

THE INTERNATIONAL CRIMINAL TRIBUNAL
FOR THE FORMER YUGOSLAVIA

Case No. IT-00-39-A

IN THE APPEALS CHAMBER

Before: Judge Fausto Pocar, Presiding
Judge Mohamed Shahabuddeen
Judge Mehmet Güney
Judge Andréia Vaz
Judge Theodor Meron

Registrar: Mr. Hans Holthuis

Date Filed: 18 March 2008

THE PROSECUTOR

v.

MOMČILO KRAJIŠNIK

PUBLIC

NOTICE OF FILING OF PUBLIC REDACTED VERSION OF PROSECUTION
RESPONSE TO APPEAL BY MOMČILO KRAJIŠNIK TO THE ICTY
JUDGEMENT OF 27 SEPTEMBER 2006

The Office of the Prosecutor:
Mr. Peter Kremer QC

The Appellant:
Mr. Momčilo Krajišnik

Amicus Curiae:
Mr. Colin Nicholls QC

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The Prosecution hereby files its public redacted version of the Prosecution Response to Momčilo Krajišnik's Appeal, filed confidentially on 12 March 2008.

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 Peter Kremer QC
 Senior Appeals Counsel

Dated this 18th day of March 2008
 At The Hague, The Netherlands

**UNITED
NATIONS**

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

Case No. IT-00-39-A
Date: 12 March 2008

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I. INTRODUCTION

1. The Chamber correctly convicted Momčilo Krajišnik of persecution, extermination, murder, deportation and inhumane acts (forced transfer) as crimes against humanity. The Chamber correctly concluded that Krajišnik was a participant in a joint criminal enterprise in which he held a central position and in which he was a driving force behind the implementation of the common objective.

2. In his appeal brief,¹ Krajišnik does not show that the Chamber erred in law or in fact. As will be seen below, the vast majority of his arguments are insufficiently developed to merit a substantive response.

A. Arguments not in the Notice of Appeal Should be Struck

3. Krajišnik introduces two entirely new arguments which are not found in his Notice of Appeal. In his “Introduction”, Krajišnik challenges the existence of an armed conflict in 1991.² In addition, at the end of his brief, Krajišnik alleges errors in sentencing,³ though without seeking the relief of a more lenient sentence.⁴

4. Both arguments should be struck. The requirement in Rule 108 for a notice of appeal to set forth grounds becomes redundant if the Appeals Chamber allows an appellant to go beyond the notice and raise entirely new arguments in his brief without showing good cause and obtaining leave.⁵

B. The “K-” documents are not on the Trial Record and Should be Struck

5. Throughout his brief, Krajišnik refers to documents to which he ascribes the prefix “K-” plus a number. He also filed discs of electronic material which appear to be Prosecution and Defence exhibits plus the documents labeled “K-”. He does not show that the “K-” documents are part of the certified record on appeal.⁶ He has not complied with the requirements to have new evidence admitted under Rule 115.

¹ Appeal by Momčilo Krajišnik to the ICTY Judgement of 27 September 2006, 15 January 2008 (BCS) and filed 1 February 2008 (official English translation).

² *Krajišnik* Brief, p.3.

³ *Krajišnik* Brief, pp.82-83.

⁴ *Krajišnik* Brief, p.84.

⁵ See *Akayesu* AJ, para.228; *Galić* AJ, para.78; *Simba* AJ, para.338.

⁶ Rule 109; See Certificate on the Trial Record, signed by Marcus Zimmer, Chief of CMSS, 8 January 2007.

Therefore the Prosecution has not responded to any arguments which rely exclusively on a “K-” document.

6. The Prosecution moves the Appeals Chamber to strike all references to documents prefixed “K-” from Krajišnik’s Brief, to disregard the associated electronic documents, and to summarily dismiss the following submissions as being without any foundation in the trial record: paragraphs 28, 31, 56, 80 (bullets 5, 7, 8, 9), 81 (bullet 2), 84, 101 (bullets 2 and 4), 102 (bullets 3 and 6), 108, 110 (bullet 1), 120 (bullet 2), 124 (bullets 4 and 5), 131 (bullet 4), 132, 154 (bullet 1), 157, 168, 184 (bullet 14), 208, 211, 239, 251, 254, 257, 258, 259 (bullet 1), 265, 279 (bullet 1), 280, 286, 292, 306, 362 (bullets 1 and 8), 389 (1st sentence), 409, 417, 429 (bullet 1), 430 (1st sentence).

C. Krajišnik Fails to Meet the Standard of Review

7. Most of the arguments in Krajišnik’s brief do not meet the standard of review on appeal. Many do not merit any further consideration.

8. To meet the standard of review for an error of law, Krajišnik must identify the alleged error, present arguments in support of his claim, and explain how the error invalidates the decision.⁷ An allegation of error of law which has no chance of changing the outcome of a decision may be rejected on that basis.⁸ The arguments in the brief fail to meet this standard.

9. To successfully argue an error of fact, Krajišnik must show that the Chamber, whether on the basis of direct or circumstantial evidence, reached a factual conclusion which no reasonable trier of fact could have reached and which occasioned a miscarriage of justice. A miscarriage of justice means “a grossly unfair outcome in judicial proceedings, as when a defendant is convicted despite a lack of evidence of an essential element of the crime.”⁹ Therefore Krajišnik must show not only the existence of an error, but that after taking account of the error, there is a reasonable doubt as to his guilt.¹⁰ Krajišnik singularly fails to reach the level required to warrant

⁷ *Brdanin* AJ, para.9.

⁸ *Brdanin* AJ, para.9; *Krnojelac* AJ, para.10.

⁹ *Brdanin* AJ, para.19; *Kunarac* AJ, para.39; *Kupreškić* AJ, para.29; *Furundžija* AJ, para.37; *Simić* AJ, para.10.

¹⁰ See *Brdanin* AJ, para.13; *Galić* AJ, para.9; *Stakić* AJ, para.220; *Blaškić* AJ, para.16.

the intervention of the Appeals Chamber which “will not lightly disturb the findings of fact by a Trial Chamber.”¹¹

10. In fact, many of Krajišnik’s arguments fall so far short of meeting the standard of review that they can and should be dismissed without further consideration. Arguments in the brief which fall into the following categories are ripe for such dismissal:

- a) Statements which do not articulate the precise nature of the error, in that they merely assert an error without giving reasons as to how the Chamber has erred, or they assert error by merely re-interpreting the evidence;¹²
- b) A factual error is alleged but no impact is articulated.¹³ As long as factual findings supporting the conviction and sentence are sound, errors relating to other factual conclusions do not have any impact on the judgement;¹⁴
- c) Arguments that are irrelevant, evidently incorrect, or which misrepresent the Chamber’s findings or ignore other relevant factual findings;¹⁵
- d) Arguments that merely dispute the Chamber’s findings on the basis of one of several pieces of evidence but which fail to explain why the conviction cannot be sustained on the basis of the remaining evidence.¹⁶ The Chamber is presumed to have considered the whole of the evidence in the trial record unless it can be clearly shown that it has not.¹⁷
- e) Trial submissions that are repeated without an explanation as to why the Chamber erred in rejecting them. On appeal a party cannot merely repeat unsuccessful trial arguments hoping that the Appeals Chamber will consider them anew.¹⁸

¹¹ *Furundžija* AJ, para.37, referring to *Tadić* AJ, para.64. *See also* *Kvočka* AJ, para.19; *Krnojelac* AJ, para.11; *Musema* AJ, para.18.

¹² *Krnojelac* AJ, para.45; *Kajelijeli* AJ, para.34; *Naletilić* AJ, paras. 327, 348.

¹³ *Brdanin* AJ, para.21; *Vasiljević* AJ, paras. 20-21.

¹⁴ *Brdanin* AJ, para.21.

¹⁵ *Brdanin* AJ, paras.23 and 26.

¹⁶ *Brdanin* AJ, paras. 27, 28, 29.

¹⁷ *Brdanin* AJ, para.11; *Kvočka* AJ, para.23.

¹⁸ *See e.g.* *Halilović* AJ, para.12; *Galić* AJ, para.10; *Blagojević* AJ, para.10; *Brdanin* AJ, para.16; *Kupreškić* AJ, para.22; *Simić* AJ, para.12; *Gacumbitsi* AJ, para.9.

11. The Prosecution identifies arguments that suffer from these flaws during the course of its response but has not responded substantively to them. Rather, the Appeals Chamber is invited to dismiss them without further consideration.

D. Krajišnik's Brief Breaches the Practice Direction

12. Krajišnik's brief fails to comply with the relevant practice directions for filing briefs on appeal. The brief does not follow the structure of his Notice of Appeal.¹⁹ In particular, within the ground which alleges "Errors of Fact" (Ground 4 of the Notice of Appeal), Krajišnik had originally used numbered paragraphs and sub-headings which were underlined. Neither the numbering nor the headings appear in his brief. It is almost impossible to know whether he has abandoned certain challenges or included others which were not originally in the Notice. In addition, in a number of places, Krajišnik fails to provide adequate references to paragraphs in the Judgement which are being challenged and to the evidence on which he relies. This also constitutes a violation of the practice directions.²⁰

13. Ground 4 "Errors of Fact" runs to some 74 pages and contains no apparent headings. There are some sentences in bold type but it is entirely unclear whether these are intended as headings or merely to highlight particular arguments. In any event, they do not coincide with the underlined headings in his Notice of Appeal. This lengthy section has no clear internal structure and no contents page. As far as the Prosecution can determine, it is not thematic. It is not set out to correspond to the structure of the Judgement. It does not tackle the Judgement paragraphs numerically, nor does it tackle the witnesses chronologically.

14. Krajišnik annexes a list of Judgement paragraph numbers he has commented on together with a note of where his commentary can be found in the brief.²¹ This list is of minimal use as it is inaccurate and incomplete. For example, at paragraph 184 (bullet 18) footnote 280 of his brief, Krajišnik refers to his commentary on Judgement paragraph 1054. However paragraph 1054 is not listed in the annex. The same is true of paragraph 312 (bullet 13) footnote 447 referring to Judgement paragraphs 1060, 1061 and 1062, which do not appear in the annexed list; footnote 266 referring to 1021-1034, only some of which appear in the list; and paragraph 396, footnote 625

¹⁹ Practice Direction IT/201 of 7 March 2002, para.4.

²⁰ Practice Direction IT/155/Rev.3 of 16 September 2005, para.17.

referring to 1117, which is not listed. This is by no means a comprehensive analysis of the annex but serves to illustrate its limited use.

E. Roadmap to the Prosecution's Response

15. The Prosecution's response follows the numbering and order of Krajišnik's grounds of appeal from "1. Introduction" through to "4. Errors of Fact". As a result of the deficiencies in the structure of Ground 4 of Krajišnik's brief, the Prosecution has sought to assist the Appeals Chamber to navigate its way through this section by endeavouring to identify Krajišnik's principal challenges. These recur throughout Ground 4. They are essentially challenges to the findings that go to the elements of JCE and the ultimate conclusion that Krajišnik was a member of a JCE, and challenges to some findings regarding crimes. Accordingly, the Prosecution's response groups the relevant paragraphs of his brief together under the following themes:

- i. Membership
- ii. Common objective
- iii. Connection to crimes/principal perpetrators
- iv. Contribution
- v. Mens Rea
- vi. Crimes

16. Any paragraphs of Krajišnik's brief which do not fall into one of these recurrent arguments are dealt with at the end of the response, unless they fall to be dismissed without further consideration on one of the grounds set out above. Appendix 1 of the Response is a table listing all the paragraphs of Krajišnik's Brief which have been addressed and the corresponding paragraph of the Response Brief where they are addressed.

17. The Prosecution considers that its approach to the response conforms to the relevant practice direction²² since it follows Krajišnik's numbering and order of his grounds of appeal. The Prosecution does not deal with the 427 paragraphs set out in ground 4 in numerical order. That would be a meaningless and unhelpful exercise.

²¹ *Krajišnik* Brief, Attachment Number 2.

Certainly Krajišnik is not prejudiced by this approach, if anything he is assisted. Should the Appeals Chamber, however, take the view that leave is required to be allowed to group the paragraphs together by their obvious topic rather than answer them one by one in numerical order, then the Prosecution seeks leave.

II. PROCEDURAL ERRORS DURING TRIAL²³

18. Krajišnik makes four arguments regarding the fairness of the trial proceedings. All four should be dismissed without further consideration.

A. Poor co-operation with counsel and rejection of request for self-representation

19. Krajišnik asserts that the Chamber failed to ensure a fair trial because it ignored his complaints of poor co-operation with Counsel and rejected his request for self-representation.²⁴ Krajišnik does not even attempt to show that the Chamber abused its discretion. He does not address the Chamber's reasons for denying self-representation, which took into account his complaints of poor co-operation with counsel.²⁵ The argument should be dismissed.²⁶

B. Non-diligent counsel

20. Court appointed counsel was diligent. The Chamber concluded it had no reason to replace him. To support his argument of lack of diligence, Krajišnik states²⁷ that during his testimony, he presented the Chamber with many "exhibits", but that at the end of his testimony, instead of admitting the "exhibits", the Chamber returned them to Counsel and the Prosecution. He alleges that Counsel forgot subsequently to tender the documents for admission,²⁸ causing the Chamber to give little weight to his testimony.²⁹ Krajišnik fails to specify which documents the Chamber failed to admit and how their admission would have impacted the verdict.

²² Practice Direction IT/201 of 7 March 2002, para.5.

²³ Numbered "2" in Krajišnik's Brief but "1" in his Notice of Appeal.

²⁴ *Krajišnik* Brief, para.1.

²⁵ T.17048 and Reasons for Denial to Proceed Unrepresented.

²⁶ *See Brdanin* AJ, para.24-25; *Galić* AJ, para.274.

²⁷ *Krajišnik* Brief, para.2.

²⁸ *Krajišnik* Brief, para.2.

²⁹ *Krajišnik* Brief, para.2.

21. His argument also misrepresents the record. For documents presented *during* Krajišnik's testimony, the Chamber did in fact admit a large number of them as exhibits.³⁰

22. *After* Krajišnik's testimony, the Registry received a number of documents directly from him.³¹ The presiding judge correctly pointed out that Krajišnik was no longer a witness³² and the documents were returned to him to discuss with counsel whether to tender them.³³ Krajišnik does not explain how counsel demonstrably erred in not seeking their admission.

C. Limited selection of counsel

23. The Appeals Chamber should dismiss Krajišnik's assertion that "if an accused is offered only a limited selection of court-appointed attorneys to choose from, and the attorney assumes the 'behaviour of the prosecutor', the right of an accused is to a proper defence has been violated,"³⁴ since he does not explain how this statement is relevant to his situation.³⁵ He does not explain how his counsel "assumed the behaviour of the prosecutor."

D. Equality of arms

24. Krajišnik posits that the essential criterion of a fair hearing is the principle of "equality of arms" between parties, ensuring that the defence is on an equal footing with the prosecution in preparation and presentation of the evidence.³⁶

25. Krajišnik then argues that his counsel should have requested adjournments on the grounds of insufficient preparation and the complexity of the case and that the Chamber should have granted such requests.³⁷ Krajišnik fails to mention that his counsel in fact made a number of requests for adjournments.³⁸ He fails to show how

³⁰ D177 through D257 (excl.D248 and D249) were admitted: Oral Decision, 6 June 2006, T.25268; Oral Decision, 26 June 2006, T.26313-26318; Decision on Admission of Exhibits, 11 August 2006. *See also* Mr. Josse on T.26317: "Could I therefore say that everything that has been given a number we are seeking the admission of."

³¹ T.26288.

³² T.26288.

³³ T.26288-26289.

³⁴ *Krajišnik* Brief, para.5, quoting the Human Rights Committee.

³⁵ *See Brdanin* AJ, paras. 24-25; *Galić* AJ, para.274.

³⁶ *Krajišnik* Brief, para.7.

³⁷ *Krajišnik* Brief, para.6.

³⁸ *See e.g.* Defence Motion for Adjournment 14 July 2004; Defence Motion for Adjournment 22 February 2005, Defence Motion for Extension of Time.

the Chamber erred in its discretion when deciding these requests, particularly as the Chamber explicitly recognised that the complexity of the case as a factor to be taken into account.³⁹ Complaints about inadequate time for preparation prior to the decision on the interlocutory appeal regarding the second adjournment motion have been finally adjudicated by the Appeals Chamber.⁴⁰

26. With regard to the presentation of evidence, Krajišnik asserts that the Chamber kept restricting him when questioning witnesses, “occasionally even brutally preventing him from questioning them at all.”⁴¹ He fails to substantiate how the Chamber abused its discretion under Rule 90(F) and the argument must be dismissed.⁴²

³⁹ *Krajišnik* Adjournment Decision.

⁴⁰ *Krajišnik* Interlocutory AD on Adjournment.

⁴¹ *Krajišnik* Brief, para.8.

⁴² *See Brdanin* AJ, paras. 24-25; *Galić* AJ, para.274.

III. ERROR OF LAW REGARDING KRAJIŠNIK'S JCE MEMBERSHIP

A. The Chamber was correct to find that Krajišnik was a member of the JCE

27. Krajišnik argues that the Chamber's conclusion that he was a JCE member was both an error of law⁴³ and an error of fact.⁴⁴ The Prosecution responds in this section to the alleged error of law.⁴⁵

28. Krajišnik argues that he and other JCE members were neither acting together nor connected by a criminal plan, but were simply individuals carrying out tasks within their lawful competencies, as part of the functioning of the state administration and in accordance with the Constitution.⁴⁶ He challenges his membership of the "core group",⁴⁷ his participation in the formulation of the common objective,⁴⁸ and argues that the Chamber did not distinguish between crimes that were part of the common objective and other violent crimes.⁴⁹

29. By alleging legal error, Krajišnik implies either that the Chamber applied the wrong law on JCE or that it applied the correct law wrongly. Neither is true. The Chamber applied the correct law in the right way.

30. Based on the alleged error of law, Krajišnik demands that the Appeals Chamber re-examine each separate crime with which he was charged to establish whether all the elements of JCE liability are met.⁵⁰ With minor exceptions discussed under "Crimes" in this Response, Krajišnik fails to identify which crimes are mistakenly attributed to the JCE.⁵¹ The Appeals Chamber has repeatedly stated that an appeal is not a trial *de novo*.⁵² Before the Appeals Chamber can be persuaded to intervene and re-examine the evidence, Krajišnik must establish both an error and an impact on the verdict. He does neither. This ground should be dismissed.

⁴³ *Krajišnik* Brief, Part 3, paras. 9-24.

⁴⁴ *Krajišnik* Brief, Part 3 Errors of Fact, paras. 130, 184 (bullet 19), 186, 187, 199, 204, 206 (3rd sentence), 239-240, 421, pp.83-84 Conclusion (bullet 17).

⁴⁵ The response to the errors of fact is in Part 4 "Membership".

⁴⁶ *Krajišnik* Brief, paras. 9-11.

⁴⁷ *Krajišnik* Brief, para.11.

⁴⁸ *Krajišnik* Brief, para.14.

⁴⁹ *Krajišnik* Brief, para.18.

⁵⁰ *Krajišnik* Brief, para.24.

B. There is no Error of Law

1. The Chamber Applied the Correct Law

31. The Chamber correctly stated that a JCE exists when a plurality of persons participate in the realization of a common criminal objective.⁵³ It expressly stated that “it is the common objective that begins to transform a plurality of persons into a group or enterprise, as this plurality has in common the particular objective,”⁵⁴ and further that “[i]t is the interaction or cooperation among persons – their joint action – in addition to their common objective, that makes those persons a group. The persons in a JCE must be shown to act together or in concert with each other in the implementation of a common objective.”⁵⁵

32. In its legal findings on Krajišnik’s responsibility, the Chamber examined the sort of connections or relationships that establish membership of a JCE.⁵⁶ It knew that, in order to find him guilty, it had to be “convinced that the Accused was sufficiently connected and concerned with persons who committed crimes pursuant to the common objective in various capacities, or who procured others to do so.”⁵⁷ The Chamber’s approach is consistent with the requirements for JCE set out by the Appeals Chamber.⁵⁸

33. Contrary to Krajišnik’s assertion, the Chamber was aware it needed to distinguish crimes committed in pursuit of the common objective from crimes which were similar but which were not those of the JCE. It employed appropriate criteria to enable it to make that distinction.⁵⁹

34. Other than disagreeing with the conclusion on his responsibility, Krajišnik fails to articulate why the legal requirements set out by the Chamber were wrong. Krajišnik’s argument is based on a mistaken premise. He was not found guilty simply because of his membership of Bosnian-Serb institutions. He was found guilty of persecution, extermination, murder, deportation and other inhumane acts because of

⁵¹ See Part IV. F. ; Part IV. C. 4 – Connection with crimes/physical perpetrators.

⁵² *Furundžija* AJ, para.40; *Blaškić* AJ, para.13.

⁵³ Judgement, para.883(i).

⁵⁴ Judgement, para.884.

⁵⁵ Judgement, para.884 (footnotes omitted).

⁵⁶ Judgement, paras. 1081-1082.

⁵⁷ Judgement, para.1086.

⁵⁸ *Brđanin* AJ, paras. 426-432.

his participation - partly by abusing his role in these institutions - in the preparation and implementation of a criminal plan that aimed at and resulted in these very crimes. Even if it were true that he and others only acted within the framework of Bosnian-Serb institutions as provided for by the Constitution, it does not make their actions any less criminal.

35. Krajišnik's argument that his actions cannot be classified as any crime under the Statute,⁶⁰ is irrelevant to his liability under JCE. The participation of the accused in the common design "need not involve commission of a specific crime under one of [the] provisions [of the Statute....], but may take the form of assistance in, or contribution to, the execution of the common plan or purpose."⁶¹

2. Krajišnik Misinterprets the Limaj Appeal Judgement

36. Krajišnik misinterprets the *Limaj* Appeal Judgement to demand that the Appeals Chamber separately examine each of the crimes to determine whether the principal perpetrators share "the premeditation and objectives" with the members of the JCE.⁶²

37. The requirement of "sharing a common plan" was analysed by the *Limaj et al.* Appeal Judgement to determine whether the principal perpetrators were members of the JCE.⁶³ This is not the issue in the present case. In this case, in general, the Chamber did not make a finding that the principal perpetrators were members of the JCE. Rather they were used by the JCE members to commit the crimes.⁶⁴ To find JCE members liable for crimes committed by principal perpetrators who are not members of the JCE, the Appeals Chamber in *Brdanin* determined that it has to be shown that the crime can be imputed to one JCE member, and that this member, when using the principal perpetrator, acted in accordance with the common plan.⁶⁵

⁵⁹ Judgement, paras. 1081-1082.

⁶⁰ *Krajišnik* Brief, para.13.

⁶¹ *Tadić* AJ, para.227.

⁶² *Krajišnik* Brief, paras.19-24.

⁶³ *Limaj* AJ para.106; See heading 1 before paras. 93 *et seq.*, heading (c) before paras. 107 *et seq.*

⁶⁴ Judgement, paras. 1086-1088 (with the exception of some JCE members, e.g. Arkan, who also physically perpetrated crimes).

⁶⁵ *Brdanin* AJ paras. 413 and 430.

38. As seen below in part 4, Krajišnik fails to show that any crime was wrongly imputed by the Chamber.⁶⁶ He merely asserts that the Chamber committed an error by not distinguishing between local violence due to unsettled local relations and violence which may have been centrally organised for the purpose of ethnic recomposition,⁶⁷ but fails to substantiate his arguments further.

⁶⁶ See below Part IV. C. .

⁶⁷ *Krajišnik* Brief, para.18.

IV. ERRORS OF FACT

A. Membership

39. Krajišnik alleges that the Chamber factually erred in finding him to be a member of the JCE. He argues that he was only acting within his sphere of competence and not linked to other JCE members but by the functioning of the state administration.⁶⁸ He challenges the Chamber's conclusion on his closeness to Karadžić and to other JCE members.⁶⁹ He seems to challenge the membership of specific individuals in the JCE.⁷⁰ His challenges fail to show that no reasonable trial chamber could have come to the conclusions reached by the Chamber on the membership of the JCE in light of all the evidence. His arguments are often irrelevant or merely assert his contrary view. As such they should be dismissed without further consideration.

40. The Chamber concluded that Krajišnik was a member of a JCE consisting of persons situated throughout the territories of the Bosnian-Serb Republic.⁷¹ It found a Pale based leadership component, including Krajišnik, Karadžić, Plavšić, Koljević, Mandić, Ostojić, Mico Stanišić and Mladić,⁷² as well as a local component, including local politicians, military and police commanders as well as paramilitary leaders.⁷³

41. This conclusion is supported by the Chamber's analysis of a wealth of evidence, and its subsequent findings that:

- Krajišnik, as member of the Presidency, member of the SDS main board and President of the Bosnian-Serb Assembly, had direct and permanent contacts with Plavšić, Karadžić and Koljević, as well as other JCE members;⁷⁴
- Krajišnik, as a member of the Presidency, member of the SDS main board and President of the Bosnian-Serb Assembly, far from being an isolated official, had extensive *de jure* and *de facto* power and influence;⁷⁵

⁶⁸ *Krajišnik* Brief, paras.73, 187, 199, 206 (3rd sentence).

⁶⁹ *Krajišnik* Brief, paras.130, 184 bullet 19, 204.

⁷⁰ *Krajišnik* Brief, paras.119, 185-186, 239-240, 421.

⁷¹ Judgement, para.1087.

⁷² Judgement, para.1087.

⁷³ Judgement, paras. 1087-1088.

⁷⁴ Judgement, paras. 3, 61, 65-67, 114, 147-148, 168-170, 176-182, 224, 579, 892-893, 927, 945, 965, 967, 983, 1085. *See also* below Part IV. D. 1. (a) IV. D. 1. (b) .

- The Presidency interacted with and had control over the government, in particular the Ministry of Interior, the Ministry of Defence and the Ministry of Justice;⁷⁶
- The Presidency (and particularly Karadžić and Krajišnik) was part of the chain of command over the VRS and supervised military goals and operations;⁷⁷
- The central leadership cooperated with and exercised control over local leaders and police forces on the ground;⁷⁸
- Krajišnik in particular had frequent contacts with municipal leaders *via* the Bosnian Serb Assembly⁷⁹ and through his frequent trips to the field;⁸⁰
- Central and local leaders were also connected through the SDS and shared and implemented SDS policies;⁸¹
- Political and military leaders acting within Bosnian-Serb central and local institutions shared the common objective;⁸²
- Bosnian-Serb central and local institutions took decisions and actions in support of and consistent with the implementation of the common objective.⁸³

42. These findings, and the evidence relied upon, show not only that those identified as JCE members acted together within the framework of Bosnian-Serb institutions, but that they used these institutions to expand their powers and implement the common objective throughout Bosnian-Serb territories. By arguing that he and other JCE members were merely acting within their competencies, through the functioning of the state administration,⁸⁴ Krajišnik simply restates the argument he

⁷⁵ Part IV. D. 1. and IV. D. 2. .

⁷⁶ Judgement, paras. 147-148, 162, 183-186, 251, 1085.

⁷⁷ Judgement, paras. 189, 194, 205-207, 223-224, 975-986, 994, 1011, 1014.

⁷⁸ Judgement, paras. 153, 168, 231, 236-239, 242, 243-255, 260-279, 903-909, 941, 992-993, 1011-1012.

⁷⁹ Judgement, paras. 69, 138, 173, 265, 278-279, 947, 1017.

⁸⁰ Judgement, paras. 1013, 1015, 1016, 1027, 1044.

⁸¹ Judgement, paras. 26, 61, 86, 117, 120, 140, 187-188, 204, 260-266.

⁸² Judgement, paras. 1089-1119.

⁸³ *E.g.* Judgement, paras. 98-99, 421, 172, 193-194, 201, 251-255, 306-308, 353, 360-362, 427, 432, 445, 784-787, 821-822, 912, 925-933 (support for arming activities), 935-949 (support for takeovers).

⁸⁴ *Krajišnik* Brief, paras. 187, 199, 206 (3rd sentence).

made a trial and merely asserts that he was not close to other JCE members,⁸⁵ but fails to demonstrate any error in the analysis of the Chamber.

43. Krajišnik challenges the Chamber's conclusion that Arkan was a member of the JCE.⁸⁶ The evidence he relies upon in fact arguably supports that conclusion. He refers to Plavšić's testimony⁸⁷ which itself refers to her statement where she stated that she "did not know [Arkan] at the time" (i.e. around 2 April 1992).⁸⁸ However, reading on in the statement, she stated that she called Arkan and asked him to release three people, which he did, and that she later went to Bijeljina and met him in person.⁸⁹ Reading the evidence as a whole, Krajišnik fails to show that the Chamber's conclusion was unreasonable. Similarly, Exh.P529 tab 265 (which Krajišnik cites in support in footnote 284) confirms the conclusion. It is evidence that Arkan's men were under command of the VRS ("Unković: We have some Arkan's men here. [...] Are they under our command? Mladić: All are."). Krajišnik fails to establish an error.

44. Other specific claims regarding individual JCE members are mere assertions⁹⁰ or irrelevant arguments.⁹¹ For instance, at paragraph 186 of his Brief, Krajišnik asserts that Bosnian-Serb leaders were in conflict with Milošević. The Chamber did not find that the JCE included Milošević and this argument is irrelevant. Similarly, at paragraph 239, Krajišnik argues that Mandić, named as a member of the JCE by the Chamber, was acquitted by the Court of BiH. The verdict of a domestic court in another trial is irrelevant. Accordingly, all these arguments should be dismissed without further consideration.

⁸⁵ *Krajišnik* Brief, paras. 130, 184 bullet 19, 204.

⁸⁶ *Krajišnik* Brief, para.185.

⁸⁷ T.26794-26795, cited in *Krajišnik* Brief, fn.284.

⁸⁸ Exh.C7, para.13.

⁸⁹ Exh.C7, paras. 13-16. *See also* Judgement, paras. 937-938 and 981 dealing with evidence of Plavšić's support for Arkan.

⁹⁰ *Krajišnik* Brief, paras. 119, 199, 421.

⁹¹ *Krajišnik* Brief, paras. 186, 239-240.

B. The Common Objective

45. The Bosnian-Serb leadership, including Krajišnik, had the common objective to ethnically recompose the territories under its control by expelling and drastically reducing the proportion of Bosnian Muslims and Bosnian Croats living there, through the commission of crimes.⁹² This was a policy of ethnic cleansing and territorial conquest entailing the use of force.⁹³

46. The common objective needed to be implemented through at least deportation and forced transfer.⁹⁴ Through the Bosnian-Serb leadership's persistence in pursuing the common objective a large range of crimes were committed.⁹⁵ "Take-overs, killings, detention, abuse, expulsions, and appropriation and destruction of property had begun in the territories claimed by the Bosnian Serbs [...] This was the Bosnian-Serb leadership's goal[...]."⁹⁶

47. Krajišnik disputes the existence of this common objective,⁹⁷ yet his arguments fail to show that no reasonable trial chamber could have reached this conclusion.

1. *Political Precursor*

48. The Bosnian-Serb leadership initially pursued two simultaneous strategies: they participated in international negotiations while at the same time, they were preparing for the unilateral separation of what they considered to be Serb territories.⁹⁸ In early 1992 separation and homogenization were not yet the *declared* aim of the Bosnian-Serb leadership⁹⁹ but the Chamber found that the Western-style democratic structure of the Bosnian-Serb Republic was "a veneer" and that behind it lay an accumulation of power in the hands of a few in the name of ethnic chauvinism.¹⁰⁰

49. Krajišnik attempts to describe the Bosnian-Serb leadership as the only party sincerely committed to the international negotiations and truly seeking a political

⁹² Judgement, paras. 1090, 1117, 1142.

⁹³ Judgement, para.1099.

⁹⁴ Judgement, para.1097.

⁹⁵ Judgement, paras. 1100-1118.

⁹⁶ Judgement, para.996.

⁹⁷ *Krajišnik* Brief, para.46.

⁹⁸ Judgement, paras. 103-105, 910, 911.

⁹⁹ Judgement, para. 908. *See also* Judgement, paras. 114, 115.

¹⁰⁰ Judgement, para.909.

solution.¹⁰¹ He fails, however, to demonstrate the unreasonableness of the Chamber's conclusion¹⁰² that alongside these efforts, they were also preparing for unilateral separation and take-over..

50. Krajišnik claims that the Chamber erred by attaching importance to an unsigned "document of intentions" of unknown date and sender.¹⁰³ He fails however to demonstrate an error in the Chamber's assessment of this document which it dated contextually and which came from "Organs of the Republic of Serbian BH"¹⁰⁴ making suggestions, requests and offers to the JNA.¹⁰⁵ Krajišnik fails to articulate why no reasonable trial chamber could give weight to its contents in the circumstances.

51. In addition Krajišnik makes irrelevant arguments, namely:

- the Constitution of the Bosnian-Serb Republic was compatible with Cutileiro's plan;¹⁰⁶
- the Constitution was approved only after the Muslim side abandoned Cutileiro's plan;¹⁰⁷
- the Muslim side had withdrawn from the agreement;¹⁰⁸
- Karadžić discussed the transformation of BiH within Cutileiro's plan;¹⁰⁹
- the Muslims were not against the linking of BiH Serbs with Serbia and the Serbs did not support the population resettlement;¹¹⁰
- the Serbian side believed that the international community would not recognize Bosnia Herzegovina without an agreed political solution.¹¹¹

¹⁰¹ *Krajišnik* Brief, paras. 139, 247, 249-251, 263-266, 268/269-270, 280, 282-285, 287.

¹⁰² Judgement, para.105.

¹⁰³ *Krajišnik* Brief, para.276 referring to Judgement, para.109.

¹⁰⁴ P64.A.1tab308.1.

¹⁰⁵ Judgement, para.109.

¹⁰⁶ *Krajišnik* Brief, para.268-269, 280.

¹⁰⁷ *Krajišnik* Brief, para.285.

¹⁰⁸ *Krajišnik* Brief, para. 280.

¹⁰⁹ *Krajišnik* Brief, para. 282.

¹¹⁰ *Krajišnik* Brief, para. 283.

¹¹¹ *Krajišnik* Brief, para. 287.

52. These arguments are immaterial as to whether the Bosnian-Serb leadership had the common criminal objective¹¹² and should be dismissed without further consideration.

2. Taking over was part of the implementation of the common objective

53. Exclusive control over the territories was essential for ethnic recomposition. Krajišnik's recurrent argument that the Bosnian-Serb leadership did not call for a *take-over of territories* but for a *take-over of powers* in the territories where Serbs were majority and where they won 1990 elections¹¹³ is factually wrong and in any case based on an artificial distinction.

54. First, it is not true that the Bosnian Serbs did not exercise the power they won as a result of the 1990 elections.¹¹⁴ In fact following the 1990 election, local level posts had already been divided to reflect the percentages gained by each party.¹¹⁵ Nor is true that the Serbs took over power only where they were majority.¹¹⁶ In 1991 the Serbs had the majority in only 15 out of 35 municipalities.¹¹⁷ The Bosnian-Serb Assembly implicitly recognised that on 9 January 1992, when it proclaimed that the Bosnian-Serb Republic would include "regions in which the Serbian people remained in minority due to the genocide conducted against it in World War II".¹¹⁸

55. Krajišnik¹¹⁹ fails to show that the Chamber's interpretation of his speech in the Assembly Session on 24 July 1992, in which he said "there are territories which are not under our control now but which should be part of the Serb Republic of Bosnia and Herzegovina"¹²⁰ as asserting that the take-over of territories to date had been insufficient,¹²¹ was unreasonable in light of the take-overs of municipalities which had already taken place.¹²² It ignores the finding that the leadership were presenting a veneer of democracy for international and local diversion¹²³ as well as the Chamber's many findings on the municipality crimes and Krajišnik's knowledge, support and

¹¹² Judgement, paras. 1096.

¹¹³ *Krajišnik* Brief, paras. 16, 17, 25-33, 35, 36, 85, 121, 422.

¹¹⁴ *Krajišnik* Brief, paras. 17, 25, 33.

¹¹⁵ Judgement, para.31.

¹¹⁶ *Krajišnik* Brief, paras. 16, 29, 35, 85, 121, 422.

¹¹⁷ Judgement, para.290, 915.

¹¹⁸ Judgement, para.103.

¹¹⁹ *Krajišnik* Brief, para.390.

¹²⁰ P65.182.1 p. 48.

¹²¹ Judgement, para.1115.

¹²² See Judgement, Part 4.

intent for them. Having regard to the totality of evidence, it cannot be said that no reasonable trial chamber could come to the same conclusion simply because of the reference to achieving the goal with discussions and negotiations.¹²⁴

56. Second, Krajišnik's distinction between *take-over of territories* and *take-over of powers* in the territories¹²⁵ is artificial. Bosnian Serbs took exclusive control over the territories. This was not a lawful action that can be artificially separated from the implementation of the common objective. The attacks on the municipalities to achieve full control over the territories and the full control itself were part of the implementation of the common objective¹²⁶ during which a large number of the crimes occurred.

57. Krajišnik's individual complaints in support of this argument do not require further response because they are:

- mere assertions of a different interpretation of the evidence without an explanation as to why the Chamber was unreasonable in its conclusion;¹²⁷
- allegations with no relevance,¹²⁸ or the relevance of which is unclear.¹²⁹

58. Krajišnik has failed to show why the Trial Chamber was unreasonable in reaching its conclusions.

3. The Common Objective was not formulated in the December Instruction nor in the Six Strategic Goals

59. Krajišnik's argument that the "December Instructions"¹³⁰ and the "Six Strategic Goals"¹³¹ were not a criminal plan wrongly interprets the Judgement. The Chamber did not make such a finding. Rather it used them to find the existence of a new central authority.¹³²

¹²³ Judgement, para.909.

¹²⁴ P65.182.1 p. 49.

¹²⁵ *Krajišnik* Brief, paras. 16, 17, 25-33, 35, 85.

¹²⁶ Judgement, para. 1142. *See also* for instance para.198.

¹²⁷ *Krajišnik* Brief, paras. 17, 25-30, 121.

¹²⁸ *Krajišnik* Brief, paras. 35-36, 85, 422.

¹²⁹ *Krajišnik* Brief, paras. 31-32.

¹³⁰ *Krajišnik* Brief, paras. 40-43

¹³¹ *Krajišnik* Brief, paras. 37-39

¹³² Judgement, para.995. *See also* para.996.

60. In addition, Krajišnik's challenge to what he purports to be an allegation that he confirmed his presence at a meeting where the Instructions were discussed is irrelevant.¹³³ First, this is not what the Chamber did with Krajišnik's evidence. The Chamber's reference is to his evidence that, if the Instructions were disseminated at a particular meeting, he did not pay attention. He did not dispute his presence at the meeting. In any case, the Chamber principally relied on testimony from witness Prstojević for its conclusion.¹³⁴ Krajišnik does not challenge that.

4. The crimes in Bijeljina were part of the common plan

61. Krajišnik's criminal responsibility arises with the attack and the crimes committed in Bijeljina from 31 March 1992 pursuant to the common objective.¹³⁵ Krajišnik argues that the Chamber erred in finding that the conflict in Bijeljina was the initiation of the common objective because Karadžić stated two days before that peace should be maintained.¹³⁶ This argument should be dismissed.

62. Because the Bosnian-Serb leadership maintained a veneer of pursuing democracy,¹³⁷ Krajišnik fails to show why no reasonable trial chamber could have concluded that Karadžić's reference to peace on 27 March 1992 was not incompatible with the existence of a common objective, and on the basis of the totality of the evidence, that the crimes committed in Bijeljina were part of the common objective.

63. Bijeljina was the first municipality to be taken over establishing a pattern that was repeated in other municipalities.¹³⁸ Paramilitary forces arrived in the town and were soon joined by JNA. In four days the Serbian flags had been hoisted on the mosques in town.¹³⁹ On 4 April TO's and other paramilitary groups (White Eagles) were in town as well as a delegation of high-ranking officials including Biljana Plavšić.¹⁴⁰

¹³³ *Krajišnik* Brief, para.40.

¹³⁴ Judgement, para.86, fn.200.

¹³⁵ Judgement, paras. 1123, 1124.

¹³⁶ *Krajišnik* Brief, para.362 bullet 4. Note that the Karadžić's speech to which Krajišnik refers took place the 27 March 1992, 4 and not 2 days before the attack.

¹³⁷ Judgement, para. 909.

¹³⁸ Judgement, para.298.

¹³⁹ Judgement, para.299.

¹⁴⁰ Judgement, paras. 299-301.

5. The forced ethnic recomposition of the territories was the common objective of the JCE

64. The Bosnian-Serb leadership's common criminal objective was to ethnically recompose the territories under its control by expelling and drastically reducing the proportion of Bosnian Muslims and Bosnian Croats through the commission of crimes.¹⁴¹ Krajišnik unsuccessfully challenges this conclusion.

(a) 7 June Sub-Regional Decision and Pašić's testimony

65. The Chamber correctly referred to the 7 June Sub-Regional Decision to move out from the Serbian territories Muslims and Croats¹⁴² in concluding that the Bosnian-Serb leadership had the common objective. First, contrary to Krajišnik's allegation,¹⁴³ the authenticity of the document was not questioned by witness Pašić. In fact, he testified that he could not remember if he attended the meeting where the decision was taken. Nor he could remember the exact content of that decision.¹⁴⁴

66. Secondly, Krajišnik has failed to explain why the Chamber erred in not giving more weight to Pašić's testimony that he was not aware of an ethnic cleansing policy.¹⁴⁵

(b) 12 February meeting of SAOs representatives

67. The Chamber made no error¹⁴⁶ in concluding that, at a meeting on 12 February 1992, representatives of three SAOs discussed population exchange as a way to achieve territorial continuity.¹⁴⁷ The evidence being properly admitted, the Chamber was entitled to attach such weight as it considered appropriate.

(c) Speeches of Mladić and Karadžić

68. Krajišnik argues that the Chamber erred on three occasions in its interpretation of speeches or statements made by Mladić and Karadžić.¹⁴⁸ In doing so, he simply gives his own interpretation of the evidence to support his claim that the Bosnian-Serb

¹⁴¹ Judgement, paras. 1090, 1142.

¹⁴² Judgement, para.1090.

¹⁴³ *Krajišnik* Brief, para.213.

¹⁴⁴ T.19784-197855.

¹⁴⁵ T.19777.

¹⁴⁶ *Krajišnik* Brief, para.277.

¹⁴⁷ Judgement, para.111.

leadership did not have a criminal plan, without establishing that no reasonable trial chamber could have concluded as this Chamber did.

69. At the 12 May session Mladić explained his vision that the Serbs could prevail without completely destroying the Muslims. He “spoke in support of declaring a unilateral ceasefire whose real purpose would be to buy the Bosnian Serbs time to reorganize their armed forces as well as gain them some credit at the international level”.¹⁴⁹ Contrary to Krajišnik’s allegation,¹⁵⁰ the Chamber did not define Mladić’s speech as a “call for ethnic cleansing”.

70. Krajišnik suggests¹⁵¹ that the Chamber¹⁵² neglected the “key part” of Karadžić’s speech on 18/19 July 1994.¹⁵³ When the Chamber quotes a portion of an exhibit, far from showing that the rest of it was disregarded, it shows that that piece of evidence was carefully analysed. Krajišnik fails to articulate why the sentence he quotes makes the Chamber’s interpretation unreasonable.

71. Krajišnik alleges that the Chamber qualified Karadžić’s speech on 15 October 1991 as a threat to Muslims.¹⁵⁴ This is wrong. Rather, the Chamber used it as evidence of the fact that in October 1991 the Bosnian-Serb leadership was already aware of the consequences of its future actions.¹⁵⁵ Krajišnik’s challenge is irrelevant in light of this.

72. Krajišnik’s arguments do not undermine the Chamber’s conclusion, based on the totality of the evidence, that the common objective existed.

(d) Mere assertions

73. Finally Krajišnik makes individual mere assertions unsupported by the evidence that a plan for ethnic cleansing and to commit crimes did not exist. These should be dismissed without further consideration¹⁵⁶

¹⁴⁸ *Krajišnik* Brief, paras. 118, 392, 445.

¹⁴⁹ Judgement, paras. 975-977.

¹⁵⁰ *Krajišnik* Brief, para.118.

¹⁵¹ *Krajišnik* Brief, paras. 392.

¹⁵² Judgement, para.1116.

¹⁵³ Exh.P1201.

¹⁵⁴ *Krajišnik* Brief, para.445.

¹⁵⁵ Judgement, para.1099.

¹⁵⁶ *Krajišnik* Brief, paras. 60 last sentence,184 bullet 23,217/as printed/ on p.42, 141.

6. Isolated action to prevent crimes or to punish the responsible are irrelevant

74. Another recurrent argument that Krajišnik seems to make is that the fact that some members of the Bosnian-Serb leadership may have taken some action, or at least announced some action, to prevent or limit the commission of the crimes proves that there was no common objective.¹⁵⁷ Most of the evidence cited by Krajišnik was expressly mentioned by the Chamber in its analysis.¹⁵⁸ Krajišnik fails to show why on the basis of all the evidence it was unreasonable to conclude that a common objective existed.¹⁵⁹

7. Miscellaneous allegations

75. Krajišnik makes other miscellaneous allegations implicitly challenging the finding of the common objective. These complaints are:

- irrelevant (for example that the number of Serbs who left their homes was greater than the number of Muslims and Croats who left the Serb Republic);¹⁶⁰
- challenges to one or more pieces of evidence or the reliability of a witness without explaining why the Trial Chamber was unreasonable and without showing why the conviction should not be affirmed on the basis of the other evidence;¹⁶¹
- mere assertions of error without evidentiary support;¹⁶²
- simply statements which do not articulate any error,¹⁶³ or which comport with the Chamber's findings.¹⁶⁴

76. They should be dismissed without further consideration.

¹⁵⁷ *Krajišnik* Brief, paras. 14, 93, 122, 320, 321, 449, 452.

¹⁵⁸ For instance, Exh.P65, tab 39, P65, tab 155, P65, tab 157, P65, tab 156, P65, tab 173, P65, tab 182, P529, tab 463, P56, tab 161, P529, tab 265, P819.

¹⁵⁹ Part IV. D. 4. ..

¹⁶⁰ *Krajišnik* Brief, para. 439 (on this point *see* Judgement, para.294); para.278 (refers to arguments of the Prosecution). *See* also para. 362,bullets 1, 5, 8.

¹⁶¹ *Krajišnik* Brief, para. 115 bullets 3, 4, para.245, paras. 408, 410, 448, 362 bullet 9.

¹⁶² *Krajišnik* Brief, paras. 253,255,256,260,267.

¹⁶³ *Krajišnik* Brief, para. 362,bullets 2,3;271,272,274.

¹⁶⁴ *Krajišnik* Brief, para.183.

77. In addition, Krajišnik alleges misquotation by the Chamber but he either fails to show an error or an impact on the verdict:

78. Krajišnik claims that the Chamber misquoted his statement at the SDS Council on 15 October 1991.¹⁶⁵ While the Chamber did not use the exact words in the minutes of the meeting,¹⁶⁶ Krajišnik fails to explain how the way the Chamber summarized his words altered their meaning, particularly read in context with the rest of the paragraph.

79. Similarly, Krajišnik claims that the telephone conversation between him and Karadžić on 1 January 1992 was misquoted.¹⁶⁷ It is correct that according to the BCS version of the exhibit Krajišnik said “We don’t have to release them”,¹⁶⁸ whereas the Chamber quoted from the erroneous English translation.¹⁶⁹ However, Krajišnik fails to demonstrate an impact of this error, in light of the remainder of the conversation.

80. Krajišnik further claims that the Chamber misquoted the Constitution which read “The Republic **is a part** of the Federal Republic”.¹⁷⁰ As the Judgement in paragraph 113 addresses the draft Constitution, it correctly referred to this part as saying that “the Bosnian-Serb Republic *would become* part of federal Yugoslavia.”¹⁷¹

81. Further Krajišnik points to the evidence of Tomislav Savkić to show that the Chamber erred in finding that the SDS formed its own military unit in Milići.¹⁷² He fails however to demonstrate an error in the Chamber’s conclusion, as the witness is talking about a different time period from that in paragraph 108 of the Judgement.

¹⁶⁵ *Krajišnik* Brief, para.257, referring to Judgement para.65.

¹⁶⁶ P65, tab 47.

¹⁶⁷ *Krajišnik* Brief, para. 273, referring to Judgement para.104.

¹⁶⁸ P64.A tab 65 p. 0322-0531.

¹⁶⁹ P403.A.1, which has the same content as P64A.1 tab 65.

¹⁷⁰ *Krajišnik* Brief, para.279.

¹⁷¹ Judgement, para.113, emphasis added.

¹⁷² *Krajišnik* Brief, para.275, referring to the testimony of Tomislav Savkić T.20600 and Judgement para.108.

C. Connection between Krajišnik and the crimes/principal perpetrators

1. Krajišnik's argument that he is not linked to the principal perpetrators or the crimes is misconceived

82. Krajišnik challenges the existence of any connection between himself and the crimes or the perpetrators of the crimes.¹⁷³ These factual challenges are based on a misunderstanding of the law on JCE.¹⁷⁴

83. An accused need not personally perpetrate the crime or be directly and physically linked to the principal perpetrator or the crime. It is sufficient that the accused shared the common objective and acted together with other JCE members in its implementation; that the accused made a significant contribution to its implementation; and that at least one of the JCE members used the principal perpetrator(s) to commit crimes in furtherance of the common objective. Krajišnik's arguments that he was not the superior and did not give any orders to the perpetrators of crimes, that he did not use and was never in contact with any of them, and that he did not act contemporaneously with the commission of the crimes,¹⁷⁵ are therefore irrelevant and should be dismissed.

2. Krajišnik does not show that no reasonable trial chamber could have imputed the crimes to the JCE

84. In reaching its verdict, the Chamber analysed a wealth of evidence and set out extensive factual and legal findings on the crimes.¹⁷⁶ In the course of its analysis, where the Chamber was not satisfied beyond reasonable doubt, it said so and did not convict Krajišnik of such crimes.¹⁷⁷ Following its analysis of all the evidence, the Chamber was satisfied that the crimes for which it convicted Krajišnik were properly imputed to one or more JCE members acting pursuant to the common objective, and that Krajišnik was sufficiently connected with those persons who committed the crimes or who used others to do so.

¹⁷³ *Krajišnik* Brief, paras. 48-49, 54, 59-60, 141, 184 bullet 21, 196, 197-198, 200-202, 345 bullet 1, 367, 451.

¹⁷⁴ *See* Part III. – Error of Law in JCE Membership.

¹⁷⁵ *Krajišnik* Brief, paras. 49, 60, 184 bullet 21, 197-198, 200-202.

¹⁷⁶ Judgement, Part 4 – Municipality Crimes, and Part 5 – Legal Findings on Crimes.

¹⁷⁷ *See e.g.* Judgement, paras. 326 and 718 (Brčko).

85. The challenges that Krajišnik makes to the findings predicate to that conclusion are insufficient to warrant further consideration by the Appeals Chamber.¹⁷⁸

86. Mere assertions of a contrary interpretation of evidence without substantiation or citing evidence in support of that contrary position should be dismissed. Examples of these are found in paragraphs 354 (bullet 1), 381 and 451.

87. Krajišnik's challenges that ignore other relevant findings should also be dismissed. These are found in paragraphs 345, 356 and 358.¹⁷⁹

88. Where Krajišnik does not explain the relevance of his arguments, the Appeals Chamber should dismiss them. Examples of this are found in paragraphs 354 (bullets 2 and 3), 355 and 375.

89. In his remaining challenges to "link", Krajišnik misrepresents the evidence and findings and ignores other relevant evidence and findings. In paragraph 354 (chapeau), he misrepresents the Chamber's finding at paragraph 281 which, in fact, was that "the crisis staffs filled the gap between the withdrawal, disintegration, or general failure of command structures within the JNA, and the establishment of a VRS **with effective control of the armed forces on the ground.**"¹⁸⁰ Similarly, Krajišnik's assertion that the TO was disbanded on 12 May 1992 when the VRS was established¹⁸¹ disregards the Chamber's finding that TO units were not completely disbanded with the creation of the VRS.¹⁸² At paragraph 359, Krajišnik to some extent misrepresents the evidence he relies upon in arguing that crisis staffs were acting independently. Đokanović's testimony was in fact equivocal. He stated only that this was his "impression".¹⁸³ In any event, his challenge ignores the other

¹⁷⁸ *Krajišnik* Brief, paras. 335, 345, 354, 355, 356, 358, 359, 367, 381, 451.

¹⁷⁹ Para.358 is a combined flaw of mere assertion to the contrary and ignoring other findings.

¹⁸⁰ Emphasis added to indicate the misrepresentation.

¹⁸¹ *Krajišnik* Brief, paras. 335, 357.

¹⁸² Judgement, para.195. *See also* para.285.

¹⁸³ T.10699.

evidence relied upon by the Chamber and cited in the relevant footnotes of the judgement.¹⁸⁴

¹⁸⁴ Judgement, fns.571-584, 651-655.

D. Contribution

90. As President of the Bosnian-Serb Assembly, a member of the National Security Council, and member of the Presidency, Krajišnik was always at the centre of power.¹⁸⁵ His “powers were enormous”.¹⁸⁶ Within the Bosnian-Serb Republic, his *de facto* authority was second only to that of Karadžić.¹⁸⁷ It was through his official positions and his *de facto* authority that Krajišnik contributed to the common objective.¹⁸⁸ The Chamber found Krajišnik’s overall contribution to the JCE to have been to help establish and perpetuate the SDS party and state structures which were instrumental to the commission of the crimes.¹⁸⁹ His political skills were deployed locally and internationally to facilitate the implementation of the common objective.¹⁹⁰

91. Krajišnik’s principal challenge is to the Chamber’s conclusions regarding his positions and his power. His arguments fail to undermine them. As will be seen, the Chamber’s conclusions withstand scrutiny. Krajišnik’s challenges to specific contribution findings also fail, resting, as they do, largely on the success or failure of his principal challenge to his positions and power.

1. Krajišnik held key positions in Bosnian-Serb central bodies and wielded enormous power

92. The Chamber found that Krajišnik contributed to the JCE through his involvement in government bodies at the Republic level.¹⁹¹ Aside from two unsubstantiated general challenges¹⁹² to the conclusion that he held a pivotal role in the JCE and contributed through his political skills, Krajišnik specifically challenges the Chamber’s findings of his membership of the National Security Council (SNB) and the Presidency. He also challenges the Chamber’s findings on his *de facto* power and influence and attempts to down-play his role.

¹⁸⁵ Judgement, para.180.

¹⁸⁶ Judgement, para.1084.

¹⁸⁷ Judgement, para.1085.

¹⁸⁸ Judgement, para.1120.

¹⁸⁹ Judgement, para.1120.

¹⁹⁰ Judgement, para.1120.

¹⁹¹ Judgement, paras. 1120-1121.

¹⁹² *Krajišnik* Brief, paras. 218 and 222 ought to be dismissed without further consideration.

(a) Krajišnik was a member of the SNB

93. As a member of the SNB, the Chamber found Krajišnik to be at the centre of power.¹⁹³ The SNB was an executive organ.¹⁹⁴ It met in joint sessions with the Government to decide on military, political and administrative matters.¹⁹⁵ Krajišnik alleges that erroneous significance was attached to the National Security Council.¹⁹⁶ In so doing, Krajišnik simply disagrees with the Chamber's conclusion, without showing error.

94. Krajišnik alleges that he was not elected to the SNB, participating in only two joint Government-SNB meetings.¹⁹⁷ The Chamber found that Krajišnik was an *ex officio* member of the SNB.¹⁹⁸ For this conclusion it cited, among other evidence, the "List of matters admitted by the Accused", 31 August 2001, paragraphs 7 and 34(b) where Krajišnik admitted membership of the SNB. In his Final Trial Brief, Krajišnik had accepted that the SNB existed and that he was a member of it.¹⁹⁹ By disagreeing with the Chamber's conclusion, Krajišnik departs from his position at trial. He fails to show how the Chamber erred by coming to a conclusion that, in fact, accorded with his own at trial.

95. Krajišnik argues that at most he attended two joint Government-SNB meetings.²⁰⁰ He fails to explain the relevance of this assertion. In any event, the Chamber found²⁰¹ that he did not attend Government meetings after 20 May 1992, there being no finding as to the precise number of joint Government-SNB meetings which he attended prior to that date. Further, in evidence, Krajišnik did not dispute that he attended meetings of the SNB.²⁰² Therefore, no error has been shown in the Chamber's finding that Krajišnik was a member of the SNB. Krajišnik's challenge to his attendance at the 28 April 1992 joint meeting²⁰³ is without reference to a

¹⁹³ Judgement, para.180.

¹⁹⁴ Judgement, para.162.

¹⁹⁵ Judgement, para.162.

¹⁹⁶ *Krajišnik* Brief, para.44, heading before para.298.

¹⁹⁷ *Krajišnik* Brief, paras. 241, 293.

¹⁹⁸ Judgement, paras. 137, 161, 952.

¹⁹⁹ Defence Final Trial Brief, para.279, although citations from his evidence reveal his view that there was no such "legal" body – see Defence Final Trial Brief, para.296.

²⁰⁰ *Krajišnik* Brief, para.299.

²⁰¹ Judgement, para.146.

²⁰² *Krajišnik*, T.23927-30, as cited in Judgement, para 161.

²⁰³ *Krajišnik* Brief, para.344, bullet 4.

paragraph of the Judgement and relies on a “K-” document not in the trial record. It should be dismissed without further consideration.

96. Krajišnik also appears to argue that the SNB was a body established by “the SNB of the SDS, not the Bosnian-Serb Assembly”²⁰⁴ stating that the Assembly decision to establish the SNB was not published nor recorded in the minutes.²⁰⁵ Krajišnik does not address the Chamber’s substantiated findings as to the establishment of the SNB by the Assembly.²⁰⁶ The allegation that the SNB was established by “the SNB of the SDS”, rather than the Assembly, amounts to mere disagreement with the Chamber’s conclusion. The Chamber’s finding was open to it on the evidence.²⁰⁷

97. Krajišnik challenges findings on the SNB’s functions.²⁰⁸ However Krajišnik does not challenge the reasoning or the evidence relied upon by the Chamber to find that the SNB developed into an executive organ²⁰⁹ issuing instructions to and receiving reports from municipal crisis staffs and TOs.²¹⁰ His arguments are thus without merit.

98. Krajišnik makes further arguments in relation to the SNB that are of unclear relevance and have no impact on the verdict²¹¹ or are mere unsubstantiated assertions.²¹² For instance, Krajišnik’s argument that the declaration was adopted not by the SNB but by the two-member Presidency²¹³ not only has no impact on the verdict but also misrepresents the Chamber’s finding and ignores the evidence it relied upon.²¹⁴ These arguments should be dismissed without further consideration.

²⁰⁴ *Krajišnik* Brief, para.299 chapeau.

²⁰⁵ *Krajišnik* Brief, para.298.

²⁰⁶ Judgement, paras. 137 and 161.

²⁰⁷ Judgement, paras. 137 (in particular fn. 289), 161.

²⁰⁸ *Krajišnik* Brief, paras. 130, bullet 11, 299 bullets 2 and 3, 301.

²⁰⁹ Judgement, para.162, fn.338.

²¹⁰ Judgement, para.162.

²¹¹ *Krajišnik* Brief, paras. 289, 294-295.

²¹² *Krajišnik* Brief, para.296, 299 bullet 1.

²¹³ *Krajišnik* Brief, para.289.

²¹⁴ Judgement, para.172 and Exhs.P65tab.120, P65tab.121 and P64 (para.178) cited in fn.357. Furthermore, to support his argument, Krajišnik relies in fn.379 of his Brief on Exh.P64Atab.702, which is a decision on the establishment of penitentiary-reeducation institutions.

(b) Krajišnik was a member of the Presidency

99. From 12 May until 17 December 1992 Krajišnik was an active member of the Presidency.²¹⁵ The Chamber entirely rejected Krajišnik's defence that he was not a member.²¹⁶ The Presidency had been expanded to five members, including Krajišnik.²¹⁷

100. Krajišnik's argument is two-fold. First, he alleges that the Chamber erred in assessing the functioning and role of the Presidency, and his role within it.²¹⁸ In doing so, Krajišnik ignores the Chamber's findings and evidence on which they were based.²¹⁹ He simply disagrees with the Chamber's conclusions. Second, Krajišnik challenges the Chamber's reliance on the records of Presidency meetings and the evidence of certain witnesses. His challenges have no merit and do not meet the standard of review. Despite the Prosecution's fuller answers to his challenges below, Krajišnik's second argument can be dismissed without further consideration. It is based on mere assertions,²²⁰ competing interpretations based on selective citation of evidence,²²¹ and misrepresentations of the evidence²²² or the judgement.²²³

101. Under his first argument, Krajišnik argues that he was not a member of the Expanded Presidency.²²⁴ He argues that, as there was no declaration of a state of war in 1992, the Presidency was not *de jure* expanded.²²⁵ The Chamber indeed found that the formal condition for the establishment of the Expanded Presidency, a declaration of a state of war, was not met at any time in 1992.²²⁶ However it considered that irrelevant, concluding Krajišnik was a *de facto* member.²²⁷ Krajišnik does not tackle the Chamber's reasons for its finding, which was based on its assessment of the evidence, including: Krajišnik's previous membership of the SNB; his presence at the

²¹⁵ Judgement, para.4. The Chamber used the term "Presidency" to denote a body consisting of five members, including Krajišnik – see Judgement, para.181.

²¹⁶ Judgement, para.179.

²¹⁷ Judgement, paras. 168, 178, 180.

²¹⁸ *Krajišnik* Brief, para.44, heading before para.298.

²¹⁹ Judgement, paras. 167, 169, 175-179.

²²⁰ *Krajišnik* Brief, para.304, bullet 2, 305 bullets 3 and 4.

²²¹ *Krajišnik* Brief, paras. 302, 303, 304, 306, 308, 309.

²²² *Krajišnik* Brief, paras. 302 (T.22819-T.22820 (closed session), T.27071, T.27073), 303 (T.27095), 304 (Exh.C7, para.30), 305 bullets 1 and 2 (Exh.P64Atab.613, Exhs.C7 (para.6), P65tab.144).

²²³ *Krajišnik* Brief, para.305 chapeau.

²²⁴ *Krajišnik* Brief, paras. 131, 206, 242, 311.

²²⁵ *Krajišnik* Brief, paras. 131 bullet 1, 188, 305 bullet 5.

²²⁶ Judgement, para.175, see also para.179.

²²⁷ Judgement, para.180.

first Presidency session; the change of designation on the minutes from “president of the Bosnian-Serb Assembly” to “present” following the constitutional amendments; and other evidence, including session records, Krajišnik signing the session record as chairman, signing documents over Karadžić’s printed name, and the inconsistent headings of the minutes.²²⁸ To the extent that Krajišnik’s arguments support the findings of the judgement, that no declaration of a state of war meant that the Presidency was not *de jure* expanded, they can be dismissed without further consideration.²²⁹

102. The only attack Krajišnik makes to the Chamber’s reasoning is that he alleges it drew the conclusion that mere presence at a session was enough to declare one a member of the Presidency.²³⁰ This is manifestly incorrect. The Chamber drew no such conclusion. It based its finding that Krajišnik was a member of the Presidency on evidence from multiple sources.²³¹ Krajišnik does not show that no reasonable trial chamber could have reached the same conclusion. He merely argues for the contrary conclusion on the basis of selective citation of evidence,²³² some of which does not even support his own proposition.²³³

103. Krajišnik argues that all Presidency sessions were in fact informal consultation meetings;²³⁴ and that these meetings constituted the continuation of joint meetings of the SNB and the Government.²³⁵ The Chamber found that the Presidency meetings were informal,²³⁶ particularly given that they involved “information sharing on topics too sensitive to record”.²³⁷ The Presidency effectively replaced the SNB.²³⁸ Krajišnik has not shown any reversible error.

²²⁸ Judgement, paras. 176, 177, 178, 179.

²²⁹ *Krajišnik* Brief, paras. 188, 305 bullet 5.

²³⁰ *Krajišnik* Brief, para.305 chapeau.

²³¹ Judgement, paras. 176, 177, 178.

²³² *Krajišnik* Brief, paras. 131, 189, 302, 307, 310.

²³³ *Krajišnik* Brief, para.302, fn.403 (Contrary to Krajišnik’s citation, D-24 (closed session) in the two cited transcript references does not state that the Presidency meetings were a continuation of the consultations called joint meetings of the SNB and the Government), similarly paras. 131 (re.T.26556 and Exh.P529tab.411), 189, 302, 307, 310 (re. Exh.P65tab.208) do not support his propositions.

²³⁴ *Krajišnik* Brief, paras. 73, 189, 305 bullet 2, 307.

²³⁵ *Krajišnik* Brief, para.302.

²³⁶ Judgement, para.169.

²³⁷ Judgement, para.892.

²³⁸ Judgement, para.167.

104. Krajišnik asserts that he attended Presidency meetings as a guest,²³⁹ in his function as the President of the Assembly.²⁴⁰ In so doing, Krajišnik simply repeats trial submissions. Krajišnik forcefully denied that he was a member of the Presidency and much of his defence rested on that denial.²⁴¹ The Chamber was cognisant of these arguments and rejected them.²⁴² Krajišnik fails to show that no reasonable trial chamber could have done so.

105. Under his second argument, Krajišnik alleges that the Chamber erred in concluding that he attended all Presidency sessions, as, he says, he did not attend 15 of them.²⁴³ Krajišnik misrepresents the Chamber's findings. The relevant finding was that he was "present *at practically* every recorded meeting of the Presidency from 12 May 1992 onwards, as well as in informal meetings for which minutes are not available but which were confirmed by witnesses and documents."²⁴⁴ Further, the Chamber found that Krajišnik was present at "*all recorded official* sessions in 1992, except possibly one".²⁴⁵ The exception refers to evidence given by Krajišnik that his attendance was misrecorded on 23 August 1992.²⁴⁶ First, to the extent that Krajišnik relies on documents which are not part of the trial record in referring to alleged Presidency sessions, the Prosecution will not respond.²⁴⁷ Second, the cited exhibits are of no relevance to this issue.²⁴⁸ Krajišnik has failed to show that the Chamber's finding was unreasonable. In any event, he has failed to articulate and show impact on the verdict.

106. Krajišnik argues that minutes recording him as a member of the Presidency were either mistaken or forged.²⁴⁹ He challenges the authenticity of all but 31 of Presidency minutes,²⁵⁰ and alleges that some were written at a later date.²⁵¹ These arguments have no merit. Authenticity and accuracy of the minutes should have been challenged at trial, and are not proper arguments on appeal, absent any showing of

²³⁹ *Krajišnik* Brief, para.189.

²⁴⁰ *Krajišnik* Brief, para.310.

²⁴¹ Judgement, para.179, numerous citations to Krajišnik's transcripts of evidence in fn.379, and Defence Final Brief paras. 298-328. *See also* Krajišnik's Final Submissions, T.27517.

²⁴² Judgement, para.179.

²⁴³ *Krajišnik* Brief, paras. 308, 309.

²⁴⁴ Judgement, para.179 (emphasis added).

²⁴⁵ Judgement, para.168, fn.349 (emphasis added).

²⁴⁶ Judgement, para.168, fn.349.

²⁴⁷ *See* Part 1 – Introduction, motion to strike "K-" documents.

²⁴⁸ *Krajišnik* Brief, para.309, fn.424.

²⁴⁹ *Krajišnik* Brief, para.306.

²⁵⁰ *Krajišnik* Brief, paras. 304, 306.

²⁵¹ *Krajišnik* Brief, para.305 bullet 1.

error by the Chamber. Krajišnik merely asserts that the submission of 31 session minutes to the office of the Presidency, makes the rest unreliable.²⁵² This does not meet the standard of review. Similarly, reliance on Đerić's view that the minutes of 9 October 1992 session were forged,²⁵³ does not demonstrate an error. Krajišnik should have objected to the admission of the document at trial and made a submission on this basis in his Final Trial Brief. Krajišnik has not alleged or established a reversible error. Further, the Chamber accepted that minutes were not contemporaneously written.²⁵⁴ It also accepted that meetings were informal and were sometimes not minuted.²⁵⁵

107. Krajišnik cites evidence from Đerić and D24, and criticises the Chamber's acceptance of Plavšić's evidence.²⁵⁶ Krajišnik fails to satisfy the standard of review. Mere citation of evidence is insufficient to establish an error of fact. Krajišnik fails to show that no reasonable Trial Chamber could have relied on Plavšić's evidence that he chaired Presidency meetings in Karadžić's absence.²⁵⁷

2. Krajišnik had extensive de jure and de facto power and influence

108. Krajišnik attempts to down-play his role and powers by repeating his trial arguments that he was a mere official who had no powers beyond the legislative sphere, in accordance with the constitutional separation of powers.²⁵⁸ He also challenges the Chamber's findings on his *de facto* power and influence.²⁵⁹

109. The Chamber expressly rejected Krajišnik's claim that he was an isolated official,²⁶⁰ finding instead that he had substantial *de jure* and *de facto* power and influence. Krajišnik fails to show that no reasonable trial chamber could have made these findings.

110. Krajišnik's arguments that executive, judicial and legislative powers functioned separately and that he did not interfere with the executive or have any influence beyond the legislative sphere²⁶¹ are premised on the assumption that he was

²⁵² Krajišnik Brief, para.304 bullet 2.

²⁵³ Krajišnik Brief, para.306, fn.421.

²⁵⁴ Judgement, para.170.

²⁵⁵ Judgement, paras. 169, 170, 179. See Krajišnik Brief, para.304.

²⁵⁶ Krajišnik Brief, paras. 302, 303, 304.

²⁵⁷ Krajišnik Brief, para.303, see Judgement, para.957, fn.1898.

²⁵⁸ Krajišnik Brief, paras. 134, 150, 187, 203, 206, 223.

²⁵⁹ Krajišnik Brief, paras. 129, 130, 132-133,135-138, 207-210, 290, 361.

²⁶⁰ Judgement, paras. 1005, 1084-1085.

²⁶¹ Krajišnik Brief, paras. 134, 150, 187, 203, 206, 223.

not a member of the Presidency. As detailed above, this is clearly unfounded.²⁶² The Chamber found that Krajišnik was not only President of the Bosnian-Serb Assembly but also a member of the SNB from 27 March 1992 and a *de facto* member of the Presidency from 12 May until 17 December 1992.²⁶³ It further found that, as a member of the Presidency, Krajišnik actively supervised the operations of Bosnian-Serb armed forces.²⁶⁴

111. Krajišnik appears to challenge the Chamber's finding that he was a member of the Bosnian-Serb leadership but fails to substantiate this challenge in any way.²⁶⁵ His challenge must therefore fail. Whatever Krajišnik's alleged grievance, there can be no doubt that Krajišnik was a member of the Bosnian-Serb leadership. He was President of the Bosnian-Serb Assembly, a member of the SNB, a member of the Presidency, and a member of the SDS main board.²⁶⁶ In any event, Krajišnik was not convicted simply because he was a member of the leadership but because he used (and abused) his various positions in the Bosnian-Serb leadership to further the common objective.

112. The Chamber found that, as both President of the Assembly and member of the Presidency, Krajišnik's powers were enormous.²⁶⁷ It found that beyond the veneer of the Bosnian-Serb institutional framework, he and Karadžić amassed all executive powers and exerted direct influence at all levels of Bosnian-Serb affairs.²⁶⁸ All party and state structures were under the *de facto* control of the two men.²⁶⁹ Krajišnik challenges these conclusions,²⁷⁰ but in doing so he:

- misrepresents the foundation for the Chamber's conclusion: the Chamber did not base Krajišnik's power on his rapport with Karadžić²⁷¹ but rather on the various positions he held (member of the Presidency, member of the SDS main board, President of the Bosnian-Serb Assembly) and the fact that, together with Karadžić, he was involved in all important meetings, bodies,

²⁶² Part IV. D. 1. (a) and IV. D. 1. (b) .

²⁶³ Judgement, paras. 161-182.

²⁶⁴ Judgement, para.975. See Part IV. D. 3. (e) and IV. E. 8. .

²⁶⁵ *Krajišnik* Brief, para.361.

²⁶⁶ See Judgement, paras. 3-4. See also T.14565-14568 (15 June 2005, Prstojević - cited in TJ fn.558): upon question of Judge Orić, Prstojević stated that top leaders of RS (and of SDS) were Radovan Karadžić, Momčilo Krajišnik, Branko Đerić, Mićo Stanišić and Momčilo Mandić.

²⁶⁷ Judgement, para.1084.

²⁶⁸ Judgement, paras. 909, 987, 1085.

²⁶⁹ Judgement, paras. 187, 1083-1084.

²⁷⁰ *Krajišnik* Brief, paras. 129-130, 132-133, 207-210, 288.

²⁷¹ *Krajišnik* Brief, paras. 130, 184 bullet 20.

decisions and operations.²⁷² Similarly, Krajišnik challenges the Chamber's reliance on Treanor's testimony as the basis for its finding that according to the Constitution, the President of the Bosnian-Serb Assembly could in some circumstances assume the duties of the President.²⁷³ In fact the Chamber relied on the Constitution itself, specifically citing Article 87 as an example,²⁷⁴ which Krajišnik does not address;

- fails to address the evidence relied on by the Chamber in reaching its extensive conclusions;
- simply gives his own interpretation of or misrepresents the evidence²⁷⁵ (for example Krajišnik argues that Karadžić explained that Mladić had been his choice²⁷⁶ but in the evidence Krajišnik cites, Karadžić explained that he and Krajišnik went together to General Kukanjac's office and that they asked for Mladić²⁷⁷);
- makes irrelevant arguments²⁷⁸ (for example that when the war broke out, he was not in Pale and thus formally remained President of the Assembly of BiH until December 1992;²⁷⁹ or arguing that because Karadžić chose Plavšić and Buha as his successors in 1996²⁸⁰ Krajišnik did not exercise power in 1992);
- makes mere assertions, without explaining why the Chamber was wrong.²⁸¹

113. As none of his arguments demonstrates an error or an impact, they should be dismissed without further consideration.

3. *Krajišnik through his associations and positions made a significant contribution to the common objective*

114. In answering Krajišnik's challenges to specific contributions, this section uses the structure of sub-paragraphs on contribution in paragraph 1121 of the judgement.

²⁷² E.g. Judgement, paras. 61, 66, 79, 86, 104, 106, 111, 114, 120, 124, 138, 161, 168, 176, 180, 224, 579, 892, 912, 919, 927, 929, 945, 950, 965, 967, 983, 994, 1013, 1085.

²⁷³ *Krajišnik* Brief, para.288.

²⁷⁴ Judgement, para.135, fn.287.

²⁷⁵ *Krajišnik* Brief, paras. 135-138.

²⁷⁶ *Krajišnik* Brief, para.138.

²⁷⁷ Exh.P65tab.224.

²⁷⁸ *Krajišnik* Brief, paras. 130, 132, 207-210, 290.

²⁷⁹ *Krajišnik* Brief, para.130.

²⁸⁰ *Krajišnik* Brief, paras. 132, 208.

²⁸¹ *Krajišnik* Brief, paras. 129-130.

(a) Krajišnik contributed to the development and implementation of SDS and Government policies to advance the JCE objective²⁸²

115. The Chamber found that the Presidency was composed entirely of SDS members, and the Assembly almost exclusively so.²⁸³ Party operations and the policies of state organs became almost indiscernible, the two being essentially the same.²⁸⁴ The functions and roles performed by Krajišnik as President of the Assembly and a member of the Presidency on one hand, and Karadžić as President of the Republic and president of the SDS on the other, left no gaps in their power.²⁸⁵ In discussing knowledge, the Chamber considered credible evidence that leading figures of the SDS, including Krajišnik, had created a policy of ethnic cleansing in full awareness that it entailed the use of force.²⁸⁶

116. Krajišnik makes four challenges to this contribution finding. First, he alleges that the Chamber made an error in finding that population transfer was official SDS policy.²⁸⁷ In fact, the Chamber's finding was that around 12 February 1992 the SDS leadership considered a transfer of population at least as a possible corollary to the establishment of authorities in order to create entities that were geographically and ethnically homogeneous.²⁸⁸ It was open to the Chamber to reach this conclusion on the basis of the evidence of Treanor and a report of the SDS Executive Committee meeting in a newspaper.²⁸⁹ Krajišnik's challenge that the only source considered by the Chamber was a newspaper is factually incorrect, as it was supplemented by the evidence of Treanor. It also amounts to a requirement for corroboration which does not accord with the Tribunal's jurisprudence.²⁹⁰

117. Second, Krajišnik argues that Brdanin's statement urging ethnic cleansing cannot be linked to the official policy of the SDS.²⁹¹ The finding in the Judgement

²⁸² Judgement, para.1121(a).

²⁸³ Judgement, para.187.

²⁸⁴ Judgement, para.187.

²⁸⁵ Judgement, para.187.

²⁸⁶ Judgement, para.1099.

²⁸⁷ *Krajišnik* Brief, para.277.

²⁸⁸ Judgement, para.111.

²⁸⁹ Judgement, para.111, fn.245, citing Treanor and Exh.P65tab.86 (which is the same document as Exh.P64Atab.353, cited in *Krajišnik* Brief, para.277).

²⁹⁰ *Kamuhanda* AJ, para.239; *Ndindabahizi* AJ, para.38; *Tadić* TJ, para.539.

²⁹¹ *Krajišnik* Brief, para.426.

does not link it to SDS policy.²⁹² This argument can be dismissed without further consideration.

118. Third, Krajišnik argues that he did not play an important role in effecting the SDS's influence on the Assembly, as deputies were independent.²⁹³ This mere assertion should be dismissed as it does not deal with the extensive evidence cited by the Chamber to reach the contrary conclusion as to his role.²⁹⁴

119. Finally, Krajišnik asserts that an SDS document is unsigned and of unknown origin.²⁹⁵ He does not state why this is relevant nor does he show error in the Chamber's approach, which considered this document together with other evidence, to find that it embodied a policy which was later adopted by the SDS Deputies' Club and was made public.²⁹⁶

120. There is no error in the Chamber's finding that Krajišnik contributed to the JCE as set out in paragraph 1121(a).

(b) Krajišnik's contributions involving government and party organs and the Bosnian-Serb Forces²⁹⁷

121. Krajišnik was directly involved in the establishment, support and maintenance of SDS party and government bodies at all levels, as well as the armed forces, save for the actual establishment of the SDS party and the establishment of the TO.²⁹⁸

122. Krajišnik was present at the 24 October 1991 SDS deputies' meeting which established the Assembly and elected him President.²⁹⁹ The Assembly in turn established the SNB, of which Krajišnik became an *ex officio* member.³⁰⁰ The SNB was effectively replaced by the Presidency and Krajišnik became a member³⁰¹ and was present during its first session.³⁰²

²⁹² Judgement, para.1028.

²⁹³ *Krajišnik* Brief, para.291.

²⁹⁴ Judgement, para.140.

²⁹⁵ *Krajišnik* Brief, para.252.

²⁹⁶ Judgement, para.51.

²⁹⁷ Judgement, para.1121(b) and (d).

²⁹⁸ Judgement, para.1121(b).

²⁹⁹ Judgement, para.67.

³⁰⁰ Judgement, para.137.

³⁰¹ Judgement, para.4. The Response Brief will use the term "Presidency" to denote a body consisting of five members, including Krajišnik, as the Chamber did – see Judgement, para.181.

³⁰² Judgement, paras. 166, 168, 178, 179, 180.

123. In the Assembly on 12 May 1992, Krajišnik promoted the creation of the VRS and during that session the VRS was formally established.³⁰³ Ratko Mladić, whom Krajišnik and Karadžić had selected for the job,³⁰⁴ was appointed as commander of the VRS Main Staff.³⁰⁵ The VRS reported directly to the Presidency.³⁰⁶ This chain of command left little room for the Minister of Defence, whose role was limited to supply and logistics of military operations.³⁰⁷ The Chamber also found that an operative Bosnian-Serb MUP was in existence by the end of March 1992,³⁰⁸ the Assembly having adopted the Law on Internal Affairs,³⁰⁹ and called for its implementation.³¹⁰ The MUP was responsible to the Minister of Interior, who in turn was responsible, first and foremost, to the Presidency.³¹¹ The MUP cooperated closely with the VRS.³¹²

124. Whilst he did not participate in the establishment of the SDS,³¹³ Krajišnik was elected to the SDS Main Board.³¹⁴ He addressed the SDS Political Council,³¹⁵ and the Deputies' Club, reiterating the objective of dividing Bosnia-Herzegovina.³¹⁶ Krajišnik played an important role in effecting the SDS's influence over the Assembly.³¹⁷

125. Krajišnik was present at the high-level SDS meeting when the 19 December 1991 Instructions were introduced,³¹⁸ forming the basis for establishing crisis staffs in the municipalities.³¹⁹ As a member of the Bosnian-Serb leadership, he participated in centralizing authority through the transformation of municipal crisis staffs first into war presidencies and then, later, into war commissions.³²⁰

³⁰³ Judgement, para.194.

³⁰⁴ Judgement, para.994.

³⁰⁵ Judgement, para.194.

³⁰⁶ Judgement, paras. 200, 205-207, 1011.

³⁰⁷ Judgement, paras. 186, 207.

³⁰⁸ Judgement, para.238.

³⁰⁹ Judgement, paras. 118, 225. *See also* Exh.P65tab.95 (Record of 9th session of Bosnian-Serb Assembly, 28 February 1992), p.40.

³¹⁰ Judgement, para.235.

³¹¹ Judgement, paras. 183-186, 244, 1085.

³¹² Judgement, para.245.

³¹³ Judgement, para.1121(b).

³¹⁴ Judgement, para.3.

³¹⁵ Judgement, para.65.

³¹⁶ Judgement, para.117.

³¹⁷ Judgement, para.140.

³¹⁸ Judgement, para.86.

³¹⁹ Judgement, para.97.

³²⁰ Judgement, para.272.

126. The SDS party structure and the municipal crisis staffs reported to Krajišnik in his capacity as President of the Assembly.³²¹ They also reported to the Presidency, of which Krajišnik was a member. Ministers and army commanders also reported directly to the Presidency.³²² Based on a wealth of evidence, the Chamber found that Assembly deputies, presidents of municipalities and other municipal officials would often meet or consult with Krajišnik.³²³

(c) Crisis staffs/war presidencies/war commissions

127. Krajišnik claims that he did not participate in the establishment of government and party organs,³²⁴ but fails to show any error in the reasoning of the Chamber. All his specific arguments regarding establishment of or control over crisis staffs, war presidencies and war commissions fail.

(i) Crisis staffs

128. Krajišnik merely asserts that he did not participate in the establishment of crisis staffs, citing to P64A, tab.362 (14th Assembly Session record, 27 March 1992), without explaining its relevance.³²⁵ He alleges that the Chamber committed an error in finding that the Assembly established crisis staffs.³²⁶ Krajišnik misinterprets the Judgement. The Chamber found that the crisis staffs started out as SDS organs and were later transformed into state organs.³²⁷ Krajišnik was present at the high-level SDS meeting when the 19 December 1991 Instructions were introduced,³²⁸ pursuant to which several municipalities set up crisis staffs.³²⁹ The transformation into state organs occurred on 4 April 1992, following an order by the SNB that the crisis staffs be activated.³³⁰ Hence the Chamber did not find that the Assembly created the crisis staffs. Instead it found that crisis staffs reported to Krajišnik in his capacity as

³²¹ Judgement, para.173, for examples, see Judgement, para.990 (A member of the Novo Sarajevo crisis staff reporting to Krajišnik), para.992 (Krajišnik attending a meeting with the local authorities in Ilidža on 17 April 1992).

³²² Judgement, para.173.

³²³ Judgement, para.1017.

³²⁴ *Krajišnik* Brief, paras. 219, 220, 224, 225.

³²⁵ *Krajišnik* Brief, para.225.

³²⁶ *Krajišnik* Brief, paras. 337, 339, 340.

³²⁷ Judgement, para.259.

³²⁸ Judgement, para.86.

³²⁹ Judgement, paras. 97, 99.

³³⁰ Judgement, para.263.

President of the Assembly.³³¹ Contrary to Krajišnik's argument,³³² Pristojević did not testify that the Assembly established the crisis staffs. His evidence was that the crisis staffs were effectively subordinated to Krajišnik as President of the Assembly.³³³

129. Krajišnik's allegation that the Instructions for the Work of Crisis Staffs were issued and withdrawn the following day³³⁴ is without foundation. The Government plan on the functioning of crisis staffs in the municipalities was issued on 26 April 1992,³³⁵ and was distributed and implemented in municipalities throughout the Bosnian-Serb Republic.³³⁶ The transformation of crisis staffs into state organs was generally completed by the end of April 1992.³³⁷ Exhibit P64A, tab 699 cited by Krajišnik³³⁸ does not show that the plan was withdrawn on 27 April 1992, as claimed. Krajišnik misrepresents the evidence and does not establish an error by the Chamber.

130. Krajišnik argues that the Chamber erred in finding that the Bosnian-Serb Leadership controlled and issued direct orders and instructions to crisis staffs.³³⁹ He alleges that crisis staffs were established spontaneously³⁴⁰ and acted autonomously.³⁴¹ Krajišnik argues that it was Plavšić and Karadžić who participated in the establishment of municipal war presidencies.³⁴² All these allegations merely cite selected evidence, urging a different conclusion than the one arrived at by the Chamber, without explaining how the Chamber erred. They merit dismissal as they do not meet the standard of review. Further arguments relating to the crisis staffs should be dismissed for the same reason.³⁴³ Finally, certain allegations amount to mere assertions,³⁴⁴ their relevance is unclear³⁴⁵ or they misrepresent the Judgement,³⁴⁶ again warranting dismissal without further consideration.

³³¹ Judgement, para.173, for examples, see Judgement, para.990 (A member of the Novo Sarajevo crisis staff reporting to Krajišnik), para.992 (Krajišnik attending a meeting with the local authorities in Ilidža on 17 April 1992).

³³² *Krajišnik Brief*, para.337.

³³³ Judgement, para.267.

³³⁴ *Krajišnik Brief*, paras. 228, 229, 299 bullet 4, 336 (instructions were in force several days only).

³³⁵ Judgement, para.263.

³³⁶ Judgement, para.264.

³³⁷ Judgement, para.264.

³³⁸ *Krajišnik Brief*, para.228, fn.315.

³³⁹ *Krajišnik Brief*, para.341.

³⁴⁰ *Krajišnik Brief*, paras. 230, 346.

³⁴¹ *Krajišnik Brief*, paras. 342, 359.

³⁴² *Krajišnik Brief*, para.346.

³⁴³ *Krajišnik Brief*, paras. 261, 343 bullets 1, 2, 4, 7, 8, 10 and 11, para.353.

³⁴⁴ *Krajišnik Brief*, paras. 262, 334, 343 bullets 5 and 12.

³⁴⁵ *Krajišnik Brief*, paras. 232, 262, 343 bullets 6 and 9.

³⁴⁶ *Krajišnik Brief*, paras. 338, 343 bullet 3.

(ii) War presidencies/war commissions

131. Krajišnik challenges the Chamber's findings on the establishment and role of war presidencies and war commissions.³⁴⁷ However, most of his arguments seem to be based on a misunderstanding of the Chamber's findings at paragraphs 272 to 279. These findings retrace the establishment of crisis staffs and their transformation into war presidencies and then almost immediately into war commissions. They show the Bosnian-Serb leadership's efforts to tighten its control over municipal organs and the means used to ensure such control and coordination. The fact that some decisions were revoked before they could be fully implemented is irrelevant in this respect. The Chamber found that the exact setting up and transformation from crisis staff to war presidency, then to war commission varied from municipality to municipality, depending on location, time and personalities.³⁴⁸ It emphasised that the main role of the ultimate war commissions was to keep the Presidency and the Bosnian-Serb Assembly informed about the situation on the ground, as illustrated by the fact that many commissioners were appointed by the Presidency.³⁴⁹ Most of Krajišnik's arguments miss the point.

132. For instance, Krajišnik asserts that Plavšić signed the instructions of 24 May for the work of municipal presidencies by mistake, since the decision on the formation of war presidencies was not issued until 31 May.³⁵⁰ However, he fails to show how this affects the Chamber's findings, especially in light of its finding that "[o]n 31 May 1992, the Bosnian-Serb Presidency took the formal decision to form war presidencies in the municipalities."³⁵¹

133. Similarly, Krajišnik's arguments based on the decision replacing war presidencies with war commissions³⁵² or his (unsubstantiated) claim that the letter informing the presidents of SAO Herzegovina, SAO Romanija and SAO Semberija about the decision establishing war presidencies³⁵³ were not acted upon are irrelevant. These arguments should be dismissed without further consideration.

³⁴⁷ *Krajišnik* Brief, paras. 347-351.

³⁴⁸ Judgement, para.279.

³⁴⁹ Judgement, para.279.

³⁵⁰ *Krajišnik* Brief, para.347 chapeau.

³⁵¹ Judgement, para.274.

³⁵² *Krajišnik* Brief, paras. 347 bullet 1, 348.

³⁵³ *Krajišnik* Brief, para.349.

134. Krajišnik's argument that, while Đokanović appointed members of commissions, other commissioners were mainly appointed by Karadžić³⁵⁴ actually supports the Chamber's finding of the Bosnian-Serb leadership's control over commissions.

135. Krajišnik seems to claim that he was not informed of the Decision by the Presidency to establish war presidencies and of the Law amending the Constitution.³⁵⁵ This ignores the fact that he was both a member of the Presidency and the President of the Bosnian-Serb Assembly and that both texts were published in the Official Gazette.³⁵⁶ This also ignores the Chamber's findings on the sharing of information among the leadership.³⁵⁷

136. Finally, Krajišnik's claim that the Chamber erred in not accepting his explanation that he was not in charge of commissioners or of appointing them is an unsubstantiated assertion and should be dismissed accordingly.³⁵⁸ In addition, he has not shown any error in the Chamber's finding that as the Presidency's contact person for war commissioners, he signed at least two decisions appointing state commissioners.³⁵⁹ In evidence, Krajišnik admitted that he signed these certificates.³⁶⁰

(d) MUP

137. Krajišnik alleges that the Chamber erred in finding that the RS MUP was established pursuant to a decision of the Assembly of 27 March 1992.³⁶¹ In two instances, the Chamber mistakenly referred to 27 March 1992 as the date on which the Assembly set up the MUP by passing a Law on Internal Affairs.³⁶² However, in an earlier part of the Judgement, it held that on 28 February 1992 the Law on Internal Affairs, amongst other laws, including the Constitution, was adopted by the Assembly.³⁶³ This is the operative finding as to the date. This is also clear from the findings that in the 11 March 1992 Assembly session there was a unanimous call for

³⁵⁴ *Krajišnik* Brief, para.350.

³⁵⁵ *Krajišnik* Brief, para.231.

³⁵⁶ Exhs.P65tab.143 and P65tab.144.

³⁵⁷ *See* Part IV. E. – *Mens Rea*.

³⁵⁸ *Krajišnik* Brief, para.351

³⁵⁹ Judgement, para.277-278, fn.613.

³⁶⁰ T.26264-5.

³⁶¹ *Krajišnik* Brief, para.393, bullets 2 and 3.

³⁶² Judgement, paras. 930, 1121(d).

³⁶³ Judgement, paras. 118, 225. *See also* Exh.P65tab.95 (Record of 9th session of Bosnian-Serb Assembly, 28 February 1992), p.40.

the implementation of the Law on Internal Affairs,³⁶⁴ the publication of the Law on Internal Affairs on 23 March 1992, which meant that it was to enter into force on 31 March 1992,³⁶⁵ and the appointment of the Minister for Internal Affairs on 24 March 1992.³⁶⁶ Whilst the 27 March 1992 date is incorrect, given the Chamber's finding that the Law on Internal Affairs was adopted on 28 February 1992, there is no impact on the verdict.

138. Krajišnik makes a number of other challenges³⁶⁷ to the Chamber's findings relating to the Ministry of Internal Affairs (MUP)³⁶⁸ which should be dismissed because either they are clearly irrelevant or he does not explain how it is relevant to the verdict. For example, apparently challenging the Chamber's finding that he contributed to the JCE by establishing the Bosnian-Serb MUP,³⁶⁹ Krajišnik states that the RS MUP began to operate with segments of the disbanded BiH MUP, which actually accords with the Chamber's findings.³⁷⁰ The statement itself implicitly acknowledges the establishment of a new MUP – that of the Bosnian-Serb Republic. His argument therefore fails.

139. Similarly, Krajišnik argues that the "RS Police" were subordinated to the Minister of the Interior.³⁷¹ This is irrelevant in terms of the verdict since the Chamber itself found that the MUP was accountable to the Minister of Interior. The Chamber went on to find that the Ministry of the Interior reported to the Presidency and the government.³⁷² Krajišnik does not explain how this finding is affected.

140. Paragraphs 234, 327, 328, 330-332 and 419 suffer from the same deficiencies as to relevance and should be dismissed.

141. In addition, at paragraph 327, Krajišnik contradicts the evidence of the witness Mandić without articulating why no reasonable Chamber was entitled to rely on Mandić's evidence. Accordingly, his argument can be dismissed without further consideration.

³⁶⁴ Judgement, para.235.

³⁶⁵ Judgement, para.236.

³⁶⁶ Judgement, para.235.

³⁶⁷ *Krajišnik* Brief, paras. 234-235, 327-328, 330-332, 359 and 419.

³⁶⁸ Judgement, Section 3.5.1, paras. 225-255, and 1121; in this context, Krajišnik also comments on paras. 966-968, 1122-1124.

³⁶⁹ *Krajišnik* Brief, para.235.

³⁷⁰ See Judgement, paras. 110, 235-239. Mandić's dispatch on which Krajišnik relies in fn.323, is cited by the Chamber in para.237.

(e) VRS

142. The Chamber found that Krajišnik was part of the political leadership setting the military goals and supervising military operations.³⁷³ Krajišnik fails to show that no reasonable trial chamber could have made these findings based on the evidence.

143. Krajišnik argues that he did not supervise, formulate or coordinate military strategy and he did not support or actively supervise the armed forces.³⁷⁴ He claims that he never issued any order to the police or to the army,³⁷⁵ and that he was not part of the armed forces chain of command³⁷⁶ or of the informal Supreme Command.³⁷⁷ He argues that neither the Presidency nor the Assembly were involved in military matters³⁷⁸ and reiterates that Mladić and the VRS acted autonomously.³⁷⁹ Krajišnik's challenges disregard the Chamber's relevant findings and analysis of the evidence.

144. Krajišnik's claims that the armed forces were commanded in accordance with the Constitution and that, as President of the Assembly he did not interfere in military matters³⁸⁰ and was not a member of the informal Supreme Command³⁸¹ are dependent on accepting his argument that he was not a member of the Presidency.³⁸² As set out above, his argument on that fails. Furthermore, the Chamber made specific findings showing Krajišnik's personal and direct involvement in military matters.³⁸³ The evidence Krajišnik cites does not contradict that finding, if anything it supports it.³⁸⁴

145. Krajišnik argues that he was not briefed by the Main Staff, never discussed military-related issues or gave any order, and that meetings between the Presidency and the army representatives were only informal and limited to logistical matters.³⁸⁵ The Chamber rejected Krajišnik's attempts to downplay his role and that of the Presidency. It found that the Presidency, as part of the chain of command, would

³⁷¹ *Krajišnik* Brief, para.359.

³⁷² *See* Part IV. D. 3. (b) .

³⁷³ Judgement, paras. 205-207, 994.

³⁷⁴ *Krajišnik* Brief, paras. 116, 117.

³⁷⁵ *Krajišnik* Brief, paras. 118 chapeau, 149 bullet 2, 184 bullet 21, 190, 313 chapeau.

³⁷⁶ *Krajišnik* Brief, para.184 bullet 22.

³⁷⁷ *Krajišnik* Brief, para.149.

³⁷⁸ *Krajišnik* Brief, paras. 143-147, 149 bullet 5, 312 bullet 6, 313, 382 chapeau.

³⁷⁹ *Krajišnik* Brief, paras. 149 bullets 3 and 4, para.312 bullets 5, 7, 8 (second and third sentences) and 12, 382 bullet 1, 421.

³⁸⁰ *Krajišnik* Brief, paras. 117, 134, 150.

³⁸¹ *Krajišnik* Brief, paras. 146, 148, 149 chapeau, bullets 1 and 2 (second sentence).

³⁸² *See* Part IV. D. 1. .

³⁸³ Judgement, paras. 987-993.

³⁸⁴ *See* Exh.P64Atab.430 and P64Atab.632 cited in *Krajišnik* Brief, para.149 bullet 1, fn.212.

³⁸⁵ *Krajišnik* Brief, paras. 118 chapeau, 146, 149 bullets 2 and 5, 150, 312 bullet 8 (second and third sentences but ignoring fn.438) 313 chapeau, 382 chapeau.

frequently discuss and make decisions in military-related matters.³⁸⁶ Orders were passed from the political leadership to military officers³⁸⁷ - including some issued by Krajišnik or under his chairmanship.³⁸⁸ The Chamber also found that it was generally the members of the Presidency, often Karadžić, who reported to the Assembly on the military and strategic situation.³⁸⁹ Krajišnik challenges these findings but most of his arguments are mere assertions.³⁹⁰ The rest rely solely on his own testimony, selected parts of Subotić's evidence,³⁹¹ or evidence that is not in the trial record,³⁹² and fails to demonstrate why the Chamber's conclusions were unreasonable based on all of the evidence.

146. As to Krajišnik's claim that Mladić acted autonomously,³⁹³ the Chamber specifically rejected it, as contradicted by the facts.³⁹⁴ In fact, Krajišnik himself testified that Mladić was directly subordinated to the Presidency.³⁹⁵ He does not address that fact, and instead refers to selected evidence by Subotić and Plavšić³⁹⁶ without addressing the evidence relied upon by the Chamber.³⁹⁷ He challenges the Chamber's reliance on T.13032-13033³⁹⁸ but ignores the further references in the footnote of the Judgement to Wilson's testimony about the relationship between Mladić and the political leadership.³⁹⁹ These arguments should be dismissed without further consideration.

147. Krajišnik also attempts to reargue that the Assembly only set political goals, not military ones.⁴⁰⁰ The Chamber found that the Bosnian-Serb Assembly was a

³⁸⁶ Judgement, paras. 200, 205-207, 959, 1011.

³⁸⁷ Judgement, paras. 205-206, 957, 961. *See also* Krajišnik, T.24638, "[Plavšić] called the minister of the MUP at Vrace, Mr. Stanisić, and she said to him: I agreed on a cease-fire on our side. I hold you accountable for abiding by this, even if they fire at you."

³⁸⁸ *See e.g.* conversation between Krajišnik to Mladić (cited in fn.442), Exh.P67tab.32, p.2 where Mladić informs Krajišnik that "I'm going further as planned and tomorrow I will stop by to get new instructions". *See also* Judgement, para.961 where the Chamber found that the Presidency, during a session not attended by Karadžić but attended by Krajišnik, ordered a cease fire for Sarajevo - at para.169 the Chamber found that in the absence of Karadžić it was Krajišnik who chaired the Presidency sessions.

³⁸⁹ Judgement, para.173.

³⁹⁰ *Krajišnik* Brief, paras. 118 chapeau, 149 bullet 2, 150, 312 bullet 8 (second and third sentences), 313 chapeau.

³⁹¹ *Krajišnik* Brief, paras. 146, 149 bullet 5, 382 chapeau.

³⁹² *Krajišnik* Brief, para.312 bullet 8 (second and third sentences).

³⁹³ *Krajišnik* Brief, paras. 149 bullets 3 and 4, 312 bullets 5, 7, 12, 382 bullet 1, 421.

³⁹⁴ Judgement, para.998.

³⁹⁵ Judgement, para.194.

³⁹⁶ *Krajišnik* Brief, paras. 149 bullets 3 and 4, 312 bullet 12, 382 bullet 1, 421.

³⁹⁷ *See* Judgement, paras. 205-206, 998 (especially fns.433, 442 and 1994).

³⁹⁸ *Krajišnik* Brief, para.312 bullet 7.

³⁹⁹ Judgement, fn.433, referring to T.13066, 13073, 13075, 13106.

⁴⁰⁰ *Krajišnik* Brief, paras. 143-145.

forum for the formulation and coordination of military strategy.⁴⁰¹ It specifically rejected Krajišnik's evidence that the Assembly could only enact political goals.⁴⁰² Krajišnik merely gives his own interpretation of selected pieces of evidence, without demonstrating an error in the Chamber's analysis.⁴⁰³

148. Similarly Krajišnik's arguments at paragraphs 123, 312 (bullet 2), 364, 393 bullet 4 and 397 are mere assertions of his own interpretation of evidence without demonstrating why the Chamber's analysis was wrong. They should also be dismissed.

149. Finally, Krajišnik's arguments that the VRS and the Presidency disapproved of and took actions against paramilitaries⁴⁰⁴ misrepresent and ignore the Chamber's relevant findings. It acknowledged that paramilitaries were operating somewhat independently, and that attempts were made to introduce respect for the law, including Mladić's order of 28 July 1992.⁴⁰⁵ The Chamber found that the military and political leadership was aware of the problems posed by the paramilitaries, but that instead of suppressing these groups, it attempted on several occasions to incorporate them into the VRS.⁴⁰⁶ It found that the Bosnian-Serb leadership vacillated in its relationship with paramilitary groups, using them opportunistically to terrorise or at other times complaining about them.⁴⁰⁷ While from July 1992 onwards, the Bosnian-Serb leadership regarded the paramilitaries as a nuisance, they approved of their actions where it served the common objective.⁴⁰⁸ Paramilitary leaders, including Arkan, were found to share the common objective and to be members of the JCE.⁴⁰⁹ Krajišnik himself acknowledges that he praised Arkan, albeit as a politician.⁴¹⁰ The evidence relied upon by the Chamber is a clear statement of support for Arkan ("Mr Arkan has many positive and significant credits when it comes to the Serbian people"),⁴¹¹ and whether Krajišnik supported him as a politician or as a warrior is irrelevant. Similarly his challenge⁴¹² that he did not know of the activities Arkan's mens, Sešelj's mens' or

⁴⁰¹ Judgement, paras. 975, 994-995, 1001-1003.

⁴⁰² Judgement, para.1002.

⁴⁰³ The same is true of *Krajišnik* Brief, para.369.

⁴⁰⁴ *Krajišnik* Brief, paras. 122, 316-325.

⁴⁰⁵ Judgement, paras. 208-222.

⁴⁰⁶ Judgement, para.222.

⁴⁰⁷ Judgement, paras. 979-986.

⁴⁰⁸ Judgement, paras. 979-986.

⁴⁰⁹ Judgement, paras. 1086-1087.

⁴¹⁰ *Krajišnik* Brief, para.126-127; *See also* Part IV. E. 10. .

⁴¹¹ Exh.P1021.A, cited in Judgement, fn.1971.

⁴¹² *Krajišnik* Brief, paras. 127-128.

the Wolves of Vučak at the material time are mere assertions and ignore the Chamber's findings on knowledge and membership of the JCE.

150. All of Krajišnik's remaining arguments on this topic must also be dismissed:

- He makes unclear or irrelevant arguments. For instance, Krajišnik argues that the conversation with Milošević was used wrongly and that the JNA split up into Serbian, Muslim and Croatian parts without indicating which conversation he is referring to nor why his argument is relevant.⁴¹³ The challenges in the following paragraphs are the same – 148, 149 chapeau, 173, 233, 300, 312 bullet 13, 393 bullet 6, 406 bullet 2, 442 bullet 1.
- He challenges the credibility of witnesses without showing that no reasonable Chamber could have accepted their evidence as reliable or that the evaluation of the evidence was wholly erroneous. [REDACTED].⁴¹⁴ Paragraphs 124-125, 323, 329 also suffer from this flaw.
- He misrepresents the Chamber's findings and the evidence (for instance Krajišnik argues that the Chamber erroneously concluded based on a conversation between Plavšić and Stanišić that the Presidency had the authority to order cease fires and that Plavšić referred to the ceasefire decision of the Assembly,⁴¹⁵ but in doing so Krajišnik ignores the Chamber's reliance on his own testimony and misrepresents the evidence where Plavšić clearly refers to the Presidency not the Assembly⁴¹⁶). The same applies to paragraphs 312 bullet 14, 314 and 424.
- He makes contradictory or inconsistent arguments: for example, Krajišnik claims that Presidency sessions were attended by members of the Main Staff on four occasions only, and relies on four exhibits that prove such attendance.⁴¹⁷ Or, Krajišnik argues that he did not confirm the existence of an informal Supreme Command,⁴¹⁸ yet according to his own testimony, "Mrs.

⁴¹³ *Krajišnik* Brief, para.312 bullet 1.

⁴¹⁴ *Krajišnik* Brief, para.313 bullet 1.

⁴¹⁵ *Krajišnik* Brief, para.312 bullet 11.

⁴¹⁶ Judgment, para.205, fn.436 referring to Exh.P64.Atab.221 and T.24637-24638 24 May 2006.

⁴¹⁷ *Krajišnik* Brief, paras. 147, 312 bullet 6.

⁴¹⁸ *Krajišnik* Brief, para.146.

Plavšić had been appointed member of the Presidency, member of the supreme command, on the 12th of May”.⁴¹⁹

(f) Other arguments relating to Krajišnik’s contribution involving government and party organs

151. Krajišnik challenges paragraph 26 of the Judgement by claiming that he did not engage in party activities.⁴²⁰ It is unclear how this is relevant to paragraph 26, which does not discuss his SDS activities. Further, the Chamber specifically found that Krajišnik was not involved in the establishment of the SDS.⁴²¹ This argument should be dismissed without further consideration.

152. Further, Krajišnik blames other parties for unconstitutional behaviour, which he argues caused the establishment of the Bosnian-Serb Assembly.⁴²² The Chamber took into account the political events preceding the establishment of the Assembly.⁴²³ Krajišnik has shown no error in the Chamber’s findings.

153. Krajišnik also argues that he did not issue instructions to take over power.⁴²⁴ This is a mere assertion. He does not show error in the Chamber’s finding, that he instructed the Government to prepare a plan for “assuming power and rendering operational the authorities” in the territory of the Bosnian-Serb Republic.⁴²⁵ The finding was based on Krajišnik’s statement in the 13th Assembly session of 24 March 1992⁴²⁶ and was reasonably made on that evidence.

154. Other challenges in relation to this topic are of unclear relevance and Krajišnik fails to show any impact on the verdict.⁴²⁷

⁴¹⁹ Krajišnik, T.24638 (open session). *See also* Krajišnik Brief, para.149 implying that a supreme command existed before November 1992.

⁴²⁰ Krajišnik Brief, para.244.

⁴²¹ Judgement, para.1121(b).

⁴²² Krajišnik Brief, para.221.

⁴²³ Judgement, Parts 2 and 3, particularly paras. 63-69.

⁴²⁴ Krajišnik Brief, para.393, bullet 2.

⁴²⁵ Judgement, paras. 933 and 1121(d).

⁴²⁶ Judgement, para.933, fn.1820, referring to Exh.P65tab.114, p.13.

⁴²⁷ Krajišnik Brief, paras. 104, 243, 393 bullets 7 and 8, 326.

4. *Krajišnik failed to investigate and follow up on investigations into crimes*⁴²⁸

155. The Chamber held that Krajišnik contributed to the JCE through failing to investigate and follow up on investigations into crimes committed by the Bosnian-Serb Forces.⁴²⁹ It found that the Presidency had authority to initiate investigations into crimes, including crimes related to combat activities,⁴³⁰ detention crimes,⁴³¹ and population expulsions.⁴³²

156. Krajišnik argues that he had no authority to conduct investigations,⁴³³ that others initiated investigations,⁴³⁴ but such investigations were not conducted.⁴³⁵ His arguments do not meet the standard of review because they ignore Chamber's findings, amount to mere assertions, or simply cite selected evidence in support of different conclusion as to his involvement through failure to investigate.

157. First, Krajišnik argues that he was not authorised to conduct investigations or punish anybody, which is why he never attempted to do so.⁴³⁶ This is a mere assertion, disagreeing with the Chamber's conclusion. In his testimony, Krajišnik acknowledged that the 11th Assembly Session⁴³⁷ contained a request to the Main Staff to investigate.⁴³⁸ The Chamber relied on this evidence to find that the Presidency had the power to investigate.⁴³⁹ Further, his argument is contrary to other Chamber findings - that he had the power to intervene, but simply was not interested in doing so,⁴⁴⁰ and that his powers were enormous both as a leader of the Assembly and a member of the Presidency.⁴⁴¹ With regard to failure to punish, the Chamber

⁴²⁸ Judgement, para.1121(j).

⁴²⁹ Judgement, para.1121(j).

⁴³⁰ Judgement, para.205, *see also* para.970 (Presidency became involved in an investigation of a large massacre of Muslims and a cover up).

⁴³¹ Judgement, para.184.

⁴³² Judgement, para.1032.

⁴³³ *Krajišnik* Brief, paras. 194; 217 (1st para so numbered); 203, fn.290.

⁴³⁴ *Krajišnik* Brief, para.312, citing fns.434 and 435, including allegation that Karadžić, Plavšić, Đerić, Stanišić and Mandić had the power to and did investigate. Also *Krajišnik* Brief, para.14, 429.

⁴³⁵ *Krajišnik* Brief, para.312, citing fns.434 and 435.

⁴³⁶ *Krajišnik* Brief, paras. 15, 194, 217 (1st para so numbered), 203 (fn.290) .

⁴³⁷ Exh.P65tab.169 (25 June 1992).

⁴³⁸ *Krajišnik*, T.24475-7.

⁴³⁹ Judgement, para.205, fn.435.

⁴⁴⁰ Judgement, para.1119.

⁴⁴¹ Judgement, para.1084.

specifically held that it had not been established that Krajišnik had the power to punish, hence it found no contribution on that basis.⁴⁴²

158. Second, Krajišnik states that the members of the Presidency who were “in charge” initiated investigations of alleged crimes.⁴⁴³ Krajišnik argues that whilst Karadžić, Plavšić, Đerić, Stanišić and Mandić could (and did) conduct investigations “from the position of their office”,⁴⁴⁴ he could not. If his alleged inability to investigate is urged on the basis of him not being a member of the Presidency, then the argument has no merit, as it is contrary to well-supported findings of the Chamber,⁴⁴⁵ which he does not successfully challenge. Krajišnik also disregards several other findings. Firstly, he disregards the finding that in reality Stanišić and Mandić reported directly to him and Karadžić,⁴⁴⁶ hence Krajišnik could have asked them to investigate. Secondly, Krajišnik fails to acknowledge the Chamber’s findings that investigations were a whitewash. The Chamber found that the investigations by Government commissions were a cover-up for detention crimes.⁴⁴⁷ Plavšić’s investigation on behalf of the Presidency of the expulsion of hundreds of Muslims from Grbavica commune was similarly a sham, with ethnic cleansing being characterised as local groups “implementing the conclusions of the London and Geneva agreement on free movement of civilians.”⁴⁴⁸ Although there were some investigations regarding MUP criminal activities, they were mostly aimed at stopping looting and the disruption of order.⁴⁴⁹

159. Third, Krajišnik alleges that some requested investigations were never conducted.⁴⁵⁰ However, the evidence he relies on does not show that the investigations were not carried out;⁴⁵¹ and some is not on point.⁴⁵² In any event, the fact that certain investigations may not have been conducted does not mean that investigation was impossible. Investigation was clearly possible, as illustrated by the Chamber’s finding that Stanišić, prompted by Krajišnik’s and Karadžić’s displeasure,

⁴⁴² Judgement, para.1121(j).

⁴⁴³ *Krajišnik* Brief, paras. 379, 312, bullets 8, 10, including allegation that Karadžić, Plavšić, Đerić, Stanišić and Mandić had the power to and did investigate. Also *Krajišnik* Brief, para.14.

⁴⁴⁴ *Krajišnik* Brief, para.312, bullet 9.

⁴⁴⁵ See section A.2 membership of the Presidency above.

⁴⁴⁶ Judgement, para.184.

⁴⁴⁷ Judgement, paras. 1065-1075.

⁴⁴⁸ Judgement, para.1032.

⁴⁴⁹ Judgement, para.255.

⁴⁵⁰ *Krajišnik* Brief, para.312, bullets 9 and 10.

⁴⁵¹ See *Krajišnik* Brief, para.312, fns.439, 441, 442, 443.

⁴⁵² Exh.P64A, tab.738 referred to in fn.442 is the appointment of Plavšić as a war commissioner.

did cause the arrest of some members of the Yellow Wasps who were committing crimes in Zvornik.⁴⁵³

160. Finally, Krajišnik merely recites evidence, urging a different conclusion as to his involvement through failure to investigate.⁴⁵⁴ He does not set out how this evidence is relevant and how it demonstrates an error. He merely asserts that there was no example of him being informed of a crime, which was not followed by investigation and punishment.⁴⁵⁵ Likewise, he merely asserts that he did not take part in covering up detention crimes.⁴⁵⁶ These allegations should be dismissed without further consideration.

5. Krajišnik disseminated information intended to engender fear and hatred and provided misleading information about crimes against Muslims and Croats⁴⁵⁷

161. The Chamber found that one of Krajišnik's contributions to the common objective was through the dissemination of information to Bosnian Serbs that they were in jeopardy of oppression at the hands of Muslims and Croats, that territories on which Muslims and Croats resided were Serb land, or that was otherwise intended to engender fear and hatred of Muslims and Croats.⁴⁵⁸

162. The Chamber found that Krajišnik, in the context of already mounting tension, made or supported a number of public statements encouraging Serb nationalism, raising the spectre of genocide or of an Islamic state, asserting Serbs' rights over territories, and discriminating against Muslims and Croats.⁴⁵⁹

163. Krajišnik disputes that his statements advocated violence or aimed at engendering ethnic hatred and claims, on the contrary, that he publicly opposed ethnic cleansing.⁴⁶⁰ However, he ignores parts of the evidence and merely attempts to justify or reinterpret his own statements in a more favourable light. The fact that some of his statements also contained or were disguised as calls for peace does not cancel out his

⁴⁵³ Judgement, para.949.

⁴⁵⁴ *Krajišnik* Brief, para.14 (especially the evidence cited in fn.14, includes evidence not part of the Trial Record), 429.

⁴⁵⁵ *Krajišnik* Brief, paras. 70, 195, 449.

⁴⁵⁶ *Krajišnik* Brief, para.174.

⁴⁵⁷ Judgement, para.1121(c) and (k).

⁴⁵⁸ Judgement, para.1121(c).

⁴⁵⁹ Judgement, paras. 46, 73, 82, 115, 194, 900-901, 910-924, 954-955, 985, 1003, 1015, 1092.

⁴⁶⁰ *Krajišnik* Brief, paras. 47, 80 chapeau, bullets 1 and 2, 82, 140 bullet 2, 184 bullets 24 and 25, 212, 248, 281, 393 chapeau and bullet 1, 394, 395, 405, 439 bullet 4.

nationalistic and discriminatory statements. It only makes them more insidious. Krajišnik fails to show that no reasonable Trial Chamber could have made these findings.

164. For example, in challenging the Chamber's conclusion that he denied the Muslim right to nationality,⁴⁶¹ Krajišnik relies on an adjudicated fact concerning the historical connection with Turkey. What he ignores are the Chamber's findings that he used this historical connection to call Muslims "a fake people", "at most a transient sect" and that "we do not accept this artificial nation."⁴⁶² Not only did the Chamber rely on this evidence to conclude that Krajišnik belittled and dehumanized Muslim identity, but it took account of his own testimony that this was "nonsense," and that "if I could distance myself from this Momčilo Krajišnik, I would."⁴⁶³ Krajišnik's argument is thus unsustainable.

165. Similar criticism can be made of his allegation that the defence presented evidence that he stood up against ethnic cleansing. He relies on an excerpt from the evidence of witness Thomson.⁴⁶⁴ However he fails to address Thomson's conclusion which was that such statements would not change the opinions expressed in his report and that "[w]hile parts of that statement - only parts of it - are commendable, I don't believe that they went very far in reassuring the non-Serb population under Bosnian-Serb control that they had any kind of future at all. On the contrary, I would have thought that the contrast between such commendable statements on the one hand and the events on the ground would have appeared grotesque to that population."⁴⁶⁵

166. Krajišnik also disputes the Chamber's finding that Krajišnik and Karadžić could be relied on to communicate the ideas of the leadership to the Bosnian-Serb public and its reliance on Beli's speech.⁴⁶⁶ However, he merely cites to the evidence relied upon by the Chamber but fails to demonstrate why it was wrong in relying on it.

167. Krajišnik further argues that he did not give any information to international representatives and the international public or embellish information.⁴⁶⁷ However, the

⁴⁶¹ *Krajišnik* Brief, para.80 bullet 1.

⁴⁶² Judgement, para.901.

⁴⁶³ Judgement, para.902.

⁴⁶⁴ *Krajišnik* Brief, para.140 bullet 2, fn.189.

⁴⁶⁵ T.15603 (30 June 2005).

⁴⁶⁶ *Krajišnik* Brief, paras. 142.

⁴⁶⁷ *Krajišnik* Brief, para.184 bullet 18.

three pieces of evidence he relies on do not contradict but in fact support the Chamber's findings to that effect.⁴⁶⁸

168. Krajišnik's submissions must therefore be dismissed.

⁴⁶⁸ Exhs.P446.A.1, P65tab.199, P583tab.119.

E. *Mens Rea*

169. In “Part 6, Accused’s Responsibility”, the Chamber summarized its conclusions on Krajišnik’s knowledge and intent (*mens rea*).⁴⁶⁹ The Chamber had no doubt that Krajišnik, Karadžić and the Bosnian-Serb leadership intended “the permanent removal, by force or other means, of Bosnian-Muslim, Bosnian-Croat or other non-Serb inhabitants from large areas of Bosnia and Herzegovina”⁴⁷⁰ through the commission of crimes against humanity. Krajišnik and Karadžić shared between themselves all important information about Bosnian-Serb affairs. Krajišnik knew of and intended the civilian detention, deportation or forced transfer, cruel or inhumane treatment, murder and extermination, and destruction of personal and cultural property of Muslims and Croats by Bosnian-Serb forces.⁴⁷¹

170. The Chamber considered a large body of evidence proving Krajišnik’s intent, as well as his knowledge of many facts. It made its findings having considered Krajišnik’s denial of knowledge of many facts surrounding the crimes committed by Bosnian-Serb forces.⁴⁷² His arguments on appeal repeat his denials from trial and challenge the Chamber’s findings on his intent and knowledge which were based on a wealth of direct and circumstantial evidence presented during the trial.

171. The Judgement cites significant pieces of evidence and explains how Krajišnik used and abused his positions and powers, leading to the Chamber’s conclusion that he knew of and intended the crimes.⁴⁷³ The principal findings are addressed in paragraphs 894 to 1076 of the Judgement, but many more are found in other parts of the Judgement.

172. Krajišnik makes random and unstructured challenges to the Chamber’s *mens rea* findings. His challenges are not contained in any one section or in any single sequence within his brief. The Prosecution attempts to assist the Appeals Chamber to navigate its way through the *mens rea* challenges by using as its basic structure, the headings in “Part 6, Accused’s Responsibility” of the Judgement and by responding to his challenges according to the order of the paragraphs in this part. Because Krajišnik

⁴⁶⁹ Judgement, paras. 890-893.

⁴⁷⁰ Judgement, para.1089-1090.

⁴⁷¹ Judgement, para.893 and 1119.

⁴⁷² Judgement, para.890.

⁴⁷³ Judgement, paras. 890-893.

also challenges paragraphs from other parts of the Judgement which refer to his *mens rea*, these paragraphs have been included under the most closely connected heading. In addition, Krajišnik's challenges against the introductory headings in *Part 6 (Parts 6.3 to 6.5)* have been addressed even though these Judgement paragraphs do not directly deal with the *mens rea* findings.

1. *Observations preliminary to discussion of facts*⁴⁷⁴

173. Krajišnik has not shown that the Chamber was unreasonable in its conclusion that he knew and intended the crimes.⁴⁷⁵ Moreover, the Chamber's findings and supporting evidence contradict his claim that there was no evidence about his *mens rea*.⁴⁷⁶

174. He states, but does not explain why, the Chamber was not entitled to rely on public domain information to support its finding that he knew of the crimes.⁴⁷⁷ He claims that he was wrongly informed that no crimes took place and cites in support references to interviews given by himself and Plavšić denying the existence of illegal camps.⁴⁷⁸ He ignores the ample evidence cited in the Judgement about detention centres and his knowledge of them.⁴⁷⁹ His unsubstantiated assertions should be dismissed.

175. The Chamber found Krajišnik to be a member of the Presidency from which "he partook of information-sharing on topics too sensitive to record."⁴⁸⁰ Given this finding, Krajišnik's claim that the Presidency sessions were informal consultation meetings is both irrelevant and unsupported.⁴⁸¹

2. *Retrospective*⁴⁸²

176. The Chamber's finding that Krajišnik supported ethnic cleansing was not unreasonable. The Chamber did not misunderstand Krajišnik's stated agreement with the speeches delivered in the Assembly in August 1994 with all their inflammatory

⁴⁷⁴ Judgement, Section 6.3, paras. 889-893.

⁴⁷⁵ *Krajišnik* Brief, paras. 61-63, 66-74, repeated in para.184 bullet 9.

⁴⁷⁶ *Krajišnik* Brief, para.69, 216, 391, first sentence.

⁴⁷⁷ *Krajišnik* Brief, para.68.

⁴⁷⁸ *Krajišnik* Brief, para.72, fn.68.

⁴⁷⁹ Judgement, paras. 1035-1064

⁴⁸⁰ Judgement, para.892.

⁴⁸¹ *Krajišnik* Brief, para.73.

⁴⁸² Judgement, Section 6.4, paras. 894-902.

and derogatory language,⁴⁸³ as Krajišnik argues.⁴⁸⁴ Krajišnik thanked the speakers for their “wonderful words”.⁴⁸⁵ It is in this context that he thanked the speakers for their “wonderful words.” His claim that he called for a peaceful solution is equally unsupportable; what he said was that although the Serbian people did not want war they were given no other choice.⁴⁸⁶ He also said that “we do not hate Muslims and Croats” but that they could not be trusted and that “we simply want to separate because we cannot live together.”⁴⁸⁷

177. Krajišnik does not substantiate his claim that the Chamber misinterpreted his statements promoting a completely Serb Sarajevo.⁴⁸⁸ Given Krajišnik’s own testimony on the basis of which the Chamber found that he resiled from his comments about Sarajevo, and given the earlier ethnic cleansing under Krajišnik’s leadership, the Chamber was entitled to understand Krajišnik’s statement about Sarajevo in this context.⁴⁸⁹

178. Krajišnik challenges the Chamber’s conclusion that his most important goal was ethnically cleansing the Bosnian-Serb territories,⁴⁹⁰ by offering his interpretation of Kovačević’s incendiary speech at the Assembly on 8 January 1993 and his praise for it.⁴⁹¹ Kovačević said “All those democracies [...] of Europe [...] want [...] to have us imprisoned in the dark realm of Islam.” Krajišnik commented that Kovačević was “best when we have opponents” and stated, in effect, that Europe was one of these inspiring opponents.⁴⁹²

3. Consolidation of Bosnian-Serb central authority⁴⁹³

179. No challenges to *mens rea* were found in Krajišnik’s brief related to this section.

⁴⁸³ Judgement, para.896.

⁴⁸⁴ *Krajišnik* Brief, para.76.

⁴⁸⁵ Judgement, para.897.

⁴⁸⁶ Exh. P1184, p.9 (“We are being offered choice between [...] war and war.”)

⁴⁸⁷ Exh. P1184, p.12 (Krajišnik’s speech).

⁴⁸⁸ *Krajišnik* Brief, paras. 77-78.

⁴⁸⁹ Judgement, para.898-899.

⁴⁹⁰ Judgement, para.900.

⁴⁹¹ *Krajišnik* Brief, para.80.

⁴⁹² Exh. P.65,tab.218, p.33.

⁴⁹³ Judgement, Section 6.5, paras. 903-909.

4. Expansionism and the pursuit of ethnically recomposed territories⁴⁹⁴

180. Krajišnik continues his challenge with a series of unsupported denials to unreferenced findings⁴⁹⁵ that he advocated changing the ethnic structure of Bosnia Herzegovina.⁴⁹⁶ On 18 March 1992 two weeks before the murders and expulsions began in Bijeljina Krajišnik said that “it would be good if [...] we could start implementing [...] the ethnic division on the ground”⁴⁹⁷ in order to have a strategic advantage in future negotiations. At the end of the year when the ethnic separation was largely achieved,⁴⁹⁸ Krajišnik confirmed that the goal to “separate ourselves from Muslims and Croats” was now “in our reach.”⁴⁹⁹ Krajišnik also made several inflammatory statements that supported the ethnic cleansing.⁵⁰⁰ These statements discredit Krajišnik’s mere assertion and unsupported claim that he did not call for a new factual situation on the ground.

181. Krajišnik challenges⁵⁰¹ the Chamber’s finding that he was of the view that the Serbs could not afford to share their living space with the Muslims.⁵⁰² Yet, at trial, Krajišnik said that the Serbs were “rightfully afraid to live with [Muslims].”⁵⁰³ The Chamber’s interpretation of his testimony is consistent with the evidence. Krajišnik’s further argument⁵⁰⁴ that the Chamber erred when considering his appearance in the Deputies Club “preaching” about the Muslims’ desire to create an Islamic state should likewise be dismissed.⁵⁰⁵ First, the referenced passages from Exhibit D260 do not support his claim that Izetbegović wanted an Islamic state or had a negative attitude towards minorities or Christians or Jews.⁵⁰⁶ Second, the Chamber itself acknowledged the evidence that some Muslims may have called for an Islamic state but found that his statement before the Deputies indicated his extreme political views.⁵⁰⁷ Krajišnik has not addressed this conclusion.

⁴⁹⁴ Judgement, Section 6.6, paras. 910-924.

⁴⁹⁵ *Krajišnik* Brief, paras.79, 439 bullet 4.

⁴⁹⁶ E.g. Judgement, para.950.

⁴⁹⁷ Judgement, para.911-912.

⁴⁹⁸ Judgement, para.1076-1077.

⁴⁹⁹ Exh.P1141.

⁵⁰⁰ Judgement, e.g., paras. 46, 117, 901, 950, 977.

⁵⁰¹ *Krajišnik* Brief, para.83.

⁵⁰² Judgement, para.918-919.

⁵⁰³ Judgement, para.918.

⁵⁰⁴ *Krajišnik* Brief, para.81.

⁵⁰⁵ Judgement, para.917.

⁵⁰⁶ *Krajišnik* Brief, para.81 bullet 1.

⁵⁰⁷ Judgement, para.917.

182. The Chamber relied on Krajišnik's 1992 statement that the Serbs claimed territories that historically belonged to them but where they were "now in a minority due to the genocide committed" against Serbs in World War II.⁵⁰⁸ Krajišnik argues that the Chamber should have considered that, in truth, what he wanted was to gain 64 % of the territory since this was the percentage privately owned by Serbs.⁵⁰⁹ The Chamber was entitled to rely upon the words he used in 1992.

183. Krajišnik's claim that he supported peace until 5 April 1992 is his unsupported reinterpretation of the evidence.⁵¹⁰ On 28 February 1992, he attended a meeting where Karadžić stated that the Bosnian-Serbs could no longer play the Yugoslav army card, it was now "Our sovereign right, our army." At the same meeting, Krajišnik stated with regard to the division of territory: "every Serb has a pistol and a map."⁵¹¹

5. Knowledge of and support for arming activities⁵¹²

184. The Chamber found that Krajišnik knew that the Bosnian-Serb population was being armed beginning around mid-1991.⁵¹³ He argues that he was not aware of nor participated in arming activities.⁵¹⁴ The Chamber excluded that he encouraged, assisted or participated in the acquisition and distribution of the arms.⁵¹⁵ Thus, Krajišnik's claim that he did not participate in arming activities is irrelevant.

185. Krajišnik argues that being in a position to hear that Serbs had weapons does not mean he knew or was involved.⁵¹⁶ However, he testified that it was not "totally unknown that there was some kind of arming."⁵¹⁷ Krajišnik's further contends that even if he knew that the Serbs had weapons, he did not know how the Serbs were arming themselves.⁵¹⁸ In making these mere assertions, he does not address the

⁵⁰⁸ Judgement, para.923.

⁵⁰⁹ *Krajišnik* Brief, para.85.

⁵¹⁰ *Krajišnik* Brief, para.247.

⁵¹¹ Judgement, para.117.

⁵¹² Judgement, Section 6.7, paras. 925-933.

⁵¹³ Judgement, para.926, fn.1804.

⁵¹⁴ *Krajišnik* Brief, paras. 86, 184 bullet 1, 418.

⁵¹⁵ Judgement, para. 1121 (f).

⁵¹⁶ *Krajišnik* Brief, para.87.

⁵¹⁷ Judgement, para.926.

⁵¹⁸ *Krajišnik* Brief, para.418.

evidence on which the Chamber relied or show why its conclusion was unreasonable.⁵¹⁹

186. Krajišnik challenges⁵²⁰ the Chamber's finding that he instructed the new Government to prepare a plan for assuming power, arguing that he attempted to delay the vote on Vještica's proposal.⁵²¹ Krajišnik did exactly what was proposed by Vještica, namely instruct the preparation of a Government plan.⁵²² He claims that the plan was not presented on the date he declared⁵²³ but that this fact was accepted by the Chamber.⁵²⁴ He also claims that the Serbian side had no plans for war. However Karadžić planned for war and ordered the setting up of a Territorial Defence. He has failed to show why the Chamber's findings were unreasonable.

6. Knowledge of and support for take-over operations⁵²⁵

187. The Chamber found that based on the overall role of Krajišnik at the time, information about take-overs found its way to him.⁵²⁶ Despite his denials, the evidence confirmed that, during take-over operations, Krajišnik had direct access to the levers of Bosnian-Serb power and he knew about the JNA's cooperation with the Bosnian-Serb take-over of power.⁵²⁷

188. Krajišnik generally denies knowledge of take-over operations.⁵²⁸ He first argues that Assembly minutes did not show that he was informed about the JNA assistance in take-over operations.⁵²⁹ However, the Chamber found that the take-over operations were reported at the Assembly⁵³⁰ and by high-ranking JNA officials to the Bosnian-Serb leadership.⁵³¹ Krajišnik does not show why the Chamber was unreasonable in its finding.⁵³²

⁵¹⁹ Judgement, para. 925-934.

⁵²⁰ *Krajišnik* Brief, para.88.

⁵²¹ Judgement, para.933.

⁵²² P65, tab.114, pp.4-15.

⁵²³ *Krajišnik* Brief, para.89.

⁵²⁴ Judgement, para.933.

⁵²⁵ Judgement, Section 6.8, paras. 935-949.

⁵²⁶ Judgement, paras. 935-940.

⁵²⁷ Judgement, paras. 949.

⁵²⁸ *Krajišnik* Brief, para.90.

⁵²⁹ *Krajišnik* Brief, para.95, first sentence.

⁵³⁰ Judgement, para.943.

⁵³¹ Judgement, paras. 945-947.

⁵³² Judgement, paras. 945, 948.

189. Krajišnik's contention⁵³³ that the Chamber erred in finding that he knew about JNA take-overs of territories because of the events in Bratunac should be dismissed. He does not show why the Chamber was unreasonable in finding his testimony on this point untruthful. As the Chamber found, in his capacity as Assembly President, he was best placed to be informed about these events and even if he had not known, he would have inquired into the matter once he heard that hundreds of Muslims civilians from Bratunac were arriving in Pale under escort.⁵³⁴

7. Knowledge of and support for crimes related to attacks⁵³⁵

190. The Chamber found that the Bosnian-Serb leadership, including Krajišnik, was regularly informed of, and came to accept, the range of crimes against Bosnian Muslims and Bosnian Croats.⁵³⁶ Krajišnik unsuccessfully challenges this and other related findings.⁵³⁷

191. Krajišnik argues⁵³⁸ [REDACTED].⁵³⁹ Krajišnik argues that he held these views because the Muslims did not want to reach an agreement. He overlooks that quarrels between the Bosnian-Serb leadership and the Muslim leadership are no justification for ethnic cleansing.

192. Krajišnik submits that during peace talks negotiators would refer to the territories as "Serbian" or "Muslim" and these references had nothing to do with ethnic cleansing. He claims that he did not advocate for ethnically clean Serbian territories during peace talks.⁵⁴⁰ However, the Chamber was entitled to rely on Witness 623 who testified that at the Geneva peace talks, Witness 623 stated that Krajišnik and Karadžić "insisted throughout that time on having an ethnically pure Serb area."⁵⁴¹

193. Krajišnik's claim⁵⁴² [REDACTED].⁵⁴³ Kecmanović did not testify as to whether Krajišnik was obsessed with ethnic cleansing (he was not asked).⁵⁴⁴

⁵³³ *Krajišnik* Brief, paras. 91, 92, 168, 170 fn.250.

⁵³⁴ Judgement, paras.947, 1035-1038.

⁵³⁵ Judgement, Section 6.9, paras. 950-974.

⁵³⁶ Judgement, paras.974.

⁵³⁷ *Krajišnik* Brief, paras.97-99.

⁵³⁸ *Krajišnik* Brief, para.99, 446.

⁵³⁹ Judgement, para.950.

⁵⁴⁰ *Krajišnik* Brief, para.391.

⁵⁴¹ Judgement, paras. 950, 1115.

⁵⁴² *Krajišnik* Brief, para.446.

[REDACTED]. His argument that these plans provided for a division of territory ignores the fact that Cutileiro's plan did not provide for ethnic cleansing.⁵⁴⁵ Krajišnik fails to show why the Chamber's assessment of the credibility and reliability of Witness 623 was unreasonable in light of all the evidence.

194. Krajišnik challenges, as "unrealistic and unusual",⁵⁴⁶ the Chamber's finding that it "has not found any evidence that the Accused ever tried to defend Muslims in the Assembly."⁵⁴⁷ He argues that the Chamber's finding disregarded that "the Muslims and the Serbs were enemies in the way that they fought and killed each other." However, his argument overlooks that some did speak up for the Muslims⁵⁴⁸ and in any case, that a conflict is fought between armed forces and Krajišnik, as a Bosnian-Serb leader, could and should have defended civilians, including Muslims. The Chamber's finding was reasonable.

195. The Chamber did not neglect documentary evidence providing for the protection of the civilian population, prevention of deportation *etc.*,⁵⁴⁹ as Krajišnik alleges.⁵⁵⁰ The Chamber considered the first exhibit he cites.⁵⁵¹ The second one is Karadžić's decision ordering that those who had left and did not return would lose their citizenship and all acquired rights including health insurance and housing.⁵⁵² His decision was issued at a time when the forcible displacement and murder of Croats and Muslims made it impossible for them to return. Karadžić's order did not facilitate returns but rather deprived Croats and Muslims of their rights, making their expulsion permanent.

196. Krajišnik challenges⁵⁵³ the finding that on 10 June 1992 Mladić informed a group of Bosnian-Serb leaders including Krajišnik of his intention to shell Sarajevo with all available means.⁵⁵⁴ In this connection, Krajišnik claims that the Chamber should have considered the general offensive of Sarajevo Muslim troops on 7 and 8

⁵⁴³ Judgement, para.950.

⁵⁴⁴ Kecmanović, T.22362-22367 (open session).

⁵⁴⁵ *Krajišnik* Brief, para.80 bullets 3, 4, 85, 152.

⁵⁴⁶ *Krajišnik* Brief, para.106.

⁵⁴⁷ Judgement, para.955.

⁵⁴⁸ Judgement, para.956.

⁵⁴⁹ Judgement, para.957.

⁵⁵⁰ *Krajišnik* Brief, para.74, fns.69-70.

⁵⁵¹ Judgement, para.957, fn.1899.

⁵⁵² Exh.P529,tab.165.

⁵⁵³ *Krajišnik* Brief, para.389.

⁵⁵⁴ Judgement, para.959.

June 1992. However, this offensive was “warded off on all fronts” by 8 June.⁵⁵⁵ Its relevance for any Bosnian-Serb shelling action on and after 10 June and after is an attempt at justification after the fact. Beyond that, Krajišnik merely re-interprets the evidence and points out allegedly illogical implications of the Chamber’s findings but does not establish why the Chamber’s assessment was unreasonable.

197. In support of his claim that he was not present at the 10 June meeting where Mladić announced the shelling of Sarajevo, [REDACTED].⁵⁵⁶ [REDACTED].⁵⁵⁷ [REDACTED].⁵⁵⁸ [REDACTED].⁵⁵⁹ He does not articulate the relevance of these arguments or show how the Chamber was unreasonable in its assessment of Witness 680’s evidence.

198. Krajišnik claims that he did not know about the crimes in Bijeljina relying on Plavšić’s alleged testimony that “she had not reported to the Accused after her visit to Bijeljina”.⁵⁶⁰ However, Plavšić only stated that Krajišnik was not informed about her departure to Bijeljina. In any case, Plavšić reasoned that Krajišnik did not have to be informed because he was only the Speaker of the Assembly not a member of the Presidency.⁵⁶¹ The Chamber expressly rejected this view.⁵⁶² Moreover, the crimes were common knowledge. On 8 April 1992, Muslims in Zvornik already knew of the killings and expulsions committed in Bijeljina at the beginning of the April. They were terrified that the same would happen to them.⁵⁶³ Despite the apparent notoriety of the Bijeljina crimes, Krajišnik maintains that he had not known of them.⁵⁶⁴ He fails to establish that the Chamber’s conclusion was unreasonable.⁵⁶⁵

199. Krajišnik’s claim⁵⁶⁶ that he did not know how volunteers were recruited because Plavšić invited volunteers ignores the Chamber’s findings that Krajišnik,

⁵⁵⁵ Exh.P65tab.153, Item 1.

⁵⁵⁶ *Krajišnik* Brief, paras. 397, fn.627, 313. *See also* *Krajišnik* Brief, paras.103, 184 bullet 3.

⁵⁵⁷ *Krajišnik* Brief, para.313.

⁵⁵⁸ *Krajišnik* Brief, para.313.

⁵⁵⁹ *Krajišnik* Brief, para.313, fn.452.

⁵⁶⁰ *Krajišnik* Brief, paras.34, 238, 362 bullets 6, 7, 365.

⁵⁶¹ Plavšić, T.26798 (open session). At para.133 of his Brief, Krajišnik argues that Plavšić should not be relied upon since she saw him in a negative light. However, Plavšić herself stated that she was on bad terms with Krajišnik and Chamber was aware of this.

⁵⁶² Judgement, paras. 161, 167, 168, 169.

⁵⁶³ Judgement, para.962.

⁵⁶⁴ *Krajišnik* Brief, para.34.

⁵⁶⁵ Similarly Krajišnik’s reliance on Plavšić’s testimony in *Krajišnik* Brief, para.403, 427 is misplaced when the evidence in Judgement, para.965, fn.1925 is considered.

⁵⁶⁶ *Krajišnik* Brief, para.315.

Karadžić and others from the Bosnian-Serb leadership were informed of the centre in Belgrade where volunteers gathered to be sent to fight in Bosnia Herzegovina.⁵⁶⁷

200. Krajišnik also submits that he did not know of the crimes in Zvornik.⁵⁶⁸ The Chamber found, however, that Đokanović had informed Krajišnik, Plavšić, Karadžić and Koljević of these crimes.⁵⁶⁹ Krajišnik's arguments against the credibility of this witness fail because:

- even if Đokanović would not publicly mention crimes in a newspaper interview or during an Assembly session, this does not mean that he did not do so in private to the leadership;⁵⁷⁰
- the fact that Đokanović was a war commissioner in municipalities where crimes were committed⁵⁷¹ does not explain why this would require a reasonable trial chamber to disbelieve him;
- the claim that Đokanović did not repeat the information about the crimes in Zvornik at a subsequent meeting is unsupported:⁵⁷² the evidence Krajišnik refers to does not address the content of the meeting in question.⁵⁷³

201. Whether or not the report of the Government commission visiting prisons mentioned the crimes in Zvornik⁵⁷⁴ is irrelevant because Krajišnik was informed about the crimes by Đokanović.

202. Krajišnik's argument that Mandić did not confirm that there was ethnic cleansing⁵⁷⁵ disregards Mandić's testimony referred to by the Chamber.⁵⁷⁶ Instead Krajišnik relies on another portion of his testimony. He fails to show why the Chamber's finding and its reliance on Mandić's testimony was unreasonable.

⁵⁶⁷ Judgement, para.208.

⁵⁶⁸ *Krajišnik* Brief, para.402.

⁵⁶⁹ Judgement, para.964.

⁵⁷⁰ *Krajišnik* Brief, para.402 bullets 1-2.

⁵⁷¹ *Krajišnik* Brief, para.402 bullet 3.

⁵⁷² *Krajišnik* Brief, para.402 bullets 4, 5.

⁵⁷³ Đokanović, T.10597.

⁵⁷⁴ *Krajišnik* Brief, para.374.

⁵⁷⁵ *Krajišnik* Brief, para.420.

⁵⁷⁶ Judgement, para.969, fn.1928.

203. Krajišnik claims that he was not informed about the shelling of Sarajevo on 14 May 1992 because he was not in Pale.⁵⁷⁷ First, not being in Pale does not mean that he was not informed. Second, Sarajevo was shelled on several dates, not only 14 May.⁵⁷⁸ Third, Krajišnik does not refer to any evidence on the record capable of overcoming the Chamber's finding that he knew of the shelling. Among other things, he was a member of the Supreme Command and had a special interest in Sarajevo, his home town.

204. [REDACTED].⁵⁷⁹ [REDACTED].⁵⁸⁰ In support, he refers only to one passage from Subotić's statement about the massacre carried out by Prijedor Police in Korićanske Stijene (a Skender Vakuf municipality).⁵⁸¹ Subotić stated that Karadžić received a report on this massacre from the Banja Luka MUP.⁵⁸² [REDACTED] In any case Subotić stated that later Karadžić initiated investigations⁵⁸³ which the Chamber found to be a cover-up.⁵⁸⁴ [REDACTED].

205. Krajišnik's denial of knowing about the Korićanske Stijene massacre should be dismissed.⁵⁸⁵ His absence from Pale on the day of the massacre and two days after does not prove he would not have been informed when he returned. Krajišnik's denial partially depends on an investigation by Drljača who, according to army reports, was responsible for the Korićanske Stijene crimes.⁵⁸⁶ Based on the failure to investigate the crime, the Chamber found a cover-up.⁵⁸⁷ Further, the Chamber, while acknowledging Subotić's testimony,⁵⁸⁸ found that Krajišnik was informed about the massacre.⁵⁸⁹ Krajišnik has not shown why this finding was unreasonable.⁵⁹⁰

206. Colonel Radislav Krstić ordered the expulsion of the Muslims in Novoseoci and the massacre of 40 to 45 Muslim males and reported to the VRS main staff that

⁵⁷⁷ *Krajišnik* Brief, paras. 102, 198, fn.287, 389 bullet 2.

⁵⁷⁸ Judgement, paras. 544, 560, 561, 562, 567, 576, 578, 584, 591, 599, 600.

⁵⁷⁹ [REDACTED].

⁵⁸⁰ *Krajišnik* Brief, para.329 bullet 1.

⁵⁸¹ Judgement, paras. 494, 970.

⁵⁸² Subotić, T.26592-26593 (open session).

⁵⁸³ Subotić, T.26594 (open session).

⁵⁸⁴ Judgement, para.970.

⁵⁸⁵ *Krajišnik* Brief, paras. 110, 184 bullet 5, 198, fn.287, 388.

⁵⁸⁶ Judgement, para.494.

⁵⁸⁷ Judgement, paras. 494, 970.

⁵⁸⁸ *Krajišnik* Brief, para.388.

⁵⁸⁹ Judgement, para.970.

⁵⁹⁰ Above, section IV. E.

the town of Novoseoci was cleansed.⁵⁹¹ Krajišnik's claim that he did not know of these events should also be dismissed.⁵⁹² Krajišnik relies upon Witness Tupajić's testimony that he did not report the crime. First, this information is irrelevant since the Bosnian-Serb leadership would have been informed by the VRS Main Staff. Second, when asked why he did not report in order to get something done about the massacre, Tupajić said "I didn't send any reports because I knew that nothing would be [*sic*] in this case."⁵⁹³

207. Krajišnik challenges⁵⁹⁴ the Chamber's conclusion that he was regularly informed of the crimes, claiming that its conclusion was based on Trifko Radić's statement to the Assembly.⁵⁹⁵ The Chamber had before it a vast evidentiary foundation supporting Krajišnik's knowledge, which Radić's statement confirms.⁵⁹⁶ Krajišnik's other challenges⁵⁹⁷ against the Chamber's assessment of Radić's comments⁵⁹⁸ merely assert that Radić did not mean what he said. Krajišnik fails to show how the Chamber's finding was unreasonable.

208. Krajišnik claims that the "Chamber charged [him] with advocating the division of Bosnia and Herzegovina."⁵⁹⁹ This conjecture does not explain how the Chamber came to an unreasonable conclusion in judging the evidence of his conduct.

209. Krajišnik alleges that it was not the practice for him to be informed about events such as those in Brčko.⁶⁰⁰ Beyond mere denial, he does not offer any substantiation for why the Chamber's findings were unreasonable. He makes similar and unsupported allegations in paragraphs 52, 64, 66-67, 96, 113, 114, 116, 184 bullet 11 last sentence, 389 bullet 1 and 393.

8. Knowledge of and support for armed forces⁶⁰¹

210. The Chamber found that Krajišnik "did not just *know* about the operations of the Bosnian-Serb armed forces in 1992, he actively supervised them as a member of

⁵⁹¹ Judgement, para.971.

⁵⁹² *Krajišnik* Brief, paras. 111, 184 bullet 10.

⁵⁹³ T.15437—39 (open session).

⁵⁹⁴ *Krajišnik* Brief, para.115, bullet 1.

⁵⁹⁵ Judgement, para.974.

⁵⁹⁶ Part IV. E.

⁵⁹⁷ *Krajišnik* Brief, para.115.

⁵⁹⁸ Judgement, para.974.

⁵⁹⁹ *Krajišnik* Brief, paras. 100-101.

⁶⁰⁰ *Krajišnik* Brief, paras. 112, 140.

⁶⁰¹ Judgement, Section 6.10, paras. 975-986.

the leadership.”⁶⁰² He challenges these findings. Because they have been addressed in the Contributions Section of this brief, they will not be repeated here.⁶⁰³

9. The Accused’s style of leadership⁶⁰⁴

211. The Chamber found that Krajišnik and Karadžić “in reality ran Republika Srpska as a personal fief. They intervened and exerted direct influence at all levels of Bosnian-Serb affairs, including military operations.”⁶⁰⁵ [REDACTED]⁶⁰⁶ are also addressed in the Contributions Section and will not be repeated here.⁶⁰⁷

212. One specific challenge bears discussion;⁶⁰⁸ that is the challenge to the Chamber’s finding that at the meeting with Ilidža officials, they discussed military matters.⁶⁰⁹ Krajišnik relies on testimony of Witness Prstojević. While Prstojević testified that at the meeting attended by Krajišnik, Karadžić, Mladić and some other representatives of the Main Staff of the Sarajevo Romanija Corps, military operations were not discussed,⁶¹⁰ he stated that the security and political situation in the area of responsibility of the Sarajevo Romanija Corps, as well as cooperation with the army, was discussed.⁶¹¹ The Chamber’s conclusion is consistent with his evidence. His challenge should be dismissed.

10. Information flows⁶¹²

213. The Chamber found direct evidence that Krajišnik was aware of important information; it also found copious information flow evidence to support its conclusion that no important information would have been withheld from Krajišnik, the second most powerful leader in the Bosnian-Serb Republic. Krajišnik’s submissions generally do not address the information flow findings. Instead he makes various irrelevant

⁶⁰² Judgement, para.975.

⁶⁰³ Part IV. D. 3. .

⁶⁰⁴ Judgement, Section 6.11, paras. 987-1005.

⁶⁰⁵ Judgement, para.987.

⁶⁰⁶ *Krajišnik* Brief, para.313.

⁶⁰⁷ Part. IV. D. 3. .

⁶⁰⁸ *Krajišnik* Brief, para.136.

⁶⁰⁹ Judgement, para.992.

⁶¹⁰ Prstojević, T.14577 (open session).

⁶¹¹ Prstojević, T.14573-14574 (open session).

⁶¹² Judgement, Section 6.12, paras.1006-1020.

claims, like he was not “in Pale” at the time.⁶¹³ Krajišnik’s challenges to the Chamber’s information flow findings fail to show error and/or demonstrate no impact.

214. Krajišnik repeatedly denies that he received reports from Mladić, the Main Staff, the MUP or other sources.⁶¹⁴ In support of his denials, he relies on several pieces of evidence⁶¹⁵ and/or simply re-assesses the evidence.⁶¹⁶ Krajišnik does not explain why a reasonable trial chamber could not conclude that important information was shared with him by others⁶¹⁷ given his position. His denials should be dismissed.

215. Krajišnik relies on Subotić’s testimony to challenge⁶¹⁸ the Chamber’s finding that he was informed about military matters, *inter alia* through Presidency sessions.⁶¹⁹ Krajišnik’s argument fails to consider the other pieces of confirming evidence cited by the Chamber in support of its finding. He does not explain why Subotić’s testimony should have been preferred over all the other evidence, especially given that

- Subotić testified that at Presidency sessions logistical matters connected with military matters were discussed;⁶²⁰
- Subotić’s testified that he felt that if Mladić reported to anyone it was only Karadžić was mere speculation;⁶²¹
- Subotić’s testimony that Karadžić would rather consult with Plavšić and Koljević than with Krajišnik,⁶²² was contradicted by Plavšić herself.⁶²³

Krajišnik does not demonstrate how the Chamber’s findings were unreasonable.

216. Likewise, Krajišnik does not demonstrate how Plavšić’s evidence⁶²⁴ shows the Chamber’s findings that he was informed about military matters, *inter alia* through Presidency sessions, were unreasonable.⁶²⁵

⁶¹³ *Krajišnik* Brief, e.g. paras. 102 bullet 9, 110, 142, 344 bullet 4, 368, 370, 425.

⁶¹⁴ *Krajišnik* Brief, paras. 98, 109, 122, 140, 150, 151, 154, 184 bullets 15, 17, 191, 205, 312 bullet 4, 333, 344 bullets 5-7, 388, 419, 423, 432, 447, 450.

⁶¹⁵ See *Krajišnik* Brief, para. 98 fns. 102, 104, 105, 106, 109.

⁶¹⁶ *Krajišnik* Brief, para. 423.

⁶¹⁷ Judgement, paras. 1006-1012.

⁶¹⁸ *Krajišnik* Brief, paras. 382, 441.

⁶¹⁹ Judgement, paras. 1009-1010 and 205-207.

⁶²⁰ *Krajišnik* Brief, para. 382, fn. 584.

⁶²¹ *Krajišnik* Brief, para. 441; Subotić, T. 26451 (open session).

- Her opinion that Mladić made decisions on his own was inconsistent with evidence that the Presidency discussed military matters with, and gave orders to, the VRS;⁶²⁶
- Plavšić saw a MUP report addressed to the President of the Presidency and to the President of the Assembly leading her “to conclude that Mr. Karadžić and Mr. Krajišnik were kept better informed than the other participants of the meetings of the Presidency.”⁶²⁷ She did not say, as Krajišnik argues, that she did not receive MUP reports.⁶²⁸

217. Krajišnik attempts⁶²⁹ to undermine the significance of a fax dated 15 May 1992 requesting military equipment that bore a handwritten note, “Very urgent, personal attention Karadžić and Krajišnik.”⁶³⁰ He alleges that he was not in Pale on this day and that session of 14 May 1992 was not a joint Government/SNB session, without explaining their relevance or impact. His claim that Mladić and Gvero came unannounced to the session of 31 August 1992 is irrelevant. None of these arguments affect the Chamber’s finding that Karadžić and Krajišnik received information about, and were involved in, important military matters.

218. Krajišnik claims⁶³¹ that the Chamber misquoted him when stating that he had conceded the possibility that he received army reports.⁶³² He claims that he said instead: “No no, that’s not the way it was. The army did not inform me.” Krajišnik misrepresents the record since he said in the same paragraph: “I don’t rule out the possibility that they sent me a copy here and there, but I certainly wasn’t informed, nor was it their obligation.”⁶³³

219. Krajišnik challenges⁶³⁴ the Chamber’s reliance on Sokolac’s statement that Krajišnik stated that a common state was no longer possible and that Muslims had led

⁶²² *Krajišnik* Brief, para.441; fn.740.

⁶²³ Judgement, para.180.

⁶²⁴ *Krajišnik* Brief, paras. 382, 441; fn.737.

⁶²⁵ Judgement; para.1010,1024.

⁶²⁶ See Judgement, para.961.

⁶²⁷ Exh.C7, para.32.

⁶²⁸ *Krajišnik* Brief, para.441;

⁶²⁹ *Krajišnik* Brief, para.425.

⁶³⁰ Judgement, para.1011.

⁶³¹ *Krajišnik* Brief, para.383.

⁶³² Judgement, para.1012

⁶³³ *Krajišnik*, T.25614 (open session).

⁶³⁴ *Krajišnik* Brief, para. 395, para.405.

the Serbs into war.⁶³⁵ Krajišnik's argument that the Assembly wanted a political resolution instead of a military one⁶³⁶ is at odds with his own words that the "thing with the Muslims and Croats" could only be solved by war without calling it one.⁶³⁷ He merely re-interprets the evidence and fails to show that the Chamber's interpretation was unreasonable.

220. Krajišnik's contests the Chamber's finding that he made many journeys,⁶³⁸ claiming that he travelled very little.⁶³⁹ In support he lists some of his journeys and omits others.⁶⁴⁰ His claim that he spent only 8 days and 10 hours outside of Pale is unsupported and irrelevant.

221. Krajišnik questions⁶⁴¹ the Chamber's reliance⁶⁴² upon his testimony that he discussed with representatives from municipalities⁶⁴³ and that "I knew every deputy as well as I know myself, and when one of them spoke, I knew whether he was bragging or telling the truth."⁶⁴⁴ Krajišnik re-interprets this evidence without explanation or showing how the Chamber's finding was unreasonable. The Chamber's conclusion is consistent, for example, with Plavšić's testimony that Krajišnik's office was always full of deputies and municipality representatives.⁶⁴⁵ Similar examples of re-interpreting evidence without explanation or showing impact are found at paragraphs 95 and 396 of his brief.

222. Krajišnik attempts to use a remark of deputy Srdić in support of his claim that he did not frequently meet with deputies and receive information.⁶⁴⁶ Srdić's remark is about receiving instructions, not the frequency of meetings with Krajišnik to share information. The Chamber's finding was not unreasonable.

223. Krajišnik also repeatedly denies knowledge of certain events, claiming insufficient means of communication⁶⁴⁷ and disregarding the Chamber's findings that

⁶³⁵ Judgement, para.1015.

⁶³⁶ *Krajišnik* Brief, para.139.

⁶³⁷ Judgement, para.977.

⁶³⁸ Judgement, para.1015-6.

⁶³⁹ *Krajišnik* Brief, para.152, bullet 1.

⁶⁴⁰ Judgement, para.1044.

⁶⁴¹ *Krajišnik* Brief, paras. 153, 156.

⁶⁴² Judgement, para.1017.

⁶⁴³ *Krajišnik*, T.25881.

⁶⁴⁴ *Krajišnik*, T.24623.

⁶⁴⁵ Judgement, para.1017.

⁶⁴⁶ *Krajišnik* Brief, para.396.

⁶⁴⁷ *Krajišnik* Brief, paras. 55-58, 157, 380, 414

the Bosnian-Serb leadership had access to and used military communication channels.⁶⁴⁸

224. Krajišnik makes a general claim that he did not believe “reports of international representatives” about detention crimes but rather that he believed instead members of the Bosnian-Serb leadership in charge of prisons and captives.⁶⁴⁹ He does not explain why it was unreasonable for the Chamber to conclude that Krajišnik’s information sources were broadened by his international exposure.⁶⁵⁰ Moreover, he omits to mention that the Chamber found that he and the Presidency were involved in dealing with prisoners to the extent that they could secure their release or exchange.⁶⁵¹

225. Krajišnik also claims that Sarajevo municipalities did not inform him of crimes. In support, he points to the testimony of Prstojević who spoke of meetings between himself and Krajišnik but did not mention crimes.⁶⁵² However, the Chamber was entitled to use Prstojević’s evidence to establish flows of information⁶⁵³ and to give no weight to Prstojević’s failure to admit that crimes were discussed given that evidence suggested that Prstojević himself had been involved in these crimes.⁶⁵⁴

226. Krajišnik uses the finding that Plavšić said Krajišnik met with municipality representatives⁶⁵⁵ to base a challenge against the findings in paragraph 278 of the Judgement.⁶⁵⁶ He ignores that the Chamber relied on Plavšić’s testimony for only a limited point, which he appears not to dispute. The Chamber cited other evidence confirming that Krajišnik resolved problems of municipality representatives and that the Presidency and sometimes Krajišnik sent out the commissioners to collect and communicate information. Krajišnik has not shown why his narrow interpretations⁶⁵⁷ are more reasonable than those of the Chamber.⁶⁵⁸

⁶⁴⁸ Judgement, paras. 1018, see also Judgement; paras. 145, 147-149, 200.

⁶⁴⁹ *Krajišnik* Brief, paras. 158, 169-171, 428-429.

⁶⁵⁰ Judgement; para.1020, 1030-1034, 1054.

⁶⁵¹ Judgement, para.205.

⁶⁵² *Krajišnik* Brief, para.155; Krajišnik mentions further witnesses but provides no references.

⁶⁵³ Judgement, para.1017.

⁶⁵⁴ Judgement, para.1021.

⁶⁵⁵ Plavšić, T.26898.

⁶⁵⁶ *Krajišnik* Brief, paras. 352, 353.

⁶⁵⁷ *Krajišnik* Brief, para.352, fn.539.

⁶⁵⁸ See also; Judgement, para. 279, fn.618.

227. Krajišnik's allegations about false testimony given by Witness Davidović⁶⁵⁹ are mere allegations which are unsubstantiated or a misinterpretation of the evidence without explanation. They should be dismissed. Davidović's extensive testimony about discussions in April or May 1992 involving, among others, Krajišnik and Arkan,⁶⁶⁰ cannot be "reduced to" one sentence. The unsupported assertion regarding the Chamber's use of Sokolac's statement can also be dismissed.⁶⁶¹

228. Krajišnik refers to the Law of Internal Affairs for his claim that he was not briefed by the MUP.⁶⁶² Even though the law did not say the MUP was obliged to brief him, Krajišnik, through his senior positions, had access to information contained in MUP reports. In any case, he does not show why the Chamber should have preferred this document over all other relevant evidence it relied upon to make its finding.⁶⁶³ Krajišnik's statement that the Bosnian-Serb Republic was allowed to have a MUP is irrelevant.

11. Knowledge of and support for population expulsions⁶⁶⁴

229. Krajišnik denies any knowledge or support for population expulsions.⁶⁶⁵ The Chamber used Mandić's statement about hiring a Muslim Judge to illustrate the politics of ethnic cleansing.⁶⁶⁶ Krajišnik misreads the evidence to argue it did not show ethnic cleansing, but rather difficulties in hiring Muslim judges.⁶⁶⁷

230. In explaining Đukić's statement that he could not live in a state where Muslim justice was done, Krajišnik argues that, two days before, Karadžić had issued an order regarding Đukić's home municipality.⁶⁶⁸ However, he does not explain the relevance of this event, nor how the Chamber erred in using it to support a finding that Krajišnik knew of population expulsions.⁶⁶⁹ Nor does he explain how his claim that the

⁶⁵⁹ *Krajišnik* Brief, paras. 124, 125.

⁶⁶⁰ Davidović, *e.g.*, T. 14255-14257, 15281 relied upon in Judgement, para.983.

⁶⁶¹ *Krajišnik* Brief, paras. 395, 405.

⁶⁶² *Krajišnik* Brief, paras. 388. *See above* paras 137-138.

⁶⁶³ Judgement, paras. 244, 1012.

⁶⁶⁴ Judgement, Section 6.13, paras. 1021-1034.

⁶⁶⁵ *Krajišnik* Brief, paras. 107, 159. *See also* para.47 3rd sentence where Krajišnik makes the same argument without any substantiation.

⁶⁶⁶ Judgement, para.1021-1022.

⁶⁶⁷ *Krajišnik* Brief, para.160..

⁶⁶⁸ *Krajišnik* Brief, para.161.

⁶⁶⁹ Judgement, para.1022.

Assembly deputies criticized the Government is relevant to this finding.⁶⁷⁰ Equally irrelevant is Krajišnik's reference to a meeting on 14 April 1992 in Ilidža.⁶⁷¹

231. Krajišnik's argument that he did not receive reports from Mladić⁶⁷² does not undermine the Chamber's conclusion that he and Karadžić received the information contained in the reports once they reached Pale.⁶⁷³ Further, his claim that he was not informed about the contents of two 1st KK reports on expulsions⁶⁷⁴ disregards that the Presidency, of which he was a member, was briefed by the Main Staff.

232. Krajišnik argues that he publicly condemned any form of ethnic cleansing, relying on a reference to Witness Thompson's evidence that Krajišnik made statements against ethnic cleansing.⁶⁷⁵ However, he ignores Thompson's clarification that the contrast between these statements and what had happened on the ground must have appeared grotesque to the population.⁶⁷⁶ He does not show how Thompson's evidence, read together in the context of all the other evidence before the Chamber, demonstrates that its finding that Krajišnik had knowledge of the forced displacement of Muslims and Croats was unreasonable.⁶⁷⁷

233. Krajišnik challenges⁶⁷⁸ the Chamber's use of Brdanin's remarks about "superfluous Muslims [...] planning to join the jihad."⁶⁷⁹ His argument that they were not personal to him and cannot be linked to him or the Bosnian-Serb leadership misses the point. These statements were consistent with the very state policy which Krajišnik helped to implement and achieve. He does not show how the Chamber was unreasonable in referring to Brdanin's remarks.

234. Krajišnik's challenge to Witness 382's testimony⁶⁸⁰ is irrelevant to the referenced portion of the Judgement.⁶⁸¹ Similarly, his challenges to the evidence of other witnesses at paragraphs 407 [Witness 583], 366, 398, 400 [Witness Davidović],

⁶⁷⁰ *Krajišnik* Brief, para. 162.

⁶⁷¹ *Krajišnik* Brief, para.163.

⁶⁷² *Krajišnik* Brief, paras. 164, 440.

⁶⁷³ Judgement, para.1024-1026.

⁶⁷⁴ *Krajišnik* Brief, para.414, 165.

⁶⁷⁵ *Krajišnik* Brief, paras. 140, bullet 2, fn.189; 216 referring to Judgement, paras. 999, 1024, 1027, 1032, 1034.

⁶⁷⁶ Thompson, T.15603.

⁶⁷⁷ Judgement, para.1023-1024.

⁶⁷⁸ *Krajišnik* Brief, para.426.

⁶⁷⁹ Judgement, para.1028.

⁶⁸⁰ *Krajišnik* Brief, para.406.

⁶⁸¹ Judgement, para.1029.

415 [Witness Radić] 409 [Witness Okun], 410 [Witness Mazowiecki's neutrality] and 376 amount to mere reassessments or a contrary interpretation without substantiation and do not demonstrate why the Chamber's use of their evidence was unreasonable.⁶⁸²

235. Krajišnik challenges⁶⁸³ Witness Okun's credibility about his testimony that Krajišnik took part in two meetings in Geneva where ethnic cleansing was discussed.⁶⁸⁴ He argues⁶⁸⁵ that Okun lied since Serbian officials publicly denied ethnic cleansing. The Chamber accepted that the Bosnian-Serb leadership publicly denied crimes,⁶⁸⁶ but their denial did not establish that crimes associated with ethnic cleansing did not occur or that Krajišnik did not know of them, as Krajišnik argues. In addition, he cites to Defence exhibits which do not support his claim that Okun gave false testimony; in fact Exhibit D227 confirms that ethnic cleansing took place.⁶⁸⁷ His arguments are a mere reassessment of the evidence and show no error.

12. Knowledge of and support for detention of civilians⁶⁸⁸

236. Krajišnik denied having knowledge of the detention of civilians at trial.⁶⁸⁹ The Chamber rejected his denials and found that many facts about detentions were well-known to Krajišnik before 6 August 1992.⁶⁹⁰ On appeal, Krajišnik renews his denials. Krajišnik does not demonstrate that the Chamber's rejection of his denials was unreasonable.

237. Krajišnik argues that he believed that he and those around him did not know the truth about the camps.⁶⁹¹ He cites to documents showing that in late August the Omarska and Keraterm camps were closed by "Pale" (the Bosnian-Serb leadership) partly in response to increased international attention.⁶⁹² Immediately thereafter, the Ministry of Health requested municipalities to indicate whether camps existed on their territory. On 28 August 1992 Simo Drljača, the Prijedor chief of police, who had set

⁶⁸² Judgement, para.1030-1035.

⁶⁸³ *Krajišnik* Brief, paras. 237, 408.

⁶⁸⁴ Judgement, para.1031.

⁶⁸⁵ *Krajišnik* Brief, para.408, fns.659, 662.

⁶⁸⁶ Judgement, para.1032.

⁶⁸⁷ *Krajišnik* Brief, para.408, fns. 660, 661.

⁶⁸⁸ Judgement, Section 6.14, paras.1035-1064.

⁶⁸⁹ Judgement, para.1036.

⁶⁹⁰ Judgement, para.1037.

⁶⁹¹ *Krajišnik* Brief, paras.184 bullet 6, 193, 236, fn.324, 444.

⁶⁹² Judgement, para.496, Exh.P308tab6.

up Omarska camp,⁶⁹³ responded that there were no camps in Prijedor.⁶⁹⁴ There were or had been 58 detention centres in Prijedor.⁶⁹⁵ These references do not show Krajišnik and others did not know of crimes, but that the camps were attracting such an amount of international attention that the leadership had to act. Krajišnik does not show why the Chamber's finding about his knowledge of civilian detentions was unreasonable.

238. Krajišnik challenges⁶⁹⁶ the finding that Prime Minister Đerić mentioned civilian prisoners in a letter dated 28 April 1992 to the MUP and TO.⁶⁹⁷ The Chamber cited and referred to its previous findings in support of its conclusion. Krajišnik also refers to Đerić's testimony, but that testimony does not address the letter.

239. Given Vuković's letter referred to by the Chamber, it was entitled to reject Mandić's testimony that the women and children he spoke about with Krajišnik were not prisoners.⁶⁹⁸ Krajišnik does not demonstrate why the Chamber reached an unreasonable conclusion that Mandić talked about detained civilians with Krajišnik on 26 June 1992.⁶⁹⁹

240. Krajišnik challenges the impartiality of Witness 239⁷⁰⁰ and the credibility of Witness Omerović.⁷⁰¹ He merely reassesses of the evidence, and does not show how the Chamber erred in relying on these witnesses.⁷⁰²

241. Aside from Mandić's denial,⁷⁰³ which the Chamber heard, Krajišnik provides no support for his claim that the Chamber unreasonably based its finding of his knowledge of detentions of civilians on Mandić's permission to use prisoners for work assignments.⁷⁰⁴ Krajišnik argues that while Mandić informed him about Kula prison and other prisons - Foča and Lukavica barracks, not within his authority - he did not talk about crimes as he did not know about them. This denial is contradicted

⁶⁹³ Judgement, para.489.

⁶⁹⁴ Judgement, para.496.

⁶⁹⁵ Judgement, para.499.

⁶⁹⁶ *Krajišnik* Brief, para.172, fn.250.

⁶⁹⁷ Judgement, para.1038.

⁶⁹⁸ Judgement, para.1041.

⁶⁹⁹ *Krajišnik* Brief, para.175, fn.252.

⁷⁰⁰ *Krajišnik* Brief, para.411.

⁷⁰¹ *Krajišnik* Brief, para.413.

⁷⁰² Judgement, para.1045, 1106.

⁷⁰³ *Krajišnik* Brief, para.412.

⁷⁰⁴ Judgement, paras.1044, 1046.

by the findings and references at Judgement paragraphs 1047 to 1064 and ignores that Mandić reported to Krajišnik.⁷⁰⁵

242. Stanišić's knowledge of expulsions and civilian detentions was shared with Karadžić and Prime Minister Đerić.⁷⁰⁶ Krajišnik denies sharing in this knowledge.⁷⁰⁷ He refers to a "K-" document. Finally, Krajišnik's reference to Stanišić's letter requesting information about the disarmament of paramilitaries is irrelevant to his knowledge about civilian detentions.⁷⁰⁸

243. Krajišnik challenges⁷⁰⁹ the Chamber's finding that he admitted knowing about the international community's accusations regarding camps.⁷¹⁰ The Chamber found that the Bosnian-Serb authorities engaged in a cover-up of crimes in detention facilities. It rejected Krajišnik's argument that he believed Ostojić's report that everything was fine in the prisons.⁷¹¹ [REDACTED]⁷¹² These claims should be dismissed.

244. Krajišnik does not explain⁷¹³ the relevance of Vuković's allegations of ethnic cleansing and their alleged effect on prisoner exchanges or of POW exchanges using commissions with UNPROFOR mediation, to his challenge of the Chamber's finding that he had knowledge of civilian detentions.⁷¹⁴ Similarly, he asserts but fails to explain the relevance of the following facts to the Chamber's findings about his knowledge: (1) he did not know of the ICRC's Manjača report⁷¹⁵ - addressed to Karadžić - that Manjača camp was run by the VRS⁷¹⁶, (2) the Presidency pardoned prisoners⁷¹⁷ and (3) an unreferenced report from the 1st KK⁷¹⁸ shows that the prison situation was inaccurately described.⁷¹⁹ Another similarly deficient allegation is that he did not receive information from the 1st KK. He simply refers to two such reports

⁷⁰⁵ Judgement, para.184.

⁷⁰⁶ Judgement, para.1050-1051.

⁷⁰⁷ *Krajišnik* Brief, para. 430.

⁷⁰⁸ *Krajišnik* Brief, para.430, referring to Exh.P818.

⁷⁰⁹ *Krajišnik* Brief, para.431.

⁷¹⁰ Judgement, para.1051-1052.

⁷¹¹ Judgement, para.1053-1054.

⁷¹² Witness 666, T.15937.

⁷¹³ *Krajišnik* Brief, paras. 166, 167, 176-177, 367, 385.

⁷¹⁴ Judgement, paras. 1056, 1035.

⁷¹⁵ *Krajišnik* Brief, paras. 178, 214.

⁷¹⁶ *Krajišnik* Brief, para.179.

⁷¹⁷ *Krajišnik* Brief, para.180.

⁷¹⁸ Probably a reference to Exh.P1250.

⁷¹⁹ *Krajišnik* Brief, paras. 180, 181.

and does not explain how they support his position.⁷²⁰ These claims should be dismissed.

245. The Chamber found that the Presidency, including Krajišnik, closely followed the release of a number of prisoners from Manjača camp. These prisoners had serious health issues and had not been combatants.⁷²¹ The Chamber relied on several documents from deliberations at Manjača to a decision of the Presidency to release some civilian prisoners.⁷²² Krajišnik's denial of knowledge⁷²³ relies on his interpretation of the evidence⁷²⁴ and on several documents⁷²⁵ showing heightened Presidency activity concerning detention facilities in July/August 1992, when international attention had increased. Krajišnik relies on the Presidency minutes not mentioning crimes but merely requiring prisoners to be treated humanely.⁷²⁶ His argument ignores the public information about civilian detention camps and the information flowing to the Bosnian-Serb leadership about them. When this evidence is considered, Krajišnik has not shown why the Chamber was unreasonable in finding that Krajišnik knew of the civilian detention camps and that the minutes about the Manjača deliberations were sanitized.⁷²⁷

246. Krajišnik challenges⁷²⁸ the Chamber's findings about his knowledge of the massacre of all inmates of the Sušica camp by MUP officers.⁷²⁹ Krajišnik is correct that Witness 666 testified that he informed army security officers - not crisis staff members - about the massacre.⁷³⁰ Krajišnik shows no impact regarding the Chamber's finding that he knew of crimes because the military authorities reported through the Main Staff to the Presidency.⁷³¹

⁷²⁰ *Krajišnik* Brief, para.184 bullet 16.

⁷²¹ Judgement, para.1057.

⁷²² Judgement, paras. 1057-1062.

⁷²³ *Krajišnik* Brief, paras. 184 bullet 7, 384.

⁷²⁴ *Krajišnik* Brief, paras. 434, 435.

⁷²⁵ *Krajišnik* Brief, para.384, fn.587.

⁷²⁶ E.g. Exh.P64A.718, p.2.

⁷²⁷ Judgement, para.1062.

⁷²⁸ *Krajišnik* Brief, paras. 372, 436.

⁷²⁹ Judgement, paras. 1063-1064.

⁷³⁰ Judgement, para.357, fn.811.

⁷³¹ E.g. Judgement, paras. 205, 206, Mladić attended Presidency sessions, for example, Judgement, paras. 957, 1009, 1011,1012.

247. Krajišnik argues that a Defence witness claimed that the crisis staff did not know about the massacre in Večiči.⁷³² However, even if this were true, a report of the 1st Krajina Corps describes the massacre.⁷³³

248. Krajišnik makes a series of unsupported denials that he did not know and was not informed about the crimes in Večiči,⁷³⁴ Brčko,⁷³⁵ Doboj,⁷³⁶ Novi Grad,⁷³⁷ Čelinac,⁷³⁸ Batković camp⁷³⁹, and Omarska, Trnopolje and Sućica prisons.⁷⁴⁰ His mere assertions should be dismissed because they disregard the Chamber's findings on the information flows to and from the Bosnian-Serb leadership.⁷⁴¹ Further the fact that Krajišnik himself never visited a prison during the war⁷⁴² is irrelevant.

13. Cover-up of detention-centre crimes⁷⁴³

249. Aside from his general denial of taking part in the cover-up of detention crimes,⁷⁴⁴ Krajišnik does not challenge any specific finding in this section of the Judgement.

14. The achievement of Momčilo Krajišnik's objectives⁷⁴⁵

250. Krajišnik states that ethnic re-composition was never his objective and that the Prosecution adduced no evidence for this assertion.⁷⁴⁶ Arguing just and honourable aims, he denies any knowledge or contribution to the forcible expulsion of non-Serbs from the territories seized by the Bosnian-Serb authorities. He makes multiple denials citing to several paragraphs in his brief.⁷⁴⁷ The Prosecution has responded to these paragraphs and demonstrated that these challenges, individually or collectively, are not capable of undermining the Chamber's conclusions.

⁷³² *Krajišnik Brief*, paras. 215, 373, 437.

⁷³³ Judgement, para.465.

⁷³⁴ *Krajišnik Brief*, paras. 215, 373, 437.

⁷³⁵ *Krajišnik Brief*, paras. 112, 142, 184 bullet 13, 368.

⁷³⁶ *Krajišnik Brief*, para.370 referring to Judgement, para.340.

⁷³⁷ *Krajišnik Brief*, para.377.

⁷³⁸ *Krajišnik Brief*, para.379. However, an order to investigate by Karadžić shows that the Bosnian-Serb leadership did know of this incident.

⁷³⁹ *Krajišnik Brief*, para.363 referring to Judgement, paras. 304-305.

⁷⁴⁰ *Krajišnik Brief*, para.433 and 372.

⁷⁴¹ Part IV. E. 10. and IV. E. 8. .

⁷⁴² *Krajišnik Brief*, para.192.

⁷⁴³ Judgement, Section 6.15, paras. 1065-1075.

⁷⁴⁴ See paras.158, 205-206, 243 above.

⁷⁴⁵ Judgement, Section 6.16, paras. 1076-1077.

⁷⁴⁶ *Krajišnik Brief*, para.182.

⁷⁴⁷ *Krajišnik Brief*, para.184.

251. In conclusion, for the reasons expressed above, Krajišnik's arguments challenging the *mens rea* findings should be dismissed as he has failed to meet the standard of review on appeal.

F. CRIMES

252. Krajišnik makes a number of individual arguments regarding the crimes that occurred in the respective municipalities.⁷⁴⁸ They should be dismissed because he has not shown any error in the Chamber's findings.

1. Muslim houses used to accommodate Serbs

253. Krajišnik argues that the reason abandoned apartments were assigned to Serb refugees was to protect them from looting and devastation.⁷⁴⁹ This argument should be dismissed. He offers no support for this mere assertion. In any event, he does not show how it could impact upon the Chamber's finding that the consequent influx of Serbs would help consolidate Serb ethnic domination in the acquired territories.⁷⁵⁰

2. Municipality Crimes

(a) Bosanski Petrovac

254. Krajišnik makes two irrelevant arguments with regard to the crimes in Bosanski Petrovac. First, he alleges that the Chamber erred in finding that there were Croats among the victims in Bosanski Petrovac.⁷⁵¹ He appears to argue that the reason the Chamber made that finding was that Exhibit P425 said there were 366 Croats in the municipality. He is incorrect. First, Exhibit P425 is irrelevant to this issue. The Chamber relied on Exhibit 954 to find that there were 48 Croats in the municipality.⁷⁵² In any event, this statistic is not the basis of the Chamber's finding that Croats were victimised. Krajišnik fails to show that the finding that Croats were unlawfully detained⁷⁵³ was unreasonable in light of the evidence it in fact relied upon.⁷⁵⁴

255. His second irrelevant challenge is that Serbs were victims of crimes in Bosanski Petrovac in 1995. It can be dismissed without further consideration.⁷⁵⁵

⁷⁴⁸ *Krajišnik* Brief, paras. 45, 47, 362, 378, 387, 401, 438-439.

⁷⁴⁹ *Krajišnik* Brief, para.45.

⁷⁵⁰ Judgement, para. 1033.

⁷⁵¹ *Krajišnik* Brief, para.378.

⁷⁵² Judgement, para.420.

⁷⁵³ Judgement, para.810.

⁷⁵⁴ See Judgement para. 425 with fn.969, particularly Malešević T.16139 (open session).

⁷⁵⁵ See *Brdanin* AJ, para.23.

256. In addition, Krajišnik alleges that the Chamber disregarded specific evidence given by Jovo Radojko.⁷⁵⁶ In fact the Chamber referred extensively to his testimony in its findings on the crimes in Bosanski Petrovac,⁷⁵⁷ thereby indicating his evidence was considered. Krajišnik fails to show that the conclusion that the Muslims were forcibly transferred⁷⁵⁸ was unreasonable in light of the totality of evidence relied upon by the Chamber.⁷⁵⁹

(b) Bijeljina

257. Bijeljina was the first municipality taken over by the Serbs.⁷⁶⁰ Whether, as Krajišnik alleges, Serbs were attacked in other municipalities prior to Bijeljina is irrelevant.⁷⁶¹ The Chamber correctly set out the ethnic composition in Bijeljina⁷⁶² and described in detail the take-over of Bijeljina municipality as established by the evidence.⁷⁶³ Krajišnik has not shown any error in the Chamber's findings. By alleging that the Muslims caused the conflict in Bijeljina, that the Serbs wanted to preserve peace and that volunteers operated on all sides,⁷⁶⁴ Krajišnik merely presents an alternative view of the evidence without showing any error in the Chamber's acceptance of a multiplicity of evidence to the contrary.⁷⁶⁵ Also, insofar as he relies on "K-" documents in support of his arguments, they should be disregarded.⁷⁶⁶

(c) Pale

258. Krajišnik alleges that evidence at trial refuted the testimony of witness Crnčalo about events in Pale.⁷⁶⁷ He refers to five defence exhibits but fails to address why no reasonable trial chamber could have accepted the evidence of Crnčalo. In addition he fails to address the fact that the Chamber relied on a multiplicity of evidence in its findings on the takeover in Pale.⁷⁶⁸ He presents an alternative interpretation of the facts which is unreferenced in the brief but which mirrors his

⁷⁵⁶ *Krajišnik* Brief, para.378 bullets 1 and 2.

⁷⁵⁷ Judgement, fns.956, 957, 960, 964, 966, 967, 971, 972, 975.

⁷⁵⁸ Judgement, para.727.

⁷⁵⁹ Judgement, set out fns. to paras. 420-428.

⁷⁶⁰ Judgement, para. 298.

⁷⁶¹ *Krajišnik* Brief, para.362.

⁷⁶² Judgement, para. 297.

⁷⁶³ Judgement, paras.298-309.

⁷⁶⁴ *Krajišnik* Brief para.362, bullets 3 and 4.

⁷⁶⁵ Judgement, set out in fns to paras.297-309.

⁷⁶⁶ *Krajišnik* Brief, para.362 bullets 2 and 8.

⁷⁶⁷ *Krajišnik* Brief, para.401, citing Judgement, para.935.

⁷⁶⁸ Judgement, paras. 584-587, 935, incl. fns.

evidence at trial, and which was rejected by the Chamber based on the totality of evidence. He fails to demonstrate why that was unreasonable. Accordingly these assertions of a contrary interpretation of evidence fail to meet the standard of review.

259. Also in this context, Krajišnik's statement that when the Muslims were moving out, Plavšić chaired the Commission in Pale is of unexplained relevance and must be dismissed.⁷⁶⁹

3. Population Expulsions

(a) Non-Serbs did not leave voluntarily

260. There is no error in the Chamber's finding that prisoners were expelled from Manjača on the basis of reports by the 1st KK from December 1992.⁷⁷⁰ Krajišnik's argument that the prisoners were not expelled but left voluntarily under the auspices of the ICRC must be dismissed.⁷⁷¹ The Chamber correctly set out the evidence that just before or upon closure of Manjača on 16 December 1992, some prisoners were transferred to Croatia, under the auspices of the ICRC, some were transferred to Batkovic camp and some were released.⁷⁷² In particular, the 1st KK reported that 1008 prisoners left on 14 December 1992 escorted by the VRS.⁷⁷³ Again on 16 December 1992, the 1st KK reported that another 1001 detainees were "escorted out".⁷⁷⁴ The remaining 418 were released under the auspices of the ICRC as stated by Krajišnik.⁷⁷⁵ However, there were no voluntary departures and the Chamber reasonably rejected this argument. Non-Serbs in the municipalities had no genuine possibility of going home because of the destruction, crimes and fear created by the Bosnian-Serb authorities and Bosnian-Serb forces.⁷⁷⁶ The fact that an international organisation assisted with the transfers does not change their forced nature.⁷⁷⁷

⁷⁶⁹ *Krajišnik* Brief, para.401 bullet 2.

⁷⁷⁰ *Judgement*, para.1097.

⁷⁷¹ *Krajišnik* Brief, para.386-387.

⁷⁷² *Judgement*, para.390.

⁷⁷³ *Judgement*, para.1026.

⁷⁷⁴ Exh.P892tab99 referred to in *Judgement*, para.1026.

⁷⁷⁵ *Krajišnik* Brief, para.387 citing Exh.P583tab108; *see also* *Judgement*, para.390.

⁷⁷⁶ *Judgement*, paras. 729-731; *see also* Exh.P891, paras.2.131-2.132.

⁷⁷⁷ *Judgement*, paras. 729-731, 1144; *See also* *Stakić* AJ, para.287.

(b) Recomposition of Territories

261. Krajišnik argues that the interview quoted by the Chamber in paragraph 1076 of the Judgement is not authentic and does not date from 1992.⁷⁷⁸ Further he asserts that because part of the interview is missing, the Chamber erroneously found that there was a military demarcation.⁷⁷⁹ These assertions are unsubstantiated. Krajišnik neither shows that the interview is not authentic nor that the Chamber erred in relying on it. In addition, he challenges the interview as one individual piece of evidence without showing any impact on the Chamber's conclusion based on the remaining evidence.⁷⁸⁰ Finally, the relevance of his reference to Exhibit D70 is unclear.⁷⁸¹ His arguments should be dismissed.

(c) Crimes committed against Serbs

262. The allegations that more Serbs left their homes than Muslims and Croats⁷⁸² and that the transfer of the Serb population occurred on a more massive scale than that of the Muslims⁷⁸³ are irrelevant.⁷⁸⁴ As part of this argument, Krajišnik also asserts that there was no evidence for the Chamber's finding that he advocated a new ethnic structure in BiH.⁷⁸⁵ The argument is unsubstantiated and should be dismissed because Krajišnik fails to show any error in the relevant findings of the Chamber.⁷⁸⁶

⁷⁷⁸ *Krajišnik* Brief, para.438.

⁷⁷⁹ *Krajišnik* Brief, para.438.

⁷⁸⁰ Judgement, paras.1076-1077.

⁷⁸¹ *Krajišnik* Brief, para.438 bullet 4.

⁷⁸² *Krajišnik* Brief, para.439.

⁷⁸³ *Krajišnik* Brief, para.47, first sentence.

⁷⁸⁴ See Judgement, para.293.

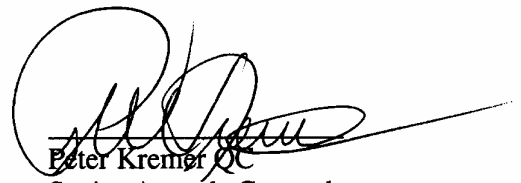
⁷⁸⁵ *Krajišnik* Brief, para.439 bullet 4.

⁷⁸⁶ Judgement, paras. 910-924, in particular paras. 918, 921 and 923.

V. CONCLUSION

263. For the foregoing reasons, the Prosecution requests that the Appeals Chamber dismiss Krajišnik's appeal and affirm his convictions.

Word Count: 26,550



Peter Kremer QC
Senior Appeals Counsel

Dated this 12th day of March 2008
At The Hague, The Netherlands

APPENDIX 1

Table indicating which paragraph of the *Krajišnik* Brief has been addressed in which paragraph(s) of the Prosecution Response

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DECLARATION PURSUANT TO RULE 112(B)

The Prosecutor will exercise due diligence to comply with his continuing Rule 68 disclosure obligations during the appeal stage of this case. As at the date of this filing, the Prosecutor has disclosed, or is in the process of disclosing, to the accused all material under Rule 68(i) which has come into his actual knowledge and, in addition, has made available to him, under Rule 68(ii), collections of relevant material held by the Prosecutor.

Dated this 12th day of March 2008
At The Hague, The Netherlands

Prosecution's Glossary

Pleadings, Orders, Decisions etc from Prosecutor v. Momčilo Krajišnik, Case No. IT-00-39-A

Abbreviation used in Prosecution Response	Full citation
Defence Closing Brief	<i>Prosecutor v. Momčilo Krajišnik</i> , Case No. IT-00-39-T, Defence Final Brief Pursuant to Rule 86(B), 18 August 2006
Defence Motion for Adjournment 14 July 2004	<i>Prosecutor v. Momčilo Krajišnik</i> , Case No. IT-00-39-T, Defence Motion for Adjournment, 14 July 2004
Defence Motion for Adjournment 22 February 2005	<i>Prosecutor v. Momčilo Krajišnik</i> , Case No. IT-00-39-T, Defence Motion for Adjournment, 22 February 2005
Defence Motion for Extension of Time	<i>Prosecutor v. Momčilo Krajišnik</i> , Case No. IT-00-39-T, Defence Motion for Extension of Time, 26 September 2005
Indictment	<i>Prosecutor v. Momčilo Krajišnik & Biljana Plavšić</i> , Case No. IT-00-39&40-PT, Amended Consolidated Indictment, 7 March 2002 (Public)
Judgement	<i>Prosecutor v. Momčilo Krajišnik</i> , Case No. IT-00-39-T, T.Ch., Judgement, 27 September 2006
<i>Krajišnik</i> Adjournment Decision	<i>Prosecutor v. Momčilo Krajišnik</i> , Case No. IT-00-39-T, Decision on Defence Motion for Adjournment (Written Reasons), 26 August 2005
<i>Krajišnik</i> Brief	<i>Prosecutor v. Momčilo Krajišnik</i> , Case No. IT-00-39-A, Appeal by Momčilo Krajišnik to the ICTY Judgement of 27 September 2006, 1 February 2008
<i>Krajišnik</i> Interlocutory AD on Adjournment	<i>Prosecutor v. Momčilo Krajišnik</i> , Case No. IT-00-39-AR73.1, App.Ch. Decision on Interlocutory Appeal of Decision on Second Defence Motion for Adjournment, 25 April 2005
Reasons for Denial to Proceed Unrepresented	<i>Prosecutor v. Momčilo Krajišnik</i> , Case No. IT-00-39-T, T.Ch., Reasons For Oral Decision Denying Mr.Krajišnik's Request To Proceed Unrepresented By Counsel Counsel, 18 August 2005

Other ICTY authorities

Abbreviation used in Prosecution Response	Full citation
<i>Blaškić</i> AJ	<i>Prosecutor v. Tihomir Blaškić</i> , Case No. IT-95-14-A, App.Ch., Judgement, 29 July 2004
<i>Blagojević</i> AJ	<i>Prosecutor v. Vidoje Blagojević & Dragan Jokić</i> , Case No. IT-02-60-A, App.Ch., Judgement, 9 May 2007
<i>Brdanin</i> AJ	<i>Prosecutor v Radoslav Brdanin</i> , Case No. IT-99-36-A, App.Ch., Judgement, 3 April 2007
<i>Furundžija</i> AJ	<i>Prosecutor v. Anto Furundžija</i> , Case No. IT-95-17/1-A, App.Ch., Judgement, 21 July 2000
<i>Galić</i> AJ	<i>Prosecutor v. Stanislav Galić</i> , Case No. IT-98-29-A, App.Ch., Judgement, 30 November 2006
<i>Halilović</i> AJ	<i>Prosecutor v. Sefer Halilović</i> , Case No. IT-01-48-A, App.Ch., Judgement, 16 October 2007
<i>Krnjelac</i> AJ	<i>Prosecutor v. Milorad Krnjelac</i> , Case No. IT-97-25-A, App.Ch., Judgement, 17 September 2003
<i>Kunarac</i> AJ	<i>Prosecutor v. Dragoljub Kunarac, Radomir Kovač and Zoran Vuković</i> , Case No. IT-96-23 & IT-96-23/1-A, App.Ch., Judgement, 12 June 2002
<i>Kupreškić</i> AJ	<i>Prosecutor v. Zoran Kupreškić, Mirjan Kupreškić, Vlatko Kupreškić, Drago Josipović and Vladimir Šantić</i> , Case No. IT-95-16-A, App.Ch., Judgement, 23 October 2001
<i>Kvočka</i> AJ	<i>Prosecutor v. Miroslav Kvočka, Milojica Kos, Mlado Radić, Zoran Žigić and Dragoljub Prcać</i> , Case No. IT-98-30/1-A, App.Ch., Judgement, 28 February 2005
<i>Limaj</i> AJ	<i>Prosecutor v. Fatmir Limaj, Haradin Bala and Isak Musliu</i> , Case No. IT-03-66-A, App.Ch., Judgement, 27 September 2007
<i>Naletilić</i> AJ	<i>Prosecutor v. Mladen Naletilić and Vinko Martinović</i> , Case No. IT-98-34-A, App.Ch., Judgement, 3 May 2006
<i>Simić</i> AJ	<i>Prosecutor v. Blagoje Simić</i> , Case No. IT-95-9-A, App.Ch., Judgement, 28 November 2006

<i>Stakić</i> AJ	<i>Prosecutor v. Milomir Stakić</i> , Case No. IT-97-24-A, App.Ch. Judgement, 22 March 2006
<i>Tadić</i> TJ	<i>Prosecutor v. Duško Tadić a/k/a “Dule”</i> , Case No. IT-94-1-T, T.Ch., Opinion and Judgement, 7 May 1997
<i>Vasiljević</i> AJ	<i>Prosecutor v. Mitar Vasiljević</i> , Case No. IT-98-32-A, App.Ch., Judgement, 25 February 2004

ICTR authorities

Abbreviation used in Prosecution Response	Full citation
<i>Akayesu</i> AJ	<i>Prosecutor v. Jean-Paul Akayesu</i> , Case No. ICTR-96-4-A, App.Ch., Judgement, 1 June 2001
<i>Gacumbitsi</i> AJ	<i>Prosecutor v. Sylvestre Gacumbitsi</i> , Case No. ICTR-2001-64-A, App.Ch., Judgement, 7 July 2006
<i>Kajelijeli</i> AJ	<i>Prosecutor v. Juvénal Kajelijeli</i> , Case No. ICTR-98-44A-A, App.Ch., Judgement, 23 May 2005
<i>Kamuhanda</i> AJ	<i>Prosecutor v. Jean de Dieu Kamuhanda</i> , Case No. ICTR-99-54A-A, App.Ch., Appeal Judgement, 19 September 2005
<i>Musema</i> AJ	<i>Prosecutor v. Alfred Musema</i> , Case No. ICTR-96-13-A, App.Ch., Judgement, 16 November 2001
<i>Ndindabahizi</i> AJ	<i>Prosecutor v. Emmanuel Ndindabahizi</i> , Case No. ICTR-01-71-A, App.Ch., Judgement, 16 January 2007
<i>Simba</i> AD on Motion for Variation of Notice of Appeal	<i>Prosecutor v. Aloys Simba</i> , Case No. ICTR-01-76-A, App.Ch., Decision on Prosecutor’s Motion for Variation of Notice of Appeal Pursuant to Rule 108, 17 August 2006
<i>Simba</i> AJ	<i>Prosecutor v. Aloys Simba</i> , Case No. ICTR-01-76-A, App.Ch., 27 November 2007

Other Abbreviations

Abbreviation used in Prosecution Response	Full citation
1KK	1 st Krajina Corps of the VRS

ARK	<i>Autonomna Regija Krajina</i> – Autonomous Region of Krajina
BiH	Bosnia and Herzegovina
Exh.	Exhibit
Exhs.	Exhibits
fn.	Footnote
fns.	Footnotes
ICRC	International Committee of the Red Cross
para.	paragraph
paras.	paragraphs
Practice Direction IT/155/Rev.3 of 16 September 2005	Practice Direction On Procedure For The Filing Of Written Submissions In Appeal Proceedings Before The International Tribunal IT/155/Rev.3 of 16 September 2005
Practice Direction IT/201 of 7 March 2002	Practice Direction On Formal Requirements For Appeals From Judgement IT/201 of 7 March 2002
RS	<i>Republika Srpska</i>
SAO	<i>Srpska Autonomna Oblast</i> – Serb Autonomous District
SDA	Party of Democratic Action
SDS	Serbian Democratic Party of Bosnia and Herzegovina
SNB	<i>Savjet za Nacionalnu Bezbjednost</i> – National Security Council
SRK	<i>Sarajevo-Romanija Korpus</i> – Sarajevo-Romanija Corps of the VRS
T.	Trial Transcript
TO	<i>Teritorijalna Odbrana</i> – Territorial Defence
UNPROFOR	United Nations Protection Forces
VRS	<i>Vojska Srpske Republike Bosne i Hercegovine</i> , later <i>Vojska Republike Srpske</i> – Army of the Bosnian-Serb Republic