

ISSN 1936-5349 (print)  
ISSN 1936-5357 (online)

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Discussion Paper No. 1044

09/2020

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Cambridge, MA 02138

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# Are there Common/Civil Law Differences and Precedent Effects in Judging Around the World? A Lab Experiment

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∞ We thank FLAME University, Harvard Law School, Harvard Law School's Summer Research program, Humboldt Universität zu Berlin, Ludwig-Maximilians-Universität, the Max Planck Institute for Collective Goods, and Sciences Po for financial support and the Max Planck Institute for Collective Goods for use of their mobile lab; Roland Ramthun of Docustom for programming the experimental interface; Brendan Halpin for help with the Stata package SADI (and for programming it in the first place); Alex Whiting for suggesting the aiding and abetting controversy; Damien Charlottin, Leandro Dias, and Máximo Langer for information about national laws; Gabriela Haymes, Henrique Duchini, Allana Pereira, Andrioli Soares, Chen Gu, Linda Hao (Langscale Translation), Aurelien Bernard, Damien Charlottin, Jakob Jochmann, and Lola Witt for translating the experimental materials into local languages; Marcelo Moreno Bonassa, Etiene Coelho Martins, Linda Hao (Langscale Translation), Damien Charlottin, Mareike Grundmann, and Andrew Hammel for translating the judgment reasons from local languages into English; James Foy, Andres Constantin, Victoria Arredondo Cívico, Amanda Bernztein, Nicole Varela, Julian Franke, Oliver Schön, Andrés Parrado, Shardul Vaidya, Howard Duan, Molly Eskridge, Tyler Good-Cohn, and JohneHenre Rzodkiewicz for excellent research assistance and administrative support; Judge Marta Capalbo, Judge Duilio Campora, and Mariano Sigman (Argentina), Judge Bruno Bodart, Estevao Gomes, Judge Isabela Isa, and HLSBSA (Brazil), Xueyao Li (China), Justice Dominique Lottin, Judge Pénélope Postel-Vinay, and the ENM (France), Deutsche Richterakademie (Germany), Ranita Nagar, Kalpesh Kumar, Gujarat National Law University, and the Chief Justice of the Gujarat High Court (India), Judge Nancy Gertner, John Manning, Denise Neary, and the FJC (U.S.), for accommodating and/or supporting the respective sessions at which we collected our data; and above all the judges for their participation. For comments, we thank participants and commentators at the American Society of Comparative Law's Special Committee on Comparative Law and the Social Sciences, the Max Planck Institutes for Collective Good and for Tax Law and Public Economics, Academica Sinica, City University Hong Kong, Freie Universität Berlin, Harvard Law School, Hong Kong University, Humboldt Universität zu Berlin, Sciences Po, Sichuan University, Wissenschaftszentrum Berlin, University of Hamburg, the Annual Meetings of the American Law and Economics Association (2019) and the American Political Science Association (2018), the 14<sup>th</sup> Annual Conference on Empirical Legal Studies, the 2019 Experimental Methods in Legal Scholarship Conference, and the Workshop on Methoden Quantitativer Textanalyse at Humboldt Universität and Wissenschaftskolleg zu Berlin, and Katerina Linos. **Author contributions:** L.K. and H.S. designed the data collection method; H.S. coordinated the data collection; I.R., H.S., J.Z.L., C.J., A.M., V.K. and P.M., and H.S. organized data collection, in particular recruitment of subjects, in AR, BR, CN, FR, DE, IN, and US, respectively; C.J., L.K., P.M., and H.S. acquired funding for data collection; H.S. analyzed and curated the data and wrote the paper. **Competing interests:** Authors declare no competing interests. **Human Subjects Research:** This research was approved by Harvard University's Committee on the Use of Human Subjects as IRB15-0206 (US), IRB15-3608 (AR), IRB15-3803 (CN), IRB17-1263 (DE), IRB17-1430 (FR), IRB18-0113 (IN), and IRB18-0304 (BR). **Data and materials availability:** All data and code are available at doi.org/10.7910/DVN/TTMUZK with the exception of raw U.S. covariate data, which pursuant to IRB conditions can only be obtained from H.S. upon signing a confidentiality agreement. All experimental materials are included as appendices to the supplementary materials.

**Abstract:** In our lab, 299 real judges from seven major jurisdictions (Argentina, Brazil, China, France, Germany, India, USA) spend up to 55 minutes to judge an international criminal appeals case and determine the appropriate prison sentence. The lab computer (1) logs their use of the documents (briefs, statement of facts, trial judgment, statute, precedent), and (2) randomly assigns each judge (i) a precedent disfavoring, favoring, or strongly favoring defendant, (ii) a sympathetic or an unsympathetic defendant, and (iii) a short, medium, or long sentence anchor. Document use and written reasons differ between countries but not between common and civil law. Precedent effect is barely detectable and estimated to be less, and bounded to be not much greater, than that of legally irrelevant defendant attributes and sentence anchors.

8/29/2020

## Introduction

We use a novel type of evidence and a novel experimental manipulation in a novel setting to investigate two central questions in comparative law and judicial decision-making, respectively. First, is it true that common and civil lawyers in general and judges in particular think differently? (Common lawyers are those from England and her former colonies, civil lawyers the rest of the world.) Prominent writers assert such differences (Zweigert & Kötz 1998 §5.III.2; Legrand 1996, 1999: “irreducible epistemological chasm”) and link them to intercountry differences in legal rules and economic outcomes (La Porta et al. 2008, 2013; cf. Spemann 2015), but the assertion has never been tested rigorously. We track judges’ document use at high resolution and find no support for the assertion. Second, are judges’ decisions causally affected by primary legal sources, specifically by precedent? Using random assignment of precedent, we find no causal effect of precedent, at least none much larger than two biases studied in the prior literature, which we replicate. We do all of this in a laboratory setting that resembles real-world judicial decision-making, at least much more so than previous studies: our participants are real judges from seven countries who spend almost an hour to decide the same fully briefed legal case.

Judicial opinions—the official reasons judges write for their decisions—would suggest the opposite answers to both questions. The style of judicial opinions differs systematically between countries, ranging from the narrowly technical, terse, and syllogistic style of the French *Cour de Cassation* to the more liberal, discursive, and expansive style of the U.S. Supreme Court (e.g., Lasser 2004), and many have seen systematic differences between common and civil law (e.g., Wetter 1960; Kötz 1982). Similarly, most courts extensively cite precedent even in jurisdictions that do not have an explicit norm of binding precedent like the common law (*stare decisis*) (MacCormick & Summers 1997). As evidence of judicial thinking, however, judicial opinions are at least problematic. To maintain their legitimacy, judges must project a certain image, which may differ by country, but what really drives judges’ decisions is a different matter (e.g., Gény 1899; Kantorowicz 1906; Frank 1930; Llewellyn 1930; Kennedy 1998; Simon 1998; Lasser 2004; Epstein et al. 2013).<sup>1</sup>

To answer the first question—differences between common and civil law thinking—without relying on judicial opinions, we generate a novel type of evidence: judges’ document use while they work on deciding a case. This “document path” process imaging technique reveals judicial thought structures in a similar way as MRIs and other brain imagining techniques reveal brain structures: the image is partial and requires statistical inference, but it is nevertheless highly informative. We analyze similarities between document paths using sequence analysis (edit distance), a method that we show to be very powerful in detecting even small differences between groups of judges. Nevertheless, we detect only differences between individual countries but not between common and civil law judges. Common and civil lawyers do not think differently after all, at least those in our sample at the resolution of our document path image.

To answer the second question—the effect of precedent—, we randomly assign each judge one of three precedents. While this experimental manipulation may seem basic, prior experimental work with judges

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<sup>1</sup> At a minimum, judges have more discretion than their opinions admit: A lower bound on legal indeterminacy and judicial error is set by inconsistency between judges deciding the same cases on a panel (e.g., justices on the U.S. Supreme Court) or deciding random draws from the same distribution of cases (e.g., judges on U.S. immigration courts) (Fischman 2013). How judges use this discretion correlates with their background and ideology (e.g., Rachlinski & Wistrich 2017; Harris & Sen 2019).

(e.g., Guthrie et al. 2001, 2007; Englich et al. 2006; Wistrich et al. 2014; Kahan et al. 2016) has only studied the causal effect of *non*-law, i.e., biases.<sup>2</sup> One reason explaining the prior focus on biases may be that manipulating the law is difficult with expert judges, as we discuss below. Another reason may be that the effect of the law seems beyond doubt in many situations (see Discussion). However, there are examples of blatant judicial disregard of the law—even of statutes (Henderson & Hubbard 2015)—, and in many situations the causal—as opposed to rhetorical—effect of law is very much an open question. Moreover, estimating the size of the law effect, if any, will put into perspective the size of biases documented in the literature, and vice versa. We replicate the anchoring and sympathy biases observed in prior studies and show that their estimated effect is larger than the estimated effect of precedent (with a 95% confidence interval ruling out significantly larger precedent effects).

We create a unique setting to study both questions: 299 real judges from seven key jurisdictions spend up to 55 minutes deciding—with written reasons—a fully briefed appeals case. From the perspective of comparative law, this setting is unique simply because comparative law has never used laboratory or experimental methods—we are not aware of any other study that has observed lawyers from multiple jurisdictions under controlled conditions. We recruited our participants at comparable professional education seminars in jurisdictions representing half the world population and playing key roles in the common/civil law taxonomy. France ( $n=43$ ) and Germany ( $n=74$ ) are the historical and, by most accounts, current center of the civil law world (e.g., Zweigert & Kötz 1998). Others see the current center of the civil law in Latin America (Merryman & Pérez-Perdomo 2007), of which Brazil ( $n=33$ ) is the largest and Argentina ( $n=31$ ) the historically dominant jurisdiction. The United States ( $n=29$ ) is one of the two current centers of the common law world (our attempts to recruit participants in the other, historical center of the common law, England, were unsuccessful). China ( $n=47$ ) and India ( $n=42$ ) are the world's largest countries and belong to the wider civil and common law, respectively (on China, see Liu et al., in press). Informed consent was obtained. See SI S1 for more information on venues and recruitment.

From the perspective of experimental studies of judicial decision-making, our setting offers an unusually high degree of realism. Most other studies do not have judges as research subjects, and those that do provide only a vignette summary of the decision context and do not ask for reasons.<sup>3</sup> This may fail to capture key features of judicial decision-making in the real world that may result in different outcomes than general human decision-making. Judges are highly trained and selected professionals operating in an environment designed to elucidate all sides of the case through adversarial argument, emphasize the importance of objectivity through decorum, provide time for reflection, and create accountability, principally by the obligation to provide reasons for the decision (Llewellyn 1940; Spellman and Schauer 2012; Kahan 2015; Spamann and Klöhn 2016).

Our study casts participants in the role of a judge on the Appeals Chamber of the International Criminal Tribunal for the Former Yugoslavia (ICTY) (see SI S2 for more details). Participants' task is to decide a fictionalized and streamlined version of a real ICTY case, *Prosecutor v. Perišić*. The legal question in the case is the meaning of aiding and abetting war crimes, which is criminalized but not defined in Article 7(1)

<sup>2</sup> Spamann & Klöhn (2016) and Liu et al. (in press) report partial results of the present study for the USA and China, respectively. A parallel study by one of us, Klerman and Spamann 2019, is discussed below.

<sup>3</sup> The closest other studies we are aware of in this respect are Englich and Mussweiler 2001 and Englich et al. 2006, who provide a 4-page description of a rape case to German judges spending about 15 minutes on a sentencing task; however, in Germany, a judge would never sentence a defendant without having first determined guilt during a full trial. One of us uses a similarly realistic design in a subsequent study discussed below (Klerman and Spamann 2019).

of the ICTY Statute. Participants have 55 minutes to decide, with brief reasons, whether to reverse or affirm the defendant's conviction by the ICTY's lower chamber ("trial judgment"). Subsequently, participants are asked to set an appropriate sentence, i.e., prison term (if they decided to reverse the conviction, they are told to imagine they had been outvoted on a panel). The computer records the document passages live on a participant's screen at any given time. The documents provided (in participants' local language) are briefs for both parties and a statement of agreed facts (both fictional) as well as the ICTY Statute, the trial judgment, and one prior decision of the Appellate Chamber, i.e., precedent (all real). See SI S2 for more information on the task and materials (which are reproduced in full in the Appendix) and SI S4 for more details on the data collected.

Unbeknownst to participants, each participant is randomly assigned one of two defendants, one of three precedents, and—in the sentencing part—one of three anchors in a  $2 \times 3 \times 3$  factorial experiment (see SI S3 for more details). The defendant is either sympathetic—a regretful, conciliatory Croat—or unsympathetic—a hateful, nationalist Serb—; these attributes are strictly legally irrelevant for purposes of determining whether a crime has been committed even though they may be taken into account for sentencing, i.e., for setting the appropriate penalty (e.g., Nadler & McDonnell 2012). The precedent either supports affirmance (*Affirm*) or supports reversal weakly (*reverse*) or strongly (*REVERSE*). *REVERSE* is a disguised version of the actual decision in *Prosecutor v. Perišić*, i.e., it concerns the exact same facts and is thus the strongest precedent imaginable.<sup>4</sup> *Affirm* is the explicit, lengthy refutation of *REVERSE* by another panel of the Appeals Chamber and hence very strong precedent in the opposite direction even while dealing with somewhat different facts (we redacted *Affirm* to hide the existence of *REVERSE*; in our redaction, *Affirm* addresses a position advanced by the defense). *reverse* defines aiding and abetting in terms that would exclude our defendant's behavior; however, this definition is neither discussed at length nor outcome-determinative in *reverse*, limiting its precedential weight. Finally, the sentencing task is explained using an example of 10, 25, or 40 years (anchor). Prior research on judicial biases has shown judges to be affected by anchors, specifically in sentencing (e.g., Englich and Mussweiler 2001; Guthrie et al. 2001; Englich et al. 2006; Rachlinski et al. 2015), and by party sympathies (Rachlinski et al. 2009; Wistrich et al. 2014). See SI S3 for more information on the experimental treatments.

As in our study, many domestic cases are decided by a single judge without a hearing on a limited record and in about one hour (Spamann & Klöhn 2016, §5.2). Our reason to use an ICTY case is that it is neutral between participants' national backgrounds, while its criminal law subject matter is familiar to participants from their national law. The ecological validity of our study hinges on whether participants understand the case and approach it with their judicial mindset. Participants' written reasons and behavior in the lab suggest they do. With very few exceptions (the exclusion of which does not affect results), participants' reasons are coherent and mostly adopt a specifically judicial diction (see SI S1). In the lab, participants approached the task with the utmost concentration and seriousness. Four actual or potential participants even expressed reservations about "deciding" a case of this gravity in such a short time. Most participants finished early, but some had to be asked repeatedly to finish writing their reasons. Subsequent work by one of us (Klerman and Spamann 2019) replicates the absence of a (strong) law effect

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<sup>4</sup> We did not use *REVERSE* in the first country where we ran the study, the United States, because we had expected that *reverse* would be strong enough to generate a precedent effect. We then added *REVERSE* in the other six countries.

in a similarly realistic design with a purely domestic lower court case, eliminating concerns of lacking realism of an international appeals case.

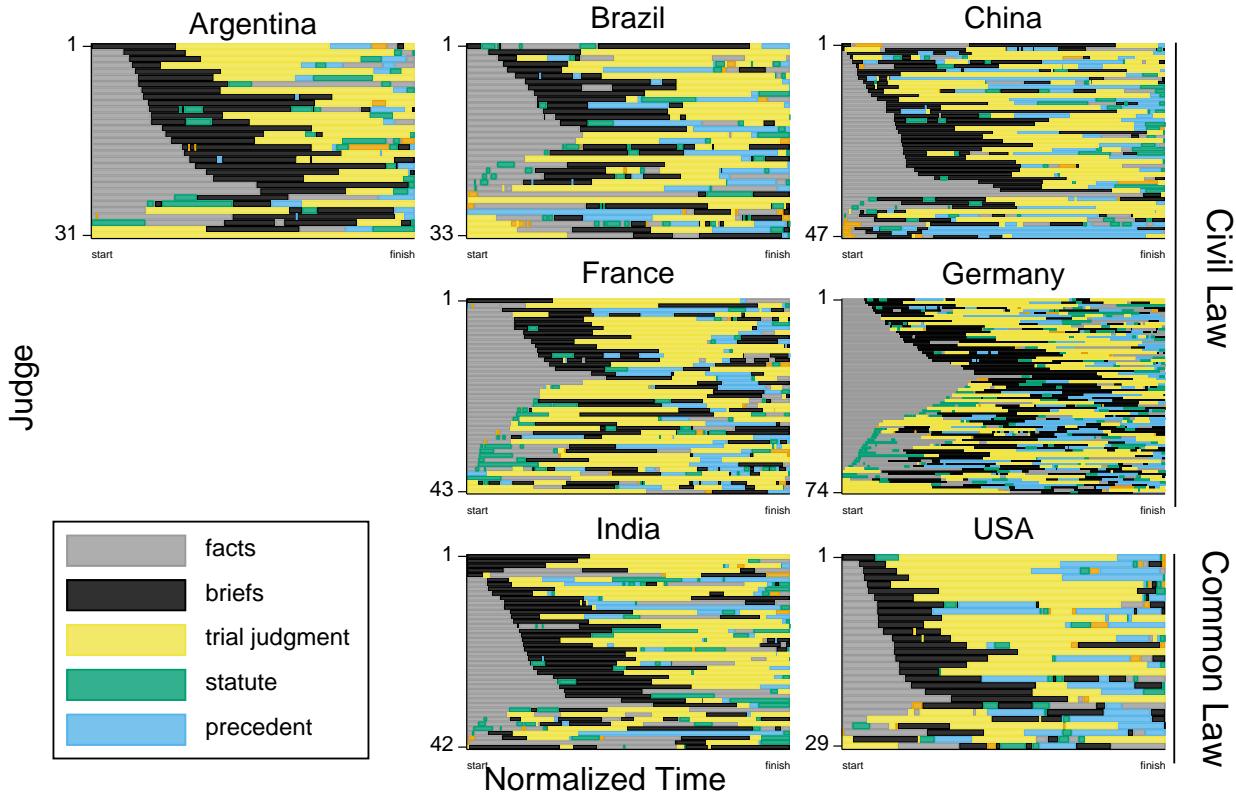
## Results

### Comparative Judicial Thinking

Figure 1 plots our main comparative evidence, the judges' document view paths by country. Each judge's time scale is normalized by that judge's total time, so that all paths are of the same length. This normalization suppresses variation in length between individual judges (mean 35 min., s.d. 10 min.) and between countries (Argentina 37, Brazil 32, China 28, France 37, Germany 36, India 40, USA 36) that we believe to be orthogonal to our question of interest, which is how judges think, i.e., how they form their view of a case, not how long it takes them to form that view.

At a high level and relative to the range of possible paths, the distribution of judges' paths looks similar in all countries. Judges everywhere tend to begin with the facts and the briefs (which the study instructions recommended reading in full) before examining the trial judgment, with brief glances at the statute throughout and longer examinations of the precedent later. This is only a tendency, though: individual judges do not all start and end with the same documents nor move through the documents at the same rhythm; there is even more heterogeneity at the paragraph level, which we have found too variable for insight and thus do not report. To the naked eye, the heterogeneity is mostly within country; there are no obvious country patterns.

Fig. 1: Document View Paths by Country



By country (plot), the graph shows for each judge (vertical axis) the documents live on that judge's screen from start to finish (horizontal axis). Orange indicates instruction views.

For a more nuanced, formal analysis, the first question we need to address is the choice of analysis method. Since our data are of a novel type, there is no established method for analyzing them in comparative law and related fields. Nor is the widespread belief that common and civil lawyers think differently articulated in specific testable hypotheses.<sup>5</sup> Simple multivariate ANOVA with the *frequency* of different documents' views as dependent variables rejects equality of countries at  $p < 0.001$  but not equality of common and civil law ( $p = .78$ ). However, ANOVA does not take into account the *ordering* of document views, which one might argue is the most characteristic aspect of possibly different ways of thinking. To capture this important dimension, we introduce sequence analysis to comparative law: we discretize all document paths to 500 steps of equal normalized length, calculate the Levenshtein distance between any two such sequences, aggregate the within-group distances normalized by total distances, and then compare this normalized aggregate to its empirical distribution under random permutation of group labels. In more detail: Levenshtein distance is a standard metric for distance between sequences of categorical data in computer science, linguistics, and other fields. It is the minimum number of edit operations (delete, insert, or substitute) required to transform one sequence into the other. (We obtain identical results with substitution cost equal to 1.5 times the cost of insert or delete. We use Halpin's (2017) implementation.) Then letting  $SS_T$  be the total sum of all pairwise Levenshtein distances divided by

<sup>5</sup> Zweigert & Kötz 1998 §5.III.2, Legrand 1996, 1999, and others claim that civil law thinking is abstract, systematizing, and institution-focused while common law thinking is more concrete, casuistic, and fact-based. None of these differences seems sufficiently specifically articulated, however, for rigorous testing.

the total number of observations (299), and  $SS_W$  be the sum of such sums calculated separately for each group, the pseudo- $R^2$  ( $SS_T - SS_W$ )/ $SS_T$  is a well-behaved, useful measure of association of sequences and groups (Studer et al. 2011). A permutation test is exact even in finite samples against the randomization null hypothesis that there are no differences at all between groups (Lehmann and Romano 2005, Theorem 15.2.2).

When the groups are countries, the pseudo- $R^2$  equals .04. This is low, but much higher than random: in 100,000 random re-assignments of all country labels to judges, we not once obtained a pseudo- $R^2$  this high, i.e.,  $p \leq 10^{-5}$ . In other words, there are detectable country differences in the document view paths.

When the groups are common and civil law, the pseudo- $R^2$  is much lower still (<.01). To assess its statistical significance, we need to permute common/civil law labels of countries, not of individuals, because the common/civil law hypothesis and corresponding null hypothesis is about the similarity of entire countries and hence groups of judges, not merely of judges within countries.<sup>6</sup> With two group members and seven countries, we reject equality of common and civil law at  $p \leq .05$  only if the two common law countries India and USA generate the most extreme pseudo- $R^2$  of any of the  $\binom{7}{2} = 21$  possible country pairs. While this seems to be a demanding test, the extreme test statistic is arguably exactly what one should expect if common and civil lawyers really thought differently. In any event, we have found empirically that the test is not so demanding after all, i.e., the test has high power even for relatively small differences. In simulated data drawn with replacement from the entire population of judges, even a 1% “half-time” sliver (the middle 5 out of the 500 steps) set to precedent for (arbitrarily designated) “common law judges” and to statute for the other, “civil law” judges is detected 72% of the time, and a 2% sliver is detected 99% of the time. When we also simulate within-country similarities by first drawing countries and then drawing judges only within countries, in each case with replacement, we still estimate 93% power for detecting a 5% sliver. In words, if there are meaningful differences between common and civil law, our permutation test has high power to detect them at  $p < .05$ . However, in actuality, our test does not come close to rejecting equality of common and civil law ( $p = .29$ , i.e., 5 other country pairs generate a higher pseudo- $R^2$ ). The underlying reason is that judges from the two common law countries India and USA are very different. For example, US and Indian judges spend respectively the lowest and second-highest average fraction of time with the statute, and the second-highest and second-lowest with the precedent. We return in the conclusion to the question of whether other common law countries might be more similar.

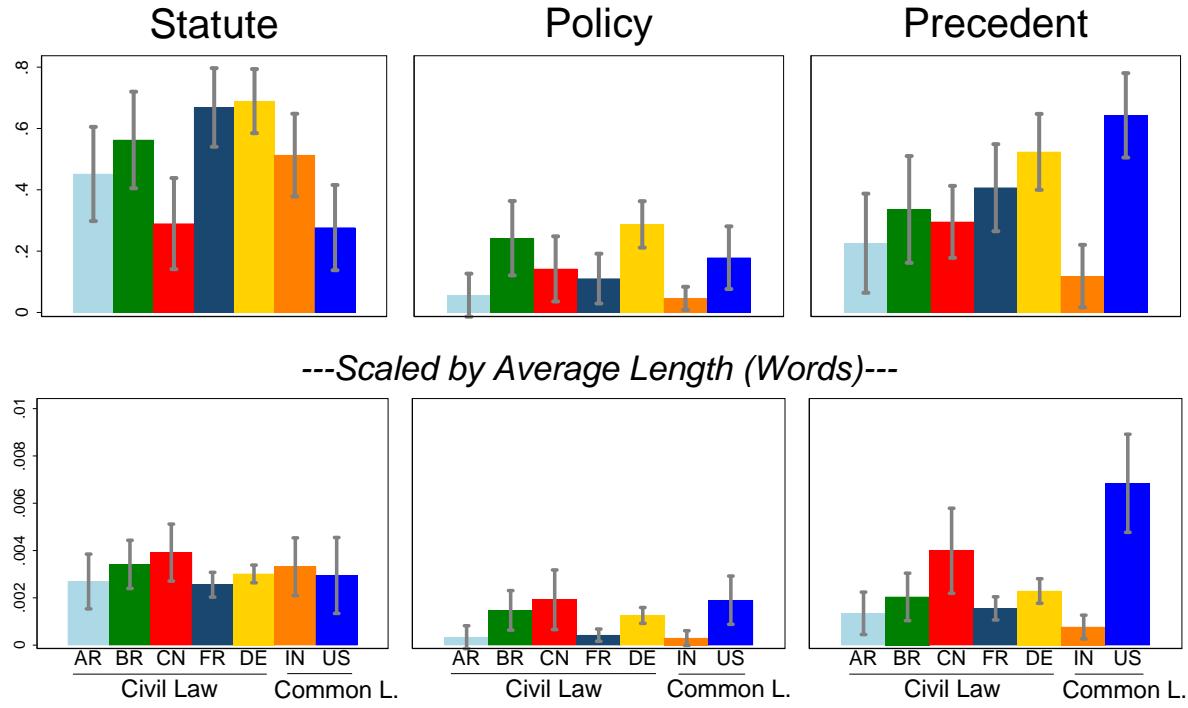
As supplementary comparative evidence, figure 2 presents the country-prevalence of key arguments (statute, policy, and precedent) in the written reasons, which all but 9 of the 299 participants submitted and which are reproduced in Appendix C (in expert English translation, where applicable). The upper panel presents the raw country-prevalence of each argument, i.e., the fraction of judges from that country that mentioned the argument in their reasons. The lower panel divides the country-prevalence by the average number of words written by judges from the respective country (in English translation, where applicable).<sup>7</sup>

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<sup>6</sup> Intuitively, it is easy to see that individual permutation would be wrong: if all within-country distances were zero and all countries were equidistant (i.e., no group of countries is special), then with probability approaching one, permuting individual labels would yield greater “within-group” distances and hence a lower pseudo- $R^2$  than any actual group of countries simply because the permutation leads to more mixing of judges from different countries.

<sup>7</sup> In the raw text data, average length of reasons measured in English words (mean 172, s.d. 140) differs considerably between countries. Chinese (mean 74) and US (mean 94) judges tend to write short reasons, French (mean 262) and German (mean 227) judges long reasons, with Argentinian (mean 168), Brazilian (mean 165), and Indian (mean 155)

Fig. 2: Prevalence of Reasons by Country



Country means and 95% bootstrap confidence intervals.

In the upper panel, the mean is taken over indicators whether an individual judge mentioned the feature in the reasons (scored as the number of 0-4 coders who so coded this judge, divided by four). In the lower panel, the mean is taken over the indicators divided by the average number of words in that country's translated reasons.

We again see considerable variation within countries and across countries (now even with the naked eye), but not between common and civil law. In fact, the biggest country differences are *between* the two common law countries India and USA, who occupy opposite extremes for the prevalence of precedent and, when scaled by average words, policy and whose differences are larger than those between the common and civil law means on all 6 dimensions. As with document paths, permutation tests strongly reject equality of the three prevalences—scaled or not—in the seven countries ( $p < 10^{-4}$ ) but not in common and civil law ( $p = .57$ ); see SI S5 for the technical details. To the extent written reasons are probative about judges' thinking (see the general caveat in the Introduction), they thus confirm our finding from document paths: judges "think differently" in different countries, but there is no evidence that these differences are related to the common/civil law distinction.

Notice that our last finding concerns the *arguments* in judges' reasons and thus is not inconsistent with the common view reported in the Introduction that there are systematic differences in the *style* of judicial opinions. Expert readers can arguably detect such differences also in our judges' written reasons. We have verified that natural language processing algorithms (NLP) can detect these differences too. NLP also show, however, how superficial such differences can be: NLP can detect source language differences in translations (Rabinovich & Wintner 2015), but that alone would hardly be considered evidence that the

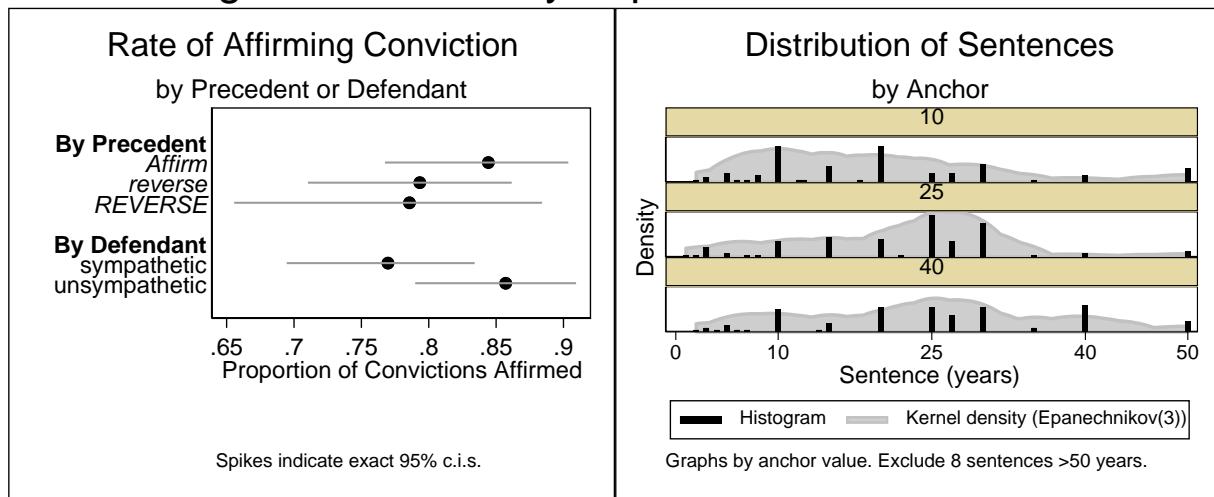
judges in between. The differences in length might themselves be a difference in style, or simply reflect experimental artefacts such as the greater ease of writing on a laptop (which we used in France and Germany) compared to on an iPad (which we used in the United States and partly in China).

speakers of different languages “think differently” (although they might). Applied to judicial reasons, NLP might simply recover the trivial fact that the common law’s language is English and the civil law’s is not, which is why we have not pursued this route.

### Effect of Law (Precedent)

We now turn to our second question: does precedent have an effect on judges’ decisions, or perhaps more to the point, how does its estimated effect size compare to judicial biases that have been documented in the literature? To emphasize that this is not a comparative question and to facilitate reading, figure 3 plots our experimental evidence for all countries combined (country-specific plots are in SI S4). The left panel plots affirmation rates by randomly assigned precedent and defendant, and the right panel plots sentence length by anchor.

Fig. 3: Decisions by Experimental Treatment



All estimated effects go in the expected direction. The defendant’s conviction is affirmed more frequently under *Affirm* than under *reverse*, and more frequently under *reverse* than under *REVERSE*.<sup>8</sup> The unsympathetic defendant’s conviction is affirmed more often than the sympathetic defendant’s. The distribution of sentence lengths shifts right as the anchor increases from 10 to 25 to 40.

<sup>8</sup> *REVERSE*’s confidence interval is larger than the other two precedents’ because we underweighted *REVERSE* in our randomization, see SI S3.

However, the estimated precedent effect is the smallest and the most likely to be mere noise. The affirmance rate under *REVERSE* (*reverse*) is only six (five) percentage points lower than under *Affirm*, whereas the difference between the two defendants is nine percentage points. Fisher exact two-sided *p*-values are .16 and .19 for the two precedent comparisons but .06 for the defendant comparison<sup>9</sup>; the anchor-sentences rank-correlation  $\rho=.16$  has  $p<.01$  ( $p=2t(N-2, |\rho|/(N-2)^{1/2}(1-\rho^2)^{-1/2})^{10}$ ). Perhaps more to the point, the precedent effect's upper 95% confidence bound is small in the absolute and relative to the defendant effect: The 95% confidence interval is [.7,4.0] for the odds ratio (OR) of *Affirm* over *REVERSE*, and [.3,2.6] for the ratio of the precedent and defendant odds ratios (OR(*Affirm/REVERSE*)/OR(*Unsympathetic/Sympathetic*) (estimates from logit regression of affirmance on precedent and defendant conditional on country, critical values from normal distribution).

The precedent effect estimate is not meaningfully larger in subgroups that one might have expected to exhibit a stronger precedent effect. Judges who mention the precedent in their reasons exhibit twice the difference in affirmance rates between *Affirm* and *REVERSE* and between *Affirm* and *reverse*, but of course even the double differences are still small: eleven ( $p=.14$ ) and ten ( $p=.17$ ) percentage points, respectively. Judges from common law countries (which, recall, have *stare decisis*) do not exhibit stronger precedent effects; in fact, their observed behavior is counter to precedent: US judges had *higher* affirmance rates under *reverse* than *Affirm* (*REVERSE* was not used in the USA, see note 4), and all Indian judges affirmed under *REVERSE* but not under *Affirm* and *reverse*.<sup>11</sup>

## Discussion

Our results provide negative answers to both our questions: Common and civil law judges do not appear to think differently, and precedent does not affect judicial decisions, at least not much more than sympathy and anchoring biases. Naturally, we cannot exclude the existence of effects that are smaller than what we have power to detect, or that manifest only in different contexts. Still, our findings are important because the effects we study were supposed to be large and not restricted to particular contexts, and our 299 observations would have given us good power to detect even modest main effect sizes. We emphasize the comparison of precedent effect to biases for this reason: whether or not precedent ultimately has *some* effect, our troublesome finding is that the size of this effect is bounded to be not much larger than that of biases.

Specifically, regarding the common/civil law distinction, our finding is limited to our sample of countries, which for the common law includes only India and the United States. There might be more commonalities between common law countries of a similar level of development or in the Commonwealth. Still, it is important to know that whatever common law family resemblance there may be does not extend to India and the United States. Moreover, our data also show that similarity cannot simply be assumed even between similarly developed, geographically adjacent countries of the same family: our document path and reason data show considerable differences between France and Germany (they only rank 10<sup>th</sup> in proximity among the 21 country pairs).

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<sup>9</sup> The Fisher tests are stratified on country and the respective other factor (as in Jung 2014). This and the other results for precedent and defendant reported in this and the next paragraph are similar in simple Fisher tests, ANOVA, country-conditional logit, or country-conditional exact logit.

<sup>10</sup> We obtain similar results in various regressions reported in SI S5.

<sup>11</sup> By contrast, Chinese judges analyzed separately do exhibit precedent effects (Liu et al., in press).

Continuing with the precedent effect, there are many real-world examples where precedent clearly does matter and does determine case outcomes. In functional court systems, lower courts respect “vertical precedent” set by higher courts, and each court tends to respect its own precedent. For example, ever since the U.S. Supreme Court ruled same-sex marriage constitutionally protected in *Obergefell v. Hodges* (2015), every U.S. court has respected this precedent, including the U.S. Supreme Court itself and lower courts that had previously decided differently. Such respect is overdetermined, however, by the threat of reversal for lower courts and persistent judicial preferences on the higher court (unless its composition changes significantly); it is also predicated on an active common understanding of what the precedent stands for. Especially the last condition is often not met when judges refer to precedent. For example, *Obergefell v. Hodges* itself cited over 100 precedents by various courts, some over 100 years old, none of which was directly on point. This is also typical when lower courts address a novel legal issue. In such cases, our results support the suspicion (e.g., Schauer 2018) that precedent has little effect on decisions, whatever its rhetorical appeal.

We believe that the most pressing agenda for future research on judicial decision-making is to identify the areas and ways in which law does matter for judicial decisions, and how this may differ across jurisdictions. Our findings and those of Klerman & Spemann (2019) show law to be less determinative than previously thought (cf. Spemann & Klöhn 2016, §3). But counterexamples such as *Obergefell*'s reception show that legal nihilism is equally inapposite. Tracing the boundaries between these and similar situations, and identifying cross-country differences in these boundaries, will help us understand and improve law's important role in society.

Similarly, our finding of considerable country differences coupled with the inability of the common/civil law distinction to explain any of them suggests a fruitful search for alternative classifications of legal systems, which is already under way (e.g., Glenn 2014). We hope that the document path evidence we introduce in this paper can be of great help in this search. These novel data can presumably be analyzed in innovative ways that we have not even thought of.

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## Supporting Information

The following describes in more detail our subject pool (S1), the study task and materials (S2), our experimental treatments (S3), the data collected including excluded observations (S4), and our statistical methods (S5). The description is exhaustive; we did not perform other interventions, collect other variables, or exclude other observations.

### S1. Venue and Recruitment

We recruited judges at continuing education seminars for judges organized by, or in conjunction with, official judges' organizations or training institutions, such as the Federal Judicial Conference in the United States. Judges from all levels and, where applicable, specializations of the judiciary attended the seminars; most were of intermediate seniority.<sup>12</sup> Judges participated for purely intellectual reasons except in France (where the seminar was part of a year-long series of training for judges aspiring to managerial positions in the judiciary) and to a lesser extent in China (where the seminar prepared for academic writing that is helpful for promotion). Participation in the study itself was always voluntary (informed consent was obtained) and anonymous. The recruitment venues and procedures are described in more detail in Appendix A. We tried but failed to obtain access to a suitable recruitment venue in England and Spain.

Judges who were inclined to participate were pointed to a URL on the computers we provided, or that they brought themselves. The study was hosted online and began with the consent form, which described the study's purpose as "to learn about legal reasoning and the role of various factors therein" and participants' task as "judg[ing] a fictitious yet highly realistic international law case." Invitation letters or other materials distributed to judges ahead of the event (as described in Appendix A) also used only this language to describe the study.

A total of 371 judges completed the initial consent, of which 367 proceeded to the main materials and 312 proceeded to submit a judgment; attrition rates are almost identical across treatment groups.<sup>13</sup> Four Chinese participants withdrew their participation after the debriefing (which our IRB required us to allow in Argentina and China).<sup>14</sup>

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<sup>12</sup> In four jurisdictions (Argentina, Brazil, France, Germany), the seminar was also open to prosecutors, whom we exclude from the analysis.

<sup>13</sup> Of the 59 judges who completed initial consent but did not submit a judgment, 11 are U.S. judges. These U.S. judges might have failed to complete the study due to a computer (iPad) freeze, in which case they might also have been given a replacement iPad with a new participation number. To the extent this happened, they would have been double-counted in the number of completed consents and read instructions. When we did replace an iPad, we could not control the treatment assignment on the new iPad, nor did we log which was a replacement iPad. To exclude the possibility that a participant might have been exposed to different treatments on different iPads, we exclude the two U.S. participations that began more than 55 seconds after the first unfinished U.S. participation was exposed to treatment-specific information beyond the defendant's name (when they proceeded to the main study materials). The same problem occurred with laptops used in one of the four rounds of German data collection, leading to one exclusion.

<sup>14</sup> Our IRB considered "judicial decision-making" incomplete disclosure of our research goals for the Argentinian and Chinese judges. Our IRB therefore demanded that we grant participants the right to withdraw their data from the study upon completion and full debriefing about the details of the study.

We exclude nine more observations for data quality concerns. First, we exclude two U.S. participants and one German participant who might have been exposed to two different treatment conditions due to a technical problem.<sup>15</sup> Second, we exclude two Chinese participants that wrote brief judgment reasons yet our system recorded as having spent only 28 and 88 seconds with the documents; our best explanations are that these were either test runs by one of us (JZL) or the system misrecorded the participation due to network issues. Third, we exclude participants who refused to give judgment (one French, one U.S.<sup>16</sup>) or misunderstood the task (one Chinese, one Indian) as assessed by at least two of four research assistants independently reading their judgment reasons (see section S4 below). This leaves us with 299 useable participations. Finally, we correct the binary judgment of four of those participants because their uncorrected binary judgments were the opposite of what their judgment reasons manifestly argued for (as assessed by one research assistant and verified by us), very strongly suggesting they had erroneously pressed the wrong judgment button. None of these exclusions or corrections affects our results; in fact, *p*-values for the defendant effect would have been lower without them. Similarly, we would have obtained the same or even stronger results if we had also excluded the three participants who pressed the cancellation button, presumably in error, after submitting a judgment and judgment reasons, or the 16 participants that only one of the four research assistants coded as misunderstanding the task.

To guarantee anonymity and save time, we collected very little demographic information and asked few additional questions. Some questions were not asked in all countries because of country-specific sensitivities, in particular about identifiability. Table S1 summarizes all the information we have beyond the outcome data discussed in the main text. Different countries' participants differed along various characteristics including age, gender, and career path. To the extent these differences are systematic, however, they more likely reflect differences between the respective national judiciaries than differences in our sampling scheme. For example, our U.S. participants are considerably older than other participants, but this is a feature of recruitment into the U.S. federal judiciary (lifetime appointment after a successful career elsewhere), not of recruitment of U.S. federal judges into our sample. Such differences entail that one cannot pin down *why* judges from different countries differ (demographics, training, institutional embedding, etc.), but they do not impede the study of the existence of differences, which is our focus.

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<sup>15</sup> In the USA and one German round, some iPads or laptops, respectively, froze due to network issues. When this happened, the assistants present usually offered the participant a replacement machine. In the USA, we did not have the technical ability to transfer frozen participations to new machines; in Germany, we did have it but the assistants might not have used it. Hence the new machine would only have registered the participants' document views from then on. Worse, it is likely that the participant was transferred to a different treatment group. To eliminate both possibilities, we exclude any participant in those sessions who commenced their participation after the first unfinished participation in that session—among those who got at least to the document view stage, and hence were exposed to the treatment—stopped recording data.

<sup>16</sup> The latter only wrote “Not sufficient time to form a judgment.” The former’s reasons began “Having completed this study, it is impossible for me to adjudicate adequately, for the following reasons: ...”

**Table S1: Participating Judges**

Country	Argentina	Brazil	China	France	Germany	India	USA
N	31	33	47	43	74	42	29
	31	32	44	43	74	38	28
	29	31	46	40	68	27	27
Court type	Appellate		0.05	0.26	0.22	0.17	*
	Criminal		0.42	0.21	0.44	0.12	
Prior job	Prosecutor		0.06	0.40			0.26
	Criminal Defender						0.44
Age group	<30		0.03	0.74	0.00	0.04	0.03
	30-40		0.34	0.26	0.22	0.29	0.53
	40-50		0.56	0.00	0.60	0.31	0.28
	>50		0.06	0.00	0.17	0.36	0.17
Female							0.19
Prior knowledge of ICL	0.23	0.44	0.02	0.05	0.10	0.28	0.07
Recognized names & places	0.65	0.63	0.38	0.59	0.58	0.41	0.81
Average Confidence	71%	75%	67%	76%	65%	68%	64%

Rates are relative to participants from the respective country. Empty cells indicate that the data were not collected in that country. For "criminal" courts, judges are counted as half if they indicate that they handle both criminal and other matters.

"Confidence" is the answer to the question "What proportion of your colleagues do you think decided the case as you did?"

\* Klerman & Spammann (2019) had 16% appellate judges in data collected at the same workshop two and three years later.

\*\* Age groups for USA are shifted up by five years, i.e., for U.S. participants, 30-40 means 35-45 etc.

## S2. Task and Materials

Following consent, participants were taken to an instruction page. It invited them to imagine themselves as a judge on the Appeals Chamber of the International Criminal Tribunal for the former Yugoslavia (ICTY) judging a defendant's appeal of his conviction by the ICTY's Trial Chamber (see Appendix B.1). A randomly chosen half of the participants was informed that the ICTY combines elements from common law and from civil law systems, while the others were left to their own imagination; this has no effect on any outcome. The instructions asked participants to decide in 50 minutes whether to affirm or reverse the trial court's conviction of the defendant, and to provide brief reasons in a text box or on a piece of paper.<sup>17</sup> When the judges clicked on a button to continue, they were taken to an overview page listing all of the documents available to them (including the instructions), and a clock on the screen started counting down 50 minutes. After 55 minutes, the computer asked any unfinished participants to conclude. Most judges finished early.

Once a participant submitted the affirm/reverse decision and reasons, we also asked what sentence length the participant would deem appropriate (if the participant had decided to reverse, we explained that the participant should imagine having been outvoted on a panel).

We chose an international criminal case to ensure that the task would be comparable yet accessible for judges from different jurisdictions. We chose an appeals case to focus on *legal* reasoning. We chose a

<sup>17</sup> The U.S. instructions asked the participants "to judge whether the defendant is or is not guilty." This language is technically imprecise because the direct determination of guilt is generally considered a question for the trial court, whereas appeals courts decide whether to reverse or affirm.

close case to maximize the probability that participants would have an open mind and hence to maximize our power; in this we partially failed because participants heavily leaned towards affirmance (81%).<sup>18</sup>

We derived our case from a real case at the International Criminal Tribunal for the former Yugoslavia (ICTY), *Prosecutor v. Perišić*. The main question in *Perišić* – in our setup, the only question – was whether a conviction for aiding and abetting under Article 7(1) of the ICTY Statute requires that the aid be “specifically directed” at the war crime, or whether any substantial contribution is sufficient. Defendant Momčilo Perišić had been the highest ranking general of Yugoslavia for much of the Bosnian war. In this capacity, he had been responsible for organizing various types of Yugoslavian support for the Army of the Republika Srpska (VRS). The VRS was the main armed group of ethnic Serbs in the Bosnian war and committed various war crimes in Bosnia, including the notorious Srebrenica massacre. Yugoslavian support for the VRS included personnel and arms. In 2011, the ICTY’s Trial Chamber convicted Perišić as an aider and abettor to the VRS crimes.<sup>19</sup> In a controversial decision from 2013, the ICTY Appeals Chamber reversed, holding that aiding and abetting required the aid to be “specifically directed” at the crimes.<sup>20</sup> Perišić had had knowledge of the VRS war crimes when providing substantial support to the VRS. But the Appeals Chamber found that Perišić’s support was directed merely towards the general war effort of the VRS, not specifically towards its war crimes.

We provided the original *Perišić* trial judgment of the ICTY Trial Chamber in the materials, except that we changed the names and some biographical information as described below.<sup>21</sup> We also provided the original ICTY statute and *one* redacted original precedent from the ICTY Appeals Chamber, as described below. We wrote the “Agreed Facts” and the briefs reproduced in Appendix B.2-B.4 with the goal of focusing the judges on only one legal issue, namely the reach of aiding and abetting liability under Article 7(1) explained above.<sup>22</sup> The original materials were in English; they were professionally translated into the respective local languages for all but the US and Indian participants. The original statute, trial judgment, and precedent, as well as our briefs, were presented with the official seal of the tribunal and other trappings of official legal documents at the ICTY (in the case of the originals, simply in the form found on the ICTY’s website). While the briefs and statement of facts, which the instructions advised to read first, were short (under 1,000 words each), the trial judgment (more than 16,000 words), precedent (more than

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<sup>18</sup> Participants’ average affirmance rates cannot be explained by the position of their respective national laws. To our knowledge, there is good authority favoring our defendant only in Germany (BGH NJW 2001, 2409 at III.2) and Argentina (cf. CFCP, Register 371/15, FSA 44000195/2009/19/1/CFC2, ‘Blaquier, Carlos Pedro Tadeo y otro s/recurso de casación’, 13 March 2015, [concurrence of Justice Gemignani]), yet German and Argentinian judges’ affirmation rates were above average (81% and 94%, respectively). The question was expressly left open by the U.S. Supreme Court in *Rosemond v. United States*, 572 U.S. 65, 77 n.8 (2014). Most likely, our participants were impressed by the gravity of the war crimes in question, which probably far exceeds anything they may encounter in their domestic courtrooms.

<sup>19</sup> *Prosecutor v. Momčilo Perišić*, Case No. IT-04-81-T, judgment of the Trial Chamber of 9/6/2011.

<sup>20</sup> *Prosecutor v. Momčilo Perišić*, Case No. IT-04-81-A, judgment of the Appeals Chamber of 2/28/2013.

<sup>21</sup> We changed the date to January 2014 to make it a live issue, and we omitted the parts relating to Zagreb because it proved too difficult to find a credible mirror city targeted by ethnic Croats.

<sup>22</sup> Towards this goal, the statement of facts was entitled “Agreed Facts” and began with the sentence: “The parties have agreed that the following key facts are not in dispute.” Similarly, the brief for the appellant began with the words: “This appeal concerns a single point of law: whether or not aiding and abetting under Article 7(1) of the Statute governing this Tribunal requires that the assistance be specifically directed to the commission of a crime.” Both briefs focused on this issue alone. They discussed the precedent and the policy issues. They cited specific passages of the precedent that could be accessed directly using hyperlinks.

15,000 words), and statute (around 23,000 words) were not and could not possibly be read in full in the 50 minutes available. This was designed to mimic the excess of available materials in the real world. As in the real world, the briefs pinpointed specific passages in the longer documents that the advocates urged the judges to consider relevant. Our online implementation facilitated access through hyperlinks in references and tables of content.

### S3. Experimental Treatments

#### Precedent and Defendant

In a  $3 \times 2$  factorial design, we randomly assigned judges to one of the six groups formed by crossing three precedents with two defendants (except in the US, where we only used two precedents for reasons explained below). The briefs and the statement of facts were adjusted accordingly, as shown in Appendix B. Our country-specific permuted block randomization aimed to achieve equal group sizes within each country except that, to maximize power, it allocated only half as many participants to the strongest precedent (*REVERSE*); actual group sizes vary slightly due to minor attrition.

#### *Precedents*

To help the reader, we label the three precedents in this paper by the direction of the decision that they would support: *Affirm*, *reverse*, and *REVERSE* (capital letters indicating greater strength). All three were actual prior decisions of the ICTY Appeals Chamber, but any participant's materials were written as if the respective other two precedents did not exist.

The two precedents that we used with all study groups were *Affirm* and *reverse*. *reverse* was helpful to the appeal's legal argument because it defined aiding and abetting as "specifically directed to assist ... the perpetration of a certain specific crime."<sup>23</sup> By contrast, *Affirm* was harmful to the appeal's legal argument because it held "[t]hat 'specific direction' is not an element of aiding and abetting liability under customary international law."<sup>24</sup> Under two well-established legal principles, however, neither of these was technically *binding* precedent even for a judge who generally adhered to the principle of *stare decisis* (i.e., binding precedent). First, both precedents were "distinguishable" because they involved materially different facts, as neither of them dealt with the issue of support provided from a separate military organization based in a different country. Second, the legal pronouncements on "specific direction" in *reverse* and arguably also in *Affirm* were "*obiter dictum*"—i.e., not necessary to reach a judgment in the case—because the accused's acts in those cases had in fact been specifically directed at the crime; *reverse*'s engagement with "specific direction" was also concomitantly short and limited to the quoted definition. Nevertheless, both precedents were *persuasive* authority for their points, particularly *Affirm*, which proclaimed that its treatment of "specific direction" was not *dictum* and dedicated over twenty pages to it.<sup>25</sup> In the real world, legal argument in general and judges' written reasons in particular appeal to such persuasive authority all the time. In the absence of any better authority, we expected these precedents to have a sizeable effect, and a survey of law professors shared our view (Spamann & Klöhn 2016).

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<sup>23</sup> Prosecutor v. Vasiljević, Case No. IT-98-32-A, at para. 102 (emphasis added).

<sup>24</sup> Prosecutor v. Sainović, Case No. IT-05-87-A, at para. 1649.

<sup>25</sup> Cf. id. at 646, note 5320 ("the issue of specific direction cannot be circumvented in determining the outcome of the present case"), and generally 643-668 (discussing specific direction).

When we ran our experiment in the first country (the U.S.), however, we found no difference in affirmation rates between these two precedents.<sup>26</sup> In the subsequent countries, we therefore added a third precedent of maximal strength, *REVERSE*: the ICTY Appeals Chamber's decision in the very case from which we took our facts (*Perišić*). We merely disguised it by changing the names of the defendant and some institutions and places.<sup>27</sup> As mentioned above, this decision had overturned the accused's conviction on the basis that aiding and abetting required specific direction, which was hence not *dictum*. Nor was this decision distinguishable, since the facts were by design exactly the same. If precedent were followed at all, *REVERSE* required reversal of the conviction.

We made some minor modifications to the precedents to fit them into our case, as described in Spamann & Klöhn (2016).

#### *Defendants*

Our two fictitious defendants differed only in their nationality, biography, and attitude. We chose these attributes and their depiction to be clearly irrelevant from a strictly legal perspective, as further discussed in Spamann & Klöhn (2016). We named these defendants Borislav Vuković (a fictitious unsympathetic Serb) and Ante Horvat (a fictitious sympathetic Croat), but in this paper refer to them simply as the sympathetic and unsympathetic defendant to help the reader.

The unsympathetic defendant's facts and trial judgment were identical to the original *Perišić* facts and trial judgment except for some locations and names, as described in Spamann & Klöhn (2016). We made only two substantive, fictitious changes to the *Perišić* original. First, we added the following biographical sentence to the statement of facts and the trial judgment facts: "He held this position [as the army's chief of staff] until his mandatory retirement from the [army] in 2004, when he became advisor to the [Yugoslavian] government for 'the rehabilitation of Serb victims of Albanian persecution' and chairman of the United Serbia Party." Second, the fictitious brief for the prosecution noted in its closing passage that the defendant "has publicly mocked this tribunal and repeatedly inflamed lingering tensions with inflammatory public statements showing absolutely no regrets about the horrors of the war in general, and the war crimes he supported in particular." This statement was supported by a footnote. See the full documents in Appendix B for details.

The sympathetic defendant's facts and trial judgment were identical to the unsympathetic defendant's, with the following three exceptions. First, we changed all names of Yugoslav and Bosnian-Serb persons, institutions, and places to their Croat and Bosnian-Croat equivalents, as described in Spamann & Klöhn (2016). Second, our (fictitious) facts noted in passing that the sympathetic defendant had contacts with

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<sup>26</sup> In this connection, it is worth mentioning that the *Affirm* variant of the prosecution's response brief in the U.S. experiment contained an unintentional typo ("required" instead of "rejected") in its second out of three references to the precedent's holding (see Appendix A.1.4, paragraph 4). According to their written reasons, however, none of the U.S. judges were misled by this. We corrected the mistake before administering the study in the other jurisdictions.

<sup>27</sup> We changed the defendant's name to a fictitious Emir Besić instead of Momčilo Perišić and made him the deputy chief of staff of the Army of the Republic of Bosnia and Herzegovina (ArBiH) instead of Yugoslavia. We slightly rewrote the rest of the facts to fit this setup. In particular, our fictitious facts described Besić as responsible for coordinating the ArBiH's activities with those of the (fictitious) Zeleni Sokoli ("ZS"), a paramilitary group consisting of Bosniak and foreign fighters. In that role, however, our fictitious Besić did exactly the same for the ZS as the real Perišić did for the VRS, and the fictitious ZS committed the same crimes as the real VRS.

NATO during the war.<sup>28</sup> Third, we changed the two fictitious bits of information relating to the accused's post-war behavior. After retirement, the sympathetic defendant "became vice-chairman of the Croatian-Bosnian Reconciliation Commission." The prosecution's brief does not comment on the sympathetic defendant's attitude. Instead, the defense's brief notes in closing: "From the very beginning of this case, the defendant has expressed his deep regret at all bloodshed in this tragic war, and in particular at the inexcusable crimes of certain soldiers and officers in the field. He categorically denies, however, that he is personally responsible for those crimes. We urge the Appeals Chamber to affirm that the law is on the side of the defendant and others forced by history to make difficult decisions in times of war, and to overturn the conviction by the Trial Chamber." See the full documents in Appendix B for details. Remorse and other post-crime behavior may be relevant for sentencing but are strictly and clearly irrelevant for the question of guilt, i.e., whether a crime was committed in the first place (e.g., Nadler & McDonnell 2012).

### Anchor

After the participants submitted their affirm/reverse decisions and associated reasons, we asked them to determine the appropriate sentence length. For calibration, we first provided two examples of sentences (measured in years) given to real convicted war criminals. In the US version of the experiment, we then simply provided an input line demanding a number and prepopulated that line with 10, 25, or 40, which were randomly assigned to participants. We expected participants to enter their judgment in years, as in our examples. To eliminate any possible confusion about the time unit, however, we slightly changed the setup in the other countries, adding the following language after the calibration examples: "To avoid misunderstandings, please write the time units (years or months) explicitly. For example, if you thought that [10/25/40] years were an appropriate penalty, you should write either '[10/25/40] years' or '[120/300/480] months,'" again randomizing the number inputs.

### S4. Data Collected

We collect three types of data: process data (document views), text data (judgment reasons), and outcome data (judgment [affirm/reverse]; sentence).

The process data consist of separate series of document requests and document visibility. The former records, with exact time stamps, judges' clicks requesting to view documents in the materials. The latter records which individual paragraphs are live on a judge's screen at roughly 10 second intervals.<sup>29</sup> As mentioned in the main text, our analysis focus on the click data because document-level information is sufficiently fine-grained for our purposes (the paragraph-level data is available in our open access repository). In fact, we even omit some further detail that seems irrelevant for our inquiry: we collapse the two briefs into one document category; we omit all table of content views (which is every judge's starting point, but occurs only eleven times after the start with a mean of 13s and a maximum of 26s duration); and we chop off instruction views at the beginning of every judge's participation (the remaining instruction views are shown in figure 1 but not mentioned in its legend because they seem unimportant to understand judicial though processes and only comprise 0.81% of judges' time). We then normalize the

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<sup>28</sup> Our idea was that NATO would trigger an in-group bias with judges from NATO countries, i.e., France, Germany, and the United States. But informal conversations suggest that even Chinese today are at least neutral towards NATO, NATO's bombing of the Chinese embassy during the Kosovo conflict notwithstanding.

<sup>29</sup> The spacing is not always exact because the experiment was hosted online and connections could trigger somewhat irregular recording.

length of each judge's click series (i.e., we let time start at 0 and divide subsequent time-stamps by the raw series' length) and discretize time to 500 evenly-spaced units; we call the resulting data the document view paths. The underlying assumption here is that the removed variation in series length (which is substantial both at the individual and at the country level) is not substantively interesting or at least much more likely to be an experimental artefact (such as being a function of the device the participant is working on) than the relative length of document views and their sequencing.<sup>30</sup>

Text data (judgment reasons) was submitted by all but nine of the 299 participants. Expert translators translated into English all text written in another language—that is, all text from civil law participants. The English texts are reproduced in Appendix C, along with the names of the translators, where applicable. Two US-American and two German law students (who were blind to the research questions) independently coded these texts using the coding protocol included as Appendix D. In the paper, we focus on the three features that we consider to be the most basic and thus of first-order importance for judicial style: whether a judge mentions the statute, the precedent, and/or policy reasons. (We would get very similar results if we considered only references to a specific precedent or even distinguishing of precedent instead of any generic mention of precedent.) The intercoder reliability is almost perfect for the first two ( $\kappa=0.84$  and  $\kappa=0.91$ ) and good for the third ( $\kappa=0.59$ ); to the extent there is disagreement, we average the scores of the four coders.

The outcome data are straightforward and require only four further explanations. First, as explained supra section S1, we corrected three judgments in function of their associated reasons without any impact on our results. Second, we have only 268 sentences because the sentencing task was part of the exit survey that participants only reached after submitting a judgment and could then skip. Third, the US sentences did not have explicit units. In the US, we had not asked judges to specify the unit when submitting their sentence. Nevertheless, we believe there is no confusion that they were entered in years, as we expected, because the calibrating examples we gave to judges in the US and elsewhere (see Appendix B.6) use years as the unit, and none of the sentences submitted by US judges is divisible by 12 and only three are divisible by 6. Fourth, five US sentences seem “fat finger” data entry errors: 209, 210, 1040, 1540, 11019. Our reason to think they are errors are their extreme size (the remaining sentences' maximum, mean, and median are 110, 25, and 20, respectively), indivisibility by 10 or 12 or, except one case, even 6 (if judges had entered the sentence in months), and our use of iPads without a physical keyboard only in the U.S. and partially in Argentina and China, which facilitated typographical mistakes. Excluding these outliers makes no meaningful difference for the rank-correlation reported in the main text or for the quantile regressions or log regressions reported below, but it does matter for simple regressions without the log transformation as reported in S5 below. Finally, for the sake of transparency, figures S1 and S2 show the outcome data by country:

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<sup>30</sup> The mean time spent with the documents is 35 min. with a s.d. of 10 min. Country means are Argentina 37, Brazil 32, China 28, France 37, Germany 36, India 40, USA 36. Chinese judges are by far the quickest. Higher reading speed for logographic relative to phonetic script might be an explanation, but we have not found any research backing up this conjecture.

Fig. S1: Affirmance Rates by Country (and Precedent and Defendant)

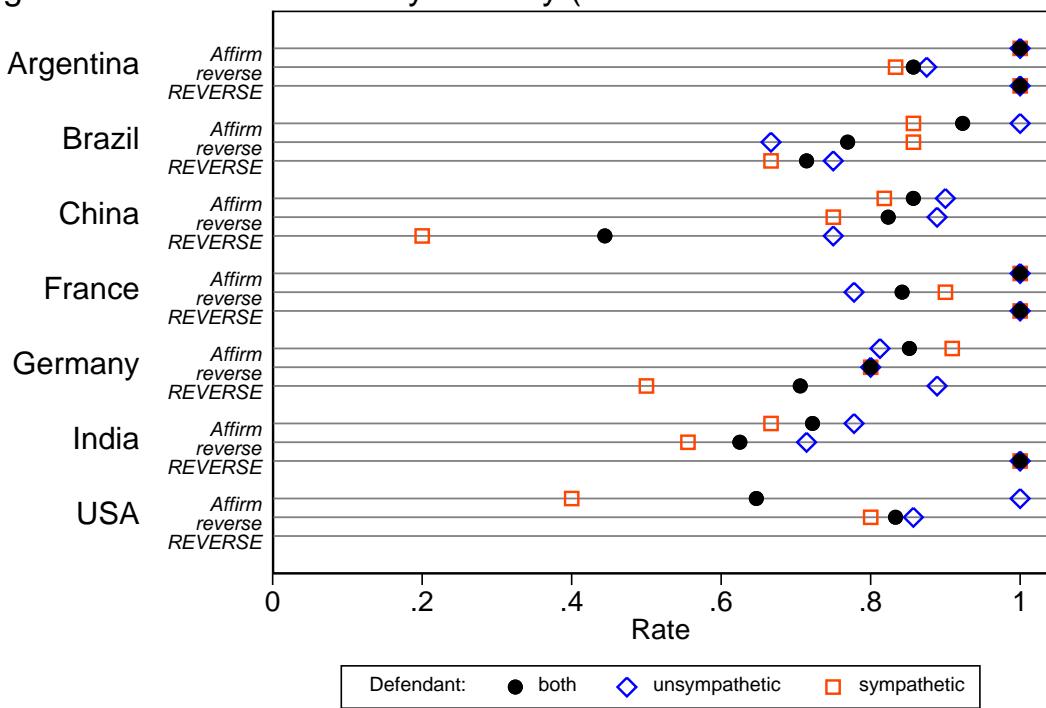
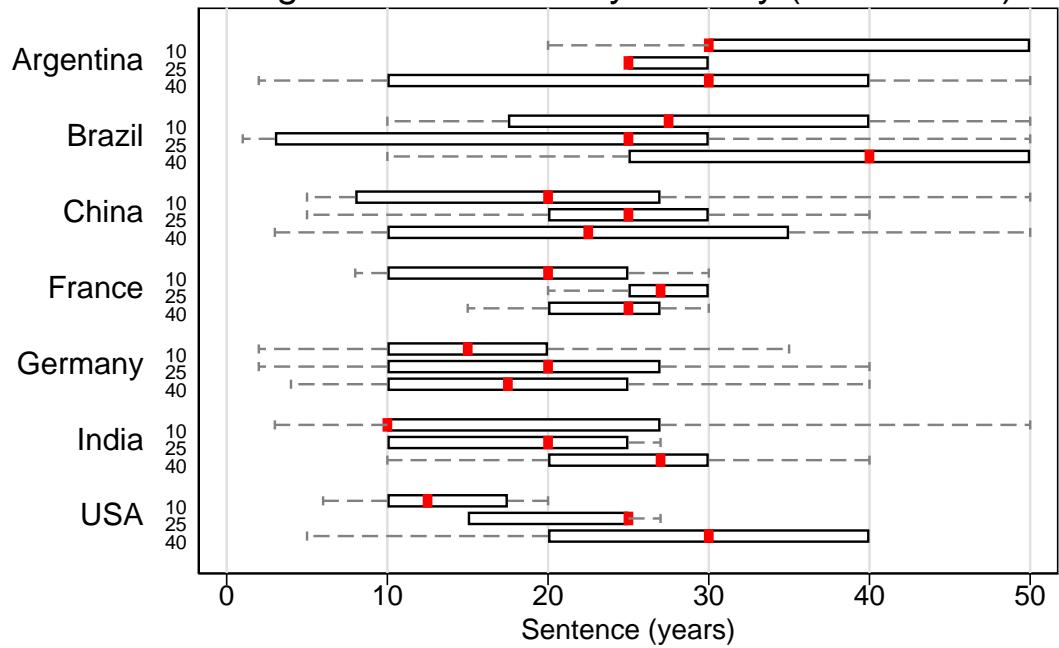


Fig. S2: Sentences by Country (and Anchor)



Medians (red marker), 25th and 75th percentiles (box), and adjacent values (whiskers). Five U.S. outlier sentences (11019, 1540, 1040, 210, and 209 years) omitted.

## S5. Statistical Methods

In this section, we explain for each data set the statistical tests mentioned in the paper to the extent they or their use is not standard and not explained in the main text. Readers may also consult our analysis code posted in our online repository, <https://doi.org/10.7910/DVN/TTMUZK>. To the extent possible, we employ non-parametric tests.

Document View Paths: Levenshtein Distance, Pseudo- $R^2$ , Permutation Test

See the main text for a description of this method.

Reasons: Rank Correlations; Permutation Tests of Pillai's Trace and Modified Hotelling's  $T^2$

A complication in working with the reasons data arises from coder disagreement, even though there is not much of it (supra section S4). For lack of a better alternative, we average over our four coders. This transforms what is in principle a binary variable into a quinary variable (with values 0,  $\frac{1}{4}$ ,  $\frac{1}{2}$ ,  $\frac{3}{4}$ , and 1). For univariate tests, this only requires small technical adjustments, specifically the use of the Spearman rank correlation and associated test instead of a Fisher or other exact test to assess associations between document views and mentions in reason. For multivariate tests, however, the theoretical consequences are graver even though, ultimately, their practical import turns out to be minor. We need multivariate tests because we have three outcome variables: statute, policy, and precedent.

Multivariate tests generally rely on asymptotics or very restrictive distributional assumptions that are not met by our data. If our data were binary, we could easily construct exact non-parametric tests using permutations because the binomial distribution only has one parameter, such that any null hypothesis concerning this one parameter entails the randomization null hypothesis, whereas permutation tests are exact against the randomization null (Lehmann and Romano 2005, Theorem 15.2.2). However, for more general distributions such as our multinomial distribution, the randomization null is more restrictive than a null concerning only one parameter, such that the permutation test is no longer necessarily exact. We believe that the relevant null hypothesis is equality of means, not equality of distributions, because the latter also depends on the distribution of coder disagreement, which could well differ between countries, for example because of writing styles or the mere fact that reasons for some but not all countries had to be translated.

Our solution is to conduct permutation tests of statistics that confer some robustness against deviations from the randomization null hypothesis. To test for differences between common and civil law, we use the “modified Hotelling's  $T^2$ ” statistic  $m'V^{-1}m$ , where  $m$  is the  $3 \times 1$  column-vector of mean differences between the two groups and  $V$  is the weighted sum of the group-specific covariance matrices, with weights equal to the *inverse* of the respective group sizes. We compare the realized modified Hotelling's  $T^2$  against its permutation distribution from the  $\binom{7}{2} = 21$  permutations of country-clusters, i.e., of country membership in the common law group, not of individual judges' nationalities (the justification for this approach is the same as for common/civil law tests of document view paths explained in the previous subsection). Chung & Romano (2016) show that this test is asymptotically valid against the less restrictive null hypothesis—compared to the randomization hypothesis—that the parameters of interest (in our case, the means) are equal. In any event, in our data the test fails to reject even the stricter randomization null hypothesis, against which, recall, the permutation test is exact.

For tests of country differences, the modified Hotelling's  $T^2$  is unsuitable because it only works for two groups, not seven. Instead, we conduct the permutation test using Pillai's trace and 10,000 draws from

the permutation distribution of individual nationalities. Pillai's trace is thought to be more robust to non-normality and heteroskedasticity than MANOVA alternatives. Since  $p < 10^{-4}$  both under standard parametric inference using Pillai's trace (not reported in the main text) and in its permutation test (as reported in the main text), we are confident that the result is robust.

#### Judgements (Affirmance Rates): Stratified Fisher Text; Country-Conditional Logit

Since the judgment outcome data are binary, a null hypothesis of equal means entails the randomization null hypothesis, and hence permutation tests such as the Fisher test are exact. There are more powerful alternatives for simple two-sample tests (cf. Spämann & Klöhn 2016), but we are not aware of such alternatives for our setting of multiple strata (countries), which seem too important to ignore. We therefore employ a stratified version of the Fisher exact test (Jung 2014), which also allows us to "hold constant" the respective other factor. Concretely, we compare the difference in affirmance rate means between two levels of a factor to its permutation distribution, where the permutation only permutes judges within groups formed by the same country and the same level of the respective other factor. We take  $p$  to be twice the mass in the tail above or below the realized value (including ties), whichever is smaller.

To estimate absolute and relative effect sizes of defendant and precedent and their respective confidence intervals, we need a more parametric model. To allow for country differences in baseline affirmance rates without having to estimate them consistently, we condition on the number of affirmances in each country in a conditional logit model (also known as fixed-effects logit or conditional logistic regression for matched case-control groups). Let subscripts  $c$  and  $i$  denote countries and participants, respectively, and define  $h_{ic} \equiv \beta_D \text{sympathetic}_{ic} + \beta_{P1} \text{reverse}_{ic} + \beta_{P2} \text{REVERSE}_{ic}$ , where  $\text{sympathetic}_{ic}$  etc. are dummy variables indicating whether participant  $i$  in country  $c$  was assigned the sympathetic defendant etc. (the baselines being the unsympathetic defendant and the *Affirm* precedent, without loss of generality). Further let  $k$  be the number of affirmances in country  $c$ ,  $\mathcal{S}_k^c$  the set of size- $k$  subsets of participants from country  $c$ , and  $f_c \equiv \sum_{S \in \mathcal{S}_k^c} \exp\{\sum_{i \in S} h_{ic}\}$ . The log-likelihood to maximize over  $\beta_D, \beta_{P1}, \beta_{P2}$  is

$$\ln L = \sum_c \left\{ \sum_i h_{ic} \cdot \text{affirm}_{ic} - \ln f_c \right\}.$$

The reported odds ratios and associated confidence intervals are the exponentials of the maximum likelihood estimates of  $\beta_D, \beta_{P1}, \beta_{P2}$  and of their normal-based confidence interval boundaries.

#### Sentences

Unlike our other outcome data, sentences are a continuous variable. We can still use the Spearman rank correlation for a univariate non-parametric test of simple association, and report this in the main text. Table S.2 additionally provides regression estimates, which are more meaningful representations of effect sizes. The regression is also helpful to control for country differences and other treatments, which reduces estimation error even though it is not necessary for consistency (the treatments are orthogonal to one another and to countries by construction, and our sample is nearly perfectly balanced).

**Table S.2: Sentences**

	(1)	(2)	(3)	(1')	(2')	(3')
	Sentence (years)		Ln(Sentence)	Sentence (years)		Ln(Sentence)
<b>Anchor (+15 years)</b>	<b>1.55</b> (0.61)	<b>3.50</b> (1.04)	<b>0.10</b> (0.04)			
<b>Anchor (baseline 10 years)</b>						
<b>25 years</b>				<b>1.71</b> (2.81)	<b>5.00</b> (2.11)	<b>0.02</b> (0.18)
<b>40 years</b>				<b>3.11</b> (1.21)	<b>6.67</b> (2.14)	<b>0.19</b> (0.08)
Defendant (baseline: Unsymp.)						
Sympathetic	-5.47 (1.39)	-4.25 (1.67)	-0.34 (0.09)	-5.46 (1.37)	-3.33 (1.71)	-0.34 (0.09)
Precedent (baseline: <i>Affirm</i> )						
<i>reverse</i>	-0.67 (2.32)	-0.75 (1.87)	0.07 (0.17)	-0.67 (2.28)	-1.67 (1.91)	0.07 (0.17)
<i>REVERSE</i>	-4.59 (2.38)	0.00 (2.31)	-0.20 (0.15)	-4.60 (2.34)	-0.33 (2.37)	-0.20 (0.15)
Country FE	Yes	Yes	Yes	Yes	Yes	Yes
Model	OLS	Quantile	OLS	OLS	Quantile	OLS
Outliers excluded	Yes <sup>\$</sup>	No	No	Yes <sup>\$</sup>	No	No
<i>N</i>	263	268	268	263	268	268

Standard errors in parentheses (clustered by country except in models 2 and 2').

<sup>\$</sup> Models 1 and 1' exclude outlier sentences of 11019, 1540, 1040, 210, and 209 years.

The first three models (1)-(3) use a continuous measure of the anchor, whereas their variants (1')-(3') use dummy variables for the three anchor variables (one of them, 15, being the omitted baseline), with very similar results.

Using years (not log years) as the outcome variable requires a technique to dampen the impact of the extreme outliers 11019, 1540, 1040, 210, and 209 years. They would otherwise overwhelm any other patterns in the data in a simple linear regression given that the other data points' maximum, median, mean, and standard deviation are only 110, 25, 23, and 14, respectively. As explained in section S4 above, we have every reason to think that these extreme outliers are data entry errors and thus feel comfortable excluding them in models (1) and (1'). In any event, the results of the other regression models do not depend on this exclusion.

## Appendix A: Recruitment Venues and Procedures

**Argentina.** In Argentina, we recruited judges from civil, commercial, family and criminal courts both at the trial and appellate levels, attending one of two seminars in “Law and Neuroscience.” The first of these seminars was a full-day event organized by one of the authors (IR) at the Universidad Torcuato di Tella in Buenos Aires in November 2015, and all invitees were informed weeks in advance about the opportunity to participate in an experiment and that such participation would be voluntary and independent of the seminar. Upon arrival, those wishing to participate in the experiment were randomly assigned to one of two groups: group A completed the experiment in the university’s computer lab from 12:30 pm until 1:30 pm while group B was offered lunch, and group A was offered lunch while group B participated in the experiment in the lab from 1:30 pm until 2:30 pm. The authors were not present, but student assistants remained in the experiment room to provide technical support regarding the use of lab computers and did not otherwise interact with the participants. Besides the student assistants, everyone else in the room was an active participant in the experiment. Prosecutors were also invited to participate in the experiment, but their submissions have not been included in the results presented in this paper.

The second seminar took place in March 2016 from 2:30 pm until 6:15 pm, and was organized by the Magistrate’s Association of San Isidro, a district in the northern part of the state of Buenos Aires. All invitees were informed weeks in advance about the opportunity to participate in an experiment and that such participation would be voluntary and independent from the seminar. The experiment was conducted during a coffee break at 3:15 pm on laptops that participants brought themselves, or, for a limited number, on iPads that we provided.

**Brazil.** For Brazil, we organized a “Workshop: How judges reason?” as part of the Harvard Law Brazilian Association Legal Symposium held in April 2018. The Symposium was organized by current students and alumni of Harvard Law School from Brazil with the support, among others, of the Association of Brazilian Federal Judges of the 2<sup>nd</sup> Regional Court. It brought to campus dozens of Brazilian judges who travelled at their own expense. Our 80-minute workshop was the first session of the day and open only to judges, who had been specifically invited to come and told to bring a laptop if they had one (most did). We provided a laptop computer to all participants who did not have their own. Following an extremely brief and generic welcome and invitation to participate by one of us (HS, who stayed in the room), judges worked on the study for up to an hour. We then debriefed.

**China.** In China, we recruited judges from local and intermediate courts in Zhejiang Province attending academic writing classes at Judges College in Hangzhou in April 2016.<sup>31</sup> By way of background, the Chinese judiciary encourages judges to write academic articles. Every court above the intermediate level publishes its own journal with academic work of judges. Most articles are closely related to judicial practice, such as new problems or hard cases that the judges encountered in their practice. But the journals also publish more theoretical and sometimes even descriptively statistical work. Judges write in these journals for fame and reputation, which can relate to promotion. The papers’ quality is also seen as an indicator of a court’s performance. The College offers two-day courses in such writing. Journal editors and judges with good publication records lecture about their writing technique and research experience. Applicants for

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<sup>31</sup> We had previously attempted to recruit judges by email invitation forwarded by chief judges of certain courts. This proved unsuccessful, however, as only 24 judges completed the experiment and gave us permission to use the data.

the courses are judges from all divisions (criminal, civil, intellectual property, administrative) of the local and intermediate courts within Zhejiang province. The College admits applicants based on court-specific quotas. Participants tend to be relatively junior but already experienced judges. With permission of the instructors, we invited judges to participate in our experiment during seven separate classes, where one of us (JZL) administered the experiment. These classes would otherwise have been used for small group discussions with about 10 judges. We sent a letter to the judges before the event, which explicitly stated that attendance would not be recorded. Most judges chose to participate. We provided them with a laptop or an iPad for the duration of the study.

**France.** In France, we conducted the study as part of a management course (CADEJ) for experienced judges and other justice professionals (prosecutors, senior clerks, etc.) wishing to assume administrative responsibilities in the French judicial system. CADEJ is organized under the auspices of the French national judge school (Ecole Nationale de la Magistrature, ENM). Participating judges come to Paris for three days of classes once a month from September 2017 through June 2018. We were given access to the morning session of the third day of the November meeting, which was dedicated to digitalization. Our particular session was exceptionally held in the rooms of Sciences Po law school. The ENM organizers had informed the participants that one of us [HS] would be offering participation in an “experiment,” followed by a presentation by another one of us [CJ] on “The Act of Judging, the Motivations of the Judge, and the Unpredictability of Decisions.” When the judges arrived, they found every seat equipped with a laptop computer. After brief words of welcome from one of the ENM organizers and one of us (CJ, who is the dean of the venue), another one of us (HS) invited the participants to participate in a study aiming “to collect scientific information about the act of judging.” CJ and HS remained in the room during the experiment but did not answer questions; technical questions were answered by technicians in the room. Of the 65 participants in the room, 63 initially participated, but 5 cancelled before completion (at least one of them by accident).

**Germany.** In Germany, we offered the study as a spare time activity to judges participating in three training programs at the German Judge Academy (Deutsche Richterakademie) in Trier in September, October, and November 2017, respectively, and one training event for young judges organized by the Ministry of Justice of the state of Lower Saxony at Bad Nenndorf in June 2018.

In Trier, on one day of the training program, one of us (AM) would briefly address the judges at the lunch break, which gathered all judges in one room, to invite them to participate in “a study by researchers from Harvard University, Humboldt University, and the MPI for Research on Collective Goods. The purpose of the study is to learn about legal reasoning and the role of various factors therein.” The judges were also given a flyer with this information and promised that there would be a debriefing with wine and crackers following the actual study. In the evening after their regular sessions interested judges gathered in a dedicated room where a mobile computer lab had been set up. Judges were seated in front of the laptops. One of the authors [AM] welcomed them, reminded them of the information provided over lunch, pointed out that participation was voluntary and referred them to the written instructions on their screens. One (first two session) or two (last session) student assistants were available for questions arising during the session. They were familiar with the hardware and had instructions to answer foreseeable questions in a standardized way. However they were not informed about what the study was about. AM stayed in the room and was available for the students in case they were approached with questions they could not answer.

In Lower Saxony one of us [AM] would briefly address the judges at one of their regular sessions and give them the same information as described for the session in Trier. However, in Lower Saxony no flyers were provided. After their last session in the afternoon of the same day, judges took a small break. During the break we set up the mobile computer lab in the course room. Most of the judges returned after the break to participate in the study. Form here the procedure was identical to that in Trier.

**India.** We used the good offices of Gujarat National Law University in Gandhinagar and the Chief Justice of the Gujarat High Court to create and offer a one day workshop on “Behavioural Law and Justice: Aspects of Negotiations and Decision-making,” where several of us (VK, PM, HS) taught. Invitations were sent to Chief Justices in all Indian states with a request to nominate district judges from their state for the workshop. The Gujarat High Court covered the judges’ travel expenses. Upon arrival at the workshop, judges received an invitation letter that explained that “[t]he linchpin of the conference will be a simulation of an international law judgement” and encouraged them to participate (while emphasizing that participation was not mandatory). We provided computers to all participants.

**USA.** We conducted the U.S. session at an annual three-day workshop for U.S. federal judges organized jointly by Harvard Law School and the Federal Judicial Center in April 2015. The workshop is open to all U.S. federal judges including circuit judges, district judges, bankruptcy judges, and magistrates.<sup>32</sup> The experiment was part of a session on “Behavioral Research on Judicial Decision-Making” in the middle of the second morning. Several weeks earlier, the judges had received an invitation to the experiment with all consent-relevant information and a reading “assignment”: Guthrie, Chris, Jeffrey J. Rachlinski, and Andrew J. Wistrich, *Blinking on the Bench*, Cornell Law Review 93:1-43 (2007), which discusses biases in judicial fact-finding. The experiment was administered on iPads we provided to the judges.

One of the authors (HS) welcomed the judges, reminded them of the experiment as described in the invitation letter, and pointed them to the iPads. Three student assistants distributed and collected the iPads and were available for help with technical questions; they did not know what the experiment was about. HS stayed in the room but did not interact with the subjects. Participation was voluntary but all the judges present in the room participated in the experiment.<sup>33</sup>

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<sup>32</sup> At the time of the experiment, no circuit judge may have been present. We refrained from collecting this information out of concern for preserving anonymity.

<sup>33</sup> We lost some small number due to technical problems, see Spemann & Klöhn 2016 for details.

## Appendix B: Study Materials

[Differences between individual country versions are indicated by footnotes containing text in square brackets.]

### 1. Instructions

Please imagine you are an appeals judge in the case Prosecutor v. [NAME] pending at the International Criminal Tribunal for the Former Yugoslavia (ICTY). This case is fictitious but very closely resembles an actual case recently decided by the ICTY. The ICTY is an international tribunal with the power to prosecute persons responsible for serious violations of international humanitarian law committed in the territory of the former Yugoslavia since 1991 in accordance with the provisions of the ICTY Statute. [As an international tribunal, the procedure of the ICTY combines elements from common law and from civil law systems, some of which may seem unfamiliar to you. – VISIBLE TO ONLY HALF THE SUBJECTS]

You have already presided over several hearings. The prosecution and the defence have now submitted their final appeals briefs and agreed on a list of agreed facts.

**Your task** is to judge whether to affirm or reverse the trial court's conviction of the defendant for aiding and abetting<sup>34</sup> various war crimes by the [RELEVANT MILITARY GROUP] on the territory of Bosnia-Herzegovina in the years 1993-1995.<sup>35</sup>

In reaching your judgment, you will be able to peruse the aforementioned briefs and the list of agreed facts. I recommend you read these in full. The briefs link to other documents, namely the decision of the trial court below, a recent decision by the Appeals Chamber in another case, and the statute establishing the ICTY. These other documents are very long. You will not have time to read them in full, but you may pursue a handful of further passages that you deem particularly relevant.

Please do NOT access any information on another device such as your smart phone, and please do NOT talk to your neighbors until the study is completed.

You have 50 minutes to reach a decision and submit a brief summary of your reasoning, either on this computer or on a separate piece of paper marked with your participant number, which will be randomly generated and shown on the screen.<sup>36</sup> To help you keep track of time, a clock on the screen will count down the 50 minutes.

By clicking on the button below, you will proceed to an index page with all the documents provided. You can at any time return to this introduction or to the index page by clicking the

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<sup>34</sup> [The U.S. version up to here read: "Your task is to judge whether the defendant is or is not guilty of aiding and abetting ..."]

<sup>35</sup> [In the U.S., Argentinian, and Chinese versions, the years "1993-1995" were erroneously given as "1992-1994."]

<sup>36</sup> [The Argentinian, Chinese, French, German, and U.S. versions also included the following words at the end of this sentence: ", either on this computer or on a separate piece of paper marked with your participant number, which will be randomly generated and shown on the screen."]

relevant link at the top of the page. For technological reasons, however, you will not be able to open more than one browser window at once.

**2. Statement of Agreed Facts** (differences between defendants [unsympathetic/sympathetic] in square brackets; substantive differences in bold)

The parties have agreed that the following key facts are not in dispute.

**THE ACCUSED [BORISLAV VUKOVIĆ / ANTE HORVAT]**

[Borislav Vuković / Ante Horvat] was born on 22 May 1944 in [Koštunići, Serbia, in the Socialist Federal Republic of Yugoslavia / Skradin, Croatia]. After joining the Yugoslav People's Army, he graduated from the Ground Forces Military Academy in 1966 and became an officer. Shortly after the conflict in the former Yugoslavia began, [Vuković / Horvat] became the Chief of Staff and then Commander of the 3rd Army within the [Yugoslav / newly formed Croatian] Army ("[VJ/HV]") based in [Niš, Serbia / Knin, Croatia]. On 26 August 1993, the President of [the Federal Republic of Yugoslavia ("FRY") / Croatia] appointed [Vuković / Horvat] as Chief of the [VJ / HV] General Staff, a position which made him the most senior officer in the [VJ / HV]. He held this position until his mandatory retirement from the [VJ / HV] in 2004, when he became **[advisor to the FRY government for “the rehabilitation of Serb victims of Albanian persecution” and chairman of the United Serbia Party / Croatian vice-chairman of the Croatian-Bosnian Reconciliation Commission]**.

**THE INDICTMENT**

[Vuković / Horvat] was charged on the basis of individual criminal responsibility (Article 7(1) of the Statute of the International Criminal Tribunal for the former Yugoslavia, hereinafter "the Statute") with aiding and abetting crimes in the Bosnian towns of [Sarajevo / Mostar] and [Vlasenica / Ahmići] by facilitating the provision of military and logistical assistance from the [VJ / HV] to the [Army of the Republika Srpska ("VRS") / Defence Council of the Hrvatska Republika Herceg-Bosna ("HVO")]. The [VRS / HVO] was an armed group of ethnic [Serbs / Croats] in the Bosnian civil war. [Vuković / Horvat] was also charged with superior responsibility (Article 7(3) of the Statute); since he was acquitted of these charges and this part of the decision is not on appeal, however, no further mention will be made of the facts underlying this part of the indictment.

**THE UNDERLYING CRIMES COMMITTED BY [VRS / HVO]**

The underlying events took place in the territory of Bosnia and Herzegovina in the period between August 1993 and November 1995.

**[SARAJEVO / MOSTAR]** From September 1992 to November 1995, the [VRS / HVO] conducted a lengthy campaign of shelling and sniping in [Sarajevo / Mostar] which resulted in the deaths of hundreds of civilians and the wounding of thousands of others.

**[VLASENICA / AHMIĆI]** In the summer of 1995, the [VRS / HVO] invaded the town of [Vlasenica / Ahmići], which the United Nations Security Council had previously established as a safe area for civilians. After taking over [Vlasenica / Ahmići], the [VRS / HVO] proceeded to forcibly remove and massacre hundreds of Muslim civilians and persons not taking an active part in hostilities.

**THE ASSISTANCE PROVIDED BY [VUKOVIĆ / HORVAT]**

Since August 1993, [Vuković / Horvat] oversaw the [VJ / HV]’s provision of extensive logistic assistance to the [VRS / HVO] as the [VJ / HV]’s Chief of General Staff.

Logistic assistance notably included vast quantities of infantry and artillery ammunition, fuel, spare parts, training and technical assistance. The Supreme Defence Council of [the Federal Republic of Yugoslavia / Croatia] granted [Vuković / Horvat] and the [Yugoslav / Croatian] Army the authority to provide logistic assistance to the [VRS / HVO]. Even though [Vuković / Horvat] was not officially a member of the Supreme Defence Council, he participated in the Council’s meetings, along with its members, notably [Slobodan Milošević and Zoran Lilić / Franjo Tuđman], who at the time held the title[s] of President of [Serbia and President of the Federal Republic of Yugoslavia, respectively / Croatia]. [Vuković / Horvat] regularly urged the Council to continue providing logistic assistance to the [VRS / HVO], insisting that they could not wage war without significant military support.

A large number of [VRS / HVO] officers were drawn from the ranks of the [Yugoslav / Croatian] Army. They officially remained members of the [Yugoslav / Croatian] Army even as they were fighting in Bosnia under the banners of the [VRS / HVO]. [Vuković / Horvat] proposed and carefully implemented the idea of creating “Personnel Centres” to regularise the status of these officers and allow them to lawfully remain part of the [Yugoslav / Croatian] Army. [VRS / HVO] officers retained their salaries and benefits as [Yugoslav / Croatian] Army members through what was known as the 30th Personnel Centre. [Vuković / Horvat] was well aware that the payment of salaries was, in his own words, of “great help” to the [VRS / HVO].

#### [VUKOVIĆ / HORVAT]’S STATE OF MIND

[Vuković / Horvat] knew that the [VRS / HVO]’s operations encompassed grave crimes against civilians. [Vuković / Horvat] received information from a variety of sources concerning the [VRS / HVO]’s criminal behaviour and discriminatory intent against Muslims. Under [Vuković / Horvat]’s direction, the [Yugoslav / Croatian] Army’s intelligence and security organs monitored the views of the international community and international media concerning the conflict in Bosnia and Herzegovina. **[The Yugoslav Army General Staff also received diplomatic reports about proceedings at the United Nations Security Council / During meetings with NATO to coordinate enforcement of the UN’s no-fly zone against Serbian violations, Horvat also received briefings on NATO intelligence]** concerning grave abuses against civilians by [VRS / HVO] forces in [Sarajevo / Mostar] and other parts of Bosnia and Herzegovina. In particular, [Vuković / Horvat] was alerted to the fact that the [VRS / HVO] was conducting a campaign of sniping and shelling against civilians during its siege of [Sarajevo / Mostar]. These regular attacks were well documented and widely reported for a period of three years.

#### THE TRIAL JUDGMENT

On 7 January 2014, the Trial Chamber found defendant-appellant [Vuković / Horvat] guilty of aiding and abetting the following crimes committed by members of the [VRS / HVO] in [Sarajevo / Mostar] and [Vlasenica / Ahmići]: murder, inhumane acts (injuring and wounding civilians, inflicting serious injuries, wounding, forcible transfer), and persecutions as crimes against humanity; and murder and attacks on civilians as violations of the laws or customs of war. The

Trial Chamber sentenced [Vuković / Horvat] to a single term of 27 years of imprisonment under Articles 3, 5, and 7(1) of the Statute.

3. Brief for the Accused (cover page omitted; differences between defendants [Vuković/Horvat] in square brackets, with substantive differences in bold; differences between precedents marked with boxes)

I. Introduction

1. This appeal concerns a single point of law: whether or not aiding and abetting under Article 7(1) of the Statute governing this Tribunal requires that the assistance be specifically directed to the commission of a crime.

2. The prosecution agrees that the defendant must be acquitted if specific direction was required, as the defendant merely provided unspecific support to the forces committing the crimes on the ground.

3. The Trial Chamber, however, convicted the defendant because it did not consider specific direction an essential element of aiding and abetting. We urge the Appeals Chamber to overturn this decision because it is inconsistent with prior decisions of the Appeals Chamber, the most fundamental principles of the Statute, and sound policy.

II. “Specific direction” is a component of the actus reus of aiding and abetting.

**[Precedent: Affirm]**

4. The Trial Chamber failed to take into account that aiding and abetting must be specifically directed to assist the commission of crimes. Neutral acts providing general logistic and military assistance to an army engaged in legitimate military operations do not qualify as aiding and abetting.

5. It is true that not all prior decisions of the Appeals Chamber concerning aiding and abetting explicitly mention the element of specific direction. We submit, however, that specific direction has always been implicit in the finding that the accused provided practical assistance to the principal perpetrator that had a substantial effect on the commission of the crime. Specific direction was never in doubt in previous cases because the accused was at or proximate to the crime scene.

6. In contrast, in cases where the conduct of the accused is remote in relation to the commission of the crimes, the requirement of specific direction as an explicit element of aiding and abetting is manifest. This is especially important in this case, as [Vuković / Horvat] is not accused of providing assistance to the commission of crimes committed by the [VJ / HV]. Rather, he is accused of facilitating the commission of crimes committed by the [VRS / HVO], a separate military organization not under his personal command and not even part of the same command hierarchy.

7. The prosecution relies on the recent Appeals Chamber’s decision in Šainović<sup>37</sup> to argue that specific direction is not a component of the actus reus of aiding and abetting. However, as Judge Tuzmukhamedov stated in his dissent, this issue was not actually relevant for deciding the case in Šainović.<sup>38</sup> Furthermore the facts in Šainović are completely different from the facts at hand. In

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<sup>37</sup> Prosecutor v. Šainović, Case No. IT-05-87-A, Judgement 23.1.2014.

<sup>38</sup> Prosecutor v. Šainović, Case No. IT-05-87-A, Judgement 23.1.2014, Dissenting Opinion of Judge Tuzmukhamedov, at para. 40.

Šainović the accused aider and abettor Vladimir Lazarević was convicted for providing assistance to members of the [VJ / HV] while he was a commander in the [VJ / HV]. [Vuković / Horvat], however, is charged with aiding and abetting the war crimes of a distinct army, i.e. the [VRS / HVO]. Finally, [Vuković's / Horvat's] conduct was remote from the place of the crimes, whereas Lazarević was physically present at the crime scene.<sup>39</sup>

8. The additional element of aiding and abetting follows from

**[Precedent: *reverse*]**

4. If there was ever any doubt about the requirement of “specific direction,” it was laid to rest by the Appeals Chamber’s *Vasiljević* decision handed down two weeks after the Trial judgment in the present case. The *Vasiljević* decision expressly required “specific direction” as part of the actus reus of aiding and abetting. Distinguishing aiding and abetting from joint criminal enterprise (JCE), the Appeals Chamber stated in *Vasiljević*:

“The aider and abettor carries out acts specifically directed to assist, encourage or lend moral support to the perpetration of a certain specific crime (murder, extermination, rape, torture, wanton destruction of civilian property, etc.), and this support has a substantial effect upon the perpetration of the crime. By contrast, it is sufficient for a participant in a joint criminal enterprise to perform acts that in some way are directed to the furtherance of the common design.”<sup>40</sup> (emphasis added)

5. The Appeals Chamber thus explicitly acknowledged that criminal liability does not attach to the mere assistance to a military group, even if that assistance had a substantial effect on the commission of the crime. Rather, the actus reus of aiding and abetting is assistance *specifically directed* at the commission of a crime.

6. [= Šainović para. 5]

7. [= Šainović para. 6]

8. [= Šainović para. 8]

**[Precedent: *REVERSE*]**

4. If there was ever any doubt about the requirement of “specific direction,” it was laid to rest by the Appeals Chamber’s *Bešić* decision handed down two weeks after the Trial judgment in the present case. *Bešić* expressly held that the actus reus of aiding and abetting requires “specific direction” in a case with very similar facts.

<sup>39</sup> Prosecutor v. Šainović, Case No. IT-05-87-A, Judgement 23.1.2014, Dissenting Opinion of Judge Tuzmukhamedov, at para. 43.

<sup>40</sup> Prosecutor v. Vasiljević, Case No. IT-98-32-A, Judgement 23 January 2014, at para. 102.

5. *Bešić* conducted an extensive review of the Appeals Chamber's prior jurisprudence. It concluded

"that specific direction is an element of the *actus reus* of aiding and abetting liability, and that in cases like this one, where an accused individual's assistance is remote from the actions of principal perpetrators, specific direction must be explicitly established."<sup>41</sup> (emphasis added)

6. The facts of *Bešić* closely resembled the present case, and the Appeals Chamber explicitly held that they are not sufficient for aiding and abetting liability under the Statute. The accused in *Bešić* was a high-ranking officer in the Army of the Republic of Bosnia and Herzegovina (ArBiH). He was accused of aiding and abetting war crimes of *another* armed group, the Zeleni Sokoli (ZS), because he managed the supply of weapons and personnel from the ArBiH to the ZS. The Appeals Chamber entered an acquittal, holding that

assistance from one army to another army's war efforts is insufficient, in itself, to trigger individual criminal liability for individual aid providers absent proof that the relevant assistance was specifically directed towards criminal activities."<sup>42</sup> (emphasis added)

7. It is hard to imagine a clearer rejection of the legal analysis in the Trial judgment in the present case. Like *Bešić*, [Vuković /Horvat] is not accused of providing assistance to the commission of crimes committed by the [VJ / HV]. Rather, he is accused of facilitating the commission of crimes committed by the [VRS / HVO], a separate military organization not under his personal command and not even part of the same command hierarchy. *Bešić* demands that the Trial judgment be overturned and [Vuković /Horvat] be acquitted. To hold otherwise would not only misapply the law but also do gross injustice by unequal treatment of [Vuković /Horvat] and *Bešić*.

8. *Bešić* ought to settle this case. It may be worth adding, however, that *Bešić* merely implements

the general principles governing the ICTY Statute. One of those principles is, as is generally accepted, that the Statute does not criminalise the waging of war per se. States provide military and technical assistance to one another with varying strategic objectives in a number of regions around the world. However, this aid in itself does not render the leaders of the assisting states individually criminally responsible for aiding and abetting crimes committed during such wars. To be held individually criminally responsible, the leaders must be shown to have committed or aided and abetted the commission of some crimes during the war, an act which is distinct, and apart, from the mere provision of military assistance. To conclude otherwise, as the Trial Chamber has done, is to criminalise the waging of war, which is not a crime according to the Statute of the Tribunal. Any provision of weapons would result in the individual criminal responsibility of the provider, approaching a form of strict liability.

9. Moreover, dispensing with the requirement of specific direction, as the Trial Chamber did, leads to absurd consequences. It would potentially ensnare all military and political leaders who approve logistical assistance to a foreign army without the power to control every decision of that

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<sup>41</sup> Prosecutor v. *Bešić*, Case No. IT-03-56-A, Judgement 23 January 2014, at para 73.

<sup>42</sup> *Id.*, at para. 72.

foreign army, in particular the intensity of its efforts to curb human rights violations. This would have a substantial chilling effect on all legitimate international military operations.

### III. Conclusion

**[HORVAT ONLY: 10. From the very beginning of this case, the defendant has expressed his deep regret at all bloodshed in this tragic war, and in particular at the inexcusable crimes of certain soldiers and officers in the field. He categorically denies, however, that he is personally responsible for those crimes. We urge the Appeals Chamber to affirm that the law is on the side of the defendant and others forced by history to make difficult decisions in times of war, and to overturn the conviction by the Trial Chamber.]**

[10 / 11]. For these reasons, [Vuković /Horvat] respectfully requests that the Appeals Chamber: (i) hold that the actus reus of aiding and abetting in international law requires specific direction; (ii) apply that standard; and (iii) reverse the Trial Chamber's judgment and enter an acquittal.

4. Brief for the Prosecution (cover page omitted; differences between defendants [Vuković/Horvat] in square brackets, with substantive differences in bold; differences between precedents marked by boxes)

I. Introduction

1. The defense requests that the Appeals Chamber reverse the Trial Chamber's judgment on the grounds that the assistance provided by [Vuković / Horvat] was not specifically directed at the war crimes committed by the [VRS / HVO]<sup>43</sup>.

2. The defense's argument is without merit. The Trial Chamber correctly found [Vuković / Horvat] guilty of aiding and abetting under Article 7 of the Statute governing this Tribunal because [Vuković / Horvat] provided logistical and personnel assistance to the [VRS / HVO] in full knowledge that the [VRS / HVO] committed atrocious war crimes.<sup>44</sup>

**[Precedent: Affirm]**

3. It is irrelevant that none of [Vuković's / Horvat's] acts were specifically directed toward the commission of the war crimes by the [VRS / HVO]. Specific direction is not an element of aiding and abetting. The defense's argument to the contrary is a transparent attempt to introduce a novel, restrictive element to the *actus reus* of aiding and abetting that has no basis in previous cases and that would make it more difficult to convict those who knowingly facilitate the most grievous crimes. We urge the Appeals Chamber to reject this attempt to undermine the very purpose of this Tribunal to hold to account those responsible for the horrors of the Yugoslav wars.

II. "Specific Direction" is not a requirement of aiding and abetting liability

4. If there was ever any doubt about the requirement of "specific direction," it was laid to rest by the Appeals Chamber's Sainović decision handed down two weeks after the Trial Chamber's judgment in the present case. The Sainović decision expressly rejected<sup>45</sup> "specific direction" as part of the *actus reus* of aiding and abetting. After an exhaustive discussion of the national and international case law, including all relevant decisions by the Appeals Chamber, the majority, Judge Tuzmukhamedov dissenting, came to the conclusion:

"[t]hat 'specific direction' is not an element of aiding and abetting liability under customary international law."<sup>46</sup>

5. The prosecution agrees that the defendant's physical distance from the crime scene may be relevant for aiding and abetting liability. However, this follows from the simple fact that in these situations the assistance is less likely to have a substantial effect on the main act. The prosecution submits that the proximity of an alleged aider and abettor to crimes committed by the principal perpetrators is one factor that a trial chamber may consider in determining whether substantial contribution is established. If such effect is established, however, there can be no doubt that the

<sup>43</sup> [In the U.S., Argentinian, and Chinese versions, "HVO" was erroneously replaced by "VRS."]

<sup>44</sup> [This was followed by the redundant words ", as [Vuković / Horvat] knew fully well" in the Argentinian, Chinese, German, and U.S. versions.]

<sup>45</sup> [The U.S. version read "required" instead of "rejected."]

<sup>46</sup> Prosecutor v. Šainović, Case No. IT-05-87-A, Judgement 23.1.2014, at para. 1649.

assistance qualifies as aiding and abetting if the accused knows that it facilitates the commission of war crimes.

**[Precedent: *reverse*: like *Affirm* para. 3-5, except]**

4. The defense's only legal argument is a quotation taken out of context from the Appeals Chamber's recent decision in the *Vasiljević* case.<sup>47</sup> The discussion in *Vasiljević*, however, was not concerned with systematically defining aiding and abetting liability. *Vasiljević* merely mentioned aiding and abetting in the context of defining a different basis for criminal liability, namely joint criminal enterprise. To better define the latter, the *Vasiljević* decision drew comparisons to the former. Nothing in that discussion suggests that specific direction is a stand-alone element of aiding and abetting. Indeed, the defense implicitly concedes that no prior decision of this Tribunal has ever denied aiding and abetting liability merely because the assistance was not *specifically* directed at the crime.

**[Precedent: *REVERSE*]**

3. It is irrelevant that none of [Vuković's /Horvat's] acts were specifically directed toward the commission of the war crimes by the [VRS / HVO]. Specific direction is not an element of aiding and abetting. The text of the Statute is clear on this point. Rewriting the Statute is not proper for this Tribunal, nor would it be wise from a policy perspective. The rewriting urged by the defense would make it more difficult to convict those who knowingly facilitate the most grievous crimes, contrary to the Statute's stated objectives. The prosecution urges the Appeals Chamber to reconsider certain passages of its recent *Bešić* decision<sup>48</sup> that conflict with the Statute's text and purpose.

II. "Specific Direction" is not a requirement of aiding and abetting liability

4. Article 7(1) of the Statute clearly extends criminal responsibility to *any* support knowingly given to an eligible crime. The text does not distinguish support that is either "specifically directed" or not, direct or indirect, etc. It simply reads:

"A person who planned, instigated, ordered, committed or otherwise aided and abetted in the planning, preparation or execution of a crime referred to in articles 2 to 5 of the present Statute, shall be individually responsible for the crime." (emphasis added)

5. The broad sweep of Article 7(1) is intentional. As the subsequent two paragraphs (Article 7(2) and 7(3)) demonstrate, the Statute makes a point of persecuting not only the foot soldiers but the masterminds who enable their horrible crimes. The [VRS / HVO] could not have committed its crimes without [Vuković's /Horvat's] support. [Vuković /Horvat] knew this and yet went ahead. Justice demands that he be convicted, and so does the Statute.

<sup>47</sup> Prosecutor v. *Vasiljević*, Case No. IT-98-32-A, Judgement 23 January 2014.

<sup>48</sup> Prosecutor v. *Bešić*, Case No. IT-03-56-A, Judgement 23 January 2014.

6. Moreover, requiring specific direction would make it almost impossible to prosecute aiding and abetting in practice. The only assistance that is clearly specifically directed at a crime is assistance that cannot be used for anything but criminal activity. It is doubtful whether, in real life, such assistance exists; surely it is rare. There is, however, much conduct that significantly contributes to crime even though it may seem harmless on its face (e.g. transferring money or seconding personnel). Such conduct should not be shielded from criminal liability merely because these acts *might* further both lawful and unlawful activities. The critical question is whether the assistance was provided with knowledge of the crimes and had an actual, substantial effect on the perpetration of the crime by its beneficiaries. In particular, the provision of weapons as a peculiar kind of assistance is never “neutral.”

7. The defense submits that under the approach favoured by the Trial Chamber, any provision of weapons would result in individual criminal responsibility of the provider, approaching a form of strict liability. However, this fear is unfounded. In order for aiding and abetting liability to arise, a number of additional elements need to be present: one or more crimes must have been actually perpetrated; the weapons provided must have substantially contributed to the perpetration; and the weapons-provider must have been aware of their likely use. The fact that they could have theoretically been used in lawful activities would not be decisive in this assessment.

**[Precedent: REVERSE only]**

8. The defense’s only legal argument is *Bešić*. It is true that that decision did acquit a defendant of aiding and abetting liability on the grounds that specific direction was lacking. The prosecution recalls, however, that the clear text of the Statute must always prevail over language in prior decisions of the Tribunal. Moreover, *Bešić* is far from the only decision that has addressed the issue of specific direction, and the long discussion in *Bešić* itself makes clear, many other decisions of the Appeals Chamber reached opposite conclusions. Finally, *Bešić* concerned different facts. Unlike the accused in the present case, the accused in *Bešić* was not the highest-ranking officer and thus did not have final authority to decide the assistance rendered to the other army.

### III. Conclusion

**[VUKOVIĆ ONLY: [8./9.]] For too long, the defendant has been able to walk free. He has publicly mocked this tribunal and repeatedly inflamed lingering tensions with inflammatory public statements showing absolutely no regrets about the horrors of the war in general, and the war crimes he supported in particular.<sup>49</sup> The Appeals Chamber should make a strong statement that generals in the headquarters can be as guilty as, or more guilty than, the soldiers on the ground when heinous crimes are committed, and that this Tribunal will prosecute both.]**

[8, 9, or 10]. For the reasons stated above, the Prosecution respectfully requests that the Appeals Chamber: (i) hold that the actus reus of aiding and abetting in international law does not require specific direction; (ii) and uphold the Trial Chamber’s judgment.

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<sup>49</sup> The prosecution recalls, for example, the defendant’s opening statement before the Trial Chamber, where he stated, among other things, that his “only regret about the war is that too few of Serbia’s enemies died.” Defence Opening Statement, 22 February 2010, Trial Hearing Transcript 9904.

**5. Decision Form:** When a participant clicks “Proceed to judgment” and confirms with “OK” that they will not be able to go back to the documents, they are taken to this decision form (the bullets are radio buttons):

YOUR JUDGMENT

- Affirm defendant's conviction (guilty)<sup>50</sup>
- Reverse defendant's conviction (not guilty)<sup>51</sup>

YOUR REASONS

Please provide your reasons for this judgment in the form below<sup>52,53</sup> [text entry box]

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<sup>50</sup> [US merely read: Guilty]

<sup>51</sup> [US merely read: Not guilty]

<sup>52</sup> [Brazil, France, Germany addition: or on a piece of paper marked with your random participation ID (shown at the bottom of this screen)]

<sup>53</sup> [Argentina, USA addition: Alternatively use the provided sheet of paper. Please mark your sheet with the anonymous ID XYZ so we can match the sheet and your judgment later]

## 6. Exit Survey: (after clicking “Continue” from the decision form)

Please answer the following short questions:

1. What proportion of your colleagues do you think decided the case as you did?
2. [FOR THOSE WHO ACQUITTED: Assume you were outvoted and the appeals chamber upheld the conviction.] What sentence would you find appropriate?
  - a. For comparison, Charles Taylor, the former president of Liberia, was sentenced to 50 year in prison by an international tribunal for aiding and abetting widespread brutality in Sierra Leone that included murder, rape, the use of child soldiers, the mutilation of thousands of civilians and the mining of diamonds to pay for guns and ammunition. On the other hand, Razim Delic, the chief of staff of the Army of Bosnia and Herzegovina during the war, was sentenced to only three years by the ICTY for his failure to prevent members of his army from committing crimes against captured civilians and enemy combatants (murder, rape, torture).
  - b. To avoid misunderstandings, please write the time units (years or months) explicitly. For example, if you thought that [10/25/40] years were an appropriate penalty, you should write either “[10/25/40] years” or “[120/300/480] months.” [numbers of years and corresponding months to be randomized]
3. Did you have any previous knowledge of international criminal law? Y/N<sup>54</sup>
4. Did you recognize any of the names or places in the case? Y/N
5. [Country specific questions on background]<sup>55</sup>
6. What is your age group? Under 30 / 30-40 / 40-50 / over 50<sup>56</sup>
7. [US only] What is your gender? Female Male

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<sup>54</sup> [India: How well did you know international criminal law before this exercise? Very well / Well / Not well / Not too well]

<sup>55</sup> [Argentina: Are you a judge or prosecutor? Judge/prosecutor; [if judge] What level of court are you currently serving on? Trial/Appeal; [if judge] What subject matter court are you currently serving on? Civil/Commercial/Criminal/Other]

[Brazil: Are you a federal or state judge? Federal/state/not a judge; Are you now, or have you ever been, responsible for criminal matters as a judge? Y/N/NA; Have you ever been a prosecutor? Y/N]

[China: What level of court are you currently serving on? Local/Intermediate/Provincial/Supreme; What division of the court are you currently serving on? Civil/Criminal/Administrative]

[France: What is your current position? Judge/Prosecutor/Other; [For those who selected judge:] Are you sitting on an appeals court? Y/N, Are you responsible for civil or criminal matters, or both? Civil(including commercial)/Criminal/both, Have you ever been a prosecutor? Y/N; [For those who selected prosecutor or other:] Have you ever been a judge? Y/N, [if yes] As a judge, did you ever sit on an appeals court?, As a judge, were you responsible for civil or criminal matters, or both? Civil(including commercial)/Criminal/both]

[Germany: Are you a judge or a prosecutor? Judge/Prosecutor; [For those who selected: judge:] What court are you currently serving on? Amtsgericht/Landgericht/Oberlandesgericht/Verwaltungsgericht/Finanzgericht/Arbeitsgericht/Sozialgericht; [For those who selected Amtsgericht, Landgericht, or Oberlandesgericht:] Are you responsible for civil or criminal matters, or both? Civil(including commercial)/Criminal/both]

[India: What type of court are you currently serving on? High Court/District Court/Civil Court]

[US: Were you ever a prosecutor? Y/N; Were you ever a criminal defense attorney? Y/N]

<sup>56</sup> [Argentina: [not asked]] [US: What is your age? Under 45, 45-55, 55-65, 65-75, over 75]

## Appendix C: Judgment Reasons

The table below reproduces participating judges' judgment reasons (in English translation where applicable), along with their treatment, their decision, and our coding of their reasons according to the coding protocol (Appendix D) as discussed in section S4. The table is sorted by judge nationality, treatments, and decision. Obvious spelling mistakes in the reasons have been corrected. (Raw versions of the reasons, including in original language if translated, are available in the data appendix.) Treatments are abbreviated as Affirm, reverse, or REVERSE (precedent) and sympathetic or unsympathetic (defendant), respectively. The reason coding on a scale from 0 to 4 counts how many of the four independent coders opined that the feature was present. *Italics* indicate language that more than one coder (in practice, always four) identified as indicating reservations about delivering a judgment.

Treatment: Precedent  
Treatment: Defendant  
Decision: Affirmed?  
Judgment Reasons

Coding: Precedent mentioned?  
Coding: Policy mentioned?  
Coding: Statute mentioned?

Argentina <sup>57</sup>			
A s 1 <i>Subject to the temporal restrictions on the time necessary to properly study the present case, I argue that the decision of the court of first instance must be affirmed given that the arguments brought forth by the Defense are not sufficient to demonstrate the unreasonableness or arbitrariness of this ruling under the applicable law. Concretely, if the discussion turns on the requirement of knowledge and specific direction on the part of Horvat that his conduct contributed to the commission of illicit acts by the material perpetrator of the crimes committed against the Bosnian Population, I consider that it is enough for the accused to suspect that his activities could have collaborated directly or indirectly in the perpetration of crimes and for him to have paid no regard to any outcomes, for assigning to him concrete responsibility as an accomplice of the conduct attributed by the prosecutor. The position in which the accused found himself can be likened to one of a guarantor, and therefore his role in administrating sources of risks, far from releasing him of any responsibility, demands greater efforts at the time of making decisions. Without this implying an objective responsibility typical of civil law, but rather a subjective element necessary to maintain that he knew but did not care if his conduct would contribute to the commission of illicit acts as the ones accredited. Therefore, there was the sufficient knowledge required to consider him an accomplice without having to require knowledge of specific illicit situations created by the material perpetrators of these events.</i>	0	0	0

<sup>57</sup> Translated by one of the authors (IR).

A s 1 In first place, the parties are allowed to appear before us regarding decisions where errors on a question of law invalidate a decision or errors might lead to judicial errors (art 25). Also, considering that Mr. Horvat acted as chief of staff and commander of the third battalion of the new Croatian army HV and retired in 2004 as president of the Bosnian-Croatian Commission. It has been established in these proceedings that the city of Ahmići, which was a safe zone for civilians, rather than being protected by Mr. Horvat, it was invaded. Many people were caused to die in a site that should have been protected. As well as other harms that clearly emerge from these proceedings, such as the provision of logistics, ammunition, to cause the death of innocent people. That the arguments presented by the Defense of Mr. Horvat do not rebut what was decided by the judges that preceded us. That regarding arguments of law, it has not been demonstrated that they have a bearing here, or that they had induced to mistake the judges that preceded us. That according to the provisions of art 8 of the Statute, as well as arts. 2, 3(b)(c)and (d), 7(1)(2)(3) and (4) and being the case that grave violations of international law have taken place, and that Mr. Horvat should have acted with the care required of him by his position, I find him guilty of the war crimes perpetrated by HV in Bosnia Herzegovina 1992-1994. 1 0 4

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A s 1 I believe that the decision of the court of first instance must be confirmed without the need to establish whether specific direction was present. The actions of Horvat are in themselves despicable, he used his position and influences to help a civilian group, later composed with military forces as well, to commit crimes of decriminalization, homicides, etc. The fact that he was a high-ranking official worsens his position. He knew about the specific direction given what was free and public knowledge. 0 0 0

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A s 1 Following the guidelines of the decision of the court of first instance, I understand that Horvat is guilty of the abhorrent crimes perpetrated by HVO in the cities of Mostar and Ahmići. Horvat was the artificer of said aid, and concretely knew that crimes were being committed against civilians, and against Muslims in particular. I interpret, following the guidelines of the Šainović decision, that specific direction is not a constitutive element of “responsibility as an accomplice” and that being far removed from the place where events occurred is irrelevant in this case. I therefore affirm the decision of the court of first instance in its entirety. 4 0 0

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A s 1 I believe that the activity displayed by the accused fulfills the requirements necessary to consider him an accomplice. I understand that the conduct undertaken proved efficient in establishing collaboration in the main events. The subjective element is also present, given that in his actions he was aware of the extension of the crimes committed by other, even though he was not present in the proximity of where the events occurred. 0 0 0

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A s 1 I understand that Horvat is guilty of complicity in the crimes committed in Mostar and Ahmići by the HVO insofar as he supplied aid, ammunition, explosives, mobility, etc. to this force having known through several sources, of the crimes that were being committed, and he had the possibility of fulfilling his moral and legal duties by denying HVO the aid which he supplied, whether he knew or not of each crime committed, given that each contribution he made contributed to the commission of a crime. 0 0 0

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A s 1 The uncontested facts indicate that the accused had knowledge of the grave crimes, abuses against civilians and sniper attacks against civilians that occurred, this given the information that he periodically received and that did not move him enough to stop the activities under his charge, some of which were indispensable in order for illicit activities to continue being perpetrated. That direct knowledge of the crimes which did not prevent him from continuing to act can in no way lead to other conclusion but to prove that his intent was for those crimes to continue, given that otherwise he would not have continued supplying supervision and logistics. In this way, the degree of precision of his knowledge, does not preclude his responsibility for his own volition, as there was no error or lack of knowledge about the crimes committed. His knowledge is so clear as to prove his intention, as otherwise he would have stopped doing what he was doing. In this way, the complicity for which he is responsible, includes the specific end that the lack of evitability demands, which is why the 0 0 0

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sentence of the court of first instance must be confirmed. In light of the concrete and specific knowledge of the crimes, the element of volition together with the cognitive one, imply his responsibility.

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A u 1 According to arts. 2, 5 and 7 of the Statute, the evidence provided, the position and degree by responsibility held by Vuković, support the conclusion that he aided and was complicit in the crimes perpetrated during the referred period. Classified as crimes against humanity. 0 0 4

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A u 1 I consider him guilty of the crime of complicity, it carrying individual criminal responsibility (art. 7.1 of the statute), as he aided directly, instigated and tacitly incited the commission of crimes by the VRS. Even though Actus Reus (material element) and Mens Rea (intellectual element) are required elements to configure the crime, the fact of having provided logistical and technical support to the VRS knowing that criminal acts and abhorrent persecutions were being committed with this help constitutes a crime. It does not matter that the acts of the accused lacked specific direction in committing crimes given that complicity does not require it. Collaboration can be considered complicity if the accused knew that he was facilitating the commission of crimes. The commission of more than one crime, the fact that the weapons and logistics contributed in a substantial manner to the perpetration of these acts, "la gran propia ilusas" that would be used to that end, to which he added enduring collaboration and his knowledge of what the weapons were used for, and lastly that he not only provided weapons and logistics, but that his plea before the Supreme Council achieved that he be authorized to continue providing weapons and logistics in general, requires that he be declared guilty of the crime of complicity. 0 0 4

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A u 1 Understanding the decision by the lower tribunal to be correct and in accordance to the facts and to procedure, in accordance to arts 3, 5, and 7.1 of the Statute insofar as the conduct attributed to Vuković amounts to complicity in the war crimes committed by the army of the Republic Srpska. The provisions of art. 7.1 contemplate any form of collaboration in the commission of the crimes enunciated, and given that it is clear that the accused provided such collaboration knowing the outcome that this would accomplish, he therefore acted with the criminal intent (knowledge and will) necessary to satisfy the necessary elements of the criminal conduct defined in the statute. 0 0 4

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r s 0 Neither the admitted nor the accredited facts contemplated the figure of an accomplice according to the applicable law. It was not demonstrated that the aid provided by the accused was offered to facilitate the in the perpetration of the abhorrent crimes committed by Croatian militias. I understand that the subjective element, that is the knowledge that the aid supplied would be used to commit any sort of crime, must be proved with certainty and not considered mere probability. 0 0 0

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r s 1 I consider the accused to be guilty given that it is clear from the admitted facts that he has clearly aided and abetted in the commission of the war crimes that motivate his sentence in the terms of arts. 3, 5, 7(1) of the Statute. The conduct of the accused in the context described puts him in a situation that renders the precedent invoked by the Defense inapplicable. On the other hand, it is evident that his personal interventions in different areas were effective, transcendental and necessary for the support of the group that committed war crimes –which although known by the accused, still did not inhibit his facilitating collaboration with the actions of the victimizers. 4 0 4

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r s 1 Based on the text of the applicable law (art. 7.1 of the statute) I do not find specific direction to be a component of the criminal act of complicity. That is to say, specific direction is not an autonomous element of responsibility. I am of the opinion that the fact that the accused supplied military and logistic support implies complicity in the crimes under investigation and as a result he bears individual criminal responsibility. It is a proven fact that Horvat acted fully knowing that the HVO committed abhorrent crimes. I insist, this crime does not require specific direction to commit a crime in the participation of the accused in supplying aid or even if his collaboration was remote. It is sufficient that the accused knew that as a consequence of their actions –supplying and facilitating military assistance and logistical support—they would contribute to the commission of illicit acts by the perpetrators. The mention of specific direction by this tribunal in another decision, which had the purpose of making a distinction between different types of crimes (criminal conspiracy), does 4 0 4

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not in any way, in my opinion, establish a precedent requiring the presence of "specific direction" as a "sine qua non" element in the definition of the crime of complicity.

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r s 1 The accused is guilty given that he contributed to defining policies meant to facilitate the commission of war crimes, making a substantial 0 0 0 contribution by authorizing the use of resources, including personnel, to commit illicit acts, a fact that is further corroborated by supplying weapons that could not have been used for any other purposes than to commit these earlier mentioned acts. The element of specific direction is substantiated in the participation the accused had in defining the referred policies. The presence in or proximity to, the targets of attacks is not an essential requisite, given that the accused knew of them given this participation. Such intervention makes him an accomplice to HVO with regard to the crimes of homicide, inhumane acts, crimes against humanity and homicides against civilian populations in violation of laws of war.

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r s 1 The decision must be affirmed given that it has been demonstrated that Horvat in his role as chief of staff in the Croatian army supplied 0 0 4 logistical aid and weapons to the Croatian Defense Council knowing that they committed war crimes, having provided an essential collaboration with such aid for the principal author (CDC) of the war crimes to commit these crimes, and Horvat knew about the illicit ends pursued by this active subject given that he could not ignore, in his capacity as military official, of such operations. Furthermore, the collaboration provided was such that if he had not supplied weapons, the criminal plan could not have been executed successfully. His conduct amounts to complicity given that he aided the author of the principal crime in the execution. Therefore, Horvat should be sentenced to 27 years of imprisonment for the homicides, inhumane acts, persecutions and acts of aggression against civilians committed (art. 3, 5 and 7 of the Statute).

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r s 1 Taking into consideration the provisions of arts. 2 to 5 and 7.1 of the Statute, and the proven facts in this proceeding, I will now proceed 0 0 4 to declare Horvat guilty, as he knew about the criminal acts perpetrated by HVO, and as a consequence, by collaborating with, aiding and facilitating weapons to the HVO, essential elements in the commission of homicidal crimes against humanity, homicide by violation of the laws of war, inhuman acts, attacks against civilians, etc. all requirements are met for a determination of criminal complicity as stated in art. 7.1. and therefore he is individually responsible for said crimes, even if he had not had knowledge of each and every crime committed. As a consequence, he is guilty.

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r u 0 I agree with the arguments of Judge's Moloto dissenting opinion. 0 0 0

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r u 1 The uncontested facts are conclusive. In fact, having proven that: The accused Borislav Vuković was born on 22 May 1944 in Koštunići, 0 0 4 Serbia, in the Socialist Federal Republic of Yugoslavia. After joining the Yugoslav People's Army, he graduated from the Ground Forces Military Academy in 1966 and became an officer. Shortly after the conflict in the former Yugoslavia began, Vuković became the Chief of Staff and then Commander of the 3rd Army within the Yugoslav Army ("VJ") based in Niš, Serbia. On 26 August 1993, the President of the Federal Republic of Yugoslavia ("FRY") appointed Vuković as Chief of the VJ General Staff, a position which made him the most senior officer in the VJ. He held this position until his mandatory retirement from the VJ in 2004, when he became advisor to the FRY government for "the rehabilitation of Serb victims of Albanian persecution" and chairman of the United Serbia Party. The indictment: Vuković was charged on the basis of individual criminal responsibility (Article 7(1) of the Statute of the International Criminal Tribunal for the former Yugoslavia, hereinafter "the Statute") with aiding and abetting crimes in the Bosnian towns of Sarajevo and Vlasenica by facilitating the provision of military and logistical assistance from the VJ to the Army of the Republika Srpska ("VRS"). The VRS was an armed group of ethnic Serbs in the Bosnian civil war. Vuković was also charged with superior responsibility (Article 7(3) of the Statute); since he was acquitted of these charges and this part of the decision is not on appeal, however, no further mention will be made of the

facts underlying this part of the indictment. The principal crimes committed by VRS The underlying events took place in the territory of Bosnia and Herzegovina in the period between August 1993 and November 1995. SARAJEVO: From September 1992 to November 1995, the VRS conducted a lengthy campaign of shelling and sniping in Sarajevo which resulted in the deaths of hundreds of civilians and the wounding of thousands of others. VLASENICA: In the summer of 1995, the VRS invaded the town of Vlasenica, which the United Nations Security Council had previously established as a safe area for civilians. After taking over Vlasenica, the VRS proceeded to forcibly remove and massacre hundreds of Muslim civilians and persons not taking an active part in hostilities. THE ASSISTANCE PROVIDED BY HORVAT: Since August 1993, Horvat oversaw the HV's provision of extensive logistic assistance to the HVO as the HV's Chief of General Staff. Logistic assistance notably included vast quantities of infantry and artillery ammunition, fuel, spare parts, training and technical assistance. The Supreme Defence Council of Croatia granted Horvat and the Croatian Army the authority to provide logistic assistance to the HVO. Even though Horvat was not officially a member of the Supreme Defence Council, he participated in the Council's meetings, along with its members, notably Franjo Tuđman, who at the time held the title of President of Croatia. Horvat regularly urged the Council to continue providing logistic assistance to the HVO, insisting that they could not wage war without significant military support. A large number of HVO officers were drawn from the ranks of the Croatian Army. They officially remained members of the Croatian Army even as they were fighting in Bosnia under the banners of the HVO. Horvat proposed and carefully implemented the idea of creating "Personnel Centres" to regularise the status of these officers and allow them to lawfully remain part of the Croatian Army. HVO officers retained their salaries and benefits as Croatian Army members through what was known as the 30th Personnel Centre. Horvat was well aware that the payment of salaries was, in his own words, of "great help" to the HVO. HORVAT'S STATE OF MIND: Horvat knew that the HVO's operations encompassed grave crimes against civilians. Horvat received information from a variety of sources concerning the HVO's criminal behaviour and discriminatory intent against Muslims. Under Horvat's direction, the Croatian Army's intelligence and security organs monitored the views of the international community and international media concerning the conflict in Bosnia and Herzegovina. During meetings with NATO to coordinate enforcement of the UN's no-fly zone against Serbian violations, Horvat also received briefings on NATO intelligence concerning grave abuses against civilians by HVO forces in Mostar and other parts of Bosnia and Herzegovina. In particular, Horvat was alerted to the fact that the HVO was conducting a campaign of sniping and shelling against civilians during its siege of Mostar. These regular attacks were well documented and widely reported for a period of three years. THE TRIAL JUDGMENT: On 7 January 2014, the Trial Chamber found defendant-appellant Horvat guilty of aiding and abetting the following crimes committed by members of the HVO in Mostar and Ahmići: murder, inhumane acts (injuring and wounding civilians, inflicting serious injuries, wounding, forcible transfer), and persecutions as crimes against humanity; and murder and attacks on civilians as violations of the laws or customs of war. The Trial Chamber sentenced Horvat to a single term of 27 years of imprisonment under Articles 3, 5, and 7(1) of the Statute. Therefore, sharing the preceding arguments, the sentence is affirmed.

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r u 1 He is guilty because the facts demonstrate that the conduct displayed by him has had effects in the perpetration of the crimes he is charged with, in accordance with the legal and common sense arguments developed in the opinion of the court of first instance, to which I refer in honor of brevity. With regard to the technicality introduced by the prosecutor with regard to the absence of specific intent, such introduction is clearly insufficient and ineffective given that in executing any act each individual is responsible for the consequences that said act produces. It emerges from the undisputed facts that his display of conducts and decisions have resulted relevant and substantial for the commission of the crime for which he is accused. 0 0 0

r u 1 I consider that specific direction is not a required element for this crime.

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It has been demonstrated that he had knowledge and that he collaborated and incited to the continuation. This was not the same situation the president was in.

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r u 1 Borislav Vuković knew about the use and reach of the equipment he provided. His actions fit within the terms of arts. 5, 3, and 7.1 of the statute. It is an undisputed fact in this case that he facilitated the provision of equipment used to perform acts which constitute crimes against humanity, and were perpetrated by the VRS. He facilitated the provision of military and logistic aid which allowed the commission of the above mentioned crimes. The sought-after interpretation of the "specific direction" element is not warranted by the language of the provision, and while it might represent a concern for the legislator, it cannot be one for those who are to judge according to proven facts, assessing facts and applying the relevant law in this case the Statute. Specific direction is therefore not a constitutive element of the conduct of an accomplice and cannot be required to assess it. The fact that the accused should have known about the use that was being given to the provisions he supplied cannot be disregarded. This is further corroborated when one considers that Vuković refused to comply with certain requests, revealing that the acted exercising his authority and therefore assumed the consequences of the decisions for which he must now answer.

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r u 1 I understand that the arguments advanced by the prosecution and by the lower court are justified. The law is sufficiently clear and precise. The description of the conduct with which Vuković has been charged, does not require specific direction in any way, he knew that he was providing weapons, logistical support and salaries to another army and before a clear warning on the part of the security council regarding the crimes that had been committed he nevertheless continued with his actions. It is true that there must be a limit to responsibility, the contrary would imply continuing until the end of days reaching the manufacturer of weapons. The supply of weapons, logistical assistance, the provision of salaries clearly give rise to the emergence of responsibility and amount to the crime of complicity in the homicides of civilians perpetrated by snipers and explosives in Sarajevo, during the years 1993/1995 by the Serbian army, as well as in Vlasenica from 1992/1995, as was decided in accordance with the law by the lower court. Which is why I so rule.

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r u 1 In light of the uncontested facts introduced, I consider that Vuković, given his high rank and the circumstances in which he fulfilled this role, supplied substantial logistical support for the perpetration of war crimes and crimes against humanity committed by members of the VRS against persons and civilians that were not actively participating in hostilities in Sarajevo and Vlasenica. These crimes were tied to the war strategy and objectives of the VRS leaders and were not committed by unsubordinated soldiers acting independently, but rather by a force that Vuković himself helped recruit. Furthermore, I especially consider that through his position and high rank he had accessed to qualified information and was alerted about the strategic objectives of the Serbian-Bosnian leaders. He also couldn't have ignored the systematic attacks with projectiles and snipers against civilians in Sarajevo performed by the VRS that occurred over a period of three years and that demonstrated that the top officials of the VRS resorted to war crimes in order to keep the city under siege. The purpose of such attacks was to intimidate the population of Sarajevo and break their will and spirit, in addition to destabilize Bosnia-Herzegovina as a country. For such reasons I consider his complicity fully proved in the clear terms of art. 7 of the statute and therefore I consider him guilty.

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r u 1 The accused conducted, at the time of these events, a series of acts that amounted to an essential participation (that wouldn't have occurred without him) through the provision of weapons, ammunition, training, etc. to the members of (VRS), many members of the Yugoslavian army, allowing them to keep their salaries and benefits, knowing of their conduct full well and being aware of international resolutions being passed, taking into consideration the position he occupied. Which constituted the alleged crimes. That conduct falls

within the terms of art. 7 (1) of the statute for actions that "otherwise aided and abetted in the planning, preparation or execution of a crime". The defense's argument regarding the requirement of a "subjective element must be disregarded as such element is not required for the type of crime under review, and neither is the invoked precedent relevant, as the factual circumstances are different than those that motivated the earlier decision.

R s 1	The essential issues to examine arise out of the determination of the appropriate scope of what should be understood as complicity or facilitation, with regard to the crimes the accused is charged with, and whether the accused had proper knowledge of the consequences of his contribution. I believe the court's decision to be a sound one, as it highlights the variables that account for the fact that the accused knew the reach of his conduct, basically considering his high rank in the military (what appears to be a relevant difference with respect to the precedent supporting the defense's plea), the war context where his actions should be assessed, and the existence of racial and religious differences. In principle, I would affirm the decision, <i>but not without noting that the case merits an evaluation that exceeds the time allotted for this exercise.</i>	2 0 0
R s 1	I believe that the decision of the lower court should be confirmed. I evaluate the following: 1) The accused Horvat had been appointed chief of staff for HV (a position that entails an extremely high degree of responsibility and knowledge). Given this and in light of what the sentence of the court of first instance points to with regard to having corroborated that he had knowledge of the acts, is that I find the accused imputable as an accomplice, given that he could have prevented events from happening (liability by omission). 2) The ruling that came after initial ruling is not yet binding (as it has not been reiterated as an established criterion). 3) The factual setting is different given that the accused Bešić was a lower-ranked officer than Horvat (and the higher the rank the more responsibility and information/knowledge). 4) I understand that if one aims for peace and for discouraging war, it is appropriate rather than absurd, to personally or individually indict with this level of rigor, that is to say, without the requirement of specific direction. Even though deliberate specific direction might not exist, the result can be clearly represented (anticipated).	4 4 0
R s 1	Horvat could not ignore that the actions that he supported with military equipment and military personnel were directed towards attacks against the most elemental laws of morality and violated standard customs of war.	0 0 0
R s 1	I consider the accused to be guilty, not of all charges, but exclusively for aiding and abetting the acts of HVO. This does not imply consenting to violations of international humanitarian law or the attack of innocent Bosnians in their territory and the other crimes committed by the accused under the excuse of aiding the Croatian inhabitants in the region and in order to prevent their expulsion from this area and in order to prevent their annihilation. The ulterior activity of the HVO, even though separate from that of the accused (in light of the Bešić precedent that dismisses the condemnatory sentence because specific direction was not properly demonstrated even though such element was inherently part of the norm) should have been foreseen given the course of events. Hence I confirm the ruling of the lower court but consider extenuating circumstances, which must include that the accused after commanding the Croatian army, began to preside over the Bosnian-Croatian Reconciliation Committee, which in itself would demonstrate that the mindset behind the aid provided was to ensure the permanence of the Croatian families residing in the Bosnian zone, and not the annihilation of that ethnicity. This in order to forge a respectful coexistence among citizens that profess different religions, which brings further support for the reduced sentence imposed. Such is my vote.	4 0 1
R s 1	The accused Ante Horvat must be condemned. Not only do I agree with the arguments presented in the vote of the majority, but independently of the provisions of the Statute, I decide this case applying the principles and values of the law. That is to say, this is a case of human rights. With his conduct he contributed to the commission of acts which violated human rights. With knowledge, will and with	1 0 3

complete freedom to act, he pressed for maintaining assistance, logistical support and personnel for an armed group that attacked civilians involved and not involved in the war, physical spaces reserved for the UN, the attack violated human rights and he endorsed it. The value of life and the legal principles of stem from it were not respected by Horvat, who was not forced to obey orders, but even if he had been given such orders, he could have objected to these orders and refused to act. It is always important to bear in mind the regulatory framework (laws, statutes, legal precedents) but one must never leave aside the values and principles of the law. I say this because I did not pause to analyze the so-called specific direction standard, given that it does not appear relevant to me while having before me a human rights violation.

R u 1 The Statute does not require the specific direction to which the appellant refers. The definition of the crime appears to be broad enough 0 0 3 as it encompasses aiding in the commission of the crimes described by the norm. But regardless, the aid supplied by the accused had specific direction, if one considers that through these actions (uncontroverted facts) an ethnic group (which from the facts does not appear to be a national army) was allowed or enabled to commit punishable crimes with the objective to prevail in the civil war that had broken out in Bosnia. This was not a mere sale of weapons, or general aid given to an army. The accused knew how the weapons would ultimately be going to be used (and were being used), as well as the money and the training to commit crimes punishable by the Statute. The fact that there were many acts does not imply the absence of specific direction, that incidentally the accused has himself declared were meant to eliminate the enemy. It is not a minor fact that the group that received the assistance of the accused were part of the army commanded by the accused, and that they would not have lost their rank or salary. That is to say, he does not only appear to have assisted a group which was engaged in criminal activities in a war (not because of participating in the war in and of itself, but because they committed war crimes during the war) but rather because he appears to have actively instigated the outcome of that campaign.

R u 1 I agree with the majority vote that the accused exceeded the logistical aid, encouraged the supreme council to support an armed group 0 0 0 that conducted illicitly persecutions, knew about the commission of crimes against humanity by said group, and despite that, he supplied the necessary resources to carry out these atrocities, without being any doubts that VES depended on the VA which he presided as chief of staff, even knowing that it was formed with forces from within his own army, and in spite of this knowledge managed to increase logistical support for conducting the crimes of which he is an accomplice.

#### Brazil<sup>58</sup>

A s 0 In effect, the majority of the court in the preceding case understood that a specific volitional element is essential to define participation 4 1 4 in the imputed crimes, as per Articles 7(1) and (3) of the Statute, as was well-put by the precedent's dissenting opinion. Regarding the present question, prosecution and defense agree that there was no specific volitional element in the facts of this case. Thus, by a legal analysis, by the relevant precedent and by the preservation of the rule of law, the sentence should be reversed and the defendant acquitted.

A s 1 The judgment should be affirmed because of the correct framing given to the acts committed by the defendant in light of the rule in Art. 4 0 4 7(1) of the Statute, as well as to the fact that similar cases have received the same framing, e.g. the ŠAINOVIĆ case, such that the same treatment should be given to the defendant HORVAT, by virtue of the principle of equality of treatment. The argument put forth by the defense—that there needs to be specific direction in order to establish personal responsibility—should not be accepted. This is because Art. 7(1) of the Statute provides that whoever “aided and abetted in the planning, preparation or

<sup>58</sup> Translated by Marcelo Moreno Bonassa with input from Etiene Coelho Martins.

execution of a crime referred to in [articles 2 to 5 of the present Statute], shall be individually responsible for the crime." In the present case, HORVAT's help was essential to the commission of these grave crimes, insofar as he supervised the supply of intensive logistical assistance to the HVO while he was commander of the HV, permitting, thus, the provisioning of munition, infantry, artillery, fuel, replacement parts, training, technical assistance, and soldier recruitment, with full awareness that the payment of salaries was of "great help" to the success of the operation.

Essentially, his leadership position allowed him to take decisions that could have prevented the commission of the crimes.

Notwithstanding, he contributed, consciously, to the consummation of the crimes committed, since he had information regarding criminal and discriminatory actions against Muslims on the part of the HVO.

Therefore, due to his leadership position and awareness of crimes being committed, his conduct can fall perfectly within Art. 7(1) of the Statute, which does not require "specific direction," as made clear by Articles 2 and 3, which expressly state that the commission of crimes by subordinates does not exempt the superior from criminal liability, if he had knowledge of them, which is proved in this case. This was also the interpretation given to the case ŠAINOVIĆ, such that the same treatment should be given to the defendant HORVAT, due to equality of treatment.

In light of the foregoing, I reject the defense's arguments, sustaining the conviction.

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A s 1 The conviction should be sustained.

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The statute and jurisprudence dispense with the requirement of specific direction. This is not made express in the statute, but it becomes clear when participation in "whichever form" that contributes to the commission of the crimes therein is criminalized. The exact significance of this expression, however, must be found in the jurisprudence.

The most recent case, in which "specific direction" was expressly considered as a supposed "element of the crime," reject this hypothesis. In fact, it is true that, in that case, the participant was at the location of the criminal acts. However, the decision does not say that this is the reason why specific direction was not required. In fact, a series of circumstances are necessary to establish participation. In the absence of some of them, proof of specific direction might indeed be relevant. In the present case, however, the accused almost completely supported a militia that was committing several war crimes, he knew of its actions, and he continued to provide logistical assistance.

In sum: specific direction is not a necessary element, neither in the law nor in the jurisprudence. It might be important to establish participation in the absence of other circumstances. This case's circumstances, demonstrated and undisputed, establish participation without the need for specific direction.

Therefore, I sustain the defendant's conviction.

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A s 1 As the petitioner's brief explained, this appeal concerns a single point of law: whether participation, within the terms of Article 7(1) of the Statute governing this Tribunal, requires that the assistance be directed to the commission of a crime.

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The prosecution agrees that the defendant should be acquitted if specific direction was required, since the defendant merely provided nonspecific support to the forces committing crimes on the ground.

The trial court, however, convicted the defendant because it did not consider specific direction to be an essential element of the participation. We ask the Appeals Chamber to reverse this decision because it is inconsistent with previous decisions by the court, the most fundamental principles of the Statute, and good policy.

However, it is established, as found in the statement of agreed facts, that the situation involves, in truth, gross negligence by the accused, since he had full knowledge of the ends to which the equipment and munition that he provided would be used, and assumed,

therefore, the risk that they would be employed for the commission of crimes against humanity, as they in fact were. The precedents invoked by the defense are not relevant to the present case, because they do not consider the demonstration of intent, or even recklessness, in the case of an agent who voluntarily provided munition and equipment with full knowledge that they would be utilized to commit genocide against Muslims.

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A s 1 This case concerns an appeal by the defendant of the judgment that convicted him to 27 years of imprisonment for having participated in homicide, inhumane acts and persecution for crimes against humanity and homicides and attacks against civilians, defined as war violations.

In his appeal, the defendant alleges that the acts he committed do not qualify as criminal participation, because they were not directed to facilitating the commission of crimes. He alleges that participation must be directed towards facilitating the commission of crimes.

The prosecution responds that the judgment should be sustained.

The case files demonstrate that the defendant effectively supplied logistical and personnel assistance, which the defendant never denied, even though he had knowledge of the commission of inhumane acts and attacks against civilians.

In fact, the offense is established not only through the above-mentioned action, but also through omission. The fact that the defendant had knowledge of the HVO's acts, and even so supplied logistical and personnel assistance, by itself, defines him as a participant, which extends responsibility to him for the crimes.

Due to the position and significance of the post he occupied, the defendant had a duty of care for the integrity of civilians in the place of action. Having failed to perform it, he is personally responsible for the consequences caused by his omission.

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A s 1 In order to establish "criminal participation" in the crimes committed by the criminal organization HVO, it is not necessary that the defendant have intended to specifically participate in such crimes. In order to demonstrate his criminal participation, it is enough that the support given be effective (causal nexus) and that the defendant have knowledge that he is collaborating with the commission of crimes (psychological nexus).

The defendant does not deny that he provided assistance.

The evidence shows that the defendant acted personally to furnish military equipment, and logistical and personnel assistance.

The defendant had full knowledge of the military group HVO's criminal activities.

"Specific direction" to commit the crime is not an element of criminal participation, as would be the case with accomplice liability; willing collaboration in the criminal act will suffice.

The physical presence of the defendant at the site of the crime is also not essential to its commission, because it is common to commit crimes from a distance or even through an intermediary (command responsibility).

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A s 1 There was considered to be enough evidence that Horvat, as Chief of General Staff of the HV, had full knowledge of the criminal behavior of HVO in relation to Muslims.

The provision of support by Horvat had a substantial effect on the commission of the crime. In these circumstances, specific direction as a normative requirement is implied, in this case, in the support, which was provided in a direct manner and with knowledge of the concrete circumstances.

A u 1 In view of the facts described, I find that the defendant acted consciously in providing logistical assistance as well as munition to the VRS, which proves his guilt, insofar as in a state of conflict, munition would necessarily be used for illicit purposes. The material support and the defendant's own testimony make clear his knowledge of the unlawfulness of his actions.

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A u 1 Initially, in light of all the facts and legal reasons given, I understand that in order to establish responsibility for participation, specific direction of a given crime is not an essential element for there to be criminal liability for the defendant.

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Although the dissenting opinion argues that this question should not necessarily be dealt with, I find that the majority was correct in considering that this question must be considered in order to determine criminal responsibility, and was also correct in affirming the conviction by not requiring specific direction, in consonance with the vast jurisprudence and the customary law. The accused undoubtedly provided material and intellectual support in acting as Chief of General Staff, and also had access to reports that would inform him of all the crimes and happenings in the soldiers' campaigns. Thus, the material support, manifested in the devising of strategies, personal inspection of the field, issuing of orders, payment of salaries, organization of troops, and omissions in regard to the lack of punishment or lack of efforts to prevent the criminal acts perpetrated by his soldiers, are all arguments capable of supporting the imputation of the crimes to the defendant, either by positive action or by omission, such that it is not necessary to prove direction of specific acts. The accused had freedom of action and the knowledge to determine whether his actions would be aimed at criminal conduct.

Therefore, requiring specific direction in order to establish the defendant's responsibility could make it impossible for him to be prosecuted, and for the interests of justice to be served.

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A u 1 The conviction should not be vacated because the existence of legal errors that would invalidate the decision or factual errors that would make it unjust was not demonstrated, in the form provided in Article 25 of the Statute. 0 0 4

In effect, as the undisputed facts show, Vuković's actions in providing military and logistical assistance to the VRS were decisive to the success of their criminal enterprise. He not only provided vast quantities of munition, fuel, repository parts, training and technical assistance, but also participated in meetings of the Supreme Defence Council of the Federal Republic of Yugoslavia, where he insistently advocated for the maintenance of continuous logistical assistance.

It should be highlighted that the accused knew that the operations resulted in grave crimes against civilians, because he was informed about the criminal behavior and the discriminatory purpose against Muslims.

Thus, the volitional element is perfectly established, in the way required by Article 7 of the Statute.

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A u 1 The decision should not be reversed. According to the ICTY, specific direction does not constitute an element of the crime of participation in war crimes. In spite of not having been physically present in any scene of the crimes for which he was accused and found guilty, the volitional element of participation is made clear by his knowledge of humanitarian violations committed by the army to which he provided support and subsidy. It was proved in the case that he received information on discriminatory and criminal violations against Serbians, mainly those of Muslim origin. The knowledge of an intent to exterminate people of Muslim religion establishes the requisite mental state of the offense of participating in crimes committed by the army, which was mostly financed by the authorizing actions of the appellant.

It should be noted that the appellant also provided the salaries of members of the violating army, which establishes a relationship of direct subordination between the perpetrators of the crime and the appellant.

It should not be said that the conviction approximates a theory of strict liability, as in the case of an arms' supplier being found guilty of a purchaser's crime, because here there is knowledge of the ends given by the logistical and physical assistance, that is, the commission of cruel war crimes with exterminatory ends by the army, which was strongly tied to the appellant.

For the foregoing reasons, the conviction should be sustained.

A u 1 Vuković had knowledge of the crimes that were being committed. VJ officials were recruited to help the VRS, and were paid with salaries from the VJ, which the defendant knew about and supported. Moreover, Vuković knew the type of crimes being committed, given that he received different reports about the VRS's criminal and discriminatory behavior, including against Muslims.

Even if at the beginning of the VJ's support of the VRS he had no such knowledge, as the reports came in, he should have moved to prevent such actions, which he had the power to do, as the VJ's Chief of General Staff.

Finally, in regard to the specific element of the requirement that the defendant be present near the site of the battle, this would prevent the main authority figure from one side of the conflict, who had the capacity to put an end to human rights violations, to be made responsible, particularly when he had direct knowledge of these violations.

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A u 1 The defendant is guilty on the basis of the facts and evidence brought forth in this suit. He participated directly/indirectly in the execution of the crime. He contributed to the swift and sure execution of the object of the mission assigned to him. The accused knew the consequences of each act he committed, and thought he would remain immune by virtue of his official position within the war. The defendant had in his hands the power of life and death, and he chose death. The death of innocent people who just wanted peace. The defendant has full responsibility for the crimes described by the prosecution and should pay for his crimes.

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r s 0 Horvat was not a member of the Supreme Defence Council; he participated in some meetings; the specific direction argument deserves consideration, because, as Judge MOLOTO's dissent put it, "providing assistance" is in no sense participation within the meaning of Article 7 of the ICTY.

After all, it is not possible to consider Horvat "individually" and "criminally" responsible for crimes committed by third parties, by virtue of his having provided salaries, housing etc. which are not directly related to the commission of the crime.

Moreover, there is no convincing evidence of support in this case, as the only proof brought forth does not establish direct responsibility for the crimes committed.

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r s 1 The defense requests the revocation of the trial court's decision, alleging that Horvat's assistance was not specifically directed to the war crimes committed by the HVO. This argument should not be sustained. The defendant's criminal responsibility is largely supported on the basis of Article 7 of the Statute applicable to the present case.

In fact, it is not relevant in this case that Horvat's acts were not specifically directed to the commission of war crimes by the HVO. The reason being that specific direction is not an element of participation, according to the above-mentioned Article 7. On the contrary, that would be introducing a new restrictive element to criminal participation, without legal basis, which would create barriers against the conviction of those who consciously facilitate the commission of very serious crimes against humanity.

One sees, then, that so-called specific direction is not a requisite of criminal responsibility for participation. In the present case, the accused had full knowledge that his actions were facilitating the execution of war crimes, which according to Article 7 of the applicable Statute is enough for his conviction. Horvat knew that the assistance he was providing was directed to the crimes committed and this assistance had a substantial effect in the realization of those crimes.

A different interpretation would make it practically impossible to convict the participant for his war crimes.

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r s 1 Regardless of whether specific direction is an element of the criminal act of participation, in the present case, the support provided by Horvat, in implementing his idea of creating Personnel Centres to regularize the situation of HVO officials and guarantee the payment of salaries, significantly contributed to the criminal enterprise.

The subjective element is established by the receipt of multiple reports on the effects of his actions and the continuation of his support, which was indispensable to the perpetration of the crimes. For the reasons aforementioned, I sustain the defendant's conviction.

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r s 1 The defendant's actions fall fully within the criminal statute defining such conduct: he provided logistical assistance to a paramilitary organization. He assisted, therefore, in the commission of crimes by the paramilitary organization, whose objectives he could not ignore, or even had a duty to know, due to his position within the Yugoslavian government. As to the requirement of specific direction—aside from that being an element not found within the relevant provision, and, therefore, mere judicial construction that is yet undeveloped and not established—even if it were taken as a requirement for liability, I also see it as present here: the provision of munition was conscious, and given to an institution whose military aims consisted of the decimation of the Muslim population in the region, such that whoever provided such material would be consciously participating in such acts of ethnic cleansing, which constitute the reason for the criminal statute. 1 0 4

r s 1 Criminal liability should always be personal and tied to the defendant's subjective element, that is to say, his intention regarding each criminal outcome that is directly or indirectly foreseeable. Thus, I concur with the majority that the defendant not only had knowledge of various crimes committed by his subordinates, but also committed several crimes himself, most notably his support of HV and the military decisions he made in the headquarters. 0 1 0

r s 1 Applicable law: Article 3, ICTY 0 3 4

Individual responsibility: Article 7(1) of ICTY à fact – participation, war strategy (and not mere chance, or isolated acts / logistical and personnel assistance, concrete possibility of avoiding the result, active participation that prevented difficulties from naturally ending the war). Subjective element established

Rejection of defense's allegations. They would make it almost impossible to attach responsibility for war crimes, which is one of the objectives of the international norm. Doctrine of de facto control. Concrete and direct actions, awareness. Intellectual conception and acquiescence.

r s 1 The case at hand concerns a war crime, wherein the defendant's conduct was within the scope of Art. 7 of the Statute, which determines that he who provides aid in some manner, or who has knowledge of degrading acts perpetrated against civilians, even if he has not directly provided practical assistance, should be responsible for the ensuing war crimes. In this case, it was proved that the actor knowingly participated, providing material support and allowing criminal actions to happen under his command. His intellectual participation as commander was proved, and a conviction will lie. 0 0 4

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r u 0 Article 21(g) of the international court's statute provides that the accused cannot self-incriminate. For that reason, all the allegations that he made are invalid for his conviction. Other accusations brought forth do not negate the presumption of innocence described in the same statute. 0 1 4

According to the trial court's dissent, the defendant was accused of supplying material support and auxiliary armed forces who committed war crimes. It is alleged that he provided support, as the responsible party for the delivery of munition, payment of salaries etc. the savage acts. He did not, however, act directly. Even if his will was to commit such acts, it does not seem to me that will, by itself, can be criminalized.

I am convinced by the argument that the behavior is far removed from a direct tie to the commission of the crimes, it being the case that we cannot criminalize to infinity.

r u 1 This case is an appeal by the defendant VUKOVIĆ to reverse the trial court's judgment, on the argument that Article 7(1) of the ICTY Statute requires specific direction to establish participation in the crimes in question. There is no way to accept the argument brought up by the defendant, insofar as the relevant legal provision does not require specific direction for the establishment of the crimes in question, as it is enough that the defendant aided and abetted with knowledge of the subsequent commission of crimes, and that his aid had a real and substantial effect, as was the case here.

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Moreover, the defendant participated in the command of the VRS, even if indirectly, and did it substantially, by providing logistics support, in the form of ammunition, parts, fuel, and others, and especially, by maintaining the VRS officials as members of the Yugoslavian army at the 30th Personnel Centre.

In view of the foregoing, considering that the participation defined in Article 7(1) of the ICTY Statute does not require a relationship of cause and effect between the defendant's conduct and the crimes committed, this court affirms the lower court's ruling, insofar as the logistical and personnel assistance provided by Vuković, individually and cumulatively, had a substantial effect on the crimes committed by the VRS in Sarajevo and Vlasenica. I reject, thus, the appeal, and fully sustain the judgment.

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r u 1 It is undisputed that the defendant had full knowledge that the material and logistical assistance he provided to the VRS was being utilized for the commission of crimes in a large scale. Article 7(1) of the ICTY Statute does not expressly require specific intent or specific direction for individual criminal responsibility. It is enough to have general intent. The jurisprudence also does not require specific intent, as proven by the references made in the appealed judgment of specific precedents regarding the issue. The passage in the precedent cited in the petitioner's brief is effectively out of context: it concerns only dicta related to differences between complicity and participation. The requirement of specific intent was not the main question discussed in the case. Requiring specific intent would in fact represent a change in the jurisprudence. For the foregoing reasons, the appealed judgment and the defendant's conviction should be sustained.

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r u 1 The criminal definition underlying the conviction, Article 7(1) of the Statute, comprises a number of actions, which includes aiding and abetting the preparation of crimes referred to in Article 2 through 5 of the Statute.

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Aiding and abetting in the preparation implies a subjective element regarding knowledge that such action will result in crime. This subjective element is not denied by the defense. On the contrary. It is found expressly in the Statement of Agreed Facts that the defendant had full awareness that the support provided by the VJ to the VRS Republic was directed towards the commission of acts of war involving the massacre of Muslims, the death of hundreds of civilians and injury of thousands. The fact that the accused was not directly involved in such acts has no legal significance in the face of the normative choice to attach criminal responsibility, personally and individually, to one who consciously aids and abets in the preparation of crimes.

Therefore, it is not legally significant whether the military and logistical assistance was employed efficiently or whether the defendant had command or control of the foreign army that benefitted from his actions. For these reasons, the defendant's conviction should be sustained.

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r u 1 The defendant's individual responsibility does not depend on "specific direction" in the sense posed by the defense (direct and specific support so that the crimes could be committed). On the other hand, in order to find responsibility it is not enough to have helped someone who committed a crime (so that a store that sells guns does not participate in the homicide committed by a purchaser): responsibility requires that the aider and abettor have knowledge that the recipient of his support is committing or planning to commit crimes.

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It is not required that the help be quantitatively significant; the fact that only 10% of the bullets used in the war crimes were provided by

reason of the defendant's support does not relieve him of responsibility.

The conviction of the accused does not imply strict liability for having helped an allied army during a war context; in fact, his criminal responsibility derives from his knowledge that the allied army, with the aid of munition, bombs, and loaned soldiers, had been committing war crimes since before his help, as well as from the fact that the support was continued even after the publication of the war crimes.

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R s 0 From the facts described in the case files and an analysis of the evidence presented, I reverse the defendant's conviction and acquit him 1 0 0 of the accusations, adopting as my deciding reason Judge Moloto's dissenting opinion, who examined the singular question presented by this case, with reference to the definition of the limits of personal participation and its criminalization according to the International Criminal Law.

R s 1 From a profound analysis of all the arguments brought forth, by the prosecution as well as the defense, one sees that the issue in 0 3 4 controversy lies within the characterization of ANTE HORVAT's participation in the war crimes listed in the prosecution's brief. A deep analysis of the controversy must determine whether there was participation of the type described in Article 7, items 1 and 3, of the Statute, which lays out the elements that comprise participation, especially with regard to the knowledge of possible crimes and their facilitation.

The problem being thus stated, we proceed to the analysis of ANTE HORVAT's participation. Even though HORVAT did not participate in the Supreme Defence Council, it was demonstrated that he had full knowledge of the actions being committed in the war context, and he encouraged the Council to continue furnishing logistical support to the HVO. In thus acting, he demonstrated complete connection with the acts perpetrated by officials in the battlefield.

Not only that, but the defendant's actions in the Council, in the direction of promoting the continuation of war, when he knew that the HVO's operations included crimes against civilians, as well as his monitoring of the media and the international community's reactions, reveal his purpose to act jointly with the HVO and to support their criminal acts.

Therefore, we see that the elements of Article 7(3) are present, and we should not impose a restrictive interpretation of the Statute in regard to crimes against humanity, given that the legal interest being safeguarded deserves full protection, as it is the case that in a military context it is very difficult to specifically identify the acts of superiors.

The element of specific direction occurred and so the conviction should be sustained.

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R s 1 The conviction should be sustained, because the evidence produced proved that the defendant committed actions within the scope of 4 0 4 Article 7(1) of the ICTY, insofar as he provided relevant support to the HVO in the commission of war crimes against civilian populations in the territory of Bosnia-Herzegovina. The discussions regarding specific direction are not relevant in the present case, because it is proved that the defendant had knowledge of war crimes committed by the HVO and nonetheless provided significant military support to that army. The defendant had full awareness of crimes committed by the HVO, given that he received a NATO briefing in which the given crimes were reported. The Bešić case precedent cannot be invoked in the present case. It ought to be distinguished, because Bešić was not a high-ranking official and did not have final authority to control the military assistance. Horvat, by contrast, was the highest military authority in the HV and had power to influence (as he in fact did) the decisions of the Supreme Defence Council of Croatia. Furthermore, the defendant provided more than munition: the HV's own soldiers were provided to the HVO and directly participated in the crimes committed. These soldiers were paid by the HV by Horvat's decision, which proves that there was direct participation of the army commanded by the defendant in the massacres against civilians that are the subject of the present penal action. The defendant's conviction should be sustained.

R u 0 Putting aside the more complex questions of fact regarding the active participation of the defendant in the daily activities of the organization to which he provided support, the object of the appeal is limited to the question of the nature of the relationship that is required between aiding and abetting and the criminal act in order to extend liability to the aider.

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The decision relied on by the defense as a precedent is very clear, particularly when confronted with the court's contrary jurisprudence. Specific direction is absolutely necessary for aiding and abetting "a crime" (as Article 7 of the relevant Statute provides textually). And the precedents that relax this association did not examine with sufficient detail the connection between aiding and abetting and the criminal act, so that it is possible to conclude that they are not controlling in this case.

The fact that the VR organization repeatedly committed the crimes described in Articles 2 to 5 of the Statute does not allow us to conclude, by the same reasoning, that the defendant purposefully aided and abetted their commission. We cannot assume, with prejudice to the defendant, a criminal course of action, without the presence of specific proof of VR's intention of committing the stated crimes with the support provided by the defendant.

In short, establishing the defendant's criminal liability would depend on a strong presumption that the crimes would not have been possible without his help, and that such help was given with specific direction towards the commission of one or more of the crimes described in the Statute. As this was not the case, it is necessary to reverse the decision and acquit the defendant, with attention to the maxim that penal rules must be interpreted narrowly, and always in favor of the accused.

Finally, the fact that the accused openly aided a patently "criminal" organization says nothing with regard to the specific accusations that are the subject of this suit, such that this fact alone cannot support the defendant's conviction, within the terms of Article 7.

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R u 1 Vuković should be considered guilty by virtue of his actual participation in the crimes committed by members of the VRS in Sarajevo and Vlasenica. Undoubtedly the support given by Vuković was important to the implementation of the actions the VRS engaged in. Even if the support was generic, an important causal nexus was found which cannot be ignored, since, even if such support was not a determining factor for the commission of the crimes, it was, at least, fundamental in amplifying its effects. Furthermore, as Chief of General Staff of the VJ, Vuković had real decisionmaking power regarding the acts he committed. Regarding the subjective (mental) element, bearing in mind the information that reached Vuković, it is reasonable to consider that he had knowledge that the VRS operations included grave crimes against civilians. Even though the information might have been unclear or uncertain, Vuković had a duty to find out the facts. In sum, specific direction was demonstrated from the moment that Vuković had knowledge of the possibility that his help to the VRS would be utilized for the commission of crimes against human rights.

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R u 1 In the first place, it is important to highlight the necessity of respecting the recent precedent of the Chamber of Appeals. The Court's understanding cannot vary with respect to the accused, in that there needs to be a requirement of "specific participation." However, it is possible to evolve in the construction of the concept of "specific participation." In reality, the provision of munition and paid soldiers with the goal of promoting true genocide is included in the concept of "specific participation," which is why the defendant's conduct falls within the criminal statute.

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R u 1 The precedent invoked by the defense, though it reflects this court's understanding in a case where the agent's participation requires a specific objective, is not applicable to the present case. The reason being that the accused was not only a high-ranking official, but the Chief of General Staff. He received intelligence reports over three years regarding events in Sarajevo: the systematic slaughter of civilians, and the international community's criticism of the actions, which were properly documented. In all, although the defense is right in affirming the need for demonstrating the specific direction element, I understand that, in this case, it was fulfilled.

After three years receiving intelligence reports, the accused, as I understand it, had knowledge that his actions were causing the massacre of civilians. Thus, the defendant's participation being proved, with regard to specific direction as well, the conviction should be sustained.

China<sup>59</sup>

A s 0 1. Precedents

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2. It is the duty of a logistics officer to ensure the sufficiency of supply to the frontline, while the usage of the supply is determined by the frontline force. We should not expect the accused to control the usage of the supply.
3. If the accused was convicted of the crime, how many similar cases will exist throughout the world?

A s 0 First, the accused provided military assistance to the HVO. The act was to implement the decision made by the government and what the accused did was to perform his duties. Second, the existing evidence is insufficient to prove that the accused has aided or abetted the HVO in commission of the charged crime. Thus, the accused is not guilty.

A s 1 Specific direction shall not be an element for establishing the accused's aiding and abetting liability to the HVO's murder, persecution and inhuman acts against the residents in town. The HVO was not subordinated to the accused and did not need to obey his command. Horvat has supplied weapons, training and technical support to the HVO after becoming aware of HVO's discriminating killing of the civilian population. He should have known what would happen in the event of war, and he had inescapable liability for the occurrence of the killing. Including specific direction as an element of the crime will allow those behind the scenes to escape justice. The court represents the common conscience and universal values of human. Mass execution and killing of civilians are crimes against humanity and gross violations of human rights. Hence, the accused shall be punished severely to embody the consensus of mankind. I hold that the accused is guilty!

A s 1 A person who planned, instigated, ordered, committed or otherwise aided and abetted in the planning, preparing or executing a crime provided in articles 2 to 5 of the Statute shall be individually liable of the crime.

Any official position held by the accused, either head of state or chief of government or government official does not exempt the person from individual criminal liability or lessen the punishment.

For any act provided in articles 2 to 5 of the Statute, if a superior knows or has reason to know his/her subordinate is to commit or has committed such act and does not take any necessary and reasonable action to prevent such act or punish the actor, the fact that the act was committed by the subordinate shall not relieve the superior of criminal liability.

A s 1 As the accused has facilitate the provision of assistance to the army, the HV was provided with adequate logistical support for carrying out military operations, including inhuman forcible transfer and massacre. As a senior officer of the army, the accused should be able to know that those acts are likely to occur during military operations. Although the accused's assistance was not specifically given to promote inhumane acts, his actual assistance to the army and his ability to anticipate the army's conduct falls within the scope of "specific direction". Therefore, the accused is found guilty.

A s 1 Decision of the trial court is made based on the appellant's inactions on a specific behavior. It can be concluded from existing evidences and facts that the appellant did not take any action to prevent the criminal acts after becoming aware of the crime. During a continuous bombardment of Mostar which lasted for three years, the accused did not take any affirmative action to deal with civilian casualties.

<sup>59</sup> Translated by Linda Hao (Langscale Translation), reviewed by one of the authors (JZL).

No encouragement or support specifically directed towards a specific crime can be found. However, since the appellant, with the awareness of such crimes, had never taken any action to deal with the specific crimes occurred during the military attack, it can be established that the appellant has acquiesced to such behavior.

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A s 1 The facts found show that the accused was provided with information of the army's commission of acts against humanity but still offered 0 0 0 his assistance. The elements of the mens rea and the actus reus are consistent with each other. Therefore, the accused is guilty of the crime.

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A s 1 A state behavior shall be distinguished from an individual behavior when deciding whether a person shall be convicted of war crimes. The 0 0 0 accused is found guilty because he played an active role in committing the crimes against humanity; he organized and led the war crimes.

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A s 1 According to the precedent, it is relatively clear that the defense is not sufficient to acquit the accused. Furthermore, a person who 4 0 3 committed such acts shall be convicted of aiding and abetting pursuant to the Statute.

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A s 1 The trial court judgment is correct in applying the law. The accused should be found guilty pursuant to the Statute and Šainović decision. 4 0 4

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A s 1 1. Although the accused's assistances were not directed towards a specific crime, he has used his authority to help a specific army. The 0 0 0 interpretation of the meaning of specific direction can be extended accordingly.

2. In subjective and objective terms: subjectively, the accused was aware of the army's violent activities against the civilians; and, objectively, he provided logistical and technical assistance with the hope of, or being indifferent to the occurrence of, the criminal result. And such assistance played a substantial role in actuality.

3. In terms of the consequence, the accused's assistance substantially contributed to the commission of the crime. When determining whether an act constitutes a crime, the distance between the act and the consequence should not be taken into account as an essential factor. Rather, the standard should be whether the assistance has a material influence on the implementation of the crime.

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A u 0 According to Article 7 of the Statute, to find aiding and abetting liability, the specific direction requirement shall be satisfied and the aider 0 0 4 shall be able to foresee the practical effect of his assistance on the occurrence of crime. An aider who is not able to foresee that his assistance will facilitate the commission of a crime shall not be found guilty of aiding and abetting of that crime. In the present case, the Prosecution had no evidence showing that the accused has provided assistance with the awareness that his act would facilitate the commission of the crime. Hence, the accused is not guilty.

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A u 1 The precedent (Šainović) clearly suggests that specific direction is not a requisite element of aiding and abetting liability. The facts and 4 0 0 nature of the present case are not very different from Šainović. The accused is thus found guilty.

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A u 1 1. "Specific direction" is not a requisite element of aiding and abetting crime. 4 0 0  
2. The accused knew of the violent conducts of this organization but still provided logistics and technology assistance to this organization, i.e. knowingly provided the assistance.  
3. The facts pattern of the present case are different from those in the precedents, so the precedents are not applicable.  
4. Therefore, the accused should be held guilty.

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A u 1 First, the accused satisfies the subjective and objective elements of aiding and abetting liability under the Statute. In fact, the army he 0 4 4 aided actually committed criminal acts. Second, the central issue of the case is whether specific direction is an essential element of the crime. I contend that although specific direction is not explicitly provided in the Statute, the legislative purpose is to punish persons who aids or abets a war crime. The accused provided assistance and support in full knowledge that the army intended to commit unlawful acts of war and this action has clearly departed from the legislative intent of the Statute. From a practical sense, if specific direction is

considered as an element of crime, as noted by the prosecution, it's very unlikely to establish specific direction in its narrow sense in a real-world scenario. Including specific direction as an element of crime will make Article 7 of the Statute ineffective and meaningless in practice.

A u 1	The precedents show clearly that specific direction is not an element of aiding and abetting liability. The defense of the accused cannot stand. The accused shall be convicted of the crime pursuant to the related statutes and the precedents.	4 0 3
A u 1	It is true that the accused has aided and abetted the crime in violation of the Statute with the awareness of a war against a country. Although no explicit intent was found that the assistance was aiming at attacking this country, the accused's knowledge and the specific circumstances suggest that such aiding and abetting conducts was specifically provided for the commission of the crime.	0 0 4
A u 1	The accused does not challenge the fact finding of the trial court. Therefore, the Appeals Chamber will not discuss the factual issues here. The issue of the appeal thus focuses on whether "aiding and abetting" under Article 7(1) of the Statute requires "specific direction". In my view, this article requires "specific direction" provided that "specific direction" is construed as "providing material assistance with the knowledge that some specific crime is committed by the principal". This means that (1) the actus reus of "aiding and abetting" does not require the aider or abettor to directly aim at assisting a particular crime, but should look into whether "material assistance" is provided; (2) the mens rea element requires 'knowingly'. Thus, the elements of "specific direction" is similar to those of dolus eventualis, i.e. "the accused knew a specific crime could probably occur yet aided or abetted the crime", and specific direction shall be determined based on a definite subjective requirement in combination with relatively broad objective requirements. According to this standard, the accused obviously has met the specific direction requirement.	0 0 4

A u 1

A u 1

A u 1	The court reached a conclusion based on the facts of the case and the rules of the International Criminal Tribunal for the former Yugoslavia and applicable international statutes.	0 0 2
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r s 0	The precedent of this case is not very clear. However, as alleged by the accused, all persons who assume the general leadership responsibility will be found guilty of waging war if specific direction is not required. This will unnecessarily enlarge the scope of the crime. Moreover, the International Court of Justice shall limit its power rather than expanding the scope of law enforcement through improper application of precedents and therefore interfering with the internal affairs of other countries.	4 4 1
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r s 0	Substantial effect on the crime committed is a required element of aiding and abetting liability. Whether there is a substantial effect shall be determined on the condition of establishing specific direction. Since neither specific direction nor substantial effect was established in the trial court, the accused should not be convicted of the crime based on the existing evidences.	0 0 0
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r s 1	Subjectively, the accused knew the criminal acts committed by the army as well as the potential dangerous consequences of his assistance.	0 1 0
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Objectively, the accused helped the army perpetrate killings of civilians by providing material assistance.

There is an inevitable connection between the crime committed by the army and the assistance provided by the accused.  
I so decided based on zero tolerance to the crimes against humanity."

r s 1	As an army member, besides obeying orders and providing supplies, Horvat was also definitely responsible for safeguarding the national security and protecting people's interests, even for protecting the interests of citizens of other countries.	0 0 0
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Since Horvat knew that the provision of ammunition would probably wound the civilians yet he still did it, he is deemed to have

knowingly connived the harmful result.

Furthermore, Horvat did not lack alternatives or opportunities. Given that the army and the civilian have completely incomparable forces, he certainly could have reduced or even prevented further casualties by taking actions such as giving warnings or reducing the quantity of ammunition supplied.

Based on the foregoing reasoning, the Prosecution did not err in issuing the indictment and all charges to the accused are established."

r s 1	My decision is consistent with the trial court decision.	0 0 0
r s 1	Specific direction cannot be considered as a requisite element of aiding and abetting crime.	0 0 0
r s 1	Horvat provided material assistance to HVO, which substantially facilitated the war. The grounds for the prosecution are established and Horvat shall be found guilty.	0 0 0
r s 1	Specific direction is not a requisite element of the crime and the conducts of the accused have fulfilled the elements required for aider and abettor's liability. The alleged specific direction requirement is a too stringent element and shall not be required in the present case. Also, individual cases shall not question or amend the content of statutes. For all the crimes against humanity, the punishment to the conduct is far more important than the legal analysis of such a conduct. And there is a causal relation between the acts committed by the accused and the consequence. Therefore, the accused is held guilty.	1 3 2
r u 0	I agree with Judge Moloto's opinion.	0 0 0
r u 1	The accused directly participated in the decision-making process in the war against Serbia. He coordinated the provision of logistical assistance and showed a clear intention to provide assistance in the statement report to the SDC during his tenure as Chief of the VJ General Staff. I think Vuković is guilty taking into account the finding that "the legal standard does not require that the accused be the exclusive source of assistance".	0 0 0
r u 1	Specific direction is not an element of the crime pursuant to Article 7 of the Statute. However, the precedents of the Appeal Chamber interpreted this article in a different way. The material shows that the Tribunal determined that a crime should consist of four elements, i.e. subjective side, objective side, the subject of the crime, and the object of the crime. This theory was adopted by countries that were under the influence of the USSR. Therefore, the precedents of the superior court shall be only seen as reference or guidance, rather than binding interpretations of the law. Hence, we should find the meaning of the statute from the statute itself. Thus, specific direction is not a required element of this crime. The accused has satisfies all four elements of the crime charged and is therefore found guilty.	4 0 4
r u 1	1. Vuković's acts of assistance objectively facilitated the wounding of civilians in the war; subjectively, the accused knew the harmful result of his acts, which satisfies the requirement of Article 7(1) of the Statute; 2. With regard to the controversial issue in the appeal, namely whether aiding and abetting liability requires specific direction, the court believes that specific direction is not required by Article 7(1) of the Statute. For aiding and abetting liability to arise in criminal law theory, the aider or abettor is only required to have some general knowledge of basic elements of the crime which was alleged to be assisted. In fact, the specific direction standard stated by the appellant and set out in precedents does not require the aider or abettor to have knowledge about a specific crime he is aiding or abetting, but only require the aider or abettor to understand the basic elements of a crime. In the present case, as the facts show,	4 0 4

Vuković's acts of assistance with personnel and weapons, in combination with the element of the mens rea such as his knowledge that his assistance might facilitate war crimes, are adequate to convict him of criminal liability.

r u 1	The central issue is whether "specific direction" is a required element to hold the appellant criminally liable. Based on the precedents and the statutes provided, "specific direction" is not required by law and therefore the legal ground proposed by the appellant is not sustained.	3 0 3
r u 1	1. Regarding the actus reus, the accused provided personnel and weaponry assistance to the VRS, which in fact substantially facilitated the crime committed by the VRS. 2. Regarding the mens rea, the accused knew that the VRS would commit a series of crimes in the territory of Bosnia and knew that his assistance could substantially facilitate the commission of those crimes. 3. Specific direction is not a requisite element of the crime. It is sufficient to constitute the crime when the accused is aware that his assistance could substantially facilitate the commission of crimes committed by the VRS, while which specific crimes are committed by the VRS were not within the control of the accused. Further, the VRS did use the personnel and weaponry assistance provided by the accused to perpetrate the crimes, which has caused seriously harmful consequences for Bosnia.	0 0 0
r u 1	Regarding actus reus, the accused has provided logistical and personnel assistance; and regarding mens rea, he has acquiesced to the act of war and continued to facilitate the acts of assistance.	0 0 0
r u 1	In cases of remoteness, the accused can be convicted of aiding and abetting crime as long as his assistance has in fact facilitated the commission of the crime in term of the result. Therefore, the issue of specific direction need not to be considered	0 0 0
r u 1	The trial judgment is correct. Previous precedents do not set out clear rules that govern the current case. However, recent precedents indicate that the decision ought to be so.	4 0 0
R s 0	1. Entering into military assistance treaties between countries with regard to providing weaponry, equipment, logistical and material support is a normal international activity. Such decision is made by the government of a state, rather than an individual. Therefore, an individual should not be held personally responsible for this decision; 2. The accused provided weapons and equipment even after becoming aware that such weapons and equipment were used in killing of civilians. But such acts do not constitute aiding or abetting crime. First of all, his provision of weapons and equipment did not violate any international law. Secondly, the accused did not explicitly or implicitly cause another person to commit unlawful acts, but only provided tools to others who then used them to commit unlawful acts. Finally, the way the weapons and equipment were used did not depend on the will of the accused."	0 1 0
R s 0	There is no substantial evidence finding that this is an individual conduct.	0 0 0
R s 0	Precedents clearly show that specific direction is an essential element of aiding and abetting war crimes. The trial court is correct in applying the law. The accused should be found not guilty.	4 0 0
R s 0	War is a continuation of politics and rulers represent the interests of the ruling class. As an officer of the party who organized the war, the accused was making specific decisions to implement the goal of his supervisors and to achieve the strategic objectives; his issuance of order to providing supports shall not be regarded as his personal and subjective support to the massacre, even though he had knowledge of a few killing incidents. The law and the state impose more restrictions on the army members within the army management system than on regular citizens. Failure to obey a military order may result in death penalty. Therefore, we cannot force him to risk his life and career and expect him not	0 0 0

to provide assistance to the army in violation of his superior's order and strategic plan. The accused's order of providing assistance to the massacre was to fulfill his duties and the consequences shall not be attributed to the person who signed and issued the assistance order. Hence, the accused is not guilty.

R s 1 Aiding and abetting does not require specific object and shall not be interpreted narrowly, especially when a crime against humanity is in question. 0 0 0

R u 0 The assistance provided to the army had no direct or substantial effect on the commission of crime by the army. This is true even if the accused knew the practical effect of his assistance. Taking into account of both subjective and objective elements, the accused shall not be held criminally liable. 0 0 0

R u 1

R u 1 Vuković used his powers to provide assistance to the VRS with knowledge that VRS has committed multiple crimes, which has satisfied the elements of crime under Article 7 of the Statute. "Specific direction" alleged by the appellant is not a requisite element of the crime under Article 7 of the Statute. 0 0 4

R u 1 1. "Specific direction" is not a requisite element of the crime. The court believes that a person is liable for aiding and abetting so long as his aiding and abetting conducts facilitate the crime committed by the principal, even if the accused was not personally present at the scene of the crime. At least, a large number of defendants would escape from punishment and the purpose of international treaty and principles will be defeated, if specific direction is a requisite element of this crime. 4 4 1

2. During the war, Vuković, the most senior officer in the VJ, had great discretion in making decisions and implementing them. And certainly he also had the authority to oppose or even prevent an action. In the present case, Vuković provided extensive logistical and personnel assistance. Although he was not a member of the SDC, Vuković, with a good knowledge of the ongoing war, still participated in the meetings of the BDC and explicitly urged the SDC to continue providing assistance, and aided the VRS. The accused has spoken arrogantly and did not take any action to prevent the war. Moreover, the VRS had in fact benefited from such assistance during the war and had actually committed the crime.

3. The Bešić decision is not exclusively directed towards the present case and Vuković, the most senior officer in the VJ, shall not be exempted from individual criminal liability. Analysis shall be made based on the facts of the case. Therefore, it is appropriate to uphold the trial judgment."

#### France<sup>60</sup>

A s 1 AH Chief of the defence staff of the 3rd Croatian army is accused and convicted at trial to a sentence of twenty-seven years imprisonment for having aided and abetted the HVO in the commission of several crimes prohibited under the Geneva Convention of 1949. 0 0 0

"The actus reus is established by the provision of ammunition and other resources.

The mens rea is established by the accused's awareness of the offences and by the measurable and significant contribution to the commission of crimes.

The accused contends that the actus reus can only be established if the aiding and abetting was specifically directed at the commission of criminal offences.

<sup>60</sup> Translated by Damien Charlton with edits by Mareike Grundmann and one of the authors (HS).

By failing to show that the HVO did not depend entirely on the HV's assistance, AH has not provided sufficient reason for the Tribunal to overturn the decision of the panel of the chamber at first instance.

The judgment at first instance must be upheld.

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A s 1 The text of article 7(1) of the Statute does not include any express reference to a requirement of "specific direction" in the course of action undertaken by a person accused of being an accomplice ("aiding and abetting in the execution of a crime"). 0 2 4

It seems to me that the defence's arguments on this point ought to be rejected.

Rejecting the requirement of "specific direction" does not necessarily entail that a strict liability applies to one who provides resources contributing to the execution of a crime, as the criminal intent must still be established.

In the case at bar, the events took place over an extended period of time (from August 1993 to November 1995), and Horvat's mens rea is established by his knowledge of the crimes executed by the HVO, his attendance at meetings of the Defence Council, and by way of intelligence reports regularly brought to his attention. Overall, even if the HV and the HVO are to be treated as two distinct entities, the HV, under HORVAT's direction, made significant logistical contributions to the execution of the crimes at issue. Without the HV's logistical assistance, none of the crimes could possibly have been executed.

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A s 1 Article 7 of the statute provides for the individual criminal responsibility of any person "who planned, instigated, ordered, committed or otherwise aided and abetted in the planning, preparation or execution of a crime referred to in articles 2 to 5 of the present Statute, shall be individually responsible for the crime." 4 0 4

Contrary to what is contended by the defence, specific direction is not an essential element of responsibility for aiding and abetting, according to this court's jurisprudence.

Furthermore, it has been proven that the accused had knowledge of the crimes committed by the HVO, by way of information received from NATO, especially as concerns the bombing of civilians during the siege at Mostar; moreover, the accused regularly received intelligence from the secret services in addition to receiving summaries of international press coverage.

It is thus clearly proven that he had knowledge of the crimes committed by the HVO, which fall within the ambit of article 2, and which do not constitute mere acts of war.

It is not disputed that the accused provided significant logistical support and other means to the HVO, that he, moreover, contributed to strengthening that organization's operational capability by establishing personnel training facilities, which entitled HVO members to a particular status and to the payment of a salary. Finally, it is proven that he regularly urged the council to continue to provide assistance to this unit.

All of these elements thus allow for holding him responsible as provided by article 7 of the statute.

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A s 1 The accused was convicted on the following basis: "A person who planned, incited to commit, ordered, committed or in any manner aided and abetted in the planning, preparation or execution of a crime shall be individually responsible for the crime." 0 0 4

He maintains that in order to be responsible, the aid or assistance must have been provided with a view to the commission of a specific crime whereas this element of specificity is not contemplated by the incriminating provisions and is not an essential element of the criminal responsibility which nevertheless includes mens rea, in the sense that the accomplice must be aware that the acts he committed contributed to the commission of a specific crime by its principal author.

In the case at bar, it is established that Mr. HORVAT, the HV's Chief of the Defence Staff supervised the logistics of providing artillery and personnel to the HVO and participated in the CSD in order to ensure that this assistance be maintained.

Importantly, he was aware of the HVO's strategic objective, had been informed through different channels, including international

sources, of the crimes it had committed against the Muslims in Bosnia, which formed an integral part of the policy favoured by the Bosnian Serb commanders.

As he admitted in his testimony, he was aware that the HVO would not have the ability to pursue its objectives without the HV's support and assistance, in that the material aiding and abetting and moral support he provided in his capacity as its Chief of the Defence Staff facilitated the commission of crimes that he could not be unaware would invariably be committed against civilians.

The only conclusion is that, through his actions, he knowingly aided and abetted, by making available logistical and military support, the commission of crimes against civilians who were not participating in the hostilities in Bosnian cities.

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A s 1 whether Ante HORVAT is guilty or innocent depends on whether his acknowledged supplying of logistical and military resources to the HVO made him an accomplice to war crimes. 0 0 0

his role and military ranking, knowledge of the military strategy and of local conflict, and the briefings he received serve as evidence preventing him from legitimately arguing that he provided assistance without being aware of the criminal use to which the HVO would put them on the ground.

he was aware that providing them with materiel and personnel would enable their operations including the commission of acts considered crimes under international law. having regard to the totality of the evidence specific direction is not a determinative criteria in establishing the offence of aiding and abetting.

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A s 1 The treaty defines the elements of the offence, including the *actus reus* and *mens rea*. In the context of that definition, the defence argued in favour of a requirement of specific direction, according to which the assistance provided by the accused would had to have been specifically directed at the commission of the criminal offence committed by its principal author. 4 0 3

This issue was recently addressed by the appellate chamber (the chamber we supposedly constitute) following an exhaustive analysis of the jurisprudence on the matter. A quick glance at that decision indicates that it is a leading case of this court. The case notably decides that the requirement of "specific direction" is not a constitutive element of the offence at issue. As such, the question we must resolve is as follows: Whether the accused aided or abetted so as to contribute significantly to the commission of an offence all while being aware that his actions served to facilitate the commission of offences by their principal author? Was the assistance he provided significant and determinative in the commission of crimes and was he aware of it?

Having set out the applicable theoretical framework, let us examine the facts of the case at bar.

*A very quick analysis of the file (in 50 minutes)* requires us to focus on the established facts, that is, the facts in respect of which there is common agreement between the parties.

The evidence presented to and relied upon by the tribunal establishes that the accused participated in meetings of the supreme defence council and contributed to the taking of decisions to provide technical assistance to the HVO; he vehemently insisted that this assistance be maintained (we wish to specify that a true decision in the case at bar could only be arrived at following a comprehensive analysis of the evidence in order to ensure that the established facts are indeed accurate and that the facts presented as established are indeed established). It has been established that the assistance provided was both significant and determinative. The *actus reus* is therefore established.

As for the *mens rea*, the evidence establishes that the accused had been made aware of crimes committed against civilians, including bombings, by several neutral local and international sources. He could not in these circumstances question the objectivity of the information he accessed.

*Quite obviously, these findings are arrived at on the basis of cursory analysis that does not take into account all of the evidence a judge*

*might consider.*

*With this caveat in mind, and assuming that this overview is accurate in light of the evidence, I would affirm the judgment on appeal.*

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A s 1 The accused held the rank of commander, in his capacity as chief of the Defence Staff of the HV. He therefore had the power to decide and to supervise operations conducted in the relevant period : 1993-1995. 4 0 3

The documents produced, the testimonies provided and the accused's own statements establish :

-that he provided logistical support to HVO : weapons, ammunition, fuel, various other materiel,

-that he provided aid in the form of manpower: medical and experts,

-that he had full knowledge of the use of the resources and assistance being provided to the HVO, and that it would contribute to the strikes carried out on Muslim civilian populations at Mostar and Ahmići.

The accused, moreover, directly encouraged the HVO's operations through his participation in the proceedings of the Superior Council, of which he was a member and to whom he had communicated his desire that the prevailing policy be maintained. As this also establishes his actual involvement and the awareness he had of operations previously carried out, the fact that the accused was "remote" from the theatres of war is juridically inconsequential.

Concerning the necessity to characterize the specific direction of the participation this would add a requirement to the text. The fact that the accused provided direct assistance in full knowledge of the intended purpose (war in conditions contrary to the international order) and that he encouraged the continuation of the policy adopted by the HVO are sufficient in order to establish the complicity of which he made himself guilty by committing the acts at issue.

Precedent created by the Šainović judgement.

A u 1 On August 26 1993 Vuković was appointed chief of the defence staff of the Yugoslavian army, the VJ. 3 0 4  
He was indicted on the basis of article 7 of the statute of the ICTY for having abetted and aided the crimes committed in the cities of Sarajevo and Vlasenica by having made logistical support available to the VRS.

The Tribunal of first instance concluded in his guilt on this basis.

Vuković was sentenced to the term of 27 years imprisonment.

Vuković brought an appeal of this decision contending that he cannot be accused of having aided and abetted the VRS' commission of crimes due to the absence of specific direction, a component of the actus reus of the individual responsibility for aiding and abetting. Article 7 of the statute provides that whoever planned instigated ordered committed or otherwise aided and abetted in the planning preparation or execution of a crime referred to in articles 2 to 5 of the statute shall be individually responsible for the crime.

It does not emerge from these provisions and from the jurisprudence that that concept of specific direction constitutes a component of the actus reus of the responsibility of article 7 of the statute.

The conditions required by article 7 are established insofar as Vuković provided his support to the crimes of the VRS through the making available of logistical resources to the VJ army, with full awareness that the VRS was waging war against Muslim Bosnian civilians and that these crimes were both a strategy and an end in itself.

The numerous documents recording these crimes were made available to the chief of the defence staff of the VJ army for a period of three years.

Consequently, the individual criminal responsibility of Vuković on the basis of article 7 of the statute shall be upheld and the decision of tribunal of first instance confirmed.

A u 1 The actus reus (existence of crimes committed by the VRS against civilians) have been established. The only question concerns the presence or absence of mens rea which may in the case at bar be broken down as follows : whether the accused Vuković was aware that the VRS was committing the crimes identified in the indictment and, if so, whether he knew that the material and logistical support he directed the VJ to provide to the VRS would facilitate or assist the commission of these crimes ?

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It cannot be debated that even if the VRS was not under Vuković's control, the material and logistical aid and assistance was provided to it by the VJ under the accused Vuković's authority.

The argument raised by the defence regarding the absence of the mens rea, in that the accused would not have been aware of the specific direction to which the VJ would have put the resources provided to it by the VRS is doubly flawed in that:

-on the one hand the accused Vuković was perfectly aware of the VRS' activities and the crimes committing against civilian populations - as they were extensively covered by the international community and media including Serbian media and undoubtedly through the military chain of communication - and with this knowledge provided these forces with material resources to pursue not only their military activities but also their exaction against civilians in the manner established in the record ; the accused Vuković necessarily knew that the decisions he took would serve to facilitate and aid in the commission of crimes against civilians in the two areas at issue in the case at bar ;

-on the other hand the precedents and jurisprudence of this court cited by the defence do not establish that a specific direction is required in every case as an absolute condition to holding in the individual criminal responsibility of an accused such that the tribunal's decision was not divergent from the jurisprudence.

The mens rea is consequently established as the accused Vuković provided military resources to the VRS he knew could enable the commission or repetition of offences of which he had been informed.

The finding of guilt must thus be affirmed.

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A u 1 article 7 of the statute of the ICTY provides that whoever has planned, incited to commit, directed or committed or in any other way aided or abetted to plan, prepare or commit an offence listed at articles 2 to 8 of the statute, is individually responsible of the aforesaid crime.

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the accused invokes specific direction as a component of the actus reus for aiding and abetting and contends that the prosecution must demonstrate the commission of a distinct and separate offence aside from that of the mere provision of weapons in order to establish objective responsibility contrary to the statute , as waging war is not a crime in its itself.

However , as held by the ICTY in Šainović, specific direction was not a component of the actus reus of aiding and abetting.

Except to remove all of the substance from article 7 of the above-mentioned statute, the infraction of aiding and abetting is constituted as soon as :

the weapons provided have been used and have contributed to crimes in a substantial manner

the accused was aware that the weapons provided would probably be used with a view to committing crimes.

In the case at bar, it is uncontested that the accused has knowingly provided logistical support to the VRS all while being aware of their use by the VRS in the commission of crimes ( cf soldiers detached from his own army and paid by him , intelligence transmitted by the international organizations)

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A u 1 While it is not required that the assistance constituting the offence of aiding and abetting be an essential component thereof, it is necessary that it have played a significant role in the commission of the principal offence.

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The actus reus consists in the supplying of military and logistical support to the VRS, and which played a significant part in the

commission of the crimes listed in the indictment,

Statements made by the accused, in capacity as the Chief of the Defence Staff, as amplified by witness testimony, establish his awareness of the crimes that were being perpetrated by the VRS, which establishes the mens rea of the offence with which the accused has been charged,

The accused may not avoid responsibility by claiming he was acting under the orders of a superior (article 7 of the statute)

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A u 1 Article 7(1) of the statute of the ICT sanctions the act of aiding or abetting in any way the planning, preparing or execution of an offence 2 0 4

listed at articles 2 to 5. It is established in the case at bar that crimes targeting civilians were committed by the VRS, at Sarajevo (bombardments, shots) and at Vlasenica (capture of the city, forced displacement of Muslim civilians). These actions are qualified as assassination, murder, inhuman acts and persecutions, within the meaning of the above-mentioned provisions of the statute of ICT. It has been proven that the accused, by taking advantage of his status as chief of the defence staff of the VJ, provided significant logistical support to the VRS (ammunition, fuel and materiel...). He urged the Supreme council, of which he was a member, to continue providing this support. Finally, he addressed the VRS' military needs by directing the building of facilities for use by the VRS and ensured that the military personnel was paid a salary. Through his actions, he directly enabled the VRS to continue committing crimes. By virtue of his rank and of the intelligence and other information to which he was privy (diplomatic reports, newspapers, numerous documents...), the accused knew of the crimes that had been perpetrated against civilians. The statute of the ICT does not require that the material aid relate to premeditated acts, nor that the means provided be specifically those that were used. Nor is it necessary that the accused was present at the scene of the crime. What must be established is the facilitation of the commission of crimes through actions (here the logistical support) whose existence and nature cannot be ignored. Such is the holding of the previous decision of the court of appeal. The decision reached at first instance must thus be confirmed.

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A u 1 Whereas the offence of aiding and abetting assumes that these acts had a significant effect and thus facilitate the commission of crimes 0 1 0  
by their principal authors;

whereas in the case at bar X was perfectly aware of the VRS' strategic objectives;

that as a result the decisions were taken in full knowledge of the circumstances;

that the material support he provided was not limited to weapons but also included the making available of comprehensive logistical support without which the VRS could not have executed the crimes it did to the same extent and over such an extended period of time;

whereas specific direction is not an essential component of the actus reus in the offence of aiding and abetting, nor a prerequisite thereof, unless it is to be held that the cadre of directors of an organization providing comprehensive material assistance, in addition to moral support in the form of representations to the leaders of relevant governmental authorities, should be beyond prosecution and possible responsibility.

that, consequently, Mr. X is found guilty of the facts of which he is accused.

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A u 1 By the judgment dated ... V was found guilty as alleged. 4 0 4

V brought an appeal of the judgment on the sole legal issue of whether aiding and abetting within the meaning of article 7/1 of the statute of the ICTY requires that the assistance be specifically directed at the commission of a criminal offence.

Within the meaning of article 7/1 discussed above, whoever planned, instigated, ordered, committed or otherwise aided and abetted in the planning, preparation, or execution of a crime referred to in articles 2 to 5 of the statute shall be individually responsible for the crime.

The text of this provision does not require that the incriminated acts be accompanied by specific direction and the ICTY's judgment in

SAINOVIC holds that specific direction is indeed not a component of proving the *actus reus* for the purposes of establishing an individual's criminal responsibility for having so obviously aided and abetted the commission of criminal offences.

As V does not otherwise call into question the proof of the *actus reus* nor of the *mens rea* of the offences at issue, the court is resigned to upholding the judgment at first instance.

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A u 1 Vuković must be found guilty in accordance with article 7 of the statutes of the ICT:

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the commission of crimes formed an integral part of the VRS' war strategy and Vuković could not be unaware of it.

Yet, he provided support in the form of personnel that aided and facilitated and abetted the commission of these crimes by making available to the VRD a class of over-qualified personnel and by ensuring that it could remain in these positions for as long as possible.

On the other hand, even if it cannot be contested that he provided logistical support, a causal link has not been demonstrated between that support and the crimes perpetrated at Sarajevo and Sebrenica. The supplying of weapons in the context of war cannot be qualified as a crime against humanity.

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A u 1 The chamber has undertaken the relevant analysis by demonstrating that the accused possessed objective knowledge that his contributions amount to aiding and abetting. The case at bar does not involve the *ex post facto* conviction of a commitment and support in war that does not constitute an offence in itself, but indeed rather demonstrates that the initial project at the time at which the aid and assistance is provided does not only include an act of war but rather crimes organized against civilians in an organized and systematic manner. It appears that the offence of aiding and abetting is properly constituted since it is established that without the logistical aid provided the crimes could not have been committed. Whether or not the accused was present at the time the crimes were committed does not appear to be determinative insofar as the surrounding circumstances were well-known to the accused, and as the assistance he provided over an extended period of time cannot be regarded as an aberration. As soon as the perpetuation of such crimes was part of the intended undertaking, the major logistical support and encouragement differs from the support of a war company which is, as such, not punishable. Contrary to what the defence states, it differs from the simple supply of weapons in an armed conflict. Holding on to the requirement of specific direction would exclude all crimes before the international tribunal as soon as the traditional aims of war are mixed with criminal offences.

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r s 0 Considering article 7 individual criminal responsibility which provides:

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"A person who planned, instigated, ordered, committed or otherwise aided and abetted in the planning, preparation or execution of a crime referred to in article 2 to 5 of the present Statute, shall be individually responsible for the crime.

The official position of any accused person, whether as Head of State or Government or as a responsible Government official, shall not relieve such person of criminal responsibility nor mitigate punishment.

The fact that any of the acts referred to in articles 2 to 5 of the present Statute was committed by a subordinate does not relieve his superior of criminal responsibility if he knew or had reason to know that the subordinate was about to commit such acts or had done so and the superior failed to take the necessary and reasonable measures to prevent such acts or to punish the perpetrators thereof.

The fact that an accused acted pursuant to an order of a Government or of a superior shall not relieve him of criminal responsibility, but may be considered in mitigation of punishment if the International Tribunal determines that justice so requires."

Whereas upon reading the arguments of the accused, who appealed the judgment convicting him at first instance, the defences concern only the causal link that must exist between the assistance and support provided and the commission of punishable criminal acts; that, for the accused the logistical or human assistance must be made available by the accused with the specific objective of enabling the commission of criminal acts; for its part, the prosecution contends that the requirement of a heightened causal link should be rejected,

and that no recent case law requires it, the precedent being cited as authority resting on a legal qualification extraneous to that set in article 7.1 as reproduced above ;

Whereas the grounds of appeal only concern this issue of mixed fact and law, and that the remainder of the reasoning set out in the judgment of first instance does not appear to be contested and is taken as accepted for the purposes of this appeal;

Whereas the proven facts permit us to hold that the HV, under the impulsion of the accused, aided and abetted the HVO by providing it with personnel (by guaranteeing security of tenure and the payment of a salary) and material logistics; that this assistance enabled the commission of criminal offences between August 1993 and November 1995 at MOSTAR and during the summer of 1995 at AHMIĆI; and that it is accepted that the accused was aware that these acts of violence were taking place ;

But whereas this evident support was justified notably on strict military grounds; that the accused, while admittedly connected to the HVO, was not its military commander ; that the accused cannot correspondingly be seen as morally blameworthy for providing aid or assistance to an act that, based on the evidence, he neither ordered to be committed, nor encouraged, and that he indirectly permitted only by providing militarily justified strategies ;

Enters a verdict of not guilty.

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r s 1 Ante Horvat is charged, pursuant to article 7(1) of the Statute of the Tribunal, with having aided and abetted the crimes committed by the HVO at Mostar and at Ahmići.

4 0 4

The chamber of first instance concluded that "it has been proven beyond a reasonable doubt that Ante Horvat is guilty, pursuant to article 7(1) of the Statute, of having aided and abetted the following offences: count 1 (assassination, crimes against humanity), count 2 (murder, violation of the laws or customs of war), count 3 (violation of bodily integrity, crime against humanity), count 4 (assaulting civilians, violation of the laws or customs of war), count 9 (assassination, crime against humanity), count 10 (murder, violation of the laws or customs of war), count 11 (forced displacement, violation of bodily integrity), crime against humanity) and count 12 (persecutions, crime against humanity)".

On appeal, the accused argues that this Court's recent jurisprudence - in respect of article 7 of the Statute - establishes that aiding and abetting requires that the accomplice providing assistance or support that was specifically directed at the commission of the crime by its principal author. His arguments amount to seeking his acquittal.

The Prosecution, on the contrary, contends that it is inappropriate to read in a requirement of "specific direction" to the text of the Statute on the basis of an inaccurate reading of that jurisprudence.

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The facts as alleged against the accused are reliably recounted in the parties' submissions and in the decision of the chamber of first instance. It is appropriate to defer to that recitation.

Acts amounting to complicity involving aiding and abetting in the commission of the crime specified in the indictment. While the Chamber's recent jurisprudence holds that the acts constituting complicity must have enabled the commission of specific criminal offences, it is incorrect to require that each act of complicity have been "specifically directed" - a phrase that appears nowhere in the case cited, at the commission of relevant criminal offences. The analysis into complicity focuses on whether the accused enabled the commission of specifically identified criminal offences (in the case at bar the offences listed in the indictment) and with full knowledge of the circumstances.

In sum, and regardless of this proposed reading of the text and the jurisprudence, Ante Horvat is guilty of complicity within the meaning of article 7 of the Statute for having provided logistical support, personnel and high-quality strategic advice as the highest ranking official

able to provide such assistance.

On that note, the fact that the events took place in war time does not permit the accused to exonerate himself by alleging that responsibility in this case is collective, not individual.

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r s 1 Whereas the appeal is admissible.

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Whereas article 7(1) of the statute of the ICTY provides that “whoever planned instigated ordered committed or otherwise aided and abetted in the planning preparation or execution of a crime referred to in articles 2 to 5 of the statute shall be individually responsible for the crime.”

Whereas it is not alleged that HORVAT physically, and directly, participated in the aforesaid crimes.

Whereas it is not otherwise alleged that HORVAT specifically directed the commission of crimes;

Whereas he is accused of having provided logistical assistance that facilitated the commission of crimes, in that he supplied the weapons necessary to the commission of those crimes, logistics without which the crime could not have been perpetrated.

Whereas in addition the evidence proves that he had knowledge from various sources of the crimes committed by the HVO, and that he may not argue that he was unaware the purpose of the logistical support he provided.

That the facts established at trial do not show that he implemented instructions having put an end to these crimes.

Whereas as a result HORVAT’s behaviour may be considered, with the meaning of article 7 of the ICTY, as constituting the aiding in the commission of crimes provided in the present statute.

As a result, upholds the judgment rendered by the chamber of first instance and declares HORVAT guilty of the facts of which he is accused and sentences him to a term of imprisonment of twenty-seven years.

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r s 1 Individual criminal responsibility for aiding and abetting does not require that the assistance be specifically directed at the commission of a criminal offence, it suffices that the accused have been clearly and unequivocally aware of the objectives or activities of those he aided and abetted. The accused may be held criminally liable for having aided and abetted a criminal offence “when it is established that by his conduct he tacitly approved and abetted the offence and was positively disposed to its commission.”

In the case at bar, Horvat knew that the HVO was involved in committing offences and targeting civilians of Muslim origin. He provided all of the assistance required from 1993 to 1995, and it is even agreed to by the parties that the HVO could not have been operational during war time without the logistical assistance he provided. Horvat also had access to NATO documents establishing that the HVO was guilty of murders and assassinations of civilians of Muslim origin. He helped with the establishment of personnel training centres and created a special rank within the Croatian army under which HVO officers were designated. With full awareness of its crimes he provided the HVO with all of the necessary logistical assistance (weapons and financial).

Overall, even if the assistance Horvat provided to the HVO was not specifically directed at the commission of those crimes, he could not be unaware that his efforts furthered the HVO’s objectives and operations, and that it had been involved in committing crimes against civilians (of Muslim origin in the case at bar).

The guilt of the accused has thus been established.

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r s 1 To be determined is the issue of whether “specific direction” is a constitutive element of the mens rea of the offence of aiding and abetting the commission of a criminal offence, where the actus reus of the offence is not in dispute.

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The defence contends that it is necessary to prove that the accused shared in the goal of committing crimes with those to whom he has provided assistance, which is not the situation in the case at bar.

The prosecution contends to the contrary that it is not necessary that this purpose be shared, as this would add a supplementary

condition to the text. The prosecution also contends that it suffices that the accused have contributed to the commission of a crime he knew was possible by providing assistance of a significant nature.

In the case at bar, it is established that no previous decision addressing individual responsibility by way of aiding and abetting has expressly endorsed a requirement of specific direction. Indeed, the decision relied on by the defence concerns another type of individual responsibility, that of the crime of carrying out a common purpose, for which specific direction is constitutive of the infraction, but it does not extend this holding to cases of aiding and abetting.

Moreover, the text extends individual criminal responsibility to persons who provide aid to a third party with full knowledge of serious crimes the latter has committed. It is obvious that the provision is targeted at the person who provides assistance to a third party in order to achieve his own objectives even if he does not necessarily share all of the principal author's objectives goals. In this regard, the text intends to sanction the significant assistance as soon as awareness of the crimes being committed are established, and that would manifestly not take place, or not at the same magnitude, without this significant aid.

The evidentiary record allows us to hold that the accused indeed provided significant assistance, which had an important effect on the commission of crimes, while knowing of their commission by the third-party HVO to whom he provided weapons and logistical assistance. These elements suffice to conclude in his guilt without it being necessary to prove that he himself shared in the desire that these crimes be committed, as he was manifestly aware that he was facilitating their commission.

r s 1	Specific direction is not a constitutive element of the infraction with which the accused is charged. (see the reasoning of the prosecution). The material assistance and logistical support was provided to HVO with full knowledge that it would facilitate and encourage the commission of crimes against civilian populations.	0 0 0
r s 1	Whereas the Court has determined that on numerous occasions, Ante Horvat used his rank and status so as to aid the HVO in waging a war in which the commission of systematic criminal acts against Bosnia's Muslim civilian population was both a military a strategy and objective. The actions of Ante Horvat greatly facilitated the perpetration of these crimes because the HVO largely depended on the HV's supporting in order to fully function as an fully operational army, as exemplified by the siege at Mostar and Ahmići. The majority is furthermore convinced that all of Ante Horvat's aforementioned acts were willful. Whereas as has already been found, Ante Horvat adamantly encouraged Croatia's CDS to maintain its policy of providing assistance to the HVO. Notably, he supervised the supplying of significant logistical and technical assistance to the HVO. If the latter had not regularly been supplied with ammunition and other weaponry, in considerable quantities, if it had not been provided with fuel, technical expertise, repair services and personnel training, it would not have been able to properly carry out its operations at Mostar and at Ahmići, respectively. Whereas in addition, the court has found that Ante Horvat supplied military personnel serving in the chief of the defence staff of the HVO as well as experiences officers serving in subordinate units and ensured their security of tenure by way of the 30th personnel staffing centre. The payment of the salaries of the HVO's highest-ranking officials, including Petković, Ante Roso, Galić, Popović, Gvero, Tolimir and some of the other principal authors of the crimes alleged to have been committed at Ahmići and Mostar, largely assisted the HVO in planning and executing its operations at Mostar and at Ahmići. By establishing the staffing facilities, Ante Horvat ensured that the military personnel was paid the same salary and provided the same benefits as the HV, thus enabling them to accomplish their mission as part of the ranks of the HVO without having to otherwise worry about their material needs or those of their families. By attending to the HVO's essential needs, Ante Horvat created the necessary conditions for the latter to implement a war strategy involving the	0 0 0

perpetration of crimes against civilians.

Whereas the court acknowledges that the evidence does not establish that the weapons used to commit the alleged crimes originated from the logistical assistance supervised by Ante Horvat. However, the court notes that the acts of an accomplice by way of aiding and abetting need not necessarily have been “specifically directed” at facilitating the crimes. In the law of aiding and abetting, for the aid provided to be considered significant, it is not necessary that the accused have provided the weapon specifically used by the author, as this element of the offence may be established through the numerous other forms of material aid discussed above, which facilitated in a significant matter to the commission of crimes. In addition, to contend that assisting the HVO and advising the CDS formed part of Ante Horvat’s “ongoing duties” would not serve to exculpate him as the evidence has already established that this course of action significantly contributed to the perpetration of the crimes.

Moreover, the fact that other Croatian representatives, for example members of the CDS or of the Department of defence, also played a part in the assistance provided to the HVO does not overtake or outweigh Horvat’s contributions.

Whereas after having examined, in the circumstances of the case at bar, the Defense’s argument relating to aiding and abetting after the fact, the court considers that it may be invoked only to part of the assistance provided by Ante Horvat. The court is convinced that the acts committed by Ante Horvat to assist the HVO, in very large part, facilitated the commission of future crimes.

The court also notes that a causal link is unnecessary as between Ante Horvat’s course of action as an accomplice by way of aiding and abetting and the perpetration of crimes, nor that his acts constituted a necessary condition to the perpetration of crimes, nor that they have be a condition *sine qua non*.

Whereas to summarize, the court concludes beyond a reasonable doubt that, whether considered individually or in their totality, the logistical support and the manpower supplied by Ante Horvat significantly contributed to the crimes committed by the HVO at Mostar and at Ahmići as alleged in the indictment.

Whereas consequently the court affirms the judgment of the tribunal of first instance as to both the guilty verdict and the sentence imposed.

r s 1 Ante HORVAT claims that the *actus reus* of the offence of aiding and abetting requires that specific direction be established to qualify as 0 0 0 a war crime, which was not the case for him; however the *actus reus* may involve different forms of intervention which do not require neither the physical presence of the accused, as occurred in the case at bar, nor the commission of any physical acts ; in other words, the fact of otherwise making logistical means available, of permitting members of the UVO army to spend their salaries in order to undertake their criminal actions, characterizes the *actus reus* of aiding and abetting, without needing to determine whether the accused acted with the specific objective of exterminating the Muslim members of local communities. The proof of the existence of this *actus reus* is established in the case at bar, the accused having himself admitted that, as Chief of the Defence Staff of the UV, he had access to high quality intelligence in relation to the means available to the government in addition to the power to make decisions, both of which allowed him to aid and abet the UVO.

Consequently, the first instance judgement shall be confirmed concerning the guilt and the quantum of the sentence.

r s 1 It has been proven that the accused provided very significant logistical support, over a significant period of time, while being full aware of 4 3 4 the crimes committed by the HVO. This logistical assistance played an essential role in the perpetration of these crimes (weapons, ammunition, manpower).

On appeal, the accused contends that these elements are insufficient to constitute the offence of aiding and abetting on the grounds

that it must be proven that this aid was specifically directed at the commission of crimes.

Aiding and abetting the commission of offences listed in the text of the statute of the ICTY do not require the concept of "specific direction" as contended by the accused, which arises from a decision rendered in another matter by the ICTY.

Aiding and abetting the commission of a crime must be analyzed on a case-by-case basis.

In the case at bar, the accused provided logistical and operational means to an armed faction he knew was committing war crimes and crimes against civilians, and which he knew would use those resources in the commission of crimes. The fact that the resources would also have been used for acts of war not subject to criminal prosecution cannot override the fact this aid is criminal in nature.

In other words, it cannot be required that the supplying of material means had been exclusively directed at the commission of a specific crime, unless we are to hold any significant material aid provided in times of war as not being amenable to prosecution if it is also used for legal purposes.

It must, however, be established that the accused was fully knowledgeable of the commission of crimes by individuals to whom he directly provided weapons and ammunition, which is the case in the case at bar.

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r s 1 The acts undertaken by the accused facilitated the commission of a criminal offence listed in article 7;

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The actus reus is constituted by the material assistance provided for a particular period (weapons, salaries, personnel)

The intent is characterized by the repeated nature of the assistance the accused provided to the Serbian and Croatian armies

He received real-time updates of these armies' actions, and never intervened to try and put them to an end. On the contrary he recognizes having remained insistent with his superiors in respect of continuing to provide assistance, while being fully aware of its contribution to the commission of crimes, thus giving rise to the individual criminal responsibility of the accused.

It is not required that assistance had been specifically directed at the commission of that offence, the contrary finding has no support in the statutory language. The case cited by the accused is based on different facts than those at issue in the case at bar.

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r u 0 The definition appearing in article 7 of the statute of the ICTY includes aiding and abetting by an accomplice. However, the formulation of

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mens rea (guilty state of mind) for complicity identified by the ICTY in various cases, presupposes that the accused specifically directed the commission of the criminal acts, even if the accused did not directly participate in their commission.

The knowledge that an accused could have had of any acts of violence being committed cannot be invoked as proof of his guilt as he was merely providing material and moral support without being certain that only his ammunition and weapons were those used in the two operational theatres targeted (Sarajevo and the second city) nor that they were being used against civilians or against persons targeted only on the basis of their religion or ethnic origin.

The ICTY's strictly-defined legal frameworks also aim to prevent bringing charges against third parties that are more or less remote from criminal activity undertaken using tools and materials they may make available.

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r u 0 The essential question in analyzing the criminal responsibility of Borislav Vuković on the charges of aiding or abetting the commission of discriminatory crimes committed by the VRS at Sarajevo and Vlasenica concerns the determination by the appellate chamber of the exemption of the prerequisite of "specific direction" of facilitating particular offences.

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In the case at bar, the tribunal of first instance held that the acts of an accomplice in the form of aiding or abetting need not necessarily have been specifically directed at facilitating the crimes, which amounts to establishing a presumption of knowledge of the criminal intent of individuals by one who provides them in advance with the military means to wage war in the course of which discriminatory acts of violence are perpetrated.

In the absence of direct evidence of such knowledge by the accused of the specific direction of the VRS at the theatres of war at Sarajevo

and Vlasenica, or of a proximity of assistance that was targeted towards the realization of the criminal intention, the appellate chamber cannot endorse an analysis of this kind and must overturn the guilty verdict.

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r u 1 The mens rea actus reus of the prosecuted facts are present without the accused being able to avail himself of some “specific direction” 0 0 0 of his participation in the crimes committed.

The accused clearly provided his support and assistance to the armed elements of the VRS while fully knowing, as he recognized, that the latter were carrying out massacres of civilian populations.

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r u 1 Vuković must be found guilty pursuant to article 7 of the statute and the appellate decision must affirm the decision of the tribunal at 0 0 4 first instance; indeed Vuković, in his capacity as chief of the defence staff of the former Yugoslavia was aware of the crimes that the VRS (Serbian population that perpetrated several attacks against the Muslim population) were committing.

Actus reus; as the chief of the defence staff, he was responsible for essential logistical strategy without which no military force could act. He was notably able to provide a certain type of bomb at a given time.

The complicity envisaged by article 7 of the statute encompasses the course of action undertaken by Vuković who in the course of his official duties provided to the VRS the logistical opportunity to pursue its objectives. To act by omission in the sense of not acting to prevent does not in any way operate to exonerate the accused because it is matched in the case at bar by the mens rea,

Mens rea:

This is the cornerstone of the legal analysis.

By virtue of his high ranking in the military hierarchy of the Yugoslavian army Vuković was indeed perfectly aware of the VRS’ animating objectives.

Yet while knowing of the extent of their crimes against the civilian Muslim population of Yugoslavia, he persisted within the scope of his military duties in providing them with additional means to oppress this demographic group.

The defense’s argument that Vuković did not participate directly in the crimes is unconvincing to the extent that he willingly provided logistical support that was indispensable to the VRS’ criminal acts.

That Vuković made himself an accomplice of the VRS within the scope of his official duties is an equally unconvincing argument because Vuković provided resources in with full knowledge of the circumstances, and cannot seek to exculpate himself by hiding behind his official duties.

Arguments of this nature are frequently made, but Vuković participated with full knowledge and made himself complicit in crimes against humanity perpetrated against the targeted population.

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r u 1 Article 7 of the statute of the ICTY does not require that the concept of specific direction be considered for materiality in the complicity in 0 0 4 crimes against humanity in the form of aiding and abetting. It suffices that the assistance provided on both the human and logistical levels have been sufficiently significant and determinative for the offence to be constituted. Vuković, on account of his position, as chief of the Yugoslavian army, allowed the VRC to commit crimes against humanity, by supplying significant quantities of weapons and by allowing VRC military combatants to continue to benefit from entitlements afforded to the Yugoslavian army.

Vuković was perfectly aware of the goal of the attacks carried out by VRC soldiers, being regularly updated of the acts committed and participating in meetings. On account of rank in the military hierarchy, Vuković played a determinative role in the commission of acts and contributed to them through the means he supplied. He also admitted that he could entirely have refused to provide such significant quantities of weapons and ammunition. He expressed no regrets as to the crimes committed.

r u 1 Article 7 of the Statute provides for individual criminal responsibility for aiding and abetting based on the provision of support with knowledge of its destination, without proof of specific intent being necessary. Article 7 does not require that the accused have been present at the place where the crimes were committed or have specifically ordered their commission.

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In the case at bar, it emerges from the evidentiary record that the accused:

-provided assistance of a determinative nature, in the form of human resources (making available soldiers and non-commissioned officers, payment of salaries), materiel (munitions and weapons) and logistics (improvement of weapons and bombs) at a time when the VRS did not have the operational capacity to lead operations on the ground on its own.

-was aware that the resources he provided were used at Sarajevo and Vlasenica, and that the VRS' original strategy was to deliberately target the Muslim population, even prior to the capture and siege of Sarajevo and that the accused had been made aware of the crimes that had been committed (assassination, murder) through intelligence briefings he received and in international reports throughout the entire duration of the war.

-did not stop providing resources and assistance to the VRS despite having the means and several opportunities to do so, on the contrary, with full knowledge of the facts, he advocated for the maintenance and increase of support provided to the VRS by the regular army, with knowledge of the use to which it would be put. He cannot hide behind the CSD's authorization, having regard to the use of the weapons in the commission of crimes and to his own repeated requests to continue providing weapons to the VRS.

As such, the accused is fixed with responsibility for the crimes of which he is accused, as the assistance he provided significantly contributed to the perpetration of crimes against civilians, contrary to the law of war as recognized under the Statute, and with full knowledge of the facts.

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r u 1 At the outset, and according to the text of article 7(1) of the statute of the ICTY, the legal element is present as this article targets complicity in the crimes listed in articles 2 to 5, via the notion of aiding and abetting (planning, instigation or abetting).

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The contents of the indictment and the evidentiary record establish the materiality of the logistical support provided to the VRS by VUKOVIĆ in his capacity as the armies' chief of the defence staff, based on the totality of the acts committed by the VRS and on the unit of which VUKOVIĆ was in charge.

The mens rea of the offence of complicity in crime have also been established as the Yugoslavian authorities and VUKOVIĆ were aware of the crimes perpetrated against Muslim civilians due to widespread international reporting (diplomatic or UNO) and to his attendance at every meeting of the Superior council of the defence despite not being a member thereof. He was moreover responsible for the territory in which the VRS operated.

If the complicity in crimes, requires, within the meaning of the Vasiljević decision issued following the judgment at first instance in VUKOVIĆ, that the support provided be specifically directed at the commission of crimes, this circumstance or this condition is established in the indictment documents. In fact, the nature and magnitude of the crimes committed by the VRS could only have been facilitated by the type of logistical assistance provided by VUKOVIĆ, particularly tied to the supplying of weapons that facilitated the bombing of Sarajevo, and thus of civilians. The same is true for the VRS' forced dispersal/removal/ of the Muslim population from VLASENICA. The incontestable knowledge possessed by VUKOVIĆ of acts perpetrated by the VRS, in the context of the initial military mission but also as to the acts committed in its execution (crimes against humanity), establishes the condition of specificity identified in the Vasiljević judgment.

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r u 1 the evidentiary record shows that the accused provided resources essential to the VRS' commission of criminal offences such that the conditions listed in article 7-1, upon which these proceedings are based, have been met ; an overbroad reading of the jurisprudence cited

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cannot justify treating the concept of specific direction as a prerequisite to establishing the *actus reus*, especially as it involves adding a requirement that the statutory text itself does not prescribe ; that in any event, the course of action undertaken by the accused demonstrates that he willfully supplied a variety of resources while being fully aware of the use to which they would be put such that he may not validly contend that he was ignorant thereto; that the assistance was provided specifically for the purpose of enabling the VRS to undertake its criminal activities targeting civilians of Muslim faith ; that the judgment must therefore be upheld.

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r u 1 Vuković requests the Tribunal to hold that the international law governing criminal responsibility for aiding and abetting requires for the *actus reus* that the assistance have been specifically directed at the commission of particular criminal offences ; Article 7-1) of the statute of the ICTY relates to the *actus reus* of the criminal responsibility for aiding and abetting (*actus reus* of complicity).

Requiring that the course of action undertaken had been specifically directed at the commission of criminal offences by the principal would amount to imposing a supplementary condition that does not appear in the text of article 7 1) discussed above.

Every provision of this article must be strictly construed.

The appeal brought by the accused is dismissed and the judgment of the Chamber of first instance confirmed.

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R s 1 Horvat, the chief of the defence staff of the Croatian army, is accused of having aided and abetted the commission of crimes at the Bosnian cities of Mostar and Ahmići by facilitating access to logistical and military resources for the council of the defence of the Croatian Republic of Bosnia-Herzegovina ("HVO") . Throughout the Bosnian civil war, the HVO bombarded and massacred civilians at Mostar and undertook to forcibly displace and massacre the Muslim population at Ahmići. Its war strategy consisted principally of massacring civilians. This armed group could not, however, have carried out such massacres without the assistance of chief of the defence staff of the Croatian army and of its high-ranking officials, all of whom received intelligence and media updates and were thus fully aware of the crimes the HVO had been committing. The assistance Mr. Horvat provided in his role as one of the highest ranking military officials included the weapons, ammunition and other equipment used in carrying out some of the massacres. The HVO indeed insists that it would not have been able to strategically wage war without the HV's logistical and technical resources. On this point as well, the assistance Mr. Horvat provided was significant in that he contributed to the promotion of high ranking HVO officials, assigning them to the 30th staffing and training centre. This assignment came with a slew of benefits and thus discouraged HVO officers from defecting. Mr. Horvat is indeed guilty on the counts of prevention, having supported and thus aided and abetted in the HVO's war strategy by supplying it with human and logistical resources, all while being fully aware of the its activities. The judgment at first instance will therefore be upheld.

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R s 1 -the mens rea is not disputed (the fact that the accused had knowledge of the state of mind and crimes committed by the HVO) *on the actus reus* 0 1 0

1. There was indisputably a level of aid (material), moral support, and abetting which had the effect on the perpetration of crimes (concretely Horvat arranged for material resources by which to wage war to be provided to the HVO)

2. the central issue on appeal is whether if one hand, the connection between the aid and the commission of crimes by HVO is direct or indirect and if it is indirect to prove in that case whether Horvat's aid was directed "specifically" at the commission of these crimes. In my view, the arguments (of the accused and of justice Moloto in his dissenting opinion) do not convince me that the connection was indirect (especially the fact that only 10% of the bullets provided by the accused were ultimately used in crimes or that Horvat did not directly distribute the weapons to the soldiers. or that the HVO had received assistance in the form of fuel from other sources..)

It is indisputable that the aid and support provided by Horvat played a significant role in the commission of crimes (especially because he

acted for the express purpose of the HVO continuing to receive logistical support all while being fully aware of the crimes (their nature, the number of victims, the perpetrators' state of mind) that the HVO was committing - attending meetings, summaries of media reports, etc.. -). This went beyond logistical assistance limited to the purpose of "waging war".

R s 1 The main issue is the characterization of the actus reus of the crimes of which M. Horvat was accused.

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Referring to the Bešić case, he emphasized that it was necessary that the aid provided to the crimes targeted by article 7,1 of the statute of the ICTY be specifically directed to the perpetration of crimes committed by those to whom the aid benefited.

It appeared to us that this precedent could not be usefully invoked in the case at bar as the accused did not have the same level of operational responsibility as M. Horvat.

On the other hand, some cases (Mrksik, Blagojevic) have held that the actus reus does not require a finding that the aid was specifically directed at the perpetration of crimes, once this finding arises implicitly from the fact that this aid had an important effect on the perpetration of crimes, as was the case in the case at bar in respect of Mr. Horvat's status in the Croatian army, his duties being close to the president of the Republic of Croatia.

It thus appears to us that a distinction must be drawn in the characterization of the actus reus:

-where the duties performed did not make it foreseeable that the aid would have a significant effect on the commission of crimes it is required that the aid was specifically directed at the commission of those crimes;

-where the duties performed by the accused were of higher rank it is sufficient that the aid played a significant role in the commission of the crime in order for it to be treated implicitly but necessarily as having been specifically directed at achieving such a purpose. In so holding, the tribunal correctly applied the statute.

R s 1 Introductory : the general conditions for the application of the law (armed conflict....) : noted

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According to article 7-1 of the statute of the ICT (Yugoslavia), whoever planned, incited the commission of, ordered, committed or in any other manner aided and abetted the planning, preparation, or execution of a crime listed at articles 2 to 5 of the statute is individually responsible for the relevant aforementioned offence.

The accused is charged with aiding and abetting the commission of offences, listed in articles 2 to 5 of the statute, by the group known as HVO, by having, in his capacity as Chief of the Defence Staff of the HV, directed that extensive logistical support, weapons, fuel, and ammunition be provided to the HVO so that it could commit crimes against civilians during the period of August 1993 to November 1995.

REVIEW of the elements of proof contained in the record (found by the tribunal at first instance): noted

Simply providing assistance cannot, on its own, in the absence, of the mens rea, constitute the offence.

As such, the initial provision of means, without knowledge of the commission of the crimes listed in articles 2 to 5 of the statute having been established, cannot constitute the relevant offence.

However, in the case at bar, it is clearly established that the accused had, as of (DATE XX TO BE SPECIFIED ON THE BASIS OF THE EXHIBITS IN THE RECORD (NOT AVAILABLE)) knowledge of the commission, by the HVO group, of recurring acts constituting offences listed in articles 2 to 5 of the ICTY statute, through the use of material means provided, notably on the MOSTAR site, and on the AHMIĆI site, during the summer of 1995.

The accused made himself guilty of a violation of article 7-1 by continuing to ensure, in his capacity as the HV's Chief of the Defence Staff, the provision of logistical support to the HVO, while fully knowing that the HVO would put it to use in a manner contrary to the statute.

R s 1 Article 7 1) of the statute of the ICTY provides that "a person who planned, incited to commit, gave, committed or in any manner aided and abetted in the planning, preparation or execution of a crime referred to in articles 2 to 5 of the present statute shall be individually

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responsible for the crime."

The concept of "aiding and abetting" is considered on an *in concreto* basis, according to the particular facts of each case.

It encompasses the *actus reus* and the *mens rea*.

The accused argues that the offence of "aiding and abetting" must be directed "specifically at the commission of a crime" according to his interpretation of the appellate chamber's decision in "Bešić"

The prosecution rejects this argument by contending that such an interpretation of article 7(1) of the statute is overly restrictive.

It is useful to recall that article 7(1) of the statute of the ICTY provides for individual criminal responsibility for the fact of having "in any way aided and abetted the planning, preparation or commission of a crime (...)".

In the case at bar, the evidence establishes that the accused, the HV's chief of the Defence Staff, regularly provided his logistical support to the HVO and even participated in the CSD's deliberations that decided that this support should be maintained : see notably exhibit P2203 : minutes of the meeting of the board of the HV defence staff on 6/1/1995 : statements of the accused who confirms having no regrets for the fact of having always given all material support to HVO.

The *actus reus* is thus established.

On the *mens rea*:

The language of article 7 of the statute of the ICTY does not mention any requirement of having specifically directed the commission of a crime.

Reading in "specifically direct the commission of a crime" amounts to requiring a heightened moral element that is not provided for in the incriminating statute.

In the case at bar, the accused knew of the crimes being committed by the HVO, particularly against civilians of Muslim faith, even before becoming the chief of the defence staff of the HV in 1993 : large amounts of information to this effect were forwarded to him directly, notably from NATO, including information that justified the creation of the ICTY.

He provided material support in full awareness of the crimes committed by the HVO, and that the crimes were facilitated by this logistical support, especially the supplying of weapons.

The *mens rea* is thus established.

Finally, adding the requirement of specific direction to the offence of aiding and abetting would amount to imposing a burden of proof that is impossible to satisfy, as this concept applies by definition to a person who was not directly implicated in the commission of crimes.

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R u 1 The Chamber of First Instance correctly declared Vuković guilty of aiding and abetting as envisaged at article 7 of the Statute governing this Tribunal. Article 7(1) of the Statute provides that: 0 0 4

"A person who (...) aided and abetted in the planning, preparation or execution of a crime referred to in articles 2 to 5 of the present Statute, shall be individually responsible for the crime."

Aiding and abetting in the planning, in the preparation and execution of a crime must in penal terms be strictly interpreted due to their general character.

It involves the fact of providing, with knowledge of the crimes committed, effective assistance that had an actual effect, neither specific nor exclusive, but that had a reasonably significant impact on the perpetration of the crime by those to whom it benefited.

It emerges from the parties' submissions and from the evidentiary record that Vuković was aware that the VRS was committing war crimes but nevertheless provided it with logistical resources and manpower that had a reasonably significant effect on the commission of

additional war crimes.

On this point, the judgment of guilty of the Chamber of First Instance shall be confirmed.

R u 1 Overview of the law:

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- general principles of criminal responsibility (legal basis, actus reus, and mens rea)
- article 3 SICTY (armed conflict);
- article 7 ( 1/ A person who planned, instigated, ordered, committed or otherwise aided and abetted in the planning, preparation or execution of a crime referred to in article 2 to 5 of the present Statute, shall be individually responsible for the crime. 3/ The fact that any of the acts referred to in articles 2 to 5 of the present Statute was committed by a subordinate does not relieve his superior of criminal responsibility if he knew or had reason to know that the subordinate was about to commit such acts or had done so and the superior failed to take the necessary and reasonable measures to prevent such acts or to punish the perpetrators thereof.)

Overview of the relevant proven facts:

\*VRS : war strategy : perpetration of war crimes, notably against civilian populations (information from multiple sources of which the accused could not have been unaware)

\*Accused : in his capacity as the Chief of the Defence Staff of the VJ : made available to the VRS various types of logistical and human resources (by the assignment of the staffing headquarters and continued provision of financial and material entitlements to VRS officers) Through numerous interventions highlighted by the Prosecution and admitted to in part by the accused, it is common ground that he was aware of the significance of these various means of support to the continuation of the VRS' activities the political objectives of which were known to him (aware through numerous sources of information that the VRS was committing war crimes, notably against civilians, notably at SARAJEVO);

It is thus established that his support to the VRS in various ways helped this army to commit the various military actions targeting civilians. To the extent that the accused was the highest-ranking officer of the VJ and had the last word in deciding the assistance provided to the VRS and that overall, he had full awareness of the crimes of war the VRS was committing, he cannot reasonably contest (a collection of serious and mutually-sustaining indicia) that he was aware that his assistance permitted the VRS to successfully implement its war strategy.

R u 1 On the basis of article 7 of the statute criminal responsibility for having aided and abetted in the planning and preparation or execution of a crime in the case at bar by having made logistical assistance available.

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On the basis of the 1999 Tadic case which defines complicity and the concept of significant contribution

In light of that by his status and rank : chief of the defence staff who directed the supplying of resources he could not be unaware the impugned acts without it being required that he had specific knowledge of the precise actions carried out in all of their constitutive elements lest we are to conflate coauthors and accomplices.

The evidence establishes that he was regularly briefed on the crimes being committed and that he persisted in providing support until the very end of the war.

In the Bešić case the court requires specific direction because the assistance is remotely connected to the acts which is not at issue in the case at bar considering his high rank and commanding status.

The degree of assistance provided establishes that the VRS could not have committed its crimes without the assistance provided.

## Germany<sup>61</sup>

A s 0	The conviction should be reversed. It has not been shown that the Defendant exerted significant influence on the commission of the crimes. The acts of support, which are not disputed, had no direct specific connection to the murders, torture, etc. Thus, the required subjective element of the offense is not given.	0 0 0
A s 1	<p>This appeal turns on the legal question of whether aiding and abetting pursuant to Art. 7(1) ICTY requires aid be specifically directed at the commission of a specific war crime.</p> <p>The Defendant claims that no specific direction is necessary, the Prosecution claims that it is irrelevant whether conduct is specifically directed at the commission of war crimes.</p> <p>To answer this question, it is necessary to consult not only the text of Art. 7(1) ICTY but also the telos (meaning and purpose), as well as the larger context of norms and the history of their creation.</p> <p>The text of the statute neither calls for nor denies the necessity of a specific direction.</p> <p>The meaning and purpose of the norm is to ensure that not only the principal offenders but also the “background figures” are made responsible for their role in the commission of war crimes. Thus, the telos of the Statute is designed precisely to cover cases like that of the Defendant. Owing to his special position as Chief of the General Staff and his closeness to President Franjo Tuđman, the Defendant had not only knowledge of but also a certain influence on decisions, and therefore can be held responsible. The telos of the statute does not require specific knowledge of each individual war crime, since it is actually typical, in war-crimes cases, that war crimes are committed randomly or in a coordinated fashion, in large measure, and, with participation from numerous different actors. Thus, the telos of the statute is satisfied when the Defendant has abstract knowledge of serious crimes.</p> <p>The history ... (I cannot comment further owing to lack of knowledge, but in a real case I would study this beforehand and consider its relevance to the decision).</p> <p>The position of this norm within the other norms of the ICTY also supports the interpretation that aiding and abetting need not be directed to a specific but rather to the abstract commission of a crime. Articles 3 and 5 of ICTY regulate the specific war-crimes liability of primary offenders, while Art. 7 very broadly regulates aiding and abetting liability. The definition of aiding and abetting includes almost all conceivable objective means of committing the offense. The subjective element of the offense requires, at the minimum, knowledge of the commission of crimes as defined by Art. 3 ff. ICTY. This knowledge may not be vague, like a mere suspicion. However, the overall context of other norms indicates that the knowledge need not extent to the specific commission of specific crimes, since such concrete details might well not even be completely known by the primary offenders.</p> <p>In the case of the Defendant, he was specifically aware that serious war crimes had been committed in the cities of Mostar and Ahmići. Nevertheless, he continued supporting the HVO in the form of ensuring salaries continued to be paid and arranging logistical support. Thus, the Defendant did not know of the specific “manner of use” of the goods he supplied, but did have permanent (insider) knowledge of the HVO’s general approach in the areas of Mostar and Ahmići. This is the typical case for those who aid and abet (para)military groups in the commission of war crimes.</p> <p>Accordingly, the first-instance judgment should be affirmed.</p>	0 0 4
A s 1	Horvat fulfilled the conditions for individual criminal liability pursuant to Art. 7(1) combined with the crimes enumerated in Art 7(3) by the principal offenders in Mostar and Ahmići. His logistical, material, and personnel support made possible and facilitated the	0 0 4

<sup>61</sup> Translated by Andrew Hammel.

commission of the crimes by the HVO. He also knew that the HVO received "significant aid" from his actions. Further, he knew of important elements the criminal activities of the HVO; this suffices. It is unnecessary to show specific knowledge of the specific underlying crime.

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A s 1 The first-instance decision of the Tribunal is affirmed.

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#### Reasons

The first-instance decision of the Tribunal is not legally erroneous. In particular, the external element of aiding in abetting as defined by Art. 7(1) of the Statute does not require that specific support be provided. This is especially the case when – as here – specific support can be found only when one assumes that crimes were furthered by specific actions – that is, when general acts in support are excluded from the category of acts punished as aiding and abetting. Even the text of Art. 7 provides no support for such a broad interpretation, since it speaks only generally of a requirement that aiding and abetting must be provided during the commission. This formulation includes acts of support prior to the offense which set the stage for later, specific crimes. This approach would not criminalize neutral acts. The subjective elements of aiding and abetting limit liability to those acts in support which facilitate a specific crime. The abettor must intend to assist in the commission of crimes which can, at the minimum, be identified. For this reason, it is also incorrect to argue that only the objective element of a specific act in support prevents the criminalization of ordinary military activity, or generalized support provided before the offense. The persons providing support must be aware that their activities will assist in the commission of intended crimes. General support for military activity is insufficient to support a conviction under this definition.

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A s 1 The elements of aiding and abetting are satisfied by the provision of ammunition, etc. in the knowledge that it will be used to commit the most serious crime under international military law, since it was also used against civilians. It need not be decided whether specific support of the HVO is required for aiding-and-abetting liability, since he in fact did provide such specific support. His knowledge of the continuing human-rights violations of the HVO is sufficient to satisfy this standard. In fact, the HVO's actions could not even have taken place without his logistical support.

A s 1 Contrary to the Defendant's assumption, the specific direction of acts in support is not part of the external elements of the offense under international law.

No such condition is found in the text of Article 7 of the Statute.

Further, previous decisions, including the Šainović decision, do not impose this requirement, but rather explicitly assume it does not exist.

Nor will criminal liability be impermissibly expanded without the requirement of specific direction. There are sufficient criteria to distinguish punishable aiding and abetting from neutral conduct (for instance, permissible weapons sales). The current case demonstrates this, since the Defendant provided significant and effective support by his personnel-related assistance (personnel centers). The criterion of physical presence is unsuited to decide on aiding and abetting liability, or to classify it for criminal-law purposes. Especially in a networked and digitalized world, physical presence is not relevant to the effectiveness and dangerousness of an act of aiding and abetting.

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A s 1 In the present case, aiding and abetting under Art. 7(3) is established, but personal responsibility under Art. 7(1) is not. The Defendant objectively knew that crimes were being committed in the HVO.

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It should be conceded to the Defense that the Defendant did not support any specific crimes, and does not seem to have had advanced knowledge of the planning of individual specific crimes.

The expansion of aiding and abetting to cover these incidents seems to far-ranging.

However, the Defendant must be considered as a superior officer of the HVO.

He created and maintained a system which guaranteed the continued existence of the HVO.

This was a general support of the HVO in the context of supplying weapons, equipment, ammunition, technical knowledge, and leadership. It is undisputed that, according to the Defendant's own information supplied to the Defense Council of the HVO, further military action would have been "impossible" without further military support.

This – uncompensated – support maintained the existence of the HVO organization. Thus, it was dependent on the Defendant and the Defense Council.

The HVO was entitled to assume that continued support after the commission of various crimes, including the siege and shelling of Mostar, indicated approval of their approach, and to feel encouraged to continue and even intensify these actions.

Given the financial and logistical dependence of the HVO, it is extremely likely that the Defendant could have induced them to change or relax their strategy with respect to the siege.

Further, the Defendant was also commander of the officers of the HV, in which the HVO fought. He could, thus, have given them the relevant orders.

By means of his cooperation, the dependence of the organization, and the continued support after the crimes, the Defendant must be treated as a superior officer. He could have taken steps to prevent these crimes, and knew as much.

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A s 1 1. Legal Standard

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The external component of aiding and abetting under Art. 7 para. 1 of the Statute does not require that the support be provided for a specific purpose. Neither the text or purpose of the statute nor the overall context supports such a limitation.

Article 7 para. 1 does not further define aiding and abetting. Thus, it is permissible to consider the purpose of the norm and the overall systematic context in which it is found. The express purpose of the norm is to ensure that, in addition to the principal, all accomplices can also be prosecuted. Thus, the statute specifically does not require that the aider and abettor participate in the crime. On the other hand, the norm is not intended to criminalize military action *per se*, or mere support thereof.

Taking these considerations into account, the consistent jurisprudence of this Court is that aiding and abetting, within the meaning of Art. 7 para. 1 of the Statute, means any action or failure to act which is aimed at providing practical assistance, encouragement, or moral support to a principal to commit a crime, and which had an important effect.

The differentiation between practical aid, on the one hand, and moral support or encouragement, on the other, makes it clear that aiding and abetting can be performed with different levels of intensity. The requirement of 'significant effect' was added to prevent the element of the offense expanding to include even non-specific support.

As a consequence, even non-specific forms of support are generally covered by the external elements of Art. 7 para. 1 if they had a significant effect on commission of the crime.

Thus the question of specificity is relevant, at most, to the internal element of the crime (mens rea).

2. Application of the Standard

If one proceeds from this understanding of aiding and abetting, then it is apparent that the first-instance court correctly concluded that the Defendant had committed a criminal act of aiding and abetting within the meaning of Art. 7 para. 1 of the Statute.

To be sure, the Defendant's actions were limited to (spatially remote) logistical support which, viewed on its own, would not seem to constitute a criminal act. However, the support constitutes aiding and abetting despite its unspecific character, since the support was

especially important to the crime from an organizational standpoint, thus ensuring it had a significant effect on the commission of the crime. The commission of the crime was significantly supported not only by the deliveries of materiel, but also by the personalized structure.

In particular, the Defendant provided additional assistance to the HVO by virtue of his function in the Croatian Army, in that he took part in meetings of the Supreme Defense Council and pushed for the support of the HVO, even though he was not himself a member of this group.

In this context, it is not exculpatory that the group was, formally, a separate army. Such a highly formalized approach would conflict with the purpose of the Statute. Further, the Defendant himself had worked to forge links between the two armies by ensuring that persons who were formally a part of the Croatian Army could also fight in the HVO.

Further, the Defendant took no steps to end his support when he became aware of its consequences.

Finally, the Defendant also fulfilled the internal component of aiding and abetting. As a member of the Croatian Army, he had access to UN and NATO information sources, and knew that the HVO had committed crimes within the meaning of Arts. 2-5 of the Statute, and specifically targeted Muslims during this activity.

### 3. Conclusion

Accordingly, the first-instance judgement should be upheld, and the appeal dismissed.

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A s 1 During a period in which war crimes were consistently being committed, the Defendant received specific information concerning these crimes, and continued to supply the arms needed for them. When he became aware of the use of arms for this purpose (at the very latest), his support can be seen as specific to this end, or at least the Defendant can be seen to have knowingly accepted that his arms shipments would be used for this purpose. 0 0 0

An additional factor is his command authority over persons who supported the HVO while continuing as members of the HV and continued to be paid by that organization.

A s 1 The grounds for appeal are not well-founded. 4 2 4

To the extent that the appeal is based on a different approach than that used in Šainović, this approach does not exist. In margin nos. 1617 ff, the Chamber expressly adopted the opposite view and explained that previous decisions had not postulated the existence of a "specific support" element of the offense, which cannot be derived from the text of Art. 7. This result also accords with the fundamental principles of general international law, which permits liability when aiding and abetting has an effect on the commission of the main offense, see margin no. 1626. There is no dispute this happened. The Chamber endorses the legal approach found in Šainović.

Nor is there any reason to fear a criminalization of military action in general, which is not required by the Statute. The result which has been found, like the Statute itself, criminalizes only war crimes, not war itself.

The Defense also argues that all support provided by military leaders would be criminalized, even when they cannot influence how the support is used. This is also unconvincing. The Defendant could influence the structural commission of the underlying offenses, and in fact did so. Acting with knowledge of the crimes which had been committed, he urged the President in the Military Council to continue military support for the HVO. HV, whose ultimate commanding officer was the Defendant, and HVO were also intimately linked on a personal level.

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A s 1 In the final analysis, the only question is whether aiding and abetting must be specifically directed. 4 2 0

This requirement was not imposed in the Šainović decision and some of the preceding decisions of the Appeals Chamber. With respect to the requirement of specific direction, the judgment is consistent with the Šainović decision. Even though this judgment was published

only shortly after the decision under review here, the Šainović judgment merely resolved obvious contradictions within the previous judgments of the Appeals Chamber.

From a substantive perspective as well, the Prosecution's argument in this case, as well as the Appeals Chamber's approach in the Šainović decision – that aiding and abetting does not require specific direction – is convincing. Criminal culpability is sufficiently restricted by the additional requirement of a subjective element (knowledge, intention, etc.).

The remaining elements were fulfilled, and the conviction therefore should be upheld.

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A u 0 The dissenting opinion of Judge Moloto is convincing. General assistance is insufficient to establish liability for aiding and abetting. The assistance must relate to a specific offense and support that offense. Otherwise, it would be nearly impossible to distinguish between innocent and culpable conduct. Every weapons manufacturer would be liable, since he can or should anticipate that his weapons will be used to commit at least one crime – unless one were to forbid weapons manufacture – and war (?!) in general – which is impossible without a one-world government, which obviously does not exist. There is no criminal law forbidding aiding and abetting in situations in which it is impossible – at least in vague outline – to anticipate the crime which will later be committed. 0 4 0

A u 0 Specific direction is a necessary element of the offense, since otherwise it would be impossible to distinguish from other acts in support. 0 3 0  
Otherwise, every act of support in the context of the commission of crimes would be punishable as aiding and abetting.

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A u 0 The problem in this case is distinguishing between support for general, non-criminal military action *per se*, which is not a crime, and culpable aiding and assisting criminal acts committed by a warring army. 0 2 1

Specific direction is appropriate to distinguish between a criminal and a non-criminal act in support. The "specific direction" should be defined as that form of support which can only be used for criminal activities. The Statute does not prohibit support for armies engaged in general military action, but warring armies generally do commit crimes. Thus, without the distinguishing criterion of specific direction, support by third parties for armies would generally be criminalized – that is, supporters would generally be criminally liable for aiding and abetting.

Since the Defendant's acts in support do not show this specific direction, but were also directed simply at supporting military action *per se*, the Defendant cannot be convicted.

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A u 1 The appeal is dismissed. 4 2 4

The appeal argues that aiding and abetting under Art. 7(1) of the Statute requires that the support be specifically directed at the commission of a crime.

This is incorrect.

The Appeals Chamber had already shown in the Šainović decision that there is no need for such a showing that the acts were specifically directed (Šainović decision, paras. 1617 ff, esp. para. 1649). The decision is thus affirmed.

The Defense's objections are unconvincing. It is thus insignificant whether [one word illegible] a decision on the legal question is dispositive for the decision.

There are also no significant differences between the cases.

The element of distance or proximity is, to be sure, a criterion in the objective decision of whether the support provided significant aid. A similar argument can be made for the question of whether the support was provided within the army or in another army. However, the conclusions reached by the first-instance court suffice to demonstrate that, in these circumstances, the support was significant.

The Defense also objects that, without a requirement that aid be specifically directed, any logistical support for a foreign army would be

culpable. This argument has no force. The requirements for fulfilling the subjective element of the offense provide a satisfactory corrective in this light.

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A u 1 -The element of specific purpose has not been endorsed in jurisprudence, and is also not present in the relevant paragraphs of the ICTY Statute. 4 0 4

-To be sure, there are differences in the judgments, but the question is a fundamental one, regardless of whether the Defendant was directly on the scene of the crime.

-Aiding and abetting can take neutral form, what is decisive is that, in addition, the Defendant knew of the crime which he was aiding and abetting. It is undisputed that the Defendant knew that the VRS had committed serious crimes against the civilians.

-Further, he was the highest-ranking officer of the VJ, whose officers in turn served in the VRS while remaining official members of the VJ and continuing to receive their salary from the VJ. Thus, there is more involved here than the mere provision of military support – that is, the conduct goes beyond mere military action, which is not punishable.

-The distance from the scene of the offense is irrelevant, since it is not a requirement of culpability for aiding and abetting.

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A u 1 The Defendant was fully aware that war crimes were involved. Aiding and abetting is also fulfilled, because he provided logistical and personnel support. 0 0 0

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A u 1 V. fulfills both the external and internal elements of the crime of aiding and abetting. Actions fulfill the external elements of aiding and abetting when they significantly help in the commission of the underlying crime. It is thus not dispositive whether the accomplice had a highly specific underlying crime in mind, if a large number of the acts of the same kind are facilitated. Yet that is what V. does. He provides logistical support to the VRS. He argued for this support in the Supreme Defense Council of the VJ. The VRS was provided with VJ soldiers and paid by the VJ; a policy which V., in turn, supported. Proximity to the offenses is not a criterion for aiding and abetting the underlying offense. It is not necessary for the Defendant to have personal command responsibility over the VRS, since this would support not just aiding and abetting, but principal liability.

As in the Šainović appeals judgment, which referred in turn to the Blacitnic decision, aiding and abetting is defined as supporting with knowledge of the cruelty. Requiring specificity would contradict the purpose of the Statute, since it would excessively restrict liability for aiding and abetting.

The interior aspect of the crime is given in the case of Sarajevo. The attack on Sarajevo lasted from 1992 to 1995. Therefore, it cannot be doubted that V. was not informed of this action. To the contrary: he argued in the Supreme Defense Council of the VJ that the siege could not be continued without the support of the VRS.

In the case of Vlasenica, there are doubts about the specific knowledge of the incident. Nevertheless, V. received so much valid information that he considered an attack to be possible, and accepted both the attack and its consequences. It is irrelevant that the specific time was not known. V. could have prevented the attack by interrupting his support. It should be assumed, in his favor, that he was unaware of the specific extent of the crimes. He was, however, aware that the city had been declared a secure zone, and that numerous civilians had fled into it. He should have reckoned with a large number of victims.

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A u 1 According to the text of Art. 7 ICTY, assistance in the planning, preparation or execution of the designated crimes is aiding and abetting. The inclusion of the planning and preparation phase makes it clear that no more restrictive standard applies to the specification of any offenses which later actually occurred. Rather, the most important criterion can simply be that the supporter knew the type and the seriousness of the crimes to be expected from the VRS. Owing to the comprehensive information at his disposal, the Defendant had this 0 4 4

knowledge.

In full knowledge of the war crimes the VRS had committed, he made efforts to ensure that this organization received necessary material and organizational support. It was only on the basis of this support—considerable amounts of weapons were delivered, ammunition was supplied—that the VRS was in a position to continue its criminal actions. Accordingly, V made a significant contribution to the commission of the war crime at issue here.

V also knew that the support he provided would be used in this manner. Thus, the support was not neutral but goal-oriented. The Defendant simply could not assume that the support he had provided would be used only for legitimate purposes. Even if V may not have witnessed the specific actions for which he provided support, he did know what kinds of war crimes were being committed, and in particular war crimes in the form of massive attacks on the civilian population.

To demand specific knowledge of the exact underlying crime would create an unacceptable gap in liability for aiding and abetting. This would exempt from criminal liability precisely those persons who make war crimes possible in the first place by creating the necessary infrastructure for their commission and providing far-reaching backing and “moral” support for these activities. It is in precisely these cases that unconditional responsibility is urgently necessary.

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A u 1 The appeal against the decision of the Criminal Chamber should not be granted.

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Contrary to the arguments in the appellate brief, the first-instance decision contains no error within the meaning of Art. 25 para. 2(b) of the Statute, which, if present, would justify the appeal. The decision of the Criminal Chamber correctly subsumed the facts of this case under the elements of the offense of aiding and abetting pursuant to Art. 7 para. 1 of the Statute.

Contrary to the arguments in the appeal, there is not requirement of a so-called “specific support” to justify conviction for aiding and abetting.

The Appeals chamber has already discussed this issue thoroughly in the Šainović decision and determined that this element is not required. It held:

here insert the relevant comments

As to this question, the dissenting opinion is precisely this determination for lack of significance.

The Appeals Chamber did not perceive a reason to depart from the comments and findings in the Šainović decision because of the circumstances of this case or the reasoning contained in the appeal.

To the extent that the appeal attempts to argue that the absence of an element of “specific support” does not do justice to the principles of the ICTY Statute, this argument is unconvincing. To find aiding and abetting under the statute it is, after all, necessary to prove knowledge of the relevant crimes. In other words, a punishable act of support in the form of logistical and financial aid is not possible precisely in those cases in which the supporter had no knowledge of the relevant crimes by the army he was supporting. It is undisputed that this is not the case here. Further aspects which might lead the Chamber to depart from the above-described comments in the Šainović decision have not been presented and are not evident from the record.

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A u 1 The appeal is admissible but not well-founded.

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The Defense’s argument that the external element of aiding and abetting requires a specific direction is not convincing. In its previous decision (margin no. 1649), the Appeals Chamber made a binding judgment that the specific is not an element of aiding and abetting under international customary law. Rather, the external element of aiding and abetting consists exclusively of practical aid, encouragement, moral support which has a significant effect on the commission of the crime. Further, the Appeals Chamber went on to answer the question, even though the previous court had held that it was not necessary to answer this preliminary question.

Contrary to the Defense's argument, the Appeals Chamber correctly chose (as the dissenting opinion noted, margin no. 43) not to limit its previous decision on the question of specific direction only to those cases in which the offender was at a specific distance from the crime scene, but rather addressed the issue more generally.

The argument that the Defendant was the commander of a separate army is unconvincing. The undisputed facts show that VRS officers were recruited from the VJ and remained, even while they fought under the VRS flag, members of the VJ. Thus, it is incorrect to claim there were two armies, so that this argument cannot prevail in this appeal.

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A u 1 a new element of the crime which is not present in the ICTY Statute should not be read into it 4 4 4  
otherwise, it would be almost impossible to prove aiding and abetting with respect to the alleged crimes, since it is impossible, in practice, to prove that aid was provided solely to assist in the commission of crimes  
even neutral aid, such as providing logistical or financial support, must be considered relevant if it was provided with knowledge that it would facilitate or make possible serious crimes  
Šainović decided that the requirement of a specific purpose for the support was not an element of the offense

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A u 1 The legal arguments advanced by the Defense, if accepted, would result in an excessively restrictive interpretation of Art. 7 para. 1 of the Statute. Under that interpretation, it would – with only a few exceptions – be impossible to criminally punish aiding and abetting war crimes unless the aid occurred extremely near in time and place to the war crimes, and with the demonstrable intention of facilitating them. The Defense also objects that an interpretation of Art. 7 para. 1 which does not require aid be provided with the intent of facilitating war crimes and extremely near the time and place of their commission would lead to excessive criminal liability, and ultimately to strict liability – for instance, for providers who furnish legal arms exports. This argument is unconvincing. An inappropriate expansion of the liability is, as an initial matter, prevented by the fact that additional elements of the crime must be fulfilled in order for arms exports to be considered criminally suspect behavior. For example, aiding and abetting liability under Art. 7 para. 1 of the Statute requires that the underlying criminal acts which form the basis for aiding and abetting liability actually be committed, that the weapons shipments significantly aided in their commission, and that the person providing the weapons knew of their intended use. These limiting factors justify conviction if the other conditions are fulfilled, without the need for a further restriction imposed by a narrowing interpretation of Art. 7 para. 1 of the Statute. 0 4 4

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A u 1 A conviction for aiding and abetting does not require that the assistance be "specifically directed". This result is consistent with the majority tendency in the jurisprudence of this Court and with the analysis of international law provided in another judgment. Further, this non-limiting interpretation does not excessively expand the definition of aiding and abetting, as the Appellant fears. What is required, but also sufficient, is knowledge that the acts of support, which have been proven in this case, were generally neutral, but in fact led directly and reliably to crimes against humanity and the laws of war. Since this has been shown in this case, the appeal should be dismissed. 4 2 0

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A u 1 The actions consist of aiding and abetting under Art. 7(1) of the Statute and not culpable failure to act by a superior under 7(3) of the Statute. 0 2 4  
Knowing of the consequences of his actions, V provided decisive support for the actions of the VRS and made those actions possible in the first place.  
He was Chief of the General Staff of the VJ and supported the VRS logistically, in particular by supplying ammunition and technical support.

He knew the consequences of his support, since he took part in meetings of the Defense Council and actively influenced it. He urged the Council to provide support and knew that military action was impossible without this support. Subjectively, he knew of the operations of the VRS and the crimes against civilians. He had information from various sources, in particular from intelligence agencies, diplomatic reports, and the reports of foreign media.

The supply of ammunition and logistical support to an army was not a neutral act which normally has no connection to potential crimes. Particularly with arms shipments, it is necessary to determine what happens with them. This is not a purely neutral activity such as the transfer of funds, since in the case of weapons shipments, the possibility of abuse is clear.

Presence at the crime scene is not required. By using his influence on political decision-makers, V could provide better support for the VRS' activities from a distance.

The decisive question is the type of support, which does not always have to be provided at the crime scene. Aiding and abetting is different from criminal complicity (thus its requirements are lesser) precisely in that it is only providing assistance to another in the commission of the crime, whereby it is necessary to prove subjective knowledge of the crimes and the effects of the support.

This is the case here. It need not be feared that neutral actions would be punishable under this standard, since the criteria set out above must also be fulfilled.

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A u 1 The requirements for the conviction of the Defendant for aiding and abetting have been fulfilled. Despite his positive knowledge of the crimes committed by the VRS, he provided the principal offenders with military and logistical support, and thus supported their actions. The principal offenders in fact committed the crimes. Based on the fact that he was aware that the VRS was aware of the circumstance that a security zone for civilians existed, but ignored it and committed armed action within it during which the death of civilians was knowingly accepted, he was guilty of the charged crimes. 0 0 0

A u 1 The Defendant was Chief of the General Staff of the Yugoslavian Army, and thus the highest-ranking officer with command authority. 2 1 4  
Although he was not a member of the Defense Council, he nevertheless had considerable influence on the question of the material support of the troops in Bosnia, who demonstrably committed war crimes against Bosnian civilians.

In deciding the criminal culpability of the Defendant, the first-instance court correctly relied on Article 7 of the Statute of the International Military Tribunal for Yugoslavia, and found individual criminal responsibility based on the fact that the Defendant ordered logistical support for the forces which committed war crimes against the Bosnian population.

As the first-instance court correctly observed, liability under Article 7 requires neither that the Defendant was in direct proximity to the crime scene, nor that he had knowledge of the specific crimes committed, and specifically supported them. It is customary that high-ranking decision-makers rarely spend time near where the crimes which they approved and supported took place. This, in fact, is the defining feature of this form of aiding and abetting. The higher up the commander or supporter is in the military hierarchy, the less frequently he will personally appear on location for the preparation, planning, and execution of the crimes, and specifically order them. Therefore, it is sufficient that person with command authority in general knowingly accept that the support which he has ordered will facilitate the commission of crimes whose type and number cannot be known in advance, and which are then in fact committed.

To this extent, the concept of aiding and abetting in international law is different from that which exists in national law or the law of the Federal Republic of Germany, which requires aiding and abetting be shown to support a specific action.

The Court's approach also accords with the principles of criminal responsibility developed in the wake of the Nuremberg War Crimes Trials, which are applicable international law. These principles also support individual criminal responsibility for aiding and abetting

pursuant to Article 7 of the Statute.

The appeal is therefore not well-founded, and the judgment is affirmed.

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r s 0 The conviction is reversed as to counts 1, 2, 3, 4, 9, and 10 of the indictment and affirmed as to counts 11 and 12. 0 2 4

It is necessary to show a specific connection between the aiding and abetting and the commission of the criminal offense. It is characteristic – and unacceptable – that, in the judgment under review, actions which occurred AFTER the violation are considered as supporting criminal liability. In the counts on which the Defendant is acquitted, he was accused of violations of individuals' legal interests. There is no proof that the Defendant objectively supported these specific acts by his behavior. Accordingly, the possibility cannot be excluded that these individual actions could have been committed without the assistance of the Defendant, such that the assumption of causality would violate the principle of "in dubio pro reo" (see also Art. 6 ECHR) and the presumption of innocence. The offenses alleged in the indictment as well as the offenses listed in Arts. 2 through 5 are thus specific offenses which were the subject of the evidence taken. Even the term "aiding AND ABETTING" itself shows that it is necessary for there to be a causal connection, since abetting can only take place in the context of a specific, legally regulated event. The term "murder" (counts 1, 2, 9, 10 of the indictment) refer to a specific external event. If one does not regard a causal connection between the alleged activity and the legal interest which it affects (here, life) as necessary, then one takes leave of the legal foundations of expressly codified elements of penal culpability. Thus, not every participation in impermissible military activities is punishment, but only those which are covered by specific legally-codified definitions of offenses.

The situation is different with respect to counts 11 and 12 of the indictment, which relate to the infringement of collective legal interests (persecution, inhumane treatment by forced relocations). In this case, it can be argued that the actions of the OHV (?) in Ahmići, which took place only towards the end of the war, could not have taken place without the long-term logistical support by the Defendant. In this regard, it should be note that the Defendant was informed by the extensive briefings he received concerning the general plans of the OHV, which he did not stop, although the Court believed he could have done so, and that without the prior logistical and psychological support, the concerted action in Ahmići would not have been possible. Unlike counts 1, 2, 3, 4, 9, and 10, which require aiding and abetting a specific action, the remaining counts of the indictment impose no such requirement, since no individual legal interests were affected by the actions but rather collective legal interests, which were violated with the Defendant's knowledge and thus demonstrable support.

Conclusion: Partial acquittal, conviction as to remaining counts, significant reduction in penalty.

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r s 0 Conviction under Art. 7(1) requires that aiding and abetting be directed towards the commission of a specific crime by the principal offender. The knowledge that acts in support might be used to commit "some sort" of crime is insufficient. In the Va..... decision, the Appeals Chamber also described the requirement that aid be directed at a specific crime as a specific feature of aiding and abetting. Based on the evidence adduced in court, it is not evident that the Appellant's actions showed the necessary specific direction of his acts in support. 4 0 4

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r s 0 According to margin no. 102 of the parallel decision, aiding and abetting requires subjectively and objectively that liability requires the facilitation or support of a certain specific underlying offense. This conclusion should be endorsed. The view put forward in the decision under review – that non-specific general support or facilitation of crimes should also be viewed as aiding and abetting – is incorrect. It would lead to aiding-and-abetting liability merely for facilitating or supporting a climate which is inviting for the commission of crimes. This would expand the definition far too much; the accomplice would, if no other circumstances were present, liable for all crimes committed within this climate. This no longer fits the definition of acting in support of a crime. 4 4 0

r s 1 The Defendant's conviction should be upheld, since the quoted appeals court judgment does not mandate a different conclusion than the one reached by the first-instance court. In particular, the requirement that the aid be provided for the specific purpose of committing a certain crime is, as the first-instance judgment concluded, not an element of liability for aiding crime as defined in Art. 7 of the Statute. Contrary to the argument advanced in the appeal, a specific purpose requirement is also not supported by the quoted decision, which sought to distinguish between aiding and abetting and participation in a common criminal enterprise on the basis of the specific purpose of the act. The requirement of a specific purpose, as used in that decision, was intended only to highlight the distinction between aiding and abetting and participating in a criminal conspiracy, not to limit the scope of the elements of criminal aiding and abetting. The appeal argues that failing to recognize this element will result in strict liability irrespective of culpability. This is not the case, since the elements of liability derived from the text of Article 7 and explicated in detail by the first-instance court provide a clear definition of the elements of criminal liability. In conclusion, the conviction of the Defendant should be upheld.

4 2 4

r s 1 Under Art. 7 para. 1 of the Statute, a person can be an accomplice during the planning, preparation, and execution of a crime. In this case, the Defendant provided the HVO with logistical support in the form of weapons deliveries, which, at the very least, assisted in the preparation of the crimes committed by the HVO. Further, he provided the HVO with support in personnel matters by creating personnel centers which allowed Croatian officers to remain part of the Croatian army, and to be paid by that army, while on active duty with the HVO. The Defendant also knew that the HVO had committed serious crimes against civilians. He also knew that, without the above-described support, the HVO would have been incapable of military action.

4 3 4

It is not relevant that the Defendant did not provide the support described above with the specific direction of enabling the HVO to commit a specific crime. The Defense argues that our approach would lead to the criminalization of all military action, and would extend criminal liability to all political and military decision-makers, even if they had no control over the decisions of the army which they supported. This is not the case.

Accordingly, this also does not affect the cited decision in the case of V.... In that case, the Chamber explained, in a portion of the opinion after the one cited by the Appellant, that the mental element of aiding consists solely of knowledge that the accomplice's aid will support the commission of the crime. By contrast, liability for participation in a common criminal enterprise requires the pursuit of a common goal. As shown above, the Defendant had knowledge that military action would not be possible without his aid, and that therefore the crimes against civilians, which he also had knowledge of, would also have been impossible. Thus, the Defendant displayed the mental element required by the Chamber. The Defense suggests that proof is required that the Defendant intended his support to facilitate certain specified crimes. However, if this view were accepted, it would no longer be possible to distinguish, as did the Chamber in the case of V...., between aiding and abetting, on the one hand, and the conspiracy, on the other. Requiring the aid to be provided with the intent of committing a specific crime would logically entail that the aid was provided pursuant to a common criminal goal shared with the principal actors. Further, were this requirement to be added to the other defining feature of aiding – namely, a significant effect on the commission of the crime – this would nearly eliminate the distinction between aiding and the commission of the underlying offense.

r s 1 Reasons

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The appeal is dismissed.

The parties have limited their argument to the question of whether the contribution of the alleged accomplice must be directed toward the commission of the underlying offenses.

H.V. was properly convicted under Art. 7(1) of the Statute, since he was individually responsible for the crimes committed in Mestas and Ahmići. He aided and abetted these offenses. Therefore, the objective element of the definition in Arts. 7(1), (5), and (3) of the Statute is

fulfilled. For a conviction for aiding and abetting, any assistance which aids the commission of the underlying offense suffices. H.V.'s invocation of the Vasiljević decision is unavailing. In that decision, the Chamber assumed that conduct must be specifically directed at facilitating a certain specific crime. H.V. specifically directed his conduct to facilitate the underlying offenses committed by the HVO by supplying (albeit indirectly) the financial and logistical means for their commission.

The question posed by the Complainant can therefore remain unanswered, since even under the interpretation he suggests, he is guilty of aiding and abetting.

r s 1 Contrary to the Defense's argument, the Court in the Vasiljević decision did not establish the principle that the objective element of aiding and abetting under Art. 7(1) of the Statute requires that the act in question be "specifically" directed at the commission of the relevant underlying crime. In the passage in which the Court addressed this issue (text number 135 of the Vasiljević-decision), the Court states only that the acts must be provided in support of a "specific crime", but does not address the nature of the act in support itself. Accordingly, the approach used in the Mirksic and Slijavncamin decisions and in the decision under review remains valid: it is sufficient when the act in support of the criminal act significantly facilitates or has a significant effect on the crime (text number 1624 of the decision under review). Even when these acts in support turn out to be routine tasks, this does not exclude the possibility they may have significant effects (Blacevic and Jakici decisions). In this case, the assistance provided was significant despite the fact that the first-instance court could not find any evidence that the weapons in question, which the HVO used to commit the underlying offenses, actually (that is, in each individual case) came from the supply shipments organized by the Defendant (text number 1624 of the decision under review). The finding of significant support was justified by the fact that the Defendant was the one who acted decisively at the level of the SDV to support and maintain the supply of weapons and ammunition in large amounts in order to – as shown by the documentary evidence on this point (notes of the Chief of the General Staff) "defend the people as well as possible". This subjective idea of the absolute necessity of logistical support, combined with the active effect on the SDV shows, along with the further factual findings concerning the largely undisputed actions of the Defendant, significant actual authority of the Defendant concerning the supply of the HVO with tools which were used to commit the named underlying offenses. As the information sources cited in the first-instance decision show, the Defendant was well aware of these offenses at the relevant time period. Even after repeated consideration of the dissenting opinion of Judge Moloto, this court stands by its conclusion that it is sufficient when the accomplice's actions create, maintain, and supervise an organization which is used to effectively facilitate the commission of the underlying offenses. In this context, the specific attribution of the individual underlying offenses (for instance, shootings) to the respective actions of the organization declines in importance with the increasing effectiveness of the organization, and the increasing influence of the accomplice on the effective functioning of the organization. In the instant case, the Defendant's influence on the sustained logistical support of the HVO was so great that even his mere efforts to establish and maintain this support fulfills the element of significantly aiding the commission of the underlying offenses.

r s 1 The reasoning of the first-instance court was correct, and a contrary decision is not required by the arguments presented in the appeal. 1 3 4 The Defendant was correctly found guilty under Art. 7 para. 3 of the Statute of aiding the crimes of murder, inhuman conduct (injury and wounding of civilians, infliction of serious injuries, and forced resettlements) and persecution as crimes against humanity, murder, and attacks on civilians. It is undisputed that the fundamental principle of the ICTY is that military action is not *per se* punishable. Yet it is incorrect to argue that the lower court's interpretation would make all decision-makers, whether military or political, liable for any and all war crimes.

Article 7 para. 1 initially requires that the external element of the crime be realized by someone.

It is not disputed that the crimes described above were in fact committed from 9/1992 to 11/95 in Mostar, as well as in 1995 in Ahmići. The Defense, however, insists that it be proven that aid was provided with the specific purpose of committing a certain crime. This has not, the Defense claims, been proven with respect to this Defendant. The overall context in which the aid was provided was vague, which means the Defendant is liable, at most, of participating in a conspiracy to commit a common criminal enterprise.

In support of this argument, the Defense observes that the Defendant was never at or even near the scene of the crimes. This is correct, but, in the view of the Appeals Senate, does not change the Defendant's criminal liability.

The law is, in fact, specifically intended to reach persons who remain in the background, as opposed to the interchangeable personnel who actually commit the offenses. Nor can the Defendant successfully argue that transfers of funds and employees can also be used for legal purposes. The Defendant became aware that crimes were being committed – at the very latest – when he met official members, such as Tudjman, the former President of Croatia. With knowledge of these circumstances, the Defendant nevertheless pressured the Council to continue its support for the HVO.

Further, the failure to remove HVO members from the Croatian Army, which ensured their continued compensation, is a criminal act – since without financial support, the HVO would have rapidly collapsed.

This fact also dooms the Defense's argument that Horvat was not part of the same command hierarchy. He assisted in setting up the military structures. Even before his appointment to the HV General Staff, the first crimes had been committed in Mostar. The Senate is convinced that the Defendant had direct knowledge of the crimes, and in particular the crimes against civilians. Nevertheless, he did not perceive the occasion of being informed of the crimes through official channels as a reason to discontinue military and financial support. Thus, his assistance must be seen as specific, and the Defense cannot prevail on its overall argument.

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r s 1 The appeal, which is admissible pursuant to Art. 25, is not well-founded. According to the Statute, a condition for finding an appeal to be well-founded is the existence of an error of fact or law. Here, the only argument is of a legal error concerning aiding and abetting liability punished under Art. 7 of the Statute. 4 0 4

Aiding and abetting liability requires knowledge of the common criminal intent of the principal offender to commit the crime. This emerges not only from Art. 7 of the Statute, but also from the Vasiljević decision, which is cited by the defense.

The Defendant fails to specify what he means by asserting that Art. 7 requires, as part of "support specifically directed at the crime", additional proof of a "specific crime". It is undisputed that the Defendant knew that crimes were to be committed, and that he supported this.

It is not necessary to prove he knew all details concerning the commission of the crime. Article 7 provides no support for the requirement that the Defendant knew all planned crimes in detail (victims affected and similar circumstances). Neither the Statute nor the Vasiljević decision supports the requirement of a more exact knowledge of the accomplice concerning "the specific" act, particularly as the Defense does not explain exactly how it would define "specific act".

Accordingly, the judgment of the previous instance, which made no legal error in its conviction for aiding and abetting, is affirmed. The Defense's argument essentially calls for the creation of an additional element of the offense which is not foreseen by the Statute. There is no legal basis for this demand.

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r s 1 First-instance judgment affirmed. 0 0 0

Punishable is aiding and abetting of the named offenses.

In contrast to principal liability, aiding and abetting liability consists of encouraging or facilitating the act.

The Defendant supported the commission of the act by actions such as arms deliveries.

It is irrelevant that he had no knowledge of specific crimes.

Aiding and abetting does not consist solely of supporting specific and clearly-defined crimes.

It suffices that the accomplice had abstract knowledge of the crimes which could be supported, and did in fact support them.

What is decisive is that the support continued after reliable information was provided, for instance by NATO reports.

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r s 1 First, the first-instance Criminal Chamber did not expressly assume the specific directedness of the action as an element of aiding and abetting (1580, 1624). Further, the Vasiljevic case involved a conviction under Art. 3 and 5, but not Art. 7 para. 1 of the Statute, and the cases are thus not identical. It is further quite questionable whether the comment made there in 102 (the accomplice carries out actions which are specifically directed in this way...) was intended to introduce an additional element of the offense. The express rejection in the first-instance decision counsels against this view. It is also not evident that the type of offense requires the specific directedness, but rather that acts should already be punished when they mean general support, aid, encouragement and moral support in the commission of these crimes. 4 0 4

r s 1 Aiding and abetting a crime requires that the crime, as defined by Arts. 2-5, is to be committed. It suffices to show that a crime of this type was intended. The Statute does not punish the general provision of materiel, but also does not require that the abettor know the time, place, and scope of the crimes, only that they are providing support for them. The Defendant wished to support the offenses by delivering materiel. He had this information and intended to provide support, at least in the firm of failing to seize on the basis of his status as a guarantor. The undisputed facts show that he did not know which persons were to be murdered, but did know that such crimes were going to be committed. To this extent, then, support for the planned crimes is enough, even if the specific commission of the crimes is left who planned the crimes against civilians. The Defendant knew of these activities. 0 0 3

r s 1 A "specific direction" of the acts in support is not contained within the text of the relevant provision defining the elements of the offense. In my view, a teleological analysis of this provision is not necessary owing to the culpability level of the punishable action (aiding and abetting), and also does not appear mandatory given the background circumstance that certain military actions should be allowed. Further, the quoted decision in which this element is introduced did not address the fundamental question of "specific direction", but rather the question of the distinction between complicity and aiding and abetting. In my view, the Appellant knew that the weapons etc. would not be used only for permissible military action because he continued to advocate for and take measures to ensure support, and thus a specific direction is actually present in this case (meaning that the legal question need not be addressed at all). 3 1 4

r s 1 That aid be specifically directed is not an element of aiding and abetting pursuant to Art. 7. Non-specific support is sufficient to satisfy the requirement of that provision. Nor does the Appeals Chamber decision cited by the Defense support the necessary satisfaction of such a requirement. In contrast to the previous decision, the support provided in this case was not for specific individual acts, but rather for the commission of an unspecified number of crimes which, by their nature, were not specifically related. Nevertheless, this type of support is covered by Art. 7(1). 4 0 4

r s 1 objective element fulfilled 0 1 4

specific direction at most a special qualifying element and as such not necessary to fulfill the elements as described in the text of the statute. No need for limiting interpretation of law, since causality for commission of war crimes is a prerequisite.

His actions were causal to the commission (provision of ammunition), preparation/planning (training and leadership of officers) of the

crimes which were committed.

subjective element

H knew the actions were suited to enabling the crimes which were committed. Knowing how aid would be used (among other things for the crimes of the principal offender) he even took additional actions outside his main jurisdiction (participation in and influence on the Defense Council) to enable the actions.

r s 1 The Defendant supported the HVO for a period of several years. At the time, he was positively aware that the HVO had committed crimes 0 0 3 listed in Arts. 3 and 5 of the Statute. It was not reasonable to assume that the HVO, which had already committed such crimes in a large number of cases, would behave differently in the future. By continuing to organize material and personnel support for the HVO, he objectively contributed to the HVO's being able to continue to act in the above-named areas and thus continue to commit crimes. From a subjective standpoint, aiding and abetting must be directed towards the commission of a crime. Here, the relevant factor is the knowledge of the accomplice that his actions will facilitate the commission of crimes by the principal. The Defendant cannot claim to have known only of earlier crimes and to not have known of additional specific crimes. To establish the subjective element of the offense, it is not necessary for the accomplice to know the specific crime which the principal will later commit. However, the Defendant, at the least, understood and accepted that the HVO would continue committing crimes within the meaning of Arts. 3 through 5 of the Statute.

r u 0 To be sure, the quote from the Vasilevic decision mentioned by the Appellant is not relevant to the present facts. The question in that 4 0 4 case was the distinction between aiding and abetting and complicity. However, the text of Art. 7(1) of the Statute is defined as aiding and abetting "the" crime, that is, aiding a specific underlying offense. This alone supports the requirement of a specific direction of the external element of aiding and abetting. The fact that this requirement was not mentioned in previous decisions can be explained by the fact that in those cases, the accomplice was close to the scene of the underlying offense, whereas this is not true in the instant case. Thus, I am convinced by the reasoning found in the dissenting opinion of Judge Moloto to the first-instance decision.

r u 0 Acquittal, 0 3 0 because the element that aid be specifically directed at supporting the specific underlying offense is not satisfied. The Defendant was aware that the army which he supported was committing crimes and would, if that support were removed, have had to cease its activities. It was not known which specific crime were supported by which specific acts of support, nor was this foreseeable ex ante. It is not impossible that non-criminal activities were also supported. To sum up, if it were impossible to distinguish aiding and abetting from non-criminal military activities (that is, military action as such), then there would be no limits on aiding and abetting liability. The alternative, which is also preferable, would be prosecution and conviction for a common criminal enterprise.

r u 0 Specific direction is required. It did not take place. Nor can it be inferred from the fact that the Defendant knew or should have known 0 0 4 that the VRS committed crimes. This conclusion is supported by the relevant special norm of § 7 no. 3 of the Statute. To be sure, this provision is not directly relevant, since the Defendant was not a superior officer of the VRS. Nevertheless, it can be seen that failure to prevent the crimes covered by the Statute can only be punishable in a superior-subordinate relationship, not in the context of support for a coordinate army. The requirement of specific direction is not present, since the Defendant, although generally aware that the VRS was committing crimes, did not deliver assistance for any one specific crime.

r u 1 The judgment is not incorrect. The Court correctly concluded the Defendant was liable for aiding and abetting under Art. 7(1) of the Statute. Vuković, acting on orders, provided significant support for the commission of crimes in Sarajevo and Vlasenica (ammunition, logistics, financial). He was more than merely an arms supplier. Without his influence as the responsible party of the VJ on the VRS forces, the latter would not have been capable of committing the acts. He also knew of the VRS' actions. His assistance provided significant causal support.

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Art. 7 of the Statute does not require more than this above-cited external element. It is unnecessary to show a direct contribution to the actual criminal acts. This case does not involve participation in a common criminal enterprise as a matter of customary international law.

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r u 1 It is affirmed that the Defendant is liable for aiding and abetting pursuant to Art. 7(1) of the Statute. The Appeals Court is not of the view that it is necessary that the support provided by the accomplice be specifically directed at committing a crime. As an initial matter, no such condition is explicitly found in the text of Article 7 of the Statute. Nor can it be derived from the Vasiljevic Decision. That decision was primarily concerned with the definition of participation in common criminal enterprises. When distinguishing this concept from aiding and abetting, the question of the specific aim of the enterprise was not seen as an isolated element of the offense, but rather in the context of one element necessary for accomplice liability: the significant effect of the support. Further, subjecting Article 7 of the Statute to interpretation does not yield the result that the element of 'specific direction' was intended to be part of the definition of aiding and abetting, or necessary to it.

4 3 4

The decisive factor for aiding and abetting is that the support provided with knowledge of the – actually committed – criminal acts, and had a material and significant effect on the commission of these acts. In this case, the defendant's conduct has fulfilled all elements of the crime. It is not disputed that the VRS committed serious crimes of which the Defendant had knowledge. Further, these activities were given decisive support by the Defendant: Not only did he commit the above crimes by supplying the VRS with the means to continue their war, he also made efforts to support VRS members financially, by continuing their official membership in the Yugoslavian army, and thus ensuring they received their salaries, even though he was aware that this would provide massive support to the VRS.

To presume the existence of a further required element of the 'specific aim' of support with respect to each criminal act is not called for in this case, and would also constitute a major hindrance to the prosecution of similar crimes. It is evident that this interpretation is not intended. For his part, the Defendant is not deprived of adequate legal protection when a court declines to recognize the requirement of the 'specific direction' be fulfilled as to every individual criminal act. The required element of 'significant contribution', in combination with the need to show knowledge of the crimes which have been committed, provides adequate assurance against unfair conviction, even of a supporter who was physically remote from the crime scene. Accordingly, the Court perceives no room to add an additional required element of 'specific direction'.

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r u 1 I believe that the legal arguments in the appeal which argue that specific direction towards the commission of a crime are necessary on the basis of the text (Art. 7 para. 1) are not well-founded. By definition, aiding and abetting is any act in support which makes a significant contribution to the commission of the crime, and requires only that the supporter know that he has provided help for a crime whose significant aspects he is aware of.

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In my view, the undisputed facts prove these elements have been fulfilled. In the years from 1993 to 1995, the VRS committed acts which, according to the undisputed facts, were intentionally directed against civilians and the Muslim minority and which constituted war crimes according to the legal definition. The undisputed facts established that the Defendant was aware of the VRS' actions and, firstly, provided significant logistical support as Chief of the General Staff and, secondly, without being a member of the Council, nevertheless urged and encouraged the Council to continue this support. According to the undisputed facts, the Defendant also knew

that the support which he pushed for contributed significantly to the VRS' ability to act.

This also undermines the Appellant's argument that the first-instance judgment would lead to general criminal culpability for supporting any military action. According to the undisputed facts, both acts of the VRS were not, in fact, "general military action" conducted according to the "general rules of conduct" for war, but rather targeted war crimes against the Muslim population. This was known to the Defendant, based on the elements of the crime.

The first-instance judgment cited by the Defense occurred in other factual circumstances and, in my view, is irrelevant to this proceeding and would, in any event, not influence my decision as an appellate judge.

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r u 1 The Defendant is guilty under Art. 7(1) of the ICTY Statute. The requirement is the commission of crimes under Arts. 2-5, the provision of assistance in planning, preparing, or execution "by another means". The required crimes exist. At the very least, they take the form of an attack on an undefended city by the targeted firing on and attack on the security zone in Summer 1995, and the ensuing intentional massacre of hundreds of Muslims, which constituted genocide in the sense of being the killing of members of a religious group with the aim of, at least, partially destroying it. This fulfills the elements of Art. 3b) and Art. 4 para. 2 of the Statute. 3 0 4

The required support is also proven. Under the Court's precedents, support can be shown by the knowledge that the acts committed aided, encouraged, or morally supported the commission of a specific crime. This does not require that Defendant have knowledge of the specific crime as such, in all its detail. It is sufficient to show that crimes were committed with the assistance provided, and that further crimes of a similar nature and extent were planned. This is shown by the fact that the Defendant, for years, committed with the means organized and provided by him. It is not necessary to show that the accomplice was so intimately involved in the planning of the specific crime that he was fully responsible for some parts of the planning, or that, at the time he provided support, he already knew of the specific details of the crime's commission. In this case, he would be a principal offender and not merely an accomplice, or he would fulfill the first alternative of desiring the crime as an accomplice (aiding and abetting planning). The Defendant, however, fulfilled the third alternative of aiding and abetting commission, by providing the VRS with materiel and personnel in a planned fashion and with significant organizational and material effort. This knowledge encompassed, first, the desire of the VRS to commit further serious crimes, and then turned into knowledge of a specific crime when the VRS began the offensive against the security zone. Even after this, the Defendant neither withdrew nor modified his support. Instead, he continued it in full scope and – at this point at the very latest – also provide moral support of a specific crime.

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r u 1 The judgment should be affirmed. The following considerations support this conclusion: 4 1 4

According to the undisputed facts of this case, Mr. Vuković, from a high position of authority, provided significant support through the VRS, knowing that the VJ was dependent on this support and that the crimes could not have been committed in the scope they were committed without this support.

As Chief of the General Staff, Mr. Vuković supervised a system and provided comprehensive military support in the form of arms shipments of significant scope, by other forms of practical aid, and by other moral and military support. He acted in the knowledge that the underlying offense would be directly committed by others, he had certain knowledge that his support would be used to assist the underlying crimes, and that, without his help, they would not have been possible in the form they took. Thus, he knowingly took advantage of a relationship of dependency. Further, he had knowledge, detailed information, concerning the circumstances of the criminal conduct of the principal offenders and from the military strategy, which, in effect, was to divide the area into a Muslim and a Serbian sector. His arms shipments were a significant factor in permitting military activity to be conducted more intensively. He was also aware of the effect which his support had on the underlying offenses, which were cruel war crimes.

When judging whether a person aided and abetted or “only” pursued a common criminal enterprise, the “specific direction” criterion cannot be presented as a required external element of aiding and abetting. As an initial matter, the text of Art. 7 (1) of the Statute does not support such an interpretation. It reads:

A person who planned, instigated, ordered, committed or otherwise aided and abetted in the planning, preparation or execution of a crime referred to in articles 2 to 5 of the present Statute, shall be individually responsible for the crime.

The word “specific direction” is not mentioned. Nor can a different interpretation be supported by the defense’s argument that a different position was endorsed in another case (Vasiljević). For one thing, the cases are not identical. Further, Mr. Vuković’s participation in the sense of aiding and abetting was not merely general support in military action. Rather, he was one of the logistical planners and supporters, without whose support these crimes could not have even occurred to the extent they did. The Defense correctly argues that military action, *per se*, is not always punishable. The relevant issue here is a case with other criteria which, in light of the fulfillment of all the elements, justify the classification of the act of Mr. Vuković as aiding and abetting. The physical distance from the scene of the crimes plays no role, since it would be contradictory to exempt precisely the background supporters from criminal liability even though they were largely responsible for planning and execution and, further, had superior strategic understanding and better financial means and other capacities.

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r u 1 Specific direction is not an independent element of aiding and abetting under Art. 7(1) of the ICTY Statute.

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The discussion in the Vasiljević case which the Defense cites did not relate to the systematic definition of culpability for aiding and abetting. The Vasiljević decision mentioned aiding and abetting only to distinguish it from another basis for criminal liability, namely the pursuit of a common criminal enterprise.

Aside from the Defense’s incorrect interpretation of the cited decision, there are no valid reasons to regard “specific direction” as an independent element of aiding and abetting under Art. 7(1) of the ICTY Statute. This view is supported neither by the text nor by the meaning and purpose of the cited provision.

Further, the Defense implicitly concedes that this Tribunal has never before denied liability for aiding and abetting solely because the assistance was not specifically directed at supporting a certain crime.

The decisive question is, rather, whether the support was provided with knowledge of the criminal acts, and whether it had a genuine and significant effect on the commission of the crime. Both of these findings were made in a legally correct manner in the decision under review.

The Defense also argues that the approach favored by the Criminal Chamber would impose personal criminal liability for any provider of weapons, ultimately creating a sort of strict liability without regard to intent. This argument is also unconvincing.

Criminally punishing aiding and abetting requires several additional elements: first, one or more crimes must actually have been committed; the weapons supplied must have significantly contributed to the commission of the crimes, and the supporter must have known of the foreseeable use of his support. These findings were also made in a legally correct manner in the decision under review.

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r u 1 Article 7 does not require that the assistance provided be specifically targeted to the commission of the underlying crime.

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It also constitutes aiding and abetting a crime when the principal offender is provided with general logistical support by someone with knowledge of his actions and intentions, and therefore is put in a position to commit the underlying crimes or to support their commission. This involves practical assistance provided to the principal offender which has a significant effect on his criminal actions. Article 7 does not justify a differentiation according to whether the support was specifically targeted. What is dispositive is that the Defendant was, from a subjective standpoint, clearly aware that the principal offender had committed the crimes, and that his actions

objectively supported the commission of those offenses, and that he wished to provide this support. The other decision of the Chamber upon which the Defendant relies involves different facts. It does not justify the general conclusion that aiding and abetting under Art. 7 involves assistance specifically directed at the commission of the crime. A limitation of this kind cannot be derived solely from the law, and may well not even be practicable in cases like the instant case. Since the VRS's actions were known, the provision of continuing logistical support for them is aiding and abetting, since without this assistance, the actions could not have been committed.

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r u 1 In my view, the conditions for aiding and abetting under Art. 7 no. 1 of the Statute have been fulfilled both objectively and subjectively. 0 4 3

Objectively, practical assistance was provided by the provision of materiel and personnel resources. As the Defendant himself admitted, military action would not have been possible without this assistance, which entails that the type of assistance provided also had a significant effect on the commission of the offense. In particular, the continuing salary payments to officers of the Yugoslavian Army who fought for the VRS was described by the Defendant as "significant help".

The Defendant was clearly aware, from reports of those involved and from the media, both that crimes had been committed and what crimes they were. From a subjective standpoint, the subjective element of the crime requires only knowledge of the essential circumstances. The Defendant's knowledge went much further than this. He knew of the commission of extremely specific crimes, which suffices to prove a sufficiently specific connection between the aid provided and the underlying crimes.

This subjective requirement sufficiently limits liability for aiding and abetting, and prevents excessive criminal liability. To require an objective specific link is not practicable, and therefore inappropriate.

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r u 1 The undisputed facts show that the Appellant is guilty of aiding and abetting the crimes which have been adjudicated. "Aiding and abetting" is an act or failure to act which is aimed at providing practical support, encouragement, or moral support to the principal in committing an offense, and which has a significant effect on the commission of the offense. The Defendant's appeal is based on the notion that his actions were not "specifically directed" toward the underlying offense, and therefore that the objective element of the crime of aiding and abetting is not fulfilled. A "specific direction" is not a necessary element of the external component (actus reus) of aiding and abetting. There need be no a causal connection between the accomplice's act and the commission of the crime, and the accomplice's activity need not be a necessary precondition to the crime. The external component of aiding and abetting a crime can take place before, during, or after the commission of the offense, and can take place at a distance from the scene of the crime.

As Chief of the HV's General Staff, Horvat supervised the administration of logistical support for the military needs of the VRS and SVK. Without his material assistance, especially weapons and ammunition, the VRS and SVK could not have engaged in killing. Since B.V. knew what was done with the weapons he provided, if not exactly when and where, and nevertheless continued to enable and even support further weapons shipments, he actively participated in the killings. Support for the crime by deliveries of the means with which the crimes were committed fulfills the objective element of aiding and abetting under Art. 7.

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r u 1 The Vasiljević Decision, among other authorities, establishes that a common goal which includes the commission of a crime is required, and that aiding and abetting is sufficient to establish this. There is no need for the goal to have been explicitly agreed. The Defendant was named the leading General Staff Counsel of the VJ; he knew of the acts committed by the VRS, and that they included serious crimes against civilians. In particular, civilians had been fired on since 1992. The Defendant knew that his wide-ranging logistical and military support of the VRS, in particular supplying munition, infantry, fuel, etc., meant that the VJ, which was led by him, would, at the minimum, support the actions of the VRS, which included crimes against civilians. A specific aim of the support as an external element of the crime is not required; it is sufficient that a general aim has been proven and that the Defendant could have foreseen that his support would facilitate (at the least) crimes against civilians. These conditions are satisfied in this case, since the crimes against civilians had – at least

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intermittently – occurred since 1992. The Defendant knew of the material facts and can certainly be charged with knowledge of which results could result from his logistical and military support. This certain knowledge also supports the inference that the Defendant, by helping the VRS through the VJ (which he led), also aimed to support the commission of crimes, even if this may not have been the sole purpose of the support. For purposes of aiding and abetting liability, this purpose suffices, even if it is not the sole purpose.

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r u 1 The appeal is based on a single argument: that Vuković's actions were not "specifically directed" towards the crimes committed by the VRS. However, the element of "specific direction" which the court in the Vasiljević decision mentioned as an element of aiding and abetting, does not apply in the case before this Court. The reviewing court has already determined that "specific direction" is not a necessary element of the external element of aiding and abetting. It is necessary to prove neither a causal connection between the accomplice's acts and the conditions of the crime, nor that the action was a precondition for the commission of the offense.

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In the final analysis, these questions can remain open, since the Defendant's acts in support indeed show a "specific direction" toward the commission of the underlying offenses. It should be noted .... (whereby it is assumed that the Defendant provided the assistance with knowledge of the consequences and the will to achieve them)

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r u 1 - the underlying offense which is being aided must be known to the Defendant, at least in general outline 0 1 0

- This is the case here. It is possible that the D. also supported the military group to help it defend against attack, and to generally improve its capacities.

However, he must have known – at least by the time reports of war crimes surfaced, if not sooner – that it was very likely such acts would also take place in the future. Nevertheless, D. continued providing support, whether in the form of materiel deliveries, personnel support, or influencing the government to continue support.

- aid need not be proven to be material to aiding the commission of the underlying offense. It is therefore irrelevant that only 10% of all of the munitions were delivered.

- if a material contribution (=50% +) were required, this would not only blur the distinction between aiding and abetting and acting as an principal, but would also exclude liability for subordinate forms of aid which nevertheless were essential to the commission of the underlying offense.

- even aside from these considerations, it is necessary to consider not only physical support, which can be rendered from afar, but also psychological support. The military group could have been strengthened and encouraged to continue their activities by the knowledge that the D., as a high-ranking general with considerable influence over the government, continued to support them despite the crimes they had committed, and the D.'s knowledge of these crimes.

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R s 0 To convict someone for aiding and abetting, it must be proven that the accomplice intended the objectively existing aiding and abetting actions to be committed with the specific direction of commission of the principal underlying offense. This is not the case here. To be

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sure, the Defendant knew that the organization to which he delivered material and other forms of support sometimes committed criminal acts, but he did not deliver his support for this reason. Rather, his intent was to ensure that the HVO would, in general, be capable of engaging in military action Military action, as such, and being an accomplice thereto, is (regrettably) not punishable. It is not possible to refrain from requiring specific intent as part of the subjective element of accomplice liability because otherwise, any support for military action would be punishable, which would violate the overall system of the statute. This is so because it is generally understood that war crimes are, to some extent, inherently a part of every war. Further, decision-makers have at least general knowledge of these war crimes. It is obvious that these crimes will recur. The result would be that a judgment for aiding and abetting a military action would, in practice, always lead to later conviction for being an accomplice to crimes. This, in turn, would make it

impossible to support any party in a war, which is precisely contrary to the intention of the law.

The prosecution insists forcefully that this definition will ensure that very few people will be convicted on the basis of being aiding and abetting by delivering of supplies. This is correct, but of no legal relevance.

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R s 0 One of the external elements of aiding and abetting under the Statute is, according to the case law of the ICTY, the specific relationship between the actions of the accused accomplice and the criminal acts committed by the principal offender or offenders. 3 0 4

This form of specific relationship of the Defendant's support to the acts committed by the principal offenders is not proven by the evidence which the Criminal Chamber heard in the first instance. It has not been shown that the goal of the Defendant's activities was to facilitate the specific crimes within the meaning of the Statute, rather than to assist in other goals, such as military action as such.

For this requirement to be satisfied, it must be shown that the subjective purpose of the support for the HVA for which the Defendant was responsible – delivery of weapons, ammunition, vehicles, and fuel, as well as the financing of officers of the official Croatian Army to enable them to act for the HVY – was specifically intended to support the commission of crimes within the meaning of the statute.

No such proof has been provided on the subjective level. Further, there has been objectively no proof that material elements of the support provided by the Defendant was used during the commission of crimes by the principal offenders.

It may be argued that the principal offenders from the HVA ranks may have felt themselves encouraged to commit crimes because the support provided for military reasons eased burdens on them in general. Nevertheless, this does not suffice to show that the Defendant provided the aid with such a purpose.

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R s 0 There is no doubt the Defendant provided support by furnishing ammunition, fuel, etc. to the HVO, however this was only non-specific support, since he was unaware of the specific use to which the support he provided would be put. 0 0 4

It is possible that, owing to his position in the HV, he had information that the HVO also committed attacks on civilians, from sources such as reports which he received. Nevertheless, in the final analysis, his support was not intended specifically for the incidents in Mostar and Ahmići. Nor does the subjective knowledge of the Defendant concerning the crimes committed by the HVO require the conclusion that his support was intended to approve of these acts and assist in their commission.

Under the Statute, aiding and abetting liability requires specific support for a certain action which is not given here.

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R s 0 In the Bešić case, the Appeals Chamber already decided that a specific direction to commit the underlying offense is a requirement for aiding and abetting liability. 4 0 0

It can be assumed here that the HVO also engaged in legal military action. It should be assumed, in the Defendant's favor, that his primary intention was to support these actions.

It is thus insufficient to show that the Defendant knew of the HVO's crimes, since this does not prove that the support he provided to the HVO was intended to facilitate these crimes, as opposed to the achievement of legal military objectives. Thus, his assistance was not specifically directed to the HVO's crimes.

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R s 1 Since the Appeals Chamber has meanwhile defined "specific direction towards crimes" as an element of aiding and abetting, we must continue this approach. 4 0 0

In my view, however, the scope of the activity of each of the supported armies in both cases is different. In the Bešić decision, it was explained that "only a few actions of the ZS" were criminal. Thus, it could not be determined that Bešić wanted to support the criminal acts.

In the Horvat decision, it was established that a significant component of the HVO's military strategy was the commission of crimes,

which was evident to Horvat from the information sources available to him (media, NATO, HV). He approved of this strategy by providing support, including persons who were at that moment organizing the commission of crimes. Thus, his aiding and abetting was knowingly directed toward supporting criminal acts.

R s 1 The conviction is affirmed.

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The Defendant is guilty of aiding and abetting, since he not only provided organizational support for the personnel of the HVO Army (officers of the Croatian army, which continued to receive their salaries from there) but also provided weapons and ammunition to the HVO. He provided this support with knowledge of the ethnically-motivated crimes of the army in Mostar and with the knowledge that without his assistance, the army would not have possessed sufficient materiel. He expressly conceded this last point; the crimes of the HVO against civilians were known to him owing to the international reporting which he himself followed, as well as surveillance by international intelligence agencies. One circumstance in particular – that the HVO Army would not have been able to act without his support – shows that he at least knowingly approved of the use of the weapons he had delivered for crimes against civilians in the UN protection zones. In light of the fact that the conflict lasted for several years, and that more than just one delivery was provided, aiding and abetting is given at least as to the attacks on civilians which occurred during the summer. The question of the specific direction of the weapons shipments toward the crimes is not relevant in this context, since the knowledge and toleration of a possible use of the weapons furnishes a sufficient distinction from mere (non-criminal) military action.

R s 1 The Defendant's actions were not neutral. The support provided by the Defendant, in this case the provision of weapons and enormous amounts of infantry and artillery ammunition, was necessary for the commission of the crimes. In the present case, thus, the Defendant's actions were not neutral, but rather had were specifically directed at facilitating crimes. These can also be clearly distinguished from ordinary weapons shipments. Weapons shipments in general can also be used to kill. However, killing during war is not considered punishable. In the present case, however, the issue is killings which are unlawful even during wartime. Further, the Defendant also knew that crimes would be committed with the weapons he delivered. He knew that the HVO committed crimes. He also knew that his arms shipments were needed for the commission of these crimes. He was involved in the entire decision-making process. Although he was not an official member of the Supreme Defense Council, he had a very high position and took part in the important meetings. He was, therefore, aware of the use to which the delivered weapons were put.

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R s 1 Horvat's support, viewed overall, achieved a quality which, in accord with the criteria first established in the Bešić decision, rose to the level of support aimed at facilitating crimes, and thus justifies liability for aiding and abetting.

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In contrast to the Bešić case, Horvat did not merely provide logistical support (for example, weapons and ammunition) for the military activities of an army which he was aware had committed war crimes.

Rather, Horvat:

- as Chief of the General Staff of the HV and therefore as commander
- completely organized the support.
- with reliable information that, without this support, the HVO would not be battle-ready and therefore could not have committed any of the crimes.
- in particular, he initiated and organized that the leadership of the HVO would be composed primarily of officers from the HV, which he led (and who were thus his subordinates), and which would be financed by "personnel centers", see Art. 7(5) (??) of the Statute, and thus were directly subordinate to him in the command hierarchy of the HV
- suggested this system in the Defense Council, defended it, obtained approval, and then implemented

R u 0 Aiding and abetting liability under 7(1) for crimes from Art. 2 to Art. 5 of the Statute is not proven, since there is no evidence for the individual responsibility of the Defendant. In the Bešić decision, which is comparable to the instant case, aiding and abetting under § 7(1) of the Statute requires a specific direction of the aiding and abetting as an external element of the crime. In the case of aiding and abetting which does not take place in direct spatial and temporal proximity to the underlying offense, this requires proof of a connection between the support which the Defendant is accused of providing and the crime committed by the principal. The undisputed fact that the Defendant aided the VRS is insufficient to prove this necessary connection. In this context, the mere provision of military support is generally not considered to be aiding and abetting possible war crimes. Nor is general knowledge of atrocities enough to prove a specific direction, since mere knowledge does not prove a goal-oriented approval and support of criminal actions.

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R u 1 Article 7(1) of the Statute read in the Prosecution's interpretation, that is, no specific direction required.

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arg.: there is no support for this in the text of Art. 7(1) of the Statute; meaning and purpose of the Statute should be consulted; this leads to undisputed conclusion that aiding and abetting in the form of logistical support of the VRS by the VJ, whose highest-ranking officer and commander was the Defendant in the relevant time period.

specific direction for aiding and abetting was required by the Court itself in the Bešić decision; however, the facts of the Bešić decision are not completely identical to the present case, since Bešić, unlike the Defendant in this case, was not the highest-ranking officer, but only part of the chain of command; in this case, Defendant is highest-ranking officer as chief of staff of the VJ, and had final command authority. Even when he initially did not know of the planned assault on Sarajevo, which can be doubted on the basis of the type of support provided, for example ammunition, he knew – at the latest at the time of the assault – from international reports how the weapons actually provided would be used, and should have stopped any further support, but this did not happen. Instead, he continued afterward to actively command the logistical support of the VRS. To be sure, the VRS was not subject to his personal command, but the aiding and abetting which is punishable under Art. 7 para. 1 would become a dead letter, since it is not disputed that the Defendant "provided support by other means for the preparation and execution of the VRS' crimes by providing assistance to the VRS. By the time international reporting started concerning the shelling of Sarajevo – at the latest – he also knew how his logistical support was being used, particularly as it was not being used by the VRS for self-defense, but recognizably used against the civilian population. To be sure, the indictment, for purposes of interpretation, also referred to Art. 7 paras. 2 and 3. However, in this context, the Court explicitly notes that the Defendant was acquitted of the crime he was accused of under Art. 7 para. 3, so that culpability based on his command responsibility cannot be invoked. Nevertheless, he should be convicted under Art. 7 para. 1 for his own aiding and abetting. The acquittal under Art. 7 para. 3 does not prevent his conviction under the elements of Art. 7 para. 1, and also does not call for a narrower interpretation of the same. Rather, Art. 7 of the Statute should be interpreted overall to impose far-ranging liability for crimes under Arts. 2 through 5 of the Statute.

An expansion of liability for aiding and abetting, and thus of the offense defined by Art. 7 para. 1, is already effectively controlled by the limits listed in the indictment, which require that aiding and abetting relate to a crime which was actually committed, and that the Defendant have knowledge of how his support would be used. A further limitation, derived from the Bešić decision, would benefit precisely those high-ranking commanders such as the Defendant, especially when he cannot be convicted under Art. 7 para. 3 owing to lack of knowledge.

R u 1 The dispute concerning the (general) requirement of a specific direction of the aiding and abetting need not be further discussed, since, according to the undisputed findings, the Defendant's conduct satisfied this requirement. The Defendant's specific acts in support consisted generally of logistical support of those who directly committed the qualified offenses. More specifically, the acts in support

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also included the delivery of large amounts of ammunition for infantry and artillery weapons.

The crimes of the principal offenders consisted primarily of a campaign using snipers and artillery against civilians during the siege of Sarajevo. Regarding this siege, it should be noted that it was documented over three years, and that the Defendant was explicitly informed of this circumstance. He was positively aware of the commission of the underlying offenses by the group to which he provided logistical support.

Thus, the Defendant is culpable of providing the ammunition with which the armed campaign was carried out. Given that the crime consisted of killing large numbers of civilians by sniper and artillery attacks, the delivery of precisely the weapons used to commit these attacks constituted specific support of precisely these crimes.

The controlling statute punishes persons who “otherwise aided and abetted the execution (of the crime)”. The Defendant can be accused of this offense, with specific reference to the underlying crime. The undisputed facts confirm that he was informed and positively aware of the necessary connection between the logistical support he provided (ammunition) and its concrete use. No closer connection is required to support a conviction for aiding and abetting.

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R u 1 The Defendant objectively aided and abetted the underlying offense. He supported the VRS in such a way as to facilitate its commission 4 2 4

of war crimes, which is not in dispute. The supporter objectively facilitated the VRS’ war crimes. Further, the Defendant subjectively knew that the VRS had committed war crimes and would continue committing them; he must at least, based on information available to him, have assumed that the VRS would continue committing war crimes. Further, the Defendant knew that the support he provided was suited to assisting the VRS in the commission of war crimes, and that it in fact did so. Thus, the Defendant provided support which qualifies as aiding and abetting, and knew this to be the case.

In light of the fact that the Defendant knew his support assisted in the VRS’ commission of war crimes (among other things), and manifestly not merely ordinary military action, there is also a sufficient connection between the potentially neutral support he gave and the war crimes. The Defendant also, at the least, knowingly tolerated this, since he knew or at least assumed that operative measures of the VRS were impossible without his assistance and that the VRS would commit war crimes.

A further specific connection between his aiding and abetting and the ensuing war crimes is not required. Such a connection is not required by the controlling Statute (whose text I would like to cite here; comment on the experiment: the fact that the documents are no longer available when the judgment is being written is not helpful!). According to the text of the statute, it is sufficient to show merely an act of aiding and abetting a war crime. A specific connection is not required and would go too far in light of the Statute’s express allowance of responsibility for high-level commanders and heads of state, who usually have nothing to do with the execution of specific actions.

The previous Chamber decision in the case of B. is not binding in this case. [and if I now had access to the decision and the Statute, I would furnish my reasons for this conclusion...]

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R u 1 The Defendant is guilty, because his logistical and personnel support satisfies the requirements of aiding and abetting pursuant to Art. 7(1). 0 0 3

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R u 1 In conclusion, the Defendant V. in this case is culpable of “specific” aiding and abetting the VRS’ war crimes within the meaning of the jurisprudence of the appeals court. 2 0 2

The basis for the decision is the interpretation of Art. 7 para. 1 of the Statute, concerning aiding and abetting the planning, preparation, or execution, in this case of the VRS’ war crimes.

The “specific direction” of the assistance towards a certain underlying crime means that there is a culpable connection between the

support provided and the crime committed by the principal offender – that is, a closer connection between the actions of the accused accomplice and the underlying crime of the principal.

This culpable closer connection exists here in the form of the dependence of the VRS on the VJ and from the specific assistance by V. without which the activities of the VRS, whether military action or war crimes against civilians, would not have been possible. In addition to this factual / logistical dependence of the VRS on the VJ, the necessary closer connection is also shown by the fact that V. had reliable information that the VRS committed war crimes. Indeed, it was the precise strategy of the VRS to commit such actions. Thus V. intentionally supported them.

Accordingly, V. knew of and approved the commission of war crimes by the VRS and supported them by providing logistical help. He knew that this support was necessary to achieving his goals, and that the VRS was dependent on his aid.

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R u 1 The sole issue in this case is the interpretation of the concept of aiding and abetting. After the Defendant was appointed Chief of the General Staff in August of 1993 – at the very latest – he had received information concerning the crimes committed by the VRS, especially in Sarajevo. To the extent that – after becoming aware of these crimes – he actively spoke out in leadership meetings in favor of the continued support of the VRS by the VJ, then even if we accept that an element of guilt is aiding and abetting specific crimes, it is clear that the crimes were sufficiently specific so that they could be attributed to the Defendant. It can further be assumed that the Defendant continued to receive information concerning the situation and therefore could have intervened at any time, if he believed it was not necessary to support attacks on the civilian population. 0 0 0

R u 1 The appeal is dismissed, because the Appeals Chamber is not convinced that the first-instance judgment was legally incorrect. The Criminal Chamber correctly assumed that the Defendant's actions be “directed toward” the commission of specific crimes is not a necessary element of aiding and abetting. However, the Defendant's conviction can be upheld even if the additional element of a specific direction is assumed, since the Appeals Chamber also believes correct view of the evidence shows that the Defendant acted with the specific direction of supporting the underlying crimes (the use of snipers in Sarajevo, killing of civilians in Vlasenica). 4 0 4

- this kind of intent is not required by the text of Art. 7(1). That provision is, rather, formulated quite broadly.
- A broad interpretation of Art. 7(1) is supported by the meaning and purpose of the Statute, which is specifically intended to ensure that not only the principal offenders are caught, but also their supporters in the background; for those defendants, however, it may not always be possible to prove that their support was specifically directed at the commission of crimes.
- A specific direction toward the commission of crimes was also not regarded as a necessary element of aiding and abetting in the Appeals Chamber cases of Mrksic and Slijvancanin.

In the alternative, the Appeals Chamber, pursuant to the evidence it must consider pursuant to Art. 25 of the Statute, can also conclude that the Defendant's aid was specifically directed toward the commission of the underlying crimes:

- It is undisputed that the VRS's actions were desired by the Defendant.
- The Defendant knew that his support was a necessary factor for these actions
- The Defendant wanted this support and support for the actions of the VRS. His actions were not comparable to the general support of an army of another state – for instance by arms shipments – but rather were specifically directed toward supporting the activities of the HRS which violated international law.

R u 1 Based on the indictment, it is undisputed that the limiting definition of the offense which requires “specific direction” is not fulfilled in the person of this Defendant. However, this element was seen as necessary to the offense of aiding and abetting in the Bešić decision of 4 1 4

the Appeals Chamber. This decision is incorrect, because there is no need for such a stringent limitation of the definition of aiding and abetting. Such a stringent limitation is not called for by the text of the statute, nor is it required on grounds of specificity. Finally, the Defense's argument that it fosters equal treatment in criminal liability is unpersuasive. In accordance with the indictment, it is sufficient that crimes under Art. (??) of the Statute were actually committed, the Defendant played a fundamental causative role in their commission, and at least knew that his support would very likely facilitate and support such crimes and tolerated this outcome with approval. The Defendant fulfilled the elements of the offense, at the very latest, when he continued logistical support after being apprised of reliable information concerning criminal acts which had been committed over a long period.

### India

A s 0 This appeal arises against the judgement of the trial chamber whereby Ante Horvat, chief of the chief of army of Yugoslavia has been convicted under article 3, 5, 7(1) of ICT statute in having aided, abetted the war crimes against HVO and accordingly has been awarded punishment of 27 years. [illegible] 0 0 3

A s 0 I recall that where an inference is drawn from circumstantial evidence to establish a fact on which a conviction relies, it must be the only reasonable inference that could be drawn from the evidence presented. An alternative reasonable explanation is that the assistance provided by Horvat to the HVO was directed at supporting the war effort and not to the commission of the crimes and that such assistance did not contribute substantially to the commission of crimes. 0 0 0

abetting.

Horvat is not accused of providing assistance to the commission of crime hence in such situation neutral acts providing general and logistic military assistance to an army engaged in legitimate military operations do not qualify as abetting and aiding and therefore requirement of specific direction as an explicit element of aiding and abetting is manifest

Horvat was not officially a member and the supreme defence council. Horvat also proposed carefully implementation the idea creating personal centers to regularise the status of the officers to allow remain part of the Croatian army

in above factual aspect prosecution has failed to prove the charges of specific direction of aiding and abetting against Horvat hence Horvat is acquitted

A s 0 the accused Ante Horvat has joined the army and appointed as commander on 26-08-1993. it is clear that he holds the post of commander in the army. and holds the official post. The charge against the petitioner is aiding and abetting and provide military assistance and logistic assistance to HVO group. it transpires that the accused petitioner has held the post of commander and in discharge of his duty, he has provided assistance to the rebel group. it is not the case of prosecution that the accused has individually or personally help the rebel group. it is quite clear from the bear reading of article 7 of the statute of the international crime tribunal art 7(2) provides that any person who holds the official position, such person shall not responsible for the offence. and article7(4) provides that any person who intentionally individually charge with the crime, he should be responsible for criminal liability. in the present case, it is not the case of prosecution that accused has done the act in his personal capacity. So accused can not be convicted and conviction can not be sustained. 0 0 4

A s 1

A s 1 Horvat is charged for aiding and assisting the planning, preparation, or execution of the crimes. H.V.O. has committed crime directly. Therefore it is required to decide whether Horvat has aided or assisted for committing Crime by H.V.O. 0 0 0

Looking to evidence on record, it is transpired that Horvat has known that H.V.O. has committed crime and violated human right.

Although Horvat has continued to aid and assist to HVO. For abatement, it is not necessary that the abettor should present at crime place. If abettor has aided for committing or inciting crime, it is amount crime. Moreover, Horvat has aided and assisted to HVO with knowledge that his aid and assistance would be increased the violence of human right. Moreover, Horvat is not ordinary person, he is officer. He has known the result of his aid and assistance. Therefore, I am of view that Horvat is guilty for his conduct, aid, and assistance. Which may increase crime. Hence I pass the following order.

Mr. Horvat is guilty for his abettment.

A s 1	1. Will determine the correct approach. 1628. 2. Therefore finds that Lacervic has failed to demonstrate that the trial chamber erred in finding that aided and abetted the crimes of deportation and forcible transfer through his involvement in the “joint operations” of the mup and the VJ in 1999. 3. Finding is confirmed.	0 0 0
A s 1	Hover has provided logistical and military support to Bosnia Croatian group involved to cleansed minority community. He gave specific direction to Croatian group thereby providing practical assistance by encouraging and giving moral support to the principal perpetrator to the crime. Assistance itself qualifies as aiding and abetting as H knew that his acts is facilitating the commission of the crime. Knowledge can be attributed to H as he has given specific direction to Military group in the was against Bosnian Muslim community. There was requisite mens rea on the part of H in providing logistical support to Croatian army to be used by them against them. It is not necessary for him the know the manner in which his specific direction were to be executed. THE intention itself indicates his guilty mind in providing and giving specific directions. Thus it is established that H aided and abetted the commission of crime by Crotian military. The appeal deserves to be dismissed.	0 0 0
A s 1	AS PER THE ncyt s. 7(1) and 7(3) Horvat is liable for conviction	0 0 3
A s 1	The basic requirement to sustain conviction on Ante Horvat are to be booked into the penal section and it is ingredients are stand proved.	0 0 4
	7(1) of ICTY gives room for otherwise aided to commit war crime defined under art 2 to 5. The involvement of Ante Horvat to provide military and logistical assistance from HV to HVO to attack in civilians of MOSTAR and AHMIĆI can be read from circumstantiated evidence who has deployed his manpower. Salary is being paid by HVO to the deployed person by Ante Horvat who has canvassed for the salary under name and style pf “arrest help.” The very conduct of the accused in providing assistance in two spells from sep 1992 to nov 1995 and in summer 1995 at MOSTAR and AHMIĆI would clearly depict that the accused has helped HVO by providing logistical and military assistance to HVO.	
	Hence, the conviction by the Trial chamber judgment is confirmed, conviction given to the defendant is sustained and hold him guilty.	

A u 0

A u 0	The main points are:	3 2 4
	The Prosecution must prove beyond a reasonable doubt that the logistical and personnel assistance provided by Vuković was specifically directed at providing practical assistance to the perpetration of the crimes and that it had a substantial effect on the perpetration of the crimes. In view of the foregoing discussion, circumstantial evidence was reasonably open to the conclusion that Vuković did not provide practical assistance to the perpetrators of the crimes which had a substantial effect on the perpetration of the crimes as Vuković’s practical assistance had a substantial effect on the perpetration of the crimes in Sarajevo and Vlasenica may reasonably be inferred, let alone which would establish it as the only reasonable conclusion.	

The legal standard does not require that Vuković be the exclusive source of assistance". While I concur that evidence of materiel from other sources does not raise a reasonable doubt that the FRY and/or the VJ was the primary source of weaponry in this case, This does not raise a reasonable doubt as to Vuković's responsibility pursuant to Article 7(1).

It is also required to be noted that the question is not whether the VRS substantially depended upon the VJ's support to function as an army, but rather, whether the support of Vuković had a substantial effect on the perpetration of crimes. That is, dependence of an army as a whole, on a foreign army as a whole, alone does not automatically lead to the only reasonable conclusion that such assistance provided to that dependent army and distributed by that army to its subordinate units was specifically directed at providing those officers in those units, being the principal perpetrators of the crimes, with practical support which had a substantial effect on the perpetration of the crimes.

Vuković provided logistical assistance to the VRS and the commanders in the VRS gave arms and ammunition to their soldiers and sent them to the theatre of war. This step was such that puts Vuković in a remote position in relation to the crimes committed. At the same time, the jurisprudence of the Tribunal does not require a cause- effect relationship but rather a substantial effect on the commission of the crime.

Although it is correct that it is not necessary to establish that the logistical assistance provided by Vuković served as a condition sine qua non to the commission of crimes, the presence of these intervening factors breaking the chain of events raises a reasonable doubt as to whether the logistical assistance provided by Vuković, in fact, had a substantial effect on the crimes committed in Vlasenica and Sarajevo. The intervening factors present in this case support an alternative inference which interrupts the natural flow of consequences from the provision of logistical assistance provided by Vuković to the VRS.

If the notion of direction is implicit in finding substantial assistance, I am of the view that a linkage between the action and the crimes must exist and needs to be proved by the Prosecution beyond a reasonable doubt. It is based on the evidence in this case, there is no clear connection between the assistance provided and the commission of crimes in Sarajevo and Vlasenica. It is clear that Vuković supported the conflict as a whole, but there is no evidence to suggest that such assistance supported the commission of the crimes which occurred in Sarajevo and Vlasenica. I recall in that regard that assisting the VRS wage war per se is not a crime under the Statute. One cannot simply ignore the reality that relations between states are often reinforced by the provision of significant military aid. Many foreign armies are dependent, to various degrees, upon such assistance to function. In this context, in many conflict zones around the world, the provision of military aid is aimed at supporting mutual interests such as the deterrence of war, the promotion of regional and global peace, stability and prosperity and other objectives.

Hence, I held him as not guilty.

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A u 1

A u 1 His logistics support to an unofficial militia group who is involved in genocide is sufficient to hold the defendant is guilty of crime against 0 0 0 humanity. He was a chief of the staff of the Yugoslav Army. Therefore he can not take the plea that he did not have any idea that his help would be used to kill innocent people.

A u 1 Considering the pleadings, record and brief facts filled by both the parties, it appears that the accused became advisor to the FRY 0 0 3 government for the rehabilitation of sorb victims of alberian persecution and chariman of teh United Serban Party and he was charged on the basis of Individual criminal responsibility under Article 7(1) of the Statute of the International law. The trial Chamber judge has convicted the accused mainly on the ground of Actus reus as though the accused is not directly involved in the crime but he had

knowledge about the consequences of his act though he has participated in the SDC's deliberately in a heinous crime and therefore Trial Chamber Court has rightly held guilty the accused and I hereby confirmed the judgment passed by the trial Court. Held guilty.

A u 1	Accused Borislav Vuković's conviction is required to be upheld as he has violated the provisions of Article 7(1)	0 0 4
A u 1	Since as per Article 5 the court has the jurisdiction to decide matter pertaining to international war crimes and Article 7 describes the type of crime, therefor this court has the jurisdiction to hear the appeal. After going through the contents and the previous judgment there is apparently involvement of the Lazqveric who aided and abetted the act of deportation and forcible transfer of people. Also there is no doubt that he has the knowledge that the act and assistance will lead to the offence and he also gave specific direction for the aiding and abetting the act. he was also the member of JCE who share the same intent therefore he is liable and has been rightly convicted by the court below. Further previous decisions cannot be made the sole criteria to overturn the judgment when the facts and the situation have been different. The appellant has challenged pleading four ground but the prosecution has proved the six grounds and have explained the case and deserves to be upheld. Therefore there is no infirmity in judgment of the Trial Chamber the same do not require any interference.	4 0 3
A u 1	I agree with the judgment. The prosecution has established the intention as such which r	0 0 0
A u 1	Heard both sides. Perused online record and documents. I would like to affirm the judgment delivered by the trial judge for the reason that when an Army officer works during war then he is expected to understand that his utmost duty is to protect Human Rights. Under the garb of misinterpreting the statutory provisions, though they are crystal clear, he can't shun or avoid his liability by simply saying that what he did will not come under "aiding" or "abetting" for the reason that he has worked on specific directions. The logic is very simple. War crimes are crimes against Humanity. They are not simple domestic crimes. Article 3 of ICTY statutes clearly provides the Tribunal shall have the power to prosecute the person violating the laws and customs of war, meaning thereby each and every violation need not be specifically like core of by the statute. Moreover, Accussed/Appellant Borislav Vuković has challenged the trial judgment only on the question of law, which inspire to presume that he is not denying the facts. Therefore, in my opinion, trial judge hasn't committed any error of law, hence I affirm the findings and conclusion reached by Trial Judge.	0 0 4
r s 0	As per my view. he is acquitted from the charges. Mere give a weapon can not be presume that he has committed any crime and here Horvat has performed his duty in war. A person shall be convicted only when there are ample evidence beyond all reasonable doubt against him. Here there are no such evidence. A previous conduct of any person can not tell his future act and therefore any previous act of HVO towards Muslim can not held guilty Horvat when he supplied arms to HVO. If a person give weapon to other then it does not mean that he has to commit any offence with that weapon and the person who give the same is responsible for that. A person is liable for aid when there are proximity but not for any remote act and act and conduct of HVO is not help the prosecution to held guilty to Horvat. Hence Horvat is hereby acquitted from the charges levelled against him.	0 1 0
r s 0	24. The Prosecution must prove beyond a reasonable doubt that the logistical and personnel assistance provided by Horvat was specifically directed at providing practical assistance to the perpetration of the crimes and that it had a substantial effect on the perpetration of the crimes. In a case where this finding is based on circumstantial evidence, such a finding must be the only reasonable conclusion based on the evidence. This court is firmly believe that the chain of circumstantial evidence must be proved. In the case of the hand I am of the view that the prosecution can not established his case as per the essential elements of the law. 25. By the foregoing analysis, I provided examples of how circumstantial evidence is reasonably open to the conclusion that Horvat did not provide practical assistance to the perpetrators of the crimes which had a substantial effect on the perpetration of the crimes. The	3 2 3

Majority fails to point to evidence from which a finding that Horvat's practical assistance had a substantial effect on the perpetration of the crimes in Mostar and Ahmići may reasonably be inferred, let alone which would establish it as the only reasonable conclusion.

26. I concur with the Majority that "the legal standard does not require that Horvat be the exclusive source of assistance".<sup>25</sup> While I also concur that evidence of materiel from other sources does not raise a reasonable doubt that the HR and/or the HV was the primary source of weaponry in this case, I respectfully cannot agree with the conclusion of the Majority that this does not raise a reasonable doubt as to Horvat's responsibility pursuant to Article 7(1).

27. I note that the question is not whether the HVO substantially depended upon the HV's support to function as an army, but rather, whether the support of Horvat had a substantial effect on the perpetration of crimes. That is, dependence of an army as a whole, on a foreign army as a whole, alone does not automatically lead to the only reasonable conclusion that such assistance provided to that dependent army and distributed by that army to its subordinate units was specifically directed at providing those officers in those units, being the principal perpetrators of the crimes, with practical support which had a substantial effect on the perpetration of the crimes.

28. Horvat provided logistical assistance to the HVO and the commanders in the HVO gave arms and ammunition to their soldiers and sent them to the theatre of war. This step is in my view a *novus actus interveniens* that places Horvat in a remote position in relation to the crimes committed. At the same time, I am well aware that the jurisprudence of the Tribunal does not require a cause- effect relationship but rather a substantial effect on the commission of the crime.

29. Although the Majority is correct that it is not necessary to establish that the logistical assistance provided by Horvat served as a *conditio sine qua non* to the commission of crimes, the presence of these intervening factors breaking the chain of events raises a reasonable doubt as to whether the logistical assistance provided by Horvat, in fact, had a substantial effect on the crimes committed in Ahmići and Mostar. I am therefore satisfied that the intervening factors present in this case support an alternative inference which interrupts the natural flow of consequences from the provision of logistical assistance provided by Horvat to the HVO.

30. If the notion of direction is implicit in finding substantial assistance, I am of the view that a linkage between the action and the crimes must exist and needs to be proved by the Prosecution beyond a reasonable doubt. I find that based on the evidence in this case, there is no clear connection between the assistance provided and the commission of crimes in Mostar and Ahmići. It is clear that Horvat supported the conflict as a whole, but there is no evidence to suggest that such assistance supported the commission of the crimes which occurred in Mostar and Ahmići. I recall in that regard that assisting the HVO wage war *per se* is not a crime under the Statute.

31. I underscore the novelty of this case in the context of the application of aiding and abetting. It is true that never before have a commander and the Chief of Staff of General Staff of one army been criminally responsible for the crimes committed by members of the armed forces of another state or entity".<sup>27</sup> This case is also unique insofar as it is the first clear expression of a direct link between the HR and the crimes committed in Ahmići and Mostar. I am satisfied that the evidence before the Trial Chamber establishes this link. It is, however, imperative at this point to recall a fundamental principle of national and international criminal law – namely that individual criminal liability is based on personal guilt, not state responsibility.

32. With that in mind, one cannot simply ignore the reality that relations between states are often reinforced by the provision of significant military aid. Many foreign armies are dependent, to various degrees, upon such assistance to function. In this context, I am mindful that in many conflict zones around the world, the provision of military aid is aimed at supporting mutual interests such as the deterrence of war, the promotion of regional and global peace, stability and prosperity and other objectives.

33. If we are to accept the Majority's conclusion based solely on the finding of dependence, as it is in *casu*, without requiring that such assistance be specifically directed to the assistance of crimes, then all military and political leaders, who on the basis of circumstantial

evidence are found to provide logistical assistance to a foreign army dependent on such assistance, can meet the objective element of aiding and abetting. I respectfully hold that such an approach is manifestly inconsistent with the law.

34. I therefore respectfully contend that the Majority erred in concluding that the logistical and personnel assistance provided by Horvat met the objective elements of aiding and abetting under Article 7(1) of the Statute.

...

r s 0 As per the judgment of the Appeal Chamber in the case of Vasiljevic, the person must have specifically directed under Article 7(1) of the Act. of aiding and abetting the crime. Merely assistance of crime with or without knowledge is not sufficient even though having the impact of crime and hence it does not make out the case of offence under Article 7(1) of the Act. The act of Horvat does not said to be waging of war without specific directions.  
The argument on behalf of the persecution cannot be accepted as a person at far distance mere assist a group of persons indirectly which results into some crime cannot be held guilty under Article 7(1) of the Act. 4 0 4

r s 0

r s 1 He is responsible for the said offence of Article 7(1) of Individual Criminal Responsibilities because he was head of HVA and his liabilities cannot be absolve or being a head of HVA, his subordinate official obey the order of head of HVA and due to his act, then he was responsible for the same for civil war. Therefore he is liable for punishment of said offence and I upheld the order of trial court and confirm the order of trial court. 0 0 3

r s 1 IN this case, Horvat has oversaw the system providing comprehensive military assistance to HVO. He has also provided logistical assistance to HVO which includes providing of weapons, training, fuel etc and his role and contribution has been acknowledged by Petkovic while sending letter to Tudjman wherein he sent gratitude for invaluable assistance HVO received from HR and it is on the record that without assistance of HV the could not be succeeded. Further, his role in abetting and aiding the HVO is clear from the fact that with his assistance only the HVO managed to get released their salary. Though, Horvat was not a member in SDC but he attended its meeting wherein they instructed to provide logistical assistance to HVO and even he participated in those meeting with Tudjman to whom gratitude has been sent by Petkovic later on and from these circumstances. Not only this, the crimes which were being committed HVO against the civilian were duly brought to the knowledge of Horvat but despite this, he continued to help HVO. Further, the weapons provided to HVO by Horvat was better than their other sources and even great bulk of military supply was given free of costs despite the fact that HVO frequently was unable to pay whenever payment was demanded and therefore, from these facts and circumstances, it clearly appears that Horvat intentionally after having knowledge of the crimes being committed by HVO aided and abetted HVO in committing the crime and the contention of Horvat that there was no specific direction or role on the part of Horvat is having no substance of merit, otherwise also, once it stands proved on record that Horvat aided and abetted HVO by providing logistical assistance and helped them to get their salaries released even while committing crime thus the act of Horvat comes within the preview of aiding or abetting the principle offender. 0 0 0

r s 1 Accused Ante Horvat having been appointed as the Chief of the HVO Army Chief and the newly formed Army being headed by the accused since 1993 to 1995. In the course of civil war in Bosnia crimes were committed at the behest of the Army Chief who the present accused where the act were carry out with the knowledge and consent of the accused person in as much as the present accused had supplied the arms and ammunition and the innocent civilian were systematically bombard by shelling and sniping Mostar resulting to murder, injuries to thousands and transfer many. The fact the present accused had provided logistic support and moral boast to the 0 0 0

Armies which was under his command was definitely an act was carry out systematically since his appointment as Army chief from 1993 to 1995 and in view of such in human atrocities and causing genocide I am inclined to uphold the conviction.

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r s 1 The defendant was very well aware of the criminal activities of HVO then also he provided assistance to them in many ways. His mens rea 0 0 0  
is established from his acts of assistance

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r s 1 It is noted that since 26 August 1993, Horvat was Chief of the HN General staff. Being at such a responsible position, he was in control of 0 0 0  
the situation and quiet vigilant qua the developments within his jurisdiction. It was impossible to ignore or not to see the deployment of  
vast quantities of infantry and storage of artillery ammunition, fuel, spare parts, training centers and technical assistance. Even though  
Horvat was not officially a member of the Supreme Defence Council, he participated in the Council's meetings, along with its members,  
notably Franjo Tuđman, who at the time held the title of President of Croatia.

It was within his knowledge that a large number of HVO officers were drawn from the ranks of the Croatian Army. They officially  
remained members of the Croatian Army even as they were fighting in Bosnia under the banners of the HVO. During his tenure HVO  
officers retained their salaries and benefits as Croatian

It is established that Horvat knew that the HVO's operations encompassed grave crimes against civilians. Horvat received information  
from a variety of sources concerning the HVO's criminal behaviour and discriminatory intent against Muslims. Under Horvat's direction,  
the Croatian Army's intelligence and security organs monitored the views of the international community and international media  
concerning the conflict in Bosnia and Herzegovina. During meetings with NATO to coordinate enforcement of the UN's no-fly zone  
against Serbian violations, Horvat also received briefings on NATO intelligence concerning grave abuses against civilians by HVO forces in  
Mostar and other parts of Bosnia and Herzegovina. In particular, Horvat was alerted to the fact that the HVO was conducting a campaign  
of sniping and shelling against civilians during its siege of Mostar. These regular attacks were well documented and widely reported for a  
period of three years.

Hence, by considering all these facts, I am of the opinion that Horvat was responsible for abetting all these crimes. the plea of Horvat,  
that he was neither an active member of the HVO organisation, nor he was in controlling authority of the organisation, is of no help to  
him, because, the abetment of crime is not necessarily requires active assistance. Even a passive assistance, provided by a person, who  
can stop the offence, is also a kind of motivation to the wrong-doers.

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r u 0 The chain of circumstances is not complete so as to prove the guilt beyond reasonable doubt that his action has resulted into such act 0 0 0

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r u 0 AS I HAVE HEARD THE BOTH THE PARTIES , As per the submission made by the appellant side, That the statute of law it does criminalize 0 2 2  
the waging of war per se. stated provide military & technical assistance to one other with varying strategic objecting in a number of  
regions armed the world. Further submitted that this aid in itself does not render the leaders of assisting stated individually criminally  
responsible for aiding and abetting crimes committed during such wars. to be held individually criminally, at the conclusion the  
conviction is proper

I am with agreement argument advanced by the prosecution side.

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r u 1 At the relevant time the Accused Borislav Vuković was advisor to the FRY government for the rehabilitation of Serb Victims of Albanian 0 0 3  
persecution. Vuković guilty of aiding and abetting the following crimes committed by the member of the VRS in Sarajevo and Vlasenica  
murder Inhuman Act. The Actus Reus- Aiding and Abetting the crime does not require Specific direction. Hence Accused Borislav Vuković  
is guilty of aiding and abetting the crime of murder as a Violation of the Laws on Custom of War under Article 3 of the statue and the

crime of inhumane acts against the two other Muslim. Horvat's criminal responsibility for aiding and abetting crime under article 7(1) established.

r u 1 1. Accused Borislav Vuković is charged with violations of the laws and customs of war pursuant to Article 3 of the statute namely 3 counts 0 0 4 of murder and two counts of attacks on civilians. The prosecution charges him with aiding and abetting the planning, preparation, or execution of the crimes alleged for the inducement pursuant to Article 7(1).

2. Article 7(1) of the statute provides that a person who planned, instigated, ordered, committed or otherwise aided and abetted in the planning, preparation or execution of a crime referred to in articles 2 to 5 of present statute, shall be individually responsible for the crime.

3. Point herein to be determined is that

Q1 Whether or not aiding and abetting requires that the assistance be specifically directed to commission of crime?

Q2 if that be so, whether the prosecution successfully establishes its case against Borislav Vuković?

Q3 What order :

4. The answers to the above narrated issues are as under

1. In affirmation

2. In affirmation

3. As per the final order

- Whether or not aiding and abetting requires that the assistance be specifically directed to commit of a crime.

- Unspecific support to the forces committing the crime.

- Sp. Direction is not an essential element of aiding.

- Criminal liability attracted by mere assistance.

- Actus reus of aiding and abetting is ass. Sp. Directed at the comm. of crime.

- Conduct – imp element

- Accused Vuković appeals

o Held that actus reus of aiding and abetting in international law requires sp. Direction

o Apply that std

o Reverse the trial court's judgment.

- Inflammatory public statements showing absolutely no regret of the horror of war in genera.

- Aiding and abetting consists of acts of omission directed at providing practical assistances, encouragement or moral support to the perpetration of the crime. Specific direction is not a requisite element of the actus reus.

- Joint criminal enterprise participation.

5. Foregoing evidence conclusively demonstrates that Borislav Vuković, as Chief of the VJ General staff, had misused his authority, oversaw the administration of logical assistance to VRS + SVR, perpetrated gratuitous acts of violence against Bosnian Muslims. This statement in his interviews corroborate his direct knowledge of the ethnic hostilities during the war. The provided practical assistance, encouragement and moral support to the principal perpetrators of the crime thereby substantially effecting on the perpetration of the crime. He was well aware of the "essential elements" of crime.

6. Aiding and abetting consists of acts of omission directed at providing practical assistance, encouragement or moral support to the perpetration of the crime.

Commission of crime = mens rea + Actus reus

Specific direction is not a requisite element of actus reus. The principle of vicarious liability comes into picture. This was a joint criminal motive. Motive was supported by preparation and action. Combination of motive + preparation + action results into crime. All the members are thus jointly responsible. Special direction is not essential element of aiding criminal liability. It can even be attracted by mere assistance. Logistical assistance provided by Vuković as a condition sine qua non to the commission of crime.

Hence, I held issue no 1 and 2 in affirmation and for issue no 3, I held Vuković guilty for the offences charged against him.

r u 1	Borislav Vuković was chief of Army General staff. The VRS was conducting lengthy shelling & sniping during 1993 to 95 in Sarajevo which resulted in deaths of hundreds & wounding thousands of others. In Vlasenica of Bosnia was safe for civilians forcibly removed Muslims & massacre of hundreds. He was not official member of Supreme defence council even he had attended several meetings. He was knowing regular albums were well documented & wide reporting for 3 years international media & reports of United nations security council & community reports were there. He was having actus reus. He planned, ordered his inferiors committed or otherwise aided & abetted. His official position not relieve from liability. Order of Govt. not relieve for remittance.	0 0 0
r u 1	On perusal of the record and proceeding of the case, Appeal memo and defense statement, it transpires that, the act of the Vuković ( herein after referred as Accused for the sake of brevity ) is not comes in to purview for which Specific direction is required and specific direction is the component of the aiding and abetting because accused was aware of the VRS discriminatory intent and criminal behaviors towards Bosnia Muslim. Further, accused has contemporaneous knowledge of allegation that VRS was committing crimes in Vlasenica. Further, accused has urged the FRI SDR to continue in policy of assistant the VRS and notably oversaw the providing of wide ranging logistical and technical assistance to the VRS, Thus, the conviction order passed by the trial chamber judge to convict the accused Under Article 3,5 and 7(1) of the Statute does not requires any interference and hence, I reject the appeal of the accused and uphold the findings of the trial chamber Court.	0 0 4
r u 1	The main defense taken in this appeal is that the conduct of the defendant was not specifically directed at the commission the crimes. It is also contended that the such specific direction was an essential ingredient for 'aiding and abetting'. In support of this contention, another decision of the AC has been referred to. However, the prosecution has rightly pointed out that the said decision was taken out of context by the defense. In the cited decision, the AC was merely trying to carve a distinction between aiding and abetting as against being a participant in joint criminal design. This cannot mean that specific direction is an essential ingredient for aiding and abetting. The defense has conceded that such ingredient has never found mention in the earlier judgments of the AC. It contended that this was so because in earlier cases, the conduct of the defendant was not remote vis a vis the commission of the actual crimes. This generalization cannot be accepted. The prosecution has rightly pointed out that the defendant was having knowledge of the crimes being committed or likely to be committed. This is apparent from the fact that he was receiving regular intelligence updates regarding the prejudice of VRS towards Muslims. He also received diplomatic reports regarding commission of grave crimes. Hence, it cannot be said that he was merely facilitating waging of war. Rather, he was facilitating the VRS with the knowledge that his actions had a direct and substantial impact upon commission of grave violations of the VRS. Hence, the Majority trial judgment is affirmed.	4 0 0

R s 1	according to section 7(1) of the Article, he will be personally held guilty for his act.	0 0 4
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R s 1	SIMULATION	0 0 0
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Actus Reus, Mens Rea, Omission and Tacit Approval and encouragement have been clear from the judgment of the Trial Chamber. It is also clear that there was assistance by providing vital logistical and technical assistance to the HVO. From the discussion of the judgment

of Trial Chamber, it is crystal clear that there is no requirement of interference in the judgment even though the defendant confesses the personal guilt.

R s 1 The trial court rightly convicted the def. because it did not consider specific direction as essential element of aiding and abetting. As per 0 0 4 the Art 7(1) Specific direction is not a requirement of aiding and abetting liability. The HVO committed the crimes of murder and attack on civilians as a violations of the laws or custom of war.

The mens rea standard if aiding & abetting - Knowledge that aid provide and assists in the commission of the relevant crime and awareness of the essential of crime.

so, all the elements are fulfilled by the prosecution, the guilty of crimes of war. Hence I affirm defendant's conviction (guilty)

R s 1 Horvat was in commanding position of new formed Croatian army. He had an responsibility to prevent such un human activity, instead of 0 0 4 that, He regularly urged to council that provide logistic assistant to HVO, with insisting that they can not wage war without significant military support, Said action of HVO resulted in big misscare of civilian of Bosnian state Mostar and Ahmići. Said war couldn't be done without significant support of logistic. He had done all this thing with intension So, He can not take benefit of his own wrong. He committed such crime with aid of other culprits, Who had been also held guilty. He has apparently violated provision of Art.3, 5 and 7 of ICT. His plead cannot be sustained as all the evidence indicated to have committed such crime by him. So his conviction is hereby upheld.

R u 1 Findings. It reveals from the statement of facts as well as from the evidence that in second that Vuković was a sr. officer of military of vz 0 0 4 and during war he helped the VRS by supplying qualities of weaponry which was used during the war in the ---- of Sarajevo and Vlasenja, Bosnia. He provided the arms to the VRs and thus charged under the article 3 for violation of the laws and customs of the war and also for ---- attack on civilians under article 7, though Vuković asked for and convinced SDC to give him legal authority, I also saw and done the same in an effort to comply with the FRYs law on ---- it was proved that the ---- was done by 'Vuković' with the ----so many people were killed in the incident. Moreover, it is acknowledged by 'Vuko' himself also, therefore the plea of the accused himself and the ---- (unclear)

Accused Vuković is guilty for violation of law and customs of war as well for logistic and personal assistance provided to VRS. Judgment of tribunal is hence confirmed.

R u 1 In the present case, it is not disputed that the VRS was an armed group which is not an army of a nation. it is also not disputed fact that 0 0 4 the VRS have committed crimes against civilian and not against anime army. Therefore, being the VJ's Chief of the General staff he took no measures to prevent the crime. As he was having the knowledge since 1993 that VJ's providing, extending logistic assistance to VRS. As per Article 7 of the Statute any of the acts referred in Article 2 to 5 of the statue was committed by subordinate it does not relive his superiors of criminal responsibility, if he knew or had reasons to know that the subordinate was about to commit such act or had done so and the superiors failed to take the necessary an reasonable measure to prevent such act.

R u 1 As per the judgment of trial chamber judgment the accused convicted for the actus reus of aiding abetting. as per the reasons of the 0 0 0 appeal of the accused and submission of the prosecution, the judgement of the trial chamber is upheld

R u 1 because in international law for Yugoslavia article 7 (1) provides the responsibility of an individual person for his act 0 0 3

USA

A s 0 It's a close call because Horvat was aware of the atrocities that were committed but while he provided material and supplies that were 0 0 0 most likely used in the atrocities, there was no conclusive evidence that he willfully made the civilian population the object of the attacks.

A s 0 While "specific direction" is not an essential element of aiding and abetting, the evidence adduced at trial does not support a finding that Horvat rendered practical assistance, encouragement or moral support that had a substantial effect on the perpetration of the crime committed by HOV. Horvat was denied the right to confront witnesses to the alleged crime. He may have been aware of alleged atrocities by HOV, but the weight of credible evidence does not support conviction for aiding and abetting. 0 0 0

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A s 0 The court finds that specific direction is an element of the offense of aiding and abetting. In the majority of the cited cases, while the term is not explicitly used, it is evident that the defendant's conduct was specifically directed at the commission of the crime. 4 0 0

A s 0 It appears there is sufficient disagreement over the question of specific direction to conclude the question is an open one. This court concludes that to eliminate the requirement would be to open the door to strict liability for waging war and thus impose liability in a manner inconsistent with the concept of "legitimate" war. Without evidence of a party's specific direction over acts that amount to crimes against humanity, there would be no distinction between the type of grievous behavior sought to be singled out and that which is accepted as a part of the "civilized" conduct of war. Therefore, without compelling evidence of the defendant's specific direction regarding crimes against humanity, his conviction must be reversed. 0 4 0

A s 0 The defendant is not guilty of the crime of aiding and abetting because, in order to be found guilty of that crime, one must have substantially contributed to the criminal conduct under applicable law and the agreed-to facts do not establish the requisite contribution. Although the Šainović decision rejected the proposition that "specific direction" is required, it confirmed that a substantial contribution is necessary for aid and abetting liability, and it did so under circumstances in which a defendant actively commanded the criminal unit and was present at the scene of the crime. Defendant here did not command the unit that engaged in the conduct, nor did he participate directly in the unlawful activity (he was not even present at the scene). Rather, he merely provided "general logistic and military support to an army engaged in legitimate military operations," albeit with knowledge that the unit was ALSO engaged in illicit activities. The law of aiding and abetting should not be read so broadly as to criminalize general logistical support. Although the prosecution need not establish a defendant's active participation was specifically directed at aiding the criminal activity in particular, it must show that there was the kind of acute reas with respect to the offensive army unit and its activities that would support a finding of substantial contribution. The facts here are insufficient to make such showing. 4 1 0

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A s 0

A s 1 I found the defendant guilty and based my decision largely on the precedent set, holding that specific activity or direct activity was not an element of aiding and abetting. I also found very compelling that the defendant had knowledge of the acts being committed when he provided assistance. 4 0 0

A s 1 Recent caseload established that "specific direction" not an element of aiding and abetting as appellant argues. If specific direction were required, the crime of aiding and abetting would collapse into the underlying crime. While that case is factually different in that the defendant there had closer physical proximity to crime, in the current era of instant communication over long distances and concurrent ability to impact and control events far away, that is not a necessary factor in aiding and abetting. Rather, defendant had proven knowledge of repeated and extensive war crimes being committed by the HVO against civilians, including children, and including murder and assault, and deliberately and actively provided assistance in the form of not only materiel but also soldiers from the army under his direct control, effectively seconding them to the HVO with full knowledge that they would be committing such crimes. Further, his proposal and implementation of this provision for paying soldiers under him to fight with the HVO was done with secrecy, indicating a guilty state of knowledge. In addition, he did not implement measures to minimize killings of innocent civilians such as disciplining 4 1 1

officers, suspending support or condemning the war criminal mess at the time, whatever remorse he expresses after it was over. Under the facts here, defendant had more than just knowledge of the likelihood the assistance he directed and provided would aid war crimes but continued to do so after he had actual knowledge it was doing so.

A s 1	This appeal challenges the judgment of conviction on a single legal ground: the accused did not specifically direct the army's war crimes, and the absence of this mens rea precluded his conviction under the statute as a matter of law. I am unconvinced by the argument. Its legal premise was expressly rejected by the Šainović panel, and the accused has not offered me a persuasive basis to countermand that opinion. Even if the Šainović panel's conclusion that specific direction "is not an essential ingredient of the acts reus" for an Article 7(1) violation, Šainović, para. 1650, were mere dicta, that conclusion was heavily researched, well-reasoned, and deeply analyzed, and I find no reason to depart from it.	4 0 3
A s 1	Proof beyond reasonable doubt on all charges. Prosecution made thorough evidence presentation. Court opinion well reasoned and addressed evidentiary issues relevant to charges in sufficient detail.	0 0 0
A u 1	Clear evidence that defendant had to know nature of criminal activities of recipients of VJS assistance for which he was responsible. Those activities further strategic objectives of VJS. This decision does not push liability for indirect aid too far. It fail to punish it vitiates the most dangerous form of aiding and abetting in modern warfare.	0 3 0
A u 1	The Šainović decision holds that "specific direction" is not an element of aiding and abetting under customary international law. To hold otherwise, as argued by the government, would be a far too narrow interpretation of established principal versus aider and abetter law. Moreover, the facts and appellate standards here support Vuković's longstanding role, proximity, and knowledge of his subordinates. This includes the possible outcomes of his subordinates. Accordingly, I would affirm the judgment of the lower court.	4 2 1
A u 1	<i>Although the time constraints of this exercise limited my ability to master the facts</i> , my review of the decision below and the stipulated facts indicated there were a number of broad and specific steps that the defendant took knowing that they would facilitate the war crimes in question. These included covering up the reasons why VJ soldiers were refusing to go to the VRS and the SU and his decisive role in the creation of the PCS. The systematic nature of the persecution and killing of civilians, unconnected to legitimate war aims, made it impossible for the defendant not to know that he had facilitated mass murder of Muslims. On the legal issue the defendant presents, it appears to be wrong, based on the Šainović decision, that specific involvement in a particular criminal act is needed; general support by a superior, with knowledge that it is facilitating a war crime, appears to suffice as a matter of law.	4 0 0
A u 1	Based solely on what I remember of the evidentiary rulings, it appears that the tribunal carefully and methodically made appropriate evidentiary rulings.  The biggest legal issue to me is whether the defendant had specific intent to cause, or permit, to occur the atrocities of which he was convicted. Based solely on what I read, it appears that the tribunal reviewed the relevant precedents, and concluded that specific intent was not required.  It also appears that the tribunal appropriately applied the facts to the law, and properly convicted the defendant of the remaining crimes.  The sentence also seems to be supported by precedent.	4 0 0
A u 1	The issue raised by defendant is one of law. We review de novo.  The analysis of the prosecution has the better of the argument and, for the reasons stated by the prosecution, I would affirm.	0 0 0

A u 1 I find the Šainović formula for the elements of the offense of aiding and abetting persuasive and authoritative. These are: knowledge by the defendant of the crimes; and a substantial effect upon these crimes by his own conduct. The record contains substantial evidence that he knew of the crimes of the SRJ (?) forces. His position as a military leader alone would be strong evidence of his access to this knowledge. The evidence is also strong that the material assistance he authorized had a substantial effect on the ability of the SRJ to carry out the crimes at the direct level. The defendants responsibility falls well within the mainstream of theories of accomplice liability. 4 0 0

A u 1 Defendant provided practical assistance to the perpetration of war crimes as required by the actus reus element of the aiding and abetting charge. The mens era requirement is an awareness that crimes will probably be committed. Tacit approval is sufficient. These have been established. There is no articulated requirement of specific direction, and I do not believe this should be inferred. It is the responsibility of higher authority to prevent war crimes, because without the substantial assistance of men and materiel up the ladder, there will be no means for widespread atrocities such as these and what we saw in WW2. Also, the appeals council has stated, albeit in dicta, that specific direction is not required, and I believe this dicta should be transformed into decisional law. 4 3 1

r s 0 Both the prosecution and defense agree that this appeal turns on whether the law requires that, to be guilty of aiding and abetting, defendant's conduct must have been "specifically directed" to the commission of the underlying crime. The Vasiljević decision directs that the answer be yes. Not only did the Court define the standard as such, it applied it in Paragraph 135. The application of the aiding and abetting law by the Trial Court greatly expands the criminal responsibility of military leaders who participate from afar. Mere knowledge that another organization to whom support is provided is committing crimes is not specific direction as contemplated by the Court in Vasiljević. The contrast between the facts of this case and that could not be more striking. The evidence against Horvat did not come close to satisfying the standard announced in Vasiljević. 4 2 0

r s 1 I would affirm the verdict finding Horvat guilty because I agree with the arguments set forth in the response brief concerning the correct interpretation of the V\_\_\_\_\_ case. That case does not appear to impose a requirement of "specific direction" on the actus reus element of an aiding and abetting offense. Rather, it discusses aiding and abetting for the sole purpose of contrasting it from the offense at issue: joint enterprise. Thus, I believe the V\_\_\_\_\_ case's mention of "specific direction" is merely dicta and not controlling. As the defense admits, the V\_\_\_\_\_ case is the only authority that can be read as imposing a specific direction requirement. In light of my conclusion that V\_\_\_\_\_ 's discussion of specific direction is dicta, it appears that the defense's reliance on V\_\_\_\_\_ dooms its case on the merits. 4 4 0

I also agree with the response brief's argument that imposing a requirement of specific direction on the offense of aiding and abetting would substantially gut the offense, by removing from its those who might attempt to excuse their conduct by cloaking it with some so-called "official" purpose, such as the need to provision the forces actually carrying out the atrocities. This would insulate from prosecution higher-up's such as the Appellant, who clearly knew that the war crimes at issue could not and would not have occurred without his assistance from afar. Criminal actors such as the Appellant should not be permitted to hide from the consequences of the actions behind their official positions.

r s 1 This is a question of statutory interpretation. The statute makes it criminal for an individual to have "planned, instigated, ordered, committed, or otherwise aided and abetted," the commission of a war crime. By introducing the phrase "aided and abetted" with the word "otherwise" the drafters suggested something apart from the more active means of committing the crime such as planning, instigating, or ordering the crime. Therefore providing indirect but critical logistical support for activities which you know involves the commission of war crimes by irregular forces would constitute "aiding and abetting" the commission of a war crime. The acts need not 4 0 4

be "specifically directed" at the war crime. While our earlier decision may have used that term in distinguishing between "aiding and abetting" and a criminal enterprise, that language was dicta and is not binding here.

r s 1	<i>While insufficient time has been allowed to analyze all aspects of this case, I have given great weight to the findings of fact of the trial court. The short review time has made as detailed study of the law impossible so I have relied heavily on the propriety of the the trial court's conclusions re the state of the law. It is apparent that Muslim citizens were targeted by military groups under the control of the defendant. The defendant holds ultimate responsibility for this. Given the constraints of time pressure by this review, deference must be given to the trial courts findings. The outcome could have been completely different if allowed the typical review time such a critical decision deserves.</i>	0 0 0
r s 1	Defendant arranged for salaries, logistical support, etc. for 3 years after being appointed commander of the Croatian forces. He knew that this support was essential to the continued operations of the "squads" executing the "safe area" occupants. He knew through his confidential advisers that there were no official constraints on these murder squads. Compliance with a superior's orders is not a defense to aiding and abetting under the statute. Facilitating the ability of death squads to accomplish their known mission is not a defense under the statute either.	0 0 3
r u 0	Not guilty. Based upon the decision in Vasiljevic. No showing of specific direction by defendant here. He had some knowledge but nothing else.	4 0 0
r u 1	The language quoted from the subsequent appellate decision defining aiding and abetting is taken out of context. In context, the language defining aiding and abetting does not limit the mens rea requirement as the appellant suggests. There is sufficient evidence that the appellant knowingly provided support for actions of others that constitute war crimes, and that he knew the nature of those actions. The conviction should be affirmed.	4 0 0
r u 1	Statute does not require specific direction as appellant urges. Case law does not support a contrary conclusion.	4 0 4
r u 1	The statute provides that aiding and abetting rejoices carrying out acts specifically directed to assist, encourage or lend moral support to the perpetrators of a specific crime and this has a substantial effect on the perpetration of a crime. The facts as given are that Vuković received field and diplomatic reports that VRS forces were sniping and shelling civilians in Sarajevo, which is a crime against humanity. His logistical support therefor assisted the perpetration of that crime and any support given after he had knowledge of the sniping can be deemed to have been done with the specific intent to commit the crime.	0 0 4
r u 1	I would affirm the finding that the Defendant was guilty of aiding and abetting. He knew war crimes were being committed by the VRS. Specific direction is not required under the statute and is not an essential element of aiding and abetting. The Vasiljević case was defining joint criminal enterprise and was not a full discussion of aiding and abetting liability.	4 0 4
r u 1	The applicable statute does not require specific direction as an element of the crime of conviction. The decision in VASILJEVC does not establish a contrary precedent.	4 0 4
r u 1	Appellants knowledge of the extensive and systematic criminal nature of how the military operation was being carried out makes him guilty under the ICTY. It is impossible for such an endeavor to not result in terrible individual crimes which the appellant well knew. This was not conducting a war with isolated and unsanctioned criminal acts being perpetrated, but an illegal enterprise from the outset. This the appellant well knew and then aided and abetted.	0 0 2

## Appendix D: Coding Protocol for Judgment Reasons

[Coding was performed independently by two German and two U.S. law students. They were instructed to correct the spelling of cases where applicable.]

### DID THE PARTICIPANT EXPLICITLY REFUSE TO SUBMIT JUDGMENT?

1. This includes any judge who *explicitly* notes that they did not want to give judgment but clicked through by mistake, to express their disapproval, etc.
2. If not: did the participant express **explicit reservations** about submitting a judgment (in particular because of the short time available)?

### ARE THERE CLEAR INDICATIONS THAT THE PARTICIPANT MISUNDERSTOOD THE TASK (OF JUDGING THE CASE ON APPEAL)?

We are NOT judging the quality of their written work product but merely looking for indicators that they did not do what they were supposed to be doing in this study. In particular, an answer that is merely cryptic, inconclusive, or even inconsistent is not evidence of a misunderstanding. Bear in mind that the judges were working under time pressure, and time may have run out before they finished their sentence or before they could delete obsolete words they had written earlier. Also, judges may purposefully use conclusory language, distort the facts, overstep their role, etc. -- happens in real life all the time.

Similarly, participants need not couch their reasons explicitly in the language of reviewing the lower court's findings. In other words, it is not evidence of a misunderstanding that a participant did not explicitly frame their argument as a review of the lower court's findings. First, most appeals courts around the world review questions of law *de novo*, so discussing the legal evaluation of facts established by the trial court is consistent with the appeal's judge role whether or not it is framed as a "review" of the trial court. Second, some appeals courts in the world are allowed to review the entire case *de novo*, see next note. Third, we must again make allowance for the time pressure and the rhetorical short cuts that it may have inspired.

1. NB: Making factual findings is not *per se* evidence of a misunderstanding. First, the ICTY Appeals Chamber is technically allowed to review "error of fact" under Art. 25(1)(b) of the ICTY statute (provided the factual error "has occasioned a miscarriage of justice"). Second, many appeals courts in the (civil law) world are allowed to review facts *de novo*, and we purposefully did not specify a standard of review. Also see the next question.
2. If you answer yes to, or had doubts about, this question 2., please include a note explaining why

### DID THE JUDGE MAKE FACTUAL FINDINGS?

Did the judge make factual findings rather than accept the conclusions of the trial court and the statement of facts, in particular with respect to whether the accused provided "substantial help" to the armed group, and whether this help was "specifically directed" at the crimes?

NB: This would be a clear misunderstanding of the task in a common law setting, where appeals courts only review questions of law. But it is much less clear at the ICTY. See note to previous question.

We count the judge as making factual findings only if the judge states facts that go beyond or against what is in the statement of facts and/or the trial court judgment. In particular, we accept that the participant in the experiment may simply be referring to factual findings of the trial court and/or the statement of facts even if the participant simply states "X" rather than writing "the trial court found that X" or "the parties agreed that X."

An example of an actual factual finding would be for the judge to say "We can infer from the fact that the defendant knew about the crimes and did not disapprove that the defendant intended the war crimes to be committed" -- because nowhere in the statement of facts or the trial court's factual findings does it say that the defendant had such intent, so here a factual inference is being drawn that goes beyond the SoF and the TC judgment.

If yes: do those factual findings disturb those of the trial court, i.e., are they in conflict with the trial court's findings?

#### **FACTUAL FINDINGS VERSUS LEGAL FINDINGS**

##### **Specific direction and substantial help**

Findings regarding *specific direction* and *substantial help* have a factual basis, but they are primarily legal findings rather than factual ones. When a reason makes a contrary finding regarding one of these issues, it is probably reinterpreting the same set of underlying facts / applying a different legal label to them, rather than finding new facts that change the legal conclusion.

##### **Example:**

"In my view, the Appellant knew that the weapons etc. would not be used only for permissible military action because he continued to advocate for and take measures to ensure support, and thus a specific direction is actually present in this case (meaning that the legal question need not be addressed at all)."

Here the judge makes no factual finding. The judge merely states that specific direction is present because of the fact that the appellant knew how the weapons would be used, and this fact was already present in the statement of facts. In other words, the judge does not add any new facts, but instead reinterprets an old fact to mean specific direction. (The trial court had considered this same fact but determined that, legally, it did not indicate specific direction.)

##### **Relationship between legal findings and factual findings**

Findings regarding *specific direction* and *substantial help* that are contrary to those of the trial court should be coded in a column separate from the columns for *factual findings* and *contrary factual findings*. There is no relationship of logical necessity between this legal findings column and the columns about factual findings. (E.g, the judge can contradict the trial court's finding regarding specific direction without making any contrary factual findings, and vice versa.) Record a contrary factual finding alongside

one of these contrary legal findings only when it is clear that the judge employed a fact not in the statement of facts or the trial court's opinion.

### Intent

*Intent* is similarly both a legal and a factual issue, but the legal side or the factual side can predominate depending on how the judge uses the word. If the judge appears to refer to the defendant's will or goals, then he may be making a factual finding about the defendant's mental state. If instead the judge appears to refer to intent as a legal construct (similar to specific direction, above), then he is most likely making a legal finding.

#### Examples:

(1)

"In the final analysis, the question whether specific direction is required can remain open, since the Defendant's acts in support indeed show a "specific direction" toward the commission of the underlying offenses. (whereby **it is assumed** that the Defendant provided the assistance with knowledge of the consequences and **the will to achieve them**)"

(2)

"His logistical support therefore assisted the perpetration of that crime and any support given after he had knowledge of the sniping **can be deemed** to have been done **with the specific intent** to commit the crime."

In the examples (1) and (2) the judge makes factual findings about the defendant's mental state. In the phrases shown in bold the judge assumes a will to achieve the consequences or an intent. However, the trial court only found that the defendant knew about the crimes going to be committed but the trial court did not make a finding regarding the will of the defendant.

### Intent vs. approval

If the judge states that the defendant knew about the crimes and, therefore, must have accepted or approved the crimes, then no factual finding is made. You can tell that no factual finding is made in such a case because this conclusion is based upon the facts already given in the statement of facts and the trial court judgment; no new fact is added in reaching this conclusion. As mentioned above, the situation is different if the judge speaks of an intent or the will to achieve the crimes.

## **WERE ANY OF THE FOLLOWING MENTIONED?**

### **1. Precedent:**

- a. Was there any mention of precedent, even in generic form ("courts have generally ...", "it is well established in the practice of the courts that ...")?
- b. If yes: can the mention be interpreted as a reference to a specific precedent available in the case?
- c. If yes: Was the name(s) of the precedent cited?
- d. Was the precedent distinguished, i.e., differences in facts pointed out?

2. **Policy** dimension of the case, i.e. what impact the judgment might have on future behavior?
3. **Statute?** If yes:
  - a. methods of statutory interpretation applied? Make note of the method ( (textualism, purposivism, canons of interpretation, etc.); mark “N/A” if no interpretation performed
4. **“Irrelevant” facts**, namely those that make the defendant look sympathetic or unsympathetic: remorse or reconciliation, nationalist party leader, insult of court, NATO contacts?

Record an *irrelevant fact* when the judge mentions a fact that should not have influenced the legal outcome, yet appears to have done so. Most irrelevant facts are things that make the defendant appear sympathetic or unsympathetic. However, this “sympathy rule” should be interpreted very broadly, and the following are always irrelevant facts: remorse or reconciliation, being nationalist party leader, insulting the court, and having any contacts with NATO.