



The International Residual Mechanism for Criminal Tribunals (“Mechanism”) was established on 22 December 2010 by the United Nations Security Council to continue the jurisdiction, rights, obligations and essential functions of the International Criminal Tribunal for Rwanda (“ICTR”) and the International Criminal Tribunal for the former Yugoslavia (“ICTY”) which closed in 2015 and 2017, respectively.

JUDGEMENT SUMMARY

APPEALS CHAMBER

(Exclusively for the use of the media. Not an official document)

The Hague, 8 June 2021

Appeal Judgement Summary for *Prosecutor v. Ratko Mladić*

Please find below the summary of the Judgement read out today by Judge Prisca Matimba Nyambe.

1. The Appeals Chamber pronounces the judgement in the case of *Prosecutor v. Ratko Mladić* today pursuant to Rule 144(D) of the Mechanism’s Rules of Procedure and Evidence (“Rules”). This summary contains the essential issues on appeal and the central findings of the Appeals Chamber and does not constitute any part of the official and authoritative Judgement.

A. Background

2. From 27 September 1965 until 10 May 1992, Ratko Mladić was a member of the Yugoslav People’s Army and held various positions in military posts throughout the former Yugoslavia. On 12 May 1992, the Bosnian Serb Assembly appointed Mladić as Commander of the Main Staff of the Army of *Republika Srpska* (“VRS”) and he remained in command until at least 8 November 1996.

3. On 24 July 1995 and 16 December 2011, the Office of the Prosecutor of the International Criminal Tribunal for the former Yugoslavia (“ICTY” and “Prosecution”) filed the respective initial and operative indictments against Mladić (“Indictment”), charging him with individual criminal responsibility on 11 counts of genocide, crimes against humanity, and violations of the laws or customs of war under Articles 3, 4, and 5 of the Statute of the ICTY (“ICTY Statute”), covering crimes allegedly committed between 12 May 1992 and 30 November 1995 in Bosnia and Herzegovina.

4. On 22 November 2017, Trial Chamber I of the ICTY (“Trial Chamber”) acquitted Mladić of genocide under Count 1 of the Indictment in relation to crimes committed against Bosnian Muslims and Bosnian Croats in certain municipalities throughout Bosnia and Herzegovina. The Trial Chamber convicted Mladić pursuant to Article 7(1) of the ICTY Statute of: (i) genocide; (ii) persecution,



extermination, murder, deportation, and inhumane acts as crimes against humanity; and (iii) murder, terror, unlawful attacks on civilians, and taking of hostages as violations of the laws or customs of war.

5. The Trial Chamber found Mladić responsible for committing these crimes through his “leading and grave role” in four joint criminal enterprises: (i) the “Overarching JCE”, aiming to permanently remove Bosnian Muslims and Bosnian Croats from Bosnian Serb-claimed territory in Bosnia and Herzegovina between May 1992 and November 1995; (ii) the “Sarajevo JCE”, aiming to spread terror among the civilian population of Sarajevo through a campaign of sniping and shelling between May 1992 and November 1995; (iii) the “Srebrenica JCE”, aiming to eliminate the Bosnian Muslims in Srebrenica between July and at least October 1995; and (iv) the “Hostage-Taking JCE”, aiming to capture UN Protection Force (“UNPROFOR”) and UN Military Observer(s) personnel (collectively, “UN Personnel”) deployed in Bosnia and Herzegovina and detain them in strategic military locations to prevent the North Atlantic Treaty Organization (“NATO”) from launching further air strikes against Bosnian Serb military targets from May to June 1995.

6. The Trial Chamber sentenced Mladić to life imprisonment.

7. Mladić filed an appeal challenging his convictions and sentence. He requests that the Appeals Chamber reverse all erroneous findings of the Trial Chamber, quash his convictions, and acquit him. In the alternative, Mladić seeks a retrial or a reduction in his sentence.

8. The Prosecution filed an appeal challenging some of the Trial Chamber’s findings pertaining to the Overarching JCE and its acquittal of Mladić for genocide under Count 1 of the Indictment. The Prosecution requests that the Appeals Chamber correct the Trial Chamber’s errors and convict Mladić of genocide under Count 1 of the Indictment.

9. The Appeals Chamber heard oral submissions of the parties on 25 and 26 August 2020.

B. Fair Trial Rights

10. In Grounds 1, 2.A, 8.A, 8.B, and 8.D of the appeal, Mladić submits that the Trial Chamber violated his fair trial rights by, *inter alia*: (i) relying on incidents which were not part of the Indictment or the Prosecution’s case in determining his liability; (ii) taking judicial notice of adjudicated facts relating to the conduct of proximate subordinates and heightening the standard of the burden to produce rebuttal evidence; (iii) failing to ensure equality of arms in relation to the presentation of the Defence case; (iv) conducting trial proceedings to the detriment of his health and failing to assess the impact of his



medical conditions on his behaviour at trial; and (v) failing to provide an adequate remedy for the Prosecution's disclosure violations.

11. For the reasons stated in the Judgement, the Appeals Chamber finds, Judge Nyambe dissenting, that Mladić fails to demonstrate that the Trial Chamber committed any error in these respects and dismisses Grounds 1, 2.A, 8.A, 8.B, and 8.D of Mladić's appeal.

C. Overarching JCE

12. The Appeals Chamber recalls the Trial Chamber's finding that, between 1991 and 30 November 1995, the Overarching JCE existed with the objective of permanently removing Bosnian Muslims and Bosnian Croats from Bosnian Serb-claimed territory in Bosnia and Herzegovina through the crimes of persecution, extermination, murder, inhumane acts (forcible transfer), and deportation. The Trial Chamber further found that Mladić's acts and omissions were so instrumental to the commission of the crimes that without them the crimes would not have been committed as they were. The Trial Chamber concluded that, by 12 May 1992, Mladić significantly contributed to the Overarching JCE and shared the intent to achieve its common objective.

13. Under Ground 3.A, Mladić submits that the Trial Chamber committed several errors in finding that the Overarching JCE existed and that he was a member of it. Having considered his submissions, the Appeals Chamber finds, Judge Nyambe dissenting, that Mladić has failed to demonstrate that the Trial Chamber committed any error in its method of relying on adjudicated facts when making findings on the underlying crimes of the Overarching JCE. The Appeals Chamber also finds, Judge Nyambe dissenting, that Mladić fails to demonstrate any error in the Trial Chamber's assessment of the evidence which he purports to be exculpatory relating to his membership in the Overarching JCE, as well as in its assessment of the scope of the joint criminal enterprise, his relationship with the Bosnian Serb leadership, and his role in the VRS. Therefore, the Appeals Chamber, Judge Nyambe dissenting, dismisses Ground 3.A of Mladić's appeal.

14. Under Ground 3.B, Mladić argues that the Trial Chamber erred in finding that he significantly contributed to and intended to participate in the Overarching JCE. In addressing Mladić's challenges, as detailed in the Judgement, the Appeals Chamber finds, Judge Nyambe dissenting, that Mladić fails to demonstrate that the Trial Chamber erred in finding that he significantly contributed to the common criminal purpose of the Overarching JCE.



15. In relation to Mladić's submission that the Trial Chamber erred in determining that he possessed and shared the intent to achieve the common objective of the Overarching JCE, the Appeals Chamber finds, Judge Nyambe dissenting, that Mladić does not demonstrate that the Trial Chamber erroneously applied a "defective method" in determining his intent. Similarly, the Appeals Chamber finds, Judge Nyambe dissenting, that Mladić fails to demonstrate any error in the Trial Chamber's assessment of direct and circumstantial evidence. Contrary to his argument that the Trial Chamber selectively relied on parts of his speeches before the Bosnian Serb Assembly to substantiate his intent, the Appeals Chamber finds, Judge Nyambe dissenting, that the Trial Chamber took a balanced account of his statements in their context and considered them within the totality of evidence of all his statements and conduct pertinent to the Overarching JCE. Furthermore, based on the Trial Chamber's findings and assessment of evidence, the Appeals Chamber finds, Judge Nyambe dissenting, that the alternative inference Mladić proposes, namely that he only sought legitimate military success rather than permanent removal of Bosnian Muslim and Bosnian Croat civilians, is not reasonable.

16. The Appeals Chamber therefore finds, Judge Nyambe dissenting, that Mladić demonstrates no error in the Trial Chamber's finding that he shared the intent to achieve the common objective of the Overarching JCE.

17. Based on the foregoing, the Appeals Chamber, Judge Nyambe dissenting, dismisses Ground 3.B of Mladić's appeal.

D. Sarajevo JCE

18. The Appeals Chamber recalls the Trial Chamber's finding that the Sarajevo JCE existed between 12 May 1992 and November 1995, with the objective of spreading terror among the civilian population of Sarajevo through a campaign of sniping and shelling, including through the commission of murder, terror, and unlawful attacks against civilians. The Trial Chamber determined that Mladić shared the intent to further, and significantly contributed to achieving, the Sarajevo JCE's common purpose.

19. Under Ground 4.A of his appeal, Mladić challenges aspects of the Trial Judgement in relation to the crime of terror, whether Sarajevo was a "defended city", the existence of the Sarajevo JCE, as well as his participation and intent. As elaborated in the Judgement, the Appeals Chamber finds, Judge Nyambe dissenting, that Mladić fails to demonstrate that the Trial Chamber erred in exercising jurisdiction over the crime of terror or that there are cogent reasons to depart from established jurisprudence in this respect.



20. Furthermore, the Appeals Chamber considers, Judge Nyambe dissenting, that Mladić does not demonstrate that the Trial Chamber erred by failing to consider Sarajevo as a “defended city” and finds, Judge Nyambe dissenting, that Mladić fails to demonstrate that no reasonable trier of fact could, in principle, have concluded that terror was the primary purpose of the shelling and sniping campaign in Sarajevo.

21. The Appeals Chamber finds, Judge Nyambe dissenting, that Mladić also fails to demonstrate error in the Trial Chamber’s assessment of his statements and orders, especially given the totality of the factors relied upon by the Trial Chamber in the overall assessment of his intent in relation to the crimes committed within the Sarajevo JCE. Furthermore, the Appeals Chamber finds, Judge Nyambe dissenting, that Mladić fails to demonstrate that the Trial Chamber applied an erroneous standard of proof or erred in its assessment in finding the perpetrators’ specific intent to spread terror among the civilian population in Sarajevo.

22. For the foregoing reasons, the Appeals Chamber, Judge Nyambe dissenting, dismisses Ground 4.A of Mladić’s appeal.

23. Under Ground 4.B of his appeal, Mladić challenges the Trial Chamber’s assessment of the majority of incidents it considered to form part of the Sarajevo JCE crime base. The Appeals Chamber finds, Judge Nyambe dissenting, that Mladić does not demonstrate that the Trial Chamber failed to consider evidence of legitimate military activity, erroneously relied on adjudicated facts, failed to provide a reasoned opinion, or erroneously inferred the responsibility of the Sarajevo Romanija Corps of the VRS. Therefore, the Appeals Chamber, Judge Nyambe dissenting, dismisses Ground 4.B of Mladić’s appeal.

E. Srebrenica JCE

24. The Appeals Chamber recalls the Trial Chamber’s finding that, between the days immediately preceding 11 July 1995 and at least October 1995, the Srebrenica JCE existed with the primary purpose of eliminating Bosnian Muslims in Srebrenica by killing the men and boys and forcibly removing the women, young children, and some elderly men. The Trial Chamber concluded that the objective of the Srebrenica JCE involved the commission of the crimes of persecution and inhumane acts (forcible transfer). The Trial Chamber also concluded that by the morning of 12 July 1995, the crimes of genocide, extermination, and murder became part of the means to achieve the objective of the Srebrenica JCE.



The Trial Chamber found that Mladić contributed significantly to the Srebrenica JCE and that he shared the intent to achieve its common objective.

25. Under Ground 5.A of his appeal, Mladić challenges the Trial Chamber's findings that he was part of a common criminal plan to forcibly transfer Bosnian Muslims and to commit genocide, extermination, and murder.

26. Regarding the common plan to forcibly transfer Bosnian Muslims, the Appeals Chamber, Judge Nyambe dissenting, finds unconvincing Mladić's submission that he was acting to evacuate civilians for humanitarian reasons. The Appeals Chamber finds, Judge Nyambe dissenting, that he demonstrates no error in the Trial Chamber's conclusions that the civilians who left Srebrenica in July 1995 "did not have a genuine choice but to leave", that their displacement was not lawful, and that the removal of Bosnian Muslim women, young children, and some elderly men from Srebrenica was forcible. In this regard, the Appeals Chamber finds, Judge Nyambe dissenting, that Mladić fails to undermine the core findings relied upon by the Trial Chamber, including that it was the conduct of the VRS that precipitated the humanitarian crises that preceded the displacements as well as the violent nature with which the VRS effected the displacements. In view of the above, the Appeals Chamber finds, Judge Nyambe dissenting, that Mladić fails to demonstrate that the Trial Chamber erred with respect to the Srebrenica JCE in finding that the removal of Bosnian Muslim women, young children, and some elderly men from Srebrenica was forcible.

27. As explained in the Judgement, the Appeals Chamber also finds, Judge Nyambe dissenting, that Mladić demonstrates no error in the Trial Chamber's assessment of evidence in relation to his participation in the common criminal plan to commit genocide, extermination, and murder.

28. Consequently, the Appeals Chamber, Judge Nyambe dissenting, dismisses Ground 5.A of Mladić's appeal.

29. The Appeals Chamber, Judge Nyambe dissenting, further rejects Mladić's arguments, under Ground 5.B of his appeal, that in concluding that he significantly contributed to the Srebrenica JCE, the Trial Chamber failed to give sufficient weight to: (i) evidence regarding his absence from Srebrenica; (ii) evidence that the MUP was not under his effective control; (iii) the military context and content of orders he gave in Srebrenica; (iv) evidence undermining the authenticity and reliability of certain intercept communications; and (v) evidence regarding his knowledge of the crimes, his inability to punish crimes, and that he or his subordinates prosecuted or investigated crimes. In particular, with



respect to his absence from Srebrenica in July 1995, the Appeals Chamber notes the Trial Chamber's findings that Mladić remained in command and control of the VRS, gave orders to VRS units that were implemented, and communicated over the phone on a regular basis with the VRS Main Staff and his subordinates. The Appeals Chamber finds, Judge Nyambe dissenting, that his arguments challenging the Trial Chamber's weighing of evidence in this regard reflect mere disagreement without demonstrating any error. For these and other reasons elaborated in the Judgement, the Appeals Chamber, Judge Nyambe dissenting, dismisses Ground 5.B of Mladić's appeal.

30. Under Ground 5.D of his appeal, Mladić challenges the Trial Chamber's finding that he shared the intent to achieve the common objective of the Srebrenica JCE. The Appeals Chamber finds, Judge Nyambe dissenting, that Mladić fails to demonstrate that the Trial Chamber erred by giving insufficient weight to: (i) his statements and actions to adhere to international law and ensuring the welfare of prisoners of war; and (ii) the military context of the orders he and his subordinates gave in Srebrenica, which he contends were consistent with combat operations. In particular, with respect to the order he issued on 13 July 1995, which called for the prevention of the entry of local and foreign journalists into the zones of combat operations in Srebrenica and Žepa, as well as a ban on giving any information to the media about operations in Srebrenica, the Appeals Chamber notes, Judge Nyambe dissenting, that Mladić attempts to show that this order was aimed at prohibiting access to Srebrenica for the media's own protection and to prevent the spreading of rumours. Mladić ignores, however, that the Trial Chamber's finding on his shared intent is based on a number of other findings regarding his position, his presence on the ground in Potočari and involvement in the Hotel Fontana meetings, his proposal to mislead the international public about the truth at the 16th Assembly Session, and the reburials of the Bosnian Muslim men and boys murdered in Srebrenica. Based on the foregoing and other reasons set out in the Judgement, the Appeals Chamber, Judge Nyambe dissenting, dismisses Ground 5.D of Mladić's appeal.

31. For the reasons set out in the Judgement, the Appeals Chamber, Judge Nyambe dissenting, dismisses Ground 5.E of Mladić's appeal under which he argues, *inter alia*, that the Trial Chamber failed to provide a reasoned opinion or evaluate the military status of the victims.

32. With respect to Mladić's challenges under Ground 5.I of his appeal, the Appeals Chamber considers, for the reasons set out in the Judgement, Judge Nyambe dissenting, that he fails to show any error in the Trial Chamber's reliance on evidence and adjudicated facts in reaching its findings relating to



the Srebrenica JCE. The Appeals Chamber, Judge Nyambe dissenting, dismisses Ground 5.I of Mladić's appeal.

F. Hostage-Taking JCE

33. The Appeals Chamber recalls the Trial Chamber's finding that, from around 25 May 1995 until approximately 24 June 1995, the Hostage-Taking JCE existed with the common objective of capturing UN Personnel deployed in various parts of Bosnia and Herzegovina and detaining them at strategic military locations to prevent NATO from launching air strikes against Bosnian Serb military targets. The Trial Chamber further found that Mladić, as Commander of the VRS Main Staff, was "closely involved [...] throughout every stage of the hostage-taking" and significantly contributed to and shared the intent to achieve the common objective of the joint criminal enterprise.

34. In relation to Mladić's challenges under Grounds 6.A and 6.B of his appeal, the Appeals Chamber finds that Mladić fails to demonstrate that the Trial Chamber erred in finding that it had jurisdiction over the hostage-taking of UN Personnel or that there are cogent reasons to depart from well-established jurisprudence on this matter. The Appeals Chamber recalls that under Common Article 3 of the Geneva Conventions, there is an absolute prohibition of taking hostage of any person taking no active part in hostilities, including detained individuals, irrespective of their status prior to detention. Mladić therefore fails to demonstrate that the Trial Chamber erred in finding that the status of the UN Personnel as combatants or civilians was irrelevant to determining whether they were entitled to the protection against hostage-taking under Common Article 3. The Appeals Chamber therefore dismisses Grounds 6.A and 6.B of Mladić's appeal.

35. Mladić also fails to demonstrate, in Ground 6.C of his appeal, that the Trial Chamber gave insufficient weight to exculpatory evidence on his significant contribution and shared intent in relation to the Hostage-Taking JCE. In particular, Mladić does not show how selective orders to treat the detained UN Personnel as prisoners of war or examples of alleged favourable treatment of the detainees, who were threatened, abused, and used as "human shields", could undermine the Trial Chamber's conclusion that he significantly contributed to the Hostage-Taking JCE. Similarly, the Appeals Chamber finds that Mladić's arguments that his orders to detain and disarm the UN Personnel, as well as those forbidding leakage of information regarding the detention and contact with the detainees, were lawful fail to identify any error or undermine the Trial Chamber's finding that he significantly contributed to the Hostage-Taking JCE.



36. Furthermore, in light of the evidence and the Trial Chamber's findings that Mladić issued orders to detain the UN Personnel and place them at potential NATO air strike locations, made statements on the fate of the detainees, informed UNPROFOR that their release was contingent on the cessation of air strikes, and that his subordinates threatened the UN Personnel with the aim of stopping the air strikes, the Appeals Chamber finds that Mladić fails to demonstrate that the Trial Chamber insufficiently considered his alleged "proactive actions and conduct" in finding that he shared the intent to achieve the common purpose of the Hostage-Taking JCE.

37. For the foregoing reasons, the Appeals Chamber dismisses Ground 6.C of Mladić's appeal.

G. Modes of Liability

38. The Trial Chamber convicted Mladić under Article 7(1) of the ICTY Statute for his commission of crimes through his participation in four joint criminal enterprises. The Trial Chamber stated that Mladić's "conduct and superior position [were] encapsulated within the conduct relied upon to establish his participation in the four [joint criminal enterprises]". When determining Mladić's sentence, the Trial Chamber took into account his participation in the four joint criminal enterprises in his official capacity as Commander of the VRS Main Staff, finding that it amounted to an abuse of his superior position.

39. Under Ground 7 of his appeal, Mladić submits that the Trial Chamber erred by failing to provide a reasoned opinion in its findings on his superior responsibility and to establish his liability under Article 7(3) of the ICTY Statute beyond reasonable doubt. The Appeals Chamber considers that the Trial Chamber's statement that Mladić's superior responsibility was "encapsulated" within his joint criminal enterprise liability falls short of a reasoned opinion. Notwithstanding, the Appeals Chamber considers, Judge Nyambe dissenting, that Mladić confuses superior responsibility under Article 7(3) of the ICTY Statute with abuse of authority as an aggravating factor in sentencing, which does not require a finding of superior responsibility. The Appeals Chamber, Judge Nyambe dissenting, therefore dismisses Mladić's argument that the Trial Chamber should have made findings on the elements of Article 7(3) of the ICTY Statute in order to consider his abuse of authority as an aggravating factor in sentencing.

40. Based on the foregoing, the Appeals Chamber, Judge Nyambe dissenting, dismisses Ground 7 of Mladić's appeal.



H. Systematic Unfairness or Bias throughout the Proceedings

41. Given that Mladić has failed to establish any error warranting the Appeals Chamber's intervention in respect of Grounds 1 to 8(A-D) of his appeal, the Appeals Chamber finds, Judge Nyambe dissenting, that his request for a retrial or remittance to remedy "cumulative" errors in the Trial Judgement is without merit. The Appeals Chamber, Judge Nyambe dissenting, dismisses Ground 8.E of Mladić's appeal.

I. Sentencing

42. The Trial Chamber sentenced Mladić to a single sentence of life imprisonment for: (i) genocide; (ii) persecution, extermination, murder, deportation, and inhumane acts as crimes against humanity; and (iii) murder, terror, unlawful attacks on civilians, and taking of hostages as violations of the laws or customs of war.

43. In relation to Mladić's challenges against the Trial Chamber's considerations in the determination of his sentence under Ground 9 of his Appeal, for the reasons stated in the Judgement, the Appeals Chamber finds, Judge Nyambe dissenting, no discernible error in the Trial Chamber's conclusion that Mladić abused his position of authority and that this added to the gravity of the crimes. The Appeals Chamber also finds, Judge Nyambe dissenting, that Mladić fails to demonstrate a discernible error in its assessment of circumstances mitigating his sentence.

44. With respect to Mladić's submission that the Trial Chamber failed to give sufficient weight to his alleged benevolent treatment of and assistance to victims as mitigating circumstances, the Appeals Chamber recalls that the Trial Chamber noted the central position Mladić held within the leadership of the VRS and considered that he "had the power to provide assistance to the victimized population on a large scale, had he wished to do so". The Trial Chamber further recalled that "sporadic benevolent acts or ineffective assistance may be disregarded", and therefore did not consider this factor in mitigation of Mladić's sentence. The Appeals Chamber considers, Judge Nyambe dissenting, that, in light of the gravity of the offences committed by Mladić and the noted sporadic nature of the benevolent treatment and assistance undertaken by him, he does not demonstrate a discernible error in the Trial Chamber's assessment of his assistance as a mitigating circumstance.

45. Furthermore, the Appeals Chamber considers, Judge Nyambe dissenting, that the Trial Chamber properly took into account the general sentencing practice in the former Yugoslavia and finds, Judge



Nyambe dissenting, that Mladić fails to demonstrate that the Trial Chamber erred in imposing a life sentence.

46. Based on the foregoing, the Appeals Chamber, Judge Nyambe dissenting, dismisses Grounds 9.A, 9.B, 9.C, and 9.D of Mladić's appeal.

J. The Appeal of the Prosecution

47. Under Count 1 of the Indictment, the Prosecution alleged that, between 31 March 1992 and 31 December 1992, Mladić committed in concert with others, planned, instigated, ordered, and/or aided and abetted genocide against a part of the Bosnian Muslim and/or Bosnian Croat groups, as such, in some municipalities of Bosnia and Herzegovina, particularly Foča, Ključ, Kotor Varoš, Prijedor, Sanski Most, and Vlasenica. The Trial Chamber found that a large number of Bosnian Muslims and/or Bosnian Croats in these municipalities were the victims of prohibited acts of genocide, such as killings or serious bodily or mental harm, which contributed to the destruction of their groups. The Trial Chamber further found, by majority, that certain physical perpetrators of these prohibited acts had the intent to destroy a part of the Bosnian Muslim group when carrying out the prohibited acts, except in relation to Bosnian Muslims in Ključ. However, the Trial Chamber was not convinced beyond reasonable doubt that those perpetrators intended to destroy the Bosnian Muslims in Sanski Most, Foča, Kotor Varoš, Prijedor, and Vlasenica ("Count 1 Municipalities"), "as a *substantial* part of the protected group". The Trial Chamber was also not convinced beyond reasonable doubt that the Bosnian Serb leadership possessed genocidal intent or that the crime of genocide formed part of the objective of the Overarching JCE. Accordingly, the Trial Chamber acquitted Mladić of genocide under Count 1 of the Indictment.

48. Under Ground 1 of its appeal, the Prosecution argues that the Trial Chamber erroneously concluded that the Bosnian Muslim communities of the Count 1 Municipalities did not each constitute a substantial part of the Bosnian Muslim group. In addressing this argument, the Appeals Chamber recalls that, where a conviction for genocide relies on the intent to destroy a protected group "in part", the targeted part must be a substantial part of that group. In particular, the Appeals Chamber, Judges N'gum and Panton dissenting, finds that the Prosecution does not demonstrate error in the Trial Chamber's conclusion that the Bosnian Muslim communities of the Count 1 Municipalities each formed "a relatively small part" of the group. With respect to the Prosecution's contention that the destruction of the Bosnian Muslim communities of the Count 1 Municipalities would in each case have been significant enough "to have an impact on the Bosnian Muslim [g]roup as a whole", the Appeals Chamber



recalls that it is not just *any* impact on a protected group that supports a finding of genocidal intent. Rather, it is the impact that the destruction of the targeted part will have on the overall *survival* of that group which indicates whether there is intent to destroy a substantial part thereof. The Appeals Chamber, Judges N’gum and Panton dissenting, finds that, with respect to the Bosnian Muslim communities of the Count 1 Municipalities, neither the Trial Chamber’s findings nor the evidence referred to by the Prosecution reflects such a threat to the viability or survival of the Bosnian Muslim group.

48. The Appeals Chamber, Judges N’gum and Panton dissenting, therefore finds that the Prosecution fails to demonstrate that the Trial Chamber erred in concluding that the Bosnian Muslim communities of the Count 1 Municipalities did not each constitute a substantial part of the Bosnian Muslim group in Bosnia and Herzegovina. The Appeals Chamber, Judges N’gum and Panton dissenting, dismisses Ground 1 of the Prosecution’s appeal.

49. Under Ground 2 of its appeal, the Prosecution submits that the Trial Chamber erred in concluding that genocide did not form part of the common purpose of the Overarching JCE by failing to infer the “destructive intent” of Mladić and other Overarching JCE members, and by applying a heightened evidentiary threshold in its assessment thereof. The Appeals Chamber recalls, however, that a substantiality assessment considers the impact that the destruction of the targeted part will have on the overall survival of that group. Noting that the Bosnian Muslim communities of the Count 1 Municipalities collectively comprised approximately 6.7 per cent of the Bosnian Muslim group, the Appeals Chamber, Judges N’gum and Panton dissenting, considers that a reasonable trier of fact could reasonably have concluded that these communities, individually as well as cumulatively, formed “a relatively small part” thereof. The Appeals Chamber, Judges N’gum and Panton dissenting, therefore concludes that a reasonable trier of fact could also have found that the destruction of the Bosnian Muslim communities of the Count 1 Municipalities, individually as well as cumulatively, was not sufficiently substantial to have an impact on the group’s overall survival at the relevant time.

50. Recalling that the Appeals Chamber will only review alleged errors that have the potential to affect the outcome of an appeal, the Appeals Chamber need not address the Prosecution’s remaining arguments and remedial requests in relation to the Trial Chamber’s alleged failure to infer Mladić’s “destructive intent” and convict him of genocide under Count 1 of the Indictment.



51. Based on the foregoing, the Appeals Chamber, Judges N’gum and Panton dissenting, dismisses Ground 2 of the Prosecution’s appeal.

K. Disposition

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

PURSUANT to Article 23 of the Statute and Rule 144 of the Rules;

NOTING the written submissions of the parties and their oral arguments presented at the appeal hearing on 25 and 26 August 2020;

SITTING in open session;

DISMISSES Mladić’s appeal in its entirety, Judge Nyambe dissenting as to Grounds 1, 2, 3, 4, 5, 7, 8, and 9 of Mladić’s appeal;

DISMISSES, Judges N’gum and Panton dissenting, the Prosecution’s appeal in its entirety;

AFFIRMS, Judges N’gum and Panton dissenting, the disposition of the Trial Chamber finding Mladić not guilty of genocide under Count 1 of the Indictment;

AFFIRMS the disposition of the Trial Chamber finding Mladić guilty of taking of hostages as a violation of the laws or customs of war under Count 11 of the Indictment, pursuant to Article 7(1) of the ICTY Statute, and **FURTHER AFFIRMS**, Judge Nyambe dissenting, the disposition of the Trial Chamber finding Mladić guilty of genocide under Count 2 of the Indictment, persecution as a crime against humanity under Count 3 of the Indictment, extermination as a crime against humanity under Count 4 of the Indictment, murder as a crime against humanity under Count 5 of the Indictment, murder as a violation of the laws or customs of war under Count 6 of the Indictment, deportation as a crime against humanity under Count 7 of the Indictment, inhumane acts (forcible transfer) as a crime against humanity under Count 8 of the Indictment, terror as a violation of the laws or customs of war under Count 9 of the Indictment, unlawful attacks on civilians as a violation of the laws or customs of war under Count 10 of the Indictment, pursuant to Article 7(1) of the ICTY Statute;

AFFIRMS, Judge Nyambe dissenting, the sentence of life imprisonment imposed on Mladić by the Trial Chamber;



RULES that this Judgement shall be enforced immediately pursuant to Rule 145(A) of the Rules; and

ORDERS that, in accordance with Rules 127(C) and 131 of the Rules, Mladić shall remain in the custody of the Mechanism pending the finalization of the arrangements for his transfer to the State where he will serve his sentence.

Judge Prisca Matimba Nyambe appends a partially dissenting opinion.

Judge Aminatta Lois Runeni N'gum and Judge Seymour Panton append a joint partially dissenting opinion.
