

**UNITED
NATIONS**



International Residual Mechanism
for Criminal Tribunals

Case No.: MICT-13-55-A
Date: 25 September 2018
Original: English

THE SENIOR JUDGE¹

Before: Judge Jean-Claude Antonetti, Senior Judge
Registrar: Olufemi Elias

THE PROSECUTOR

v.

RADOVAN KARADZIC

Public

MOTION TO DISQUALIFY JUDGE THEODOR MERON

The Office of the Prosecutor:

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¹ pursuant to Rule 18(B)(iv)

1. Following the *Mladic* disqualification decision,² Radovan Karadzic hereby moves, pursuant to Rule 18, to disqualify Judge Theodor Meron from his appeal for the appearance of bias. This appearance of bias results from Judge Meron's cumulative participation in judgements where he was extensively confronted with evidence and findings concerning disputed facts and issues that are the subject of President Karadzic's appeal, and by the conclusions that he drew in those cases in which he affirmed the convictions of President Karadzic's subordinates.

Procedural History

2. On 24 March 2016, an ICTY Trial Chamber convicted President Karadzic of genocide in Srebrenica in 1995, war crimes, and crimes against humanity. It acquitted him of genocide in the municipalities of Bosnia in 1992. President Karadzic was sentenced to 40 years imprisonment.³

3. Both President Karadzic and the Prosecution appealed.⁴ President Meron assigned himself to the appeal as Presiding Judge. Judges Sekule, Joensen, de Prada, and Gatti were also assigned to the appeal.⁵

4. President Karadzic filed his brief on 5 December 2016,⁶ argued the appeal on 23-24 April 2018,⁷ and is awaiting his judgement.

Argument

I. A Reasonable Apprehension of Bias Exists

A. The Standard

5. The standard for appearance of bias is whether "the circumstances would lead a reasonable observer, properly informed, to reasonably apprehend bias."⁸

6. In the *Mladic Decision*, Judge Antonetti held that a reasonable observer would reasonably apprehend bias on the part of Judge Meron when hearing the *Mladic* appeal as a result of Judge Meron's participation in the *Krstic, Blagojevic & Jokic*, and *Tolimir* appeals.⁹

² *Mladic Decision*. Full citations can be found in the Glossary at Annex A.

³ *Karadzic TJ*

⁴ *Radovan Karadzic's Notice of Appeal* (22 July 2016); *Prosecution's Notice of Appeal* (22 July 2016)

⁵ *Order Assigning Judges to a Case before the Appeals Chamber* (20 April 2016)

⁶ *Radovan Karadzic's Appeal Brief* (5 December 2016)

⁷ T84-316 (23-24 April 2018)

⁸ *Furundzija AJ*, para. 189

⁹ *Mladic Decision*, para. 52

7. There were two components to this conclusion. First, Judge Meron had been extensively confronted with evidence related to General Mladic from the trial record in those cases and from findings he upheld on appeal.¹⁰ Second, Judge Meron had previously convicted General Mladic's subordinates on appeal.¹¹

8. Applying that standard to President Karadzic's case, a reasonable observer, properly informed, would reasonably apprehend bias on the part of Judge Meron.

B. Related Cases

9. During his illustrious career as an ICTY and Mechanism judge, Judge Meron decided 13 appeals relating to facts that were the subject of the *Karadzic* case.¹² He was the Presiding Judge in six of those appeals.¹³ As President of the Mechanism, Judge Meron also decided on the early release of Prosecution Witness Momir Nikolic.¹⁴

(1) The Municipalities

(a) *Stakic*

10. Judge Meron sat on the Appeals Chamber that affirmed the conviction of Milomir Stakic, President of Prijedor Municipal Assembly. Stakic was a subordinate of President Karadzic, and a member of the joint criminal enterprise to remove Muslims and Croats from Serb territory through the commission of crimes.¹⁵

11. Judge Meron was confronted with evidence and findings from the trial record in the *Stakic* case indicating that President Karadzic had directed the expulsion of Muslims and Croats from Serb areas of Bosnia by promulgating the "Six Strategic Goals".¹⁶ The Appeals Chamber expressly upheld this finding, holding that the Six Strategic Goals expressed the common purpose to expel Muslims and Croats from Serb areas of Bosnia and noting that "[b]y the time Karadzic set out these goals, preparations were already underway for the fulfillment of the first goal of separating the Serbs from the other national communities."¹⁷

¹⁰ *Id.*, para. 49

¹¹ *Id.*, para. 51

¹² *Kunarac AJ; Krstic AJ; D. Nikolic AJ; Deronjic AJ; M. Nikolic AJ; Stakic AJ; Galic AJ; Brdjanin AJ; Blagojevic AJ; Krajisnik AJ; Milosevic AJ; Tolimir AJ; Seselj AJ*

¹³ *Krstic, D. Nikolic, Deronjic, Brdjanin, Tolimir, and Seselj*

¹⁴ *M. Nikolic Early Release Decision*

¹⁵ *Indictment*, paras. 9,12,33

¹⁶ A list of relevant *Stakic TJ* references is Annex B.

¹⁷ *Stakic AJ*, para. 225

12. The Appeals Chamber also found that “assuming that a Bosnian Serb state requires at least a majority of Bosnian Serb inhabitants, it is difficult to see, particularly in the context of this case, how such a state could be created without uprooting Muslims and Croats from their homes against their will.”¹⁸

(b) *Brdjanin*

13. Judge Meron presided over the Appeals Chamber that affirmed the conviction of Radoslav Brdjanin, President of the Autonomous Region of Krajina. Brdjanin was a subordinate of President Karadzic and a member of the joint criminal enterprise to remove Muslims and Croats from Serb territory through the commission of crimes.¹⁹

14. Judge Meron was confronted with evidence and findings from the trial record in the *Brdjanin* case indicating that President Karadzic directed the expulsion of Muslims and Croats from Serb areas of Bosnia by promulgating of a “Strategic Plan” and installed Brdjanin to implement that plan.²⁰ The Appeals Chamber upheld the Trial Chamber’s finding that the Strategic Plan could only be implemented by the use of force and fear by dismissing a challenge to that finding,²¹ and expressly upheld the finding that Brdjanin was aware that the Strategic Plan could only be implemented by the use of force and fear based on, *inter alia*, his intercepted telephone conversations with President Karadzic.²²

(c) *Krajisnik*

15. Judge Meron sat on the Appeals Chamber that affirmed most of the convictions of Momcilo Krajisnik, Bosnian Serb National Assembly President. Krajisnik was a subordinate of President Karadzic, and a member of the joint criminal enterprise to remove Muslims and Croats from Serb territory through the commission of crimes.²³

16. In a case that mirrored the *Karadzic* municipalities component, Judge Meron was confronted with evidence and findings from the trial record in the *Krajisnik* case indicating that Krajisnik had participated in a joint criminal enterprise with Karadzic and others in the Serb leadership to ethnically recompose the territories under Serb control by drastically reducing the proportion of Muslims and Croats by committing crimes of

¹⁸ *Id.*, para. 224

¹⁹ *Indictment*, paras. 9,12,33

²⁰ A list of relevant *Brdjanin TJ* references is Annex C.

²¹ *Brdjanin AJ*, para. 43 and fn. 395

²² *Id.*, para. 216

²³ *Indictment*, paras. 9,11,33

persecution, deportation, and forcible transfer.²⁴

17. The Appeals Chamber upheld the Trial Chamber's finding that Karadzic was a member of the joint criminal enterprise, stating: "the Trial Chamber's findings on the identity of the JCE members [including Karadzic] stand."²⁵ The Appeals Chamber also explicitly upheld a number of other findings concerning Karadzic's participation in the joint criminal enterprise and *mens rea*.²⁶ Finally, the Appeals Chamber in *Krajisnik* heard the testimony of President Karadzic on appeal and held that it was unconvincing.²⁷

(2) Sarajevo

(a) *Galic*

18. Judge Meron sat on the Appeals Chamber that affirmed the conviction of General Stanislav Galic, the Sarajevo Romanija Corps Commander. General Galic was a subordinate of President Karadzic, and a member of the joint criminal enterprise to terrorise Sarajevo's civilian population through a campaign of sniping and shelling.²⁸

19. Judge Meron was confronted with evidence and findings from the trial record in the *Galic* case, including some of the same scheduled incidents as those in the *Karadzic* case (such as the February 1994 Markale market shelling), concluding that there was a campaign of sniping and shelling against Sarajevo's civilian population promulgated by General Galic's superiors, President Karadzic and General Mladic.²⁹ The Appeals Chamber upheld the conviction against a challenge, *inter alia*, to the existence of such a campaign,³⁰ and held that the Trial Chamber had not erred when considering the attacks to be indiscriminate and disproportionate.³¹

(b) *Dragomir Milosevic*

20. Judge Meron sat on the Appeals Chamber that affirmed the conviction of General Dragomir Milosevic, the Sarajevo Romanija Corps Commander who succeeded Galic. General Milosevic was a subordinate of President Karadzic, and a member of the joint criminal enterprise to terrorise Sarajevo's civilian population through a campaign of

²⁴ A list of relevant *Krajisnik TJ* references is Annex D.

²⁵ *Krajisnik AJ*, paras. 230-31

²⁶ A list of relevant *Krajisnik AJ* references is Annex E.

²⁷ *Krajisnik AJ*, paras. 205, 351, 501, 604, 612, 685

²⁸ *Indictment*, paras. 15,16,33

²⁹ *Galic TJ*, paras. 606, 746

³⁰ *Galic AJ*, paras. 216-19

³¹ *Id.*, paras. 235-36

sniping and shelling.³²

21. Judge Meron was confronted with evidence and findings from the trial record in the *Milosevic* case, including some of the same scheduled incidents as those in the *Karadzic* case, concluding that there was a campaign of sniping and shelling against Sarajevo's civilian population,³³ and that the shelling was indiscriminate.³⁴ The Appeals Chamber upheld the conviction against a challenge, *inter alia*, to the existence of such a campaign,³⁵ and held that the Trial Chamber had not erred when considering the attacks to be indiscriminate and disproportionate.³⁶

(3) Srebrenica

(a) *Krstic*

22. Judge Meron presided over the Appeals Chamber that affirmed the conviction of General Radislav Krstic. General Krstic was a subordinate of President Karadzic and a member of the joint criminal enterprise to eliminate the Bosnian Muslims of Srebrenica.³⁷

23. Judge Meron was confronted with evidence and findings from the trial record in the *Krstic* case concluding that President Karadzic had, through Directive 7, ordered the Drina Corps to create an unbearable situation of total insecurity with no hope of further survival or life for the inhabitants of Srebrenica and restricting humanitarian aid to the enclave.³⁸

24. The Appeals Chamber, while holding that Directive 7 was not evidence of genocidal intent, found that it alerted General Krstic to the Main Staff's intention to obstruct humanitarian aid to Srebrenica's civilians so that their conditions would become unbearable and further motivate them to leave the area.³⁹

(b) *Tolimir*

25. Judge Meron presided over the Appeals Chamber that affirmed the conviction of General Zdravko Tolimir for, *inter alia*, forcible transfer of Bosnian Muslims after the

³² *Indictment*, paras. 15,16,33

³³ *Milosevic TJ*, para. 966

³⁴ *Id.*, para. 971

³⁵ *Milosevic AJ*, para. 38

³⁶ *Id.*, paras. 99-102

³⁷ *Indictment*, paras. 20,22,33

³⁸ *Krstic TJ*, paras. 28, 120

³⁹ *Krstic AJ*, paras. 88-90

fall of Srebrenica. General Tolimir was a subordinate of President Karadzic and a member of the joint criminal enterprise to eliminate the Bosnian Muslims of Srebrenica.⁴⁰

26. Judge Meron was confronted with evidence and findings from the trial record in the *Tolimir* case concluding that President Karadzic had, through Directive 7, ordered the Drina Corps to create an unbearable situation of total insecurity with no hope of further survival or life for Srebrenica's inhabitants and restricting humanitarian aid to the enclave.⁴¹

27. The Appeals Chamber affirmed General Tolimir's conviction for participating in a joint criminal enterprise with, *inter alia*, President Karadzic, to forcibly remove the Bosnian Muslims from Srebrenica, finding that the Trial Chamber did not err when it had "no doubt that at the latest by early March 1995 a common plan existed in the Bosnian Serb leadership to forcibly remove the Bosnian Muslim population from the Srebrenica and Zepa enclaves."⁴²

(c) *Momir Nikolic*

28. As a member of the Appeals Chamber adjudicating Momir Nikolic's sentencing appeal and as President deciding Nikolic's early release application, Judge Meron, on both occasions, rewarded Nikolic for his cooperation as a Prosecution witness by reducing his sentence from 27 to 20 years⁴³ and releasing him before he had served 2/3 of his sentence.⁴⁴

C. Grounds for Disqualification

29. The right to an impartial judge is a basic human right.⁴⁵ An impartial judge is one who is free from actual bias and the appearance of bias.⁴⁶ President Karadzic does not contend that Judge Meron is actually biased against him. Indeed, he has appreciated Judge Meron's procedural fairness during the appeal and Judge Meron's extraordinary concern for his health and detention conditions.⁴⁷

30. However, Judge Meron's continued participation in this appeal presents the

⁴⁰ *Indictment*, paras. 20,22,33

⁴¹ A list of relevant *Tolimir TJ* references is Annex F.

⁴² *Tolimir AJ*, paras. 311, 317-21

⁴³ *M. Nikolic AJ*, para. 114

⁴⁴ *M. Nikolic Early Release Decision*, para. 35

⁴⁵ *Mladic Decision*, para.. 3, citing *Furundzija AJ*, para. 177

⁴⁶ *Furundzija AJ*, para. 179

⁴⁷ T329 (15 August 2018)

appearance of bias under the *Mladic Decision*. He has affirmed the convictions of 14 of President Karadzic's subordinates, upholding findings that they were members of a joint criminal enterprise with him. In doing so, he has been exposed to, and affirmed, findings of President Karadzic's culpability as well as the existence of joint enterprises and criminal campaigns.

31. For example, when deciding Ground 28 of President Karadzic's appeal, which contends that the Trial Chamber erred in finding a common plan to remove Muslims and Croats from Serb territory to create a homogeneous entity, Judge Meron would have to put aside the evidence and findings from the *Stakic*, *Brdjanin*, and *Krajisnik* cases, and would have to judge the credibility of Stakic, Brdjanin, Krajisnik, and Seselj, whose culpability he has already judged. They all testified at President Karadzic's trial that there was no such plan.⁴⁸

32. When deciding Ground 33, which contends that the Trial Chamber misapplied principles of the law of armed conflict in its analysis of the shelling of Sarajevo, Judge Meron would have to put aside the *Galic* and *Milosevic* appeals, which upheld findings of the existence of a shelling and sniping campaign, and would have to judge the credibility of Generals Galic and Milosevic, who testified at President Karadzic's trial that there was no such campaign.⁴⁹

33. When deciding Ground 34, which contends that the Trial Chamber erred when concluding that the VRS fired the shell that landed on the Markale market on 5 February 1994, Judge Meron would have to put aside his own findings in the *Galic* case that the VRS fired that very shell.⁵⁰

34. When deciding Grounds 38 and 39, which contends that the Trial Chamber erred when finding that President Karadzic shared the common purpose of removing the Bosnian Muslims from Srebrenica, Judge Meron would have to put aside the *Krstic* and *Tolimir* cases, and would have to judge the credibility of Krstic and Blagojevic, who testified that there was no such common purpose.⁵¹

⁴⁸ D4195, para. 28 (Stakic); D4034, para. 23 (Brdjanin); T43269 (12 November 2013) (Krajisnik); D3665, para. 32 (Seselj)

⁴⁹ T37408-09 (18 April 2013) (Galic); T33145 (4 February 2013) (Milosevic)

⁵⁰ *Galic AJ*, paras. 318-35

⁵¹ D4136, T6335 (25 October 2000), T6562 (27 October 2000); T6828 (2 November 2000) (Krstic); D4189, p. 4 (Blagojevic)

35. When deciding Ground 40, which contends that the Trial Chamber erred when concluding, based on the testimony of Momir Nikolic, that President Karadzic agreed to the killing of Bosnian Muslim males from Srebrenica and shared the common purpose of eliminating them, Judge Meron would have to judge the credibility of Momir Nikolic, a Prosecution witness whose cooperation he has twice rewarded.

36. When deciding President Karadzic's appeal, Judge Meron would also have to put aside his findings as to the lack of credibility of President Karadzic, who testified as a witness in the *Krajisnik* appeal.

37. A reasonable observer, being properly informed of all the above, cumulatively, would reasonably apprehend bias on the part of Judge Meron, who after all, is only human. President Karadzic, as a psychiatrist, knows that our sub-conscious is an important influence on our actions, despite the best of intentions. The need to avoid even the appearance of bias is particularly important in the context of the Mechanism's work, which seeks to promote truth and reconciliation in the former Yugoslavia. Many in the region will question the *Karadzic* judgement's legitimacy if Judge Meron is allowed to continue, considering the standard for the appearance of bias established in the *Mladic Decision*.

38. While ICTY jurisprudence promoted a high bar to a judge's disqualification, that Tribunal was limited to five judges who could hear an appeal. The Mechanism has 25.⁵² The *Mladic Decision* is a welcome paradigm shift in favor of a less restrictive approach to the standard for disqualification in light of the increased capacity of the Mechanism to provide judges unburdened by their prior decisions.

II. This Motion is Timely

39. In the *Mladic Decision*, Judge Antonetti found that while General Mladic's delay in filing a motion to disqualify the three judges of the Appeals Chamber was regrettable, Rule 18 provided no time limit on the filing of a motion for disqualification.⁵³

40. President Karadzic likewise regrets filing this motion at a late stage of his appeal. The reason for the late filing is that, prior to the *Mladic Decision*, a judge's participation in judgements involving the same events was not grounds for

⁵² *Mladic Decision*, para. 83

⁵³ *Id.*, para. 56

disqualification.⁵⁴ It was only after the *Mladic Decision* on 3 September 2018 that there was a sound legal basis to make the argument that Judge Meron should be disqualified.

41. As there are no time limits on motions for disqualification, the instant motion cannot be dismissed as untimely.

Conclusion

42. Justice should not only be done, but should manifestly and undoubtedly be seen to be done.⁵⁵ In light of the *Mladic Decision*, Judge Meron should be disqualified from continuing to sit on the *Karadzic* appeal.

Word count: 2923

Respectfully submitted,



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⁵⁴ *Nyiramasuhuko Disqualification Decision*, para. 20; *Renzaho AJ*, para. 22; *Nahimana AJ*, para.78; *Galic AJ*, para.44

⁵⁵ *Mladic Decision*, para. 3 quoting Lord Hewart, CJ in *R. v Sussex Justices* (1923), [1924] I K.B. 256, 259

Annexes—Table of Contents

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C	<i>Brdjanin TJ</i> references
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F	<i>Tolimir TJ</i> references

ANNEX “A”

Glossary

<i>Blagojevic AJ</i>	<i>Prosecutor v Blagojevic & Jokic, No. IT-02-60-A, Judgement (9 May 2007)</i>
<i>Brdjanin AJ</i>	<i>Prosecutor v Brdjanin, No. IT-99-36-A, Judgement (3 April 2007)</i>
<i>Brdjanin TJ</i>	<i>Prosecutor v Brdjanin, No. IT-99-36-T, Judgement (1 September 2004)</i>
<i>Deronjic AJ</i>	<i>Prosecutor v Deronjic, No. IT-02-61-A, Judgement on Sentencing Appeal (20 July 2005)</i>
<i>Furundzija AJ</i>	<i>Prosecutor v Furundzija, No. IT-95-17/1-A, Judgement (21 July 2000)</i>
<i>Galic AJ</i>	<i>Prosecutor v Galic, No. IT-98-29-A, Judgement (30 November 2006)</i>
<i>Galic TJ</i>	<i>Prosecutor v Galic, No. IT-98-29-T, Judgement (5 December 2003)</i>
<i>Indictment</i>	<i>Prosecutor v Karadzic, No. IT-95-5/18-PT, Prosecution's Marked-Up Indictment (19 October 2009)</i>
<i>Karadzic TJ</i>	<i>Prosecutor v Karadzic, No. IT-95/5-18-T, Judgement (24 March 2016)</i>
<i>Krajisnik AJ</i>	<i>Prosecutor v Krajisnik, No. IT-00-39-A, Judgement (12 March 2009)</i>
<i>Krajisnik TJ</i>	<i>Prosecutor v Krajisnik, No. IT-00-39-T, Judgement (27 September 2006)</i>
<i>Krstic AJ</i>	<i>Prosecutor v Krstic, No. IT-98-33-A, Judgement (19 April 2004)</i>
<i>Krstic TJ</i>	<i>Prosecutor v Krstic, No. IT-98-33-T, Judgement (2 August 2001)</i>
<i>Kunarac AJ</i>	<i>Prosecutor v Kunarac et al, No. IT-96-23-A, Judgement (12 June 2002)</i>
<i>Milosevic AJ</i>	<i>Prosecutor v Dragomir Milosevic, No. IT-98-29/1-A, Judgement (12 November 2009)</i>
<i>Milosevic TJ</i>	<i>Prosecutor v Dragomir Milosevic, No. IT-98-29/1-T, Judgement (12 December 2007)</i>
<i>Mladic Decision</i>	<i>Prosecutor v Mladic, No. MICT-13-56-A, Decision Relative aux Requetes de la Defense aux Fins du Dessaisissement des Juges Theodore Meron, Carmel Agius, et Liu Daqun (3 September 2018)</i>
<i>Nahimana AJ</i>	<i>Nahimana et al. v. Prosecutor, No. ICTR-99-52-A, Judgement, (28 November 2007)</i>
<i>D. Nikolic AJ</i>	<i>Prosecutor v Dragan Nikolic, No. IT-94-2-A, Judgement on Sentencing Appeal (4 February 2005)</i>
<i>M. Nikolic AJ</i>	<i>Prosecutor v Momir Nikolic, No. IT-02-60/1-A, Judgement on Sentencing Appeal (8 March 2006)</i>
<i>M. Nikolic Early Release Decision</i>	<i>Prosecutor v Momir Nikolic, No. MICT-14-65-ES, Decision of the President on the Early Release of Momir Nikolic (14 March 2014)</i>
<i>Nyiramasuhuko Disqualification Decision</i>	<i>Prosecutor v. Nyiramasuhuko et al, No. ICTR-98-42-A, Decision on Motion for Disqualification of Judge Fausto Pocar (2 October 2012)</i>
<i>Rezaho AJ</i>	<i>Rezaho v. Prosecutor, No. ICTR-97-31-A, Judgement (1 April 2011)</i>
<i>Seselj AJ</i>	<i>Prosecutor v Seselj, No. MICT-16-99-A, Judgement (11 April 2018)</i>
<i>Stakic AJ</i>	<i>Prosecutor v Stakic, No. IT-97-24-A, Judgement (22 March 2006)</i>
<i>Stakic TJ</i>	<i>Prosecutor v Stakic, No. IT-97-24-T, Judgement (31 July 2003)</i>

<i>Tolimir AJ</i>	<i>Prosecutor v Tolimir, No. IT-05-88/2-A, Judgement (8 April 2015)</i>
<i>Tolimir TJ</i>	<i>Prosecutor v Tolimir, No. IT-05-88/2-T, Judgement (12 December 2012)</i>

ANNEX “B”

Relevant References in *Stakic* Trial Judgement:

Para.	Text
41-43	<p>On 12 May 1992, the 16th session of the Assembly of the Serbian People in Bosnia and Herzegovina was held in Banja Luka. At the session Radovan Karadzic outlined the six strategic goals of the Bosnian Serb leadership in Bosnia and Herzegovina. Given the significance of these goals for illustrating the political context in which the crimes charged in this Indictment were committed, the Trial Chamber will recall them in some detail.</p> <p>42. The presentation begins: “The Serbian side in Bosnia and Herzegovina, the President, the Government, the Council for National Security, which we have set up have formulated strategic priorities, that is to say, the strategic goals for the Serbian people.” The first two strategic goals read as follows:</p> <p>1. The first such goal is separation from the other two national communities – separation of states. Separation from those who are our enemies and who have used every opportunity, especially in this century, to attack us, and who would continue with such practices if we were to continue to stay together in the same state.</p> <p>2. The second strategic goal, it seems to me, is a corridor between Semberija and Krajina. That is something for which we may be forced to sacrifice something here and there, but is of the utmost strategic importance for the Serbian people, because it integrates the Serbian lands, not only of Serbian Bosnia and Herzegovina, but it integrates Serbian Bosnia and Herzegovina with Serbian Krajina and Serbian Krajina with Serbian Bosnia and Herzegovina and Serbia. So, that is a strategic goal which has been placed high on the priority list, which we have to achieve because Krajina, Bosnian Krajina, Serbian Krajina, or the alliance of Serbian states is not feasible if we fail to secure that corridor, which will integrate us, which will provide us unimpeded flow from one part of our state to another. The remaining four goals concerned a) the establishment of a corridor in the Drina Valley, b) the establishment of a border on the Una and Neretva rivers, c) the division of the city of Sarajevo into Serb and Muslim parts, and d) access for the Serbian Republic of Bosnia and Herzegovina to the sea.</p> <p>43. Having outlined the foregoing strategic goals, Karadzic concluded by saying: “We believe, and we have faith in God, justice and our own strength, that we shall achieve what we have planned, all six strategic goals – of course, according to the hierarchy – and that we shall finally and definitely finish the job of the freedom struggle of the Serbian people.” The Trial Chamber agrees with the Prosecution’s military expert, Ewan Brown, who came to the conclusion that the six strategic goals should be seen as the political direction given by the senior Bosnian Serb leadership regarding the creation of a Bosnian Serb State.</p>
471	<p>The common goal on the Prijedor level found its vibrant expression in Radovan Karadzic’s six strategic goals of the Bosnian Serb leadership in Bosnia and Herzegovina which included as the first goal the separation of Serbs from “the other two national communities”. Karadzic remarked that the accomplishment of his goals “shall finally and definitely finish the job of the freedom struggle of the Serbian people”. By the time Karadzic set out these goals, preparations were</p>

	already underway for the fulfillment of the first goal in Prijedor Municipality.
710	The evidence has established the close and coordinated co-operation between the civilian authorities led by the Accused, the SJB and the military authorities. This proves that the Accused's conduct, occupying the political field of this co-operation, was a <i>conditio sine qua non</i> for the achievement of the deportation. The Trial Chamber is convinced that the deportation of the non-Serb population from the territory of the municipality, in accordance with the first two of the six strategic goals of the Serbian people expounded by Radovan Karadžić on 12 May 1992, was the central tool to establish a pure Serbian State
819	The Trial Chamber is convinced that there was a persecutorial campaign based on the intent to discriminate against all those who were non-Serb or who did not share the above-mentioned plan to consolidate Serbian control and dominance in the Municipality of Prijedor. The evidence before this Trial Chamber compellingly shows that the victims of these crimes discussed above were non-Serbs, or those affiliated to or sympathising with them. The Trial Chamber holds that this campaign started as of 7 January 1992 with the establishment of the self-proclaimed Assembly of the Serbian People in the Municipality of Prijedor. The Serbian Assembly's decision of 17 January 1992 to join the Autonomous Region of Krajina ("ARK") reinforced the plan to establish a Serb-dominated and Serb-controlled territory on a municipal level. The Chamber has already recalled the first of Radovan Karadžić's six strategic goals of the Bosnian Serb leadership in Bosnia and Herzegovina which included separation from "the other two national communities", i.e. the Bosnian Muslims and the Bosnian Croats, "a separation of states", a "separation from those who are our enemies", and the preparations and acts to achieve these goals in Prijedor municipality.

ANNEX “C”

Relevant References in *Brdjanin* Trial Judgement:

Para.	Text
61	<p>In this atmosphere of tension the three main nationalist parties, having separate national agendas with conflicting interests, failed to reconcile their differences and started moving in opposite directions. Most importantly, they disagreed on the question of the constitutional status of BiH. While the SDA and the HDZ promoted the secession of the SRBH from the SFRY, the SDS strongly advocated the preservation of Yugoslavia as a state, in order to ensure that the Serbs would continue to live together in a single state, and would not become a minority in an independent Bosnian state. On 15 October 1991, SDS President Radovan Karadzic made an impassioned speech before the Assembly of the SRBH in Sarajevo, indicating the possibility that Bosnian Muslims could disappear as a group if they declared the independence of the SRBH from the SFRY. SDA President Alija Izetbegovic responded that Karadzic's threatening message and its method of presentation illustrated why the SRBH might be forced to separate from the SFRY. After the Republican Assembly of the SRBH had adjourned for the day and the SDS delegation had departed, HDZ and SDA delegates reconvened without them and passed a "Declaration of Sovereignty", a measure that moved the SRBH a step closer to independence.</p>
67	<p>During the first session of the SerBiH Assembly, held on 24 October 1991, Radovan Karadzic made it clear that the Bosnian Serbs were prepared to use force and fear to achieve their ends if they were otherwise unsuccessful.</p>
68	<p>In a speech given on the occasion of the "Plebiscite of the Serb People" in Sarajevo in November 1991, Radovan Karadzic instructed SDS members representing the municipalities to impose complete Bosnian Serb authority in their respective municipalities, regions and local communities. On 11 December 1991, the SerBiH Assembly voted to recommend the establishment of separate Serbian municipalities. The declared aim of this decision was "to break up the existing municipalities where Serbs are not in a majority"</p>
69-70	<p>On 19 December 1991, the Main Board of the SDS issued a document entitled "Instructions for the Organisation and Activity of Organs of the Serbian People in Bosnia and Herzegovina in Extraordinary Circumstances" ("Variant A and B Instructions"). These instructions provided for the conduct of specified activities in all municipalities in which Serbs lived, and essentially mapped out the take-over of power by Bosnian Serbs in municipalities where they constituted a majority of the population ("Variant A") and where they were in a minority ("Variant B").¹²⁸ The stated purpose of the Variant A and B Instructions was "to carry out the results of the plebiscite at which the Serbian people in Bosnia and Herzegovina decided to live in a single state" and to "increase mobility and readiness for the defence of the interests of the Serbian people."</p> <p>70. The Variant A and B Instructions included, amongst others, the directive that the SDS Municipal Boards should form Crisis Staffs of the Serbian people in their respective municipalities. The "tasks, measures and other activities" referred to in the Variant A and B Instructions were to be carried out exclusively at the order of</p>

	the President of the SDS.
71	In early 1992, while international negotiations to resolve the question of the status of BiH were ongoing, the Bosnian Serb leadership enforced its plan to separate the territories claimed by them from the existing structures of the SRBH and to create a separate Bosnian Serb State. On 9 January 1992, the SerBiH Assembly proclaimed the SerBiH, which on 12 August 1992 was renamed Republika Srpska (“RS”). ¹³² It was composed of so-called Serbian autonomous regions and districts, which included the ARK.
72	The discussions held in the SerBiH Assembly during the following couple of months illustrated the continued determination of the Bosnian Serb leadership to establish a state in which there would be no place for non-Serbs. In order to achieve this aim, it was foreseen that force and fear would be used to permanently remove non-Serbs from the territory of the proclaimed SerBiH. The Bosnian Serb leadership expressed this intention also outside SerBiH Assembly meetings.
73	At the end of March 1992, the Bosnian Serb leadership, aiming to implement the Strategic Plan, took the necessary measures to separate the Bosnian Serb police forces from the non-Serb police forces and to put the Bosnian Serb police under the Bosnian Serb civilian command. On 27 March 1992, the SerBiH Assembly established the Serbian Ministry of Internal Affairs (“MUP”). On 16 April 1992, the Ministry of National Defence of the SerBiH issued a decision on the establishment of the Territorial Defence (“TO”) as an army of the SerBiH, putting the command and control of the TO with municipal, district and regional staffs, as well as the staff of the SerBiH TO. In the same decision the Ministry of National Defence of the SerBiH declared an imminent threat of war and ordered public mobilisation of the TO in the entire territory of the SerBiH. Moreover, the formation of TO staffs in the newly established Bosnian Serb municipalities was ordered.
74	In April 1992, Radovan Karadzic and Nikola Koljevic showed a map of the future BiH, according to which seventy per cent of the territory of BiH would be covered by the SerBiH. A few months later this map was a reality, as the Bosnian Serb forces controlled exactly those areas which according to the map would constitute the territory of the SerBiH.
75	During the 16 th session of the SerBiH Assembly that took place on 12 May 1992, at a time when the armed conflict had already begun, Radovan Karadzic articulated the six strategic goals of the Serbian People of Bosnia and Herzegovina. The first and most fateful goal was the “separation from the other two national communities – separation of states”. The other goals concerned the establishment of a corridor between Semberija and Krajina; the establishment of a corridor in the Drina Valley; the establishment of a border on the Una and Neretva rivers; the division of the city of Sarajevo into Serb and Muslim sectors; and, finally, securing access to the sea for the SerBiH.
76	In essence, these strategic goals constituted a plan to seize and control territory, establish a Bosnian Serb state, defend defined borders and separate the ethnic groups within BiH.
77	The Trial Chamber is satisfied beyond reasonable doubt that the first strategic goal

	<p>entailed the permanent removal of a significant part of the non-Serb population from the territory of the planned Bosnian Serbian state. When the policy discussions at the 16th session of the SerBiH Assembly on the movement of population are seen in connection with the inflammatory, combative, and derogatory comments towards the non-Serb population of Bosnia and Herzegovina made during that same session, it becomes evident that non-Serbs were viewed as a constant threat and that significant numbers of them were to be permanently removed from the territory claimed by the Bosnian Serbs. A comment by Dragan Kalinic, a delegate from Sarajevo and later SerBiH Health Minister, is of note: “Have we chosen the option of war or the option of negotiation? I say this with a reason, and I must add that, knowing who our enemies are, how perfidious they are, how they cannot be trusted until they are physically, militarily destroyed and crushed, which of course implies eliminating and liquidating their key people”.</p>
79	<p>The Trial Chamber is convinced that the six strategic goals of the Serbian People of Bosnia and Herzegovina articulated at the 16th session of the SerBiH Assembly were far from political rhetoric. They constituted the political manifesto of the Bosnian Serb leadership and turned out to be the driving factor behind the actions of the Bosnian Serb armed forces, shaping the events in BiH from May 1992 onwards.</p>
80	<p>Prior to the outbreak of the armed conflict, the SDS started waging a propaganda war which had a disastrous impact on the people of all ethnicities, creating mutual fear and hatred and particularly inciting the Bosnian Serb population against the other ethnicities. Within a short period of time, citizens who had previously lived together peacefully became enemies and many of them, in the present case mainly Bosnian Serbs, became killers, influenced by a media, which by that time, was already under the control of the Bosnian Serb leadership. The use of propaganda was an integral part of the implementation of the Strategic Plan and created a climate where people were prepared to tolerate the commission of crimes and to commit crimes.</p>
99	<p>Considering that the nature of the demands made by the SOS coincides with the instructions that the SDS in Banja Luka received from the SDS in Pale, that no attempt was made by either the army or the police to remove the barricades or to arrest the members of the SOS, that the head of the SOS (Nenad Stevandić) was also a member of the SDS who was in direct contact with Radovan Karadžić, and that the demands of the SOS were indeed readily implemented, the Trial Chamber is satisfied beyond reasonable doubt that the establishment and the action of the SOS was orchestrated by the SDS as one of its tools to put into effect the Strategic Plan.</p>
100	<p>When the armed conflict broke out in BiH, the scale of crimes committed against the non-Serb civilian population in the Bosnian Krajina escalated. These crimes came about through close co-operation between the Bosnian Serb police, the army and Serbian paramilitary groups. The clearly recognisable pattern of criminal activity allows for only one reasonable conclusion, namely that these crimes were committed with the aim of implementing the Strategic Plan of the Bosnian Serb leadership to take control of the territory claimed for the Serbian State within BiH and to permanently remove most non-Serbs from this territory.</p>

118	<p>The Trial Chamber is satisfied beyond reasonable doubt that the crimes that were committed in the Bosnian Krajina from April 1992 until the end of December 1992, the period relevant to the Indictment, occurred as a direct result of the over-arching Strategic Plan. The ethnic cleansing was not a by-product of the criminal activity; it was its very aim and thus an integral part of the Strategic Plan. The conditions of life imposed on the non-Serb population of the Bosnian Krajina and the military operations against towns and villages which were not military targets were undertaken for the sole purpose of driving people away. Many people were kept in detention centres under horrendous conditions. As it was intended to permanently remove these people from the territory of the SerBiH, many of their homes were destroyed in order to prevent them from returning. Bosnian Muslim homes that were not destroyed were allocated to Serb refugees from Croatia and other parts of BiH. The deliberate campaign of devastation of the Bosnian Muslim and Bosnian Croat religious and cultural institutions was just another element of the larger attack. The final objective, however, was the removal of the population and the destruction of their homes. By August 1992, the consistent application of such a discriminatory policy was obvious. The evidence shows a consistent, coherent and criminal strategy of cleansing the Bosnian Krajina of other ethnic groups implemented by the SDS and the Bosnian Serb forces.</p>
119	<p>The Trial Chamber is satisfied beyond reasonable doubt that during the implementation of this policy, effective control over the Bosnian Serb military, police and civilian structures was exercised variously by political leaders from the Bosnian Serb Supreme Command and other governmental authorities of the SerBiH. The impact of so-called uncontrolled elements was marginal. It is also satisfied beyond reasonable doubt that it was impossible to implement a systematic policy of this magnitude, just by spontaneous action or by criminal actions by isolated radical groups. Moreover, the Trial Chamber is convinced that the actual methods used to implement the Strategic Plan were controlled and coordinated from a level higher than the respective municipalities, even though some municipalities distinguished themselves by taking certain initiatives.</p>
172	<p>Despite the provisions in Articles 4 and 5 of the ARK Statute, suggesting that the ARK was a multi-ethnic institution, the ARK was in practice a Serbian organisation. Out of the 189 delegates to the ARK Assembly, only a negligible number were of Bosnian Croat or Bosnian Muslim ethnicity. Moreover, while no senior SDA or HDZ politician ever participated in any session of the ARK Assembly, senior SDS members at the level of the SerBiH, including Radovan Karadzic, as well as high ranking officers of the army, took a vital interest in the work of the ARK and participated in a number of sessions of the ARK Assembly. The Serbian nature of the ARK manifested itself most clearly through the work of its bodies. As the evidence discussed in the following chapters demonstrates, the ARK authorities not only had the potential to be a tool for the implementation of the Strategic Plan, but this was in fact their primary concern.</p>
177	<p>The decision of the ZOBK Assembly on the proclamation of the ARK, dated 16 September 1991, was a first expression of the region's secessionist aspirations. The Accused stated that this decision would ensure the region's independence. This</p>

	<p>secessionist movement gave rise to tensions between the ARK and the central government of the SerBiH, as well as between the Accused and Radovan Karadzic. Radovan Karadzic believed that the autonomy of the ARK would obstruct the implementation of the Strategic Plan. In this context he stated before the SerBiH Assembly:</p> <p>“Of course, the Serbian Republic of Bosnia and Herzegovina will have its regions with full freedom to act according to the interests of the Serbian people. However, I promise you, Bosnian Krajina must not become an issue. If it becomes an issue we will lose the Knin Krajina. Alija is praying to God that we secede, that we screw up. They will send in UN forces, create Zone A and Zone B and we are certain to lose one of them. And the other will be part of an independent BiH, with all sorts of conditions imposed (...). We cannot allow that five people with personal ambitions destroy our chances. We are very close to achieving our strategic objectives.”</p>
186	<p>Finally, the role of the ARK can also be established on the basis of the intercepted telephone conversations between senior representatives of the SDS, the ZOBK and the ARK with Radovan Karadzic. During these conversations that took place between June of 1991 and February of 1992, issues regarding the implementation of the Strategic Plan, such as military mobilisation, the creation of Bosnian Serb municipalities, the constitutional position of the Bosnian Krajina and the dismissals of non-Serbs from employment were discussed and instructions to that effect were issued by Radovan Karadzic.</p>
294	<p>The Accused was in direct contact with Radovan Karadzic and other Bosnian Serb leaders from whom he received instructions. The Accused’s close contact with the top leadership of the SerBiH is also demonstrated by the fact that during meetings of the SerBiH Assembly, he was sitting in the front row among the most senior members of the SDS</p>
295	<p>The top leadership of the SerBiH granted the Accused a high degree of authority and autonomy in areas of fundamental political importance, which is indicative of the trust the Accused enjoyed at the highest political level. In a telephone conversation on 31 October 1991, Radovan Karadzic assured the Accused that he had all the power in the Krajina and indicated that he should take more decisions without consulting the party leadership. Moreover, in a conversation between Radovan Karadzic and a certain Miroslav on 7 January 1992, the Accused was identified as a mature and politically strong personality, who would be able to take power.</p>
296	<p>When the ARK Crisis Staff was created on 5 May 1992, assuming all powers and functions of the ARK Assembly and thus becoming the highest organ of civilian authority in the ARK, the Accused became its President. Vojo Kupresanin as President of the ARK Assembly would have been the most obvious candidate to become the President of the ARK Crisis Staff. Nonetheless, it was the Accused, having the support of Radovan Karadzic, who was chosen for this position.</p>
306	<p>The Accused’s espousal of the Strategic Plan and his acceptance of the use of force and fear for its implementation is abundantly clear from a review of a number of intercepted telephone conversations between Radovan Karadzic and the Accused or other political leaders, the acts and conduct of the Accused, his public speeches</p>

	and his speeches during Assembly sessions of the ARK and the SerBiH, attended by the Accused as a delegate.
307	Although the Accused agreed with the Strategic Plan and its eventual implementation by force and fear and despite the fact that the Accused pursued these objectives through his deeds and speeches, it has not been established that the Accused actually participated in formulating the content of the Strategic Plan. The Trial Chamber is of the view that the Strategic Plan was defined by Radovan Karadzic and a number of the Bosnian Serb political and military leaders at the highest level.

ANNEX “D”

Relevant References in *Krajisnik* Trial Judgement:

Para.	Text
910	As Karadzic recalled in his 1994 speech, the battle for the Republic began on 18 March 1992, the day on which the Bosnian-Serb leadership, in the person of the Accused, made known to the Assembly deputies its wish to pre-emptively take over territories in Bosnia-Herzegovina, while separating the Bosnian Serbs from the other two ethnic groups.
918-19	<p>The Accused's point at the Deputies' Club on 28 February 1992 was that the Serbs, on the verge of being swamped, could not afford to share their future, which came down to their living space, with the Muslims. (The Accused, giving his explanation of the message sent by the Bosnian-Serb leadership to the Serb population, said in court: "If the Muslims do not want to live with us in Yugoslavia, if they want to impose a unitary Bosnia on us in an unconstitutional way, then we are rightfully afraid to live with them in a sealed-off Bosnia-Herzegovina where they are dominant.")</p> <p>919. The Accused and Karadzic held this opinion in common; but whereas the Accused was a managerial type of comparatively few words, whose key role was to maintain a functioning central authority and an illusion of good governance while a new ethnic reality was being forged on the ground, Karadzic was the ideologue-visionary who gave expression to problems, and legitimization to solutions, which he had come to presume were on the mind of every Bosnian Serb: "Muslims cannot live with others," Karadzic railed at the same Club gathering in February 1992. "We must be clear on that. They couldn't live with the Hindu, who are as peaceful as sheep". The populations, he continued, would have to be separated in "each and every village" because the Muslims "will overwhelm you with their birth rate and their tricks." (Karadžić affected concern that the Muslims could "quadruple" their number from one generation to the next.)</p>
927-29	<p>On 12 July 1991 Radovan Karadzic addressed an SDS gathering at which the Accused was present: "We know that Serbs are arming themselves with smuggled weapons and some ancient ones. We as a party do not have a right to arm the people, but we do not have the right to discourage it either.</p> <p>928. As it turned out, arming did have something to do with the SDS. Witness 636 testified that he was involved in the distribution of weapons by the SDS between April and September 1991. The weapons originated from the JNA in Croatia and were stored in a school in the village of Kamenica, in Drvar municipality. The weapons were distributed from there to nearby municipalities. Nenad Stevandic, a member of the ARK crisis staff, supervised the distribution. In August 1991 Stevandic invited Radovan Karadzic to witness the distribution for himself. Karadzic visited Drvar and toured the Kamenica school.</p> <p>929. In early November 1991, in a long speech on the meaning of the upcoming Bosnian-Serb plebiscite, Karadzic could boast to his audience, which included the Accused ("I probably heard it", the Accused conceded), that the Bosnian Serbs were better armed than the Muslims, had "got themselves a lot" of weapons, and those weapons were in addition to the weapons at the disposal of the pro-Serb</p>

	<p>JNA. (The pro-Serb stance of the JNA is discussed in part 3 of this judgement.)</p> <p>By the time General Mladić detailed his ideas about a new Bosnian-Serb army before the Assembly on 12 May 1992 (see below), the utility of an armed population had already been proven: “We are not starting from scratch. That is very important. Our starting point are the armed Serbian people in the Republika Srpska of Bosnia and Herzegovina, who have, in the course of the war so far, responded, insofar as they did, to the call to put a stop ... to the fascist and phantom Ustasha dragon. And so far, we have saved this people from being totally wiped out.” In 1995 Karadzic said: “Distribution of weapons was carried out thanks to the JNA. What could be withdrawn was withdrawn and distributed to the people in the Serbian areas, but it was the SDS which organised the people and created the army.”</p>
950	<p>Witness 623, of Serb ethnicity, was a senior member of the government of Bosnia-Herzegovina. In April or May 1992 he attended a meeting with the Accused in Sarajevo. The armed conflict was escalating. Witness 623 asked the Accused to convey his appeals to Radovan Karadzic to return to a political solution. The Accused was “obsessed”, in the witness’s assessment, with the project of ethnic division of Serbs from Muslims and Croats. The Accused said that the SDS’s most crucial concern was how to subdivide territories in such a way as to bring them under exclusive Serb control, especially in the Sarajevo region (Novo Sarajevo, Novi Grad, Ilidza, and Vogosca). The following day, Witness 623 had another meeting with the Accused, which was also attended briefly by Karadzic. The Accused said at this meeting that joint life with the Muslims was not possible anymore, as it was not possible to come to any agreement with them. At the Geneva peace negotiations, the Accused and Karadzic insisted throughout on having an ethnically pure Serb area in Bosnia-Herzegovina, as a precondition for a peaceful settlement</p>
974	<p>The Bosnian-Serb leadership accepted that destruction of civilian settlements would be swift and vast. Details of such destruction of towns and villages have been discussed in part 4 of this judgement. Trifko Radić reported to the Bosnian-Serb Assembly on 12 May 1992 that “we have no other solution but to shell and destroy towns. We have destroyed one third of Visoko, maybe tonight another third will go.” There is thus no doubt that the Bosnian-Serb leadership, including the Accused, were regularly informed of, and came to accept the range of crimes against Bosnian Muslims and Bosnian Croats described above. These crimes included killings of civilians, at times on a large scale, and looting and destruction of civilian property.</p>
987	<p>The Accused and Radovan Karadzic may have located themselves at recognizable nodes of a modern state structure (President of Assembly, President of Republic), but in reality they ran Republika Srpska as a personal fief. They intervened and exerted direct influence at all levels of Bosnian-Serb affairs, including military operations.</p>
994	<p>The VRS had a plan of action broadly formulated by the political leadership. Neither Karadzic nor the Accused found it necessary to become involved in the affairs of the VRS on a daily basis. This was done by their trusted commander</p>

	<p>Ratko Mladic, whom Karadzic and the Accused had selected for the job. General Mladic was guided by the strategic goals articulated by Karadzic and the Accused at the Bosnian-Serb Assembly session of 12 May 1992. In Karadzic's own words: "The first such goal is separation from the other two national communities – separation of states. Separation from those who are our enemies and who have used every opportunity, especially in this century, to attack us, and who would continue with such practices if we were to stay together in the same state. The second strategic goal, it seems to me, is a corridor between Semberija and Krajina. ...there will be no Krajina, Bosnian Krajina, Serbian Krajina or alliance of Serbian states if we do not secure that corridor ... The third strategic goal is to establish a corridor in the Drina Valley, that is, elimination of the Drina as a border between two worlds. We are on both sides of the Drina, and our strategic interest and our living space are there. ... The fourth strategic goal is establishment of the border on the Una and Neretva rivers. The fifth strategic goal is division of the city of Sarajevo into Serbian and Muslim parts ... The sixth strategic goal is the access of the Serbian Republic of Bosnia and Herzegovina to the sea.</p>
996	<p>Much more important in relation to actual policy was the feedback loop of coordination and support that existed between the Bosnian-Serb forces on the ground and the central leadership. Take-overs, killings, detention, abuse, expulsions, and appropriation and destruction of property had begun in the territories claimed by the Bosnian Serbs well before the pronouncement of the strategic goals on 12 May 1992. These incidents were discussed in part 4 of the judgement, were launched in early April 1992, and were repeated throughout the claimed territories in the months to come. This was the Bosnian-Serb leadership's goal, and if there was any goal needed on 12 May, it was the continued pursuit of this same goal.</p>
1024	<p>The forced displacement of Muslims was reported up the VRS line of command to the Main Staff, and, therefore, to General Mladic, who kept the Presidency members informed about the growth and stabilization of the Bosnian-Serb Republic. There are many reports of this kind in evidence, and while it is not the Chamber's finding that the Accused received the reports themselves, the Chamber does find that information of this kind was communicated to the Accused, as well as to Karadzic, once it had reached Pale</p>
1051	<p>Hence, at least in early July 1992 Stanisic knew about the illegal and widespread detention of Muslim and Croatian civilians in inhumane conditions. He reported the situation to Radovan Karadzic and the Prime Minister on 17 July 1992 using words from the minutes of the meeting the week before: "The Army, crisis staffs and war presidencies have requested that the Army round up or capture as many Muslim civilians as possible, and they leave such undefined camps to internal affairs organs. The conditions in some of these camps are poor: there is no food, individuals sometimes do not observe international norms, etc. ... Special emphasis should be placed on the issue of relocating certain citizens, villages, etc. because this does not fall within the competence of the MUP". Here is the logic of ethnic cleansing cast in the banal language of officialdom: round up civilians, place them in camps, camps and their staff do not meet international standards, citizens and whole villages are thus relocated.</p>

1055	The civilian detention centres were an instrument, as much as they were an intermediate step, in the logic of dislocation and expulsion. In early August 1992, the Bosnian-Serb leadership was still hoping to prolong the operations of detention centres. On 5 August 1992 Karadzic boasted in an interview with Belgrade television that “What we have are prisons for prisoners of war and prisons for criminals. We have excellent conditions in all prisons, or in almost all prisons ... the fact is that we do not have camps for civilians”
1087	The Chamber finds that the JCE of which the Accused was a member consisted of persons situated throughout the territories of the Bosnian-Serb Republic. There was a Pale based leadership component of the group, including, but not limited to, the Accused, Radovan Karadzic, Biljana Plavsic, Nikola Koljevic, Momcilo Mandic, Velibor Ostojic, Mico Stanisic, and, as of 12 May 1992, General Ratko Mladic. The JCE rank and file consisted of local politicians, military and police commanders, paramilitary leaders, and others. It was based in the regions and municipalities of the Bosnian-Serb Republic, and maintained close links with Pale.
1090	The Chamber finds that the above allegations have been proven in relation to Article 5 of the Statute (crimes against humanity). The Bosnian-Serb leadership wanted to ethnically recompose the territories under its control by expelling and thereby drastically reducing the proportion of Bosnian Muslims and Bosnian Croats living there. In the words of a decision of representatives from Bihać, Bosanski Petrovac, Sprska Krupa, Sanski Most, Prijedor, Bosanski Novi, and Ključ, on 7 June 1992, “Muslims and Croats should move out of our municipalities until a level is reached where Serbian authority can be maintained and implemented on its own territory in each of these municipalities.”
1099	Notwithstanding the above, even before the Bosnian-Serb take-overs began in April 1992, the Accused and Radovan Karadzic were aware that an armed conflict between the ethnic groups would have devastating consequences. On 15 October 1991, speaking before the Bosnia-Herzegovina Assembly, Radovan Karadzic said: “This is the road that you want Bosnia and Herzegovina to take, the same highway of hell and suffering that Slovenia and Croatia went through. Don’t think you won’t take Bosnia and Herzegovina to hell and Muslim people in possible extinction.” Three days earlier, he had said in a telephone conversation with Gojko Đogo that the Bosnian Serbs would fight against secession from Yugoslavia, that “Sarajevo will be a black cauldron where 300,000 Muslims will die”, and that “they’d be up to their necks in blood and that the Muslim people would disappear”. Other evidence confirms that the Accused knew where the events he had helped set in train were heading. Witness 623, of Serb ethnicity, was in 1992 a senior member of the government of Bosnia-Herzegovina. He stated that the leading figures of the SDS, including the Accused, had created a policy of ethnic cleansing in full awareness that it entailed the use of force. In April or May 1992 he attended a meeting with the Accused in Sarajevo. He expressed his view to the Accused that any ethnic separation for the purpose of creating an entity under Serb rule could not be achieved without the violent displacement of civilians, causing bloodshed among them.
1107	Inhumane living conditions and cruel or inhumane treatment at detention centres

	were issues that the Bosnian-Serb leadership actively tried to cover up. In August 1992 Karadzic said in a television interview that “We have excellent conditions in all prisons, or in almost all prisons ... the fact is that we do not have camps for civilians”.
1108	If murder of civilians during attacks on towns and villages had not been intended from the outset by the members of the JCE, it was soon incorporated as an intended crime. Biljana Plavšić knew that civilians had been killed during the attack on Bijeljina in early April 1992. Her reaction was to say that Arkan had done a good job in saving the Serb population from the Muslim threat. The Bosnian-Serb leadership very soon came not only to accept killings in connection with attacks as part of the JCE, but also to encourage them. The indiscriminate bombardment of Sarajevo is a case in point. In June 1992, the Bosnian-Serb leadership, in a meeting with Mladić, did not oppose Mladić’s decision to attack Sarajevo with artillery. The attack was massive and indiscriminate.
1109	Extermination of Muslims, such as the incident at Koricanske Stijene in August 1992, was also reported to the Bosnian-Serb leadership. Its reaction to this particular event was to try to cover it up.
1110	The Serb attacks on Muslim and Croat enclaves were associated with cruel or inhumane treatment, and this was known to the Bosnian-Serb leadership. In April 1992, Witness 583 reported to Karadzic about the terror inflicted on the Muslim population of Zvornik. Karadzic answered that such crimes, committed by paramilitary units, were inevitable. In May 1992 Momcilo Mandic said in a telephone conversation that “we are holding Turks under siege [in Sarajevo]. We’ll starve them a bit.” Physical and psychological abuse of the citizens of Sarajevo through indiscriminate bombardment of the city was a prominent aspect of the Bosnian-Serb aggression.
1112	When Witness 583 reported “ethnic cleansing” to the Bosnian-Serb leadership in July 1992, Karadzic, Koljevic, and Plavsic responded that it was a cruel war in which everybody was committing crimes. They insisted that the Muslims did not wish to remain in the territories, citing as proof that the Muslims had signed voluntary departure declarations and had exchanged their properties. A letter sent by Radovan Karadzic in July 1992 to several municipalities requested an inventory of “all housing facilities ... that are vacant following the voluntary departure of Muslims”. The housing stock was to be used to accommodate Serbs leaving the Muslim part of Sarajevo.
1115	When Witness 583 reported “ethnic cleansing” to the Bosnian-Serb leadership in July 1992, Karadzic, Koljevic, and Plavsic responded that it was a cruel war in which everybody was committing crimes. They insisted that the Muslims did not wish to remain in the territories, citing as proof that the Muslims had signed voluntary departure declarations and had exchanged their properties. A letter sent by Radovan Karadzic in July 1992 to several municipalities requested an inventory of “all housing facilities ... that are vacant following the voluntary departure of Muslims”. The housing stock was to be used to accommodate Serbs leaving the Muslim part of Sarajevo.
1117	In summary, in the months following March 1992, reports about crimes detailed in parts 4 and 5 of this judgement reached the Bosnian-Serb political leadership,

	including the Accused. The leadership did not discontinue its discriminatory forced displacement programme in light of the increasing number and range of crimes being reported, but rather persisted with its territorial conquests and demographic recompositions.
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ANNEX “E”

Relevant References in *Krajisnik* Trial Judgement:

#	Text
205	<p>With regard to Radovan Karadzic's evidence, the Appeals Chamber is not convinced that Amicus Curiae's mere references to limited parts of his testimony and of the Karadzic Rule 92 ter Statement undermine the extensive evidence relied on by the Trial Chamber in making the above-mentioned findings regarding Krajisnik's mens rea with respect to the original crimes. (fn 514) The Appeals Chamber is thus not satisfied that the Karadzic 92 ter Statement and his testimony raise a reasonable doubt that would cause the Appeals Chamber to reverse the finding on Krajisnik's mens rea in relation to the original crimes.</p> <p>fn. 514 See , for example, Trial Judgement, paras 964 (Dragan Dokanovic reported to Krajisnik what he had heard about people being driven from their homes); 1023 (Krajisnik was informed in an Assembly Session about the take-over and ethnic cleansing of Ilidza); 1024 ("the forced displacement of Muslims was reported up to the VRS line of command to the Main Staff, and, therefore, to General Mladic, who kept the Presidency members informed [...]" and "the Chamber does find that information of this kind was communicated to the Accused"); 1027 (Krajisnik was present at a meeting in Banja Luka where Radovan Karadzic complained that "insufficient steps had been taken to remove Muslims and Croats from Banja Luka"); 1031 (the issue of "ethnic cleansing" was raised at the meetings with Herbert Okun and Cyrus Vance in Geneva); and 1041 (conversation between Krajisnik and Momcilo Mandic about, inter alia , the forced displacement of civilians).</p>
230-31	<p>The Trial Chamber found that the JCE comprised the following individuals:</p> <p>In the Pale-based leadership: Krajisnik; Radovan Karadzic; Biljana Plavsic; Nikola Koljevic; Momcilo Mandic; Velibor Ostojic; Mićo Stanisic; and General Ratko Mladic (as of 12 May 1992).</p> <p>In the local component of the rank and file JCE members: Arkan (Zeljko Raznatovic); Dr. Beli (proper name Milenko Vojnovic); Mirko Blagojevic; Radoslav Brdjanin; Simo Drljaca; Rajko Dukic; Gojko Klickovic; "Vojo" Kupresanin; Rajko Kusic; Mauzer; (proper name Ljubisa Savic); Jovan Mijatovic; Veljko Milankovic; Nedeljko Rasula; Momir Talic; Jovan Tintor; Vojin (Žuco) Vuckovic; and Stojan Zupljanin.</p> <p>231. In addition, the Trial Chamber found that the "JCE rank and file consisted of local politicians, military and police commanders, paramilitary leaders, and others." The Appeals Chamber recalls that it has already found this finding, without more, erroneous because it is unspecific and impermissibly vague. In remaining parts, however, the Trial Chamber's findings on the identity of the JCE members stand. (fn 579)</p> <p>fn. 579: Cf. Trial Judgement, paras 1087-1088. See supra III.C.1</p>
351	<p>Furthermore, the Appeals Chamber is not convinced that the Karadzic's Rule 92 ter Statement and his oral testimony on their own, are sufficient to undermine the extensive evidence supporting the Trial Chamber's findings. Therefore, the Appeals Chamber finds that the Karadzic 92 ter Statement and his oral testimony do not create a reasonable doubt that would cause the Appeals Chamber to reverse the findings on Krajisnik's hierarchical position in the Bosnian-Serb leadership.</p>
431-	<p>The Trial Chamber further found that "[t]he SDS leadership, in agreement with</p>

32	<p>the political establishment in Serbia, began considering options for a break-up of [BiH] along ethnic lines and a realignment of component parts with neighbouring states". It referred, inter alia, to a meeting between Slobodan Milosevic, Radovan Karadzic, Biljana Plavsic and Krajisnik on 14 February 1991.</p> <p>432. Krajisnik challenges this finding on the basis of a document which does not form part of the trial record and was not admitted on appeal. The Appeals Chamber therefore dismisses his argument, adding that Krajisnik in any case fails to explain why the Trial Chamber could not reasonably have reached its conclusion on the basis of the other evidence it relied on.</p>
501	<p>Krajisnik asserts that the Trial Chamber erred in concluding that he played an important role in effecting the SDS's influence over the Bosnian-Serb Assembly. In support of this assertion, he submits that witnesses testified that the deputies of the Assembly were independent; he specifically refers to the testimonies of Witnesses Trbojevic and Kasagic, as well as to Radovan Karadzic's Rule 92 ter statement. Having considered these testimonies and the extensive testimonial evidence on which the Trial Chamber relied for its finding, the Appeals Chamber is not satisfied that the Karadzic statement raises a reasonable doubt that would cause the Appeals Chamber to reverse the finding.</p>
604	<p>Krajisnik further states that before the war, he sent optimistic messages to the public and tried to prevent the war by working in the BiH Assembly until 5 April 1992. Also, in June 1991, in a TV programme, he supported peace and a political resolution in BiH, at a time when he allegedly became a JCE member. The Appeals Chamber dismisses the first allegation, as being an unsupported assertion. With respect to the second argument, the Appeals Chamber has considered the evidence referred to by Krajisnik as well as the evidence on which the Trial Chamber made the impugned finding, and is not satisfied that the Karadzic statement creates a reasonable doubt that would cause the Appeals Chamber to reverse the finding.</p>
612	<p>The Trial Chamber found that, at the Assembly session of 25 July 1992, Krajisnik asserted that the take-over of territories to date had been insufficient. Krajisnik argues that at the Assembly session of 24-26 July 1992, he "spoke about the platform for the upcoming session of negotiations where the map of the constituent units was the most important issue, and as not all aspirations could be included, [he] therefore said that the only objective of the Serbian side was to reach their goal through negotiations so that the Serbian side would acquire the areas that are Serbian, and in order to appease the deputies, he said that not all Serbian areas were included in the existing map." Furthermore, Krajisnik refers to the additional evidence of Radovan Karadzic who stated that Krajisnik was involved in efforts prior to the outbreak of war to come up with a political solution, and that he never encouraged, advocated or suggested ethnic cleansing, the movement of civilian population, or the murder of Muslims. Having considered the evidence on which the Trial Chamber's findings were based, the Appeals Chamber is not satisfied that the additional evidence creates a reasonable doubt that would prompt the Appeals Chamber to reverse the impugned finding.</p>
613	<p>At paragraph 1099 of the Trial Judgement, the Trial Chamber found that "even before the Bosnian-Serb take-overs began in April 1992, the Accused and</p>

	<p>Radovan Karadzic were aware that an armed conflict between the ethnic groups would have devastating consequences” and it cited in this connection Karadzic’s statement at the BiH Assembly session on 15 October 1991. Krajisnik argues that “the Defence presented evidence showing that Mr. Karadzic in fact just repeated the words spoken from the same rostrum by Muhamed Filipović on 10 October 1991, as Karadzic himself explained in his interview in Politika newspaper of 17 October 1991.” This is insufficient to show that the Trial Chamber’s findings in paragraph 1099 of the Trial Judgement were unreasonable. Krajisnik also argues that it is evident from what Karadzic said that this speech was not a threat, as he reiterated several times “I am not threatening”; Krajisnik adds that, chairing the session, he did not consider the statement as alarming as it was presented later in the media. The Appeals Chamber dismisses this allegation as being a mere assertion that the Trial Chamber failed to interpret evidence in a particular manner.</p>
615	<p>Krajisnik submits that the Serbian side used the “historical fact that genocide was carried out against the Serbs in WWII” as a “tactical argument” in negotiations to reach its goal of gaining 64 per cent of BiH, which represented the territory privately owned by Serbs. He disputes that this was a call for the take-over of territories because Cutileiro’s plan envisaged the creation of constituent units based on the 1971, 1981 and 1991 censuses. The Appeals Chamber considers that Krajisnik fails to address the evidence showing that the recount of World War II atrocities was not limited to negotiations and that it was used by Karadzic and Koljevic in response to allegations by Mr. Okun that “ethnic cleansing” was taking place. Hence, the Appeals Chamber dismisses Krajisnik’s allegation as an argument that challenges the Trial Chamber’s analysis of a piece of evidence without explaining why the Trial Chamber’s finding should not stand on the basis of the remaining evidence</p>
633	<p>Krajisnik argues that he advocated the prevention of war, pointing to the danger of the unconstitutional recognition of BiH independence. He also argues that immediately before the war, Karadzic addressed the deputies in support of peace, and that he (Krajisnik) supported this stance throughout the war. The Appeals Chamber finds that in light of the evidence considered by the Trial Chamber in relation to Karadzic’s position towards an armed conflict, (fn 1648) Krajisnik does not show that the findings of the Trial Chamber were unreasonable. Also, the final argument is unsupported by evidence and it is thus dismissed. Fn 1648: See Trial Judgement, para. 1099</p>
685	<p>Turning to Krajisnik’s two statements, the Appeals Chamber considers that it is not determinative that they, on their own, could lead to a reasonable inference consistent with his innocence. Rather, the question is whether the only reasonable inference on the evidence as a whole was that Krajisnik had the required mens rea. The Trial Chamber was therefore correct to evaluate the two statements in the context of other events during the Indictment period and in light of other evidence. As JCE counsel do not attempt to explain why or in what respect this holistic assessment of the evidence was unreasonable, the Appeals Chamber need not consider this argument any further. Furthermore, the Appeals Chamber does not find that in light of the evidence considered by the Trial Chamber, the</p>

additional evidence of Radovan Karadzic on Krajisnik's continued attempt to negotiate a peaceful solution during all of 1992 creates a reasonable doubt that would cause the Appeals Chamber to reverse the Trial Chamber's findings on Krajisnik's mens rea.

ANNEX “F”

Relevant References in *Tolimir* Trial Judgement:

Para.	Text
188	<p>The Srebrenica and Žepa enclaves were specifically considered in Directive 7, calling on the Drina Corps to carry out “complete physical separation of Srebrenica from Zepa “... as soon as possible, preventing even communication between individuals in the two enclaves”. It further directed the Drina Corps “by planned and well-thought-out combat operations [to] create an unbearable situation of total insecurity with no hope of further survival or life for the inhabitants of Srebrenica and Zepa”. This included limiting supplies to the enclaves, instructing:</p> <p>The relevant state and military organs responsible for work with UNPROFOR and humanitarian organisations shall, through the planned and unobtrusively restrictive issuing of permits, reduce and limit the logistics support of UNPROFOR to the enclaves and the supply of material resources to the Muslim population, making them dependent on our goodwill, while at the same time avoiding condemnation by the international community and international public opinion.</p> <p>Directive 7 further called for plans for “an operation named Jadar with the task of breaking up and destroying the Muslims forces” in the Srebrenica and Žepa enclaves and “definitively liberating the Drina valley region” if UNPROFOR forces should abandon the enclaves.</p>
705	<p>In fact, Directive 7 specifically targeted these protected civilian populations with a call to create “an unbearable situation of total insecurity with no hope of further survival or life for the inhabitants of Srebrenica and Zepa”.. Given the VRS’s detailed knowledge about the situation in the enclaves, the Majority finds that this specific language of Directive 7—“the inhabitants of Srebrenica and Zepa”—would necessarily refer to a predominantly civilian Bosnian Muslim population, the large part of whom had been driven further into the narrowing enclaves by previous military actions of the VRS. In the months that followed the issuance of Directive 7, VRS military actions were directed at the Srebrenica and Zepa enclaves. VRS retaliations—against ABiH actions and NATO bombing—targeted Bosnian Muslim civilians. The VRS additionally targeted UNPROFOR units stationed in the enclaves—the peacekeeping units that were intended to assist the civilian population. Convoys of humanitarian aid and UNPROFOR supplies were heavily restricted with the eventual and expected result of a beleaguered population and an ineffective peacekeeping force.</p>
813	<p>The Majority also finds that the evidence establishes beyond reasonable doubt that the Bosnian Serb Forces possessed the intent to forcibly displace the Bosnian Muslims from the Srebrenica enclave to ABiH-held territory within the BiH. As established in the findings on the elements of Article 5, the intent to separate the ethnic groups of BiH existed from as early as 1992. By March 1995, there was a clear RS directive to target the Bosnian Muslim population to create “an unbearable situation of total insecurity with no hope of further survival or life for the inhabitants of Srebrenica and Zepa”. Following months of restrictions in 1995 and calculated attacks on the civilian population in early July, the Bosnian Muslims of Srebrenica had clustered into a small area of the enclave; it was at that time that the Bosnian Serb Forces seized the opportunity to move the entirety of the vulnerable population to other areas of BiH in accordance with their plan.</p>

1012	<p>The Accused further submits that Directive 7 was never implemented and instead replaced by Directive 7/1 issued on 31 March 1995, which did not include a reference to the creation of unbearable living conditions. The Majority, notes, firstly, that already on 20 March 1995, the Drina Corps Command issued an order for combat operations forwarding, verbatim, the goal set out in Directive 7 to create an unbearable situation of total insecurity for the inhabitants of the enclaves to its subordinate brigades. Second, the evidence demonstrates that contrary to the Accused's position, Directive 7/1 did not replace Directive 7, but served as the military translation of the political goals set out in the text of Directive 7. Military orders issued after Directive 7/1 set out tasks pursuant to Directive 7 and Directive 7/1.³⁹⁹² The Majority in this regard specifically notes the order for active combat operations issued by Živanović on 2 July 1995, which in particular ordered that the task of improving the VRS's tactical position “in the depth of the area” with a view of “creat[ing] conditions for the elimination of the enclaves”, shall be done “pursuant to Operations Directive 7 and 7/1” of the VRS Main Staff. The Majority, Judge Nyambe dissenting, is therefore satisfied that the political goals set out in Directive 7—which, the Majority emphasises, were endorsed by Karadžić as the Supreme Commander of the armed forces of the RS by his signing of the Directive—were implemented through military orders.</p>
1015	<p>The Chamber has already found elsewhere in this Judgement that the VRS did engage in restrictions on convoys delivering humanitarian aid and UNPROFOR re-supply convoys to both enclaves. Through and by these restrictions which steadily increased from March 1995 up until July, the Majority finds that the enclaves were, as envisaged by Directive 7, “squeezed” to the point where the living circumstances for the Bosnian Muslim population became unbearable. They also resulted in the reduced operational readiness of UNPROFOR and its inability, as a result, to carry out its mandate. As a consequence, a devastating humanitarian situation engulfed the enclaves by early July, leaving an estimated 42,000 persons inside Srebrenica and the approximately 6,500 to 10,000 people in Zepa without sufficient food, water or medical supplies, aware of the inability of DutchBat to protect them, and in fear of what was to come</p>
1038	<p>The Majority, Judge Nyambe dissenting, finds that the restrictions of convoys and military actions against the enclaves as detailed above and elsewhere in this Judgement were carried out pursuant to the strategic goals set out in Directive 7. These military actions were connected, and occurred almost in unison. They demonstrate the planned and coordinated efforts by the VRS, laying the groundwork for the realisation of the ultimate aim of Directive 7: the physical removal of the Bosnian Muslim population, including both the ABiH and its civilian inhabitants, from the enclaves of Srebrenica and Zepa. Within a very short period of time, the plan of ethnic separation that had been devised by the RS leadership in the previous years had been implemented, and it was done so successfully. The VRS managed to transport approximately 25,000-30,000 Bosnian Muslim civilians—with the exception of at least 1,000 men whose fate is discussed elsewhere in this Judgement—from Potocari to Kladanj—with the assistance of the MUP—in a matter of days. Less than two weeks later, nearly 4,400 Bosnian Muslims were transported out of Zepa over a period of only three days.</p>
1040	<p>The Majority, Judge Nyambe dissenting, has no doubt that at the latest by early March 1995 a common plan existed in the Bosnian Serb leadership to forcibly remove</p>

<p>the Bosnian Muslim population from the Srebrenica and Žepa enclaves. The acts that were taken to implement this plan, as discussed above, were carried out in furtherance of the JCE to Forcibly Remove. The plan was carried out by a plurality of persons, including numerous high-ranking VRS officers and their subordinates, and members of the MUP. The participation of the Accused in this plan, and the extent to which he contributed to it, will be discussed separately.</p>



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