorities in Mostar deciding on the use of apartments[88]. The Decree on the Use of Abandoned Apartments, dated July 1993,[89] defines what is an abandoned apartment, and can be given for use to a member of HVO or a person who, due to war, was left without his/her apartment. The temporary use of an apartment may last up to one year and is to be determined by the municipal HVO administration. MPA thus acted in accordance with the procedure as prescribed by the quoted decree. So, these allegations of the Prosecution are not base on factual findings, and should be rejected.

Sub-ground 1(B)

51. The Prosecution alleges that the Trial Chamber erred in law by compartmentalizing its assessment of the evidence demonstrating the foreseeability of JCE3 crimes. Instead of assessing foreseeability for each Accused in light of the totality

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from Stolac and Čapljina would be carried out in a similar climate of violence as in the earlier operations in Gornji Vakuf and Mostar', so, it is clear they did not change the standard, like Trial Chamber sometimes use terms 'would be' and 'probable consequence' instead of 'could be' and possible consequence' but apply same possibility standard

[85] Prosecution Appeal para. 215-219

[86] ibid.

[87] footnote 56, P5841, P2749, P2754, P2769, P2770, P2802, P2871, 5D2113; Forbes (T. 21421/23-25; 21422/1-6), (T. 21422/19-24), (T. 21422/25; 21423/1-9), (T.21423/10-22)

[88] 1D3016, Defence Appeal, para. 202,203

[89] P03089

of evidence, the Chamber analysed the evidence in relation to each of the relevant incident in isolation. The Prosecution states that this error led Chamber to wrongly acquit Ćorić of murder, wilful killing, and appropriation of property for incidents stemming from the evictions in the municipalities of Stolac and Čapljina and detentions in Dretelj Prison.[90] The Prosecution alleges that the Chamber failed to consider its own findings demonstrating Ćorić's awareness of the circumstances surrounding the implementation of the common purpose in totality. The Prosecution reckons that this includes that Ćorić was a member of JCE characterized by violent ethnic cleansing, and he intended murder and wilful killing as means to implement its criminal purpose[91] - but this are elements of JCE1 responsibility that he was found responsible, and that he was entered convictions – the Prosecution wants that same elements create all possible form of liabilities.

52. The Prosecution's quotation of the Judgment show we are dealing with paragraphs in which he was found responsible and convicted. And the Prosecution wants that these convictions would be enough to bootstrap additional convictions for other crimes, and that is out of scope of principle of legality, and principle *non bis in idem*. Furthermore, the Prosecution states that Ćorić was regularly informed about violence, and then they quote the Chamber's findings from Gornji Vakuf and other municipalities and they present it as totality of evidence – if he knew what happened in Gornji Vakuf, than he probably knew what happened in Stolac and Čapljina. We challenge those findings, that he knew for crimes in Gornji Vakuf, because he was not even there, he was in other state during Gornji Vakuf operation[92], so, this does not lead to conclusion that he knew what happened in other municipalities, i.e. Stolac and Čapljina. The Prosecution has to show what evidence is disregarded that show he knew what happened in Stolac and Čapljina, and not showing us conclusions of the Chamber for other municipalities and asking for using these conclusions as evidence in other municipalities. Further allegations of Prosecution in this sub ground are that Ćorić visited Dretelj Prison on July 9th 1993 when the prison was overcrowded. Ćorić did not

[90] Prosecution Appeal, para. 220
[91] Prosecution Appeal, para. 221, Vol.4, paras 1000-10006
[92] Defence Appeal, para. 148, 195,196, 300; Andabak (T.50967) ' and he (Ćorić) was in Zagreb at the time, so he didn't know that we were involved in the Gornji Vakuf operations and combat.', 51009, 51082

visit Dretelj Prison, and the Prosecution evidence does not mention the prison, but rather that he visited the barracks near Dretelj that the military police used. The evidence is that from this position Dretelj Prison itself is not even visible. [93] In any event, such a visit of a separate building near the Dretelj Prison is supported only by one document of dubious nature and whose questionable contents were unable to be confirmed by a single witness, and remain in dispute. [94] The Defence points out that [redacted] testified in the trial, as a prosecution witness, but that interestingly the prosecution failed to ask him if Ćorić ever visited the Dretelj Prison. It is difficult to believe that the Prosecution would fail to ask him that critical question, unless they knew he could not confirm their prosecution theory. In any event, Dretelj Prison was under the effective authority of the 1st Knez Domagoj Brigade and its commander, Nedjeljko Obradovic.[95]

53. Furthermore, Ćorić did not condone the use of detainees to perform forced labour despite being on notice that they were being wounded and killed. Documentary evidence and testimony demonstrate the fact that prisoners were taken out for labour according to the orders of commanders of military units which were subordinated to the Operative Zone, and these military units were supposed to ensure the safety of detainees while transferred to the place of work.96 Orders issued by Main Staff [97] had authority to regulate the taking of detainees for work and attempted to do so. [redacted] Furthermore, allegations that Ćorić could anticipate that during removal of women and children murder might occur, because earlier he 'ordered and facilitated'

[93] [redacted]

[95] P3731; P4253
[96] P4273; P4750
[97] P3592; P5873
[98] [redacted]
[99] [redacted]

removal of men. But he did not ordered the arrest of men in Stolac and Čapljina, this is based on very externded interpretation of document signed by Rade Lavrić, his deputy, who signed the order, and this order was about conscripts, not Muslim men.[100]

54. Furthermore, the Prosecution alleges that these same arguments are valid for evaluation of Ćorić's responsibility for thefts and plunder resulting from the eviction operations in the municipalities of Stolac and Čapljina.[101] Defence denies these allegations, because Ćorić did not participate in it, what the Prosecution consider as totality of evidence includes erroneous findings that are challenged by the Defence in its Appeal,[102] and the Prosecution's allegations are not based in evidence, but in upon an extended interpretation of findings, without regard to the principle of *in dubio pro reo*.

Sub-ground 1(C)

55. The Prosecution alleges that the Trial Chamber failed to adjudicate the Accused's responsibility under JCE3 for a large number of crimes – killings, rapes, sexual assaults, thefts, plunder and the destruction of mosques despite having found that those crimes were proven and Ćorić was aware of the risk that crime might happen, or, in the alternative, the Chamber failed to provide a reasoned opinion on Accused's acquittal for liability under JCE3.[103]

56. The Prosecution claim that Ćorić could foresee murder and willful killing in detention centre and during evictions because he knew that it happened in Gornji Vakuf, during siege of Mostar and he was regularly informed that detainees in Heliodrom were mistreated and that they are in poor conditions.[104] Defence deny these allegations because it denies that Ćorić knew about murders in Gornj Vakuf, he was not there, not in the state, as Defence stated in sub-ground 1(B)[105], Ćorić was not involved in siege of

[100] P03077, 3rd Company of htre 3rd Batallion participated in arrests under command of 1st HVO Brigade Knez Domagoj, not Military Police Administration
[101] Prosecution Appeal, para. 223-224
[102] Defence Appeal para. 144, 268
[103] Prosecution Appeal, paa. 226-227
[104] Prosecution Appeal, para.227-229
[105] Defence Appeal, para. 148, 195,196, 300; Andabak (T.50967', 51009, 51082

Mostar[106], and did not know for mistreatment of detainees[107], but these are different types of crimes than murder and wilful killing, he cannot be responsible for murder if he earlier knew for a different type of misdemeanour at some other location. Ćorić participated in fighting against crime, there is a lot of evidence, disregarded evidence in this case, so, his behaviour in starting hundreds of criminal proceedings must have role in evaluating his role during period when he was Chief of the Military Police Administration.

57. Furthermore, the Prosecution alleges that Ćorić had actual knowledge of commission of rapes, and, considering that he signed a report on the work of the Mostar Centre of the Department for Criminal Investigations of the Military Police Administration on 9 August 1993 in which it is stated that there is increase in crimes including rapes committed in Mostar, that he was informed about sexual crimes from 14 or 16June 1993, and coupled with his awareness of and contribution to the prevailing climate of violence and vulnerability of the Moslim population as a result of forcible displacement, detention and separation men from women, Ćorić could foresee the possibility that HVO forces might commit sexual violence crimes in implementing the criminal purpose.[108]

58. If Ćorić is to be held accountable for the actions of the Military Police (even though they are, in the view of the Defence, outside his chain of command, then it must be taken into account that the military police did everything in its power to fight against crime, including to prevent sexual crime, including rapes, in Mostar and elsewhere. The Defence has presented a lot of evidence about these efforts fighting against crime.[109] as a part of the evidence on record we have court and Prosecution files from Mostar, both civil and military courts,, as a result of criminal records taken by victims by military or

[106] Defence Appeal, para. 151, 153, 154, 157,199, 200, 202, 204; P04174, P04258, P2030, P1988, P2002, 2D470, 2D313, 3D00676,3D00016, P2020; Witness A (T.14011/12-14012/7)
[107] Defence Appeal, paar. 136, 165
[108] Prosecution Appeal para. 230-232
[109] 5D04288; Surrogate sheet (for 3 CDs) containing Prosecution Registers for the period from 1992 until 1995:Mostar MilitaryProsecution Office register books from 1992, 1993, 1994 and until 31 July 1995; District Prosecution Office registers from 1992, 1993, 1994 and 1995; Capljina Municipal Prosecution register books from 1992, 1993 and 1994; Mostar Municipal Prosecution Office registers from 1992, 1993, 1994 and
1995; excerpts from Livno Military Prosecution Office register books from 1992, 1993, 1994 and 1995, Witness Buntic - Transcript 30449, 30450, 30451, 30524-30561

civil police, including procedure for Article 88 (rape) of Criminal Code of Republic Bosnia and Herzegovina.[110] Having in mind all the evidence about steps taken to prevent crime, and police work put into bringing perpetrators to justice, it is not possible to draw conclusion that 'Ćorić knew for commission of murders and could foresee it'. There are lot of criminal records concerning rape, and no reasonable trier of facts can conclude that those who file that quantity of criminal records against perpetrators who are members of HVO, and someone who speaks about increase of crime in reports, and not hiding it - as the Prosecution wrongly alleges despite the fact that someone who wants crime to be committed do not want to publicly speak about it with exact numbers of it , and propose measures against it, no reasonable trier of facts may conclude that this person want this crime to happen and agree with it.

59. The Prosecution furthermore alleges that Ćorić could foresee appropriation and plunder that occurred in Sovići and Doljani, Podgrađe, Raštani, Vareš and Stupni Do that were committed by HVO forces during attacks Bosnian Muslims.[111] There are no any evidence that Ćorić or military police had any role in those occurrences, and Trial Chamber validate it. Even earlier occurrences that the Prosecution mentions, like evictions in Mostar as of mid-June 1993 came later occurrences that had to be foreseen (Sovići and Doljani in April 1993). The Prosecution gives no arguments, and does not point to any possible evidence, so, this sub-ground of appeal is completely groundless. In order for the Appeals Chamber to assess a party's arguments on appeal, the party is expected to present its case clearly, logically, and exhaustively. The Appeals Chamber may dismiss submissions as unfounded without providing detailed

[110] Some examples of filed criminal reports with original registered numbers, Exhibit 5D04288 ; District Military Prosecution of Mostar : 1. KT-40/92 Mostar MP's criminal report against Brajković Jelenko, Article 153 KZRBiH 5D 04288 Img 1627, 2. KT- 86/92, Mostar MP's criminal report against Zelenika Ivan, **Article 88** KZRBiH 5D 04288 Img 1632, 3. KT-88/92, Stolac MP's criminal report against Jurić Slavko, Article 148 KZRBiH 5D 04288 Img 1632, 4. KT-265/93, Mostar MP's criminal report against Bušić Mario, Mario Pažin, Mario Čavić i Knezović Blaško (all members of military police) **Article 88** KZRB 5D 04288, Img 1828, 5. KT-588/93, Mostar MP's criminal report against Zelenika Stanko, Article 148 KZRBiH, 5D 04288, Img 1869, 6. KT-1033/93, MP's Crime Department's criminal report against Bijuk Vedran called 'Splico', Article 36 KZRBiH5D 04288 Img 1957, 7. KT-1116/93, MP's Crime Department's criminal report against Kordić Milenko, Article 36 KZRBiH, 5D 04288, Img 1965, 8. KT-1556/93, Čapljina MP's criminal report against Kozina Veselko, Article 226 KZRBiH, 5D 04288,
Img 2010 9. KT-2789/93, MP's Crime Department's criminal report against Škobić Božidar, Article 150 KZRBiH, injured party is Ćorić Saja 5D 04288 Img 1223, 9. KT-312/94, MP's 1st batallion's criminal report against Šilić Zeljko, **Article 88** KZRBiH, 5D 04288, Img 1264

[111] Prosecution Appeal, para. 233

reasoning if a party's submissions are obscure, contradictory, vague, or suffer from other formal and obvious insufficiencies.[112]

60. The Prosecution furthermore alleges that Ćorić could foresee destruction of Muslim religious institutions, before June 1993.[113] Prosecution alleges that Ćorić knew about destruction of since October 1992 and Prozor events, and also Gornji Vakuf in January 1993. This actual knowledge, coupled with his awareness of the climate of ethnic tension and violence, show that he could foresee that HVO forces could destroy or damage other mosques in implementing common criminal plan, and PROSECUTION submit that Trial Chamber erred in failing to adjudicate Ćorić's responsibility for four mosques – Sovići and Doljani, Skrobućani and Baba Bešir mosque in Mostar. There are no any evidence that any of Military Police Unit or military policeman participated in destroying mosques, perpetrators of these crimes were unknown, and to deal with this was matter of civil and not military police. There is no any single clue that lead to conclusion that Ćorić could foresee these criminal events, what happened in Prozor in October 1992 is out of scope and time frame of TC's establishing time frame of Joint Criminal Enterprise, and in Gornji Vakuf, Ćorić did not participate, it was said on many places in Response to this Ground of Appeal. The Prosecution failed to provide us with arguments, possible evidence that is disregarded, so, in this sub-ground it failed to present its case clearly, logically and exhaustively, especially having in mind that footnotes that has to carry some evidence or factual findings on which they base their claim is actually not concerning Ćorić but other accused, so this allegations have no any support .[114]

61. Furthermore, the Prosecution Appeal alleges that Chamber erred in law by failing to provide a reasoned opinion.[115] It is necessary for appellant claiming an error of law on the basis of the lack of a reasoned opinion to identify the specific issues, factual

[112] D. Milošević AJ, para. 16, referring to Mrkšić and Šljivančanin AJ, para. 17, Krajišnik AJ, para. 16, Martić AJ, para. 14, Strugar AJ, para. 16; Orić AJ, paras 13-14 and references cited therein, Karera AJ, para. 12. See Perišić AJ, para. 12; Gotovina and Markač AJ, para. 15; Ndahimana AJ, para. 12; Mugenzi and Mugiraneza AJ, para. 16; Gatete AJ, para. 12
[113] Prosecution Appeal, para. 234-235
[114] Prosecution Appeal, para. 235, footnote 731: Judgemnt, Vol. 4, paras. 59, 342, 433 - this paragraphs, especially 342 and 433, are not connceted with the accused Ćorić
[115] Prosecution Appeal, para. 236-237

findings, or arguments that the appellant submits the trial chamber omitted to address and to explain why this omission invalidates the decision.[116] The Prosecution's allegations have no basis in factual findings of the Chamber. The Trial Chamber used same principles in acquittals like when it entered convictions, so, the Prosecution's allegations misrepresent the factual findings and the evidence, and ignore other relevant factual findings.[117]

SUB-ground 1(D), Contributions to JCE1 crimes

62. The Prosecution alleges that Chamber erred in law by requiring Ćorić to have specifically contributed to particular JCE1 crimes in the municipalities of Stolac and Čapljina in order to be liable for the JCE3 crimes committed during the evictions (murder, wilful killing, the appropriation of property and plunder), and this led the Chamber to, as the Prosecution stated in their appeal, erroneously acquit Ćorić of several criminal incidents.[118]

63. This sub-ground of Ground 1 of the Prosecution's appeal is based on misinterpretation of the Trial Chamber's findings. What the Chamber expressed was not that Ćorić has to be linked to JCE1 to be JCE3 responsibility, but Chamber explained why there is no JCE3 responsibility for Ćorić in connection with mentioned criminal incidents – because of, among other elements, Ćorić's non-involvement in earlier occurrences, the essential element of JCE3 liability is missing. There is no foreseeability for him that those crime might occur. And foreseeability is necessary for this type of liability, according to jurisprudence. There are two requirements for the third form of joint criminal enterprise, one objective and one subjective. The objective element requires that the crime be the natural and foreseeable consequence of the execution of the JCE. The subjective element requires that the accused was aware that the resulting crime was a possible consequence of the JCE and participated with that awareness.[119] It has

[116] Šainović et al. AJ, para. 20; Perišić AJ, para. 9; Lukić and Lukić AJ, para. 11; D. Milošević AJ, para. 13; Krajišnik AJ, para. 12; Martić AJ, para. 9; Halilović AJ, para. 7; Brđanin AJ, para. 9; Đorđević AJ, par. 14, par. 18
[117] see, Paragraph 29, supra
[118] Prosecution Appeal, para.238-240, Vol.4/1015-1016
[119] *Krajisnik*, TJ para. 882;*Stanisic & Simatovic*, TJ, para. 1257

to be reasonably foreseeable on the basis of the information available to the accused that the crime or underlying offence would be committed.[120] The law requires that the extended crime be reasonably foreseeable based upon the information available to the accused at the time that the crime or underlying offence would be committed and the Prosecution must prove that the accused had sufficient knowledge that the extended crime was a natural and foreseeable consequence of the common criminal purpose.[121] Because there was no information available to the accused at the time that the crime might be committed, there is no responsibility. Lack of information and not error by requiring the accused to specifically contribute to JCE1 is reason for these acquittals.

Sub-ground 1(E)

64. In its reasoning for Sub-ground 1(E), the Prosecution states that the Chamber's own findings and the evidence summarized in previous sub-grounds demonstrate that Ćorić was aware of the risk that additional JCE3 crimes might be committed and willingly took that risk. The Prosecution says that no reasonable trier of facts could have failed to convict Ćorić of the additional JCE3 crimes. They provide us with table, containing list of additional crimes, [122] Contrary to that, Defence state that this sub-ground has no any reasons, no any erred facts. A party alleging an error of law must identify the alleged error, present arguments in support of its claim, and explain how the error invalidates the decision.[123] Defence is not provide with information which facts are disregarded, what evidence is a base for additional JCE3 liability. This sub-ground has to be dismissed by Trial Chamber because it contains no reasoned opinion. Contrary to the Prosecution's allegations, Trail Chamber's factual findings concerning mentioned error in facts, in the table in par. 242, are not erred; they have been made by Trial Chamber in the same manner as factual findings that resulted in convictions.

65. Accordingly, none of the sub grounds presented by the Prosecution Appeal meet the criteria for Appellate intervention and they thus should be denied and dismissed.

[120] *Milutinovic TJ* para. 111
[121] *Tolimir,* TJ para. 1139
[122] Prosecution Appeal, para. 241-242
[123] Đorđević AJ, par. 14, Šainović et al. AJ, para. 20; Perišić AJ, para. 8; Lukić and Lukić AJ, para. 11;; Ndahimana AJ, para. 8; Mugenzi and Mugiraneza AJ, para. 12; Gatete AJ, para. 8.

III. Ground 2 of the Prosecution Appeal

A. Ground 2 Should be Dismissed as the Prosecution has Not Demonstrated Any Error of Law or Fact Requiring Appellate Intervention.

66. In Ground 2 of its Appeal, the Prosecution alleges that the Chamber erred in failing to adjudicate the Accused's responsibility under Article 7(3) for failure to consider other forms of responsibility, after having determined that the Accused were not responsible for committing those crimes as members of JCE. They submit that the Trial Chamber was required to consider other charged modes of liability before entering an acquittal.[124] Had the Chambers properly considered the Accused's responsibility under Article 7(3), it would have found Ćorić criminally responsible for failing to punish certain crimes committed by forces under their effective control. [125] The Prosecution alleges that the Chamber's findings and the totality of evidence record eliminate any doubt about the Superior responsibility. According to PROSECUTION's allegations in their Appeal, Ćorić should have been convicted pursuant 7(3) responsibility for murder (Count 2), Wilful killing (Count 3) with respect to Dretelj Prison.[126]

67. The Prosecution submitted that the Trial Chamber erred in law by entering acquittals before considering all charged modes of liability.[127] They say that the case law establishes that a Trial Chamber has discretion to enter a conviction on the basis of Article 7(1) mode of liability which best reflects the totality of Accused's criminal conduct. Before entering acquittal Trial Chamber must adjudicate an accused's responsibility under all charged modes. They say that cumulative charges under 7(1) and 7(3) must always be separately considered, even where a Trial Chamber enters

[124] Prosecution Appeal, para. 17, 278
[125] OTP puts footnote 869 in which says that the Prosecution appeal these findings in Ground 1 but it did not say in which paragraph of its own appeal, so it's not totally clear what exactly is meant by term 'Chambers findings' in this exact situation concerning allegations of possible Command Responsibility
[126] Prosecution Appeal, para. 279
[127] Prosecution Appeal, para. 281

conviction under Article 7(1), it is still oblige to make explicit findings on the elements of superior responsibility under Article 7(3) for sentencing purposes.[128]

68. In support of their arguments, the Prosecution alleges that Ćorić failed to punish his subordinates for the deaths of three detainees in Dretelj Prison.[129] 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, PROSECUTION says, the Chamber acquitted him with respect to this incident without any further consideration of his liability under Article 7(3) for his failure to punish perpetrators.[130] The Prosecution Appeal alleges that Ćorić had power regarding the security of detainees in Dretelj, the Military Police Administration was responsible for initiating proceedings against members of the MP suspected of committing crimes, and that Ćorić had material ability to punish members of the HVO MP who fired at the hangars.[131] Then they say that in mid-July 1993 Ćorić was informed that members of Military Police in charge of the security of the detainees had fired on them on 14 July 1993. Ćorić was again informed on 29 July 1993 that three detainees were killed, so, according to Appellant, Trial Chamber concluded that as of mid-July 1993 Ćorić was aware that detainees at Dretelj were being mistreated, resulting in deaths.[132] The Prosecution alleges that the Chamber found that Ćorić failed to act, continued to exercise his functions in the MPA and therefore 'deliberately took the risk that more detainees might be killed as a result of mistreatment, as indeed occurred in August 1993, and that was a crime for which Ćorić was found responsible under JCE3.[133]

69. The Conclusion the Prosecution in its Appeal is that 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.[134] What is set out as The Chamber's own findings and totality of evidence, according to allegations of

[128] Prosecution Appeal, para. 282-283, in support of their thesis OTP mentions Kordić AJ, par. 34, Judgment Vol. !, par. 263, Blaškić AJ, par 91, Setako AJ, para. 268
[129] Prosecution Appeal, para. 317
[130] ibid., The Judgment Vol. 4, par. 1017-1019, 1021, in support of their thesis OTP put earlier parts of this particularnApellant's Brief (The Prosecution's Appeal of Ćorič's acquittal under JCE3 in Ground 1,
[131] Prosecution Appeal, par. 318,
[132] Prosecution Appeal, par. 319,
[133] Prosecution Appeal, par. 320
[134] Prosecution Appeal, par. 321

Prosecution's Appeal, is – The Accused were superior to and exercised effective control over the perpetrators and had material ability to punish their criminal conduct[135]; 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,[136] and the Accused failed to take necessary and reasonable measures to punish the perpetrators of the relevant crimes. Measures which reasonably fell within the Accused's material powers and showed that they genuinely tried to punish the perpetrators.[137]

70. Respectfully, the Prosecution Appeal is premised upon an entirely erroneous understanding and interpretation of both the Judgment and the prevailing jurisprudence. The Prosecution's quotation and reference to case law is not correct – in the Kordić Appeal Judgment, par. 34, which the Prosecution references and relies upon in paragraph 863 of their Appeal, it is actually said:

> *The provisions of Article 7(1) and Article 7(3) of the Statute connote distinct categories of criminal responsibility. However, the Appeals Chamber considers that, in relation to a particular count, it is not appropriate to convict under both Article 7(1) and Article 7(3) of the Statute. Where both Article 7(1) and Article 7(3) responsibility are alleged under the same count, and where the legal requirements pertaining to both of these heads of responsibility are met, a Trial Chamber should enter a conviction on the basis of Article 7(1) only, and consider the accused's superior position as an aggravating factor in sentencing*[138]

[135] OTP points to Čelebići AJ, par. 256 and Halilović AJ, par 59, it does not give support in factual findings, OTP Appeal footnote 885
[136] OTP footnote 886, Čelebići AJ, par. 239 and Halilović AJ, par 28
[137] OTP footnote 887, Halilović, AJ, par 63
[138] Kordić AJ, par 34

71. The Kordić Appeal Judgment is not alone in such a finding and is supported by other jurisprudence that has been in accord with it.[139] It is clear that what the case law says is that the Trial Chamber should enter a conviction on the basis of Article 7(1) only, where both 7(1) and 7(3) are met, and it would consider Accused superior position as an aggravating factor in this situation. And that is different than the way the Prosecution use it. The Case law does not say that Chamber has to examine Superior responsibility if it already established responsibility under 7(1), it is nowhere said. It does not say that Trial Chamber is obliged to make explicit findings on the elements of superior responsibility for sentencing purposes – it says that if superior position is established it will consider it as an aggravating factor, but it does not have to make special findings about it. Also, it is clear that from above quoted case law does not derive the existence of error in law if Trial Chamber fail to consider Article 7(3) charges for purpose of sentencing.

72. The Prosecution's interpretation of Kordić, is way too extensive; it puts the burden of proof in Trial Chamber's hands. The thesis of Prosecution that it is an error of law to fail to consider 7(3) accusations even when conviction has already been entered upon Article 7(1) is not based in case law, also, their Ground of Appeal, Ground 2 in this Appeal, is based on wrongful interpretation of case law.[140] The prevailing jurisprudence goes directly to the contrary of the Prosecution's position in their Appeal on this point.[141]

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[139] Blaškić AJ, par 91: 'The Appeals Chamber considers that the provisions of Article 7(1) and Article 7(3) of the Statute connote distinct categories of criminal responsibility. However, the Appeals Chamber considers that, in relation to a particular count, it is not appropriate to convict under both Article 7(1) and Article 7(3) of the Statute. Where both Article 7(1) and Article 7(3) responsibility are alleged under the same count, and where the legal requirements pertaining to both of these heads of responsibility are met, a Trial Chamber should enter a conviction on the basis of Article 7(1) only, and consider the accused's superior position as an aggravating factor in sentencing.';
Čelebići AJ, para. 745 (emphasis added). In a footnote, the Appeals Chamber also stated that this observation "applies only if the two types of responsibility are not independently charged under different counts, with separate offences imposed on each. A different situation may arise of two separate counts against an accused, one alleging Article 7(1) responsibility for direct or accessory participation in a particular criminal incident, and another alleging Article 7(3) responsibility for failure to prevent or punish subordinates for their role in the same incident. If convictions and sentences are entered on both counts, it would not be open to aggravate the sentence on the Article 7(3) charge on the basis of the additional direct participation, nor the sentence on the Article 7(1) charge on the basis of the accused's position of authority, as to do so would impermissibly duplicate the penalty imposed on the basis of the same conduct."
[140] Blaškić, AJ, par 91, footnote 183
[141] see, fn 139 supra

73. Furthermore, the Prosecution gives no argument for their thesis of Ćorić's Article 7(3) responsibility for murder and wilful killing in Dretelj prison. In their Appeal[142] they just reproduce the Trial Chambers conclusions from the Judgment[143], it does not reveal, nor mention earlier, evidence that lead to conclusion that Ćorić is responsible, no mentioning of any evidence or factual findings, just reproducing his position, which implicitly means that he is responsible because of his function, not because what he did, that there is no need for *mens rea* and *actus reus*, it's enough that he was the Chief of Military Police and this means that he is responsible for all crimes committed anywhere - and that is a proper nor not lawful position.

74. The Prosecution constantly ignores a significant amount of evidence that shows that Ćorić and the Military Police did undertake significant efforts to fight the crime.[144] The Ćorić Defence tendered into evidence log-books and registers of some Court Offices in Bosnia and Herzegovina, and some Prosecutor's offices, which contains criminal proceedings against known and unknown perpetrators; it contains hundreds of criminal reports for various crimes where Moslems are victims, from thefts till murders, for all areas where Defence could obtain such documents. More than 2000 criminal reports were filed by the Military Police against Croat perpetrators by the relevant law enforcement authorities in HZ-HB. A number of "unfinished" cases was transferred by the judicial organs to the new courts after the Washington Agreements.[145] This evidence

[142] Prosecution Appeal, para. 317-320
[143] Judgment, par. 1017-1020
[144] Ćorić Apellant's Brief, par. 294,295, Buntic (T.30449, 30450, 30451, 30524-30561); 5D04288; (3 CDs) containing Prosecution Registers for the period from 1992 until 1995:Mostar Military Prosecution Office register books from 1992, 1993, 1994 and until 31 July 1995; District Prosecution Office registers from 1992, 1993, 1994 and 1995; Capljina Municipal Prosecution register books from 1992, 1993 and 1994; Mostar Municipal Prosecution Office registers from 1992, 1993, 1994 and 1995; excerpts from Livno Military Prosecution Office register books from 1992, 1993, 1994 and 1995
[redacted] 5D5027; 5D5032; 5D5024, Vidovic (T.51562/18-51569/23), 5D04288, P00100, P00101
[145] Some examples of filed criminal reports with original registered numbers, Exhibit 5D04288 ; District Office of the Prosecution in Mostar : 1.KT-44/93 – MUP's criminal report against Bunoza Dragan and Rajić Tvrtko, article148 KZRBiH, injured party Šuta Hebib, 5D 04288 Image 2112 2. KT-46/93 – PS Čitluk criminal report against Sesar Miro, Kolobarić Robert, Pehar Antonio, Dugandžić Franjo, more injured parties and among them Hadžiabdić Esad from Mostar, Article 148 KZRBiH 5D 04288 Img 2112 3. KT-4/94 criminal report against Ulaković Alen injured party is Korać Husejin, Article 36 KZRBiH 5D 04288Img 2116
District Military Prosecution of Mostar : 1. KT-40/92 Mostar MP's criminal report against Brajković Jelenko, Article 153 KZRBiH 5D 04288 Img 1627**,** 2. KT- 86/92, Mostar MP's criminal report against

clearly shows that the Prosecution's statement in their Appeal that Ćorić is criminally responsible for failing to punish certain crimes committed by forces under their effective control is not based on factual findings.

75. The Prosecution did not challenge the afore-mentioned evidence of what the Military Police did in fighting against crime, it did not challenge it during the Trial Phase, it did not challenge it after, it just ignores it, like it does not exist, and all the Prosecution's given evidence and arguments on appeal act like these Court register and criminal proceedings that the Military Police initiated and filed does not exist.

76. Having in mind existence of these registers and logbooks with numerous filed criminal reports against many members of HVO and other Croats as perpetrators of crimes against Muslims, it is obvious that Ćorić, as Chief of the Military Police Administration, did fight against crime. The Trial Chambers found in the Judgment that, as Chief of the Military Police Administration, Ćorić had the ability to participate in fighting crime within the HVO but that his power was limited to investigating the perpetrators of crimes, while the responsibility for their Prosecution rested with the Military Prosecutor.[146] So, according to those registers and log-books that is what he did – Military Police filed criminal reports against known perpetrators and brought them to Military Prosecutor, and also filed reports against unknown perpetrators. Within the limited power that he had, he acted reasonably and lawfully to prevent crime.

77. If we took into account other evidence, such as 5D04248, then we have to admit it is not usual, nor logical that someone intends crimes to be committed if he then on the

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Zelenika Ivan, Article 88 KZRBiH 5D 04288 Img 1632, 3. KT-88/92, Stolac MP's criminal report against Jurić Slavko, Article 148 KZRBiH 5D 04288 Img 1632, 4. *KT-265/93,* Mostar MP's criminal report against Bušić Mario, Mario Pažin, Mario Čavić i Knezović Blaško (all members of military police) Article 88 KZRB 5D 04288, Img 1828, 5. KT-588/93, Mostar MP's criminal report against Zelenika Stanko, Article 148 KZRBiH, 5D 04288, Img 1869, 6. KT-1033/93, MP's Crime Department's criminal report against Bijuk Vedran, Article 36 KZRBiH**5D** 04288 Img 1957, 7. KT-1116/93, MP's Crime Department's criminal report against Kordić Milenko, Article 36 KZRBiH, 5D 04288, Img 1965, 8. KT-1556/93, Čapljina MP's criminal report against Kozina Veselko, Article 226 KZRBiH, 5D 04288,
Img 2010 9. KT-2789/93, MP's Crime Department's criminal report against Škobić Božidar, Article 150 KZRBiH, injured party is Ćorić Saja 5D 04288 Img 1223, 9. KT-312/94, MP's 1st batallion's criminal report against Šilić Zeljko, Article 88 KZRBiH, 5D 04288, Img 1264**,**

[146] Vol.4/880, 882

other hand uses his authorities and functions of the Chief of the Military Police, to file criminal reports against hundreds and hundreds of members of HVO, including members of the Military Police for crimes against Muslims, crimes that he allegedly wants to be committed in the first place. Such a conclusion is not logical, and ir defies common sense. So, the arguments of Prosecution concerning superior responsibility and the alleged efforts of Ćorić in facilitating and condoning crimes and taking no steps to fight crime are simply fanciful and unsupportable under the evidence, and are not based on facts in the case.

78. Furthermore, the alleged responsibility of Ćorić is based entirely on several documents of questioned authenticity, and some of those documents are crucial for Ćorić's defence, the essential part of his responsibility is based on these fake documents, and especially one, document P03216.[147] document that is a fundamental basis for Ćorić's responsibility concerning so-called ' a network of Heceg Bosna/HVO prisons'. Defence challenged that document but their arguments were not answered; first, it is not Valentin Ćorić's signature on this document and that is indisputable;[148] it is a signature that looks like a signature of his deputy Rade Lavrić. Witness Slobodan Božić who was familiar with signatures of Lavrić and Ćorić said that this is not neither Ćorić nor Lavrić's signature; he even said in his testimony that Rade Lavrić told him that this is not his signature, that Lavrić saw the document and clearly says that this is a forgery.[149]

79. [redacted] None of the other witnesses who by their position were supposed to receive this order could confirm it as authentic[151], [redacted]

[147] Exhibits P03216 and P 3220 refer to the same document. It is analyzed in detail in the Defence Appeal, Ground 12 and Ground 14.
[148] [redacted] Bozic (T.36412/18-36413/2), [redacted]
[149] Bozic (T.36413/6-36414/2), Vidovic (T.51738/25-51739/4),
[150] [redacted]
[151] [redacted]

[redacted][152]. Furthermore – this document is not recorded in the Heliodrom logbook[153], and it should have been recorded therein, if authentic, since Obradovic's Order (P03201) is recorded in the logbook, and P03216 purports to be a response to same. It is indicative of the dubious nature of P03216 that other documents sent to Heliodrom prison are recorded in the logbook, among them Colonel Obradovic's order[154] that P03216 is alleged to be a reply to, but there is no recorded receipt of P03216 - this alleged order of Ćorić's, dated 6th July 1993. As such the only reasonable conclusion available under the evidence is that it is a fraudulent document and not authentic.

80. In other situations, relating to documents of questioned provenance, this same Trial Chamber demanded proof of entry in the same Heliodrom logbook as proof of authenticity.[155] The Defence gave multiple arguments of sufficient nature to demonstrate that P03216 is a fake, but that evidence is disregarded and not even cited in the Judgment.[156] Having this in mind, this question of a blatantly forged P03216 being the crucial document/evidence of the Prosecution's case, the whole concept of Ćorić's responsibility for Dretelj Prison has no basis in fact, under Article 7(1) or 7(3) and command responsibility for crimes at Dretelj would be a form of liability for someone else, someone who really has effective control in Dretelj Prison, and not Valentin Ćorić. So, this Ground of Appeal of the Prosecution is based on unsupportable evidence and is baseless.

81. Contrary to what the Prosecution says, Ćorić had no effective control over military policemen on 14th July 1993, and he did not fail to punish perpetrators. It is said in the Defence Appeal that Dretelj and Gabela military remand prisons were under the effective authority of the 1st Knez Domagoj Brigade and its commander, Nedjeljko

[152] [redacted]
[153] P00285
[154] P03201, order by 05. July 1993., Class: 8/93-01/166-2, Reg. Number: 1100-01-01-93-495, Entry number 683 in logbook,
[155] Vol.2/1431: 'However, the Chamber observes that a logbook at the Heliodrom refers to the receipt of the instructions issued by Bruno Stojić on 11 February 1993. The Chamber thus finds that the Heliodrom logbook, which was created at the time of the events, shows that the instructions of Bruno Stojić were indeed sent and received at the Heliodrom.'
[156] Defence Appeal, Ground 14

Obradovic.[157] The evidence shows the sole duty of the MP Battalion within Dretelj was to assist the brigade in security issues under the command of the brigade commander and to report on eventual criminal incidents connected to members of the MP. The evidence shows the Military Police Administration did not have such authority and Ćorić could not influence the conditions of detention in these two facilities.

82. Further, when looking at what actions Ćorić undertook, the Prosecution's arguments look even more inappropriate and unsustainable. [redacted] Ivan Ancic turned to Ćorić informing him about the inappropriate reaction of Obradovic and the conditions of detention in Dretelj, Ćorić took the measures that he could in order to ameliorate the state of detainees. He attended a government session on 19 July 1993 and took Ivan Ancic with him so that he could present the problems given in Dretelj to the assembly -- however, the situation did not change.[158] Branimir Tucak, the assistant chief of the MPA for security was sent to Dretelj on two occasions in order to inspect the situation, and one of that occasion is on 29th July 1993 which Prosecution mentions in quoted parts of the Appeal, although Tucak's remarks were primarily about security of the facility.[159] Ćorić once again cast attention on the situation in Dretelj at a collegium meeting of the heads of Defence Department on 2 September 1993[160]. Boban appointed Tomo Sakota Coordinator for Centres for POWs and Isolated Persons[161], but conditions did not change due to the strong power of the brigade and the local municipal authorities.[162] The brigade took measures even against the orders of Mate Boban, as it happened in the case of the action directed by Tomo Sakota to release detainees from Dretelj according to the orders of Mate Boban. Local authorities and the 1st HVO Brigade attempted to hinder the accomplishment of the action.[163]

83. Having the totality of the aforesaid evidence in mind, it is not Ćorić who willingly took the risk of committing crimes of murder after he had to foresee it. He did what he could, by informing the Government, he sent his assistant to conduct inspection and

[157] P3731; P4253
[158] [redacted]
[159] [redacted]
[160] P4756, Item 3
[161] 5D2090; P7341
[162] P7341; [redacted]
[163] P7341, Item 2-3

inform him about what he found. In short he undertook all the steps he could think of or exercise within his limited domain to force those with the authority to do something to try and resolve the issues. He certainly did not contribute to the creation nor the continuation of the poor conditions.

84. Further, the incident that the Prosecution is mentioning, the incident on 14 July 1993, includes Frano Vulić, a military policeman, who killed one and wounded two detainees. [redacted]

[redacted][164]

85. [redacted] Frano Vulić claimed that he shot inmates who were attempting to fee and that that he shot them to stop them. The Prosecution does not give any counter evidence showing that this policeman shot with any other intent or for any other reason or no reason, but nonetheless the Prosecution labels his behaviour is an unquestionably criminal act, for which he had to be punished, and for which his superiors should be liable. However, the evidence is clear that Vulić's immediate superior officer took all necessary and expected steps, and that Ćorić, as Chief of Military Administration at the very most, if and when informed about the incident, could not have any better information [redacted], would have been informed that after the shooting, appropriate steps were taken, and that there is an on-going investigatory/disciplinary procedure as to the shooter.

86. The Prosecution does not provide any evidence that Ćorić actually had prior knowledge about this 14th July incident apart from what Tucak's letter from 29th July 1993 says – so, there is no evidence that he had information about it at all. And, then, when he had information about this incident, he also received at the same time and had

[164] [redacted] P3476, P3446

information about investigatory/disciplinary steps having been taken and which were underway. So, his duty as a superior was fulfilled, and that is according to the relevant case law, which states "a superior will be criminally responsible through the principles of superior responsibility only if information was available to him which would have put him on notice of offences committed by subordinates,"[165] and that the superior failed to act or punish. Further, the Appeals Chamber in Čelebići case stated that "[n]eglect of a duty to acquire such knowledge, however, does not feature in the provision [Article 7(3)] as a separate offence, and a superior is not therefore liable under the provision for such failures but only for failing to take necessary and reasonable measures to prevent or to punish."[166] The use of disciplinary measures may be sufficient for a superior to discharge his duty to punish crimes under Article 7(3).[167] Further, where reports were made to the appropriate authorities by subordinates of the accused, for the institution of disciplinary matters, the accused has discharged his duty and cannot be held criminally responsible pursuant to Article 7(3) even if the other authorities fail to carry through with a serious investigation.[168]

87. Exhibit P03446 is mentioned in the Prosecution's Appeal, and it is the basis for the Trial Chamber's findings in its Judgment.[169] The Finding that Ćorić was informed about a criminal incident in Dretelj Prison in Mid-July 1993 comes from that document, created by Krešimir Bogdanović, commander of 3rd Company of the 5th Batallion of Military Police, the one which was stationed in Dretelj. This document is a report by Bogdanović sent to the Chief of the Military Police Administration, in which he informed him about the incident, and in which he stated that Frano Vulić, the military policeman who shot the inmates, '*after giving a statement, was then relieved of his duty as military policeman. Crime investigators will conduct a more detailed investigation about all this*.'[170] It is clear that from such a report that Ćorić , as the Chief of the Military Police Administration was informed that after a shooting incident, all necessary and appropriate steps were taken by authorities, by officers who were superior to the guard

[165] *Čelebići* AJ, par. 241 , Krnojelac AJ, par. 151, Blaškić AJ, par 62
[166] *Čelebići,* AJ par. 226
[167] *Popović* AJ, para. 1942
[168] *Boskoski & Tarculovski*, TJ, para. 536
[169] Vol.4/988 (footnote 1859)
[170] P03446, Official Note 14th July 1993

who had possibly committed a crime, and that steps were underway to determine if a crime had been committed and the consequences of same. There was no reason for Ćorić to doubt that that all appropriate investigative and disciplinary procedures, including legal steps, according to relevant legal provisions would be followed. Ćorić thus could not be put on notice of any "crime" for which he needed to intervene to punish or discipline himself.

88. The Prosecution did not challenge successfully the findings of Trial Chamber regarding this incident in Dretelj Prison on 14th July 1993. The Trial Chamber did not fail to find Valentin Ćorić responsible for murder and wilful killing base on Article 7(3) responsibility due to any error in analysis, but rather under the evidence Article 7(3) responsibility could not attach for same given the factual scenario and the information available to Ćorić. There simply are no elements of such responsibility for any reasonable trial chamber to find otherwise, and thus the findings of the Trial Chamber are understandable, reasonable, and correct. The Chamber's own findings and the evidence demonstrate that the elements of 7(3) were not met with respect to murder (Count 2) and wilful killing (Count 3) in Dretelj Prison.

89. Accordingly, this ground of Appeal must be dismissed.

IV. Ground 3: The Prosecution's Appeal as to Wanton Destruction

A. Ground 3 Should be Dismissed as the Prosecution Has Failed to Demonstrate Any Discernible Error Critical to the Verdict Reached.

90. The Prosecution Appeal in Ground 3 alleges that 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 the Accused for crimes committed in Prozor, Gornji Vakuf and Mostar.[171] The basis for the argued convictions are the Chamber findings that the HVO destroyed houses and stables and killed cattle belonging to Bosnian Moslems in

[171] Prosecution Appeal, para. 18, 325

Skrobućani, Lug and Podaniš in Prozor municipality in May or June through July 1993; that the HVO destroyed houses belonging to Bosnian Moslems in the villages of Duša, Hrasnica, Uzričje and Ždrimci in Gornji Vakuf municipality on 18 January 1993; that the HVO destroyed the Old Bridge on 8-9 November 1993; and that the HVO destroyed or heavily damaged ten mosques in East Mostar between June and December 1993.[172]

91. The alleged errror is that the Chamber, first found that these incidents could not result in convictions under Count 19 due to the findings that the territory was not occupied by the HVO at the time of destruction[173], and then declined to enter convictions under Count 20 because it believed all incidents of destruction had been found to be contained in the conviction under Count 19.[174]

92. The Prosecution seeks an additional conviction for these 4 sites, as well as an increase in sentence for Respondent.[175]

93. As a preliminary matter, the Defence notes that the Prosecution has mis-understood the Judgment. The Chamber indeed has found Respondent liable and guilty under Count 20 for the first two of the enumerated crimes this ground complains of.[176] As to the Old Bridge and Mosques in Mostar the Defence cannot find any reference to the MP or Respondent in the findings of liablity for the same in the enumerated citations provided by the Prosecution to the Judgment.[177] The Chamber thus had in mind this finding of guilt as to 2 of the sites when considering the appropriate sentence to be imposed. Without a finding of Respondent's liability as to the last 2 sites, there cannot be any extra conviction. Thus there is no discernible error affecting the sentence, as the crimes for which he was found liable and guilty were already duly considered by the Chamber in reaching the sentence. The Chamber declined to enter convictions for these crimes under Count 20 because it believed same

[172] Prosecution Appeal, para. 326
[173] Prosecution Appeal, para. 327
[174] Prosecution Appeal, para. 328
[175] Prosecution Appeal, para. 330
[176] Vol.4/1006
[177] (Bridge) Vol.2/1366 and Vol.3/1587; (Mosques) Vol.2/1377 and Vol.3/1580

were included in Count 19 and thus additional conviction would be cummulative.[178] Accordingly, per the Judgment Respondent has already been found guilty of the crimes in relation to these locations[179], and the sentence imposed against him includes the Chambers appraisal of guilt for these crimes. There is no increase in sentence that can appropriately result from the error, if any, because all the crimes were duly considered by the Chamber.

94. In the alternative, even assuming that the Prosecution is correct and that liability was established of the Respondent as to the remaining 2 locations as well, even if convictions ought to have been entered for Wanton Destruction as to all 4 locations, the result is not of significance to the verdict or the sentence already imposed. The Chamber has already held that all 4 incidents constituted the crime of Wanton Destruction.[180] The Chamber declined to enter convictions for these crimes under Count 20 for Wanton Destruction because it believed same were included in Count 19 and thus additional conviction would be cummulative.[181] Accordingly, per the Judgment Respondent has already been found guilty of the crimes in relation to these locations[182], and the sentence imposed against him includes the Chambers appraisal of guilt for these crimes. Further, that sentence imposed is significant in nature, and the Defence even asserts that the sentence imposed is excessive in nature, given the reasons and arguments submitted in the Defence Appeal.[183] Thus, even if the prosecution's technical appeal were to be granted , there would be no practical difference in the judgment or sentence imposed and thus would be pyrrhic in nature.

95. The Prosecution Appeal is also rendered moot by the fact that the finding of guilt as to these localities as to Respondent is based on errors of fact and law that render said finding unsound, and are subject to the Defence Appeal.[184] The findings as to these localities ignore and do not analyze the battles between the ABIH and HVO

[178] Vol.4/1264-1266
[179] Vol.4/1006
[180] Prosecution Appeal para. 326-327
[181] Vol.4/1264-1266
[182] Vol.4/1006
[183] Defence Appeal, Ground 16, para. 321-332
[184] Defence Appeal Ground 7

military in these localities, nor that a great number of casualties on the HVO side resulted from same, nor that Respondent did not have effective control over the HVO forces participating in said combat, nor information about the crimes so as to be able to undertake any disciplinary measures.

96. For the error to be one that occasioned a miscarriage of justice, it must have been "critical to the verdict reached"[185] Accordingly, insofar as the instant Appeal is not one that was critical to the verdict reached, and does not affect any acquittals, the Prosecution has failed to meet the standard for Appellate intervention and this ground should be dismissed.

V. Ground 4: The Prosecution's Appeal as to the Length of Sentence

A. Ground 4 Should be Dismissed as the Prosecution Has Failed to Demonstrate Any Error Demonstrating that the Sentence against Ćorić was Manifestly Insufficient

97. The Prosecution Appeal in Ground 4 alleges the Chamber erred in law and abused its discretion in sentencing the accused to manifestly insufficient sentences.[186] Per the Prosecution Appeal, the 16 year sentence imposed against Ćorić does not reflect the gravity of the crimes for which he was found guilty, nor his contributions/involvement in them.[187] Per the Prosecution Appeal, the sentence that should be imposed is 35 years for Ćorić,[188] essentially repeating their unsuccessful sentencing request from trial. For the reasons set forth herein, the Prosecution's arguments are without merit and this ground should be dismissed.

[185] Limaj AJ para. 13
[186] para. 331
[187] para. 336
[188] para. 338

98. As a preliminary matter, it should be noted and stressed that the Defence considers and asserts that the Trial Judgment's imposition of a 16 year sentence against Ćorić is too severe and manifestly excessive, as set forth in the Defence Appeal.[189] The Defence stands behind its arguments and submissions in the Defence Appeal that numerous errors in both fact and law invalidate both the conviction and sentence pronounced against Ćorić. Ćorić is of the view that the Defence Appeal should be granted, and that thus the Prosecution's Fourth Ground of Appeal will be rendered moot thereby. However, for the limited purpose of responding to this Prosecution Appeal for an increase in sentence, we present arguments and submissions *arguendo,* premised as if the Chamber's findings will stand. Nothing in this Response should be construed neither as a waiver of arguments nor as an admission that the Chamber did not err in the sentence imposed as argued by the Defence Appeal, or that there were not additional mitigating factors that ought to have led to a lower sentence. Respondent asserts and submits only that the Chamber did not err in imposing a sentence ***which was manifestly insufficient***, as claimed by the Prosecution.

99. Further, the entirety of this ground of the Prosecution Appeal focuses on the number of years of the sentence and fails to take into account the jurisprudence that, apart from the number of years for which an individual is sentenced, indictment, prosecution and conviction by an international war crimes tribunal is an extremely stigmatizing process in itself, which has a part to play in acknowledging the seriousness of crimes committed.[190] Thus the deterrent effect of a conviction alone is considerable, without need to increase a sentence.

100. The Prosecution Appeal argues that several factors support higher sentences. Invariably all these factors seem to revolve around the number and gravity of the crimes and the senior offices of authority held by the Defendants, as well as their participation

[189] see, Ground 16
[190] *Furundžija TJ*,para.290.

in a JCE, described as one of the most serious forms of liability.[191] However this position neglects the jurisprudence that gradations of fault within the JCE doctrine are possible, and may be reflected in the sentences given[192], even for the most serious of crimes committed as part of a JCE. While membership in a JCE forms the basis of a finding of criminal responsibility for crimes directly committed by others who are said to be members of the JCE, an individual's form and degree of participation in the underlying crimes themselves as a member of the JCE but not as a direct perpetrator, should be reflected in the sentence imposed upon him.[193] Thus a finding of criminal liability for the most serious crimes does not automatically equate to the imposition of the most serious sentence. Although members of a purported JCE may be held criminally liable for offenses committed by individuals within their number irrespective of their particular role or participation in the offenses in question, those differing roles and levels of participation in the offenses in question should be reflected in the sentence imposed on each individual.

101. Notably, as to Ćorić, the Prosecution initially limits its argument for increased sentence because he is one of the "architects" of the network of HVO detention centers that played a key role in the purported execution of the JCE.[194] However it then seeks to attribute further aggravating factors for a higher sentence in addition, specifically to also include: a) sending of MP to Gornji Vakuf to take part in operations[195]; b) providing MP units in Mostar for evictions, arrest, sniping, shelling[196]; c) impeding delivery of humanitarian aid to East Mostar[197]; and d) creating a climate of impunity to encourage commission of crimes.[198] The Prosecution asserts that Ćorić played a major role in the commission of crimes in furtherance of the JCE both as MPA Chief and as MUP Minister.[199] The Chamber's imposition of liability for Ćorić's time as MUP Minister is

[191] Prosecution Appeal, para. 376-377
[192] Krajisnik, TJ para.886.
[193] Aleksovski, AJ para.182.
[194] Prosecution Appeal para. 335, 404-407
[195] Prosecution Appeal para. 402
[196] ibid.
[197] ibid.
[198] Prosecution Appeal para. 403
[199] Prosecution Appeal, para. 335, 401

inappropriate, given that this is a time period outside the scope of the Indictment, for which the Defence was not given proper notice.[200] The Prosecution cannot take advantage of this fundamental error on the part of the Chamber to ask for an increased sentence.

B. Standard of Review

102. As a general rule, the Appeals Chamber will not substitute its sentence for that of a Chamber unless it believes that the Chamber has committed an error in exercising its discretion, or has failed to follow applicable law.[201] The Appeals Chamber will only intervene if it finds the error discernible.[202] As long as a Chamber does not venture outside its discretionary framework in imposing a sentence, the Appeals Chamber will not intervene.[203]

103. Chambers are endowed with considerable discretion in deciding the appropriate sentence in a case since it is their overriding obligation to ensure that the sentence fits the gravity of the specific crime, the circumstances of the case and the individual role of the particular accused person.[204] The Chambers are in a unique position to discharge this function since it is they, and only they, who hear all of the evidence in the case.[205] Moreover, it is well-established in the jurisprudence of the International Tribunal that the Chambers exercise a considerable amount of discretion (although it is not unlimited) in determining an appropriate sentence and that the Appeals Chamber has to give a margin of deference to the Chamber's evaluation of the evidence presented at trial

104. Accordingly, the Prosecution has the burden to establish that the Chamber committed discernible error which amounts to an abuse of its sentencing discretion - "*it*

[200] Defence Appeal, Ground 11
[201] Čelebići AJ, para 725; Kupreškić AJ, para 408.
[202] Čelebići AJ, para 725; Kupreškić AJ, para 408.
[203] Čelebići AJ, para 725; Kupreškić AJ, para 408.
[204] *Čelebići AJ*, IT-96-21-A,para.717; *Dragan Nikolić AJ*,para.9.
[205] *Čelebići AJ*, IT-96-21-A*bis*,para.11; *Stakić AJ*, IT-97-24-A,para.9; *Nikolić AJ*, IT-94-2-A,para.8.

therefore falls on each appellant [...] to demonstrate how the Chamber ventured outside its discretionary framework in imposing the sentence it did."[206] The Prosecution has to demonstrate that the Chamber gave weight to extraneous or irrelevant considerations, failed to give weight or sufficient weight to relevant considerations, made a clear error as to the facts upon which it exercised its discretion, or that the Chamber decision was so unreasonable or plainly unjust that the Appeals Chamber is able to infer that the Chamber must have failed to exercise its discretion properly.[207]

105. In the instant case, under the aforesaid standard of review, it is respectfully submitted that the Prosecution Appeal has not demonstrated any discernible errors or abuses of discretion committed by the Chamber, which would warrant the intervention of the Appeals Chamber to increase the sentence imposed against Respondent.

106. Rather, the Prosecution has only reiterated and repeated the findings of the Judgment, which have been given due consideration already by the Chamber, including those that are erroneous. For instance, in arguing for an increased sentence, the Prosecution cites 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"[208] but as support for this contention merely gives a lengthy recitation of evidence contained in the Judgment.[209] It is insufficient for a party on Appeal to merely restate, and repeat evidence and arguments from trial.[210] The Prosecution makes no effort to do anything more than merely recite a bulk of evidence already considered by the Chamber and incorporated in the Judgment and sentence. A similar approach is undertaken for the argument as to gravity of the siege of East Mostar[211], the deporting of detainees to third

[206] Čelebići AJ, para 725; Kupreškić AJ, para 408.
[207] Galić AJ, para 394; Nikolić Sentencing AJ, para 95; Babić Sentencing AJ, para 44.
[208] Prosecution Appeal, para. 340
[209] Prosecution Appeal, para. 341-353
[210] Blagojevic AJ, para. 10; Simic AJ, para. 12; Blaskic AJ, para. 13
[211] Prosecution Appeal, para. 356-368

countries[212], and the use of detainees for labor.[213] The Prosecution Appeal's collection of emotive renditions of the crimes committed by others adds nothing to the assessment of the evidence as to the individual guilt of Ćorić, as undertaken by the Chamber. Rather, the only part of the Prosecution Appeal that considers the relation of Ćorić's acts and conduct focuses merely on the argument that Ćorić and others were in a leadership position and thus "architects and leading implementers of the JCE".[214] However, per the relevant jurisprudence of the Appeals Chamber,[215] the actual circumstances of the case cannot be overridden solely by consideration of the seniority of the Defendant. Just as low level officers cannot escape the gravity of their crimes, neither should high level officers have their sentences automatically increased.

107. Additionally, it should be noted the Prosecution seeks to have Coric's adjudicated responsibility as a superior for 7(3) liability in Prozor taken into account to reach a higher sentence.[216] The object and purpose of superior responsibility by itself cannot logically add to the gravity of a breach of superior responsibility. The so-called '*inherent gravity*' attributed by the object and purpose of superior responsibility by the Prosecution is part of the offence itself and thus cannot be used as an aggravating factor.[217] Respectfully the Appeal Chamber has ruled " where an aggravating factor for the purposes of sentencing is at the same time an element of the offence, it cannot also constitute an aggravating factor for the purposes of sentencing."[218] Accordingly this Prosecution argument is inappropriate.

[212] Prosecution Appeal, para. 369-373
[213] Prosecution Appeal, para. 374-375
[214] Prosecution Appeal para. 376-415
[215] *Čelebići AJ*, IT-96-21-A,para.849; *Musema AJ*, ICTR-96-13-A,para.382.
[216] Prosecution Appeal, para 408
[217] *Todorović* SJ,para.57.
[218] Blaskić AJ para. 693; Vasiljević AJ paras. 172-173

C. *Prosecution Arguments are Flawed and Rely on Incomplete Interpretations of Erroneous Chamber Findings and the Misconstrue the Evidence.*

1. Ćorić did not have a key role in relation to detention facilities nor did he abuse such a role in furtherance of a JCE

108. In relation to detention centers the Prosecution alleges a higher sentence for Ćorić based on the erroneous argument that he: a) repeatedly authorized use of detainees for forced labor notably at front lines[219]; b) played a key role in arrest of civilians[220]; c) through his control of detention facilities and authority moving detainees established a deportation system to 3rd countries.[221] It is further said that the detention centers were part of a unified network of overcrowded facilities where detainees suffered from hunger, thirst, lack of hygiene and lack of medical treatment and were beaten or mistreated, such that these dire conditions in detention centers were used to coerce Muslims to leave HZ-HB.[222]

109. The Prosecution is mis-characterizing the findings of the Chamber in part, and in part is relying on finding that themselves are erroneous and ignore the evidence at trial. For these reasons this Prosecution Ground should be rejected.

110. The Defence Appeal in detail demonstrates the erroneous conclusions as to the power and authority of Ćorić as to Detention Facilities, as well as the bulk of evidence that demonstrates he did not have authority over the same.[223] Given such a backdrop it is inappropriate to grant the request of the Prosecution to increase the sentence based on the same.

[219] Prosecution Appeal, para. 404
[220] Prosecution Appeal, para. 405
[221] Prosecution Appeal, para. 406-407
[222] Prosecution Appeal, para. 347-351, 370
[223] Defence Appeal, Grounds 7(B), 7(C), 7(D), 7(E), 7(F), 7(G), 7(H), 11(C), and 13

111. The Prosecution ignores and mischaracterizes the findings in the Judgment that: a) Ćorić never restricted access to detention centers for representatives of international organizations[224]; b) after October 1992 there is no evidence detainees were sent for labor upon Ćorić's approval;[225] c) Ćorić did not have knowledge of mistreatment at detention facilities;[226] and d) Ćorić had no role in logistics for detention facilities.[227] These findings militate against any increased sentence for Ćorić based upon the Prosecution arguments as to detention centers.

112. The Prosecution further relies on erroneous findings that are unsupported by the actual evidence, which establishes that: a) neither Ćorić nor the MPA but rather HVO Military commanders had the authority over arrests, food and accommodations, security, health condition of prisoners and detainees, transfer of prisoners and detainees and release of prisoners and detainees;[228] b) Ćorić repeatedly tried to improve conditions in detention centers despite lacking authority for same;[229] c) Ćorić had no role in health care at detention facilities;[230] and d) Ćorić's overall lack of authority in regard to detention facilities.[231] This evidence militates against any increased sentence for Ćorić based upon the Prosecution arguments as to detention centers.

113. In relation to detainees taken for labour, the Chamber concedes that beginning in October 1992 there is no evidence that detainees were sent with Ćorić's approval.[232] The Chamber's finding as to the preceding period is based solely on regulations that were overruled. Overwhelming evidence demonstrates that the HVO Main Staff and

[224] Vol.4/961 and 992
[225] Vol.2/1470
[226] Vol.4/955, 974
[227] Vol.4/904
[228] P5647; P2649; 5D1057; P3266; P4156; [redacted]
P3019; P3222; P2132; P1913; P2120; P3546; P3234; P1359; Pavlovic (T.46851/16-46852/2); P3119; P680; P3270; P3954 [redacted]); Pavlovic (T.47007/20-47008/10); P3197; 2D1538; 2D1537; P4145; 2D412; P3129; 5D1066; 2D715; P3286; 2D278; Vidovic (T.51737/17-51738/1); P6658; P1913; P6662; P9732; P3380; [redacted] P4941; P4946; P5138; P3604; P3169; 5D2184; P3201; P1636; P4193; [redacted]
[229] Defence Appeal, para. 138-142
[230] P4653; 2D917; P4145; 2D412; P3197; Bagaric (T.38992/5 – 38995/1)
[231] Ground 7
[232] Vol.2/1470.

HVO Military commanders were authorized to send detainees for work, not Ćorić.[233] The Chamber correctly concluded that neither the MPA nor MP were involved in any incident inducing the alleged mistreatment of detainees working on the frontline.[234] The only evidence of linking Ćorić with such authority and knowledge as to detainees being used at frontlines are dubious in nature and contradictory in themselves and rebutted by other evidence.[235]

114. As to his knowledge of arrests of civilians - the findings of the Chamber that are relied upon are erroneous. The evidence demonstrates that civilians were evacuated for their safety to Heliodrom by the ODPR[236]. This is corroborated by the letter of the Head of the ODPR.[237] ODPR had exclusive/overall authority over the transfer/accommodation of the civilians who moved out of their homes in May 1993. No one else had the authority to interfere in these affairs.[238] So, in the context of this evidence, Ćorić informed the warden, that a large number of people would be arriving at Heliodrom and asked him to let them in, not for any criminal purpose, but rather a humane purpose. The Chamber says that these people were arrested, but they were free to go after few days, when fighting in the city stopped.[239] Further, Ćorić had no further authority as to these persons or Heliodrom at that time, as shown by approval of OZ Commander Lašić, concerning the visit of the ICRC.[240]

115. As to any scheme to deport Muslims to third countries, it must be stressed that no direct evidence was led to prove any order of Ćorić existed in regards release of detainees and their transfer to third countries, only documents and witnesses of dubious character were relied upon to conclude the same.[241] Given the lack of authority of Ćorić

[233] Defence Appeal, para. 135, 166
[234] Vol.2/1612, 1617 and 1633.
[235] Defence Appeal, para. 133-134, 168-171
[236] [redacted]
[237] 2D1321, para 2
[238] 5D1004; 5D2016; 6D576
[239] as confirmed by Vol.4/925
[240] 5D1001
[241] Defence Appeal, para. 179-185

as to Detention facilities, or the release of persons from same, it is inappropriate to increase his sentence for the activities of others outside his control.

2. Ćorić did not create a climate of impunity tolerating crimes.

116. The Prosecution argues that Ćorić ordered that crimes committed in Mostar by the *Vinko Škrobo* and *Benko Penavić* ATGs be disregarded thus protecting criminals**.**[242] This argument is misplaced, as it is entirely based on findings of the Chamber that are erroneous and unsupported by the evidence. Rather, it is clear from the evidence that Ćorić and others worked together to collect information on ATG's crimes with the aim to perform a comprehensive operation to arrest and institute proceedings, but that they had to delay arrests until they had enough personnel to effectuate the same, as the ATGs were well armed and numerous.[243] The Judgment does not deny that the arrests of the ATGs personnel occurred, but only takes issue with the timing of the same.[244]

117. But even the Chamber itself found the MP was forced to devote the major part of its forces and equipment to combat operations, such that crime could not be effectively opposed in satisfactory fashion in HZ-HB.[245] Further other evidence denoted the difficulties encountered in facing such a large and well-armed ATG without adequate manpower.[246]

118. Contrary to the Prosecution Arguments there is ample evidence that shows criminal investigations/procedures against members of HVO, including members of ATGs, and KB.[247] No fewer than 2000 criminal reports were filed by the MP against Croat perpetrators by the relevant law enforcement authorities in HZ-HB.[248] A large

[242] Prosecution Appeal, para. 403
[243] Defence Appeal, para. 38, 153, 232, 234,
[244] Vol.4/931-932
[245] Vol.1/972
[246] Vidovic (T.51518/2-18; 51444/4-13; 51600/15-51603/14); [redacted] P5471; 5D548; P1654
[247] P05893, P05841, P02749, P2754, P02769, P2802 , P2871, 5D2113,P5800,
[248] [redacted] 5D4288

number of "unfinished" cases were transferred by the judicial organs to the new courts after the Washington Agreements.[249] A HVO report dealing with the MP activities from July-December 1993 stressed efforts to cooperate with other law enforcement organs to engage in several operations to increase traffic security and identify perpetrators of crimes were carried out.[250]

119. Ćorić called for severe pay decreases to be enforced for disciplinary proceedings arising out of misconduct, and which was even stricter than the military's regulations.[251] Likewise Ćorić's personal attitude as to discipline of MP found to have engaged in misconduct, was described as stringent:

> "[…] any such perpetrators should be persecuted and a criminal report filed […] anybody who besmirched the name of the MP on battlegrounds throughout Bosnia and Herzegovina, that they should be thrown out of the unit".[252]

The evidence is clear where information of rapes by 4 MP members reached him that Ćorić acted appropriately and swiftly in calling that the perpetrators immediately be relieved of duty, placed in military detention, and their file turned over to the military prosecutor for charges to be filed, with the notation that "[…]the above-named have sullied the honor of the MP and their further presence in this unit is detrimental."[253] And most importantly, we have evidence of Ćorić, both as MPA Chief and as MUP Minister, appealing for the return of MP and policeman from the frontlines because of a lack of manpower to police duties including the prevention of crime.[254] Again the Chamber itself found that engagement of the MP at the frontlines made it so that the MP could not carry out its normal duties for which it is entrusted,[255]

[249] Vidovic (T.51562/18-51569/23); 5D5027; 5D5032; 5D5024
[250] P7419 pg. 2; see also 2D138; 1D2577
[251] P1444
[252] Andabak (T.50953/19-50954/9)
[253] P3571
[254] P5471, P6837
[255] Vol.1/940,972

120. Evidence demonstrated that, Ćorić instituted professional training for MP, using instructors and texts geared for the work of the police during war-time as well as rules of war.[256] Evidence confirmed the intent of the training was to insure that the MP procedure would be coordinated with the International Law.[257] None of the texts used in the training authorize or teach any criminal conduct.[258] The topics of the training were: a)to humanely treat prisoners;[259] b)ensuring detainees were not subjected to cruel treatment or torture;[260]c)ensuring detainees were protected from physical violence;[261]d)ensuring detainees were provided access to food and water; [262] and e)ensuring detainees were not compelled to do dangerous work.[263]

121. Ćorić conducted seminars for MP commanders, on the conduct and duties of the MP in war, how to treat civilians, captured enemies and wounded people humanely.[264] Organized education courses on the same topics were held at the battalion command and individual companies, with the help of the ICRC, where booklets were distributed on the conduct of soldiers during combat.[265] Ćorić and the MPA issued the decision to set up such training centers and were involved in certifying persons completed the same. [266]

122. Rather than encourage a culture of impunity, it is clear from the above that Ćorić took deliberate action to make the MP adhere to IHL and the Geneva Conventions, and tried within his limited means and authority to fight crime, not condone the same.

[256] Defence Appeal, Sec. V. A.
[257] Desnica (5D5109 para. 6)
[258] Desnica (T.50875/8-50877/7) 5D5113, 5D5114, 5D5115, 2D751 and P7
[259] Desnica (T.50890/7-9)
[260] Desnica (T.50890/10-13)
[261] Desnica (T.50890/14-15)
[262] Desnica (T. 50890/16-7)
[263] Desnica (T.50890/18-21)
[264] [redacted]
[265] Andabak (T.5092/9-17)
[266] Desnica (T.50891/18-50892/24); P1629; P2189

3. Ćorić did not provide MP units to contribute to JCE crimes in Mostar and Gornji Vakuf

123. The Prosecution Appeal[267] in seeking a higher sentence for the participation of the MP in military operations in Mostar and Gornji Vakuf, is misplaced, and in contradiction to the findings and evidence about the limited authority of Ćorić over MP once they were subordinated to HVO military commanders. Even under the erroneous conclusions of the Chamber that Ćorić retained some limited authority over MP, the Prosecution argument fails.

124. The Chamber held that Ćorić, had limited authority and effective control over MP units and in particular had the power to re-subordinate them.[268] However the Chamber further agreed with the Defence that the MPA's command ability over the MP diminished, as the war progressed.[269] Further it admitted that it was not in a position to find that all reports on crimes against Muslims were actually brought to the attention of Ćorić.[270] As to Ćorić's reaction to crimes that were brought to his attention, his response demonstrated stringent adherence to law, not a contribution to crimes, as he dismissed the MP from service, called for criminal reports to be sent to prosecutors, and declared - "[…]the above-named have sullied the honor of the MP and their further presence in this unit is detrimental."[271] Other reporting to him dealt with logistics and not crimes[272], or tended to show that that MP were doing their proper job in terms of law enforcement.[273] Post combat reports of the MP were given to the military commanders, not the Ćorić.[274]

[267] Prosecution Appeal, para. 402
[268] Vol.4/871
[269] Vol.1/964
[270] Vol.4/878
[271] P3571
[272] P2784; P420; P423; P6722; 5D4092; 5D4094; [redacted]
[273] P420; P423; P6722
[274] 5D4385; [redacted]

125. Per the Chamber the powers that remained in Ćorić's hands were those in relation to recruitment and powers of appointment.[275] However, the exercise of those powers by him does not support an intent to further the JCE and thus is not supportive of the sought increase of sentence. Ćorić recruited and maintained Muslims such that throughout the conflict Muslims made up a considerable part of MP units.[276] At the height of the conflict Ćorić officially recommended appointment of a Muslim, as commander of an entire MP battalion.[277] In fact, other command positions within the MP were likewise filled by Muslims.[278] Through the relevant time period 25-30% of the 2nd MP Battalion remained staffed by Muslims.[279]

126. Thus the Prosecution argument fails, even without looking at the bulk of evidence demonstrating that Ćorić did not have any power or authority as to the MP once subordinated to the HVO military commanders. If one were to take into account the overwhelming preponderance of evidence demonstrating that Ćorić in fact did not retain authority over MP subordinated to HVO military commanders,[280] the result would even more overwhelmingly go against the sought increase in sentence for the role of the MP in Gornji Vakuf and Mostar.

4. Ćorić did not contribute to the misery of East Mostar by impeding humanitarian aid or otherwise.

127. The Evidence at trial runs counter to the Prosecution's argument about Coric's role in limiting humanitarian aid or otherwise adding to the misery of East Mostar.

128. Ćorić undertook efforts to enter into an agreement with the Red Cross to assist humanitarian convoys in passing through checkpoints on the territory of HZ-HB.[281] Other documents demonstrate that, within his limited authority, he did all he could to

[275] Vol.4/873-876.
[276] [redacted] Andabak (T.50949/2 – 50950/6); P4850
[277] P2970 (26 June 1993); 5D4094
[278] Andabak (T.50950/5-6).
[279] Andabak (T.50949/12-50950/6)
[280] Defence Appeal, fn.40, 42, 43, 58
[281] 5D524

clear up misunderstandings caused by legitimate security concerns and worked with humanitarian organizations to adhere to the commitment to assist properly registered and announced aid convoys get where they were going.[282] Ćorić conducted all measures that MP work is done properly, on checkpoints.[283] The evidence shows that Ćorić's orders in regards to checkpoints were always based on implementing decisions reached at a higher authority, and in the vein of implementing peace agreements reached.[284] MP did not have efficient means to control persons moving in or out of Mostar, as this authority was held by the OZ commander Lasic.[285] MP were to be deployed by Lasic who retained authority to directly command in the case of incidents arising.[286] Ćorić is excluded from the formulation of P01868, and is neither a recipient of the same, nor is he listed among those with authority for its implementation, thus he is not a key figure for checkpoints in Mostar.

D. Prosecution Comparisons to Higher Sentences Entered Against Other ICTY Convicted Persons is Inapplicable.

129. The Prosecution Appeal erroneously calls for a comparison with sentences entered in prior ICTY cases of Galić and Milošević for crimes in Sarajevo as commanders of the Sarajevo Romanija Corps of the VRS.[287] The Prosecution's reference to these sentences is neither appropriate nor helpful, as the qualitative differences between the conduct of those Defendants and the facts of those cases is such that severe sentences may have been appropriate for them but that such sentences are not appropriate for Respondent. Factually and otherwise these two cases are dissimilar to the specific facts and circumstances of the instant matter, and thus are inappropriate comparisons.

[282] P1451; 5D526; 5D529
[283] 2D01365
[284] P04174, P04258, P2030, P1988, P2002, 2D470, 2D313, 3D00676,3D00016, P2020; Witness A (T.14011/12-14012/7)
[285] P5007 pg. 2 point 3
[286] P1868
[287] Prosecution Appeal para. 368

130. Per the jurisprudence, the principle of proportionality by no means encompasses proportionality between one's sentence and the sentence of other accused and comparative analysis of the different sentences imposed upon different defendants within the Tribunal can only be of limited value.[288] When the Chamber determines that the level of participation in the commission of the crime and the mitigating factors are different, it is justified in imposing different sentences.[289]

131. In imposing a life sentence against Galić, the Appeals Chamber noted that his crimes were "characterised by **exceptional brutality and cruelty**"[290] including deaths and injury arising out of his direct orders to target shelling, and sniping at schools, markets, shops, funerals and hospitals.[291] Respectfully, there has been no evidence nor finding of any direct orders by Ćorić that would amount to anything similar. Given the findings and evidence of the limited nature of Ćorić's command or his lack of direct involvement in crimes, any comparison to Galić is wholly misguided and inappropriate.

132. Similarly, in relation to Milošević, comparison is not appropriate. In setting the sentence the Appeals Chamber focused on "active and central role" of Milošević in crimes and that Milošević "did more than merely tolerate the crimes as a commander; in maintaining and intensifying the campaign of shelling and sniping the civilian population in Sarajevo throughout the Indictment period, he provided additional encouragement to his subordinates to commit the crimes against civilians." [292] As specified elsewhere[293] Respondent cannot be said to have the same type of conduct making comparison unhelpful and inappropriate.

133. Rather than comparing to other cases where the individual responsibility, factual scenario, and mitigation evidence were different, it is more helpful to look at the specific circumstances of this case, in order to reach a determination of a individualized

[288] *Plavsic*, SJ para. 132; *Krajisnik* TJ para.1146.
[289] *M. Nikolic*, Judgement on Sentencing Appeal at para. 47
[290] Galić AJ, para. 455 (emphasis added)
[291] Ibid
[292] Milošević, AJ, para. 334
[293] See, Part V. Section C, supra.

sentence. As has been held by the Appeals Chamber: "*Sentencing is a discretionary decision and it is inappropriate to set down a definitive list of sentencing guidelines. The Sentence must always be decided according to the facts of each particular case and the individual guilt of the perpetrator*."[294] What is most important for a Chamber is to individualize the penalty imposed.[295] Accordingly, comparisons to different accused, convicted for different crimes and different forms of participation in different circumstances do not demonstrate discernible error so as to render the sentence imposed manifestly insufficient.

E. Prosecution Reliance on National Sentencing Legislation is Inappropriate.

134. The Prosecution Appeal further attempts to argue for National sentencing principles to influence the Appeals Chamber and enter a higher sentence against Respondent.[296]

135. The citation to national sentencing legislation is also unhelpful for the purposes of establishing an error or abuse of discretion on the part of the Chamber. The Canadian Act applies only two sentences[297], the death penalty or life in prison, which clearly are not in accord with the current sentencing jurisprudence of the ICTY, which emphasizes molding the sentence to fit the circumstances of the case. The German Act punishes the commander "in the same way as the perpetrator,"[298] which is a clear departure from the *sui generis* understanding of superior responsibility embodied in the ICTY jurisprudence, that those convicted of superior responsibility are sentenced only in relation to their specific failures and are not charged with the crimes of his

[294] Blaskić AJ, para. 680
[295] Kupreskic AJ, para. 445
[296] Prosecution Appeal, para. 336, 416-417
[297] Crimes Against Humanity and War Crimes Act, s 4(2).
[298] Act to Introduce the Code of Crimes Against International Law, s 4(1).

subordinates.[299] The jurisdictions cited to that consider those convicted of superior responsibility as accomplices or aiders and abettors is similarly inappropriate, given that such is clearly not the view of the Tribunal.[300] The Prosecution gives no explanation or guidance as to why or how the Appeals Chamber can have recourse to these domestic sentencing practices, especially given the established ICTY jurisprudence on sentencing, much less how failure to apply domestic sentencing laws of other jurisdictions is an error on the part of the Chamber. There are simply too many differences between how other nations define their crimes, and determine sentences, which depart from the well-settled jurisprudence of the Tribunal for the type of review suggested by the Prosecution to be appropriate.

136. The Prosecution partly bases its arguments on the fact that the minimum sentence of 25 years to life the maximum of imprisonment are imposed in these jurisdictions for smaller crime bases.[301] The implication is that if persons in these jurisdictions receive such sentences for a smaller number of victims, here with the greater the number of victims we should see the greater the sentence. However, the jurisprudence of the Tribunal states where the scale of the crimes committed is reflected in the crimes for which each accused has been convicted, the number of victims will not be considered an aggravating factor.[302] Thus the comparison of size of crime base or number of victims is likewise not an appropriate comparison. Rather the sentence should be individualized to the facts of the case and the individual Accused.

137. Rather than these other outside jurisdictions, the more germane to the crimes for which Ćorić has been convicted, would be the SFRY sentencing legislation. Although both the Statute as well as the Rules provide that a Chamber shall take into account the general practice regarding prison sentences in the courts of the former Yugoslavia, Chambers are not bound by such national practice, nor prevented from imposing a greater or lesser sentence than would have been imposed under the legal regime of the

[299] see, e.g. *Halilović TJ*,paras. 42-52, 78; approved in *Hadžihasanović AJ*,para. 39, *Krnojelac AJ*, para.171.
[300] *Halilović TJ*, ,paras.42-54; confirmed in *Hadžihasanović TJ*, ,paras.66-75; *Čelebići AJ*,paras.239.
[301] Prosecution Appeal Para. 417
[302] Blagojevic & Jokic, TJ, para. 841

former Yugoslavia.[303] Thus the same logic dictates that the Chamber is not prevented from imposing greater or lesser sentences than would be available in ANY outside jurisdiction, given that such is the jurisprudence in relation to that jurisdiction that is most closely related and germane to the crimes at issue.

138. Additionally, if any national practice ought to be considered in the manner suggested by the Prosecution, it would be the SFRY practice rather than that of other countries. The crimes occurred in a time and place when the SFRY laws were in place,[304] and thus would be the most relevant and germane sentencing regime for the crimes for which Ćorić has been convicted. Although both the Statute as well as the Rules provide that a Chamber shall take into account the general practice regarding prison sentences in the courts of the former Yugoslavia, Chambers are not bound by such national practice, nor prevented from imposing a greater or lesser sentence than would have been imposed under the legal regime of the former Yugoslavia.[305]

139. Under SFRY sentencing law, Article 142 of the SFRY Criminal Code permits a range of sentence from five years as a minimum to the maximum penalty of death for violations of international law in times of war or armed conflict.[306] While the maximum prison sentence for most crimes was 15 years, after the death penalty was abolished in 1990 previous death penalty eligible crimes were converted to a maximum sentence of 20 years. Thus under this sentencing standard, the sentence imposed against for Ćorić is considered to be severe, and exceeds the maximum for most crimes, and is near maximum sentence for the most serious crimes that previously called for a death sentence. In any event it is well in excess of a minimum sentence.

140. Accordingly, under the type of analysis suggested by the Prosecution, it is clear that the sentence imposed against Ćorić is not manifestly insufficient nor too lenient.

[303] Popovic et al, AJ, para. 2087
[304] 2D00906; 2D00907; and P00449
[305] Popovic et al, AJ, para. 2087
[306] Blagojevic & Jokic, TJ, para. 830

F. ***Prosecution's Analysis of Mitigating Factors is Flawed.***

141. The Prosecution Appeal states that none of the mitigating circumstances addressed by the Chamber justify such low sentences.[307] This position fails to give due credit to those mitigation factors that were recognized, and does not take into account the errors of the Chamber in failing to take into account other mitigating factors that should have reduced the sentence even further.

142. The Chamber recognized the voluntary surrender[308] and good behavior of the Respondent[309] as mitigating factors. The same are duly recognized as mitigation factors to be considered, especially as to rehabilitative prospects. The Accused's extraordinarily good behavior when detained at the UNDU shows good rehabilitative prospects and is a mitigating factor.[310] Similarly an Accused's voluntary surrender to the Tribunal may properly be taken into account as a mitigating circumstance, even if he may well be considered to be under an obligation to surrender.[311] The Prosecution position essentially would try to negate this well-settled jurisprudence of the Tribunal.

143. However, it is also the position of the Defence that more significant mitigation factors were erroneously omitted from the Chamber's conclusions which should significantly reduce the sentence further, such as: a) conduct after the conflict assisting victims, according to the Chamber's own standard[312]; and b) the Chamber's finding of Ćorić's direct involvement in fighting crime within the HVO[313]. Other evidence attested to Ćorić taking those steps within his limited domain to contribute to law-enforcement efforts, trying to increase the effectiveness of anti-crime measures, supporting training of additional crime technicians and encouraging the MP to work closely with the civilian

[307] Prosecution Appeal para. 377
[308] Vol.4/1371
[309] Vol.4/1372
[310] Kordic & Cerkez, AJ para.1091; Bralo, SJ para. 82
[311] Mrkšic TJ, para 698
[312] Vol.4/1288
[313] Vol.4/881

police.[314] The Chamber further conceded Ćorić's involvement in Operation Pauk/Spider, to arrest members of the HVO (including the KB) involved in crime[315] but did not give credit to Vidovic's testimony about Ćorić's instructions in the prevailing period to prepare for this operation,[316] and did not grant him credit in mitigation for the same.

144. Other evidence attested to Ćorić's involvement in training the MP that stressed adherence to IHL.[317] The Chamber confirmed his involvement in such training,[318] but failed to consider the substance as mitigation evidence. The Chamber also confirmed he issued instructions to MP working at Heliodrom,[319] but failed to consider that these instructions emphasized respect of IHL, ordered that treatment shall be in accordance with the Geneva Conventions that free entrance shall be guaranteed for the representatives of the ICRC and that a precise list of prisoners shall be drafted.[320] Lastly, the Chamber failed to consider the contributions of Ćorić after the war, contributing to law and order in the FBiH – he was deputy minister for civilian affairs and communications in the Council of Ministers of BIH, in Sarajevo.[321] Respectfully all the foregoing mitigation factors should have been considered by the Chamber. The Chamber's negation of such mitigating evidence was improper. Following the Prosecution's current desires to increase the sentence would affirm this error of the Chamber and would send the wrong signal, which would stifle efforts of others contemplating personal sacrifice in the interests of promoting law and order at a time of war.

145. The Prosecution Appeal is thus misplaced in diminishing the scope of mitigation factors applicable. A proper review of mitigation evidence demonstrates the sentence imposed is manifestly excessive.

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[314] 5D4110
[315] Vol.4/932
[316] Vol.4/934
[317] See Ground 2
[318] Vol.4/861
[319] Vol.4/893
[320] P514
[321] P09053, page 6, of English translation

146. The excessiveness of the sentence, and thus the inapplicability of the instant Prosecution argument is further established when it is considered that the Chamber erroneously considered factors in aggravation of the sentence.[322]

G. Prosecution's Sought Sentence Is Inconsistent with that Requested at Trial

147. Lastly, the Prosecution Appeal seeks a sentence which it sought at trial, which fails to take into account that the conviction of the Respondent is much more narrower than the scope of criminal responsibility that was alleged by the Prosecution, and for which the same 35 year sentence was sought at trial.

148. Such an approach ignores the fact that Ćorić was convicted by the Majority on a much more limited basis, and he was acquitted of charges sought by the Prosecution including: a) murder (Count 2) and wilful killing (Count 3) for incidents 1-9, and 12-14;[323] b) Rape (Count 4) and inhumane treatment (sexual assault) (Count 5) for incidents 15-20[324]; c) Destruction or wilful damage to institutions dedicated to religion (Count 21) for incidents 21-23[325]; and d) Appropriation of property (Count 22) and plunder (Count 23) for incidents 24-31[326]. The Chamber further did not enter convictions on 3 of the counts of the indictment (14, 17 and 20) due to their cumulative nature.[327]

149. It is therefore inconsistent of the Prosecution on the basis of the sentence which it itself requested at trial for a vastly wider scope of criminal responsibility to now seek that same sentence in respect to a narrower scope of criminal responsibility.

[322] Defence Appeal, para. 322-324
[323] Vol.4/1008, 1015-1016, 1019, 1021
[324] Vol.4/1008, 1021
[325] Vol.4/1021, p.430 (disposition)
[326] Vol.4/1015-1016
[327] Vol.4/1256-1266

H. Conclusion

150. It should be recalled that an integral part of the principle of retribution in sentencing is restraint, which requires a fair and balanced approach based upon the culpability of the individual defendant.[328] The Appeal Chamber has said that retribution must not be accorded undue prominence in sentencing,[329] and cannot justify a departure from the fundamental principle that an individual should be punished solely on the basis of **his** wrongdoing.[330] Respectfully the Prosecution argument focuses only on calling for retribution for an overarching picture of unfortunate crimes which were grave and serious in nature, and would dispense with the need to look at the limited individual responsibility of Ćorić for these crimes, or the lack thereof. Such approach is contrary to the jurisprudence of the Tribunal and the notions of due process and justice.

151. For all of the foregoing reasons, the Prosecution Appeal has failed to identify any sustainable arguments for the sentence of Ćorić to be increased, or that the Chamber erred in pronouncing a sentence which was manifestly too lenient. Accordingly this Prosecution Ground of Appeal should be dismissed.

152. Consequently the sentence should remain unchanged, subject of course, to the result of the Defence Appeal alleging numerous errors leading to a manifestly excessive sentence.

[328] *Brdjanin* TJ para.1090
[329] *Aleksovksi*, AJ para.185
[330] *D. Nikolic*, AJ para.64

VI. Conclusion and Prayer for Relief

153. For all the foregoing reasons and arguments the Defence respectfully requests that each and every ground of the Prosecution Appeal directed against Respondent be disallowed. The Prosecution has failed to satisfy the test for Appellate intervention and has failed to establish any discernible error.

WHEREFORE, the Defence of Valentin Ćorić respectfully requests the Appeals Chamber to:

a) **DISMISS** the Prosecution Appeal in all respects;

b) **UPHOLD** the acquittals of Respondent as contained in the Judgment;

c) **HOLD**, subject to the Defence Appeal, that the sentence imposed on Respondent is not manifestly inadequate; and

d) **CONSIDER** the Defence Appeal.

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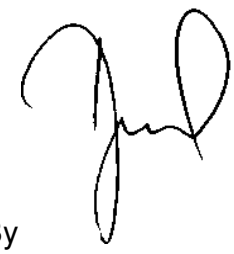
Respectfully submitted,



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