

**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-95-17-A
Date: 2 April 2007
Original: English

IN THE APPEALS CHAMBER

Before: Judge Andréia Vaz, Presiding
Judge Mohamed Shahabuddeen
Judge Mehmet Güney
Judge Theodor Meron
Judge Wolfgang Schomburg

Registrar: Mr. Hans Holthuis

PROSECUTOR

v.

MIROSLAV BRALO

JUDGEMENT ON SENTENCING APPEAL

The Office of the Prosecutor:

Mr. Peter M. Kremer Q.C.
Mr. Xavier Tracol
Ms. Kristina Carey

Counsel for the Accused:

Mr. Jonathan Cooper
Ms. Virginia C. Lindsay

I. INTRODUCTION	2
II. STANDARD FOR APPELLATE REVIEW	4
III. FIRST GROUND OF APPEAL: WHETHER THE TRIAL CHAMBER ABUSED ITS DISCRETION BY NOT TAKING INTO ACCOUNT CERTAIN FACTORS AS MITIGATING	6
A. DETERIORATING MILITARY AND POLITICAL SITUATION IN VITEZ	6
B. PRIOR ATTACK ON THE APPELLANT AND HIS WIFE IN THEIR OWN HOME	8
C. DURESS AND SUPERIOR ORDERS	9
D. CONCLUSION	13
IV. SECOND GROUND OF APPEAL: WHETHER THE TRIAL CHAMBER ERRED BY FAILING TO GIVE PROPER WEIGHT TO SPECIFIC FACTORS IN MITIGATION OF SENTENCE	14
A. THE APPELLANT’S INDIVIDUAL CIRCUMSTANCES	14
1. The Appellant’s personal circumstances	15
2. The Appellant’s captivity after his attempted surrender in 1997	16
3. The gravity of the crimes committed by the Appellant and his individual circumstances	17
B. THE APPELLANT’S COOPERATION	18
1. Cooperation of value to the Tribunal	19
2. Cooperation with the Prosecution	24
3. Cooperation of value to the people of Ahmi}i: the Appellant’s post-conflict conduct	35
C. THE APPELLANT’S EXPRESSION OF REMORSE	37
V. THIRD GROUND OF APPEAL: WHETHER THE TRIAL CHAMBER ERRED BY FAILING TO ORDER AN APPROPRIATE REDUCTION OF SENTENCE TO REFLECT THE MITIGATION IN THE CASE	38
VI. DISPOSITION	44
VII. ANNEX A: PROCEDURAL BACKGROUND	45
VIII. ANNEX B: GLOSSARY OF TERMS	49

I. INTRODUCTION

1. The Appeals Chamber of the International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the Former Yugoslavia Since 1991 (“Appeals Chamber” and “International Tribunal”, respectively) is seized of an appeal from the Sentencing Judgement rendered by Trial Chamber III on 7 December 2005 in the case *Prosecutor v. Miroslav Bralo*, Case No. IT-95-17-S (“Sentencing Judgement”).

2. The events giving rise to this appeal took place in the villages of Ahmići, Nadioći and their environs in central Bosnia and Herzegovina from April to July 1993. Miroslav Bralo, born on 13 October 1967 (“Appellant”), was a member of the “Jokers”, the anti-terrorist platoon of the 4th Military Police Battalion of the Croatian Defence Council (“HVO”),¹ and participated in an attack on the village of Ahmići on 16 April 1993, with instructions to ethnically cleanse the village, to kill the Muslim men of military age, to burn all Muslim residences, and to expel all the Muslim residents from the village.²

3. The first indictment against the Appellant was issued under seal on 10 November 1995. A revised version was filed, also under seal, on 21 December 1998 and disclosed in October 2004.³ On 19 July 2005, the Office of the Prosecutor (“Prosecution”) filed a plea agreement based on an amended indictment⁴ filed the same day, in which the number of counts had been reduced from twenty-one to eight.⁵ The Amended Indictment charged the Appellant with persecutions on political, racial and religious grounds as a crime against humanity punishable under Articles 5(h) and 7(1) of the Statute of the International Tribunal (“Statute”) (Count 1). It further charged him with four grave breaches of the Geneva Conventions of 1949: torture or inhuman treatment, punishable under Articles 2(b) and 7(1) of the Statute (Count 3); unlawful confinement, punishable under Articles 2(g) and 7(1) of the Statute (Counts 6 and 7); and inhuman treatment, punishable under Articles 2(b) and 7(1) of the Statute (Count 8). It also charged the Appellant with three violations of the laws or customs of war, all punishable under Articles 3 and 7(1) of the Statute: murder (Count 2), torture (Count 4), and outrages upon personal dignity including rape (Count 5).⁶

¹ Sentencing Judgement, para. 10.

² Sentencing Judgement, para. 12.

³ Sentencing Judgement, para. 1.

⁴ The plea agreement (“Plea Agreement”) and the amended indictment (“Amended Indictment”) were filed as part of the following document: *Prosecutor v. Miroslav Bralo*, Case No. IT-95-17-PT, Filing of Documents Relating to Rule 62ter, 19 July 2005, containing the Plea Agreement, the Amended Indictment and the Factual Basis.

⁵ Sentencing Judgement, para. 3.

⁶ Sentencing Judgement, para. 5.

The Trial Chamber, during the plea hearing held on 19 July 2005, confirmed the Amended Indictment, accepted the guilty pleas formally entered by the Appellant to each of the eight counts charged, and entered a conviction for each of these eight counts.⁷

4. In its Sentencing Brief filed on 10 October 2005, the Prosecution recommended that the Trial Chamber impose a sentence of 25 years' imprisonment.⁸ The Appellant did not specify what sentence he would consider acceptable but submitted that it should be less than 18 years' imprisonment.⁹ The sentencing hearing took place on 20 October 2005. On 7 December 2005, the Trial Chamber sentenced the Appellant to 20 years' imprisonment.¹⁰

5. The Appellant filed his notice of appeal on 5 January 2006 and his appeal brief on 30 March 2006.¹¹ The Prosecution filed its brief in response on 2 May 2006.¹² A brief in reply was filed on 19 May 2006.¹³ The Appellant subsequently filed two supplemental briefs regarding which responses and replies were received.¹⁴

6. In the Appellant's Brief, the Appellant generally submits that the Trial Chamber erred in law and acted outside of its discretion in its assessment of the facts when it passed a sentence which was manifestly excessive, amounting to a miscarriage of justice, in that the sentence did not properly reflect the substantial mitigating factors in this case.¹⁵ In support of this argument, he specifically submits that (1) the Trial Chamber erred in assessing matters as "wholly irrelevant to sentence" and in finding that they should therefore "not be considered" in mitigation;¹⁶ (2) the Trial Chamber erred in assessing the weight of factors it accepted as relevant;¹⁷ and (3) "overall", the sentence was not properly reduced to reflect the volume and quality of mitigation.¹⁸ The Appeals Chamber will treat each of these submissions as a separate ground of appeal. To the extent that the submissions

⁷ Sentencing Judgement, para. 3, referring to *Prosecutor v. Miroslav Bralo*, Case No. IT-95-17-PT, Plea Hearing, 19 July 2005, T. 44.

⁸ *Prosecutor v. Miroslav Bralo*, Case No. IT-95-17-S, *Partially under Seal* Prosecution's Sentencing Brief, 10 October 2005 ("Prosecution Sentencing Brief"), para. 97.

⁹ *Prosecutor v. Miroslav Bralo*, Sentencing Brief on Behalf of Miroslav Bralo, Case No. IT-95-17-S, 25 November 2005, RP D 760-D 590 ("Defence Sentencing Brief"), paras 86-89.

¹⁰ Sentencing Judgement, para. 95.

¹¹ Notice of Appeal Against Sentence on Behalf of Miroslav Bralo, 5 January 2006 ("Notice of Appeal"); Confidential Appeal Brief on Behalf of Miroslav Bralo, 30 March 2006 ("Confidential Appellant's Brief"). A public redacted version of this brief was filed on 26 May 2006 ("Appellant's Brief").

¹² Prosecution Respondent's Brief to the "Appeal Brief on Behalf of Miroslav Bralo", 2 May 2006 ("Respondent's Brief").

¹³ Confidential Reply Brief on Behalf of Miroslav Bralo, 19 May 2006, re-filed for public access without redactions on 26 May 2006 ("Reply Brief").

¹⁴ See "Annex A: Procedural Background" below, under "Supplemental Briefs".

¹⁵ Appellant's Brief, para. 3.

¹⁶ Appellant's Brief, para. 4.1.1.

¹⁷ Appellant's Brief, para. 4.1.2.

¹⁸ Appellant's Brief, para. 4.1.3.

under the first two grounds are repeated under the third ground, the Appeals Chamber will focus its analysis on the respective earlier grounds and then incorporate it by reference in the third ground as necessary.

II. STANDARD FOR APPELLATE REVIEW

7. The relevant provisions on sentencing are Articles 23 and 24 of the Statute and Rules 100 to 106 of the Rules of Procedure and Evidence of the International Tribunal (“Rules”). Both Article 24 of the Statute and Rule 101 of the Rules contain general guidelines for a Trial Chamber that amount to an obligation to take into account the following factors in sentencing: the gravity of the offence or totality of the culpable conduct, the individual circumstances of the convicted person, the general practice regarding prison sentences in the courts of the former Yugoslavia, and aggravating and mitigating circumstances.¹⁹

8. Sentencing appeals, as appeals from a trial judgement, are appeals *stricto sensu*;²⁰ they are of a corrective nature and are not trials *de novo*.²¹ The Appeals Chamber will in principle only take into account evidence referred to by the Trial Chamber in the body of the Judgement or in a related footnote; evidence contained in the trial record and referred to by the Parties; and additional evidence admitted on appeal.²² The Appeals Chamber underlines that, in cases where it is seized of an error of law and/or an error of fact pertaining to mitigating circumstances, the conclusion as to whether a fact amounts to a mitigating circumstance will be reached “on a balance of probabilities”.²³ Pursuant to Article 25 of the Statute, the role of the Appeals Chamber is limited to correcting errors of law invalidating a decision and errors of fact which have occasioned a

¹⁹ *Galić* Appeal Judgement, para. 392; *Momir Nikolić* Judgement on Sentencing Appeal, para. 6; *Jokić* Judgement on Sentencing Appeal, para. 6; *Deronjić* Judgement on Sentencing Appeal, para. 6; *Dragan Nikolić* Judgement on Sentencing Appeal, para. 7; *Čelebići* Appeal Judgement, paras 429 and 716. In addition, Trial Chambers are obliged to take into account the extent to which any penalty imposed by a court of any State on the convicted person for the same act has already been served, as referred to in Article 10(3) of the Statute and in Rule 101(B)(iv) of the Rules.

²⁰ *Galić* Appeal Judgement, para. 393; *Momir Nikolić* Judgement on Sentencing Appeal, para. 7; *Jokić* Judgement on Sentencing Appeal, para. 7; *Deronjić* Judgement on Sentencing Appeal, para. 7; *Dragan Nikolić* Judgement on Sentencing Appeal, para. 8; *Mucić et al.* Judgement on Sentencing Appeal, para. 11.

²¹ *Galić* Appeal Judgement, para. 393; *Momir Nikolić* Judgement on Sentencing Appeal, para. 7; *Jokić* Judgement on Sentencing Appeal, para. 7; *Deronjić* Judgement on Sentencing Appeal, para. 7; *Dragan Nikolić* Judgement on Sentencing Appeal, para. 8; *Kupreškić et al.* Appeal Judgement, para. 408; *Mucić et al.* Judgement on Sentencing Appeal, para. 11; *Čelebići* Appeal Judgement, para. 724.

²² *Naletilić and Martinović* Appeal Judgement, paras 11-12; *Blaškić* Appeal Judgement, paras 13 and 24.

²³ *Babić* Judgement on Sentencing Appeal, para. 43; *Blaškić* Appeal Judgement, para. 697; *Čelebići* Appeal Judgement, para. 590.

miscarriage of justice.²⁴ These criteria are well established in the jurisprudence of the International Tribunal²⁵ and the International Criminal Tribunal for Rwanda (“ICTR”).²⁶

9. Trial Chambers are vested with a broad discretion in determining an appropriate sentence, due to their obligation to individualise penalties to fit the circumstances of the accused and the gravity of the crime.²⁷ As a general rule, the Appeals Chamber will not revise a sentence unless the Trial Chamber has committed a discernible error in exercising its discretion or has failed to follow the applicable law.²⁸ It is for the Appellant to demonstrate how the Trial Chamber ventured outside its discretionary framework in imposing his sentence.²⁹ To show that the Trial Chamber committed a discernible error in exercising its discretion, “the Appellant has to demonstrate that the Trial Chamber gave weight to extraneous or irrelevant considerations, failed to give weight or sufficient weight to relevant considerations, made a clear error as to the facts upon which it exercised its discretion, or that the Trial Chamber’s decision was so unreasonable or plainly unjust that the Appeals Chamber is able to infer that the Trial Chamber must have failed to exercise its discretion properly”.³⁰

²⁴ *Momir Nikolić* Judgement on Sentencing Appeal, para. 7; *Jokić* Judgement on Sentencing Appeal, para. 7; *Deronjić* Judgement on Sentencing Appeal, para. 7; *Dragan Nikolić* Judgement on Sentencing Appeal, para. 8; *Furundžija* Appeal Judgement, para. 40.

²⁵ *Kvočka et al.* Appeal Judgement, para. 14; *Vasiljević* Appeal Judgement, paras 4-12; *Kunarac et al.* Appeal Judgement, paras 35-48; *Kupreškić et al.* Appeal Judgement, para. 29; *Čelebići* Appeal Judgement, paras 434-435; *Furundžija* Appeal Judgement, para. 37; *Tadić* Appeal Judgement, para. 64.

²⁶ *Musema* Appeal Judgement, para. 15; *Akayesu* Appeal Judgement, para. 178; *Kayishema and Ruzindana* Appeal Judgement, para. 320.

²⁷ *Galić* Appeal Judgement, para. 393; *Momir Nikolić* Judgement on Sentencing Appeal, para. 8; *Jokić* Judgement on Sentencing Appeal, para. 8; *Deronjić* Judgement on Sentencing Appeal, para. 8; *Babić* Judgement on Sentencing Appeal, para. 7; *Dragan Nikolić* Judgement on Sentencing Appeal, para. 9; *Čelebići* Appeal Judgement, para. 717.

²⁸ *Galić* Appeal Judgement, para. 393; *Momir Nikolić* Appeal Judgement on Sentencing Appeal, para. 8; *Jokić* Judgement on Sentencing Appeal, para. 8; *Deronjić* Judgement on Sentencing Appeal, para. 8; *Blaškić* Appeal Judgement, para. 680; *Krstić* Appeal Judgement, para. 242; *Kupreškić et al.* Appeal Judgement, para. 408; *Jelisić* Appeal Judgement, para. 99; *Čelebići* Appeal Judgement, para. 725; *Furundžija* Appeal Judgement, para. 239; *Aleksovski* Appeal Judgement, para. 187; *Tadić* Judgement in Sentencing Appeals, para. 22.

²⁹ *Galić* Appeal Judgement, para. 393; *Momir Nikolić* Judgement on Sentencing Appeal, para. 8; *Jokić* Judgement on Sentencing Appeal, para. 8; *Deronjić* Judgement on Sentencing Appeal, para. 8; *Dragan Nikolić* Judgement on Sentencing Appeal, para. 9; *Čelebići* Appeal Judgement, para. 725.

³⁰ *Galić* Appeal Judgement, para. 394; *Momir Nikolić* Judgement on Sentencing Appeal, para. 95; *Babić* Judgement on Sentencing Appeal, para. 44.

III. FIRST GROUND OF APPEAL: WHETHER THE TRIAL CHAMBER ABUSED ITS DISCRETION BY NOT TAKING INTO ACCOUNT CERTAIN FACTORS AS MITIGATING

10. The Appellant argues that, while the Trial Chamber did consider his submissions,³¹ it failed to take into account the following facts as mitigating circumstances: (1) the deteriorating military and political situation in La{va Valley in 1992 and 1993;³² (2) the attack on the Appellant and his wife in their home in February 1993;³³ (3) the fact that the Appellant was released from prison on condition that he participate in the attack on the village of Ahmići;³⁴ and (4) the manner in which he was used by his superiors.³⁵ He concludes that each matter raised under his first ground of appeal bears some weight, considered individually and cumulatively, and should have been taken into consideration by the Trial Chamber when determining his sentence.³⁶ The Prosecution responds that the Appellant's first sub-ground of appeal should be denied.³⁷

11. The Appeals Chamber notes that, while the Appellant argues that the Trial Chamber erred in law by failing to take into account matters he deems relevant to sentence,³⁸ the issue before it is not whether the facts he refers to must be taken into account as a matter of law as mitigating circumstances, but rather whether the Trial Chamber abused its discretion in deciding which facts may be taken into account.³⁹ The only mitigating circumstance that Trial Chambers are specifically required to consider as a matter of law, pursuant to Rule 101(B)(ii) of the Rules, is cooperation with the Prosecution.⁴⁰

A. Deteriorating military and political situation in Vitez

12. The Appellant submits that the Trial Chamber erred when it failed to consider as relevant to sentence the context of the deteriorating military and political situation in the municipality of Vitez prior to the attack in April 1993,⁴¹ whereas previous Trial Chambers considered "the harsh environment of the armed conflict as a whole" when assessing the sentence.⁴² He asserts that the

³¹ Appellant's Brief, para. 4.1, fn. 2.

³² Appellant's Brief, para. 8.1, referring to Sentencing Judgement, para. 51.

³³ Appellant's Brief, para. 8.2, referring to Sentencing Judgement, para. 52.

³⁴ Appellant's Brief, para. 8.3, referring to Sentencing Judgement, para. 56.

³⁵ Appellant's Brief, para. 8.4, referring to Sentencing Judgement, para. 56.

³⁶ Appellant's Brief, para. 42.

³⁷ Respondent's Brief, para. 3.40.

³⁸ Appellant's Brief, para. 7.1.

³⁹ *Čelebići* Appeal Judgement, para. 780.

⁴⁰ *Vasiljević* Appeal Judgement, para. 180. See also *Dragan Nikolić* Judgement on Sentencing Appeal, para. 63.

⁴¹ Appellant's Brief, paras 10-15. See also Reply Brief, paras 5-6; AT. 43.

⁴² Appellant's Brief, para. 14, quoting *Čelebići* Trial Judgement, para. 1283. See also AT. 44.

participation of numerous local people in the attack, all acting under unlawful orders, revealed the extent of the breakdown of societal and moral norms in this area in April 1993⁴³ and that, while this approach does not condone the atrocities committed, “extreme circumstances” and a “climate of fear and uncertainty” warrant a lesser degree of condemnation of the individual perpetrator.⁴⁴ He concludes that, as a result, it was “both artificial and unjust” to exclude the realities of the war in Bosnia from the considerations underlying his sentence.⁴⁵ The Prosecution responds that the Trial Chamber was aware of the pressures placed on many people by the deteriorating situation in the region⁴⁶ but that, considering the grave, violent and brutal nature of the Appellant’s crimes, the context of their commission could not be regarded as a mitigating circumstance.⁴⁷ It asserts that “a finding otherwise may lead to a situation whereby the harsh environment can be used to mitigate the criminal conduct of all participants in a conflict situation”.⁴⁸

13. The Appeals Chamber notes that, as the Appellant in fact acknowledges,⁴⁹ the Trial Chamber did consider the arguments he made in his Sentencing Brief⁵⁰ and at the Sentencing Hearing⁵¹ about the deteriorating military and political situation in the municipality of Vitez. The Trial Chamber found that it was “notorious that such pressure existed” but that the “enormous pressures” referred to by the Appellant could not be taken into account as a mitigating circumstance since “[l]arge sections of the population of Vitez municipality, and indeed of many parts of Bosnia and Herzegovina, were subjected to the same or similar pressures, and yet did not respond in the same manner as Bralo”.⁵² The Trial Chamber therefore did not ignore the Appellant’s arguments but refused to take into account this chaotic context as a mitigating circumstance. The Appellant is merely reiterating on appeal arguments already made at trial and fails to demonstrate that the Trial Chamber committed a discernible error. In any case, the Appeals Chamber has previously held that the chaotic context of a conflict cannot be taken into account in mitigation:

[A] finding that a “chaotic” context might be considered as a mitigating factor in circumstances of combat operations risks mitigating the criminal conduct of all personnel in a war zone. Conflict is by its nature chaotic, and it is incumbent on the participants to reduce that chaos and to respect international humanitarian law. While the circumstances in Central Bosnia in 1993 were chaotic,

⁴³ Appellant’s Brief, para. 13.

⁴⁴ Appellant’s Brief, para. 15.

⁴⁵ Appellant’s Brief, para. 15.

⁴⁶ Respondent’s Brief, para. 3.8, referring to Sentencing Judgement, para. 51.

⁴⁷ Respondent’s Brief, paras 3.6 and 3.8.

⁴⁸ Respondent’s Brief, para. 3.7; AT. 91-92.

⁴⁹ Appellant’s Brief, para. 12.

⁵⁰ Sentencing Brief, para. 47.

⁵¹ T. 120 (20 October 2005).

⁵² Sentencing Judgement, para. 51.

the Appeals Chamber sees neither merit nor logic in recognising the mere context of war itself as a factor to be considered in the mitigation of the criminal conduct of its participants.⁵³

14. For the foregoing reasons, this part of the Appellant's first ground of appeal is dismissed.

B. Prior attack on the Appellant and his wife in their own home

15. The Appellant contends that the Trial Chamber erred in considering the attack on his home⁵⁴ only within the general context of the tensions that existed in the region, thereby "fail[ing] to do justice to the force of this material in relation to its significance for [him] personally".⁵⁵ In his view, his situation could not be compared to that of others as there was apparently no evidence that large sections of the population were subjected to "targeted night-time bombing of their houses".⁵⁶ Further, the Appellant argues that the Trial Chamber failed to consider that his wife was victimised.⁵⁷ The Prosecution responds that the Trial Chamber specifically considered the attack on the Appellant's home and rightly used its discretion when not attaching any mitigating weight to this fact.⁵⁸

16. Before turning to the merits of the Appellant's arguments, the Appeals Chamber will address the Prosecution's contention that the Appellant attempts to rely on the *tu quoque* principle.⁵⁹ In that respect, the Appeals Chamber notes that the Appellant does not attempt to escape responsibility for his acts⁶⁰ but rather attempts to have the attack on his home taken into account in mitigation of his sentence. Reliance on the *tu quoque* principle was therefore not sought by the Appellant. The Appeals Chamber will now turn to assess whether the Trial Chamber fulfilled its obligation pursuant to Rule 101(B)(ii) of the Rules to take into account all mitigating circumstances before it.⁶¹

17. The Trial Chamber, when addressing the Appellant's arguments pertaining to the attack on his home, held the following:

⁵³ *Blaškić* Appeal Judgement, para. 711.

⁵⁴ At the Appeal Hearing, the Appellant clarified that he was referring to the house in which he lived in 1993 (AT. 50-51).

⁵⁵ Appellant's Brief, para. 21.

⁵⁶ Appellant's Brief, para. 21.

⁵⁷ Appellant's Brief, para. 22.

⁵⁸ Respondent's Brief, para. 3.10, referring to Sentencing Judgement, para. 48, in which the Trial Chamber considered the family circumstances of the Appellant generally, and para. 52, dealing specifically with the attack on the Appellant's home. *See also* AT. 93.

⁵⁹ Respondent's Brief, para. 3.11. The *tu quoque* principle has previously been defined as the process whereby an accused would try to exculpate himself from a crime by showing that the adversary has committed a similar crime before (*see Kupreškić et al.* Trial Judgement, paras 515-516).

⁶⁰ Reply Brief, para. 9; AT. 45.

⁶¹ *Jokić* Judgement on Sentencing Appeal, para. 6; *Deronjić* Judgement on Sentencing Appeal, para. 149. *See also Musema* Appeal Judgement, para. 395.

[...] If this evidence has been brought in order to demonstrate some kind of justifiable fear felt by Bralo in the context of the breakdown of community relations between the Croat and Muslim communities in his home area, then the Trial Chamber reiterates that the tensions that existed in the region at the relevant time can in no way act in mitigation of the sentence to be imposed upon Bralo for his commission of serious, violent crimes.⁶²

The Trial Chamber therefore treated the Appellant's arguments within the general context of the military and political situation in the municipality of Vitez. It reiterated that the tensions that existed in the region could not be used in mitigation, thereby implicitly basing itself on its earlier finding that "[l]arge sections of the population of Vitez municipality, and indeed of many parts of Bosnia and Herzegovina, were subjected to the same or similar pressures, and yet did not respond in the same manner as Bralo".⁶³

18. With regard to the Appellant's argument that the Trial Chamber should have referred under this part of its reasoning to specific incidents of attacks on houses involving "large sections of the population [...] on or before 3rd February 1993"⁶⁴ in order to show that those sections of the population were submitted to the same or similar pressures, the Appeals Chamber finds that the Trial Chamber did not need to rely on such specific incidents. Whether it is the chaotic context or specific attacks on houses that are taken into consideration, the rationale is the same: individuals are expected to "reduce that chaos and to respect international humanitarian law".⁶⁵ An individual whose house has been attacked cannot expect, on this ground alone, any mitigation of his sentence for his subsequent wrongdoings. With regard to the Appellant's argument that the Trial Chamber failed to consider that his wife was victimised,⁶⁶ the Appeals Chamber notes that the Appellant did not make any such argument at trial, and recalls that an appeal is not the appropriate forum in which mitigating circumstances, evidence of which was readily available at trial, should be presented for the first time.⁶⁷

19. For the foregoing reasons, this part of the Appellant's first ground of appeal is dismissed.

C. Duress and superior orders

20. The Appellant submits that his release from Kaonik prison on the eve of the Indictment period, on the express condition that he would fight under orders and subordinate himself to the

⁶² Sentencing Judgement, para. 52.

⁶³ Sentencing Judgement, para. 51.

⁶⁴ Appellant's Brief, para. 21.

⁶⁵ *Blaškić* Appeal Judgement, para. 711.

⁶⁶ Appellant's Brief, para. 22.

⁶⁷ See *Deronjić* Judgement on Sentencing Appeal, para. 150; *Babić* Judgement on Sentencing Appeal, para. 62; *Kvočka et al.* Appeal Judgement, para. 674: "As regards additional mitigating evidence that was available, though not raised, at

“Jokers” military unit, indicates “a clear context of pressure to participate under orders in future combat actions”,⁶⁸ and that his choice was taken “under a form of pressure or duress”.⁶⁹ He argues that the Trial Chamber, when holding that “[t]here is no evidence to suggest that he attempted to resist this pressure”,⁷⁰ failed to take into account that he “was in a uniquely precarious position from which to mount any challenge to anything”.⁷¹ He asserts that his superiors specifically chose him to commit criminal actions, as they expected him to obey these orders faithfully due to his conditional release from prison.⁷² He contends that, although he refused to raise the issue of duress or superior orders as a defence, these factors should have been considered by the Trial Chamber when assessing the “overall criminality of [his] behaviour”.⁷³ In his view, he was “something less than a free agent”,⁷⁴ under “a form of pressure or duress”⁷⁵ to fight under orders. Finally, he submits that, having accepted the factual material supporting the submission that he had been operating under pressure and had been used by his superiors, the Trial Chamber “acted perversely” by failing to ascribe any weight to the material and erred in not considering the submissions as relevant to mitigation.⁷⁶

21. The Prosecution responds that the Trial Chamber rightly held that, although the Appellant “was under some pressure” to become a member of the “Jokers” and to take part in combat operations, he was bound by the relevant norms of international humanitarian law.⁷⁷ In particular, it submits that his acceptance to fight under orders did not imply future obedience to unlawful orders⁷⁸ and that, being aware of the illegality of the orders issued to him, he had a duty to refuse to comply with them.⁷⁹ It argues that, although the Trial Chamber did not consider the Appellant’s argument that he was used as a “weapon of war”⁸⁰ as a specific plea of superior orders as a

trial, the Appeals Chamber does not consider itself to be the appropriate forum at which such material should first be raised.” See also *Kupreškić* Appeal Judgement, para. 414.

⁶⁸ Appellant’s Brief, paras 23 and 25.

⁶⁹ Appellant’s Brief, para. 24.

⁷⁰ Sentencing Judgement, para. 53.

⁷¹ Appellant’s Brief, para. 27.

⁷² Appellant’s Brief, para. 31.

⁷³ Appellant’s Brief, para. 30.

⁷⁴ Appellant’s Brief, para. 30; AT. 46. See also Appellant’s Brief, para. 32, where the Appellant argues that, although he did not raise the issue of superior orders as a defence, the sentence should have reflected the fact that some of the crimes he was convicted for had been committed under direct orders.

⁷⁵ Appellant’s Brief, para. 24.

⁷⁶ Appellant’s Brief, paras 40-42, referring to Sentencing Judgement, para. 56.

⁷⁷ Respondent’s Brief, para. 3.16. See also Respondent’s Brief, para. 3.31, citing *Erdemović* Appeal Judgement, Separate and Dissenting Opinion of Judge Cassese, para. 15, where the Prosecution stresses that the duty of the Appellant to refuse the implementation of unlawful orders applied regardless of whether he knew about the relevant norms of international humanitarian law.

⁷⁸ Respondent’s Brief, paras 3.19 and 3.23.

⁷⁹ Respondent’s Brief, para. 3.20, referring to Sentencing Judgement, para. 54.

⁸⁰ Defence Sentencing Brief, para. 68. See also AT. 48.

mitigating circumstance, it took the Appellant's alleged precarious position into account.⁸¹ Further, the Prosecution responds that, should the Appellant's submission be read as pleading duress as a potential mitigating factor, such new information cannot be raised for the first time at the appeal stage.⁸² It argues that, in any event, raising duress would contradict the Appellant's acknowledgment of full responsibility for his crimes.⁸³

22. While the Appellant's submissions occasionally suffer from a lack of clarity, the Appeals Chamber considers his arguments pertaining to the pressure to take orders and those relating to his specific tasking by persons in authority to be intrinsically linked. While duress is not necessarily limited to obedience to superior orders, the Appeals Chamber notes that these two notions often relate to the same factual circumstances.⁸⁴ This fact was specifically considered by the Trial Chamber when it held that "Duress and superior orders are separate, but related, concepts".⁸⁵

23. The Appeals Chamber stresses that the Appellant acknowledged his "refusal [...] to seek at any stage to raise either duress or superior orders as any form of defence"⁸⁶ and understands this acknowledgment to imply that such a defence is not being sought for the first time on appeal. The Appeals Chamber notes that the only arguments submitted by the Appellant in this context at the sentencing stage referred to the "use of Bralo by his superiors":

[...] Miroslav Bralo was used as a weapon of war for a short period in April and early May 1993. If superior command responsibility in general is an aggravating circumstance then the targeted manipulation of an inferior to commit clearly criminal actions to order would be especially so. As well as being released specifically to fight under orders, he was used to commit murders under orders in the context of the attack on Ahmići used to commit rape under orders to facilitate an interrogation, and used to frighten people by his Commander at the trenches.⁸⁷

The Trial Chamber specifically took these arguments into account. It accepted that the Appellant was released from prison "on the condition that he participate in the attack on Ahmići",⁸⁸ that he was therefore "under some pressure to become a member of the 'Jokers' and to be actively involved

⁸¹ Respondent's Brief, para. 3.30, referring to Sentencing Judgement, para. 54.

⁸² Respondent's Brief, paras 3.24-3.25.

⁸³ Respondent's Brief, para. 3.26.

⁸⁴ *Erdemović* Appeal Judgement, Joint Separate Opinion of Judge McDonald and Judge Vohrah, paras 34-35.

⁸⁵ Sentencing Judgement, para. 53.

⁸⁶ Appellant's Brief, para. 30. *See also* Appellant's Brief, para. 32; AT. 47.

⁸⁷ Defence Sentencing Brief, para. 68, quoted at para. 38 of the Appellant's Brief.

⁸⁸ Sentencing Judgement, para. 53.

in combat operations carried out by the HVO”,⁸⁹ and took into account the possibility that the Appellant was used as a “weapon of war”.⁹⁰

24. The Appeals Chamber stresses that the Appellant, acknowledging these findings of the Trial Chamber, does not argue that the pressure he was under to join the “Jokers” was actually higher than that established by the Trial Chamber. The Appeals Chamber rather understands the Appellant to be arguing that this pressure to join the “Jokers”, “indicatFingğ a clear context of pressure to participate under orders in future combat actions”,⁹¹ prevented him from challenging these orders.⁹² The Appeals Chamber therefore considers that the Appellant’s arguments pertain to the pressure he felt to obey illegal orders, be they “unlawful orders of wide application”⁹³ or unlawful orders directed specifically at him.⁹⁴ However, the Appeals Chamber considers, as noted by the Prosecution,⁹⁵ that the Appellant fails to demonstrate that he was under “duress” to obey illegal orders. The Trial Chamber correctly found, as the Appellant acknowledges,⁹⁶ that “[i]t is the duty of any person involved in an armed conflict to comply fully with the relevant norms of international humanitarian law and, while Bralo may have been pressured to participate in combat activities, he remained legally and morally obliged to conduct himself in accordance with those norms”.⁹⁷ Moreover, the Appeals Chamber not only considers that the Appellant failed to resist these unlawful orders, but also stresses his enthusiasm and willingness to implement such orders, as evidenced in the Trial Chamber’s findings on the Appellant’s desire to humiliate his victims.⁹⁸

25. In light of the foregoing, the Appeals Chamber finds that the Appellant failed to show a discernible error by the Trial Chamber when not taking the pressure exerted on him into account in mitigation of sentence.

⁸⁹ Sentencing Judgement, para. 53.

⁹⁰ Sentencing Judgement, para. 56: “While it may be the case that Bralo was used by his superiors as a ‘weapon of war,’ once again the Trial Chamber finds that this has no bearing upon the appropriate punishment that he should receive for his crimes.”

⁹¹ Appellant’s Brief, para. 25.

⁹² Appellant’s Brief, para. 27.

⁹³ Appellant’s Brief, para. 35.

⁹⁴ Appellant’s Brief, paras 31 and 36.

⁹⁵ Respondent’s Brief, para. 3.27.

⁹⁶ Appellant’s Brief, para. 29.

⁹⁷ Sentencing Judgement, para. 54.

⁹⁸ *See, inter alia*, Sentencing Judgement, paras 33-35. *See also* Sentencing Judgement, para. 54, where the Trial Chamber held that “[a]ll of [the Appellant’s] actions display his complete contempt at the time for the laws governing armed conflict, along with a shocking disregard for the value of human life and dignity.”

D. Conclusion

26. The Appeals Chamber, having found that the Trial Chamber did not abuse its discretion or commit a discernible error in not taking into account as mitigating circumstances the deteriorating military and political situation in Lašva Valley in 1992 and 1993, the attack on the Appellant and his wife in their home in February 1993, the fact that the Appellant was released from prison on condition that he participate in the attack on the village of Ahmići, and the manner in which he was used by his superiors, dismisses the Appellant's first ground of appeal.

IV. SECOND GROUND OF APPEAL: WHETHER THE TRIAL CHAMBER ERRED BY FAILING TO GIVE PROPER WEIGHT TO SPECIFIC FACTORS IN MITIGATION OF SENTENCE

27. The Appellant submits that the Trial Chamber erred when it failed to ascribe proper weight to his individual circumstances and to his “[p]ositive Co-operation of value to the Prosecutor, the International Tribunal, and the People of Ahmi}i”.⁹⁹

A. The Appellant’s individual circumstances

28. The Appellant submits that the Trial Chamber failed to ascribe proper weight in mitigation to his personal circumstances.¹⁰⁰ He argues that, by restricting its consideration of the evidence before it to the narrow categories of his “good character” and his “family circumstances”, the Trial Chamber failed to attach appropriate weight to it.¹⁰¹ In his view, his personal circumstances have a wider significance than simple considerations of “good character” and “family circumstances”¹⁰² and “each of these aspects of [his] personal circumstances is mitigating in a broader sense than that considered by the Trial Chamber”.¹⁰³ Specifically, he contends that, as a result of such categorisation of his personal circumstances, the Trial Chamber did not give sufficient weight to the evidence relating to: the location of his family home on the very front line of battle; the physical and mental abuse he suffered as a child; the loss of his job as a consequence of the war; his subsequent enlistment in the HVO army for almost a year; and the fact that he had been in captivity for almost two years after having unsuccessfully tried to surrender to UN forces in 1997, during which period his wife and daughter were killed in a fire.¹⁰⁴ The Prosecution responds that the Appellant fails to demonstrate that the Trial Chamber abused its discretion in evaluating the personal circumstances before it¹⁰⁵ and that the Trial Chamber correctly found that the personal circumstances of the Appellant deserved little weight in light of the serious, violent and brutal nature of the committed crimes.¹⁰⁶ In his Brief in Reply, the Appellant asserts that the Prosecution erred in arguing a “causative link between the grave nature of the crimes and the assessment of

⁹⁹ Appellant’s Brief, para. 43.

¹⁰⁰ Appellant’s Brief, para. 43; AT. 49.

¹⁰¹ Appellant’s Brief, paras 44-45, referring to Sentencing Judgement, paras 47-48. *See also* Appellant’s Brief, para. 48.

¹⁰² Appellant’s Brief, para. 47. The Appellant submits that these matters would have helped the Trial Chamber to “better understand how [he] evolved from a simple farmer and factory worker into a soldier who fought honourably for his country, and then into a war criminal.”

¹⁰³ Appellant’s Brief, para. 49.

¹⁰⁴ Appellant’s Brief, paras 45.1-45.5.

¹⁰⁵ Respondent’s Brief, para. 3.48; AT. 95.

¹⁰⁶ Respondent’s Brief, para. 3.52, referring to Sentencing Judgement, paras 28 and 48. *See also* AT. 98.

limited weight, or even of irrelevance, for otherwise mitigating material”.¹⁰⁷ In his view, while the gravity of the offence may render a particular error harmless, mitigating circumstances should first be considered objectively.¹⁰⁸

1. The Appellant’s personal circumstances

29. With regard to the Appellant’s claim that, by restricting its consideration of the evidence before it to the narrow categories of his “good character” and his “family circumstances”, the Trial Chamber failed to attach appropriate weight to the evidence before it,¹⁰⁹ the Appeals Chamber reaffirms that Trial Chambers are under no obligation to address mitigating circumstances under a specific heading: “[w]hat matters is, that the Trial Chamber fulfilled [...] its obligation pursuant to Rule 101(B)(ii) of the Rules to take into account any mitigating circumstances.”¹¹⁰ In the present case, the Appeals Chamber notes that the Trial Chamber specifically considered the Appellant’s difficult childhood,¹¹¹ his enlistment in the HVO army and his combat activities,¹¹² the tragic death of his second wife and daughter in 1998,¹¹³ as well as his alleged prior good character¹¹⁴ and, having regard to all the circumstances of the case, ascribed little weight in mitigation to these facts.¹¹⁵ With regard to the Trial Chamber’s alleged failure to attach proper weight to the loss of his job as a consequence of the war,¹¹⁶ the Appeals Chamber finds that, as noted by the Prosecution,¹¹⁷ the Appellant has failed to demonstrate how the loss of his job in the context of the poor economic situation in the region after the break-up of the former Yugoslavia placed him in a more disadvantageous situation than others in the region. As noted above,¹¹⁸ the chaotic context of a conflict, economic deterioration being one of its facets, cannot be taken into account in mitigation. With regard to the Appellant’s claim relating to the location of the house in which he was born and raised,¹¹⁹ the Appeals Chamber notes that this issue was not raised at the sentencing stage¹²⁰ and

¹⁰⁷ Reply Brief, paras 15-16, quoting in particular paragraph 3.52 of the Respondent’s Brief and referring to paragraphs 3.6, 3.8-3.9, 3.13 and 3.33-3.35 of the Respondent’s Brief. *See also* AT. 43.

¹⁰⁸ Reply Brief, para. 16.

¹⁰⁹ Appellant’s Brief, paras 44-45, referring to Sentencing Judgement, paras 47-48. *See also* Appellant’s Brief, para. 48.

¹¹⁰ *Deronjić* Judgement on Sentencing Appeal, para. 149, referring to *Musema* Appeal Judgement, para. 395. *See also* *Jokić* Judgement on Sentencing Appeal, para. 76.

¹¹¹ Sentencing Judgement, para. 47.

¹¹² Sentencing Judgement, para. 47.

¹¹³ Sentencing Judgement, para. 47.

¹¹⁴ Sentencing Judgement, para. 47.

¹¹⁵ Sentencing Judgement, para. 48.

¹¹⁶ Appellant’s Brief, paras 45.3 and 46. *See also* Reply Brief, para. 21.2; AT. 43-45.

¹¹⁷ Respondent’s Brief, para. 3.51.

¹¹⁸ *See supra* para. 13, referring to *Blaškić* Appeal Judgement, para. 711.

¹¹⁹ Appellant’s Brief, para. 45.1; AT. 50-51.

¹²⁰ After a thorough review of the documents before it and, contrary to the references included by the Appellant in the Appellant’s Brief (fn. 37) and in the Reply Brief (fn. 23), the Appeals Chamber notes that this argument was not

that there is therefore no evidence on the basis of which the Appeals Chamber can consider this submission.¹²¹ The Appeals Chamber recalls that an appeal is not the appropriate forum in which mitigating circumstances, evidence of which was readily available at trial, should be presented for the first time.¹²² The Appeals Chamber will therefore not consider this part of the Appellant's argument.

30. For the foregoing reasons, this part of the Appellant's second ground of appeal is dismissed.

2. The Appellant's captivity after his attempted surrender in 1997

31. With regard to the Appellant's claim that the Trial Chamber "disregarded the fact that [he] was held under armed guard by the HVO for almost two years" after his attempted surrender in 1997,¹²³ the Appeals Chamber notes that the Appellant, when depicting his "History and Circumstances" in his Sentencing Brief, specifically referred to the two years he spent in captivity after his surrender to the HVO,¹²⁴ and detailed the circumstances surrounding this captivity in his Further Statement.¹²⁵ Although the Trial Chamber considered the Appellant's attempted surrender in 1997 as part of its considerations on his voluntary surrender, remorse and steps towards rehabilitation,¹²⁶ it is unclear whether the Trial Chamber, in this assessment, had specific regard to the Appellant's captivity under HVO guard. However, even if the Trial Chamber did not take into account that the Appellant was held under armed guard by the HVO, the Appeals Chamber considers that the Appellant fails to demonstrate any relevance of this captivity for the sentence imposed upon him, in particular considering that his submissions do not specify the reasons for which he was held under armed guard.

32. The Appeals Chamber accordingly concludes that the Appellant has not shown a discernible error by the Trial Chamber in the exercise of its discretion when not taking this factor into account.

included in the Defence Sentencing Brief or in its Annexes, nor was it raised by the Defence in its oral submissions before the Trial Chamber on 20 October 2005.

¹²¹ See *Deronji*} Judgement on Sentencing Appeal, para. 150; *Babi*} Judgement on Sentencing Appeal, para. 62.

¹²² See *Deronji*} Judgement on Sentencing Appeal, para. 150; *Babi*} Judgement on Sentencing Appeal, para. 62; *Kvočka et al.* Appeal Judgement, para. 674: "As regards additional mitigating evidence that was available, though not raised, at trial, the Appeals Chamber does not consider itself to be the appropriate forum at which such material should first be raised." See also *Kupre{ki}*} Appeal Judgement, para. 414.

¹²³ Appellant's Brief, para. 48.

¹²⁴ Defence Sentencing Brief, para. 17.

¹²⁵ Defence Sentencing Brief, Annex A2, Statement of Miroslav Bralo, paras 17 to 25.

¹²⁶ Sentencing Judgement, para. 69.

3. The gravity of the crimes committed by the Appellant and his individual circumstances

33. The Appeals Chamber recalls its consistent position in the jurisprudence that, in tailoring the sentence to fit the individual circumstances of the accused and the gravity of the crime,¹²⁷ “it is open to a Trial Chamber to weigh the mitigating circumstances against other factors, such as, the gravity of the crime, the particular circumstances of the case and the form and degree of the participation of the accused in the crime”.¹²⁸ The Appeals Chamber notes that, in the present case, the Trial Chamber, when assessing the sentencing factors, found the crimes committed by the Appellant to be of the “utmost gravity”.¹²⁹ Moreover, “[b]eyond the inherently shocking nature of these crimes”,¹³⁰ it stressed in detail the specific manner in which they were committed¹³¹ and the impact they had on the victims.¹³² Indeed, the Trial Chamber found that the Appellant was “a willing participant in one of the most brutal attacks upon a community in the entire conflict in Bosnia and Herzegovina”.¹³³ The Appeals Chamber particularly notes the Trial Chamber’s findings regarding the Appellant’s desire to degrade and humiliate his victims.¹³⁴

34. The Appeals Chamber therefore finds that, when weighing these specific personal circumstances, the Trial Chamber rightly considered the gravity of the crimes committed. Further, the Appellant fails to show that the Trial Chamber erred when it found that, in light of these “extremely serious crimes, committed in a particularly brutal manner”, his personal circumstances had “only limited bearing on the sentence to be imposed”.¹³⁵

35. For the foregoing reasons, this part of the Appellant’s second ground of appeal is dismissed.

¹²⁷ *Kamuhanda* Appeal Judgement, para. 351. See also *Čelebići* Appeal Judgement, para. 717; *Akayesu* Appeal Judgement, para. 407.

¹²⁸ *Jokić* Judgement on Sentencing Appeal, para. 67. See also *Dragan Nikolić* Judgement on Sentencing Appeal, para. 40; *Babić* Judgement on Sentencing Appeal, para. 60.

¹²⁹ Sentencing Judgement, para. 28. The Trial Chamber stressed that next to being charged with persecution as a crime against humanity, “the remaining counts of the Indictment are a catalogue of serious, violent offences, namely murder, rape, torture, unlawful confinement, and inhuman treatment, constituting grave breaches of the Geneva Conventions and/or violations of the laws or customs of war” (*ibid.*).

¹³⁰ Sentencing Judgement, para. 29.

¹³¹ Sentencing Judgement, paras 29-35.

¹³² Sentencing Judgement, paras 36-40. The Trial Chamber stressed in particular that the submitted statements of the victims “paint a picture of shattered lives and livelihoods, and of tremendous ongoing pain and trauma” (Sentencing Judgement, para. 40).

¹³³ Sentencing Judgement, para. 30.

¹³⁴ Sentencing Judgement, paras 33-35. The Appeals Chamber notes in particular the Trial Chamber’s assessment of the Appellant’s brutal rape and torture of Witness A and its conclusion that the Appellant’s actions “demonstrate a desire to debase and terrify a vulnerable woman, who was at the complete mercy of her captors” (Sentencing Judgement, para. 34).

¹³⁵ Sentencing Judgement, para. 48.

B. The Appellant's cooperation

36. The Appellant submits that his cooperation with the Prosecution, which the Trial Chamber qualified as only “moderate”¹³⁶ and described as mere “willingness to give information”,¹³⁷ was in fact “substantial” within the meaning of Rule 101(B)(ii) of the Rules.¹³⁸ He further argues that he actually cooperated “with the wider aims of the International Tribunal itself”¹³⁹ and asserts that, while the Trial Chamber considered his submission that his cooperation included not only that with the Prosecution but also cooperation with the “Tribunal as a whole” and his “cooperation of value to the people of Ahmi}i”, it only addressed, in its discussion of mitigating factors, his cooperation with the Prosecution.¹⁴⁰ The Prosecution responds that the Trial Chamber attached proper weight to the mitigating circumstances referred to by the Appellant.¹⁴¹

37. At the outset, the Appeals Chamber notes that the only mitigating circumstance mentioned explicitly in Rule 101(B)(ii) of the Rules is substantial cooperation with the Prosecutor. While the jurisprudence of the International Tribunal has consistently identified cooperation under Rule 101(B)(ii) of the Rules primarily as cooperation with the Prosecution,¹⁴² cooperation is not to be “construed narrowly and singularly”,¹⁴³ and Trial Chambers accordingly have the discretion to take other forms of cooperation into account by examining them under different headings: what matters is that Trial Chambers fulfil their obligation under Rule 101(B)(ii) to consider all mitigating circumstances before them.¹⁴⁴ When parties make submissions at trial pertaining to “cooperation” beyond the narrow scope of cooperation with the Prosecution, the fact that a Trial Chamber does not address them under the strict category of cooperation with the Prosecution does not necessarily mean that such submissions were not taken into account. The Appeals Chamber therefore considers that the real issue raised by the Appellant in the instant case is not one of the category assigned by the Trial Chamber, but rather concerns whether each factor was taken into account and, if so, the weight attributed to it. Accordingly, the Appeals Chamber will examine in turn the issues raised by the Appellant under the heading of “cooperation” and consider whether the Trial Chamber took into

¹³⁶ Appellant's Brief, para. 50, referring to Sentencing Judgement, para. 81.

¹³⁷ Appellant's Brief, para. 53, referring to Sentencing Judgement, para. 81.

¹³⁸ Appellant's Brief, para. 51.

¹³⁹ Appellant's Brief, para. 51.

¹⁴⁰ Appellant's Brief, para. 52.

¹⁴¹ Respondent's Brief, para. 3.41.

¹⁴² See *Momir Nikolić* Judgement on Sentencing Appeal, paras 86 ff; *Jokić* Judgement on Sentencing Appeal, para. 88; *Dragan Nikolić* Judgement on Sentencing Appeal, paras 61 ff.

¹⁴³ *Simić* Sentencing Judgement, para. 111: “[C]o-operation should not be construed narrowly and singularly. Rather, co-operation with the Prosecution can be found to exist where a defendant, through his or her actions, facilitated the timely presentation of the Prosecution's case, as was the case when Milan Simić agreed to the use of video-link, thereby waiving his right to be present for his trial, as enshrined in Article 21(4)(d) of the Statute.”

¹⁴⁴ *Deronjić* Judgement on Sentencing Appeal, para. 149.

account all factors mentioned by the Parties in their submissions at trial. The Appeals Chamber will then examine whether the Trial Chamber made a discernable error when according weight to each of these factors.

1. Cooperation of value to the Tribunal

38. Under “Cooperation of value to the Tribunal”, the Appellant raises arguments pertaining to: (a) his stance in initial proceedings; (b) the significance of his Plea Agreement; (c) his contribution to establishing the factual record; and (d) the saving of the International Tribunal’s resources.¹⁴⁵

(a) The Appellant’s stance in initial proceedings

39. The Appellant submits that, when assessing the evidence on his cooperation, the Trial Chamber failed to properly consider his non-adversarial stance in the initial proceedings.¹⁴⁶ However, when addressing the specifics of this issue, the Appellant limits his submissions to detailing his behaviour preceding his guilty plea, including his attempted voluntary surrender in 1997 and his efforts to agree on a Factual Basis.¹⁴⁷ He makes no argument as to a specific discernible error on the part of the Trial Chamber.

40. As the Appeals Chamber has consistently held, the Appellant must set out the arguments supporting the contention that the alleged error has invalidated the decision or occasioned a miscarriage of justice.¹⁴⁸ He must at least identify the alleged error and advance arguments in support of its contention.¹⁴⁹ The Appeals Chamber therefore finds that the Appellant, by not submitting any argument substantiating his claim regarding a specific error by the Trial Chamber in relation to his stance in the initial proceedings, has failed to meet his burden of proof on appeal. The Appeals Chamber therefore dismisses the arguments of the Appellant regarding his stance in the initial proceedings as evidently unfounded.¹⁵⁰

¹⁴⁵ The Appeals Chamber also takes note of the Appellant’s assertion that the supporting materials initially submitted by the Prosecution were weak and that the “central evidence relied on by the Prosecutor is [his] own confession” (Appellant’s Brief, para. 68). However, the Appeals Chamber will not address this argument as the Appellant failed to substantiate it.

¹⁴⁶ Appellant’s Brief, para. 53.2: “The Trial Chamber erred in its assessment of this evidence by [...] failing to properly consider the Appellant’s non-adversarial stance to the proceedings, such that no preliminary motions were filed despite serious defects in the documents underlying the original indictment.”

¹⁴⁷ Appellant’s Brief paras 61-64.

¹⁴⁸ *Kunarac et al.* Appeal Judgement, para. 44.

¹⁴⁹ *Kupreškić et al.* Appeal Judgement, para. 27.

¹⁵⁰ *Stakić* Appeal Judgement, para. 13; *Kunarac et al.* Appeal Judgement, para. 47; *Gacumbitsi* Appeal Judgement, para. 10.

(b) The significance of the Appellant's Plea Agreement

41. The Appellant submits that the Trial Chamber overlooked the significance of his Plea Agreement, which took the novel form of a “unilateral declaration” rather than a “contract between parties”,¹⁵¹ as well as the detailed Factual Basis¹⁵² and the Further Statement¹⁵³ he provided. He asserts that the Trial Chamber did not properly consider the quantity and quality of the information he provided in these materials,¹⁵⁴ which “greatly exceeded the original indictment against him”.¹⁵⁵ The Appellant submits that the Factual Basis went far beyond the scope of the original indictment in that it covered a longer time period, reflected not only “crimes of every type charged in the original indictment”,¹⁵⁶ but also included other crimes such as the attack on the village of Ahmići¹⁵⁷ and aiding and abetting the execution of the ^erimi} family,¹⁵⁸ and revealed the discriminatory intent underlying these crimes.¹⁵⁹ The Prosecution responds that the novel form of the Appellant's guilty plea and the extent of the Factual Basis were duly assessed and allocated weight by the Trial Chamber when it considered the mitigating value of the guilty plea itself.¹⁶⁰ In particular, it submits that the Trial Chamber gave weight to the fact that the Appellant's admissions led to an additional charge being included in the Indictment¹⁶¹ and that the Factual Basis also involved a “profound acknowledgement of personal responsibility”, demonstrating his genuine remorse.¹⁶²

42. The Appeals Chamber recalls at the outset that the mitigating weight to be attached to a guilty plea lies within the discretion of the Trial Chamber.¹⁶³ The Appeals Chamber considers therefore that it lies inherently within the discretion of the Trial Chamber to assess the specific

¹⁵¹ Appellant's Brief, para. 65. The Appellant stresses that no “consideration” was offered by the Prosecution nor “any other form of inducement or promise” was made to him in exchange of his plea.

¹⁵² Appellant's Brief, para. 66.

¹⁵³ Appellant's Brief, Appendix D, English Translation of Declaration and Supplemental Statement of Miroslav Bralo.

¹⁵⁴ Appellant's Brief, para. 53.3.

¹⁵⁵ Appellant's Brief, para. 54.2; AT. 55.

¹⁵⁶ Appellant's Brief, para. 67.2.

¹⁵⁷ Appellant's Brief, para. 67.2.1.

¹⁵⁸ Appellant's Brief, para. 67.2.2.

¹⁵⁹ Appellant's Brief, para. 67.2.3.

¹⁶⁰ Respondent's Brief, para. 3.56, referring to paragraphs 63-65 and 72 of the Sentencing Judgement. The Prosecution also submits that the extensiveness of the Factual Basis as stressed by the Appellant was not significant, as a guilty plea must only be based on a sufficient factual basis (Respondent's Brief, para. 3.59, referring to *Momir Nikolić* Sentencing Judgement, paras 67, 69 and 70).

¹⁶¹ Respondent's Brief, para. 3.57, referring to Sentencing Judgement, paras 62-63. *See also* AT. 102. The Prosecution stresses that the Trial Chamber considered this fact as an important mitigating factor and also noted that no promises or inducements had been made to the Appellant by the Prosecution. At paragraph 29 of his Reply Brief, the Appellant contends that the Trial Chamber's wording at paragraphs 62-63 of the Sentencing Judgement is much more ambiguous than the understanding of the Prosecution and that it is unclear whether the Trial Chamber gave full weight to the inclusion of Count One in the indictment.

¹⁶² Respondent's Brief, para. 3.58, referring to Sentencing Judgement, para. 65.

¹⁶³ *Momir Nikolić* Judgement on Sentencing Appeal, para. 82. *See also Jelisić* Appeal Judgement, para. 121.

value of the documents underlying such a guilty plea. With regard to the Further Statement given by the Appellant, the Appeals Chamber notes that the Appellant does not provide any detail about the alleged quality of this Statement nor its specific significance in the proceedings against him.¹⁶⁴ As he makes no argument as to a specific discernible error on the part of the Trial Chamber in this regard, the Appeals Chamber cannot deal with this part of the Appellant's submissions.¹⁶⁵ With regard to the novel form of the Plea Agreement as a "unilateral declaration",¹⁶⁶ the Appeals Chamber notes that the Trial Chamber specifically considered this when assessing the mitigating value of the Appellant's guilty plea. The Trial Chamber indeed acknowledged the unilateral character of the Plea Agreement in that "the guilty pleas were not entered on the basis of any promises or inducements on the part of the Prosecution".¹⁶⁷ The Appeals Chamber finds that the Appellant failed to demonstrate a discernible error by the Trial Chamber for not according any additional weight to the form of the Plea Agreement going beyond the substantial weight it accorded to his guilty plea and inherently to the Plea Agreement underlying it.¹⁶⁸

43. As to the extent of the Factual Basis underlying the Plea Agreement, the Appeals Chamber recalls that Rule 62*bis*(iv) of the Rules requires only a "sufficient factual basis" agreed between the parties,¹⁶⁹ which underlies the plea agreement and as such is being assessed in the evaluation of the guilty plea itself. However, this does not prevent a Trial Chamber from considering additional information provided by an accused going beyond this requirement of a "sufficient factual basis" as evidence, for example, of the accused's remorse, his steps towards rehabilitation or his cooperation with the Prosecution. The Appellant claims specifically that the information he provided "formed the basis for a wholly new indictment",¹⁷⁰ and that it led, in particular, to the inclusion of Count One in the Indictment.¹⁷¹ The Appeals Chamber notes that the Trial Chamber specifically considered the inclusion of a new charge in the Indictment, when it held that "while some counts

¹⁶⁴ Appellant's Brief, para. 65, where the Appellant mentions the provision of a Further Statement, but fails to provide any further information with regard to its significance.

¹⁶⁵ With regard to the use of the Appellant's Further Statement in other proceedings, *see infra*, paras 54 ff.

¹⁶⁶ Appellant's Brief, para. 65.

¹⁶⁷ Sentencing Judgement, para. 63.

¹⁶⁸ Sentencing Judgement, paras 72 and 83.

¹⁶⁹ *See also Babić* Judgement on Sentencing Appeal, para. 18: "In the specific case of a sentencing judgement following a guilty plea, the Trial Chamber, pursuant to Rule 62*bis*(iv) of the Rules, must be satisfied that 'there is a sufficient factual basis for the crime and the accused's participation in it, either on the basis of independent indicia or on lack of any material disagreement between the parties about the facts of the case'. A common procedure is that the parties enter negotiations and agree on the facts underlying the charges to which the accused will plead."

¹⁷⁰ Appellant's Brief, para. 66.

¹⁷¹ Reply Brief, para. 29.

were removed from the Indictment, it is noteworthy that a new charge of persecution as a crime against humanity was added, based partly on information supplied by Bralo”.¹⁷²

44. The Appeals Chamber therefore finds that the Trial Chamber, having considered the provision of information of further crimes committed by the Appellant when assessing the mitigating value of his guilty plea and having found his guilty plea to be a “significant mitigating factor”,¹⁷³ did not commit a discernable error when not giving any additional weight to this mitigating circumstance going beyond the substantial weight accorded to the guilty plea.

(c) The Appellant’s contribution to establishing the factual record

45. With regard to the Appellant’s claim that the Trial Chamber failed to consider that he contributed to a “historical record”,¹⁷⁴ the Appeals Chamber notes that this factor, although not expressly mentioned by the Trial Chamber, intrinsically falls within the value given to a guilty plea. Indeed, such a contribution to help establish the truth is one of several reasons which have been given in the jurisprudence of the International Tribunal and the ICTR for the mitigating effect of a guilty plea.¹⁷⁵ As such, this factor is part of the substantial weight the Trial Chamber has attached to the Appellant’s guilty plea.¹⁷⁶

46. With regard to the Appellant’s argument that special weight should be given to the fact that he was the first accused in a series of Lašva Valley cases to plead guilty before trial,¹⁷⁷ the Appeals Chamber notes that the Trial Chamber, when assessing the value of the Appellant’s guilty plea and his remorse, specifically considered that “Bralo is the first person charged by the Tribunal with crimes committed in that area who has admitted his criminal conduct”.¹⁷⁸ Accordingly, the Appeals Chamber finds that the Appellant fails to show how the Trial Chamber abused its discretion when it reflected the importance of being the first accused to admit guilt in relation to crimes committed in the Lašva Valley as part of the significant weight it attached to his guilty plea and to his remorse.¹⁷⁹

¹⁷² Sentencing Judgement, para. 63.

¹⁷³ Sentencing Judgement, para. 72.

¹⁷⁴ Appellant’s Brief, para. 120.

¹⁷⁵ *Dragan Nikolić* Judgement on Sentencing Appeal, para. 49. See also *Serugendo* Trial Judgement and Sentence, para. 55.

¹⁷⁶ Sentencing Judgement, paras 72 and 83.

¹⁷⁷ Appellant’s Brief, para. 110.

¹⁷⁸ Sentencing Judgement, para. 71, referring to the Statement of Mehmed Ahmi}, President of the Ahmići Municipality Council.

¹⁷⁹ See also *Momir Nikolić* Judgement on Sentencing Appeal, paras 84-85.

(d) The saving of the International Tribunal's resources

47. With regard to the Appellant's claim that his "guilty plea resulted in very substantial savings for the Tribunal in money, time and other resources"¹⁸⁰ and that no witnesses had to be mobilised by the Prosecution,¹⁸¹ the Appeals Chamber notes that this fact was considered in detail by the Trial Chamber:

Substantial human and practical benefits flow from a plea of guilty, particularly one tendered at an early stage in the proceedings. Victims and witnesses who have already suffered enormous psychological and physical harm are not required to travel to the Hague to recount their experiences in court, and potentially re-live their trauma. In addition, scarce legal, judicial and financial resources that would otherwise be expended in preparing for and conducting a lengthy and expensive trial may be redeployed in the interests of securing the wider objectives of the Tribunal.¹⁸²

The Appeals Chamber recalls that "a guilty plea obviates a lengthy trial and therefore saves International Tribunal resources".¹⁸³ Nevertheless, as the Appeals Chamber has previously held, "the avoidance of a lengthy trial, while an element to take into account in sentencing, should not be given undue weight".¹⁸⁴ The Appeals Chamber finds that, in the present case, the Appellant has failed to demonstrate a discernible error by the Trial Chamber when it actually gave significant weight to the Appellant's contribution to saving International Tribunal resources as part of its assessment of his guilty plea.¹⁸⁵

(e) Conclusion

48. In light of the foregoing, the Appeals Chamber concludes that the Trial Chamber duly took into account all the relevant elements of the Appellant's guilty plea and of his Factual Basis when considering his guilty plea and his remorse. The Appellant failed to substantiate how these circumstances, having been accorded substantial weight in mitigation of sentence,¹⁸⁶ gave rise to an additional mitigating effect deserving separate consideration and weight as "cooperation". This part of the Appellant's second ground of appeal is accordingly dismissed.

¹⁸⁰ Appellant's Brief, para. 112.

¹⁸¹ Appellant's Brief, para. 113. The Appellant, quoting paragraph 64 of the Sentencing Judgement, submits that while the Trial Chamber had accepted the significance of these different aspects of his guilty plea, it failed to reflect their importance in an appropriate reduction of sentence (Appellant's Brief, paras 114-115).

¹⁸² Sentencing Judgement, para. 64.

¹⁸³ *Momir Nikolić* Judgement on Sentencing Appeal, para 79.

¹⁸⁴ *Dragan Nikolić* Judgement on Sentencing Appeal, para. 51. See also *Momir Nikolić* Judgement on Sentencing Appeal, para. 79.

¹⁸⁵ Sentencing Judgement, paras 72 and 83.

¹⁸⁶ Sentencing Judgement, para. 83.

2. Cooperation with the Prosecution

49. The Appellant claims that the Trial Chamber should have considered his cooperation with the Prosecution as “substantial cooperation” and accorded it weight as such,¹⁸⁷ whereas the Trial Chamber found “evidence of some co-operation, in the form of provision of documents and a willingness to give information” and accorded it “weight as moderate co-operation”.¹⁸⁸ He submits that the evaluation of an accused’s cooperation “depends both on the quantity and quality of the information he provides”,¹⁸⁹ and that, to assess its quality, a Trial Chamber should evaluate the uses made by the Prosecution of this information. He argues that he provided information to the Prosecution in the form of documents he handed over in 1997¹⁹⁰ and through the information he supplied in the Factual Basis and in his further Statement,¹⁹¹ which the Prosecution used and continues to use in other proceedings before the International Tribunal. He submits that, due to the confidential nature of the use made of this information, he was unable to assess it at the sentencing stage.¹⁹² In particular, he contends that, in light of the material that has now been disclosed,¹⁹³ the information was in fact very valuable to the Prosecution,¹⁹⁴ and that the substance and the significant quantity of the provided information, which had been used as central documents in many trials,¹⁹⁵ amounted to cooperation that was “substantial in degree but moderate in extent”.¹⁹⁶ The Appellant claims that the Trial Chamber failed to properly assess the Prosecution’s use of these documents and, as a consequence, erred in not taking the quality of this information into account.¹⁹⁷

50. In response, the Prosecution points out that, while it informed the Trial Chamber at the sentencing stage that, in its view, the Appellant had not cooperated,¹⁹⁸ the Trial Chamber departed from this assessment of the Appellant’s level of cooperation and gave sufficient reasons for doing

¹⁸⁷ Appellant’s Brief, paras 51 and 82.

¹⁸⁸ Sentencing Judgement, para. 81.

¹⁸⁹ Reply Brief, para. 23, quoting *Blaškić* Trial Judgement, para. 774.

¹⁹⁰ Appellant’s Brief, para. 54.1; Second Supplemental Brief, paras 8.1-8.5.

¹⁹¹ Appellant’s Brief, paras 70-80; First Supplemental Brief, paras 1-6, 10; Second Supplemental Brief, paras 8.6 and 9.

¹⁹² Appellant’s Brief, para. 57.

¹⁹³ See Decision on Motion of Miroslav Bralo for Access to Certified Trial Record, 2 May 2006; Decision on Motions for Access to *Ex Parte* Portions of the Record on Appeal and for Disclosure of Mitigating Material, 30 August 2006 (“Decision on Access and Disclosure”); *Prosecutor v. Tihomir Blaškić*, Case No. IT-95-14-R, Confidential Decision on Application on Behalf of Miroslav Bralo for Access to Confidential Material, 3 November 2006 (“Decision on Access”); *Prosecutor v. Tihomir Blaškić*, Case No. IT-95-14-R, Decision on Prosecution’s Report Concerning Decision on Application by Miroslav Bralo for Access to Confidential Material (Confidential), 29 January 2007.

¹⁹⁴ First Supplemental Brief, para. 10(b); Second Supplemental Brief, paras 7 and 14. See also AT. 67, lines 3-11.

¹⁹⁵ AT. 72, lines 1-10.

¹⁹⁶ AT. 69-73 and AT. 76.

¹⁹⁷ Appellant’s Brief, para. 75; First Supplemental Brief, para. 11; Second Supplemental Brief, para. 23.

¹⁹⁸ Response to Second Supplemental Brief, para. 33, referring to T. 80-85 (where the Prosecution submits that the steps taken by Miroslav Bralo to cooperate did not rise to the level of substantial cooperation).

so.¹⁹⁹ In particular, the Prosecution submits that the Trial Chamber correctly determined that the provision of documents in itself was sufficient to grant moderate mitigation.²⁰⁰ It argues that while a finding of substantial cooperation can be based on a broad range of acts by an accused and while the utility of information provided may be considered when evaluating an accused's cooperation, the provision of documentation alone, in the International Tribunal's case-law, has never qualified as substantial cooperation.²⁰¹ The Prosecution concedes that it used the material provided by the Appellant in other proceedings but stresses that the provision of this information was not timely and that its use was of a "very limited scope".²⁰² It submits that, in any case, the provision of documents was only one factor taken into account by the Trial Chamber when considering the Appellant's cooperation.²⁰³ In particular, it argues that the Trial Chamber considered the Appellant's refusal to give an interview to the Prosecution,²⁰⁴ noted the limited value of the Appellant's willingness to testify in other proceedings,²⁰⁵ and also considered the lack of restriction on the use of his Factual Basis.²⁰⁶ The Prosecution concludes that, overall, the Appellant's acts of cooperation can only be characterised as moderate cooperation.²⁰⁷

(a) Applicable Law

51. Substantial cooperation with the Prosecutor is the only mitigating circumstance expressly mentioned in the Rules.²⁰⁸ However, what constitutes "substantial cooperation" is not defined. It is within the Trial Chamber's discretion to evaluate the extent and the nature of the accused's cooperation²⁰⁹ and to determine whether the cooperation provided is substantial and should be accorded weight in mitigation.²¹⁰ As correctly noted by the Trial Chamber in the present case,²¹¹ an accused's cooperation need not be substantial for it to be taken into account as a mitigating circumstance.²¹² In determining whether an accused's cooperation was substantial, a Trial Chamber may take into account various circumstances such as his willingness to give interviews to the

¹⁹⁹ Respondent's Brief, para. 3.43.

²⁰⁰ Respondent's Brief, paras 3.44 and 3.46, referring to para. 81 of the Sentencing Judgement.

²⁰¹ Response to Second Supplemental Brief, paras 9 and 12.

²⁰² AT. 84, lines 4-13; AT. 85, lines 13-15. *See also* Response to Second Supplemental Brief, paras 21, 26 and 43.

²⁰³ Respondent's Brief, para. 3.46.

²⁰⁴ Respondent's Brief, para. 3.46, referring to Sentencing Judgement, paras 74 and 78.

²⁰⁵ Respondent's Brief, para. 3.46, referring to Sentencing Judgement, para. 79.

²⁰⁶ Respondent's Brief, para. 3.46, referring to Sentencing Judgement, para. 80.

²⁰⁷ AT. 85, lines 9-17.

²⁰⁸ *See* Rule 101(B)(ii).

²⁰⁹ *Jelisić* Appeal Judgement, para. 124.

²¹⁰ *Momir Nikolić*, Judgement on Sentencing Appeal, para. 91. *See also* *Jelisić* Appeal Judgement, para. 126.

²¹¹ Sentencing Judgement, para. 76.

²¹² *See* *Dragan Nikolić* Judgement on Sentencing Appeal, para. 66; *Vasiljević* Appeal Judgement, para. 180.

Prosecution²¹³ and to testify in other proceedings before the International Tribunal,²¹⁴ the provision of original documentation²¹⁵ and, more generally, the provision of unique and corroborative information to the Prosecution.²¹⁶ This variety of factors clearly indicates that the assessment of substantial cooperation primarily depends on the specific circumstances of each case and that substantial cooperation does not solely rest on one specific act of an accused but must be assessed as a whole. The Appeals Chamber, recalling the jurisprudence of the International Tribunal,²¹⁷ therefore agrees with the Trial Chamber that the qualification of an accused's cooperation as "substantial" will depend on the quantity *and* the quality of the information provided.²¹⁸

52. The Appeals Chamber stresses that the assessment of the quality of the provided information primarily depends on its "actual content".²¹⁹ In this regard, the provision of new information, "heard for the first time before this Tribunal",²²⁰ has to be seen as particularly valuable. Special weight has previously also been given to the provision of unique and corroborative information to the Prosecution,²²¹ as well as the identification of new crimes and perpetrators²²² and of previously unknown mass graves.²²³ However, the content of the information is not the only criteria to be taken into account in the assessment of the quality of the information. Such quality, as stressed by the Prosecution,²²⁴ will also depend on the earnestness of the accused in providing it.²²⁵ Indeed, substantial cooperation has previously been established even where the accused, due to his low rank, had only limited access to sensitive information and could therefore only provide limited information to the Prosecution.²²⁶ Further, while the actual use by the Prosecution in other proceedings before the International Tribunal of information provided by an accused is not, as

²¹³ See *Blagojević & Jokić* Trial Judgement, para. 857; *Momir Nikolić* Sentencing Judgement, para. 155. See also *Banović* Sentencing Judgement, para. 60.

²¹⁴ See, in particular, *Deronjić* Sentencing Judgement, paras 247 to 253, where the Trial Chamber details the stance of the accused as a witness in other proceedings. See also *Babić* Sentencing Judgement, para. 74; *Obrenović* Sentencing Judgement, para. 128.

²¹⁵ See *Deronjić* Sentencing Judgement, para. 254.

²¹⁶ See *Deronjić* Sentencing Judgement, para. 246; *Dragan Nikolić* Sentencing Judgement, para. 260.

²¹⁷ See *Deronjić* Sentencing Judgement, para. 244; *^e{i}* Sentencing Judgement, para. 62; *Todorović* Sentencing Judgement, para. 86; *Bla{ki}* Trial Judgement, para. 774.

²¹⁸ Sentencing Judgement, para. 76. The Appeals Chamber notes that, in their submissions, the Parties both focus on the quantity and the quality of the information to evaluate the cooperation of the Appellant, but differ in their characterisation of what should be seen as quality of provided cooperation. See Reply Brief, para. 23; AT 69, lines 1-9, where the Appellant characterized substantial cooperation as the provision of "material of substance"; Response to Second Supplemental Brief, para. 8; AT. 79-80.

²¹⁹ See *Vasiljević* Trial Judgement, para. 299.

²²⁰ *Dragan Nikolić* Sentencing Judgement, para. 260.

²²¹ *Deronjić* Sentencing Judgement, para. 246.

²²² *Deronjić* Sentencing Judgement, para. 255.

²²³ *Momir Nikolić* Sentencing Judgement, para. 155.

²²⁴ Respondent's Brief, para. 3.45.

²²⁵ See *Bla{ki}*, Trial Judgement, para. 774: "The earnestness and the degree of co-operation with the Prosecutor decides whether there is a reason to reduce the sentence on this ground."

²²⁶ *Banović* Sentencing Judgement, para. 59.

suggested by the Appellant,²²⁷ in itself proof of the quality of the submitted information, such use has to be seen, as conceded by the Prosecution,²²⁸ as a significant indication of the value of this information.

53. In light of the above, the Appeals Chamber will now determine whether the Trial Chamber correctly assessed the evidence before it when evaluating the Appellant's cooperation. The Appeals Chamber will then assess the value, if any, of the additional evidence admitted on appeal, and itself determine whether this material, when considered together with the materials before the Trial Chamber, warrants, on a balance of probabilities,²²⁹ a finding of substantial cooperation and a reduction of sentence.

(b) Assessment of the Appellant's cooperation with the Prosecution

54. In its evaluation of the Appellant's cooperation, the Appeals Chamber will particularly focus on the quantity and the quality of the information provided by the Appellant. When assessing the quality of the information provided, special regard will be given to the Prosecution's use of the material, as an objective indication of its quality. In the present case, the Appeals Chamber notes that it is undisputed between the Parties that the material provided by the Appellant consists of, on the one hand, nine documents which he handed over to UNPROFOR troops in 1997 and his oral statements made to Lieutenant Van Kuijk at this same time, as well as, on the other hand, material underlying the Appellant's Plea Agreement, namely the Factual Basis and his Further Statement made in 2005.²³⁰ As noted by the Trial Chamber,²³¹ it is the value to be placed on them as evidence of cooperation that is in dispute. In the same way, the additional evidence introduced on appeal does not show further acts of cooperation by the Appellant but rather seeks to demonstrate the value of his previous assistance to the Prosecution.²³²

(i) Evidence of cooperation before the Trial Chamber

55. The Appellant contends that the Trial Chamber merely considered the fact that he provided documents in 1997 but failed to properly assess their value as evidenced by their use by the Prosecution in other proceedings.²³³ He submits that the Trial Chamber erred when it failed to

²²⁷ Appellant's Brief, para. 77.

²²⁸ Response to Second Supplemental Brief, paras 9 and 39; AT. 79, lines 15-17.

²²⁹ See *supra* para. 8 and fn. 23.

²³⁰ See Appellant's Brief, paras 55 and 65; Response to Second Supplemental Brief, para. 18; AT 83, lines 17-18.

²³¹ Sentencing Judgement, para. 76.

²³² See also Decision on Miroslav Bralo's Motion for Admission of Additional Evidence (Confidential), 12 January 2007, paras 5 and 21.

²³³ Appellant's Brief, paras 55-58.

adequately consider the Prosecution's reliance on his Factual Basis in the "*Blaškić* Request",²³⁴ submitted *ex parte* by the Prosecution.²³⁵ The Appellant claims that, at the sentencing stage, he had not been in a position to fully argue the significance of his cooperation because of the Prosecution's failure to disclose the use it made of the information provided.²³⁶ He asserts that the Trial Chamber misapplied the burden and standard of proof in its evaluation of his cooperation,²³⁷ arguing that, in the context of the Prosecution's sole knowledge of certain matters,²³⁸ the burden of proof shifts to the Prosecution once the accused has adduced "evidence of sufficient weight and quality to raise a *prima facie* showing of cooperation".²³⁹ The Prosecution stresses that the use of information is evidence of the quality of the cooperation but is not evidence of cooperation itself.²⁴⁰ It contends that the provision of the documents, in itself, was sufficient for the Trial Chamber to give moderate weight to the Appellant's cooperation²⁴¹ and argues that the reference to the Factual Basis in the *Blaškić* Request does not amount to cooperation.²⁴² It submits that, where the Prosecution and the Defence do not agree on the level of cooperation, the burden lies on the Defence to demonstrate the existence of substantial cooperation.²⁴³ In any event, it contends that, in the present case, the Appellant chose not to seek a ruling on substantial cooperation.²⁴⁴

56. The Appeals Chamber recalls that the standard of proof with regard to mitigating circumstances is proof on a balance of probabilities.²⁴⁵ The Appeals Chamber considers that, where the Trial Chamber must evaluate an accused's cooperation based on information solely in the possession of the Prosecution, the issue is not whether the burden of proof shifts, as claimed by the Appellant.²⁴⁶ The issue would instead appear to be whether the Trial Chamber has sufficiently assessed the evidence provided on an *ex parte* basis in order to protect the rights of the accused, where the accused himself does not have the opportunity to do so.

²³⁴ *Prosecutor v. Tihomir Blaškić*, Case No. IT-95-14-R, Prosecution's Request for Review or Reconsideration (Confidential), 29 July 2005 ("*Blaškić* Request"). A public redacted version was filed on 10 July 2006.

²³⁵ Appellant's Brief, paras 72-80; First Supplemental Brief, paras 10-11.

²³⁶ Appellant's Brief, para. 57; Second Supplemental Brief, para. 4.2.

²³⁷ Appellant's Brief, para. 53.1; Second Supplemental Brief, para. 16.

²³⁸ Second Supplemental Brief, para. 4.2.

²³⁹ Second Supplemental Brief, para. 6.

²⁴⁰ AT. 79, lines 15-17.

²⁴¹ Respondent's Brief, para. 3.44, referring to paragraph 81 of the Sentencing Judgement.

²⁴² Response to First Supplemental Brief, para. 1.

²⁴³ Response to Second Supplemental Brief, para. 15.

²⁴⁴ Response to Second Supplemental Brief, para. 15, referring to Sentencing Hearing, T. 85.

²⁴⁵ *Babić* Judgement on Sentencing Appeal, para. 43. See also *Čelebići* Appeal Judgement, para. 590. The Appeals Chamber notes that, at paragraphs 53.1 and 77 of his Appellant's Brief and at the Appeal Hearing (AT. 59, lines 8-13), the Appellant seemingly argued that the Trial Chamber used a higher standard than "balance of probabilities". However, the Appeals Chamber notes that the Appellant failed to substantiate these arguments and will accordingly not address them.

²⁴⁶ Second Supplemental Brief, paras 2.1 and 4-6.

57. The Appeals Chamber notes that, in the present case, the Prosecution submitted an *ex parte* evaluation of the Appellant's cooperation, based primarily on the use in the *Blaškić* Review Proceedings²⁴⁷ of the Appellant's Factual Basis.²⁴⁸ At the same time, the Prosecution issued a public declaration that there was no further mitigating material to be disclosed.²⁴⁹ In such cases, the Appeals Chamber considers that the better practice is to first check whether the documents in question could be disclosed *inter partes* in order to allow the accused to himself comment on the Prosecution's submissions.²⁵⁰ This may in certain instances necessitate an application to another Chamber for a variation in protective measures. Where it is not possible for such documents to be submitted *inter partes*, it is within a Trial Chamber's discretion to rely on the Prosecution's *ex parte* assessment of the accused's cooperation, as the Trial Chamber did in the instant case. In this event, the Appeals Chamber emphasises that the Prosecution must provide sufficient explanations in its assessment as to why it considers the information given by an accused valuable or not. The Trial Chamber should then evaluate the nature and extent of the accused's cooperation and set out a reasoned opinion in writing.²⁵¹ Under the circumstances, such reasoned opinion is the Appellant's only guide as to whether his right to a fair trial has been preserved.

58. In light of the above, the Appeals Chamber will now determine whether the Trial Chamber, based on the evidence before it, committed a discernable error in its evaluation of the Appellant's cooperation with the Prosecution. When examining the Trial Chamber's assessment of the mitigating value to be attributed to the documents the Appellant provided in 1997, the Appeals Chamber first stresses that the Appellant never submitted these documents to the Trial Chamber.²⁵² Accordingly, the Trial Chamber correctly found that, "[w]ithout having itself received this information, it is difficult for the Trial Chamber to assess its quantity and quality, but it takes into account its provision nonetheless".²⁵³ Moreover, the Appeals Chamber finds that the Appellant, in his submissions to the Trial Chamber,²⁵⁴ failed to detail how, in his view, the alleged use of these

²⁴⁷ *Prosecutor v. Tihomir Blaškić*, Case No. IT-95-14-R ("Blaškić Review Proceedings").

²⁴⁸ *Prosecutor v. Miroslav Bralo*, Case No. IT-95-17-S, Prosecution's Further Submissions Concerning Rule 68 (*ex parte*), 18 October 2005 ("Prosecution's Further Submissions"), paras 5 to 7. The *ex parte* status of these submissions was lifted on 12 July 2006.

²⁴⁹ *Prosecutor v. Miroslav Bralo*, Case No. IT-95-17-S, Prosecutor's Declaration Concerning Rule 68, 19 October 2005.

²⁵⁰ *Dragan Nikolić* Judgement on Sentencing Appeal, paras 61-63.

²⁵¹ *Momir Nikolić* Judgement on Sentencing Appeal, para. 96: "Only a reasoned opinion, one of the elements of the fair trial requirement embodied in Articles 20 and 21 of the Statute, allows the Appeals Chamber to carry out its function pursuant to Article 25 of the Statute by understanding and reviewing findings of a Trial Chamber." (footnote omitted). See also *Kordić and Čerkez* Appeal Judgement, para. 385; *Kunarac et al.* Appeal Judgement, para. 41.

²⁵² AT. 65, lines 4-19.

²⁵³ Sentencing Judgement, para. 77.

²⁵⁴ Defence Sentencing Brief, para. 81: "We note that the documents handed over by Miroslav Bralo to UN authorities in 1997 were received into evidence in at least one trial." *Confidential Annex B9b* to the Sentencing Brief contains a list of all documents handed over in 1997, as well as a short description of each document.

documents by the Prosecution would have suggested their value as cooperation, and failed to seek disclosure at trial stage of information concerning such use.²⁵⁵ The Appeals Chamber stresses that the Trial Chamber nevertheless considered that the documents in question had been used in other proceedings and took the provision of these documents into account for its assessment of the Appellant's cooperation.²⁵⁶ The Appeals Chamber therefore finds that the Appellant fails to show a discernable error in the Trial Chamber's evaluation of this evidence.

59. The Appeals Chamber now turns to the Trial Chamber's assessment of the value of the Factual Basis underlying the Appellant's Plea Agreement, as evidence of cooperation by the Appellant. The Appeals Chamber notes that the Prosecution submitted to the Trial Chamber, on an *ex parte* basis only, a very brief explanation of the use it had made in the *Blaškić* Request of materials it had received from the Appellant, including his Factual Basis, and attached the *Blaškić* Request in full.²⁵⁷ The Trial Chamber reflected the submission of these *ex parte* documents in its summary of the parties' arguments.²⁵⁸

60. As detailed above,²⁵⁹ a Trial Chamber should evaluate the Prosecution's assessment of an accused's cooperation. In the present case, the Trial Chamber correctly assured the Appellant that it would evaluate the *ex parte* submissions of the Prosecution to this effect.²⁶⁰ In the Sentencing Judgement, the Trial Chamber concluded its assessment of the Appellant's cooperation with regard to the use of the Factual Basis as follows:

Finally, with regard to the use that may be made of the Factual Basis agreed between Bralo and the Prosecution, the Trial Chamber finds that this is also of limited value as evidence of co-operation from Bralo. While he has placed no restriction on the use of the Factual Basis, and therefore is not being obstructive, it does not necessarily follow that he is being positively co-operative with the Prosecution. Therefore, even if the Factual Basis is being used by the Prosecution in other cases before the Tribunal, its use does not imbue it with value as evidence of co-operation from Bralo.²⁶¹

61. The Appeals Chamber notes that the Prosecution made very limited *ex parte* submissions regarding the value it drew from the Appellant's Factual Basis for the *Blaškić* Request.²⁶² For its

²⁵⁵ In the *Defence Confidential Motion for Disclosure of Mitigating Material under Rule 68*, as well as during the Sentencing Hearing, the Appellant only sought disclosure of the use made of his Factual Basis.

²⁵⁶ Sentencing Judgement, para. 77.

²⁵⁷ *Prosecutor v. Miroslav Bralo*, Case No. IT-95-17-S, Prosecution's Further Submissions. In these submissions, the Prosecution concluded that, in its view, the references to the Appellant in the *Blaškić* Request did not amount to substantial cooperation (*ibid.* paras 5-6).

²⁵⁸ Sentencing Judgement, para. 75: "[The Prosecution] noted that it had provided the Trial Chamber on an *ex parte* basis with information that could be analysed to determine its value as evidence of co-operation by Bralo with the Prosecution."

²⁵⁹ *See supra*, para. 57.

²⁶⁰ T. 61-62 (Private Session).

²⁶¹ Sentencing Judgement, para. 80.

²⁶² *Prosecutor v. Miroslav Bralo*, Case No. IT-95-17-S, Prosecution's Further Submissions, paras 5-6.

part, the Trial Chamber's reasoning with regard to the extent and manner of its assessment of the information provided by the Prosecution is somewhat obscure. In particular, it remains unclear whether the Trial Chamber relied on the Prosecution's arguments when assessing the mitigating value of the use made of the Factual Basis in other proceedings. The Appeals Chamber refers in this context to the approach taken in the *Dragan Nikolić* case, where the Trial Chamber requested the Prosecution at the Sentencing Hearing to provide documents that "would enable [it] to review them *in camera* in order to assess if the Accused's co-operation with the Prosecution could be regarded as being substantial".²⁶³ The Trial Chamber then gave a substantive account of its analysis of the provided documents, before concluding that it could not itself assess them²⁶⁴ and therefore accepting the Prosecution's assessment that the Accused's co-operation was substantial.²⁶⁵

62. The Appeals Chamber is convinced that, in order to provide a transparent assessment of the Appellant's cooperation, a similar approach would have been appropriate in the present case, in particular in light of the reassurances given to the Appellant at the Sentencing Hearing.²⁶⁶ While, in light of its findings above,²⁶⁷ the Appeals Chamber agrees with the Trial Chamber that the use of the Factual Basis by the Prosecution is not in itself proof of the quality of the submitted information, the references made to the Appellant in the *Blaškić* Request, as detailed by the Appellant in his First Supplemental Brief,²⁶⁸ indeed suggest a certain utility of the information for the Prosecution. Nevertheless, the Appeals Chamber stresses that, given that cooperation has to be seen as a whole, the Trial Chamber's assessment of the use of the Factual Basis must be considered as just one of the elements that could be relevant to establish the extent of the Appellant's cooperation.

63. In particular, the Appeals Chamber stresses that, as part of the assessment of the Appellant's cooperation, special regard must be had to the accused's willingness to cooperate as underlined by his actions and evidenced, in particular, by his earnestness when providing information to the Prosecution.²⁶⁹ In the present case, the Appeals Chamber notes that the Trial Chamber, while taking into account the Appellant's willingness to testify in future cases,²⁷⁰ also considered that he had

²⁶³ *Dragan Nikolić* Sentencing Judgement, para. 258.

²⁶⁴ *Dragan Nikolić* Sentencing Judgement, para. 259.

²⁶⁵ *Dragan Nikolić* Sentencing Judgement, para. 260.

²⁶⁶ T. 61-62 (Private Session).

²⁶⁷ *See supra* para. 52.

²⁶⁸ First Supplemental Brief, paras 1-6. The Appellant stresses that he is one of three persons named in the *Blaškić* Request, para. 57(b), as source of evidence of the new fact that Blaškić issued orders to commit crimes (*ibid.* paras 1-2).

²⁶⁹ *See supra* para. 52.

²⁷⁰ Sentencing Judgement, para. 79.

refused to meet with the Prosecution for an interview.²⁷¹ Moreover, the Appeals Chamber points to the fact that the Plea Agreement filed with the Trial Chamber, unlike other plea agreements,²⁷² does not specify any cooperation to be provided by the Appellant. Although such specification is not mandatory, its inclusion is a significant indication of an accused's willingness to cooperate with the Prosecution. It establishes clear obligations on the part of the accused, which can then be considered by a Trial Chamber when assessing the accused's cooperation.²⁷³ In light of these considerations, the Appeals Chamber finds that the Trial Chamber did not err when holding that the Appellant, although not being obstructive,²⁷⁴ did not show an overall willingness to cooperate.

64. The Appeals Chamber therefore concludes that the Trial Chamber, in light of all the evidence before it, did not abuse its discretion in qualifying the Appellant's cooperation as only moderate.

(ii) Additional evidence of cooperation before the Appeals Chamber

65. The Appeals Chamber notes that, in the following assessment of additional evidence, it will only consider material which was not previously available to the Trial Chamber.²⁷⁵ The Appellant essentially details the use of this additional evidence by the Prosecution in different proceedings and argues that this use demonstrates the value of the information he provided.²⁷⁶ The Prosecution responds that the additional evidence, when weighed together, does not support a finding of substantial cooperation with the Prosecution.²⁷⁷

66. The Appeals Chamber first stresses that, contrary to what the Appellant suggests,²⁷⁸ the Appeals Chamber is not required to remit the case to the Trial Chamber for a new determination of

²⁷¹ Sentencing Judgement, para. 78.

²⁷² See *Rajić* Sentencing Judgement, para. 156; *Mrđa* Sentencing Judgement, paras 72-74. See also *Deronjić* Sentencing Judgement, paras 249-250; *Jokić* Sentencing Judgement, para. 95.

²⁷³ See *Rajić* Sentencing Judgement, para. 156; *Mrđa* Sentencing Judgement, paras 72-74. See also *Deronjić* Sentencing Judgement, paras 249-250; *Jokić* Sentencing Judgement, para. 95.

²⁷⁴ Sentencing Judgement, para. 80.

²⁷⁵ All the Appellant's arguments with regard to these materials are reflected at paragraphs 8 to 16 of his Second Supplemental Brief and were raised at the Appeal Hearing (AT. 67 and 72, lines 1-10). Those materials previously on the Trial Record, but unavailable to the Appellant, have already been considered in detail (*see supra* paras 58-62).

²⁷⁶ Second Supplemental Brief, paras 8.1-8.5 and 9. The Appellant details the use of the documents he provided in 1997 at the trial stage of *Prosecutor v. Tihomir Blaškić*, Case No. IT-95-14-T ("Blaškić case"), at the trial stage of *Prosecutor v. Dario Kordić and Mario Čerkez*, Case No. IT-95-14/2-T ("Kordić and Čerkez case"), and as part of the confirmation material presented with the indictment in *Prosecutor v. Paško Ljubičić*, Case No. IT-00-41 ("Ljubičić case"); as well as the use of his Factual Basis in support of *Blaškić* Review Proceedings as evidence of new facts or to counter evidence given before the *Blaškić* Trial Chamber.

²⁷⁷ Response to Second Supplemental Brief, paras 18-31. See also AT. 84-85.

his sentence. In particular, the Appeals Chamber recalls that, contrary to the Appellant's submissions,²⁷⁹ an alleged failure of the Prosecution to produce exculpatory evidence under Rule 68 of the Rules at the trial stage can be cured through the admission of additional evidence before the Appeals Chamber²⁸⁰ and does not in itself warrant a remittal of the case to the Trial Chamber. The Appeals Chamber will itself reconsider the specific issue of cooperation on the basis of the additional evidence admitted on appeal.²⁸¹

67. The Appeals Chamber notes that the material provided by the Appellant has been used by the Prosecution in three cases, namely *Blaškić, Kordić and Čerkez*, as well as within the confirmation materials presented with the indictment in the *Ljubičić* case. The Appeals Chamber also notes that materials provided by the Appellant were turned over by the Prosecution to the State Prosecutor of Bosnia and Herzegovina in the course of the transfer of the *Ljubičić* case pursuant to Rule 11bis.²⁸² With regard to the use of the documents provided in 1997 in the *Blaškić* trial proceedings, the Appeals Chamber stresses that, contrary to the Prosecution's arguments,²⁸³ the relative importance given by the Prosecution to the value of these documents was only exemplified through the disclosure of the Prosecution's contemporaneous motion.²⁸⁴ The Appeals Chamber also notes the use of one of these documents in the *Kordić and Čerkez* case as Exhibit 265-1, as well as the use of four documents in the *Ljubičić* case. While finding that this multiple use of the documents provides some indication of their utility for the Prosecution, the Appeals Chamber is not able to assess for itself the actual impact of these documents on the Prosecution's case in each of these proceedings.²⁸⁵ However, the Appeals Chamber takes note of the Prosecution's submission that it had received six of the nine documents handed over by Miroslav Bralo in 1997 independently from another source in 2003.²⁸⁶

²⁷⁸ AT. 37-40. The Appellant sought to remit this matter to the original Trial Chamber for reconsideration of sentence in the light of this new material (AT. 38, lines 7-9). See also Reply Brief to Second Supplemental Brief, para. 6.

²⁷⁹ AT. 36-37.

²⁸⁰ See *Stakić* Appeal Judgement, paras 191-193.

²⁸¹ See *supra* para. 8.

²⁸² See Exhibit D-A3 ("Letter dated 6 October 2006, from Peter M. Kremer, Q.C., Senior Appeals Counsel"). The Appeals Chamber considers that, contrary to the Prosecution's arguments (Response to Second Supplemental Brief, para. 30; AT. 86-87), the handing over of materials to the State Prosecutor of Bosnia and Herzegovina can be considered as use of these materials by the Prosecution.

²⁸³ Response to Second Supplemental Brief, para. 28.

²⁸⁴ *Prosecutor v. Tihomir Blaškić*, Case No. IT-95-14-T, Prosecutor's Motion for an *ex parte in camera* Hearing in respect of the Admission of Newly-Discovered Evidence, filed *ex parte* and under seal, 11 December 1997 (made public on 13 January 2006). In this motion, the Prosecution requested the admission of Witness Lieutenant Van Kuijk, to whom the Appellant had tried to surrender, and sought the admission of said documents.

²⁸⁵ The Appeals Chamber notes that the Parties did not submit further evidence to that effect.

²⁸⁶ AT. 84, lines 9-11.

68. With regard to the *Blaškić* Review Proceedings, the Appeals Chamber notes that, as conceded by the Prosecution,²⁸⁷ it was information provided by the Appellant that confirmed Blaškić's role as commander of the Alpha force, but that this was only "one element of a massive case against Mr. Blaškić".²⁸⁸ The Appeals Chamber also notes that the Prosecution made reference to the Appellant's Factual Basis as new "first hand" evidence to ascertain that orders from Blaškić in relation to the attack on Ahmići included orders to commit crimes.²⁸⁹ However, the Appeals Chamber finds that the Appellant's Factual Basis is used only as corroboration of evidence provided by other witnesses.²⁹⁰ The Appeals Chamber therefore finds that, although the information provided by the Appellant seems to have been of some utility to the Prosecution in the *Blaškić* Review Proceedings, it cannot be said that it was of a nature to warrant by itself a finding of substantial cooperation by the Appellant.

69. In light of the above, the Appeals Chamber is therefore not convinced, on a balance of probabilities, that the information contained in the additional evidence before it amounts to such quality or quantity as to warrant a finding of substantial cooperation by the Appellant.

(c) Conclusion

70. In its assessment of the Appellant's cooperation with the Prosecution, the Appeals Chamber first found that the Trial Chamber did not commit a discernable error when it held, in light of the evidence before it, that the quality and quantity of the cooperation provided by the Appellant only deserved moderate weight in mitigation of sentence. The Appeals Chamber then considered the additional evidence on appeal and was not satisfied that the quality and the quantity of the information provided warranted a finding of substantial cooperation. Taking into account the evidence before the Trial Chamber in conjunction with the additional evidence admitted on appeal, the Appeals Chamber concludes that the Appellant failed to show that his cooperation with the Prosecution was in fact substantial. The Appeals Chamber therefore upholds the Trial Chamber's finding of moderate weight to be given to the Appellant's cooperation with the Prosecution.

²⁸⁷ AT. 81, lines 7-8.

²⁸⁸ AT. 81, lines 9-11.

²⁸⁹ *Prosecutor v. Tihomir Blaškić*, Case No. IT-95-14-R, Redacted Version of Prosecutor's Revised Reply to Defence's "Response to Prosecutor's Request for Review or Reconsideration", 4 September 2006 ("Prosecutor's Reply"), para. 74.

²⁹⁰ *See Prosecutor v. Tihomir Blaškić*, Case No. IT-95-14-R, Prosecutor's Reply, paras 54 and 72. *See also* AT. 84, lines 11-22.

3. Cooperation of value to the people of Ahmi}i: the Appellant's post-conflict conduct

71. The Appellant submits that the Trial Chamber failed to properly consider his cooperation of particular value to the people of Ahmi}i, including his identification of crime sites and his active engagement with the Commission on Missing Persons by identifying several grave-sites,²⁹¹ as well as the location of landmines.²⁹² He submits that his Factual Basis led to the location and identification of the "Loncari 3", as well as to the location of the original burial place of the ^erimi} family.²⁹³ He also emphasises the particular importance of his guilty plea to the people of Ahmi}i, as evidenced by statements from members of the victimised community themselves.²⁹⁴ He argues that by revealing new factual material through his acknowledgement of a systematic crime against the entire Muslim civilian population of the Lašva Valley,²⁹⁵ he assisted the victimised communities²⁹⁶ and the International Commission on Missing Persons.²⁹⁷ The Appellant stresses that his post-conflict conduct was "truly aimed at the furthering of peace and reconciliation".²⁹⁸ He submits that the International Tribunal should encourage such "full and active co-operation from each and every defendant in proceedings before it" by expressly recognising that "such behaviour may substantially mitigate past criminal behaviour".²⁹⁹ The Prosecution responds that the Trial Chamber expressly acknowledged the Appellant's identification of crime sites, location of burial sites of victims, and assistance in mine clearance in Ahmi}i, as significant mitigating circumstances

²⁹¹ Appellant's Brief, paras 54.4, 81 and 132-139. The Appellant first outlines the different ways in which he helped in the location of grave-sites (Appellant's Brief, paras 132.1-132.3) and then elaborates on the significance of clarifying the whereabouts of still missing persons for the local communities (Appellant's Brief, para. 133, quoting Defence Sentencing Brief, Annex B13, Statement of Mehmed Ahmi}) and the International Community (Appellant's Brief, paras 134-135, quoting UN General Assembly, Resolution A/RES/57/10, 16 December 2002 and UN General Assembly, Resolution A/RES/55/24). Lastly, he points to the assistance he provided to the International Commission on Missing Persons (Appellant's Brief, paras 136-137, quoting Appellant's Brief, Appendix F, Statement of Mr. Zaim Kablar).

²⁹² Appellant's Brief, paras 81, 129-131. To support his argument pertaining to mine clearance, he points to the importance of such action as a concern of the International Community, relying on UN General Assembly, Resolution A/RES/55/24, 14 November 2000. See also Reply Brief, para. 30.

²⁹³ Appellant's Brief, para. 69.

²⁹⁴ Appellant's Brief, paras 107-109, citing Defence Sentencing Brief, Annex B13, Statement of Mehmed Ahmi}, current President of the Ahmi}i Municipality ("I consider that pleading guilty and showing remorse is positive. F...g It would be good if everyone did the same. I am asked about the impact this will have on relations in this area. I say it will have a fantastic effect."); Annex B4, Statement of Ferid Ahmi}; Annex B10, Statement of Natalija Krizanac.

²⁹⁵ Appellant's Brief, para. 121.

²⁹⁶ Appellant's Brief, paras 117-118, citing Defence Sentencing Brief, Annex B13, Statement of Mehmed Ahmi}; and Annex B2, Statement of Goran Gogi}.

²⁹⁷ Appellant's Brief, para. 119, quoting from the Appellant's Brief, Appendix F, Statement of Mr. Zaim Kablar, Regional Representative for the International Commission on Missing Persons.

²⁹⁸ Appellant's Brief, fn. 93. To support his argument that his alleged attempt to further peace should be taken into account as a mitigating factor, the Appellant refers in particular to paragraph 59 of the *Babić* Judgement on Sentencing Appeal.

²⁹⁹ Appellant's Brief, para. 138.

demonstrating the steps he took to atone for his crimes.³⁰⁰ It submits that to consider these factors separately as evidence of cooperation would lead to impermissible double-counting.³⁰¹

72. The Appeals Chamber notes at the outset that the Appellant acknowledges that the Trial Chamber has taken his post-conflict conduct into account.³⁰² Indeed, the Trial Chamber explicitly stated that “[the Appellant’s] efforts to assist in the location of the remains of his victims and others killed in the course of the conflict, and to aid de-mining operations, are to be commended”.³⁰³ The Trial Chamber also specifically considered statements by members of the victims’ communities to reflect the impact of the Appellant’s efforts to atone for his crimes, when stating that:

[...] the Trial Chamber is mindful of the statement given by Zaim Kablar, who has been involved in the location and exhumation of bodies in central Bosnia, and who has described the importance of Bralo’s contribution to finding the remains of several of his victims, and the positive effect that this has had on the families of those victims and the local community.³⁰⁴

This led the Trial Chamber to the conclusion that “the efforts [the Appellant] has made to try to atone for his crimes, demonstrate that he is genuinely remorseful”.³⁰⁵ Moreover, the Appeals Chamber finds that the Trial Chamber gave due consideration to the positive effect the Appellant’s guilty plea and expression of genuine remorse had on the victims’ communities and accepted the Appellant’s “acknowledgement of wrongdoing” as “extremely important for the entire community in its continuing process of recovery and reconciliation”.³⁰⁶ The Appeals Chamber observes that the Trial Chamber considered the Appellant’s genuine remorse to be a significant mitigating factor³⁰⁷ and accorded this fact substantial weight in mitigation.³⁰⁸

73. The Appeals Chamber accordingly concludes that the Trial Chamber duly took into account all the relevant elements of the Appellant’s post-conflict conduct – including his cooperation of value to the people of Ahmi}i – and afforded these mitigating circumstances substantial weight when considering his guilty plea and his remorse.³⁰⁹ The Appellant has failed to substantiate how these circumstances, having been accorded substantial weight in mitigation of sentence,³¹⁰ gave rise

³⁰⁰ Respondent’s Brief, para. 3.61, referring to Sentencing Judgement, para. 72. The Prosecution submits that the Appellant himself detailed these factors at paragraphs 79 and 80 of his Defence Sentencing Brief as demonstrating his genuine remorse.

³⁰¹ Respondent’s Brief, para. 3.61.

³⁰² Appellant’s Brief, para. 54.

³⁰³ Sentencing Judgement, para. 69.

³⁰⁴ Sentencing Judgement, para. 69.

³⁰⁵ Sentencing Judgement, para. 70.

³⁰⁶ Sentencing Judgement, para. 71, referring to the Statement of Mehmed Ahmi}, appended to the Defence Sentencing Brief.

³⁰⁷ Sentencing Judgement, para. 72.

³⁰⁸ Sentencing Judgement, para. 83.

³⁰⁹ Sentencing Judgement, paras 72 and 83.

³¹⁰ Sentencing Judgement, para. 83.

to an additional mitigating effect deserving separate consideration and weight as “cooperation”. In particular, the Appeals Chamber finds that, contrary to the Appellant’s claim,³¹¹ it was within the Trial Chamber’s discretion to consider the Appellant’s assistance in the location of burial sites and of sites of crimes as well as his help in the location of land mines as indications of the Appellant’s remorse and the steps taken to atone for his crimes; the Trial Chamber was not bound to consider these factors again when assessing the Appellant’s cooperation.

74. For the foregoing reasons, this part of the Appellant’s second ground of appeal is dismissed.

C. The Appellant’s expression of remorse

75. The Appellant notes that both the Prosecution³¹² and the Trial Chamber³¹³ recognised his genuine remorse underlying his guilty plea and reflected in his public statement of remorse.³¹⁴ In his view, genuine remorse, going beyond the simple acceptance of a guilty plea,³¹⁵ “is one of the most powerful and all-embracing factors in mitigation”.³¹⁶ He argues in that respect that his post-conflict conduct demonstrates his active expression of remorse but that these efforts to make a “contribution to peace in the region” were not fully reflected in his sentence.³¹⁷ The Prosecution responds that the Trial Chamber specifically considered the significance of the Appellant’s guilty plea and his remorse “in the promotion of reconciliation in the region and in the healing of the victims”.³¹⁸

76. As detailed above,³¹⁹ the Trial Chamber considered the Appellant’s genuine remorse to be a factor deserving substantial weight in mitigation.³²⁰ The Appeals Chamber considers that the Appellant failed to show a discernible error of the Trial Chamber in the exercise of its discretion. As a result, this part of the Appellant’s second ground of appeal is dismissed.

77. For the foregoing reasons, the Appellant’s second ground of appeal is dismissed.

³¹¹ Appellant’s Brief, para. 81.

³¹² Appellant’s Brief, para. 126, referring to the Sentencing Hearing, T. 109, lines 11-19.

³¹³ Appellant’s Brief, para. 127, quoting from Sentencing Judgement, para. 70.

³¹⁴ Appellant’s Brief, para. 125, referring to the Appellant’s Brief, Appendix C, English Translation of Apology.

³¹⁵ Appellant’s Brief, para. 122.

³¹⁶ Appellant’s Brief, para. 123.

³¹⁷ Appellant’s Brief, para. 128, quoting from *Plavšić* Sentencing Judgement, para. 94.

³¹⁸ Respondent’s Brief, para. 3.68, referring to Sentencing Judgement, paras 64, 65 and 71.

³¹⁹ *See supra*, para. 72.

³²⁰ Sentencing Judgement, para. 83.

V. THIRD GROUND OF APPEAL: WHETHER THE TRIAL CHAMBER ERRED BY FAILING TO ORDER AN APPROPRIATE REDUCTION OF SENTENCE TO REFLECT THE MITIGATION IN THE CASE

78. The Trial Chamber held that, when considering only the gravity of the crimes committed by the Appellant, including the aggravating circumstances, “a sentence of at least 25 years’ imprisonment would be warranted”.³²¹ The Appellant, although acknowledging the appropriateness of a sentencing range beginning at 25 years,³²² submits that the Trial Chamber abused its discretion when reducing the sentence only by “as little as 5 years, or as little as 20% of the sentence”³²³ after it determined that the mitigating evidence “together warrantFedg *substantial modification* of the sentence”.³²⁴ In order to demonstrate this alleged abuse of discretion by the Trial Chamber, the Appellant elaborates on the proper approach to the role of the International Tribunal in assessing the value of mitigating factors.³²⁵ He rejects “a narrow interpretation of the mandate given in the Statute”, which limits the International Tribunal to its task of prosecuting and punishing those responsible, without consideration of the effects of a sentence “on the interests of those outside the International Tribunal”.³²⁶ Instead, he stresses the importance of the International Tribunal’s wider aim, which he outlines as a “very practical and constructive commitment to secure justice, peace and reconciliation within the region and to bring communities together”.³²⁷ In his view, this approach allows for exceptional sentences, despite the “gravity of the offending”.³²⁸

79. In the present case, the Appellant submits that the approach taken by the Trial Chamber when evaluating the mitigating evidence “represents an overly restrictive view of the powers and functions of the Tribunal”³²⁹ and that the mitigating factors presented in his Sentencing Brief³³⁰ and amplified in his appeal deserve a more significant reduction of sentence than that ordered by the

³²¹ Sentencing Judgement, para. 95.

³²² Appellant’s Brief, para. 87; AT. 74.

³²³ Appellant’s Brief, para. 87.

³²⁴ Appellant’s Brief, para. 85, quoting from Sentencing Judgement, para. 83 (emphasis in the Appellant’s Brief).

³²⁵ Appellant’s Brief, paras 89-101.

³²⁶ Appellant’s Brief, para. 89.

³²⁷ Appellant’s Brief, para. 90. According to the Appellant (Appellant’s Brief, paras 97-99), the International Tribunal’s wider aim of reconciliation in the region, as well as its contribution to lasting peace and security has also been stressed by the UN General Assembly, Resolution A/RES/51/203, 17 December 1996, and Resolution A/RES/55/24, 14 November 2000, as well as by the UN Security Council, Resolution 1534 (2004), 26 March 2004.

³²⁸ Appellant’s Brief, para. 92. The Appellant quotes in particular from the *Erdemovi* 1998 Sentencing Judgement, para. 21, which reads: “The International Tribunal, in addition to its mandate to investigate, prosecute and punish serious violations of international humanitarian law, has a duty, through its judicial functions, to contribute to the settlement of the wider issues of accountability, reconciliation and establishing the truth behind the evils perpetrated in the former Yugoslavia” (Appellant’s Brief, para. 91).

³²⁹ Appellant’s Brief, para. 102.

³³⁰ Defence Sentencing Brief, paras 2-24 and 64-89.

Trial Chamber.³³¹ The Appellant, after reiterating the mitigating elements he considers worthy of a greater modification of sentence and further detailing some of the arguments submitted in his first and second grounds of appeal, concludes that, in light of these mitigating circumstances, the Trial Chamber failed to pass a sentence reflecting the “substantial modification” it found to be warranted.³³² He further stresses the Appeals Chamber’s power to vary a sentence in cases where a materially erroneous appreciation of mitigating or aggravating circumstances has led to an inappropriate sentence.³³³

80. The Prosecution responds that the Appellant fails to demonstrate how the Trial Chamber abused its discretion when imposing the sentence³³⁴ and fails to show any discernable error in the Trial Chamber’s assessment of his overall sentence of 20 years.³³⁵ It argues that, when considering a sentence of “at least 25 years’ imprisonment” to be appropriate absent the mitigating circumstances,³³⁶ the Trial Chamber envisaged a “starting point for a sentence for the crimes committed”³³⁷ and, on the basis of the gravity of the crimes and the aggravating circumstances, likely considered that a sentence of over 25 years was actually warranted.³³⁸ Accordingly, the Prosecution contends that the Appellant misread the Sentencing Judgement³³⁹ as a sentence of 20 years indicates that more credit was given to mitigating circumstances than he suggested.³⁴⁰ Further, the Prosecution asserts that the Appellant, by asking for a re-evaluation of all mitigating circumstances as presented in the Defence Sentencing Brief,³⁴¹ actually requests a trial *de novo*, asking the Appeals Chamber to “substitute its judgement for that of the Trial Chamber in an arena in which the Trial Chamber has a very broad discretion”.³⁴²

81. The Appeals Chamber notes that the Trial Chamber, having determined the weight to be accorded to the mitigating evidence, concluded that “Bralo’s guilty plea and the time at which it was tendered, along with his remorse and efforts to atone for his crimes, and his voluntary surrender, together warrant substantial modification of the sentence that would otherwise be

³³¹ Appellant’s Brief, para. 103; AT. 74-76.

³³² Appellant’s Brief, para. 141, citing Sentencing Judgement, para. 83.

³³³ Reply Brief, para. 34, referring to Article 25 of the Statute and to paragraph 726 of the *Blaškić* Appeal Judgement.

³³⁴ Respondent’s Brief, para. 3.67. For a general discussion on the discretion of the Trial Chamber regarding mitigating circumstances, the Prosecution refers to paragraph 44 of the *Babić* Judgement on Sentencing Appeal.

³³⁵ Respondent’s Brief, para. 3.65.

³³⁶ Respondent’s Brief, para. 3.65, citing Sentencing Judgement, para. 95.

³³⁷ Respondent’s Brief, para. 3.66.

³³⁸ Respondent’s Brief, para. 3.71.

³³⁹ Respondent’s Brief, para. 3.71.

³⁴⁰ Respondent’s Brief, para. 3.71.

³⁴¹ Respondent’s Brief, para. 3.70, referring to Appellant’s Brief, paras 104-139.

³⁴² Respondent’s Brief, para. 3.70. The Prosecution argues that the case-law of the International Tribunal does not provide for such a remedy.

appropriate”.³⁴³ The Appellant endorses this conclusion but claims that, in light of the International Tribunal’s wider aim to “secure justice, peace and reconciliation within the region”,³⁴⁴ the Trial Chamber abused its discretion by adopting an overly restrictive view of the powers and functions of the International Tribunal and by assessing the value of mitigating factors too narrowly.³⁴⁵ The Appeals Chamber agrees with the Appellant that the International Tribunal has a special role in “contributing to lasting peace and security and national reconciliation”³⁴⁶ within the region,³⁴⁷ a function inherent in the International Tribunal’s tasks since its establishment.³⁴⁸ However, the Appeals Chamber finds that the Trial Chamber was well aware of this role and explicitly took it into account when considering the purposes of punishment to be followed in its sentencing process.³⁴⁹

82. In addressing the Appellant’s submission that the Trial Chamber did not give sufficient weight to this sentencing factor, the Appeals Chamber recalls that “while national reconciliation and the restoration and maintenance of peace are important goals of sentencing, they are not the only goals”.³⁵⁰ As the Trial Chamber rightly stressed, the purposes of punishment are clearly set out in the jurisprudence of the International Tribunal.³⁵¹ In particular, the Appeals Chamber recalls the importance of the principle of retribution in the International Tribunal’s sentencing process. The Appeals Chamber concurs with the Trial Chamber that the principle of retribution imposed on a convicted person “amounts to an expression of condemnation by the international community at the horrific nature of the crimes committed, and must therefore be proportionate to his specific conduct”.³⁵² The Appeals Chamber further recalls that, as the Trial Chamber observed,³⁵³ principles of deterrence are also relevant to sentencing considerations.³⁵⁴ In the present case, the Appeals Chamber has already found that the Trial Chamber considered in detail all circumstances of the case

³⁴³ Sentencing Judgement, para. 83.

³⁴⁴ Appellant’s Brief, para. 90.

³⁴⁵ Appellant’s Brief, para. 102.

³⁴⁶ UN General Assembly, Resolution A/RES/55/24, 14 November 2000.

³⁴⁷ See *Babić* Judgement on Sentencing Appeal, para. 61. See also *Babić* Sentencing Judgement, para. 68; *Erdemović* 1998 Sentencing Judgement, para. 21.

³⁴⁸ Security Council Resolution S/RES/808, 22 February 1993, setting up the International Tribunal, focused on its role to “contribute to the restoration and maintenance of peace”.

³⁴⁹ Sentencing Judgement, para. 21.

³⁵⁰ *Kamuhanda* Appeal Judgement, para. 351. See also *Dragan Nikolić* Sentencing Judgement, para. 4, for the balance struck by the Trial Chamber between the “extreme gravity of the crimes for which the Accused accepted full responsibility against [h]is contribution to peace and security. In doing so, it is for this Trial Chamber to come as close as possible to justice for both victims and their relatives and the Accused, justice being of paramount importance for the restoration and maintenance of peace.”

³⁵¹ Sentencing Judgement, para. 22, referring to *Čelebići* Appeal Judgement, para. 806; *Aleksovski* Appeal Judgement, para. 185; *Tadić* Judgement in Sentencing Appeals, para. 48.

³⁵² Sentencing Judgement, para. 22. See also *Aleksovski* Appeal Judgement, para. 185: “An equally important factor is retribution. This is not to be understood as fulfilling a desire for revenge but as duly expressing the outrage of the international community at these crimes.”

³⁵³ Sentencing Judgement, para. 22.

and gave appropriate weight to them when determining the Appellant's sentence.³⁵⁵ The Appeals Chamber recalls in particular that the Trial Chamber specifically considered the Appellant's genuine remorse and his personal contribution to reconciliation in the region when it assessed his guilty plea, and accorded substantial weight in mitigation to these facts.³⁵⁶ The Appeals Chamber therefore concludes that the Appellant has not demonstrated that the Trial Chamber has misapplied the principles governing sentencing at the International Tribunal when determining his sentence.

83. The Appeals Chamber now turns to the Appellant's claim that the Trial Chamber failed to reduce his sentence in full commensuration with the "substantial modification" it had found to be warranted in light of the relevant mitigating circumstances.³⁵⁷ The Appeals Chamber recalls that the "proof of mitigating circumstances does not automatically entitle Fang Fağppellant to a credit in the determination of the sentence; it simply requires the Trial Chamber to consider such mitigating circumstances in its final determination".³⁵⁸ In the present case, the Appeals Chamber notes that the Trial Chamber indeed took the relevant mitigating circumstances into account when it determined the Appellant's sentence:

The Trial Chamber has conducted a careful review of the sentences that have been imposed by this Tribunal in other cases. In light of this sentencing practice, and taking account only of the gravity of the crimes committed by Bralo, including the aggravating circumstances, the Trial Chamber finds that a sentence of at least 25 years' imprisonment would be warranted. However, having carefully weighed the mitigating circumstances that have also been found, the Trial Chamber concludes that a single sentence of 20 years' imprisonment is a proportionate and appropriate punishment.³⁵⁹

84. The Appeals Chamber stresses that, "upon finding that mitigating circumstances have been established, a decision as to the weight to be accorded thereto lies within the discretion of the Trial Chamber".³⁶⁰ It is for the Appellant to demonstrate how the Trial Chamber ventured outside its discretionary framework in imposing his sentence.³⁶¹ In the present case, the Appellant claims that the mitigating factors he presented in his Sentencing Brief³⁶² and highlighted again on appeal generally deserve a more significant reduction of sentence than that ordered by the Trial Chamber.³⁶³ The Appeals Chamber agrees with the Prosecution that the Appellant's arguments

³⁵⁴ See, e.g., *Dragan Nikolić* Judgement on Sentencing Appeal, para. 45; *Čelebići* Appeal Judgement, para. 800; *Tadić* Judgement in Sentencing Appeals, para. 48.

³⁵⁵ See *supra* Grounds 1 and 2.

³⁵⁶ See *supra* paras 72-73.

³⁵⁷ Appellant's Brief, paras 83-88.

³⁵⁸ *Jokić* Judgement on Sentencing Appeal, para. 57 (internal quotation marks omitted). See also *Babić* Judgement on Sentencing Appeal, para. 44, referring to *Niyitegeka* Appeal Judgement, para. 267.

³⁵⁹ Sentencing Judgement, para. 95.

³⁶⁰ *Jokić* Judgement on Sentencing Appeal, para. 57. See also *Babić* Judgement on Sentencing Appeal, para. 44.

³⁶¹ See *supra*, para. 9.

³⁶² Defence Sentencing Brief, paras 2-24 and 64-89.

³⁶³ Appellant's Brief, para. 103.

merely ask for a re-evaluation of all mitigating circumstances as presented at the trial stage.³⁶⁴ The Appeals Chamber finds that the Appellant, when claiming that “the Trial Chamber should have done more to reflect the totality of this and other mitigating material and to have passed a sentence much more in line with the ‘substantial modification’ it promised”,³⁶⁵ has failed to substantiate any discernable error in law or in fact by the Trial Chamber when it used its broad discretion in determining an appropriate sentence. On a related issue, the Appeals Chamber also considers that the Appellant failed to show that the Trial Chamber was not transparent in its reduction of sentence.³⁶⁶ The Appeals Chamber finds that the Trial Chamber clearly weighed the factors in both mitigation and aggravation against the gravity of the crimes committed by the Appellant.³⁶⁷

85. With regard to the proper method for calculating the impact on a sentence of mitigating circumstances, the Appeals Chamber considers that any modification of sentence needs to be assessed in light of all the circumstances of the case and cannot be limited to a simple mathematical diminution of the sentence otherwise to be imposed. As noted above, the Trial Chamber correctly weighed all circumstances of the case before imposing its final sentence. The Appeals Chamber will only amend a sentence when the sentence was “so unreasonable or plainly unjust that the Appeals Chamber is able to infer that the Trial Chamber must have failed to exercise its discretion properly”.³⁶⁸ As the ICTR Appeals Chamber has held, it can only use its prerogative to substitute a new sentence “when the one given by the Trial Chamber simply cannot be reconciled with the principles governing sentencing at the Tribunal”.³⁶⁹ Finally, the Appeals Chamber notes that, as the Prosecution has not appealed the Sentencing Judgement, the Appeals Chamber has no competence to consider any matter going to an increase of sentence.

86. In the present case, in particular in light of the seriousness of the crimes committed and with specific regard to the aggravating circumstances not challenged by the Appellant, the Appeals Chamber considers that the Appellant failed to demonstrate that the sentence imposed upon him was so unreasonable as to amount to an abuse of discretion by the Trial Chamber and failed to show that the imposed sentence contradicted the principles governing sentencing at the International Tribunal.

87. For the foregoing reasons, the Appellant’s third ground of appeal is dismissed.

³⁶⁴ Respondent’s Brief, para. 3.70, referring to paragraphs 104-139 of the Appellant’s Brief.

³⁶⁵ Appellant’s Brief, para. 141.

³⁶⁶ See Reply Brief, para. 32.

³⁶⁷ Sentencing Judgement, para. 95.

³⁶⁸ *Babić* Judgement on Sentencing Appeal, para. 44, *Momir Nikolić* Judgement on Sentencing Appeal, para. 95; *Galić* Appeal Judgement, paras 394 and 444.

³⁶⁹ *Gacumbitsi* Appeal Judgement, para. 205. See also *Galić* Appeal Judgement, paras 442 and 455.

VI. DISPOSITION

For the foregoing reasons, **THE APPEALS CHAMBER**, unanimously

PURSUANT to Article 25 of the Statute and Rules 117 and 118 of the Rules;

NOTING the respective written submissions of the Parties and the oral arguments they presented at the hearing of 9 February 2007;

SITTING in open session;

DISMISSES the Appellant's grounds of appeal;

AFFIRMS the sentence of 20 (twenty) years' imprisonment as imposed by the Trial Chamber;

ORDERS in accordance with Rule 103(C) and Rule 107 of the Rules, that the Appellant is to remain in the custody of the International Tribunal pending the finalisation of arrangements for his transfer to the State in which his sentence will be served.

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

Dated this 2nd day of April 2007 at The Hague, The Netherlands.

Judge Andréia Vaz
Presiding

Judge Mohamed Shahabuddeen

Judge Mehmet Güney

Judge Theodor Meron

Judge Wolfgang Schomburg

[Seal of the International Tribunal]

VII. ANNEX A: PROCEDURAL BACKGROUND

1. Filing of the appeal submissions

1. The Appellant filed his notice of appeal on 5 January 2006.¹ On 2 February 2006, the Appeals Chamber granted the Appellant's request for an extension of time of fifteen days following the communication to him of the B/C/S translation of the Sentencing Judgement.² This translation was filed on 15 March 2006 and the Appellant filed his appeal brief on 30 March 2006.³ The Prosecution filed its brief in response on 2 May 2006.⁴ A brief in reply was filed on 19 May 2006.⁵

2. Composition of the Appeals Chamber

2. By order of 11 January 2006, the President of the International Tribunal, Judge Fausto Pocar, designated the following Judges to hear the present appeal: Judge Mohamed Shahabuddeen, Judge Mehmet Güney, Judge Andrésia Vaz, Judge Theodor Meron, and Judge Wolfgang Schomburg.⁶ On 2 February 2006, having been elected as Presiding Judge in the present appeal pursuant to Rule 22(B) of the Rules, Judge Andrésia Vaz issued an order designating herself as the Pre-Appeal Judge with responsibility for all pre-appeal proceedings in this case.⁷

3. Rule 115 Motions

3. On 3 November 2006, the Appeals Chamber in the *Blaškić* case ("*Blaškić* Appeals Chamber") rendered confidentially its Decision on Application on Behalf of Miroslav Bralo for Access to Confidential Material ("Decision on Access"), in which it granted Miroslav Bralo access to a closed session transcript in the *Blaškić* appeals proceedings, subject to a protected Defence witness' consent being obtained and to the application of certain protective measures.⁸ The Prosecution was instructed to request the Victims and Witnesses Section of the International Tribunal to seek the consent of the said witness. This consent not being given, the Prosecution was requested, on 20 December 2006, to file a submission before the *Blaškić* Appeals Chamber concerning its use of material provided by the Appellant during the cross-examination of that

¹ Notice of Appeal against Sentence on Behalf of Miroslav Bralo, 5 January 2006.

² Decision on Miroslav Bralo's Motion for Extension of Time to File Appellant's Brief, 2 February 2006.

³ Confidential Appeal Brief on Behalf of Miroslav Bralo, 30 March 2006. A public redacted version of this brief was filed on 26 May 2006 ("Appellant's Brief").

⁴ Prosecution Respondent's Brief to the "Appeal Brief on Behalf of Miroslav Bralo", 2 May 2006 ("Respondent's Brief").

⁵ Confidential Reply Brief on Behalf of Miroslav Bralo ("Reply Brief"), 19 May 2006, re-filed for public access without redactions on 26 May 2006.

⁶ Order Assigning Judges to a Case Before the Appeals Chamber, 11 January 2006.

⁷ Order Appointing the Pre-Appeal Judge, 2 February 2006.

witness. On 11 January 2007, the Prosecution submitted *ex parte* a summary to that effect. On 29 January 2007, the *Blaškić* Appeals Chamber instructed the Prosecution to provide this summary to the Appellant's Defence, subject to protective measures.⁹ On 8 February 2007, the Appeals Chamber in the instant case dismissed the Appellant's motion to have this summary admitted as additional evidence on appeal pursuant to Rule 115 of the Rules.¹⁰

4. On 12 January 2007, the Appeals Chamber granted in part the "Motion on Behalf of Miroslav Bralo pursuant to Rule 115" filed confidentially by the Appellant on 9 November 2006.¹¹ On 30 January 2007, the Appellant subsequently filed a second supplemental brief.¹²

4. Other substantive motions

5. On 20 March 2006, the Appellant filed a motion in which he requested the Appeals Chamber to grant him "access to documents D1 to D182 of the certified trial record that forms the basis of the appeal".¹³ On 2 May 2006, his motion was granted in part.¹⁴

6. On 30 August 2006, the Appeals Chamber decided upon several confidential motions filed by the Appellant¹⁵ and the Prosecution¹⁶ pertaining to the Appellant's access to *ex parte* documents

⁸ *Prosecutor v. Tihomir Blaškić*, Case No. IT-95-14-R, Decision on Access, p. 9.

⁹ *Prosecutor v. Tihomir Blaškić*, Case No. IT-95-14-R, Decision on Prosecution's Report Concerning Decision on Application by Miroslav Bralo for Access to Confidential Material (Confidential), 29 January 2007.

¹⁰ Decision on Miroslav Bralo's Second Motion for Admission of Additional Evidence Pursuant to Rule 115 (Confidential), 8 February 2007.

¹¹ Decision on Miroslav Bralo's Motion for Admission of Additional Evidence (Confidential), 12 January 2007. This additional evidence consists of: (i) "Prosecutor's Motion for an *ex parte in camera* Hearing in Respect of the Admission of Newly-Discovered Evidence", filed *ex parte* and under seal on 11 December 1997 in *Prosecutor v. Tihomir Blaškić*, Case No. IT-95-14-T, and made public on 13 January 2006 ("Exhibit D-A1"); (ii) public redacted version of "Prosecutor's Revised Reply to Defense's 'Response to Prosecutor's Request for Review or Reconsideration'", filed on 4 September 2006 in *Prosecutor v. Tihomir Blaškić*, Case No. IT-95-14-R ("Exhibit D-A2"); and (iii) Letter dated 6 October 2006, from Peter M. Kremer, Q.C., Senior Appeals Counsel ("Exhibit D-A3").

¹² Miroslav Bralo's Second Supplemental Brief in Support of Sub-Headings 1.2(2) and 1.3, 30 January 2007. A public version was filed on 5 February 2007. *See supra* under "Supplemental briefs".

¹³ Motion of Miroslav Bralo for Access to Certified Trial Record, 20 March 2006, para. 1.

¹⁴ Decision on Motion of Miroslav Bralo for Access to Certified Trial Record, 2 May 2006. The Prosecution was ordered to provide redacted versions of *ex parte* confidential documents D1-D50ter, D54-D51, D57ter-D55, D61bis-D58, D66ter-D62, D71-D70, D73bis-D72, and D110-D94A/B. At the same time, the *ex parte* status of confidential documents D77ter-D74 and D134ter-D133, as well as of redacted copies of *ex parte* confidential documents D1-D50ter, D54-D51, D57ter-D55, D61bis-D58, D66ter-D62, D71-D70, D73bis-D72, and D110-D94A/B was lifted. The Appellant was granted access to documents D114 to D168, as well as to confidential documents D77ter-D74 and D134ter-D133, and to confidential redacted documents D110-D94A/B, D1-D50ter, D54-D51, D57ter-D55, D61bis-D58, D66ter-D62, D71-D70, and D73bis-D72.

¹⁵ Request for Review of Access to *Ex Parte* Portions of the Record on Appeal, 20 June 2006 ("Request for Access"); Motion to Compel Disclosure of Mitigating Material under Rules 66 and 68, 21 June 2006 ("Motion for Disclosure").

¹⁶ Prosecution's Motion to Strike, 10 July 2006 ("Motion to Strike"); Prosecution's Motion to Reject Miroslav Bralo's Response to Prosecution's Notice to Lift the *Ex Parte* Status of the Prosecution's Further Submissions Concerning Rule 68 Filed on 18 October 2005 (RP D 836 to 833), 31 July 2006 ("Motion to Reject").

in his case as well as the Prosecution's disclosure obligations under Rules 66 and 68 of the Rules.¹⁷ The Appeals Chamber dismissed the Motion for Disclosure and the Motion to Reject, granted the Motion to Strike and, as to the Request for Access, ordered the Prosecution to state whether it was still necessary to maintain the *ex parte* status of certain documents identified by the Appeals Chamber. On 8 September 2006, the Prosecution acted in furtherance of the Appeals Chamber's decision; it lifted the *ex parte* status of a number of the concerned documents.¹⁸

5. Supplemental briefs

7. On 15 August 2006, the Appellant requested leave to supplement his appeal brief.¹⁹ On 9 January 2007, the Appeals Chamber granted his motion in part.²⁰ The Prosecution filed its response on 19 January 2007,²¹ and the Appellant filed his reply on 23 January 2007.²²

8. On 30 January 2007, pursuant to the Appeals Chamber's decision of 12 January 2007,²³ the Appellant filed a second supplemental brief.²⁴ The Prosecution filed its response on 6 February 2007²⁵ and the Appellant filed his reply on 14 February 2007.²⁶ Following a motion by the Prosecution,²⁷ in which it requested to strike out parts of the Appellant's reply, and a motion by the Appellant requesting leave to file a response to the Prosecution's oral arguments,²⁸ the Appeals

¹⁷ Decision on Motions for Access to *Ex Parte* Portions of the Record on Appeal and for Disclosure of Mitigating Material, 30 August 2006.

¹⁸ Prosecution's Notice and Application for Redactions Pursuant to the Order of the Appeals Chamber Dated 30 August 2006, 8 September 2006.

¹⁹ Miroslav Bralo's Motion for Leave to Supplement Appeal Brief in Light of New Information Concerning *Ex Parte* Portion of the Trial Record (Confidential), 15 August 2006 ("Motion of 15 August 2006").

²⁰ Decision on Miroslav Bralo's Motion for Leave to Supplement Appeal Brief in Light of New Information Concerning *Ex Parte* Portion of the Trial Record, 9 January 2007. The Appeals Chamber accepted as validly filed paragraphs 1-7 and 10-11 of the confidential "*Proposed Miroslav Bralo's Supplemental Brief in Support of Ground 1.2(2) and 1.3*" attached as an annex to the Motion of 15 August 2006.

²¹ Prosecution's Response to "Miroslav Bralo's Supplemental Brief in Support of Grounds 1.2(2) and 1.3" of 15 August 2006 Pursuant to the Appeals Chamber's Decision on Miroslav Bralo's Motion for Leave to Supplement Appeal Brief in Light of New Information Concerning *Ex Parte* Portion of the Trial Record Dated 9 January 2007 (Confidential), 19 January 2007.

²² Reply Brief on Behalf of Miroslav Bralo in Relation to His Supplemental Brief in Support of Grounds 1.2(2) and 1.3 (Confidential), 23 January 2007.

²³ See below under "Rule 115 Motions".

²⁴ Miroslav Bralo's Second Supplemental Brief in Support of Sub-Headings 1.2(2) and 1.3, 30 January 2007. A public version was filed on 5 February 2007.

²⁵ Prosecution's Response to Miroslav Bralo's Second Supplemental Brief in Support of Sub-Headings 1.2(2) and 1.3 (Confidential), 6 February 2007.

²⁶ Reply Brief in Relation to Miroslav Bralo's Second Supplemental Brief in Support of Sub-Headings 1.2(2) and 1.3 With Citations to the Certified Trial Record in Reply to Prosecution Arguments Relating to Sub-Heading 1.2(1) Raised During Oral Arguments, 14 February 2007. This reply was originally due on 12 February 2007. On 13 February 2007, upon good cause being shown, the Appeals Chamber granted the Appellant's unopposed motion for a two-day extension of time (Decision on Miroslav Bralo's Motion for Extension of Time to File Reply Brief in Relation to His Supplemental Brief, 13 February 2007).

²⁷ Prosecution's Motion to Strike, 15 February 2007.

²⁸ Appellant's Motion for Leave to File Response to Prosecution Oral Arguments, 23 February 2007.

Chamber granted the Prosecution's motion in part and ordered certain passages of the Appellant's reply to be struck out, while dismissing the Appellant's motion.²⁹

6. Status Conferences

9. Status Conferences in accordance with Rule 65*bis* of the Rules were held on 8 May 2006 and 15 September 2006.³⁰

7. Appeal Hearing

10. Pursuant to the Scheduling Order of 10 January 2007, the hearing on the merits of the appeal took place on 9 February 2007.

²⁹ Decision on Prosecution's Motion to Strike and on Appellant's Motion for Leave to File Response to Prosecution Oral Arguments, 5 March 2007.

³⁰ By order of 11 January 2007, the Pre-Appeal Judge ordered that the status conference scheduled to take place that same day be cancelled upon the unopposed request from the Appellant to waive his right to have a status conference.

VIII. ANNEX B: GLOSSARY OF TERMS

A. List of Cited Court Decisions

1. International Tribunal

ALEKSOVSKI

Prosecutor v. Zlatko Aleksovski, Case No. IT-95-14/1-A, Judgement, 24 March 2000 (“*Aleksovski Appeal Judgement*”).

BABIĆ

Prosecutor v. Milan Babić, Case No. IT-03-72-S, Sentencing Judgement, 29 June 2004 (“*Babić Sentencing Judgement*”).

Prosecutor v. Milan Babić, Case No. IT-03-72-A, Sentencing Judgement, 18 July 2005 (“*Babić Judgement on Sentencing Appeal*”).

BANOVIJ

Prosecutor v. Predrag Banovi}, Case No. IT-02-65/1-S, Sentencing Judgement, 28 October 2003 (“*Banovi}* Sentencing Judgement”).

V. BLAGOJEVIJ & D. JOKI

Prosecutor v. Vidoje Blagojeviæ & Dragan Jokiaæ, Case No IT-02-60-T, Judgement, 17 January 2005 (“*Blagojevic & Jokiaæ Trial Judgement*”).

BLA[KI]

Prosecutor v. Tihomir Blaškić, Case No. IT-95-14-T, Judgement, 3 March 2000 (“*Blaškić Trial Judgement*”).

Prosecutor v. Tihomir Blaškić, Case No. IT-95-14-A, Judgement, 29 July 2004 (“*Blaškić Appeal Judgement*”).

BRALO

Prosecutor v. Miroslav Bralo, Case No. IT-95-17-S, Preliminary Order on Motion for Disclosure of Mitigating material under Rule 68 (Confidential), 5 October 2005.

Prosecutor v. Miroslav Bralo, Case No. IT-95-17-S, Sentencing Judgement, 7 December 2005 (“*Sentencing Judgement*”).

Prosecutor v. Miroslav Bralo, Case No. IT-95-17-A, Decision on Motion of Miroslav Bralo for Access to Certified Trial Record, 2 May 2006.

Prosecutor v. Miroslav Bralo, Case No. IT-95-17-A, Decision on Motions for Access to *ex parte* Portions of the Record on Appeal and for Disclosure of Mitigating Material, 30 August 2006.

Prosecutor v. Miroslav Bralo, Case No. IT-95-17-A, Decision on Miroslav Bralo’s Motion for Leave to Supplement Appeal Brief in Light of New Information Concerning *Ex Parte* Portion of the Trial Record, 9 January 2007.

Prosecutor v. Miroslav Bralo, Case No. IT-95-17-A, Decision on Miroslav Bralo's Motion for Admission of Additional Evidence (Confidential), 12 January 2007.

Prosecutor v. Miroslav Bralo, Case No. IT-97-17-A, Decision on Miroslav Bralo's Motion for Extension of Time to File Appellant's Brief, 2 February 2006.

Prosecutor v. Miroslav Bralo, Case No. IT-95-17-A, Decision on Miroslav Bralo's Second Motion for Admission of Additional Evidence Pursuant to Rule 115 (Confidential), 8 February 2007.

“ČELEBIĆI” (A)

Prosecutor v. Zejnil Delalić, Zdravko Mucić, a.k.a. “Pavo”, Hazim Delić and Esad Landžo, a.k.a. “Zenga”, Case No. IT-96-21-T, Judgement, 16 November 1998 (“Čelebići Trial Judgement”).

Prosecutor v. Zejnil Delalić, Zdravko Mucić, a.k.a. “Pavo”, Hazim Delić and Esad Landžo, a.k.a. “Zenga”, Case No. IT-96-21-A, Judgement, 20 February 2001 (“Čelebići Appeal Judgement”).

“ČELEBIĆI” (B)

Prosecutor v. Zdravko Mucić, Hazim Delić and Esad Landžo, Case No. IT-96-21-A, Judgement on Sentence Appeal, 8 April 2003 (“Mucić *et al.* Judgement on Sentencing Appeal”).

^E[I]

Prosecutor v. Ranko ^e{i}, Case No. IT-95-10/1, Sentencing Judgement, 11 March 2004 (“^e{i} Sentencing Judgement”).

DERONJIĆ

Prosecutor v. Miroslav Deronjić, Case No. IT-02-61-S, Sentencing Judgement, 30 March 2004 (“Deronjić Sentencing Judgement”).

Prosecutor v. Miroslav Deronjić, Case No. IT-02-61-A, Judgement on Sentencing Appeal, 20 July 2005 (“Deronjić Judgement on Sentencing Appeal”).

ERDEMOVIJ

Prosecutor v. Dražen Erdemovi}, Case No. IT-96-22-A, Judgement, 7 October 1997 (“Erdemovi} Appeal Judgement”).

Prosecutor v. Dražen Erdemovi}, Case No. IT-96-22-Tbis, Sentencing Judgement, 5 March 1998 (“Erdemovi} 1998 Sentencing Judgement”).

FURUNDŽIJA

Prosecutor v. Anto Furundžija, Case No. IT-95-17/1-T, Judgement, 10 December 1998 (“Furundžija Trial Judgement”).

Prosecutor v. Anto Furundžija, Case No. IT-95-17/1-A, Judgement, 21 July 2000 (“Furundžija Appeal Judgement”).

GALIĆ

Prosecutor v. Stanislav Galić, Case No. IT-98-29-A, Judgement, 30 November 2006 (“Galić Appeal Judgement”).

HARADINAJ

Prosecutor v. Ramush Haradinaj et al., Case No. IT-04-84-AR65.1, Decision on Ramush Haradinaj's Modified Provisional Release, 10 March 2006 ("*Haradinaj* Decision on Modified Provisional Release").

JELISIĆ

Prosecutor v. Goran Jelisić, Case No. IT-95-10-T, Judgement, 14 December 1999 ("*Jelisić* Trial Judgement").

Prosecutor v. Goran Jelisić, Case No. IT-95-10-A, Judgement, 5 July 2001 ("*Jelisić* Appeal Judgement").

JOKIĆ

Prosecutor v. Miodrag Jokić, Case No. IT-01-42/1-S, Sentencing Judgement, 18 March 2004 ("*Jokić* Sentencing Judgement").

Prosecutor v. Miodrag Jokić, Case No. IT-01-42/1-A, Sentencing Judgement, 30 August 2005 ("*Jokić* Judgement on Sentencing Appeal").

KORDIĆ AND ČERKEZ

Prosecutor v. Dario Kordić and Mario Čerkez, Case No. IT-95-14/2-T, Judgement, 26 February 2001 ("*Kordić and Čerkez* Trial Judgement").

Prosecutor v. Dario Kordić and Mario Čerkez, Case No. IT-95-14/2-A, Judgement, 17 December 2004 ("*Kordić and Čerkez* Appeal Judgement").

KRSTIĆ

Prosecutor v. Radislav Krstić, Case No. IT-98-33-T, Judgement, 2 August 2001 ("*Krstić* Trial Judgement").

Prosecutor v. Radislav Krstić, Case No. IT-98-33-A, Judgement, 19 April 2004 ("*Krstić* Appeal Judgement").

KUNARAC, KOVAČ AND VUKOVIĆ

Prosecutor v. Dragoljub Kunarac, Radomir Kovač and Zoran Vuković, Case No. IT-96-23 & IT-96-23/1-A, Judgement, 12 June 2002 ("*Kunarac et al.* Appeal Judgement").

Z. KUPREŠKIĆ, M. KUPREŠKIĆ, V. KUPREŠKIĆ, JOSIPOVIĆ, (PAPI) AND SANTIĆ

Prosecutor v. Zoran Kupreškić, Mirjan Kupreškić, Vlatko Kupreškić, Drago Josipović, Dragan Papić and Vladimir Santić, a.k.a. "Vlado", Case No. IT-95-16-T, Judgement, 14 January 2000 ("*Kupreškić et al.* Trial Judgement").

Prosecutor v. Zoran Kupreškić, Mirjan Kupreškić, Vlatko Kupreškić, Drago Josipović and Vladimir Santić, Case No. IT-95-16-A, Appeal Judgement, 23 October 2001 ("*Kupreškić et al.* Appeal Judgement").

KVOČKA, KOS, RADIĆ, ŽIGIĆ AND PRCAĆ

Prosecutor v. Miroslav Kvočka, Milošica Kos, Mlado Radić, Zoran Žigić and Dragoljub Prcać, Case No. IT-98-30/1-T, Judgement, 2 November 2001 ("*Kvočka et al.* Trial Judgement").

Prosecutor v. Miroslav Kvočka, Milojica Kos, Mlado Radić, Zoran Žigić and Dragoljub Prcać, Case No. IT-98-30/1-A, Appeal Judgement, 28 February 2005 (“*Kvočka et al.* Appeal Judgement”).

MRĐA

Prosecutor v. Darko Mrđa, Case No. IT-02-59-S, Sentencing Judgement, 31 March 2004 (“*Mrđa* Sentencing Judgement”).

NALETILIJ AND MARTINOVIJ

Prosecutor v. Mladen Naletilić and Vinko Martinović, Case No. IT-98-34-A, Judgement, 3 May 2006 (“*Naletilić and Martinović* Appeal Judgement”).

D. NIKOLIĆ

Prosecutor v. Dragan Nikolić, Case No. IT-94-02-S, Sentencing Judgement, 18 December 2003 (“*Dragan Nikolić* Sentencing Judgement”).

Prosecutor v. Dragan Nikolić, Case No. IT-94-02-A, Judgement on Sentencing Appeal, 4 February 2005 (“*Dragan Nikolić* Judgement on Sentencing Appeal”).

M. NIKOLIĆ

Prosecutor v. Momir Nikolić, Case No. IT-02-60/1-S, Sentencing Judgement, 2 December 2003 (“*Momir Nikolić* Sentencing Judgement”).

Prosecutor v. Momir Nikolić, Case No. IT-02-60/1-A, Appeal Sentencing Judgement, 8 March 2006 (“*Momir Nikolić* Judgement on Sentencing Appeal”).

OBRENOVIĆ

Prosecutor v. Dragan Obrenović, Case No. IT-02-60/2-S, Sentencing Judgement, 10 December 2003 (“*Obrenović* Sentencing Judgement”).

ORIĆ

Prosecutor v. Naser Orić, Case No. IT-03-68-T, Judgement, 30 June 2006 (“*Orić* Trial Judgement”).

PLAVŠIĆ

Prosecutor v. Biljana Plavšić, Case No. IT-00-39&40/1-S, Sentencing Judgement, 27 February 2003 (“*Plavšić* Sentencing Judgement”).

RAJIĆ

Prosecutor v. Ivica Rajić aka Viktor Andrić, Case No. IT-95-12-S, Sentencing Judgement, 8 May 2006 (“*Rajić* Sentencing Judgement”).

M. SIMIĆ

Prosecutor v. Milan Simić, Case No. IT-95-9/2-S, Sentencing Judgement, 17 October 2002 (“*Simić* Sentencing Judgement”).

STAKIĆ

Prosecutor v. Milomir Stakić, Case No. IT-97-24-A, Appeal Judgement, 22 March 2006 (“*Stakić* Appeal Judgement”).

P. STRUGAR

Prosecutor v. Pavle Strugar, Case No. IT-01-42-T, Judgement, 31 January 2005 (“*Strugar* Trial Judgement”).

D. TADIĆ

Prosecutor v. Duško Tadić a/k/a “Dule”, Case No. IT-94-1-T, Sentencing Judgement, 14 July 1997 (“*Tadić* 1997 Sentencing Judgement”).

Prosecutor v. Duško Tadić, Case No. IT-94-1-A, Judgement, 15 July 1999 (“*Tadić* Appeal Judgement”).

Prosecutor v. Duško Tadić, Case No. IT-94-1-A and IT-94-1-Abis, Judgement on Sentencing Appeal, 26 January 2000 (“*Tadić* Judgement in Sentencing Appeals”).

TODOROVIĆ

Prosecutor v. Stevan Todorović, Case No. IT-95-9/1-S, Sentencing Judgement, 31 July 2001 (“*Todorović* Sentencing Judgement”).

VASILJEVIĆ

Prosecutor v. Mitar Vasiljević, Case No. IT-98-32-T, Judgement, 29 November 2002 (“*Vasiljević* Trial Judgement”).

Prosecutor v. Mitar Vasiljević, Case No. IT-98-32-A, Judgement, 25 February 2004 (“*Vasiljević* Appeal Judgement”).

2. ICTR

AKAYESU

Prosecutor v. Jean-Paul Akayesu, Case No. ICTR-96-4-A, Judgement, 1 June 2001 (“*Akayesu* Appeal Judgement”).

GACUMBITSI

Prosecutor v. Gacumbitsi, Case No. ICTR-2001-64-A, Judgement, 7 July 2006 (“*Gacumbitsi* Appeal Judgement”).

KAMBANDA

Jean Kambanda v Prosecutor, Case No. ICTR 97-23-A, Judgement, 19 October 2000 (“*Kambanda* Appeal Judgement”).

KAMUHANDA

Prosecutor v. Jean de Dieu Kamuhanda, Case No. ICTR-95-1-A, Judgement, 19 September 2005 (“*Kamuhanda* Appeal Judgement ”).

KAYISHEMA AND RUZINDANA

Prosecutor v. Clément Kayishema and Obed Ruzindana, Case No. ICTR-95-1-A, Judgement (Reasons), 1 June 2001 (“*Kayishema and Ruzindana* Appeal Judgement ”).

MUSEMA

Prosecutor v. Alfred Musema, Case No. ICTR-96-13-A, Judgement, 16 November 2001 (“*Musema* Appeal Judgement”).

NIYITEGEKA

Prosecutor v. Eliézer Niyitegeka, Case No. ICTR-96-14-T, Appeal Judgement, 9 July 2004 (“*Niyitegeka* Appeal Judgement”).

SERUGENDO

Prosecutor v. Joseph Serugendo, Case No. ICTR-2005-84-I, Judgement and Sentence, 12 June 2006 (“*Serugendo* Trial Judgement and Sentence”).

SERUSHAGO

Prosecutor v. Omar Serushago, Case No. ICTR-98-39-S, Sentence, 5 February 1999 (“*Serushago* Sentence”).

SIMBA

Prosecutor v. Aloys Simba, Case No. ICTR-01-76-T, Judgement and Sentence, 13 December 2005 (“*Simba* Trial Judgement”).

B. List of Other Legal Authorities

Security Council Resolution 1534 (2004), 26 March 2004.

UN General Assembly Resolution A/RES/51/203, 17 December 1996.

UN General Assembly Resolution A/RES/55/24, 14 November 2000.

C. List of Abbreviations

According to Rule 2(B) of the Rules of Procedure and Evidence, the masculine shall include the feminine and the singular the plural, and vice-versa.

Appellant	Miroslav Bralo
Appellant’s Brief	<i>Prosecutor v. Miroslav Bralo</i> , Case No. IT-95-17-A, Appeal Brief on Behalf of Miroslav Bralo (Public Version), 26 May 2006
AT.	Transcript page from hearings on appeal in the present case. All transcript page numbers referred to are from the unofficial, uncorrected version of the transcript, unless not specified otherwise. Minor differences may therefore exist between the pagination therein and that of the final transcripts released to the public. The Appeals Chamber accepts no responsibility for the corrections of or mistakes in these transcripts. In case of doubt the video-tape of a hearing is to be revisited.
B/C/S	The Bosnian/Serbian/Croatian languages

Confidential Appellant's Brief	<i>Prosecutor v. Miroslav Bralo</i> , Case No. IT-95-17-A, Confidential Appeal Brief on Behalf of Miroslav Bralo, 30 March 2006
Defence	Counsel for Miroslav Bralo
Defence Sentencing Brief	<i>Prosecutor v. Miroslav Bralo</i> , Sentencing Brief on Behalf of Miroslav Bralo (Public Version), Case No. IT-95-17-S, 25 November 2005 and Supplementary Sentencing Material, 29 November 2005
First Supplemental Brief	Miroslav Bralo's Motion for Leave to Supplement Appeal Brief in Light of New Information Concerning <i>Ex Parte</i> Portion of the Trial Record (Confidential), 15 August 2006
HVO	Croatian Defence Council (army of the Bosnian Croats)
ICTR	International Criminal Tribunal for the Prosecution of Persons Responsible for Genocide and Other Serious Violations of International Humanitarian Law Committed in the Territory of Rwanda and Rwandan Citizens responsible for genocide and other such violations committed in the territory of neighbouring States, between 1 January 1994 and 31 December 1994
International Tribunal	International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the Former Yugoslavia since 1991
Jokers	(<i>also</i> [D]zokeri) - a unit within the 4th Battalion of the HVO Military Police
Notice of Appeal	Notice of Appeal Against Sentence on Behalf of Miroslav Bralo, 5 January 2006
Prosecution	Office of the Prosecutor
Prosecution Sentencing Brief (Partially under Seal)	<i>Prosecutor v. Miroslav Bralo</i> , Case No. IT-95-17-S, <i>Partially under Seal</i> Prosecution's Sentencing Brief, 10 October 2005
Reply Brief	<i>Prosecutor v. Miroslav Bralo</i> , Case No. IT-95-17-A, Confidential Reply Brief on Behalf of Miroslav Bralo, 19 May 2006, re-filed for public access without redactions on 26 May 2006
Reply to First Supplemental Brief	Reply Brief on Behalf of Miroslav Bralo in Relation to His Supplemental Brief in Support of Grounds 1.2(2) and 1.3 (Confidential), 23 January 2007
Reply to Second Supplemental Brief	Reply Brief in Relation to Miroslav Bralo's Second Supplemental Brief in Support of Sub-Headings 1.2(2) and

	1.3 With Citations to the Certified Trial Record in Reply to Prosecution Arguments Relating to Sub-Heading 1.2(1) Raised During Oral Arguments, 14 February 2007
Response to Second Supplemental Brief	Prosecution's Response to Miroslav Bralo's Second Supplemental Brief in Support of Sub-Headings 1.2(2) and 1.3 (Confidential), 6 February 2007
Respondent's Brief	<i>Prosecutor v. Miroslav Bralo</i> , Case No. IT-95-17-A, Prosecution Respondent's Brief to the "Appeal Brief on Behalf of Miroslav Bralo", 2 May 2006
Response to First Supplemental Brief	Prosecution's Response to "Miroslav Bralo's Supplemental Brief in Support of Grounds 1.2(2) and 1.3" of 15 August 2006 Pursuant to the Appeals Chamber's Decision on Miroslav Bralo's Motion for Leave to Supplement Appeal Brief in Light of New Information Concerning <i>Ex Parte</i> Portion of the Trial Record Dated 9 January 2007 (Confidential), 19 January 2007
Response to Second Supplemental Brief	Prosecution's Response to Miroslav Bralo's Second Supplemental Brief in Support of Sub-Headings 1.2(2) and 1.3 (Confidential), 6 February 2007
Rules	Rules of Procedure and Evidence
Second Supplemental Brief	Miroslav Bralo's Second Supplemental Brief in Support of Sub-Headings 1.2(2) and 1.3, 30 January 2007
Sentencing Hearing	<i>Prosecutor v. Miroslav Bralo</i> , Case No. IT-95-17-S, Sentencing Hearing, 20 October 2005 ("Sentencing Hearing")
Sentencing Judgement	<i>Prosecutor v. Miroslav Bralo</i> , Case No. IT-95-17-S, Sentencing Judgement, 7 December 2005
Statute	Statute of the International Tribunal for the Former Yugoslavia established by Security Council Resolution 827 (1993)
T.	Transcript page from hearings at trial in the present case. All transcript page numbers referred to are from the unofficial, uncorrected version of the transcript, unless specified otherwise. Minor differences may therefore exist between the pagination therein and that of the final transcripts released to the public. The Appeals Chamber accepts no responsibility for the corrections of or mistakes in these transcripts. In case of doubt the video-tape of a hearing is to be revisited.

