

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

Case No. IT-04-74-A

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

Registrar: Mr. John Hocking

Date filed: 29 July 2015

THE PROSECUTOR

v.

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

PUBLIC

**JADRANKO PRLIĆ'S NOTICE OF RE-FILING OF PUBLIC REDACTED
VERSION OF JADRANKO PRLIĆ'S APPEAL BRIEF**

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Ms. Dijana Tomašegović-Tomić and Mr. Dražen Plavec for Valentin Čorić
Mr. Fahrudin Ibrišimović and Mr. Roger Sahota for Berislav Pušić**

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Jadranko Prlić, through his Counsel ("the Defence"), hereby files this notice pursuant to the Appeals Chamber's Decision on the Prosecution's Urgent Motion to Reclassify Public Briefs and Modify the Public Redacted Briefing Schedule dated 8 July 2015.

Dated: 29 July 2015
The Hague, Netherlands

Respectfully Submitted,

A handwritten signature in black ink, appearing to read 'Michael G. Karnavas', is written over a light gray rectangular background.

Michael G. Karnavas
Counsel for Dr. Jadranko Prlić

Word Count: 37 words

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

Registrar: Mr. John Hocking

Date filed: 12 January 2015

THE PROSECUTOR

v.

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

PUBLIC

JADRANKO PRLIĆ'S APPEAL BRIEF AS AMENDED BY CORRIGENDUM

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**THE INTERNATIONAL CRIMINAL TRIBUNAL
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PROSECUTOR v. JADRANKO PRLIĆ ET AL.

PUBLIC

JADRANKO PRLIĆ'S APPEAL BRIEF AS AMENDED BY CORRIGENDUM

Jadranko Prlić, through his Counsel, hereby submits his Appellant's Brief pursuant to Article 25 of the Statute of the Tribunal and Rule 108 of the Rules of Procedure and Evidence in support of his appeal against the Trial Chamber III's Judgement of 29 May 2013. The procedural history as set forth in Volume 5 of the Judgement is adopted. Dr. Prlić respectfully requests the Appeals Chamber to reverse all findings of guilt and convictions against him and vacate the Judgement or to remand the case to the Trial Chamber for a trial *de novo*. Alternatively, the Appeals Chamber should reduce the manifestly excessive sentence.

OVERVIEW:

1. One wouldn't know from reading the six-volume, 2,475-page Trial Judgement (TJ) that Prlić challenged any of the charges against him during the course of the nearly five-year trial. One wouldn't know that Prlić adduced exculpatory or contextually relevant evidence through opposing witnesses, or that a comprehensive defence case was advanced, addressing all relevant issues and charges in the Indictment. And one certainly wouldn't know that the Trial Chamber (TC) ignored vast amounts of evidence that it found at odds with its selected narrative of the events and evidence. In reading the voluminous TJ one would assume that the TC masterfully analyzed, diligently considered, and appropriately deliberated on the evidence – unless, of course, one were familiar with the record. Paradoxically, commonsense evaluations often rest on appearances, even when contradicted by reality. And as appearances can be deceiving, the TJ is deceptive. Hence this Appeal: a contrast between appearance and reality.
2. Contrary to the TC's findings and conclusions, the evidence does not show: that the HZ(R)HB was established as part of a JCE to reconstitute in any sense the Banovina 1939 borders so it could either join Croatia or be an independent state within BiH with close ties to Croatia; that the HZ(R)HB used its political and military apparatus to

dominate the Muslim population through ethnic cleansing or to commit reverse ethnic cleansing against the Croats of Central Bosnia; or that Prlić was a member of this JCE, who, through his position, acts and omissions, agreed to and facilitated the commission of the JCE core crimes.

3. That a TC would examine all relevant evidence objectively in rendering a judgement should be a given. This article of faith is a mantra liberally repeated in decisions. Yet, the axiom is only valid when adhered to. It is manifestly false when offered to shield wholesale disregard of evidence, thus becoming a shield upon which the body of actual evidence and reality are borne. In this case, the Appeals Chamber (AC) should not assume that the TC earnestly reviewed all the evidence – as it was duty-bound to do and as it represents in the TJ. The AC should disregard assumptions in favor of evidence, and fallacy (the out-of-context evaluation of selective evidence) in favor of reality (contextualizing the relevant evidence based on the prevailing circumstances during the period of the Indictment). It should rely on the record. Guidance for that task is provided here.
4. The record does not support the TC's findings and conclusions. Inconvenient portions of the record are either manipulated as if on a Procrustean bed to fit a desired interpretation or calculatingly consigned to the cutting room floor.
5. Evidence adduced to place events into context or explain motives was not considered. (Grounds.1.1;1.2;1.3;3.4;5;9.2;9.3;9.4;9.6;9.10;16.1;16.2;16.3;16.4;16.7;18; 19).
6. Evidence contradicting or diminishing OTP evidence was studiously overlooked. (Grounds.1;2).
7. The OTP's corrupt method of constructing witnesses' statements, by tainting and distorting their sources or knowledge, was ignored. (Ground.6.1).
8. Witnesses who were OTP employees or who have had contractual arrangements with the OTP were hoisted to the pedestal of neutral expertise. (Ground.4).
9. Defence witnesses were summarily declared biased; their evidence ignored solely on the basis of association with the Accused. (Ground.2;Vol.1,para.284). Even when venturing

into specifics, the TC failed to articulate appropriate reasoning. (Vol.4,para.286-287,para.511,fn.1246).

10. The TC sprinkled names of Prlić's witnesses to create the illusion of testimony considered. The record, however, shows that the substance of these witnesses' testimony was ignored. Merely citing their names for inconsequential matters is a subterfuge; an attempt to cozen the AC into thinking that the evidence of these witnesses was considered, and thereby dissuade the AC from examining the record. (Ground.2).
11. The TC ignored testimonial and documentary evidence showing that the BiH Croats were vulnerable and defenseless to threats and acts of aggression as of 1991, when Yugoslavia began to disassemble and military attacks began from BiH territories against Croatia. (Ground.1). What evidence the TC cherry-picked to consider distorts reality. (Ground.1).
12. The TC ignored evidence showing that Franjo Tuđman, as President of Croatia, supported the independence and viability of BiH. He did so by recognizing BiH as a newly formed independent state, by providing military and humanitarian assistance that directly benefited the Muslims and the Muslim-dominated government of BiH. He did so by engaging with the international organizations and negotiators in finding a viable political and administrative internal organization of BiH that would recognize and secure the rights of all the constituent peoples and national minorities in BiH. He did so by allowing hundreds of thousands of BiH Muslim refugees to enter and remain in Croatia, at a time when one-third of Croatia was occupied. He did so by encouraging the BiH Croats to accept the terms of the Washington Agreement, though it was flawed and detrimental to their interests. (Ground.9).
13. The TC ignored evidence showing that the Croatian Army (HV) was protecting its sovereign and internationally recognized borders from JNA military attacks. Croatia was lawfully responding to acts of armed aggression originating from BiH territory. Croatia neither occupied BiH territories nor did any military scimmages spilling over into BiH constitute an IAC. (Grounds.1.1;19).
14. The TC ignored evidence showing that the so-called Graz meeting was not some clandestine gathering of BiH Croat and Serb leaders to carve up BiH, but that it was a

scheduled meeting that was encouraged by the then international negotiator/interlocutor, Cutileiro. (Grounds.1.1;9.4).

15. The TC ignored evidence showing that the BiH Croats were organizing themselves much the same as the Muslims after the BiH state bodies stopped functioning. Just as the HZHB established an armed force, so did the Muslims. Just as HZHB took measures to meet many of the functions required of the BiH state which it could not carry out, Muslim dominated municipalities adopted similar measures. They did so because there was no other choice. Contextually, this is relevant because it shows that the actions of the HZHB, and in particular the HVOHZHB, were necessary, reasonable, and consistent with the political, social, and economic realities. (Grounds.1.1;1.2).
16. The TC ignored evidence showing how the HZHB was structured, the delineation of powers between the HZHB Presidency and the HVOHZHB, and the functions and authorities of the HVOHZHB President in comparison to the Department Heads, Sub-Departments, and Commissions. Evidence showing the *de jure* and *de facto* functions and authorities of Prlić *vis-à-vis* the Department Heads, Sub-Departments, and Commissions was ignored without reasoning. This evidence was relevant and necessary in ascribing authority, responsibility, failure, blame, and guilt. (Grounds.1.2;1.2.4, 1.2.5;11.1;11.3;11.4;11.5;11.6;11.7;11.8.)
17. The TC ignored evidence showing that the HVOHZHB made concerted efforts to adopt measures and take actions to alleviate the humanitarian challenges it faced. What evidence the TC cherry-picked does not present an accurate and objective depiction of the facts from which fair and reasonable conclusions can be drawn. Critical evidence on important events and matters, such as the Međugorje agreement, are glossed over as if they were tangential musings worth mentioning but not considering. (Grounds.16.4.6;16.4.7).
18. The TC ignored evidence showing that the so-called “15 January 1993 Ultimatum” was nothing of the sort; it did not commence the alleged JCE or contribute to any crimes. (Grounds.10.3;10.4;16.1).
19. The TC ignored evidence showing that the 4 April 1993 Decision (so-called “15 April 1993 Ultimatum”) was not an ultimatum, was not implemented, and did not contribute to any crimes. (Grounds.10.3 and 10.4;16.2).

20. The TC ignored evidence showing that the measures taken by the Mostar Municipality concerning the displaced persons/refugees were non-discriminatory and were similar to the measures adopted in Muslim-controlled municipalities. (Grounds.16.4.3;16.4.4).
21. The TC ignored evidence showing that the Croats of Central Bosnia were in actual danger from the ABiH, particularly the Mujaheddin subordinated/linked to the ABiH, and that the HVOHZHB had no choice but to assist in their exodus. (Ground.16.6.2).
22. The TC ignored evidence showing that the HRHB was established as a result of the ongoing negotiations led by international negotiators Owen and Stoltenberg. The evidence is contextually important, showing how and why the HRHB was established. (Ground.1.3).
23. The TC ignored evidence showing that neither Prlić nor the HVOHZHB had *de jure* or *de facto* authority or influence over the HVO Main Staff and it did not engage in any military planning or decision-making that had a direct impact on the course of the military operations of the armed forces of the HZ(R)HB. (Ground.12).
24. Had the TC correctly analyzed all of the evidence, it would have found that the HZHB emerged as a result of the helplessness of the SRBiH in ensuring the safety and wellbeing of BiH citizens. It emerged out of necessity for survival. It emerged because BiH as a state could not and did not function properly. BiH was incapable of carrying out the economic, administrative, judicial, political, social, and military functions required of it at the state, municipal, and local levels. The evidence adduced on these issues, which the TC distorts or ignores, shows the circumstances under which the HZHB was founded. It is relevant in discerning motive. It is relevant as a counter-argument to the OTP's theory that the HZHB was created for ulterior motives. It is relevant because the issues in this case can only be appreciated and resolved through a multi-disciplinary analytical approach involving, *inter alia*, history, economics, politics, local/Yugoslav law and administrative structures, international events, and negotiations. And by ignoring evidence, the TC tailored a narrative of a seemingly seamless evolution of the HZHB to the HRHB, self-fulfilling its result-determinative conclusion that there was an unrelenting overarching JCE, germinating from the establishment of the HZHB as the manifestation of and the means to reconstitute the Banovina 1939 borders. (Grounds.1.1;1.2.;1.3).

25. In sum, by ignoring evidence, the TC manufactured a false narrative that Prlić was at the political apex with boundless authority over all political, social, humanitarian, and military matters in the areas designated as the HZ(R)HB, and was a member of and made substantial contributions to the alleged JCE and associated JCE core crimes. This is, as the record, though not the Judgement, shows, nonsense.

GROUND 1:

26. The TC erred in law and fact by failing to properly assess the evidence, opting instead to systematically rely on selective evidence, while ignoring contradictory evidence at odds with its conclusions, facilitating a confirmation bias through erroneous findings.

1.1

27. The TC erroneously relied on selective evidence in analyzing the proclamation of the HZHB on 18 November 1991, despite claiming otherwise.¹ By systematically ignoring relevant evidence concerning SFRY's dissolution and events in Croatia,² it fashioned a false narrative³ serving as the foundation for further errors, allowing it to erroneously conclude the existence of a JCE in which Prlić was a substantially contributing member.⁴

28. The TC ignored evidence,⁵ erroneously concluding that HDZBiH was part of HDZ-Croatia.⁶ When the first HDZBiH Statute was enacted, Yugoslavia still existed, Croatia and SRBiH were not independent, and HDZBiH was considered a constituent unit of HDZ as a planet-wide organization. Once Croatia became independent, as did BiH, HDZBiH became autonomous, active exclusively within BiH, though still part of the planet-wide HDZ organization.

29. The TC erroneously concluded that at the meeting on 6 August 1991, HDZBiH made plans to implement a "special plan" in the event of an attack on the Bosnian Croats by supporters of greater Serbia or any other party.⁷ It erroneously relied on P00047 and adjudicated facts, ignoring contextual evidence indispensable for interpreting P00047. In the first half of 1991, Presidents of the SFRY six Republics were meeting in order to find a political settlement; several alternative solutions were discussed with the EU.⁸ One

¹ Vol.1, para.406.

² 3D03720, pp.47-49; Praljak, 42487/11-42488/2; 3D03260; Žužul, 27655/9-27661/11; 1D02910; P00037; 27618/10-21; Kljuić, 3863/15-3867/23; 3950/9-25; 4026/11-4028/14; 4089/19-4092/6; 8017/6-8019/8; P00032; 3D00432; 4103/23-4113/15; 4150/16-4157/25; Manolić, 4460/14-4462/5; Buntić, 30244/22-30246/7; [REDACTED]; Boras, 28882/13-28883/25; 1D01941; 28884/1-28888/20; 1D00524; P00041; P00042; 3D00320; Gorjanc, 46061/24-46063/24; 3D00320.

³ Vol.1, paras.409-436.

⁴ Vol.4, paras.6-277.

⁵ Batinić, 34314/6-34315/21; 34330/25-34333/3; 34334/8-34337/20; 34343/20-34346/14; Gagro, 2755/1-2757/22; Kljuić, 4026/3-4028/14; Sančević, 28728/6-15; Akmadžić, 29867/13-29868/3; 1D00486, conclusion4; 1D02699, p.2, Art.4; 1D02798; P00734; 1D02579; 1D02700, Art.4; 1D02701, Art.3; 3D03720, pp.47-49.

⁶ Vol.1, para.409.

⁷ Vol.1, para.413.

⁸ Kljuić, 3863/15-3867/23; 3950/9-25; 4026/11-4028/14; 3D03720, pp.50-51; Žužul, 27655/9-27661/11.

alternative was the division of the territory,⁹ while another envisaged a confederation for Yugoslavia with an integral BiH; if division of BiH became an option, either BiH Croats and Muslims would join Croatia or BiH would be divided with every entity (constituent peoples) taking its part.¹⁰ HDZBiH, as the leading party of BiH Croats, discussed those proposals; the plan mentioned in P00047 must be interpreted within this context.

30. The TC erroneously concluded that on 23 August 1991 HDZBiH set up municipal councils in eight regions as a condition precedent (precursor for the JCE) to the territorial and political unification of the BiH Croats.¹¹ P00050 is misinterpreted, Kljuić's testimony is mischaracterized, and relevant evidence concerning regionalization is ignored. P00050 is a proposal for eight regions covering 70 municipalities throughout BiH; it did not imply any territorial pretensions. Regionalization was constitutionally permissible;¹² necessary as of April 1991. With the danger of war spilling into BiH from Croatia,¹³ the only available option for defence was at the municipal level.¹⁴ With a collapsed State/BiH economy, the municipalities were on their own.¹⁵ The SRBiH government was not adequately acting/reacting to prevent the war.¹⁶ As Yugoslavia was breaking up and as the SRBiH was silently being occupied, Izetbegović, the SRBiH President of the Presidency, went to the Islamic Conference in Jeddah for help. HDZBiH was asking SDA (Izetbegović's Muslim party) to take a position.¹⁷ Izetbegović, through Filipović and Zulfikarpašić, opted to stay in rump Yugoslavia through an agreement with Karadžić on 1 August 1991; a chillingly precipitous act for BiH Croats.¹⁸

31. The TC mischaracterized the activities of the HDZBiH Crisis Staff in September 1991.¹⁹ It ignored relevant parts of Kljuić's testimony showing HDZBiH's efforts to have a joint defence with the Muslims²⁰ and that the establishment of a Crisis Staff by BiH Croats was an appropriate measure.²¹ HDZBiH relied on Croatia for the purchasing of weapons from

⁹ 1D00894;Žužul,27666/11-27670/6.

¹⁰ Kljuić,3950/9-25;3961/21-3966/9;4082/3-4083/14.

¹¹ Vol.1,para.414.

¹² Kljuić,3892/7-3894/10.

¹³ Boras,28893/6-22; P00050;Kljuić,4087/21-4088/12;4098/19-4096/18;P00032;P00034.

¹⁴ Kljuić,4103/23-4104/9;P00041;Kožulj;32537/7-32543/20 ;1D00568 ;1D00569 ;1D00879 ;1D00350.

¹⁵ Kljuić,4096/19-4103/22;4120/13-4121/20.

¹⁶ Kljuić,4104/10-4111/3;4118/25-4119/6.

¹⁷ Kljuić,4113/16-4118/4;P00042.

¹⁸ Kljuić,4122/1-4126/6;Boras,28888/21-28891/4;1D00475.

¹⁹ Vol.1,para.416.

²⁰ Kljuić,4140/23-4142/5.

²¹ Kljuić,3897/11-3902/24;4138/1-4139/17.

funds donated by the BiH diaspora Croats for the defence of BiH Croats;²² in case of an armed conflict, the Crisis Staff would be ready.²³

32. The TC mischaracterized the evidence on the 18 September 1991 Decision to create a commission on cantonization.²⁴ The commission was formed to resolve a new administrative organization of SRBiH,²⁵ effectively forming the basis for the negotiations in Geneva and the VOPP.²⁶
33. The TC erroneously assessed P00069²⁷ by relying on Tomljanovich, mischaracterizing Gagro's testimony, and inappropriately selecting out of context two out of 100 pages from Presidential Transcript P00068. Gagro testified that no concrete resolutions were reached at this meeting and that neither he nor anyone else signed any conclusions. The list of signatures attached to P00069/P00071/1D00487p.3 is a sign-up sheet of the participants; conclusions were to be drawn up in the future.²⁸ In P00068, Tuđman is clear: "we cannot question, we cannot endanger the border of Bosnia and Herzegovina because of the defence of the Republic of Croatia."²⁹ Manolić, commenting on Tuđman's words, notes that Tuđman neither supported SRBiH's division nor its annexation to Croatia.³⁰ There being no supporting evidence confirming that the alleged conclusions in P00069 were ever approved, the TC's findings in Vol.1,para.424, and all associated findings concerning this being the precursor of the JCE, are erroneous.
34. The TC erroneously concluded that on 12 and 18 November 1991, two parallel institutions were created in BiH, the Croatian Community of Posavina and the HZHB, and that the 18 November 1991 Decision established the HZHB as a political, cultural, economic and territorial entity ("Područja"), consisting solely of the Croatian representatives and representing only Croats living in HZHB territory.³¹

²² P00058; Kljuić, 3897/11-3902/24; 4136/18-4142/5; 4134/7-4136/17; 4139/12-/4140/7.

²³ Kljuić, 4136/18-4137/24; 4138/24-4140/5.

²⁴ Vol.1, para.416.

²⁵ Kljuić, 3900/6-25; 3901/20-3902/24; 3897/11-3902/24; 3906/5-3909/5; P00060/1D00486; Watkins, 18994/25-19003/18; 1D01538, p.1; Boras, 28893/23-28895/6; P00060/1D00486.

²⁶ Kljuić, 3897/11-3902/24; 3906/5-3909/5; P00060/1D00486.

²⁷ Vol.1, para.419, 424.

²⁸ Gagro, 2681/25-2688/19.

²⁹ P00068, pp.51-54.

³⁰ 4314/25-4319/15; P00068, pp.51-54.

³¹ Vol.1, paras.420-422, 425.

35. The TC erroneously relied on P00302/P00078, the 3 July 1992 Amended Decision on establishing the HZHB. Ribičić,³² Donia,³³ and Tomljanovich³⁴ rely in their expert reports *only* on P00302/P00078 and *not* on the 18 November 1991 Decision (1D00488/P00081), thus compromising the value/weight of their expertise (report and testimony) on the establishment of HZHB.³⁵
36. The TC ignored relevant parts of Kljuić's testimony where he acknowledged not seeing the 3 July 1992 Decision,³⁶ and that based on viewing the original 18 November 1991 Decision he concluded that the HZHB was an HDZBiH party community with no administrative or executive government ambitions.³⁷ Kljuić confirmed the chronology of the events between 18 November 1991 and 3 July 1992³⁸ as contextually relevant in appreciating the reasoning for HZHB's evolution, debunking any inferences that these efforts by HDZBiH and the establishment of the HZHB were related to or in furtherance of the alleged JCE. Kljuić confirmed that the Croatian Community of Posavina had no territorial pretension,³⁹ that Tuđman supported regional communities, that when the HZHB was established it did not have statehood attributes,⁴⁰ and that it was a natural consequence of events for BiH Croats to link up.⁴¹ The HZHB did not have borders.⁴²
37. The TC ignored evidence confirming Kljuić's testimony. Perković testified that this decision was political, not legal: the HZHB had neither territorial pretensions nor boundaries.⁴³ Buntić testified that the 3 July 1992 Amended Decision reflected necessary adjustments in response to the evolving events.⁴⁴

³² P08973, pp. 7-18.

³³ P09536, pp. 30-31.

³⁴ P09545, pp. 8-13, paras. 8-23.

³⁵ Ground. 4.

³⁶ Kljuić, 3939/11-3934/23; P00078.

³⁷ Kljuić, 4177/6-4194/4; 1D00488/P00081.

³⁸ Kljuić, 3823/9-3928/6; 3929/11-3934/23; 3985/2-9.

³⁹ Kljuić, 3910/7-3912/5.

⁴⁰ Kljuić, 3915/15-3916/23.

⁴¹ Kljuić, 3918/7-3920/9.

⁴² Sančević, 28535/13-28537/12; 28605/13-28609/24 ; P06454; Buntić, 30277/7-30279/11 ; 1D00488; 30329/18-30334/5; 1D02261; 1D01925; 1D02258; 1D02259; 1D02253; 30338/25-30346/14; 1D02254; 1D02280; 1D02255, 1D02262; 1D02257; 1D00265; 1D02260; 1D01981; 1D02013; 30780/4-30784/2; P00078; P09276-map9; 30786/25-30792/19; 30796/23-30797/21; P00078; 30854/4-30855/7; 1D02261; 30901/3-30902/17; Perković, 31640/15-31657/10; 2D00594; P00079; 31660/18-31662/18; 1D00899; 32029/24-32031/21; Tomić, 33830/17-33837/19; P00735; 33838/17-33839/2; P00736; 33861/18-33864/10; P01579.

⁴³ Perković, 31642/15-31659/8; 1D00156.

⁴⁴ Buntić, 30249/3-30250/11; 30277/7-30279/11; P00079/1D00488; 30298/8-22; 1D01670; 30303/19-30305; P00302; 30766/22-30768/13.

38. The TC erroneously concluded that several days after the proclamation of the HZHB, the Government of SRBiH declared the HZHB unlawful.⁴⁵ On 21 November 1991 the SRBiH Government determined that the HZHB was not a “community” with government/institutional elements but an “organization of the party and its operation.”⁴⁶ Perković testified that since the Government has not taken any steps after having considered this decision, it was logical to conclude that the establishment of the HZHB in November 1991 was not considered unconstitutional,⁴⁷ adding that the HZHB continues to exist in BiH.⁴⁸ The TC ignored this evidence without any explanation.

39. The TC drew erroneous conclusions on the 27 December 1991 Presidential Transcript (P00089)⁴⁹ by taking a few pages of this 125-page document out of context and relying on Kljuić and Donia’s testimony in a vacuum. The TC ignored significant developments influencing the events in SFRY and SRBiH, all of which are necessary in understanding the chronology of the events leading to the establishment of the HZHB:

- On 13 July 1991 the Netherlands suggested that the “option of agreed changes to some of the internal borders between the Yugoslav republics might be explored.”⁵⁰
- Establishment of the The Hague Conference on Yugoslavia in September 1991.⁵¹
- On 18 October 1991 The Hague Conference proposed that agreement between republics should include recognition of the independence of the republics, within existing borders, unless otherwise agreed, to those republics wishing changes.⁵² It was also proposed that in areas in which persons belonging to a national or ethnic group formed a majority, they would enjoy special status-autonomy.⁵³ These provisions were repeated in the 4 November 1991 Draft Convention-Treaty provisions;⁵⁴ they

⁴⁵ Vol.1,para.426.

⁴⁶ 2D00594;Perković,31640/15-31642/14;31673/7-31677/19;31909/4-31912/12.

⁴⁷ Perković,31640/15-31642/14;

⁴⁸ Perković,31653/12-31654/7;Batinić,34403/6-34404/15;1D02961.

⁴⁹ Vol.1,para.428.

⁵⁰ Žužul,27666/11-27670/6;1D00894;Okun,16860/14-16864/1;1D00894.

⁵¹ 1D00894,p.1.

⁵² 4D01349,Art.1.1.e.

⁵³ Jurčević,44870/20-44874/24;4D01349;Arts.2.5;4D01454.

⁵⁴ 1D00893/1D00418,Art.1.1.f,Art.2.c.5.

originated from the international community before the London Conference and were known by all negotiating parties.⁵⁵

- On 20 November 1991 the Badinter Arbitration Committee answered Lord Carrington's question on whether the internal boundaries between Croatia and Serbia and between BiH and Serbia could be regarded as frontiers in terms of public international law: they may be altered by freely agreeing, any alterations by force would be illegal.⁵⁶
- 16 December 1991 EU Declaration on the Guidelines on the Recognition of New States in Eastern Europe and in the Soviet Union: the basic principles of respect called for the inviolability of frontiers, altered only through peaceful means and mutual agreement.⁵⁷

40. The TC ignored evidence that Tuđman was aware of these activities and that his main concern was to secure Croatia's recognition and existing borders.⁵⁸ During the 27 December 1991 meeting Tuđman emphasized that the Hague Conference on Yugoslavia and the United States opposed any change of borders by force, and that the condition was ripe for a political agreement on demarcation inside BiH,⁵⁹ for a political solution to avoid war,⁶⁰ and that direct talks should be held with Izetbegović and Karadžić to find a solution for all three sides.⁶¹ On 1D00894, Okun commented: "there were individuals who toyed with all kinds of ideas."⁶² P00089 merely shows that different people presented different ideas.⁶³

41. The TC mischaracterized and ignored evidence in erroneously concluding that on 9 February 1992, Croatian leaders of HDZ-Croatia and HDZBiH met to consider uniting all BiH Croats with Croatia, and that the Croatian Government and parliament would be

⁵⁵ Žužul, 27670/18-27671/20; 1D00893/1D00418; Okun, 16850/25-16852/11; 1D00893/1D00418; (Donia never saw 1941/2-1945/12; 1D00417/transcript error-should be 1D00418).

⁵⁶ 4D00540; Žužul, 31058/19-31059/12.

⁵⁷ 4D00542.

⁵⁸ Žužul, 28099/23-28103/19; 28126/6-28127/1; Sančević, 28688/7-28695/15; P00089; 28731/23-28732/21; 28744/12-28746/14; 28746/21-28753/10; P00089, Rebić, 28150/18- 28152/19; 28375/6-28378/20.

⁵⁹ P00089, p.19.

⁶⁰ P00089, pp.100-101.

⁶¹ P00089, pp.102-103.

⁶² 16863/5-16864/1.

⁶³ P00089, Kljuić, pp.2-16; Boban, pp.20-27; Brozović, pp.36-38; Barač, pp.38-41; Stanić, pp.42-44; Lasic, pp.45-58, Raić, pp.58-66; Udovčić, pp.66-74; Kordić, 74-78; Vlašić, pp.79-84; Markišić, pp.84-90; Koštroman, 90-94; Jurić, pp.94-98.

asked to provide “Croatian nationality” for BiH Croats, including the right to vote in Croatian elections.⁶⁴ The TC ignored evidence from Žužul,⁶⁵ Rebić,⁶⁶ Sančević,⁶⁷ and Biškić⁶⁸ showing that all diaspora Croats were able to obtain Croatian citizenship after Croatia’s independence, and that the Croatia-RBiH Agreement on Friendship and Cooperation provided that citizens of both countries could acquire double citizenship.⁶⁹ The purpose of this meeting was to safeguard the status of SRBiH Croats as a constituent peoples/nation in view of the referendum question on SRBiH sovereignty and independence, drafted by the SRBiH Parliament without sufficient consultation from HDZBiH.⁷⁰ Kljuić and Boban shared the same vision for an indivisible SRBiH, with autonomy of Croats inside SRBiH,⁷¹ and HDZBiH lobbied for an administrative division of SRBiH, not partitioning.⁷²

42. The TC erroneously concluded that Boban issued an order on 8 April 1992 whereby the HZHB ceased to recognize the “RBiH” Territorial Defence as the military structure of the HZHB.⁷³ Boban’s order refers to the use of the name TO (Territorial Defence), not the non-recognition of the RBiH.⁷⁴
43. The TC erroneously concluded based on P00187 that during the period of tripartite negotiations, the HVO negotiated politically with the Serbs of BiH over the partition of BiH, and that on 6 May 1992, Karadžić and Boban issued the joint statement described by them as a “peace agreement”, which provided for the territorial division of BiH based on the Banovina 1939 borders and for the general ceasefire.⁷⁵
44. The Graz meeting was one of a series of meetings held to resolve outstanding disputes between Serbs and Croats in BiH.⁷⁶ A similar meeting was held between BiH Croats and

⁶⁴ Vol.1,para.429.

⁶⁵ 27654/10-27655/1.

⁶⁶ 28438/23-28442/7;1D02918.

⁶⁷ 28537/15-28545/21;1D02918;1D02919;P00339.

⁶⁸ 15186/14-15188/5.

⁶⁹ P00339,p.4,point.7.

⁷⁰ Batinić,34350/6-34358/2;P00117;1D00410;34623/25-34625/14;Žužul,27726/3-27727/17;P00336;27638/25-27639/25;27821/7-27823/20;27761/4-27766/12;1D01935;Tomić,34007/20-34013/12;34013/19-34017/15;Praljak,40352/24-40354/19.

⁷¹ Kljuić,3897/11-3902/24;P00058;3906/5-3909/5;P00060.

⁷² Kljuić,3954/10-3956/7;P00089.

⁷³ Vol.1,para.436;P00152.

⁷⁴ Akmadžić,29755/23-29756/11;P00336;29616/7-29617/17;2D00544;29542/10-29543/18;4D01234;29543/19-29544/13;4D00826

⁷⁵ Vol.1,para.439.

⁷⁶ Boras,28948/24-28954/13;1D02935,pp.9049-9051;1D00893.

Muslims in Split on 16 and 17 May 1992.⁷⁷ The EC proposed bilateral meetings.⁷⁸ Witness 1D-AA, who was present at the Graz meeting, testified that the international community encouraged this meeting and that neither an agreement was reached (signed or otherwise) with the Bosnian Serbs at Graz, nor a joint statement issued by Karadžić and Boban.⁷⁹

1.2

45. The TC erred in law and fact by failing to consider evidence relevant to the organizational structure, functioning, and powers⁸⁰ of the HZHB and its institutions, fashioning a false narrative from which it then made further erroneous findings and conclusions, particularly relating to Prlić's criminal responsibility and participation in a JCE.
46. The TC erroneously relied on selective evidence, assessing only the *de jure* powers of various HZHB organs.⁸¹ The TC ignored virtually all evidence concerning the development of HZHB legislation and its *de facto* implementation; essential in assessing the functioning of the political and administrative structures and Prlić's activities as they may relate to any alleged crimes.
47. The TC ignored Cviki's report on the three distinct phases and functioning of the HZHB, HVOHZHB, HRHB, HRHB Government, and municipal HVOs during different periods of war from 1991-1994.⁸²
48. The TC ignored evidence about the 3 July 1992 HZHB Presidency meeting⁸³ where the 18 November 1991 Decision of the Foundation of the HZHB was amended,⁸⁴ and where the 15 May 1992 Statutory Decision on the temporary organization of executive power and administration in HZHB territory⁸⁵ was amended⁸⁶ and publicly explained.⁸⁷

⁷⁷ 1D02739;Boras,29149/23-29152/21.

⁷⁸ P09526,p.1.

⁷⁹ Boras,28948/24-28949/5;[REDACTED];29849/13-28950/5;[REDACTED];28950/12-28954/13;29013/7-29014/19;;3D00446;1D00893.

⁸⁰ The TC throughout the TJ uses the terms "powers" and "authority" interchangeably, or uses both "powers and authority." For sake of consistency this brief uses "powers."

⁸¹ Vol.1,paras.437,492-686;975-986;Vol.2,paras.669-748.

⁸² Cviki,35224/15-35331/2;1D03111,Chapters5,6,8.

⁸³ 1D01670.

⁸⁴ P00078.

⁸⁵ P00206.

⁸⁶ P00303,Art.2-especially.

⁸⁷ 1D02441.

49. The TC failed to consider the amendments in the context of the developments taking place between November 1991 and July 1992,⁸⁸ with the amendments of 3 July 1992 establishing the HZHB Presidency as a legislative body,⁸⁹ and the adoption of the Decree on the Armed Forces *prescribing* the duties of the HVOHZHB executive and administrative bodies.⁹⁰ The TC failed to adequately consider the Agreement on Friendship and Cooperation of 21 July 1992, which provided a general framework for the future organization of BiH in keeping with the constituent status enjoyed by the nations in BiH, i.e. ensuring against the imposition of a unitary political system.⁹¹ This framework essentially tracked the Cutileiro Plan,⁹² the VOPP⁹³ and the OSPP.⁹⁴
50. The TC failed to consider that only with the Amended Decision establishing the HZHB, the position of the HZHB President as a single, independent entity was created,⁹⁵ and that Boban was elected to this position⁹⁶ though he was President of HZHB Presidency, HVOHZHB President, the Supreme Commander of the HVO military,⁹⁷ HDZBiH Vice-President,⁹⁸ and HDZBiH President from November 1992 (the political party supported by 95% of the BiH Croats).⁹⁹
51. The TC ignored evidence that on 14 August 1992 the HZHB Presidency held a session reforming the HVOHZHB executive and administrative body. Boban relinquished his position as President of this executive and administrative body, and the HZHB Presidency appointed Prlić in his stead.¹⁰⁰ Until 14 August 1992, Boban was the head of the executive and legislative bodies, the Supreme Commander of the HVOHZHB (military) and HDZBiH Vice-President.¹⁰¹ By relinquishing his post as HVOHZHB President, the executive and administrative body, the legislative and executive powers were separated.¹⁰² As of 14 April 1992, the Department Heads as part of this collective

⁸⁸ P00274;[REDACTED];Kljuić,7973/22-7974/17.

⁸⁹ Buntić,30303/19-30305/22;P00302.

⁹⁰ P00289,Art.9.

⁹¹ P00339;Žužul,27729/14-27734/34.

⁹² 1D00398,Statement of Principles,Chapter A.

⁹³ 1D00892,Constitutional Framework,Chapter I.

⁹⁴ P03990,Appendix I,Constitutional Agreement of the Union of the Republics,p.13.

⁹⁵ Buntić,30303/19-30305/22.

⁹⁶ 1D01670,p.8.

⁹⁷ Tomić,33963/3-33966/12.

⁹⁸ Buntić,30358/23-30361/21.

⁹⁹ Akmadžić,29768/23-29769/17;29806/6-29809/13;P00743,p.7;Buntić,30358/24-30360/15.

¹⁰⁰ P00429,Buntić 30358/23-30361/21.

¹⁰¹ Buntić,30358/23-30361/21.

¹⁰² Buntić,30358/23-30361/21.

executive and administrative body had not met.¹⁰³ The situation throughout BiH had dramatically deteriorated because of the breakdown in the Republican institutions and the lack of funding for social services at the municipal level, which were normally financed by the Federal and Republic governments. The Social Accounting Office/Payment System(SDK) was not functioning and no funds were being distributed by the Republican government. Taxes collected at the municipal level were being used to finance the defence, leaving the general population virtually without basic social services.¹⁰⁴

52. The TC ignored the Decree on the Organization and Responsibilities of the Departments and Commissions of the HVOHZHB enacted at the 14 August 1993 HZHB session,¹⁰⁵ essential to understanding the competencies of the departments and commissions, which corresponded with the BiH Law on State Administration.¹⁰⁶ In performing their prescribed duties, department heads had the right to issue regulations independently; a right they exercised regularly.¹⁰⁷ Article 7 required the departments and commissions to “cooperate with the republican bodies in the preparation of acts which confirm the policy of the RBiH and in the preparation of laws and other regulations and general acts, referring to issues of the equality of the constituent peoples of the RBiH.” Primorac explained that at the republic level – which equally applied for the HVOHZHB level – there was no hierarchy in the sense of the President of the government having the power to give orders transcending a minister’s understanding of the law.¹⁰⁸ Article 34 required the application of relevant provisions of the BiH Law on State Administration to the rights, obligations and responsibilities of the HVOHZHB and departments and commissions in the execution of their powers, the organization of municipal HVO offices, and basic issues of supervisory inspections. The TC ignored the Decree on Internal Affairs During a State of War or Imminent Threat of War on the Territory of the HZHB adopted at this 14 August 1992 HZHB session,¹⁰⁹ which stipulated that the

¹⁰³ Buntić,30358/23-30361/21.

¹⁰⁴ Tomić,33738/6-33739/21;33740-33744/14;1D03111,Chapter1,paras.23-26;Cvikl,35148/7-35155/4;Kožulj,32537/7-32543/20;1D00568;1D00569;1D00879;1D00350.

¹⁰⁵ 1D00001.

¹⁰⁶ Perković,31748/6-31751/1;1D02518;1D01118;1D02052;1D00869;1D02012;1D01879;Zelenika,32994/9-32996/17;Batinić,34285/17-34286/7;34389/1-8;34282/21-34285/16;Akmadžić,29699/1-29703/11;P10509;1D00822,Arts.4,7,24;Perković,31738/1-31741/7.

¹⁰⁷ 1D00016;1D00015;1D00019;1D00023;1D00020;1D00041;1D00147;P00309;P00452;1D00065;1D00129;1D00197;P00309;P00527;P00526;2D01336;2D01232;4D00461.

¹⁰⁸ Primorac,29990/10-29991/7.

¹⁰⁹ 1D00002.

Department Heads (reporting exclusively to the HZHB Presidency¹¹⁰) could restrict or prohibit movement in public places in certain areas due to exceptional circumstances: powers not entrusted to the HVOHZHB President or the HVOHZHB.

53. The TC ignored evidence that most of the initial work of the HVOHZHB executive and administrative authority dealt with making adjustments to the then-existing Federal and Republic legislation that needed to be harmonized in light of the prevailing circumstances,¹¹¹ and the Agreement of Friendship and Cooperation.¹¹² The HVOHZHB was defined as a temporary executive authority;¹¹³ all regulations were passed as temporary regulations, limited to “the period of war and imminent threat of war.”¹¹⁴ The HVOHZHB called itself an interim executive body in its reporting to the HZHB Presidency,¹¹⁵ also reflected at internal meetings.¹¹⁶ Prlić reaffirmed this publicly.¹¹⁷
54. The TC ignored the further developments in HZHB legislation and the circumstances influencing it. The HVOHZHB executive and administrative authority was transformed during the 17 October 1992 HZHB Presidency session.¹¹⁸ Changes to the Statutory Decision on the Interim Organization of the Executive Authority permitted the HVOHZHB to pass urgent decisions in cases “not suffering delay” that fell within the jurisdiction of the HZHB Presidency. Such decisions would take effect pending approval at the next session of the HZHB Presidency.¹¹⁹ Buntić noted that this type of emergency Decision was common, and that at the time of enactment it had not been foreseen that the Presidency would not convene again for some time.¹²⁰
55. The TC failed to consider the HZHB Presidency Rules of Procedure,¹²¹ save for a single mention.¹²² While members of the HZHB Presidency were concurrently Presidents of the municipalities,¹²³ the HVOHZHB was tasked to supervise the work of the municipal

¹¹⁰ 1D00002.

¹¹¹ Perković, 31697/11-31699/7.

¹¹² P00339, pp. 3-4, Point 6.

¹¹³ P00303, Art. 2

¹¹⁴ 1D01558.

¹¹⁵ P00128, p. 1.

¹¹⁶ P01798, p. 2.

¹¹⁷ 1D02078, p. 5; 1D02225, pp. 2-3.

¹¹⁸ 2D01262.

¹¹⁹ P00684, p. 2, Art. 1.

¹²⁰ Buntić, 30368/17-30370/16; P00684.

¹²¹ P00596.

¹²² Vol. 1, para. 496.

¹²³ P00078, Art. 7.

HVOs.¹²⁴ *De jure*, the HVOHZHB was to both *monitor* the work of the municipalities and be *subordinate* to the Presidency: a *de facto* absurdity.¹²⁵ The Presidents of the municipal HVOs, in their capacity as members of the HZHB Presidency, were individually and collectively required to promote relations with the Presidency's subordinate organ, the HVOHZHB, while the *subordinate* organ was expected to "supervise" the work of its superiors with the power to dismiss them.¹²⁶ Perković observed: "[t]his concept implies that presidents of the municipal councils of the HV[O] were members of the Presidency, and then according to this same logic you have a complete system in which everyone answers to everyone else, but essentially no one answers to anyone else."¹²⁷ While the Statutory Decision of 3 July 1992 provided the HVOHZHB with the power to dissolve municipal HVO regulations and enactments,¹²⁸ the 14 October 1992 Rules of Procedure of the HVOHZHB restricted the HVOHZHB to merely requesting municipal HVOs to correct any regulation or enactments violating the legal provisions of the HZHB.¹²⁹ The HVOHZHB nullified municipal legislation on four occasions, though there is no evidence that the affected municipalities ever complied with HVOHZHB decisions.¹³⁰

1.2.1 and 1.2.2

56. The TC erred by failing to consider evidence relevant to the functions and powers of the HZHB President, and President of the HZHB Presidency.¹³¹

57. Submissions in Ground.1.1, paras.50-51 are adopted here by reference.

1.2.3

58. The TC erroneously concluded that the Decision on the Creation of the HZHB of 18 November 1991 established the HZHB Presidency as the supreme legislative and executive organ,¹³² by relying on conflicting,¹³³ unreliable,¹³⁴ and irrelevant¹³⁵ evidence,

¹²⁴ P00078; Art.15.

¹²⁵ Perković, 31949/11-31956/17; P00303; P00431; P02248; 1D01611.

¹²⁶ P00303, Arts.14,15.

¹²⁷ Perković, 31668/3-21.

¹²⁸ P00303, Art.15.

¹²⁹ P00431; P00921; P01831; P05262; Perković, 31949/11-31956/17.

¹³⁰ P00431; P00921; P01831; P05262; Perković, 31949/11-31956/17.

¹³¹ Vol.1, paras.494-498; 506-507.

¹³² Vol.1, para.500.

¹³³ P00081/P00079; P00302/P00078.

¹³⁴ Ribičić, Ground 4.3.

and misinterpreting evidence.¹³⁶ In analyzing the *de jure* powers of the HZHB Presidency, the TC failed to consider its *de facto* powers and other contextually relevant events.¹³⁷

59. Submissions in Grounds.1.1,paras.34-38;1.2,paras.48-49 are adopted here by reference.

1.2.4 and 1.2.5

60. The TC erred in law and fact by failing to consider evidence relevant to the functions and powers of the HVOHZHB President¹³⁸ and Departments, Sub-Departments, and Services and Commissions.¹³⁹

61. Submissions in Ground.1.1,paras.51-55 are adopted here by reference.

62. The TC erroneously concluded that the HVO was a homogeneous, organized political/military entity that operated like a government,¹⁴⁰ by mischaracterizing Ribičić's, Lane's, BF's and Jurčević's testimony. Ribičić and Jurčević made conclusions by only reading the 3 July 1992 Statutory Decision when Boban was Supreme Commander and HVOHZHB President, before there was a separation of powers (See Grounds.1.1,paras.51,54-55;12). Ribičić did not use the word "military", while [REDACTED] and Lane lacked knowledge about the functioning of the HVOHZHB.¹⁴¹

63. The TC failed to analyze the *de jure* and *de facto* organization of work within the HVOHZHB,¹⁴² and erroneously concluded that the "HVO was advised of the activities of the HVO departments, including the Defence Department, by means of work programs which each department was required to prepare for the HVO, starting in the second half of 1993."¹⁴³ Tomić testified that **a.** the departments of the HVOHZHB never submitted their programs to the HVOHZHB, despite Prlić's requests,¹⁴⁴ **b.** the first program was prepared and submitted by the Ministries in December 1993 under the HRHB

¹³⁵ Watkins,[REDACTED];P09545;1D00002;1D00165;P09552;1D02340.

¹³⁶ Buntić.

¹³⁷ Vol.1,paras.501-502.

¹³⁸ Vol.1,paras.515-537.

¹³⁹ Vol.1,paras.525-528,536.

¹⁴⁰ Vol.1,para.515.

¹⁴¹ Lane,23721/1-5;23721/18-23722/8;23728/25-23729/3;23770/8-23771/25;23729/21-23730/16;23730/17-24;23739/22-23740/4;[REDACTED].

¹⁴² Vol.1,paras.525-528.

¹⁴³ Vol.1,paras.526.

¹⁴⁴ Perković,31678/22-31679/18;1D02749.

Government,¹⁴⁵ and c. the HZHB budget was not prepared while the HVOHZHB functioned.¹⁴⁶ Only when all HRHB bodies started to work did the administrative system begin functioning.¹⁴⁷

64. The TC, in its “*de jure*” analysis,¹⁴⁸ ignored relevant regulations showing the HVOHZHB departments’ obligation to directly implement HZHB regulations.¹⁴⁹ Every department was independent and responsible in carrying out the tasks related to the executive and administrative power given to Department Heads,¹⁵⁰ who were responsible to the HZHB Presidency.¹⁵¹

1.2.6

65. The TC erred in law and fact by failing to consider evidence relevant to the functions and powers of the municipal HVOs; its claim that it analyzed the *de jure* relationships of the HVOHZHB and of the HRHB Government with the municipal authorities in view of subsequently analyzing the *de facto* relationship¹⁵² is vacuous.

66. The TC erroneously concluded that the HVOHZHB coordinated the work of the administrative organs at the municipal level, could dissolve the municipal HVOs, and could void their pronouncements and appoint or remove their members.¹⁵³ The TC mischaracterized Primorac: he explained that the BiH Government financed the HVOHZHB and HVO Orašje, not that the HVOHZHB “coordinated” the work of municipal HVOs.¹⁵⁴

67. The TC ignored evidence concerning the relationships between the HVOHZHB and municipal authorities,¹⁵⁵ especially showing the independence of municipalities¹⁵⁶ and their constitutional role in wartime.¹⁵⁷ The TC ignored regulations adopted by the

¹⁴⁵ Tomić, 34808/16-34809/17; 34118/25-34120/5; 34045/1-11; Witness-I, 23590/11-22; P06689.

¹⁴⁶ Tomić, 34808/16-34809/17; 34118/25-34120/5; 34045/1-11; Witness-I, 23590/11-22; P06689.

¹⁴⁷ P06689.

¹⁴⁸ Vol.1, paras. 538-667.

¹⁴⁹ P00303, Art. 22; 1D00001, Arts. 2-3, 5-6; 1D00822, Art. 24.

¹⁵⁰ P00303, Art. 20; P00303, Art. 21; 1D00822, Arts. 160-161.

¹⁵¹ 1D00822, Arts. 38, 100-101, 167, 168; 1D00001, Arts. 7, 33-34; P09530, Arts. 11, 18; P00206, Art. 3; P00303, Art. 3; Buntić, 30284/8-30286/7; Tomić, 34124/25-34125/19; 34126/5-34129/8; 34816/19-34817/3; 34808/16-34809/17.

¹⁵² Vol.1, paras. 529-533.

¹⁵³ Vol.1, para. 531.

¹⁵⁴ Primorac, 29937/11-29940/13; 1D02948; 29950/21-29952/11; 1D02942.

¹⁵⁵ Buntić, 31022/17-31025/18; 31025/19-31028/3; Perković, 31738/1-31741/7.

¹⁵⁶ 1D02994; Kožulj, 32535/6-32537/6; 1D02754, Art. 4.

¹⁵⁷ Tomić, 33809/3-7; 33852/4-33824/8; 1D00897, Art. 63.

municipalities prescribing that municipal HVOs were responsible only to the HZHB Presidency¹⁵⁸ or to the municipal assembly,¹⁵⁹ and that municipal HVOs independently decided on the resignation of their members.¹⁶⁰ The TC ignored evidence that municipalities regularly passed legislation parallel to HVOHZHB legislation¹⁶¹ without informing the HVOHZHB.¹⁶²

68. The TC erroneously concluded that the HVOHZHB had the option of abrogating decisions of the municipal HVOs,¹⁶³ by ignoring and mischaracterizing evidence. Perković testified that the mechanism to implement the articles of the 3 July 1992 Statutory Decision regarding supervision of municipalities did not exist.¹⁶⁴ Not only is there no evidence that any of those decisions were implemented, but the TJ confirmed that subordination of the municipal HVOs to the HVOHZHB was not followed in practice.¹⁶⁵

69. The TC erroneously concluded that the HVOHZHB granted funds to municipal HVOs; the two decisions relate to HVOs in Sarajevo and Hrasnica, and 1D02137 is dated 9 August 1994, a period outside the Indictment.¹⁶⁶

70. The TC erroneously concluded that the HVOHZHB removed the “government of the Municipality of Ljubuški” and appointed a Commissioner of the HVOHZHB to replace it.¹⁶⁷ It relies on three Bar Table Motion documents,¹⁶⁸ which it misinterprets. The HVOHZHB made a decision to appoint the then President of the municipal HVO Ljubuški as a commissioner; not to remove a member of the municipal government – confirmed by P01863,pp.2-3. The TC ignored evidence that this measure was taken within the Defence Department, with the HVO Main Staff aiming to consolidate the situation in Ljubuški Municipality.¹⁶⁹

¹⁵⁸ 1D00550, Art.4.

¹⁵⁹ 1D02058, Art.3; 1D00808, Art.5.

¹⁶⁰ [REDACTED]; 3D02186.

¹⁶¹ P00128; P04699; P09551; P00921; P01505; 1D01672.

¹⁶² Tomić, 33904/4-33905/11; 34150/9-34151/2.

¹⁶³ Vol.1, paras.532,670.

¹⁶⁴ Perković, 31711/7-31715/8; 31949/11-31956/17; 31762/12-31764/25; 31662/23-31665/8; 31667/6-31668/21; 31768/12-31774/10; 31776/2-31781/2; Buntić, 30902/20-30904/10; Vol.1, para.671.

¹⁶⁵ Vol.1, para.671.

¹⁶⁶ Vol.1, para.533.

¹⁶⁷ Vol.1, para.672.

¹⁶⁸ P01700; P01781; P01863; P01865; P00172; is irrelevant.

¹⁶⁹ P01700, p.2; Praljak, 41033/2-41035/23; 41174/25-176/22; Perković, 31830/25-31831/16.

71. The TC erroneously concluded that municipal HVOs submitted reports to the HVOHZHB,¹⁷⁰ by mischaracterizing two documents introduced through Bar Table Motion: P01505, an invitation to the meeting, and 2D00852, Minutes of the meeting of the HVOHZHB where it concluded to ask for a report on the situation in Mostar Municipality. There is no evidence that the HVOHZHB received it.
72. The TC erroneously concluded that the representatives of the HRHB municipalities were appointed by decisions of the HRHB Government,¹⁷¹ by mischaracterizing two documents introduced through Bar Table Motion: P05805, a 10 November 1993 request by President of the municipal HVO Ljubuški to the HVOHZHB to verify changes in the composition of existing HVOs which took place since its establishment in 1992; and 2D01359, a collection of correspondence about the selection process for “political officer in military district” and “assistant commander in PD,” appointed independently by the Department/Ministry of Defence and without any influence by the HVOHZHB or HRHB Government.¹⁷²
73. The TC ignored evidence that the HVOHZHB had no power to remove municipal HVO Presidents,¹⁷³ and that municipal HVOs regulated their elections.¹⁷⁴
74. The TC in Vol.1,paras.675-676 rightly concluded that the HRHB Government had a problem in *de facto* supervision of municipalities, demonstrated in Prlić’s letter to the municipal HVOs,¹⁷⁵ though it ignored evidence that throughout the period of the Indictment, the HVOHZHB could not *de facto* supervise and control municipal HVOs.¹⁷⁶ The TC ignored evidence that municipalities had both legislative and executive functions;¹⁷⁷ that at the beginning of the war, following the collapse of the BiH administration, municipalities started to function like a state, which was necessary and legal.¹⁷⁸ This happened in Muslim¹⁷⁹ and Croat¹⁸⁰ areas equally.

¹⁷⁰ Vol.1,para.673.

¹⁷¹ Vol.1,para.674.

¹⁷² Vol.1,paras.567-579.

¹⁷³ Tomić,34814/15-34815/4;34816/9-18;34770/21-34773/1;34773/3-12;1D02538.

¹⁷⁴ [REDACTED];3D02186.

¹⁷⁵ P06689.

¹⁷⁶ Tomić,33953/21-33955/9;33973/14-33974/3;33868/25-33870/23;34027/14-34029/2;33977/22-33979/13;34029/3-12;Jurčević,44812/5-44816/25;4D01674.

¹⁷⁷ Tomić,33766/1-33767/17;P00578,p.11.

¹⁷⁸ 1D02994;Kljuić,4137/12-4138/15;Gorjanc,46068/17-46069/3;Tomić,33761/9-33763/14;1D00559;33762/2-33763/14;1D00560;1D00561;33763/15-33764/10;1D00573;333772/15-33776/19;33776/21-33779/14;1D00798;1D00801;1D00803;33779/23-33781/15;1D00804;1D00806;1D02331;1D02332;1D02333;Bandić;38001/15-

75. The TC ignored Cvikić's testimony, showing that all municipalities, throughout BiH, took measures related to defence, macroeconomic and microeconomic matters and government services,¹⁸¹ and enacted legislation in contravention of the HZHB legislature.¹⁸²
76. The TC erroneously concluded that municipal HVO authorities contributed to and were financed by the HZHB budget, by relying on one document introduced through a Bar Table Motion.¹⁸³ The TC ignored Tomić's testimony,¹⁸⁴ as well as other evidence showing that the armed forces of the HZHB were to be financed by municipal HVOs.¹⁸⁵

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77. The TC erroneously relied on selective evidence in analyzing the proclamation of the HRHB, thus facilitating a false narrative from which further erroneous conclusions ensued.¹⁸⁶
78. The TC erroneously concluded that by the end of April 1993 various international and local actors stated that the VOPP could not be implemented and that "fresh negotiations" started on 18 May 1993.¹⁸⁷ The cited documents do not support the TC's conclusion that the Medugorje meeting concerned a "new" agreement. The evidence shows that it concerned the implementation of the already signed VOPP on 25 March 1993¹⁸⁸ and Joint Statement on the implementation of the VOPP and provisional government signed on 25 April 1993.¹⁸⁹ The purpose for this meeting was to stop the fighting between the HVO and the ABiH that had started in Konjic and Jablanica at the end of March 1993 and had

38003/8;Buntić,30322/8-30323/23;30337/21-30338/10;30302/25-30303/16;30344/7-30337/15; 30338/12-24;30302/25-30303/16;1D01670;30344/7-30337/15;30338/12-24;30631/3-30632/2;1D02004; 30501/12-30502/9;30578/21-30579/19;30579/21-30580/25;30650/23-30654/21;1D01105;30499/23-30500/8; 30502/11-30503/18;P03350;30973/10-30974/10;30322/8-30323/23;30337/21-30338/10.

¹⁷⁹ 1D03111,pp.76-85,Chapter4,paras.8-40.

¹⁸⁰ 1D03111,pp.85-93,Chapter4,paras.41-69.

¹⁸¹ 1D03111,pp.92,94-119,130-185;Cvikić,35199/3-35206/19;35206/20-35209/5;35209/23-35218/12;35216/13-35216/16;35222/13-35224/14;35231/4-35235/22;35236/4-35247/10;35250/1-18;35250/20-35255/16;35255/17-35257/7;[REDACTED];Krešić,38742/3-38744/11.

¹⁸² Perković,31843/1-31844/5;2D00535;2D00537;2D00540;2D00541;31837/14-31838/25; 1D02988;1D00296;1D00298;31839/1-24;2D01214;31840/14-21;2D01416;31840/1-13;2D01230;31783/5-31784/4;1D02058;31765/1-31767/4;1D00810;1D00812;Tomić,33904/4-33905/11;1D00272;33905/12-33906/11;1D00031;33907/11-33910/25;1D00306;1D03021;1D00275;1D 002951;D 00288; 1D00310;33915/3-24;1D01747;1D02540;33886/23-33889/9;1D00362;1D 00315;1D 00316; 33900/18-33901/24;1D00314.

¹⁸³ Vol.1,para.681;P01097.

¹⁸⁴ 34153/24-34155/13;34770/21-34773/14;34813/15-34817/3;33868/25-33870/23;1D01934;2D01272; 33953/21-33955/9;33972/3-33974/3;P05799;33977/1-33979/13;34027/14-34029/12;P05799;1D01934;P06689.

¹⁸⁵ P00588,Art.170.

¹⁸⁶ Vol.1,paras.477-486.

¹⁸⁷ Vol.1,para.477.

¹⁸⁸ 1D02908.

¹⁸⁹ P02078;P03299,pp.2-3,paras.3-5.

spread to Mostar.¹⁹⁰ The TC ignored Sančević's testimony that this meeting was Tuđman's initiative for peace and that an agreement was reached for implementing the VOPP and to stop the fighting between the ABiH and the HVO.¹⁹¹ Sančević testified about the Good Will Mission composed of the representatives of Turkey and Croatia trying to stop the fighting between the HVO and the ABiH but stated that the mission was not successful because of obstructions from ABiH commander Pašalić who also told him that he was given an order to take Mostar and then to take an area around Dubrovnik belonging to Croatia.¹⁹² The TC disregarded the Co-Chairmen's report to the Security Council stating that on 18 May 1993 in Međugorje, Boban and Izetbegović reached an understanding on all issues.¹⁹³

79. The TC ignored and mischaracterized evidence showing that the BiH Croat leadership acted based on the agreed implementation of the VOPP by the Muslim leadership and the support of the international community, by preparing the legal enactments required for implementation.¹⁹⁴ Prlić, upon being unanimously appointed interim Prime Minister of BiH,¹⁹⁵ immediately began taking the necessary steps to implement the mandate handed to him by the Međugorje agreement,¹⁹⁶ including dismantling the HZHB.¹⁹⁷ On 27 May 1993, contrary to the terms of the 18 May 1993 Međugorje agreement, the Chief of the ABiH Main Staff, Halilović, submitted a proposal to the Supreme Command "to reject the plan on offer" and to continue to "wage a war of liberation,"¹⁹⁸ similar to one sent to Izetbegović on 10 January 1993 asking him "to prevent division of BiH on ethnic or any

¹⁹⁰ Zelenika,33117/15-33126/19;1D01464;1D02753;1D02756;1D02757;1D02777;1D02758;1D01013, 1D01308;33136/16-33139/20;1D01009;1D01010;1D01011;1D01012;1D01483;33164/1-33174/18;2D00814;1D02756;2D01439;2D00237;P01882;P01977;33199/23-33200/14;4D00415;33309/11-3316/22;P10668/1D02753;P10667;33148/2-22;1D02717;33170/7-33172/9;2D00237;P01882;33204/4-3213/3;1D02758;P02128;IC00864;4D01242;4D00454;4D00438;33209/3-33211/3;33216/8;33223/6-33227/5;33171/20-33172/9;P01882;33304/14-33305/4;33304/1-33309/3;P01164;33354/19-33358/18;P01808;4D01355, 1D02340;Filipović,47458/4-47462/11;4D00830;IC01181;4D00561;IC01183;IC01187;IC01188, 4D00565;4D00566;4D00567;IC01184;IC01185;4D00622;IC01186.

¹⁹¹ Sančević,28551/6-28552/19;28556/6-28557/8;1D02404;28557/9-28559/22;28777/23-28781/11;1D02404;28549/21-28551/5;P02088;28552/22-28555/2;P02088;28551/6-28552/19;28556/6-28557/8;1D02404;28557/9-28559/22;28777/23-28781/11;1D02404.

¹⁹² Sančević,28560/11-28563/5;P02454;28597/4-28598/16;P06454.

¹⁹³ P03299,pp.2-3,paras.3-4.

¹⁹⁴ Akmadžić,29521/9-29530/24;1D02314;1D02322;1D02468;1D02904;1D02407;1D02408;1D02409;1D02410, 1D02411;1D02412;1D02413;1D01940;1D02840.

¹⁹⁵ Sančević,28555/2-28557/8;1D01595;1D02404.

¹⁹⁶ Buntić,30477/4-30478/19;Tomić,33917/9-33929/2;1D01596;1D01597;1D01598;1D01599;1D01600;1D01601;1D01602;1D01586.

¹⁹⁷ Akmadžić,29526/25-29529/25;Jašak,49058/12-49061/3;Buntić,30477/12-30478/19;Tomić,34001/24-34003/16;Sančević,28777/23-28781/11;Praljak,44170/3-18;40666/21-40471/19.

¹⁹⁸ 1D01062,p.1D29-0305.

other principle.”¹⁹⁹ Both documents evidenced Izetbegović’s political goal of a unitary state, irrespective of the costs.²⁰⁰ Inexorably, all efforts made to implement the VOPP based on the May 1993 Međugorje agreement were futile,²⁰¹ considering the lack of readiness of the Muslim side to implement the VOPP,²⁰² their insistence from March 1993 that ABiH implement the internal organization of BiH through Districts and ignore the constituent people in BiH contrary to the basic principles of the VOPP,²⁰³ the Muslim attacks on the HVO in June and July,²⁰⁴ and the emergence of a new peace plan of a Union of three republics.

80. The TC erroneously assessed the establishment of the HRHB, by relying primarily on Ribičić’s value-laden and unsupported report.²⁰⁵ Ribičić confirmed that the Muslims accepted the peace plan;²⁰⁶ similar to the Croats, the Muslims began drafting legislation for establishing the (Muslim) Republic of Bosnia.²⁰⁷ Ribičić confirmed that the Muslims agreed, without the Croats knowing, to offer the Serbian Republic the possibility to leave BiH.²⁰⁸ Ribičić acknowledged that the HRHB was not a “mini-state” as part of a Union of three republics, did not seek independence,²⁰⁹ and had no defined territory pending the outcome of the international negotiations.²¹⁰

81. The TC erroneously concluded that the Agreement on Constitutional Principles of the OSPP was reached on 20 September 1993.²¹¹ The TC ignored evidence that all sides agreed with the Constitutional Arrangements on 30 July 1993.²¹² The provisions on the

¹⁹⁹ 4D01235;Jurčević,44834/21-44835/24.

²⁰⁰ 1D01315;Akmadžić,29404/3-29406/1;1D02438;Akmadžić,29338/2-16;29328/11-29329/29;29329/14-20332/21;29332/22-29335/16;29376/15;29391/13;1D02848;1D02847;1D02849;1D02851;29509/24-29521/6, 1D02940.

²⁰¹ Akmadžić,29530/1-24;1D02840.

²⁰² Nissen,20545/16-20546/3;20548/6-20549/13;20553/23-20558/23;Akmadžić,29489/5-29491/5;29499/16-29500/18;Tomić,34721/9-34724/5;33917/9-33923/7;Sančević,28764/12-28765/7.

²⁰³ Buntić,31028/4-31032/1;Perković,32034-/21-32049/19;1D02458;1D01210;1D01949;1D02212;Akmadžić, 29446/15-29448/12;29448/13-29451/9;1D02565;29451/10-29453/15.

²⁰⁴ 1D01263;1D01264;P02760;P03413;Akmadžić,29591/16;29591/1-29599/23;29599/24-29601/2;2D00902; Sančević,28559/23-28563/5.

²⁰⁵ Vol.1,paras.480,404;P08973,pp.61-63;Ground.4.3.

²⁰⁶ Ribičić,25629/2-12;25627/13-20.

²⁰⁷ Ribičić,25625/15-25627/12;1D01436.

²⁰⁸ Ribičić,25627/21-25628/1.

²⁰⁹ Ribičić,25566/25-25567/19;Jurčević,44762/2-25.

²¹⁰ Ribičić,25629/13-25630/11.

²¹¹ Vol.1,paras.285-286.

²¹² P03990,p.5,para.19.

agreed Agreement on Constitutional Principles made it legally impossible to dissolve the Union without the free consent of all three constituent peoples in the Republic.²¹³

82. The TC erroneously concluded that the Croatian Assembly approved the OSPP in late August 1993.²¹⁴ The matter was put before the HDZBiH Main Committee at Livno on 24 August 1993 and on 27 August 1993. The HVOHZHB drafted proposals to initiate a new system of government²¹⁵ based on the agreed Agreement on Constitutional Principles of the OSPP.²¹⁶ On 28 August 1993, the HZHB Presidency, the HDZBiH Presidency, and Croats who had been elected in the 1990 elections to the Chamber of Municipalities of the BiH Assembly constituted the House of Representatives that then proclaimed the HRHB.²¹⁷ The TC ignored evidence that the HRHB, like the HZHB, had no defined borders pending a final peace agreement for BiH.²¹⁸ The TC ignored and mischaracterized evidence that on the initiative of the Co-Chairmen, a series of intensive bilateral talks were taking place in the first half of September:²¹⁹

- a. Since the Union of Republics would be a land-locked state, access to the sea was crucial, requiring Tuđman's participation in the peace talks²²⁰ for an agreement between Croatia and the Union of Republics,²²¹ signed on 14 September 1993 by Tuđman and Izetbegović.²²²
- b. Tuđman and Izetbegović signed a Joint Declaration to establish working groups for issues pertaining to the territorial division between the two republics in the Union of Republics, for reconstruction and trust between Croats and Muslims, for the humanitarian status of refugees, and for the mutual and unconditional disbandment of all prisoner camps and release of all

²¹³ P03990,p.6,para.22,p.20,Art.2a-b.

²¹⁴ Vol.1,para.482.

²¹⁵ Perković,31786/1-31793/17;P04560;1D01778;P04611;P04589;1D02112;32027/24-32029/22;1D01436;Buntić,30483/25-30486/2.

²¹⁶ Perković,31786/1-31793/17;P04560,p.1;1D01778;P04611;P04589;1D02112;32027/24-32029/22;1D01436;Buntić,30483/25-30486/2;P03990,p.5,para.19.

²¹⁷ Perković,31786/1-31793/17;P04560,p.1;1D01778;P04611;P04589;1D02112;32027/24-32029/22;1D01436;Buntić,30483/25-30486/2.

²¹⁸ Ground.1.1,para.42,Ground.1.3,para.80;Ground.9.6.

²¹⁹ P03990,p.8,paras.31-32.

²²⁰ P03990,p.7,para.28;Žužul,27625/8-27630/14.

²²¹ P03990,pp.30-32;Žužul,27786/1-16;1D02896.

²²² Žužul,27786/1-16;1D02896.

prisoners under ABiH and HVO control by no later than 21 September 1993.²²³

- c. Tuđman and Izetbegović signed the Declaration on Confederation between the Muslim Republic and the Croatian Republic on one side and Croatia on the other side with provisions on maintaining the integrity of the BiH and a Croat-Muslim alliance.²²⁴ On 16 September 1993 Izetbegović signed with Karadžić an entirely different Joint Declaration, providing that during the initial two years of the Union's existence, a referendum could be held on a mutually agreed date within the Republics of the Union on the question of whether citizens of any particular Republic agreed to remain in or depart from the Union; effectively accepting the possibility of changing the BiH borders.²²⁵ The Complete OSPP was signed on 20 September 1993.²²⁶
- d. After the 21 December 1993 round of negotiations among all three sides about the Union of the three Republics,²²⁷ fresh fighting broke out between the HVO and the ABiH,²²⁸ with the ABiH launching an offensive to reach the Adriatic Sea, while pushing the HVO and Central-Bosnian Croats towards Herzegovina.²²⁹ The peace negotiations resumed in January/February 1994,²³⁰ though the Muslims remained disinterested until they gained the territory they wanted by force.²³¹ "The Muslims had clearly chosen to continue with the war...on the advice of their military commanders that they could defeat the Croats in central Bosnia."²³²

²²³ Žužul, 27786/1-27802/3; 1D01320; 1D01321; 3D00451; P05155, pp. 48-49; Raguž, 31328/10-31329/20; P05051, 1D01590; Sančević, 28575/1-28576/24; Petković, 50039/4-50050/6; P05051; 1D02230.

²²⁴ Žužul, 27786/1-27802/3; 1D01320; 1D01321; 3D00451; 3D00320, p. 6; P05155, pp. 48-49.

²²⁵ Žužul, 27786/1-27802/3; 1D01320; 1D01321; 3D00451; 3D00320, p. 6; P05155, pp. 48-49.

²²⁶ 1D02854, para. 1.

²²⁷ 1D02854; Tomić, 34800/21-34781/10; Petković, 49925/23-49929/6; P07475, p. 12; 1D01313.

²²⁸ Vol. 1, para. 486.

²²⁹ Petković, 50039/4-50050/6; P05051; 1D02230; IC01181; IC01183; IC01187; IC01188; 4D00565, 4D00566; 4D00567; Marić, 48177/13-40188/3; 4D00786; 4D01547; 4D01219; P07260, pp. 25-28.

²³⁰ P07866, p. 1; Vol. 1, para. 487.

²³¹ 1D01552.

²³² 1D01549, p. 2; *see also* Watkins, 19076/5-22; 19097/12-17; Petković, 50046/6-50050/6; 1D02230, p. 6

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83. The TC ignored evidence relevant to the organizational structure, functioning, and powers of the HRHB and its institutions in relation to and in contrast with the organizational structure, functioning, and powers of the HZHB and its institutions. As glaring examples:

- a. The TC failed to analyze the *de facto* position of the HVOHZHB after 28 August 1993, when the HRHB was established, but the HVOHZHB, including its President, though changing its name in the HRHB Government, proceeded to function pursuant to the statutory decision on the structure of temporary authorities from 1992²³³ until the election of the new Government in 20 November 1993;²³⁴ and
- b. The TC ignored evidence that the HRHB had a clear division of power among the legislature, executive, and judiciary.²³⁵

84. The TC failed to adequately analyze the evidence related to the *de jure* and *de facto* powers of the HRHB President,²³⁶ by ignoring the testimony of Tomić,²³⁷ Cvikič,²³⁸ Buntić,²³⁹ Perković²⁴⁰ and Kožulj,²⁴¹ and incorrectly interpreting relevant evidence. It ignored, for instance, evidence that Boban, as HRHB President, had the power to call meetings of the Government, preside over these meetings, decide the agenda,²⁴² and propose the HRHB Government to Parliament.²⁴³

85. The TC failed to assess the powers of the HRHB President through the power and composition of the Presidential Council (translated as “Council of the Presidency”)

²³³ P00303;P04611,Arts.11-12.

²³⁴ P05517,pp.2-6;P04589;Božić,36373/21-36374/8;Buntić,30629/6-30630/18;30674/17-30675/23.

²³⁵ Watkins,18935/4-24;Buntić,30484/1-30486/2;30484/1-30486/2;30394/1-30395/12;30397/13-30398/4;Perković,31786/1-31791/9;31990/15-31994/5;31996/3-31997/1;32007/2-22;32027/24-32029/22;Perković,31798/8-31799/6;31792/22-31793/17;32004/14-20;31794/5-31797/25;31798/8-31799/6;Tomić,34799/1-34781/10;33963/3-33968/22;Akmađić,29771/21-25;29404/3-29406/1;29774/25-29775/13;29534/1-29535/16;29501/21-29506/5;Žužul,27786/1-16;27791/10-27792/1.

²³⁶ Vol.1,paras.494-498;

²³⁷ Tomić,34118/25-34120/5;34045/1-11;33826/14-33828/5;1D00049;33867/5-33868/24 ;1D02136;33871/7-33872/12;1D02135;1D02132;33878/13- 33884/13;1D01896;34807/13-34808/15.

²³⁸ Cvikič,35224/15-35331/2;1D03111,Chapters5,6,8.

²³⁹ Buntić,30394/1-30395/12;30397/9-30398/4;30483/20-30486/2;P04560;1D01778;P04611.

²⁴⁰ Perković,31792/22-31793/17;1D02112;31794/5-31797/25;1D01873;31798/8-31799/6;P07000;32004/14-20.

²⁴¹ Kožulj,32570/24-32575/15;P07825;1D01614;1D01953;1D02668;1D02668;1D02672.

²⁴² P05517,Art.21;P06667.

²⁴³ P05517,Art.4.

established by Boban's Decision on 10 December 1993.²⁴⁴ The Presidential Council had power over strategic, political, and defence matters, and coordinated the activities of the executive bodies of the HRHB.²⁴⁵ It was initially comprised of the ministers of defence, finance, justice, and inter-republican and international relations, effectively usurping the role of the Government.²⁴⁶

86. The TC rightly noted that the House of Representatives gave powers to the Presidential Council to substitute the legislative powers of the House of Representatives in exceptional circumstances,²⁴⁷ but erred by failing to recognize that the HZHB did not have in its structure a similar body connected to the HZHB President. This is essential because *de facto*, the powers of the HZHB Presidency rested in its members, the municipal HVO Presidents,²⁴⁸ having unofficial meetings with Boban and taking decisions from the power of the HZHB Presidency²⁴⁹ that then had to be implemented by the HVOHZHB.²⁵⁰

Conclusions and relief:

87. By ignoring and mischaracterizing evidence, the TC failed to provide reasoned opinions and applied an incorrect legal standard in assessing the evidence, invalidating the TJ. No reasonable trier of fact would have found that the HZHB/HRHB had anything to do with reconstituting the Banovina 1939 borders in furtherance of any JCE; an error of fact effecting a miscarriage of justice. (Grounds.9-10).

88. Having properly assessed the evidence, a reasonable trier of fact would have found that:

- a. The HZHB was born out of necessity due to the failure of the BiH State, its institutions, and its leadership to provide the necessary protection and socio-economic services to parts of BiH where the majority of Croats resided. (Grounds.9-10).

²⁴⁴ Vol.1,para.498.

²⁴⁵ P07424,Art.4.

²⁴⁶ P07424.

²⁴⁷ Vol.1,para.498.

²⁴⁸ Tomić,33766/1-33767/17;Cviki,35160/8-35162/17;1D02976,Art.130;1D02974;35477/16-35483/21;1D03111,para.66;P00588;35490/4-35493/16;Bunitić,30302/25-30303/16;1D01670;30334/7-30338/24;1D02053;1D02338;30439/5-30440/14;1D00274;30631/3-30632/2;30973/10-30974/10;30322/8-30323/23;P00305;30337/21-30338/10;1D02338.

²⁴⁹ Witness-I,23517/9-23518/4;23413/22-23414/15;23562/22-23563/7;23415/1-11;23405/20-23406/12.

²⁵⁰ Tomić,34814/15-34816/18.

- b. Neither Prlić nor the HVOHZHB had power over the municipal HVOs or the presidents of the municipal HVOs, who were members of the HZHB Presidency, and who were individually/collectively the superiors of the HVOHZHB. (Ground.11.9).
- c. The Departments, Sub-Departments, Services, and Commissions were independent in their functioning and not subordinated to Prlić/HVOHZHB President. (Grounds.11.3,11.4,11.5,11.6,11.7,11.8,12.1.para.387,392)
- d. The HRHB emerged as a result of, and was consistent with, the OSPP Constitutional Agreement on Constituting the Union of the Republics of BiH, and not in furtherance of an overarching JCE to constitute a Croatian “mini-state.” (Ground.9.10).

89. The AC should overturn the convictions for Counts 1-25.²⁵¹

²⁵¹ Vol.1,paras.31-261,406-986;Vol.2,paras.669-748;Vol.3,paras.509-1741;Vol.4,para.278.

GROUND 2:

90. The TC erroneously ignored the evidence of virtually all of Prlić's witnesses without credible reasoning, facilitating a confirmation bias through erroneous findings. The TC applied an incorrect standard in the assessment of this evidence – much of which was contextually significant in assessing Prlić's functions, responsibilities, and actions, and/or exculpatory for Prlić.
91. Presumably a TC evaluates all evidence presented to it and weighs the evidence accordingly;²⁵² it need not refer to the testimony of every witness or piece of evidence on the trial record.²⁵³ This presumption is rebutted when there is a showing that the TC ignored relevant evidence without justification/reasoning.²⁵⁴
92. A TC has the discretion to assess any inconsistencies in the testimony of witnesses, and to determine whether, in light of the overall evidence, the witnesses are nonetheless reliable and credible.²⁵⁵ However, as a component of Prlić's right to a fair trial under Articles 20 and 21, the Judgement must reflect, transparently, how, when, and to what extent the TC exercised its discretion.²⁵⁶ One reason for creating a record of the proceedings is to ensure that when a TC exercises its discretion – whether during the proceedings or during its deliberations – there are verifiable means to scrutinize the TC's actions and decisions. A reasoned opinion ensures that the accused can exercise his/her right of appeal and that the AC can carry out its statutory duties under Article 25 to review these appeals.²⁵⁷ Opaque and unverifiable pronouncements that the evidence was considered are vacuous, not reflective of reasoned opinions.²⁵⁸
93. The TC claimed that in analyzing *viva voce* witnesses, it gave "specific consideration to the attitude, the conduct and the personality of the witnesses...as well as to the time elapsed between the facts as alleged in the Indictment and the testimony of the said witnesses."²⁵⁹ It claimed that it took "into account certain circumstances particular to the witnesses, such as their possible involvement in the events recounted, the fear of self-

²⁵² *Kvočka*, AJ, para.23.

²⁵³ *Limaj*, AJ, para.86.

²⁵⁴ *Limaj*, AJ, para.86.

²⁵⁵ *Muvunyi*, AJ, para.144.

²⁵⁶ *Furundžija*, AJ, para.69.

²⁵⁷ *Limaj*, AJ, para.81.

²⁵⁸ *Muvunyi*, AJ, paras.142-148.

²⁵⁹ Vol.1, para.284.

incrimination, the relationship of the witnesses to the Accused and the possibility of a motive which might, under certain circumstances, call into question the reliability of the testimony.”²⁶⁰ The TJ reveals otherwise.

94. The TC merely made scant references to Prlić’s witnesses for trivial or uncontested matters while ignoring the substance of their evidence, creating the illusion that it considered the evidence of these witnesses. A subterfuge, not to be countenanced by the AC as the last instance of judicial review.

2.1

95. The TC erroneously ignored the testimony of Prlić’s witnesses testifying on all issues related to the alleged JCE and JCE core crimes, including but not limited to: IAC, occupation, Croatia’s humanitarian assistance to BiH and BiH refugees, the peace negotiations, the functioning of SRBiH and RBiH, the establishment of HZ(R)HB, RBiH public finance issues and the role of the Government on different levels, the economic measures of the HZ(R)HB within the context of the economic environment in BiH from 1991-1994, the HZ(R)HB, its institutions and political and administrative powers – *de jure* and *de facto* – of the various HZ(R)HB authorities, municipal HVO authorities, civil society issues such as public utilities, industry, and infrastructure, education, language, “Croatisation”, humanitarian aid, currency, crime prevention, detention facilities, and prisons. (See Notice).

2.1.1 Miomir Žužul:

96. In March 1992 Žužul began working at Croatia’s Ministry of Foreign Affairs. He participated in EC-led peace negotiations in April 1992, became Deputy Foreign Minister in July 1992, and was an advisor to Tuđman for national security in September 1992. After the ICFY was established, he was Croatia’s ambassador to the UN in Geneva, participating in most talks in Geneva and elsewhere. In early 1994, he became Tuđman’s special envoy to liaise with the Contact Group and assist in negotiations. He participated in the Washington Agreement and Dayton Agreements, and thereafter served as Croatia’s ambassador to the USA before becoming Minister of Foreign Affairs.²⁶¹

²⁶⁰ *Id.*

²⁶¹ Žužul, 27608/14-27613/24.

97. By disregarding Žužul's testimony, the TC erred in its findings challenged in Grounds.1.1;1.2;1.3;1.4;9.2;9.3;9.5;9.6;9.9;19.1;19.2;19.3.

2.1.2 Damir Zorić:

98. In August 1991 Zorić was an advisor to Granić, Deputy Prime Minister of Croatia for social issues. Zorić was the Secretary General of Croatia's ODPR from its establishment in November 1991 until March 1993 when he was elected to the Croatian Parliament, though he remained involved in issues related to refugees and displaced persons. At the end of 1995 he returned to the ODPR until May 1996. He then served as Croatia's ambassador to BiH from 1999-2000.²⁶²

99. By disregarding Zorić's testimony, the TC erred in its findings challenged in Grounds.9.3;9.5;16.6.5;16.6.6;16.12;16.13;16.14;16.15;18.

2.1.3 Adalbert Rebić:

100. From 1991-1996, Rebić was head of Croatia's ODPR, serving also as a minister without portfolio from 1995-1996.²⁶³

101. By disregarding Rebić's testimony, the TC erred in its findings challenged in Grounds.1.1;16.6.2;16.6.3;16.6.4;16.6.5;16.6.6;16.7.5;16.9.

2.1.4 Zdravko Sančević:

102. In late 1991 Sančević was assigned to Croatia's Ministry of Information before becoming Croatia's Minister of Emigration in Croatia. From the end of 1992 to early 1996 he served as Croatia's ambassador to BiH.²⁶⁴

103. By disregarding Sančević's testimony, the TC erred in its findings challenged in Grounds.1.1;1.3;9.2;9.4;9.5;12;13;16.2.1;16.2.2;16.2.3;16.2.4;16.2.5;16.5.1;16.5.2;16.6.2;16.6.3;16.6.4;16.9;16.12;16.13;16.14;16.15;18;19.

²⁶² Zorić,27857/6-27858/6;27865/15-18.

²⁶³ Rebić,28146/17-23;28149/10-28150/17.

²⁶⁴ Sančević,28520/8-28522/2;28528/4-17;1D02926;28578/2-14;28526/21-28527/24.

2.1.5 Franjo Boras:

104. In November 1990 Boras was elected to the SRBiH Presidency; Izetbegović illegally dismissed him from the Presidency on 20 October 1993.²⁶⁵

105. By disregarding Boras's testimony, the TC erred in its findings challenged in Grounds.1.1;9.4;9.5;9.6;16.2.1;16.2.2;19.

2.1.6 Mile Akmadžić:

106. In mid-1990, Akmadžić worked in the office of the SRBiH President of the Presidency until February 1991 when he was appointed Secretary General of the Presidency.²⁶⁶ On 10 November 1992, he was elected Prime Minister of the Republic of BiH. He held this position until the end of August 1993. On 14 November 1992, he was elected one of the Vice-Presidents of HDZBiH. On 10 December 1993, he became a member of the HRHB Presidential Council and later was elected Vice-President of the HRHB Government. Akmadžić was involved in the VOPP negotiations. He served as an Ambassador of BiH to Macedonia.²⁶⁷

107. By disregarding Akmadžić's testimony, the TC erred in its findings challenged in Grounds.1.1;1.2;1.3;1.4;9.2;9.6;9.9;15;16.1.1;16.1.2;16.3.1;16.4.1;16.6.2;18;19.3.

2.1.7 Žarko Primorac:

108. Primorac was appointed RBiH Minister of Finance on 15 June 1992. He was relieved/dismissed on 23 December 1992.²⁶⁸

109. By disregarding Primorac's testimony, the TC erred in its findings challenged in Grounds.1.1;1.2;1.2.6;9.6;16.4.1.

2.1.8 Milan Cviki

110. Cviki's qualifications are set out in his CV.²⁶⁹

²⁶⁵ Boras,[REDACTED];29041/2-14;28989/11-28993/6;1D02933.

²⁶⁶ Akmadžić,29326/20-29328/10.

²⁶⁷ Akmadžić,29324/5-29326/19;29372/6-25;1D02308;29393/7-12.

²⁶⁸ Primorac,29871/8-29878/14;1D02645;1D01632.

²⁶⁹ Cviki,1D03111,pp.206-228.

111. By disregarding Cviki's testimony, the TC erred in its findings challenged in Grounds.1.1;1.2;1.2.6;1.4;4.3;9.3;9.6;11.6;16.4.1.

2.1.9 Zoran Buntić:

112. Buntić was the HVOHZHB Head of Justice and General Administration. He participated in the VOPP negotiations in the first half of January 1993 in Geneva.²⁷⁰

113. By disregarding Buntić's testimony, the TC erred in its findings challenged in Grounds.1.1;1.2;1.2.5;1.2.6;1.3;1.4;4.3;9.2;9.6;11.1;11.2;11.5;12.1;12.2;13;15;16.1.1;16.2.1;16.2.2;16.4.2;16.5.1;16.5.2;16.6.2;16.12;16.13;16.14;16.15;18.

2.1.10 Zoran Perković:

114. In 1989, Perković began working as a republican inspector for administrative issues until after the first multi-party election in BiH. He then served as Assistant Minister for Information until late April 1992. In December 1992, he became a member of the HVOHZHB Committee for Laws and Regulations.²⁷¹

115. By disregarding Perković's testimony, the TC erred in its findings challenged in Grounds.1.1;1.2;1.2.6;1.3;1.4;4.3;9.2;9.6;11.2;11.4;11.5;12.1;12.2;13;16.2.1;16.2.2;16.4.1;16.4.2;16.4.3;16.4.4;16.4.6;16.4.7;16.5.1;16.5.2;16.6.2;16.6.3;16.6.4;16.12;16.13;16.14;16.15;18.

2.1.11 Neven Tomić:

116. Tomić was a member of the Special Purpose Council in Mostar in 1992, and later served as Head of the HVOHZHB Financial Department, before becoming Minister of Finance in FBiH, and Minister of Foreign Trade and International Communications in RBiH.²⁷²

117. By disregarding Tomić's testimony, the TC erred in its findings challenged in Grounds.1.1;1.2;1.2.4;1.2.5;1.2.6;1.3;1.4;9.2;9.6;9.9;11.1;11.2;11.3;11.6;12.1;12.2;13;15;16.2.1;16.2.2;16.4.1;16.4.3;16.4.4;16.4.7;16.6.2;16.6.3;16.6.4;16.12;16.13;16.14;16.15;18.

²⁷⁰ Buntić,30243/12-30244/21;30443/7-30444/21.

²⁷¹ Perković,31621/22-31624/6.

²⁷² Tomić,33702/1833707/5;33722/6-24;33730/17-33731/10;33785/11-33787/13.

2.1.12 Ilija Kožulj:

118. Kožulj was a member of the HRHB Government, Assistant Minister in the BiH Government, and BiH Ambassador to Spain.²⁷³

119. By disregarding Kožulj's testimony, the TC erred in its findings challenged in Grounds.1.2.6;1.4;9.2.

2.1.13 Miroslav Palameta:

120. Palameta was SRBiH Under Secretary in the Ministry of Education in 1991. He remained in that position until the beginning of April 1992, when he could no longer travel to Sarajevo. In the summer of 1992 he was appointed HVOHZHB Deputy Head of Office for Education. He also served as BiH's ambassador to Italy and the Vatican.²⁷⁴

121. By disregarding Palameta's testimony, the TC erred in its findings challenged in Grounds.9.2;9.6;16.4.1;16.12;16.13;16.14;16.15.

2.1.14 Martin Raguž:

122. Raguž worked for the RBiH Ministry for Work, Social Affairs and Refugees in June 1992 to July 1993. In March 1993 he was appointed Deputy Head of the HZHB ODP, becoming its head in December 1993 until he was elected Federation Deputy Minister for Refugees and Social Welfare. He held this position until the end of 1995. In 2000 he was elected Minister of the BiH Ministry for Human Rights and Refugees.²⁷⁵

123. By disregarding Raguž's testimony, the TC erred in its findings challenged in Grounds.1.3;9.3;10.5;11.1;11.7;11.8;13;14;16.3.1;16.4.1;16.4.3;16.4.4;16.4.7;16.6.2;16.6.3;16.6.4;16.6.5;16.6.6;16.12;16.13;16.14;16.15;16.9.

2.1.15 Marinko Šimunović:

124. Šimunović worked for the Mostar Red Cross from 28 June 1992 to 1 April 1998 and as Chief Secretary of the BiH Federation Red Cross until 3 October 2003.²⁷⁶

²⁷³ Kožulj,32490/5-32492/25;32497/14-32499/7.

²⁷⁴ Palameta,32754/9-32759/8;32772/5-8;32780/25-32782/24.

²⁷⁵ Raguž,31240/10-31246/15.

²⁷⁶ Šimunović,33403/16-33405/21.

125. By disregarding Šimunović's testimony, the TC erred in its findings challenged in Grounds.10.5;11.7;16.4.6;16.6.2.

2.1.16 Borislav Puljić:

126. Puljić was a member of the Crisis Staff for Mostar Municipality from mid-March 1992 to early May 1992, and later served as Mostar Municipality's Head of the Urbanism Department.²⁷⁷

127. By disregarding Puljić's testimony, the TC erred in its findings challenged in Grounds.9.6;10.5;12;16.4.3;16.4.4;16.4.5;16.4.6;16.12;16.13;16.14;16.15.

2.1.17 Mirko Zelenika:

128. Zelenika was President of the Executive Council of Jablanica Municipality.²⁷⁸

129. By disregarding Zelenika's testimony, the TC erred in its findings challenged in Grounds.1.1;1.3;10.5;16.2.1;16.2.2;16.2.3;16.2.4;16.2.5;16.6.2.

2.1.18 Zdravko Batinić:

130. Batinić was President of the Executive Council of the Municipal Assembly of Gornji Vakuf from the end of 1991 to 11 January 1993.²⁷⁹

131. By disregarding Batinić's testimony, the TC erred in its findings challenged in Grounds.1.1;1.2;9.5;16.1.2;16.5.1;16.5.2;16.6.2.

Conclusions and relief:

132. By ignoring evidence relevant to Prlić – demonstrated throughout this brief – the TC failed to provide a reasoned opinion.²⁸⁰ Similarly, by opting to rely on one set of evidence (the OTP's) over another set (Prlić's) – without pointing to inconsistencies in the evidence or identifying reasons for doubting witnesses' credibility – the TC applied a double standard and failed to provide a reasoned opinion on Prlić's defence.²⁸¹ By effectively ignoring Prlić's entire defence case, the TC denied Prlić his right to present a

²⁷⁷ Puljić,32084/12-32090/23.

²⁷⁸ Zelenika,32994/3-32995/11.

²⁷⁹ Batinić,34286/8-14;34314/6-34315/21;1D02699;34273/21-34283/4.

²⁸⁰ Perišić,AJ,paras.94-95.

²⁸¹ Muvunyi,AJ,para.147.

defence and challenge evidence, violating Article 21(4); an error of law invalidating the TJ. By failing to consider these witnesses, the TC erred in fact by drawing unsustainable conclusions regarding the existence of a JCE and Prlić's powers and responsibilities, effecting a miscarriage of justice.

133. The AC should overturn the convictions for Counts 1-25.²⁸²

²⁸² Vol.1,paras.31-261;406-986;Vol.2,paras.669-748;Vol.3,paras.509-1741;Vol.4,para.278.

GROUND 3:

134. The TC erred in law by systematically failing to make specific findings on documentary evidence it claimed to have assessed in accordance with the Statute, the Rules, and the Tribunal's jurisprudence.²⁸³ The TJ reveals otherwise. Rather than making specific findings on how it assessed evidence, the TC relied on opaque and unverifiable pronouncements.²⁸⁴

135. Prlić has a right to a reasoned opinion.²⁸⁵ What constitutes a reasoned opinion depends on the specifics of a case.²⁸⁶ A TC is expected to evaluate all evidence presented to it and weigh it accordingly.²⁸⁷ Although a TC need not refer to every piece of evidence in the trial record,²⁸⁸ the judgement should reflect to some degree of certainty what the TC actually considered in order for the AC to determine whether the evidence was properly assessed.²⁸⁹

136. Blanket statements on assessment of evidence are not reasoned opinions. An insufficient analysis of the evidence may amount to a failure to provide a reasoned opinion.²⁹⁰ A TC will have failed to provide a reasoned opinion where it opts to rely on one set of evidence over another conflicting set, without pointing to inconsistencies in the evidence, or identifying reasons for doubting witnesses' credibility.²⁹¹

3.1

137. The TC erred in law by purporting to have afforded greater weight to documentary evidence than to oral testimony whenever it found witness testimony to dispute a logical sequence of documents in a manner less than persuasive, without specifying the witnesses and the nature of the testimony it found to be questionable and the documentary evidence to which it afforded greater weight.²⁹²

²⁸³ Vol.1,para.269.

²⁸⁴ Vol.1,paras.287,380,382.

²⁸⁵ ICTY Statute,Arts.20,21,23;*Furundžija*,AJ,para.69;*Limaj*,AJ,para.81.

²⁸⁶ *Perišić*,AJ,para.92.

²⁸⁷ *Kvočka*,AJ,para.23.

²⁸⁸ *Limaj*,AJ,para.86.

²⁸⁹ *Muvunyi*,AJ,paras.147-48.

²⁹⁰ *Perišić*,AJ,paras.95-96.

²⁹¹ *Muvunyi*,AJ,para.147.

²⁹² Vol.1,para.287.

138. It cannot be assumed based on the TC's opaque and unverifiable pronouncements that it actually assessed the evidence in the manner it claims, when considering that the TC failed to examine relevant evidence proffered by Prlić (Grounds.1,2); failed to reason through inconsistencies and shortcomings in expert testimony (Ground.4) and witness testimony (Ground.6); and failed to allow Prlić to confront uncorroborated hearsay, which was ultimately relied upon (Ground.5).

139. Nothing in the record demonstrates that the TC followed its opaque and unverifiable pronouncements in assessing the evidence. The TC provided no analysis as to how it assessed the evidence upon which it made its findings and conclusions, placing Prlić in the dark as to which pieces of evidence the TC actually assessed and relied upon, and which pieces it ignored.

3.2

140. The TC erred in law by purporting to have assigned greater weight to the contents of a document convincingly explained by a witness than to a document admitted by way of written statement, without specifying which documents it assigned greater weight as having been convincingly explained, and which documents it assigned little or no weight for not having been convincingly explained.²⁹³

141. Submissions in Ground.3.1 are adopted here by reference.

3.3

142. The TC erred in law by purporting to have assigned some weight to documents not commented on by witnesses in cases where their content was corroborated by other documents, and particularly when they belonged to a cohesive set of documentary evidence constituting a reliable whole, without specifying which documents it actually considered, which documents were considered corroborating documents, and which set of documentary evidence it considered as a whole to be reliable.²⁹⁴

143. Submissions in Ground.3.1 are adopted here by reference.

²⁹³ Vol.1,para.380.

²⁹⁴ Vol.1,para.381.

3.4

144. The TC erred in law by purporting to have considered all the documentary evidence admitted by written motion and to have assessed it in the context of the evidence admitted, without specifying which documents it gave little or no weight after having purportedly considered the source of the document, its author, the possibility of contradictions, and any issues raised by the parties concerning authenticity.²⁹⁵

145. Submissions in Ground.3.1 are adopted here by reference.

Conclusions and relief:

146. By failing to make specific findings the TC applied an incorrect legal standard and failed to provide reasoned opinions. Prlić's right to an effective appeal is denied by the TC's exuberant reliance on the presumption it enjoys with regard to the AC's standard of review.²⁹⁶ Prlić must demonstrate concretely what the TC failed to consider and how those failures affected the overall factual and legal findings lest he suffer a summary dismissal of any of his grounds or sub-grounds of appeal.²⁹⁷ The TC's opaque and unverifiable pronouncements make this task impossible, violating Articles 21 and 25; an error of law invalidating the TJ.

147. The AC should overturn the convictions for Counts 1-25.²⁹⁸

²⁹⁵ Vol.1,para.382.

²⁹⁶ *Kvočka*,AJ,para.23.

²⁹⁷ *Krajišnik*,AJ,para.142.

²⁹⁸ Vol.1,paras.31-261,406-986;Vol.2,paras.669-748;Vol.3,paras.509-1741;Vol.4,para.278.

GROUND 4:

148. The TC erred in law and fact in failing to properly assess the credibility of OTP expert witnesses and by heavily relying upon them in making critical findings against Prlić, facilitating a confirmation bias through erroneous findings.²⁹⁹
149. The TC erred in law and fact by relying on the testimony and reports of OTP expert witnesses Donia,³⁰⁰ Tomljanovich,³⁰¹ and Ribičić³⁰² in making findings and conclusions regarding the existence of the alleged JCE.
150. The TC claimed that it assessed each expert for their field of expertise, impartiality, methodology employed in their reports, material available for conducting their analyses, and the credibility of their conclusions.³⁰³ The TJ reveals otherwise.
151. The TJ does not show that the TC assessed each expert and their reports.³⁰⁴ The TJ lacks any analysis on the weight given to expert testimony or reports where the expert's independence and impartiality was challenged.³⁰⁵

4.1

152. The TC failed to properly assess Donia's credibility and critically scrutinize his testimony and expert report by not considering that Donia:
- was not a lawyer, ethnographer, demographer, or political scientist;³⁰⁶ and his Ph.D. was constrained to BiH Muslims in the late 19th century;³⁰⁷
 - had a close and long-term association with the OTP;³⁰⁸
 - had methodological flaws in his report:

²⁹⁹ Vol.1,para.291.

³⁰⁰ Vol.1,paras.409,420-422,424,426,428,429,432,436,438-440,442; Vol.4,para.14;Related to P09536, Vol.1,paras.409,413,420,421,422,424,426,429,432,433,436,438,439,442,447; Vol.4,paras.13-14.

³⁰¹ Related to P09545, Vol.1,paras.419,421,436-437,452-454,467,483-484,500-501,504,506,511,515, 522,525,528,532,534,555,640,670; Vol.4,paras.21,81,82,88,125,138,158.

³⁰² Vol.1,paras.465,480,483-484,515,631,698,711; Vol.3,paras.549,552,556; Vol.4,paras.11,14-16,18,21, 82. Related to P08973, Vol.1,paras.421-422,424,480,483-484,493,495-96,498,500-511,515-516,522-25,527-528,531,631,633,638,685,689,694,698,711,769; Vol.3,paras.549,552, 556; Vol.4,paras.14,16,21,82.

³⁰³ Vol.1,paras.290-291.

³⁰⁴ *Martić*, Decision on Avramov Report,para.9.

³⁰⁵ *Milutinović*,T.840/9-24;*Dorđević*,Decision on Rule 94bis,para.19.

³⁰⁶ 1884/8-23.

³⁰⁷ P09547;Donia,1841/17-1842/12.

³⁰⁸ Donia,1743/24-1744/16;1851/4-20.

- scarce and selective use of citations;³⁰⁹
- reliance on secondary sources;³¹⁰
- lack of comprehensiveness, restricting himself only to the OTP's narrative of the facts;³¹¹ and
- limited materials available.³¹²

153. The TC erroneously relied on Donia's testimony and report in erroneously analyzing:

- The establishment of HZHB and existence of the ultimate purpose of the alleged JCE;³¹³
- The establishment of HVO;³¹⁴
- The alleged partitioning of BiH in the 6 May 1992 Graz meeting between the Serb and Croat delegations;³¹⁵
- The VOPP could not be implemented as of April 1993.³¹⁶

4.2

154. The TC failed to properly assess Tomljanovich's credibility and critically scrutinize his testimony and expert report by not considering that Tomljanovich:

- did not understand the function of an expert witness in legal proceedings or the significance of rendering an opinion;³¹⁷
- is not a lawyer or political scientist;³¹⁸ and his Ph.D. was constrained to early modern Central European History, focusing on a 19th Century Croatian Bishop;³¹⁹

³⁰⁹ Donia, 1852/25-1857/11; 1847/13-1849/1.

³¹⁰ Donia, 1871/12-23; 1876/5-25; 1878/25-1879/9.

³¹¹ Donia, 1858/8-14.

³¹² Donia, 1858/11-14; 1860/4-1862/9; 1852/2-17; 1859/11-1860/3; 1866/17-1867/9; 1864/11-1865/7; 1861/3-1862/2.

³¹³ Vol.1, para.409, 420-422, 425-426, 429; Vol.4, para.14, 43; Ground.1.1; Ground.9.5; Ground.10.1.

³¹⁴ Vol.1, para.436; Ground.1.1; Ground.12.2.

³¹⁵ Vol.1, para.439; Vol.4, para.13; Ground.1.1.5; Ground.9.4.

³¹⁶ Vol.1, para.447; Ground.1.3; Ground.9.10.

³¹⁷ Tomljanovich, 5932/15-25; 6187/19-6188/24; 6191/2-6193/2.

³¹⁸ Tomljanovich, 6188/25-6190/3; 6724/16-22.

³¹⁹ Tomljanovich, 5927/5-20.

- was an OTP employee since 1999;³²⁰
 - participating in OTP strategy sessions, investigations, and preparation of the case;³²¹
 - interviewing witnesses and suspects, including Prlić; and
 - offering advice that may have influenced the decisions taken by the OTP as to who should and should not be indicted in the case;³²²
- had methodological flaws in his report. He:
 - failed to consider important contextual and historical information concerning the functioning and assistance of the Sarajevo Government,³²³ the role of peace negotiations,³²⁴ and events leading up to the 15 January 1993 Decision;³²⁵
 - failed to consider and explain the function and role of Boban in the structure and functioning of the HZHB;³²⁶
 - failed to explain the role of military combat units and the relations between the military units and local civilian organs;³²⁷
 - lacked comprehension of the legal system and constitutional law, and failed to consult with lawyers concerning legal issues;³²⁸
 - lacked comprehension concerning the institutional structure of the HZHB and the HRHB, and their functions;³²⁹
 - employed selective use of sources, looking only to the HZHB's legal documents without taking into account contextual information, in order to fit the OTP's narrative;³³⁰

³²⁰ Tomljanovich, 6187/5-18; 6730/22-24; 2014/23-2015/25; 2010/7-2014/22; 6201/10-22.

³²¹ Tomljanovich, 6731/5-14.

³²² Tomljanovich, 6194/1-6198/24; 6731/7-6732/21; 6228/9-11; 2026/6-2027/13.

³²³ Tomljanovich, 6734/4-6735/25; 6755/21-6758/5; 6780/25-6781/20; 6820/20-6821/18; 6839/8-19.

³²⁴ Tomljanovich, 6757/16-6758/5; 6823/7-6824/7; 6831/4-16; 6849/1-16; 6843/8-6844/20.

³²⁵ Tomljanovich, 6842/15-25.

³²⁶ Tomljanovich, 6166/3-10; 6903/5-14; 6109/2-14.

³²⁷ Tomljanovich, 6764/22-6765/5.

³²⁸ Tomljanovich, 6768/20-6770/23; 6783/4-6785/11; 6800/1-20; 6830/5-16.

³²⁹ Tomljanovich, 6774/6-22; 6830/5-16.

- had limited the use of materials available to him for his report:
 - deliberately chose not to deal with legislation from the BiH government;³³¹
 - did not review the BiH Constitution;³³² and
 - used primary documents from only one side of the conflict.³³³

155. The TC relied on Tomljanovich's report (his seven-day testimony was not cited) in erroneously analyzing:

- The establishment of the HZHB and existence of the ultimate purpose of the alleged JCE;³³⁴
- The functioning of the HZHB and the HVOHZHB;³³⁵
- The HVOHZHB's alleged appropriation of HZHB Presidency powers;³³⁶
- Prlić's alleged "introduction of a Croatian culture in the territory of the HZ(R)HB";³³⁷
- The relationship between the HVOHZHB and municipal HVOs;³³⁸
- The alleged 15 January 1993 "Ultimatum";³³⁹
- The alleged 15 April 1993 "Ultimatum";³⁴⁰ and
- The establishment of HRHB as an alleged "mini-state."³⁴¹

4.3

156. The TC failed to properly assess Ribičić's credibility and critically scrutinize his testimony and expert report by not considering that Ribičić:

³³⁰ Tomljanovich,6740/15-6742/5.

³³¹ Tomljanovich,6782/19-25,6806/24-6807/8.

³³² Tomljanovich,6725/11-15.

³³³ Tomljanovich,6765/6-22.

³³⁴ Vol.1,paras.419,421,436,500;Vol.4,para.21.Ground.1.1;Ground.1.2.

³³⁵ Vol.1,paras.515,522,525,531;Ground.1.1;Ground.1.2;Ground.1.4;Ground.11.

³³⁶ Vol.1,paras.511-522;Vol.4,para.88;Ground.1.2;Ground.1.4;Ground.11.1.2.

³³⁷ Vol.4,para.158;Ground.16.4.

³³⁸ Vol.1,paras.531,670;Ground.1.2.6;Ground.11.1.9.

³³⁹ Vol.1,paras.452,453,454;Vol.4, paras.21,125;Ground.10.2;Grounds.10.3,10.4;Ground.16.1.

³⁴⁰ Vol.1,paras.468,483;Vol.4,para.138;Ground.10.3 and 10.4;Ground.16.2.

³⁴¹ Vol.1,paras.483-484,504,528;Vol.4,para.21;Ground.1.3;Ground.1.4;Ground.9.1;Ground.9.10.

- lacked credibility as an expert:
 - was not aware that every municipality in the former SFRY had official gazettes;³⁴²
 - relied on extraneous political statements, such as the 1991 Presidential Transcript, to undertake a constitutional analysis of legal texts;³⁴³
 - did not go beyond documents provided by the OTP;³⁴⁴
 - had knowledge of newly available evidence (not available to him for his report in Kordić), but did not review this evidence and reconsider his constitutional findings on the HZ(R)HB to see if the original analysis was correct;³⁴⁵
- was closely associated with the OTP:
 - although aware of new evidence, Ribičić looked only to documents provided by the OTP, tailoring his report to fit the OTP narrative;³⁴⁶
- had methodological flaws in his report such as:
 - reliance on secondary sources,³⁴⁷ and by his own admission, using no sources in footnotes for his main conclusion, which was extensively relied upon by the TC;³⁴⁸
 - failure to consult with original sources from the interim BiH Presidency or from HZHB³⁴⁹ or from the Muslim government in Sarajevo;³⁵⁰
 - failure to consult with the persons involved in international negotiations;³⁵¹
 - engagement in speculative political analysis concerning the thoughts of Tuđman;³⁵²

³⁴² Ribičić, 25498/12-19; Buntić, 30322/8-30323/23; 30337/21-30338/10; 30676/1-30677/4; Perković, 31746/16-31748/5; Tomić, 33969/19-33970/7.

³⁴³ Ribičić, 25555/2-15; 25581/7-25584/10.

³⁴⁴ Ribičić, 25552/1-12; Cviki, 35373/8-35376/13.

³⁴⁵ Ribičić, 25581/7-25584/10; 25585/4-25586/12.

³⁴⁶ Ribičić, 25581/7-25584/10; Cviki, 35384/11-35386/14.

³⁴⁷ Ribičić, 25544/3-25545/18.

³⁴⁸ Ribičić, 25563/15-25566/5; P08973, pp. 25, 44, 48-49, 52.

³⁴⁹ Ribičić, 25558/6-25561/18.

³⁵⁰ Ribičić, 25561/25-25562/2; 25638/13-25639/16.

³⁵¹ Ribičić, 25562/3-12.

- lack of understanding of the new constitutional arrangements for BiH established by ICFY;³⁵³
- had limited materials available for his report:
 - he was not provided with documents giving the relevant contextual information³⁵⁴ and was ignorant of documents regarding:
 - the Muslim-Serb Agreement between Filipović and Karadžić;³⁵⁵
 - the functioning of the municipal HVOs in all HZHB municipalities;³⁵⁶
 - efforts in engaging with internationals to negotiate a peaceful solution to the conflict;³⁵⁷
 - the implementation of the VOPP;³⁵⁸
 - the relations between Croatia and BiH.³⁵⁹

157. The TC relied on Ribičić's testimony and report in erroneously analyzing:

- The Karadorđevo meeting on 25 March 1991 between Tuđman and Milošević;³⁶⁰
- The establishment of the HZHB and existence of the ultimate purpose of the alleged JCE;³⁶¹
- The functioning of the HZHB and the HVOHZHB;³⁶²
- The HVOHZHB's alleged appropriation of HZHB Presidency powers;³⁶³
- The relationship between the HVOHZHB and municipal HVOs;³⁶⁴

³⁵² Ribičić,25565/15-25566/5.

³⁵³ Ribičić,25602/13-20;25599/12-25606/1.

³⁵⁴ Ribičić,25576/20-25578/17.

³⁵⁵ Ribičić,25595/7-20.

³⁵⁶ Ribičić,25579/8-25580/10.

³⁵⁷ Ribičić,25586/24-25589/19;25596/17-25597/22;25610/21-25611/8;25618/9-25619/8.

³⁵⁸ Ribičić,25586/24-25589/19;25620/3-25624/21.

³⁵⁹ Ribičić,25607/7-18.

³⁶⁰ Vol.4,para.11;Ground.9.3.

³⁶¹ Vol.1,paras.421,422,425;Vol.4,paras.14-16,18;Ground.1.1.

³⁶² Vol.1,para.500-502,505-507,515,633;Ground.1.1;Ground.1.2;Ground.1.4.

³⁶³ Vol.1,para.511,522;Vol.4,para.88;Ground.1.2;Ground.1.4;Ground.11.1.2.

- The establishment and functioning of the HRHB as an alleged “mini-state”;³⁶⁵ and
- The existence of IAC.³⁶⁶

Conclusions and relief:

158. By failing to properly assess these expert witnesses, the TC erred in law by applying an incorrect legal standard in the assessment of evidence and failed to provide reasoned opinions, impacting the overall credibility of the TC’s assessment of the facts, invalidating the TJ. By relying on these expert witnesses in making its findings, the TC erred in fact by drawing unsustainable conclusions regarding the existence of a JCE and Prlić’s powers and responsibilities, effecting a miscarriage of justice.

159. The AC should overturn the convictions for Counts 1-25.³⁶⁷

³⁶⁴ Vol.1,para.531,685;Ground.1.2.6;Ground.1.4.

³⁶⁵ Vol.1,paras.483-484,508-510,528;Vol.4,para.21;Ground.1.3;Ground.1.4;Ground.9.1;Ground.9.10.

³⁶⁶ Vol.3,paras.549,552,556;Ground.19.

³⁶⁷ Vol.1,paras.31-261,406-986;Vol.2,paras.669-748;Vol.3,paras.509-1741;Vol.4,para.278.

GROUND 5:

160. The Majority erred in law and fact in admitting and relying on uncorroborated hearsay from the Mladić Diaries, while denying Prlić the opportunity to tender excerpts from the Mladić Diaries and/or present *viva voce* testimony in response to the hearsay admitted. Specifically, the Majority erred in law and fact by:

- a. denying without proper reasoning the admission of evidence contextually relevant and exculpatory to Prlić's defence case;
- b. denying Prlić his right of confrontation;
- c. making findings on contested adjudicative facts in the absence of the requisite adversarial process involving testimony and evidence which should have been admitted; and
- d. relying on P11376 and P11380 in the absence of the evidence it declined to admit and other relevant evidence.

161. The Majority granted the OTP's request to reopen its case,³⁶⁸ admitting evidence from the Mladić Diaries,³⁶⁹ finding it was "relevant" in showing "the possible participation of these Accused in achieving the purposes of the alleged JCE,"³⁷⁰ while denying Prlić's request to reopen his case³⁷¹ to refute any fresh OTP evidence admitted.³⁷² The Majority denied admission of Mladić entries and other documents Prlić proffered as rebuttal to the entries admitted for the OTP,³⁷³ finding that "none of the exhibits deal with the statements or actions of Accused Prlić himself."³⁷⁴ Contrastingly, Judge Antonetti, after analyzing each proposed document, found 38/40 documents to be relevant and admissible.³⁷⁵ Finally, the Majority denied Praljak's request to reopen his case and testify concerning the meetings with Mladić and the statements attributed to him in P11376 and P11380,³⁷⁶

³⁶⁸ Prosecution Notice of Intent to Request Reopening; Prosecution Motion for Reopening; Prosecution Motion to Admit Evidence in Reopening.

³⁶⁹ Decision on Prosecution Motion for Reopening, para.40.

³⁷⁰ *Id.*, para.61.

³⁷¹ Prlić's Response to Prosecution Motion for Reopening; Prlić's Notice of Intent to Request Reopening; Prlić's Response to Prosecution Motion to Admit Evidence in Reopening.

³⁷² Decision on Prosecution Motion for Reopening, para.64.

³⁷³ Prlić's Revised Motion to Rebut Evidence Admitted by TC.

³⁷⁴ Decision on Prlić's Motion to Admit Evidence in Rebuttal, para.24.

³⁷⁵ Dissenting Opinion of Judge Antonetti on Decision to Admit Evidence, pp.2-3.

³⁷⁶ Praljak's Motion Pursuant to the 6 October 2010 Decision; Supplement to Praljak's Motion Pursuant to the 6 October 2010 Decision; Praljak's Request for Certification to Appeal the 23 November 2010 Decision.

ruling that Praljak's defence could give evidence "in its closing brief and closing arguments."³⁷⁷ By denying Praljak's request to testify, Prlić was equally denied the opportunity to confront Praljak. All requests for certification for interlocutory appeal were denied.³⁷⁸

162. The Majority erred in finding that Prlić was not diligent.³⁷⁹ Prlić filed his notice conditioned on the reopening of the OTP's case,³⁸⁰ as the OTP bears the burden of proof throughout the proceedings.³⁸¹ Only once a decision was taken regarding the reopening of the OTP's case could the Defence make an informed decision on whether to reopen its case. Further, there was a lack of clarity on a host of issues related to the Mladić Diaries.³⁸²

163. By denying Prlić the opportunity to reopen his case and present fresh evidence, Prlić was denied his right to present a defence.³⁸³ The entries submitted by Prlić met the criteria set by the Majority for rebuttal, linking each entry to:

- a. those entries admitted for the OTP;
- b. relevant events;
- c. paragraphs of the Indictment; and
- d. the significance of the Prlić Defence case.³⁸⁴

164. The Majority denied the admission of 1D03193 and 1D03194 though the significance of these documents became known to Prlić after the admission of the OTP's entries from the Mladić Diaries,³⁸⁵ and despite the Majority having admitted OTP documents on the

³⁷⁷ Decision on Praljak's Motion for Reopening, para. 28.

³⁷⁸ Decision on Prlić's Request for Certification to Appeal the Decision on Reopening; Decision on Prlić's Request for Certification to Appeal the 24 November 2010 Decision; Decision on Praljak's Request for Certification to Appeal the 23 November 2010 Decision.

³⁷⁹ Prlić's Response to Prosecution Motion for Reopening; Prlić's Notice of Intent to Request Reopening; Prlić's Response to Prosecution Motion to Admit Evidence in Reopening; Prlić's Request for Certification to Appeal the Decision on Prosecution Motion for Reopening; Prlić's Revised Motion to Rebut Evidence Admitted by TC; Prlić's Request for Certification to Appeal the 6 October 2010 Decision.

³⁸⁰ Prlić's Notice of Intent to Request Reopening, para. 13.

³⁸¹ *Blagojević & Jokić*, AJ, para. 226.

³⁸² Letter to TC III; Prlić's Request for Certification to Appeal the Decision on Prosecution Motion for Reopening, para. 11; Decision on Stojić Motion for Certification to Appeal the Decision on Reopening; Prlić's Revised Motion to Rebut Evidence Admitted by TC.

³⁸³ Concerning Indictment, paras. 15, 17.1(a), 17.1(b), 23, 27.

³⁸⁴ Prlić's Revised Motion to Rebut Evidence Admitted by TC.

³⁸⁵ *Id.*, para. 17.

same basis.³⁸⁶ In submitting entries and other fresh evidence for rebuttal (as limited by the Majority), Prlić followed the same standard as argued by the OTP.³⁸⁷ These entries were relevant especially in regard to P11376 and P11379.³⁸⁸ Based on the low threshold for admissibility and the free evaluation of evidence,³⁸⁹ these documents should have been admitted, particularly when at least one of the Judges found 38/40 to be relevant³⁹⁰ and the OTP had no objection to 24 of the entries.³⁹¹

165. The Majority erred in law and fact by denying Prlić his right to reopen his case and present relevant evidence.³⁹² The entries identified concerned issues such as:

- a. the integrity and reliability of UN documents, in particular UNPROFOR documents, and the accuracy and reliability of witnesses who relied on such documents; (Ground.6)
- b. Izetbegović's general integrity in negotiating; (Ground.16.1.1,para.459)
- c. Graz and bilateral negotiations encouraged by internationals; (Grounds.1.1,para.44;9.4)
- d. the Geneva negotiations and the so-called 15 January 1993 Ultimatum; (Grounds.10.3 and 10.4;16.1)
- e. negotiations between Serbs and Croats, and Serbs and Muslims; (Grounds.1.1;1.3)
- f. Mladić's/Bosnian-Serb view of Croats as Ustashas; and
- g. Serb and Muslim cooperation.³⁹³

³⁸⁶ Decision on Prosecution Motion for Reopening,para.41.

³⁸⁷ Prlić's Revised Motion to Rebut Evidence Admitted by TC,paras.15-17.

³⁸⁸ *Id.*,Confidential Annex I.

³⁸⁹ *Martić*,Decision Adopting Guidelines on Admission of Evidence Annex A,para.2.

³⁹⁰ Dissenting Opinion of Judge Antonetti on Decision to Admit Evidence,pp.2-3.

³⁹¹ Confidential Annex to Prosecution Consolidated Response to Defence Motions to Reopen their Cases and Tender Evidence.

³⁹² Prlić's Notice of Intent to Request Reopening,paras.11-12(describing the content of the Confidential Annexes attached);Non-Confidential Annex to Prlić's Response to Prosecution Motion for Reopening, (containing a contextual analysis of the purported documents to be submitted by entries identified by the Prosecution with relevant excerpts identified by the Prlić Defence);Confidential Annex to Prlić's Request for Certification to Appeal the Decision on Prosecution Motion for Reopening.

³⁹³ Confidential Annexes to Prlić's Notice of Intent to Request Reopening.

166. Prlić explicitly showed how the entries he proposed contextually related to and/or rebutted the entries admitted for the OTP, particularly P11376 and P11380, concerning:

- a. allegations of ongoing cooperation with Serbs (1D03195, 1D03199/Indictment para. 27);
- b. bilateral negotiations initiated by internationals (1D0359, P11375, 1D03165 1D03164, 1D03171, 1D03174/Indictment paras. 15,23,27);
- c. alleged Croat territorial ambitions to restore Banovina 1939 (1D03167, 1D03168, 1D03169, 1D03170, 1D03172/Indictment paras. 15,17.1(a),17.1(b)); and
- d. context related to the meeting of 3 February 1994 (1D03178, 1D03193, 1D03194, 1D03188, 1D03190, 1D03191/Indictment paras.15,17.1(a),17.1(b)); Mladić's/Bosnian-Serb's views of Croats in BiH (1D03158, 1D03160, 1D03161, 1D03163, 1D03166, 1D03175, 1D03176, 1D03179, 1D03181, 1D03185/Indictment paras 15, 23, 27); and the Muslim and Croat coalition (1D03157, 1D03161, 1D03162, 1D03175, 1D03180, 1D03173, 1D03182, 1D03183, 1D03184, 1D03197, 1D03198, 1D03187, 1D03191, 1D03192/Indictment paras.17,23,27).

167. The Majority admitted and relied on P11376 and P11380, which contained quoted remarks purportedly attributed to Praljak, in making JCE findings.³⁹⁴ Praljak's statements are uncorroborated hearsay. Mladić was unable to testify. No prior testimony had been elicited concerning these meetings, and no witnesses testified to the meetings. Praljak's request to reopen his case and testify concerning the meetings with Mladić and the statements attributed to him in P11376 and P11380 was denied.³⁹⁵ The Majority's suggestion that Praljak's Counsel vouch for Praljak in the closing brief and testify in his stead during closing arguments in lieu of *viva voce* testimony from Praljak is as absurd³⁹⁶ as the Majority's denial of Praljak's certification for appeal without reasoned analysis.³⁹⁷

³⁹⁴ Praljak's Motion Pursuant to the 6 October 2010 Decision; Supplement to Praljak's Motion Pursuant to the 6 October 2010 Decision; Decision on Prosecution Motion for Reopening, para.61; Vol.4, paras.119,525.

³⁹⁵ Praljak's Motion Pursuant to the 6 October 2010 Decision; Supplement to Praljak's Motion Pursuant to the 6 October 2010 Decision; Decision on Praljak's Motion for Reopening.

³⁹⁶ *Id.*, para.28; Decision on Praljak's Request for Certification to Appeal the 23 November 2010 Decision.

³⁹⁷ Praljak's Request for Certification to Appeal the 23 November 2010 Decision, para.18; Decision on Praljak's Request for Certification to Appeal the 23 November 2010 Decision, p.4.

Counsel cannot testify³⁹⁸ and representations by Counsel in closing briefs and closing arguments are not evidence.³⁹⁹

168. The Majority erred in law and fact by failing to consider evidence, assessing P11376 and P11380 in a contextual vacuum, and drawing unsustainable conclusions regarding Prlić's membership and participation in a JCE. Prlić attempted to adduce evidence on P11376 and P11380⁴⁰⁰ in order to show the competing alternative narratives when all relevant evidence is examined in context. The Majority rebuffed Prlić's attempts.

169. **Alternative explanation to P11376:** P11376 is Mladić Diary entry of 5-6 October 1992. A meeting was held where several issues were raised, in particular, the exchange of prisoners, the shelling of Slavonski Brod, Croatia by the VRS, the need to resolve the conflict around Jajce, BiH, partly due to its hydro-electric plant, and other issues. Meetings between all sides had been ongoing for a variety of reasons,⁴⁰¹ including issues related to the exchange of prisoners.⁴⁰² At this meeting Prlić invoked the need for international involvement (*"The signing is possible only in the presence of some of the international monitors – VANCE or OWEN"*). This remark suggests that negotiations were taking place, presumably over the shelling of Slavonski Brod, establishing a ceasefire line, Jajce and the supply of electricity. All pressing issues.⁴⁰³ Prlić was not discussing carving up BiH or re-establishing the Banovina 1939 borders. Mladić's Order of 6 October 1992 validates that Slavonski Brod was under attack by the VRS and that the discussions of the previous day were about ending the attack.⁴⁰⁴ The BiH-State authorities did not take any action to stop the shelling of Slavonski Brod from within BiH borders.⁴⁰⁵ Irrespective of the agreement and order, the very next day Mladić attacked Bosanski Brod.⁴⁰⁶ Contextually this shows that this meeting was not about redefining the

³⁹⁸ ICTY Code of Professional Conduct for Counsel, Art. 26.

³⁹⁹ SLUITER, p. 674.

⁴⁰⁰ Annexes to Prlić's Response to Prosecution Motion for Reopening; Prlić's Notice of Intent to Request Reopening; Prlić's Response to Prosecution Motion to Admit Evidence in Reopening; Prlić's Revised Motion to Rebut Evidence Admitted by TC.

⁴⁰¹ 1D00475; 5D00049; P00339; 1D01935; 2D00798; 1D01543; P00717; 2D00809; P10257; P01467; 1D02853; P01988; P11192; 4D01344; P02259; P02344; 1D02404; P02726; P02960; P10264; 1D02896; P04690; 3D00320, p. 6; 4D01234, summarized in Annex to Prlić's Response to Prosecution Motion for Reopening, p. 9, fn. 36.

⁴⁰² 1D02435; P02512; 3D03042; P02520; 6D00006; 2D00438; 6D00762; [REDACTED]; 6D00580; 2D00590; summarized in Annex to Prlić's Response to Prosecution Motion for Reopening, pp. 10-11, fn. 40.

⁴⁰³ The contextual background is set out in the Annex, *id.*, pp. 11-12.

⁴⁰⁴ P11377; Annex 2 to Prosecution Motion for Reopening, p. 1, para. 1; Buljan, 36738/2-16; Praljak, 39459/1-39460/11; 40095/12-40097/5; 41340/19-41341/24.

⁴⁰⁵ Kljuić, 4014/5-4019/24; 28866/15-28888/25.

⁴⁰⁶ Buljan, 36728/6-36730/19; 36844/7-36845/17.

Banovina 1939 borders, notwithstanding any remarks attributed to Praljak by Mladić; it was a meeting to stop the shelling on Slavonski Brod and to alleviate the attendant humanitarian crisis.⁴⁰⁷ It lends context to the next meeting of 26 October 1992, P11380.

170. **Alternative explanation to P11380:** In P11380 Prlić is claimed to have said “[i]f we don’t want to respect what we agreed last time, there is no point in any further talks.” Presumably Prlić is referring to the previous meeting of 5 October 1992, which led to Mladić’s Order of 6 October 1992, reading in part: “An agreement was reached regarding the ceasefire, the repair of the ‘Jajce 2’ hydroelectric plant, the release of water for other power plants, and exchange of prisoners.”⁴⁰⁸ Bosanski Brod fell to the VRS forces the following day. Prlić’s remarks concern Mladić’s breach of the 5 October 1992 agreement. Prescient were these remarks. Despite reaching an arrangement with Mladić on Jajce, Mladić almost immediately savagely attacked Jajce,⁴⁰⁹ sacking it in just two days.⁴¹⁰ Jajce was defended by the HVO and the TO (Muslim forces) units. The Muslim forces prevented the reinforcements from defending Jajce.⁴¹¹

Conclusions and relief:

171. The Majority erroneously concluded that P11376 and P11380 show that on 5 and 26 October 1992, Prlić, Stojić, Praljak and Petković, as members of a delegation of Croatia and the HZHB, met with Mladić to discuss the division of BiH between the Serbs and the Croats,⁴¹² in furtherance of the ultimate purpose of the JCE: the creation of the Croatian entity partly within the Banovina 1939 borders.⁴¹³
172. Rather than examining P11376 and P11380 within the overall context of the ongoing events *in situ*, the Majority ignored evidence before it that contradicted the conclusion it wished to reach. Repeatedly it had been provided with the evidence and contextual

⁴⁰⁷ Zorić, 27890/25-27893/14.

⁴⁰⁸ P11377.

⁴⁰⁹ Vulliamy, 1541/1-1542/16.

⁴¹⁰ 3D03527.

⁴¹¹ 2D01028; 2D01335; 3D01669; 3D00484; P00670; 3D03527.

⁴¹² Vol.4, paras. 119, 525.

⁴¹³ Vol.4, paras. 6-24.

analysis relevant to P11376 and P11380,⁴¹⁴ yet it made no attempts to objectively assess all relevant evidence at its disposal; the TJ is silent.

173. The OTP's case hinged on the notion of an overarching JCE.⁴¹⁵ Thus, any entries from the Mladić Diaries or other fresh evidence contextually relevant in explaining any of the incidents alleged to be connected to the JCE, when considered, would have provided alternative plausible explanations to the benefit of Prlić.

174. By restricting the admission of Mladić Diaries entries submitted by Prlić, the Majority violated Prlić's rights to confrontation and an effective defence:⁴¹⁶ facilitating the admission of evidence that only supported the OTP's JCE narrative⁴¹⁷ while disallowing the admission of rebuttal evidence to the contrary,⁴¹⁸ thus ensuring the absence of a counter-narrative on matters claimed by the OTP and found by the TC to be indicative of the plan and goals of the alleged JCE. By summarily dismissing Prlić's entries without providing any discernible analysis, as it had done with the OTP's entries,⁴¹⁹ the TC/Majority applied a double standard in the admission of evidence, resulting in an incorrect application of the law and abuse of its discretion.

175. This denied Prlić his right to equality of arms by disallowing him a reasonable opportunity to present his case, placing him at an appreciable disadvantage *vis-à-vis* the OTP.⁴²⁰ Prlić should have been given a fair chance to challenge evidence against him and to bring his own evidence.⁴²¹ By failing to provide "every practicable facility it [was] capable of granting under the Rules and Statute" to allow Prlić to present his case,⁴²² the Majority erred in law by violating Articles 20 and 21, invalidating the TJ.

176. These errors, individually and collectively, impact on the overall credibility of the TC's assessment of the facts. When considering P11376 and P11380 in the context of the attack and fall of Jajce on 27-29 October 1992, the only rational conclusion a reasonable

⁴¹⁴ Annex to Prlić's Response to Prosecution Motion for Reopening, p.14, n50, summarizing entries from the Mladić Diaries which further show the animus Mladić had for the Croats, who he generally referred to as Ustasha.

⁴¹⁵ Indictment, para.15.

⁴¹⁶ Decision on Request to Admit the Statement of Prlić, para.15; *Blagojević*, 735/3-736/5.

⁴¹⁷ Decision on Prosecution Motion for Reopening, para.64.

⁴¹⁸ Decision on Prlić's Motion to Admit Evidence in Rebuttal, para.24.

⁴¹⁹ *Id.*

⁴²⁰ *Brđanin & Talić*, Public Version of the Confidential Decision on the Alleged Illegality of Rule 70 of 6 May 2002, para.22.

⁴²¹ TRECHSEL, p.292.

⁴²² *Tadić*, AJ, para.52.

trier of fact would have reached is that the parties involved in the meetings of 5 and 26 October 1992 had diverging and mutually exclusive interests, in that the meetings were not about a JCE. By drawing unsustainable conclusions, the TC erred in fact, effecting a miscarriage of justice.

177. The AC should overturn the convictions for Counts 1-25.⁴²³

⁴²³ Vol.1,paras.31-261,406-986;Vol.2,paras.669-748;Vol.3,paras.509-1741;Vol.4,para.278.

GROUND 6:

178. The TC erred in law and fact by failing to properly assess the credibility and evidence of certain OTP witnesses, while heavily relying on them in making findings against Prlić, facilitating a confirmation bias.

179. While the TC need not discuss the credibility of every witness,⁴²⁴ it must assess the witnesses it relies on for **a.** credibility in terms of internal consistency and detail;⁴²⁵ **b.** strength of their testimony under cross-examination;⁴²⁶ **c.** consistency of their testimony against prior statements;⁴²⁷ **d.** credibility *vis-à-vis* other witness accounts of other evidence submitted in the case;⁴²⁸ and **e.** possible motives.⁴²⁹ If a witness's evidence shows weakness in any of these respects, the TC must look for corroboration. If corroboration is absent or based on hearsay, the TC cannot base a conviction on this evidence.⁴³⁰

180. The TC claimed that it considered the evidence of the witnesses.⁴³¹ The TJ reveals otherwise.

6.1

181. The TC erroneously relied on the witness statements of BA⁴³² and DZ,⁴³³ [REDACTED].⁴³⁴

BA

182. The TC failed to consider:

⁴²⁴ *Limaj*, AJ, para.86.

⁴²⁵ *Bagilishema*, TJ, paras.532,656,700.

⁴²⁶ *Bagilishema*, TJ, para.615.

⁴²⁷ *Bagilishema*, TJ, paras.374,411.

⁴²⁸ *Bagilishema*, TJ, para.374.

⁴²⁹ *Bagilishema*, TJ, para.749.

⁴³⁰ *Bagilishema*, TJ, paras.619,636,653,752.

⁴³¹ Vol.1, paras.284-285.

⁴³² Vol.1, paras.626,627,630,654; Vol.2, paras.673,735,738,739,812,822,866,873,874,917,918,1038,1205,1208,1213,1230,1261,1263,1438,1496,1501,1834,1920,2080; Vol.3, paras.128,132; Vol.4, paras.49,50,51,54,57,99,116,153,164,167,168,184,201,212,234,259,284,350,422,941,960,1091; [REDACTED]: Vol.1, paras.626,633,654; Vol.2, paras.740,880,891,894,1200,1205,1213,1230; Vol.3, paras.583,587; Vol.4, paras.49,50,51,54,57,82,99,116,117,153,164,167,168,179,184,201,208,212,234,259,941.

⁴³³ Vol.1, para.464; Vol.2, paras.813,881,1036,1038,1201,1220,1228,1229,1233,1235,1239,1257,1258,1259,1260,1262,1263,1266; Vol.3, paras.131,203,503,561,563,583; Vol.4, paras.51,58,108,109,112,139,174,211,245,261,323,354,784,1073; [REDACTED]: Vol.1, paras.493,689; Vol.2, paras.1016,1228,1232,1233,1453,1634; Vol.3, paras.502,563,583; Vol.4, paras.51,58,108,112,139,167,174,211,323,354.

⁴³⁴ ICTY Statute, Art.21, *Martić*, Decision on Defence Motion to Exclude the testimony of Babić, para.68, fns.124-128.

Statement:

- [REDACTED];⁴³⁵
 - [REDACTED];⁴³⁶
 - [REDACTED];⁴³⁷
 - [REDACTED];⁴³⁸

Testimony:

- [REDACTED];⁴³⁹
- [REDACTED],⁴⁴⁰ [REDACTED];⁴⁴¹
- [REDACTED];⁴⁴²
- [REDACTED];⁴⁴³
- [REDACTED];⁴⁴⁴
- [REDACTED];⁴⁴⁵
- [REDACTED];⁴⁴⁶
- [REDACTED];⁴⁴⁷ and
- [REDACTED].⁴⁴⁸

⁴³⁵ [REDACTED].

⁴³⁶ [REDACTED].

⁴³⁷ [REDACTED].

⁴³⁸ [REDACTED].

⁴³⁹ [REDACTED].

⁴⁴⁰ [REDACTED].

⁴⁴¹ [REDACTED].

⁴⁴² [REDACTED].

⁴⁴³ [REDACTED].

⁴⁴⁴ [REDACTED].

⁴⁴⁵ [REDACTED].

⁴⁴⁶ [REDACTED].

⁴⁴⁷ [REDACTED].

⁴⁴⁸ [REDACTED].

183. No reasonable trier of fact would have relied on BA's testimony or statement to conclude that:

- a. Prlić was the main HVO official for negotiating and authorizing the passage of humanitarian convoys in the HZ(R)HB;⁴⁴⁹
- b. there was a campaign aimed at expelling Muslims who lived in abandoned flats,⁴⁵⁰ and that the justification was to accommodate Croats fleeing ABiH attacks;⁴⁵¹
- c. Prlić said that 10,000 Muslims wished to leave Mostar for third countries, that he negotiated with Croatia for transit visas for Muslims go to third countries through Croatia⁴⁵² and that he supported a policy of moving Muslim detainees and their families from HZ(R)HB to third countries;⁴⁵³
- d. Prlić enacted bureaucratic obstacles to prevent repairs to East Mostar's water system;⁴⁵⁴
- e. Prlić and Boban shared the wish to drastically reduce the Muslim population of the HZHB while increasing the Croatian population through the removal of Muslims,⁴⁵⁵ and requested the assistance of humanitarian organizations to facilitate this population movement;⁴⁵⁶
- f. in May-June 1992, Croats became the majority in Mostar Municipality, and in May 1993, a new influx of refugees changed the demographic structure in Mostar in favor of the Muslims;⁴⁵⁷
- g. Prlić knowingly attempted to conceal or minimize HVO crimes.⁴⁵⁸

DZ

⁴⁴⁹ Vol.4,para.80.

⁴⁵⁰ Vol.2,paras.739-40,917;Vol.4,para.49.

⁴⁵¹ Vol.2,para.874.

⁴⁵² Vol.4,para.212.

⁴⁵³ Vol.4,paras.212,275.

⁴⁵⁴ Vol.2,paras.1213,1230;Vol.4,paras.179,184,941.

⁴⁵⁵ Vol.4,paras.51,212,234.

⁴⁵⁶ Vol.4,para.54.

⁴⁵⁷ Vol.2,para.673.

⁴⁵⁸ Vol.4,paras.167,259,284.

184. The TC failed to consider:

- [REDACTED];⁴⁵⁹
- [REDACTED];⁴⁶⁰
- [REDACTED];⁴⁶¹
- [REDACTED];⁴⁶²
- [REDACTED];⁴⁶³
- [REDACTED]:
 - [REDACTED];⁴⁶⁴
 - [REDACTED];⁴⁶⁵
 - [REDACTED],⁴⁶⁶ [REDACTED];⁴⁶⁷
 - [REDACTED];⁴⁶⁸
 - [REDACTED];⁴⁶⁹
 - [REDACTED];⁴⁷⁰
 - [REDACTED];⁴⁷¹ and
 - [REDACTED].⁴⁷²

⁴⁵⁹ [REDACTED].

⁴⁶⁰ [REDACTED];P02960; [REDACTED];P02960; [REDACTED];P03420; [REDACTED];P03547; [REDACTED];1D02094; [REDACTED];P02930; [REDACTED];P02387.

⁴⁶¹ [REDACTED].

⁴⁶² [REDACTED].

⁴⁶³ [REDACTED];P07576; [REDACTED].

⁴⁶⁴ [REDACTED];P06965; [REDACTED].

⁴⁶⁵ [REDACTED];P06931; [REDACTED].

⁴⁶⁶ [REDACTED].

⁴⁶⁷ [REDACTED];1D02098; [REDACTED]

⁴⁶⁸ [REDACTED].

⁴⁶⁹ [REDACTED].

⁴⁷⁰ [REDACTED];1D02094; [REDACTED].

⁴⁷¹ [REDACTED].

⁴⁷² [REDACTED].

185. No reasonable trier of fact would have relied on DZ's testimony or statement to conclude that:

- a. Pogarčić, speaking on behalf of Boban, Stojić and Prlić, "expressed their wish to gather the Croatian population in one Croatian entity;"⁴⁷³
- b. Prlić played a key role in a series of ceasefire negotiations in Gornji Vakuf and Mostar;⁴⁷⁴
- c. the HVO attempted to prevent access to humanitarian convoys and international organizations to East Mostar, and that HVO political leaders deliberately obstructed the delivery of humanitarian aid to East Mostar by setting impossible conditions;⁴⁷⁵
- d. Prlić was aware that the HVO was shooting at members of international organizations;⁴⁷⁶
- e. the HZHB's policy of increasing the Croatian population while decreasing the Muslim population was supposed to facilitate the construction of a State within BiH inhabited mostly by Croats;⁴⁷⁷
- f. Boban stated that BiH Muslims had to be chased out of Mostar and BiH.⁴⁷⁸

6.2

186. The TC erroneously assessed the credibility of BB,⁴⁷⁹ BC,⁴⁸⁰ BD,⁴⁸¹ BH,⁴⁸² Manolić,⁴⁸³ Galbraith,⁴⁸⁴ Beese,⁴⁸⁵ and Lane.⁴⁸⁶

BB

⁴⁷³ Vol.4,para.211.

⁴⁷⁴ Vol.4,para.109.

⁴⁷⁵ Vol.2,paras.1228,1232.

⁴⁷⁶ Vol.2,paras.1239,1263,Vol.4,para.174.

⁴⁷⁷ Vol.4,para.51.

⁴⁷⁸ Vol.4,para.58.

⁴⁷⁹ Vol.4,paras.49-51,58,89,108,160,167,260.

⁴⁸⁰ Vol.4,paras.54,179,184.

⁴⁸¹ Vol.4,paras.54-55,82,117,179,184-185.

⁴⁸² Vol.4,paras.15,44,51,82-83.

⁴⁸³ Vol.1,paras.777;Vol.3,paras.553,556,566;Vol.4,paras.9,11-12,15,17.

⁴⁸⁴ Vol.1,paras.487;Vol.3,paras.530,546,555,561-566;Vol.4,paras.9,11,14-15,17,22-23.

⁴⁸⁵ Vol.1,paras.452,461,463,471,473,506;Vol.3,paras.514,533,535,541,561,563;Vol.4,paras.21,45,54-55,108,209.

⁴⁸⁶ Vol.1,paras.451,458,464,493,515,689;Vol.3,para.536;Vol.4,paras.14,16,19,43,108-109,127,277.

187. The TC failed to consider that BB:

- [REDACTED];
- [REDACTED];⁴⁸⁷
- [REDACTED],⁴⁸⁸ [REDACTED];⁴⁸⁹
- [REDACTED];⁴⁹⁰
- [REDACTED];⁴⁹¹
- [REDACTED];⁴⁹²
- [REDACTED];⁴⁹³
- [REDACTED],⁴⁹⁴[REDACTED];⁴⁹⁵
- [REDACTED];⁴⁹⁶ and
- [REDACTED].⁴⁹⁷

188. No reasonable trier of fact would have relied on BB's testimony or statement to conclude that:

- a. Prlić was informed about the work of the detainees;⁴⁹⁸
- b. Prlić informed a representative of an international organization on 16 August 1993 that "the Muslims from Ljubuški were being interned for their own safety as HVO soldiers returning from the front were seeking revenge";⁴⁹⁹

⁴⁸⁷ [REDACTED].

⁴⁸⁸ [REDACTED];1D00435;1D00606.

⁴⁸⁹ [REDACTED].

⁴⁹⁰ [REDACTED];1D00641;1D00717;1D00730;P03089.

⁴⁹¹ [REDACTED].

⁴⁹² [REDACTED];1D01824;1D01186;1D01187.

⁴⁹³ [REDACTED];1D00977;1D01444; [REDACTED].

⁴⁹⁴ [REDACTED],1D01922;1D01856; [REDACTED].

⁴⁹⁵ [REDACTED].

⁴⁹⁶ [REDACTED].

⁴⁹⁷ [REDACTED].

⁴⁹⁸ Vol.2,paras.1481,1473,1492;Vol.4,para.229.

⁴⁹⁹ Vol.4,para.260.

- c. the HVO Decision of 15 April 1993 barred Muslims who were occupying abandoned flats from obtaining the status of “displaced person”;⁵⁰⁰
- d. between October 1992-April 1994, Prlić was well informed of the situation on the ground in areas claimed to belong to the HZ(R)HB.⁵⁰¹

BC

189. The TC failed to consider that BC:

- [REDACTED];⁵⁰²
- [REDACTED];⁵⁰³
- [REDACTED];⁵⁰⁴
- [REDACTED];⁵⁰⁵ and
- [REDACTED].⁵⁰⁶

190. No reasonable trier of fact would have relied on BC’s testimony or statement to conclude that:

- a. Prlić refused to authorize access to East Mostar to international organizations.⁵⁰⁷

BD

191. The TC failed to consider that BD:

- [REDACTED]⁵⁰⁸ [REDACTED];⁵⁰⁹
- [REDACTED];⁵¹⁰

⁵⁰⁰ Vol.4,para.49.

⁵⁰¹ Vol.4,para.108.

⁵⁰² [REDACTED].

⁵⁰³ [REDACTED];1D01263;1D01264;4D00022.

⁵⁰⁴ [REDACTED];1D01529;P05428; [REDACTED].

⁵⁰⁵ [REDACTED].

⁵⁰⁶ [REDACTED].

⁵⁰⁷ Vol.2,para.1238;Vol.4,para.184.

⁵⁰⁸ [REDACTED].

⁵⁰⁹ [REDACTED].

- [REDACTED];⁵¹¹
- [REDACTED];⁵¹²
- [REDACTED];⁵¹³
- [REDACTED];⁵¹⁴
- [REDACTED];⁵¹⁵
- [REDACTED];⁵¹⁶
- [REDACTED],⁵¹⁷ [REDACTED]⁵¹⁸ [REDACTED];⁵¹⁹ and
- [REDACTED].⁵²⁰

192. No reasonable trier of fact would have relied on BD's testimony or statement to conclude that:

- a. Prlić "participated in many meetings between representatives of international organizations and the HVO negotiating free access for humanitarian convoys",⁵²¹
- b. the HVO arranged for the removal of Croats to provinces 8 and 10 in order to alter the balance of power;⁵²²
- c. Prlić had the power to authorize access to East Mostar for members of international organizations.⁵²³

BH

⁵¹⁰ [REDACTED].

⁵¹¹ [REDACTED].

⁵¹² [REDACTED].

⁵¹³ [REDACTED].

⁵¹⁴ [REDACTED];1D00936;1D01644;1D01522.

⁵¹⁵ [REDACTED].

⁵¹⁶ [REDACTED].

⁵¹⁷ [REDACTED];P03428;1D01336; [REDACTED].

⁵¹⁸ [REDACTED].

⁵¹⁹ [REDACTED].

⁵²⁰ [REDACTED];1D01591.

⁵²¹ Vol.2,paras.1224-1244;Vol.4,para.117.

⁵²² Vol.2,paras.227,232,824,874;Vol.4,para.55;Specifically Vol.4,paras.54,55.

⁵²³ Vol.4,para.184.

193. The TC failed to consider:

- [REDACTED];⁵²⁴
- [REDACTED],⁵²⁵ [REDACTED],⁵²⁶ [REDACTED],⁵²⁷ [REDACTED];
- [REDACTED];⁵²⁸
- [REDACTED];⁵²⁹
- [REDACTED];⁵³⁰
- [REDACTED];⁵³¹
- [REDACTED];⁵³²
- [REDACTED].⁵³³

194. There was no way to test the source of his knowledge, or whether the OTP was fair in searching for the truth as opposed to pigeonholing material to fit its case theory.⁵³⁴ The Defence repeatedly raised this objection and requested the documents, without any relief.⁵³⁵

195. No reasonable trier of fact would have relied on BH's testimony or statement to conclude that the HZHB was not a temporary initiative.⁵³⁶

Manolić

196. The TC failed to consider that Manolić:

⁵²⁴ [REDACTED].

⁵²⁵ [REDACTED].

⁵²⁶ [REDACTED].

⁵²⁷ [REDACTED].

⁵²⁸ [REDACTED].

⁵²⁹ [REDACTED].

⁵³⁰ [REDACTED].

⁵³¹ [REDACTED].

⁵³² [REDACTED].

⁵³³ [REDACTED].

⁵³⁴ [REDACTED].

⁵³⁵ [REDACTED].

⁵³⁶ Vol.4,para.15.

- was not testifying from his independent memory of events, but from documents he was shown.⁵³⁷
- appeared ignorant on key events, despite being head of Croatia's security services:⁵³⁸
 - The HDZ meeting that took place in Livno with respect to the referendum question;⁵³⁹
 - The functioning of the central government in Sarajevo regarding the central bank and government services;⁵⁴⁰
 - The details and understanding of the OSPP;⁵⁴¹ and
 - The statutory decisions and legislation of the HZ(R)HB;⁵⁴²
- claimed to be ignorant of the Mujaheddin though he was present at National Security meetings where the issue was discussed⁵⁴³ and the matter was so notorious as to come to US Ambassador Galbraith's attention;⁵⁴⁴
- was not present at the Karadordevo meetings between Tuđman and Milošević,⁵⁴⁵ and whatever he knew was based on uncorroborated hearsay;⁵⁴⁶
- provided conflicting evidence: on direct-examination he claimed that Boban and Karadžić reached an agreement in Graz;⁵⁴⁷ on cross-examination he acknowledged that no agreement was reached,⁵⁴⁸ basing his knowledge of Graz on media/hearsay information.⁵⁴⁹

197. No reasonable trier of fact would have relied on Manolić's testimony or statement to conclude that:

⁵³⁷ Manolić, 4594/16-4595/8.

⁵³⁸ Manolić, 4571/13-4577/21.

⁵³⁹ Manolić, 4579/2-4583/20; 4584/1-4584/15.

⁵⁴⁰ Manolić, 4607/22-46012/4.

⁵⁴¹ Manolić, 4613/3-4621/5.

⁵⁴² Manolić, 4603/4-4604/13.

⁵⁴³ P03517.

⁵⁴⁴ Manolić, 4579/21-4582/2; 6673/24-25; 6676/16-20.

⁵⁴⁵ Manolić, 4274/21-4275/12.

⁵⁴⁶ Manolić, 4277/20-4278/6.

⁵⁴⁷ Manolić, 4337/9-21.

⁵⁴⁸ Manolić, 4585/16-22.

⁵⁴⁹ Manolić, 4585/25-2587/3.

- a. Tuđman claimed that BiH was not supposed to exist as a sovereign independent state and that part of BiH was to be annexed to Croatia,⁵⁵⁰ and advocated and planned to divide BiH between Croatia and Serbia;⁵⁵¹
- b. The HVO prepared reports for the Croatian authorities and/or the HV;⁵⁵²
- c. The Croatian Ministry of Defence supplied arms and materiel and transferred funds to the HVO.⁵⁵³

Galbraith

198. The TC failed to consider that Galbraith:

- arrived in Croatia in June 1993, after many of the events unfolded;⁵⁵⁴
- was ignorant of the BiH Constitution and whether municipalities could self-organize;⁵⁵⁵
- arrived *in situ* with the Clinton Administration's preconceived view that the HZ(R)HB was an illegal entity, unlawfully engaging in war against the ABiH,⁵⁵⁶ and that Boban and Praljak should be dismissed;⁵⁵⁷
- never requested a legal opinion on the internal structure of BiH envisaged by the VOPP and OSPP;⁵⁵⁸ and
- provided exculpatory testimony:
 - Owen discussed changing international borders with Tuđman;⁵⁵⁹
 - the Sarajevo government and the Central Bank were not functioning;⁵⁶⁰
 - Boban was the top leader of the HZ(R)HB;⁵⁶¹

⁵⁵⁰ Vol.1,para.428;Vol.4,paras.9,18,22-24.

⁵⁵¹ Vol.4,paras.10-12.

⁵⁵² Vol.3,para.553.

⁵⁵³ Vol.3,para.556.

⁵⁵⁴ Galbraith,6424/10-17;6646/14-6647/1.

⁵⁵⁵ Galbraith,6668/11-20.

⁵⁵⁶ Galbraith,6623/11-22;6681/5-6682/15.

⁵⁵⁷ Galbraith,6649/16-6651/23.

⁵⁵⁸ Galbraith,6669/10-22.

⁵⁵⁹ Galbraith,6661/16-6663/2.

⁵⁶⁰ Galbraith,6663/15-6664/3;6671/8-22.

- the process of extending passports was not in order to deplete the BiH population, but an unintended consequence;⁵⁶² and
- The Mujaheddin committed atrocities against the Croats.⁵⁶³

199. No reasonable trier of fact would have relied on Galbraith's testimony or statement to conclude that:

- a. HV members were sent by Croatia to be integrated into and wield power over the HVO;⁵⁶⁴
- b. Tuđman claimed that BiH was not supposed to exist as a sovereign independent state and that part of BiH was to be annexed to Croatia,⁵⁶⁵ remained preoccupied with borders of Croatia and by Croatian Banovina⁵⁶⁶ and advocated and planned to divide BiH between Croatia and Serbia;⁵⁶⁷
- c. Croatia appointed and removed HVO commanders/generals, and paid their salaries.⁵⁶⁸

Beese

200. The TC failed to consider that Beese:

- was in BiH only six months,⁵⁶⁹ insufficiently briefed,⁵⁷⁰ knowing very little of the details of the warring factions⁵⁷¹ or the Sarajevo and local governments;⁵⁷²
 - he was ignorant of the region;
 - he was ignorant of the Former Yugoslavia constitution and constitutions of the Republics;⁵⁷³

⁵⁶¹ Galbraith,6670/5-7.

⁵⁶² Galbraith,6672/6-6673/11.

⁵⁶³ Galbraith,6673/24-25;6676/16-20.

⁵⁶⁴ Vol.3,paras.546-48.

⁵⁶⁵ Vol.1,para.428;Vol.4,paras.9,18,22-24.

⁵⁶⁶ Vol.4,para.22.

⁵⁶⁷ Vol.4,paras.10-12.

⁵⁶⁸ Vol.3,paras.546,555.

⁵⁶⁹ Beese,5262/4-6.

⁵⁷⁰ Beese,5191/12-19;5263/1-24;5266/7-5269/5.

⁵⁷¹ Beese,5188/25-5189/6;5187/24-5188/5.

⁵⁷² Beese,5269/22-25.

- he was ignorant of the BiH Croats' negotiation efforts pre-dating the HZHB⁵⁷⁴ and after;⁵⁷⁵
- he was ignorant of how the BiH government functioned;⁵⁷⁶
- he was ignorant of the HZ(R)HB governmental structures,⁵⁷⁷ having never reviewed any legislation;⁵⁷⁸
- he was ignorant of the civilian and military authorities' responsibilities, lacking an appreciation for the *de jure* and *de facto* influence of the political leadership over the HVO military authorities and municipal HVOs and their local HVO units;⁵⁷⁹
- he never saw the so-called 15 January 1993 Ultimatum,⁵⁸⁰ only hearing about it through the ABiH,⁵⁸¹ knew nothing of the actual substance or potential consequences;⁵⁸²
- he never contacted Prlić – whose office was roughly ten minutes travel – on the so-called 15 January 1993 Ultimatum,⁵⁸³ opting instead to travel to Split to brief Lane having only heard the ABiH version;⁵⁸⁴
- he was ignorant of the VOPP and its implementation, though he harbored a negative view of it;⁵⁸⁵
- he was ignorant that the HV and the HVO had different color license plates.⁵⁸⁶
- lacked credibility concerning the Mujaheddin, claiming it to be HVO propaganda to encourage Croats to leave their homes.⁵⁸⁷

⁵⁷³ Beese,5263/1-24;5266/7-25.

⁵⁷⁴ Beese,5265/19-5266/2.

⁵⁷⁵ Beese,5303/20-5311/10.

⁵⁷⁶ Beese,5270/1-5272/5.

⁵⁷⁷ Beese,5316/9-5318/3;1D00819.

⁵⁷⁸ Beese,5278/9-25.

⁵⁷⁹ Beese,5279/1-5280/23.

⁵⁸⁰ Beese,5299/15-24;5304/16-5305/8.

⁵⁸¹ Beese,5206/14-19.

⁵⁸² Beese,5205/20-5206/6;5322/21-5326/3;1D00821.

⁵⁸³ Beese,5302/8-12.

⁵⁸⁴ Beese,5301/18-5302/25.

⁵⁸⁵ Beese,5198/25-5205/9;P02168.

⁵⁸⁶ Beese,5391/8/-5392/22.

⁵⁸⁷ Beese,3251/25-3252/7.

○ [REDACTED];⁵⁸⁸

○ [REDACTED].⁵⁸⁹

201. No reasonable trier of fact would have relied on Beese's testimony or statement to conclude that:

- a. the HVO arranged for the removal of Croats to provinces 8 and 10 in order to alter the balance of power;⁵⁹⁰
- b. the HVO conducted propaganda campaigns to provoke a mass exodus of Croats from Central Bosnia.⁵⁹¹

Lane

202. The TC failed to consider:

- Lane's memory was unreliable. He could not remember where he was at points in time, who he met and where, having no independent recollection if he attended meetings.⁵⁹² Specifically, he could not remember:
 - If Prlić drew a circle or a map (never produced), the details of the drawing,⁵⁹³ when this supposed meeting took place, who was there, or if he made a report;⁵⁹⁴
 - If the HV vehicles he purportedly saw were tanks.⁵⁹⁵
- Lane was shown documents he was unfamiliar with by the OTP to refresh his memory;⁵⁹⁶
- Lane's interview was not tape recorded,⁵⁹⁷ thus denying Prlić an opportunity to effectively confront Lane on the accuracy/source of his memories;

⁵⁸⁸ [REDACTED].

⁵⁸⁹ [REDACTED].

⁵⁹⁰ Vol.2, paras.227,232,824,874; Vol.4, para.55; Specifically Vol.4, paras.54,55.

⁵⁹¹ Vol.4, paras.45,208.

⁵⁹² Lane,23667/12-23668/17;23671/16-23672/1;23673/3-13;23732/4-23733/6;23774/22-23777/4;23733/7-23738/16;23679/12-23687/20;P01215;23758/20-23762/9.

⁵⁹³ Lane,23758/20-23760/6.

⁵⁹⁴ Lane,23711/17-23;23758/20-23764/24;23956/2-13.

⁵⁹⁵ Lane,23794/23-23798/17.

⁵⁹⁶ Lane,23722/19-23723/24.

- Lane was with ECMM only six months,⁵⁹⁸ received very little instruction before being sent off to BiH,⁵⁹⁹ being briefed by others who were ignorant of the region;⁶⁰⁰
- Lane was ignorant of:
 - HZ(R)HB structures and personalities;⁶⁰¹
 - Prlić and Boban's functions;⁶⁰²
 - The VOPP;⁶⁰³
 - The negotiations in Geneva and what agreements had been reached;⁶⁰⁴
 - The discussions on establishing a Joint Command;⁶⁰⁵
 - The agreement of friendship and cooperation between Croatia and BiH;⁶⁰⁶
 - The food and water situation in Mostar, making no effort to find out what was actually available,⁶⁰⁷ relying only on information from the East side and his Muslim interpreter.⁶⁰⁸

203. No reasonable trier of fact would have relied on Lane's testimony or statement to conclude that:

- a. The HZHB had borders with territorial goals in order to create a "mini-state",⁶⁰⁹
- b. Prlić drew a circle representing BiH divided in two, with the Serbs on the one side and the Croats on the other, omitting any reference to Muslims;⁶¹⁰

⁵⁹⁷ Lane,23752/6-23753/21.

⁵⁹⁸ Lane,23804/25-23805/2.

⁵⁹⁹ Lane,23716/1-8.

⁶⁰⁰ Lane,23721/1-5.

⁶⁰¹ Lane,23721/18-23722/8;23728/25-23729/3;23770/8-23771/25.

⁶⁰² Lane,23729/21-23730/16;23730/17-24;23739/22-23740/4.

⁶⁰³ Lane,23779/24-23784/8;23805/24-23806/8.

⁶⁰⁴ Lane,23789/2-23793/22;1D01521;23920/12-14.

⁶⁰⁵ Lane,23789/2-23793/22.

⁶⁰⁶ Lane,23793/23-23794/19.

⁶⁰⁷ Lane,23817/9-23821/19;23830/9-21;23837/15-23838/12.

⁶⁰⁸ Lane,23724/12-19; 23824/14-23825/15.

⁶⁰⁹ Vol.1,paras.409-490;Vol.4,paras.15-16.

⁶¹⁰ Vol.4,para.19.

- c. Prlić was involved in planning the attack on Gornji Vakuf and that on 19 January 1993 he attended negotiations for a ceasefire agreement in Mostar.⁶¹¹

Conclusions and relief:

204. The TC's failure to properly assess these witnesses represents an incorrect legal standard in the assessment of evidence and a failure to give a reasoned opinion, impacting the credibility of the TC's assessment of the facts relevant to their testimony; an error of law invalidating the TJ. By relying on these witnesses in making its findings, the TC erred in fact by drawing unsustainable conclusions regarding the existence of a JCE and Prlić's powers and responsibilities, effecting a miscarriage of justice.
205. The AC should overturn the convictions for Counts 1-25.⁶¹²

⁶¹¹ Vol.4,paras.126,127,129;130-134.

⁶¹² Vol.1,paras.31-261,406-986;Vol.2,paras.669-748;Vol.3,paras.509-1741;Vol.4,para.278.

GROUND 7:

206. Prlić has a right to adequate time and facilities to challenge and question the witnesses against him.⁶¹³ Although the TC has discretion to regulate the examination of witnesses, it must respect the Accused's right of confrontation.⁶¹⁴ Prlić must be afforded the same rights as if he were tried individually.⁶¹⁵

207. What constitutes adequate time depends on factors specific to each case.⁶¹⁶ Flexibility is necessary to ensure that the time allocation is sufficient, and the right of confrontation is effective:⁶¹⁷ time must be objectively adequate to permit the Defence to set forth the case in a manner consistent with fair trial rights.⁶¹⁸

7.1

208. On 8 May 2006, the TC limited the amount of cross-examination by applying a mathematical *one-sixth-solution*: the Defence collectively have the same time for cross-examination as the OTP takes for direct examination, and in the absence of an agreement between Defence Counsel, each would have one-sixth of the time allocated to the OTP for direct examination.⁶¹⁹

209. The Defence moved to appeal this decision, demonstrating that Counsel were forced to focus on time at the expense of substance.⁶²⁰ Annexes demonstrated where the TC failed to give adequate time to pursue lines of questioning and elicit important evidence.⁶²¹

210. The AC dismissed the Defence's interlocutory appeal, finding that the TC could modify the time, and the Defence teams could agree to modify the allocation.⁶²²

⁶¹³ ICTY, Statute, Arts. 20, 21; *Krasniki v. Czech Republic*, para. 75.

⁶¹⁴ *Tolimir*, Decision on Miletić's Interlocutory Appeal, para. 29.

⁶¹⁵ ICTY, RPE, Rule, 82(A); Status Conference, T. 386/13-15; Status Conference, T. 478/7-19.

⁶¹⁶ *Ngibaraware*, Decision on Appeal Re Trial Date, para. 28.

⁶¹⁷ *Martić*, Decision on Defence motion to Exclude the testimony of Babić, para. 68, fn. 126.

⁶¹⁸ *Orić*, Decision on Length of Defence Case, paras. 7, 8.

⁶¹⁹ Oral Decision of 8 May 2006.

⁶²⁰ Prlić's Outline of Cross-Examination of Donia, 17 May 2006; Joint Defence Request for Certification to Appeal TC Oral Decision, para. 4; Joint Defence Interlocutory Appeal against TC Oral Decision.

⁶²¹ Joint Defence Request for Certification to Appeal TC Oral Decision; Joint Defence Interlocutory Appeal against TC Oral Decision, Annex II.

⁶²² Decision on Joint Defence Interlocutory Appeal against TC Oral Decision, p. 4.

Thereafter, the TC attempted to remedy the lack of time by allocating the Accused additional time at the Defence's request.⁶²³

211. Prlić reiterated his position concerning the unfairness of the *one-sixth-solution*, demonstrating concretely the prejudice suffered resulting from the TC's rigid formula.⁶²⁴

212. Prlić moved for severance because the TC's undue limitations led to Prlić being treated as a member of a monolithic group, and not an individual as required by Rule 82(A).⁶²⁵ Annexes demonstrated where the Defence did not have sufficient time for cross-examination.⁶²⁶ The TC denied Prlić's motion, finding that Prlić did not demonstrate sufficient prejudice.⁶²⁷ No further relief was available to Prlić.

213. The TC erred in law and fact by violating Prlić's right to confront witnesses and present a defence. The possibility of asking for additional time at the end of cross-examination was not an appropriate remedy.⁶²⁸ A thorough and proper cross-examination must be prepared in advance, in full knowledge of the available time.⁶²⁹ Counsel were placed in a position of having to either select some of the issues to address in cross-examination, or cover all the issues without going into substance,⁶³⁰ sacrificing the quality of the questioning process. The TC committed factual errors by relying on the testimony of these witnesses.

214. The TC erred in law by treating Prlić as a member of a group, and not an individual as required by Rule 82(A). The six Accused held different positions and functions during the Indictment period,⁶³¹ and were defending against different cases with different defences through their respective theories, strategies and tactics.⁶³² Invariably, each of the Defence teams was interested in different aspects of witnesses' testimony. Considering these

⁶²³ Decision on the Implementation of the 8 May 2006 Decision, p.2.

⁶²⁴ Prlić's Interrogatories for Tomljanovich; 5453/17-23; 6122/8-16; 16139/9-16158/8; 17097/7-19; 17107/8-17; 17108/1-13; Letter including excerpts of the Okun diaries to the TC; IC00545; 17982/12-24; 17983/13-19; [REDACTED]; 25619/9-13.

⁶²⁵ Prlić's Motion for Severance.

⁶²⁶ *Id.*, Annex 1.

⁶²⁷ Decision on Prlić's Motion for Severance, para.31.

⁶²⁸ *Mrškić*, T.8690/8-13; *Krajišnik*, T.3068/18-3070/8; *Krajišnik*, T.2601/8-2602/8; *Jelišić*, T.1063/4-1064/2.

⁶²⁹ Prlić's Motion for Severance, para.11.

⁶³⁰ *Id.*

⁶³¹ Amended Indictment, 16 November 2005, paras.2-14.

⁶³² 17119/16-17120/3.

challenges, the TC failed to provide adequate reasons as to why a less restrictive approach to time-management was not adopted.⁶³³

215. The TC erred in law by violating Prlić's right to equality of arms.⁶³⁴ By limiting the time for cross-examination, the TC put the Defence at a disadvantage *vis-à-vis* the OTP, and Prlić was not permitted a fair opportunity to present his case.⁶³⁵

Conclusion and Relief:

216. By systematically denying Prlić adequate time and facilities, the TC applied an incorrect legal standard in the assessment of evidence, impacting the overall credibility of the TC's assessment of the facts; an error of law invalidating the TJ. By failing to provide Prlić adequate time to question essential witnesses, the TC erred in fact by drawing unsustainable conclusions regarding the existence of a JCE and Prlić's powers and responsibilities, effecting a miscarriage of justice.

217. The AC should overturn the convictions for Counts 1-25.⁶³⁶

⁶³³ *Van Mechelen v. Netherlands*, para.58.

⁶³⁴ *Nahimana*, AJ, para.181; *Kupreškić*, Decision on Appeal by Dragan Papić against Ruling to Proceed by Deposition, para.24.

⁶³⁵ *Stakić*, AJ, para.149.

⁶³⁶ Vol.1, paras.31-261,406-986; Vol.2, paras.669-748; Vol.3, paras.509-1741; Vol.4, para.278.

GROUND 8:

218. The *Tadić* AC created JCE liability, finding it based in customary international law.⁶³⁷

Judge Shahabuddeen, Presiding Judge in *Tadić*, admits that this was “an error”: “[T]wo rival theories – joint criminal enterprise and co-perpetratorship – hold sway in major parts of the world, but not generally; neither is therefore entitled to be regarded as customary international law.”⁶³⁸ This is a cogent reason for the AC to depart from its jurisprudence on JCE in the interests of justice.

219. While not conceding that JCE I and II are applicable at the ICTY, the focus of this Ground is JCE III.

8.2

220. The TC, by majority, erred in applying JCE III, declining to consider JCE III’s status in customary international law “out of concern for juridical certainty.”⁶³⁹ Juridical certainty cannot justify the continued application of a form of liability that is not in the Statute and does not exist in customary international law. Prlić’s right not to be convicted through an illegitimate mode of liability trumps any concern for consistency and certainty in the applicable law.

221. An OTP-commissioned study by the Max-Planck Institute confirmed that different legal systems have a high degree of variance concerning participation in crime, with most states using co-perpetration.⁶⁴⁰ There is no “extensive and virtually uniform” state practice regarding JCE III’s application.⁶⁴¹

222. *Tadić* undertook a limited survey of state practice, relying on cases that themselves did not always follow customary international law and lacked reasoning.⁶⁴² Treaty law also provides insufficient support. The two statutes *Tadić* relied on do not refer to JCE III.

⁶³⁷ *Tadić*, AJ, paras.187-229.

⁶³⁸ Shahabuddeen, pp.202-03(emphasis added).

⁶³⁹ Vol.1, para.210.

⁶⁴⁰ Max-Planck Study, p.16.

⁶⁴¹ *North Sea Continental Shelf Cases*, para.74.

⁶⁴² MINEAR, p.16; Damaška, pp.486-87.

223. The ICC has rejected JCE III liability, because it is not in its Statute.⁶⁴³ The ICC Statute is a “text supported by a great number of States [which] may be taken to express the...*opinio juris* of those States.”⁶⁴⁴ Since there is no *opinio juris* concerning JCE III, it cannot be applied.⁶⁴⁵
224. JCE III cannot be equated with “committed” in Article 7(1).⁶⁴⁶ It more closely resembles “otherwise aided and abetted,” which differs in *mens rea* from JCE III.⁶⁴⁷ Since JCE III is not in the Statute, its application violates the *nullum crimen sine lege* principle.⁶⁴⁸ Doubt must be resolved in Prlić’s favor.⁶⁴⁹
225. *Tadić* read JCE into the Statute implicitly, using circular reasoning.⁶⁵⁰ The Statute’s object and purpose do not support reading in JCE III; this is not a case of defining an ambiguous term, but of creating a form of liability not contemplated by the drafters. JCE III interferes with the Statute’s object and purpose by trivializing convictions, shifting the focus to membership in and actions of a group.⁶⁵¹
226. The *Dorđević* AC decided that the ECCC’s rejection of JCE III does not constitute a cogent reason to depart from established jurisprudence.⁶⁵² This is incorrect. The ECCC PTC found that the Nuremburg Charter and Control Council Law #10 do not provide support for JCE III.⁶⁵³ It analyzed the cases *Tadić* relied on and found they did not provide a “sufficiently firm basis to conclude that JCE III formed part of customary international law....”⁶⁵⁴ The ECCC TC affirmed the PTC’s rejection of JCE III.⁶⁵⁵
227. These two Chambers’ rejection of JCE III, along with the ICC’s refusal to apply it and Judge Shahabuddeen’s admission that it is not customary international law, constitute cogent reasons to depart from existing jurisprudence.

⁶⁴³ Weigend, pp.476-78.

⁶⁴⁴ *Tadić*, AJ, para.223. The main aim of the Rome Conference was to achieve the broadest acceptance of the ICC by mainly adopting into the Statute recognized provisions of customary international law.

⁶⁴⁵ *Nicaragua Case*, para.207.

⁶⁴⁶ Ambos, pp.171-172.

⁶⁴⁷ *Id.*, p.14.

⁶⁴⁸ *Martić*, Separate Opinion of Judge Schomburg, para.4.

⁶⁴⁹ *Delalić*, TJ, paras.408-413.

⁶⁵⁰ Ohlin, p.72.

⁶⁵¹ See Schabas, pp.1033-34; *Martić*, Separate Opinion of Judge Schomburg, para.2; *Ngudjolo Chui*, Concurring Opinion of Judge Van den Wyngaert, paras.16-19.

⁶⁵² *Dorđević*, AJ, para.50.

⁶⁵³ ECCC PTC Decision, para.78.

⁶⁵⁴ *Id.*, para.83.

⁶⁵⁵ ECCC TC Decision, paras.33-35.

228. *Dorđević* misstated the ECCC PTC's findings. *Dorđević* found that "the ECCC did not determine whether or not the third category of joint criminal enterprise liability was a part of customary international law," stating that the PTC found that the cases relied upon by *Tadić* were "not proper precedents for the purpose of determining the status of customary law in this area."⁶⁵⁶ *Dorđević* concluded erroneously that the ECCC PTC deemed it unnecessary to determine whether JCE III was part of customary international law.⁶⁵⁷

229. In fact, the ECCC PTC considered the cases relied upon by *Tadić* and found that the *Italian cases* were not proper precedent because they were domestic courts applying domestic law.⁶⁵⁸ The PTC *did* analyze whether JCE III existed in customary international law and expressly concluded that it did not. It determined that it was unnecessary to consider whether JCE III might exist *as a general principle of law* because it was not satisfied that such liability would have been foreseeable.⁶⁵⁹ Although *Dorđević* criticized the ECCC PTC for limiting its analysis to *Tadić's* sources, the ECCC TC reviewed additional sources and reached the same conclusion as the PTC.⁶⁶⁰

230. The ECCC PTC's and TC's rejection of JCE III comes on the heels of a long line of judicial dissent at the ICTY concerning JCE III. Indeed, Judge Schomburg praised the ECCC decision as "more than welcome after years of dangerous confusion."⁶⁶¹ Latest in this line of dissenting opinions is that of Judge Antonetti, who, in 82 pages, thoroughly examined JCE III and found that it "**does not validly exist and must be discarded.**"⁶⁶²

Conclusions and relief:

231. By applying JCE III as a mode of liability, the TC erred in law, invalidating the TJ. Should the AC find that JCE is applicable, it must apply it restrictively. The AC should reverse the convictions for Counts 2-3, 21-23.⁶⁶³

⁶⁵⁶ *Dorđević*, AJ, para.50.

⁶⁵⁷ *Id.*

⁶⁵⁸ ECCC PTC Decision, para.82.

⁶⁵⁹ *Id.*, para.87.

⁶⁶⁰ ECCC TC Decision, para.29.

⁶⁶¹ Schomburg, JCE Jurisprudence, p.28.

⁶⁶² Vol.6, pp.100-82, esp., p.173.

⁶⁶³ Vol.1, paras.31-261; Vol.3, paras,509-1741; Vol.4, para.278.

GROUND 9:

232. The TC erroneously concluded that the ultimate purpose of the HZ(R)HB leaders and Tuđman was the JCE of setting up a “Croatian entity” that reconstituted at least in part the Banovina 1939 borders, and that this “Croatian entity” was either to join Croatia or to be an independent state within BiH with close ties to Croatia.⁶⁶⁴

9.1

233. The TC erred in law and fact by failing to first consider whether there was a legitimate purpose for establishing the HZ(R)HB. If there was, the TC should only have considered whether there was a JCE co-existing with the legitimate purpose for establishing the HZ(R)HB if there was no other reasonable explanation.⁶⁶⁵

234. The TC ignored evidence which is necessary in understanding the chronology of the events leading to the establishment of the HZHB, specifically:

- a. SFRY’s dissolution and events in Croatia (Ground.1.1,paras.27,28);
- b. The HZHB had no administrative, executive government, or territorial ambitions (Ground.1.1,paras.36-38);
- c. Significant developments in influencing the events in SFRY and SRBiH (Ground.1.1,para.39);
- d. Tuđman opposed changing BiH’s borders (Ground.1.1,para.40);
- e. The legitimate purpose of the 9 February 1992 meeting to safeguard the status of SRBiH Croats as a constituent/nation in view of the referendum on SRBiH independence (Ground.1.1,para.41).

235. The TC did not explore at all whether the HZHB had a legitimate purpose to protect Croats as a constituent nation in BiH, as opposed to facilitating a JCE to reconstitute the Banovina 1939 borders. It failed to consider that the HZHB was born out of necessity due to the failure of the BiH State to adequately protect and provide governmental services for BiH Croats. (Grounds.1.1,para.30;1.2,para.51) The actions of the HZHB, and in

⁶⁶⁴ Vol.4,paras.4-24,41-73,1220-1232.

⁶⁶⁵ Vol.1,paras.406-490.

particular the HVOHZHB, were necessary, reasonable, and consistent with the political, social, and economic realities. The HZHB never had defined borders and was established to take care of all Croats in BiH.⁶⁶⁶

9.2

236. The TC erroneously concluded that Tuđman claimed that BiH was not supposed to exist as a sovereign independent state and that part of BiH was to be annexed to Croatia,⁶⁶⁷ by relying on selective snippets from Presidential Transcripts and witnesses AR,⁶⁶⁸ Galbraith,⁶⁶⁹ Manolić⁶⁷⁰ and Okun,⁶⁷¹ and ignoring contextually relevant evidence. The TC ignored evidence from the Presidential Transcripts showing Tuđman's policy for cooperation with the Izetbegović/Muslim government.⁶⁷²

237. The TC mischaracterized and ignored Manolić's testimony⁶⁷³ concerning Tuđman's attitudes and actions toward BiH. Manolić testified that Tuđman: strongly promoted voting on the referendum for BiH;⁶⁷⁴ supported BiH sovereignty and was against changing the borders;⁶⁷⁵ was against the Banovina 1939 borders because the AVNOJ-internationally recognized borders were important for Croatia's borders;⁶⁷⁶ never stated that he was for partition;⁶⁷⁷ and accepted all peace plans and proposed putting UN forces on borders.⁶⁷⁸

238. The TC ignored contradictions in Okun's evidence⁶⁷⁹ about the 28 November 1992 meeting when Šušak and Tuđman allegedly spoke about partitioning BiH. The discussion related to the arms embargo and about relations among Serbs and Croats because 1/3 of

⁶⁶⁶ Sančević, 28605/13-28606/10; 28607/17-28609/24; 28688/7-28695/15; 28744/12-28746/14; Buntić, 30796/23-30797/21; Perković, 31642/15-31652/2; 31891/8-31892/22; Jašak, 48881/16-48882/12; Filipović, 47762/11-18; 4D-AA, 49265/7-13; Batinić, 34403/14-34404/15; 34330/14-22; 1D02843.

⁶⁶⁷ Vol.1, para.428; Vol.4, paras.9, 18, 22-24.

⁶⁶⁸ Though not cross-examined, his evidence was challenged; Žužul, 31155/11-31163/4; Donia, 1931/8-1933/7.

⁶⁶⁹ Ground.6.2, paras.198-199.

⁶⁷⁰ Ground.6.2, paras.196-197.

⁶⁷¹ Okun, 16653/3-23.

⁶⁷² P00312, p.6; P00414, pp.35-42, 55-57; P00466, p.55; P00524, pp.6, 12; P00524, p.11; P00822, p.51; P00866, pp.9, 10; P01158, p.45; P01544, p.19; P01622, pp.18, 34-35; P01739, p.32; P01883, pp.12, 13, 18, 23; P02059, p.30; P02302, pp.6, 15, 46; P02719, p.49; P03112, p.42; P03195, p.30; P03373, pp.12-13; P04740, pp.3, 4, 9; P05080, p.4; P06006, p.3; P06123, p.6; P06454, pp.2, 85; P07031, p.30; P07198, p.10; P07254, p.11; P07464, p.54, 55; P07485, pp.10, 68; P07570, p.21; P07682, pp.21-22; P07856, pp.67-68.

⁶⁷³ Vol.4, para.9.

⁶⁷⁴ Manolić, 4494/20-4495/7; 4585/20-4586/3; 4601/12-4602/1; 4276/16-4277/19.

⁶⁷⁵ Manolić, 4601/1-11; 4631/14-4632/3; 4685/6-4686/4.

⁶⁷⁶ Manolić, 4282/25-4283/24; 4282/6-14; 4290/9-4291/11; 4296/6-12; 4281/11-4282/4.

⁶⁷⁷ Manolić, 4631/14-4632/3; 4602/2-8.

⁶⁷⁸ Manolić, 4707/22-4708/20; 4686/5-9.

⁶⁷⁹ Okun, 16711/9-16714/1.

Croatia was occupied. Okun's contemporaneous notes do not reflect any discussions about partition; he wrote: "will try to set up a Serb/Croat meeting after our return from Jeddah."⁶⁸⁰ It defies logic and stretches the imagination that the co-chairmen of ICFY would be organizing a "Serb/Croat" meeting to discuss the carving up of BiH.

239. The TC mischaracterized Tuđman's words⁶⁸¹ from the Presidential Transcript of 17 September 1992.⁶⁸² Nowhere does Tuđman say that the HRHB was to be incorporated into Croatia. The HRHB was established 11 months later.⁶⁸³

240. The TC erroneously concluded that Tuđman remained preoccupied with the Banovina 1939 borders,⁶⁸⁴ by relying on selective parts of the Presidential Transcript, by disregarding the testimony of witnesses who were present during those meetings, and ignoring the contextually relevant ongoing events during the meetings.⁶⁸⁵ A good example is Presidential Transcript, 5 November 1993, cited in Vol.4,para.22,fn.75:⁶⁸⁶ Tuđman cannot be understood without considering the OSPP and the signing of a secret agreement between Tuđman and Izetbegović connecting the Muslim and Croat Republics in BiH, and a confederation with Croatia,⁶⁸⁷ an agreement constantly emphasized by Tuđman.⁶⁸⁸

241. Submissions in Ground.1.3,paras.80-82 are adopted here by reference.

242. The TC mischaracterized other transcripts.⁶⁸⁹ Tuđman supported an independent BiH, asking UNPROFOR to protect the Croatia-BiH border,⁶⁹⁰ mentioning the Banovina as an argument against demographic changes inside BiH⁶⁹¹ or in countering pressure from internationals who entertained notions of changing the internationally recognized borders

⁶⁸⁰ P00829,p.2

⁶⁸¹ Vol.4,para.18.

⁶⁸² P00498,pp.80-81.

⁶⁸³ Ground.1.3,paras.80-82.

⁶⁸⁴ Vol.4,para 22.

⁶⁸⁵ Žužul,27797/22-27802/3;Praljak,41753/1-41754/9;41757/9-41758/12.

⁶⁸⁶ P06454,pp.1-2;Praljak,41762/13-41765/9.

⁶⁸⁷ Žužul,31130/5-15;27802/11-27805/3;27640/1-22;27643/3-18;27787/2-27789/24;27772/23-27774/20;27785/10-24; 3D00320,p.6;Tomić,34740/24-34741/16;34798/8-13;Praljak,40716/20-40717/19.

⁶⁸⁸ P01544,p.25,26;P01622,p.31;P03467,pp.8-13;P04740,p.3;P05080,p.4;P05155,p.48;P05997,pp.7,15,50;P06006,pp.2,3;P06251,p.6;P06454,pp.2-4;P07198,p.8;P07719,p.9;P07856,p.67;P08012,pp.4-5,22,41;P05080,pp.2-4;P06454,pp.1-2;P05155,pp.47-49.

⁶⁸⁹ Vol.4,para.22.

⁶⁹⁰ P04740,p.6;P03324,p.7;P02452,pp.1-2.

⁶⁹¹ P02466,p.10.

of Croatia.⁶⁹² The TC ignored evidence concerning the rights of three constitutive peoples: all discussions among Tuđman and his officials and guests about BiH's territory and constitutional arrangement were related to international peace plans in which division meant BiH's internal organization and not partition, based on the constituent rights of the three BiH constituent nations, not partition.⁶⁹³ Croatia's aim was to protect BiH Croats, the smallest and most vulnerable of the constitutive peoples.⁶⁹⁴

243. The mentioning of "Banovina" (an administrative division of the Kingdom of Yugoslavia),⁶⁹⁵ was not in the context of dividing or annexing territory from BiH. It was merely a reference point during negotiations about the internal organization of BiH.⁶⁹⁶ Tuđman supported the independence and territorial integrity of BiH regardless of the audience.⁶⁹⁷ Tuđman's/Croatia's policy was for a peaceful political solution as proposed by the international negotiators for an independent BiH organized in constitutive units within a decentralized state structure.⁶⁹⁸ Tuđman's policy remained consistent.⁶⁹⁹

⁶⁹² P03279, pp.21-22.

⁶⁹³ Akmadžić, 29865/2-29866/4; 29355/12-9357/5; Žužul, 27611/9-24; 27787/2-27789/24; 27792/23-27794/15; 27625/8-27630/14; Sančević, 28590/4-28592/18; 28688/5-10; Buntić, 30871/8-30873/13; 30870/13-30871/7; Jurčević, 44869/11-17.

⁶⁹⁴ Žužul, 27821/7-27823/20; 27638/25-27639/25; 31167/19-31169/17; 27761/4-27766/12; 27725/8-27726/23; 27727/3-24; P00336, pp.7, 51-52, 61, 62, 64; P00414, pp.35, 36-38, 55-57; P04740, pp.22, 28, 31, 35, 39, 48; P02613, p.13; P03704, pp.26-28; P06123, p.7; P06251, p.7; P07260, p.35; P07464, p.10; P07910, pp.21, 22, 24-25, 56.

⁶⁹⁵ Jurčević, 3D03720, pp.22-24.

⁶⁹⁶ P00089, p.100; P00336, pp.51, 52, 62; P00866, p.16; P02122, p.27; P02466, p.10; P03240, p.42; P03279, pp.21, 22; P06251, pp.16-20; P07464, p.13.

⁶⁹⁷ P00068, p.54; P00108, pp.47-48, 58; P00134, pp.4-5, 100; P00167, pp.6-7; P00312, pp.1, 6, 11, 17-18, 49; P00336, pp.48-49, 51, 52, 61, 62, 64; P00866, p.10; P00890, p.45; P01158, p.45; P01544, pp.18-19, 24; P02302, p.49; P02466, p.17; P02613, p.13; P02719, p.49; P03324, pp.10, 14, 17; P03467, pp.8-11; P04740, pp.6, 7, 34; P06454, pp.4, 30; P06930, p.10; P07198, p.8; P07719, pp.5, 7, 10; P07464, p.32; P07856, p.18; P07910, pp.30, 35; Žužul, 27617/1-27618/9; 27638/25-27639/25; 27792/23-27794/15; 31064/10-31066/10.

⁶⁹⁸ Perković, 31886/17-31889/7; 31665/9-31667/5; Tomić, 34234/15-34238/6; 34003/17-34004/7; 34704/21-34707/4; 34727/16-34728/12; 34697/22-34698/19; 33979/23-33980/23; 34004/11-34006/24; Kožulj, 32570/24-32572/5; 32572/10-32573/4; Palameta, 32783/12-32789/4.

⁶⁹⁹ P00108, p.58; P00134, pp.100-101; P00167, pp.6-7; P00336, pp.48-49, 53-54, 86; P00498, pp.30, 75, 76; P01158, p.45; P02302, p.46; P03195, p.36; P03324, pp.10, 18; P06454, p.2; P07031, pp.10-11; P07198, p.9; P07464, p.21; P07485, p.68; P07570, pp.18-19, 21; P07856, pp.18, 21; Praljak, 40044/6-40045/8; Sančević, 28528/4-17; 28588/10-28589/25; 28540/14-28544/9; 28572/15-28574/7; 28626/15-28629/25; 28630/1-23; 1D00401; 28634/22-28637/11; 1D02887; 28637/12-28638/8; 1D02806; 28641/16-28644/4; 28624/22-28626/14; 1D02275.

9.3

244. The TC erroneously concluded that Tuđman advocated and planned to divide BiH between Croatia and Serbia,⁷⁰⁰ claiming that Tuđman and Milošević during one meeting in Karađorđevo planned to finalize the division of BiH.⁷⁰¹

245. Manolić acknowledged not knowing about the Karađorđevo meeting,⁷⁰² and noted that the referendum – held a year later – confirmed BiH's independence.⁷⁰³ Manolić denied knowing of any agreement in Karađorđevo, though he rejected the existence of any plan by Tuđman to divide BiH.⁷⁰⁴ He testified that at the time in 1991, Yugoslavia was still in existence and BiH was not on the agenda for discussion.⁷⁰⁵

246. [REDACTED].⁷⁰⁶

247. Okun was engaged in the BiH peace negotiations as of September 1992;⁷⁰⁷ he could not have known of Tuđman's intentions in 1991.

248. Likewise, Galbraith arrived in Croatia in June 1993,⁷⁰⁸ and never testified about any meetings between Tuđman and Milošević in 1991 or thereafter.

249. Ribičić testified that his conclusions regarding the alleged Tuđman/Milošević plan were based on reading one Presidential Transcript, confirming that it was a value judgment (repeated in his book⁷⁰⁹); an unreliable and inappropriate source for basing legal/constitutional expertise.⁷¹⁰

250. The TC erroneously concluded the existence of a double policy by Tuđman/Croatia⁷¹¹ by ignoring Tuđman's/Croatia's assistance to BiH in accepting the refugees,⁷¹² hosting

⁷⁰⁰ Vol.4,paras.10-12.

⁷⁰¹ Vol.4,para.11.

⁷⁰² Manolić,4276/25.

⁷⁰³ Manolić,4274/2-4278/17.

⁷⁰⁴ Manolić,4673/14-4674/2;4474/23-4475/2;4671/4-3673/6;4473/9-17;4476/1-16;4494/1-11;4494/12-16;4636/2-15;4682/18.

⁷⁰⁵ Manolić,4633/24-4634/19;4634/20-4635/3;4635/4-14.

⁷⁰⁶ [REDACTED].

⁷⁰⁷ Okun,16653/16-18.

⁷⁰⁸ Galbraith,6422/22-6423/5.

⁷⁰⁹ 1D02036,p.5.

⁷¹⁰ Ribičić,25549/13-25555/6;1D02036;Cvikl,35384/11-35386/14;Ground.4.3.

⁷¹¹ Vol.4,para.12.

⁷¹² Raguž,31256/23-31258/3;31259/6-31261/2;Zorić,28001/13-28003/17;27959/10-27960/1;27855/24-27856/9;27945/10-27948/1.

ABiH soldiers in Croatia,⁷¹³ and providing logistics for ABiH and financial support.⁷¹⁴ The TC further mischaracterized the Presidential Transcripts. On 27 December 1991, Tuđman remarked that discussions with Izetbegović and Karadžić must be held to find an acceptable peaceful solution, stressing that he was for a sovereign BiH,⁷¹⁵ while on 17 July 1993, Tuđman denied any agreement with Milošević.⁷¹⁶ Tuđman was transparent during his meetings,⁷¹⁷ never advocated carving up BiH between Croatia and Serbia,⁷¹⁸ and opposed BiH's division.⁷¹⁹

251. Submissions in Ground.19 are adopted here by reference.

9.4

252. The TC erred in finding that the 6 May 1992 Graz meeting between representatives of the Serbian and Croatian BiH communities was connected to the plan of partitioning BiH in order to expand the Croatian borders along the demarcation of Croatian Banovina resulting from the *Cvetković-Maček* agreement of 1939.⁷²⁰

253. Submissions in Ground.1.1,para.44 are adopted here by reference.

254. The TC ignored Boras's testimony who was present at the meeting,⁷²¹ and testified that the meeting in Graz was not about "partitioning" BiH in order to expand Croatian borders, but about internal administrative arrangements. The TC mischaracterized Sančević's testimony; he did not testify about the Graz meeting.⁷²²

9.5

⁷¹³ Zorić,27943/22-27945/9;27976/19-27977/7;27978/16-27978/21.

⁷¹⁴ 3D03720,pp.128-172;Jurčević,44779/1-44782/4;Zorić,27939/25-27942/19;27882/12-27887/7; Praljak,40110/10-40128/9;3D02633.

⁷¹⁵ P00089,p.29.

⁷¹⁶ P03517;Žužul,27631/2-8.

⁷¹⁷ P01544,pp.18-19;P03112,p.22;P03195,pp.20-21;P03324,p.17;P03373,p.16;P05080,p.11;P06006, p.3;P06123,pp.3,7;P06251,p.7;P07198,p.12;P07719,p.5;P07856,p.7.

⁷¹⁸ Žužul,31121/3-16;27655/9-27661/11;31167/19-31169/17;Jurčević,44872/15-874/25;Praljak,39610/20-39617/15;40347/20-40348/3;3D02003.

⁷¹⁹ Zorić,28096/13-28103/19.

⁷²⁰ Vol.1,para.439;Vol.4,para.13.

⁷²¹ Boras,29248/7-23.

⁷²² Sančević,28744/12-28746/17.

255. The TC erroneously concluded that Tuđman supported the creation of the HZHB as a Croatian entity as part of a plan to expand Croatian borders,⁷²³ contradicting its findings in Vol.1,para.423.⁷²⁴
256. The TC failed to properly assess all relevant evidence and systematically relied on selective evidence.
257. Submissions in Grounds.1.1,paras.27-40 and 1.2,para.48-49,53,58-59 are adopted here by reference.
258. The TC ignored evidence that HDZBiH's policy was always for BiH:⁷²⁵ reacting to the war in Croatia which in part was conducted from BiH,⁷²⁶ acting because of the BiH/Sarajevo Government's inability to protect BiH and BiH Croats,⁷²⁷ organizing a defence with different measures, including establishing a number of Croatian communities inside HDZ,⁷²⁸ and offering an organized defence with Muslims.⁷²⁹
259. The actions of HDZBiH cannot be fully appreciated in the absence of context: the Muslim policy of pursuing a unitary/Muslim dominated state,⁷³⁰ and how the Sarajevo government became a Muslim government.⁷³¹
260. The TC ignored the testimony of Tuđman's close associates explaining the meaning and significance of Tuđman's reference to Banovina as one of a dozen historical precedents of Croatian statehood⁷³² and that Tuđman was against changing the AVNOJ borders recognized by the international community because he was concerned that one-third of Croatia's territory was occupied by the Serbs.⁷³³

⁷²³ Vol.1,paras.423,428;Vol.4, paras.14,17.

⁷²⁴ P00080,pp.1,46.

⁷²⁵ Boras,28878/18-28880/21;28880/22-28882712;Batinić,34350/6-34358/2;P00117;1D00410;34623/25-34625/14;34324/12-34327/10;1D02579;34327/12-34330/22;1D02700;1D02580;34544/8-34547/25;34625/15-34627/21;P03990,pp.16-33;34344/7-34346/14;1D02701;34604/22-34605/17.

⁷²⁶ Boras,28882/13-28883/25;28886/1-28887/1;28891/5-28893/5.

⁷²⁷ Boras,28887/2-28888/20;28898/13-28899/19.

⁷²⁸ P00034;P00047;P00050;P00052;P00058;Boras,28893/6-22.

⁷²⁹ 1D00486;Boras,28895/16-28896/17;28893/23-28895/6.

⁷³⁰ Boras,29114/10-29116/8;29116/12-29117/8;[REDACTED];29272/18-29274/4;29240/11-29241/5.

⁷³¹ Boras,28989/3-28993/6;29258/10-25.

⁷³² Ribičić,25466/9-468/10;25570/5-19;Žužul,27648/12-27651/3.

⁷³³ Žužul,27631/2-8;Zorić,28126/6-28127/2;P00134,p.100,126,128;P00699,pp.2-5;P00498;P03195,p.36;P03324,p.10;P03969,p.4;P04740,pp.10,13;P05997,p.4;P07031,pp.10-11;P07198,pp.2-6;P07031,pp.10-11;P07719,p.5;Jašak,48625/5-48626/19;P02019;Praljak,39779/1-39882/2;41304/15-41309/11;41320/9-41324/10;Sančević,28746/21-28753/10.

261. The TC ignored Praljak's testimony concerning the 17 September 1992 Presidential Transcript: the establishment of the Banovina was not the goal,⁷³⁴ and the HZHB would cease to exist upon solving BiH's internal organization.⁷³⁵ It ignored Prlić's remarks reflected in this Presidential Transcript, confirming his understanding of an inviolable BiH of three constituent peoples.⁷³⁶

9.6

262. The TC erroneously concluded that the HZHB had borders with territorial goals in order to create a "mini-state" – an autonomous territorial BiH aligned with Croatia as an integral part of Croatia,⁷³⁷ by relying on Ribičić, Okun, Ole-Brix, and Lane (Grounds.4.3;6.2) and failing to properly assess all relevant evidence.

263. Submissions in Grounds.1.1,paras.36 and 1.3,para.82 are adopted here by reference.

264. The TC ignored⁷³⁸ Ribičić's foreword in his book,⁷³⁹ where he explains how after reading the Presidential Transcript of 27 December 1991, he changed his legal analysis and opinion on the HZHB.⁷⁴⁰ Ribičić speculates about the alleged goal of the HZHB to be connected with Croatia,⁷⁴¹ though testifying that the HZHB was not a "mini-state" separated from BiH⁷⁴² – echoing Prlić.⁷⁴³

265. Ole-Brix's opinion is just as speculative.⁷⁴⁴ Acknowledging that he had no personal knowledge about BiH⁷⁴⁵ and that he never met with Boban, Prlić, Zubak, or Stojić,⁷⁴⁶ Ole-Brix noted that there was never a clear agenda.⁷⁴⁷

266. Lane, basing his opinion "from being immersed in the population,"⁷⁴⁸ proved to be an unreliable witness. He demonstrated a profound ignorance of the HZHB's structure, its

⁷³⁴ Praljak,41241/3-41245/4;P00466,pp.54-57.

⁷³⁵ Praljak,41727/7-41730/14.

⁷³⁶ Ribičić,25587/2-19;P00498,p.28;Ground.18,para.652.

⁷³⁷ Vol.1,paras.409-490;Vol.4,paras.15-16.

⁷³⁸ Vol.4,para.15.

⁷³⁹ 1D02036,pp.6-7.

⁷⁴⁰ Ribičić,25554/7-25555/6;25582/20-25583/19.

⁷⁴¹ P08973,p.52;Cvikl,p.35384/11-386/14.

⁷⁴² Ribičić,25462/16-25463/1;25586/24-25588/21.

⁷⁴³ P00498,p.28.

⁷⁴⁴ P10356,p.10752.

⁷⁴⁵ P10356,pp.10792/15-16.

⁷⁴⁶ P10356,pp.10742/2-10795/8.

⁷⁴⁷ P10356,pp.10831/14-18.

⁷⁴⁸ Lane,23806/9-23808/5.

leadership,⁷⁴⁹ BiH,⁷⁵⁰ and the ongoing peace plans while he was *in situ*.⁷⁵¹ (Ground.6.2,paras.202-203). Čupina was equally unreliable: giving contradicting testimony,⁷⁵² and lacking credibility.⁷⁵³

267. Witnesses confirmed that the HZHB was always inside BiH as an interim structure,⁷⁵⁴ stressing that one reason for the establishment of the HZHB was to fill a vacuum left by the defunct BiH state government.⁷⁵⁵ The HZHB was an association of municipalities, functioning inside BiH's legal system.⁷⁵⁶

268. The TC disregarded evidence that any BiH municipality could join the HZHB, debunking the notion that the HZHB had defined borders: more than 50 municipalities joined the HZHB,⁷⁵⁷ functioning throughout BiH, as is the case today.⁷⁵⁸ Prlić showed the absurdity that the HZHB was an attempt to reconstitute the Banovina 1939 borders, demonstrating through a map that in fact the areas of the HZHB⁷⁵⁹ – which had no boundaries – covered a great deal of BiH. The HVO was devoted to defending the sovereignty of BiH,⁷⁶⁰ and the HZHB never sought to be recognized as independent.⁷⁶¹

⁷⁴⁹ Lane,23721/18-23722/8;23728/25-23729/3;23770/8-23771/25;23729/21-23730/16;23730/17-24;23739/22-23740/4.

⁷⁵⁰ Lane,23789/2-23793/22;23793/23-23794/19.

⁷⁵¹ Lane,23703/18-23704/17;23721/18-23733/8;23727/18-23729/3;23770/18-23771/9;23775/19-23776/21;23779/14-23781/2.

⁷⁵² Idrizović,9898/7-13;2D00073;2D00072;2D00076;Praljak,40391/17-40393/17.

⁷⁵³ Vol.1,para.285.

⁷⁵⁴ Akmadžić,29344/8-29347/16;29347/19-29348/19;29416/18-29422/17;29422/18-29429/5;29429/8-29432/2;Boras,28960/20-28961/8;28969/9-28970/25;1D02441;[REDACTED];P10356,pp.10804-10805;Žužul,27696/5-27698/14;Primorac,29925/7-29926/23;Cviki,35187/8-38195/6;Buntić,30676/25-30677/4;30683/22-30684/13;30766/22-30780/3;Perković,31709/20-31711/6;31891/8-31892/22;31792/22-31793/17;31807/3-18;1D02112;Tomić,34719/23-34721/8;34001/24-34003/16;33826/2-13;Giles,2059/2-11;Palameta,32778/3-17;32826/4-32827/7;Jurčević,44752/20-7555/22;3D03720,p.79;3D03720,p.79;Božić,36396/22-36397/12;Marjan,35559/9-35560/12;Petković,49764/24-49765/11.

⁷⁵⁵ Akmadžić,29445/2-29448/12;29625/9-29627/22;29627/23-29631/14.

⁷⁵⁶ Buntić,30762/5-24;30676/25-30677/4;30766/22-30780/3;30323/25-30325/2;30325/5-25;30328/22-30329/10;30370/21-30371/22;30371/24-30374/4;30348/13-30350/7;30376/18-30385/5;30385/19-30388/7;30388/10-30389/5;1D02441.

⁷⁵⁷ Perković,31946/3-31949/10;31746/16-31748/5;31653/11-31654/7;31891/8-31892/22;31792/22-31793/17;31807/3-18;31882/5-16;Buntić,30782/3-30784/2;30329/18-30334/5;30755/18-30756/2;30338/25-30339/24;30339/25-30342/24;30343/1-30346/14;30277/7-30279/11;30780/4-30782/1;30786/25-30792/19;30796/23-30797/21;30834/13-25;30901/3-30902/17;30854/4-30855/7;1D02262; 1D02257;1D00265;1D02260;1D01981;1D02013;1D02261;1D01736;1D01925;1D02258;1D02255; 1D01261;1D02012;1D02254.

⁷⁵⁸ Jurčević,44882/9-44884/13;1D02961;Perković,31656/23-31657/10;32029/24-32031/21;31660/18-31662/22;31648/14-31652/2;Tomić,34026/25-34027/13;33873/19-33874/15;33877/22-33878/12;33883/4-33884/13.

⁷⁵⁹ 1D02843.

⁷⁶⁰ Puljić,32320/5-32323/19;32326/6-17;32310/2-32313/12;32328/12-32329/25;Jurčević,44793/1-44794/15;Praljak,43350/21-43351/15;39918/5-39920/21;P00302,Art.4.

⁷⁶¹ Žužul,27696/5-27698/14.

9.7

269. The TC erred in law and fact by finding that Prlić, among others, met with General Ratko Mladić of the VRS (BiH Serb armed forces) as part of a delegation from Croatia on 5 and 26 October 1992 for the specific purpose of discussing the partition of BiH.⁷⁶²

270. Submissions in Ground.5 are adopted here by reference.

9.8

271. The TC erred in law and fact by finding that Prlić, during an interview with Lane, drew a circle representing BiH divided in two, with the Serbs on the one side and the Croats on the other, omitting any reference to Muslims.⁷⁶³ No evidence was presented to corroborate this assertion.

272. Submissions in Ground.6.2.paras.202-203 are adopted here by reference.

9.9

273. The TC erred in finding that Tuđman was the *de facto* head of the BiH Croatian delegation at the ICFY,⁷⁶⁴ relying exclusively on Okun's uncorroborated testimony. Okun's Diary, which was allegedly meticulous and was a basis for reporting to the UN on negotiations,⁷⁶⁵ does not mention Tuđman as the *de facto* head of the BiH-Croat delegation.⁷⁶⁶ Okun confirmed that Tuđman had a legal interest in BiH being attacked from its territory, and that internationals repeatedly asked Tuđman to assist in the peace process in BiH.⁷⁶⁷

274. The TC ignored evidence that Tuđman played a role in international negotiations⁷⁶⁸ especially when some of the territorial issues in BiH could be resolved with Croatia's cooperation: access to the Adriatic Sea.⁷⁶⁹ Tuđman was not the head of the Croatian delegation from BiH;⁷⁷⁰ the international community asked Tuđman to participate in

⁷⁶² Vol.4,paras.14,18,19,43,119,525.

⁷⁶³ Vol.4,para.19.

⁷⁶⁴ Vol.1,para.443;Vol.4,para.20.

⁷⁶⁵ Okun,16656/24-16657/4;16658/2-7.

⁷⁶⁶ Okun,16888/13-16889/10;16821/9-16823/23.

⁷⁶⁷ 1D01312,Okun,16871/6-16872/9;p.16939/9-2;Praljak,44164/13-44165/21;P01158,p.53.

⁷⁶⁸ Žužul,31137/15-31138/14;27820/14-27821/6.

⁷⁶⁹ Žužul,27631/2-8;Tomić,34799/1-34781/10;1D02854,p.2,Watkins,18958/3-18960/25.

⁷⁷⁰ Žužul,31137/15-31138/14;27820/14-27821/6.

trying to find a solution for peace,⁷⁷¹ and Izetbegović wanted to negotiate with Tuđman.⁷⁷²

9.10

275. The TC erroneously concluded that following the signing of the VOPP by the BiH Croats and until August 1993, the leaders of the HZHB created a “mini-state” within BiH by establishing the HRHB⁷⁷³ by relying on Ribičić (Ground.4.3) and misinterpreting the evidence and disregarding contextual and other relevant evidence.

276. Submissions in Ground.1.3 are adopted here by reference.

277. The TC erroneously concluded that the primary objective of the HZHB leaders was the “preservation of so-called Croatian territories claimed under the Vance-Owen Plan” by relying on one military document from the Ante Starčević brigade for which Tokić testified that he expressed in it his own opinion,⁷⁷⁴ and one document from the Knez Domagoj Brigade introduced through a Bar Table Motion.⁷⁷⁵ There is no evidence that HZHB leaders had this goal.

278. The TC erroneously concluded that on 8 February 1994 the HRHB House of Representatives proclaimed itself “the sole legitimate government of the BiH Croats and that it needed to work to consolidate its statehood.”⁷⁷⁶ The TC ignored contextual evidence and mischaracterized P07825. Negotiations on the OSPP were scheduled to resume in February 1994 and by this Declaration (P07825), the House of Representatives was merely expressing its support for this plan. In the same context, at the 13 February 1994 meeting⁷⁷⁷ – mischaracterized by the TC⁷⁷⁸ – Prlić stated “we have created a state in Herceg Bosna with all systems, including customs and finance,”⁷⁷⁹ in accordance with the competencies of the Republic envisaged by the Union of Republics.⁷⁸⁰

⁷⁷¹ P00312,pp.5,11,16;P00414,p.47;P00466,pp.38,39,47;P00866,p.11;P01544,pp.25,26;P01622,p.31;P01739,pp.8-10,33;P01883,p.12;P2466,p.10;P02613,p.7;P03467,pp.8-13;P05080,p.17;P07031,pp.10-11;P07856,p.67;P09852,p.1,para.3,p.2,para.5.

⁷⁷² Akmadžić,29535/17-29536/19;P05051;Watkins,18948/9-21.

⁷⁷³ Vol.1,paras.409-490;Vol.4,para.21.

⁷⁷⁴ Tokić,45533/24-45537/16;P02486.

⁷⁷⁵ P05391.

⁷⁷⁶ P07825.

⁷⁷⁷ P07856.

⁷⁷⁸ Vol.4,para.21.

⁷⁷⁹ 1D02911,p.47.

⁷⁸⁰ P03990,p.14.Art.3.

Conclusions and relief:

279. The TC mischaracterized events and actions and applied an incorrect legal standard in the assessment of evidence; an error of law invalidating the TJ. Had the evidence been properly considered, no reasonable trier of fact would have found that HZ(R)HB leaders and Tudman envisaged a plan or ultimate purpose to set up a Croatian entity that reconstituted, at least in part, the Banovina 1939 borders, and that this “Croatian entity” was either to join Croatia or be an independent state within BiH with close ties to Croatia; an error of fact effecting a miscarriage of justice.

280. The AC should overturn the convictions for Counts 1-25.⁷⁸¹

⁷⁸¹ Vol.1,paras.31-261,406-986;Vol.2,paras.669-748;Vol.3,paras.509-1741;Vol.4,para.278.

GROUND 10:

281. The TC erroneously concluded that the HZ(R)HB had a common criminal purpose to use its political and military apparatus to dominate the Muslim population through ethnic cleansing, and that the plurality of persons sharing this common criminal purpose consulted each other, using the machinery, structures, and members of the HVO to devise and implement various aspects of the common criminal purpose.⁷⁸²

10.1

282. The TC erroneously concluded that HZ(R)HB leaders deemed it necessary to change the ethnic makeup of the territories it claimed to form the HZ(R)HB in order to reconstruct the Banovina 1939 borders, moving the Muslim population outside HZHB territory, and that Prlić knew that the implementation of this purpose ran counter to the peace negotiations being conducted in Geneva,⁷⁸³ by systematically relying on selective evidence on the establishment of the HZHB and subsequent events.

283. Submissions in Grounds.1.1;1.3;9.6;9.7;16.1;16.2;16.3 are adopted here by reference.

10.2

284. The TC erroneously concluded that by mid-January 1993 the HVO and certain Croatian leaders aimed to consolidate HVO control over provinces 3, 8, and 10 by eliminating all Muslim resistance and ethnically cleansing the Muslims within these provinces,⁷⁸⁴ by relying solely on evidence from internationals and overlooking their lack of credibility ([REDACTED]⁷⁸⁵) and unsubstantiated perceptions,⁷⁸⁶ while ignoring other relevant evidence.

285. Submissions in Ground.16.1 are adopted here by reference.

10.3 and 10.4

286. The TC erroneously concluded that the HZHB leaders carried out the JCE in stages by erroneously finding that:

⁷⁸² Vol.1,paras.428,439;Vol.4,paras.13,14,18,22,24,41-67,522,524,525,1231-1232.

⁷⁸³ Vol.4,para.43.

⁷⁸⁴ Vol.1,paras.452-464;Vol.2,paras.330-342,503-506,514,521;Vol.4,para.44.

⁷⁸⁵ P02787;[REDACTED].

⁷⁸⁶ Thornberry,P10041,para.42.

- a. military campaigns were conducted in the provinces considered Croatian;
- b. the HVO launched an attack on 18 January 1993 in Gornji Vakuf;
- c. the HVO shelled surrounding villages to Gornji Vakuf and then took control over them; and
- d. the HVO attacked Sovići and Doljani on 17 April 1993,⁷⁸⁷ and that between 17 and 19 April 1993 the HVO was conducting offensive actions and taking possession of several villages in Prozor Municipality, committing acts of violence such as setting fire to Muslim houses, causing the Muslim population to flee, and thereby preventing any possible return.⁷⁸⁸

287. The TC erroneously concluded that:

- a. in January 1993 the HVO conducted military campaigns in the provinces it considered Croatian in order to consolidate its presence there.⁷⁸⁹ (Submissions in Ground.16.1 are adopted here by reference); and
- b. that HVO attacks on Sovići and Doljani were not a defensive reaction to the ABiH attacks.⁷⁹⁰

288. Submissions in Ground.16.2 are adopted here by reference.

10.5

289. The TC erroneously concluded that on 15 April 1993 the municipal HVO/municipal HVO Mostar adopted a decision (amended on 29 April 1993) regarding refugees and displaced and deported persons, resulting in the Muslims being discriminated against.⁷⁹¹

290. The TC erroneously concluded that Croats became a majority in Mostar Municipality in May-June 1992,⁷⁹² and that a new influx of refugees changed the demographic

⁷⁸⁷ Vol.1,paras.452-464,465-476;Vol.2,paras.330-342,346-395,445,503-506,514,521-536,538-549,753;Vol.4, paras.45-46,668,1220.

⁷⁸⁸ Vol.1,paras.465-476;Vol.2,paras.84,87,89;Vol.4,para.47.

⁷⁸⁹ Vol.4,para.45.

⁷⁹⁰ Vol.4,para.46;Vol.2,paras.465-467.

⁷⁹¹ Vol.2,paras.672-673,730-742;Vol.4,para.49.

⁷⁹² Vol.2,para.672.

structure in Mostar in May 1993 in favor of Muslims.⁷⁹³ The TC relied on BA's unsubstantiated statement,⁷⁹⁴ and mischaracterized documents⁷⁹⁵ and CS's testimony.⁷⁹⁶ [REDACTED], and the data from 1D00936 relates to the entire Mostar Municipality; no conclusion can be made [REDACTED]. The TC ignored evidence that in May 1993 the front-line divided Mostar city and Mostar Municipality (West and East), and that the data from the ODPR [REDACTED] from May 1993 onwards relates only to West Mostar.⁷⁹⁷ [REDACTED],⁷⁹⁸ with 9,000 Muslims regularly receiving humanitarian aid.⁷⁹⁹ The TC ignored evidence from CS that [REDACTED],⁸⁰⁰ illegally.⁸⁰¹

291. The TC erroneously concluded that the municipal HVO Mostar's 15 April 1993 Decision on the rights of displaced persons and refugees (amended on 29 April 1993) denied Muslim refugees humanitarian aid, forcing them to leave Mostar,⁸⁰² and that at the beginning of May 1993 the HVO issued an ultimatum to Muslims occupying abandoned flats to leave by 9 May 1993, though evictions started on 8 May 1993.⁸⁰³ The TC erroneously relied on BA's and BC's uncorroborated statements and adjudicated facts, at the exclusion of other relevant evidence – including evidence showing BA's and BC's lack of credibility. (Grounds.6.1,paras.182-183;6.2,paras.189-190). The TC ignored BB's [REDACTED]:

- a. [REDACTED];⁸⁰⁴
- b. [REDACTED]⁸⁰⁵ [REDACTED];⁸⁰⁶
- c. [REDACTED];⁸⁰⁷ and
- d. [REDACTED].⁸⁰⁸

⁷⁹³ Vol.2,para.673.

⁷⁹⁴ [REDACTED].

⁷⁹⁵ 1D00936.

⁷⁹⁶ [REDACTED].

⁷⁹⁷ 1D00936,p.3,emphasized "Mostar" Data until 5 May 1993;[REDACTED];Šimunović,33630/15-22;33638/19-33640/13; [REDACTED].

⁷⁹⁸ [REDACTED].

⁷⁹⁹ Šimunović,33499/14-33501/11;33673/8-33676/5;1D02813.

⁸⁰⁰ [REDACTED].

⁸⁰¹ Puljić;32157/20-32158/14;1D00548;32283/1-10;32286/20-32288/6;2D00007.

⁸⁰² Vol.4,para.49,159;Vol.2,paras.739-741.

⁸⁰³ Vol.2,para.742.

⁸⁰⁴ [REDACTED].

⁸⁰⁵ [REDACTED];1D01448;1D00960;1D01392;1D01232;1D01083;1D00977;Zelenika,33110/3-23;1D01007;1D00349.

⁸⁰⁶ [REDACTED];1D00641;1D007171D01157;1D00435;1D00606;[REDACTED];P03089.

⁸⁰⁷ [REDACTED];P02151.

292. The TC ignored Raguž's testimony that the Mostar Decision was in accordance with the Law on Refugees of RBiH, which regulated the obligation of military conscripts, and that in reality it changed nothing concerning the status of displaced persons, regardless of their ethnicity.⁸⁰⁹
293. The TC ignored Šimunović's testimony that similar decisions were adopted by other Muslim majority municipalities, that there was no connection between the Mostar Decision and the movement of people or distribution of humanitarian aid,⁸¹⁰ that the level of international humanitarian aid dropped in April 1993 in part because of the Mostar Decision,⁸¹¹ and that the reports of internationals were wrong – no one lost refugee status based on the Mostar Decision.⁸¹²
294. The TC ignored evidence showing the transparency and non-discriminatory distribution of humanitarian aid in the Mostar Municipality.⁸¹³ The Red Cross was completely independent, distributing humanitarian aid equally to all beneficiaries.⁸¹⁴

10.6, 10.7, and 10.8

295. The TC erroneously concluded the existence of an HVO policy, which Prlić and Boban allegedly shared, which entailed drastically reducing the Muslim population of the HZHB, especially in Mostar, while increasing the Croatian population through the removal of Muslims to territories beyond those designated as "Croatian" and the removal of Croats from those regions so that they would fall under Croatian control.⁸¹⁵ It relies on BA's testimony⁸¹⁶ (Ground.6.1, paras.179-190). There is no other evidence supporting this conclusion. The TC disregarded all evidence to the contrary.
296. Submissions in Grounds.16.5;16.6.2;16.6.5 and 16.6.6 are adopted here by reference.

⁸⁰⁸ [REDACTED];1D01444,Art.11;P04822;[REDACTED].

⁸⁰⁹ Raguž,31283/9-31285/2;31268/9-31272/11;31289/1-31290/15;31272/12-31276/19;31281/2-14;31285/3-31288/25;31495/12-31496/4;[REDACTED];31481/6-31482/24;31282/9-31283/8.

⁸¹⁰ Šimunović,33676/6-33677/22;33588/9-33596/17;33596/19-33598/1;33443/13-33445/11;33445/12-33446/2.

⁸¹¹ Šimunović,33454/12-33456/18;33465/20-33467/8;33492/1-33494/15;33447/4-33451/11.

⁸¹² Šimunović,33629/13-33633/9;33672/12-33673/7;33636/13-33641/22;33673/8-33676/5.

⁸¹³ Šimunović,33440/14-33442/6;33442/7-33443/12;33462/10-33463/20;33680/24-33681/8.

⁸¹⁴ Šimunović,33409/13-19;33408/1-33409/12;33409/20-33411/5;33415823-33419/10;33420/16-33421/4;33431/15-33432/2;33442/4-33443/12;1D02759;1D02761;33494/16-33500/21;33522/1-33532/10;1D02761;3D03249;3D03178;3D03227;33503/6-33505/19.

⁸¹⁵ Vol.2,paras.227,232,824,874,1786;Vol.3,paras.502,508;Vol.4,paras.51,54;specifically Vol.4,para.51.

⁸¹⁶ Ground.6.1.

297. The TC erroneously concluded that around 5 May 1993 there was a new influx of population in Mostar, causing a change in the demographic situation in favor of Muslims.⁸¹⁷

298. The TC erroneously concluded that on 5 May 1993 and 10 June 1993, Prlić requested the assistance of humanitarian organizations to assist in population movement by assembling the greatest number of Croats possible in the areas considered to be Croatian.⁸¹⁸

299. Submissions in Ground.16.6.2 are adopted here by reference.

300. The TC erroneously concluded that the HVO arranged for the removal of Croats to provinces 8 and 10 in order to alter the balance of power.⁸¹⁹ Beese and BD are unsubstantiated. [REDACTED],⁸²⁰ and according to the VOPP, Travnik was the capital of province 10.⁸²¹ That Croats would ethnically cleanse Croats from province 10 to province 8 defies logic.

10.10

301. The TC erroneously concluded that subsequent to the ABiH attack of 30 June 1993, Muslims from Mostar, Stolac, Čaplina, Ljubuški, and Prozor were arrested, detained, and sent to territories under the ABiH or to third countries as part of a JCE.⁸²²

302. The TC ignored evidence showing the arrests of Muslim HVO members after the treacherous acts of 30 June 1993 and the ensuing ABiH offensive,⁸²³ the international negotiations and agreement reached for releasing the HVO and ABiH prisoners in September 1993,⁸²⁴ and that Croats from Travnik were not accommodated in Mostar.⁸²⁵

⁸¹⁷ Vol.4,para.50;See.Ground.10.5,para.290.

⁸¹⁸ Vol.4,paras.50,51,54.

⁸¹⁹ Vol.2,paras.227,232,824,874;Vol.4,para.55; Specifically Vol.4,paras.54,55.

⁸²⁰ [REDACTED];P09276.maps.9,11.

⁸²¹ 1D01314,p.19;1D00892,p.27;P09841;P01398,p.12.

⁸²² Vol.2,paras.921-923,1642-1655;Vol.3,paras.140-145,264-266;270,272-274;Vol.4,paras.57-58.

⁸²³ Ground.16.3.1.

⁸²⁴ Ground.1.3,para.82.

⁸²⁵ Ground.16.5,1 and 16.5.2,para.554.

303. The TC erroneously concluded that the alleged process of ethnic cleansing was irreversible,⁸²⁶ by solely relying on BB [REDACTED].⁸²⁷ The TC ignored evidence showing [REDACTED],⁸²⁸ and that [REDACTED].⁸²⁹

304. Submissions in Grounds.16.4.3-16.4.4 are adopted here by reference.

305. [REDACTED],⁸³⁰ [REDACTED].⁸³¹ [REDACTED],⁸³² [REDACTED].⁸³³

10.12, 10.13, and 10.14

306. The TC erroneously concluded that 22,000-24,000 Croats from Travnik, Novi Travnik, Vareš, Kiseljak, and Bugojno arrived in HZ(R)HB territory in an organized manner specifically in Prozor, Stolac, Čaplina, and Ljubuški,⁸³⁴ that in October 1993 the HVO forced the Croatian population to leave Vareš,⁸³⁵ and that the leaders of the HVO concealed the events at Stupni Do so these events would help encourage the Croats of Vareš to move in the direction of “their plan.”⁸³⁶

307. The TC mischaracterized and ignored evidence. Submissions in Grounds.16.5-16.6 are adopted here by reference.

10.15

308. The TC erroneously concluded that the JCE became more efficient as the HZ(R)HB authorities introduced on 30 June 1993 a system of deportation: releasing Muslim detainees from HVO detention centers contingent upon their departure to Croatia and thereafter transferred to a third country.⁸³⁷

309. Submissions in Grounds.1.1;1.3;16.1;16.2;16.3 are adopted here by reference.

10.16 and 10.17

⁸²⁶ Vol.4,para.58.

⁸²⁷ [REDACTED].

⁸²⁸ [REDACTED].

⁸²⁹ Nissen,20655/6-20657/9; [REDACTED];P02512/6D00007; [REDACTED];4D00496,p.1.

⁸³⁰ [REDACTED].

⁸³¹ [REDACTED].

⁸³² Ground.6.1,paras.184-185.

⁸³³ [REDACTED].

⁸³⁴ Vol.2,paras.227,232,824,874,1786;Vol.3,paras.502,508;Vol.4,para.60.

⁸³⁵ Vol.3,paras.502,508;Vol.4,para.61.

⁸³⁶ Vol.4,para.62.

⁸³⁷ Vol.2,paras.921-923,1642-1655;Vol.3,paras.140-145,264-266,270,272-274;Vol.4,para.64.

310. The TC erroneously found the existence of a clear pattern of conduct from January 1993 to April 1994 to modify the ethnic composition in the so-called Croatian provinces in light of the HZ(R)HB authorities' interpretation of the VOPP, and that HZ(R)HB political and military leaders, especially Prlić, lent support and coordination to field operations to carry out crimes in furtherance of a JCE.⁸³⁸ The TC offered no supporting authority for these conclusions.

Conclusions and relief:

311. The TC mischaracterized events and actions, failed to provide reasoned opinions, and applied an incorrect legal standard in assessing the evidence; an error of law invalidating the TJ. Properly assessing the evidence, no reasonable trier of fact would have found the existence of a common criminal purpose by the HZ(R)HB to use its political and military apparatus to dominate the Muslim population through ethnic cleansing; an error of fact effecting a miscarriage of justice.

312. The AC should overturn the convictions for Counts 1-25.⁸³⁹

⁸³⁸ Vol.4,paras.65-67.

⁸³⁹ Vol.1,paras.31-261,406-986;Vol.2,paras.669-748;Vol.3,paras.509-1741;Vol.4,para.278.

GROUND 11:

313. The TC erred in law and fact by finding that Prlić had significant *de jure* and *de facto* powers in coordinating and directing the work activities of the Government of the HVOHZ(R)HB.⁸⁴⁰

11.1

314. The TC erroneously assessed the functions and responsibilities of the HZHB President, the HRHB President, the HZHB Presidency, the HRHB House of Representatives, the HVOHZHB President, and the President of the HRHB Government.⁸⁴¹

315. Submissions in Grounds.1.2, paras.45-76; and 1.4 are adopted here by reference.

316. The TC erred by not distinguishing the HVOHZHB from the HRHB Government.

317. The TC ignored evidence that HDZBiH played a significant role in the division of powers in BiH and HZHB. HDZBiH was representing the Croats in international negotiations about the internal structure of BiH together with the SDA and SDS in BiH⁸⁴² and it was a signatory to international agreements.⁸⁴³ The Presidents of the HDZBiH municipal boards were members of the HZHB Presidency.⁸⁴⁴ The President of the HDZ executive council was also an *ex officio* member of the HRHB Presidential Council.⁸⁴⁵

318. Submissions in Ground.1.1 are adopted here by reference.

319. The TC ignored evidence that Boban, having concentrated the positions of President of HZHB Presidency and HZHB President,⁸⁴⁶ was the supreme authority in HZHB,⁸⁴⁷ with numerous advisors,⁸⁴⁸ holding unofficial meetings with the municipal HVO

⁸⁴⁰ Vol.1, paras.493-498, 511, 515-537, 556, 590, 606, 608, 615, 616, 626, 633, 639, 642-644, 645-650, 665, 670-677, 967; Vol.2, paras.5-12, 152-153, 227-228, 308-313, 327-330, 500-506, 521, 613, 669-693, 1765-1769; 1887-1893, 1903-1905, 2041-2053, 2065; Vol.3, paras.328-332; Vol.4, paras.88-121, 270, 273.

⁸⁴¹ Vol.4, paras.88-90.

⁸⁴² 1D00525; 1D00398, p.7.

⁸⁴³ 1D02434.

⁸⁴⁴ P00081, Art.7; Vol.1, para.505.

⁸⁴⁵ P07856.

⁸⁴⁶ Buntić, 30303/19-30305/22; 30306/21-30307/23; 30250/12-30251/14; Perković, 31784/9-31785/23; P00308; 1D00174; 1D00173; 1D00171; 1D00010; P00391, p.12, Buntić, 30358/24-30360/15.

⁸⁴⁷ Witness-I, 23410/11-23413/18; 23487/23-23488/15.

⁸⁴⁸ Witness-I, 23335/12-23336/2.

Presidents (members of the HZHB Presidency),⁸⁴⁹ and making decisions that had to be implemented by the HVOHZHB.⁸⁵⁰

320. Submissions in Ground.1.2,paras.50-51,54-55 are adopted here by reference.
321. The TC failed to assess the powers of the HRHB President and the composition of the Presidential Council. Prlić, as President of the HRHB Government, was not appointed by Boban to the Presidential Council.⁸⁵¹ The TC wrongly concluded that Boban altered the composition of the Council and appointed Prlić in this body;⁸⁵² it was the Chamber of Deputies that amended its decision on the establishment of the HRHB to include the President of the HRHB Government as an *ex officio* member.⁸⁵³
322. The TC erroneously assessed Prlić's powers by ignoring Zubak's powers, HVOHZHB Vice-President, who chaired HVOHZHB meetings during the time when Prlić was appointed Prime Minister of the BiH Government,⁸⁵⁴ coordinated relations with the departments and internal policy,⁸⁵⁵ coordinated the inter-departmental body for fighting crimes,⁸⁵⁶ chaired the Headquarters for refugees and displaced persons,⁸⁵⁷ and was appointed as the President of the Presidential Council:⁸⁵⁸ *de jure* and *de facto* powers that far exceeded Prlić's powers, despite his inferior denomination.
323. The TC ignored evidence showing the differences in the functioning of the HZHB and the HVOHZHB executive, the HRHB, and the HRHB Government and municipalities during different periods of war from 1991-1994.⁸⁵⁹
324. Submissions in Grounds.1.2,paras.45-57;1.4,paras.83-86 are adopted here by reference.
325. The TC erroneously concluded that as HVOHZHB President, Prlić played a significant role within the HVOHZHB because he signed official documents, directed

⁸⁴⁹ Witness-I,23517/9-23518/4;23413/22-23414/15;23562/22-23563/723415/1-11;23405/20-23406/12.

⁸⁵⁰ Tomić,34814/15-34816/18.

⁸⁵¹ P07424,Art.4.

⁸⁵² Vol.1,para.497.

⁸⁵³ P07883,Art.8a; P07882,Art.8a;P07876,Preamble;Tomić,34258/1-34260/2;P06930,pp.36-37.

⁸⁵⁴ 1D01608;1D01609;1D01667.

⁸⁵⁵ Perković,31679/19-31682/24;1D01881,p.2.

⁸⁵⁶ 1D01181,p.4.

⁸⁵⁷ P03092.

⁸⁵⁸ P07856,p.80.

⁸⁵⁹ 1D03111,pp.94-119,30-173,174-185.

debates during discussion over adopting decisions, organized votes and sometimes proposed revisions to texts.⁸⁶⁰ The TC relied on documentary evidence introduced through a Bar Table Motion:⁸⁶¹ the Statutory Decision of 3 July 1993, and Marjan's and Perković's testimonies. Marjan was discredited; as a historian he could not grasp basic legal issues relevant to understanding the collective decision-making process of the HVOHZHB.⁸⁶² He was also biased in favor of Stojić and the HVO.⁸⁶³ Perković accurately explained how the HVOHZHB functioned.⁸⁶⁴

326. The TC erroneously relied on Article 9, Statutory Decision of 3 July 1992, promulgated when Boban was HVOHZHB President, which specified that the HVOHZHB President "guide [not "direct" as in the translation], coordinate and supervise the work of administrative departments and bodies of regional administration of the HZHB."⁸⁶⁵ The TC ignored evidence showing, *de facto*, that Article 9 could not be implemented after Prlić replaced Boban on 14 August 1992, ignoring the Decree on the Organization and Responsibilities of Departments and Commissions of the HVOHZHB; crucial for understanding the HVOHZHB and its Rules of Procedure,⁸⁶⁶ and consequently, Prlić's actual power. Article 5 of the Decree is an apt example: it required the HVOHZHB departments and commissions to execute policies and apply and ensure the application of regulations and other acts issued by the HZHB Presidency.⁸⁶⁷ Hence, the department heads and commissions were directly responsible to the HZHB Presidency (municipal HVO Presidents) and not to the HVOHZHB President. (See Grounds.1.2.4;1.2.5)

327. The Rules of Procedure prescribed that the HVOHZHB functioned through the work of HVOHZHB bodies based on their draft programs that were to be submitted to the HVOHZHB for approval and which the President and Secretary of the HVOHZHB were to supervise the implementation.⁸⁶⁸ However, the HVOHZHB departments never

⁸⁶⁰ Vol.1,para.536;Vol.4,para.88.

⁸⁶¹ 2D00852;P01505;P01557.

⁸⁶² 35716/9-35728/20.

⁸⁶³ Vol.4,para.346.

⁸⁶⁴ 31722/22-31727/18.

⁸⁶⁵ P00303.

⁸⁶⁶ Buntić,30852/2-30853/23;31022/17-31025/18;30284/8-30286/7;Perković,31668/23-31670/8;1D00001;P09530.

⁸⁶⁷ 1D00001.

⁸⁶⁸ P09530,Arts.7-10.

submitted programs to the HVOHZHB, despite Prlić's requests.⁸⁶⁹ The first work program was prepared for the 1994 HRHB Government.⁸⁷⁰

328. In assessing Prlić's responsibilities, the TC further ignored changes in legislation after Boban relinquished his executive post to Prlić.⁸⁷¹

329. In Vol.4, paras.88-90 the TC erroneously assessed Prlić's *de jure* decision-making powers between August 1992 and April 1994 by not distinguishing the differences between the HZHB and HRHB at all relevant times and circumstances.

330. The TC erroneously concluded that Prlić presided over "cabinet" meetings of the HRHB Government, which had the power to make urgent decisions on defence and security.⁸⁷² It relied exclusively on the documentary evidence introduced through a Bar Table Motion.⁸⁷³ These are the meetings of the HRHB Government, not meetings of the "cabinet" whose establishment was prescribed by the Law on Government.⁸⁷⁴ There is no evidence that cabinet meetings ever took place. The TC erroneously concluded that Ćorić, as Chief of Military Police Administration, attended HVOHZHB sessions, by relying on irrelevant evidence.⁸⁷⁵ There is no evidence that Ćorić attended these sessions.

331. The TC erroneously concluded that at the recommendation of the President of the HRHB Government, the Government appointed and removed heads and deputy heads of the "cabinet."⁸⁷⁶ The TC relied exclusively on documentary evidence introduced through a Bar Table Motion,⁸⁷⁷ which either came into effect during a period outside the Indictment or which was not relevant to the HRHB. Article 27 of 1D01402 prescribed the appointments and the dismissal of "head of offices" not the heads of the "cabinet."

332. The TC erroneously concluded that from August 1992 to April 1994 the "HVO/Government of the HZ(R)H-B" discussed measures to ensure the observance of the code of war.⁸⁷⁸ The TC relied on P06687 and Watkins' testimony. In his report

⁸⁶⁹ Perković, 31678/22-31679/18; 1D02749.

⁸⁷⁰ Tomić, 34808/16-34809/17; 34118/25-34120/5; 34045/1-11; Witness-I, 23590/11-22; P06689.

⁸⁷¹ Ground.1.2, paras.47-57.

⁸⁷² Vol.1, para.527; Vol.4, para.88.

⁸⁷³ P06667; P07279; P07310; P08092; Ground.3.

⁸⁷⁴ P05517, p.2, Art.9; Perković, 31808/23-31809/7; P07279;

⁸⁷⁵ P01572; P09545, p.111.

⁸⁷⁶ Vol.1, para.537.

⁸⁷⁷ 1D01402; P06817; P07461; Ground.3.

⁸⁷⁸ Vol.4, para.88.

Watkins claims that Prlić, as the President of the HRHB Government, met with Roso “to discuss measures introduced to ensure observance of the code of war.” The HVOHZHB did not exist at the time of this document; it cannot be used to assess Prlić’s responsibilities as HVOHZHB President. There is nothing in this document about HRHB Government meetings discussing measures to be taken for ensuring the observance of the code of war.

333. The TC erroneously concluded that from August 1992 to April 1994 the “HVO/Government of the HZ(R)H-B” discussed the budget of the “HZ(R)HB.”⁸⁷⁹ It erroneously relied on 2D01262, Minutes of the HZHB Presidency session from 17 October 1992, and not of the HVOHZHB. It erroneously relied on P01097, a Working Meeting of 11 January 1993, introduced by a Bar Table Motion. The TC ignored Tomić’s testimony that:

- a. the enactment of the Budget was under the competency of the HZHB Presidency up to 28 August 1993 and after that under the HRHB House of Representatives;
- b. the Budget for the HZHB was never enacted; and
- c. the first law on the Budget was proposed and enacted in 1994 by the House of Representatives of the HRHB.⁸⁸⁰

P08092 is Minutes of the 18th HRHB cabinet meeting of 19 April 1994, introduced through a Bar Table Motion. It does not show nor can it prove that the HVOHZHB had a Budget.

334. The TC erroneously concluded that from August 1992 to April 1994 the “HVO/Government of the HZ(R) H-B” discussed the location, detention conditions and exchange of “prisoners of war” with the ABiH.⁸⁸¹ The HVOHZHB never discussed the exchange of prisoners of war. P01439 talks about a proposal of the Commission for Exchange to exchange 30 civilians from Glamoč (controlled by Serb forces) and Livno (controlled by HVO forces). The TC erroneously linked the HVOHZHB Decision (P02679) to establish military prisons to detain prisoners of war. Military prisons were for

⁸⁷⁹ Vol.4,para.88;Ground.3.

⁸⁸⁰ Tomić,33826/14-33828/5;33867/5-33868/24;33871/7-33872/13;33878/13-33883/3;33883/4;33884/13.

⁸⁸¹ Vol.4,para.88.

suspects, accused, and sentenced individuals based on court decisions. P03560 is Minutes of the meeting from 19 July 1993 dealing with an emergency situation when the issue of accommodation of prisoners of war was discussed based on a request of the municipal HVO Čapljina.

335. Submissions in Ground.13 are adopted here by reference.

336. The TC ignored the Rules of Procedure for the HVOHZHB⁸⁸² in concluding the decision-making process in HVOHZHB.⁸⁸³ The TC ignored evidence that all members of the HVOHZHB were equally responsible for every decision⁸⁸⁴ irrespective of the votes cast.⁸⁸⁵ Though Prlić signed collective decisions of the HVOHZHB, including all appointments proposed by departments, he had no power to appoint anyone;⁸⁸⁶ he merely had a vote equal to others.⁸⁸⁷

337. The TC mischaracterized Prlić's words⁸⁸⁸ when he explained how the power of the HVOHZHB President was reduced by the changes in legislature after Boban ceased to be its President.⁸⁸⁹ Prlić reiterated that he could not make any decisions independently.⁸⁹⁰

11.2

338. The TC erroneously concluded that the HVOHZHB progressively appropriated/abrogated for itself all the executive and administrative powers including legislative functions because the HZHB Presidency met infrequently and lacked oversight,⁸⁹¹ by relying on Ribičić and Tomljanovich, and by mischaracterizing Tomić's and Buntić's testimonies. Ribičić acknowledged that the HVOHZHB adopted decrees on an interim basis in emergency situations and exceptional circumstances to be confirmed

⁸⁸² P09530.

⁸⁸³ Vol.1,para.536;Vol.4,para.89-90.

⁸⁸⁴ Buntić,30757/25- 30758/13.

⁸⁸⁵ P09530,Božić,36250/22-36255/4;Perković,31723/22-31727/18;Buntić,30286/14-21;30285/23-30286/13;30734/5-30738/12.

⁸⁸⁶ Tomić,33726/1-33727/23;Božić,36198/17-36192/15;Buntić,30625/6-30626/24.

⁸⁸⁷ Raguž,31310/21-31316/10.

⁸⁸⁸ Vol.4,para.89,fn.256.

⁸⁸⁹ P09078,pp.35-37.

⁸⁹⁰ Prlić-opening,27562/9-20;P00303,Art.16;P09530;Perković,31719/25-31720/17;31678/22-31679/18;31743/17-31746/15;31668/23-31670/8.

⁸⁹¹ Vol.1,paras.511,522.

by the HZHB Presidency; a common practice permitting the HZHB Presidency (the Presidents of municipal HVOs) to retain power.⁸⁹²

339. Submissions in Ground.1.2,para.54 are adopted here by reference.

340. Articles 38-43 of the Rules of Procedures of the HZHB Presidency (P00596) show that the HZHB Presidency was superior to the HVOHZHB.⁸⁹³ As the supreme administrative body, the HZHB Presidency was kept fully informed.⁸⁹⁴ The changes to Article 18 of the Statutory Decision enabled the HVOHZHB to pass pressing decrees for immediate enactment until determined otherwise by the HZHB Presidency.⁸⁹⁵ The HVOHZHB urged the HZHB Presidency to meet.⁸⁹⁶ Similar measures in emergency situations were prescribed in the BiH legal system (All People's Defence system).⁸⁹⁷

11.3

341. The TC erroneously concluded that Prlić was "involved in the supervision and activities" of the Department/Ministry of Defence of HZ(R)HB.⁸⁹⁸ The TC repeatedly erred in its assessment of Prlić's *de jure* and *de facto* powers by vacuously reciting that he was "involved in the supervision and activities" of all HVOHZHB departments, sub-departments and offices, and by ignoring evidence to the contrary.⁸⁹⁹

342. While the HVOHZHB could make recommendations to the Defence Department for certain actions, neither the HVOHZHB nor Prlić could issue orders to the Head of the Defence Department.⁹⁰⁰

343. The HZHB Presidency established the Defence Department and Boban created its organizational structure.⁹⁰¹ Marjan confirmed the close relationship between the Defence

⁸⁹² Ribičić,25483/22-25484/14;25480/20-25481/20;25485/14-25486/17;25491/16-25492/15;25497/6-25498/7; 25501/22-25502/11;P08973,p.31.

⁸⁹³ P08973,p.31.

⁸⁹⁴ P09530,Art.30;P04220;Buntić,30898/3-30901/2;30389/20-30390/14,30898/3-30901/2;1D01979; P00559,p.5;P00921;P01505;1D01672;P09551,p.82;Tomić,33845/20-33847/3;Perković,31741/9-31743/15;P00596,Art.40

⁸⁹⁵ P00684;Perković,31670/9-31671/14;Buntić,31025/19-31028/3.

⁸⁹⁶ Buntić,30904/11-30905/4;30907/2-30908/11;30708/19-30711/2;30251/15-30252/7;30368/18-30370/16; 30403/6-30404/16;P00543,p.8;P01627,item3,pp.1-2.

⁸⁹⁷ 1D00897,Arts.66,84.

⁸⁹⁸ Vol.4,paras.91-92.

⁸⁹⁹ Vol.4,paras.92,94,96,98,100,104.

⁹⁰⁰ P03796,p.5;P05963.

⁹⁰¹ Vol.1,paras.539-540,698.

Department and Boban.⁹⁰² After Boban relinquished his position as HVOHZHB President to Prlić, all powers in military matters were transferred from the HVOHZHB to the Defence Department. (Grounds.1.2,12). The TC ignored evidence showing the Defence Department's independence, having full autonomy over its budget.⁹⁰³ Its actual powers are demonstrated through its orders to the Department of Interior and municipal police,⁹⁰⁴ its direct orders to the military,⁹⁰⁵ and its independent decisions on its scope of work.⁹⁰⁶ Božić, the Deputy Head of the Defence Department, confirmed that the HVOHZHB neither supervised the Defence Department⁹⁰⁷ nor Stojić. Poignantly, the municipal HVOs, not the HVOHZHB, financed the Defence Department's Security Service.⁹⁰⁸

344. Submissions in Grounds.1.2,paras.52;1.2.4-1.2.5 and 12 are adopted here by reference.

345. The TC erroneously concluded that Prlić participated in setting up the military and defence program and structures of the HZ(R)HB.⁹⁰⁹ P00988 bears no signature and no date.⁹¹⁰ P00518 lists decrees adopted by the HZHB President, HZHB Presidency, and the Defence Department; none of these acts were adopted by the HVOHZHB.⁹¹¹

346. The TC erroneously concluded that Prlić approved the methodology for adopting defence plans and participated in the adoption of the decision on the control of HZ(R)HB airspace.⁹¹² P00767(p.3) shows that the HVOHZHB approved the methodology for adopting defence plans.⁹¹³ P07310(p.3,item7), introduced through a Bar Table Motion, shows that the decision to control the airspace has no reference to the Defence Department or Ministry of Defence.

347. The TC erroneously concluded that Stojić regularly reported to "his President" on defence matters including the military situation on the ground, by relying on P01324 and

⁹⁰² Marjan,35735/16-35738/17;P00098;P00586;P02477.

⁹⁰³ Tomić,34816/19-34817/3;34182/23-34183/1;34775/11-21;34801/14-34804/5;34804/6-34805/2;34801/14-34805/22;P00588,Art.170;Witness-I,23339/1-23340/13.

⁹⁰⁴ P03123/P03124.

⁹⁰⁵ P00804;P00933;P01246;P02093;P02292;P03124;2D00485;P01316;P00610;P00619;P02673;Petković, 50081/19-50083/6;4D00320;P00468;P00491;P01493;P06087;P00799;2D00984.

⁹⁰⁶ P00518;1D00001,Art.9.

⁹⁰⁷ Božić,36535/20-36537/6.

⁹⁰⁸ Bandić,38016/15-38017/22;2D00931.

⁹⁰⁹ Vol.4,para.91.

⁹¹⁰ Pinjuh,37231/25-37232/22.

⁹¹¹ Ground.3.

⁹¹² Vol.4,para.91.

⁹¹³ Ground.12;Ground.3.

1D02179.⁹¹⁴ Stojić briefed the entire HVOHZHB and HRHB Government. Relevant, yet ignored, is P03796(p.5) showing the HVOHZHB (not Prlić) recommending (not ordering) the Defence Department to issue timely reports about the situation at the front line to the public and to the HVOHZHB.

348. The TC erroneously concluded that the “HVO agreed” that Prlić would organize a special working meeting with the collegiums of the Defence Department and Department of Interior based on P03796,p.5. Because of frequent clashes over jurisdiction between the civilian and military police in Mostar, the HVOHZHB (not Prlić) recommended that the officials from the Defence Department and the Department of Interior meet to discuss these issues, public order being a common field of activity.⁹¹⁵ The HVOHZHB, not having the power to impose its will or give orders to Department Heads, attempted to assist these two Department Heads to define their respective jurisdictions and reach a *modus vivendi* for dealing with criminality.⁹¹⁶ The TC ignored evidence showing that matters of public order were a common field of activity of those two departments, and that they cooperated without the HVOHZHB.⁹¹⁷ Even from this one document cited by the TC, it can only be concluded that Prlić could not independently organize working meetings with the department, but only with the approval of the collective body/HVOHZHB.

349. The TC erroneously concluded that Prlić appointed Biškić as a Deputy Defence Minister,⁹¹⁸ by mischaracterizing Biškić and other evidence; the HRHB Government appointed Biškić as assistant Minister of Defence (not Deputy) based on the proposal of the Defence Minister.⁹¹⁹ Prlić had no power to independently make decisions/appointments.⁹²⁰

⁹¹⁴ Vol.4,para.91;Ground.3.

⁹¹⁵ Božić,36403/12-36404/15;P02578;P06208.

⁹¹⁶ P03796;P04008;P01661;P02575;P04008;P04111;2D00854;P04275;P04276;P04841;P05610;P07310;P07354;P08276,pp.5,6.

⁹¹⁷ Božić,36403/12-36404/15;P02578;P06208.

⁹¹⁸ Vol.1,para.608;Vol.4,para.91.

⁹¹⁹ Biškić,15350/14-15353/11;1D01260,Art.29;P06994;P07000,p.12.

⁹²⁰ Ground.11.1.

350. The TC erred regarding Jukić's appointment.⁹²¹ The House of Representatives elected the President and members of the Government subsequent to their nomination for appointment by the President of the Republic.⁹²²

351. The TC erred by ignoring evidence showing the differences between the HVOHZHB and the HRHB Government. While the HVOHZHB Department Heads were proposed and appointed by Boban or the HZHB Presidency,⁹²³ it was not until the end of 1993 that Prlić, as acting President of the HRHB Government, had *some* say on ministry appointments.

11.4

352. The TC erroneously concluded that Prlić was involved in the supervision and activities of the Department/Ministry of Interior of the HZ(R)HB.⁹²⁴

353. The TC erroneously relied on evidence that Prlić signed appointments (1D00190,P03791) to conclude that Prlić had power over the other members of the HVOHZHB – he only signed collectively adopted decisions.⁹²⁵ The TC ignored evidence that the Rules of Internal Organization required the approval of the HVOHZHB based on the criteria of the Department of Justice and General Administration.⁹²⁶

354. Submissions in Grounds.1.2,paras.52;1.2.4 and 1.2.5;11.3,para.350 are adopted here by reference.

355. The TC erroneously concluded that the HVOHZHB agreed that Prlić would organize special working meetings with the collegiums of the Defence Department and the Department of Interior.⁹²⁷

356. The fact that Prlić presided over meetings of the HVOHZHB and the HRHB Government during which decisions about the Ministry of Interior and its activities were adopted, does not prove that Prlić was involved in the supervision and activities of the Ministry of Interior. The TC relies on several documents introduced through a Bar Table

⁹²¹ Vol.1,para.556.

⁹²² P05517,Art.4;P06581,p.26-27,29;Vol.1,paras.503,514.

⁹²³ Ground.1.2,para.51.

⁹²⁴ Vol.4,paras.93-94.

⁹²⁵ Perković,31686/15-31688/4;P01063,p.6.

⁹²⁶ Perković,31679/19-31682/24;1D01881,p.2

⁹²⁷ P03796;Ground.11.3,para.348.

Motion, some of which are from the period not covered by Indictment⁹²⁸ or do not mention Prlić's presence.⁹²⁹ The rest of the cited documents do not mention decisions about the Ministry of Interior. For example, P06667 concerns the first session of the HRHB Government presided over by Boban; P07354 is the HRHB Government meeting where the Ministries of Interior, Justice, and Finance were entrusted by the Government to prepare a report for the House of Representatives about activities taken to prevent crimes;⁹³⁰ P05714 relates to an HRHB Government meeting where nothing about the Ministry of Interior is discussed; P06689 is Prlić's letter to municipalities urging them to be fiscally disciplined. P01403 is the only cited document from when the HVOHZHB functioned (3 February 1993) and where a position was adopted calling for the financing of the activities of the Department of Interior to be ensured at the level of the HZHB. No evidence exists that this conclusion was implemented.

357. The TC erroneously relies on P06581, pp.26-29 in concluding that Prlić proposed Ćorić's appointment as Minister of Interior of the HRHB to Tuđman. Boban proposed Ćorić.⁹³¹

358. In assessing the "supervision" over the Department of Interior and Ministry of Interior, the TC ignored evidence that the Department of Interior and Ministry of Interior, with the Defence Department and Defence Ministry respectively, independently decided about the engagement of police forces.⁹³²

359. There is no evidence that Prlić issued orders to the Department of Interior. Contrastingly, there is a plethora of evidence that military authorities and the Defence Department independently/autonomously supervised and ordered the civilian police forces as they saw fit, without any authorization from or reference to Prlić or the HVOHZHB.⁹³³ The TC ignored the Report of Work of the Department of Interior: "The competent authorities have been promptly provided with information of defence and security interest obtained in the course of, or in connection with, police work, with 44 reports of security interest submitted to the HZHB President, and 48 reports containing

⁹²⁸ P08253;P08276;Ground.3.

⁹²⁹ P07850;Ground.3.

⁹³⁰ P07354,p.2.

⁹³¹ P06581,p.26;Praljak,41502/7-23.

⁹³² Petković,49604/19-49606/21;P03027;P06027;P05573;P03123/3124.

⁹³³ Praljak,42737/24-42750/1;P03160;P03135;5D02009;5D02189;40987/16-40989/16;41215/4-18;42078/1-42082/25;P05235;P05232;41188/11-41189/13;3D01202;Pavlović,46905/12-46906/16;5D04392;P04125;5D00546;5D01065;5D03019.

intelligence data of defence interest to the Defence Department.”⁹³⁴ No information on “security and defence interest” was submitted to the HVOHZHB or to the HVOHZHB President. And rightly so. The Decree on Internal Affairs did not envisage an obligation to inform the HVOHZHB about its activities, but instead the HZHB Presidency.⁹³⁵

11.5

360. The TC erroneously concluded that Prlić was involved in the supervision and activities of the Department/Ministry of Justice and General Administration of the HZ(R)HB because he presided over HVOHZHB meetings and signed some appointments.⁹³⁶ Presiding over HVOHZHB and HRHB Government meetings did not give Prlić the power to supervise the Department/Ministry of Justice and General Administration of the HZ(R)HB.

361. Submissions in Grounds.1.2,paras.52;1.2.4 and 1.2.5 are adopted here by reference.

362. The TC ignored evidence that the HVOHZHB was responsible for judicial appointments.⁹³⁷

11.6

363. The TC erroneously concluded that Prlić directed and controlled the fiscal and financial organs of the HVO/Government of the HZ(R)HB and its budget,⁹³⁸ by relying on documents covering the period when the Ministry of Finance did not function⁹³⁹ and by mischaracterizing Witness-I’s testimony.⁹⁴⁰ Prlić could only act with authorization from the HVOHZHB.

364. Submissions in Grounds.1.2,para.52;1.2.4-1.2.5 and 11.1 are adopted here by reference.

365. The TC erroneously concluded that Prlić directed, supported, and facilitated raising or collecting funds. None of the decrees proposed by the Department of Finance and enacted

⁹³⁴ P00128,pp.18-19;P09545,para.118.

⁹³⁵ 1D00002,Art.12.

⁹³⁶ Vol.4,paras.95-96.

⁹³⁷ Buntić,30625/6-30626/24;31025/19-31028/3;2D01262;30501/12-30502/9;1D02384;P00684;Perković, 31670/9-31671/14.

⁹³⁸ Vol.4,paras.97-98.

⁹³⁹ P00102;1D00036;P01097.

⁹⁴⁰ Witness-I,23449/7-23451/20.

by the HVOHZHB authorized such power to the HVOHZHB President. Witness-I does not support the TC's conclusions, as it claims.⁹⁴¹

366. Likewise, the TC erroneously concluded that Prlić drew up, supervised, and controlled the budget of the HVO/Government of the HZ(R)HB. Again, the TC mischaracterizes the evidence.⁹⁴² The conclusions in 1D02136 and 1D02135 (when the HRHB Budget had yet to be adopted) are revealing: the HVOHZHB is reminding the Finance Department of its obligations – pursuant to HVOHZHB decrees – to estimate the inflow of funds in the budget.⁹⁴³ The House of Representatives was in charge of the HRHB Budget,⁹⁴⁴ as concluded by the TC in Vol.1, para.508 and as Cvikl explained.⁹⁴⁵ The Head of the Finance Department of the HVOHZHB was vested with the executive authority to implement the budget; he did not need authorization from the HVOHZHB President.⁹⁴⁶ No budget was adopted in 1992 or 1993; expenditures were made pursuant to HVOHZHB decisions,⁹⁴⁷ with the first budget drafted by the Finance Ministry being adopted for the HRHB in 1994.⁹⁴⁸

11.7

367. The TC erroneously concluded that Prlić was involved in directing and organizing the ODPB's activities and had power to direct it and control it,⁹⁴⁹ while finding, contradictorily, that the ODPB was accountable to the HVOHZHB and not to Prlić.⁹⁵⁰ The TC erred by basing its conclusion on HVOHZHB decisions signed by Prlić⁹⁵¹ and by mischaracterizing Raguz's testimony.⁹⁵²

368. The TC erroneously concluded, based on 1D02141, that Prlić "instructed" the ODPB to facilitate the working conditions for three experts from the Croatian ODPB and ensure their security and access to information during their visit in HZHB territory as part of

⁹⁴¹ Witness-I, 23449/7-23451/20.

⁹⁴² P00412; 1D02135; P01403; 1D02136; P00511; P06189.

⁹⁴³ Tomić, 33867/5-33870/23; 33871/7-19.

⁹⁴⁴ Cvikl, 35300/8-15; P04589, Art. 7; Tomić, 33878/13-33884/13; 1D02740.

⁹⁴⁵ Cvikl, 35310/10-35311/24.

⁹⁴⁶ P00578, p.2.

⁹⁴⁷ Tomić, 33826/14-33828/5; 33872/1-13; 34045/1-11; 1D00049.

⁹⁴⁸ Tomić, 33826/14-33828/5; Cvikl, 35310/10-35312/14; P07629; P08035.

⁹⁴⁹ Vol.4, paras.99-100.

⁹⁵⁰ Vol.1, paras.626-639.

⁹⁵¹ P00848; P03079; P03092.

⁹⁵² Raguz, 31310/21-31316/10.

joint activities related to displaced persons and humanitarian and social issues. Prlić was neither instructing nor ordering; on behalf of the HVOHZHB he was pleading.⁹⁵³

369. The TC erroneously concluded that Prlić participated in a meeting attended by Zubak and Tadić, during which they allegedly “informed an international organization of their plan to negotiate with the Croatian ODPR for transit visas for Muslims” by relying on one [REDACTED] document.⁹⁵⁴ Nothing supports the conclusion that Prlić directed or controlled the ODPR during this meeting or at any other time.

370. Submissions in Grounds.16.6.3-16.6.4 are adopted here by reference.

371. The Headquarters for refugees was formed due to the gravity of the humanitarian situation at the time,⁹⁵⁵ for activities usually performed by the municipalities.⁹⁵⁶ Zubak headed the Headquarters and was authorized to make autonomous decisions in the Headquarters’ area of responsibility, with the ODPR becoming more autonomous.⁹⁵⁷

11.8

372. The TC erroneously concluded that Prlić exercised direct power over the Service for the Exchange of Prisoners and Other Persons, in particular, by supervising the establishment, organization and activities of the Service and by being kept informed of its activities.⁹⁵⁸ It erroneously relied on the HVOHZHB decision establishing the Service and appointing Pušić as its head, introduced through a Bar Table Motion;⁹⁵⁹ the Commission was established and functioned with Pušić as its member, as stated by the TJ.⁹⁶⁰ This document (P07102) bears no indicia of reliability: bearing neither a signature nor a stamp. There is no corroborating evidence that this is the genuine document that was ever sent to or received by the HRHB Government or Prlić.

373. The TC erroneously relied on three “reports” purportedly sent by Pušić to the HRHB Government on 15 and 18 December 1993 and 3 January 1994, about the implementation

⁹⁵³ Raguž,31321/21-31325/24; [REDACTED].

⁹⁵⁴ [REDACTED].

⁹⁵⁵ 1D01263;1D01264;1D01264;3D00837.

⁹⁵⁶ Šimunović,33492/1-23;Raguž,31546/3-8;P03092,Art.2.

⁹⁵⁷ Raguž,31318/5-31319/9;31543/15-31547/25;1D01672;31328/10-31330/12;1D01590.

⁹⁵⁸ Vol.4,paras.101-104.

⁹⁵⁹ P03796;Ground.3.

⁹⁶⁰ P02520;P06805,p.2.

of Boban's Decision to close the detention facilities.⁹⁶¹ No exhibit numbers are offered by the TC.⁹⁶² Notwithstanding these uncorroborated documents, the Service was autonomous, communicating directly with the ICRC, Croatia, and the BiH Government;⁹⁶³ evidence ignored by the TC. The Service for Exchange was a technical body, not accountable to the HVOHZHB; it is not referenced in any of the semi-annual reports of the HVOHZHB or in the Program of the HRHB Government.⁹⁶⁴

11.9

374. The TC erroneously concluded that Prlić directed and supervised the work of the municipal HVO authorities, coordinated the work of the municipal administrative bodies, could dissolve the municipal HVOs, annul their enactments, appoint and dismiss their members, and abrogate the decisions of the municipal HVOs that contravened the regulations in force in the HZ(R)HB.⁹⁶⁵

375. Submissions in Grounds.1.2,paras.54-55;1.2.6 are adopted here by reference.

376. The TC erroneously concluded that Prlić participated in the dissolution of the municipal HVOs which did not conform to HZ(R)HB policies, by relying on the dissolution of the Ljubuški HVO and two documents introduced through a Bar Table Motion.⁹⁶⁶ Neither of these documents support the TC's conclusions that Prlić participated in the dissolution of the municipal HVOs.

377. The TC erroneously concluded that Prlić received reports from the municipal HVOs based on three documents introduced through a Bar Table Motion.⁹⁶⁷ P01853 is a plea for help to President Tuđman; Boban and Prlić are copied. P06292 is a complaint on the work of the Vitez Defence Office sent to Boban and five others, including Prlić. 2D00852 are the Minutes of an HVOHZHB meeting about the situation in Mostar Municipality; no evidence was introduced showing that a working group composed of Zubak, Petković, Božić, Alapeza, and Begić ever met, produced any assessments or made

⁹⁶¹ Vol.4,paras.101-103.

⁹⁶² P07178;P07246;P07468.

⁹⁶³ P05870;P05877;Raguž,31337/22-31338/24;1D02170.

⁹⁶⁴ 4D01464;P00128;P04699;P04735;P04220.

⁹⁶⁵ Vol.1,para.105.

⁹⁶⁶ P01781;P01700;Ground.3.

⁹⁶⁷ P01853;2D00852;P06292;Ground.3.

any proposals.⁹⁶⁸ None of those documents support the conclusion that Prlić received reports.

378. The TC erroneously concluded that Prlić participated in the appointment of members of various municipal HVO councils, by relying on two documents introduced through a Bar Table Motion.⁹⁶⁹ P05805 is a 10 November 1993 request by the President of municipal HVO Ljubuški to the HVOHZHB to verify changes in the composition of the existing HVO that took place since its establishment in 1992. P08239 is the 28 April 1994 Minutes of the meeting of the HRHB, reflecting a period which is outside the scope of the Indictment. Neither of those documents supports the conclusion that Prlić participated in the appointment of municipal HVO council members.

Conclusions and relief:

379. The TC failed to analyze Boban's *de facto* powers. The TC's fundamental failure to consider: the evolving nature of the HZHB/HRHB due to the organic nature of the events in BiH and the attendant international negotiations; the distinct characteristics of these two organs; and the evidence adduced by Prlić and others led the TC to erroneously conclude that Prlić was at the apex, with virtual omnipotent power over the civilian, military, and municipal authorities in the HZ(R)HB; an error of law invalidating the TJ. Had the TC properly assessed the evidence, no reasonable trier of fact would have found that Prlić had *de jure* or *de facto* powers to coordinate and direct the work activities of the Government of the HVOHZ(R)HB or contributed to any JCE; an error of fact effecting a miscarriage of justice.

380. The AC should overturn the convictions for Counts 1-25.⁹⁷⁰

⁹⁶⁸ 2D00852,p.8,Item.4,Conclusion.2.

⁹⁶⁹ P05805;P08239;Ground.3.

⁹⁷⁰ Vol.1,paras.31-261,406-986;Vol.2,paras.669-748;Vol.3,paras.509-1741;Vol.4,para.278.

GROUND 12:

381. The TC erred when it found that Prlić was a member of a JCE and made a significant contribution to the execution of that JCE as President of the Government of the HVOHZ(R)HB, by chairing high-level meetings where decisions on the political and military strategy in the HZ(R)HB were adopted, and that he could issue military decisions through the military chain-of-command.⁹⁷¹

12.1

382. The TC erroneously concluded that Prlić had power in military matters and that “the Government of the HVOHZ(R)HB had the power and responsibility to control, in general and particularly in terms of the military strategy, the armed forces of the HZ(R)HB.”⁹⁷²

383. The TC relied solely on P00588(Article 9) in finding that the HVOHZHB played a role in military matters because the HZHB’s defence plans were to be produced.⁹⁷³ The TC ignored evidence that in the Yugoslav system of All People’s Defence, every social and political community, from the federation to the municipality,⁹⁷⁴ as well as every legal entity, from kindergartens to libraries to courts to enterprises, was obliged to have a defence plan having nothing to do with the usage of military forces.⁹⁷⁵ There is no evidence of any HVOHZHB defence plans.⁹⁷⁶

384. The TC mischaracterized Petković’s evidence, claiming that he acknowledged that the HVOHZHB – as the civilian authority in the HZHB – exercised control over the HVO/military authorities.⁹⁷⁷ Petković commented on the 17 September 1992 interview (1D02078) where Prlić explained: “*The Croatian Defence Council is a civilian authority, namely the temporary executive government of the Croatian Community of Herceg-Bosna and that much should be clear. In all fairness, terms coincide. HVO/Croatian Defence Council/ is also the name of the military units operating in this area, and the same designation is that of the temporary executive government in the area of the Croatian*

⁹⁷¹ Vol.1, paras.452-462,465-472,515-537,761,767-768,791-796,858,877; Vol.4, paras.106-111,276,297-298,300,304,308,312,336,382,425,429.

⁹⁷² Vol.1, paras.517-521; Vol.4, para.106.

⁹⁷³ Vol.1, para.518; Pinjuh, 37236/18-37237/7; See Ground.3.

⁹⁷⁴ Puljić, 32086/1-32087/16; 32094/8-21; 32133/9-32134/25.

⁹⁷⁵ Perković, 31751/2-31755/13; 1D00897; 1D02722; 1D02723; 1D02724; 1D02811; Tomić, 33715/22-33717/22; Buntić, 30434/20-30436/15; 1D02383; Marjan, 35602/5-17.

⁹⁷⁶ Petković, 49380/18-49381/7; Praljak, 43612/8-14.

⁹⁷⁷ Vol.1, para.519.

Community of Herceg-Bosna...”⁹⁷⁸ Petković remarked that he “understood that the HVO was civilian authorities and then you have HVO as a military authority.”⁹⁷⁹

385. In Vol.1,para.519, the TC relied on Petković’s Final Brief in support of its conclusions. Absurd. Representations by Counsel for an accused or by the OTP in final briefs or closing arguments have no legal authority. (Ground.5,para.161).

386. The TC misinterpreted Petković’s testimony claiming he acknowledged that the civilian authorities of the HVOHZHB were asked to set the “overall strategy” of the HZHB,⁹⁸⁰ citing Petković where he comments about: defence plans, the Defence Department’s authority, Boban as a Supreme Commander, briefing the HVOHZHB after which some decisions were taken by the HVOHZHB, and the 28 August 1993 meeting of the HZHB Presidency. None of this evidence establishes beyond a reasonable doubt that the HVOHZHB set the “overall strategy” or any “strategy” for the HZHB. Petković never produced a single document showing where he – as the highest military officer of the HVO being accountable to Boban and responsible for all HVO military personnel and affairs, save for Boban – was directly ordered by Prlić or the HVOHZHB to take military action. (See Ground.16.1,para.455-459 concerning the 15 January 1993 HVOHZHB Decision made pursuant to Boban’s order as transmitted by Praljak.)

387. The TC erroneously relied on P00289, the 3 July 1992 Decree on the Armed Forces. This Decree was in effect when Boban was HVOHZHB President and when he was both the highest executive and legislative authority, and the Supreme Commander. When Boban relinquished his executive authority within the HVOHZHB, the HZHB Presidency – of which Boban was President – amended the Decree, stripping the HVOHZHB President and the HVOHZHB of any power over the HVO. Carelessly, Marjan – Stojić’s historian/military expert – analyzed the 3 July 1992 Decree on the Armed Forces,⁹⁸¹ though this blunder was exposed when he testified. (See Amended Decree on Armed Forces 4D00521/P00588 for an accurate account of the HVOHZHB’s actual powers or lack thereof over the HVO/military and its commanders, Petković and Praljak).

⁹⁷⁸ 1D02078,pp.4-5.

⁹⁷⁹ Petković,50013/5-50036/17;specifically,50014/23-50016/6.

⁹⁸⁰ Vol.1,para.519.

⁹⁸¹ 2D02000,pp.5-8,paras.2-7.

388. The TC's reliance on the HVOHZHB Report for the work of various departments during the year 1992⁹⁸² is equally inapt; it does not show that the HVOHZHB made political or "overall strategy" decisions.

389. The TC mischaracterized Petković's testimony.⁹⁸³ Petković testified that the HVOHZHB could make conclusions or proposals about certain issues but that the final decisions rested with the Supreme Commander or Chief of Main Staff, mentioning as examples two proposals to the Supreme Commander in June 1993 without giving any details.⁹⁸⁴

390. Petković testified that only the Supreme Commander and the Main Staff could decide about military matters,⁹⁸⁵ that the HVOHZHB was not part of the military,⁹⁸⁶ that he never received any orders from any civilian/politician other than from Boban,⁹⁸⁷ and that he had no contacts with Prlić except three times when he was invited to HVOHZHB sessions.⁹⁸⁸

391. Praljak, the second Chief of Main Staff, testified that neither Prlić nor the HVOHZHB had the power to give him orders,⁹⁸⁹ and that the HVO armed forces was only obliged to implement Boban's orders/political will.⁹⁹⁰ Even the TC concluded that the Chief of the Main Staff was "directly accountable to the Supreme Commander in those areas specifically related to strategic planning and the use of the said armed forces."⁹⁹¹

392. Contrary to the TC's findings, Marjan testified that the HVOHZHB issued "instruction and guidance" to the Defence Department, not instruction for enforcement of "issues related to defence."⁹⁹² The TC ignored evidence that the field of activities of the Defence Department was much broader than military issues,⁹⁹³ and that the Defence Department was obligated to cooperate with other administrative bodies to synchronize

⁹⁸² P00128,p.3.

⁹⁸³ Vol.1,para.519.

⁹⁸⁴ Petković,49768/25-49771/1.

⁹⁸⁵ Petković,49771/18-22.

⁹⁸⁶ Petković,50186/11-188/20.

⁹⁸⁷ Petković,50361/23-50362/19;50775/18-777/18.

⁹⁸⁸ Petković,49762/13-49764/23.

⁹⁸⁹ Praljak,41465/3-41467/12; Božić,36362/1-36363/13.

⁹⁹⁰ Praljak,44395/19-44396/7.

⁹⁹¹ Vol.1,para.495.

⁹⁹² Vol.1,para.519;2D0200,para.13.

⁹⁹³ Vol.1,para.540;1D00001,Art.9; Božić,36456/5-15;36403/12-36404/15;P02578;Pinjuh,37.231/25-37232/22;37329/2-22;Buljan,36741/20-36742/9;P02477;36744/2-25;P04699,p.9;P07419,p.2;36799/5-36800/9;P09551,p.6.

defence-related activities.⁹⁹⁴ Marjan explained that political decisions regarding military matters were not the purview of the executive, that only the HZHB Presidency was able to adopt such decisions supported by the HDZ⁹⁹⁵ and that political control over the armed forces was exercised by the HZHB President and municipalities;⁹⁹⁶ effectively concluding that the HVOHZHB had no power over the HVO Main Staff.⁹⁹⁷

393. The TC erroneously concluded that the HVO's military strategy was discussed by the HVOHZHB during its sessions, reflected in Minutes of the meetings.⁹⁹⁸ The TC erroneously concluded that the "HVO/Government" adopted regulations concerning the mobilization of military personnel, having contradictorily concluded: "areas related to mobilization and appointment constituted some of the stated powers wielded directly by Mate Boban."⁹⁹⁹ Only Boban was authorized to proclaim mobilization, with the Defence Department having the obligation to prepare and execute mobilization.¹⁰⁰⁰

394. Regarding the TC's conclusion about the HVOHZHB Decision from 15 January 1993 (P01145) and the HVOHZHB meeting on 3 April 1993,¹⁰⁰¹ submissions in Grounds.16.1 and 16.2 are adopted here by reference.

395. Petković did not testify – as claimed by the TC – that Prlić could issue operative orders to the armed forces through the Defence Department.¹⁰⁰² Quite the contrary; Petković explicitly testified that Prlić could not issue operative orders to the military,¹⁰⁰³ and that the Defence Department never issued operative orders to the HVO Main Staff.¹⁰⁰⁴ The TC contradicted itself.¹⁰⁰⁵

⁹⁹⁴ 1D00001, Art.9; 1D01402, Art.7.

⁹⁹⁵ Marjan, 35889/2-35890/22.

⁹⁹⁶ Marjan, 35627/3-35629/13.

⁹⁹⁷ Marjan, 35624/4-35626/14.

⁹⁹⁸ Vol.4, para.106, fn.314.

⁹⁹⁹ Vol.1, para.704.

¹⁰⁰⁰ P00588/4D00512.Arts.37-38; Pinjuh, 37271/22-273/23; 37627/13-37628/22; 37324/1-11.

¹⁰⁰¹ Vol.4, para.106.

¹⁰⁰² Vol.4, para.107.

¹⁰⁰³ Petković, 49762/13-49764/23; 50361/23-50362/19; 50775/18-777/18.

¹⁰⁰⁴ Petković, 49778/19-780/13; 50089/1-50090/18; 50094/12-24.;

¹⁰⁰⁵ Vol.4, para.107, fn.321; Vol.4, para.106, fn.311; Vol.1, paras.519, 521.

396. The TC erroneously concluded that Prlić issued decisions that directly impacted military operations.¹⁰⁰⁶ The military commander in Gornji Vakuf had no knowledge about the 15 January 1993 Decision,¹⁰⁰⁷ [REDACTED].¹⁰⁰⁸
397. Likewise, Prlić's 30 May 1993 Letter to the ABiH and HVO which was forwarded to the RBiH Embassy in Zagreb¹⁰⁰⁹ is unsupportive of the TC's conclusions. Prlić was requesting air transport for the wounded from East Mostar, asking for full cooperation and for access to be granted to all wounded in areas controlled by the HVO and ABiH.¹⁰¹⁰ Prlić was acting in his capacity as President of the RBiH Government based on his appointment, which was agreed by all participants to the Međugorje Agreement on 18 May 1993,¹⁰¹¹ organized in order to implement the VOPP.¹⁰¹²
398. The TC mischaracterized the 26 June 1993 document stating that Stojić, Prlić, and Boban co-signed an "order" instructing the municipal HVOs of Livno and Tomislavgrad to ensure that "Military Police forces allowed Serbs to leave the territory of the two municipalities."¹⁰¹³ P02967 is neither signed by Boban nor does it relate to military issues; it is in reference to an agreement with the ICRC to ensure that Serbs who lived in Livno and Tomislavgrad (Raščani) could depart from those places if they wished.¹⁰¹⁴
399. Regarding the TC's conclusion on the 30 June 1993 Joint Statement in Vol.4,para.107 submissions in Ground.16.3 are adopted here by reference.
400. The TC places undue weight on the statements of representatives of the international community that Prlić "appeared to be very well informed about the situation on the ground."¹⁰¹⁵ Other documents in support of this statement actually show that Prlić neither had knowledge nor power in military affairs. In P01015 Prlić says: "It is probably a problem of strategy. I am not a military man, I am just President of Government."¹⁰¹⁶

¹⁰⁰⁶ Vol.4,para.107.

¹⁰⁰⁷ Tokić,45508/18-45512/10;45513/6-45514/17;45514/18-45516/25.

¹⁰⁰⁸ [REDACTED].

¹⁰⁰⁹ 1D01589

¹⁰¹⁰ 1D01588.

¹⁰¹¹ 1D02404;Ground.18,para.652.

¹⁰¹² Sančević,28555/3-28559/22;1D01595;1D02404.

¹⁰¹³ Vol.4,para.107;P02967.

¹⁰¹⁴ P09852,p.15;1D02840;P02967.

¹⁰¹⁵ Lane,BB,Beese,DZ.

¹⁰¹⁶ P01015,p.11;also P04208,pp.3-4.

401. The TC erroneously concluded that Prlić played a key role in a series of ceasefire negotiations in Gornji Vakuf and Mostar.¹⁰¹⁷ There is no credible evidence supporting this conclusion. (Lane, Ground.6.2,paras.202-203; DZ, Ground.1,paras.184-185). Petković and Pašalić signed the Order to stop the fighting in Gornji Vakuf after Petković received Boban's order.¹⁰¹⁸ P01215 confirms that Petković and Pašalić agreed that a joint order by the ABiH and HVO high commands be sent to the local commanders in Gornji Vakuf to ease tensions.¹⁰¹⁹ The TC makes no mention of Prlić's supposed involvement in the ceasefire agreement in Gornji Vakuf.¹⁰²⁰ Concerning Mostar, [REDACTED].¹⁰²¹ [REDACTED].¹⁰²²

402. The TC erroneously concluded that Prlić had the power to coordinate the deployment of civilian police units that were under the direct power of the Ministry of Interior.¹⁰²³ The HRHB Government's acceptance of a proposal of the Ministry of Interior to recommend to the Ministry of Defence that it replace active police with HVO reserve units on the front line¹⁰²⁴ is not indicative that Prlić had power over the civilian police, or that the HVOHZHB or Prlić had any influence over such matters.¹⁰²⁵

12.2

403. The TC erred in concluding that reports on combat activities of the HVO armed forces were routinely sent to the Government.¹⁰²⁶ The cited documents are not reports on combat activities, but reports of the overall activities of the Main Staff, part of Defence Department reports, intended for the HZHB Presidency.¹⁰²⁷

404. The TC ignored evidence that the HVOHZHB, under its Rules of Procedures, was to report to the HZHB Presidency.¹⁰²⁸ All reports cited by the TC are compilations of reports of the work of departments and commissions.¹⁰²⁹ The overall security situation was discussed at HVOHZHB meetings in order for the departments to function and adjust

¹⁰¹⁷ Vol.4,para.109.

¹⁰¹⁸ Lane,23931/16-933/12;23954/3-17;P01211;P01238.

¹⁰¹⁹ P01215.

¹⁰²⁰ Vol.2,paras.390-391,394.

¹⁰²¹ [REDACTED].

¹⁰²² [REDACTED].

¹⁰²³ Vol.4,para.110;Vol.1,paras.651-655.

¹⁰²⁴ P05963;P06837.

¹⁰²⁵ Petković,49604/19-49606/21;3D02408;P03027;P06027;P05573.

¹⁰²⁶ Vol.1,paras.767-768.

¹⁰²⁷ 2D01353;4D00830;P00128;P03274;P04699;P03642;4D01605;P07302.

¹⁰²⁸ P09530,Art.38.

¹⁰²⁹ P00128;P04699;P04735;P09551;P04220.

their activities accordingly.¹⁰³⁰ Even during the meetings of the Defence Department Collegium (the Main Staff was part of the Collegium) there were no discussions about the military situation and the usage of military forces.¹⁰³¹ From 28 August 1992 until April 1994 Petković attended three meetings out of 105 Minutes of the meetings introduced in evidence:¹⁰³² Prlić was absent during one meeting.¹⁰³³ Of the two other meetings, one was a joint meeting with Topić, President of the municipal HVO Mostar, who was also a member of the HZHB Presidency, being present.¹⁰³⁴

405. The TC mischaracterized 2D01353;¹⁰³⁵ it is a report on the implementation of the priority duties and tasks regarding the establishment of the HVO Main Staff, not about combat activities.

406. The TC ignored evidence that the HVOHZHB and Prlić had no power in military matters,¹⁰³⁶ that important political and military decisions were made by the HZHB President with no participation of the HVOHZHB or Prlić,¹⁰³⁷ that even when the military and security situation was on the HVOHZHB agenda there were no discussions, guidelines, instructions or orders issued to the HVO/military,¹⁰³⁸ that military operations were the authority of the Supreme Commander and the HVO Main Staff,¹⁰³⁹ that the HVOHZHB had no power to order mobilization because this fell under the authority of the municipalities,¹⁰⁴⁰ and that issues of military strategy were never discussed by the HVOHZHB but at the level of the HZHB President.¹⁰⁴¹

407. Submissions in Ground.11.3 are adopted here by reference.

¹⁰³⁰ Tomić,33971/12-33973/4;34703/2-7;34146/25-34147/13;34775/11-21.

¹⁰³¹ Božić,36214/18-36215/18;36684/16-36689/7;2D01363;2D01443;2D01444;P01075.

¹⁰³² 1D01609;P02575.

¹⁰³³ 1D01609.

¹⁰³⁴ P02575.

¹⁰³⁵ Vol.1,para.767.

¹⁰³⁶ Buntić,30358/24-30361/21.

¹⁰³⁷ Perković,31864/25-31867/10;31735/5-31736/10.

¹⁰³⁸ Perković,31729/12-31732/22; 31817/10-31820/18;1D01672.

¹⁰³⁹ Buntić,30725/8-30728/17.

¹⁰⁴⁰ Buntić,30690/24-30692/2.

¹⁰⁴¹ Tomić,33974/7-33975/12;33975/14-33976/1;34781/12-34783/7;33957/19-33962/14;34807/13-34808/15;34689/20-34690/12;34776/2-8.

Conclusions and relief:

408. By ignoring evidence, the TC failed to provide reasoned opinions and applied an incorrect legal standard in assessing the evidence; an error of law invalidating the TJ. No reasonable trier of fact would have found that Prlić chaired high-level meetings at which decisions on the political and military strategy in the HZ(R)HB were adopted collectively, and that he could, and did, issue military decisions through the military chain-of-command; an error of fact effecting a miscarriage of justice.

409. The AC should overturn the convictions for Counts 1-25.¹⁰⁴²

¹⁰⁴² Vol.1,paras.31-261,406-986;Vol.2,paras.669-748;Vol.3,paras.509-1741;Vol.4,para.278.

GROUND 13:

410. The TC erroneously concluded that Prlić was a member of a JCE and made a significant contribution to the execution of that JCE, having power over the detention centers of the HZ(R)HB.¹⁰⁴³
411. The TC erroneously concluded that “Gabela prison” was established on 8 June 1993 pursuant to Prlić’s decision,¹⁰⁴⁴ by relying on P02679 and ignoring relevant evidence. P02679 is an HVOHZHB Decision to set up a County Military Prison and County Prison in Gabela for the areas of Čapljina, Neum, Ljubuški and Ravno based on BiH legislation.¹⁰⁴⁵ P02679 is not Prlić’s decision and does not establish a detention center.
412. The TC ignored Buntić’s testimony on the differences between detention centers¹⁰⁴⁶ and civilian or military prisons.¹⁰⁴⁷ Military/civilian prisons are for persons subject to criminal proceedings and those with a final judgement.¹⁰⁴⁸ Detention centers are for prisoners of war.¹⁰⁴⁹ The HVOHZHB meeting on 6 September 1993 notes the difference.¹⁰⁵⁰ The TC offered no explanation for ignoring this evidence.
413. The Presidents of the courts were responsible for supervising prisoners in custody based on judicial decisions.¹⁰⁵¹ Neither the Judiciary nor the HVOHZHB had power over detention centers,¹⁰⁵² evidenced by the Department of Justice and Administration report of 10 July 1993: *“Our contacts with prison wardens and commanders are almost non-existent so we do not have information about the condition of people being held there on the basis of decisions issued by judicial organs. Accepting the complexity of the situation and not wishing to interfere with defense work, we request complete information on the*

¹⁰⁴³ Vol.1,paras.515-537;Vol.2,paras.123-135,138-156,179-222,293-299,1390-1441,1445-1482,1484-1512,1634-1638,1642-1662,1671-1686,1788-1818,1834-1839,1855-1860;1915-1917,1919-1921,2007-2012,2075-2083, 2162-2174;Vol.3,paras.9-36,59,128-135;151-158,163-204,210-214,216,223,227,235, 251,258-263,264-274 352-355,369-373,384-389;Vol.4, paras.112-114,218-255,270,273,276,397.

¹⁰⁴⁴ Vol.3,para.156;Vol.4,para.112.

¹⁰⁴⁵ P02679,preamble;Buntić,31014/10-31015/25;1D02909.

¹⁰⁴⁶ Buntić,30314/20-30316/25;P00292;P00234;P00452;P06805,point2.

¹⁰⁴⁷ P02679.

¹⁰⁴⁸ Example, [REDACTED];1D02245;1D02245.

¹⁰⁴⁹ Buntić,30314/20-30316/21;P00292;30995/23-30997/15;31002/13-31015/25;30661/10-30662/4; 31018/9-31020/23;30619/18-30620/24;30644/25-30648/24;30654/22-30655/10;30655/13-30657/17;Perković,31980/22-31982/9;P00587,Arts.30-35.

¹⁰⁵⁰ P04841,p.2.

¹⁰⁵¹ Buntić,30661/10-30662/2;4D01105,Art.205;P00589,Art.8.

¹⁰⁵² Buntić,30504/16-30506/8;30575/16-30578/19;30581/2-30582/9;30998/8-30999/3.

*number of persons being held in prison and that we supervise the work of the prison at least in the part that relates to the above-mentioned persons.”*¹⁰⁵³

414. There is no evidence connecting Prlić or the HVOHZHB in any manner – opening, closing, feeding, healthcare, hygiene, transfer, releasing – to any of the 17 detention facilities identified by the TC in different municipalities:

- a. Prozor;¹⁰⁵⁴
- b. Secondary School;¹⁰⁵⁵
- c. Unis;¹⁰⁵⁶
- d. Fire station;¹⁰⁵⁷
- e. MUP;¹⁰⁵⁸
- f. Tech School;¹⁰⁵⁹
- g. Heliodrom;¹⁰⁶⁰
- h. Vojno¹⁰⁶¹ in Mostar;
- i. Koštana¹⁰⁶² in Stolac;
- j. Ljubuški and Vitina-Otok-Ljubuški, Silos;¹⁰⁶³
- k. Grabovina¹⁰⁶⁴;
- l. Dretelj;¹⁰⁶⁵
- m. Gabela;¹⁰⁶⁶

¹⁰⁵³ P03350,pp.3-4,para.13.

¹⁰⁵⁴ Vol.2,paras.293-299.

¹⁰⁵⁵ Vol.2,paras.139-156,179-180.

¹⁰⁵⁶ Vol.2,paras.181-188.

¹⁰⁵⁷ Vol.2,paras.189-197.

¹⁰⁵⁸ Vol.2,paras.199-200.

¹⁰⁵⁹ Vol.2,paras.212-222.

¹⁰⁶⁰ Vol.2,paras.1390-1428,1456.

¹⁰⁶¹ Vol.2,paras.1669-1682.

¹⁰⁶² Vol.2,paras.2007-2012.

¹⁰⁶³ Vol.2,paras.2165-2174.

¹⁰⁶⁴ Vol.2,paras.1915-1917.

¹⁰⁶⁵ Vol.3,paras.9-36.

- n. Čapljina High School;¹⁰⁶⁷
- o. Čapljina Elementary School¹⁰⁶⁸;
- p. Majdan¹⁰⁶⁹ in Vareš.

415. There is no evidence that information was sent from any of these detention facilities to Prlić or the HVOHZHB, or vice versa. There is no evidence that the HVOHZHB financed any of these detention facilities or ever budgeted them to be financed.¹⁰⁷⁰

416. Buntić testified that Dretelj and Gabela were military facilities under municipal HVO remit,¹⁰⁷¹ with the municipal HVO Čapljina establishing a prison, which later moved to Gabela.¹⁰⁷² This prison was a detention center from April 1993, with Previšić as its warden.¹⁰⁷³

417. After the 30 June 1993 arrests of military able-bodied men, Stojić ordered that the management of the detention of the detainees in Čapljina Municipality be transferred from the 1st Knez Domagoj Brigade to the local HVO.¹⁰⁷⁴ Buntić testified that on 19 July 1993 municipal HVO Čapljina sent a request to the HVOHZHB for help in relocating prisoners from that municipality due to the bad conditions in its prisons,¹⁰⁷⁵ resulting in the establishment of a working group which met with municipal HVO Čapljina officials concerning the accommodation of the Gabela and Dretelj prisoners.¹⁰⁷⁶ The HVOHZHB did not approve any request from the municipal HVO Čapljina as the TC claims.¹⁰⁷⁷ HVOHZHB Members were tasked to find additional spaces for prisoners in other municipalities,¹⁰⁷⁸ not in other detention facilities as erroneously concluded by the TC.¹⁰⁷⁹ Buntić testified that members of the HVOHZHB visited other municipalities but that none of the heads of municipalities expressed a willingness to help Čapljina Municipality.

¹⁰⁶⁶ Vol.3,paras.165-180,189,191-192,258-261,264.

¹⁰⁶⁷ Vol.3,paras.353-355.

¹⁰⁶⁸ Vol.3,paras.370-373.

¹⁰⁶⁹ Vol.3,paras.385-389.

¹⁰⁷⁰ Tomić,34760/5-34761/4;33878/13-33883/3.

¹⁰⁷¹ 1D01105;2D01019;Buntić,30578/21-30579/19;30579/21-30580/25;30650/23-30654/21.

¹⁰⁷² 2D01019;Buntić,30499/23-30500/8;30502/11-30503/18;1D01105;P03350,p.3,para.11.

¹⁰⁷³ Vol.3,paras.159,165,194,210.

¹⁰⁷⁴ Vol.2,para.2081.

¹⁰⁷⁵ Buntić,30505/16-30506/8;P03560;P03673.

¹⁰⁷⁶ Buntić,30505/16-30506/8;P03560.

¹⁰⁷⁷ Vol.3,para.211.

¹⁰⁷⁸ P03673.

¹⁰⁷⁹ Vol.3,para.211.

The municipalities controlled all municipal properties/facilities; the HVOHZHB had no power to force municipality HVOs to assist on this matter.¹⁰⁸⁰

418. Submissions in Grounds.1.2.6;11.9 are adopted here by reference.

419. The TC erroneously concluded that Prlić “thought it necessary” to overturn a decision about Previšić’s “official appointment” as a warden of a County Military Prison,¹⁰⁸¹ thus proving that the 8 June 1993 HVOHZHB decision on establishing a County Military Prison entered into force without being published in the Official Gazette.¹⁰⁸² Fiction. There is no evidence supporting this conclusion or that Gabela was ever referred to as a County Military Prison.¹⁰⁸³

420. The TC’s conclusion that Prlić or the HVOHZHB established and closed Gabela¹⁰⁸⁴ is contrary to its findings that Gabela functioned within the military structure¹⁰⁸⁵ as of April 1993,¹⁰⁸⁶ and that Gabela authorities implemented Boban’s Order to close all detention centers by releasing prisoners.¹⁰⁸⁷ No reports from Gabela were sent to Prlić or the HVOHZHB.

421. The TC erroneously concluded that Prlić could close detention centers.¹⁰⁸⁸ The TC erroneously relied on one document produced by DZ¹⁰⁸⁹ and an HRHZ Government Decision abrogating the Decision on opening a District Military Prison. District Prisons are distinct from detention centers – as argued in paras.413-416.¹⁰⁹⁰ DZ’s document is about a 30 November 1993 agreement between the ABiH and the HVO on the release of prisoners in Međugorje. Prlić agreed to meet with some foreign officials and ABiH representatives, with Pogarčić, Jukić, Pušić, and Raguž, though it was understood that a subsequent meeting would be held at an appropriate level between the ABiH and the

¹⁰⁸⁰ Buntić,30582/5-30586/2.

¹⁰⁸¹ P07668.

¹⁰⁸² Vol.3,para.155.

¹⁰⁸³ P03731;P04253;P04716;P04838;

[REDACTED];P05302;P05225;2D01538;P06729;P07181;P07194;P07266; P07371.

¹⁰⁸⁴ Vol.3,paras.156-158.

¹⁰⁸⁵ Vol.3,paras.163-204,216,213,227,235;268-274.

¹⁰⁸⁶ Vol.3,paras.165,194.

¹⁰⁸⁷ Vol.3,paras.264-265.

¹⁰⁸⁸ Vol.3,para.158;Vol.4,para.112,254.

¹⁰⁸⁹ P06965.

¹⁰⁹⁰ P02679.

HVO.¹⁰⁹¹ Prlić's supposed representation that "it was his intention to close POW camps"¹⁰⁹² is not proof that he had the *de jure* or *de facto* powers over detention centers.

422. The TC ignored evidence that Boban began closing detention centers in July 1993,¹⁰⁹³ and that Granić informed Galbraith that Pogarčić – Boban's chief of staff – was placed in charge of closing all but three detention centers by 10 September 1993.¹⁰⁹⁴

423. On 14 September 1993, Tuđman and Izetbegović signed a Joint Declaration providing for bilateral and unconditional disbanding of all detainee camps and the release of detainees by 21 September 1993.¹⁰⁹⁵ Silajdžić and Granić were appointed as trustees.¹⁰⁹⁶ Boban agreed in October and November 1993 to close all detention centers.¹⁰⁹⁷ Based on this Joint Declaration, Boban decided to close all detention centers by 10 December 1993.¹⁰⁹⁸ Based on Boban's decision, Gabela was transformed into a transitory center for detainees.¹⁰⁹⁹

424. The TC erroneously concluded that the letters sent by Prlić on 2 December 1993 to Thornberry and Silajdžić are his letters, expressing his power;¹¹⁰⁰ they are letters from the HRHB Government about an initiative for improving of humanitarian conditions.

425. The TC erroneously concluded that Prlić had the power to grant international organizations access to detention centers,¹¹⁰¹ by relying on one uncorroborated document bearing hearsay,¹¹⁰² [REDACTED].¹¹⁰³ The TC ignored evidence that [REDACTED]¹¹⁰⁴ [REDACTED].

¹⁰⁹¹ P06965,p.2,para.2.

¹⁰⁹² P06965,p.3,para.6; [REDACTED];Ground.6.1,paras.181-182.

¹⁰⁹³ Galbraith,6475/17-6476/2;[REDACTED].

¹⁰⁹⁴ Galbraith,6507/12-6509/12;[REDACTED];Biškić,15110/20-15111/18.

¹⁰⁹⁵ P05051.

¹⁰⁹⁶ Sančević,28575/1-28576/24;28816/25-28817/11;Buljko,19949/20-19950/6;P05051;1D02224,p.3; 1D00938.

¹⁰⁹⁷ 1D00938;P08087,p.6.

¹⁰⁹⁸ P07096;P07149;P06973;P07260,pp.1-4,Biškić,15368/15-15370/17;Watkins,18883/14-18884/6;18761/15-

21.

¹⁰⁹⁹ Biškić,15378/20-15379/1;15384/4-15386/11;P07149;Vol.3,para.158.

¹¹⁰⁰ Vol.4,para.112.

¹¹⁰¹ Vol.2,paras.1437,1441;Vol.4,para.113.

¹¹⁰² Ground.3.

¹¹⁰³ [REDACTED].

¹¹⁰⁴ [REDACTED];Nissen,20564/3-20565/6;[REDACTED].

Conclusions and relief:

426. The TC mischaracterized evidence, erroneously attached weight to certain pieces of evidence, and failed to consider alternatives, representing an incorrect legal standard in the assessment of evidence; an error of law invalidating the TJ. No reasonable trier of fact would have found that Prlić had power over the detention centers of the HZ(R)HB or the detainees, or power to grant international organizations access to the detention centers; an error of fact effecting a miscarriage of justice.

427. The AC should overturn the convictions for Counts 1-3, 6-18.¹¹⁰⁵

¹¹⁰⁵ Vol.1,paras.31-261;Vol.3,paras.509-756,781-1522,1694-1741;Vol.4,para.278.

GROUND 14:

428. The TC erroneously concluded that as President of the Government of the HVOHZ(R)HB, Prlić had the power to negotiate and authorize the delivery of humanitarian aid in the territory of the HZ(R)HB and BiH, thus being a member of a JCE and making a significant contribution to its execution,¹¹⁰⁶ by relying on Nissen's speculative testimony that Prlić was authorized to sign the Makarska Agreement.¹¹⁰⁷ Nissen was not present during negotiations concerning the Makarska Agreement,¹¹⁰⁸ he had no knowledge about the HZHB structures,¹¹⁰⁹ and he testified that only Boban was authorized in the summer of 1993 to authorize the passage of humanitarian convoys.¹¹¹⁰

429. The TC erroneously relied on BA.¹¹¹¹ [REDACTED],¹¹¹² BA lacked credibility (Ground.6.2,paras.182-183).

430. The TC erroneously concluded that Prlić's powers were indicative from a document introduced through a Bar Table Motion.¹¹¹³ The TC concluded that, after the UNHCR reported an incident to Prlić in February 1993, Ćorić responded to that report and that Prlić must have undoubtedly entrusted Ćorić with the matter. The TC's conclusion is speculative and certainly not the only plausible conclusion.¹¹¹⁴

431. The TC erroneously concluded that from June to August 1993 Prlić "participated in many meetings between representatives of international organizations and the HVO negotiating free access for humanitarian convoys."¹¹¹⁵ None of the evidence relied upon refers to "negotiations of free access of humanitarian aid" with Prlić [REDACTED]¹¹¹⁶ after which the Makarska Agreement was signed.¹¹¹⁷ None of the other internationals

¹¹⁰⁶ Vol.1,paras.515-537; Vol.2,paras.1228-1244; Vol.4,paras.115-121,270,272.

¹¹⁰⁷ Vol.4,para.116.

¹¹⁰⁸ Nissen,20476/20.

¹¹⁰⁹ Nissen,20561/13-20564/1; [REDACTED].

¹¹¹⁰ Nissen,20527/18-20528/18; [REDACTED]; VanderGrinten,21176/1-21179/14; [REDACTED];P04430; [REDACTED].

¹¹¹¹ Vol.4,para.116.

¹¹¹² [REDACTED].

¹¹¹³ Vol.4,para.116,fn.344.

¹¹¹⁴ Ground.3.

¹¹¹⁵ Vol.2,paras.1224-1244; Vol.4,para.117.

¹¹¹⁶ [REDACTED].

¹¹¹⁷ 1D02070; [REDACTED].

dealing with Prlić testified that Prlić had the power to grant international organizations passage of humanitarian aid. [REDACTED].¹¹¹⁸

432. Submissions in Ground.16.4 are adopted here by reference.

433. The TC ignored evidence that the Makarska Agreement was a continuation of the HVOHZHB's and Prlić's efforts to assist in the free passage of humanitarian aid after which all convoys were approved with no exceptions, reaching their destinations.¹¹¹⁹ [REDACTED].¹¹²⁰

434. The TC ignored evidence that the power to approve passage of humanitarian aid was with Stojić, Božić, Lučić, Petković, Tole, Matić, Vegar, Bagarić, and Ćorić.¹¹²¹ There is no evidence that Prlić had the power to approve such matters, or that he ever did.

435. The TC erroneously relied on 1D00898 to show that Prlić had the power to negotiate and authorize delivery of humanitarian aid. 1D00898 does not grant authorization to negotiate and authorize delivery; it is about cooperation with Logistical Centers in Croatia and coordination between the RBiH Government and the HVO on humanitarian issues.¹¹²²

436. Submissions in Ground.16.4.7 are adopted here by reference.

Conclusions and relief:

437. By attaching undue weight to certain evidence, and ignoring other evidence, the TC failed to provide reasoned opinions, and applied an incorrect standard in the assessment of evidence; an error of law invalidating the TJ. No reasonable trier of fact would find that Prlić had the power to negotiate and authorize the delivery of humanitarian aid in the territory of the HZ(R)HB and BiH; an error of fact effecting a miscarriage of justice.

438. The AC should overturn the conviction for Count 25.¹¹²³

¹¹¹⁸ [REDACTED].

¹¹¹⁹ P10264;Raguž,31319/10-31320/1;31353/15-31358/14;1D01360.

¹¹²⁰ [REDACTED].

¹¹²¹ P04527;P04174;P03895.

¹¹²² 1D00898.

¹¹²³ Vol.1,paras.31-261;Vol.3, paras.509-629,781-1522,1694-1741;Vol.4,para.278.

GROUND 15:

439. The TC erroneously concluded that Prlić was a member of a JCE and made a significant contribution to the execution of that JCE and that as President of the Government of the HVOHZ(R)HB Prlić played a key role in the relations of the HVO/Government of the HZ(R)HB with the Government of Croatia¹¹²⁴ by finding that from September 1992 to April 1994, Prlić attended five meetings in Croatia with Tuđman, President of Croatia, and other Croatian leaders. The evidence shows that after the first meeting on 17 September 1992,¹¹²⁵ Prlić never met Tuđman again until 5 November 1993 – some 14 months later.¹¹²⁶

440. Submissions in Ground.18 are adopted here by reference.

441. The meeting of 17 September 1992 took place immediately after the London Conference – where the future internal organization of BiH was discussed; the meeting was organized to express views to be advocated at the ICFY peace conference on BiH.¹¹²⁷ Buntić, who participated in the Geneva negotiations, testified: *“It was also concluded that at the forthcoming peace conference, we ought to advocate precisely the issues that were touched upon in Mr. Prlić’s speech as well as mine. This is something that we did in the subsequent negotiations that took place at the peace conference.”*¹¹²⁸ Prlić expressed his understanding of the aims of the HZHB: “forming BiH based on the principles of the European Community.”¹¹²⁹

442. The TC erred in relying on the Mladić Diaries.¹¹³⁰

443. Submissions in Ground.5 are adopted here by reference.

444. The TC erroneously concluded that Prlić worked on economic cooperation between “HZ(R)HB” and Croatia. During the meeting of 17 September 1992 Prlić suggested the setting up of border crossings and border control¹¹³¹ between BiH and Croatia.¹¹³² The next time Prlić met with Tuđman on 5 November 1993 the discussions were related to the

¹¹²⁴ Vol.1,paras.515-537;Vol.4,paras.119-121,270,277.

¹¹²⁵ P00498.

¹¹²⁶ P06454.

¹¹²⁷ Akmadžić,29406/2-29411/2;1D02564;1D02454;1D00397.

¹¹²⁸ Buntić,30366/17-23.

¹¹²⁹ P00498,p.28.

¹¹³⁰ Vol.4,para.119.

¹¹³¹ P00498,pp.29-30.

¹¹³² Tomić,33830/18-33837/19.

appointment of the HRHB Government.¹¹³³ No economic issues were discussed, other than Prlić noting that Hercegovina had no accommodations for the refugees from Vareš, thus seeking humanitarian assistance from Croatia to accept them.¹¹³⁴

445. The TC erroneously concluded that Prlić cooperated with the ODPR Croatia in organizing the departure of Muslims,¹¹³⁵ by relying on one document from [REDACTED]¹¹³⁶ and one document introduced through a Bar Table Motion.¹¹³⁷ P07019 is dated 3 December 1993 and deals with the inability to return civilians in all settlements (except Polog and Kruševo) in the Mostar Municipality as long as the war operations were in effect.¹¹³⁸ Prlić effectively made the same request in his 7 April 1994 letter to ODPR Croatia; requesting to extend refugee status for all persons from Mostar in the name of HRHB and in the name of the RBiH Government.¹¹³⁹

446. Submissions in Grounds.16.6.3-16.6.4 are adopted here by reference.

Conclusions and relief:

447. By attaching undue weight to certain evidence, and ignoring other evidence, the TC failed to provide reasoned opinions, and applied an incorrect standard in the assessment of evidence; an error of law invalidating the TJ. No reasonable trier of fact would find that Prlić played a key role in the relations of the HVO/Government of the HZ(R)HB with the Government of Croatia; an error of fact effecting a miscarriage of justice.

448. The AC should overturn the convictions for Counts 1-25.¹¹⁴⁰

¹¹³³ P06454.

¹¹³⁴ P06454,p.38.

¹¹³⁵ Vol.4,para.120.

¹¹³⁶ [REDACTED].

¹¹³⁷ P07019.

¹¹³⁸ P07019.

¹¹³⁹ 1D01593.

¹¹⁴⁰ Vol.1,paras.31-261,406-986;Vol.2,paras.669-748;Vol.3,paras.509-1741;Vol.4,para.278.

GROUND 16:

449. The TC erroneously concluded that Prlić, by his acts or omissions to exercise his functions, was a principle member of a JCE, and intended and agreed to commit JCE core crimes, significantly contributing to a JCE.¹¹⁴¹

16.1

450. The TC erroneously concluded that Prlić significantly contributed to the implementation of the JCE in Gornji Vakuf Municipality.¹¹⁴²

16.1.1

451. The TC erroneously concluded that the 15 January 1993 HVOHZHB Decision¹¹⁴³ (not Prlić's order/decision as stated in Vol.1,paras.452-453) was an ultimatum drafted by Prlić and was issued pursuant to or in furtherance of the implementation of a "single preconceived common criminal plan."¹¹⁴⁴ The TC mischaracterized the evidence, erroneously relied on Tomljanovich (Ground.4.2), and disregarded relevant evidence.

452. The 15 January 1993 HVOHZHB Decision and orders by Stojić and Petković did not represent an "ultimatum" to the ABiH.¹¹⁴⁵ The Decision and Orders called for reciprocity in re-subordination, for the establishment of the ABiH/HVO Joint Command, equal national representation of the commanding staff, orders to commanders of HVO operative zones to initiate talks with ABiH commanders in order to find the best ways of setting up the Joint Commands,¹¹⁴⁶ complete and equal reciprocity in setting up joint commands,¹¹⁴⁷ and prescribed no measures for lack of compliance.¹¹⁴⁸ During that time, the transport of weapons freely flowed to the ABiH from the HZHB, including Central Bosnia, where Gornji Vakuf is situated.¹¹⁴⁹ The VOPP left a large number of Croats in the provinces

¹¹⁴¹ Vol.4, paras.122-278,1219-1232.

¹¹⁴² Vol.1,paras.452-463;Vol.2,paras.330-342,346-395,445,753;Vol.4,paras.45,125-134,271,668,1220.

¹¹⁴³ P01146.

¹¹⁴⁴ Vol.4,paras.45,125,127,271.

¹¹⁴⁵ Petković,50184/7-50185/13;P01139,items,5,7;P03642,p,1-2;P01032,p.16;Praljak,40571/12-40572/3;44151/14-44162/13;44165/22-44167/21.

¹¹⁴⁶ P01146;P01140;Petković,50184/7-50185/13;P01139,items,5,7;Praljak,40606/8-40612/5;44142/15-44147/7; Akmadžić,29777/7-13.

¹¹⁴⁷ P01140;P01139.

¹¹⁴⁸ Beese,5205/20-5206/6;P01146;P01140;P01139.

¹¹⁴⁹ Majić,37842/2-37843/19;2D01254;Jurić,39288/10-39290/5;2D00809.

where Croats were not a majority, and some 20,000 HVO soldiers¹¹⁵⁰ were supposed to be under the command of the ABiH in the transitional period.¹¹⁵¹ The HVOHZHB, at its session on 18 January 1993, concluded to provide help to the HVO units in provinces 1, 5, and 9, and for the Defence Department to draft instructions on the subordination of HVO units to the ABiH Command in provinces 1, 5, and 9.¹¹⁵²

453. The TC erroneously concluded that two alleged “subordination orders” existed (14 and 16 January 1993), by relying Agić and Rule’s 92bis statement (P09803).¹¹⁵³ It is impossible that on 14 January 1993 Agić saw the HVOHZHB Decision issued on 15 January.¹¹⁵⁴ There is no supporting evidence that any other “decision” existed. Rule never mentioned a 14 January Order, or any other “subordination order.”¹¹⁵⁵

454. The TC concluded in Vol.1,para.336-337 that clashes in Gornji Vakuf started on 11 January 1993 and continued until 16 January 1993.¹¹⁵⁶ Buntić, who was involved in the January negotiations, testified that he was told that a military agreement was reached calling for the separation of forces in order to stop HVO-ABiH clashes.¹¹⁵⁷

455. The TC ignored evidence that Izetbegović signed the constitutional principles,¹¹⁵⁸ including the Agreement for Peace in BiH,¹¹⁵⁹ which “were inextricably linked.”¹¹⁶⁰ Annex VII provided for withdrawal of all formations into provinces where the relevant nation was in the majority during the transitional period, until the complete demilitarization provided for by the VOPP occurred.¹¹⁶¹ The Co-Chairmen of the ICFY agreed that it was up to the ABiH and the HVO to make arrangements about the

¹¹⁵⁰ Boras,29018/20-29023/21;[REDACTED];Buljan,36761/15-21;Kljuić,8010/5-8011/22;8012/5-9; Pinjuh,37699/21-37704/21;P1622,p.24;Makar,38484/1-24.

¹¹⁵¹ Praljak,41959/9-41962/16.

¹¹⁵² P01197.

¹¹⁵³ Vol.2,para.330;Vol.4,para.125.

¹¹⁵⁴ Agić,9295/9-9297/19; the HVOHZHB met in the morning and the decision was not on the agenda (P01137); an extraordinary session was held in the evening-Praljak,40570/11-19;44053/10-44054/1;43701/4-15;P01146.

¹¹⁵⁵ P09803;Rule,5406/8-5409/20.

¹¹⁵⁶ Tokić,45363/12-20;45560/16-45561/7;45466/21-45467/22;45388/2-14;4D00356;Praljak,44073/1-44074/23; 44085/3-25.

¹¹⁵⁷ 30442/23-30447/1.

¹¹⁵⁸ 1D01314,AnnexV,p.16.

¹¹⁵⁹ 1D01314,AnnexVI,p.20.

¹¹⁶⁰ 1D01314,p.4,para.18.

¹¹⁶¹ 1D01314,p.36.

withdrawal of forces in designated provinces in accordance with the VOPP Annex VII.¹¹⁶²

456. Praljak testified that following the Geneva Agreement, discussions were held in Zagreb between, *inter alia*, Izetbegović and his colleagues on the Muslim side, and Šušak, Boban, and Praljak on the Croat side on the implementation of Annex VII,¹¹⁶³ resulting in the Zagreb Agreement. The terms were “written [down], dovetailed, and handed over” to the BiH Defence Minister Rajić.¹¹⁶⁴ Praljak travelled to Mostar, presenting the Zagreb Agreement first to Rajić, and then Prlić, Stojić, and Petković.¹¹⁶⁵ Praljak testified that the Croats hoped that this agreement marked the end of the clashes; that a Joint Command between the ABiH and the HVO would be set up; and accordingly, Boban reduced the number of HVO soldiers.¹¹⁶⁶ Akmadžić, who was involved in the January negotiations, testified that the HVOHZHB Decision and the Decision of the BiH Defence Minister were issued to stop and prevent fighting between the ABiH and the HVO; a first step to implementing the VOPP.¹¹⁶⁷

457. In light of the Geneva Agreement, and the fact that on that same day, 15 January 1993, Boban, Izetbegović, Tuđman, and the Co-Chairmen of the ICFY met in Zagreb,¹¹⁶⁸ the HVOHZHB would have had no reason to question the authenticity or accuracy of the document Praljak brought from Zagreb containing the terms of the Zagreb Agreement.¹¹⁶⁹ The TC disregarded its own finding¹¹⁷⁰ that on 18 January 1993, Boban and Akmadžić sent a letter to Izetbegović explaining that the HVOHZHB Decision was in accordance with the Geneva Conference,¹¹⁷¹ requesting an urgent meeting and a peaceful solution.¹¹⁷²

458. That Prlić’s and the HVOHZHB’s understanding of the agreement called for mutual subordination is confirmed by the HVOHZHB 18 January 1993 meeting¹¹⁷³ where it was decided to correspond with Izetbegović to resolve all disagreements and

¹¹⁶² Okun, 16896/1-20; 17047/5-17048/22; 17049/17-17051/2; P09852; P01158, p.20.

¹¹⁶³ Praljak, 44151/14-44162/13; P01158, p.51-53; 40568/18-40571/10; 44142/15-44147/7; 44054/5-44055/4.

¹¹⁶⁴ Praljak, 40578/11-18; 43699/15-43702/6; 40606/8-40612/5; 44054/5-44055/4; P01150.

¹¹⁶⁵ Praljak, 40568/18-40571/10; 40570/11-40578/11-18; 41970/3-41974/3.

¹¹⁶⁶ Praljak, 40612/6-20; 41485/9-41486/10; 42338/13-42339/8; 44055/22-44056/3.

¹¹⁶⁷ Akmadžić, 29469/3-29469/18; 29470/14-24; 1D01521; 1D02730; P01150; 2D01409.

¹¹⁶⁸ P01158; Akmadžić, 29776/10-29777/6; 29777/14-29778/10; 29787/6-29788/13.

¹¹⁶⁹ Akmadžić, 29469/3-29469/18; 29470/14-24; 1D01521; 1D02730; Praljak, 40568/18-40571/10; 40578/11-18.

¹¹⁷⁰ Vol.1, para.458.

¹¹⁷¹ Akmadžić, 29612/17-29613/10; 2D01409; Praljak, 41970/3-41974/3; P01150; 1D01195, p.3; 44055/22-44056/3

¹¹⁷² 1D01521.

¹¹⁷³ P01197/1D00818, pp.3-4.

misunderstandings and to “contribute to realization of obligations you took before the world” and “stance expressed before the Co-Chairmen.”¹¹⁷⁴ Revealingly, after the meeting between ECMM official Beaussou and Prlić, it was recorded: “[Prlić] regretted very much that the agreement to create a BiH/HVO joint command did not succeeded after five or six months of negotiation. This ‘decision’ was according to him however agreed in principle by the BiH Command and is, in fact, nothing else than the direct consequence of the document signed by Boban in Geneva. In reality, he stressed that it would not change a lot as in Mostar, for instance, the BiH 1st Brigade was already under HVO Command,”¹¹⁷⁵ as confirmed by ABiH documents and statements.¹¹⁷⁶

459. Izetbegović reneged on the Zagreb Agreement,¹¹⁷⁷ as was his habit.¹¹⁷⁸ Accordingly, Boban instructed the HVOHZHB to withdraw the 15 January 1993 Decision,¹¹⁷⁹ with the HVOHZHB complying.¹¹⁸⁰

16.1.2

460. The TC erroneously concluded that this so-called 15 January 1993 Ultimatum was followed by systematic and widespread military operations by the HVO armed forces military command in Gornji Vakuf in January 1993,¹¹⁸¹ by mischaracterizing and ignoring evidence, and contradicting its own findings.¹¹⁸²

461. The TC ignored Gorjanc’s testimony that Petković’s Orders (P01135 and P01139) were not orders to attack the ABiH.¹¹⁸³ Item 7 in P01139 is illuminating: “Operative Zone Commanders have the obligation to initiate talks with the commanders of the BiH Army in order to find the best ways to set up joint commands.”

462. The TC mischaracterized Andrić’s 27 January 1993 Report:¹¹⁸⁴ Andrić went to Gornji Vakuf on 12 January 1993 based on Stojić’s order to calm the situation down after the

¹¹⁷⁴ P01197/1D00818,p.2.

¹¹⁷⁵ P01215,p.2.

¹¹⁷⁶ 1D01424;1D01572;1D01424.

¹¹⁷⁷ Praljak,40572/4-12;40573/1-40576/19;P01158.

¹¹⁷⁸ Praljak,40617/21-40622/3;41959/9-41962/16;41975/18-976/24;P01240,pp.5-19.

¹¹⁷⁹ 1D00820.

¹¹⁸⁰ 1D00821;P01267.

¹¹⁸¹ Vol.1,para.460;Vol.4,paras.126,127,271.

¹¹⁸² Tokić,45363/12-20;45560/16-45561/7;45466/21-45467/22;45388/2-14;4D00356;Praljak,44073/1-44074/23;44085/3-25;Vol.1,paras.336-337.

¹¹⁸³ Gorjanc,46370/7-46382/4;P01146;P01140;P01139;P01135;P01186;P01163.

¹¹⁸⁴ 4D00348/3D03065.

fighting started on 11 January 1993; the HVO and the ABiH concluded a ceasefire agreement on 13 January 1993 which the ABiH did not honor; on 18 January Andrić ordered the implementation of the 13 January 1993 Agreement;¹¹⁸⁵ two days later there were further negotiations;¹¹⁸⁶ and on 20 and 21 January 1993 the HVO conducted no activities, confirming Petković's¹¹⁸⁷ and Praljak's¹¹⁸⁸ testimony that Andrić's actions were not related to the HVOHZHB Decision.¹¹⁸⁹

463. The TC mischaracterized the 18 January 1993 HVOHZHB letter (erroneously referred as "Prlić's letter") to Gornji Vakuf. The letter was based on information received by Stojić that the Muslim forces intended to take over and apply terror tactics to "cause Croats of the area to flee."¹¹⁹⁰ Batinić testified that he never saw the letter, but expected that the HZHB would have protected them because they were under attack.¹¹⁹¹ Tokić testified that he did not see this letter, but in his opinion, this letter was not stoking the tensions with the HVO under attack; it called for the Croats of Gornji Vakuf to remain in their homes.¹¹⁹² There is no evidence connecting Andrić's 18 January 1993 order to the HVOHZHB letter. The 19 January 1993 Minutes of the HVOHZHB meeting shows the absence of information about the developments in the field.¹¹⁹³

16.1.3

464. The TC erroneously concluded that Prlić was involved in planning the attack on Gornji Vakuf¹¹⁹⁴ and that on 19 January 1993 he attended negotiations in Mostar for a ceasefire agreement. Lane was a poor witness, not being able to recall where the meeting was held or what was discussed. (Ground.6.2,paras.202-203) Lane's testimony about Prlić's powers was speculative.¹¹⁹⁵ Beaussou's Report discredits Lane, suggesting that Petković, Pašalić, and Prlić met separately.¹¹⁹⁶

¹¹⁸⁵ 4D00348/3D03065,p.2.

¹¹⁸⁶ 4D00348/3D03065,p.3.

¹¹⁸⁷ Petković,50076/22-50077/18,50837/8-22.

¹¹⁸⁸ Praljak,40689/14-40692/7,43429/11-17;1D00816;P01163;P01182;P01206,p.2;P01220;P01226; P01236,p.4.

¹¹⁸⁹ Praljak,40593/5-40594/21;42889/7-42891/12;40578/19-40581/6;40591/10-40593/4;P01185,p.4;

4D00348/3D03065.

¹¹⁹⁰ P01197.

¹¹⁹¹ Batinić,34486/6-34489/1.

¹¹⁹² Tokić,45508/18-45514/17.

¹¹⁹³ P01227,p.1-2.

¹¹⁹⁴ Vol.4,paras.126,127,129;130-134.

¹¹⁹⁵ Lane,23681/1-23689/8;P01215.

¹¹⁹⁶ P01215,p.1.

465. The TC erroneously concluded that the 20 January 1993 Petković/Pašalić Order aborting all combat activities in Gornji Vakuf¹¹⁹⁷ was based on a meeting between Beausou, Petković, Pašalić, and Prlić. Contradictorily, the TC concluded in Vol.2,para.390 that this Petković/Pašalić Order concurred with Boban's Order of 19 January 1993 sent to the Defence Department and the HVO Main Staff,¹¹⁹⁸ also confirmed by evidence.¹¹⁹⁹
466. The TC erroneously concluded that Prlić was one of Andrić's superiors¹²⁰⁰ by relying solely on one sentence from one document – 4D00348/3D03065 – Andrić's Report on activities for 13-22 January 1993,p.2. On 18 January 1993, Andrić acted based on an order from a "higher command."¹²⁰¹ There is no evidence that the HVOHZHB or Prlić had any power to issue orders to the military; no such orders exist.¹²⁰² The TC correctly concluded in Vol.1,paras.708,743-768 and Vol.4,para.106 that Prlić was not in the chain-of-command.
467. The TC erroneously concluded that Šiljeg's reports on Gornji Vakuf,¹²⁰³ introduced through a Bar Table Motion, were sent "particularly" to the HVOHZHB, when those reports were sent to the HZHB Presidency, the Defence Department, the HVO Main Staff, and the Northwest OZ.¹²⁰⁴
468. The TC erroneously concluded that on 25 January 1993, Prlić told an ECMM representative that he had ordered the HVO commander in Gornji Vakuf to stop all attacks.¹²⁰⁵ The TC ignored evidence that [REDACTED].¹²⁰⁶ Šiljeg's 24 January 1993 Order to respect the ceasefire¹²⁰⁷ [REDACTED].¹²⁰⁸

¹¹⁹⁷ P01238.

¹¹⁹⁸ P01211.

¹¹⁹⁹ Tokić,45368/10-45369/16;P01211;P01238;1D00818;P01229;P01300,p.1.

¹²⁰⁰ Vol.4,paras.127,133.

¹²⁰¹ 4D00348/3D03065.

¹²⁰² P09530,Art.32,p.10.

¹²⁰³ P01206;P01357.

¹²⁰⁴ Ground.3.

¹²⁰⁵ Vol.4,para.129;P01309.

¹²⁰⁶ Lane,23784/9-23788/22;[REDACTED];P01293/P01286; [REDACTED];1D00819; P01238.

¹²⁰⁷ P01300.

¹²⁰⁸ [REDACTED].

16.1.4

469. The TC erroneously concluded that Prlić intended that crimes be committed in Gornji Vakuf.¹²⁰⁹

470. Submissions in Ground.16.1.3 are adopted here by reference.

471. Šiljeg's reports of 19, 28, and 30 January 1993¹²¹⁰ were sent to the HZHB Presidency, the HVOHZHB Defence Department, the HVO Main Staff, and the Northwest OZ. These documents do not show that Prlić or the HVOHZHB were aware of the developments in the field from 15-25 January 1993, and nothing can be gleaned from the HVOHZHB Minutes of the meetings.¹²¹¹

472. The TC ignored evidence showing that Prlić and the HVOHZHB had no involvement in the Gornji Vakuf military operations. The 20 January 1993 Petković/Pašalić Joint Order called for a Joint Commission to examine the reasons, consequences, and culprits.¹²¹² The 27 January 1993 Boban/Izetbegović Joint Order also called for the HVO and ABiH commanders to fix responsibility for the fighting at all levels and form a joint command.¹²¹³ Accordingly, Petković ordered: "The commanders of the HVO zones of operations shall be obliged to immediately identify reasons, causes, consequences and responsibility of members of the HVO and BiH Army units for the conflicts caused in their areas of responsibility."¹²¹⁴ Finally, on 11 February 1993, Petković and Halilović ordered the establishment of a joint command and re-ordered the commanders to investigate and fix responsibility for the clashes and release all detainees unconditionally.¹²¹⁵ The military commanders executed these orders.¹²¹⁶

¹²⁰⁹ Vol.4, paras.127,130,134.

¹²¹⁰ P01206;P01351;P01357.

¹²¹¹ P01137;P01197;P01227;P01264;P01324;P01388;P01403;P01439;Prlić-opening,27572/15-19.

¹²¹² P01238/1D00819.

¹²¹³ P01329/2D00093;Lane,23936/5-25;Beese,5377/15-5378/3;Agić,9391/3-22.

¹²¹⁴ P01322/4D00358.

¹²¹⁵ P01467.

¹²¹⁶ Praljak,44128/20-44129/14;41880/6-15;42194/2-42197/6;P00092;P01359;P01344;P01330;Tokić,45377/5-11;P01344;45545/20-45547/8.

16.2

473. The TC erroneously concluded that the attacks on Prozor and Jablanica were planned in April 1993 pursuant to an ultimatum, with Prlić significantly contributing to the JCE in Prozor, Sovići, and Doljani.¹²¹⁷

16.2.1 and 16.2.2

474. The TC erroneously concluded that on 3 April 1993 the HVOHZHB adopted a statement in the form of an ultimatum, published on 4 April 1993, calling for Izetbegović to subordinate the ABiH to the HVO in provinces 3, 8 and 10 by 15 April 1993 or the HVO would act unilaterally by military means if necessary and that this so-called 15 April 1993 Ultimatum was issued in furtherance of the JCE.¹²¹⁸ The TC erroneously relied on Tomljanovich¹²¹⁹ and uncorroborated hearsay news reports,¹²²⁰ while mischaracterizing evidence.¹²²¹

475. On 3 March 1993, an agreement to establish an “interim Presidency,” consisting of nine members, was signed by Izetbegović, Silajdžić, Boban, and Akmadžić.¹²²² While supposedly undertaking efforts to implement the interim agreement, Izetbegović was implementing the SDA policy to have BiH as a unitary state by rearranging BiH in Districts¹²²³ with the support of the ABiH.¹²²⁴ Forming Districts was unconstitutional,¹²²⁵ and contrary to the VOPP and the Agreement signed by the Muslim and Croatian delegations on 3 March 1993.¹²²⁶ Rearranging BiH through Districts was not discussed at the international negotiations; the SDA/Izetbegović pressed the formation/implementation on the very day of the signing of the VOPP.¹²²⁷

¹²¹⁷ Vol.1,paras.465-476;Vol.2,paras.84,87,89,521-536,538-549,613;Vol.4,paras.136-147,271,1220.

¹²¹⁸ Vol.1,para.468;Vol.4,paras.138-140.

¹²¹⁹ Ground.4.2.

¹²²⁰ P10675;P01804;P01808.

¹²²¹ P01798;1D01655/P02046.

¹²²² 1D02853.

¹²²³ 1D00509.

¹²²⁴ Perković,32034/21-32049/19;1D02458;1D01949;1D02212;1D01210.

¹²²⁵ Buntić,30454/7-30470/4;1D00509.

¹²²⁶ 1D02903;1D02853;P01398,p.10.AnnexV,para.462.

¹²²⁷ Buntić,30469-30470;Buntić,30454/4-30470/4;1D02565;P01661;1D01972;IC00825;IC00826.

¹²²⁷ 1D01210;Buntić,31030/10-31032/1;1D01182;30463/4-30465/23;P01661;Zelenika,33117/15-33126/19, 1D01464, 1D02753;1D02756;1D02757;1D02777;1D02758;1D01013;1D01308;33148/2-22;1D02717;33170/7-33172/9, 2D00237, P01882;33204/4-33213/3;1D02758;P02128;IC00864;4D01242, 4D00454, 4D00438;33209/3-33211/3;33223/6-33227/5;P09606;33171/20-33172/9;P01882;33304/14-33305/4;33304/1-

476. The HVOHZHB opposed any attempts to install various organs appointed by the then one-sided Presidency and RBiH Government,¹²²⁸ while implementing decisions of the RBiH Provisional Presidency and the RBiH Provisional Central Government based on the VOPP assumed obligations. The reference to one-sided legislative actions was directed to the Sarajevo Government's unconstitutional attempts to establish Districts, contrary to and *in lieu* of the VOPP provisions.¹²²⁹

477. Izetbegović's efforts to redistrict BiH through the use of the ABiH was seen as irresponsible and dangerous by the SDA Regional Committee for Herzegovina.¹²³⁰ The ABiH was instructed to implement forcible military measures to establish the Districts,¹²³¹ giving rise to a perception that the SDA and the ABiH were establishing a unitary state through a two-track/two-faced policy.¹²³²

478. On 13 March 1993, the BiH Presidency dismissed the legally elected Municipal Assembly Presidents in Konjic and Jablanica, prompting Rusmir Hadžihusejnović, the legally appointed/elected President of the Konjic Municipality, to contest the legality of this decision. On 20 March 1993, Halilović appointed Safet Ćibo to the 4th Corps of ABiH, and the SDA HQ in Zenica appointed him to the Regional Board of the SDA for Herzegovina. Ćibo's illegal appointment coincided with the beginning of the Muslim offensive in the Konjic area.¹²³³ The HVOHZHB questioned the Muslim leadership's sincerity, especially Izetbegović.¹²³⁴ The TC ignored this evidence, which, unquestionably, is essential to understanding the 3 April 1993 HVOHZHB conclusions. By doing so, the TC erroneously concluded that an ultimatum was issued in furtherance of the JCE.

33309/3;P01164;33354/19-33358/18;P01808;Akmadžić,29338/2-16;29328/11-29329/29;29329/14-20332/21;29332/22-29335/16;29376/15-29391/13;1D02848;1D02847;1D02849;1D02851;29509/24-29521/6;1D02940;

¹²²⁸ Akmadžić,29338/21-29344/7;2D00191;29374/16-29376/14;1D02888;1D02889;29399/21-29402/18;1D02431;1D02870;29393/13-29397/20;1D01192;29402/22-

29403/24;1D01297;1D01348;1D01348;1D01347;1D01307;1D01310;29397/21-29399/2.

¹²²⁹ Vol.1,para.469;See,Ground.1.3,para.79.

¹²³⁰ 1D01210.

¹²³¹ Buntić,31030/10-31032/1;1D01182.

¹²³² Akmadžić,29338/2-16;29328/11-29329/29;29329/14-20332/21;29332/22-

9335/16;29376/15;29391/13;1D02848; 1D02847;1D02849;1D02851;29509/24-29521/6;1D02940.

¹²³³ Zelenika,33117/15-33126/19;1D01464;1D02753;1D02756;1D02757;1D02777;1D02758;1D01013;

1D01308;33136/16-33139/20;1D01009;1D01010;1D01011;1D01012;1D01483;33164/1-

33174/18;2D00814;1D02756, 2D01439;2D00237;P01882;P01977;33199/23-33200/14;4D00415;33309/11-

33316/22, P10668/1D02753;P10667;33148/2-22;1D02717;33170/7-33172/9;2D00237;P01882;33204/4-

33213/3, 1D02758;P02128;IC00864;4D01242;4D00454;4D00438;33209/3-33211/3;4D01242;33215/23-

33216/8;33223/6-33227/5;4D00139;4D01241;33171/20-33172/9;P01882;33304/1-33309/3;P01164;33354/19-

33358/18;P01808.

¹²³⁴ Buntić,30463/4-30465/23;P01661.

479. The TC erroneously relied on uncorroborated hearsay media reports, while ignoring reliable evidence that no ultimatum was issued and that media reports were incorrect.¹²³⁵
480. While finding that on 25 March 1993 Izetbegović and Boban signed the entire VOPP package (Vol.1,para.466), the TC ignored evidence that both sides agreed to the implementation of the VOPP.¹²³⁶
481. The Minutes of the meeting (P01798) show that Boban was present to explain the terms of and make arrangements for the implementation of the VOPP.¹²³⁷ The Provisions on Interim Provincial Governments¹²³⁸ provided that the “*legal system of each Province during the interim period shall be that now prevailing in its territory, provided that no legal provision at the provincial level may be in conflict with the Interim Arrangements specified here.*” To implement this provision, it was concluded that HVOHZHB bodies and services would make their regulations compatible with the VOPP;¹²³⁹ the HVOHZHB Secretariat was tasked to prepare a list of posts in the central and provincial authorities in HZHB. 15 April 1993 was the deadline for HVOHZHB bodies and services to make regulations compatible with the VOPP.
482. The TC ignored Owen’s statement where he explained the activities between the parties after the bilateral agreement on the VOPP was signed on 25 March 1993: “*It stems from New York, when a bilateral agreement was reached between Mr.Boban and Mr.Izetbegović. A controversial issue was how to solve the command or rather of the control of the two military forces. It was then decided that both sides would try, as much as they could, to reach an agreement and if an agreement was not reached within 14 days, the two Co-Chairmen would offer their good services.*”¹²⁴⁰ Prlić, in his April 1993 interview, denied the existence of an ultimatum, explaining that Owen and Vance gave Boban and Izetbegović two weeks to agree on the “behavior of the troops” in provinces belonging to Croats and Muslims.¹²⁴¹

¹²³⁵ Vegar,37071/21-37075/1,37083/7-37088/25,37150/1-37152/6;P09519;Tomić,34710/23-34714/2.

¹²³⁶ P01738;Akmadžić,29489/5-29491/5;29833/10-29834/1;29496/18-29487/16;Boras,28985/8-17;1D02225; Tomić,34716/12-34717/14;33979/23-33980/23;34001/24-34003/16;34004/11-34006/24;1D02003;Sančević, 28831/20-28833/11;1D02186.

¹²³⁷ Buntić,30470/8-30471/8.

¹²³⁸ 1D02908,p.2,paras.8-9,p.12,para.5.

¹²³⁹ P01798,pp.5-6

¹²⁴⁰ P02059,p.2.

¹²⁴¹ 1D01655,pp.1-2;Vol.4,para.138.

483. The proposed Boban-Izetbegović Joint Statement complied with the VOPP, consisting of the Agreement on interim arrangements, for establishing an interim presidency and central government,¹²⁴² and the temporary freezing of the military situation.¹²⁴³
484. The TC ignored its conclusions (Vol.1,para.472) and other relevant evidence, such as the 25 April 1993 Joint Statement providing for the establishment of a coordinating body for implementing the VOPP and an ABiH/HVO Joint Command¹²⁴⁴ and the comprehensive military agreement.¹²⁴⁵ Viewed separately, the documents and events provide a distorted impression; considered collectively in context the documents provide the only plausible conclusion that no JCE existed.
485. The TC erroneously concluded that on 15 April 1993 and the days that followed, the HVO was ordered to enforce the subordination of the ABiH forces.¹²⁴⁶ It disregarded several orders as of March 1993 issued to ensure greater performance of assignments in operational zones of directly subordinated units and to prevent misunderstandings between the ABiH and HVO.¹²⁴⁷ These orders were not connected to the HVOHZHB 3 April 1993 meeting. Moreover, during that time, transport of weapons flowed freely to the ABiH from the HZHB.¹²⁴⁸
486. The TC erroneously relied on DZ.¹²⁴⁹ He was not competent to testify on the reasoning of the 3 April 1993 Decision: [REDACTED],¹²⁵⁰ [REDACTED],¹²⁵¹ [REDACTED],¹²⁵² [REDACTED],¹²⁵³ and [REDACTED].¹²⁵⁴
487. The TC/reasonable trier of fact would have concluded that the 3 April 1993 Decision was not linked to a JCE, had it considered the series of joint documents produced from

¹²⁴² 1D02908,p.2,para.8,p.8,p.12,p.25,p.35,AnnexIV.

¹²⁴³ 1D02903.

¹²⁴⁴ P02078;[REDACTED].

¹²⁴⁵ P02088.

¹²⁴⁶ Vol.1,para.469.

¹²⁴⁷ Pavlović,46828/5-46832/9;P01736;4D00474;5D03046;P01913;P01900;4D00473.

¹²⁴⁸ Majić,37840/22-37841/25;2D00311;Makar,38460/3-38463/12;2D01112;2D01113;2D01114;2D01115.

¹²⁴⁹ Vol.4,para.139.

¹²⁵⁰ [REDACTED].

¹²⁵¹ [REDACTED].

¹²⁵² [REDACTED].

¹²⁵³ [REDACTED].

¹²⁵⁴ [REDACTED].

the 3 March 1993 New York agreement¹²⁵⁵ stressing that the situation should be solved through political means and hostilities should cease,¹²⁵⁶ Petković's order,¹²⁵⁷ the Halilović-Petković Agreement,¹²⁵⁸ and the Boban-Izetbegović Joint statement.¹²⁵⁹

16.2.3, 16.2.4, and 16.2.5

488. The TC erroneously concluded that the so-called 15 April 1993 Ultimatum was the cause for the clashes around Jablanica Municipality, in particular, Sovići and Doljani, and was followed by systematic and widespread military operations by the HVO around Prozor.

489. The TC erroneously concluded that following the HVO 4 April 1993 Ultimatum a "plan" to attack villages in Prozor Municipality was drawn up.¹²⁶⁰ It relied on exhibits introduced through Bar Table Motion.¹²⁶¹ The TC ignored Jašak's testimony that the HVO's activity was a reaction to the ABiH attack which had started on 13 April 1993 and that no plan for attack existed.¹²⁶²

490. In Vol.1,para.143, the TC concluded that the HVO began to shell the town of Jablanica on 15 April, whereas in Vol.1,para.524-528, it concluded that clashes between the HVO and the ABiH broke out on 13-14 April 1993.

491. The TC ignored evidence¹²⁶³ showing that the HVO did not plan to take control of Jablanica;¹²⁶⁴ it did not have the forces to credibly do so.¹²⁶⁵ Konjic and Jablanica represented one military area.¹²⁶⁶ The ABiH attacked the HVO in Konjic on March 23 1993,¹²⁶⁷ based on a 20 March 1993 plan.¹²⁶⁸ This plan commenced with Čibo's appointment as mayor of Konjic and Jablanica, and as Deputy Commander of the 4th

¹²⁵⁵ 1D02853;1D02903;3D00320.

¹²⁵⁶ P01983/2D00089.

¹²⁵⁷ P01959.

¹²⁵⁸ 2D00470.

¹²⁵⁹ P02078.

¹²⁶⁰ Vol.1,para.84;Vol.4,para.141-142.

¹²⁶¹ P01909;P01917;P02191;Ground.3.

¹²⁶² Jašak,48945/15-48950/24;48951/6-48954/24.

¹²⁶³ Vol.4,para.144.

¹²⁶⁴ Petković,49428/19-49432/19;Marić,48193/1-25.

¹²⁶⁵ Jašak,48638/24-48639/9;Idrizović,9771/3-9772/2;Filipović,47620/8-17.

¹²⁶⁶ Jašak,48633/11-48634/9.

¹²⁶⁷ 4D00438;P01739,p.25;Jašak,48609/5-15;Sančević,28587/16-28588/9;1D02910,p.32.

¹²⁶⁸ 4D00454/2D00253;[REDACTED];4D00454; [REDACTED].

Corps and SDA Regional Board.¹²⁶⁹ Conflict spread to Jablanica in mid-April.¹²⁷⁰ The HVO forces in Konjic and Jablanica were in a desperate situation seeking help.¹²⁷¹ 4D00599 shows the ABiH plan to “complete the work” started in Konjic and continue to Jablanica-Mostar, Prozor-Rama¹²⁷² and onwards south to the sea.¹²⁷³ The TC ignored this evidence as well as other evidence showing the connection between the HVO’s defensive actions in helping the civilians in Konjic Municipality.¹²⁷⁴

16.2.6

492. The TC erroneously concluded that Prlić was personally informed of the removal of civilians from Sovići and Doljani by the HVO and did nothing to protect them,¹²⁷⁵ relying solely on P02191.¹²⁷⁶ No evidence supports a finding that Prlić received P02191 or the information claimed therein.

493. The TC, in discussing the evacuation of civilians,¹²⁷⁷ does not reference Prlić or the HVOHZHB as being involved.¹²⁷⁸ Šarić, in his letter, was reacting to the sudden arrival of civilians in his municipality.¹²⁷⁹

16.2.7

494. The TC erroneously concluded that Prlić, by participating in the “drafting of the ultimatum” intended for crimes to be committed against the Muslim population in the municipalities of Prozor and Jablanica.¹²⁸⁰ The TC ignored Petković’s testimony that the

¹²⁶⁹ Zelenika,33117/15-33126/19;1D01464;1D02753;1D02756;1D02757;1D02777;1D02758;1D01013, 1D01308;33136/16-33139/20;1D01009;1D01010;1D01011;1D01012;1D01483;33164/1-33174/18; 2D00814;1D02756;2D01439;2D00237;P01882;P01977;33199/23-33200/14;4D00415;33309/11-33316/22;P10668/1D02753;P10667.

¹²⁷⁰ Jašak,48643/2-646/21;48648/24-48649/10;P01874;2D00246;Petković,49432/20-49438/21;4D00426.

¹²⁷¹ 2D00246;4D-AB,47144/13-47150/19;47166/23-47167/24;47169/14-47172/14;4D00599;4D00085;4D-AB, 47153/6-47157/4;P01874;P01879;P01887;4D00083;4D00874;4D00453;P01882;3D00557; 4D00085;Jurić,39360/2-25;4D00453.

¹²⁷² 4D-AB,47200/1-47201/20; P01879;Jurić,39364/20-39367/14;2D01305.

¹²⁷³ Zelenika,33204/4-33208/16;33209/3-33211/3;33212/1-19;33212/20-33214/13;33214/14-33215/10; 33215/11-21;33215/23-33216/8;33223/6-33224/13;33224/14-33227/5;33148/2-22;33170/7-33171/19.

¹²⁷⁴ Petković,49483/10-21.

¹²⁷⁵ Vol.2,para.613;Vol.4,paras.145-146.

¹²⁷⁶ Vol.4,para.146;Ground.3.

¹²⁷⁷ Vol.2,paras.603-608.

¹²⁷⁸ Petković,49486/4-49489/19;49497/11-49450/8;Filipović,47806-47810/13.

¹²⁷⁹ Petković,49496/10-49497/10;P02191;4D00458.

¹²⁸⁰ Vol.4,paras.146-147.

alleged crimes were investigated,¹²⁸¹ and of Boban's involvement.¹²⁸² There is no evidence that Prlić or the HVOHZHB were involved.¹²⁸³

16.3

495. The TC erroneously concluded that Prlić planned, endorsed, accepted, encouraged, supported, knowingly turned a blind eye to, and/or contributed to the campaign of arrests and mass detention of Muslims beginning on 30 June 1993 in several municipalities.¹²⁸⁴

16.3.1

496. The TC erroneously concluded that Prlić and Stojić called on the Croats to arm against the Muslims in their 30 June 1993 joint proclamation,¹²⁸⁵ by ignoring evidence showing the commencement of a Muslim offensive on 30 June 1993,¹²⁸⁶ and contradicting its findings.¹²⁸⁷

497. This attack on 30 June 1993 was an act of treason by Muslim HVO soldiers: slaughtering their comrades-in-arms in their sleep as the ABiH attacked the HVO.¹²⁸⁸ After the attack, ABiH Commander Pašalić delivered a speech on the radio exhorting: *"People, citizens of Mostar, you have to understand that this is a judgment day when you have to start with fight. I am inviting each citizen who can to bear a rifle, who can bear a rock, to kill ustasha..."*¹²⁸⁹ A rare speech in tone and content.¹²⁹⁰ Halilović, Pašalić's chief commander, was recorded proclaiming to Pašalić: *"We shall keep on, we shall not stop until there is single Ustasha left."*¹²⁹¹ The obvious goal of the ABiH – at least as expressed in this rhetoric – was the extermination/genocide of the BiH Croats.¹²⁹² The President of the BiH Government demanded from the UN Secretary General that *"all necessary measures are taken with the aim of prevention of any further aggression on the*

¹²⁸¹ Petković,49452/15-24;49454/25-49455/7;49438/22-49446/9,49449/12-49450/14;P02059,p.34;P02088.

¹²⁸² 2D00089; P10268; P02047;P01994;3D01211.

¹²⁸³ Petković,49438/22-49446/9;49449/12-49450/14;P02088.

¹²⁸⁴ Vol.2,paras.880-886,890-895,1501;Vol.3,para.609;Vol.4,paras.64,151-155,272,273,337,737,823,1220.

¹²⁸⁵ P03038.

¹²⁸⁶ Vol.2,para.882.

¹²⁸⁷ Vol.2,paras.879-884.

¹²⁸⁸ [REDACTED];Raguž,31526/25-31528/18;Vegar,36976/23-36982/20;2D00448;Jašak,48698/8-48701/13;4D00480.

¹²⁸⁹ 2D00448.

¹²⁹⁰ Vegar,36976/23-36982/20;37069/6-18.

¹²⁹¹ P03030.

¹²⁹² Jašak,48696/20-48697/24;P03030.

Croatian people and its territories in Bosnia and Herzegovina.”¹²⁹³ Inexplicably, the TC ignored this evidence; just as facts get in the way of a good story, so do inconvenient truths interfere with purpose-determinative narratives.

498. Based on these events, and recognizing the imminent danger,¹²⁹⁴ Prlić and Stojić issued a joint statement which in no short measure was normal under the circumstances: “We should unite all our forces from every Croatian village and town, from the whole Herceg-Bosnia in order to stop the Muslim aggression.”¹²⁹⁵ Prlić issued no orders to military units (as he could not even if he wanted) and made no inflammatory remarks demonizing Muslims/ABiH.¹²⁹⁶ This joint statement called for everyone to return to their units and was a call for defence.¹²⁹⁷

16.3.2

499. The TC erroneously concluded that the 30 June 1993 joint proclamation was linked to a JCE, setting in motion the arrest of Muslims, by ignoring evidence that the HVO was surprised by the ABiH attack,¹²⁹⁸ had not taken any preventive measures,¹²⁹⁹ and had made no preparations for the arrests resulting from the ABiH attack and killings of HVO Croats by HVO Muslims.¹³⁰⁰

500. ECMM representative Nissen testified that it was illogical to infer a preconceived plan by the HVO to imprison Muslims in the area of the HZHB; the HVO would have intervened earlier to prevent/limit the treacherous killings by the HVO Muslims.¹³⁰¹ International observers had no information of any preparations underway for the mass arrest of Muslims.¹³⁰² The joint proclamation was not connected to any arrests; Pavlović, whose unit engaged in arrests, testified he never saw the joint proclamation.¹³⁰³

¹²⁹³ Akmadžić,29532/8-29533/25;1D02309.

¹²⁹⁴ Prlić-opening,27544-27545.

¹²⁹⁵ Vegar,36972/21-36973/19;P03038.

¹²⁹⁶ Vegar,36976/23-981/20; 36972/21-3697319; P03038.

¹²⁹⁷ Marjan,35884/13-35889/20.

¹²⁹⁸ Petković,49591/1-49593/25.

¹²⁹⁹ [REDACTED];4D00469;2D00288;4D00034;4D00035;4D00473;Petković,49586/3-49590/12;Jašak,48698/8-48701/13;4D00480.

¹³⁰⁰ Pavlović,46922/17-46923/10;46856/13-22;Petković,49585/1-19;4D00948;4D00702.

¹³⁰¹ Nissen,20649/4-20650/3.

¹³⁰² Nissen,20648/20-20649/3.

¹³⁰³ Pavlović,46968/13-49969/8.

16.3.3

501. The TC erroneously concluded that the military authorities could not have made arrests without the approval of the civilian authorities, including Prlić's consent. The TC mischaracterized Petković's testimony. Though he testified that civilian authorities controlled the HVO military, Petković noted that "Prlić's influence was limited by the Decree on Armed Forces;"¹³⁰⁴ echoed by Praljak in the broader context. (Ground.12.1,para.391).

502. Submissions in Ground.12.1 are adopted here by reference.

16.3.4

503. The TC erroneously concluded that the military chain-of-command perceived the 30 June 1993 joint proclamation in the same way as it perceived the so-called 15 January 1993 and 15 April 1993 Ultimatums and, as such, Prlić accepted the mass arrest of Muslim men, including those who did not belong to any armed force, on 6 July 1993.¹³⁰⁵

504. Submissions in Grounds.16.1-16.2 are adopted here by reference.

505. The TC erroneously concluded that Stojić was tasked with implementing the "decision" or "proclamation" issued together with Prlić.¹³⁰⁶ P03038 (not reflective of the two separate documents issued separately) is a statement issued by Prlić and Stojić,¹³⁰⁷ and an Order for mobilization issued by Stojić based on the power vested in him *through* Boban.¹³⁰⁸

506. There is nothing in the statement showing that Stojić was put in charge of implementing the public announcement made by him and Prlić. Stojić's Order called for all conscripts to report to the Defence Office in their districts of residence or their units within 24 hours.¹³⁰⁹ The authority for mobilization rested with the Supreme Commander, the President of the Presidency, under Article 37 of the Decree on Armed Forces, not with the HVOHZHB or Prlić.¹³¹⁰ Article 30 authorized the Supreme Commander/Boban to

¹³⁰⁴ Petković,50343/9-50345/1.

¹³⁰⁵ Vol.4,para.154.

¹³⁰⁶ Vol.4,para.151.

¹³⁰⁷ P03038,p.1,paras.1-5;P03039,p.1,paras.1-2;p.2,paras.1-2.

¹³⁰⁸ Pinjuh,37279/11-20;P03038.

¹³⁰⁹ P03038,p.1,para.6.item.1;P03039,p.2,paras.3-7;P03024; Praljak,41949/2-41942/13.

¹³¹⁰ Pinjuh,37235/20-37238/20;P00588/4D00521.

“delegate certain tasks of leading and commanding the armed forces to the Head of the Defence Department/Stojić.”¹³¹¹ Stojić issued the order “pursuant to the authorization” from Boban, showing the interlinking *de jure/de facto* relationship between the Supreme Commander and the Head of the Defence Department – to the exclusion of the HVOHZHB, its President/Prlić and other departments.¹³¹²

507. The TC erroneously concluded that Šiljeg, Commander of the North-West OZ, requested “instructions for work” from Petković and Stojić on the basis of the Prlić-Stojić statement.¹³¹³ Preposterous. The statement was never sent to the HVO Main Staff or to any military structure (Vol.4,para.107). The TC mischaracterized P03026 and disregarded the evidence that the order for mobilization came solely from Stojić,¹³¹⁴ as rightly concluded in Vol.2,para.884.

508. The TC erroneously concluded that pursuant to the Prlić-Stojić joint statement, Lavrić ordered all departments and sections of the Military Police Administration and all Military Police battalions demanding, *inter alia*, the arrest of all conscripts who had not regulated their status.¹³¹⁵ This conclusion is contrary to the TC’s conclusions in Vol.2,para.884, and it ignores evidence that Lavrić’s Order conformed to Stojić’s Order.¹³¹⁶ The TC ignored evidence confirming that the arrests were based on HVO Main Staff orders.¹³¹⁷

509. The TC ignored Petković’s testimony that his 30 June 1993 Order for the isolation of military-aged Muslim men was based on his communications with, and the approval of, Supreme Commander Boban.¹³¹⁸ Petković’s Order does not refer to the Prlić-Stojić joint statement. Petković informed Stojić that “Measures have been taken in all units to remove the Muslims from the HVO.”¹³¹⁹ There is no evidence showing which document was issued first: the Prlić-Stojić joint statement or the Petković Order.

¹³¹¹ P00588/4D00521.

¹³¹² P03038,p.1,para.6.

¹³¹³ Vol.4,para.151; P03026.

¹³¹⁴ Praljak,41949/2-41942/13;P03038;P03039.

¹³¹⁵ Vol.4,para.152.

¹³¹⁶ Marjan,35902/19-35903/21.

¹³¹⁷ Andabak,51123/8-26/5;51166/21-167/17;P04228;5D05094.

¹³¹⁸ Petković,49575/10-49579/24;P03019.

¹³¹⁹ Petković,49580/24-49581/20;4D00480.

16.3.5

510. The TC erroneously concluded that Prlić knew of “the plan” and intended to have Muslim men arrested indiscriminately and *en masse* and placed in detention.¹³²⁰

511. Submissions in Grounds.16.3.1-16.3.2 are adopted here by reference.

512. The TC erroneously ignored evidence showing Prlić’s efforts to lessen tension and improve the situation by informing the internationals about the arrests as soon he became aware,¹³²¹ and subsequently appealing to all sides in BiH not to use humanitarian operations as a weapon in the conflict,¹³²² [REDACTED].¹³²³ (Ground.14,para.433)

16.4

513. The TC erred in finding that Prlić planned, endorsed, accepted, encouraged, supported, knowingly turned a blind eye to, and/or contributed to crimes committed in Mostar.¹³²⁴

16.4.1

514. The TC erroneously concluded that Prlić approved the introduction of a Croatian culture in “HZ(R)HB” through the usage of the Croatian language, Croatian Dinar, and the HZHB coat of arms and flag;¹³²⁵ it relies on Tomljanovich (Ground.4.2).

515. The TC ignored evidence that:

- a. the Croatian language (not identical to the Croatian language spoken in Croatia)¹³²⁶ was an official language before BiH independence;¹³²⁷
- b. the Muslims did not object to the usage of the Croatian language prior to 1993; the Muslims had not decided on a name for their language;¹³²⁸ and

¹³²⁰ Vol.4,para.155.

¹³²¹ Petković,49581/21-49583/9;49584/10-23;[REDACTED].

¹³²² 1D01529.

¹³²³ [REDACTED].

¹³²⁴ Vol.2,paras.669-673,675-710,716-748,750-757,918,1201,1203,1213-1218,1222,1227-1244,1264-1268,1347-1348,1351,1361-1362,1366;Vol.4,paras.156-185,272.

¹³²⁵ Vol.4,para.158.

¹³²⁶ Perković,31903/6-31905/2;31711/7-31714/1.

¹³²⁷ 1D00430;Donia,1955/24-1957/5.

¹³²⁸ Akmadžić,29432-29438;1D02663

c. the issue of language was constitutionally regulated.¹³²⁹

516. The Bosniak language was first mentioned officially on 28 August 1993.¹³³⁰ Izetbegović, at the RBiH Presidency session on 26 December 1992 mockingly suggested that “we should be silent” while the Bosnian Muslim language is included in the RBiH Constitution.¹³³¹ There is no evidence showing the use of Muslim/Bosniak language texts in BiH during the period of the Indictment.

517. Submissions in Grounds.1.1-1.2 are adopted here by reference.

518. The TC ignored evidence that the decrees on education were promulgated to organize and finance education on an interim basis, just as was done elsewhere in BiH¹³³² [REDACTED].¹³³³ The Muslims’ interests were considered by the HVOHZHB, as demonstrated by the Decree on the implementation of the HZHB Law on Public Administration, Article 2: “the citizens of HZHB have the right to use their language and letter in communication with the administrative bodies of HZHB.”¹³³⁴

519. The TC ignored evidence that the BiH Dinar remained the official currency in the HZHB, but due to exigent circumstances, Croatian Dinars, Deutsche Marks, and US Dollars were used.¹³³⁵ The use of the Croatian Dinar had nothing to do with the politics of the alleged so-called Croatisation.¹³³⁶

520. The TC erroneously concluded that Prlić aproved the introduction of Croatian culture by signing a decree on the coat-of-arms and flag of the HZHB, ignoring evidence that the HZHB coat of arms and flag were a half a millennium old in BiH, used also by Muslim noble families,¹³³⁷ and that the HZHB Presidency decided on these matters,¹³³⁸ with the HVOHZHB merely drafting the implementing legislation as instructed.¹³³⁹

¹³²⁹ Palameta,32758/3-32764/1;32770/8-32772/1;32775/14-32777/1;32790/20-32791/22;32793/5-21;32772/5-32774/4;1D00469.

¹³³⁰ 1D00430;1D00468;1D00469;1D00470.

¹³³¹ Akmadžić,29432/3-29438/12;1D02663.

¹³³² Palameta,32778/3-17;32798/4-32800/23;32800/24-32803/16;32769/14-32770/7.

¹³³³ [REDACTED].

¹³³⁴ 1D02305.

¹³³⁵ Primorac,29901/4-21;29914/11-29919/1;1D01622;1D01621;1D01623;29962/20-29964/10;1D01292.

¹³³⁶ Cviki,35178/9-35181/23;35538/10-35542/24;1D02078,p.17;Tomić,33812/15-33818/6;33767/18-3768/8;33810/20-33812/6;34161/2-1434181/2-20;34183/1-34184/12;Perković,31713/9-31714/1;Primorac,29927/9-29930/7;1D00036;30033/13-30041/3;1D02663;IC00813;IC00814;IC00815;IC00816;30048/8-30049/7;29901/4-21;29914/11-29919/1;1D01622;1D01621;1D01623;29962/20-29964/10;1D01292.

¹³³⁷ Donia,1960/11-1962/13;1962/14-1963/18;1964/1-22;5D01046;5D01026.

16.4.2

521. The TC erroneously concluded that the HVOHZHB on 17 May 1993 during its 38th session expressed its support for the relocation of civilians to the Heliodrom and the release of women, children, and elderly, and that Prlić accepted the arrests of Muslim men of Mostar who did not belong to any armed forces carried out around 9 May 1993, by participating in the meeting and raising no objections.¹³⁴⁰ The TC relied on a single document,¹³⁴¹ which it misinterpreted.

522. The HVOHZHB did not express its support for the relocation of civilians to the Heliodrom, as stated in Vol.4,para.165; it expressed its support for the activities of the Office for Expelled Persons and Refugees.¹³⁴² The TC ignored evidence and its own findings¹³⁴³ that the ODPH did not participate in the relocation of civilians; it helped civilians, women, children, and elderly, mostly refugees relocated from Mostar by the military for security reasons.¹³⁴⁴

523. The Minutes of the 38th session show that “The HVOHZHB was informed that all elderly persons, women and children have already been sent back to their homes, and that some of them have been sent, at their own request, to the part of the town on the left bank of the river Neretva.”¹³⁴⁵

524. Nothing suggests that the relocation was related only to Muslims, and no discussions about arrests of Muslim men were recorded.¹³⁴⁶ The TC ignored evidence that Prlić and the HVOHZHB did not participate in activities or agreements during this period.¹³⁴⁷

16.4.3 and 16.4.4

525. The TC erroneously concluded that Prlić: contributed to the process of evicting Muslims in Mostar by signing the Decree of 6 July 1993 (P03089), accepted an

¹³³⁸ P00543,p.4;2D01262,pp.2,15,item,15.

¹³³⁹ P00767,p.3.item.2;P00772.

¹³⁴⁰ Vol.4,para.165.

¹³⁴¹ 1D01666;Ground.3.

¹³⁴² 1D01666,p.1.

¹³⁴³ Vol.1,para.805.

¹³⁴⁴ Gorjanc,46516/21-46518/10;Marić,48197/25-48198/16;Petković,49552/23-49553/17;49555/1-7;49983/14-49984/14;Vegar,37159/15-37163/20;P10837.

¹³⁴⁵ 1D01666,p.2.

¹³⁴⁶ Raguž,31519/6-31520/7;Buntić,30692/16-30695/7;Perković,32021/12-32023/18.

¹³⁴⁷ P02352;1D01595;1D02404;4D00307;6D00007.

HVOHZHB practice of appropriating the apartments of Muslims expelled from West Mostar; contributed to a climate of violence in Mostar; and accepted the commission of crimes.¹³⁴⁸

526. There is no evidence that the HVOHZHB appropriated the apartments of Muslims expelled from West Mostar. The TC found that the executive power within the municipalities was exercised by the municipal HVOs: not by the HVOHZHB,¹³⁴⁹ and that the Muslim inhabitants were expelled from their flats by HVO soldiers.¹³⁵⁰ There is no evidence that the HVOHZHB allocated apartments of expelled Muslims to soldiers and Croatian families, and it is contrary to the TJ.¹³⁵¹ The Mostar Municipality had its own legislation¹³⁵² and its own Housing Commission – consisting of three Croats and three Muslims – in charge of allocating abandoned flats.¹³⁵³

527. The TC mischaracterized the Decree (P03089). The definition and usage of abandoned apartments was the same as in the RBiH law of June 1992.¹³⁵⁴ The Decree regulated that apartments should not be considered abandoned and could not be temporarily used if abandoned “due to the use of physical force and the objective of ethnic cleansing the populace from a certain region or achieving other objectives” and that use of the abandoned apartments could be granted temporarily, through proper procedure.¹³⁵⁵

528. The TC ignored evidence showing:

- a. the chaotic usage of socially-owned abandoned apartments;
- b. the efforts made by municipal authorities to introduce order¹³⁵⁶ in the usage of apartments belonging to the municipality and to other legal entities;¹³⁵⁷
- c. the Decree was to standardize the legislation in all municipalities;¹³⁵⁸

¹³⁴⁸ Vol.4,paras.169-171.

¹³⁴⁹ Vol.2,paras.683-686;P03089,Art.9.

¹³⁵⁰ Vol.2,paras.815,818,826,872,876,897,929,984;Vegar,37058/16-37060/15.

¹³⁵¹ Vol.2,para.938.

¹³⁵² Vol.2,paras.730-734;P00229;1D00548;1D00598;1D00618;P00490;1D00715.

¹³⁵³ 1D00730.

¹³⁵⁴ P03089,Arts.1,2,10;1D01223,Arts.1,2,10;Vol.2,para.169.

¹³⁵⁵ P03089,Arts.3,9,11.

¹³⁵⁶ Puljić,32283/1-10;32286/20-32288/6;32157/20-32158/14;1D00548;2D00007.

¹³⁵⁷ Marić,48394/10-17.

- d. the Decree was more in line with advancing human rights than the RBiH Law on abandoned apartments;¹³⁵⁹ and
- e. the majority of abandoned flats were allotted to Muslims¹³⁶⁰ and ABiH soldiers.¹³⁶¹

529. The TC erroneously concluded that “once Muslims were deprived of their apartments, their return became unrealistic,”¹³⁶² by ignoring evidence that the HVOHZHB adopted measures protecting property: not allowing property transactions,¹³⁶³ banning privatization,¹³⁶⁴ and ensuring the return of property to the rightful owner/user.¹³⁶⁵ The TC ignored evidence that the HVOHZHB prevented changes in the demographic structure during the war by prescribing that refugees and displaced persons retained their place of domicile in the places of residence they had on 1 April 1992.¹³⁶⁶

530. Submissions in Ground.10.5 are adopted here by reference.

16.4.5

531. The TC erroneously concluded that Prlić supported an HVO campaign of firing and shelling against East Mostar by knowing, accepting and encouraging the murders, destruction of property and the destruction of the Old Bridge resulting from an HVO campaign of firing and shelling against East Mostar.¹³⁶⁷ There is no evidence that Prlić in any way encouraged the murders and destruction of property in East Mostar. The TC erroneously concluded that Prlić was one of the “HVO authorities” who “wished to minimize or conceal” the responsibility of HVO armed forces in the destruction of the Old Bridge,¹³⁶⁸ based on Prlić’s remarks to Tuđman and others,¹³⁶⁹ and a BBC interview.¹³⁷⁰

¹³⁵⁸ 1D01669,p.2.item.2.

¹³⁵⁹ Raguž,31558/1-31563/18; 31290/16-31298/7;P03089;1D01223.

¹³⁶⁰ 3D01027;Puljić,32291/2-32292/14;32309/21-32210/3;1D00641;Vegar,37054/7-37057/12; 37057/13-37058/1.

¹³⁶¹ 3D00734;Jašak,48802/9-48804/18.

¹³⁶² Vol.4,para.170.

¹³⁶³ Perković,31800/8-31802/23;Raguž,31398/16-31399/4.

¹³⁶⁴ Tomić,33824/9-33825/2;1D00052.

¹³⁶⁵ [REDACTED];31476/11-1477/4;Perković,31800/8-31802/23;1D01892; 1D00669;Tomić,33768/9-33772/14;1D02002;Prlić,opening,27568/5-18;P01580;P01652,p.4.

¹³⁶⁶ P01580;P01652,p.4.

¹³⁶⁷ Vol.4,paras.173-176.

¹³⁶⁸ Vol.2,para.1348,1351;Vol.4,para.175.

532. The TC ignored evidence that from 7 to 11 November 1993 Prlić was not in Mostar; he was visiting Banja Luka, Velika Kladuša, and Zagreb.¹³⁷¹ In the meeting with Tudman, Prlić merely expressed a known fact: the Old Bridge was 300 meters away from the front line which had not changed since May 1993.¹³⁷²

533. In Prlić's BBC interview he noted that destruction of the Old Bridge "is terrible", that its destruction had started a year and a half earlier (confirmed in Vol.2,para.1297), and that "this week is final date of this destroying." Prlić noted that he did not know why the Bridge was destroyed, since there were no political or military reasons to destroy it, but nonetheless expressed optimism in the prospect of Muslims, Croats, and Serbs living harmoniously together in Mostar and in the region in harmony as good and equal neighbors.¹³⁷³

16.4.6

534. The TC erroneously concluded that Prlić failed to act to improve the living conditions of the population of East Mostar, having the power to intervene.¹³⁷⁴ The TC disregarded evidence showing Prlić's efforts to facilitate and provide favorable conditions for the flow of humanitarian aid (Grounds.12,para.397;14,para.433;16.4.7,paras.544,546) [REDACTED].¹³⁷⁵

535. The TC erroneously concluded that in June 1993 the HVO hindered repair on the water supply system in East Mostar and that Prlić deliberately impeded THW Company's attempts to repair the water supply by placing bureaucratic obstacles in the way.¹³⁷⁶ The TC selectively used parts of documents and uncorroborated hearsay.¹³⁷⁷ BA offered no specifics for his claims that the HVO constantly raised "bureaucratic obstacles."¹³⁷⁸

536. The TC mischaracterized Finlayson's evidence: he explained that the ABiH forces prevented the repairing of the water supply in June 1993.¹³⁷⁹ Nissen noted that the delay

¹³⁶⁹ Vol.1,para.1347.Vol.4,para.176.

¹³⁷⁰ P07437.

¹³⁷¹ P06454,p.38;P06581,pp.3-6,18;P08654.

¹³⁷² Vol.2,para.782;Praljak,44493/3-21;P06564;IC01005;IC01006;Puljić,32447/4-21;Marić,48237/11-24.

¹³⁷³ Giles,2073/4-2074/8;P07437.

¹³⁷⁴ Vol.4,paras.179-182.

¹³⁷⁵ [REDACTED];1D02094.

¹³⁷⁶ Vol.4,paras.179-180;Vol.2,para.1218.

¹³⁷⁷ BA;[REDACTED];Ground.6.1,paras.179-180 and Ground.6.2,paras.186-187.

¹³⁷⁸ Vol.4,para.179;Vol.2,para.1213.

¹³⁷⁹ Finlayson,18148/14-18156/15;2D00156;P02598.

of the work on the water supply was a military issue and that THW left because of security reasons.¹³⁸⁰ Puljić's testimony was ignored: the Mostar municipal authority controlled utilities such as the water supply;¹³⁸¹ there was no solution for supplying water to East Mostar without repairing the bridges.¹³⁸² The TC ignored evidence that the ABiH opened fire on workers trying to fix the main source for supplying water in Mostar Municipality,¹³⁸³ and that West Mostar also lacked water.¹³⁸⁴ It is illogical to conclude that the HVO obstructed the repairs on the water supply in June 1993, considering that the TC concluded that from July 1993 – after the ABiH's all-out attack – until November 1993, the HVO attempted to manage the water supply issues in Mostar and performed the necessary repairs.¹³⁸⁵

537. The TC erroneously concluded that Prlić's proposals for help to East Mostar were not followed through,¹³⁸⁶ implying Prlić's non-commitment or obstruction. The TC ignored its own conclusion that from June 1993 to April 1994, a front line separated Mostar into two territories, one controlled by the HVO and the other by the ABiH,¹³⁸⁷ while ignoring evidence that the ABiH rejected all offers for help from the west side,¹³⁸⁸ [REDACTED].¹³⁸⁹

538. The TC ignored evidence that the peace proposal after the inauguration of the HRHB Government was a continuation of previous efforts despite the constant attacks from the ABiH: to provide necessary utilities and health care for all inhabitants of Mostar.¹³⁹⁰ And that the new government with new powers played a more prominent role in humanitarian issues,¹³⁹¹ and Prlić sincerely tried to find solutions for all of Mostar and all its inhabitants.¹³⁹²

¹³⁸⁰ Nissen, 20510/16-512/4; Vol.2, para.1214.

¹³⁸¹ Puljić, 32111/9-32112/7; 32168/1-16; 32168/1-16.

¹³⁸² Puljić, 32213/23-32216/9; 32216/10-32218/9; 32222/17-32228/5; 32295/23-32299/21.

¹³⁸³ Puljić, 32237/19-32238/8.

¹³⁸⁴ Puljić, 32400/18-32401/11; [REDACTED]; 2D00501; 2D-AB; 37511/14-37512/11; [REDACTED].

¹³⁸⁵ Vol.2, para.1218.

¹³⁸⁶ Vol.2, para.1203; Vol.4, para.181.

¹³⁸⁷ Vol.1, para.992.

¹³⁸⁸ Bagarić, 39161/14-39166/21; 39176/16-39177/6; [REDACTED]; Bagarić, 39213/11-39216/1; 38973/18-38974/14; [REDACTED]; Vol.2, para.1222.

¹³⁸⁹ [REDACTED].

¹³⁹⁰ Šimunović, 33519/1-33521/6; 1D02767; 1D02766; 1D02765; 1D02764.

¹³⁹¹ 1D01912, Perković, 31799/7-31800/7; 31794/5-31797/25; 1D01873.

¹³⁹² [REDACTED]; P02046, p.5; [REDACTED]; Puljić, 32126/6-32131/14.

16.4.7

539. The TC erroneously concluded that Prlić foresaw and intended the suffering and attack on human dignity of the inhabitants of East Mostar by contributing to the blocking of humanitarian aid delivery to East Mostar from June 1993 to at least the end of December 1993.¹³⁹³

540. The TC erroneously concluded – based on BA’s statement – that international organizations, during the 10 June 1993 meeting were informed that the ODPR issued a decision setting the administrative requirements and conditions for the movement of humanitarian aid convoys.¹³⁹⁴ There is no evidence corroborating BA’s claims. [REDACTED],¹³⁹⁵ [REDACTED].¹³⁹⁶ (Ground.6.1,paras.179-180)

541. The TC erroneously concluded that Prlić had the power to grant passage to humanitarian organizations delivering humanitarian aid.¹³⁹⁷ Prlić needed permission from the HVO military to move about.¹³⁹⁸

542. Submissions in Ground.14 are adopted here by reference.

543. The TC erroneously concluded that in July 1993 Prlić refused to authorize international organizations access to East Mostar¹³⁹⁹ by mischaracterizing BC’s testimony. [REDACTED].¹⁴⁰⁰ The TC ignored evidence that just after the Makarska Agreement was signed and when the joint Muslim-Croat convoy was ready for departure from Croatia, the ABiH launched an attack on Stolac and Čapljina municipalities on 12 July 1993,¹⁴⁰¹ preventing any kind of movement from the south: thus explaining Prlić’s letter on 14 July 1993¹⁴⁰² and the UNHCR’s cancelling of its convoy to refugees at the Heliodrom.¹⁴⁰³ Granić confirmed this in his letter to the BiH Government and Prlić.¹⁴⁰⁴

¹³⁹³ Vol.4,paras.183-185.

¹³⁹⁴ Vol.2,para.1230;Vol.4,para.184.

¹³⁹⁵ [REDACTED].

¹³⁹⁶ [REDACTED].

¹³⁹⁷ Vol.2,para.1231;Vol.4,para.183.

¹³⁹⁸ [REDACTED];1D01643;Perković,31804/11-22;1D01642;P04527;P04174;P03895.

¹³⁹⁹ Vol.2,para.1238;Vol.4,para.184.

¹⁴⁰⁰ [REDACTED];1D01336.

¹⁴⁰¹ Ćurčić,45831/1-45833/7;45895/10-45896/2;4D01042;[REDACTED];P03383;P03905;4D01715;P09935;4D01042;4D01096;4D01101;[REDACTED];P03428;P08648;P09935,para.26;[REDACTED];4D00462,Nissen,20559/1-20560/2;20561/12-20564/1;20526/8-23;P03565;[REDACTED].

¹⁴⁰² 1D01336;[REDACTED];Nissen,20565/6-21;[REDACTED].

¹⁴⁰³ [REDACTED];Nissen,20564/3-20565/6.

¹⁴⁰⁴ P03539.

Contextually this is relevant, providing an alternative plausible explanation concerning the delivery of humanitarian aid: it vividly shows why humanitarian aid was often blocked, and by whom.

544. The TC's findings that "during some periods Prlić blocked all access to the area"¹⁴⁰⁵ is unsubstantiated by the evidence it cited, and is also contradicted by [REDACTED].¹⁴⁰⁶ Boban, not Prlić, decided about the movement of internationals in July 1993.¹⁴⁰⁷

545. The TC erroneously concluded that the 8 August 1993 Makarska meeting attests to difficulties faced by the internationals in obtaining permission to deliver humanitarian aid to the population of East Mostar.¹⁴⁰⁸ Nothing from the evidence suggests that this meeting was an obstacle to the delivery of humanitarian aid. The TC mischaracterized [REDACTED]. [REDACTED]. [REDACTED].¹⁴⁰⁹ Contrary to the TC's conclusions, this meeting was organized to eliminate obstacles in the delivery of humanitarian aid. [REDACTED], is irrelevant; it does not mention the Makarska Agreement.

546. The TC ignored evidence that some administrative procedures were necessary.¹⁴¹⁰ This meeting was a continuation of Prlić's and the HVOHZHB's efforts to set up a system in cooperation with the internationals to ensure the smooth delivery of humanitarian aid; all convoys were approved without any exception and reached their destinations.¹⁴¹¹ The functioning of the Joint Commission initiated by Prlić and the Protocol signed by all participants¹⁴¹² ensured unhindered passage of humanitarian convoys in BiH from June to December 1993,¹⁴¹³ as confirmed by UNHCR.¹⁴¹⁴

547. The TC ignored evidence that Prlić – despite his limited powers – endeavored to ensure the free flow of humanitarian aid during internal meetings,¹⁴¹⁵ public

¹⁴⁰⁵ Vol.4,para.185.

¹⁴⁰⁶ [REDACTED].

¹⁴⁰⁷ VanderGrinten,21176/1-21179/14;[REDACTED];P04430;[REDACTED].

¹⁴⁰⁸ Vol.2,para.1239;Vol.4,para.184.

¹⁴⁰⁹ [REDACTED].

¹⁴¹⁰ [REDACTED];1D01921;1D01856;1D01922;Tomić,33849/13-33850/15;[REDACTED];Lane,23824/10-13;BJ,5793/7-22;5737/21-25; Watkins,18975/1-18976/10;[REDACTED];Raguž,31341/13-31342/12;1D01954;31364/4-31365/15;1D01921;1D02281; 1D01856;P01032;1D02282;1D01921;2D00008.

¹⁴¹¹ P10264;Raguž,31319/10-31320/1;31353/15-31358/14;1D01360.

¹⁴¹² 1D02024;1D02025;1D01855;Raguž, 31339/10-31341/12.

¹⁴¹³ 1D01854;Raguž,31365/16-31366/19;31332/13-31333/21;31358/15-31362/5;3D00921;1D02183; [REDACTED].

¹⁴¹⁴ Raguž,31333/22-31334/10.

¹⁴¹⁵ P03560;P04220;Raguž,31319/10-31320/1;1D00931.

appearances,¹⁴¹⁶ and meetings and correspondence with internationals.¹⁴¹⁷ When Boban gave his approval in late August 1993, Prlić tried to no avail to persuade protesters to allow convoys to enter East Mostar; hence his request to Praljak to use his influence.¹⁴¹⁸

16.5

548. The TC erred in finding that Prlić was involved in displacing Croats from Vareš.¹⁴¹⁹

16.5.1 and 16.5.2

549. The TC erroneously concluded that Croats from Vareš were displaced to territories claimed to be part of the HZHB because some officials did not wish that Vareš Municipality be included in the area of BiH considered “Croatian” and in finding that Prlić shared the intention to displace the Croats from Vareš because that municipality was not considered “Croatian.”

550. The TC erroneously concluded that “some HZ(R)HB officials did not wish” that Vareš Municipality be included in the “area of BiH considered Croatian”;¹⁴²⁰ [REDACTED].¹⁴²¹ The HZHB never had defined borders; it was established to take care of all Croats in BiH, including parts of Vareš Municipality inhabited by Croats.¹⁴²² [REDACTED]¹⁴²³ and the HRHB¹⁴²⁴ up to when the Croats were expelled by the ABiH in November 1993.¹⁴²⁵

551. The TC ignored evidence that the Croats were expelled from Travnik, Bugojno, Fojnica, and Konjic – areas designated by international negotiators as part of the Croat-majority provinces¹⁴²⁶ – whereas Croats in Kiseljak and Kreševo, areas not designated as Croat-majority provinces, did not leave.¹⁴²⁷

¹⁴¹⁶ 1D01529;1D02230,p.9;Petković,50036/21-50039/3;1D02070.

¹⁴¹⁷ 1D01871;P03673.

¹⁴¹⁸ Praljak,43874/14-43875/4;44393/24-44395/18;P03895;Vol.2,para.1240.

¹⁴¹⁹ Vol.3,paras.502-508;Vol.4,paras.198-204.

¹⁴²⁰ Vol.4,para.198.

¹⁴²¹ [REDACTED].

¹⁴²² Sančević,28605/13-28606/10;28607/17-28609/24;28688/7-28695/15;28744/12-28746/14;Buntić,30796/23-30797/21;Perković,31642/15-31652/2;31891/8-31892/22;Jašak,48881/16-48882/12;Filipović,47762/11-18;[REDACTED];Batinić,34403/14-34404/15;34330/14-22;1D02843.

¹⁴²³ [REDACTED];1D01267.

¹⁴²⁴ P00700;2D01262,p.16;1D02816,p.2.

¹⁴²⁵ Vol.3,paras.505-508.

¹⁴²⁶ 1D00898,p.5,Map,p.26.Province.10;p.27.Province.10;P09276.Map.11.

¹⁴²⁷ Petković,50598/10-50599/5;1D00898,p.5.Map;p.26.Province.7;P09276.Map.11.

552. The TC erroneously concluded that Prlić contributed to the organization of the removal of the Croats from Kakanj and Vareš municipalities and their rehousing in the HZ(R)HB in August 1993.¹⁴²⁸ The TC ignored evidence that “in June 1993, between 10.000 and 15.000 BiH Croats arrived in the town of Vareš”,¹⁴²⁹ fleeing due to ABiH attacks.¹⁴³⁰ The 18 August 1993 letter was not sent to the municipal HVO Mostar to communicate a decision to evacuate the Kakanj Croats,¹⁴³¹ but to the municipal HVO Vareš as a response to the repeated requests for the evacuation of Croats from Kakanj and Vareš.¹⁴³² The HVOHZHB and Prlić reacted: “Following the many times expressed request by Kakanj Croats exiled from Vareš Municipality, for an evacuation of those who are most endangered (children, women, the sick, the old).”¹⁴³³

553. The TC erroneously concluded that the ODPR was under the direct power of Prlić,¹⁴³⁴ having concluded otherwise in Vol.1,paras.630-631.

554. The TC ignored evidence that all 5,500 displaced Croats from Vareš ended up in Croatia,¹⁴³⁵ debunking conclusions of reverse ethnic cleansing in furtherance of the JCE/homogenization of Croat designated areas.

555. The TC erroneously concluded that after the events in Stupni Do “the HVO political authorities called on the Croatian population to leave the Municipality of Vareš.”¹⁴³⁶ It relied on one document of unsubstantiated hearsay.¹⁴³⁷ The document notes: “*We came by information indicating that the HVO were encouraging people to flee by spreading rumors about Muslim atrocities any by making transportation possibilities available.*”¹⁴³⁸ There is no mention who those authorities were. [REDACTED], Prlić mentioned that 5,000 refugees had arrived in Herzegovina; this had nothing to do with the alleged call of “the HVO political authorities” to the Croats to leave Vareš.

¹⁴²⁸ Vol.4,paras.199-200.

¹⁴²⁹ Vol.3,para.502.Vol.4,para.199.

¹⁴³⁰ [REDACTED];1D01264 ;P02760;1D00927;[REDACTED].

¹⁴³¹ P04248.

¹⁴³² [REDACTED];1D01263;1D01262;1D01264;3D00837.

¹⁴³³ P04282.

¹⁴³⁴ Vol.4,para.201.

¹⁴³⁵ 1D00927;[REDACTED].

¹⁴³⁶ Vol.3,para.503;Vol.4,para.202.

¹⁴³⁷ Ground.3.

¹⁴³⁸ P02980,p.21.

556. The TC erroneously concluded that Vareš fell into ABiH hands on 5 November 1993,¹⁴³⁹ and that on 4 November 1993 the HRHB Government decided that the ODPH would receive and accommodate refugees.¹⁴⁴⁰ The TC ignored evidence that Vareš fell on 3 November 1993, that the citizens left the city early that day, and that the HVO Main Staff then asked UNPROFOR to pull the civilians out of the battle zone.¹⁴⁴¹ The HRHB Government on 4 November 1993 reacted to this humanitarian catastrophe; Bishop Komarica informed the HRHB Government that civilians from Vareš escaped to territory under control of Serb forces, conveying a message from the Serb government that they needed to send fuel and buses to transport the civilians to Herzegovina.¹⁴⁴²

557. The TC erroneously concluded that Prlić “shared the wish to displace Croats from Vareš.”¹⁴⁴³ In October 1993, Prlić sent the letter to Croatia asking it to receive 5,500 displaced persons from Kakanj, who since June 1993 were accommodated in Vareš, saying that “*if there is no new aggression in the territories inhabited by Croatian population in the winter period all of the displaced persons will be taken care of in the adequate and to human needs appropriate way.*”¹⁴⁴⁴ This shows that neither Prlić nor the HVOHZHB expected the arrival of Vareš Croats in November 1993. No reasonable trier of fact would have found that there was a “wish” to displace Croats from Vareš or that Prlić shared this “wish.”¹⁴⁴⁵

16.6

558. The TC erroneously concluded that Prlić was involved in and contributed to a policy of population movement.¹⁴⁴⁶

16.6.1

559. The TC erroneously found the existence of an HZ(R)HB policy of population movement to displace Croats and Muslims in order to create or reinforce Croatian populations in territories considered Croatian.

¹⁴³⁹ Vol.3,para.505;Vol.4,para.203.

¹⁴⁴⁰ Vol.4,para.203.

¹⁴⁴¹ 4D00519,p.11;Petković,49610/10-49611/7;3D00971;3D00984.

¹⁴⁴² 1D01269;1D01270;[REDACTED];1D00926.

¹⁴⁴³ Vol.4,para.204.

¹⁴⁴⁴ 1D00927;[REDACTED];1D00928,p.2.

¹⁴⁴⁵ [REDACTED].

¹⁴⁴⁶ Vol.2,paras.227,232,921-923,1642-1655;Vol.3,paras.140-145,264-266,270,272-274,502-508;Vol.4,paras.207-215,275,1221.

560. Submissions in Grounds.16.4.3;16.9;16.10 are adopted here by reference.

16.6.2

561. The TC erroneously concluded that Prlić planned, facilitated, and directed the relocation of the Croatian population to territories claimed to belong to HZ(R)HB, as part of a policy of population movement in furtherance of a JCE.¹⁴⁴⁷

562. The TC erroneously concluded that on 1 February 1993 the HVOHZHB established the Commission for the Question of the Migration of Population, by relying on one document introduced through a Bar Table Motion.¹⁴⁴⁸ There is no evidence that this Commission ever existed.

563. The TC erroneously concluded that during a meeting on 5 May 1993 Prlić advocated a population and property exchange program,¹⁴⁴⁹ by relying on BA's statement to the exclusion of other relevant evidence. [REDACTED].¹⁴⁵⁰ Croats were under attack¹⁴⁵¹ and wished to escape Zenica.¹⁴⁵² There was no resettlement policy of Croats from Zenica.¹⁴⁵³ Boban's 7 May 1993 letter to the UN asked for the protection of Croats to "enable the free movement of Croats entering and leaving the areas of Zenica, Konjic and Jablanica."¹⁴⁵⁴ There is no evidence of any exchange of property, forbidden by the HVOHZHB.¹⁴⁵⁵ The TC inexplicably rejected the plethora of evidence that the Croat exodus was due to ABiH attacks;¹⁴⁵⁶ evacuation was requested for the wounded, sick, and handicapped.¹⁴⁵⁷ The Mujaheddin were real and frightening.¹⁴⁵⁸

564. The TC erroneously gave weight to ECMM reports and Beese.¹⁴⁵⁹ Travnik was the capital of Province No.10, one of the VOPP-designated Croat majority provinces.¹⁴⁶⁰ It

¹⁴⁴⁷ Vol.4,paras.207-209.

¹⁴⁴⁸ Vol.4,para.207;Ground.3.

¹⁴⁴⁹ Vol.4,para.208.

¹⁴⁵⁰ [REDACTED].

¹⁴⁵¹ Akmadžić,29575/25-29576/17;29576/19-29577/8;29577/9-29578/4;29579/16-29580/22;2D00101;2D00473;2D00472;P02168;2D01405;2D01404;Bagarić,38912/22-38915/16;2D00098.

¹⁴⁵² Buntić,30471/12-30476/23;1D02003;1D02738;P02142;1D01670.

¹⁴⁵³ Petković,50060/15-50064/1;1D02230,p.24.

¹⁴⁵⁴ P09606,p.2.

¹⁴⁵⁵ [REDACTED];Perković,31800/8-31802/23;1D01892;1D00669.

¹⁴⁵⁶ Ground.16.3.1,para.497;16.3.2,para.499;16.6.2,para.566;16.6.3,16.6.4,para.582.

¹⁴⁵⁷ P02128,p.3;Zelenika,33174/19-33177/24;Petković,49901/24-49902/17;[REDACTED].

¹⁴⁵⁸ 1D01654;3D00331,pp.16-18,paras.47-60;[REDACTED];1D02243;Beese,5437/15-5443/20;2D01262,p.5;2D00016;Filipović,47561/2-47561/21;P06697,p.7,para.29-30;3D01914;4D00597;2D01407.

¹⁴⁵⁹ Vol.4,para.209;1D01668;P03413;Ground.6.2,paras.200-201.

defies logic to suggest that the HZHB/HVOHZHB would pursue a reverse ethnic cleansing policy to resettle Croats from a designated Croat-majority province. Beese's testimony that the movement was an effort to change the voting pattern¹⁴⁶¹ is unsustainable: the HVOHZHB took measures to the contrary.¹⁴⁶² Beese also noted, incredibly, that the danger from the Mujaheddin was propaganda.¹⁴⁶³

565. Submissions in Ground.16.5 are adopted here by reference.

566. The TC misinterpreted two documents and disregarded evidence in concluding that the HVOHZHB organized the anticipated relocation of Central Bosnian Croats.¹⁴⁶⁴ The TC ignored evidence showing the ABiH attacks in the Travnik area, with civilians – wounded and sick – having to be evacuated to Serb-controlled territory,¹⁴⁶⁵ that the HVOHZHB had been informed of the imminent threat to the Central Bosnian Croats and of the HZHB Presidency's inaction,¹⁴⁶⁶ and that the HVOHZHB reacted on the basis of this information by sending proposals to the HRHB Presidency to take some actions.¹⁴⁶⁷ The TC ignored evidence that at the beginning of the June 1993, 30,000 Croats were expelled from Central Bosnia when on 9 June 1993 the ABiH took control of Travnik and on 13 June 1993 took control of Kakanj.¹⁴⁶⁸

567. After the 30 June 1993 ABiH attack in Mostar and the expulsion of Croats from Fojnica, the same proposal was sent again to the HZHB Presidency and the Supreme Commander on 13 July 1993.¹⁴⁶⁹ There was no reaction.¹⁴⁷⁰

568. The TC erroneously concluded that Muslims were forced to leave their homes in West Mostar in order to accommodate the Croats from other areas in BiH and in particular from Travnik.¹⁴⁷¹ None of the refugees – 22,461 in Herzegovina from June to December

¹⁴⁶⁰ 1D01314,p.19;1D00892,p.27;P09841;P01398,p12.

¹⁴⁶¹ Beese,3251/16-24.

¹⁴⁶² P01652,p.4;P01580.

¹⁴⁶³ Beese,5442/6-5443/20.

¹⁴⁶⁴ Vol.4,para.209;Ground.3.

¹⁴⁶⁵ Filipović,47635/4-47639/25;3D01731,p.5.

¹⁴⁶⁶ 1D01668,p.1.

¹⁴⁶⁷ Perković,31720/18-31722/15;1D02340,p.6;1D01668,p.3.

¹⁴⁶⁸ Bagarić,38922/12-38923/6;2D01296;1D01263;1D01264;P02875;[REDACTED];2D01407; [REDACTED];P01263;2D00438;2D00686;2D00902;Božić,36466/16-36468/8;Jašak,49080/17-49082/2;48855/10-48862/17;2D01467;2D01494;P03990,p.9,para.37.

¹⁴⁶⁹ 1D01611,p.4;P03413.

¹⁴⁷⁰ Vol.4,para.214;P06454,p.36.

¹⁴⁷¹ Vol.4,para.209.

1993 – were accommodated in Mostar.¹⁴⁷² There is no evidence of a policy of forcibly moving Muslims and resettling Croats in Mostar or in Herzegovina;¹⁴⁷³ on 30 November 1993, 9,928 Muslims lived in the West Mostar¹⁴⁷⁴ with less than 500 Croats living in East Mostar.¹⁴⁷⁵

569. The Staff for organizing and coordinating the effort to accommodate and provide for expelled people and refugees¹⁴⁷⁶ was created by the HVOHZHB to deal with the humanitarian crisis. The ODPR was unable to care for the tens of thousands of displaced persons arriving in HZHB areas in June 1993¹⁴⁷⁷ due to the ABiH offensive in Central Bosnia.¹⁴⁷⁸

570. The TC erroneously relied on DZ who claimed that Pogarčić, speaking on behalf of Boban, Stojić, and Prlić, “expressed their wish to gather the Croatian population in one Croatian entity.”¹⁴⁷⁹ Pogarčić was Boban’s Chief of Staff. There is no evidence connecting Pogarčić to Prlić, [REDACTED].¹⁴⁸⁰

571. The TC erroneously concluded that Prlić participated in organizing and facilitating the departure of the Croatian population of Central Bosnia to Herzegovina between August and November 1993, by relying on the 29 July 1993 meeting of the HVOHZHB, when issues of accommodation, movement, and the anticipated arrival of 10,000 Croats from Central Bosnia were raised and the Croatian ODPR was asked to assist in the movement of the Croats by providing logistical support.¹⁴⁸¹ The TC conveniently ignored evidence showing why 10,000 Croats from Central Bosnia fled from Central Bosnia and why they ended up in Croatia, not in Herzegovina.¹⁴⁸²

572. The TC erroneously concluded that the ODPR sent a letter on 3 November 1993 to Prlić,¹⁴⁸³ it was sent to the Presidents of the municipal HVOs informing them about the

¹⁴⁷² 1D01829;[REDACTED];Raguž,31376/2-14.

¹⁴⁷³ Raguž,31440/18-31443/4;31443/5-31444/7;Tomić,34762/4-12;34255/19-34257/24;34256/16-19; Buntić,30398/8-30399/5;30977/3-30978/15;30972/1-30973/8.

¹⁴⁷⁴ Šimunović,33636/13-33638/18;33672/12-33676/5;1D02813.

¹⁴⁷⁵ Perković,32013/9-32014/5.

¹⁴⁷⁶ Vol.4,para.210.

¹⁴⁷⁷ Raguž,31543/15-31547/25;31318/5-31319/9;P03092;1D01672,p.2;

¹⁴⁷⁸ [REDACTED];1D01264;3D00837.

¹⁴⁷⁹ Vol.4,para.211.

¹⁴⁸⁰ [REDACTED].

¹⁴⁸¹ Vol.4,paras.212,213.

¹⁴⁸² 1D01829;[REDACTED];Raguž,31376/2-14;Ground.16.6.2.

¹⁴⁸³ Vol.4,para.213.

ABiH aggression and the realistic possibility of the arrival of a large new wave of expelled Croats from Vareš.¹⁴⁸⁴

573. The TC mischaracterized the 5 November 1993 Presidential Transcript¹⁴⁸⁵ by ignoring the context of the events surrounding the meeting.¹⁴⁸⁶ Prlić remarked that Herzegovina could not accommodate/care for the Croats from Vareš, and that Croatia should accommodate them.¹⁴⁸⁷

574. The TC erroneously concluded that HVO forces exerted pressure on the Croats to leave Vareš,¹⁴⁸⁸ implying that some Croats from Vareš were removed as part of the JCE. This contradicts the TC's findings "that even if the HVO forces exerted pressure on the Croats to leave Vareš, the threat of attacks by the ABiH and the fact that they did happen were sufficient to bring about the departure of Croats from the municipality."¹⁴⁸⁹ There was no policy to relocate Croats from Central Bosnia to territories claimed to belong to the HZ(R)HB; evidence shows that expelled Croats mainly ended up in Croatia.¹⁴⁹⁰ The "HZ(R)HB" policy, shared by Prlić, was for the Croats to remain at their place of origin.¹⁴⁹¹ Just as Syrians are fleeing from ISIS, so were the Croats from Central Bosnia fleeing from the Mujaheddin. Logical.

575. No reasonable trier of fact would have found that Prlić planned and facilitated the movement of Croats from areas where they were to territories claimed to belong to the HZ(R)HB. Croats moved from Central Bosnia because of the ABiH; most Croat refugees came from Croat-majority provinces (Travnik, Bugojno, Fojnica, Konjic, Jablanica, Gornji Vakuf). Croat refugees ended up mainly in Croatia or third countries; none were accommodated in Mostar.

¹⁴⁸⁴ Raguž, 31334/11-31336/11; 1D02179; 31378/23-31379/12.

¹⁴⁸⁵ Vol.4, para.214; P06454.

¹⁴⁸⁶ Ground.9.2, para.240.

¹⁴⁸⁷ P06454, p.38.

¹⁴⁸⁸ Vol.4, para.214.

¹⁴⁸⁹ Vol.3, para.508.

¹⁴⁹⁰ 1D00928; 1D00932; P05960; [REDACTED]; 1D01872; 1D02224; 1D00929; 1D00927; 1D01829; P07582; [REDACTED]; Batinić, 34399/1-34400/14; 34400/18-34402/16; 34402/17-34403/8; [REDACTED]; Raguž, 31246/16-31247/22; 31317/10-31318/4; 31374/19-31376/24; 31376/25-31378/4; 31378/5-22; 31378/23-31379/12; 31379/13-31380/4; 31380/5-31389/21; 31389/22-31390/3; Rebić, 28310/10-28311/5; 28456/9-28458/24; 28307/18-28310/9.

¹⁴⁹¹ P04208, pp.3, 6-7; P08155, p.2; Sančević, 28578/15-28586/10; 28607/17-28609/24; 28612/1-28615/3; Tomić, 34838/1-34839/19.

16.6.3 and 16.6.4

576. The TC erred in finding that Prlić allowed detainees to be moved to ABiH-held territories or sent them to third countries via Croatia and that he directed/supported the policy of moving Muslim detainees and their families outside the HZ(R)HB to third countries via Croatia.¹⁴⁹²

577. The TC erroneously concluded – based on BA – that Prlić said that 10,000 Muslims wished to leave Mostar for third countries, that he negotiated with Croatia for transit visas for Muslims to go to third countries through Croatia,¹⁴⁹³ and that he supported a policy of moving Muslim detainees and their families from the HZ(R)HB to third countries.¹⁴⁹⁴ The TC mischaracterized and ignored evidence.

578. [REDACTED].¹⁴⁹⁵ [REDACTED].¹⁴⁹⁶ [REDACTED].

579. During the 19 July 1993 meeting, the HVOHZHB concluded that measures should be taken to protect civilians in the zones of war operations and that considering the inflow of new refugees and expelled persons in HZHB areas, the Staff for Organizing and Coordinating the Care of Expelled Persons and Refugees in cooperation with the ODPR should assist civilians wishing to voluntarily leave for third countries.¹⁴⁹⁷ Nothing in the conclusions suggests that refugees/displaced persons or detainees of any particular nationality were mentioned.

580. [REDCATED].¹⁴⁹⁸ [REDACTED].¹⁴⁹⁹ [REDACTED].

581. The TC ignored evidence that persons needed transit visas for travel regardless of their nationality.¹⁵⁰⁰ In the second part of 1993, more than 2,000 requests for transit to third countries were processed, mainly through UNHCR.¹⁵⁰¹ The TC ignored evidence

¹⁴⁹² Vol.4,paras.212,275.

¹⁴⁹³ Vol.4,para.212.

¹⁴⁹⁴ Vol.4,paras.212,275;Ground.6.1,paras.182-183.

¹⁴⁹⁵ [REDACTED].

¹⁴⁹⁶ [REDACTED].

¹⁴⁹⁷ P03560,pp.5-6;P03565.

¹⁴⁹⁸ [REDACTED].

¹⁴⁹⁹ [REDACTED].

¹⁵⁰⁰ P06324,p.7;Sančević,28534/4-28537/14;28545/22-28546/18.

¹⁵⁰¹ 1D01710;Raguž,31539/9-31540/17;31399/5-31402/10.

that the Ljubuški transit center was subsequently opened, mainly for Croat refugees as intended.¹⁵⁰² An ODPH report confirms this.¹⁵⁰³

582. The TC ignored evidence that the 29 July 1993 meeting¹⁵⁰⁴ was organized to prepare for the reception of persons who had escaped from Bugojno after the ABiH attack.¹⁵⁰⁵ UNHCR was engaged in moving refugees to third countries.¹⁵⁰⁶ In mid-July 1993, those caught in the middle of war zones wanted to leave; the majority left Mostar before summer 1993,¹⁵⁰⁷ demonstrating the ODPH's role as purely humanitarian: no goal of ethnically cleansing Muslims.¹⁵⁰⁸

16.6.5 and 16.6.6

583. The TC erroneously concluded that Prlić directed/participated in the relocation of Croats from Central Bosnia to and the expelling of Muslims from HZ(R)HB territories.¹⁵⁰⁹ Muslims were not expelled. The TC ignored evidence showing the return of Muslim refugees to BiH, including to areas under HVO control.¹⁵¹⁰

584. Submissions in Grounds.16.6.2;16.6.3;16.6.4 are adopted here by reference.

16.7

585. The TC erroneously concluded that Prlić had power over prisons and detention facilities established in the HZ(R)HB, and that he accepted the mistreatment of detainees in Dretelj, Gabela, and the Heliodrom.¹⁵¹¹

16.7.1

586. The TC erroneously concluded that Prlić had power over the Heliodrom.

¹⁵⁰² Raguž,31402/11-31405/13;31525/7-31526/14.

¹⁵⁰³ P06324,p.3.

¹⁵⁰⁴ Vol.4,para.212.

¹⁵⁰⁵ Galbraith,6497/1-8;[REDACTED];Bagarić,38924/1-38925/18;2D00461;Watkins,19026/6-11;4D00563;Perković, 31729/12-31731/7;1D01672;Raguž,31378/5-22;1D01523.

¹⁵⁰⁶ 1D01710;Rebić,28299/12-28300/15;28451/4-20;28183/23-28187/13;1D02601;1D02600;1D02599;1D02598;1D02597;1D02596;1D02594;1D02595;1D02593;Galbraith,6598/13-20;6532/1-16.

¹⁵⁰⁷ Tomić,33708/2-33710/13;34049/15-34052/2.

¹⁵⁰⁸ Rebić,28152/20-28154/12;28159/6-28161/3;28453/4 28454/6;[REDACTED];P06965,p.3.

¹⁵⁰⁹ Vol.4,para.275.

¹⁵¹⁰ Zorić,27954/25-27958/4;28122/18-28124/8;Rebić,28223/22-28226/16;1D01590;Raguž,31328/10-31330/12;31342/13-31343/20;31344/22-31345/22;31476/11-31477/4.

¹⁵¹¹ Vol.1,paras.515-537;Vol.2,paras.894,1437-1441;Vol.3,paras.59,154-158,165,168,171,173,180,189,191,192,194,210,211,212,258,264,265;Vol.4,paras.218-255,273-275,337,397.

587. Submissions in Ground.13 are adopted here by reference.

16.7.2

588. The TC erroneously concluded that Prlić and the HVOHZHB facilitated and supported the detention of civilians and the bad conditions in the Heliodrom,¹⁵¹² by effectively relying on one document.¹⁵¹³ The HVOHZHB merely expressed support for the activities of the ODPR.

589. Submissions in Ground.16.4.2 are adopted here by reference.

590. The TC erroneously concluded that the HVOHZHB “conceded that efforts had to be made to improve the detention conditions”¹⁵¹⁴ and that Prlić, by issuing the press release on 23 July 1993 after being informed at the HVO meeting on 19 and 20 July 1993 of the “precarious situation of the detained Muslims as the detention centers”, “imparted” information about the detention of Muslims which he knew was inaccurate¹⁵¹⁵ and publicly justified the detention of Muslims at the Heliodrom and denied that their situation was bad. Nonsense. The meetings on July 19 and 20 related to Čapljina prisons, not to the Heliodrom.¹⁵¹⁶ The TC ignored contextual evidence when assessing the press release, which is Prlić’s answer to Granić’s appeal on the occasion of the deterioration of the humanitarian situation on BiH territory¹⁵¹⁷ after the ABiH offensive on 30 June 1993. The information in the press release came from the authorities dealing with detention centers.¹⁵¹⁸ There is no evidence that those in charge of the Heliodrom were obliged to send information to Prlić or the HRHB Government, or that any such information was forwarded and received.¹⁵¹⁹ Prlić had no *de jure* power over any of the detention centers, including the Heliodrom. And there is no evidence that Prlić exceeded his legitimate powers. Prlić could not implement any measures – good or bad – in the Heliodrom. The TC’s conclusions are unreasonable and inapposite of the evidence and reality when viewed in context.

¹⁵¹² Vol.4,paras.222,225.

¹⁵¹³ 1D01666;Ground.3.

¹⁵¹⁴ Vol.4,para.224.

¹⁵¹⁵ Vol.4,para.225.

¹⁵¹⁶ Ground.13,para.417.

¹⁵¹⁷ Vol.4,para.223;P09697;P03673.

¹⁵¹⁸ P03560;[REDACTED];46308/7-46311/9;Bagarić,38986/17-38990/7;39230/6-39232/5;P05035;P03197;Vidović,51518/19-51521/7;51747/23-

51750/5;[REDACTED];P05503;[REDACTED];2D00412.

¹⁵¹⁹ Vol.4,para.224.

591. Submissions in Ground.13 are adopted here by reference.

16.7.3

592. The TC erred in fact and law in finding that Prlić was involved in and/or had the power to grant representatives of international organizations access to the Heliodrom.

593. Submissions in Ground.13 are adopted here by reference.

16.7.4

594. The TC erred in finding that Prlić facilitated the use of the detainees from the Heliodrom for work at the frontlines and as human shields, that he had a power to intervene, and that he accepted their abuse and the death of some.¹⁵²⁰

595. Submissions in Grounds.12-13 are adopted here by reference.

596. Prlić had no power over the military or over those authorized at the Heliodrom to assign detainees to forced labor.¹⁵²¹ The HVO Main Staff had authority over matters related to labor performed by detainees, prohibiting the taking of prisoners for labor in dangerous zones.¹⁵²² The Defence Minister intervened by issuing orders to prevent such practices.¹⁵²³

597. The TC erroneously concluded that Prlić was informed about the work of the detainees.¹⁵²⁴ The TC relied on one document (P09846)[REDACTED], and two letters from the ICRC of 18 February 1994 (P07895) and 16 March 1994 [REDACTED]. [REDACTED]. There is no evidence that Prlić received any of these letters. But even assuming that he had, [REDACTED] is not proof of *de jure* or *de facto* powers, and it certainly does not prove Prlić acquiesced by dereliction. The ICRC sent a report in November 1993 to Boban and Pogarčić, his chief of staff – not Prlić – with the list of persons concerning forced labor.¹⁵²⁵ Obviously, the ICRC – *in situ* – knew the actual authority responsible. The TC ignored this evidence, just as it ignored Biškić's testimony that:

¹⁵²⁰ Vol.4,para.232.

¹⁵²¹ Vol.2,para.1492.

¹⁵²² Biškić,15131/18-15132/5;P05873.

¹⁵²³ Biškić,15137/7-15138/13;15160/2-15163/4.

¹⁵²⁴ Vol.2,paras.1481,1473,1492;Vol.4,para.229.

¹⁵²⁵ P00284.

- a. he received ICRC's Letters,¹⁵²⁶
- b. Military Police – as the competent authority – reacted on every one of them,¹⁵²⁷ as well as SIS,¹⁵²⁸ and
- c. relevant information was collected and proper orders were issued to launch investigations¹⁵²⁹ regarding the allegations in the ICRC letters,¹⁵³⁰ with the Minister of Defence, Chief of Main Staff, and the ICRC being informed.¹⁵³¹

16.7.5

598. The TC erroneously concluded that Prlić planned and facilitated the organization of the departure of about 2,500 detainees from the Heliodrom to Croatia, characterized as a “plan” of “ethnic cleansing.”¹⁵³² It relies only on one document, [REDACTED],¹⁵³³ and BA's uncorroborated testimony. There is no evidence that Prlić was involved in releasing persons from the Heliodrom.¹⁵³⁴

599. Submissions in Grounds.16.6.3-16.6.4 are adopted here by reference.

600. The TC disregarded [REDACTED].¹⁵³⁵ [REDACTED].¹⁵³⁶

16.8

601. The TC erroneously concluded that Prlić had power over the Vojno Detention Center and its detainees.¹⁵³⁷ The TC erroneously concluded that Prlić accepted the use of detainees at the frontline and the deaths and wounding of the detainees,¹⁵³⁸ based on

¹⁵²⁶ Biškić,15167/23-15170/8;P07895;Biškić,15174/18-15121;[REDACTED].

¹⁵²⁷ P09890/1D01254;Biškić,15105/3-25.

¹⁵²⁸ Biškić,15156/8-15158/3.

¹⁵²⁹ Biškić,15175/15-15176/16;[REDACTED].

¹⁵³⁰ Biškić,15333/1-25;1D01248;Biškić,15163/6-15168/19.

¹⁵³¹ Biškić,15148/13-15156/5;15331/22-15332/9;P07798;P07787;15158/5-15159/1;15334/1-21;1D01254;15173/9-15174/17;15372/24-15376/9;P07798;P08077.

¹⁵³² Vol.4,para.235.

¹⁵³³ [REDACTED].

¹⁵³⁴ Vol.3,paras.1445-1452.

¹⁵³⁵ [REDACTED].

¹⁵³⁶ [REDACTED].

¹⁵³⁷ Vol.2,paras.1685,1694,1711,1729.

¹⁵³⁸ Vol.2,paras.1685,1694,1711,1729;Vol.4,paras.236-238.

documents sent from ICRC to the Defence Department,¹⁵³⁹ the Main Staff,¹⁵⁴⁰ [REDACTED]¹⁵⁴¹ in which Prlić was copied.

602. Submissions in Grounds.12.1;13;16.7.4 are adopted here by reference.

16.9

603. The TC erroneously concluded that Prlić had power over Dretelj Prison and its detainees and accepted the precarious conditions and mistreatment of the detainees.¹⁵⁴²

604. Submissions in Grounds.12.1;13;16.7.4, regarding the conclusion in Vol.4,para.242, are adopted here by reference.

605. The TC erroneously concluded that during the meetings in July 1993 the “HVO/Government of the HZ(R)HB decided to take measures to improve the conditions of the detention of the detainees” and that the “decision did not bring about the expected improvements because in September 1993 the detention conditions were still just as bad.”¹⁵⁴³ The TC erroneously relied on two HVOHZHB Minutes of meetings.¹⁵⁴⁴ Holding discussions in an attempt to find solutions for problems outside the responsibility and powers of the HVOHZHB, and to which it did not contribute, does not impute *de jure* or *de facto* responsibility. (Grounds.3,16.7)

606. The TC erroneously concluded that Prlić moved prisoners from Dretelj to other centers, with some being sent to third countries via Croatia.¹⁵⁴⁵ The TC ignored evidence relevant to the 20 September 1993 meeting.¹⁵⁴⁶ The Joint Declaration signed by Tuđman and Izetbegović on 14 September 1993 provided for bilateral and unconditional disbanding of all detainee camps and for the release of detainees no later than 21 September 1992;¹⁵⁴⁷ Granić and Silajdžić were placed in charge of implementing this agreement.¹⁵⁴⁸ Silajdžić reported: “*Foreign Minister Granić’s visit to Dretelj began the process of abolishing this camp (ten sick persons placed in hospitals, a number of*

¹⁵³⁹ P07636.

¹⁵⁴⁰ P07660.

¹⁵⁴¹ [REDACTED].

¹⁵⁴² Vol.3,paras.16-36,39-44,57,59-64,68-95,99-126;Vol.4,paras.241-249.

¹⁵⁴³ Vol.4,para.248.

¹⁵⁴⁴ Vol.4,paras.241,244.

¹⁵⁴⁵ Vol.4,paras.249,245-249;Vol.3,paras.144-145.

¹⁵⁴⁶ [REDACTED].

¹⁵⁴⁷ P05051.

¹⁵⁴⁸ Sančević,28816/25-28817/11;28575/1-28576/24;Rebić,28311/6-28313/20;28317/22-28317/2.

detainees released, transfer of 500 detainees to Korčula prepared; there they will await exchange on the 'all for all' principle)", agreeing with Granić's assessment: "All groups will work in close cooperation with UNPROFOR, UNHCR and ICRC and agree with all organizations on specific steps, especially concerning the registration, release, temporary accommodation and exchange of detainees."¹⁵⁴⁹ The transfer of detainees was decided by the ICRC,¹⁵⁵⁰ [REDACTED].¹⁵⁵¹ The ICRC confirmed that the 516 detainees from Dretelj were released for medical reasons under the auspice of the ICRC and transferred to Croatia and handed over to the UNHCR¹⁵⁵² based on the free will of detainees.¹⁵⁵³ They were accommodated in Croatia with the status of refugees.¹⁵⁵⁴ Neither the HVOHZHB nor Prlić were involved in these matters.¹⁵⁵⁵ As noted, Prlić had no power over the detention centers or its detainees.¹⁵⁵⁶

16.10

607. The TC erroneously concluded that Prlić facilitated the departure of detainees to foreign countries via Croatia.¹⁵⁵⁷ The TC ignored evidence showing that under the authority of the ICRC, detainees voluntarily chose where to be released – to territory under the control of the HVO or ABiH or abroad¹⁵⁵⁸ – as shown in Vol.2,para.1647.

608. Submissions in Grounds.16.4.3;16.9 are adopted here by reference.

16.11

609. The TC erroneously concluded that Prlić and/or the HVOHZHB had power over Gabela Prison, and that Prlić and/or the HVOHZHB established and closed Gabela Prison.¹⁵⁵⁹ Evidence shows that reports and information about Gabela were sent through

¹⁵⁴⁹ 1D01936,pp.1-2.

¹⁵⁵⁰ Sančević,28808/24-28809/17.

¹⁵⁵¹ [REDACTED].

¹⁵⁵² P05304;1D02735.

¹⁵⁵³ Biškić,15384/4-15386/11;P07149;Biškić,15378/20-15379/1;15179/2-15180/22;15114/15-15115/2;15319/21-15322/12;Sančević,28808/24-28809/17.

¹⁵⁵⁴ Rebić,28317/3-14;28501/7-28503/8.

¹⁵⁵⁵ Rebić,28312/21-28313/21.

¹⁵⁵⁶ Ground.13.

¹⁵⁵⁷ Vol.4,paras.212,234,249.

¹⁵⁵⁸ 1D00938;1D02213;6D00499;P06965,p.3;Biškić,15114/15-15115/2;P07149;15319/21-15322/12;P07148;P07371.

¹⁵⁵⁹ Vol.4,paras.251,253-255.

the chain-of-command to the Office of the HRHB President, not to Prlić or the HRHB Government.¹⁵⁶⁰

610. Submissions in Grounds.12.1;13;16.7;16.9 are adopted here by reference.

16.12, 16.13, 16.14, and 16.15

611. The TC erroneously concluded that Prlić denied, concealed, and encouraged crimes against Muslims and that he failed to take measures to prevent the crimes or punish the perpetrators,¹⁵⁶¹ and that Prlić had the hierarchical power to intervene (against members of the JCE, including the other Accused) in order to prevent and punish the commission of crimes and change the course of events.¹⁵⁶²

612. The TC erroneously concluded, by relying only on the mischaracterized testimony of BA¹⁵⁶³ that Prlić knowingly sought to minimize or conceal the crimes committed by the HVO armed forces – presumably in order to facilitate the implementation of the JCE.¹⁵⁶⁴ [REDACTED],¹⁵⁶⁵ [REDACTED].¹⁵⁶⁶ The TC ignored evidence that random evictions took place¹⁵⁶⁷ by irregular forces,¹⁵⁶⁸ and that the Military Police regularly reported those acts as crimes.¹⁵⁶⁹

613. The TC erroneously concluded that on 16 August 1993 Prlić informed “a representative of an international organization that the Muslims from Ljubuški were being interned for their own safety as HVO soldiers returning from the front were seeking revenge,”¹⁵⁷⁰ by relying upon unsubstantiated evidence.¹⁵⁷¹ BB was not present at the meeting, thus was not competent to comment on what Prlić may have said versus what

¹⁵⁶⁰ Bagarić,39152/15-20;[REDACTED];2D00278;[REDACTED];P05485;[REDACTED]: P05948;Božić,36281/9-36289/9;2D00926;P05133;P05222;P05225.

¹⁵⁶¹ Vol.2,para.291;445,826,873,876,918,1264-1268,1347-1353,1358-1366;Vol.3,paras.480-498; Vol.4,paras.258-269.

¹⁵⁶² Vol.1,paras.493-986.

¹⁵⁶³ Ground.6.1.

¹⁵⁶⁴ Vol.4,paras.259-263.

¹⁵⁶⁵ [REDACTED].

¹⁵⁶⁶ [REDACTED].

¹⁵⁶⁷ Sančević,28809/18-28810/4;[REDCATED];Zorić,28122/18-28124/8;1D01593.

¹⁵⁶⁸ P03616,p.3;Bagarić,39199/13-39200/4.

¹⁵⁶⁹ 5D00538;P01654;P02749;P03536;P03482;P03571;P03536;P03542;5D05080;2D00887;2D00873;2D00876; 5D02049;5D05077;5D05079;5D04114;P00702;P06999;P05518;P05554;3D01184;P06002;P06964;4D01456.

¹⁵⁷⁰ Vol.4,para.260.

¹⁵⁷¹ Ground.6.2.pparas.187-188.

was reported.¹⁵⁷² Even assuming Prlić made those remarks, [REDACTED], they were not beyond the ken.¹⁵⁷³

614. Regarding conclusions in Vol.4,para.262, submissions in Grounds.16.7;13 are adopted here by reference.

615. The TC erroneously concluded that Prlić, “by his official and public statements, engendered fear, mistrust and hatred of Bosnian Muslims among Bosnian Croats and, in this connection, exacerbated nationalist sentiments among the Bosnian Croats, thus contributing to the realization of the JCE.”¹⁵⁷⁴

616. Submissions in Grounds.16.1.2;16.3.1 are adopted here by reference.

617. The TC erroneously concluded that both the letter of 18 January 1993 and the proclamation of 30 June 1993 “were issued at crucial times, that is, at the time when the HVO launched an attack on several places in Gornji Vakuf or mounted a campaign of mass arrests of Muslims” and implied that those events are connected with those letters or had some influence on them.¹⁵⁷⁵

618. The TC ignored all Prlić’s other statements against population movement,¹⁵⁷⁶ and against the war, especially with Muslims.¹⁵⁷⁷ Prlić advocated that the division of power in Mostar should be 50:50 among Croats and Muslims and was committed to joint life.¹⁵⁷⁸ He advocated cooperating with Muslims for mutual equality in public, in internal meetings,¹⁵⁷⁹ and appointments,¹⁵⁸⁰ and the Muslim side trusted him.¹⁵⁸¹

619. The TC erroneously concluded that Prlić did nothing to prevent crimes and to punish perpetrators.¹⁵⁸² The TC presumed that Prlić had *de jure* power to do so, though the evidence reveals otherwise (See Grounds.11;12;13). The TC erroneously concluded that

¹⁵⁷² Raguž,31554/3-31556/3.

¹⁵⁷³ [REDACTED].

¹⁵⁷⁴ Vol.4,paras.265-267.

¹⁵⁷⁵ Vol.4,para.267.

¹⁵⁷⁶ Giles,2061/15-2062/20;2064/23-2065/20;1D01655,p.4.

¹⁵⁷⁷ 1D02078,p.7;P01015,pp.9-10,12-13;Giles,2065/21-2066/1;2067/10-21;2073/4-17;P02124;P06510;

Tomić,34677/17-34688/15;P01215,p.2;P01015,p.15.

¹⁵⁷⁸ P01015,pp.20-21;P02046,p.5;[REDACTED];Puljić,32126/6-32131/14.

¹⁵⁷⁹ P01317,p.2;1D02225;1D02078,pp.14,22,30;P01215,p.2;Prlić-opening,27555/13-25;P02021,p.2;

Palameta,32789/11-32790/19;1D02149;Giles,2067/10-21;Puljić,32238/11-32241/6.

¹⁵⁸⁰ P00921,p.8;1D02076,p.2; P00578,pp.11-12;P00672,p.5;1D02123;1D02124;1D02379;1D00190;1D00193.

¹⁵⁸¹ [REDACTED];P02046,p.5;[REDACTED];Puljić,32126/6-32131/14;1D00818,p.7.

¹⁵⁸² Vol.4,paras.268-269.

Prlić had hierarchical power over the perpetrators of crimes, and that he had the power to intervene within the hierarchy of the HVO and the HZ(R)HB;¹⁵⁸³ the TC contradictorily did not establish these hierarchical powers it claimed Prlić possessed.¹⁵⁸⁴

620. Submissions in Grounds.11;12;13 are adopted here by reference.

621. The TC erroneously concluded that Prlić did not sincerely condemn the crimes, ignoring evidence to the contrary.¹⁵⁸⁵ The Minutes of HVOHZHB sessions reflect the HVOHZHB's efforts to combat crimes, including war crimes, asking all HZHB institutions to conduct investigations and punish perpetrators,¹⁵⁸⁶ urging them to fulfill their function in fighting against crime and prosecuting it.¹⁵⁸⁷ Those measures were particularly devoted to the situation in Mostar: coordinating efforts with the municipal HVO Mostar and different enforcement agencies.¹⁵⁸⁸

622. The TC ignored evidence that in prosecuting crimes and launching investigations in accordance with the Law on Criminal Procedure¹⁵⁸⁹ and the Decree on Military Courts,¹⁵⁹⁰ the procedure started with the military commander, MP, and SIS.¹⁵⁹¹

623. The TC ignored evidence showing the HVOHZHB's effort to build up the judiciary and commitment to fight against criminality,¹⁵⁹² and showing that despite the challenges,¹⁵⁹³ courts were functioning and prosecuting crimes against Muslims

¹⁵⁸³ Vol.4,para.268.

¹⁵⁸⁴ Vol.4,para.121.

¹⁵⁸⁵ Watkins,18777/7-18778/1;[REDACTED];Beese,3099/23-3100/11;P01549;Vihervouri,21713/23-21714/20;1D01652,p.4;Perković,31799/7-31800/7;32025/5-32027/8;1D01912;1D02229;1D02230,pp.13-14;Petković,50039/4-50041/25;1D02230;[REDACTED];Tomić,34769/13-34770/19.

¹⁵⁸⁶ P01661;P02575;Vidović,51612/19-51613/6;P04008;P04111;2D00854;Vidović,51597/9-51598/17;P04275;P04276;P04841;P05610;P07310;P07354;P08276,pp.5,6.

¹⁵⁸⁷ 1D02204;Biškić,15270/14-15271/3;P04699,p.12;15271/22-15272/11;P04699,p.13;

¹⁵⁸⁸ P02585;P02575;Perković,32023-32024/16;31803/11-31804/10;1D02113;Jašak,49064/10-17;P04111;P06730;P03616;[REDACTED];5D05074;5D05075;5D05077;5D05079;5D05080;Vidović,51504/18-51505/7;51610/19-51612/14;P04058;5D04117;P06730.

¹⁵⁸⁹ 4D01105.

¹⁵⁹⁰ 4D01317.

¹⁵⁹¹ Buntić,30657/19-30661/9;30719/4-30720/6;30720/7-30722/21;30882/6-30883/11;Vidović,51447/8-51448/20;514549-51456/2;Tomić,34780/9-34781/11;34781/12-34783/7;Bandić,38354/5-56/16;4D01317;Vidović,51453/1-20;Filipović,47811/12-47812/10;47816/1-18;[REDACTED];Praljak,42205/12-42208/4;2D03011;P04268;42194/2-42197/6;P00092;P01359;P01344;42199/12-42200/13;3D0059642197/7-42198/10;P01491;Petković,5027177-50275/7;P02968;4D00924;P02038;P02047;P02071;50283/18-50284/19;50689/12-50693/9;P01344;P10308;P01598;Božić,36695/3-22;4D00575;P06791;P06800;Vidović,51463/2-22;P06648;P06734;5D04151.

¹⁵⁹² Buntić,30632/18-30637/16;30370/21-30371/22;30376/18-30385/5;30374/5-30376/14;30492/19-30493/18;Tomić,34021/8-34022/12;Božić,36259/7-36261/14;Watkins,18935/4-24;P04611;1D01976,p.2;P07165,Art.9;5D04194;5D04212;5D04215;5D04216;5D04217;5D04196;5D04160.

¹⁵⁹³ Vol.1,para.986.

committed by the HVO.¹⁵⁹⁴ The TC ignored evidence that Prlić urged institutions with the power to fight crime to do so,¹⁵⁹⁵ and that crimes were addressed once it was possible through Operation Spider, launched in June 1994 by the HRHB Government.¹⁵⁹⁶

16.16

624. The TC erroneously concluded that Prlić facilitated Croatia's participation in the conflict between the HVO and the ABiH in BiH and knew that the armed conflict was international in character.¹⁵⁹⁷ There was no IAC.¹⁵⁹⁸ Lane's evidence that Prlić was informed of the HVO military operations against the ABiH¹⁵⁹⁹ is unsubstantiated.

625. TC erroneously concluded that Prlić facilitated the participation of Croatia in the conflict.¹⁶⁰⁰

626. Submissions in Grounds.6.2, paras.202-203;15;18, para.649 are adopted here by reference.

Conclusions and relief:

627. By ignoring and mischaracterizing evidence, the TC failed to provide reasoned opinions and applied an incorrect legal standard in assessing the evidence; an error of law invalidating the TJ. No reasonable trier of fact would have found that Prlić, as President of the Government of the HVOHZ(R)HB, by his acts/omissions, intended and agreed with others to commit JCE core crimes, was one of the principle members of a JCE, or that he significantly contributed to a JCE; an error of fact effecting a miscarriage of justice.

628. Properly assessing the evidence, a reasonable trier of fact would have found that:

- a. Prlić did not issue an ultimatum on 15 January 1993 in furtherance of a common plan, or participate in the planning/conducting of military operations

¹⁵⁹⁴ 2D00889;2D00875;2D00882;2D00881;5D02014;5D04247.

¹⁵⁹⁵ Perković,31799/7-31800/7;32025/5-32027/8;31803/11-31804/10;31736/10-31737/22;32023/19-32024/16.

¹⁵⁹⁶ 1D01249,Biškić,15334/22-15339/14;1D01256;1D01251;1D01252;Praljak,41502/7-23;44677/17-44679/8;1D02577;1D01257;Biškić,15353/20-15355/1;1D01252;15160/2-15163/4;P07878.

¹⁵⁹⁷ Vol.4,para.227.

¹⁵⁹⁸ Vol.4,para.277.

¹⁵⁹⁹ Vol.4,para.277.

¹⁶⁰⁰ Vol.4,para.277.

leading to crimes committed against the Muslims of Gornji Vakuf (Ground.16.1);

- b. Prlić did not issue an ultimatum on 15 April 1993 contributing to the implementation of a JCE around Prozor, Solvići and Doljani (Ground.16.2);
- c. Prlić did not plan, endorse, accept, encourage, support, knowingly turn a blind eye to, and/or contribute to the campaign of arrests and mass detention of Muslims beginning on 30 June 1993 in several municipalities (Ground.16.3);
- d. Prlić did not plan, endorse, accept, encourage, support, knowingly turn a blind eye to, and/or contribute to crimes in Mostar (Ground.16.4);
- e. Prlić was not involved in displacing Croats in Vareš and did not contribute to a policy of population movement (Ground.16.5;16.6);
- f. Prlić did not have authority over prisons, detention centers, prisoners or detainees (Ground.16.7;16.8;16.9;16.10;16.11);
- g. Prlić did not condone or turn a blind eye to crimes committed by members of the HVO armed forces, and conducted investigations to punish perpetrators (Ground.16.13-16.14);
- h. Prlić did not have the hierarchical authority to intervene in order to prevent/punish the commission of crimes and change the course of events (Ground.16.15); and
- i. Prlić did not facilitate Croatia's participation between the HVO and the ABiH, and did not know that the armed conflict was international in character (Ground.16.16).

629. The AC should overturn the convictions for Counts 1-25.¹⁶⁰¹

¹⁶⁰¹ Vol.1, paras.31-261,406-986; Vol.2, paras.669-748; Vol.3, paras.509-1741; Vol.4, para.278.

GROUND 17:

630. The TC erroneously concluded that Prlić committed crimes in the municipalities of Gornji Vakuf, Jablanica, and Mostar by participating in a JCE III.¹⁶⁰²

17.1

631. The TC erroneously concluded that Prlić knowingly contributed to a climate of violence in Gornji Vakuf Municipality, foresaw that crimes not intended by the common criminal plan would occur (systematic and widespread thefts of Muslim property in Hrasnica, Uzričje, and Ždrimci) resulting from the HVO attacks of 18 January 1993, and willingly accepted the risks.¹⁶⁰³

632. The TC erroneously concluded that the clashes in Gornji Vakuf are JCE-related¹⁶⁰⁴ and that Prlić significantly contributed to the JCE.¹⁶⁰⁵

633. The TC erroneously concluded that Prlić participated in the attack on Gornji Vakuf by being directly involved in its planning, by signing the so-called 15 January 1993 Ultimatum, by overseeing its implementation on the ground until the ceasefire when he ordered the cessation of the HVO attacks on 25 January 1993,¹⁶⁰⁶ and by being informed of the climate of violence in which the operations were carried out as of 19 January 1993.¹⁶⁰⁷

634. Submissions in Ground. 16.1 are adopted here by reference.

17.2

635. The TC erroneously concluded that Prlić knowingly contributed to a climate of violence in Jablanica Municipality (Sovići and Doljani), foresaw that crimes (murders linked to detentions, the thefts of Muslim property, and the destruction of the mosques in Sovići and Doljani) not intended by the common criminal plan would occur, and willingly accepted the risks.¹⁶⁰⁸

¹⁶⁰² Vol.4,paras.280-284,288;1220-1232.

¹⁶⁰³ Vol.1,paras.452-463;Vol.2,paras.330-342,393,445,753;Vol.4,paras.45,125-134,271,1220.

¹⁶⁰⁴ Ground.10.2;10.3,10.4.

¹⁶⁰⁵ Ground.16.1.

¹⁶⁰⁶ Ground.16.1.

¹⁶⁰⁷ Ground.16.1.4,16.12,16.13,16.14,16.15.

¹⁶⁰⁸ Vol.1,paras.465-476;Vol.2,paras.521-536,538-549,580-581,613,640-655;Vol.4,paras.136-147,271,1220.

636. The TC erroneously concluded that Prlić “drafted the ultimatum of April 1993”¹⁶⁰⁹ and “formulated in the same terms as that of January 1993,”¹⁶¹⁰ that he was informed of the climate of violence against the Muslim population in Gornji Vakuf in January 1993 and did nothing to prevent the commission of the crimes.¹⁶¹¹

637. Submissions in Ground. 16.2 are adopted here by reference.

17.3

638. The TC erroneously concluded that Prlić knowingly contributed to a climate of violence in Mostar Municipality and foresaw that crimes (murders, rapes, sexual abuse, and thefts of private property) not intended by the common criminal plan would occur during the alleged campaigns to evict Muslim inhabitants in Mostar linked to the detentions and the thefts of Muslim property, and willingly accepted the risk¹⁶¹² by doing nothing to prevent the commission of these crimes or punish the perpetrators.¹⁶¹³

639. Submissions in Grounds.16.12;16.13;16.14-16.15 are adopted here by reference.

Conclusions and relief:

640. The TC failed to provide reasoned opinions and applied an incorrect legal standard in assessing the evidence; an error of law invalidating the TJ. No reasonable trier of fact would have found that Prlić participated in or foresaw crimes committed by a JCE III, used the members and structures of the HVO of the HZ(R)HB to commit the crimes that were part of a common criminal purpose to ethnically cleanse the Muslim population from the territory claimed as Croatian, committed crimes in the municipalities of Gornji Vakuf, Jablanica, or Mostar, and knowingly or otherwise contributed to a climate of violence in the municipalities of Gornji Vakuf, Jablanica, or Mostar; an error of fact effecting a miscarriage of justice.

641. The AC should overturn the convictions for Counts 2-3, 21-23.¹⁶¹⁴

¹⁶⁰⁹ Ground.16.2.

¹⁶¹⁰ Ground.16.1.

¹⁶¹¹ Grounds.16.1.4,16.2.3,16.12,16.13,16.14,16.15.

¹⁶¹² Vol.2,paras.669-673,675-710,716-748,750-757,918,1201,1203,1213-1218,1222,1227-1244,1264-1268,1347-1348,1351,1361-1362,1366;Vol.4,paras.156-185,272.

¹⁶¹³ Grounds.16.12,16.13,16.14,16.15.

¹⁶¹⁴ Vol.1,paras.31-261;Vol.3,paras.509-1741;Vol.4,para.278.

GROUND 18:

642. The TC erred in law and fact in concluding that the OTP proved beyond a reasonable doubt that Prlić possessed the requisite *mens rea* for membership in the alleged JCE, and that he carried out the *actus reus* of the alleged JCE.¹⁶¹⁵

643. An omission may constitute a contribution to a JCE but it must be combined with a duty to act and authority over the perpetrators in question.¹⁶¹⁶ Oath of office in the absence of *de jure* and *de facto* powers does not give rise to a legal duty to act.¹⁶¹⁷ Perceptions that an accused is in power are not sufficient to find he had actual power.¹⁶¹⁸ Powers must be “real” for criminal responsibility to be attached to them.¹⁶¹⁹

644. Strict liability is not an appropriate standard for individual criminal responsibility.¹⁶²⁰ Criminal intent is required to find an individual responsible for any crime: malicious intent, or, at least, negligence so serious as to be tantamount to acquiescence to malicious intent.¹⁶²¹ When the TC infers the state of mind of an Accused, that inference must be the only inference available on the evidence.¹⁶²²

645. The TC found that Prlić was one of the principal members of the JCE, having made a significant contribution, demonstrating his discriminatory intention to implement the common criminal purpose of expelling the Muslim population from the HZ(R)HB.¹⁶²³

646. The TC erroneously concluded that Prlić possessed the requisite *mens rea* for membership in the alleged JCE, and that he carried out the *actus reus* of the alleged JCE. The TC essentially applied a strict liability standard, finding Prlić responsible by virtue of his position and the continued exercise of his functions.¹⁶²⁴ It interpreted legislative decisions in light of subsequent events,¹⁶²⁵ and found that by participating in the drafting of legislative decisions, Prlić intended the crimes.¹⁶²⁶

¹⁶¹⁵ Vol.1,paras.31-261,406-490;Vol.4,paras.41-73,78-83,122-272.

¹⁶¹⁶ *Milutinović*, TJ, Vol.3,para.275.

¹⁶¹⁷ *Id.*

¹⁶¹⁸ *Halilović*, TJ, para.366.

¹⁶¹⁹ *Kordić*, TJ, para.422.

¹⁶²⁰ *Akayesu*, TJ, para.489.

¹⁶²¹ *Akayesu*, TJ, para.489.

¹⁶²² Vol.1,para.213;*Krajišnik*, AJ, para.685.

¹⁶²³ Vol.4,para.276.

¹⁶²⁴ Vol.4,paras.134,165,168,174,204,232,238,249,282-284.

¹⁶²⁵ Vol.4,paras.125-275.

¹⁶²⁶ Vol.4,paras.134,147,154,158.

647. This method of analysis proved to be erroneous in *Gotovina*, wherein the TC interpreted transcripts in light of subsequent unlawful attacks to find the existence of a JCE.¹⁶²⁷ The AC found that outside this context, it was not reasonable to find that the only interpretation of the transcripts involved a JCE to forcibly deport Serbs.¹⁶²⁸ Other circumstantial evidence such as Tuđman's speeches and policy/legal attempts to prevent the return of Serb civilians were insufficient to support the TC's findings regarding the alleged JCE.¹⁶²⁹

648. Similarly, here, the TC's conclusions regarding Prlić's *mens rea* are premised on erroneous inferences from selective evidence, ignoring other relevant evidence and alternative plausible explanations to:

- JCE: Prlić's alleged awareness of the existence of a common criminal purpose.¹⁶³⁰
- Decision of 15 January 1993: Prlić ordered the attacks, and intended the consequences.¹⁶³¹
- Decision of 4 April 1993: Prlić intended to repeat the events in Gornji Vakuf and accepted the commission of crimes against the Muslim population.¹⁶³²
- Joint Proclamation of 30 June 1993: Prlić knew of the plan and intended to have Muslim men indiscriminately and *en masse* placed in detention, inasmuch as the HVO armed forces' actions came after the joint proclamation.¹⁶³³
- Operations of 9 May 1993 and following days: Prlić accepted the arrest of Muslim men of Mostar who did not belong to any armed forces by participating in the 38th Session of the HVO on 17 May 1993, and failing to raise objections while continuing to exercise his functions as head of the HVO.¹⁶³⁴
- Operations to evict Muslims from Mostar mid-May 1993 – February 1994: Prlić contributed to a climate of violence and accepted the acts of violence linked to the

¹⁶²⁷ *Gotovina*, AJ, para.93.

¹⁶²⁸ *Gotovina*, AJ, para.93.

¹⁶²⁹ *Gotovina*, AJ, paras.94-98.

¹⁶³⁰ Vol.4, para.43; Ground.10.1.

¹⁶³¹ Vol.4, para.133-134; Ground.16.1.

¹⁶³² Vol.4, para.147; Ground.16.2.

¹⁶³³ Vol.4, para.155; Ground.16.3.

¹⁶³⁴ Vol.4, para.165; Ground.16.4.

eviction campaigns, which were a part of the preconceived plan, by failing to act, and by validating the loss of apartments belonging to Muslims in Mostar and by remaining in power while fully cognizant of crimes against Muslims in West Mostar.¹⁶³⁵

- Regarding the Siege of Mostar: Prlić encouraged and accepted the HVO campaign of fire and shelling against East Mostar as well as its impact by minimizing or attempting to deny them.¹⁶³⁶
- Living Conditions of East Mostar/Blocking Humanitarian aid: Prlić deliberately impeded attempts to repair the water supply system;¹⁶³⁷ by blocking access of humanitarian aid he foresaw the harm it would cause to people in East Mostar.¹⁶³⁸
- Vareš: Prlić shared the wish with other HZ(R)HB officials, that Vareš should not be included in the BiH territory considered to be Croatian, contributing to the movement of the Croatian population into the territories of the HZ(R)HB.¹⁶³⁹
- HVOHZ(R)HB Policy of Migration Movement: Prlić planned/facilitated the movement of the Croat population from where it was to territories claimed by the HZHB and that this demonstrated Prlić's wish to populate areas considered Croatian with Croats to the detriment of the Muslims.¹⁶⁴⁰
- Detention Facilities: Prlić accepted the poor detention conditions¹⁶⁴¹ by failing to take appropriate measures to prevent crimes or punish perpetrators and knowingly denying, concealing and encouraging the crimes against the Muslims.¹⁶⁴²
- JCE III crimes: Prlić willingly accepted the risk that crimes would be committed by continuing to exercise his functions and by doing nothing himself to prevent the commission of crimes or to punish the perpetrators.¹⁶⁴³

¹⁶³⁵ Vol.4,para.171;Ground.16.6.

¹⁶³⁶ Vol.4,para.176;Ground.16.4.5,16.12,16.13,16.14,16.15.

¹⁶³⁷ Vol.4,para.180;Ground.16.4.7.

¹⁶³⁸ Vol.4,para.185;Grounds.10,11,16.4.7.

¹⁶³⁹ Vol.4,para.204;Ground.16.5.

¹⁶⁴⁰ Vol.4,para.215;Grounds.10.6,10.7,10.8,16.6.

¹⁶⁴¹ Vol.4,paras.220,225,232,235,249,255,268,263;Grounds.16.7-16.11.

¹⁶⁴² Vol.4,para.269;Grounds.16.12,16.13,16.14,16.15.

¹⁶⁴³ Vol.4,paras.282-284;Ground.17.

- Other indications of *mens rea*: Prlić and Boban shared an identical vision concerning the policies of the HVO.¹⁶⁴⁴

649. The TC failed to consider evidence regarding Prlić's mental state, ignoring Prlić's:

- continuity of Government Service in BiH from 1989-2003, always elected based on free democratic elections, by secret ballot, supported by all constituencies,¹⁶⁴⁵ as:
 - 17 November 1992 appointment as Commissioner of the RBiH Government;¹⁶⁴⁶
 - 18 May 1993 appointment as President of the BiH Government;¹⁶⁴⁷
 - 1994 Deputy Prime Minister and Minister of Defence for BiH, for joint Muslim and Croat forces;
 - 1996-2001, Foreign Minister of State for BiH; and
 - 2001-2003, Deputy Minister for Economic Relations.
- understanding of the HZHB expressed publicly,¹⁶⁴⁸ and to Tudman and other Croatian and HZHB officials: forming BiH based on EC principles, through three national units.¹⁶⁴⁹
- [REDACTED].¹⁶⁵⁰
- ideas for the future of BiH.¹⁶⁵¹
- aims of the HVOHZHB.¹⁶⁵²
- efforts to prevent crimes and punish perpetrators.¹⁶⁵³

¹⁶⁴⁴ Vol.4,para.51;Grounds.6.1;10.6,10.7,10.8.

¹⁶⁴⁵ Prlić,opening,27487/19-25;P09078,p.14.

¹⁶⁴⁶ 1D00898;1D02147;Akmadžić,29422/18-29429/5;Raguž,31263/18-31265/18;Perković,31928/1-5;1D02565,Zorić,27919/5-27920/9.

¹⁶⁴⁷ Sančević,28551/6-28557/3;28572/15-28574/7;1D02404;Nissen,20543/22-20544/19;1D01596;1D01062;1D01600;1D01599;1D01598;1D01588;1D01597;Tomić,34719/23-34721/8;33923/20-33929/2;1D01586;1D01587;1D01589;1D01601;P02881,p.1.

¹⁶⁴⁸ 1D02078,pp.6-7,31;Petković,50013/5-50036/17;1D02076,p.2;1D02230;Petković,50039/4-50042/25.

¹⁶⁴⁹ P00498,p.28;1D00398,p.4;P00339,pp.2-4.point.1,6;3D02230,p.1.Conclusion.I;1D01935,p.1;1D01946,p.1,points.2-3;Buntić,30361/23-30367/22;1D01312,pp.13-14,paras.34-40.

¹⁶⁵⁰ [REDACTED];1D02094.

¹⁶⁵¹ 1D01945;1D02357;1D02078;1D02482;1D02225;1D02222;1D02221;1D02220;1D02224;29429/9-29432/2.

¹⁶⁵² P00498;P00578;1D03111,Chapters7-9;Sančević,28574/8-25;28724/3-28725/19.

- non-membership in HDZ during the Indictment period.¹⁶⁵⁴

Conclusions and relief:

650. By failing to consider evidence and ignoring alternative plausible explanations, the TC failed to provide reasoned opinions and applied an incorrect legal standard in assessing the evidence; an error of law invalidating the TJ. No reasonable trier of fact would find that Prlić possessed the requisite *mens rea* for membership in any alleged JCE, that he carried out the *actus reus* of the alleged JCE, or that he assumed the risk of reasonably foreseeable crimes being committed outside the alleged JCE; an error of fact effecting a miscarriage of justice.

651. The AC should overturn the convictions for Counts 1-25.¹⁶⁵⁵

¹⁶⁵³ Grounds.16.12,16.13,16.14,16.15;Biškić;15334/18-15341/12;P04111;1D01813;1D01249;1D01252;1D01257.

¹⁶⁵⁴ 1D02078,p.32;Buntić,30252/8-14.

¹⁶⁵⁵ Vol.1,paras.31-261,406-986;Vol.2,paras.669-748;Vol.3,paras.509-1741;Vol.4,para.278.

GROUND 19:

652. The Majority erred in law and fact in finding that an IAC existed in BiH.¹⁶⁵⁶

19.1

653. The Majority erroneously concluded that the southern front mentioned in HV documents¹⁶⁵⁷ covered part of the HZ(R)HB area,¹⁶⁵⁸ ignoring evidence of JNA attacks. Croatia was legitimately defending its territory¹⁶⁵⁹ under international law.¹⁶⁶⁰ The JNA had cut off Croatia's southern territory situated in the coastal area south of Split and spreading from Split to Dubrovnik and Prevlaka.¹⁶⁶¹

654. The JNA attacks launched from BiH territory, which at the time was part of rump Yugoslavia, were persistent, placing all of Croatia under threat.¹⁶⁶² BiH was unable/unwilling to prevent/repel the JNA,¹⁶⁶³ allowing JNA forces to traverse its territory and launch attacks on Croatia, an internationally recognized independent State.¹⁶⁶⁴ Croatia had a right to respond in self-defence.¹⁶⁶⁵

655. The HV had to cross into BiH to safeguard Croatia's territorial integrity.¹⁶⁶⁶ Given the topography,¹⁶⁶⁷ HV units could not but use border areas in BiH to defend Croatia;¹⁶⁶⁸ BiH agreed.¹⁶⁶⁹ Croatia's southern front, averaged five kilometers wide, limited Croatia's ability to defend itself strictly within Croatian territory.¹⁶⁷⁰ Had the Majority considered

¹⁶⁵⁶ Vol.1,paras.82-86;Vol.2,paras.29,31,347,546,552,565,631,642,650,694,2096;Vol.3,paras.510,514-568.

¹⁶⁵⁷ P03667;P11033.

¹⁶⁵⁸ Vol.3,para.529.

¹⁶⁵⁹ Beneta,43014/9-21;Žužul,27636/8-27638/24;27729/8-27735/14;P00339;27766/14-27769/11, 1D02039;27782/24-27785/24;1D02567;1D02573;Praljak,43014/9-21.

¹⁶⁶⁰ UNCh,Art.51;*Armed Activities Case*,para.146;UN.Doc.A/HRC/14/24/Add.6,para.35.

¹⁶⁶¹ Praljak,41628/12-15;43014/9-15;44546/9-15;Skender,45254/9-12;Beneta,46570/24-46572/5;46697/23-46698/7;Jašak,48632/2-11;Žužul,27621/21-27625/7;27636/8-27638/24;27698/10-27709/5; P00130;P00131;P00205;27807/7-19.

¹⁶⁶² Žužul,27617/1-27618/9;27621/21-27625/7;27636/8-27638/24.

¹⁶⁶³ P10451;Gagro,2856/25-2858/1;Kljuić,4016/18-4019/24;Boras,28882/13-28883/25;1D01941;28886/1-28887/1;P00041;28891/5-28893/5;P00047;28887/2-28888/20;P00042;28898/13-28899/19.

¹⁶⁶⁴ P00110;Beneta,46645/1-12.

¹⁶⁶⁵ UNCh,Art.51; *Armed Activities Case*,para.146;UN.Doc.A/HRC/14/24/Add.6,para.35.

¹⁶⁶⁶ ARSIWA,Art.25.

¹⁶⁶⁷ 4D01351;Beneta,46572/16-46573/1;Praljak,39876/18-39877/10.

¹⁶⁶⁸ Beneta,46564/2-7;46668/20-46669/2;39876/18-39877/10;41821/10-12;49302/7-49303/13.

¹⁶⁶⁹ Žužul,27636/8-27638/24;27728/22-27732/10;P00336;27720/24-27722/7;27766/14-27769/11;1D02039; 27739/3-27741/5;P00386;P00406;27776/5-27777/19;P00339;P00336,pp.99-130;4D01240;Sančević,28603/18-28605/12;P06454,p.45;28767/13-28768/5;Gorjanc,46105/5-46107/4;46388/3-46389/16;Skender,45253/14-45255/22;4D01293;P11033.

¹⁶⁷⁰ Beneta,46572/16-46573/1;39877/1-10;IC01173;Nissen,20593/4-21;Petković,50130/9-50138/7;IC01190, 50527/6-50528/10,49299/3-49309/11,49851/20-49852/16;P00279.

this evidence, it would have concluded that no reasonable trier of fact could have found that the southern front included parts of the HZ(R)HB.

656. States have an inherent right to self-defence in response to an actual armed attack: Israel was entitled to cross over into Lebanon to repel attacks from Hezbollah;¹⁶⁷¹ Turkey was entitled to cross into Iraq to repel attacks from the PKK;¹⁶⁷² and Iraq is entitled, presumably, to cross over into Syria to repel ISIS attacks against Iraq from Syria.¹⁶⁷³

19.2

657. The Majority erroneously concluded that HV units participated in the conflict between the HVO and the ABiH. The presence of some individual HV soldiers or HV units in BiH territory is neither sufficient nor conclusive evidence that elements of the HV were operating in BiH at the behest of Croatia.¹⁶⁷⁴

658. The Majority erroneously relied on uncorroborated assertions in concluding the presence of HV units on the southern front in BiH,¹⁶⁷⁵ in municipalities,¹⁶⁷⁶ in detention centers,¹⁶⁷⁷ and intervening in the HVO-ABiH conflict:¹⁶⁷⁸

- Hujdur claimed that the HV was present in BiH without having any actual knowledge.¹⁶⁷⁹
- Watkins presumed HV presence in BiH because of the type of weaponry he observed.¹⁶⁸⁰
- [REDACTED].¹⁶⁸¹
- Nissen affirmed that the ECMM had no direct knowledge and had not observed HV troops in BiH.¹⁶⁸²

¹⁶⁷¹ UN.Doc.S/PV.5489;UNGA.Res.61/154;UN.Doc.A/HRC/12/48. Israel was criticized for its disproportionate use of force, but no comments were made as to the legality of the offensive into Lebanon.

¹⁶⁷² UN.Doc.S/1996/479;UN.Doc.SG/SM/11436.

¹⁶⁷³ UNSG Remarks,23 September 2014.

¹⁶⁷⁴ *Bemba Gombo*,Decision,para.246.

¹⁶⁷⁵ Vol.3,para.530.

¹⁶⁷⁶ Vol.2,para.29;Vol.3,paras.532-38,541.

¹⁶⁷⁷ Vol.3,paras.539-40.

¹⁶⁷⁸ Vol.3,paras.531,543.

¹⁶⁷⁹ Hujdur,3502/4-11;3617/24-3619/21.

¹⁶⁸⁰ Watkins,18848/18-18849/23.

¹⁶⁸¹ [REDACTED].

¹⁶⁸² Nissen,20485/24-20486/6;20487/1-23;20500/25-20501/13;20504/8-15;20591/5-21;20488/8-25;[REDACTED]; 20591/21-20592/6;P07587.

659. Any HV elements in BiH would have been just over the southern Croatian border, south of Split and around Dubrovnik,¹⁶⁸³ defending the territory of Croatia from attacks staged from BiH.¹⁶⁸⁴ “The fact that members of the HV were in the service of the HVO does not imply beyond reasonable doubt that they were there on the direct order of Croatia.”¹⁶⁸⁵

660. The HV did not distinguish between Croats and Muslims,¹⁶⁸⁶ permitting all volunteers – many hailing from BiH and returning to protect their families and villages¹⁶⁸⁷ – to go to BiH.¹⁶⁸⁸ Volunteers from the HV were free to join the HVO or the ABiH.¹⁶⁸⁹ HV soldiers who joined the HVO were assigned to the HVO units and incorporated into the HVO chain-of-command.¹⁶⁹⁰

661. The HV and its units could not¹⁶⁹¹ and did not go to BiH to link up or be incorporated into the HVO or ABiH.¹⁶⁹² This was forbidden and punishable.¹⁶⁹³

19.3

662. The Majority erroneously concluded that the authorities of the HV wielded overall control over the HVO.¹⁶⁹⁴

663. The Majority erroneously relied on Galbraith¹⁶⁹⁵ in concluding that HV members were sent by Croatia to be integrated into and wield power over the HVO.¹⁶⁹⁶ Other than conjecture, Galbraith offered no supporting evidence in claiming that Croatia appointed and dismissed HVO officers.¹⁶⁹⁷

¹⁶⁸³ Ground.19.1.

¹⁶⁸⁴ Žužul,27776/22-27777/14;Petković,49303/14-24.

¹⁶⁸⁵ Kordić,AJ,para.359.

¹⁶⁸⁶ Čurčić,45800/2-45802/20;Crnković,45137/16-45138/23.

¹⁶⁸⁷ Biškić,15035/2-12,15068/2-15;Buljan,36852/15-25;Praljak,41892/4-9;45916/5-18;Petković,50520/1-14;23379/2-11.

¹⁶⁸⁸ Praljak,39669/17-39670/1;39846/21-39847/4;41587/17-22;41590/7-12.

¹⁶⁸⁹ Praljak,40076/10-40077/7.

¹⁶⁹⁰ Praljak,43100/11-19,43145/13-43146/9;Petković,49299/13-49300/1;Vol.1,para.775.

¹⁶⁹¹ 3D00300;3D00443.

¹⁶⁹² Beneta,46697/18-46698/7;Praljak,41815/10-25;Petković,49299/7-17.

¹⁶⁹³ Praljak,40084/14-20.

¹⁶⁹⁴ Vol.3,para.568.

¹⁶⁹⁵ Vol.3,para.546.

¹⁶⁹⁶ Vol.3,paras.546-548.

¹⁶⁹⁷ Galbraith,6467/12-18.

664. The Majority erroneously concluded that the HV and HVO conducted joint military operations in furtherance of the political goals shared by HZHB and Croatia,¹⁶⁹⁸ by relying exclusively on Ribičić and adjudicated facts.¹⁶⁹⁹
665. The Majority mischaracterized Beneta's testimony. He testified that HV members integrated into the HVO, under HVO command,¹⁷⁰⁰ not that HV commanders gave orders to the HVO units.¹⁷⁰¹
666. The Majority erroneously concluded that Šušak went to BiH as Croatian Defence Minister in furtherance of joint military operations between the HV and HVO,¹⁷⁰² and not in his personal capacity, as testified by Biškić,¹⁷⁰³ by relying on the erroneous conclusion that HV authorities met the HVO for the purpose of planning military operations.¹⁷⁰⁴
667. The Majority erroneously concluded that the Croatian Ministry of Defence provided material financial support for the HVO.¹⁷⁰⁵ Croatian emigrants originating from BiH collected funds for BiH.¹⁷⁰⁶ The TC ignored the evidence that Croatia supplied arms, military equipment and training to both the HVO and ABiH.¹⁷⁰⁷
668. Submissions in Ground. 15 are adopted here by reference.

¹⁶⁹⁸ Vol.3,para.549.

¹⁶⁹⁹ Ground.4.3.

¹⁷⁰⁰ Beneta,46632/21-46633/4.

¹⁷⁰¹ Vol.3,para.550.

¹⁷⁰² Vol.3,para.552.

¹⁷⁰³ Biškić,15073/5-13.

¹⁷⁰⁴ Vol.3,para.549.

¹⁷⁰⁵ Vol.3,paras.556-558.

¹⁷⁰⁶ Witness-I,23551/4-25;23576/6-22;P10301;1D01754;1D01755;23539/22-23540/11;23561/15-23562/4 ;23578/3-11;23581/16-23582/1;1D01755;1D01754.

¹⁷⁰⁷ Biškić,15073/5-13;3D02633;Majić,37835/3-37841/25;2D00630;3D00436;3D00437;2D00898;2D00311; Miloš,38656/10-38657/24;38658/16-24;38659/11-38660/6;3D00008;[REDACTED];Makar, 38448/5-38458/11;2D01108;2D10778;2D01078;2D01079;2D01080;2D01081;2D01084;2D01086; 2D01087; 2D01098;2D01097;2D01078;2D01100;2D01101;38458/11;[REDACTED];2D00311;Marjan, 36031/16-36032/1;Žužul,27735/21-27738/19;27782/23-27785/9;1D02567;Akmadžić,29438/13-29440721;1D02077;29608/6-29612/16;29440/23-29444/19;1D02292.

Conclusions and relief:

669. By de-contextualizing the events to confirm Croatian aggression against BiH, the TC failed to provide reasoned opinions and applied an incorrect legal standard in assessing the evidence; an error of law invalidating the TJ. Had the Majority taken all relevant facts and evidence into consideration it would have found that Croatia's actions were defensive and legal, and targeted against the JNA, not against BiH or its population.¹⁷⁰⁸ No reasonable trier of fact would have found that Croatia participated in the HVO-ABiH conflict or that the HV wielded overall control over the HVO; an error of fact effecting a miscarriage of justice.

670. The AC should overturn the convictions for Counts 3, 5, 7, 9, 11, 13, 16, 19, 22.¹⁷⁰⁹

¹⁷⁰⁸ Praljak, 41628/12-15; 43014/9-15; 44546/9-15; 45254/9-12; 46697/23-46698/7; 48632/2-11; Žužul, 27621/21-27625/7; 27636/8-27638/24; 27698/10-27709/5; P00130; P00131; P00205; 27807/7-19; Beneta, 46570/24-46572/5.

¹⁷⁰⁹ Vol.1, paras.81-132; Vol.3, paras.515-625, 704-756, 769-780, 810-839, 894-849, 1000-1058, 1102-1154, 1297-1297, 1523-1556, 1619-1653; Vol.4, para.278.

GROUND 20:

671. The Majority erred in law and fact by finding a state of occupation in the Municipalities of Prozor, Gornji Vakuf, Jablanica, Ljubuški, Stolac, Čapljina, and Vareš¹⁷¹⁰ when no IAC existed.¹⁷¹¹ The Majority misapplied the *Naletilić* criteria leading it to its erroneous conclusion that a state of occupation existed in BiH.¹⁷¹²
672. The law of belligerent occupation is inapplicable to NIACs.¹⁷¹³ The essence of belligerent occupation is that it be exercised by a foreign hostile army.¹⁷¹⁴
673. The Majority erred in law and fact by finding that the HVO was in a position to substitute its own authority for that of the occupied territories.¹⁷¹⁵ The HVO cannot be regarded as occupying BiH as it was a recognized body within the BiH civil¹⁷¹⁶ and military¹⁷¹⁷ authorities, and from 1992 was a component of the RBiH armed forces.¹⁷¹⁸
674. The occupying power must “exercise its governmental authority to the exclusion of an established government;” i.e., the legitimate sovereign must actually be displaced and the civil government eliminated.¹⁷¹⁹ The HVO administration never actually displaced BiH authorities (Ground.1.2,paras.47,53); it existed within BiH’s internationally recognized borders, and aimed to preserve the recognized constituent status of the Croats in BiH (Grounds.1.2,paras.47,5;1.3,paras.79-82).

Conclusions and Relief:

675. By failing to take into account that there was no IAC and that the HVO was a legitimate authority within the BiH Government, the Majority applied an incorrect standard of law in finding a state of occupation; an error of law invalidating the TJ. Had the evidence been properly considered, no reasonable trier of fact would have found that there was intent to establish a state-within-a-state or intent to permanently take over any of the BiH’s functions, or exercise “state like powers.” The political structures that

¹⁷¹⁰ Vol.3,para.589.

¹⁷¹¹ Vol.3,para.589.

¹⁷¹² Vol.3,para.570,*Naletilić*,TJ,para.217.

¹⁷¹³ DINSTEIN,pp.33-34.

¹⁷¹⁴ Hague Convention(IV),Art.42; *Armed Activities Case*,para.173;DINSTEIN,pp.33-34.

¹⁷¹⁵ Vol.3,paras.578-589.

¹⁷¹⁶ 3D00647;P02078.

¹⁷¹⁷ P01988.

¹⁷¹⁸ 3D00647,para. 6.

¹⁷¹⁹ *Naletilić*, TJ,para.217;*Armed Activities Case*,para.173;*Hostages Case*,pp.55-56.

emerged within the establishment of BiH were the result of prevailing circumstances: the failure of the BiH to provide the necessary services, functions, and protections.¹⁷²⁰ The system of local self-management and regionalization was provided for in the BiH Constitution and required by the Law on All People's Defence.¹⁷²¹ This was not occupation, but rather a management approach that was logical and legal given the context of the break-up of Yugoslavia; an error of fact effecting a miscarriage of justice.

676. The AC should overturn the convictions for Counts 3, 5, 7, 9, 11, 13, 16, 19, 22.¹⁷²²

¹⁷²⁰ 1D03111.

¹⁷²¹ 1D00897;1D02976.

¹⁷²² Vol.1,paras.81-139;Vol.3,paras.515-625,704-756,769-780,810-839,894-949,1000-1058,1102-1154,1297-1397,1523-1556,1619-1653;Vol.4,para.278.

GROUND 21:

677. The TC imposed a manifestly unreasonable sentence of 25 years of imprisonment,¹⁷²³ having committed a discernible error considering elements it should not have considered and failing to consider elements it should have considered.¹⁷²⁴

21.1

678. The TC committed discernible error by failing to consider as mitigating factors Prlić's significant efforts in dealing with the various humanitarian issues, his efforts to close down the detention centers over which he had no power, and his efforts to bring a sense of normalcy during and after the war under exceptionally difficult circumstances.

- Prlić (and the HVOHZHB/Government of the HRHB) made all possible efforts to facilitate the transfer and distribution of humanitarian aid.¹⁷²⁵
- [REDACTED].¹⁷²⁶
- Prlić was not in a position to take steps to control and prevent acts of violence in detention centers, which were under Boban's ultimate authority.¹⁷²⁷
- When the HVOHZHB/HRHB Government learned of the existence of poor conditions in detention facilities, they attempted to resolve these matters to the extent possible, even though they were effectively incapable of controlling the authorities responsible for detentions and detention facilities.¹⁷²⁸
- Prlić assisted with the achievement of positive results in the HZ(R)HB. In 1995, annual data show that growth rates in the real sector of Croat-majority areas of BiH were quite high.¹⁷²⁹ And "the majority of Herceg-Bosna legislation was accepted in the Federation and later at BiH's level...."¹⁷³⁰
- Prlić's continuity of Government Service in BiH. (Ground.18,para.653)

¹⁷²³ Vol.4,paras.1296-1324.

¹⁷²⁴ Nikolić,AJ,para.9.

¹⁷²⁵ Raguž,31353/15-31355/19;31365/16-31367/14;P10264;1D01854;1D02024;1D01529;1D02070;1D01611;1D01336;P03673;1D02299;1D01873;1D01874;1D01912.

¹⁷²⁶ [REDACTED].

¹⁷²⁷ P00588;P07096.

¹⁷²⁸ Ground.13,para.417.

¹⁷²⁹ 1D03111,p.191;Cviki,35296/3-35297/9;35310/15-35311/24.

¹⁷³⁰ 1D03111,p.191.

21.2

679. The TC committed discernible error by considering as aggravating factors that Prlić played a key role in the commission of crimes.¹⁷³¹

680. The TC erred in counting as an aggravating factor precisely what it relied on to impute criminal responsibility to Prlić: his position.¹⁷³² The TC would not have convicted Prlić on the basis of JCE had he not held the position he did. As the AC has held, elements of a crime cannot constitute aggravating factors,¹⁷³³ nor does a position of authority automatically warrant a harsher sentence.¹⁷³⁴

681. Similarly, the TC erroneously “double-counted” its finding that Prlić contributed to the JCE as an aggravating factor. Contribution to the JCE is an essential element of individual responsibility.¹⁷³⁵ If there is no contribution, then there is no JCE responsibility. The TC cannot, at the same time, use Prlić’s alleged participation in the JCE to find him liable, and as an aggravating factor for sentencing.

Conclusions and relief:

682. The AC should find that the TC committed discernible errors in determining the sentence it imposed against Prlić and should therefore adjust accordingly.

¹⁷³¹ Vol.4,para.1318.

¹⁷³² Vol.4,paras.121,134,165,168,174,204,232,238,249,282-84.

¹⁷³³ *Galić*,AJ,para.408.

¹⁷³⁴ *Milošević*,AJ,para.302.

¹⁷³⁵ *Tadić*,AJ,para.227.

OVERALL RELIEF SOUGHT:

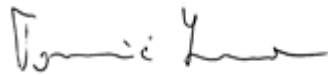
For the foregoing reasons, Dr. Prlić respectfully requests a full acquittal of all of the charges contained in Counts 1-25.

Dated: 12 January 2015
The Hague, Netherlands

Respectfully submitted,



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Word Count: 49,433